

ORDINANCE NO. 2493

AN ORDINANCE REPEALING ORDINANCE NO. 2364 OF THE CITY OF MESQUITE, TEXAS, CONTAINING THE CITY OF MESQUITE'S TAX SAVER PLAN AND SUBSTITUTING THEREFOR A NEW TAX SAVER PLAN; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the Tax Saver Plan previously adopted by the City Council by Ordinance No. 2364, on December 1, 1986, is hereby repealed, and a new Tax Saver Plan is adopted as set out in the attached Exhibit "A", which is incorporated as fully as set out at length herein.

SECTION 2. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 3. The fact that the existing Tax Saver Plan for the employees of the City of Mesquite did not include a Dependent Care Assistance Plan creates an urgency and an emergency and necessitates that this ordinance become effective immediately from and after its date of passage and the publication of its caption as the law in such cases provides.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 7th day of December, A.D., 1987.

George A. Venner, Sr.
George A. Venner, Sr.
Mayor

ATTEST:

APPROVED:

Lynn Prugel
Lynn Prugel
City Secretary

Jonathan Graham
Jonathan Graham
City Attorney

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Exhibit "A"

CITY OF MESQUITE, TEXAS

TAX SAVER PLAN

Effective January 1, 1988

CITY OF MESQUITE, TEXAS
TAX SAVER PLAN

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ARTICLE I

Purpose and Definitions

1.1 Purpose: The purpose of this legal instrument is to set forth the Tax Saver Plan of the Employer, which will provide eligible employees the option of electing benefits as herein described.

1.2 Legal Status: This Plan is a "cafeteria plan" under Section 125 of the Code. The Plan will be "nondiscriminatory" as such term is used in Section 125 of the Code and the employer will take whatever steps are necessary to maintain the Plan as "nondiscriminatory" under said Section 125. The steps the employer will take may include, but are not limited to, a change in the method of determining the Participant's Tax Saver Dollars created by the Plan and/or the method of allocating the Tax Saver Dollars to individual participants.

1.3 Definitions: The following words, when appearing in this Plan, have the meanings set forth below unless the context clearly denotes otherwise:

(a) Code: The Internal Revenue Code of 1954, as amended from time to time.

(b) City Council: The Mesquite City Council

(c) Compensation: For any pay period, any employee's cash remuneration for personal services received from the employer, prior to any conversion to pre-tax dollars.

(d) Effective Date: January 1, 1987

(e) Employee: Any person who receives compensation from the employer for regular, full-time services (at least 40 hours weekly.) An employee's eligibility shall only be as provided in Article II.

(f) Employer: The City of Mesquite, Texas

(g) Participant: An employee of the employer who is eligible to participate in this Plan in accordance with Article II hereof.

(h) Plan: The City of Mesquite, Texas Tax Saver Plan, as it may be amended from time to time.

(i) Plan Year: The twelve (12) month period beginning on January 1 and ending December 31.

(j) Plan Administrator: The person appointed to act for the employee and to administer the Plan in accordance with Article V.

(k) Tax Saver Dollars: The dollar credits made available to a participant under this Plan by the employer determined in accordance with Article III hereof.

1.4 Construction: The masculine gender, where appearing in the Plan, shall be deemed to include the feminine gender; the singular may include the plural; and vice versa unless the context clearly indicates to the contrary.

ARTICLE II

Eligibility for Participation

2.1 Initial Eligibility: Any employee whose date of hire occurred prior to January 1, 1987, shall become eligible to be a participant on the effective date, provided he is an employee on such date.

2.2 Subsequent Eligibility: On and after the effective date, an employee of the employer shall become eligible to be a participant hereunder on the January 1 or July 1 date which is coincident with or next follows the employee's date of hire, provided he is an employee on such entry date.

2.3 Participation: Each employee who becomes eligible to participate hereunder in accordance with Section 2.1 or 2.2 hereof shall be notified by the employer, as promptly as administratively feasible, of his eligibility.

Such employee will be provided with an election form on which he may elect a conversion to Tax Saver Dollar credits of compensation as specified under Article III hereof, such election to be made prior to the beginning of the Plan year (or in the case of the participant's initial Plan year, prior to the period of coverage in such Plan year) for which it is effective. An election once made shall remain effective for the remainder of the Plan year, except as provided in Section 3.3 hereof.

ARTICLE III

Source of Tax Saver Dollars for Participants

3.1 Tax Saver Dollars: This Article explains the source of Tax Saver Dollars and how this source is allocated for the participant's use.

