AGENDA

CITY COUNCIL MEETING

MONDAY, JANUARY 5, 2015

7:00 P.M.
CITY COUNCIL CHAMBERS, CITY HALL - 45 LYON TERRACE
BRIDGEPORT, CONNECTICUT

Prayer

Pledge of Allegiance

Roll Call

Mayoral Proclamation: Honoring retired Bridgeport Police Lieutenant David Daniels III for more than 25 years of dedicated service to the community.

City Council Citation: Honoring retired Bridgeport Police Lieutenant David Daniels III for more than 25 years of dedicated service to the community.

MINUTES FOR APPROVAL:

Approval of City Council Minutes: November 3, 2014 (Tabled on 12/15/14) and November 17, 2014.

COMMUNICATIONS TO BE REFERRED TO COMMITTEES:

12-14 Communication from OPED re: Proposed Resolution regarding the Permanent renaming of Ann Street in Steel Point to "Bass Pro Way", referred to Public Safety and Transportation Committee.

13-14 Communication from Central Grants re: Grant Submission: State of Connecticut Department of Energy and Environmental Protection for America the Beautiful (ATB) Grant Program, referred to Economic and Community Development and Environment Committee.

14-14 Communication from Labor Relations and Benefits Administration re: Proposed Pharmacy Benefit Management Agreement with Express Scripts Insurance Company, Inc. for the period of January 1, 2014 to December 31, 2016, referred to Contracts Committee.

15-14 Communication from Labor Relations and Benefits Administration re: Proposed Agreement with Express Scripts Insurance Company, Inc. regarding Medicare Part-D Employer-Only Sponsored Group Waiver Plan Prescription Drug Services for the period of January 1, 2015 to December 31, 2016, referred to Contracts Committee.

16-14 Communication from Central Grants re: Grant Submission: State of Connecticut Department of Office of Policy and Management for the Nutmeg Network Grant Program, referred to Economic and Community Development and Environment Committee.

COMMUNICATIONS TO BE REFERRED TO COMMITTEES CONTINUED:

18-14 Communication from City Attorney re: Proposed Design-Build Agreement concerning Streetscape Projects, referred to Contracts Committee.

19-14 Communication from Central Grants re: Grant Submission: Arbor Day Foundation for TD Green Streets Grant Program (#15347), referred to Economic and Community Development and Environment Committee.

20-14 Communication from Central Grants re: Grant Submission: State of Connecticut Department of Housing Community Development Block Grant Disaster Recovery (CDBG-DR) Tranche 2 Application for Public Facilities Infrastructure and Planning (#15463), referred to Economic and Community Development and Environment Committee.

21-14 Communication from City Attorney re: Proposed Settlement of Pending Litigation with William Feliciano, referred to Miscellaneous Matters Committee.

22-14 Communication from OPED re: Proposed Resolution Authorizing Capital Funding for the Historic Renovation of the Mary and Eliza Freeman Homes Located at 354 and 360 Main Street, referred to Economic and Community Development and Environment Committee.

23-14 Communication from OPED re: Proposed Resolution Authorizing a Tax Incentive Agreement for Crescent Crossings II Project, a Mixed-Income Affordable Housing Development Located at 252 Hallett Street and request to order a Public Hearing relative to the same, referred to Economic and Community Development and Environment Committee.

RESOLUTIONS TO BE REFERRED TO BOARDS, COMMISSIONS, ETC.:

17-14 Resolution presented by Council Member(s) Banta and Taylor-Moye re: Request to designate an area sufficient for three (3) motor vehicles in front of the South End YMCA Located at 650 Park Avenue as being "No Parking/No Standing, Drop Off/Pick-Up Only, 7:30 a.m. – 9:30 a.m./3:30 p.m. – 5:30 p.m.", referred to Board of Police Commissioners.

MATTERS TO BE ACTED UPON (CONSENT CALENDAR):

***02-14** Economic and Community Development and Environment Committee Report re: Grant Submission: FY 2014-2015 Medical Reserve Corps Capacity Building Award (#15397).

***06-14** Economic and Community Development and Environment Committee Report re: Grant Submission: State of Connecticut Department of Economic and Community Development for a Historic Brownfield Revitalization Program (#15409).

THE FOLLOWING NAMED PERSON HAS REQUESTED PERMISSION TO ADDRESS THE CITY COUNCIL ON MONDAY, JANUARY 5, 2015 AT 6:30 P.M., IN THE CITY COUNCIL CHAMBERS, CITY HALL, 45 LYON TERRACE, BRIDGEPORT, CT.

NAME	SUBJECT
John Marshall Lee 30 Beacon Street Bridgeport, CT 06605	Fiscal Review 2014.

CITY OF BRIDGEPORT
CITY COUNCIL
PUBLIC SPEAKING SESSION
MONDAY, JANUARY 5, 2015
6:30 PM

CALL TO ORDER

Council President McCarthy called the Public Speaking Session to order at 6:45 p.m.

ROLL CALL

City Clerk Hudson called the roll.

The following members were present:

130th District: Enrique Torres
131st District: Jack O. Banta, Denese Taylor-Moye
132nd District: Robert Halstead, Patricia Swain
133rd District: Thomas McCarthy, Howard Austin
134th District: Michelle Lyons, AmyMarie Vizzo-Paniccia
135th District: Richard Salter
136th District: Alfredo Castillo
137th District: Milta Feliciano, Lydia Martinez
138th District: Richard Paoletto
139th District: James Holloway

A quorum was present.

THE FOLLOWING NAMED PERSONS HAVE REQUESTED PERMISSION TO ADDRESS THE CITY COUNCIL ON MONDAY, NOVEMBER 3, 2014 AT 6:30 P.M., IN THE CITY COUNCIL CHAMBERS, CITY HALL, 45 LYON TERRACE, BRIDGEPORT, CT.

John Marshall Lee
30 Beacon Street
Bridgeport, CT 06605

Fiscal Review 2014.

Good evening Council members, elected leaders of our municipal legislature, stewards of the funds provided by taxpayers! Happy New Year to you and your families!

A CT Post reporter recently indicated that an important issue facing you this evening will be about the renaming of streets, the need for such coming when one member of the community feels that an individual is deemed worthy of such an honor. It is probably also a worthy subject

so that streets and avenues in the City have a name, commonly understood by all public safety officials and the public they vow to serve. Let us be safe and secure.

My purpose is to raise issues that continue to exist indicating weakness and the inclination towards sickness in City governance and thus to the community at large:

- Money issues are always important. But if issues are too complex, presented poorly or inaccurately, or untimely, then things slide by, unreviewed, unmonitored, poorly understood and likely supportive of inefficiency or even illegality. As an example, the audit of 2013 released about one year ago indicated that in that fiscal year $500,000 of excess revenue showed up as Cash- Miscellaneous in the Comptroller's revenue budget. Did any of you raise the question as to its source or whether it would repeat itself? Revenue is good. Is there harm in the question?
- That same external audit revealed that 15 Council members in June 2013 with the guidance of their leadership had requested purchase orders totaling nearly $30,000 for City taxpayer funds to be sent to non-profit organizations. It was a primary year and an election year. There exist no agenda, minutes or official City meeting records. That would appear to make this an illegal action in sending funds from the "Legislative – Other Services" account for which no services were received by the City. Why has there been no response to this behavior?
- Where is your answer for taxpayer funds exceeding a half million dollars spent in hasty fashion for a roadway in Stratford CT as well as separate legal expenses while your Council President sits on that Commission with the Mayor? Is there a final report?
- City Council stipends are authorized by Ordinance it is true. But the system in action for two years is other than Ordinance. The City no longer reimburses. It advances funds. Taxpayers do not trust the system, nor should they when you tabled two years ago, a review and restatement of such an Ordinance. You operate extra legally and wonder why taxpayers object? When will you become legal?
- This past year in the name of economic development you have granted special taxing plans or abatement agreements to certain owners, many of whom reside outside Bridgeport. Each deal you make, whether for ten years or forty years, forces City "full" taxpayers to make up the dollars that will be lost per your agreement. Current taxpayers are forced to subsidize each project though they are never shown the amount of the subsidy, individually or cumulatively. Can you show your District what an average homeowner pays extra in taxes because of the total of subsidies? Do you even have that information when you vote?
- Each month you receive a financial report of some 80-90 pages that most of you do not read, and the minority of Council members who scan it, register no concern on any issues. Nine months ago I indicated a method for making such a report more GREEN, by cutting its size by 75% to the same categories you review at budget time and ignoring the Board of Education budget except for less than six line items as their own report is on line and includes the number of employees per department as well as grant revenues, details which you as Council members do not receive regarding City departments. Are you afraid to know what is truly happening about taxpayer money? Don't you know that you are responsible for inaction?

Within the next week or so, I expect that you will receive the Comprehensive Annual Financial Review from the external auditors as well as the final audited June, 2014 monthly financial report. What news resides there for taxpayers unhappy with October 2008 property valuations? Will you hold special meetings where responses will be available to questions raised? If you don't do this on a city-wide basis, will you do so within your District? Time will tell.

There was no one else signed up to address the Council at this time.

ADJOURNMENT

Council President McCarthy then adjourned the Public Speaking Portion of the Council Meeting at 6:53 p.m.

Respectfully submitted,

S. L. Soltes
Telesco Secretarial Services

CITY OF BRIDGEPORT

CITY COUNCIL MEETING

MONDAY, JANUARY 5, 2015
7:00 PM

City Council Chambers, City Hall - 45 Lyon Terrace

Bridgeport, Connecticut

CALL TO ORDER

Mayor Finch called the City Council Meeting to order at 7:02 p.m.

PRAYER

Pastor Jarvis Tracey of the Faith and Hope Apostolic Ministries led those present in a short prayer.

PLEDGE OF ALLEGIANCE

Mayor Finch then requested Council Member Feliciano to lead those present in reciting the Pledge of Allegiance.

ROLL CALL

City Clerk Hudson called the roll.

The following members were present:

130th District: Enrique Torres
131st District: Jack O. Banta, Denese Taylor-Moye
132nd District: Robert Halstead, Patricia Swain
133rd District: Thomas McCarthy, Howard Austin
134th District: Michelle Lyons, AmyMarie Vizzo-Paniccia
135th District: Mary McBride-Lee, Richard Salter
136th District: Richard DeJesus, Alfredo Castillo
137th District: Lydia Martinez, Milta Feliciano
138th District: Richard Paoletto, Michael Marella
139th District: Eneida Martinez, James Holloway

A quorum was present. Council President McCarthy said that Council Member Brannelly was not able to attend the meeting.

Mayoral Proclamation: Honoring retired Bridgeport Police Lieutenant David Daniels III for more than 25 years of dedicated service to the community.

City Council Citation: Honoring retired Bridgeport Police Lieutenant David Daniels III for more than 25 years of dedicated service to the community.

Council President McCarthy called Lt. David Daniels forward. Council Member McBride-Lee then spoke about how Lt. Daniels was a valuable asset to the community. She thanked him for all the work that he had done for the community. Mayor Finch then presented retired Lieutenant Daniels with a proclamation and Council President McCarthy presented Lt. Daniels with a Council Citation.

Lt. Daniels thanked everyone involved and said that he was pleased to serve the City.

MINUTES FOR APPROVAL:

Approval of City Council Minutes: November 3, 2014 (Tabled on 12/15/14) and November 17, 2014.

Council President McCarthy stated that Council Member Halstead wished to amend the minutes and requested that following statement be read into the record as part of the motion to amend.

November 3, 2014 -

**** COUNCIL PRESIDENT MCCARTHY MOVED TO AMEND THE MINUTES OF NOVEMBER 3, 2014 TO INCLUDE THE FOLLOWING DOCUMENT THAT COUNCIL MEMBER HALSTEAD READ INTO THE RECORD AS FOLLOWS:**

> **"ROBERT HALSTEAD QUESTIONED THE PURPOSE OF A GRANT BEING PRESENTED FOR APPROVAL FROM CENTRAL GRANTS THAT STATED BASICALLY IT WAS A HISTORIC PRESERVATION GRANT TO SORT OUT CITY DOCUMENTS. MS. GUPTA, CENTRAL GRANTS DIRECTOR WAS CALLED TO THE PODIUM TO ADDRESS THE ISSUE. HALSTEAD ASKED HER IF THIS WAS THE HISTORIC GRANT FROM THE STATE UNDER PUBLIC ACT 228 THAT WAS TO BE USED IN PART FOR HISTORIC PRESERVATION. MS. GUPTA ANSWERED AFFIRMATIVE. HALSTEAD ASKED IF THIS HISTORIC GRANT WOULD BE USED TO PRESERVE HISTORIC DOCUMENT. MS. GUPTA REPLIED NEGATIVE. HALSTEAD SPOKE THAT IT WAS HIS UNDERSTANDING THAT THIS FUNDING SHOULD BE USED FOR HISTORIC PRESERVATION AND SUGGESTED THAT PART OF ITS USE BE APPLIED TO PRESERVATION OF OLD MAPS IN THE ENGINEERING OFFICE AND ASKED IF MS. GUPTA COULD LOOK INTO USING PART OF THIS GRANT FOR THAT PURPOSE. MS. GUPTA REPLIED THAT SHE WOULD LOOK INTO IT."**

**** COUNCIL MEMBER HALSTEAD SECONDED.**

**** THE MOTION TO AMEND THE MINUTES OF NOVEMBER 3, 2014 PASSED UNANIMOUSLY.**

**** COUNCIL PRESIDENT MCCARTHY MOVED TO APPROVE THE MINUTES OF NOVEMBER 3, 2014 AS AMENDED.**
**** COUNCIL MEMBER SWAIN SECONDED.**
**** THE MOTION TO APPROVE THE MINUTES OF NOVEMBER 3, 2014 AS AMENDED PASSED UNANIMOUSLY.**

November 17, 2014 –

**** COUNCIL PRESIDENT MCCARTHY MOVED TO APPROVE THE MINUTES OF NOVEMBER 17, 2014 AS SUBMITTED.**
**** COUNCIL MEMBER LYONS SECONDED.**
**** THE MOTION PASSED UNANIMOUSLY.**

Mayor Finch then said that Council Member Holloway would like to address the Council as a matter of personal privilege.

Council Member Holloway said that every year a number of universities bestow honorary degrees on individuals who did not attend their schools. He said that when an honorary street name is bestowed on a street, it can be changed later. There are a number of different signs on the street signs that have been designated as honorary streets. He then spoke about a particular stretch of streets that had been changed after being given an honorary designation. He said that there were no rules for designing sections of streets with honorary designations. He said that while he might not agree with this, he believed it was the right of the communities to do this.

COMMUNICATIONS TO BE REFERRED TO COMMITTEES:

**** COUNCIL MEMBER LYONS MOVED TO APPROVE THE AGENDA ITEMS LISTED BELOW TO BE REFERRED TO COMMITTEES.**

12-14 COMMUNICATION FROM OPED RE: PROPOSED RESOLUTION REGARDING THE PERMANENT RENAMING OF ANN STREET IN STEEL POINT TO "BASS PRO WAY", REFERRED TO PUBLIC SAFETY AND TRANSPORTATION COMMITTEE.

13-14 COMMUNICATION FROM CENTRAL GRANTS RE: GRANT SUBMISSION: STATE OF CONNECTICUT DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION FOR AMERICA THE BEAUTIFUL (ATB) GRANT PROGRAM, REFERRED TO ECONOMIC AND COMMUNITY DEVELOPMENT AND ENVIRONMENT COMMITTEE.

14-14 COMMUNICATION FROM LABOR RELATIONS AND BENEFITS ADMINISTRATION RE: PROPOSED PHARMACY BENEFIT MANAGEMENT AGREEMENT WITH EXPRESS SCRIPTS INSURANCE COMPANY, INC. FOR THE

PERIOD OF JANUARY 1, 2014 TO DECEMBER 31, 2016, REFERRED TO CONTRACTS COMMITTEE.

15-14 COMMUNICATION FROM LABOR RELATIONS AND BENEFITS ADMINISTRATION RE: PROPOSED AGREEMENT WITH EXPRESS SCRIPTS INSURANCE COMPANY, INC. REGARDING MEDICARE PART-D EMPLOYER-ONLY SPONSORED GROUP WAIVER PLAN PRESCRIPTION DRUG SERVICES FOR THE PERIOD OF JANUARY 1, 2015 TO DECEMBER 31, 2016, REFERRED TO CONTRACTS COMMITTEE.

16-14 COMMUNICATION FROM CENTRAL GRANTS RE: GRANT SUBMISSION: STATE OF CONNECTICUT DEPARTMENT OF OFFICE OF POLICY AND MANAGEMENT FOR THE NUTMEG NETWORK GRANT PROGRAM, REFERRED TO ECONOMIC AND COMMUNITY DEVELOPMENT AND ENVIRONMENT COMMITTEE.

18-14 COMMUNICATION FROM CITY ATTORNEY RE: PROPOSED DESIGN-BUILD AGREEMENT CONCERNING STREETSCAPE PROJECTS, REFERRED TO CONTRACTS COMMITTEE.

19-14 COMMUNICATION FROM CENTRAL GRANTS RE: GRANT SUBMISSION: ARBOR DAY FOUNDATION FOR TD GREEN STREETS GRANT PROGRAM (#15347), REFERRED TO ECONOMIC AND COMMUNITY DEVELOPMENT AND ENVIRONMENT COMMITTEE.

20-14 COMMUNICATION FROM CENTRAL GRANTS RE: GRANT SUBMISSION: STATE OF CONNECTICUT DEPARTMENT OF HOUSING COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY (CDBG-DR) TRANCHE 2 APPLICATION FOR PUBLIC FACILITIES INFRASTRUCTURE AND PLANNING (#15463), REFERRED TO ECONOMIC AND COMMUNITY DEVELOPMENT AND ENVIRONMENT COMMITTEE.

21-14 COMMUNICATION FROM CITY ATTORNEY RE: PROPOSED SETTLEMENT OF PENDING LITIGATION WITH WILLIAM FELICIANO, REFERRED TO MISCELLANEOUS MATTERS COMMITTEE.

22-14 COMMUNICATION FROM OPED RE: PROPOSED RESOLUTION AUTHORIZING CAPITAL FUNDING FOR THE HISTORIC RENOVATION OF THE MARY AND ELIZA FREEMAN HOMES LOCATED AT 354 AND 360 MAIN STREET, REFERRED TO ECONOMIC AND COMMUNITY DEVELOPMENT AND ENVIRONMENT COMMITTEE.

23-14 COMMUNICATION FROM OPED RE: PROPOSED RESOLUTION AUTHORIZING A TAX INCENTIVE AGREEMENT FOR CRESCENT CROSSINGS II PROJECT, A MIXED-INCOME AFFORDABLE HOUSING DEVELOPMENT LOCATED AT 252 HALLETT STREET AND REQUEST TO ORDER A PUBLIC

HEARING RELATIVE TO THE SAME, REFERRED TO ECONOMIC AND COMMUNITY DEVELOPMENT AND ENVIRONMENT COMMITTEE.

**** COUNCIL PRESIDENT MCCARTHY SECONDED.**
**** THE MOTION PASSED UNANIMOUSLY.**

RESOLUTIONS TO BE REFERRED TO BOARDS, COMMISSIONS, ETC.:

**** COUNCIL MEMBER AUSTIN MOVED THE FOLLOWING ITEM BE REFERRED TO THE APPROPRIATE BOARD, COMMISSION, ETC.**

17-14 RESOLUTION PRESENTED BY COUNCIL MEMBER(S) BANTA AND TAYLOR-MOYE RE: REQUEST TO DESIGNATE AN AREA SUFFICIENT FOR THREE (3) MOTOR VEHICLES IN FRONT OF THE SOUTH END YMCA LOCATED AT 650 PARK AVENUE AS BEING "NO PARKING/NO STANDING, DROP OFF/PICK-UP ONLY, 7:30 A.M. – 9:30 A.M./3:30 P.M. – 5:30 P.M.", REFERRED TO BOARD OF POLICE COMMISSIONERS.

**** COUNCIL MEMBER LYONS SECONDED.**
**** THE MOTION PASSED UNANIMOUSLY.**

MATTERS TO BE ACTED UPON (CONSENT CALENDAR):

***02-14 Economic and Community Development and Environment Committee Report re: Grant Submission: FY 2014-2015 Medical Reserve Corps Capacity Building Award (#15397).**

***06-14 Economic and Community Development and Environment Committee Report re: Grant Submission: State of Connecticut Department of Economic and Community Development for a Historic Brownfield Revitalization Program (#15409).**

Mayor Finch then asked if there was any Council Member who would like to remove an item from the Consent Calendar. When there was no response, he asked a second time. Hearing no response, the two items on the Consent Calendar were put forward for consideration.

**** COUNCIL PRESIDENT MCCARTHY MOVED THE CONSENT CALENDAR AS FOLLOWS:**

> ***02-14 ECONOMIC AND COMMUNITY DEVELOPMENT AND ENVIRONMENT COMMITTEE REPORT RE: GRANT SUBMISSION: FY 2014-2015 MEDICAL RESERVE CORPS CAPACITY BUILDING AWARD (#15397).**
>
> ***06-14 ECONOMIC AND COMMUNITY DEVELOPMENT AND ENVIRONMENT COMMITTEE REPORT RE: GRANT SUBMISSION: STATE OF CONNECTICUT DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT FOR A HISTORIC BROWNFIELD REVITALIZATION PROGRAM (#15409).**

**** COUNCIL MEMBER HOLLOWAY SECONDED.**
**** THE MOTION PASSED UNANIMOUSLY.**

ADJOURNMENT

**** COUNCIL MEMBER PAOLETTO MOVED TO ADJOURN.**
**** COUNCIL MEMBER MARELLA SECONDED.**

Mayor Finch commented that Channel 12 News had recently done an article on a new park in Bridgeport. He explained that Channel 12 had been given a preview of the park and it had not been officially opened at this time. The official opening will be done later in the year.

**** THE MOTION TO ADJOURN PASSED UNANIMOUSLY.**

The meeting adjourned at 7:25 p.m.

Respectfully submitted,

S. L. Soltes
Telesco Secretarial Services

Comm. #12-14 Ref'd to: Public Safety and Transportation Committee on 01/05/2015.

City of Bridgeport, Connecticut
OFFICE OF PLANNING & ECONOMIC DEVELOPMENT
DEPARTMENT OF CITY PLANNING
MARGARET E. MORTON GOVERNMENT CENTER
999 BROAD STREET
BRIDGEPORT, CONNECTICUT 06604
TELEPHONE: (203) 576-7221
FAX: (203) 332-5611

BILL FINCH
Mayor

DAVID M. KOORIS
Director

December 12, 2014

Honorable Council
C/o City Clerk's Office
45 Lyon Terrace
Bridgeport, CT 06604

RE: Street Renaming, Permanent

Honorable Council Members,

I have attached a resolution to permanently rename Ann Street, in Steel Point, to Bass Pro Way. The resolution outlines the name change, but I look forward to discussing it further with you at the Committee meeting and answering any questions you may have.

Sincerely,

Lynn M. Haig
Senior Planner

CC: David Kooris

RECEIVED
CITY CLERK'S OFFICE
2014 DEC 12 P 1:06

ATTEST _____
CITY CLERK

Bass Pro Way – Street Name Change
12/2014

RESOLUTION

WHEREAS, the City of Bridgeport has been desirous of redeveloping the Steel Point peninsula since the 1980's; and

WHEREAS the State of Connecticut and the Federal Government have invested tens of millions of dollars in the development of Steel Point for relocations, coastal improvements, transportation and utility infrastructure, and remediation, including an additional $30 million in support of the construction of the Bass Pro Shops site; and

WHEREAS, the City has partnered with Bridgeport Landing Development to ensure a successful redevelopment project, named SteelPointe Harbor; and

WHEREAS, Bass Pro Shops demonstrated confidence in the success of SteelPointe Harbor by becoming the first anchor tenant willing to construct the first Bass Pro Shops in the State of Connecticut and willing to build it in Bridgeport; and

WHEREAS, Bass Pro Shops and Bridgeport Landing Development have requested that Ann Street be renamed to Bass Pro Way;

Now, therefore be it

RESOLVED, by the City Council that Ann Street be, for its entire length between East Main Street and Waterview Avenue, renamed and be hereafter known as "Bass Pro Way".

FURTHER RESOLVED, that the Mayor or the Director of the Office of Planning and Economic Development are hereby authorized to take all such actions, do all such things, and execute all such documents that are necessary in furtherance of and consistent with this resolution in the best interests of the citizens of the City of Bridgeport.

Comm. #13-14 Ref'd To ECD&E Committee on 01-05-2015

City of Bridgeport, Connecticut

CENTRAL GRANTS OFFICE

999 Broad Street
Bridgeport, Connecticut 06604
Telephone (203) 332-5662
Fax (203) 332-5657

BILL FINCH
Mayor

ANDREW J. NUNN
Chief Administrative Officer

CHRISTINA B. SMITH
Director
Central Grants

December 19, 2014

Office of the City Clerk
City of Bridgeport
45 Lyon Terrace, Room 204
Bridgeport, Connecticut 06604

Re: Resolution – **State of Connecticut Department of Energy and Environmental Protection America the Beautiful (ATB) Grant Program**

Attached, please find a Grant Summary and Resolution for the **State of Connecticut Department of Energy and Environmental Protection America the Beautiful Grant Program** to be referred to the **Committee on Economic and Community Development and Environment** of the City Council.

Grant: City of Bridgeport application to the **State of Connecticut Department of Energy and Environmental Protection America the Beautiful Grant Program**

If you have any questions or require any additional information please contact me at 203-332-5664 or autumn.hurst@bridgeportct.gov.

Thank you,

Autumn Hurst
Central Grants Office

RECEIVED
CITY CLERK'S OFFICE
2014 DEC 19 A 10:26

ATTEST _____
CITY CLERK

GRANT SUMMARY

PROJECT TITLE: **State of Connecticut Department of Energy and Environmental Protection America the Beautiful Grant Program**

NEW x RENEWAL CONTINUING

DEPARTMENT SUBMITTING INFORMATION: **Central Grants Office**

CONTACT NAME: **Autumn Hurst**

PHONE NUMBER: **203-332-5664**

PROJECT SUMMARY/DESCRIPTION: The City of Bridgeport **Parks Department** is seeking funding to expand the Bridgeport Watershed Based Tree Planting Program, a project to improve water quality and green space in neighborhoods located in the Pequonnock River and Rooter River Watersheds. Funding would allow the City to procure and plant 50 trees within the Watersheds. These tree plantings will increase the city's tree canopy and help to improve water quality. In addition to plantings, the City will work with NRZs and other community stakeholders to show the importance of trees and vegetation as a critical component of green infrastructure and the related water quality benefits.

CONTRACT PERIOD: Project period ends March 1, 2016

IF APPLICABLE

FUNDING SOURCES (include matching/in-kind funds):
Federal:
State: $12,000
City: $14,891.81 (In-Kind: Parks Department staff time and equipment usage)
Other:

FUNDS REQUESTED
Salaries/Benefits:
Supplies:

A Resolution by the Bridgeport City Council

Regarding the

State of Connecticut Department of Energy and Environmental Protection

America the Beautiful Grant Program

WHEREAS, the **State of Connecticut Department of Energy and Environmental Protection** is authorized to extend financial assistance to municipalities in the form of grants; and

WHEREAS, this funding has been made possible through the **America the Beautiful Grant Program**; and

WHEREAS, funds under this grant will be used to expand the Bridgeport Watershed Tree Planting Program through the procurement and planting of trees to be used as green infrastructure in the Pequonnock and Rooster River Watersheds in Bridgeport, Connecticut; and

WHEREAS, it is desirable and in the public interest that the City of Bridgeport, **Parks Department**, submits an application to the **State of Connecticut Department of Energy and Environmental Protection** to expand the Bridgeport Watershed Based Tree Planting Program.

NOW THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL:

1. That it is cognizant of the City's grant application to and contract with the **State of Connecticut Department of Energy and Environmental Protection** for the purpose of the **America the Beautiful Grant Program**; and

2. That it hereby authorizes, directs and empowers the Mayor or his designee, the **Director of the Parks Department**, to execute and file such application with the **State of Connecticut Department of Energy and Environmental Protection America the Beautiful Grant Program** and to provide such additional information and to execute such other contracts, amendments, and documents as may be necessary to administer this program.

Comm. # 14-14 Ref'd to Contracts Committee on 01/05/2015

CITY OF BRIDGEPORT

LABOR RELATIONS AND BENEFITS ADMINISTRATION

45 Lyon Terrace, Bridgeport, Connecticut 06604

BILL FINCH
Mayor

LAWRENCE E. OSBORNE
Director
(203) 576-7843

JANET M. FINCH
Human Resources
Manager
(203) 576-8474

RICHARD D. WEINER
Benefits Manager
(203) 576-7007

December 22, 2014

Honorable Fleeta Hudson
City Clerk
City of Bridgeport
45 Lyon Terrace
Bridgeport, CT 06604

Dear Madam Clerk:

Attached please find an original and thirteen copies of the Pharmacy Benefit Management Agreement between the City and Express Scripts Insurance Company, Inc.

The term of the Agreement is from January 1, 2014 through December 31, 2016.

I respectfully request that these documents be referred to the Contracts Committee at the Council meeting of January 5, 2015.

Sincerely,

Richard D. Weiner
Benefits Manager

RECEIVED
CITY CLERK'S OFFICE
2014 DEC 22 A 10:28

ATTEST _____
CITY CLERK

EXPRESS SCRIPTS, INC.
PHARMACY BENEFIT MANAGEMENT AGREEMENT

THIS PHARMACY BENEFIT MANAGEMENT AGREEMENT ("Agreement") will be effective as of the date set forth in Section 6.1 and is entered into by and between EXPRESS SCRIPTS, INC., a Delaware corporation ("ESI"), and CITY OF BRIDGEPORT, organized under the laws of the state of Connecticut ("Sponsor").

RECITALS

A. The Connecticut Public Sector Coalition (the "Coalition") issued a Request for Proposal for the provision of prescription drug benefit services for Coalition Members to be provided under separate agreements to be executed between ESI and each Coalition Member.

B. ESI, either directly or through its subsidiaries, engages in pharmacy benefit management services, including, among other things, pharmacy network contracting; pharmacy claims processing; mail and specialty drug pharmacy; cost containment, clinical, safety, adherence, and other like programs; and formulary and rebate administration ("PBM Services").

C. Coalition desires to retain the services of ESI on behalf of Coalition Members.

D. Sponsor provides or arranges for the provision of health benefits, including a prescription drug benefit.

E. ESI and Sponsor desire that ESI be the exclusive provider of PBM Services for Sponsor's Plan (as defined below) under the terms and conditions set forth herein.

THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

TERMS OF AGREEMENT

ARTICLE I - DEFINITIONS

"Ancillary Supplies, Equipment, and Services" or "ASES" means ancillary supplies, equipment, and services provided or coordinated by ESI Specialty Pharmacy in connection with ESI Specialty Pharmacy's dispensing of Specialty Products. ASES may include all or some of the following: telephonic and/or in-person training, nursing/clinical services, in-home infusion and related support, patient monitoring, medication pumps, tubing, syringes, gauze pads, sharps containers, lancets, test strips, other supplies, and durable medical equipment. The aforementioned list is illustrative only (not exhaustive) and may include other supplies, equipment, and services based on the patient's needs, prescriber instructions, payer requirements, and/or the Specialty Product manufacturer's requirements.

"Average Wholesale Price" or "AWP" means the average wholesale price of a prescription drug as identified by drug pricing services such as Medi-Span or other source recognized in the retail prescription drug industry selected by ESI (the "Pricing Source"). The applicable AWP shall be the originally submitted 11-digit NDC for the product on the date dispensed, and for prescriptions filled in Participating Pharmacies, Mail Service Pharmacy, and ESI Specialty Pharmacy will be the AWP for the package size of the original container from which the prescription drug was dispensed. Re-packaging and re-labeling NDC's are allowed as long as the AWP of original NDC is retained and adjudicated for pricing and discount purposes. If the Pricing Source discontinues the reporting of AWP or materially changes the manner in which AWP is calculated, then ESI will make an equitable adjustment as necessary to maintain the parties' relative economics and the pricing intent of this Agreement. Under no circumstances will ESI simultaneously use more than one pricing source to determine AWP. If the applicable pricing source changes the methodology for calculating AWP or ceases publishing or replaces AWP, or ESI utilizes another recognized pricing source or pricing benchmark other than AWP, in a way that changes the economics of the Program, the parties agree to modify the Program Pricing Terms to preserve the parties' relative economics before such changed methodology or other event. "Brand/Generic Algorithm" or "BGA" means ESI's standard and proprietary brand/generic algorithm

utilized by ESI for all of its clients, a copy of which may be made available for review by Sponsor or its Auditor upon request. The purposes of the algorithm are to utilize a comprehensive and logical algorithm to determine the brand or generic status of products in the ESI master drug file using a combination of industry standard attributes, to stabilize products "flipping" between brand and generic status as may be the case when a single indicator is used from industry pricing sources, and to reduce Sponsor, Member and provider confusion due to fluctuations in brand/generic status. Sponsor or its Auditor may audit ESI's application of its BGA to confirm that ESI is making brand and generic drug determinations consistent with such algorithm.

"Brand/Generic Algorithm" or "BGA" means ESI's standard and proprietary brand/generic algorithm utilized by ESI for all of its clients, a copy of which may be made available for review by Sponsor or its Auditor upon request. The purposes of the algorithm are to utilize a comprehensive and logical algorithm to determine the brand or generic status of products in the ESI master drug file using a combination of industry standard attributes, to stabilize products "flipping" between brand and generic status as may be the case when a single indicator is used from industry pricing sources, and to reduce Sponsor, Member and provider confusion due to fluctuations in brand/generic status. Sponsor or its Auditor may audit ESI's application of its BGA to confirm that ESI is making brand and generic drug determinations consistent with such algorithm.

"Brand Drug" means a prescription drug identified as such in ESI's master drug file using indicators from First Databank (or other source nationally recognized in the prescription drug industry) on the basis of a standard Brand/Generic Algorithm, a copy of which may be made available for review by Sponsor or its Auditor upon request.

"Coalition" means the Connecticut Public Sector Coalition. The parties recognize however that there is no such legal entity as the Coalition.

"Coalition Member" means each entity that participates in the Coalition, as mutually agreed between the Coalition and ESI.

"Copayment" means that portion of the charge for each Covered Drug dispensed to the Member that is the responsibility of the Member (e.g., copayment, coinsurance and/or deductible) as indicated on the Set-Up Forms.

"Covered Drug(s)" means those prescription drugs, supplies, Specialty Products and other items that are covered under the Plan, each as indicated on the Set-Up Forms.

"Eligibility Files" means the list submitted by Sponsor to ESI in reasonably acceptable electronic format indicating persons eligible for drug benefit coverage services under the Plan.

"ESI National Plus Network" means ESI's broadest Participating Pharmacy network.[1]

"Express Advantage Network" means ESI's Participating Pharmacy network aimed at maximizing cost savings through limited provider participation.

"ESI Specialty Pharmacy" means CuraScript, Inc., Accredo Health Group, Inc., Express Scripts Specialty Distribution Services, Inc., or another pharmacy or home health agency wholly-owned or operated by ESI or one or more of its affiliates that primarily dispenses Specialty Products or provides services related thereto; provided, however, that when the Mail Service Pharmacy dispenses a Specialty Product, it shall be considered an ESI Specialty Pharmacy hereunder.

"Formulary" means the list of FDA-approved prescription drugs and supplies developed by ESI's Pharmacy and Therapeutics Committee and/or customized by Sponsor, and which is selected and/or adopted by Sponsor. The drugs and supplies included on the Formulary will be modified by ESI from time to time as a result of factors, including, but not limited to, medical appropriateness, manufacturer Rebate arrangements, and patent expirations. Additions and/or deletions to the Formulary are hereby

[1] The ESI National Plus Network was historically referred to as the "EN50 Network" in ESI's network provider agreements with Participating Pharmacies, and is subject to future name change.

adopted by Sponsor, subject to Sponsor's discretion to elect not to implement any such addition or deletion through the Set-Up Form process, which such election shall be considered a Sponsor change to the Formulary.

"Generic Drug" means a prescription drug, whether identified by its chemical, proprietary, or non-proprietary name, that is therapeutically equivalent and interchangeable with drugs having an identical amount of the same active ingredient(s) and approved by the FDA, and which is identified as such in ESI's master drug file using indicators from First Databank (or other source nationally recognized in the prescription drug industry used by ESI for all clients) on the basis of a standard Brand/Generic Algorithm utilized by ESI for all of its clients, a copy of which may be made available for review by Sponsor or its Auditor upon request. All Generic Drugs, whether such Generic Drug is a single source generic or multisource generic product, will be included in the Generic Ingredient Cost Guarantee as set forth in Exhibit A-1 unless otherwise expressly identified as part of the claims excluded.

"MAC List" means a list of off-patent prescription drugs or supplies subject to maximum reimbursement payment schedules developed or selected by ESI.

"Mail Service Pharmacy" means a pharmacy wholly-owned or operated by ESI or one or more of its affiliates, other than an ESI Specialty Pharmacy, where prescriptions are filled and delivered to Members via mail delivery service.

"Manufacturer Administrative Fees" means those administrative fees paid by manufacturers to ESI pursuant to a contract between ESI and the manufacturer in connection with ESI's administering, invoicing, allocating and collecting the Rebates under the Rebate program.

"Maximum Reimbursement Amount" or "MRA" means the maximum unit ingredient cost payable by Sponsor for a drug on the MAC List based on maximum reimbursement payment schedule(s) developed or selected by ESI. The application of MRA pricing may be subject to certain "dispensed as written" (DAW) protocols and Sponsor defined plan design and coverage policies.

"Member" means each person who Sponsor determines is eligible to receive prescription drug benefits as indicated in the Eligibility Files.

"Member Submitted Claim" means a paper claim submitted by a Member for Covered Drugs dispensed by a pharmacy for which the Member paid cash.

"Participating Pharmacy" means any licensed retail pharmacy with which ESI or one or more of its affiliates has executed an agreement to provide Covered Drugs to Members, but shall not include any mail order or specialty pharmacy affiliated with any such Participating Pharmacy. Participating Pharmacies are independent contractors of ESI.

"PMPM" means per member per month fee, if applicable, as determined by ESI from the Eligibility Files.

"Plan" means the self-funded prescription drug benefit plan(s) administered and/or sponsored by Sponsor.

"Prescription Drug Claim" means a Member Submitted Claim, Subrogation Claim or claim for payment submitted to ESI by a Participating Pharmacy, Mail Service Pharmacy, or ESI Specialty Pharmacy as a result of dispensing Covered Drugs to a Member.

"Rebates" mean retrospective formulary rebates that are paid to ESI pursuant to the terms of a formulary rebate contract negotiated independently by ESI with a pharmaceutical manufacturer and directly attributable to the utilization of certain Covered Drugs by Members. Rebates do not include Manufacturer Administrative Fees; product discounts or fees related to the procurement of prescription drug inventories by ESI Specialty Pharmacy or the Mail Service Pharmacy; fees received by ESI from pharmaceutical manufacturers for care management or other services provided in connection with the dispensing of products; or other fee-for-service arrangements whereby pharmaceutical manufacturers generally report the fees paid to ESI or its affiliates for services rendered as "bona fide service fees"

pursuant to federal laws and regulations (collectively, "Other Pharma Revenue"). Such laws and regulations, as well as ESI's contracts with pharmaceutical manufacturers, generally prohibit ESI from sharing any such "bona fide service fees" earned by ESI, whether wholly or in part, with any ESI client. ESI represents and warrants that it will not enter into any agreement with a pharmaceutical manufacturer for Other Pharma Revenue with the intent to reduce Rebates.

"Set-Up Forms" means any standard ESI document or form, which when completed and signed by Sponsor (electronic communications from Sponsor indicating Sponsor's approval of a Set-Up Form shall satisfy the foregoing), will describe the essential benefit elements and coverage rules adopted by Sponsor for its Plan.

"Specialty Product List" means the standard list of Specialty Products and their reimbursement rates under the applicable (exclusive or open) option maintained and updated by ESI from time to time. The Specialty Product List is available to Sponsor upon request.

"Specialty Products" means those injectable and non-injectable drugs on the Specialty Product List. Specialty Products typically have one or more of several key characteristics, including frequent dosing adjustments and intensive clinical monitoring to decrease the potential for drug toxicity and increase the probability for beneficial treatment outcomes; intensive patient training and compliance assistance to facilitate therapeutic goals; limited or exclusive product availability and distribution; specialized product handling and/or administration requirements and/or cost in excess of $500 for a 30-day supply.

"Subrogation Claim" means subrogation claims submitted by any state or a person or entity acting on behalf of a state under Medicaid or similar United States or state government health care programs, for which Sponsor is deemed to be the primary payor by operation of applicable federal or state laws.

"UM Company" means MCMC, LLC or other independent third party utilization management company contracted by ESI, subject to and as further described in Sections 2.3 (d) and (e).

"Usual and Customary Price" or "U&C" means the retail price charged by a Participating Pharmacy for the particular drug in a cash transaction on the date the drug is dispensed as reported to ESI by the Participating Pharmacy.

ARTICLE II - PBM SERVICES

2.1 Eligibility/Set Up. Sponsor will submit completed Set-Up Forms and Eligibility Files (initial and updated) on a mutually determined basis, which ESI will accurately implement. Changes to the Set-Up Forms must be documented on ESI's standard amendment forms. Accurate and complete eligibility files electronically transmitted by 10:00 A.M. EST, via secured processes acceptable to Express Scripts, will be updated within two (2) business days of receipt. Eligibility performed manually by ESI for Sponsor, or material changes to the Eligibility File processes requested by Sponsor during the term may be subject to additional fees set forth on Exhibit A. Sponsor will be responsible for all Prescription Drug Claims during the period of the Member's eligibility as indicated on the Eligibility File including for retroactively termed Members, except in the event of ESI's negligence. ESI agrees that, upon request, each Client has the right to a full file refresh on a monthly basis.

2.2 Pharmacy Network.

(a) Participating Pharmacies. ESI will maintain a network(s) of Participating Pharmacies as identified in Exhibit A, and will make available an updated list of Participating Pharmacies on-line. ESI maintains multiple networks and subnetworks, and periodically consolidates networks or migrates clients to other networks and subnetworks. If, due to an access concern, Sponsor requests that ESI attempt to add a particular retail pharmacy to the network of Participating Pharmacies serving Sponsor and its Members hereunder, ESI will make commercially reasonable efforts to add any such pharmacy to the Participating Pharmacy network for Sponsor, provided that such pharmacy meets ESI's network participation requirements and agrees to ESI's standard terms and conditions. If any such pharmacy meets ESI's network participation requirements and agrees to ESI's standard terms and conditions except for ESI's standard network rates (i.e., the particular pharmacy will only agree to higher than standard reimbursement rates), and Sponsor nevertheless requests that ESI add such pharmacy, the rate

charged to Sponsor for Prescription Drug Claims processed through such pharmacy (assuming ESI agrees to contract with such pharmacy) will be the net ingredient cost plus the dispensing fee paid by ESI to such Participating Pharmacy (plus applicable sales or excise tax or other governmental surcharge, if any). All such Prescription Drug Claims will be excluded from the pricing guarantees set forth in Exhibit A.

(i) ESI will require each Participating Pharmacy to meet ESI's network participation requirements, including but not limited to licensure, insurance and provider agreement requirements. ESI also performs audits (i.e., electronic or on-site) of Participating Pharmacies to determine compliance with their provider agreement billing requirements. ESI will attempt recovery of identified overpayments through offset, demand or other reasonable means; provided that ESI will not be required to institute litigation. Recovered overpayments are credited to Sponsor. To compensate ESI for the cost of conducting audits and audit-related services, ESI charges a standard fee in the amount set forth in Exhibit A upon recovery of overpayments. Copies of participation requirements and auditing processes are available upon request. All Participating Pharmacies will be subject to audit by ESI. At a minimum, EEI performs annual on-site audits of 3% of standard national network pharmacies that process more than 250 claims.

(ii) ESI does not direct or exercise any control over the Participating Pharmacies or the professional judgment exercised by any pharmacist in dispensing prescriptions or otherwise providing pharmaceutical related services at a Participating Pharmacy. ESI shall have no liability to Sponsor, any Member or any other person or entity for any act or omission of any Participating Pharmacy or it agents or employees. In the event of any contractual dispute between Participating Pharmacies and ESI that subsequently reduces the size of the retail network currently in place, ESI will provide Coalition with a geo-access analysis of alternate Participating Pharmacies for Sponsor.

(b) Mail Service Pharmacy. Members may have prescriptions filled through the Mail Service Pharmacy. Subject to applicable law, ESI may communicate with Members regarding benefit design, cost savings, availability and use of the Mail Service Pharmacy, as well as provide supporting services. ESI may suspend Mail Service Pharmacy services to a Member who is in default of any Copayment amount due ESI.

(c) Specialty Products and ASES. As elected by Sponsor on the Set-Up Forms, Members may have prescriptions filled through ESI Specialty Pharmacy on an exclusive basis (i.e., "ESI Specialty Pharmacy – Exclusive Care") or at Participating Pharmacies and through ESI Specialty Pharmacy (i.e., "ESI Specialty Pharmacy – Open Care"). Subject to applicable law, ESI and ESI Specialty Pharmacy may communicate with Members and physicians to advise Members filling Specialty Products at Participating Pharmacies of the availability of filling prescriptions through ESI Specialty Pharmacy. Specialty Products will be excluded from any price guarantees set forth in the Agreement. In no event will the Mail Service Pharmacy or Participating Pharmacy pricing specified in the Agreement apply to Specialty Products.

(i) ESI will notify Sponsor no more frequently than monthly of new Specialty Products that are introduced to the market on or after the Effective Date of this Agreement with their applicable reimbursement rates ("Notice"). The parties agree as follows:

(A) If Sponsor has expressly excluded a specific therapy class or product on a Set-Up Form, Specialty Products in such excluded classes will automatically be deemed excluded from coverage and will reject as "NDC Not Covered" through Participating Pharmacies, Mail Service Pharmacy and ESI Specialty Pharmacy; otherwise, subject to (B) below, all other Specialty Products will be implemented as Covered Drugs at the rate specified in the applicable Specialty Drug list or Notice. If Sponsor desires to cover otherwise excluded Specialty Products, Sponsor must notify ESI in writing that it desires to cover the Specialty Product before ESI will adjudicate as a Covered Drug, and if ESI receives such confirmation of coverage from Sponsor such Specialty Product will be loaded thereafter as a Covered Drug at the applicable reimbursement rate set forth in the Notice.

(B) Sponsor must notify ESI in writing if it wants to exclude the Specialty Product from coverage. The exclusion will be implemented within seven (7) business days after the date of ESI's receipt of such notification. There will not be any retroactive denials for Prescription Drug Claims processed prior to ESI's receipt of the rejection notice and implementation of the exclusion as provided above and Sponsor will be responsible for the payment of such Prescription Drug Claims processed prior to the rejection of coverage.

(ii) For Specialty Products filled through ESI Specialty Pharmacy only, Members may receive the following services from ESI Specialty Pharmacy, depending on the particular therapy class or disease state: ASES; patient intake services; pharmacy dispensing services and/or social services (patient advocacy, hardship reimbursement support, and indigent and patient assistance programs).

(iii) Subject to Sponsor's prior authorization requirements, if applicable, at the rates set forth in Exhibit A, ESI will provide or coordinate ASES for Members through ESI Specialty Pharmacy or through other specialty pharmacies or other independent third party providers of ASES when ASES is required. If ESI or ESI Specialty Pharmacy engages a third party provider of ASES, ESI or ESI Specialty Pharmacy shall contractually obligate such third party provider of ASES to comply with all applicable laws, including, without limitation, all applicable laws relating to professional licensure. ESI does not direct or exercise any control over any third party provider of ASES in administering Specialty Products or otherwise providing ASES.

(iv) If Sponsor elects the ESI Specialty Pharmacy - Open Care option, then any ancillary supplies, equipment, and services provided or coordinated in connection with the dispensing of Specialty Products at Participating Pharmacies (for example, limited distribution products not then available through ESI Specialty Pharmacy or overrides) will be billed to Sponsor at the cost charged to ESI for such ancillary supplies, equipment, and services provided or coordinated, unless such ancillary supplies, equipment, and services provided or coordinated are included in the ingredient cost of the Specialty Product.

2.3 Claims Processing.

(a) Claims Processing.

(i) ESI will perform claims processing services for Covered Drugs dispensed by Participating Pharmacies, Mail Service and ESI Specialty Pharmacy. The "per Rx" administrative fees set forth in Exhibit A shall be charged for all claims processing services, including initial, rejected, reversed and reprocessed Prescription Drug Claim processing.

(ii) In connection with each prescription submitted for processing on-line by a Participating Pharmacy, ESI will perform standard drug utilization review ("DUR") in order to assist the dispensing pharmacist and prescribing physician in identifying potential drug interactions, incorrect prescriptions or dosages, and certain other circumstances that may be indicative of inappropriate prescription drug usage. ESI's DUR processes are not intended to substitute for the professional judgment of the prescriber, the dispensing pharmacist or any other health care professional providing services to the Member.

(iii) If elected by Sponsor, ESI will process Member Submitted Claims in accordance with the rules in the Set-Up Forms and ESI's standard procedures. All paper claims submitted by a Member for Direct Member Reimbursement (DMR), will be entered into ESI's claim adjudication systems where all benefit, drug, and clinical functions will be applied and validated prior to the Member being reimbursed and the Sponsor being billed.

(iv) If authorized by Sponsor on the Set-Up Forms, ESI will process Subrogation Claims in accordance with applicable federal and state laws, in which case Sponsor will pay such Subrogation Claims in accordance with Article III and Exhibit A. If Sponsor does not authorize ESI to process Subrogation Claims, ESI will reject the claim and refer claimants to Sponsor regarding such claims, in accordance with applicable federal and state laws. ESI is not legally

responsible to pay Subrogation Claims to the extent Sponsor is not timely paying ESI with respect to such Subrogation Claims.

(v) Sponsor or its third party designee (as applicable) will have the final responsibility for all decisions with respect to coverage of a Prescription Drug Claim and the benefits allowable under the Plan, including determining whether any rejected or disputed claim will be allowed.

(b) Prior Authorization. For the fees set forth in the Clinical Addendum described in Exhibit A-2 (if applicable), ESI will provide prior authorization ("PA") services as specified and directed by Sponsor for drugs designated on the Set-Up Form. Prior authorized drugs must meet Sponsor-approved guidelines ("Guidelines") before they are deemed to be Covered Drugs. Unless Sponsor otherwise directs, Sponsor hereby authorizes coverage for an otherwise excluded use in the event of co-morbidities, complications and other factors not otherwise expressly set forth in the Guidelines. In determining whether to authorize coverage of such drug under the PA Program, ESI will apply only the Guidelines and may rely entirely upon information about the Member and the diagnosis of the Member's condition provided to it from the prescriber. ESI will not undertake to determine medical necessity, make diagnoses or substitute ESI's judgment for the professional judgment and responsibility of the prescriber.

(c) Claims for Benefits. ESI will process initial "claims for benefits" for Member Submitted Claims and PA requests consistent with the ERISA claims rules set forth in 29 CFR Part 2560 (or applicable state law if a non-ERISA plan) ("Claims Rules"). Sponsor may elect to have ESI perform appeals services in connection with denied "claims for benefits" for the fees set forth in Exhibit A, or facilitate such services through Sponsor or a third party of Sponsor's choice. If Sponsor elects to conduct its own appeals or facilitate through a third party of Sponsor's choice, ESI will route Member appeals to Sponsor or other Sponsor designated entity. If Sponsor elects to have ESI perform appeals services, Sponsor agrees that ESI may perform such services through the UM Company. Through its contract with ESI, the UM Company has agreed to be, and will serve as, the named fiduciary for its performance of such appeals. ESI also agrees to accept fiduciary status solely with respect to its performance of any appeal.

(d) UM Company. In the event ESI performs appeals services, or facilitates the performance of appeals services through the UM Company, ESI or the UM Company, as applicable, will be responsible for conducting the appeal on behalf of Sponsor in accordance with the Claims Rules. ESI represents to Sponsor that UM Company has contractually agreed that: (A) UM Company will conduct appeals in accordance with the Claims Rules and Sponsor's plan, (B) Sponsor is a third party beneficiary of UM Company's agreement with ESI (a copy of which is available upon request) and the remedies set forth therein, and (C) UM Company will indemnify Sponsor for third party claims caused by the UM Company's negligence or willful misconduct in providing the appeal services.

(e) External Review Services.

ESI will not conduct any external review services (as defined in the Patient Protection and Affordable Care Act of 2010 and its implementing regulations ("PPACA")); provided, however, Sponsor may elect to have UM Company facilitate the provision of external review services through UM company contracted IROs (as such term is defined in PPACA), for the fees set forth on Exhibit A below (if applicable). Sponsor must execute a standard ESI "External Appeals Services" Set-Up Form, which may be requested through ESI Account Management, in order to receive such services from UM Company.

In the event that Sponsor elects to utilize UM Company to facilitate the provision of external review services through UM Company contracted IROs, UM Company will be responsible for facilitating all such appeals (and the IROs will be responsible for providing all such appeals) in accordance with PPACA and all other applicable federal and state laws, and Sponsor hereby acknowledges and agrees that:

(i) UM Company (with respect to facilitating the external reviews) and the IROs (with respect to performing the external reviews), and not ESI, will be providing external review services; UM Company is an independent contractor of ESI; the IROs are independent contractors of UM Company and not ESI; and ESI does not in any way control or direct either UM

Company or the IROs with respect to facilitation or performance of external review services provided by each respectively.

