
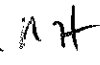



## REPORT TO CITY COUNCIL

**DATE:** JUNE 23, 2010

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** GREG RAMIREZ, CITY MANAGER 

**BY:** NATHAN HAMBURGER, ASSISTANT CITY MANAGER   
CELESTE BIRD, ADMINISTRATIVE ANALYST 

**SUBJECT:** RESOLUTION NO. 10-1585; AMENDING THE COMPENSATION PLAN BY: INCREASING THE EMPLOYER CONTRIBUTION TO HEALTH CARE AND VISION PREMIUMS, SETTING THE SALARY RANGES FOR CITY EMPLOYEES TO INCLUDE A COLA RATE INCREASE IN THE SECOND YEAR. INTRODUCING THE IMPROVED DELTA DENTAL BENEFIT, AND ELIMINATING THE POSITION OF ACCOUNTING SPECIALIST III, ESTABLISHING THE POSITION OF ACCOUNTANT, APPROVING THE CLASSIFICATION SPECIFICATION, AND SETTING THE SALARY RANGE, AND RESOLUTION NO. 10-1586; ESTABLISHING A HEALTH CARE SPENDING ACCOUNT AND A DEPENDENT CARE SPENDING ACCOUNT

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The City follows the practice of consulting with City employees on matters such as working conditions, classifications, and compensation, including salaries and benefits. Providing benefits such as this is a means to attract and retain quality employees. As a result of the 2010-2012 consultation sessions with the City employees, and in lieu of a 2010-2011 Cost of Living Adjustment (COLA), it is proposed that the City agree to a two-year compensation package which includes an increase to the employer contribution to healthcare premiums, update the dental benefit to market standard, the establishment of a Flexible Healthcare Spending Account and Dependent Care Spending Account. In addition, it is recommended that the City establish the position of Accountant to replace the position of Accounting Specialist III at the same salary range.

Effective January 1, 2011; through December 31, 2011, staff recommends an employer contribution amount up to the 2011 Blue Shield Advantage family rate, which includes the 2011 minimum contribution required under PEMHCA, plus the Vision Service Provider (VSP) family rate which will increase by 6% in July, 2010. Effective July 1, 2011 through June 30, 2012, the second year compensation will include a COLA rate increase based on the Consumer Price Index as listed by the U.S. Department of Labor Statistics, Urban Wage Earners & Clerical Workers for Los Angeles, Riverside, and Orange Counties for year ending 2010, and an employer contribution amount up to the 2012 Blue Shield Advantage Family rate, which will include the 2012 minimum contribution required under PEMHCA, plus the current VSP rate. The second year compensation of the employer contribution and the COLA rate increase will be conditioned

on the ability to achieve a balanced budget. Staff has budgeted for 2011 increases and will be presenting a balanced budget for fiscal year 2010-2011.

The City has contracted with Wells Fargo Insurance Services (formerly ABD Insurance) for Dental coverage since 1997. Since that time, there have been no adjustments to the level of coverage. In an effort to insure adequate coverage reflecting current cost point, and to bring the compensation package to a level comparable with other similar sized agencies, the City has negotiated enhancements to the Delta benefit coverage, including the addition of orthodontics.

In an effort to more accurately reflect the duties of certain employment positions, Human Resources staff reviews job classifications annually. Staff is recommending the elimination of the classification of the Accounting Specialist III, to be reclassified as Accountant. The current job duties and responsibilities of the new Accountant classification will change to reflect the reorganized duties, with the opportunity to learn additional tasks. The pay range will remain the same but years experience and education requirements have been adjusted to reflect the additional experience necessary to serve in this new classification.

In July, 2004, the City adopted Resolution 04-1336, establishing a Flexible Spending Account which included a Premium Only Plan, allowing employees and council members the option to pay for out-of-pocket health premium costs with pre-tax dollars. At the request of the City's employees, Human Resources staff has researched and is recommending the adoption of Resolution 10-1586 which adds a Health Care Spending Plan and a Dependent Care Spending Plan as additional components of the City's Flexible Spending Account. These plans are being proposed as a cost-neutral program due to the fact that Human Resources staff was able to renegotiate certain services provided to employees related to a Employee Assistance Program (EAP), thus making the funds available for the additional Flexible Spending Accounts. It is anticipated that the Flexible Spending Accounts operational cost would not exceed the amount allocated for the EAP in the past and would actually be less in future years as there was a small cost to establish the plan documents.

A Health Care Spending Account is one of a number of tax-advantaged financial accounts that can be set up through a benefit plan of an employer. This type of program allows an employee to set aside a portion of his or her earnings to pay for qualified expenses, as established in the benefits plan for medical related expenses, capped at \$2,500 per calendar year. Money deducted from an employee's pay into a Flexible Spending Account is not subject to payroll taxes.

Dependent Care Accounts can also be established to pay for certain expenses to care for dependents that live with employees who work. While this most commonly means child care, for children under the age of 13, it can also be used for adult day care for senior citizen dependents that live with employees, such as parents. The Dependent Care Account is federally capped at \$5,000 per year. Unlike the Health Care Accounts, Dependent Care Accounts are not "pre-funded"; employees cannot receive reimbursement for the full amount of the annual contribution on day one. Employees can only be reimbursed up to the amount they have had deducted during that plan year.

Resolution 10-1586 outlines the necessary steps required for the proper implementation of the Health Care and Dependent Care Spending Accounts. Incorporated as part of Resolution 10-1586 are the Plan Documents required by the IRS for the implementation of the additional Flexible Spending Accounts.

The proposed Plan Documents have been reviewed and approved as to form by the City Attorney.

### **RECOMMENDATION**

Staff recommends the City Council adopt Resolution 10-1585, amending the compensation plan by increasing the employer contribution to health care and vision premiums, set salary ranges, in the second year, for City employees to include a COLA rate increase; introduce improved dental benefits; eliminate position of Accounting Specialist III and establish the position of Accountant, approving the classification specification, and setting the salary range, and Resolution 10-1586; establishing a Health Care Spending Account and a Dependent Care Spending Account.

Attachments: Resolution Nos. 10-1585 and 10-1586, with Exhibits

**RESOLUTION NO. 10-1585**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, AMENDING THE COMPENSATION PLAN BY INCREASING THE EMPLOYER CONTRIBUTION TO HEALTH CARE AND VISION PREMIUMS, SETTING THE SALARY RANGES FOR CITY EMPLOYEES TO INCLUDE A COLA RATE INCREASE IN THE SECOND YEAR; INTRODUCING THE IMPROVED DELTA DENTAL BENEFIT; ELIMINATING THE POSITION OF ACCOUNTING SPECIALIST III, ESTABLISHING THE POSITION OF ACCOUNTANT, APPROVING THE CLASSIFICATION SPECIFICATION, AND SETTING THE SALARY RANGE.**

THE CITY COUNCIL OF THE CITY OF AGOURA HILLS HEREBY FINDS, RESOLVES AND ORDERS AS FOLLOWS.

SECTION 1. An increased employer contribution is hereby established, effective January 1, 2011, through December 31, 2011 to include an amount up to the 2011 Blue Shield Advantage family rate, which includes the 2011 minimum contribution required under PEMHCA, plus the VSP family rate, which will increase by 6% in July, 2010. Effective July 1, 2011, through June 30, 2012, the second year compensation will include a COLA rate increase based on the Consumer Price Index as listed by the U.S. Department of Labor Statistics, Urban Wage Earners & Clerical Workers for Los Angeles, Riverside, and Orange Counties for year ending 2010, and an employer contribution amount up to the 2012 Blue Shield Advantage family rate, which will include the 2012 minimum contribution required under PEMHCA, plus the current VSP rate. The second year compensation of the employer contribution and the COLA rate increase will be conditioned on the ability to approve a balanced budget.

SECTION 2. Improved dental benefits are hereby established for full-time employees and Council members to include higher calendar year maximums and orthodontics.

SECTION 3. The Compensation Plan is amended to eliminate the classification of Accounting Specialist III, and the classification of Accountant is hereby added, adopted, and approved. The Accountant classification specification is attached as Exhibit A.

SECTION 4. The classification of Accountant is assigned the salary range listed below:

ACCOUNTANT                      1015

SECTION 5. The effective date of the resolution is June 23, 2010.

PASSED, APPROVED and ADOPTED this 23<sup>rd</sup> day of June, 2010, by the following vote to wit:

AYES: ( )  
NOES: ( )  
ABSENT: ( )  
ABSTAIN: ( )

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William D. Koehler, Mayor

ATTEST:

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Kimberly M. Rodrigues, City Clerk

**EXHIBIT A**  
**CITY OF AGOURA HILLS**  
**ACCOUNTANT**

DEFINITION

Under general supervision of the Director of Finance, to perform professional accounting and reporting activities in the preparation and maintenance of accounts payable, receivable, payroll, business registration, and cash management and other financial and statistical records and reports, requiring the application of Generally Accepted Accounting Principles; performs revenue analysis; reconciles data to the general ledger; and performs related duties as required.

CLASS CHARACTERISTICS

This class is distinguished from the Accounting Specialist series by the additional performance as coordinator for the City-wide data processing network system and all support duties requiring knowledge of the operations of the system and by performance of complex tasks and duties relating to accounting, reconciliation and analysis.

