

ORDINANCE NO. _____

PROPOSED ORDINANCE NO. 21-008

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LAKE LAND, FLORIDA RELATING TO RETIREE HEALTHCARE EXPENSES; MAKING FINDINGS; AMENDING AND RESTATING THE CITY OF LAKE LAND HEALTH REIMBURSEMENT ARRANGEMENT PLAN; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Lakeland, Florida wishes to continue the City's Health Reimbursement Arrangement Plan (the "Plan") upon amended and restated terms and conditions, and with a new Trustee and Plan Supervisor, in order to provide former employees with an opportunity to receive reimbursement for certain eligible healthcare expenses; and

WHEREAS, the City Commission intends that the benefits provided and payable under the Plan be eligible for exclusion from the gross income of participants under the Internal Revenue Code;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAKE LAND, FLORIDA:

SECTION 1. The foregoing findings are true and correct and are hereby adopted and made a part hereof.

SECTION 2. The City of Lakeland's Health Reimbursement Arrangement Plan is hereby amended and restated in accordance with the following plan documents (the "Plan Documents"), which are hereby approved, incorporated herein by reference and adopted: (1) Trust Agreement by and between the City of Lakeland and Voya Institutional Trust Company, attached hereto as Exhibit "A"; (2) Total

Administrative Services Corporation Retiree Funded HRA Basic Plan Document, attached hereto as Exhibit “B”; (3) Trust Funded HRA Administration Agreement attached hereto as Exhibit “C”; (4) Total Administrative Services (TASC) Retiree Funded HRA Basic Plan Document Adoption Agreement attached hereto as Exhibit “D”; and (5) Business Associate Agreement attached hereto as Exhibit “E.”

SECTION 3. The City’s Director of Retirement Services is hereby authorized to execute each of the Plan Documents on behalf of the City of Lakeland.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5. If any word, sentence, clause, phrase or provision of this Ordinance, for any reason, is held to be unconstitutional, void or invalid, the validity of the remainder of this Ordinance shall not be affected thereby.

SECTION 6. This Ordinance shall take effect immediately upon its passage.

PASSED AND CERTIFIED AS TO PASSAGE this 1st day of March, A.D. 2021.

H. WILLIAM MUTZ, MAYOR

ATTEST: _____
KELLY S. KOOS, CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS: _____
PALMER C. DAVIS
CITY ATTORNEY

EXHIBIT "A"

TRUST AGREEMENT

by and between

City of Lakeland
and

Voya Institutional Trust Company

City of Lakeland Trust Agreement

THIS TRUST AGREEMENT, effective as of the 1st day of March, 2021 between City of Lakeland, Florida (the "Employer") in its corporate capacity and as the Plan Sponsor of the City of Lakeland, Florida Retiree Health Savings Plan Plan (the "Plan"), and Voya Institutional Trust Company (the "Trustee").

WITNESSETH:

WHEREAS, the Employer has adopted the Plan, which is intended to meet the requirements of Sections 105 and 106 of the Internal Revenue Code of 1986, as amended ("Code"), and other applicable guidance governing health reimbursement arrangements for the benefit of the employees therein described; and

WHEREAS, the Employer has established or desires to establish a trust constituting a part of the Plan, pursuant to which assets are held to provide for the funding of and payment of benefits under the Plan; and

WHEREAS, the Employer has the power to manage and control the assets of the Plan; and

WHEREAS, the Employer has elected to invest the assets of the Plan by means of an investment program (the "Program") offered by Voya Retirement Insurance and Annuity Company ("VRIAC") and in connection therewith, VRIAC provides investment services to the Plan; and

WHEREAS, the Employer wishes to appoint the Trustee as a trustee to the Plan solely with respect to the Program assets in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, the Employer and the Trustee, each intending to be legally bound, agree as follows:

SECTION 1 - ESTABLISHMENT AND OPERATION OF TRUST

1.1 **Appointment and Acceptance of Trustee.** The Employer hereby establishes with the Trustee a trust consisting of such sums of money and such other property acceptable to the Trustee as shall from time to time be paid or delivered to the Trustee, and hereby appoints the Trustee as trustee with respect to the assets invested through the Program and held pursuant to this Agreement as such assets shall exist from time to time (the "Fund"). For purposes of the Agreement, Plan assets invested through the Program in a self-directed brokerage account shall also be considered to be part of the Fund. The Fund shall be held by the Trustee in trust and dealt with in accordance with the provisions of this Agreement. The Fund shall not include any interest in any direct or indirect investments in real property, leaseholds, mineral interests or participations in a real estate investment trust or corporation organized under Section 501(c) or 501(c)(25) of the Code. The Trustee shall have no responsibility for any property until it is received and accepted by the Trustee, or for any property of the Plan not delivered to the Trustee and accepted by the Trustee to be a part of the Fund. The Trustee hereby accepts its appointment, acknowledges that it assumes the duties established by this Agreement, and agrees to be bound by the terms contained herein.

1.2 **Trustee Responsibilities.** The Trustee shall receive and hold the assets of the Fund in accordance with the terms of this Agreement. The duties of the Trustee hereunder are as a directed trustee and the Trustee shall act solely in accordance with the instructions of the Authorized Parties in accordance with Sections 2.2 and 2.3 of this Agreement ("Authorized Instructions"). Nothing in this Agreement is intended to give the Trustee any discretionary responsibility, authority or control with respect to the management or administration of the Plan or the management of the assets of the Plan. Further, the Trustee is not a party to the Plan and has no duties or responsibilities other than those that may be expressly contained in this Agreement. In any case in which a provision of this Agreement conflicts with any provision in the Plan, this Agreement shall control.

1.3 **Exclusive Benefit.** Except as may be permitted by law, by the terms of the Plan, or by this Agreement, at no time prior to the satisfaction of all liabilities with respect to participants and their beneficiaries under the Plan shall any part of the Fund be used for or diverted to any purpose other than for the exclusive benefit of the participants and their beneficiaries. The assets of the Fund shall be held for the exclusive purposes of providing benefits to participants of the Plan and their beneficiaries and defraying the reasonable expenses of administering the Plan and the Trust.

1.4 **Standard of Care.** The Trustee shall discharge its duties under this Agreement with the care and skill required under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with

such matters would use in the conduct of an enterprise of a like character and with like aims. The Trustee shall not be liable for any acts or omissions of another person other than the negligent acts or omissions of its own employees, agents or affiliates including VRIAC. The Trustee shall not be responsible for the title, validity or genuineness of any property or evidence of title thereto received by it or delivered by it pursuant to this Agreement and shall be held harmless in acting upon any notice, request, direction, instruction, consent, certification or other instrument reasonably believed by it to be genuine and delivered by the proper party or parties.

1.5 Contributions. The Trustee shall receive contributions or other amounts for deposit to the Plan that are delivered to the Trustee or its designated agent for deposit to or for the benefit of the Plan. The Employer shall have sole duty and responsibility for the determination of the accuracy or sufficiency of the contributions to be made under the Plan and for the transmittal of contributions or other amounts to the Plan. The Trustee shall have no duty or responsibility (a) to determine the amounts to be contributed to or transferred to the Plan or on behalf of the participants of the Plan, (b) to collect any contributions or transfers to the Plan or to enforce the collection of any such contributions or transfers, or (c) for the adequacy of amounts deposited to the Fund to meet and discharge any of the Plan's liabilities.

1.6 Return of Contributions. Notwithstanding any other provision of this Agreement contributions made by the Employer based upon mistake of fact may be returned to the Employer within one year of such contribution, provided that the return of contributions under this Section 1.6 may not violate any provision of the Plan and shall make such return plus any earnings to the Employer. The Trustee shall return contributions under this Section 1.6 only in accordance with Authorized Instructions and the Trustee shall have no duty to determine whether the return of such contributions is permitted under this Section 1.6 and the Plan. In the alternative, the Employer may reduce its contributions to the Plan for a subsequent year by contributions made by the Employer based upon a mistake of fact or law, with or without earnings thereon, to the extent that such reduction is permitted by law and by the terms of the Plan.

1.7 Distributions. The Trustee shall make distributions and disbursements from the Fund solely in accordance with Authorized Instructions. The Employer agrees that the Trustee shall not have any responsibility or duty under this Agreement to see to the proper application of any payment, to determine the tax effect of any payment, or to determine whether a distribution or disbursement to any person paid in accordance with Authorized Instructions is appropriate under the terms of the Plan and applicable law.

1.8 Compliance with Law. The Trust is intended to be tax-exempt under Section 115 of the Code. The Employer represents that the Trust qualifies as an integral part of the Employer's essential government function as required by Section 115 of the Code and that the Plan constitutes a health reimbursement arrangement under Code Sections 105 and 106 and as described in Notice 2002-45 and Revenue Ruling 2002-41. The Employer will advise the Trustee promptly if the Employer becomes aware of changes in the law that may affect its status as a 115 trust or health reimbursement arrangement as described herein.

SECTION 2 - AUTHORITIES

2.1 Authority to Execute Agreement. The Employer hereby certifies that it has the power and authority to enter into this Agreement on behalf of the Plan. The person(s) signing below as representatives of the Employer each warrant, as individuals, that each is an authorized representative of the Employer, all signatures are genuine and the persons indicated are authorized to sign.

2.2 Authorized Parties. The Plan Administrator shall concurrently with the execution of this Trust Agreement, furnish VRIAC, as the agent of the Trustee, with a written list of the names, signatures, and extent of authority of all persons authorized to direct the Trustee and otherwise act on behalf of the Plan Administrator under the terms of the Plan. Such persons designated by the Plan Administrator to act on its behalf hereunder are "Authorized Parties". The Trustee and VRIAC, shall be entitled to rely on and shall be fully protected in acting upon directions, instructions, and any information provided by an Authorized Party until notified in writing by the Plan Administrator of a change of the identity or extent of authority of an Authorized Party.

2.3 Authorized Instructions. All directions and instructions to the Trustee from an Authorized Party ("Authorized Instructions") shall be in writing, transmitted by mail (including electronic mail) or by facsimile. The Trustee shall be entitled to rely on and shall be fully protected in acting in accordance with all such directions and instructions which it reasonably believes to have been given by an Authorized Party and in failing to act in the absence thereof.

SECTION 3 - POWERS AND DUTIES

3.1 General Powers and Duties of Trustee. In administering the Trust, the Trustee shall be specifically authorized to:

(a) In accordance with Authorized Instructions, receive, hold and maintain custody of, and disburse Plan assets;

(b) Hold securities or other Plan property in book entry form or through another agent or nominee, including without limitation in an omnibus account arrangement, provided that the Trustee's records clearly indicate that such securities or other property are held for the exclusive benefit of the Plan and its participants and beneficiaries;

(c) Appoint domestic agents, sub-trustees, sub-custodians or depositories (including affiliates of the Trustee) as to part or all of the Fund, except that the indicia of ownership of any asset of the Fund shall not be held outside the jurisdiction of the District Courts of the United States unless in compliance with the standards of Section 404(b) of ERISA and regulations thereunder;

(d) Collect income payable to and dividends or other distributions due to the Fund and sign on behalf of the Plan any declarations, affidavits, and certificates of ownership required to collect income and principal payments;

(e) Collect proceeds from assets of the Fund that may mature or be called;

(f) Until Authorized Instructions are received, hold the assets of the Fund uninvested, or invest the assets of the Fund in bank accounts of any bank, and the Trustee may retain any earnings on such deposits as part of its compensation for services hereunder;

(g) Submit or cause to be submitted to the Employer all information received by the Trustee regarding ownership rights pertaining to property held in the Fund;

(h) Exercise all voting rights relating to securities held in the Fund as directed by the Employer;

(i) Commence or defend suits or legal proceedings and represent the Fund in all suits or legal proceedings in any court or before any other body or tribunal as the Trustee shall deem necessary to protect the Fund provided, however, that the Trustee shall not be obligated to do so unless it has been indemnified by the Employer and the Plan against all expenses and liabilities sustained in connection with such action;

(j) After providing notification to the Employer, employ suitable agents and legal counsel and, as part of its reimbursable expenses under this Agreement, pay their reasonable compensation and expenses. The Trustee shall be entitled to rely on and may act upon advice of counsel on all matters, and, if the use of such counsel is authorized by Employer, the Trustee shall be without liability for any action reasonably taken or omitted pursuant to such advice;

(k) Make, execute and deliver any and all documents, agreements or other instruments in writing as is necessary or desirable for the accomplishment of any of the powers and duties in this Agreement; and

(l) Generally take any action, whether or not expressly authorized, which the Trustee may deem necessary or desirable for the fulfillment of its duties hereunder.

SECTION 4 - INVESTMENT OF THE FUND

4.1 Investment of the Fund. The assets of the Fund shall be invested and reinvested among the investments selected by the Employer. The Employer shall have sole responsibility for the investment and reinvestment of the assets of the Fund, except to the extent that the Plan permits participants to instruct the Employer or its authorized representative with respect to the investment of their individual accounts among investment options selected by Employer. The Trustee shall have no duty or responsibility for (i) selecting or providing advice with respect to the selection of any investment options offered under the Plan, (ii) determining or reviewing any securities or other property purchased for or held by the Plan, or (iii) providing advice with respect to the purchase, retention, redemption, or sale of any securities or other property for the Plan. In the event the Employer has selected particular investment options offered through the Program into which Plan assets previously invested with another investment provider are to be placed (a procedure known as "mapping"), the Trustee shall bear no duty or responsibility for determining the suitability of the Program investment offerings selected for this purpose.

4.2 Investment Transactions. All investment transactions for the Fund shall be effected by the Trustee's sole responsibility therefore shall be to, solely in accordance with Authorized Instructions, (a) timely transmit trade instructions and funds for purposes of settling the Plan's investment transactions, (b) receive and hold title to securities purchased on the Plan's behalf, (c) cooperate in the transfer of securities or other property of the Plan in connection with the redemption or sale of securities or other property, and (d) collect proceeds received upon such redemptions or sales.

SECTION 5 - REPORTING AND RECORDKEEPING

5.1 Records and Reports. The Trustee shall keep accurate records of all amounts received to and disbursed from the Fund and the investments and other transactions of the Fund for at least six years following the date of such transaction. The Trustee shall provide a report of the assets of the Fund to the Employer from time to time, but at least annually. The Trustee may rely on the fair market value of the property of the Fund as reported by the recordkeeper and the Trustee shall be fully protected in relying on such values.

5.2 Review of Reports. If, within ninety (90) days after the Trustee mails to the Employer a statement with respect to the Fund, the Employer has not given the Trustee written notice of any exception or objection thereto, the statement shall be deemed to have been approved, and in such case the Trustee shall not be liable for any matters in such statements. The Employer or its agent, upon giving prior written notice to Trustee, shall have the right at its own expense to inspect the Trustee's books and records directly relating to the Fund during normal business hours. The Trustee shall be reimbursed its actual costs for making such books and records available for inspection.

5.3 Non-Fund Assets. The duties of the Trustee shall be limited to the assets held in the Fund, and the Trustee shall have no duties with respect to assets held by any other person including, without limitation, any other trustee for the Plan. The Employer hereby agrees that the Trustee shall not serve as, and shall not be deemed to be, a co-trustee under the circumstances, and shall have no co-fiduciary liability for any other person or trustee.

SECTION 6 - COMPENSATION, EXPENSES, TAXES, INDEMNIFICATION

6.1 Compensation and Expenses. The Trustee shall be entitled to compensation for services under this Agreement as set forth in the VRIAC plan services agreement or similar contract. The Employer acknowledges that the Trustee may increase the amount of compensation on an annual basis with sixty (60) days' prior written notice to the Employer. The Trustee shall also be entitled to receive as part of its compensation any amounts earned under Section 3.1(f) and to reimbursement for expenses incurred by it in the discharge of its duties under this Agreement in accordance with Section 3.1. The Trustee is authorized to charge and collect from the Fund any and all such fees and expenses, unless the Employer objects within 30 days of receiving notice of the Trustee's intent to collect its fees and expenses from the Fund.

6.2 Tax Obligations. To the extent an Authorized Party has provided necessary information to the Trustee, the Trustee shall use reasonable efforts to assist such Authorized Party to notify the Employer of any responsibility for payment of taxes, withholding, certification and reporting requirements, claims for exemptions or refund, interest, penalties and other related expenses of the Fund ("Tax Obligations"). Notwithstanding the foregoing, the Trustee shall have no responsibility or liability for any Tax Obligations now or hereafter imposed on the Employer or the Fund by any taxing authorities, domestic or foreign, except as provided by applicable law. To the extent the Trustee is responsible under any applicable law for payment of any Tax Obligation on behalf of the Fund or the Trust, the Employer shall cause the appropriate Authorized Party to inform the Trustee of all Tax Obligations, shall direct the Trustee with respect to the performance of such Tax Obligations, and shall provide the Trustee with all information required by the Trustee to meet such Tax Obligations.

6.3 Indemnification. The Employer, and to the extent permitted by the law, the Plan, shall indemnify and hold harmless the Trustee from all claims, liabilities, losses, damages and expenses, including reasonable attorney's fees and expenses (including Tax Obligations) incurred by the Trustee in connection with this Agreement, except as a result of the Trustee's own negligence or willful misconduct. This indemnification shall survive the termination of this Agreement.

6.4 Force Majeure. The Trustee shall not be responsible or liable for any losses to the Fund resulting from nationalization, expropriation, devaluation, seizure, or similar action by any governmental authority, de facto or de jure; or enactment, promulgation, imposition or enforcement by any such governmental authority of currency restrictions, exchange controls, levies or other charges affecting the Fund's property; or acts of war, terrorism, insurrection or revolution; or acts of God; or any other similar event beyond the control of the Trustee or its agents. This Section shall survive the termination of this Agreement.

SECTION 7 - AMENDMENT, TERMINATION, RESIGNATION, REMOVAL

7.1 Amendment. The Trustee may amend this Agreement as necessary to comply with the provisions of applicable law and regulations. The Trustee shall deliver written notice of any such amendment to the Named Fiduciary. Other amendments may be made by written agreement signed by the parties hereto.

7.2 Removal or Resignation of Trustee. The Trustee may be removed with respect to all or part of the Fund upon receipt of sixty (60) days' written notice from the Employer. The Trustee may resign as Trustee hereunder upon sixty (60) days' written notice delivered to the Employer. In the event of such removal or resignation, the successor trustee will be appointed by the Employer, and the retiring Trustee shall transfer the Fund, less such amounts as may be reasonable and necessary to cover its compensation and direct expenses including but not limited to, a pro-rata share of the fees described in Section 6.1. In the event the Employer fails to appoint a successor trustee within sixty (60) days of receipt of written notice of resignation, the Trustee reserves the right to seek the appointment of a successor trustee from a court of competent jurisdiction. The Employer shall indemnify the Trustee from any costs incurred by the Trustee in seeking such appointment. The Trustee shall have no duties, responsibilities or liability with respect to the acts or omissions of any successor trustee.

7.3 Merger or Consolidation of Trustee. Any entity into which the Trustee may be merged or with which it may be consolidated, or any entity resulting from any merger or consolidation to which the Trustee is a party, or any entity succeeding to the trust business of the Trustee, shall become the successor of the Trustee hereunder, without the execution or filing of any instrument or the performance of any further act on the part of the parties hereto.

7.4 Plan Termination. Upon termination of the Plan, the Trustee shall distribute all assets then constituting the Fund, less any fees and expenses payable from the Fund, pursuant to the written instructions of the Employer. The Trustee shall be entitled to assume that such distributions are in full compliance with and not in violation of the terms of the Plan or any applicable law.

7.5 Property Not Transferred. The Trustee reserves the right to retain such property as is not suitable for distribution or transfer at the time of the termination of the Plan or this Agreement and shall hold such property for the benefit of those persons or other entities entitled to such property until such time as the Trustee is able to make

distribution. The Employer shall indemnify the Trustee from any costs incurred by the Trustee for retaining the property until it can be distributed. Upon the appointment and acceptance of a successor trustee, the Trustee's sole duties shall be those of a custodian with respect to the property not transferred.

7.6 **Termination of Administrative Services Agreement or Investment Agreement.** Notwithstanding the notice requirements in Section 7.2, in the event the Administrative Services Agreement between the Employer and/or the Named Fiduciary and the Recordkeeping Affiliate is terminated, this Agreement shall terminate simultaneously with the termination of the Administrative Services Agreement without further notice from any party hereunder to the others. For purposes of this section, the Investment Agreement, if applicable, shall be subject to the terms of this section in addition to or in the absence of an Administrative Services Agreement.

