

2004

**EMPLOYEE MEDICAL
SPENDING PLAN
(EMSP)**

EMPLOYEE MEDICAL SPENDING PLAN

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ARTICLE I

PREAMBLE

THIS INSTRUMENT made and published by the City of Dallas effective January 1, 2004, amends and restates the City's Employee Medical Spending Plan, as follows:

1.0 Establishment of Plan

The City of Dallas (the "City") has established a self-insured Employee Medical Spending Plan (the "Plan") as of the Effective Date specified in Section 2.07, below.

1.02 Purpose of Plan

This Plan has been established to reimburse the eligible employees of the City for the cost of out-of-pocket medical and dental expenses incurred by them, their spouses and dependents. It is intended that the Plan meet the requirements for qualification under Code Section 105, and that benefits paid employees hereunder be excludable from their gross incomes by virtue of Section 105(b). This plan is further intended to be a component benefit of the City's Flexible Benefit Plan meeting the requirements for qualification under Section 125 of the Internal Revenue Code. All restrictions under City's Flexible Benefit Plan apply to the Employee Medical Spending Plan.

ARTICLE II

DEFINITIONS

- 2.01 Administrator or Plan Administrator means the person appointed by the Director of Human Resources to direct and administer the Employee Benefits Program.
- 2.02 Benefits means any amounts paid to a Participant in the Plan as reimbursement for Eligible Medical and Dental Expenses incurred by the Participant during a Plan Year either individually or by the Participant's spouse or dependents.
- 2.03 Code means the Internal Revenue Code of 1986, as amended.
- 2.04 City means the City of Dallas, Dallas County, Texas
- 2.05 Coverage Period means the Plan Year, during which period the benefits provided by this Plan shall be available to a Participant hereunder.

- 2.06 Dependent means any individual who is a dependent of the Participant within the purview of Code Section 152.
- 2.07 Effective Date means January 1, 1994.
- 2.08 Eligible Medical or Dental Expenses means those expenses incurred by a Participant, a Participant's spouse, or a Participant's dependents, after the effective date of the Employee's participation herein, before the coverage is revoked, and during the Plan Year which are otherwise allowable as deductions under Code Section 213 [without regard to the limitations contained in Section 213(a),] but shall not include an expense incurred for the payment of premiums under a health benefits or insurance plan. For purposes of this Plan, an expense is "incurred" when the Participant, spouse or dependent is furnished the medical care or services giving rise to the claimed expense.
- 2.09 Employee means any individual who regularly renders personal services and who is compensated for such services by salary or wages by the City of Dallas. The only employees eligible for participation in the program are permanent full-time and permanent part-time employees who work more than 20 hours a week.
- 2.10 Experience Gains mean the amount, if any, by which contributions exceed claims reimbursement and reasonable administrative costs for a Plan Year.
- 2.11 Participant means an individual who participates in the program in his or her capacity as an employee.
- 2.12 Plan Year means the annual accounting period of the Plan, which shall coincide with the Plan Year of the Employer's Flexible Benefit Plan.
- 2.13 Spouse means an individual who is legally married to a Participant, but does not include an individual separated from the Participant under a legal separation decree.

ARTICLE III
ELIGIBILITY

Each Employee who is eligible to participate in the City's Flexible Benefit Plan and who has entered into a Salary Reduction Agreement that provides funding for the Employee Medical Spending Plan shall automatically be a Participant in this Plan as of the date that coverage in such Flexible Benefit Plan becomes effective.

ARTICLE IV

COVERAGE AMOUNTS AND CONTRIBUTIONS

4.01 Available Levels of Benefits; Contributions

A Participant may choose his or her applicable level of Employee Medical Spending Plan benefit up to \$2,500.00.

4.02 Required Contributions

As a condition to continued eligibility to receive benefits under this Plan, a Participant shall pay contributions corresponding to the selected benefit level selected by the Participant.

4.03 Payment of Contributions

The normal mode of payment of contributions due for a Plan Year shall be by deduction of an equal amount from two paychecks each month during the coverage period, pursuant to the Participants Election of Benefits and Salary Reduction Agreement. Persons continuing coverage while on FMLA leave and former employees continuing coverage under COBRA must make required contributions monthly, in advance, to the Benefits office.