(ii) ESI represents to Sponsor that UM Company has contractually agreed that: (A) UM Company will facilitate all external review services in accordance with PPACA and all other applicable federal and state laws; (B) UM Company will contractually require its contracted IROs to perform all external reviews in accordance with PPACA and all other applicable federal and state laws; (C) to the extent not prohibited by law, UM Company will indemnify, defend and hold Sponsor harmless from and against any and all losses, damages, injuries, causes of action, claims, demands and expenses (including reasonable attorney's fees, costs and expenses), arising out of, resulting from, or related to any act, omission or default by the IROs in their performance of the external reviews; and (D) Sponsor has third party beneficiary rights to enforce the preceding indemnification and hold harmless provision.

(f) Call Center. ESI will provide 24-hours a day, 7-days a week toll-free telephone, IVR and Internet support to assist Sponsor, Sponsor's agents and Members with Member eligibility and benefits verification, location of Participating Pharmacies or other related Member concerns.

2.4 Formulary Support and Rebate Management.

(a) Formulary Adherence and Clinical Programs. ESI may provide clinical, safety, adherence, and other like programs as appropriate. The Clinical Addendum described in Exhibit A-2 sets forth certain available adherence, clinical, safety and/or trend programs that require additional fees hereunder. ESI will not implement any program for which Sponsor may incur an additional fee without Sponsor's prior written approval and election of such program.

(b) Rebate Program. Subject to the remaining terms of this Agreement, ESI will pay to Sponsor the amounts set forth on Exhibit A.

2.5 Program Operations.

(a) Reporting. ESI will make available to Sponsor ESI's on-line standard management information reporting applications. Upon Sponsor's request, ESI may develop special reporting packages or perform custom programming at ESI's standard hourly rate for such services, as set forth in Exhibit A.

(b) Claims Data.

(i) Claims Data Retention. ESI will retain Sponsor's claims data for a total of ten (10) years from the date the prescription is filled. Thereafter ESI will dispose of such data in accordance with its standard policies and practices and applicable state and federal law. Disposition of PHI shall be in accordance with the Business Associate Agreement.

(ii) Claims Data to Vendors. Upon Sponsor's written request and at no additional charge, ESI will provide regular prescription claims data in ESI's standard format(s) to Sponsor's vendors ("Vendors") for disease management, flexible savings account and other "payment," "treatment" and "healthcare operations" purposes (as defined under HIPAA). Requests for retrieval of data beyond thirty (30) months are subject to the hourly custom programming charge set forth in Exhibit A.

(iii) De-Identified Claims Data. ESI or its affiliates may use and disclose both during and after the term of this Agreement the anonymized claims data (de-identified in accordance with HIPAA) including drug and related medical data collected by ESI or provided to ESI by Sponsor for research; provider profiling; benchmarking, drug trend, and cost and other internal analyses and comparisons; clinical, safety and/or trend programs; ASES; or other business purposes of ESI or its affiliates, in all cases subject to applicable law.

(c) Sponsor Audits. Provided that this Agreement has been duly executed by Sponsor and Sponsor is current in the payment of invoices under this Agreement, Sponsor may, upon no less than thirty (30) days prior written request, audit ESI's provision of services hereunder, the scope of which shall

be to verify regulatory compliance and/or compliance with the financial terms of this Agreement, on an annual basis consistent with the Audit Protocol set forth in Exhibit B. Sponsor may use an independent third party auditor ("Auditor"), so long as such Auditor is not engaged in providing services for Sponsor or otherwise that conflict with the scope or independent nature of the audit (as determined by ESI acting reasonably and in good faith), and provided that Sponsor's Auditor executes a mutually acceptable confidentiality agreement. Any request by Sponsor to permit an Auditor to perform an audit will constitute Sponsor's direction and authorization to ESI to disclose PHI to the Auditor.

(d) Performance Standards. ESI will conform to the performance standards set forth on Exhibit E hereto. The payments set forth in Exhibit E will be Sponsor's sole monetary remedy for any failure by ESI to meet a performance standard in addition to any correction or reimbursement associated with payment or billing errors.

2.6 Pharmacy Management Funds ("PMF").

(a) ESI will provide up to $3.00 per Member implemented as of the Effective Date, to reimburse the actual, fair market value of: (i) expense items and services related to transitioning, administering, and implementing the pharmacy benefit initially and throughout the term, such as, custom ID Cards, IT programming, custom formulary letters, member communications, and benefit set-up quality assurance; and/or (ii) mutually agreed upon expense items and services related to implementation of additional clinical or other similar programs provided by ESI throughout the Term; in either case subject to submission of adequate documentation to support reimbursement within 180 days of incurring the applicable expense. Both Sponsor and ESI (upon agreement from Sponsor) may use the PMF to cover the fair market value of expenses for projects requiring joint resources. All reimbursement under the PMF is subject to ESI's standard PMF business practices for all clients.

(b) Sponsor represents and warrants that: (i) it will only request reimbursement under the PMF for its actual expenses incurred in transitioning, administering, and implementing the pharmacy benefit managed by ESI hereunder, and/or the additional clinical or other similar program provided by ESI throughout the Term; (ii) that the applicable service, item or program was actually performed or provided; (iii) the amount of the reimbursement is equal to or less than the reasonable fair market value of the actual expenses incurred by Sponsor; (iv) it will notify and disclose the amount and the terms of any PMF reimbursements to Members and other third parties to the extent required by applicable laws and regulations. In addition, if the Sponsor and the Plan are subject to ERISA, Sponsor represents and warrants that it will only request reimbursement under the PMF for items or services for which Sponsor, in the absence of the PMF, would be allowed reimbursement from the Plan (i.e., not "settlor functions").

(c) Sponsor shall comply with all applicable federal and state requirements, including, but not limited to, all applicable federal and state reporting requirements with respect to any expense, item or service reimbursed under this Section 2.6. ESI reserves the right to periodically audit the books and records of Sponsor on-site, during normal business hours and after giving reasonable advance notice, for the purposes of verifying Sponsor's compliance with the PMF requirements set forth in this Agreement.

(d) ESI intends to amortize the PMF over the Initial Term of the Agreement on a straight-line basis. In the event of a termination of this Agreement for any reason other than ESI's uncured material breach prior to the expiration of the Initial Term, Sponsor will reimburse ESI an amount equal to any paid but unamortized portion of the PMF. Reimbursement to ESI by Sponsor pursuant to this Section will not be in lieu of any other rights or remedies ESI may have in connection with the termination of this Agreement, including monetary or other damages. PMF reimbursements shall not be paid prior to the Effective Date of this Agreement and are not payable until this Agreement is executed. Sponsor will have no right to interest on, or the time value of, any PMF, and unused funds shall be retained by ESI.

ARTICLE III - FEES; BILLING AND PAYMENT

3.1 Fees. In consideration of the PBM Services provided by ESI, Sponsor will pay the applicable claims reimbursement amounts ("Claims Reimbursements") and other administrative fees ("Administrative Fees") pursuant to the terms set forth on Exhibit A ("Claims Reimbursements," "Administrative Fees" and any other charge or fee that is the responsibility of Sponsor as may be described elsewhere in this Agreement are hereinafter referred to collectively as "Fees"). ESI may use any excess achieved in any

guarantee offered pursuant to this Agreement to make up for, and offset, a shortfall in any other guarantee set forth in this Agreement.

3.2 Billing and Payment.

(a) Billing. ESI will invoice Sponsor: (i) bi-weekly for Claims Reimbursements; and (ii) on a monthly basis for the Administrative Fees.

(b) Payment. Sponsor will pay ESI by wire, ACH transfer or pre-authorized debit within two (2) business days from the date of Sponsor's receipt of each ESI invoice. Sponsor will be responsible for all costs of collection, and agrees to reimburse ESI for such costs and expenses, including reasonable attorneys' fees. All amounts not paid by the due date thereof will bear interest at the rate of 1.5% per month or, if lower, the highest interest rate permitted by law. In addition to any rights under Section 6.2, ESI may apply Rebate amounts otherwise owed to Sponsor against any unpaid Fees.

(c) Deposit. If, at any time: (i) Sponsor has two or more invoices past due and outstanding, or (ii) ESI has reasonable grounds to believe Sponsor may be delinquent in payment of fees based on Sponsor's financial data (e.g., persistent negative cash flow, bankruptcy or insolvency), ESI may require that the Sponsor provide to ESI a deposit in an amount equal to the average of the last three (3) months of billing history as the basis for determining the one (1) month deposit amount or, if three (3) months billing history is not available, the most recent month of billing history as the basis. ESI will retain the deposit until the earlier of termination of this Agreement (following any run-off period), or six (6) consecutive months of timely payments of all Fees following submission of the deposit, and may apply the deposit to delinquent fees until return of the deposit.

ARTICLE IV – HIPAA; CONFIDENTIAL INFORMATION

4.1 HIPAA. The parties agree that as relates to use and disclosure of PHI, electronic transaction standards and security of electronic PHI under the Health Insurance Portability and Accountability Act of 1996, as amended, they are subject to the terms of the Business Associate Agreement set forth in Exhibit C. Notwithstanding the foregoing, the parties acknowledge that in providing services to Members, ESI Specialty Pharmacy and the Mail Service Pharmacy are acting as separate health care provider covered entities under HIPAA and not as business associates to the Plan covered by the Business Associate Agreement. In providing services, ESI Specialty Pharmacy and the Mail Services Pharmacy shall abide by all HIPAA requirements applicable to covered entities and shall safeguard, use and disclose Member PHI accordingly.

4.2 Confidential Information.

(a) Each party agrees that the terms of this Agreement and information of the other party, including, but not limited to the following, will constitute confidential and proprietary information ("Confidential Information"): (i) with respect to ESI: ESI's reporting and other web-based applications, eligibility and adjudication systems, system formats and databanks (collectively, "ESI's Systems"), clinical or formulary management operations or programs, fraud, waste and abuse tools and programs, anonymized claims data (de-identified in accordance with HIPAA); ESI Specialty Pharmacy and Mail Service Pharmacy data; information and contracts relating to Rebates and Manufacturer Administrative Fees, prescription drug evaluation criteria, drug pricing information, and Participating Pharmacy agreements; and (ii) with respect to Sponsor: Participating Pharmacy Sponsor and Member identifiable health information and data, Eligibility Files, Set-Up Form information, business operations and strategies. Neither party will use the other's Confidential Information, or disclose it or this Agreement to any third party (other than Sponsor attorneys and accountants), at any time during or after termination of this Agreement, except as specifically contemplated by this Agreement or upon prior written consent, which will not unreasonably be withheld. Upon termination of this Agreement, each party will cease using the other's Confidential Information, and all such information will be returned or destroyed upon the owner's direction. Confidential Information does not include information which is or becomes generally available to the public; was within the recipient's possession or knowledge prior to its being furnished to the recipient pursuant to this Agreement, or is independently developed by the recipient under circumstances not involving a breach of this Agreement.

(b) Sponsor will not, and will not permit any third party acting on Sponsor's behalf to, access, attempt to access, test or audit ESI's Systems or any other system or network connected to ESI's Systems. Without limiting the foregoing, Sponsor will not: access or attempt to access any portion or feature of ESI's Systems, by circumventing ESI's Systems access control measures, either by hacking, password "mining" or any other means; or probe, scan, audit or test the vulnerability of ESI's Systems, nor breach the security or authentication measures of ESI's Systems.

ARTICLE V - COMPLIANCE WITH LAW; FIDUCIARY ACKNOWLEDGEMENTS; FINANCIAL DISCLOSURE

5.1 Compliance with Law; Change in Law. Each party shall be responsible for ensuring its compliance with any laws and regulations applicable to its business, including maintaining any necessary licenses and permits. Sponsor shall be responsible for any governmental or regulatory charges and taxes imposed upon or related to the services provided hereunder. With respect to any Plan that is subject to the provisions of ERISA, the Sponsor or the plan sponsor shall ensure that its activities in regard to such program are in compliance with ERISA, and shall be responsible for disclosing to Members any and all information relating to the Plan and this Agreement as required by law to be disclosed, including any information relating to Plan coverage and eligibility requirements, commissions, rebates, discounts, or provider discounts referred to in Section 5.3 hereof. If there is a new or change in federal or state laws or regulations or the interpretation thereof, or any government, judicial or legal action that, among other things, materially burdens ESI, requires ESI to increase payments or shorten payment times for Covered Drugs to Participating Pharmacies, or materially changes the scope of services hereunder (a "Change in Law"), then there shall be an appropriate modification of the services, reimbursement rates, Administrative Fees and/or Rebates hereunder. Any proposed contract pricing modification will maintain the parties' relative economics and the pricing intent of this Agreement. Sponsor shall have the right to engage a qualified third party consultant, subject to execution of a mutually agreeable confidentiality agreement, to evaluate any proposed contract pricing modification. ESI will provide said consultant with reasonable information in a timely manner upon which the proposed modification is based. If the parties cannot agree on economically equivalent contract modifications or adjusted fee or rates, then either party may terminate the Agreement on ninety (90) days prior written notice to the other.

5.2 Fiduciary Acknowledgements. ESI offers pharmacy benefit management services, products and programs ("PBM Products") for consideration by all clients, including Sponsor. The general parameters of the PBM Products, and the systems that support these products, have been developed by ESI as part of ESI's administration of its business as a PBM. The parties agree that they have negotiated the financial terms of this Agreement in an arm's-length fashion. Sponsor acknowledges and agrees that, except for the limited purpose set forth in Section 2.3(c), neither it nor the Plan intends for ESI to be a fiduciary (as defined under ERISA or state law) of the Plan, and, except for the limited purpose as set forth in Section 2.3(c), neither will name ESI or any of ESI's wholly-owned subsidiaries or affiliates as a "plan fiduciary." Sponsor further acknowledges and agrees that neither ESI nor any of ESI's wholly-owned subsidiaries or affiliates: (a) have any discretionary authority or control respecting management of the Plan's prescription benefit program, except as set forth in Section 2.3(c), or (b) exercise any authority or control respecting management or disposition of the assets of the Plan or Sponsor. Sponsor further acknowledges that all such discretionary authority and control with respect to the management of the Plan and plan assets is retained by Sponsor or the Plan. Upon reasonable notice, ESI will have the right to terminate PBM Services to any Plan (or, if applicable, Members) located in a state requiring a pharmacy benefit manager to be a fiduciary to Sponsor, a Plan, or a Member in any capacity.

5.3 Disclosure of Certain Financial Matters. In addition to the Administrative Fees paid to ESI by Sponsor, ESI and ESI's wholly-owned subsidiaries or affiliates derive revenue in one or more of the ways as further described in the Financial Disclosure to ESI PBM Clients set forth in Exhibit D hereto ("Financial Disclosure"), as updated by ESI from time to time. Unlike the Administrative Fees, the revenues described in the Financial Disclosure are not direct or indirect compensation to ESI from Sponsor for services rendered to Sponsor or the Plan under this Agreement. In negotiating any of the fees and revenues described in the Financial Disclosure or in this Agreement, ESI and ESI's wholly-owned subsidiaries and affiliates act on their own behalf, and not for the benefit of or as agents for Sponsor, Members or the Plan. ESI and ESI's wholly-owned subsidiaries and affiliates retain all proprietary rights and beneficial interest in such fees and revenues described in the Financial Disclosure

and, accordingly, Sponsor acknowledges that neither it, any Member, nor the Plan, has a right to receive, or possesses any beneficial interest in, any such fees or revenues; provided, that ESI will pay Sponsor amounts equal to the amounts expressly set forth on Exhibit A.

ARTICLE VI - TERM AND TERMINATION; DEFAULT AND REMEDIES

6.1 Term.

(a) This Agreement will commence effective as of January 1, 2014 ("Effective Date"), and will continue for a period of three (3) years ("Initial Term"), and may be terminated earlier or extended in accordance with the terms of Section 6.2 below. Thereafter, this Agreement will automatically renew with the same terms and conditions as set forth herein for successive one (1) year renewal terms, subject to the right of termination as otherwise provided herein.

(b) Not less than ninety (90) days prior to the end of the Initial Term or any renewal term of this Agreement either party may notify the other party in writing that it desires to terminate this Agreement effective as of the end of the then current term.

(c) Market Check. Following the initial 24 months of this Agreement (but not before), Coalition or its designee may provide ESI with a written comparison, prepared by an independent pharmacy benefit management consultant, for pharmacy benefit management services offered by a third party PBM provider which includes and takes into account similar plan design, Formulary, clinical and trend programs, retail pharmacy, mail pharmacy, and specialty pharmacy mix and utilization, demographics and other relevant factors necessary to provide an appropriate comparison ("Coalition's Current Market Price"). Coalition's Current Market Price will be measured on the basis of a total, aggregate comparison of the pricing terms offered by a single vendor to a single plan, and not on the basis of individual or best price points available from multiple vendors to a single plan or a single vendor to multiple plans. A copy Coalition's Current Market Price analysis prepared by the consultant will be submitted to both Coalition and to ESI. The consultant will also provide a reasonably detailed description of the methods and assumptions used in the analysis including the methods and assumptions related to the calculation of the individual pricing components and the Net Plan Costs, as defined below. ESI shall have a reasonable opportunity (i.e., not less than ten (10) business days) to evaluate Coalition's Current Market Price. If the comparison analysis concludes that Coalition's Current Market Price would yield an annual three percent (3%) or more savings of "Net Plan Costs" (with Net Plan Costs defined as the sum of the cost of Covered Drugs, dispensing fees, and claims Administrative Fees, less Rebates received by Coalition) under the Agreement, then the parties shall negotiate in good faith a modification of the pricing terms herein. The revised pricing terms will become effective on the first day of the contract year following the issuance of the report or sixty (60) days following a fully executed amendment or agreement memorializing the revised pricing terms, whichever is later. The market check shall be at Coalition's expense, except that ESI shall be responsible for its costs related to responding to the market check.

6.2 Termination.

(a) Without Cause. Following the initial twelve (12) months of this Agreement (but not before), either party may terminate this Agreement for any reason or for no reason upon ninety (90) days prior written notice of such termination to the other party.

(b) Breach or Default. Either party may give the other written notice of a material, substantial and continuing breach of this Agreement. If the breaching party has not cured said breach within thirty (30) days from the date such notice was sent, this Agreement may be terminated at the option of the non-breaching party. If the amount of time commercially reasonable for the breach to be cured is longer than thirty (30) days, this Agreement may not be terminated by the non-breaching party pursuant to this provision until such commercially reasonable period of time has elapsed; provided, however, that in no event will such period exceed sixty (60) days.

(c) Non-Payment. Notwithstanding anything to the contrary herein, ESI (and its wholly-owned subsidiaries) may terminate or suspend their performance hereunder and cease providing or authorizing provision of Covered Drugs to Members upon forty-eight (48) hours written notice if Sponsor

fails to pay ESI or provide a deposit, if required, in accordance with the terms of this Agreement. ESI attempts collection through written and verbal communications with Sponsor prior to sending the notice described herein.

(d) Obligations Upon Termination. Upon notice of termination of this Agreement, the parties will mutually develop a run-off plan providing for: (i) Sponsor notification to Members of the timing of any transition to a successor pharmacy benefit manager at least thirty (30) days prior to the effective date of such termination; (ii) ESI provision of open Mail Service Pharmacy refill files and standard claims data and PA files for transition to the successor pharmacy benefit manager in accordance with then existing industry protocol; and (iii) whether Sponsor elects for ESI to process Participating Pharmacy or Member Submitted Claims for prescriptions filled during the Term but filed with ESI after the effective date of termination ("Termination Date"). Sponsor will continue to pay ESI in accordance with this Agreement for any Fees for PBM Services provided during the term and any run-off period. ESI will continue filing for Rebates for claims incurred prior to the Termination Date and will, subject to final reconciliation of any outstanding amounts owed by Sponsor to ESI, pay Sponsor Rebates for such claims in accordance with the Rebate payment schedule set out herein. Notwithstanding anything in this Agreement to the contrary, ESI shall not be obligated to provide post-transition services following the transition to the successor pharmacy benefit manager and conclusion of the run-off period, including, but not limited to, the provision of continued data reporting, reporting, consultation, or analysis.

(e) Provision of Files at Termination. Upon written direction of Client, ESI agrees to provide the new pharmacy benefit management vendor with transition files in a timely manner at no additional cost to Client, including (1) Open Mail Order Refill Files, both pre and post termination (2) Clinical Prior Authorization Files, and (3) the most recent twelve (12) months of Client historical claims files.

6.3 Remedies.

(a) Remedies Not Exclusive. A party's right to terminate this Agreement under Article VI will not be exclusive of any other remedies available to the terminating party under this Agreement or otherwise, at law or in equity.

(b) Force Majeure. Neither party will lose any rights under this Agreement or be liable in any manner for any delay to perform its obligations under this Agreement that are beyond a party's reasonable control, including, without limitation, any delay or failure due to riots, earthquakes, storms, floods or other extreme weather conditions, fires, acts of terrorism, epidemics, embargoes, war or other outbreak of hostilities, government acts or regulations, the failure or inability of carriers, suppliers, or telecommunications providers to provide services necessary to enable a party to perform its obligations hereunder, or any other reason where failure to perform is beyond the party's reasonable control, and is not caused by the negligence, intentional conduct or misconduct of the defaulting party; *provided, however*, that this clause may not be invoked to excuse a party's payment obligations hereunder. ESI represents that it maintains and continually updates a business continuity plan designed to mitigate any disruption to the services provided by ESI under this Agreement.

(c) Limitation of Liability. Except for the indemnification obligations set forth in Section 6.3(d), each party's liability to the other hereunder will in no event exceed the actual proximate losses or damages caused by breach of this Agreement. In no event will either party or any of their respective affiliates, directors, employees or agents, be liable for any indirect, special, incidental, consequential, exemplary or punitive damages, or any damages for lost profits relating to a relationship with a third party, however caused or arising, whether or not they have been informed of the possibility of their occurrence.

(d) Indemnification.

(i) In addition to any indemnification obligations set forth in the Business Associate Agreement, ESI will indemnify and hold Sponsor harmless from and against any loss, cost, damage, expense or other liability, including, without limitation, reasonable costs and attorney fees ("Costs") incurred in connection with any and all third party claims, suits, investigations or enforcement actions ("Claims") which may be asserted against, imposed upon or incurred by Sponsor and arising as a result of (A) ESI's negligent acts or omissions or willful misconduct

(including those of the Mail Service Pharmacy and ESI Specialty Pharmacy), or (B) ESI's breach of this Agreement.

(ii) Sponsor will indemnify and hold ESI harmless from and against any Costs for Claims which may be asserted against, imposed upon or incurred by ESI and arising as a result of (A) Sponsor's negligent acts or omissions or willful misconduct, benefit design and coverage decisions, or breach of this Agreement, or (B) any improper use Sponsor, an Auditor or Vendor may make of PHI or ESI System access provided to such party.

(iii) As a condition of indemnification, the party seeking indemnification will notify the indemnifying party in writing promptly upon learning of any Claim for which indemnification may be sought hereunder, and will tender the defense of such claim to the indemnifying party. No party will be obligated to indemnify the other with respect to any claim settled without the written consent of the other.

6.4 Survival. The parties' rights and obligations under the Sections 2.5, Articles III, IV and V; and Sections 6.2(c), 6.3, 6.4, 7.2, 7.3, 7.4 and 7.6 will survive the termination of this Agreement for any reason.

ARTICLE VII – MISCELLANEOUS

7.1 Liability Insurance. Each party will maintain such policies of general liability, professional liability and other insurance of the types, including self-insurance, and in amounts customarily carried by their respective businesses. Proof of such insurance will be available upon request. ESI agrees, at its sole expense, to maintain during the term of this Agreement or any renewal hereof, commercial general liability insurance, pharmacists professional liability insurance for the Mail Service and ESI Specialty Pharmacy pharmacies, and managed care liability with limits, excess of a self-insured retention, in amounts of not less than $5,000,000 per occurrence and in the aggregate. ESI does not maintain liability insurance on behalf of any Participating Pharmacy, but does contractually require such pharmacies to maintain a minimum amount of commercial liability insurance or, when deemed acceptable by ESI, to have in place a self-insurance program

7.2 Notice. Any notice or document required or permitted to be delivered pursuant to this Agreement must be in writing and will be deemed to be effective upon mailing and must be either (a) deposited in the United States Mail, postage prepaid, certified or registered mail, return receipt requested, or (b) sent by recognized overnight delivery service, in either case properly addressed to the other party at the address set forth below, or at such other address as such party will specify from time to time by written notice delivered in accordance herewith:

Express Scripts, Inc.
Attn: President
One Express Way
St. Louis, Missouri 63121
With copy to Legal Department
Fax No. (800) 417-8163

City of Bridgeport
Attn: Rich Weiner
45 Lyon Terrace
Bridgeport, CT 06604

7.3 Independent Parties. No provision of this Agreement is intended to create or will be construed to create any relationship between ESI and Sponsor other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither party, nor any of their respective representatives, will be construed to be the partner, agent, fiduciary, employee, or representative of the other and neither party will have the right to make any representations concerning the duties, obligations or services of the other except as consistent with the express terms of this Agreement or as otherwise authorized in writing by the party about which such representation is asserted.

7.4 Assignment and Subcontracting. Sponsor may assign this Agreement upon first obtaining ESI's written consent, which consent will not be unreasonably withheld following a standard credit review of the proposed assignee. Sponsor acknowledges and agrees that ESI may perform certain services hereunder (e.g., mail service pharmacy and specialty pharmacy services) through one or more ESI subsidiaries, affiliates, or designees. ESI is responsible and liable for the performance of its subsidiaries and affiliates in the course of their performance of any such service. To the extent that ESI subcontracts any PBM Service under this Agreement to a third party, ESI is responsible and liable for the performance of any such third party. In addition, ESI may contract with third party vendors to provide information technology support services and other ancillary services, which services are not PBM Services hereunder, but rather are services that support ESI's conduct of its business operations. This Agreement will be binding upon, and inure to the benefit of and be enforceable by, the respective successors and permitted assigns of the parties hereto.

7.5 Integration; Amendments. This Agreement and any Exhibits hereto constitute the entire understanding of the parties hereto and supersedes any prior oral or written communication between the parties with respect to the subject matter hereof. If there is a separate Business Associate Agreement between the parties, such an agreement will be incorporated herein for all applicable purposes. No modification, alteration, or waiver of any term, covenant, or condition of this Agreement will be valid unless in writing and signed by the parties or the agents of the parties who are authorized in writing, except as may be otherwise permitted pursuant to the terms and conditions of this Agreement or any Exhibit hereto.

7.6 Choice of Law. This Agreement will be construed and governed in all respects according to the laws in the State of Missouri, without regard to the rules of conflict of laws thereof.

7.7 Waiver. The failure of either party to insist upon the strict observation or performance of this Agreement or to exercise any right or remedy will not be construed as a waiver of any subsequent breach of this Agreement or impair or waive any available right or remedy.

7.8 Trademarks. Each party acknowledges each other party's sole and exclusive ownership of its respective trade names, commercial symbols, trademarks, and servicemarks, whether presently existing or later established (collectively "Marks"). No party shall use the other party's Marks in advertising or promotional materials or otherwise without the owner's prior written consent.

7.9 Taxes and Assessments. Any applicable sales, use, excise, or other similarly assessed and administered tax, surcharge, or fee imposed on items dispensed, or services provided hereunder, or the fees or revenues generated by the items dispensed or services provided hereunder, or any other amounts ESI or one or more of its subsidiaries or affiliates may incur or be required to pay arising from or relating to ESI's or its subsidiaries' or affiliates' performance of services as a pharmacy benefit manager, third-party administrator, or otherwise in any jurisdiction, will be the sole responsibility of Sponsor or the Member. If ESI is legally obligated to collect and remit, or to incur or pay, any such sales, use, excise, or other similarly assessed and administered tax, surcharge, or fee in a particular jurisdiction, such amount will be reflected on the applicable invoice or subsequently invoiced at such time as ESI becomes aware of such obligation or as such obligation becomes due. ESI reserves the right to charge a reasonable administrative fee for collection and remittance services provided on behalf of Sponsor.

7.10 Third Party Beneficiary Exclusion. This Agreement is not a third party beneficiary contract, nor will this Agreement create any rights on behalf of Members as against ESI. Sponsor and ESI reserve the right to amend, cancel or terminate this Agreement without notice to, or consent of, any Member.

7.11 Authority to Contract. Sponsor hereby represents and warrants that it has obtained due and proper authority to enter into this Agreement through its governing body.

IN WITNESS WHEREOF, the undersigned have executed this Pharmacy Benefit Management Agreement as of the day and year below set forth.

EXPRESS SCRIPTS, INC.

By:_____

Printed Name: _____

Title:_____

Date:_____

CITY OF BRIDGEPORT

By:_____

Printed Name:_____

Title:_____

Federal ID Number:_____

Date:_____

EXHIBIT A

PHARMACY PROGRAM FEES

ESI shall be Sponsor's exclusive provider of PBM Services for Sponsor's Plans offering a prescription benefit. The financial terms set forth in Exhibit A are conditioned on such exclusive arrangement and all other specified conditions expressly incorporated in such exhibits, including, but not limited to the adoption by Sponsor of the specified network, qualifying co-payment structures, Formulary, and no Members in a 100% co-payment plan (if applicable). In the event one or more of the following occurs (whether between the date of the Cost Proposal and the Effective Date, or during the Term), ESI will have the right, upon notice, to make an equitable adjustment to the rates, Administrative Fees and/or Rebates, solely as necessary to return ESI to its contracted economic position as of the effective date of such event:

(a) There is a material change in: (i) the conditions or assumptions stated in this Agreement; or (ii) the size, demographics or gender distribution of Sponsor's Membership compared to data provided by Sponsor; and/or

(b) Sponsor changes its Formulary, benefit designs, implements OTC plans, clinical or trend programs or otherwise takes an action that has the effect of lowering the amount of Rebates earned hereunder or materially impacting any guarantee; and/or

(c) Sponsor elects to use on-site clinics or pharmacies to dispense prescription drugs to Members which materially reduces Rebates and/or the number of Covered Drug claims submitted on-line; and/or

(d) More than 5% of claims are incurred in Massachusetts, Hawaii, Alaska, or Puerto Rico; and/or

(e) Rebate revenue is materially decreased because Brand Drugs unexpectedly move off-patent to generic status or due to a Change in Law.

Exhibit A includes the following:

Exhibit A-1

Pharmacy Reimbursement Rates

Exhibit A-2

Administrative and Clinical Program Fees

Exhibit A-3

Rebates

Exhibit A-1

Pharmacy Reimbursement Rates

Sponsor will pay to ESI the amounts set forth below, net of applicable Copayments. The application of brand and generic pricing below may be subject to certain "dispensed as written" (DAW) protocols and Sponsor defined plan design and coverage policies for adjudication and Member Copayment purposes. Sales or excise tax or other governmental surcharge, if any, will be the responsibility of Sponsor.

A Member's Copayment charged for a Covered Drug will be the lesser of the applicable Copayment, AWP discount or U&C.

I. Participating Pharmacy Reimbursement Rates (Does Not Apply to Specialty Products)

Network	ESI National Plus Network	
	1-83 Days' Supply	84-90 Days' Supply[(1)]
Ingredient Cost - Brand	Lesser of AWP – 16.50% or U&C	Lesser of AWP – 20.00% or U&C
Ingredient Cost - Generic	Lesser of AWP – 16.50%, MRA or U&C	
Ingredient Cost - Compound Drugs	Lesser of U&C or combined AWP plus applicable service fee	
Brand Dispensing Fee/Rx	$1.00	$1.30
Generic Dispensing Fee/Rx	$1.00	$1.30
Administrative Fee/Rx	$0.00	

Notwithstanding the preceding, ESI will guarantee an average aggregate annual discount for Generic Drugs, as set forth in the table in Section III below.

[(1)] Certain Participating Pharmacies have agreed to participate in the extended (84 – 90) day supply network ("Maintenance Network") for maintenance drugs. Rebate Amounts in the 84 – 90 Days' Supply column in the table set forth above are applicable only if Sponsor implements a plan design that requires Members to fill such days' supply at a Maintenance Network Participating Pharmacy (i.e., Sponsor must implement a plan design whereby Members who fill extended days' supply prescriptions at a Participating Pharmacy other than a Maintenance Network Participating Pharmacy do not receive benefit coverage under the Plan for such prescription). If no such plan design is implemented, Rebate Amounts for such days' supply will be the same as for Prescription Drug Claims for less than an 84 days' supply, and Rebate Amounts for an 84 – 90 days' supply in the table set forth above shall not apply, even if a Maintenance Network Participating Pharmacy is used.

II. Mail Pharmacy Reimbursement Rates (Does Not Apply to Specialty Products).

Ingredient Cost - Brand Drugs	AWP – 25.50%
Ingredient Cost – Generic Drugs	AWP - 25.50% or, if lower, MRA
Ingredient Cost - Compound Drugs	Combined AWP plus applicable service fee
Brand Dispensing Fee/Rx*	$0.00
Generic Dispensing Fee/Rx*	$0.00
Administrative Fee/Rx	$0.00

* Dispensing Fees are inclusive of shipping and handling.

III. **Pricing Guarantees.**

Ingredient Cost Guarantee. ESI will guarantee an average aggregate annual discount as reflected below on Sponsor utilization to be calculated as follows:

[1-(total discounted AWP ingredient cost (excluding dispensing fees and claims with ancillary charges, and prior to application of Copayments) of applicable Prescription Drug Claims for the annual period divided by total undiscounted AWP ingredient cost (both amounts will be calculated as of the date of adjudication) for the annual period)]. Discounted ingredient cost will be the lesser of MRA (as applicable), U&C or AWP discount adjudication methodology.

Notwithstanding anything herein to the contrary, a Prescription Drug Claim that processes at the Generic rates set forth in Section I (Participating Pharmacy Reimbursement Rates) and Section II (Mail Pharmacy Reimbursement Rates) above, as indicated on the ingredient cost field of the Prescription Drug Claim's data record, shall be reconciled as part of the Generic guarantee below. The only Prescription Drug Claims that shall be excluded from the reconciliation of the pricing guarantee are as identified in the "Claims Excluded" column of the table below. All other Prescription Drug Claims shall be included in the reconciliation of the guarantee.

Type of Guarantee	Participating Pharmacy	Mail Service Pharmacy	Claims Excluded
Generic	AWP – 76.75%	AWP – 81.50%	OTC, compounds, Member Submitted Claims, Subrogation Claims, vaccines, Specialty Products, biosimilar products, and products filled through in-house or 340b pharmacies (if applicable)

Guarantees will be measured and reconciled on an annual basis within 90 days of the end of each contract year. The above guarantees are annual guarantees - if this Agreement is terminated prior to the completion of the then current contract year (hereinafter, a "Partial Contract Year"), then the above guarantees will not apply for such Partial Contract Year. To the extent Sponsor changes its benefit design or Formulary during the term of the Agreement, the guarantee will be equitably adjusted if there is a material impact on the discount achieved. Subject to the remaining terms of this Agreement, ESI will pay the difference of Sponsor's net cost for any shortfall between the actual result and the guaranteed result; provided, however, that ESI may use an excess achieved in one or more of the above guarantees to make up for, and offset, a shortfall in another guarantee. ESI may also use any excess achieved in any other guarantee offered pursuant to this Agreement to make up for, and offset, a shortfall in any of the above guarantees or any other guarantee(s) set forth in this Agreement.

IV. **Specialty Products**

(a) Exclusive Care. ESI Specialty Pharmacy is the exclusive provider of Specialty Products for the reimbursement rates shown on the Exclusive ESI Specialty Pharmacy Specialty Product List. Any Specialty Product dispensed at a Participating Pharmacy (for example, limited distribution products not then available through ESI Specialty Pharmacy or overrides) will be reimbursed at the standard Participating Pharmacy Specialty Product rates shown below. Upon ESI Specialty Pharmacy acquisition of limited distribution products, Members will obtain prescriptions through ESI Specialty Pharmacy.

(b) Open Care. Specialty Products shall be available through ESI Specialty Pharmacy and at Participating Pharmacies for the Participating Pharmacy Specialty Product reimbursement rates.

	Ingredient Cost	Dispensing Fee
Exclusive ESI Specialty Pharmacy	See Exclusive Specialty Drug List Lesser of AWP discount or MRA	$0.00
Open ESI Specialty Pharmacy	See Open Specialty Drug List Lesser of AWP discount or MRA	$0.00
Select ESI Specialty Pharmacy*	See Select ESI Specialty Pharmacy Drug List Lesser of AWP discount or MRA	$0.00
Participating Pharmacy Specialty Products	Participating Pharmacy Specialty Drug List Lesser of AWP discount, U&C or MRA	$2.00

*Where Sponsor has implemented Open ESI Specialty Pharmacy, then Select ESI Specialty Pharmacy pricing will apply if Sponsor also implements ESI's Specialty Pharmacy program through the standard Set-Up Form process. See ESI Account Management Team for more information.

(b) Pricing for ASES is as follows:

(i) For Specialty Products needing an additional charge to cover costs of all ASES required to administer the Specialty Products, the following standard per diem and nursing fee rates shall apply. Exceptions to the standard per diem and nursing rates are set forth in (ii), below, which list may be updated from time to time by ESI. Pricing for home infusion supplies and services provided at Participating Pharmacies (for example, limited distribution products not then available through ESI Specialty Pharmacy or overrides) will be pass through.

Standard Per Diem	$65/dose
Standard Nursing Fee/ First 2 Hours	$150
Standard Nursing Hourly	$75

(ii) Additional exceptions to AWP Discount Rates and Standard Per Diem & Nursing Fees

Brand Name	AWP Discount	Per Diem
EPOPROSTENOL	1.0%	$65/day
REMODULIN	5.0%	$65/day

The AWP discount includes Phone Support Nursing, Supplies, Pump, first two training visits, and Coordination of In-Person Nursing. In-home nursing that is requested/needed beyond the first two training visits will be charged at a rate of $150 for the first two hours and $75 for every hour after.

(c) Specialty Products will be excluded from any price guarantees set forth in the Agreement. In no event will the Mail Service Pharmacy or Participating Pharmacy pricing terms specified in the Agreement, including, but not limited to, the annual average ingredient cost discount guarantees, apply to Specialty Products.

(d) Unless otherwise set forth in an agreement directly between ESI Specialty Pharmacy and Sponsor, if a Specialty Product dispensed or ASES provided by ESI Specialty Pharmacy is billed to Sponsor directly by ESI Specialty Pharmacy instead of being processed through ESI, Sponsor agrees to timely pay ESI Specialty Pharmacy for such claim pursuant to the rates above and within thirty (30) days of Sponsor's, or its designee's, receipt of such electronic or paper claim from ESI Specialty Pharmacy. ESI Specialty Pharmacy shall have 360 days from the date of service to submit such electronic or paper claim.

(e) The list of Specialty Products and their corresponding rates set forth below are subject to addition, deletion, or modification by ESI from time to time.

THERAPY	DRUG	Per Diem & Nursing Service Charges	AWP Discount	Dispensing Fee
Anemia	ARANESP		13.7%	$0.00
Anemia	EPOGEN		13.7%	$0.00
Anemia	PROCRIT		13.7%	$0.00
Anemia	SOLIRIS		11.6%	$0.00
Cancer	8-MOP		18.0%	$0.00
Cancer	ABRAXANE		13.7%	$0.00
Cancer	ADRIAMYCIN		34.0%	$0.00
Cancer	ADRUCIL		34.0%	$0.00
Cancer	AFINITOR		12.7%	$0.00
Cancer	AGRYLIN		18.0%	$0.00
Cancer	ALIMTA		18.0%	$0.00
Cancer	ALKERAN IV		18.0%	$0.00
Cancer	ALKERAN ORAL		18.0%	$0.00
Cancer	ALOXI		18.0%	$0.00
Cancer	ANAGRELIDE HYDROCHLORIDE		34.0%	$0.00
Cancer	ANZEMET		18.0%	$0.00
Cancer	ARRANON		12.7%	$0.00
Cancer	ARZERRA		13.7%	$0.00
Cancer	AVASTIN		13.7%	$0.00
Cancer	AZACITIDINE		13.7%	$0.00
Cancer	BICALUTAMIDE		34.0%	$0.00
Cancer	BICNU		18.0%	$0.00
Cancer	BLENOXANE		18.0%	$0.00
Cancer	BLEOMYCIN SULFATE		34.0%	$0.00
Cancer	BOSULIF		13.7%	$0.00
Cancer	CAMPTOSAR		18.0%	$0.00
Cancer	CARBOPLATIN		34.0%	$0.00
Cancer	CASODEX		18.0%	$0.00
Cancer	CISPLATIN		34.0%	$0.00
Cancer	CLADRIBINE		34.0%	$0.00
Cancer	COSMEGEN		18.0%	$0.00
Cancer	CYCLOPHOSPHAMIDE		34.0%	$0.00
Cancer	CYTARABINE		18.0%	$0.00
Cancer	CYTOXAN		18.0%	$0.00
Cancer	DACARBAZINE		34.0%	$0.00
Cancer	DACOGEN		12.7%	$0.00
Cancer	DACTINOMYCIN		34.0%	$0.00
Cancer	DECITABINE		12.7%	$0.00
Cancer	DEFEROXAMINE MESYLATE		34.0%	$0.00
Cancer	DELESTROGEN		18.0%	$0.00
Cancer	DEPOCYT		18.0%	$0.00
Cancer	DESFERAL		18.0%	$0.00
Cancer	DOCEFREZ		18.0%	$0.00
Cancer	DOCETAXEL		18.0%	$0.00
Cancer	DOXIL		18.0%	$0.00
Cancer	DOXORUBICIN HCL		34.0%	$0.00

Cancer	ELIGARD		13.7%	$0.00
Cancer	ELOXATIN		18.0%	$0.00
Cancer	EMCYT		18.0%	$0.00
Cancer	ERBITUX		13.7%	$0.00
Cancer	ERIVEDGE		11.6%	$0.00
Cancer	ESTRADIOL VALERATE		34.0%	$0.00
Cancer	ETOPOPHOS		18.0%	$0.00
Cancer	ETOPOSIDE IV		34.0%	$0.00
Cancer	ETOPOSIDE ORAL		34.0%	$0.00
Cancer	FASLODEX		18.0%	$0.00
Cancer	FIRMAGON		12.7%	$0.00
Cancer	FLOXURIDINE		18.0%	$0.00
Cancer	FLUDARA		18.0%	$0.00
Cancer	FLUDARABINE PHOSPHATE		18.0%	$0.00
Cancer	FLUOROPLEX		18.0%	$0.00
Cancer	FLUOROURACIL		18.0%	$0.00
Cancer	FLUTAMIDE		34.0%	$0.00
Cancer	FOLOTYN		12.7%	$0.00
Cancer	GAZYVA		13.7%	$0.00
Cancer	GEMCITABINE HCL		34.0%	$0.00
Cancer	GEMZAR		18.0%	$0.00
Cancer	GILOTRIF		12.7%	$0.00
Cancer	GLEEVEC		15.9%	$0.00
Cancer	GLIADEL		18.0%	$0.00
Cancer	GRANISETRON HCL		34.0%	$0.00
Cancer	GRANISOL		18.0%	$0.00
Cancer	GRANIX		13.7%	$0.00
Cancer	HALAVEN		12.7%	$0.00
Cancer	HERCEPTIN		13.7%	$0.00
Cancer	HEXALEN		18.0%	$0.00
Cancer	HYCAMTIN ORAL		13.7%	$0.00
Cancer	HYDREA		18.0%	$0.00
Cancer	HYDROXYUREA		34.0%	$0.00
Cancer	ICLUSIG		13.7%	$0.00
Cancer	IFEX		18.0%	$0.00
Cancer	IFOSFAMIDE		34.0%	$0.00
Cancer	IFOSFAMIDE-MESNA		34.0%	$0.00
Cancer	INLYTA		13.7%	$0.00
Cancer	IRINOTECAN HCL		34.0%	$0.00
Cancer	ISTODAX		13.7%	$0.00
Cancer	IXEMPRA		12.7%	$0.00
Cancer	JAKAFI		13.7%	$0.00
Cancer	JEVTANA		13.7%	$0.00
Cancer	KADCYLA		13.7%	$0.00
Cancer	LEUCOVORIN CALCIUM		34.0%	$0.00
Cancer	LEUKERAN		18.0%	$0.00
Cancer	LEUPROLIDE		22.0%	$0.00
Cancer	LIPODOX		34.0%	$0.00
Cancer	LUPRON DEPOT		13.7%	$0.00
Cancer	MATULANE		10.0%	$0.00
Cancer	MECHLORETHAMINE HCL		18.0%	$0.00

Cancer	MEKINIST		13.7%	$0.00
Cancer	MELPHALAN HCL		34.0%	$0.00
Cancer	MESNA		34.0%	$0.00
Cancer	MESNEX IV		18.0%	$0.00
Cancer	MESNEX ORAL		18.0%	$0.00
Cancer	MOZOBIL		13.7%	$0.00
Cancer	MUSTARGEN		18.0%	$0.00
Cancer	NAVELBINE		18.0%	$0.00
Cancer	NEXAVAR		12.7%	$0.00
Cancer	NILANDRON		18.0%	$0.00
Cancer	OCTREOTIDE ACETATE		13.7%	$0.00
Cancer	ONDANSETRON		34.0%	$0.00
Cancer	ONXOL		34.0%	$0.00
Cancer	OXALIPLATIN		34.0%	$0.00
Cancer	OXSORALEN ULTRA		18.0%	$0.00
Cancer	PACLITAXEL		34.0%	$0.00
Cancer	PANRETIN		18.0%	$0.00
Cancer	PERJETA		12.7%	$0.00
Cancer	POMALYST		13.7%	$0.00
Cancer	PROLEUKIN		13.7%	$0.00
Cancer	PROTHELIAL		13.7%	$0.00
Cancer	REVLIMID		13.8%	$0.00
Cancer	RITUXAN		13.7%	$0.00
Cancer	SANDOSTATIN		13.7%	$0.00
Cancer	SPRYCEL		11.6%	$0.00
Cancer	STIVARGA		13.7%	$0.00
Cancer	SUTENT		13.7%	$0.00
Cancer	SYLATRON		13.7%	$0.00
Cancer	SYNRIBO		13.7%	$0.00
Cancer	TAFINLAR		13.7%	$0.00
Cancer	TARCEVA		15.9%	$0.00
Cancer	TARGRETIN		18.0%	$0.00
Cancer	TASIGNA		12.7%	$0.00
Cancer	TAXOL		18.0%	$0.00
Cancer	TAXOTERE		18.0%	$0.00
Cancer	TEMODAR		13.7%	$0.00
Cancer	TEMOZOLOMIDE		22.0%	$0.00
Cancer	THALOMID		13.7%	$0.00
Cancer	THERACYS		18.0%	$0.00
Cancer	THIOTEPA		34.0%	$0.00
Cancer	TICE BCG		18.0%	$0.00
Cancer	TOPOSAR		34.0%	$0.00
Cancer	TORISEL		13.7%	$0.00
Cancer	TREANDA		13.7%	$0.00
Cancer	TRELSTAR		18.0%	$0.00
Cancer	TRISENOX		18.0%	$0.00
Cancer	TYKERB		12.7%	$0.00
Cancer	UVADEX		18.0%	$0.00
Cancer	VALCHLOR		5.4%	$0.00
Cancer	VANTAS		12.7%	$0.00
Cancer	VECTIBIX		12.7%	$0.00

Cancer	VELCADE		13.7%	$0.00
Cancer	VESANOID		18.0%	$0.00
Cancer	VIDAZA		13.7%	$0.00
Cancer	VINBLASTINE SULFATE		34.0%	$0.00
Cancer	VINCASAR PFS		34.0%	$0.00
Cancer	VINCRISTINE SULFATE		34.0%	$0.00
Cancer	VINORELBINE TARTRATE		34.0%	$0.00
Cancer	VOTRIENT		12.7%	$0.00
Cancer	XALKORI		13.7%	$0.00
Cancer	XELODA		13.7%	$0.00
Cancer	XGEVA		12.7%	$0.00
Cancer	XTANDI		13.7%	$0.00
Cancer	YERVOY		13.7%	$0.00
Cancer	ZALTRAP		13.7%	$0.00
Cancer	ZELBORAF		11.6%	$0.00
Cancer	ZOFRAN		18.0%	$0.00
Cancer	ZOLADEX		13.7%	$0.00
Cancer	ZOLINZA		13.7%	$0.00
Cancer	ZOMETA		18.0%	$0.00
Cancer	ZUPLENZ		18.0%	$0.00
Cancer	ZYTIGA		13.7%	$0.00
Crohn's Disease	CIMZIA		13.7%	$0.00
DVT/Anticoagulation	ARIXTRA		13.7%	$0.00
DVT/Anticoagulation	ENOXAPARIN SODIUM		34.0%	$0.00
DVT/Anticoagulation	FONDAPARINUX SODIUM		13.7%	$0.00
DVT/Anticoagulation	FRAGMIN		13.7%	$0.00
DVT/Anticoagulation	IPRIVASK		13.7%	$0.00
DVT/Anticoagulation	LOVENOX		13.7%	$0.00
Growth Stimulating Agents	GENOTROPIN		15.9%	$0.00
Growth Stimulating Agents	HUMATROPE		15.9%	$0.00
Growth Stimulating Agents	INCRELEX		7.5%	$0.00
Growth Stimulating Agents	NORDITROPIN		15.9%	$0.00
Growth Stimulating Agents	NUTROPIN		13.7%	$0.00
Growth Stimulating Agents	OMNITROPE		13.7%	$0.00
Growth Stimulating Agents	SAIZEN		13.7%	$0.00
Growth Stimulating Agents	SEROSTIM		13.7%	$0.00
Growth Stimulating Agents	TEV-TROPIN		13.7%	$0.00
Growth Stimulating Agents	ZORBTIVE		13.7%	$0.00
Hemophilia	ADVATE		22.0%	$0.00
Hemophilia	ALPHANATE		29.3%	$0.00
Hemophilia	ALPHANINE SD		29.3%	$0.00
Hemophilia	BEBULIN		5.4%	$0.00

Hemophilia	BENEFIX		12.7%	$0.00
Hemophilia	CORIFACT		22.0%	$0.00
Hemophilia	FEIBA		27.2%	$0.00
Hemophilia	HELIXATE FS		27.2%	$0.00
Hemophilia	HEMOFIL M		27.2%	$0.00
Hemophilia	HUMATE-P		29.3%	$0.00
Hemophilia	KOATE		27.2%	$0.00
Hemophilia	KOGENATE		27.2%	$0.00
Hemophilia	MONOCLATE P		27.2%	$0.00
Hemophilia	MONONINE		24.1%	$0.00
Hemophilia	NOVOSEVEN RT		25.0%	$0.00
Hemophilia	PROFILNINE SD		27.2%	$0.00
Hemophilia	RECOMBINATE		27.2%	$0.00
Hemophilia	RIASTAP		11.6%	$0.00
Hemophilia	RIXUBIS		29.3%	$0.00
Hemophilia	STIMATE		13.7%	$0.00
Hemophilia	WILATE		29.3%	$0.00
Hemophilia	XYNTHA		22.0%	$0.00
Hepatitis	COPEGUS		13.7%	$0.00
Hepatitis	INCIVEK		15.9%	$0.00
Hepatitis	INFERGEN		13.7%	$0.00
Hepatitis	INTRON A		13.7%	$0.00
Hepatitis	OLYSIO		15.9%	$0.00
Hepatitis	PEGASYS		15.9%	$0.00
Hepatitis	PEG-INTRON		13.7%	$0.00
Hepatitis	REBETOL		13.7%	$0.00
Hepatitis	RIBASPHERE		44.9%	$0.00
Hepatitis	RIBAVIRIN		44.9%	$0.00
Hepatitis	SOVALDI		15.9%	$0.00
Hepatitis	VICTRELIS		15.9%	$0.00
Hepatitis B	ADEFOVIR DIPIVOXIL		34.0%	$0.00
Hepatitis B	BARACLUDE		18.0%	$0.00
Hepatitis B	EPIVIR HBV		18.0%	$0.00
Hepatitis B	HEPAGAM B		18.0%	$0.00
Hepatitis B	HEPSERA		18.0%	$0.00
Hepatitis B	HYPERHEP B S-D		18.0%	$0.00
Hepatitis B	NABI-HB		18.0%	$0.00
Hepatitis B	TYZEKA		18.0%	$0.00
Hereditary Tyrosinemia	ORFADIN		Plus 4.1%	$0.00
HIV	APTIVUS		18.0%	$0.00
HIV	ATRIPLA		18.0%	$0.00
HIV	COMBIVIR		18.0%	$0.00
HIV	CRIXIVAN		18.0%	$0.00
HIV	DIDANOSINE		34.0%	$0.00
HIV	EGRIFTA		13.7%	$0.00
HIV	EMTRIVA		18.0%	$0.00
HIV	EPIVIR		18.0%	$0.00
HIV	EPZICOM		18.0%	$0.00
HIV	FUZEON		13.7%	$0.00
HIV	INTELENCE		18.0%	$0.00
HIV	INVIRASE		18.0%	$0.00

