

EM SUBMISSION NO.: EME6032014

PRESENTED: 11-11-14

ADOPTED: 11-11-14

BY THE EMERGENCY MANAGER:

RESOLUTION AUTHORIZING THE CITY OF FLINT TO ENTER INTO A THIRD PARTY ADMINISTRATOR SERVICE AGREEMENT WITH AMERIPLAN, INC.


In order to ensure consistency in the administrative services required to effectively operate the City of Flint Hardship Program, the City of Flint is seeking authority to enter into an Agreement with AmeriPlan, Inc. to serve as the Third Party Administrator to provide third party claim payment services; and

The term of the Third Party Administrator Service Agreement shall run from July 1, 2014 through June 30, 2015; and

The City of Flint agrees to compensate AmeriPlan, Inc. pursuant to the covenants contained within the Third Party Administrator Service Agreement attached hereto and made a part hereof, in the amount of \$15.00 per claim not to exceed \$5,250.00 per month, from appropriated funds in line item 627-000.105-716.100.


IT IS RESOLVED that the Emergency Manager hereby authorizes the City of Flint to enter into the Third Party Administrator Service Agreement, attached hereto and made a part hereof, with AmeriPlan, Inc., to ensure consistency in the administrative services required to effectively operate the City of Flint Hardship Program. AmeriPlan, Inc., shall be compensated in the amount of \$15.00 per claim, not to exceed \$5,250.00 per month, from appropriated funds in line item 627-000.105-716.100.

APPROVED AS TO FORM:



Peter M. Bade, City Attorney

APPROVED AS TO FINANCE:



Gerald Ambrose, Finance Director

EM DISPOSITION:

ENACT ✓

FAIL _____

REFER TO COUNCIL _____



Darnell Earley, Emergency Manager

DATED 11-11-14



THIRD PARTY ADMINISTRATOR SERVICE AGREEMENT

THIS AGREEMENT is made on this 1st day of July, 2014 by and between **CITY OF FLINT** ("Plan Sponsor") and AmeraPlan, Inc. ("Third Party Administrator" or "TPA"), 3001 West Big Beaver Road, Suite 320 Troy, MI 48084.

RECITALS

In order to ensure consistency in the administrative services required to effectively operate the **City of Flint Hardship Program** (the "Plan"), as established and amended from time to time by Plan Sponsor, Plan Sponsor hereby requests TPA to serve as Third Party Administrator to provide third party claim payment services and agrees to compensate TPA as outlined herein. TPA is willing to serve Plan Sponsor as a Third Party Administrator in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, it is hereby agreed as follows:

1. Administrative Services. TPA will provide Plan Sponsor with all services necessary for the administration and operation of the Plan including, but not limited to, payment of Plan benefits in accordance with the terms of the Plan, and preparation of reports for use by Plan Sponsor in the financial management and administrative control of Plan. TPA will administer the Plan in accordance with Plan terms and Plan Sponsor benefit cost control standards, audit procedures, and payment practices.

(a) Administrative and Operational Services Itemization:

- Dedicated Claims Processor for benefit plan claims adjudication and customer service
- 1-800 number for Plan Participants
- Weekly check runs for benefit plan claims expense payments to include registers
- Detailed monthly claims activity reporting
- Quality Assurance & Performance Standards to meet and or exceed national standards for fiduciary and procedure accuracy
- Claims turnaround time — 90% of all clean claims processed within 18 days. A clean claim is a claim that TPA can process without having to obtain additional information
- Retiree EOB transaction reports

2. Term of Agreement. The initial term of this agreement shall begin July 1st, 2014 and continue through June 30th, 2015. At the end of the initial term and of each succeeding term, this Agreement will be automatically renewed for an agreed period of time each unless terminated pursuant to Section 15.

