



COBRA Administrative Services Proposal

City of Forney

FloreSelect

Flores Sales Contact: Cindy Bistany

Phone: 828-693-3595

Email: cindy@flores-associates.com

Proposal prepared on 7/31/19

Proposal is valid until 12/31/19

Service starts on January 1, 2020

 **Flores**
Better Benefits Delivered

Contents

| | |
|---|----------|
| About Flores | 3 |
| One Solution for COBRA & Tax Advantaged Accounts | 4 |
| Proposal Summary | 5 |
| Employer Experience | 6 |
| COBRA Implementation & Administration Overview | 7 |
| Plan Administration and Eligibility Updates | 8 |
| Employer Portal..... | 8 |
| Professional Fees | 9 |
| Addendum A: COBRA Administration Agreement | 1 |
| Addendum B: Electronic Notice | 1 |

Next Steps

Once you decide to select Flores, please follow the steps below to initiate implementation:

1. An authorized Company representative must sign at the bottom of page 9 and the last pages of Addendum A: COBRA Administration Agreement and Addendum B: Electronic Notice.
2. Return a signed copy to your Flores Business Development contact.

If you are a new Flores client, your Business Development contact will introduce you to your dedicated Account Manager who will setup your COBRA administration and be your partner moving forward.

For current Flores clients, you will continue to work with the same dedicated Account Manager who works with you to administer your other Flores services.

About Flores

Flores & Associates, LLC was founded in 1986 to provide Human Resources consulting services such as compensation, benefits, and selection to a broad cross section of small to mid-sized companies throughout the Southeast. We have evolved over the last thirty years from our Human Resources consulting roots into a national leader in the field of Benefit Administration.

Driven by our mission to achieve customer satisfaction and improve our core competencies, Flores has been uniquely transformed from a generalist organization into a specialty services firm focused on Employee Reimbursement Accounts and COBRA administration. We exceed our clients' expectations by combining dedicated Account Managers and proactive communication with innovative technology.

Flores has developed a proprietary administration platform and online portals to deliver the best possible service experience for Employee Reimbursement Accounts and COBRA administration. Our proprietary technology and systems allow Flores to continuously improve our services in anticipation of changing client and market needs.

Our bottom line is complete client satisfaction and our 99% client retention rate is confirmation that we are on the right path. Today, we have developed a national client base that numbers over 1,900 companies, serving 400,000 employees in all 50 states and several foreign countries.

Better Benefit Solutions



One Solution for COBRA & Tax Advantaged Accounts

Improve Efficiency and Compliance

Working with Flores as your partner for COBRA and tax advantaged reimbursement accounts will improve your COBRA compliance to ensure your FSA and HRA benefits are also included in your COBRA notices. Using multiple providers to administer COBRA for different benefits creates confusion and oversights that can be very costly due to failing to meet COBRA requirements.

Partnering with Flores for COBRA and FSA, HRA, or HSA will also greatly improve your efficiency because you can communicate eligibility updates to a single source and work with one primary contact, your Flores Account Manager.

Realize Full Carrier Independence

In future years, you are free to change health insurance carriers and change payroll companies without needing to make painful changes to their COBRA, FSA, HSA, and HRA administration.



Proposal Summary

Objective: Implement COBRA administration that will provide the Company with a cost-effective means to satisfy their regulatory COBRA compliance requirements and provide Company administrators and COBRA Qualified Beneficiaries with an excellent service experience.



Simply Better Service

- Dedicated Account Manager support for employer and COBRA participants.
- Work with a true benefits partner who can provide guidance on all COBRA regulatory and compliance questions. Flores Account Managers are certified COBRA experts with years of experience.
- Flores team structure ensures consistent quality and prompt responses even when your Dedicated Account Manager is out of the office.
- Phone calls answered by Flores employees during regular business hours. No phone trees.
- Initial COBRA Rights notices sent to covered employees and covered spouses with notice documentation and tracking by Flores system for compliance.
- Qualifying event notices sent to Qualified Beneficiaries with notice documentation and tracking by Flores system for compliance.
- Monthly premium collection and remittance. Monthly invoices mailed or emailed to COBRA Qualified Beneficiaries who can pay premiums online or by check.



Turnkey Implementation

- A detailed implementation checklist that will allow your dedicated Account Manager to guide you through a quick implementation.
- Notification templates to communicate transition to current active COBRA qualified beneficiaries.
- Company administrator web conference tutorial.
- 90-day post implementation check-up with Flores Account Management leadership.



Innovative Technology

- Achieve efficiencies with a single, integrated online experience for COBRA with full access to real-time administrator functions and reporting.
- Online portal and mobile app for COBRA Qualified Beneficiaries.
- Automated systems with quality controls to ensure compliance with all COBRA requirements.
- Electronic archiving of all transactions as required by law.
- All correspondence including notices, enrollment forms, invoices and payments available for client review via the administrator portal.
- Optional COBRA enrollment updates communicated directly to insurance carriers to reinstate and term COBRA coverage.



