

**Working version with redlining to indicate changes effective
effective 1/1/03 to the initial contractual arrangement]**

**ADMINISTRATIVE SERVICES
AND PREFERRED PROVIDER NETWORK ACCESS AGREEMENT**

This Administrative Services and Preferred Provider Network Access Agreement ("Agreement") is made by and between the City of Overland Park, Kansas (hereinafter referred to as "City"), and United HealthCare Services, Inc. a Minnesota corporation located at 9900 Bren Road East, Minneapolis, Minnesota (hereinafter referred to as "UHS").

WHEREAS, City has established a self-funded plan of health care coverage ("Plan"), under which all benefits and expenses are paid out of City's funds, for its employees, their dependents or other eligible persons, and

WHEREAS, City desires certain services related to the administration of the Plan be performed by a third party, and

WHEREAS, UHS has agreed to undertake and perform the requested administrative services on behalf of the Plan and the City as set forth in this Agreement, and

WHEREAS, UHS has created or has access to a network of Preferred Providers that are willing to provide health services to Covered Persons under the Plan, and

WHEREAS, City has indicated it desires that its Plan include access to the Preferred Provider network, and

WHEREAS, City intends to purchase stop/loss insurance as part of its Plan of health care coverage, and

NOW THEREFORE, In consideration of the premises and mutual covenants herein set forth, the parties agree as follows:

I. **DEFINITIONS.** For the purposes of this Agreement, the following terms shall have the meanings set forth below:

- A. **Claims Administrator:** The parties agree that while UHS is the "Claims Administrator" for purposes of this Agreement, it is not the intent of the parties that UHS be identified as the Plan Administrator.
- B. **Covered Person:** Either the subscriber or a dependent entitled to benefits under the terms and conditions of the Plan.
- C. **Description of Benefits:** Document(s) provided to Covered Persons describing the coverage offered under the Plan and the terms and conditions of that coverage.
- D. **Health Services:** Health care services or supplies covered by the Plan.

PHI: Protected Health Information, as defined under the privacy regulations issued pursuant to the Health Insurance Portability and Accountability Act ("HIPAA"), UHS receives from or on behalf of Plan.

- E. **Plan:** Plan of health care coverage established by City for its employees, their dependents, or other eligible persons, as that plan currently exists or may be amended in the future. Although City may include benefits other than health care coverage in the Plan, as used in

this Agreement, Plan refers only to the portions of the Plan relating to self-funded health care coverage.

- F. **Plan Administrator:** City or its designee.
- G. **Preferred Provider:** Health care provider which has entered into an agreement with UHS' affiliate, UnitedHealthcare of the Midwest, Inc., under which the provider has agreed to provide health care services to persons covered by self-funded health care coverage plans for which UHS provides administrative services.

Proprietary Business Information: Information about each parties' business that is confidential, proprietary, trade secret or is not readily available to the general public; or, information that has been designated by either party as confidential or proprietary.

- H. **Subscriber:** Eligible person as defined by the Description of Benefits document, who is properly enrolled for coverage under the Plan. The Subscriber is the person (who is not a dependent) on whose behalf coverage under the Plan is provided.

Urgent Care Claim: Those claims that require notification or approval prior to receiving medical care, where a delay in treatment could seriously jeopardize the Covered Person's life or health or ability to regain maximum function, or in the opinion of a physician with knowledge of the Covered Person's medical condition could cause severe pain.

II. **THE PLAN AND DESCRIPTION OF BENEFITS.**

- A. Establishment of the Plan and Description of Benefits. City is solely responsible for establishing and maintaining the Plan. UHS shall provide advice to City regarding the contents of the Description of Benefits, including the determination of what health care services will be covered by the Plan and which persons should be eligible for such coverage. City agrees that the Plan shall contain any provisions which are necessary to cause the Plan to be consistent with the Preferred Provider contracts. UHS shall draft the Description of Benefits but City shall be solely responsible for approval of the final content of the Description of Benefits, except that any references in the documents to Preferred Providers or to UHS or services provided by UHS must be approved in writing by UHS before any distribution of the documents, including distribution to Covered Persons.

This Agreement shall not become, and shall not be deemed or construed to be, part of the Plan, provided, upon completion, a copy of the Description of Benefits shall be attached as Exhibit A. The Description of Benefits may be amended by City in its discretion, but City shall give UHS written notice of any such amendment at least 90 days before the amendment effective date. UHS shall be responsible for drafting all amendments in a timely fashion. Any increase or change in the nature of the services provided by UHS under this Agreement which would be caused by the amendment must be approved in writing by UHS for the change in services to be included under this Agreement. Any such approved increase or change shall also be a basis for UHS to request renegotiation of the service fee paid to UHS by City. In the event the parties cannot agree on a new service fee within 30 days of the date UHS received written notice of the final draft of an amendment, UHS shall have no obligation to provide the increased or changed services and UHS may terminate this Agreement upon 60 days prior written notice to City.

UHS shall have the right to attend any informational meetings for potential Covered Persons relating to the Plan and shall cooperate with City's efforts to provide information to Covered Persons regarding the Plan and the Preferred Providers.

- B. Responsibility for the Plan. Except to the extent this Agreement specifically requires UHS to have the fiduciary responsibility for a Plan administrative function, City acknowledges it has sole responsibility for the Plan for purposes of this Agreement including its benefit design and compliance with any laws that apply to City or the Plan, whether or not City or someone designated by City is the Plan Administrator. UHS is not the Plan Administrator of the Plan.

The City shall have the exclusive, final and binding discretionary authority and power to interpret the terms, conditions, limitations, and exclusions of the Plan, including any framework of interpretations applicable to the Plan, to make factual determinations regarding payment of claims or provision of benefits and to construe any disputed or ambiguous terms under the Plan or the framework of interpretations applicable to the Plan. The City shall have the right to delegate such discretionary authority to other persons to include persons or entities providing services in regard to the Plan.

