CITY COUNCIL AGENDA

Notice is hereby given that the Rockport City Council will hold a regular meeting on Tuesday, June 8, 2021, at 6:30 p.m. The meeting will be held in person at the Training Room of the Rockport Service Center, 2751 State Highway 35 Bypass, Rockport, Texas with social distancing guidelines and using the video conferencing application ZOOM. A temporary suspension of the Open Meetings Act to allow telephone or video conference public meetings has been granted by Governor Greg Abbott. These actions are being taken to mitigate the spread of COVID-19 by avoiding meetings that bring people into a group setting and in accordance with Section 418.016 of the Texas Government Code. Video conferencing capabilities will be utilized to allow individuals to address the City Council. Members of the public can participate in the meeting remotely via Zoom at https://us02web.zoom.us/j/87994671777 or scan the QR code to the right.

SCAN ME

Due to the COVID-19 pandemic, the attorney general has said: "statutes that may be interpreted to require face-to-face interaction between members of the public and public officials are suspended; provided, however, that the governmental bodies must offer alternative methods of communicating with their public officials." Public participation is valued and citizens wishing to express their views on any topic or agenda item can electronically submit a citizen participation form in order to register to speak by going to https://rockport.seamlessdocs.com/f/CouncilCitizenParticipation or scanning the QR code to the right, or if attending the meeting in person register at the meeting. Using the same form, citizens can also provide written comments to the City Secretary by 4:00 p.m. on the day of the meeting. The Mayor will read the comments and they will be summarized in the minutes of the meeting.

SCAN ME

The matters to be discussed and acted upon are as follows:

Opening Agenda

1. Call meeting to order.

2. Pledge of Allegiance.

3. Presentation: Municipal Clerk's Office Achievement of Excellence Award.

4. Citizens to be heard.
   At this time, comments limited to three (3) minutes will be taken from the audience from persons who have signed the speaker's card located on the table in the back of the Training Room of the Service Center and delivered to the City Secretary before the meeting begins, or written comments received by 4:00 p.m. on the day of the meeting, on any subject matter that is not on the agenda, will be read by the Mayor and summarized in the minutes of the meeting. Persons wishing to address the Council and who have registered using the Citizen Participation Form will have up to three minutes to speak. In accordance with the Open Meetings Act, Council may not discuss or take action on any item that has not been posted on the agenda. While civil public criticism is not prohibited; disorderly conduct or disturbance of the peace as prohibited by law shall be cause for the chair to terminate the offender's time to speak.

Consent Agenda

All consent agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member so requests, in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.

5. Deliberate and act on approval of Regular Meeting Minutes of May 25, 2021.

6. Deliberate and act on Amendment to Section 125 Flexible Spending Arrangement agreement

with TML Health Benefits Pool.

7. Deliberate and act to confirm Mayoral appointments to various City of Rockport boards, committees, and commissions.

8. Deliberate and act to confirm Mayor appointments of City Council liaisons to various boards, committees, and commissions.

Regular Agenda

9. Deliberate and act on first reading of an Ordinance of the City of Rockport, Texas, amending Chapter 70 "Parks and Recreation", Article II Park and Leisure Services Advisory Board", Section 70-42 "Function; Organization"; providing for cumulative and conflicts and severability clauses; and providing for an effective date.

10. Deliberate and act on an interlocal agreement with Aransas County for a CDBG-DR grant to develop a parking lot located at 106 S. Magnolia Street and authorizing the City Manager to negotiate and execute all necessary documents.

11. Deliberate and act on a ground lease agreement with Aransas County for construction of a radio tower at 1130 State Highway 188 and authorizing the City Manager to negotiate and execute all necessary documents.

12. Hear and deliberate on status of COVID-19 and response efforts.

13. Reports from Council.
    At this time, the City Council will report/update on all committee assignments, which may include the following: Aransas County Alliance Local Government Corporation; Aransas Pathways Steering Committee; Building and Standards Commission; Coastal Bend Bays and Estuaries Program; Coastal Bend Council of Government; Coastal Bend Mayors Group; Park & Leisure Services Advisory Board; Planning & Zoning Commission; Rockport-Fulton Chamber of Commerce; Aransas County Storm Water Management Advisory Committee; Swimming Pool Operations Advisory Committee; Tourism Development Council; Tree & Landscape Committee; YMCA Development Committee; Texas Maritime Museum, Fulton Mansion, Rockport Center for the Arts, Aransas County, Aransas County Independent School District, Aransas County Navigation District, Town of Fulton, and Texas Municipal League. No formal action can be taken on these items at this time.

14. Adjournment.

Special Accommodations

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at (361) 729-2213, ext. 225 or FAX (361) 790-5966 or email citysec@cityofrockport.com for further information. Braille is not available. The City of Rockport reserves the right to convene into executive session under Government Code §§ 551.071-551.074 and 551.086.

Certification

I certify that the above notice of meeting was posted on the bulletin board at the Rockport Service Center, 2751 State Highway 35 Bypass, Rockport, Texas on Friday, June 4, 2021, 2021, by 5:00 p.m. and on the City's website at www.cityofrockport.com. I further certify that the following News Media were properly notified of this meeting as stated above*: The Rockport Pilot* and *Corpus Christi Caller Times*.


Teresa Valdez, City Secretary

CITY COUNCIL AGENDA
Regular Meeting: Tuesday, June 8, 2021

AGENDA ITEM: 3

Presentation: Municipal Clerk's Office Achievement of Excellence Award.

SUBMITTED BY: Mayor Pat R. Rios

APPROVED FOR AGENDA: PKC

BACKGROUND: The Texas Municipal Clerk's Association (TMCA) Municipal Clerk's Office Achievement of Excellence Award recognizes the excellence in the effective and efficient management of resources in a municipal clerk's office. The first recipients were awarded in 2020. The Achievement of Excellence Award covers a period of two years. There have been 43 recipients of the award out of 600 cities having clerks who are members of TMCA.

The goal of the award program is to recognize municipal clerk offices that meet certain professional requirements, promotion of the office, recognizing the office's management with elected officials and community, and demonstration of compliance with local, state and federal standards.

FISCAL ANALYSIS: N/A

RECOMMENDATION: Not an action item.

March 29, 2021

Teresa Valdez, City Secretary
City of Rockport
2751 SH 35 Bypass
Rockport, TX 78382

Dear Teresa Valdez,

Congratulations on behalf of the Texas Municipal Clerks Association, Inc., and the Achievement of Excellence Award Committee. The Office of the Municipal Clerk in the City of Rockport has met the requirements to receive the Achievement of Excellence Award!

The Achievement of Excellence Award program recognizes the statutory requirements and demands for the effective and efficient management of resources for proper governance by the municipal clerk's office. The award recognizes municipal clerk offices throughout the state for compliance with federal, state and local statutes that govern standards necessary to fulfill the duties and responsibilities of the office. A municipal clerk office must have met nine of 12 standards to be eligible for the Excellence Award.

Your office clearly succeeded in demonstrating the standards that qualified you to receive this award and we are proud of you and your office's accomplishments. This award highlights contributions that you and your City represent in local government.

The recipients of this distinguished award will be recognized in the June issue of the TMCA, Inc., newsletter and be officially acknowledged in October at the awards banquet during our annual Advanced Institute. In addition, the Municipal Clerk's Office will receive a framed award certificate, so watch for it in the mail in the next few weeks! If you would like your award presented in person or at a City Council meeting, please contact a TMCA staff member at 940-565-3488.

A copy of the notification mailed to your Mayor is enclosed. Congratulations again and keep up the GREAT work!

Sincerely,

Thelma A. Gilliam, TRMC, CMC
Chair, Achievement of Excellence Award Committee
Texas Municipal Clerks Association, Inc.

C: Achievement of Excellence Award Committee
Aimee Nemer, TRMC, MMC – TMCA, Inc., President
Alicia Richardson, TRMC, CMC – Committee Board Liaison

CITY COUNCIL AGENDA
Regular Meeting: Tuesday, June 8, 2021

AGENDA ITEM: 5

Deliberate and act on approval of Regular Meeting Minutes of May 25, 2021.

SUBMITTED BY: City Secretary Teresa Valdez

APPROVED FOR AGENDA: PKC

BACKGROUND: Please see the accompanying minutes of the Regular Meeting of May 25, 2021.

FISCAL ANALYSIS: N/A

RECOMMENDATION: Staff recommends Council approve the Minutes, as presented.

CITY OF ROCKPORT

MINUTES

CITY COUNCIL REGULAR MEETING
6:30 p.m., Tuesday, May 25, 2021
Rockport Service Center, 3751 State Highway 35 Bypass
and
Via Video Conferencing Application ZOOM

A temporary suspension of the Open Meetings Act to allow telephone or video conference public meetings was granted by Governor Greg Abbott. These actions were being taken to mitigate the spread of COVID-19 by avoiding meetings that bring people into a group setting and in accordance with Section 418.016 of the Texas Government Code.

Due to the COVID-19 pandemic, the attorney general has said: "statutes that may be interpreted to require face-to-face interaction between members of the public and public officials are suspended; provided, however, that the governmental bodies must offer alternative methods of communicating with their public officials." Public participation is valued and citizens wishing to express their views on any topic or agenda item can electronically submit a Citizen Participation Form in order to register to speak by going to https://rockport.seamlessdocs.com/f/CouncilCitizenParticipation or scanning the QR code provided on the Agenda, or if attending the meeting in person register at the meeting. Using the same form, citizens can also provide written comments to the City Secretary by 4:00 p.m. on the day of the meeting. The Mayor will read the comments and they will be summarized in the minutes of the meeting.

On the 25th day of May 2021, the City Council of the City of Rockport, Aransas County, Texas, convened in Regular Session at 6:30 p.m., at the Training Room of the Rockport Service and via video conferencing application ZOOM, and notice of meeting giving time, place, date and subject was posted as described in V.T.C.A., Government Code § 551.041.

CITY COUNCIL MEMBERS PRESENT
Mayor Patrick R. Rios
Mayor Pro-Tem J.D. Villa, Ward 2
Council Member Katy Jackson, Ward 1
Council Member Bob Cunningham, Ward 3
Council Member Brad Brundrett, Ward 3
Council Member Andrea Hattman, Ward 4

CITY COUNCIL MEMBER(S) ABSENT
Council Member Michael Saski, Ward 1

STAFF MEMBERS PRESENT
City Manager Kevin Carruth
Assistant to City Manager Kimberly Henry
City Secretary Teresa Valdez
Director of Public Works & Building Services Mike Donoho
Director of Finance Katie Griffin
Parks & Leisure Services Director Rick Martinez
Chief of Police Greg Stevens
Information Technology Director Bob Argetsinger

ELECTED OFFICIALS PRESENT
Aransas County Navigation District Commissioner Malcolm Dieckow

Opening Agenda

1. Call to Order.

With a quorum of the Council Members present, the Regular Meeting of the Rockport City Council was called to order by Mayor Rios at 6:30 p.m. on Tuesday, May 25, 2021, in the Training Room of the Rockport Service Center, 2751 State Highway 35 Bypass, Rockport, Texas, and via video conferencing application ZOOM.

2. Pledge of Allegiance.

Council Member Hattman led the Pledge of Allegiance to the U.S. flag.

3. Presentation of Certificate of Election to newly-elected official for Ward 1.
(Presentación de los certificados de elección para recién elegido official de Barrio 1).

Mayor Rios presented the Certificate of Election to newly-elected official for Ward 1, Kathleen "Katy" Jackson.

4. Administration of Oath of Office to newly-elected official for Ward 1.
(Administración de se juramento del cargo el recién elegido oficial de Barrio 1.)

Mayor Rios administered the Oath of Office to newly-elected official for Ward 1, Kathleen "Katy" Jackson.

5. Presentation of Certificate of Election to newly-elected official for Ward 3.
(Presentación de los certificados de elección para recién elegido official de Barrio 3).

Mayor Rios presented the Certificate of Election to newly-elected official for Ward 3, Brad Brundrett.

6. Administration of Oath of Office to newly-elected official for Ward 3.
(Administración de se juramento del cargo el recién elegido oficial de Barrio 3.)

Mayor Rios administered the Oath of Office to newly-elected official for Ward 3, Brad Brundrett.

Mayor Rios thanked Council Member Cunningham and Council Member Saski for their service.

7. Deliberate and act on election by Council of Mayor Pro-Tem.

MOTION: Council Member Hattman moved to nominate and elect Council Member Villa to serve as Mayor Pro-Tem for a term of May 2020 to May 2021 pursuant to the City of Rockport Home Rule Charter. Council Member Brundrett seconded the motion. Motion carried unanimously.

8. Proclamation: Joe Gazin Day.

Mayor Rios read a Proclamation proclaiming May 28, 2021, as Joe Garzin Day in the City of

Rockport.

Mayor Rios stated Agenda Item #9 will be addressed later in the meeting.

10. Citizens to be heard.

At this time, comments limited to three (3) minutes will be taken from the audience from persons who have signed the speaker's card located on the table in the back of the Training Room of the Service Center and delivered to the City Secretary before the meeting begins, or written comments received by 4:00 p.m. on the day of the meeting, on any subject matter that is not on the agenda, will be read by the Mayor and summarized in the minutes of the meeting. Persons wishing to address the Council and who have registered using the Citizen Participation Form will have up to three minutes to speak. In accordance with the Open Meetings Act, Council may not discuss or take action on any item that has not been posted on the agenda. While civil public criticism is not prohibited, disorderly conduct or disturbance of the peace as prohibited by law shall be cause for the chair to terminate the offender's time to speak.

Mayor Rios said one Citizen Participation Form had been received.

Andrew Kane, 2106 Lakeview, addressed the Council. Mr. Kane voiced comments that he had not seen any action taken on his claim that the petition submitted with the Ward 3 application for a place on the ballot was invalid.

Consent Agenda

All consent agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member so requests, in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.

11. Deliberate and act on approval of Regular Meeting Minutes of May 11, 2021.

12. Deliberate and act on 2nd quarter report from the Texas Marine Science Institute/Mission Aransas National Estuarine Research Reserve for Fiscal Year 2020-2021 Bay Education marketing expenditures.

13. Deliberate and act on request from Rockport Volunteer Fire Department for temporary closure of a portion of Gagon Street and Ann Street from 10:00 a.m. to 2:00 p.m. on June 5, 2021, for Fire Department Anniversary party.

14. Deliberate and act on re-appointment of Municipal Court Judge and Municipal Court Administrator for a term of two years retroactive to November 10, 2020.

15. Deliberate and act on an Ordinance of the City Council of the City of Rockport, Texas, extending a COVID-19 pandemic Declaration of Local Disaster for the period of May 25 – June 22. 2021; establishing rules and regulations for the duration of the disaster; restricting certain activities; and establishing penalties for violations.

16. Deliberate and act on an Ordinance of the City Council of the City of Rockport, Texas, extending a Declaration of Local Disaster (Winter Storm Uri) for the period of May 25 – June 22, 2021, establishing rules and regulations for the duration of the Disaster; and establishing an effective date.

Mayor Rios called for requests to remove any item from the Consent Agenda for separate

discussion.

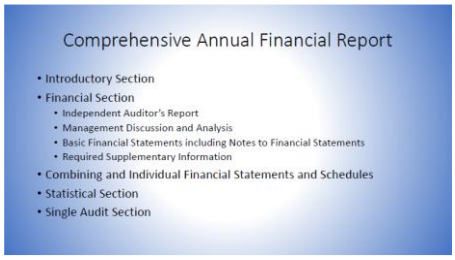
Mayor Rios read the captions of the Ordinances listed as Consent Agenda Items #15 and #16.

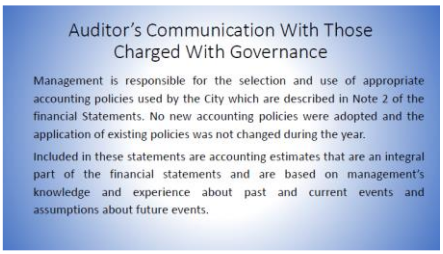
MOTION: Council Member Hattman moved to approve the Consent Agenda, as presented. Mayor Pro-Tem Villa seconded the motion. Motion carried unanimously.

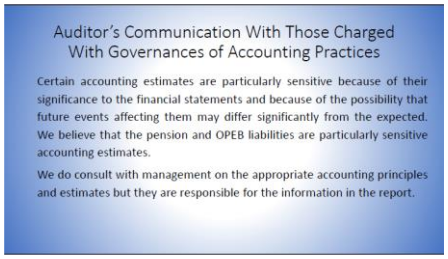
Regular Agenda

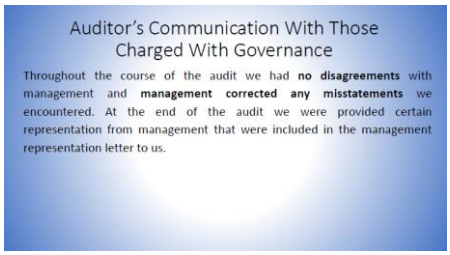
17. Deliberate and act on presentation and acceptance of Comprehensive Annual Financial Report for the City of Rockport for Fiscal Year 2019-2020 Audit.

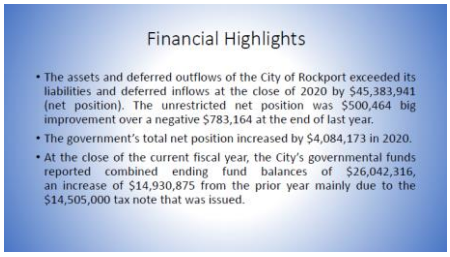
F. John Sheppard, of Collier, Johnson & Woods, P.C. addressed the Council and gave a presentation (below) on the City of Rockport Fiscal Year 2019-2020 Audit.

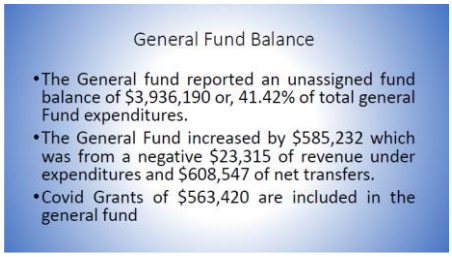


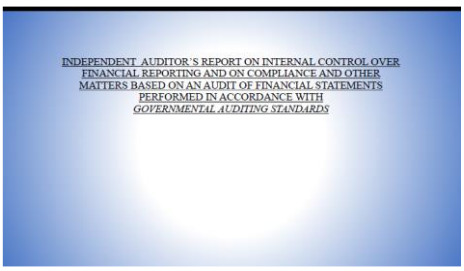


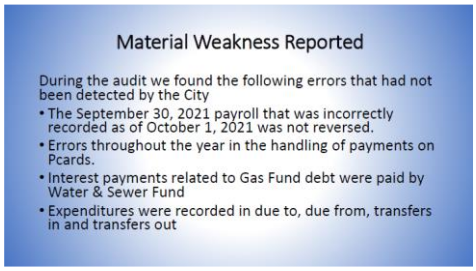


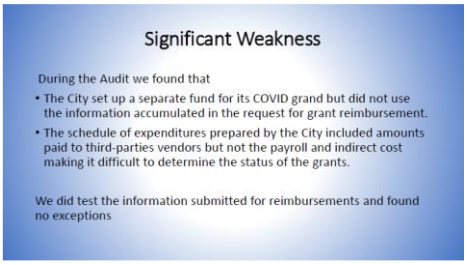


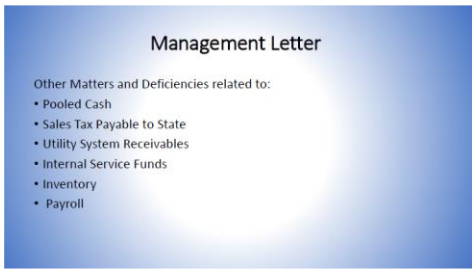












MOTION: Mayor Pro-Tem Villa moved to accept the Comprehensive Annual FinanciaReport for the City of Rockport for Fiscal Year 2029-2020 Audit. Motion was seconded by Council Member Brundrett. Motion carried unanimously.

18. **Deliberate and act on second and final reading of an Ordinance granting a Conditional Use Permit for mobile food and retail vending for property located at 210 Seabreeze Drive; also known as approximately 80.0 acres of land out of portions of the Aransas County Navigation District No.1 Rockport Beach Park and Festival Grounds property located in the city of Rockport, Aransas County, Texas and being a portion of the 102.5 acres Rockport Harbor patent, Abstract 343 and revised August 12, 1953, and recorded in Volume M3, Page 499, Deed Records of Aransas County, Texas, along with a portion of Abstract 357 dated November 6, 1953, containing 604.296 acres and recorded in Volume N-3, Page 178, Deed Records of Aransas County, Texas, with said 80.0 acres being a portion of Abstracts 343 and 357; currently zoned R-1 (1st Single Family Dwelling District); subject to compliance with the conditions stated within this Ordinance, as well as those stipulated in the City of Rockport Code of Ordinances; repealing all ordinances in conflict therewith; providing for severability; and providing an effective date.**

Mayor Rios said there had been no changes in format or content since Council approved the first reading of the Ordinance on May 11, 2021.

MOTION: Mayor Pro-Tem Villa moved to approve the second and final reading of an Ordinance granting a Conditional Use Permit for mobile food and retail vending for property located at 210 Seabreeze Drive; also known as approximately 80.0 acres of land out of portions of the Aransas County Navigation District No.1 Rockport Beach Park and Festival Grounds property located in the city of Rockport, Aransas County, Texas and being a portion of the 102.5 acres Rockport Harbor patent, Abstract 343 and revised August 12, 1953, and recorded in Volume M3, Page 499, Deed Records of Aransas County, Texas, along with a portion of Abstract 357 dated November 6, 1953, containing 604.296 acres and recorded in Volume N-3, Page 178, Deed Records of Aransas

County, Texas, with said 80.0 acres being a portion of Abstracts 343 and 357; currently zoned R-1 (1st Single Family Dwelling District); subject to compliance with the conditions stated within this Ordinance, as well as those stipulated in the City of Rockport Code of Ordinances; repealing all ordinances in conflict therewith; providing for severability; and providing an effective date. Council Member Hattman seconded the motion.

Council Member Brundrett asked if the structure is ADA compliant.

Aransas County Navigation District Commissioner Malcolm Dieckow answered that it is being worked on and will be ADA compliant.

Motion carried unanimously.

19. Deliberate and act on Memorandum of Understanding with Texas State University, through its Meadows Center and Clean Coast Texas Collaborative program, to promote and improve water quality in Aransas Bay, Copano Bay, and Little Bay.

City Manager Kevin Carruth said the proposed Memorandum of Understanding (MOU) is non-binding and is the same as the MOUs to be executed by Aransas County, Aransas County Navigation District and Town of Fulton. Mr. Carruth stated there is no commitment of funds by the City.

MOTION: Mayor Pro-Tem Villa moved to approve the Memorandum of Understanding with Texas State University, through its Meadows Center and Clean Coast Texas Collaborative program, to promote and improve water quality in Aransas Bay, Copano Bay, and Little Bay. Council Member Hattmann seconded the motion. Motion carried unanimously.

20. Deliberate and act on a partial assignment and assumption agreement between Rockport Harvey Housing, LLC, and Pearl Point Phase 2, LLC, and authorizing the City Manager to negotiate and execute all necessary documents.

City Manager Kevin Carruth stated construction and leasing of Phase I of the Pearl Point Apartments development by Rockport Harvey Housing is ahead of schedule, 60% already leased, and the develop wants to proceed with Phase II. Mr. Carruth said there are no changes to the agreement, but the agreement cannot be assigned to another party without the City's consent, but the City cannot unreasonably "withhold, delay, or condition the assignment."

Mayor Rios stated this assignment will address the financing so they can proceed with Phase II.

MOTION: Mayor Pro-Tem Villa moved to approve the partial assignment and assumption agreement between Rockport Harvey Housing, LLC, and Pearl Point Phase 2, LLC, and authorize the City Manager to negotiate and execute all necessary documents. Council Member Hattman seconded the motion. Motion carried unanimously.

21. Deliberate and act on payment to Gexa Energy for ancillary services and nodal basis adjustment to electric energy costs related to Winter Storm Uri.

City Manager Kevin Carruth stated Winter Storm Uri resulted in unprecedented energy and

ancillary charges. Mr. Carruth said there are three components to the energy bill and the City did not suffer from two of those components as a member of the Texas Coalition for Affordable Power (TCAP), but the impact of Winter Storm Uri resulted in higher than anticipated ancillary services costs. Mr. Carruth informed the Council the total additional costs of the ancillary services and nodal basis adjustment is $124,346.57 and Gexa has provided three payment options: 1) Monthly payments June 2021 to December 2022; 2) Lump sum; and 3) Monthly payments June 2021 to December 2028. Mr. Carruth said the balance of $124,346.57 has been submitted by City staff to FEMA for reimbursement, and if FEMA does not provide reimbursement, alternative funding avenues identified include use of the Community Disaster Loan or use of Fund Balance in the Utility Fund and/or General Fund.

MOTION: Mayor Rios moved to approve the lump sum payment to Gexa Energy for ancillary services and nodal basis adjustment to electric energy costs related to Winter Storm Uri to be paid with FEMA reimbursement if received and if FEMA reimbursement is not received it will be paid using Community Disaster Laon proceeds. Mayor Pro-Tem Villa seconded the motion. Motion carried unanimously.

22. Hear and deliberate on status of COVID-19 and response efforts.

Mayor Rios stated the percentages of vaccinated person in Aransas County are way up for persons 65+ years of age.

City Manager Kevin Carruth said Aransas County is ahead of State statistics in all four categories.

9. Proclamation: Rockport-Fulton High School Lady Pirate Softball Team Week.

Members of the Rockport-Fulton High School Lady Pirate Softball Team joined Mayor Rios at the dais.

Mayor Rios read a Proclamation proclaiming the week of May 24-28, 2021, as Rockport-Fulton High School Lady Pirate Softball Team Week in the City of Rockport, Texas.

23. Reports from Council.

Mayor Pro-Tem Villa said he attended the Parks & Leisure Services Advisory Board meeting on Monday that had been rescheduled from last month due to a lack of quorum. Mayor Pro-Tem Villa stated it was suggested the Parks & Leisure Services Advisory Board meet quarterly instead of monthly and he asked the City Manager and City Secretary to research this and see if this was possible.

Council Member Brundrett thanked the voters of Rockport for giving him the opportunity to serve.

Council Member Hattman stated she will be working with Aransas Pathways to do a clean-up of Tule Creek. Council Member Hattman reminded everyone the Wine Festival is this weekend, there is a Grand Re-opening of the Skate Park and there will be a Fitness class at the Fit Court at Memorial Park on Saturday.

City Manager Kevin Carruth said there will be semi-pro skaters demonstrating moves at the Grand Re-opening of the Skate Park and there will be door prizes.

