

RESOLUTION NO. 34-2005

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE THE NECESSARY DOCUMENTS AMENDING THE TAX SAVER PLAN NECESSITATED BY CHANGES IN PROVISIONS OF THE INTERNAL REVENUE CODE; AND NOTIFYING ELIGIBLE EMPLOYEES OF THE AMENDMENT.

WHEREAS, with the passage of Ordinance No. 2364 on December 1, 1986, the City of Mesquite (the "City") originally adopted a Tax Saver Plan (the "Plan") that allows eligible employees to use tax-free dollars to pay for medical or dental premiums, certain medical expenses and/or dependent care; and

WHEREAS, with the passage of Ordinance No. 3622 on November 17, 2003, the City amended the Plan as necessitated by changes in provisions of the Internal Revenue Code; and

WHEREAS, Section 13.2.B of the Plan reserves the City's right to amend the Plan by resolution; and

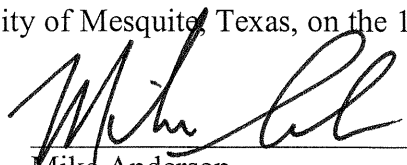
WHEREAS, it has been determined that a recent change in provisions of the Internal Revenue Code have necessitated an amendment to the Plan to include a grace period during which dependent care assistance and health care expenses incurred by eligible employees will be deemed to have been incurred during the Plan Year in accordance with the requirements of Internal Revenue Service Notice 2005-42.

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


SECTION 1. That the City Manager is hereby authorized to execute the Amendment to the City of Mesquite's Tax Saver Plan (the "Amendment"), attached hereto as Exhibit "A," on behalf of the City.

SECTION 2. That the City's eligible employees will be notified of this Amendment that will allow them to have additional time to use their funds set aside for use in the Tax Saver Plan.

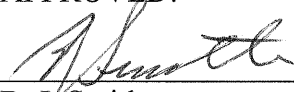
DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 15th day of August, 2005.

  
\_\_\_\_\_  
Mike Anderson  
Mayor

ATTEST:

  
\_\_\_\_\_  
Judy Womack  
City Secretary

APPROVED:

  
\_\_\_\_\_  
B. J. Smith  
City Attorney

**AMENDMENT TO  
THE CITY OF MESQUITE  
TAX SAVER PLAN**

**WHEREAS**, the City of Mesquite (the "Employer") desires to amend the City of Mesquite Tax Saver Plan (the "Plan"), as most recently amended and restated effective January 1, 2004, to add a Grace Period during which Dependent Care Assistance and Health Care Expenses incurred by an employee will be deemed to have been incurred during the Plan Year as described in Internal Revenue Service Notice 2005-42; and

**WHEREAS**, Section 13.2 B of the Plan reserves the right for the Employer to amend the Plan;

NOW, THEREFORE, the Plan is hereby amended as follows, effective for the Plan Year that began on January 1, 2005:

1. *Section 4.2.* Amend by deleting the "Forfeitures" paragraph in the section in its entirety and adding a new "Forfeitures" paragraph to Section 4.2 to read as follows:

**Forfeitures** - Flexible Dollars which are contributed to Reserve Accounts during a Plan Year and are not utilized for benefits during the year, including the Grace Period, must be forfeited by the Employee to the Plan and cannot be carried forward by the Employee, in any manner, to a subsequent Plan Year.

2. *Article V.* Amend by adding the following definition to Article V to read as follows:

**Grace Period** - With respect to any Plan Year, the time period ending on the fifteenth day of the third calendar month after the end of such Plan Year, during which Dependent Care Assistance and Health Care Expenses incurred by a Participant will be deemed to have been incurred during such Plan Year.

3. *Section 7.1.* Amend by deleting the second and third paragraphs in their entirety and adding new second and third paragraphs to Section 7.1 to read as follows:

For **Dependent Care Expense Reimbursement**, an Employee's Reserve Account will remain open for the remainder of the Plan Year and Grace Period in which termination occurs. Any eligible expenses which are incurred through the end of the Plan Year and Grace Period may be submitted for payment from the appropriate account.

For **Health Care Expense Reimbursement**, an Employee's Reserve Account will remain open for the remainder of the Plan Year and Grace Period in which termination occurs but ONLY for reimbursement of expenses incurred prior to

Employee's termination date, unless the Employee continues his participation as a COBRA enrollee.