3.2 Salary Exchange: Each participant may elect Tax Saver Dollar credits during any Plan year in exchange for an equal portion of such participant's compensation for such year, provided that the amount of compensation that may be so exchanged for Tax Saver Dollars may not be more than five thousand dollars (\$5,000) during a Plan year for Dependent Care Assistance only (IRS Code, Section 129).

If the participant so elects to exchange compensation for Tax Saver Dollars, he will be credited with Tax Saver Dollars equal to the amount of compensation so exchanged. The procedures for making such election each Plan year, including the allocation to the Special Expense Accounts under Section 4.3 and 4.4 hereof, shall be determined by the employer.

3.3 Revocation of Election: In general, an election made pursuant to Article II hereof may not be revoked during the Plan year. However, revocation will be permitted, and a new election for the remainder of the Plan year may be made, if such revocation is occasioned by a change in family status. Situations resulting in a change in family status will include, but are not limited to, (i) marriage, divorce or death of the participant, spouse or any covered dependent, (ii) birth or adoption of a child, and (iii) termination or initiation of employment of the participant, spouse, or any covered dependent.

The revocation hereunder, and any new election, shall be made in writing on forms to be prescribed by the employer, and must be approved by the employer.

The employer may rely upon any reasonable direction or information from a participant relating to participant's entitlement to revocation and a new election for the remainder of the Plan year as set forth in this section.

ARTICLE IV

Spending Tax Saver Dollars4.1 Benefit Areas Where Tax Saver Dollars Can Be Applied: Tax Saver Dollars

can be used to provide benefits in accordance with Section 4.2 hereof.

4.2 Use of Tax Saver Dollars:

A. Medical Reimbursement Plan: Available Tax Saver Dollars may be used, if the participant elects, to provide benefits for expenses incurred on and after the effective date and during the Plan year of participation, under the Medical Reimbursement Plan (Attachment A) maintained by the employer for its employees.

B. Dependent Care Assistance Plan: Available Tax Saver Dollars may be used, if the participant elects, to provide benefits for expenses incurred on and after the effective date, and during the Plan year of participation, under the Dependent Care Assistance Plan (Attachment B) maintained by the employer for its employees.

4.3 Special Expense Accounts: Tax Saver Dollars to be applied to provide benefits under the Medical Reimbursement Plan and the Dependent Care Assistance Plan shall be provided through a series of Special Expense Accounts, as follows:

(a) Medical Reimbursement Account ("Medical Account"): The account to which shall be allocated the Tax Saver Dollars the participant elects to use to provide benefits under Section 4.2-A hereof.

(b) Dependent Care Assistance Account ("Dependent Account"): The account to which shall be allocated the Tax Saver Dollars the participant elects to use to provide benefits under Section 4.2-B hereof.

A participant wishing to establish such accounts shall specify the amount of Tax Saver Dollar credits to be allocated to the Medical Account and/or Dependent Care Account. A participant's Tax Saver Dollar credits shall accrue to the participant on a ratable basis per pay period throughout the Plan year, and the participant's individual Special Expense Accounts shall be credited as of the end of each pay period with an amount equal to the Tax Saver Dollar credits allocable to the participant for such period under such accounts. The Special Expense Account balances at any time shall be equal to the Tax Saver Dollar credits then allocated thereto and not yet applied therefrom.

Whenever a participant requests benefit payments under one or more of the above-named Plans, the employer shall make such payment to the extent such participant's Medical Account or Dependent Care Account, as applicable, has sufficient Tax Saver Dollar credits remaining to provide such benefit payment or payments. If such participant's Medical Account or Dependent Care Account is insufficient to provide all benefit payments requested pursuant to Section 4.2-A or 4.2-B, the Plan Administrator shall determine which benefit shall be paid. The Plan Administrator may consult with the participant in making such determination. All requests for benefit payments shall be in accordance with Section 5.3 hereof, but in no event may an expense under one Plan be provided from the individual's expense account of another Plan.

A participant may request benefit payments under the above-named Plans for a Plan year for all eligible expenses incurred under said Plans during such Plan year pursuant to Section 5.3 hereof. For this purpose, an expense is deemed to be incurred when the participant is provided the service that gives rise to the expense, notwithstanding when the participant is formally billed or charged for the service, or when the participant pays the provider for the service.