EXAMPLES OF DUTIES

Depending upon assignment, duties may include, but are not limited to, the following:

1. Reviews time records submitted by departments to ensure conformance with appropriate administrative policies and regulations; records hours worked, verifies pay increases and computer file data for the current payroll periods; reviews and edits documents, corrects errors and balances payroll for each pay period.
2. Prepares tax returns, 1099 statements, and other reporting documentation related to payables and payroll matters; prepares manual checks; prepares or processes benefits payments and calculates accruals; compiles routine reports related to payroll activity.
3. Processes documents and performs data entry relating to accounts payable and accounts receivable; reviews edit documents and corrects errors; prepares warrants and demand registers, and billings; reconciles accounts to the general ledger; maintains related files.
4. Performs other accounting tasks assigned, such as reconciling and posting daily cash receipts; the preparation of journal and correcting entries relating to payroll, investment interest and deposits, accounts payable and receivable, and petty cash; assists in the execution of funds transfers/investments; performs research and prepares summaries or reports relating to fiscal activity; assists in the preparation of the City budget.

5. Assists in the preparation of the comprehensive Annual Financial Report, State controller reports, and related year-end financial statements, schedules, notes and reports; ensures selected general ledger accounts and annual reports accurately reflect City's financial position at fiscal year-end; assists staff and City auditors with the pre-audit and audit.
6. Responds to questions and provides information regarding established policy or procedures; provides liaison to vendors to resolve problems.
7. Prepares journal entries on fixed assets and Construction in Progress additions/deletions; updates the fixed asset subsidiary ledgers; prepare annual depreciation schedule; prepares fiscal year end reports on fixed asset balance sheet accounts.
8. Operates the City's computer network system and functions as liaison to the contract network manager. Coordinates the installation, operation, maintenance of the desktop equipment and peripherals; provides support for administrative software and computer equipment; troubleshoots user applications; performs daily backup procedures; and identifies installed hardware and software problems.

## QUALIFICATIONS GUIDELINES

### Education and / or Experience

Any combination of education and/or experience that has provided the knowledge, skills, and abilities necessary for satisfactory job performance. Example combinations include a Bachelor's degree from an accredited college or university with major course work in accounting, finance, public administration, business administration, or related field and five years of experience in accounting or a related field, which involved maintaining financial and statistical records, including accounts payable, receivable, or payroll records; two years of experience in a computer network system support field.

### Knowledge, Skills, and Abilities

Considerable knowledge of the principles and practices of financial record keeping, including accounts payable, receivable, and payroll; general office procedures; related laws and ordinances. Skill in the operation of a variety of office equipment, including skill in performing data entry and the operation of a network system. Ability to understand, interpret, and apply the fundamental principles of accounting, related policies and procedures; reconcile differences within the record keeping system requiring and understanding of the relationship among accounting records and documents; understand and coordinate the operation of a computer network system; and prepare manual and computerized financial reports, and maintain ledgers and journals; analyze fiscal data and draw logical conclusions; communicate effectively both orally and in writing; establish and maintain cooperative working relationships.

**RESOLUTION NO. 10-1586**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA ESTABLISHING A HEALTH CARE SPENDING ACCOUNT AND A DEPENDENT CARE SPENDING ACCOUNT**

THE CITY COUNCIL OF THE CITY OF AGOURA HILLS HEREBY FINDS, RESOLVES, AND ORDERS AS FOLLOWS:

SECTION 1. Flexible Spending Accounts known as a Health Care Spending Account and a Dependent Care Spending account are hereby approved and established and the City Manager of the City of Agoura Hills is hereby authorized and directed to execute and deliver the Plan Documents to the Plan Administrator who is hereby designated as the Finance Director.

SECTION 2. The Plan Administrator shall be instructed to take such actions that are deemed necessary and proper in order to implement the Plans, and to set up adequate accounting and administrative procedures to provide benefits under the Plans.

SECTION 3. The City Manager or his designate shall notify the employees of the City of Agoura Hills of the establishment of the Health Care Spending Account and the Dependent Care Spending Account by delivering to each eligible employee a copy of the Summary Plan Description, and Salary Redirection Agreement, providing them an opportunity to choose whether or not they elect to participate in the Plans.

SECTION 4. Attached hereto as Exhibits A and B, respectively, are true copies of the City of Agoura Hills Plan Documents for the Health Care Spending Account and the Dependent Care Spending Account, each of which is approved and adopted by this resolution.

SECTION 5. The City Manager is authorized to take such further action as is required for the proper operation of the Health Care Spending Account and the Dependent Care Spending Account, including the approval of agreements, and adoption of changes or amendments to Exhibits A and B that are necessary or convenient for the proper functioning of the Health Care Spending Account and the Dependent Care Spending Account or for compliance with Internal Revenue Service requirements, provided such changes or amendments do not result in additional costs or expenses to the City.



PASSED, APPROVED AND ADOPTED on this 23<sup>rd</sup> day of June 2010 by the following vote to wit:

AYES: ( )  
NOES: ( )  
ABSENT: ( )  
ABSTAIN: ( )

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William D. Koehler, Mayor

ATTEST:

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Kimberly M. Rodrigues, City Clerk

EXHIBIT A

**CITY OF AGOURA HILLS**  
**HEALTH CARE SPENDING ACCOUNT PLAN**

**Effective July 1, 2010**

## **STATEMENT OF PURPOSE**

This document describes the City of Agoura Hills Health Care Spending Account Plan, effective on July 1, 2010.

The Plan is intended to qualify as a "health care flexible spending arrangement" under sections 125 and 105(h) of the Internal Revenue Code of 1986, as amended, and is to be interpreted in a manner consistent with all relevant provisions of the Code. The Plan operates in conjunction with the City of Agoura Hills Section 125 Plan.

The purpose of the Plan is to provide participants with reimbursements of qualifying medical care expenses, which are funded by participants with before-tax contributions.

# ARTICLE I

## DEFINITIONS

Whenever used herein, the following terms shall have the following meaning, unless a different meaning is clearly required by the context:

- 1.1 Anniversary Date. The Anniversary Date shall mean the first day of any Plan Year.
- 1.2 Annual Enrollment Period. The 30 day period or annual enrollment period concurrent with CalPERS open enrollment period during which an Eligible Employee may make an election pursuant to section 3.3.
- 1.3 Change in Status. When facts and circumstances warrant, a change is deemed to occur on the date of:
  - (A) a change in the Employee or Dependent's marital status, including marriage, death of spouse, divorce, legal separation or annulment.
  - (B) the birth, placement for adoption or adoption of a Dependent child;
  - (C) the death of an Employee's spouse or Dependent child;
  - (D) the commencement or termination of employment of the Employee or Employee's spouse or Dependent;
  - (E) the switching from part-time to full-time employment status; or visa versa, by the Employee or the Employee's spouse;
  - (F) the taking of an unpaid leave of absence by the Employee or the Employee's spouse;
  - (G) change in the Participant's eligibility for purposes of coverage under any Employer-sponsored benefit plan offered through this Plan;
  - (H) a special enrollment pursuant to the Health Insurance Portability and Accountability Act of 1996.
- 1.4 Code. Code shall mean the Internal Revenue Code of 1986, as amended.
- 1.5 Compensation. Compensation shall mean the total remuneration of a Participant, including (but not limited to) wages, salary, overtime, bonuses, commissions, and any other payment which is not an advance, loan or expense reimbursement. Each

Participant's Compensation shall be determined prior to taking into account the Participant's salary reduction contributions under the Plan.

- 1.6 Dependent. Dependent shall mean any individual who is a tax dependent of the Participant as defined in Code section 105(b) and the regulations issued under Code section 106.
- 1.7 Effective Date. Effective Date shall mean the date that this Plan became effective, which was July 1, 2010.
- 1.8 Election Period. Election Period shall mean the period of time in which a Participant or Eligible Employee may enter, change, or terminate from the Plan.
- 1.9 Eligible Employee. Eligible Employee shall mean an Employee who is regularly scheduled to work a minimum of 30 hours per week and active Council Members. Notwithstanding anything in the Plan to the contrary, the term "Eligible Employee" shall not include Employees who are classified by the Employer as temporary Employees, Employees who are covered under a collective bargaining agreement, and Employees who are regularly scheduled to work less than 30 hours per week.
- 1.10 Employee. Employee shall mean individual who the Employer classifies as a common law employee, Council Members and who is on the Employer's Form W-2 payroll; provided that the person is not classified by the Employer as an independent contractor, leased employee, or contract worker.
- 1.11 Employer. Employer shall mean City of Agoura Hills
- 1.12 Grace Period. Grace Period shall mean the two and a half month period of time following the immediately preceding Plan Year during which a Participant may incur Qualifying Medical Care Expenses and receive reimbursement under the Plan for such Qualifying Medical Care Expenses, but does not cause the Plan to be considered to provide for deferred compensation
- 1.13 Health Care Spending Account. Health Care Spending Account shall mean the bookkeeping account described in article IV.
- 1.14 Highly Compensated Individual. Highly Compensated Employee shall mean any individual defined under Code section 105(h) as a "highly compensated individual."
- 1.15 Initial Election Period. The Initial Election Period shall be the thirty (30) days after the effective date of the Plan. This Initial Election Period may be extended by the Plan Administrator, at its sole discretion, upon written notice to employees.
- 1.16 Participant. Participant shall mean any Eligible Employee who elects to participate in the Plan in accordance with article II.

