

## CONTRACT FOR COBRA ADMINISTRATION SERVICES

This contract is dated, made, and entered into as of the 1st day of September, 2015, by the City of Durham ("City") and P&A Administrative Services, Inc. ("Contractor"), a corporation organized and existing under the laws of the State of New York.

Sec. 1. Background and Purpose. The City heretofore has used Contractor to assist it in meeting its COBRA compliance responsibilities and desires to continue to do so, and Contractor desires to continue to provide such services upon certain terms and conditions;

Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor's. The Contractor shall provide the following services:

(a) Within ninety (90) days after an employee of the City first becomes covered by the Plan, Contractor shall send by first class mail a notice addressed to the employee and to any spouse of the employee who also is covered by the Plan informing them of their rights and responsibilities under the COBRA law (an "Initial COBRA Notice").

(b) Contractor shall review any notice stating that a Qualifying Event for COBRA purposes has occurred with respect to coverage under the Plan. For purposes of this Agreement, the term "Qualifying Event" shall have the meaning ascribed to it by Section 2203 of the Public Health Services Act or any successor provision of law. If such notice is determined to have been timely provided and the occurrence of a Qualifying Event is confirmed, Contractor shall provide the following services with respect to each of those individuals who has become entitled to COBRA continuation coverage as a result of that Qualifying Event (a "Qualified Beneficiary"):

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

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

that will be providing the elected coverage;

(3) Contractor shall send to the Qualified Beneficiary who has elected COBRA continuation coverage (a "COBRA Continuant"), a bill with respect to each month of the elected coverage, and shall send a second bill should the COBRA Continuant fail to timely pay the original bill by its stated due date. The billed amount shall be 102 percent of the "applicable premium" (110 percent with respect to coverage extended from 18 months to 29 months due to disability, unless a different percentage is mutually agreed upon by the parties) Section 2202(3) of the Public Health Services Act;

(4) Contractor shall forward 100% of the applicable premium to the City for payment to the Coverage Provider, accompanied by information that identifies the COBRA Continuant, the amount of his or her premium and the coverage period to which the premium payment relates. The amount by which a premium payment exceeds the applicable premium (typically, 2 percent of the applicable premium) shall be retained by Contractor as additional compensation for its services hereunder;

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

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

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

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

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

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

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

(12) Prior to the termination of a COBRA Continuant's continuation coverage, Contractor shall provide him or her with a notice describing any rights that he or she may have to obtain coverage under a "conversion health plan" within the meaning of Section 2202(5) of the Public Health Services Act;

(d) With respect to any individual who is a COBRA Continuant on the date this Agreement first becomes effective, Contractor shall provide all of the services described in paragraphs "3" through "12" of subsection (b) above.

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

(f) Should any Coverage Provider, in the normal course of its business, not provide written certifications of creditable coverage for persons whose coverage under the Plan terminates in accordance with the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and should the City request them, Contractor shall provide such certifications ("HIPAA Certificates").

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

(h) Once per month, Contractor shall provide to the City a summary of information pertaining to its administrative activities hereunder during the preceding month, including the names of each of the Plan's COBRA Continuants during that month, the premium amounts that each paid for coverage during that month and the types of coverage he or she received during that month.

In this contract, "Work" means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor's duties to the City that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

Sec. 3. Reserved.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 5. Contractor's Billings to City. Compensation. The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: such information as may be reasonably requested by the City. Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

The City shall pay the Contractor for the Work as follows: In accordance with Schedule A, Fee Schedule, attached hereto and made a part hereof.

The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

Sec. 6. Prompt Payment to Subcontractors. (a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8<sup>th</sup> day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham.

(b) If the individual assigned to administer this contract for the City (in this section, titled "Prompt Payment to Subcontractors," he or she will be referred to as the "Project Manager") determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold from progress or final payments to the Contractor the sums estimated by the Project Manager to be

- (i) the amount of interest due to the Subcontractor under subsection (a), and/or
- (ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the City to the Contractor.