4.4 How Tax Saver Dollars are Maintained Hereunder: No actual funds or assets shall be maintained under this Plan, the Special Expense Accounts or under any of the Plans referenced herein where Tax Saver Dollars can be spent. A record of a participant's Tax Saver Dollar credits shall be maintained.

4.5 Internal Revenue Service Approval: The use of any option under this Plan may, at the discretion of the employer, or if otherwise required, be contingent upon approval of the Internal Revenue Service.

4.6 Termination of Employment: In the event a participant's employment with the employer terminates for any reason (termination of service, death, disability, retirement) any Tax Saver Dollar credits actually accrued remaining in the participant's Special Expense Accounts, after deduction for all reimbursements of eligible claims, shall continue to be eligible for reimbursement hereunder to the extent of making claim under Section 5.3 hereof for expenses incurred during the Plan year in which his employment terminated. If reimbursements from any options elected by the participant hereunder are greater than the elected Tax Saver Dollar credits, the net amount will be recovered from the participant (or his beneficiary) either in cash from the participant or from any remaining wages, accrued vacation pay, or other monies due and owing to the participant (or his beneficiary) by the employer.

ARTICLE V

Administration

5.1 Administration of the Plan: The Plan shall be administered by the employer who shall have the sole responsibility for the administration of this Plan as described herein. The employer may change or modify the Plan administration in its sole discretion. The expenses of administering the Plan shall be paid by the employer. Any designated representative of the employer who is an employee of the employer shall not receive any compensation with respect to services provided to the Plan except as such person may be entitled to benefits under this Plan.

5.2 Powers and Duties of the Employer: The employer shall have such duties and powers as may be necessary to discharge its duties hereunder, including, but not by way of limitation, the following:

(a) to construe and interpret the Plan, decide all questions of eligibility and determine the amount, manner and time of payment of any benefits hereunder.

(b) to prescribe procedures to be followed by participants filing applications for benefits;

(c) to prepare and distribute, in such manner as it determines to be appropriate, information explaining the Plan;

(d) to receive from participants such information as shall be necessary for the proper administration of the Plan;

(e) to furnish employees such annual reports with respect to the administration of the Plan as are reasonable and appropriate;

(f) to receive, review and keep on file (as it deems necessary) reports of benefit payments by the employer and reports of disbursements for expenses directed by employees.

(g) to exercise such authority and responsibility as it deems appropriate in order to comply with the terms of the Plan relating to the records of the participants and the balances which are payable under this Plan; and

(h) to appoint a Plan administrator and other individuals to act for the employer in the administration of the Plan and any other agents it deems advisable, including legal and actuarial counsel.

The employer and/or Plan administrator may rely upon any reasonable direction, or information from a participant relating to such participant's entitlement to benefits hereunder as being proper under this Plan, and is not required under this Plan to inquire into the propriety of any such direction or information. The employer does not make any guarantee to any employee in any manner for any loss or other event because of the employee's participation in this Plan.

5.3 Claims Procedure: In the event a participant has a claim for any benefits under this Plan, then such participant shall file a claim with the employer on a form or forms provided for such purpose, provided that any claim submitted shall total at least fifty dollars (\$50.00) or the balance remaining in the participant's Special Expense Account, if less. Claims for benefits shall be submitted to the employer by the tenth (10th) of the month for payment by the end of such month. Any claims received by the employer after the tenth (10th) of the month may be held until the following month. Payment of claims shall be made directly to the participant and shall never be made directly to the provider of any of the services provided for hereunder.

A participant's claim for benefits for expenses incurred during any Plan year may only be made against the Tax Saver Dollar credits allocable to him for such Plan year. The claim for benefits may be submitted hereunder during the Plan year in which incurred and up to a three (3) month period thereafter.

Any Tax Saver Dollar Credits remaining in a participant's Special Expense Account at the end of such three (3) month period shall be forfeited by the participant and shall inure to the general credit of the employer.

Prior to making any payment of benefits hereunder, the employer may require the participant to provide such information and the completion of appropriate documents or forms necessary for the proper administration of this Plan. The employer may rely upon all such information furnished it, including the participant's current mailing address. Further, the employer may also request that the participant file all appropriate claims and requests for payment from any other plan or plans maintained by the employer prior to making of any payments under this Plan, including requests for payment with any insurance carrier or organization which has the responsibility for making any benefit payments under any plans maintained by the employer.

