

CITY OF COLORADO SPRINGS

CAFETERIA PLAN

Plan Document

Effective January 1, 2014

CITY OF COLORADO SPRINGS

CAFETERIA PLAN

Article I. PURPOSE

1.01 The purpose of this Cafeteria Plan is to allow eligible Employees to elect certain benefits in exchange for a reduction in Compensation.

1.02 The Plan is intended to qualify as a “cafeteria plan” within the meaning of section 125 of the Code, and is maintained for the exclusive benefit of Employees. This Plan shall be interpreted in a manner that is consistent with section 125 of the Code and any other applicable law.

1.03 This Plan is established with the intent that it be maintained indefinitely, but the City may amend or terminate the Plan at any time.

Article II. DEFINITIONS

When capitalized, the following terms have the meanings set forth below, unless the context clearly requires otherwise:

2.01 “Administrator” means the Director of Human Resources or designee.

2.02 “Change in Family Status” means: (i) a change in marital status; (ii) a change in the number of Dependents; (iii) a change in employment of an Employee or of the Employee’s spouse (including the termination or commencement of employment, a change in hours worked, or a change in work schedule, a change in compensation of benefits or benefit eligibility, a change in location of the worksite, and other changes); (iv) a change in the eligibility of a Dependent to meet the requirements for benefits; (v) a change in residence; (vi) entering into or returning from FMLA leave; being in LWOP status for thirty days or more; or (vii) any other event or status that is permissible under the Code, as determined by the Administrator.

2.03 “City” means the City of Colorado Springs, all departments or divisions that report directly to the City Mayor, the City Attorney, the City Clerk, and the City Auditor. City does not include City Council, Colorado Springs Utilities, or the Memorial Health System.

2.04 “COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

2.05 “Code” means the Internal Revenue code of 1986, as amended, and includes the body of law that implements and interprets the Internal Revenue Code.

2.06 “Compensation” means an Employee’s salary, including overtime, and similar remuneration received from the City.

2.07 “Contributions” or “Contribute” means money contributed by a Participant to pay for benefits under this Plan.

2.08 “DDCSAP” means the plan adopted by the City called the “Dependent Day Care Spending Account Plan.”

2.09 “Dependent” means the Participant’s “Spouse” and any other person who is a dependent of the Participant (including but not limited to the Participant’s civil union partner pursuant to C.R.S. Article 15 of Title 14) who satisfy the requirements of Section 152 of the Code, determined without regard to section 152(b)(1), 152(b)(2), and 152(d)(1)(B). “Dependent” includes any child or stepchild of the Participant until the end of month in which the child or stepchild attains age 26. “Spouse” for purposes of this definition of “Dependent” shall be interpreted consistent with IRS Rev. Rul. 2013-17.

2.10 “Election Form” means the form or forms, in electronic or paper format, specified by the Administrator by which an Employee or a Participant: (i) elects to participate, (ii) changes participation elections, (iii) authorizes a change in Contributions, (iv) makes any other elections, or (v) takes any other action under the Plan, as permitted by the Administrator.

2.11 “Employee” means a person who performs services for and under the control of the City, and is classified as an employee by the City for purposes unrelated to this Plan. An individual who immediately prior to taking leave under the FMLA is an Employee during the period of leave under the FMLA. Employee does not include a person who is self-employed, as defined in Code section 401(c)(1)(A); a person the Administrator determines is engaged by the City as an independent contractor; or a person the Administrator determines is engaged by the City as a consultant or advisor on a retainer or fee basis. Employee does not include any person who has retired from the City unless the person otherwise qualifies as an Employee. Employee does not include: a person who is classified as an “hourly” employee by the Director of Human Resources, a person regularly scheduled to work fewer than twenty hours per week, or seasonal employees. The Mayor is deemed to be regularly scheduled to work twenty hours or more per week. A person who is not an Employee is not eligible to participate in the Plan solely on the basis that the person is determined to be an employee by a court or other authority for purposes unrelated to the Plan.

2.12 “FMLA” means the Family Medical Leave Act and the regulations promulgated under that act at 29 CFR part 825.

2.13 “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended, and the body of law that implements and interprets the act.

2.14 “HCSAP” means a plan adopted by the City called the “Health Care Spending Account Plan.”

2.15 “LWOP” means Leave Without Pay. It is the status of an Employee who is absent from his or her assigned duties and who does not receive Compensation for the period of that absence.

2.16 “Open Enrollment” means a period of time designated by the Administrator during which an Employee may elect to participate in or change elections related to this Plan for the next Plan Year.