Comprehensive Reporting

- Weekly distribution of COBRA activity reports to Company contacts.
- Monthly remittance reporting.
- Online reports available 24/7 in Employer Portal.



Gain peace of mind for Flores' financial and operational controls from our annual Service Organization Controls 1 (SOC 1) report.

Employer Experience

Dedicated Account Manager

Being customer-focused means you will not reach a phone-tree when you call Flores. Our customer service philosophy is to make each position at Flores accountable to the client. The vertical integration of duties permits us to provide each client with their own dedicated Account Manager who is highly invested in the various account processes as well as developing a lasting relationship. The Company's Account Manager will be a true benefits partner who can provide guidance on all COBRA regulatory and compliance questions.



Silent Systems with Pro-Active Support

We provide silent systems with proactive support to make Human Resources and Finance's job easier. We blend technology together with our people to create "high-tech and high-touch" results that leave clients and participants feeling well served by our team.

Using our online administrator interface as a platform for compliance management, we turn a cumbersome process into one that is easy to manage and is updated on a real-time basis through the use of email and scanning protocols.

Quality Assurance

The quality Flores delivers is described as efficient, accurate, thorough, helpful, refreshing, and professional. We allow the firm to grow based on continuously reviewing our ability to maintain a high degree of quality for existing clients, participants, and our employees.

Update COBRA Continuant Coverage with Carriers

Employers are responsible for updating COBRA coverage with their insurance carriers. Flores sends weekly activity reporting to employer contacts that can be used to reinstate and term COBRA continuant coverage with insurance carriers.

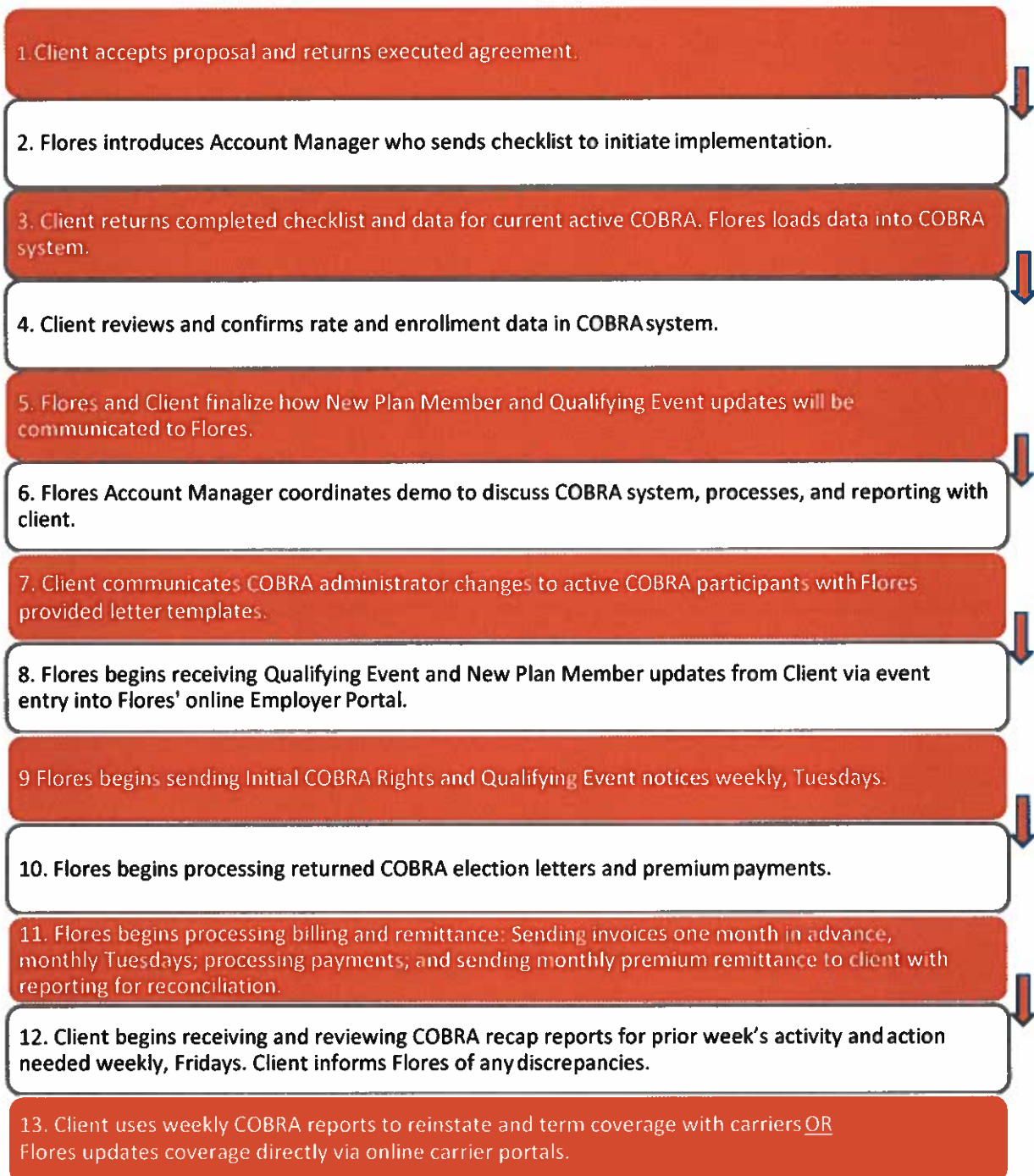
If needed, Flores can use the employer's insurance carrier enrollment portals to make real-time enrollment changes directly with insurance carriers including:

