

**CITY OF WATERTOWN, NEW YORK  
AGENDA**

This shall serve as notice that the next regularly scheduled meeting of the City Council will be held on Monday, November 17, 2014, at 7:00 p.m. in the City Council Chambers, 245 Washington Street, Watertown, New York.

**MOMENT OF SILENCE**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**ADOPTION OF MINUTES**

**COMMUNICATIONS**

**PRIVILEGE OF THE FLOOR**

**RESOLUTIONS**

- Resolution No. 1 - Authorizing Application for Federal Emergency Management Agency (FEMA) Grant, Fire Department
- Resolution No. 2 - Authorizing Budget Modification No. 2 Request for The FY 2012 Small Cities Community Development Block Grant
- Resolution No. 3 - Approving Change Order No. 1 to Flower Memorial Library Boiler Replacement, G.S. Hanley, LLC
- Resolution No. 4 - Authorizing Adjustment of 2014-15 Real Property Taxes for Property at 210 California Avenue, Parcel 06-16-309.000
- Resolution No. 5 - Authorizing Assignment of City-owned Tax Sale Certificate on Parcel Number 01-14-121.000 Known as 591 Rear Main Street West To Steven Yelle, 36627 Reese Road, Clayton, New York 13624
- Resolution No. 6 - Authorizing Sale of Real Property, Known as 169 Alexandria Avenue to Ray Worcester, 152 Winthrop Street, Watertown, New York 13601

- Resolution No. 7 - Authorizing Sale of Real Property, Known as  
618 Alexandria Avenue to Ray Worcester,  
152 Winthrop Street, Watertown, New York 13601
- Resolution No. 8 - Authorizing Sale of Real Property, Known as  
507 Cross Street to Chui Sam Chan, 233 Mullin Street,  
Watertown, New York 13601
- Resolution No. 9 - Authorizing Sale of Real Property, Known as  
739 Main Street West to Thon Vith Lopez,  
611 Olive Street, Watertown, New York 13601
- Resolution No. 10 - Authorizing Sale of Real Property, Known as  
VL-2 Mather Street to Gregg M. Pound, 172 Haney Street,  
Watertown, New York 13601
- Resolution No. 11 - Authorizing Sale of Real Property, Known as  
VL Mather Street to Ray Worcester, 152 Winthrop Street,  
Watertown, New York 13601
- Resolution No. 12 - Authorizing Sale of Real Property, Known as  
115 St Mary Street to Thon Vith Lopez, 611 Olive Street,  
Watertown, New York 13601
- Resolution No. 13 - Approving Administrative Services Agreement By and  
Between POMCO and the City of Watertown Self-Funded  
Health Insurance Program
- Resolution No. 14 - Approving Service Agreement By and Between ProAct and  
the City of Watertown Self-Funded Health Insurance  
Program
- Resolution No. 15 - Approving Plan Services Agreement for Administration of  
Section 125 Plan, Benefit Services Group

## **ORDINANCES**

## **LOCAL LAW**

## **PUBLIC HEARING**

7:30 p.m. Program Year 2012 Community Development Block Grant  
Public Hearing

**OLD BUSINESS**

Tabled

Resolution Approving Whitewater Park Public Access  
Limited Use Agreement with Hole Brothers Holdings, LLC

**STAFF REPORTS**

1. Slip, Slide, and Skate Fees

**NEW BUSINESS**

**EXECUTIVE SESSION**

**WORK SESSION**

**ADJOURNMENT**

**NEXT REGULARLY SCHEDULED CITY COUNCIL MEETING IS MONDAY,  
DECEMBER 1, 2014.**

Res No. 1

November 10, 2014

To: The Honorable Mayor and City Council

From: Sharon Addison, City Manager

Subject: Authorizing Application for Federal Emergency Management Agency (FEMA) Grant, Fire Department

The City Fire Department is seeking Council approval to apply for a grant from the Federal Emergency Management Agency (FEMA). This funding opportunity is in the amount of \$257,660 and requires 10% matching funds from the City. If approved, this grant will allow the Fire Department to purchase equipment as detailed in the attached report from Fire Chief Dale C. Herman. This 10% match will be allocated from FY15-16 Budget.

A resolution is attached for Council consideration authorizing Chief Herman to sign and submit the grant application on behalf of the City of Watertown by December 5, 2014. City staff will be available to answer any questions Council may have related to this grant opportunity.

# RESOLUTION

Page 1 of 1

Authorizing Application for Federal  
Emergency Management Agency (FEMA)  
Grant, Fire Department

Council Member BURNS, Roxanne M.  
 Council Member BUTLER, Joseph M. Jr.  
 Council Member JENNINGS, Stephen A.  
 Council Member MACALUSO, Teresa R.  
 Mayor GRAHAM, Jeffrey E.

Total .....

YEA	NAY

### *Introduced by*

WHEREAS the Federal Emergency Management Agency (FEMA) is accepting applications for funding through December 5, 2014, and

WHEREAS the City of Watertown Fire Department will prepare an application that meets the intended purpose of this grant, which will allow the Department to purchase much needed supplies, and

WHEREAS the application, in the amount of \$257,660, requires a matching fund of 10% from the City,

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown hereby authorizes the Fire Department to submit a grant application in the amount of \$257,660 to the Federal Emergency Management Agency (FEMA), and

BE IT FURTHER RESOLVED that Fire Chief Dale C. Herman is hereby authorized and directed to execute the grant application on behalf of the City of Watertown.

### *Seconded by*



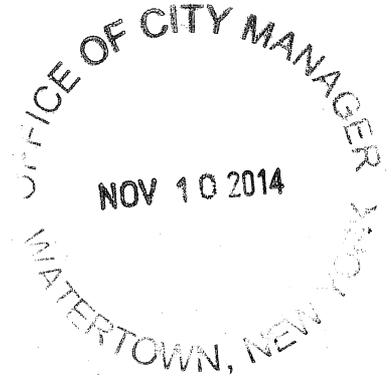
CITY OF WATERTOWN, NEW YORK

FIRE DEPARTMENT

224 South Massey Street  
Watertown, New York 13601  
(315) 785-7800

Fax: (315) 785-7821

Dale C. Herman, Fire Chief  
dherman@watertown-ny.gov



November 10, 2014

Ms. Sharon Addison  
City Manager  
245 Washington Street  
Watertown:

Dear Sharon:

The Federal Emergency Management Agency (FEMA) has been able to allocate over \$304,000,000 in the Assistance to Firefighters Grant Program. The City of Watertown Fire Department has conducted a needs assessment by which funding could aid our organization in providing personal protective equipment, interoperable radio equipment for fire vehicles that are not currently outfitted with such and a trunking radio upgrade to our existing radios to operate on the Jefferson County's new proposed radio system. With Council approval, a grant application would be applied for the following items:

80 MSA ultra-elite face pieces	\$ 38,800
80 Structural firefighting boots	22,400
80 Pair structural fighting gloves	8,160
20 45 minute self-contained breathing apparatus cylinders	26,200
5 25 UHF mobile radios with installation	20,802
Trunking upgrade installation for 106 mobile and portable radios	<u>141,298</u>
	\$257,660

The City would be responsible for 10% of the cost of the equipment purchased, and it is forecasted that if awarded, these expenses would be in the next fiscal year.

The deadline for submission is December 5, 2014.

If you have any further questions, please do not hesitate to contact me.

Truly yours,

CITY OF WATERTOWN FIRE DEPARTMENT

Dale C. Herman  
Fire Chief

DCH:cdb

Res No. 2

November 12, 2014

To: The Honorable Mayor and City Council

From: Kenneth A. Mix, Planning & Community Development Coordinator

Subject: Authorizing Budget Modification No. 2 Request for the FY 2012 Small Cities Community Development Block Grant

The City's 2012 Small Cities Community Development Block Grant provides funds for rental housing rehabilitation. The Grant Agreement divides the program into three activities and each activity has a budget amount that cannot be exceeded.

The last project being funded by this program is underway. In order to draw down the remaining funds, the grant budget has to be modified to reflect the actual cost for each activity. Budget modification requests have to be authorized by the City Council.

The budget modification proposal attached to the resolution prepared for City Council consideration shifts \$13,601.46 from Administration to the Housing Rehabilitation activity. The current budget and proposed budget are as follows:

Activity	Current Budget	Proposed Budget
Housing Rehabilitation	\$341,500	\$355,101.46
Program Delivery	\$ 24,750	\$ 24,750.00
Administration	<u>\$ 33,750</u>	<u>\$ 20,148.54</u>
TOTAL	\$400,000	\$400,000.00

RESOLUTION

Page 1 of 1

Authorizing Budget Modification No. 2 Request for  
The FY 2012 Small Cities Community  
Development Block Grant

Council Member BURNS, Roxanne M.  
Council Member BUTLER, Joseph M. Jr.  
Council Member JENNINGS, Stephen A.  
Council Member MACALUSO, Teresa R.  
Mayor GRAHAM, Jeffrey E.

Total .....

YEA	NAY

*Introduced by*

\_\_\_\_\_

WHEREAS the Grant Agreement with the New York State Housing Trust Fund Corporation represented by the Office of Community Renewal for the FY 2012 Small Cities Community Development Block Grant contains budget amounts for each activity, and

WHEREAS the budget numbers need to be altered to match the actual final expenditures as shown on Form 8-1, which is attached and made a part of this resolution, and

WHEREAS budget modifications must be approved by the Office for Small Cities,

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Watertown, New York that it hereby approves the proposed budget modifications for the FY 2012 Small Cities Community Development Block Grant, and

BE IT FURTHER RESOLVED that the Mayor Jeffrey E. Graham is hereby authorized and directed to sign the budget modification form on behalf of the City and submit it to the Office of Community Renewal for approval.

**Seconded by**

**FORM 7-1**

**BUDGET MODIFICATION\***

Recipient: City of Watertown

Project #: 1207HR75-12

Modification #: 2

OFFICE USE ONLY	ACTIVITY	OFFICE OF COMMUNITY RENEWAL APPROVED BUDGET			PROPOSED MODIFICATION (+/-)		AFTER MODIFICATION			
							Budget			CDBG
IDIS #	NAME/USE	CDBG	OTHER SOURCES	TOTAL	CDBG	OTHER SOURCES	CDBG	OTHER SOURCES	TOTAL	FUNDS AVAILABLE
	Multi-Unit Rehabilitation	\$341,500.00	\$902,000.00	\$1,243,500.00	\$13,601.46	-\$163,080.00	\$355,101.46	\$738,920.00	\$1,094,021.46	\$0.00
	Multi-Unit Program Delivery	\$24,750.00	\$51,750.00	\$76,500.00	\$0.00	-\$51,750.00	\$24,750.00	\$0.00	\$24,750.00	\$0.00
	Grant Administration	\$33,750.00	\$48,200.00	\$81,950.00	-\$13,601.46	-\$48,200.00	\$20,148.54	\$0.00	\$20,148.54	\$0.00
		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Certification to the best of my knowledge and belief the modification indicated have been duly authorized by the governing body of the applicant.

_____ Signature of Chief Elected Official	_____ Date
Jeffrey E. Graham	Mayor
_____ Typed Name of Chief Elected Official	_____ Title

<b>For Office Use Only</b>	FMS Budget Modified Date: _____	Initials: _____
Program Staff Review _____ (Update FMS Substages 201/211 & 202/212)		
Approved: _____	Denied: _____	Date: _____ (Update FMS Substage 203/213)
Authorized Signature: _____		Title: _____

\* MODIFICATIONS TO BUDGET ALSO MODIFY SCHEDULE B OF THE NYS CDBG AGREEMENT. BUDGET MODIFICATIONS MUST BE REFLECTED ON ALL FUTURE REQUESTS FOR FUNDS REQUEST FOR FUNDS FORM 1-4A, COLUMN A)

Res No. 3

November 4, 2014

To: The Honorable Mayor and City Council

From: Sharon Addison, City Manager

Subject: Change Order No. 1 for Flower Memorial Library Boiler Replacement,  
G.S. Hanley, LLC

On August 18, 2014, City Council accepted the bid submitted by G.S. Hanley, LLC for the Flower Memorial Library Boiler Replacement Project in the amount of \$111,683.00.

G.S. Hanley, LLC has now submitted Change Order No. 1 in the amount of \$2,733.22, which will bring the final contract amount to \$114,416.22.

As stated in the attached report from City Engineer Justin Wood, this change is to allow for the replacement of a larger diameter exhaust pipe. This now completes the installation of the boilers.

A resolution is attached for City Council consideration.

**RESOLUTION**

Page 1 of 1

Approving Change Order No. 1 to Flower Memorial Library Boiler Replacement, G.S. Hanley, LLC

*Introduced by*

Council Member BURNS, Roxanne M.  
 Council Member BUTLER, Joseph M. Jr.  
 Council Member JENNINGS, Stephen A.  
 Council Member MACALUSO, Teresa R.  
 Mayor GRAHAM, Jeffrey E.

Total .....

YEA	NAY

WHEREAS on August 18, 2014, City Council accepted a bid submitted by G.S. Hanley, LLC, for the Flower Memorial Library Boiler Replacement Project, per our specifications, in the amount of \$111,683.00, and

WHEREAS G. S. Hanley, LLC has now submitted Change Order No. 1 in the amount of \$2,733.22, bringing the total contract amount to \$114,416.22, and

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown approves Change Order No. 1 to the contract with G. S. Hanley, LLC in the amount of \$2,733.22, a copy of which is attached and made part of this resolution, for the Flower Memorial Library Boiler Replacement Project, bringing the total contract amount to \$114,416.22, and

BE IT FURTHER RESOLVED that City Manager Sharon Addison is hereby authorized and directed to execute the Change Order documents on behalf of the City of Watertown.

**Seconded by**

# Change Order

No. 1

Date of Issuance: October 28, 2014 Effective Date: November 3, 2014

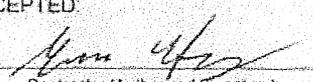
Project: Flower Memorial Library Boiler Replacement	Owner: City of Watertown, NY	Owner's Contract No.:
Contract: Flower Memorial Library Boiler Replacement		Date of Contract: August 29, 2014
Contractor: G.S. Hanley, LLC		Engineer's Project No.:

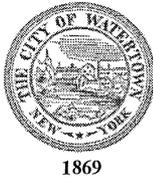
The Contract Documents are modified as follows upon execution of this Change Order:

Description: Addition of new flue. See attached document.

Attachments: (List documents supporting change): Letter dated October 28, 2014 from G.S. Hanley.

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price:  \$ <u>111,683.00</u>	Original Contract Times: <input type="checkbox"/> Working days <input type="checkbox"/> Calendar days Substantial completion (days or date): <u>October 13, 2014</u> Ready for final payment (days or date): _____
[Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____:  \$ _____	[Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____: Substantial completion (days): _____ Ready for final payment (days): _____
Contract Price prior to this Change Order:  \$ <u>111,683.00</u>	Contract Times prior to this Change Order: Substantial completion (days or date): _____ Ready for final payment (days or date): _____
Increase of this Change Order:  \$ <u>2,733.22</u>	[Increase] [Decrease] of this Change Order: Substantial completion (days or date): _____ Ready for final payment (days or date): _____
Contract Price incorporating this Change Order:  \$ <u>114,416.22</u>	Contract Times with all approved Change Orders: Substantial completion (days or date): <u>October 27, 2014</u> Ready for final payment (days or date): _____

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: _____ Engineer (Authorized Signature)	By: _____ Owner (Authorized Signature)	By:  Contractor (Authorized Signature)
Date: _____	Date: _____	Date: <u>10/28/14</u>
Approved by Funding Agency (if applicable): _____		Date: _____



CITY OF WATERTOWN  
ENGINEERING DEPARTMENT  
MEMORANDUM

DATE: 30 October 2014

TO: Sharon Addison, City Manager

FROM: Justin Wood, City Engineer

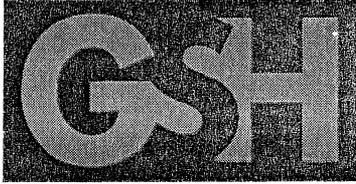
SUBJECT: Flower Memorial Library Boiler Replacement Project, Change Order #1

Enclosed is a copy of Change Order #1 for the FML Boiler Replacement Project. The total change order amount is for \$2,733.22. This will bring the final contract amount to \$114,416.22 from the original contract amount of \$111,683.00, with the contractor, G.S. Hanley LLC.

As part of the contract, a new larger diameter exhaust pipe had to be connected from each new boiler to the existing flue (main exhaust pipe). The existing flue was thought to be able to accommodate the new connections and was to remain in place. During construction, however, it was determined full replacement was necessary, which resulted in this change order.

Please prepare a resolution for City Council consideration.

Cc:  
Jim Mills, City Comptroller



# Change Order Request 01

G.S. Hanley, LLC  
4415 Cedarvale Road  
Syracuse, NY 13215

October 28, 2014

Bill To: City of Watertown

RE: PO# 201402556 FML boiler replacement flue install deviation from drawings.  
Portions of 12" diameter flue required replacement due to change in boot tee inlets. Per boiler sizing.

Scope: Demo 12" existing flue sections to immediate stack side of first 12"x4" boot tee. Install manufacturers required adapter collar and subsequent straight 12" flue pieces, 12" adjustable pieces, 12"x8" boot tees, 12" drain section, and 12" tee cap as required.

9/25/14 Demo 12" flue as required. 2hrs x \$74.85 = \$149.70

10/22/14 Install 12" flue pieces. Connect condensate drain. 6hrs x \$74.85 = \$449.10

New material: 1-2.8 oz. sealant \$20.32

1-7001SIL-5 5 oz. Silicone Gasket Lube Tube \$14.46

1-7001TUBE ½" x 10' Drain Tube Hose \$40.31

1-CCA12DRN Inline Drain \$193.62

2-CCA12BT08 12"x12"x8" Boot Tees \$833.65

1-CCA12CV Tee Cap \$128.15

2-41427SS Support Clamps \$65.48

1-CCA12ADSV CI Plus to CI Vent Adapter Kit \$34.70

1-CCA12L24 24" Straight Length \$215.63

2-CCA12AJSM 7-11" Adjustable Lengths \$394.06

Total Material: \$1,940.38 + 10% = \$2134.42

Total Labor: \$598.80

Total Labor and Material: \$2733.22

Total sum: Two thousand seven hundred thirty three dollars and twenty two cents.  
(\$2733.22)

Respectfully,  
Gerad Hanley  
President

Res No. 4

November 7, 2014

To: The Honorable Mayor and City Council  
From: James E. Mills, City Comptroller  
Subject: 2014-15 Property Tax Bill Adjustment

The City performed sidewalk replacement work at 210 California Avenue as part of the most recently completed Sidewalk Special Assessment District. The property owner, Janelle Travis, claims she did return the invoice indicating she wanted to be included in the ten year payment plan. However, the City never received the form and accordingly re-levied the invoice in full onto the 2014-15 City property tax bill. The amount of the invoice was \$1,050.

The City does have enough funds remaining from the serial bond issued to cover this sidewalk district's ten year enrollees to also include this parcel. Accordingly, the attached resolution adjusts the tax bill to reflect the amount due had the original enrollment form been received by our office.

# RESOLUTION

Page 1 of 1

Authorizing Adjustment of 2014-15  
Real Property Taxes for Property  
at 210 California Avenue, Parcel 06-16-309.000

Council Member BURNS, Roxanne M.  
Council Member BUTLER, Joseph M. Jr.  
Council Member JENNINGS, Stephen A.  
Council Member MACALUSO, Teresa R.  
Mayor GRAHAM, Jeffrey E.

Total .....

YEA	NAY

### *Introduced by*

WHEREAS there is outstanding 2014-15 City Real Property Taxes on the property of known as 210 California Avenue, Parcel No. 06-16-309.000, in the amount of \$1,614.70 of which \$564.70 represents the property taxes and \$1,050.00 represents re-levied sidewalk charges, and

WHEREAS the property owner desires to have the sidewalk invoice enrolled in the Sidewalk Special Assessment Program to allow for payments to be made over 10 years plus applicable interest, and

WHEREAS the City has limited funds available from the serial bond issued to pay the invoices enrolled in the Sidewalk Special Assessment Program, and

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Watertown hereby adjusts the property taxes indicated above to reflect participation in the Sidewalk Special Assessment Program resulting in a revised 2014-15 City tax bill as follows:

2014-15	City Tax	\$564.70
2014-15	Sidewalk Installment	\$125.22
	Total 2014-15 City Tax Bill	\$689.92

### **Seconded by**

Res No. 5

November 6, 2014

To: The Honorable Mayor and City Council  
From: James E. Mills, City Comptroller  
Subject: Assignment of Tax Sale Certificates

On November 5<sup>th</sup> the City Comptroller's Office held a public auction of a City owned tax sale certificate on 591 Rear Main Street West for which the redemption period had expired but the City did not wish to take title to the parcel. The results of the auction are as follows:

<b>Parcel Number</b>	<b>Address</b>	<b>Bid Amount</b>	<b>Bidder Name</b>
01-14-121.000	591 Rear Main Street West	\$ 20,000	Steven Yelle

The required 10% deposit has been received for the tax sale certificate. The high bidder does not own any other property in the City. The attached resolution has been prepared for City Council consideration to accept the high bid submitted and authorize the assignment of the tax sale certificate.

