

CITY OF GRAND PRAIRIE CAFETERIA PLAN

Effective: 1-1-13

GENERAL INFORMATION ABOUT THE PLAN

Plan Name: City of Grand Prairie Cafeteria Plan

Plan Year: January 1 – December 31 annually

Plan Sponsor: City of Grand Prairie
318 W. Main Street, Human Resources Department
Grand Prairie, TX 75050

Plan Administrator: City of Grand Prairie
318 W. Main Street, Human Resources Department
Grand Prairie, TX 75050

Agent for Service of Legal Process: City of Grand Prairie
Office of the City Secretary
317 College Street
Grand Prairie, TX 75050

Important Disclaimer: Certain benefits hereunder are provided pursuant to an insurance contract or pursuant to a governing document adopted by the City of Grand Prairie. If the terms of this document conflict with the terms of such insurance contract or governing document, then the terms of the insurance contract or governing document will control rather than this document, unless otherwise required by law.

INTRODUCTION

The City of Grand Prairie, hereinafter called the “City” hereby establishes a Pre-Tax Premium Contribution Plan called the City of Grand Prairie Group Health Plan (hereinafter called the “Plan”) for its employees who become eligible to participate in accordance with these Plan provisions. This document replaces the prior plan document affirmed through Resolution 2512 passed May 17, 1988.

- 1.1 Purpose of Plan** The purpose of this Plan is to provide eligible employees of the City with the option of either (a) receiving cash or (b) making pre-tax contributions to or paying premiums under the Benefit Plan(s). The Plan was previously adopted and is amended and restated as set forth herein effective as of the Effective Date.
- 1.2 Cafeteria Plan Status** This Plan is intended to qualify as a "cafeteria plan" under section 125 of the Code and is to be interpreted in a manner consistent with the requirements thereof. The City will undertake all steps necessary to comply with all requirements applicable in the Internal Revenue Code sections and Treasury Department regulations.
- 1.3** This Plan is amended and restated January 1, 2013. The anniversary date of this Plan is January 1 of each year. The “Plan Year” of this Plan is the period January 1 through December 31 of each year.

Article 2. DEFINITIONS

When used herein, the following terms shall have the meanings set forth below, unless a contrary meaning is clearly intended by the context. A pronoun or adjective in the masculine gender includes the feminine gender, and the singular includes the plural unless the context clearly indicates otherwise.

- 2.1 **Administrator** means the City of Grand Prairie or such other person(s) or committee as the City may designate.
- 2.2 **Benefit Option** means each separate benefit option available under a Benefit Plan, including the Levels of Coverage for each such option.
- 2.3 **Benefit Plan(s)** means the health, dental, vision, dependent care account, health care account and/or other eligible plans or portions of plans that are maintained by the Employer from time to time and set forth on Appendix A and that provide benefit coverage for Employees and their Dependents (but excluding any dependent life insurance coverage and other benefit plans that may not be offered through a cafeteria plan under section 125 of the Code). The provisions of the Benefit Plan(s) are incorporated herein by this reference.
- 2.4 **Benefit Plan Premium** means the Employee's share of the amount of premium established periodically for the Level of Coverage elected by the Employee under the Benefit Plan, including, if applicable, the cost of COBRA or other continuation coverage.
- 2.5 **City** means the City of Grand Prairie, Texas.
- 2.6 **CHIPRA** means Children's Health Insurance Program Reauthorization Act and allows 60-day special enrollment period resultant from a loss of Medicaid or CHIP health insurance coverage by eligible employees and/or their dependents.
- 2.7 **COBRA** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.
- 2.8 **Code** means the Internal Revenue Code of 1986, as amended.
- 2.9 **Council** means the elected governing authority of the City.
- 2.10 **DCA** means the City of Grand Prairie Dependent Care Account Plan, as amended from time to time.
- 2.11 **Dependent** means any individual who is a "dependent" of a Participant as such term is defined in the applicable Benefit Plan.
 - a. For purposes of our benefit plans, dependent means

- 1) Natural, step or adopted children, unmarried or married and under age 26 (they do not have to be full time students)
 - 2) Legal spouse (common-law not allowed on benefits)
 - 3) Unmarried children of any age if mentally or physically incapable of self care or self-support (requires annual review by carriers)
 - 4) Other dependents (grandchildren, nieces, nephews) are only eligible if the employee provides evidence of court appointed guardianship. Notarized statements do not qualify as court appointed.
- b. For purposes of Article 5 hereof, a “Dependent” means a dependent as defined in section 152 of the Code, except that for purposes of accident or health coverage, Code section 105(b) shall be taken into account and any child to whom section 152(e) of the Code applies is treated as a dependent of both parents, and, for purposes of the DCA, “Dependent” means a qualifying individual with respect to the Employee, as defined in section 21(b)(1) of the Code.

