

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
FEBRUARY 20, 2024 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
PROFESSIONAL SERVICES AGREEMENT – POINT C	◆ RESOLUTION ORDINANCE RECEIVE/FILE	KEVIN POKORNY DIRECTOR OF ADMINISTRATIVE SERVICES

**SYNOPSIS**

A resolution has been prepared to authorize the execution of a professional services agreement with Point C, Cherry Hill, New Jersey to administer the City’s Flexible Spending Account (FSA) Plan in an amount not to exceed \$2,706.

**FISCAL IMPACT**

The FY23/FY24 Biennial Budget provides funding for this service.

**RECOMMENDATION**

Approval.

**BACKGROUND**

The City has a contract with Mid-American Benefits, Omaha, Nebraska, to provide administrative services related to the City’s FSA Plan. Recently, Mid-American Benefits has partnered with Point C for several administrative services including FSA Plans. With the change to Point C, we are asking for approval of a new professional services agreement with Point C to provide the administrative services associated with the City’s FSA Plan.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AUTHORIZING THE MAYOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH POINT C, CHERRY HILLS, NEW JERSEY TO PROVIDE PROFESSIONAL ADMINISTRATIVE SERVICES FOR THE CITY'S FSA PLAN IN AN AMOUNT NOT TO EXCEED \$2,706.00.

WHEREAS, the City Council of the City of La Vista has determined that said services are necessary; and

WHEREAS, the FY23/FY24 Biennial Budget includes funding for this project; and

WHEREAS, that the form of amended and restated Welfare Benefit Plan, effective January 01, 2024, presented to this meeting (and a copy of which is attached hereto) is hereby approved and adopted, and that the proper agents of the city are hereby authorized and directed to execute and deliver to the Administrator of said Plan one or more counterparts of the Plan; and

WHEREAS, that the Administrator shall be instructed to take such actions that the Administrator deems necessary and proper in order to implement the Plan, and to set up adequate accounting and administrative procedures for the provision of benefits under the Plan; and

WHEREAS that the proper agents of the City shall act as soon as possible to notify the employees of the City of the adoption of the Plan and to deliver to each employee a copy of the Summary Plan Description of the Plan, which Summary Plan Description is attached hereto and is hereby approved.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska authorize the Mayor to execute a professional services agreement with Point C to provide professional administrative services for the City's FSA plan in an amount not to exceed \$2,706.00.

PASSED AND APPROVED THIS 20TH DAY FEBRUARY OF 2024.

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, MMC

December 19, 2023

City of La Vista  
8116 Park View Blvd  
La Vista, NE 68128

**RE: City of La Vista  
Invoice: 24187.01  
Point C Administration Agreements**

Hello,

On behalf of Mid-American Benefits and Point C we would like to thank you for your business. Our goal is to exceed your expectations in service excellence. If there is anything we can do to better service you, please let us know.

Please review the (FSA) Setup and Plan Administration Fees listed below.

Services	Volume	Rate	Total
Plan Set-up		\$500.00	Waived
Debit Card Set-up Per Card	41	\$3.50	Waived
Monthly Plan Administration PEPM	41	\$5.50 (MMF \$75.00)	\$225.50
<i>Fees shown will be on the next monthly invoice.</i>			
<b>Total</b>			<b>\$225.50</b>

To assist in proper and accurate administration and clear communication, I have attached to this letter, agreement(s) outlining our responsibilities to your organization. Enclosed are the following:

Consumer Directed Administration Agreement  
Schedule B  
Business Associate Agreement

Since these agreements are also for our mutual protection, I ask that you review them with your corporate counsel. If everything is in order based on the scope of the work we have been retained to provide, please sign, and return a copy to our office.

Sincerely,

*Debbie Klein*

Debbie Klein  
Manager Consumer Directed Benefits

Enclosures

## **Point C Administration Agreement**

This Administrative Services Agreement and accompanying exhibits and appendices which are attached hereto and incorporated herein (collectively referred to as the "Agreement") made the **1st** day of **January, 2024** ("Effective Date"), by **City of La Vista** ("Plan Sponsor"), **City of La Vista** ("Plan Administrator") and Point C. ("Contractor"), a corporation formed and existing under the laws of the State of New Jersey, having its principal place of business at 1934 Olney Ave., Suite 200, Cherry Hill, NJ 08003.

The purpose of this Agreement is to state the terms and conditions by which the Contractor will provide independent administrative services to the Plan Sponsor as it relates to administration of the Plan(s). This Agreement shall not be deemed to be a contract of insurance under any laws or regulations. The Contractor does not insure, guarantee or underwrite liability. The Contractor has no responsibility and the Plan Sponsor has total responsibility for payment of claims arising under the Plan and all expenses incidental to it.

WHEREAS, the Plan Sponsor desires to make available a program of healthcare benefits (the "Plan") and funds said Plan from general assets of the employer through salary reductions and/or other assets;

WHEREAS, the Plan Sponsor wishes to contract with an independent third party to perform certain services with respect to the Plan as enumerated below;

### **WITNESSETH**

### **DEFINITIONS**

For purposes of this Agreement, the following words and phrases have the meanings set forth below, unless the context clearly indicates otherwise and wherever appropriate, the singular shall include the plural and the plural shall include the singular.

Adjudicate means process (electronically or manually) and pay, deny or pend for additional information, all claims submitted to the Plan.

Calendar Year means January 1st through December 31st of the same year.

Claim means a request by a Claimant for payment or reimbursement for Covered Services from the Plan.

Claimant means any person or entity submitting expenses for payment or reimbursement from the Plan.

Claims Payment Account means an account established on behalf of the Plan Sponsor for payment or reimbursement for Covered Services, which Account shall be an asset of the Plan Sponsor.

Claims Runout means Claims that are incurred but unreported and/or unpaid as of the effective date of termination of this Agreement.