# RESOLUTION

Page 1 of 1

Authorizing Assignment of City-owned Tax Sale Certificate on Parcel Number 01-14-121.000 Known as 591 Rear Main Street West To Steven Yelle, 36627 Reese Road, Clayton, New York 13624

Council Member BURNS, Roxanne M.  
Council Member BUTLER, Joseph M. Jr.  
Council Member JENNINGS, Stephen A.  
Council Member MACALUSO, Teresa R.  
Mayor GRAHAM, Jeffrey E.

Total .....

YEA	NAY

***Introduced by***

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WHEREAS the City of Watertown is the owner of a certain tax sale certificate on a lot of land known as 591 Rear Main Street West as designated on the map of the Department of Assessment and Taxation of the City of Watertown, New York as Parcel No. 01-14-121.000, and

WHEREAS the tax sale certificate has not been redeemed within the two year redemption period per City Charter Section 140, and

WHEREAS the City Council does not wish to take title to this property, and

WHEREAS the City Comptroller held a public auction on November 5, 2014 as authorized by City Council on October 6, 2014 for the purpose of assigning the City's tax sale certificate,

NOW THEREFORE BE IT RESOLVED that the offer of \$20,000 submitted by Steven Yelle for the purchase of the tax sale certificate for Parcel No. 01-14-121.000, is a fair and reasonable offer therefore and the same is hereby accepted, and

BE IT FURTHER RESOLVED that the City Comptroller is directed to assign the City's tax sale certificate for the above parcel to Steven Yelle upon the Comptroller's receipt of certified funds in the amount of \$20,000.

**Seconded by**

Res Nos. 6, 7, 8, 9, 10, 11, 12

November 6, 2014

To: The Honorable Mayor and City Council  
From: James E. Mills, City Comptroller  
Subject: Sale of City Property

On November 5<sup>th</sup> the City Comptroller's Office held a public auction of City owned properties. The results of the auction are as follows:

Parcel Number	Location	Bid Amount	Bidder
01-10-437.000	169 Alexandria Avenue	\$ 500	Ray Worcester
01-10-438.000	618 Alexandria Avenue	\$ 500	Ray Worcester
09-02-131.000	507 Cross Street	\$ 1,500	Chui Sam Chan
01-14-109.000	739 Main Street West	\$ 9,000	Thon Vith Lopez
09-20-207.000	VL-2 Mather Street	\$ 2,000	Gregg M. Pound
09-22-101.112	VL Mather Street	\$ 5,000	Ray Worcester
03-07-113.000	115 St. Mary Street	\$ 22,000	Thon Vith Lopez

The required 10% deposit has been received for each parcel. Resolutions authorizing the sale of each property are attached for City Council consideration. All of the above high bidders are current with property taxes and none have outstanding issues with Code Enforcement.

Properties included in the auction that did not receive bids were:

Parcel Number	Location
1-10-307.000	100 Alexandria Avenue
1-10-308.000	101 Alexandria Avenue
1-10-310.000	103 Alexandria Avenue
09-21-102.000	VL-1 Mather Street
03-09-101.000	36 Stuart Street
1-24-202.000	59 Woodley Street
1-24-201.000	60 Woodley Street

# RESOLUTION

Page 1 of 2

Authorizing Sale of Real Property,  
Known as 169 Alexandria Avenue to  
Ray Worcester, 152 Winthrop Street,  
Watertown, New York 13601

Council Member BURNS, Roxanne M.  
Council Member BUTLER, Joseph M. Jr.  
Council Member JENNINGS, Stephen A.  
Council Member MACALUSO, Teresa R.  
Mayor GRAHAM, Jeffrey E.

Total .....

YEA	NAY

### *Introduced by*

WHEREAS there has heretofore been bid in by the City of Watertown at a tax sale a certain lot of land known as 169 Alexandria Avenue, approximately 30' x 70' in size, and also known and designated on the map of the Department of Assessment and Taxation of the City of Watertown, New York as Parcel No. 01-10-437.000, and

WHEREAS title to said land has since been retained by the City of Watertown as acquired at said tax sale, which title was retained by reason of the failure of anyone to redeem the same, and

WHEREAS said real property has never been assigned by the Council for a public use, and

WHEREAS the City Council desires to ensure that properties such as this property be brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers,

NOW THEREFORE BE IT RESOLVED that pursuant to Section 23, Subdivision (b) of the General City Law, Section 247 of the Charter of the City of Watertown as amended by Local Law No. 1, 1985, adopted December 3, 1984, effective January 17, 1985, and the ordinance, Municipal Code, Chapter 16 adopted by the Council on June 6, 1977, that the offer of \$500 submitted by Ray Worcester for the purchase of Parcel No. 01-10-437.000, is a fair and reasonable offer therefore and the same is hereby accepted, and

# RESOLUTION

Page 2 of 2

Authorizing Sale of Real Property,  
Known as 169 Alexandria Avenue to  
Ray Worcester, 152 Winthrop Street,  
Watertown, New York 13601

Council Member BURNS, Roxanne M.
Council Member BUTLER, Joseph M. Jr.
Council Member JENNINGS, Stephen A.
Council Member MACALUSO, Teresa R.
Mayor GRAHAM, Jeffrey E.

Total .....

YEA	NAY

BE IT FURTHER RESOLVED that the Mayor, Jeffrey E. Graham, be and he hereby is authorized, empowered and directed to execute and deliver a Quit Claim Deed expressly reserving a permanent and perpetual easement for a sanitary sewer main in favor of the City of said real property to Ray Worcester upon receipt of the above mentioned sum of money in cash only by the City Comptroller, and

BE IT FURTHER RESOLVED that the deed issued by the City contain a provision that if the property sold is not brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers, the City shall have the right to seek and be entitled to receive reversion of title to the premises to the City.

**Seconded by**

# RESOLUTION

Page 1 of 2

Authorizing Sale of Real Property,  
Known as 618 Alexandria Avenue to  
Ray Worcester, 152 Winthrop Street,  
Watertown, New York 13601

Council Member BURNS, Roxanne M.  
Council Member BUTLER, Joseph M. Jr.  
Council Member JENNINGS, Stephen A.  
Council Member MACALUSO, Teresa R.  
Mayor GRAHAM, Jeffrey E.

Total .....

YEA	NAY

***Introduced by***

WHEREAS there has heretofore been bid in by the City of Watertown at a tax sale a certain lot of land known as 618 Alexandria Avenue, approximately 25' x 70' in size, and also known and designated on the map of the Department of Assessment and Taxation of the City of Watertown, New York as Parcel No. 01-10-438.000, and

WHEREAS title to said land has since been retained by the City of Watertown as acquired at said tax sale, which title was retained by reason of the failure of anyone to redeem the same, and

WHEREAS said real property has never been assigned by the Council for a public use, and

WHEREAS the City Council desires to ensure that properties such as this property be brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers,

NOW THEREFORE BE IT RESOLVED that pursuant to Section 23, Subdivision (b) of the General City Law, Section 247 of the Charter of the City of Watertown as amended by Local Law No. 1, 1985, adopted December 3, 1984, effective January 17, 1985, and the ordinance, Municipal Code, Chapter 16 adopted by the Council on June 6, 1977, that the offer of \$500 submitted by Ray Worcester for the purchase of Parcel No. 01-10-438.000, is a fair and reasonable offer therefore and the same is hereby accepted, and

# RESOLUTION

Page 2 of 2

Authorizing Sale of Real Property,  
Known as 618 Alexandria Avenue to  
Ray Worcester, 152 Winthrop Street,  
Watertown, New York 13601

Council Member BURNS, Roxanne M.  
 Council Member BUTLER, Joseph M. Jr.  
 Council Member JENNINGS, Stephen A.  
 Council Member MACALUSO, Teresa R.  
 Mayor GRAHAM, Jeffrey E.

Total .....

YEA	NAY

BE IT FURTHER RESOLVED that the Mayor, Jeffrey E. Graham, be and he hereby is authorized, empowered and directed to execute and deliver a Quit Claim Deed expressly reserving a permanent and perpetual easement for a sanitary sewer main in favor of the City of said real property to Ray Worcester upon receipt of the above mentioned sum of money in cash only by the City Comptroller, and

BE IT FURTHER RESOLVED that the deed issued by the City contain a provision that if the property sold is not brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers, the City shall have the right to seek and be entitled to receive reversion of title to the premises to the City.

**Seconded by**

# RESOLUTION

Page 1 of 2

Authorizing Sale of Real Property,  
Known as 507 Cross Street to  
Chui Sam Chan, 233 Mullin Street,  
Watertown, New York 13601

Council Member BURNS, Roxanne M.  
Council Member BUTLER, Joseph M. Jr.  
Council Member JENNINGS, Stephen A.  
Council Member MACALUSO, Teresa R.  
Mayor GRAHAM, Jeffrey E.

Total .....

YEA	NAY

### *Introduced by*

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WHEREAS there has heretofore been bid in by the City of Watertown at a tax sale a certain lot of land known as 507 Cross Street, approximately 77' x 52' in size, and also known and designated on the map of the Department of Assessment and Taxation of the City of Watertown, New York as Parcel No. 09-02-131.000, and

WHEREAS title to said land has since been retained by the City of Watertown as acquired at said tax sale, which title was retained by reason of the failure of anyone to redeem the same, and

WHEREAS said real property has never been assigned by the Council for a public use, and

WHEREAS the City Council desires to ensure that properties such as this property be brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers,

NOW THEREFORE BE IT RESOLVED that pursuant to Section 23, Subdivision (b) of the General City Law, Section 247 of the Charter of the City of Watertown as amended by Local Law No. 1, 1985, adopted December 3, 1984, effective January 17, 1985, and the ordinance, Municipal Code, Chapter 16 adopted by the Council on June 6, 1977, that the offer of \$1,500 submitted by Chui Sam Chan for the purchase of Parcel No. 09-02-131.000, is a fair and reasonable offer therefore and the same is hereby accepted, and

# RESOLUTION

Page 2 of 2

Authorizing Sale of Real Property,  
Known as 507 Cross Street to  
Chui Sam Chan, 233 Mullin Street,  
Watertown, New York 13601

Council Member BURNS, Roxanne M.  
Council Member BUTLER, Joseph M. Jr.  
Council Member JENNINGS, Stephen A.  
Council Member MACALUSO, Teresa R.  
Mayor GRAHAM, Jeffrey E.

Total .....

YEA	NAY

BE IT FURTHER RESOLVED that the Mayor, Jeffrey E. Graham, be and he hereby is authorized, empowered and directed to execute and deliver a Quit Claim Deed expressly reserving a permanent and perpetual easement for a sanitary sewer main in favor of the City of said real property to Chui Sam Chan upon receipt of the above mentioned sum of money in cash only by the City Comptroller, and

BE IT FURTHER RESOLVED that the deed issued by the City contain a provision that if the property sold is not brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers, the City shall have the right to seek and be entitled to receive reversion of title to the premises to the City.

**Seconded by**

# RESOLUTION

Page 1 of 2

Authorizing Sale of Real Property,  
Known as 739 Main Street West to  
Thon Vith Lopez, 611 Olive Street,  
Watertown, New York 13601

Council Member BURNS, Roxanne M.  
 Council Member BUTLER, Joseph M. Jr.  
 Council Member JENNINGS, Stephen A.  
 Council Member MACALUSO, Teresa R.  
 Mayor GRAHAM, Jeffrey E.

Total .....

YEA	NAY

### *Introduced by*

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WHEREAS there has heretofore been bid in by the City of Watertown at a tax sale a certain lot of land known as 739 Main Street West, approximately 42' x 92' in size, and also known and designated on the map of the Department of Assessment and Taxation of the City of Watertown, New York as Parcel No. 01-14-109.000, and

WHEREAS title to said land has since been retained by the City of Watertown as acquired at said tax sale, which title was retained by reason of the failure of anyone to redeem the same, and

WHEREAS said real property has never been assigned by the Council for a public use, and

WHEREAS the City Council desires to ensure that properties such as this property be brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers,

NOW THEREFORE BE IT RESOLVED that pursuant to Section 23, Subdivision (b) of the General City Law, Section 247 of the Charter of the City of Watertown as amended by Local Law No. 1, 1985, adopted December 3, 1984, effective January 17, 1985, and the ordinance, Municipal Code, Chapter 16 adopted by the Council on June 6, 1977, that the offer of \$9,000 submitted by Thon Vith Lopez for the purchase of Parcel No. 01-14-109.000, is a fair and reasonable offer therefore and the same is hereby accepted, and

# RESOLUTION

Page 2 of 2

Authorizing Sale of Real Property,  
Known as 739 Main Street West to  
Thon Vith Lopez, 611 Olive Street,  
Watertown, New York 13601

Council Member BURNS, Roxanne M.
Council Member BUTLER, Joseph M. Jr.
Council Member JENNINGS, Stephen A.
Council Member MACALUSO, Teresa R.
Mayor GRAHAM, Jeffrey E.

Total .....

YEA	NAY

BE IT FURTHER RESOLVED that the Mayor, Jeffrey E. Graham, be and he hereby is authorized, empowered and directed to execute and deliver a Quit Claim Deed expressly reserving a permanent and perpetual easement for a sanitary sewer main in favor of the City of said real property to Thon Vith Lopez upon receipt of the above mentioned sum of money in cash only by the City Comptroller, and

BE IT FURTHER RESOLVED that the deed issued by the City contain a provision that if the property sold is not brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers, the City shall have the right to seek and be entitled to receive reversion of title to the premises to the City.

**Seconded by**

# RESOLUTION

Page 1 of 2

Authorizing Sale of Real Property,  
Known as VL-2 Mather Street to  
Gregg M. Pound, 172 Haney Street,  
Watertown, New York 13601

Council Member BURNS, Roxanne M.
Council Member BUTLER, Joseph M. Jr.
Council Member JENNINGS, Stephen A.
Council Member MACALUSO, Teresa R.
Mayor GRAHAM, Jeffrey E.

Total .....

YEA	NAY

### *Introduced by*

WHEREAS there has heretofore been bid in by the City of Watertown at a tax sale a certain lot of land known as VL-2 Mather Street, approximately 256' x 196' in size, and also known and designated on the map of the Department of Assessment and Taxation of the City of Watertown, New York as Parcel No. 09-20-207.000, and

WHEREAS title to said land has since been retained by the City of Watertown as acquired at said tax sale, which title was retained by reason of the failure of anyone to redeem the same, and

WHEREAS said real property has never been assigned by the Council for a public use, and

WHEREAS the City Council desires to ensure that properties such as this property be brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers,

NOW THEREFORE BE IT RESOLVED that pursuant to Section 23, Subdivision (b) of the General City Law, Section 247 of the Charter of the City of Watertown as amended by Local Law No. 1, 1985, adopted December 3, 1984, effective January 17, 1985, and the ordinance, Municipal Code, Chapter 16 adopted by the Council on June 6, 1977, that the offer of \$2,000 submitted by Gregg M. Pound for the purchase of Parcel No. 09-20-207.000, is a fair and reasonable offer therefore and the same is hereby accepted, and

# RESOLUTION

Page 2 of 2

Authorizing Sale of Real Property,  
Known as VL-2 Mather Street to  
Gregg M. Pound, 172 Haney Street,  
Watertown, New York 13601

Council Member BURNS, Roxanne M.
Council Member BUTLER, Joseph M. Jr.
Council Member JENNINGS, Stephen A.
Council Member MACALUSO, Teresa R.
Mayor GRAHAM, Jeffrey E.

Total .....

YEA	NAY

BE IT FURTHER RESOLVED that the Mayor, Jeffrey E. Graham, be and he hereby is authorized, empowered and directed to execute and deliver a Quit Claim Deed expressly reserving a permanent and perpetual easement for a sanitary sewer main in favor of the City of said real property to Gregg M. Pound upon receipt of the above mentioned sum of money in cash only by the City Comptroller, and

BE IT FURTHER RESOLVED that the deed issued by the City contain a provision that if the property sold is not brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers, the City shall have the right to seek and be entitled to receive reversion of title to the premises to the City.

**Seconded by**

# RESOLUTION

Page 1 of 2

Authorizing Sale of Real Property,  
Known as VL Mather Street to  
Ray Worcester, 152 Winthrop Street,  
Watertown, New York 13601

Council Member BURNS, Roxanne M.  
Council Member BUTLER, Joseph M. Jr.  
Council Member JENNINGS, Stephen A.  
Council Member MACALUSO, Teresa R.  
Mayor GRAHAM, Jeffrey E.

Total .....

YEA	NAY

***Introduced by***

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WHEREAS there has heretofore been bid in by the City of Watertown at a tax sale a certain lot of land known as VL Mather Street, approximately 10.60 acres in size, and also known and designated on the map of the Department of Assessment and Taxation of the City of Watertown, New York as Parcel No. 09-22-101.112, and

WHEREAS title to said land has since been retained by the City of Watertown as acquired at said tax sale, which title was retained by reason of the failure of anyone to redeem the same, and

WHEREAS said real property has never been assigned by the Council for a public use, and

WHEREAS the City Council desires to ensure that properties such as this property be brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers,

NOW THEREFORE BE IT RESOLVED that pursuant to Section 23, Subdivision (b) of the General City Law, Section 247 of the Charter of the City of Watertown as amended by Local Law No. 1, 1985, adopted December 3, 1984, effective January 17, 1985, and the ordinance, Municipal Code, Chapter 16 adopted by the Council on June 6, 1977, that the offer of \$5,000 submitted by Ray Worcester for the purchase of Parcel No. 09-22-101.112, is a fair and reasonable offer therefore and the same is hereby accepted, and

RESOLUTION

Page 2 of 2

Authorizing Sale of Real Property,  
Known as VL Mather Street to  
Ray Worcester, 152 Winthrop Street,  
Watertown, New York 13601

Council Member BURNS, Roxanne M.  
Council Member BUTLER, Joseph M. Jr.  
Council Member JENNINGS, Stephen A.  
Council Member MACALUSO, Teresa R.  
Mayor GRAHAM, Jeffrey E.

Total .....

YEA	NAY

BE IT FURTHER RESOLVED that the Mayor, Jeffrey E. Graham, be and he hereby is authorized, empowered and directed to execute and deliver a Quit Claim Deed expressly reserving a permanent and perpetual easement for a sanitary sewer main in favor of the City of said real property to Ray Worcester upon receipt of the above mentioned sum of money in cash only by the City Comptroller, and

BE IT FURTHER RESOLVED that the deed issued by the City contain a provision that if the property sold is not brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers, the City shall have the right to seek and be entitled to receive reversion of title to the premises to the City.

**Seconded by**

# RESOLUTION

Page 1 of 2

Authorizing Sale of Real Property,  
Known as 115 St Mary Street to  
Thon Vith Lopez, 611 Olive Street,  
Watertown, New York 13601

Council Member BURNS, Roxanne M.
Council Member BUTLER, Joseph M. Jr.
Council Member JENNINGS, Stephen A.
Council Member MACALUSO, Teresa R.
Mayor GRAHAM, Jeffrey E.

Total .....

YEA	NAY

### *Introduced by*

WHEREAS there has heretofore been bid in by the City of Watertown at a tax sale a certain lot of land known as 115 St. Mary Street, approximately 50' x 100' in size, and also known and designated on the map of the Department of Assessment and Taxation of the City of Watertown, New York as Parcel No. 03-07-113.000, and

WHEREAS title to said land has since been retained by the City of Watertown as acquired at said tax sale, which title was retained by reason of the failure of anyone to redeem the same, and

WHEREAS said real property has never been assigned by the Council for a public use, and

WHEREAS the City Council desires to ensure that properties such as this property be brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers,

NOW THEREFORE BE IT RESOLVED that pursuant to Section 23, Subdivision (b) of the General City Law, Section 247 of the Charter of the City of Watertown as amended by Local Law No. 1, 1985, adopted December 3, 1984, effective January 17, 1985, and the ordinance, Municipal Code, Chapter 16 adopted by the Council on June 6, 1977, that the offer of \$22,000 submitted by Thon Vith Lopez for the purchase of Parcel No. 03-07-113.000, is a fair and reasonable offer therefore and the same is hereby accepted, and

# RESOLUTION

Page 2 of 2

Authorizing Sale of Real Property,  
Known as 115 St Mary Street to  
Thon Vith Lopez, 611 Olive Street,  
Watertown, New York 13601

Council Member BURNS, Roxanne M.  
 Council Member BUTLER, Joseph M. Jr.  
 Council Member JENNINGS, Stephen A.  
 Council Member MACALUSO, Teresa R.  
 Mayor GRAHAM, Jeffrey E.

Total .....

YEA	NAY

BE IT FURTHER RESOLVED that the Mayor, Jeffrey E. Graham, be and he hereby is authorized, empowered and directed to execute and deliver a Quit Claim Deed expressly reserving a permanent and perpetual easement for a sanitary sewer main in favor of the City of said real property to Thon Vith Lopez upon receipt of the above mentioned sum of money in cash only by the City Comptroller, and

BE IT FURTHER RESOLVED that the deed issued by the City contain a provision that if the property sold is not brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers, the City shall have the right to seek and be entitled to receive reversion of title to the premises to the City.

