

ADOPTED BY THE
MAYOR AND COUNCIL

December 6, 2016

RESOLUTION NO. 22678

RELATING TO GROUP INSURANCE; PROVIDING FOR THE AMENDMENT AND RESTATEMENT OF THE CITY OF TUCSON'S SECTION 125 PLAN, TO ENSURE PLAN COMPLIANCE WITH APPLICABLE REVISIONS AND AMENDMENTS TO SECTION 125 OF THE INTERNAL REVENUE CODE OF 1986; THE FAMILY MEDICAL LEAVE ACT; THE HEALTH INSURANCE PORTABILITY AND ACCOUNTBILITY ACT; AND THE PATIENT PROTECTION AFFORDABLE CARE ACT; AND DECLARING AN EMERGENCY.

WHEREAS, Section 125 of the Internal Revenue Code as amended, authorizes the City of Tucson to establish and maintain benefit plans that provide employees with an option to elect pre-tax contributions to fund certain health and child care expenses; and

WHEREAS, on December 9, 1990, the Mayor and Council adopted Resolution No. 15886 directing staff to implement an employee benefit restructuring program as provided for under the City of Tucson Section 125 Plan; and

WHEREAS, on July 7, 2010, the Mayor and Council adopted Resolution No. 21584, amending and restating the City of Tucson Section 125 Plan; and

WHEREAS, the City is authorized, pursuant to Section 6.1 of the Plan to adopt amendments to the Plan; and

WHEREAS, amendments to the Internal Revenue Code, the Family Medical Leave Act, the Health Insurance Portability and Accountability Act, and the Patient Protection Affordability Care Act, require the City of Tucson to amend the City of Tucson Section 125 Plan for purposes of ensuring plan qualification and compliance;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

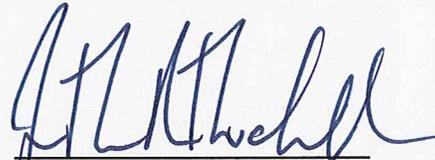
SECTION 1. The City of Tucson 125 Plan, attached hereto and incorporated herein by this reference as Exhibit A, is amended and restated effective retroactively to July 1, 2016.

SECTION 2. The Mayor is hereby authorized and directed to execute the City of Tucson Section 125 Plan documents for and on behalf of the City of Tucson, and the City Clerk is authorized and directed to countersign the same.

SECTION 3. The various City of Tucson officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this resolution and to insure that the City of Tucson Section 125 Plan documents and its Benefit Option Plans continue to comply with applicable tax regulations regarding qualification of such plans.

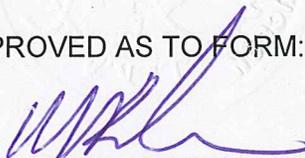
SECTION 4. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this resolution become immediately effective, an emergency is hereby declared to exist and this resolution shall be effective immediately upon its passage and adoption.

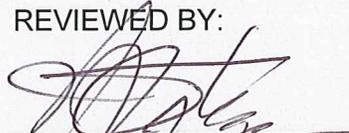
PASSED, ADOPTED, AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, December 6, 2016.


MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED BY:

CITY MANAGER

**CITY OF TUCSON
SECTION 125 PLAN**

Amended and Restated as of July 1, 2016

**City of Tucson
Section 125 Plan**

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ARTICLE I - ESTABLISHMENT OF PLAN

- 1.1 History. The Mayor and Council of the City of Tucson (the "City") originally adopted the City of Tucson 125 Plan (the "Plan"), pursuant to Section 125 of the Internal Revenue Code of 1986 as amended (the "Code"), effective January 1991, in order to establish a "Section 125 Plan" to provide to the City's employees certain welfare and other benefits. Subsequent to the adoption of the Plan, the City adopted and established certain other Benefit Options which, subject to the eligibility requirements set forth in each Benefit Option, became available to the City's employees for the purpose of providing the benefits described therein.

As of July 1, 2016, the City hereby amends and restates this Plan in its entirety by adopting the City of Tucson Section 125 Plan (Amended and Restated). The primary purpose of this amendment and restatement is to ensure compliance with applicable revisions and adoption of amendments to the Internal Revenue Code, Family Medical Leave Act, The Health Insurance Portability and Accountability Act of 1996, and the Patient Protection Affordable Care Act, and to clarify the provisions of the Plan and the related Benefit Options.

- 1.2 Purpose. The purpose of this Plan is to allow employees who become Participants in the Plan to participate in other qualified Benefit Options maintained by the City and to elect any combination of the benefits offered under any of such Benefit Options, so as to best meet each Participant's individual needs, and to allow Participants to receive, to the greatest extent permitted by law, non-taxable benefits, as permitted by Section 125 of the Code.
- 1.3 Intention. The City of Tucson Section 125 Plan is intended a qualified benefit plan maintained under Section 125 of the Code as amended from time to time. This Plan shall be interpreted, construed and administered in accordance with such intent. In no event shall this Plan be administered or construed to constitute a plan of deferred compensation.