COBRA means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

Covered Services means the care, treatments, services, or supplies described in the Plan Document as eligible for payment or reimbursement from the Plan.

Employer means Plan Sponsor (unless otherwise stated), and any successor organization or affiliate of such Employer which assumes the obligations of the Plan and this Agreement.

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ERISA means the Employee Retirement Income Security Act of 1974, as amended.

Health Care Providers means physicians, dentists, hospitals, or other medical practitioners or medical care facilities that are duly licensed and authorized to receive payment or reimbursement for Covered Services provided under the terms of the Plan.

Paid Claims means claims for benefits solely funded by Plan Sponsor and submitted for processing to Contractor and for which payment has been issued to the Claimant or assignee.

Plan means the self-funded employee welfare benefit plan, which is the subject of this Agreement and which the Plan Sponsor has established pursuant to the applicable Plan Document.

Plan Document means the instrument or instruments that set forth and govern the duties of the Plan Sponsor and eligibility and benefit provisions of the Plan which provide for the payment or reimbursement of Covered Services, as may be amended from time to time.

Plan Participant is any person eligible for enrollment, and his/her covered dependents, who are properly enrolled and entitled to benefits from the Plan. Persons eligible for enrollment are those who meet the Plan's eligibility requirements.

Plan Year means the period of time specified as such in the Plan Document.

Summary Plan Description means the document required to be provided to Plan Participants under Sec. 102 of ERISA that describes the terms and conditions under which the Plan operates. In the event of any conflict or inconsistency between the Summary Plan Description and the Plan Document, the terms of the Plan Document will control, when permitted by law.

Utilization Management means the review and evaluation of medical necessity and appropriateness of the use of health care services, procedures or facilities utilized by a Plan Participant under the terms of the Plan.

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## **SECTION I**

### **The Plan**

- 1.1 The Plan Sponsor has established the Plan, providing means by which Plan Participants can secure the benefits set forth in the Plan.
- 1.2 The Plan Sponsor acknowledges that it serves as Plan Administrator and Named Fiduciary (as those terms are defined in ERISA), and shall have discretionary authority and control over the management of the Plan, and all discretionary authority and responsibility for the administration of the Plan. The Contractor does not serve either as Plan Administrator or as a Named Fiduciary of the Plan. All functions, duties and responsibilities of the Contractor are governed exclusively by this Agreement and the Plan Document.
- 1.3 Notwithstanding anything herein to the contrary, it is acknowledged and understood that the source of funding for payment of claims are contributions made by the Plan Sponsor, the Plan Administrator or, if applicable, the Plan Sponsor's employees.
- 1.4 The Plan Sponsor and Plan Administrator have retained Contractor to provide services to the Plan Sponsor, Plan Administrator and Plan Participants in accordance with the terms and conditions of this Agreement and pursuant to Schedules attached hereto and made a part hereof.
- 1.5 Plan Sponsor shall fund the Claims Payment Account and grant the Contractor drafting authority with respect to such Account. The Contractor shall notify the Plan Sponsor of the amount necessary to pay Claims adjudicated from the previous check cycle and the Plan Sponsor will deposit amounts necessary to pay such claims within five(5) business days or as agreed upon by and between the parties. Unless otherwise arranged with the Contractor, The Claims Payment Account shall be set up by the Plan Sponsor who shall execute and deliver to the Contractor and a depository selected by the Plan Sponsor any and all documents necessary to empower the Contractor to act as signatory on such account.
- 1.6 Plan Administrator will Pre-fund in a Claim Account established by Contractor on behalf of the Plan.
  - a. Debit Card Funding Option:
    - a. Daily: 3% of Covered Employee Annual Benefit
    - b. Weekly: 5% of Covered Employee Annual Benefit
    - c. Monthly: 10% of Covered Employee Annual Benefit
- 1.7 With the exception of the initial funding of the Claims Payment Account, claim funding requests will be fulfilled by ACH (Automated Clearing House). If funding by check is requested in place of ACH, the Pre-fund amount will be increased to two (2) times the above deposit per covered employee.

## **SECTION II**

### **The Contractor**

- 2.1 The Contractor shall assist the Plan Sponsor and the Plan Administrator in the administration and management of the Plan as it may be requested and authorized from time to time.
- 2.2 The Plan Administrator and Plan Sponsor authorize the Contractor to do all things deemed necessary or convenient to carry out the terms and purposes of this Agreement.
- 2.3 Subject to Paragraph 2.4, the Contractor shall have the responsibility for processing Claims under the Plan and for arranging for the payment thereof from funds of the Plan by issuing a check or draft upon the Claims Payment Account. The Contractor shall honor any assignment of benefits of a Plan Participant under the Plan to any person or institution qualified as an assignee under the Plan Document.
- 2.4 The Contractor shall use reasonable care and due diligence in exercising its duties and responsibilities under this Agreement. Provided that the Contractor meets the standard of care set forth in this Paragraph, the Contractor shall not be liable to the Plan, the Plan Sponsor, the Plan Administrator or any third party, including without limitation, the Sponsor's employees, for any disputed claim or failure to pay a claim. In no event shall the

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Contractor be liable for any act or failure to act on the part of any insurance carrier utilized in connection with the Plan, including without limitation, any failure by such carrier to pay a claim.