This subsection (b) does not limit any other rights to withhold payments that the City may have.

(c) Nothing in this section (titled "Prompt Payment to Subcontractors") shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the

Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(d) The Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

Sec. 7. Insurance. Contractor shall maintain insurance not less than the following:

**Commercial General Liability, covering**

- **Broad form coverage, and in particular, coverage for personal injury, including but not limited to libel, slander, and defamation**
- **contractual liability**
- **independent contractors, if any are used in the performance of this contract**
- **City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)**
- **combined single limit not less than \$1,000,000 per occurrence**

**Workers' Compensation Insurance, covering**

- **statutory benefits;**
- **covering employees; covering owners partners, officers, and relatives (who work on this contract) (this must be stated on the certificate)**
- **City's liability, any amount.**

**Insurance shall be provided by:**

- **companies authorized to do business in the State of North Carolina**
- **companies with Best rating of A or better.**

**Insurance shall be evidenced by a certificate:**

- **providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage**
- **certificates shall be addressed to:  
City of Durham, North Carolina  
Attention: Benefits Manager  
Human Resources Department  
101 City Hall Plaza  
Durham, NC 27701**

**Both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract**

Sec. 8. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule referred to in section 2 above, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 9. Exhibits. The following exhibits are made a part of this contract: Exhibit A (Fee Schedule).  
In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 10. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:

**Regina Youngblood**  
**Human Resources Director**  
City of Durham  
101 City Hall Plaza  
Suite 1600  
Durham, NC 27701-3329  
The fax number is (919) - 560-4214.  
Email: [Regina.Youngblood@durhamnc.gov](mailto:Regina.Youngblood@durhamnc.gov)

To the Contractor:

**Michael A. Rizzo**  
**President**  
P&A Administrative Services, Inc.  
17 Court Street, Suite 500  
Buffalo, NY 14202  
The fax number is (716) – 855-7121  
Email: [rizzom@padmin.com](mailto:rizzom@padmin.com)

Sec. 11. Indemnification. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a

result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

#### Sec. 12. Miscellaneous

(a) Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of

State and such registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment, Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in

part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(j) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(k) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) The word "Work" is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(l) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(m) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without

City Council action.

Sec. 13. Termination for Convenience ("TFC"). (a) *Procedure*. Without limiting any party's right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations*. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate. (c) *Payment*. The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

P&A Administrative Services, Inc.

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

Title of officer: President

State of New York

ACKNOWLEDGMENT BY CORPORATION

County of Erie

I, a notary public in and for the aforesaid county and state, certify that Michael A Rizzo personally appeared before me this day and stated that he is the President of P&A Administrative Services, Inc., a corporation, and that by authority duly given and as the act of the corporation, he signed the foregoing contract or agreement with the City of Durham and the corporate seal was affixed thereto. This the \_\_\_\_\_ day of September, 2015.

My commission expires:

\_\_\_\_\_  
Notary Public

\_\_\_\_\_

**SCHEDULE A  
FEES**

1. **NOTICE FEES.** The City shall pay to Contractor the following fees with respect to notices generated by Contractor:

Initial COBRA Notices:	\$8.00 per Notice
COBRA Election Notices:	\$20.00 per Notice

Contractor shall forward monthly invoices to the City for the notice fees due hereunder. Each such invoice shall be due and payable within thirty (30) days after receipt by the City.

2. **MAILING EXPENSES.** The City shall pay to Contractor the cost of any mailing required under the Agreement the rate for which exceeds the first class rate charged by the U.S. Post Office.

3. **PARTICIPANT FEES.** An individual who has coverage under the Plan shall pay to Contractor a fee of \$25.00 should a check tendered by him or her in payment of a premium be returned on account of insufficient funds. Further, if an individual's COBRA coverage must be reinstated due to non-payment of premiums or other circumstances for which he or she is responsible, he or she shall pay Contractor a reinstatement fee of \$30.00.