



CITY OF MENDOTA

"Cantaloupe Center Of The World"

ROBERT SILVA
Mayor
ROLANDO CASTRO
Mayor Pro Tem
VICTOR MARTINEZ
JESSE MENDOZA
OSCAR ROSALES

AGENDA MENDOTA CITY COUNCIL Regular City Council Meeting CITY COUNCIL CHAMBERS 643 QUINCE STREET August 27, 2019 6:00 PM

CRISTIAN GONZALEZ
City Manager
JOHN KINSEY
City Attorney

The Mendota City Council welcomes you to its meetings, which are scheduled for the 2nd and 4th Tuesday of every month. Your interest and participation are encouraged and appreciated. Notice is hereby given that Council may discuss and/or take action on any or all of the items listed on this agenda. **Please turn your cell phones on vibrate/off while in the council chambers.**

Any public writings distributed by the City of Mendota to at least a majority of the City Council regarding any item on this regular meeting agenda will be made available at the front counter at City Hall located at 643 Quince Street Mendota, CA 93640, during normal business hours, 8 AM - 5 PM.

In compliance with the Americans with Disabilities Act, those requiring special assistance to participate at this meeting please contact the City Clerk at (559) 655-3291. Notification of at least forty-eight hours prior to the meeting will enable staff to make reasonable arrangements to ensure accessibility to the meeting.

CALL TO ORDER

ROLL CALL

FLAG SALUTE

FINALIZE THE AGENDA

1. Adjustments to Agenda
2. Adoption of final Agenda

CITIZENS ORAL AND WRITTEN PRESENTATIONS

At this time members of the public may address the City Council on any matter not listed on the agenda involving matters within the jurisdiction of the City Council. Please complete a "request to speak" form and limit your comments to THREE (3) MINUTES. Please give the completed form to City Clerk prior to the start of the meeting. All speakers shall observe proper decorum. The Mendota Municipal Code prohibits the use of boisterous, slanderous, or profane language. All speakers must step to the podium, state their names and addresses for the record. Please watch the time.

APPROVAL OF MINUTES AND NOTICE OF WAIVING OF READING

1. Minutes of the regular City Council meeting of August 13, 2019.
2. Notice of waiving of the reading of all resolutions and/or ordinances introduced and/or adopted under this agenda.

CONSENT CALENDAR

Matters listed under the Consent Calendar are considered to be routine and will be enacted by one motion and one vote. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Calendar and will be considered separately.

1. AUGUST 09, 2019 THROUGH AUGUST 22, 2019
WARRANT LIST CHECKS NO. 45703 THRU 45761
TOTAL FOR COUNCIL APPROVAL = \$754,958.95
2. Proposed adoption of **Resolution No. 19-59**, approving an update to the Westamerica Bank signature card.
3. Proposed adoption of **Resolution No. 19-60**, appointing delegates for the League of California Cities' Annual Business Meeting.
4. Proposed adoption of **Resolution No. 19-61**, approving a Medical Expense Reimbursement Plan between the City of Mendota and Administrative Solutions, Inc., and authorizing the City Manager to execute same.
5. Proposed adoption of **Resolution No. 19-62**, approving the modified City of Mendota 401(K) profit sharing plan to exclude non-CalPERS participants, deferring less than 3% from the Employer matching contribution.

BUSINESS

1. Council discussion and consideration to provide a letter of support for Enrique Noyola of the Mendota Boxing Club.
 - a. *Receive report from City Clerk Cabrera-Garcia*
 - b. *Inquiries from Council to staff*
 - c. *Mayor opens floor to receive any comment from the public*
 - d. *Council provide direction to staff on how to proceed*
2. Introduction and first reading of **Ordinance No. 19-09**, amending the City's cannabis ordinance to modify the location requirements for commercial cannabis retail businesses.
 - a. *Receive report from City Attorney Kinsey*
 - b. *Inquiries from Council to staff*
 - c. *Mayor opens floor to receive any comment from the public*
 - d. *Council provide any input and waive the first reading of Ordinance No. 19-09, and sets the public hearing for the September 10th City Council Meeting*

PUBLIC HEARING

1. Public hearing of **Resolution No. 19-63**, authorizing the placement of special assessments on the 2019/2020 tax roll for the 2019 nuisance abatement costs.
 - a. *Receive report from Chief of Police Andreotti*
 - b. *Inquiries from Council to staff*
 - c. *Mayor opens the public hearing, accepting comments from the public*
 - d. *Mayor closes the public hearing*
 - e. *Council provide any input and adopt Resolution No. 19-63*

DEPARTMENT REPORTS AND INFORMATIONAL ITEMS

1. Administrative Services
 - a) Monthly Report
2. Finance Officer
 - a) Grant Update
3. City Attorney
 - a) Update
4. City Manager

MAYOR AND COUNCIL REPORTS AND INFORMATIONAL ITEMS

1. Council Member(s)
2. Mayor

CLOSED SESSION

1. Conference regarding real property negotiations pursuant to Government Code §54956.8.
 - a) Addresses:
 - a. 195 Smoot Street, Mendota, CA 93640
 - b. 415 Sorensen Avenue, Mendota, CA 93640
 - c. 437 Sorensen Avenue, Mendota, CA 93640
 - b) Negotiator: Cristian Gonzalez
 - c) Negotiating Party: Mendota Unified School District
 - d) Under Negotiation: Terms of payment

ADJOURNMENT

CERTIFICATION OF POSTING

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby declare that the foregoing agenda for the Mendota City Council Regular Meeting of August 27, 2019, was posted on the outside bulletin board located at City Hall, 643 Quince Street Friday, August 13, 2019 at 4:45 p.m.



Celeste Cabrera-Garcia, City Clerk



MINUTES OF MENDOTA REGULAR CITY COUNCIL MEETING

Regular Meeting

August 13, 2019

Meeting called to order by Mayor Silva at 6:01 p.m.

Roll Call

Council Members Present: Mayor Robert Silva, Councilors Jesse Mendoza and Victor Martinez

Council Members Absent: Mayor Pro Tem Rolando Castro and Councilor Oscar Rosales

Flag salute led by Mayor Silva

FINALIZE THE AGENDA

1. Adjustments to Agenda.
2. Adoption of final Agenda.

A motion was made by Councilor Martinez to adopt the agenda, seconded by Councilor Mendoza; unanimously approved (3 ayes, absent: Castro and Rosales).

CITIZENS ORAL AND WRITTEN PRESENTATIONS

Kevin Romero (Tuft Street) – provided an update on the Mendota High School football team.

Mark Banuelos (Gaxiola Street) – thanked Chief of Police Andreotti for the Mendota Police Department's donation to the Mendota Boxing Club; introduced Enrique Noyola and summarized his accomplishments; and requested a letter of support from the City Council for Mr. Noyola.

Discussion was held on Mr. Banuelos submitting a donation request to the Mendota Community Corporation.

Ashley Chanthaphuang (United Health Centers of the San Joaquin Valley) - thanked the City Council for their support for the center; provided clarification on the hours of operation of the Urgent Care center; and presented a donation to the Mendota Community Corporation for the Fireworks Show.

APPROVAL OF MINUTES AND NOTICE OF WAIVING OF READING

1. Minutes of the regular City Council meeting of July 23, 2019.
2. Notice of waiving of the reading of all resolutions and/or ordinances introduced and/or adopted under this agenda.

A motion was made by Councilor Martinez to approve items 1 and 2, seconded by Councilor Mendoza; unanimously approved (3 ayes, absent: Castro and Rosales).

CONSENT CALENDAR

1. JULY 23, 2019 THROUGH AUGUST 08, 2019
WARRANT LIST CHECKS NO. 45615 THRU 45702
TOTAL FOR COUNCIL APPROVAL = \$698,562.12
2. Proposed adoption of **Resolution No. 19-54**, authorizing the reimbursement of costs for the construction of storm drainage improvements pursuant to the development agreement for Tract 6218, La Colonia.
3. Proposed adoption of **Resolution No. 19-55**, approving a change order from SET Services for additional work and equipment that was required to replace a sewer main line.
4. Proposed adoption of **Resolution No. 19-56**, approving a Memorandum of Understanding between the City of Mendota and the American Federation of State, County, and Municipal Employees Local 2703 Mendota Chapter.
5. Proposed adoption of **Resolution No. 19-57**, approving a Commercial Lease Agreement between the City of Mendota and the United Security Bank for the lease of an area of Mendota City Hall.
6. Proposed adoption of **Resolution No. 19-58**, approving the conversion from Blue Shield PPO health insurance plan to the Aetna health insurance plan.

A motion was made by Councilor Martinez to adopt items 1 through 6 of the Consent Calendar, seconded by Councilor Mendoza; unanimously approved (3 ayes, absent: Castro and Rosales).

PUBLIC HEARING

1. Public hearing and second reading of **Ordinance No. 19-07**, enacting informal bidding procedures for specified public works projects.

Mayor Silva introduced the item and Assistant City Attorney Cardella summarized the report including the proposed procedures permitting the City to use simple purchase procedures for certain public works projects; the established purchase limits; and the benefits of adopting such procedures.

Discussion was held on when the procedures could be used.

At 6:13 p.m. Mayor Silva opened the hearing to the public and, seeing no one present willing to comment, closed it in that same minute.

A motion was made by Councilor Martinez to adopt Ordinance No. 19-07, seconded by Councilor Mendoza; unanimously approved (3 ayes, absent: Castro and Rosales).

2. Public hearing and first reading of **Ordinance No. 19-08**, amending the zoning code to permit commercial cannabis retail businesses in the C-3 district, subject to a conditional use permit.

Mayor Silva introduced the item and Assistant City Attorney Cardella summarized the report including that on July 16th the Planning Commission considered and approved Resolution No. PC 19-02; in their approval, the Planning Commission included a recommendation for the City Council to consider modifications to the location requirements for commercial cannabis retail businesses; and the requirements that cannabis retail businesses would need to meet per the proposed ordinance.

At 6:23 p.m. Mayor Silva opened the hearing to the public.

Discussion was held on the amount of properties that would be eligible to house these types of businesses under the 500 foot buffer versus the 800 foot buffer.

Kevin Romero (Tuft Street) – summarized the discussion that was held during the July 16th Planning Commission meeting regarding the item.

At 6:27 p.m. Mayor Silva closed the hearing to the public.

A motion was made by Councilor Mendoza to waive the first reading of Ordinance No. 19-08 and modify the ordinance for it to provide that cannabis retail businesses shall be no close than 500 feet from any other cannabis retail business, school, day care center, or youth center, and schedule the public hearing, seconded by Mayor Silva; approved (2 ayes, no: Martinez).

DEPARTMENT REPORTS AND INFORMATIONAL ITEMS

1. Animal Control, Code Enforcement, and Police Department
 - a) Monthly Report

Chief of Police Andreotti provided his report for the Animal Control Department including the monthly log; issues with the dog kennel; individuals surrendering their animals; thanked the Public Works Department for assisting the department; and provided a personnel update.

Discussion was held on the amount of fines that were issued for the month; how the department handles animal surrender situations; and the status of the annual dog clinic.

Chief Andreotti provided his report for the Code Enforcement Department including the monthly log; and provided a personnel update.

Discussion was held on the condition of the car sales lot on Oller Street, and how the department was addressing the situation.

Chief Andreotti summarized the report for the Police Department including a personnel update; officers addressing noise issues throughout the City; and officers educating the public on the importance of reporting violations.

2. City Attorney
 - a) Update

Nothing to report.

3. City Manager

City Manager Gonzalez commented on the National Night Out event that was recently held; the upcoming AMOR groundbreaking ceremony; stated that there would be a discussion item regarding developing an active shooter plan at the October Public Safety Sub-Committee meeting; the status of the 5th Street and Black Street reconstruction project; and the timeline of the United Security Bank project.

Discussion was held on the status of the roundabout project near the La Colonia subdivision; and the status of the roundabout project at the intersection of Derrick Avenue and Oller Street.

MAYOR AND COUNCIL REPORTS AND INFORMATIONAL ITEMS

1. Council Member(s)

Councilor Martinez thanked the staff for their work; stated that the Rojas-Pierce Park project was featured in the Business Journal; and thanked the audience for attending the meeting.

Councilor Mendoza reported on the Axiom Trip; commented on the National Night Out event; stated that it is important that the public builds relationships with staff; the importance of reporting violations; and thanked the audience for attending the meeting.

2. Mayor

Mayor Silva commented on the picture that was given to the City by the event organizers of the Annual Joaquin Murrieta Horse Ride.

ADJOURNMENT

With no more business to be brought before the Council, a motion for adjournment was made at 6:53 p.m. by Councilor Martinez, seconded by Councilor Mendoza; unanimously approved (3 ayes, absent: Castro and Rosales).

Robert Silva, Mayor

ATTEST:

Celeste Cabrera-Garcia, City Clerk

CITY OF MENDOTA
CASH DISBURSEMENTS
8/9/2019 - 8/22/2019
Check# 45703 - 45861

Date	Check #	Amount	Vendor	Department	Description
August 9, 2019	45703	\$186.12	KELLY MEJIA	GENERAL	FINAL ACCRUALS PAYMENT
August 13, 2019	45704	\$870.00	ADMINISTRATIVE SOLUTIONS INC	GENERAL	(6) HRA ADMINISTRATION - AUGUST 2019 & (26) MONTHLY MEDICAL ADMINISTRATION FEE - AUGUST 2019
August 13, 2019	45705	\$288.93	ADT SECURITY SERVICES	GENERAL-WATER-SEWER	SECURITY SERVICES 8/12/19 - 9/12/19 CITYHALL, DMV, & EDD
August 13, 2019	45706	\$1,340.35	COMCAST	GENERAL-WATER-SEWER	CITY WIDE XFINITY SERVICES 8/6/19-9/5/19
August 13, 2019	45707	\$200.00	STATE WATER RESOURCES CONTROL BOARD	SEWER	BLACK AVE AND FIFTH AVE STORM WATER PERMIT REGISTRATION FEE
August 13, 2019	45708	\$1,026.13	VERIZON WIRELESS	GENERAL-WATER-SEWER	CITY WIDE PHONE SERVICES 7/7/19 - 8/6/19
August 14, 2019	45709	\$22,273.43	S.E.T. SERVICES	SEWER	EMERGENCY 8" SEWER REPLACEMENT EXTRA WORK LABOR & MAINTENANCE
August 14, 2019	45710	\$358,065.69	KSA REALTY INVESTMENTS LLC	SEWER	REIMBURSEMENT - COSTS DRAIN BASIN 10/29/18 - 3/22/19
August 20, 2019	45711	\$107,920.00	WESTAMERICA BANK	GENERAL	PAYROLL TRANSFER 8/5/2019 - 8/18/2019
August 21, 2019	45712	\$802.92	AFLAC	GENERAL	AFLAC INSURANCE FOR AUGUST 2019
August 21, 2019	45713	\$483.17	ALL PHASE MEDALLION SUPPLY	STREETS	STREET LIGHTS (12) 105-305V LED/HID PHOTO CELL
August 21, 2019	45714	\$803.45	BSK ASSOCIATES	WATER-SEWER	GENERAL EDT - WEEKLY TREATMENT & DISTRIBUTION & (2) MONTHLY WASTEWATER WW MONTHLY (WEEK 1 & WEEK 2-5)
August 21, 2019	45715	\$471.79	CROWN SERVICES CO	GENERAL-SEWER	(5) TOILET RENTAL 1XWK (1) SERVICES & REMOVAL
August 21, 2019	45716	\$840.00	D&D DISPOSAL INC	GENERAL	ANIMAL CONTROL DISPOSAL FOR JULY 2019
August 21, 2019	45717	\$434.00	DEPARTMENT OF JUSTICE	GENERAL	(7) FINGERPRINT APPS FOR JULY 2019 & (6) BLOOD ALCOHOL ANALYSIS (PD)
August 21, 2019	45718	\$318.52	EINERSON'S PREPRESS	GENERAL	(1000 CT) ENVELOPES #10 & (3) 250 CT BUSINESS CARDS (PD)
August 21, 2019	45719	\$11,666.63	FIREBAUGH POLICE DEPARTMENT	GENERAL	POLICE DISPATCH SERVICES FOR JULY 2019
August 21, 2019	45720	\$906.95	HARDWARE DISTRIBUTION	STREETS	(4) 6" YELLOW PLASTIC SPEED BUMP
August 21, 2019	45721	\$200.00	HI - LINE ELECTRIC COMPANY INC	SEWER	(100) ZINC WASHER, (50) 1/2 ZINC WASHER, (50) SCREW CAP
August 21, 2019	45722	\$97.17	HR DIRECT	GENERAL-WATER-SEWER	(1) ENGLISH CA POSTER GUARD 1 YR STATE, FED, LOCAL
August 21, 2019	45723	\$504.75	INDUSTRIAL CHEM LAB	STREETS	(5 GAL) TRI-LETE CHEMICAL (STREET RIGHT OF WAY)
August 21, 2019	45724	\$180.00	KHAMPHOU, INSYARATH	GENERAL	MONTH OF JULY CRIME STATS (PD)
August 21, 2019	45725	\$310.00	KERWEST NEWSPAPER	GENERAL	(8) ORDINANCE NO. 19-08 AMEND ZONING CODE - COMMERCIAL CANNABIS
August 21, 2019	45726	\$374.02	MENDOTA SMOG & REPAIR	STREETS	STREET SWEEPER - COOLANT RESERVIOR TANK
August 21, 2019	45727	\$32.61	METRO UNIFORM	GENERAL	(1) MOISTURE WICK T-SHIRT, PRINTING, & EMBROID (PD)
August 21, 2019	45728	\$56,530.67	MID VALLEY DISPOSAL	REFUSE-STREETS	ROLL OFF BIN EXCHANGE FOR 10 YARD & 40 YARD & SANITATION CONTRACT SERVICES FOR JULY 2019

CITY OF MENDOTA
CASH DISBURSEMENTS
8/9/2019 - 8/22/2019
Check# 45703 - 45861

August 21, 2019	45729	\$1,370.90	MUNICIPAL MAINTENANCE EQUIPMENT	STREETS	STREET SWEEPER - (1) ADAPTER, OVERHUNG LOAD SPLINED
August 21, 2019	45730	\$34.15	NATIONAL NOTARY ASSOCIATION	GENERAL	CITY CLERK NOTARY PUBLIC COMMISSION - STYLE STAMP FOR NAME CHANGE
August 21, 2019	45731	\$2,663.97	NORTHSTAR CHEMICAL	WATER	(1300 GAL) SODIUM HPOCHLORITE - 12.5 MILL A
August 21, 2019	45732	\$932.02	OFFICE DEPOT	GENERAL-WATER-SEWER	MULTIPLE DEPARTMENTS OFFICE SUPPLIES
August 21, 2019	45733	\$990.78	PAPE MACHINERY	WATER-SEWER-STREETS	JD 544J LOADER - DIAGNOSE & REPAIR LOADER HYDRAULICS
August 21, 2019	45734	\$21,059.38	PG&E	GENERAL-WATER-SEWER-STREETS	WATER DEPARTMENT UTILITIES - 7/16/19 - 8/14/19
August 21, 2019	45735	\$2,453.04	PITNEY BOWES INC	GENERAL-WATER-SEWER	FOLDING MACHINE - SERVICE AGREEMENT 9/1/19 - 8/31/20
August 21, 2019	45736	\$7,990.00	PRICE, PAIGE, & COMPANY	GENERAL-WATER-SEWER-STREETS-REFUSE	PROFESSIONAL SERVICES - AUDIT CITY'S FINANCIAL STATEMENTS YEAR END 6/30/2019
August 21, 2019	45737	\$117,285.19	PROVOST & PRITCHARD	GENERAL-WATER-SEWER-STREETS	PROFESSIONAL SERVICES - JULY 2019 LA COLONIA & AMOR (PASSTHRU), MOWRY BRIDGE, ENGINEERING SERVICES, COMMUNITY CENTER
August 21, 2019	45738	\$1,983.98	PURCHASE POWER	GENERAL-WATER-SEWER	POSTAGE METER REFILL 7/26/19 & 8/16/19
August 21, 2019	45739	\$101.78	R&B COMPANY	GENERAL	(3) 4" OR 6" SADDLE SIZE FIBRELYTE W/ PROBE -630 OLLER (PASSTHRU)
August 21, 2019	45740	\$55.05	R.G. EQUIPMENT COMPANY	GENERAL	(2) TRIMMER LINE SPOOL BLACK 3LB
August 21, 2019	45741	\$1,963.94	RAMONS TIRE	GENERAL-WATER-SEWER-STREETS	MULTIPLE DEPARTMENTS TIRE REPAIR, TIRE PURCHASE, & OIL CHANGE
August 21, 2019	45742	\$100.00	RIGHT NOW PHLEBOTOMY	GENERAL	CASE# 19-4298 BLOOD DRAW (PD)
August 21, 2019	45743	\$2,629.89	SORENSEN MACHINE WORKS	GENERAL-WATER-SEWER-STREETS	MULTIPLE DEPARTMENT SUSPLIES FOR JULY 2019
August 21, 2019	45744	\$326.72	UNION PACIFIC RAILROAD COMPANY	STREETS	PUBLIC ROADWAY ENCROACHMENT - SEPTEMBER 2019
August 21, 2019	45745	\$194.85	TCM INVESTMENTS	GENERAL	MPC3503 LEASE PAYMENT - POLICE DEPARTMENT COPIER
August 21, 2019	45746	\$1,498.91	TECH MASTER PEST MANAGEMENT	GENERAL-WATER-SEWER	CITYWIDE GENERAL PEST CONTROL SERVICES
August 21, 2019	45747	\$1,455.81	TESCO CONTROL INC	SEWER	PROFESSIONAL SERVICES - REPAIR VFD, FLOAT, AND INSTRUMENTAL TROUBLESHOOTING
August 21, 2019	45748	\$300.04	THOMASON TRACTOR COMPANY	STREETS	(1) FUEL FILTER FOR JD & JD 6420 FAILING TO START REPAIR
August 21, 2019	45749	\$167.64	TIREHUB LLC	GENERAL	VEH#91 - (2) KY EDGE PERFORMANCE BW 94V TIRES (PD)
August 21, 2019	45750	\$100.00	TRANSUNION RISK & ALTERNATIVE DATA	GENERAL	TRANSUNIONS RISK & ALTERNATIVE PEOPLE SEARCH FOR JULY & AUGUST 2019
August 21, 2019	45751	\$4,861.72	TRIANGLE ROCK PRODUCTS LLC	STREETS	(73.52) ST 1/2 IN MM AGG & ASPHALT FOR NAPLES STREET REPAIR
August 21, 2019	45752	\$48.59	TRU TRAILERS INC	WATER-SEWER	(1) 5 LUG HUB FOR TRAILER
August 21, 2019	45753	\$95.64	UNIFIRST CORPORATION	GENERAL-WATER-SEWER	JANITORIAL SERVICE - (6) RUGS, WET & DRY MOP, & TERRYCLOTHS

CITY OF MENDOTA
 CASH DISBURSEMENTS
 8/9/2019 - 8/22/2019
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August 21, 2019	45754	\$2,898.27	USA BLUEBOOK	WATER-SEWER	(1) TRANSLUCENT PE TUBING 500' ROLL, (1) WALCHEM PUMP, (3) TRASH BAGS, (4) USA BB BUFFER PACK, CONDUCTIVITY SOLUTION
August 21, 2019	45755	\$217.93	VALLEY FARM SUPPLY STORES INC	SEWER	(2) HONDA START ASSY (SEWER PUMP)
August 21, 2019	45756	\$176.80	VETERINARY MEDICAL CENTER	GENERAL	(8) DOG EUTHANASIA
August 21, 2019	45757	\$65.00	VILLAMAR MOTORS & TRANS	GENERAL	UNIT#M89 - OIL CHANGE W/ 6 QRT SYNTHTIC (PD)
August 21, 2019	45758	\$8,917.40	WANGER JONES HELSLEY	GENERAL-WATER-SEWER	LEGAL SERVICES RE: GENERAL LEGAL SERVICES 7/15/19
August 21, 2019	45759	\$65.10	WECO	GENERAL-WATER-SEWER	(6) RENT CYL ACETYLENE#4, OXYGEN D&K FOR JULY 2019
August 21, 2019	45760	\$327.16	ZEE MEDICAL SERVICE	WATER-SEWER	FIRST AID KIT SUPPLIES - PUBLIC WORKS YARD AND WATER PLANT
August 22, 2019	45761	\$4,500.00	JAMES G. PALMER APPRAISALS, INC	GENERAL	APPRAISAL: 50 ACRE VACANT PROPERTY - GUILLEN PARKWAY
		\$754,958.95			

AGENDA ITEM – STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS
FROM: NANCY M. DIAZ, FINANCE OFFICER
VIA: CRISTIAN GONZALEZ, CITY MANAGER
SUBJECT: RESOLUTION NO. 19-59 APPROVING AN UPDATE TO THE WESTAMERICA BANK SIGNATURE CARD
DATE: AUGUST 27, 2019

ISSUE

Should the City Council approve Resolution No. 19-59, approving an update to the Westamerica Bank signature card?