**Seconded by**

November 10, 2014

To: The Honorable Mayor and City Council

From: Sharon Addison, City Manager

Subject: Approving Administrative Services Agreement for Self-Funded Health Insurance, Third Party Administrator, POMCO

The City of Watertown became self-insured for our health insurance benefits effective July 1, 1992, with POMCO as our third party administrator. The City's Health Insurance Committee requested proposals for the administration for our Health Insurance Program. As detailed in the attached memorandum from Administrative Specialist Matthew Roy, an RFP was issued with the help of our stop-loss broker, the Anchor Group, to 13 carriers. It is their recommendation that the City Council remain with POMCO for those services.

An Administrative Services Agreement has been negotiated between the parties outlining the duties and responsibilities of the parties. The term of the Agreement is for three years beginning January 1, 2015 and ending on December 31, 2017, with the ability to renew for two one-year extensions. The Administrative Fee charged by POMCO is \$26.20 per employee per month for the duration of the three-year contract. This represents a slight increase from the current fee charged of \$25.58. Our past contracts allowed for an annual increase. This change could potentially save the plan \$10,000 over the term of the contract.

A resolution approving the Agreement between the City of Watertown and POMCO has been prepared for City Council consideration.

**RESOLUTION**

Page 1 of 1

Approving Administrative Services Agreement  
By and Between POMCO and the  
City of Watertown Self-Funded  
Health Insurance Program

Council Member BURNS, Roxanne M.  
Council Member BUTLER, Joseph M. Jr.  
Council Member JENNINGS, Stephen A.  
Council Member MACALUSO, Teresa R.  
Mayor GRAHAM, Jeffrey E.

Total .....

YEA	NAY

***Introduced by***

WHEREAS a Request for Proposal was issued by the City’s Health Insurance Committee, and

WHEREAS said RFPs were sent to thirteen (13) Third Party Administrators (TPA), and

WHEREAS the Health Insurance Committee has done extensive interviews, research and comparisons of all of the timely received responses, and

WHEREAS the Health Insurance Committee unanimously recommends POMCO as the City’s Third Party Administrator, and

WHEREAS the City and POMCO has developed an Administrative Services Agreement that describes the duties and responsibilities of the parties, and

WHEREAS the term of this Agreement is for three (3) years beginning January 1, 2015 and ending on December 31, 2017, with an administrative fee of \$26.20 per enrollee per month, for the duration of the contract, with ability to renew for two one-year extensions,

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Watertown, New York that it hereby approves this Administrative Services Agreement between the City and POMCO, a copy of which is attached and made a part of this resolution, and

BE IT FURTHER RESOLVED that the City Manager Sharon Addison is hereby authorized and directed to execute the Agreement on behalf of the City.

**Seconded by**



## ADMINISTRATIVE SERVICES AGREEMENT

This Agreement by and between the **CITY OF WATERTOWN**, with its principal place of business at 245 Washington Street, Watertown, NY 13601 (hereinafter referred to as the Client), and **POMCO, INC.**, a corporation duly organized pursuant to the laws of the State of New York with its principal place of business at 2425 James Street, Syracuse, New York 13206 (hereinafter referred to as POMCO).

### WITNESSETH

**WHEREAS**, the Client is desirous of engaging the services of POMCO to provide administrative services for the Client's Self-Funded Benefit Plan (hereinafter referred to as the "Plan") and such additional services as set forth below; and

**WHEREAS**, POMCO is duly qualified to provide such services and has agreed to perform such services;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements expressly hereinafter set forth, the parties hereto agree as follows:

### NO INSURANCE

This Agreement is not intended to be insurance or a policy of insurance, and therefore, it is the intention of the parties that this Agreement not be subject to the Insurance Law of the State of New York or the regulations of the Superintendent of Insurance of the State of New York. Provided, however, that this paragraph shall not act as a waiver of, or prejudice any rights that either of the parties may have under any statute which may be applicable to this Agreement, including the insurance law if legislation is enacted pursuant to which this Agreement would be regulated hereunder.

### TERM

This Agreement shall be for a term of three (3) years and shall become effective on January 1, 2015, and unless renewed, shall expire on December 31, 2017, subject to Article XII of this Agreement.

The Client shall have the option to renew this Agreement for additional terms of one year, at an administrative fee agreed upon by both the Client and POMCO.

Renewal shall be automatic during subsequent years, unless the Client exercises its right not to renew. Notice of Client's intent not to renew shall be in writing and must be

delivered to POMCO by certified mail, return receipt requested no later than ninety (90) days prior to the expiration of the current term. Client's option to renew is subject to compliance with all terms of this Agreement by the Client.

### ARTICLE I

#### EMPLOYEE RECORD MANAGEMENT SYSTEM & BENEFIT MANAGEMENT SERVICE

POMCO will provide the Client with an online system for developing and maintaining comprehensive employee benefit records, including the following services:

- A. Provide turnaround data for distribution to and completion by employees.
- B. Transfer enrollment data for all coverage lines to computer storage on the POMCO system.
- C. Provide the capabilities for designated Client personnel to add, change, or delete enrollment data following initial enrollment.
- D. Transmit all enrollment data and transactions and coordinate the issuance of identification cards. ID card production and issuance will be at no cost for the initial issue and incidental maintenance. Any reissue for Client-directed requests will be billed to the Client.
- E. Provide enrollment data which updates all enrollment transactions on a monthly basis.
- F. Continue and where necessary, allow for coding to identify enrollees by various classifications, locations, employment statuses, and job categories.
- G. Provide at the Client's request, enrollment data for a complete update of all employee benefit records on an annual basis.
- H. Provide available management reports designed to meet administrative and internal accounting needs (see Report Appendix B).
- I. Provide the Client with secure electronic access to POMCO's system for the Client's use for all authorized transactions.
- J. Train and instruct employees designated by the Client in the use and operation of the POMCO system.
- K. Provide post termination of coverage COBRA administrative services under the terms and conditions of the regulation in effect as of the date of this Agreement.
  1. Notify eligible individual of their right to continue coverage.
  2. Accept the election of coverage by the eligible individuals.
  3. Bill and collect premiums for those who elect to continue coverage.
  4. Provide reports designed to meet administrative and internal accounting needs.



## ADMINISTRATIVE SERVICES AGREEMENT

POMCO hereby agrees to provide benefit management services to the Client in the design, development, and implementation of employee benefits programs. These services include:

- A. Review and evaluate current benefit programs.
- B. Recommend alternative funding techniques designed to make better use of benefit dollars.
- C. Analyze claims experience and utilization data to recommend changes in benefit design.
- D. Develop annual cost projections.
- E. Develop cost projections for Plan modifications.
- F. Develop estimates of incurred claims for the Plan.
- G. Review internal policies affecting waiting periods, employee contribution premium waiver, duplicate coverage, coordination of benefits, and other personnel rules and regulations.
- H. Oversee the implementation of new or restructured benefit programs if so requested.
- I. Use of reasonable efforts to keep current with related benefit trends and developments, and to communicate such trends and developments to the Client to the extent the Client reasonably needs to know about such trends and developments.
- J. Assist the Client with respect to stop-loss insurance coverage for the Plan, if applicable.

### ARTICLE II

#### MEDICAL CLAIM PAYMENT AND ADMINISTRATION

In conjunction with the Client's Plan, POMCO will provide the following administrative and claim processing services:

- A. Assist with and provide, on behalf of the Client, a Master Plan Document that reflects the terms of the Plan as reasonably defined by the Client and includes provisions reserving the Client's right to modify or terminate the Plan at any time, authorizing the Client or its designee to construe any ambiguous or uncertain term in the Plan. Assist with and provide, on behalf of the Client, the timely update of the Master Plan Document as required. Any amendment to the Master Plan Document that is not required by law shall be done at such time, and in such manner, as is agreed to by the parties. The Plan Document will serve as the basis for interpreting claims for benefits and claim adjudication.
- B. Review each claim submitted to verify eligibility for benefits. Such review, and any denial of a claim, shall be handled in a manner that complies with the Master Plan Document, as amended from time to time.
- C. Provide for a review of claims by a licensed practitioner on POMCO's staff.
- D. Process all claims properly submitted and not requiring additional data. Where claims are not properly

submitted, POMCO will undertake to assist the enrollee, through correspondence and otherwise, in making a proper submission.

- E. Process claims expenses and related costs and issue checks for payment as appropriate. Claim related expenses include: HCRA tax, ancillary and national provider network expenses, physician/provider consulting fees, legal expense, HCRA and Large Case Management expense as defined by POMCO. Checks will be issued weekly. Each check will be accompanied by a detailed Explanation of Benefits Statement (E.O.B.).
- F. Provide a toll free telephone number for enrollees to use when inquiring regarding the status of a claim and assist enrollees with claim related inquiries.
- G. Provide access to enrollee records, including claims status information to authorized Client personnel.
- H. Maintain comprehensive financial and utilization data associated with claims submitted for processing, and make reports to the designated individuals of the Client in accordance with the reports set forth in Appendix B, which is attached hereto. The cost of any additional non-standard reports requested by the Client will be billed to the Client at a mutually agreeable prearranged fee.
- I. Provide, on behalf of the Client, IRS Forms 1099 and 1096 to all providers of benefits to whom aggregate assigned benefits of \$600 or more were made during a calendar year.
- J. Assist with and coordinate, on behalf of the Client, the preparation and arrangement of printing Benefit Plan Booklets for distribution to eligible employees. The cost of printing and distributing the Benefit Plan Booklets will be paid for by the Client. POMCO shall notify the Client how much it will cost to print and distribute the Benefit Plan Booklets, and, after receiving the Client's consent to such cost (which consent shall not be unreasonably withheld), POMCO shall arrange for such printing and distribution.
- K. Arrange for the printing of necessary forms for the submission of claims. The cost of printing claim forms will be paid for by the Client.
- L. Assist the Client, when requested by the Client, in the mailing of specially requested reports, forms, labels, and other materials to enrollees. The cost of printing and mailing these specially requested reports, forms, labels, and materials will be paid for by the Client.
- M. Perform calculation, reporting, and record keeping functions relating to the New York State Health Care Reform Act of 1996 (HCRA). Monthly filing will be done directly with New York State. Client is responsible for liability due to HCRA tax review findings. This includes during the term of this Agreement as well as at any time after this Agreement



## ADMINISTRATIVE SERVICES AGREEMENT

- terminates.
- N. Contract, on behalf of Client, and assist in the intermediation of the claims for prescription drugs with the prescription drug plan administrator/claims payor and assist in interpretation of the drug plan administration for discussion with and/or actions by the Client.
- O. Benefits Management Base Services. Establish a toll-free number for enrollees to telephone as required pursuant to the Plan's benefit management program. Upon receipt of the telephone call from the enrollee, POMCO shall determine whether the care requires management pursuant to the benefit management program. If the proposed medical care requires management, then POMCO shall:
1. Evaluate the appropriateness of the treatment setting by contacting the proposed provider either by telephone or in writing. POMCO shall make its best efforts to contact the provider within 48 hours after receipt of the telephone call from the enrollee. Once POMCO makes contact with the provider, within 48 hours after said contact, POMCO shall make a determination if an inpatient setting is medically necessary and shall advise the enrollee whether or not benefits are available under the Plan.
  2. Keep accurate records of its managed care services hereunder, including but not limited to, the name of the employee, the Social Security number of the employee, a telephone log of calls received and/or made from and to the provider and the enrollees, and any and all information and reviews utilized in making its determination.
  3. Provide large case management services that include:
    - a. Identification of patients who are candidates for large case management.
    - b. Coordination with the patient, family and treatment team, viable options that are medically appropriate alternatives in the particular clinical situation.
    - c. Manage the patient's health benefits in conjunction with other available resources to structure a quality cost effective plan. POMCO's staff of registered nurses and/or board certified physicians will be utilized in the large case management process.
- P. Provide prepayment inpatient hospital review and verification services for all applicable inpatient hospital claims.
- Q. Provide prepayment medical claims review and

- verification services for all applicable medical claims. These services include medical appropriateness, unbundling, and billing practice reviews by POMCO's technical review staff.
- R. Provide access to and claims adjudication services for POMCO's Participating Provider Organization (PPO). POMCO will supply Client with electronic copy of the POMCO PPO directory at no charge. Hardcopy directories and updates to the PPO directory will be supplied to the Client at POMCO's cost to print and deliver.
- S. Provide for a review by an independent firm for the purpose of verifying POMCO internal controls over the POMCO health claim disbursement system and procedures.
- T. Attend meetings at the Client's primary location.

### ARTICLE III PAYMENT OF CLAIMS

POMCO will use a bank account for claim payments. POMCO will notify the Client of claim payments drawn on this account by providing a detailed check register. The Client will deposit funds to the account, as required by the bank, to cover checks paid. The Client agrees that checks made out to the Client, for the pertinent plan, and received by POMCO may be deposited by POMCO on Client's behalf. For clients that utilize debit cards, a 5% deposit will be required and will only be assessed if POMCO is requested to use its own funds for any debit card payments.

Upon request, POMCO shall review all previously denied benefits. The determination of POMCO, made in accordance with the Client's Plan, on any application for benefits is final and conclusive except the Client reserves the right to review and authorize payment of benefits previously denied by POMCO. The appeal review and written determination described in this paragraph shall be handled in a manner that complies with the Master Plan Document.

### ARTICLE IV ADMINISTRATIVE FEES

The fee to the Client for services performed by POMCO, in connection with the Client's Plan, is primarily based on a monthly amount for each enrollee of record as submitted by the Client to POMCO at the time of billing. POMCO will provide an invoice itemizing the amount of the service fee



## ADMINISTRATIVE SERVICES AGREEMENT

in advance. On the first check cycle of each month, the fees will be processed and paid from the client's account. The fees are contained in the Administrative Fee Schedule, Appendix C, attached hereto. The fee may be revised during subsequent years of the Agreement in an amount agreed to by POMCO and the Client or as specified in Appendix C.

The parties agree to modify the administrative fee listed in Appendix C if a change in law or regulations or a change in the benefit plan results in a significant revision of the duties originally contemplated at the time of this Agreement. Such modification shall be agreed to by both parties.

### ARTICLE V THE CLIENT'S DUTIES

- A. The Client agrees to provide POMCO all information and assistance which POMCO may reasonably need to properly administer the Plan. The Client also understands that this Agreement requires the timely transfer by the Client of the requisite raw data.
1. POMCO shall not be responsible for the failure to include Client data, which is not timely received, in the reports prepared for the Client. POMCO shall request only such data and material that is reasonably appropriate and necessary to complete its obligations hereunder. Client assumes all responsibility for the accuracy of the data and material submitted by the Client.
  2. In determining any person's right to benefits under the Plan, POMCO shall rely on Client eligibility information furnished by the Client for its enrollees, as well as any other enrollees for which the Client has extended benefits under the Plan prior to submission of the claim. It is mutually understood that effective performance of the Agreement by POMCO will require that it be advised by the Client periodically, but not less frequently than monthly, of individuals eligible for benefits under the Plan, the effective date of termination (as the case may be) of their eligibility and the extent of the benefits to which they are entitled to under the Plan. The Client shall also cause to be furnished to POMCO such other information as may reasonably be required for the proper administration of the Plan, including Social Security numbers or any agreed upon identification code.
  3. It is mutually agreed that POMCO shall not be responsible for delays in performance of this Agreement to the extent the delay is due to the failure of the Client to timely perform any of its obligations under this Agreement.
- B. The Client agrees to forward funds sufficient to pay

eligible claims presented for payment. In accordance with Article II, if funds are not paid as requested, POMCO may take the following action:

1. Suspend benefit payments or terminate this Agreement as provided for in Article XII if the Client has not deposited funds to pay employee benefit claims within five (5) days of its receipt of written notice from POMCO that such funds have not been deposited.
- C. Client agrees that during the term of its contractual relationship with POMCO and for a period of two (2) years thereafter, Client will not induce or attempt to induce any person who is an employee or agent of POMCO to leave the employ of POMCO and engage in any business which competes with POMCO. Client agrees that the violation of this provision at any time will produce severe damage and injury to POMCO. In the event of such breach or threatened breach by Client, POMCO shall be entitled to seek injunctive relief, both preliminary and permanent, enjoining and restraining such breach or threatened breach. Such remedies shall be in addition to all other remedies available to POMCO in law or in equity, including but not limited to the right to recover from Client any and all damages that may be sustained as a result of Client's breach.

### ARTICLE VI RECORD RETENTION AND REVIEW

- A. POMCO shall maintain and preserve archival records covering claims submitted under the Plan, as well as payments made under the Plan. The archival records shall be maintained for the term of this Agreement in accordance with sound business practices, and in no event shall such archival records be transferred without prior written notification to the Client.
1. POMCO and the Client agree that the archival records pertaining to the business transacted under this Agreement shall remain the sole and exclusive property of the Client. Upon the expiration of this Agreement, or the earlier termination of this Agreement, POMCO shall provide access to archival records to the Client, except where POMCO may be required by law to maintain possession of such records. In the event POMCO is required by law to maintain possession of the archival records, POMCO shall supply the Client, at the cost of the client, with a copy of such records, and shall surrender to the Client the archival records as soon as practicable. Notwithstanding the foregoing, POMCO may upon expiration of this Agreement, or the earlier termination of this Agreement, maintain such



## ADMINISTRATIVE SERVICES AGREEMENT

- copies of the archival records as may be in accordance with sound business practices.
2. During the term of this Agreement, POMCO will not use the archival records for any purpose whatsoever inconsistent with the performance of its duties under this Agreement, except with the prior written consent of the Client.
- B. No information with respect to the administration of the Plan shall be disclosed by POMCO without prior permission of the Client unless required by law. The parties to this Agreement acknowledge that all health related information shall be deemed confidential and shall not be disclosed without the express authorization of the individual involved, except when disclosure of such information is required by either party for the administration of the Plan. Any disclosure of medical information shall comply with applicable laws.
- C. The Client or any certified public accounting firm authorized by the Client, shall have the right to examine or audit, in a reasonable manner, all Plan records during the regular business hours of POMCO upon thirty (30) business days advance written notice to POMCO. Upon notification and before commencement, all parties to the audit will mutually agree to the scope and extent of such audit.

### ARTICLE VII INDEMNIFICATION AGREEMENT

- A. Client shall indemnify and hold POMCO harmless from any and all claims, damages, costs, expenses, and liability, including the cost of reasonable attorney's fees, from all providers of service, persons covered under the Client's Benefit Plan or any other person, corporation or organization, which claim arises out of and in accordance with the administration by POMCO of the Client's Benefit Plan; except the Client shall not be held responsible for any judgment or award, or portion thereof (or attorney's fees with respect thereto) attributable to the willful misconduct, negligent act, breach of contract, fraud or criminal conduct of POMCO; its agents, contractors, representatives, employees, officers or directors.
- B. POMCO shall indemnify and hold the Client harmless from any and all damages, costs expenses and liability arising from or in connection with any willful misconduct, negligent act, fraud or criminal conduct of POMCO, its agents, contractors, representatives, employees, officers or directors, which claim arises out of and in accordance with the administration of its duties under the terms, covenants and conditions of this Agreement. POMCO shall not be held responsible for any award or portion thereof (or attorney's fees with respect thereto) attributable to the willful misconduct,

- negligent act or omission, fraud or criminal conduct of the Client; its agents, contractors, representatives, employees, officers or directors.
- C. POMCO agrees that it will conduct itself consistent with its status, said status being that of an independent contractor, and its employees or agents will neither hold themselves out as nor claim to be an officer or employee of the Client, including, but not limited to, matters relating to Workers' Compensation coverage, unemployment benefits, Social Security benefits, or retirement benefits.
- D. Clerical errors or normal variations in claim processing made without intent to defraud and absent negligence or willful misconduct are recognized in this Agreement as possible. When such errors or variations are made and discovered, the Client and POMCO shall work together in correcting, adjusting or otherwise making them right to the extent such is both possible and recoverable.
- E. The parties agree that the opinions, consultations, advice and similar information provided by POMCO and POMCO employees are informational only and are not considered to be legal advice. Clients should retain their own legal counsel and/or accountants for any plan decisions or determinations.
- F. POMCO represents and warrants that it maintains, and shall maintain during the period this Agreement is in force and effect, professional liability and commercial crime/employee dishonesty insurance. There is no liability on the part of POMCO for disruption of services or termination of this Agreement due to a pandemic/epidemic disease outbreak.

### ARTICLE VIII ASSIGNMENT

POMCO agrees that it will not assign, transfer, convey, or otherwise dispose of this Agreement or its rights, title obligations or interests in and/or to the same, nor any part thereof, nor to any monies which are or will become due and payable thereunder, nor the power to execute such Agreement to any other person, company, corporation, or entity without the prior express written consent of the Client.

### ARTICLE IX LAWS GOVERNING AGREEMENT

- A. This Agreement shall be governed by, and shall be construed in accordance with, the laws of the State of New York. If, however, any provision of this Agreement is, or becomes, inconsistent with any federal or state law or regulation, this Agreement will



## ADMINISTRATIVE SERVICES AGREEMENT

be deemed modified to comply with said law or regulation.

- B. In acceptance of this Agreement, POMCO covenants and certifies that it will comply, in all respects, with the federal, state or other municipal laws which pertain hereto, regarding work or municipal contracts, matters of employment, length of hours, Workers' Compensation and human rights.