- 1.17 Period of Coverage. Period of Coverage shall mean (i) a Plan Year and corresponding Grace Period, or (ii) the portion of the Plan Year and corresponding Grace Period remaining after the effective date of an Eligible Employee's election to participate in the Plan, or (iii) the portion of the Plan Year and corresponding Grace Period prior to a Participant's termination from the Plan; whichever is applicable.
- 1.18 Plan. Plan shall mean the City of Agoura Hills Health Care Spending Account Plan, as set forth herein.
- 1.19 Plan Administrator. Plan Administrator shall be the entity designated as the Plan Administrator in section 9.1 of the Plan.
- 1.20 Plan Year. Plan Year shall mean the period beginning January 1 and ending December 31, except that the first Plan year shall begin on July 1, 2010, and end on December 31, 2011.
- 1.21 Qualifying Medical Care Expense. Qualifying Medical Care Expense shall mean an expense incurred by a Participant, or by the spouse or Dependent of such Participant, for medical care as defined in section 213(d) of the Code, but only to the extent that the Participant or other person incurring the expense is not reimbursed (or entitled to reimbursement) for the expense through insurance or otherwise (other than under the Plan). Qualifying Medical Care Expense does not include any premium paid for coverage under any plan maintained by the Employer or any other employer, or any expense incurred for qualified long term care services as defined in section 7702B(c) of the Code. Qualifying Medical care Expenses shall be deemed to be incurred at the time the services to which the expenses relate are rendered.
- 1.22 Required Contribution. Required Contribution shall mean the Participant's coverage amount for the Plan Year, divided by the number of regular Compensation payments for the remaining Period of Coverage.
- 1.23 Section 125 Plan. Section 125 Plan shall mean the City of Agoura Hills Section 125 Plan, as may be amended from time to time.

## ARTICLE II

### ELIGIBILITY AND PARTICIPATION

#### 2.1 Eligibility.

Employees shall become eligible to participate in the Plan upon satisfying the requirements of sections (A) and (B) below:

##### (A) Employment Status.

The Employee is regularly scheduled to work a minimum of 30 hours per week for the Employer and all active Council Members. All individuals designated by the Employer as independent contractors (regardless of whether or not they are Employees), Employees working on a temporary basis, and Employees regularly scheduled to work less than 30 hours per week, shall not be eligible to participate in the Plan.

##### (B) Service Conditions.

Employees are eligible to participate in the plan on the first day of the month following date of hire.

#### 2.2 Commencement of Participation.

Eligible Employees begin participating in the Plan when sections 2.1 (A) and (B) have been met.

#### 2.3 Termination of Participation.

An individual shall cease to be a Participant upon the occurrence of any of the following:

- (A) the date he or she ceases to be an Eligible Employee;
- (B) the date the Plan is terminated;
- (C) the last day of the Plan Year in which he or she ceases active employment with the Employer for any reason, including retirement, resignation, involuntary termination, layoff, leave of absence, disability or death; or
- (D) the date on which he or she fails to make any Required Contribution (including payment by salary reduction).

#### 2.4 Reinstatement of Former Participant.

If an individual ceases to be a Participant, he or she shall become a Participant again as of the date he or she once more becomes an Eligible Employee, and

makes an election under the Section 125 Plan to receive benefits under this Plan, or if such election is reinstated under the Section 125 Plan.

2.4 Participation of Spouses or Dependents.

If and to the extent required by law (including, without limitation, section 4980B of the Code and regulations thereunder), in the event of a Participant's death, termination, divorce or legal separation from his or her spouse, a Dependent child ceasing to be a Dependent child under the Plan, or other events prescribed by law, coverage under this Plan shall be made available to the spouse or Dependent of a Participant or former Participant in lieu of (or in addition to) the Participant. In that event, such spouse or Dependent shall be treated as a Participant under this Plan, but only to such extent and for such period as the law requires. No salary reduction agreement shall be required for such a spouse or Dependent, but Required Contributions must be paid to the Plan Administrator on a monthly basis (or within such other limit as may be provided for by law), and coverage shall cease upon nonpayment of any such Required Contribution.



## **ARTICLE III**

### **ELECTIONS**

#### **3.1 Election of Benefits.**

An Eligible Employee shall have the right to elect the benefits available under article IV.

During the applicable initial election period, as determined under this article III, an Employee who elects this benefit shall enter into a written salary reduction agreement authorizing and directing the Employer to reduce his or her Compensation in an amount equal to the amount determined pursuant to section 5.1 and to credit such amount to the Participant's Health Care Spending Account. Except as provided in section 3.5, a salary reduction agreement may not be changed during the Plan Year.

#### **3.2 Initial Election.**

An Employee who becomes eligible to participate must complete, sign and file an election form with the Plan Administrator during the 30-day period beginning on the date he or she is first eligible pursuant to section 2.1. Subject to section 3.3, the election shall take effect as soon as administratively practicable after the benefit election form is filed with the Plan Administrator, but in no event earlier than the first day of participation, and shall continue in effect for the Plan Year until the Participant submits a new election in accordance with either sections 3.3 or 3.5.

#### **3.3 Election.**

To elect or change benefits, Participants and eligible Employees may complete, sign and file a benefit election form and salary reduction agreement during the Initial Election Period or Annual Enrollment Period.

#### **3.4 Failure to Return an Election Form.**

If an Employee fails to return a completed Election Form to the Plan Administrator on or before the specified due date for the initial Plan Year of the Plan, or the Plan Year in which he or she first becomes an eligible Employee, he or she shall be deemed not to be a Participant for the first Plan Year; for subsequent years, the Employee shall be deemed not to be a Participant absent a completed Election Form. As such, the Employee shall also be deemed not to have agreed to a reduction of his or her Compensation for the Plan Year.

### 3.5 Changes in Status.

A Participant may change his benefit election and any salary reduction agreement referenced in section 3.1, by completing, signing and filing a new election form and salary reduction agreement with the Plan Administrator within thirty (30) days of the occurrence of a Change in Status, provided such new election is on account of and consistent with the Change in Status.

The Participant shall be responsible for notifying the Plan Administrator of a Change in Status and for requesting a benefit election form and salary reduction agreement. Elections made pursuant to this section 3.5 shall take effect on the first day of the month after the date the new benefit election form and salary reduction agreement is filed with the Plan Administrator, but in no event earlier than the earlier of:

- (A) the first day of the first pay period beginning immediately after the new benefit election form is filed with the Plan Administrator; or
- (B) the occurrence of the Change in Status.

Subject to a subsequent Change in Status and proper election, as previously described, the new election shall continue in effect through the last day of the Plan Year within which such election is made.

Notwithstanding any other provision of this Plan, the Plan Administrator may (a) permit a Participant to revoke (and subsequently reinstate) his or her election to receive reimbursements of Qualifying Medical Care Expenses during the Plan Year, and (b) adjust a Participant's Required Contribution as a result of a revocation or reinstatement to the extent the Plan Administrator deems necessary or appropriate to assure the Plan's compliance with the provisions of the Family and Medical Leave Act of 1993 and any regulations pertaining thereto.

## ARTICLE IV

### HEALTH CARE SPENDING ACCOUNTS

#### 4.1 Health Care Spending Accounts.

The Plan Administrator shall establish and maintain a Health Care Spending Account for each Participant who elects the reimbursement benefits under article III.

#### 4.2 Crediting Accounts.

Amounts shall be credited and allocated to the Participant's Health Care Spending Account in accordance with articles V and VI.

#### 4.3 Debiting Accounts.

Health Care Spending Accounts shall be debited in accordance with articles V and VI.

#### 4.4 No Funding of Accounts.

A Participant's Health Care Spending Account shall be a bookkeeping mechanism only and no money shall actually be paid into nor shall any interest be credited to, or paid on, amounts credited to the Participant's Health Care Spending Account. No assets or funds shall be paid to, held in or invested in any separate trust.

#### 4.5 Plan Participants.

A Participant shall be eligible to receive reimbursement for Qualifying Medical Care Expenses in a Plan Year and subsequent grace period up to the amount elected for coverage in the Participant's Health Care Spending Account.

If an Employee becomes a Participant other than on the first day of the Plan Year the amount elected for coverage in the Participant's Health Care Spending Account shall be prorated by multiplying it by a fraction, the numerator of which is the number of months the Participant will participate in such Plan Year, and the denominator of which is twelve (12).

#### 4.6 Reimbursement Requests.

The Participant must submit, to the Plan Administrator, a written request for reimbursement for his or her Qualifying Medical Care Expenses from his or her Health Care Spending Account on a form provided by the Plan Administrator along with such evidence as the Plan Administrator deems necessary as to the amount, nature and payment of such expenses. Such request must be submitted by the end

of ninety days following the close of the Plan Year and corresponding Grace Period for which the benefit election is effective and during which the expenses were incurred.

4.7 Limitation on Reimbursement.

No amounts shall be reimbursed pursuant to this Plan with respect to Qualifying Medical Care Expense to the extent that the Participant incurring the Expense is reimbursed for it by insurance or otherwise. If a Participant receives benefits under this Plan and is reimbursed for the Qualifying Medical Care Expense giving rise to such benefits from any other source at any time, he shall remit such benefits to the Plan Administrator to the extent of such reimbursement.

4.8 Timing of Reimbursements.

Reimbursement of Qualifying Medical Care Expenses to a Participant shall be paid from the general assets of Employer as soon as administratively practicable after the required forms and documentation have been received by the Plan Administrator under procedures established pursuant to the Plan.

