

**LEGAL DEPARTMENT
CITY OF GULFPORT**

*P. O. Box 1780
Gulfport, MS. 39502*

*City Hall
2nd Floor
2309-15th Street*

MEMORANDUM

[To Request Matter to be placed upon Council Agenda]

To: Mayor Billy Hewes: Attention Dr. John Kelly, CAO

**Council President Ricky Dombrowski
Councilman Kenneth Casey
Councilwoman Ella Holmes-Hines
Councilman F. B. "Rusty" Walker, IV
Councilman Myles Sharp
Councilman R. Lee Flowers
Councilwoman Cara Pucheu**

Ronda Cole, Council Clerk

From: Margaret Murdock, Assistant City Attorney

Dated: December 30, 2013

RE: A RESOLUTION BY THE GULFPORT CITY COUNCIL TO APPROVE SALES AND SERVICE AGREEMENT WITH FIVE POINTS ICT, INC., FOR THE PROVISION OF ON-LINE WELLNESS PORTAL SERVICES AND TO AUTHORIZE THE MAYOR TO EXECUTE AND DELIVER ANY AND ALL DOCUMENTS TO EFFECTUATE THIS AGREEMENT

This is to respectfully request placement and consideration of the attached item, referenced above, on the City Council Agenda **on the January 7, 2014, City Council Agenda**

Subject: *In October, as a part of the health insurance proposals, the City Council authorized that a contract be obtained from a vendor to provide on-line wellness portal services to the City and its employees. Cheryl Millender of the Human Resources Office, along with Sherri Baker, health insurance consultant, have requested that the attached Sales and Service Agreement between the City and Five Points ICT, LLC, be presented to the City Council for approval in order that Five Points ICT, LLC, may provide the aforementioned services.*

The attached items have been presented to, or originate from the following Departments :

Department

Approve

Disapprove

Legal Department

Margaret Murdock

Also reviewed and approved by:

Submitted for review and approval to:

John Kelly, CAO, and/or
Mayor Billy Hewes

There came on for consideration at a duly constituted meeting of the Mayor and Members of the City Council of the City of Gulfport, Mississippi, held on the ____ day of _____, 2014, the following Resolution:

A RESOLUTION BY THE GULFPORT CITY COUNCIL TO APPROVE SALES AND SERVICE AGREEMENT WITH FIVE POINTS ICT, INC., FOR THE PROVISION OF ON-LINE WELLNESS PORTAL SERVICES AND TO AUTHORIZE THE MAYOR TO EXECUTE AND DELIVER ANY AND ALL DOCUMENTS TO EFFECTUATE THIS AGREEMENT

WHEREAS, the City of Gulfport desires to obtain certain on-line wellness portal services to assist with improvements to the overall wellness of the employees of the City; and

WHEREAS, Five Points ICT, Inc., can provide the services required by the City pursuant to a Sales and Services Agreement for a period of one year; and

WHEREAS, it is in the best interest of the City of Gulfport that the City enter into a n agreement with Five Points ICT, Inc., for the provision of on-line wellness portal services to the City of Gulfport and its employees; and

WHEREAS, a proposed Agreement between the City and Five Points ICT, Inc., is attached hereto as Exhibit “A” for review, consideration and approval.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GULFPORT, MISSISSIPPI, AS FOLLOWS, TO WIT:

Section 1. That the matters, facts and things recited in the Preamble hereto are hereby adopted as the official findings of the Governing Authority.

Section 2. That the proposed Agreement between the City and Five Points ICT, Inc., as found in Exhibit “A” hereto, be and the same is hereby approved in substantially the same or similar form as found in Exhibit “A” and that the Mayor be and he is hereby authorized, on behalf of the City of Gulfport, to enter into, sign, execute, and deliver any and all documents needed to effectuate the awarding of the contract to Five Points ICT, Inc., for on-line wellness portal services, including but not limited to the Agreement found in Exhibit “A” hereto.