### ARTICLE X TERMINATION OF AGREEMENT

This Agreement shall terminate upon the earliest of the following dates:

- A. The expiration date of this Agreement or any renewal thereof, where there has been no new renewal.
- B. Upon the default of either party, thirty (30) days from the date of delivery of written notice, provided that said notice sets forth POMCO's reason(s) for such termination and further provided that the Client has not deposited the requested undisputed funds with POMCO within five (5) days after the receipt of POMCO's written notice. Notwithstanding the preceding sentence, a failure by the Client to deposit funds to pay employee benefit claims shall not be considered a default for purposes of this Paragraph B until the Client fails to deposit such funds within five (5) days of its receipt of written notice from POMCO that such funds have not been deposited.
- C. On any other date mutually agreeable to the Client and POMCO.
- D. The date the Client's Plan is discontinued.
- E. On a date that the Superintendent of Insurance, or any other governmental official body, advises POMCO that it does not have the authority to administer the Client's Plan under the terms of this Agreement, or on a date of any Court decision which so provides. POMCO shall promptly notify the Client in writing upon its receipt of notice that an action or proceeding has been commenced with respect to matters set forth in this paragraph.
- F. In the event of termination of this Agreement, POMCO shall complete the processing of all valid claims for benefits under the Plan received by it to the effective date of termination. POMCO shall be paid in advance for the claims to be paid, and the administration charge in effect, on the date of termination. Administrative fees and charges due to POMCO for any period of less than a month shall be prorated on a daily basis. In addition, POMCO agrees to provide an accounting within sixty (60) days after the effective date of termination, except that adjustments in such accounting may be necessary by reason of the subsequent determination of final payments to

providers of service for such period. Upon termination of this Agreement, POMCO shall, at no additional charge, provide to the Client, a report indicating (a) the status of POMCO's work in progress but incomplete as of the date of the report, and (b) such administration information as is reasonably necessary for the future administration of the Plan and that is reasonably available from POMCO, including, but not limited to, the latest Plan data available from POMCO regarding the applicable amount of claims submitted, payments made, deductibles, coinsurance payments, lifetime maximums, and annual maximums (to the extent applicable under the Plan).

- G. Upon termination in good standing, the Client shall have the option to contract with POMCO to provide run-out claims processing services for claims incurred through the termination date. The fees for this service will be the full service fees in place at the termination date for each of the first two months of services, then 50% of the full service fee for each of the next two months, and finally \$12.50 per claim with a \$2,500 per month minimum for any month subsequent to the fourth month. The Client may terminate services under this paragraph at any time with 30 days notice. POMCO will provide services under this clause for a maximum of six months.

### ARTICLE XI RIGHT OF OWNERSHIP

The Client agrees that the POMCO system, computer programs and documentation of that system utilized to implement this Agreement are, and shall remain, the exclusive and sole property of POMCO. POMCO agrees that the data accumulated in the course of administration of the Client's Plan, is and shall remain, the exclusive and sole property of the Client, and shall be provided to Client at Client's request and can be relinquished and transferred by Client without POMCO's consent. It is further expressly understood that the systems, programs and documentation that are the exclusive and sole property of POMCO shall not be disclosed orally, in writing, or by any other means by the Client, its agents or employees without the prior written approval of POMCO. The provisions and restrictions of this paragraph shall otherwise survive and be binding upon the parties for a period of fifteen (15) years after the termination of this Agreement.

Client agrees that POMCO, Inc., its subsidiaries and affiliates may make references to Client in its marketing activities.



# ADMINISTRATIVE SERVICES AGREEMENT

## ARTICLE XII DISCLAIMER

POMCO acts only as a provider of services to the Plan. POMCO does not insure the Plan in any way. POMCO is not a fiduciary. POMCO, on behalf of the Client, will assist the Client with meeting their duties as required by Employee Retirement Income Security Act of 1974; however, ultimately it is the responsibility of the Client to ensure compliance, if applicable.

POMCO and the Client hereby stipulate and certify that there is no member of the Client or other officer or employee forbidden by law to be interested in this Agreement directly or indirectly who is a party thereto.

The Client acknowledges that POMCO may be eligible to receive potential reimbursements from national services contracts with ancillary vendors including, but not limited to, pharmacy and drug services, laboratory, and network products.

## ARTICLE XIII MODIFICATION

This Agreement may be modified or amended only by written instrument, duly executed by POMCO and the Client.

POMCO may revise the administrative charge under this Agreement if any change in law, regulations or client directive imposes significantly greater duties or obligations on POMCO than was contemplated by the Agreement in force at the time of such change. The modification itself, as well as any revision in the administrative charge, must be mutually agreed upon by both Client and POMCO. The effective date of such change shall be thirty (30) days after POMCO sends written notice of its intent to revise the administrative charge under this Agreement to Client.

## ARTICLE XIV NOTICES

All notices required under the Agreement shall be properly served if sent by certified mail, return receipt requested. The date of serving shall be the date upon which such notice was received, unless such receipt was refused, in which event date of service shall be the date of refusal.

## CITY OF WATERTOWN

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## POMCO, INC.

By: \_\_\_\_\_  
Robert W. Pomfrey

Title: President

Date: \_\_\_\_\_

## APPENDIX A BUSINESS ASSOCIATE AGREEMENT

For purposes of complying with the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the regulations on privacy and confidentiality, 45 C.F.R. Parts 160, 162 and 164 including the Security Rule and the requirements under the Health Information Technology for Economic Recovery and Reinvestment Act of 2009 (the "ARRA") and the requirements of the final modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules effective on March 26, 2013, **POMCO, INC.** ("Business Associate") and the **CITY OF WATERTOWN** ("Covered Entity") agree to the following:

This Agreement is intended to ensure that the Business Associate will establish and implement appropriate safeguards (including certain administrative requirements) for "Protected Health Information" ("PHI") that the Business Associate may create, receive, use, or disclose in connection with certain functions, activities, or services (collectively "services") to be provided by Business Associate to Covered Entity.

Terms used but not otherwise defined in this Business Associate Agreement ("BAA") shall have the same meaning as those terms in 45 CFR 160.103 and 164.501. Notwithstanding the above, "Covered Entity" shall have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement.; "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g); "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the to the information created or received by Business Associate from or on behalf of Covered Entity and/or its health benefit plan(s); "Security Rule" shall mean the Security Standards for the Protection of Electronic Health Information at 45 CFR 160 and 164, subpart A&C; "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system; "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his

designee; and "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

Except as expressly provided in the HIPAA Privacy Rule or this Agreement, this Agreement does not create any rights in third parties.

### I. Specific Requirements

A. Business Associate agrees to create, receive, use, or disclose PHI only in a manner that is consistent with this Agreement or the HIPAA Privacy Rule as defined in 45 CFR 164.51(e)(2) and only in connection with providing the services to Covered Entity identified in the agreement. Accordingly, in providing services to or for the Covered Entity, Business Associate, for example, will be permitted to use and disclose PHI, for "treatment, payment and health care operations" in accordance with the HIPAA Privacy Rule. Additionally, under the HIPAA Privacy Rule, the Business Associate also may use or disclose PHI received by the Business Associate in its capacity as a Business Associate to the Covered Entity if:

- (i) the use relates to: (1) the proper management and administration of the Business Associate or to carry out legal responsibilities of the Business Associate or (2) data aggregation services relating to the health care operations of the Covered Entity; or
- (ii) the disclosure of information received in such capacity will be made in connection with a function, responsibility, or service identified in the Service Agreement, *and* such disclosure is required by law *or* the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held

confidential and the person agrees to notify the Business Associate of any breaches of confidentiality.

- B. Business Associate will include in all contracts with its agents or subcontractors, if such contracts involve the disclosure of PHI to the agents or subcontractors, the same restrictions and conditions on the use and disclosure of PHI that are set forth in this Agreement and subcontractors will incur liability under the HIPAA requirements for non-compliance with such provisions.
- C. Business Associate will maintain appropriate physical, administrative and technical safeguards as necessary to ensure that PHI is not used or disclosed except as provided for by this Agreement. Business Associate further acknowledges that it is subject to the requirements of 45 CFR 164.308, 164.310, 164.312 and 164.316 to the same extent such requirements apply to the Covered Entity. Business Associate is, however, not liable for the acts and omissions of any subcontractor to the extent that the HIPAA requirements apply directly to them.
- D. Business Associate will report to Covered Entity any use or disclosure of PHI that it has knowledge of and is not provided for in this Agreement. This also includes reporting to Covered Entity any Security Incident of which it becomes aware with respect to ePHI provided by, or created or received by Business Associate on behalf of Covered Entity in as expeditious a manner as possible and in no event later than 60 calendar days after discovery, as defined in 45 CFR 164.410(a)(2) and will comply with the requirement of the Breach Notification Rule.
- E. In accordance with 45 C.F.R. § 164.524 of the HIPAA Privacy Rule, Business Associate will make available to those individuals who are subjects of PHI, their PHI in Designated Record Sets by providing the PHI to Covered Entity (who then will share the PHI with the individual), by forwarding the PHI directly to the individual, or by making the PHI available to such individual at a reasonable time and at a reasonable location.
- F. Business Associate will make available PHI for amendment and incorporate any amendment to PHI in accordance with 45 C.F.R. § 164.526 of the HIPAA Privacy Rule.
- G. Upon the termination or expiration of this Agreement, Business Associate agrees to return the PHI to Covered Entity, destroy the PHI (and retain no copies), or further protect the PHI if return or destruction is not feasible.
- H. Business Associate shall make available to the Covered Entity or the Secretary of HHS or its agents, at the request of the Covered Entity, the Business Associate's internal practices, books and records relating to the use and disclosure of PHI.
- I. Business Associate agrees that, in connection with the transmission of standard EDI transactions, it will not change the definition, data condition, or use of a data element or segment in a standard transaction; add any elements or segments to the maximum defined data set or change the meaning or intent of the standard's implementation specifications.
- J. The Parties agree that Covered Entity shall have the right to terminate this Agreement or seek other remedies if Business Associate violates a material term of this Agreement.
- K. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- L. Business Associate agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528 and the regulations adopted pursuant to 42 USC 17935(c).
- M. Business Associate agrees to provide to Covered Entity, in time and manner

designated by Covered Entity and not materially disruptive of Business Associates operations or business, an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528 and the regulations adopted pursuant to 42 USC 17935(c), in a prompt and reasonable manner consistent with the HIPAA regulations.

- N. Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, if requested, as well as any changes to such notice.
- O. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual or his or her personal representative to use or disclose Protected Health Information, if such changes affect Business Associate's uses or disclosures of Protected Health Information.
- P. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, if such changes affect Business Associate's uses or disclosures of Protected Health Information and does not materially effect the business and operations of Business Associate.
- Q. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule.

## **II. Term and Termination**

- A. Term. This BAA shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

- B. Termination for Cause. Without limiting the termination rights of the parties pursuant to the Agreement, and upon the knowledge of a material breach of a provision under this Agreement, the other party shall provide an opportunity for the breaching party to cure the breach or end the violation and terminate the BAA if the breaching party does not cure the breach or end the violation within the sixty (60 days), or immediately terminate the Contract if cure is not possible. If neither termination nor cure is feasible, the non-breaching party shall report the violation to the Secretary.
- C. Effect of Termination. (1) Except as provided in paragraph (2) of this subsection, upon termination of this Amendment, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. (2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make the return or destruction infeasible. In such event, Business Associate shall extend the protections of this Amendment to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

**CITY OF WATERTOWN  
APPENDIX B  
REPORT INDEX**

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**ENROLLMENT REPORTS**

Master Coverage Report  
Over Age Report/Report of Dependents Over Age 19 (25)  
Over Age Report/Report of All Employees (Spouses) Over Age 64  
Age Range Totals Report  
Dependent College Students Report  
Benefit Transaction Listing  
Individual Coverage Report By Coverage Code  
Report of COB Information  
Health and/or Dental Coverage Report  
Beneficiary Records Report  
Employee Eligibility Report For Coverage Type  
Monthly Enrollment by Medicare Status

**BENEFIT & UTILIZATION REPORTS**

Claim Analysis Overview  
Normative Comparison Summary  
Utilization Benchmark Summary  
Shock Claim Summary  
Shock Claim Detail  
Monthly Cost Summary  
Prescription Drug Summary  
Dental Summary  
Cost Distribution Summary  
Cost by Age Group  
Cost Summary by Employee  
Key Utilization Indicators  
Large Claim Trend Analysis  
Medical Cost Dist (Category)  
Medical Cost Dist (Diagnosis)  
Preventable Conditions

**BENEFIT ANALYSIS APPLICATIONS**

Payee Analysis  
Diagnosis Analysis  
Procedure Analysis  
Prescription Analysis  
Payment Analysis  
Provider Cost Comparison  
Health Service Analysis  
Lag Matrix Generator  
Stop Loss Trigger Report

**CHECK AND ACCOUNT REGISTERS**

Claim Check Register  
Fund Account Statement

**EXECUTIVE REPORTS**

Monthly Claims Experience  
Plan Cost Comparison  
Analysis of Submitted Claims Vs. Paid Claims  
Large Claims Analysis  
Claims Lag Study  
Breakdown of Plan Expenditures  
Claims Per Enrollee by Type  
PPO Utilization

**CITY OF WATERTOWN  
ADMINISTRATIVE FEES  
APPENDIX C**

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**BASE ADMINISTRATION:**

**I. Comprehensive Health Claims Adjudication Services**

- Enrollment interface
- Receive and review health claims for eligibility
- Adjudicate health claims within benefit plan guidelines including Coordination of Benefits
- Produce checks and Explanation of Benefits
- Provide check registers along with funding requirements
- Produce an assortment of eligibility and claims data reports
- Identification Cards
- Booklet Development
- Plan Document
- 800 Customer Service

**II. Enrollment and Benefit Management Services**

This service is an exclusive POMCO developed product which includes all enrollment functions such as online updating, coordination of benefits, tracking student verification, employee status tracking, and other features. The service also provides instantaneous on-line access to eligibility and claims inquiry at your office. The service also allows for the collection of data that assists POMCO in providing consultation and management services with regards to plan design and cost analyses.

**III. COBRA/HIPAA**

POMCO provides all aspects of COBRA administration including notification, follow-up, billing and collection, eligibility update and termination. POMCO will provide HIPAA compliant administrative services.

**COST CONTAINMENT SERVICES:**

**IV. Inpatient Claims Accuracy & Necessity Reviews**

POMCO will review and price all inpatient claims submitted to the plan. In addition, focused necessity reviews will be performed on claims as they are submitted. This process involves the review of actual hospital records performed by accredited specialists. A HCRA/Inpatient fee of \$120 per non-Medicare primary hospital inpatient claim will be charged through as a claim expense on each inpatient claim. This fee will cover specialized services including expanded inpatient claims review, fee negotiation and discount arrangements, expanded reference requirements, and monthly tax reporting and filing requirements.

**V. Utilization Review Services**

POMCO will provide an inpatient precertification program including a toll free number, continued stay reviews, concurrent reviews, discharge planning, medical procedure reviews, and high risk case management services. Under this program POMCO works to provide the most effective medical care at the lowest possible cost. (Note: An additional hourly rate of \$135 is applied for professional services rendered on Large Case Management (LCM) cases).

**VI. Medical/Coding Review Services**

POMCO will review all claims for upcoding, unbundling, inappropriate/questionable procedures, medical protocol, etc. POMCO reviews and makes determination on claims and eliminates balance billing by providers. Claims are reviewed by consulting physician specialists when appropriate.

**VII. POMCO PPO Allied Network**

POMCO will provide its existing New York State and national PPO together with its routine expansions. POMCO's discounted fee schedule is accepted as payment in full for all eligible services performed (includes Multiplan).

**Total Above Services Per Enrollee Per Month ..... \$26.20\***

\* These fees are in effect through December 31, 2017. Effective January 1, 2018, the fees in effect shall be changed by the percentage change in the Northeast Medical Consumer Price Index for the period ending the previous September 30<sup>th</sup>, not to exceed 2.5%.

**City of Watertown**

**Accepted By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

# CITY OF WATERTOWN, NEW YORK



FRINGE BENEFITS OFFICE  
SUITE 301, CITY HALL  
245 WASHINGTON STREET  
WATERTOWN, NEW YORK 13601  
Tel: (315) 785-7755  
FAX: (315) 755-6418  
E-Mail: [mroy@watertown-ny.gov](mailto:mroy@watertown-ny.gov)

To: Sharon Addison  
City Manager

From: Matthew Roy  
Administrative Specialist

Re: Health Insurance Third-Party Administrator

Date: November 5, 2014

In January of 2014 this office, in conjunction with the health insurance committee, began the initial process of issuing a full RFP for the administration of the City's health insurance plan. The last time a full RFP was issued for this was in 2008 with a starting date of January 1, 2009.

Early on it was clear to committee members that we needed help with our endeavor. The RFP process for this service is very complicated and very time consuming. Committee members agreed that we did not possess the necessary skill set to properly issue and analyze a complex RFP such as this. Thankfully the City's current stop-loss broker, the Anchor Group, was willing to help. They agreed, in conjunction with the insurance committee, to help create the RFP, issue the RFP, and analyze its results at no charge to the City.

The RFP was created, issued and distributed to 13 different carriers. The standard questions were asked of the carriers and a very comprehensive medical claims adjudication was performed. During the adjudication process, a sampling of medical claims that were paid by POMCO were sent to the different carriers to see how much they would have paid on the claim. This process allowed us to make a direct comparison of all the carriers to see which carrier has the lowest reimbursement rates based upon our claims experience.

In late August we received the full 900 page RFP results back from the Anchor Group. The insurance committee met to view the results and the top 2 finalists were chosen to come in for presentations. The committee met again in late September and, by a unanimous vote, we agreed to continue our health insurance third-party administrator relationship with POMCO. The results of the RFP were very clear and for the following reason we decided to remain with POMCO:

- Their superior performance in the medical claims adjudication
- Their low administration fees in comparison to the competition
- Their past exemplary service
- Their superior performance at the finalist presentations
- Their assistance in helping the City maintain compliance with the federal health care legislation

Their extensive provider network in our area.  
No member disruption

This contract will span for 3 years with the ability to renew for 2-1 year extensions. We did negotiate a change in the administrative fee structure with POMCO. Their administration fees are slightly higher at \$26.20 compared to our current \$25.58. However, this fee will remain constant for the duration of the 3-year contract. Our past contracts allowed for an annual increase indexed to inflation and not to exceed 2.5%. This change could potentially save the plan \$10,000 over the term of the contract.

If you have any questions please let me know.

Res No. 14

November 10, 2014

To: The Honorable Mayor and City Council

From: Sharon Addison, City Manager

Subject: Approving Service Agreement for Self-Funded Health Insurance,  
ProAct Inc.

The City of Watertown became self-insured for our health insurance benefits effective July 1, 1992. The City's Health Insurance Committee requested proposals for Pharmacy Benefits Services administration for our Health Insurance Program. As detailed in the attached memorandum from Administrative Specialist Matthew Roy, an RFP was issued with the help of our stop-loss broker, the Anchor Group, to nine carriers. It is their recommendation that the City Council remain with ProAct Inc. for those services.

A Service Agreement has been negotiated between the parties outlining the duties and responsibilities of the parties. The term of the Agreement is for three years beginning January 1, 2015 and ending on December 31, 2017, with the ability to renew for two one-year extensions. There no longer is an Administrative Fee per drug claim. The \$1.05 dispensing fee is guaranteed for the term of the contract. When comparing this contract to our current contract, it is projected to save the insurance fund \$300,000 per year. This projection is based upon our current utilization, which could change in the future.

A resolution approving the Agreement between the City of Watertown and ProAct Inc. has been prepared for City Council consideration.

# RESOLUTION

Page 1 of 1

Approving Service Agreement  
By and Between ProAct and the  
City of Watertown Self-Funded  
Health Insurance Program

Council Member BURNS, Roxanne M.
Council Member BUTLER, Joseph M. Jr.
Council Member JENNINGS, Stephen A.
Council Member MACALUSO, Teresa R.
Mayor GRAHAM, Jeffrey E.
Total .....

YEA	NAY

***Introduced by***

WHEREAS a Request for Proposal was issued by the City’s Health Insurance Committee, and

WHEREAS said RFPs were sent to nine (9) carriers, and

WHEREAS the Health Insurance Committee has done extensive interviews, research and comparisons of all of the timely received responses, and

WHEREAS the Health Insurance Committee unanimously recommends ProAct Inc. as the City’s Pharmacy Benefit Manager, and

WHEREAS the City and ProAct Inc. have developed a Service Agreement that describes the duties and responsibilities of the parties, and

WHEREAS the term of this Agreement is for three (3) years beginning January 1, 2015 and ending on December 31, 2017, with a \$1.05 dispensing fee for the term of the contract,

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Watertown, New York that it hereby approves this Service Agreement between the City and ProAct Inc., a copy of which is attached and made a part of this resolution, and

BE IT FURTHER RESOLVED that the City Manager Sharon Addison is hereby authorized and directed to execute the Agreement on behalf of the City.