4.09 Special Limitations on Qualifying Medical Care Expenses.

This Plan covers only Qualifying Medical Care Expenses incurred during the period for which the Participant has elected to have funds allocated to his Health Care Spending Account. Qualifying Medical Care Expenses shall be considered incurred when the medical care is provided and not when the Participant is formally billed, charged for or pays the Expense.

4.10 Maximum Amount.

A Participant may not elect to have more than \$2,500 credited to the Health Care Spending Account for each Plan Year.

## ARTICLE V

### CREDITS AND DEBITS TO ACCOUNTS

#### 5.1 Salary Reduction Authorization.

During the applicable election period determined under article III, each Eligible Employee shall enter into a salary reduction agreement with the Employer which shall provide for a reduction in the Participant's Compensation in an amount equal to the amount determined under the Section 125 Plan.

The Plan Administrator will provide for, and keep records of, such salary reduction arrangements.

#### 5.2 Change of Election.

Except as provided in section 3.5, a Participant's benefit or salary reduction election cannot be changed during the Plan Year.

#### 5.2 Forfeiture of Unused Spending Account Benefits.

Any amount allocated to a Health Care Spending Account, and not applied to provide the elected reimbursement from such Account ninety days following the end of the Plan Year and corresponding Grace Period for expenses incurred during such Plan Year and Grace Period, shall be forfeited by the Participant; provided, that if the Participant was (by reason of being a member of a reserve component) ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and such active duty takes place in whole or in part during a Plan Year, then the Participant shall be deemed to have elected to receive a refund of all unused amounts to the Participant's Health Care Spending Account at the end of the applicable Grace Period for such Plan Year, and the Plan shall make such a refund to the Participant, in accordance with section 125(h) of the Code

## ARTICLE VI

### REIMBURSEMENTS

#### 6.1 Employer Contribution.

In accordance with a Participant's election under article III of this Plan, the Employer shall credit the appropriate amount to the Participant's Health Care Spending Account. The Health Care Reimbursement benefit elected by a Participant shall be paid from the Employer's general assets; no assets or funds shall be paid or held or invested in a separate trust; and no interest shall be credited to or paid on any amount determined under this article VI.

#### 6.2 Health Care Reimbursement Benefit.

This Plan provides reimbursement of health care expenses, of up to \$2,500 per year.

- (A) Reimbursement for health care expenses shall be made only to specifically reimburse the Participant for expenses incurred during the Grace Period or preceding Plan Year. The Participant may only obtain reimbursement of documented Qualifying Medical Care Expenses. Reimbursement of such expenses is limited to such amount as the Participant elects to be allocated to his or her Health Care Spending Account.
- (B) Qualifying Medical Care Expenses reimbursed under the Plan must have been incurred during the period the Participant was participating in the Plan. Expenses are treated as incurred when the services eligible for reimbursement are rendered.

#### 6.3 Claim Forms and Payment of Reimbursement Benefits.

The Participant must submit to the Plan Administrator, a request for reimbursement from his Health Care Spending Account on the form or forms provided for such purpose by the Plan Administrator and in accordance with the terms of this Plan and such procedures established by the Plan Administrator. The form must indicate:

- (A) the amount, date and nature of each expense
- (B) the name of the person, organization or entity to which the expense was or is to be paid;
- (C) the name of the person for whom the expense was incurred and, if such person is not the Participant requesting the benefit, the relationship of such person to the Participant;
- (D) the amount recovered or expected to be recovered, under any insurance arrangement or other plan, with respect to the expense;

- (E) such other information as the Plan Administrator shall from time to time require; and
- (F) a statement that the expense (or the portion thereof for which reimbursement is sought under the Plan) has not been reimbursed or is not reimbursable from any other source.

Payments shall be made as soon as administratively practicable after the required forms and documentation have been received by the Plan Administrator, as described in article VII of this document.

#### 6.4 Reimbursements.

Reimbursement of Qualifying Medical Care Expenses under this Plan shall be from the general assets of the Employer. The Health Care Spending Account will not represent actual Participant or Employer deposits into any fund. A Participant shall have no rights to any particular assets of the Employer. A Participant's right to reimbursement under the Plan shall be limited to the amount of salary reduction of the Participant allocated to this Plan.

#### 6.4 Rights of Participants.

Any Health Care Spending Account established hereunder shall be for the administrative convenience of the Plan Administrator. Nothing in this Plan shall require the Employer to segregate or set aside any portion of its assets. Nor shall the establishment of any Health Care Spending Account hereunder or of any other administrative practice vest any Participant with title in the assets of the Employer or entitle him to benefits, except as expressly provided in the Plan.

#### 6.5 Nonalienation Clause.

Any rights or benefits under the Plan may not be anticipated, assigned (either at law or equity), transferred or alienated by the Participant in any manner. Such prohibition on alienation shall be a precondition for benefits under the Plan.

## **ARTICLE VII**

### **PAYMENT OF CLAIMS**

#### **7.1 General.**

This article VII applies only to claims for benefits under this Plan, not to claims under any other health and/or welfare benefit plan(s) offered through the Section 125 Plan

#### **7.2 Filing and Initial Determination of Claim.**

Any Employee, beneficiary, or his duly authorized representative may file a claim for a Plan benefit to which the claimant believes is entitled. Such claim must be in writing and delivered to the Plan Administrator, in person or by mail, postage prepaid. Within 30 days after receipt of such claim, the Plan Administrator shall notify the claimant, by mail, postage prepaid, of the granting or denial, in whole or in part, of such claim, unless special circumstances require an extension of time for processing the claim. In no event may the extension exceed 90 days from the end of the initial 30-day period. If such extension is necessary, the claimant shall be given written notice to this effect prior to the expiration of the initial 30 day period. The Plan Administrator shall have full discretion to deny or grant a claim in whole or in part. If notice of the denial of a claim is not furnished in accordance with this section, the claim shall be deemed denied and the claimant shall be permitted to exercise his or her right to review under sections 7.4 and 7.5.

#### **7.3 Duty Upon Denial of Claim.**

The Plan Administrator shall provide a claimant who is denied a claim for benefits with written notice setting forth the following, in a manner calculated to be understood by the claimant:

- (A) the specific reasons for the denial;
- (B) specific references to pertinent provisions of the Plan on which the denial is based;
- (C) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
- (D) an explanation of the procedure for review of denied claims.

#### **7.4 Request for Review of Claim Denial.**

If there is an adverse benefit determination, notice to the claimant or authorized representative will be provided in writing within a reasonable period but not later than 30 days after receipt of the claim. However, this period may be extended one



time only by the Plan for up to an additional 15 days if the Plan determines that such an extension is necessary due to matters beyond its control, and it provides written notice (prior to the end of the original 30-day period) of the circumstances requiring the extension and the date by which the plan expects to render a decision.

If an extension is necessary due to failure to submit the information necessary to decide the claim, the notice of extension will specifically describe the required information and unresolved issues that prevent claim determination. The claimant or authorized representative will be given 45 days from receipt of the notice to provide the necessary information.

#### 7.5 Legal Remedy.

Before pursuing a legal remedy, claimant shall first exhaust all claims, review and appeals procedures required under the Plan.

## ARTICLE VIII

### CESSATION OF COVERAGE

#### 8.1 Cessation of Participation.

In the event that a Participant ceases to be an Eligible Employee for any reason during the Plan Year, the Participant's election and Compensation reduction (if any) relating to this Plan shall end. The Participant shall be entitled to reimbursement for Qualifying Medical Care Expenses incurred within the same Plan Year and corresponding Grace Period and before he or she ceased to be an Eligible Employee.

#### 8.2 Continuation of Coverage.

If and to the extent required by law (including, without limitation, sections 105, 125, and 4980B of the Code and regulations thereunder), in the event a Participant ceases to be an Eligible Employee and undertakes to pay Required Contributions to the Plan Administrator thereafter on a monthly basis (or within such other time limit as may be provided for by law), coverage under the Plan shall continue so long as such Required Contributions are paid, but not beyond the end of the period for which such coverage is required by law. In addition, the former Participant shall be treated as a Participant under the Plan to such extent as is required by law, and shall be entitled to reimbursement for Qualifying Medical Care Expenses incurred during such period of continued coverage, subject to section 8.3.

#### 8.3 Limits on Time and Amount of Reimbursement.

Reimbursements shall be made for any Plan Year including its Grace Period under this article VIII only if the Participant applies for such reimbursement in accordance with section 7.2 on or before ninety (90) days following the close of the Plan Year and Grace Period. In the event of the Participant's death, the Participant's spouse (or, if none, the Participant's executor or administrator) may apply on the Participant's behalf for reimbursements permitted under this article VIII. No reimbursement under this article VIII shall exceed the remaining balance, if any, in the Participant's Health Care Spending Account for the Plan Year or subsequent Grace Period in which the expenses were incurred.

**ARTICLE IX**  
**ADMINISTRATION**

9.1 Appointment of the Plan Administrator.

The Employer is hereby designated as the Plan Administrator.