- 2.5 If for any reason an action is brought against Contractor by the United States of America or any state or federal agency to recover for any payment with respect to any item of service under the Plan, whether under 42 U.S.C. §1395(b) (B) (2) (ii) or otherwise (a "Recovery Action"), the Plan Administrator and the Plan Sponsor shall indemnify, defend and hold harmless Contractor against such Recovery Action and shall reimburse on demand Contractor for any amount any such party recovers against Contractor in connection with any such Recovery Action.
- 2.6 The Plan Sponsor agrees that the Contractor shall have no liability for any refusal by any insurance company to issue or to continue any policy, or for any termination of any policy by any insurance company, or for any action by any insurance company.
- 2.7 The Contractor shall render monthly reports to the Plan Sponsor and/or Plan Administrator in accordance with a Schedule, mutually agreed upon between the parties, which shall include the following:
- a. Receipts of the Plan, other than deposits made by the Plan Sponsor from its own funds or from collections from employees.
  - b. Disbursements, by category, made or recommended by the Contractor or Plan Administrator under the Plan.
- 2.8 The Contractor, at its expense, shall obtain the bond required by Section 412 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The amount of the bond shall be fixed at the beginning of each Plan Year and shall not be less than the greatest of (i) 10 percent of the amount of funds handled by the Contractor under this Agreement or (ii) \$1,000.
- 2.9 The Contractor shall:
- a. Assist and/or arrange preparation of the Plan Document/Summary Plan Description (collectively, "Documents"). Documents will include when necessary or requested Board Resolutions and Salary reduction/change of election forms. Contractor will customize such documentation only to the extent necessary to incorporate the Employer's responses to plan design questions submitted by Contractor. In addition, Contractor will provide sample document changes to comply with revisions in applicable legislation or regulations; however Contractor shall in no case be liable to Plan Administrator, Plan Sponsor, or any Plan Participant for any damage or harm resulting from a change in applicable law or regulation.
  - b. Process and maintain employee census, including initial enrollments, annual enrollments and changes made to such payroll deductions in accordance with the terms of the Plan. All elections and changes to elections will be processed in accordance with the terms of the Plan.
  - d. Follow the claims administration procedures and practices as determined by the Plan Document(s).
  - e. Provide suitable facilities, personnel, procedures, forms and instructions for the administration of claims under the Plan.
  - f. With the assistance of Plan Sponsor and Plan Administrator, when necessary, certify eligibility of Plan Participants to receive payments under the Plan.
  - g. Determine, in accordance with the Plan Documents and reasonable claims administration procedures and practices, the qualification of claims submitted.
  - h. Make payments with Plan Sponsor's funds as provided for in the Plan Documents, of the amount due with respect to claims that qualify under the Plan Documents as provided above.
  - i. Provide advice on disputed claims.
  - j. Refer to Plan Administrator, for consideration and final decision, any claim or class of claims Plan Administrator may specify or for which an exercise of discretionary authority is necessary, including but not limited to claims involving:

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- a. Eligibility;
- b. A question with respect to qualification of claims submitted under the terms of the Plan;
- c. A question with respect to the amount due; and
- d. Any controversy, for which the Contractor will furnish Plan Administrator with an analysis of the issues to assist Plan Administrator in reaching a decision.
- k. Report to Plan Administrator with respect to non-routine claims in process.
- l. Submit to Plan Administrator a monthly accounting of payments made, with sufficient detail to provide for the audit and control of funds used.
- m. Make custom reports available to Plan Sponsor and/or Administrator at the specified rates in Schedule "B"
- n. Submit to Plan Sponsor and Plan Administrator an annual accounting of benefit payments to participants and dependents by major line of coverage.
- o. Provide advice on benefit and Plan Document revisions as requested by Plan Sponsor and/or Administrator.
- p. Assist Plan Sponsor in preparation of Plan Amendments and related materials as necessary. The Contractor shall be remunerated on an hourly basis as specified in Schedule "B".
- q. Plan Sponsor will have access to web-based tools, allow plan members to check status of claims, request identification cards, add/remove dependents, review balances (where applicable), and access comprehensive plan performance metrics.
- r. Various levels of access and information will be developed, with authorization to access different levels set by the Plan Sponsor. Plan Sponsor will be responsible for submitting customization requests, and providing a list of who is to be provided which level of access.
- s. Provide storage for Plan Sponsor records related to the Plan. Hard copy records will be destroyed in compliance with HIPAA standards, unless the Plan Sponsor wishes to retain hard copy records at its location, in which case, the Plan Sponsor will be solely responsible for maintaining the integrity and the confidentiality of the records and must inform Contractor of its desire to retain said hard copy records with enough advance notice to reasonably comply with the request.

### **SECTION III**

#### **Claims for Benefits**

- 3.1 Any Plan Participant may make application for benefits from the Plan as provided by the Plan upon the form or forms provided by the Contractor. Each applicant shall fully and truthfully complete such application for benefits and the applicant shall supply such pertinent information as may be required by the Contractor.
- 3.2 Notwithstanding anything herein to the contrary, the Contractor's due investigation and verification shall be limited to a review of the application for benefits to verify that the applicant is a Plan Participant or duly authorized representative/assignee, that the claimed benefit is covered by the Plan and that any deductible or other prerequisite under the Plan has been met. The Contractor can rely on the factual statements contained in any application unless such statements are such that any reasonable person would recognize them as fraudulent on their face.
- 3.3 The Contractor shall not be liable for any action taken at the direction of the Plan Administrator and/or the Plan Sponsor not to pay or honor any Claim. The Plan Administrator and the Plan Sponsor agree to indemnify and hold the Contractor harmless in all instances in which the Contractor follows the express directions of the Plan Sponsor and/or Plan Administrator.

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- 3.4 The Contractor may, at its option, and unless the Plan Participant request otherwise in writing not later than the time of filing proofs of claim, arrange payment of the applicable benefits directly to the health provider rendering the service. Nothing herein contained shall be construed to require that a service be provided by a particular health provider.