The City's Section 125 plan makes several Benefit Options available to participating employees on a pre-tax basis, including the pre-tax payment of premiums, the Health Flexible Spending Arrangement or FSA (also known as the "Health Care Reimbursement Plan"), the Dependent Care Assistance Program (DCAP), pre-tax contributions to Health Savings Accounts (HSA), and certain voluntary insurance policies issued prior to July 1, 2010. (A complete listing of Benefit Options is attached as Appendix A).

The City reserves the right to contract with an independent claims administrator for administration of the various Benefits Options. Details about the Benefit Options, including the Health FSA and DCAP benefits, are described in the City's Insurance Handbook and in each plan document, located at www.tucsonaz.gov/insurance.

- 1.4 Effect On Benefit Options. Nothing in this Plan shall be construed to affect the provisions of any Benefit Option which is intended to comply with the requirements of any other provision of the Code, except to the extent that this Plan permits Participants to purchase or receive the benefits provided under any other Benefit Option with a Salary Reduction Order.

ARTICLE II – DEFINITIONS

Application of Definitions. As referred to herein, the words and phrases shall have the following meanings unless a different meaning is plainly required by the context. Words in the masculine gender shall be deemed to include the feminine gender, and words in the feminine gender shall be deemed to include the masculine gender; and unless the context otherwise requires, the singular shall include the plural and the plural the singular. Any headings herein are included for reference only and are not to be construed so as to alter any of the terms of the Plan.

- 2.1 "Benefit Option" means a qualified benefit as defined in Section 125 of the Code that is offered under this Plan as a City sponsored employee benefit available to Eligible Employees on a pre-tax basis. (Appendix A).
- 2.2 "City" means the City of Tucson, a municipality located in the state of Arizona.
- 2.3 "Claims Administrator" means an independent third party designated by the Plan Administrator to determine claims for benefits under the Plan or its Benefit Option, or in the absence of such designation, the Plan Administrator.
- 2.4 "Code" means the Internal Revenue Code of 1986, as amended from time to time.
- 2.5 "Compensation" means an employee's total taxable remuneration for the performance of services during each Plan Year in which he is a Participant as reflected on Form W-2, including, but not limited to, his basic wages or salary, overtime pay, bonuses or other forms of compensation, such compensation to be determined before any reduction on account of any withholding, such as Federal or State income taxes, Social Security, insurance premiums or voluntary elective contributions to this Plan or to any deferred compensation plan maintained by the City, but excluding the value of any benefit provided an employee through any qualified employee pension plan sponsored by the City and any compensation paid in kind.
- 2.6 "Dependent" means an individual who is eligible for coverage as a dependent of an Eligible Employee as defined under the applicable Benefit Option, the Insurance Handbook and the Code. Effective July 1, 2016, a Dependent will include a legally married Spouse, a married or unmarried child of the employee, a disabled child and a dependent child (as defined in the Insurance Handbook).
- 2.7 "Effective Date" as it applies to the City of Tucson Section 125 Plan means July 1, 1991. This Plan, as amended and restated, shall be effective July 1, 2016. The Effective Date of a Benefit Option is contained in each plan document.
- 2.8 "Eligible Employee" means an employee of the City who is eligible to participate in a Benefit Option, as defined in the Insurance Handbook.

- 2.9 "Insurance Handbook" means the City's Insurance Handbook located at www.tucsonaz.gov/insurance, as amended and updated from time to time. To the extent that any provision of the Insurance Handbook and a Benefit Option conflict, the terms of the Benefit Option shall control.
- 2.10 Open Enrollment: The annual period during which an Eligible Employee may add coverage for eligible dependents, drop coverage for dependents or select among alternate Benefit Options that are offered by the City. The City may administer more than one Open Enrollment period each year, as necessary to properly administer the various Benefit Options available to Eligible Employees. The current Open Enrollment period(s) is described in the Insurance Handbook.
- 2.11 "Participant" means an Eligible Employee covered under this Plan.
- 2.12 "Plan" means this City of Tucson Section 125 Plan.
- 2.13 "Plan Administrator" means the City of Tucson Benefits Office.
- 2.14 "Plan Year" means, for the purpose of the City of Tucson Section 125 Plan, a 12 consecutive month period beginning each January 1st and ending on the next following December 31st. A Benefit Option may have a calendar plan year or any other plan 12-month plan year as established for that Benefit Option. Plan Years are outlined in the Insurance Handbook. The plan year for each Benefit Option is referred to herein as the "Benefit Option coverage period."
- 2.15 "Salary Reduction Order" means a Participant's authorization to reduce his or her Compensation in accordance with Article V of the Plan, in such form as prescribed by the Plan Administrator.
- 2.16 "Severance Date" means the date on which an employee's employment with the City terminates on account of a quit, discharge, death, retirement, or layoff. Except as the Plan Administrator may otherwise determine in accordance with City employment policies and procedures, an employee shall be deemed to be absent from City employment (but not terminated) during any period of (a) absence from assigned work that is approved by the City under the City's applicable standard administrative directives, (b) military leave protected by USERRA, or (c) absence taken in accordance with the Family and Medical Leave Act of 1993, as amended from time to time. If such employee fails to return to employment with the City upon the conclusion of such an approved absence, such employee's Severance Date shall be the date as determined by City policy.
- 2.17 "Spouse" means the legal spouse of a Participant.
- 2.18 "USERRA" means the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) as it may be amended from time to time.

