

LIFESTYLE SPENDING ACCOUNT PLAN SERVICES AGREEMENT

This Lifestyle Spending Account Plan Services Agreement (the "**Agreement**") made effective as of July 1, 2023 (the "**Effective Date**"), by and between **TOWN OF APEX**, 73 Hunter Street, Apex, NC 27502 (the "**Employer**"), and **P&A ADMINISTRATIVE SERVICES, INC.**, 17 Court Street, Suite 500, Buffalo, NY 14202-3294 ("**P&A**").

WITNESSETH:

WHEREAS, the Employer maintains a "lifestyle spending account" for the benefit of its eligible employees that adopt the Plan (the "Plan"); and

WHEREAS, the Employer heretofore engaged P&A to provide technical and administrative services with respect to the Plan and desires P&A to continue to do so upon certain terms and conditions;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto, with the intention of being legally bound hereby, covenant and agree as follows:

1. Services. P&A shall provide the following services with respect to the Plan:

- a. provide Participants with a form to use in submitting benefit claims to P&A for processing;
- b. from time to time, notify the Employer of the aggregate amount of funds needed from the Employer to pay pending approved claims and receive said funds as transmitted by the Employer;
- c. pursuant with the plan rules and requirements furnished by the employer adjudicate pay approved benefit claims from funds made available by the Employer for that purpose. Claims shall be paid by check or, where authorized by a Participant, by direct electronic deposit to a bank account of the Participant;
- d. pursuant with the plan rules and requirements furnished by the employer provide such other services as shall be reasonably necessary to process claims under the Plan;

2. Compensation. As compensation for the services rendered hereunder, the Employer shall pay P&A such fees as are set forth in **Schedule A** attached hereto and made a part hereof. P&A may modify this fee schedule as of the beginning of any Plan Year commencing after the initial term of this Agreement, as described in Section 5. P&A shall notify the Employer in writing of any modification to the fee schedule not less than ninety (90) days before the beginning of the Plan Year in which the modification is to become effective. Should the Employer be unwilling to accept any such modification, it may exercise its right to terminate the Agreement in accordance with Section 5.

3. Employer Responsibilities.

- a. The Employer shall notify P&A in writing of any event or occurrence that affects the group of employees who are eligible to participate in the Plan.
- b. The employer shall provide P&A Group a comprehensive list of eligible expenses along with any other relevant plan rules necessary to administer the plan at least 30 days in advance of the plan year.
- c. The Employer shall provide P&A on a timely basis with such other information as P&A deems necessary or appropriate for the discharge of its responsibilities hereunder, including any information that must be obtained from the Employer to prepare annual reports for the plan.

4. Responsibilities of the Parties and Indemnification. The responsibilities and liabilities of P&A are only those set forth herein, and no others shall be implied. P&A shall have no duty or authority to make, or to compel the Employer to make payment of any benefit under the Plan. Except for its own misconduct or negligence, P&A shall not indemnify the Employer or any other provider of benefits under the Plan, with respect to its liability to pay benefits to Participants.

Except for its own misconduct or negligence, neither P&A nor any of its officers, directors, or employees, nor any agent of or counsel for any of the foregoing, shall be liable to anyone at any time interested in the Plan, for any act or omission in providing services hereunder. P&A shall indemnify and hold harmless the Employer from any claim, liability, obligation or charge arising out of P&A's misconduct, negligence or other wrongdoing in connection with activities or responsibilities arising out of or relating to this Agreement. [sentence deleted].

By engaging P&A ADMINISTRATIVE SERVICES, INC. to provide Lifestyle Spending Account administration services the Employer represents and warrants that they have consulted with legal [clause deleted] counsel regarding the tax and other compliance requirements relating to the Lifestyle Spending Account, acknowledge and accept full responsibility for all legal and tax compliance obligations associated with the Lifestyle Account program design, and, to the extent permitted by North Carolina law, agree to hold P&A ADMINISTRATIVE SERVICES, INC. harmless for all liability and responsibility associated with any tax, legal, or other compliance requirements.

5. Termination. The initial term of this Agreement shall commence on the Effective Date and shall end on the last day of the first twelve-month Plan Year commencing on or after that date. Thereafter, this Agreement may be renewed for each additional Plan Year unless one of the parties hereto gives the other party notice in writing of its desire to terminate the Agreement as of the end of a specified Plan Year not less than sixty (60) days prior to the end of that Plan Year.

