

RESOLUTION NO. 041-15

A RESOLUTION APPROVING AND ADOPTING THE AMENDMENT TO THE TAKECARE BY WAGeworks HEALTH SAVINGS ACCOUNT REGARDING NONDISCRIMINATION REQUIREMENTS AND AUTHORIZING AND DIRECTING THE EXECUTION OF ANY COUNTERPARTS OF THE AMENDMENT TO THE ADMINISTRATOR OF THE PLAN; AND DECLARING AN EMERGENCY

WHEREAS, the Takecare by WageWorks HSA contained a provision for “Nondiscrimination Requirements”; and,

WHEREAS, WageWorks has instituted a simplified process for remedying nondiscrimination should the plan be found discriminatory and participant account adjustments are needed; and,

WHEREAS, the City of Napoleon approves and adopts the proposed amendment by WageWorks and authorizes the City Manager to execute and deliver any and all documents necessary, **NOW THEREFORE**;

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NAPOLEON, OHIO:

Section 1. That, the City of Napoleon approves and adopts the following amendment to the Health Care Flexible Spending Account:

“HEALTH CARE FLEXIBLE SPENDING ACCOUNT AMENDMENT

ARTICLE I

PREAMBLE

1.1 Adoption and effective date of amendment. The Employer adopts this Amendment to the Takecare by WageWorks (“Plan”) to reflect changes to the Nondiscrimination Requirements of the Plan. The sponsor intends this Amendment as good faith compliance with the requirements of this provision. 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.

ARTICLE II

NONDISCRIMINATION REQUIREMENTS

2.1 Effective Date. This Amendment is effective as of August 1, 2015.

2.2 Nondiscrimination Requirements. Notwithstanding any provision contained in this Health Care Flexible Spending Account Plan to the contrary, the “Adjustment to avoid test failure.” shall read as follows:

(c) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination or possible taxation to Key Employees or a group of employees in whose favor discrimination may not occur in violation of Code Section 125, it may, but shall not be required to, reduce contributions or non-taxable Benefits in order to assure compliance with the Code and regulations. Any act taken by the Administrator shall be carried out in a uniform and nondiscriminatory manner. With respect to any affected

Participant who has had Benefits reduced pursuant to this Section, the reduction shall be made proportionately among Health Flexible Spending Account Benefits and Dependent Care Flexible Spending Account Benefits, and once all these Benefits are expended, proportionately among insured Benefits. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited and deposited into the benefit plan surplus.”


Section 2. City Manager is authorized to execute and deliver any and all documents necessary to the Plan Administrator, including counterparts thereto.

Section 3. That, it is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Resolution were adopted in open meetings of this City Council, and that all deliberations of this City Council and any of its committees that resulted in such formal actions were in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code and the Codified Ordinances of Napoleon Ohio.

Section 4. That, if any other prior Ordinance or Resolution is found to be in conflict with this Resolution, then the provisions of this Resolution shall prevail. Further, if any portion of this Resolution is found to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Resolution or any part thereof.

Section 5. That, this Resolution is declared to be an emergency measure necessary for the immediate preservation of the public peace, health or safety of the City and its inhabitants, and for the further reason that this legislation must be in effect at the earliest possible time to comply with the August 1st^h, 2015 deadline; therefore, provided it receives the required number of votes for passage as emergency legislation, it shall be in full force and effect immediately upon its passage; otherwise, it shall be in full force and effect at the earliest time permitted by law.

Passed: 07/20/2015



Travis B. Sheaffer, Council President

Approved: 07/20/2015



Ronald A. Bell, Mayor

VOTE ON PASSAGE 7 Yea 0 Nay 0 Abstain

Attest:



Gregory J. Heath, Clerk/Finance Director

I, Gregory J. Heath, Clerk/Finance Director of the City of Napoleon, do hereby certify that the foregoing Resolution No. 041-15 was duly published in the Northwest Signal, a newspaper of general circulation in said City, on the 25th day of August, 2015.



Gregory J. Heath, Clerk/Finance Director