3. Claim Administration.

(a) TPA, as agent for Plan Sponsor, will, consistent with the current Plan claim administration procedures and practices then applicable to its own health care plan administration business:

- (1) receive claims for Plan benefits and requests for Plan services, and expeditiously review, and make determinations with respect to such claims in accordance with the terms and conditions of the Plan; and
- (2) disburse benefit payments that it determines to be due in accordance with the provisions of the Plan.

4. Banking Agreement.

(a) Payment by TPA of any amount payable under the Plan will be made from a bank account established by Plan Sponsor through an ACH transfer to the Electronic Payment Clearinghouse Trust ("EPC Trust"). The Plan Sponsor is only responsible for the bank account fees and not the fees of the EPC Trust. It is expressly understood that TPA is not a guarantor of benefits and that it will not be liable for the payment of any benefits that are, or may be due under the Plan. Prior to the TPA initiating an ACH transfer on behalf of the Plan Sponsor for the purpose of payment of benefits under the Plan, TPA will notify Plan Sponsor of the amount of the ACH transfer so that Plan Sponsor may transfer sufficient funds to the Account.

(b) TPA, as agent for Plan Sponsor, will issue payments from the EPC Trust for Plan benefits and Plan-related expenses in the amount TPA determines to be proper under the Plan and/or under this Agreement.

(c) In the event TPA pays any person less than the amount to which he is entitled under the Plan, TPA will promptly adjust the underpayment by directing the EPC Trust to draw the additional funds from Plan Sponsor's Account. In the event TPA overpays any person entitled to benefits under the Plan, or pays benefits to any person not entitled to them, TPA will take all reasonable steps to recover the overpayment; however, TPA will not be required to initiate court proceedings to recover an overpayment. TPA will only be liable for overpayments to the extent set forth in Section 11.d.

(d) Following termination of this Agreement, Plan Sponsor will remain liable for payment of all Plan benefits or fees due any Retiree for services rendered prior to termination. Plan Sponsor will reimburse TPA to the extent TPA makes any such payment. In no event will any payment of Plan benefits or fees by TPA be construed to oblige TPA to assume any liability of Plan Sponsor for the payment of such benefits or fees. This provision will survive the termination of this Agreement.

5. Enrollment and Determination of Eligibility.

(a) Plan Sponsor will:

- (1) respond to all routine inquiries from Retirees concerning enrollment in the Plan and its terms, conditions, and operations;
- (2) handle all enrollment activity using enrollment forms supplied or approved by TPA; and
- (3) notify Plan participants of their right to apply for benefits and supply them with claim forms (to be provided by Plan Sponsor) and claim filing instructions.

(b) In determining any person's right to benefits under the Plan, TPA will rely upon eligibility information furnished by the City of Flint Hardship program. It is mutually understood that the effective performance of this Agreement by TPA will require that it be advised on a timely basis

by Plan Sponsor of the identity of individuals eligible for benefits under the Plan. Such information will be provided promptly to TPA in a form and manner as agreed and will identify the effective date and/or termination date of eligibility, the kinds of benefits to which such individuals are entitled, and any additional information as specified by TPA. Plan Sponsor represents and warrants that its eligibility determinations will be in accordance with the terms of the City of Flint's Hardship program.

(c) Plan Sponsor acknowledges that its prompt furnishing of complete and accurate eligibility and benefit information is essential to the timely and efficient administration by TPA of claims for the Plan. If Plan Sponsor, or any party designated by Plan Sponsor, fails to provide TPA with accurate eligibility information, benefit design requirements, or other agreed-upon data, in an accessible and readable format agreed to in advance by the parties, and in the time frame and format agreed to in advance by the parties, TPA will have no liability whatsoever under this Agreement (specifically including but not limited to Section 11.d. herein) for any act or omission by TPA, or its employees, affiliates, subcontractors, agents, or representatives, which is directly or indirectly caused by such failure.

(d) Plan Sponsor will notify TPA of the termination of eligibility of any Plan participant within 60 days of the loss of eligibility. Plan Sponsor will remain responsible for all fees, charges and claims with respect to such terminated individual incurred or charged through the date of TPA's receipt of notice of termination, except that TPA will credit to Plan Sponsor administration fees charged for the shorter of (a) the 60 day period preceding the date TPA receives the notice, or (b) the period from the date of termination to the date of notice to TPA.