**Seconded by**

**PROACT, INC. SERVICE AGREEMENT**

**with**

**CITY OF WATERTOWN**

ProAct, Inc.  
6333 Route 298  
East Syracuse, NY 13057  
(315) 413-7780

# SERVICE AGREEMENT

## Table of Contents

<b>ARTICLE 1</b> .....	<b>3</b>
DEFINITIONS .....	3
<b>ARTICLE 2</b> .....	<b>6</b>
PROACT SERVICES .....	6
<b>ARTICLE 3</b> .....	<b>10</b>
IMPLEMENTATION .....	10
<b>ARTICLE 4</b> .....	<b>10</b>
DUTIES TO BE PERFORMED BY PLAN SPONSOR .....	10
<b>ARTICLE 5</b> .....	<b>12</b>
PAYMENTS DUE PROACT .....	12
<b>ARTICLE 6</b> .....	<b>13</b>
RECORDS .....	13
<b>ARTICLE 7</b> .....	<b>14</b>
REBATE ADMINISTRATION .....	14
<b>ARTICLE 8</b> .....	<b>15</b>
INDEMNIFICATION .....	15
<b>ARTICLE 9</b> .....	<b>16</b>
DISPUTE RESOLUTION PROCEDURE .....	16
<b>ARTICLE 10</b> .....	<b>16</b>
CONFIDENTIALITY .....	16
<b>ARTICLE 11</b> .....	<b>17</b>
EXCLUSIVITY .....	17
<b>ARTICLE 12</b> .....	<b>18</b>
TERM AND TERMINATION .....	18
<b>ARTICLE 13</b> .....	<b>19</b>
GENERAL PROVISIONS .....	19
<b>EXHIBIT A</b> .....	<b>25</b>
ADMINISTRATIVE FEE SCHEDULE .....	25
<b>EXHIBIT B</b> .....	<b>27</b>
BUSINESS ASSOCIATE AGREEMENT .....	27

## PROACT, INC. SERVICE AGREEMENT

**THIS SERVICE AGREEMENT** (hereinafter referred to as the “Agreement”) is entered into this first day of January, 2015, between ProAct, Inc., a New York corporation with offices located at 6333 Route 298, East Syracuse, New York 13057 (hereinafter referred to as “ProAct”), and the City of Watertown, with offices located at 245 Washington Street, Watertown, New York 13601 (hereinafter referred to as “Plan Sponsor”).

**WHEREAS**, Plan Sponsor is a municipality organized under the laws of the State of New York and desires to offer a pharmacy prescription drug benefit plan providing for the dispensing of prescription drugs and other covered products to Plan Participants; and

**WHEREAS**, Plan Sponsor desires to hereby engage ProAct to perform services relating to prescription drug claim processing, eligibility verification, mail service pharmacy and preparation of drug management and utilization reports required by Plan Sponsor; and

**WHEREAS**, ProAct is qualified to perform the matters referred to hereunder and is willing to do so upon and subject to the terms and conditions hereof.

**NOW THEREFORE**, in consideration of the mutual promises and agreement herein contained, Plan Sponsor and ProAct hereby agree as follows:

### ARTICLE 1 DEFINITIONS

#### 1.1 Average Wholesale Price

The term “Average Wholesale Price” shall mean the average wholesale price of a prescription drug or medication dispensed as set forth in the current price list updated no less than weekly in recognized sources such as Medi-Span or First Data Bank, including its supplements, or other nationally recognized pricing source as determined by ProAct in its sole discretion. The applicable Average Wholesale Price (“AWP”) for prescriptions dispensed at retail and mail services pharmacies shall be based on the actual package size submitted. In the event of any material change in the method used to determine AWP by First DataBank or Medi-Span, or should First DataBank and Medi-Span not continue to publish AWP pricing, the parties agree to modify the pricing hereunder to maintain the parties’ respective economic position under this Agreement as of the Effective Date such that the aggregate net price of a product is the same as before such change or discontinuance occurred.

- 1.2 Benefit Plan  
The term “Benefit Plan” shall mean Plan Sponsor’s plan document covering prescription drug benefits, including Claims processing parameters and other information specifying healthcare coverage for Plan Participants, as those parameters currently exist or may be amended in the future. Plan Sponsor will provide ProAct with certain information relating to such Benefit Plans (“Benefit Plan Information”), as required in Section 4.2.
- 1.3 Claims  
The term “Claims” shall mean those prescription drug claims processed through ProAct’s on-line claims adjudication system or otherwise transmitted or processed in accordance with the terms of this Agreement in connection with a Benefit Plan.
- 1.4 Copayment  
The term “Copayment” shall mean such amounts as are required to be paid to Participating Pharmacies by Plan Participants according to the Benefit Plan Information provided by Plan Sponsor, which may be a deductible, a percentage of the prescription price or a fixed charge.
- 1.5 Dispensing Fee  
The term “Dispensing Fee” shall mean the amount established by agreement between Plan Sponsor and ProAct on the date of execution hereof, and modified thereafter by agreement between ProAct and Plan Sponsor, as the standard Participating Pharmacy fee for filling a single prescription.
- 1.6 Effective Date  
The term “Effective Date” shall mean the date upon which this Agreement shall be effective. The Effective Date is the first day of January, 2015
- 1.7 ERISA  
The term “ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.
- 1.8 Formulary  
The term “Formulary” shall mean the list of prescription drugs and medications identified by ProAct for routine use and which will be dispensed through Participating Pharmacies to Plan Participants.
- 1.9 HIPAA  
The term “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations promulgated thereunder.
- 1.10 Identification Cards  
The term “Identification Cards” (“ID Cards”) shall mean printed identification cards containing specific information about the prescription drug benefits to which the Plan Participants are entitled. All ID Cards shall have the applicable ProAct pharmacy

network logo or other method of identifying the fact that ProAct is the provider of the prescription drug benefit in a form acceptable to ProAct.

1.11 Implementation Date

The term “Implementation Date” shall mean the date upon which ProAct completes the input of Plan Sponsor’s Plan Participants List, unless such date is extended because Plan Sponsor’s data required conversion or is in a format that is unacceptable to ProAct, pursuant to Section 3.2.

1.12 Maximum Allowable Cost or MAC

The term “Maximum Allowable Cost” or “MAC” shall mean the unit price that has been established by ProAct for a multi-source drug (i.e., a drug with more than two sources) included on the MAC drug list applicable to Plan Sponsor, which list may be amended from time to time by ProAct in maintaining its generic pricing program. Plan Sponsor acknowledges that the MAC list applicable to Plan Sponsor is not the same as the MAC published by the Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration, or “HCFA MAC”).

1.13 Participating Pharmacies

The term “Participating Pharmacies” shall mean those organizations which contract with ProAct to provide Pharmacy Drug Services for Plan Participants and shall include, but shall not be limited to, walk-ins, mail order, specialty injectible and e-commerce vendors.

1.14 Pharmaceutical Manufacturer

The term “Pharmaceutical Manufacturer” shall mean a pharmaceutical company which has entered into an agreement with ProAct to offer discounts for pharmaceutical products.

1.15 Pharmacy Network

The “Pharmacy Network” consists of a retail pharmacy network, established and maintained by ProAct, to provide covered prescription drugs and other products.

1.16 Pharmacy Network Management

The term “Pharmacy Network Management” shall mean ProAct’s responsibility for contract reimbursement negotiations as well as provider relations with Participating Pharmacies. Reimbursement negotiations shall include: i) payment terms; ii) method of payment; iii) timeliness of payment; and iv) access fees, as well as any other issues related to payment to Participating Pharmacies. Provider relations shall include: i) store information updates; ii) credentialing; iii) contract compliance; and iv) Plan Participant service issues, as well as any other issues related to the relationship with Participating Pharmacies.

1.17 Plan Participants

The term “Plan Participants” shall mean those individuals who are entitled to Prescription Drug Services under the Plan as identified by Plan Sponsor as set forth in Plan Sponsor’s eligibility file prepared and maintained by Plan Sponsor and delivered to ProAct.

1.18 Plan Participants List

The term “Plan Participants List” shall have the meaning set forth in Section 3.2.

1.19 Prescription Drug Services

The term “Prescription Drug Services” shall mean all claims processing, reporting, rebate administration, pharmacy network management and other pharmacy benefit management services to be provided by ProAct pursuant to this Agreement.

1.20 Protected Health Information or PHI

The terms “Protected Health Information” or “PHI” shall have the meaning given such terms by HIPAA but limited to that information created or received by ProAct in its capacity as a business associate to the Benefit Plan.

1.21 Rebates

The term “Rebates” shall mean the formulary rebates, including base and market share rebates, collected by ProAct in its capacity as a group purchasing organization for the Benefit Plan from various pharmaceutical companies that are attributable to the utilization of single source brand prescription drugs by Plan Participants.

**ARTICLE 2**  
**PROACT SERVICES**

- 2.1 Claims Processing Services. ProAct shall provide Claims processing services related to Claims for prescriptions dispensed on or after the Effective Date of this Agreement. ProAct shall process Claims received from Participating Pharmacies and Plan Participants, determine whether such Claims qualify for reimbursement in accordance with the terms of the applicable Benefit Plan and determine the applicable payment. ProAct agrees to process Claims within National Council for Prescription Drug Programs (NCPDP) prevailing standards. ProAct shall process Claims within the time frames established by applicable state and federal law. Upon termination of this Agreement, ProAct shall be obligated to process only those Claims which are for prescriptions dispensed before the termination date and which are received by ProAct within ninety (90) days of the termination date. Any Claims submitted and processed after the termination date will be invoiced at the rates set forth for such Claims in Exhibit A.

ProAct shall arrange for the following services to be provided upon receipt of a Claim:

- (a) Verify that the patient for which the prescription has been claimed is a Plan Participant and is entitled to Prescription Drug Services.
- (b) If applicable, verify that the prescriber is an authorized prescriber under the Benefit Plan.
- (c) Verify that the medication dispensed is a drug covered by the Benefit Plan.

2.2 Collection of Copayment by Participating Pharmacies. Prior to providing to a Plan Participant any Prescription Drug Services to which such Plan Participant is or may be entitled under a Benefit Plan, Participating Pharmacies shall be required to collect from Plan Participant the amount of any applicable Copayment. Participating Pharmacies shall not recover from Plan Participants any unpaid balances due Participating Pharmacies from ProAct or Plan Sponsor.

2.3 Mail Order Delivery Pharmacy. ProAct shall provide mail order home delivery services through PROACT Pharmacy Services as follows:

- (a) Dispense new or refill prescriptions following receipt from a Plan Participant of a prescription and a completed order or refill order form and any applicable Copayment;
- (b) Fill prescriptions subject to the professional judgment of the dispensing pharmacist, good pharmacy practices in accordance with local community standards and product labeling guidelines; and
- (c) Ship all filled prescriptions to Plan Participants via United States postal service or other appropriate carriers to the address provided by the Plan Participant.

2.4 Direct Plan Participant Reimbursement. To the extent authorized by the Benefit Plan, ProAct or Plan Sponsor shall provide Plan Participants with a ProAct (and Plan Sponsor approved) Claim form for use for reimbursement for Prescription Drug Services provided by a Participating or non-Participating Pharmacy. When such a Claim is submitted on the approved form, ProAct shall process the Claim according to the Benefit Plan and in the amount approved by Plan Sponsor for payment.

2.5 Claim Submission. Plan Sponsor acknowledges that ProAct shall require the Participating Pharmacies to send to ProAct, at the expense of the Participating Pharmacies, Claims via on-line point-of-sale terminals (“POS”), and/or on the Universal Claim Forms (“UCF”), and/or magnetic tapes or diskettes containing Claims information. Incorrect Claims will be denied. The Claim forms shall be sent to:

ProAct, Inc.  
1230 US Highway 11  
Gouverneur, New York 13642  
Attention: Helpdesk

or at such other address designated by ProAct upon written notice.

2.6 Pharmacy Network Administration. ProAct shall contract with Participating Pharmacies at various reimbursement rates throughout the term of the Agreement, and shall charge Plan Sponsor a blended reimbursement rate which may be greater or less than the actual

rate paid to Participating Pharmacies. Plan Sponsor acknowledges and agrees that such difference in provider discount, if any, shall be retained by ProAct as compensation for administering the pharmacy network.

- 2.7 Therapeutic Alternative Program. Generic substitutions may be conducted through ProAct's mail order delivery service pharmacies and Participating Pharmacies under a program that substitutes brand name drugs with generic equivalents or therapeutic alternatives, where available and clinically appropriate, unless (i) the prescriber requires the prescription to be dispensed as written and does not authorize generic substitution; or (ii) the Plan Participant has notified the dispensing pharmacy to dispense the brand name drug only.
- 2.8 Payments to Participating Pharmacies. ProAct shall pay to the Participating Pharmacies, on behalf of Plan Sponsor, such reimbursement as may be agreed upon by Plan Sponsor and ProAct for dispensing of prescriptions to Plan Participants no later than fourteen (14) business days from confirmation of receipt of funds from Plan Sponsor for this purpose.
- 2.9 Transaction Charges. Participating Pharmacies shall be responsible for any applicable transaction charges associated with the submission of Claims to ProAct. Such charges are to be deducted by ProAct from the reimbursements to such Participating Pharmacies. Reimbursement checks to Participating Pharmacies using POS, Pharmacy Computer Systems and UCF for Claims processing will be paid in the net amount of the Claim after deduction by ProAct of all applicable transaction charges.
- 2.10 Customer Service for Pharmacy and Plan Participant Inquiries. ProAct shall be responsible for responding to inquiries from Participating Pharmacies and Plan Participants regarding the services provided by ProAct under this Agreement through a ProAct toll-free phone line. Services to be provided by ProAct include providing answers to questions on eligibility, Benefit Plan guidelines, deductibles, Copay levels, maximum benefit status, instructions on completing a direct Plan Participant reimbursement claim form and status of direct Plan Participant reimbursement claims.
- 2.11 Hours of Service. ProAct's 800 Help Line shall be available to Plan Sponsors, Participating Pharmacies and Plan Participants during ProAct's regular hours of business. These hours shall be Monday through Friday, 7:00 am to 8:00 pm, Eastern Standard Time (EST) and Eastern Daylight Time (EDT) and Saturday, 8:00 am to 5:00 pm, EST and EDT. These hours do not include national holidays and may be changed at any time. ProAct shall notify Plan Sponsor and the Participating Pharmacies prior to any changes to the schedule of business hours.
- 2.12 Pharmacy Audits. ProAct shall maintain criteria, which it may amend from time to time, to establish when and how a Participating Pharmacy shall be audited to determine compliance with its contract with ProAct. The audit may be conducted by ProAct's internal auditors or its outside auditors or by ProAct's review of electronically transmitted Claims. On-site pharmacy audits shall be conducted on a contingency basis. ProAct shall

not be required to institute any action to collect any overpayments to Participating Pharmacies.

- 2.13 Core Reports. ProAct shall prepare and deliver to Plan Sponsor core claims reports no later than thirty (30) days from the close of each quarter. Additional or customized reports shall incur costs to Plan Sponsor as described in Exhibit A.
- 2.14 Eligibility and Benefit Plan Changes. ProAct shall load Plan Participant data into the ProAct system no later than five (5) business days from receipt of such data. ProAct shall have thirty (30) days to implement any changes in any coverage criteria used by Plan Sponsor that require customized edits. The charges, as determined by agreement between ProAct and Plan Sponsor, for the necessary custom programming to implement any such customized edit will be borne by Plan Sponsor unless otherwise agreed by the parties. Plan Sponsor shall be bound by the change date requirements as described in Section 4.2 of this Agreement.
- 2.15 Plan Participant Services. Plan Participants shall be able to view their personal drug history for retail and mail order medications, expenditures and Copayments.
- 2.16 Government Agency Submitted Claims. Plan Sponsor acknowledges that government agencies may seek eligibility or similar data from ProAct regarding Plan Participants. Additionally, government agencies, or their agents, may submit to ProAct claims for reimbursement for prescription drug benefits provided by such government agencies to Plan Participants (“Government Claims”). Plan Sponsor authorizes ProAct to provide such data as requested by government agencies or their agents and further authorizes ProAct to process such Government Claims on behalf of Plan Sponsor. Plan Sponsor shall reimburse ProAct for all amounts advanced by ProAct for payment of Government Claims. Plan Sponsor acknowledges that Government Claims submitted by or on behalf of a state Medicaid agency shall be paid if submitted within three (3) years from the original date of fill unless a longer period is required by applicable law. In addition, Government Claims submitted by or on behalf of a state Medicaid agency may not be denied on the basis of the format of the Government Claim or failure to present proper documentation at the point-of-sale. Plan Sponsor shall also reimburse ProAct for any adjustments or reconciliations to previously processed Government Claims that may be payable to government agencies in accordance with applicable laws and regulations. ProAct reserves the right to (i) terminate these services upon ninety (90) days’ prior written notice to Plan Sponsor; or (ii) delegate these services to a third party claims processor.
- 2.17 Non-Standard or Excessive Services or Materials. In the event Plan Sponsor requests non-standard Identification Cards, services, forms, materials or documents, or standard services, forms, materials or documents in an amount which ProAct determines to be unreasonable or excessive, Plan Sponsor shall be charged for such additional services as provided based on the fee structure described in Exhibit A.

2.18 Additional Services. In the event that Plan Sponsor requests ProAct to provide services other than those described herein, including special research projects, special reports, consultative services (e.g., HIPAA compliance consultation), ProAct system changes to accommodate changes in Plan Sponsor's Benefit Plan or system, or other tasks to be specifically performed for or on behalf of Plan Sponsor, Plan Sponsor shall pay to ProAct an additional charge to be mutually agreed upon by the parties in writing before the services are provided.

### **ARTICLE 3 IMPLEMENTATION**

3.1 Implementation Services. ProAct shall provide standard implementation services to Plan Sponsor at no additional charge. In consultation with Plan Sponsor, ProAct shall develop a mutually agreeable implementation plan prior to the Effective Date. .

3.2 Plan Participant Lists. Plan Sponsor shall provide to ProAct (i) a full file list of Plan Participants (including eligible dependents) as described in Section 4.1 hereof at least fourteen (14) days prior to the Implementation Date in a format acceptable to ProAct; (ii) the governing Benefit Plan, including a summary plan description; and (iii) such other information required by Section 4.2 hereof describing the Plan Sponsor's Benefit Plan to be used by ProAct to provide Prescription Drug Services under the terms of this Agreement.

### **ARTICLE 4 DUTIES TO BE PERFORMED BY PLAN SPONSOR**

4.1 Eligibility Data. Plan Sponsor shall provide to ProAct all information concerning the Prescription Benefit Plan and Plan Participants necessary for ProAct to perform the Prescription Drug Services, including all updates thereto, on a daily basis and at least fourteen (14) days prior to the Implementation Date. Plan Sponsor shall be responsible for ensuring the accuracy of the Eligible Member List and Plan Sponsor shall be obligated to pay ProAct for Claims accepted by ProAct that are submitted by or on behalf of persons listed on any Plan Participants List. Plan Sponsor shall bear the entire risk of all fraudulent Claims submitted by Plan Participants or by unauthorized persons using a Plan Participant's ID Card or identification number. The Plan Participant List shall contain the following minimum information:

- Plan Participant's identification number;
- Plan Participant's full name (last, first, and middle initial);
- Plan Participant's date of birth;
- Plan Participant's address;
- the names of dependents;
- the dates of birth for dependents;
- the date the Plan Participant's participation in Prescription Drug Services under the Benefit Plan becomes effective;

- the date the Plan Participant's participation in Prescription Drug Services under the Benefit Plan is terminated;
- the Benefit Plan group number

Plan Sponsor agrees to indemnify ProAct for any damages related to Plan Sponsor's failure to provide accurate and timely data described in this Section 4.1.

- 4.2 Benefit Plan Information. Thirty (30) days prior to the Effective Date hereof, Plan Sponsor will deliver to ProAct detailed Benefit Plan Information. Such information shall contain all of the elements required by ProAct so that ProAct may verify and price the Claims submitted by Participating Pharmacies, and to prepare the various reports as described in this Agreement. In addition, Plan Sponsor shall provide any Benefit Plan Information changes to ProAct immediately, preferably thirty (30) days prior the date such changes shall become effective (the "Change Date"), except that changes to Benefit Plan Information that are to be effective on January 1 of any given year must be provided to ProAct at least ninety (90) days prior to January 1. Failure to provide Benefit Plan Information changes within the time frames described in this Section 4.2 may result in postponement of the proposed Change Date. Plan Sponsor shall also provide to ProAct copies of and any subsequent changes to the applicable plan document, certificate of insurance or summary plan description documentation containing Benefit Plan Information related to the Prescription Drug Services administered by ProAct under this Agreement.
- 4.3 Notification Requirements. Plan Sponsor will review all reports, statements, and invoices provided by ProAct and shall notify ProAct in writing of any errors or objections within thirty (30) days of receipt. Specifically, this shall also apply to all service requests, benefit change request forms, pharmacy operations change requests or any notification resulting from an independent audit. Until Plan Sponsor notifies ProAct in writing of any errors or objections, ProAct will be entitled to rely on the information contained in the reports, statements, and invoices. If Plan Sponsor does not notify ProAct in writing of any errors or objections within the thirty (30) day period, the information contained therein will be deemed accurate, complete, and acceptable to Plan Sponsor, and thereafter ProAct shall have no liability related thereto. This does not apply with respect to any undercharges or underpayments of Plan Sponsor.
- 4.4 Plan Participant Copayments. ProAct may, but shall not be obligated to, dispense a prescription even if the prescription is not accompanied by the applicable Copayment. ProAct will credit any amount submitted by Plan Participant in excess of the Plan Participant's Copayment. In the event a Plan Participant submits to ProAct an insufficient Copayment and the Plan Participant fails to remit the balance of the Copayment amount to ProAct within thirty (30) days of ProAct's request, then ProAct shall have the right to invoice Plan Sponsor and Plan Sponsor shall have an obligation to pay ProAct the amount of the uncollected Copayment.

