

**The City of Mandan  
Dependent Care Reimbursement Plan**

**Plan Document**

**Effective Date of the Plan**

01/01/2016

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## **Section 1 Definitions**

**1.0 Definitions** - The following definitions shall be used in reference to this document.

**1.1 "Affiliated Company"** - means another entity as described in the Code (Section 414(b), (c), (m) or (o)) that receives the Employer's consent to participate in the Plan.

**1.2 "Annual Salary Reduction"** - means the amount a Participant voluntarily elects to reduce their income by to pay for Benefits under the Plan.

**1.3 "Benefits Account"** - means an administrative account established to track a Participant's pre-tax contributions and payments for Plan Benefits.

**1.4 "Code"** - means the Internal Revenue Code of 1986 and its amendments.

**1.5 "Contributions"** - means Employee (and/or Employer) funds used to pay Benefits under the Plan.

**1.6 "Dependent"** - means a Spouse who is physically or mentally incapable of self-care, a child (as defined under Section 152 of the Code and as amended by the Working Families Tax Relief Act of 2004) under the age of 13 or other child deemed physically or mentally incapable of self-care.

**1.7 "Effective Date"** - means the first day of the Plan Year in which Benefits can be received under the Plan. This City of Mandan Dependent Care Reimbursement Plan's Effective Date is 01/01/2016.

**1.8 "Eligible Employee" or "Employee"** - means an employee of the Employer meeting the eligibility requirements of the Plan. Employees may be common law employees, leased employees described in Section 414(n) and full-time life insurance salesmen [as defined in section 7701(a)(s0)]. Self-employed individuals are not treated as employees for purpose of Section 125. Sole proprietors, partners, directors of corporations and two-percent (or more) shareholders of an S corporation are not considered to be Employers under Section 125 and may not participate in the Plan.

**1.9 "Employer"** - means City of Mandan and Affiliated Company.

**1.10 "Enrollment Form"** - means a copy of the Dependent Care Reimbursement Plan Enrollment Form (to be completed by an Eligible Employee and submitted to the Plan Administrator in a timely fashion).

**1.11 "Enrollment Period"** - means the time frame establish by the Employer in which the Eligible Employee may submit an Enrollment Form to the Plan Administrator.

**1.12 "Entry Date"** - means the first day the Employee is enrolled on the plan.

**1.13 "Expense," "Eligible Expense" or "Dependent Care Expense"** - means an amount paid or incurred for services providing care for a Dependent so that the Employee and spouse may be gainfully employed or may search for gainful employment and as detailed under Section 21(b)(2) of the Code. If the expenses are for care outside the Employee's home, the Dependent must be a child under the age of thirteen (13) or another Dependent who spends at least eight (8) hours per day in the Employee's home.

**1.14 "FMLA"** - means the Family Medical Leave Act of 1993, as amended.

**1.15 "Grace Period"** - If implemented, IRS Ruling 2005-42 extends the deadline for reimbursement of health and dependent care expenses up to 2 1/2 months after the end of the Plan Year. Claims with a date of service within this 2 1/2 month extension would be reimbursed as if they were provided during the Plan Year. The Plan shall apply the maximum 2 1/2 month extension, accepting (and reimbursing) claims with dates of service during the extension. The Post Plan Year Receipt Submission Period will begin the day after the completion of the extension.

**1.16 "Highly Compensated Employee"** - means an Employee of the Employer defined by Code Section 414(q).

**1.17 "HIPAA"** - means the Health Insurance Portability and Accountability Act of 1996, as amended.

**1.18 "Participant"** - means an Eligible Employee who has elected to enroll in the Plan, completed the appropriate paperwork and submitted it to the Plan Administrator in a timely fashion. (Dependents may not be Participants in the Plan.)

**1.19 "Pay Period Reduction"** - means the amount a Participant's income is reduced each scheduled pay period.

**1.20 "Plan"** - means The City of Mandan Dependent Care Reimbursement Plan adopted by the Employer exclusively for the benefit of Eligible Employees.

**1.21 "Plan Administrator"** - means City of Mandan or other Employer appointed person, committee or organization to administer the Plan.