4.04 Selection of Contribution

The selection of the contribution amount must be made:

- (a) within 31 days of the starting date of a new employee; or

(b) during the annual enrollment period, unless the Participant experiences a change in family status. Changes in family status include:

- Marriage;
- Divorce;
- Birth or adoption of a child;
- Death of a spouse or a child;
- Termination of employment or commencement of employment of a spouse;
- Change of spouse to or from part-time employment;
- Change of Participant to or from part-time; and
- Taking of unpaid leave of absence by Participant or spouse.
- Loss of COBRA coverage

4.05 Elections Irrevocable

The election of benefits and amounts shall be irrevocable for the Plan Year; provided, however, that a Participant may make a new election on account of and consistent with a change in family status as long as the appropriate election form is filed with the Plan within 30 days of the change. Notwithstanding the preceding, the election of an employee who is not on FMLA leave is revoked if the employee fails to make required contributions. An employee returning from leave without pay during the same plan year who retained continuation coverage during the period of leave will automatically resume the making of Plan contributions. Persons who did not contribute while on FMLA leave may either resume making contributions upon their return to work or retain their terminated status, at their option. Others cannot re-enroll until the next open enrollment period.

ARTICLE V

BENEFITS

5.01 Eligibility of Benefits

Each Participant in the Plan shall be entitled to a benefit hereunder for all Eligible Medical and Dental Expenses incurred by him, his spouse or his dependents on or after the effective date of his participation, (and after the effective date of the Plan) subject to the limitations contained in Article V, below.

5.02 Claims for Benefits

No benefits shall be paid hereunder unless a Participant has first submitted a written claim for benefits to the Plan Administrator on a form specified by the Plan Administrator, and pursuant to the procedures set out in the City's Flexible Benefit Plan. Upon receipt of a properly documented claim, the City shall pay the Participant the benefits provided under this Plan within the time specified for payment. A Participant may submit a claim for reimbursement for an Eligible Medical or Dental Expense arising during the Plan Year at any time during the period that begins when the expense is incurred, and ends 60 days after the close of the Plan Year.

5.03 Payment of Benefits

The Plan Administrator shall make the reimbursement payments provided herein to a Participant on a monthly basis. The minimum amount for a claim payment is fifty dollars. A Participant may submit a claim any time a Participant has accumulated fifty dollars or more in eligible unreimbursed expenses. This minimum claim payment amount is waived (a) if the claim will reduce the Participant's balance to zero or (b) during the period of time between the end of the Plan year and sixtieth day after the close of the Plan year.

5.04 Required Information

Each Participant's claim for benefits shall contain the following information, either;

- (1) verification of expenses: a completed Explanation of Benefits Form or a pink copy of the City check from the City and EOB's from any other health benefits plan or program, and such other information that the Administrator may require to establish entitlement to payment; or
- (2) an itemized statement from the medical/dental provider if required by the Administrator, and a certification from the Participant that such expenses have not been reimbursed and are not reimbursable through other plan coverage;
- (3) the name of the person on whose behalf Eligible Medical or Dental Expenses have been incurred and that person's relationship to the Participant; and,
- (4) a certification that the patient, if not the Participant, is the spouse of the Participant or a dependent of the Participant under the terms of Section 152 of the Internal Revenue Code.

5.05 Termination of Coverage Because of Termination of Employment or Reduction in Hours

In the event that a Participant terminates employment with the City or reduces his or her work hours below the minimum required, coverage shall continue until the last day of the month in which employment terminates or in which the hours are reduced. The Plan shall reimburse any eligible expenses (up to the amount of the Participant's annual benefit, less prior benefits paid during the Plan Year) that are incurred within the Participant's period of coverage during the Plan Year. The Participant shall be entitled to submit a claim for reimbursement of eligible expenses at any time before the 60th day after the close of the Plan Year. Notwithstanding the preceding paragraph, the Participant shall have the right to elect "Continuation Coverage" under Article VI below.

ARTICLE VI

COBRA CONTINUATION OF COVERAGE

6.01 COBRA Continuation Coverage after Termination of Normal Participation

Each Participant shall have the right to elect to continue coverage under this article upon the occurrence of a Qualifying Event that would otherwise result in such person losing coverage hereunder. Such extended coverage under this article is known as "COBRA Continuation Coverage".

6.02 What is a "Qualifying Event"

Either of the following shall be considered as a "Qualifying Event":

- (a) the termination (other than by reason of gross misconduct) of the Participant's employment; or
- (b) reduction of the Participant's hours of employment below any minimum level of hours required for participation herein.

6.03 What Benefit is Available under COBRA Continuation Coverage

Each Participant who elects to continue coverage under Article VI shall have the right to continue the level of coverage in effect for the Participant on the day before the Qualifying Event, or a lesser level of coverage pursuant to Participant's election under Section 4.01 above.

The maximum coverage amount that may be continued by the Participant shall be

- (a) until the end of the Plan Year, the amount of the annual benefit that was in effect when termination occurred reduced by benefits paid out prior to termination of normal coverage.