SECTION 8 - ADDITIONAL PROVISIONS

8.1 **Assignment or Alienation.** Except as may be provided by law, the Fund shall not be subject to any form of attachment, garnishment, sequestration or other actions of collection afforded creditors of the Employer, participants or beneficiaries under the Plan. The Trustee shall not recognize any assignment or alienation of benefits unless an Authorized Instruction is received.

8.2 **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida, to the extent not preempted by Federal law, but the Plan assets shall be held in the State of Connecticut.

8.3 **Necessary Parties.** The Trustee reserves the right to seek a judicial or administrative determination as to its proper course of action under this Agreement. Nothing contained herein will be construed or interpreted to deny the Trustee or the Employer the right to have the Trustee's account judicially determined. To the extent permitted by law, only the Trustee and the Employer shall be necessary parties in any application to the courts for an interpretation of this Agreement or for an accounting by the Trustee, and no participant under the Plan or other person having an interest in the Fund shall be entitled to any notice or service of process. Any final judgment entered in such an action or proceeding shall, to the extent permitted by law, be conclusive upon all persons. The Employer shall indemnify the Trustee for any costs incurred by the Trustee in seeking such judgment.

8.4 **Notices.** All notices and other communications hereunder shall be in writing and shall be sufficient if delivered by hand or if sent by telefax or mail (including electronic mail), postage prepaid, addressed:

(a) If to the Trustee:

J. Denise Jackson
President
Voya Institutional Trust Company
One Orange Way
Windsor, Connecticut 06095

(b) If to the Employer:

Cherie Watson
500 N. Lake Parker
Lakeland, FL 33801

The parties may by like notice, designate any future or different address to which subsequent notices shall be sent. Any notice shall be deemed given when received.

8.5 **No Third Party Beneficiaries.** The provisions of this Agreement are intended to benefit only the parties hereto, their respective successors and assigns, and participants and their beneficiaries under the Plan. There are no other third party beneficiaries.

8.6 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and said counterparts shall constitute but one and the same instrument and may be sufficiently evidenced by one counterpart.

8.7 Shareholder Communication. Until such time as the Trustee receives a written notice to the contrary with respect to a particular security, the Trustee may release the identity and the address of the Trust to the security issuer which requests such information pursuant to the Shareholder Communications Act of 1985 for the specific purpose of the direct communication between such security issuer and shareholder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the effective date set forth above.

City of Lakeland, Florida

By: _____

Name: _____

Title: _____

Voya Institutional Trust Company

By: _____

Name: _____

Title: _____

EXHIBIT "B"

**TOTAL ADMINISTRATIVE SERVICES CORPORATION
RETIREE FUNDED HRA
BASIC PLAN DOCUMENT**



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ARTICLE I. INTRODUCTION

- 1.1 **Establishment.** An executed Adoption Agreement plus this Basic Plan Document constitute the "Plan" for an Adopting Employer. The Effective Date of the Plan is set forth in the Adoption Agreement.
- 1.2 **Purpose.** The purpose of the Plan is to provide certain former Employees with an opportunity to receive reimbursement for certain Eligible Expenses as provided in this Plan. It is the intention of the Adopting Employer that the benefits provided and payable under this Plan be eligible for exclusion from the gross income of Participants as provided by Sections 105(b) and 106 of the Code. In addition, it is the intention of the Adopting Employer that the Plan qualify as a Health Reimbursement Arrangement ("HRA") under IRS Revenue Ruling 2002-41 (June 26, 2002) and IRS Notice 2002-45 (June 26, 2002).
- 1.3 **HIPAA Privacy and Security Rules.** This Plan is a "covered entity" for purposes of the Privacy Rules and Security Rules as described in greater detail in Article VIII below.
- 1.4 **Not ERISA Plan.** This Plan is not an employee welfare benefit plan for purposes of ERISA.
- 1.5 **Trust.** This Plan is funded through a Trust, reflected in a separate document.

ARTICLE II. DEFINITIONS

The following words and phrases are used in this Plan and shall have the meanings set forth in this Article unless a different meaning is clearly required by the context or is defined within an Article.

- 2.1 **Adopting Employer** means a state or political subdivision thereof that adopts this Plan by completing and executing an Adoption Agreement, which may include a joint powers agreement.
- 2.2 **Adoption Agreement** means the separate agreement, or portions thereof, completed and executed by an Adopting Employer setting forth the Adopting Employer's selection of options under the Plan.
- 2.3 **Authorized Representative** means, for the claims and appeal procedures, the person entitled to act on behalf of the claimant with respect to a benefit claim or appeal. In order for the Plan to recognize a person as an Authorized Representative, written notification to that effect signed by the claimant and notarized must be received by the Plan. An assignment for purposes of payment is *not* designation of an "Authorized Representative."
- 2.4 **Basic Plan Document** means this document, which together with an executed Adoption Agreement constitutes the Plan for an Adopting Employer.
- 2.5 **Claims Run-out Period** means the period of time (as indicated in Section 5.3) during which a Participant may submit claims to the Plan for Eligible Expenses.
- 2.6 **Code** means the Internal Revenue Code of 1986, as amended from time to time.
- 2.7 **Covered Individual** means a Participant, Dependent of a Participant and the Spouse of a Participant, and any other person appropriately covered under the Plan.
- 2.8 **Dependent** means an individual (other than the Participant and the Participant's Spouse) with respect to whom amounts expended for medical care are excluded from the Participant's gross income under Section 105(b) of the Code, as amended.
- 2.9 **Eligible Expense** means a Health Care Expense or a Limited Scope Health Care Expense.
- 2.10 **Employee** means any person employed by the Adopting Employer and on the Employer's W-2 payroll on or after the Effective Date, except that it shall not include:
- (a) Any self-employed individual as described in Section 401(c) of the Code;
 - (b) Any employee included within a unit of employees covered by a collective bargaining unit unless such agreement expressly provides for coverage of the employee under this Plan;
 - (c) Any employee who is a nonresident alien and receives no earned income from the Adopting Employer from sources within the United States;
 - (d) Any employee who is a leased employee as defined in Section 414(n)(2) of the Code;
 - (e) An individual classified by the Employer as a contract worker, independent contractor, temporary employee, or casual employee, whether or not any such persons are on the Employer's W-2 payroll or are determined by the IRS or others to be common-law employees of the Employer; or

- (f) Any individual who performs services for the Employer but who is paid by a temporary or other employment or staffing agency such as "Kelly," "Manpower," etc., whether or not such individuals are determined by the IRS or others to be common-law employees of the Employer.

All employees who are treated as employed by a single employer under subsections (b), (c) or (m) of Section 414 of the Code are treated as employed by a single employer for purposes of this Plan. Employee also includes any elected official of the Employer employed by the Employer on or after the Effective Date.

- 2.11 **Employer Contribution** means a non-elective contribution made by the Adopting Employer on behalf of each Participant in the Plan. The Employer Contribution is an amount that has not been actually or constructively received by the Participant, and it is made available to the Participant exclusively for reimbursement under the Plan. Employer Contributions may include mandatory salary reduction contributions.
- 2.12 **Entry Date** means the date as of which an Employee becomes a Participant in this Plan, which shall be the date on which the Employee satisfies the eligibility requirements set forth in Section 4.1.
- 2.13 **ePHI** means PHI maintained or transmitted in electronic media, including, but not limited to, electronic storage media (i.e., hard drives, digital memory medium) and transmission media used to exchange information in electronic storage media (i.e., internet, extranet, and other networks). PHI transmitted via facsimile and telephone is not considered to be transmissions via electronic media.
- 2.14 **ERISA** means the Employee Retirement Income Security Act of 1974 and regulations thereunder, as amended from time to time. Plans sponsored by public sector entities are not subject to ERISA.
- 2.15 **HC Account** means "health care account" and is the record keeping account established under the Plan for each Participant.
- 2.16 **Health Care Expense** means as defined in the Adoption Agreement, provided it is defined no more broadly than the description in IRS Revenue Ruling 2002-41 and IRS Notice 2002-45. Notwithstanding the foregoing, if the Adopting Employer sponsors a cafeteria plan, Health Care Expense shall not include premiums that may be paid on a pre-tax basis in accordance with the terms of such cafeteria plan, which may include premiums for major medical coverage provided by the Employer and premiums for coverage under an insurance contract, health maintenance organization agreement, or other benefit agreement providing coverage issued on a non-group, individual basis. To the extent Health Care Expense is defined in the Adoption Agreement to include premiums for qualified long-term care insurance, the amount of such premium that will qualify as a Health Care Expense shall be limited to the portion that constitutes "eligible long-term care premiums" as defined in Section 213(d)(10) of the Code. "Health Care Expense" may include over-the-counter drugs and medicine (other than insulin) only if such drug or medicine has been prescribed, as required by Section 106(f) of the Code.
- 2.17 **HIPAA** means the Health Insurance Portability and Accountability Act of 1996 and regulations thereunder, as amended from time to time.
- 2.18 **Health Reimbursement Arrangement ("HRA")** means an employer funded medical reimbursement program within the meaning of IRS Revenue Ruling 2002-41 (June 26, 2002) and IRS Notice 2002-45 (June 26, 2002).

- 2.19 **Highly Compensated Individual** means an individual who is (1) one of the 5 highest paid officers, or (2) among the highest paid 25 percent of all Employees, except (i) Employees who have not completed 3 years of service, (ii) Employees who have not attained age 25, (iii) part-time or seasonal Employees, (iv) Employees not included in the plan who are included under a collective bargaining agreement, and (v) Employees who are nonresident aliens and who receive no earned income from a source within the United States.
- 2.20 **Limited Scope Health Care Expense** means a Health Care Expense for dental or vision care and, if provided in the Adoption Agreement, a Post-Deductible Expense. "Limited Scope Health Care Expense" may include over-the-counter drugs and medicine only if such drug or medicine has been prescribed, as required by Section 106(f) of the Code.
- 2.21 **Managing Body** means the person or persons with authority to make decisions for the Adopting Employer.
- 2.22 **Minimum Annual Deductible** means the applicable minimum annual deductible for a high deductible health plan under Section 223(c)(2)(A)(i) of the Code. If the Participant and/or the Participant's Spouse or Dependent has something other than single coverage under the high deductible health plan, then the minimum annual deductible provided under Code Section 223(c)(2)(A)(i) for family coverage applies; if neither the Participant nor the Participant's Spouse or Dependents has something other than single coverage under the high deductible health plan, then the minimum annual deductible provided under Code Section 223(c)(2)(A)(i) for single coverage applies.
- 2.23 **Participant** means an Employee who has become and not ceased to be a Participant pursuant to Article IV. In addition, Participant includes persons "deemed" to be Participants under a specific provision of this Plan.
- 2.24 **PHI** means health information that:
- (a) Is created or received by a health care provider, health plan, or health care clearinghouse;
 - (b) Relates to the past, present, or future physical or mental health or condition of an individual (including "genetic information" as that term is defined in the Genetic Information Nondiscrimination Act of 2008); the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
 - (c) Either identifies the individual or reasonably could be used to identify the individual.
- 2.25 **Plan** means the Adopting Employer's Plan as may be amended from time to time. It consists of a completed Adoption Agreement plus the Basic Plan Document.
- 2.26 **Plan Administrator** means the entity, person or persons determined under Section 9.1.
- 2.27 **Plan Supervisor** means Total Administrative Services Corporation designated by and under contract with the Plan Administrator to perform certain administrative functions, including, but not limited to, claims administration and recordkeeping.
- 2.28 **Plan Year** means the twelve (12) month period beginning and ending as indicated in the Adoption Agreement. The initial Plan Year may be a "short" Plan Year beginning and ending as indicated in the Adoption Agreement. The records of the Plan will be kept based upon the Plan Year.

- 2.29 **Post-Deductible Expense** means a Health Care Expense that is incurred after the Minimum Annual Deductible has been satisfied by the Participant and, if applicable, the Participant's family.
- 2.30 **Privacy Rules** means the *Standards of Privacy of Individually Identifiable Health Information* at 45 C.F.R. part 160 and part 164 at subparts A and E.
- 2.31 **Security Incident** means "security incident" as defined in 45 C.F.R. Section 164.304, which generally defines "security incident" to include attempted or successful unauthorized access, use, disclosure, modification, or destruction of ePHI.
- 2.32 **Security Rules** means the Security Standards and Implementation Specifications at 45 C.F.R. Part 160 and Part 164, subpart C.
- 2.33 **Sponsor** means the Adopting Employer.
- 2.34 **Spouse** means an individual who is legally married to a Participant and who is treated as a "spouse" under the Code.
- 2.35 **Trust** means the trust identified in the Adoption Agreement, created for the purpose of accepting and holding Employer Contributions, and limited other contributions, made under the Plan.
- 2.36 **Trustee** means the person or persons identified as a "Trustee" under the Trust.

**ARTICLE III.
ADOPTING EMPLOYER**

- 3.1 **Adoption of Plan.** The Adopting Employer may adopt the Plan by resolution duly adopted by its Managing Body, as represented and warranted in the Adoption Agreement, and upon execution of an Adoption Agreement.
- 3.2 **Cessation of Employer Participation.** The Adopting Employer may cease to be an Adopting Employer in accordance with Article X.
- 3.3 **Recordkeeping and Reporting.** The Adopting Employer shall furnish, or arrange for the furnishing, to the Plan Supervisor the information with respect to each Covered Individual necessary to enable the Plan Supervisor to maintain records sufficient to determine the benefits due to or which may become due and to prepare and provide any reports required by law.

**ARTICLE IV.
ELIGIBILITY AND PARTICIPATION OF EMPLOYEES**

- 4.1 **Eligibility Requirements.** Each Employee shall be eligible to participate in this Plan upon meeting the eligibility requirements set forth in the Adoption Agreement.
- 4.2 **Participant Status.** An Employee who has met the eligibility requirements described in Section 4.1 shall become a Participant as of the Employee's Entry Date. Becoming a Participant does not necessarily mean the Participant may receive benefits under the Plan. See Section 5.4 for more information.
- 4.3 **Conditions of Participation.** As a condition of participation and receipt of benefits under this Plan, the Participant agrees to:
- (a) Observe all Plan rules and regulations;
 - (b) Consent to inquiries by the Plan Supervisor and Plan Administrator with respect to any provider of services involved in a claim under this Plan;
 - (c) Submit to the Plan Administrator all notifications, reports, bills, and other information required by the Plan or which the Plan Supervisor and Plan Administrator may reasonably require; and
 - (d) Cooperate with all reasonable requests of the Plan Supervisor and Plan Administrator that may be necessary for the proper administration of the Plan.

Failure to do so relieves the Plan, Plan Administrator, Plan Supervisor, Adopting Employer, and Sponsor of any obligations under this Plan with respect to that Participant and any others claiming entitlement to benefits under this Plan through that Participant and shall result in the termination of the Participant's participation in the Plan.

- 4.4 **Coverage Options.** The Plan consists of one or more of the following coverage options as described below.
- (a) One or more of the following coverage options, as indicated in the Adoption Agreement, are available under the Plan:
 - (i) **Full Scope Option.** Participants may receive reimbursement for Health Care Expenses incurred by themselves and their Spouses and Dependents.
 - (ii) **Limited Scope Option.** Participants may receive reimbursement for only Limited Scope Health Care Expenses incurred by themselves and their Spouses and Dependents.
 - (iii) **Suspended Account Option.** Participants may receive no reimbursements from their HC Accounts. However, the balance of the Participant's HC Account will be preserved for use in subsequent Plan Years.
 - (b) Participants will be covered under the "Full Scope Option" unless the Participant elects in writing and in a manner specified by the Plan Administrator to participate in another available coverage option. Notwithstanding the foregoing, if provided in the Adoption Agreement, Participants enrolled in a high deductible health plan (as defined in Section 223 of the Code) sponsored by the Adopting Employer shall automatically be enrolled in

the coverage option specified in the Adoption Agreement. If an election of coverage options is required, such an election shall be effective on a Plan Year basis, shall be made prior to the beginning of the Plan Year, shall be irrevocable during the Plan Year, and shall automatically renew for subsequent Plan Years unless the Participant makes an election (in the manner specified above) to participate in a different coverage option for such subsequent Plan Year. Notwithstanding the foregoing, the Plan Administrator may allow an election of a coverage option mid-year when a Participant enters the Plan mid-Plan Year, the Plan is amended mid-Plan Year to include an additional coverage option, or the Adopting Employer makes changes to its group medical plan (e.g., adds a high deductible health plan) mid-Plan Year.

- (c) If a Participant changes coverage options, the following rules apply with respect to claims for reimbursement under the Plan:
- (i) Expenses will be eligible for reimbursement under the Plan in accordance with the coverage option in which the Participant is enrolled at the time the expense is incurred. For example, if a Participant who is enrolled in the "Limited Scope Option" incurs an expense for something other than a Limited Scope Health Care Expense, that expense cannot be reimbursed under the Plan at any time in the future (e.g., if the Participant subsequently becomes covered under the "Full Scope Option").
 - (ii) Notwithstanding the foregoing, a Health Care Expense incurred while the Participant is covered under the "Full Scope Option" will not be reimbursed if the claim for such expense is submitted after the Participant has become covered under another coverage option and such expense is not reimbursable under the new coverage option. For example, if a Participant incurs an expense for something other than a Limited Scope Health Care Expense while covered under the "Full Scope Option," that expense cannot be reimbursed if the claim is submitted after the Participant becomes covered under the "Limited Scope Option."

4.5 **Waiver of Participation.** A Participant may elect to permanently waive future participation in and reimbursements under this Plan (the "opt out election"). The opportunity to make an opt out election will be made available annually and upon termination of the Participant's employment with the Adopting Employer. An opt out election shall be made in accordance with procedures established by the Plan Administrator. If the opt out election is made during the election opportunity provided annually, the opt out election will be effective as of the last day of the Plan Year in which it is made. If the opt out election is made during the election opportunity provided upon termination of employment, the opt out election will be effective on the date on which the Participant's employment with the Adopting Employer terminates. If a Participant makes an opt out election, no reimbursements will be provided by the Plan to that Participant for Eligible Expenses incurred after the effective date of the opt out election. However, unless otherwise prohibited by applicable law (including regulatory guidance), a Participant making an opt out election may continue to submit claims for Eligible Expenses incurred prior to the effective date of the opt out election until the close of the applicable claim Claims Run-out Period.

4.6 **Termination of Contributions.** Unless provided otherwise in the Adoption Agreement, a Participant shall cease to be eligible to receive contributions under this Plan at midnight of the earliest of the following dates:

- (a) The date of the death of the Participant;

- (b) The date of termination of the Participant's employment with the Adopting Employer;
- (c) The date of the Participant's failure to meet the eligibility requirements of Section 4.1, as may be amended from time to time in accordance with Article X; or
- (d) The date of termination of the Plan in accordance with Article X.

Termination of contributions under this Plan shall not prevent a former Participant from receiving continuation coverage required by applicable law.

4.7 **Termination of Participation.** A Participant automatically ceases to be a Participant at midnight of the earliest of the following dates:

- (a) The date of the death of the Participant;
- (b) The date the balance of the Participant's HC Account reaches zero, if no further contributions will be made to said account under Article VI; or
- (c) The date of termination of the Plan in accordance with Article X.

Participation may also terminate for cause, including for failing to comply with the conditions of participation described in Section 4.3 and/or for making fraudulent or improper claims. In certain cases, if participation is terminated for cause, the Participant's coverage may be terminated retroactively to the date on which the event giving rise to the cause occurred. Termination of participation in this Plan shall not prevent a former Participant from receiving continuation coverage required by applicable law.

4.8 **Deemed Participants.** For certain purposes, persons that were not Employees are deemed to be Participants as required by law.