**1.22 "Plan Year"** - means the twelve (or less during an initial short Plan Year) consecutive month period commencing on the Effective Date and anniversaries thereof.

**1.23 "Post Plan Year Receipt Submission Period"** - means the 3 month period after the end of the 2 1/2 month extension (as provided by IRS Ruling 2005-42) in which Participants may submit eligible receipts.

**1.24 "Salary Reduction Agreement"** - means the Employee's voluntary authorization for the Employer to reduce the Employee's compensation to pay for Benefits provided under the Plan.

**1.25 "Service Date"** - means the day eligible services were performed or received by the Participant or covered Dependent.

**1.26 "Spouse"** - means a legally married opposite (or same) sex individual.

**1.27 "USERRA"** - means the Uniformed Services Employment and Reemployment Rights Act of 1994 (and its amendments).

**1.28 "Waiting Period"** - means the 3 month time frame commencing from the date of hire to the Employee's Entry Date into the Plan.

## **Section 2 Purpose of the Plan**

**2.1 Purpose of the Plan** - The City of Mandan Dependent Care Reimbursement Plan is adopted by City of Mandan to be effective 01/01/2016. The purpose of the Plan is to offer Eligible Employees the ability to be reimbursed for Dependent Care Expenses so that the Employee (and spouse) may be gainfully employed. City of Mandan intends that the Plan qualify as a "Dependent Care Assistance Plan" as described under Section 129 (d) of the Internal Revenue Code of 1986, and its amendments. Benefits received by participating Employees shall be eligible for exclusion from the Employee's income for federal income tax purposes as stated under Section 129 of the Code. Employees electing not to enroll in the City of Mandan Dependent Care Reimbursement Plan will pay for Dependent Care Expenses on an after-tax basis. This Plan Document was written to meet the requirements of a Dependent Care FSA as detailed in the August 6, 2007 Proposed Regulations (26 CFR Part I).

## **Section 3 Benefits of the Plan**

**3.1 Benefits of the Plan** - Eligible Employees enrolling in the City of Mandan Dependent Care Reimbursement Plan may reduce their annual compensation (by an amount not to exceed the Plan Maximum as stated in Section 3.4), establishing a Benefit Account from which the Employer shall reimburse the Participant for eligible Expenses. The account funds used to pay for eligible Expenses shall be excluded from the Participating Employee's income for federal tax purposes. The Employee's Annual Salary Reduction may only be changed if the Employee and/or Dependent experience a "Change in Life Status" (within the meaning of Section 7.1).

**3.2 Benefit Account** - The Employer will create administrative accounts for each participating Employee and debit the accounts by the designated Pay Period Reduction on each scheduled pay period. As Participants submit eligible Expenses, the Employer shall, on a routine basis (determined by the Employer) reimburse the Participant and credit their Benefit Account. Participants are only eligible for reimbursement in the amount (or current balance) of their Benefit Account. Benefits shall only be paid for eligible Expenses having a service date during the Participant's Term of Participation. All funds remaining in a Participant's Benefit Account at the end of the Post Plan Year Receipt Submission Period, shall be forfeited.

**3.3 Benefit Cost** - Prior to the Participant's Entry Date, the Participant shall designate an annual Salary Reduction Amount. The Participant authorizes the Employer to reduce their income by the designated amount, establish a Benefit Account and pay for submitted eligible Expenses. The Benefit Cost shall be the Participant's Annual Salary Reduction Amount. This amount will remain constant throughout the Plan Year and can only be changed if a Change in Life Status is experienced.

**3.4 Maximum Benefit** - Prior to the Plan Year Effective Date, the Employer shall designate the maximum benefit amount (but shall not have a Benefit greater than the Code allows). The 2016 Maximum Benefits shall be \$5,000.00. Married Participants filing a separate income tax return from their spouse is \$2,500.00.

**3.5 Minimum Benefit** - Eligible Employees may elect to initially enroll in the Plan (prior to their Entry Date for the Plan Year) and designate an Annual Salary Reduction of \$0.00. No benefits will be available for the Participating Employee and the Participating Employee shall have the ability to change their Annual Salary Reduction prior to his Plan Entry Date.