2.12 Effective Date means January 1 of the Plan Year.

2.13 Employee means an individual who is employed by an Employer and who is classified by the Employer for Plan purposes as a regular employee, including such an employee who is on an approved leave of absence or FMLA leave. Notwithstanding the foregoing, the term "Employee" shall not include any person who is classified by the Employer for Plan purposes (notwithstanding such person's classification or reclassification for tax or other purposes) as a leased employee, contract employee, or independent contractor or who is not paid through the Employer's payroll system.

2.14 Employer means the City of Grand Prairie.

2.15 Flexible Spending Account Plan (“FSA”) means a tax-advantaged financial account that is set up through the City of Grand Prairie. The Flexible Spending Account Plan allows an employee to set aside a portion of his or her earnings to pay for qualified expenses as established in the cafeteria plan for medical and / or dependent care expenses. Money deducted from an employee's pay and contributed to an FSA is not subject to payroll taxes resulting in a payroll tax savings for the employee.

2.16 FMLA means the Family Medical Leave Act of 1993, as amended.

2.17 HCA means the City of Grand Prairie Health Care Account Plan, as amended from time to time.

2.18 Heroes Earnings Assistance and Relief Tax Act of 2008 (the HEART Act) means the amended Section 125 of the Internal Revenue Code to provide a special rule allowing distributions of unused amounts in a Flexible Spending Account Plan

Health Care Account to reservists ordered to active military service. The HEART Act applies to distributions made on or after June 18, 2008.

2.19 HIPAA means Health Insurance Portability and Accountability Act as amended.

2.20 Level of Coverage means the level of coverage (for example, Employee only or Employee plus Spouse) elected with respect to a Benefit Plan.

2.21 Participant means an Employee who participates in the Plan in accordance with Article III.

2.22 Plan means the City of Grand Prairie Cafeteria Plan, as set forth herein and as amended from time to time.

2.23 Plan Year means the twelve (12)-month period commencing on each January 1 and ending on each December 31.

2.24 USERRA means Uniformed Services Employment and Reemployment Rights Act as referred to employees as members of a reservist unit and called to active military service

Article 3. PARTICIPATION

3.1 Commencement of Participation An Employee who participated in the Plan immediately prior to the Effective Date will continue to be a Participant on the Effective Date. An Employee who is not a Participant on the Effective Date will become a Participant (a) on the first day of the month (or concurrent with) following date of hire; or the date he becomes a participant in accordance with the terms of a specific Benefit Plan.

3.2 Cessation of Participation

a. A Participant will cease to be a Participant as follows:

- 1) The date the Plan terminates;
- 2) On the last day of the month on which he ceases to be an Employee; at the end of the month in which he terminates
- 3) On the date Benefit Plan participation ceases;
- 4) On the last date through which contributions were paid; or
- 5) On the date benefits under the Plan are revoked, expire, or terminates with respect to all Benefit Options.

b. If a Participant ceases to be a Participant in the Plan for any reason, his election to receive Benefit Options and his related compensation reduction agreement made under the Plan shall terminate.

3.3 Deemed After-Tax Contributions to Plan. Subject to Section 4.8(g), a former Participant and/or the "qualified beneficiary" (as defined by COBRA or similar, applicable law) of a former Participant who continues Benefit Plan coverage under COBRA or a similar, applicable law or who is otherwise eligible to pay Benefit Plan Premiums on an after-tax basis, shall contribute such premiums to the Plan on an after-tax basis.

3.4 Reinstatement of Former Participant. A former Participant will become a Participant again if and when he meets the eligibility requirements of Section 3.1; provided that:

- a. Participation Ceases Due to Failure to Make Required Contributions: A former Participant may not make a new benefit election or reinstate a benefit election within the same Plan Year in which the Participant ceases participation due to a failure to make required contributions;

- b. *Participation Ceases Due to Termination of Employment:* A Participant whose benefit election terminates due to the Participant's termination of employment:
 - 1) Participants who resume employment within 30 days of a termination of employment shall have his prior Benefit Option election automatically reinstated if the Participant is eligible for such Benefit Option upon resuming employment without any other intervening event that would permit a change in election pursuant to Section 4.7 hereof;
 - 2) Participants who resume employment later than 30 days after a termination of employment may make a new Benefit Option election or elect to have his prior Benefit Option election reinstated under this Plan with respect to such Benefits Options, if the Participant is eligible for such Benefit Option upon resuming employment. However, if such Participant has an intervening Change in Status, as described in Section 4.7 herein, such Participant may make a new benefit election; provided that the new benefit election is consistent with such Change in Status;
- c. Notwithstanding the foregoing provisions of subsections a. and b., a Participant who takes FMLA leave and revokes his election with respect to a Benefit Option providing group health benefits may reinstate such election upon returning from FMLA leave; provided that such Participant shall not be entitled to greater benefits relative to a Participant who has not taken leave during the Plan Year.