Section 4. That this Resolution be, and it is hereby ordered to be spread on the minutes of the governing Authority, and to be in full force and effect immediately upon its passage and enactment according to law.

The above and foregoing Resolution, after having been first reduced to writing and ready by the Clerk, was introduced by _____, seconded by _____, and was adopted by the following roll call vote:

AYES

NAYS

ABSENT

WHEREUPON, the President declared the motion carried and the Resolution adopted this the _____ day of _____, 2014.

(SEAL)

ATTEST:

ADOPTED:

CLERK OF THE COUNCIL

PRESIDENT

The above and foregoing Ordinance was submitted to and approved by the Mayor, this the _____ day of _____, 2014.

APPROVED:

MAYOR

Sales and Service Agreement – FIVE POINTS ICT, INC.

1. SERVICES: Five Points ICT, Inc ("FIVE POINTS") shall provide the Services, as set forth in and defined pursuant to Schedule A ("Services"), to the Client ("Client") and to the end user group ("End User Group") and any user in that group ("End User(s)"), as specified below:

CLIENT NAME: City of Gulfport Mississippi

DOING BUSINESS AS: _____

ADDRESS: _____

CITY, STATE, ZIP CODE: _____

PRIMARY CONTACT NAME: _____

FAX NUMBER: _____

TELEPHONE NUMBER: _____

EMAIL ADDRESS: _____

BILLING CONTACT NAME: _____

TELEPHONE NUMBER: _____

BILLING EMAIL ADDRESS: _____

BILLING ADDRESS: _____

CITY, STATE, ZIP CODE: _____

END USER GROUP: City of Gulfport Mississippi

PRIMARY CONTACT NAME: _____

TELEPHONE NUMBER: _____

EMAIL ADDRESS: _____

Accordingly, Client hereby authorizes and empowers FIVE POINTS to perform or cause to be performed the Services necessary to fulfill the terms of this Sales and Service Agreement (the "Agreement"), beginning on 1/1/2014 ("Effective Date").

2. TERM: This Agreement shall commence on the Effective Date and shall remain in effect for an "Initial Term" of twelve (12) months unless earlier terminated pursuant to Section 7, and shall be renewed thereafter, subject to an agreement of the applicable renewal rates, for "Renewal Terms" of twelve (12) months each unless either party provides the other written notice of its intention not to renew at least thirty (30) days prior to the end of the Initial Term or any Renewal Term. The Initial Term and any Renewal Terms are referred to herein collectively as the "Term."
3. CHARGES: The Client agrees to pay on a monthly basis (or annual basis, as appropriate) without demand or offset to FIVE POINTS, its agents or assigns, the charges set forth in Schedule A, subject to the terms and conditions as provided for in this Agreement. Such charges will include those charges incurred from the previous month or year and pro-rata and/or prospective subscription charges. On a recurring basis prior to any Renewal Term, FIVE POINTS reserves the right to increase or decrease the charges provided herein or institute additional charges and/or fees by giving Client written notice sixty (60) days in advance of the effective date of such increase or decrease.
4. INTELLECTUAL PROPERTY. Except as expressly provided for in this Agreement, the parties shall each retain all intellectual property that they owned prior to the Effective Date, and this Agreement shall not be interpreted or construed to grant a party any rights, title, interest or license in the other party's preexisting intellectual property. FIVE POINTS shall own all rights, title and interest in any intellectual property related to, within the scope, of or that enhances the Services, including any aggregate data created as a result thereof

("Improvements") during the term of this Agreement, and thereafter. Client hereby assigns all right, title and interest in any intellectual property created by the Improvements to FIVE POINTS. FIVE POINTS shall have the right to apply for copyrights, patents (including utility and design patents), or other protection for such Improvements, and to enforce its rights in such Improvements, anywhere in the world under its own name and at its own expense. Each party hereby agrees that neither it nor any of its affiliates shall use the name, logo or any other trademarks of the other party without the prior written consent of the other party, which may be withheld at the sole discretion of the other party.