HIV	ISENTRESS		18.0%	$0.00
HIV	KALETRA		18.0%	$0.00
HIV	LAMIVUDINE		34.0%	$0.00
HIV	LAMIVUDINE-ZIDOVUDINE		34.0%	$0.00
HIV	LEXIVA		18.0%	$0.00
HIV	NEVIRAPINE		34.0%	$0.00
HIV	NORVIR		18.0%	$0.00
HIV	PREZISTA		18.0%	$0.00
HIV	RESCRIPTOR		18.0%	$0.00
HIV	RETROVIR		18.0%	$0.00
HIV	REYATAZ		18.0%	$0.00
HIV	SELZENTRY		18.0%	$0.00
HIV	STAVUDINE		34.0%	$0.00
HIV	SUSTIVA		18.0%	$0.00
HIV	TIVICAY		18.0%	$0.00
HIV	TRIZIVIR		18.0%	$0.00
HIV	TRUVADA		18.0%	$0.00
HIV	VIDEX		18.0%	$0.00
HIV	VIRACEPT		18.0%	$0.00
HIV	VIRAMUNE		18.0%	$0.00
HIV	VIREAD		18.0%	$0.00
HIV	ZERIT		18.0%	$0.00
HIV	ZIAGEN		18.0%	$0.00
HIV	ZIDOVUDINE		34.0%	$0.00
Homocystinuria	CYSTADANE		12.7%	$0.00
Immune Deficiency	ACTIMMUNE		13.7%	$0.00
Immune Deficiency	ADAGEN		Plus 4.1%	$0.00
Immune Deficiency	BIVIGAM	**	14.7%	$0.00
Immune Deficiency	CARIMUNE NF	**	14.7%	$0.00
Immune Deficiency	CYTOGAM	**	13.7%	$0.00
Immune Deficiency	FLEBOGAMMA	**	13.7%	$0.00
Immune Deficiency	GAMASTAN	**	14.7%	$0.00
Immune Deficiency	GAMMAGARD	**	15.8%	$0.00
Immune Deficiency	GAMMAGARD LIQUID	**	11.6%	$0.00
Immune Deficiency	GAMMAKED	**	14.7%	$0.00
Immune Deficiency	GAMMAPLEX	**	13.7%	$0.00
Immune Deficiency	GAMUNEX	**	14.7%	$0.00
Immune Deficiency	HIZENTRA	**	13.7%	$0.00
Immune Deficiency	HYPERRHO S/D	**	22.0%	$0.00
Immune Deficiency	MICRHOGAM	**	13.7%	$0.00
Immune Deficiency	OCTAGAM	**	13.7%	$0.00
Immune Deficiency	PRIVIGEN	**	13.7%	$0.00
Immune Deficiency	RHOGAM	**	22.0%	$0.00
Immune Deficiency	RHOPHYLAC	**	13.7%	$0.00
Immune Deficiency	WINRHO SDF	**	32.4%	$0.00
Infertility	BRAVELLE		13.7%	$0.00
Infertility	CETROTIDE		13.7%	$0.00
Infertility	CHORIONIC GONADOTROPIN		13.7%	$0.00
Infertility	FOLLISTIM AQ		13.7%	$0.00
Infertility	GANIRELIX ACETATE		13.7%	$0.00
Infertility	GONAL-F		13.7%	$0.00

Infertility	MENOPUR		13.7%	$0.00
Infertility	NOVAREL		13.7%	$0.00
Infertility	OVIDREL		13.7%	$0.00
Infertility	PREGNYL		13.7%	$0.00
Infertility	REPRONEX		13.7%	$0.00
Metabolic Disorder	ALDURAZYME	**	7.5%	$0.00
Metabolic Disorder	BERINERT		13.7%	$0.00
Metabolic Disorder	CARBAGLU		5.4%	$0.00
Metabolic Disorder	CEREZYME	**	13.7%	$0.00
Metabolic Disorder	CINRYZE	**	7.5%	$0.00
Metabolic Disorder	ELAPRASE	**	13.7%	$0.00
Metabolic Disorder	FABRAZYME	**	6.4%	$0.00
Metabolic Disorder	FIRAZYR		13.7%	$0.00
Metabolic Disorder	KALBITOR	**	13.7%	$0.00
Metabolic Disorder	LUMIZYME	**	10.6%	$0.00
Metabolic Disorder	MYOZYME	**	11.6%	$0.00
Metabolic Disorder	NAGLAZYME	**	12.7%	$0.00
Metabolic Disorder	PROCYSBI		5.4%	$0.00
Metabolic Disorder	RAVICTI		13.7%	$0.00
Metabolic Disorder	V-PRIV	**	13.7%	$0.00
Metabolic Disorder	ZAVESCA		11.6%	$0.00
Multiple Sclerosis	AMPYRA		14.9%	$0.00
Multiple Sclerosis	AUBAGIO		12.7%	$0.00
Multiple Sclerosis	AVONEX		15.9%	$0.00
Multiple Sclerosis	BETASERON		15.9%	$0.00
Multiple Sclerosis	COPAXONE		15.9%	$0.00
Multiple Sclerosis	EXTAVIA		13.7%	$0.00
Multiple Sclerosis	GILENYA		15.9%	$0.00
Multiple Sclerosis	MITOXANTRONE		13.7%	$0.00
Multiple Sclerosis	NOVANTRONE		13.7%	$0.00
Multiple Sclerosis	REBIF		13.7%	$0.00
Multiple Sclerosis	TECFIDERA		13.7%	$0.00
Multiple Sclerosis	TYSABRI		10.6%	$0.00
Neutropenia/Thrombocytopenia	LEUKINE		13.7%	$0.00
Neutropenia/Thrombocytopenia	NEULASTA		13.7%	$0.00
Neutropenia/Thrombocytopenia	NEUMEGA		13.7%	$0.00
Neutropenia/Thrombocytopenia	NEUPOGEN		13.7%	$0.00
Neutropenia/Thrombocytopenia	NPLATE		13.7%	$0.00
Ophthalmics	CYSTARAN		5.4%	$0.00
Ophthalmics	EYLEA		11.6%	$0.00
Ophthalmics	LUCENTIS		13.7%	$0.00
Ophthalmics	MACUGEN		13.7%	$0.00
Ophthalmics	OZURDEX		12.7%	$0.00
Ophthalmics	RETISERT		6.4%	$0.00
Osteo-Arthritis	EUFLEXXA		13.7%	$0.00
Osteo-Arthritis	GEL-ONE		13.7%	$0.00
Osteo-Arthritis	HYALGAN		13.7%	$0.00

Osteo-Arthritis	ORTHOVISC		13.7%	$0.00
Osteo-Arthritis	SUPARTZ		13.7%	$0.00
Osteo-Arthritis	SYNVISC		13.7%	$0.00
Osteoporosis	AREDIA		18.0%	$0.00
Osteoporosis	BONIVA		18.0%	$0.00
Osteoporosis	FORTEO		15.9%	$0.00
Osteoporosis	IBANDRONATE SODIUM		34.0%	$0.00
Osteoporosis	PAMIDRONATE DISODIUM		34.0%	$0.00
Osteoporosis	PROLIA		12.7%	$0.00
Osteoporosis	RECLAST		18.0%	$0.00
Other Specialty Agents	ACTHAR GEL		13.7%	$0.00
Other Specialty Agents	APOKYN		13.7%	$0.00
Other Specialty Agents	ARCALYST		13.7%	$0.00
Other Specialty Agents	ATRYN		13.7%	$0.00
Other Specialty Agents	BOTOX		18.0%	$0.00
Other Specialty Agents	CYTOVENE		12.7%	$0.00
Other Specialty Agents	DYSPORT		13.7%	$0.00
Other Specialty Agents	EXJADE		11.6%	$0.00
Other Specialty Agents	GANCICLOVIR SODIUM		12.7%	$0.00
Other Specialty Agents	GATTEX	**	13.7%	$0.00
Other Specialty Agents	ILARIS		13.7%	$0.00
Other Specialty Agents	KRYSTEXXA		12.7%	$0.00
Other Specialty Agents	KYNAMRO		12.7%	$0.00
Other Specialty Agents	LUPRON DEPOT PED		13.7%	$0.00
Other Specialty Agents	MAKENA		13.7%	$0.00
Other Specialty Agents	MYOBLOC		18.0%	$0.00
Other Specialty Agents	NULOJIX		13.7%	$0.00
Other Specialty Agents	PRIALT		11.6%	$0.00
Other Specialty Agents	PROMACTA		13.7%	$0.00
Other Specialty Agents	QUTENZA		12.7%	$0.00
Other Specialty Agents	SABRIL		11.6%	$0.00
Other Specialty Agents	SAMSCA		13.7%	$0.00
Other Specialty Agents	SENSIPAR		13.7%	$0.00
Other Specialty Agents	SIGNIFOR		10.6%	$0.00
Other Specialty Agents	SOMATULINE DEPOT		13.7%	$0.00
Other Specialty Agents	SOMAVERT		12.7%	$0.00
Other Specialty Agents	SUPPRELIN LA		13.7%	$0.00
Other Specialty Agents	VIVITROL		13.7%	$0.00
Other Specialty Agents	XENAZINE		13.7%	$0.00
Other Specialty Agents	XEOMIN		5.4%	$0.00
Phenylketonuria (PKU)	KUVAN		13.7%	$0.00
Pulmonary	ARALAST	**	13.7%	$0.00
Pulmonary	BETHKIS		13.7%	$0.00
Pulmonary	GLASSIA	**	13.7%	$0.00
Pulmonary	KALYDECO		13.7%	$0.00
Pulmonary	PULMOZYME		13.7%	$0.00
Pulmonary	TOBI		13.7%	$0.00
Pulmonary	TOBRAMYCIN		13.7%	$0.00
Pulmonary	XOLAIR		15.9%	$0.00
Pulmonary	ZEMAIRA	**	13.7%	$0.00
Pulmonary Hypertension	ADCIRCA		13.7%	$0.00

Pulmonary Hypertension	ADEMPAS		13.7%	$0.00
Pulmonary Hypertension	EPOPROSTENOL SODIUM AND DILUENT	**	Plus 1.0%	$0.00
Pulmonary Hypertension	FLOLAN AND DILUENT	**	Plus 1.0%	$0.00
Pulmonary Hypertension	LETAIRIS		13.7%	$0.00
Pumonary Hypertension	OPSUMIT		13.7%	$0.00
Pulmonary Hypertension	REMODULIN	**	1.2%	$0.00
Pulmonary Hypertension	REVATIO		15.9%	$0.00
Pulmonary Hypertension	SILDENAFIL		44.9%	$0.00
Pulmonary Hypertension	TRACLEER		15.9%	$0.00
Pulmonary Hypertension	TYVASO	**	Plus 1.0%	$0.00
Pulmonary Hypertension	VELETRI	**	Plus 1.0%	$0.00
Pulmonary Hypertension	VENTAVIS	**	Plus 1.0%	$0.00
Respiratory Syncytial Virus	SYNAGIS		13.7%	$0.00
Rheumatoid Arthritis and other autoimmune conditions	ACTEMRA		7.5%	$0.00
Rheumatoid Arthritis and other autoimmune conditions	BENLYSTA		12.7%	$0.00
Rheumatoid Arthritis and other autoimmune conditions	ENBREL		14.9%	$0.00
Rheumatoid Arthritis and other autoimmune conditions	HUMIRA		14.9%	$0.00
Rheumatoid Arthritis and other autoimmune conditions	KINERET		12.7%	$0.00
Rheumatoid Arthritis and other autoimmune conditions	METHOTREXATE		34.0%	$0.00
Rheumatoid Arthritis and other autoimmune conditions	METHOTREXATE SODIUM		34.0%	$0.00
Rheumatoid Arthritis and other autoimmune conditions	ORENCIA IV		10.6%	$0.00
Rheumatoid Arthritis and other autoimmune conditions	ORENCIA SC		10.6%	$0.00
Rheumatoid Arthritis and other autoimmune conditions	REMICADE		14.9%	$0.00
Rheumatoid Arthritis and other autoimmune conditions	RHEUMATREX		18.0%	$0.00
Rheumatoid Arthritis and other autoimmune conditions	SIMPONI		12.7%	$0.00
Rheumatoid Arthritis and other autoimmune conditions	STELARA		12.7%	$0.00

Rheumatoid Arthritis and other autoimmune conditions	TREXALL		18.0%	$0.00
Rheumatoid Arthritis and other autoimmune conditions	XELJANZ		13.7%	$0.00
Rheumatoid Arthritis and other autoimmune conditions	XIAFLEX		10.6%	$0.00
Transplant	ASTAGRAF		18.0%	$0.00
Transplant	AZASAN		18.0%	$0.00
Transplant	AZATHIOPRINE		18.0%	$0.00
Transplant	CELLCEPT		18.0%	$0.00
Transplant	CYCLOSPORINE		34.0%	$0.00
Transplant	GENGRAF		34.0%	$0.00
Transplant	MYCOPHENOLATE MOFETIL		34.0%	$0.00
Transplant	MYFORTIC		18.0%	$0.00
Transplant	NEORAL		18.0%	$0.00
Transplant	PROGRAF		18.0%	$0.00
Transplant	RAPAMUNE		18.0%	$0.00
Transplant	SANDIMMUNE		18.0%	$0.00
Transplant	SIMULECT		18.0%	$0.00
Transplant	TACROLIMUS		34.0%	$0.00
Transplant	ZENAPAX		18.0%	$0.00
Transplant	ZORTRESS		18.0%	$0.00

V. Influenza and Other Vaccinations

Vaccinations shall adjudicate at the lower of:

(a)

	Participating Pharmacy **INFLUENZA**	*Participating Pharmacy* **OTHER VACCINES**
Ingredient Cost +	Participating Pharmacy Ingredient Cost as set forth in the Agreement	Participating Pharmacy Ingredient Cost as set forth in the Agreement
Dispensing Fee +	Participating Pharmacy Dispensing Fee as set forth in the Agreement	Participating Pharmacy Dispensing Fee as set forth in the Agreement
Professional Service Fee (PSF); cost for pharmacist to administer the vaccine	Pass-Through (capped at $15 per vaccine claim)	Pass-Through (capped at $20 per vaccine claim)
Vaccine Program Fee *	$2.50 per vaccine claim	$2.50 per vaccine claim

* The Vaccine Program Fee will be billed separately to Sponsor as part of the administrative invoice according to the billing frequency set forth in the Agreement. This Vaccine Program Fee will apply to any vaccine claims, whether at contracted rates or U&C, and is in addition to any per Prescription Drug Claim administrative fee set forth in the Agreement.

or

(b) the combined ingredient cost, dispensing fee (if any) and professional service fee (if any) that the Participating Pharmacy generally charges an individual paying cash, without coverage for prescription drug benefits, plus the Vaccine Program Fee set forth above.

Coverage is subject to Plan provisions. No vaccine claims will be included in any guarantees set forth in the Agreement and/or amendments thereto.

Exhibit A-2

Administrative Services and Clinical Program Fees

I. Administrative Services

PBM Services – No Additional Fee	
Customer service for Members	Electronic claims processing
Electronic/on-line eligibility submission	Plan setup
Standard coordination of benefits (COB) (reject for primary carrier)	Software training for access to our on-line system(s)
FSA eligibility feeds	
Network Pharmacy Services	
Pharmacy help desk	Pharmacy reimbursement
Pharmacy network management	Network development (upon request)
Network Pharmacy Audit Program – 80% share	Network Pharmacy Reporting
Home Delivery Services	
Benefit education	Prescription delivery – standard
Reporting Services	
Web-based client reporting – produced by Sponsor	Annual Strategic Account Plan report
Ad-hoc desktop parametric reports	Billing reports
Claims detail extract file electronic (NCPDP format)	Inquiry access to claims processing system
Load 12 months claims history for clinical reports and reporting	
Website Services	
Express-Scripts.com for Sponsor — access to reporting tools, eligibility update capability, contact directory, sales and marketing information, and benefit and enrollment support secured through Risk Base Authentication	Express Preview™ enrollment option — available during open enrollment to enable members to evaluate prescription benefit plan options
Express-Scripts.com for Members — access to benefit, drug, health and wellness information; prescription ordering capability; and customer service	
Implementation Package and Member Communications	
New Member packets (includes two standard resin ID cards) Member replacement cards printed via web	Implementation support
Clinical	
Concurrent Drug Utilization Review (DUR)	Prior Authorization – Administrative • Non-clinical Prior Authorization • Lost/stolen overrides • Vacation supplies

PBM Services	Fees
Manual/hardcopy eligibility submission	$10.00/update (includes initial entry)
Member-submitted paper claims processing fee Medicaid subrogation claims fee	$2.50/claim $2.50/claim
Electronic Prescribing	Pass-through charge for ePrescribing Eligibility and Formulary transaction fees charged to Sponsor at ESI's preferred rate with data switch such as Surescripts.
Reporting Services	
Web-based client reporting – produced by ESI	$100/report
Custom ad-hoc reporting	$150/hour, with a minimum of $500
Replacement Member Communication Packets	
Member requested replacement packets Sponsor requested re-carding	$1.50 + postage per packet $1.50 + postage per packet
Reviews and Appeals Management	
Initial Determinations (i.e. coverage reviews) and Level One Appeals for the Coverage Authorization Program, consisting of: • Prior Authorization • Step Therapy • Drug Quantity Management	Included in program charge
Initial Determinations and Level One Appeals for the Benefit Review Program, consisting of reviews known as: • Plan Design Related Requests • Plan Exclusion Reviews (clinical or administrative reviews of non-covered drugs) • Copay Reviews • Plan Limit Reviews (e.g. age, gender, days' supply limits) • Plan Rule/Administrative Reviews/Non-clinical Reviews • Clinical Benefit Reviews • Direct Claim Reject Reviews	$55 per review
Final and Binding Appeals – Level Two Appeals * and/or Urgent Appeals** *Level One for clients with only one level of appeal ** Appeals can be urgent at Level One or Level Two and decisions are final and binding.	$10.00 per review* (incremental to PMPM fees or per review fees above) *** this additional fee is applied to each initial determination.**
External Reviews by Independent Review Organizations - for non-grandfathered plans	$800 per review
Comprehensive Consumer Driven Health (CDH) Solution	
Required Services and Fee for all CDH enrolled Members	
Foundational Services • Technical Bi-directional data exchange; dedicated operations; 24-hour a day, seven-days a week monitoring and quality control; performance reporting; and analytics • Member Advocacy Dedicated CDH member services, open enrollment tools and member communications library, robust online features, and preventive care	Technical and Member Advocacy: $0.35 PMPM Additional services will be quoted upon request. Postage charges are not included and will be billed to Sponsor.
Optional Service and Fee for all CDH enrolled Members	

PBM Services	Fees
Comprehensive Member Engagement Services • Health Choices Medication Adherence Monitoring and Outreach and proactive, personalized member communications • Drug Choices Benefit Coaching, Prescription Benefit Review Statements, proactive, personalized member communications	Comprehensive Services: $0.30 PMPM All Services (Foundational & Comprehensive): $0.65 PMPM Additional services will be quoted upon request. Postage charges are not included and will be billed to Sponsor.
Medicare Part D – Retiree Drug Subsidy (RDS)	
RDS enhanced service (ESI sends reports to CMS on behalf of Sponsor) • Notice of Creditable Coverage	$1.12 PMPM for Medicare-qualified Members $1.35/letter + postage
RDS standard service (ESI sends reports to Sponsor) • Notice of Creditable Coverage	$0.62 PMPM for Medicare-qualified Members with a minimum annual fee of $5,000 $1.35/letter + postage

II. Clinical/Trend Programs.

ESI offers a comprehensive suite of trend and integrated health management programs. These offerings may change or be discontinued from time to time as ESI updates its offerings to meet the needs of the marketplace.

The programs (and corresponding pricing and guarantees) outlined in the Clinical Addendum (executed separately by Sponsor) represent the programs currently adopted by Sponsor as of the Effective Date. ESI also offers additional programs, as well as savings guarantees, under certain conditions. Information concerning such programs, guarantees, and fees, if applicable, is available on request. In addition, the ESI Account Management Team will periodically discuss new programs, guarantees, and fees with Sponsor, which Sponsor may adopt through ESI's standard Set-Up Form process.

Sponsor will select clinical/trend programs during implementation by checking selected options on the Clinical Addendum and on the applicable Set-Up Form. Such Set-Up Forms are incorporated herein by reference as and when executed by the parties.

Please refer to the Clinical Addendum for a listing of Sponsor's programs.

EXHIBIT A-3

Rebates

1. **Rebate Amounts**

A. Subject to the conditions set forth in Sections 2. – 4. below and elsewhere in this Agreement, ESI will pay to Sponsor an amount equal to the greater of:

(i) 100% of the Rebates received by ESI;

Or

(ii) Subject to Sponsor meeting the Plan design conditions identified in the table below, the following guaranteed amounts:

Formulary:	ESI National Preferred					
Copayment Design:	Less than $15 Copayment differential			Minimum $15 Copayment differential		
	Participating Pharmacies and ESI Specialty Pharmacy 1-83 Days' Supply	**Participating Pharmacies and ESI Specialty Pharmacy** 84-90 Days' Supply (1)	**Mail Service Pharmacy**	**Participating Pharmacies and ESI Specialty Pharmacy** 1-83 Days' Supply	**Participating Pharmacies and ESI Specialty Pharmacy** 84-90 Days' Supply (1)	**Mail Service Pharmacy**
Per Brand Claim	Year 1: $42.44 Year 2: $45.82 Year 3: $47.16	Year 1: $104.50 Year 2: $105.52 Year 3: $111.28	Year 1: $104.50 Year 2: $105.52 Year 3: $111.28	Year 1: $44.67 Year 2: $48.23 Year 3: $49.64	Year 1: $110.00 Year 2: $111.07 Year 3: $117.14	Year 1: $110.00 Year 2: $111.07 Year 3: $117.14

Formulary:	ESI Basic					
Copayment Design:	Less than $15 Copayment differential			Minimum $15 Copayment differential		
	Participating Pharmacies and ESI Specialty Pharmacy 1-83 Days' Supply	**Participating Pharmacies and ESI Specialty Pharmacy** 84-90 Days' Supply [1]	**Mail Service Pharmacy**	**Participating Pharmacies and ESI Specialty Pharmacy** 1-83 Days' Supply	**Participating Pharmacies and ESI Specialty Pharmacy** 84-90 Days' Supply [1]	**Mail Service Pharmacy**
Per Brand Claim	Year 1: $29.71 Year 2: $32.07 Year 3: $33.01	Year 1: $73.15 Year 2: $73.86 Year 3: $77.90	Year 1: $73.15 Year 2: $73.86 Year 3: $77.90	Year 1: $31.27 Year 2: $33.76 Year 3: $34.75	Year 1: $77.00 Year 2: $77.75 Year 3: $82.00	Year 1: $77.00 Year 2: $77.75 Year 3: $82.00

[1] Certain Participating Pharmacies have agreed to participate in the extended (84 – 90) day supply network ("Maintenance Network") for maintenance drugs. Rebate Amounts in the 84 – 90 Days' Supply column in the table set forth above are applicable only if Sponsor implements a plan design that requires Members to fill such days' supply at a Maintenance Network Participating Pharmacy (i.e., Sponsor must implement a plan design whereby Members who fill extended days' supply prescriptions at a Participating Pharmacy other than a Maintenance Network Participating Pharmacy do not receive benefit coverage under the Plan for such prescription). If no such plan design is implemented, Rebate Amounts for such days' supply will be the same as for Prescription Drug Claims for less than an 84 days' supply, and Rebate Amounts for an 84 – 90 days' supply in the table set forth above shall not apply, even if a Maintenance Network Participating Pharmacy is used.

B. If the Plan design conditions identified in the table in Section 1.A.(ii) above are not met, the "greater of" methodology and the guaranteed amounts shall not apply, and ESI will, subject to the remaining terms of this Agreement, pay Sponsor Rebate amounts pursuant to the percentage set forth in Section 1.A.(i) above.

2. Exclusions

Member Submitted Claims, Subrogation Claims, biosimilar products, OTC products, claims older than 180 days, claims through Sponsor-owned or 340b pharmacies, and claims pursuant to a 100% Member Copayment plan are not eligible for the guaranteed Rebate amounts set forth in Section 1.A.(ii) above.

3. Rebate Payment Terms

A. Subject to the conditions set forth herein, ESI shall pay Sponsor the percentage amount set forth in Section 1.A.(i) above for Rebates collected by ESI during each calendar quarter hereunder within approximately one hundred and eighty (180) days following the end of such calendar quarter. ESI shall also pay Sponsor the percentage amount set forth in Section 1.A.(i) above for residual Rebates collected by ESI, if any, related to such calendar quarter, which are collected by ESI in subsequent quarters.

B. On an annual and aggregate basis, ESI shall reconcile the guaranteed amounts set forth in Section 1.A.(ii) above (against the percentage amount paid to Sponsor quarterly) within two hundred and forty (240) days following the end of each calendar year and shall credit Sponsor for any deficit on the next invoice immediately following the reconciliation to the extent such deficit is not offset by ESI against excesses achieved in other guarantees offered pursuant to this Agreement. If, upon reconciliation, the annual aggregate percentage amount paid to Sponsor for the calendar year pursuant to Section 1.A.(i) and 3.A. above is greater than the guaranteed

aggregate amounts set forth in Section 1.A.(ii) above, ESI shall be entitled to make up for, and offset, a shortfall in other guarantee(s) set forth in this Agreement with such excess annual aggregate percentage amount, and such excess amount shall be applied either directly to the other shortfall guarantee(s) or applied as a credit against future Rebate payments (or as a direct invoice amount to be paid by Sponsor, if a credit is not feasible).

4. Conditions

A. ESI contracts with pharmaceutical manufacturers for Rebates on its own behalf and for its own benefit, and not on behalf of Sponsor. Accordingly, ESI retains all right, title and interest to any and all actual Rebates received from manufacturers. ESI will pay Sponsor amounts equal to the Rebate amounts allocated to Sponsor, as specified above, from ESI's general assets (neither Sponsor, its Members, nor Sponsor's plan retains any beneficial or proprietary interest in ESI's general assets). Sponsor acknowledges and agrees that neither it, its Members, nor its Plan will have a right to interest on, or the time value of, any Rebate payments received by ESI during the collection period or moneys payable under this Section. No amounts for Rebates will be paid until this Agreement is executed by Sponsor. ESI will have the right to apply Sponsor's allocated Rebate amount to unpaid Fees.

B. Sponsor acknowledges that it may be eligible for Rebate amounts under this Agreement only so long as Sponsor, its affiliates, or its agents do not contract directly or indirectly with anyone else for discounts, utilization limits, rebates or other financial incentives on pharmaceutical products or formulary programs for claims processed by ESI pursuant to the Agreement, without the prior written consent of ESI. In the event that Sponsor negotiates or arranges with a pharmaceutical manufacturer for Rebates or similar discounts for any Covered Drugs hereunder, but without limiting ESI's right to other remedies, ESI may immediately withhold any Rebate amounts earned by, but not yet paid to, Sponsor as necessary to prevent duplicative rebates on Covered Drugs. To the extent Sponsor knowingly negotiates and/or contracts for discounts or rebates on claims for Covered Drugs without prior written approval of ESI, such activity will be deemed to be a material breach of this Agreement, entitling ESI to suspend payment of Rebate amounts hereunder and to renegotiate the terms and conditions of this Agreement.

C. Under its Rebate program, ESI may implement ESI's Formulary management programs and controls, which may include, among other things, cost containment initiatives, and communications with Members, Participating Pharmacies, and/or physicians. ESI reserves the right to modify or replace such programs from time to time. Guaranteed Rebate amounts, if any, set forth herein, are conditioned on adherence to various Formulary management controls, benefit design requirements, claims volume, and other factors stated in the applicable pharmaceutical manufacturer agreements, as communicated by ESI to Sponsor from time to time. If any government action, change in law or regulation, change in the interpretation of any law or regulation, or any action by a pharmaceutical manufacturer has an adverse effect on the availability of Rebates, then ESI may make an adjustment to the Rebate terms and guaranteed Rebate amounts, if any, hereunder.

D. Rebate amounts paid to Sponsor pursuant to this Agreement are intended to be treated as "discounts" pursuant to the federal anti-kickback statute set forth at 42 U.S.C. §1320a-7b and implementing regulations. Sponsor is obligated if requested by the Secretary of the United States Department of Health and Human Services, or as otherwise required by applicable law, to report the Rebate amounts and to provide a copy of this notice. ESI will refrain from doing anything that would impede Sponsor from meeting any such obligation.

EXHIBIT B

AUDIT PROTOCOL

1. AUDIT PRINCIPLES

ESI recognizes the importance of its clients ensuring the integrity of their business relationship by engaging in annual audits of their financial arrangements with ESI, and, where applicable (i.e., Medicare Part D), by auditing compliance with applicable regulatory requirements. ESI provides this audit right to each and every client. In granting this right, ESI's primary interest is to facilitate a responsive and responsible audit process. In order to accomplish this goal, for all clients, ESI has established the following Protocol. Our intent is in no way to limit Sponsor's ability to determine that ESI has properly and accurately administered the financial aspects of the Agreement or complied with applicable regulatory requirements, but rather to create a manageable process in order to be responsive to our clients and the independent auditors that they may engage. If Sponsor has any concern that this Protocol will prohibit Sponsor from fully confirming its financial arrangement with ESI, we encourage Sponsor to express such concern at the audit kick-off meeting.

ESI strongly encourages clients to have their auditors, without jeopardizing the independent nature of the audit, review the auditor's initial findings and reports with ESI prior to discussing with the client in order to avoid any unnecessary client confusion. We have found often times that items identified as issues during the initial audit turn out to be non-findings once a dialogue takes place between the auditor and ESI. In other words, we believe it is in everyone's interest to ensure that the auditor and ESI are not simply "missing each other" in the exchange of information prior to the auditor reviewing its findings with the client.

2. AUDIT PREREQUISITES

A. There are four components of your arrangement with ESI eligible for audit on an annual basis:

- Retrospective Claims
- Rebates
- Performance Guarantees
- Compliance with Regulatory Requirements (i.e., Medicare Part D)

Balancing the need to adequately support the audit process for all ESI clients, with an efficient allocation of resources, we encourage clients to audit all four components, as applicable, through a single annual audit. If you choose to audit the above components separately throughout the year, rather than combining all components into a single annual audit, you will be subject to ESI's standard charges for each additional audit. All such fees shall be reasonable and based on ESI's costs for supporting such additional audits.

B. ESI will provide all data reasonably necessary for Sponsor to determine that ESI has performed in accordance with contractual terms. ESI will provide all data reasonably necessary for Sponsor to determine that ESI has performed in accordance with contractual terms, including a claims data file from the most recent NCPDP version.

C. ESI engages a national accounting firm, at its sole cost and expense, to conduct a SSAE 16 audit on behalf of its clients. Upon request, ESI will provide the results of its most recent SSAE 16 audit. Testing of the areas covered by the SSAE 16 is not within the scope of Sponsor's audit rights (i.e., to confirm the financial aspects of the Agreement) and is therefore not permitted. However, if requested, ESI will explain the SSAE 16 audit process and findings to Sponsor in order for Sponsor to gain an understanding of the SSAE 16.

3. AUDITS

A. ESI recommends that the initial audit period for a claims audit cover a timeframe not to exceed twenty-four (24) months immediately preceding the request to audit (the "Audit Period"). This Audit Period allows a reasonable amount of time for both parties to conclude the audit before claims data is archived off the adjudication system. ESI will accommodate reasonable requests to extend the Audit Period, but this may delay ESI's response time to audit findings due to the age of the claims. Due to the additional resources necessary to pull claims data older than twenty-four (24) months, if you request to extend the Audit Period, you will be subject to ESI's standard charges for such additional data pulls. All such fees shall be reasonable and based on ESI's additional costs associated with retrieval and reporting of such data. If the parties mutually determine, acting in good faith, that the initial audit demonstrates in any material respects that ESI has not administered the financial arrangement consistent with the contract terms of the Agreement, then ESI will support additional auditing beyond the Audit Period at no additional charge.

B. CMS generally modifies its requirements for administering the Medicare Part D annually. For this reason, ESI recommends that the initial audit period for a Medicare Part D compliance audit cover a timeframe not to exceed the twelve (12) months immediately preceding the request to audit (collectively, the "Medicare Part D Audit Period"). This Medicare Part D Audit Period is intended to assist our clients with the CMS annual oversight requirements.

C. When performing a Rebate audit, Sponsor may perform an on-site review of the applicable components of manufacturer agreements, selected by Sponsor, as reasonably necessary to audit the calculation of the Rebate payments made to Sponsor by ESI. Our ability to drive value through the supply chain and in our negotiations with manufacturers is dependent upon the strict confidentiality and use of these agreements. Providing access to these agreements to third parties that perform services in the industry beyond traditional financial auditing jeopardizes our ability to competitively drive value. For this reason, access to and audit of manufacturer agreements is restricted to a mutually agreed upon audit firm which carries insurance for professional malpractice of at least Two Million Dollars ($2,000,000).

D. ESI recommends that Sponsor select an initial number of manufacturer contracts to enable Sponsor to audit fifty percent (50%) of the total Rebate payments due to Sponsor for two (2) calendar quarters during the twelve (12) month period immediately preceding the audit (the "Rebate Audit Scope and Timeframe"). ESI will accommodate reasonable requests to extend this Rebate Audit Scope and Timeframe, but this may delay ESI's on-site preparation time as well as response time to audit findings. Due to the additional resources necessary to support a Rebate audit beyond the Rebate Audit Scope and Timeframe, if you request to extend the Rebate Audit Scope and Timeframe, you will be subject to ESI's standard charges for such additional audit support. All such fees shall be reasonable and based on ESI's additional costs. If the parties mutually determine, acting in good faith, that the initial Rebate audit demonstrates in any material respects that ESI has not administered Rebates consistent with the contract terms of the Agreement, then ESI will support additional auditing beyond the Rebate Audit Scope and Timeframe at no additional charge.

E. If you have a Pass-Through pricing arrangement for Participating Pharmacy claims, ESI will provide the billable and payable amount for a sampling of claims provided by you or your auditor (i.e., ESI will provide the actual documented claim record) during the audit to verify that ESI has administered such Pass-Through pricing arrangement consistent with the terms of the Agreement. If further documentation is required, ESI may provide a statistically valid sample of claims remittances to the Participating Pharmacies to demonstrate ESI's administration of Pass-Through pricing. In any instance where the audit demonstrates that the amount billed to you does not equal the Pass-Through amount paid to the Participating Pharmacy, you or your auditor may perform an on-site audit of the applicable Participating Pharmacy contract rate sheet(s).

4. AUDIT FINDINGS

A. Following Sponsor's initial audit, Sponsor (or its Auditor) will provide ESI with a written report of suspected errors, if any. In order for ESI to evaluate Sponsor's audit report, Sponsor shall provide an electronic data file in a mutually agreed upon format containing up to 300 claims for further investigation by ESI.

B. Following Sponsor's initial audit of Medicare Part D compliance, Sponsor (or its Auditor) will provide ESI with a written report of suspected non-compliant issues and payment reconciliation issues, if any. In order for ESI to evaluate Sponsor's audit report, Sponsor shall provide ESI with specific regulatory criteria and Medicare Part D program requirements used to cite each suspected non-compliant and payment reconciliation issue.

C. ESI will use commercially reasonable best efforts to respond to the audit report in no more than sixty (60) days from ESI's receipt of the report. Please be aware, however, that audits that require evaluation of six (6) or more findings typically require additional time to respond due to the complex nature of such audits. Our pledge to respond within the foregoing timeframe is predicated on a good faith and cooperative effort between Sponsor and/or its Auditor and ESI.

D. Sponsor agrees that once audit results are accepted by both parties, the audit shall be considered closed and final. To the extent the mutually accepted audit results demonstrate claims errors, ESI will reprocess the claims and make corresponding adjustments to Sponsor through credits to a future invoice(s). If we are unable to reprocess claims and issue corresponding credits to Sponsor through this process, ESI will make adjustments to Sponsor via a check or credit.

5. CONFIDENTIALITY

ESI's contracts are highly confidential and proprietary. For this reason, ESI only permits on-site review rather than provide copies to our clients. During on-site contract review, Sponsor (or its Auditor) may take and retain notes to the extent necessary to document any identified errors, but may not copy (through handwritten notes or otherwise) or retain any contracts (in part or in whole) or related documents provided or made available by ESI in connection with the audit. ESI will be entitled to review any notes to affirm compliance with this paragraph.

EXHIBIT C

BUSINESS ASSOCIATE AGREEMENT

Express Scripts, Inc. ("ESI") and Sponsor are parties to an agreement ("PBM Agreement") whereby ESI provides certain pharmacy benefit management services to the Sponsor's prescription drug plan (Sponsor and Sponsor's prescription drug plan collectively referred to hereinafter as "Plan"). This Business Associate Agreement addresses the parties' rights and obligations concerning the use and disclosure of patients' protected health information. The HIPAA Rules (as defined below) require ESI and the Plan to enter into a "business associate agreement" to comply with applicable sections of the HIPAA Rules as of the applicable Compliance Dates. If Sponsor or a third party authorized by Sponsor provides health information related to Sponsor's medical plan to ESI to perform PBM Services, and to the extent such information constitutes PHI, the parties agree that the terms of this Business Associate Agreement shall also apply with respect to such medical plan PHI.

1. **Definitions.**

(a) "Breach" shall mean the unauthorized acquisition, access, use, or disclosure of Protected Health Information that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. "Breach" shall not include:

(i) any unintentional acquisition, access, or use of PHI by an employee or individual acting under the authority of Plan or ESI, as long as such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual with Plan or ESI and such information is not further acquired, accessed, used, or disclosed by any person; or

(ii) an inadvertent disclosure from an individual who is otherwise authorized to access PHI at a facility operated by Plan or ESI to another similarly situated individual at the same facility, provided that any such information received as a result of such disclosure is not further acquired, accessed, used, or disclosed by any person.

(b) "Compliance Date(s)" shall mean the date established by HHS or the United States Congress for effective date of applicability and enforceability of the HIPAA Rules and HITECH Standards.

(c) "Designated Record Set" shall mean a group of records maintained by or for Plan that is (i) the medical records and billing records about individuals maintained by or for Plan, (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for Plan to make decisions about individuals.

(d) "Electronic Health Record" shall mean an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

(e) "Electronic PHI" shall have the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103.

(f) "Health Plan" or "Plan" shall have the same meaning as the term "Health Plan" in 45 C.F.R. § 160.103.

(g) "HIPAA Rules" means the collective privacy, transaction and code sets, and security regulations promulgated pursuant to the Health Insurance Portability and Accountability Act, as codified at 45 C.F.R. Parts 160, 162 & 164.

(h) "HITECH Standards" means the privacy, security and security Breach notification provisions applicable to a Business Associate under Subtitle D of the Health Information Technology for Economic and Clinical Health Act ("HITECH"), which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated thereunder.

(i) "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

(j) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by ESI from or on behalf of Plan.

(k) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart E, as they exist now or as they may be amended.

(l) "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.

(m) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

(n) "Security Incident" shall have the same meaning as "security incident" in 45 C.F.R. § 164.304

(o) "Security Standards" shall mean the Security Standards, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart C, to be effective no later than April 20, 2005, as they exist now or as they may be amended.

(p) "Transactions Standards" shall mean the Standards for Electronic Transactions, 45 C.F.R. Parts 160 and 162, as they exist now or as they may be amended.

Terms used, but not otherwise defined, in this Business Associate Agreement shall have the same meaning as those terms in the HIPAA Rules and the HITECH Standards.

2. **General Use and Disclosure Provisions.** ESI and Plan acknowledge and agree as follows:

(a) *Use or Disclosure.* ESI agrees not to use or further disclose PHI other than as expressly permitted or required by this Business Associate Agreement or as Required by Law.

(b) *Minimum Necessary.* ESI will take reasonable efforts to limit requests for, use and disclosure of PHI to the minimum necessary to accomplish the intended request, use or disclosure.

(c) *Specific Use or Disclosure Provisions.* Except as otherwise limited in this Business Associate Agreement, ESI may use and disclose PHI to properly provide, manage and administer PBM Services under the PBM Agreement and consistent with applicable law to assist the Plan in its operations, as long as such use or disclosure would not violate the HIPAA Rules if done by the Plan, or such use or disclosure is expressly permitted in (i) through (iii) below:

(i) ESI may use PHI for the proper management and administration of ESI or to carry out ESI's legal responsibilities.

(ii) ESI may disclose PHI to third parties for the proper management and administration of ESI or to carry out the legal responsibilities of ESI provided that the disclosures are Required by Law, or ESI obtains reasonable assurances from the person to whom the information is disclosed that: (A) the information will remain confidential, (B) the information will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and (C) the person notifies ESI of any instances of which it is aware in which the confidentiality of the information has been breached.

(iii) ESI may use PHI to perform Data Aggregation services on behalf of the Plan as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(d) *Reporting.* ESI agrees to promptly notify Plan if ESI has knowledge that PHI has been used or disclosed by ESI in a manner that violates this Business Associate Agreement. To the extent that ESI creates, receives, maintains or transmits Electronic PHI, ESI agrees to report promptly to Plan any Security Incident, as determined by ESI, involving PHI of which ESI becomes aware. Effective thirty (30) calendar days after the effective date of applicable regulations issued by the Secretary, ESI shall, following the discovery of a Breach of Unsecured PHI, notify Plan of such Breach without unreasonable delay and in no event later than sixty (60) calendar days after the discovery, including the identification of each individual whose Unsecured PHI has been, or is reasonably believed to have been, accessed, acquired or disclosed during the Breach. A Breach shall be treated as discovered as of the first day on which such Breach is known or reasonably should have been known by ESI.

(e) *Safeguards.* ESI agrees to use appropriate safeguards, consistent with applicable law, to prevent use or disclosure of PHI in a manner that would violate this Business Associate Agreement. ESI shall provide Plan with such information concerning such safeguards as Plan may reasonably request from time to time. To the extent that ESI creates, receives, maintains or transmits Electronic PHI, ESI agrees to use appropriate administrative,

physical and technical safeguards to protect the confidentiality, integrity and availability of the Electronic PHI that ESI creates, receives, maintains or transmits on behalf of the Plan as required by the Security Standards.

(f) *Mitigation.* ESI agrees to mitigate, to the extent practicable, any harmful effect that is known to ESI of a use or disclosure of PHI by ESI in violation of this Business Associate Agreement or the PBM Agreement.

(g) *Subcontractors and Agents.* ESI agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by ESI on behalf of the Plan, agrees to the same restrictions, terms and conditions that apply through this Agreement to ESI with respect to such information, including the requirement that it implement reasonable and appropriate safeguards to protect any Electronic PHI that is disclosed to it by ESI.

(h) *Access.* Within fifteen (15) business days of a request by the Plan, ESI shall provide access to Plan to PHI in a Designated Record Set in order to meet the requirements under 45 C.F.R. § 164.524. If ESI receives a request directly from an Individual, or if requested by the Plan that access be provided to the Individual, ESI shall provide access to the Individual to PHI in a Designated Record Set within thirty (30) days in order to meet the requirements under 45 C.F.R. § 164.524.

(i) *Amendment.* Within sixty (60) days of a request by the Plan or subject Individual, ESI agrees to make any appropriate amendment(s) to PHI in a Designated Record Set that Plan directs or agrees to pursuant to 45 C.F.R. § 164.526.

(j) *Accounting.* Within thirty (30) days of a proper request by the Plan, ESI agrees to document and make available to Plan, for a reasonable cost-based fee (under conditions permitted by HIPAA if an Individual requests an accounting more than once during a twelve month period), such disclosures of PHI and information related to such disclosures necessary to respond to such request for an accounting of disclosures of PHI, in accordance with 45 C.F.R. § 164.528. Within sixty (60) days of proper request by subject Individual, ESI agrees to make available to the Individual the information described above. ESI shall retain copies of any accountings for a period of six (6) years from the date the accounting was created.

(k) *Restrictions on Use or Disclosure.* Within fifteen (15) business days of a request of the Plan, ESI agrees to consider restrictions on the use or disclosure of PHI agreed to by the Plan on behalf of an Individual in accordance with 45 C.F.R. § 164.522.

(l) *Audit and Inspection.* ESI agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by ESI on behalf of the Plan, available to Plan within ten (10) business days, or at the request of the Plan or the Secretary, to the Secretary in a time and manner directed by the Secretary, for purposes of the Secretary determining the Plan's compliance with the HIPAA Rules. Any release of information regarding ESI's practices, books and records is proprietary to ESI and shall be treated as confidential and shall not be further disclosed without the written permission of ESI, except as necessary to comply with the HIPAA Rules.

(m) *Compliance with the HITECH Standards.* Notwithstanding any other provision in this Business Associate Agreement, no later than February 17, 2010, unless a separate effective date is specified by law or this Business Associate Agreement for a particular requirement (in which case the separate effective date shall be the effective date for that particular requirement), ESI shall comply with the HITECH Standards, including, but not limited to: (i) compliance with the requirements regarding minimum necessary under HITECH § 13405(b); (ii) requests for restrictions on use or disclosure to health plans for payment or health care operations purposes when the provider has been paid out of pocket in full consistent with HITECH § 13405(a); (iii) the prohibition of sale of PHI without authorization unless an exception under HITECH § 13405(d) applies; (iv) the prohibition on receiving remuneration for certain communications that fall within the exceptions to the definition of marketing under 45 C.F.R. § 164.501 unless permitted by this Agreement and Section 13406 of HITECH; (v) the requirements relating to the provision of access to certain information in electronic access under HITECH § 13405(e); (vi) compliance with each of the Standards and Implementation Specifications of 45 C.F.R. §§ 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards) and 164.316 (Policies and Procedures and Documentation Requirements); and (vii) as of the separate compliance date set forth in regulations promulgated under HITECH on this topic, the requirements regarding accounting of certain disclosures of PHI maintained in an Electronic Health Record under HITECH § 13405(c) to the extent that ESI discloses any PHI maintained in an Electronic Health Record on behalf of the Plan pursuant to this Business Associate Agreement.

3. <u>Plan Obligations.</u>

(a) Plan shall notify ESI of any limitation(s) in the notice of privacy practices of Plan in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect ESI's use or disclosure of PHI.

(b) Plan shall notify ESI of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect ESI's use or disclosure of PHI.

(c) Plan shall notify ESI of any restriction to the use or disclosure of PHI that Plan has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect ESI's use or disclosure of PHI.

(d) Plan shall not request that ESI use or disclose PHI in any manner that would exceed that which is minimally necessary under the HIPAA Rules or that would not be permitted by a Covered Entity.

(e) Plan agrees that it will have entered into "Business Associate Agreements" with any third parties (e.g., case managers, brokers or third party administrators) to which Plan directs and authorizes ESI to disclose PHI.

4. **Transactions Standards.** The HIPAA Rules provide for certain Transactions Standards for transfer of data between trading partners. While certain of the standards may or may not be adopted by the Plan (e.g., for eligibility), ESI will be prepared to accept the following in accordance with 45 C.F.R. Part 162.1502: ASC X12N 834 – Benefit Enrollment and Maintenance. In addition, to the extent applicable, ESI shall comply with other applicable transactions standards for claims processing functions between ESI and provider pharmacies. Each party hereby agrees that it shall not change any definition, data condition or use of a data element or segment in a standard, add any data elements or segment to the maximum defined data set, use any code or data elements that are either marked "not used" in the standard's implementation specification or are not in the implementation specification, or change the meaning or intent of the implementation specification.

5. **Breach; Termination.**

(a) Without limiting the termination rights of the parties pursuant to the PBM Agreement, upon Plan's knowledge of a material breach by ESI of this Business Associate Agreement, Plan shall notify ESI of such breach and ESI shall have thirty (30) days to cure such breach. In the event ESI does not cure the breach, or cure is infeasible, Plan shall have the right to immediately terminate this Business Associate Agreement and the PBM Agreement. If cure of the material breach is infeasible, Plan shall report the violation to the Secretary.

(b) As of February 17, 2010 and without limiting the termination rights of the parties pursuant to the PBM Agreement, upon ESI's knowledge of a material breach by the Plan of this Business Associate Agreement, ESI shall notify Plan of such breach and the Plan shall have thirty (30) days to cure such breach. In the event the Plan does not cure the breach, or cure is infeasible, ESI shall have the right to immediately terminate this Business Associate Agreement and the PBM Agreement. If cure of the material breach is infeasible, ESI shall report the violation to the Secretary.

(c) To the extent feasible, upon termination of the PBM Agreement for any reason, ESI shall, and shall cause any subcontractors and agents to, return or destroy and retain no copies of all PHI received from, or created or received by ESI on behalf of, the Plan. If ESI determines, in its sole discretion, that return or destruction of such information is not feasible, ESI shall continue to limit the use or disclosure of such information as set forth in this Agreement as if the PBM Agreement had not been terminated.

6. **Indemnification.** Each party (the "Indemnifying Party") shall indemnify and hold the other party and its officers, directors, employees and agents (each an "Indemnified Party") harmless from and against any claim, cause of action, liability, damage, cost or expense ("Liabilities") to which the Indemnified Party becomes subject to as a result of third party claims (including reasonable attorneys' fees and court or proceeding costs) brought against the Indemnified Party, which arise as a result of: (i) the material breach of this Business Associate Agreement by the Indemnifying Party; or (ii) the gross negligence or willful misconduct of the Indemnifying Party, except to the extent such Liabilities were caused by the Indemnified Party. A party entitled to indemnification under this Section 6 shall give prompt written notification to the Indemnifying Party of the commencement of any action, suit or proceeding relating to a third party claim for which indemnification is sought, subject to applicable confidentiality constraints. The Indemnifying Party shall be entitled to assume control of the defense of such action, suit, proceeding or claim with competent counsel of its choosing. Indemnification shall not be required if any claim is settled without the Indemnifying Party's consent, which such consent shall not be unreasonably withheld. **NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION 6, IN NO EVENT WILL AN INDEMNIFYING PARTY BE LIABLE TO AN INDEMNIFIED PARTY UNDER CONTRACT, TORT, OR ANY OTHER LEGAL THEORY FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR SPECIAL LOSSES OR DAMAGES OF ANY KIND.**

7. **Miscellaneous.**

(a) **Amendment.** The parties acknowledge that the foregoing provisions are designed to comply with the mandates of the HIPAA Rules and HITECH Standards. ESI shall provide written notice to Plan to the extent that any final regulation or amendment to final regulations promulgated by the Secretary under HITECH requires changes

to this Business Associate Agreement. Such written notice shall include any additional amendment required by any such final regulation and the Business Associate Agreement shall be automatically amended to incorporate the changes set forth in such amendment provided by ESI to Plan, unless Plan objects to such amendment in writing within fifteen (15) days of receipt of such written notice. In the event that Plan objects timely to such amendment, the parties shall work in good faith to reach agreement on an amendment to the Business Associate Agreement that complies with the final regulations. If the parties are unable to reach agreement regarding an amendment to the Business Associate Agreement within thirty (30) days of the date that ESI receives any written objection from the Plan, either ESI or Sponsor may terminate this Business Associate Agreement upon ninety (90) days written notice to the other party. Any other amendment to this Business Associate Agreement unrelated to compliance with applicable law and regulations shall be effective only upon execution of a written agreement between the parties.

(b) **Effect on PBM Agreement**. Except as relates to the use, security and disclosure of PHI and electronic transactions, this Business Associate Agreement is not intended to change the terms and conditions of, or the rights and obligations of the parties under, the PBM Agreement.

(c) **No Third-Party Beneficiaries**. Nothing express or implied in the PBM Agreement or in this Business Associate Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations or liabilities whatsoever.

(d) **Interpretation**. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits the Plan to comply with the HIPAA Rules and the HITECH Standards.

(e) **Effective Date**. This Business Associate Agreement shall be effective as of the applicable Compliance Dates or the effective date of the PBM Agreement, whichever is later.

EXHIBIT D

FINANCIAL DISCLOSURE TO ESI PBM CLIENTS

This disclosure provides an overview of the principal revenue sources of Express Scripts, Inc. and Medco Health Solutions, Inc. (individually and collectively referred to herein as "ESI"), as well as ESI's affiliates. In addition to administrative and dispensing fees paid to ESI by our clients for pharmaceutical benefit management ("PBM") services, ESI and its affiliates derive revenue from other sources, including arrangements with pharmaceutical manufacturers, wholesale distributors, and retail pharmacies. Some of this revenue relates to utilization of prescription drugs by members of the clients receiving PBM services. ESI may pass through certain manufacturer payments to its clients or may retain those payments for itself, depending on the contract terms between ESI and the client.

Network Pharmacies – ESI contracts for its own account with retail pharmacies to dispense prescription drugs to client members. Rates paid by ESI to these pharmacies may differ among networks (e.g., Medicare, Worker's Comp, open and limited), and among pharmacies within a network, and by client arrangements. PBM agreements generally provide that a client pay ESI an ingredient cost, plus dispensing fee, for drug claims. If the rate paid by a client exceeds the rate contracted with a particular pharmacy, ESI will realize a positive margin on the applicable claim. The reverse also may be true, resulting in negative margin for ESI. ESI also enters into pass-through arrangements where the client pays ESI the actual ingredient cost and dispensing fee amount paid by ESI for the particular claim when the claim is adjudicated to the pharmacy. In addition, when ESI receives payment from a client before payment to a pharmacy, ESI retains the benefit of the use of the funds between these payments. ESI may maintain non-client specific aggregate guarantees with pharmacies and may realize positive margin. ESI may charge pharmacies standard transaction fees to access ESI's pharmacy claims systems and for other related administrative purposes.