- Reinstate COBRA coverage
- Terminate COBRA coverage
- Enroll COBRA Continuant

Employers who elect this option will still be responsible for reconciling their monthly insurance carrier's invoice. Weekly COBRA activity reports will still be sent to the employer and should continue to be reviewed on a regular basis.

COBRA Implementation & Administration Overview

Flores will provide the employer with a turnkey recordkeeping service to properly administer the critical compliance components of their COBRA responsibilities including Qualifying Event Processing and Notification, as well as participant billing, premium collection, and initial notification of COBRA rights.



Plan Administration and Eligibility Updates

Flores is pleased to offer Employee Navigator integration and can accept COBRA New Plan Member and Qualifying Event updates from Employee Navigator for Select clients.

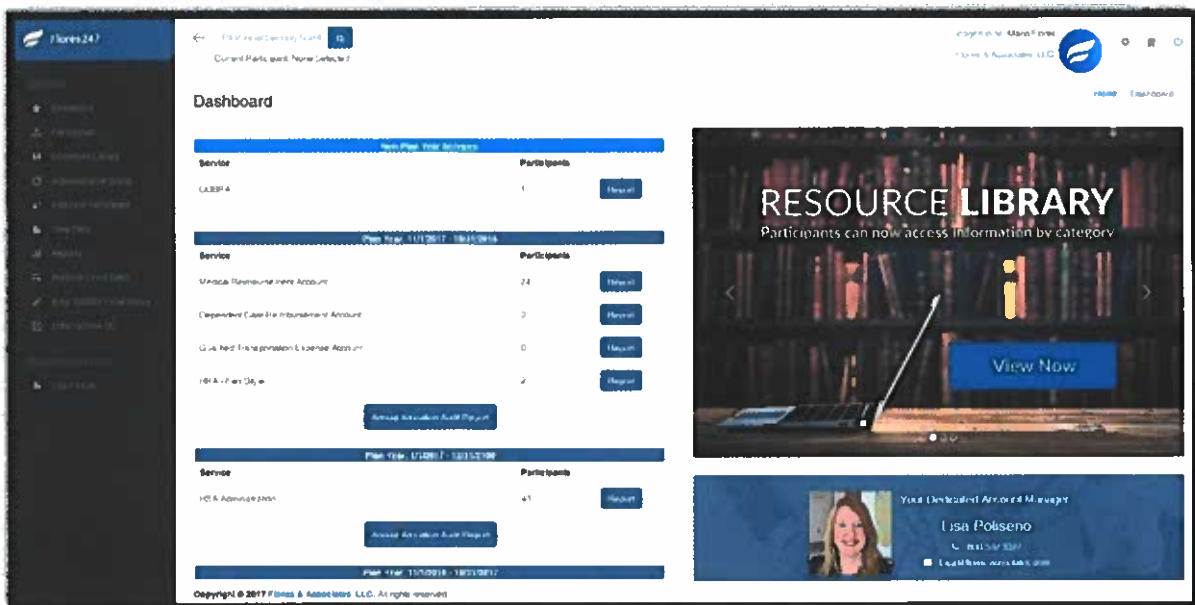


Employer Portal

Our online employer portal will serve as an intuitive online tool to assist you in managing your compliance responsibilities under COBRA law.

Features include:

- Access to COBRA, FSA, HSA, HRA, and Commuter benefits with Flores in one integrated portal.
- Real-time event entry and report generation.
- All correspondence including notices, enrollment forms, invoices, and payments available for review from the online interface.
- Weekly recap of all event entries including notices sent, enrollments, terms, etc. sent directly to Company contacts.
- Monthly remittance report of all payments received.
- Ability to update corporate contact information and manage access for multiple administrator contacts.