2.17 “Participant” means an Employee, any person continuing benefits under COBRA during the

time he or she participates in this Plan, or any Employee with a roll-over balance in the HCSAP.

2.18 "Plan" means this plan.

2.19 "Plan Pay Day" means the first and second pay days in the calendar month.

2.20 "Plan Year" means the calendar year.

2.21 "Premium Pay Program" means the program by which premiums for the medical, dental, and vision insurance plans offered by the City and selected by an Employee are paid under this Plan.

2.22 "Vacation Buy Program" means the program offered by the City by which an Employee may forego a portion of Compensation in exchange for additional leave.

Article III. ELIGIBILITY AND PARTICIPATION

3.01

(a) An Employee who is on LWOP is eligible to participate in this Plan unless the Employee is on LWOP on the first day of the Plan Year; provided, however that if an Employee who is on LWOP on the first day of the Plan Year arranges prior to January 1 to pre-pay the cost of the benefits during the LWOP period or to pay the cost of the benefits from his or her compensation once the Employee terminates LWOP, the Employee will be a Participant on January 1 of the Plan Year. In the absence of pre-payment or an election to pay for the benefits from Compensation upon returning to work, the Employee will not be eligible to participate until the Employee ceases to be on LWOP.

(b) An Employee who is on LWOP for 30 days or more, but is not on LWOP on January 1 of the Plan Year, is not a Participant during the period of LWOP unless the Employee arranges within 10 business days of entering into LWOP to pre-pay the cost of the benefits during the LWOP period or to pay the cost of the benefits from his or her Compensation once the Employee terminates LWOP. An Employee who is not a Participant during LWOP will not be a Participant after LWOP status terminates if the LWOP status lasts more than 30 days, but as of the date LWOP status terminates, the Employee will be treated as an Employee who commences employment after the Plan Year starts.

3.02 An Employee who commences employment after the Plan Year starts may elect to become a Participant not later than 30 days after employment commences.

3.03 An Employee elects to participate by electing to Contribute to the HCSAP, the DDCSAP, the Premium Pay Program, or the Vacation Buy Program. An Employee who elects to Contribute to any of the plans or programs participates in those plans or programs commencing on the date specified below:

(a) If the election is accepted as an Open Enrollment election on or before the day specified by the Administrator for submission of an Open Enrollment election, then participation shall commence on the first day of the Plan Year that begins after the election was accepted. If the Administrator, for good cause shown by the Employee, accepts an Open Enrollment election

before the first day of the Plan Year that follows Open Enrollment, but after the day specified for submission of an Open Enrollment election, then participation shall commence on the first day of the Plan Year that begins after the election was accepted.

(b) If an election is accepted for the current Plan Year on or after the first day of the Plan Year, the election shall be effective as of the first day of the month after the month in which the election is accepted.

(c) Notwithstanding any other provision of this Plan to the contrary, an Employee who acquires a Dependent because of birth, adoption, placement for adoption, or marriage may elect to participate in the Premium Pay Program for the purchase of health care insurance, vision insurance, or dental insurance, and may elect to increase the salary contribution to the HCSAP to the extent that the election is consistent with the acquisition of the Dependent, and may elect to have the election be effective as of the date of birth, adoption, placement for adoption, or marriage, but these elections will be effective only if they are made and accepted not more than thirty days after the birth, adoption, placement for adoption, or marriage by which the Employee acquired the Dependent.

3.04 An election may not be changed during the Plan Year unless the Employee or Participant experiences a Change in Family Status, but the election may be changed only if the change in election is on account of and consistent with the Change in Family Status, and only if the change in election is submitted by the Employee and accepted by the Administrator within thirty days of the event that gave rise to the Change in Family Status. A change in benefits election includes an election to participate and an election to cease participation. If the Employee or Participant wishes to change an election, the Employee or Participant must submit an Election Form to the Administrator. The Employee or Participant must state on the Election Form how the change in election is consistent with and on account of the Change in Family Status. An election that is accepted by the Administrator shall be effective on the first day of the month that commences after the month in which the election was accepted. The Administrator shall reject an election if the election is not made on account of or if it is not consistent with the Change in Family Status.

3.05 Notwithstanding any provision of this Plan to the contrary, an Employee who enters into, is on (whether on the first day of the Plan Year or any other day), or returns from leave under the FMLA shall have the right to participate and to change participation to the extent required by section 1.125-3 of the regulations applicable to section 125 of the Code.