BACKGROUND

The current signature card held at the City's bank, Westamerica Bank, needs to be updated to reflect changes that have occurred. The changes include a title change and legal name change.

ANALYSIS

Westamerica Bank has requirements that need to be satisfied in order to update the information on a signature card for an account. Meeting Minutes or a minute order is required to include the following: name of the business entity; names and titles of all officers of the business entity; names and titles of all authorized signers on the account. A Personal Information Sheet and copy of identification card is required for all signers on account. After the information is provided to Westamerica Bank, a signature card with information is provided to the City to be signed by the authorized signers.

FISCAL IMPACT

None.

RECOMMENDATION

Staff recommends that the City Council adopt Resolution No. 19-59, approving an update to the signature card at Westamerica Bank.

**BEFORE THE CITY COUNCIL
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MENDOTA APPROVING
AN UPDATE TO THE WESTAMERICA
BANK SIGNATURE CARD**

RESOLUTION NO. 19-59

WHEREAS, the City of Mendota has authorized signees for the signature card with Westamerica Bank (Signature Card); and

WHEREAS, there has been a personnel update with a signee of the City of Mendota; and

WHEREAS, the City Clerk has changed her legal name; and

WHEREAS, the signees for the signature card with Westamerica Bank need to be updated to reflect the changes with personnel and the change of the City Clerk's legal name; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Mendota hereby approves an update to the Westamerica Bank signature card by updating the title of Rudy Marquez and the legal name of Celeste Cabrera-Garcia as stated in Exhibit "A", attached hereto and incorporated herein

Robert Silva, Mayor

ATTEST:

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 27th day of August, 2019, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Celeste Cabrera-Garcia, City Clerk

EXHIBIT A

Organization: City of Mendota
City Council: Robert Silva – Mayor
Rolando Castro – Mayor Pro Tempore
Victor Martinez – Councilmember
Jesse Mendoza – Councilmember
Oscar Rosales - Councilmember

Authorized Signers:

Robert Silva – Mayor
Rolando Castro – Mayor Pro Tempore
Cristian Gonzalez – City Manager
Rudy Marquez – Finance Director
Celeste Cabrera-Garcia – City Clerk



Council Action Advised by August 30, 2019

June 10, 2019

TO: Mayors, City Managers and City Clerks

**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES
League of California Cities Annual Conference – October 16 - 18, Long Beach**

The League's 2019 Annual Conference is scheduled for October 16 – 18 in Long Beach. An important part of the Annual Conference is the Annual Business Meeting (during General Assembly), scheduled for 12:30 p.m. on Friday, October 18, at the Long Beach Convention Center. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event that the designated voting delegate is unable to serve in that capacity.

Please complete the attached Voting Delegate form and return it to the League's office no later than Friday, October 4. This will allow us time to establish voting delegate/alternate records prior to the conference.

Please note the following procedures are intended to ensure the integrity of the voting process at the Annual Business Meeting.

- **Action by Council Required.** Consistent with League bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates **must** be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. To register for the conference, please go to our website: www.cacities.org. In order to cast a vote, at least one voter must be present at the

Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the Voting Delegate Desk. This will enable them to receive the special sticker on their name badges that will admit them into the voting area during the Business Meeting.

- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but *only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.
- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the Sacramento Convention Center, will be open at the following times: Wednesday, October 16, 8:00 a.m. – 6:00 p.m.; Thursday, October 17, 7:00 a.m. – 4:00 p.m.; and Friday, October 18, 7:30 a.m.–11:30 a.m.. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but will be closed during roll calls and voting.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to the League's office by Friday, October 4. If you have questions, please call Darla Yacub at (916) 658-8254.

Attachments:

- Annual Conference Voting Procedures
- Voting Delegate/Alternate Form



Annual Conference Voting Procedures

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to League policy.
2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the League Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in his or her possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.
6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.
7. **Resolving Disputes.** In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.



CITY: Mendota

2019 ANNUAL CONFERENCE
VOTING DELEGATE/ALTERNATE FORM

Please complete this form and return it to the League office by Friday, October 4, 2019. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.

In order to vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

Please note: Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

1. VOTING DELEGATE

Name: _____

Title: _____

2. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

3. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

PLEASE ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES.

OR

ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).

Name: _____

Email _____

Mayor or City Clerk _____
(circle one) (signature)

Date _____ Phone _____

Please complete and return by Friday, October 4, 2019

League of California Cities
ATTN: Darla Yacub
1400 K Street, 4th Floor
Sacramento, CA 95814

FAX: (916) 658-8240
E-mail: dyacub@cacities.org
(916) 658-8254

**BEFORE THE CITY COUNCIL
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MENDOTA APPOINTING
VOTING DELEGATES FOR THE LEAGUE
OF CALIFORNIA CITIES' ANNUAL
BUSINESS MEETING**

RESOLUTION NO. 19-60

WHEREAS, the League of California Cities (League) holds its Annual Conference every fall; and,

WHEREAS, the Annual Business Meeting is held wherein the League takes actions on resolutions that establish its policy; and,

WHEREAS, this year's Annual Business Meeting will be held at the Long Beach Convention Center on Friday, October 18, 2019 at 12:30 p.m.; and

WHEREAS, any appointed official casting a vote for a member city must be specifically authorized by the legislative body of that city, in advance of the vote being cast, in order to do so.

NOW, THEREFORE, BE IT RESOLVED, that the City of Mendota hereby designates Mayor Robert Silva as Voting Delegate and Mayor Pro Tem Rolando Castro and Council Member Jesse Mendoza as Alternate Voting Delegates for the representation of the City in League matters at the 2019 meeting.

Robert Silva, Mayor

ATTEST:

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 27th day of August, 2019, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Celeste Cabrera-Garcia, City Clerk

**BEFORE THE CITY COUNCIL
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MENDOTA APPROVING
A MEDICAL EXPENSE REIMBURSEMENT
PLAN BETWEEN THE CITY OF MENDOTA AND
ADMINISTRATIVE SOLUTIONS, INC., AND
AUTHORIZING THE CITY MANAGER
TO EXECUTE SAME**

RESOLUTION NO. 19-61

WHEREAS, in 2012, the City of Mendota (City) entered into a Medical Expense Reimbursement Plan (MERP) with Administrative Solutions, Inc. (ASi) for additional health coverage benefits; and

WHEREAS, the MERP is intended to qualify as a Medical Expense Reimbursement Plan under Code Section 105 and shall be interpreted in a manner consistent with such Code and the Treasury regulation thereunder; and

WHEREAS, the City and ASi have been unable to locate an original copy of the MERP that was executed in 2012; and

WHEREAS, the City and ASi have determined that in order to continue coverage, a new MERP must be executed by both parties.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Mendota hereby approves the Medical Expense Reimbursement Plan, and authorizes the City Manager to execute the Adoption Agreement for Medical Reimbursement Arrangement with Administrative Solutions, Inc., in substantial form presented as Exhibit "A," and all other documentation necessary to effectuate such Medical Expense Reimbursement Plan, subject to such reasonable modifications, revisions, additions and deletions as he may approve prior to execution, said execution to provide conclusive evidence of such approval.

Robert Silva, Mayor

ATTEST:

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 27th day of August, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Celeste Cabrera-Garcia, City Clerk

Exhibit A

Medical Expense Reimbursement Plan

ADOPTION AGREEMENT FOR MEDICAL REIMBURSEMENT ARRANGEMENT

The undersigned Employer adopts this Medical Reimbursement Arrangement and elects the following provisions:

EMPLOYER INFORMATION

1. EMPLOYER'S NAME, ADDRESS AND TELEPHONE NUMBER

Name: City of Mendota
Address: 643 Quincy Street
Mendota, Ca 93640

Telephone: 559-266-6456

2. EMPLOYER'S TAXPAYER IDENTIFICATION NUMBER: 94-6000369

3. TYPE OF ENTITY

- a. [] Corporation (including Tax-exempt or Non-profit Corporation)
b. [] Professional Service Corporation
c. [] S Corporation
d. [] Limited Liability Company that is taxed as:
1. [] a partnership or sole proprietorship
2. [] a Corporation
3. [] an S Corporation
e. [] Sole Proprietorship or Non-profit Corporation
f. [] Partnership (including Limited Liability)
g. [X] Governmental Entity
h. [] Other

NOTE: S Corporation shareholders, partners, sole proprietors, and members of a Limited Liability Company generally cannot participate in the Heath Reimbursement Arrangement.

PLAN INFORMATION

4. PLAN NAME:

City of Mendota Medical Expense Reimbursement Plan

5. EFFECTIVE DATE

- a. [X] This is a new Medical Reimbursement Arrangement effective as of December 1, 2012. (hereinafter called the "Effective Date").
b. [] This is an amendment and restatement of a previously established Medical Reimbursement Arrangement of the Employer which was originally effective (hereinafter called the "Effective Date"). The effective date of this amendment and restatement is

6. NUMBER assigned by the Employer

- a. [X] 501
b. [] 502
c. [] 503
d. [] Other

Medical Expense Reimbursement Plan

- 7. PLAN ADMINISTRATOR'S NAME, ADDRESS AND TELEPHONE NUMBER:
(If none is named, the Employer will become the Administrator.)
 - a. Employer (Use Employer address and telephone number).
 - b. Use name, address and telephone number below:

Name: _____

Address: _____
 _____ Street

_____ City _____ State _____ Zip

Telephone: _____

- 8. CLAIMS ADMINISTRATOR'S NAME, ADDRESS AND TELEPHONE NUMBER:
(If none is named, the Employer will serve as the Claims Administrator.)
 - a. Employer (Use Employer address and telephone number).
 - b. Use name, address and telephone number below:

Name: ADMINISTRATIVE SOLUTIONS, INC.
 Address: P. O. Box 5809 Fresno, CA 93755
 Telephone: (559) 256-1320

ELIGIBILITY REQUIREMENTS

- 9. ELIGIBLE EMPLOYEES
 - a. N/A. No exclusions.
 - b. The following are excluded (select all that apply):
 - 1. Union Employees
 - 2. Non-resident aliens
 - 3. Employees who are not eligible for the Employer's group medical plan
 - 4. Salaried Employees
 - 5. Hourly Employees
 - 6. Leased Employees
 - 7. Part-Time Employees scheduled to work at least _____ hours per week.
 - 8. Other: _____

- 10. THE FOLLOWING AFFILIATED EMPLOYERS will adopt this Medical Reimbursement Arrangement as Participating Employers (if there is more than one, or if Affiliated Employers adopt this after the date the Adoption Agreement is executed, attach a list to this Adoption Agreement of such Affiliated Employers including their names, addresses and taxpayer identification numbers):
 - a. N/A
 - b. Name of Affiliated Employer (s): _____

11. CONDITIONS OF ELIGIBILITY

Any Eligible Employee will be eligible to participate in the Medical Reimbursement Arrangement upon satisfaction of the following:

- a. Date of Hire (No service required)
- b. Same conditions as Employer's group medical plan
- c. _____ years after date of hire
- d. _____ months after date of hire
- e. _____ days after date of hire
- f. Other: _____

Medical Expense Reimbursement Plan

- 12. EFFECTIVE DATE OF PARTICIPATION
An Eligible Employee who has satisfied the eligibility requirements will become a Participant on
 - a. the day on which such requirements are satisfied.
 - b. the first day of the month coinciding with or next following the date on which such requirements are satisfied.
 - c. the first day of the calendar quarter coinciding with or next following the date on which such requirements are satisfied.
 - d. the first day of the pay period coinciding with or next following the date on which such requirements are met.
 - e. the first day of the Coverage Period coinciding with or next following the date on which such requirements are satisfied.
 - f. same date as Employer's group medical plan.
 - g. Other: _____.

BENEFITS

- 13. MAXIMUM BENEFIT PER COVERAGE PERIOD:
 - a. \$ _____
 - b. Other SEE ATTACHED SCHEDULE OF BENEFITS

- 14. COVERAGE PERIOD is:
 - a. monthly
 - b. quarterly
 - c. yearly
 - d. Other _____

- 15. THIS ARRANGEMENT SHALL REIMBURSE: (select all that apply)
 - a. co-payments under the Employer's group medical plan
 - b. deductibles under the Employer's group medical plan
 - c. all medical expenses within the meaning of Code Section 213
 - d. medical insurance premiums
 - e. the following types of medical expenses ONLY: _____

 - f. Other: See attached Schedule of Benefits.

- 16. IS THE EMPLOYER SUBJECT TO THE FAMILY AND MEDICAL LEAVE ACT?
If b. is selected, FMLA will not apply
 - a. Yes.
 - b. No.

- 17. IS THE PLAN SUBJECT TO COBRA?
If b. is selected, COBRA will not apply
 - a. Yes.
 - b. No.

- 18. RETIREES OR OTHER TERMINATED EMPLOYEES SHALL:
 - a. Shall continue to be eligible for reimbursement of any remaining balances.
 - b. May not participate and any unused amounts are forfeited.

- 19. A CLAIM may be submitted up to 120 days after
 - a. the end of the Coverage Period
 - b. the end of each calendar year
 - c. Other: _____

Medical Expense Reimbursement Plan

This Adoption Agreement may be used only in conjunction with The Medical Reimbursement Arrangement Basic Plan Document. This Adoption Agreement and the Medical Reimbursement Arrangement document shall together be known as the Medical Reimbursement Arrangement.

EMPLOYER

By: _____

PARTICIPATING EMPLOYER (if applicable)

By: _____

PARTICIPATING EMPLOYER (add additional signature lines as necessary):

By: _____

MEDICAL EXPENSE REIMBURSEMENT PLAN

SUMMARY PLAN DESCRIPTION

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MEDICAL REIMBURSEMENT ARRANGEMENT

INTRODUCTION

We are pleased to establish this Medical Reimbursement Arrangement to provide you with additional health coverage benefits. The benefits available under this Plan are outlined in this summary plan description. We will also tell you about other important information concerning the Plan, such as the rules you must satisfy before you become eligible and the laws that protect your rights.

Read this summary plan description carefully so that you understand the provisions of our Plan and the benefits you will receive. You should direct any questions you have to the Administrator. There is a plan document on file which you may review if you desire. In the event there is a conflict between this summary plan description and the plan document, the plan document will control.

I ELIGIBILITY

1. What Are the Eligibility Requirements for Our Plan?

You will be eligible to join the Plan once you have satisfied the conditions for coverage under our group medical plan.

2. When is My Entry Date?

You can join the Plan on the same day you can enter our group medical plan.

3. Are There Any Employees Who Are Not Eligible?

Yes, there are certain employees who are not eligible to join the Plan. They are:

- Employees who are leased employees.
- Employees who are not eligible to receive medical benefits under our group medical plan.
- Employees who are part-time. A part-time employee is someone who works, or is expected to work, less than 32 hours a week.
- Certain non-resident aliens whose income is not considered income earned within the United States under Federal tax laws.

-- Employees who are considered “self-employed individuals” under the Federal tax law. Partners in a partnership [members of a Limited Liability Company] are “self-employed individuals” and therefore are not eligible to participate.

-- Employees who are considered “self-employed individuals” under the Federal tax law. A sole proprietorship is a “self-employed individual” and therefore is not eligible to participate.

-- Employees who are considered “2-percent shareholders” under the Federal tax law. “2-percent shareholders” are treated as “self-employed individuals” and therefore are not eligible to participate.

II BENEFITS

1. What Benefits Are Available?

The plan allows you to be reimbursed for certain out-of-pocket medical expenses, indicated on the Schedule of Benefits, which are incurred by you and/or your dependents. The expenses which qualify are those permitted by Section 213 of the Internal Revenue Code.

The maximum allowed each year is shown on the Schedule of Benefits.

Expenses are considered “incurred” when the service is performed, not necessarily when it is paid for. Any amounts reimbursed to you under the Plan may not be claimed as a deduction on your personal income tax return nor reimbursed by other health plan coverage.

2. When Must Expenses Be Incurred?

You may submit expenses that you incur each “Coverage Period.” A new “Coverage Period” begins each calendar year.

3. When Will I Receive Payments From The Plan?

During the course of the Coverage Period, you may submit requests for reimbursement of expenses you have incurred. However, you must make your requests for reimbursements no later than 90 days after the end of the Coverage Period each year. The Administrator will provide you with acceptable forms for submitting these requests for reimbursement. In addition, you must submit to the Administrator proof of the expenses you have incurred and that they have not been paid by any other health plan coverage. If the request qualifies as a benefit or expense that the Plan has agreed to pay, you will receive a reimbursement payment soon thereafter. Remember, reimbursements made from the Plan are generally not subject to federal income tax or withholding. Nor are they subject to Social Security taxes.

4. What Happens If I Terminate Employment?

If your employment is terminated during the Plan Year for any reason, your participation in the Plan will cease and any unused amounts are forfeited.

COBRA:

Under Federal law, if you, your spouse, and/or your covered dependents lose coverage under this Plan, then you, your spouse, and/or your covered dependents may be entitled to continuation of health care coverage. The Administrator will inform you of these rights if you lose coverage for any reason other than divorce, legal separation or a covered dependent ceasing to be a dependent. Generally, if we (and any related companies) employed twenty (20) or more employees “on a typical business day” in the preceding calendar year, health plan continuation must be made available for a period not to exceed eighteen (18) months if a loss of benefits occurs because of your termination of employment or reduction of hours, or for a period not to exceed three (3) years for any of the other reasons given in (b) and (c) below. Under certain circumstances, persons who are disabled at the time of termination of employment or reduction in hours and/or within the first 60 days of COBRA coverage may be eligible for continuation of coverage for a total of 29 months (rather than 18). You should check with the Administrator for more details regarding this extended coverage. However, in certain circumstances, this continuation coverage may be terminated for reasons such as failure to pay continuation coverage cost, coverage under another employer’s plan (whether as an employee or otherwise, provided the other employer’s health plan does not contain any exclusion or limitation with respect to any pre-existing condition of the beneficiary unless the pre-existing condition limit does not apply to, or is satisfied by, the qualified beneficiary by reason of the group health plan portability, access and renewability requirements of the Health Insurance Portability and Accountability Act, ERISA or the Public Health Services Act), termination of our health plan, a “for cause” termination of coverage for reasons such as fraud, or you (or the person entitled to continued coverage) become enrolled in Medicare. However, if you become enrolled in Medicare, your covered dependents may still qualify for continuation coverage. The cost of continuation coverage must be paid by the individual choosing such coverage; however, the cost may not exceed 102% of the cost of the same coverage for a “similarly situated” employee or family member. When the continuation coverage for a disabled

person is extended from 18 months to 29 months, the disabled person may be charged 150% (rather than 102%) of the cost of the coverage after expiration of the initial 18-month period.