The Flores COBRA Administration Guide gives step by step instructions for using the employer website, managing your COBRA, and reporting tools. This guide is available for your reference in the Documents section of the employer portal.

Professional Fees

Professional fees are guaranteed for a five (5) year period upon acceptance of this proposal.



Flores will render a billing for the first month's administration once COBRA has been implemented for the plan year. Subsequent monthly administration fees will be billed at the beginning of each month.

| | |
|--------------------------------------|---------------|
| Implementation Fee (One-Time) | Waived |
|--------------------------------------|---------------|

| | |
|------------------------------------|---------------------------|
| 2% COBRA Administrative Fee | Retained by Flores |
|------------------------------------|---------------------------|

| | |
|---|---------------|
| Administrative Fee (Per Insured Employee, Per Month) | \$0.60 |
|---|---------------|

- *If employer uses Employee Navigator to send Flores eligibility updates for COBRA, this fee increases by \$0.05 PEPM.*
- *Includes Qualifying Event notices (not to exceed 20% turnover).*

| | |
|--|-----------------|
| COBRA Initial Rights Notifications for New Plan Members (Per Notice Mailed) | Included |
|--|-----------------|

- *Documented and tracked by the Flores system for compliance.*
- *Option to email notices to covered employees with email address. Notices mailed to covered spouse.*

| | |
|--|----------------|
| Monthly Minimum Billing Requirement | \$50.00 |
|--|----------------|

| | |
|--|------------|
| Retiree & Leave of Absence Billing (Per Participant, Per Month) | N/A |
|--|------------|

Other Rare Service Fees

- | | | |
|--|--|--------------|
| • Mailed Open Enrollment Notices | \$10 per notice plus printing & shipping | |
| • Mailed QE's in excess of 20% turnover | | \$3.75 each |
| • Bulk mailing of Initial Rights Notices to correct past compliance gaps | | \$2.00 each |
| • Custom file to communicate COBRA enrollment/term to carriers | | Custom quote |

Sign here to accept fees: _____

Addendum A: COBRA Administration Agreement

This **COBRA ADMINISTRATION AGREEMENT** (the "Agreement") is made and entered into this _____ day of _____ 20__ by and between **FLORES & ASSOCIATES, LLC** ("Flores") and **City of Forney** (the "Company").

STATEMENT OF PURPOSE

The Company is the plan administrator of a health plan subject to the requirements of "COBRA" (the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended). Flores is in the business of helping plan administrators meet their obligations under COBRA.

The Company and Flores wish to enter into this Agreement whereby Flores will assist the Company in meeting its COBRA obligations for the health plan or plans ("Health Plan").

Section 1 - COBRA ADMINISTRATIVE SERVICES

Flores' COBRA Responsibilities - Flores will have the following COBRA responsibilities for the Health Plan under this Agreement.

a) **COBRA Manual** - Flores will provide the Company with a COBRA administrative manual that will include:

- i. Procedures to be followed by the Company in meeting its COBRA obligations and to provide the information necessary for Flores to administer the COBRA services.
- ii. Initial COBRA Notification Form (unless COBRA Notification service is declined by Company during implementation).
- iii. Qualifying Event Notification Form.
- iv. Right to Convert to Individual Insurance Notification (available only for insured plans to the extent the insurance contract grants conversion privileges).
- v. Sample language for revision of Summary Plan Description for the Health Plan.
- vi. Reporting Forms for Qualifying Event Notification.
- vii. Other Administrative Forms.
- viii. Instructions.

Note: The COBRA Initial and Qualifying Event Notification Forms included in the COBRA Manual are based on model documents provided by the U.S. Department of Labor ("DOL") and Internal Revenue Service ("IRS").

2. **Initial COBRA Notice** - Flores will provide the following Initial COBRA Notice services if selected during implementation.

Flores will provide the initial COBRA notice to all new employees of Company and dependents who are participants under the Health Plan beginning after the Effective Date and whose names and addresses are furnished by the Company.

3. **Qualifying Event Notice** - Flores will provide Qualifying Event Notice services.

Flores will mail the Qualifying Event Notice directly to Qualifying Beneficiaries, who are those employees and dependents who lose coverage under the Health Plan as a result of a “qualifying event.” Flores will provide the Qualifying Event Notice within 10 days of the receiving notice of a Qualifying Event from the Company. The Company must provide timely information to Flores of qualifying events (see Company’s Responsibilities below).

4. **Administration of Continuation Coverage Elections and Premium Collection** – Flores will administer the Continuation Coverage Elections and Collection of Premiums.