Mayor Rios said the annual Memorial event will be Monday at 2:00 p.m. Mayor Rios stated there will be a bench dedication on Monday at 1:30 p.m. at Veterans Memorial Park honoring Felix Keeley, former Naval Master Chief.

Mayor Pro-Tem Villa asked if the speed trailer could be placed near the Wine Festival to slow people down.

Chief of Police Greg Stevens stated the City cannot place the speed trailer on a Texas Department of Transportation roadway. Chief Stevens said he will check and see if they could put the City's message board near the Wine Festival.

Council Member Jackson announced the VFW, American Legion and GI Forum will be placing flags on Veterans' graves beginning at 8:00 a.m. on Thursday.

24. Adjournment.

At 7:41 p.m., Mayor Pro-Tem Villa moved to adjourn. Motion was seconded by Council Member Jackson. Motion carried unanimously.

APPROVED:

_____
Patrick R. Rios, Mayor

ATTEST:

_____
Teresa Valdez, City Secretary

CITY COUNCIL AGENDA
Regular Meeting: Tuesday, June 8, 2021

AGENDA ITEM: 6

Deliberate and act on Amendment to Section 125 Flexible Spending Arrangement agreement with TML Health Benefits Pool.

SUBMITTED BY: City Secretary Teresa Valdez

APPROVED FOR AGENDA: PKC

BACKGROUND: City Council approved the Section 125 Flexible Spending Arrangement agreement with TML Health Benefits Pool in June 2020 which became effective October 1, 2020. The proposed amendment to the Agreement changes the carryover balance from $500.00 to $550.00.

An explanation of Section 125 Flexible Spending Arrangement follows:

A cafeteria plan is a separate written plan maintained by an employer for employees that meets the specific requirements and regulations of section 125 of the Internal Revenue Code. It provides participants an opportunity to receive certain benefits on a pretax basis.

Pre-Tax Premium Only
Section 125 of the Internal Revenue Code allows, among other things, employers to deduct employee insurance premiums pre-tax, thereby eliminating payroll taxes for the employee's premium as well as the employer's payroll tax obligations. The proposed agreement affects only those dollars that an employee pays towards an insurance premium, whether it is the employee contribution to the employee premium or for premium payments the employee makes for additional optional coverage.

Unreimbursed Healthcare
To assist employees with medical or healthcare expenses, we have an opportunity to participate in the Unreimbursed Healthcare Spending Account Plan. This is part of Section 125 Cafeteria Plan allowing employees to pay for healthcare expenses that are not or cannot be reimbursed by our health benefit program, such as monthly contributions, deductibles, and the benefit percentage that is the employee's responsibility, with before-tax dollars. This plan offers the employee the opportunity to make contributions to the FSA account to cover these expenses with pre-tax money. Employees can list all eligible dependents to utilize the contributions and will allow for the maximum amount of $550.00 to be carried over to the following plan year. Any remaining amount not used for expenses incurred during the plan year will be forfeited in accordance with current plan provisions and tax law. The current contribution limit is $2,700 but the IRS allows for a maximum of $2,750. There were three employees at the maximum contribution for the 2019-2020 plan year. Each participant is issued a debit card to access their account and pay for healthcare expenses.

FISCAL ANALYSIS: The City will save a small amount of payroll taxes on the portion of the employee's premium payment that is pre-tax, in addition to the cafeteria plan contributions that are pre-tax. There is a cost to the City from TML as the Plan Administrator. There is a monthly service fee for the Section 125 Flexible Spending Plan for the City of $3.70 per participant for the debit card.

FY 2016-2017 is the first year the City offered a Section 125 Flexible Spending Arrangement (FSA) for employees. Currently 39 employees are taking advantage of the benefit for a monthly cost to the City of $144.30. There is a small amount of risk for the employee if they contribute more than they use and there is a small amount of risk to the City if an employee separates early; however, experience in other communities shows this to be negligible for both.

RECOMMENDATION: Staff recommends Council approve the Amendment to the Section 125 Flexible Spending Arrangement agreement with TML Health Benefits Pool, as presented.

TML Health Benefits Pool

AMENDMENT TO FLEXIBLE SPENDING ARRANGEMENT SERVICE AGREEMENT CARRYOVER

This Amendment ("**Amendment**") to Flexible Spending Arrangement Service Agreement Carryover is entered into as of the latest date signed below (the "**Effective Date**") by and between TML Multistate Intergovernmental Employee Benefits Pool d/b/a TML Health Benefits Pool ("**TML Health**") and City of Rockport ("**Plan Sponsor**"). TML Health and Plan Sponsor are referred to individually as "**Party**" and collectively as the "**Parties.**"

RECITALS

WHEREAS, the Parties entered into that certain Flexible Spending Arrangement Service Agreement effective 10/1/2020 (the "**Agreement**");

WHEREAS, the Parties desire to amend the Agreement pursuant to the terms and conditions herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby accepted and acknowledged, the Parties agree as follows:

1. **Amendment**. The second paragraph of Attachment 4 to the Agreement titled "Flexible Spending Arrangement – Carry-Over Service Addendum" shall be stricken entirely and replaced as follows:

> "FSA participants may carryover a designated balance ("designated carryover") to the next Plan Year of $550.00 leftover in the unreimbursed health FSAs (Unreimbursed Healthcare Carryover not in excess of $550.00) only at year's end on qualified health expenses, pursuant to IRS Notice 2013-71. Expenses for health FSA qualified benefits incurred during the current plan year may be paid or reimbursed from benefits or contributions remaining unused at the end of the immediately preceding plan year, not to exceed the designated carryover. Upon exhaustion of that benefit, monies can be accessed from current year contributions. The plan cannot permit cash-out or conversion of unused benefits or contributions, to any other taxable or nontaxable benefit. If the employee at any time becomes covered under a Qualified High Deductible Health Plan ("HDHP"), as prescribed by Section 223 of the Internal Revenue Code) with an accompanying health savings account ("HSA") then the FSA will automatically convert from a general purpose FSA to a post-deductible FSA for any amounts incurred when the HDHP is in effect."

2. **Limited Effect**. Except as expressly provided in this Amendment, all of the terms and provisions of the Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties hereto. Without limiting the generality of the foregoing, the Amendment contained herein will not be construed as an amendment to or waiver of any other provision of the Agreement or as a waiver of or consent to any further or future action on the part of either party that would require the waiver or consent of the other party. On and after the Effective Date, each reference in the Agreement to "this Agreement," "the Agreement," "hereunder," "hereof," "herein," or words of like import, and each reference to the Agreement in any other agreements, documents, or instruments executed and delivered pursuant to, or in connection with, the Agreement will mean and be a reference to the Agreement as amended by this Amendment.

3. **Entire Agreement**. This Amendment constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

IN WITNESS WHEREOF, the Parties have entered into this Amendment to Flexible Spending Arrangement Service Agreement Carryover as of the Effective Date.

TML HEALTH

TML Multistate Intergovernmental Employee Benefits Pool d/b/a TML Health Benefits Pool

By: _____
Name: Jennifer Hoff
Title: Executive Director
Date: _____

Plan Sponsor

City of Rockport

By: _____
Name: _____
Title: _____
Date: _____

Approved as to Form:

By: _____
Leah Simon, General Counsel

TML Health Benefits Pool

Flexible Spending Arrangement Service Agreement

This FLEXIBLE SPENDING ARRANGEMENT SERVICE AGREEMENT ("Agreement") for plan administrator services between City of Rockport, ("Plan Sponsor") and TML MultiState Intergovernmental Employee Benefits Pool d/b/a TML Health Benefits Pool ("TML Health" or "Plan Administrator") is effective as of 10/1/2020.

W I T N E S S E T H:

Section I - The Plan

1.1 The Plan Sponsor has adopted an Employee Flexible Spending Arrangement ("FSA" or the "Plan") under Section 125 of the Internal Revenue Code. This Plan is offered to all eligible employees who are qualified by employment status.

1.2 The Plan Participants are the employees enrolled in the Plan.

1.3 All contributions to the Plan shall be deposited in the name of the Plan with a Bank designated by the Plan Administrator subject to approval of the Plan Sponsor if requested by the Plan Sponsor.

1.4 The Plan Sponsor agrees that a healthcare expense reimbursement arrangement is a health plan under Title II of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Plan Sponsor agrees that it is the Plan Sponsor's, and not the Plan Administrator's, responsibility to ensure that its healthcare expense reimbursement arrangement plan, if any, is compliant with all relevant sections of HIPAA Title II or any other law.

Section II - The Plan Administrator

2.1 The Plan Administrator shall provide consulting services and shall assist the Plan Sponsor in the administration of the FSA.

2.2 The Plan Administrator shall have the full responsibility for maintaining accounts for each eligible person electing to participate in the Plan. The Plan Administrator shall arrange for eligible claims payments from funds deposited by the Plan Sponsor as directed by their participating employees. The claims payments shall be made by the Plan Administrator by issuing a check or draft to the participant upon the Plan Bank Account, if such account is provided for this purpose, in an amount equal to the qualified charges from the submitted claim. The claims submitted by the Plan Participants shall be paid within ten days of receipt by the Plan Administrator.

2.3 To the extent that information is available to the Plan Administrator, Plan Administrator shall assist the Plan Sponsor in sending information to Plan Sponsor so that Plan Sponsor may prepare any report, tax return or similar papers required by state or the federal government pertaining to the operation or management of the Plan. The ultimate responsibility for filing any governmental document shall be with the Plan Sponsor.

2.4 The Plan Administrator shall render periodic reports to each Plan Participant, which shall include the following:

a. Receipts of the Participant's Plan Contributions;

b. Disbursement of Plan Contributions through claims payments; and

c. Statements of (a) and (b) above shall automatically be provided each Participant following the submission and payment of a qualified claim.

2.5 The Plan Administrator shall prepare a Plan Document for the FSA. The Plan Sponsor shall assume the responsibility of obtaining legal review of the Plan Document.

2.6 Unless otherwise provided, the Plan Administrator is authorized to do all the things necessary or convenient to carry out the terms and purposes of the Plan.

Section III - Procedure for Making and Payment of Claims for Benefits from the Fund

3.1 Any Plan Participant may make application for benefits from the Plan as provided by the Plan upon the form or forms provided by the Plan Administrator. The Plan Participant shall fully and truthfully complete such application for benefits and the applicant shall supply all such pertinent information including copies of paid receipts, as may be required under the Section 125 rules and specified by the Plan Administrator.

3.2 The Plan Administrator shall accept copies of any application for benefits made in the appropriate manner shall duly investigate and verify the statements made on the application and determine benefit eligibility. If the facts as stated in such application entitle the covered person to receive payment of benefits from the Plan, the Plan Administrator shall forthwith arrange for the proper payment.

3.3 Claim filings shall be mailed/faxed to the person or department designated by the Plan Administrator. If appropriate, claims could be submitted through the debit card transaction. Claims checks are processed each week. During the last month, eligible claims of any amount shall be processed by the Plan Administrator.

3.4 All Plan benefits processed by the Plan Administrator shall be mailed to the qualified Plan Participant within ten (10) days of approval.

If the Plan Administrator finds that the Plan Participant is not entitled to a claim payment under the Plan, the claim application shall be denied, all or in part, and returned to the Plan Participant with the Plan Administrator's reason for denial. The Plan Participant may appeal a denial by the Plan Administrator to the Plan Sponsor. The Plan Sponsor's determination is final and conclusive.

3.5 The Plan Administrator shall not be liable for any failure or refusal to pay or honor any application for benefits made pursuant to this Agreement; and to the extent allowed by law, the Plan Administrator must be indemnified by the Plan Sponsor for any liability related to its duties herein, and shall be reimbursed by the Plan Sponsor for any expense, loss, damage, or legal fees incurred by the Plan Administrator in defending any claims or demands made against the Plan Sponsor, the Plan Administrator or the Plan. This paragraph will not apply for any loss due to the gross negligence or willful misconduct of the Plan Administrator.

Section IV - Costs of Administrator

4.1 The Plan Administrator shall be entitled to a fee or fees for its service to the Plan and, under this Agreement, the fee shall be paid in the form of an advance start-up costs, a pass through of printing or printing preparation costs and Monthly Service Fee.

Section V – Duties of the Plan Sponsor

5.1 As of the effective date of this Agreement, the Plan Sponsor shall provide the Plan Administrator with a complete list of all eligible Plan Participants. The Plan Sponsor shall arrange for enrollment meetings and, with the Plan Administrator's assistance, complete Plan enrollment.

5.2 The Plan Sponsor shall collect funds in accordance with authorized payroll reductions or deductions and shall remit these monies to the Plan Administrator on a monthly (or pay period) basis.

5.3 The Plan Sponsor shall forward the appropriate service fees to the Plan Administrator on the first of each calendar month or in conjunction with the monthly plan fund collections.

5.4 The Plan Sponsor shall assist in the enrollment of eligible employees in the Plan, notify the Plan Administrator of any change of eligibility, cooperate with the Plan Administrator with regard to proper claim settlement, transmit to the Plan Administrator proper claim settlement and transmit to the Plan Administrator all inquiries pertaining to the Plan.

5.5 The Plan Sponsor shall be responsible for filing any documents required by the Internal Revenue Service ("IRS").

5.6 The Plan Sponsor limits contributions to the Plan to $2,700.00 per employee, unless otherwise specified below the signature line on this agreement.

Section VI – Duration and Termination of the Agreement

6.1 This Agreement may be terminated by the Plan Sponsor or the Plan Administrator by prior written notice of intention to terminate given to the other party, to be effective as of an annual plan anniversary date. Said written notice shall be given not less than thirty (30) days prior to such termination. The thirtieth (30th) day shall coincide with the last day of a calendar month. The Plan Administrator may also terminate this Agreement following the termination of any medical, dental, or vision coverage provided by the Plan Administrator to the Plan Sponsor, to be effective upon ten (10) days' written notice sent to the Plan Sponsor, effective on the date specified in the notice. The Additional Contract Documents referenced in Section 8.7 may be amended by Notice of Renewal for each renewal Plan Year or by Notice of Mid-Year Plan Amendments. In the event any such Additional Contract Document is amended, said amended document will be attached to this Agreement and incorporated by reference to said document. All obligations of the Plan Administrator related to the relevant rights of the covered Participant to payments of benefits from the Plan will be terminated and extinguished on the effective date of termination given in the notice whether or not the claim for such benefits arose prior to or following the termination of this Agreement. Absent a prior written notice of termination this Agreement will annually renew on the effective date set forth at inception. In no case shall termination by the Plan Administrator relieve the Plan Sponsor of its obligation to maintain the Plan.

Section VII - Qualifications

7.1 To qualify the Plan Sponsor must have on file a current Interlocal Agreement with the TML Health Benefits Pool. The Plan Sponsor must have ten percent (10%) of the eligible employees participate in the Plan. Should these qualifications not be met, or maintained, the Plan Administrator may terminate this Agreement pursuant to Section VI.

Section VIII - Miscellaneous Provisions

8.1 In the event of resignation or inability to serve as the Plan Administrator, the Plan Sponsor may appoint a successor.

8.2 If during the operation of the Plan, the United States Government, the government of any state or any instrumentality or either shall assess any tax against the Plan and the Plan Administrator is required to pay such tax, the Plan Administrator shall report the payment to the Plan Sponsor who will reimburse the Plan Administrator for such tax or assessment.

8.3 Plan Administrator shall incur no tax liability to the Plan Sponsor or to an employee or dependent of the Plan Sponsor for any administrative errors, or any other act or failure to act not directly connected with processing and payment of claims as provided in this Agreement, except where the tax liability is caused solely by the Plan Administrator. To the extent allowed by law, the Plan Sponsor shall hold Plan Administrator harmless from and indemnify it against any and all liability, claims, damages (including punitive or consequential damages), costs, expenses, or fees (legal or otherwise) incurred or paid in connection therewith which might be asserted by the Plan, the Plan Sponsor's employees, or other persons for which the Plan Administrator would not be liable to the Plan Sponsor as set forth above.

8.4 Where the context of the Agreement requires, the singular shall include the plural and the masculine gender shall include the feminine.

8.5 This Agreement may be amended by the Plan Sponsor and the Plan Administrator at any time by mutual written consent of said parties.

8.6 The Plan Sponsor hereby is designated the agent for service of legal process on behalf of the Plan, in its principal office.

8.7 Additional Contract Documents

The following attachments are additional contract documents:

1. Attachment 1 – Flexible Spending Arrangement Plan Document
2. Attachment 2 – Schedule of Fees
3. Attachment 3 – Not Applicable
4. Attachment 4 – Flexible Spending Arrangement – Carryover Service Addendum
5. Attachment 5 – Flexible Spending Arrangement Forms

IN WITNESS WHEREOF, the Plan Sponsor and the Plan Administrator have executed this Flexible Spending Arrangement Service Agreement this _____ day of _____, 20_____.

Healthcare Limitation amounts are limited to $ 2,700.00 .

[Employer's limit for participant contributions may be an amount up to federal maximum amount of $ 2,750.00 *, effective* 1/1/2020 *.]*

The Section 125 FSA Plan Year is from: 10/1/2020 to 9/30/2021 .

TML Health	City of Rockport
Jennifer Hoff Print name	_____ Print Name
_____ Signature	_____ Signature
Executive Director Title	_____ Title
_____ Date	_____ Date

APPROVED AS TO FORM:

_____
Leah Simon, General Counsel

Attachment 1
Flexible Spending Arrangement Plan Document

Introduction

The Plan Sponsor recognizes that many employees in today's work force are faced with childcare expenses, as well as certain medical or healthcare expenses that are not fully covered by your health benefit program.

To assist employees with these expenses, we are offering you the opportunity to participate in the Plan Sponsor Dependent Care Account and Unreimbursed Healthcare Spending Account Plans. These Plans are part of the Plan Sponsor Section 125 Flexible Spending Arrangement ("FSA" or "Plan Sponsor Plan"). These FSA Account plans allow you to pay for dependent care and healthcare expenses that are not or cannot be reimbursed by your health benefit program, such as the monthly contributions, deductibles and the benefit percentage that is your responsibility, with before-tax dollars. This Plan Sponsor Plan offers you the opportunity to make contributions to FSA Accounts to cover these expenses with before-tax moneys.

You will be reimbursed for childcare expenses and unreimbursed healthcare expenses from your FSA accounts as you present your claims for payment.

We have written this booklet with as few technical terms as possible, so that you will be aware of your benefit rights. Every effort has been made to make the booklet as complete and accurate as possible. However, if any conflict should arise between this booklet and these plans, the terms of the plans will govern.

Plan Sponsor will be happy to supply you with any additional information so that you will have a complete understanding of the benefits.

General Information

Name and Type of Plan and Fiscal Year

The names of the plans available in the FSA are: (1) the Plan Sponsor Dependent Care Account, and (2) the Plan Sponsor Unreimbursed Healthcare Reimbursement Account Plan. The Dependent Care Account is a plan authorized under Section 129 of the Internal Revenue Code. The Unreimbursed Healthcare Reimbursement Account is authorized under Sections 105 & 125 of the Internal Revenue Code. These plans are provided under the Plan Sponsor Plan, which is an authorized Internal Revenue Code Section 125 Cafeteria Plan.

Administration of the Plan

The Plan Sponsor is the Member. The Plan Administrator is TML Health Benefits Pool.

Agents for Service of Process

Legal service of process may be made on the Plan Sponsor.

Amendments to, or Termination of, the Plan

The Plan Sponsor Plan may be modified, amended or terminated in whole or in part, at any time by the Plan Sponsor or its designee.

Flexible Benefit Plan

A flexible benefits plan is a benefit designed to increase employee's' spendable income by reducing their taxes. Internal Revenue Code Section 125 allows employers to provide three basic types of flexible benefits plans to their employees.

1. Premium Conversion plan
2. Dependent Care Spending Account
3. Unreimbursed Healthcare Spending Account

How the Program Works

These flexible benefits plans let you set aside part of your pay on a *before-tax* basis to:

1. Pay certain insurance premiums through the **Pre-tax Premium Conversion** Option;
2. Set up an **Unreimbursed Healthcare Reimbursement Account** to pay certain medical, dental, vision and hearing care expenses not covered by insurance (Unreimbursed Healthcare Account standard maximum $2,750 per year [Patient Protection Affordable Care Act] or a lower amount established by the employer); and
3. Set up a **Dependent Care Account** to pay eligible childcare and dependent care expenses while you and your spouse (if married) are at work. Yearly maximum is $5,000 (or $2,500) for married employees who file separate returns). These options are explained in more detail in the sections to follow.

What are Before-Tax Dollars?

The before-tax dollars you contribute to this program is money that is *never* taxed for federal income tax and social security tax purposes. Basically, the program reduces your taxable income.

Participating in flexible benefits plans will not affect your other benefits or your employment contract (if applicable). They will continue to be based on your actual income. Your W-2 form, however, will show a reduced amount of pay according to your Pre-tax Premium Conversion and Reimbursement Account elections.

Eligibility

You are eligible for the flexible benefit plans for premium conversion, dependent care and/or unreimbursed healthcare expenses on the Plan Sponsor Plan's effective date if you are eligible to receive other employee benefits from your employer. You will have the opportunity to make before-tax contributions to each of the flexible benefit plans. You can make your elections by completing the election form or the online enrollment form.

Changes in Eligibility

You will cease to be eligible for the participation in the Plan Sponsor Plan if the following occurs:

1. the plan terminates,
2. you are no longer an eligible employee of the Plan Sponsor, or

3. you elect to revoke your elections because you qualify for leave under the Family and Medical Leave Act of 1993 (FMLA).

If you revoke your eligibility under the provisions of FMLA and then return to work you may reinstate your elections on the same terms as prior to the leave. If you are no longer an eligible employee of the Plan Sponsor, you must elect COBRA continuation of coverage and promptly pay 102% of your contracted contribution in order to access any benefit balance for claims incurred after the date of your termination.

Choosing a Deposit Amount

When you enroll in the Plan Sponsor Plan, you must specify the amount of your income you want deducted, on a pre-tax basis for the Dependent Care Spending Account and/or Unreimbursed Healthcare Spending Account. Your employer will administer the Pre-Tax Premium Conversion Plan for you. Equal payroll deductions will be taken from each paycheck during the plan year. The Unreimbursed Healthcare Spending Account contributions are established by the employer with a standard maximum amount of $2,750 per year (as of January 2020 and thereafter).

Restrictions on Changing Your Deposit Amounts

You may not change or revoke your elections during the Plan Year except as prescribed in federal regulations. Those qualifying events include, but are not limited to the following circumstances:

1. Change in legal marital status, including marriage, divorce or legal separation, death of spouse or annulment.
2. Change in the number of dependents including birth, adoption and placement for adoption or death of a dependent.
3. Change in employment status, including commencement or termination of employment of the employee, spouse or dependent.
4. Change in work schedule including an increase or decrease in the number of hours of employment by employee, spouse, or dependent including a switch from full-time to part-time status, a strike or lockout, or commencement or return from an unpaid leave of absence.
5. The dependent satisfies or ceases to satisfy the requirements for dependents. An event that causes an employee's dependent to satisfy or cease to satisfy the requirements for coverage due to attainment of age, or any similar circumstances as provided under the accident or health plan under which the employee receives coverage.
6. A change in the place of residence or work site of the employee, spouse or dependent.
7. An employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of such an employee if the dependent is eligible, but not enrolled for coverage under such terms) may enroll for coverage under the terms of the plan within sixty (60) days of loss of coverage, due to loss of eligibility, under Medicaid or a State Children's Health Insurance Program (SCHIP).
8. If the dependent child is dropped by SCHIP (State Children's Health Insurance Program).
9. If the employee, spouse or dependent become entitled to Medicare or Medicaid, the employee may elect to cancel the coverage on the employee, spouse or dependent.
10. If the plan receives a Qualified Medical Child Support Order (QMED) pertaining to an employee's dependent, an employer may elect to change the election without the consent of the employee.
11. If the plan sponsor significantly changes either the cost of coverage or the coverage itself during the year, participants may change their benefit election as a result.

12. If FMLA applies to the employer, it applies to the Flex plan. An employee requesting leave under FMLA may revoke his or her existing Flex plan. However, if the employer pays the employee's share of the contribution, the employee may not revoke coverage.
13. If an employee loses health coverage while on FMLA or protected leave the employee must make a required payment for the employer to reinstate the employee's coverage upon request. An employee on FMLA leave has the same rights as other employees to take advantage of the change in family status rule. During the FMLA period, payment of contributions must continue without regard to leave. FMLA requirements do not apply to non-health benefits such as life insurances or dependent care provided through the Flex plan. If the employee fails to make a scheduled payment, the employer may make the payment on the employee's behalf and recoup it after the employee returns from leave using the "catch-up" rules.
14. Substantial decrease in the medical providers available in the PPN, reduction of benefits for a specific type of medical conditions or treatment and/or similar reduction of loss of coverage.
15. If covered individual transitions from paid to a non-paid daycare service.
16. Cessation of required contributions.
17. Any other change of status allowed under the regulations of the Internal Revenue Service.
18. If an employee's hours of employment drop to under thirty (30) hours per week, regardless of whether the drop in hours results in a loss of eligibility under the group health plan, the employee may prospectively revoke the group health plan provided the revocation corresponds with enrollment of the employee and any dependents who were also covered in another plan that provides minimum essential coverage. The new coverage must be effective no later than the first day of the second month following the date coverage is revoked.
19. If a group health plan's plan year is non-calendar, an employee may revoke coverage mid-plan year to enroll in a marketplace plan during the market place open enrollment period. The effective date of the revocation must be 12/31 and the employee must show enrollment of himself/herself and any dropped dependents in a marketplace plan the following 1/1.

If one of the above circumstances does occur during the plan year, you have **thirty one (31) days** from the occurrence to change or revoke your elections. **The change in coverage must be consistent with the qualifying event (QE).** Plan Administrator has the right to request documentation of changes.

Benefits subject to COBRA Continuation of Coverage may include: medical, health reimbursement coverage in conjunction with the medical, dental, vision, prescription and/or the Flexible Spending benefits. FSA Accounts include Unreimbursed Healthcare Spending Accounts and Dependent Care Accounts.

Separation from Service

An employee who terminates employment and later returns to work cannot rejoin the FSA plan for the balance of the Plan Year.

Forfeiture of Benefits

You forfeit any amount of dependent care reimbursement benefits and unreimbursed healthcare spending account benefits if a claim for reimbursement is not provided to the Plan Administrator within ninety (90) days after the last day of participation in the Plan. Upon such forfeiture, your Dependent Care Reimbursement Account or Unreimbursed Healthcare Spending Account shall be reduced to zero (0). At the discretion of the Plan sponsor, forfeitures of benefits under the Plan may be reallocated to Participants in any reasonable manner. Forfeitures of benefits may also be applied toward the cost of administering the Plan. Forfeited benefits shall become the sole property of the Plan Sponsor.

In the event your employment terminates during the Plan Year, you have ninety (90) days after the last day of participation in the Plan to submit incurred expenses. All employee and dependent coverage will terminate on the **earliest** of the end of the month your employment terminates or the end of the month in which you cease to be an active, full-time Employee.