- (a) If you would otherwise lose your health plan coverage under this Plan because of a termination of employment or reduction in hours, you may continue the health plan coverage provided under this Plan. However, this will not be a tax-deductible expense to you, absent unusual circumstances.
- (b) Your spouse may choose continuation coverage for himself or herself if he or she loses group health coverage for any of the following reasons: (1) your death; (2) your divorce or legal separation; or (3) you become enrolled in Medicare.
- (c) Your dependent children, including a child born to or placed for adoption with the Participant during the period of COBRA coverage, may choose continuation coverage for themselves if they lose group health coverage for any of the following reasons: (1) death of a parent; (2) your divorce or legal separation; (3) you become enrolled in Medicare; or (4) your dependent ceases to be a dependent child under the Plan.

It is your responsibility to notify the Plan Administrator of a divorce, legal separation or other change in marital status, change in a spouse's address, or a child losing dependent status under the plan, within sixty (60) days of the event. It is our responsibility to notify the Plan Administrator of your death, termination of employment or reduction in hours, the Employer's bankruptcy, or Medicare eligibility.

5. Family and Medical Leave Act (FMLA)

If you take leave under the Family and Medical Leave Act, you may revoke or change your existing elections for health insurance. If your coverage in these benefits terminates, due to your revocation of the benefit while on leave or due to your non-payment of contributions, you will be permitted to reinstate coverage for the remaining part of the Plan Year upon your return.

If you continue your coverage during your unpaid leave, you may pre-pay for the coverage, you may pay for your coverage on an after-tax basis while you are on leave, or you and your Employer may arrange a schedule for you to "catch up" your payments when you return.

6. Uniformed Services Employment and Reemployment Rights Act (USERRA)

If you are going into or returning from military service, you may have special rights to health care coverage under your Medical Reimbursement Arrangement under the Uniformed Services Employment and Reemployment Rights Act of 1994. These rights can include extended health care coverage. If you may be affected by this law, ask your Administrator for further details.

III GENERAL INFORMATION ABOUT OUR PLAN

This Section contains certain general information which you may need to know about the Plan.

1. General Plan Information

City of Mendota Medical Expense Reimbursement Plan is the name of the Plan.

Your Employer has assigned Plan Number 501 to your Plan.

The provisions of your Plan become effective on December 1, 2012.

2. Employer Information

Your Employer's name, address, and identification number are:

City of Mendota
643 Quincy Street
Mendota, Ca 93640
94-6000369

The Plan allows other employers to adopt its provisions. You or your beneficiaries may examine or obtain a complete list of employers, if any, who have adopted your Plan by making a written request to the Administrator.

3. Plan Administrator Information

The name, address and business telephone number of your Plan's Administrator are:

City of Mendota
643 Quincy Street
Mendota, Ca 93640
559-266-6456

The Plan Administrator keeps the records for the Plan and is responsible for the administration of the Plan. The Administrator will also answer any questions you may have about our Plan. The Plan Administrator has the exclusive right to interpret the appropriate plan provisions. Decisions of the Administrator are conclusive and binding. You may contact the Administrator for any further information about the Plan.

4. Third Party Claims Administrator Information

The name, address and business telephone number of the Third Party Claims Administrator are:

Administrative Solutions, Inc.
PO Box 5809
Fresno, CA 93755-5809
(559) 256-1320

The Third Party Claims Administrator is responsible for the actual processing of claims on behalf of the Plan Administrator.

5. Service of Legal Process

The Employer is the Plan's agent for service of legal process.

6. Type of Administration

The Plan is a Medical Expense Reimbursement Plan and the administration is provided through a Third Party Claims Administrator. The Plan is not funded or insured. Benefits are paid from the general assets of the Employer.

**IV
ADDITIONAL PLAN INFORMATION**

1. Your Rights Under ERISA

Plan Participants, eligible employees and all other employees of the Employer may be entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code. These laws provide that Participants, eligible employees and all other employees are entitled to:

- (a) examine, without charge, at the Administrator's office, all Plan documents, including insurance contracts, collective bargaining agreements, and a copy of the latest annual report (Form 5500 Series) filed by the Plan with the U.S. Department of Labor, and available at the Public Disclosure Room of the Pension and Welfare Benefits Administration.
- (b) obtain copies of all Plan documents and other Plan information upon written request to the Administrator. The Administrator may charge a reasonable fee for the copies.

- (c) Continue health care coverage for a Plan Participant, Spouse, or other dependents if there is a loss of coverage under the Plan as a result of a qualifying event. Employees or dependents may have to pay for such coverage.
- (d) Review this summary plan description and the documents governing the Plan on the rules governing COBRA continuation coverage rights.

If your claim for a benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or Federal court.

Under ERISA there are steps you can take to enforce the above rights. For instance, if you request materials from the Plan and do not receive them within thirty (30) days, you may file suit in a Federal court. In such a case, the court may request the Administrator to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Administrator. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or Federal court.

In addition, if a Plan Participant disagrees with the Plan's decision or lack thereof concerning the qualified status of a medical child support order, he or she may file suit in federal court.

In addition to creating rights for Plan Participants, ERISA imposes obligations upon the individuals who are responsible for the operation of the Plan. The individuals who operate the Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of the Plan Participants and their beneficiaries. No one, including the Employer or any other person, may fire a Plan Participant or otherwise discriminate against a Plan Participant in any way to prevent the Plan Participant from obtaining benefits under the Plan or from exercising his or her rights under ERISA.

If it should happen that Plan fiduciaries misuse the Plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees; for example, if it finds your claim is frivolous.

If you have any questions about the Plan, you should contact the Administrator. If you have any questions about this statement, or about your rights under ERISA or the Health Insurance Portability and Accountability Act (HIPAA), or if you need assistance in obtaining documents from the Administrator, you should contact the nearest office of the Pension and Welfare Benefits Administration, U.S. Department of Labor, listed in the telephone directory or the Division of Technical Assistance and Inquiries, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Pension and Welfare Benefits Administration.

2. How to Submit a Claim

When you have a Claim to submit for payment, you must:

- (1) Obtain a claim form from the Plan Administrator.
- (2) Complete the Employee portion of the form.
- (3) Attach copies of all bills from the service provider for which you are requesting reimbursement.

A Claim is defined as any request for a Plan benefit, made by a claimant or by a representative of a claimant that complies with the Plan’s reasonable procedure for making benefit Claims. The times listed are maximum times only. A period of time begins at the time the Claim is filed. Decisions will be made within a reasonable period of time appropriate to the circumstances. “Days” means calendar days.

Notification of whether Claim is accepted or denied 30 days

Extension due to matters beyond the control of the Plan 15 days

Insufficient information on the Claim:

Notification of 15 days

Response by Participant 45 days

Review of Claim denial 60 days

The Plan Administrator will provide written or electronic notification of any Claim denial. The notice will state:

- (1) The specific reason or reasons for the denial.

- (2) Reference to the specific Plan provisions on which the denial was based.
- (3) A description of any additional material or information necessary for the claimant to perfect the Claim and an explanation of why such material or information is necessary.
- (4) A description of the Plan's review procedures and the time limits applicable to such procedures. This will include a statement of the your right to bring a civil action under Section 502 of ERISA following a denial on review.
- (5) A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Claim; and
- (6) If the denial was based on an internal rule, guideline, protocol, or other similar criterion, the specific rule, guideline, protocol, or criterion will be provided free of charge. If this is not practical, a statement will be included that such a rule, guideline, protocol, or criterion was relied upon in making the denial and a copy will be provided free of charge to the claimant upon request.

When you receive a denial, you will have 180 days following receipt of the notification in which to appeal the decision. You may submit written comments, documents, records, and other information relating to the Claim. If you request, you will be provided, free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Claim.

The period of time within which a denial on review is required to be made will begin at the time an appeal is filed in accordance with the procedures of the Plan. This timing is without regard to whether all the necessary information accompanies the filing.

A document, record, or other information shall be considered relevant to a Claim if it:

- (1) was relied upon in making the Claim determination;
- (2) was submitted, considered, or generated in the course of making the Claim determination, without regard to whether it was relied upon in making the Claim determination;
- (3) demonstrated compliance with the administrative processes and safeguards designed to ensure and to verify that Claim determinations are made in accordance with Plan documents and Plan provisions have been applied consistently with respect to all claimants;
- (4) or constituted a statement of policy or guidance with respect to the Plan concerning the denied Claim.

The review will take into account all comments, documents, records, and other information submitted by the claimant relating to the Claim, without regard to whether such information was submitted or considered in the initial Claim determination. The review will not afford deference to the initial denial and will be conducted by a fiduciary of the Plan who is neither the individual who made the adverse determination nor a subordinate of that individual.

MEDICAL EXPENSE REIMBURSEMENT PLAN

BASIC PLAN DOCUMENT

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MEDICAL EXPENSE REIMBURSEMENT PLAN

As used in this Plan, the following words and phrases shall have the meanings set forth herein unless a different meaning is clearly required by the context:

ARTICLE I DEFINITIONS

- 1.1** “Administrator” means the individual(s) or committee appointed by the Employer to carry out the administration of the Plan. In the event the Administrator has not been appointed, or resigns from a prior appointment, the Employer shall be deemed to be the Administrator.
- 1.2** “Affiliated Employer” means any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code Section 414(m)) which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to Treasury regulations under Code Section 414(o).
- 1.3** “Code” means the Internal Revenue Code of 1986, as amended.
- 1.4** “Coverage Period” means the time period as set forth in the Adoption Agreement.
- 1.5** “Dependent” means any individual who qualifies as a dependent under Code Section 152 (as modified by Code Section 105(b)).
- 1.6** “Effective Date” means the date specified in the Adoption Agreement.
- 1.7** “Eligible Employee” means any Eligible Employee as elected in the Adoption Agreement and as provided herein. An individual shall not be an “Eligible Employee” if such individual is not reported on the payroll records of the Employer as a common law employee. In particular, it is expressly intended that individuals not treated as common law employees by the Employer on its payroll records are not “Eligible Employees” and are excluded from Plan participation even if a court or administrative agency determines that such individuals are common law employees and not independent contractors. Furthermore, Employees of an Affiliated Employer will not be treated as “Eligible Employees” prior to the date the Affiliated Employer adopts the Plan as a Participating Employer.

However, a self-employed individual as defined under Code Section 401(c) or a 2-percent shareholder as defined under Code Section 1372(b) shall not be eligible to participate in this Plan.

- 1.8** “Employee” means any person who is employed by the Employer. The term “Employee” shall also include any person who is an employee of an Affiliated Employer and any Leased Employee deemed to be an Employee as provided in Code Section 414(n) or (o).
- 1.9** “Employer” means the entity specified in the Adoption Agreement, any successor which shall maintain this Plan and any predecessor which has maintained this Plan. In addition, unless the context means otherwise, the term “Employer” shall include any Participating Employer which shall adopt this Plan.
- 1.10** “Employer Contribution” means the amounts contributed to the Plan by the Employer.
- 1.11** “ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.
- 1.12** “Leased Employee” means, effective with respect to Plan Years beginning on or after January 1, 1997, any person (other than an Employee of the recipient Employer) who, pursuant to an agreement between the recipient Employer and any other person or entity (“leasing organization”), has performed services for the recipient (or for the recipient and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient Employer. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the recipient Employer shall be treated as provided by the recipient Employer. Furthermore, Compensation for a Leased Employee shall only include Compensation from the leasing organization that is attributable to services performed for the recipient Employer.

A Leased Employee shall not be considered an employee of the recipient Employer if:

(a) such employee is covered by a money purchase pension plan providing: (1) a nonintegrated employer contribution rate of at least ten percent (10%) of compensation, as defined in Code Section 415(c)(3), but for Plan Years beginning prior to January 1, 1998, including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee’s gross income under Code Sections 125, 402(e)(3), 402(h)(1)(B), 403(b), or for Plan Years beginning on or after January 1, 2001 (or as of a date, no earlier than January 1, 1998, as specified in an addendum to the Adoption Agreement), 132(f)(4), (2) immediate participation, and (3) full and immediate vesting; and (b) leased employees do not constitute more than twenty percent (20%) of the recipient Employer’s nonhighly compensated workforce.

- 1.13** “Participant” means any Eligible Employee who has satisfied the requirements of Section 2.1 and has not for any reason become ineligible to participate further in the Plan.
- 1.14** “Plan” means this Basic Plan Document and the Adoption Agreement as adopted by the Employer, including all amendments thereto.
- 1.15** “Premiums” mean the Participant’s cost for any health plan coverage.

1.16 “Qualifying Medical Expenses” means any expense eligible for reimbursement under the Medical Expense Reimbursement Plan which would qualify as a “medical expense” (within the meaning of Code Section 213 and the rulings and Treasury regulations thereunder) of the Participant, the Participant’s spouse or a Dependent and not otherwise used by the Participant as a deduction in determining the Participant’s tax liability under the Code or reimbursed under any other health coverage, including a health Flexible Spending Account. Qualifying Medical Expenses covered by this Plan are limited as elected in the Adoption Agreement. Furthermore, a Participant may not be reimbursed for “qualified long-term care services” as defined in Code Section 7702B(c).

ARTICLE II PARTICIPATION

2.1 Eligibility

Any Eligible Employee shall be eligible to participate hereunder on the date such Employee satisfies the conditions of eligibility elected in the Adoption Agreement.

2.2 Effective Date of Participation

An Eligible Employee who has satisfied the conditions of eligibility pursuant to Section 2.1 shall become a Participant effective as of the date elected in the Adoption Agreement.

If an Employee, who has satisfied the Plan’s eligibility requirements and would otherwise have become a Participant, shall go from a classification of a noneligible Employee to an Eligible Employee, such Employee shall become a Participant on the date such Employee becomes an Eligible Employee or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee.

If an Employee, who has satisfied the Plan’s eligibility requirements and would otherwise become a Participant, shall go from a classification of an Eligible Employee to a noneligible class of Employees, such Employee shall become a Participant in the Plan on the date such Employee again becomes an Eligible Employee, or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee.

2.3 Termination of Participation

This Section shall be applied and administered consistent with any rights a Participant and the Participant’s Dependents may be entitled to pursuant to Code Section 4980B, Section 7.13 of the Plan, or any election on the Adoption Agreement. In the case of the death of the Participant, any remaining balances may only be paid out as reimbursements for Qualifying Medical Expenses and shall not constitute a death benefit to the Participant’s estate and/or the Participant’s beneficiaries.

ARTICLE III
BENEFITS

3.1 Establishment of Plan

- (a) This Medical Expense Reimbursement Plan is intended to qualify as a Medical Expense Reimbursement Plan under Code Section 105 and shall be interpreted in a manner consistent with such Code Section and the Treasury regulations thereunder.
- (b) A Participant shall be entitled to benefits under the Plan for a Plan Year in an amount that does not exceed the Participant's Medical Reimbursement Benefits. The amount of a Participant's Medical Reimbursement Benefits shall be uniformly available during the Plan Year.
- (c) Employer may, in its discretion, pay any or all of the above defined expenses in lieu of making reimbursement thereof. In such event, Employer shall be relieved of all further responsibility with respect to that particular medical expense.
- (d) Notwithstanding any other provisions of this Plan, no Participant shall receive Medical Reimbursement Benefits in excess of the Employer's Insured Health Plan Deductible per Plan Year.
- (e) Coverage hereunder shall be funded by the Employer from its general assets and, to the extent required by the Employer, by Employee contributions.

3.2 Nondiscrimination Requirements

- (a) It is the intent of this Medical Expense Reimbursement Plan not to discriminate in violation of the Code and the Treasury regulations thereunder.
- (b) If the Administrator deems it necessary to avoid discrimination under this Medical Expense Reimbursement Plan, it may, but shall not be required to reduce benefits provided to "highly compensated individuals" (as defined in Code Section 105(h)) in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner.

3.3 Payment of Benefits

- (a) Contributions to the Plan for the Plan Year shall be limited to the amounts determined by the Employer's Insured Health Plan Deductible and the Agreements entered into by Participants for the Plan Year. Contributions to the Plan shall be made to, and all Plan assets shall be held in, such accounts or funds as the Employer deems appropriate.
- (b) The Plan Administrator shall establish a separate Medical Reimbursement Benefits Account for each Participant in the Plan. The Plan Administrator shall credit a Participant's Medical Reimbursement Benefits Account with the amount of Medical Reimbursement Benefits to be made available to the Participant pursuant to the Agreement to Participate. The Plan Administrator shall charge a Participant's Medical Reimbursement Benefits Account in the amount of any reimbursements made to the Participant. The Plan Administrator may also establish a minimum reimbursement amount below which requests for reimbursement shall not be made during the Plan Year, but which must be made by the end of the Plan Year.
- © No benefit shall be paid hereunder unless a Participant has first submitted a written claim for benefits to the Plan Administrator and pursuant to the procedures set out in Article VII, below. Upon receipt of a properly documented claim, the Employer shall pay the Participant the benefits provided under this Plan. A Participant may submit a claim for reimbursement for an Eligible Medical Expense arising during the Plan Year at any time during the period that begins when the expense is incurred, and ends ninety (90) days after the close of the Plan Year.
- (d) Any Participant applying for reimbursement under this Plan shall submit to Employer (or the claims processing agent designated by Employer), an explanation of benefits (EOB) form under the Group Health Plan accompanied by all bills, receipts, canceled checks or other valid evidence of payment for verification by Employer prior to payment. A failure to comply herewith may, at the discretion of the Employer, terminate any such participant's right to reimbursement. All such bills, checks, receipts, notices, etc. may, at the discretion of Employer, be retained by it for such period as it shall choose.
- (e) Coverage under this Plan shall cease as of the earliest date on which any of the conditions set forth in Article II are not satisfied. Such Former Participant shall have the right to submit a claim for reimbursement for any Eligible Medical Expense arising during the Coverage Period at any time within 90 days after the end of the applicable Plan Year, and to receive benefits hereunder. Except as provided in Article V, below, the Participant shall not be entitled to reimbursement for expenses incurred after coverage ceases under this Plan.
- (f) Reimbursement under this plan shall be made by the Employer only in the event and to the extent that such reimbursement or payment is not provided for under

any insurance policy or policies, whether owned by the Employer or the participant or under any other health and accident plan. In the event that there is such a policy or plan in effect, providing for reimbursement or payment in whole or in part, then to the extent of the coverage under such policy or plan the Employer shall be relieved of any liability hereunder.

- (g) A Participant forfeits any amount of Medical Reimbursement Benefits under the Plan for a Plan Year if a claim for reimbursement is not provided to the Plan Administrator within 90 days after the last day of the Plan Year. Upon such forfeiture, the Participant's Medical Reimbursement Benefits Account shall be reduced to zero. At the discretion of the Employer, forfeitures of benefits under the Plan may be reallocated to Participants in any reasonable manner. Forfeitures of benefits may also be applied towards the cost of administering the Plan. Forfeitures of benefits shall become the sole property of the Employer.
- (h) The Plan is intended to pay benefits solely for otherwise unreimbursed medical expenses. Accordingly, it shall not be considered a group health plan for coordination of benefits purposes, and its benefits shall not be taken into account when determining benefits payable under any other plan.

**ARTICLE IV
ERISA PROVISIONS**

4.1 Claim for Benefits

Any claim for Benefits shall be made to the Administrator. The following timetable for claims and rules below apply:

Notification of whether claim is accepted or denied	30 days
Extension due to matters beyond the control of the Plan	15 days
Insufficient information on the Claim:	
Notification of	15 days
Response by Participant	45 days
Review of claim denial	60 days

The Administrator will provide written or electronic notification of any claim denial. The notice will state:

- (1) The specific reason or reasons for the denial.
- (2) Reference to the specific Plan provisions on which the denial was based.

- (3) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary.
- (4) A description of the Plan's review procedures and the time limits applicable to such procedures. This will include a statement of the right to bring a civil action under section 502 of ERISA following a denial on review.
- (5) A statement that the claimant is entitled to receive, upon request and free of charge reasonable access to, and copies of, all documents, records, and other information relevant to the Claim.
- (6) If the denial was based on an internal rule, guideline, protocol, or other similar criterion, the specific rule, guideline, protocol, or criterion will be provided free of charge. If this is not practical, a statement will be included that such a rule, guideline, protocol, or criterion was relied upon in making the denial and a copy will be provided free of charge to the claimant upon request.

When the Participant receives a denial, the Participant shall have 180 days following receipt of the notification in which to appeal the decision. The Participant may submit written comments, documents, records, and other information relating to the Claim. If the Participant requests, the Participant shall be provided, free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Claim.

The period of time within which a denial on review is required to be made will begin at the time an appeal is filed in accordance with the procedures of the Plan. This timing is without regard to whether all the necessary information accompanies the filing.

A document, record, or other information shall be considered relevant to a Claim if it:

- (1) was relied upon in making the claim determination;
- (2) was submitted, considered, or generated in the course of making the claim determination, without regard to whether it was relied upon in making the claim determination;
- (3) demonstrated compliance with the administrative processes and safeguards designed to ensure and to verify that claim determinations are made in accordance with Plan documents and Plan provisions have been applied consistently with respect to all claimants; or
- (4) constituted a statement of policy or guidance with respect to the Plan concerning the denied claim.

The review will take into account all comments, documents, records, and other information submitted by the claimant relating to the Claim, without regard to whether such information was submitted or considered in the initial claim determination. The review will not afford deference to the initial denial and will be conducted by a fiduciary of the Plan who is neither the individual who made the adverse determination nor a subordinate of that individual.

4.2 Named Fiduciary

The “named Fiduciaries” of this Plan are (1) the Employer and (2) the Administrator. The named Fiduciaries shall have only those specific powers, duties, responsibilities, and obligations as are specifically given them under the Plan including, but not limited to, any agreement allocating or delegating their responsibilities, the terms of which are incorporated herein by reference. In general, the Employer shall have the sole responsibility for providing benefits under the Plan; and shall have the sole authority to appoint and remove the Administrator; and to amend the elective provisions of the Adoption Agreement or terminate, in whole or in part, the Plan. The Administrator shall have the sole responsibility for the administration of the Plan, which responsibility is specifically described in the Plan. Furthermore, each named Fiduciary may rely upon any such direction, information or action of another named Fiduciary as being proper under the Plan, and is not required under the Plan to inquire into the propriety of any such direction, information or action. It is intended under the Plan that each named Fiduciary shall be responsible for the proper exercise of its own powers, duties, responsibilities and obligations under the Plan. Any person or group may serve in more than one Fiduciary capacity.