Flores will undertake the following responsibilities for the administration of continuation coverage:

- a. Flores will accept elections for continuation coverage received from Qualified Beneficiaries and will notify the Company within ten (10) business days after the end of each month of the status of each Qualified Beneficiary’s election. Election forms are to provide all necessary data Flores requires to efficiently process an election.
- b. If a Qualified Beneficiary makes an election for continuation and if the Company confirms that the Qualified Beneficiary is eligible for continuation coverage (such a Qualified Beneficiary will be referred to as a “Continuant”), Flores will collect premiums (plus administrative charges) from or on behalf of Continuants, and forward the amount of the paid premiums less the administrative charges to the Company on a monthly basis.
- c. Flores will advise the Company via email of the status of each Continuant within ten (10) business days after the end of each month. These status reports will include Continuants who are current on their payments, and those whose Health Plan coverage should be cancelled for failing to timely remit payments pursuant to the requirements of COBRA. The Company will be responsible for making the final decision to cancel Health Plan coverage for failure to timely remit premium payments.

5. **Maintenance of Records** - Flores shall store data provided by the Company with respect to periods of coverage of participants and dependents under the Health Plan retroactive to January 1, 2020 and shall retrieve such data in connection with the issuance of Notices. Flores shall maintain proof of services performed by Flores for a period of seven years from the date that a Notice is issued.
6. **Telephone Access to Customer Service Representatives** - Flores shall provide a toll-free telephone number for access to a Customer Service Representative, who will be available during normal business hours (8:30 a.m. to 5:00 p.m. E.S.T., Monday to Friday, except holidays) that may be used by Health Plan participants and dependents (or their authorized representatives) in connection with the services provided by Flores under this Agreement.
7. **Other Responsibilities** – Flores will not provide any COBRA services not described in this Agreement, except that Flores may provide additional COBRA services at its option for no additional charge.

Company' Responsibilities - The Company will have the following COBRA responsibilities for the Health Plan under this Agreement:

1. **Notice of Qualifying Events Resulting in Loss of Coverage** – The Company shall notify Flores of the following events that result in the loss of coverage by a covered employee or dependent under the Health Plan ("Qualifying Events"):
 - i. Death of a covered employee/retiree;
 - ii. Termination of employment of a covered employee (for reasons other than gross misconduct) or reduction in the employee's hours;
 - iii. Divorce/legal separation from the covered employee;
 - iv. Covered employee/retiree becoming entitled to benefits under Title XVIII of the Social Security Act (Medicare);
 - v. Dependent children who cease to be eligible as "dependents" under the terms of the Health Plan;
 - vi. Company filing for bankruptcy;
 - vii. Any other event resulting in a covered employee and/or dependent becoming qualified to continue coverage under the provisions of COBRA;

Note: The Company shall provide the notice of a Qualifying Event for a covered employee or dependent not later than 21 days after the date of the Qualifying Event. The Company shall be solely responsible for determining whether an employee has had a Qualifying Event, whether a covered employee has been terminated for gross misconduct, or whether a covered employee or dependent is or has been incompetent.

2. **Notice of Other Events** - In addition, the Company shall notify Flores of the following events, whether or not they result in the loss of coverage by a Qualified Beneficiary:
 - a. A Qualified Beneficiary being determined, under title II or XVI of the Social Security Act, to have been disabled at any time during the first sixty (60) days of continuation coverage or that the qualified beneficiary is no longer disabled. Such notice(s) shall be provided to Flores as soon as practicable, but in no event later than five (5) business days after the date Company becomes aware of such event; and
 - b. The termination of any plan that is part of the Health Plan, such notice(s) to be provided at least thirty (30) days prior to, or, if less, as soon as practicable in advance of, the termination of the plan that is part of the Health Plan.

3. **Notification of Premium Rates** - The Company shall determine and notify Flores of the applicable premium rates to be charged for COBRA continuation coverage as follows:
 - i. The Company will give Flores the rates for all participants and dependents' electing continuation coverage as of the Effective Date.
 - ii. If the Company changes rates in mid-year, it shall notify Flores of the new rates at least thirty (30) days before the first billing date that the new rates apply; and
 - iii. The Company will notify Flores of the rates for the next year at least thirty (30) days before the first billing date for the next year.

Procedures – In providing COBRA services, Flores shall follow these rules:

1. Flores shall consider COBRA premiums to be timely paid if, within thirty (30) days of the due date, such premiums are actually delivered to Flores, postmarked by the U.S. Postal Service or sent by express delivery service (with evidence thereof), unless the Company advises Flores in writing that a longer period applies under the Health Plan. Actual delivery, postmark or evidence of express delivery will also be used to determine timeliness of COBRA elections based on applicable statutory periods. Flores shall not be responsible for reviewing the Health Plan in any respect or for comparing the Health Plan with the group health plan sponsored by another employer or Medicare.
2. Notices will be sent by Flores by U.S. Postal Service first class mail to the affected participant or dependent at the address provided to Flores by the Company pursuant to procedures established by Flores. Flores shall maintain records showing the date of mailing, the address, and any returns. If mail is returned without a forwarding address, Flores will notify the Company.