**ARTICLE 5**  
**PAYMENTS DUE PROACT**

- 5.1 Invoicing. ProAct shall invoice Plan Sponsor for claims on a bi-weekly basis. Plan Sponsor shall remit to ProAct via overnight mail the full amount reflected on such invoices within ten (10) business days to the bank account designated by ProAct. Should said amount not be remitted via overnight mail within ten (10) business days, Plan Sponsor shall be subject to interest charged on all overdue amounts at an amount equal to one and one-half percent (1.5%) per month, to accrue on a daily basis. If Plan Sponsor questions the amount of the Statement, Plan Sponsor may notify ProAct of its questions regarding said amount but shall remain obligated to send via overnight mail the full amount of the invoice. If ProAct receives such a notice, it shall make a commercially reasonable effort to respond to such questions within five (5) business days.
- 5.2 Suspension of Services. In the event amounts due ProAct under Section 5.1 are more than two (2) days' past due and payment has not yet been sent via overnight mail to a ProAct designated bank account, then ProAct may give notice to Plan Sponsor of ProAct's intent to suspend its services and system operations. At any time thereafter, ProAct may terminate this Agreement as provided in Article 12 of this Agreement. Plan Sponsor shall be responsible for all costs of collection and agrees to reimburse ProAct for such costs and expenses, including reasonable attorneys' fees.
- 5.3 Deposit. In the event Plan Sponsor fails to remit its full payment within ten (10) business days of its receipt of ProAct's invoice three (3) or more times during any twelve (12) month period, ProAct shall have the option, in its sole discretion, to collect from Plan Sponsor a deposit in an amount equal to the average invoice amount over the previous six (6) months, or, if there is a less than six (6) months' billing history, then such deposit shall be equal to the average invoice amount over the actual billing history. ProAct shall retain the deposit until the termination of this Agreement, at which time such deposit shall be returned, without interest, less any offsets for payment defaults and collection costs (in accordance with Section 5.5 below).
- 5.4 Sale and Use Taxes. The parties hereby agree that the payment of any and all state and local sales taxes and use taxes attributable to any Prescription Drug Services delivered pursuant to this Agreement shall be the sole and exclusive obligation of Plan Sponsor.
- 5.5 Offsets. In the event of any uncured payment default, Plan Sponsor hereby authorizes ProAct to offset the amount of such payment defaults and collection costs against any amounts otherwise payable to Plan Sponsor (including any Rebate amounts as provided in Article 7) or Plan Sponsor's deposit (as described in Section 5.3 above).

## ARTICLE 6 RECORDS

- 6.1 Maintenance of Records. ProAct shall maintain, in the original form or other media, the Claims received from the Pharmacy Network and adequate records to establish payment to the Pharmacy Network. Upon prior written notification to ProAct, Plan Sponsor shall have access to such records during normal business hours.
- 6.2 Use of Information. ProAct and Plan Sponsor may use, reproduce, or adapt information obtained in connection with this Agreement, including Claims data information and eligibility information, in any manner they deem appropriate, except that each party and its agents, employees and contractors shall maintain the confidentiality of this information to the extent required by applicable Law, including the provisions of HIPAA, and may not use the information in any way prohibited by Law. Each party shall be solely responsible for its own use of the information and shall indemnify and hold the other party harmless for, from and against any and all costs, losses and damages incurred by such other party as a result of such use.
- 6.3 Ownership of Information. Without limiting the generality of Section 6.2, and subject to the restrictions set forth therein:
- a. Claims data information provided to ProAct directly by Plan Sponsor shall be the property of Plan Sponsor.
  - b. Plan Sponsor agrees that the aggregate compilations of information contained in any and all databases developed by ProAct or its designees, and any prior and future versions thereof, are the property of ProAct and protected by copyright which shall be owned by ProAct.
  - c. ProAct, its agents, employees, and contractors shall have the right to use, reproduce, and adapt all information obtained in connection with this Agreement, to render services to ProAct's clients and to develop new products and services which may be outside the scope of this Agreement. Any work, compilation, processes, or inventions developed by ProAct or its agents, employees, or contractors pursuant to this Section 6.3 shall be owned by ProAct and deemed its confidential information.
- 6.4 Right to Audit Claims and Business Records. Plan Sponsor may inspect and audit once annually ProAct's business records that directly relate to billings made to Plan Sponsor for Claims. ProAct may inspect and audit, or cause to be inspected and audited, once annually the books and records of Plan Sponsor directly relating to this Agreement, including the existence and number of Plan Participants. Plan Sponsor and ProAct shall fully cooperate with representatives of each other and with representatives of any regulatory or accreditation agency in the conduct of any such inspection or audit. Such audits shall be at the auditing party's sole expense and shall only be made during normal

business hours, following fifteen (15) days' written notice, without undue interference to the audited party's business activity, and in accordance with reasonable audit practices. An audit of ProAct's records shall be conducted at ProAct's office where such records are located and shall be limited to transactions over the twelve (12) month period preceding such audit. If a completed audit reveals a discrepancy in the results and the previous calculations of the audited party, then the auditing party shall deliver written notice setting forth in reasonable detail the basis of such discrepancy. The parties shall use reasonable efforts to resolve the discrepancy within thirty (30) days following delivery of the notice, and such resolution shall be final, binding, and conclusive upon the parties. Upon a final and conclusive determination of a discrepancy revealed by an audit procedure under this Agreement, the party that owes money shall pay such sums to the other party within thirty (30) days of the delivery of the conclusive audit findings.

## **ARTICLE 7**

### **REBATE ADMINISTRATION**

- 7.1 Appointment of ProAct as Agent. Plan Sponsor appoints ProAct as its exclusive agent for the purpose of negotiating and arranging for Rebates on the purchase of prescription drugs from Pharmaceutical Manufacturers. ProAct agrees that it will comply with all applicable state and federal laws and regulations regarding the administration of Rebates on the purchase of prescription drugs. Plan Sponsor represents that it does not have any existing direct rebate and/or chargeback agreements with any Pharmaceutical Manufacturer and also agrees that during the term of this Agreement Plan Sponsor will not negotiate or arrange for rebates on the purchase of Prescription Drug Services from any Pharmaceutical Manufacturer. In the event Plan Sponsor negotiates directly with a Pharmaceutical Manufacturer for rebates on the purchase of prescription drugs, ProAct may immediately terminate Plan Sponsor's participation in ProAct's Rebate program.
- 7.2 Participation in Program. Plan Sponsor shall be eligible to receive rebates from certain Pharmaceutical Manufacturers for prescription drugs dispensed to Plan Participants who are covered by Benefit Plans which meet the following criteria:
- Develop, publish and distribute a drug formulary or other drug product selection guide consistent with ProAct's recommended drug Formulary and preferred product list, including all subsequent revisions;
  - Provide feedback to Plan Sponsor to ensure compliance with Plan Sponsor's drug formulary via established communication mechanisms (e.g., retrospective drug utilization review/evaluation programs, provider newsletters, contract compliance programs); and
  - Meet the eligibility criteria of each of the respective Pharmaceutical Manufacturers for plan applicable agreements.

- 7.3 Rebate Disclosure. Plan Sponsor agrees that it will fully comply with ERISA. In providing services under this Agreement, ProAct is not acting as a fiduciary (as defined in Section 3.21(a) of ERISA) of Plan Sponsor's prescription drug program and Plan Sponsor shall not name ProAct as a "plan fiduciary."
- 7.4 Eligible Rebate Data. Claims which have been submitted to: (i) Medicaid; (ii) Medicare; or (iii) any other state or federal health care program which receives rebates, discounts, chargebacks or other forms of price reduction directly from Pharmaceutical Manufacturers shall not be eligible to participate in ProAct's Rebate program. Plan Sponsor will not contract, directly or indirectly, with any other entity for discounts, rebates or financial incentives on pharmaceutical products or formulary programs for claims processed by ProAct pursuant to this Agreement. In the event Plan Sponsor negotiates or arranges with a pharmaceutical manufacturer for rebates or similar discounts and any Pharmaceutical Manufacturer's audit of ProAct's Rebate program reveals improperly calculated rebates, then Plan Sponsor shall be solely responsible for the reimbursement of any Rebates improperly made and the cost of the audit services.
- 7.5 Other Pharmaceutical Relationships. Nothing in this Article 7 shall preclude ProAct from pursuing other, independent sources of revenue from Pharmaceutical Manufacturers and engaging in other revenue-producing relationships with Pharmaceutical Manufacturers.

## ARTICLE 8 INDEMNIFICATION

- 8.1 Indemnity by Plan Sponsor. Plan Sponsor shall indemnify and hold ProAct, its officers, directors, shareholders, employees, successors, other agents and assigns ("ProAct Indemnitees"), harmless from and against any claims, liabilities, damages, judgments or other losses (including attorneys' fees) imposed upon or incurred by ProAct Indemnitees arising out of or as a result of any acts or omissions of Plan Sponsor, its officers, directors, employees or other agents, in connection with the performance of any of their respective obligations under this Agreement, including, without limitation, the submission to Participating Pharmacies or Pharmaceutical Manufacturers of inaccurate or false information provided by Plan Sponsor.
- 8.2 Indemnity by ProAct. ProAct shall indemnify and hold Plan Sponsor and its officers, directors, shareholders, employees, successors, other agents and assigns ("Plan Sponsor Indemnitees"), harmless from and against any claims, liabilities, damages, judgments or other losses (including attorneys' fees) imposed upon or incurred by Plan Sponsor Indemnitees arising out of or as a result of any acts or omissions of ProAct, its officers, directors, employees or other agents, in connection with the performance of any of their respective obligations under this Agreement.
- 8.3 Limitation of Liability. ProAct relies on Medi-Span or First Data Bank or other industry comparable databases in providing Plan Sponsor and Plan Participants with Claims adjudication and drug utilization review services. ProAct has utilized due diligence in

collecting and reporting the information contained in the databases and has obtained such information from sources believed to be reliable. ProAct, however, does not warrant the accuracy of reports, alerts, codes, prices or other data contained in the databases. The clinical information contained in the databases and the Formulary is not intended as a supplement to, or a substitute for, the knowledge, expertise, skill, and judgment of physicians, pharmacists, or other healthcare professionals involved in Plan Participants' care. The absence of a warning for a given drug or drug combination shall not be construed to indicate that the drug or drug combination is safe, appropriate or effective for any Plan Participant.

IN NO EVENT SHALL PROACT OR ANY AFFILIATE OF PROACT BE LIABLE TO PLAN SPONSOR OR ANY PLAN PARTICIPANT OR ANY AFFILIATE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATED TO PROACT'S PERFORMANCE UNDER THIS AGREEMENT OR BREACH THEREOF, EVEN IF PROACT HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. PROACT'S LIABILITY TO PLAN SPONSOR, PLAN PARTICIPANTS OR ANY AFFILIATE UNDER THIS AGREEMENT, IF ANY, SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT OF COMPENSATION PAID TO PROACT BY PLAN SPONSOR FOR ADMINISTRATIVE SERVICES FOR THE PRIOR TWELVE (12) MONTHS FROM THE DATE THE CLAIM IS ASSERTED.

## **ARTICLE 9**

### **DISPUTE RESOLUTION PROCEDURE**

- 9.1 Resolution of Disputes. The parties agree that any and all disputes arising out of, or relating to, this Agreement shall first be addressed by direct negotiation between the parties. The disputing party shall provide the other party with written notice of the dispute ("Notice of Dispute"), containing a detailed description of the matter in controversy. The parties agree to exercise reasonable commercial efforts to resolve the dispute as soon as practicable.

## **ARTICLE 10**

### **CONFIDENTIALITY**

- 10.1 Confidential Information. The term "Confidential Information" means information of a confidential or proprietary nature relating to the subject matter described in this Agreement which is taken from or disclosed by one party (the "Disclosing Party") to the other (the "Receiving Party"). Confidential Information includes, but is not limited to, matters of a technical nature such as trade secrets, methods, compositions, data and know-how, designs, systems, processes, computer programs, files and documentation, similar items or research projects and any information derived therefrom; matters of a business nature, such as the terms of this Agreement (including any pricing terms and Pharmaceutical Manufacturer contract terms), marketing, sales, strategies, proposals, and lists of actual or potential Plan Participants, Participating Pharmacies and Pharmaceutical

Manufacturers; as well as any other information that is designated by either party as confidential.

- 10.2 Treatment of Confidential Information. The Receiving Party agrees: (i) to hold the Disclosing Party's Confidential Information in strict confidence and to take reasonable precautions to protect such Confidential Information (including, without limitation, all precautions Receiving Party employs with respect to its own confidential materials); (ii) not to divulge any such Confidential Information or any information derived therefrom to any third party unless required in the performance of the Receiving Party's duties under this Agreement; (iii) not to make any use whatsoever at any time of such Confidential Information except for the purpose of this Agreement nor use it for its own or any third party's benefit; and (iv) not to copy, analyze, transcribe, transmit, decompile, disassemble or reverse engineer any such Confidential Information nor use such Confidential Information in any patent application. The confidentiality obligations of this Section 10.2 shall not apply to information which, as evidenced in writing, (a) is or becomes publicly known by Receiving Party through no breach of this Agreement; (b) is learned by the Receiving Party from a third party entitled to disclose it; or (c) is rightfully obtained by the Receiving Party prior to this Agreement.

Receiving Party may make disclosures required by law or court order provided Receiving Party uses diligent, reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and has allowed the Disclosing Party to participate in the proceeding.

- 10.3 Injunctive Relief. Receiving Party acknowledges that it shall not acquire any rights or title to any Confidential Information merely by virtue of its use or access to such Confidential Information hereunder. Neither the execution of this Agreement nor the furnishing of any Confidential Information hereunder shall be construed as granting, either expressly or by implication or otherwise, the Receiving Party any license under any invention or patent now or hereafter owned by or controlled by the Disclosing Party. Each party agrees that it may not be adequately compensated for damages arising from a breach or threatened breach of any of the covenants contained in this Article 10 by the other party, and each party shall be entitled to injunctive relief and specific performance in addition to all other remedies. None of the information that may be submitted or exchanged by the parties shall constitute any representation, warranty, assurance, guarantee, or inducement by a party to the other with respect to the infringement of patents, copyrights, trademarks, trade secrets, or any other rights of third persons.

## ARTICLE 11 EXCLUSIVITY

- 11.1 Exclusivity. Plan Sponsor agrees that ProAct shall be the sole and exclusive agent for Plan Sponsor for each of the services described herein during the term of this Agreement Notwithstanding the foregoing, this Section shall not be construed to prohibit Plan Sponsor from including pharmacy coverage under a fully insured medical/prescription

benefit plan. Plan Sponsor acknowledges and agrees that Plan Sponsor shall not engage any prescription benefit manager or other third party to provide to Plan Sponsor or its Benefit Plan any service that is similar to one of the Prescription Drug Services provided by ProAct, including, without limitation, retail pharmacy network contracting, pharmacy claims processing, mail pharmacy services and formulary and rebate administration services. Plan Sponsor acknowledges and agrees that a breach of this Section 11.1 shall be deemed a material breach of this Agreement and shall entitle ProAct to modify pricing terms pursuant to Section 13.2 of this Agreement.

## ARTICLE 12 TERM AND TERMINATION

- 12.1 Term. This Agreement shall become effective on the Effective Date and shall be for a term of three (3) years and thereafter shall continue in effect for additional one (1) year terms unless terminated on its anniversary date by either party by certified mail, mailed at least sixty (60) days prior to such date. Termination shall have no effect upon the rights and obligations of the parties arising out of any transactions occurring prior to the effective date of such termination.
- 12.2 Termination For Cause. This Agreement may be terminated at any time by either party based on a material breach of any terms or conditions herein stated provided that sixty (60) days' advance written notice of such material breach shall be given to the other party and such party shall have the opportunity to cure such material breach during such sixty (60) day notice period.
- 12.3 Termination Due to Non-Payment. Notwithstanding the termination rights described in Section 12.2, above, in the event Plan Sponsor fails to timely remit to ProAct the full amount of payment (and any interest accrued thereon) as set forth in Section 5.1 above, and such payment (plus interest, if any) is not received by ProAct within the time limits set forth in Section 5.2 above, ProAct may terminate this Agreement on any date thereafter, effective on the date notice of such termination is received by Plan Sponsor.
- 12.4 Effect of Termination. If this Agreement is terminated pursuant to this Article 12: (i) all further obligations of the parties under this Agreement shall terminate (but not such party's obligation to make payments arising prior to the termination of this Agreement or any obligation surviving the termination hereof); (ii) all Confidential Information provided by either party shall, except for Confidential Information required by law to be retained by a party, be immediately returned by a Receiving Party (as defined in Section 10.1), or such Receiving Party shall certify to the Disclosing Party that such materials have been destroyed; (iii) should ProAct have a deposit from Plan Sponsor (as described in Section 5.3, above), such deposit shall be reduced by any offsets for payment defaults and collection costs (as described in Section 5.5 above) before being returned; (iv) neither party shall be relieved of any obligation or liability arising from any prior breach of such party of any provision of this Agreement; and (v) the parties shall, in all events, remain

bound by and continue to be subject to the provisions set forth in Sections 6.1, 6.3, 6.4, 7.3, 8.1, 8.2, 8.3, 9.1, 10.1, 10.2, 10.3, 13.1, 13.2, 13.8, 13.9, 13.11, 13.12 and 13.20.

## ARTICLE 13 GENERAL PROVISIONS

- 13.1 Use of ProAct Software. Plan Sponsor acknowledges that ProAct owns or possesses license rights (including off-the-shelf vendor agreements) from certain third parties to the entire software system used by ProAct in processing Claims and preparing reports, including computer programs, system and program documentation, and other documentation relating thereto (collectively, including certain license rights, the “ProAct Software System”) and that the ProAct Software System is the exclusive and sole property of ProAct.
- 13.2 Pricing Assumptions. Upon thirty (30) days’ prior written notice to Plan Sponsor, ProAct may modify or amend the financial provisions of this Agreement in a manner which accounts for the impact of the events identified below. Such notice will include ProAct’s explanation of the manner in which the modification accounts for the impact of the event:
- (a) Any government-imposed or industry-wide change that would impede ProAct’s ability to provide the pricing described in this Agreement, including any prohibition or restriction on the ability to receive rebates or discounts for pharmaceutical products;
  - (b) Implementation or addition of a high deductible health plan/consumer-driven health plan option;
  - (c) Implementation or addition of a member-paid plan;
  - (d) A greater than twenty percent (20%) change in the total number of Plan Participants from the number provided during pricing negotiations; or
  - (e) A change in the coverage of Medicare-eligible Plan Participants, irrespective of the resulting change in total number of Plan Participants, as defined above.
- 13.3 Insurance. Each party shall obtain and maintain, with respect to the activities in which such party engages pursuant to this Agreement, professional liability (errors and omissions) insurance in amounts reasonable and customary for the nature and scope of business engaged in by such party and comprehensive liability insurance. Upon request, either party shall promptly deliver to the other party evidence of such insurance. Each party agrees to notify the other party immediately upon such party’s receipt of any notice canceling, suspending or reducing the coverage limits of its professional liability insurance or comprehensive liability insurance.

- 13.4 Successors and Assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either party hereto without the prior written consent of the other party hereto. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and permitted assigns. Notwithstanding anything to the contrary contained in this Agreement (including this Section 13.4), no consent shall be required and this Agreement will apply to, be binding in all respects upon, and inure to the benefit of any successors of Plan Sponsor to this Agreement resulting from a Change of Control. A “Change of Control” shall occur if, as a result of one or a series of related transactions: (i) all or substantially all the assets of Plan Sponsor are disposed of to any entity not wholly owned and controlled by Plan Sponsor, outside the ordinary course of business; (ii) Plan Sponsor effects a merger with one or more other entities in which Plan Sponsor is not the surviving entity; or (iii) Plan Sponsor engages in a transaction that results in any entity holding securities possessing a majority of the voting power that does not hold such voting power as of the time of this Agreement.
- 13.5 Waiver. Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. No waiver by any party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or other term or condition of this Agreement on any future occasion.
- 13.6 Severability. In the event that any provision of this Agreement shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.
- 13.7 Further Assurances. Each party hereto shall execute and cause to be delivered to each other party hereto such instruments and other documents, and shall take such other actions, as such other party may reasonably request (at or after the date hereof) for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.
- 13.8 Choice of Law. This Agreement shall be construed, interpreted and governed according to the laws of the State of New York.
- 13.9 Non-Competition in Hiring. During the term of this Agreement, and for a period of one (1) year thereafter, neither party shall, without the prior written consent of the other party, knowingly employ or solicit for hire, or knowingly allow its officers, directors, agents or affiliates to employ or solicit for hire, any employees of the other party.
- 13.10 Force Majeure. The performance obligations of ProAct and/or Plan Sponsor respectively hereunder shall be suspended to the extent that all or part of this Agreement cannot be

performed due to causes which are outside the control of ProAct and/or Plan Sponsor and could not be avoided by the exercise of due care, including, but not limited to, acts of God, acts of a public enemy, acts of a sovereign nation or any state or political subdivision or any department or regulatory agency thereof or entity created thereby, acts of any person engaged in a subversive or terrorist activity or sabotage, fires, floods, earthquakes, explosions, strikes, slow-downs, freight embargoes, or by any enforceable law, regulation or order. The foregoing shall not be considered to be a waiver of any continuing obligations under this Agreement, and as soon as conditions cease, the party affected thereby shall fulfill its obligations as set forth under this Agreement. In order to benefit from the provisions of this Section 13.10, the party claiming force majeure must notify the other reasonably promptly in writing of the force majeure condition. If any event of force majeure, in the reasonable judgment of the parties, is of a severity or duration such that it materially reduces the value of this Agreement, then this Agreement may be terminated without liability or further obligation of either party (except for any obligation expressly intended to survive the termination of this Agreement and except for all amounts that have become or will become due and payable hereunder).

