

**Seventh Amendment to the Health Care Consultant Agreement**  
**between**  
**The City of Overland Park, Kansas**  
**and**  
**Mercer Health & Benefits LLC**

This seventh amendment (the “Seventh Amendment”) is made as of May 31, 2014, by and between the City of Overland Park, Kansas (“City”) and Mercer Health & Benefits LLC (“Consultant”).

**WHEREAS**, City and Consultant entered into a Health Care Consultant Agreement commencing on June 1, 2007 (the “Agreement”) whereby City engaged Consultant to provide certain services to City under the terms and conditions set forth in the Agreement; and

**WHEREAS**, the City and Consultant subsequently on May 30, 2010 entered into an amendment to the original June 1, 2007 Agreement, (the “Amendment”) whereby the parties agreed to certain limitations of liability and other matters; and

**WHEREAS**, the City and Consultant subsequently on June 20, 2011 entered into a Second Amendment to the original June 1, 2007 Agreement and the May 30, 2010 Amendment to the Health Care Consulting Agreement, (the “Second Amendment”) whereby the parties agreed to certain terms and conditions; and

**WHEREAS**, the City and Consultant subsequently on July 9, 2012 entered into a Third Amendment to the original June 1, 2007 Agreement, the May 30, 2010 Amendment, and the June 20, 2011 Second Amendment, (the “Third Amendment”) whereby the parties agreed to certain terms and conditions; and

**WHEREAS**, the City and Consultant subsequently on November 19, 2012 entered into a Fourth Amendment to the original June 1, 2007 Agreement and all subsequent amendments to the Agreement, whereby the parties agreed to certain terms and conditions; and

**WHEREAS**, the City and Consultant subsequently on August 5, 2013 entered into a Fifth Amendment to the original June 1, 2007 Agreement and all subsequent amendments to the Agreement, whereby the parties agreed to certain terms and conditions; and

**WHEREAS**, the City and Consultant subsequently on December 16, 2013 entered into a Sixth Amendment to the original June 1, 2007 Agreement and all subsequent amendments to the Agreement, whereby the parties agreed to certain terms and conditions; and

**WHEREAS**, the parties now wish to further amend the Agreement and all subsequent amendments to the Agreement as provided below.

**NOW, THEREFORE**, in consideration of the mutual promises and undertakings contained in the Agreement, subsequent amendments and herein, the parties agree as follows:

Paragraph 1. The parties agree to amend the following provisions of the Agreement and all subsequent amendments:

**SECTION IV. RESPONSIBILITIES AND OBLIGATIONS OF CONSULTANT** shall be amended by deleting or amending the following provisions currently found in the Agreement and subsequent amendments to the Agreement:

- Subsection G. Feasibility study for on-site clinic shall be deleted.
- Subsection H. On-Site Clinic Consulting shall be amended to read:
  - 1) Review the City's current on-site clinic operation, including evaluation of data on plan member demographics, utilization and other relevant data.
  - 2) Review and consult with City regarding the clinic operator's use of member medical information and other contract performance issues.

**SECTION VI. CONSIDERATION AND PAYMENT TERMS** shall be amended by replacing the existing language with the following provisions:

Except as otherwise provided in this Section VI, City shall pay Consultant the following compensation for services provided to the City:

**June 1, 2014 to May 31, 2015**

Medical and Dental ongoing services	\$ 70,000
Medical Marketing Project (if required)	\$ 20,000
Dental Marketing Project (if required)	\$ 10,000

**Provided the Parties have contracted for the term June 1, 2015 to May 31, 2016 the compensation shall be:**

Medical and Dental ongoing services	\$ 72,500
Medical Marketing Project (if required)	\$ 20,000
Dental Marketing Project (if required)	\$ 10,000

**Provided the Parties have contracted for the term June 1, 2016 to May 31, 2017 the compensation shall be:**

Medical and Dental ongoing services	\$ 75,000
Medical Marketing Project (if required)	\$ 20,000
Dental Marketing Project (if required)	\$ 10,000

In addition, the parties acknowledge that the Consultant is entitled to receive the following compensation in the form of commissions on ancillary insurance coverage as indicated below:

**Lincoln Financial:**

- Basic Life & Dependent Life Insurance;
- Basic AD&D;
- Long Term Disability;

Optional Life;  
Optional Short Term Disability;  
**Commissions:**  
All coverages pursuant to commission schedule

**Application Software, Inc. (ASI)**  
Flex Administration  
Net of commissions

**UNUM Life Insurance Company:**  
Long Term Care Insurance  
**Commissions:**  
Pursuit to commission schedule

**Aetna/Allstate (effective January 1, 2014):**  
Critical Illness;  
Vision  
**Commissions:**  
Pursuant to commission schedule

Payment Terms

Consultant is to remit a monthly invoice for one-twelfth (1/12) of the annual consideration as set forth in Paragraph A above, to the City's Manager, Human Resources that records the Consultant's monthly activity and the hours expended. Payment for services rendered by Consultant is due and payable by City within 30 days of receipt of invoice from Consultant.

