

**RESOLUTION NO: 2016-07-20A**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS AUTHORIZING THE MAYOR TO EXECUTE THE SECTION 125 FLEX PLAN SERVICE AGREEMENT WITH TML MULTISTATE INTER-GOVERNMENTAL EMPLOYEE BENEFITS POOL (ATTACHMENT A) FOR THE PLAN YEAR OF OCTOBER 1, 2017 THROUGH SEPTEMBER 30, 2018.**

**City of Overton**  
Overton, Texas

**WHEREAS**, the undersigned Employer is an Employer Member of the TML MultiState Intergovernmental Employee Benefits Pool (hereinafter referred to as the "Pool"); and

**WHEREAS**, the undersigned Employer sponsors an employee benefits plan; and

**WHEREAS**, the undersigned Employer is responsible for the administration of its employee benefit plan as the Plan Administrator; and

**WHEREAS**, the undersigned Employer wants the Pool to assist the Employer in complying with the requirements of the Section 125 Flex Plan Year for 10/01/2017 to 09/30/2018.

**NOW, THEREFORE**, in consideration of the promises, mutual covenants and agreements contained in ATTACHMENT A, the undersigned Employer and the Pool agree to the terms as outlined in ATTACHMENT A.

**INTRODUCED, READ AND APPROVED FOR ADOPTION AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS ON THIS THE 20<sup>th</sup> DAY OF JULY, 2017**



**CITY OF OVERTON**  
*C. R. Evans, Jr.*  
C. R. Evans, Jr., MAYOR

ATTEST:

APPROVED AS TO FORM AND LEGALITY

*Rachél Gafford*  
Rachél Gafford, CITY SECRETARY

*Blake Thompson*  
Blake Thompson, CITY ATTORNEY

**ATTACHMENT A****Service Agreement for Plan Administrator**

This SERVICE AGREEMENT between the City of Overton, Texas, (Plan Sponsor) and TML MultiState Intergovernmental Employee Benefits Pool, (Plan Administrator) will be effective on 10/01/2017.

WITNESSETH:

**Section I****The Plan**

1. The Plan Sponsor has adopted an Employee Flexible Benefits Plan under Section 125 of the Internal Revenue Code. This Plan is offered to all eligible employees who are qualified by employment status.
2. The Plan Participants are the employees enrolled in the Plan.
3. All contributions to the Plan shall be deposited in the name of the Plan with a Bank designated by the Plan Administrator subject to approval of the Plan Sponsor if requested by the Plan Sponsor.
4. The Plan Sponsor agrees that a healthcare expense reimbursement arrangement is a health plan under Title II of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Plan Sponsor agrees that it is the Plan Sponsor's, and not the Plan Administrator's, responsibility to ensure that its healthcare expense reimbursement arrangement plan, if any, is compliant with all relevant sections of HIPAA Title II or any other law.

**Section II****The Plan Administrator**

1. The Plan Administrator shall provide consulting services, and shall assist the Plan Sponsor in the administration of the Flexible Benefits Plan.
2. The Plan Administrator shall have the full responsibility for maintaining accounts for each eligible person electing to participate in the Plan. The Plan Administrator shall arrange for eligible claims payments from funds deposited by the Plan Sponsor as directed by their participating employees. The claims payments shall be made by the Plan Administrator by issuing a check or draft to the participant upon the Plan Bank Account, if such account is provided for this purpose, in an amount equal to the qualified charges from the submitted claim. The claims submitted by the Plan Participants shall be paid within ten days of receipt by the Plan Administrator.
3. To the extent that information is available to the Plan Administrator, the Plan Administrator shall assist the Plan Sponsor in the preparation of any report, tax return or similar papers required by state or the Federal Government pertaining to the operation or management of the Flexible Benefits Plan; however, the ultimate responsibility for filing any governmental document shall be with the Plan Sponsor.
4. The Plan Administrator shall render periodic reports to each participant, which shall include the following:
  - a. Receipts of the Participant's Plan Contributions;
  - b. Disbursement of Plan Contributions through claims payments; and
  - c. Statements of (a) and (b) above shall automatically be provided each Participant following the submission and payment of a qualified claim.

5. The Plan Administrator shall prepare a Plan Document for the Flexible Benefits Plan sponsored by the Plan Sponsor. The Plan Sponsor shall assume the responsibility of obtaining legal review of the Plan Document.
6. Unless otherwise provided, the Plan Administrator is authorized to do all the things necessary or convenient to carry out the terms and purposes of the Plan.