**ARTICLE V.
BENEFITS UNDER THE PLAN**

- 5.1 **Benefits.** The Plan shall reimburse Eligible Expenses in accordance with Section 4.4 and this Article V.
- 5.2 **Health Care ("HC") Account.** The HC Account will be credited with the Employer Contribution. A Participant's HC Account will be decreased from time to time in the amount of payments made to the Participant for Eligible Expenses.
- 5.3 **Claims for Benefits.** Benefits under the Plan may be obtained as follows:
- (a) **Paper Claims.** A Participant may make a claim for reimbursement under this Plan by completing a claim form and submitting to the Plan Supervisor the claim form and such other information, including a third party statement, as is necessary to establish that an Eligible Expense has been incurred and the amount of the expense. The Plan Supervisor is entitled to rely on the information provided on the claim form in processing claims under this Plan. A claim must be submitted for payment within the time period indicated in the Adoption Agreement. Where circumstances beyond the Participant's control prevent submission within the described time frame, notice of a claim with an explanation of the circumstances may be accepted by the Plan Supervisor as a timely filing. Claims shall be determined in accordance with Article VII.
 - (b) **Automatic Reimbursement of Recurring Claims.** The Plan provides for automatic reimbursements of insurance premiums that qualify as Eligible Expenses. To receive automatic reimbursements as provided herein, the Participant must complete and return a form to the Plan Supervisor electing to do so. A Participant must submit the first claim incurred during a particular Plan Year pursuant to the standard paper claim procedures described above. Subsequent to the reimbursement of that claim, the Plan Supervisor will automatically reimburse an amount equal to the amount of the first claim at the appropriate payment interval without submission of an additional paper claim. For purposes of this provision, the appropriate payment interval shall be the time period reflected in the first claim for which the services of coverage was provided (e.g., weekly, monthly, quarterly, etc.). Notwithstanding anything herein to the contrary, reimbursements for recurring claims shall be made only after the Eligible Expense was incurred (i.e., after the coverage as provided). In the event the amount of the Eligible Expense or the identity of the insurance carrier changes, the Participant must submit a paper claim with respect to the new amount or insurance carrier.
 - (c) **Electronic Payment Cards.** If provided in the Adoption Agreement, a Participant may receive reimbursement of an Eligible Expense by use of an electronic payment card at the time the Eligible Expense is incurred. The use of the electronic payment card shall be subject following conditions:
 - (1) The Participant must make an affirmative election to use the electronic payment card in accordance with procedures established by the Plan Supervisor.
 - (2) The electronic payment card will be deactivated when a Participant's participation in the Plan terminates.
 - (3) A Participant agrees through the use of the electronic payment card that:

- (i) the electronic payment card will be used only for Eligible Expenses that have not been reimbursed under any other plan covering similar benefits; and
- (ii) the Participant will not seek reimbursement for any expense paid with the electronic payment card under any other plan covering benefits.

The electronic payment card shall include a statement providing that each use of the card shall constitute a reaffirmation of the certification.

- (4) The electronic payment card may be used only at merchants who are health care providers (e.g., doctor's office, hospital, pharmacy, etc.) or other merchants identified in applicable IRS guidance.
- (5) Each time the electronic payment card is used, a Participant shall obtain and retain a third party statement from the health care provider containing the information necessary to substantiate that the expense paid by the card was an Eligible Expense.
- (6) A electronic payment card transaction shall be substantiated if one of the following conditions is satisfied:
 - (i) The Participant provides, upon request by the Plan Supervisor (or its designee), a third party statement with respect to the transaction.
 - (ii) The payment was made to a merchant who is a health care provider and it matches a specific co-payment the Participant has under a group medical or group dental plan sponsored by the Sponsor or a multiple of that co-payment of not more than five (5) times the dollar amount of the co-payment.
 - (iii) The payment was made to a merchant who is a health care provider and is for an expense with the same amount, duration, and health care provider as a previously approved Eligible expense under this Plan.
 - (iv) The payment was made to a merchant who is a health care provider and the electronic claim file with respect to the expense is accompanied by an electronic or written confirmation from the health care provider that verifies the nature and amount of the expense and that the expense is an Eligible Expense.
 - (v) The electronic payment card is used at a merchant (of any kind) that participates in an inventory information approval system developed by the card provider that verifies, at the time of purchase, that the goods being purchased constitute medical care.
- (7) Special rules apply to the use of the electronic payment card to purchase over-the-counter drugs and medicines other than insulin. Notwithstanding the rules described above regarding the use of the card to purchase medical care, the card may be used to purchase such over-the-counter drugs and medicines only in the following circumstances:
 - (i) At any 90% pharmacy if the expense is substantiated after the purchase

in accordance with paragraph (6)(i) above.

- (ii) At drug stores, pharmacies, non-health care merchants that have pharmacies, and mail order or web-based merchants that sell prescription drugs if (a) the cardholder presents the prescription to the pharmacist; (b) the pharmacist assigns a prescription number and dispenses the over-the-counter drug or medicine in accordance with applicable law; (c) the pharmacy retains a record of the transaction, including the name on prescription, prescription number, date, and the amount of the purchase; (d) the pharmacy's records are accessible by the employer or its agent; (e) the debit card system does not allow over-the-counter drugs or medicines without a prescription number; and (f) the expense is substantiated in accordance with the standard rules described above in paragraph (6).
 - (iii) At merchants having healthcare related merchant codes (other than merchants described in item ii above) if the expense is substantiated in accordance with the standard rules described above in paragraph (6).
- (8) A Participant shall repay the Plan for an electronic payment card payment for any transactions that are not substantiated as required above. The Plan shall handle unsubstantiated claims as required under the Code and applicable regulations.
 - (9) The use of an electronic payment card does not constitute a "claim" under the claims procedures contained in Article VII.

5.4 **Incurred Expenses.** An expense is "incurred" when the Participant is provided with the care giving rise to the Eligible Expense, not when the service is billed or paid. Reimbursement shall not be made for future projected expenses. To be reimbursable, the Participant must have incurred an Eligible Expense after his/her Entry Date. In addition, the Participant must have incurred the Eligible Expense after his/her employment with the Adopting Employer has terminated. Notwithstanding the foregoing, if a Participant with an HC Account balance is rehired by the Adopting Employer after having terminated employment, then any Eligible Expenses incurred by the Participant (or the Participant's Spouse or Dependents) during the Participant's period of reemployment by the Adopting Employer shall not be eligible for reimbursement under the Plan. The restriction on reimbursements described in the preceding sentence shall apply regardless of: (1) the length of the period of time between the initial separation from service and the reemployment; (2) the nature of the Participant's employment upon rehire (e.g., whether the Participant is rehired on part-time, temporary, seasonal, etc. basis); and (3) any other factor (e.g., vesting status, the number of hours per week the Participant is reemployed to work, etc.). Upon such reemployed Participants subsequent termination of employment with the Adopting Employer, the Participant shall again become eligible to receive reimbursements from his or her HC Account for Eligible Expenses incurred after his or her reemployment ends.

5.5 **Timing of Reimbursement.** Participants shall be reimbursed weekly.

5.6 **Maximum Reimbursement.** The maximum reimbursement a Participant may receive at any time shall be the amount of the Participant's HC Account balance at the time the reimbursement request is processed. The maximum reimbursement requirements apply to the Participant, Spouse, and Dependents on an aggregate basis, not an individual basis. If a Participant's claim is for an amount that is more than the Participant's current HC Account balance, the excess, unreimbursed part of the claim will be carried into the subsequent month(s), to be paid as the balance of the Participant's HC Account becomes adequate. Notwithstanding the foregoing, the excess,

unreimbursed portion of a claim will not be carried over into the subsequent month(s) if no further contributions will be made to the Participant's HC Account under Article VI.

5.7 **Death of a Participant.**

- (a) Notwithstanding anything herein to the contrary, in the event a Participant's participation in the Plan terminates because of the Participant's death, the Participant has no surviving Spouse or Dependents, and the former Participant incurred a Eligible Expense prior to the Participant's death that would have been reimbursable out of the Participant's HC Account but that has not been submitted for reimbursement, the deceased Participant's estate may submit such Eligible Expense for reimbursement in accordance with Section 5.3. A certified copy of the deceased Participant's death certificate and proof that the person acting upon behalf of such Participant's estate has authority to do so must be submitted with such claims.
- (b) Notwithstanding anything herein to the contrary, the deceased Participant's surviving Spouse, if any, may continue to access the Participant's HC Account for purposes of obtaining reimbursement of Eligible Expenses until the earlier of: (1) the date on which the HC Account balance reaches zero; or (2) the date on which the surviving Spouse dies. No claim shall be paid to a surviving Spouse pursuant to this subsection (b) unless a certified copy of the deceased Participant's death certificate has been provided to the Plan Supervisor. If continuation coverage is required by applicable law, the access described in this Section 5.7(b) shall be provided only if offered as and selected in lieu of such continuation coverage.
- (c) Notwithstanding anything herein to the contrary, the deceased Participant's surviving Dependents, if any, may continue to access the Participant's HC Account for purposes of obtaining reimbursement of Eligible Expenses until the earlier of: (1) the date on which the HC Account balance reaches zero; or (2) the date the last surviving Dependent dies. No claim shall be paid to a surviving Dependent pursuant to this subsection (c) unless a certified copy of the deceased Participant's death certificate has been provided to the Plan Supervisor. If continuation coverage is required by applicable law, the access described in this Section 5.7(c) shall be provided only if offered as and selected in lieu of such continuation coverage.
- (d) Notwithstanding anything in the Plan to the contrary, if provided in the Adoption Agreement, upon a Participant's death, the Participant's Designated Beneficiary may continue to access the Participant's HC Account for purposes of obtaining reimbursement of Eligible Expenses incurred by the Designated Beneficiary if the Participant is not survived by a Spouse or Dependent. Such access shall be provided until the earlier of: (1) the date on which the HC Account balance reaches zero; or (2) the date on which the Designated Beneficiary dies. No claim shall be paid to a Designated Beneficiary unless a certified copy of the deceased Participant's death certificate has been provided to the Plan Supervisor and the Designated Beneficiary has certified that the Participant does not have a surviving Spouse or Dependent. Reimbursements paid to a Designated Beneficiary shall be reported as taxable income to the Designated Beneficiary to the extent required by law. For purposes of the Plan, a "Designated Beneficiary" is a person designated by a Participant as his/her beneficiary in accordance with the procedures established by the Plan Supervisor for doing so. A Participant may designate one or more contingent Designated Beneficiaries who will become a Designated Beneficiary if the primary Designated Beneficiary predeceases the Participant. An individual who is the Participant's Spouse or Dependent is not a Designated Beneficiary even if the Participant has attempted to designate his/her Spouse or Dependent as a beneficiary.

- 5.8 **Nondiscrimination.** This Plan is intended to be nondiscriminatory and to meet the requirements under applicable sections of the Code. If the Plan Administrator determines before or during any Plan Year, that the Plan may fail to satisfy any nondiscrimination requirement imposed by the Code or any limitation on benefits provided to Highly Compensated Individuals, the Plan Administrator shall take such action as the Plan Administrator deems appropriate, under rules uniformly applicable to similarly situated Participants, to assure compliance with such requirements or limitation.
- 5.9 **HC Account Forfeitures.** Any amount remaining in a Participant's HC Account shall be forfeited following the later to occur of: (1) the termination of Participant's participation in the Plan (including, but not limited to, the Participant's election to opt out under Section 4.5), (2) the termination of any continuation coverage provided by the Plan under applicable law, or (3) the termination of any coverage provided by the Plan in lieu of continuation coverage required by applicable law; provided that where participation or coverage is terminated because of the death of the Participant, forfeiture shall not occur until the expiration of the time period contained in Section 5.3 for the submission of claims. Notwithstanding the forgoing, a Participant's HC Account shall also be forfeited if: (i) the balance of the HC account is less than \$25, (ii) no further contributions shall be made to the HC Account, and (iii) no claim has been submitted by the Participant for a period of six (6) months. In addition, the portion of the Participant's HC Account that is not vested shall be forfeited upon the Participant's termination of employment. A Participant's interest in his/her HC Account shall vest as provided in the Adoption Agreement. Forfeited amounts shall be used for the purposes described in the Adoption Agreement. However, except as allowed under the Trust, no amounts will revert to the Adopting Employer. If the Adoption Agreement indicates that forfeitures shall be contributed to the HC Accounts of other Participants, the following rules shall apply. Forfeitures occurring during a Plan Year shall be held in a separate subaccount until the close of the Plan Year. Immediately following the close of the Plan Year, the forfeitures shall be contributed to the HC Accounts of all Participants employed by the Adopting Employer on the last day of such Plan Year in the manner provided in the Adoption Agreement (i.e., on a per capita or pro rata basis). To the extent the full balance of the forfeiture subaccount cannot be allocated as provided in the Adoption Agreement (e.g., because the balance does not divide evenly among the number of Participants), any balance remaining shall be held in the forfeiture subaccount until the end of the subsequent Plan Year and allocated at that time.
- 5.10 **Medical Support Orders.** Notwithstanding any provision of this Plan to the contrary this Plan shall recognize medical child support orders as required under applicable state law or under the Child Support Performance and Incentive Act of 1998. Participants involved in a divorce or child custody matter should be directed to have their legal counsel contact the Plan Administrator.
- 5.11 **Coordination with Cafeteria Plan.** To the extent the Adopting Employer also sponsors a medical reimbursement program as part of its cafeteria plan within the meaning of Section 125 of the Code, a Participant participates in the medical reimbursement program, and the Participant or a Covered Individual covered through such a Participant incurs an expense that is eligible for reimbursement under this Plan and the medical reimbursement program, the medical reimbursement program shall pay first. If the Plan Supervisor adjudicates claims under both programs and a claim is submitted to the Plan Supervisor for an expense covered by both programs at a time when the balance of the Participant's account under the program that pays first is inadequate to pay the claim in full, the unreimbursed portion of the claim shall automatically be paid by the other program.
- 5.12 **Further Limitations on Benefits.**
- (a) This Plan does not cover expenses incurred for any loss caused by or resulting from injury or disease for which benefits are payable under any worker's compensation law or other employer, union, association or governmental sponsored group insurance plan.

- (b) This Plan does not cover expenses incurred for any loss caused by or resulting from injury or disease for which benefits are received by the Participant, the Participant's Spouse or the Participant's Dependent under any health and accident insurance policy or program, whether or not premiums are paid by the Adopting Employer or by the Participant, the Participant's Spouse or the Participant's Dependent child.
- (c) Amounts reimbursed under a dependent care assistance program described in Section 129 of the Code shall not be reimbursed under this Plan.
- (d) Other limitations, if any, as set forth in the Adoption Agreement.

5.13 **Restrictions on Investment to HC Account.** A portion of the Participant's HC Account will be segregated in a separate subaccount for purposes of providing funding for electronic payment card transactions. The funds held in such subaccount shall be unavailable for investment and shall be held as cash. The balance of such subaccount shall be equal to the lesser of \$2,000 or the balance of the Participant's HC Account. In the event a Participant's entire HC Account is not held in such subaccount, the Plan Supervisor will liquidate the Participant's investments and transfer funds to the cash subaccount on a daily basis in an amount sufficient to maintain the required balance of the subaccount.

ARTICLE VI. CONTRIBUTIONS

- 6.1 **Employer Contributions.** The Adopting Employer shall make a fixed contribution per Participant as set forth in the Adoption Agreement. The amount of the Employer Contribution, and any restrictions on the use thereof, shall be identified in the Adoption Agreement and communicated to the Participants. The amount of the Employer Contribution may change from time to time as reflected in the Adoption Agreement.
- 6.2 **No Employee Contributions.** Except for contributions required for continuation coverage as described in Article XII, no contributions other than Employer Contributions are required nor will they be accepted.
- 6.3 **Trust.** All contributions shall be held in the Trust. The investment of the assets of the Trust shall be directed as provided in the Adoption Agreement. Notwithstanding the foregoing:
- (a) If electronic payment cards are available under the Plan and a Participant elects to use an electronic payment card, a portion of that Participant's HC Account will be segregated in a separate subaccount for purposes of providing funding for electronic payment card transactions. The funds held in such subaccount shall be unavailable for investment and shall be held as cash. The balance of such subaccount shall be equal to the lesser of \$1,000 or the balance of the Participant's HC Account. In the event a Participant's entire HC Account is not held in such subaccount, the Plan Supervisor will liquidate the Participant's investments and transfer funds to the cash subaccount on a weekly basis in an amount sufficient to maintain the required balance of the subaccount.
 - (b) The investment of any assets of the Trust that constitute forfeitures shall be directed by the Plan Administrator until such time, if any, that such forfeitures are allocated to the HC Accounts of other Participants.

**ARTICLE VII.
CLAIMS DETERMINATIONS AND REVIEW OF DENIED CLAIM**

The following procedures apply:

7.1 **General Provisions.** All claims and appeals will be adjudicated in a manner so that the independence and impartiality of the persons involved in making the determination are ensured. Decisions regarding hiring, compensation, termination, and similar matters with respect to any individual involved in the determination (e.g., a claims adjudicator or medical expert) shall not be based upon the likelihood that the individual will support a denial of benefits.

7.2 **Initial Claim Determination.**

(a) **Time Frame for Decision.** The Plan must determine the claim within thirty (30) days of receipt of the claim.

(b) **Extension of Time.** If the Plan is not able to determine the claim within this time period due to matters beyond its control, the Plan may take an additional period of up to fifteen (15) days to determine the claim. If this additional time will be needed, the Plan must notify the claimant or the claimant's Authorized Representative prior to the expiration of the initial thirty (30) day time period for determining the claim. This extension is only available once.

Notification: The notification of the need for the extension must include a description of the "matters beyond the Plan's control" that justify the extension and the date by which a decision is expected.

(c) **Incomplete Claims.** There is no special rule if a claim is incomplete. Incomplete claims can be addressed through the extension of time described above. If the reason for the extension is the failure to provide necessary information and the claimant is appropriately notified, the Plan's period of time to make a decision is "tolled."

Tolling: The period of time in which the Plan must determine a claim is suspended from the date upon which notification of the missing necessary information is sent until the date upon which the claimant responds.

Notification: For this purpose, notification can be made orally to the claimant or the health care professional, unless the claimant requests written notice.

The notification will include a time frame in which the necessary information must be provided. Once the necessary information has been provided, the Plan must decide the claim within the extension described above. If the requested information is not provided within the time specified, the claim may be decided without that information.

7.3 Decision.

- (a) **Notification of Decision.** Written (or electronic) notification of the Plan's determination must be provided to the claimant or the claimant's Authorized Representative. Such notification must be provided only where the decision is adverse. The notification will be provided in a culturally and linguistically appropriate manner in accordance with 45 CFR § 147.136, to the extent such regulation applies to the Plan.

"Adverse" means:

- A denial, reduction, or termination of a benefit;
- A failure to provide or make payment (in whole or in part) for a benefit; or
- A rescission of coverage under the Plan, which is a cancellation or discontinuance of coverage under the Plan that has retroactive effect other than a cancellation or discontinuance attributable to a failure to timely pay or make required premiums or contributions toward coverage.

- (b) **Adverse Decision.** For adverse claim determinations, the notification shall at a minimum:

- Include information sufficient to identify the claim involved, including the date of service, the identity of the health care provider, and the claim amount, and to inform the claimant of the right to receive, upon request, the diagnosis and treatment codes (if any) and their corresponding meanings upon request;
- State the specific reason(s) for the determination, including the denial code (if any) and its corresponding meaning, and describe the Plan's standard, if any, used to make the determination;
- Reference specific Plan provision(s) upon which the determination is based;
- Describe additional material or information necessary to complete the claim and why such information is necessary;
- Describe the internal appeals and external review processes (if any) available under the Plan, including how to initiate an appeal and the procedures and time limits applicable to an appeal;
- Disclose any internal rule, guidelines, protocol or similar criterion relied on in making the adverse determination (or state that such information will be provided free of charge upon request);
- Where the decision involves scientific or clinical judgment, disclose either (1) an explanation of the scientific or clinical judgment applying the terms of the Plan to claimant's medical circumstances, or (2) a statement that such explanation will be provided at no charge upon request; and
- Disclose the availability of and contact information for any applicable office of health insurance consumer assistance or ombudsman established to assist individuals with the internal claims and appeals and external review processes (if any).

Notice of the adverse determination may be provided in written or electronic form. Electronic notices will be provided in a form that complies with applicable legal requirements.

- (c) **Not Adverse Decision.** For claim determinations that are not adverse, notice will be provided that informs the claimant or the claimant's Authorized Representative the claim has been accepted.