Brand/Generic Classifications – Prescription drugs may be classified as either a "brand" or "generic;" however, the reference to a drug by its chemical name does not necessarily mean that the product is recognized as a generic for adjudication, pricing or copay purposes. Associated with pharmacy reimbursement, ESI distinguishes brands and generics through a proprietary algorithm ("BGA") that uses certain published elements provided by First DataBank (FDB) including price indicators, Generic Indicator, Generic Manufacturer Indicator, Generic Name Drug Indicator, Innovator, Drug Class and ANDA. The BGA uses these data elements in a hierarchical process to categorize the products as brand or generic. The BGA also has processes to resolve discrepancies and prevent "flipping" between brand and generic status due to price fluctuations and marketplace availability changes. The elements listed above and sources are subject to change based on the availability of the specific fields. Updated summaries of the BGA are available upon request. Brand or generic classification for client reimbursement purposes is either based on the BGA or specific code indicators from Medi-Span or a combination of the two as reflected in the client's specific contract terms. Application of an alternative methodology based on specific client contract terms does not affect ESI's application of its BGA for ESI's other contracts.

Maximum Allowable Cost ("MAC")/Maximum Reimbursement Amount ("MRA") – As part of the administration of the PBM services, ESI maintains a MAC List of drug products identified as requiring pricing management due to the number of manufacturers, utilization and/or pricing volatility. The criteria for inclusion on the MAC List are based on whether the drug has readily available generic product(s), is generally equivalent to a brand drug, is cleared of any negative clinical implications, and has a cost basis that will allow for pricing below brand rates. ESI also maintains MRA price lists for drug products on the MAC List based on current price reference data provided by MediSpan or other nationally recognized pricing source, market pricing and availability information from generic manufacturers and on-line research of national wholesale drug company files, and client arrangements. Similar to the BGA, the elements listed above and sources are subject to change based on the availability of the specific fields. Updated summaries of the MAC methodology are available upon request.

Manufacturer Formulary Rebates, Associated Administrative Fees, and PBM Service Fees – ESI contracts for its own account with manufacturers to obtain formulary rebates attributable to the utilization of certain brand drugs and supplies (and possibly certain authorized generics marketed under a brand manufacturer's new drug application). Formulary rebate amounts received vary based on client specific utilization, the volume of utilization as well as formulary position applicable to the drug or supplies, and adherence to various formulary management controls, benefit design requirements, claims volume, and other similar factors, and in certain instances also may vary based on the product's market-share. ESI often pays an amount equal to all or a portion of the formulary rebates it receives to a client based on the client's PBM agreement terms. ESI retains the financial benefit of the use of any funds held until payment of formulary rebate amounts is made to the client. ESI may maintain non-client specific aggregate guarantees with manufacturers and may realize positive margin. In addition, ESI provides administrative services to contracted manufacturers, which include, for example, maintenance and operation of the systems and other infrastructure necessary for managing and administering the PBM formulary rebate process, pharmacy discount programs, access to drug utilization data, as allowed by law, for purposes of verifying and evaluating applicable payments, and for other purposes related to the manufacturer's products. ESI receives administrative fees from the participating manufacturers for these services. These administrative fees are calculated based on the price of the drug or supplies along with the volume of utilization and do not exceed the greater of (i) 4.58% of the average wholesale price, or (ii) 5.5% of the wholesale acquisition cost of the products. In its capacity as a PBM company, ESI

also may receive other service fees from manufacturers as compensation for the performance of various services, including, for example, formulary compliance initiatives, clinical services, therapy management services, education services, medical benefit management services, and the sale of non-patient identifiable claim information. These service fees are not part of the formulary rebates or associated administrative fees.

Copies of ESI's standard formularies may be reviewed at www.__express-scripts.com/services/clientsadvisors. In addition to formulary considerations, other plan design elements are described in ESI's Plan Design Review Guide, which may be reviewed at www.express-scripts.com/services/clientadvisors.

ESI Subsidiary Pharmacies – ESI has several licensed pharmacy subsidiaries, including our specialty pharmacies. These entities may maintain product purchase discount arrangements and/or fee-for-service arrangements with pharmaceutical manufacturers and wholesale distributors. These subsidiary pharmacies contract for these arrangements on their own account in support of their various pharmacy operations. Many of these subsidiary arrangements relate to services provided outside of PBM arrangements, and may be entered into irrespective of whether the particular drug is on one of ESI's national formularies. Discounts and fee-for-service payments received by ESI's subsidiary pharmacies are not part of the PBM formulary rebates or associated administrative fees paid to ESI in connection with ESI's PBM formulary rebate programs. However, certain purchase discounts received by ESI's subsidiary pharmacies, whether directly or through ESI, may be considered for formulary purposes if the value of such purchase discounts is used by ESI to supplement the discount on the ingredient cost of the drug to the client based on the client's PBM agreement terms. From time to time, ESI and its affiliates also may pursue and maintain for its own account other supply chain sourcing relationships not described below as beneficial to maximize ESI's drug purchasing capabilities and efficiencies, and ESI or affiliates may realize an overall positive margin with regard to these initiatives.

The following provides additional information regarding examples of ESI subsidiary discount arrangements and fee-for-service arrangements with pharmaceutical manufacturers, and wholesale distributors:

ESI Subsidiary Pharmacy Discount Arrangements – ESI subsidiary pharmacies purchase prescription drug inventories, either from manufacturers or wholesalers, for dispensing to patients. Often, purchase discounts off the acquisition cost of these products are made available by manufacturers and wholesalers in the form of either up-front discounts or retrospective discounts. These purchase discounts, obtained through separate purchase contracts, are not formulary rebates paid in connection with our PBM formulary rebate programs. Drug purchase discounts are based on a pharmacy's inventory needs and, at times, the performance of related patient care services and other performance requirements. When a subsidiary pharmacy dispenses a product from its inventory, the purchase price paid for the dispensed product, including applicable dispensing fees, may be greater or less than that pharmacy's acquisition cost for the product net of purchase discounts. In general, our pharmacies realize an overall positive margin between the net acquisition cost and the amounts paid for the dispensed drugs.

ESI Subsidiary Fee-For-Service Arrangements – One or more of ESI's subsidiaries, including, but not limited to, its subsidiary pharmacies also may receive fee-for-service payments from manufacturers or wholesalers in conjunction with various programs or services, including, for example, patient assistance programs for indigent patients, dispensing prescription medications to patients enrolled in clinical trials, various therapy adherence and fertility programs, administering FDA compliance requirements related to the drug, product reimbursement support services, and various other clinical or pharmacy programs or services. As a condition to having access to certain products, and sometimes related to certain therapy adherence criteria or FDA requirements, a pharmaceutical manufacturer may require a pharmacy to report selected information to the manufacturer regarding the pharmacy's service levels and other dispensing-related data with respect to patients who receive that manufacturer's product. A portion of the discounts or other fee-for-service payments made available to our pharmacies may represent compensation for such reporting.

Other Manufacturer Arrangements – ESI also maintains other lines of business that may involve discount and service fee relationships with pharmaceutical manufacturers and wholesale distributors. Examples of these businesses include a wholesale distribution business, group purchasing organizations, a medical benefit management company, and United BioSource Corporation ("UBC"). Compensation derived through these business arrangements is not part of the PBM formulary rebates or associated administrative fees paid to ESI in connection with ESI's PBM formulary rebate programs. Services related to these arrangements are provided to manufacturers irrespective of whether a drug is on one of ESI's national formularies. Of particular note, UBC partners with life sciences and pharmaceutical companies to develop, commercialize, and support safe, effective use and access to pharmaceutical products. UBC maintains a team of research scientists, biomedical experts, research operations professionals, technologists and clinicians who work with clients to conduct and support clinical trials, create, and validate and administer pre and post product safety and risk management programs. UBC also works on behalf of pharmaceutical manufacturers to provide product and disease state education programs, reimbursement assistance, and other support services to the public at large. These service fees are not part of the formulary rebates or associated administrative fees.

Third Party Data Sales – Consistent with any client contract limitations, ESI or its affiliates may sell HIPAA compliant information maintained in their capacity as a PBM, pharmacy, or otherwise to data aggregators, manufacturers, or other third parties on a fee-for-service basis or as a condition of discount eligibility. All

such activities are conducted in compliance with applicable patient and pharmacy privacy laws and client contract restrictions.

April 7, 2014

THIS EXHIBIT REPRESENTS ESI'S FINANCIAL POLICIES. ESI MAY PERIODICALLY UPDATE THIS EXHIBIT AND THE FINANCIAL DISCLOSURES CONTAINED HEREIN TO REFLECT CHANGES IN ITS BUSINESS PROCESSES; THE CURRENT FINANCIAL DISCLOSURE IS AVAILABLE UPON REQUEST AND ACCESSIBLE ON EXPRESS-SCRIPTS.COM FOR CLIENTS & ADVISORS.

EXHIBIT E

PERFORMANCE GUARANTEES

In the event that any failure by ESI to meet any performance standard is due to a "force majeure" as defined in the agreement, failure of sponsor to perform its obligations under the agreement, or actions or inactions of Sponsor that adversely impact ESI' ability to maintain the subject standard (e.g., faulty eligibility, changes in benefit design not adequately communicated to members and benefit designs that substantially change the members' rights under the plan), ESI will be excused from compliance with such performance standards until such circumstances have been resolved and any existing backlogs or other related effects have been eliminated.

Within 90 days after the end of each year, ESI shall report to Sponsor ESI' performance under each performance standard. Notwithstanding the foregoing, for purposes of determining whether ESI has met or failed to meet each performance standard, performance standards will be measured and reconciled on an annual basis and amounts due resulting from an ESI failure to meet any performance standard(s), if any, shall be calculated and paid to Sponsor within 30 days following Sponsors receipt of reconciliation report.

No performance penalties, if any, will be paid until this agreement is executed by Sponsor. In no event will the sum of the payments to Sponsor, as a result of ESI' failure to meet the performance standards exceed $10.00 per Member up to a maximum of $117,500 per year for the annual performance standards.

The following performance standards are based on 11,750 members as of the effective date and throughout the term. Any material change below such number may result in a renegotiation of the standards and penalties set forth below.

Performance standards for the ESI' Pharmacy assume a minimum of 1,000 home delivery prescriptions submitted annually.

Service Feature	Guarantee	Penalty
Implementation (for <u>new</u> Connecticut Coalition Member Groups only)		
Implementation and Start-up	ESI will guarantee the implementation of Sponsor to be completed in accordance within the mutually agreed upon timelines. Each of ESI's standards is dependent upon receiving specific information from Sponsor. Loading of eligibility and production of ID cards are dependent upon receiving group structure and benefit plan design sign off from Sponsor. A delay in receipt of data or information from Sponsor may require rescheduling of all subsequent deliverable dates. The recommended implementation time frame is 90 days. **Communications** ESI's Implementation Project Manager (IPM) will provide regular updates to Sponsor tracking the status of the implementation. A completed implementation sign-off manual will be provided to Sponsor upon Sponsor's formal transition from the IPM to the Account Team. The implementation performance guarantee is a one-time only guarantee valid 90 days from Sponsor's effective date.	The following dollars will be paid to Sponsor if ESI does not complete the deliverables by the dates noted in the performance standard, assuming that Sponsor has provided the information necessary to complete these deliverables: *Benefit Plan Design — $0* *Group Structure and Eligibility Load — $0* *ID Cards — $0* *Toll-Free Telephone Number — $0* *Communications — $0* The maximum implementation penalty will be $0.
Implementation Satisfaction	ESI agrees to provide an Implementation satisfaction survey. The assessment will be comprised of specific implementation project plan milestone dates and any new solutions/business practices that were created by both parties throughout the process. A satisfaction rating of 1-5 will be used based on meeting the milestone dates and/or if the new solutions/business practices fulfilled the business requirement need. ESI guarantees an average rating of 4 or greater. This is dependent on the Sponsor providing the necessary information by the agreed upon dates. 1 – Date missed by fourteen (14) or more business days due to fault of ESI and/or solution did not fulfil any part of business requirement 2 – Date missed by seven (7) business days or more, but less than fourteen (14) business days, due to fault of ESI and/or solution fulfilled partial business requirement 3 – Date missed by one (1) business day or more, but less than seven (7) business days, due to fault of ESI and/or solution fulfilled minimal business requirement 4 – Date met with anticipated results and/or solution fulfilled business requirement need 5 – Date met by seven (7) business days or more with anticipated results and/or solution better than business requirement need The implementation satisfaction survey is a one-time only guarantee valid 90 days from Sponsor's effective date.	ESI will pay $0 for an average rating less than 4. ESI will pay $0 for an average rating less than or equal to 3. ESI will pay $0 for an average rating less than or equal to 2. ESI will pay $0 for an average rating less than or equal to 1. In no event shall the total penalty exceed $0.

Service Feature	Guarantee	Penalty
Account Management		
Account Management — Satisfaction	ESI agrees to provide an annual Account Management Satisfaction Survey. ESI guarantees that the Sponsor's overall satisfaction with Account Management will be greater than or equal to Meets Expectations. For the purposes of this guarantee, Sponsor's rating shall be defined on the following scale: Exceeds Expectations, Meets Expectations, Does Not Meet Expectations in any contract year. ESI shall be responsible for survey design, data collection, analysis, and all costs associated with conducting the surveys.	ESI will put $23,500 as a total amount of penalty at risk.
Client Services Administration		
Client-Specific Member Satisfaction Survey	One random sample member survey will be completed annually specific to the Sponsor. ESI guarantees a patient satisfaction rate of 90% or greater. Guarantee assumes survey response rate is statistically significant.	ESI will put $0 as a total amount of penalty at risk.
Contact Center		
Average Speed of Answer	ESI guarantees that calls will be answered in an average of 30 seconds or less. This guarantee is predicated on the installation of a toll-free number unique to the Sponsor.	ESI will pay Sponsor $0 for each full second above the standard 30 seconds on an annual basis. The maximum annual penalty will be $0. The calculation will be based on the average speed of answer.
Blockage Rate (Busy Signal)	ESI will guarantee a blockage rate of 1% or less. Blockage is defined as a caller receiving a busy signal. This guarantee is predicated on the installation of a toll-free number unique to Sponsor.	ESI will pay Sponsor $0 for each full percentage point above the standard 1% on an annual basis. The maximum annual penalty will be $0. The calculation will be based on the blockage percentage.
Percent of Calls Abandoned	The Telephone Abandonment Rate of the Member Service Telephone Line will be 3% or less of all incoming calls received during each Contract Year.	ESI will pay Sponsor $0 for each full percentage point above the standard 3% on an annual basis. The maximum annual penalty will be $0. The calculation will be based on the average percentage of calls abandoned.
Home Delivery Pharmacy		
Dispensing Accuracy	Whereas ESI strives for 100% accuracy, The Dispensing Accuracy Rate for each Contract Year will be 99.996% or greater. Guarantee is measure at book of business.	ESI will pay Sponsor $0 for each full percentage point below the standard of 99.996% on an annual basis. The maximum annual penalty will be $0. The calculation will be based on the average prescription accuracy.
Turnaround Time for Routine (Clean) Prescriptions	ESI guarantees to dispense prescriptions not subject to intervention within an average of two (2) business days.	ESI will pay Sponsor $11,750 for each full day above the standard two (2) business days on an annual basis. The maximum annual penalty will be $11,750.
Turnaround Time for Prescriptions Subject to Intervention	ESI guarantees to dispense prescriptions subject to intervention within an average of four (4) business days.	ESI will pay Sponsor $11,750 for each full day above the standard four (4) business days on an annual basis. The maximum annual penalty will be $11,750.

Service Feature	Guarantee	Penalty
Data Systems		
Data Systems Availability and Adjudication	ESI guarantees an annual average 99% system availability of the point-of-sale adjudication system on a book-of-business basis. This guarantee excludes systems downtime attributed to regularly scheduled systems maintenance or systems downtime attributed to telecommunications failure or other circumstances outside the control of ESI.	ESI will pay Sponsor $0 for each full percentage point which the yearly average of the online computer systems availability is below 99%. The maximum annual penalty for availability and adjudication will be $0.
Reporting		
Timely Production of Management Reports	ESI guarantees access to the online reporting data will be available within an annual average of fifteen (15) business days after the billing cycle that contains the last day of the month.	ESI will put $0 as a total amount of penalty at risk.
Claims Detail Files	ESI guarantees that all claims detail files sent to external vendors will be provided within eight (8) days of scheduled delivery date.	ESI will put $0 as a total amount of penalty at risk.
Replacement ID Card Production		
Timely Production of Replacement ID Cards	ESI guarantees that standard replacement ID cards will be produced within an annual average of four (4) business days of the receipt and update of machine-readable eligibility information.	ESI will put $0 as a total amount of penalty at risk.
Eligibility		
Eligibility — Timeliness of Installations	Accurate and complete eligibility files electronically transmitted by 10:00 A.M. EST, via secured processes acceptable to ESI, will be updated within two (2) business days of receipt.	ESI will put $0 as a total amount of penalty at risk.
Retail Pharmacy Network		
Network Pharmacy Geographic Access	ESI guarantees that 95% of members (based on client-supplied eligibility) will have access to a network pharmacy within a five-mile radius of their residence if there is an existing pharmacy within that radius. ESI has 90 days to cure, if the percentage drops below the above stated percentages. This standard will be measured and reported annually using information provided by GeoAccess or similar service.	ESI will pay Sponsor $0 if this standard is not met.
On-site Network Audits	ESI guarantees that 3% of pharmacies in the ESI pharmacy network will be audited on-site based across our book of business. This standard will be measured and reported annually.	ESI will pay Sponsor $0 if this standard is not met.
Benefit Changes		
Benefit Additions or Changes — Accuracy	ESI guarantees a 98.5% set up accuracy based upon the receipt of complete information on a signed benefit add/change form from the client.	ESI will pay Sponsor $23,500 per every full percentage point below the standard. Payment based on annual average with total maximum payout of $10,040
POS Claims Accuracy		
POS Accuracy	ESI guarantees that 99% of POS claims will be processed accurately. This is contingent upon the claims adjudication system being 100% accurate, which will be tested prior to contract start date and signed off on.	ESI will put $11,750 as a total amount of penalty at risk.

Service Feature	Guarantee	Penalty
Account Service		
Account Service Reporting	ESI guarantees that standard reports provided by ESI will be delivered within thirty (30) business days after the reporting period. Reports requiring customization will be delivered on a mutually agreed upon date.	ESI will pay $0 for every quarter the standard is not met. ESI will put $0 as a total amount of penalty at risk.
Account Team Continuity	ESI guarantees that, except for circumstances beyond ESI's control (such as promotions, resignations, leave, etc.), Sponsor's designated account team will remain constant for at least the first eighteen (18) months of the contract period, unless a change in account management staff is requested by Participating Member Groups or the Connecticut Coalition.	ESI will put $11,750 as a total amount of penalty at risk.
Paper Claims		
Paper Claims Requiring No Development Processing Time	ESI guarantees member-submitted paper claims requiring no development (clean) will be processed within an average of 10 business days.	ESI will put $0 as the total amount of penalty at risk.
Paper Claims Requiring Development Processing Time	ESI guarantees member-submitted paper claims requiring development (non-clean) will be processed within an average of 14 business days.	ESI will put $0 as the total amount of penalty at risk.
Customer Service		
Customer Service — First Call Resolution	ESI guarantees that 94% or greater of patient calls will be resolved on the first call.	ESI will pay Sponsor $23,500 for each full percentage point below 94%. The maximum annual penalty will be $10,040.
Customer Service Response Time to Written Inquiries	ESI will guarantee that annually 95% or more of written inquiries will be responded to within five (5) business days and that annually 100% of written inquiries will be responded to within ten (10) business days.	ESI will put $0 as a total amount of penalty at risk.
Client Satisfaction	ESI agrees to provide an annual Client Satisfaction Survey. ESI guarantees that the Sponsor's overall satisfaction with ESI will be greater than or equal to an average of 5 on a scale of 1 to 7. ESI shall be responsible for survey design, data collection, analysis, and all costs associated with conducting the surveys.	ESI will put $10,000 as a total amount of penalty at risk.

CITY OF BRIDGEPORT
LABOR RELATIONS AND BENEFITS ADMINISTRATION

45 Lyon Terrace, Bridgeport, Connecticut 06604

BILL FINCH
Mayor

LAWRENCE E. OSBORNE
Director
(203) 576-7843

JANET M. FINCH
Human Resources
Manager
(203) 576-8474

RICHARD D. WEINER
Benefits Manager
(203) 576-7007

Comm. #15-14 Referred to Contracts Committee
on 01/05/2015

December 22, 2014

Honorable Fleeta Hudson
City Clerk
City of Bridgeport
45 Lyon Terrace
Bridgeport, CT 06604

Dear Madam Clerk:

Attached please find an original and thirteen copies of the Medicare Part-D Employer-Only Sponsored Group Waiver Plan Prescription Drug Services Agreement between the City and Express Scripts Insurance Company, Inc.

The term of the Agreement is from January 1, 2015 through December 31, 2016.

I respectfully request that these documents be referred to the Contracts Committee at the Council meeting of January 5, 2015.

Sincerely,

Richard D. Weiner
Benefits Manager

RECEIVED
CITY CLERK'S OFFICE
2014 DEC 22 A 10:27

ATTEST _____
CITY CLERK

MEDICARE PART D
EMPLOYER-ONLY SPONSORED GROUP WAIVER PLAN
PRESCRIPTION DRUG SERVICES AGREEMENT

THIS MEDICARE PART D EMPLOYER-ONLY SPONSORED GROUP WAIVER PLAN PRESCRIPTION DRUG SERVICES AGREEMENT ("Agreement"), made as of the date of execution as set forth on the signature page (the "Execution Date"), is entered into by and between Express Scripts Insurance Co., an Arizona corporation ("ESIC"), and CITY OF BRIDGEPORT, on its own behalf and on behalf of the Client Group Health Plan (as defined below) ("Client").

RECITALS

A. ESIC is an approved CMS-contracted prescription drug plan ("PDP") sponsor for an Employer Group Waiver Plan PDP in accordance with CMS regulations, has received approval from the Centers for Medicare and Medicaid Services ("CMS") to serve as a Prescription Drug Plan Sponsor (a "PDP Sponsor") and to provide prescription drug coverage that meets the requirements of, and pursuant to, the Voluntary Prescription Drug Benefit Program set forth in Part D of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, 42 U.S.C. §1395w-101 through 42 U.S.C. §1395w-152 (the "Act") and all applicable and related rules and regulations promulgated, issued or adopted by CMS or other governmental agencies with jurisdiction over enforcement of the Act, including, but not limited to, 42 C.F.R. §423.1 through 42 C.F.R. §423.910 (with the exception of Subparts Q, R, and S), and the terms of any PDP Sponsor contract between CMS and ESIC (collectively, the "Medicare Drug Rules"); and

B. Pursuant to the waivers granted by CMS under 42 U.S.C. §1395w-132(b), ESIC offers employer-only sponsored group waiver plans ("EGWPs") to employers that wish to provide prescription drug benefits to their Part D Eligible Retirees (as defined below) in accordance with the Medicare Drug Rules; and

C. Client currently provides a prescription drug benefit (the "Current Benefit") to its Part D Eligible Retirees (as defined below) pursuant to a non-Medicare, self-insured welfare benefit plan (the "Client Group Health Plan"); and

D. Client desires to contract with ESIC to offer a prescription drug benefit to Client's Part D Eligible Retirees pursuant to an EGWP that is substantially similar in design to the Current Benefit (the "EGWP Benefit," as further defined below), and as part of the Client Group Health Plan; and

E. Provided that the EGWP Benefit meets the actuarial equivalence standards of the Medicare Drug Rules, as more fully described below, ESIC desires to offer the EGWP Benefit to Client's Part D Eligible Retirees in accordance with the Medicare Drug Rules and pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual representations, warranties and covenants herein contained, and pursuant to the terms and subject to the conditions set forth below, ESIC and Client hereby agree as follows:

TERMS AND CONDITIONS

ARTICLE I - DEFINITIONS

Terms not otherwise defined in this Agreement shall have the meanings ascribed to them as set forth below, or as defined in the Medicare Drug Rules.

"Affiliate" means, with respect to ESIC, individually or collectively, any other individual, corporation, partnership, limited liability company, trust, joint venture or other enterprise or entity directly or indirectly controlling (including without limitation all directors and executive officers of such entity), controlled by or under direct or indirect common control of or with ESIC.

"Ancillary Supplies, Equipment, and Services" or "ASES" means ancillary supplies, equipment, and services provided or coordinated by ESIC Specialty Pharmacy in connection with ESIC Specialty Pharmacy's dispensing of Specialty Products. ASES may include all or some of the following: telephonic and/or in-person training, nursing/clinical services, in-home infusion and related support, patient monitoring, medication pumps, tubing, syringes, gauze pads, sharps containers, lancets, test strips, other supplies, and durable medical equipment. The aforementioned list is illustrative only (not exhaustive) and may include other supplies, equipment, and services based on the patient's needs, prescriber instructions, payer requirements, and/or the Specialty Product manufacturer's requirements.

"Average Wholesale Price" or "AWP" means the average wholesale price of a prescription drug as identified by drug pricing services such as Medi-Span or other source recognized in the retail prescription drug industry selected by ESIC (the "Pricing Source"). The applicable AWP shall be the 11-digit NDC for the product on the date dispensed, and for prescriptions filled in (a) Participating Pharmacies and ESIC Specialty Pharmacy will be the AWP for the package size from which the prescription drug was dispensed, and (b) in the Mail Service Pharmacy the AWP for the smaller of: (i) the NDC code for the package size from which the prescription drug was dispensed, or (ii) package sizes of 100 units or 16 ounce quantities, or the next larger quantity if such specified quantities are not available. If the Pricing Source discontinues the reporting of AWP or Multi-Source Indicator code identifiers or materially changes the manner in which AWP is calculated or its Multi-Source Indicator code identifiers are reported, then ESIC reserves the right to make an equitable adjustment as necessary to maintain the parties' relative economics and the pricing intent of this Agreement.

"Brand/Generic Algorithm" or "BGA" means ESIC's standard and proprietary brand/generic algorithm, a copy of which may be made available for review by Client or its Auditor upon request. The purposes of the algorithm are to utilize a comprehensive and logical algorithm to determine the brand or generic status of products in the ESIC master drug file using a combination of industry standard attributes, to stabilize products "flipping" between brand and generic status as may be the case when a single indicator is used from industry pricing sources, and to reduce Client, EGWP Enrollee and provider confusion due to fluctuations in brand/generic status. Client or its Auditor may audit ESIC's application of its BGA to confirm that ESIC is making brand and generic drug determinations consistent with such algorithm.

"Brand Drug" means a prescription drug identified as such in ESIC's master drug file using indicators from First Databank (or other source nationally recognized in the prescription drug industry) on the basis of a standard Brand/Generic Algorithm, a copy of which may be made available for review by Client or its Auditor upon request. Notwithstanding the foregoing, certain prescription drug medications that are licensed and then currently marketed as brand name drugs, where there exists at least one (1) competing prescription medication that is a generic equivalent and interchangeable with the marketed brand name drug, may process as "Generic Drugs" for Prescription Drug Claim adjudication and EGWP Enrollee Copayment purposes.

"Copayment" or "Copay" means that portion of the charge for each Covered Product dispensed to an EGWP Enrollee that is the responsibility of such EGWP Enrollee (e.g., copayment, coinsurance, cost sharing, and/or deductibles under initial coverage limits and up to annual out-of-pocket thresholds) as provided under the EGWP Benefit, as shown in the Set-Up Forms.

"Coverage Gap" means the stage of the benefit between the initial coverage limit and the catastrophic coverage threshold, as described in the Medicare Part D prescription drug program administered by the United States federal government.

"Coverage Gap Discount" means the manufacturer discounts available to eligible Medicare beneficiaries receiving applicable, covered Medicare Part D drugs, while in the Coverage Gap.

"Coverage Gap Discount Program" means the Medicare program that makes manufacturer discounts available to eligible Medicare beneficiaries receiving applicable, covered Medicare Part D drugs, while in the Coverage Gap.

"Covered Drug(s)" means those prescription drugs, supplies, Specialty Products and other items that are covered under the EGWP Benefit, or treated as covered pursuant to a coverage determination or appeal.

"Enrollee Submitted Claim" means (a) a claim submitted by an Enrollee for Covered Drugs dispensed by a pharmacy other than a Participating Pharmacy, (b) a claim submitted by a Enrollee for a vaccination, or (c) a claim for Covered Drugs filled at a Participating Pharmacy for which the Enrollee paid the entire cost of the Covered Product.

"Enrollment File" means the list(s) submitted by Client to ESIC, in accordance with Article II, indicating the Part D Eligible Retirees that Client has submitted for enrollment in the EGWP Benefit, as verified by ESIC through CMS eligibility files.

"EGWP Benefit" means the prescription drug benefit to be administered by ESIC under this Agreement, as defined in the Recitals above and as further described in the Client Group Health Plan document, its summary plan description, and its summary of benefits, the latter of which is attached hereto as Exhibit A, as may be amended from time to time in accordance with the terms of this Agreement.

"EGWP Enrollee" means each Part D Eligible Retiree who is enrolled in the EGWP Benefit in accordance with the terms of this Agreement.

"EGWP Plus" means a prescription drug benefit plan design that provides non-Medicare EGWP coverage supplemental to the standard Part D benefit, and is defined by CMS as other health or prescription drug coverage, and as such, the Coverage Gap Discount is applied before any additional coverage beyond the standard Part D benefit.

"ERISA" means the Employee Retirement Income Security Act, as amended, 29 U.S.C. §1001 et seq.

"ESIC Specialty Pharmacy" means CuraScript, Inc., Accredo Health Group, Inc., Express Scripts Specialty Distribution Services, Inc., or another pharmacy or home health agency wholly-owned or operated by ESIC or one or more of its affiliates that primarily dispenses Specialty Products or provides services related thereto; provided, however, that when the Mail Service Pharmacy dispenses a Specialty Product, it shall be considered an ESIC Specialty Pharmacy hereunder.

"Formulary" means the list of FDA-approved prescription drugs and supplies developed by ESIC's Pharmacy and Therapeutics Committee and/or customized by Client, which meets the requirements of the Medicare Drug Rules, and which is selected and/or adopted by Client. Subject to the requirements of the Medicare Drug Rules, the drugs and supplies included on the Formulary will be modified by ESIC from time to time as a result of factors, including, but not limited to, medical appropriateness, manufacturer Rebate arrangements, and patent expirations. Additions and/or deletions to the Formulary are hereby adopted by Client, subject to Client's discretion, subject to the requirements of the Medicare Drug Rules, to elect not to implement any such addition or deletion through the Set-Up Form process, which such election shall be considered a Client change to the Formulary.

"Generic Drug" means a prescription drug, whether identified by its chemical, proprietary, or non-proprietary name, that is therapeutically equivalent and interchangeable with drugs having an identical amount of the same active ingredient(s) and approved by the FDA, and which is identified as such in ESIC's master drug file using indicators from First Databank (or other source nationally recognized in the prescription drug industry) on the basis of a standard Brand/Generic Algorithm, a copy of which may be made available for review by Client or its Auditor upon request.

"Home Delivery Education" or "HDE" means a program through which ESI provides information about Home Delivery to EGWP Enrollees currently taking maintenance medications. EGWP Enrollees receive targeted messages that explain the benefits of using Home Delivery and instruction for getting started.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations promulgated thereunder.

"Late Enrollment Penalty" or "LEP" means the financial penalty incurred under the Medicare Drug Rules by Medicare Part D beneficiaries who have had a continued gap in creditable coverage of sixty-three (63) days or more after the end of the beneficiary's initial election period, adjusted from time to time by CMS.

"Mail Service Pharmacy" means a pharmacy wholly-owned or operated by ESIC or one or more of its affiliates, other than an ESIC Specialty Pharmacy, where prescriptions are filled and delivered to EGWP Enrollees via mail delivery service.

"Manufacturer Administrative Fees" means those administrative fees paid by manufacturers to ESIC or its Affiliate pursuant to a contract between ESIC or its Affiliate and the manufacturer in connection with ESIC or its Affiliate administering, invoicing, allocating and collecting the Rebates under the Medicare Rebate Program.

"Medicare Formulary" means the list of prescription drugs and supplies developed, implemented and maintained in accordance with the Medicare Drug Rules for the EGWP Benefit.

"Medicare Rebate Program" means ESIC's or its Affiliate's manufacturer rebate program under which ESIC or its Affiliate contracts with pharmaceutical manufacturers for Rebates payable on selected Covered Drugs that are reimbursed, in whole or in part, through Medicare Part D, as such program may change from time to time.

"Members" has the meaning as set forth in that certain Pharmacy Benefit Management Agreement, dated January 1, 2014, by and between Express Scripts, Inc. ("ESI") and Client, as amended from time to time (the "Commercial Agreement").

"Maximum Reimbursement Amount" or "MRA" means the maximum unit ingredient cost payable by Client for a drug on the MAC List based on maximum reimbursement payment schedule(s) developed or selected by ESIC. The application of MRA pricing may be subject to certain "dispensed as written" (DAW) protocols and Client defined plan design and coverage policies.

"Part D" or "Medicare Part D" means the Voluntary Prescription Drug Benefit Program set forth in Part D of the Act.

"Part D Eligible Retiree" means an individual who is (a) eligible for Part D in accordance with the Medicare Drug Rules, (b) not enrolled in a Part D plan (other than the EGWP Benefit), and (c) eligible to participate in Client's Current Benefit.

"Participating Pharmacy" means any licensed retail pharmacy with which ESIC or one or more of its Affiliates has executed an agreement to provide Covered Drugs to EGWP Enrollees, but shall not include any mail order or specialty pharmacy affiliated with any such Participating Pharmacy. Participating Pharmacies are independent contractors of ESIC.

"Pharmacy" or "Pharmacies" refers from time to time to any or all Participating Pharmacies, Mail Service Pharmacy, or ESIC Specialty Pharmacy as the context of the provision dictates.

"PHI" means protected health information as defined under HIPAA.

"PMPM" means, if applicable, per EGWP Enrollee, per month, as determined by ESIC from the Enrollment Files for the applicable time period.

"Prescription Drug Claim" means an EGWP Enrollee Submitted Claim or claim for payment of a Covered Product submitted to ESIC by a Participating Pharmacy, Mail Service Pharmacy, or Specialty Pharmacy as a result of dispensing Covered Drugs to an EGWP Enrollee.

"Prescription Drug Plan" or "PDP" shall have the meaning set forth in the Medicare Drug Rules.

"Rebates" means retrospective formulary rebates that are paid to ESIC or its Affiliate pursuant to the terms of a formulary rebate contract negotiated independently by ESIC or its Affiliate with a pharmaceutical manufacturer and directly attributable to the utilization of certain Covered Drugs by EGWP Enrollees under the EGWP Benefit. Rebates do not include Manufacturer Administrative Fees: product discounts or fees related to the procurement of prescription drug inventories by or on behalf of ESIC or its Affiliates owned and operated specialty or mail order pharmacies, as more fully described in Exhibit D; fees received by ESIC from manufacturers for care management or other services provided in connection with the dispensing of Specialty Products; or other fee-for-service arrangements whereby pharmaceutical manufacturers generally report the fees paid to ESIC or its Affiliates for services rendered as "bona fide service fees" pursuant to federal laws and regulations, including, but not limited to the Medicaid "Best Price" rule (collectively, "Other Pharma Revenue"). Such laws and regulations, as well as ESIC's contracts with pharmaceutical manufacturers, generally prohibit ESIC from sharing any such "bona fide service fees" earned by ESIC, whether wholely or in part, with any ESIC client. ESIC represents and warrants that it will not enter into any agreement with a pharmaceutical manufacturer for Other Pharma Revenue in exchange for a reduction of Rebates.

"Set-Up Forms" means any standard ESIC document or form, which when completed and signed by Client (electronic communications from Client indicating Client's approval of a Set-Up Form shall satisfy the foregoing), will describe the essential benefit elements and coverage rules adopted by Client.

"Specialty Product List" means the standard list of Specialty Products and their reimbursement rates applicable to Client under the applicable (exclusive or open) option as updated from time to time. The Specialty Product List is available to Client upon request.

"Specialty Products" means those injectable and non-injectable drugs on the Specialty Product List. Specialty Products, which may be administered by any route of administration, are typically used to treat chronic or complex conditions, and typically have one or more of several key characteristics, including frequent dosing adjustments and intensive clinical monitoring to decrease the potential for drug toxicity and increase the probability for beneficial treatment outcomes; intensive patient training and compliance assistance to facilitate therapeutic goals; limited or exclusive product availability and distribution (if a drug is only available through limited specialty pharmacy distribution it is always considered a Specialty Product); specialized product handling and/or administration requirements.

"True Out-of-Pocket Costs" or "TrOOP" means costs incurred by an EGWP Enrollee or by another person on behalf of an EGWP Enrollee, such as a deductible or other cost-sharing amount, with respect to Covered Drugs, as further defined in the Medicare Drug Rules.

"UM Company" means MCMC, LLC or other independent third party utilization management company contracted by ESIC, subject to and as further described herein.

"Usual and Customary Price" or "U&C" means the retail price charged by a Participating Pharmacy for the particular drug in a cash transaction on the date the drug is dispensed as reported to ESIC or its Affiliate by the Participating Pharmacy.

"Vaccine Claim" means (i) a Medicare Part D covered vaccine claim for reimbursement submitted by a Participating Pharmacy, ESI Mail Pharmacy, ESIC Specialty Pharmacy, physician, or other entity and (ii) a Medicare Part B covered vaccine claim submitted by a Participating Pharmacy. Vaccine Claim is a Prescription Drug Claim for purposes of this Agreement.

ARTICLE II – PLAN STATUS UNDER APPLICABLE LAWS; ENROLLMENT AND DISENROLLMENT IN THE EGWP BENEFIT

2.1 Medicare Part D. Client and ESIC acknowledge and agree as follows:

(a) Under the Medicare Drug Rules, the EGWP Benefit will be deemed to be an EGWP administered by ESIC, and each EGWP Enrollee will be deemed to be a Part D enrollee of ESIC who is covered by the EGWP Benefit.

(b) The design of and administration of the EGWP Benefit is subject to the applicable requirements of the Medicare Drug Rules. Client shall cooperate with ESIC and, upon ESIC's request, do, execute, acknowledge, deliver, and provide such further acts, reports, information, and instruments as may be reasonably required or appropriate to administer the EGWP Benefit in compliance with the Medicare Drug Rules, applicable state insurance laws and other applicable laws.

(c) If the number of Client's Part D Eligible Retirees is materially reduced or eliminated for any reason, ESIC may communicate with those persons at ESIC's expense regarding alternative Medicare Part D options, including alternative Medicare Part D services offered by ESIC or one or more of its Affiliates, and the program pricing terms hereunder may be equitably modified by ESIC to reflect the reduction or elimination of the number of Part D Eligible Retirees.

2.2 ERISA. Client acknowledges and agrees that, in providing services under this Agreement and administering the EGWP Benefit, neither ESIC nor any of ESIC's Affiliates is acting as a fiduciary (as defined in Section 3.21(a) of ERISA) of the Client Group Health Plan, and Client shall not name ESIC or any of ESIC's Affiliates as a plan fiduciary. Neither ESIC nor any of ESIC's Affiliates have nor shall have any power to make any decisions as to the Client Group Health Plan's policy, interpretations, practices or procedures, but rather provides ministerial services within a framework of policies, guidelines, interpretations, rules, practices, and procedures chosen by Client. Client acknowledges that neither ESIC nor any of ESIC's Affiliates have nor shall have any discretionary authority or control respecting management of the Client Group Health Plan, nor exercise any authority or control respecting management or disposition of the plan assets of the Client Group Health Plan, if any exist. Client further acknowledges that all such discretionary authority with respect to the Client Group Health Plan is retained by Client or some other person or entity as designated in writing by Client to act with such discretionary authority.

2.3 HIPAA. Each of Client, the Client Group Health Plan and ESIC agrees to take reasonable and necessary actions to safeguard the privacy and security of information that identifies a particular EGWP Enrollee in accordance with state and federal privacy and security requirements, including HIPAA and the confidentiality and security provisions stated in 42 C.F.R. §423.136. Without limiting the generality of the foregoing, the parties acknowledge that, for the purposes of HIPAA compliance, each of ESIC and the Client Group Health Plan is a Covered Entity, and that, with respect to the EGWP Benefit, ESIC and the Client Group Health Plan shall be deemed to be an Organized Health Care Arrangement. ESIC and the Client Group Health Plan may transmit and receive PHI as necessary for the operation of the EGWP Benefit. In addition, ESIC may transmit PHI to the Client Group Health Plan for payment purposes and any other purpose permitted by HIPAA. Client hereby represents and warrants that: (i) the Client Group Health Plan's documents have been amended to meet the specification requirements set forth at 45 C.F.R. §164.504(f); (ii) Client will use and disclose PHI solely in accordance with these provisions; and (iii) accordingly, ESIC, at the direction of the Client Group Health Plan, may disclose PHI to Client consistent with the terms of this Section 2.3. The parties shall take reasonable steps to ensure that all uses and disclosures of PHI by ESIC, the Client Group Health Plan and Client only include information that is minimally necessary to accomplish the purpose(s) of the use or disclosure. Capitalized terms used in this Section 2.3 and not otherwise defined in this Agreement shall have the meaning set forth in HIPAA. ESIC may use and disclose both during and after the term of this Agreement the anonymized claims data (de-identified in accordance with HIPAA) including drug and related medical data collected by ESIC or provided to ESIC by Client for research; provider profiling; benchmarking, drug trend, and cost and other

internal analyses and comparisons; clinical, safety and/or trend programs; ASES; or other ESIC business purposes, in all cases subject to applicable law.

2.4 Group Enrollment. Subject to each individual's right to opt out, as described below, Client shall enroll Part D Eligible Retirees in the EGWP Benefit through a group enrollment process, as further described in and permitted under the Medicare Drug Rules. Client agrees that it will comply with all applicable requirements for group enrollment in EGWPs as set forth in the Medicare Drug Rules and related CMS guidance, and as described and required by ESIC's policies and procedures.

2.5 Enrollment File. No later than thirty (30) days prior to the Effective Date and the first day of each EGWP Benefit enrollment period thereafter, so long as this Agreement is in effect, Client shall provide an Enrollment File to ESIC via the communication medium reasonably requested by ESIC that lists those Part D Eligible Retirees for whom Client intends to make application for enrollment in the EGWP Benefit (i.e., those Part D Eligible Retirees who have not opted out of the group enrollment process) for that contract year. Client represents and warrants that all information it provides to ESIC in the Enrollment File will be complete and correct. Client shall communicate all new enrollments (i.e., individuals who become eligible to participate in the EGWP Benefit outside of an annual election period), requested retroactive enrollments of Part D Eligible Retirees, and disenrollments from the EGWP Benefit via the communication medium reasonably requested by ESIC. ESIC agrees to process retroactive enrollment requests pursuant to the requirements of the Medicare Drug Rules.

2.6 Implementation.

(a) ESIC's Responsibilities. ESIC shall implement the Enrollment File following confirmation of the eligibility of the Part D Eligible Retirees listed on the Enrollment File with CMS eligibility files. A Part D Eligible Retiree will not be enrolled in the EGWP Benefit unless such individual is listed on both the Enrollment File submitted by Client and the CMS eligibility files. If an individual is listed on the Enrollment File provided by Client, but is not eligible for participation according to CMS eligibility files, then ESIC shall notify Client in a timely manner regarding such individual's ineligibility. ESIC will work with Client to determine if such individual has been rejected due to an administrative or clerical error (e.g., data field standards errors, rejections related to information input by ESIC related to the EGWP Benefit into the CMS system, etc.), or an error requiring individual retiree contact, and if so in either case, ESIC will take appropriate action and attempt to correct such error and resubmit the individual through the CMS system. Client acknowledges and agrees that ESIC may update in the Enrollment File any and all information concerning Part D Eligible Retirees upon receipt of corrected information from CMS, and ESIC may use such corrected information to obtain a Part D Eligible Retiree's enrollment in the EGWP Benefit. For all Part D Eligible Retirees that have been included by Client in the Enrollment File, but who are ultimately determined to be ineligible for participation in the EGWP Benefit, ESIC or its Affiliate shall notify the individual of his or her ineligibility in the EGWP Benefit and take all other action as required by applicable law. ESIC shall communicate to Client any changes to a Part D Eligible Retiree's information in the Enrollment File based upon updates or corrections received from CMS.

(b) Incomplete Enrollment File Information. Client's submission to ESIC of an inaccurate or incomplete Enrollment File (e.g., missing date of birth, last name, first name, etc.) or otherwise of incomplete information with respect to any individual Part D Eligible Retiree may result in a rejection of the Part D Eligible Retiree's enrollment in the EGWP Benefit. ESIC will provide Client with regular reports providing the details of all such incomplete information needed to enroll Part D Eligible Retirees. Client acknowledges and agrees that ESIC may contact Client's Part D Eligible Retirees to obtain the information required hereunder and that ESIC will update the Enrollment File on Client's behalf to reflect additional information needed to complete enrollment of the Part D Eligible Retirees in the EGWP Benefit. If ESIC, using reasonable efforts, is not able to obtain all missing information from a Part D Eligible Retiree within twenty-one (21) days after receiving Client's initial request for enrollment of the Part D Eligible Retiree in the EGWP Benefit, then Client's request shall be deemed cancelled and ESIC or its Affiliate shall notify the individual of his or her non-enrollment in the EGWP Benefit and shall take all other action as required by applicable law.

(c) Effective Date of Application for Enrollment into EGWP Benefit. Notwithstanding any provision of this Agreement to the contrary, the effective date of the application for any Part D Eligible Retiree who ESIC seeks to enroll in the EGWP Benefit hereunder shall be the date on which the application for enrollment is entered by ESIC into its enrollment system, subject however to any adjustments that ESIC may make for retroactive enrollments as necessary to enroll the Part D Eligible Retiree in the EGWP Benefit.

2.7 Individual Disenrollment. If Client or ESIC determines that an EGWP Enrollee is no longer eligible to participate as an EGWP Enrollee in the EGWP Benefit (an "Ineligible Enrollee"), such Ineligible Enrollee shall be disenrolled in accordance with the Medicare Drug Rules.

2.8 Group Disenrollment. If, upon the expiration of the then current term of this Agreement, Client plans to disenroll its EGWP Enrollees from the EGWP Benefit using a group disenrollment process, then Client shall implement the following procedures:

(a) Notification to EGWP Enrollees. Client shall provide at least twenty-one (21) days (or such other minimum days notice as required by the Medicare Drug Rules) prior written notice to each EGWP Enrollee that Client plans to disenroll him or her from the EGWP Benefit and shall include with such written notification an explanation as to how the EGWP Enrollee may contact CMS for information on other Medicare Part D options that might be available to the EGWP Enrollee; and

(b) Information to ESIC. Client shall provide all the information to ESIC that is required for ESIC to submit a complete disenrollment request transaction to CMS, as set forth in the Medicare Drug Rules.

2.9 Voluntary Disenrollment. If an EGWP Enrollee makes a voluntary request to be disenrolled from the EGWP Benefit (the "Voluntary Disenrollee") to Client, then Client shall notify ESIC at least sixty (60) days prior to the effective date of such Voluntary Disenrollee's disenrollment, in a manner and format agreed upon by the parties. If Client does not timely notify ESIC of such Voluntary Disenrollee's disenrollment in the EGWP Benefit, then ESIC shall submit a retroactive disenrollment request to CMS. Client acknowledges that CMS may only grant up to a ninety (90) day retroactive disenrollment in such instances. If the Voluntary Disenrollee makes his or her request directly to ESIC, then ESIC shall direct the Voluntary Disenrollee to initiate the disenrollment with the Client.

2.10 Responsibility for Claims After Loss of Eligibility or Disenrollment. Except for Prescription Drug Claims that are paid due to ESIC's negligence, Client shall be responsible for reimbursing ESIC pursuant to Section 5.1 for all Prescription Drug Claims processed by ESIC: (a) with respect to an Ineligible Enrollee during any period in which the Enrollment File indicated that such Ineligible Enrollee was eligible; and (b) with respect to a Voluntary Disenrollee, in the event Client did not provide timely notice to ESIC of such disenrollment as set forth in this Article II.

2.11 Effect On / Effect Of Commercial Agreement. Except as expressly provided in this Agreement, the parties acknowledge that ESIC shall have no obligations under the Commercial Agreement with respect to the Client Group Health Plan, and that Client shall be solely responsible for determining the eligibility of Members covered by the prescription drug benefit administered pursuant to the Commercial Agreement (the "Commercial Benefit"). By requesting a Member's enrollment as an EGWP Enrollee in the EGWP Benefit, Client represents that such EGWP Enrollee's eligibility as a Member in the Commercial Benefit (except for EGWP supplemental coverage) will immediately terminate. An EGWP Enrollee may not have dual coverage under the EGWP Benefit and the Commercial Benefit; and therefore, after any EGWP Enrollee's enrollment in the EGWP Benefit, all Prescription Drug Claims and Member Submitted Claims submitted to ESIC under the Commercial Agreement shall be treated as Prescription Drug Claims under this Agreement and shall be processed by ESIC in accordance with the EGWP Benefit.

2.12 Retroactive Payments / Enrollment and Disenrollment. ESIC may receive or recoup payments from CMS based upon retroactive enrollments to the EGWP Benefit or retroactive disenrollments from the

EGWP Benefit under this Agreement. To the extent ESIC has agreed in this Agreement to pay Client amounts equal to such payments, ESIC shall pay such amounts to Client within forty-five (45) days of ESIC's receipt of payments from CMS; provided, further, that any related PMPM Fees (as defined in Section 5.2(b)) associated with the retroactive enrollment or disenrollment, as the case may be, shall be adjusted in accordance with the applicable terms of this Agreement.

ARTICLE III – PRESCRIPTION DRUG SERVICES

3.1 Exclusivity. Client acknowledges and agrees that, in the event Client offers its Part D Eligible Retirees more than one Part D benefit option, the eligibility determinations, enrollment and disenrollment and other administration of such Part D options will require extensive coordination with the administration of the EGWP Benefit. For these reasons, Client agrees that Client shall use ESIC as Client's exclusive provider of all Medicare Part D services for its Part D Eligible Retirees during the term of this Agreement. The terms and conditions of Client's and ESIC's arrangements for Part D options other than the EGWP Benefit shall be set forth in separate agreements.

3.2 Prescription Drug Services. In exchange for the fees set forth in Exhibit B, ESIC will administer the EGWP Benefit for EGWP Enrollees in accordance with the terms and conditions of this Agreement. Such administrative services will include: pharmacy network contracting; Mail Service Pharmacy and Specialty Products services; Prescription Drug Claim processing; Formulary and Rebate administration; Medication Therapy Management; services cost containment, clinical, safety, adherence, and other like programs (collectively, "Prescription Drug Services"), as further described in Sections 3.7 through 3.10. All Prescription Drug Services shall be provided by ESIC in accordance with the Medicare Drug Rules and the terms of the EGWP Benefit. Client acknowledges and agrees that ESIC may provide Prescription Drug Services under this Agreement through one or more of its Affiliates. ESIC will have written agreements with each Affiliate that will perform services on behalf of ESIC in connection with the EGWP Benefit that meet the requirements the Medicare Drug Rules for subcontractors of PDP Sponsors.

3.3 The EGWP Benefit. The EGWP Benefit will satisfy all actuarial equivalence standards set forth in the Medicare Drug Rules. Client hereby agrees to cooperate with ESIC to perform the necessary actuarial equivalence calculations to determine whether the EGWP Benefit meets the foregoing actuarial equivalence standards prior to the Effective Date. If ESIC determines that the EGWP Benefit does not meet the actuarial equivalence standards, then Client shall cooperate with ESIC to make necessary adjustments to the EGWP Benefit design to meet the actuarial equivalence standards.

3.4 Changes to the EGWP Benefit. Client shall have the right to request changes to the terms of the EGWP Benefit from time to time by providing written notice to ESIC. ESIC shall implement any such requested changes, subject to the following conditions: (a) all changes to the EGWP Benefit must be consistent with the Medicare Drug Rules; (b) the EGWP Benefit, after implementation of such changes, must continue to meet the actuarial equivalence standards referenced in Section 3.3 above; (c) EGWP Benefit changes may be implemented only at times and in the manner permitted by the Medicare Drug Rules; and (d) any requested change that would increase ESIC's costs of administering the EGWP Benefit without an equivalent increase in reimbursement to ESIC from Client shall not be implemented unless and until Client and ESIC agree in writing upon a corresponding amendment to the reimbursement terms of this Agreement.

3.5 EGWP Enrollee Communications. All standard EGWP Enrollee communications concerning the EGWP Benefit (i.e., summary plan description, evidence of coverage, etc.) shall be mutually developed by ESIC and the Client pursuant to the Medicare Drug Rules, including the CMS Marketing Guidelines contained therein. ESIC shall be responsible, with assistance from Client, in completing the EGWP Enrollee communications and distributing them to EGWP Enrollees as appropriate. Pursuant to the Medicare Drug Rules, ESIC must provide all such EGWP Enrollee communications to CMS for review. If CMS notifies ESIC that any such EGWP Enrollee communication is deficient, Client agrees to assist ESIC to make necessary revisions to such EGWP Enrollee communication to correct such deficiency.

3.6 Pharmacy Network. ESIC will maintain a network(s) of Participating Pharmacies, and will make available an updated list of Participating Pharmacies on-line. Pharmacy Network will at a minimum, be sufficient to meet the needs of the EGWP Enrollees as required pursuant to the Medicare Drug Rules. Neither ESIC nor its Affiliate direct or exercise any control over the Participating Pharmacies or the professional judgment exercised by any pharmacist in dispensing prescriptions or otherwise providing pharmaceutical related services at a Participating Pharmacy. ESIC shall have no liability to Client, any EGWP Enrollee or any other person or entity for any act or omission of any Participating Pharmacy or it agents or employees. If, due to an access concern, and upon Client's written request to add a particular retail pharmacy to the network of Participating Pharmacies servicing Client and its Enrollees, ESIC will make commercially reasonably efforts to add any such retail pharmacy to the Participating Pharmacy network for Client, provided that such pharmacy meets ESIC's network participation requirements and agrees to ESIC's standard terms and conditions. If ESIC pays any such Participating Pharmacy a higher rate than ESIC's standard network rate (i.e. the particular pharmacy will only agree to higher than standard reimbursement rates), and Client nevertheless requests that ESIC add such pharmacy, the rate charged to Client for Prescription Drug Claims processed through such pharmacy (assuming ESIC agrees to contract with such pharmacy) will be the net ingredient cost plus the dispensing fee paid by ESIC to such Participating Pharmacy (plus applicable sales or excise tax or other governmental surcharge, if any). All such Prescription Drug Claims will be excluded from the pricing guarantees set forth in Exhibit B.