The Plan will make a qualified reservist distribution of any available funds in the Unreimbursed Healthcare Spending Account pursuant to the Heroes Earnings Assistance and Relief Tax of 2008 (26 U.S.C.A. 125(h)) upon written request of the qualified reservist.

No Transfer between Accounts

IRS rules do not allow any transfer of funds between dependent care accounts and unreimbursed healthcare spending accounts. Separate accounts must be mandated for medical expense reimbursement and dependent care reimbursement.

Reimbursements

Dependent care and any unreimbursed healthcare spending account expenses not submitted as a medical claim will be reimbursed by completing a claim form and attaching the appropriate documentation or by the adjudication of the recurring expense. Claims are processed and checks mailed weekly.

FSA Account Statements

Each time a flex check is sent to the enrollee it is accompanied with a statement indicating the account balance. A statement is also sent to the employee ninety (90) days prior to the end of the flexible benefit plan year indicating the spending account balance.

Active Duty Reservist

If the Plan Sponsor considers a call to active duty "**unpaid leave**" this will be a "qualifying event" to drop dependent coverage and the employee can reinstate the flexible spending plan when they return to work.

If the Plan Sponsor considers a call to active duty "**paid leave**" this will not be considered a "qualifying event" and the employee cannot change their flexible spending contributions. In other words, the employee's pay will be reduced by the same amount as it was before being called to active duty.

The Effect of the Plan on Other Benefits

Some of the benefits provided by the Plan Sponsor Plan (e.g., pension benefits, group life insurance benefits) are determined on the basis of your earnings. For the purpose of these benefits, the Plan provided by the Plan Sponsor, will be based on your earnings before any salary reduction contributions to the FSA Account plans are taken into account.

Under present law, your earnings for the purpose of determining your Social Security benefits and FICA taxes do not include salary reduction contributions under the Plan Sponsor Plan, including salary reduction contributions to these FSA Account plans. In almost all cases, the value of the FICA, Federal and state income tax savings to you will exceed the reduction in your eventual Social Security benefits.

Further information on this subject is available from the Plan Sponsor.

Claims Information

Payment of Paper Claims

In order to receive reimbursement for an eligible claim for dependent care or unreimbursed healthcare expenses, you must complete the form supplied to you by your employer. This form may require you to submit additional information pertaining to your claims, such as a signed statement from your physician for healthcare services received.

All payments for eligible claims will be reimbursed within ten (10) business days of receipt. If claims remain at the end of the Plan Year for which there are no remaining funds in your account to reimburse you, these claims will **not** be paid, carried over or charged against the balance in your account in any subsequent Plan Year. **You will not be reimbursed for these excess claims.**

- **All payments for claims will be made directly to you and not any provider of service.**

Payment of Debit Card Claims

In order to receive reimbursement for an eligible claim the card can only be used at merchants and service providers that have approved merchant category codes related to healthcare, such as physician, pharmacies, dentists, vision care offices, hospitals, and other merchant code providers.

Premium Conversion Plan

The Premium Conversion Plan allows you to pay for healthcare contributions, which you pay and are payroll deducted by your employer, on a pre-tax basis and reduce your taxable income. Examples are the contributions for dependent medical, dental or vision coverage. Also included are premiums for optional employee life, but not dependent life. It is like getting an instant tax refund every payday. In fact, many employees may even increase their take-home pay just by participating in this option.

Note: A maximum of $50,000 basic and/or optional life can be claimed on a pre-tax basis. Any group life insurance in excess of $50,000 is taxable and must be paid with after tax dollars. Employee salary reductions for the excess coverage are not taken into account when determining the amount to include in an employee's taxable income for the excess coverage.

Once enrolled, you may not change your election or pre-tax payroll deductions for the remainder of the Plan Year unless there is a IRS qualifying event.

Unreimbursed Healthcare Spending Account

The Unreimbursed Healthcare Spending Account reimburses an employee's pledge amount not to exceed the employer's unreimbursed healthcare spending amount limit to a standard maximum of $2,750 per plan year (January 2020 and thereafter).

This maximum amount for unreimbursed health has no effect on the dependent care flex benefit. The dependent care flex benefit will remain at $5,000 (or $2,500 in married and filing separately). If the employee at any time becomes covered under a Qualified High Deductible Health Plan ("HDHP"), as prescribed by Section 223 of the Internal Revenue Code) with an accompanying health savings account ("HSA") then the FSA will automatically convert from a general purpose FSA to a post-deductible FSA for any amounts incurred when the HDHP is in effect. This means that expenditure for non-preventive medical costs will not be paid until the deductible for the HDHP has been met, and then only to the extent that those costs exceed the deductible.

What Expenses are Eligible for Reimbursement?

Only medical expenses that are not covered by your medical insurance and that are allowable by the IRS may be reimbursed from your account. Expenses for your dependents are included as long as that person is a dependent as defined by the IRS.

Included is an alphabetical list of items that are encountered frequently by persons utilizing FSA Accounts. Some of these items may be reimbursed, and some may not; a brief note indicating which category the item falls into follows each item.

How to Get Reimbursed

Claiming your before-tax dollars to pay covered expenses is an easy process. In addition, the medical care must be provided during the Plan Year for which you have set up your account.

Your expenses will be reimbursed up to the amount you have pledged for the year in your Unreimbursed Healthcare Spending Account. The total yearly amount is available for reimbursement as soon as the Plan Year starts and the expense incurred.

Step 1

Paper Claim

When you have a covered medical expense, obtain a receipt showing the date of service and the service provided (you do not have to pay for the service before submitting it for reimbursement).

Before applying for reimbursement, submit any medical bills covered by insurance as you normally would to any insurance company that covers you or your dependents. IRS allowable expenses not reimbursable by insurance can then be submitted for reimbursement. If the service is covered under another insurance policy, submit a copy of the Explanation of Benefits from that insurance company along with a Flex Reimbursement Form for reimbursement (A copy of the form is included in this booklet).

If you are enrolled in both an Unreimbursed Healthcare Spending Account and a Health Savings Account, your Unreimbursed Healthcare Spending Account will not reimburse you for any allowable expenses applied toward satisfaction of your medical plan deductible. If you are enrolled in a Health Savings Account, expenses applied toward your medical plan deductible can be reimbursed only under your Health Savings Account. Except, if your medical plan deductible is more than the minimum deductible established by

federal law for a qualified high-deductible health plan, after you have satisfied the minimum deductible required under federal law, either your Unreimbursed Healthcare Spending Account or your Health Savings Account may be used to reimburse expenses applied to your deductible that exceed the federally-established minimum.

Debit Card Claims

Each participating employee certifies upon enrollment for each Plan Year thereafter that the card will only be used for eligible medical care expenses of the employee, the employee's spouse and dependents. The employee also certifies that any expense paid with the card has not been reimbursed and that the employee will not seek reimbursement under any other plan covering health benefits.

Substantiating Procedures for Debit Card Claims

The employer establishes the following procedures for substantiating claimed medical expenses after the card is used.

First, if the dollar amount of the transaction at a healthcare provider equals the dollar amount of the copayment for that service under the accident or health plan the charge is fully substantiated without the need for submission of receipt. This notice expands the copayment match substantiation method to include as automatic substantiations certain matches of multiple copayments in specific dollar amounts, and the dollar amount of the transaction at a healthcare provider (as identified by its merchant category code) equals an exact multiple of not more than five (5) times the dollar amount of the copayment for the specific service. Under this method, the merchant system must collect and download the inventory control of the purchase.

Second, the Administrator permits automatic reimbursement without further review of recurring expenses that match expenses previously approved as to amount, provider and time period.

Third, if the merchant, service-provider, or other independent third-party merchant at the time and point-of-sale provides information to verify the Administrator (including electronically by e-mail) that the charge is for a medical expense. The charge is fully substantiated without the need for submission of a receipt or further review.

All other charges to the card are treated as conditional pending confirmation of the charge by the submission of additional third-party information, such as receipt.

Step 2

Mail your completed reimbursement claim form and documentation to:
TML Health Benefits Pool | PO Box 140167 | Austin, Texas 78714-0167
Fax: (512) 719-6505 or (512) 719-6520

Step 3

You will receive an FSA account reimbursement check made out to you and mailed to your home address. Claims are paid within ten (10) working days from the date of receipt.

COBRA Continuation of Coverage (COC) Rights

Introduction

You're getting this notice because you have recently gained coverage under a group health plan (the Plan). This notice has important information about your right to COBRA Continuation of Coverage (COC), which is a temporary extension of coverage under the Plan. This notice explains COBRA Continuation of Coverage, when it may become available to you and your family and what you need to do to protect the right to receive it. When you become eligible for COBRA Continuation of Coverage, you may also become eligible for other coverage options that may cost less than COBRA Continuation of Coverage.

The right to COBRA Continuation of Coverage was created by a federal law, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). COBRA Continuation of Coverage can become available to you and other members of your family when your group health coverage would otherwise end. For more information about your rights and obligations under the Plan and under federal law, you should review the Plan booklet or contact TML Health Benefits Pool, 1821 Rutherford Lane, Suite 300, Austin, Texas 78754 or by telephone (800) 282-5385.

You may have other options available to you when you lose group health coverage

For example, you may be eligible to buy an individual plan through the Health Insurance Marketplace. By enrolling in coverage through the Marketplace, you may qualify for lower costs on your monthly premiums and lower out of pocket costs. Additionally, you may qualify for a 30-day special enrollment period for another group health plan for which you are eligible (such as a spouse's plan), even if that plan generally doesn't accept late enrollees.

What is COBRA Continuation of Coverage?

COBRA Continuation of Coverage is a continuation of Plan coverage when it would otherwise end because of a life event. This is also called a "qualifying event." Specific qualifying events are listed later in this notice. After a qualifying event, COBRA Continuation of Coverage must be offered to each person who is a "qualified beneficiary." You, your spouse and your dependent children could become qualified beneficiaries if coverage under the Plan is lost because of the qualifying event. Under the Plan, qualified beneficiaries who elect COBRA Continuation of Coverage may be required to pay for coverage depending on the policy of your Employer.

If you're an employee, you'll become a qualified beneficiary if you lose your coverage under the Plan because of either one of the following qualifying events:

1. Your hours of employment are reduced; or
2. Your employment ends for any reason other than your gross misconduct.

If you're the spouse of the employee, you'll become a qualified beneficiary if you lose your coverage under the Plan because of any of the following qualifying events:

1. Your spouse dies;
2. Your spouse's hours of employment are reduced;
3. Your spouse's employment ends for any reason other than his or her gross misconduct;
4. Your spouse becomes entitled to Medicare benefits (under Part A, Part B and/or Part C); or
5. You become divorced or legally separated from your spouse.

Your dependent children will become qualified beneficiaries if they lose coverage under the Plan because of any of the following qualifying events:

1. The parent-employee dies;
2. The parent-employee's hours of employment are reduced;
3. The parent-employee's employment ends for any reason other than his or her gross misconduct;
4. The parent-employee becomes entitled to Medicare benefits (Part A, Part B and/or Part C);
5. The parents become divorced or legally separated; or
6. The child stops being eligible for coverage under the Plan as a "dependent child."

Any decision of whether an Employee was terminated because of gross misconduct will be made by the Employer. The Employer may not change its decision on whether or not a termination was for gross misconduct later than the forty-fifth (45th) day after the date employment terminated or the date a COBRA Continuation of Coverage election notice was mailed to the employee, whichever is earlier. Any determination of gross misconduct shall be based on events that occurred prior to the termination of employment.

Sometimes, filing a proceeding in bankruptcy under Title 11 of the United States Code can be a qualifying event. If a proceeding in bankruptcy is filed with respect to your Employer, and that bankruptcy results in the loss of coverage for any retired employee covered under the Plan, the retired employee will become a qualified beneficiary. The retired employee's spouse, surviving spouse and dependent children will also become qualified beneficiaries if bankruptcy results in the loss of their coverage under the Plan.

Please note that COBRA Continuation of Coverage does not include any life benefits. If you had voluntary life coverage, you may convert it to an individual policy within thirty-one (31) days of your qualifying event. Contact your Employer's human resources office for more information and conversion forms.

When is COBRA Continuation of Coverage available?

The Plan will offer COBRA Continuation of Coverage to qualified beneficiaries only after TML Health Benefits Pool has been notified that a qualifying event has occurred. The Employer must notify TML Health Benefits Pool of the following qualifying events:

1. The end of employment or reduction of hours of employment;
2. Death of the employee;
3. Commencement of a proceeding in bankruptcy with respect to the Employer; or
4. The employee's becoming entitled to Medicare benefits (under Part A, Part B and/or Part C).

You must give notice of some Qualifying Events

For all other qualifying events (divorce or legal separation of the employee and spouse or a dependent child's losing eligibility for coverage as a dependent child), you must notify TML Health Benefits Pool within sixty (60) days after the qualifying event occurs. You must provide notice to: TML Health Benefits Pool, 1821 Rutherford Lane, Suite 300, Austin, Texas 78754 or by telephone (800) 282-5385.

How is COBRA Continuation of Coverage provided?

Once TML Health Benefits Pool receives notice that a qualifying event has occurred, COBRA Continuation of Coverage will be offered to each of the qualified beneficiaries. Each qualified beneficiary will have an independent right to elect COBRA Continuation of Coverage. Covered employees may elect COBRA Continuation of Coverage on behalf of their spouses, and parents may elect COBRA Continuation of Coverage on behalf of their children.

COBRA Continuation of Coverage is a temporary continuation of coverage. When the qualifying event is the death of the employee, the employee's becoming entitled to Medicare benefits (Part A, Part B and/or Part C), your divorce or legal separation or a dependent child's losing eligibility as a dependent child, COBRA Continuation of Coverage lasts for up to a total of thirty-six (36) months. When the qualifying event is the end of the employment or reduction of the employee's hours of employment, and the employee became entitled to Medicare benefits less than eighteen (18) months before the qualifying event, COBRA Continuation of Coverage for qualified beneficiaries other than the employee lasts until thirty-six (36) months after the date of Medicare entitlement. For example, if a covered employee becomes entitled to Medicare eight (8) months before the date on which his employment terminates, COBRA Continuation of Coverage for his spouse and children can last up to thirty-six (36) months after the date of Medicare entitlement, which is equal to twenty-eight (28) months after the date of the qualifying event (thirty-six (36) months minus eight (8) months). Otherwise, when the qualifying event is the end of employment or reduction of the employee's hours of employment, COBRA Continuation of Coverage generally lasts for only up to a total of eighteen (18) months. There are three (3) ways in which this eighteen (18) month period of COBRA Continuation of Coverage can be extended.

Active Duty Reservists extension of COBRA Continuation of Coverage

If covered by the Plan as an employee at the time of call to active duty, active duty reservists or guard members and their covered dependents can maintain eligibility on the Plan for up to twenty-four (24) months as prescribed by and subject to the terms and conditions of the Uniformed Services Employment and Reemployment Rights Act (USERRA). The date on which the person's absence begins is the qualifying event for COBRA Continuation of Coverage (COC) to be offered to the reservist or guard member.

If a fire fighter or police officer is called to active duty for any period, the Employer must continue to maintain any health, dental, or life coverage received on the date the fire fighter or police officer was called to active military duty until the Employer receives written instructions from the fire fighter or police officer to change or discontinue the coverage. Such instruction shall be provided no later than sixty (60) days following the Qualifying Event. If no such instruction is given, then coverage will terminate on the sixty-first (61st) day, which shall then become the Qualifying Event for COBRA Continuation of Coverage purposes. Eligibility will meet or exceed requirements of USERRA and/or regulatory compliance.

In administering this coverage, TML Health Benefits Pool will follow the time guidelines of COBRA Continuation of Coverage under 42 U.S.C.A.300bb-1 *et seq*. To qualify for this coverage, the employee must give written notice to the Employer within sixty (60) days of the qualifying event. The Employer member must notify TML Health Benefits Pool that an employee has been called to active duty and submit a copy of the Employer member's active reservist policy to TML Health Benefits Pool.

Disability extension of COBRA Continuation of Coverage

If you or anyone in your family covered under the Plan is determined by Social Security to be disabled and you notify TML Health Benefits Pool within sixty (60) days of that determination, you and your entire family may be entitled to receive up to an additional eleven (11) months of COBRA Continuation of Coverage for a total maximum of twenty-nine (29) months. The disability must start at some time before the sixtieth (60th) day of COBRA Continuation of Coverage and must last at least until the end of the eighteen (18) or twenty-four (24) month period of COBRA Continuation of Coverage. You may contact TML Health Benefits Pool about a disability determination at 1821 Rutherford Lane, Suite #300, Austin, Texas 78754 or by telephone (800) 282-5385.

Second Qualifying Event extension of COBRA Continuation of Coverage

If your family experiences another qualifying event while receiving eighteen (18) or twenty-four (24) months of COBRA Continuation of Coverage, the spouse and dependent children in your family can get up to eighteen (18) additional months of COBRA Continuation of Coverage, for a maximum of thirty-six (36) months, if TML Health Benefits Pool is properly notified about the second qualifying event. This extension may be available to the spouse and any dependent children getting COBRA Continuation of Coverage if the employee or former employee dies, becomes entitled to Medicare benefits (Part A, Part B and/or Part C) gets divorced or legally separated, or if the dependent child stops being eligible under the Plan as a dependent child. This extension is available only if the second qualifying event would have caused the spouse or dependent child to lose coverage under the Plan had the first qualifying event not occurred.

Are there other coverage options besides COBRA Continuation of Coverage?

Yes. Instead of enrolling in COBRA Continuation of Coverage, there may be other coverage options for you and your family through the Health Insurance Marketplace, Medicaid or other group health plan coverage options (such as a spouse's plan) through what is called a "special enrollment period." Some of these options may cost less than COBRA Continuation of Coverage. You can learn more about many of these options at http://www.healthcare.gov.

Adding Dependents

If you are a COBRA Continuation of Coverage participant, you have the same rights to add dependents to your COBRA Continuation of Coverage as an active covered employee. For example, you may add dependents to your COBRA Continuation of Coverage within thirty-one (31) days of marriage or sixty (60) days of the birth, adoption or placement for adoption of a child. Also, you may add dependents to your COBRA Continuation of Coverage during your Employer's Open Enrollment. However, these dependents who were not covered under the Plan before your qualifying event occurred are not qualified beneficiaries and do not have individual COBRA Continuation of Coverage rights, except for children added within sixty (60) days of birth, adoption or placement for adoption. Children added to your COBRA Continuation of Coverage within sixty (60) days of birth, adoption or placement for adoption are qualified beneficiaries and have their own COBRA Continuation of Coverage rights.

If you have questions

Questions concerning your Plan or your COBRA Continuation of Coverage rights should be addressed to the contact or contacts identified below. State and local government employees seeking more information about their rights under COBRA Continuation of Coverage, the Health Insurance Portability and Accountability Act (HIPAA) and other laws affecting group health plans, can contact the U.S. Department of Health and Human Services' Centers for Medicare and Medicaid Services at:

- https://www.cms.gov/CCIIO/Programs-and-Initiatives/Other-Insurance-Protections/cobra_fact_sheet.html; or
- https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/index.html#COBRA

Keep Your Plan Informed of Address Changes

In order to protect your family's rights, you should keep TML Health Benefits Pool informed of any changes in addresses of family members. You should also keep a copy, for your records, of any notices you send to your Employer and TML Health Benefits Pool.

Protecting Your Health Information

A Federal law called Health Insurance Portability and Accountability Act of 1996 (HIPAA), requires the Plan Sponsor of an Unreimbursed Healthcare Spending Account to protect the privacy and security of you and your dependent's health information. The Plan Sponsor and the Plan Administrator take their responsibilities to protect your health information seriously. The Plan Administrator will use and disclose individually identifiable health information only when needed to pay claims submitted for reimbursement under the Unreimbursed Healthcare Spending Account, when needed to administer the Unreimbursed Healthcare Spending Account or when required by law. HIPAA prohibits the Plan Sponsor from using or disclosing any health information from the Unreimbursed Healthcare Spending Account for employment-related actions and decisions, or for the administration of any other employee benefit plan of the Plan Sponsor.

The Plan Sponsor has administrative, physical and technical safeguards in place to protect the privacy of health information. The Plan Sponsor will notify you regarding privacy breaches per Health and Human Services requirements.

In addition to restrictions on how the Plan Sponsor and Plan Administrator may use and disclose individually identifiable health information, HIPAA gives you and your covered dependents certain rights. These rights include the right to access your health information, to amend (or correct) your health information and to receive an accounting of certain disclosures of your health information.

The Plan Sponsor is required to maintain a notice of its privacy practices that explains fully how the Plan Sponsor and its business associates, including the Plan Administrator, may use and disclose your health information and your rights under the Privacy Rule. If you have not received a copy of the Plan Sponsor's notice of privacy practices for your Unreimbursed Healthcare Spending Account, contact the Plan Sponsor.

Dependent Care Reimbursement Account

You may set aside money in your Dependent Care Reimbursement Account to pay childcare expenses up to a maximum of $5,000 or $2,500 per year for married employees who file separate tax returns. Maximum benefits notwithstanding any other provision of this Plan, no Participant shall receive Dependent Care Reimbursement Benefits in excess of $5,000 (or $2,500 in the case of a married Participant filing a separate Federal income tax return) in a calendar year. An eligible expense must enable the employee (and spouse, if married) to be gainfully employed or to look for gainful employment. Special limitations to this account include the following:

- If you are married, your spouse must be employed in a paying job, a full-time student for five (5) months in the year, or disabled.
- The maximum age for eligible children is through age twelve (12). Other dependents (such as children age thirteen (13) and over, parents or spouse) can receive care if they are disabled or cannot otherwise care for themselves because of physical or mental impairments.
- Tuition for private school is not an eligible expense; only Pre-Kindergarten tuition expenses incurred for a day care type facility will be accepted.
- The child or other dependent receiving the care must live in your home and must be claimed as a dependent on your Federal Income Tax Return.
- You must pay a "qualified person" to care for your eligible dependents at your home, at a licensed day care center, at a day camp, or at another location (except overnight camps). A "qualified person"

providing dependent care does not include any of your children under age nineteen (19) or any other person whom you claim as a dependent.

- You must file a Form 2441 with the IRS, including the name, address and taxpayer identification number of the person or organization, providing the dependent care services.

Money from this account will pay your eligible childcare expenses tax-free. Of course, you may be able to claim tax credit for child and dependent care costs. The credit can be claimed when you file your income tax return. For more information about the tax credit, refer to IRS publication 503 – *Child and Dependent Care Expenses.* The tax credit can be claimed for any expenses not paid through your Dependent Care Reimbursement Account, but you cannot use the tax credit *and* the Dependent Care Reimbursement Account for the *same* expenses.

Why You Should Budget Carefully

It is important that you budget carefully when taking advantage of the Dependent Care Reimbursement Account. The same tax law that permits this benefit also specifies that any money that is left in your account at the end of the plan year must be forfeited. Your account balance cannot be transferred to your Unreimbursed Healthcare Spending Account or carried forward to the next year. However, you will have ninety (90) days after the end of the plan year to claim dependent care expenses incurred in the *previous* plan year before any unused balance is forfeited.

Even if you should over budget and have some money remaining unused in your account, you may still benefit due to the amount of your tax savings.

Once Enrolled, You May Not Change Your Election for the remainder of the Plan Year unless a qualifying event occurs.

How to Get Reimbursed

Claiming your before-tax dollars to pay covered childcare expenses is an easy process. In addition, the childcare must be provided *during* the plan year for which you have set up your account. The recurring expense form may be used for an automated dependent care reimbursement.

Your expenses will be reimbursed up to the amount in your Dependent Care Reimbursement Account. You will be reimbursed for the remainder of your expenses as money is deposited into your account on the first of each month.

Step 1

When you have a covered childcare expense, obtain a bill or receipt once dependent care has been incurred. This is your documentation for the expense. This documentation must include the name of the child/children the care was provided for along with the date the care was provided and the amount charged. If a bill or receipt is not available, your childcare provider can document your expense using the Statement of Certification provided at the bottom of the dependent care reimbursement form or the covered participant may execute a recurring expense form which requires the childcare provider's signature.

Step 2

Fill out the dependent care reimbursement claim form and if appropriate, a recurring expense form. (A copy of the form is included in this booklet.) Be sure to attach proper documentation for the expense to the form. Documentation includes one of the following:

- Bill
- Receipt
- Statement of Certification

Step 3

Mail your completed reimbursement claim form and documentation to:

TML Health Benefits Pool | PO Box 140167 | Austin, Texas 78714-0167

Fax: 512-719-6505

Step 4

The covered participant will receive an FSA Account reimbursement check made out to the covered participant and mailed to the home address.

Claims are paid within ten (10) working days from the day of receipt.

A cafeteria plan may include a "spend-down" provision allowing employees who ceased participation (e.g., because of termination of employment) to be reimbursed for eligible dependent care expenses from the dependent care account through the end of the plan year.

Typical Eligible Medical or Medical-Related Expenses

The following, while not intended to be complete, illustrates medical or medical-related expenses, which may be eligible as part of the Flexible Benefits plan under Internal Revenue Service (IRS) Code Section 213 rules. The list originates from a database of more than 55,000 health and beauty aid items that is continually updated with new product introductions and discontinuations. For complete details, please refer to IRS http://www.irs.gov publication 502 – *Medical and Dental Expense*.

Eligibility Status Definitions

Eligible products include over the counter products that are for medical care and are primarily for medical purposes. They include medicines or products that diagnose, alleviate or treat existing or imminent injuries, illnesses or medical conditions. These drugs and products are not cosmetic in nature, or merely beneficial to general health or used for personal hygiene. As a general rule, most of these products are of short-term use but some do treat chronic medical conditions. Qualified medical expenses include those expenses compliant with federal tax deductions under Section 213(d) as outlined by the Internal Revenue Service.

Not Included as Eligible Products for Approval Dual-Purpose

Some products are considered dual-purpose. These products may have both a medical purpose and a personal/cosmetic or general health purpose. In order to be considered eligible, they must be used to treat a medical condition and cannot be used to improve or maintain general health unless prescribed by a physician to treat a specific illness, condition, or injury. These products may be eligible for reimbursement, but require a letter of medical necessity from a licensed healthcare professional stating the specific diagnosis or medical condition, the specific over the counter medicine recommendation to treat the condition and documentation of the product and cost.

Eligible Over the Counter (OTC)

Eligible products include OTC products that are for medical care and are primarily for a medical purpose. They include products (other than OTC medicines or drugs) that diagnose, alleviate or treat existing or imminent injuries, illnesses or medical conditions. As a general rule, most of these products are of short-term use but some do treat chronic medical conditions. Qualified medical expenses include those over-the-counter items compliant with federal tax rules under IRS Code Section213(d) as outline by the Internal Revenue Service. In these cases, the expense would not have been paid "but for" the disease or illness. An expense is not deductible as medical care if the taxpayer would have paid the expense even in absence of a medical condition. The user does not need to provide a statement from a medical provider or indicate a diagnosis in order to receive reimbursement. Taxes, shipping and surcharge/convenience fees (as permitted by law and card brand/network regulations) directly associated with the purchase of an eligible product can be included.