#### **SECTION IV**

##### **Cost of Administration**

- 4.1 The Contractor shall be entitled to fees for its services under this Agreement which shall be payable on a monthly basis, except for the installation or annual compliance fees, in accordance with the Schedule of Fees attached to this Agreement as Schedule "B", as revised each contract anniversary, (or more frequently if additional services are requested by Plan Sponsor or Plan Administrator) and signed by a representative of the Plan Sponsor and/or Plan Administrator.
- 4.2 An administrative fee invoice will be mailed to Plan Administrator's designee on a monthly basis. Funding of invoice is due on the 1<sup>st</sup> of the month following receipt. Payments not received by the 10<sup>th</sup> of the month will incur a delinquent fee as described below.
- a. Past due Administrative fees: 1% of outstanding fees per month.
- 4.3 Plan Claim Funding request will be requested no less than a weekly basis. Funding of claims is due within 10-days of funding request. Payments not received within 10-days of the funding request will incur an administrative delinquency fee as described below.
- a. Past due claim funding administration fee: 1% of outstanding funding request.

#### **SECTION V**

##### **The Plan Sponsor and Plan Administrator**

- 5.1 As of the Effective Date of this Agreement, if requested, the Plan Sponsor and/or Plan Administrator shall provide the Contractor with a complete list of all employees of the Plan Sponsor who are eligible for benefits from the Plan. Thereafter, the Plan Sponsor and/or Plan Administrator shall notify the Contractor on a monthly basis of all changes in participation. This information shall be provided in a format reasonably acceptable to the Contractor and include the following for each Plan Participant: name and address, Social Security number, date of birth, type of coverage, sex, relationship to employee, changes in coverage, date coverage begins or ends, and any other information necessary to determine eligibility and coverage levels under the Plan. The Plan Sponsor assumes responsibility for any erroneous disbursement of benefits by the Contractor caused by error or neglect on the Plan Sponsor's part in providing eligibility and coverage information to the Contractor, including but not limited to failure to give timely notification of ineligibility of a former Plan Participant. Eligibility information may be communicated via electronic eligibility file, transmitted to Contractor by Plan Sponsor.
- 5.2 The Plan Sponsor and/or Plan Administrator shall collect the contributions, if any, made by the employees of the Plan and shall transfer the money collected to the Claims Payment Account on at least on a monthly basis. The Plan Sponsor, upon notice from the Contractor, shall pay to the Claims Payment Account any deficiencies in the Plan. The obligation to adequately fund the Claims Payment Account for payment of benefits shall always remain on the Plan Sponsor and the Plan Administrator and the funding of the Claims Payment Account and Plan shall never be the responsibility of the Contractor.
- 5.3 The Plan Sponsor and/or Plan Administrator shall assist in the enrollment of the employees in the Plan, cooperate with the Contractor with regard to proper settlement of claims, and transmit any inquires pertaining to the Plan to the Contractor. The Plan Sponsor and Plan Administrator shall maintain a supply of forms, enrollment material or other documents and shall distribute or make available such documents to the employees.

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- 5.4 The Plan Sponsor and/or Plan Administrator shall provide all materials and documents, including summaries for employees, reports, applications and notice forms, as may be necessary or convenient for the operation of the Plan or to satisfy the requirements of governing laws.
- 5.5 Indemnification. In addition to the terms already set forth, each party agrees to indemnify and hold harmless the other party against all claims, demands, costs, expenses (including reasonable attorneys' fees), liabilities, and losses arising under this Agreement where such claims, demands, costs, expenses, liabilities, and losses are caused by acts or omissions of the indemnifying party.
- a. The Contractor will indemnify, defend, and hold the Plan Sponsor and Plan Administrator and their respective directors, officers and employees harmless from and against any and all claims, suits, actions, liabilities, losses, fines, penalties, damages, and expenses of any kind including, but not limited to, court costs and attorney's fees, that the Plan Sponsor or Plan Administrator may suffer or incur as a result of any dishonest, fraudulent, grossly negligent, or criminal act or omission of the Contractor or its employees, or by a breach of confidentiality or right of privacy of any Plan Participant by the Contractor except for acts taken at the specific direction of the Plan Sponsor or Plan Administrator. Should the Contractor be called upon to indemnify the Plan Sponsor or Plan Administrator, it may at its discretion choose to handle any defense efforts necessary to counter claims against the Contractor and/or the Plan Sponsor or Plan Administrator which would give rise to, and necessitate, said indemnification. The Contractor shall be entitled to rely, without investigation or inquiry, upon any written communication(s) of the Plan Sponsor or Plan Administrator or agents thereof. This indemnity does not extend to any acts or omissions other than those enumerated in this paragraph. This indemnity shall survive termination of this Agreement. The remedy for payments made in error will be to seek recovery from the Plan Participant or the provider of services.
  - b. The Plan Sponsor and Plan Administrator will indemnify, defend, and hold the Contractor and its respective directors, officers and employees harmless from and against any and all claims, suits, actions, liabilities, losses, fines, penalties, damages, and expenses of any kind including, but not limited to, court costs and attorney's fees, that the Contractor may suffer or incur as a result of any dishonest, fraudulent, grossly negligent, or criminal act or omission of the Plan Sponsor or Plan Administrator or their employees, or by the Plan Sponsor or Plan Administrator's breach of confidentiality or right of privacy of any Plan Participant except for acts taken at the specific direction of the Contractor. Should the Plan Sponsor or Plan Administrator be called upon to indemnify the Contractor, it may at its discretion choose to handle any defense efforts necessary to counter claims against the Contractor and/or the Plan Sponsor or Plan Administrator which would give rise to, and necessitate, said indemnification. The Plan Sponsor and Plan Administrator shall be entitled to rely, without investigation or inquiry, upon any written communication(s) of the Contractor or agents of the Contractor. This indemnity does not extend to any acts or omissions other than those enumerated in this paragraph. This indemnity shall survive termination of this Agreement.
  - c. The Contractor will not be liable for any damages, assessments, or other contractual or other issues arising between the Plan Sponsor or Plan Administrator and any vendor thereof, even in the event the Contractor has suggested, introduced, or otherwise endorsed the particular vendor. Contracting with vendors and ensuring that such contracts are adhered to is ultimately the responsibility of the Plan Sponsor.
- 5.6 Notwithstanding anything in this agreement to the contrary, in no event will the Contractor be liable to the Plan Sponsor or the Plan Administrator for any incidental, indirect, special, consequential or non-pecuniary damages of any kind or nature whatsoever arising out of this agreement, whether based in warranty, contract, negligence, strict liability or other tort, breach of any statutory duty, principles of indemnity or contribution, or any other legal theory.
- 5.7 Plan Sponsor will maintain excess loss insurance with a carrier approved by the Contractor and promptly notify the Contractor of any termination, expiration, lapse, or modification of this insurance, if applicable.