- C. Regulatory Compliance. UHS shall provide City with information in UHS' possession necessary for City and Plan to comply with any laws or regulations applicable to Plan, but the City's and Plan's compliance with any federal, state or local laws and regulations applicable to the Plan shall be the sole responsibility of City. The City shall comply and ensure that Plan complies with all such laws and regulations. UHS shall obtain and maintain any licenses or regulatory approvals necessary for it to perform its services under this Agreement. Further, UHS shall comply with any laws and regulations applicable to it in carrying out its services under this Agreement.

In the event UHS' performance of its duties under this Agreement is made materially more burdensome or expensive, or the duties to be performed are materially changed, due to a change in federal, state or local laws or regulations during the term of this Agreement, the parties shall negotiate an appropriate adjustment to the fee paid to UHS. If the parties cannot agree on an adjusted service fee within 30 days after UHS sent written notice of the material change and its wish to negotiate an adjusted fee to City, then UHS may terminate this Agreement by providing 90 days prior written notice to City.

In the event that the Plan, the City, the arrangement established by this Agreement, or any payments for claims for Health Services or fees to UHS are subjected to any form of governmental or regulatory charges, including any premium taxes, insolvency fund fees, guarantee fund fees or any similar charges, such charges shall be the sole responsibility of City or the Plan and City or Plan agree to reimburse UHS for such charges.

- D. Covered Person Information. Before the effective date of this Agreement, City shall provide UHS with a form satisfactory to UHS to be used to obtain information needed by UHS regarding each Covered Person. City shall notify UHS promptly of any changes in the eligibility of a Covered Person or any addition of Covered Persons to the Plan. UHS shall be entitled to rely on the most current information in its possession regarding eligibility of Covered Persons in paying claims and providing other services under this Agreement and shall not be required to make retroactive changes in regard to claims incurred on dates more than 60 days before the date on which corrected information was provided to UHS, and then such changes shall be made only to the extent permitted by the Preferred Provider agreements.

III. RESPONSIBILITIES AND OBLIGATIONS OF UHS.

- A. Administrative Services Provided By UHS. To assist City in the administration of the Plan, UHS shall provide to City the services described in Exhibit B, in the manner described in that exhibit and in this Agreement. It is understood and acknowledged by City that UHS shall provide its administrative services in accordance with its standard methods. A list and description of those standard methods is more fully described in Exhibit B. In the event City

requests non-standard or customized services, the additional cost of such services shall be paid by City at UHS' then-current rates for such non-standard methods.

- B. Provider Network Access. UHS has created or has access to a network of Preferred Providers. Some or all of those Preferred Providers shall be available to provide Health Services under the Plan to Covered Persons. The initial list or directory of Preferred Providers is attached as Exhibit E of this Agreement. UHS makes no representations or promises regarding the continued availability to the Plan or Covered Persons of a Preferred Provider. Deletions or additions to the list of Preferred Providers contained in Exhibit E may be made in the sole discretion of UHS. UHS shall provide written notice of such deletions or additions to City, which shall in turn provide written notice of such changes to Covered Persons.

UHS shall provide such services as are necessary in its judgment to administer and maintain the Preferred Provider network, including providing information to the Preferred Providers regarding the terms of the Plan, such as amounts of any copayments or deductibles, and providing identification of Covered Persons to Preferred Providers.

IV. RESPONSIBILITIES AND OBLIGATIONS OF CITY.

City shall be responsible for establishing and maintaining the Plan and shall provide the funds for payment of Health Services rendered to Covered Persons pursuant to the terms of the Plan. In addition, the City shall be responsible as further set forth herein.

V. CONSIDERATION AND PAYMENT TERMS.

A. Consideration.

1. Administrative Service Fee. City agrees to pay UHS for services performed in accordance with the terms of this Agreement a monthly service fee equal to \$32.20 multiplied by the number of Subscribers covered during any part of the monthly billing cycle. In addition to the administrative services UHS shall provide as set forth herein, this fee includes: a) access to a Preferred Provider network, b) access to Optum's UnitedHealthcare Care24 program services; c) access to a pharmacy Preferred Provider network; d) access to a transplant Preferred Provider network; and e) conversion coverage through United HealthCare Insurance Company.

2. MH/SA Preferred Provider Fee. City agrees to pay UHS for access to a mental/health substance abuse Preferred Provider network and payment of mental health/substance abuse Health Services a monthly fee equal to ~~\$13.75~~\$14.73 multiplied by the number of Subscribers covered during any part of the monthly billing cycle.

3. Changes in Monthly Fees. In the event that the number of Subscribers covered by the Plan or any option of the Plan changes by ten percent (10%) or more at any time, UHS may change the monthly fees by providing City with 60 days prior written notice of the adjusted monthly fee.

4. Future Fee Standards. The parties agree that should the City and UHS extend the term of this Agreement, the "Administrative Service Fee" rates shall be as follows:

- a. Should the Agreement be extended for a second year, the monthly administrative service fee for that second year shall be \$35.77 multiplied by the number of Subscribers covered during any part of the monthly billing cycle.

- b. Should the Agreement be extended for a third year, the monthly administrative service fee for that third year shall be \$37.91 multiplied by the number of Subscribers covered during any part of the monthly billing cycle.

- B. Payment Terms. UHS shall invoice or bill City at least monthly for UHS' fees. City shall pay such fees to UHS from City's funds. These fees shall be due and payable on the first day of each calendar month. If City fails to pay such fees within 15 days of its due date, UHS may exercise its rights to terminate the Agreement pursuant to Section VIII.B.1. No such amounts that are to be paid to UHS under this section shall be considered Plan assets.