3.06 A Participant who terminates employment during the Plan Year shall cease to be a Participant unless he or she has elected to continue participation in a specified plan or program by exercising his or her rights, and making the payments to the City as specified in the COBRA continuation statement provided to the Employee by the City. If COBRA rights are elected, participation will continue through the earlier of the last day of the Plan Year or until the benefits acquired by the COBRA payments cease. Notwithstanding the termination of participation, a person who ceases employment with the City and was a participant in the DDCSAP shall continue to be a Participant with respect to the DDCSAP through the end of the Plan Year, but no further Contributions shall be made to the DDCSAP.

3.07 An Employee who changes one or more benefit elections as a result of a Change in Family Status is not eligible to revoke that new election until the end of the Plan Year, unless the revocation and new election are made as a result of a subsequent Change in Family Status.

3.08 An Employee or Participant who fails to make an election to participate or to change an election during the times specified in this Plan shall be deemed to have elected not to participate or not to have changed his or her election.

3.09 Except for the Premium Pay Program, participation in and elections under this Plan shall terminate at the close of the Plan Year unless participation or elections otherwise terminate earlier because of a Change in Family Status, FMLA leave, or any other qualifying event. An election relating to the Premium Pay Program shall apply to the following Plan Year unless timely revoked by the Employee during Open Enrollment.

3.10 By participating, a Participant in this Plan authorizes the Administrator and any person or entity administering this Plan to disclose protected health information, as that term is defined by the HIPAA, in any form and to the extent that the Administrator reasonably determines is necessary or appropriate to administer this Plan or any other plan to which this Plan relates. The Administrator shall assure that reasonable steps to comply with HIPAA are taken by those persons and entities who receive the protected health information.

3.11 The expanded CHIP law created a new HIPPA special enrollment period. Regardless of other enrollment deadlines, you will have 60 days from the date of one of the following events to request enrollment in the City's medical plan. The events are: 1.) You or your dependent loses Medicaid or Children's Health Insurance Program (CHIP) coverage because you are no longer eligible. 2.) You or your dependent qualifies for state assistance in paying your employer group medical plan premiums. The special enrollment rights allow you to either: 1.) Enroll in your current medical coverage; or 2.) Enroll in any medical plan benefits option for which you and your dependents are eligible.

Article IV. SALARY REDUCTION, CONTRIBUTIONS, AND CLAIMS FOR REIMBURSEMENT

4.01

(a) A Participant in the HCSAP, the DDCSAP, the Premium Pay Program, or the Vacation Buy Program must elect to Contribute to those plans or programs.

(i) If a Participant elects to Contribute to the HCSAP, the Participant shall authorize Contributions of not less than \$5.00 per Plan Pay Day and not greater than the limit set forth in Appendix A, as may be amended from time to time by the Administrator, for the HCSAP.

(ii) If a Participant elects to Contribute to the DDCSAP, the Participant shall authorize Contributions of not less than \$5.00 per Plan Pay Day and not greater than the limit set forth in Appendix A, as may be amended from time to time by the Administrator for the DDCSAP.

(iii) If a Participant elects to Contribute to the Premium Pay Program, the Participant shall be deemed to have authorized Contributions equal to the sum owed by the Participant for the premiums for insurance elected by the Participant for medical, dental, and vision coverage. Salary reduction for any retroactive coverage as a result of a birth, adoption, or placement for

adoption shall be taken from salary that is not available to the Employee as of the date of the election.

(iv) If a Participant elects to Contribute to the Vacation Buy Program, the Participant shall by that election authorize Contributions in the amount established, in writing, by the City based upon the compensation of the Employee and the vacation time purchased.

(v) Regardless of any provision of this Plan to the contrary, the maximum Contributions to this Plan shall not exceed the maximum Contributions permitted by the Code and shall be reduced by Contributions to this Plan or any other similar plan offered by the City or any other employer in which the Employee was a participant during the Plan Year.

(b) Notwithstanding any other provision of this Plan or any provision of the HCSAP or the Premium Pay Program to the contrary, an Employee who enters into, is on, or returns from leave under FMLA shall have the right to change his or her salary reduction, to Contribute on a pretax or a post-tax basis, and to change the level of coverage under the HCSAP or the Premium Pay Program, to participate or to terminate participation in the HCSAP or the Premium Pay Program during leave under the FMLA, and to exercise any other rights as are necessary for this Plan, the HCSAP, or the Premium Pay Program to comply with section 1.125-3 of the regulations applicable to section 125 of the Code.

(c) An election shall be effective only if the Election Form is timely submitted to, and accepted by, the Administrator. An Election Form for the current Plan Year must be submitted within thirty days of the date the person becomes an Employee, and all other Election Forms must be submitted within thirty days of the date of the Change in Family Status.