ARTICLE III - PARTICIPATION

3.1 Participation

- (a) An Eligible Employee may elect to become a Participant in this Plan. The effective date of participation of coverage of Eligible Employees and their eligible dependents is determined by the Plan Administrator.
- (b) If an Eligible Employee is eligible and chooses to participate in any of the Benefit Options offered through the City, such Eligible Employee must complete a Salary Reduction Order in accordance with Article V to authorize the reduction of his Compensation and payment of Benefit Option costs on a pre-tax basis.
- (c) Notwithstanding the foregoing, Salary Reduction Orders are automatic in connection with certain Benefit Option elections. If the Plan Administrator treats a Benefit Option election as an automatic Salary Reduction Order election in accordance with its uniform and nondiscriminatory policies and procedures, all participation and Salary Reduction Order election requirements set forth in this Plan shall be deemed to be satisfied.

3.2 Termination of Participation in Plan

A Participant shall cease to be a Participant in the Plan on the occurrence of earliest of the following events:

- (a) The date the Plan terminates;
- (b) The date the individual ceases to be an Eligible Employee; or,
- (c) The date on which the Participant has no valid Salary Reduction Order in effect and is no longer entitled to any reimbursements from a flexible spending arrangement offered under the Plan.

3.3 Impact of Termination of Employment and Re-employment on Plan Participation

- (a) Except as provided in subsection (c) below (COBRA coverage provision), an Eligible Employee shall cease to continue to be a Participant in this Plan upon termination of employment and may not continue any Salary Reduction Order.
- (b) If an Eligible Employee is reemployed by the City within thirty (30) days of termination, benefit participation will be reinstated in accordance with the provisions of the Benefit Option or, in the absence of such provisions, as provided by the Plan Administrator. In the event that benefit participation is automatically reinstated under one or more Benefit Options, any related

Salary Reduction Order(s) previously entered into by the Participant under this Plan also will be automatically reinstated and no changes to the prior Plan elections shall be permitted. Otherwise, an Eligible Employee reemployed by the City shall be treated as a new employee for purposes of participating in the Plan.

- (c) Notwithstanding the above, a former Participant or other qualified beneficiary, as defined in 26 U.S.C. § 4980B of the Code, or a former Participant who is on a military leave may elect to continue coverage as provided by the Consolidated Omnibus Budget Reconciliation Act (COBRA) and USERRA, as applicable. Contributions to the Plan's flexible spending arrangement(s) can continue in accordance with the Plan Administrator's policies and procedures regarding COBRA elections. If a former Participant elects to continue coverage under any other Benefit Options by exercising available COBRA rights, any and all payments required to fund COBRA coverage shall be made directly to the Plan Administrator or insurance carrier as applicable and shall not be made under this Plan.

3.4 Benefit Option Participation

The terms, conditions and duration of an Eligible Employee's participation in a Benefit Option shall be governed by the documentation for the applicable Benefit Option, as summarized in the Insurance Handbook. Participation in most Benefit Options is separate and independent from participation in this Plan.

ARTICLE IV - ELECTION OF BENEFITS

4.1 Benefit Elections

(a) Subject to all other provisions of this Plan, a Participant may choose between receiving his or her full Compensation and purchasing coverage under one or more of the Benefit Options set out in Appendix A on a pre-tax basis. No Participant shall be permitted to elect pre-tax benefits or pre-tax premium payment benefits under this Plan unless the Participant has satisfied the eligibility and enrollment requirements for the underlying Benefit Option.

(b) Irrevocability of Elections

Unless an exception applies herein consistent with applicable laws or required by law, a Participant's election under the Plan is irrevocable for the period of coverage to which it relates. See Sections 4.5, 4.6, 5.6 and 5.9 for certain exceptions and permissible changes.

4.2 Annual Enrollment Procedures

Upon initial eligibility and in connection with each Open Enrollment, the Plan Administrator shall provide instructions to Eligible Employees regarding the election and enrollment procedures for the Benefit Options and corresponding Salary Reduction Orders under this Plan. Certain Salary Reduction Order elections, such as an Eligible Employee's election to pay medical insurance premiums on a pre-tax basis, are automatic in the Open Enrollment process, subject to the Eligible Employee's confirmation of all elections. The City's Insurance Handbook (located at www.tucsonaz.gov/insurance) is the source for information about enrollment procedures and the available Benefit Options.