4.3 General Fiduciary Responsibilities

The Administrator and any other fiduciary under ERISA shall discharge their duties with respect to this Plan solely in the interest of the Participants and their beneficiaries and

- (a) for the exclusive purpose of providing Benefits to Participants and their beneficiaries and defraying reasonable expenses of administering the Plan;
- (b) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and
- (c) in accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with ERISA.

4.4 Nonassignability of Rights

The right of any Participant to receive any reimbursement under the Plan shall not be

alienable by the Participant by assignment or any other method, and shall not be subject to the rights of creditors, and any attempt to cause such right to be so subjected shall not be recognized, except to such extent as may be required by law.

ARTICLE V ADMINISTRATION

5.1 Plan Administration

The operation of the Plan shall be under the supervision of the Administrator. It shall be a principal duty of the Administrator to see that the Plan is carried out in accordance with its terms, and for the exclusive benefit of Employees entitled to participate in the Plan. The Administrator shall have full power to administer the Plan in all of its details, subject, however, to the pertinent provisions of the Code. The Administrator's powers shall include, but shall not be limited to the following authority, in addition to all other powers provided by this Plan:

- (a) To make and enforce such rules and regulations as the Administrator deems necessary or proper for the efficient administration of the Plan;
- (b) To interpret the Plan, the Administrator's interpretations thereof in good faith to be final and conclusive on all persons claiming benefits under the Plan;
- (c) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan and to receive benefits provided under the Plan;
- (d) To limit benefits for certain highly compensated individuals if it deems such to be desirable in order to avoid discrimination under the Plan in violation of applicable provisions of the Code;
- (e) To approve reimbursement requests and to authorize the payment of benefits; and

- (f) To appoint such agents, counsel, accountants, consultants, and actuaries as may be required to assist in administering the Plan.

Any procedure, discretionary act, interpretation or construction taken by the Administrator shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to comply with the terms of Code Section 105(h) and the Treasury regulations thereunder.

5.2 Examination of Records

The Administrator shall make available to each Participant, Eligible Employee and any other Employee of the Employer such records as pertain to their interest under the Plan for examination at reasonable times during normal business hours.

5.3 Indemnification of Administrator

The Employer agrees to indemnify and to defend to the fullest extent permitted by law any Employee serving as the Administrator or as a member of a committee designated as Administrator (including any Employee or former Employee who previously served as Administrator or as a member of such committee) against all liabilities, damages, costs and expenses (including attorney's fees and amounts paid in settlement of any claims approved by the Employer) occasioned by any act or omission to act in connection with the Plan, if such act or omission is in good faith.

ARTICLE VI AMENDMENT OR TERMINATION OF PLAN

6.1 Amendment

The Employer, at any time or from time to time, may amend any or all of the provisions of the Plan without the consent of any Employee or Participant.

6.2 Termination

The Employer is establishing this Plan with the intent that it will be maintained for an indefinite period of time. Notwithstanding the foregoing, the Employer reserves the right to terminate the Plan, in whole or in part, at any time. In the event the Plan is terminated, no further reimbursements shall be made.

**ARTICLE VII
MISCELLANEOUS**

7.1 Plan Interpretation

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner. This Plan shall be read in its entirety and not severed except as provided in Section 7.11.

7.2 Gender and Number

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

7.3 Written Document

This Plan, in conjunction with any separate written document which may be required by law, is intended to satisfy the written Plan requirement of Code Section 105 and any Treasury regulations thereunder.

7.4 Exclusive Benefit

This Plan shall be maintained for the exclusive benefit of the Employees who participate in the Plan.

7.5 Participant's Rights

This Plan shall not be deemed to constitute an employment contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon him as a Participant of this Plan.

7.6 Action by the Employer

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

7.7 No Guarantee of Tax Consequences

Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under the Plan will be excludable from the Participant's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether each payment under the Plan is excludable from the Participant's gross income for federal and state income tax purposes, and to notify the Employer if the Participant has reason to believe that any such payment is not so excludable. Notwithstanding the foregoing, the rights of Participants under this Plan shall be legally enforceable.

7.8 Indemnification of Employer by Participants

If any Participant receives one or more payments or reimbursements under the Plan that are not for a permitted Medical Expense such Participant shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payments or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional federal and state income tax (plus any penalties) that the Participant would have owed if the payments or reimbursements had been made to the Participant as regular cash compensation, plus the Participant's share of any Social Security tax that would have been paid on such compensation, less any such additional income and Social Security tax actually paid by the Participant.

7.9 Funding

Unless otherwise required by law, amounts made available by the Employer need not be placed in trust, but may instead be considered general assets of the Employer. Furthermore, and unless otherwise required by law, nothing herein shall be construed to require the Employer or the Administrator to maintain any fund or segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in, any fund, account or asset of the Employer from which any payment under the Plan may be made.

7.10 Governing Law

This Plan and Trust shall be construed and enforced according to the Code, ERISA, and the laws of the state or commonwealth in which the Employer's principal office is located (unless otherwise designated in the Adoption Agreement), other than its laws respecting choice of law, to the extent not pre-empted by ERISA.

7.11 Severability

If any provision of the Plan is held invalid or unenforceable, its invalidity or unenforceability shall not affect any other provisions of the Plan, and the Plan shall be construed and enforced as if such provision had not been included herein.

7.12 Headings

The headings and subheadings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

7.13 Continuation of Coverage

Notwithstanding anything in the Plan to the contrary, in the event any benefit under this Plan subject to the continuation coverage requirement of Code Section 4980B becomes unavailable, each qualified beneficiary (as defined in Code Section 4980B) will be entitled to continuation coverage as prescribed in Code Section 4980B.

7.14 Family and Medical Leave Act

Notwithstanding anything in the Plan to the contrary, in the event any benefit under this Plan becomes subject to the requirements of the Family and Medical Leave Act and regulations thereunder, this Plan shall be operated in accordance with Regulation 1.125-3.

7.15 Health Insurance Portability and Accountability Act

Notwithstanding anything in this Plan to the contrary, this Plan shall be operated in accordance with HIPAA and regulations thereunder.

7.16 Uniformed Services Employment and Reemployment Rights Act

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with USERRA and the regulations thereunder.

CERTIFICATE OF ADOPTING RESOLUTION

The undersigned Principal of City of Mendota, (the Employer) hereby certifies that the following resolutions were duly adopted by the board on December 1, 2012, and that such resolutions have not been modified or rescinded as of the date hereof:

RESOLVED, that the Medical Expense Reimbursement Plan effective December 1, 2012, presented to this meeting is hereby approved and adopted and that the proper officers of the Employer are hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Plan.

RESOLVED, that the Administrator shall be instructed to take such actions that are deemed necessary and proper in order to implement the Plan, and to set up adequate accounting and administrative procedures to provide benefits under the Plan.

The undersigned further certifies that attached hereto is a true copy of the Medical Expense Reimbursement Plan and the Summary Plan Description approved and adopted in the foregoing resolutions.

Principal

Date: _____

**BEFORE THE CITY COUNCIL
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MENDOTA TO APPROVE
THE MODIFIED CITY OF MENDOTA 401(K)
PROFIT SHARING PLAN TO EXCLUDE
NON-CALPERS PARTICIPANTS DEFFERING
LESS THAN 3% FROM THE EMPLOYER
MATCHING CONTRIBUTION**

RESOLUTION NO. 19-62

WHEREAS, on or about August 15, 1966, the City of Mendota (“Employer”) adopted the City of Mendota 401(k) Profit Sharing Plan (the “Plan”);

WHEREAS, pursuant to the terms of the Plan, the Employer has the power to amend and restate the Plan;

WHEREAS, on January 8, 2002, a resolution to amend the City of Mendota 401(k) Profit Sharing Plan was duly adopted by unanimous consent at a meeting of the City Council of the City of Mendota;

WHEREAS, on December 13, 2016 a resolution to amend the City of Mendota 401(k) Profit Sharing Plan was duly adopted by unanimous consent at a meeting of the City Council of the City of Mendota;

WHEREAS, such resolution approved December 13, 2016, has not been modified or rescinded; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mendota as follows:

- I. That the form of Plan presented to the City Council is a Cash or Deferred Profit Sharing Plan as authorized under Internal Revenue Code sections 401(a), 401(k), 402(g), 401(m) and 501(a). This restatement shall be effective January 1, 2019;
- II. That the City of Mendota 401(k) Profit Sharing Plan presented to the City Council is hereby adopted and approved and that the proper officers of the Employer are hereby authorized and directed to execute and deliver to the Plan Administrator one or more counterparts of the Plan and Trust.
- III. That the City will contribute an Employer Matching contribution based on a participating Non-CalPERS Employee's base salary, contingent on a participating Non-CalPERS Employee contributing at least three percent (3%) of his/her base

salary within the plan.

- IV. That the proper Officers of the Employer shall act as soon as possible to notify employees of the Employer of the restatement of the Plan and Trust. The undersigned further certifies that attached hereto as Exhibits A, B and C respectively are true copies of the City of Mendota 401(k) Profit Sharing Plan Adoption Agreement, Basic Plan Document and Trust Agreement approved and adopted in the above resolution.

Robert Silva, Mayor

ATTEST:

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 27th day of August, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Celeste Cabrera-Garcia, City Clerk

Exhibit A

**ADOPTION AGREEMENT
FOR THE ALL VALLEY ADMINISTRATORS LLC PROTOTYPE
NON-STANDARDIZED
CASH OR DEFERRED PROFIT SHARING PLAN
03-001**

**NON-STANDARDIZED PROTOTYPE
ADOPTION AGREEMENT
FOR THE ALL VALLEY ADMINISTRATORS LLC
CASH OR DEFERRED PROFIT SHARING PLAN**

The All Valley Administrators LLC Cash or Deferred Profit Sharing Plan ("the Plan") is hereby adopted by:

City Of Mendota
(the "Employer").

The Plan as applicable to the Employer shall be known as:

City of Mendota 401(k) Profit Sharing Plan

This Plan shall be funded solely by Insurance Contracts. (See Insurance Addendum)

The Effective Date of the Plan and Trust is: January 1, 2019. (May not be earlier than the first day of the initial Plan Year or for restatement of an existing plan, the first day of the current Plan Year, or the first day of the remedial amendment cycle, January 1, 2007.)

a. If the Plan contains a different effective date for a portion of the Plan, enter the date here. Otherwise, omit this question.

Note: The date(s) entered may not be earlier than the adoption date of the Plan.

a.1. Effective date for the cash or deferral portion of the Plan: August 15, 1966 (CODA effective date must be on or after the adoption date of this Plan.)

a.2. Effective date for the matching portion of the Plan: ___/___/___

a.3. Effective date for the profit sharing portion of the Plan: ___/___/___

Note: For New Plans, skip to Part I.

b. The Plan is an amendment of a preexisting Plan that was originally effective as of: ___/___/___.

c. The Plan is an amendment and restatement of a preexisting Plan that was originally effective as of: August 15, 1966.

d. Frozen Plan. This Plan was frozen effective: ___/___/___.

*** CAUTION ***

FAILURE TO FILL OUT THE ADOPTION AGREEMENT PROPERLY MAY
RESULT IN DISQUALIFICATION OF THE PLAN

PART I. The following identifying information pertains to the Employer, the Plan and the Trust:

1. **Employer Address:** 643 Quince Street
Mendota, CA 93640
2. **Employer Telephone:** (559) 266-6456
3. **Employer Tax ID:** 94-6000369
4. **Employer Fiscal Year End:** 12/31
5. **Three Digit Plan Number:** 001
6. **Plan Year:** 01/01 to 12/31
(Must be 12 consecutive months.)
7. **Short Plan Year:** ___/___/___ to ___/___/___
8. **Plan Agent:** City Of Mendota
643 Quince Street
Mendota, CA 93640
(559) 266-6456
9. **Plan Administrator:** City Of Mendota
643 Quince Street
Mendota, CA 93640
(559) 266-6456
10. **Plan Administrator ID Number:** 94-6000369
11. **IRS Determination Letter Date:** 03/31/2008
(Leave blank for a new plan.)
12. **IRS File Folder Number:** 313B6248501-001
(Leave blank for a new plan.)
13. **Legal Organization of Employer:**
- a. Sole Proprietorship
 - b. Partnership
 - c. C Corporation
 - d. S Corporation
 - e. Limited Liability Company (LLC)
 - f. Limited Liability Partnership (LLP)
 - g. Not for Profit Corporation
 - h. Professional Service Corporation
 - i. Other: **City Government**
(Must be legal entity recognized under federal income tax laws)
14. **Business Code:** 813000
(as used on Form 5500; 6 digit NAICS)
15. **State of Legal Construction:** California
16. **Date Business Commenced:** ___/___/___
17. **Other Members of a Controlled Group or Affiliated Service Group:**
(Only participating members should sign the Adoption Agreement. May check both controlled group and affiliated service group.)
- Controlled Group: (List participating members)
 - Affiliated Service Group: (List participating members)
18. **Trust Information:**

Note: An executed copy of the Trust Agreement must be attached to this Plan. The Plan and Trust Agreement must be read and construed together. The powers, rights, and responsibilities of the Trustee shall be those specified in the Trust Agreement.

- a. Plan Trustees: City Manager
Finance Director

- b. Trust ID Number: 94-6000369
- c. The Trust shall be known as: City of Mendota 401(k) Profit Sharing Plan
- d. Trust document
 - d.1. The Plan will use the All Valley Administrators LLC trust approved by the IRS for use with this Plan.
 - d.2. The Plan will use the _____ approved by the IRS for use with this Plan.
 - d.3. The Plan will use a separate trust provided by the Trustee. *Note: The use of this trust causes loss of reliance on the opinion letter. The Plan is no longer considered part of the pre-approved plan program.*
- e. Trustees as signatories to the Adoption Agreement, discretionary amendments and Interim Amendments.
 - e.1. Trustee must sign the Adoption Agreement, discretionary amendments, and Interim Amendments.
 - e.2. Trustee does not sign the Adoption Agreement, discretionary amendments, and Interim Amendments.

PART II. The Plan contains certain design features intended to provide the statutory requirement or most commonly adopted feature, but permits the selection of alternative features. **Unless specifically provided to the contrary, only one selection may be made for each design category.** Section references are to the Plan or the Trust. All capitalized terms are defined in the Plan or Trust.

A. Eligibility and Service Provisions

A1. Plan Features

The selection of Plan options must be consistent with the requirements for the types of Employer Contributions permitted under the Plan. For example:

ADP Test Safe Harbor: Any Employer ADP Test Safe Harbor Contribution must be allocated to all Eligible Employees who have reached age 21 and have at least one Year of Service consisting of 1000 hours during any Eligibility Computation Period.

QACA: For QACA Safe Harbor Contribution purposes, the definition of Eligible Employee may exclude those who have an affirmative Elective Deferral election. Any Employer QACA Safe Harbor Contribution must be allocated to all Eligible Employees who have reached age 21 and have at least one Year of Service consisting of 1000 hours during any Eligibility Computation Period.

SIMPLE K: Any Employer Non-Elective SIMPLE Contribution must be allocated to all Eligible Employees who have compensation for the Plan Year of at least \$5,000 (or a lesser amount specified in this Adoption Agreement). SIMPLE compensation is based on Code section 3401(a) wages. Employer contributions to a SIMPLE K must be 100% immediately vested.

Prevailing Wage: Under the Davis-Bacon Act, employer contributions to the qualified plan that are intended to satisfy the fringe benefit obligation must be universally available (i.e., no age or service requirements) and be 100% immediately vested in order to avoid "annualization." Ensure that plan selections will satisfy state and federal prevailing wage requirements as well as all qualification requirements.

The schedule of the Prevailing Wage Contributions MUST be attached to the Adoption Agreement and the Summary Plan Description (SPD). Select one of a, b, or c for each contribution type.

Elective Deferrals	Safe Harbor Employer Contributions (ADP test or QACA)	SIMPLE K Employer Contributions	Non-Elective Contributions	Matching Contributions	Prevailing Wage Contributions	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	a. The Plan permits this type of contribution.
<input type="checkbox"/>	N/A	N/A	N/A	N/A	N/A	a.1. Automatic Enrollment (ACR, EACA, or QACA) applies to Elective Deferrals.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b. Accounts for this type of contribution exist in the Plan. However, this type of contribution is no longer permitted.
<u> </u>	<u> </u>	<u>01/01/</u>	<u> </u>	<u> </u>	<u> </u>	Date as of which contributions were discontinued.
N/A	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	c. This type of contribution is not and was never permitted under the Plan.

A2. Eligible Employees - All Employees of adopting Employers, including Employees of certain related businesses and Leased Employees are eligible except for certain members of a collective bargaining unit and nonresident aliens with no U.S. source income, unless otherwise specified below. An Employer that is a member of a controlled group or affiliated service group must adopt this Plan for its Employees to be eligible to participate in this Plan. (Select all applicable. Selections other than a., d., and e. are not safe harbor and are subject to nondiscrimination testing.)

Eligible Employees for the entire Plan

a. All Employees are eligible except members of a collective bargaining unit and nonresident aliens with no U.S. source income. (Plan provision.)

In lieu of the Plan provision described in a., you may select the inclusions and exclusions below. For example, selecting only b. means that all Employees, including members of a collective bargaining unit, but excluding nonresident aliens with no U.S. income, will be eligible.

- b. Include members of collective bargaining unit.
- c. Include nonresident aliens with no U.S. source income.
- d. Exclude Employees acquired in a Code section 410(b)(6)(C) transaction.
- e. Exclude Employees not covered by a collective bargaining agreement with the following unions:

Excluded from the Entire Plan or a Portion of the Plan

Entire Plan	Elective Deferrals	Non-Elective Contributions	Matching Contributions	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	f. Exclude Leased Employees.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	g. Exclude Key Employees.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	h. Exclude all Highly Compensated Employees.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	i. Exclude Highly Compensated Employees who are Key Employees.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	j. Exclude Self-Employed Individuals.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	k. Exclude Employees whose compensation is based solely on commissions.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	l. Exclude Employees that are paid on an hourly basis.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	m. Exclude Employees that have a stated salary and are not paid on an hourly basis.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	n. Exclude Employees who are not eligible for Employer-provided health and welfare benefits.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	o. Exclude Employees whose compensation does not include prevailing wage payments. Include only "prevailing wage" employees.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	p. Other: (The exclusions entered here cannot result in the group of NHCEs participating under the Plan being only those NHCEs with the lowest amount of compensation and/or the shortest periods of Service and who may represent the minimum number of these Employees necessary to satisfy coverage under Code section 410(b).) (Cannot discriminate in favor of Highly Compensated Employees.)
				p. Specify the other exclusions.

Excluded from the ADP Test or QACA Safe Harbor Employer Contribution Portion of the Plan
(If Plan includes ADP Test or QACA Safe Harbor Employer Contributions, complete if applicable.)

- q. Exclude all Highly Compensated Employees.
- r. Exclude Highly Compensated Employees who are Key Employees.
- s. Exclude Employees with an affirmative Elective Deferral election. (Available for QACA only.)

A3. Highly Compensated Employee Determination - Highly Compensated Employee means any Employee who: (1) was a 5-percent owner at any time during the year or the preceding year, or (2) for the preceding year had compensation from the Employer in excess of \$80,000 (as adjusted by the Secretary pursuant to Code section 415(d)) and, if the Employer so elects, was in the top-paid group for the preceding year. The top-paid group election and the calendar year data election must apply consistently to the determination years of all plans of the Employer. (Select all applicable.)

- a. Plan Provision.
- b. Top-paid group election - Highly Compensated Employee determination limited to top 20% of Employees by pay.
- c. Calendar year data election - Method for determining greater than \$80,000 in compensation (as adjusted by the Secretary pursuant to Code section 415(d)), uses compensation paid during the calendar year beginning with or within the Look-Back Year. (Not available for calendar year plans.)
- d. The employee census for all plans will be based on:
 - d.1. The preceding Plan Year.
 - d.2. The calendar year beginning within the preceding Plan Year.
 - d.3. The 12-month period ending ___/___/_____. (Select this option when using the Plan Year of another plan of the Employer.)

A4. Computation Periods for Years of Service

Eligibility Computation Period - The initial Eligibility Computation Period begins on the Employment Commencement Date and ends on the anniversary thereof. The Eligibility Computation Periods subsequent to the initial Eligibility Computation Period:

- a. Continue to be based on the Employment Commencement Date. (Plans using the Elapsed Time Method for determining a Year of Service for Eligibility purposes must select this option.)
- b. Are the Plan Years beginning with the first Plan Year commencing prior to the first anniversary of the Employment Commencement Date. (Not available for Plans using the Elapsed Time Method for determining a Year of Service for Eligibility purposes.)

Computation Periods for Vesting Service and Credited Service - The computation period for a Year of Service shall be the 12-consecutive month period selected below:

Note: Credited Service is only applicable for Plans selecting certain Non-Elective and Matching Contribution allocation formulas (D13.k., D13.x., D13.z., D14.k, and D14.n.). You may omit Credited Service selections unless required by the allocation formula.

Vesting Service	Credited Service	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	c. The Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	d. The Employee's Eligibility Computation Period.
<input type="checkbox"/>	<input type="checkbox"/>	e. The 12-month period ending on the employment anniversary date.
<input type="checkbox"/>	<input type="checkbox"/>	f. The calendar year ending with or within the Plan Year.

A5. Hour of Service - Service is credited on the basis of actual hours for which the Employee is paid or entitled to payment. The Employer may elect to use the Elapsed Time Method to determine Years of Service. (Complete a. or b. for each purpose.)