7.4 **Access to Relevant Documents.**

In order (1) to evaluate whether to request review of an adverse determination, and (2) if review is requested, to prepare for such review, the claimant or the claimant's Authorized Representative will have access to all relevant documents.

Relevant: A document, record or other information is "relevant" if it was relied upon in making the determination, or was submitted to the Plan, considered by the Plan, or generated in the course of making the benefit determination without regard to whether it was relied upon.

7.5 **Appealing a Denied Claim.**

If a claim is denied, in whole or part, the claimant or the claimant's Authorized Representative may request the denied claim be reviewed.

- (a) **Requesting Review.** The claimant or the claimant's Authorized Representative has a period of one-hundred eighty (180) days to appeal the claim determination. The appeal request must be in writing and should be sent to the address specified in the notification of adverse decision described above.
- (b) **Full and Fair Review.** The claimant will have the right to review the claim file and to present evidence and testimony. The claimant will be provided, free of charge, with new or additional evidence considered, relied upon, or generated by the Plan in connection with the claim as soon as possible and sufficiently in advance of the date on which the notice of final internal adverse benefit determination is required to give the claimant a reasonable opportunity to respond prior to that date. Before the Plan issues a final internal adverse benefit determination based on a new or additional rationale, the claimant will be provided, free of charge, with the rationale as soon as possible and sufficiently in advance of the date on which the notice of final internal adverse benefit determination is required to give the claimant a reasonable opportunity to respond prior to that date. The review of the adverse benefit determinations will take into account all new information, whether or not presented or available at the initial determination. No deference will be afforded to the initial determination.
- (c) **Consultation with Independent Medical Expert.** In the case of a claim denied on the grounds of a medical judgment, a health professional with appropriate training and experience will be consulted. The health care professional who is consulted on appeal will not be the individual who was consulted, if any, during the initial determination or a subordinate of that individual.

Disclosure: If the advice of a medical or vocational expert was obtained by the Plan in connection with the claim denial, the names of each such expert shall be provided, regardless of whether the advice was relied upon.

- (d) **Time Frame for Decision.** If claimant or the claimant's Authorized Representative requests a review of a denied claim within the time frame described above, the Plan Administrator shall review the claim and make a determination no later than sixty (60) days from the date the review request was received.

- (e) **Decision.** The review of the claim will be conducted by the Plan Administrator. It will be made by a person different from the person who made the initial determination and such person will not be a subordinate of the original decision maker. The information in the administrative record shall be reviewed. Additional information submitted shall be considered. The decision shall be based upon that information plus the terms of the Plan and past interpretations of the same and similar Plan provisions. The Plan Administrator may rely upon protocols, guidelines, or other criterion.
- (f) **Notification of Decision.** Written (or electronic) notification of the Plan Administrator's determination must be provided to the claimant or the claimant's Authorized Representative. Such notification must be provided whether the decision is adverse or not adverse. The notification will be provided in a culturally and linguistically appropriate manner in accordance with 45 CFR § 147.136, to the extent such regulation applies to the Plan.

"Adverse" means:

- A denial, reduction, or termination of a benefit;
- A failure to provide or make payment (in whole or in part) for a benefit, or
- A rescission of coverage under the Plan, which is a cancellation or discontinuance of coverage under the Plan that has retroactive effect other than a cancellation or discontinuance attributable to a failure to timely pay or make required premiums or contributions toward coverage.

- (g) **Adverse Decision.** For adverse appeal determinations, the notification shall reflect at least the following:
- Include information sufficient to identify the claim involved, including the date of service, the identity of the health care provider, and the claim amount, and to inform the claimant of the right to receive, upon request, the diagnosis and treatment codes (if any) and their corresponding meanings upon request;
 - Contain a discussion of the determination, including the specific reason(s) for the determination, the denial code (if any) and its corresponding meaning, and the Plan's standard, if any, used to make the determination;
 - Reference specific Plan provision(s) upon which the determination is based;
 - Describe the external review process (if any) available under the Plan;
 - Disclose any internal rules, guidelines, protocol or similar criterion relied on in making the adverse determination (or state that such information will be provided free of charge upon request);
 - A statement indicating entitlement to receive upon request, and without charge, reasonable access to or copies of all documents, records or other information relevant to the determination;
 - Where the decision involves scientific or clinical judgment, disclose either (1) an explanation of the scientific or clinical judgment applying the terms of the Plan to claimant's medical circumstances, or (2) a statement that such explanation will be provided at no charge upon request; and
 - Disclose the availability of and contact information for any applicable office of

health insurance consumer assistance or ombudsman established to assist individuals with the external review process (if any).

Notice of the adverse determination may be provided in written or electronic form. Electronic notices will be provided in a form that complies with applicable legal requirements.

(h) **Not Adverse Decision.** For claim determinations that are not adverse, notice will be provided that informs the claimant or the claimant's Authorized Representative the decision has been reversed, and the claim accepted.

7.6 **Deemed Exhaustion.** If the Plan fails to adhere to the requirements described in 45 CFR § 147.136(b)(2), the claimant will be deemed to have exhausted the internal claims and appeals process as provided in 45 CFR § 147.136(b)(2)(ii)(F), to the extent such regulation applies to the Plan.

7.7 **External Review.** The Plan will provide any applicable external review process that may be required to be provided by a health reimbursement arrangement under 45 CFR § 147.136, to the extent such regulation applies to the Plan.

**ARTICLE VIII.
HIPAA PRIVACY AND SECURITY PROVISIONS**

The Privacy Rules and Security Rules under HIPAA apply to the Plan.

- 8.1 **Use and Disclosure of PHI.** The Plan will use PHI to the extent allowed by, and in accordance with the uses and disclosures permitted by, HIPAA. Specifically, the Plan will use and disclose PHI for purposes related to health care treatment, payment for health care, and health care operations. The Plan will also use and disclose PHI as required by law and as permitted by authorization of the subject of PHI. If the Plan discloses PHI to the Adopting Employer in accordance with this Article VIII, the Adopting Employer may use and further disclosure PHI for the same purposes and in the same situations as the Plan may use and disclose PHI, provided that such use or disclosure is for Plan administration functions performed by the Adopting Employer for the Plan or is required by law or permitted by authorization. All uses and disclosures of PHI, whether by the Plan or by Adopting Employer, shall be limited to the minimum PHI necessary to accomplish the intended purpose of the use or disclosure in accordance with HIPAA. Notwithstanding the foregoing, neither the Plan nor the Adopting Employer shall use PHI that is genetic information in a manner that is prohibited by the Genetic Information Nondiscrimination Act of 2008.
- (a) **Payment** includes activities undertaken by the Plan to obtain premiums or determine or fulfill its responsibility for coverage and provision of Plan benefits that relate to an individual to whom health care is provided. These activities include, but are not limited to, the following:
- (1) determination of eligibility, coverage and cost sharing amounts (for example, cost of a benefit, plan maximums and co-payments as determined for an individual's claim);
 - (2) coordination of benefits;
 - (3) adjudication of health benefits claims (including appeals and other payment disputes);
 - (4) subrogation of health benefit claims;
 - (5) establishing employee contributions;
 - (6) risk adjusting amounts due based on enrollee health status and demographic characteristics;
 - (7) billing, collection activities, and related health care data processing;
 - (8) claims management and related health care data processing, including auditing payments, investigating and resolving payment disputes and responding to participant inquiries about payments;
 - (9) obtaining payment under a contract for reinsurance (including stop-loss and excess of loss insurance);
 - (10) medical necessity reviews or reviews of appropriateness of care or justification of charges;

- (11) utilization review, including pre-certification, preauthorization, concurrent review and retrospective review;
 - (12) disclosure to consumer reporting agencies related to the collection of premiums or reimbursement (the following PHI may be disclosed for payment purposes: name and address, date of birth, Social Security number, payment history, account number and name and address of provider and/or health plan); and
 - (13) reimbursement to the Plan.
- (b) **Health care operations** include, but are not limited to, the following activities:
- (1) quality assessment;
 - (2) population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, disease management, contacting health care providers and patients with information about treatment alternatives and related functions;
 - (3) rating provider and Plan performance, including accreditation, certification, licensing or credentialing activities;
 - (4) underwriting, premium rating and other activities relating to the creation, renewal or replacement of a contract of health insurance or health benefits, and ceding, securing or placing a contract for reinsurance of risk relating to health care claims (including stop-loss insurance and excess of loss insurance);
 - (5) conducting or arranging for medical review, legal services and auditing function, including fraud and abuse detection and compliance programs;
 - (6) business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the Plan, including formulary development and administration, development or improvement of payment methods or coverage policies;
 - (7) business management and general administration activities of the Plan, including, but not limited to:
 - (i) management activities relating to the implementation of and compliance with HIPAA's administrative simplification requirements;
 - (ii) customer service, including data analyses for policyholders.
 - (8) resolution of internal grievances; and
 - (9) due diligence in connection with the sale or transfer of assets to a potential successor in interest, if the potential successor in interest is a covered entity under HIPAA or following completion of the sale or transfer, will become a covered entity.

8.2 **Adopting Employer's Obligations under the Privacy Rules.** Under the Privacy Rules, the Plan may not disclose PHI to the Adopting Employer unless the Adopting Employer certifies that the Plan document has been amended to provide that the Plan will make such disclosures only upon receipt of a certification from the Adopting Employer that the Plan has been amended to

include certain conditions to the Adopting Employer's receipt of PHI and that Adopting Employer agrees to those conditions. By adopting this Plan document, the Adopting Employer certifies that the Plan has been amended as required by the Privacy Rules and that it agrees to the following conditions, thereby allowing the Plan to disclose PHI to the Adopting Employer. The Adopting Employer agrees to:

- (a) not use or further disclose PHI other than as permitted or required by the Plan document or as required by law;
- (b) ensure that any agents, including a subcontractor, to whom the Plan provides PHI received from the Plan agree to the same restrictions and conditions that apply to the Adopting Employer with respect to such PHI;
- (c) not use or disclose PHI for employment related actions and decisions unless authorized by an individual;
- (d) not use or disclose PHI in connection with any other benefit or employee benefit plan of the Adopting Employer unless authorized by an individual;
- (e) report to the Plan any PHI use or disclosure of which it becomes aware that is inconsistent with the uses or disclosures permitted hereunder and/or may constitute a "breach" as that term is defined in HIPAA;
- (f) make PHI available for access by the individual who is the subject of the PHI in accordance with HIPAA;
- (g) make PHI available for amendment and incorporate any amendments to PHI in accordance with HIPAA;
- (h) make available the information required to provide an accounting of disclosures in accordance with HIPAA;
- (i) make internal practices, books and records relating to the use and disclosure of PHI received from Plan available to the HHS Secretary for the purposes of determining the Plan's compliance with HIPAA; and
- (j) if feasible, return or destroy all PHI received for the Plan that the Adopting Employer still maintains in any form, and retain no copies of such PHI when no longer needed for the purpose for which disclosure was made (or if return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction infeasible).

8.3 Adopting Employer's Obligations under Security Rules. If the Adopting Employer creates, receives, maintains, or transmits ePHI (other than enrollment and disenrollment information and Summary Health Information, which are not subject to these restrictions), the Adopting Employer will:

- (a) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI;
- (b) ensure that any agents, including subcontractors, who create, receive, maintain, or transmit ePHI on behalf of the Plan implement reasonable and appropriate security measures to protect the ePHI;

- (c) report to the Plan any Security Incident of which it becomes aware; and
- (d) implement reasonable and appropriate security measures to ensure that only those persons identified below have access to ePHI and that such access is limited to the purposes identified below.

8.4 **Adequate separation between the Plan and the Adopting Employer must be maintained.** In accordance with HIPAA, only the following employees or classes of employees may be given access to PHI:

- (a) the person employed in the position that is given primary responsibility for performing the Adopting Employer's duties as the Plan Administrator of the Plan; and
- (b) staff designated by the person described in (a) above.

8.5 **Limitation of PHI Access and Disclosure.** The person(s) described above may only have access to and use and disclose PHI for Plan administration functions that the Adopting Employer performs for the Plan.

8.6 **Noncompliance Issues.** If the person(s) described above does not comply with this Plan document, the Adopting Employer shall provide a mechanism for resolving issues of noncompliance including, but not limited to, disciplinary sanctions.

**ARTICLE IX.
PLAN ADMINISTRATION**

9.1 Plan Administrator.

- (a) The Plan Administrator shall be responsible for the general supervision of the Plan and shall have authority to control and manage the operation and administration of the Plan. The Plan Administrator shall perform any and all acts necessary or appropriate for the proper management and administration of the Plan.
- (b) The Adopting Employer shall be the Plan Administrator unless its Managing Body designates a person or persons other than the Adopting Employer to be the Plan Administrator. The Adopting Employer shall also be the Plan Administrator if the person or persons so designated cease to be the Plan Administrator.
- (c) The Plan Administrator may designate an individual or entity to act on its behalf with respect to certain powers, duties, and/or responsibilities regarding the operation and administration of this Plan. The Plan Administrator has delegated certain powers, duties, and responsibilities with respect to the Plan to the Plan Supervisor.

9.2 Agent for Service of Legal Process. The agent for service of legal process for the Plan is the Plan Administrator.

9.3 Allocation of Responsibility for Administration. The Plan Administrator shall have the sole responsibility for the administration of this Plan as is specifically described in this Plan. The designated representatives of the Plan Administrator shall have only those specific powers, duties, responsibilities, and obligations as are specifically given to them under this Plan. The Plan Administrator warrants that any directions given, information furnished, or action taken by it shall be in accordance with the provisions of the Plan authorizing or providing for such direction, information or action. It is intended under this Plan that the Plan Administrator shall be responsible for the proper exercise of its own powers, duties, responsibilities, and obligations under this Plan and shall not be responsible for any act or failure to act of another Employee of the Adopting Employer. Neither the Plan Administrator, nor the Adopting Employer makes any guarantee to any Participant in any manner for any loss or other event because of the Participant's participation in this Plan.

9.4 Rules and Decisions. Except as otherwise specifically provided in the Plan, the Plan Administrator may adopt such rules and procedures as it deems necessary, desirable, or appropriate. All rules and decisions of the Plan Administrator shall be uniformly and consistently applied to all Participants in similar circumstances. When making a determination or calculation, the Plan Administrator shall be entitled to rely upon information furnished by a Participant, the Adopting Employer, or legal counsel, or other entity acting on behalf of the Adopting Employer or Plan Administrator.

9.5 Records and Reports. The Plan Administrator shall be responsible for complying with all reporting, filing and disclosure requirements for the Plan.

9.6 Authorization of Benefit Payments. The Plan Administrator (or the Plan Supervisor as its designee) shall issue directions to the Trustee concerning all benefits which are to be paid from the Trust, pursuant to the provisions of the Plan, and warrants that all such directions are in accordance with the Plan.

9.7 **Other Powers and Duties of the Administrator.** The Plan Administrator shall also have such other duties and powers as may be necessary to discharge its duties under the Plan including, but not limited to, the following:

- (a) Discretion to construe and interpret the Plan in a non-discriminatory manner, to decide all questions of eligibility and to determine all questions arising in the administration and application of the Plan;
- (b) To receive from the Adopting Employer and from Participants such information as shall be necessary for the proper administration of the Plan;
- (c) To furnish the Adopting Employer, upon request, such annual reports with respect to the administration of the Plan as are reasonable and appropriate; and
- (d) To appoint individuals to assist in the administration of the Plan and any other agents the Plan Administrator deems advisable including legal and actuarial counsel. The Plan Administrator shall not have the power to add to, subtract from, or modify any of the terms of the Plan, to change or add to any benefits provided by the Plan, or to waive or fail to apply any requirements of eligibility for a benefit under this Plan.

9.8 **Plan Interpretation.** This Plan will be administered in accordance with its terms. The Plan Administrator and the Plan Supervisor (and/or other person acting as a fiduciary with respect to this Plan), to the extent that such individual or entity is acting in its fiduciary capacity, shall have the complete and final authority, responsibility, and control, in its sole discretion, to manage, administer and operate this Plan, to make factual findings, to construe the terms of this Plan, and to determine all questions arising in connection with the administration, interpretation, and application of this Plan, including, but not limited to, the eligibility and coverage of individuals and the authorization or denial of payment or reimbursement of benefits. All determinations and decisions will be binding on this Plan, Covered Individuals, claimants, and all interested parties.

**ARTICLE X.
PLAN AMENDMENT AND TERMINATION**

- 10.1 **Amendment by Adopting Employer.** The Adopting Employer reserves the right to amend, alter, or wholly revise this Plan or the Adoption Agreement, prospectively or retrospectively, at any time by the action of its Managing Body, and the interest of each Participant is subject to the powers so reserved. The Adopting Employer expressly may amend, alter or wholly revise this Plan or the Adoption Agreement if it determines it necessary or desirable, with or without retroactive effect, to comply with the law. Such changes shall not affect any right to benefits that accrued prior to such amendments. Such amendment shall be made in writing and shall be delivered promptly to the Plan Supervisor, Plan Administrator, and Trustee.
- 10.2 **Adopting Employer's Right to Terminate.** Although the Adopting Employer expects the Plan to be maintained for an indefinite time, the Adopting Employer reserves the right to terminate the Plan or any portion of the Plan at any time. In the event of the dissolution, merger, consolidation, or reorganization of the Adopting Employer, the Plan shall terminate unless the Plan is continued by a successor to the Adopting Employer in accordance with the resolution of such successor's Managing Body. Such termination shall not affect any right to benefits that accrued prior to such termination. Such action shall be made in writing and shall be delivered to the Plan Supervisor, Plan Administrator, and Trustee at least ninety (90) days prior to the effective date of the termination.

**ARTICLE XI.
GENERAL PROVISIONS**

- 11.1 **No Reversion to the Plan Administrator or Adopting Employer.** Except as specifically allowed under the Trust, no part of the corpus or income of the Trust shall revert to the Adopting Employer or be used for or diverted to, purposes other than the exclusive benefit of participants and other persons entitled to benefits under the Plan.
- 11.2 **Persons Dealing With Trust.** No person dealing with the Trust shall be required to see to the application of any money paid or property delivered to the Trust, or to determine whether or not the Trust is acting pursuant to any authority granted to them under the Trust.
- 11.3 **Non-Alienation of Benefits.** Benefits payable under this Plan shall not be subject to anticipation, alienation, sale, transfer, execution, or levy of any kind either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a spouse or former spouse, or for any other relative of the Participant, prior to actually being received by the person entitled to the benefit under the terms of the Plan, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable under the Plan shall be void. The Adopting Employer, Plan Administrator and/or Plan Supervisor shall not in any manner be made liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits under the Plan.
- 11.4 **Action by Employer.** Whenever the Adopting Employer, under the terms of this Plan, is permitted or required to do or perform any act or matter or thing, it shall be done and performed by the Managing Body of the Adopting Employer or such representatives of the Adopting Employer as the Managing Body may designate.
- 11.5 **No Guarantee of Tax Consequences.** Notwithstanding any provision in this Plan to the contrary, this Plan makes no commitment or guarantee that any amounts paid to or on behalf of a Participant under this Plan will be excludable from the Participant's gross income for federal or state income tax purposes. It shall be the obligation of each Participant to determine whether each payment is excludable from the Participant's gross income for federal and state income tax purposes, and to notify the Plan Administrator if the Participant has reason to believe that any such payment is not so excludable.
- 11.6 **Compensation and Expenses.** The Plan Supervisor shall be entitled to reasonable fees for its services hereunder, which shall be described in an Administrative Services Agreement between the Plan Supervisor and the Plan Administrator. Such fees and any expenses incurred by the Plan Supervisor in connection with the Plan (including expenses and fees of persons hired or employed by them) shall be paid as described in the Adoption Agreement. The compensation of the Trustee, as provided for in the Trust document, shall also be paid as described in the Adoption Agreement.
- 11.7 **Governing Law.** This Plan shall be construed and enforced according to the laws of the State in which the Adopting Employer's principal office is located, except to the extent preempted by federal law.
- 11.8 **Family and Medical Leave Act of 1993 ("FMLA").** Notwithstanding any provision of this Plan to the contrary, this Plan shall be operated and maintained in a manner consistent with FMLA, to the extent the Adopting Employer is subject to such law.