3.5 Compliance with FMLA and USERRA. Notwithstanding anything herein to the contrary, the Plan shall be administered in accordance with the mandatory provisions of the FMLA and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

Article 4. BENEFIT OPTIONS

- 4.1 Benefit Options.** With respect to each Plan Year and each Benefit Option, a Participant may elect either
- a. To receive his remuneration from the Employer in the form of cash compensation for such Plan Year, or
 - b. To choose to receive the Benefit Option, provided that a Benefit Option may not be selected by a Participant if the Participant is not eligible to receive such benefit under the terms of the Benefit Plan providing such benefit. If a Benefit Option is selected, the Participant will waive rights to an amount of cash compensation equal to the Benefit Plan Premium for such benefit and the Employer will contribute an equal amount toward the provision of such benefit.
- 4.2 Description of Benefits Other Than Cash.** While the election to receive one or more of the Benefit Options may be made under this Plan, the benefits will be provided not by this Plan, but by the Benefit Plan(s) Carrier. The types and amounts of benefits available under each Benefit Plan, the requirements for participating in each such Benefit Plan, and the other terms and conditions of coverage and benefits under each such Benefit Plan are as set forth in the documents comprising the Benefit Plan(s).
- 4.3 Election of Benefit Options In Lieu of Cash.** If a Participant elects to receive one or more Benefits Options in accordance with the procedures described in Sections 4.1 and 4.2 in lieu of cash, then
- a. The cost of the Optional Benefits elected by the Participant shall be deducted from such Participant's compensation in substantially equal amounts each pay period throughout the Plan Year; provided, however, that (i) if the Participant takes an approved, unpaid leave of absence or unpaid FMLA leave, such cost may be paid on a "pay-as-you-go basis" while the Participant takes such leave and (ii) if a former Participant (or qualified beneficiary) is deemed to continue participation under Section 3.3, such cost shall be paid on a "pay-as-you-go basis."
 - b. The cost of such Benefit Options shall be the Benefit Plan Premium for such benefit, as adjusted from time to time.
- 4.4 Annual Election Procedure.** Prior to the commencement of each Plan Year, the Administrator shall provide one or more election and compensation reduction agreement opportunities to each Participant. At the discretion of the Administrator, such election agreements may be provided in writing or by electronic, telephonic, or other means of communication or transmission. The election agreement shall be effective as of the first day of the Plan Year. Each Participant who desires one or more Benefit Options for the Plan Year shall so specify on the appropriate election agreement and shall agree to a corresponding reduction in his compensation. Each election agreement must be completed and returned to the Administrator on or before

the date and in the manner specified by the Administrator, which date shall not be later than the day before the first day of the Plan Year for which such election is applicable.

4.5 New Employee Election Procedure. As soon as practicable after an individual first becomes an Employee, the Administrator shall provide the individual an opportunity to enter into a compensation reduction agreement with the City. If the Employee desires to participate in one or more Benefit Options for the balance of the Plan Year or the succeeding Plan Year, as applicable, he shall so specify on the election agreement and shall agree to a corresponding reduction in compensation otherwise payable to him. The election agreement must be completed within 30 days of hire date.

4.6 Failure to Elect

- a. An eligible Employee who fails to complete an election agreement on or before the specified due date for the Plan Year in which he is first eligible to become a Participant shall be deemed to have elected to receive cash in lieu of all Benefit Options for such Plan Year with the exception of the medical plan in which he will be defaulted to the lowest benefit level plan offered during that plan year.
- b. A Participant who fails to complete an election agreement on or before the specified due date for any subsequent Plan Year shall be deemed to have elected to receive cash in lieu of all Optional Benefits for such Plan Year with the exception of the medical plan in which he will be defaulted to the lowest benefit level plan offered during that plan year.
- c. If an employee has medical coverage under another plan, he may choose to opt-out of the City's medical plans. When an employee elects to not participate, he is "opting out" and must provide proof to the City for the remainder of the Plan Year or for any subsequent Plan Year that he has coverage elsewhere.