## **Section 4 Plan Eligibility**

**4.1 Plan Eligibility** - Employees become eligible to participate in the Plan upon meeting the appropriate following criteria and submitting an Enrollment Form in a timely fashion.

- a) Newly-hired Employees are eligible to participate in the Plan after meeting the 3 month Plan Waiting Period.
- b) Active Employees (those that have already met the waiting period) are eligible to participate in the Plan on the first day of the Plan Year.
- c) Former Employees who's employment was terminated (either voluntary or involuntary) and are subsequently rehired within six (6) months (from date employment is terminated) shall not have to meet the Plan Waiting Period. If the Employee is rehired within the same Plan Year, such Employees shall not be entitled to submit a new Enrollment Form for such Plan Year but instead shall have reinstated (as of the date of reemployment) the same coverage under the Component Plans as was in effect at the time he ceased to be a Participant.
- d) Former Employees who are rehired in a Plan Year beginning after the Plan Year in which his participation ended shall become a Participant as of the date of his re-employment provided that the Employee files a new election form for such Plan Year with the Plan Administrator as provided in Section 5.1.
- e) Employees who were absent on account of an unpaid leave of absence under FMLA who returns to work may be eligible to participate without meeting the Plan Waiting Period.
- f) Employees who are absence on account of military service covered by USERRA shall not have to meet the Plan Waiting Period when they return to employment.

**4.2 Eligible Dependent** - The Working Families Tax Relief Act of 2004 (WFTRA) amended Section 152 of the Code and offered a definition of a "dependent" for consistency throughout numerous government programs. This DCRP plan will use Section 21(b)(1) definition with respect to the Employee, and in the case of divorced parents, a qualifying individual (who is a child) shall be treated as a qualifying individual of the custodial parent [within the meaning of Section 152(e)(3)(A)]. In general, an eligible dependent is:

- a) An Employee's child, stepchild, grandchild, brother, sister, stepbrother, stepsister, niece or nephew who is under age thirteen and resides with the Employee for at least half of the year; or
- b) An Employee's spouse, child, stepchild, grandchild, brother, sister, stepbrother, stepsister, niece or nephew who is physically or mentally incapable of self-care and resides with the Employee for at least half of the year.

**4.3 Plan Entry Date** - Employee's Plan Entry Date will be the first day after meeting the Plan Eligibility requirements in section 4.1. Annual Salary Reduction will begin on the first pay period after eligibility into the Plan (or the date the Company can reasonably make the reduction from the payroll system).

## **Section 5 Plan Participation**

**5.1 - Plan Participation** - Eligible employees become Plan Participants by completing (and signing) the appropriate Enrollment Form and submitting it to the Plan Administrator prior to the employee's Plan Entry Date (or within ten (10) working days after the employee's Plan Entry Date if the Plan Entry Date is immediate upon hire, rehire, return from FMLA leave or return from military service covered by USERRA). The Enrollment Form shall provide the elected Annual Salary Reduction Agreement authorizing the Employer to withhold a designated amount from the Participant's compensation. Prior to the first day of any new Plan Year, Eligible Employees must submit a completed Enrollment Form designating a Salary Reduction Amount for the new Plan Year. If the employee does not submit a completed Enrollment Form in the time frame explained above, he will be ineligible until the next Plan Year to enroll in the Plan.

**5.2 Term of Participation** - Employees meeting the Plan Participation requirements (as stated in Section 5.1) shall remain covered by the Plan until the earliest of the following

- a) The last day of the Plan Year (or Grace Period if elected);
- b) The day after the death of the Employee;
- c) The date of separation of employment (voluntary or involuntary);

- d) The day the Employee ceases to be an Eligible Employee;
- e) The day the Participant who experienced a Change in Life Status revokes participation under the Plan;
- f) The date the Participant fails to make a contribution; or
- g) The date the City of Mandan Dependent Care Reimbursement Plan terminates.

## **Section 6**

### **Plan Contributions and Reimbursements**

**6.1 Plan Contributions** - Plan Participants agree to reduce their annual salary (through a Salary Reduction Agreement found on the Enrollment Form) by a voluntary designated amount, which is to be used by the Employer to pay for submitted eligible receipts. The Employer shall be responsible for the accounting of the Participant's Benefit Accounts. The Employer may maintain the funds in a general account (or any account that is deemed in the best interest of the Plan).