- 11.9 **Newborns' and Mothers' Health Protection Act ("NMHPA").** Notwithstanding any provision of this Plan to the contrary, this Plan shall be operated and maintained in a manner consistent with NMHPA. Federal law requires the following statement be included in the Plan document, verbatim:

Under federal law, group health plans and health insurance issuers offering group health insurance generally may not restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a cesarean section. However, the plan or issuer may pay for a shorter stay if the attending physician (e.g., your physician, nurse, or midwife, or a physician assistant), after consultation with the mother, discharges the mother or newborn earlier. Also, under federal law, plans and issuers may not set the level of benefits or out-of-pocket costs so that any later portion of the 48-hour (or 96-hour) stay is treated in a manner less favorable to the mother or newborn than any earlier portion of the stay. In addition, a plan or issuer may not, under federal law, require that a physician or other health care provider obtain authorization for prescribing a length of stay of up to 48 hours (or 96 hours). However, to use certain providers or facilities, or to reduce your out-of-pocket costs, you may be required to obtain precertification. For information on precertification, contact your Plan Administrator.

- 11.10 **Women's Health and Cancer Rights Act of 1998 ("WHCRA").** Notwithstanding any provision of this Plan to the contrary, this Plan shall be operated and maintained in a manner consistent with WHCRA.
- 11.11 **Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA").** Notwithstanding any provision of this Plan to the contrary, this Plan shall be operated and maintained in a manner consistent with USERRA. The Plan Administrator may, within the parameters of the law, establish uniform policies by which to provide such continuation coverage required by USERRA and such policies shall be incorporated herein by reference.
- 11.12 **Plan Not a Contract of Employment.** The Plan is not an employment agreement and does not assure the continued employment of any Employee or Participant for any period of time. Nothing contained in the Plan shall interfere with the Adopting Employer's right to discharge an Employee at any time, regardless of the effect such discharge may have upon the individual as a Participant in this Plan.
- 11.13 **Erroneous Payments.** If the Plan makes a payment for benefits in excess of the benefits required by the Plan or makes a payment to or on behalf of an individual who is not currently covered by the Plan, the Plan shall be entitled to recover such erroneous payment from the recipient thereof.
- 11.14 **Medicare Secondary Payer.** The Plan shall comply with the Medicare secondary payer rules found in 42 U.S.C. § 1395y. In general, the Plan shall pay benefits primary to Medicare if any one of the following conditions is satisfied: (a) the Employer employed twenty (20) or more employees for each working day in at least twenty (20) weeks in either the calendar year in which the claim is made or the preceding calendar year, the Participant is employed by the Employer, and the Participant is actually covered by Medicare by reason of obtaining the age of 65; (b) the Employer employed 100 or more employees on at least 50% of its regular business days during the calendar year preceding the year in which the claim was made, the Participant is employed by the Employer, and the Participant is actually covered by Medicare by reason of disability; and (c) the Participant is entitled to Medicare by reason of end stage renal disease and the claim is made during the thirty (30) month period beginning in the first month in which such Participant is entitled to benefits under Medicare (regardless of whether he/she applies for such benefits). In all other cases, the Plan shall pay benefits secondary to Medicare.

- 11.15 **Medicare Part D.** The Plan shall cooperate with Medicare Part D prescription drug plans (and Covered Individuals who are enrolled in such plans) with respect to coordination of benefits between the Plan and the Medicare Part D plan, including the provision of information to the Medicare Part D plan (or the Covered Individuals) regarding the benefits provided under the Plan for costs covered by the Medicare Part D plan. Covered Individuals enrolled in Medicare Part D plans shall cooperate with the Plan so that the Plan may perform its obligations under this subsection.
- 11.16 **Exhaustion of Administrative Remedies; Statute of Limitations.** For all claims subject to the administrative procedures described in Article VII, exhaustion of those administrative procedures is required prior to the initiation of a legal action. Thereafter, legal action by a Participant, or someone on behalf of a Participant, must be initiated within one (1) year of receipt of the written notification of denial upon appeal. To the extent exhaustion of the appeal process is not required, a Participant, or someone on behalf of the Participant, must initiate legal action within one (1) year of having submitted the initial claim request to the Plan Administrator, or its designee. No legal action may be brought by a Participant, or someone on behalf of the Participant, after expiration of the applicable limitations period. This Section 11.17 shall apply to the extent the provisions hereof are not prohibited by applicable law.
- 11.17 **Michelle's Law.** Notwithstanding any provision of this Plan to the contrary, this Plan shall be operated and maintained in a manner as required by Michelle's Law.
- 11.18 **Health Care Reform.** The Plan is intended to be exempt from the provisions of the Patient Protection and Affordable Health Care Act ("PPACA"), as amended by the Health Care and Education Reconciliation Act ("Reconciliation Act"), to the fullest extent allowed by law. Because Eligible Expenses must be incurred after termination of the Participant's employment with the Adopting Employer to be reimbursable under the Plan (as provided in Section 5.4), the Plan covers fewer than two current Employees of the Adopting Employer (i.e., the Plan is a "retiree-only" HRA) and, therefore, is exempt from PPACA.

**ARTICLE XII.
COBRA CONTINUATION**

- 12.1 **Compliance with COBRA.** Continued coverage for the Plan shall be provided only if and as required under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), as amended.
- 12.2 **COBRA Policies and Procedures.** To the extent not provided herein, the Plan Administrator may, within the parameters of the law, establish uniform policies by which to provide such continuation coverage and such policies shall be incorporated herein by reference.
- 12.3 **Notification Procedures.** The Plan requires the notifications described below with respect to continuation coverage under COBRA:
- (a) **Notice of qualifying event.** Under the law, a Covered Individual (or a representative acting on behalf of the Covered Individual) has the responsibility to inform the Plan of a divorce, legal separation, or a child losing dependent status under the Plan (the "qualifying event") within sixty (60) days of the latest of: (i) the date of the qualifying event; (ii) the date coverage would be lost because of the qualifying event; or (iii) the date on which the Covered Individual was informed of the responsibility to provide notice and the procedures for doing so. The notification must be provided in writing and be mailed to the Plan. Oral notification, including notification by telephone is not acceptable. Electronic (including emailed or faxed) or hand-delivered notifications are not acceptable. The notification must be postmarked no later than the last day of the sixty (60) day notice period described above. The notification must:
- (1) state the name of the Plan;
 - (2) state the name and address of the employee or former employee who is or was covered under the Plan;
 - (3) state the name(s) and address(es) of all Covered Individuals who lost coverage due to the qualifying event;
 - (4) include a detailed description of the event;
 - (5) identify the effective date of the event; and
 - (6) be accompanied by any documentation providing proof of the event (i.e., the divorce decree).

If no notification is received within the required time period, no continuation coverage will be provided. If the notification is incomplete, it will be deemed timely if the Plan is able to determine the plan to which it applies, the identity of the employee and the Covered Individuals, the qualifying event, and the date on which the qualifying event occurred, provided that the missing information is provided within thirty (30) days. If the missing information is not provided within that time, the notification will be ineffective and no continuation coverage will be provided.

- (b) **Notice of second qualifying event.** A Covered Individual (or a representative acting on behalf of the Covered Individual) must notify the Plan of the death of the employee, divorce or separation from the employee, or a dependent child's ceasing to be eligible for coverage as a dependent under the Plan, if that event occurs within the eighteen (18) month continuation period (or an extension of that period for disability or for pre-termination Medicare entitlement). The notification must be provided within sixty (60) days after such a second qualifying event occurs in order to be entitled to an extension of the continuation period. The notification must be provided in writing and be mailed to the

Plan. Oral notification, including notice by telephone is not acceptable. Electronic (including emailed or faxed) or hand-delivered notifications are not acceptable. The notification must be postmarked no later than the last day of the sixty (60) day notice period described above. The notification must:

- (1) state the name of the Plan;
- (2) state the name and address of the employee or former employee who is or was covered under the Plan;
- (3) state the name(s) and address(es) of all Covered Individuals who lost coverage due to the initial qualifying event and who are receiving COBRA coverage at the time of the notice;
- (4) identify the nature and date of the initial qualifying event that entitled the Covered Individuals to COBRA coverage;
- (5) include a detailed description of the event;
- (6) identify the effective date of the event; and
- (7) be accompanied by any documentation providing proof of the event (i.e., the divorce decree).

If no notification is received within the required time period, no extension of the continuation period will be provided. If the notification is incomplete, it will be deemed timely if the Plan is able to determine the plan to which it applies, the identity of the employee and the Covered Individuals, the qualifying event, and the date on which the qualifying event occurred, provided that the missing information is provided within thirty (30) days. If the missing information is not provided within that time, the notification will be ineffective and no extension of the continuation period will be provided.

- (c) **Notice of disability.** A Covered Individual (or a representative acting on behalf of the Covered Individual) must notify the Plan when a Covered Individual has been determined to be disabled under the Social Security Act within sixty (60) days of the latest of: (i) the date of the disability determination; (ii) the date of the qualifying event; (iii) the date coverage would be lost because of the qualifying event; or (iv) the date on which the Covered Individual was informed of the responsibility to provide notice and the procedures for doing so. Notwithstanding the foregoing, notification must be provided before the end of the first eighteen (18) months of continuation coverage. The notification must be provided in writing and be mailed to the Plan. Oral notification, including notice by telephone is not acceptable. Electronic (including emailed or faxed) or hand-delivered notices are not acceptable. The notification must be postmarked no later than the last day of the sixty (60) day notice period described above. The notification must:

- (1) state the name of the Plan;
- (2) state the name and address of the employee or former employee who is or was covered under the Plan;
- (3) state the name(s) and address(es) of all Covered Individuals who lost coverage due to the initial qualifying event and who are receiving COBRA coverage at the time of the notice;
- (4) identify the nature and date of the initial qualifying event that entitled the qualified beneficiaries to COBRA coverage;
- (5) state the name of the disabled Covered Individual;
- (6) identify the date upon which the disabled Covered Individual became disabled;
- (7) identify the date upon which the Social Security Administration made its determination of disability; and
- (8) include a copy of the determination of the Social Security Administration.

If no notification is received within the required time period, no extension of the continuation period will be provided. If the notification is incomplete, it will be deemed timely if the Plan is able to determine the plan to which it applies, the identity of the employee and the Covered Individuals, the qualifying event, and the date on which the qualifying event occurred, provided that the missing information is provided within thirty (30) days. If the missing information is not provided within that time, the notification will be ineffective and no extension of the continuation period will be provided.

If such person has been determined under the Social Security Act to no longer be disabled, the person must notify the Plan of that determination within thirty (30) days of the later of: (i) the date of such determination; or (ii) the date on which the Covered Individual was informed of the responsibility to provide notice and the procedures for doing so. The notification must be in writing and be mailed to the Plan. Regardless of when the notification is provided, continuation coverage will terminate retroactively on the first day of the month that begins thirty (30) days after the date of the determination, or the end of the initial coverage period, if later. If the notification is not provided within the required time, the Plan reserve the right to seek reimbursement of any benefits provided by the Plan between the date coverage terminates and the date the notification is provided.

- (d) **Notice of Coverage Under Another Group Health Plan or Medicare.** A Covered Individual must notify the Plan immediately if any Covered Individuals receiving continuation coverage actually become covered by another group health plan or Medicare. Regardless of when such notification is provided, coverage will terminate retroactively to the date of the coverage under the other group health plan or Medicare. If, for whatever reason, a Covered Individual on continuation coverage receives any benefits under the Plan after coverage is to cease under the foregoing rule, the Plan reserves the right to seek reimbursement from such Covered Individual.



**TRUST FUNDED HRA
ADMINISTRATION AGREEMENT
effective March 1, 2021**

between

**Total Administrative Services Corporation
("Plan Supervisor")**

And

City of Lakeland, Florida ("Adopting Employer" & "Plan Administrator")

WHEREAS, City of Lakeland, Florida ("Adopting Employer") has heretofore adopted the City of Lakeland, Florida Retiree Health Savings Plan (the "HRA Plan"); and

WHEREAS, Adopting Employer has heretofore adopted the City of Lakeland, Florida Section 115 Retiree Health Savings Trust (the "Trust"); and

WHEREAS, Adopting Employer may have heretofore adopted one or more health and/or welfare benefit plans (other than the HRA Plan) that are to be funded through the Trust (the "Health and Welfare Plan(s)"); and

WHEREAS, the HRA Plan and Health and Welfare Plan(s) (if any) names Adopting Employer as Plan Administrator and appoints Plan Administrator to act on behalf of the HRA Plan and Health and Welfare Plan(s) (if any); and

WHEREAS, Adopting Employer is a governmental entity and, therefore, the HRA Plan and Health and Welfare Plan(s) (if any) are not employee welfare benefit plans subject to the Employee Retirement Income Security Act of 1974 ("ERISA"); and

WHEREAS, the HRA Plan is, and the Health and Welfare Plan(s) (if any) may be, "covered entities" subject to the privacy and security provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); and

WHEREAS, the Plan Administrator is the entity capable of acting on behalf the HRA Plan and Health and Welfare Plan(s) (if any) for purposes of HIPAA; and

WHEREAS, the Plan Supervisor performs services (directly and indirectly) with respect to operating, administering, and providing recordkeeping for programs of the type of the Health and Welfare Plan(s) (if any), HRA Plan, and the Trust; and

WHEREAS, the Plan Administrator desires that the Plan Supervisor furnish certain services described in this Agreement in the operation and administration of the Health and Welfare Plan(s) (if any), HRA Plan, and the Trust;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and the exhibits and addenda, if any, attached hereto, effective March 1, 2021, the Plan Administrator and the Plan Supervisor hereby agree as follows:

I. Definitions

The following Definitions shall apply to this Agreement:

- A. **Administrative Services** - means those services relating to the establishment, maintenance, and administration of the HRA Plan, Health and Welfare Plan(s), and Trust to be performed by the Plan Supervisor as set forth in this Agreement.
- B. **Adopting Employer** – means City of Lakeland, Florida.
- C. **Adoption Agreement** – means the Trust Funded HRA Basic Plan Document Adoption Agreement for City of Lakeland, Florida.
- D. **Agreement** - means this administration agreement and any exhibits and addenda attached hereto and any outside agreements specifically incorporated by reference.
- E. **Basic Plan Document** – means the document known as the Trust Funded HRA Basic Plan Document.
- F. **COBRA** - means the Consolidated Omnibus Budget Reconciliation Act of 1985 (as it appears in the Public Health Services Act) and regulations thereunder, as amended from time to time.
- G. **Code** - means the Internal Revenue Code of 1986 and regulations thereunder, as amended from time to time.
- H. **Effective Date** - means the date upon which this Agreement is first effective as indicated above.
- I. **ERISA** - means the Employee Retirement Income Security Act of 1974 and regulations thereunder, as amended from time to time.
- J. **Health and Welfare Plan(s)** - not applicable.
- K. **HIPAA** - means the Health Insurance Portability and Accountability Act of 1996 and regulations thereunder, as amended from time to time.
- L. **HRA Plan** - means the City of Lakeland, Florida Retiree Health Savings Plan.
- M. **Participant** – means an individual who is participating in one or both of the HRA Plan and/or Health and Welfare Plan(s), including those on continuation coverage required under COBRA.
- N. **PPACA** – means the Patient Protection and Affordable Care Act and regulations thereunder, as amended from time to time.
- O. **Plan Administrator** – means the entity as defined in the HRA Plan and Health and Welfare Plan(s).
- P. **Plan Supervisor** – means Total Administrative Services Corporation an independent contractor designated to perform certain administrative services pursuant to this Agreement with respect to the HRA Plan, Health and Welfare Plan(s), and Trust.
- Q. **PHI** – means Protected Health Information for purposes of HIPAA.
- R. **Summary Description** – means the written documents distributed directly or indirectly to Participants explaining the HRA Plan and Health and Welfare Plan(s).

- S. **Trust** – means the City of Lakeland, Florida Section 115 Retiree Health Savings Trust.
- T. **Trust Document** – means the document through which the Trust is established.

II. Plan Establishment & Maintenance

- A. **Generally.** Adopting Employer shall establish the Health and Welfare Plan(s), HRA Plan, and the Trust. The Plan Administrator shall be responsible for the operation and administration of the Health and Welfare Plan(s), HRA Plan, and the Trust. In accordance with this Agreement, the Plan Supervisor shall provide administrative services to Adopting Employer and Plan Administrator in connection with the establishment of, the operation of, the administration of, and/or the recordkeeping for the Health and Welfare Plan(s), HRA Plan, and the Trust.
- B. **Documents.** Adopting Employer and Plan Administrator shall have ultimate responsibility for all aspects of the HRA Plan, Health and Welfare Plan(s), and Trust documentation, including, but not limited to, the plan document, Trust Document, Summary Description, amendments and updates to such documents, and the application for tax-exempt status (IRS Form 1024).
 - 1. **Health and Welfare Plan(s).** The Adopting Employer and Plan Administrator shall be responsible for all plan documentation related to the Health and Welfare Plan(s). Except as provided below, the Plan Supervisor shall not be responsible for providing documents for the Health and Welfare Plan(s).
 - 2. **HRA Plan and Trust.** The Plan Supervisor shall provide the Adopting Employer with services related to the initial preparation and periodic revision of documents relating to the HRA Plan including the Basic Plan Document, Trust Document, Summary Description for the HRA Plan, and related documentation. Adopting Employer and Plan Administrator shall approve all such materials within thirty (30) days following delivery by the Plan Supervisor, unless such deadline is extended by mutual agreement of all parties. Adopting Employer's and Plan Administrator's failure to object within such time period (including any agreed upon extension period) shall constitute approval. Unless Adopting Employer, Plan Administrator and the Plan Supervisor mutually agree otherwise, the Plan Administrator shall deliver to all Participants all appropriate and necessary documents and materials, including, but not limited to, the Plan Document for the HRA Plan, Trust Document, Trust amendments, Summary Descriptions, enrollment forms, and application and notice forms, as may be necessary for the operation of the HRA Plan or to satisfy the requirements of state or federal laws and regulations. Upon termination of this Agreement, Adopting Employer agrees to cease using the documents relating to the HRA Plan including the Plan Document, Trust Document, Summary Description, and other Participant communication materials, and further agrees that neither it nor its agents shall copy any portion of the Plan Document or Trust Document in the course of preparing replacement documents.
- C. **Amendment & Termination.** The HRA Plan, Health and Welfare Plan(s), and/or Trust may be amended or terminated in accordance with their terms. If the Adopting Employer amends the HRA Plan, Health and Welfare Plan(s), or the Trust, the Adopting Employer agrees to notify the Plan Supervisor (1) before the later of the effective date of the amendment or the date of adoption of the amendment, or (2) as soon as administratively feasible. The Plan Supervisor is responsible for providing services pursuant to such amended Plan or Trust only upon its consent which shall be evidenced by an amendment to this Agreement. Such consent shall not be unreasonably withheld but may be conditioned upon Adopting Employer's agreement to pay increased administrative fees.