Service for Eligibility Purposes	Vesting Service	Credited Service	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	a. Service is based on actual hours and following equivalency will be used when records of hours are not maintained: (Also select one of a.1. through a.4.)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a.1. Days Worked - An Employee will be credited with 10 Hours of Service if he is credited with at least 1 Hour of Service during the day.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a.2. Weeks Worked - An Employee will be credited with 45 Hours of Service if he is credited with at least 1 Hour of Service during the week.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a.3. Semi-Monthly or Two-Week (Bi-weekly) Payroll Period - An Employee will be credited with 95 Hours of Service if he is credited with at least 1 Hour of Service during the payroll period.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	a.4. Months Worked - An Employee will be credited with 190 Hours of Service if he is credited with at least 1 Hour of Service during the month.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b. Service is determined under the Elapsed Time Method, and fractional years are measured using: (Also select one of b.1. through b.5. and one of b.6. through b.9.)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b.1. Exact dates in years
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b.2. Exact dates in months
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b.3. Calendar month granted if Employee credited with an Hour of Service
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b.4. Nearest calendar months
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b.5. Completed calendar months
			and rounded to the nearest:
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b.6. 1/12th of a year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b.7. 1/10th (.1) of a year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b.8. 1/100th (.01) of a year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b.9. 1/1000th (.001) of a year.

A6. Years of Service

Note: For Eligibility and Vesting purposes, no more than 1000 hours may be required, though a lesser number may be specified. For Credited Service, no more than 2000 hours may be required for a Year of Service, with proration required for 1000 hours or more.

Year of Service for Eligibility Purposes - If service for eligibility purposes is based on Hours of Service, a Year of Service is granted for each computation period during which at least 1000 hours are credited, unless a lesser number of hours is specified in A8.d.1.

Years of Vesting Service (Select one of a. through c. or d.)

Determined based on Hours of Service method using one of the following:

- a. At least 1000 hours credited during a computation period for Vesting Service. (Plan provision.)
- b. ____ Hours of Service (not to exceed 1000) credited during a computation period for Vesting Service.
- c. ____ Hours of Service (not to exceed 1000 hours), pro-rata year given if less than specified hours.
- d. Determined under the Elapsed Time Method using the following measure:
 - d.1. ____ months of service (May not require more than 12 months.)
 - d.2. ____ days of service (May not require more than 365 days.)

All Years of Vesting Service are taken into account UNLESS you exclude certain years. (Select either e. or any combination of f. through h.)

- e. Include all Years of Vesting Service.
- f. Exclude Years of Vesting Service prior to age 18.
- g. Exclude Years of Vesting Service prior to the original Effective Date of this Plan.
- h. Exclude Years of Vesting Service prior to the original Effective Date of predecessor plan - Effective Date of predecessor plan: ____/____/____.

Year of Credited Service

Complete if the Non-Elective and Matching Contribution allocation formula is based on Credited Service (D13.k., D13.x., D13.z., D14.k., or D14.n.) and Credited Service is based on Hours of Service. (If Credited Service is based on the Elapsed Time Method, omit and refer to the Definition "Elapsed Time Method.")

- i. ____ Hours of Service (not to exceed 1000).
- j. ____ Hours of Service, pro-rata year given if less than specified hours (not to exceed 2000).
- k. ____ Hours of Service, pro-rata year given if less than specified hours provided at least ____ hours are earned (first blank not to exceed 2000, second blank not to exceed 1000).

Years of Credited Service are granted for:

- l. Years while a Participant.
- m. All years with the Employer.
- n. Limited to ____ years.

A7. Service with Predecessor Employers/Prior Employers - Service with Predecessor Employers is treated as service for the Employer, if the Employer maintains the plan of the Predecessor Employer. In all other cases, predecessor service is granted as specified below. Where applicable, identify the Predecessor Employer(s) and any document(s) that provide(s) for the crediting of service with such predecessor(s).

- a. No predecessor service is being granted.
- b. The Plan credits predecessor service as specified in this item b.

Service with the following entities shall be credited as service under this Plan:

Service with the above entities has been determined under the terms of the following documents, if any:

The granting of predecessor service is due to:

- b.1. Adoption of predecessor's plan.
- b.2. Merger of predecessor's plan and this Plan.
- b.3. Spin-off of portion of predecessor's plan to form this Plan.
- b.4. Termination of predecessor's plan.
 - b.4.A. Assets and liabilities transferred to this Plan.
 - b.4.B. Assets of prior plan distributed. Service granted for those employed as of ___/___/____.

Such service credit will be limited to 5 years, and will be counted for (select all applicable):

- b.5. Eligibility.
- b.6. Vesting.
- b.7. Contribution Allocations.
- b.8. Attainment of Early or Normal Retirement Age.
- c. The Plan credits service with prior employers as specified in this item c.

Service with the following prior employers shall be credited as service under this Plan:

Such service credit will be limited to 5 years, and will be counted for (select all applicable):

- c.1. Eligibility.
- c.2. Vesting.
- c.3. Contribution Allocations.
- c.4. Attainment of Early or Normal Retirement Age.

A8. Eligibility Requirements for Elective Deferral, Non-Elective Contributions, Matching Contributions (Section 2.1.1) and Elective Deferral under an Eligible Automatic Contribution Arrangement (EACA) (Section 2.2.3) - An Employee is eligible to participate in a portion of the Plan, if he satisfies the following requirements during the Eligibility Computation Period. (Select all applicable. Selecting more than one option means that an Employee must meet all indicated requirements for eligibility, except for option f. "Employed on". Option f. overrides any other requirement.)

Elective Deferrals (non-EACA) and ADP Test or QACA Safe Harbor	EACA Elective Deferrals	Non-Elective Contributions	Matching Contributions	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. No age or service required.
N/A	N/A	<input type="checkbox"/>	<input type="checkbox"/>	b. Use the eligibility requirements selected for Elective Deferrals.
<input type="checkbox"/>	N/A	N/A	N/A	b.1. For Employer Safe Harbor (ADP test or QACA) Contributions, apply the statutory exclusion of minimum age of 21 and service requirement of a Year of Service consisting of 1000 Hours of Service during an Eligibility Computation Period. (Select additional options to specify the eligibility requirements for Elective Deferrals.)

Elective Deferrals (non-EACA) and ADP Test or QACA Safe Harbor	EACA Elective Deferrals	Non-Elective Contributions	Matching Contributions	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. Minimum age of ____ years. (Not to exceed 21.)
(age)	(age)	(age)	(age)	Specify age.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	d. Service requirement. (If a service requirement applies, select one of d.1., d.2., or d.3.)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d.1. Minimum of ____ Year(s) of Service, where ____ Hours of Service are required for a Year of Service for Eligibility purposes. (Cannot require more than 1 year for Elective Deferrals, ADP Test or QACA Safe Harbor, or 2 years for other Employer Contributions. If 2 years is selected, must select full and immediate vesting. Also, cannot require more than 1000 Hours of Service during the 12-month computation period for a Year of Service.)
1 year	years	years	years	Specify years required. Whole years only.
hours	hours	hours	hours	Specify number of hours within 12-month computation period. (Cannot exceed 1000 Hours of Service).
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d.2. Minimum of ____ months (cannot require more than 12 months for Elective Deferrals) of service in which the Employee is credited with ____ Hours of Service in each month, but in no event will the Employee be required to complete more than 1 Year of Service as defined in Part 1 Article II. (If 24 months is selected, must select full and immediate vesting.)
months	months	months	months	Specify months.
hours	hours	hours	hours	Specify hours to be completed during a month.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d.2.A Months must be consecutive, but in no event will the Employee be required to complete more than 1 Year of Service as defined in Part 1 Article II.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	d.3. Minimum of ____ months of service - use Elapsed Time Method. (Cannot require more than 24 months (12 months for Elective Deferrals/ADP test or QACA safe harbor). If 24 months is selected, must select full and immediate vesting. An Employee cannot be required to complete any specified number of Hours of Service.)
6.0 months	months	6.0 months	6.0 months	Specify months.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	e. In determining the applicable Entry Date, the service requirement described above is satisfied as soon as the hours or months requirements are met, not at the end of the Eligibility Computation Period.
<i>Note: Elections in f. below require testing under 1.401(a)(4)-4 Benefits, Rights, and Features.</i>				
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	f. Eligible Employees employed on ____/____/____ are eligible as indicated below.
____/____/____	____/____/____	____/____/____	____/____/____	Specify "employed on" date
				Select either or both of the following, if Employees must also meet the eligibility requirements selected above:
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	f.1. Age requirement.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	f.2. Service requirement. (If not selected, employees that would otherwise never work 1000 hours per year will enter the Plan.)
				Employees who meet these requirements shall enter the Plan as of:
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	f.3. The date specified below. (Prior to next Plan Entry Date)

Elective Deferrals (non-EACA) and ADP Test or QACA Safe Harbor	EACA Elective Deferrals	Non-Elective Contributions	Matching Contributions	
____/____/____	____/____/____	____/____/____	____/____/____	Specify the Entry Date.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	f.4. The Effective Date of this document.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	f.5. The next Plan Entry Date.

A9. **Break in Service** - A Break in Service occurs, if an Employee fails to complete more than 500 Hours of Service during the applicable computation period unless a lesser number is specified.
Note: A Year of Service and a Break in Service must be measured on the same computation period. A Break in Service for vesting purposes must use the same computation period used to determine a Year of Vesting Service.

Eligibility	Vesting	Credited Service	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	a. Plan Provision. A Break in Service will occur if the Employee fails to complete more than 500 Hours of Service.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b. A Break in Service will occur if the Employee fails to complete more than ____ (not to exceed 500) Hours of Service.
____	____	____	Specify hours, not to exceed 500.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. A Break in Service will occur after a one year period of severance under the Elapsed Time Method.

A10. **Entry Date for Elective Deferral (including EACA), Non-Elective Contributions, and Matching Contributions (Section 2.1.2)** - An Employee who satisfies the eligibility requirements enters the Plan on the Entry Date. (Specify the Entry Date for each type of contribution permitted under the Plan.)

Elective Deferrals (and ADP or QACA Safe Harbor, if applicable)	Non-Elective Contributions	Matching Contributions	
N/A	<input type="checkbox"/>	<input type="checkbox"/>	a. Same selection as Entry Date for Elective Deferrals.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b. Semiannual - First Entry Date: ____/____ or the date 6 months later, coincident with or next following satisfaction of the eligibility requirements.
____/____	____/____	____/____	Specify first entry date in the Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. Quarterly - First Entry Date: ____/____ and the same day of the month occurring in each successive 3-month period, coincident with or next following satisfaction of the eligibility requirements.
____/____	____/____	____/____	Specify first entry date in the Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d. Monthly - The _____ day of each calendar month of the Plan Year, coincident with or next following satisfaction of the eligibility requirements
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Select the day of the month.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	e. First day of next Plan Year coincident with or next following satisfaction of the eligibility requirements, but in no event later than ____ months (not to exceed 6) after satisfaction of the requirements.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Specify number of months, not to exceed 6.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	f. First day of the next Plan Year after satisfaction of the eligibility requirements, but in no event later than ____ months (not to exceed 6) after satisfaction of the requirements.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Specify number of months, not to exceed 6.

Elective Deferrals (and ADP or QACA Safe Harbor, if applicable)	Non-Elective Contributions	Matching Contributions	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	g. First day of the _____ month (not more than 6th) after satisfaction of the eligibility requirements, but in no event later than the first day of the next Plan Year. Select month.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	h. The _____ (first or last) day of the Plan Year in which the eligibility requirements are satisfied. (If "last" is used, eligibility requirements, item A8 above, cannot exceed 6 months of service and age 20-1/2 or 18 months of service and age 20-1/2 with immediate (100%) vesting.) Select "first" or "last."
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	i. First day of the Plan Year nearest to the date the eligibility requirements are satisfied.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	j. First day of the Plan Year coincident with or next following the date the eligibility requirements are satisfied, but in no event later than 6 months after satisfying the eligibility requirements.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	k. First day of the Plan Year coincident with or next following the satisfaction of the eligibility requirements. (Eligibility requirements, item A8. above, cannot exceed 6 months of service and age 20-1/2 or 18 months of service and age 20-1/2 with immediate (100%) vesting.)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	l. Anniversary Date coincident with or next following the satisfaction of the eligibility requirements but in no event later than the first day of the next Plan Year or 6 months after satisfying the eligibility requirements.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	m. Anniversary Date of the Plan Year in which the eligibility requirements are satisfied, but in no event later than 6 months after satisfying the eligibility requirements.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	n. Date of satisfaction of the eligibility requirements.

B. Date Provisions

B1. Anniversary Date - The Anniversary Date is:

- a. The last day of the Plan Year.
- b. The first day of the Plan Year.
- c. ___/___ of each Plan Year. (Enter month and day)
- d. Other - Specify: _____ (Must be at least annually.)

B2. Valuation Date

Note: Participant controlled investments, as specified in item H3., are valued daily, unless otherwise specified in item B2.k. below.

The Valuation Date is the date or dates on which the assets of the Trust Fund are valued and Participants' Accounts determined. (Select all applicable.)

- a. Last day of the Plan Year.
- b. Semiannually on the last day of each 6 month period beginning with the first day of the Plan Year.
- c. Quarterly on the last day of each 3 month period beginning with the first day of the Plan Year.
- d. Monthly on the last day of each calendar month of the Plan Year.
- e. Bi-Monthly beginning on the last day of the second month of the Plan Year and at two month intervals thereafter on the last day of the month.
- f. Semi-Monthly on the 15th day and last day of each calendar month.
- g. Weekly.
- h. Bi-Weekly.
- i. Last day of each pay period.
- j. Daily.
- k. Other. (e.g., If different assets have different valuation dates, such as Segregated Funds are valued on a different basis, specify in this item) Specify: _____ (Must be at least annually)

Note: For purposes of computing the Top-Heavy Ratio: For the first Plan Year, the Valuation Date is the last date of that year. For any subsequent Plan Year, the Valuation Date is the last Valuation Date in the prior Plan Year.

B3. Normal Retirement Age - For each Participant the Normal Retirement Age is: (Select one or more of a. through l. If more than one option is selected, Normal Retirement Age is attained on the first date the requirements of any option are met, but in no event later than age 65 and the 5th anniversary of participation in the Plan. For this purpose only, participation is assumed to commence as of the first day of the first Plan Year in which the Employee became a Participant.)

- a. Statutory: The later of age 65 or the 5th anniversary of participation in the Plan. For this purpose only, participation is assumed to commence as of the first day of the first Plan Year in which the Employee became a Participant.
- b. Age 65 (not to exceed 65 and may not be less than 55).
- c. Age ___ and ___ Years of Service.
- d. Age ___ and ___ Years of Participation.
- e. Sum of age and Years of Service equals ___.
- f. Sum of age and Years of Participation equals ___.
- g. Age ___ and the sum of the age and Years of Service equals ___.
- h. Age ___ and the sum of age and Years of Participation equals ___.
- i. Age ___ and the ___ anniversary of employment.
- j. Age ___ and the ___ anniversary of actual participation in the Plan.
- k. Age ___ and the ___ anniversary of the participation commencement date. For this purpose only, participation is assumed to commence as of the first day of the first Plan Year in which the Employee became a Participant.
- l. Other - Specify: _____, but in no event later than the later of age 65 or the 5th anniversary of participation. (Cannot discriminate in favor of Highly Compensated Employees.)

B4. Normal Retirement Date - The Normal Retirement Date is:

- a. The actual date Normal Retirement Age is attained.
- b. The first day of the month in which Normal Retirement Age is attained.
- c. The first day of the month nearest the date Normal Retirement Age is attained.
- d. The first day of the month coincident with or next following the date Normal Retirement Age is attained.
- e. Anniversary Date of the Plan Year in which Normal Retirement Age is attained, but in no event later than 6 months following attainment of Normal Retirement Age.
- f. Anniversary Date nearest the date Normal Retirement Age is attained.
- g. Anniversary Date coincident with or next following the date Normal Retirement Age is attained, but in no event later than 6 months following attainment of Normal Retirement Age.
- h. Anniversary Date coincident with or next preceding the date Normal Retirement Age is attained.
- i. The last day of the month in which Normal Retirement Age is attained.
- j. The last day of the month nearest the date Normal Retirement Age is attained.
- k. The last day of the month coincident with or next following the date Normal Retirement Age is attained.

B5. Early Retirement Age - For each Participant, the Early Retirement Age is: (Select all that apply. If more than one option is selected, the Participant attains Early Retirement Age at the earliest age when any of the selected requirements are satisfied.)

Note: In no event shall Early Retirement Age exceed Normal Retirement Age.

- a. The Plan does not provide an Early Retirement Age. (Skip Question B6.)

- b. Age 60.
- c. Age ____ and ____ Years of Service.
- d. Age ____ and ____ Years of Participation.
- e. ____ years prior to the Normal Retirement Age.
- f. Sum of age and Years of Service equals ____.
- g. Sum of age and Years of Participation equals ____.
- h. Age ____ and the sum of the age and Years of Service equals ____.
- i. Age ____ and the sum of age and Years of Participation equals ____.
- j. ____ Years of Service.
- k. ____ Years of Participation.
- l. Age ____ and the ____ anniversary of employment.
- m. Age ____ and the ____ anniversary of actual participation in the Plan.

B6. Early Retirement Date - The Early Retirement Date is:

- a. The actual date Early Retirement Age is attained.
- b. The first day of the month in which the Early Retirement Age is attained.
- c. The first day of the month nearest the date Early Retirement Age is attained.
- d. The first day of the month coincident with or next following the date Early Retirement Age is attained.
- e. Anniversary Date of the Plan Year in which the Early Retirement Age is attained.
- f. Anniversary Date nearest the date Early Retirement Age is attained.
- g. Anniversary Date coincident with or next following the date Early Retirement Age is attained.
- h. Anniversary Date coincident with or next preceding the date Early Retirement Age is attained.
- i. The last day of the month in which the Early Retirement Age is attained.
- j. The last day of the month nearest the date Early Retirement Age is attained.
- k. The last day of the month coincident with or next following the date Early Retirement Age is attained.

B7. Disability - The Plan requires the Adoption Agreement to specify the meaning of the term "Disability" and that an Employee or Participant is "Disabled" if he has a Disability. The Plan Administrator shall make all determinations in connection with such issues in a uniform, nondiscriminatory manner. An Employee or Participant has a "Disability" if:

Select a. or one or more of b. through d. Selecting more than one option means that an Employee or Participant has a Disability as of the earliest date he meets one of the selected options.

- a. No disability benefits are provided and there are no disability-related vesting provisions.
- b. He suffers from a medically determinable physical or mental impairment that may be expected to result in death or to last for a continuous period of not less than ____ (at least 12) months and that renders him incapable of performing his duties.
- c. The Social Security Administration has determined that he is eligible to receive Social Security disability benefits.
- d. He has begun to receive payments under the long term disability program or a comparable disability program maintained by the Employer.

B8. Limitation Year - The Limitation Year for purposes of the limitation imposed by Code section 415 is:

- a. The Plan Year.
- b. Calendar year coinciding with or ending within the Plan Year.
- c. The 12-consecutive month period ending ____/____.
- d. Employer Fiscal Year ending with or within Plan Year.
- e. The 12-consecutive month period ending _____ (Specify. e.g. "the last Friday in February") with or within Plan Year.

C. Compensation

C1. Compensation (Section 3.2.5(a) and Definitions) - For purposes of the Plan, a Participant's Compensation is based on one of the Code section 415 definitions of Compensation, as selected below, and measured over the Compensation Computation Period, as selected in C3.

Note: Use caution when selecting different definitions of Compensation for the various Plan purposes. Column 1, Plan Compensation, means Compensation as that defined term is used for any Plan purpose, including for Elective Deferral purposes, except as indicated under columns 2 or 3.

Plan Compensation (e.g. Elective Deferral, Match and Non-Elective purposes)	Compensation for Safe Harbor Employer Contribution purposes (ADP Test or QACA)	Compensation for Code sec. 415 and 416 purposes	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	a. Wages, tips, and other compensation entered on Box 1 of Form W-2.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b. Code section 3401(a) compensation (compensation for FICA purposes).
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. Code section 415(c)(3) compensation.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d. Simplified Code section 415(c)(3) compensation, as defined in Treas. Reg. 1.415(c)-2(d)(2).
N/A	<input checked="" type="checkbox"/>	N/A	e. Not applicable. Not a Safe Harbor CODA plan.

Deferrals - Specify the deferrals to be excluded from the definition used for Plan Compensation. All salary deferrals must be included or excluded to maintain a Code sec. 414(s) safe harbor definition of Compensation.

Indicate the **exclusions** from among the salary deferrals by selecting f. or any of g. through i. Omit to **include** all salary deferrals in the applicable definition of Compensation.

Plan Compensation (including for Elective Deferral purposes)	Safe Harbor Employer Contributions	Non-Elective Contributions	Matching Contributions	
<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	f. All of the items listed in g. through i.
<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	g. 402(h)(1)(B) (SEP deferrals).
<input checked="" type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	<input checked="" type="checkbox"/> Exclude	<input checked="" type="checkbox"/> Exclude	h. 125 (Cafeteria Plan).
<input checked="" type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	<input checked="" type="checkbox"/> Exclude	<input checked="" type="checkbox"/> Exclude	i. 132(f)(4) (Transportation).
<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	j. 402(e)(3) (401(k) and 403(b) deferrals).
<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	k. 457(b) deferrals.
<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	l. 408(p) (Simple Retirement Account 402(k) deferrals).

Deemed Sec. 125 Compensation - The Plan may include Deemed Sec 125 Compensation in Compensation. (Select m. or one of n. or o. for the basic definition of Compensation selected above. This selection does not affect the safe harbor status of the definition of Compensation.)

m. Not applicable. No Cafeteria Plan or no Deemed Sec. 125 Compensation.

Plan Compensation (including for Elective Deferral purposes)	Safe Harbor Employer Contributions	Non-Elective Contributions	Matching Contributions	Compensation for Code Sec. 415 and 416 purposes!	
<input type="checkbox"/> Include	<input type="checkbox"/> Include	<input type="checkbox"/> Include	<input type="checkbox"/> Include	<input type="checkbox"/> Include	n. Include Deemed Sec. 125 Compensation.
<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	<input checked="" type="checkbox"/> Exclude	o. Exclude Deemed Sec. 125 Compensation.

C2. Modifications to Compensation - For Plan purposes as indicated by the columns below, indicate the modifications to Compensation.