Any late payments to UHS shall bear interest at a rate equal to the then-current Prime Rate of Mellon Bank, Pittsburgh, Pennsylvania plus two percent. As of any anniversary date of this Agreement, UHS may propose changes to the fees paid to it by notifying City in writing of such proposed change at least 120 days prior to the anniversary date. If City accepts such change, it shall become effective on the anniversary date. If City rejects the proposed change and the parties are otherwise unable to agree on a change to the fees, UHS may terminate this Agreement by giving at least 60 days prior written notice to City.

VI. RECORDS AND REPORTS.

- A. Records. UHS shall maintain, in a form deemed appropriate by UHS, records relating to its responsibilities under this Agreement, including records relating to claims processing. City shall maintain records relating to the terms and operation of the Plan, including the identification of eligible persons, payments to UHS and payments for Health Services. Each party may have access to the records directly and specifically relating to the Plan and maintained by the other party, during normal business hours and upon reasonable notice, provided, however, that UHS shall not have to disclose provider payment fee schedules or other proprietary information. Each party shall pay the cost of copies of any records which it requests from the other party. If a party or its designee wishes to inspect or audit the records of the other party under this section and such inspection or audit will take more than eight hours of the other party's personnel's time, the party conducting the audit or inspection shall pay for the other party's personnel's time in excess of eight hours, at the party's standard charges for such time, and any other costs incurred by the party in complying with the audit or inspection request. No third party may be allowed to conduct an audit or inspection without the prior written consent of the party whose records are being audited. The parties agree to cooperate and assist one another in the audit of the claims payment process.

~~During and after the term of this Agreement and subject to the provisions of the Kansas Open Records Act, the City, on behalf of itself and Plan, grants UHS permission to use and/or transfer to third parties for research and analysis purposes the claims and related medical data in UHS' possession. The parties shall maintain the confidentiality of any information relating to Covered Persons in accordance with any applicable laws. Neither party shall reveal the identity of any Covered Person to a third party. Neither party shall disclose any confidential business information of the other party without the prior written consent of that party.~~

In the event of any termination of this Agreement, UHS shall provide City with copies of records in UHS' possession directly and specifically relating to the Plan and necessary for the continued operation of the Plan. The copies may be provided in hard copy or machine readable form, in UHS' discretion. All records maintained by either party relating to the Plan shall be kept for at least five years after the date the records were created or any applicable period required by law, whichever is longer.

- B. UHS Reports. UHS shall provide City with its standard set of self-funded reports, as they currently exist or may be revised from time-to-time.

C. **Proprietary Business Information.** Proprietary Business Information will be used solely to administer the Plan or to perform duties or obligations under this Agreement. During the term of the Agreement and subject to the provisions of the Kansas Open Records Act if applicable, the parties agree that Proprietary Business Information will not be disclosed to any person or entity other than either party's employees, subcontractors, or representatives needing access to such information to administer the Plan or perform under this Agreement.

D. **PHI.** The parties agree that PHI will be used solely to administer the Plan or to perform duties or obligations under this Agreement in accordance with any applicable laws. The parties agree that PHI will not be disclosed to any person or entity other than either party's employees, subcontractors, or representatives needing access to such information to administer the Plan or perform under this Agreement provided proper business associate agreements are executed and maintained when required under the HIPAA privacy regulations.

In addition to the permitted uses stated above, the parties agree that UHS may also use PHI for the following purposes:

1. Proper management and administration and to fulfill any present or future legal responsibilities;
2. Disclose the PHI to third parties for the purpose of UHS' proper management and administration or to fulfill any present or future legal responsibilities; provided, however, that the disclosures are required by law or UHS has received from the third party written assurances that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and the third party will notify UHS of any instances of which it becomes aware in which the confidentiality of the PHI has been breached;
3. Aggregate the PHI as permitted under HIPAA;
4. De-identify any and all PHI provided that UHS de-identifies the information in accordance with HIPAA. De-identified information does not constitute PHI, is not subject to the terms and conditions of this section, may be used by UHS or a related entity for research, creating comparative databases, statistical analysis, or other studies, and is considered by UHS to be Proprietary Business Information;
5. Use, or disclose to a related entity, PHI for research, as defined under the privacy regulations issued pursuant to HIPAA, including but not limited to projects for therapeutic outcomes research, and for epidemiological studies. UHS will obtain and maintain, on behalf of Plan, any consents, authorizations or approvals that may be required by applicable federal or state laws and regulations for use or disclosure of PHI for such purposes. UHS will maintain the confidentiality of such information as it relates to any individual Participant, provider, or of the City's business. The research, databases, analyses, and studies are considered by UHS to be Proprietary Business Information; and
6. Create or use, or disclose to a related entity to create or use, limited data sets as permitted under HIPAA. UHS also may disclose limited data sets to a related entity, City or City's vendors at City's direction, provided however, UHS or any recipient to whom UHS discloses such limited data sets agrees UHS shall limit use of the limited data sets to research, health care operations or public health purposes and further agrees UHS or the recipient shall:
 - (a) Not use or further disclose the limited data sets other than as permitted by this Agreement or as otherwise required by law;
 - (b) Use appropriate safeguards to prevent use or disclosure of the limited data sets other than as provided for by this Agreement;
 - (c) Report to City any use or disclosure of the limited data sets not provided for by this Agreement of which UHS becomes aware;
 - (d) Ensure that any agents, including a subcontractor, to whom UHS provides the limited data sets agrees to the same restrictions and

conditions that apply to the limited data set recipient with respect to such information; and

(e) Not re-identify the PHI in the limited data sets or contact the individuals.

These limited data sets are considered by us to be Proprietary Business Information.