4.7 Changes by Administrator. If the Administrator determines, before or during any Plan Year, that the Plan may fail to satisfy for such Plan Year any nondiscrimination requirement imposed by the Code, the Administrator shall take such action as the Administrator deems appropriate, under rules uniformly applicable to similarly situated participants, to assure compliance with such requirements or limitation. Such action may include, without limitation, a modification of elections by or benefits paid to highly compensated individuals (as defined as in Code section 125(e)(2) or 105(h)(5), as applicable), highly compensated participants (as defined in Code section 125(e)(1)) or key employees (as defined in Code sections 125(b)(2) and 416(i)(1)) with or without the consent of such Employees. Any such election or benefit modification shall be made pro rata among members of the group subject to the relevant nondiscrimination requirement.

4.8 Irrevocability of Election by the Participant During the Plan Year. Elections made (or deemed to be made) under the Plan shall be irrevocable by the Participant

during the Plan Year, except as provided in this Section 4.8. Notwithstanding anything in this Section 4.8 to the contrary, a Participant may not revoke or change an election to receive Benefit Options under the HCA for a Plan Year if such revocation or change would reduce the Benefit Plan Premium previously elected by the Participant for such plan and such year.

- a. A Participant may revoke a benefit election and file a new benefit election for the balance of the Plan Year if both the revocation and new election are on account of a “Change in Family Status,” as described under paragraph (1) below and are consistent with such “Change in Family Status,” as described under paragraph (2) below.

- 1) Change in Family Status. “Change in Family Status” shall include the following changes relating to the Participant:

- *Legal Marital Status:* events that change a Participant’s legal marital status including marriage (common-law not allowed on benefits), death of spouse, divorce, or annulment; legal separation does not qualify.
- *Dependents:* events that change the Participant’s number of Dependents including birth, adoption, placement for adoption, death, or an event that causes a Participant’s Dependent to satisfy or cease to satisfy the requirements for coverage on account of attainment of age, or any similar circumstance as provided in such Benefit Plan;
- *Employment Status:* any of the following events that change the employment status of the Participant, spouse, or a Dependent: a termination or commencement of employment; a strike or lockout; a commencement of or return from an unpaid leave of absence; a change in worksite; and any other change in employment status that causes the Participant, spouse, or a Dependent to become eligible or to cease to be eligible under such a Benefit Plan or another employee benefit plan of such individual’s employer, including a change from salaried to hourly employment status under such a plan where only salaried employees are eligible;
- *Residence:* including a change in the place of residence of the Participant, spouse, or a Dependent; and

- 2) Consistency Requirement. A Participant may revoke a benefit election for the balance of a Plan Year and file a new election only if the change in election is on account of and corresponds with a Change in Family Status that affects eligibility for coverage under an employer’s plan. For example, a change in the place of residence of a Participant, spouse, or Dependent does not satisfy the consistency requirement unless such

change results in the Participant, spouse, or Dependent becoming eligible for coverage or ceasing to be eligible for coverage with respect to a Benefit Option (such as when a person covered by an HMO moves out of the HMO service area).

- If the Change in Family Status is a Participant's divorce or annulment from a spouse, the death of a spouse or dependent, or a dependent ceasing to satisfy the eligibility requirements for coverage, such Participant's election to cancel a Benefit Option for any individual other than the spouse involved in the divorce, annulment or legal separation, the deceased spouse or Dependent, or the Dependent that ceased to satisfy the eligibility requirements for coverage, respectively, fails to correspond with the Change in Family Status.
 - If an Employee, spouse or Dependent, as a result of a change in the Participant's legal marital status or a change in the Participant's Employment Status, as such events are described above, gains eligibility for coverage under a cafeteria plan or a plan governing the provision of one or more qualified benefits under section 125(f) of the Code which is sponsored by the employer of the Participant's spouse or Dependent ("Other Plan"), a Participant's election to cease or decrease coverage for that individual under this Plan corresponds with that Change in Family Status only if coverage for such individual becomes applicable or is increased under the Other Plan. However, if the Change in Family Status is a change in the Participant's legal marital status or a change in the employment status of the Participant's spouse or Dependent, as such events are described above, an election to increase or an election to decrease group-term life insurance coverage shall be deemed to correspond with such Change in Family Status.
- b. If a Participant, spouse, or Dependent who is enrolled in a Benefit Plan of the Employer becomes entitled to coverage under Part A or Part B of Title XVIII of the Social Security Act (Medicare) or Title XIX of the Social Security Act (Medicaid), (other than coverage consisting solely of benefits under section 1928 of the Social Security Act), the Participant may make an election change to cancel or reduce coverage of the Participant, spouse, or Dependent, as applicable, under a Benefit Plan that is a health plan. In addition, if the Participant, spouse, or Dependent who has been entitled to such coverage under Medicare or Medicaid loses eligibility for such coverage, the Participant may make an election change to commence or increase coverage for that Participant, spouse, or Dependent under such plan.