**Section III**

**Procedure for Making and Payment of Claims for Benefits from the Fund**

1. Any covered person may make application for benefits from the Plan as provided by the Plan upon the form or forms provided by the Plan Administrator. The applicant shall fully and truthfully complete such application for benefits and the applicant shall supply all such pertinent information including copies of paid receipts, as may be required under the Section 125 rules and specified by the Plan Administrator.
2. The Plan Administrator shall accept copies of any application for benefits made in the appropriate manner shall duly investigate and verify the statements made on the application and determine benefit eligibility. If the facts as stated in such application entitle the covered person to receive payment of benefits from the Plan, the Plan Administrator shall forthwith arrange for the proper payment.
3. Claim filings shall be mailed/faxed to the person or department designated by the Plan Administrator. If appropriate, claims could be submitted through the debit card transaction. Claims checks are processed each week. During the last month, eligible claims of any amount shall be processed by the Plan Administrator.
4. All Plan benefits processed by the Plan Administrator shall be mailed to the qualified Plan Participant within ten (10) days of approval.  
If the Plan Administrator finds that the Plan Participant is not entitled to a claim payment under the Plan, the claim application shall be denied, all or in part, and returned to the Plan Participant with the Plan Administrator's reason for denial. The Plan Participant may appeal a denial by the Plan Administrator to the Plan Sponsor. The Plan Sponsor's determination is final and conclusive upon the covered person.
5. The Plan Administrator shall not be liable for any failure or refusal to pay or honor any application for benefits made pursuant to this Agreement; and to the extent allowed by law, the Plan Administrator must be indemnified by the Plan Sponsor for any liability related to its duties herein, and shall be reimbursed by the Plan Sponsor for any expense, loss, damage, or legal fees incurred by the Plan Administrator in defending any claims or demands made against the Plan Sponsor, the Plan Administrator or the Plan. This paragraph will not apply for any loss due to the gross negligence or willful misconduct of the Plan Administrator.

**Section IV**

**Costs of Administrator**

1. The Plan Administrator shall be entitled to a fee or fees for its service to the Plan and, under this Agreement, the fee shall be paid in the form of an advance start-up costs, a pass through of printing or printing preparation costs and monthly service fee.

<b>Item</b>	<b>Cost</b>	<b>Payable</b>
Setup Fee	\$50.00/Group	One time(1)
Monthly Service Fee(2)	\$3.70/Participant Debit   \$5.00/Participant Paper	Monthly

Special Reports(3)	As agreed upon	30 days following receipt of report
Grace Period/Carryover Transition Fee	No additional charge	

1. One time set up fee for each group that enrolls in the Section 125 Flexible Spending Plan.
2. Monthly Service Fee includes:
  - a. processing contribution;
  - b. processing claims (review and verification);
  - c. paying claims (direct mail to employee);
  - d. paying dependent premium (if applicable);
  - e. employee fund balance statement with each reimbursement; and
  - f. statement of fund balances and projected year-end balance at close of Plan Year fourth quarter. The flexible spending arrangement (FSA) participants have up to an additional two and a half (2½) months to spend money leftover in the FSAs at year’s end on qualified health and dependent care expenses, pursuant to IRS Notice 2005-42. Expenses for qualified benefits incurred during the grace period may be paid or reimbursed from benefits or contributions remaining unused at the end of the immediately preceding plan year. Upon exhaustion of that benefit monies can be accessed from current year contributions. The period must not extend beyond the fifteenth (15th) day of the third calendar month after the end of the immediately preceding plan year to which it relates. The plan cannot permit cash-out or conversion of unused benefits or contributions, during the grace period, to any other taxable or nontaxable benefit. (Fourteen (14) months and fifteen (15) days before the amounts are forfeited under the “use it or lose it” authorization in Notice 2005-42 for the current cafeteria plan). If the employee at any time becomes covered under a high deductible health plan (“HDHP”), as prescribed by Section 223 of the Internal Revenue Code) with an accompanying health savings account (“HSA”) then the FSA will automatically convert from a general purpose FSA to a post-deductible FSA for any amounts incurred when the HDHP is in effect. This means that expenditure for non-preventive medical costs will not be paid until the deductible for the HDHP has been met, and then only to the extent that those costs exceed the deductible.
3. Normal Reports to the Plan Sponsor, at no additional cost are:
  - a. initial enrollment verification;
  - b. quarterly fund balance;
  - c. projected year-end fund balance at the close of the Plan Year fourth quarter; and
  - d. two and a half (2½) month grace period will be included in fund balance, plus interest earned if any.