3.7 Audits of Participating Pharmacies; Fraud and Abuse. ESIC shall periodically audit Participating Pharmacies to determine compliance with their agreements with ESIC or its Affiliate and in order to meet the anti-fraud provisions of the Medicare Drug Rules applicable to PDPs. ESIC also shall perform fraud and abuse reviews of EGWP Enrollees and physicians as required under the Medicare Drug Rules for PDPs. The audits and reviews may be conducted by ESIC's or its Affiliate's internal auditors or its outside auditors, and at the pharmacy or at ESIC by a review of electronically transmitted claims. Any balance of recovered overpayments will be credited to Client on the next billing cycle after the correction. ESIC shall attempt recovery of identified overpayments through offset, demand or other reasonable means. ESIC shall not be required to institute litigation to collect any overpayments, but shall cooperate with Client in the event Client elects to pursue litigation.

3.8 Mail Service Pharmacy. EGWP Enrollees may have prescriptions filled through the Mail Service Pharmacy. Subject to applicable law, ESIC may communicate with EGWP Enrollees regarding benefit design, cost savings, availability and use of the Mail Service Pharmacy, as well as provide supporting services. ESIC may suspend Mail Service Pharmacy services to a EGWP Enrollee who is in default of any Copayment amount due ESIC. Client will be responsible for any unpaid EGWP Enrollee Copayment amounts if payment has not been received from the EGWP Enrollee within one hundred twenty (120) days following dispensing. Client will be billed following the one hundred twenty (120) day collection period, with payment due in accordance with the payment terms set forth in Article V of this Agreement.

3.9 Claims Processing. Subject to Sections 3.9(a)-(i), ESIC will perform claims processing services for Covered Drugs dispensed to EGWP Enrollees by Participating Pharmacies, Mail Service and ESIC Specialty Pharmacy consistent with the applicable standard transaction rules required under HIPAA. The "per Rx" administrative fees set forth in Exhibit B shall be charged for all claims processing services, including initial, rejected, reversed and reprocessed Prescription Drug Claim processing. If elected by Client, ESIC also shall process EGWP Enrollee Submitted Claims in accordance with the rules in the Set-Up Forms and ESIC's standard procedures.

(a) Application of Discounts. Prescription Drug Claims will be processed based on the rates set forth in Exhibit B, including Prescription Drug Claims for which no benefits are payable to the EGWP Enrollee for Covered Drugs because of the application of any deductible or 100% co-insurance requirement following satisfaction of any initial coverage limit consistent with the Medicare Drug Rules.

(b) COB. ESIC will coordinate benefits with state pharmaceutical assistance programs and entities providing other prescription drug coverage consistent with the Medicare Drug Rules. If Client provides self-funded non-Medicare EGWP supplemental coverage ("EGWP supplemental coverage") for EGWP Enrollees in accordance with the Medicare Drug Rules, the parties agree that such EGWP

supplemental coverage will be subject to and managed under the terms of the Commercial Agreement. ESIC will perform the following additional coordination of benefits with Client's EGWP supplemental coverage: Coordination of benefits for Medicare Part D applicable drugs throughout the EGWP Benefit and the EGWP supplemental coverage; single transaction for EGWP Enrollees at POS utilizing Medicare Part D eligibility and a single ID card; utilize EGWP Enrollee eligibility established under Medicare Part D plan; comprehensive EGWP Enrollee communications package on the EGWP supplemental coverage; all CMS required reporting; claims reporting detailing primary and secondary payments; and financial reporting detailing application of Coverage Gap Discount Program.

(c) Utilization Management. Consistent with the terms of the EGWP Benefit, ESIC will establish a reasonable and appropriate drug management program that includes incentives to reduce costs when medically appropriate; maintains policies and systems to assist in preventing over-utilization and under-utilization of prescribed medications, according to guidelines specified by CMS and in accordance with the Medicare Drug Rules. Further, in connection with each prescription submitted for processing on-line by a Participating Pharmacy, ESIC will perform standard drug utilization review ("DUR") in order to assist the dispensing pharmacist and prescribing physician in identifying potential drug interactions, incorrect prescriptions or dosages, and certain other circumstances that may be indicative of inappropriate prescription drug usage. ESIC's DUR processes are not intended to substitute for the professional judgment of the prescriber, the dispensing pharmacist or any other health care professional providing services to the EGWP Enrollee.

(d) Quality Assurance. Consistent with the terms of the EGWP Benefit, ESIC will establish quality assurance measures and systems to reduce medication errors and adverse drug interactions and improve medication use in accordance with the Medicare Drug Rules.

(e) TrOOP. Consistent with the terms of the EGWP Benefit, ESIC will establish and maintain a system to record EGWP Enrollees' TrOOP balances, and shall communicate TrOOP balances to EGWP Enrollees upon request.

(f) Coverage Determinations and Appeals. The parties acknowledge and agree that ESIC is required under the Medicare Drug Rules to maintain oversight of coverage determinations under the EGWP Benefit, including prior authorizations and EGWP Enrollee Submitted Claims determinations, and to maintain an appeals process for EGWP Enrollees. Client acknowledges and agrees that ESI may perform such services through the UM Company. ESIC or the UM Company, as applicable, will be responsible for conducting the appeal in a manner consistent with the requirements of the Medicare Drug Rules and shall ensure that the contract with the UM Company complies with the applicable delegation requirements of the Medicare Drug Rules, including without limitation 42 C.F.R. §423.505. ESI represents to Client that UM Company has contractually agreed that: (A) UM Company will conduct appeals in accordance with the the Medicare Drug Rules and the EGWP Benefit, (B) Client is a third party beneficiary of UM Company's agreement with ESIC or its Affiliate (a copy of which is available upon request) and the remedies set forth therein, and (C) UM Company will indemnify Client for third party claims caused by the UM Company's negligence or willful misconduct in providing the appeal services.

(g) EOBs. ESIC will furnish EGWP Enrollees, in a manner specified by CMS, a written explanation of benefits ("EOB") when prescription drug benefits are provided under qualified prescription drug coverage consistent with the requirements of the Medicare Drug Rules.

(h) EGWP Enrollee Services. ESIC will provide 24-hours a day, 7-days a week toll-free telephone, IVR and Internet support to assist Client and EGWP Enrollees with EGWP Enrollee eligibility, benefits and TrOOP verification, location of Participating Pharmacies and other related EGWP Enrollee concerns.

(i) Prior Authorization. For the fees set forth in the Clinical Programs described in Exhibit B-2 (if applicable), ESIC will provide prior authorization ("PA") services as specified and directed by Client for drugs designated on the Set-Up Form. Prior authorized drugs must meet Client-approved guidelines ("Guidelines") before they are deemed to be Covered Drugs. Unless Client otherwise directs, Client

hereby authorizes coverage for an otherwise excluded use in the event of co-morbidities, complications and other factors not otherwise expressly set forth in the Guidelines, unless Client directs that Client be provided such issue for determination. In determining whether to authorize coverage of such drug under the PA Program, ESIC will apply only the Guidelines and may rely entirely upon information about the EGWP Enrollee and the diagnosis of the EGWP Enrollee's condition provided to it from the prescriber. ESIC will not undertake to determine medical necessity, make diagnoses or substitute ESIC's judgment for the professional judgment and responsibility of the physician prescriber.

3.10 Formulary and Medication Management.

(a) P&T Committee and Medicare Formulary. ESIC or its Affiliate will maintain a pharmacy and therapeutics committee ("P&T Committee") in accordance with the Medicare Drug Rules, which will develop a Medicare Formulary to be selected by Client for the EGWP Benefit consistent with the requirements of the Medicare Drug Rules. In accordance with the Medicare Drug Rules, all Covered Drugs on the Medicare Formulary shall be Part D drugs (within the meaning of the Medicare Drug Rules) or otherwise permitted to be covered by a PDP under the Medicare Drug Rules. Client acknowledges and agrees that the Medicare Formulary may not be modified by removing Covered Drugs, adding additional utilization management restrictions, making the cost-sharing status of a drug less beneficial or otherwise modified in a manner not consistent with the Medicare Drug Rules.

(b) Medication Therapy Management. Consistent with the terms of the EGWP Benefit and for the fees identified on Exhibit B, ESIC or its Affiliate will implement a Medication Therapy Management program that is designed to ensure that Covered Drugs prescribed to targeted EGWP Enrollees are appropriately used to optimize therapeutic outcomes through improved medication use; and reduce the risk of adverse events, including adverse drug interactions, in accordance with the Medicare Drug Rules.

3.11 Medicare Rebate Program.

(a) ESIC or its Affiliate will negotiate with pharmaceutical manufacturers regarding the terms of the Medicare Rebate Program and will, on its own behalf, enter into agreements with such manufacturers for Rebates for certain Covered Drugs. ESIC will pay to Client the amounts as set forth on Exhibit B-3, subject to the following:

(i) Client's election of, and conformance to, the Medicare Formulary identified on Exhibit B and applicable benefit designs;

(ii) Distribution of the Medicare Formulary (or a summary thereof) to EGWP Enrollees and/or physicians, as applicable; and

(iii) Client's compliance with other reasonable, generally applicable requirements for participation in the Medicare Rebate Program for the EGWP Benefit.

(b) Rebates are not payable on Enrollee Submitted Claims, subrogation claims, OTC products, claims older than 180 days, claims pursuant to a 100% Copayment plan, biosimilar products, reversed claims or claims through Client owned , in-house, or on-site pharmacies, or operated not-for-profit pharmacies. ESIC and Client each acknowledge and understand that market conditions, patent status and other factors may influence Medicare Formulary decisions from time to time. If such market conditions, patent status or other factors have the effect of lowering the amount of Rebates earned by Client (whether prior to the Execution Date, or at any other time during the term of this Agreement), ESIC shall have the right to make an equitable adjustment to the Rebates as of the effective date of such event upon notice to Client. Such adjustment will be made as of the date of the change provided that ESIC provides Client with supporting information regarding the impact of the applicable changes(s).

(c) Amounts representing the Rebates allocated to the Client pursuant to the terms of this Agreement shall be paid on a quarterly basis approximately 150 days following the end of each quarterly period; provided, however, that ESIC shall make quarterly payments as provided herein only to the extent

of the payments it receives approximately 120 days following the end of the quarterly period. Payments attributable to amounts that ESIC or its Affiliate receives later than 120 days following the end of a quarter shall be included by ESIC in the next quarterly payment. ESIC and its Affiliate retain all right, title and interest to any and all actual Rebates received from manufacturers, except that ESIC shall pay Client amounts equal to the Rebate amounts allocated to Client, as specified on Exhibit B, from ESIC's or its Affiliate's general assets (neither Client nor its EGWP Enrollees retain any beneficial or proprietary interest in ESIC's or its Affiliate's general assets). Client acknowledges and agrees that neither it nor its EGWP Enrollees shall have a right to interest on, or the time value of, any Rebate payments received by ESIC or its Affiliates during the collection period or moneys payable under this Section. No Rebates shall be paid until this Agreement is executed by Client. ESIC shall have the right to apply Client's allocated Rebate amount to unpaid Fees and shall have the right to delay payment of Rebates to allow for final adjustments upon termination of this Agreement.

(d) Client acknowledges that it may be eligible for Rebate amounts under this Agreement only so long as Client, its affiliates, or its agents do not contract directly or indirectly with anyone else for discounts, utilization limits, rebates or other financial incentives on pharmaceutical products or formulary programs for claims processed by ESIC pursuant to this Agreement, without the prior written consent of ESIC. In the event that Client negotiates or arranges with a pharmaceutical manufacturer for Rebates or similar discounts for any Covered Drugs hereunder, but without limiting ESIC's or its Affiliate's right to other remedies, ESIC may immediately withhold any Rebate amounts earned by, but not yet paid to, Client as necessary to prevent duplicative rebates on Covered Drugs. To the extent Client knowingly negotiates and/or contracts for discounts or rebates on claims for Covered Drugs without prior written approval of ESIC, such activity shall be deemed to be a material breach of this Agreement, entitling ESIC to suspend payment of Rebate amounts hereunder and to renegotiate the terms and conditions of this Agreement.

(e) On at least an annual basis, and as otherwise required under the Medicare Drug Rules, ESIC shall disclose to Client the amount of all Rebates received from Manufacturers or otherwise retained by ESIC or its Affiliate with respect to the Rebate eligible EGWP Benefit utilization. Client and ESIC shall coordinate disclosure to CMS of all Rebates and, if applicable, reported to Client by ESIC in connection with any Medicare utilization to the extent required by the Medicare Drug Rules.

(f) Under its Rebate program, ESIC may implement ESIC's Formulary management programs and controls, which may include, among other things, cost containment initiatives, and communications with EGWP Enrollees, Participating Pharmacies, and/or physicians. ESIC reserves the right to modify or replace such programs from time to time. Guaranteed Rebate amounts, if any, set forth herein, are conditioned on adherence to various Formulary management controls, benefit design requirements, claims volume, and other factors stated in the applicable pharmaceutical manufacturer agreements, as communicated by ESIC to Client from time to time. If any government action, change in law or regulation, change in the interpretation of any law or regulation, or any action by a pharmaceutical manufacturer has an adverse effect on the availability of Rebates, then ESIC may make an adjustment to the Rebate terms and guaranteed Rebate amounts, if any, hereunder.

(g) Rebate paid to Client pursuant to this Agreement are intended to be treated as "discounts" pursuant to the federal anti-kickback statute set forth at 42 U.S.C. §1320a-7b and implementing regulations. Client is obligated if requested by the Secretary of the United States Department of Health and Human Services, or as otherwise required by applicable law, to report the Rebate amounts and to provide a copy of this notice. ESIC will refrain from doing anything that would impede Client from meeting any such obligation.

3.12 Late Enrollment Penalty. Client agrees to and attests that it shall comply with the applicable CMS requirements of the LEP and shall comply with ESIC's LEP policy, inducing participating with ESIC in the following process:

(a) Client has an option to: (i) provide an initial global attestation to ESIC to attest to a creditable coverage for all of its EGWP Enrollees; or (ii) periodically provide an attestation to ESIC to

attest to a creditable coverage for its EGWP Enrollees listed on the LEP report periodically provided to Client by ESIC.

(b) If Client elects to periodically attest to ESIC under Section 3.12(a)(ii) above, then:

(i) Client's response shall be delivered to ESIC within five (5) business days from the receipt of LEP report from ESIC;

(ii) Client shall provide ESIC with the file listing all EGWP Enrollees for whom Client was unable to attest; and

(iii) ESIC shall also mail an attestation to each EGWP Enrollee that has gap in coverage as defined by CMS.

(c) Client will provide ESIC with the attestation in the form attached as Exhibit E of this Agreement, and a file listing of all the EGWP Enrollees included in the attestation.

(d) ESIC will collect responses to the attestations from Client or EGWP Enrollees and submits EGWP Enrollees information to CMS for processing and determination of applicable LEP.

(e) CMS calculates the LEP amount and transmits the LEP amount to ESIC on the daily TRR file, which is communicated to Client. ESIC shall invoice Client for payment of the LEP, which shall be due and owing by the Client to ESIC. Per the Medicare Drug Rules, Client may elect to either pay for the LEP on behalf of the EGWP Enrollee, or seek reimbursement of the LEP amount from the EGWP Enrollee. This election must be made prior to the beginning of the plan year and must be applied consistently by Client for all EGWP Enrollees throughout the plan year.

ARTICLE IV – PROGRAM OPERATIONS

4.1 Program Reporting. ESIC or its Affiliate shall make available to Client ESIC's or its Affiliate's standard management information reporting applications. At the request of Client, ESIC or its Affiliate may develop special reporting packages at ESIC's or its Affiliate's standard hourly rate for such services, as set forth on Exhibit B-2.

4.2 Regulatory Reporting. ESIC also agrees to comply with the reporting requirements set forth in 42 C.F.R. §423.514, including reporting significant business transactions with parties in interest to CMS, notifying CMS of any loans or other financial arrangements that it makes with contractors, subcontractors, and related entities, and making such information available to EGWP Enrollees upon reasonable request.

4.3 Claims Data Retention. ESIC and Client will maintain, for a period of the then current plan year plus an additional ten (10) years, the applicable books, contracts, medical records, patient care documentation, and other records relating to covered services under this Amendment. ESIC and its Affiliate may use and disclose both during and after the term of this Agreement the anonymized claims data (de-identified in accordance with HIPAA) including drug and related medical data collected by ESIC or provided to ESIC by Client for research; provider profiling; benchmarking, drug trend, and cost and other internal analyses and comparisons; clinical, safety and/or trend programs; ASES; or other ESIC business purposes, in all cases subject to applicable law.

4.4 Client Audits. Provided that this Agreement has been duly executed by Client and Client is current in the payment of invoices under this Agreement, Client may, upon no less than thirty (30) days prior written request, audit ESIC's provision of services hereunder, the scope of which shall be to verify regulatory compliance and/or compliance with the financial terms of this Agreement, on an annual basis consistent with the Audit Protocol set forth in Exhibit C. Client may use an independent third party auditor ("Auditor"), so long as such Auditor is not engaged in providing non-audit services for Client or otherwise that conflict with the scope or independent nature of the audit (as determined by ESIC acting reasonably and in good faith), and provided that Client's Auditor executes a mutually acceptable confidentiality

agreement. Any request by Client to permit an Auditor to perform an audit will constitute Client's direction and authorization to ESIC to disclose PHI to the Auditor.

4.5 Government Audits. ESIC and Client agree to allow the United States Department of Health and Human Services ("DHHS") and the Comptroller General, or their designees, the right to audit, evaluate, inspect books, contracts, medical records, patient care documentation and other records relating to covered services under this Agreement, as are reasonably necessary to verify the nature and extent of the costs of the services provided to EGWP Enrollees under this Agreement, for a period of the then current plan year, plus an additional ten (10) years following termination or expiration of the Amendment for any reason, or until completion of any audit, whichever is later.

4.6 Liability Insurance. Each party shall maintain such policies of general liability, professional liability and other insurance of the types and in amounts customarily carried by their respective businesses. Proof of such insurance shall be available upon request. ESIC agrees, at its sole expense, to maintain during the term of this Agreement or any renewal hereof, commercial general liability insurance, pharmacists professional liability insurance for the ESIC Mail Service and ESIC Specialty Pharmacies, and managed care liability with limits, excess of a self insured retention, in amounts of not less than $5,000,000 per occurrence, and in the aggregate. ESIC or its Affiliate does not maintain liability insurance on behalf of any Participating Pharmacy, but does contractually require such pharmacies to maintain a minimum amount of commercial liability insurance or, when deemed acceptable by ESIC or its Affiliate, to have in place a self-insurance program.

ARTICLE V – MONTHLY PREMIUMS; FEES; BILLING AND PAYMENT

5.1 Monthly Premiums.

(a) Collection of Monthly Premium Amounts. In accordance with the Medicare Drug Rules, ESIC hereby delegates the premium collection function to Client and hereby directs Client, on behalf of ESIC, to collect all monthly premium payments due from EGWP Enrollees for participation in the EGWP Benefit. In connection with ESIC's delegation of the premium collection function to Client under this Section 5.1(a), Client hereby agrees as follows:

(i) That in no event, including, but not limited to, nonpayment by ESIC of any amounts due by ESIC to Client pursuant to this Agreement, ESIC's insolvency, or ESIC's breach of this Agreement, will Client bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against an EGWP Enrollee or persons acting on his or her behalf for payments that are the financial responsibility of ESIC under this Agreement. The foregoing is not intended to prohibit Client from collecting premium amounts due by EGWP Enrollees for participation in the EGWP Benefit;

(ii) That the DHHS, the Comptroller General, or their designees shall have the right to inspect, evaluate, and audit pertinent contracts, books, documents, papers and records of the Client involving Client's collection of premium amounts from EGWP Enrollees, and that DHHS', the Comptroller General's, or their designees' right to inspect, evaluate, and audit any such pertinent information will exist through ten (10) years from the date of termination or expiration of this Agreement, or from the date of completion of any audit, whichever is later;

(iii) That if ESIC or CMS determines that Client is not performing the premium collection function in compliance with all applicable Medicare Drug Rules and Client is unable to cure such noncompliance within thirty (30) days following notice from ESIC or CMS, then ESIC may, at its sole discretion, either: (i) upon prior written notice to Client, revoke all or a portion of such delegated function as ESIC deems necessary to effectuate ESIC's ultimate responsibility to CMS for the performance of such delegated function under ESIC's contract with CMS; or (ii) negotiate an alternative remedy in lieu of revocation of delegation, so long as such remedy conforms to the requirements of the Medicare Drug Rules; and

(iv) That Client shall not further delegate or subcontract the performance of the premium collection function to a third party without ESIC's prior written consent, which consent will not be unreasonably withheld. If Client does further delegate or subcontract the performance of the premium collection function or any other delegated function under this Agreement, then Client agree that it shall: (i) amend its written agreement with such subcontractor or enter into a separate written agreement with such subcontractor that contains the terms, conditions, and provisions set forth in Schedule 5.1(a)(iv) attached hereto and incorporated herein by reference; and (ii) ensure that such subcontractor's performance of the premium collection function or other delegate function complies with the provision set forth on Schedule 5.1(a)(iv).

(b) Determination of Monthly Premium Amounts (if any) to be Subsidized by Client. In determining the amount of the EGWP Enrollee's monthly premium for participation in the EGWP Benefit that Client will subsidize, if any, Client shall make such determination subject to the following restrictions and any other restrictions that may be imposed by CMS:

(i) Client may subsidize different amounts for different classes of EGWP Enrollees provided such classes are reasonable and based on objective business criteria, such as years of service, business location, job category, and nature of compensation (e.g., salaried vs. hourly). Different classes cannot be based on eligibility for the Low Income Subsidy;

(ii) Client may not vary the premium subsidy for individuals within a given class of EGWP Enrollees;

(iii) Client may not charge an EGWP Enrollee more than the sum of his or her monthly beneficiary premium attributable to basic prescription drug coverage and 100% of the monthly beneficiary premium attributable to his or her supplemental prescription drug coverage, if any, and that by signing this Agreement, Client agrees and attests that it shall abide by such provisions in accordance with the requirements set forth in 42 CFR 423.504 and 423.505;

(iv) Client shall directly refund to the EGWP Enrollee (or shall allow ESIC to do so), within forty-five (45) days of original receipt from CMS of the Low Income Subsidy premium, the full premium subsidy amount up to the monthly beneficiary premium amount previously collected from the EGWP Enrollee; provided, however, that to the extent there are Low Income Subsidy premium amounts remaining after Client refunds the full monthly beneficiary premium amount to the EGWP Enrollee, then Client may apply that remaining portion of the Low Income Subsidy premium to the portion of the monthly premium paid by Client;

(v) If Client is not able to reduce the up-front monthly beneficiary premium as described in subsection (iv) above, Client shall directly refund to the EGWP Enrollee (or shall allow ESIC to do so), within forty-five (45) days of original receipt from CMS of the Low Income Subsidy premium, the full premium subsidy amount up to the monthly beneficiary premium amount previously collected from the EGWP Enrollee;

(vi) If the Low Income Subsidy amount for which an EGWP Enrollee is eligible is less than the portion of the monthly beneficiary premium paid by the EGWP Enrollee, then Client must communicate to the EGWP Enrollee the financial consequences for the beneficiary of enrolling in the EGWP Benefit as compared to enrolling in another Medicare Part D plan with a monthly beneficiary premium equal to or below the Low Income Subsidy amount; and

(vii) In the event of a change in an EGWP Enrollee's Low Income Subsidy status or an EGWP Enrollee otherwise becomes ineligible to receive the Low Income Subsidy after payment of the Low Income Subsidy premium amount to the EGWP Enrollee, and upon ESIC's receipt of notification from CMS that such Low Income Subsidy premium amount will be recovered from ESIC or withheld from future payments to ESIC, then ESIC in its sole discretion will invoice Client or set off from amounts otherwise owed from ESIC to Client, and in either case

Client shall reimburse ESIC for, all amounts deemed by CMS to be ineligible Low Income Subsidy premium payments with respect to the EGWP Enrollee.

(c) Reporting and Auditing of Premium Amounts; Non-Payment by EGWP Enrollees. Upon reasonable advance written notice, ESIC or its Affiliate shall have access to Client's records in order to audit the monthly premium amounts collected from EGWP Enrollees for the purposes of fulfilling reporting requirements under the Medicare Drug Rules or applicable state insurance laws related to collection of such premium amounts or to otherwise assess compliance with the Medicare Drug Rules in connection with the collection of such premium amounts. Any audits performed by ESIC or its Affiliate pursuant to this Section 5.1(c) will be at ESIC's expense. Client acknowledges and agrees that neither ESIC nor its Affiliate shall be responsible to Client for non-payment by any EGWP Enrollee of any monthly premium amount due by such EGWP Enrollee for participation in the EGWP Benefit. Client further acknowledges and agrees that in the event that either Client or ESIC (through any audit) determines that Client has collected a greater premium amount from an EGWP Enrollee than is due, that Client shall promptly refund any such overpayment to the EGWP Enrollee.

5.2 Billing. ESIC or its Affiliate will bill Client for, and Client shall pay ESIC or its Affiliate, (i) twice a month for the Claims Reimbursement Amount (as defined below) for such billing period; and (ii) twice a month for any Administrative Services Fees (as defined below) incurred by Client during the previous month (or earlier if not yet invoiced to Client). In addition, on a monthly basis, ESIC will bill Client for, and Client shall pay ESIC, the PMPM Fees (as defined below) due for such period, Claims Reimbursement Amount, PMPM Fees, and Administrative Services Fees to be referred to collectively as "Fees". For purposes of this Section 5.2:

(a) "Claims Reimbursement Amount" means, with respect to any period, the amount equal to:

(i) The aggregate amount of reimbursement due from Client to ESIC for Covered Drugs dispensed to EGWP Enrollees by the Pharmacies, and, if applicable, for EGWP Enrollee Submitted Claims during such period, including dispensing fees and all associated claims processing administrative fees, based on the reimbursement rates and pricing terms set forth on Exhibit B;

minus

(ii) Monthly beneficiary premiums paid to ESIC by EGWP Enrollees (but not including premiums collected by Client on ESIC's behalf pursuant to Section 5.1(b) to the extent such premium funds are not transferred by Client to ESIC), if any.

(b) "PMPM Fees" means, with respect to any period, all per EGWP Enrollee per month administrative fees ("PMPM Fees") as set forth on Exhibit B-2 for such period.

(c) "Administrative Services Fees" means the fees incurred by Client, if any, for ESIC's or its Affiliate's performance of the administrative services listed in the Administrative Fees table set forth on Exhibit B.

5.3 CMS Reimbursement.

(a) CMS Reimbursement Payment Terms. ESIC will pay Client an amount equal to the total amount paid to ESIC by CMS for the following: (1) advance direct subsidy monthly payments paid to ESIC, if any, by CMS with respect to EGWP Enrollees, (2) reinsurance subsidy payments, if any, paid to ESIC by CMS with respect to the EGWP Benefit, (3) low-income subsidy payments paid to ESIC by CMS, if any, with respect to EGWP Enrollees and subject to the provisions of Section 5.1(b) of this Agreement, and (4) any other reimbursement payment by CMS to ESIC, if any, for coverage provided to EGWP Enrollees under the EGWP Benefit for such period (each as further defined in the Medicare Drug Rules) (collectively, "CMS Reimbursement"). ESIC will pay amounts representing CMS Reimbursement,

allocated pursuant to the terms of this Agreement, on a monthly basis approximately forty-five (45) days after ESIC's receipt of the CMS Reimbursement from CMS. ESIC and its Affiliate retain all right, title and interest to any and all actual CMS Reimbursement received from CMS, except that ESIC shall pay Client amounts equal to the CMS Reimbursement amounts allocated to Client, as specified in this Agreement, from ESIC's or its Affiliate's general assets (neither Client nor its EGWP Enrollees retain any beneficial or proprietary interest in ESIC's or its Affiliate's general assets). Client acknowledges and agrees that neither it nor its EGWP Enrollees shall have a right to interest on, or the time value of, any CMS Reimbursement payments received by ESIC or its Affiliates during the collection period or moneys payable under this Section. No CMS Reimbursements shall be paid until this Agreement is executed by Client. ESIC shall have the right to apply Client's allocated CMS Reimbursement amount to unpaid Fees and shall have the right to delay payment of CMS Reimbursement to allow for final adjustments upon termination of this Agreement.

(b) CMS Reimbursement Reporting. At least annually, ESIC will provide Client an accounting of all CMS Reimbursement received by ESIC from CMS pursuant to the Medicare Drug Rules with respect to the EGWP Benefit.

5.4 CMS-Required Reconciliation / Reinsurance.

(a) End-of-Year Reconciliation. The parties acknowledge that pursuant to the Medicare Drug Rules, approximately eleven (11) months after the conclusion of each plan year, CMS will reconcile payment year disbursements, including, but not limited to, CMS Reimbursements (as defined above) and Coverage Gap Discount Payments (as defined below), with updated enrollment and health status data, actual low-income cost-sharing costs, actual allowable reinsurance costs, and other pertinent information. Upon any payment adjustments made by CMS as a result of such reconciliation the following shall occur: (i) if ESIC receives any additional payments from CMS as a result of previous underpayments discovered during the reconciliation, ESIC will pay amounts equal to such amounts to Client subject to the remaining terms of this Agreement; and (ii) with respect to any amounts requested, recovered or withheld by CMS as a result of previous overpayments discovered during the reconciliation, if ESIC has paid amounts to Client pursuant to this Agreement for CMS Reimbursement received by ESIC and CMS determines during the reconciliation process that such CMS Reimbursement has been overpaid to ESIC, Client shall repay to ESIC such amounts previously paid by ESIC. All such payments resulting from a CMS reconciliation will be due and owing within forty-five (45) days from the date of ESIC's receipt of the reconciliation results.

(b) End-of-Year Reinsurance Payments. The parties acknowledge that pursuant to the Medicare Drug Rules, approximately eleven (11) months after the conclusion of each plan year and after CMS' end-of-year reconciliation described in subsection (a) immediately above, CMS will make final payment to ESIC for reinsurance for the immediately preceding coverage year based upon CMS obtaining all information necessary to determine the amount of the reinsurance payment. No later than forty five (45) days after ESIC's receipt of such reinsurance payment, if any, ESIC agrees to pay an amount equal to such reinsurance payment received by ESIC to Client subject to the remaining terms of this Agreement; provided, however, that if CMS subsequently recovers any such reinsurance payments from ESIC due to a CMS reconciliation or other process described in the Medicare Drug Rules, then Client shall be obligated to repay to ESIC such amounts previously paid to Client.

(c) Plan-to-Plan Reconciliation. The parties acknowledge that the Medicare Drug Rules provide ESIC with a process through which to coordinate EGWP Enrollees' prescription drug benefits with other providers of prescription drug coverage. ESIC will perform such plan-to-plan coordination and any related reconciliation; provided, that within forty-five (45) days after completion of such coordination or reconciliation process, ESIC shall pay to Client an amount equal to payments recovered for the EGWP Benefit, but at the same time ESIC shall have a right to recoup from Client any amount which ESIC is obligated to pay to any other prescription drug plan pursuant to a plan-to-plan reconciliation.

5.5 Payment. Client shall pay all Fees to ESIC by wire or ACH transfer, debit or other electronic method within two (2) business days from the date of Client's receipt of the ESIC invoice. Client shall be

responsible for all costs of collection and shall reimburse ESIC for such costs and expenses, including reasonable attorneys' fees. Any amounts not paid by the due date thereof shall bear interest at the rate of prime lending rate as published by *The Wall Street Journal* plus two percent (2%) per annum, or, if lower, the highest interest rate permitted by law. If Client disputes any item on any invoice, Client shall state the amount in dispute in writing within thirty (30) days of the date of the invoice. Client shall pay the full amount invoiced and shall notify ESIC of the disputed amount. ESIC also shall have the option to retain amounts owed to Client based on CMS Reimbursement and Rebates with respect to EGWP Enrollee utilization to apply against unpaid Fees.

5.6 Manufacturer Coverage Gap Discount.

(a) Pursuant to its CMS contract, ESIC has agreed to administer for EGWP Enrollees at point-of-sale the Coverage Gap Discount authorized by section 1860D-14A of the Social Security Act. In connection with the Coverage Gap Discount, CMS will coordinate the collection of discount payments from manufacturers, and payment to ESIC, through a CMS contractor (the "Coverage Gap Discount Payments"). Subject to Section 5.4(a) above, ESIC agrees to periodically remit to Client amounts equal to 100% of the Coverage Gap Discount Payments received by ESIC within forty-five (45) days following ESIC's receipt of such Coverage Gap Discount Payments. ESIC and its Affiliate retain all right, title and interest to any and all actual Coverage Gap Discount Payments received from CMS, except that ESIC shall pay Client amounts equal to the Coverage Gap Discount Payments amounts allocated to Client, as specified in this Agreement, from ESIC's or its Affiliate's general assets (neither Client nor its EGWP Enrollees retain any beneficial or proprietary interest in ESIC's or its Affiliate's general assets). Client acknowledges and agrees that neither it nor its EGWP Enrollees shall have a right to interest on, or the time value of, any Coverage Gap Discount Payments received by ESIC or its Affiliates during the collection period or moneys payable under this Section. No Coverage Gap Discount Payments shall be paid until this Agreement is executed by Client. ESIC shall have the right to apply Client's allocated Coverage Gap Discount Payments amount to unpaid Fees and shall have the right to delay payment of Coverage Gap Discount Payments to allow for final adjustments upon termination of this Agreement. Notwithstanding anything contained in this Section 5.6, Client shall retain all right, title, and interest to the amounts that ESIC is contractually obligated to pay Client hereunder, and failure by ESIC to pay such amounts will constitute a breach of this Agreement.

(b) If the EGWP Benefit administered by ESIC under this Agreement for Client includes EGWP Plus design elements, then the Coverage Gap Discount will be coordinated with the Client Group Health Plan consistent with Medicare Part D Rules.

5.7 Deposit. If, at any time: (i) Client has two or more invoices past due and outstanding, or (ii) ESIC has reasonable grounds to believe Client may be delinquent in payment of fees based on Client's financial data (e.g., persistent negative cash flow, bankruptcy or insolvency), ESIC may require that the Client provide to ESIC a one (1) month deposit amount using the last three (3) months of billing history as the basis for determining the one (1) month deposit amount or, if three (3) months billing history is not available, the most recent month of billing history as the basis. ESIC will retain the deposit until the earlier of termination of this Agreement (following any run-off period), or six (6) consecutive months of timely payments of all Fees following submission of the deposit, and may apply the deposit to delinquent fees until return of the deposit.

ARTICLE VI - CONFIDENTIALITY

6.1 Proprietary Information. Each party agrees that information of the other party, including, but not limited to the following, shall constitute confidential and proprietary information ("Proprietary Information") of the other party unless otherwise public: (a) with respect to ESIC and its Affiliate: reporting and system applications, (web-based and other media), and system formats, databanks, clinical and formulary management operations and programs, fraud, waste and abuse tools and programs, and manuals, anonymized claims data (de-identified in accordance with HIPAA), ESIC Specialty Pharmacy and Mail Service Pharmacy data, information concerning Rebates, prescription drug evaluation criteria, drug choice management, drug pricing information, and Participating Pharmacy agreements; and (b) with

respect to Client: Participating Pharmacy Client and EGWP Enrollee identifiable health information and data, Client information files, business operations and strategies. Neither party shall use the other's Proprietary Information or disclose it to any third party, at any time during or after termination of this Agreement, except as specifically contemplated by this Agreement, upon prior written consent or as required by the Medicare Drug Rules or other applicable law. Upon termination of this Agreement, each party shall cease using the other's Proprietary Information, and all such information shall be returned or destroyed upon the owner's direction.

6.2 Non-Access to ESIC's or its Affiliate's Systems. Client will not, and will not permit any third party acting on Client's behalf to, access, attempt to access, test or audit ESIC's or its Affiliate's systems or any other system or network connected to ESIC's or its Affiliate's systems. Without limiting the foregoing, Client will not: (i) access or attempt to access any portion or feature of ESIC's or its Affiliate's systems, by circumventing such systems' access control measures, either by hacking, password "mining" or any other means; or (ii) probe, scan, audit or test the vulnerability of such systems, nor breach the security or authentication measures of such systems.

ARTICLE VII - COMPLIANCE WITH LAW; FINANCIAL DISCLOSURE

7.1 Compliance with Law; Change in Law. ESIC and Client hereby agree to perform their respective obligations under this Agreement in a manner that is consistent with and complies with the Medicare Drug Rules and with ESIC's contractual obligations under its contract with CMS. In addition, each party shall be responsible for ensuring its compliance with all federal, state, and local laws and regulations applicable to its business, including maintaining any necessary licenses and permits. Client shall be responsible for any government or regulatory charges and taxes imposed upon or related to the services provided hereunder. If the scope of ESIC's duties under this Agreement is made materially more burdensome or expensive due to a change in federal, state or local laws or regulations or the interpretation thereof, including actions by CMS, the parties shall negotiate an appropriate modification of the services and/or an adjustment to the Fees paid to ESIC. If the parties cannot agree on a modification or adjusted Fees, then either party may terminate this Agreement on thirty (30) days prior written notice to the other. In addition, if any change in Federal or applicable state law or regulation (including the interpretation of existing laws or regulations by a court or administrative agency) occurs during the term of this Agreement, and in consequence thereof ESIC is required to increase payments for Covered Drugs to Participating Pharmacies in the applicable jurisdiction under its provider agreements, the Pharmacy Reimbursement Rates set forth in Exhibit B-1 will be increased by the same amount upon prior notice to Client.

7.2 Disclosure of Certain Financial Matters. Client acknowledges and agrees that ESIC will contract with its Affiliate, ESI, to provide the pharmacy benefit management services contemplated by this Agreement on ESIC's behalf. In addition to the administrative fees paid to ESIC by Client, ESIC and ESI's wholly-owned subsidiaries or Affiliates derive revenue in one or more of the ways as further described in the ESI Financial Disclosure to PBM Clients set forth in Exhibit D hereto ("Financial Disclosure"), as updated by ESI from time to time. Unlike the administrative fees, the revenues described in the Financial Disclosure are not direct or indirect compensation to ESIC from Client for services rendered to Client or the Client Group Health Plan under this Agreement. In negotiating any of the fees and revenues described in the Financial Disclosure, ESI and ESI's wholly-owned subsidiaries and Affiliates act on their own behalf, and not for the benefit of or as agents for Client, EGWP Enrollees or the EGWP Benefit. Except for the Rebate amounts set forth in Exhibit B, if any, Client acknowledges and agrees that ESIC and ESIC's wholly-owned subsidiaries and Affiliates retain all interest, revenues, any or all Rebates and Manufacturer Administrative Fees not payable to Client, and all Participating Pharmacy discounts, if any, in addition to any administrative and other fees paid by Client. Client acknowledges for itself and its EGWP Enrollees that, except as may be expressly provided herein, neither it nor any EGWP Enrollee has a right to receive, or possesses any beneficial interest in, any such discounts or payments.

ARTICLE VIII - TERM AND TERMINATION; DEFAULT AND REMEDIES

8.1 Term. The initial term of this Agreement (the "Initial Term") shall commence on the Execution Date, and coverage of EGWP Enrollees under the EGWP Benefit shall begin as of January 1, 2015 (the "Effective Date"). Unless earlier terminated as provided herein, the Initial Term shall continue for two (2) years until December 31, 2016 (the "Initial Term"). Thereafter, this Agreement shall automatically renew for successive one (1) year renewal terms, unless and until either party notifies the other of its intent not to renew the Agreement in writing at least ninety (90) days prior to the expiration of the then current term. This Agreement may be terminated earlier during the Initial Term or any renewal terms pursuant to Section 8.2 below.

8.2 Termination.

(a) Breach or Default. Either party may give the other written notice of a material, substantial and continuing breach of this Agreement. If the breaching party has not cured said breach within thirty (30) days from the date such notice was sent, this Agreement may be terminated at the option of the non-breaching party. If the amount of time commercially reasonable for the breach to be cured is longer than thirty (30) days, this Agreement may not be terminated by the non-breaching party pursuant to this provision until such commercially reasonable period of time has elapsed; provided, however, that in no event shall such period exceed sixty (60) days.

(b) Termination of ESIC's Contract with CMS. If at any time throughout the term of this Agreement, CMS either does not renew its contract with ESIC or terminates its contract with ESIC such that ESIC may no longer provide services as a PDP Sponsor under the Medicare Drug Rules, then this Agreement shall be automatically terminated conterminously with such CMS contract termination.

(c) Non-Payment. To the extent permitted by the Medicare Drug Rules and other applicable laws, ESIC and its Affiliate may terminate or suspend their performance hereunder and cease providing or authorizing provision of Covered Drugs to EGWP Enrollees upon forty-eight (48) hours written notice if Client fails to pay ESIC or provide a deposit, if required, in accordance with the terms of this Agreement. ESIC also may offset amounts overdue to ESIC with CMS Reimbursement amounts, Rebate amounts or other fees owed, if any, by ESIC to Client. To the extent permitted by law, ESIC may suspend Mail Service Pharmacy and/or ESIC Specialty Pharmacy services to any EGWP Enrollee who is in default of payment of any Copayments or deductibles to the applicable Pharmacy.

(d) Insolvency; Regulatory Action. To the extent permitted by applicable law, ESIC may terminate this Agreement, or suspend performance hereunder, upon the insolvency of Client, and Client may terminate this Agreement upon the insolvency of ESIC. The "insolvency" of a party shall mean the filing of a petition commencing a voluntary or involuntary case (if such case is an involuntary case, then only if such case is not dismissed within sixty (60) days from the filing thereof) against such party under the United States Bankruptcy Code or applicable state law; a general assignment by such party for the benefit of creditors; the inability of such party to pay its debts as they become due; such party's seeking or consenting to, or acquiescence in, the appointment of any trustee, receiver or liquidation of it, or any material part of its property; or a proceeding under any state or federal agency declaration or imposition of receivership, composition, readjustment, liquidation, insolvency, dissolution, or like law or statute, which case or proceeding is not dismissed or vacated within sixty (60) days. Notwithstanding the preceding, in the event of Client's insolvency or other cessation of operations, ESIC agrees to require Participating Pharmacies to continue to provide prescription drug services to EGWP Enrollees if required by the Medicare Drug Rules and all other applicable federal and state laws relating to insolvency or other cessation of operations or termination. Nothing herein shall be interpreted to require ESIC or Pharmacies to provide services without being paid for Covered Drugs or Prescription Drug Services.

8.3 Remedies.

(a) Remedies Not Exclusive. A party's right to terminate this Agreement under Article VIII shall not be exclusive of any other remedies available to the terminating party under this Agreement or otherwise, at law or in equity.

(b) Force Majeure. Neither party shall lose any rights under this Agreement or be liable in any manner for any delay to perform its obligations under this Agreement that are beyond a party's reasonable control, including, without limitation, any delay or failure due to strikes, labor disputes, riots, earthquakes, storms, floods or other extreme weather conditions, fires, explosions, acts of terrorism, epidemics or pandemics, embargoes, war or other outbreak of hostilities, government acts or regulations, the failure or inability of carriers, suppliers, delivery services, or telecommunications providers to provide services necessary to enable a party to perform its obligations hereunder, or any other reason where failure to perform is beyond the party's reasonable control, and is not caused by the negligence, intentional conduct or misconduct of the defaulting party; provided, however, that this clause may not be invoked to excuse a party's payment obligations hereunder.

(c) Limitation of Liability. Except for the indemnification obligations set forth in Section 8.3(d), each party's liability to the other hereunder shall in no event exceed the actual proximate losses or damages caused by breach of this Agreement. In no event shall either party or any of their respective affiliates, directors, employees or agents, be liable for any indirect, special, incidental, consequential, exemplary or punitive damages, or any damages for lost profits relating to a relationship with a third party, however caused or arising, whether or not they have been informed of the possibility of their occurrence.

(d) Indemnification.

(i) ESIC will indemnify and hold Client harmless from and against any loss, cost, damage, expense or other liability, including, without limitation, reasonable costs and attorney fees ("Costs") incurred in connection with any and all third party claims, suits, investigations or enforcement actions, including claims of infringement of any intellectual property rights ("Claims") which may be asserted against, imposed upon or incurred by Client and arising as a result of (A) ESIC's negligent acts or omissions or willful misconduct, (B) ESIC's breach of this Agreement, (C) ESIC's unauthorized use or disclosure of EGWP Enrollee PHI, or (D) ESIC's breach of any representation or warranty made by ESIC under this Agreement.

(ii) Client will indemnify and hold ESIC harmless from and against any Costs for Claims which may be asserted against, imposed upon or incurred by ESIC and arising as a result of (A) Client's negligent acts or omissions or willful misconduct, (B) Client's breach of this Agreement, (C) Client's, the Client Group Health Plan's, or any Auditor's unauthorized use or disclosure of EGWP Enrollee PHI, or (D) Client's breach of any representation or warranty made by Client under this Agreement.

(iii) As a condition of indemnification, the party seeking indemnification shall notify the indemnifying party in writing promptly upon learning of any Claim for which indemnification may be sought hereunder, and shall tender the defense of such claim to the indemnifying party. No party shall indemnify the other with respect to any claim settled without the written consent of the other.

8.4 Obligations Upon Termination. Client or its agent shall pay ESIC in accordance with this Agreement for all claims for Covered Drugs dispensed and services provided to Client and EGWP Enrollees on or before the later of: (i) the effective date of termination, or (ii) the final date that all EGWP Enrollees have been transitioned to a new Part D plan, as applicable (the "Termination Date"). Claims submitted by Participating Pharmacies or EGWP Enrollee Submitted Claims filed with ESIC after the Termination Date shall be processed and adjudicated in accordance with a mutually determined run-off plan. The parties shall cooperate regarding the transition of Client and its EGWP Enrollees to a successor PDP Sponsor in accordance with all applicable Medicare Drug Rules and ESIC will take all

reasonable steps to mitigate any disruption in service to EGWP Enrollees. Notwithstanding the preceding, ESIC may (a) delay payment of any final CMS Reimbursement amounts, Rebate amounts or other amounts due Client, if any, to allow for final reconciliation of any outstanding amount owed by Client to ESIC, or (b) request that Client pay a reasonable deposit in the event ESIC is requested to process after the Termination Date claims incurred on or prior to such date.

8.5 Survival. The parties' rights and obligations under Sections 3.7 and 3.8(f); Articles V, VI and VII; and Sections 8.3, 8.4, and 8.5 shall survive the termination of this Agreement for any reason.

ARTICLE IX - MISCELLANEOUS

9.1 Notice. Any notice or document required or permitted to be delivered pursuant to this Agreement must be in writing and shall be deemed to be effective upon mailing and must be either (a) deposited in the United States Mail, postage prepaid, certified or registered mail, return receipt requested, or (b) sent by recognized overnight delivery service, in either case properly addressed to the other party at the address set forth below, or at such other address as such party shall specify from time to time by written notice delivered in accordance herewith:

ESIC: Express Scripts Insurance Co.
Attn: President
One Express Way
St. Louis, Missouri 63121
with copy to: General Counsel
Fax: 800-417-8163

Client: City of Bridgeport
Attn: Rich Weiner
45 Lyon Terrace
Bridgeport, CT 06604

9.2 Independent Parties. No provision of this Agreement is intended to create or shall be construed to create any relationship between ESIC or its Affiliate and Client other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither party, nor any of their respective representatives, shall be construed to be the partner, agent, fiduciary, employee, or representative of the other and neither party shall have the right to make any representations concerning the duties, obligations or services of the other except as consistent with the express terms of this Agreement or as otherwise authorized in writing by the party about which such representation is asserted.

9.3 Assignment and Subcontracting. Client acknowledges and agrees that ESIC may perform certain services hereunder (e.g., mail service pharmacy and specialty pharmacy services) through one or more ESIC subsidiaries or Affiliates. ESIC is responsible and liable for the performance of its subsidiaries and Affiliates in the course of their performance of any such service. To the extent that ESIC subcontracts any PBM Service under this Agreement to a third party, ESIC is responsible and liable for the performance of any such third party. In addition, ESIC may contract with third parties to provide information technology support services and other ancillary services, which services are not PBM Services hereunder, but rather are services that support ESIC's conduct of its business operations. This Agreement will be binding upon, and inure to the benefit of and be enforceable by, the respective successors and permitted assigns of the parties hereto.

9.4 Integration. This Agreement and any Exhibits hereto constitute the entire understanding of the parties hereto and supersede any prior oral or written communication between the parties with respect to ESIC's provision of Prescription Drug Services to Client and EGWP Enrollees as a PDP Sponsor of the EGWP Benefit under the Medicare Drug Rules. The parties hereby expressly agree that this Agreement and the Commercial Agreement are separate and independent agreements that stand on their own and

that, unless otherwise specifically set forth in this Agreement, no term or condition in one such agreement shall have any connection to or bear any force or effect on the other agreement.

9.5 Amendments. No modification, alteration, or waiver of any term, covenant, or condition of this Agreement shall be valid unless in writing and signed by both parties or the agents of the parties who are authorized in writing.

9.6 Choice of Law. Unless governed by the Medicare Drug Rules or applicable state insurance laws, this Agreement shall be construed and governed in all respects according to the laws in the State of Missouri, without regard to the rules of conflict of laws thereof.

9.7 Waiver. The failure of either party to insist upon the strict observation or performance of this Agreement or to exercise any right or remedy shall not be construed as a waiver of any subsequent breach of this Agreement or impair or waive any available right or remedy.

9.8 Taxes and Assessments. Any applicable sales, use, excise, or other similarly assessed and administered tax, surcharge, or fee imposed on items dispensed, or services provided hereunder, or the fees or revenues generated by the items dispensed or services provided hereunder, or any other amounts ESIC or one or more of its subsidiaries or affiliates may incur or be required to pay arising from or relating to ESIC's or its subsidiaries' or affiliates' performance of services as a pharmacy benefit manager, third-party administrator, or otherwise in any jurisdiction, will be the sole responsibility of Client or the EGWP Enrollee. If ESIC is legally obligated to collect and remit, or to incur or pay, any such sales, use, excise, or other similarly assessed and administered tax, surcharge, or fee in a particular jurisdiction, such amount will be reflected on the applicable invoice or subsequently invoiced at such time as ESIC becomes aware of such obligation or as such obligation becomes due. ESIC reserves the right to charge a reasonable administrative fee for collection and remittance services provided on behalf of Client.

9.9 Severability. In the event that any provision of this Agreement is invalid or unenforceable, such invalid or unenforceable provision shall not invalidate or affect the other provisions of this Agreement which shall remain in effect and be construed as if such provision were not a part hereof; provided that if the invalidation or unenforceability of such provision shall, in the opinion of either party to the Agreement, have a material effect on such party's rights or obligations under this Agreement, then the Agreement may be terminated by such party upon thirty (30) days written notice by such party to the other party.

9.10 Third Party Beneficiary Exclusion. This Agreement is not a third party beneficiary contract, nor shall this Agreement create any rights on behalf of EGWP Enrollees as against ESIC. Client and ESIC reserve the right to amend, cancel or terminate this Agreement without notice to, or consent of, any EGWP Enrollee.

9.11 Trademarks. Each party acknowledges each other party's sole and exclusive ownership of its respective trade names, commercial symbols, trademarks, and service marks, whether presently existing or later established (collectively "Marks"). No party shall use the other party's Marks in advertising or promotional materials or otherwise without the owner's prior written consent.

9.12 Debarment. ESIC or its Affiliate shall not knowingly employ, or subcontract with, an individual or an entity that employs or contracts with an individual, who is excluded from participation in Medicare under section 1128 or 1128A of the Act or from participation in a Federal health care program for the provision of health care, utilization review, medical social work, or administrative services.

9.13 Signatures. Any documents required to implement the terms of this Agreement shall be signed by a representative of each party with legal authority to bind the entity.

9.14 Federal Funds. The parties acknowledge that information provided in connection with this Agreement is used for purposes of obtaining federal funds and, as such, the parties are subject to certain laws that are applicable to individuals and entities receiving federal funds.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year below set forth.

EXPRESS SCRIPTS INSURANCE CO.

By:_____

Printed Name: _____

Title:_____

Date:_____

CITY OF BRIDGEPORT

By: _____

Printed Name:_____

Title:_____

Date:_____

Federal ID Number:_____

EXHIBIT A

EGWP BENEFIT

(Attached hereto by reference)

SCHEDULE 5.1(a)(iv)

If Client engages a subcontractor ("Subcontractor") to perform any of the functions that ESIC has delegated to Client to perform under this Agreement, Client shall do so pursuant to a written agreement that includes the following terms, conditions, and provisions:

1. The agreement between Client and Subcontractor (the "Subcontract") must clearly identify the parties to the Subcontract.

2. The Subcontract must describe the functions that are being delegated to and performed by the Subcontractor.

3. The Subcontract must describe the manner in which Client will monitor the performance of the Subcontractor on an ongoing basis; specifically to monitor compliance with the Medicare Drug Rules.