The employer shall make all determinations as to the right of any person to a benefit under this Plan. Any denial by the employer of a claim for benefits under the Plan by a participant shall be stated in writing by the Plan administrator and delivered or mailed to the participant; and such notice shall set forth the specific reasons for the denial in a manner that may be understood by the average Plan participant. In addition, the employer shall afford a reasonable opportunity to any participant whose claim for benefits has been denied for a review of the decision denying the claim.

5.4 Availability of Plan Details: The employer has made and may continue to make available descriptive materials to participants concerning how the Plan operates, including the process by which benefits are payable.

5.5 Participant's Statements: At least once each year, by January 31, the employer shall provide to each participant a statement of his participation under the Plan for the prior Plan year. Such statement will be in writing, in a form to be prescribed by the employer, and shall show the amounts paid by the employer under the Plan on behalf of the participant during the prior Plan year.

5.6 Rules and Decisions: The employer may adopt such rules and procedures as it deems necessary, desirable or appropriate. All rules and decisions of the employer shall be uniformly and consistently applied to all participants in similar circumstances. When making a determination or calculation, the employer shall be entitled to rely upon information furnished by a participant or the legal counsel of the employer.

5.7 Indemnification of the Plan Administrator: The Plan administrator shall be indemnified by the employer against any and all liabilities arising by reason of any act or failure to act made in good faith pursuant to the provisions of the Plan, including expenses reasonably incurred in the defense of any claim relating thereto.

ARTICLE VI

Miscellaneous

6.1 Nonguarantee of Employment: Nothing contained in this Plan shall be construed as a contract of employment between the employer and any employee, or as a right of any employee to be continued in the employment of the employer, or as a limitation of the right of the employer to discharge any of its employees, with or without cause.

6.2 Rights to Employer's Assets: No employee or beneficiary shall have any right to, or interest in, any assets of the employer upon termination of employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable under the Plan to such employee or beneficiary. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the employer.

6.3 Nonalienation of Benefits: Benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, including such liability which is for alimony or other payments for the support of a spouse or former spouse, or for any other relative of the employee, unless pursuant to court order, prior to actually being received by the person entitled to the benefit under the terms of the Plan; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The employer shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.

6.4 Divestment of Benefits: Subject only to the specific provisions of this Plan, including the provisions of Section 5.3 hereof, nothing shall be deemed to divest a participant of a right to the benefit to which the participant becomes entitled in accordance with the provisions of this Plan.

ARTICLE VII

Amendments and Action by Employer

7.1 Amendments: The employer reserves the right to make, from time to time, any amendment or amendments to this Plan; however, no amendment shall have any retroactive adverse effect on a participant unless the employer determines such amendment is necessary or desirable to comply with applicable law.

7.2 Action by Employer: Any action by the employer under this Plan may be taken by any person or persons duly authorized by the City Council of Mesquite, Texas.

ARTICLE VIII

Plan Termination

8.1 Right to Terminate: The employer may terminate the Plan at any time by a resolution duly adopted by the City Council of Mesquite, Texas.

8.2 Plan Termination: Upon the termination of the Plan, the rights of all participants affected thereby shall become payable as the administrator may direct. Such direction may include: (a) a continuation of the Plan in order to pay balances in accordance with Article IV, or (b) a distribution of the balance remaining to the participant's credit, after payment of any expenses properly chargeable thereto.

CITY OF MESQUITE, TEXAS
MEDICAL REIMBURSEMENT PLAN
ATTACHMENT A
EFFECTIVE JANUARY 1, 1987

Purpose: This document is for the purpose of creating a medical reimbursement plan of the City of Mesquite, Texas (hereinafter called the "Employer.") The written Plan, which shall be known as City of Mesquite Texas Medical Reimbursement Plan (hereinafter called the "Plan"), is for the exclusive benefit of the eligible employees of the employer or their spouses or dependents and will provide such persons with specific benefits consisting of personal medical reimbursement services as defined herein. Such Plan is established in connection with, and to form a part of, City of Mesquite Texas Tax Saver Plan (hereinafter called the "Tax Saver Plan.")

This Plan is intended to meet the requirements of Section 105(h) of the Internal Revenue Code of 1954 as amended from time to time.

Effective Date: This Plan is effective as of January 1, 1987, or at the discretion of the employer, upon approval of this Plan by the Internal Revenue Service.

This Plan shall terminate on the date specified in a duly-adopted resolution by the employer.

Eligibility: Each employee of the employer who is covered by the Tax Saver Plan is eligible for benefits hereunder, provided such employee establishes a Medical Account under Section 4.3-A of such Plan.