- c. If the Administrator receives a judgment, decree, or order resulting from a divorce, annulment, or change in legal custody (including a qualified medical child support order) that requires health coverage for a Participant's child, or for a foster child who is a Dependent of the Participant, the Administrator or the Participant may change the Participant's election under this Plan to provide such coverage for the child if the order requires coverage under a Benefit Option. Likewise, the Participant may change his or her election under this Plan to cancel coverage for the child if the order requires the Participant's former spouse to provide such coverage for the child.
- d. A Participant may revoke a Benefit Option election that constitutes health coverage under a group health plan during a period of coverage and make a new election that corresponds with the special enrollment rights provided under applicable provisions of the Health Insurance Portability and Accountability Act if they show proof of other coverage within the allowable time frame provided by the Plan as applicable.
- e. With respect to a Benefit Option other than benefits under the HCA, if the cost of such Benefit Option increases or decreases (other than, with respect to the DCA, a cost change imposed by a dependent care provider who is a relative of the Employee), an automatic corresponding change shall be made to the Participant's election; provided, however, that if a cost increase is significant, the Administrator may permit each Participant electing such Benefit Option for the Plan Year either (i) to make a corresponding change in his election or (ii) to revoke his election for the remainder of the Plan Year and elect similar coverage under another Benefit Option for the remainder of the Plan Year.
- f. In the event that coverage under a Benefit Plan other than the HCA is significantly curtailed or ceases during a Plan Year, the Administrator may permit each affected Participant to revoke his election for the remainder of the Plan Year. In such event, the Participant may elect similar coverage under another Benefit Option for the remainder of the Plan Year. If a new Benefit Option (other than a Benefit Option under the HCA) providing coverage similar to one or more existing Benefit Options is added during a Plan Year, the Administrator may permit each affected Participant to elect the new Benefit Option on a prospective basis and to make a corresponding change in his election. If a Benefit Option (other than a Benefit Option under the HCA) is eliminated during a Plan Year, the Administrator may permit each affected Participant to elect another Benefit Option on a prospective basis and to make a corresponding change in his election.
- g. A Participant who takes FMLA leave may revoke an existing election for group health plan coverage and make such other election for the remaining portion of the period of coverage as may be provided for under the FMLA.

- h. A Participant may revoke a benefit election for the remainder of a Plan Year and file a new election that is on account of and corresponds with a change made under an Other Plan, if the Other Plan permits participants to make an election change that would be permitted under subsections (a) through (h) above; or if the period of coverage under the Plan is different from the period of coverage under the Other Plan.
- 4.9** Any change or revocation under this Section 4.7 shall be effective as of the date specified in each relevant benefit plan document. An election form must be completed and returned to the Administrator within the time period set forth in each relevant benefit plan document.
- 4.10 Automatic Termination of Election.** Except as described in Section 3.4, elections made (or deemed to be made) under this Plan shall automatically terminate on the date on which the Participant ceases to be a Participant in the Plan, although coverage or benefits under the Component Plans might continue, as provided by the terms of such plans.
- 4.11 Limitation on Contributions.** The maximum contribution under the Plan for any Participant shall be the highest aggregate sum of all Benefit Plan Premiums, as adjusted from time to time. The minimum contribution under the Plan for any Participant shall be the lowest aggregate sum of all Benefit Plan Premiums, as adjusted from time to time, for all Benefit Plans in which the Participant participates.
- 4.12 Compliance with HIPAA.** Notwithstanding anything herein to the contrary, the Plan shall be administered in accordance with the mandatory provisions of the Health Insurance Portability and Accounting Act. HIPAA includes protections for coverage under group health plans that limits exclusions for preexisting conditions, prohibits discrimination against employee and dependents based on their health status and allows a special opportunity to enroll in a Benefit Plan to individuals in certain circumstances. The HIPAA privacy rule also provides federal protections for personal health information held by covered entities and gives patients an array of rights with respect to that information. The rule is balanced so that it permits the disclosure of personal health information needed for patient care and other important purposes.
- 4.13 Compliance with COBRA.** Notwithstanding anything herein to the contrary, the Plan shall be administered in accordance with the mandatory provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), as amended.