6.04 Notice Requirements

- (a) When an Employee becomes covered under the health benefits program, the Plan Administrator must inform the Employee in writing of the rights to continued coverage, as described in Article VI
- (b) The City shall give the Plan Administrator written notice in case of a Qualifying Event within thirty (30) days of the occurrence thereof.
- (c) Within fourteen (14) days of receipt of the City's notice, the Plan Administrator shall furnish the Participant with written notification of the termination of regular coverage under the Plan, as well as a recital of the rights of any such Participant to elect COBRA Continuation Coverage, as required by 42 U.S.C. Sec 300bb in accordance with the terms of this Plan.

6.05 Election Period

Any Participant entitled to COBRA Continuation Coverage shall have 60 days from the later of the date of the notice required by Section 6.04 or the date the Qualifying Event in which to return a signed election to the Plan Administrator indicating the choice to continue benefits under this article.

6.06 (RESERVED)

6.07 Automatic Termination of COBRA Continuation Coverage

COBRA Continuation Coverage shall automatically cease if (a) the City no longer offers group health coverage or this Plan to any of its employees, (b) the required premium for continuation coverage is not paid within 30 days of the date due, (c) an electing Participant becomes entitled to Medicare, or (d) an electing Participant becomes covered under another group health plan, including Retiree Health Coverage, unless such health plan contains any exclusion or limitation with respect to any preexisting condition of such Participant.

ARTICLE VII

BENEFIT LIMITATIONS

7.01 Source of Payments

All benefits derived hereunder shall be paid exclusively from the Participant's Employee Medical Spending Account under the City's Flexible Benefit Plan. The amount available for reimbursement shall, at all times during the Plan Year, be equal to the amount of coverage purchased by the Participant, less any previous reimbursements made during the Plan Year coverage period. However, no benefits will be payable with respect to a coverage period for which the Participant has failed to make required contributions.

7.02 Dollar Limitations

In no event may the annual value of benefits provided hereunder for any Participant pursuant to the Participant's Benefit Election and Salary Reduction Agreement exceed \$2,500.00.

7.03 Automatic Adjustments

Before or during the Plan Year, the Plan Administrator shall have the right to make automatic, downward adjustments to the benefit election made by any Participant who is considered to be "Highly Compensated" within the meaning of Code Section 414(q) in order to prevent this Plan from becoming discriminatory within the meaning of Code Section 89(e)(1).

ARTICLE VIII

FORFEITURES AND EXPERIENCE GAINS

8.01 Forfeiture of Unclaimed Balances

Reimbursements will be made only for expenses incurred during the Plan Year from January 1 to December 31. Participants have a grace period of sixty (60) days after the end of the Plan Year to file a claim. Any outstanding credit balance left unclaimed in the Participant's account at the end of the grace period will be forfeited. No refunds or carryovers will be allowed.

8.02 Experience Gains

Experience Gains shall be used to add benefits for the following Plan Year on a reasonable and uniform basis as approved by the Plan Administrator in accordance with the then-existing legal requirements.

ARTICLE IX

PLAN ADMINISTRATION

9.01 Appointment of Plan Administrator

The Plan Administrator shall be the Benefits Administrator of the City of Dallas.

9.02 Responsibilities of the Plan Administrator

The Plan Administrator shall have the exclusive right to interpret the terms and provisions of the Plan relating to its function hereunder, and to determine any facts relevant thereto or questions arising thereunder or in the administration thereof, including the right to remedy or correct any ambiguities, inconsistencies or omissions. Any such interpretation or decision of the Plan administrator shall be conclusive and binding on all persons.

9.03 Operation of the Plan Administrator

The Plan Administrator may adopt such rules and regulations as deemed desirable for the conduct of affairs, and may employ such accountants, counsel and other specialists as deemed necessary or desirable in connection with the performance of his functions hereunder. The Plan Administrator shall be entitled to rely conclusively upon, and shall be fully protected in any action taken by it in good faith in relying upon, any opinions or reports which shall be furnished to it by any such accountant, counsel or other specialist. The Plan Administrator shall serve without compensation for his or her services as such.

9.04 Annual Statements

Plan Administrator shall furnish each Participant with an annual statement of his or her Employee Medical Spending Account within 120 days after the close of each Plan Year.

ARTICLE X

REVIEWS AND APPEALS

10.01 Informal Review

The determination of whether an individual is entitled to benefits under the Employee Medical Spending Plan, and the determination of the amount of benefits to be paid shall be made by the Plan in accordance with the terms of this Plan and applicable administrative procedures and policies. A review is a prerequisite to a formal appeal.

