

## RESOLUTION NO. 972

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ADOPTING AMENDMENTS TO THE CITY'S SECTION 125 CAFETERIA PLAN FOR FLEXIBLE SPENDING ACCOUNTS

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**WHEREAS**, on June 9, 2009, Council adopted Resolution No. 792 implementing flexible spending accounts for the employees; and

**WHEREAS**, this plan has been amended to reflect a change to the "use or lose" rule, (under IRS Notice 2013-71) which now permits up to \$500.00 of unused amounts remaining at the end of a plan year in a health FSA to be carried over into the following plan year; and

**WHEREAS**, the current 2.5 month grace period will be removed from the plan; now, therefore,

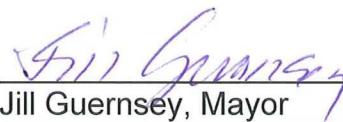
### THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

**Section 1.** The City Council hereby approves the Amendment to the City's Flexible Spending Arrangement attached hereto as Exhibit A and incorporated herein, effective retroactive to September 1, 2014. The City Administrator is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Plan.

**Section 2.** Because this is an amendment the authorized agents of the City shall act as soon as possible to notify City employees of the adoption of this amendment by delivering to each employee a copy of the Summary Plan Document attached hereto as Exhibit B and incorporated herein.

RESOLVED by the City Council this 22nd day of September, 2014.

APPROVED:

  
\_\_\_\_\_  
Jill Guernsey, Mayor

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
Molly M. Towslee, City Clerk

Filed with the City Clerk: 09/17/14  
Passed by the City Council: 09/22/14  
Resolution No. 972

**NOTICE 2013-71 CARRYOVER AMENDMENT**

- Attached: 1) the Plan Amendment, 2) the adopting resolution, and 3) the Summary of Material Modifications (SMM). The SMM (participant notice) must be provided to all health FSA plan participants.
- The carryover Amendment is **optional**
- Employers wanting to amend their 2014 plan must do so by the **last day of the plan year** in which the carryover applies.
- The plan cannot have both the grace period (2.5 months to incur expenses after the plan year ends) and the carryover. Employers must determine whether the grace period option or the carryover provision is better for their participants. This amendment can be used to **remove the grace period and add the carryover** or used to add the carryover (for plans without the grace period).
- Please fill-out the amendment, sign, and return it to [employerservices@flex-plan.com](mailto:employerservices@flex-plan.com)

## FLEXIBLE BENEFITS PLAN CARRYOVER AMENDMENT

### ARTICLE I PREAMBLE

- 1.1 **Adoption and effective date of amendment.** The Employer adopts this Amendment to **City of Gig Harbor** Flexible Benefits Plan (the "Plan"). The plan sponsor intends this Amendment as good faith compliance with the requirements of these provisions. This Amendment shall be effective on or after the date the Employer elects in Section 2.1 below.
- 1.2 **Supersession of inconsistent provisions.** This Amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.

### ARTICLE II ELECTIONS

- 2.1 **Effective Date.** The provisions of this Amendment, unless otherwise indicated are effective as of 09/01/2014 (effective date: be sure to note the effective date in the plan year for which you are intending to have the carryover apply. For example, 08/13/2014 for plans intending to carryover unused balances into 2015).
- 2.2 **CARRYOVER OF UNUSED AMOUNTS REMAINING AT THE END OF THE HEALTH FSA PLAN YEAR.**

On October 31, 2013 the IRS released Notice 2013-71 (the "Notice"). The Notice contains modifications to the rules for § 125 cafeteria plans. The Notice modifies the "use-or-lose" rule for health FSAs that is currently set forth in proposed regulations under § 125 of the Internal Revenue Code (the Code). This modification permits § 125 cafeteria plans to be amended to allow up to \$500 of unused amounts remaining at the end of a plan year in a health FSA to be carried over into the following plan year, provided that the plan does not also incorporate the grace period rule. This carryover of up to \$500 does not affect the maximum amount of salary reduction contributions that the participant is permitted to make under §125(i) of the Code (\$2,500 adjusted for inflation after 2012 or a lesser amount as set by the employer). This carryover option provides an alternative to the current grace period rule and administrative relief similar to that rule.

- (1) **City of Gig Harbor** is hereby amending this plan to add the carry over feature as provided by IRS Notice 2013-71 as of the effective date.
- (2) **City of Gig Harbor** is hereby amending this plan to remove the 2 ½ month grace period.

This amendment has been executed this 22nd day of September, 2014.

Name of Employer: CITY OF GIG HARBOR

By: Ronald J. Williams  
EMPLOYER - Ron Williams, City Administrator

**SUMMARY OF MATERIAL MODIFICATIONS  
for the**

**City of Gig Harbor  
Flexible Benefits Plan**

**I  
INTRODUCTION**

This is a Summary of Material Modifications regarding the Employer Name Flexible Benefits Plan (the “Plan”). This is merely a summary of the most important changes to the Plan and information contained in the Summary Plan Description (“SPD”) previously provided to you. It supplements and amends that SPD so you should retain a copy of this document with your copy of the SPD. If you have any questions, contact the Administrator. If there is any discrepancy between the terms of the Plan, as modified, and this Summary of Material Modifications, the provisions of the Plan will control.

**II  
SUMMARY OF CHANGES**

***Amending the Plan to add the Carryover Feature.*** As of the effective date of this amendment the employer is adding the carryover feature as provided by IRS Notice 2013-71. The carryover feature allows participants to carryover unused amounts remaining in the health FSA at the end of the claims run-out period into the following plan year. The amount that may be carried over is the lesser of the balance in the health FSA as of the carryover date or \$500. Employees with a balance as of the last day of the claims run-out period will automatically receive a carryover amount regardless of whether they have enrolled in a health FSA in the subsequent year. The carryover amount does not affect the maximum salary reduction set aside for the following year; consequently, a participant could have \$500 carried over and elect \$2500 for a total \$3000 benefit. The carryover will apply to claims incurred during the claim filing period. The carryover will occur after the claims run-out period has expired.

***Amending the Plan to Remove the Grace Period.*** The employer has amended their cafeteria plan to remove the grace period. The grace period is a period of 2.5 months after the plan year end date which permits plan participants to incur expenses against the prior plan year balance. As of the effective date of this amendment the employer is removing the grace period.

## CERTIFICATE OF ADOPTING RESOLUTION

The undersigned authorized representative of **City of Gig Harbor** hereby certifies that the following resolutions were duly adopted on September 22, 2014 (date) and that such resolutions have not been modified or rescinded as of the date hereof;

RESOLVED, that the Amendment to the Plan (the Amendment) is hereby approved and adopted, and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the amendment.

The undersigned further certifies that attached hereto is a copy of the Amendment approved and adopted in the foregoing resolution.

Date: September 22, 2014  
Signed: Molly M Towslee  
Molly Towslee, City Clerk  
[print name/title]