

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2015-285

Council Meeting Date: 07-27-2015

Date Adopted: 07-27-2015

TITLE: RESOLUTION APPROVING AMENDMENT TO EMPLOYEE FLEXIBLE BENEFITS PLAN AGREEMENT

Councilperson Muñoz submitted the following resolution, which was duly seconded by Councilperson Galluccio.

WHEREAS, the Borough of New Providence offers all eligible employees the flexible protection of individual insurance plans at no cost to the Borough, such as accident/sickness disability insurance, cancer insurance, and life insurance, and

WHEREAS, the Borough provides an employee benefits plan within the context of section 125 of the internal revenue code for the benefit of its employees, and

WHEREAS, the Internal Revenue Code (IRC) has made changes to the Nondiscrimination Requirements of Section 125, as it addresses the "Adjustment to avoid test failure" provision; and

WHEREAS, the Borough of New Providence wishes to amend Article II "Nondiscrimination Requirements", Section 2.2 (c) entitled, "Adjustment to Avoid Test Failure" to provide a simplified process.

NOW THEREFORE BE IT RESOLVED the governing body of the Borough of New Providence they do hereby amend its Flexible Benefits Plan document to reflect changes to Article II "Nondiscrimination Requirements", Section 2.2 (c) entitled, "Adjustment to Avoid Test Failure" as attached hereto and made a part of this resolution, and they do further authorize and direct the Mayor and Borough Clerk to execute same on behalf of the Borough of New Providence.

APPROVED, this 27th day of July, 2015.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
GALLUCCIO	X			
GENNARO	X			
KAPNER	X			
MADDEN	X			
MUÑOZ	X			
ROBINSON	X			
MORGAN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 27th day of July, 2015.

Wendi B. Barry, Borough Clerk

**HEALTH CARE FLEXIBLE SPENDING ACCOUNT AMENDMENT
ARTICLE I
PREAMBLE**

1.1 **Adoption and effective date of amendment.** The Employer adopts this Amendment to the _____ Borough of New Providence _____ (“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.

This Amendment has been executed this 27th day of July, 2015.

Name of Employer:

_____ Borough of New Providence _____

By: _____

EMPLOYER