4. The Subcontract must describe any reporting requirements that the Subcontractor has to Client.

5. The Subcontract must describe the payment that the Subcontractor will receive for performance under the Subcontract.

6. The Subcontractor must agree that the United States Department of Health and Human Services ("DHHS"), the Comptroller General, or their designees have the right to inspect, evaluate, and audit any pertinent contracts, books, documents, papers and records (including medical records and documentation) of the Vendor involving transactions related to the Centers for Medicare and Medicaid Services' ("CMS") contract with ESIC for a period of ten (10) years following the expiration or termination of the Subcontract or the date of any audit completion, whichever is later.

7. The Subcontractor must agree pursuant 42 CFR § 423.505(i)(3)(iv) to produce upon request by CMS, or its designees, any books, contracts, records, including medical records and documentation of the PDP Sponsor, relating to the Part D program, to either the PDP Sponsor to provide to CMS, or directly to CMS or its designees.

8. The Subcontractor must agree that in no event, including, but not limited to, nonpayment by Client, Client's insolvency, or breach of the Subcontract, will the Subcontractor bill, charge, collects a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against a beneficiary of Client or persons acting on his or her behalf for services provided by the Subcontractor pursuant to the Subcontract.

9. The Subcontract must: (i) specify that the Subcontractor will perform all services under the Subcontract in a manner that is consistent with and that complies with ESIC's contractual obligations under its contract with CMS; (ii) specify that the Subcontractor agrees to comply with all applicable federal laws, regulations, and CMS instructions; and (iii) provide for revocation of the Subcontractor's delegated activities and reporting responsibilities or specify other remedies in instances when CMS, Client, or ESIC determine that the Subcontractor has not performed satisfactorily.

10. The Subcontract must require the Subcontractor to agree to comply with state and federal privacy and security requirements, including the confidentiality and security provisions stated in 42 CFR §423.136.

11. The Subcontract must include an acknowledgment by the parties that information provided in connection with the Subcontract is used for purposes of obtaining federal funds.

12. If the Subcontract permits the Subcontractor to use a subcontractor to perform any of the services delegated to it under the Subcontract, the Subcontract must require that the Subcontractor include all of the above provisions in a written agreement with such subcontractor.

13. The Subcontract must be signed by a representative of the Subcontractor with legal authority to bind the Subcontractor.

14. The Subcontract must contain a representation by Client and the Subcontractor that they shall not knowingly employ, or subcontract with, an individual or an entity that employs or contracts with an individual, who is excluded from participation in Medicare under section 1128 or 1128A of the Act or from participation in a Federal health care program for the provision of health care, utilization review, medical social work, or administrative services.

15. The Subcontract must contain language clearly indicating that the first tier, downstream, or related entity has agreed to participate in the PDP Sponsor's Medicare Prescription Drug Benefit program. This requirement is not applicable for a network pharmacy if the existing contract would allow participation in this program.

16. The Subcontract must be for a term of at least the one-year contract period for which the PDP Sponsor's Medicare Part D Application is submitted. However, where the Subcontract is for services or products to be used in preparation for the next contract year's Part D operations (marketing, enrollment), the initial term of such Subcontract must include this period of performance (e.g., contracts for enrollment-related services must have a term beginning no later than November 15 extending through the full contract year ending on December 31 of the next year).

17. Insofar as the Subcontractor establishes the pharmacy network or select pharmacies to be included in the network, the Subcontractor must agree: i) pursuant 42 CFR § 423.505(i)(5) that the PDP Sponsor retains the right to approve, suspend, or terminate any arrangement with a pharmacy; ii) pursuant 42 CFR §423.505(i)(3)(vi) and consistent with 42 CFR § 423.520 to issue, mail, or otherwise transmit payment of all clean claim to such pharmacies (excluding long-term care and mail order) submitted by or on behalf of pharmacies within 14 days for electronic claims and within 30 days for claims submitted otherwise; iii) pursuant 42 CFR § 423.505(i)(3)(viii)(B) and 42 CFR § 423.505(i)(3)(viii)(A) that if a prescription drug pricing standard is used for reimbursement, Subcontractor will identify the source used by the PDP Sponsor for the prescription drug pricing standard of reimbursement and agree to a contractual provision that updates to such a standard occur not less frequently than once every 7 (seven) days beginning with an initial update on January 1 of each year, to accurately reflect the market price of acquiring the drug.

EXHIBIT B

PHARMACY REIMBURSEMENT RATES
ADMINISTRATIVE SERVICES AND FEES
STANDARD REPORTING
REBATES

ESIC shall be Client's exclusive provider of EGWP Services for Client's Group Health Plans offering a prescription benefit. The financial terms set forth in Exhibit B are conditioned on such exclusive arrangement and all other specified conditions expressly incorporated in such exhibits, including, but not limited to the adoption by Client of the specified network, qualifying co-payment structures, Formulary, and no Enrollees in a 100% Copayment benefit plan (if applicable), and no greater than ten percent of total utilization for all Plans attributable to a consumer driven health plan (CDHP). In the event one or more of the following occurs (whether between the date of the Cost Proposal and the Effective Date, or during the Term), ESIC will have the right, upon notice, to make an equitable adjustment to the rates, administrative fees administrative fees and/or Rebates, solely as necessary to return ESIC to its contracted economic position as of the effective date of such event:

(a) There is a material change in: (i) the conditions or assumptions stated in this Agreement; or (ii) the size, demographics or gender distribution of Client's EGWP Enrollees compared to data provided by Client; and/or

(b) Client changes its Formulary, benefit designs, implements OTC plans, clinical or trend programs or otherwise takes an action that has the effect of lowering the amount of Rebates earned hereunder or materially impacting any guarantee; and/or

(c) Client elects to use on-site clinics or pharmacies to dispense prescription drugs to EGWP Enrollees which materially reduces Rebates and/or the number of Covered Drug claims submitted on-line; and/or

(d) More than 5% of claims are incurred in Massachusetts, Hawaii, Alaska, or Puerto Rico; and/or

(e) Rebate revenue is materially decreased because Brand Drugs move off-patent to generic status or due to a Change in Law.

The following are incorporated into Exhibit B:

Exhibit B-1

Pharmacy Reimbursement Rates

Exhibit B-2

Administrative and Clinical Program Fees

Exhibit B-3

Rebates

Exhibit B-1

Pharmacy Reimbursement Rates

Client will pay to ESIC the amounts set forth below, net of applicable Copayments. The application of brand and generic pricing below may be subject to certain "dispensed as written" (DAW) protocols and Client Group Health Plan design and coverage policies for adjudication and EGWP Enrollee Copayment purposes. Sales or excise tax or other governmental surcharge, if any, will be the responsibility of Client.

A Member's Copayment charged for a Covered Drug will be the lesser of the applicable Copayment, AWP discount or U&C.

I. Participating Pharmacy Reimbursement Rates (Does Not Apply to Specialty Products)

Network	Medicare Network
Ingredient Cost - Brand 1-34 days' supply	Lesser of AWP – 15.00% or U&C
Ingredient Cost - Brand 35-90 days' supply	Lesser of AWP – 19.00% or U&C
Ingredient Cost – Generic	Lesser of AWP – 15.00%, MRA or U&C
Ingredient Cost - Compound Drugs	Lesser of U&C or combined AWP plus applicable service fee
Brand Dispensing Fee/Rx	$1.20
Generic Dispensing Fee/Rx	$1.20
Administrative Fee/Rx	$0.00

Notwithstanding the preceding, ESI will guarantee an average aggregate annual discount for Generic Drugs, as set forth in the table in Section III below.

II. Mail Pharmacy Reimbursement Rates (Does Not Apply to Specialty Products).

Ingredient Cost - Brand Drugs	AWP – 25.50%
Ingredient Cost – Generic Drugs	AWP - 25.50% or, if lower, MRA
Brand Dispensing Fee/Rx*	$0.00
Generic Dispensing Fee/Rx*	$0.00
Administrative Fee/Rx	$0.00

* Dispensing Fees are inclusive of shipping and handling. If carrier rates (i.e., U.S. mail and/or applicable commercial courier services) increase during the term of this Agreement, the Dispensing Fee will be increased to reflect such increase(s).

Notwithstanding the preceding, ESI will guarantee an average aggregate annual discount for Generic Drugs, as set forth in the table in Section III below.

III. Pricing Guarantees.

Ingredient Cost Guarantee. ESI will guarantee an average aggregate annual discount as reflected below on Sponsor utilization to be calculated as follows:

> [1-(total discounted AWP ingredient cost (excluding dispensing fees and claims with ancillary charges, and prior to application of Copayments) of applicable Prescription Drug Claims for the annual period divided by total undiscounted AWP ingredient cost (both amounts will be calculated as of the date of adjudication) for the annual period)]. Discounted ingredient cost will be the lesser of MRA (as applicable), U&C or AWP

discount adjudication methodology.

Type of Guarantee	Participating Pharmacy 1-34 days' supply	Participating Pharmacy 35-90 days' supply	Mail Service Pharmacy	Claims Excluded
Brand	AWP - 15.00%	AWP -19.00%	25.50%	OTC, compounds, products subject to patent actions, long term care, single source generic drugs, Member Submitted Claims, Subrogation Claims, vaccines, Specialty Products, biosimilar products, and products filled through in-house or 340b pharmacies (if applicable)
Generic	AWP – 76.00%		AWP – 81.50%	OTC, compounds, products subject to patent actions, long term care, single source generic drugs, Member Submitted Claims, Subrogation Claims, vaccines, Specialty Products, biosimilar products, and products filled through in-house or 340b pharmacies (if applicable)

Guarantees will be measured and reconciled on an annual basis within 90 days of the end of each contract year. The above guarantees are annual guarantees - if this Agreement is terminated prior to the completion of the then current contract year (hereinafter, a "Partial Contract Year"), then the above guarantees will not apply for such Partial Contract Year. To the extent Sponsor changes its benefit design or Formulary during the term of the Agreement, the guarantee will be equitably adjusted if there is a material impact on the discount achieved. Subject to the remaining terms of this Agreement, ESI will pay the difference attributable to any shortfall between the actual result and the guaranteed result; provided, however, that ESI may use an excess achieved in one or more of the above guarantees to make up for, and offset, a shortfall in another guarantee above within the same channel.

IV. Specialty Products

(a) Specialty Products shall be available through ESI Specialty Pharmacy and at Participating Pharmacies for the Specialty Product List for ESI Specialty Pharmacy – Open, and Participating Pharmacy reimbursement rates.

	Ingredient Cost	Dispensing Fee
Open ESI Specialty Pharmacy	Open Specialty Product List Lesser of AWP discount or MRA	$0.00
Participating Pharmacy Specialty Products	Participating Pharmacy Specialty Product List Lesser of AWP discount, U&C or MRA	$0.00

(b) ESI Specialty Pharmacy or ESIC will be entitled to charge a reasonable fuel surcharge fee to cover fuel surcharges imposed by carriers in connection with the delivery of Specialty Products by ESI Specialty Pharmacy. In no event will the Mail Service Pharmacy or Participating Pharmacy pricing specified in the Agreement apply to Specialty Products.

(c) ESIC will notify Client no more frequently than monthly of new Specialty Products that are introduced to the market and added to the Specialty Product List on or after the Effective Date of this Agreement with their applicable Specialty Product List reimbursement rates ("Notice"). The parties agree as follows:

(i) If Client has expressly excluded a specific therapy class or product, Specialty Products in such excluded classes will automatically be deemed excluded from coverage and

will reject as "NDC Not Covered" through Participating Pharmacies, Mail Service Pharmacy and ESI Specialty Pharmacy; otherwise, all other Specialty Products will be implemented as Covered Drugs at the rate specified in the applicable Specialty Product List or Notice, and Client acknowledges and agrees to same. If Client desires to cover otherwise excluded Specialty Products, Client must notify ESIC in writing that it desires to cover the Specialty Product before ESIC will adjudicate as a Covered Drug, and if ESIC receives such confirmation of coverage from Client such Specialty Product will be loaded thereafter as a Covered Drug at the applicable Specialty Product List reimbursement rate set forth in the Notice.

(ii) Client must notify ESIC in writing if it wants to exclude the Specialty Product from coverage. The exclusion will be implemented within seven (7) business days after the date of ESIC's receipt of such the notification. There will not be any retroactive denials for Prescription Drug Claims processed prior to ESIC's receipt of the rejection notice and implementation of the exclusion as provided above and Client will be responsible for the payment of such Prescription Drug Claims processed prior to the rejection of coverage.

(d) Specialty Products and ASES. EGWP Enrollees may have prescriptions filled through ESI Specialty Pharmacy and Participating Pharmacies. Subject to applicable law, ESIC and ESI Specialty Pharmacy may communicate with EGWP Enrollees and physicians to advise EGWP Enrollees filling Specialty Products at Participating Pharmacies of the availability of filling prescriptions through ESI Specialty Pharmacy. Specialty Products will be excluded from any price guarantees set forth in the Agreement. In no event will the Mail Service Pharmacy or Participating Pharmacy pricing specified in the Agreement apply to Specialty Products.

(i) For Specialty Products filled through ESI Specialty Pharmacy only, EGWP Enrollees may receive the following services from ESI Specialty Pharmacy, depending on the particular therapy class or disease state: ASES; patient intake services; pharmacy dispensing services and/or social services (patient advocacy, hardship reimbursement support, and indigent and patient assistance programs).

(ii) Subject to Client's prior authorization requirements, if applicable, at the rates set forth in Exhibit B-1, ESIC will provide or coordinate ASES for EGWP Enrollees through ESI Specialty Pharmacy or through other specialty pharmacies or other independent third party providers of ASES when ASES is required. If ESIC or ESI Specialty Pharmacy engages a third party provider of ASES, ESIC or ESI Specialty Pharmacy shall contractually obligate such third party provider of ASES to comply with all applicable laws, including, without limitation, all applicable laws relating to professional licensure. ESIC does not direct or exercise any control over any third party provider of ASES in administering Specialty Products or otherwise providing ASES.

(iii) For Specialty Products needing an additional charge to cover costs of all ASES required to administer the Specialty Products, the following standard per diem and nursing fee rates shall apply. Exceptions to the standard per diem and nursing rates are set forth in (iv), below, which list may be updated from time to time by ESIC. Pricing for home infusion supplies and services provided at Participating Pharmacies (for example, limited distribution products not then available through ESI Specialty Pharmacy or overrides) will be pass through.

Standard Per Diem	$65/dose
Standard Nursing Fee/First 2 Hours	$150
Standard Nursing Hourly	$75

(iv) Additional exceptions to AWP Discount Rates and Standard Per Diem & Nursing Fees

Brand Name	AWP Discount	Per Diem
EPOPROSTENOL	1.0%	$65/day
REMODULIN	5.0%	$65/day

The AWP discount includes Phone Support Nursing, Supplies, Pump, first two training visits, and Coordination of In-Person Nursing. In-home nursing that is requested/needed beyond the first two training visits will be charged at a rate of $150 for the first two hours and $75 for every hour after.

(e) Any ancillary supplies, equipment, and services provided or coordinated in connection with the dispensing of Specialty Products at a Participating Pharmacy will be billed to Client at the cost charged to ESIC for such ancillary supplies, equipment, and services provided or coordinated, unless such ancillary supplies, equipment, and services provided or coordinated are included in the ingredient cost of the Specialty Product.

V. Influenza and Other Vaccinations

(a) Medicare Part D vaccinations

	Participating Pharmacies/Mail Service Pharmacy/ESI Specialty Pharmacy	**Other than Participating Pharmacies/Mail Service Pharmacy/ESI Specialty Pharmacy** [1]
Vaccine Administration	$20.00 per Part D covered vaccine	Pass Through Charge as Submitted
Ingredient Cost	Applicable discount rate as set forth in the Agreement	Pass Through Charge as Submitted
Administrative Fee/Vaccine Claim	Participating Pharmacy Administrative Fee per Prescription Drug Claim as set forth in the Agreement	EGWP Enrollee Submitted Administrative Fee per Prescription Drug Claim as set forth in the Agreement

[1] Except for Vaccine Claims submitted electronically by physicians. Pricing for Vaccine Claims submitted electronically by physicians is set forth below.

	Vaccine Claims Submitted Electronically by Physicians
Vaccine Administration[1]	$20.00 per Part D covered vaccine
Ingredient Cost	Pass-Through
Administrative Fee/Vaccine Claim	Participating Pharmacy Administrative Fee per Prescription Drug Claim as set forth in the Agreement
Vendor Transaction Fee	Pass Through at $3.75[1]

[1] $3.75 is the fee currently charged by DSI to ESIC. This amount is subject to change. ESIC will provide Client prior written notice of any change.

(b) Medicare Part B vaccinations

Medicare Part B Vaccinations shall adjudicate at the lower of:

(i)

	Participating Pharmacy INFLUENZA	Participating Pharmacy OTHER VACCINES
Ingredient Cost **+**	Participating Pharmacy Ingredient Cost as set forth in the Agreement	Participating Pharmacy Ingredient Cost as set forth in the Agreement
Dispensing Fee **+**	Participating Pharmacy Dispensing Fee as set forth in the Agreement	Participating Pharmacy Dispensing Fee as set forth in the Agreement
Professional Service Fee (PSF); cost for pharmacist to administer the vaccine	Pass-Through (capped at $15 per vaccine claim)	Pass-Through (capped at $20 per vaccine claim)
Vaccine Program Fee *	$2.50 per vaccine claim	$2.50 per vaccine claim

* The Vaccine Program Fee will be billed separately to Client as part of the administrative invoice according to the billing frequency set forth in the Agreement. This Vaccine Program Fee is in addition to any per Prescription Drug Claim administrative fee set forth in the Agreement.

or

(ii) the combined ingredient cost, dispensing fee (if any) and professional service fee (if any) that the Participating Pharmacy generally charges an individual paying cash, without coverage for prescription drug benefits, plus the Vaccine Program Fee set forth above.

Coverage is subject to Plan provisions. No vaccine claims will be included in any guarantees set forth in the Agreement and/or amendments thereto.

VI. Long Term Care; I/T/U and IHS; Home Infusion Pricing

LONG TERM CARE NETWORK PROVIDERS	Pricing
Brand Discount	Lower of AWP – 10.18% or U&C
Generic Discount	Lower of AWP – 10.18%, MRA, or U&C
Brand Dispensing Fee Per Claim	$4.50
Generic Dispensing Fee Per Claim	$4.50
Administrative Fee Per Claim	$0.00
I/T/U and IHS PRESCRIPTION SERVICES	Medicaid Reimbursement Rate by State, as published by CMS (Available upon request).
HOME INFUSION PROVIDERS	**Pricing**
Brand Discount	Lower of AWP – 10.18% or U&C

Generic Discount	Lower of AWP – 10.18%, MRA, or U&C
Brand Dispensing Fee Per Claim	$0.00
Generic Dispensing Fee Per Claim	$0.00
Administrative Fee Per Claim	$0.00

* Immunoglobulin priced at AWP-0%

Exhibit B-2

Administrative and Clinical Program Fees

I. Administrative Fees

Optional PBM Services

Additional PBM Services	Fees
Claims Processing	
Member Submit Fee (includes Medicaid subrogation claims) Electronic Prescribing	$10.00 per claim Pass through charge for ePrescribing Eligibility and Formulary transaction fees charged to [Client] at Express Scripts' preferred rate with data switch such as Surescripts.
Custom Client Reporting	
Custom Ad Hoc Reports – applies for reporting outside of self-services reporting tool	$150 per hour; minimum $500 charge
Premium Billing	
EGWP Enrollee Premium Billing	Pricing available upon request
Account and EGWP Enrollee Services	
EGWP Enrollee Requested Materials Client requested Re-carding Custom materials Mailings over five pages in length	$1.50 + postage per packet $1.50 + postage per packet Priced upon request Priced upon request
Reviews and Appeals Management	
Initial Determinations (i.e. coverage reviews) and Level One Appeals for the Coverage Authorization Program, consisting of: • Prior Authorization • Step Therapy • Drug Quantity Management	Included in EGWP Admin Fee
Initial Determinations and Level One Appeals for the Benefit Review Program, consisting of reviews known as: • Plan Design Related Requests • Plan Exclusion Reviews (clinical or administrative reviews of non-covered drugs) • Copay Reviews • Plan Limit Reviews (e.g. age, gender, days' supply limits) • Plan Rule/Administrative Reviews/Non-clinical Reviews • Clinical Benefit Reviews • Direct Claim Reject Reviews	Included in EGWP Admin Fee

PDP Services

PDP Services	
EGWP Plus Administrative Fee	$10.19 PMPM

Express Scripts' EGWP Plus administrative fee includes the following services:

Implementation
Implementation and support for up to one plan design Incremental Cost for implementing multiple plan designs - $5,000 per plan design per year
Medicare Part D Formulary and Network Management
Contracting of retail, long term care, and home infusion networks to conform to CMS access requirements Establishment of a CMS approved Formulary and P&T Committee support Formulary management and change notification communications Administration of manufacturer rebate contracts in compliance with CMS requirements
Claims Processing
Electronic Claims Processing
Enrollment Management
Electronic Eligibility submission Initial enrollment, age-in members, low-income management Eligibility/Enrollment status reporting
Home Delivery Services

Processing and delivery of prescriptions received via Internet, fax, phone or mail

Prescription Delivery - Standard

Therapeutic Resource Center services where appropriate

Mail Programs where appropriate

Participation in Mail Marketing Programs where appropriate

Refill orders received by phone or Internet 24 hours a day, 7 days a week

Handling and postage expense of mail-order prescriptions. If postage rates (i.e., U.S. mail and/or applicable commercial courier services) increase during the term of this Agreement, the Dispensing Fee will be increased to reflect such increase(s)

Braille prescription labels for visually impaired

Communication/educational materials included in medication packages:

- Summary statement of benefit account
- Drug Information Leaflet with each new prescription
- Buck slips highlighting benefit components
- Pre-addressed pharmacy order form/envelope
- Refill or renewal form (when appropriate)

Specialty Pharmacy Services

Clinical support, including:

- Patient tele-counseling from specially trained pharmacists and nurses
- Care management including information and support directly to the patient
- Coordination of care with the patient's case manager and/or home care agency
- Specialty drug educational materials and product information

Toll-free telephone line for members using specialty drugs

Ancillary supplies (such as needles and syringes) provided with self-inject able medications

Logistics coordination of delivery to patient's home or physician's office

Express delivery to physician's office or patient's home

- Standard two-day delivery
- Overnight delivery if required by physician (excluding Sundays)

Comprehensive drug utilization management review applied to specialty pharmacy related medical and prescription claims

Enhanced physician services including communication materials, forms, informational hotline

Analysis of integrated pharmacy and medical claims databases to identify persons using specialty medications.

Targeted communications, including:

- an initial mailing upon enrollment notifying members of the change in plan coverage;
- follow-up mailings and outbound phone calls notifying members of their eligibility for services from the specialty pharmacy

Additional services available:

Mailings direct to members, physicians or plan location - Quoted Upon Request

Medicare Processing and Reporting Services

Interaction with CMS and federal agencies to ensure compliance and applicable laws

Manage contact with CMS

Evaluate actuarial equivalence and report to CMS as required
Processing, reconciliation, and reporting of CMS Direct Subsidy, CMS Low-Income Premium and Cost-Sharing, Coverage Gap Discount Payments, and CMS Catastrophic Reinsurance (subject to plan design)
LIS Premium Refund Service
Subsidies will only be received on behalf of members approved by CMS as eligible for the PDP. Any member rejected by CMS will not be eligible for any of the subsidies outlined above. To the extent that CMS, for any reason, re-opens a reconciliation window with the PDP, the PDP has the right to re-open reconciliation with the client for any of the above subsidies
Client management and financial reporting
Preparation of all data necessary to meet Medicare Part D Reporting Requirements
Development and transmission of applicable files to CMS as part of program administration
All CMS reporting requirements related to rebates, network access, TrOOP, clinical program management, claims administration, operational compliance, and other reports as required by CMS
Maintenance and support of CMS "Prescription Drug Event" (claim) process • Maintenance and distribution of PDE files • Process to manage CMS responses • Resolution of PDE rejects
Support of up to one regulatory audit CMS might perform on behalf of [Client] if applicable
Website
Express-Scripts.com for Clients & Advisors — access to: • Reporting tools • Eligibility EGWP Enrollee status reporting • Contact directory • Sales and marketing information • Benefit and enrollment support secured through Risk Base Authentication
Express-Scripts.com for EGWP Enrollees — access to • Benefit, drug, health and wellness information • Prescription ordering capability • Customer service
Account and EGWP Enrollee Service
Assigned account team
Annual pharmacy benefit strategic planning with quarterly review
Medicare Call-Center Services including support for client's open enrollment (open enrollment support is dependent on [Client] submitting benefit information within the required timeframe for support)
Grievance management
Centralized administration for payment of claim and administrative fees
Training for online tools
Care and Safety Management Education
EGWP Enrollee Communications

Development of communication templates, customer service scripting, and other communication tools
Development of template language to be included in open enrollment materials
Mailing of Medicare required member communications, as applicable.

- Pre-notification Letters (Including benefit overview)

New Enrollee Packets

- EGWP Enrollee ID card
- Quick Reference Guide
- Welcome Letter
- Benefit Overview
- Evidence of Coverage (EOC)
- Formulary Guidebook
- Pharmacy directory
- HIPAA Notice
- Home Delivery Order From

On-Going

- Transition Supply Letters
- Explanation of Benefits (EOBs)
- Medication Therapy Management (MTM) Letters
- Coverage Determination Letters
- Grievance and Appeals Letters
- Low Income Subsidy (LIS) Riders
- Late Enrollment Penalty (LEP) Attestation Letters
- Enrollment/Disenrollment Letters
- 60 Day Formulary Notification Letters
- Other CMS required notifications

Renewal EGWP Enrollee Packet

- Annual Notice of Changes (ANOC)
- Evidence of Coverage (EOC)
- Formulary Guidebook
- Home Delivery Order Form

Clinical Services

Concurrent Drug Utilization Reporting (DUR)
Retrospective DUR
Medication Therapy Management and reporting
Fraud, Waste, and Abuse Program
CMS Approved Utilization Management Programs including Drug Quantity Management, Prior Authorization, and Step Therapy

Participating Pharmacies

Pharmacy Audit
Pharmacy Help Desk
Pharmacy Network Management
Network Development Upon Request
Pharmacy Reimbursement

II. Clinical/Trend Programs.

ESIC offers a comprehensive suite of trend and integrated health management programs. With a 360-degree view of the patient, ESIC promotes changes that maximize health outcomes and value – reducing prescription waste, enabling better overall health and value, enriching the care continuum and managing medication therapy and safety. These offerings may change or be discontinued from time to time as ESIC updates its offerings to meet the needs of the marketplace.

EXHIBIT B-3

REBATES

I. Rebates (Does Not Apply to Specialty Products)

A. Subject to the terms and conditions set forth below and in Section 3.10 of this Agreement, ESIC or its Affiliates will remit to Client an amount equal to the greater of:

(i) 100% of the Rebates received by ESIC or its Affiliates, excluding Rebates received by ESIC or its Affiliates for Specialty Products;

Or

(ii) Subject to Client meeting the Plan design conditions identified in the table below, the following guaranteed amounts:

Formulary:	Medicare National Preferred Formulary		
Copayment Design:	**Minimum $15 Copayment Differential**		
	Participating Pharmacies 1-34 days' supply	**Participating Pharmacies** 35-90 days' supply	**Mail Service Pharmacy**
Per Brand Claim	$10.00	$20.00	$40.00

B. If the Plan design conditions identified in the table in Section A.(ii) above are not met, the "greater of" methodology and the guaranteed amounts shall not apply, and ESIC will, subject to the remaining terms of this Agreement, pay Client Rebate amounts pursuant to the percentage set forth in Section A.(i) above.

C. Long Term Care and Home Infusion claims are not eligible for Rebates.

D. Subject to the conditions set forth herein, ESIC shall pay Client the percentage amount set forth in Section 1.A.(i) above for Rebates collected by ESIC during each calendar quarter hereunder within approximately one hundred and fifty (150) days following the end of such calendar quarter. ESIC shall also pay Client the percentage amount set forth in Section 1.A.(i) above for residual Rebates collected by ESIC, if any, related to such calendar quarter, which are collected by ESIC in subsequent quarters.

E. On an annual and aggregate basis, ESIC shall reconcile the guaranteed amounts set forth in Section 1.A.(ii) above (against the percentage amount paid to Client quarterly) within two hundred and forty (240) days following the end of each calendar year and shall credit Client for any deficit on the next invoice immediately following the reconciliation to the extent such deficit is not offset by ESIC against excesses achieved in other guarantees offered pursuant to this Agreement. If, upon reconciliation, the annual aggregate percentage amount paid to Client for the calendar year pursuant to Section 1.A.(i) and 3.A. above is greater than the guaranteed aggregate amounts set forth in Section 1.A.(ii) above, ESIC shall be entitled to make up for, and offset, a shortfall in other guarantee(s) set forth in this Agreement with such excess annual aggregate percentage amount, and such excess amount shall be applied either directly to the other shortfall guarantee(s) or applied as a credit against future Rebate payments (or as a direct invoice amount to be paid by Client, if a credit is not feasible).

EXHIBIT B-4

Rebates (Specialty Products)

1. **Rebate Amounts**

Subject to the conditions set forth in Sections 2. and 3. below and elsewhere in this Agreement, ESIC will pay to Client an amount equal to the percentage of Rebates and Manufacturer Administrative Fees received by ESIC as set forth in the table below:

	ESI Specialty Pharmacy
Per Brand Claim	100%

2. **Rebate Payment Terms**

Subject to the conditions set forth herein, ESIC shall pay Client the percentage amounts set forth in Section 1 above for Rebates and Manufacturer Administrative Fees collected by ESIC during each calendar quarter hereunder within approximately one hundred and fifty (150) days following the end of such calendar quarter. ESIC shall also pay Client the percentage amount set forth in Section 1. above for residual Rebates and Manufacturer Administrative Fees collected by ESIC, if any, related to such calendar quarter, which are collected by ESIC in subsequent quarters.

3. **Conditions**

A. ESIC contracts with pharmaceutical manufacturers for Rebates and Manufacturer Administrative Fees on its own behalf and for its own benefit, and not on behalf of Client. Accordingly, ESIC retains all right, title and interest to any and all actual Rebates and Manufacturer Administrative Fees received from manufacturers. ESIC will pay Client amounts equal to the Rebate and Manufacturer Administrative Fees amounts allocated to Client, as specified above, from ESIC's general assets (neither Client, its Members, nor Client's plan retains any beneficial or proprietary interest in ESIC's general assets). Client acknowledges and agrees that neither it, its Members, nor its Plan will have a right to interest on, or the time value of, any Rebate payments or Manufacturer Administrative Fee payments received by ESIC during the collection period or moneys payable under this Section. No amounts for Rebates or Manufacturer Administrative Fees will be paid until this Agreement is executed by Client. ESIC will have the right to apply Client's allocated Rebate amount and Manufacturer Administrative Fees amount to unpaid Fees.

B. Client acknowledges that it may be eligible for Rebate amounts and Manufacturer Administrative Fee amounts under this Agreement only so long as Client, its affiliates, or its agents do not contract directly or indirectly with anyone else for discounts, utilization limits, rebates or other financial incentives on pharmaceutical products or formulary programs for claims processed by ESIC pursuant to the Agreement, without the prior written consent of ESIC. In the event that Client negotiates or arranges with a pharmaceutical manufacturer for Rebates or similar discounts for any Covered Drugs hereunder, but without limiting ESIC's right to other remedies, ESIC may immediately withhold any Rebate amounts or Manufacturer Administrative Fee amounts earned by, but not yet paid to, Client as necessary to prevent duplicative rebates on Covered Drugs. To the extent Client knowingly negotiates and/or contracts for discounts or rebates on claims for Covered Drugs without prior written approval of ESIC, such activity will be deemed to be a material breach of this Agreement,

entitling ESIC to suspend payment of Rebate amounts and Manufacturer Administrative Fee amounts hereunder and to renegotiate the terms and conditions of this Agreement.

C. Under its Rebate program, ESIC may implement ESIC's Formulary management programs and controls, which may include, among other things, cost containment initiatives, and communications with Members, Participating Pharmacies, and/or physicians. ESIC reserves the right to modify or replace such programs from time to time. Guaranteed Rebate amounts, if any, set forth herein, are conditioned on adherence to various Formulary management controls, benefit design requirements, claims volume, and other factors stated in the applicable pharmaceutical manufacturer agreements, as communicated by ESIC to Client from time to time. If any government action, change in law or regulation, change in the interpretation of any law or regulation, or any action by a pharmaceutical manufacturer has an adverse effect on the availability of Rebates, then ESIC may make an adjustment to the Rebate terms and guaranteed Rebate amounts, if any, hereunder.

D. Rebate and Manufacturer Administrative Fee amounts paid to Client pursuant to this Agreement are intended to be treated as "discounts" pursuant to the federal anti-kickback statute set forth at 42 U.S.C. §1320a-7b and implementing regulations. Client is obligated if requested by the Secretary of the United States Department of Health and Human Services, or as otherwise required by applicable law, to report the Rebate amounts and to provide a copy of this notice. ESIC will refrain from doing anything that would impede Client from meeting any such obligation.

EXHIBIT C

AUDIT PROTOCOL

1. AUDIT PRINCIPLES

ESIC recognizes the importance of its clients ensuring the integrity of their business relationship by engaging in annual audits of their financial arrangements with ESIC, by auditing compliance with applicable regulatory requirements. ESIC provides this audit right to each and every client. In granting this right, ESIC's primary interest is to facilitate a responsive and responsible audit process. In order to accomplish this goal, for all clients, ESIC has established the following Protocol. Our intent is in no way to limit Client's ability to determine that ESIC has properly and accurately administered the financial aspects of the Agreement, but rather to create a manageable process in order to be responsive to our clients and the independent auditors that they may engage. If Client has any concern that this Protocol will prohibit Client from fully confirming its financial arrangement with ESIC, we encourage Client to express such concern at the audit kick-off meeting.

ESIC strongly encourages clients to have their auditors, without jeopardizing the independent nature of the audit, review the auditor's initial findings and reports with ESIC prior to discussing with the client in order to avoid any unnecessary client confusion. We have found often times that items identified as issues during the initial audit turn out to be non-findings once a dialogue takes place between the auditor and ESIC. In other words, we believe it is in everyone's interest to ensure that the auditor and ESIC are not simply "missing each other" in the exchange of information prior to the auditor reviewing its findings with the client.

2. AUDIT PREREQUISITES

A. There are three components of your arrangement with ESIC eligible for audit on an annual basis:

- Retrospective Claims
- Rebates
- Performance Guarantees

Balancing the need to adequately support the audit process for all ESIC clients, with an efficient allocation of resources, we encourage clients to audit all three components, as applicable, through a single annual audit. If you choose to audit the above components separately throughout the year, rather than combining all components into a single annual audit, you will be subject to ESIC's standard charges for each additional audit. All such fees shall be reasonable and based on ESIC's costs for supporting such additional audits.

B. ESIC will provide all data reasonably necessary for Client to determine that ESIC has performed in accordance with contractual terms.

C. ESIC engages a national accounting firm, at its sole cost and expense, to conduct a SSAE 16 audit on behalf of its clients. Upon request, ESIC will provide the results of its most recent SSAE 16 audit. Testing of the areas covered by the SSAE 16 is not within the scope of Client's audit rights (i.e., to confirm the financial aspects of the Agreement) and is therefore not permitted. However, if requested, ESIC will explain the SSAE 16 audit process and findings to Client in order for Client to gain an understanding of the SSAE 16.

3. AUDITS

A. ESIC recommends that the initial audit period for a claims audit cover a timeframe not to exceed twenty-four (24) months immediately preceding the request to audit (the "Audit Period"). This Audit Period allows a reasonable amount of time for both parties to conclude the audit before claims data is archived off the adjudication system. ESIC will accommodate reasonable requests to extend the Audit Period, but this may delay ESIC's response time to audit findings due to the age of the claims. Due to the additional resources necessary to pull claims data older than twenty-four (24) months, if you request to extend the Audit Period, you will be subject to ESIC's standard charges for such additional data pulls. All such fees shall be reasonable and based on ESIC's additional costs associated with retrieval and reporting of such data. If the parties mutually determine, acting in good faith, that the initial audit demonstrates in any material respects that ESIC has not administered the financial arrangement consistent with the contract terms of the Agreement, then ESIC will support additional auditing beyond the Audit Period at no additional charge.

B. When performing a Rebate audit, Client may perform an on-site review of the applicable components of manufacturer agreements, selected by Client, as reasonably necessary to audit the calculation of the Rebate payments made to Client by ESIC. Our ability to drive value through the supply chain and in our negotiations with manufacturers is dependent upon the strict confidentiality and use of these agreements. Providing access to these agreements to third parties that perform services in the industry beyond traditional financial auditing jeopardizes our ability to competitively drive value. For this reason, access to and audit of manufacturer agreements is restricted to a mutually agreed upon national CPA accounting firm whose audit department is a separate stand-alone division of the business, which carries insurance for professional malpractice of at least Two Million Dollars ($2,000,000).

C. ESIC recommends that Client select an initial number of manufacturer contracts to enable Client to audit fifty percent (50%) of the total Rebate payments due to Client for two (2) calendar quarters during the twelve (12) month period immediately preceding the audit (the "Rebate Audit Scope and Timeframe"). ESIC will accommodate reasonable requests to extend this Rebate Audit Scope and Timeframe, but this may delay ESIC's on-site preparation time as well as response time to audit findings. Due to the additional resources necessary to support a Rebate audit beyond the Rebate Audit Scope and Timeframe, if you request to extend the Rebate Audit Scope and Timeframe, you will be subject to ESIC's standard charges for such additional audit support. All such fees shall be reasonable and based on ESIC's additional costs. If the parties mutually determine, acting in good faith, that the initial Rebate audit demonstrates in any material respects that ESIC has not administered Rebates consistent with the contract terms of the Agreement, then ESIC will support additional auditing beyond the Rebate Audit Scope and Timeframe at no additional charge.

D. If you have a Pass-Through pricing arrangement for Participating Pharmacy claims, ESIC will provide the billable and payable amount for a sampling of claims provided by you or your auditor (i.e., ESIC will provide the actual documented claim record) during the audit to verify that ESIC has administered such Pass-Through pricing arrangement consistent with the terms of the Agreement. If further documentation is required, ESIC may provide a statistically valid sample of claims remittances to the Participating Pharmacies to demonstrate ESIC's administration of Pass-Through pricing. In any instance where the audit demonstrates that the amount billed to you does not equal the Pass-Through amount paid to the Participating Pharmacy, you or your auditor may perform an on-site audit of the applicable Participating Pharmacy contract rate sheet(s).

4. AUDIT FINDINGS

A. Following Client's initial audit, Client (or its Auditor) will provide ESIC with a written report of suspected errors, if any. In order for ESIC to evaluate Client's audit report, Client shall provide an electronic data file in a mutually agreed upon format containing up to 300 claims for further investigation by ESIC.

B. ESIC will use commercially reasonable best efforts to respond to the audit report in no more than sixty (60) days from ESIC's receipt of the report. Please be aware, however, that audits that require evaluation of six (6) or more findings typically require additional time to respond due to the complex nature of such audits. Our pledge to respond within the foregoing timeframe is predicated on a good faith and cooperative effort between Client and/or its Auditor and ESIC.

C. Client agrees that once audit results are accepted by both parties, the audit shall be considered closed and final. To the extent the mutually accepted audit results demonstrate claims errors, ESIC will reprocess the claims and make corresponding adjustments to Client through credits to a future invoice(s). If we are unable to reprocess claims and issue corresponding credits to Client through this process, ESIC will make adjustments to Client via a check or credit.

5. AUDITS BY GOVERNMENT ENTITIES

A. In the event CMS, the OIG, MEDIC, or another government agency has engaged in an audit of Client and/or its "first tier" and "downstream entities", Client shall contact the ESIC Account Management team and provide a written copy of the audit notice or request from the government agency promptly upon receipt.

B. Client agrees that CMS may have direct access to ESIC's and any such "downstream entity's" pertinent contracts, books, documents, papers, records, premises and physical facilities, and that ESIC and such "downstream entity" will provide requested information directly to CMS unless otherwise agreed upon by ESIC and Client.

C. Following the government audit of Client and its "first tier" and "downstream entities", Client shall provide ESIC with a written report of suspected non-compliant issues noted in the government audit that relate to services provided by ESIC, if any. If there are such findings, ESIC will work with Client and/or government agency to respond to any suspected non-compliant issues.

D. Support for all such audits by government entities will be subject to ESIC's standard charges. All such fees shall be reasonable and based on ESIC's costs for supporting such audits.

6. CONFIDENTIALITY

ESIC's contracts are highly confidential and proprietary. For this reason, ESIC only permits on-site review rather than provide copies to our clients. During on-site contract review, Client (or its Auditor) may take and retain notes to the extent necessary to document any identified errors, but may not copy (through handwritten notes or otherwise) or retain any contracts (in part or in whole) or related documents provided or made available by ESIC in connection with the audit. ESIC will be entitled to review any notes to affirm compliance with this paragraph.

EXHIBIT D

As provided in the Agreement, ESIC may provide services under this Agreement through one or more of its Affiliates, including Express Scripts, Inc. ("ESI"). The following financial disclosure statement relates to the rebate programs and other financial arrangements that may be used by Express Scripts, Inc. ("ESI") in connection with ESIC's administration of the EGWP Benefit under this Agreement.

FINANCIAL DISCLOSURE TO ESI PBM CLIENTS

This disclosure provides an overview of the principal revenue sources of Express Scripts, Inc. and Medco Health Solutions, Inc. (individually and collectively referred to herein as "ESI"), as well as ESI's affiliates. In addition to administrative and dispensing fees paid to ESI by our clients for pharmaceutical benefit management ("PBM") services, ESI and its affiliates derive revenue from other sources, including arrangements with pharmaceutical manufacturers, wholesale distributors, and retail pharmacies. Some of this revenue relates to utilization of prescription drugs by members of the clients receiving PBM services. ESI may pass through certain manufacturer payments to its clients or may retain those payments for itself, depending on the contract terms between ESI and the client.

Network Pharmacies – ESI contracts for its own account with retail pharmacies to dispense prescription drugs to client members. Rates paid by ESI to these pharmacies may differ among networks (e.g., Medicare, Worker's Comp, open and limited), and among pharmacies within a network, and by client arrangements. PBM agreements generally provide that a client pay ESI an ingredient cost, plus dispensing fee, for drug claims. If the rate paid by a client exceeds the rate contracted with a particular pharmacy, ESI will realize a positive margin on the applicable claim. The reverse also may be true, resulting in negative margin for ESI. ESI also enters into pass-through arrangements where the client pays ESI the actual ingredient cost and dispensing fee amount paid by ESI for the particular claim when the claim is adjudicated to the pharmacy. In addition, when ESI receives payment from a client before payment to a pharmacy, ESI retains the benefit of the use of the funds between these payments. ESI may maintain non-client specific aggregate guarantees with pharmacies and may realize positive margin. ESI may charge pharmacies standard transaction fees to access ESI's pharmacy claims systems and for other related administrative purposes.

Brand/Generic Classifications – Prescription drugs may be classified as either a "brand" or "generic;" however, the reference to a drug by its chemical name does not necessarily mean that the product is recognized as a generic for adjudication, pricing or copay purposes. Associated with pharmacy reimbursement, ESI distinguishes brands and generics through a proprietary algorithm ("BGA") that uses certain published elements provided by First DataBank (FDB) including price indicators, Generic Indicator, Generic Manufacturer Indicator, Generic Name Drug Indicator, Innovator, Drug Class and ANDA. The BGA uses these data elements in a hierarchical process to categorize the products as brand or generic. The BGA also has processes to resolve discrepancies and prevent "flipping" between brand and generic status due to price fluctuations and marketplace availability changes. The elements listed above and sources are subject to change based on the availability of the specific fields. Updated summaries of the BGA are available upon request. Brand or generic classification for client reimbursement purposes is either based on the BGA or specific code indicators from Medi-Span or a combination of the two as reflected in the client's specific contract terms. Application of an alternative methodology based on specific client contract terms does not affect ESI's application of its BGA for ESI's other contracts.

Maximum Allowable Cost ("MAC")/Maximum Reimbursement Amount ("MRA") – As part of the administration of the PBM services, ESI maintains a MAC List of drug products identified as requiring pricing management due to the number of manufacturers, utilization and/or pricing volatility. The criteria for inclusion on the MAC List are based on whether the drug has readily available generic product(s), is generally equivalent to a brand drug, is cleared of any negative clinical implications, and has a cost basis that will allow for pricing below brand rates. ESI also maintains MRA price lists for drug products on the MAC List based on current price reference data provided by MediSpan or other nationally recognized pricing source, market pricing and availability information from generic manufacturers and on-line research of national wholesale drug company files, and client arrangements. Similar to the BGA, the elements listed above and sources are subject to change based on the availability of the specific fields. Updated summaries of the MAC methodology are available upon request.

Manufacturer Formulary Rebates, Associated Administrative Fees, and PBM Service Fees – ESI contracts for its own account with manufacturers to obtain formulary rebates attributable to the utilization of certain brand drugs and supplies (and possibly certain authorized generics marketed under a brand manufacturer's new drug application). Formulary rebate amounts received vary based on client specific utilization, the volume of utilization as well as formulary position applicable to the drug or supplies, and adherence to various formulary management controls, benefit design requirements, claims volume, and other similar factors, and in certain instances also may vary based on the product's market-share. ESI often pays an amount equal to all or a portion of the formulary rebates it receives to a client based on the client's PBM agreement terms. ESI retains the financial benefit of the use of any funds held until payment of formulary rebate amounts is made to the client. ESI may maintain non-client specific aggregate guarantees with manufacturers and may realize positive margin. In addition, ESI provides administrative services to contracted manufacturers, which include, for example, maintenance and operation of the systems and other infrastructure necessary for managing and administering the PBM formulary rebate process, pharmacy discount programs, access to drug utilization data, as allowed by law, for purposes of verifying and evaluating applicable payments, and for other purposes related to

the manufacturer's products. ESI receives administrative fees from the participating manufacturers for these services. These administrative fees are calculated based on the price of the drug or supplies along with the volume of utilization and do not exceed the greater of (i) 4.58% of the average wholesale price, or (ii) 5.5% of the wholesale acquisition cost of the products. In its capacity as a PBM company, ESI also may receive other service fees from manufacturers as compensation for the performance of various services, including, for example, formulary compliance initiatives, clinical services, therapy management services, education services, medical benefit management services, and the sale of non-patient identifiable claim information. These service fees are not part of the formulary rebates or associated administrative fees.

Copies of ESI's standard formularies may be reviewed at www.__express-scripts.com/services/clientsadvisors. In addition to formulary considerations, other plan design elements are described in ESI's Plan Design Review Guide, which may be reviewed at www.express-scripts.com/services/clientadvisors.

ESI Subsidiary Pharmacies – ESI has several licensed pharmacy subsidiaries, including our specialty pharmacies. These entities may maintain product purchase discount arrangements and/or fee-for-service arrangements with pharmaceutical manufacturers and wholesale distributors. These subsidiary pharmacies contract for these arrangements on their own account in support of their various pharmacy operations. Many of these subsidiary arrangements relate to services provided outside of PBM arrangements, and may be entered into irrespective of whether the particular drug is on one of ESI's national formularies. Discounts and fee-for-service payments received by ESI's subsidiary pharmacies are not part of the PBM formulary rebates or associated administrative fees paid to ESI in connection with ESI's PBM formulary rebate programs. However, certain purchase discounts received by ESI's subsidiary pharmacies, whether directly or through ESI, may be considered for formulary purposes if the value of such purchase discounts is used by ESI to supplement the discount on the ingredient cost of the drug to the client based on the client's PBM agreement terms. From time to time, ESI and its affiliates also may pursue and maintain for its own account other supply chain sourcing relationships not described below as beneficial to maximize ESI's drug purchasing capabilities and efficiencies, and ESI or affiliates may realize an overall positive margin with regard to these initiatives.

The following provides additional information regarding examples of ESI subsidiary discount arrangements and fee-for-service arrangements with pharmaceutical manufacturers, and wholesale distributors:

ESI Subsidiary Pharmacy Discount Arrangements – ESI subsidiary pharmacies purchase prescription drug inventories, either from manufacturers or wholesalers, for dispensing to patients. Often, purchase discounts off the acquisition cost of these products are made available by manufacturers and wholesalers in the form of either up-front discounts or retrospective discounts. These purchase discounts, obtained through separate purchase contracts, are not formulary rebates paid in connection with our PBM formulary rebate programs. Drug purchase discounts are based on a pharmacy's inventory needs and, at times, the performance of related patient care services and other performance requirements. When a subsidiary pharmacy dispenses a product from its inventory, the purchase price paid for the dispensed product, including applicable dispensing fees, may be greater or less than that pharmacy's acquisition cost for the product net of purchase discounts. In general, our pharmacies realize an overall positive margin between the net acquisition cost and the amounts paid for the dispensed drugs.

ESI Subsidiary Fee-For-Service Arrangements – One or more of ESI's subsidiaries, including, but not limited to, its subsidiary pharmacies also may receive fee-for-service payments from manufacturers or wholesalers in conjunction with various programs or services, including, for example, patient assistance programs for indigent patients, dispensing prescription medications to patients enrolled in clinical trials, various therapy adherence and fertility programs, administering FDA compliance requirements related to the drug, product reimbursement support services, and various other clinical or pharmacy programs or services. As a condition to having access to certain products, and sometimes related to certain therapy adherence criteria or FDA requirements, a pharmaceutical manufacturer may require a pharmacy to report selected information to the manufacturer regarding the pharmacy's service levels and other dispensing-related data with respect to patients who receive that manufacturer's product. A portion of the discounts or other fee-for-service payments made available to our pharmacies may represent compensation for such reporting.

Other Manufacturer Arrangements – ESI also maintains other lines of business that may involve discount and service fee relationships with pharmaceutical manufacturers and wholesale distributors. Examples of these businesses include a wholesale distribution business, group purchasing organizations, a medical benefit management company, and United BioSource Corporation ("UBC"). Compensation derived through these business arrangements is not part of the PBM formulary rebates or associated administrative fees paid to ESI in connection with ESI's PBM formulary rebate programs. Services related to these arrangements are provided to manufacturers irrespective of whether a drug is on one of ESI's national formularies. Of particular note, UBC partners with life sciences and pharmaceutical companies to develop, commercialize, and support safe, effective use and access to pharmaceutical products. UBC maintains a team of research scientists, biomedical experts, research operations professionals, technologists and clinicians who work with clients to conduct and support clinical trials, create, and validate and administer pre and post product safety and risk management programs. UBC also works on behalf of pharmaceutical manufacturers to provide product and disease state education programs, reimbursement assistance, and other support services to the public at large. These service fees are not part of the formulary rebates or associated administrative fees.

Third Party Data Sales – Consistent with any client contract limitations, ESI or its affiliates may sell HIPAA compliant information maintained in their capacity as a PBM, pharmacy, or otherwise to data aggregators, manufacturers, or other third parties on a fee-for-service basis or as a condition of discount eligibility. All such activities are conducted in compliance with applicable patient and pharmacy privacy laws and client contract restrictions.

April 7, 2014

THIS EXHIBIT REPRESENTS ESI'S FINANCIAL POLICIES. ESI MAY PERIODICALLY UPDATE THIS EXHIBIT AND THE FINANCIAL DISCLOSURES CONTAINED HEREIN TO REFLECT CHANGES IN ITS BUSINESS PROCESSES; THE CURRENT FINANCIAL DISCLOSURE IS AVAILABLE UPON REQUEST AND ACCESSIBLE ON EXPRESS-SCRIPTS.COM FOR CLIENTS & ADVISORS.

EXHIBIT E

CERTIFICATION OF INFORMATION RELATING TO CREDITABLE COVERAGE REQUIREMENT AND LATE ENROLLMENT PENALTY FOR PART D EMPLOYER GROUP WAIVER PLAN

Pursuant to the contract(s) between the Centers for Medicare & Medicaid Services ("CMS") and Express Scripts Insurance Co., ("ESIC"), governing the operation of the contract between ESIC and _____ ("Client"), an Employer Group Waiver Plan (EGWP), ESIC hereby requests from Client a certification concerning the creditable coverage maintained for the Part D beneficiaries enrolled under the contract with Client ("Enrollees").

CMS REQUIREMENT - Under applicable CMS Part D regulations, 42 CFR 423, CMS Manual Chapter 4, and related guidance as may be amended from time to time: plans, "using the Batch Eligibility Query (BEQ), [must] determine whether the Enrollee was either enrolled in a Part D plan or was covered by an employer receiving the retiree drug subsidy (RDS) since the IEP end date. If .the Enrollee was enrolled in a Part D Plan or by an employer receiving RDS or in an employer-sponsored plan providing coverage at least as good as the standard Medicare part D plan since the end of the IEP, such that there is no gap in creditable coverage of sixty-three (63) or more days, [the plan must] report to CMS that the Enrollee had zero (0) uncovered months." This coverage is deemed to be continuous "creditable coverage."

Under the same guidance, plans may secure an attestation from employers and unions such as Client, who enroll groups of Enrollees into Medicare prescription drug coverage. The attestation must provide that employer/Client has been maintaining continuous creditable coverage for each applicable Enrollee for the time during which the Enrollee was enrolled through Client.