Review Process:

- (a) Any Participant may obtain a review by the supervisor responsible for the administration of the Plan by filing a request to reconsider an adverse determination as to:
 - (I) whether the conditions for coverage have been met, or
 - (II) whether the conditions for enrollment have been met, or
 - (III) whether the claim and sufficient supporting documentation were timely filed, or
 - (IV) the amount of benefits payable were determined correctly.
- (b) The request for review must be received in the Plan Office within four months of the claims determination.
- (c) The Assistant Administrator will complete the review within 30 working days unless additional information is required for the review determination.

10.02 Formal Appeal

If the Participant is dissatisfied with the results of such review, and if the amount in controversy is \$100 or more, the Participant is eligible for a formal appeal.

Appeal Process:

- (a) An appeal must be requested in writing and filed with the Plan Administrator within three (3) months of the review determination.

- (b) The Administrator shall obtain legal advice and, if in his or her opinion it is appropriate, other advice concerning the appeal; however, the decision of the Plan Administrator shall be final.
- (c) The Administrator will issue a ruling within thirty working days of receiving the appeal. If there are extenuating circumstances, this time may be extended.

ARTICLE XI

MISCELLANEOUS

11.01 Amendment and Termination

This Plan shall be subject to amendment or termination at any time by the City; provided, however, that amendment or termination shall not affect any right to claim benefits arising prior to such amendment or termination, and provided further that after termination no person shall be considered to be a Participant for any purposes of the Plan.

11.02 Applicable Law

The Plan is intended to qualify as part of a “cafeteria plan” under Section 125 of the Code, and shall be construed and interpreted in a manner consistent with the requirements of the Code and the rules and regulations thereunder.

11.03 Non-Alienation of Benefits

The right of any Participant to any benefit or to any payment hereunder shall not be subject to assignment, alienation, attachment or other legal, equitable or other process, and any attempt to assign, alienate, attach or otherwise encumber such benefit or payment shall be void.

11.04 No Contract of Employment

Nothing herein contained shall be construed as a contract of employment between the City and any person, as a right of any person to continue in the employment of the City, or as a limitation on the right of the City to discharge any person, with or without cause. The employment records of the City shall be final and binding upon all Employees as to eligibility and participation.

2004

**DEPENDENT CARE
ASSISTANCE PROGRAM
(DCAP)**

DEPENDENT CARE ASSISTANCE PROGRAM

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**ARTICLE I
PREAMBLE**

THIS INSTRUMENT made and published by the City of Dallas (the "City") amends and restates the City of Dallas Dependent Care Assistance Program to be effective January 1, 2004, as follows:

1.01 Establishment of Program

The Employer has established a Dependent Care Assistance Program (the "Program") as of January 1, 1994.

1.02 Purpose of Program

This Program has been established to reimburse the eligible employees of the City for the cost of dependent care expenses incurred by them incidental to their being employed. It is intended that the Program meet the requirements for qualification under Section 129(d)(1) of the Code, and that benefits paid employees hereunder be excludible from their gross incomes by virtue of Section 129(a) of the Code. This Program is also intended to be a component benefit of the City's Flexible Benefit Plan meeting the requirements for qualification under Section 125 of the Code. All restrictions under the City's Flexible Benefit Plan apply to the Dependent Care Assistance Program.

**ARTICLE II
DEFINITIONS**

The following words and phrases as used herein shall have the following meanings, unless a different meaning is plainly required by the context:

2.01 Administrator or Program Administrator means the person appointed by the Director of Human Resources to direct and administer the Employee Benefits Programs.

2.02 Benefits means any amounts paid to a Participant in the Program as reimbursement for Qualifying Employment Related Expenses paid or incurred by the Participant during a Program Year.

2.03 City means the City of Dallas, Dallas County, Texas.

2.04 Code means the Internal Revenue Code of 1986, as amended.

- 2.05 Dependent means any individual who is a dependent of the Participant within the purview of Section 152(a) of the Code.
- 2.06 Dependent Care Provider means Provider of care of "qualifying individual" as defined in Section 2.17. Can be an individual or a Center as defined in Section 2.16.
- 2.07 Earned Income means all income derived from wages, salaries, tips, and other employee compensation (such as disability or wage continuation benefits), as well as self-employment income, but does not include (a) any amounts received pursuant to this Program or any other dependent care assistance program under Section 129 of the Code, (b) any amount received as a pension or annuity, or (c) workers compensation.
- 2.08 Educational Institution means any college or university, the primary function of which is to conduct formal instruction, and which routinely maintains a regular faculty and curriculum and normally has an enrolled student body in attendance at the location where its educational activities are regularly presented.
- 2.09 Effective Date means January 1, 1994.
- 2.10 Eligible Employment Related Expenses means those Qualifying Employment-Related Expenses (as defined below) paid or incurred incident to maintaining employment, other than amounts paid to:
- (a) an individual with respect to whom a deduction is allowable under Code Sec. 152(e) to the Participant or the Participant's spouse;
 - (b) The Participant's spouse; or
 - (c) a child of the Participant who is under 19 years of age.
- 2.11 Employee means a person who regularly renders personal services and who is compensated for such services by salary or wages by the City of Dallas. The only employees eligible for participation in the program are permanent full-time and permanent part-time employees who normally work for the City more than 20 hours a week.
- 2.12 Experience Gains means the amount, if any, by which contributions exceed claims reimbursement and reasonable administration costs for a Program Year.
- 2.13 Married for purposes of determining the maximum amount of available benefits under this Program, means not legally separated or divorced from a spouse, nor does