6. Administrative Fees. The monthly administrative fees payable to TPA for services performed under this Agreement will be calculated per claim per the administrative fee schedule attached hereto as "Exhibit A". TPA will invoice Plan Sponsor on a Monthly basis and payment is due upon receipt. TPA will also invoice Plan Sponsor on a monthly basis and payment is due upon receipt.

7. Notice to Retirees. Plan Sponsor will supply each covered Retiree with the City of Flint's Hardship program description or other written notice within 60 days after the effective date of the coverage which advises each individual of the benefits being provided.

8. Confidentiality. TPA and Plan Sponsor will each comply with applicable federal and state laws governing the confidentiality of personal data identifying an individual covered by the Plan, as well as corresponding medical records generated by Plan participants.

9. HIPAA Compliance. TPA will receive protected health information ("PHI") from Plan Sponsor, Plan participants, service providers and others and will use and disclose PHI in fulfilling its obligations under this Agreement. TPA agrees to use and disclose PHI in a manner consistent with HIPAA, HITECH and the Business Associate Agreement entered into with Plan Sponsor as covered entity, attached hereto as Exhibit B.

10. Other Provisions.

(a) Plan Sponsor is the ERISA Plan Fiduciary and Plan Administrator. TPA is neither a fiduciary nor a trustee with respect to the Plan, and nothing in this Agreement may be construed as giving TPA the status of either a fiduciary or a trustee with respect to the Plan.

(b) TPA will be entitled to rely upon any communication reasonably believed by TPA to be genuine and to have been signed or presented by the proper party or parties. TPA will not be bound by any notice, direction, requisition, or request unless and until it has been received in writing as TPA specifies for the purposes of this Agreement. Any communication from Plan Sponsor will be sufficient if addressed to TPA and sent by mail or facsimile to TPA. Any communication from TPA will be sufficient if addressed to Plan Sponsor and sent by mail or facsimile to Plan Sponsor.

11. Liability and Indemnity.

(a) In performing its obligations under this Agreement, TPA neither insures nor underwrites any liability of Plan Sponsor under the Plan, but, with respect to Plan Sponsor and/or Plan Administrator (as that term is described in ERISA), acts only as the provider of the services described in this Agreement and, with respect to Plan participants, acts only as the agent of Plan Sponsor and/or Plan Administrator.

(b) TPA will have no duty or obligation to defend against any action or proceeding brought to recover a claim for Plan benefits. TPA will, however, make available to Plan Sponsor and its counsel, such evidence relevant to such action or proceeding as TPA may have as a result of its administration of the contested benefit determination.

(c) Plan Sponsor will indemnify and hold harmless TPA and its respective directors, officers and employees (collectively, "TPA") from and against any and all liabilities, losses, damages, costs, and expenses (including without limitation, reasonable attorneys fees) suffered or incurred by TPA in connection with the performance of services under this contract; provided, however, that Plan Sponsor will have no obligation hereunder to the extent that any such liability, loss, damage, cost or expense arises solely out of TPA's negligence or bad faith.

(d) TPA will indemnify and hold harmless Plan Sponsor and its respective directors, officers and employees (collectively, "Plan Sponsor") from and against any liabilities, losses, damages, costs, and expenses (including without limitation, reasonable attorneys fees and overpayment of benefits unrecovered pursuant to Paragraph 4(c)) suffered or incurred by Plan Sponsor in connection with TPA's performance of services while under this contract arising solely from TPA's negligent manner or bad faith.

(e) To avoid misunderstanding by third parties concerning each other's respective duties and liabilities, each party agrees not to use the other's name, logo, service marks, trademarks or other identifying information without the prior written approval of the other.