Article 5. FLEXIBLE SPENDING ACCOUNTS

Purpose: The purpose of this legal instrument is to set forth the Flexible Spending Account Plan of the Employer, which will provide eligible employees the option of benefits as herein described.

5.1 Source of Flexible Spending Account dollars for Participants:

- a. Salary Exchange: Each eligible participant may elect to contribute Flexible Spending Account dollars during any Plan Year to the HCA and DCA. Contributions to the DCA may not be more than five thousand dollars (\$5,000) during a Plan Year (\$2500 in the case of a separate return by a married individual) (IRS Code, Section 129) and contributions to the HCA may not be more than two thousand five hundred dollars (\$2,500) during a Plan Year.
- b. Participants may enroll in one or both FSA's by completing an enrollment election during new hire or annual enrollment periods. Participants make annual elections by anticipating qualified out-of-pocket expenses for the plan year. The annual election may not exceed the maximum amount specified in the plan document. As there is no statutory maximum contribution for health FSA's, the maximum contribution is restricted through plan design as described above in Section 5.1(s).
- c. If the participant elects to exchange compensation for Flexible Spending Account dollars, he will be credited with Flexible Spending Account dollars equal to the amount of compensation so exchanged. The procedures for making such election each Plan year shall be determined by the employer.

5.2 Revocation of Election: In general, an election made pursuant to Section 5.1 above, may not be revoked during the Plan year. However for the HCA, a revocation will be permitted, and a new election for the remainder of the Plan year may be made, if such revocation is pursuant to a Change in Family Status. Situations resulting in a change in family status will include, but are not limited to, (i) marriage, divorce or death of the participant, spouse or any covered dependent; (ii) birth or adoption of a child, or a dependent leaving the household as a result of a custody agreement, and (iii) termination or initiation of employment of the participant, spouse or any covered dependent.

- a. The revocation hereunder, and any new election, shall be made in writing on forms to be prescribed by the employer, and must be approved by the employer. The employer may rely upon any reasonable direction or information from a participant relating to participant's entitlement to revocation and a new election for the remainder of the Plan year as set forth in this section

5.3 Elections Changes in the DCA: Participants may make a prospective election change that is on account of and corresponds with a change by the Participant in the dependent care service provider or a change in cost of dependent care. For example, if the Participant terminates one dependent care service provider and hires a new dependent care service provider, the Participant may change coverage to reflect the cost of the new service provider; and if the Participant terminates a dependent care service provider because a relative becomes available to take care of the child at no charge, the Participant may cancel coverage. The “change in cost” provision of this Section 5.3 shall apply to dependent care expense reimbursement benefits only if the cost change is imposed by a dependent care provider who is not a relative of the Employee as described in Code sections 152(a)(1) through (8) (including grandparent, parent or stepparent, aunt or uncle, sibling or stepsibling, parent-in-law, sibling-in-law or son- or daughter- in law, child or adopted child). The revocation and/or new election must be made in writing on the forms provided by the Employer, and must be approved by the Employer. The Employer may rely upon any reasonable direction or information from a Participant relating to the Participant’s entitlement to an election change.

5.4 Use of Flexible Spending Account dollars:

- a. Pre-Tax Premium Contribution Plan: Available Flexible Spending Account dollars may be used, if the participant elects, to provide benefits for expenses incurred on and after the effective date and during the Plan year of participation, under the Pre-Tax Premium Contribution Plan maintained by the employer for its employees.
 - 1) Health Care Account: Available Flexible Spending Account Dollars may be used, if the participant elects, to provide benefits for expenses incurred on and after the effective date and during the Plan year of participation, under the Medical Reimbursement Plan (Attachment B) maintained by the employer for its employees.
 - 2) Dependent Care Account: Available Flexible Spending Account dollars may be used, if the participant elects, to provide benefits for expenses incurred on and after the effective date, and during the year of participation, under the Dependent Care Account (Attachment C) maintained by the employer for its employees.

5.5 Medical care expenses incurred during a Plan Year shall be reimbursed up to the amount that the Participant has elected to be covered for the Plan Year (reduced by any previous reimbursement for the Plan Year) even if such reimbursement exceeds the balance of the amount the Participant has contributed to the HCA at the time of the reimbursement. .