3. In addressing correspondence to participants and dependents and other individuals, Flores where practicable, will use zip+4, for those addresses that are furnished to Flores without such information, and to use its best efforts to correct or complete addresses that it recognizes to be incorrect and or incomplete.
4. Flores shall accept verbal direction from the Company when necessary to fulfill Flores' duties under the terms of this agreement.

SECTION 2 – ADDITIONAL SERVICES

Flores Responsibilities - Flores will provide the following additional Services.

1. **COBRA Updates** - Flores shall provide current and updated information to the Company relating to compliance with COBRA, if such services have been selected, including any changes or modifications in compliance requirements, notification language and related steps necessary to act in accord with said changes or modifications.
2. **Government Audits** - Flores or its officer or designated agent, shall be available to attend any audit held by the Internal Revenue Service, or hearing by any governmental agency or bureau, regarding compliance with COBRA, and will provide, at such audit or hearing, records and documentation so as to assist the Company at such hearing in evidencing compliance with COBRA.

SECTION 3 – FLORES' RELIANCE ON THE COMPANY

The Company understands that all services, reports and forms prepared by Flores under this Agreement will be based on information provided by the Company, and that the timeliness and accuracy of the Notices and other services provided under this Agreement depend upon the timeliness and accuracy of the information provided by the Company. Flores will rely fully on the accuracy and completeness of information submitted by the Company and will have no duty or responsibility to verify such information.

The Company represents that it is the plan administrator for the Health Plan and is authorized to act for the Health Plan and to engage agents in this capacity to assist in the performance of administrative duties. Flores will not become a fiduciary or a party to the Health Plan by this Agreement and will assume only those responsibilities described in this Agreement.

Flores does not contract to provide tax or legal advice, and the Company is responsible for the preparation, adequacy or validity of any legal documents affecting the Health Plan.

SECTION 4 – CONTRACT TERMS

1. **Term of Agreement** This Agreement shall be effective on January 1, 2020 "Effective Date". The agreement shall continue in effect for one (1) year. The agreement will renew for successive one (1) year terms upon payment of the then prevailing rate established by Flores, unless terminated by either party as set forth below.
2. **Termination**. Termination of the service is allowable by either party if provided in writing to the respective party 60 days before the renewal of the plan year.
 - i. **Termination for Convenience** If the termination is simply for convenience during the middle of the plan year or written notice to terminate was not received 60 days prior to the renewal of the plan year, then Flores reserves the right to bill the client for remainder of the respective plan year at the current rate.
 - ii. **Termination for Bankruptcy, Insolvency, or Business Wind Down**. Either party may terminate a Service immediately if either party (i) voluntarily files for bankruptcy; (ii) declares insolvency; (iii) takes action to commence winding down its business; or (iv) is named as a defendant in any involuntary bankruptcy or insolvency proceeding.
 - iii. **Termination Due to Legislative and/or Regulatory Changes**. Either party shall have the right to terminate a Service if a material change to such Service is required as a result of a legislative and/or regulatory change. Upon receipt of written notice of such change, the parties shall meet and confer in good faith. If the parties do not reach agreement on any such modification of the Service, then either party shall have the right to terminate the Service thereafter upon sixty (60) days' prior written notice to the other party.
 - iv. **Effect of Termination**. You shall be responsible to pay all amounts due and owed upon termination.

Note 1: Failure to make payments to Flores within fifteen (15) days of the due date will be deemed a breach of this agreement and will entitle Flores to cancel the agreement immediately. In the event that Flores learns of the Company's closure, or temporary or permanent suspension of operations of the business that sponsors the Health Plan, or termination of the Health Plan, Flores may cancel the agreement immediately.

Note 2: In the event of cancellation in accordance with the above, the Company may submit a written request for a refund of the balance of its annual fee(s). Refunds shall be reduced by the value of services previously provided by Flores. The one-time setup fee is non-refundable.

Note 3: The materials provided to the Company for the COBRA Services represent a substantial investment of time, effort, and money by Flores. The Company understands that such materials are the property of Flores. The Company agrees not to use such materials after the termination of the Agreement, or to give them to other companies or individuals for commercial use.

SECTION 5 – LIMITS OF RESPONSIBILITY AND INDEMNIFICATION

Under this Agreement Flores will be responsible for any direct expense or loss of the Company, but not for any collateral or consequential damages, arising from a. the failure of Flores to fulfill any of its duties under this Agreement, or b. the dishonest, fraudulent, or criminal acts of Flores, its employees, directors, or officers, acting alone or in collusion with others. Further, Flores will be responsible for any COBRA excise taxes and penalties imposed upon it under the COBRA Indemnification procedures described below.