13.11 Entire Agreement; No Third Party Beneficiaries. This Agreement, including the Exhibits: (i) constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof; and (ii) is intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the parties to confer third party beneficiary rights, and this Agreement does not confer any such rights, upon any other third party.

13.12 Use of Name. Neither party shall use the other party's name, trade or service mark, logo, or the name of any affiliated company in any advertising or promotional material, presently existing or hereafter established, except in the manner and to the extent permitted by prior written consent of the other party.

13.13 Notice. Any notice required or permitted by this Agreement, unless otherwise specifically provided for in this Agreement, shall be in writing and shall be deemed given: (i) one (1) day following delivery to a nationally reputable overnight courier; (ii) one (1) day following receipt by facsimile during the receiving party's business hours with written confirmation thereof; or (iii) three (3) days after the date it is deposited in the United States mail, postage prepaid, registered or certified mail, or hand delivered addressed as follows:

To ProAct: ProAct, Inc.  
6333 Route 298  
East Syracuse, New York 13057

To Plan Sponsor: City of Watertown  
245 Washington Street  
Watertown, New York 13601

Either party may at any time change its address for notification purposes by mailing a notice stating the change and setting forth the new address.

- 13.14 Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart. This Agreement may be executed and delivered by facsimile and upon such delivery the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party. The original signature copy shall be delivered to the other party by express overnight delivery. The failure to deliver the original signature copy and/or the nonreceipt of the original signature copy shall have no effect upon the binding and enforceable nature of this Agreement.
- 13.15 Independent Contractors. Plan Sponsor and ProAct are independent entities and nothing in this Agreement shall be construed or be deemed to create a relationship of employer and employee or principal and agent or franchiser and franchisee or any relationship, fiduciary or otherwise, other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of this Agreement. Nothing in this Agreement is intended to be construed, or be deemed to create, any rights or remedies in any third party, including but not limited to a Plan Participant. Nothing in this Agreement shall be construed or deemed to confer upon ProAct any responsibility for or control over the terms or validity of the Prescription Drug Services. ProAct shall have no final discretionary authority over or responsibility for Plan Sponsor's administration. Further, because ProAct is not an insurer, plan sponsor, plan contract, third party administrator, or a provider of health services to Plan Participants, ProAct shall have no responsibility for: (i) any funding of Plan Sponsor's benefits; (ii) any insurance coverage relating to Plan Sponsor or any plan contract of Plan Sponsor or Plan Participants; or (iii) the nature or quality of professional health services rendered to Plan Participants.
- 13.16 Consent to Amend. This Agreement or any part or section of it may be amended at any time during the term of this Agreement only by mutual written consent of duly authorized representatives of ProAct and Plan Sponsor.
- 13.17 Headings. The headings of Articles, Sections and Exhibits contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 13.18 Compliance with Laws and Regulations. This Agreement will be in compliance with all pertinent federal and state statutes and regulations. If this Agreement, or any part hereof, is found not to be in compliance with any pertinent federal or state statute or regulation, then the parties shall renegotiate the Agreement for the sole purpose of correcting the non-compliance. Each party shall comply with the provisions of all applicable laws

relating to the performance of its obligations under this Agreement, including the federal anti-kickback statute, set forth at 42 U.S.C. § 1320a-7b(b) (the “Anti-Kickback Statute”), and the federal “Stark Law,” set forth at 42 U.S.C. § 1395nn (“Stark Law”), with respect to the performance of its obligations under this Agreement.

13.19 Subcontracting. ProAct may subcontract any or all services to be provided under this Agreement.

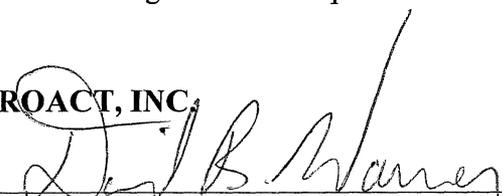
13.20 HIPAA Compliance. For the purposes of this Agreement, ProAct is deemed to be a “Business Associate” or “Covered Entity” as such terms are defined by HIPAA. The parties will endeavor to comply with all applicable regulations published pursuant to HIPAA, as of the effective enforcement date of each standard. In addition, without limiting any other provision of this Agreement:

- a. all services provided by ProAct under this Agreement will be provided in such a manner as to enable Plan Sponsor to remain at all times in compliance with all HIPAA regulations applicable to Plan Sponsor, to the extent that Plan Sponsor’s compliance depends upon the manner in which such services are performed by ProAct;
- b. all software, application programs and other products licensed or supplied by ProAct under this Agreement will contain such characteristics and functionality (including as applicable, but not limited to, the ability to accept and securely transmit data using the standard HIPAA transaction sets) as necessary to ensure that Plan Sponsor’s use of such software, application programs and other products and associate documentation from ProAct, when utilized by Plan Sponsor in the manner as directed by ProAct, will fully comply with the HIPAA regulations applicable to Plan Sponsor. In the event any amendment to this Agreement is necessary for Plan Sponsor to comply with the HIPAA regulations as they relate to this Agreement or its subject matter, including, but not limited to, requirements pertaining to Business Associate agreements, Plan Sponsor and ProAct will negotiate in good faith and amend this Agreement accordingly, with such amendment to be effective prior to the date compliance is required under each standard of the HIPAA regulations; and
- c. all software, application programs, eligibility lists or other member-specific information and other products licensed or supplied by Plan Sponsor under this Agreement will contain such characteristics and functionality (including as applicable, but not limited to, the ability to accept and securely transmit data using the standard HIPAA transaction sets) as necessary to ensure that ProAct’s use of such software, application programs and other products and associate documentation from Plan Sponsor, when utilized by ProAct in the manner as directed by Plan Sponsor, will fully comply with the HIPAA regulations applicable to ProAct. In the event any amendment to this Agreement is necessary for ProAct to comply with the HIPAA regulations as they relate to this Agreement

or its subject matter, including, but not limited to, requirements pertaining to Business Associate agreements, ProAct and Plan Sponsor will negotiate in good faith and amend this Agreement accordingly, with such amendment to be effective prior to the date compliance is required under each standard of the HIPAA regulations.

- d. To the extent ProAct acts as a Business Associate of the Benefit Plan, ProAct shall adhere to applicable requirements established for Business Associates, as set forth in Exhibit B. In compliance with HIPAA, ProAct may share Plan Participant information as appropriate for the treatment, payment and health care operations of other health care providers or plans.

The provisions of this Agreement shall bind and inure to the benefit of the parties hereto and their heirs, legal representatives, successors and assignees. This Agreement constitutes the entire understanding between the parties hereto.

**PROACT, INC.**  
  
BY \_\_\_\_\_

David B. Warner  
NAME

President  
TITLE

10/7/14  
DATE

**CITY of WATERTOWN**  
\_\_\_\_\_  
BY

Sharon Addison  
NAME

City Manager  
TITLE

\_\_\_\_\_  
DATE

**EXHIBIT A**  
ADMINISTRATIVE FEE SCHEDULE

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**CLAIMS PROCESSING FEE:** **\$0.00**  
**PER PAID CLAIM**

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**REBATE SHARE TO PLAN SPONSOR** **85% with a minimum guarantee**  
**of \$33.01 per retail brand claims and \$93.82 for mail service brands**

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**PHARMACY RATES**

Retail Network Pharmacy Rates:

Brand: The lesser of AWP -16% + \$1.05 dispensing fee, or U&C  
Generic: The lesser of MAC or AWP -16% + \$1.05 dispensing fee, or U&C

Mail Order Service Pharmacy:

Brand: AWP less 24% + no dispensing fee  
Generic: AWP less 76% + no dispensing fee

Specialty Drug Pricing:

AWP less 14.5% + \$1.40 dispensing fee, or U&C

- |  |                               |
|--|-------------------------------|
| 1. Electronic magnetic media                   | No charge                     |
| 2. Input and maintenance from hard copy        | No charge                     |
| 3. Clinical Prior Authorizations               | \$15.00 per Rx                |
| 4. Direct Member Reimbursements (paper claims) | \$2.00 per paid claim         |
| 5. Member Identification Cards                 | No charge                     |
| 6. Ad Hoc Reports                              | \$150.00 per programming hour |
| 7. Drug Utilization Review (DUR) Services      | No charge                     |

8. Out-of-pocket expenses	
Mailing expenses/postage	At meter cost
Air freight/overnight letters	At carrier cost
9. Shipping and handling charges	At cost
10. Standard Clinical Programs	
Step Therapy	\$.08 PMPM
Concurrent DUR Edits	No Charge
Plan Design Changes	No Charge
Physician Profiling	No Charge
Administrative Overrides/Prior Authorizations	No Charge
Formulary Management	No Charge
Therapeutic Alternative Programs	No Charge
On-site Member Education Programs	No Charge
Over the Counter Drug Programs	No Charge
Half Tablet Program	No Charge
Direct Mail Utilization Program	No Charge
11. Optional Programs	
On-line Eligibility Access	\$1,500 (3 year licensing fee)
Customized On-Site Wellness Programs	\$75.00 per program hour
Retiree Drug Subsidy-Basic Services	No Charge
RDS Account Setup for Groups with fewer than 500 RDS Members	\$5000 Admin setup fee
RDS Notice of Creditable Coverage	\$1.25 per letter + postage
RDS Additional Subsidy Related Services (ProAct uploads cost reports to CMS)	\$1.00 PMPM per Medicare-qualified members with minimum annual fee of \$7,500
Actuarial Certification & Attestation	\$350 per hour – as negotiated

12. Drug Rebates. ProAct shall remit to Plan Sponsor that portion of the Rebates as set forth above (“Plan Sponsor Rebates”), with the excess, if any, of actual Rebates over Plan Sponsor Rebates to be retained by ProAct as an additional service fee for the services provided under this Agreement. In lieu of billing Plan Sponsor for this fee, ProAct may retain the amount due from the Rebates collected by ProAct. No Rebate shall be credited for any generic Claim, whether such Claim is filled with a generic drug or by a brand-name drug dispensed in lieu of a generic drug reimbursement rate. Quarterly Rebate payment shall be made within sixty (60) days following the quarter collected. ProAct may adjust the Plan Sponsor Rebate payments in an equitable manner if: (i) a generic version of a branded product is introduced in the market; or (ii) a branded product is recalled or withdrawn from the market.

**EXHIBIT B**  
**BUSINESS ASSOCIATE CONTRACT**

This Business Associate Contract (“Contract”) is entered into on January 1, 2015 (“Contract Effective Date”) between the City of Watertown, having a principal location at 245 Washington Street, Watertown, New York 13601 (“Covered Entity”), and ProAct, Inc., having a principal location at 6333 Rte 298, East Syracuse, New York 13057 (“Business Associate”) (Each a “Party” and collectively, the “Parties”).

**RECITALS:**

- A. Covered Entity will make available and/or transfer to Business Associate protected health information (“PHI”) in order for Business Associate to carry out i) its contractual obligations under a contract between Covered Entity and Business Associate dated January 1, 2015 (the “Underlying Services Agreement” between the Parties) and/or ii) certain business responsibilities on behalf of Covered Entity.
- B. Business Associate will have access to and/or receive from Covered Entity PHI that may be used or disclosed only in accordance with this Contract and the Privacy, Security, Breach Notification and Enforcement Regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, as set forth in the Code of Federal Regulations (“CFR”) at Title 45, Parts 160 and 164, as may be amended (collectively “HIPAA”).
- C. Covered Entity and Business Associate qualify, respectively, as a “covered entity” and as a “business associate” as such terms are defined under HIPAA.

**NOW THEREFORE**, for good and valuable consideration, intending to be legally bound, Covered Entity and Business Associate agree as follows:

- 1. **Definitions.** The following terms shall have the meaning ascribed to them in this Section. Other capitalized terms shall have the meaning given such terminology by HIPAA.
  - a. **Administrative, Physical and Technical Safeguards** shall have the same meaning as those terms are defined in 45 CFR 164.304.
  - b. **Breach** shall mean the unauthorized acquisition, access, use, or disclosure of PHI (as defined herein) which compromises the security or privacy of such PHI.
  - c. **Contract** shall refer to this document
  - d. **Electronic PHI** shall have the same meaning as “electronic protected health information” in 45 CFR 160.103.

- e. **HHS Privacy Regulations** shall mean the Code of Federal Regulations (“CFR”) at Title 45, Sections 160 and 164, as may be amended.
- f. **Individual** shall mean the person who is the subject of the Information, and has the same meaning as the term “individual” is defined by 45 CFR 160.103, including a person who qualifies as a personal representative in accordance with 45 CFR 164.502.
- g. **Party or Parties** shall mean Business Associate and/or Covered Entity.
- h. **PHI** shall mean information provided and/or made available by Covered Entity to Business Associate, and has the same meaning as the term “protected health information” as defined by 45 CFR 160.103.
- i. **Required by Law** shall have the same meaning as the term “required by law” in 45 CFR 164.103.
- j. **Secretary** shall mean the Secretary of the U.S. Department of Health and Human Services (“HHS”) and any other officer or employee of HHS to whom the authority involved has been delegated.
- k. **Security Incident** shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- l. **Unsecured PHI** shall have the same meaning as the term “unsecured protected health information” in 45 CFR 164.402.

## 2. Permitted Use or Disclosure of PHI.

- a. Business Associate shall be permitted to use or disclose PHI provided or made available from Covered Entity to perform any function on behalf of Covered Entity with regard to the use and disclosure of, and/or access to, PHI that is required, necessary or desirable for Business Associate to carry out its contractual obligations set forth in the Underlying Services Agreement and/or other business responsibilities on behalf of Covered Entity provided such function would not violate HIPAA if done by Covered Entity. Business Associate may use or disclose PHI as Required by Law.
- b. Except as otherwise limited in this Contract, Business Associate is permitted to use and disclose PHI received from Covered Entity if necessary for the proper management and administration of Business Associate, to carry out legal responsibilities of Business Associate, or otherwise in a manner which does not identify individual patients, provided:

- i) The disclosure is Required by Law;
  - ii) The Business Associate obtains reasonable assurances from the person or entity to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person or entity; the person or entity will use appropriate safeguards to prevent unauthorized access to, use, or disclosure of the PHI, and the person or entity in possession of the PHI immediately notifies the Business Associate of any instance of which it is aware in which the confidentiality of the PHI has been breached; or
  - iii) The PHI is de-identified.
- c. Business Associate shall ensure that its uses and disclosures of, and requests for PHI to or on behalf of Covered Entity, are consistent with the Minimum Necessary requirement under HIPAA and Covered Entity's Minimum Necessary policies and procedures.
  - d. Business Associate may use PHI to de-identify the information in accordance with 45 CFR 164.514(a)-(c).
  - e. Business Associate may provide data aggregation services relating to the Health Care Operations of Covered Entity.

### 3. Business Associate's Obligations:

- a. **Limits on Use and Disclosure.** Business Associate shall not use or further disclose the PHI provided or made available by Covered Entity other than as permitted or required by this Contract, or as Required by Law.
- b. **Appropriate Safeguards.** Business Associate shall establish and maintain appropriate safeguards, including but not limited to those necessary for compliance with Subpart C of 45 CFR Part 164, to prevent any access to, or use or disclosure of the PHI, other than as provided for in this Contract and shall implement Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.
- c. **Education.** Business Associate shall provide HIPAA compliance education to its existing employees and all new hires who may have access to PHI.

- d. **Policies and Procedures.** Business Associate shall implement reasonable and appropriate policies and procedures, as set forth in 45 CFR §164.316, to comply with the standards, implementation specifications, and/or other security requirements for the protection of Electronic PHI.
  
- e. **Reports of Improper Use, Disclosure, Security Incident or Breach of Unsecured PHI.** Business Associate shall report to Covered Entity promptly, but no later than five (5) business days after discovery of any access to, use or disclosure of PHI not provided for or allowed by this Contract, or any Security Incident, or Breach of Unsecured PHI of which Business Associate becomes aware. (ref. 45 CFR 164.504(e)(2)(ii)(C), 45 CFR 164.410 and 164.314(a)(2)(i)(C).). With respect to a Breach of Unsecured PHI, Business Associate must include the following information in its report to Covered Entity, but must not delay initial notification of the suspected Breach for purposes of collecting such information:
  - i) To the extent possible, the identity of each Individual whose PHI has been Breached;
  - ii) Brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
  - iii) Description of the types of Unsecured PHI that were involved in the Breach;
  - iv) Steps Individuals should take to protect themselves from potential harm resulting from the Breach;
  - v) Brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against further Breaches; and
  
- f. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an email address, web site, or postal address.
  
- g. **Subcontractors and Agents.** In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), anytime Business Associate's Subcontractor or agent creates, receives, maintains, or transmits the PHI on behalf of Business Associate, Business Associate shall first enter into a written agreement with the Subcontractor or agent that contains the same terms, conditions and restrictions on the access, use and disclosure of PHI as contained in this Contract. Business Associate shall also ensure that any such Subcontractor or agent to whom Business Associate provides Electronic PHI agrees in writing

to implement reasonable and appropriate safeguards to protect such Electronic PHI.

- h. Right of Access.** Business Associate shall make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligation under 45 CFR 164.524. In the event Business Associate receives a request for access to PHI directly from the Individual, Business Associate shall forward such request to Covered Entity promptly, and in no case later than five (5) business days following such request.
- i. Right to Amendment.** Business Associate shall use reasonable efforts to facilitate Covered Entity's obligation to make PHI in a Designated Records Set available for appropriate amendment by an Individual pursuant to 45 CFR 164.526. In the event Business Associate receives a request to amend such PHI directly from the Individual, Business Associate shall forward such request to Covered Entity promptly, and in no case later than five (5) business days following such request.
- j. Right to an Accounting.** Business Associate shall maintain and make available the information required to provide an accounting of disclosures of PHI to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528. In the event Business Associate receives a request for an accounting directly from the Individual, Business Associate shall forward such request to Covered Entity promptly, and in no case later than five (5) business days following such request.
- k. HIPAA Obligations.** To the extent Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of such Subpart that apply to the Covered Entity in the performance of such obligation(s).
- l. Access to Books and Records.** Business Associate shall make its internal practices, books, and records relating to the use or disclosure of PHI received from, created, maintained or received by Business Associate on behalf of Covered Entity, available to the Secretary or the Secretary's designee for purposes of determining compliance with HIPAA.
- m. Mitigation Procedures.** Business Associate shall have procedures in place for mitigating, to the maximum extent practicable, any deleterious effect from the access, use or disclosure of PHI in a manner contrary to or inconsistent with this Contract and HIPAA.
- n. Sanction Procedures.** Business Associate shall establish and implement a system of sanctions, including documentation of the sanctions that are applied, if any, for any employee, agent or Subcontractor who violates this Contract or HIPAA.

- o. HITECH Act Compliance.** All provisions of Subtitle D of the Health Information Technology for Economic and Clinical Health Act, signed into law on February 17, 2009 (“HITECH”), that are made applicable with respect to Covered Entity shall also be applicable to Business Associate, and shall be deemed incorporated herein by reference. In accordance with HITECH and in furtherance of Business Associate’s obligations set forth in this Contract, Business Associate shall:
- i) Comply with sections 45 CFR 164.308; 164.310; 164.312; and 164.316 of the Security Rules.
  - ii) Not use or disclose PHI unless such use or disclosure is in compliance with each applicable requirement of section 45 CFR 164.504(e), provided that Business Associate shall not be in compliance with such section if it knows of a pattern of activity of the Covered Entity that is a material breach or violation of Covered Entity’s obligations under this Contract, unless Business Associate takes reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the Contract or, if termination is not feasible, report the problem to the Secretary.
  - iii) Comply with the applicable minimum necessary rules established by HITECH and pursuant to any applicable regulations promulgated by the Secretary.
  - iv) Comply with the rules on marketing and fundraising communications established by HITECH and pursuant to any applicable regulations promulgated by the Secretary provided however, that Business Associate shall not make any such communications unless specifically authorized by the Covered Entity.
  - v) Comply with the rules on restrictions on certain disclosures of PHI requested by Individuals established by HITECH and pursuant to any applicable regulations promulgated by the Secretary.
  - vi) If Business Associate is responsible for providing an Individual access to PHI maintained in an electronic health record, provide such access in accordance with HITECH and any applicable regulations promulgated by the Secretary.