Prescribed Drugs and Medicines, including Prescribed Over the Counter (OTC)

Drugs and medicines prescribed by a licensed medical professional and dispensed in accordance with state laws including the generation of a Prescription Number are considered Eligible by the IRS. This includes OTC Drugs and medicines other than dual-purpose. Since the prescription serves as the determination of medical eligibility in a merchant location with a properly configured Pharmacy and IIAS POS system, no additional checks are required. These items will not be listed on the Eligible Products list due to their separate processing rules.

Dual-Purpose

Some products are considered dual-purpose. These products may have both a medical purpose and a personal hygiene, cosmetic or general health purpose. In order to be considered eligible, they must be used to treat a medical condition and cannot be used to improve or maintain general health unless prescribed by a physician to treat a specific illness, condition, or injury. These products may be eligible for reimbursement, but require a letter of medical necessity from a licensed healthcare professional stating the specific diagnosis or medical condition, the specific OTC medicine recommendation to treat the condition, and documentation of the product and cost. Dual-purpose items will not be included in the SIGIS List.

Ineligible

Certain products that merely benefit general health or are for cosmetic/personal hygiene are not reimbursable. Typically, these are not referred to as medicines or drugs and are not recognized to treat a medical condition. Medical expenses that are not reimbursable under Section 213(d) of the federal tax code are ineligible. These include food supplements, toiletries, lotions and soaps, shampoos, vitamins and most herbal supplements.

PURSUANT TO SECTION 9003 OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010, REIMBURSEMENTS FOR EXPENSES INCURRED FOR A MEDICINE OR A DRUG SHALL BE TREATED AS A REIMBURSEMENT FOR MEDICAL EXPENSES ONLY IF SUCH MEDICINE OR DRUG IS A PRESCRIBED DRUG (DETERMINED WITHOUT REGARD TO WHETHER SUCH DRUG IS AVAILABLE WITHOUT A PRESCRIPTION) OR IS INSULIN.

Abortion – Medical expenses associated with a legal abortion due to rape, incest or is life threatening to the mother, are reimbursable.

Acid controllers – Pepcid AC, Zantac, Prilosec (not included in eligible product list)

Acid reducer – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011. Pepcid AC, Zantax, Prilosec

Acne medication – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011. Clearasil, OXY (not included in eligible product list)

Acupressure treatments – Products that treat a medical condition are eligible. Weight-loss products are dual purpose.

Acupuncture – Medical expenses paid for acupuncture are reimbursable.

After-school care or extended day programs (supervised activities for children after the regular school program) – Will qualify if used to enable the employee and spouse to be gainfully employed. These programs generally are not educational in nature. Their primary purpose is to care for children while parents are at work. However, educational expenses (e.g., tuition) will not qualify.

Agency fee – Will qualify if it is an expense that must be paid in order to obtain the related care. However, the fee should not be reimbursed until care is provided. Fees that are forfeited (e.g., because the employee selects a different provider) will not qualify.

Air filter – If prescribed to treat a specific medical condition, this expense is reimbursable. *Also see **Personal use items**.*

Air purifier – To show that the expense is primarily for medical care, a prescription order recommending the item to treat a specific medical condition will be required.

Alcoholism and drug abuse – Medical expenses paid to a treatment center for alcohol or drug abuse are reimbursable. This includes meals and lodging provided by the center during treatment.

Alternative medicine – *See **Naturopathy**.*

Allergy medicine – Expenses to alleviate or treat injuries or sickness with a prescription. Alavert, Benadryl, Claritin, Sudafed

Allergy & sinus – Alavert, Benadryl, Claritin, Sudafed (not included in eligible product list)

Allergy pillows, mattress covers, air purifiers, filters, etc. – Treat allergies diagnosed by physicians.

Ambulance – Medical expenses paid for ambulance service are reimbursable.

Antacid – To alleviate or treat sickness with a prescription, includes gum liquid and tablets.

Anti-bacterial hand sanitizers – Purell, Nexcare, Germ-X personal use component; but for test must be established

Antibiotic products – Bacitracin, Neosporin, triple antibiotic ointment (not included in eligible product list)

Anti-diarrhea medication – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011. Imodium, Kaopectate (not included in eligible product list)

AntiGas – Gas-X, Phazyme with physician order

Antifungal (Foot) – Lamisil, Lotrimin (not included in eligible product list)

Antiparasitic treatments – Nix, Rid, lice treatments

Antiseptics & wound cleansers – Rubbing alcohol, peroxide, Epsom salt, betadine, hibiclens

Anti-itch lotion – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011. Caladryl, Lanacane, Sarna, hydrocortisone (not included in eligible product list)

Antiparasitic treatments – Nix, Rid, lice treatments (not included in eligible product list)

Antiseptic wash & wound care – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011. Rubbing alcohol, peroxide, Epson salt, Betadine, Hibiclens (not included in eligible product list)

Antihistamine – To alleviate or treat sickness with prescription

Application fee – Will qualify if it is an expense that must be paid in order to obtain the related care. However, the fee should not be reimbursed until care is provided. Fees that are forfeited (e.g., because the employee selects a different provider) will not qualify.

Artificial limb – Medical expenses paid for an artificial limb are reimbursable.

Artificial teeth – *See **Medical aids**.*

Aspirin – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011.

Assisted living – *See **Custodial Care and Elder Care**.*

Attendant – *See **Nursing services**.*

Au pair – Amounts paid to an au pair to care for a qualifying individual may qualify as dependent care assistance expenses. In addition, an up-front fee paid to employ the au pair may qualify as a child-care expense if it is an expense that must be paid in order to obtain the related care, but it should not be reimbursed until care is provided.

Autoette – *See **Wheelchair**.*

Automobile – *See **Car**.*

Baby diapers – Huggies, Pampers, Pullups to treat juvenile incontinence or medical condition

Baby formulas/nutritionals – Pediassure, Progestimila specialty formulas/nutritionals are covered if medically necessary and authorized by medical practitioner. Only the excess cost between regular formula and the specialized formula may be eligible under an employer's plan.

Baby electrolytes and dehydration – Pedialyte, Enfalyte baby electrolytes and dehydration

Baby rash ointments & creams – Desitin, Aveeno Baby includes petroleum jelly merchandized and marketed for baby rash (not included on eligible product list)

Baby teething pain – Baby Orajel, Anbesol Baby Oral Gel (not included in eligible product list)

Babysitting and child care – These expenses are not reimbursable under a health FSA, even if the care allows a parent to get medical care. *Also see **Dependent care expenses**.*

Backup or emergency care – Will qualify if used to enable the employee and spouse to be gainfully employed and other applicable conditions are met.

Bandages – Medical supplies such as bandages used to cover torn skin.

Before-school care – *See **After-school care**.*

Benzocaine swabs – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011.

Birth control pills – Medical expenses paid for birth control pills prescribed by a doctor are reimbursable. Morning-after pill, female contraceptives, spermicidal foam (not included in eligible product list)

Boarding school – Generally will not qualify.

Boric acid powder – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011.

Braille books and magazines – Medical expenses for the cost of Braille books and magazines for use by a visually impaired person that is more than the price for regular books and magazines are reimbursable.

Breast augmentation – Expenses related to breast augmentation (such as implants or injections) are not reimbursable because the procedure is cosmetic in nature. However, medical costs related to the removal of breast implants that are causing a medical problem are reimbursable.

Breast pump and breast feeding supplies – Prescribed breast pump and breast feeding supplies used for the convenience of the mother is reimbursable. Breast Pump (cost or rental fee), Breast Pump Parts (pump valve, replacement tubing piston unit, diaphragms, pump body, flange, shield), Storage Bottles, Storage Bags, Gel Pads, Nursing Pads, Nipple Shields, Nursing Pillows and Covers, Nursing Bras, Bra Shields, and Coolers, Conversion Kits, Areola Stimulator, Car Adapter

Breast reconstruction surgery – Medical expenses related to breast reconstructive surgery are reimbursable only if physician substantiates that the procedure is due to medical necessary surgery (due to an illness or disease).

Breast reductions – Medical expenses related to breast reduction surgery are reimbursable only if a physician substantiates that the procedure is medically necessary and not for cosmetic purposes (that is, to prevent or treat an illness or disease).

Bronchial asthma inhalers – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011.

Broncholidator/Expectorant tablets – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011.

Bunion and blister treatment – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011.

Cancer insurance – *See **Supplemental insurance policies**.*

Capital expenses – If their main purpose is medical care, capital expenses paid for special equipment installed in a participant's home or for improvements to the home are reimbursable. For further details, see discussion under the heading, "Capital Expenses" found later in this booklet.

Car – Medical expenses are reimbursable for special hand controls and other special equipment installed in a car for the use of a person with disabilities. Also, the amount by which the cost of a car specially designed to hold a wheelchair exceeds the cost of a regular car is a reimbursable medical expense. However, the cost of operating a specially equipped car is not reimbursable (*see **Transportation***).

Chair – The cost of a reclining chair purchased on the advice of a physician to alleviate a heart, back or other condition is reimbursable.

Childcare – *See **Dependent care expenses**.*

Childbirth classes – Expenses for childbirth classes are reimbursable, but are limited to expenses incurred by the mother-to-be. Expenses incurred by a "coach" – even if that is the father-to-be are not reimbursable. To qualify as medical care, the classes must address specific medical issues, such as labor, delivery procedures and breathing techniques.

Chiropractor – Expenses paid to a chiropractor for medical care are reimbursable.

Christian Science practitioners – Medical expenses paid to Christian Science practitioners are reimbursable.

Church of Scientology – *See **Scientology "audits"**.*

Clinic – Medical expenses for treatment at a health clinic are reimbursable.

COBRA premiums – COBRA premiums may not be reimbursed through their health FSAs.

Coinsurance amounts – Medical coinsurance amounts and deductibles are reimbursed.

Cold medicine – Alleviate or treat injuries or sickness with a prescription.

Cold relief syrup – *See **Cold medicine**.*

Cold relief tablets – *See **Cold medicine**.*

Cold sore medication – Includes fever blister medication; Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011. Only medicated products are covered.

Commuting costs – *See **Trips**.*

Compression hosiery – Jobst, TED, Futuro including diabetic socks; may be reimbursed for cost in excess cost over regular hose and socks

Contact lenses – *See **Vision care**.*

Condoms – Condoms are eligible for reimbursement.

Contraceptives – Condoms (with and without spermicide), Trojan, Durex, Lifestyle (Excludes drugs and medicines which require a prescription.)

Cord blood storage – Cord blood storage for a healthy baby should not be reimbursed through an FSA. Cord blood is not stored to do things that constitute "medical care," but instead to be available to potentially provide medical care in the future – if necessary. If, however, the child has a specific medical condition that the cord blood is intended to treat, then storage should be a reimbursable expense.

Corn and callus removal medication – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011

Cosmetic surgery – Medical expenses for cosmetic surgery are reimbursable if the surgery is necessary to improve a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease. However, medical expenses paid for other cosmetic surgery are not reimbursable under a heath FSA. This applies to any procedure that is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease. For example, face lifts, hair transplants, hair removal (electrolysis) and liposuction generally are not deductible. If there is a concern that a medical or dental surgery could be considered cosmetic, a doctor's certification should be obtained explaining how the procedure meaningfully promotes the proper function of the body or prevents or treats an illness or disease. This will help ensure that the claim is reimbursable.

Cotton balls – Only sterile cotton balls are eligible, non-sterile are considered dual purpose.

Cough, cold & flu dietary supplements – Airborne, hall's Defense, Germ Defense Alka Seltzer Immunity products that are merely dietary supplements and marketed as such, including those claiming to "support the immune system" (i.e. Airborne), are not covered (dual). Cold preventative products which are "proven to lessen the severity" or "reduce the duration" of colds or flu are covered. These include homeopathic, natural products, some herbals and some forms of zinc.

Cough drops – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011.

Cough syrup – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011.

Crutches – Medical expenses paid to buy or rent crutches are reimbursable.

Custodial care – Will qualify only if (1) such expenses are not attributable to medical service; (2) the person in custody is a qualifying individual [other than a qualifying child under age thirteen (13)], and (3) the qualifying individual spends at least eight (8) hours each day in the employee's household.

Dancing lessons, swimming lessons, etc. – Dancing lessons, swimming lessons, etc., are not reimbursable even if they are recommended by a doctor.

Day camp – The cost of a day camp or similar program to care for a qualifying individual may qualify, even if the day camp specializes in particular activities. Summer school expenses are considered primarily educational rather than for care and will not qualify. Note that, depending on the circumstances, a day camp may be considered a dependent care center.

Day care – *See **Dependent care expenses**.*

Deductibles – Medical insurance deductibles and coinsurance amounts under the employer's plan are reimbursable.

Dental repair – Temporary dental repair products are eligible.

Dental treatment – Medical expenses for dental treatment are reimbursable. This includes fees paid to dentists for X-rays, fillings, braces, extractions, dentures, etc. *Also see **Cosmetic surgery**.*

Denture adhesives, repair, and cleansers – Denture products and maintenance covered, includes PoliGrip, Benzodent, Plate Weld, and Efferdent.

Denture pain relief

Dependent care – Dependent care expenses (under Section 129, Internal Revenue Code) are not reimbursable under an Unreimbursed Healthcare Account, but may be reimbursable under a Dependent Care Spending Account.

Dependent care center – Will qualify if the center meets the requirement of Code 21(b)(2)(C) including compliance with all applicable laws and regulations. Note that depending on the circumstances, a day camp may be considered a dependent care center.

Diabetes Care – Testing (meters, strips, lancets, alcohols swabs), dosing (syringes, pens, etc.), glucose are eligible. OTC medicines and personal care are eligible or dual purpose.

Diabetes nutritionals – Glucerna, boost glucose to treat symptoms of diabetes when recommended by physician

Diabetes personal care & supplies – Include diabetes skin care, cough & cold, support socks and supplies. Personal care is generally not covered; must test or treat a specific symptom or condition of Diabetes.

Diabetes testing & aids – Ascensia, One Touch, insulin syringes, glucose products (includes glucose tabs/gels, testing and insulin related accessories

Diabetic supplies – Includes lancets, test strips and other supplies.

Diagnostic devices – Medical expenses for the cost of devices used in diagnosing and treating illness and disease. Thermometers, blood pressure monitors, cholesterol testing. *Example:* A diabetic patient may use a blood sugar test kit to monitor your blood sugar level. The cost may include the cost of the blood sugar test kit in your medical expenses. Drug and body fat testers are not covered.

Diagnostic products – Cholesterol screening, thermometers, blood pressure monitors, cholesterol testing. Includes devices that monitor, screen or test for the presence of disease, dysfunction of the body or for other medical conditions; drug, alcohol and body fat testers are dual-purpose.

Diapers – Juvenile Incontinence – Products marketed for juvenile incontinence only. Regular diapers and training pants are not eligible.

Diaper service – Payments for diapers or diaper services are not reimbursable unless they are needed to relieve the effects of a particular disease. Products marketed for juvenile incontinence only. Regular diapers and training pants are not eligible.

Dietary supplements – Essential fatty acids (fish oil), soy, enzymes, amino acids under narrow circumstances, they will be eligible if used to treat a medical condition or at-risk for illness diagnosed by physician, dietary supplement marketed in pain relief, cough & cold and antacids/laxative categories do not automatically qualify as a medical expense 9i.e, Azo Cranberry, Airborne, Culturelle, etc.)

Diets – *See **Special foods**.*

Digestive aids – Lactaid, Lactase, Beano with physician order only

Disability – *See **Braille books and magazines; Capital expenses; Car; Guide dog or other animal; Learning disability; Lifetime care; Mentally retarded, special home for; Personal use items; Schools, special; Television; Therapy; Transportation; and Wheelchair**. Also see discussion under the heading "Capital Expenses" found later in this booklet.*

Disabled dependent care expenses – Medical expenses may include work related expenses for the purpose of taking a credit for dependent care. The requirement that at least eight (8) hours per day be spent in the employee's household in order for care provided outside the employee's household to qualify for reimbursement does not apply to a qualifying child under the age thirteen (13), whether or not the qualifying child is incapable of self-care. Any care outside the household must enable the employee and spouse to be gainfully employed.

Distilled water – If it serves a medical purpose.

Divorce – No, even when a doctor or psychiatrist recommends it.

Drug & alcohol testing kits – First check drug testing, alcohol breathalyzer. Diagnostics of illegal activities are not eligible.

Drug addictions – *See **Alcoholism and drug abuse**.*

Drug testing kits – Diagnostics of illegal activities are typically not covered.

Drugs – *See **Medicines**.*

Durable Medical Equipment – Wheel Chairs, Crutches, and Oxygen Machines can be included when manufacturer provides UPC; merchants can mark non-UPC tagged items as private label items

Ear care – Medicated ear drops, syringes, and ear wax removal

Ear piercing – Expenses for ear piercing are not reimbursable.

Ear plugs – Mack's, Flent to treat medical condition (presence of middle/inner ear tubes) diagnosed by physician

Ear water-drying aid – If it serves a medical purpose.

Ear wax removal drops – If it serves a medical purpose.

Eczema cream – If it serves a medical purpose.

Egg donor fees and expenses – The Unreimbursed expense for egg donor fees for an attempted pregnancy. The agency fee for procuring the donor and coordinating the transaction between the donor and recipient, medical and psychological testing of the donor, and the legal fees for preparing a contract between the recipient and the donor are deductible medical expenses under Code Section 213.

Elastics/Athletic treatments – ACE, Futuro, elastic bandages, braces, hot/cold therapy, orthopedic supports & rib belts, etc. Waist shapers, tummy supports, work related back braces and products indicated as "Athletic" or "Sport" are not covered as they are considered dual purpose.

Elder care – Will qualify only if (1) such expenses are not attributable to medical services, (2) the elderly person is a qualifying individual; and (3) in the case of services provided outside the employee's household, the person still regularly spends at least eight (8) hours each day in the employee's household. Elder day care will often qualify, but around-the-clock care in a nursing home will not. Note that long-term care insurance cannot be offered under a cafeteria plan.

Electrolysis or hair removal – *See **Cosmetic surgery**.*

Employment-related expenses – Employment-related expenses such as employment physicals are not reimbursable. (Note, however, that physical exams that are not employment-related are reimbursable. *See **Physical exams***).

Employment taxes – *See **Nursing services**.*

Enemas – Bags, Syringes, prefilled saline enemas - Fleet

Equipment, diagnostic devices – For the diagnosis, cure, mitigation, treatment or prevention of disease, or purpose of affecting any body structure or function.

Equipment, supplies, and diagnostic services – Equipment such as crutches, supplies such as bandages and diagnostic devices such as blood sugar kits may be deductible medical expenses if they are for the diagnosis, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting the body structure or function.

Exercise equipment – To treat medical condition diagnosed by physician, not for general health

Exercise programs – If prescribed by a physician to treat a specific medical condition, exercise programs are related to general health and are not reimbursable.

Eye care – Contact lens care, eyeglass repair kits; visine refresh tears not included in eligible product list

Eye drops – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011.

Eyeglasses – *See **Vision care**.*

Eye surgery – Expenses for eye surgery to treat defective vision such as laser eye surgery or radial keratotomy are reimbursable.

Face lifts – *See **Cosmetic surgery**.*

Face/Respiratory masks – medical grade or commercial/consumer – 3M cold weather, pollen/dust filtering masks, used for work/general health needs

Family planning – Pregnancy kits, ovulation kits.

Feminine antifungal and anti-itch - Monistat, Gyne-Lotrimin, Vagisil, Soothing Care

Feminine moisturizing – Raplens, Rephresh to treat vaginal dryness caused by medical condition

Feminine protection (pads & liners) – Kotex, Always, Stayfree they are ordinarily considered as being used to maintain general health and for personal care. They are dual if used for post-surgery or child birth.

Fertility – Medical expenses related to the treatment of infertility, including in vitro fertilization, are reimbursable.

Fiber laxatives (bulk forming) – Benefiber, Fibercon, Metamucil (powder or pills) not included in eligible product list unless covered to treat a medical condition for a short duration; bars and drinks that are "nutritional foods" for help with regularity are not covered due to (dual) purpose.

FICA and FUTA taxes of daycare provider – The overall expenses of the care provider will qualify.

First aid burn & scar treatments & skin protectants (petroleum jelly) – Aloe, Mederma, Neosporin Scar Solution, Vaseline Jelly prescribed by a physician for a burn. Tapes and bandages indicated as "Athletic" or "Sport" are not covered.

First aid dressing, supplies, and wipes – Band-Aid, 3M Nexcare, J&J First Aid, non-sport tapes; medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011. Tapes and bandages indicated as "Athletic" or "Sport" are not covered.

Fitness/exercise classes – Only if prescribed by physician for a medical condition.

Fitness programs – Fitness programs or physical therapy for general health are not reimbursable.

Finance charge – *See **Missed-appointment fees**.*

Flu relief tables or liquid – *See **Cold medicine**.*

Fluoride treatments – Gel-Kam to treat medical condition diagnosed by physician and not for general oral care

Food – *See **Special foods**.*

Food thickeners – Thick-it for test must be established

Foot care treatment – Products that treat specific ailments are eligible: un-medicated corn & callus treatments (e.g., callus cushions), devices, therapeutic insoles; products for general use or comfort are not eligible. Products that create specific ailments are eligible; products for general use or comfort are not eligible (due to dual use).

Foot insoles and cushioning – Insoles, Heel & Arch, Dr. Scholl's Air Pillo, Odor Eaters treatment vs general use for comfort, must treat specific ailment to be covered

Foreign countries – Medical expenses incurred in foreign countries outside the United States are reimbursable.

Formula, infant – Formula for an infant is not considered an eligible benefit, even if the mother is unable to breast feed. It is viewed as food that satisfies normal nutritional requirements.

Founder's fee – *See **Lifetime care**.*

Funeral expenses – Expenses for funerals are not reimbursable.

Gas treatments – Includes gas prevention food, enzyme dietary supplements and gas relief drops for infants and children Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011.

Gender reassignment – Expenses incurred for gender reassignment surgery and hormone therapy are deductible under Section 213. The IRS announced in Action on Decision (AOD) 2011-03 that it acquiesced to the Tax Court ruling in O'Donnabhain v. Commissioner, 134 T.C. 34 (2010). In that ruling the Tax Court held that because in its view hormone therapy and sex reassignment surgery treat a disease – gender identify disorder – they are medical care and the expenses for that medical care are deductible under Section 213.

Gloves (rubber & cotton) – Protective gloves of any type & cotton beauty gloves are dual purpose and not covered.

Glucosamine and/or chondroitin – Osteo Bi-Flex, Cosamin D, Flex-a-min Nutritional Supplements, medical expenses as long as products are marketed for arthritis treatment (as opposed to mere prevention)

Glucose meters – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011.

Group medical insurance – *See **Insurance premiums**.*

Guide dog or other animal – The cost of a guide dog or other animal used by the visually impaired or hearing impaired is reimbursable. Costs associated with a dog or other animal trained to assist persons with other physical disabilities are also reimbursable, as are amounts paid for the care of these specially trained animals.

Hair growth product – Rogain to treat symptom of medical condition diagnosed by physician

Hair transplant – *See **Cosmetic surgery**.*

Hand sanitizer – Will not qualify if used for general health, may qualify if used to treat or alleviate a specific medical condition.

Head lice products – Nix Lice Comb, Rid Lice Comb

Headache medications – Must be prescribed.

Health care services – Urgent Care or Primary Care services provided by a licensed practitioner at an IIAS merchant.

Health club dues – Health club dues, YMCA dues, or amounts paid for steam baths for general health or to relieve physical or mental discomfort not related to a particular medical condition are not reimbursable unless incurred to fight a physician-diagnosed disease state of obesity.

Health institute – Medical expense fees you pay for treatment at a health institute only if the treatment is prescribed by a physician and the physician issues a statement that the treatment is necessary to alleviate a physical or mental defect or illness of the individual receiving treatment.

Health supports – Any products with a primary purpose of sports or work/industrial are dual purpose and not eligible. Ace, Futuro, braces, elastic bandages, hot/cold therapy, orthopedic supports, rib belts, back braces, etc.

Healthy baby care – *See **Nursing services**.*

Hearing aids/medical batteries – Medical expenses for a hearing aid and batteries are reimbursable. The cost of hearing aid repairs is a qualified medical expense.

Heartburn medicines – Heartburn medicines, including antacids, purchased for personal use of the employee, spouse or dependent to alleviate or treat personal injuries or sickness, without a prescription, are reimbursable.

Hemorrhoid treatments – Must be prescribed, even if available without a prescription.

Herbal and botanicals – Under narrow circumstances, they will be eligible if used to treat medical conditions or at-risk for illness diagnosed by a physician.

Home exercise equipment – Expenses for home exercise equipment are reimbursable only if all of the following conditions are met:

- The home exercise equipment is prescribed by your physician to treat an illness (including obesity) or bodily impairment;
- Your physician certifies, in writing, that the home exercise equipment is medically necessary to treat a disease or impairment and is not being prescribed to promote general health; and
- You certify, in writing, that you would not have purchased the home exercise equipment for any other reason than treating your disease or bodily impairment.

Home health care (limited segments) – Ostomy, walking aids, decubitus/pressure relief, enteral/parenteral feeding supplies, patient lifting aids, orthopedic braces/supports, splints & casts, hydrocollators, nebulizers, electrotherapy products, catheters, un-medicated wound care, wheel chairs. Home Health Care is dual-purpose and not eligible other than what is indicated in Home Health Care eligibility section.

Home health care services (limited segments) – Urgent Care or Primary Care services provided by a licensed practitioner at an IIAS merchant.

Homeopathic earache tablets – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011.

Homeopathic remedies – Products that treat an illness or condition that are eligible with a prescription

Hormone replacement – Will qualify if used primarily for medical care. Will not qualify for maintaining general health. Prescription order will be required.

Hospital expenses – Expenses incurred as a hospital inpatient or outpatient for laboratory, surgical and diagnostic services qualify as medical expenses.

Hot & cold therapy – ACE Hot/Cold Compress, Cara Ice Bag, Bed buddy Back Wrap, Kaz Heating Pad, ThermaCare Heat Wrap

Hot tub – *See **Capital expenses**.*

Household help – The cost of household help, even if recommended by a doctor, is not reimbursable. However, certain expenses paid to an attendant providing nursing-type services are reimbursable *(see **Nursing services**)*.

Human guide – Expenses for a human guide – to take a blind child to school, for example – are reimbursable. *Also see **Guide dog or other animal**.*

Hydrogen peroxide – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011.

Hypnosis – If the care is rendered by a licensed health care professional for a specific illness or disorder, it can be reimbursed from the FSA.