it include the situation where the Participant, although legally married, files a separate federal income tax return, maintains a separate, principal residence from the Participant during the last six months of the taxable year, and does not furnish more than one-half of the cost of maintaining the principal place of abode of the qualifying individual.

- 2.14 Participant means an individual who participates in the Program in his or her capacity as an employee.
- 2.15 Program Year means the annual accounting period of the Program, which begins on January 1, and ends on December 31, of each year.
- 2.16 Qualifying Dependent Care Center means (a) a dependent care center which complies with all applicable state and local licensing laws and regulations of the jurisdiction in which it is operated; (b) provides care for more than six (6) individuals (other than individuals who reside at such daycare center); and (c) receives a fee, payment or grant in return for services to individuals for whom it provides services, without regard to whether such facility is operated for a profit.
- 2.17 Qualifying Employment-Related Expenses means those expenses that would be considered to be employment-related expenses under Section 21(b)(2) of the Code (relating to expenses for household and dependent care services necessary for gainful employment) if paid for by the Employee.
- 2.18 Qualifying Individual means an individual is claimed as a Dependent on Participant's federal income tax return, and is
- (a) the Participant's Dependent who is under the age of thirteen (13); or
 - (b) the Participant's Dependent who is mentally or physically incapable of caring for himself or herself; or
 - (c) the Participant's Spouse who is mentally or physically incapable of caring for himself or herself.

If the Participant is divorced or separated and the Participant's child is not claimed on the Participant's tax return, then in order to qualify, the child must be in the Participant's custody six months out of the year.

- 2.19 Qualifying Services means services performed:
- (a) in the Participant's home; or
 - (b) outside the Participant's home for (1) the care of a Dependent of the Participant who is under age 13, or (2) the care of any other Qualifying Individual who resides at least eight (8) hours per day in the Participant's household.
- 2.20 Services means the services performed relating to the care of a Qualifying Individual that enable the Participant or his spouse to be either gainfully employed or actively searching for gainful employment.
- 2.21 Spouse means an individual who is legally married to a Participant, but shall not include an individual legally separated from the Participant under a divorce or separate maintenance decree, nor shall it include an individual who, although married to the Participant, files a separate federal income tax return, maintains a separate, principal residence from the Participant during the last six months of the taxable year, and does not furnish more than one-half of the cost of maintaining the principal place of abode of the qualifying individual.
- 2.22 Student means an individual who, during each of five (5) or more calendar months during the Program Year, is a full time student at an Educational Institution.

ARTICLE III ELIGIBILITY

3.01 Eligibility to Participate

Each Employee who is a Participant in the City's Flexible Benefit Plan (Section 125 Plan) and who has elected Employee Dependant Care Assistance benefits pursuant to the Benefit Election and Salary Reduction Agreement in becoming a member of such Flexible Benefit Plan shall automatically be a Participant in this Program as of the date his participation in such Flexible Benefit Plan becomes effective. Reasonable notification of the availability and terms of the Program shall be provided the eligible employees.

ARTICLE IV BENEFITS

4.01 Eligibility for Benefits

Each Participant in the Program shall be entitled to a benefit hereunder for all Eligible Employment Related Expenses incurred by him or her on or after the effective date of participation, subject to the limitations contained in Article V, below.

4.02 Enrollment Period

Enrollment in DCAP and the selection of the contribution amount must be made:

- (a) within 30 days of the starting date of a new employee, or
- (b) during the annual enrollment period, unless the Participant experiences a change in family status.

Changes in family status include:

- marriage;
- divorce;
- birth or adoption of a child;
- death of spouse or child;
- commencement or termination of employment of spouse,
- change of spouse to or from part-time employment,
- change of Participant to or from part-time employment; or
- taking of unpaid leave of absence by Participant or spouse.