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- 5.8 The Plan Sponsor will not require the Contractor, under any circumstances, to issue payment(s) for Claims, or any other costs arising out of the subject matter of this Agreement, unless the Plan Sponsor has previously deposited sufficient funds in the Claims Payment Account or otherwise made sufficient funds available to Contractor to cover such payment(s).

## **SECTION VI**

### **Termination of the Agreement**

- 6.1 Either party may terminate this Agreement on each Plan anniversary. Additionally, either party may terminate this Agreement by providing the other party written notice of termination if: (a) the other party materially breaches its obligations under this Agreement, and the breach is not cured within ninety (90) calendar days after written notice of the breach is provided by the non-breaching party; or (b) the other party becomes insolvent (generally unable to pay its debts as they become due) or the subject of a bankruptcy, conservatorship, receivership or similar proceeding, is deemed by the Commissioner of the New Jersey Department of Banking and Insurance to be an "impaired third party administrator" as defined at N.J.A.C. 11:23-1.2, or makes a general assignment for the benefit of its creditors.
- 6.2 All obligations of the Contractor related to the rights of Plan Participants to payment of benefits under the Plan will be terminated and extinguished on the effective date of termination even if the claim for such benefits arose prior to the termination of this Agreement.
- 6.3 If this Agreement is terminated by the Plan Sponsor or Plan Administrator in a manner other than as set forth in Paragraph 6.1 above, all fees due to the Contractor pursuant to Schedule "B" will be annualized reduced by fees paid through the termination date and be paid to the Contractor. Payment of any such fees shall be made to the Contractor within thirty (30) days of receipt of Contractor's invoice for such fees.
- 6.4 Upon termination by either party and upon remittance to the Contractor of the amount due pursuant to Paragraph 6.3, the Contractor shall, within sixty (60) days after the date of termination, prepare and deliver to the Plan Sponsor and Plan Administrator a complete and final accounting and report as of the date of termination of the financial status of the Plan. The Contractor, at the time of the final accounting, shall also deliver any funds of the Plan which may be in its possession and control to the Plan Sponsor and shall irreversibly relinquish any control of or access to the Claims Payment Account.
- 6.5 Upon termination by either party, the Plan Sponsor and/or Plan Administrator shall immediately notify all Plan Participants and/or beneficiaries of the termination and its effect upon them.

## **SECTION VII**

### **Miscellaneous Provisions**

- 7.1 In the event of the resignation, termination or inability to serve of the Contractor, the Contractor may appoint a successor. Any successor, upon appointment and his acceptance, shall succeed to and be vested with all rights and obligations conferred on the Contractor. There shall be no assignment of duties by the Contractor without the prior, written consent of the Plan Sponsor, which consent may be granted or withheld at the Plan Sponsor's sole discretion.
- 7.2 If during the operation of the Plan, the Federal Government, the government of any state, or any political subdivision or any instrumentality of either shall assess any tax against or arising from the Plan and the Contractor is required to pay such tax, the Contractor shall report the payment to the Plan Sponsor and make a charge against the Plan for such tax. The Plan Sponsor shall pay any and all taxes, surcharges, licenses, and fees levied, if any, by any local, State, or Federal authority in connection with the Plan.
- 7.3 Where the context of the Agreement requires, the singular shall include the plural and the masculine gender shall include the feminine.

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- 7.4 This Agreement may be amended by the Plan Sponsor, Plan Administrator and Contractor at any time by mutual written consent of said parties; provided however, that said amendment may not contradict the Plan Document or prejudice any existing Claim.
- 7.5 The Contractor shall not assume any of the functions, responsibilities, liabilities or obligations of the Plan Administrator except as herein expressly set forth.
- 7.6 The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as though such invalidity or unenforceable provisions were omitted.
- 7.7 Neither party may assign its rights or obligations under this Agreement without the prior, written consent of the other party.
- 7.8 Except to the extent preempted by federal law, this Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, without regard to its choice of law principles.
- 7.9 The Plan Sponsor, the Plan Administrator and the Contractor each acknowledge that as a result of entering into this Agreement, each party has and will continue to reveal and disclose to the other, information that is proprietary and/or confidential of such party ("Confidential Information"). Such Confidential Information may include, but is not limited to all technical and business information relating to products, services, business techniques, costs, profit and margin information, customers, marketing and employee information learned or acquired by or on account of this Agreement. The parties agree that they will (a) hold any such Confidential Information of another party in strict confidence; (b) not disclose Confidential Information of another party to any third parties or to any of its employees not having a legitimate need to know such Confidential Information; and (c) will not use Confidential Information of another party for any purpose not directly related to and necessary for the performance of obligations under this Agreement (unless required to do so by a court of competent jurisdiction or a regulatory body having authority to require such disclosure). The terms and conditions of this paragraph shall survive the termination of this Agreement. Confidential Information revealed or disclosed by a party for any purpose not directly related to and necessary for the performance of such party's obligations under this Agreement shall not be considered Confidential Information for purposes hereof if; (a) when, and to the extent such Confidential Information is or becomes generally available to the public without the fault or negligence of the party receiving or disclosing the Confidential Information; or (b) if the unrestricted use of such Confidential Information by the party receiving or disclosing the Confidential Information has been expressly authorized in writing and in advance by an authorized representative of the other party.
- 7.10 If a party is prevented from fulfilling its obligations hereunder by force majeure, such party shall not be liable under this agreement for any delay or failure caused by such occurrence. "Force Majeure" means any cause beyond the reasonable control of a party, including but not limited to an act of God, act or omission of civil or military authorities of a state or nation, fire, strike, flood, riot, war, delay of transportation, or inability due to any of these causes to obtain necessary labor, materials or facilities.
- 7.11 Resolution of Disputes-Arbitration of Disputes:
- a. **Agreement to Arbitrate:** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA), and judgment upon the award rendered by the Arbitrator(s) shall be entered in any court having jurisdiction thereof. The Arbitration shall take place in the State of New Jersey, at a site mutually agreed upon.
  - b. **Appointment of Arbitrators:** Appointment of Arbitrators shall follow the AAA's Commercial Arbitration Rules on the appointment from party appointed panel members, inclusive of selection of neutral umpire, and expedited procedure for all disputes.
  - c. **Award of Arbitrators:** The award of the Arbitrator or Arbitration Panel shall be in writing and shall be final and binding on all parties.