Imported drugs – Imported drugs are not generally reimbursable FSA expenses because most are not legally imported by individuals. Prescription drugs that the FDA has announced may be legally imported by individuals are, however, reimbursable FSA expenses.

Impotence or sexual inadequacy – Medical expenses related to the treatment of impotence are reimbursable if substantiated by a physician.

Incontinence protection & treatment products – Attends, Depend, GoodNites for juvenile incontinence, Prevail. Skin and cleansing products are not covered (dual).

Incontinence protection personal care – Attends, Depend, Prevail, GoodNites, Underjams

Infant formula – *See **Formula, infant**.*

Infertility – *See **Fertility**.*

Insulin – The cost of insulin is reimbursable.

In-patient meals – *See **Lodging and meals**.*

In-vitro fertilization – *See **Fertility**.*

Insurance premiums – Premiums for any health plan are not reimbursable under a Health FSA; some policies may be under premium conversion.

Iodine tincture – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011.

Ipecac syrup – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011.

Kindergarten – Such expenses are primarily educational in nature, whether half or full day, private or public school, state-mandated, or voluntary.

Laboratory fees – Laboratory fees that are part of medical care are reimbursable.

Laetrile – Laetrile, even if prescribed by a doctor is *not* reimbursable.

LASIK – The cost of laser surgery to correct or promote the proper function of the eye is reimbursable. *Also see **Radial keratotomy**.*

Late fees – Probably will qualify if for late pickup (i.e., the fee is charged to care for the child because the child was picked up late) the payment still relates direct to the care of the child. The fee will not qualify if the late payment is because the child care bill was paid late.

Laxatives – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011.

Lead-based paint removal – The cost of removing lead-based paints from surfaces in a home to prevent a child who has (or has had) lead poisoning from eating the paint is reimbursable. These surfaces must be in poor repair (peeling or cracking) or within the child's reach. The cost of repainting the scraped area, however, is not reimbursable.

Learning disability – Tuition payments to a special school for a child who has severe learning disabilities caused by mental or physical impairments, including nervous system disorders, are reimbursable. A doctor must recommend that the child attend the school. *See **Schools, special**.* Also, tutoring fees paid on a doctor's recommendation for a child's tutoring by a teacher who is specially trained and qualified to work with children who have severe learning disabilities are reimbursable.

Legal fees – Legal fees paid to authorize treatment for mental illness are reimbursable. However, any part of a legal fee that is a management fee - for example, a guardianship or estate management fee - is not reimbursable.

Lice treatment – Must be prescribed, even if available without prescription.

Licensing requirement – Neither the tax code nor IRS regulations require a plan participant to determine whether a provider is qualified, authorized under state law or licensed to practice before using his/her services. In Revenue Ruling 63-91, the IRS ruled that: "Amounts paid for medical services rendered by practitioners, such as chiropractors, psychotherapists, and others rendering similar type services, constitute expenses for 'medical care' within the provisions of section 213 of the Code, even though the practitioners who perform the services are not required by law to be, or are not (even though required by law) licensed, certified, or otherwise qualified to perform such services." The main issue is the nature of the treatment, not the license held by the practitioner.

Thus, services provided by a range of organizations and individuals may be reimbursable, including care provided by hospitals, medical doctors, dentists, eye doctors, chiropractors, nurses, osteopaths, podiatrists, psychiatrists, psychologists, physical therapists, acupuncturists, psychoanalysts and others.

Life insurance premiums – Life insurance premiums are not reimbursable in a Health FSA.

Lifetime care – Part of a life-care fee or "founder's fee" paid either monthly or as a lump sum under an agreement with a retirement home is reimbursable if it is allocable to medical care. The agreement must require a specified fee payment as a condition for the home's promise to provide lifetime care, treatment and training of an employee's physically or mentally impaired dependent upon the employee's death or

inability to provide care are reimbursable. The payments must be a condition for the institution's future acceptance of the dependent and must not be refundable.

Lip balms – Sun Care Lip balms which are part of a Sun Care line and have an SPF 15+ and state UVA/UVB are eligible.

Liposuction – *See **Cosmetic surgery**.*

Lodging and meals – The cost of lodging and meals at a hospital or similar institution are reimbursable if the employee's main reason for being there is to receive medical care. *Also see **Nursing home**.*

The cost of lodging not provided in a hospital or similar institution while an employee is away from home is reimbursable if four requirements are met:

1. The lodging is primarily for and essential to medical care;
2. Medical care is provided by a doctor in a licensed hospital or in a medical care facility related to, or the equivalent of, a licensed hospital;
3. The lodging is not lavish or extravagant under the circumstances; and
4. There is no significant element of personal pleasure, recreation or vacation in the travel away from home. The reimbursable amount cannot exceed $50 for each night for each person. Lodging is included for a person assisting the person receiving the medical care. For example, if a parent is traveling with a sick child, up to $100 per night is reimbursable as a medical expense for lodging. Meals and lodging away from home for medical treatment that is not received at a medical facility, or for the relief of a specific condition, are not reimbursable even if the trip is made on the advice of a doctor.

Long-term care insurance premiums – Long-term care insurance premiums are not reimbursable under a medical FSA. (LTC Insurance plans as defined under Section 7702B to be offered through Cafeteria Plans to the extent the amount of payment does not exceed long-term care premiums as defined by Section 213(d)(10).

Magnifying glasses - Corrective lenses and frames are covered.

Marijuana – Marijuana, even if prescribed for medicinal purposes, is not a reimbursable expense.

Marriage counseling – Expenses for marriage counseling services do not qualify as medical expenses. However, sexual inadequacy or incompatibility treatment is reimbursable if the treatment is provided by a psychiatrist.

Massage – Fees paid for massages are not reimbursable unless prescribed and substantiated by a physician to treat a physical defect or illness.

Mastectomy related special bras – Will qualify when incurred following a mastectomy for cancer.

Maternity clothes – Expenses for maternity clothes are not reimbursable.

Mattresses – Mattresses and mattress boards designed for use in the treatment of arthritis are reimbursable.

Meals – *See **Lodging and meals**.*

Medical aids – Expenses for medical aids are reimbursable. Medical aids such as false teeth, hearing aids, orthopedic shoes, crutches and elastic hosiery are reimbursable.

Medical alert devices – Personal emergency transmitters worn as a bracelet or necklace are not reimbursable.

Medical conferences – Expenses for admission and transportation to a medical conference are reimbursable if the medical conference concerns the chronic illness of yourself, your spouse or your dependent. The costs of the medical conference must be primarily for and necessary to the medical care of you, your spouse or

your dependent. You must spend the majority of your time at the conference attending sessions on medical information. The cost of meals and lodging while attending the conference is not reimbursable.

Medical information plan – Amounts paid to a plan that keeps medical information so that it can be retrieved from a computer data bank for medical care are reimbursable.

Medical nutritionals – Treats a specific condition and prescribed by a physician

Medical Savings Accounts (MSAs) – MSAs cannot be offered as part of a flex plan or FSA.

Medical services – Only legal medical services are reimbursable. Amounts paid for illegal operations or treatments, regardless of whether they are rendered by licensed or unlicensed practitioners are not reimbursable.

Medicare Part A – The tax paid for Medicare Part A is not reimbursable.

Medicare Part B – Premiums paid for Medicare Part B are not reimbursable.

Medicare Part D – A voluntary prescription drug insurance program for persons with Medicare A or B. You can include as a medical expense, premiums you pay for Medicare Part D.

Medicated & specialty soaps – to treat skin condition diagnosed by physician

Medicated bath products & specialty soaps – Medical expenses; Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011 or to treat a specific condition diagnosed by a physician. Basis Bar, Cetaphil Cleansing Bar to treat skin condition diagnosed by physician

Medicated chest rub – *See **Cold medicine**.*

Medicated nasal sprays, drops & inhalers – Afrin Spray (not included in eligible product list)

Medicated respiratory treatments and vapor products – Primatene, Bornkaid, medicated Vics Vapor Rub, includes asthma medications and delivery devices like inhalers and nebulizers; vaporizers and humidifiers not covered (dual)

Medicines – Amounts paid for domestic purchased **prescribed** medicines and drugs are reimbursable.

Menstrual care products - The CARES Act that was signed into law on March 27, 2020, allows consumers to purchase or receive reimbursement for OTC medications and menstrual care products through an HSA, FSA or HRA without regard to whether the medications are prescribed.

Mentally handicapped, retarded, special home for – The cost of keeping a mentally retarded person in a special home (not the home of a relative) on the recommendation of a psychiatrist to help the person adjust from life in a mental hospital to community living is reimbursable.

Minerals – Calcium Carbonate, Ferrous, Sulfate under narrow circumstances, they will be eligible if used to treat medical condition or at-risk for illness diagnosed by a physician.

Missed-appointment fees – These fees are not directly for medical care or supplies, and therefore should not be treated as reimbursable FSA expenses.

Motion sickness – Dramamine, Sea-band wristband, Bonine (not included in eligible product list)

Mouth guards – Dantek, Night Guard

Nasal care supplies – Includes decongestant inhalers, spray or drops, and nasal strips to improve congestion

Nasal moisturizers & washes – Neilmed Neti Pot & solutions, Ocean Saline Spray, Simply Saline

Nasal strips & snore relief – Breathe Right to treat sleep apena or improper breathing diagnosed by physician

Naturopathy – Non-traditional healing treatments to treat a medical condition. Naturopathy expenses are

not reimbursable unless used to treat medical condition or at-risk for illness diagnosed by physician.

Nicotine patches and gum – Even if prescribed, over-the-counter drugs to help stop smoking are not deductible under Section 213. They may be reimbursable, however. *Also see* ***Over-the-counter*** *and* ***Smoking cessation program.***

Non-prescription drugs and medicines – *See* ***Over-the-counter.***

Nursing home – The cost of medical care in a nursing home or home for the aged for an employee, or for an employee's spouse or dependent, is reimbursable. This includes the cost of meals and lodging in the home if the main reason for being there is to get medical care.

Nursing services – Wages and other amounts paid for nursing services are reimbursable. Services need not be performed by a nurse as long as the services are of a kind generally performed by a nurse. This includes services connected with caring for the patient's condition, such as giving medication or changing dressings, as well as bathing and grooming the patient. Only the amount spent for nursing services is reimbursable. If the attendant also provides personal and household services, these amounts must be divided between the time spent performing household and personal services and the time spent on nursing services.

- Meals – Amounts paid for an attendant's meals are also reimbursable. This cost may be calculated by dividing a household's total food expenses by the number of household members to find the cost of the attendant's food, then apportioning that cost in the same manner used for apportioning an attendant's wages between nursing services and all other services (see above).
- Upkeep – Additional amounts paid for household upkeep because of an attendant are also reimbursable. This includes extra rent or utilities paid because of having to move to a larger apartment to provide space for an attendant.
- Infant care – Nursing or babysitting services for a normal, healthy infant are not reimbursable.
- Social Security, unemployment (FUTA) and Medicare taxes paid for a nurse, attendant or other person who provides medical care are reimbursable.

Nutritional foods – Ensure, Boost; to treat medical condition diagnosed by physician and not for general health

Nutritional supplements – The cost of nutritional supplements, vitamins, herbal supplements, "natural medicines", etc. are not reimbursable, unless prescribed by a physician and are medically ordered to treat a specific medical condition. *See* ***Special foods.***

Obesity – Uncompensated amounts paid by individuals for participation in a weight-loss program as treatment for a specific disease or diseases diagnosed by a physician are eligible. The costs of purchasing diet food items are not eligible.

Operations – Medical expense amount you pay for legal operations that are not for unnecessary cosmetic surgery.

Optometrist – *See* ***Vision care.***

Oral remedies or treatments – Saliva substitutes, mouth sore treatments, dental repair, Salivart, Anbesol, Orajel, Bentemp. Only dry mouth remedies that are saliva substitutes are covered (gels, sprays, etc. not mouthwash, rinses, toothpaste (not included in eligible product list)

Orthodontia – May reimburse expenses or reimburse advance payments for orthodontia services without violating the no-deferred-compensation rule, so long as the covered individual has actually made the advance payments in order to receive the services. Services for orthodontic care are generally reimbursable, except care for cosmetic purposes. *See* ***Cosmetic surgery.***

Orthopedic shoes – *See* ***Medical aids.***

Organ donor – *See* ***Transplants.***

Osteopath – Osteopathic expenses are reimbursable.

Over-the-counter – Over-the-counter drugs (that is, drugs available without a prescription) are reimbursable when prescribed by a physician. However, to be reimbursed over-the-counter drugs must be legally procured; generally accepted as falling within the category of medicine and drugs; used to **diagnose, cure, mitigate, treat or prevent a disease or disorder** of a structure or function of the body; and not used for general good health. Reimbursable over-the-counter drugs include antacids, allergy medicines, pain relievers and cold medicines. Dietary supplements, such as vitamins, cosmetics and other products used **to maintain general good health** are not reimbursable. The CARES Act that was signed into law on March 27, 2020, states purchases made or reimbursements of expenses incurred after December 31, 2019 will not require a prescription from a physician.

Oxygen – Amounts paid for oxygen or oxygen equipment to relieve breathing problems caused by a medical condition are reimbursable.

Pain reliever – The cost of purchasing a pain reliever, with a prescription, is reimbursable when purchased to treat or alleviate personal injury or sickness. Tylenol, Advil, Midol, Bayer not included in eligible product list.

Patterning exercises – *See **Therapy**.*

Personal trainer – Only if prescribed by a physician for a medical condition.

Personal use items – Items that are ordinarily used for personal, living and family purposes are not reimbursable unless they are used primarily to prevent or alleviate a physical or mental defect or illness. For example, the cost of a wig purchased at the advice of a physician for the mental health of a patient who has lost all of his or her hair from disease is reimbursable.

If an item purchased in a special form primarily to alleviate a physical defect is one that in normal form is ordinarily used for personal, living and family purposes, the cost of the special form in excess of the cost of the normal form is reimbursable. *Also see **Braille books and magazines**.*

Phone equipment – Telephone equipment designed for a hearing-impaired person are reimbursable, as are the cost of repairs.

Physical exams – Physical exams are generally reimbursable, except for employment-related physicals. *See **Employment-related expenses**.*

Pinworm treatment – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011.

Pre-existing conditions – Medical expenses not covered because of the plan's pre-existing condition limitation are reimbursable.

Pregnancy test – The cost of an over-the-counter pregnancy test is reimbursable. A pregnancy test performed by a physician is reimbursable.

Prenatal vitamins – Stuart Prenatal, Nature's Bounty Prenatal Vitamins

Prescription drugs – *See **Medicines**.*

Private hospital room – The extra cost of a private hospital room is reimbursable.

PRK (photorefractive keratectomy) – *See **Radial keratotomy**.*

Probiotics and prebiotics – Culturelle, Florastor to treat digestive condition and recommended by physician & not general digestive health

Prosthesis – *See **Artificial limb**.*

Psychiatric care – Expenses for psychiatric care are reimbursable. These expenses include the cost of supporting a mentally ill dependent at a specially equipped medical center where the dependent receives medical care. *Also see **Psychoanalysis** and **Transportation**.*

Psychoanalysis – Expenses for psychoanalysis are reimbursable.

Psychologist – Expenses for psychological care are reimbursable.

Radial keratotomy – Radial keratotomy (RK) is a reimbursable expense. *Also see **LASIK**.*

Reading glasses and maintenance accessories – Reading glasses are a reimbursable expense. Chains, etc., are not covered.

Reasonable and customary charges amounts in excess of – Medical expenses in excess of a Medical Plan's reasonable and customary charges are reimbursable.

Resort – *See **Spa or resort**.*

Retin-A – Reimbursable when prescribed by a physician to treat a specific medical condition (such as acne), but not for cosmetic purposes (such as wrinkles).

Rogaine – Reimbursable when prescribed by a physician for a specific medical condition (such as hypertension), but not for cosmetic purposes (that is, to stimulate hair growth).

Rubbing alcohol – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011

Saline nose drops – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011

Schools, special – Expenses paid to a special school for a mentally impaired or physically disabled person are reimbursable if the main reason for using the school is its resources for treating the disability. This includes the cost of a school that:

- teaches Braille to a visually impaired child;
- teaches lip-reading to a hearing-impaired child; or
- provides remedial language training to correct a condition caused by a birth defect.

The cost of meals, lodging and ordinary education supplied by a special school is reimbursable only if the main reason for using the school is its resources for treating the mental or physical disability. The cost of sending a non-disabled "problem child" to a special school for benefits the child may get from the course of study and disciplinary methods is not reimbursable.

Scientology "audits" – Amounts paid to the Church of Scientology for "audits" do not qualify as expenses for medical care.

Service animals – Yes, if animal is primarily for medical care to alleviate a mental defect or illness and would not have been paid but for the defect or illness.

Sexual counseling – Expenses for counseling regarding sexual inadequacy or incompatibility are reimbursable if the counseling is provided to a husband and/or wife by a psychiatrist.

Shampoo, medicated – Maybe when used to treat specific medical condition; letter of medical necessity from physician needed

Sinus medications – Sinus medications, allergy and homeopathic nasal spray; medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011.

Skin care-therapeutic hand & body – Eucerin, Acquaphonr, Amlactin to treat or remedy a skin condition diagnosed by a physician

Skin treatments – Psoriasin, MG217, Demarest Eczema (not included in eligible product list). Medical expense as long as intended purpose is to treat skin conditions like eczema, psoriasis, rosacea, etc. (as opposed to mere prevention)

Sleep aids & sedatives – Unisom, Nytol, Sominex (not included in eligible product list)

Smoking deterrents – Nicoderm, Nicorette (not included in eligible product list)

Stomach remedies – Mylanta, Maalox, Tums (not included in eligible product list)

Smoking cessation program – The cost of a stop-smoking program is reimbursable. In June 1999 the IRS reversed its position on this issue based on scientific evidence proving the addictive nature of tobacco. Stop-smoking drugs prescribed by a physician are also reimbursable. The cost of nonprescription drugs such as nicotine patches or gum should be reimbursable when purchased to quit smoking.

Spa or resort – Although a visit to a spa or resort may be prescribed by a physician for medical treatment, only the costs of the medical services provided are reimbursable, not the cost of transportation. *See **Transportation** and **Trips**.*

Special education – Medical expense fees that you pay on a doctor's recommendation for a child's tutoring by a teacher who is specially trained and qualified to work with children who have learning disabilities caused by mental or physical impairments, including nervous system disorders. You can include as a medical expenses (tuition, meals and lodging) of attending a school that furnished special education to help a child to overcome a learning disability. A doctor must recommend that the child attend the school. Overcoming the learning disabilities must be a principle reason for attending the school and any ordinary education received must be incidental to the special education provided. Special education includes: teaching Braille to a visually impaired person, teaching lip reading to a hearing-impaired person or giving remedial language training to correct a condition caused by a birth defect. You cannot include in medical expenses the cost of sending a problem child to a school where the course of study and the disciplinary methods have a beneficial effect on the child's attitude if the availability of medical care in the school is not a principle reason for sending the student there.

Special foods – The cost of special foods and/or beverages-even if prescribed- that substitute for other foods or beverages that a person would normally consume and that satisfy nutritional requirements (such as the consumption of bananas for potassium, for example) are not deductible. However, prescribed special foods or beverages are reimbursable if they are consumed primarily to alleviate or treat an illness or disease, that are substantiated by a physician and they are not part of normal nutritional fees. Special foods purchased as part of a weight loss program are not reimbursable expenses because, according to the IRS, reduced-calorie foods are substitutes for the food individuals would normally eat. Special foods and beverages are reimbursable only to the extent that their cost is greater than the cost of the commonly available version of the same product. In December 2001 letter ruling, the IRS set four standards for determining whether cayenne pepper qualifies under Code Section 213. There may be circumstances, however, when special foods do get favorable tax treatment. The IRS allows the cost of special food to be treated for tax purposes as medical care.

To qualify, the special food must:

- alleviate or treat an illness;
- not be part of the normal nutritional needs of the individual; and
- be substantiated by a physician that is needed as part of treatment.

Spouse medical expenses – These may be reimbursable if the spouse does not file a separate tax return.

Sterilization – The cost of a legal sterilization (a legally performed operation to make a person unable to have children) is reimbursable.

Stomach care – Includes acid reducers and antacid gum, liquid and tablets; Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011.

Sublimated sulfur powder – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011.

Substance abuse – *See **Alcoholism and drug abuse**.*

Stop-Smoking programs – Medical expenses amounts you pay for a program to stop smoking; however, you cannot include in medical expenses amounts you pay for drugs that do not require a prescription, such as nicotine gum or patches, that are designed to help stop smoking.

Sunburn relief, sun protection and sunscreens – Sunscreen and sunburn relief are over-the-counter products that prevent disease (such as skin cancer) or alleviate injuries (such as sunburns) and therefore should be reimbursable FSA expenses; Coppertone, Banana Boat SPF 15+ and UVA/UVB protection; protection against skin cancer and premature skin aging

Sunglasses – Prescription sunglasses are reimbursable. Non-prescription sunglasses may be reimbursable if they meet the Section 213 definition of medical care, for example, if an optometrist recommends them for a patient with contact lenses that correct a retinal condition causing sensitivity to light.

Sun protection (SPF 15 & above and "Broad Spectrum") – Primary use must be for protection against skin cancer and premature skin aging with indication of UVA and UVB protection (Broad Spectrum) and 15 and above (15+).

Substance abuse – *See **Alcoholism and drug abuse**.*

Supplemental insurance policies – A health FSA cannot reimburse participants for premiums paid for supplemental insurance policies, such as policies covering cancer or other specific diseases, hospital confinement and intensive care; however, premiums for these policies can be paid by premium conversion under a cafeteria plan.

Swimming lessons – *See **Dancing lessons, swimming lessons, etc**.*

Taxes – Sales and service taxes imposed on qualified medical care or products are reimbursable.

Teeth guards – These devices, prescribed to treat the grinding of teeth while sleeping, are reimbursable. Guards designed for sports are not reimbursable.

Teeth whitening – These expenses are cosmetic and are not reimbursable.

Telephone – The costs of purchasing and repairing special telephone equipment that lets a hearing-impaired person communicate over a regular telephone are reimbursable.

Television – The cost of equipment that displays the audio part of TV programs as subtitles for a hearing-impaired person is reimbursable. This may include an adapter that attaches to a regular TV or the cost of a specially equipped TV in excess of the cost of the same model regular TV set.

TENS – Homedics Rapid+Relief, Icy Hot Smart Relief, Zewa Spa Buddy

Tests – Diagnostic or screening tests, such as those that detect or evaluate the risk of heart disease, stroke, diabetes, osteoporosis, cancer, etc. – qualify as medical care under Section 213 if there is a direct relationship between the test and a medical diagnosis.

Therapeutic shampoo & scalp treatments (medicated) – Nizoral, Neutrogena T-Gel to treat skin/scalp condition for short duration diagnosed by physician

Therapy – Amounts paid for therapy received as medical treatment are reimbursable. Payments made to an individual for special exercises administered to a mentally retarded child are also reimbursable. These

so-called "patterning" exercises consist mainly of coordinated physical manipulation of the child's arms and legs to imitate crawling and other normal movements. *Also see **Fitness programs**.*

Toiletries – Toiletries are not reimbursable in a Health FSA.

Transplants – Payments for surgical, hospital, laboratory and transportation expenses for a donor or a possible donor of a kidney or other organ are reimbursable.

Transportation – Amounts paid for transportation primarily for, and essential to, medical care are reimbursable (except as provided below), these include:

- bus, taxi, train or plane fare, or ambulance service;
- actual car expenses, such as gas and oil (but not expenses for general repair, maintenance, depreciation and insurance);
- parking fees and tolls;
- transportation expenses of a parent who must accompany a child who needs medical care;
- transportation expenses of a nurse or other person who can give injections, medications or other treatment required by a patient who is traveling to get medical care and is unable to travel alone;
- transportation expenses for regular visits to see a mentally ill dependent if these visits are recommended as a part of treatment; and
- transportation and registration fees (but not meals or lodging expenses) incurred to attend a medical conference on a chronic disease of the employee or a dependent.

Instead of actual expenses, it is acceptable to use a flat rate of $0.23 per mile for each mile a car is used for medical purposes in 2012. The cost of tolls and parking may be added to this amount.
Reimbursable expenses do not include:

- transportation expenses to and from work, even if a medical condition requires an unusual means of transportation; or
- transportation expenses incurred if, for non-medical reasons, an employee chooses to travel to another city, such as a resort, for an operation or other medical care prescribed by a doctor.

Trips – Amounts paid for transportation to another city if the trip is primarily for and essential to receiving medical services are reimbursable *(also see **Lodging and meals**)*. A trip or vacation taken for a change in environment, improvement of morale or general improvement of health, is not reimbursable, even if it is taken at the advice of a doctor. *See **Spa or resort**.* The cost of commuting to a job not explicitly prescribed as therapy for a medical condition also is not reimbursable.

Tuition – Charges for medical care included in the tuition of a college or private school are reimbursable if the charges are separately stated in the tuition bill. *Also see **Learning disability** and **Schools, special**.*

Tutors' fees – *See **Learning disability**.*

Umbilical cord blood banking – Yes, if there is an existing or imminently probable disease, physical or mental defect or illness (for example, stem cells).

Unmedicated nasal sprays, drops & inhalers – Ocean Nasal Spray (not included in eligible product list)

Unmedicated vapor products – Sudacare, un-medicated Vicks Vapor Rub (not included in eligible product list). Includes asthma medications and delivery devices like inhalers and nebulizers, vaporizers and humidifiers.

Unscheduled office visits – Physicians' offices may charge a fee for coming without an appointment. Fees charged for an unscheduled visit can be considered a qualified medical expense that can be reimbursed through FSA funds, if the participant received qualified services as defined by Section 213(d) during that visit.

Upset stomach medications – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011.

Vacation – *See **Trips***.

Vaccinations – Flu Shots, Pneumonia Vaccinations

Vaccines – Expenses for vaccines are reimbursable.

Vapor patch cough suppressant – Medical expenses paid per Patient Protection and Affordable Care Act (PPACA) 1.1.2011.

Vaporizers & humidifiers and Accessories – Vicks, Sunbeam, Kaz if used to treat illness, not covered for normal household use

Vasectomy – Expenses for vasectomies are reimbursable.

Viagra – If prescribed to treat impotence as a specific medical condition, the cost of Viagra is reimbursable.

Vision care – Optometric services and medical expenses for eyeglasses and contact lenses needed for medical reasons are reimbursable. Eye exams and expenses for contact lens solutions are also reimbursable. However, premiums for contact lens replacement insurance are not reimbursable. *Also see **Radial keratotomy***.

Vitamins – Only expenses for vitamins prescribed by a physician that are prescription strength to treat a specific medical condition are reimbursable. Dietary supplements, such as vitamins, cosmetics and other products used to maintain general good health are not reimbursable.