Attestation
Client directs ESIC to effectuate enrollment into an EGWP of all persons on such files. In doing so:

☐ For persons on the initial file and subsequent files, Client attests that all Enrollees submitted by the Client to ESIC for enrollment under an Enhanced Plan were either enrolled under another Prescription Drug Plan or had other creditable coverage as defined by the CMS applicable guidelines prior to their coverage under Enhanced Plan. This Attestation applies to all enrollees Client has submitted to ESIC as of the date below, and shall further apply as a continuing obligation to submissions by Client at any time during the term of the Agreement.

☐ For the initial file, Client attests that all Enrollees submitted by the Client to ESIC for enrollment under an Enhanced Plan were either enrolled under another Prescription Drug Plan or had other creditable coverage as defined by the CMS applicable guidelines prior to their coverage under Enhanced Plan.

RELEASE TO DISCLOSE PROTECTED HEALTH INFORMATION (PHI) - PHI is collected by Express Scripts, Inc. and its affiliates ("ESI") in connection with the prescription drug program of Client which is administered by ESI pursuant to ESI's arrangement with Client. Pursuant to the Standards for Privacy of Protected Health Information ("Privacy Rule") to the Health Insurance Portability and Accountability Act of 1996, Client represents and warrants that ESIC may access information pertaining to the commercial coverage, which includes RDS coverage of the Enrollees for the purpose of verifying whether Enrollees had creditable prescription drug coverage during the coverage gap assessed by the ESIC pursuant to the Chapter 4 – Creditable Coverage Period Determinations and the Late Enrollment Penalty - of the Medicare Prescription Drug Benefit Manual requirements.

ACCURACY – In providing said Certification, Client acknowledges that the information directly affects the calculation of CMS payments to the ESIC and/or Client or additional benefit obligations of ESIC and those misrepresentations to CMS about the accuracy of such information may result in Federal civil action and/or criminal prosecution.

RESPONSIBILITY – Client will indemnify and hold ESIC harmless from claims or causes of action asserted against ESIC arising from misrepresentation of information provided in this Attestation by Client. Client agrees to provide ESIC

proof of creditable coverage or documentation from members in the event that ESIC is audited by any government authority.

APPEAL – ESIC shall not be responsible for appealing CMS' determination of Enrollees' creditable coverage status, however, ESIC shall honor the final disposition of appeals that are filed by Client.

AGREEMENT – This Attestation supplements and is made a part of the Agreement in effect between ESIC and Client.

Based on best knowledge, information, and belief, as of the date indicated below, Client is attesting that all information submitted to ESIC is accurate, complete, and truthful.

Signature: _____

Print Name: _____

Client: _____

Dated: _____

City of Bridgeport, Connecticut
CENTRAL GRANTS OFFICE
999 Broad Street
Bridgeport, Connecticut 06604
Telephone (203) 332-5662
Fax (203) 332-5657

BILL FINCH
Mayor

ANDREW J. NUNN
Chief Administrative Officer

CHRISTINA B. SMITH
Director
Central Grants

Comm. #16-14 Ref'd to: ECD&E Committee on 01/05/2015

December 23, 2014

Office of the City Clerk
City of Bridgeport
45 Lyon Terrace, Room 204
Bridgeport, Connecticut 06604

Re: A Resolution by the Bridgeport City Council Regarding the Nutmeg Network Grant for referral to the ECDE committe

If you have any questions or require any additional information please contact me at 203-576-7732 or renu.gupta@bridgeportct.gov.

Thank you,

Renu Gupta

RECEIVED
CITY CLERK'S OFFICE
2014 DEC 24 A 10:36

ATTEST _____
CITY CLERK

Central Grants Office
City of Bridgeport
999 Broad Street
Bridgeport, CT 06604

Grant Information Sheet

Contact Information

Project Manager	Adam Heller	Phone	203-576-8188
Grant Writer	Renu Gupta	Phone	203-576-7732

Background Information

Grant Program (Full Title)	Nutmeg Network Grant		
Funding Entity	State of CT - OPM		
Program Start Date	July 1,2015	Program End Date	June 30, 2017

Overseeing Department	Information Technology Services (ITS)
Purpose/Scope of Grant Project	**Purpose [Why?]:** Connect municipalities to secure Nutmeg Network and offer services at lower costs. **Scope/Description (What) :** The State will conduct assessment at the sites (install and test Fibers, assess power supply and secure connections) connect the site to the network and offer low cost services. **Location(s)/Address (es) [Where?]:** City Hall, Margaret Morton government Cente and Barnum Museum
Project Services Carried Out By	☐ City of Bridgeport ☐ External Organization(s):
Project Services Council District(s) Specifics	☐ N/A or No Specific Limits ☐ **Citywide** ☐ 130th ☐ 131th ☐ 132th ☐ 133th ☐ 134th ☐ 135th ☐ 136th ☐ 137th ☐ 138th ☐ 139th
Rationale for Project Location(s)	

Award Type	☐ N/A	☐ Cash	☐ Technical Assistance	☐ Recognition Only
Grant $	☐ N/A	☒ Requested:		☐ Awarded: $
Match Amount	☐ N/A	☐		☐ In-Kind: $
Max % Requested (Indirect/Direct Project Staff Salary)	☒ N/A			

A Resolution by the Bridgeport City Council
Regarding the
Nutmeg Network Grant Program

WHEREAS, the **State Department of Office of Policy and Management** is authorized to extend financial and technical assistance to municipalities in the form of grants; and,

WHEREAS, this opportunity has been made possible through the **State Department of Office of Policy and Management Nutmeg Network Grant Program**; and

WHEREAS, assistance under this grant will be used by the information Technology Services for employees of the City and Barnum Museum; and,

WHEREAS, it is desirable and in the public interest that the City of Bridgeport Central Grants Office, submit an application to **State Department of Office of Policy and Management;** and

NOW THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL:

1. That it is cognizant of the City's grant application to and contract with the **State Department of Office of Policy and Management** for the purpose of activities under Nutmeg Network Grant ; and,

2. That it hereby authorizes, directs and empowers the Mayor or his designee to execute and file such application with the **State Department of Office of Policy and Management** and to provide such additional information and to execute such other contracts, amendments, and documents as may be necessary to administer this program.

Comm. #18-14 Ref'd to Contracts Committee on 01/05/2015.

CITY OF BRIDGEPORT
OFFICE OF THE CITY ATTORNEY
999 Broad Street
Bridgeport, Connecticut 06604-4328

CITY ATTORNEY
Mark T. Anastasi

DEPUTY CITY ATTORNEY
Arthur C Laske, III

ASSOCIATE CITY ATTORNEYS
Gregory M. Conte
Betsy A. Edwards
Richard G. Kascak, Jr.
Russell D. Liskov
John R. Mitola
Ronald J. Pacacha
Lisa R. Trachtenburg

ASSISTANT CITY ATTORNEYS
Salvatore C. DePiano
R. Christopher Meyer
Edmund F. Schmidt
Eroll V. Skyers

Telephone (203) 576-7647
Facsimile (203) 576- 8252

December 29, 2014

Fleeta Hudson, City Clerk
45 Lyon Terrace
Bridgeport, Connecticut 06604

RE: Request To Add Item to City Council Meeting Agenda January 5, 2015
Subject: Design-Build Contracts For Streetscape Projects

Dear Fleeta:

At the request of David Kooris, Director, Office of Planning and Economic Development, please add this item to the Agenda for the January 5, 2015 City Council meeting:

This matter involves the City's desire to engage two (2) design-build teams to design streetscapes, for example to create traffic-calming features at several important Bridgeport intersections, as well as other projects to provide safe access to streets for all users, including pedestrians, bicyclists, motorists and transit riders of all ages and abilities. The City selected the design-build teams as a result of a Request For Qualifications process under the City's purchasing ordinance. This request seeks the City Council's approval of contracts with both design-build teams in substantially the form of the attached Design-Build Agreement. Each team will submit proposals for the various projects and one will be chosen based upon the best design concept that can be delivered for the best price in the most reasonable timeframe.

This arrangement is designed to pair the designer of a project with the builder of the project into a single team that is expected to ensure more efficient

RECEIVED
CITY CLERK'S OFFICE
2014 DEC 30 A 9:38

ATTEST
CITY CLERK

budget and schedule controls for these streetscape projects than the typical design-bid-build arrangement.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY

By: _____
Ronald J. Pacacha,
Associate City Attorney

Encl. Proposed agreement

DESIGN/BUILD AGREEMENT

BETWEEN

CITY OF BRIDGEPORT

AND

_____

[DATE]

DESIGN/BUILD AGREEMENT

THIS AGREEMENT IS MADE AND ENTERED INTO as of the day of _____, 20___, by and between the **CITY OF BRIDGEPORT**, a municipal corporation, having offices at 45 Lyon Terrace, Bridgeport, Connecticut 06604, acting through its Department of Public Facilities, Division of Construction Management Services (hereinafter referred to as **"Owner"**) and _____, a [corporation, LLC or other] organized and existing under the laws of the State of _____, having an address at _____ (hereinafter referred to as "**Design/Builder**").

WHEREAS, the Owner advertised on _____ (see **Exhibit A** hereof) for several qualified, licensed (where licensing is required) design builders or design/build teams to provide to the Owner certain architectural, engineering, construction and other services related to the design of _____ that will comply with all applicable federal, State and local laws and codes;

WHEREAS, the Design/Builder submitted its qualifications/proposal entitled "_____" dated _____ (see **Exhibit C** hereof);

WHEREAS, the Owner intends to seek proposals for a particular project from more than one design/builder and to select the design/builder to do the work of such project who proposal presents the best value to the City and will seek proposals for other projects from more than one design/builder in the future as such projects are developed and the funding for them is secured; and

WHEREAS, the Owner desires to engage the Design/Builder, and the Design/Builder agrees to accept the responsibility to design each project that it may be awarded in conformance with the Owner's specifications and, if such design is acceptable, to construct the Project in accordance with the approved design and the approved schedule, giving assurances to the Owner that each such project will be completed within the approved Project budget.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

DEFINITIONS

The following definitions will be used throughout this Agreement, unless the context requires otherwise:

"**Approval**" or "**Approved**" means, with respect to the administration and performance of this Agreement, that the Owner has given its written approval(s) to the Design/Builder when required, including but not limited to, the approval of budgets, change directives, changes or deviations from or with respect to Services, additional expenses, scope changes, substitutions, time delays, schedule changes, etc.

"**Budget**' means the Owner's declaration of maximum construction cost set forth herein including a contingency, as the same may be amended from time to time, which Budget the Design/Builder must use in its design and ensure that the Project can be constructed for.

"**Construction Documents**" means the design documents, drawings and specifications prepared by the Design/Builder and Approved by the Owner setting forth in detail the Design/Builder's requirements for the construction of the Project including drawings, technical specifications, cost estimates, bond and insurance requirements, deliverables, warranties and the like.

"**Construction Consultant**" means any Owner's construction consultant engaged by the Owner to protect the Owner's interests in connection with the Project.

"**Construction Documents Phase**" means the period during which the Design/Builder prepares the Construction Documents for the Owner's Approval.

"**Design/Builder**" means _____, acting through the Design/Builder's Representative, its Approved subcontractors and consultants, including its design, engineering and construction professionals.

"**Design/Builder's Representative**" means the specific individual designated in writing by the Design/Builder to the Owner at the inception of this Agreement and from time to time as its representative with respect to the Project pursuant to this Agreement who shall have authority to bind the Design/Builder. At the inception of this Agreement, the Design/Builder's Representative shall be _____. During the Construction Phase, the Design/Builder's Representative shall be _____.

"**Final Completion**" shall mean the point at which the Project is complete and may be lawfully used and occupied except for punchlist items.

"**Owner**" means the City of Bridgeport acting through the Owner's Representative who shall have authority for the day-to-day activities of the Project and who shall be designated in writing at the inception of this Agreement and who may be changed by written notice from time to time during the term of this Agreement.

"**Owner's Representative**" means the specific individual or individuals designated in writing by the Owner to the Design/Builder from time to time during the term of this Agreement as its representative with respect to the Project. At the inception of this Agreement, the Owner's Representative shall be _____, or his designee set forth in writing to the Design/Builder. The Owner's Representative, but not the Project Manager, shall have authority to change the material terms of this Agreement, which can only be changed by an authorized City department head.

"**Permits and Approvals**" means all required regulatory permits from federal, state and local governmental agencies and authorities having jurisdiction over the Project.

"**Preliminary Design Phase Documents**" means the Design/Builder's review of all existing site conditions, landscaping, site restrictions, layout of new structures, facilities and landscaping to be included in the Project, review and analysis of the Project requirements under applicable laws and regulations to ascertain the requirements for all Permits and Approvals (defined below) required for the successful completion of the Project, and the preparation of preliminary drawings for the Owner's review and Approval.

"**Preliminary Design Phase**" means the period during which the Design/Builder undertakes and completes the Preliminary Design Phase Documents for submission to and Approval by the Owner.

"**Project**" means the design and the construction of the Construction Phase Documents Approved by the Owner set forth in this Agreement.

"**Project Manager**" means the person designated by the Owner in writing who has day-to-day responsibility for interacting and making decisions on the Owner's behalf.

"**Schedule**" means the schedule of milestone dates and other time requirements Approved by the Owner and to be met by the Design/Builder.

"**Services**" means the design and construction obligations of the Design/Builder, and other necessary professional services required to complete the Project as described herein.

"**Study Report**") shall mean a report containing the information described in Section 2.2(C) hereof.

ARTICLE I BASIC AGREEMENT

1.1 **Design/Builder's Qualifications.** The Design/Builder represents that it has as a part of its team or as a subcontractor one or more design professionals duly-licensed in the State of Connecticut and qualified and experienced in the design, engineering and preparation of preliminary design, design development and construction drawings, specifications, cost estimates, contracts and bid documents relating to the design and construction of the Project described herein and other public improvements in accordance with the requirements of the Owner. The parties are entering into this Agreement with the understanding that the Design/Builder will provide multi-disciplinary services through its own forces or by engaging qualified subcontractors and consultants to the Design/Builder, including but not limited to, architects, landscape designers, civil engineers, structural engineers, construction inspectors, land surveyors, geo-technical engineers, soil-testing professionals, environmental assessment and remediation design specialists, electrical engineers, cost-estimators, mechanical engineers and other professional services necessary for the completion of Project. The Design/Builder represents that its subcontractors and consultants will also be duly-licensed in the State of Connecticut where licensing of such professionals is required. The licenses of the Design/Builder's designer and other subcontractors and consultants identified herein shall be submitted to the Owner prior to the execution of this Agreement as well as the licenses of those designers, subcontractors and consultants Approved by the Owner in the future. In the case of new or additional professionals not disclosed at the inception of this Agreement, the Design/Builder shall present the professional license(s) of any new subcontractors and consultants to the Owner promptly in advance of engaging any of them for the Owner's Approval. The Design/Builder will conduct, prepare and present to the Owner for review and acceptance all required studies, plans, surveys, specifications, drawings and cost estimates which shall be prepared in cooperation with the Owner's Representative and the Owner's Construction Consultant as determined by the Owner, as necessary to accomplish the Work. The Services of the Design/Builder shall include, without being limited to, budgeting, scheduling, attendance and participation in monthly and other periodic progress meetings, identification and monitoring of key factors impacting the quality, timing and completion of the work, development of strategies to avoid or mitigate delays, and other services described herein or that may be required or desired with respect to the Project.

B. **Use of Task Orders.** The consulting Services required by this Agreement will be assigned by Task Order to allow for the Project and other potential projects to be assigned to the Design/Builder. The Owner shall request Services by one or more Task Orders. The content, schedule and Compensation for each Task Order shall be negotiated prior to commencing Services under such Task Order.

C. **Assignment of Projects.** The Owner shall identify and inform the Design/Builder of Projects that it wishes the Design/Builder to submit a proposal for and, if the Design/Builder is selected, shall issue a written Task Order to the Design/Builder upon mutual agreement of the terms and conditions thereof. Each additional Task Order will be considered an amendment to this Agreement, shall be incorporated by reference into this Agreement, and shall become a part hereof as if fully set forth herein. Each Task Order shall be commenced by the Design/Builder within five (5) business days of receipt of a written notice to proceed or on such later date that may be specified therein (each, a "**Notice to Proceed**").

D. **Task Order Format.** A format for a Task Order is attached as **Exhibit B**. Its inclusion as part of this Agreement illustrates the general framework to be used in authorizing each and every Task Order requiring the Design/Builder's Services for the duration of this Agreement.

E. **Authority to Request Additional Tasks or Services.** It is understood and agreed by the parties that, upon the Approval of this Agreement, only the Owner's Representative, designated by the Owner in writing from time to time to the Design/Builder, shall have the authority to add Task Orders to this Agreement.

1.2 **Compensation.** The Owner shall compensate the Design/Builder for each Task Order as follows:

1.3 **Payment.** Payment of Compensation to the Design/Builder shall be divided among the phases of the work assigned to and completed by the Design/Builder. The parties agree that the Compensation will be separate and distinct for the Preliminary Design Phase, the Design Development Phase and the Construction Phase. Compensation for each such phase shall be paid in the following manner:

A. Compensation for the Project from the effective date of a Task Order through Final Completion ("**Compensation**") shall be made monthly in proportion to the percentage of each phase of the work of the Project that is either completed or observed work in place that is not disputed by the Owner less five (5%) percent ("**Retainage**"). The accumulated total Compensation at Final Completion, shall not exceed $_____ Dollars ("**Not to Exceed**" or "**NTE**"). The Compensation due and payable for each phase as allocated to such phase is as follows:

Preliminary Design Phase	NTE $ _____
Design Development Phase	NTE $ _____

Construction Documents Phase NTE $ _____

Total Aggregate Compensation **NTE $ _____**

B. **Submission of Invoices**. All invoices for Compensation shall be submitted monthly by the 20th day of the month for the prior month's Services rendered in connection with such phase. Each invoice shall be on a form approved by the Owner and shall contain sufficient supporting data acceptable to Owner. Such invoice shall not be complete until all supporting documentation has been submitted to the Owner and the Owner has had ten (10) business days to review such invoice and documentation.

C. **Timing of Submission; Payment; Interest**. Invoices shall be submitted by the twentieth (20th) day of the month for Services rendered during the previous month. The Owner shall pay all undisputed amounts for Compensation within thirty (30) days after the completion of the Owner's review period. Notwithstanding anything herein to the contrary, Compensation shall not be paid on disputed invoices or portions thereof until the Owner is satisfied that sufficient backup documentation and justification exists therefor. The Owner shall not be obligated to pay interest to the Design/Builder for amounts withheld by the Owner based upon a good faith dispute.

D. **Release of Retainage**. Retainage shall be promptly released to the Design/Builder after Final Completion and when the Owner determines that the punchlist has been completed.

E. **Responsibility for Certain Payments**. The Design/Builder shall remain responsible, and shall indemnify and hold harmless the Owner from and defend it against all liability for the withholding and payment of all Federal, state and local personal income, wage, earnings, occupation, social security, worker's compensation, unemployment, sickness and disability insurance taxes, payroll levies or employee benefit requirements (under ERISA, state law or otherwise) now existing or hereafter enacted and attributable to the Design/Builder, its subcontractors and consultants and their respective employees.

F. **Unauthorized Charges**. The Design/Builder expressly understands and agrees that the Owner shall not be liable for the payment of any Services or other work performed by the Design/Builder, its subcontractors or consultants based upon unauthorized representations of or directions from officers, agents or employees of the Owner other than the Owner's Representative that result in unauthorized charges or that exceed the Budget for this Project or any phase thereof ("**Unauthorized Charges**") unless the Design/Builder submits a written request to the Owner to perform additional Services or other work that is not authorized under this Agreement or that may exceed the Budget. Unauthorized Charges that are not brought to the Owner's

attention and Approved will not be honored and payment therefor will be deemed waived by the Design/Builder.

1.4 **Construction Cost Budget**. The Owner and Design/Builder agree as follows:

A. The construction budget for this Project is an absolute total of _____ ($_____) Dollars (the "**Budget**") that the Owner will pay to the Design/Builder, which includes all soft costs and all hard costs required directly or indirectly to construct and complete the Project. The Budget does not include the Owner's cost of financing, its administrative expenses, legal, accounting and consulting fees incurred directly by the Owner, and advertising costs.

B. **Liability of Design/Builder For Construction Budget**. The Design/Builder shall control the design of the work so that in the Design/Builder's best professional opinion, the Project can be properly designed and constructed on time within the Budget. The Design/Builder acknowledges and agrees that it has ultimate responsibility for the cost of labor, materials and equipment, the methods and determination of bid prices, the conduct of competitive bidding processes, economic, market and bargaining powers during negotiation, and negotiating conditions as part of the work of the Project. Accordingly, the Design/Builder warrants and represents that bids or negotiated prices in the aggregate will not vary from or exceed the Budget, notwithstanding that the final bids or negotiated prices may exceed the estimate of construction cost or evaluation prepared or agreed to by the Design/Builder, and further agrees to use its best efforts and experience, in the interests of the Owner, to ensure that the bid documents, construction documents and construction specifications protect the Budget and avoid costly changes or costs in excess of the Budget resulting from design errors or omissions, errors and omissions in the bid documents, construction documents or construction specifications, mistakes made during construction, correction of work, or intentional or willful misconduct by the Design/Builder, its subcontractors or consultants.

1.5 **Use of Subcontractors and Consultants**. The Design/Builder has retained or will retain as subcontractors and consultants, at its sole cost and expense, trained, experienced and licensed professionals (where licensing is required in this State) to render the categories of service necessary to complete the Project. The names and qualifications of such subcontractors and consultants will be disclosed to the Owner in writing for review, consideration and Approval prior to the Design/Builder hiring the same. The Design/Builder shall inform the Owner in writing in advance of the Design/Builder's intent to substitute any Approved subcontractor or consultant or the substitution of any subcontractor or consultant not identified to the Owner at the time of execution of this Agreement. The Owner shall have the right, in the exercise of its reasonable business judgment, to reject any such additional or substitute subcontractor or

consultant and to request the Design/Builder to submit alternatives. The Design/Builder's hiring, retention and substitution of such subcontractors and consultants shall not diminish or reduce the Design/Builder's overall responsibility under this Agreement for the successful and timely completion of the Project in accordance with the Schedule and the Budget.

1.6 **Project Responsibility and Staffing**.

A. **Design/Builder's Staffing.** The principal of the Design/Builder will represent the Design/Builder in all matters of communication, coordination, decision and policy pertaining to Design/Builder's work under this Agreement and is referred to as the "Design/Builder's Representative" herein. The Design/Builder's Representative may be removed or replaced from time to time as set forth herein by written notice, provided, however, that the parties agree that the Design/Builder's Representative shall not be removed without the prior written Approval of the Owner, which Approval may be withheld in the exercise of the Owner's prudent business judgment, unless such individual has ceased his or her employment with the Design/Builder. Notwithstanding anything in the foregoing sentence to the contrary, the Owner may request in writing that the Design/Builder's Representative be removed and replaced, without cost or expense to the Owner in the exercise of the Owner's prudent business judgment. If the Owner requests the replacement of the Design/Builder's Representative and the Design/Builder either (a) refuses to do so or (b) unreasonably delays the appointment of a replacement or if the Owner determines that such replacement is unsatisfactory, in the exercise of the Owner's prudent business judgment, the Owner shall be permitted to terminate this Agreement.

B. **Subcontractors and Consultants.** The Project staff will consist of, at a minimum, the staff identified by the Design/Builder in the professional categories approved by the Owner at the time of execution of this Agreement. The Design/Builder represents that all subcontractors and consultants employed by it in connection with this Agreement possess the requisite licenses (where licensing is required), education, training and experience to perform their respective job descriptions and functions in a competent and professional manner for this Project. No subcontractor or consultant shall be replaced, and no additional subcontractor or consultant shall be assigned to the Project, without the prior written approval of the Owner. The Owner may, without incurring cost or expense, require that the Design/Builder replace any subcontractor or consultant in the sole discretion of the Owner upon written notice to the Design/Builder. If required, the Design/Builder shall have on its staff or shall retain third parties at its sole cost and expense as a part of the performance of its Basic Services, full service professional consultants and subcontractors for the following services:

Professional Category	Firm to be Retained

A. Cost Estimator

B. Architect/Designer

C. Civil/Structural Engineers

D. Mechanical / Electrical Engineers

E. Site Planning

F. Geotechnical / Environmental Engineers

G. Construction Administration

H. Special Inspections

The Design/Builder shall inform the Owner in writing in advance of engaging any other subcontractor or consultant that has not been identified above. The retention of the aforesaid consultants and subcontractors shall not diminish or reduce the obligations and duties of the Design/Builder hereunder for the successful and timely completion of the work on the Project.

1.7 **Time; Preparation of a Schedule for the Project.** The Design/Builder shall complete each phase of its work for the Project in a timely fashion in accordance with the Schedule attached hereto as **Exhibit D**. Once the parties hereto have agreed to the design phase and the construction phase, respectively, of the Schedule, all dates set forth in the Schedule, as the same may be amended from time to time in accordance with this Agreement, shall be **TIME OF THE ESSENCE**. The Design/Builder acknowledges that the Owner may suffer direct and indirect losses, including, but not limited to, the loss of, delay in obtaining or increased cost of financing, the loss of revenue as affected by future development, expense of obtaining temporary facilities, inconvenience and other adverse affects if the Design/Builder does not perform its Services strictly in accordance with the Schedule. The Design/Builder shall be liable to Owner for all direct and indirect losses, costs and expenses, including reasonable attorneys' fees, consultants' fees, dispute resolution costs and other expenses sustained by the Owner should the Design/Builder fail to meet the interim and final mandatory milestone dates reflected on the Schedule or otherwise fail to strictly comply with any term or provision of this Agreement; provided, however, that such damages shall not include consequential, punitive or speculative damages. This paragraph shall survive early termination of the Agreement.

A. **Timely Performance an Essential Condition**. The Design/Builder and the Owner understand and agree that the date of commencement and the required dates as specified in Schedule that forms a part of this Agreement to be

completed by the Design/Builder, are **ESSENTIAL CONDITIONS** of this Agreement.

B. **Commencement of Services.** It is mutually understood and agreed that the Services of the Design/Builder hereunder shall be commenced within five (5) days after the issuance of a Notice to Proceed by the Owner or on such later date specified therein.

C. **Daily Damages For Delay; Exclusions.** In the event of the Design/Builder's failure to timely complete the required Services by the dates specified in the Schedule, the Design/Builder shall, in additional to all other remedies available to the Owner, be liable to the Owner for liquidated damages for various known and unknown losses that the Owner may suffer, which the parties agree may be difficult to quantify and prove. The parties have therefore mutually agreed to establish a liquidated sum for such uncertain damages in advance. The daily amount established for Delay Damages is deemed to be reasonable, is not greatly disproportionate to the damages that the parties agree at the time of the execution of this Agreement that the Owner would sustain if the Design/Builder delays the progress of the Project, and is treated as a liquidated sum and not a penalty for the loss to the Owner resulting from the delay in completion of the work, the delay in opening, the inability to use all or a portion of the Project site and its amenities, the added direct and indirect costs to the Owner relating to such delay, including but not limited to administrative, temporary services and inspection costs on account of the delay. Such damages shall be assessed against the Design/Builder in the amount of **[Select dollar amount per day] ($_____)** per calendar day for each and every day that the said Services shall be and remain incomplete due to no direct fault of the Owner ("**Delay Damages**"). The Owner shall give written notice to the Design/Builder that such a delay has occurred and that Delay Damages have commenced. Delay Damages shall continue to accrue and be payable until the Design/Builder rectifies the delay and gives written notice and substantiation that the progress of the Project is on schedule in accordance with the Schedule. Subject to the Design/Builder's right to correct such delay and put the Project on schedule by the next subsequent date specified in the Schedule, any such Delay Damages for which the Design/Builder is liable shall be payable within ten (10) days of written demand from the Owner and, if not promptly paid, may either be deducted by the Owner from any money due or to become due to the Design/Builder or may be pursued by collection action. **Notwithstanding anything to the contrary set forth in this paragraph, Delay Damages do not satisfy, and are not intended to compensate the Owner for, the additional costs and expenses to the Owner resulting from the need to consult with legal counsel, construction consultants, design consultants and the like related to investigating and advising the Owner about the causes that led to the Design/Builder's failure to meet the dates as set forth in the Schedule, the consequences of such failure and the resulting delay, and any needed action on the part of the Owner or the Design/Builder to rectify**

the situation and minimize the risk that subsequent interim and final mandatory milestone dates may not be met.

D. **Schedule Deemed To Be Reasonable; Design/Builder's Opportunity to Rectify Delay; Other Delays; Schedule Revisions**. It is expressly understood and agreed by the parties that the time for the completion of each interim and final mandatory milestone date contained in the Schedule for each phase of the work and the ultimate Final Completion of the Project has been established by mutual agreement of the parties to be a reasonable time for the completion thereof. If the Design/Builder fails to meet a milestone date in the Schedule, Delay Damages shall commence and the Design/Builder shall submit a revised Schedule to the Owner's Representative within ten (10) days after receipt of the Owner's notice that Delay Damages are being assessed demonstrating how the time projected to have been lost in the attainment of such milestone date will be regained by the Design/Builder's efforts at no additional cost, expense or damage to the Owner. If, in the opinion of the Owner's Representative, the Design/Builder's revised Schedule will avoid any further delay, thereby reflecting the timely attainment of the next subsequent interim or final mandatory milestone date, and if the Design/Builder proceeds in accordance with such revised Schedule and achieves the revised date, the Owner shall have the ability to withhold from assessing Delay Damages against the Design/Builder. The Owner will not Approve the Design/Builder's plan for revising the Schedule to regain any such lost time that may occur if the Design/Builder's proposal reflects costs, expenses, procedures, resource requirements, or other adverse affects upon the Owner or the Project which the Owner's Representative determines are in violation of other requirements of this Agreement. Any revision of the Schedule Approved by the Owner in such case shall not be deemed a waiver of the Owner's right to assess Delay Damages for subsequent delays or the right to terminate this Agreement on account of abandonment or repeated failure to meet mandatory milestone dates by the Design/Builder, nor shall the revision of the Schedule otherwise relieve the Design/Builder from full responsibility for the timely performance of its obligations under this Agreement. In all other cases where a delay is encountered that is not due to the fault of the Design/Builder, any delay in the contract time set forth in the Schedule shall be changed by a formal Change Order. Any claim for an extension or shortening of the contract time shall be set forth in written notice delivered by the party making such claim no later than thirty (30) days after the occurrence of the event giving rise to the delay has occurred and stating the specific nature of the claim. Such claim shall be supported by the written statement of the party claiming delay, documentation substantiating such delay, and a statement of the entire adjustment in the Schedule to which the party believes it is entitled, which shall be delivered to the other party within five (5) days after the date notice of such claim has been made. If the Owner approves an extension of the contract time to the Design/Builder, which extension shall only be entertained if the Owner is the cause of the delay, if an event constituting force majeure is the cause of the delay, or if the delay is otherwise beyond the control of the Design/Builder, the

Owner will grant the Design/Builder a delay in the contract time that is reasonably believed to have resulted from such delay and will award additional time to complete in accordance with this Agreement. If the parties cannot mutually agree to the number of days by which the contract time should be extended as a result of such delay, either party shall submit the matter to dispute resolution in accordance with this Agreement. Notwithstanding the fact that a delay may have occurred, both parties, respectively, have an obligation to take reasonable steps to mitigate the adverse effect of such delay on the timely completion of the Project.

E. **Owner's Right to Require Design/Builder to Accelerate.** With respect to any portion of the Services to be rendered by the Design/Builder under this Agreement, the Owner's Representative will have the right to review, accept and/or reject the Design/Builder's staffing of the Project, and the timeliness and/or progress of the Services pursuant to the Schedule, may approve/disapprove or modify payments due to the Design/Builder, and may monitor or comment upon and, as necessary, require the Design/Builder to place additional forces and resources, at no cost to the Owner, to accelerate completion time in order to meet the agreed-to Schedule, without additional Compensation being due to the Design/Builder and without diminishing the Design/Builder's obligation to pay Delay Damages for not achieving an interim or final mandatory milestone date set forth in the Schedule. If, on the other hand, the Owner specifically requests acceleration for the Owner's convenience in writing, the Design/Builder shall be entitled to seek additional Compensation calculated in accordance with this Agreement.

1.8 **Representations and Warranties**. The Design/Builder represents and warrants, as of the date hereof and throughout the Term of this Agreement, as follows:

A. **Use of Qualified Personnel, Subcontractors and Consultants**. The Design/Builder represents that it is a _____ **[corporation, LLC, joint venture, partnership]** comprised in part of duly-licensed architects and other design professionals engaged in the performance of architectural services pursuant to the provisions of Section 20-298a of the Connecticut General Statutes, has the requisite experience to undertake and complete the Services pursuant to the requirements of this Agreement, has in its employ, or will engage at its sole cost and expense, licensed (where required), experienced, qualified and trained personnel, subcontractors and consultants, and will use, or require those in its employ to use, quality equipment accurately calibrated to competently perform the Services.

B. **Probable Construction Cost**. The Design/Builder represents that if and when its probable Construction Cost Estimate (CSI Format preferred) is prepared, the Design/Builder will prepare the same using its best efforts and past experience in light of the facts and circumstances available to it prior to the date

it submits such Construction Cost Estimate to the Owner, and represents that all soft costs and actual hard construction cost of the Project shall not exceed the Construction Budget except on account of facts and circumstances unknown, undiscovered, or unknown or undiscoverable, through reasonable efforts of the Design/Builder.

C. **Design/Builder Possesses Adequate Resources and Personnel.** The Design/Builder represents that it is financially stable and has adequate resources and personnel to complete the Services for the Project in a timely fashion.

D. **No Conflicts**. The Design/Builder has disclosed in writing prior to the execution of this Agreement, and shall disclose in the future if they occur, all conflicts or potential conflicts of interest that may or are likely to have an adverse affect on its ability to professionally and competently perform its obligations in connection with the Project, including but not limited to, the nature and specifics of its relationship with any elected official of the Owner, the Owner's Representative, an employee or employees of the Owner, other participants in the Project, for example the Owner's Construction consultant or subcontractors, and the like. The Design/Builder represents that it will employ its best efforts to ensure that its performance of the Services described herein will not result in a conflict of interest, will not violate any laws or contractual obligations with third parties, and is an enforceable obligation of the Design/Builder.

E. **Prior Approval of All Subcontractors and Consultants.** The Design/Builder will not, except for those subcontractors and consultants specifically identified in this Agreement, engage any other subcontractor or consultant for any of the Services for any Task Order without prior written notice to and written Approval of the Owner.

F. **No Violation of Law**. The Design/Builder represents that neither it, nor any of its officers, directors, owners, employees, partners, members, joint venturers and agents, or, to the best of its knowledge, any of its Approved subcontractors and consultants, have been charged with, pled guilty to, or been convicted of a criminal violation of federal or state law, other than as disclosed in advance to the Owner prior to execution of this Agreement, arising directly or indirectly from or related to its business operations that resulted or may result in the imposition of a monetary fine in excess of $10,000, injunction, criminal conviction or other sanction that has resulted or may result in imprisonment in excess of one (1) year, and further represents that the Design/Builder has taken and shall take all reasonable steps to ensure that its officers, directors, owners, employees, partners, members, joint venturers, agents, subcontractors and consultants shall comply with the requirements of all laws, rules and regulations applicable to this Agreement or to the conduct of its or their businesses in the performance of the Services under this Agreement.

G. **Quality and Performance of Services**. The Design/Builder represents that it will perform, or ensure the performance by those employed by or under its control, the Services in a good and workmanlike manner consistent with the level of skill and care ordinarily exercised by members of the profession currently practicing in the State of Connecticut under similar conditions in connection with a Project of this type and scope, and will diligently pursue the completion of such Services in accordance with the terms of this Agreement.

H. **Licenses and Permits**. The Design/Builder represents that it possesses, and will ensure that its subcontractors and consultants possess, all professional licenses and other licenses and permits in the State of Connecticut that may be required to perform the Services required by this Agreement.

I. **Observance of Proprietary Rights**. The Design/Builder represents and warrants that it will take reasonable steps to ensure that the performance of the Services will not infringe upon or misappropriate any United States copyright, trademark, patent, or the trade secret or other proprietary material of any third persons. Upon being notified of such a claim, the Design/Builder shall, at the request of the Owner and in the Owner's sole discretion, (i) defend through litigation or obtain through negotiation the right of the Owner to continue using the Services of the Design/Builder while such claim of infringement is contested; (ii) modify the Services to be rendered at no cost, expense or damage to the Owner so as to make such Services non-infringing while preserving the original functionality, and/or (iii) replace the Services or the infringing or potentially infringing portion thereof with the functional equivalent. If the Owner determines that none of the foregoing alternatives provide an adequate remedy or resolution of the claim of infringement, the Owner may terminate all or any part of the Services and, in addition to other relief, shall be entitled to recover the amounts previously paid to the Design/Builder hereunder related to such claim of infringement.

J. **Communications and Coordination.** The Project Manager shall receive, control and coordinate all documents and arrange all meetings with the Design/Builder and third parties on behalf of the Owner. The Design/Builder shall keep the Project Manager informed of the nature and content of all direct communications that the Design/Builder has with representatives of the State of Connecticut and the U.S. Government, if any, in connection with the Project.

K. **Owner Shall Not Be Billed for Taxes.** The Owner is not obligated to pay certain sales, use, gross receipts taxes, ad valorem or other taxes with respect to the Services rendered by the Design/Builder, its subcontractors and consultants, and the Design/Builder agrees not to invoice the Owner therefor. The Owner reserves the right to withhold pursuant to Section 12-430(7) of the Connecticut General Statutes, in addition to any Retainage provided in this Agreement, a percentage of the monies owed to any party that is a non-resident of the State of Connecticut but who has not received an appropriate certificate

from the Commissioner of Revenue Services pursuant to the aforesaid statute on account of sales taxes that may be owed by such non-resident to the State of Connecticut. Upon request of the Design/Builder, its subcontractors and consultants, the Owner's Department of Public Purchases will issue tax-exempt certificates to any party purchasing materials or rendering services to the Project for which a tax exemption is available.

L. **Inspection of Records; Audits.** The Owner, its agent(s), or the representatives of any funding source shall have the right to inspect such records from time to time, with or without prior notice, during the Design/Builder's normal business hours.

ARTICLE II DESIGN/BUILDER'S RESPONSIBILITIES

2.1 Basic Services

The Services required by the Owner consist of three (3) separate and distinct phases, that is, the Preliminary Design Phase, the Design Development Phase and the Construction Phase. The Owner reserves the right to discontinue for convenience the Design/Builder's Services upon the completion of the Preliminary Design Phase or upon the completion of the Design Development Phase, and reserves the separate right to decline to proceed with the Design/Builder's services for the Construction Phase.

A. **Defined**. The Design/Builder's basic services ("**Basic Services**") consist of the design services described herein and any other services normally performed by a designer to design a Project of this nature, including, but not limited to those activities described in subparagraph B below. In addition, the Design/Builder's basic services shall include all services required during the construction phase to ensure that the Project is constructed and achieves Final Completion in accordance with the Approved drawings.

B. **Design/Builder's Performance**. The scope of Design/Builder's Basic Services are to also include those services that are reasonable, consistent with and necessary for the design and construction of a Project complete and functioning, and including, but not limited to, attendance at periodic meetings, preparing and submitting written, monthly progress reports, and other efforts designed to keep the Owner informed of progress on the Project. Where the Owner has informed the Design/Builder of the funding source requirements, all Design/Builder's Services, records and documents shall fully comply with the restrictions and requirements of all laws, rules and regulations of federal, state and local governmental and quasi-governmental agencies, authorities and funding sources having jurisdiction over or otherwise related to the Project, utility companies, fire underwriters, and other parties disclosed by the Owner, known to the Design/Builder, or otherwise in effect at the time such Services are rendered,

or the date on which, for example, the Connecticut Department of Environmental Protection or the United States Army Corps of Engineers approves any permit for the Project, or which, in the exercise of the best professional judgment of an independent designer or builder retained by the Owner, should have been known to the Design/Builder and all of the Design/Builder's costs of compliance therewith shall be included in the Budget.

C. **Notice of Meetings**. The Design/Builder will give timely advance notice to Owner of any and all meetings held by the Design/Builder in connection with this Project with utility companies, or city, state or other regulatory agencies, third parties and the like. Scheduling of such meetings is to be done by the Design/Builder. The Design/Builder's Basic Services shall include attendance at public and private meetings related to obtaining any necessary approval for the Project.

D. **Cooperation with Other Professionals**. The Design/Builder shall cooperate fully with any consultant, construction manager, or contractor employed by the Owner in connection with the Project.

2.2 **Preliminary Design Phase**. The Preliminary Design Phase shall commence within five (5) days of receipt of a Notice to Proceed from the Owner on or such later date specified therein. During the Preliminary Design Phase, the Design/Builder shall be responsible for the following matters:

A. **Field Survey**: The Design/Builder shall perform reviews of all existing site conditions, landscaping and physical limitations on the site, shall perform a topographical survey of each area of the Project, prepare base mapping of existing facilities at an appropriate scale for layout of new structures and landscaping.

B. **Review and Notification of all Requirements for the Project.** The Design/Builder shall review and analyze the Project requirements with respect to the requirements of all federal, state and local regulatory agencies and authorities having jurisdiction over the Project to ascertain the requirements for all Permits and Approvals (defined below) required for the successful completion of the Project, and shall confirm to and mutually agree on all requirements in consultation with the Project Manager.

C. **Preliminary Study and Report**. The Design/Builder shall prepare preliminary drawings and a study report ("**Study Report**") which shall constitute the Preliminary Design Phase submittal ("**Preliminary Design Phase Documents**"). The format of the Study Report shall consist of the preliminary drawings including plan, elevation and section drawings illustrating the scale and relationship of all components of the proposed work to existing conditions and facilities, and shall illustrate the design concept and details for any proposed work or structure with regard to foundation, anchoring, internal and external

features, materials, finished appearance and location. The Study Report shall include all information required for permits and approvals including their timeframes, written information on material specifications, cost estimates in CSI format and any other information required to file for any and all required Permits and Approvals. The Preliminary Design Phase Documents shall form the basis for seeking Permits and Approvals for the Project and all other permitting as required and as necessary to perform and complete all required phasing to facilitate the timely completion of the Project within the Schedule.

D. **Distribution of Project Information.** The Design/Builder shall promptly furnish to the Project Manager copies of all drawings, documents, reports, test results, correspondence, studies, meeting minutes and other verbal record, on any media, created by or on behalf of the Design/Builder or which comes into the possession of the Design/Builder and required, desired or necessary to keep the Owner informed of the progress of the Design/Builder's Services, the progress of the Project, or as otherwise may be requested by the Owner pursuant to this Agreement. Deliverables for the final Preliminary Design Phase Documents shall be a minimum of four (4) hard copies of all documents and drawings submitted for review and one (1) electronic copy in approved electronic media. All the deliverables in all phases shall be prepared using the following computer programs: drawings in AutoCad™ Release 14; specification and bid documents in Microsoft Word™; cost estimates in Microsoft Excel™ except as the Owner may otherwise approve.

2.3 **Design Development Phase**. Upon receipt of Owner's written approval to implement the Preliminary Design Phase Documents, and upon receipt of a notice to proceed with the Design Development Phase, the Design/Builder shall do the following:

A. **Preparation of Design Development Phase Documents.** The Design/Builder shall prepare from the drawings and study report of the approved Preliminary Design Phase Documents a set of design development documents ("**Design Development Documents**") consisting of final-scale plans, elevations and detail sections sufficient in detail to describe the design concept and fix the size and character of the work as to site improvements, aesthetics, structure, mechanical systems, electrical systems, specifications of materials and finishes, as well as size and character of all other aspects or systems of the work, and to identify all materials, Approved substitutions, and other elements of the Work as may be appropriate. The Design/Builder shall prepare for submittal all design analyses indicating design criteria and parameters used in developing the design concept. The Design/Builder shall also prepare CSI-based specifications and a detailed CSI-based cost estimate for review, comment and Approval by the Owner. The cost estimate shall have unit costs and quantities with labor and material prices in sufficient detail to indicate whether the work exceeds the Construction Budget. These Design Development Documents shall be prepared

for consultation with the Owner and other consultants retained by Owner, if any, for the Project.

B. **Conformity with Budget.** The Design/Builder shall cooperate with the Project Manager and the Owner's designated consultants to review and update the Budget to ensure that the Design Development Documents do not exceed the cost of that phase of the Budget. To the extent that the construction cost exceeds the Budget after the completion of the Design Development Documents, the Design/Builder shall suggest options and alternatives to reduce the construction costs which, if accepted by the Owner, will be incorporated into the Construction Documents. The Owner's Representative, or his/her designee, reserves the right to recommend changes to the work that will assist in keeping the work within Budget, and the Design/Builder agrees to incorporate changes into the work, provided sound architectural practices are maintained.

C. **Distribution of Project Information.** The Design/Builder shall promptly furnish the Project Manager copies of all drawings, documents, reports, test results, correspondence, studies, meeting minutes and other verbal records, on any media, created by or on behalf of the Design/Builder or which come into its possession and which are required, desired or necessary to keep the Owner fully informed of the progress of the Design/Builder's Services, the progress of the Project, or as otherwise may be requested by the Owner pursuant to this Agreement. Deliverables for the final Design Development Phase Documents shall be at a minimum four (4) hard copies of all documents and drawings submitted for review and one (1) copy of all documents in approved electronic media, unless otherwise directed by the Owner.

2.4 **Construction Documents Phase.** Upon receipt of Owner's written authorization to implement the Design Development Documents presented in the Design Development Phase and to proceed with the Construction Document Phase, the Design/Builder shall have the following responsibilities:

A. **Preparation of Construction Phase Documents.** The Design/Builder shall prepare from the approved Design Development Documents, all necessary drawings and specifications setting forth in detail the requirements for the construction of the Project including drawings, technical specifications, and cost estimates as supplemented by the Construction Consultant, if any, and shall incorporate such information into such drawings and specifications and submit the Construction Documents to the Owner for Approval. This phase of the Work will include the pursuit of all Permits and Approvals required for the Project that have not previously been obtained.

B. **Preparation of Documents and Permit Applications.** The Design/Builder shall prepare and file, with the cooperation and approval of the Owner, all the required documents to obtain all Project Permits and Approvals from all governmental agencies and authorities having jurisdiction over the

Project and shall be responsible for revising the drawings and related materials, if necessary, in connection with obtaining such Permits and Approvals. The Design/Builder shall ensure that all costs of construction resulting from any such required revisions including fees for all Permits and Approvals are within the Budget. If it is necessary to revise the drawings to secure governmental approval, the drawings shall be revised by the Design/Builder, as necessary, at no additional cost to the Owner.

C. **Certification of Governmental Compliance.** Prior to the commencement of construction, the Design/Builder shall certify to the Owner and any funding source for the Project that the Budget, the Construction Documents, and all other required deliverables prepared for the Project, conform to all applicable governmental regulations, statutes and ordinances, and, that the Project, when constructed in accordance with the Construction Documents, shall comply with all applicable codes.

D. **Coordination of All Project Drawings.** The Design/Builder shall be responsible for ensuring that all Project drawings and specifications coordinate with the plans and specifications for any design furnished by a subcontractor or consultant employed by the Design/Builder and, furthermore, shall use its best professional judgment to see that all Project drawings and specifications coordinate with the plans and specifications for any design furnished by any consultant employed by the Owner.

2.5 **Construction Administration Phase**

A. **Design/Builder's Role.** Upon receipt of the Owner's authorization to proceed with construction, the Design/Builder shall provide all necessary construction administration services and shall consult with the Project Manager and the Construction Consultant, if any, to the extent necessary to fully protect the interests of the Owner.

B. **Site Visits.** The Design/Builder is responsible for the progress and quality of the construction and to ensure that construction is proceeding in substantial accordance with the Construction Documents and the Schedule. The Design/Builder shall notify the Project Manager in writing if any portion of the construction is not in conformity with the requirements of the Construction Phase Documents and make recommendations to the Owner for its correction at the Design/Builder's sole cost and expense. The Design/Builder shall consult with the Project Manager with regard to any and all circumstances arising during the course of the construction which would be in the best interests of the Owner.

C. **Rejection of Work; Additional Testing.** The Project Manager or the Construction Consultant, if any, shall, but are not obligated to, notify the Design/Builder of Work that does not appear to conform to the Construction Documents so that the Design/Builder has an opportunity to correct such

nonconformity. If the Design/Builder fails to correct any nonconformity that may exist, whether identified by the Project Manager or not, the Design/Builder shall be responsible for the correction of such nonconformity at its sole cost and expense. Whenever proper professional judgment would indicate a probability of a non-conforming or adverse circumstances, and in order to ensure the proper implementation of the intent of the Construction Documents, the Design/Builder shall conduct special inspection or testing of any Work in accordance with the provision of the Construction Documents, whether or not such work has then been fabricated, installed or completed.

D. **Certificate of Substantial Completion**. When the Project has achieved Final Completion, the Design/Builder shall certify such achievement in writing to the Owner ("**Certificate of Substantial Completion**"). The Design/Builder shall prepare the architectural and mechanical punchlist for review and comment by the Project Manager and shall simultaneously submit the Certificate of Substantial Completion for Approval by the Owner's Representative. The Owner's Representative shall determine whether the Certificate of Substantial Completion is acceptable and shall have the right to require the Design/Builder to correct defective work. Whether defective work is found or not, Design/Builder shall immediately pursue the punchlist work and shall complete the same no later than sixty (60) days after issuance of its Certificate of Substantial Completion.

E. **Certificate of Final Completion**. The Design/Builder shall receive and review written guarantees, manufacturers' manuals, parts lists and all documents related to the Project. Upon request of the Owner, but not before, the Design/Builder shall issue a certificate of final completion stating that Project has been completed in accordance with the Construction Documents ("**Certificate of Final Completion**") and shall submit to the Owner simultaneously all close-out documents, as-built drawings, final lien waivers and consents of surety from Design/Builder and all of its subcontractors and consultants before Final Payment can be made.

F. **Disputes and Claims**. The Design/Builder has full responsibility to give full and prompt attention to any claims or controversies that arise during the course of construction of the Project and to resolve the same at its sole cost and expense.

G. **Assistance in Meetings**. The Design/Builder shall assist the Owner in connection with any meetings with governmental agencies and authorities necessary to obtain any Permits or Approvals for the Project.

H. **Course of Construction Testing Program.** The Design/Builder shall be responsible for the development of a course of construction testing program, including but not limited to material testing, special inspections and the like to ensure that all materials incorporated into the Work meet the requirements of the specifications and are in compliance with all codes.

I. **Equipment Evaluation**. The Design/Builder shall furnish to City personnel all necessary assistance and training in the utilization of any equipment or system that is incorporated into the Project.

J. **Record Drawings**. At the completion of the Project, the Design/Builder shall provide Construction Documents on a computer diskette in a Windows format compatible with AutoCad™, Release 14 software or other media approved by the Owner. Said documents shall reflect as-built conditions. In addition to the computer diskette, the Design/Builder shall provide two (2) sets of blackline prints and one (1) set of photocopy mylars, at the Design/Builder's sole cost and expense.

N. **Work Reports and Records.** The Design/Builder shall keep accurate written records of the progress of the Project, copies of which shall be promptly furnished to the Owner. Bi-weekly field reports are to be produced and submitted to the Owner, no later than five (5) days after the date of the field observation.

O. **Cost Records.** The Design/Builder shall keep and maintain accurate and detailed accounting records of any and all costs incurred on the Project for purposes of subsequent examination and audit. Such records shall be kept at the Design/Builder's principal place of business and, if the same is not located in the State of Connecticut, the Design/Builder will have to make arrangements to keep such records in the State of Connecticut. Such records shall be made available to the Owner on reasonable prior notice. At any time within five (5) years from the date of Substantial Completion or Final Completion of the Project, the Owner or its designee shall have the right to inspect, copy and audit such records.

P. **Liability For Construction Means, Methods, etc.; Safety**. The Design/Builder shall be responsible for all construction means, methods, technology, sequences; procedures and for performing any and all construction activities; and safety in connection with the Work or at the Project site.

ARTICLE III INFORMATION AND COMMUNICATION

3.1 **Information Supplied by Owner.** The Owner shall provide information regarding its requirements for the Project in sufficient detail to enable the Design/Builder to prepare comprehensive Design Development Documents. The Owner shall furnish such information with reasonable promptness to avoid delay in the performance and delivery of the Services. The Design/Builder shall review the Owner's requirements for completeness and accuracy and shall notify the Owner, in the exercise of the Design/Builder's best professional judgment, if it knows or believes that reliance upon the Owner-supplied information would be unreasonable, in which case the Design/Builder shall inform the Owner's

Representative in writing of the basis for questioning the reliability or reasonableness of the information supplied.

3.2 **Representation of the Owner; Differing Responsibilities of the Owner's Representative and the Project Manager**. The Owner shall be represented on this Project by the Project Manager and the Owner's Representative. At the inception of this Agreement, the Project Manager will be _____, Division of Construction Management Services. The Design/Builder is cognizant that the Owner's Representative and the Project Manager have different authority and responsibility under this Agreement. In all cases, the decisions of the Owner's Representative shall take precedence.

A. **Owner's Representative**. The Owner's Representative has full and final authority over all material decisions relating to this Agreement and the contractual relationship between the Owner and the Design/Builder, including but not limited to, decisions pertaining to changes in Compensation, changes in scope of Services, requests for Additional Services, changes to time for performance, termination of the Design/Builder, Approval of additional subcontractors and consultants not previously Approved by the Owner, changes to the Owner's Representative, changes to deliverable items, and any other cardinal change or material decision related to this Agreement.