III. Plan Supervisor Responsibilities

- A. **Status of the Plan Supervisor.** Adopting Employer shall not (1) name the Plan Supervisor as the Plan Administrator in any documents applicable to the HRA Plan or Health and Welfare Plan(s), nor (2) hold out to other parties or third parties that the Plan Supervisor serves in the foregoing capacity. In addition, the Plan Supervisor does not intend to assume any of the administrative duties or responsibilities commensurate with such designations.
- B. **Capacity of Plan Supervisor.** In fulfilling its duties and obligations under this Agreement, the Plan Supervisor: (i) shall act as the administrative agent of the HRA Plan, Health and Welfare Plan(s), and Trust; (ii) does not intend to be an Adopting Employer or Plan Administrator (as such terms are defined under the Plan) of the HRA Plan or Health and Welfare Plan(s) or with respect to the assets of such plans; and (iii) does not have any discretionary authority, control, or responsibility with respect to administration of the HRA Plan, Health and Welfare Plan(s), or the Trust or with respect to conformity of the HRA Plan, Health and Welfare Plan(s), or the Trust with any applicable federal or state law. In addition, the Plan Supervisor shall not be required to participate in or act in a manner that aids or assists a breach of a fiduciary's duty.
- C. **Processing of Claims.** Subject to Article IV and Section VI.C., the Plan Supervisor shall process, adjust and settle claims of Participants received by the Plan Supervisor for benefits under the HRA Plan in accordance with the terms and conditions of the HRA Plan. The Plan Supervisor shall deliver (electronically) to all Participants the claim forms necessary for submitting claims. Where the terms and conditions of the HRA Plan are not clear, the Plan Supervisor reserves the right to request direction from the Plan Administrator. When a claim is approved, the Plan Supervisor or its designee shall provide instructions to the trustee or its designee, in accordance with any contract or agreement between the trustee and the Plan Administrator, directing the trustee to pay benefits from the Trust. When a claim is denied, the Plan Supervisor will notify the Participant of such denial in compliance with the Plan. If such denial is appealed, the Plan Supervisor will notify the Plan Administrator within thirty (30) days. The Plan Supervisor will not be responsible for processing, adjusting and settling claims of Participants for benefits under the Health and Welfare Plan(s).
- D. **Account Servicing.** The Plan Supervisor shall provide account management services. The Plan Supervisor shall make available to the Adopting Employer a client service representative to respond to questions regarding general administrative issues and plan design.
- E. **Employee Communication.** The Plan Supervisor shall provide standard communication materials to Participants in the HRA Plan as agreed upon by the parties. The Plan Supervisor shall provide general administrative services to assist persons with general information about the HRA Plan and answer routine questions from persons concerning coverage status, claims status, complaint administration, and other inquiries related to the HRA Plan. Notwithstanding the preceding, the Plan Supervisor shall: (i) be under no obligation to meet with individual Participants regarding their claims; and (ii) not offer any investment or securities advice to any Participant.
- F. **Recordkeeping.** The Plan Supervisor shall perform the recordkeeping services described herein in conformity with data provided by the Adopting Employer.
1. The Plan Supervisor will maintain records of the allocations of the HRA Plan's account by Participant and contribution type for each investment fund selected by the Participant or the Adopting Employer, as applicable.
 2. The Plan Supervisor will maintain records of funds deposited in an aggregate account in the Trust to fund the Health and Welfare Plan(s).

3. The Plan Supervisor will perform calculations of allocations of Adopting Employer contributions and earnings according to the direction and information requested from and provided by the Adopting Employer.
 4. If applicable, the Plan Supervisor will perform allocation of existing account balances into investment funds according to directions from Participants provided in accordance the procedures established by the Plan Supervisor. Such transactions will be processed each business day as requested by Participants and in accordance with the Plan Supervisor's procedures. Confirmations of investment elections, investment transfers, and realignment requests directed by Participants will be sent to Participants.
- G. **Accountings.** At such regular periodic intervals as Adopting Employer and the Plan Supervisor agree upon and specify in Exhibit A (which is incorporated by reference), the Plan Supervisor shall provide the Adopting Employer with reporting regarding the Health and Welfare Plan(s), HRA Plan, and the Trust.
- H. **Participant Access to Information.** The Plan Supervisor shall provide HRA Plan Participants with "24 hour" access to the recordkeeping system through a website connection, but does not guarantee immediate or uninterrupted access at any time. The Plan Supervisor will use reasonable efforts to keep the website properly maintained, but cannot be held responsible for circumstances beyond its reasonable control such as, but not limited to, natural disasters, damage resulting from unauthorized use of a Participants personal identification number, or failure of the system for any other reason outside of the Plan Supervisor's control. The Plan Supervisor shall also provide HRA Plan Participants with account statements at least annually. Such statements shall be provided directly to the Plan Administrator for distribution to the Participants.
- I. **Assistance with Reporting and Notifications.** Except as otherwise specifically provided herein and unless applicable law imposes such responsibility solely on the Plan Supervisor, the Plan Supervisor shall not have any responsibility related to: (1) determining what reporting and notification requirements apply to the HRA Plan and the Health and Welfare Plan(s); (2) preparing and filing any tax return, report, or other document required to be provided to any local, State or Federal government or agency thereof with respect to the HRA Plan or the Health and Welfare Plan(s) (e.g., various reports required under PPACA, etc.); or (3) preparing and distributing any notification required to be provided to any participant of the HRA Plan or the Health and Welfare Plan(s) under applicable law (e.g., various notifications required by PPACA, etc.). Such responsibility for preparing, filing, and/or distributing all tax returns, reports, notifications, or other documents shall be that of the Adopting Employer or Plan Administrator. Notwithstanding the foregoing, the Plan Supervisor may assist Adopting Employer and Plan Administrator with its reporting and notification obligations if the Plan Supervisor agrees, in writing, to do so and if Adopting Employer and/or Plan Administrator agree to pay any additional fees chargeable by the Plan Supervisor for such additional service.
- J. **Nondiscrimination Testing.** If chosen by the Plan Administrator as an optional service as listed in Exhibit B, the Plan Supervisor shall perform all nondiscrimination tests that may be required under the Code with respect to the HRA Plan, including, but not limited to, tests regarding coverage and benefits, and shall verify the classes of highly compensated employees and non-highly compensated employees with the Adopting Employer if this option is chosen by Plan Administrator as an optional service as listed on the Fee Schedule incorporated as part of this Agreement. The Adopting Employer shall provide all information necessary to complete such testing. Should the HRA Plan fail any applicable nondiscrimination tests, the Plan Supervisor may provide suggestions (consistent with the HRA Plan language) regarding how to correct the situation. The responsibility for making

a decision regarding how to correct the situation shall be that of the Adopting Employer or Plan Administrator.

- K. **Compliance with Applicable Law.** The Plan Supervisor shall comply with all federal and state laws and regulations applicable to the Plan Supervisor's responsibilities under this Agreement.
- L. **Insurance.** The Plan Supervisor shall maintain professional liability and errors and omissions insurance in the amount of \$2,000,000.00.
- M. **Subcontractors.** The Plan Supervisor may hire subcontractors, at its own expense, to perform any of the services required of it under this Agreement and to act as its designee for purposes of this Agreement.
- N. **Investments.** The Plan Supervisor shall not be responsible for, and shall not take part in, selecting or recommending investments available to Participants.
- O. **Shareholder Communications.** Plan Supervisor will cause all proxies and accompanying materials solicited by an entity, and all prospectuses issued by a company whose securities are held in the Trust ("shareholder communications") to be mailed to the Plan Administrator within a reasonable period of time after the receipt of such shareholder communications by Plan Supervisor. In the event a Participant makes a request to the Plan Supervisor for a copy of any shareholder communication, the Plan Supervisor shall forward such request, within a reasonable time period, to the Plan Administrator who shall be responsible for responding to such request. Plan Supervisor has no responsibility to disseminate copies of shareholder communications to Participants who have invested their accounts in the securities for which such shareholder communications have been received or to any other person. If the shareholder communications include a requirement, request, or opportunity for action (such as a proxy, consent, election, instruction, direction, approval, or similar action) (the "Proxies"), the Plan Administrator will solely be responsible for soliciting and forwarding proxy votes in accordance with the Plan Document and the requirements of the law. In no case will Plan Supervisor be under any duty to determine how, or if, Proxies are voted or to take any other action in connection with any shareholder communication. Plan Supervisor will be under no obligation to forward or return any other corporate material received on behalf of the Trust unless required by law or this paragraph.
- P. **Processing Withdrawals.** When the Plan Administrator requests a withdrawal from the Trust with respect to the Health and Welfare Plan(s), the Plan Supervisor or its designee shall provide instructions to the trustee or its designee, in accordance with any contract or agreement between the trustee and the Plan Administrator, directing the trustee to make a distribution from the Trust.
- Q. **Debit Card Services.** The Plan Supervisor will provide the following services with respect to the use of debits cards to obtain reimbursements under the HRA Plan:
 - 1. Obtain all information necessary for issuance of debit cards to Participants. The Plan Supervisor is entitled to rely upon the accuracy and completeness of all information provided by the Adopting Employer.
 - 2. Through its subcontractor, the debit card vendor, issue debit cards and process debit card transactions.
 - 3. Provide communications to the Adopting Employer, Plan Administrator, and Participants regarding use of debit cards.
 - 4. Process the transfer of funds from the Trust to a designated account to pay debit card claims. The Trust shall be the primary source of funding for debit card claims.

5. Provide substantiation of claims reimbursed via use of the debit card in accordance with applicable IRS rules.
6. Assist the Plan Administrator with recouping debit card reimbursements that are not permitted by IRS rules to the extent required by, and in accordance with, IRS rules. Notwithstanding the foregoing, it shall be the Plan Administrator's ultimate responsibility for recouping such reimbursements in accordance with applicable IRS rules.

IV. Duties of Adopting Employer and Plan Administrator

- A. **FMLA Determinations.** The Adopting Employer shall make determinations regarding FMLA, including, but not limited to, whether FMLA applies. The Plan Supervisor shall not make determinations regarding FMLA. Furthermore, the Plan Supervisor shall be entitled to rely upon the information provided by the Adopting Employer and is under no obligation to independently verify such information.
- B. **Eligibility Determination & Information.** The Adopting Employer shall provide the Plan Supervisor with a listing of all persons eligible for coverage under the HRA Plan, with a list of all eligible participants who are "claim active" (i.e., are entitled to have claims reimbursed), a list of all eligible participants who are not claim active, written notice of any addition or deletion of such persons, and any further information necessary for the Plan Supervisor to provide its services hereunder. The Adopting Employer is responsible for reviewing and approving the documentation of such information. The Adopting Employer may provide such information in any written method mutually acceptable to the Adopting Employer and the Plan Supervisor, including, but not limited to, electronic transmissions. The Plan Supervisor may rely on the most current information in its possession regarding eligibility of a HRA Plan Participant in paying claims and providing other services under this Agreement.
- C. **Contributions.** The Adopting Employer shall remit contributions to the Trust as provided in the HRA Plan and Health and Welfare Plan(s). As contributions are made, the Adopting Employer shall, in a mutually agreed format, provide the Plan Supervisor with such Participant contribution information as is reasonably required by the Plan Supervisor in order to perform its duties hereunder, including, but not limited to, the amount of the contribution to be allocated to each Participant. The Adopting Employer is responsible for the accuracy and completeness of the data it submits to the Plan Supervisor and is solely responsible for any adverse consequences that may result from errors or inaccuracies in such data. The Plan Supervisor is not responsible for requiring that any contributions be made, or for determining that the contributions that are received by the Trust comply with the terms of the HRA Plan or Health and Welfare Plan(s).
- D. **Medical Child Support Order Compliance.** Adopting Employer shall be responsible for all aspects of compliance with state law and the Child Support Performance and Incentive Act of 1998 regarding medical child support orders. Adopting Employer shall provide notice to the Plan Supervisor of any Participants who become covered under the HRA Plan by virtue of a medical child support order and of any Participants who cease to be covered under the HRA Plan by virtue of the expiration of a medical child support order. The Plan Supervisor shall be entitled to rely upon the information provided by the Adopting Employer pertaining to such medical child support order.
- E. **Nondiscrimination Testing.** Unless otherwise provided in Exhibit B, the Adopting Employer and the Plan Administrator are responsible for performing any nondiscrimination tests that may be required under the Code, including, but not limited to, tests regarding coverage and benefits. Should the HRA Plan fail any applicable nondiscrimination tests, the Plan Supervisor may provide suggestions (consistent with the HRA Plan language) regarding how to correct the situation. The responsibility for making a decision regarding how to correct the situation shall be that of the Adopting Employer or Plan Administrator.

- F. **Payment of Administrative Services Fees.** In consideration of Plan Supervisor's performance of the services described in this Agreement, Adopting Employer shall pay the Plan Supervisor's administrative fees as described in Exhibit B. Generally, all such fees will be paid as provided in the Adoption Agreement, provided per participant per month fees may be paid directly from the accounts of HRA Plan Participants that are claim active (i.e., able to submit claims and obtain reimbursements) only if such Participants will not be receiving any future contributions.
1. **Payment by Participants.** Subject to the foregoing, if the HRA Plan provides that administrative fees for employees shall be paid from the Trust (including from a Participant's account), the Plan Supervisor shall bill the Trust and/or the Participants' accounts directly as the fees become due. Notwithstanding the foregoing, if the HRA Plan provides that the administrative fees for a Participant who has terminated employment with the Adopting Employer shall be paid from the Participant's account, the Plan Supervisor shall bill the Participant's account every six (6) months (in January and July) on a prospective basis (i.e., the January billing shall cover January through June). If the Participant terminates employment after the regularly scheduled billing dates (i.e., in January and July), the first billing for that Participant shall occur on the date following the date of termination and shall cover the months between that date and the date of the next regularly scheduled billing.
 2. **Minimum Fees.** The minimum monthly fee described in Exhibit B shall apply if the sum of the recordkeeping fees and standard claims processing fees (excluding asset-based fees) does not exceed the applicable minimum provided in Exhibit B. If the minimum fee applies, the asset-based fees identified in Exhibit B will be charged and collected in addition to the applicable minimum monthly fee.
 3. **Failure to Pay.** Any failure to pay any such fees within thirty (30) days of the date upon which they are due may, at the Plan Supervisor's option, result in the Plan Supervisor's (1) imposition of a late fee equal to the lesser of (i) 1.5% of the outstanding balance or \$75 per month, whichever is greater, or (ii) the maximum amount allowed by the usury laws of the applicable state, and/or (2) upon notice to the Plan Administrator, suspension of performance of its services under this Agreement until such time as such fees are paid or termination of this Agreement.
 4. **Increases.** The administrative fees identified in Exhibit B shall increase upon reasonable notice in the event of and in direct proportion to any rate increases implemented by the United States Postal Service. Such increases shall be effective on the effective date or the first of the month next following the effective date of the postage rate increase. The Plan Supervisor also reserves the right to charge additional fees for repeating, or expanding the scope of, its services due to inaccurate, incomplete, or unusable data supplied by the Adopting Employer.
 5. **Fees for Additional Services.** In the event additional services that are not part of the normal plan administrative services contemplated by this Agreement, or chosen by Plan Administrator on Exhibit B, are required, Plan Supervisor may charge the Adopting Employer an additional fee commensurate with the additional services provided. Plan Supervisor will inform the Adopting Employer of the amount of the additional fee in advance of conducting the additional administrative services. Examples of additional administrative services not contemplated by this Agreement include (but are not limited to): calculating income on late participant contributions; calculating income on participant contributions that are delayed by Adopting Employer actions; and any other administration services requested by Adopting Employer that are not part of the on-going administrative services contemplated by this Agreement.

- G. **HIPAA Portability and PPACA.** Adopting Employer or Plan Administrator shall be solely responsible for determining whether the portability requirements of HIPAA and group health plan requirements of the Patient Protection and Affordable Care Act ("PPACA") apply to the HRA Plan and the Health and Welfare Plan(s). Unless mutually agreed otherwise, Adopting Employer or Plan Administrator shall be solely responsible for complying with (1) the portability requirements of HIPAA, including, but not limited to, providing certificates of creditable coverage to Participants, and (2) the group health plan requirements of PPACA, including, but not limited to, the external review requirements, with respect to the HRA Plan and the Health and Welfare Plan(s).
- H. **Regulatory Compliance.** Adopting Employer and Plan Administrator shall be responsible for compliance with applicable laws and regulations pertaining to the HRA Plan or Health and Welfare Plan(s). Adopting Employer and Plan Administrator shall be responsible for any governmental or regulatory charges resulting from the Adopting Employer's establishment and operation of the HRA Plan or Health and Welfare Plan(s). This provision does not relieve the Plan Supervisor from any statutory or agency requirements placed directly on it as a result of performing services under this Agreement.
- I. **HRA Plan and Health and Welfare Plan Design.** Adopting Employer possesses and exercises ultimate authority and responsibility for the design of the HRA Plan and Health and Welfare Plan(s). The Adopting Employer has consulted its legal and/or accounting advisors concerning the tax advantages and consequences of sponsoring the Health and Welfare Plan(s), HRA Plan, and the Trust and shall not rely on the Plan Supervisor for such guidance.
- J. **HRA Plan and Health and Welfare Plan Interpretation.** Plan Administrator possesses and exercises ultimate authority and responsibility for determining benefits under the HRA Plan and Health and Welfare Plan(s), making decisions regarding eligibility for participation, termination of participation, and payment of benefits. This includes, but is not limited to, review of claim denials.
- K. **Other Information.** Adopting Employer or Plan Administrator (including a designee) shall comply with all requests for information made by the Plan Supervisor reasonably necessary for the Plan Supervisor to fulfill its duties under this Agreement. Any documentation received by the Adopting Employer or Plan Administrator (including a designee) that should have been provided to the Plan Supervisor shall be promptly forwarded to the Plan Supervisor. Such documentation includes, but is not limited to, claims forms.
- L. **Review of Reports and Forms.** The Adopting Employer shall be responsible to review all accounting reports, compliance testing, government returns (i.e., Form 990), and any other reports prepared by or on behalf of the Plan Supervisor (collectively the "Reports") and to notify the Plan Supervisor of any errors or omissions in the Reports within sixty (60) days of receipt of them. If no errors or omissions are asserted within sixty (60) days, the Adopting Employer shall be deemed to have approved the accuracy of the Reports and the Plan Supervisor shall be released and relieved of all liability and indemnified by the Adopting Employer for any actions taken pursuant to this Agreement based upon the Reports.
- M. **Review of Communication Materials.** The Adopting Employer shall review all communication products and materials prepared by the Plan Supervisor to ensure consistency of the materials with the terms of the HRA Plan.
- N. **Authorized Representatives.** Until otherwise advised in writing by the Adopting Employer, the Plan Supervisor may accept the authority and rely upon the instructions of, or documents signed by, any representatives of the Adopting Employer listed in Exhibit C (which is incorporated by reference herein). Additional documentation, specifying persons authorized for various purposes, may also be executed by the parties from time to time,

and the Plan Supervisor shall be entitled to rely upon such documentation without question, unless it has actual knowledge that such person's authority has been revoked.

- O. **Legal Obligations.** Adopting Employer or Plan Administrator shall possess ultimate responsibility and authority for the operation of the HRA Plan and Health and Welfare Plan(s).
- P. **Investments.** The Plan Administrator shall be responsible for determining how and with whom to invest the assets of the Trust, including, but not limited to, selecting the investments or menu of investment options, as the case may be. The Plan Administrator shall adopt an investment policy governing the investment of the assets of the Trust. The Plan Administrator shall be responsible for mailing or otherwise distributing fund prospectuses or other similar information regarding the investments in which the assets of the Trust are invested to the extent such information is not distributed by the funds or investment providers. The Plan Supervisor shall have no responsibility with respect to the investment of the assets of the Trust.
- Q. **Debit Card Responsibilities.** The Adopting Employer acknowledges and accepts sole responsibility for fraudulent debit card usage. The Plan Supervisor may be able to assist the Adopting Employer in the recovery of debit account transactions reported as fraudulent, provided that Participants comply with the terms outlined in the applicable Cardholder Agreement for the timely reporting of such fraudulent activity. To the extent the assets of the Trust are insufficient to fund all debit card claims, the Adopting Employer shall have sole responsibility for the payment of any debit card transactions that cannot be funded by the Trust.

V. Records & Information

- A. **Maintenance and Access.** Plan Supervisor and Plan Administrator shall maintain adequate records relating to the terms and operation of the HRA Plan, Health and Welfare Plan(s), and Trust for at least the plan year to which the records relate and for an eight (8) year period thereafter. Each party shall have access to the records relating to the Health and Welfare Plan(s), HRA Plan, and the Trust maintained by the other party during normal business hours and upon reasonable notice and request and subject to applicable laws and regulations. The parties shall maintain the confidentiality of any information relating to Participants, the Health and Welfare Plan(s), the HRA Plan, and the Trust in accordance with applicable laws and regulations.
- B. **Record Use.** The Plan Supervisor, Adopting Employer and Plan Administrator agree that the medical records, names, addresses, telephone numbers, Social Security numbers and other personal information relating to Participants, which the Plan Supervisor may obtain as a result of performing administrative services may be collected, maintained and used by the Plan Supervisor and the Plan Administrator as necessary to administer the HRA Plan, Health and Welfare Plan(s), and the Trust. The Plan Supervisor and the Plan Administrator may use patient specific and individually identifiable information, as necessary to properly administer the Health and Welfare Plan(s), the HRA Plan, and the Trust, to defend any claim related to the HRA Plan, Health and Welfare Plan(s), or to the provision of services under this Agreement, or as otherwise may be permitted by state or federal law. All parties agree that such information shall be considered confidential and protected as required under applicable law.
- C. **Confidential Business Information.** The Plan Supervisor, Adopting Employer and Plan Administrator shall each take all necessary steps to protect the other party's confidential business information. Such information shall not be disclosed to third parties without the express written consent of the other party unless required by law or court order.
- D. **Transfer of Records.** When this Agreement ends, the Plan Supervisor may transfer to Adopting Employer, Plan Administrator and/or any successor administrator those records

the Plan Supervisor determines are reasonably necessary to effectuate a smooth transition of administration of the HRA Plan or Health and Welfare Plan(s). The Plan Supervisor intends that this transfer of records will satisfy its obligation to maintain such records as described above. The Plan Supervisor shall provide the Plan Administrator an opportunity to review the records and obtain copies of any such records in addition to the records the Plan Supervisor has identified as necessary for a smooth transition or otherwise transferred. The details of such transfer, including but not limited to the means, method and timing, shall be agreed to by the parties. All costs associated with such a record review and transfer will be paid by the Adopting Employer prior to the transfer.