Wage continuation policies – Premiums paid under wage continuation policies are not reimbursable because they could provide benefits that would be received in a subsequent plan year, resulting in prohibited deferred compensation.

Wart removal medication – Wart removal medication is reimbursable.

Wart removers – Cryo Products – Compound W Freeze Off, Dr. Scholl's Freeze Away, Wartner

Weight control supplements – To treat obesity diagnosed by a physician.

Weight loss program – The cost of a weight loss program for general health is not reimbursable even if a doctor prescribes the program. However, the cost of a weight loss program may be reimbursable in two (2) instances. First, if attendance at a weight loss program is prescribed by a physician to treat a specific illness (e.g., heart disease), the expense is reimbursable. The physician should substantiate the necessity of this treatment. Second, obesity is now medically recognized by the IRS as a disease in its own right, and weight loss programs to treat obesity are reimbursable expenses. Apparently, weight loss programs to treat obesity do not have to be prescribed by a physician, but obesity must be diagnosed. *Also see **Special foods***. A medical expense for weight loss can be reimbursed if the treatment is for a specific disease diagnosed by a physician. Exercise equipment and exercise programs are covered if prescribed by a physician. Alli, Slim Fast to treat obesity diagnosed by a physician

Well baby care – *See **Nursing services***.

Wigs – If prescribed for the mental health of a patient who has lost all of his/her hair from disease or treatment.

Wheelchair – Amounts paid for an autoette or a wheelchair used mainly for the relief of sickness or disability, and not just to provide transportation to and from work, are reimbursable. The cost of operating and maintaining the autoette or wheelchair is also reimbursable.

Whole Life insurance premiums – Whole Life insurance premiums are not reimbursable in a Health FSA; not allowed in premium conversion because they could provide benefits that would be received in a subsequent plan year, resulting in prohibited deferred compensation.

Wigs – *See **Personal use items**.*

X-ray fees – Amounts paid for X-rays taken for medical reasons are reimbursable.

Definitions

Dependent

A Participant's Spouse or an individual who is a dependent within the meaning of Section 152(a) of the Internal Revenue Code of a Participant or a former Participant in the Plan.

1. a child (including adopted children and eligible foster children) or a descendant of a child up to the attained age of twenty-seven (27);
2. a brother, sister, stepbrother, or stepsister;
3. the father or mother, or an ancestor of either;
4. a stepfather or stepmother;
5. a son or daughter of a brother or sister of the plan participant;
6. a brother or sister of the father or mother of the plan participant;
7. a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law; or
8. an individual, who is not the plan participant's spouse, who lives with the plan participant and is a member of the plan participant's household.

A relative described above is a qualifying relative only if he or she receives more than one-half of his or her support from the plan participant. Special rules apply in cases of multiple support agreements, in which no one person contributes over one-half of the individual's support. The individual also must have gross income less that the exemption amount (see current IRS Form 1040), not including certain income earned by disabled individuals.

A Dependent for whom expenses can be reimbursed from the Dependent Care Account must meet the following criteria:

1. Can be claimed as a dependent for Federal income tax purposes; and
2. Is under the age of thirteen (13); or
3. If over the age of thirteen (13), requires full time care because of physical or mental incapacity; or
4. Is the spouse of the employee and is physically or mentally incapable of caring for himself or herself.

If the covered participant is divorced, the covered participant can generally have your child's dependent care expenses reimbursed if you are the custodial parent, i.e., if you have custody of the child for a longer period of time during the Plan Year than the other parent. However, the following exceptions would override the custodial parent rule and permit you, as a non-custodial parent, to have your child's dependent care expenses eligible for the reimbursement account:

1. The custodial parent formally releases claim to the Federal income tax dependent exemption for the tax year;
2. You provide over half of the support of the child under a multiple support agreement; or

3. You are entitled to the dependent exemption for Federal income tax as a result of an agreement executed prior to 1985.

Payments made directly to a child or any other person that you can claim as a dependent cannot be reimbursed by this Plan.

Employee

An individual employed by the Plan Sponsor who regularly works at least twenty (20) hours per week, and at least five (5) months per year, except for:

1. Employees covered by a collective bargaining agreement;
2. Employees who are non-resident aliens who receive no earned income from the Employer which constitutes income from sources within the United States;
3. Employees who are self-employed individuals as defined in Section 401(c) of the Internal Revenue Code (including sole proprietors and partners in a partnership); and
4. Employees who own (or are considered to own within the meaning of Section 318 of the Internal Revenue Code) more than two (2) percent of the outstanding stock of an S corporation or stock possessing more than two (2) percent of the total combined voting power of all stock of such corporation.

Participant

Any Employee who has met the eligibility requirements of the Plan and has elected to participate in the Plan by providing the Plan Sponsor with an executed Benefits Enrollment Form.

Plan Year

The twelve (12) consecutive month period beginning the first (1st) day of the plan year.

Salary Reduction Agreement

The agreement by an Employee authorizing the Plan Sponsor to reduce the Employee's compensation while a Participant during the Plan Year for purposes of making contributions toward benefits under the Plan.

Spouse

An individual who is legally married to a Participant but shall not include an individual separated from a Participant under a decree of legal separation.

Qualifying Event

An event as prescribed by IRS Rule 1.125-4.

1. With regards to the election to participate in the Plan and election for benefits other than Accident, Health and Group Term Life, Qualifying Event shall include a change in status such as the marriage or divorce of the Participant; the adoption, placement for adoption, birth or death of a child or other Dependent of the Participant or the Participant's Spouse; the emancipation or coming of age of a child of the Participant so that the child is no longer eligible as a Dependent under change in status in the opinion of the Plan Sponsor.
2. With regards to elections for accident, Health or Group Term Life benefits, Qualifying Event shall

include events that change an eligible Employee's legal marital status, number of dependents, the eligible Employee's, Spouse's or dependent's employment status, work schedule, residence or work site, an event that causes an eligible Employee's Dependent to satisfy or cease to satisfy the requirements for coverage, and such other events as provided in code or regulation.

Capital Expenses

Medical expenses incurred by employees for special equipment installed in the home or for improvements are reimbursable under an FSA account (subject to the discussion below) if their main purpose is medical care. Under Internal Revenue Code Section 213, the cost of permanent improvements that increase the value of the property may be partly deducted as a medical expense. The cost of the improvement is reduced by the increase in the value of the property; the difference is a deductible medical expense. If the value of the property is not increased by the improvement, the entire cost is deductible as a medical expense.

Improvements made to accommodate a residence to a person's disability do not usually increase the value of the residence, and the full cost is usually reimbursable. These improvements include, but are not limited to:

- constructing entrance or exit ramps;
- widening doorways at entrances or exits;
- widening or otherwise modifying hallways and interior doorways;
- installing railing, support bars or other modifications to bathrooms;
- lowering or making other modifications to kitchen cabinets and equipment;
- moving or otherwise modifying electrical outlets and fixtures;
- installing porch lifts and other forms of lifts (but generally not elevators);
- modifying fire alarms, smoke detectors and other warning systems;
- modifying stairways;
- adding handrails or grab bars;
- modifying hardware on doors;
- modifying areas in front entrance and exit doorways; and
- re-grading the ground to provide access to the residence.

Only reasonable costs to accommodate a personal residence to a disabled condition are considered medical care. Additional costs for personal motives, such as for architectural or aesthetic reasons, are not reimbursable.

Operation and Maintenance

If a capital expense qualifies as a reimbursable medical expense, then expenses related to operation and maintenance also qualify as medical expenses, as long as the medical reason for the capital expense still exists. This is so even if none or part of the original capital expense qualified as a medical care expense.

Improvements to Property Rented by a Person with Disabilities

Amounts paid by a person with disabilities to buy and install special plumbing fixtures, mainly for medical reasons, in a rented house are reimbursable medical expenses. For example, Don has arthritis and a heart condition. He cannot climb stairs or get into a bathtub. On his doctor's advice, he installs a bathroom with a shower stall on the first floor of his two-story rented house. Don's landlord did not pay any of the cost of buying and installing the special plumbing and did not lower the rent. Don can deduct the entire amount he paid.

It is important that you budget carefully when taking advantage of the Medical Expense Reimbursement Account. The same tax law that permits this benefit also specifies that any money that is left in your account

at the end of the plan year must be forfeited. Your account balance cannot be transferred to your Child Care Reimbursement Account or carried forward to the next year.

All employee and dependent coverage will terminate on the **earliest** of the end of the month your employment terminates or the end of the month in which you cease to be an active, full-time Employee.

If your employment terminates or you lose coverage before the end of the plan year, you have ninety (90) days from the end of the plan year to claim medical expenses incurred prior to your date of termination. *If your coverage is still effective on the last day of the plan year, you have ninety (90) days from the end of the plan year to claim medical expenses incurred during the plan year.*

Even if you should over budget and have some money remaining unused in your account, you may still benefit due to the amount of your tax savings.

Money from your Unreimbursed Healthcare Spending Account will pay your medical expenses with before tax dollars. Any expenses paid from this account may not be claimed again as a deduction on your income tax return.

Capital Expenses Worksheet

The following worksheet may be used to figure the amount of a reimbursable capital expense.

1.	Enter the cost improvements.	$_____
2.	Enter the value of the home immediately after improvements	$_____
3.	Enter the value of your home immediately before the improvements	$_____
4.	Subtract line 3 from line 2. This is the increase in the value of your home due to improvements (If line 4 is more than or equal to line 1, you have no medical expenses due to the home improvements; stop here) (If line 4 is less than line 1, go to line 5)	$_____
5.	Subtract line 4 from line 1. These are your medical expenses due to home improvements.	$_____

Attachment 2
FSA Schedule of Fees for Plan Administrator Services

Item	Cost	Payable
Setup Fee	$50 /Group	One time(1)
Monthly Service Fee(2)	$3.70 /Participant Debit $3.70 /Participant Paper	Monthly
Special Reports(3)	As agreed upon	30 days following receipt of report

(1) One time set up fee for each group that enrolls in the Flexible Spending Arrangement.

(2) Monthly Service Fee includes:

a) processing contribution;

b) processing claims (review and verification);

c) paying claims (direct mail to employee);

d) paying dependent premium (if applicable);

e) employee fund balance statement with each reimbursement; and

f) statement of fund balances and projected year-end balance at close of Plan Year fourth quarter.

(3) Normal Reports to the Plan Sponsor, at no additional cost are:

a) initial enrollment verification;

b) quarterly fund balance; and

c) projected year-end fund balance at the close of the Plan Year fourth quarter.

Attachment 4
Flexible Spending Arrangement – Carry-Over Service Addendum

The City of Rockport has authorized the Flexible Spending Arrangement ("FSA") – Carry Over Addendum. The operation of the FSA – Carry-Over Addendum will continue on the same terms and conditions as the HRA with the following employer decisions regarding the FSA account.

FSA participants may carryover a designated balance ("designated carryover") to the next Plan Year of $ 500.00 leftover in the unreimbursed health FSAs only

(Unreimbursed Healthcare Carryover not in excess of $500)

at year's end on qualified health expenses, pursuant to IRS Notice 2013-71. Expenses for health FSA qualified benefits incurred during the current plan year may be paid or reimbursed from benefits or contributions remaining unused at the end of the immediately preceding plan year, not to exceed the designated carryover. Upon exhaustion of that benefit, monies can be accessed from current year contributions. The plan cannot permit cash-out or conversion of unused benefits or contributions, to any other taxable or nontaxable benefit. If the employee at any time becomes covered under a Qualified High Deductible Health Plan ("HDHP"), as prescribed by Section 223 of the Internal Revenue Code) with an accompanying health savings account ("HSA") then the FSA will automatically convert from a general purpose FSA to a post-deductible FSA for any amounts incurred when the HDHP is in effect.

This means that expenses for non-preventive medical costs will not be paid until the deductible for the HDHP has been met, and then only to the extent that those costs exceed the deductible.

1. Responsibility of the $ 3.70 administration fee is as follows (choose **one**):
   - ☐ Employee is responsible for the entire administration fee.
   - ☒ Employer will be responsible for the entire administration fee.

2. Employer contribution is as follows (choose **one**):
   - ☒ Employer will not make contribution to the FSA.
   - ☐ Employer will make monthly contribution to the FSA in the amount of $_____.

Monthly contributions to the FSA shall be made in an amount authorized, paid and deposited by Employer.

ADOPTED:

By _____
(Signature)

Name _____

Title _____

Address _____

Attachment 5
Flexible Spending Arrangement Forms

Section 125
Medical Necessity Availability Form

TML Health Benefits Pool

Under the IRS rules, some healthcare services and products are only eligible for reimbursement through a Flexible Spending Arrangement (FSA), Health Reimbursement Arrangement (HRA) or Health Savings Account (HSA) when a physician or healthcare provider certifies they are medically necessary. Please have your provider complete the attached form.

Date	Employee Name
Social Security #	Subscribers Policy Holder's Name
Provider Address	Provider Phone Number
	Diagnosis
Start Date of Treatment	End Date of Treatment
Recommended Medical Treatment	
Explanation: How the Medical Treatment Alleviates the Diagnosis	

Provider Signature _____ Date _____

Section 125
Employee Enrollment Form

TML Health Benefits Pool

Employer Name			Employer Group #	
Employee Name			Social Security #	
Employee Preferred Contact Phone #			Employee E-mail	
Street Address	City	State	Zip Code	☐ Check here if new
Mailing Address	City	State	Zip Code	☐ Check here if new

Date of Birth	Check One ☐ Male ☐ Female	Check One ☐ Single ☐ Widowed ☐ Married ☐ Divorced	Date Employed

Spouse Name (First, M.I.)	Date of Birth
Dependent Name (First, M.I.)	Date of Birth
Dependent Name (First, M.I.)	Date of Birth
Dependent Name (First, M.I.)	Date of Birth
Dependent Name (First, M.I.)	Date of Birth

I request that my salary be reduced as follows:

	Annually	Monthly
Contribution for Medical Coverage	$	$
Contribution for Dental Coverage	$	$
Other Contributions (SPECIFY) _____	$	$
Unreimbursed Healthcare Expenses	$	$
Dependent Care Expense (DCA)	$	$
Total Authorized Reductions	$	$

AUTHORIZATION: I certify the above information to be correct and true to the best of my knowledge and that any children listed are dependents under Section 152 of the Internal Revenue Code. I understand that any amounts remaining in my account(s) not used for expenses incurred during the plan year will be forfeited in accordance with current plan provisions and tax laws. I also understand that the Flexible Spending reduction(s) will be in effect for the plan year and cannot be revoked unless I experience a change in my family status, significant change in cost or coverage of my health plan or my spouse's health plan or separation from service as prescribed by IRS rules. If a change in family status occurs, you have thirty-one (31) days from the occurrence to change or revoke your election. Furthermore, I hereby authorize my employer to transfer my required health benefits contribution on a monthly basis to the TML Health Benefits Pool. I agree to only submit claims which qualify as medical expenses under Section 213, Internal Revenue Code or dependent care expenses under Section 129, Internal Revenue Code.

I ACCEPT: ☐ Pre-tax Premium Only ☐ Unreimbursed Healthcare ☐ DCA ☐ Unreimbursed Capital Health Expense

Employee Signature _____ Date _____

☐ **WAIVER OF PARTICIPATION:** The benefits of the plan have been thoroughly explained to me and I decline to participate.

Employee Signature _____ Date _____

Please return this form to your employer.

Section 125
Employee Change Form

TML Health Benefits Pool

Employer Name			Employer Group #	
Employee Name			Social Security #	
Employee Preferred Contact Phone #			Employee E-mail	
Street Address	City	State	Zip Code	☐ Check here if new
Mailing Address	City	State	Zip Code	☐ Check here if new
Effective Date of Change		Reason for Change		

ADD OR REMOVE FAMILY MEMBERS (COMPLETE BELOW)

☐ Add ☐ Change	Name (First, M.I.)	Relation	Date of Birth
☐ Add ☐ Change	Name (First, M.I.)	Relation	Date of Birth

CHANGE IN COVERAGE TYPE (COMPLETE BELOW)

Coverage	Change	From		To	
		Pledge Amount	Monthly Amount	Pledge Amount	Monthly Amount
Medical Contribution	☐ Add ☐ Remove ☐ Increase ☐ Decrease				
Dental Contribution	☐ Add ☐ Remove ☐ Increase ☐ Decrease				
Unreimbursed Health Care Expense	☐ Add ☐ Remove ☐ Increase ☐ Decrease				
Dependent Care Expense (DCA)	☐ Add ☐ Remove ☐ Increase ☐ Decrease				
Other Contribution (Please specify)	☐ Add ☐ Remove ☐ Increase ☐ Decrease				

AUTHORIZATION: I certify the above information to be correct and true to the best of my knowledge and that any children listed are dependents under Section 152 of the Internal Revenue Code. I understand that any amounts remaining in my account(s) not used for expenses incurred during the plan year will be forfeited in accordance with current plan provisions and tax laws. I also understand that the Flexible Spending reduction(s) will be in effect for the plan year and cannot be revoked unless I experience a change in my family status, significant change in cost or coverage of my health plan or my spouse's health plan or separation from service as prescribed by IRS rules. If a change in family status occurs, you have thirty-one (31) days from the occurrence to change or revoke your election. Furthermore, I hereby authorize my employer to transfer my required health benefits contribution on a monthly basis to the TML Health Benefits Pool. I agree to only submit claims which qualify as medical expenses under Section 213, Internal Revenue Code or dependent care expenses under Section 129, Internal Revenue Code.

Employee Signature _____ Date _____

Please return this form to your employer.

Section 125
Unreimbursed Reimbursement Form

TML Health Benefits Pool

Employer Name			Employer Group #	
Employee Name			Social Security #	
Street Address	City	State	Zip Code	☐ Check here if new
Mailing Address	City	State	Zip Code	☐ Check here if new

Description of Eligible Expense	Incurred Date	Total Amount of Bill	Amount paid by any Plan	Amount to be Reimbursed	Expense for: (*Name*)
		$	$	$	
		$	$	$	
		$	$	$	
		$	$	$	
		$	$	$	
	TOTAL	$	$	$	

AUTHORIZATION: I certify the above information to be correct and true to the best of my knowledge and that any children listed are dependents under Section 152 of the Internal Revenue Code. I understand that any amounts remaining in my account(s) not used for expenses incurred during the plan year will be forfeited in accordance with current plan provisions and tax laws. I also understand that the Flexible Spending reduction(s) will be in effect for the plan year and cannot be revoked unless I experience a change in my family status, significant change in cost or coverage of my health plan or my spouse's health plan or separation from service as prescribed by IRS rules. If a change in family status occurs, you have thirty-one (31) days from the occurrence to change or revoke your election. Furthermore, I hereby authorize my employer to transfer my required health benefits contribution on a monthly basis to the TML Health Benefits Pool. I agree to only submit claims which qualify as expenses under Section 213, Internal Revenue Code.

Employee Signature _____ Date _____

Please return this form to TML Health Benefits Pool.

PO Box 140167 | Austin, Texas 78714-0167 | Fax: (512) 719-6505

Section 125
Dependent Care Reimbursement Form

TML Health Benefits Pool

Employer Name			Employer Group #	
Employee Name			Social Security #	
Street Address	City	State	Zip Code	☐ Check here if new
Mailing Address	City	State	Zip Code	☐ Check here if new

Name of Individual or Organization providing Dependent Care Services	Tax ID or SS#	Date Incurred	Amount to be Reimbursed	Expense for Care of: (*Name*)
_____ Name	_____	_____	$ _____	_____
_____ Name	_____	_____	$ _____	_____
_____ Name	_____	_____	$ _____	_____
		TOTAL	$ _____	

_____ Employee Signature

_____ Date

AUTHORIZATION: I certify the above information to be correct and true to the best of my knowledge and that any children listed are dependents under Section 152 of the Internal Revenue Code. I understand that any amounts remaining in my account(s) not used for expenses incurred during the plan year will be forfeited in accordance with current plan provisions and tax laws. I also understand that the Flexible Spending reduction(s) will be in effect for the plan year and cannot be revoked unless I experience a change in my family status, significant change in cost or coverage of my health plan or my spouse's health plan or separation from service as prescribed by IRS rules. If a change in family status occurs, you have thirty-one (31) days from the occurrence to change or revoke your election. Furthermore, I hereby authorize my employer to transfer my required health benefits contribution on a monthly basis to the TML Health Benefits Pool. I certify that the expenses listed above qualify as expenses under Section 129, Internal Revenue Code.

STATEMENT OF CERTIFICATION: I certify that I have provided care for_____'s child (children or dependent) from_____to_____. My charge for this service was_____.

Name and Address of Provider

Provider's Signature

Tax ID or SS#

Please return this form to TML Health Benefits Pool.

PO Box 140167 | Austin, Texas 78714-0167 | Fax: (512) 719-6505

Section 125
Recurring Expense Service Form

TML Health Benefits Pool

INSTRUCTIONS: This form is used to request your Dependent Care Account or Transportation Account contributions be reimbursed to you on a per pay period basis. By completing this form you will not need to provide continuing documentation. Please complete all fields and include appropriate documentation stating your dependent will be attending throughout the year or specific time frames. **All information must be completed by you & your Dependent Care provider to receive reimbursement. CLAIMS WILL NOT BE PROCESSED WITHOUT YOUR SIGNATURE AND THE PROVIDER'S SIGNATURE.**

A. DECLARATION OF SERVICES

I request reimbursement for the below listed timeframe for qualified

☐ Dependent Care Services **or** ☐ Transportation Expenses

I certify that the services will be provided between the following dates:

_____ to _____

Start Date of Services (MM/DD/YY) | End Date of Services (MM/DD/YY)

I have included signed copies of the independent provider's charges, which will include the total amount of

$ _____ for the dates provided above.

Total Amount of Services

***NOTE:** If you have any changes during the dates referenced above, please notify TML Health Benefits Pool at (800) 282-5385 or fax (512) 719-6505.*

B. PARTICIPANT INFORMATION

Name of Participant		Social Security #	
Address: Street	City	State	Zip
Preferred Contact Phone #		E-Mail	
Name of Dependent			

C. CARE PROVIDER INFORMATION

Name of Dependent Care/Transportation Expense Provider			
Address: Street	City	State	Zip
Federal Tax ID			

D. SIGNATURES

_____ _____

Authorized Signature of Provider | Date

_____ _____

Participant Signature | Date

PLEASE NOTE: Your total reimbursement amount will be calculated per the amount you have elected for the year based on the amount of payrolls that occur throughout the plan year. For questions regarding your maximum contribution amount, please contact TML Health Benefits Pool at (800) 282-5385 or fax (512) 719-6505.

Section 125
Account Claim Form

TML Health Benefits Pool

INSTRUCTIONS: Please complete this form for the submission of any EOBs, prescription orders or receipts. Number your EOBs and receipts to correspond with the "Item #" column in sections B, C and/or D. Fax form to (512) 719-6505 or mail form to TML Health Benefits Pool. This form must be submitted with each EOB or receipt; claims will not be processed unless proper documentation is supplied. **Please Note:** Section B applies only to plans in which Flexible Spending Funds are available after meeting a Flexible Spending deductible. For more information about your plan, consult your enrollment materials, your HR Department or TML Health Benefits Pool.

A. ACCOUNT HOLDER INFORMATION*

NAME Last	First	Middle Initial

MAILING ADDRESS Street	City	State	Zip

Social Security #	Employer
Preferred Contact Phone #	**E-mail**

B. EOBS FOR PROOF OF DEDUCTIBLE *(necessary only for plans in which Flexible Spending Funds are available after meeting a Flexible Spending Deductible)*

Item #	Date	Provider
E1	/ /	
E2	/ /	
E3	/ /	
E4	/ /	
E5	/ /	

C. RECEIPTS FOR REIMBURSEMENT

Please complete this section for any requests for manual reimbursements from your Flexible Spending funds. You must provide a corresponding receipt in order to be reimbursed. *NOTE: You may have to meet your Flexible Spending Deductible (see Section B above) before you are eligible for reimbursement. Consult your HR Department or TML Health Benefits Pool for your plan info.*

Item #	Date	Provider	Amount
R1	/ /		
R2	/ /		
R3	/ /		
R4	/ /		
R5	/ /		
		TOTAL	

D. RECEIPTS FOR PHARMACY PURCHASES

Please complete this section to accompany pharmacy receipts. You must provide receipts for all pharmacy purchases.

Item #	Date	Provider
P1	/ /	
P2	/ /	
P3	/ /	
P4	/ /	
P5	/ /	

E. AGREEMENT AND SIGNATURE*

I certify that these eligible expenses have been incurred by me or my eligible dependent and are not for cosmetic purposes but for the treatment of an illness, injury, trauma, or medical condition. I understand that expenses incurred means the service has been provided that gave rise to the expense, regardless of when I am billed or charged for or pay for the service. The expenses have not been reimbursed and I will not seek reimbursement elsewhere. I understand that any amounts reimbursed may not be claimed on me or my spouse's income tax returns. I understand that I am not eligible for reimbursement before I have reached the Flexible Spending deductible set by my employer. I have received and read the printed material regarding the reimbursement accounts and under all of the provisions.

	Employee Signature	Date

MAIL TO:	FAX TO:	
TML Health Benefits Pool PO Box 140167 Austin, Texas 78714-0167	TML Health Benefits Pool (512) 719-6505	**Please keep copies of all receipts, prescription orders and EOBs for your own records.** For questions and concerns, please call TML Health Benefits Pool at (800) 282-5385. *** These sections are required. Use only Sections B, C and D as needed.**

CITY COUNCIL AGENDA
Regular Meeting: Tuesday, June 8, 2021

AGENDA ITEM: 7

Deliberate and act to confirm Mayoral appointments to various City of Rockport boards, committees, and commissions.

SUBMITTED BY: Mayor Patrick Rios

APPROVED FOR AGENDA: PKC

BACKGROUND: Each year after the May election, the City confirms Mayoral appointments to various City of Rockport boards, committees, and commissions. Appointments for all boards and committees include the following: **NOTE:** **Red** type depicts re-appointments. Blue type represents appointments.

PARKS AND LEISURE SERVICES ADVISORY BOARD

PLACE NO.	MEMBER'S NAME	EXPIRATION DATE	WARD	COMMENTS
1	David Rodriguez	June 1, 2024	2	**Will stay on if meetings are held quarterly**
2	Tracey Bennett	June 1, 2024	4	Requesting re-apppointment.
3	Leo Villa	June 1, 2023	2	
4	Ray A. Garza	June 1, 2024	4	**Will stay on if meetings are held quarterly**
5	Jenny Vander Pluym	June 1, 2023	3	Requesting re-appointment
6	Karen Rester	June 1, 2022	3	
7	*VACANT*	June 1, 2022		

Council Liaison: Mayor Pro-Tem J.D. Villa

PLANNING & ZONING COMMMISSION

PLACE NO.	MEMBER'S NAME	EXPIRATION DATE	WARD	COMMENTS
1	Ric Young	June 1, 2022	4	
2	Warren Hassinger	June 1, 2024	3	Requesting re-apppointment.
3	Kim Hesley	June 1, 2024	3	Requesting re-apppointment.
4	G. Maynard Green	June 1, 2023	1	
5	Ruth Davis	June 1, 2022	1	
6	James H. Rester III	June 1, 2023	3	
7	W. Kent Howard	June 1, 2024	3	Requesting re-apppointment.