9.2 Powers and Authority/Action Conclusive.

Except as otherwise expressly provided in the Plan:

- (A) The Plan Administrator will have all powers necessary or helpful for the carrying out of its responsibilities, and its decisions or actions in good faith in respect to any matter hereunder will be conclusive and binding upon all parties concerned.
- (B) Without limiting the generality of the foregoing, the Plan Administrator will have the power to make rules and regulations for the administration of the Plan; to construe all terms, provisions, conditions and limitations of the Plan; and to determine the answers to all questions arising out of or in connection with the provisions of the Plan or its administration in any and all cases in which the Plan Administrator deems such a determination advisable.

The foregoing list of powers is not intended to be complete or exhaustive, and the Plan Administrator will, in addition, have such powers as he or she may determine to be necessary for the performance of his or her duties under the Plan.

9.3 Counsel and Agents.

The Plan Administrator may employ such counsel (including legal counsel, who may be counsel for the Employer) and agents and such clerical and other services as he may require in carrying out the provisions of the Plan. The Plan Administrator will be fully protected in acting or refraining to act in accordance with the advice of legal or other counsel.

9.4 Reliance on Information.

The Plan Administrator and any of its officers, directors, and employees will be entitled to rely upon any tables, valuations, certificates, opinions and reports furnished by any accountant, trustee, insurance company, counsel, physician, dentist or other expert who is engaged by the Plan Administrator. The Plan Administrator will be fully protected in respect to any action taken or suffered by them in good faith reliance thereon.

9.5 Genuineness of Documents.

The Plan Administrator and any of its officers, directors and employees will be entitled to rely upon any notice, request, consent, letter, telegram or other paper or document believed by them or any of them to be genuine and to have been signed or sent by the proper person, and will be fully protected in respect of any action taken or suffered by them in good faith in reliance thereon.

9.6 Proper Proof.

In any case in which the Plan Administrator is required under the Plan to take action upon the occurrence of any event, it will be under no obligation to take such action unless and until proper satisfactory evidence of such occurrence has been received by them.

9.7 Estoppel of Participants.

The Plan Administrator may rely upon any certificate, statement or other representation made to them by the Employer or by any Employee, Participant, spouse, or Dependent with respect to any fact required to be determined under any provisions of the Plan, and will not be liable on account of the payment of any moneys or the doing of any act in reliance upon any such certificate, statement or other representation. In the discretion of the Plan Administrator:

- (A) any such certificate, statement or other representation made by an Employee or Participant will be conclusively binding upon such Employee or Participant, spouse, and his Dependents, and such Employee, Participant, spouse, or Dependents will thereafter and forever be estopped from disputing the truth and correctness of such certificate, statement or other representation; and
- (B) any such certificate, statement or other representation made by a Participant's spouse or Dependent will be conclusively binding upon such person, and such person shall thereafter and forever be estopped from disputing the truth and correctness of such certificate, statement or other representation.

9.8 Service as a Fiduciary.

The Plan Administrator shall act as a fiduciary. Any fiduciary under the Plan may serve in more than one fiduciary capacity with respect to the Plan.

9.9 Delegates.

The Plan Administrator may designate other persons to carry out fiduciary and other responsibilities under the Plan and shall not be liable for the acts or omissions of such persons except as provided by law.

## ARTICLE X

### AMENDMENT AND TERMINATION OF THE PLAN

#### 10.1 Amendment.

The Employer may amend the Plan at any time, and from time to time, either retroactively or prospectively, except as may be limited by applicable law.

#### 10.2 Termination.

The Employer expects that this Plan will be maintained indefinitely. However, continuance is not guaranteed. The Employer reserves the right to terminate the Plan at any time with advance notice to Participants.

#### 10.3 Expenses Incurred Prior to Termination.

If the Plan is terminated, the Participants' right to receive benefits and reimbursements under the Plan for Qualifying Medical Care Expenses incurred prior to the termination date shall not be affected in any manner.

## ARTICLE XI

### MISCELLANEOUS

#### 11.1 Indemnification by Employer.

To the fullest extent permitted by law, the Employer shall indemnify and hold harmless the Plan Administrator and Employees who perform duties under the Plan, against all claims, losses, damages, expenses, and liabilities resulting from any action or omission of any such person in connection with administering the Plan, as long as such action or omission was at the time in good faith and carried forth with proper diligence and care, and provided that the Employer determines in its discretion that the Plan Administrator or Employee did not commit gross negligence or willful misconduct.

#### 11.2 Funding.

All contributions to the Plan shall be considered general assets of the Employer.

#### 11.3 Not an Employment Agreement.

The establishment of the Plan shall not be construed to constitute a contract between the Employer and any Participant, or to be a consideration or inducement for the employment of any Participant or Employee, or to confer upon any Employee or Participant any legal right to be retained in the employ of the Employer. All Employees will remain subject to discharge to the same extent as if the Plan had never been adopted, and may be treated without regard to the effect such treatment might have upon them under the Plan. Nothing in the Plan shall be deemed to be an agreement, consideration, inducement, or condition of employment.

#### 11.4 Titles and Headings.

The captions contained herein are inserted only as a matter of convenience and for reference, and in no way define, limit, enlarge or describe the scope or intent of the Plan, nor in any way shall affect the Plan or the construction of any provision thereof.

#### 11.5 Gender and Number.

Wherever used in this document, the singular shall include the plural, the plural shall include the singular, the masculine shall include the feminine and neuter, the feminine shall include the masculine and neuter, and the neuter shall include the masculine and feminine, except where the context requires otherwise.

11.6 Amendments in Writing.

Any and all amendments to this Plan need to be in writing, and signed by a duly authorized representative of the Employer, in order to be valid.

11.7 Severability.

If any provision of the Plan is held invalid or unenforceable, its invalidity or its inability to be enforced will not affect other provisions of the Plan, and the Plan will be construed and enforced as if such provision had not been included therein.

11.8 Plan Administrator Information.

Name and address of the Plan Administrator:

City of Agoura Hills  
30001 Ladyface Court  
Agoura Hills, CA 91301

Telephone number of the Plan Administrator:

818-597-7300

11.10 Service of Legal Process.

The Employer shall be the agent for service of legal process for the Plan.

11.11 Governing Law.

The Plan shall be construed in accordance with the laws of the state of California to the extent not preempted by federal law.



**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the Employer has caused this Plan to be signed by its duly authorized representative on the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**CITY OF AGOURA HILLS**

BY: \_\_\_\_\_

EXHIBIT B

**CITY OF AGOURA HILLS**  
**DEPENDENT CARE SPENDING ACCOUNT PLAN**

**Effective July 1, 2010**

## **STATEMENT OF PURPOSE**

This document describes the City of Agoura Hills Dependent Care Spending Account Plan, which is effective July 1, 2010.

The Plan is intended to qualify as a "dependent care reimbursement plan" under sections 125 and 129 of the Internal Revenue Code of 1986, as amended, and is to be interpreted in accordance with all relevant provisions of the Code. The Plan operates in conjunction with the City of Agoura Hills Section 125 Plan.

The purpose of the Plan is to provide participants with reimbursements of dependent care expenses, which are funded by participants with before-tax contributions.

# ARTICLE I

## DEFINITIONS

Whenever used herein, the following terms shall have the following meaning, unless a different meaning is clearly required by the context:

- 1.1 Administrator. Administrator shall be the entity designated as the Administrator in section 10.1 of the Plan.
- 1.2 Anniversary Date. The Anniversary Date shall mean the first day of any Plan Year.
- 1.3 Annual Enrollment Period. Annual Enrollment Period shall mean the period specified by the Administrator during which an Eligible Employee may make an election pursuant to section 3.3.
- 1.4 Change in Status. Change in Status shall have the same meaning as a "status change" as set forth in the Section 125 Plan.
- 1.5 Code. Code shall mean the Internal Revenue Code of 1986, as amended.
- 1.6 Compensation. Compensation shall mean the total remuneration of a Participant, including (but not limited to) wages, salary, overtime, bonuses, commissions, and any other payment which is not an advance, loan or expense reimbursement. Each Participant's Compensation shall be determined prior to taking into account the Participant's salary reduction contributions under the Plan.
- 1.7 Dependent. Dependent shall mean any individual who is a tax dependent of the Participant as defined in Code section 152(a), or as defined in Code section 21(e)(5) (i.e. a dependent of the parent with custody for the greater portion of the calendar year).
- 1.8 Dependent Care Assistance. Dependent Care Assistance shall mean reimbursement under the terms of this Plan for Employment Related Expenses.
- 1.9 Dependent Care Service Provider. Dependent Care Service Provider shall mean a person who provides care or other services that constitute Employment Related Expenses, but shall not include (a) a dependent care center (as defined in section 21(b)(2)D of the Code), unless the requirements of the Code section 21(b)(2)(C) are satisfied; or (b) a related individual described in section 129(c) of the Code.
- 1.10 Dependent Care Spending Account. The Participant's Dependent Care Spending Account shall mean the account described in article IV of this Plan.
- 1.11 Earned Income. Earned Income shall mean wages, salaries, tips and other

Compensation, including net earnings from self-employment for his or her taxable year, and excluding pension and annuity income, income as a nonresident alien not connected with a United States business and computed without regard to any community property laws. A Participant's Earned Income shall not include any amounts paid or incurred by the Employer on behalf of the Participant, whether by salary reductions or otherwise, for Dependent Care Assistance. The Earned Income of a spouse who is a full-time student at an educational institution or has a Physical or Mental Incapacity shall be deemed to be not less than \$250 per month if there is one Qualifying Individual with respect to the Participant or \$500 per month if there are two or more Qualifying Individuals with respect to the Participant