5. **END USER DATA:** For the purposes of this Agreement, "End User Group Data" is defined as any data inputted by designated administrators of the End User Group, FIVE POINTS, or the Client on behalf of the End Users and End User Group, for the purpose of using the Services or facilitating the End Users' use of the Services. The End User Group shall own all rights, title and interest in and to all of the applicable End User Group Data. FIVE POINTS shall have no responsibility for the legality, reliability, integrity, accuracy and quality of the End User Group Data. If requested by the End User Group, FIVE POINTS may transfer the End User accounts and any End User Group Data to another designated Client for the purpose of End User Group service and administration of End User accounts.
6. **LIMITATION OF LIABILITY:** Client does not seek indemnity by this Agreement from FIVE POINTS. FIVE POINTS DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, RELATING TO THE SERVICES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. FIVE POINTS MAKES NO WARRANTY, EXPRESS OR IMPLIED, THAT THE SERVICE(S) IT FURNISHES WILL AVERT OR PREVENT CERTAIN OCCURRENCES. Client agrees that FIVE POINTS shall not be liable for any of Client's losses or damages, irrespective of origin, to persons or property, whether directly or indirectly caused by performance or non-performance of obligations imposed by this Agreement or by the negligent acts or omissions of FIVE POINTS, its agents, employees, contractors or subcontractors. The Client does hereby waive and release any rights of recovery against FIVE POINTS that it may have hereunder. It is agreed that it is impractical and impossible to fix actual damages which may arise from situations where there may be a failure of services provided. It is further agreed that if FIVE POINTS should become liable for any losses or damages attributable to its services in any respect, its total liability to Client shall be limited to the fees and charges received by FIVE POINTS, which the Client agrees is reasonable. The payment of this amount shall be FIVE POINTS' sole and exclusive liability regardless of the amount of loss or damage incurred by the Client. No suit or action shall be brought against FIVE POINTS more than one (1) year after the accrual of the cause of action therefore. FIVE POINTS shall not be liable for any delays, however caused, or for interruptions of the Services caused by strikes, riots, floods, acts of God or by any event beyond the control of FIVE POINTS. IN NO EVENT SHALL FIVE POINTS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES. To the extent that any provision contained in this paragraph is contrary to Mississippi law, Mississippi law shall govern.
7. **TERMINATION/PAYMENT:** FIVE POINTS has the option to terminate this Agreement for cause, including should any payment due from Client to FIVE POINTS remain overdue for a period of more than thirty (30) days. Should FIVE POINTS elect to exercise such cancellation option, said exercise shall be in writing, sent by certified mail, return receipt requested, and such cancellation shall be effective upon receipt. Client has the option to terminate this Agreement at any time after completion of the Initial Term by giving FIVE POINTS written notice thirty (30) days in advance of the effective date of such termination. Past due balances shall be subject to an interest charge of 1.5% per month computed from the due date of each invoice previously issued, or the maximum rate legally permitted, whichever is less. Client shall pay any collection costs, including reasonable attorneys' fees, and other expenses incurred by FIVE POINTS to collect any sums due under this Agreement.
8. **GOVERNING LAW:** This Agreement shall be interpreted and governed by the laws of the State of Mississippi.
9. **ENTIRE AGREEMENT:** This Agreement, including any schedules or exhibits, or amendments thereto, constitutes the entire agreement between the parties relating to the subject matter hereof, and supersedes all other agreements between the parties relating to the matters discussed herein, whether written or verbal. Other than this Agreement, there are no verbal agreements, representations, warranties, undertakings or other agreements between the parties.

IN WITNESS WHEREOF, the parties have executed and delivered the foregoing Agreement, to be effective as of the day and year first above written.