Participant Plan Contributions will be credited into the Participant's Benefit Account in equal amounts throughout the Plan Year, subject to the Participant's termination of coverage under Section 5.2. Participant's Term of Participation (described in Section 5.2).

**6.2 Claims Substantiation** - Flexible Spending Arrangements have specific rules regarding eligible claims/services and the procedures needed prior to reimbursing a claim. With this Plan, a qualified staff member will review all claims submitted to ensure they include:

- a) The Employee's Name;
- b) The name of the Dependent(s) who received the services and if they are eligible to receive benefits under the Employee's Plan;
- c) Review the service to determine if it is an eligible expense under the Code;
- d) Review the date the service was rendered to ensure it is within the Plan Year, prior to the end of the grace period (if applicable) and after the Adoption of the Plan (in Section 11.1);
- e) Determine if the claim was submitted to the Plan Administrator during the associated Plan Year or its Post Plan Year Receipt Submission Period; and
- f) A statement that the claim has not been reimbursed, in the process of being reimbursed or will be submitted for reimbursement to another source (such as a spouse's Dependent Care FSA).

**6.3 Reimbursements of Eligible Expenses** - To receive reimbursement for eligible Expenses, the Participant must submit the actual (or photocopy) receipt of the Provider that performed the services. The following information is requested for the proper administration of the claim:

- a) The name of the person that received the services;
- b) The service start and end dates of the claim;
- c) The service(s) performed or received;
- d) The amount of the services; and
- e) The amount reimbursed by another employer or other source.

Expenses for a child daycare center are reimbursable if the center provides care for six or more individuals, receives a fee, grant or payment for providing these services, and complies with all applicable state and federal laws. Expenses attributable to the service provided by the following do not qualify for reimbursement: a child of the Employee (or spouse) under the age of nineteen (19) or a parent of the Employee (if the Employee or spouse claims them as a dependent).

The Plan Administrator shall be responsible for determining if the Expense is eligible for reimbursement. Participants submitting Expenses that are denied reimbursement shall be allowed the ability to request a written explanation and arbitration procedure as stated in Section 8.3.

**6.4 Revocation/Modification of Plan Contributions** - After the Participant's Plan Entry Date, Participants shall not be allowed to revoke or modify their Plan Contributions unless the Employee or covered Dependent experiences a Change in Life Status (within the meaning of Section 7.1). Prior to the Participant's Plan Entry Date, the Participant shall be eligible to revoke or modify Plan Contributions. Any change to Plan Contributions requires the Participant to complete a new Enrollment Form and Salary Reduction Agreement.

**6.5 Nonstandard Plan Contributions** - Participants who are absent on account of military service covered by USERRA or take an unpaid leave of absence under FMLA shall be able to revoke or modify Plan Contributions. Since the Employer can no longer obtain Plan Contributions through payroll reduction, other collection means may become necessary. Participants may elect to continue in the Plan provided the appropriate regulation criteria are met and contributions are made in one of the following methods. Participant Plan Contributions may change to accommodate any Plan Contributions being made by the Employer (plus applicable administration fees).

- a) Prepayment Method - Participants may prepay Plan Contributions. The Employer shall not make prepayments mandatory for the Participant to remain in the Plan.
- b) Pay-As-You-Go Method - The Employer shall allow Participants to make Plan Contributions on a monthly basis or in an agreed upon (and written) voluntary scheduled method between the Participant and the Plan Administrator.
- c) Catch-Up Method - For Participants taking a FMLA leave of absence, the Employer may make Plan Contributions for the Participant and recoup them upon the Participant's return to work in accordance with Code Section 125 and the regulations issue there under.

**6.6 Nondiscrimination** - The Plan shall not discriminate in favor of Highly Compensated Individuals as to eligibility, contributions and benefits under the Plan in accordance with the laws regulating this Plan. In addition, the Plan shall not provide employees who own five percent or more of the employer over twenty-five percent (25%) of the total annual benefits provided by the Plan. The Plan Administrator may exclude such employees from participation in the Plan, limit the Plan Contributions made by employees or other such actions to maintain the integrity of the Plan.