- vii) Comply with the rules on accounting of disclosures of certain PHI maintained in an electronic health record (if Covered Entity uses an electronic health record) established by HITECH and pursuant to any applicable regulations promulgated by the Secretary.
- viii) Comply with the rules on the sale of PHI established by HITECH and pursuant to any applicable regulations promulgated by the Secretary.

**4. Covered Entity's Obligations.**

- a. Covered Entity shall notify Business Associate of Covered Entity's Notice of Privacy Practices, including any limitation(s) in accordance with 45 CFR 164.520, to the extent the Notice of Privacy Practices and/or such limitation(s) may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- c. Covered Entity shall notify Business Associate of any amendment or restriction to use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of the PHI.
- d. Covered entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity (except as set forth in 2(b) and (e) of this Contract).

**5. Property Rights.** The PHI shall be and remain the property of Covered Entity. Business Associate shall acquire no title or rights to the PHI as a result of this Contract.

**6. Independent Entities.** This Contract shall establish no relationship between the Parties other than that of independent contractors. Neither Covered Entity nor Business Associate, nor any of their respective agents or employees, shall be construed to be the agent, employee or representative of the other. None of the provisions of this Contract are intended to create, nor shall they be deemed or construed to create, any partnership, joint venture, or other relationship between the Parties except that of independent contracting entities. Business Associate acknowledges that it has independent obligations to comply with certain HIPAA requirements. Covered Entity does not make any warranties, representations or

guarantees that this Contract satisfies Business Associate's independent obligations to comply with HIPAA.

## 7. Term and Termination.

- a. **Term.** The term of this Contract shall commence on the Contract Effective Date, and shall terminate upon termination of the Underlying Services Agreement (or other arrangement between the Parties), or when terminated for cause by the Covered Entity, as set forth below. Business Associate understands that termination for any reason nonetheless requires the further obligations by Business Associate set forth in section 7(c) below.
- b. **Termination for Cause.** Covered Entity shall have the right to immediately terminate this Contract if Covered Entity determines that Business Associate (or its Subcontractor) has violated a material term of this Contract and/or HIPAA and the Business Associate (or its Subcontractor) has not taken steps to cure such material default within thirty (30) days of receipt of the Covered Entity's written notification of such material breach. However, in the event that the default cannot be cured within the 30-day cure period, the 30-day cure period shall be extended for a reasonable additional time to cure such default, provided the Business Associate commences to cure the default within the 30-day cure period and proceeds diligently to affect the cure within such reasonable additional time.
- c. **Effect of Termination.** The obligations of Business Associate to protect the confidentiality of the PHI in its possession and/or known to it, its employees, agents or Subcontractors, shall survive termination of this Contract for any reason. In addition, at the termination of this Contract for any reason, Business Associate shall return, destroy or de-identify (so that the respective information does not identify Individuals) all PHI received from, created, maintained or received by Business Associate on behalf of Covered Entity. If return or destruction of all or part of the PHI is not commercially feasible, Business Associate shall extend the protections of this Contract for as long as necessary to protect the PHI and to limit any further access, use or disclosure of the PHI to those purposes that make the return or destruction of the PHI infeasible. If Business Associate elects to destroy the PHI it shall certify to Covered Entity in writing that the PHI has been destroyed. Destruction of PHI must be in accordance with industry standards and processes for ensuring that reconstruction, re-use and/or re-disclosure of PHI is prevented after destruction, with the exact method of destruction dependent on the media in which the PHI is contained. To the extent applicable, Business Associate shall ensure any such destruction is consistent with state and/or federal record retention laws or regulations.

8. **Change In Law/Regulation.** In the event that any new laws, regulations, or interpretations of the foregoing are promulgated, the Parties shall use reasonable efforts to promptly amend this Contract to comply with such change without any financial concession.
9. **Amendment.** This Contract may be amended by written agreement of the Parties.
10. **Choice of Law.** This Contract shall be governed by New York law and applicable federal law. The Parties also agree that for purposes of privacy rights, HIPAA shall supersede all applicable state laws, except to the extent such State laws are not preempted.
11. **Injunctive Relief.** Notwithstanding any rights or remedies provided for in this Contract, Covered Entity retains all rights to seek injunctive relief to prevent or stop the unauthorized access to, or use or disclosure of PHI by Business Associate or any agent, Subcontractor or third party that received PHI from Business Associate.
12. **Binding Nature and Assignment.** This Contract shall be binding on, and inure to the benefit of the Parties hereto and their successors and permitted assigns, but neither Party may assign this Contract without the prior written consent of the other (except to any entity controlled by, controlling or under common control with the assigning entity).
13. **Notices.** Whenever under this Contract a Party is required to give notice to the other Party, such notice shall be deemed given if mailed by First Class Certified United States mail, return receipt requested, postage prepaid or hand-delivered, including recognized overnight courier service, with confirmed receipt, and addressed as follows:

BUSINESS ASSOCIATE:

PROACT, INC.  
6333 Route 298  
East Syracuse, NY 13057

COVERED ENTITY:

CITY of WATERTOWN  
245 Washington Street  
Watertown, NY 13601

Attn: David B. Warner, President

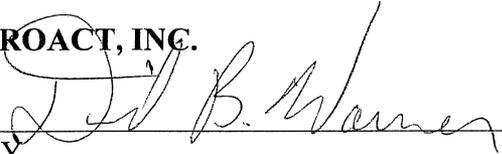
Attn: Sharon Addison, City Manager

14. **Article Headings.** The article headings used are for referenced and convenience only, and shall not enter into the interpretation of this Contract.
15. **Entire Contract.** This Contract consists of this document, and constitutes the entire agreement between the Parties with respect to the subject matter herein. There are no understandings or other agreements which are not fully expressed in this Contract, and no change, waiver or discharge of obligations arising under this Contract shall be

valid unless in writing and executed by the Party against whom such change, waiver or discharge is sought to be enforced. This Contract supersedes any previous HIPAA business associate agreement between the Parties.

**16. Indemnification.** Each Party (“Indemnifying Party”) shall defend, indemnify and hold the other Party harmless for any and all costs, including fines, penalties, interest and reasonable attorneys’ fees, related to any claim, liability, suit, or investigation by law enforcement or other governmental or regulatory agency or brought by an Individual related to the wrongful acts or omissions of the Indemnifying Party, its employees, agents or subcontractors, whether intentional or negligent, that violates the HHS Privacy Regulations regarding access to, use of or disclosure of PHI.

**IN WITNESS WHEREOF,** Covered Entity and Business Associate have caused this Contract to be signed and delivered by their duly authorized representatives, as of the date first set forth above.

**PROACT, INC.**  
  
BY \_\_\_\_\_

David B. Warner  
NAME

President  
TITLE

10/7/14  
DATE

**CITY of WATERTOWN**  
\_\_\_\_\_  
BY

Sharon Addison  
NAME

City Manager  
TITLE

\_\_\_\_\_  
DATE

# CITY OF WATERTOWN, NEW YORK



FRINGE BENEFITS OFFICE  
SUITE 301, CITY HALL  
245 WASHINGTON STREET  
WATERTOWN, NEW YORK 13601  
Tel: (315) 785-7755  
FAX: (315) 755-6418  
E-Mail: [mroy@watertown-ny.gov](mailto:mroy@watertown-ny.gov)

To: Sharon Addison  
City Manager

From: Matthew Roy  
Administrative Specialist

Re: Pharmacy Benefit Manager

Date: November 5, 2014

As part of the previously discussed RFP for TPA services, we also had the Anchor Group complete an RFP for the City's pharmacy benefit manager contract currently held by Pro Act. The last time an RFP was completed for this service was also in 2008 with coverage beginning January 1, 2009.

A complete prescription claims adjudication was completed during the course of this RFP. A full year's worth of claims were distributed to 9 carriers who then re-priced the claims according to their contract structure. In August the results of the RFP were shared with committee members and the top 2 finalists were called in for a presentation in September.

The committee met again in late September and by a unanimous vote health committee members agreed on the selection of Pro Act as the City's pharmacy benefit manager. For the following reasons, we are suggesting that Pro Act be awarded this contract once again:

- Their superior performance in the pharmacy claim adjudication
- Their past exemplary service
- Their superior performance during the presentations
- Their close working relationship with Cana Rx
- No member disruption

This contract will span for 3 years with the ability to renew for 2-1 year extensions. When compared to our current contract, this new contract could potentially save the insurance fund \$300,000 per year. This projection is based upon our current utilization which could change in the future. However, this contract represents a significant savings in comparison to our current contract.

If you have any questions please let me know.

Res No. 15

November 10, 2014

To: The Honorable Mayor and City Council

From: Sharon Addison, City Manager

Subject: Approving Plan Service Agreement for Section 125 Plan,  
Benefit Services Group

As detailed in the attached memorandum from Administrative Specialist Matthew Roy, an RFP for the administration of the City's Section 125 Flexible Medical and Dependent Care Accounts was issued last year for this service with Benefit Services Group winning the one-year contract with the option to extend for four one-year agreements. It is his recommendation that the City Council extend this service with Benefit Services Group for one term, effective January 1, 2015.

A Plan Service Agreement has been negotiated between the parties outlining the duties and responsibilities of the parties.

A resolution approving the Plan Service Agreement between the City of Watertown and Benefit Services Group has been prepared for City Council consideration.

**RESOLUTION**

Page 1 of 1

Approving Plan Services Agreement for Administration of Section 125 Plan, Benefit Services Group

Council Member BURNS, Roxanne M.
Council Member BUTLER, Joseph M. Jr.
Council Member JENNINGS, Stephen A.
Council Member MACALUSO, Teresa R.
Mayor GRAHAM, Jeffrey E.
Total .....

YEA	NAY

***Introduced by***

WHEREAS on November 13, 2013 the City Council accepted the bid for the Administration of the City of Watertown’s Section 125 Plan with Benefit Services Group, and

WHEREAS the contract included the option to extend for four one-year extensions, and

WHEREAS it is the recommendation of the Administrative Specialist that the City of Watertown extend the Plan Service Agreement with Benefit Services Group for one year,

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown, New York, approves the one-year extension of the Plan Services Agreement for Administration of the City’s Section 125 Plan, a copy of which is attached and made part of this resolution, effective January 1, 2015, and

BE IT FURTHER RESOLVED that the City Manager Sharon Addison is hereby directed and authorized to execute documents necessary for this Agreement.

**Seconded by**

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**Section 125 Cafeteria Plan  
Premium Reduction Option *Plus*  
Flexible Spending Plans**

**PLAN SERVICE AGREEMENT**

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*ADOPTED BY*  
**CITY OF WATERTOWN, NEW YORK**  
*EFFECTIVE 01/01/2015*

**SECTION 125 CAFETERIA PLAN  
PREMIUM REDUCTION OPTION *PLUS*  
FLEXIBLE SPENDING ACCOUNTS**

**CONSULTING, ENROLLMENT, AND  
PLAN SERVICES AGREEMENT**

This agreement specifies the services to be provided to City Of Watertown, New York.

**ADMINISTRATOR**

Under the agreement, City Of Watertown, New York will function as the Plan Sponsor, Benefit Services Group as the Benefit Enrollment Firm, and Benefit Services Group as the Plan Service Provider Firm. These companies will function as subcontractor(s) for consulting, enrollment and administrative plan services.

**CONSULTING SERVICES TO BE PROVIDED  
BY BENEFIT SERVICES GROUP**

Benefit Services Group will assist City Of Watertown, New York in plan analysis and design, both initially and for any revisions to existing benefits. The service and assistance includes cost estimates of initial plan; cost projections of any proposed plan revisions; and advice prepare summary plan descriptions.

Benefit Services Group will also perform the following activities:

- Design the ProPlus125 Plan Document and Summary Plan Description. (City Of Watertown, New York and its legal counsel will review this document.)
- Provide Plan Adoption Agreement and Plan Information Summary and Sample Corporate Resolutions of the Board of Directors.
- Provide Salary Reduction Agreements and Disclosures.

**ENROLLMENT SERVICES TO BE PROVIDED  
BY BENEFIT SERVICES GROUP**

Benefit Services Group will provide the following enrollment services:

- Present employee informational group meetings (if required).
- Meet with each employee, as needed, to discuss the employee's personal benefit coverage needs.
- Review salary reduction agreements with each employee as requested.
- Provide re-enrollment services as requested.
- Optional Internet Enroll for open enrollment

**ADMINISTRATIVE SERVICES TO BE PROVIDED  
BY BENEFIT SERVICES GROUP**

Benefit Services Group will provide the following administrative services:

- Open individual benefit accounts for plan administration using the enrollment forms and/or payroll deduction register provided by the Employer.
- Prepare reports of detail and summary enrollment results for payroll setup of employee elections
- Process Changes Of Status Elections into Administration Records and otherwise keep on-going records of activity affecting each Employee's Elections.
- Provide initial administrative form originals for duplication as needed:
  - Reimbursement Claim Forms
  - Election Enrollment, Termination and Change of Election Forms
  - Re-Enrollment Forms for following year enrollment if requested.
- Provide initial status and history reports
  - Account Balance totals on each reimbursement checks
  - Account History Report on request
  - Check History Report on request
  - Voucher History Report on request
- On a **Pay cycle basis**, provide:
  - Reconcile contribution reports with payroll deduction amounts and submit any discrepancies to the employer if the employer provides the contribution reports to BSG.
  - Reimbursement checks to employees on a pay cycle basis or on an approved schedule and upon receipt of expense receipts and approved claim vouchers.
  - Checks and Check Register showing checks written and ACH each cycle to be distributed by employer.
- On an **as requested** basis, provide
  - Non-discrimination tests results
  - Cash Status Report showing summary transactions of cash activity.
  - Request For Funds Report (if required) showing those employees that have drawn out more than contributed to date and any participants that have had previous requests.
  - Employee Account Balances showing the participants' account balances.
- On a **Annual** basis, provide:
  - Plan Renewal Election Forms
- Claims Processing for Reimbursement Accounts
- Balance Inquiry Services
  - Online Access for HR and all participants.
  - Telephone Balance Inquiry is available to the Plan Participants. The participant has access to Account Balances, Check History and Voucher History for the current plan year.

**RESPONSIBILITIES OF PLAN SPONSOR**

City Of Watertown, New York is the Plan Sponsor and the Plan Administrator that is ultimately responsibility for ProPlus125 including the above listed duties delegated to Benefit Services Group All decisions regarding Plan Administration is the Plan Administrator's responsibility whereas Benefit Services Group will assist the Administrator but not act as the Administrator.

City Of Watertown, New York will provide support, information, reports, and data necessary to propose, administer, report, test and otherwise administer the Cafeteria Plan to Benefit Services Group so Benefit Services Group can assist with the administration of ProPlus125. More specifically these include but not limited to are:

- Each Payroll, submit to BSG a contribution list of all deductions taken out of each employees paycheck.
- Secure legal review of the ProPlus125 Plan Documents from its legal counsel or otherwise review and execute the documents in a timely. And forward a signed copy back to Benefit Services Group
- Report participant Election additions, terminations, and changes to Benefit Services Group each pay cycle.
- Sign reimbursement checks (authorized signature facsimile) or authorize Benefit Services Group to sign depending upon banking arrangements.
- Distribute Summary Plan Description and various other reports to employees as requested.
- Upon notice, take any action required if the plan(s) warrants Administrator's authority.
- Provide management support in planning enrollment, meeting facilities, and scheduling.
- Provide document storage for Administrative Files and Records for up to seven years.

### **PAYMENT FEES AND TERMS**

At each month end, Benefit Services Group and/or Benefit Services Group. will submit a statement showing the amount of fees for that month. City Of Watertown, New York will pay Benefit Services Group and Benefit Services Group the amount within 10 days of receipt of the statement.

Benefit Services Group, Inc. has the right to change the fee schedule by advising City Of Watertown, New York 60 days before the end of a plan year.

### **REPORTS AND DATA**

All reports and data remain the property of City Of Watertown, New York. On request, Benefit Services Group will provide City Of Watertown, New York all data in the electronic or printed format used by Benefit Services Group

### **TERMS OF THIS AGREEMENT**

This agreement will be effective from the date the parties execute this agreement until it is terminated. Benefit Services Group may withdraw from this agreement with 21 days written notice to City Of Watertown, New York and Benefit Services Group If City Of Watertown, New York terminates this agreement during the plan year, the fee for the rest of the plan year becomes due and payable as of the termination date. If Benefit Services Group wishes to terminate this agreement during the plan year, Benefit Services Group must give written notice and must continue services until City Of Watertown, New York has secured suitable replacement of such service or until City Of Watertown, New York releases Benefit Services Group or until the end of the current plan year, whichever occurs first.

**PLAN SPONSOR**

**City Of Watertown, New York**

**PLAN SERVICE PROVIDER FIRM**

**Benefit Services Group**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# CITY OF WATERTOWN, NEW YORK

## FRINGE BENEFITS OFFICE

SUITE 301, CITY HALL

245 WASHINGTON STREET

WATERTOWN, NEW YORK 13601

Tel: (315) 785-7755

FAX: (315) 755-6418

E-Mail: [mroy@watertown-ny.gov](mailto:mroy@watertown-ny.gov)



To: Sharon Addison  
City Manager

From: Matthew Roy  
Administrative Specialist

Re: Section 125 Plan Administration

Date: November 5, 2014

Our current contract with Benefit Services Group for the administration of the City's section 125 flexible medical and dependent care accounts is set to expire on December 31, 2014. An RFP was issued for this service last year with Benefit Services Group winning a one year contract with the option to extend for four-one year agreements. For the following reasons, I am recommending that we extend this service with Benefit Services Group for one of these additional terms:

- Their exemplary performance in the administration of these plans
- Administration fees will remain the same as we currently pay
- No disruption to our employees
- Their administration fees remain low compared to the competition

If you have any questions please feel free to let me know.

Public Hearing – 7:30 p.m.

November 12, 2014

To: The Honorable Mayor and City Council  
From: Kenneth A. Mix, Planning & Community Development Coordinator  
Subject: Program Year 2012 Community Development Block Grant Public Hearing

The City Council scheduled a Public Hearing for 7:30 p.m. on Monday, November 17, 2014 to solicit comments on the effectiveness of the City's administration of the Program Year 2012 Community Development Block Grant.

I will have information for the public at the Public Hearing on the Community Development Block Grant program.

Tabled

November 12, 2014

To: The Honorable Mayor and City Council

From: Kenneth A. Mix, Planning & Community Development Coordinator

Subject: Approving Whitewater Park Public Access Limited Use Agreement  
With Hole Brothers Holdings, LLC

The attached Resolution was introduced and Tabled on October 20, 2014. A copy of the Agreement can be found in the Agenda for the October 20 meeting.

It is recommended that this Resolution remain Tabled until a response is received from the New York State Department of State.

# RESOLUTION

Page 1 of 1

Approving Whitewater Park Public Access Limited Use Agreement with Hole Brothers Holdings, LLC

Council Member BURNS, Roxanne M.  
 Council Member BUTLER, Joseph M. Jr.  
 Council Member JENNINGS, Stephen A.  
 Council Member MACALUSO, Teresa R.  
 Mayor GRAHAM, Jeffrey E.

Total .....

YEA	NAY
	4

***Introduced by***

Council Member Teresa R. Macaluso

WHEREAS an Agreement with Hole Brothers Holdings LLC for the limited use for a portion of Whitewater Park has been drafted, and is attached and made part of this resolution, and

WHEREAS the City Council wishes to enter into said Agreement for the reasons recited in the Agreement,

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown, New York, hereby approves the Whitewater Park Public Access Limited Use Agreement between the City of Watertown, New York, and Hole Brothers Holdings LLC, and

BE IT FURTHER RESOLVED that the Mayor, Jeffrey E. Graham, is hereby authorized and directed to sign the Limited Use Agreement on behalf of the City Council.

**Seconded by** Council Member Roxanne M. Burns

October 31, 2014

To: Ms. Sharon Addison, City Manager  
From: Erin E. Gardner, Superintendent of Parks and Recreation  
Subject: Slip, Slide, and Skate Fees

In an effort to keep program costs fair and improve the safety and quality of the Parks & Recreation Slip, Slide & Skate Program, the Parks and Recreation Department would like to request that a onetime fee of \$25 for City resident skaters and \$45 for City resident skaters who require skate rentals. Skaters who are non-residents would have a onetime fee of \$45 and skaters who are not non-residents that require skates rentals would have a onetime fee of \$65. All fees will include 10/hrs of group lesson led by a qualified instructor.

Currently, the fee is \$25 or \$2.50 per class and an additional \$2 for skate rentals.

We strongly encourage participants to register online with the new Webtrac software, the majority will do this, but having a class by class and skate rental fee requires a staff person to be at the register to ring up a handful of sales. This pulls staff from other necessary work.

Giving participants the opportunity to drop in and pay per class also makes it difficult for an instructor to provide quality & safe instruction, as they will need to assess skill level for the individual, this takes valuable time away from the group that have paid for a full session of lessons. Program Manager, Celia Cook, will be in attendance to answer questions.