FIVE POINTS ICT, INC:

By: _____

Name: _____

Title: _____

Date: _____

CLIENT:

By: _____

Name: _____

Title: _____

Date: _____

<remainder of page intentionally blank>

SCHEDULE A

Selected Services and Pricing:

Monthly Recurring Fees:

General Information

Option 1

# Users	550
Length of Contract (months)	12
Number of Portals Needed	1
Goods Shipping Location	MS

HR & Communication Apps

Core Communications App** ^	<input checked="" type="checkbox"/>
Survey App^	<input type="checkbox"/>
Education & Training App** ^	<input type="checkbox"/>
Online Paycheck Stub App** ^	<input type="checkbox"/>

Benefits Apps

Benefits App** ^	<input checked="" type="checkbox"/>
Benefits - Video Content ^	<input checked="" type="checkbox"/>
403(b)/401(k) Education Tracking^	<input type="checkbox"/>
Online Enrollment Platform** ^	<input checked="" type="checkbox"/>
Enrollment System Configuration	Ongoing Admin

Healthcare Apps & Services

Wellness App** ^	<input checked="" type="checkbox"/>
Wellness Management Service	<input type="checkbox"/>
eHealth Clinic ** ^	<input type="checkbox"/>
Rewards Tracking App** ^	<input checked="" type="checkbox"/>

Wholesale Pricing

Monthly, per user	\$	3.83
Annually - per user	\$	45.99
Multi-App Discount** Included		5%
Volume Discount ^ Included		0%
Length of Contract Discount Included		0%
Total Monthly Cost	\$	2,107.74

Online Enrollment Setup Fees (years 2 and 3, if necessary):

Setup of Online Enrollment App	Recurring monthly fees include online enrollment setup fees. Actual fees for subsequent years to be determined upon full discovery of product and vendor integration requirements.
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Video Production Fees (as needed):

Custom Video Production	\$50 per hour of production. Will only be required if custom benefits or training videos are requested.
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Schedule A, Cont'd
Description of Selected Services

Group Setup & Admin Training:

- Implementation guidance & support
- Customization, setup, and loading of users
- Admin training
- Custom communication package to promote the site to users

My Benefits Channel - Core Platform & Communications Services:

- Access to the Secure Communications App for all members
- Up to 5 administrators with videoconferencing hosting privileges
- Additional videoconferencing hosts for an added fee
- Setup, Training and Orientation on the system
- Technical support as needed

My Benefits App:

- Unlimited access to benefits documents for all members
- Benefits Videos:
 - Hosting for videos in the Benefits App
 - Unlimited access to benefits videos for all users
- Custom video production is available at a rate of \$50/hour

Wellness App:

- Unlimited access to a suite of wellness tools, including Health Assessments, Health Trackers, Customized Wellness Activities, Wellness Education, and Health Check Tools.
- Ability to import biometric data (additional processing fees may apply)
- Customized admin reporting available (additional processing fees may apply)

Rewards Tracking App:

- Setup, tracking, and online communication of rewards participation results for all members.
- Admin level participation summary reports, delivered up to once per month (upon request).
- For custom reporting needs, additional processing fees may apply.

Enrollment App:

- Access to complete benefit elections for all users during open enrollment period.
- Access to complete benefit elections for new hires throughout the plan year.
- Admin reports available in CSV or similar spreadsheet format
- Export file formats available to electronically share data with vendors.
- Custom data file formats available, setup fees may apply.

Billing Method:

- Setup fees are billed on a one-time basis as needed.
- Recurring fees are billed on a per user per month basis at the pricing shown on page 4.
- Fees are billed monthly, approximately 15 days prior to the beginning of the month. Fees for each month are due on the 1st of that month.
- Users are calculated using the number of accounts on My Benefits Channel with an "Active" status.

CLIENT ACKNOWLEDGMENT OF SCHEDULE A:

Signed: _____

Printed Name: _____

Date: _____