Except as specifically provided in this Section, the Company agrees to hold Flores harmless (including reasonable attorney's fees and costs) and expressly releases all claims against Flores in connection with any claim or cause of action that results from the failure or alleged failure of the Company (its officers and employees, and any entity related to or performing services on behalf of Flores, including, without limitation, any insurance company providing services to or on behalf of the Health Plan) to comply with HIPAA, COBRA, the Employee Retirement Income Security Act of 1974, other applicable law or the provisions of this Agreement, and any occurrences prior to the Effective Date of this Agreement.

It is specifically understood by the Company, and notwithstanding anything in this Agreement to the contrary, that Flores shall not be responsible to receive or review claims for benefits under the Health Plan or be liable for the payment of any claims for benefits under or in connection with the Health Plan or any group health plan of the Company, including without limitation, where sought as damages in an action against the Company, Flores, or otherwise.

No provision of this Agreement shall be deemed to make Flores or any entity affiliated with Flores a party to the Health Plan or a fiduciary of the Health Plan. The Company agrees to indemnify and hold Flores harmless from and against any and all liability or liabilities, claims, penalties, damages or costs, including attorneys' fees, which Flores may incur arising out of the Company's exercise of, or failure to exercise, fiduciary authority under the Health Plan and/or the failure to perform any other obligation of the Company contemplated by this Agreement.

COBRA INDEMNIFICATION - To the extent that COBRA Services have been selected in the Professional Fees Summary, Flores and the Company each agree to indemnify the other from and against any Charges (as defined below) arising out of or resulting from the breach by the other party of any provision of this Agreement, with such Charges being payable by the responsible party upon a Determination of Liability (as defined below) in accordance with the terms set forth below. For purposes of this Section:

- i. The parties acknowledge and agree that this Agreement is a legally enforceable written agreement within the meaning of Internal Revenue Code ("Code") § 4980B(e)(2)(A) with respect to and to the extent of the services that Flores is obligated to provide hereunder. Flores shall pay for excise taxes imposed upon it under Code § 4980B(c)(4)(C) of the Code, provided that Flores retains all rights to challenge or seek a waiver from the Internal Revenue Service with respect to all or any portion of such excise taxes, and provided further that the Company, and not Flores, shall have responsibility with respect to such excise taxes in cases where such tax assessment arises out of the Company's act or failure to act or Flores following the instructions provided by Company.
- ii. "Charges" means a. excise taxes imposed under Code § 4980B(e)(1), subject to the provisions of the aggregate limitations set forth in Code § 4980B(c)(4)(C) and the right of the assessed party to challenge the Internal Revenue Service with respect to all or part of the imposition of such excise taxes; and/or b. penalties (in an amount up to \$110 per day) that are imposed by a court under Section 502(c)(1) or ERISA and that are paid, but shall exclude the payment of the claims for medical benefits under the terms of any group health plan, and, which in the case of a. or b. are incurred as a direct result of the other party breaching the Agreement.
- iii. "Determination of Liability" means: a. the agreement by the indemnifying party ("Indemnitor") that it has committed a breach of the Agreement that directly resulted in the incurrence of a Charge by the party seeking indemnification ("Indemnitee") in response to a notice from the Indemnitee to the Indemnitor via certified mail asserting liability under this provision, and requesting payment; or b. a determination by a court of competent jurisdiction in a final non-appealable decision issued in a case in which the Indemnitor is a party, which decision finds that the Indemnitor has committed a breach of the Agreement that directly resulted in the Indemnitee incurring a Charge.

- iv. Notwithstanding anything in this Section to the contrary, neither party shall be entitled to indemnification under this Section in circumstances where the Charge(s) sought hereunder result from: a. the Indemnitor following the written instruction of the Indemnitee; b. reasonable reliance by the Indemnitor on information furnished by the Indemnitee; c. the actions or inactions of the Indemnitor in circumstances where the Indemnitor requested, but did not receive, information or guidance from the Indemnitee, which information or guidance the Indemnitee is obligated to provide under the Agreement or which is within the sole control of the Indemnitee under the Health Plan; d. the improper, illegal, fraudulent or negligent actions of the Indemnitee; or e. a matter in which the Indemnitee fails to notify the Indemnitor within fifteen (15) days after the Indemnitee first becomes aware of the assessment or suit against it for which indemnification will be or is sought hereunder.