Initial: \_\_\_\_\_

- d. **Expenses of Arbitration:** All of the parties hereto shall pay their pro rata share of the expenses of such arbitration as provided under the AAA's Commercial Arbitration Rules, which require, among other things, payment of the party appointed arbitrator, one-half (1/2) payment of the neutral umpire. The expenses of witnesses for either side shall be paid by the party producing such witnesses. In addition, each party shall bear its own fees, costs and expenses (including attorney's fees) incurred in connection with the arbitration.
- e. **Arbitration Records to be Held in Confidence:** All arbitration proceedings hereunder, and records thereof, shall be held in strictest confidence by the Arbitrators and the parties. The Arbitrators shall agree in writing to be bound by this provision, prior to the commencement of the arbitration. However, this provision shall not prohibit the Arbitrators or parties from releasing documents for judicial proceedings, regulatory compliance, or pursuant to a properly certified subpoena, or as otherwise permitted under the AAA's Commercial Arbitration Rules.

IN WITNESS WHEREOF, the Plan Sponsor, the Plan Administrator and the Contractor, all intending to be legally bound, have executed this Agreement this 1<sup>st</sup> day of January / 2024.

Attest:

Point C

\_\_\_\_\_

BY: \_\_\_\_\_  
CONTRACTOR

Attest:

City of La Vista

\_\_\_\_\_

BY: \_\_\_\_\_  
PLAN SPONSOR

Attest:

City of La Vista

\_\_\_\_\_

BY: \_\_\_\_\_  
PLAN ADMINISTRATOR

**Point C Administrative Services**  
**Schedule B**  
**City of La Vista**

*The Following list of fees shall apply to the implementation and maintenance of the benefit program for the Employee and their dependents covered under the Employee Health Care Benefit Program.*

**Group Number: 24187**

Service		Fee	Frequency
Consumer Smart Services		\$ 5.50	Per Employee Per Month
(FSA/DepCare)		\$ 75.00	(Stand alone Minimum Monthly Fee)
Consumer Smart Debit Card Set-up	Waived	\$ 3.50	Initial Card: Maximum Two
		\$ 3.50	Additional Cards
		\$ 3.50	Replacement Cards
<b>Other Services</b>			
Consumer Smart Service Set-up		Waived	One Time Fee
Consumer Smart Annual Compliance	Yr.2	\$ 250.00	Annually
Postage (For non-routine mailings)			Billed As Incurred
Banking Fees:			Vendor Cost For Claim Account
<b>Services Upon Request</b>			
Plan Document Amendments		\$ 150.00	Per Amendment
Custom Reports		\$ 125.00	Computer Programming Hour
(Upon Request)		\$ 75.00	Per Report
Copies	Black and White	\$ 0.15	Per Copy
	Color	\$ 0.50	
<b>Custom Service Request Rates</b>			
Clerical		\$ 45.00	Per Hour
Mid-level Consultant		\$ 125.00	Per Hour
Senior Consultant		\$ 175.00	Per Hour
Travel Cost			Billed As Incurred

*The above Fee Schedule is in effect for 12-months and continues until changed by written agreement of the parties:  
This Fee Schedule is effective: **January 1, 2024***

\_\_\_\_\_  
Point C Representative Date

\_\_\_\_\_  
City of La Vista Date

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "BAA") dated 1/1/2024, is entered into by and between **CITY OF LA VISTA** ("Covered Entity") and **POINT C**, ("Business Associate"), and will be made effective as of the last date of signature hereto **January 1, 2024** (the "Effective Date"). Covered Entity and Business Associate are referred to herein collectively as the "Parties" and may be referred to individually as a "Party."

WHEREAS, the purpose of this BAA is to assure the privacy and security of Protected Health Information ("PHI") and Electronic Protected Health Information ("EPHI") (each as defined below) of the Covered Entity in accordance with the regulations (including, but not limited to, the "Privacy Rule" (45 C.F.R. Part 160, subpart A and C, and Part 164, subparts A and E), the "Security Rule" (45 C.F.R. Part 160, subpart A and C, and Part 164, subparts A and C), the "Breach Notification Rule" (45 C.F.R. Part 160, Subparts A and C, and 45 C.F.R. Subpart D), the "Enforcement Rule" (45 C.F.R. Part 160, Subparts C and D); and the "Electronic Transaction Rule" (45 C.F.R. Parts 160 and 162) issued by the U.S. Department of Health and Human Services ("DHHS") pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the American Recovery and Reinvestment Act, including the Health Information Technology for Economic and Clinical Health Act ("HITECH"), all such laws and regulations as may be amended from time to time. The Privacy Rule, the Security Rule, the Breach Notification Rule, the Enforcement Rule, and the Electronic Transaction Rule are collectively referred to as the "HIPAA Rules";

WHEREAS, HIPAA provides, among other things, that a covered entity is permitted to disclose and allow access to PHI and EPHI to a business associate, and to allow the business associate to obtain and receive PHI, if the covered entity obtains satisfactory assurances in the form of a written contract that the business associate will comply with all applicable HIPAA Rules;

NOW THEREFORE, Covered Entity and Business Associate agree as follows:

1. **Definitions.** Capitalized terms used, but not otherwise defined, in this BAA shall have the meanings set forth in HIPAA, HITECH, and the HIPAA Regulations.