Exclusions - Plan Compensation shall exclude the following (No exclusions in this area, other than g., taxable employee benefits, are permitted for Code section 414(s) safe harbor Compensation.):

Plan Compensation (including for Elective Deferral purposes)	Safe Harbor Employer Contributions	Non-Elective Contributions	Matching Contributions	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	a. No exclusions from Compensation.
N/A	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b. Same as selections for Plan Compensation.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. Overtime.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d. Commissions.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	e. Discretionary bonuses.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	f. Bonuses.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	g. Taxable employee benefits.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	h. In excess of the specified dollar amount.
\$ _____	\$ _____	\$ _____	\$ _____	Specify the dollar amount.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	i. Other exclusion - specify. (Cannot discriminate in favor of Highly Compensated Employees.)
				Specify the other exclusion from Compensation.

Final Code Sec. 415 regulations and HEART Act Compensation - Select "include" or "exclude" regarding the treatment as Compensation of amounts described below. These selections do not affect the safe harbor status of the definition of Compensation.

Plan Compensation (including for Elective Deferral purposes)	Compensation for ADP Test or QACA Safe Harbor Employer Contribution purposes	Compensation for Code sec. 415 and 416 purposes	
<input type="checkbox"/> Include	<input type="checkbox"/> Include	<input type="checkbox"/> Include	j. Include amounts paid during the first few weeks of the next Limitation Year. (Plan Provision on the 2007 Defined Contribution Plan Interim Amendment.)
<input checked="" type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	<input checked="" type="checkbox"/> Exclude	k. Exclude amounts paid during the first few weeks of the next Limitation Year.

Compensation for nonparticipating nonresident aliens - For administrative convenience in determining Key and Highly Compensated Employees, the Employer may elect to exclude compensation paid to nonresident aliens who are not Participants.

- l. Exclude compensation paid to nonresident aliens who do not participate to the extent compensation is excluded from gross income and not effectively connected with a U.S. trade or business
- m. Include compensation paid to nonresident aliens who do not participate, though compensation is excluded from gross income and not effectively connected with a U.S. trade or business

Salary Continuation while on Military Leave

Note: Differential Wage Payments are salary continuation payments received while on active military duty for more than 30 days. For Plan Years beginning on or after January 1, 2008, Differential Wage Payments are included in Compensation for Code sec. 415 and 416 purposes.

Plan Compensation (including for Elective Deferral purposes)	Compensation for ADP Test or QACA Safe Harbor Employer Contribution purposes	
<input checked="" type="checkbox"/> Include	<input type="checkbox"/> Include	n. Include Differential Wage Payments.
<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	o. Exclude Differential Wage Payments.
<input checked="" type="checkbox"/> Include	<input type="checkbox"/> Include	p. Include salary continuation payments for military service that do not meet the definition of Differential Wage Payments in Compensation for Code sec. 415 and 416 purposes and for Plan purposes as indicated.
<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	q. Exclude salary continuation payments for military service that do not meet the definition of Differential Wage Payments.

Salary Continuation for Disabled Participants - Select one of r. or s., to include, or select t. to exclude salary continuation payments to Disabled Participants as Compensation.

Plan Compensation (including for Elective Deferral purposes)	Compensation for ADP Test or QACA Safe Harbor Employer Contribution purposes	Compensation for Code sec. 415 and 416 purposes	
<input type="checkbox"/> Include	<input type="checkbox"/> Include	<input type="checkbox"/> Include	r. Include Compensation paid to any Participant who is permanently and totally Disabled. (Check this box only if salary continuation applies to all Participants who are permanently and totally Disabled for a fixed or determinable period.)
<input type="checkbox"/> Include	<input type="checkbox"/> Include	<input type="checkbox"/> Include	s. Include Compensation paid to any Participant who is not Highly Compensated and who is permanently and totally Disabled.
<input checked="" type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	<input checked="" type="checkbox"/> Exclude	t. Exclude Compensation paid to Participants who are permanently and totally Disabled. (Plan Provision on the 2007 Defined Contribution Plan Interim Amendment)

Post-Severance Compensation - Select to "include" or "exclude" certain items as Post-Severance Compensation. These selections do not affect the safe harbor status of the definition of Compensation.

- u. Apply the Plan's rules regarding certain Post-Severance Compensation in Limitation Years beginning after ____/____/_____. (Select this option and specify a date before July 1, 2007, if the provisions of the Plan regarding the inclusion of certain Post-Severance Compensation in the definition of Compensation applied prior to July 1, 2007.)

Plan Compensation (including for Elective Deferral purposes)	Compensation for ADP Test or QACA Safe Harbor Employer Contribution purposes	Compensation for Code sec. 415 and 416 purposes	
<input checked="" type="checkbox"/> Include	<input type="checkbox"/> Include	<input checked="" type="checkbox"/> Include	v. Include Post-Severance Compensation that is for unused sick, vacation or leave pay.
<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	w. Exclude Post-Severance Compensation that is for unused sick, vacation or leave pay. (Plan Provision on the 2007 Defined Contribution Plan Interim Amendment.)

Complete x. or y. only if Compensation for that Plan purpose is defined as Code section 415(c)(3) compensation.

<input type="checkbox"/> Include	<input type="checkbox"/> Include	<input type="checkbox"/> Include	x. Include amounts received post-severance pursuant to an unfunded deferred compensation plan.
<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	<input type="checkbox"/> Exclude	y. Exclude amounts received post-severance pursuant to an unfunded deferred compensation plan. (Plan Provision on the 2007 Defined Contribution Plan Interim Amendment.)

- C3. Compensation Computation Period** - The Compensation Computation Period for QACA and ADP Test Safe Harbor Contributions is the Plan Year. (Specify the Compensation Computation Period for other Plan purposes below. Also specify the Compensation Computation Period during the initial year of Participation, for each Plan purpose, including Safe Harbor Contributions, in item g. or h. Select all applicable.)

Plan Compensation (including for Elective Deferral purposes)	Compensation for Non-Elective Contributions	Compensation for Matching Contributions	Compensation for Sec. 416 purposes	
N/A	<input type="checkbox"/>	<input type="checkbox"/>	N/A	a. Same as the Compensation Computation Period for Plan Compensation.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A	b. Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	c. Limitation Year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d. Calendar year ending with or within the Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	N/A	e. Over the period selected below that ends with or within the Plan Year:

Plan Compensation (including for Elective Deferral purposes)	Compensation for Non-Elective Contributions	Compensation for Matching Contributions	Compensation for Sec. 416 purposes	
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		e.1. Pay period.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		e.2. Monthly.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		e.3. Bi-Monthly.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		e.4. Quarterly.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		e.5. Semi-Annually.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		e.6. Bi-Weekly.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		e.7. Weekly.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	N/A	f. The 12-consecutive month period ending on (___/___) with or within the Plan Year. (For Employees whose Employment Commencement Date is less than 12 months before the end of the 12-month period designated, Compensation will be determined over the Plan Year.)
				Specify the last day of the 12-month period.

Compensation for initial Plan Year of Participation:

Plan Compensation (including for Elective Deferral purposes)	Compensation for ADP Test or QACA Safe Harbor Employer Contributions	Compensation for Non-Elective Contributions	Compensation for Matching Contributions	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	g. From Entry Date as a Participant.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	h. For the 12-month period ending in the initial year of participation.

D. Contribution and Allocation

D1. Elective Deferrals (Section 2.2.2) (Select all applicable.)

- a. No limits on Elective Deferrals.
- b. Elective Deferrals must be at least _____% of Compensation. (Do not enter a value in excess of 1%.)
- c. Elective Deferrals cannot exceed _____% of Compensation. (May not exceed 100%.)
- d. HCEs may defer up to _____% of Compensation. (May not exceed 100%.)
- e. Elective Deferrals must be at least \$_____ (must be a de minimis amount), per payroll period.
- f. Elective Deferrals may not exceed \$_____ per Plan Year.
- g. Other: _____
Note: Any minimum or maximum limitation described here must conform to all of the Plan's CODA restrictions and rules and must not discriminate in favor of Highly Compensated Employees.
- h. Bonuses: (Select one of h.1. through h.3., and select h.4. if applicable.)
Note: Review the selections under C2.e.1. and C2.f.1., regarding treatment of bonuses and discretionary bonuses as Plan Compensation, before selecting options under this item D1.h. Selections in this area do NOT modify the definition of Plan Compensation.
 - h.1. Bonuses are not subject to deferral election.
 - h.2. Bonuses are subject to the same deferral election as regular wages.
 - h.3. A special election shall be provided for bonuses.
 - h.4. Bonuses paid within 2-1/2 months of the end of the Plan Year shall be subject to the deferral election for the prior Plan Year.

D2. Automatic Compensation Reduction (ACR) / Automatic Contribution Arrangement (Section 2.2.3) This item includes options for ACR provisions that are not part of an EACA or QACA, as well as EACA and QACA options.

ACR (not EACA, not QACA)	EACA	QACA	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	a. Not permitted.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b. Permitted as of the Effective Date of this Plan, unless otherwise specified below. Effective date for ACR, EACA, or QACA provisions. (Specify the effective date if it is other than the general Effective Date of this Plan.)
(If the Plan includes EACA provisions that vary for groups of Participants, skip to item p. Otherwise, select c., d., or e., for each type of ACR or automatic contribution arrangement, and complete all other applicable items.)			
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. Permitted, and the initial percentage and escalator provisions are the QACA statutory provisions of 3% during the initial period, 4% in the year following the initial period, 5% in the next year, and 6% for the years thereafter.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d. Permitted, and the initial percentage, specified in f., is subject to alternative escalator provisions, as indicated in g.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	e. Permitted, and is a flat percentage, as specified in f. below.
%	%	%	f. If d. or e. is selected, specify the default / initial percentage. Percentage entered cannot exceed 10%. Also, for a QACA, the percentage must be at least 6%. (e.g. for 6%, enter 6.00)

Periodic increase and maximum percentage - If d. was selected, specify the periodic increase and the maximum default election percentage, as a percentage of Compensation. (E.g. The increase in a Participant's ACR shall be g.1.% up to a maximum ACR of g.2.% of Compensation.)

%	%	%	g.1. Specify the periodic increase as a percentage of Compensation. (In no event will the default election exceed the maximum default election percentage.)
%	%	%	g.2. Specify the maximum default election percentage. (Cannot exceed 10%.)

Timing for the periodic increases - If c. or d. is selected, indicate the timing for the periodic increases. (The date on which the increase is applied to a given Participant depends on the type of automatic contribution arrangement, as well as the selections below. See 2.2.3.)

ACR (not EACA, not QACA)	EACA	QACA	

ACR (not EACA, not QACA)	EACA	QACA	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	h. Increases occur on the first day of the Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	i. Increases occur on the specified date each year.
			Specify the date on which increases in the default percentage occur.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	j. Do not apply the automatic increase to a Participant to whom the current default percentage did not apply for an entire Plan Year.

Participants subject to default election - If c., d. or e. is selected, indicate the Participants to whom the default election will apply. The default election applies to: (select all applicable)

ACR (not EACA, not QACA)	EACA	QACA	
<input type="checkbox"/>	<input type="checkbox"/>	N/A	k. All Eligible Participants.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	l. Current Participants without an election.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	m. All Participants whose prior year election is less than the current year default reduction percentage.
<input type="checkbox"/>	<input type="checkbox"/>	N/A	n. All Participants hired after the specified date.
			Specify the "hired after" date.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	o. The selections above apply only to Participants who do not have an election on file on or after the effective date of this provision.
			Specify the effective date of this provision.

EACA that varies by Participant Groups

- p. The Plan contains EACA provisions and the initial percentage and periodic increase rules vary by Participant group. (Specify the employee groups or classifications, adding as many rows as necessary in the text box, and provide the initial percentage and periodic increase rules for each. Cannot discriminate in favor of Highly Compensated Employees.)

D3. Catch-up Contributions (Section 2.2.2(b))

- a. Not applicable - Catch-up Contributions are not permitted.
 b. Catch-up Contributions are permitted.

If the Plan provides for Matching Contributions under D9., also select b.1. or b.2. Otherwise, skip to D4.

- b.1. Catch-up Contributions will be matched.
 b.2. Catch-up Contributions will not be matched.
Note: Exclusion of Catch-up Contributions from Matching Contributions may make it difficult to accurately determine Matching Contributions.

D4. Roth Deferrals (After-tax, Section 2.2.2(a))

- a. Not applicable - Roth Deferrals are not permitted.
 b. Roth Deferrals are permitted, and Participants may elect both pre-tax and Roth deferrals.
 c. Roth Deferrals are permitted, however a Participant's deferrals must be either all Roth or all pre-tax.
d. The Plan permits Roth Deferrals as indicated in b. or c. and the effective date of this provision is other than the Effective Date of this Plan or a prior Plan. Effective date: ___/___/____
e. If the Plan provides for Matching Contributions, also select e.1. or e.2. Otherwise, skip to D5.
 e.1. Roth Deferrals will be matched.
 e.2. Roth Deferrals will not be matched.

D5. Deemed Individual Retirement Account (Section 3.12.1)

Note: In order to accept a rollover from a Roth IRA, the Plan must permit Deemed IRAs. Review the requirements for IRA accounts held within a qualified plan in Part 3 Article XII.

- a. Not applicable - Deemed IRAs are not permitted.
 b. Deemed IRAs are permitted, and are pre-tax and/or after-tax Roth IRAs, as indicated in b.1 and b.2.
 b.1. Pre-tax IRA.
 b.2. After-tax Roth IRA.

D6. Voluntary Employee Contributions (After-tax Only, Section 2.2.4) (Select all applicable)

- a. Plan does not permit Voluntary Employee Contributions.
 b. Voluntary Employee Contributions were permitted until ___/___/____.
 c. Plan permits Voluntary Employee Contributions.
If there are limitations on the amount of Voluntary Employee Contributions, complete all applicable.
 c.1. But not in excess of _____% of Compensation.
 c.2. But not in excess of \$_____ per Plan Year.

If the Plan provides for Matching Contributions, select c.3. or c.4. Otherwise, skip to D7.

- c.3. Match Voluntary Employee Contributions in same manner as Elective Deferrals.
- c.4. Do not match Voluntary Employee Contributions.

D7. Paid Time Off Contributions (Section 2.2.1(a)(6)) (Select a or b., and complete c. if applicable.)

- a. The Employer does not sponsor a bona fide Paid Time Off (PTO) Plan or chooses not to provide that unused PTO credits may be treated as an Employer Contribution.
- b. The Employer sponsors a bona fide Paid Time Off (PTO) Plan that clearly defines when unused PTO credits will be forfeited, carried over, cashed out, or treated as an Employer Contribution. The Plan will treat the cash equivalent value of any unused PTO credits as indicated below. (Complete b.1., select one of b.2. or b.3., and select b.4., if applicable.)
 - b.1. Specify the name(s) of the Paid Time Off Plan(s) to which the following selections apply.

 - b.2. Unused PTO credits will be treated as a Non-Elective Contribution for all Participants.
 - b.3. Unused PTO credits will be treated as an Elective Deferral, for Participants, as indicated below. (Select all that apply.)
 - b.3.A. If the Participant provides a PTO Contribution deferral election.
 - b.3.B. Automatically, for those Participants who are subject to an automatic contribution arrangement and who do not provide instructions to the contrary.
 - b.4. Upon termination of employment, unused PTO credits are considered Post-Severance Compensation as indicated under C2.v., and will be treated as an Employer Contribution as indicated in b.2. or b.3. above.
- c. The Plan treats unused PTO credits as contributions to the Plan as indicated in a. or b., effective ___/___/_____. (Complete if the effective date for the PTO provision is other than the general Effective Date of this Plan or a prior Plan.)

D8. Non-Elective Contribution (Section 2.2.1(a)(3)(i)) - The Employer Non-Elective Contribution (other than ADP Test or QACA Safe Harbor, QNEC, Prevailing Wage, or Top-Heavy Contributions) to the Plan shall be: (Select all applicable. You may select i. in addition to making other selections under this item.)

- a. Not applicable - Non-Elective Contributions are not permitted.
- b. Discretionary.
- c. Discretionary, by employee classification defined in D25. below.
- d. Discretionary, by employee classification; each Participant is a separate class.

If the Employer Non-Elective Contribution is discretionary, select one of e. through g.

- e. Not limited to profits.
- f. Limited to profits for the year.
- g. Limited to accumulated profits.

Nondiscretionary

- h. An amount necessary to meet the allocation requirements in D13. below.
- i. The amount required by any collectively bargained agreement (CBA).
- j. _____% of eligible Plan Compensation. (Not to exceed 25%)
- k. Total of \$_____ per Plan Year, but not more than 25% of eligible Plan Compensation.

D9. Matching Contributions (Section 2.2.1(a)(3)(ii)) - The Employer Matching Contributions (other than ADP Test / QACA Safe Harbor, QMAC, or Prevailing Wage Contributions) shall be: (You may select f. in addition to selecting one of b. through e.)

- a. Not applicable - Matching Contributions (other than those mentioned above) are not permitted.
- b. A discretionary amount determined by the Employer in a nondiscriminatory manner.

Nondiscretionary

- c. The total matching allocations calculated for Participants.
- d. The total matching allocations calculated for Participants plus a discretionary amount. (Complete D15. Supplemental Match.)
- e. The sum of the amounts specified for each employee classification.
- f. The amount required by any collectively bargained agreement (CBA).

D10. Requirements to Share in Non-Elective and Matching Contributions Allocations (Sections 2.3.2 and 2.3.3) (Select all applicable. Does not apply to ADP Test / QACA Safe Harbor, QNEC, QMAC, Prevailing Wage or Top-Heavy Contributions.)

Non-Elective Contributions	Matching Contributions	

Non-Elective Contributions	Matching Contributions	
<input type="checkbox"/>	<input type="checkbox"/>	a. Not applicable - No Employer Contributions of the type selected.

Participants eligible to share in the Employer Contributions		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	b. No exclusions. All Participants are eligible subject to the requirements selected below.
<input type="checkbox"/>	<input type="checkbox"/>	c. Highly Compensated Employees are excluded.
<input type="checkbox"/>	<input type="checkbox"/>	d. Key Employees are excluded. <i>(Note: May impact nondiscrimination testing.)</i>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	e. Other excluded group - Specify. (Cannot discriminate in favor of Highly Compensated Employees.) Specify the other excluded group.
	<u>The City will contribute an Employer Matching contribution based on a participating Non-CalPERS Employee's base salary, contingent on a participating Non-CalPERS Employee contributing at least three percent (3%) of his/her base salary within the plan.</u>	

Requirements to share in the Employer Contributions		
Select one of f. through l., under each applicable column. If you select j., k., or l., specify the service requirement under m.		
Non-Elective Contributions	Matching Contributions	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	f. Will be eligible regardless of hours, months, or days of service.
<input type="checkbox"/>	<input type="checkbox"/>	g. Must be employed on the last day of the Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	h. Must have received Compensation since prior allocation date.
<input type="checkbox"/>	<input type="checkbox"/>	i. Must be employed on the allocation date for Employer Contributions.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	j. Must complete an hours, days, or months of service requirement, as specified in m. below.
<input type="checkbox"/>	<input type="checkbox"/>	k. Must complete an hours, days, or months of service requirement, as specified in m. below, AND be employed on the last day of the Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	l. Must complete an hours, days, or months of service requirement, as specified in m. below, OR be employed on the last day of the Plan Year.
		m. Hours, days, or months requirement for j., k., or l. (Complete one of m.1., m.2., or m.3. under each applicable column.)
<u>1000</u>		m.1. Must complete the specified Hours of Service (cannot exceed 1000).
		m.2. Under the Elapsed Time Method, must complete the specified days (cannot exceed 365).
		m.3. Under the Elapsed Time Method, must complete the specified months (cannot exceed 12).

Death, Retirement, Disability		
If requirements other than those specified above apply if a Participant dies, retires, or becomes Disabled during the Plan Year, select the applicable options.		
Non-Elective Contributions	Matching Contributions	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	n. Regardless of the selections in f. through l., a Participant will be eligible as indicated below.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	o. If the Participant dies during the Plan Year, the requirement selected in o.1. or o.2. applies.

Non-Elective Contributions	Matching Contributions	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	o.1. No hours requirement.
<input type="checkbox"/>	<input type="checkbox"/>	o.2. Only if the Participant meets Hours of Service requirement.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	p. If the Participant retires during the Plan Year, the requirement selected in p.1. or p.2. applies.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	p.1. No hours requirement.
<input type="checkbox"/>	<input type="checkbox"/>	p.2. Only if the Participant meets Hours of Service requirement.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	q. If the Participant becomes Disabled during the Plan Year, the requirement selected in q.1. or q.2. applies. (Also complete item D11.)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	q.1. No hours requirement.
<input type="checkbox"/>	<input type="checkbox"/>	q.2. Only if the Participant meets Hours of Service requirement.

HEART Act Allocations

- r. HEART Act Allocations (2.3.9(a)): In the case of death or Disability resulting from active military service, the Participant shall be eligible for an allocation as if he returned to employment with the Employer prior to death or Disability, provided the death or Disability occurred on or after January 1, 2008 (no earlier than January 1, 2008).

D11. Non-Elective Contributions on Behalf of Disabled Participants based on Imputed Compensation (Section 2.3.8) (Select a. or b. If b. is selected, must complete c. below and must select E1.f.3., 100% vesting for Disabled Participants.)