**Section V  
The Plan Sponsor**

1. As of the effective date of this Agreement, the Plan Sponsor shall provide the Plan Administrator with a complete list of all employees who are eligible for benefits under

- the Plan. The Plan Sponsor shall arrange for enrollment meetings and, with the Plan Administrator's assistance, complete Plan enrollment.
2. The Plan Sponsor shall collect funds in accordance with authorized payroll reductions or deductions and shall remit these monies to the Plan Administrator on a monthly (or pay period) basis.
  3. The Plan Sponsor shall forward the appropriate service fees to the Plan Administrator on the first of each calendar month or in conjunction with the monthly plan fund collections.
  4. The Plan Sponsor shall assist in the enrollment of eligible employees in the Plan, notify the Plan Administrator of any change of eligibility, cooperate with the Plan Administrator with regard to proper claim settlement, transmit to the Plan Administrator proper claim settlement and transmit to the Plan Administrator all inquiries pertaining to the Plan.
  5. The Plan Sponsor shall be responsible for filing any documents required by the Internal Revenue Service.
  6. The Plan Sponsor limits contributions to the Plan to \$2,550 per employee (January 2015 and thereafter), unless otherwise specified below the signature line on this agreement. (Unreimbursed Healthcare Spending maximum \$2,550)

## Section VI

### Termination of the Agreement

1. This Agreement may be terminated by the Plan Sponsor or the Plan Administrator by written notice of intention to terminate given to the other party, to be effective as of an annual plan anniversary date. Said written notice shall be given not less than thirty (30) days prior to such termination. The thirtieth (30th) day shall coincide with the last day of a calendar month. The Plan Administrator may also terminate this agreement following the termination of any medical, dental, or vision coverage provided by the Plan Administrator to the Plan Sponsor, to be effective upon ten (10) days written notice sent to the Plan Sponsor, effective on the date specified in the notice. All obligations of the Plan Administrator related to the relevant rights of the covered Participant to payments of benefits from the Plan will be terminated and extinguished on the effective date of termination given in the notice whether or not the claim for such benefits arose prior to or following the termination of this Agreement. Absent a written notice of termination this agreement will annually renew on the effective date set forth at inception. In no case shall termination by the Plan Administrator relieve the Plan Sponsor of its obligation to maintain the Plan.

## Section VII

### Qualifications

1. To qualify the Plan Sponsor must have on file a current Interlocal Agreement with the TML MultiState Intergovernmental Employee Benefits Pool. The Plan Sponsor must have ten (10) percent of the eligible employees participate in the Plan. Should these qualifications not be met, or maintained, the Plan Administrator may terminate this agreement pursuant to Section VI.

## Section VIII

### Miscellaneous Provisions

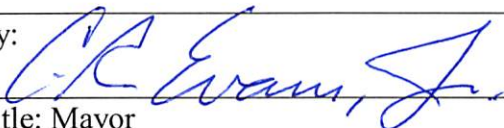
1. In the event of resignation or inability to serve as the Plan Administrator, the Plan Sponsor may appoint a successor.
2. If during the operation of the Plan, the United States Government, the government of any state or any instrumentality or either shall assess any tax against the Plan and the Plan



Administrator is required to pay such tax, the Plan Administrator shall report the payment to the Plan Sponsor who will reimburse the Plan Administrator for such tax or assessment.

3. The Plan Administrator shall incur no liability to the Plan Sponsor or to an employee or dependent of the Plan Sponsor for any act or failure to act not directly connected with processing and payment of claims as provided in this Agreement, except where the liability is proximately caused solely by the gross negligence or willful misconduct of the Plan Administrator. To the extent allowed by law, the Plan Sponsor shall hold the Plan Administrator harmless from and indemnify it against any and all liability, claims, damages (including punitive or consequential damages), costs, expenses, or fees (legal or otherwise) incurred or paid in connection therewith which might be asserted by the Plan, the Plan Sponsor's employees or other persons for which the Plan Administrator would not be liable to the Plan Sponsor as set forth above.
4. Where the context of the Agreement requires, the singular shall include the plural and the masculine gender shall include the feminine.
5. This Agreement may be amended by the Plan Sponsor and the Plan Administrator at any time by mutual written consent of said parties.
6. The Plan Sponsor hereby is designated the agent for service of legal process on behalf of the Plan, in its principal office.

IN WITNESS THEREOF, the Plan Sponsor and the Plan Administrator have executed this Agreement this the 20<sup>th</sup> day of JULY, 2017.

<b>City of Overton</b>	<b>TML MultiState Intergovernmental Employee Benefits Pool</b>
By: 	By: Susan L. Smith
Title: Mayor	Title: Executive Director
Address: 1200 S. Commerce Overton, TX 75684	

Healthcare Limitation amounts are limited to \$2,550.

(standard maximum \$2,550 (January 2015 and thereafter) or amount established by Employer)  
The Section 125 Flex Plan Year is 10/01/2017 to 09/30/2018.