Council Liaison: Mayor Pro-Tem J.D. Villa, as required

TREE AND LANDSCAPE COMMITTEE

PLACE NO.	MEMBER'S NAME	EXPIRATION DATE	WARD	COMMENTS
1	Shelly Steckler	June 1, 2023	4	
2	*VACANT*	June 1, 2023		
3	*VACANT*	June 1, 2024		
4	*VACANT*	June 1, 2022		
5	Ginger Easton Smith	June 1, 2023	3	
6	Linda Frank	June 1, 2022	3	
7	*VACANT*	June 1, 2022		

Council Liaison: Council Member Brad Brundrett
Alternate: Council Member Andrea Hattman

ZONING BOARD OF ADJUSTMENT and BUILDING & STANDARDS COMMISSION

PLACE NO.	MEMBER'S NAME	EXPIRATION DATE	WARD	COMMENTS
1	Warren Hassinger	June 1, 2023	3	Requesting re-apppointment.
2	Ric Young	June 1, 2023	4	
3	Carey Dietrich	June 1, 2022	3	
4	Leo Villa	June 1, 2022	2	
5	Jeanetta Davis	June 1, 2022	1	
6	Richard W. Smith	June 1, 2022	2	Alternate
7	James H. Rester III	June 1, 2023	3	Alternate

Council Liaison: Council Member Brad Brundrett
Alternate: Mayor Pro-Tem J.D. Villa

FISCAL ANALYSIS: N/A

STAFF RECOMMENDATION: Staff recommends that City Council confirm the Mayor's appointments and re-appointments to various boards, commissions, and committees, as presented.

CITY COUNCIL AGENDA
Regular Meeting: Tuesday, June 8, 2021

AGENDA ITEM: 8

Deliberate and act to confirm Mayoral appointments of City Council liaisons to various boards, committees, and commissions.

SUBMITTED BY: Mayor Patrick R. Rios

APPROVED FOR AGENDA: PKC

BACKGROUND: Council Liaisons serve to facilitate communication between Council and their committees. Liaisons are not members of their committees and do not actively participate in committee deliberations other than to answer questions of fact. Each year after the May election, the Mayor appoints City Council Members to act as liaisons to the various boards, committees and commissions.

1. **ARANSAS PATHWAYS**
   Council Liaison: Mayor Rios Alternate Liaison: Council Member Brundrett

2. **COASTAL BEND BAYS AND ESTUARIES**
   Council Liaison: Council Member Katy Jackson Alternate Liaison: Mayor Pro-Tem Villa

3. **COASTAL BEND COUNCIL OF GOVERNMENTS**
   Council Liaison: Mayor Rios Alternate Liaison: Mayor Pro-Tem Villa

4. **ECONOMIC DEVELOPMENT COUNCIL**
   Council Liaison: Mayor Rios Alternate Liaison Council Member Hattman

5. **PARK AND LEISURE SERVICES ADVISORY BOARD**
   Council Liaison: Mayor Pro-Tem Villa Alternate Liaison: Council Member Brundrett

6. **PLANNING & ZONING COMMMISSION**
   Council Liaison: Mayor Pro-Tem Villa

7. **ROCKPORT CULTURAL ARTS DISTRICT**
   Council Liaison: Council Member Katy Jackson Alternate Liaison: Council Member Hattman

8. **ROCKPORT-FULTON CHAMBER OF COMMCERCE**
   Council Liaison: Council Member Hattman

9. **ROCKPORT HERITAGE DISTRICT ASSOCIATION**
   Council Liaison: Council Member Katy Jackson

10. TREE LANDSCAPE COMMITTEE
Council Liaison: Council Member Brad Brundrett Alternate Liasion: Council Member Hattman

11. ZONING BOARD OF ADJUSTMENT
Council Liaison: Council Member Brundrett Alternate Liaison: Mayor Pro Tem JD Villa

12. STORMWATER MANAGEMENT ADVISORY COMMITTEE
Council Liaison: Mayor Rios Alternate Liaison: Mayor Pro Tem JD Villa

13. TOURISM DEVELOPMENT COUNCIL
Council Liaison: Council Member Hattman Alternate Liaison: Council Member Brundrett

14. SWIMMING POOL ADVISORY COMMITTEE
Council Liaison: Mayor Pro-Tem Villa Alternate Liaison: Council Member Hattman

FISCAL ANALYSIS: N/A

STAFF RECOMMENDATION: Staff recommends that City Council confirm the Mayor's appointments of City Council liaisons to various boards, commissions, and committees, as presented.

CITY COUNCIL AGENDA
Regular Meeting: Tuesday, June 8, 2021

AGENDA ITEM: 9

Deliberate and act on first reading of an Ordinance of the City of Rockport, Texas, amending Chapter 70 "Parks and Recreation", Article II Park and Leisure Services Advisory Board", Section 70-42 "Function; Organization"; providing for cumulative and conflicts and severability clauses; and providing for an effective date.

SUBMITTED BY: Parks and Leisure Services Director Rick Martinez

APPROVED FOR AGENDA: PKC

BACKGROUND: Currently, this board just resumed monthly meetings, due to Covid-19. As with other boards, it continues to be a challenge for board members to attend meetings, due to other commitments. This board has had open seats for an extended period and it has been difficult to conduct meetings due to not having a quorum. As a result, meetings have been cancelled on several occasions.

At the Parks Board's 24, 2021, meeting they passed a recommendation for the Council to consider the reducing the frequency of Park Board meetings from monthly to quarterly, as noted in Sec. 70-42(a)(1). This more accurately reflects the Board's workload and will more easily attract new members and retain current members. The proposed change will not prevent the Board from meeting more frequently, if needed. In addition, staff recommends deleting Sec. 70-42(a)(2) requiring quarterly verbal reports from the board as this has not occurred in over a decade and Council is updated at each council meeting through the Board's Council Liaison.

Please see the accompanying proposed ordinance for additional information.

FISCAL ANALYSIS: N/A

RECOMMENDATION: Staff recommends Council approve the first reading of the Ordinance amending Chapter 70 "Parks and Recreation", Article II Park and Leisure Services Advisory Board", Section 70-42 "Function; Organization"; providing for cumulative and conflicts and severability clauses; and providing for an effective date, as presented.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ROCKPORT, TEXAS AMENDING CHAPTER 70 "PARKS AND RECREATION", ARTICLE II "PARK AND LEISURE SERVICES ADVISORY BOARD", SECTION 70-42 "FUNCTION; ORGANIZATION"; PROVIDING FOR CUMULATIVE AND CONFLICTS AND SEVERABILITY CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF ROCKPORT, TEXAS.

Section 1. Code Amendment. The City of Rockport Code of Ordinances Chapter 70 (entitled "Parks and Recreation"), Article II (entitled "Park and Leisure Services Advisory Board"), Section 70.42 (entitled "Function; organization") is hereby as follows:

Sec. 70-42. Function; organization.

(a) The park and leisure services advisory board shall:

(1) Hold at least one regular meeting per ~~month~~ quarter and additional meetings as needed.

~~(2) Present a verbal summary of the monthly meeting, to include any resolutions, recommendations or reports at the first regularly scheduled council meeting the month after the board meeting.~~

~~(3)~~(2) Adopt a set of operating procedures and guidelines establishing the conduct and organization of the park and recreation leisure services advisory board.

~~(4)~~(3)Elect a chairman and vice-chairman to serve out a term of one calendar year.

(b) The city manager shall ensure that the park and leisure services advisory board receives the staff support necessary to prepare minutes, correspondence and other written mat

Section 2. Cumulative and Conflicts. This Ordinance shall be cumulative of all provisions of ordinances of the City of Rockport, Texas, except where the provisions of the Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed. Any and all previous versions of this Ordinance to the extent that they are in conflict herewith are repealed.

Section 3. Severability. This Ordinance is severable as prescribed in Section 1-8 of the Code of Ordinances.

Section 4. Open Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

Section 5. Effective Date. This Ordinance shall become effective immediately upon adoption by second and final reading.

APPROVED and **PASSED** on first reading the 8th day of June 2021.

CITY OF ROCKPORT:

_____
Patrick R. Rios, Mayor

ATTEST:

_____
Teresa Valdez, City Secretary

APPROVED, PASSED and **ADOPTED** on second reading the_____day of June 2021.

CITY OF ROCKPORT:

_____
Patrick R. Rios, Mayor

ATTEST:

_____
Teresa Valdez, City Secretary

CITY COUNCIL AGENDA
Regular Meeting: Tuesday, June 8, 2021

AGENDA ITEM: 10

Deliberate and act on an interlocal agreement with Aransas County for a CDBG-DR grant to develop a parking lot located at 106 S. Magnolia Street and authorizing the City Manager to negotiate and execute all necessary documents.

SUBMITTED BY: City Manager Kevin Carruth

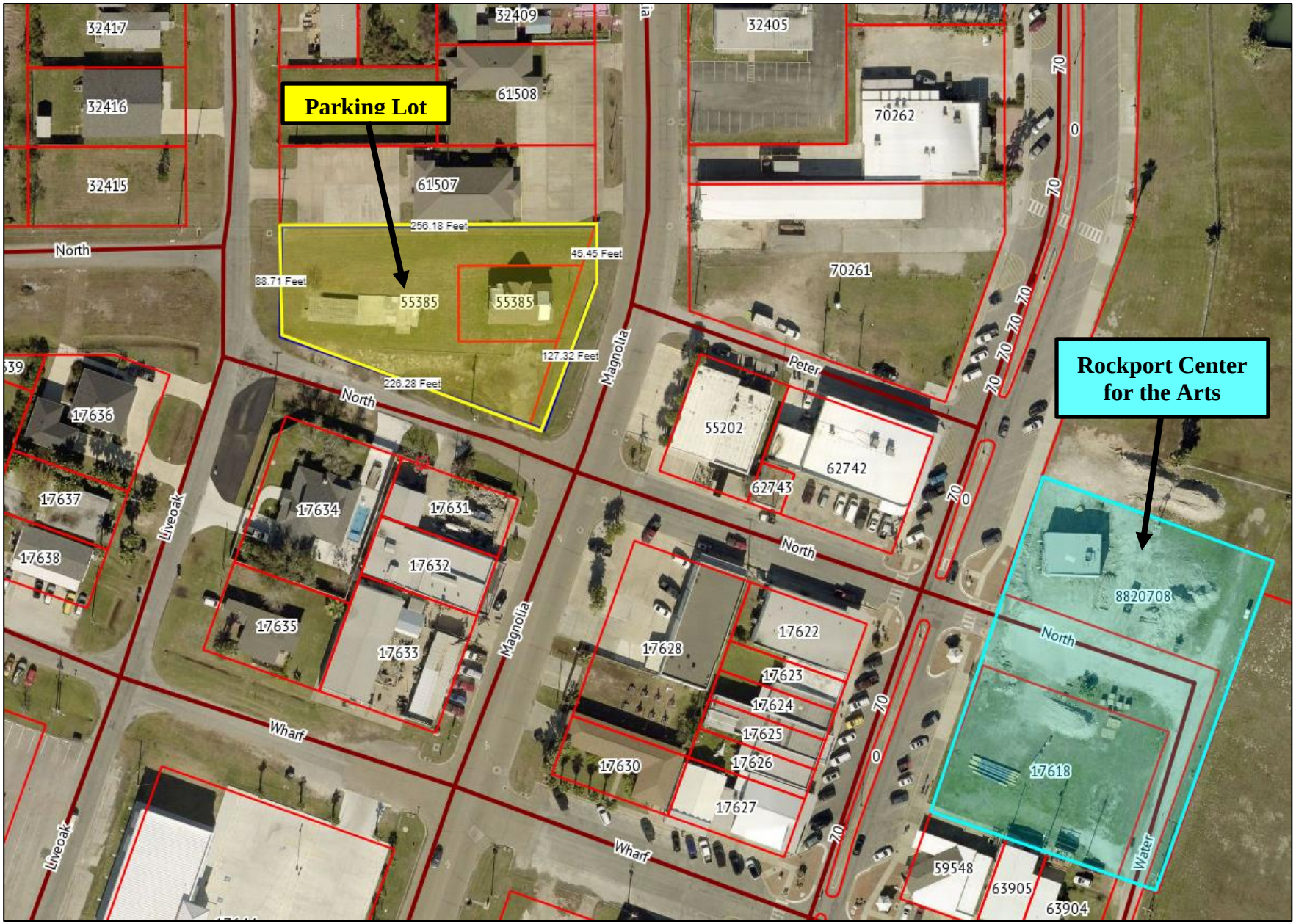
APPROVED FOR AGENDA: PKC

BACKGROUND: The proposed interlocal agreement with Aransas County allows the County to acquire, design, and construct a parking lot with 60 off-street spaces and related public improvements at 106 S. Magnolia Street, the site of the former Rockport train depot. Aransas County will utilize their CDBG-DR grant funds allocated to them through the Texas General Land Office and will administer the grant and oversee the construction of the parking lot. Once complete, the parking lot will be transferred to the City of Rockport. The parking lot will support the new Rockport Center for the Arts and adjoining events center that is being built with the City's EDA grant.

Please see the accompanying aerial map and proposed interlocal agreement for additional information.

FISCAL ANALYSIS: The total project cost is $3,599,167, which will be covered 100% by the grant with no local match required. Future maintenance will be the responsibility of the City.

RECOMMENDATION: Staff recommends Council approve the proposed interlocal agreement with Aransas County for a CDBG-DR grant to develop a parking lot located at 106 S. Magnolia Street and authorizing the City Manager to negotiate and execute all necessary documents, as presented.


Parking Lot
Rockport Center for the Arts
32417
32416
32415
32409
61508
61507
32405
70262
70261
256.18 Feet
88.71 Feet
45.45 Feet
127.32 Feet
226.28 Feet
55385
55385
North
Magnolia
Peter
55202
62742
62743
17636
17637
17638
17634
17631
17632
17635
17633
Liveoak
Wharf
17628
17622
17623
17624
17625
17626
17627
17630
8820708
17618
Water
59548
63905
63904
70
0

INTERLOCAL COOPERATION AGREEMENT BETWEEN ARANSAS COUNTY, TEXAS, AND THE CITY OF ROCKPORT, TEXAS

This Interlocal Cooperation Agreement ("Agreement") is made pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, by and between ARANSAS COUNTY, TEXAS, a political subdivision of the State of Texas, hereinafter referred to as the "COUNTY," and the CITY OF ROCKPORT, a Home Rule Charter City, hereinafter referred to as the "CITY," both of which are sometimes referred to collectively herein as the "Parties."

W I T N E S S E T H :

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, as amended, authorizes units of local government to contract with one or more units of local government to perform government functions and services; and,

WHEREAS, the COUNTY has applied for Community Development Block Grant Disaster Recovery ("CDBG-DR") funds through the Texas General Land Office ("GLO"); and,

WHEREAS, the CITY is building a new Rockport Center for the Arts facility and is need of assistance to engineer, acquire a site, and construct a parking lot and related public improvements for the new Rockport Center for the Arts (the "Project"); and,

WHEREAS, the governing bodies of the CITY and the COUNTY desire to foster good will and cooperation between the two entities; and,

WHEREAS, the COUNTY desires to assist the CITY with the Project; and,

WHEREAS, the COUNTY will have the resources to assist the CITY with the Project should it be awarded the necessary CDBG-DR grant funds from the GLO; and,

WHEREAS, the Parties desire to enter into this Agreement for the public purpose of the County utilizing grant funds to construct a public parking lot to accommodate the increased demand for parking in the area due to the new Rockport Center for the Arts.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions herein stated, and in consideration of the benefits that will accrue to the Parties, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Purpose and Public Benefit. The purpose of this Agreement is for the COUNTY to allocate CDBG-DR grant funds to assist the CITY with the Project, to administer the grant, handle contracting, and oversee the construction for the Project.

The respective governing body of each party finds that the subject of this Agreement is necessary for the benefit of the public; that each party has the legal authority to perform; that the division of cost fairly compensates the performing party under this Agreement; and the performance of this Agreement is in the common interest of both parties.

2. Term. This Agreement shall be in effect upon execution by the Parties. Thereafter, this Agreement shall be automatically renewed for successive one (1) year periods corresponding to the beginning of the COUNTY's fiscal year on January 1st, unless either party terminates this Agreement by notifying the other party, in writing, of its desire to terminate this Agreement by September 1st of the fiscal year preceding termination. The term of this Agreement shall automatically end upon completion of the Project and the transfer of ownership to the CITY.

3. COUNTY's Rights and Duties.

a. Endeavor to execute any duties it has under the Grant in a timely and efficient manner;

b. Provide staff to serve as Grant Administrator to help manage the Project;

c. Administer the GLO CDBG-DR grant, including acting as a repository of all receipts and grant documentation pertinent to the Grant and to furnish such information to the GLO and/or the CITY upon request;

d. Perform financial duties related to the grant administration, including accepting all Project invoices from the Administrator, engineer, and contractors, process all payments through the County Auditor's office, submit all reimbursements to the GLO, and collect funds through the County Auditor's office;

e. Serve as the primary contact in all matters pertaining to the Grant and serve as the liaison between itself, CITY, and the GLO;

f. Create and publicize a Request for Qualifications to procure an engineering firm for the Project and interact directly with the engineering firm regarding the Project;

g. Solicit sealed bids, conduct bidding procedures, and procure a construction contractor for the Project;

h. Acquire the real property that is chosen as the site for the Project for use as a parking lot pursuant to the grant requirements;

i. Ensure that the CITY shall not be responsible for any grant related costs or expenses other than those outlined herein without the express written consent of the CITY, except for costs that may be associated with early termination or a breach of this Agreement;

j. Maintain, at its sole discretion, the option to approve construction contracts or change orders that would result in costs that exceed available grant funds;

k. Provide all grant deliverables to the GLO through its Grant Administrator upon completion and close out the grant.

l. Transfer full ownership of the Project improvements to the CITY upon the COUNTY's acceptance of the Certificate of Construction Completion;

m. Report, and if necessary, collect any program income generated by the grant-funded improvements from the CITY and repay the GLO.

4. CITY's Rights and Duties. The Parties agree that the CITY will perform the following duties:

a. Promptly comply with all COUNTY requests for information required to fulfill the COUNTY's obligations under the grant;

b. Cooperate with the COUNTY to obtain any necessary permits and for Project inspections;

c. Permit the COUNTY, its Grant Administrator, engineer, and construction contractor full access to the CITY's rights-of-way where grant-funded public improvements are constructed;

d. Upon Project completion and conveyance to CITY, CITY shall be solely responsible for the Project improvements, including continued maintenance, repairs, and operation of any improvement;

e. Accept ownership of the Project improvements upon COUNTY's acceptance of the Certificate of Construction Completion;

f. Maintain and use the improvements for the purposes for which they are intended, namely as a parking facility for the Rockport Center for the Arts, for at least fifteen (15) years after the grant is closed by the GLO;

g. Establish a pricing structure for any fees collected for use of the parking lot that minimizes the generation of net operating income.

h. Perform its duty to collect fees.

i. Any revenue collected by the CITY that exceeds net operating income shall be reported to the COUNTY on an annual basis and, upon COUNTY's request, shall be returned to COUNTY as grant program income within ten (10) business days.

5. Termination. Either the COUNTY or the CITY may terminate this Agreement so long as it provides thirty (30) days written notice to the other party, but such early termination shall not relieve the parties from the financial obligations addressed herein, subject to Paragraph 6 below.

6. Payments from Current Revenues and Notice of Non-appropriation. Each party paying for the performance of governmental functions or services must make those payments from current revenues. If, for any fiscal year, a party fails to appropriate funds in amounts sufficient to pay or

perform its obligations under this Agreement, such party shall endeavor to provide thirty (30) days notice of its failure to appropriate and, if applicable, its subsequent need to terminate this Agreement.

7. Notices. Whenever a notice is required to be given in writing and under the terms of this Agreement, such notices shall either be delivered or mailed by certified mail, return receipt requested, to the parties at the following addresses:

As to the COUNTY:	As to the CITY:
County Judge 2840 HWY 35 N Rockport, TX 78382	City Manager 2751 SH 35 Bypass Rockport, TX 78382

Each party may change the address for notices by giving written notice to the other party in accordance with the provisions of this paragraph.

8. No Warranty. The Parties further agree that any grant funds provided by the COUNTY are without any warranty of any kind to the CITY or any third party, and the CITY hereby agrees that, to the extent allowed by law, it will defend, hold harmless, and indemnify the COUTY, its officers, agents, and employees for any claims for injury or death of any person or for damage to property, arising out of the COUNTY's performance of its duties under this Agreement.

9. Status of Employees, Contractors, and Agents. No joint employment is created by this Agreement. The employees, contractors, and agents of the respective party shall remain solely the employees, contractors, and agents of that respective party.

10. Indemnification and Tort Claim Act. To the extent allowed by law, the COUNTY agrees to promptly defend, indemnify, and hold the CITY harmless from and against any and all claims, demands, suits, causes of action, and judgments for (a) damages to the loss of property of any person; and or (b) the death, bodily injury, illness, disease, loss of services, or loss of income or wages to any person, arising out of or incident to, concerning or resulting from, the negligent or willful act or omission of the COUNTY, its agents, officers, and/or employees in the performance of duties pursuant to this Agreement.

To the extent allowed by law, the COUNTY agrees to promptly defend, indemnify, and hold the CITY harmless from and against any and all claims, demands, suits, causes of action, and judgments for (a) damages to the loss of property of any person; and or (b) the death, bodily injury, illness, disease, loss of services, or loss of income or wages to any person, arising out of or incident to, concerning or resulting from, the negligent or willful act or omission of the COUNTY, its agents, officers, and/or employees in the performance of duties pursuant to this Agreement.

Nothing in this Agreement shall be construed to waive, partially or in full, any immunities the Parties may have under the Tort Claim Act or other laws.

11. Non-Discrimination. The Parties covenant that (1) no person shall be excluded from participation in, denied the benefit of, or otherwise subjected to discrimination under the terms of this Agreement on the ground of race, color, age, sex, handicap, or national origin; and (2) in carrying out the terms and conditions of this Agreement, no person shall be subjected to discrimination on the grounds of race, color, age, sex, handicap, or national origin.

12. Interpretation of Law, Assignment, and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. No assignment of this agreement or any right accrued hereunder shall be made, in whole or in part, by either party without the prior written consent of the other party. Venue shall be in Aransas County, Texas.

13. Integration and Amendments. This Agreement constitutes the entire agreement between the Parties and may not be amended, altered, modified, or changed in any way, except in writing that is signed by the Parties, which specifically references this Agreement. There are no other agreements, representations, warranties, whether oral or written, regarding the subject matter of this Agreement. Any amendment to this Agreement shall be attached to this Agreement and all of the terms herein that are not specifically address in the amendment shall remain in full force and effect.

14. No Third Party Beneficiaries. Nothing in this Agreement, expressed or implied, is intended to confer upon any person or entity, other than the Parties hereto, any rights or remedies under the terms of this Agreement, except as expressly stated herein.

15. Severability. If any one or more of the sections, sentences, clauses, or parts of this Agreement be held invalid for any reason, the invalidity of such section, sentence, clause, or part shall not affect nor prejudice the applicability and validity of any other provision of this Agreement.

16. Bargaining. The Parties have each had the opportunity to seek independent legal counsel before entering into this Agreement. The language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against either party.

17. Counterparts. This Agreement may be executed in any number of counterparts and when each party has signed and delivered to the other at least one (1) such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one (1) agreement; provided, however, this Agreement shall not be binding upon the Parties until signed by both Parties.

18. Authorization. The undersigned officers and/or agents of the respective party hereto are the properly authorized officials of the party and have the necessary authority to execute this Agreement on behalf of the Parties hereto. Each party certifies by signing below that any necessary actions and resolutions extending such authority have been duly passed and approved and are currently in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year last written below.

"COUNTY"
Aransas County, Texas

By: _____
Judge C. H. "Burt" Mills Date
County Judge

ATTEST:

(seal)

_____
Carrie Arrington, Aransas County Clerk

"CITY"
Rockport, Texas

By: _____
Kevin Carruth Date
City Manager

ATTEST:

(seal)

_____
Teresa Valdez, City Secretary

CITY COUNCIL AGENDA
Regular Meeting: Tuesday, June 8, 2021

AGENDA ITEM: 11

Deliberate and act on a ground lease agreement with Aransas County for construction of a radio tower at 1130 State Highway 188 and authorizing the City Manager to negotiate and execute all necessary documents.