- E. **HIPAA Business Associate.** The Plan Supervisor acknowledges its role as a business associate for purposes of the privacy and security standards under HIPAA.

VI. Indemnification and Limitation of Liability

- A. **Funding.** The Plan Supervisor shall have no responsibility, risk, liability, or obligation for the funding of HRA Plan or Health and Welfare Plan(s) benefits. The responsibility and obligation for funding benefits shall be solely and completely the responsibility of the Adopting Employer.
- B. **Claim Processing Errors.** The Plan Supervisor shall be liable for the recovery of claim processing errors arising from the Plan Supervisor's performance pursuant to the terms of this Agreement. Notwithstanding the preceding, however, the Plan Supervisor shall not be liable for any such error that is reasonable, made in good faith. The Plan Supervisor shall use diligent efforts toward the recovery of such losses. The Plan Supervisor's liability, if any, shall be limited to the amount in excess of the claim amount(s) payable under the terms of the HRA Plan.
- C. **Indemnification by the Plan Administrator for Claims Decisions.** If the Plan Administrator reverses a claim payment decision made by the Plan Supervisor, the Plan Administrator shall notify the Plan Supervisor in writing of such decision and shall indemnify, hold harmless, and defend the Plan Supervisor from and against any and all liabilities, losses, damages, claims, lawsuits, causes of action, costs, and expenses the Plan Supervisor may incur because of any such reversal, unless the Plan Supervisor was negligent in making the claim payment decision.
- D. **No Guarantee of Benefits.** The Plan Supervisor does not assume any responsibility, risk, liability or obligation for the general policy direction of the HRA Plan or Health and Welfare Plan(s), the adequacy of funding thereof, or any act or omission or breach of duty by parties other than Plan Supervisor. The Plan Supervisor is not and shall not be deemed a guarantor with respect to any benefits payable under the HRA Plan or Health and Welfare Plan(s).
- E. **Indemnification for Design/Interpretation.** The Plan Supervisor is not engaged in the practice of law. The resolution of any legal issues concerning the HRA Plan or Medical Plan is the responsibility of the Plan Administrator and/or the Adopting Employer and their legal counsel. The Plan Administrator and Adopting Employer shall indemnify, hold harmless, and defend the Plan Supervisor from and against any and all liabilities, losses, damages, claims, lawsuits, or causes of action, and any costs and expenses associated therewith (including any attorneys' fees the Plan Supervisor may incur or be asked to pay), arising directly or indirectly, out of the design and/or interpretation of the HRA Plan or Health and Welfare Plan(s), including, but not limited to, any liability, losses, damages, claims, lawsuits, or causes of action and any costs and expenses associated therewith (including any attorneys' fees the Plan Supervisor may incur or be asked to pay) arising under any state, federal or local law or regulation.
- F. **General Indemnification.** The Plan Administrator and Adopting Employer shall indemnify, hold harmless, and defend the Plan Supervisor and its directors, trustees,

officers, employees, and agents from and against any and all liabilities, losses or damages arising out of any claims, lawsuits, or causes of action, and any costs and expenses associated therewith (including any attorneys' fees the Plan Supervisor may incur or be asked to pay), which arise, directly, from the Plan Administrator's or Adopting Employer's act or omission to act in its administration of the Plan, including, but not limited to, any liability, losses, damages, claims, lawsuits, or causes of action and any costs and expenses associated therewith (including any attorneys' fees the Plan Supervisor may incur or be asked to pay) arising under any law.

- G. **Indemnification for Prior Administration.** If a party other than the Plan Supervisor previously provided administration or recordkeeping services to the Health and Welfare Plan(s), HRA Plan, or the Trust, the Plan Administrator and Adopting Employer shall indemnify, hold harmless, and defend the Plan Supervisor and its directors, trustees, officers, employees, and agents from and against any and all liabilities, losses or damages arising out of any claims, lawsuits, or causes of action, and any costs and expenses associated therewith (including any attorneys' fees the Plan Supervisor may incur or be asked to pay), which arise, directly or indirectly, from such prior administration or recordkeeping, including, but not limited to, any liability, losses, damages, claims, lawsuits, or causes of action and any costs and expenses associated therewith (including any attorneys' fees the Plan Supervisor may incur or be asked to pay) arising under any law.
- H. **Plan Supervisor's Duty to Indemnify.** The Plan Supervisor shall indemnify, hold harmless, and defend the Plan Administrator and Adopting Employer and their directors, trustees, officers, employees, and agents from and against any and all liabilities, losses or damages arising out of any claims, lawsuits, or causes of action, and any costs and expenses associated therewith (including any attorneys' fees the Plan Administrator and Adopting Employer may incur or be asked to pay), which arise, directly or indirectly, from the Plan Supervisor's act or omission to act in its administration of the HRA Plan, Health and Welfare Plan(s), or Trust including, but not limited to, any liability, losses, damages, claims, lawsuits, or causes of action and any costs and expenses associated therewith (including any attorneys' fees the Plan Administrator and Adopting Employer may incur or be asked to pay) arising under any law.
- I. **Limitation of Liability.** The Plan Supervisor shall exercise, in the performance of its duties, reasonable care and shall be liable for loss only when caused by the Plan Supervisor's (or the Plan Supervisor's subcontractors') negligence, gross negligence, fraud, willful misconduct, criminal conduct or a material breach of this Agreement. The Plan Supervisor shall be responsible for direct damages caused by its failure to satisfy its duties hereunder; provided, however, that the Plan Supervisor shall not be liable for any incidental or consequential damages caused by its failure to satisfy its duties hereunder. The Plan Supervisor shall not be liable for the processing that is delayed due to circumstances beyond its reasonable control, including, but not limited to, national, state, or city disaster, acts of God, severe weather, or any other circumstances that would affect the Plan Supervisor or its trading platforms, software, or Internet systems.
- J. **Reliance on Data & Direction.** Notwithstanding any provision of this Agreement to the contrary, the Plan Supervisor is not responsible or liable for any acts or omissions made pursuant to any direction, consent or other request reasonably believed by the Plan Supervisor to be genuine and from an authorized representative of Adopting Employer and Plan Administrator. The Plan Supervisor is not responsible or liable for acts or omissions made in reliance on erroneous data provided by Adopting Employer or Plan Administrator to the extent the Plan Supervisor's acts or omissions are attributable to the erroneous data, or for the failure of Adopting Employer or Plan Administrator to perform their obligations under this Agreement.

VII. Term and Termination

- A. **Term.** This Agreement is effective as of the date first written hereinabove and shall continue for a period of thirty-six (36) consecutive months beginning on the Effective Date. This Agreement shall automatically renew and for a period of each twelve (12) consecutive month period thereafter on the day following the last day of the prior term, unless this Agreement is replaced by a new agreement or until the termination of this Agreement pursuant to this Sections VII.B. or C. of the Agreement below. If this Agreement is not terminated or replaced by a new agreement, this Agreement will renew as provided herein and Employer and Plan Administrator will be obligated to comply with any changes made to the Agreement by Plan Supervisor in accordance with Section VIII.A. below. Notwithstanding the foregoing, this Agreement will not renew if Plan Supervisor determines that a material breach existed on the scheduled renewal date.
- B. **Termination.** This Agreement may be terminated by either party at any time by written notice of intention to terminate given to the other party to be effective as of a specified date not less than ninety (90) days from the date such notice is received. Notwithstanding the foregoing, in the event the Plan Administrator terminates this Agreement pursuant to this Section VII.B. during the initial thirty-six (36) month contract term for reasons other than termination for cause, as described in Section VII.C. below, the Plan Administrator shall pay to the Plan Supervisor an early termination fee equal to 1% of the Trust's total asset value 30 days prior to the termination date, subject to a \$5,000 maximum. Such early termination fee shall be paid prior to the transfer of records described in Section V.D. hereof.
- C. **Termination For Cause.** Either party shall have the right to immediately terminate the Agreement upon:
1. The material breach of the terms of this Agreement, by either the Plan Supervisor or the Adopting Employer, including failure to remit service fees due the Plan Supervisor, if such material breach is not corrected within ten (10) days of receipt of written notice specifying the nature of the breach to the satisfaction of the non-breaching party;
 2. The bankruptcy or insolvency of Adopting Employer or the Plan Supervisor; or
 3. The enactment of any law, promulgation of any regulation or action of any State or Federal agency or authority which makes or declares illegal the continuance of this Agreement or the performance of any of the services of the Plan Supervisor hereunder.
- D. **Responsibility for Claims Administration After Termination of Agreement.** Upon termination of this Agreement, the Plan Supervisor shall cease to act on behalf of Adopting Employer and Plan Administrator. Adopting Employer and Plan Administrator shall be responsible for the processing and payment of all eligible benefit claims payable on or after the date of termination pursuant to the terms of the HRA Plan. The Plan Supervisor reserves the right to notify any Participants that the Plan Supervisor no longer acts on behalf of Adopting Employer and Plan Administrator.
- E. **Post-Termination Obligations.** Plan Supervisor may, as mutually agreed upon by Adopting Employer, Plan Administrator and Plan Supervisor, provide certain administrative services following the termination of this Agreement.

VIII. Miscellaneous

- A. **Agreement Amendment.** This Agreement may be amended only by mutual agreement in writing executed by all parties. In addition, upon notification to Adopting Employer and Plan Administrator, Plan Supervisor may amend this Agreement at any time to the extent necessary to comply with applicable federal, state or local laws or regulations. Furthermore, Plan Supervisor may amend the rates, fees, and charges to be paid by the Trust or Adopting Employer and other terms of this Agreement effective as of the start of any term described in Section VII.A. Plan Supervisor shall notify Adopting Employer and Plan Administrator of (a) the new rates, fees, and charges at least sixty (60) days prior to the start of the new term, and (b) any changes in other terms of this Agreement at least thirty (30) days prior to the start of a new term.
- B. **Notices.** All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and delivered personally, or sent by registered or certified mail or nationally recognized overnight carrier, postage prepaid, electronic transmission, or by facsimile transmission, to the address set forth below, or to such other address set forth in a notice given in the manner herein provided. All such notices, requests, information or other communications shall be deemed to have been given (i) when delivered if personally delivered, (ii) three business days after having been placed in the mail, if delivered by registered or certified mail, (iii) the business day after having been placed with a nationally recognized overnight carrier, if delivered by nationally recognized overnight carrier, and (iv) the business day after transmittal by facsimile if transmitted with electronic confirmation of receipt.

If to Adopting Employer and Plan Administrator:

City of Lakeland, Florida
228 S Massachusetts Ave
Lakeland, FL 33801-5086
Telephone: (863) 834-8794

If to the Plan Supervisor:

Total Administrative Services Corporation
Attn: Corporate Counsel
2302 International Lane
Madison, WI 53704-3140
Telephone: 888.595.2261

Upon the occurrence of a change in any of the above address information, each party shall notify the other party(ies) of such change within five (5) business days of the effective date of the change.

- C. **Severability.** The provisions of this Agreement are severable. If any provision of this Agreement is held invalid by a court of law or other tribunal, the invalidity of any provision will not affect any other provision of this Agreement.
- D. **Survival.** The rights and obligations described in Sections V., VI, and VII shall survive termination of this Agreement.
- E. **No Waiver of Rights.** Nothing in this Agreement shall be deemed to limit or abrogate any right or remedy available under law. The failure of any party to insist upon the strict observation or performance of any provision of this Agreement or to exercise any right or remedy shall not impair or waive any such right or remedy.
- F. **Copyrighted Works.** The Adopting Employer acknowledges that the Plan Supervisor and its agents are the sole copyright owners of all plan documentation, administrative guides

and forms, content of the web site, and all other materials provided under the terms of this Agreement and that such materials are proprietary to the Plan Supervisor. The Plan Supervisor grants the Adopting Employer a nonexclusive, nontransferable right to copy such materials provided such copies are needed for the sole purpose of collecting and reporting information regarding Participants or notifying Participants of information regarding the HRA Plan or Health and Welfare Plan(s). Other materials provided by the Plan Supervisor shall not be copied or reproduced by the Adopting Employer without the Plan Supervisor's prior written consent.

- G. **Non-Assumption of Liabilities.** Unless specifically provided in this Agreement, the parties do not assume the existing or future obligations, liabilities or debts of the other party.
- H. **Entire Agreement.** This Agreement shall supersede and replace any and all other agreements between the parties relating to the same subject matter. This Agreement contains the entire agreement and understanding of the parties relating to the subject matter hereof, except as otherwise provided in this Agreement.
- I. **Authority.** This Agreement is the valid and binding obligation of the Adopting Employer and Plan Administrator, enforceable in accordance with its terms. The execution and performance of this Agreement has been duly authorized by all necessary action of the Adopting Employer's governing body. The Adopting Employer and Plan Administrator have the full legal right, power and authority to enter into and perform the Agreement. Each party represents that this Agreement has been executed by a duly authorized representative.
- J. **Governing Law.** The Agreement shall be governed by and interpreted in accordance with applicable federal law. To the extent the federal law does not govern, this Agreement shall be governed by the laws of the State of Florida and the courts in such state shall have sole and exclusive jurisdiction of any dispute related hereto and arising hereunder.
- K. **Independent Contractors.** The Plan Supervisor shall be construed to be acting as an independent contractor and not as an employee of Adopting Employer or Plan Administrator. The Plan Supervisor, Adopting Employer and the Plan Administrator shall not have the power or authority to act for or on behalf of, or to bind the other party, except as set forth in this Agreement.
- L. **Third Party Beneficiaries.** The obligations of each party to this Agreement shall inure solely to the benefit of the other signatory party(ies). Except as expressly provided in this Agreement, no person or entity is intended to be or shall be construed or deemed to be a third party beneficiary of this Agreement.
- M. **Successors and Assigns.** This Agreement shall be binding on any successors, assigns and subcontractors of the parties authorized under this Agreement.
- N. **Audit Rights.** The parties agree to cooperate in all reasonable audits. Audit fees shall be payable by the party initiating the audit. Audits shall be conducted using procedures mutually agreed upon by the parties. Results of the audit may be shared with the party being audited at the sole discretion of the party initiating the audit.
- O. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
- P. **Force Majeure.** Neither party shall be liable for any delay or failure to perform its obligations under this Agreement arising out of a cause beyond its control or without its fault or negligence. Such causes may include, but are not limited to, fires, floods, and natural disasters.

- Q. **Acceptance of Agreement.** Payment to Plan Supervisor by Adopting Employer (either through direct check or electronic funds transaction) made at least seven (7) days following receipt of this Agreement for services described in this Agreement will signify Employer's acceptance of all terms, conditions, and obligations of this Agreement. Acceptance will be effective on the Effective Date.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the effective date indicated above.

ADOPTING EMPLOYER & PLAN
ADMINISTRATOR

PLAN SUPERVISOR

By: _____

By: _____

Authorized Representative
Total Administrative Services Corporation

Printed: _____

Title: _____

Title: _____

LIST OF EXHIBITS

- A Reports
- B Administrative Fees
- C Authorized Representatives

EXHIBIT A
Reports

Participant:

- Confirmations within 24 hours of:
 - Investment Elections
 - Transfer of Funds
 - Realignment Requests
- Annual statements mailed to the Adopting Employer or Participants for distribution (within 22 business days following close of the Plan Year)
- Statement on Demand

Plan Sponsor:

- Section 115 trust Reconciliation – reconciles the 115 Trust account to the plan report totals, by fund and in the total.

EXHIBIT B
Administrative Fees

The following describes the standard and optional administration services and fees.

STANDARD SERVICES

Recordkeeping PPPM¹ Fee (Non-Claim Active)	\$1.90
Recordkeeping PPPM² Fee (Claim Active)	\$1.00
Minimum Monthly Fee	WAIVED

OTHER FEES (as applicable)

Description of Service	Fee
Standard communication materials (some materials will reflect actual plan provisions, but no custom fonts, wording, logos, etc.; customization is available – see below for optional services and fees)	N/C
Annual participant statements mailed Participants (mailed within 22 business days following plan anniversary)*	N/C
Standard Plan – Plan and Trust documents*	N/C
Standard Plan amendments/restatements requested by Adopting Employer	\$250 each
Preparation of Summary of Benefits and Coverage (SBC)	N/C
Check re-issue fee (charged to participant)	\$25
Fee to correct erroneous data provided by Adopting Employer or Plan Administrator	\$150/hour
Record review and transfer upon termination	N/C

* All annual participant statements are available online for participants to review. If there is an email address in the system, participants will receive an email notification when the statement is available for review. If there is no email address in the system, a paper statement will be generated and mailed.

¹ “PPPM” means per participant per month.

² “PPPM” means per participant per month.

OPTIONAL SERVICES

Initial to Authorize Optional Service	Description of Optional Service	Fee
_____	Custom Plan – Plan and Trust documents (including plan amendments/restatements to custom plan and trust documents) *	**
_____	Employee meetings (per meeting, plus travel expenses)	N/C
_____	Multi-site billing and accounting (per site)	\$25

*Work performed on behalf of Plan Supervisor by Hitesman Law, P.A. TASC provides standard documents at no cost. Custom plan documents and amendments/restatements to custom plan documents are prepared on behalf of Plan Supervisor by Hitesman Law, P.A. TASC covers the cost of the first two hours of work performed by Hitesman Law, P.A.; time to prepare the Form 1024 may exceed the two hours. Any additional legal questions exceeding the first two hours covered by TASC may incur additional charges.

** **All services** mentioned in this Agreement provided by Hitesman Law, P.A. are provided directly to the Plan Supervisor and billed to the Plan. A separate Engagement Letter will be sent to the Plan Supervisor to cover the Agreement with Hitesman. TASC will be billed for and pay for the first two (2) hours of Hitesman services, regardless of which Service described in this Agreement was provided.

EXHIBIT C

Authorized Representatives

Name: _____ Signature: _____

Name: _____ Signature: _____

Name: _____ Signature: _____

Name: _____ Signature: _____



TOTAL ADMINISTRATIVE SERVICES CORPORATION (TASC)
RETIREE FUNDED HRA
BASIC PLAN DOCUMENT ADOPTION AGREEMENT
FOR
City of Lakeland, Florida

This is the Adoption Agreement referred to in the TASC Retiree Funded HRA Basic Plan Document ("Basic Plan Document"). This Adoption Agreement plus the TASC Retiree FHRA Basic Plan Document Non-ERISA (20.0.0.0), as amended from time to time, constitutes the Plan for the Adopting Employer.

ADOPTING EMPLOYER INFORMATION:

Employer Name: City of Lakeland, Florida
Address: 228 S Massachusetts Ave
City, State Zip: Lakeland, FL 33801-5086
Phone Number: (863) 834-8794
Federal ID #: 56-6000354
Contact Person: Name: Cherie Watson
Title: Retirement Services Director
Address: 500 N. Lake Parker
City, State Zip: Lakeland, FL 33801
Phone Number: (863) 834-8794
Email Address: Cherie.Watson@lakelandgov.net

EMPLOYEES AND/OR PARTICIPANTS:

There were more than fifty (50) Employees in the last twelve months? [X] Yes [] No
There were more than twenty (20) Employees in the last calendar year? [X] Yes [] No

This Plan benefits terminated/retired Employees only.