**6.7 Forfeiture of Unpaid Benefits** - Participants shall forfeit any funds remaining in their Benefit Accounts on the day after the Post Plan Year Receipt Submission Period. Receipts may be submitted until the end of the Post Plan Year Receipt Submission Period but the Service Date must be during the Participant's Term of Participation. Funds remaining in a Participant's Benefit Account may not be transferred or allocated towards another Plan Year. No deferral of compensation will be allowed under the Plan. All Participants' Benefit Accounts will have a zero balance following the Post Plan Year Receipt Submission Period. Forfeitures shall become the sole property of the Employer and used as deemed necessary by the Employer.

The Plan Administrator shall utilize such funds for Plan administration expenses. If Forfeiture of Unpaid Benefits still remain after paying Plan administration expenses, the Plan Administrator shall utilize funds (in compliance with the Code) to benefit all Participants, equally and uniformly.

## **Section 7 Change in Life Status**

**7.1 Change in Life Status** – A Participant may change his annual Salary Reduction Amount during a Plan Year if either the Employee, his spouse or his Dependent experiences a Change in Life Status. If one (or more) of those events occur, the Participant (or dependent) may revoke or alter their Annual Salary Reduction Amount by completing a Change in Life Status Form and submitting it to the Plan Administrator within a timely fashion. One or more of the following events constitutes a Change in Life Status:

- a) Employee gets married, divorced, legally separated or his marriage is annulled;
- b) Adoption, Birth or Death of a Dependent;
- c) Death of the Employee;
- d) Employee or Dependent becomes newly employed or unemployed;
- e) Employee or Dependent's employment goes from part-time to full-time or full-time to part-time;
- f) Dependent child becomes (or ceases to be) an eligible "dependent" under the Plan;
- g) A change in the Employee's or spouse's employment status including a change attributable to a strike or lockout, or the commencement of or return from an unpaid leave of absence; or
- h) A change in providers or services rendered.

Any change in a Participant's existing election must be consistent with the Change in Life Status. A change in election must be made no later than thirty (30) days after the date of the Change in Life Status. The Plan Administrator shall determine whether a Change in Life Status has occurred and whether a Participant's change in coverage is consistent with such Change in Life Status.

## **Section 8**

### **Plan Administration**

**8.1 Plan Administrator** - The Plan Administrator shall be responsible for the administration of the Plan having all rights, powers and duties as set forth in the Plan. The Plan Administrator may delegate any of its duties under this Plan.

**8.2 Plan Administration** - The following describes the administration duties (but not limited in scope) of the Plan Administrator.

- a) Distribute Plan Communications (i.e. Plan Document Summaries, Enrollment Forms, Plan Change/Law Changes and/or other material related to the Plan) to Eligible Employees and Participants;
- b) To interpret the Plan in its discretion including resolving claim ambiguities, inconsistencies or omissions. The determination of the Plan Administrator shall be binding and conclusive upon all persons whomsoever.
- c) The Plan Administrator is hereby authorized and empowered, in its sole and absolute discretion, to promulgate any uniform rules, regulations and schedules of general applicability and to adopt such forms as the Plan Administrator deems necessary in order to carry out the purpose of the Plan;
- d) Review Plan testing to determine if the Plan favors Highly Compensated Employees; and
- e) To hire any agent, accountant, attorney or other qualified individual to assist with the interpretation of the Plan and/or assist with the proper administration. Fees for these services shall be paid by the Employer or excess reserves of the Plan.

**8.3 Denial of Benefits** - If benefits are denied under the Plan, Participants may submit (in writing) a description of the situation to the Plan Administrator for review. The Plan Administrator shall submit in writing, within sixty days upon receipt of the claim, a decision as to whether benefits will be provided or denied. The Plan Administrator's explanation as to why benefits were denied may reference Sections of this Plan Document and other related material.

If benefits are denied, the Participant may request from the Administrator (in writing) within sixty days, a full and fair review of their claim. (If special circumstances apply, the Plan Administrator may extend the sixty day request). Upon receipt, the Plan Administrator will establish a hearing date whereby the Plan Administrator will hear and render a decision that shall be construed as the final decision and binding for both parties. The Plan Administrator's decision shall be writing and sent to the employee within sixty days of the hearing. All rulings shall apply uniformly to similarly situated Participants and shall not discriminate in any fashion.