All Participant elections must be made or confirmed in accordance with the Plan Administrator's uniform and non-discriminatory procedures and all Salary Reduction Orders must apply only with regard to Compensation not yet paid by the City to the Employee.

4.3 Duration of Elections

Except as provided in Sections 4.5, 4.6, 5.6 and 5.9, a Participant's election is irrevocable and shall remain in effect through the last day of the coverage period for the particular Benefit Option, subject further to the conditions set forth in the plan document of the respective Benefit Option.

4.4 Participation in Benefit Plans

Any Participant who has a Salary Reduction Order in effect shall be entitled, if

eligible, to elect to purchase benefits provided under any of the Benefit Options (see Appendix A) in accordance with the terms thereof. A Participant shall not be entitled to substitute a benefit under one Benefit Option for a benefit under another Benefit Option during a Plan Year following his irrevocable election. In all cases, the selection of benefits under the Benefit Options shall be limited to the extent necessary to maintain this Plan's compliance with Section 125 of the Code and the regulations thereunder.

4.5 Reduction or Revocation of Certain Elections by Plan Administrator

The Plan Administrator may revoke or reduce a Participant's election of elective contributions and non-elective contributions under this Plan at any time prior to or during a Plan Year, to the extent necessary to ensure the plan complies with applicable federal and state law and City of Tucson policy or Benefit Option contract, as outlined in the Insurance Handbook and in the Benefit Option information outlined on the Benefits Office website.

4.6 Family and Medical Leave and Military Leave

A Participant who goes on unpaid leave in accordance with the City's standard Administrative Directives for Family and Medical Leave Act (FMLA) or military leave under USERRA may:

- (a) Revoke his or her election under a Benefit Option at the onset of such leave or at any time during such leave; and
- (b) Revoke his or her election with respect to non-health benefits to the same extent as employees who are on unpaid leaves of absence other than FMLA or military leave are permitted to revoke such elections.

Upon return from FMLA, an Eligible Employee who has revoked an election may choose to reinstate such election, with no changes to the election in effect prior to the revocation, effective the first day of the month following return from leave, provided, however, that the City may require reinstatement of the election if employees who return from a period of unpaid leave not covered by the FMLA are also required to resume participation under a Benefit Option upon return from leave.

Upon return from military leave, an Eligible Employee's benefits shall be reinstated in accordance with USERRA.

Any revocation or reinstatement of an election under a Benefit Option in accordance with this Section 4.6 shall be deemed to be a revocation or reinstatement of any and all corresponding Salary Reduction Orders under this Plan.

ARTICLE V - SALARY REDUCTION ORDER AND ACCOUNTS

5.1 Salary Reduction Order.

An Eligible Employee may complete a Salary Reduction Order authorizing the City to reduce his Compensation by an amount equal to the cost of coverage and benefits available to the Eligible Employee under the Benefit Options selected by the Eligible Employee. The amount of Compensation to be reduced must be specified as a specific dollar and cents amount, or an amount equal to the cost of benefits purchased under the Benefit Option. Upon completion of a Salary Reduction Order, an Eligible Employee shall become a Participant in the Plan, subject to the terms hereof. In no event shall a Participant's total salary reduction for any Plan Year exceed the Participant's Compensation for that Plan Year.

5.2 Timing and Rules for Completing Salary Reduction Orders.

- (a) Instructions on how to enroll in the Plan and how to enter into an initial or subsequent Salary Reduction Order are published by the City in the City's Insurance Handbook (located at www.tucsonaz.gov/insurance). Eligible Employees may request additional information on the enrollment and election process from the Plan Administrator at any time. The Plan Administrator shall determine, in its discretion and from time to time, the form, content and means of communication and distribution of all Salary Reduction Orders and instructions for completion thereof.
- (b) Subject to rules and deadlines for Open Enrollment and Change in Status, a Salary Reduction Order generally must be completed on or before the earlier of the date (i) an Eligible Employee is eligible to participate in a Benefit Option or (ii) the first day of a Benefit Plan coverage period. A Salary Reduction Order shall be effective as of the date determined by the Plan Administrator, except as stated in Section 5.2(d) and 5.2(e).
- (c) The City may, pursuant to uniform and non-discriminatory policies and procedures, treat certain Salary Reduction Orders as "evergreen elections" that remain in effect from one Benefit Option coverage period to the next, without an affirmative election from the Participant. The City shall communicate to the Participants during each Open Enrollment period which Salary Reduction Orders, if any, are treated as evergreen elections.
- (d) If the Eligible Employee is executing the Salary Reduction Order as part of Open Enrollment, the Eligible Employee shall become a Participant in the Benefit Plan as of the first date of the Benefit Option coverage period.
- (e) If the Eligible Employee is executing the Salary Reduction Order due to a Change In Family Status, the Salary Reduction Order shall become effective in accordance with the terms of the Benefit Option and rules outlined in the Insurance Handbook.