- a. Employer will **not** make Non-Elective Contributions on behalf of Disabled Participants based on imputed Compensation.
- b. The Employer will make Non-Elective Contributions on behalf of Disabled Participants, as indicated below, on the basis of the Compensation each such Participant would have received for the Limitation Year if the Participant had been paid at the rate of Compensation paid immediately before becoming Disabled. Such imputed Compensation for the Disabled Participant may be taken into account only if the contributions made on behalf of such Participant will be nonforfeitable when made. Compensation will mean Compensation as the term is defined in Part I, Article II.
- b.1. Disabled Participants who are not Highly Compensated Employees.
- b.2. All Disabled Participants.
- c. Contributions for Disabled Participants based on imputed Compensation shall be made: (If c2. or c3. is selected, must also select one of c4. through c7. Otherwise, select only one option.)
- c.1. Only for the Plan Year in which he becomes Disabled.
- c.2. For ___ Plan Years provided he continues to be Disabled, but not beyond the Plan Year selected below. (Must also select one of c4 through c7.)
- c.3. For up to ___ years after date of Disability, but not beyond the Plan Year selected below. (Must also select one of c4. through c7.)
- c.4. Until the end of the Plan Year in which he attains Early Retirement Age.
- c.5. Until the end of the Plan Year before the Plan Year in which Early Retirement Age is attained.
- c.6. Until the end of the Plan Year in which he attains Normal Retirement Age.
- c.7. Until the end of the Plan Year before the Plan Year in which Normal Retirement Age is attained.

D12. Fail Safe Allocations (Section 2.3.7) - Allocations will be given to Employees who normally would not be given an allocation of Non-Elective Contributions in order to satisfy nondiscrimination requirements. If a fail safe is not elected, the Plan must be amended if the test fails.

- a. No fail safe. (Warning: If a Plan with this option fails the 410(b) tests, it must be amended within 9-1/2 months after the end of the Plan Year to bring it into compliance.)
- b. Fail Safe if the Plan fails coverage under Code section 410(b).

D13. Allocation Method for the Employer Non-Elective Contribution (Section 2.3.2) - The Employer Non-Elective Contribution is allocated to Participants on the basis selected below. (Select one of a. through z. and for integrated formulas, also complete item r. (Integration Level)) (Does not apply to ADP Test / QACA Safe Harbor Contributions, QNEC, or Prevailing Wage Contributions. See D21., D20., and D19., respectively.)

- a. Not applicable - Non-Elective Contributions are not permitted.

Dollar Based Formulas

- b. Flat dollar amount per Plan Year equal to the Non-Elective Contribution divided by the number of Participants. (Design based safe harbor, requires no additional testing)
- c. Flat dollar amount per Compensation Computation Period equal to the Non-Elective Contribution divided by the number of Participants. (Design based safe harbor, requires no additional testing)
- d. \$_____ per Participant. (Design based safe harbor, requires no additional testing)
- e. \$_____ per Hour of Service.
- f. \$_____ per Hour of Service up to a maximum of _____ hours.

Non-Integrated Formulas

- g. Pro-rata on Compensation during the Plan Year. (Design based safe harbor, requires no additional testing)
- h. Pro-rata on Compensation during the Compensation Computation Period.

- i. _____% of each Participant's Compensation. (Design based safe harbor, requires no additional testing)
- j. Age-Weighted: Allocation pro-rata on an annuity of 1% of Compensation payable at Normal Retirement Age, where the present value of such annuity is based on the interest rates and the mortality table selected below. (Design based safe harbor, requires no additional testing)

Preretirement interest rate

- 7.50%
- 8.00%
- 8.50%

Post-retirement interest rate

- 7.50%
- 8.00%
- 8.50%

Post-Retirement Mortality

- | | | |
|--|--|---|
| <input type="checkbox"/> UP-84 (unisex) | <input type="checkbox"/> 71 GAM - female | <input type="checkbox"/> 83 GAM - female |
| <input type="checkbox"/> 71 IAM - male | <input type="checkbox"/> 83 IAM - male | <input type="checkbox"/> 83 GAM - blended 50/50 |
| <input type="checkbox"/> 71 IAM - female | <input type="checkbox"/> 83 IAM - female | <input type="checkbox"/> 94 GAR (unisex) |
| <input type="checkbox"/> 71 GAM - male | <input type="checkbox"/> 83 GAM - male | |

- k. Uniform points allocation formula where: (May require additional testing)
 - k.1. The Non-Elective Contribution is allocated pro-rata over total awarded points for the Plan Year.
 - k.2. \$_____ is allocated for each point.
 - k.3. _____% of Compensation is allocated for each point.

Each Participant will be awarded: (Select at least 2 options; do not select both k.5. and k.6.)

- k.4. _____ points for each year of age.
- k.5. _____ points for each Year of Credited Service, as specified under A6.
- k.6. _____ points for each Year of Credited Service, as specified under A6., at Normal Retirement Age (or current age if later).
- k.7. _____ points for each \$_____ of Compensation (not to exceed \$200).
- k.8. Maximum number of points per Participant: _____ (Omit if no maximum.)
- l. Tiered formula: Each eligible Participant shall receive an allocation of the Employer's discretionary contribution in accordance with the following table: It is not necessary to contribute an amount sufficient to fund each tier. (Complete tier 1 and tier 6 and any middle tiers desired.)

Tier 1 Up to _____% of Compensation not in excess of \$_____

Tier 2 Up to _____% of Compensation in excess of the amount in tier 1, but not in excess of \$_____

Tier 3 Up to _____% of Compensation in excess of the amount in tier 2, but not in excess of \$_____

Tier 4 Up to _____% of Compensation in excess of the amount in tier 3, but not in excess of \$_____

Tier 5 Up to _____% of Compensation in excess of the amount in tier 4, but not in excess of \$_____

Tier 6 Up to _____% of Compensation in excess of the amount in tier 5

(The last blank in each Tier is to be the excess Compensation) (Design based safe harbor, requires no additional testing)

The tiers will be applied:

- l.1. By allocating the Non-Elective Contribution tier by tier until no remaining contribution remains. The percentages entered above represent the maximum amount that can be allocated to a specific tier.
- l.2. As stated. (Money Purchase type formula)

Class Allocated Formulas

Note: For m. through p., the classification definition may not be a definition limiting the group of NHCEs to the group with the lowest amount of Compensation and/or the shortest periods of service and who may represent the minimum number of these Employees necessary to satisfy coverage under Code section 410(b). In the case of Self-Employed Individuals, (i.e. sole proprietors or partnerships), the requirements of Treasury Regulation section 1.401(k)-1(a)(6) continue to apply, and the allocation method should not be such that a cash or deferred election is created for a Self-Employed Individual as a result of application of the allocation method.

- m. Prorate by classification. Each eligible Participant shall receive an allocation for the Plan Year equal to a prorata percentage of the Employer discretionary Non-Elective Contribution specified for the employee classification of which the Participant is a member, such percentage to equal the ratio that the Participant's Compensation for the Plan Year bears to the aggregate Compensation for all eligible Participants in the same employee classification for that Plan Year. (Must define the employee classification in D25. below.) (Requires additional testing)
- n. Percentage of Compensation or Dollar Amount Per Participant. Each eligible Participant shall receive an allocation of Employer discretionary Non-Elective Contribution, such allocation will be based on the Participant's classification. There shall be a separate classification for each Participant identified by the Participant's name. A list of each classification and the associated percentage or dollar amount shall be prepared for each Plan Year not later than the time prescribed by law for filing the return for such applicable taxable year (including any extensions), and shall be maintained as part of the administrative records of the Plan. (Requires additional testing)

Note: The list must be updated on an annual basis and approved by the Employer prior to making the allocation.

- o. Flat dollar amount per Plan Year equal to the Non-Elective Contribution to the class divided by the number of Participants in the class (Must define the employee classification in D25. below.) (Requires additional testing)
- p. A dollar amount equal to cents per hour the Participant worked, where the cents per hour worked is based on the table below: (Add additional lines as necessary to accommodate all classifications and must define the employee classification in D25. below.) (Requires additional testing)

<u>Employee</u>	<u>Cents per</u>	<u>Employee</u>	<u>Cents per</u>
-----------------	------------------	-----------------	------------------

<u>Classification</u>	<u>Hour</u>	<u>Classification</u>	<u>Hour</u>
A	==	F	==
B	==	G	==
C	==	H	==
D	==	I	==
E	==	J	==

- q. Pro-rata on weighted Compensation during the Plan Year. Weights are listed by Participant name. The list will be prepared and stored in the Employer's records on a permanent basis. Residual Non-Elective Contributions allocated pro-rata on:
(Choose q.1. or q.2.)
- q.1. Compensation.
- q.2. Weighted Compensation.

Note: The list must be updated on an annual basis and approved by the Employer prior to making the allocation. (Requires additional testing)

Integrated Formulas: Integration Level and Integrated Allocation Formulas

Complete r. to designate the integration level and select an integrated formula under s., t., u., or v.

- r. Integration Level - If the allocation formula selected is integrated, the integration level is: (See Section 2.3.5 and Definitions.)

Integration levels that automatically satisfy Code section 401(l)

- r.1. The Taxable Wage Base under the Social Security Act.
- r.2. The greater of \$ _____ or 20% of the Taxable Wage Base under the Social Security Act.
- r.3. The greater of \$ _____ or 80% of the Taxable Wage Base under the Social Security Act.
- r.4. The lesser of \$ _____ or the Taxable Wage Base under the Social Security Act (the amount must exceed 80% of the Taxable Wage Base).
- r.5. _____% of the Taxable Wage Base under the Social Security Act (not to exceed 100%).
- r.6. The greater of \$10,000 or 20% of the Taxable Wage Base under section 230 of the Social Security Act in effect as of the first day of the Plan Year.
- r.7. 80% of the Taxable Wage Base under section 230 of the Social Security Act in effect as of the first day of the Plan Year plus \$ _____ (not to exceed \$1,000).

Integration levels that do not automatically satisfy Code section 401(l) and require additional testing.

- r.8. _____% of the Taxable Wage Base under section 230 of the Social Security Act in effect as of the first day of the Plan Year rounded up to the next \$ _____. (First blank not to exceed 100%, second blank not to exceed \$3,000.)
- r.9. \$ _____.
- r.10. _____% of the Taxable Wage Base under the Social Security Act.

Integrated Formulas

- s. _____% (Base Contribution Percentage) of Compensation up to the Integration Level PLUS _____% (Excess Contribution Percentage) of Compensation in excess of the Integration Level.
- t. Following the four steps of Plan Section 2.3.5, pro-rata over Compensation up to _____%; any remaining contribution allocated pro-rata over Compensation above the Integration Level up to the same percentage; any remaining contribution allocated over Compensation plus Compensation above the Integration Level, provided Code section 401(l) is satisfied; any remaining contribution allocated pro-rata over Compensation.
- t.1. Limit disparity to _____% (Use when limiting disparity to less than the Maximum Permitted Disparity.)

*Note: For plans that choose to automatically satisfy the Minimum Top-Heavy Allocation requirement, the blank should be completed with 3% for a single plan, or 5% if the Employer also sponsors a defined benefit plan that covers the same employees as this defined contribution plan. **Warning:** if you specify a percentage that is less than 3%, an additional contribution may be required for years when the Plan is Top-Heavy.)*

- u. Pro-rata over Compensation plus Compensation above the Integration Level, provided Code section 401(l) is satisfied; any remaining contribution allocated pro-rata over Compensation.

If the Plan is Top-Heavy, the allocation formula:

- u.1. Remains the same (Minimum Top-Heavy Allocation determined last)
- u.2. Changes to the formula in option t. (Use Steps One through Four in Plan Section 2.3.5 only when Plan is Top-Heavy.)
- v. Pro-rata over Compensation plus Compensation over the Integration Level, disregarding the constraints of Code section 401(l). (Requires additional testing)

Age and Service Schedules

- w. Age Based Allocation. Each eligible Participant shall receive an allocation of the Non-Elective Contribution based on the age of the Participant as shown in the table below: (Plans intending to provide a schedule that "increases smoothly" under Reg. 1.401(a)(4)-8 must enter percentages that increase, but not more than 5 percentage points or by a ratio of 2.) (Requires additional testing)
- w.1. Ages grouped in 10 year intervals:

<u>Attained Age</u>	<u>Percentage of Compensation</u>	<u>Attained Age</u>	<u>Percentage of Compensation</u>
Less than 25	_____ %	45 to 54	_____ %
25 to 34	_____ %	55 to 64	_____ %
35 to 44	_____ %	65 or older	_____ %

w.2. Ages grouped in 5 year intervals

<u>Attained Age</u>	<u>Percentage of Compensation</u>	<u>Attained Age</u>	<u>Percentage of Compensation</u>
Less than 25	_____ %	45 to 49	_____ %
25 to 29	_____ %	50 to 54	_____ %
30 to 34	_____ %	55 to 59	_____ %
35 to 39	_____ %	60 to 64	_____ %
40 to 44	_____ %	65 or older	_____ %

x. A percentage of Compensation based on Years of Credited Service as shown in the table below: (Plans intending to provide a schedule that "increases smoothly" under Reg. 1.401(a)(4)-8 must enter percentages that increase, but not more than 5 percentage points or by a ratio of 2.) (Requires additional testing)

x.1. Fifth year in second Credited Service range: (Also select one of x.1..A or x.1.B.)

<u>Years of Credited Service</u>	<u>Percentage of Compensation</u>
Less than 5	_____ %
5 to 9	_____ %
10 to 14	_____ %
15 to 19	_____ %
20 to 24	_____ %
<input type="checkbox"/> x.1.A 25 or more	_____ %
<input type="checkbox"/> x.1.B 25 to 29	_____ %
30 to 34	_____ %
35 or more	_____ %

x.2. Fifth year in first Credited Service range: (Also select one of x.2.A. or x.2.B.)

<u>Years of Credited Service</u>	<u>Percentage of Compensation</u>
0 to 5	_____ %
6 to 10	_____ %
11 to 15	_____ %
16 to 20	_____ %
21 to 25	_____ %
<input type="checkbox"/> x.2.A 26 or more	_____ %
<input type="checkbox"/> x.2.B 26 to 30	_____ %
31 to 35	_____ %
36 or more	_____ %

y. Allocate Non-Elective Contribution age range by age range until no unallocated contribution remains. (Plans intending to provide a schedule that "increases smoothly" under Reg. 1.401(a)(4)-8 must enter percentages such that the cumulative percentages increase, but not more than 5 percentage points or by a ratio of 2). THE PERCENTS ENTERED ARE THE INCREASE BETWEEN AGE RANGES, NOT THE CUMULATIVE PERCENT FOR THE RANGE (Requires additional testing)

y.1. Ages grouped in 10 year intervals:

<u>Attained Age</u>	<u>ADDITIONAL Maximum Percentage of Compensation</u>	<u>Attained Age</u>	<u>ADDITIONAL Maximum Percentage of Compensation</u>
Less than 25	_____ %	45 or older	_____ %
25 or older	_____ %	55 or older	_____ %
35 or older	_____ %	65 or older	_____ %

y.2. Ages grouped in 5 year intervals:

<u>Attained Age</u>	<u>ADDITIONAL Maximum Percentage of Compensation</u>	<u>Attained Age</u>	<u>ADDITIONAL Maximum Percentage of Compensation</u>
Less than 25	_____ %	45 or older	_____ %
25 or older	_____ %	50 or older	_____ %
30 or older	_____ %	55 or older	_____ %
35 or older	_____ %	60 or older	_____ %
40 or older	_____ %	65 or older	_____ %

- z. Allocate Non-Elective Contribution Credited Service range by Credited Service range until no unallocated contribution remains. (Plans intending to provide a schedule that "increases smoothly" under Reg. 1.401(a)(4)-8 must enter percentages that increase such that the cumulative percentages increase, but not more than 5 percentage points or by a ratio of 2). THE PERCENTS ENTERED ARE THE INCREASE BETWEEN CREDITED SERVICE RANGES, NOT THE CUMULATIVE PERCENT FOR THE RANGE (Also select one of z.1. or z.2.) (Requires additional testing)

<u>Years of Credited Service</u>	<u>ADDITIONAL Maximum Percentage of Compensation</u>
Less than 5	_____ %
5 or more	_____ %
10 or more	_____ %
15 or more	_____ %
20 or more	_____ %
<input type="checkbox"/> z.1. 25 or more	_____ %
<input type="checkbox"/> z.2. 25 or more	_____ %
	30 or more _____ %
	35 or more _____ %

D14. Allocation Method for Matching Contributions (Section 2.3.3) - Matching Contributions, other than ADP Test / QACA Safe Harbor Contributions or QMACs, shall be allocated to eligible Participants in an amount:

- a. Not applicable - No Matching Contributions.

Discretionary Formulas

Note: For discretionary matching formulas, a Board Resolution / Action by the Employer declaring the percentage or dollar amount for Matching Contributions shall be prepared for each Plan Year not later than the time prescribed by law for filing the return for such applicable taxable year (including any extensions), and shall be maintained as part of the administrative records of the Plan.

- b. Pro-rata on Elective Deferrals during the Plan Year.
- c. Based on a discretionary percentage, determined by the Employer in a nondiscriminatory manner, of each tier of a Participant's Elective Deferrals or flat dollar amount allocated on a uniform basis to all Participants, as determined by the Employer.
- d. Pro-rata on Elective Deferrals during the Plan Year by employee classification. (Must define the employee classification in D26. below.)
- e. Percent of Elective Deferrals declared each year by employee classification. (Must define the employee classification in D26. below.)

Nondiscretionary Formulas

- f. Equal to _____% of the Elective Deferrals made on behalf of a Participant.
- g. _____% of Elective Deferrals and _____% of Voluntary Employee Contributions.
- h. A percentage of Elective Deferrals based upon employee classification. (In the text area, add as many rows as necessary for employee classifications and must define the employee classification in D26. below.)
- i. Graded based on a percentage of each Participant's Compensation contributed as an Elective Deferral as follows:
- | | |
|----------------------|----------------------------------|
| _____ % of the first | _____ % of Compensation deferred |
| _____ % of the next | _____ % of Compensation deferred |
| _____ % of the next | _____ % of Compensation deferred |
| _____ % of the next | _____ % of Compensation deferred |
| _____ % thereafter | |
- j. Graded based on the dollar amount of the Elective Deferral of each Participant as follows:
- | | |
|----------------------|-----------------------------------|
| _____ % of the first | \$ _____ of Compensation deferred |
| _____ % of the next | \$ _____ of Compensation deferred |
| _____ % of the next | \$ _____ of Compensation deferred |
| _____ % of the next | \$ _____ of Compensation deferred |
| _____ thereafter | |

- k. Graded based on each Participant's Years of Credited Service as follows:

<u>Exceeding</u>	<u>Matching Percentage</u>
___ years	_____ % plus
___ years	an additional _____ % plus
___ years	an additional _____ % plus
___ years	an additional _____ % plus
___ years	an additional _____ % plus
___ years	an additional _____ %

- l. A percentage based on the percentage of Compensation deferred:
 - _____ % if less than _____ % of Compensation deferred
 - _____ % if less than _____ % of Compensation deferred
 - _____ % if less than _____ % of Compensation deferred
 - _____ % if less than _____ % of Compensation deferred
 - _____ % if defer more

- m. A percentage based on the dollar amount deferred:
 - _____ % if less than \$_____ of Compensation deferred
 - _____ % if less than \$_____ of Compensation deferred
 - _____ % if less than \$_____ of Compensation deferred
 - _____ % if less than \$_____ of Compensation deferred
 - _____ % if defer more

- n. Graded based on each Participant's Years of Credited Service as follows:

<u>Equal to Or More Than</u>	<u>And Less Than</u>	<u>Matching Percentage</u>
___ years	___ years	_____ %
___ years	___ years	_____ %
___ years	___ years	_____ %
___ years	___ years	_____ %
___ years	___ years	_____ %
___ years	___ years	_____ %

D15. Supplemental Discretionary Matching Contribution (Section 2.3.3) - Shall be allocated to eligible Participants in an amount:

- a. Not applicable - No supplemental discretionary Matching Contribution.
- b. Proportionate to the Elective Deferrals made on behalf of a Participant.
- c. According to the method selected in D14.b. through D14.n. above.
- d. Pro-rata on Matching Contributions.
- e. Based on a discretionary percentage, determined by the Employer in a nondiscriminatory manner, of each tier of a Participant's Elective Deferrals or flat dollar amount allocated on a uniform basis to all Participants, as determined by the Employer.

D16. Limitations on Matching Contributions (Section 2.3.3) - The Matching Contributions allocated to a Participant's Account for a Plan Year may not exceed the limitations described below: (Select all applicable.)

- a. Not applicable - No Matching Contribution or no limit.
- b. The maximum Elective Deferral that is matched is:
 - b.1. _____% of Compensation per Plan Year (for Plans that allocate the Matching Contributions on an annual basis).
 - b.2. _____% of Compensation per payroll period (no True-up).
 - b.3. _____% of Compensation per Plan Year (True-up as provided under D23.).
 - b.4. \$_____.
- c. The maximum Matching Contribution for any Participant is:
 - c.1. _____% of Compensation per Plan Year (for Plans that allocate the Matching Contributions on an annual basis).
 - c.2. _____% of Compensation per payroll period (no True-up).
 - c.3. _____% of Compensation per Plan Year (True-up as provided under D23.).
 - c.4. \$_____.

D17. Minimum Top-Heavy Allocation (Section 2.3.4) - The Minimum Top-Heavy Allocation will be satisfied based on the following selections. (Must select a. or b. and must select e. or f. May also select c. or d.)

In the event the Plan is Top-Heavy the Employer will, if necessary,

- a. Make an additional contribution to meet the Top-Heavy requirements.

If formula D13.o. is selected above (flat dollar amount for each Participant in the class) the additional contribution is to:

- a.1. Only the affected Participants.
- a.2. All Participants in the affected class.
- b. First satisfy the Minimum Top-Heavy Allocation and reallocate the remaining Employer Contribution.

All Participants are eligible for the Minimum Top-Heavy Allocation, except (May select either, neither, or both of c. and d.)

- c. Key Employees.
- d. Employees covered by a collectively bargained agreement.

Minimum Top-Heavy Allocation - For purposes of the Minimum Top-Heavy Allocation, an allocation of contributions and Forfeitures equal to the following percentage of each eligible Participant's Compensation will be made to the Employee's Account when the Plan is Top-Heavy: (Must select e. or f.)

- e. The lesser of 3% or the highest percentage allocated to any Key Employee.
- f. _____%. (Must be at least 3.)