12. Governing Laws. This Agreement will be construed and enforced according to the laws of the State of Michigan.

13. Modification of Agreement. This Agreement and its exhibits constitute the entire Agreement between the parties hereto. Changes in this Agreement may be made only by mutual written agreement between TPA and Plan Sponsor. If Plan Sponsor changes the Plan in a manner which materially increases administration costs, the parties will negotiate in good faith to appropriately modify the administration fee agreement.

Upon the enactment of any law, regulation, court decision or interpretive policy of any government agency charged with enforcement of the HIPAA Privacy Rule, the parties agree to amend this Agreement in such manner as is necessary to comply with any new legal obligation or interpretation.

14. Records. TPA will maintain all employee claim files, computer data, and account records for a period of six years, or longer if required by law, and thereafter from the beginning of this Agreement. As set forth in Section 15 of this Agreement, TPA will return to Plan Sponsor all documents as indicated.

15. Termination of Agreement.

(a) Automatic.

- (1) If any state or other jurisdiction enacts a law which prohibits the continuance of this Agreement or if the existing law is interpreted by a court of competent jurisdiction to so prohibit the continuance of this Agreement, termination will be effective immediately upon giving of written notice to the other party.
- (2) The date Plan Sponsor becomes insolvent, or bankrupt, or subject to liquidation, receivership, or conservatorship; or
- (3) The termination date of the Plan (or the portion of the Plan that is the subject of this Agreement).

(b) After expiration of the first year of this Agreement, either party may cancel this contract, without cause, by giving 30 days written notice to the other party.

(c) TPA may terminate this Agreement on 30 days notice in the event Plan Sponsor breaches any of the terms of the Agreement, including but not limited to the payment of fees under the Section 6 herein or failure of Plan Sponsor to perform its obligations.

(d) If TPA violates a material term of the HIPAA provisions in Section 9 and Exhibit B, Plan Sponsor may, at its option, terminate this Agreement, with or without advance notice, and with or without an opportunity to cure the breach.

(e) Upon termination, Plan Sponsor (at its option) may choose to have TPA perform claims "run-out" (run-out represents all claims incurred but not yet reported for processing — IBNR — within the Plan Year), in accordance with the Fee Schedule set forth as Exhibit A for a 90-day period of time; followed by an additional agreed upon period of time at the rate of \$25 per processed claim.

(f) Custom reports are available at the rate of \$125.00 per hour. The following is a listing of standard reports that are available at the rate of \$100.00 per report:

1. Claims Annual Paid — Medical
2. Medical Deductible Accumulation Report
3. Flex Year-end Balance Reports (if applicable)

(g) Within 30 days of termination of this Agreement, TPA will deliver to Plan Sponsor (or its designee) the work in process and files for all unpaid claims, and other property belonging to Plan Sponsor. Plan Sponsor will pay for all reasonable shipping and other reasonable related expense.

Upon termination of this Agreement for any reason, TPA will return or destroy all PHI received from the Plan, or created or received by TPA on behalf of the Plan. This provision applies to PHI that is in the possession of subcontractors or agents of TPA. TPA will retain no copies of the PHI with the consent of Plan Sponsor. If the return or destruction of any PHI is infeasible, TPA will notify the Plan of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, TPA will extend the protections of this Agreement to such PHI and limit further use and disclosure of the PHI for so long as TPA maintains the PHI.

(h) In the event of termination of the Plan (or the portion of the Plan that is the subject of this Agreement) for any reason, it is the sole responsibility of Plan Sponsor to properly notify the covered Retirees of such termination and to advise them of their rights, if any, under applicable state and federal laws, including ERISA, and the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA").

16. Interpretation. Terms used, but not otherwise defined, in Section 9 of this Agreement and Exhibit B will have the same meaning as those terms in the HIPAA Privacy Rule. Section 9 of this Agreement and Exhibit B will be construed in light of any guidance on the HIPAA Privacy Rules issued by HHS or the Office of Civil Rights. Any ambiguity in this Agreement will be resolved to permit the Plan to comply with the Privacy Rule.