- 5.3 Election Amendments Required by Plan Administrator. Any provision of this Plan to the contrary notwithstanding, either prior to or during any Plan Year, the Plan Administrator may require all or any class of Participants to amend the amount of any Salary Reduction Order then in effect as to future reductions in salary if the Plan Administrator, in his discretion, determines that such amendment is necessary in connection with a change in the cost of a Benefit Option and such change in cost would not be considered significant. Any change of a Participant's Salary Reduction Order made pursuant to this Section 5.3 shall be made in accordance with such rules, regulations and procedures as the Plan Administrator may, in his sole discretion, adopt from time to time.
- 5.4 Changes or Suspension of Salary Reduction Order. Except as provided in Section 5.6, a Participant may not change a Salary Reduction Order during a Benefit Option coverage period and such Salary Reduction Order shall be effective for the entire Benefit Option coverage period to which it relates. A Participant may change or stop his Salary Reduction Order effective as of the first day of a succeeding Benefit Option coverage period. Except as the Plan Administrator may otherwise provide by rule or regulation, a Participant's direction to change or stop a Participant's Salary Reduction Order shall be effective only if received by the Plan Administrator during an Open Enrollment preceding the next Benefit Option coverage period.
- 5.5 Reauthorization of Suspended Salary Reduction Orders. Except as provided in Section 5.6, and subject to such limitations as the Plan Administrator may adopt by rule or regulation, a Participant who has stopped his Salary Reduction Order may deliver a new Salary Reduction Order authorizing his Compensation to be reduced in accordance with this Article V. A Salary Reduction Order which reauthorizes salary reductions shall be effective as of the first day of the Benefit Plan coverage period following the date the Plan Administrator accepts a Salary Reduction Order from the Participant. Except as the Plan Administrator may otherwise provide by rule or regulation, excluding application of Section 5.6, a Salary Reduction Order directing the Plan Administrator to recommence the reduction of a Participant's Compensation shall be effective only if received by the Plan Administrator during the Open Enrollment preceding the Benefit Option coverage period.
- 5.6 Permissible Mid-Year Election Changes due to Change in Status events. Subject to such limitations as the Plan Administrator may adopt by rule or regulation, a Participant may initiate, stop or reauthorize his Salary Reduction Order, if such initiation, suspension or reauthorization is on account of and consistent with the following change in status events.
- (a) Change in legal marital status, including marriage, death of Spouse, divorce, legal separation, or annulment.

- (b) Change in the number of Dependents, including birth, adoption, placement for adoption, or death of a Dependent.
- (c) Change in employment status, including termination or commencement of employment of the Eligible Employee, Spouse, or Dependent which changes an individual's eligibility for benefits under a plan sponsored by another employer.
- (d) A change in residence of the Eligible Employee, Spouse or Dependent, outside the service area.
- (e) Significant cost and/or coverage changes in a group health plan offered through a Spouse's or Dependent's employment causing the Spouse or Dependent to waive or enroll in coverage under the other employer group health plan. The change made under this Plan must be consistent with coverage added or waived under the Spouse's or Dependent's employer plan.
- (f) Increases or decreases in the amount charged by a dependent care provider.
- (g) Changes in work schedule including an increase or decrease in the number of hours of employment by the Eligible Employee, Spouse, or Dependent, including a switch between full-time and part-time status, a strike or lockout, or commencement or return from an unpaid leave of absence that leads to a gain or loss of benefit coverage.
- (h) The Dependent satisfies or ceases to satisfy the requirements for Dependents.
- (i) If the Eligible Employee, Spouse or Dependent becomes entitled to Medicare or Medicaid, or loses eligibility for Medicare or Medicaid, the Employee may elect to change the coverage of the Eligible Employee, Spouse or Dependent under the Health Plan Benefit Option, and/or change participation in the Health FSA or HSA, but not the DCAP.
- (j) If an Employee is permitted to make changes to his or her elections under a Benefit Option in accordance with a qualified medical child support order (QMCSO) pertaining to an Eligible Employee's Dependent, the Eligible Employee also shall be permitted to make consistent changes to any Salary Reduction Order, or initiate a new Salary Reduction Order, under this Plan.

A Participant shall advise the Plan Administrator within 31 days after any Change of Status events (60 days for birth/adoption/placement for adoption or loss/gain of Medicaid/CHIP coverage and eligibility). The Participant shall further advise

the Plan Administrator of the relationship of such Change in Status events to his requested change, suspension or reauthorization of his Salary Reduction Order. The change in Salary Reduction Order made under this Plan must be consistent with the Change of Status that has occurred.