UHS agrees that it shall:

1. Not use or further disclose the PHI other than as set forth by this Agreement or required by law;
2. Use appropriate safeguards to prevent use or disclosure of PHI other than as set forth by this Agreement;
3. Report to Plan any use or disclosure of any PHI of which UHS becomes aware that is not set forth by this Agreement;
4. Ensure that any subcontractor or agent to whom UHS provides any PHI agrees to the same restrictions and conditions that apply to UHS with regard to the use and/or disclosure of PHI pursuant to this section;
5. Respond to individuals' requests for access to PHI in its possession that constitutes a Designated Record Set in accordance with HIPAA;
6. Incorporate any amendments or corrections to the PHI in its possession that constitutes a Designated Record Set in accordance with HIPAA;
7. Provide to individuals an accounting of disclosures, in accordance with HIPAA;
8. Make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of HHS for purposes of determining City's compliance with HIPAA ; and
9. Except as provided for herein or as required by law, upon termination of this Agreement, return to Plan or destroy the PHI and retain no copies in any form, if feasible. If UHS determines that returning or destroying the PHI is infeasible, UHS agrees to extend the protections, limitations and restrictions of this section to such PHI and to limit any further uses and/or disclosures of such PHI retained to the purposes that make the return or destruction of the PHI infeasible, for as long as UHS maintains such PHI.

Plan and City Obligations:

1. City agrees to amend its Plan documents to include specific provisions to restrict the use or disclosure of PHI and to ensure adequate procedural safeguards and accounting mechanisms for such uses or disclosures, in accordance with the HIPAA privacy regulation.
2. Plan agrees that it will (a) obtain any consent or authorization that may be required by applicable federal or state laws and regulations prior to furnishing UHS the PHI, except as provided for in this section above; and (b) not furnish UHS any PHI that is subject to any arrangements permitted or required of Plan that may adversely affect UHS' ability to use and/or disclose PHI under this Agreement, including, but not limited to, restrictions on the use and/or disclosure of PHI as provided for in HIPAA.

VII. PAYMENTS FOR HEALTH SERVICES.

- A. Responsibility for Payment. City is solely responsible for providing funds for payment for Health Services covered by the Plan and rendered by Preferred Providers or non-Preferred Providers.

The City shall be fully responsible for and agrees to reimburse UHS to the extent that UHS has made payment of the Health Services claims asserted against UHS or its affiliates by any health care provider or any Covered Person for payment of Health Services subject to the limits of payment for these services as set forth in the Plan. The City further agrees to

reimburse UHS for any other costs and reasonable attorney's fees incurred by UHS in defending such claims up to the sum of twenty-five thousand dollars (\$25,000.00) per any calendar year, regardless of the number of claims UHS may have defended during that year.

UHS agrees that it shall reimburse the Plan and/or City for the wrongful payment of claims for Health Services caused by UHS' gross negligence or willful misconduct or material breach of this Agreement.

City acknowledges that the Preferred Providers are third-party beneficiaries of this Agreement and may rely upon City's agreement to pay for Health Services rendered by the Preferred Providers. UHS may provide evidence of City's agreement to pay by giving a copy of Exhibit C to the Preferred Providers.

- B. Payments to Providers. Payments to Preferred Providers shall be made by UHS on behalf of the City in accordance with the terms of the agreements with those providers and, except to the extent the Health Service is subject to coordination of benefits and/or subrogation recovery, shall be billed to City in accordance with Exhibit D. Health Services subject to coordination of benefits and/or a subrogation recovery shall be billed to City in accordance with the Preferred Provider's Customary Charges after any copayments and/or deductibles have been applied.

~~City acknowledges that there may be arrangements with providers or suppliers of pharmacy Health Services under which UHS or its affiliates may receive and retain payments from those providers or suppliers in return for services. UHS, as soon as administratively possible at the end of each Plan year, will provide City with an accounting of the amounts received from providers or suppliers of pharmacy Health Services.~~ Non-Preferred Providers shall be paid by City according to the terms and conditions of the Plan. In the event that a dispute arises between City and any provider regarding payment of a claim, City shall promptly inform UHS of the dispute and UHS shall use reasonable efforts to facilitate resolution of the dispute.

- C. ~~Claims Account. The parties acknowledge that claims under the Plan are to be paid from a separate fund account established by the City. City shall be solely responsible for funding said account. City shall not name UHS or represent that UHS is, and UHS shall not be, a trustee or custodian over the account or the Plan. Prior to the effective date of this Agreement, City shall give UHS the right to initiate Automated Clearinghouse ("ACH") transfers from the City account to a UHS account which UHS will use to pay claims. No such amounts which are to be or are transferred to UHS shall be considered Plan assets. UHS shall also be given the right to access information regarding the balance in City's account from which ACH transfers are being made.~~

~~At the end of each claims processing time period, UHS may, within 48 hours following notice to City, initiate ACH transfers from the City account in an amount necessary to pay the claims processed by UHS.~~

Claims Account. The parties acknowledge that claims under the Plan are to be paid from a separate fund account established by the City. City shall be solely responsible for funding said account. City shall not name UHS or represent that UHS is, and UHS shall not be, a trustee or custodian over the account or the Plan. Prior to the effective date of this Agreement, City shall arrange to initiate Automated Clearinghouse ("ACH") transfers from the City account to a UHS account which UHS will use to pay claims. No such amounts which are to be or are transferred to UHS shall be considered Plan assets. UHS shall also be given the right to access information regarding the balance in City's account from which ACH transfers are being made.

At the end of each claims processing time period, UHS shall provide notice to City via telephone of the amount necessary to pay claims processed. City shall, within 48 hours following receipt of notice from UHS, initiate ACH transfers from the City account to a UHS account in an amount necessary to pay the claims processed by UHS.

In the event that for any reason funds are not available to complete an ACH transfer in the required amount and City fails to cause the account to provide the required amount of funds within the required 48 hours following notice of the need to provide such funds, UHS shall have the right to terminate this Agreement immediately and may provide notice of such termination to Preferred Providers and Covered Persons.

In the event that City has at any time failed to make funds available to pay claims for Health Services or has failed to pay fees to UHS, in addition to any other remedies, UHS shall have the right to arrange an offset of any unpaid amounts against any amounts owed to City by UHS, or any entity affiliated with UHS.