4.03 Elections Irrevocable

The election of benefits and amounts shall be irrevocable for the Program Year; provided, however, that a Participant may make a new election which is on account of and consistent with a change in family status as long as the appropriate election form is filed with the Program within 30 days of the change.

4.04 Claims for Benefits

No benefits shall be paid hereunder unless a Participant has first submitted a written claim for benefits to the Program Administrator on a form specified by the Program Administrator, and pursuant to the procedures set out in the City's Flexible Benefit Plan. Upon receipt of a properly documented claim, the City shall pay the Participant

the benefits provided under this Program within the time specified for payment under such Flexible Benefit Plan. A Participant may submit a claim for reimbursement for a Qualifying Expense arising during the Program Year at any time during the period that begins when the expense is incurred, and ends sixty (60) days after the close of the Program Year. Participant forfeits any outstanding balance for which no claims are made at the end of the grace period for the Program Year.

4.05 Required Information

Each Participant's claim for benefits shall contain a receipt or bill from the Dependent Care Provider and a written statement containing the following information:

- (a) the Dependent or Dependents for whom services are to be or have been performed;
- (b) the nature of the services performed on behalf of the Participant;
- (c) the amount of the requested reimbursement;
- (d) the relationship of the service provider to the Participant, if any;
- (e) if the services are performed by a child of the Participant, the age of such child;
- (f) the place where any services are being performed;
- (g) if services are to be performed outside the Participant's household, a statement as to whether the Dependent being provided with such services spends at least eight (8) hours per day in such household;
- (h) if services are being or are to be performed in a daycare center that regularly provides dependent care services for more than six (6) individuals on a nonresident basis, a statement that such facility meets the criteria for qualification set out in Section 2.16, above and Code Sec. 21(b)(1)(C);
- (i) if the Participant is married, a statement of (1) the Spouse's salary or wages, if employed, or (2) if the Spouse is not employed, a statement that (i) he or she is incapacitated, or (ii) he or she is a full time student at an Educational Institution and the months of the Program Year that such Spouse will be in attendance at such Institution.

4.06 Payment of Benefits

The Program Administrator shall make the reimbursement payments provided herein to a Participant on a bi-weekly or monthly basis.

4.07 Outstanding Credit Balance Left Unclaimed

Reimbursements will be made only for expenses incurred during a period of coverage within the Program Year from January 1 to December 31. Participants have a grace period of 60 days after the end of the Program Year to file a claim.

Any outstanding credit balance left unclaimed in the Participant's account at the end of the grace period will be forfeited. No refunds or carry-overs will be allowed.

4.08 Repayment of Excess Reimbursements

If, as of the end of any Program Year, it is determined that a Participant has received payments under this Program that exceed the amount of Qualifying Expenses that have been substantiated by such Participant during the Program Year, the Program Administrator shall give the Participant prompt written notice of any such excess amount, and the Participant shall repay the amount of such excess to the City within sixty (60) days of receipt of such notification.

4.09 Termination of Coverage Because of Termination of Employment or Reduction in Hours

In the event a Participant terminates employment with the City or reduces his or her work hours below the minimum required, coverage shall continue until the last day of the month in which employment terminates or in which the hours are reduced. The Program shall reimburse any eligible expenses (up to the amount in the Participant's account balance) that are incurred within the Participant's period of coverage during the Program Year. The Participant shall be entitled to submit a claim for reimbursement of eligible expenses at any time before the 60th day after the close of the Program Year.

Notwithstanding the preceding paragraph, the Participant shall have the right to elect "continuation coverage" under section 4.10 below.

4.10 Continuation Coverage

Notwithstanding section 4.09, a Participant shall have the right to continue coverage until the end of the Program Year in which the Participant terminates employment or reduces his or her work hours below the minimum required. If a Participant terminates employment, but elects to continue coverage, the Participant may choose to pay his or her remaining contributions withholding, to the extent possible, from the Participant's final salary payment. No reimbursement will be made for any expenses incurred during a period for which the Participant has not paid the required contributions under the Program. If a Participant who is being billed fails to make a payment within 30 days of the due date, the City will terminate coverage effective as of the end of the month for which the last contribution was made.

4.11 Experience Gains

Experience Gains shall be used to add benefits for the following Program Year on a reasonable and uniform basis as approved by the Program Administrator in accordance with the then existing legal requirements.

ARTICLE V BENEFIT LIMITATIONS

5.01 Source of Payments

All benefits derived hereunder shall be paid exclusively from the Participant's Employee Dependent Care Account under the Employer's Flexible Benefit Plan. Contributions to the account will be uniform throughout the Program Year. In no event shall benefit payments hereunder exceed the amounts available for reimbursement under such Employee Dependent Care Account, net of any required administrative service fees and charges.