- 1.12 Effective Date. Effective Date shall mean July 1, 2010.
- 1.13 Election Period. Election Period shall mean the period of time in which a Participant or Eligible Employee may enter, change, or terminate from the Plan.
- 1.14 Eligible Employee. Eligible Employee shall mean an Employee who is regularly scheduled to work a minimum of 30 hours per week and active Council Members. Notwithstanding anything in the Plan to the contrary, the term "Eligible Employee" shall not include Employees who are classified by the Employer as temporary Employees, Employees who are covered under a collective bargaining agreement, and Employees who are regularly scheduled to work less than 30 hours per week.
- 1.15 Employee. Employee shall mean individual who the Employer classifies as a common law employee, Council Members and who is on the Employer's Form W-2 payroll; provided, that the person is not classified by the Employer as an independent contractor, leased employee, or contract worker.
- 1.16 Employer. Employer shall mean City of Agoura Hills
- 1.17 Employment Related Expenses. Employment Related Expenses shall mean those expenses meeting the requirements set forth in article VI which are eligible for reimbursement under article VII.
- 1.18 Grace Period Grace Period shall mean the two and a half month period of time following the immediately preceding Plan Year during which a Participant may receive payment or incur Employment Related Expenses and receive reimbursement under the Plan for Employment Related Expenses but does not cause the Plan to be considered to provide for deferred compensation
- 1.19 Initial Election Period. The Initial Election Period shall be the thirty (30) days after the effective date of the Plan. This Initial Election Period may be extended by the Plan Administrator, at its sole discretion, upon written notice to employees.
- 1.20 Participant. Participant shall mean any Eligible Employee who elects to participate in the Plan in accordance with article II.

- 1.21 Period of Coverage. Period of Coverage shall mean (i) a Plan Year and corresponding Grace Period, or (ii) the portion of the Plan Year and corresponding Grace Period remaining after the effective date of an Eligible Employee's election to participate in the Plan, or (iii) the portion of the Plan Year and corresponding Grace Period prior to a Participant's termination from the Plan; whichever is applicable.
- 1.21 Physical or Mental Incapacity. Physical or Mental Incapacity shall mean the individual is incapable of caring for himself or herself, or requires full-time attention of another person for his or her own safety or the safety of others, because of a physical or mental defect.
- 1.22 Plan. Plan shall mean the City of Agoura Hills Dependent Care Spending Account Plan, as set forth herein.
- 1.23 Plan Year. Plan Year shall mean the period beginning January 1 and ending December 31, except that the first Plan year shall begin on July 1, 2010 and end on December 31, 2011.
- 1.24 Qualifying Individual. Qualifying Individual shall mean:
- (A) An individual who is:
- (1) a Dependent of the Participant, who is under the age of thirteen (13), and with respect to whom the Participant is entitled to a deduction on his or her federal income tax return under section 151(c) of the Code;
  - (2) a Dependent of the Participant who is under a Physical or Mental Incapacity; or
  - (3) the spouse of a Participant, if such spouse is under a Physical or Mental Incapacity.
- (B) In the case of divorced or separated parents, a child who is:
- (1) under the age of thirteen (13) years or under a Physical or Mental Incapacity;
  - (2) receives over one-half (1/2) of his or her support during the Plan Year from his or her parents who are divorced or legally separated under a decree of divorce or separate maintenance or who are separated under a written separation agreement or who live apart at all times during the last six (6) months of the calendar year; and
  - (3) is in the custody of one or both of his or her parents for more than one-half (1/2) of the calendar year
  - (4) but only if the Participant has custody of such child for a longer period

during the Plan Year than the other parent.

- 1.25 Required Contribution. Required Contribution shall mean the Participant's coverage amount for the Plan Year, divided by the number of regular Compensation payments for the remaining Period of Coverage.
- 1.26 Section 125 Plan. Section 125 Plan shall mean the City of Agoura Hills Section 125 Plan, as amended.

## ARTICLE II

### ELIGIBILITY AND PARTICIPATION

#### 2.1 Eligibility.

Employees shall become eligible to participate in the Plan upon satisfying the requirements of sections (A) and (B) below:

##### (A) Employment Status.

The Employee is regularly scheduled to work a minimum of 30 hours per week for the Employer and all active Council Members. All individuals designated by the Employer as independent contractors (regardless of whether or not they are Employees), Employees working on a temporary basis, and Employees regularly scheduled to work less than 30 hours per week, shall not be eligible to participate in the Plan.

##### (B) Service Conditions.

Employees are eligible to participate in the plan on the first day of the month following date of hire.

#### 2.2 Commencement of Participation.

Eligible Employees begin participating in the Plan when sections 2.1 (A) and (B) have been met.

#### 2.3 Termination of Participation.

An individual shall cease to be a Participant upon the occurrence of any of the following:

- (A) the date he or she ceases to be an Eligible Employee;
- (B) the date the Plan is terminated;
- (C) the last day of the Plan Year in which he or she ceases active employment with the Employer for any reason, including retirement, resignation, involuntary termination, layoff, leave of absence, disability or death; or
- (D) the date on which he or she fails to make any Required Contribution (including payment by salary reduction).

#### 2.4 Reinstatement of Former Participant.

If an individual ceases to be a Participant, he or she shall become a Participant again as of the date he or she once more becomes an Eligible Employee, and



makes an election under the Section 125 Plan to receive benefits under this Plan, or if such election is reinstated under the Section 125 Plan.

## **ARTICLE III**

### **ELECTIONS**

#### **3.1 Election of Benefits.**

An Eligible Employee shall have the right to elect the benefits available under article IV.

During the applicable Initial Election Period, as determined under this article III, an Employee who elects this benefit shall enter into a written salary reduction agreement authorizing and directing the Employer to reduce his or her Compensation in an amount equal to the amount determined pursuant to section 5.1 and to credit such amount to the Participant's Dependent Care Spending Account. Except as provided in section 3.5, a salary reduction agreement may not be changed during the Plan Year.

#### **3.2 Initial Election.**

An Employee who becomes eligible to participate must complete, sign and file an election form with the Administrator during the Initial Election Period. Subject to section 3.3, the election shall take effect as soon as administratively practicable after the benefit election form is filed with the Administrator, but in no event earlier than the first day in which the Employee is an Eligible Employee, and shall continue in effect for the remainder of the Plan Year unless the Participant submits a new election in accordance with either sections 3.3 or 3.5.

#### **3.3 Election.**

To elect or change benefits, Participants and eligible Employees may complete, sign and file a benefit election form and salary reduction agreement during the Initial Election Period or Annual Enrollment Period.

#### **3.4 Failure to Return an Election Form.**

If an Employee fails to return a completed Election Form to the Administrator on or before the specified due date for the initial Plan Year of the Plan, or the Plan Year in which he or she first becomes an eligible Employee, he or she shall be deemed not to be a Participant for the first Plan Year; for subsequent years, the Employee shall be deemed not to be a Participant absent a completed Election Form. As such, the Employee shall also be deemed not to have agreed to a reduction of his or her Compensation for the Plan Year.

3.5 Changes in Status.

A Participant may change his or her benefit election and any salary reduction agreement referenced in section 3.1, by completing, signing and filing a new election form and salary reduction agreement with the Administrator within thirty (30) days of the occurrence of a Change in Status (or within such other period as may be specified by law), provided such new election is on account of and consistent with the Change in Status.

The Participant shall be responsible for notifying the Administrator of a Change in Status and for requesting a benefit election form and salary reduction agreement. Elections made pursuant to this section 3.5 shall take effect on the first day of the month after the date the new benefit election form and salary reduction agreement is filed with the Administrator, but in no event earlier than the earlier of:

- (A) the first day of the first pay period beginning immediately after the new benefit election form is filed with the Administrator; or
- (B) the occurrence of the Change in Status.

Subject to a subsequent Change in Status and proper election, as previously described, the new election shall continue in effect through the last day of the Plan Year within which such election is made.

Notwithstanding any other provision of this Plan, the Administrator may (a) permit a Participant to revoke (and subsequently reinstate) his or her election to receive Dependent Care Assistance during the Plan Year, and (b) adjust a Participant's Required Contribution as a result of a revocation or reinstatement to the extent the Administrator deems necessary or appropriate to assure the Plan's compliance with the provisions of the Family and Medical Leave Act of 1993 and any regulations pertaining thereto.

## ARTICLE IV

### DEPENDENT CARE SPENDING ACCOUNT

#### 4.1 No Funding of Accounts.

A Participant's Dependent Care Spending Account shall be a bookkeeping mechanism only, and no money shall actually be paid into nor shall any interest be credited to, or paid on, amounts credited to the Participant's Dependent Care Spending Account. No assets or funds shall be paid to, held in or invested in any separate trust.

#### 4.2 Plan Participants.

A Participant shall be eligible to receive reimbursement for Employment Related Expenses in a Plan Year or subsequent Grace Period up to the amount elected for coverage in the Participant's Dependent Care Spending Account.

#### 4.3 Reimbursement Requests.

The Participant must submit, to the Administrator, a written request for reimbursement for his or her Employment Related Expenses from his or her Dependent Care Spending Account on a form provided by the Administrator, along with such evidence as the Administrator deems necessary as to the amount, nature and payment of such expenses. Such request must be submitted by or on the 90<sup>th</sup> day following the close of the Plan Year and subsequent Grace Period for which the benefit election is effective and during which the expenses were incurred.