Notwithstanding the foregoing, this Agreement shall terminate (a) automatically if either party is adjudicated a bankrupt or suffers appointment of a temporary or permanent receiver, trustee or custodian for all or a substantial part of their assets, which shall not be discharged within thirty (30) days of appointment, or makes an assignment for the benefit of creditors, or (b) after written notice by one party of the other party's material breach of, or material failure to perform, its obligations hereunder unless such breach or failure is cured within ten (10) days of said notice. Any notice of breach must provide all such details as are known to the non-breaching party regarding the nature of the other party's alleged breach, the specific obligation hereunder to which the alleged material breach relates, the approximate date on which the alleged breach occurred and the identity of any personnel of the other party that were involved. Failure to provide such detail shall render said notice null and void for purposes of this Agreement.

Should the Employer cause this Agreement to be terminated other than in accordance with the preceding paragraph, the Employer immediately shall become obligated to pay P&A as liquidated damages an amount equal to seventy-five (75%) percent of the fees that would have been due had the Agreement remained in effect for the period (i) commencing on the date next following the date on which the Agreement prematurely was or will become terminated, and (ii) ending on the earliest date as of which the Employer properly could have terminated the Agreement by giving the advance notice prescribed hereunder on the date the Employer first notified P&A in writing of the Employer's intention to terminate the Agreement. For purposes of calculating this liquidated damages amount, the fees due to P&A hereunder for services it provided in the month preceding the month within which P&A first was notified of the premature termination of the Agreement shall be the fees due for each month during the period described in the preceding sentence.

6. Confidentiality. All books and records, including the data therein, pertaining to each party which may come into the hands of the other are to be treated as confidential and private records, and the other party shall not disclose information from such records unless it is required by law or authorized by the initial party in writing prior to such disclosure. Both parties reserve the right to control the use of any of their symbols, trademarks, computer programs and service marks currently existing or hereafter established. Both parties agree that they will not use the computer programs work, symbols, trademarks, service marks, or other devices of the other in advertising, promotional material, or otherwise and will not advertise or display such devices without the prior written consent of the other party. In addition, both parties further agree that any such work, symbols, trademarks, service marks, or other devices furnished by one party to the other shall remain the property of the initial party and shall be returned by the other party upon demand of the initial party upon termination of this Agreement.

7. **HIPAA Compliance.** The parties hereto acknowledge that they have entered into a separate Business Associate Agreement of even date herewith (the Employer on behalf of the Plan) , and agree that said Business Associate Agreement and all of the obligations and rights of the parties thereunder shall be incorporated herein by reference.

8. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the parties, their legal representatives, contractors, agents, successors and assigns.

9. **Integration.** By their making of this Agreement, the parties hereto hereby acknowledge that this Agreement supersedes any previous understandings between them with respect to all matters contained herein and contains the entire understanding and agreement between them with respect to all matters contained herein and cannot be amended, modified or supplemented except by a subsequent written agreement entered into by both parties.

10. **Subcontracting.** P&A shall not subcontract any portion of this Agreement without the prior written approval of the Employer.

11. **Non-Exclusive Arrangement.** Nothing contained herein shall be construed to prevent either party from independently operating or participating in any other agreement concerning plan administration services independent and unrelated to the services and obligations of the parties pursuant to this Agreement.

12. **Waiver of Breach.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed as a waiver of a breach or violation of any other provision of this Agreement or of any subsequent breach or violation thereof.

13. **Severability.** In the event any provision of this Agreement is rendered invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

14. **Governing Law.** This Agreement is made in and shall be construed pursuant to the laws of the State of **North Carolina**, to the extent that the law of the State of **North Carolina** is not superseded by federal law.

15. **Enforcement.** If any action at law or in equity (including arbitration) is necessary to enforce or interpret any one or more of the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

16. **Notice.** Any notice hereunder by either party shall be deemed to have been duly given three (3) business days after mailing, and shall be given by fax and by being mailed in any post office or post office box maintained by the United States Postal Service, enclosed in a postage paid envelope, registered or certified mail, return receipt requested, addressed to the party to whom or which notice is intended to

be given at such party's address as stated above or to such other address as each party shall specify in writing to the other.

17. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and together shall constitute one and the same instrument.

(Remainder of page left intentionally blank)

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

TOWN OF APEX

P&A ADMINISTRATIVE SERVICES, INC.

By: _____

By: _____

Title: _____

Title: _____

This instrument has been preaudited in the manner required by the Local Government Fiscal Control Act.

Antwan Morrison, Finance Director