SECTION 6 – MISCELLANEOUS

1. **Governing Law** - The parties agree that this Agreement shall be governed by the laws of the State of North Carolina regardless of what jurisdiction may be involved with said Agreement.
2. **Binding Effect** - This Agreement shall be binding upon and inure to the benefit of each of the parties hereto, their heirs, successors and assigns.
3. **Confidentiality** - All information, whether printed, written, electronic or oral, in answer to inquiry or voluntarily furnished by the Company or its agents or employees to Flores shall be held in confidence by Flores solely for the purposes of fulfillment of the terms of this agreement. To the extent that Flores is in receipt of protected health information within the meaning of HIPAA, Flores will enter into a separate Business Associate Agreement (within the meaning of HIPAA) protecting the privacy of the information in accordance with HIPAA standards. The Company or the Health Plan shall be responsible for drafting the Business Associates Agreement for review of Flores for compliance with HIPAA and this Agreement.
4. **Entire Agreement, Amendments, Assignment** - This writing shall be a final expression of the agreement between the Company and Flores and as a complete and exclusive statement of its terms. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. No other representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein. This Agreement can only be modified in writing and signed by the parties or their duly authorized agents. The Company may not assign this Agreement to any other person without the written consent of Flores.
5. **Privacy/PHI**: Flores acknowledges that it may from time to time it might receive or otherwise have access to certain personally identifying information, including protected health information, of the Company's employees. Flores agrees to take appropriate steps to secure this data in a way that will prevent unauthorized disclosure of such data.

6. **Unclaimed Funds.** Flores maintains an escheats process for all checks. If a check is not deposited within 180 days from when the check was issued, then a letter is mailed to the last known address on record to whom the check was issued. If after 180 days from the date the letter has been mailed, no response has been received by Flores, then Flores will issue a forfeiture check to the company containing a detailed report of the un-deposited funds. If the funds remain un-deposited for a period of 3 years, Flores reserves the right to use these funds to offset general plan administration expenses.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first above written.

FLORES:
FLORES & ASSOCIATES, LLC

COMPANY:
City of Forney

By:  (SEAL)

By: _____ (SEAL)

Addendum B: Electronic Notice

Effective as of January 1, 2020

THIS ELECTRONIC NOTICE ADDENDUM to the COBRA Administration Agreement is made and entered into by and among **Flores & Associates, LLC** ("Flores"), and **City of Forney** (the "Company").

WHEREAS, prior to or in conjunction with this Addendum, the parties have entered into the COBRA Administration Agreement, the terms of which remain in full force and effect;

WHEREAS, the parties now believe that they can better and more efficiently serve the Company's employees and eligible covered beneficiaries (collectively "Covered Individuals") by providing certain employee benefit notices electronically. These notices include, Initial COBRA Notices and COBRA Qualifying Event Notices (collectively, "COBRA Notices").

WHEREAS, the Company understands the additional administrative burdens posed by providing electronic notice, which include but are not limited to notifying Covered Individuals of certain aspects of electronic notice; obtaining consent from Covered Individuals to provide COBRA Notices electronically; and tracking the current email addresses of Covered Individuals.

NOW THEREFORE, the undersigned parties hereby agree and confirm that:

1. The Company hereby directs Flores to provide COBRA Notices via electronic means to Covered Individuals when the Company provides an email address for that Covered Individual.
2. By providing an email address, the Company acknowledges it provided notice to and obtained the informed consent of that Covered Individual as described in the Department of Labor electronic notice safe harbor.
3. The Company acknowledges and agrees that it is solely responsible for (1) obtaining informed consent from Covered Individuals regarding the use of electronic notices; (2) collecting email addresses of Covered Individuals; (3) remitting those email addresses to Flores; and (4) notifying Flores within two (2) business days in the event a Covered Individual withdraws consent for electronic delivery or provides notice regarding a change of email address. The Company shall only provide email addresses for Covered Individuals who have executed, and not subsequently revoked, Notice and Consent Forms.
4. Flores is not responsible for and under no obligation to verify or confirm the email addresses or the acknowledgement of consent to receive electronic notices provided by the Company. The Company understands that all COBRA Notices will be based on information provided by the Company, and that the timeliness and accuracy of the COBRA Notices depend upon the timeliness and accuracy of the information provided by the Company. Flores will rely fully on the accuracy and completeness of information submitted by the Company.

5. As a supplement to and not in place of Section 5 of the COBRA Administration Agreement, the Company shall indemnify, hold harmless, and/or reimburse Flores with respect to any and all claims, costs (including reasonable attorneys' fees), losses, damages, actions, liabilities and obligations arising out of, related to, or resulting from the electronic delivery of COBRA Notices in the manners and methods described in this Addendum.
6. This Addendum may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Executed counterparts of this Addendum B may be delivered by electronic mail or facsimile transmission.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first above written.

FLORES:
FLORES & ASSOCIATES, LLC

COMPANY:
City of Forney

By:  (SEAL)

By: _____ (SEAL)