#### 4.4 Limitation on Reimbursement.

No amounts shall be reimbursed pursuant to this Plan with respect to Employment Related Expense to the extent that the Participant incurring the Employment Related Expense is reimbursed for it by other plans. If a Participant receives benefits under this Plan and is reimbursed for the Employment Related Expense giving rise to such benefits from any other source at any time, he or she shall remit such benefits to the Administrator to the extent of such reimbursement.

#### 4.5 Timing of Reimbursements.

Reimbursement of Employment Related Expenses to a Participant shall be paid from the general assets of Employer as soon as administratively practicable after the required forms and documentation have been received by the Administrator under procedures established pursuant to the Plan.

4.6 Special Limitations on Employment Related Expenses.

This Plan covers only Employment Related Expenses incurred during the Period of Coverage for which the Participant has elected to have funds allocated to his or her Dependent Care Spending Account. Employment Related Expenses shall be considered incurred when the dependent care is provided, and not when the Participant is formally billed, charged for or pays the Employment Related Expense.

## ARTICLE V

### CREDITS AND DEBITS TO ACCOUNTS

#### 5.1 Salary Reduction Authorization.

During the applicable election period determined under article III, each Eligible Employee shall enter into a salary reduction agreement with the Employer which shall provide for a reduction in the Participant's Compensation in an amount equal to the amount determined under the Section 125 Plan.

The Administrator shall provide for, and keep records of, such salary reduction arrangements.

#### 5.2 Change of Election.

Except as provided in section 3.5, a Participant's benefit or salary reduction election cannot be changed during the Plan Year.

#### 5.3 Forfeiture of Unused Spending Account Benefits.

Any amount allocated to a Dependent Care Spending Account, and not applied to provide the elected reimbursement from such Account ninety days following the end of the applicable Plan Year and subsequent Grace Period, for expenses incurred during such Plan Year and subsequent Grace Period, shall be forfeited by the Participant.

## ARTICLE VI

### EMPLOYMENT RELATED EXPENSES

#### 6.1 Employment Related Expenses.

Employment Related Expenses for which reimbursement may be made pursuant to article VI are amounts paid by the Participant for:

- (i) the ordinary and usual services necessary to the maintenance of the Participant's home, which are performed in and about such home and attributable in part to the care of a Qualifying Individual; or
- (ii) expenses for the care of Qualifying Individuals,

if such expenses are incurred to enable the Participant and his or her spouse, if any, to be gainfully employed (or seek gainful employment, if applicable) for a period for which there are one or more Qualifying Individuals with respect to the Participant.

Employment Related Expenses shall not include any amount paid for services outside the Participant's household at a camp where the Qualifying Individual stays overnight.

#### 6.2 Special Limitations.

Employment Related Expenses which are incurred for services outside the Participant's household shall be entitled to reimbursement only:

- (A) if incurred for the care of a Qualifying Individual who is a Dependent of the Participant and is:
  - 1. under the age of thirteen (13) years and with respect to whom the Participant is entitled to a deduction for a personal exemption as a dependent on his or her federal income tax return under section 151(c) of the Code; or
  - 2. another Qualifying Individual who regularly spends at least eight (8) hours each day in the Participant's household, or
- (B) if incurred for services performed outside the Participant's household by a Dependent Care Center, only if such center complies with the applicable laws and regulations of a state or unit of local government and care is rendered to:
  - 1. a Qualifying Individual who is under the age of thirteen (13) years and

with respect to whom the Participant is entitled to a deduction for a personal exemption as a dependent on his or her federal income tax return under section 151(c) of the Code; or

2. another Qualifying Individual who regularly spends at least eight (8) hours per day in the Participant's household.

6.3 No Payment to Certain Dependents.

Notwithstanding any provision of the Plan to the contrary, no payment shall be made hereunder to a Participant for Employment Related Expenses for services rendered by any individual:

- (A) with respect to whom, for the Participant's taxable year, the Participant or his or her spouse is entitled to a deduction for a personal exemption as a dependent of such individual on his or her federal income tax return under section 151(c) of the Code; or
- (B) who is a son, stepson, daughter or stepdaughter of the Participant under the age of nineteen (19) years at the end of the Participant's taxable year.



## **ARTICLE VII**

### **REIMBURSEMENTS**

#### **7.1 Dependent Care Reimbursement Benefit.**

This Plan provides reimbursement of Employment Related Expenses.

- (A) Reimbursement for Employment Related Expenses shall be made only to specifically reimburse the Participant for expenses incurred during the Plan Year or subsequent Grace Period. The Participant may only obtain reimbursement of documented expenses that meet the criteria specified in this Plan. Reimbursement of such expenses is limited to the balance contained in the Participant's Dependent Care Spending Account established under this Plan.
- (B) Employment Related Expenses reimbursed under the Plan must have been incurred during the period the Participant was participating in the Plan. Expenses are treated as incurred when the services eligible for reimbursement are rendered.

#### **7.2 Claim Forms and Payment of Reimbursement Benefits.**

The Participant must submit to the Administrator, a request for reimbursement from his or her Dependent Care Spending Account on the form or forms provided for such purpose by the Administrator, and in accordance with the terms of this Plan and such procedures established by the Administrator. The form must indicate:

- (A) the amount, date and nature of each expense;
- (B) the name and employer identification number of the person, organization or entity to which the expense was or is to be paid;
- (C) the name of the person for whom the expense was incurred and, the relationship of such person to the Participant;
- (D) the amount recovered or expected to be recovered, under any insurance arrangement or other plan, with respect to the expense;
- (E) such other information as the Administrator shall from time to time require; and
- (F) statement that the expense (or the portion thereof for which reimbursement is sought under the Plan) has not been reimbursed or is not reimbursable from any other source.

### 7.3 Limitations of Benefits.

- (A) A Participant shall be eligible to receive reimbursements for Employment Related Expenses during any Plan Year, subsequent Grace Period, or the 90 day run-out claims period from the end of the year in an amount not exceeding the lesser of:
1. the amount elected by the Participant to be allocated to his or her Dependent Care Spending Account under the Section 125 Plan maintained by the Employer;
  2. the statutory maximum of \$5,000, (or \$2,500 in the case of a married Participant who files a separate federal tax return); or
  3. the Earned Income of the Participant, or if the Participant is married at the end of his or her taxable year, the Earned Income of the Participant's spouse, if less. For the purpose of making reimbursements under this Plan, the Participant's marital status shall be deemed to be his or her marital status on the date the request for reimbursement is made.
- (B) For the purposes of this article, the following Participants shall not be considered to be married:
1. A Participant who is legally separated under a decree of divorce or separate maintenance; and
  2. A married Participant filing a separate return:
    - (a) who maintains as the Participant's house a household which constitutes the principal place of abode of a Qualifying Individual for more than one-half (1/2) of his or her taxable year;
    - (b) who furnishes more than one-half (1/2) of the cost of maintaining such household during his or her taxable year; and
    - (c) whose spouse is not a member of such household for the last six (6) months of such taxable year.

### 7.4 Payment of Dependent Care Expenses.

No reimbursement or payment under this article VII of expenses incurred during a Plan Year or subsequent Grace Period shall at any time exceed the balance in the Participant's Dependent Care Spending Account for the Plan Year at the time of the reimbursement or payment. The amount of any Dependent Care Expenses not reimbursed or paid as a result of the preceding sentence shall be reimbursed or paid at a later date during the Plan Year or subsequent Grace Period only if and

when the balance in the Participant's Dependent Care Expense Account permits such reimbursement or payment, but not including amounts contributed to the Dependent Care Spending Account after the end of the Plan Year.

7.5 Reimbursements.

Reimbursement of Employment Related Expenses under this Plan shall be from the general assets of the Employer. The Dependent Care Spending Account shall not represent actual Participant or Employer deposits into any fund. A Participant shall have no rights to any particular assets of the Employer. A Participant's right to reimbursement under the Plan shall be limited to the amount of salary reduction of the Participant allocated to this Plan.

7.6 Rights of Participants.

Any Dependent Care Spending Account established hereunder shall be for the administrative convenience of the Administrator. Nothing in this Plan shall require the Employer to segregate or set aside any portion of its assets. Nor shall the establishment of any Dependent Care Spending Account hereunder or of any other administrative practice vest any Participant with title in the assets of the Employer or entitle him or her to benefits, except as expressly provided in the Plan.

7.7 Nonalienation Clause.

Any rights or benefits under the Plan may not be anticipated, assigned (either at law or equity), transferred or alienated by the Participant in any manner. Such prohibition on alienation shall be a precondition for benefits under the Plan.

## ARTICLE VIII

### PAYMENT OF CLAIMS

#### 8.1 General.

This article applies only to claims for Dependent Care Assistance described in article VII, not to claims under any other health and welfare benefit plan offered through the Section 125 Plan. Claims for benefits under any other health and welfare benefit plan shall be made and adjudicated pursuant to the terms of such other plan.