Cash Basis Law

The City is obligated only to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes as set forth in this Agreement during the City's current budget year. In the event the City does not so budget and appropriate the funds, the parties shall be relieved from all obligations, without penalty, under this Agreement.

**SECTION XII TERM**, shall be amended and restated to read as follows:

The initial term of this Agreement shall be from June 1, 2014, to May 31, 2015 (the "Initial Term"). After the Initial Term, on June 1, 2015, the Agreement is subject to renewal by the parties for two successive one-year terms on June 1 of each year. During the initial term and any subsequent term this Agreement is subject to termination as provided for in the Agreement.

**NEW SECTION XXVII**, shall be added and shall read as follows:

A. The Parties acknowledge that:

1. Consultant does not act on behalf of any particular insurer or other service provider, is not bound to utilize any particular insurer or service provider, and does not have the authority to make binding commitments on behalf of any insurer or service provider.
2. Consultant does not guarantee or make any representation or warranty that coverage or service can be placed on terms acceptable to the City.
3. Consultant is not responsible for the solvency or ability to pay claims of any insurance carrier or for the solvency or ability of any service provider to provide service.
4. Insurance carriers or service providers with which the City's other risk or insurance coverage or other business is placed will be the City's responsibility.

B. In order to avoid issues related to impairment or voiding of coverage or service, the City acknowledges that it is responsible for providing complete, accurate, up-to-date, and timely documentation and information to Consultant, insurers, or other service providers. The Parties agree to review all policies, endorsements and program agreements delivered to the City by Consultant and will advise the other Party prior to the effective date of coverage of anything which is believed not in accordance with the negotiated coverage and terms; provided the City receives any such documents at least thirty days prior to the effective date of the document(s).

C. The Parties acknowledge that:

Title V of the Gramm-Leach-Bliley Act and related state laws and regulations establish limitations on the use and distribution of non-public information collected by financial institutions from their customers and consumers. Consultant's insurance-related work qualifies Consultant as a financial institution under this Act. Consultant's Privacy Policy Notice and additional information regarding its other compliance policies, including its conflicts of interest policy, are available at [www.mercer.com/transparency](http://www.mercer.com/transparency). At this web address, the City will also find information regarding Marsh & McLennan Companies, Inc. and its subsidiaries' equity interests in certain insurers and contractual arrangements with certain insurers and wholesale brokers.

D. The Parties acknowledge that:

Consultant receives standard commissions for ancillary lines of coverage placed on the City's behalf. Consultant does not receive any commissions for placing medical, dental or stop loss coverage on the City's behalf. Per the City's direction, Consultant is not eligible for any supplemental commission compensation on the City's behalf. Consultant and its Affiliates serve a wide array of clients, including clients who compete with or whose interests may be adverse to one another. In addition, Consultant interacts with insurance carriers and other service providers through numerous business and contractual relationships, including serving as a broker for its clients and receiving commissions from carriers, providing consulting or administration services to carriers, and auditing carriers' claims data. Consultant is committed to serving each of its clients in an objective manner and maintaining the confidentiality of each of its client's information.

Paragraph 2. Other Terms. All other terms and provisions of the Agreement as amended by subsequent amendments and, not otherwise amended hereby, shall remain in full force and effect. In the event of any inconsistency between the terms of this Seventh Amendment and the Agreement, the terms of this Seventh Amendment shall govern and control.

Paragraph 3. Severability. It is the intent of the parties that the provisions of this Seventh Amendment shall be enforced to the fullest extent permitted by applicable law. To the extent that the terms set forth in this Seventh Amendment or any word, phrase, clause or sentence is found to be illegal or unenforceable for any reason, such word, phrase, clause or sentence shall be modified deleted or interpreted in such a manner so as to afford the party for whose benefit it was intended the fullest benefit commensurate with making this Seventh Amendment as modified, enforceable and the balance of this Seventh Amendment shall not be affected thereby, the balance being construed as severable and independent.

IN WITNESS WHEREOF, the parties have agreed to this Seventh Amendment this 19<sup>th</sup> day of May, 2014.

ATTEST:

CITY

\_\_\_\_\_  
Marian Cook  
City Clerk

By: \_\_\_\_\_  
Carl Gerlach  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael R. Santos  
City Attorney

Mercer Health & Benefits LLC

By: \_\_\_\_\_  
Name:  
Title:

CORPORATE ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

BE IT REMEMBERED That on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, \_\_\_\_\_ of Mercer Health & Benefits LLC, 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 the above 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 Appointment Expires

\_\_\_\_\_