5.02 Limitation on Services to be Reimbursed

Reimbursement is made only for services that enable the Participant and the Participant's spouse to work outside the home unless the spouse is a full-time student or physically or mentally disabled and unable to provide his or her own care. Weekend and evening reimbursement allowed only if Participant and spouse both work during those times. Payment restricted to expenses incurred during coverage period only.

5.03 Earned Income Limitation

- (a) Participant annual reimbursement for dependent care expenses shall not exceed the lesser of:
 - (1) the Participant's earned income for the Program Year;
 - (2) the earned income of the Participant's Spouse for Program Year; or
- (b) For purposes of paragraph (a), a Spouse of a Participant who is not employed during a month in which the Participant incurs Eligible Employment Related Expenses and which Spouse is either incapacitated or is a Student shall be deemed to have earned income for such month equal to:
 - (1) \$200, if there is one (1) Qualifying Individual for whom the Participant incurs Eligible Employment Related Expenses, or
 - (2) \$400, if there are more than one Qualifying Individuals for whom the Participant incurs Eligible Employment Related Expenses.

5.04 Dependent Limitations

Dependent care is strictly limited to qualifying services as defined in Sections 2.19 and 2.20 for qualifying individuals as defined as Section 2.18.

5.05 Dependent Care Provider Limitations

- (1) Dependent care provider must not be:
 - (a) a relative claimed by either the Participant or the Participant's spouse on his/her federal income tax return; or
 - (b) the Participant's child or stepchild who is under the age of 19 at the end of the tax year.
- (2) Where a dependent care provider provides care for more than 6 children not residing at the place of care, the care provider must be in compliance with all applicable laws and regulations of the State of Texas and the city and county in which the care is provided.

5.06 Dollar Limitation

In no event may benefits provided for any Participant during any Program Year exceed, Five Thousand dollars (\$5,000) or, if the Participant is married (as defined in Code Sec. 21(e)(3)-(4)) and files a separate income tax return, Two Thousand Five Hundred Dollars (\$2,500).

5.07 Discrimination Tests Limitation

The Administrator is authorized to proportionally reduce the contributions and benefits of Highly Compensated Employees, as defined by Code Sec. 414(q), if doing so would result in the Program meeting the nondiscrimination test(s) of Code Sec.129.

**ARTICLE VI
PROGRAM ADMINISTRATION**

6.01 Administrative Functions

The Program Administrator shall be responsible for the day-to-day operation of the Program, including verification of Eligible Employment Related Dependent Care Expenses, and determine the amounts that are eligible for reimbursement. The Program Administrator may retain such clerks, supervisors, consultants, accountants, actuaries, legal counsel and third party administrators as he/she deems necessary to fulfill his/her administrative functions hereunder.

6.02 Annual Statements

The Program Administrator shall indicate the amount of deductions made pursuant to this Program during the preceding calendar year on the Form W-2 Wage and Tax Statement of each Participant electing benefits hereunder on or before January 31 of the year following the Program Year.

**ARTICLE VII
REVIEWS AND APPEALS**

7.01 Informal Review

The determination of whether an individual is entitled to benefits under the Employee Dependent Care Assistance Program, and the determination of the amount of benefits shall be made by the Program Administrator in accordance with the terms of the Employee Dependent Care Assistance Program Document (as approved by the City Council) and applicable administrative procedures and policies. A review is a prerequisite to a formal appeal.

Review Process:

- (a) Any participant may obtain a review by the supervisor responsible for the administration of the Program by filing a request to reconsider an adverse determination as to:
 - (I) whether the conditions for coverage have been met, or
 - (II) whether the conditions for enrollment have been met, or
 - (III) the amount of benefits payable were determined correctly.
- (b) The request for review must be received in the Program Office within six months of the claims determination.
- (c) The Assistant Administrator will complete the review within 30 working days unless additional information is required for the review determination.

7.02 Formal Appeal

If the participant is dissatisfied with the results of such review, and if the amount in controversy is \$100 or more, the participant is eligible for a formal appeal.

Appeal Process:

- (a) An appeal must be requested in writing and filed with the Program Administrator within six (6) months of the review determination.

- (b) The Administrator shall obtain legal advice and, if in his or her opinion it is appropriate, other advice concerning the appeal; however, the decision of the Program Administrator shall be final.
- (c) The Administrator will issue a ruling within thirty working days of receiving the appeal. If there are extenuating circumstances, this time may be extended.