#### 8.2 Filing and Initial Determination of Claim.

Any Employee, beneficiary, or his or her duly authorized representative may file a claim for a Plan benefit to which the claimant believes he or she is entitled. Such claim must be in writing and delivered to the Administrator, in person or by mail, postage prepaid. Within 60 days after receipt of such claim, the Administrator shall notify the claimant, by mail, postage prepaid, of the granting or denial, in whole or in part, of such claim, unless special circumstances require an extension of time for processing the claim. In no event may the extension exceed 30 days from the end of the initial 60-day period. If such extension is necessary, the claimant shall be given written notice to this effect prior to the expiration of the initial 60-day period. The Administrator shall have full discretion to deny or grant a claim in whole or in part. If notice of the denial of a claim is not furnished in accordance with this section, the claim shall be deemed denied and the claimant shall be permitted to exercise his or her right to review under sections 8.4 and 8.5.

#### 8.3 Duty Upon Denial of Claim.

The Administrator shall provide a claimant who is denied a claim for benefits with written notice setting forth the following in a manner calculated to be understood by the claimant:

- (A) the specific reasons for the denial;
- (B) specific references to pertinent provisions of the Plan on which the denial is based;
- (C) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
- (D) an explanation of the procedure for review of denied claims.

#### 8.4 Request for Review of Claim Denial.

Within 60 days after a claimant's receipt of written notification of the denial (in whole

or in part) of a claim, the claimant (or a duly authorized representative) upon written application to the Administrator, delivered in person or by certified mail, postage prepaid, may request a review of such denial, review pertinent documents, and submit issues and comments in writing. The application shall state the name and address of the claimant; the fact that the claimant is disputing the denial of the claim; the date of the notice of denial; and the reasons, in clear and concise terms, for disputing the denial.

#### 8.5 Decision on Review of Denied Claim.

The Administrator's decision on review shall be written in a manner calculated to be understood by the claimant, and shall include specific reasons for the decision and specific references to the pertinent provisions of the Plan on which the decision is based. The Administrator shall make a decision on review of a denied claim no later than 60 days after receipt of the request for review, unless special circumstances require an extension of time for processing. If an extension is necessary, the Administrator shall give the claimant written notice of the extension prior to the expiration of the initial 60-day period. If the Administrator fails to give written notice of decision on review within the prescribed period, the denial shall be deemed affirmed, and the claimant may exercise his or her right to legal remedy pursuant to section 8.6.

#### 8.6 Legal Remedy.

Before pursuing a legal remedy, claimant shall first exhaust all claims, review and appeals procedures required under the Plan.

## ARTICLE IX

### CESSATION OF COVERAGE

#### 9.1 Cessation of Participation.

In the event that a Participant ceases to be an Eligible Employee for any reason during the Plan Year, the Participant's election and Compensation reduction (if any) relating to this Plan shall end. The Participant shall be entitled to reimbursement for Employment Related Expenses incurred within the same Plan Year and corresponding Grace Period and before he or she ceased to be an Eligible Employee.

#### 9.2 Limits on Time and Amount of Reimbursement.

Reimbursements shall be made for any Plan Year and subsequent Grace Period under this article IX only if the Participant applies for such reimbursement in accordance with section 8.2 on or before ninety (90) days following the close of the Plan Year and Grace Period. In the event of the Participant's death, the Participant's spouse (or, if none, the Participant's executor or administrator) may apply on the Participant's behalf for reimbursements permitted under this article IX. No reimbursement under this article IX shall exceed the remaining balance, if any, in the Participant's Dependent Care Spending Account for the Plan Year and subsequent Grace Period in which the expenses were incurred.

# ARTICLE X

## ADMINISTRATION

### 10.1 Appointment of the Administrator.

The Employer is hereby designated as the Administrator.

### 10.2 Powers and Authority/Action Conclusive.

Except as otherwise expressly provided in the Plan:

- (A) The Administrator shall have all powers necessary or helpful for the carrying out of its responsibilities, and its decisions or actions in good faith in respect to any matter hereunder shall be conclusive and binding upon all parties concerned.
- (B) Without limiting the generality of the foregoing, the Administrator shall have the power to make rules and regulations for the administration of the Plan; to construe all terms, provisions, conditions and limitations of the Plan; and to determine the answers to all questions arising out of or in connection with the provisions of the Plan or its administration in any and all cases in which the Administrator deems such a determination advisable.

The foregoing list of powers is not intended to be complete or exhaustive, and the Administrator shall, in addition, have such powers as it may determine to be necessary for the performance of its duties under the Plan.

### 10.3 Counsel and Agents.

The Administrator may employ such counsel (including legal counsel, who may be counsel for the Employer) and agents and such clerical and other services as he may require in carrying out the provisions of the Plan. The Administrator shall be fully protected in acting or refraining to act in accordance with the advice of legal or other counsel.

### 10.4 Reliance on Information.

The Administrator and any of its officers, directors, and employees shall be entitled to rely upon any tables, valuations, certificates, opinions and reports furnished by any accountant, trustee, insurance company, counsel, physician, dentist or other expert who is engaged by the Administrator. The Administrator shall be fully protected in respect to any action taken or suffered by them in good faith reliance thereon.

#### 10.5 Genuineness of Documents.

The Administrator and any of its officers, directors and employees shall be entitled to rely upon any notice, request, consent, letter, telegram or other paper or document believed by them or any of them to be genuine and to have been signed or sent by the proper person, and shall be fully protected in respect of any action taken or suffered by them in good faith in reliance thereon.

#### 10.6 Proper Proof.

In any case in which the Administrator is required under the Plan to take action upon the occurrence of any event, it shall be under no obligation to take such action unless and until proper satisfactory evidence of such occurrence has been received by them.

#### 10.7 Estoppel of Participants.

The Administrator may rely upon any certificate, statement or other representation made to the Administrator by the Employer or by any Employee, Participant, spouse, or Dependent with respect to any fact required to be determined under any provisions of the Plan, and shall not be liable on account of the payment of any money or the doing of any act in reliance upon any such certificate, statement or other representation. In the discretion of the Administrator:

- (A) any such certificate, statement or other representation made by an Employee or Participant shall be conclusively binding upon such Employee or Participant, spouse, and his or her Dependents, and such Employee, Participant, spouse, or Dependents shall thereafter and forever be estopped from disputing the truth and correctness of such certificate, statement or other representation; and
- (B) any such certificate, statement or other representation made by a Participant's spouse or Dependent shall be conclusively binding upon such person, and such person shall thereafter and forever be estopped from disputing the truth and correctness of such certificate, statement or other representation.

#### 10.8 Delegates.

The Administrator may designate other persons to carry out responsibilities under the Plan, and shall not be liable for the acts or omissions of such persons except as provided by law.



## ARTICLE XI

### AMENDMENT AND TERMINATION OF THE PLAN

#### 11.1 Amendment.

The Employer may amend the Plan at any time, and from time to time, either retroactively or prospectively, except as may be limited by applicable law.

#### 11.2 Termination.

The Employer expects that this Plan shall be maintained indefinitely. However, continuance is not guaranteed. The Employer reserves the right to terminate the Plan at any time with advance notice to Participants.

#### 11.3 Expenses Incurred Prior to Termination.

If the Plan is terminated, the Participants' right to receive benefits and reimbursements under the Plan for Dependent Care Assistance incurred prior to the termination date shall not be affected in any manner.

## ARTICLE XII

### MISCELLANEOUS

#### 12.1 Indemnification by Employer.

To the fullest extent permitted by law, the Employer shall indemnify and hold harmless the Administrator and Employees who perform duties under the Plan, against all claims, losses, damages, expenses, and liabilities resulting from any action or omission of any such person in connection with administering the Plan, as long as such action or omission was at the time in good faith and carried forth with proper diligence and care, and provided that the Employer determines in its discretion that the Administrator or Employee did not commit gross negligence or willful misconduct.

#### 12.2 Funding.

All contributions to the Plan shall be considered general assets of the Employer.

#### 12.3 Not an Employment Agreement.

The establishment of the Plan shall not be construed to constitute a contract between the Employer and any Participant, or to be a consideration or inducement for the employment of any Participant or Employee, or to confer upon any Employee or Participant any legal right to be retained in the employ of the Employer. All Employees shall remain subject to discharge to the same extent as if the Plan had never been adopted, and may be treated without regard to the effect such treatment might have upon them under the Plan. Nothing in the Plan shall be deemed to be an agreement, consideration, inducement, or condition of employment.

#### 12.4 Titles and Headings.

The captions contained herein are inserted only as a matter of convenience and for reference, and in no way define, limit, enlarge or describe the scope or intent of the Plan, nor in any way shall affect the Plan or the construction of any provision thereof.

#### 12.5 Gender and Number.

Wherever used in this document, the singular shall include the plural, the plural shall include the singular, the masculine shall include the feminine and neuter, the feminine shall include the masculine and neuter, and the neuter shall include the masculine and feminine, except where the context requires otherwise.

12.6 Amendments in Writing.

Any and all amendments to this Plan need to be in writing, and signed by a duly authorized representative of the Employer, in order to be valid.

12.7 Severability.

If any provision of the Plan is held invalid or unenforceable, its invalidity or its inability to be enforced shall not affect other provisions of the Plan, and the Plan shall be construed and enforced as if such provision had not been included therein.

12.8 Plan Information

Name and address of the Plan Administrator:

City of Agoura Hills  
30001 Ladyface Court  
Agoura Hills, CA 91301

Telephone number of the Plan Administrator:

818-597-7300

12.9 Governing Law.

The Plan shall be construed in accordance with the laws of the state of California to the extent not preempted by federal law.

**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the Employer has caused this Plan to be signed by its duly authorized representative on the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**City of Agoura Hills**

BY: \_\_\_\_\_