- 5.6** Dependent Care Expenses incurred during a Plan Year shall be reimbursed up to the amount that the Participant has contributed as of the last day of the month preceding the claim for reimbursement.
- 5.7** A participant may request benefit payments under the above-named Plans for a Plan year for all eligible expenses incurred under said Plans during such Plan year pursuant to Section 5.4 hereof. For this purpose, an expense is deemed to be incurred when the participant is provided the service that gives rise to the expense, notwithstanding when the participant is formally billed or charged for the service, or when the participant pays the provider for the service.
- 5.8** How Flexible Spending Account Dollars are Maintained Hereunder: No actual funds or assets shall be maintained under this Plan or under any of the Plans referenced herein where Flexible Spending Account Dollars can be spent. A record of a participant's Flexible Spending Account Dollar credits shall be maintained.
- 5.9** Internal Revenue Service Approval: The use of any option under this Plan may, at the discretion of the employer, or if otherwise required, be contingent upon approval of the Internal Revenue Service.
- 5.10** Termination of Employment: In the event a participant's employment with the employer terminates for any reasons (termination of service, death, disability, retirement) any Flexible Spending Account Dollar credits actually accrued remaining in the participant's account, after deduction for all reimbursements of eligible claims, shall continue to be eligible for reimbursement hereunder to the extent of making claims under Section 5.4 hereof for expenses incurred during the Plan year in which his employment terminated. If reimbursements from any options elected by the participant hereunder are greater than the elected Flexible Spending Account Dollar credits, reimbursement shall be made up to the amount remaining in the account.

ARTICLE 6. ADMINISTRATION OF THE PLAN

6.1 Plan Administrator. The administration of the Plan shall be the responsibility of the Administrator. The Administrator will have full power and sole discretion to administer the Plan in all of its details, subject to applicable requirements of law. For this purpose, the Administrator's powers will include, but will not be limited to, the following discretionary authority, in addition to all other powers provided by this Plan:

- a. To make and enforce such rules and regulations as it deems necessary or proper for the efficient administration of the Plan including the establishment of any claims procedures that may be required by applicable provisions of law;
- b. To interpret the Plan in its sole discretion, its interpretation thereof in good faith to be final and conclusive on all persons claiming benefits under the Plan;
- c. To decide, in its sole discretion, all questions concerning the Plan and the eligibility of any person to participate in the Plan;
- d. To appoint such agents, counsel, accountants, consultants and other persons as may be required to assist in administering the Plan; and
- e. To allocate and delegate its responsibilities under the Plan and to designate other persons to carry out any of its responsibilities under the Plan, any such allocation, delegation or designation to be in writing and in accordance with applicable requirements of law.

6.2 Notwithstanding the foregoing, any claim which arises under the Component Plan(s) shall not be subject to review under this Plan, and the Administrator's authority under this Article 6 shall not extend to any matter as to which an administrator under any such other plan is empowered to make determinations under such plan.

6.3 Reliance on Tables, Etc. In administering the Plan the Administrator will be entitled, to the extent permitted by law, to rely conclusively on all tables, valuations, certificates, opinions and reports that are furnished by, or in accordance with the instructions of, the administrators of the Component Plan(s) or by accountants, counsel, or other experts employed or engaged by the Administrator.

6.4 Claims and Review Procedures

- a. If any person believes he is being denied any rights or benefits under the Plan, such person may file a claim in writing with the Administrator. If any such claim is wholly or partially denied, the Administrator will notify such person of its decision in writing. Such notification will be written in a manner calculated to be understood by such person and will contain

- 1) specific reasons for denial;
 - 2) specific reference to pertinent Plan provisions;
 - 3) a description of any additional material or information necessary for such person to perfect such claim and an explanation of why such material or information is necessary; and
 - 4) information as to the steps to be taken if the person wishes to limit a request for review.
- b. Such notification will be given within 60 days after the claim is received by the Administrator (or within 120 days, if special circumstances require an extension of time for processing the claim, and if written notice of such extension and circumstances is given to such person within the initial 60-day period). If such notification is not given within such period, the claim will be considered denied as of the last day of such period and such person may request a review of his claim.
- c. Within 60 days after the date on which a person receives a written notice of a denied claim (or, if applicable, within 60 days after the date on which denial is considered to have occurred) such person (or his duly authorized representative) may
- 1) file a written request with the Administrator for a review of his denied claim and of pertinent documents; and
 - 2) submit written issues and comments to the Administrator.
- d. The Administrator will notify such person of its decision in writing. Such notification will be written in a manner calculated to be understood by such person and will contain specific reasons for the decision as well as specific references to pertinent Plan provisions. The decision on review will be made within 60 days after the request for review is received by the Administrator (or 120 days, if special circumstances require an extension of time for processing the request such as an election by the Administrator to hold a hearing, and if written notice of such extension and circumstances is given to such person within the initial 60-day period). If the decision on review is not made within such period, the claim will be considered denied.