B. **Project Manager**. The Project Manager has responsibility for day-to-day coordination with the Design/Builder, communications from the Owner's Representative to the Design/Builder, inspections, verifications, reports, meetings, initial sign-off on monthly invoices prior to submission to the Owner's Representative for review and Approval, and other typical contract administration functions that are not inconsistent with the decision-making authority of the Owner's Representative as to material matters and cardinal changes.

C. **Clarification of Authority**. Should the Design/Builder have any question or doubt concerning the role or authority of either the Project Manager or the Owner's Representative, real or perceived, direct or indirect, the Design/Builder is responsible for seeking clarification, confirmation or decision from the Owner's Representative before proceeding. The Design/Builder may rely on the oral clarification, confirmation or decision of the Owner's Representative, but must promptly seek to reduce the same to writing so that such action of the Owner's Representative is reflected in the Project records. The Design/Builder shall be liable for any action taken or foregone which has an adverse affect on the Project or the Owner based upon decisions of the Project Manager outside of the scope of his/her responsibilities with respect to the Project as to which the Design/Builder failed to seek clarification from the Owner's Representative. On the other hand, the Design/Builder shall not be liable for any action taken or foregone which has an adverse affect on the Project or the Owner when such action or forbearance resulted from direction taken or decision made by the Owner's Representative.

3.3 **Independent Legal and Accounting Services.** The Owner shall furnish its own legal, accounting, auditing and insurance counseling services, however, the fact that the Owner possesses such support services will not relieve the Design/Builder of its responsibilities pursuant to this Agreement. The Design/Builder shall furnish, at its own overhead expense, its own legal, accounting, estimating, auditing and insurance counseling services.

3.4 **Confidential Information**. Each party hereby acknowledges that it may be exposed to confidential information which may not be available to the public or discoverable under the Freedom of Information Act ("**FOIA**") and other proprietary information belonging to the other party or relating to its business and affairs, including, without limitation, source code and design materials for work product and other materials expressly designated or marked as confidential ("**Confidential Information**"). Confidential Information does not include (i) information already known or independently developed by the recipient; (ii) information in the public domain through no wrongful act of the party; (iii) information received by a party from a third party who was free to disclose it; or (iv) information required to be disclosed by a court or administrative agency or authority, or (v) information properly disclosable under FOIA.

3.5 **Covenant Not to Disclose.** Each party hereby agrees that during the term of this Agreement and at all times thereafter it shall not use, commercialize or disclose the other party's identified Confidential Information to any person or entity, except to its own employees who have a "need to know," to such other recipients as the party claiming confidentiality may approve in writing in advance of disclosure, or as otherwise required by court order, statute or regulation. The Design/Builder will notify the Owner of spills or other discharges of hazardous environmental contaminants, hazardous waste, regulated chemicals and other conditions that may be detrimental to public health, safety and welfare which are regulated under Connecticut law ("**Reportable Environmental Event**"). In cases where the Owner is not the property owner affected by such Reportable Environmental Event, the Design/Builder shall notify the Owner of such Reportable Environmental Event and the Owner will notify the property owner of such occurrence. Each party shall use at least the same degree of care in safeguarding the other party's Confidential Information as it uses in safeguarding its own Confidential Information, but in no event shall a party use less than due diligence and care. Neither party shall alter or remove from any software, documentation or other Confidential Information of the other party (or any third party) any proprietary, copyright, trademark or trade secret legend.

3.6 **Existing Environmental Reports.** The Owner shall furnish to the Design/Builder for its use any chemical, air and water pollution tests, tests for hazardous materials and other laboratory and environmental tests in the Owner's possession related to the Work of a Task Order.

ARTICLE IV REMEDIES

4.1 **Default by Design/Builder.** It shall be a material default under this Agreement in the event that any of the following occur (each a "**Design/Builder Default**"): (i) The Design/Builder fails to expeditiously perform the Services required to be performed through no fault of the Owner thereby delaying the commencement, progress, or delivery of the Project, or (ii) the Design/Builder is slow to pay or fails to pay any subcontractor or consultant promptly after the Design/Builder has been paid for the work of such subcontractor or consultant, or (iii) the Design/Builder is declared to be bankrupt or insolvent, makes an assignment for the benefit of creditors, files a voluntary petition in bankruptcy or insolvency, or a receiver for the Design/Builder is appointed, or a bankruptcy or insolvency proceeding, petition, declaration or assignment is not set aside within thirty (30) days of filing, or (iv) any representation or certification made by the Design/Builder to the Owner shall prove to be false or misleading on the date said representation or certification is made, or (v) default shall be made in the observance or performance of any material covenant, agreement or condition contained in this Agreement required to be kept, performed or observed by Design/Builder, or (vi) there has been a material adverse change in the financial condition of the Design/Builder, or (vii) the Design/Builder, or any of its principals or officers shall be convicted of or plead guilty to the commission of a crime punishable as a felony or imposing a fine in excess of $10,000, or (viii) the Design/Builder violates a material provision of any laws, ordinances, rules, regulations or orders of any public authority in the performance of its duties hereunder. If such an Design/Builder Default has occurred and has not been cured within thirty (30) days, with or without written notice from the Owner, the Owner may declare a Design/Builder Default hereunder and exercise any remedies available to it, including the termination of this Agreement. In the event that the Owner terminates the Design/Builder for an Event of Default that is not cured after notice and such termination becomes the subject of arbitration, if the Owner's termination of the Design/Builder is deemed to have been wrongful or inappropriate, such termination will be deemed converted to a termination for convenience by the Owner and the Design/Builder's remedies shall be limited to those set forth herein with regard to termination for convenience.

4.2 **Default by Owner.** In the event the Owner shall fail to perform any of its material obligations pursuant to this Agreement ("**Owner's Default**"), the Design/Builder shall give written notice stating the nature and details of such default to the Owner within fourteen (14) days of the occurrence of the event. If the Owner fails to cure a payment default within sixty (60) days after receipt of such notice, the Design/Builder may declare an Owner's Default hereunder and exercise any remedies available to it.

4.3 **Termination by the Owner Due to Design/Builder Default.** If the Design/Builder fails to supply enough properly-skilled professionals and employees, or fails to provide sufficient and proper materials, or if the Design/Builder commits a material violation of any laws, ordinances, rules, regulations or orders of any governmental agency or authority having jurisdiction, or otherwise commits a Design/Builder Default under this Agreement, the Owner shall give written notice to the Design/Builder with the nature and specifics of such default within fourteen (14) days of the occurrence of the event. In the event that the Design/Builder fails to cure such default within fourteen (14) days after receipt of such notice, the Owner may declare the Design/Builder to be in default hereunder and exercise any remedies available to it. The Owner may, without prejudice to any right or remedy, terminate the employment of the Design/Builder and take possession of all plans, specifications, drawings and other data prepared by the Design/Builder, whether complete or not, by whatever method the Owner may deem expedient. Additionally, the Owner may pursue any legal action available to it to obtain relief for actual damages suffered by reason of a Design/Builder Default hereunder. In such event, the Design/Builder shall be liable to compensate and reimburse the Owner for all of its loss, cost and expense, including but not limited to attorneys' fees and consultants' fees, which are caused directly or indirectly by the Design/Builder Default but such losses may not include compensatory, exemplary or punitive damages.

4.4 **Termination by Design/Builder.** Should the Owner commit an Owner's Default that continues beyond the giving of notice and the passage of the cure period provided herein, the Design/Builder may, as its sole and exclusive remedy, terminate this Agreement. Upon such a termination, the Design/Builder shall be entitled to recover from the Owner all Compensation due for Services performed in accordance with the requirements of this Agreement to the date of such termination, including Reimbursable Expenses. The Design/Builder may not recover any other damages, costs or expenses from the Owner other than payment for Services performed up to the date of termination.

4.5 **Termination by Owner Without Fault of the Design/Builder.** Upon fifteen (15) days' prior written notice, the Owner shall have the right to cancel and terminate this Agreement at any time whether or not a Design/Builder Default exists hereunder, and the Owner shall incur no liability to the Design/Builder or any other person by reason of such cancellation, except that, if the cancellation is for no fault of the Design/Builder, the Owner shall pay to the Design/Builder all sums then due to the Design/Builder hereunder for Services rendered in accordance with this Agreement performed up to the date of termination.

4.6 **Transfers on Termination; Assignment of Contracts.** In the event of any termination of this Agreement by the Owner, the Design/Builder shall, upon written request of the Owner, return to the Owner within seven (7) days all drawings, renderings, calculations, reports, studies, papers, materials

and other items on every form of media prepared by, in the possession of, or available to the Design/Builder relating to the Project whether created by or at the request of the Design/Builder or created by others. In addition, each party will assist the other party in an orderly termination of this Agreement and the transfer of the Design/Builder's interest in all contracts or arrangements with subcontractors, consultants, material suppliers and others, however, the Owner shall only be responsible for payments that may be due for goods and services rendered to the Project after the date of termination of the Design/Builder.

4.7 **Resolution of Disputes and Choice of Law**. The parties agree that all disputes between them in connection with this Agreement or the interpretation thereof, if they cannot be resolved by mutual agreement, shall be resolved in a court of law having jurisdiction over the parties located in Fairfield County, Connecticut.

4.8 **Claims For Additional Compensation and Time.** If an event occurs or other circumstances arise during the performance of the Services that establish or may tend to establish a claim by the Design/Builder for additional Compensation and/or additional time to perform, the Design/Builder shall promptly make such claim to the Owner in writing within fourteen (14) days of the occurrence of such event or circumstances setting forth the facts giving rise to such claim under this Agreement and the additional Compensation or contract time requested by the Design/Builder. The Design/Builder shall not undertake to perform additional work without the prior written approval of the Owner. All claims for additional Compensation or additional contract time that are not asserted with such 14-day period are deemed waived by the Design/Builder.

ARTICLE V INDEMNIFICATION AND INSURANCE

5.1 **Indemnification.** The Design/Builder represents and warrants that it will employ its best professional judgment in the performance of the Services hereunder to ensure that the Project is free from material defects which were known or should have been known to the Design/Builder in the exercise of reasonable care under the circumstances. To the fullest extent permitted by law, the Design/Builder, for itself, its subcontractors and consultants (the "**Indemnitor**"), agrees to indemnify, save and hold Owner, its elected officials, department heads, employees, contractors and subcontractors (the "**Indemnitee**") harmless from and against any and all liability, damage, loss, claim, demand, action and expenses of any nature whatsoever, including, but not limited to, costs, expenses, consulting fees and reasonable attorneys' fees which arise out of or are connected with: (i) any negligent act, error or omission by the Indemnitor in the performance of this Agreement; (ii) the negligent failure of the Indemnitor to comply with the laws, statutes, ordinances or regulations of any governmental or quasi-governmental agency or authority having jurisdiction over the Project; or (iii) the breach of any material term or condition of this Agreement

by the Indemnitor. The provisions of this indemnification article shall not be construed as an indemnification of the Indemnitee for any loss or damage attributable to the sole act or omission of the Indemnitee. The indemnity set forth above shall survive the completion, expiration or any earlier termination of this Agreement.

5.2 **Environmental Indemnification.**

A. **Indemnification.** [The Capitalized terms used herein are defined in Paragraph 5.2.B hereof.] The Design/Builder hereby agrees, unconditionally, absolutely and irrevocably, jointly and severally, if more than one, to indemnify, defend and hold harmless the Owner from and against and in respect of any loss, liability, cost, injury, expense or damage of any and every kind whatsoever (including, without limitation, court costs, attorneys' fees, consultants' fees and experts' fees and expenses, whether or not litigation is commenced) which at any time or from time to time may be claimed, suffered or incurred by a third party in connection with any inquiry, charge, claim, cause of action, demand, abatement order or lien made or arising directly or indirectly or in connection with, with respect to, or as a direct or indirect result of the Design/Builder's action or omission which results in a Release to or from the Project site into the Environment of any Hazardous Substances including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under or as a result of the enforcement of the Environmental Laws, whether now known or unknown, including without limitation:

(i) the removal, encapsulation, containment or other treatment, transport or disposal of Hazardous Substances on the Project site or emanating therefrom;
(ii) the imposition of a lien against the Project site, including liability resulting from the Design/Builder's failure to take prompt steps to remove, and to remove, such lien by payment of the amount owed or by the furnishing of a bond, cash deposit or security in an amount necessary to secure the discharge of such lien or the claim out of which the lien arises;
(iii) any inquiry, claim or demand, by any person including without limitation, any costs incurred in connection with responding to or complying with such inquiry, claim or demand;
(iv) any failure of the Design/Builder to use the Project site in compliance with all applicable Environmental Laws, and the defense of any litigation, proceeding or governmental investigation relating to such failure to comply with Environmental Laws;
(v) any personal injury concerning or relating to the presence of Hazardous Substances on or emanating from the Project site, or as a result of activities conducted on or with respect to the Project site in connection with the remediation of Hazardous Materials thereon or emanating therefrom.

The provisions of this indemnification shall govern and control over any inconsistent provision of any other document executed or delivered by the Design/Builder in connection with this Agreement. This paragraph shall survive the completion, expiration or early termination of this Agreement and shall be a continuing obligation of the Design/Builder and shall be binding upon the Design/Builder, its successors and assigns, and shall inure to the benefit of the Owner, its successors and assigns.

B. **Definitions**.

"Environment" means any water or water vapor, any land including the land surface and subsurface, air, aquatic life, wildlife, biota and all other natural resources and features.

"Environmental Laws" means, without limitation, all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the Environment and/or governing the use, storage, production, treatment, generation, transportation, processing, handling or disposal of Hazardous Substances, and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives, whether formal or informal, of federal, state and local governmental agencies and authorities with respect thereto, as they may be amended, renumbered, substituted or supplemented from time to time, and those Environmental Laws that may come into being or into effect in the future.

"Environmental Permits" means, without limitation, all permits, licenses, approvals, authorizations, filings, consents or registrations required by any applicable Environmental Law in connection with (a) the ownership, use and/or operation of the Project site for the use, storage, production, treatment, generation, transportation, processing, handling or disposal of Hazardous Substances, or (b) the sale, transfer, encumbrance or conveyance of all, or any portion of the Project site.

"Hazardous Substances" means, without limitation, any flammable, explosive, corrosive of ignitable material, characteristic waste, listed waste, radon, radioactive material, asbestos, urea-formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum-based wastes, methane gas, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, mixtures or derivatives having the same or similar characteristics and effects, as defined in, listed under, or regulated by various federal, State or local environmental laws, rules or regulations, including, without being limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801 et seq.), the Emergency Planning and Community Right to Know Act, as amended (42 U.S.C.

11001 et seq.), the Resource, Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1251, et seq.), the Clean Air Act, as amended (42 U.S.C. Section 7401 et seq.), the Clean Water Act, as amended (33 U.S.C. 1251 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. 300, et seq.), or as such substances are defined under any similar state laws or regulations, including, without being limited to, the release of substances constituting a "spill" as defined In Connecticut General Statutes Section 22a Sect. 452(c).

"Improvements" means the buildings, structures and other physical improvements previously existing, presently located on, or to be constructed on the Project site.

"Project site" means the real property described herein and its appurtenances.

"Release" or "spill" shall have the same meaning given to those terms under the Environmental Laws whether they are historic or sudden, and without regard to quantity.

5.3 **Insurance.** The following insurance coverage is required from the Design/Builder and it is understood that the Design/Builder will require other coverage from every subconsultant in any tier according to the work being performed and shall ensure that all insurance coverage is issued and in force in accordance with the terms hereof.

A. **Coverage Required.** The Design/Builder shall procure, present to the Owner in advance of any Services performed, and maintain in effect for the term of this Agreement without interruption the insurance coverages identified below with insurers licensed to conduct business in the State of Connecticut and having a minimum Best's A + 15 financial rating or other rating acceptable to the City.

Errors and Omissions Insurance (claims made form) will be provided by all design professionals involved in the Project with minimum limits of $3,000,000, or as otherwise required by the Owner.

Commercial General Liability (occurrence form) insuring against claims or suits brought by members of the public alleging bodily injury or personal injury or property damage and claimed to have arisen out of operations conducted under this Agreement. Coverage shall be broad enough to include premises and operations, contingent liability, contractual liability, completed operations (24 months), broad form property damage, care, custody and control, with limitations of a minimum $1,000,000 per

occurrence and $2,000,000 combined primary and excess coverage for each occurrence/aggregate and $300,000 property damage.

Business Automobile insuring against claims or suits brought by members of the public alleging bodily injury or personal injury or property damage and claimed to have arisen out of the use of owned, hired or non-owned vehicles in connection with business. Coverage will be broad enough to include contractual liability, with limitations of $1,000,000 combined primary and excess coverage for each occurrence/aggregate with a combined single limit for bodily injury, personal injury and property damage.

Workers' Compensation insuring in accordance with statutory requirements in order to meet obligations towards employees in the event of injury or death sustained in the course of employment. Liability for employee suits shall not be less than $500,000 per claim.

B. **General Requirements.** All policies shall include the following provisions:

Cancellation notice—The Owner shall be entitled to receive from all insurance carriers an unequivocal agreement to provide not less than 30 days' prior written notice of cancellation, non-renewal or reduction in coverage, such notices to be given to the Owner at the following address: Purchasing Agent, City of Bridgeport, Margaret E. Morton Government Center, 999 Broad Street, Bridgeport, Connecticut 06604.

Certificates of Insurance—All policies will be evidenced by an original certificate of insurance on a ACORD-25S form delivered to the Owner and authorized with original signature or stamp of the insurer or a properly-authorized agent or representative reflecting all coverage required, such certificate to be delivered to the Owner prior to any work or other activity commencing under this Agreement.

Additional insured—The Design/Builder, its subcontractors and consultants will arrange with their respective insurance agents or brokers to name the Owner, its elected officials, officers, department heads, employees and agents, at no additional cost to the Owner, on all policies of primary and excess insurance coverages as additional insured parties except errors and omissions coverage and workers' compensation coverage, and as loss payee with respect to any damage to property of the Owner, as its interest may appear. The undersigned shall submit to the Owner upon commencement of this Agreement and periodically thereafter, but in no event less than once during each year of this Agreement, evidence of the existence of such insurance coverages in

accordance with the terms of this Agreement. The City shall be designated as follows:

"The City of Bridgeport
Attention: Purchasing Agent
Margaret E. Morton Government Center
999 Broad Street
Bridgeport, Connecticut 06604"

ARTICLE VI MISCELLANEOUS

6.1 **Singular, Plural, Gender, etc.** Wherever in this Agreement the context so requires, the singular number shall include the plural number and vice versa, and any gender herein used shall be deemed to include the feminine, masculine or neuter gender.

6.2 **Professional Services Contract.** This Agreement is entered into to provide for the various phases of the design of the Work related to the Project, to provide for the construction of the Project within the Project Budget and Schedule, and to define the rights and obligations, risks and liabilities of the parties to each other. This Agreement, and any document or agreement entered into in connection herewith, shall not be deemed to create any other or different relationship between the Design/Builder and the Owner other than as expressly provided herein. The Design/Builder acknowledges that the Owner is not a partner or joint venturer with the Design/Builder and that the Design/Builder is not an employee or agent of the Owner.

6.3 **Prohibition Against Assignment.** The Design/Builder may not transfer, hypothecate or in any way alienate or assign its obligations under or interest in this Agreement or delegate any duties to be performed by it hereunder without the prior written consent of Owner, which consent may be withheld in the Owner's sole and absolute discretion. The Owner may assign its interest in this Agreement at any time to any person or entity that assumes the Owner's obligations from the date of the assignment hereunder; provided, however, that absent express consent in writing by the Design/Builder, such assignment shall not release the Owner from its obligations to the Design/Builder hereunder for payment of all amounts due the Design/Builder pursuant to this Agreement.

6.4 **Time of the Essence.** All dates set forth in this Agreement, and the mandatory milestone dates contained in the Approved Schedule, as may be amended from time to time, are agreed to be critical to the completion of the Project and shall be considered of the essence to this Agreement.

6.5 **Notices.** All notices, requests, demands or changes of address required or desired by either party shall be in writing and shall be either

personally delivered, delivered by messenger or overnight delivery service, or be delivered by registered or certified mail, return receipt requested, postage prepaid, and addressed to the other party at the address heretofore set forth (each a "**Notice**"). All Notices shall be deemed received, in the case of personal or overnight delivery service, upon receipt, or in the case of mailing, on the date of receipt thereof by the party to whom it is addressed or, if receipt is refused, upon the expiration of forty-eight (48) hours from the time of deposit of such mailed notice in an office of the United States Postal Service. A change of address of a party shall be set forth in the same manner as other required notices.

6.6 **No Waiver.** No waiver of any party's default hereunder by the other party hereto at any one time shall be construed as a waiver by such party of any subsequent breach of the same or another term of this Agreement by the other party.

6.7 **Ownership of Documents.** All drawings, specifications, surveys, test results, models, plans, computer programs, databases and other work product prepared by the Design/Builder or anyone employed by the Design/Builder in any form or media upon creation are and shall be the sole and exclusive property of the Owner, including without limitation all copyrights, rights of reproduction and reuse, and other interests relating thereto. The Owner and any entity affiliated with the Owner may reuse all such documents and data for future work in connection with the construction of the Project or for future Projects, provided that the Owner shall not alter any drawings or specifications signed and sealed by the Design/Builder without its prior written consent. The Design/Builder shall have an irrevocable, non-exclusive license to copy and use such documents and data and may retain copies of such documents and data for re-use in the conduct of its professional practice.

6.8 **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of the Owner and the Design/Builder and their respective successors, Approved assigns and legal representatives.

6.9 **Captions.** The captions and headings contained herein are for convenience only and are not to be construed as part of this Agreement, nor shall the same be construed as defining or limiting in any way the scope or intent of the provisions hereof.

6.10 **Governing Law; Venue.** This Agreement shall be construed in accordance with the laws of the State of Connecticut. Any legal action brought to enforce any provision or obtain any interpretation of this Agreement or for other relief shall be brought in a State or Federal court of competent jurisdiction over the parties in Bridgeport, Connecticut.

6.11 **Entire Agreement.** Each party acknowledges that there are no prior or contemporaneous oral promises, undertakings or agreements in connection with this Agreement that are not contained herein. This Agreement may be modified only by a written agreement signed by all parties hereto. All previous negotiations and agreements between the parties hereto, with respect to the transactions set forth herein, are merged into this instrument, the documents or other materials referenced herein, and amendments hereto mutually agreed to in writing by the parties, which together fully and completely express the parties' rights and obligations.

6.12 **Partial Invalidity.** If any term or provision of this Agreement is believed to be illegal, unenforceable or in violation of the laws, statutes, ordinances or regulations or any public agency or authority having jurisdiction over the parties or the Project, then, such matter shall be submitted to arbitration in accordance with this Agreement to determine whether such term or provision is severable or if this Agreement is deemed to be a whole by a fair construction of its terms and provisions under Connecticut law. If such term or provision is found to be severable, this Agreement shall remain in full force and effect, such term shall be deemed stricken therefrom and this Agreement shall be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision. If such term is not found to be severable, this Agreement may be terminated by either party upon the giving of prompt written notice within ten (10) days after such determination, whereupon the rights and obligations of the parties shall be determined in accordance with the provisions of this Agreement as if a mutual, voluntary termination had occurred.

6.13 **Survival.** The terms, provisions, representations, warranties and certifications contained in this Agreement or inferable therefrom, shall survive the completion of the Project, or the earlier termination of this Agreement as to the Services completed to the date of such termination, subject to all applicable statutes of limitation and repose.

6.14 **Waiver of Liens.** The Design/Builder understands that it may not place a mechanic's lien or other encumbrance on the Premises and hereby waives any right it may have to file or assert a mechanic's or materialmen's lien against the Project site or against the Project, including but not limited to, any rights granted to the Design/Builder by the laws of the State of Connecticut.

6.15 **Excusable Delay.** The parties hereto, respectively, shall not be in default of this Agreement if either is unable to fulfill, or is delayed in fulfilling, any of its obligations hereunder, or is prevented or delayed from fulfilling its obligations, in spite of its employment of best efforts and due diligence, as a result of extreme and unseasonable weather conditions, natural disasters, catastrophic events, mass casualties to persons or significant destruction of property, war, governmental preemption in a national emergency, enactment of law, rule or regulation or change in existing laws, rules or regulations which

prevent any party's ability to perform its respective obligations under this Agreement, or actions by other persons beyond the exclusive control of the party claiming hindrance or delay. If a party believes that a hindrance or delay has occurred, it shall give prompt written notice to the other party of the nature of such hindrance or delay, its effect upon such party's performance under this Agreement, the action needed to avoid the continuation of such hindrance or delay, and the adverse effects that such hindrance or delay then has or may have in the future on such party's performance. Notwithstanding notification of a claim of hindrance or delay by one party, such request shall not affect, impair or excuse the other party hereto from the performance of its obligations hereunder unless its performance is impossible, impractical or unduly burdensome or expensive, or cannot effectively be accomplished without the cooperation of the party claiming delay or hindrance. The occurrence of such a hindrance or delay may constitute a change in the scope of Services, and may result in the need to adjust the Compensation or time in accordance with the terms of this Agreement.

6.16 **Non-Discrimination.** The requirements for minority hiring and participation by disadvantaged businesses are set forth in Chapter 3.12 of the Municipal Code of Ordinances of the City of Bridgeport, which Chapter is attached here to as **Exhibit E**.

6.17 **Precedence of Documents.** The documents constituting this Agreement set forth in Paragraph 6.11 are intended to be complementary and shall be read together to include everything necessary for the proper execution and completion of the Work. However, to the extent that any conflicts, inconsistencies or ambiguities exist in the contract documents, the Design/Builder shall perform the more stringent requirement or adhere to the higher standard of work or performance involved. In the event of an irreconcilable conflict, then a determination shall be made by review of the various contract documents in the following descending order of precedence:

This Agreement, including all exhibits, attachments, schedules, and documents
referred to therein whether incorporated by reference or not;
Any properly-executed change or amendment;
As between figures given in drawings and the scale of measurements, the figures shall take precedence; and
Detail drawings shall have precedence over general drawings.

6.18 **Council Approval of Agreement Required.** This Agreement shall become effective when the City Council of the City of Bridgeport approves the same, the Mayor executes the Agreement and the Design/Builder receives a fully-executed original thereof complete with all Schedules and Exhibits.

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

CITY OF BRIDGEPORT

By:_____

DESIGN/BUILDER

By:_____
Name:
Title:
Duly-authorized

Exhibit A

Design/Builder's Proposal

Exhibit B

Hourly Billing Rates of Design/Builder and Each Subcontractor and Consultant

Exhibit C

Reimbursable Expenses

Reimbursable Expenses shall include the following:

1. Shipping and handling of documents during design and construction documents phases.
2. Reproduction of documents for submittals to the Owner and regulatory agencies (the Owner will provide for reproduction of final documents for bidding and construction purposes)
3. In-house printing
4. Computer plots
5. Long-distance telephone
6. Local courier services
7. Out-of-city courier services
8. Mileage beyond 50 mile radius of City of Bridgeport

Exhibit D

Project Schedule

Exhibit E

Nondiscrimination

A. The Contractor agrees and warrants that during the performance of this contract he will not Discriminate or permit discrimination against any person or group of persons because of race, color, religion, sex, age or national origin m any manner prohibited by the laws of the United States or of the state of Connecticut, and further agrees to take affirmative action that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Office of Contract Compliance of the City of Bridgeport setting forth the provisions of this section.

B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, sex, age or national origin.

C. The Contractor will send to each labor union or other representative with which he has a collective bargaining agreement or other contract or understanding, and to each vendor with which he has a contract or understanding, a notice to be provided advising the labor union or worker's representative of the Contractor's commitments under this division, and shall post copies of such notice in conspicuous places available to employees and applicants for employment.

D. The Contractor will comply with all provisions of this Section and with all the rules and regulations or orders issued by the Office of Contract Compliance pursuant thereto.

E. The Contractor will provide the Office of Contract Compliance with such information requested by said office concerning the employment pattern, practices and procedures of the Contractor as relate to the provisions of subsections A through C of this Section and rules and regulations and/or orders issued pursuant thereto.

F. In the event of the Contractor's noncompliance with the nondiscrimination clauses of the Contract or with any rule, regulation or order issued under this Section, the Contract may be canceled, terminated or suspended, in whole or in part and such other sanctions may be imposed and remedies invoked as are provided under the provisions of Section 3.12.100(D) of the City of Bridgeport Ordinances and rules, regulations or orders issued pursuant thereto, or as provided by federal and state laws.

G. The Contractor will include the provisions of subsection A of this Section, in every subcontract or purchase order unless exempted by rules, regulations or orders of the Office of Contract Compliance issued pursuant to Section 3.12.060 of the City of Bridgeport Ordinances, so that such provision will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Office of Contract Compliance may direct as a means of enforcing this Section, including sanctions for non-compliance in accordance with the provisions of Section 3.12.100 of the City of Bridgeport Ordinances.

Exhibit F

Task Order Form

This Task Order No. ___ is made as of this ___ day of _____, 2014 under the terms and conditions established in the Design/Build Agreement between the Owner and the Design/Builder dated _____, and shall constitute an amendment to such Agreement. This Task Order is issued for the following purpose, consistent with the Project defined in the Agreement:

[Brief description of the Project elements to which this Task Order applies.]

Section A—Scope of Services

A.1. The Design/Builder shall perform the following Services:

A.2. The following Services are not included in this Task Order, but shall be provided as additional Services if Approved in writing by the Owner.

A.3. In conjunction with the performance of the foregoing Services, the Design/Builder shall provide the following submittals/deliverables ("**Deliverables**") to the Owner:

Section B—Task Schedule

The Design/Builder shall perform the Services and deliver the related documents, if any, according to the following Task Schedule:

Section C—Compensation

C.1. In return for the performance of the Services under this Task Order, the Owner shall pay the Design/Builder Compensation in the amount of [dollars], payable according to the following terms:

C.2. Compensation for any additional Services requested under this Task Order, if any, shall be paid by the Owner to the Design/Builder according to the following terms:

Section D—Owner's Responsibilities

The Owner shall perform and/or provide the following in a timely manner so as not to delay the performance or completion of the Services by the Design/Builder. Unless otherwise provided in this Task Order, the Owner shall bear all costs incident to compliance with the following:

Section E—Other Provisions

The parties agree to the following additional provisions with respect to this Task Order:

Except to the extent modified herein, all terms and conditions of the Agreement shall continue in full force and effect.

Owner

By:_____
Name:
Title:

Design/Builder

By:_____
Name:
Title:

City of Bridgeport, Connecticut
CENTRAL GRANTS OFFICE
999 Broad Street
Bridgeport, Connecticut 06604
Telephone (203) 332-5662
Fax (203) 332-5657

BILL FINCH
Mayor

ANDREW J. NUNN
Chief Administrative Officer

CHRISTINA B. SMITH
Director
Central Grants

December 29, 2014

COMM. #19-14 Referred to ECD&E Committee on 01/05/2015

Office of the City Clerk
City of Bridgeport
45 Lyon Terrace, Room 204
Bridgeport, Connecticut 06604

Re: Resolution – **Arbor Day Foundation TD Green Streets Grant Program (#15347)**

Attached, please find a Grant Summary and Resolution for the **Arbor Day Foundation TD Green Streets Grant Program** to be referred to the **Committee on Economic and Community Development and Environment** of the City Council.

Grant: City of Bridgeport application to the **Arbor Day Foundation TD Green Streets Grant Program**

If you have any questions or require any additional information please contact me at 203-332-5665 or christinab.smith@bridgeportct.gov.

Thank you,

Christina Smith
Central Grants Office

RECEIVED
CITY CLERK'S OFFICE
2014 DEC 30 A 10:49

ATTEST _____
CITY CLERK

GRANT SUMMARY

PROJECT TITLE: **Arbor Day Foundation TD Green Streets Grant Program**

NEW x RENEWAL CONTINUING

DEPARTMENT SUBMITTING INFORMATION: **Central Grants Office**

CONTACT NAME: **Christina Smith**

PHONE NUMBER: **203-332-5665**

PROJECT SUMMARY/DESCRIPTION:

Groundwork Bridgeport, Inc. in partnership with the City of Bridgeport **Parks and Recreation Department** is seeking funding from the Arbor Day Foundation's TD Green Streets Grant program. This program supports innovative practices in community forestry. Through the program, municipalities are eligible to receive grants in support of local forestry projects in low-to-moderate income (LMI) neighborhoods. The funds would be used by Groundwork Bridgeport, Inc. to create a tree nursery on reclaimed land to facilitate the expansion of Bridgeport's tree canopy and provide job training as part of the growing green industry.

CONTRACT PERIOD: 1 year from award

IF APPLICABLE

FUNDING SOURCES (include matching/in-kind funds):
Federal:
State: $19,693 (no match required)
City:
Other:

FUNDS REQUESTED
Salaries/Benefits:
Supplies:

A Resolution by the Bridgeport City Council

Regarding the

Arbor Day Foundation

TD Green Streets Grant Program

WHEREAS, the **Arbor Day Foundation** is authorized to extend financial assistance to municipalities in the form of grants; and

WHEREAS, this funding has been made possible through the **TD Green Streets Grant Program**; and

WHEREAS, funds under this grant are provided to create a tree nursery on reclaimed land to facilitate the expansion of Bridgeport's tree canopy and provide job training as part of the growing green industry; and

WHEREAS, it is desirable and in the public interest that the City of Bridgeport, **Parks and Recreation Department,** submits an application to the **Arbor Day Foundation** for the TD Green Streets Grant Program.

NOW THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL:

1. That it is cognizant of the City's grant application to and contract with the **Arbor Day Foundation** for the purpose of the **TD Green Streets Grant Program**; and

2. That it hereby authorizes, directs and empowers the Mayor or his designee, the **Director of Parks and Recreation Department**, to execute and file such application with the **Arbor Day Foundation** for the **TD Green Streets Grant Program** and to provide such additional information and to execute such other contracts, amendments, and documents as may be necessary to administer this program.

City of Bridgeport, Connecticut
CENTRAL GRANTS OFFICE
999 Broad Street
Bridgeport, Connecticut 06604
Telephone (203) 332-5662
Fax (203) 332-5657

BILL FINCH
Mayor

ANDREW J. NUNN
Chief Administrative Officer

CHRISTINA B. SMITH
Director
Central Grants

COMM. #20-14 Referred to ECD&E Committee on 01/05/2015

December 30, 2014

Office of the City Clerk
City of Bridgeport
45 Lyon Terrace, Room 204
Bridgeport, Connecticut 06604

Re: Resolution – State of Connecticut Department of Housing's (DOH) Community Development Block Grant-Disaster Recovery (CDBG-DR) Tranche 2 - Application for Public Facilities, Infrastructure and Planning (#15463)

Attached, please find a Grant Summary and Resolution for the State of Connecticut Department of Housing's Community Development Block Grant-Disaster Recovery (CDBG-DR) Tranche21-Application for Public Facilities, Infrastructure and Planning to be referred to the Economic and Community Development & Environment Committee of the City Council.

Grant: City of Bridgeport application to the State of Connecticut Department of Housing's (DOH) Community Development Block Grant-Disaster Recovery (CDBG-DR) Tranche 2

If you have any questions or require any additional information please contact me at 203-332-5665 or christinab.smith@bridgeportct.gov.

Thank you,

Christina Smith
Central Grants Office

RECEIVED
CITY CLERK'S OFFICE
2014 DEC 30 A 10:49

ATTEST
CITY CLERK

GRANT SUMMARY

PROJECT TITLE: **State of Connecticut Department of Housing Community Development Block Grant Disaster Relief (CDBG-DR) Application for Public Facilities, Infrastructure and Planning – Tranche 2**

RENEWAL NEW **x**

DEPARTMENT SUBMITTING INFORMATION: **Central Grants Office**

CONTACT NAME: **Christina Smith**

PHONE NUMBER: **203-332-5665**

PROJECT SUMMARY/DESCRIPTION: The City of Bridgeport Department of Public Facilities is seeking funding from the State of Connecticut Department of Housing's Community Development Block Grant- Disaster Recovery Program. **The City is requesting $610,000** for the Generators at Columbus, Cross, Hallen, Hooker and Madison Schools. All generators will be permanently installed, protecting five schools which act as critical facilities in times of need. No Match Required.

Project Period: One (1) Year from Date of Contract

IF APPLICABLE

FUNDING SOURCES (include matching/in-kind funds):
Federal:
State: **$610,000.00**
City: **$200,000.00**
Other:

FUNDS REQUESTED
Salaries/Benefits:
Supplies:

A Resolution by the Bridgeport City Council

Regarding the

State of Connecticut Department of Housing

Community Development Block Grant Disaster Recovery-Tranche 2

Application for Public Facilities, Infrastructure and Planning

WHEREAS, the State of Connecticut Department of Housing is authorized to extend financial assistance to municipalities in the form of grants; and

WHEREAS, this funding has been made possible through the Community Development Block Grant Disaster Recovery (CDBG-DR) Tranche 2; and

WHEREAS, funds under this grant will be used to purchase and install generators at Columbus, Cross, Hallen, Hooker and Madison Schools in Bridgeport, Connecticut; and,

WHEREAS, it is desirable and in the public interest that the City of Bridgeport, Department of Public Facilities, submit an application to the State of Connecticut Department of Housing **in an amount not to exceed $610,000** for the purposes of purchasing and installing generators at Columbus, Cross, Hallen, Hooker and Madison Schools in Bridgeport, Connecticut; and,

Now therefore, be it hereby RESOLVED BY THE CITY COUNCIL:

1. That it is cognizant of the City's grant application to and contract with the State of Connecticut Department of Housing to purchase and install generators at Columbus, Cross, Hallen, Hooker and Madison Schools in Bridgeport, Connecticut;

2. That it hereby authorizes, directs and empowers the Mayor or his designee to execute and file such application with State of Connecticut Department of Housing for the Community Development Block Grant-Disaster Recovery Tranche 1 and to provide such additional information and to execute such other contracts, amendments, and documents as may be necessary to administer this program.

CITY ATTORNEY
Mark T. Anastasi

DEPUTY CITY ATTORNEY
Arthur C. Laske, III

ASSOCIATE CITY ATTORNEYS
Gregory M. Conte
Betsy A. Edwards
Richard G. Kascak, Jr.
Russell D. Liskov
John R. Mitola
Ronald J. Pacacha
Lisa R. Trachtenburg

CITY OF BRIDGEPORT
OFFICE OF THE CITY ATTORNEY
999 Broad Street
Bridgeport, CT 06604-4328

DEPUTY CAO FOR LEGAL SERVICES
Molree Williams-Lendor

ASSISTANT CITY ATTORNEYS
Salvatore C. DePiano
Edmund F. Schmidt
Eroll V. Skyers

Telephone (203) 576-7647
Facsimile (203)576-8252

December 29, 2014

Comm. #21-14 Referred to Miscellaneous Matters Committee
On January 05, 2015

The Honorable City Council
of the City of Bridgeport
45 Lyon Terrace
Bridgeport, CT 06604

Re: *Proposed settlement of miscellaneous lawsuits and claims*

Dear Council Members:

The Office of the City Attorney respectfully recommends the following pending lawsuit be settled as set forth below. It is our professional opinion that resolving this matter for the consideration agreed to between the parties is in the best interest of the City of Bridgeport.

NAME	ATTORNEY	SETTLEMENT	CAUSE/INJURY
William Feliciano	Gary A. Mastronardi, 211 State Street Bridgeport, CT 06601	$350,000.00	Violation of Rights

Kindly place this matter on the agenda for the City Council meeting on January 5, 2015 for referral to the Miscellaneous Matters Committee only. Thank you for your assistance in this matter.

Very truly yours,

Mark T. Anastasi
City Attorney

cc: Fleeta C. Hudson, City Clerk

City of Bridgeport, Connecticut
OFFICE OF PLANNING & ECONOMIC DEVELOPMENT
DEPARTMENT OF CITY PLANNING
MARGARET E. MORTON GOVERNMENT CENTER
999 BROAD STREET
BRIDGEPORT, CONNECTICUT 06604
TELEPHONE: (203) 576-7221
FAX: (203) 332-5611

BILL FINCH
Mayor

DAVID M. KOORIS
Director

COMM. #22-14 Referred to ECD&E Committee on
01/05/2015

Office of the City Clerk
45 Lyon Terrace
Bridgeport, CT 06605

December 30, 2014

Dear City Clerk:

Attached, please find a resolution that would authorize the City to enter into an agreement to provide capital funding to the Mary and Eliza Freeman Center for History and Community in an amount not to exceed $100,000 in support of the historic renovation of the Mary and Eliza Freeman Homes located at 354 and 360 Main Street.

This item is for referral to the Economic and Community Development and Environment Committee.

Sincerely,

Bill Coleman
Director of Neighborhood Development

CC: Mayor Finch
Andrew Nunn, CAO
David Kooris, OPED

RECEIVED
CITY CLERK'S OFFICE
2014 DEC 30 P 4:35

ATTEST

A Resolution
Authorizing Capital Funding for the Historic Renovation of the Mary and Eliza Freeman Homes at 354 and 360 Main

WHEREAS, the Mary and Eliza Freeman Homes located at 354 and 360 Main Street (the "Property") represent a tremendous historic asset for the City of Bridgeport;

WHEREAS, the Property is owned by the Mary and Eliza Freeman Center for History and Community (the "Owner");

WHEREAS, the Owner is in the midst of an ongoing effort to renovate and restore the Property in order to provide for a unit of affordable housing as well as a museum and cultural center (the "Project");

WHEREAS, the completed Project will celebrate, commemorate, and highlight the Property's history as the site of the oldest houses built in Connecticut by free blacks prior to the abolition of slavery;

WHEREAS, the Property is on the National Register of Historic Places and is listed site on the Connecticut Freedom Trail;

WHEREAS, the City has been supportive of the Owner's efforts to complete the Project, having provided approximately $100,000 in funding through the HUD-funded Neighborhood Stabilization Program, which was used to do selective demolition and additional stabilization of the structures;

WHEREAS, the City has also provided an additional $31,000 through the Community Development Block Grant Program to fund further interior stabilization work, (the "CDBG Funding");

WHEREAS, the Owner has also secured funding in the amount of $47,000 from the 1772 Foundation to support the historic renovation;

WHEREAS, the Owner has hired both a structural architect and a historic preservationist specialist to develop the specifications needed to renovate the buildings in accordance with U.S. Department of the Interior standards;

WHEREAS, the City Council on May 3, 2010 approved Item #45-09, providing up to $100,000 in City Capital Funding in support of the Project in the City's 2011-2015 Capital Plan, (the "Capital Funding");

WHEREAS, the Owner is now positioned to make use of this Capital Funding to pay for the cost of architectural services incurred on the Project thus far (in at least the minimum amount of $31,000), as well as to begin exterior stabilization and demolition work;

WHEREAS, the City wishes to enter into a Development Agreement, which will provide for the use of the Capital Funding in manner that is complementary to the CDBG funding of the Project;

NOW THEREFORE BE IT RESOLVED that the Director of the Office of Planning and Economic Development or his designee is authorized to negotiate and execute a Funding and Development Agreement with the Owner in an amount not to exceed $100,000 in a manner consistent with the purposes of this resolution.

BE IT FURTHER RESOLVED that the Director of the Office of Planning and Economic Development, or his designee, is authorized to negotiate and execute such other agreements and take such other necessary or desirable actions in furtherance of the Project and consistent with this resolution as may be in the best interests of the City.

City of Bridgeport, Connecticut
OFFICE OF PLANNING & ECONOMIC DEVELOPMENT
DEPARTMENT OF CITY PLANNING
MARGARET E. MORTON GOVERNMENT CENTER
999 BROAD STREET
BRIDGEPORT, CONNECTICUT 06604
TELEPHONE: (203) 576-7221
FAX: (203) 332-5611

BILL FINCH
Mayor

DAVID M. KOORIS
Director

COMM. #23-14 Referred to ECD&E Committee on
01/05/2015

Office of the City Clerk
45 Lyon Terrace
Bridgeport, CT 06605

December 30, 2014

Dear City Clerk:

Attached, please find a resolution that would authorize a Tax Incentive Development Agreement for 252 Hallett Street in support of the $30 million Crescent Crossing II Project, which is an 84-unit, mixed-income, affordable housing development. This item is for referral to the Economic and Community Development and Environment Committee. It will require a public hearing.

Sincerely,

Bill Coleman
Director of Neighborhood Development

CC: Mayor Finch
Andrew Nunn, CAO
David Kooris, OPED

A Resolution by the Bridgeport City Council
Authorizing a Tax Incentive Agreement
for Crescent Crossings II,
a Mixed-Income Affordable Housing Development
at 252 Hallett Street

Whereas Sections 8-215 and Section 8-216 of Chapter 133 of the Connecticut General Statutes (the "Statute") provide that municipalities may by ordinance provide for real estate tax abatements for housing developed for low or moderate-income persons, and may enter into Agreements with the State of Connecticut, acting through its Department of Economic and Community Development, (the "State") to provide for the State's reimbursement, at the State's discretion, to the municipality of such taxes abated for this purpose;

Whereas the Statute provides that such tax abatement shall be used for one or more of the following purposes: (1) To reduce rents below the levels which would be achieved in the absence of such abatement and to improve the quality and design of such housing; (2) to effect occupancy of such housing by persons and families of varying income levels within limits determined by the Commissioner of Economic and Community Development by regulation, or (3) to provide necessary related facilities or services in such housing;

Whereas, Crescent Crossing Phase II, located at 252 Hallett Street (the "Property"), is the second phase in a multi-phased development for the Property, the first phase of which (for 93 units at a cost of $32 million) is progressing and has received a $5mm CHAMP Award from the State Department of Economic and

Community Development, as well as a $2.9 mm Infrastructure Grant from the State Department of Housing;

Whereas Crescent Crossing Phase II represents an approximately $30 million dollar investment in the new construction of 84 units of affordable housing within a mixed-income development program that shall be deed-restricted for low and moderate income residents earning less than sixty (60%) percent of the Area's Median Income (the "Project");

Whereas the Property, owned by Park City Communities (the "Owner") is to be devoted in part to replacement housing for Marina Village;

Whereas, Crescent Crossings LLC (the "Developer"), an LLC directed by the JHM Financial Group of Stamford, CT has entered into a development agreement with the Owner so as to construct the Project and has also made application to the State of Connecticut for Project funding;

Whereas, in support of the Project's financial structure, the Developer has requested a Tax Incentive Development Agreement to establish a predictable tax payment schedule for the Project;

Whereas the City of Bridgeport's Office of Planning and Economic Development ("OPED") finds that the public purposes of the Statute are met with respect to this Project and that the Project is consistent with the City's Master Plan and that it is in the City's interest to support the reinvestment in the Property;

Whereas, the Developer has presented OPED with an operating pro-forma that shows reasonable operating expenses and reserves as per industry standards and OPED has reviewed the pro-forma to arrive at its judgment of what is an appropriate tax payment schedule at 7.5% of the Project's Effective Gross Income ("EGI");

Whereas, OPED has conducted the Economic Justification Analysis required by Section 3.20.040 of the City's Tax Incentive Development Program (the "Ordinance") and has concluded that absent the provision of a Tax Incentive Agreement fixing real estate taxes at the payment schedule described herein, the Development shall not attract the capital it needs to proceed;

Whereas, the Project meets the Eligibility Criteria outlined in Section 3.20.030 of the Ordinance;

Whereas it is in the City's interest to encourage the development of high quality affordable housing;

Whereas, the Developer has a solid track record in developing and managing such projects;

NOW THEREFORE BE IT RESOLVED that the Director of the Office of Planning and Economic Development or his designee is authorized to negotiate and execute a Tax Incentive Development Agreement for which the base annual tax payment in the first year of operation shall amount to no less than $65,520, or $780 per unit per year, and which shall escalate at 3% per year for the duration of the deed-restricted financing period, anticipated to be up to 35 years;

BE IT FURTHER RESOLVED that the Director of the Office of Planning and Economic Development, or his designee, is authorized to negotiate and execute such other agreements and take such other necessary or desirable actions in furtherance of the Project and consistent with this resolution as may be in the best interests of the City.

17-14

RESOLUTION

By Councilmember(s): Jack O. Banta
Denese Taylor-Moye

District: 131st

Introduced at a meeting
Of the City Council, held:

January 5, 2015

Referred to:

Board of Police Commissioners

Attest: _____
City Clerk

WHEREAS, maintaining the safety and well being of our residents is a major priority for the City Council; and

WHEREAS, Park Avenue is a key thoroughfare adjacent to I-95 and heavily traveled daily by a variety of motor vehicles including large commercial trucks, heavy construction equipment as well as police, fire and medical responding to a wide range of emergencies; and

WHEREAS, vehicles parking in front of 650 Park Avenue in the morning and afternoon to pick up children from the South End YMCA congest the roadway and leave little room for other vehicles to get by them safely; and

WHEREAS, this parking congestion creates a hazard; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council requests the Board of Police Commissioners to designate an area sufficient for three motor vehicles in front the South End YMCA at 650 Park Avenue as being "No Parking/No Standing, Drop off /Pick Up Only, 7:30 - 9:30 am/3:30 - 5:30 pm" and install appropriate signage.

Referrals Made:

***02-14 Consent Calendar**

Grant Submission: re FY2014-2015 Medical Reserve Corps Capacity Building Award. (#15397)

Report
of
Committee
on
ECD & Environment

Submitted: January 5, 2015

Adopted:_____

Attest: Fleeta C Hudson
City Clerk

Approved_____

Mayor

City of Bridgeport, Connecticut

To the City Council of the City of Bridgeport:

The Committee on **ECD and Environment** begs leave to report; and recommends for adoption the following resolution:

***02-14 Consent Calendar**

A Resolution by the Bridgeport City Council
Regarding the
FY 2014-2015 Medical Reserve Corps Capacity Building Award
(#15397)

WHEREAS, the National Association of County and City Health Officials (NACCHO) is authorized to extend financial assistance to municipalities in the form of grants; and

WHEREAS, this funding has been made possible through the Medical Reserve Corps Capacity Building Award; and

WHEREAS, funds under this grant are used to continue the Medical Reserve Corps consisting of students from all three Bridgeport high schools; and

WHEREAS, it is desirable and in the public interest that the City of Bridgeport, Health and Social Services department, submits an application to the National Association of County and City Health Officials for the purpose of continuing the Medical Reserve Corps; Now, therefore be it hereby

RESOLVED BY THE CITY COUNCIL:

1. That it is cognizant of the City's grant application to and contract with the National Association of County and City Health Officials for the purpose of the Medical Reserve Corps Capacity Building Award; and

2. That it hereby authorizes, directs and empowers the Mayor or his designee to execute and file such application with the National Association of County and City Health Officials for the Medical Reserve Corps Capacity Building Award and to provide such additional information and to execute such other contracts, amendments, and documents as may be necessary to administer this program.

RESPECTFULLY SUBMITTED,
THE COMMITTEE ON
ECONOMIC AND COMMUNITY DEVELOPMENT & ENVIRONMENT

Lydia N. Martinez, Co-Chair

Jack O. Banta, Co-Chair

Mary A. McBride-Lee

Richard DeJesus

Michelle A. Lyons

Michael J. Marella

Eneida Martinez

***06-14 Consent Calendar**

Grant Submission: re State Department of Economic and Community Development for a Historic Brownfield Revitalization Program. (#15409)

Report
of
Committee
on
ECD & Environment

Submitted: January 5, 2015

Adopted: _____

Attest: Fleeta C Hudson
City Clerk

Approved _____

Mayor

City of Bridgeport, Connecticut

To the City Council of the City of Bridgeport.

The Committee on **ECD and Environment** begs leave to report; and recommends for adoption the following resolution:

***06-14 Consent Calendar**

A Resolution by the Bridgeport City Council
Regarding the
State of Connecticut Department of Economic and Community Development
Historic Brownfield Revitalization Program (#15409)

WHEREAS, the **State of Connecticut Department of Economic and Community Development** is authorized to extend financial assistance to municipalities in the form of grants; and

WHEREAS, this funding has been made possible through the **Historic Brownfield Revitalization Program**; and

WHEREAS, funds under this grant are provided to perform and environmental assessment and planning on the former Remgrit property located at 899 Barnum Ave, Bridgeport, CT 06608; and

WHEREAS, it is desirable and in the public interest that the City of Bridgeport, **Office of Planning and Economic Development**, submits an application to the **State of Connecticut Department of Economic and Community Development** for the purpose of undertaking the environmental assessment and planning on the property located at 899 Barnum Avenue, Bridgeport, CT 06608; Now, therefore be it hereby

RESOLVED BY THE CITY COUNCIL:

1. That it is cognizant of the City's grant application to and contract with the **State of Connecticut Department of Economic and Community Development** for the purpose of the **Historic Brownfield Revitalization Program**; and

2. That it hereby authorizes, directs and empowers the Mayor or his designee, the **Director of the Office of Planning and Economic Development**, to execute and file such application with the **State of Connecticut Department of Economic and Community Development Historic Brownfield Revitalization Program** and to provide such additional information and to execute such other contracts, amendments, and documents as may be necessary to administer this program.

Report of Committee on ECD and Environment
***06-14 Consent Calendar**

RESPECTFULLY SUBMITTED,
THE COMMITTEE ON
ECONOMIC AND COMMUNITY DEVELOPMENT & ENVIRONMENT

Lydia N. Martinez, Co-Chair

Jack O. Banta, Co-Chair

Mary A. McBride-Lee

Richard DeJesus

Michelle A. Lyons

Michael J. Marella

Eneida Martinez

Please Note: That Committee Members did not sign off on Item #06-14 as attached.

Council Date: January 5, 2015