(d) Each Employee who submits an Election Form shall specify the benefits elected, and shall authorize the City to reduce Compensation in accordance with this Plan. The annual reduction in the Employee's Compensation that the Employee authorizes for the Plan Year shall be equal to the sum of the benefit amounts that the Employee has elected under the Plan. This annual reduction, unless subsequently changed as a result of a Change in Family Status, shall be taken in equal installments from the Participant's Compensation on each Plan Pay Day remaining in the Plan Year. The order of the reduction, from first to last, shall be: (i) Premium Pay Program, (ii) DDCSAP, (iii) HCSAP; and (iv) Vacation Buy Program. If a Participant revokes an election because of a Change in Family Status, Contributions shall be re-determined, and the new amount shall apply for the remainder of the Plan Year. The re-determined reduction in the Employee's Compensation shall be equal to the sum of the benefits the Participant elected, prorated for the remainder of the Plan Year. This reduction, unless changed as a result of a subsequent Change in Family Status, shall be taken in equal installments from the Participant's Compensation on each Plan Pay Day remaining in the Plan Year. Regardless of when benefits commence, Contributions by salary reduction shall be taken from Compensation not available to the Participant as of the date of the election.

(e) Withdrawal from the Plan shall be deemed a revocation of a benefit election.

4.02 If at any time a Participant has insufficient Compensation to permit the full Plan Pay Day reduction elected under this Plan, the Participant shall be deemed to have elected to have additional amounts taken from Compensation. The additional amounts shall be taken from Compensation on any Plan Pay Day or other pay day on which the Employee has sufficient

Compensation to permit the reduction in Compensation. The additional reductions in Compensation shall continue until they equal the reductions in Compensation that would have been taken under the Plan had the Participant had sufficient Compensation to permit the full reduction.

4.03 The Administrator shall reimburse a Participant for an expense subject to reimbursement under the DDCSAP and the HCSAP only if (i) the expense qualifies for reimbursement under the applicable plan and (ii) the Participant timely files a claim for reimbursement that is accepted by the Administrator.

4.04 A claim for reimbursement shall not be accepted by the Administrator unless it contains all information and documentation that the Administrator reasonably requests, is signed by the Participant, and is filed not later than March 31 of the year that follows the close of the Plan Year. No reimbursement shall be made if the Administrator determines that the reimbursement is not permitted under the Code.

Article V. ADMINISTRATION

5.01 The Administrator shall administer this Plan and shall have the power and the duty to take all actions and to make all decisions necessary or proper to carry out the intent of this Plan. Any final determination by the Administrator concerning the administration and interpretation of this Plan or concerning any benefit election or reduction in Compensation shall be conclusive. Actions taken under the Plan by the Administrator with respect to the classification of Employees or Participants or with respect to the Contributions on behalf of a Participant shall be consistent with applicable law, and shall be uniform with regard to similarly situated Employees and Participants. The Administrator shall also have the following specific powers and duties:

(a) to require an Employee or Participant to furnish any information the Administrator may request as a condition of receiving any benefit or making any election under this Plan;

(b) to make and enforce rules and regulations, and to prescribe the use of forms that the Administrator deems necessary to administer this Plan;

(c) to interpret this Plan, and to resolve ambiguities, inconsistencies, and omissions;

(d) to determine the eligibility of any Employee to participate;

(e) to make or to direct the appropriate person or entity to make all necessary or proper payments or credits under this Plan;

(f) to maintain records and accounts showing transactions under the Plan;

(g) to employ agents to carry out the duties of the Administrator under this Plan, and to employ a third party administrator;

(h) to consult with actuaries, accountants, attorneys, or other persons;

(i) to prepare, distribute, and accept any form during the time this Plan is in effect as may be necessary to terminate this Plan;

(j) to reject or modify an election by any highly compensated Employee, as that term is used in the Code, if the rejection or modification is necessary to enable this Plan to avoid being discriminatory under the Code;

(k) to take all action necessary to assure that the administration of this Plan complies with HIPAA, the Patient Protection Affordable Care Act (PPACA), the Health Care and Education Reconciliation Act of 2010 (HCERA), and any other Federal law; and

(l) to amend Appendix A consistent with the Code, other applicable law, and the policies established by the City.