City acknowledges and agrees that the UHS accounts into which money from City is transferred may contain money from one or more other sponsors of self-insured health plans or health plans under contract with UHS for administrative services. City also acknowledges and agrees that any and all interest earned from such UHS account(s) shall belong to UHS.

VIII. TERM AND TERMINATION.

- A. Term. This Agreement shall become effective on January 1, 2001, ("Effective Date") for a term ending December 31, 2001, unless earlier terminated as provided in this Agreement. This Agreement shall automatically renew for additional one-year terms unless either party terminates it by giving written notice of its desire not to renew at least 60 days prior to the end of the then-current term. UHS shall have no obligation to provide any services under this Agreement relating to a claim or other event regarding health care delivered before the Effective Date of this Agreement.
- B. Termination.
1. If City fails to make any payment to UHS or to a Preferred Provider when such payment is due under this Agreement, or to United HealthCare Insurance Company for stop-loss coverage, or to meet its obligations to pay amounts into the claims account as required by Section VII.C, UHS may terminate this Agreement effective immediately upon sending written notice to City.
 2. Either party may terminate this Agreement in the event of a material default, other than a failure to pay described in Section VIII.B.1 above, by the other party. Such termination shall be effective 60 days after written notice specifying the default has been given to the defaulting party, unless the default has been cured before the end of the 60 day period.
 3. City may terminate this Agreement effective immediately upon written notice to UHS in the event that UHS fails to obtain or maintain any required material licenses or regulatory approvals necessary for it to perform services under this Agreement.
 4. UHS may terminate this Agreement effective immediately upon written notice to City in the event City ceases to be actively engaged in business or if the Plan is terminated or if City or the Plan are in substantial non-compliance with applicable laws and rules.
 5. Either party may terminate this Agreement at any time by providing the other party with 90 days prior written notice of the party's intent to terminate.

6. This Agreement may also be terminated as otherwise provided herein.

C. Cooperation on Termination. In the event of termination of this Agreement for any reason, UHS shall provide reasonable cooperation to the person or entity selected by City to assume administration of the Plan. However, in the event this Agreement is terminated for reasons other than those enumerated in Section VIII.B.1, UHS shall, for a period of 6 months following termination, process claims incurred after the Effective Date and prior to the effective date of termination provided City continues to pay the administrative service fee set forth in Section V.A for a period of 3 months and to pay amounts into the claims account as required by Section VII.C of this Agreement.

VIX. DISPUTES.

In the event that any dispute relating to this Agreement arises between UHS and City, the dispute should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests.

IX. INSURANCE.

For the duration of this Agreement, UHS shall maintain error and omissions liability insurance coverage in the sum of not less than \$1,000,000. A certificate of insurance is to be provided to the City within 30 days of the effective date of this Agreement, with renewal certificates filed annually for the duration of this Agreement.

X. FIDELITY BOND.

UHS agrees to purchase and maintain a fidelity bond for its officers, directors, agents and employees in an amount not less than \$500,000. UHS will continue to maintain such bond and will advise City if such bond is terminated for any reason.

XI. COMPLIANCE WITH EQUAL OPPORTUNITY LAWS, REGULATIONS AND RULES AND OTHER LAWS.

UHS shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, national origin, ancestry, or age. In all solicitations or advertisements for UHS employees, UHS shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission). If UHS fails to comply with the manner in which UHS reports to the Commission in accordance with the provision of K.S.A. 44-1031 and amendments thereto, UHS shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended, in whole or in part, by City. If UHS is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, UHS shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City. UHS shall include the above provisions or similar provisions in its subcontracts so that such provisions will be binding upon subcontractors.

UHS further agrees to abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all federal, state, and local laws, ordinances and regulations applicable to this Agreement and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

XII. PROHIBITION AGAINST CONTINGENT FEES.

UHS agrees that it has not employed or retained any company or person, other than a bona fide employee working for UHS, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this provision, the City may terminate this Agreement without liability or may, in its discretion, deduct from the Agreement fees or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee. UHS agrees that it will not accept any fee, commission, percentage, gift, or other consideration from any third party for the performance of any work under the Agreement.

XIII. MISCELLANEOUS.

- A. This Agreement contains the entire understanding of the parties and may not be amended except by mutual agreement in an amendment executed by both parties.
- B. The relationship between the parties is solely one of independent contractors and nothing in this Agreement shall be construed or deemed to create any other relationship between the parties, including one of employment, agency or joint venture.
- C. Unless it has first obtained the written consent of the other party, neither party may assign this Agreement or any of its rights or obligations under this Agreement to any other person, except that UHS may make such an assignment to an entity controlling, controlled by or under common control with UHS.
- D. All notices required under this Agreement shall be in writing and signed by the party giving notice. Additionally, all such notices shall be delivered by hand or first-class mail to the other party at the address set forth below or such other address as has been given by proper notice.
- E. The failure of any party to enforce any provision of this Agreement shall not constitute a waiver by such party of any provision. The past waiver of a provision by either party shall not constitute a course of conduct or a waiver in the future with respect to that same provision.
- F. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas.
- G. This Agreement, and its appendices, constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date indicated above.

City of Overland Park, Kansas

By: _____
Ed Eilert, Mayor

ATTEST:

Marian Cook
City Clerk

APPROVED AS TO FORM:

Michael R. Santos
Senior Assistant City Attorney

United HealthCare Services, Inc.

By: _____

ATTEST:

CORPORATE ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

BE IT REMEMBERED, That on this ____ day of _____, 2000, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, President of United HealthCare Services, Inc., a corporation duly organized, incorporated and existing under and by virtue of the laws of _____; who is personally known to me to be such officer and who is personally known to me to be the same person who executed as such officer within instrument on behalf of said Corporation, and such person duly acknowledged the execution of the same to be the act and deed of said Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires:

(If the Agreement is not executed by the president of the corporation or general partner of the partnership, please provide documentation which authorizes the signatory to bind the corporation or partnership.)