2. **Services and Applicability.** The Covered Entity and Business Associate have entered into the Services Agreement under which Business Associate may create, receive, use, maintain or transmit PHI from or on behalf of the Covered Entity. This BAA shall only be effective in the event that Business Associate meets the definition of a business associate under 45 C.F.R. 160.103. In the event of a conflict between the terms of the Services Agreement and this BAA with respect to the HIPAA Rules, this BAA shall control unless expressly stated otherwise.

3. **Relationship of the Parties.** None of the provisions of this BAA are intended to create, nor shall they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this BAA and the Services Agreement evidencing their business relationship. Business Associate is an independent contractor and not an agent of the Covered Entity.

4. **Permitted Uses and Disclosures.** Business Associate may use and/or disclose PHI only as permitted or required by the Services Agreement and this BAA, or as otherwise Required by Law. Business Associate may disclose PHI to, and permit the use of PHI by, its employees, contractors, agents, or other representatives only to the extent directly related to and necessary for the performance of the Services. Business Associate shall make uses and disclosures of, and requests for PHI from Business Associate only in a manner consistent with the Covered Entity minimum necessary policies and procedures, and shall request, use or disclose no more than the minimum PHI necessary to perform the Services. Business Associate shall not use or disclose PHI in a manner (i) inconsistent with Business Associate's obligations under the HIPAA Rules, or (ii) that would violate the HIPAA Rules if disclosed or used in such a manner by Covered Entity.

4.1 Business Associate may use and disclose PHI for the proper management and administration of its business and to carry out its legal responsibilities in accordance with 45 C.F.R. §164.504(e)(4).

4.2 Business Associate may use PHI to create de-identified information pursuant to the standards set forth at 45 C.F.R. § 164.514(b).

4.3 Business Associate may use PHI in its possession to provide data aggregation services relating to the health care operations of the Covered Entity.

4.4 Business Associate may disclose PHI in its possession to third parties to support Business Associate's performance of Services, provided that Business Associate has received from the third party written assurances that the PHI will be held confidentially, that the PHI will only be used or further disclosed as Required by Law or for the purpose for which it was disclosed to the third party, and that the third party will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached, as required under 45 C.F.R. § 164.504(e)(4).

4.5 To the extent Business Associate is carrying out one or more obligations of the Covered Entity under 45 C.F.R. Part 164, Subpart E, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

5. **Safeguards for the Protection of PHI.** Business Associate warrants that it has implemented and shall maintain commercially reasonable and appropriate security safeguards for PHI and will protect the confidentiality and integrity of such PHI created, received, used, maintained or transmitted from, or on behalf of the Covered Entity. Business Associate shall comply with the Security Rule, as may be amended, and with the applicable provisions of the Privacy Rule, as may be amended, in carrying out its obligations under the Services Agreement.

6. **Reporting of Unauthorized Uses and Disclosures.** If Business Associate has knowledge of any use or disclosure of PHI not provided for by this BAA, including any Security Incident, then Business Associate shall provide notification without unreasonable delay to Covered Entity in writing. Notwithstanding the above, the Parties acknowledge that probes and reconnaissance scans are commonplace in the industry and as such, the Parties acknowledge and agree that, to the extent such probes and reconnaissance scans constitute Security Incidents, this



Section 6 constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of such Security Incidents for which no additional notice to Covered Entity shall be required, as long as such probes and reconnaissance scans do not result in unauthorized access, Use, or Disclosure of PHI. Probes and reconnaissance scans as used in this Section 6 include, without limitation, pings and other broadcast attacks on Business Associate's firewalls, port scans, and unsuccessful log-on attempts that do not result in unauthorized access, Use, or Disclosure of PHI.

7. **Reporting of Breach of Unsecured PHI.** Business Associate agrees to promptly report to Covered Entity any Breach of Unsecured PHI of which Business Associate becomes aware in the time and manner specified under 45 C.F.R. 164.410, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Following a Breach, Business Associate shall provide Covered Entity with sufficient information to permit the Covered Entity to comply with the Breach notification requirements set forth at 45 C.F.R. §164.400 et seq. To the extent Business Associate is not able to provide all of the information requested by Covered Entity within the time frame set forth above, Business Associate agrees to promptly supplement such information with additional information as it becomes available. Business Associate agrees to act, in cooperation with the Covered Entity, in good faith to investigate and mitigate any harm caused by any unauthorized use, Security Incident, or Breach.

8. **Use and Disclosure of PHI by Subcontractors, Agents, and Representatives.** Business Associate shall require any Subcontractor, agent, or other representative that is authorized to create, receive, maintain, or transmit PHI on behalf of Business Associate to execute a business associate agreement to agree in writing to terms, restrictions, conditions, and requirements no less stringent than those that apply to Business Associate set forth herein.

9. **Individual Rights.** To the extent that Business Associate maintains PHI in a Designated Record Set and at the request of Covered Entity, Business Associate agrees to provide the following to Covered Entity to permit Covered Entity to comply with Individual rights requirements as applicable to PHI used or maintained by Business Associate:

9.1. **Right of Access.** Business Associate agrees to provide access to PHI maintained by Business Associate in a Designated Record Set, if any, at the request of the Covered Entity or as directed by the Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. §164.524. Upon receipt of a request for access from an Individual, Business Associate shall forward the request, or direct the Individual, to the Covered Entity within fifteen (15) calendar days of receipt.