The Plan Administrator shall approve or deny the change, suspension or reauthorization in his sole discretion, such discretion to be applied in a uniform and nondiscriminatory manner, in accordance with such rules and regulations as he may adopt.

- 5.7 Consistency. Any permitted change must be consistent with the Change in Status event.
- 5.8 Effective Date of Change in Salary Reduction Order. In accordance with the Code, changes made on account of a permissible mid-year Change of Status event outlined in section 5.6 will be effective as of the date of the Change in Status; provided, however, that the Participant complies with the Plan Administrator's uniform and nondiscriminatory deadlines for notification to the Plan Administrator of a Change in Status. The new or modified Salary Reduction Order entered by a Participant following a Change in Status will be implemented by the Plan Administrator with regard to prospective compensation only.
- 5.9 Special Rules for Flexible Spending Account Elections (FSA and DCAP). A Salary Reduction Order directing contributions to the Health Flexible Spending Account Plan (FSA) or the Dependent Care Assistance Plan (DCAP) shall be administered in accordance with the special rules set forth in this Section, as well as the guidelines and requirements specified for the FSA and DCAP in the City's Insurance Handbook.
- (a) FSA Available Reimbursement. At all times during the Plan Year and the available grace period, a Participant shall be entitled to reimbursement under the FSA in an amount that does not exceed the anticipated amount to be allocated on his behalf under the FSA for the Plan Year, less any previously reimbursed expenses, regardless of the actual amount then standing to the Participant's credit under the FSA for payment of expenses. Each payment to the Participant under the FSA shall reduce the amount available to pay the Participant's expenses under the FSA for a particular Plan Year.
- (b) DCAP Available Reimbursement. A Participant shall be entitled to reimbursement of eligible expenses under the DCAP in amount that does not exceed the actual amount then standing to the Participant's credit under the DCAP. Each payment to the Participant under the DCAP shall reduce the amount available to pay the Participant's expenses under the DCAP for a particular Plan Year.

- (c) FSA Allocation of Expenses and Forfeiture of Contributions. Any eligible FSA expenses incurred by a Participant during the available grace period for a particular Plan Year shall be allocated either to the previous Plan Year or to the Plan Year in which the grace period occurs, in accordance with uniform rules and procedures of the Plan Administrator. To the extent that a Participant's contributions to the FSA for a Plan Year exceeds the eligible expenses submitted for reimbursement during the Plan Year and the available grace period, the excess amount credited to the Participant's FSA account shall be forfeited. Forfeited FSA funds will be applied first to costs associated with the Plan. Any forfeited funds in excess of the amount used for administration of the Plan will be returned to the general fund for use by the City for any purpose it determines.
- (d) Annual Limitations. The maximum FSA and DCAP contributions and reimbursements, per Participant per Plan Year, shall not exceed the applicable annual limit on contributions as determined by the Internal Revenue Service. The City may establish additional rules and procedures for minimum and maximum contributions that may be made on an annual, monthly, payroll period, or other basis.
- (e) Bookkeeping Accounts Only. The Plan Administrator is not required by law to maintain, and does not maintain, actual separate and discrete accounts for Participants who make FSA and DCAP contributions pursuant to Salary Reduction Orders. All FSA and DCAP reimbursement payments shall be made from the general assets of the City, and no assets shall be earmarked or segregated for purposes of providing benefits.
- (f) Responsibility for Payment. It is the Participant's responsibility, in all cases, to pay for healthcare and dependent care expenses. Any FSA or DCAP reimbursement payment made pursuant to this Plan to the Participant or the Participant's representative (as described in Section 8.4) shall completely discharge all liability of this Plan, the Plan Administrator, and the City with respect to such expense.
- (g) Overpayments. If, for any reason, any FSA or DCAP benefit under this Plan is erroneously paid, exceeds the annual limitations or exceeds the Participant's eligible expenses under the FSA or DCAP, the Participant shall be responsible for refunding the overpayment to the Plan. The refund shall be in the form of a lump sum payment, a reduction of the amount of future benefits otherwise payable under the Plan, or any other method as the Plan Administrator, in its sole discretion, may require.

5.10 Special Rules for Health Savings Account (HSA) Elections. Notwithstanding any provision of this Plan to the contrary, a Salary Reduction Order directing contributions to a Health Savings Account or HSA on behalf of a Participant may

be modified or revoked on a monthly and prospective basis with regard to the HSA contributions.

5.11 Employee After-Tax Contributions

Under certain circumstances, a Participant may pay for coverage under certain Benefit Options from Compensation that has been subject to federal income taxes. The monetary amount associated with these payments constitutes employee after-tax contributions. Employee after-tax contributions shall be accounted for separately by the Plan Administrator and the Plan Administrator shall ensure that the City receives the information necessary for proper income tax reporting and withholding on any employee after-tax contributions. Employee after-tax contributions may be made for the following purposes:

- (a) To pay for continuation of coverage during unpaid FMLA or other approved Leave;
- (b) For such other purposes as determined by the Plan Administrator on a nondiscriminatory basis for all similarly situated Participants.