17. Relationship of Parties. Plan Sponsor has sole and final authority to control and manage the operation of the Plan. TPA is and will remain an independent contractor with respect to the services being performed hereunder and will not for any purpose be deemed an employee of Plan Sponsor. Nor will TPA and Plan Sponsor be deemed partners, engaged in a joint venture or governed by any legal relationship other than that of independent contractor. TPA does not assume any responsibility for the general policy design of the Plan, the adequacy of its funding, or any act or omission or breach of duty by Plan Sponsor. TPA generally provides reimbursement services only and does not assume any financial risk or obligation with respect to claims for benefits payable by Plan Sponsor under the Plan. Nothing herein will be deemed to constitute TPA as a party to the Plan or to confer upon TPA any authority or control respecting management of the Plan, authority or responsibility in connection with administration of the Plan, or responsibility for the terms or validity of the Plan. Nothing in this Agreement will be deemed to impose upon TPA any obligation to any employee of Plan Sponsor or any person who is participating in the program ("Participant").

18. Third-Parties. This Agreement will be enforceable only by the Parties hereto and no other person shall have the right to enforce any of the provisions contained herein.

19. Assignment. Neither this Agreement, nor any interest created hereby, may be assigned by TPA or Plan Sponsor without the express written consent of the other party.

20. Severability. If any term or provision of this Agreement is found to be invalid or unenforceable for any reason, it will be adjusted rather than voided, if possible, so as best to accomplish the objective of the parties to the extent possible. In any event, the remaining terms and provisions will be deemed valid and enforceable. It is expressly understood and agreed that each provision of this Agreement providing for a limitation of liability disclaimer or limitation of warranties, or exclusion of damages is intended by the parties to be severable and independent of any other provisions and to be enforced as such.

21. Waiver. The failure of either party any time to require performance by the other party of any provision hereof will not affect in any way the full right to require such performance at any time thereafter; nor will the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. No waiver or modification of any of the terms or provisions of this Agreement will be valid unless in each instance the waiver or modification is accomplished pursuant to the modification provisions of Section 13.

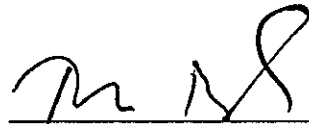
22. Cooperation. Each party to this Agreement agrees to execute and deliver all documents and to perform all further acts and to take any and all further steps that may be reasonably necessary to carry out the provisions of this Agreement and the transactions contemplated hereby.

23. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together will constitute a single instrument.

24. Headings. Headings in the Section of this Agreement are included for convenience only and will not control the meaning or interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers.

APPROVED AS TO FORM:



Peter M. Bade, Flint City Attorney

CITY OF FLINT

By: 

Title: Emergency Manager

Date: _____

AmeraPlan, Inc.

By: _____

Title: _____

Date: _____



**Supervisory Service Master Agreement EXHIBIT A:
By and Between CITY OF FLINT and AmeraPlan, Inc.
July 1, 2014 through June 30, 2015**

| Ameraplan's Guaranteed Administration Fees, per employee per month (PEPM) | |
|---|--|
| Per Claim Administration Fee: | \$15.00 per claim not to exceed \$5,250.00 per month |
| Utilization Management, Claims Code Editing & 24/7 Nurse Hotline Fee: | N/A |
| PPO Network Access Fee: | N/A |
| PPO Network Access Fee: | N/A |
| Dental Administration Fee: | N/A |
| Vision Administration Fee: | N/A |
| Flexible Spending Account Administration | N/A |
| Short-Term Disability Administration: | N/A |

| Ameraplan's One-Time Startup Costs | |
|------------------------------------|-----|
| Implementation Fee: | N/A |
| SPD/Document Production Fee: | N/A |

CITY OF FLINT

By: _____

Title: _____

Date: _____

[Signature]
Emergency Manager
11-24-14

AmeraPlan, Inc.

By: _____

Title: _____

Date: _____