**8.4 Indemnity** - The Employer shall agree to indemnify and hold harmless (to the extent permitted by law) any employed, hired, contracted individual or software provider to assist with the implementation and administration of the Plan. In addition, the Employer agrees to pay for any costs of defense or other legal fees.

## **Section 9**

### **Miscellaneous**

**9.1 Amendment and Termination** - The Employer may amend the Plan at anytime, retroactively if necessary, to maintain the Plan's compliance under the Code, its amendments or other regulations affecting the Plan. The Employer may also terminate the Plan at anytime, provided that no amendment, suspension or termination of the Plan may be made which would reduce or eliminate any accrued benefits (arising from incurred but unpaid claims) of Participants or their covered Dependents existing prior to the effective date of such termination.

**9.2 No Employment Contract** - The Plan shall not be deemed a contract of employment between the Employer and Participant. The Plan provides benefits to employees but shall not guarantee or imply the Participant's continued employment. The Employer may terminate employment at anytime regardless of the effect the termination may have on the Participant or the Plan.

**9.3 Nonassignability** - Participants may not assign, sell or transfer benefits of the Plan to another employee, Participant or any other individual.

**9.4 Facility of Payment** - If the Employer deems a Participant, spouse or other Dependent incapable of receiving benefits, the Plan Administrator shall direct the Employer to provide benefits to a designated (or at the Plan Administrator's discretion if not designated) individual. Any such facility of Payment shall be made in accordance with the terms of the Plan and the Code.

**9.5 Required Information** - Participants shall provide the Plan Administrator all information relative to the efficient operation of the Plan. The Plan Administrator shall not be required to seek or investigate for Participant information that is needed for the correct administration of the Plan. The Plan Administrator shall have the right to request additional information from a Participant or covered Dependent if there are any ambiguities or inconsistencies with a claim or an elected benefit.

**9.6 Assumed Compliance** - The Employer believes that the Plan is in compliance with the Code and other related legislation or court decisions. The Plan has not been submitted to the governing bodies for approval, therefore shall not guarantee the Participant's reduced tax liability. Participants enrolling in the Plan shall assume any tax consequences upon the Plan being deemed invalid or in noncompliance. If the Plan is deemed invalid or in noncompliance, the Employer shall either terminate the Plan or take the appropriate actions to regain compliance.

**9.7 Plan Funds** - The Employer shall not utilize or divert Participant Plan Contributions for purposes other than the intended use of the benefits described under the Plan. Excess or forfeited funds may be used for Plan administration expenses (or as explained in Section 6.6) but cannot be used to reimburse a Participant without a substantiated claim

**9.8 Severability** - If any provision under the Plan is deemed invalid or in noncompliance with the Code, it shall not affect the remaining provisions and the Plan shall continue as if the invalid provision was never part of the Plan.

**9.9 Certain Conflicts** - Notwithstanding any other provision of this Plan, to the extent any provision herein conflicts with any provision set forth in a Component Plan, the provision of such plan will control.

**9.10 Construction** - The masculine gender, where appearing in the Plan, shall include the feminine gender, and vice versa, and the singular may include the plural, unless the context clearly indicates to the contrary. The term "delivered to the Plan Administrator," as used in the Plan, shall include delivery to a person or persons designated by the Plan Administrator for the disbursement and receipt of administrative forms. Delivery shall be deemed to have occurred only when the form or other communication is actually received. Headings and subheadings are for the purpose of reference only and are not to be considered in the construction of the Plan.

**9.11 Applicable Laws** - The City of Mandan Dependent Care Reimbursement Plan shall be construed and enforced according to the laws of the State of North Dakota to the extent not preempted by Federal law.

**Section 10**  
**Adoption of the Plan**

**10.1 Adoption of the Plan** - The City of Mandan Dependent Care Reimbursement Plan is adopted by City of Mandan for the purpose as stated in Section 2.1 to be effective 01/01/2016 and provide benefits to Eligible Employees in a nondiscriminatory manner. This document is executed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Authorized Representative's Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

**Witnessed By:**

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

## 10.2 Amendments