EXHIBIT A

DESCRIPTION OF BENEFITS

(Please label Description of Benefits as "Exhibit A" and attach here.)

EXHIBIT B

UHS SERVICES

1. Description of Benefits Drafting. UHS shall draft, and shall bear the cost of printing and distributing, the Description of Benefits in accordance with UHS' standard forms for those documents. If City requests any customization of such documents, City shall pay for preparation of such forms at UHS' standard rates for its personnel and shall reimburse UHS for any out-of-pocket expense incurred in preparing such customized documents. UHS shall prepare any necessary revisions or amendments to the Description of Benefits and City shall bear the cost of printing and distributing any such revisions or amendments.
2. Forms. UHS shall prepare and print the forms and other documents necessary for it to provide services under this Agreement. UHS shall provide two sets of identification cards per year covering each Covered Person to the appropriate Covered Persons. Additional identification cards shall be provided at the expense of City. Upon request by City, UHS shall customize identification cards and explanation of benefit forms by placing City's name and/or logo on such cards or forms. If City requests any other customization of forms or documents, City shall pay for preparation and printing of such forms or documents at UHS' standard rates for its personnel and shall reimburse UHS for any out-of-pocket expenses incurred in preparing and printing such forms or documents.
3. Claims Processing. UHS shall process or arrange for the processing of claims for Health Services under the Plan. UHS shall arrange for the Preferred Providers to submit claims for Health Services directly to UHS. UHS shall provide standard forms for the submission of claims by Covered Persons for Health Services received from non-Preferred Providers. City hereby adopts the benefit interpretation and practice guidelines published in the medical policy, medical management and benefit interpretation manuals ("Guidelines"), as amended from time to time, as a framework of interpretations for administration of City's Plan. City hereby directs UHS to follow and apply such Guidelines in administering those terms and conditions of the Plan relating to claims processing and payment and benefit determination and calculation. Claims shall be processed in accordance with the terms and conditions of the Plan, including the framework of interpretations set forth in the Guidelines, and the instructions of City.

UHS shall conduct coordination of benefits consistent with the terms of the Plan. City shall provide UHS with any information in its possession regarding the existence of other coverage for a Covered Person. If another plan is primary for a Health Service, UHS shall direct Preferred Providers to first seek payment from that plan.

UHS shall provide its standard services related to the detection and prevention of abusive and fraudulent claims. UHS' abuse and fraud management processes will be based upon proprietary and confidential procedures, modes of analysis and investigations UHS develops. UHS shall use the same procedures and standards in delivering abuse and fraud management services to the City as it uses for other customers. City recognizes that use of UHS' abuse and fraud management services may not result in recovery or in full recovery for any particular case. In combination with its standard abuse and fraud management services, UHS shall also provide its standard recovery services for recovery of overpayments. Overpayments are described as payments that exceed the amount payable under the Plan (for example, because of provider billing error, retroactive or inaccurate eligibility information, Medicare disputes, or missing information), and other overcharges made by providers. City recognizes that use of UHS' standard recovery services may not result in recovery or in full recovery for any particular case. UHS does not guarantee or warranty any particular level of prevention, detection or recovery. UHS agrees to perform these services pursuant to the industry standards for such services.

UHS may, but shall not be obligated to, assert, or may arrange for a third party to assert, any subrogation rights of City in regard to payments for Health Services. City shall cooperate with any

such subrogation efforts. Unless otherwise required by an agreement with a Preferred Provider, City shall receive any net subrogation recoveries, after deduction of the costs of recovery, including any amounts UHS or a third party has incurred or amounts they are entitled to receive in regard to such subrogation efforts. However, UHS shall have no affirmative duty to pursue, or to contract with any third party to pursue, such rights of subrogation, and City may independently pursue such rights after reasonable prior written notice to UHS of its intent to do so on its own or through a third party.

4. Utilization Management. UHS shall apply its standard utilization management techniques to Health Services provided by Preferred Providers. UHS shall also provide any prior review and approval or other utilization management services specified in the Description of Benefits for Health Services from non-Preferred Providers.
5. Stop-Loss and Conversion Coverage. UHS shall arrange for United HealthCare Insurance Company ("UHI"), an affiliate of UHS, to issue stop-loss coverage to City in regard to expenses incurred by City under the Plan. Payment of any premiums or charges related to such stop-loss coverage shall not be the responsibility of UHS, although it may arrange for the billing and collection of stop-loss premiums on behalf of UHI. City agrees and acknowledges that all stop-loss coverages and reimbursements are based upon and calculated pursuant to the actual amount of Health Services billed by UHS to City. UHI shall also provide conversion coverage. The cost for such conversion coverage is included in the administrative Service fee described in Section V.A of the Agreement.
6. Stop-Loss Reporting. To the extent such reporting is required under City's stop-loss coverage, UHS agrees to provide the following information to City's stop-loss carrier on behalf of City:
 - A. Notification of eligible claims expenses which reach 50% of the specific amount of \$125,000.00 and when eligible claims expenses exceed the aggregate deductible, if any, calculated according to the terms of City's stop-loss coverage. No provision of this Agreement, however, shall be construed to mean that UHS is obligated to provide notification of the existence of specific health conditions or diagnosis in regard to a Covered Person or to do reporting in other than UHS' standard format. UHS shall have no responsibility for the timeliness of any reporting or claims filing unless it has been given prior written notification of the timelines for reporting by City, and UHS has agreed to meet such timelines.
 - B. A summary of all eligible claims expenses calculated according to the terms of City's stop-loss coverage for Health Services received by a Covered Person.
 - C. Verification of enrollment of the Covered Person.
 - D. Completion and filing of appropriate claim forms to City's stop-loss carrier.
 - E. Aggregate stop-loss reports (summarizes eligible claims expenses calculated according to the terms of City's stop-loss coverage and enrollment in the Plan) after the end of the appropriate reporting period.
 - F. After each issuance of checks for claims under the Plan, a status report of those claims at 50% or greater of the specific stop-loss amount.