ARTICLE VI - AMENDMENT, TERMINATION AND SEVERABILITY

6.1 Right to Amend

The City reserves the right to make at any time with proper notice modifications, revisions or amendments to this Plan or Benefit Options, it determines to be necessary or desirable to maintain the qualifications of the Plan or Benefit Options under Section 125 of the Code, and any applicable regulation or laws, or to ensure the successful administration and operation of each Plan. The City shall make amendments in writing; and, no amendment shall have any retroactive adverse effect on a Participant, unless the City determines such amendment is necessary or desirable to comply with applicable law.

6.2 Right to Terminate

The City, through a formal resolution, shall have the authority to terminate the Plan at any time in whole or in part; but in no event shall such termination prejudice any claim or benefit under the Plan that was incurred but not paid prior to the termination date.

6.3 Severability

Should any part or provision of this Plan or a Benefit Option subsequently be invalidated by a court of competent jurisdiction or enforcement agency, the remainder of the Plan and its Benefit Options shall be given effect to the maximum extent possible.

ARTICLE VII – PLAN ADMINISTRATION

7.1 Finance Director Duties

The Finance Director or his/her designee shall be responsible for maintaining a system of accounts for the salary reduction contributions in accordance with generally accepted accounting principles for payroll and benefit plans. The finance director also shall be responsible for oversight of the payroll procedures connected to the benefit administration, including the oversight of payroll deductions implemented by the Plan Administrator on behalf of Participants such as the collection of contributions and other duties pursuant to Sections 22-81, 22-82, and 22-83 of the Tucson City Code. The Finance Director shall be responsible for federal or state reporting responsibilities under the Internal Revenue Code or the Patient Protection and Affordability Care Act and for any request from state or federal agency of competent jurisdiction, with regard to financial records.

7.2 Human Resources Director Duties

The Human Resources Director or his/her designee is hereby charged with the duty of causing all Eligible Employees to be informed as to their benefits, rights and obligations under such insurance or medical health plan agreement pursuant to section 22-84 of the Tucson City Code.

7.3 Plan Administrator

The City has designated the Benefits Office of the City of Tucson as Plan Administrator. The Plan Administrator's principal duty shall be to oversee the day-to-day operations of the Plan benefits and ensure that the Plan is administered in accordance with its terms and for the exclusive benefit of Participants in the Plan, without discrimination among them.

7.4 Plan Administrator Powers and Duties

The Plan Administrator shall have full power to administer the Plan in all of its details, subject to applicable requirements of law. For this purpose, the Plan 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 inform all Eligible Employees of their benefits, rights and obligations under the Plan.
- (b) To establish administrative policies and procedures consistent with the objectives of the Plan and as required by law, and to enforce such policies and procedures as it deems necessary or proper for the efficient administration of the Plan.

- (c) To interpret the provisions of the Plan that made in good faith will be final and conclusive on all persons claiming benefits under the Plan.
- (d) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan.
- (e) To appoint such agents, counsel, accountants, consultants and other persons as may be required to assist in administering the Plan.
- (f) To allocate and delegate responsibilities under the Plan and to designate other persons to carry out any of its responsibilities under the Plan.
- (g) To communicate to any supplier or administrator of benefits under this Plan in writing all information required to carry out the provisions of the Plan.
- (h) To notify the Participants in writing of any substantive amendment or termination of the Plan or of a change in benefits available under the Plan.

Notwithstanding the provisions of this section, the powers and duties allocated to the Plan Administrator and described in this section shall only be applicable with respect to a claim arising under the Benefit Options or to the administration of the Benefit Options to the extent that such power or duty is not allocated (either expressly or by implication) to the individual(s) or entity appointed to serve as administrator of any of the Benefit Options.

7.5 Fraudulent Claims

If a person is found to have falsified any document in support of a claim for benefits or coverage under the Plan, the Plan Administrator may without anyone's consent terminate coverage and may refuse to honor any claim under the Plan.

7.6 Examination of Records

The Plan Administrator will make available to each Participant such records under the Plan as requested and pertaining to the Participant for examination at reasonable times during normal business hours.

7.7 Nondiscriminatory Exercise of Authority

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

7.8 Standard of Review

The Plan Administrator has discretionary authority to operate, administer and construe the Plan in accordance with the reason and purpose for which this Plan is established and maintained. Any action of the Plan Administrator for which there is a rational basis shall be final and legally binding on all parties.

ARTICLE VIII - GENERAL PROVISIONS

8.1 Information to be Furnished

Participants shall provide the Plan Administrator with such information and evidence and shall sign such documents, as may reasonably be requested from time to time, for the purpose of administration of the Plan.

8.2 No Rights to Benefit

Neither the establishment/amendment of the Plan nor the payment of any benefits will be construed as giving to any Participant or other person any entitlement, or legal or equitable right against the City.