**ARTICLE VIII
AMENDMENT OR TERMINATION OF PROGRAM**

8.01 Permanency

While the City fully expects that this Program will continue indefinitely, due to unforeseen, future social, legal, and economic contingencies, permanency of the Program will be subject to the City's right to amend or terminate the Program, as provided in Sections 8.02 and 8.03, below.

8.02 City's Right to Amend

The City reserves the right to amend the Program at any time and from time-to-time, and retroactively if deemed necessary or appropriate to meet the requirements of Code Sec. 129, or any similar provisions of subsequent revenue or other laws, or the rules and regulations in effect under any of such laws or to conform with governmental regulations or other policies, to modify or amend in whole or in part any or all of the provisions of the Program; provided, however, that no such modification or amendment shall make it possible for any Employee Dependent Care Account Balance that has not been forfeited to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their beneficiaries under the Program.

8.03 City's Right to Terminate

The City reserves the right to discontinue or terminate the Program at any time without prejudice.

8.04 Determination of Effective Date of Amendment or Termination

Any such amendment, discontinuance or termination shall be effective at such date as the City Council of the City of Dallas shall determine.

Subject to Section 4.07, no amendment, discontinuance or termination shall allow the return to the City of any Account Balance nor its use for any purpose other than for the exclusive benefit of Participants and their beneficiaries.

ARTICLE IX GENERAL PROVISIONS

9.01 Employment Rights Conferred

Neither this Program nor any action taken with respect to it shall confer upon any person the right to be continued in the employment of the City.

9.02 Post-Mortem Payments

Any Benefit payable under the Program after the death of a Participant shall be paid to the participant's surviving spouse (if any), otherwise, to his or her estate. If there is doubt as to the right of any person to receive any amount, the Administrator may retain such amount until the rights thereto are determined, without liability for any interest thereon, or it may pay such amount into any court of appropriate jurisdiction, in either of which events neither the Administrator, nor the City, shall be under any further liability to any person.

9.03 Non-alienation of Benefits

No benefit under the Program shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to do so shall be void. No benefit under the Program shall in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any person. If any person entitled to benefits under the Program becomes bankrupt or attempts to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge any benefit under the Program, or if any attempt is made to subject any such benefit to the debts, contracts, liabilities, engagements or torts of the person entitled to any such benefit, except as specifically provided in the Program, then such benefit shall cease and terminate in the discretion of the Program Administrator, and he may hold or apply the same or any part thereof to the benefit of any dependent or beneficiary of such person, in such manner and proportion as he may deem proper.

9.04 Mental or Physical Incompetency

If the Program Administrator determines that any person entitled to payments under the Program is incompetent by reason of physical or mental disability, as established by a court of competent jurisdiction, the Administrator may cause all payments thereafter becoming due to such person to be made to any other person for his benefit, without responsibility to follow the application of amounts so paid. Payments made pursuant to this Section shall completely discharge the Program Administrator and the City.

9.05 Inability to Locate Payee

If the Program Administrator is unable to make payment to any Participant or other person to whom a payment is due under the Program because he cannot ascertain the identity or whereabouts of such Participant or other person after reasonable efforts have been made to identify or locate such person (including a notice of the payment so due mailed to the last known address of such Participant or other person as shown on the records of the City), such payment and all subsequent payments otherwise due to such Participant or other person shall be forfeited three (3) years after the date such payment first became due.

9.06 Requirement of Proper Forms

All communications in connection with the Program made by a Participant shall become effective only when duly executed on forms provided by and filed with the Program Administrator.

9.07 Source of Payments

The City shall be the sole source of benefits under the Program. No Employee or beneficiary shall have any right to, or interest in, any assets of the City upon termination of employment or otherwise, except as provided from time to time under the Program, and then only to the extent of the benefits payable under the Program to such Employee or beneficiary.

9.08 Tax Effects

Neither the City nor the Program Administrator makes any warranty or other representation as to whether or not any payments received by a Participant hereunder will be treated as includible in gross income for federal or state income tax purposes.

9.09 Multiple Functions

Any person or group of persons may serve in more than one fiduciary capacity with respect to the Program.

9.10 Gender and Number

Masculine pronouns include the feminine as well as the masculine gender, and the singular shall include the plural, unless indicated otherwise by the context.

9.11 Headings

The Article and Section headings contained herein are for convenience of reference only, and shall not be construed as defining or limiting the matter contained thereunder.

9.12 Applicable Laws

This Employee Dependent Care Assistance Program Document shall, as to matters not otherwise pre-empted by federal law, be construed according to the laws of the State of Texas.

9.13 Severability

Should any part of this Employee Dependent Care Assistance Program Document subsequently be invalidated by a court of competent jurisdiction, the remainder thereof shall be given effect to the maximum extent possible.