UHS shall have no other reporting requirements to City's stop-loss carrier unless UHS has specifically been informed of and agreed in writing to perform the reporting requirements.

- ~~7. Inquiries, Review of Denied Claims, and Complaints or Disputes. UHS shall respond to written or telephone requests for information made during normal business hours relating to UHS' obligations under this Agreement and shall provide reasonable assistance in resolving any issues relating to the Plan.~~

~~City shall have the exclusive, final and binding discretionary authority for the review and appeal of denied claims and resolution of complaints or disputes related to the Plan or benefits available under the Plan. City shall be considered the appropriate named fiduciary for purposes of review and appeal of denied claims and resolution of complaints or disputes under the Plan.~~

7. ~~**Inquiries.** UHS shall respond to written or telephone requests for information made during normal business hours relating to UHS' obligations under this Agreement and shall provide reasonable assistance in resolving any issues relating to the Plan.~~

~~**Appeals of Non-Urgent Care Claims.** City appoints UHS as a named fiduciary under the Plan with respect to (i) performing claim processing and payment, and (ii) performing the fair and impartial review of initial appeals of denied claims. UHS will conduct the review of the initial appeal within 30 days from the receipt of a request to appeal a denial. If an additional appeal is requested, UHS will forward to City or their designee documentation regarding the denied claim necessary for City and their designee to conduct the final appeal. City retains full responsibility as Plan Administrator for the final review of denied claims, and City has the discretionary authority to construe and interpret the terms of the Plan and to make final, binding determinations concerning the availability of Plan benefits regarding these claims.~~

~~If it is determined that a benefit is payable, UHS will issue a check for, or otherwise credit the benefit payment to the appropriate payee. If UHS determines that all or a part of the benefit is not payable under the Plan, UHS will notify the claimant of the denial and of the claimant's right to appeal the denial. This notification will be designed to comply with UHS standards and applicable requirements for claim denial notices.~~

~~If UHS denies a Plan benefit claim, the claimant shall have the appeal rights set forth in the Description of Benefits, and/or which are required under applicable law. UHS will process the initial appeal and determine whether a Plan benefit is available. If the claim is still denied, UHS will notify the claimant that denial has been upheld and of their right to further appeal the denial to the City for a full and fair review which will be final and binding. This notice will be designed to comply with UHS standards and applicable requirements for claim denial notices.~~

~~City will review the appeal and determine whether the Plan benefit is payable. If, after the review, City determines that the Plan benefit is payable, City will notify UHS and the claimant. If, after the review, City determines that the Plan benefit is still not payable, City will notify UHS and the claimant of the denial. City's determination will be final and binding on the claimant and all other interested parties.~~

~~**Appeals of Urgent Care Claims.** With respect to Urgent Care Claim appeals as that term is defined in the Agreement, City appoints UHS a named fiduciary under the Plan. UHS will conduct one final review of appeals of denied Urgent Care Claims and issue a determination as soon as possible but not later than 72 hours from receipt of the request to appeal. City delegates to UHS the discretionary authority to construe and interpret the terms of the Plan and to make final binding determinations concerning the availability of Plan benefits regarding these claims.~~

8. ~~**Provider Network Access.** UHS shall make a network of Preferred Providers available to Covered Persons as set forth in Section III.B of the Agreement.~~

9. ~~**Pharmacy Benefit Management Services.** In this provision a Preferred Pharmacy shall mean a pharmacy which has entered into an agreement with UHS or its affiliate or subcontractor to provide prescription drug services to Covered Persons. UHS will determine which pharmacies will be Preferred Pharmacies. The particular pharmacies that are Preferred Pharmacies can change at any time. UHS will make reasonable efforts to provide City with advance notice of any material changes in the network of Preferred Pharmacies.~~

~~If UHS furnishes a preferred drug list, also known as a drug formulary, for use with the Plan, City agrees not to copy, distribute, sell, or otherwise provide the preferred drug list to another party~~

without UHS prior written approval, except to Covered Persons as described below. On termination of this Agreement, City will cease all use of the preferred drug list.

UHS will process the claims of Preferred Pharmacies in accordance with the Description of Benefits and the Preferred Pharmacy's participation agreement.

Preferred Drug List (PDL) Rebate Program. City will comply with the requirements of the preferred drug list rebate program under which UHS has access to rebates payable by pharmaceutical manufacturers on certain prescription drug products dispensed to Covered Persons by Preferred Pharmacies. These requirements include, but are not limited to the following: (1) City agrees to use the UHS preferred drug list and pharmacy network; (2) City agrees to distribute or permit UHS to distribute the preferred drug list to Covered Persons; (3) City agrees to conduct appropriate communication with the Covered Persons, i.e., advising Covered Persons to furnish a copy of the preferred drug list to their physicians; (4) City agrees to other reasonable requirements for participation in the preferred drug list rebate program that UHS may communicate to City from time to time.

UHS' subcontractor, on UHS' behalf, will negotiate with drug manufacturers regarding the terms of the rebate program, and will arrange for payment of rebates on applicable prescription drug products utilized by Covered Persons. City agrees that during the term of this Agreement, neither City nor the Plan will negotiate or arrange or contract in any way for rebates on or the purchase of prescription drugs from any manufacturer. In the event City or the Plan negotiates or arranges with a drug manufacturer for rebates on or the purchase of prescription drugs or services, UHS may, without limiting its right to other remedies, immediately terminate the pharmacy benefit management services under this Agreement.

City acknowledges that UHS will retain all the rebates from prescription drug services as part of its reasonable compensation under this Agreement.

Upon City's request, UHS will provide it with current information concerning the value of these rebates.