5.02 Employees shall have rights under this Plan that are enforceable as required by section 125 of the Code. These rights may be enforced only against the City, and not against any other person or entity. Nothing in this Plan shall be construed to provide, and no act or omission of any person or entity shall provide, any rights to an Employee other than those that are granted under this Plan in accordance with section 125 of the Code. The Administrator and other employees of the City shall not be personally liable for any act or failure to act of any person or entity under this Plan.

5.03 Expenses of this Plan shall be paid from the assets of the Plan.

5.04 An Employee or a Participant may petition the Administrator concerning a dispute arising under this Plan. The petition shall be submitted to the Administrator in writing within one-hundred eighty days of the event or the giving of any notice to the Employee or Participant giving rise to the dispute. A petitioner may review records that are or may be directly relevant to the dispute unless the records are protected from disclosure under the Colorado Open Records Act or any other law. The Administrator may conduct an independent investigation as may be necessary to render a decision, and the decision of the Administrator shall be made in a reasonable time after receipt of the petition. Written notice of the decision of the Administrator on the petition shall be promptly furnished to the petitioner and shall include reasons for the decision. The decision of the Administrator on a petition shall be final.

Article VI. AMENDMENT AND PLAN TERMINATION

6.01 It is the intent of the City that the Plan be maintained for an indefinite time, but the City may amend, suspend, or terminate this Plan without the consent of any Employee, Participant, or other person. Any amendment shall be binding on all Participants and Employees. The Administrator shall recommend to the Mayor any amendment that may be necessary or appropriate to meet the requirements of the Code or of any other law. Unless permitted by the Code, no amendment, suspension, or termination shall be made that would cause or permit the assets of the Plan to be used for any purpose other than to provide benefits, pay expenses, or, in the case of gains, be distributed to Participants as permitted by the Code. The Administrator

shall assure that Plan assets do not inure to the benefit of any person other than as permitted above.

6.02 Upon termination of this Plan, the Administrator shall pay or provide for the payment of all obligations that are properly payable under this Plan.

Article VII. GENERAL PROVISIONS

7.01 This Plan shall not give, and no act of the Administrator, any agent, or any other person shall give a person the right to be employed by the City, or give an Employee the right to be retained in the employ of the City. Neither this Plan nor any act or failure of any person or entity to act pursuant to this Plan shall affect the right of the City to dismiss any Employee. The adoption and maintenance of this Plan shall not constitute a contract of employment between the City and any person. The adoption and maintenance of this Plan shall not constitute (i) consideration for, (ii) an inducement to, or (iii) a condition of, the employment of any person.

7.02 This Plan shall not give a person any right to, or interest in, any assets of the City.

7.03 All notices, statements, reports, and other communications from the Administrator shall be deemed to have been given when delivered (either electronically, in person, or by placing in inter-office mail) or when mailed by first-class mail, postage prepaid, and addressed to the person at the address that last appears in the records of the Administrator. The date an election is accepted by the Administrator shall, if the circumstances warrant, be deemed the date the election was submitted.

7.04 By electing to participate, an Employee consents to the disclosure of any confidential information regarding the Employee or any Dependent as may be necessary to administer this Plan. The consent to disclose is a condition of participation, and shall be effective without further notice.

7.05 No election shall be effective for any Plan Year other than the one for which it was accepted by the Administrator unless specifically applicable to any other Plan Year as stated in this Plan.

7.06 All forms submitted under this Plan shall be submitted in a form as is prescribed from time to time by the Administrator and shall be mailed by first-class mail, sent electronically as specified by the Administrator, or delivered to the Administrator at the address or location specified in writing by the Administrator.

7.07 This plan shall be governed by and construed in accordance with the laws of Colorado, except to the extent superseded by Federal law.

Appendix A – Maximum Employee Annual Salary Reduction or Contribution

Health Care Spending Account :

Minimum Contribution per plan year = \$5 per pay day

Maximum Contribution per plan year = \$2,500

Dependent Day Care Spending Account:

Minimum Contribution per plan year = \$5 per pay day

Maximum Contribution per plan year = \$5,000

Vacation Buy:

Minimum Contribution per plan year = \$0.00

Maximum Contribution per plan year = Hourly salary x 40 hours for full time employees

Medical Plan:

Minimum Contribution per plan year = \$0.00

Maximum Contribution per plan year = \$11,040

Dental Plan:

Minimum Contribution per plan year = \$0.00

Maximum Contribution per plan year = \$1206

Vision Plan:

Minimum Contribution per plan year = \$0.00

Maximum Contribution per plan year = \$312

7.08 This plan, as amended, shall be effective January 1, 2014.

Adopted this 3rd day of January, 2014.

Cynthia Sullivan
Name

Dir., HR
Title