8.3 Governing Law

This Plan and all Benefit Options shall be construed, administered and enforced according to the laws of Arizona except as may be preempted by federal law.

8.4 Facility of Payment

If the Plan Administrator deems any person entitled to receive any amount under the provisions of this Plan incapable of receiving or disbursing the same by reason of minority, death, illness or infirmity, mental incompetence or incapacity of any kind, the Plan Administrator may, in its discretion, take any one or more of the following actions:

- (a) Pay such amount to a legally appointed representative, guardian, conservator for the comfort, support and maintenance of the person entitled to receive such amount.
- (b) The Plan Administrator may, in its discretion, deposit any amount due to a minor to his credit in any savings or commercial bank of the Plan Administrator's choice.

If a Participant dies while benefits under the Plan remain unpaid, the Plan Administrator may make payment to the executors or administrators of the Participant's estate.

Payment in the manner described above shall be in complete discharge of the liabilities of this Plan and the obligations of the Plan Administrator and the City.

8.5 Lost Payee

Any amount due and payable to a Participant or beneficiary shall be forfeited if the Plan Administrator, after reasonable effort, is unable to locate the Participant

or beneficiary to whom payment is due. Such forfeited amounts shall be applied toward the administrative expenses of the Plan, or shall revert to the City. However, any such forfeited amount will be reinstated through a special contribution to the Plan by the City and become payable if a claim is made by the Participant or beneficiary. The Plan Administrator shall prescribe uniform and nondiscriminatory rules for carrying out this provision.

8.6 No Guarantee of Tax Consequences

Notwithstanding anything herein to the contrary, the City neither ensures nor makes any commitment or guarantee that any amounts paid to a Participant pursuant to the Plan or any amounts by which a Participant's wages are reduced pursuant to Article V will be excludable from the Participant's gross income for federal, state or local income tax purposes. It shall be the obligation of each Participant to notify the Plan Administrator if the Participant has reason to believe that any payment made or to be made to the Participant pursuant to the Plan is not excludable from the Participant's gross income for federal, state or local income tax purposes.

8.7 Funding

Payments due under the Plan will be made from designated accounts on behalf of the City or otherwise provided by a third party insurance company with whom the Plan Administrator has contracted to provide certain benefits, and no funds will be placed in escrow or earmarked to pay benefits.

8.8 Indemnification of City by Participant

If a Participant receives one or more payments in accordance with applicable Plan provisions that are not for eligible Benefit Option expenses, such Participant shall indemnify and reimburse the City for any liability it may incur for failure to withhold federal, state or local income tax or Social Security tax from such payments. Such indemnification and reimbursement shall not exceed the sum of the amount of additional federal and state income tax that the Participant would have owed if the payments had been made to the Participant as regular cash Compensation plus the Participant's share of any Social Security tax that would have been paid on such Compensation.

ARTICLE IX - PROTECTED HEALTH INFORMATION PROVISIONS

9.1 Permitted Disclosures of Protected Health Information

Any Benefit Option that is a "Health Plan" as defined in 45 CFR §160.103 (such as the Health Flexible Spending Arrangement maintained pursuant to this Plan) may disclose Protected Health Information (as defined in 45 CFR §160.103) in certain circumstances. Please refer to the notice regarding the disclosure of Protected Health Information on the Benefits Home Page at www.tucsonaz.gov/insurance for additional information.

IN WITNESS WHEREOF, the City has caused this Section 125 Plan to be amended and restated in its name and behalf effective the 1st day of July 2016 by its officer thereunto duly authorized.

ATTEST (SEAL)



Roger W. Randolph City Clerk

Date: December 6, 2016

THE CITY OF TUCSON

Signature: 

Printed Name: Jonathan Rothschild

Title: Mayor

**CITY OF TUCSON
SECTION 125**

BENEFIT OPTIONS

APPENDIX A to Exhibit A to Resolution 22678

to City of Tucson Section 125 Plan

A Participant in this Plan may elect pre-tax benefits associated with the following **Benefit Options**, which are offered to the City's Employees:

1. Medical Plans (including an HMO option and high deductible health plans (HDHPs) utilizing a Health Reimbursement Arrangement (HRA) or a Health Savings Account (HSA))
2. Vision Plan
3. Dental Plans
4. Health Flexible Spending Account Plan (general purpose Health FSA)
5. Dependent Care Spending Account Plan (DCAP)
6. Voluntary Benefits (including but not limited to Short Term Disability, Accidental Injury, Cancer Benefit and, Hospital Confinement). Please note these Voluntary Benefits are available on a pre-tax basis through this Plan only for Participants who enrolled in these programs prior to July 1, 2010.

Refer to the Insurance Handbook and Benefit Option booklets and SBCs (Summaries of Benefits and Coverage) at www.tucsonaz.gov/insurance for details about the Benefit Options noted here.