Income to Subcontractor from Drug Manufacturers. UHS' subcontractor provides to drug manufacturers certain administrative services, formulary compliance services, computer software, non-confidential data, and/or research services and is paid by the manufacturer for such services, software and non-confidential data. UHS does not receive, or share in, these amounts.

Mail Order Pharmacy Rebate Program. If City desires, UHS can provide a mail order pharmacy program for Covered Persons including the necessary forms and procedures to obtain such services. If City offers such a program, prescription drug claims dollars under the Plan may be reduced by approximately 2%. Depending on the aggregate volume of mail order pharmacy sales nationally of UHS customers and the customers of UHS' affiliates, UHS may receive a volume discount which is equivalent to up to eight cents per member per month. UHS retains these volume discounts, and can provide City with information on actual amounts retained upon City's request.

Other Pharmacy Payments. UHS also receives other funds from its subcontractor related to usage of drugs in the formulary and costs thereof. These funds approximate 3 to 3 1/2 cents per member per month and are retained by UHS. UHS can provide City with information on the actual amounts retained upon City's request.

- 10. System Access.** Systems, as used in this provision, describes UHS' systems that UHS makes available to City to facilitate the transfer of information in connection with this Agreement. If reports are provided through UHS' Systems, UHS further reserves the right, from time to time, to change the content, format and/or type of the reports that are standardly provided.

UHS shall grant City the nonexclusive, nontransferable right to access and use the functionalities contained within the Systems, under the terms set forth in this Agreement. City agrees that all rights, title and interest in the Systems and all rights in patents, copyrights, trademarks and trade

secrets encompassed in the Systems will remain UHS'. In order to obtain access to the Systems, City shall obtain, and be responsible for maintaining, at no expense to UHS, the hardware, software and Internet browser requirements UHS provides to City, including any amendments thereto. City shall be responsible for obtaining an Internet Service Provider or other access to the Internet. City shall not (a) access Systems or use, copy, reproduce, modify, or excerpt any of the Systems documentation provided by UHS in order to access or utilize Systems, for purposes other than as expressly permitted under this Agreement; or (b) share, transfer or lease City's right to access and use Systems, to any other person or entity which is not a party to this Agreement. City may designate any third party to access Systems on their behalf, provided the third party agrees to these terms and conditions of Systems access and City assumes joint responsibility for such access.

City shall use commercially reasonable physical and software-based measures, and comply with UHS' security procedures, as may be amended from time to time, to protect the System, its functionalities, and data accessed through Systems from any unauthorized access or damage (including damage caused by computer viruses). City shall notify UHS immediately if any breach of the security procedures, such as unauthorized use, is suspected.

UHS reserves the right to terminate City's System access (a) on the date City fails to accept the hardware, software and browser requirements provided by UHS, including any amendments thereto or (b) immediately on the date UHS reasonably determines that City has breached, or allowed a breach of, any applicable provision of this Agreement. Upon termination of this Agreement, City agrees to cease all use of Systems, and UHS shall deactivate City's identification numbers and passwords and access to the System.

EXHIBIT C

City acknowledges that it is a "Payor" as used and defined in the Preferred Provider agreements. City further acknowledges its obligation to make sufficient funds available to pay for Health Services rendered by Preferred Providers to Covered Persons under City's Plan.

City has authorized distribution of copies of this Exhibit to Preferred Providers. In the event City fails to provide funds to pay Preferred Providers as provided under the City's Plan, the Preferred Providers may seek remedies legally available to third party beneficiaries.

City of Overland Park

By: _____

Its: _____

Date: _____

EXHIBIT D

BILLING FOR PREFERRED PROVIDER SERVICES

I. Definitions:

- A. **Copayment:** Charge Covered Person must pay for certain Health Services. Upon receiving Health Services, the Copayment is payable directly to the Preferred Provider and not to UHS or City.
- B. **Customary Charges:** Usual and customary fee-for-service charges made by Preferred Providers for Health Services regardless of whether the person receiving such services is a Covered Person.
- C. **Deductible:** Annual amount of charges for Health Services which Covered Person is required to pay in advance of any coverage for such services.

II. Billing to City for Health Services rendered by Preferred Providers (excluding Health Services subject to coordination of benefits and/or subrogation recovery):

- A. Physician and Allied Professional Health Services

Amounts established by the terms of the Preferred Providers' agreement, less any Copayment and/or Deductible.
- B. Inpatient Hospital and Ancillary Facility Health Services

Amounts established by the terms of the Preferred Providers' agreement, less any Copayment and/or Deductible.
- C. Outpatient Hospital and Ancillary Facility Health Services

Amounts established by the terms of the Preferred Providers' agreement, less any Copayment and/or Deductible.
- D. Pharmacy Health Services

A discount off of the Average Wholesale Price, plus Administrator's dispensing fee, less any Copayment and/or Deductible.
- E. Mental Health/Substance Abuse Health Services

A per Covered Person per month fee as described in Section V.A.2 of the Agreement for mental health/substance abuse Health Services covered by the Plan. This fee shall be due and payable monthly in the same manner as the fees set forth in Section V.B of the Agreement.

City acknowledges that United Behavioral Health ("UBH") provides access to its mental health/substance abuse Preferred Provider network on a capitated basis to City. UBH is a wholly owned subsidiary of UHS. As such, in the event that claim experience for mental health/substance abuse Health Services is such that the amounts paid to UBH providers is less than the amount paid to UBH by City, then UBH will benefit financially. Conversely, in the event that claim experience for mental health/substance abuse Health Services is such that the amount paid to UBH providers is greater than the amount paid to UBH by City, then UBH will suffer a financial loss.

City obtains access to UBH's Preferred Provider network at the rate described in Section V.A.2 of the Agreement. Of this amount, \$2.93 will be retained by UHS as an administrative fee for implementing and maintaining the mental health/substance abuse Preferred Provider network.

EXHIBIT E

LIST OF PREFERRED PROVIDERS

(Please label Provider Directory as "Exhibit E" and attach here.)