MISCELLANEOUS:

Name of Plan: City of Lakeland, Florida Retiree Health Savings Plan
Addendum(s) Attached: [] Yes [X] No Joint Powers Agreement Attached: [] Yes [X] No

ARTICLE I: INTRODUCTION

1.1 Effective Date means: N/A
(month, day, year)
Original Effective Date: February 16, 2009
(month, day, year)
Restatement Date (date Adoption Agreement is effective): March 1, 2021
(month, day, year)

ARTICLE II: DEFINITIONS

2.16 Health Care Expense means:
[] Uninsured Medical, excluding Premiums (i.e., Section 213(d) medical expenses).
[X] Uninsured Medical, including Premiums
[] Medical Deductible

- Medical Deductible & Prescription
- Medical Deductible & Co-insurance
- Medical Deductible, Co-pay and Prescription
- Medical Deductible, Co-pay, Co-insurance & Prescription
- Premiums Only

- 2.20 Limited Scope Health Care Expense:
- Does not include Post-Deductible Expenses.
 - Includes Post-Deductible Expenses.
 - N/A – Plan does not offer a Limited Scope option.

2.28 Plan Year is: January 1 through December 31
(month, day, year)

2.28 The initial "short" Plan Year is: March 1, 2021 - December 31, 2021 N/A
(month, day, year)

2.35 Name of Trust: City of Lakeland, Florida Section 115 Retiree Health Savings Trust

ARTICLE IV: ELIGIBILITY AND PARTICIPATION OF EMPLOYEES

- 4.1 Eligibility requirements are as follows (check and complete only those that apply):
- Age (*Describe*): _____
 - Length of Service (*Describe*): _____
 - Employment Classification (e.g., union, part-time, full-time) (*Describe*):
 All full-time, regular employees of the City, hired after January 1, 2003 and subject to ratification of the funding policy, eligibility criteria, and form of benefits by individual collective bargaining units, as necessary.
 - Covered under a specified group medical plan (*Describe*): _____
 - Eligible for coverage under the Adopting Employer's group medical plan and actually covered under a group medical plan (the Adopting Employer's or another employer's)
 - Covered under the Adopting Employer's group medical plan
 - Other (*Describe*): _____

- 4.4(a) Coverage options available under the Plan include (choose all that apply):
- Full Scope Option.
 - Limited Scope Option.
 - Suspended Account Option.

- 4.4(b) Coverage option determined as follows:
- N/A
 - As provided in the Basic Plan Document (i.e., Full Scope Option unless affirmative election of another option)
 - Participants enrolled in the high deductible health plan are automatically enrolled in the following option unless they affirmatively elect another option:
 - Limited Scope Option.
 - Suspended Account Option.

- 4.6 Termination of Contributions:
- As provided in the Basic Plan Document (i.e., upon ceasing to be eligible, termination of employment, death, or termination of plan).
 - Other (*Describe*): _____

ARTICLE V: BENEFITS UNDER THE PLAN

5.3(a) Claims Run-out Period:

5.3(c) Electronic payment cards are:

- Available under the Plan.
- Not available.

5.7(b) Post-death access by Designated Beneficiary:

- Allowed as provided in the Basic Document.
- Not allowed.

5.9 Use of forfeitures:

- Pay administrative costs which would otherwise be paid from the Trust (i.e., Participants' HC Account balances)
- At the close of the Plan Year in which such forfeitures occur, contributed to the HC Accounts of all Participants employed by the Employer on the last day of such Plan Year on a per capita basis.
- At the close of the Plan Year in which such forfeitures occur, contributed to the HC Accounts of all Participants on a per capita basis.
- Other (*Describe*): _____

Note: Under no circumstances will the amounts revert to the Adopting Employer. Forfeitures may not be used to offset future contributions by the Adopting Employer.

5.9 Vesting:

- 100% vesting at Entry Date
- Vesting occurs pursuant to the following schedule: _____

5.12(d) Other Limitations, if any: N/A

ARTICLE VI: CONTRIBUTIONS

6.1 Employer Contribution amount, timing, restrictions (*check all that apply*):

One Time Contribution:

- Fixed dollar amount _____
- Fixed formula (*Describe*): _____
- Restrictions, if any (*Describe*): _____

Contributed on (*Identify Date*): _____

Recurring Contributions:

- Fixed dollar amount _____
 - Per month
 - Per quarter
 - Per year

Other (*Describe*): _____

Restrictions, if any (*Describe*): _____

Fixed formula (*Describe*): An employee mandatory salary reduction of .5% per payroll.

Per month

Per quarter

Per year

Other (*Describe*): Per payroll

Restrictions, if any (*Describe*): At the end of each calendar year, the City will make an annual determination as to the amount (if any) that the employer will contribute to the Participant RHS Account as a discretionary contribution.

Annual Contribution of Accumulated Paid Time Off, Vacation, or Sick Leave:
(Describe): _____

Contribution of Accumulated Paid Time Off, Vacation, or Sick Leave Upon Termination of Employment
(Describe): _____

Other (*Describe*): _____

6.3 Direction of Investments:

Plan Administrator

Participant

ARTICLE XI: GENERAL PROVISIONS

11.6 Reasonable fees of Plan Supervisor (recordkeeping and claims administration) shall be paid as follows:

Fixed fees shall be charged to the Plan and paid from the general assets of the Adopting Employer (billed to the Adopting Employer); asset-based fees shall be charged to the Participant and paid from the Participant's HC Account.

All fees shall be charged to the Plan and paid from the general assets of the Adopting Employer (billed to the Adopting Employer).

All fees shall be charged to the Participant and paid from the Participant's HC Account.

Other (*Describe*): _____

11.6 Payment of Trustee's fee:

- Fixed fees shall be charged to the Plan and paid from the general assets of the Adopting Employer (billed to the Adopting Employer); asset-based fees (if applicable) shall be charged to the Participant and paid from the Participant's HC Account.
- All fees shall be charged to the Plan and paid from the general assets of the Adopting Employer (billed to the Adopting Employer).
- All fees shall be charged to the Participant and paid from the Participant's HC Account.
- Other (*Describe*): WAIVED

ACKNOWLEDGEMENTS

1. Pursuant to Section 2.10(a), any collectively bargained Employees participating in this Plan participate because the collective bargaining agreement provides for coverage under this Plan.
2. This Plan has been duly adopted or authorized to be adopted by the Adopting Employer's Managing Body.
3. This Plan is a "covered entity" for purposes of the Privacy Rules under the Health Insurance Portability and Accountability Act (HIPAA).

ADOPTING EMPLOYER: City of Lakeland, Florida

Date: _____

By: _____

Its: _____

EXHIBIT "E"

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is entered into by and between the City of Lakeland, Florida Retiree Health Savings Plan (the "Plan") and Total Administrative Services Corporation, dba TASC ("Business Associate") (together referred to as the "Parties") effective March 1, 2021.

WHEREAS, the Plan is a group health plan as defined in Title 45, Parts 160 and 164 of the Code of Federal Regulations (the "Privacy Regulations") and Title 45, Parts 160, 162 and 164 of the Code of Federal Regulations (the "Security Regulations") (together, the "Privacy and Security Regulations") adopted pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA");

WHEREAS, Business Associate and the Plan entered into an agreement ("Underlying Agreement") whereby Business Associate will perform services on behalf of the Plan; and

WHEREAS, the Parties wish to set forth their understandings with regard to the use and disclosure of Protected Health Information ("PHI") by Business Associate in performance of its obligations in compliance with the Privacy and Security Regulations; as amended to incorporate Subtitle D of the Health Information Technology for Economic and Clinical Health Act, Title XIII of Public Law 111-005 (42 U.S.C.A. Section 17921 et seq., subchapter III, Privacy) ("HITECH").

In consideration of the mutual promises set forth below, the parties hereby agree as follows:

1. Definitions. Capitalized terms shall have the meanings given to them in the Privacy and Security Regulations, which are incorporated herein by reference.
2. Use and Disclosure of Protected Health Information. The Plan and Business Associate hereby agree to comply with the privacy and security requirements of HIPAA, as set forth in the Privacy and Security Regulations. Business Associate shall use and/or disclose PHI only to the extent necessary in furtherance of Business Associate's obligations and duties under the Underlying Agreement with the Plan and as authorized or permitted by the Privacy and Security Regulations. Business Associate shall disclose PHI to other business associates of the Plan and any subcontractors to the extent necessary for purposes of the Plan's Payment and Health Care Operations, provided such other business associates and/or subcontractors have business associate agreements in place with the Plan or Business Associate as required by the Privacy Regulations (and a copy of the applicable provisions of such other business associate agreements will be provided to Business Associate or the Plan upon request). Business Associate shall disclose PHI to the Plan Sponsor to the extent necessary for the Plan Sponsor's administration activities that constitute Payment or Health Care Operations, provided the Plan document has been amended as required by the Privacy Regulations (and a copy of the applicable provisions of the Plan document will be provided to

Business Associate upon request). Business Associate may disclose Summary Health Information to the Plan Sponsor for the purpose of (a) obtaining bids for health or stop loss insurance for the Plan, or (b) modifying, amending or terminating the Plan.

3. Prohibition on Unauthorized Use or Disclosure of PHI. Business Associate shall not use or disclose any PHI received from or on behalf of the Plan, except as permitted or required by the Underlying Agreement, this Agreement, the Privacy and Security Regulations, and as required by law or as otherwise authorized in writing by the Plan. Business Associate shall comply with the applicable provisions of: (a) the Privacy and Security Regulations; (b) state laws, rules and regulations applicable to individually-identifiable health information not preempted by federal law; and (c) the Plan's health information privacy policies and procedures.

4. Business Associate's Operations. Business Associate may use PHI it creates for or receives from the Plan, in its capacity as a Business Associate, to the extent necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities but only if:

(a) The disclosure is required by law; or

(b) Business Associate obtains reasonable assurance, evidenced by written contract, from any person or organization to which Business Associate shall disclose such PHI that such person or organization shall:

(i) Hold such PHI in confidence and use or further disclose it only for the purpose for which Business Associate disclosed it to the person or organization or as required by law; and

(ii) Notify Business Associate (who shall in turn promptly notify the Plan) of any instance of which the person or organization becomes aware in which the confidentiality of such PHI was breached as soon as possible.

5. Data Aggregation Services. Business Associate may use PHI to provide Data Aggregation Services related to the Plan's Health Care Operations.

6. PHI Safeguards. Business Associate shall develop, implement, maintain and use appropriate administrative, technical and physical safeguards to prevent the improper use or disclosure of any PHI relating to the Plan and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI.

7. Electronic Health Information Security and Integrity. Business Associate represents and warrants that it is compliant with all applicable requirements of the Security Regulations. Business Associate further represents and warrants that it has fully developed and implemented, and maintains and uses appropriate administrative, technical and physical security measures consistent with and in compliance with the Security Regulations to preserve the integrity, confidentiality and availability of all electronic PHI that it creates, receives, maintains or transmits on behalf of the Plan. Business Associate

shall document and keep its security measures current in accordance with the Security Regulations.

8. Protection of Exchanged Information in Electronic Transactions. If Business Associate conducts any Standard Transaction for or on behalf of the Plan, Business Associate shall comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply, with each applicable requirement of the Privacy and Security Regulations and any Business Associate Agreement with any subcontractor or agent as required.

9. Subcontractors and Agents. In accordance with Title 45, Sections 164.502(e)(1)(ii) and 164.308(b)(2) of the CFR, Business Associate shall require each of its subcontractors or agents that create, receive, maintain or transmit PHI on behalf of the Plan and/or Business Associate, or to whom Business Associate may provide PHI on behalf of the Plan, to agree to satisfactory assurances as required by the Rules and to agree to written contractual provisions that impose at least the same obligations to protect such PHI as are imposed on Business Associate by this Agreement and the Privacy and Security Regulations. Business Associate shall maintain a list of all subcontractors and agents to which it provides the Plan's PHI, and it will provide the list to the Plan upon request.

10. Access to PHI. Business Associate shall provide access, at the request of the Plan, to PHI in a Designated Record Set, to the Plan or, as directed by the Plan, to an Individual to meet the requirements under Title 45, Section 164.524 of the CFR or applicable state law. Business Associate shall provide access in the time and manner set forth in the Plan's health information privacy policies and procedures unless the individual requests this access from the Plan or the Business Associate in a specific electronic form. In this case, the access must be provided in the electronic form and format requested by the individual, if it is readily producible, or, if not, in a readable electronic form and format as agreed to by the Plan and the individual

11. Amending PHI. Business Associate shall make any amendment(s) to PHI in a Designated Record Set that the Plan directs or agrees to pursuant to Title 45, Section 164.526 of the CFR at the request of the Plan or an Individual in the time and manner set forth in the Plan's health information privacy policies and procedures.

12. Accounting for Disclosures of PHI.

(a) Business Associate shall document all disclosures of PHI and information related to such disclosures and provide written notice to the Plan within three business days of learning about any disclosure as would be required for the Plan to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Title 45, Section 164.528 of the CFR.

(b) Business Associate agrees to provide the Plan, in the time and manner set forth in the Plan's health information privacy policies and procedures, information collected in accordance with Section 12(a) above, to permit the Plan to respond to a request by an Individual for an accounting of disclosures of PHI in

accordance with Title 45, Section 164.528 of the CFR. Business Associate shall provide the accounting directly to an Individual upon request by the Plan.

13. Access to Books and Records. Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from or on behalf of the Plan available to the Plan and to DHHS or its designee for the purpose of determining the Plan's compliance with the Privacy Regulations.

14. Reporting. As described below, Business Associate shall report to the Plan in writing any "Event."

(a) Definition. For purposes of this Agreement, "Event" shall mean any use or disclosure of PHI not permitted (1) under the Privacy Regulations, including events that rise to the level of a Breach, (2) under this Agreement or (3) by law, or that is a Security Incident.

(b) Event Reporting. Business Associate shall provide written notice to the Plan's Privacy Official of any Event within three business days after any Event of which it has reasonable suspicion or discovers. This notice shall identify a contact person with whom the Plan may correspond regarding the Event. Within ten (10) days from the date of initial notice, Business Associate shall provide the Plan a written report identifying or describing: (i) the affected Individual whose Unsecured PHI has been or is reasonably believed to have been accessed, acquired or disclosed; (ii) the incident, including the nature of the incident, the date of the Event and the date of the discovery of the Event, if known; (iii) who made the unauthorized use and/or received the unauthorized disclosure; (iv) the types of Unsecured PHI involved in the Event; (v) any specific steps the affected Individual should take to protect him or herself from potential harm related to the Event; (vi) what the Business Associate is doing, as a corrective action, to investigate the Event, to mitigate losses and to protect against further Events; (vii) contact procedures for how the affected Individual can obtain further information from the Business Associate; (viii) a recommended plan of notifications to affected Individuals, HHS and/or the media, as may be appropriate or required by law; and (ix) such other information, including the risk assessment analysis prepared by the Business Associate, as reasonably requested by the Plan's Privacy Official. Business Associate shall conduct the risk assessment to determine whether a Breach occurred and inform the Plan of its assessment. If in the opinion of the Plan the incident qualifies as a Breach, the Business Associate shall carry out the appropriate notification responsibilities, after receiving the Plan's approval of the Business Associate's plan of proposed notifications and the specific content of such notifications. Business Associate shall require all of its subcontractors and agents who experience an Event related to the Plan to report the Event to the Business Associate in such a time so that the Business Associate shall comply with the notification requirements described in this section.

15. Sale of PHI. Business Associate shall not receive direct or indirect payment in exchange for any PHI relating to the Plan or its Individuals, unless Business Associate receives authorization by all affected Individuals, except as permitted under the Privacy Regulations, including 45 CFR Part 164.

16. Marketing. Business Associate shall not receive direct or indirect payment for marketing communications which include PHI relating to the Plan or its Individuals without authorization from the affected Individuals unless such communication is permitted under the Privacy Regulations, including 45 CFR Part 164.

17. Restrictions on Uses, Disclosures and Requests.

(a) Business Associate will limit all uses, disclosures and requests of PHI, including electronic PHI, to the Limited Data Set to the extent possible or, if that is not sufficient, to the minimum necessary to accomplish the intended purpose of such use, disclosure or request, to the extent required by the Privacy Regulations. Business Associate shall maintain a written policy delineating the standards it will use in determining the minimum necessary information for its uses and disclosures of PHI in accordance with standards set forth in the Privacy Regulations.

(b) Upon the request of an Individual, Business Associate will not disclose such Individual's PHI for purposes of Payment or Health Care Operations if the Individual paid in full out of pocket for the health care item or service to which the PHI relates, in accordance with 45 CFR section 164.522.

18. Mitigation. 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.

19. Sanctions. Business Associate shall apply appropriate sanctions to any employee, subcontractor or agent who uses or discloses PHI in violation of this Agreement or applicable law.

20. Termination for Cause. As required by the Privacy Regulations, if the Plan becomes aware that the Business Associate has engaged in a material breach, then the Plan shall:

(a) Provide an opportunity for the Business Associate to cure the breach. If the Business Associate does not cure the breach or end the violation within the time specified by the Plan, then the Plan shall have the right to terminate this Agreement and the Underlying Agreement, if termination is feasible.

(b) Immediately terminate this Agreement and the Underlying Agreement if cure is not possible and if termination is feasible.

21. Return or Destruction of Health Information.

(a) Except as provided in Section 20(b) below, and subject to any record retention provisions of the Underlying Agreement, upon termination, cancellation, expiration or other conclusion of this Agreement and the Underlying Agreement, Business Associate shall return to the Plan or destroy all PHI created or received by Business Associate on behalf of the Plan. This provision shall also apply to PHI that is in the possession of all subcontractors or agents of Business Associate.

(b) In the event that the Parties mutually determine that returning or destroying the PHI is infeasible, Business Associate shall retain the PHI, extend the protections of this Agreement to such PHI and maintain the confidentiality of all such PHI and continue to use appropriate safeguards with respect to all electronic PHI to comply with Subpart C of 45 CFR part 164, for so long as Business Associate maintains such PHI. The obligations of Business Associate under this Section 20(b) shall survive termination of this Agreement and the Underlying Agreement.

22. Obligations of Plan.

(a) The Plan shall provide Business Associate a copy of the Plan's Notice of Privacy Practices.

(b) The Plan shall notify Business Associate of any restriction to the use or disclosure of PHI that the Plan has agreed to or is required to abide by under 45 CFR section 164.522 (and any revocation of such a restriction, including by an individual), to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(c) The Plan shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Regulations if done by the Plan, except as permitted in Sections 4 and 5 above.

23. Automatic Amendment. Upon the effective date of any amendment to the Privacy and Security Regulations and any applicable regulations thereunder with respect to PHI, the Agreement shall automatically be deemed to be amended to incorporate such amendment to the Privacy and Security Regulations and applicable regulations so that Business Associate and the Plan remain in compliance with the Privacy and Security Regulations and applicable regulations.

24. Hold Harmless. Business Associate shall indemnify, hold the Plan and its affiliates, employees, directors, trustees and agents harmless from and against all claims, obligations, liabilities, penalties, taxes, costs, damages, losses, civil or criminal penalties or expenses (including reasonable attorneys' fees) of any sort which may be imposed on or incurred by the Plan in connection with, or arising out of, a Breach, act or omission by Business Associate, its employees, agents, or any of its subcontractors or the performance or breach of Business Associate's or any of its subcontractors' responsibilities and obligations under the Privacy and Security Regulations or this Agreement. The parties' respective rights and obligations under this section shall survive termination of this Agreement.

25. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

26. Independent Contractor. The Parties are and shall remain independent contractors throughout the term of this Agreement. Nothing in this Agreement or

otherwise shall be construed to constitute Business Associate and the Plan as partners, joint ventures, agents or anything other than independent contractors.

27. Facsimile Signature. Signature pages may be transmitted by facsimile, e-mail or other electronic means. Upon delivery via facsimile, e-mail or other electronic means, a signature shall be deemed an original and shall be admissible in evidence.

28. Final Agreement. This Agreement supersedes all prior Business Associate Agreements between the parties with respect to the Underlying Agreement.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf, effective as of March 1, 2021.

City of Lakeland, Florida

**Total Administrative Services
Corporation (TASC)**

By: _____

By: _____

Its: _____

Its _____

Date: _____

Date: _____