4. *Section 9.2.* Amend by adding the following sentence at the end of the first paragraph in Section 9.2 to read as follows:

Notwithstanding anything in this Section to the contrary, Health Care Expenses incurred during the Grace Period shall also be deemed to have been incurred during the Plan Year to which the Grace Period relates.

5. *Section 9.3.* Amend by adding the following sentence at the end of the first paragraph in Section 9.3 to read as follows:

Notwithstanding anything in this Section to the contrary, Dependent Care Assistance Expenses incurred during the Grace Period shall also be deemed to have been incurred during the Plan Year to which the Grace Period relates.

6. *Section 11.1.* Amend by deleting the first sentence of the second paragraph of Section 11.1 in its entirety and adding additional information to the beginning of the second paragraph to Section 11.1 to read as follows:

Claims for expenses related to a Plan Year and the Grace Period for such Plan Year must be submitted not later than the 90<sup>th</sup> day after the end of the Grace Period. Subject to the preceding sentence, an Employee's claims that are incurred during the Grace Period shall be paid first from the amount remaining in the Employee's Dependent Care Assistance Reserve Account established for the preceding Plan Year until the claims are paid in full or the amount credited to such Reserve Account is fully applied. The remaining amount due, if any, on such claims incurred during the Grace Period for a Plan Year shall be paid from the Employee's Dependent Care Assistance Reserve Account, if any, established for the current Plan Year.

7. *Section 12.1.* Amend by deleting the first sentence of the third paragraph of Section 12.1 in its entirety and adding additional information to the beginning of the third paragraph to Section 12.1 to read as follows:

Claims for expenses related to a Plan Year and the Grace Period for such Plan Year must be submitted not later than the 90<sup>th</sup> day after the end of the Grace Period." Subject to the preceding sentence, an Employee's claims that are incurred during the Grace Period shall be paid first from the amount remaining in the Employee's Health Care Expense Reimbursement Account established for the preceding Plan Year until the claims are paid in full or the amount credited to such Reserve Account is fully applied. The remaining amount due, if any, on such claims incurred during the Grace Period for a Plan Year shall be paid from the Employee's Health Care Expense Reserve Account, if any, established for the current Plan Year.

8. *Section 13.1.A.* Amend by deleting the second paragraph in its entirety and adding a new second paragraph to Section 13.1.A. to read as follows:

All contributions must be used within the Plan Year, including the applicable Grace Period, during which the contributions were made or they will be forfeited by the Employee to the Plan.

9. *Section 13.1B.* Amend by deleting it in its entirety and adding a new Section 13.1.B. to read as follows:

**B. Uses of Funds**

The contributions will be applied to provide the benefits under the Plan. Unused (forfeited) contributions may not be carried forward by the Employee in any manner to a subsequent Plan Year, except with respect to claims incurred during the Grace Period. The Plan Sponsor in its sole discretion, however, may use forfeited amounts to: (1) pay administrative expenses; (2) reduce Reserve Account contributions for the following Plan Year; (3) increase amounts available to pay claims from Reserve Accounts in future years; or (4) provide a rebate to Plan participants, in which case funds must be allocated on a reasonable and consistent basis and cannot be allocated based on claims experience.

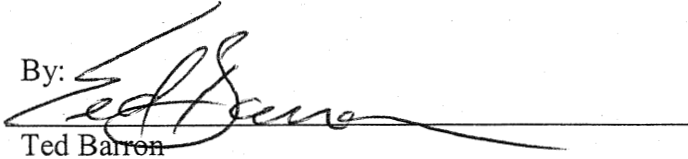
**END OF AMENDMENT**

**SIGNATURES ON NEXT PAGE**

EXECUTED as of this 16 day of August, 2005, but  
effective as of January 1, 2005.

CITY OF MESQUITE

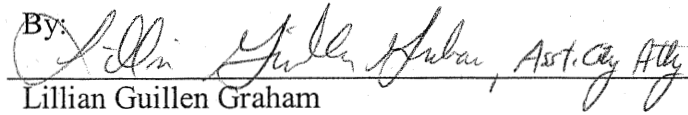
By:

  
Ted Barron

Title: City Manager

APPROVED AS TO FORM:

By:

  
Lillian Guillen Graham

Title: City Attorney, or his Designee