Covered Expenses Reimbursable: Expenses for any health-related expenditures incurred on or after the effective date, and during the Plan year of participation, which meet the criteria for deduction as a medical expense under Section 213 of

the Internal Revenue Code of 1954, as amended from time to time (without regard to any percentage limitation contained therein) will be eligible for reimbursement to the extent the employee has Tax Saver Dollar credits available in his Medical Account under the Tax Saver Plan. Reimbursement will be available for vision and hearing care, medical and dental expenses over and beyond the current Medical Plan coverage, prescription drug reimbursement, and premiums paid for health insurance. Expenses paid by the City of Mesquite Texas Group Health Plan, or any other group or insured medical/dental program are not reimbursable under this Plan.

General: For the purposes of this Plan, where the term "dependent" is used, the term has the same meaning as used in the City of Mesquite, Texas Group Health Plan (even if the employee's spouse or dependents are not covered under such plan.)

This Plan shall not be funded in any way by the employer, and any payments of benefits from the Plan shall be made solely from the general assets of the employer.

The employer shall be totally responsible for the administration of this Plan and any decisions made in accordance herewith shall be final and conclusive on all employees and their dependents.

CITY OF MESQUITE, TEXAS
DEPENDENT CARE ASSISTANCE PLAN
ATTACHMENT B

EFFECTIVE JANUARY 1, 1988

Purpose: This document is for the purpose of creating a dependent care assistance plan of City of Mesquite, Texas (hereinafter called the "Employer"). The written Plan, which shall be known as the City of Mesquite, Texas Dependent Care Assistance Plan (hereinafter called the "Plan"), is for the exclusive benefit of the eligible employees of the employer or their spouses or dependents and will provide such persons with specific benefits consisting of dependent care assistance as defined herein. Such Plan is established in connection with, and to form a part of, the City of Mesquite, Texas Tax Saver Plan (hereinafter called the "Tax Saver Plan").

This Plan is intended to meet the requirements of Section 129 of the Internal Revenue Code of 1954 as amended from time to time.

Effective Date: This Plan is effective as of January 1, 1988, or, at the discretion of the employer, upon approval of this Plan by the Internal Revenue Service.

This Plan shall terminate on the date specified in a duly-adopted resolution by the employer.

Nondiscrimination: The benefits provided under this Plan shall not in any way discriminate in favor of employees who are officers, shareholders, or highly compensated.

Eligibility: Each employee of the employer who is covered by the Tax Saver Plan is eligible for benefits hereunder, provided such employee establishes a Dependent Account under Section 4.3-B of such Plan.

Covered Expenses Reimbursable: The employee will be reimbursed for dependent care expenses which are "employment related expenses," incurred on or after the effective date, and during the Plan year of participation, to the extent the employee has Tax Saver Dollar credits available in his Dependent Account under the Tax Saver Plan. For this purpose "employment related expenses" are amounts paid by an employee or his spouse in order to be employed, if such expenses are (1) for household services or (2) for the care of a dependent of the employee under the age of fifteen (15) or a dependent or spouse of the employee who is physically or mentally incapable of caring for himself.

If such expenses are incurred for services outside the employee's home, the expense must be for a dependent who is under age fifteen (15), or if for a dependent or spouse who is physically or mentally incapable of caring for himself, such dependent or spouse must regularly spend at least eight (8) hours per day in the employee's home.

If a dependent care center (i.e., a facility which provides care for more than six (6) people and which receives fees, payments or grants for such people) is the recipient of the employment related expenses, then these payments will be reimbursable only if the dependent care center complies with all State and local laws.

No reimbursements can be made to a married employee whose spouse had no earned income for the year, other than a spouse who is a student or is physically or mentally incapable of self-care who will be deemed to have income as stated under Section 44A(e)(2) of the Internal Revenue Code of 1954, as amended. Further, there will be no duplication of dependent care expenses under this Plan if the employee claims the expense as a tax credit on the employee's or his/her spouse's federal income tax return.

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General: For the purposes of this Plan, where the term "dependent" is used, the term has the same meaning as provided by Section 152 of the Internal Revenue Code of 1954.

This Plan shall not be funded in any way by the employer, and any payments of benefits from the Plan shall be made solely from the general assets of the employer.

The employer shall be totally responsible for the administration of this Plan and any decisions made in accordance herewith shall be final and conclusive on all employees and their dependents.

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