SUBMITTED BY: City Manager Kevin Carruth

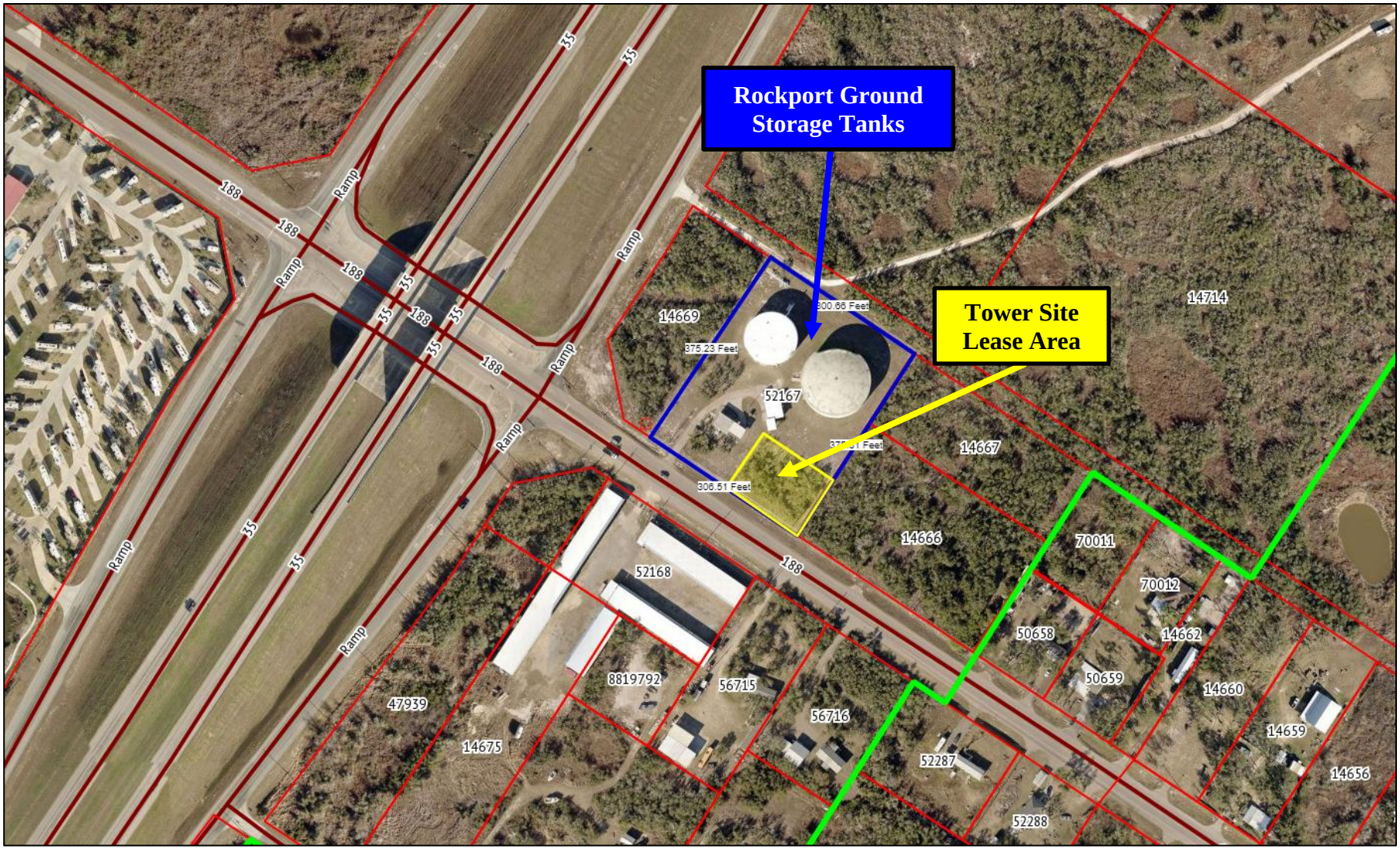
APPROVED FOR AGENDA: PKC

BACKGROUND: The proposed ground lease agreement with Aransas County allows the County to lease a portion of the area at the southeast corner of the City's ground storage facility at 1130 State Highway 188 and construct a 190-foot tower for use by emergency services, primarily members of the Aransas County Emergency Corps. The leased area will be fenced off separately from the ground storage area and will have its own driveway and entrance. In addition to the tower and fencing, the other improvements include a 9' x 20' Conex container on a concrete pad for equipment and a generator for emergency power. The initial term is for 15 years with up to five additional 15-year renewals.

Please see the accompanying aerial map and proposed agreement for additional information.

FISCAL ANALYSIS: The project is funded through a grant received by Aransas County. There is no match nor ongoing maintenance obligation required of City.

RECOMMENDATION: Staff recommends Council approve the proposed ground lease agreement with Aransas County for construction of a radio tower at 1130 State Highway 188 and authorizing the City Manager to negotiate and execute all necessary documents, as presented.


Rockport Ground Storage Tanks
Tower Site Lease Area
14669
14714
14667
14666
52167
52168
70011
70012
50658
14662
50659
14660
14659
14656
52287
52288
56715
56716
8819792
47939
14675
375.23 Feet
306.51 Feet
188
35
Ramp

RADIO TOWER GROUND LEASE AGREEMENT BETWEEN CITY OF ROCKPORT AND ARANSAS COUNTY

STATE OF TEXAS §
§ **KNOW ALL PERSONS BY THESE**
COUNTY OF ARANSAS § **PRESENTS:**

This Radio Tower Ground Lease Agreement (hereinafter called "GROUND LEASE") is made by and between the City of Rockport, Texas, a Texas municipal corporation located in Aransas County, Texas (hereinafter called "CITY"), acting by/through its City Manager and Aransas County (hereinafter called "LESSOR"), acting by/through its County Judge.

1. DEMISE OF LEASED PREMISES

1.1 CITY, for and in consideration of the rents, covenants, and promises herein contained to be kept, performed and observed by LESSOR, does hereby lease and, demise to LESSOR and LESSOR does hereby rent and accept from CITY the real property owned by CITY located at the corner of State Highway 188 and State Highway 35 Bypass, Aransas County Texas, also known as a portion of 1130 State Highway 188 and as more particularly shown in the attached Exhibit A, being within the corporate limits of Rockport and the County of Aransas, Texas, (hereinafter referred to as the "LEASED PREMISES").

1.2 The CITY reserves the right to enter the LEASED PREMISES at reasonable hours and, if, in the opinion of the CITY, an emergency exists requiring immediate action, at any time, to inspect, to make replacements, repairs or restorations, and to carry out any work or activities in connection with the protection of the public health, safety and welfare, or the preservation of the LEASED PREMISES. LESSOR acknowledges the above reservation by CITY and agrees to respect and be subordinate to same. Reasonable notice shall be construed as giving notice the day before the CITY proposes to enter the LEASED PREMISES, except for an emergency, which will not require notice.

2. USE OF LEASED PREMISES

2.1 The LEASED PREMISES shall be used solely for purposes that are consistent with LESSOR'S operation of its Emergency Communications Tower for law enforcement, fire department(s), emergency medical services, or other local government needs, and for no other purpose. CITY represents that the LEASED PREMISES may lawfully be used for such purposes.

3. TERM

3.1. The initial term of this GROUND LEASE shall be for a period of fifteen (15) years commencing on the 1st day of the month following the latter of the date of City Council approval or the date of acceptance of engineering plans for the improvements by the authorized representative of the City and shall end fifteen years (15) years from the latter of the dates provided above. This GROUND LEASE may be renewed by the mutual

consent of the parties to such renewal and pursuant to any revised terms as agreed by the parties. LESSOR shall provide CITY with written notice of its intent to renew before the 90th day prior to the expiration of the GROUND LEASE term.

3.2. If LESSOR performs and abides by all provisions and conditions of this GROUND LEASE, upon expiration of the Initial Term of this GROUND LEASE, LESSOR shall have five (5) consecutive options to renew this GROUND LEASE for five (5) additional successive terms of fifteen (15) years each (each a "Renewal Term") at a rental rate calculated in accordance with Section 5.2 of this GROUND LEASE and on terms and conditions that may be prescribed by CITY at the time. LESSOR shall notify CITY in writing of its intent to exercise a respective option not less than ninety (90) nor more than one hundred eighty (180) days prior to the expiration of the term then in effect. If LESSOR does not exercise its option for a first Renewal Term within the time frame provided herein, LESSOR shall automatically and simultaneously forfeit its subsequent options to lease the LEASED PREMISES for additional Renewal Terms, and LESSOR shall no longer have any rights or interest in the LEASED PREMISES following the expiration of the Initial Term.

4. IMPROVEMENTS BY LESSOR, ACCEPTANCE AND CONDITION OF LEASED PREMISES

4.1. LESSOR has had full opportunity to examine the LEASED PREMISES and acknowledges that there is in and about them nothing dangerous to life, limb or health. LESSOR's taking possession of the LEASED PREMISES shall be conclusive evidence of LESSOR's acceptance thereof and LESSOR hereby accepts said LEASED PREMISES as being in good and satisfactory order in its present condition AS IS, WHERE IS AND WITH ALL FAULTS as suitable for the purpose for which leased. CITY specifically disclaims any warranty of suitability for LESSOR'S intended purpose.

4.2. LESSOR agrees that no representations respecting the condition of the LEASED PREMISES and no promises to alter or improve same, either before or after the execution hereof, have been made by CITY or its agents, to LESSOR unless the same are contained herein or made a part hereof by specific reference herein.

4.3. LESSOR may, at any time and from time to time during the lease term, maintain, alter, remodel, reconstruct, rebuild, or replace, improvements on the premises, subject to the following:

4.3.1 LESSOR bears the cost of any such work.
4.3.2 The premises must at all times be kept free of mechanics' and materialmen's liens or any other lien or other encumbrance.
4.3.3 LESSOR must obtain CITY'S written approval of the planned work prior to commencement.
4.3.4 LESSOR obtains all required permits and authorizations for the erection and operations of such structures but any related fees for such permits and authorizations shall be waived

4.4. LESSOR understands and agrees that all personal property placed by LESSOR upon the LEASED PREMISES is at the sole risk and expense of LESSOR and that CITY shall not be liable to LESSOR or to any other person or party for loss, theft, vandalism, or damage or injury to person or property.

4.5. SIGNS

4.5.1 All signage erected, maintained or displayed on the leased premises shall comply with the City Code.

5. RENTAL/CONSIDERATION & SERVICES

5.1. Ten and No/100 Dollars ($10.00) and other services and considerations shall be exchanged between LESSOR and CITY for the placement of the structure on the LEASED PREMISES.

5.2. LESSOR shall be allowed to construct a fence, separate entrance from FM 188, emergency communications tower, and other necessary support structures and appurtenances; all in conformance with the design and construction standards of the City of Rockport. Improvements and signage shall comply with all CITY codes, regulations and permit requirements.

6. MAINTENANCE OF LEASED PREMISES

6.1. LESSOR shall, at all times, keep or cause to be kept, the LEASED PREMISES free of litter, trash, paper, and other waste and shall place same in standard trash containers in the immediate vicinity or in other appropriate locations and shall conform with all applicable garbage, sanitary, and heath regulations of the CITY.

6.2. LESSOR shall be responsible for the condition of the LEASED PREMISES. LESSOR shall repair any damage to the LEASED PREMISES caused by LESSOR, and shall maintain, or caused to be maintained, the LEASED PREMISES in a clean, neat, attractive, and sanitary condition.

6.3. LESSOR will, at the termination of this GROUND LEASE, return the LEASED PREMISES to CITY in as good condition as at the commencement of the term hereof, usual wear and tear, acts of God or unavoidable accident only, excepted.

6.4. LESSOR agrees to hold CITY harmless for any theft, damages or destruction of signs, goods and/or other property of LESSOR both during the term of the GROUND LEASE and as so left on the LEASED PREMISES after LESSOR vacates the LEASED PREMISES. If said signs, goods, and any other property placed by LESSOR upon the LEASED PREMISES are not removed by it within thirty (90) days after the LEASED

PREMISES are vacated, then the CITY may remove same without further notice or liability therefore.

6.5. CITY'S RESERVATIONS: CITY reserves the right from time to time, to install, maintain, repair and replace utility lines, and wires passing through the LEASED PREMISES. Any such maintenance, repair, or replacement shall be placed in locations which shall not unreasonably interfere with LESSOR'S use of the LEASED PREMISES, and shall be carried out to the extent possible so as to minimize inconvenience or disruption of LESSOR'S business.

7. TAXES AND LICENSES

7.1 LESSOR shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State and local taxes and fees, which are now or may hereafter be levied upon LESSOR, or upon the business conducted on the LEASED PREMISES, or upon any of LESSOR'S property used in connection therewith; and LESSOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by LESSOR, subject to agreements entered into by LESSOR and Federal, State or local government authorities.

8. COVENANTS OF LESSOR AND CITY

8.1 In addition to the covenants expressed within other articles of this GROUND LEASE, LESSOR covenants and agrees a follows:

8.1.1 Obey (a) all applicable laws relating to the use, condition, and occupancy of the LEASED PREMISES, and (b) any requirements imposed by utility companies serving or insurance companies covering the LEASED PREMISES.

8.1.2 Pay for all utilities furnished to the premises for the term of this lease including electricity, gas, internet, garbage, wastewater, and water.

8.1.3 Allow CITY to enter the LEASED PREMISES to perform CITY’s obligations, inspect the LEASED PREMISES.

8.1.4 Submit in writing to CITY any request for repairs, replacement, and maintenance that are the obligations of CITY.

8.1.5 Vacate the LEASED PREMISES on the last day of the term.

8.1.6 Not to use the LEASED PREMISES for any purpose other than the permitted use.

8.1.7 Not permit any waste to accumulate upon the LEASED PREMISES.

8.1.8 Not use the LEASED PREMISES in any way that would void insurance insuring CITY and/or the LEASED PREMISES.

8.1.9 Not alter the LEASED PREMISES without CITY's express written permission.

8.1.10 Not to allow a lien to be placed on the LEASED PREMISES nor bind or attempt to bind CITY for the payment of any money in connection with the construction, repair, alteration, addition, or reconstruction in, on or about the LEASED PREMISES.

8.2 In addition to the covenants expressed within other articles of this GROUND LEASE, CITY covenants and agrees as follows:

8.2.1 Lease to LESSOR the LEASED PREMISES for the entire term beginning on the commencement date and ending on the termination date.

8.2.2 Deliver the LEASED PREMISES to LESSOR in its present condition "AS IS".

9. DEFAULTS AND TERMINATION

9.1 The following events shall be deemed to be events of default by LESSOR under this GROUND LEASE:

9.1.1 LESSOR shall fail to meet its obligations set forth in Section 5 of this GROUND LEASE.

9.1.2 LESSOR shall fail to comply with any term, provision or covenant of this GROUND LEASE, other than the obligations set forth in Section 5, and shall not cure such failure within thirty (30) days after written notice thereof to LESSOR.

9.1.3 LESSOR deserts or vacates all or any part of the LEASED PREMISES; LESSOR will be deemed to have deserted or vacated the LEASED PREMISES if, by any method or manner whatever or if LESSOR assigns, transfers, sells or sublets its interest or right to the LEASED PREMISES without the prior written consent of the CITY.

9.1.4 The taking by a court of competent jurisdiction of LESSOR and its assets pursuant to proceedings under the provisions of any Federal or State reorganization code or act, insofar as the following enumerated remedies for default are provided for or permitted in such code or act.

9.1.5 Upon the occurrence of an event of default as heretofore provided, CITY may, at its option, declare this GROUND LEASE and all rights and interests created by it to be terminated. Upon CITY electing to terminate, this GROUND LEASE shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof. CITY, its agents or attorney, may resume possession of the LEASED PREMISES and relet the same for the remainder of the original

term at the best rent CITY, its agents, or attorney, may obtain for the account of LESSOR, who shall make good any deficiency.

9.2 Upon the occurrence of an event of default, CITY shall be entitled to terminate this GROUND LEASE and CITY shall have no further obligation hereunder.

9.3 Any termination of this GROUND LEASE as herein provided shall not relieve LESSOR from the payment of any sum or sums that shall then be due and payable or become due and payable to CITY hereunder, or from any claim or claims for damages then or theretofore accruing against LESSOR hereunder, or any such sum or sums or claim for damages pursuant to any remedy provided for by law or in equity, or from recovering damages from LESSOR for any default thereunder. All rights, options and remedies of CITY contained in this GROUND LEASE shall be cumulative of the other, and CITY shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this GROUND LEASE. No waiver by CITY of a breach of any of the covenants, conditions, or restrictions of this GROUND LEASE shall be construed or held to be a waiver of any succeeding or preceding breach of the same or of any other covenant, condition, or restriction herein contained.

9.4 Upon any such expiration or termination of this GROUND LEASE, LESSOR shall quit and peacefully surrender the LEASED PREMISES to CITY, and CITY, upon, or at any time after, such termination or expiration may, without further notice, enter upon and re-enter the LEASED PREMISES and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess LESSOR and remove LESSOR and all other persons and property from the LEASED PREMISES. Any property left on the LEASED PREMISES shall be deemed abandoned and CITY may dispose of same without further legal action by CITY or liability to LESSOR therefore LESSOR shall have ninety (90) days after lease expiration or termination to remove LESSOR'S improvements and equipment from the LEASED PREMISES.

10. INDEMNIFICATION

10.1 LESSOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to LESSOR'S activities under this GROUND LEASE, including any acts or omissions of LESSOR, any agent, officer, director, representative, employee, consultant or subcontractor of LESSOR, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this GROUND LEASE. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LESSOR AND CITY ARE FOUND

JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. LESSOR shall promptly advise the CITY in writing of any claim or demand against the CITY or LESSOR known to LESSOR related to or arising out of LESSOR'S activities under this GROUND LEASE.

11. INSURANCE REQUIREMENTS

11.1 Without limiting CITY's right to indemnification, it is agreed that LESSOR shall secure, prior to commencing any activities under this GROUND LEASE, and maintain during the term of the GROUND LEASE, insurance coverage as follows. (This provision does not waive the indemnity as provided hereinabove.)

11.2 LESSEE shall promptly, after the execution of this GROUND LEASE, provide comprehensive general public liability insurance for personal injury/death growing out of any one accident or other cause in a minimum amount of $1,000,000.00 for each single occurrence for bodily injury or death and a minimum sum of $100,000.00 for property damage for each single occurrence for injury to or destruction of property.

11.3 All said policies and the certificates evidencing them shall provide for a minimum of ten (10) days prior written notice to the LESSOR in the event of cancellation or material change in the terms thereof. All said policies and the certificates evidencing them shall also contain a contractual liability endorsement covering the liability assumed by the LESSEE by the terms of this GROUND LEASE. LESSOR shall be named as an additional insured in all insurance policies required to be maintained by LESSEE hereunder.

11.4 It is agreed that any insurance of self-insurance maintained by the CITY shall apply in excess of and not contribute with insurance provided by this policy (if applicable).

11.5 The commercial general liability (or business owner's property policy) must be endorsed to name CITY as "additional insureds" and must not be endorsed to exclude the sole negligence of CITY or Lienholder from the definition of "insured contract." Additional insured endorsements must not exclude coverage for the sole or contributory ordinary negligence of CITY. Property insurance policies must contain waivers of subrogation of claims against CITY. Certificates of insurance and copies of any additional insured and waiver of subrogation endorsements must be delivered by LESSOR to CITY before entering the LEASED PREMISES and thereafter at least ten (10) days before the expiration of the policies.

12. HOLDING OVER

12.1. Should LESSOR hold over the LEASED PREMISES, or any part thereof, after the expiration of the term of this LEASE, unless otherwise agreed to in writing, such holding over shall constitute and be construed as a tenancy from month to month only. The inclusion of the preceding sentence shall not be construed as CITY'S consent for the LESSOR to hold over.

13. ASSIGNMENT

13.1. LESSOR shall not have the right to assign the LEASE or any interest therein without first obtaining the written consent of CITY, which consent shall not be unreasonably withheld, and which consent will be evidenced by passage of a CITY resolution, approving same.

13.2. CITY shall have the right to transfer and assign, in whole or in part, any of its rights under this LEASE, and in the building and property referred to herein; and CITY shall by virtue of such assignment be released from such obligations, which are assumed by the assignee.

13.3. The receipt by the CITY of rent from an assignee or occupant of the LEASED PREMISES shall not be deemed a waiver of the covenant in this LEASE against assignment subletting or an acceptance of the assignee, SUBLESSOR or occupant as a LESSOR or release of the LESSOR from further observance and performance by the LESSOR of the covenants contained in this LEASE. No provision of this LEASE shall be deemed to have been waived by the CITY unless such waiver is in writing signed by the CITY.

13.4. LESSOR shall not sublet the LEASED PREMISES or any interest therein. Any subletting shall be null and void and CITY shall have cause to terminate this LEASE.

13.5. LESSOR is expressly prohibited from entering into an independent contract relationship with anyone in relation to the business conducted on the LEASED PREMISES, which amounts to any assignment or subletting of the LEASED PREMISES as determined solely by the CITY.

14. CONFLICT OF INTEREST

14.1. LESSOR acknowledges that it is informed that Texas Law prohibits contracts between the CITY and any local public official (hereinafter called "OFFICIAL"), such as a CITY officer or employee, and that the prohibition extends to an officer and employee of CITY agencies such as CITY owned utilities and certain CITY boards and commissions, and to contracts involving a business entity in which the OFFICIAL has a substantial interest, as defined by Texas law, if it is reasonably foreseeable that an action on the matter would confer an economic benefit on the business entity.

14.2. LESSOR warrants and certifies, and this LEASE is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY or any of its agencies such as city owned utilities.

15. SEVERABILITY

15.1. If any clause or provision of this LEASE is illegal, invalid or unenforceable under present or future laws effective during the term of this GROUND LEASE, then and in that event it is the intention of the parties hereto that the remainder of this GROUND LEASE shall not be affected thereby, and it is also the intention of the parties to this GROUND LEASE that in lieu of each clause or provision of this GROUND LEASE that is illegal, invalid or unenforceable, there be added as a part of this GROUND LEASE a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

16. AMENDMENT

16.1. This GROUND LEASE constitutes the entire agreement between the parties. No amendment, modification, or alteration of the terms of this GROUND LEASE shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

17. NOTICES

17.1. Notices to CITY required or appropriate under this GROUND LEASE shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to:

City of Rockport
Attn: City Manager
2751 SH 35 Bypass
Rockport, Texas 78382

With Copy to:
Denton, Navarro, Rocha, Bernal & Zech, PC
Attn: City Attorney City of Rockport
2517 N. Main Avenue
San Antonio, Texas 78212

17.2. Notices to LESSOR shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to LESSOR at:

Aransas County
Attn: County Judge
2840 Highway 35 N
Rockport, Texas 78382

18. RELATIONSHIPS OF PARTIES

18.1. Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partners, joint venturers, or any

other similar such relationships between the parties hereto other than that of CITY and LESSOR.

19. TEXAS LAW TO APPLY

19.1. THIS GROUND LEASE SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HERE UNDER ARE PERFORMABLE IN ARANSAS COUNTY, TEXAS.

20. LESSOR'S RIGHT TO QUIET ENJOYMENT

20.1. The relationship created herein by this GROUND LEASE is that of CITY and LESSOR and not an agency or partnership. In accordance therewith, and subject to the conditions listed in Article 1, and subject to LESSOR'S performance of all covenants herein made by LESSOR, the CITY agrees that LESSOR shall and may peaceably and quietly have, hold and enjoy the LEASED PREMISES.

21. GENDER

21.1. Words of any gender used in this GROUND LEASE shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

22. CAPTIONS

22.1. The captions contained in this GROUND LEASE are for convenience of reference only and in no way limit or enlarge the terms and conditions of this GROUND LEASE.

23. AUTHORITY

23.1. If the signer of this GROUND LEASE is an entity or other than an individual who is the LESSOR, then the signer hereof for LESSOR hereby represents and warrants that he or she has full authority to execute this GROUND LEASE on behalf of LESSOR.

(Signature page to follow)

IN WITNESS WHEREOF, we have affirmed our signatures this _____ day of June, 2021.

CITY:

CITY OF ROCKPORT, TEXAS

By:_____
Kevin Carruth, City Manager

ATTEST:

_____
Teresa Valdez, City Secretary

LESSOR:

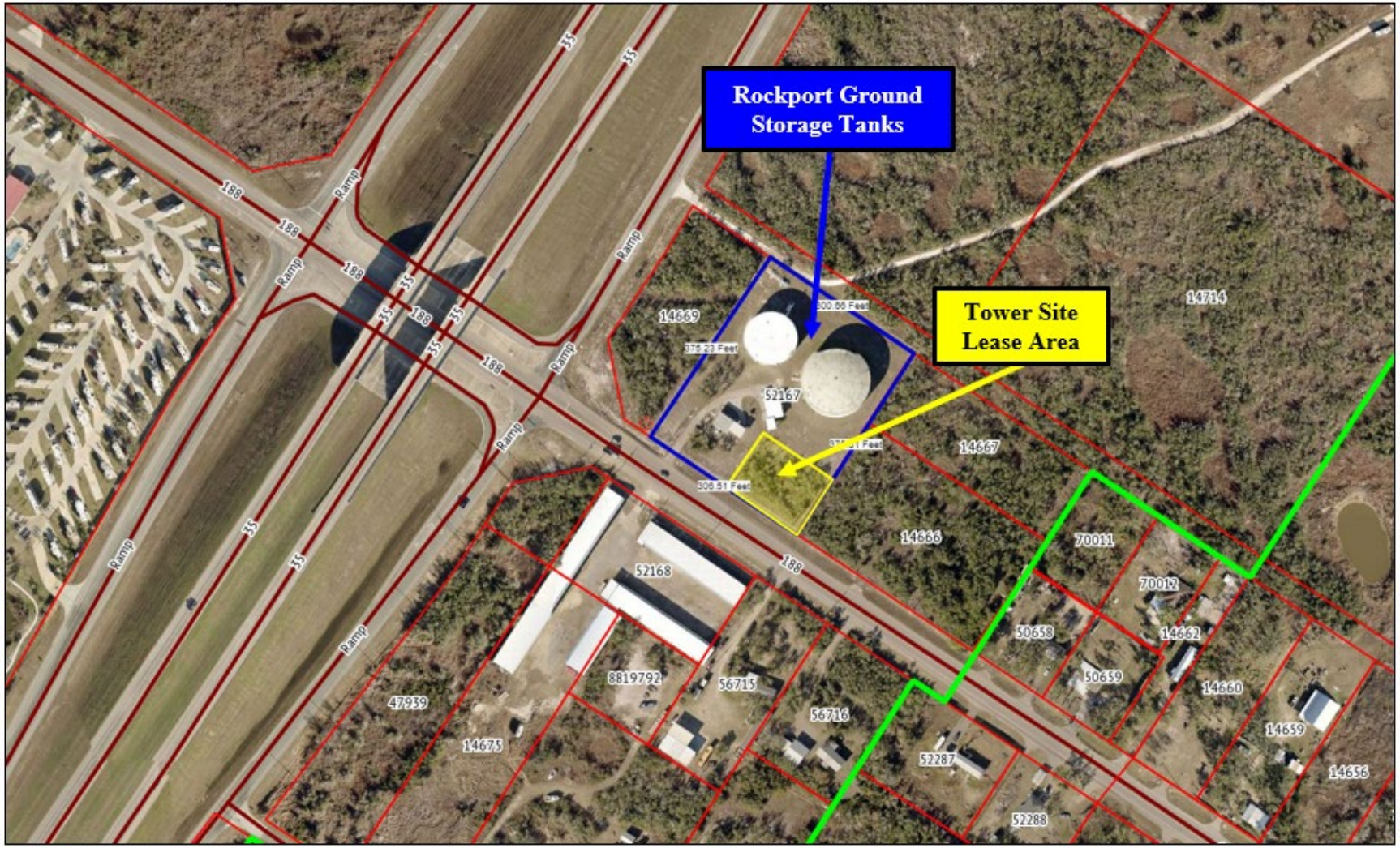
ARANSAS COUNTY, TEXAS

By:_____
C.H. “Burt” Mills, County Judge

ATTEST:

_____
Valerie Amason, County Clerk

Exhibit A


Rockport Ground Storage Tanks
Tower Site Lease Area
14669
52167
14667
14666
52168
70011
70012
50658
14662
50659
14660
14659
14656
56715
56716
52287
52288
8819792
47939
14673
14734
188
Ramp
55

CITY COUNCIL AGENDA
Regular Meeting: June 8, 2021

AGENDA ITEM: 12

Hear and deliberate on status of COVID-19 and response efforts.

SUBMITTED BY: City Manager Kevin Carruth

APPROVED FOR AGENDA: PKC

BACKGROUND: Staff and Council will discuss recent activities and developments in the COVID-19 pandemic.

FISCAL ANALYSIS: N/A

RECOMMENDATION: Not an action item.