6.5 Nondiscriminatory Exercise of Authority. Whenever, in the administration of the Plan, any discretionary action by the Administrator is required, the Administrator shall exercise its authority in a nondiscriminatory manner so that all persons similarly situated will receive substantially the same treatment.

- 6.6 Indemnification of Administrator.** The Employer shall indemnify any Employee serving as Administrator or as a member of a committee designated as Administrator (including any Employee who formerly served as Administrator or as a member of such committee) in accordance with the Employer's policies and procedures regarding claims against Employees.
- 6.7 Expenses** All expenses that shall arise in connection with the administration of the Plan and that are not paid by the Employer, including, without limitation, administrative expenses and compensation and other expenses and charges of any actuary, counsel, accountant, specialist or other person who is retained by the Administrator in connection with the administration of the Plan, shall be paid by the Plan assets.

ARTICLE 7. AMENDMENT AND TERMINATION OF PLAN

- 7.1 Amendment of Plan.** The City has the right to amend the Plan (including any portion thereof) at any time, by resolution of the Council or by written action of a delegate thereof who is specifically authorized by resolution of the Council to amend the Plan, provided that no amendment by a delegate of the Council shall be effective if it materially increases the cost of the Plan to the City. No amendment may be made to the Plan (including any portion thereof) except in accordance with this Section.
- 7.2 Termination of Plan.** The City has the right to discontinue or terminate the Plan, in whole or in part, at any time, with or without notice by resolution of the Council or by written action of a delegate thereof who is specifically authorized by resolution of the Council to terminate all or a portion of the Plan. Upon the effective date of any termination or discontinuance of the Plan, all affected elections and reductions in compensation relating to the Plan shall terminate.

ARTICLE 8. MISCELLANEOUS

- 8.1 Participant Elections and Communications.** All communications and elections in connection with the Plan made by a Participant shall become effective only when duly executed and filed with the Administrator.
- 8.2 Limitation of Rights.** Neither the establishment of the Plan nor any amendment thereof will be construed as giving to any Participant or other person any legal or equitable right against the Administrator or the Employer, except as expressly provided herein, and in no event will the terms of employment or service of any Participant be modified or in any way be affected hereby.
- 8.3 Benefits Solely from General Assets.** The benefits provided hereunder will be paid as determined in the discretion of the Administrator from the general assets of the Employer or from any trust(s) or insurance policies established in connection with any Benefit Plan(s). Nothing herein will be construed to require the Employer or the Administrator to maintain any fund or segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in, any fund, account or asset of the Employer from which any payment under the Plan may be made.
- 8.4 Non-assignability of Rights.** The right of any Participant to receive any reimbursement under the Plan shall not be alienable by the Participant by assignment or any other method, and will not be subject to attachment by his creditors by any process whatsoever, and any attempt to cause such right to be so subjected will not be recognized, except to such extent as may be required by law.
- 8.5 No Guarantee of Tax Consequences.** Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts contributed hereunder or paid to or for the benefit of a Participant will be excludable from the Participant's gross income for Federal or state income tax purposes, or that any other Federal or state tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether contributions and benefits are excludable from the Participant's gross income for Federal and state income tax purposes, and to notify the Administrator if the Participant has reason to believe that any such contribution or benefit is not so excludable.
- 8.6 Indemnification of Employer by Participants.** A Participant shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold Federal or state income tax or social security tax from any payments or reimbursements made in connection with the Plan. However, such indemnification and reimbursement shall not exceed the amount of additional Federal or state income tax that the Participant would have owed if the payments or reimbursements had been made to the Participant as regular cash compensation, plus the Participant's share of any employment (Social Security and Medicare) tax that would have been paid on

such compensation, less any such additional income and employment tax actually paid by the Participant.

- 8.7 Governing Law.** To the extent not superseded by federal law, including the Code, the Plan will be construed, administered, and enforced according to the laws of Texas, without giving effect to the conflicts of law provisions thereof.
- 8.8 Severability.** The provisions of the Plan are severable. If any provision of the Plan is deemed legally or factually invalid or unenforceable to any extent or in any application, then the remainder of the provision and the Plan, except to such extent or in such application, shall not be affected, and each and every provision of the Plan shall be valid and enforceable to the fullest extent and in the broadest application permitted by law.