9.2. **Right of Amendment.** Business Associate agrees to make any amendment(s) to PHI maintained by Business Associate in a Designated Record Set, if any, that the Covered Entity directs or agrees to, pursuant to 45 C.F.R. §164.526, or take such other measures as directed or agreed to by the Covered Entity to satisfy the Covered Entity's instructions pursuant to such regulation. Upon receipt of a request for amendment from an Individual, Business Associate shall forward such request to the Covered Entity within fifteen (15) calendar days of receipt.

9.3. **Right to Accounting of Disclosures.** Business Associate agrees to document such disclosures of PHI as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Business Associate agrees to maintain and provide to the Covered Entity such information collected in order to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Upon receipt of a request for an accounting of disclosures Business Associate shall forward the request to the Covered Entity within fifteen (15) calendar days of receipt.

9.4. **Modifications to Individual Rights.** Business Associate shall comply with any request from Covered Entity to comply with Individuals' requests to restrict the uses and disclosures of their PHI under 45 C.F.R. §164.522.

10. **Prohibition on Sale of PHI.** Business Associate shall not receive or provide direct or indirect remuneration in exchange for any PHI in a manner that would violate Section 13405(d) of HITECH or 45 C.F.R. §164.502(a)(5)(ii).

11. **Inspection of Books and Records.** Business Associate shall make its internal practices, books, records, and policies and procedures relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, the Covered Entity, available to the DHHS Office for Civil Rights ("OCR"), or their agents, or to the Covered Entity for purposes of monitoring compliance with the HIPAA Rules and the HITECH Act. Such information shall be made available in a time and manner designated by the Covered Entity, DHHS or OCR.

12. **Obligations of Covered Entity.**

12.1. **Notice of Privacy Practices.** Covered Entity shall provide Business Associate with the Covered Entity's then-current Notice of Privacy Practices.

12.2. **Revocation of Permitted Use or Disclosure of PHI.** Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by a patient to use or disclose PHI of Covered Entity, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

12.3. **Restrictions on Use or Disclosure of PHI.** Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in

accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

12.4. Requested Uses or Disclosures of PHI. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Regulations if done by Covered Entity.

13. **Term and Termination.**

13.1. Term. This BAA shall commence on the Effective Date and end with the termination of the Services Agreement, unless terminated sooner pursuant to this Section 13.

13.2. Termination for Breach. As provided under 45 C.F.R. §164.504(e)(2)(iii), the Covered Entity may immediately terminate the Services Agreement and any related agreements if the Covered Entity determines that Business Associate has breached a material term of this BAA after Covered Entity shall have provided Business Associate with written notice of the existence of the breach, stating with particularity the nature of the breach, and shall have provided Business Associate with thirty (30) calendar days to cure said breach.

13.3. Termination of Subcontractor. If the Covered Entity determines that a Subcontractor of Business Associate has breached a material term of this BAA, the Covered Entity shall provide Business Associate with written notice of the breach, stating with particularity the nature of the breach, and provide Business Associate with thirty (30) calendar days to require Subcontractor to cure said breach. Failure by Business Associate to cure a breach or violation by the Subcontractor, in the manner set forth above, shall be grounds for immediate termination of the Services Agreement.

13.4. Effect of Termination. Upon termination of the Services Agreement, the Covered Entity may, in its sole discretion, recover all PHI relating to the Covered Entity in the possession of Business Associate and its Subcontractors, agents, or representatives. Business Associate shall return to the Covered Entity or destroy all such PHI, and shall retain no copies. If Business Associate reasonably believes that it is not feasible to return or destroy all PHI as described above, Business Associate shall ensure that any and all protections, requirements and restrictions contained in this BAA shall be extended to any PHI retained after the termination of this BAA, and that any further uses and/or disclosures shall be limited to the purposes that make the return or destruction of the PHI infeasible.

14. **Notices.** All notices or other communications required or permitted hereunder shall be in writing and shall be deemed given or delivered (a) when delivered personally, against written receipt, (b) if sent by registered or certified mail, return receipt requested, postage prepaid, when received, (c) when received by email transmission, and (d) when delivered by a nationally recognized overnight courier service, prepaid, and shall be sent to the addresses set forth on the signature page of this BAA or at such other address as each Party may designate by written notice to the other by following this notice procedure. Notices shall be sent by both email and hard copy mail.

15. **Miscellaneous.**

15.1. **Regulatory References.** A citation in this BAA to the Code of Federal Regulations shall mean the cited section as that section may be amended from time to time.

15.2. **Amendment.** This BAA may be amended or modified only in a writing signed by the Parties.

15.3. **Interpretation/Integration.** Any ambiguity in this BAA shall be interpreted to permit compliance with HIPAA, the HIPAA Rules, and HITECH. This BAA supersedes any business associate agreement or business associate BAA previously entered into by and between the Parties.

15.4. **Governing Law; Venue.** This BAA shall be governed by and construed in all respects under the governing law identified in the Services Agreement. To the extent that the Services Agreement is silent on such matters, the laws of the State of Delaware shall govern.

15.5. **No Third Party Beneficiaries.** Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors and permitted assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

15.6. **Assignment.** This BAA may only be assigned in accordance with the terms and conditions of the Services Agreement.

15.7. **Binding Effect.** The provisions of this BAA shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

15.8. **Counterparts.** This BAA may be executed in counterparts, each of which will constitute an original and all of which will be one and the same document.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the Parties hereto have executed this BAA effective as of the Effective Date.

**CITY OF LA VISTA**

**POINT C**

**“COVERED ENTITY”**

**“BUSINESS ASSOCIATE”**

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

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

Print Name: \_\_\_\_\_

Christine Hammerquist

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

President/CEO

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

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

Address: \_\_\_\_\_

Address: 1934 Olney Ave, Cherry Hill, NJ