D18. Limits on Allocations of Non-Elective Contributions (Section 2.3.2) - Other than the Minimum Top-Heavy Allocation and Maximum Permissible Annual Additions, the Plan imposes the following limits: (Select all applicable)

- a. No Plan imposed limits.
- b. The minimum allocation to any Participant eligible for an allocation of Non-Elective Contributions for a Plan Year is:
 - b.1. \$_____.
 - b.2. _____% of Compensation.
- c. The maximum allocation to any Participant eligible for an allocation of Non-Elective Contributions for a Plan Year is:
 - c.1. \$_____.
 - c.2. _____% of Compensation.

D19. Prevailing Wage Contributions (Section 2.2.1(a)(4)) - This contribution shall be determined pursuant to the Davis Bacon Act or any other Federal, State, or Municipal prevailing wage law. All contributions must be 100% vested at all times, and shall be made and allocated on a timely basis as required by the various acts. No age or service requirement under this Plan shall apply to this contribution. (Select one.)

- a. Not applicable. Prevailing Wage Contributions are not permitted.

Select b. or c. to indicate that this Plan will accept Prevailing Wage Contributions. In either case, for Participants receiving an allocation of Prevailing Wage Contributions who are **not** eligible for other Employer Contributions, the Prevailing Wage Contribution will be allocated to a Segregated Account, as determined by the prevailing wage schedule.

For Participants entitled to Prevailing Wage Contributions as well as an allocation of other Employer Contributions which are 100% vested when made, such as a QNEC or QMAC, the Prevailing Wage Contribution will:

- b. Supplement the other Employer Contributions.
- c. Reduce /offset the other Employer Contributions and any remaining Prevailing Wage Contribution shall be contributed to the Employer Contribution Account.

Note: If b. or c. is selected, you must attach the prevailing wage schedule to this Adoption Agreement and to the Summary Plan Description.

D20. Qualified Non-Elective (QNEC) and Qualified Matching (QMAC) Contributions (other than Prevailing Wage Contributions) (Sections 2.2.1(a)(3)(iii) and 2.3.3(d)) (Select all applicable.)

Warning: Using a QNEC to satisfy the ADP or ACP Test is prohibited if prior year testing is selected under F1.a. or F1.g. To use the QNEC in the ADP or ACP test, you must comply with Reg. 1.401(k)-2(a)(6)(iv) or Reg. 1.401(m)-2(a)(6)(v), respectively, which requires the QNEC to either be less than 5% of a Participant's Compensation or no more than twice a "representative contribution rate" determined by analyzing the QNECs / QMACs provided to all Non-Highly Compensated Employees.

Warning: To use the QMAC in the ADP or ACP test, you must comply with Reg. 1.401(k)-2(a)(6)(v) or Reg. 1.401(m)-2(a)(5)(ii), respectively, which require the matching rate to either be 100% or less or no more than twice a "representative matching rate" determined by analyzing the QMACs provided to all Non-Highly Compensated Employees.

The requirement for the Employer to make a QNEC / QMAC is: (Select one of a. through c. under each column.)

QNEC	QMAC	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	a. This type of Employer Contributions is not permitted.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	b. The Employer may make a QNEC / QMAC at its discretion.
<input type="checkbox"/>	<input type="checkbox"/>	c. The Employer will make a QNEC / QMAC to the extent necessary to satisfy the ADP / ACP test.

The Participants eligible for a QNEC / QMAC are: (Select one of d. or e. You may also select any of f. through j. that apply.)

QNEC	QMAC	
<input type="checkbox"/>	<input type="checkbox"/>	d. All Participants, as limited by the selections under f. through j., if any.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	e. All Participants who are not Highly Compensated, as limited by the selections under f. through j., if any.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	f. Participants who made Elective Deferrals during the Plan Year.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	g. Participants eligible to make Elective Deferrals during the Plan Year.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	h. Participants employed on the last day of the Plan Year.
<input type="checkbox"/>	N/A	i. Participants eligible to receive a Non-Elective Contribution for the Plan Year.

N/A	<input type="checkbox"/>	j. Participants eligible to receive a Matching Contribution during the Plan Year.
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QNECs / QMACs shall be allocated in the following manner: (In each column, select one of k. through o.)

QNEC	QMAC	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	k. In proportion to a Participant's Compensation.
N/A	<input type="checkbox"/>	l. As a uniform percentage of Elective Deferrals.
N/A	<input type="checkbox"/>	m. As a uniform percentage of Matching Contributions.
<input type="checkbox"/>	<input type="checkbox"/>	n. As a uniform dollar amount.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	o. In the percentage or amount necessary to satisfy the ADP or ACP test, beginning with the lowest paid Non-Highly Compensated Employees. <i>Note: See "Warning" above. May be used with Prior Year testing method (F.1.a.) only if the contribution is made within the 12-month period following the last day of the Prior Year.</i>

The Plan imposes the following limits on the allocation of QNECs / QMACs: (Select one of p. through r.)

QNEC	QMAC	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	p. No Plan imposed limits.
<input type="checkbox"/>	<input type="checkbox"/>	q. A maximum QNEC / QMAC of \$ _____ per Plan Year allocated to a Participant.
\$ _____	\$ _____	Specify maximum amount, which cannot exceed 25% of Compensation.
<input type="checkbox"/>	<input type="checkbox"/>	r. A maximum QNEC / QMAC of _____% of Compensation per Plan Year allocated to a Participant, which cannot exceed 25% of Compensation.
_____ %	_____ %	Specify maximum percentage, which cannot exceed 25% of Compensation.

D21. Safe Harbor CODA Provisions (including QACA) (Section 2.9.1)

Note: Do not complete this item unless you have indicated in A1.a. that either ADP Test Safe Harbor Employer Contributions or Safe Harbor Employer Contributions under a QACA are currently permitted under the Plan.

The Safe Harbor Employer Contributions shall be: (Select one of a., b., or c. Also complete d. and/or e. if applicable.)

- a. An ADP Test Safe Harbor Non-Elective Contribution, as provided under Code Sec. 401(k)(12)(C) and Reg. 1.401(k)-3(b), and the Safe Harbor Non-Elective Contribution to each eligible Participant will be in an amount equal to _____% of Compensation. (Must be 3% or more.)
- b. An ADP Test Safe Harbor Matching Contribution, as provided under Code Sec. 401(k)(12)(B) and Reg. 1.401(k)-3(c), and the Safe Harbor Matching Contribution will be: (Select one of b.1. through b.4.)
 - b.1. ADP Test Safe Harbor Basic Matching Contribution of 100% of the Elective Deferral that does not exceed 3% of Compensation, plus 50% of the Elective Deferral that exceeds 3% of Compensation but does not exceed 5% of Compensation.
 - b.2. ADP Test Safe Harbor Enhanced Matching Contribution equal to 150% of the first 3% of Compensation deferred.
 - b.3. ADP Test Safe Harbor Enhanced Matching Contribution equal to 100% of the first 4% of Compensation deferred.
 - b.4. ADP Test Safe Harbor Enhanced Matching Contribution equal to the sum of:
 - b.4.A. _____% (not less than 100%) of the Participant's Elective Deferrals that do not exceed _____% of Compensation (may not exceed 6%), plus
 - b.4.B. _____% of the Elective Deferrals that exceed _____% (enter the same value as entered as the second % under b.4.A.) of Compensation but do not exceed _____% (not greater than 6%) of Compensation.
(This contribution will also satisfy the ACP Test Safe Harbor requirements. The rate of match cannot increase as the Elective Deferrals increase. The values that you enter under b.4. must ensure that, at any rate of Elective Deferrals, the Matching Contribution is at least equal to the Matching Contribution receivable if the Employer were making the Basic Matching Contribution of item b.1.)
- c. Made under a Qualified Automatic Contribution Arrangement (QACA), as provided under Code Sec. 401(k)(13) and subject to the vesting schedule specified in E1.
 - c.1. QACA Safe Harbor Non-Elective Contribution to each eligible Participant in an amount equal to _____% of Compensation. (Must be 3% or more.)
 - c.2. QACA - Basic Matching Contribution of 100% of the Elective Deferral that does not exceed 1% of Compensation, plus 50% of the Elective Deferral that exceeds 1% of Compensation, but does not exceed 6% of Compensation.
 - c.3. QACA Safe Harbor Alternative Matching Contribution equal to the sum of:
 - c.3.A. _____% (not less than 100%) of the Participant's Elective Deferrals that do not exceed _____% of Compensation plus
 - c.3.B. _____% of the Elective Deferrals that exceed _____% (enter the same value as entered as the second % under c.3.A.) of Compensation but do not exceed _____% of Compensation.
(This contribution will also satisfy the ACP Test Safe Harbor requirements. The rate of match cannot increase as the Elective Deferrals increase. The values that you enter under c.3. must ensure that, at any rate of Elective Deferrals, the Matching Contribution is at least equal to the Matching Contribution receivable if the Employer were making the Basic Matching Contribution of item c.2.)
- d. If the Plan also provides for Matching Contributions under D9., in any Plan Year in which this Plan is designated as a QACA or ADP Test Safe Harbor CODA Plan under Part 2 Article IX:
 - d.1. Matching Contributions under D9. of the Adoption Agreement may be made. (Not Safe Harbor for ACP Test purposes; ACP Testing will be required.)
 - d.2. Matching Contributions under D9. of the Adoption Agreement shall not be made (Safe Harbor).
- e. The QACA or ADP Test Safe Harbor Non-Elective Contribution will be made to another plan of the Employer, _____ (Insert the name of the other defined contribution plan of Employer, or omit if the Safe Harbor Non-Elective Contribution will be made to this Plan.)

Note: No additional contributions are required in order to satisfy the requirements for the ADP Safe Harbor. However, if the Employer

wishes to make Matching Contributions that satisfy the ACP Test Safe Harbor requirements, then complete the following item D22.

D22. ACP Test Safe Harbor Contribution - The Plan satisfies the requirements of the ADP Test Safe Harbor and the Employer elects to make the following additional ACP Test Safe Harbor Contribution:

- a. Not Applicable - Only the Safe Harbor Contribution of D21. will be made.
- b. The ACP Test Safe Harbor Contribution is satisfied by the Basic Matching Contribution or the Enhanced Matching Contribution of D21.
- c. An additional ACP Test Safe Harbor Matching Contribution will be made and will be provided to: (Must select one of c. 1. through c.3. You may also select c.4.)
 - c.1. Each Participant who is eligible to make Elective Deferrals.
 - c.2. Each Participant eligible to make Elective Deferrals who is a Non-Highly Compensated Employee.
 - c.3. Each Participant eligible to make Elective Deferrals except Participants who are Highly Compensated and Key Employees.
 - c.4. However, Participants who have not completed a Year of Service since their original Employment Commencement Date, or have not yet reached age 21, and are not employed on the earlier of the first day of the next Plan Year after meeting the preceding requirements or 6 months after meeting the preceding requirements, will not receive the ACP Safe Harbor Contribution.

The additional ACP Test Safe Harbor Contribution is: (Select at least one of c.5. through c.7. Also, you may select c.7. in combination with c.5. or c.6.)

- c.5. _____% of the Elective Deferrals that do not exceed 6% of Compensation.
- c.6. _____% of the Elective Deferrals that do not exceed _____% of Compensation, plus _____% of the Elective Deferrals thereafter that do not exceed _____% of Compensation.
(The number inserted in the third blank cannot exceed the number inserted in the first blank. The number in the fourth blank cannot exceed 6.)
- c.7. A discretionary percentage (determined by the Employer in a nondiscriminatory manner for the Plan Year) of the Elective Deferrals that do not exceed 6% of a Participant's Compensation, such that the allocation of the additional ACP Test Safe Harbor Contribution does not exceed 4% of a Participant's Compensation for the Plan Year.

D23. Allocation Dates and True-Up for Employer Contributions (Sections 2.2.1, 2.3.2, 2.3.3, and 2.9.1) - Employer Contributions (other than Prevailing Wage Contributions) will be allocated to Participant Accounts as indicated below. (Select one of a. through i. and one of j. through p. for each contribution type.)

Allocation Dates - Select one of a. through i. for each contribution type.

Non-Elective Contributions	Matching Contributions	Safe Harbor Contributions (QACA or ADP Test Safe Harbor)	ACP Test Safe Harbor Contributions	
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	a. Not applicable - No Employer Contributions of the type indicated.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b. Annually, the last day of the Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. The Valuation Date elected in B2. coincident with or next following the date the contribution is made.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d. The last day of the Compensation Computation Period selected in C3.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	e. The last day of each pay period.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	f. Quarterly, the last day of each Plan Year quarter.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	g. Quarterly, the last day of each calendar year quarter.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	h. Monthly, the last day of each calendar month.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	i. Other - Specify.
_____	_____	_____	_____	Specify the other allocation date provisions. (Must be allocated at least annually.)
_____	_____	_____	_____	
_____	_____	_____	_____	

True-Up - Select one of j. through p. for each contribution type.

Note: Safe Harbor Non-Elective Contributions must always be "trued-up" based on Compensation for the Plan Year. The options in column 3 apply to Safe Harbor Matching Contributions only.

Non-Elective Contributions	Matching Contributions	Safe Harbor Matching Contributions (QACA, ADP Test, or ACP Test, Safe Harbor Matching Contributions)	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	j. No True-up or Not applicable (no Employer Contributions of the type indicated).
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	k. True-up to the current pay period for the Plan Year to date.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	l. True-up at the end of the Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	N/A	m. True-up year-to-date at each Valuation Date as elected in B2.
<input type="checkbox"/>	<input type="checkbox"/>	N/A	n. True-up year-to-date at each allocation date as elected above in this item D23.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	o. True-up each plan-year quarter with respect to the Compensation and Elective Deferrals for that plan-year quarter. (No True-up at the end of the Plan Year.)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	p. True-up each calendar month with respect to the Compensation and Elective Deferrals for that calendar month. (No True-up at the end of the Plan Year.)

D24. 401(k) SIMPLE Provisions (Sections 2.8.1 and 2.8.4)

Note: Complete only if the Plan is a SIMPLE Plan, as indicated under A1.a. If so, select one.

The Employer elects to have the 401(k) SIMPLE Provisions described in Article VIII apply to the Plan. (This option may be selected only if the Plan uses a calendar year Plan Year and the Employer is an Eligible Employer as defined in Section 2.8.2(b) of the Plan.)

- a. The Employer Contribution shall be a Matching Contribution equal to 100% of each Participant's Elective Deferral up to 3% of SIMPLE Compensation, as described in Section 2.8.4(a) of the Plan.
- b. In lieu of the Matching Contribution described in Section 2.8.4(a) of the Plan, the Employer shall make a Non-Elective Contribution described in Section 2.8.4(b) of the Plan, of 2% of SIMPLE Compensation, to be allocated to all Eligible Employees who received at least \$_____ [INSERT AN AMOUNT LESS THAN \$5,000] of SIMPLE Compensation for the Year.

D25. Employee Classifications (Section 2.3.2) - If the Plan allocates Non-Elective Contributions based on employee classifications, define the classifications below: (In the text area, add rows as needed to list all employee classifications. Each class must be clearly defined in a manner that satisfies 1.401-1(b)(1)(ii) of the Code.)

<u>Employee Classification</u>	<u>Description of Classification</u>
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D26. Employee Classifications (Section 2.3.3(a)) - If the Plan allocates Matching Contributions based on employee classifications, define the classifications below: (In the text area, add rows as needed to list all employee classifications. Each class must be clearly defined in a manner that satisfies 1.401-1(b)(1)(ii) of the Code.)

<u>Employee Classification</u>	<u>Description of Classification</u>
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E. Vesting Provisions

E1. Vesting Schedule (Section 2.4.1) - Benefits will vest in accordance with the method specified in a. through e. below. (Select one in each column. All contributions made pursuant to the Prevailing Wage Contribution (D19.), QNEC / QMAC (D20.), the ADP Safe Harbor Contribution (D21.), and the SIMPLE (D24.) provisions shall be 100% vested and nonforfeitable at all times.)

Vesting Schedule for Years when the Plan is not Top-Heavy					
Non-Elective Contribution Account	Matching Contribution Account	ACP Test Safe Harbor Matching Account	QACA Safe Harbor Employer Account	Top-Heavy Vesting Schedule	
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	N/A	a. Not applicable - No Employer Contributions of the selected type.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	N/A	<input type="checkbox"/>	b. At the rate of 20% each year after 2 Years of Vesting Service (20% vested in second year).
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. 100% vesting after ___ Year(s) of Vesting Service. Specify number of years. (not to exceed 3 years for Top-Heavy, Non-Elective, or Matching Accounts, or 2 years for QACA Accounts).
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d. 100% vesting upon participation.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	e. Other: (Optional vesting schedule must be at least as favorable as c. with 2 years for QACA Safe Harbor Contribution, or b. for all others) Enter the percentage for each service range:
0.000 %	0 %	%	%	0.000 %	Less than 1 Year of Vesting Service
60.000 %	60.000 %	%	%	60.000 %	1 but less than 2
80.000 %	80.000 %	%	100%	80.000 %	2 but less than 3
100.000 %	100.000 %	%	100%	100.000 %	3 but less than 4
%	%	%	100%	%	4 but less than 5
%	%	%	100%	%	5 but less than 6
100%	100%	100%	100%	100%	6 or more

Vesting at attainment of Early Retirement Age, death, or Disability while employed. (Select all that apply among the f. sub-options and g. However, you may not select both f.3. and g. in the same column.)

Vesting Schedule for Years when the Plan is not Top-Heavy					
Non-Elective Contribution Account	Matching Contribution Account	ACP Test Safe Harbor Matching Account	QACA Safe Harbor Employer Account	Top-Heavy Vesting Schedule	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	f. 100% vesting if any of the selected events occur while a Participant is employed by the Employer.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	f.1. Early Retirement Age.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	f.2. Death.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	f.3. Disability.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	g. A Disabled Participant continues to earn Vesting Service as though he was still employed.

E2. Prior Vesting Schedule - Complete the following if a prior vesting schedule continues to apply to Participants' Accounts. This prior vesting schedule may be more generous than that described in E1. and the Plan is subject to the limitations of Section 3.8.3(b). Or, the prior vesting schedule may be less generous, and continues to apply to contributions prior to the date specified under E2.a.2.

Non-Elective Contribution Account	Matching Contribution Account	
<input type="checkbox"/>	<input type="checkbox"/>	a. A prior vesting schedule applies to the selected Account. Enter the date this prior vesting schedule was amended.
<input type="checkbox"/>	<input type="checkbox"/>	a.1. The prior vesting schedule is more generous than the vesting schedule of E1.
<input type="checkbox"/>	<input type="checkbox"/>	a.2. The prior vesting schedule is less generous than the vesting schedule of E1. and continues to apply to contributions made prior to the specified date.
		b. Enter the vested percentage for each service range under the prior schedule.
%	%	Less than 1 Year of Vesting Service
%	%	1 but less than 2
%	%	2 but less than 3
%	%	3 but less than 4
%	%	4 but less than 5
%	%	5 but less than 6
%	%	6 but less than 7
100%	100%	7 or more

E3. Transferred Assets Vesting Schedule (Section 3.9.3(b)) - For transfers occurring after December 31, 2007, complete the following only if the other plan's vesting schedule provides greater vesting than the vesting schedule listed above.

- a. Non-Elective Contribution Account - a different vesting schedule applies to assets that were transferred from another plan's accounts into this Plan's Non-Elective Contribution Account.
 - a.1. Name of the plan from which assets were transferred: _____
 - a.2. Name of the source account from which assets were transferred (e.g. Profit Sharing): _____

- b. Matching Contribution Account - a different vesting schedule applies to assets that were transferred from another plan's accounts into this Plan's Matching Contribution Account.
- b.1. Name of the plan from which assets were transferred:

- b.2. Name of the source account from which assets were transferred:

Non-Elective Contribution Account	Matching Contribution Account	C. Enter the vested percentage for each service range under the transferred assets vesting schedule.
%	%	Less than 1 Year of Vesting Service
%	%	1 but less than 2
%	%	2 but less than 3
%	%	3 but less than 4
%	%	4 but less than 5
%	%	5 but less than 6
100%	100%	6 or more

E4. Reemployment (Section 2.4.3) - Years of Vesting Service completed after a Break in Service are not counted for purposes of increasing the vested percentage attributable to service before the Break in Service unless reemployed within 5 years, or as otherwise indicated below.

- a. Plan provision described above (5-year break rule).
- b. Count all service after the Break in Service for purposes of increasing the vested percentage attributable to service before the Break in Service.
- c. Not applicable - 100% immediate vesting or no Employer Contributions.

Omit the rest of this section E ONLY if ALL Accounts are 100% vested at participation and there are no Matching Contributions subject to Forfeiture pursuant to Section 2.7.9.

E5. Forfeitures (Section 2.4.4) - When a Participant terminates, the nonvested portion of his Accounts is treated as a Forfeiture, as indicated below. (Select all applicable.)

- a. No Forfeitures shall occur if the Participant is entitled to an allocation of Forfeitures. In this case, the Forfeiture will occur and be applied as of the first date indicated in item E6. for which the Participant is not entitled to an allocation of Forfeitures.

The Forfeiture is determined as of the: (Must select one of b. through e. May select e. along with b. or c., in which case the Forfeiture is determined as of the earlier of the two dates.)

- b. Last day of the Plan Year in which the distribution occurs.
- c. Valuation Date coincident with or next following the Distribution Determination Date.
- d. As of the last day of the Plan Year in which the _____ Break in Service occurs.
- e. Later of the last day of the Plan Year in which the distribution occurs, or the last day of the Plan Year of the fifth consecutive Break in Service.

If Forfeitures are determined based on distributions, Forfeitures occur: (Must select f. or g., if option b., c., or e. is selected.)

- f. Only when the entire vested interest (the final payment) is distributed.
- g. Pro-rata as the vested interest is distributed.

Deemed distributions to nonvested Participants occur as of:

- h. The date of termination.
- i. The last day of the Plan Year in which the Participant terminates employment.
- j. The Valuation Date next following the Participant's date of termination.
- k. The last day of the Plan Year following the Plan Year in which the Participant terminates employment.
- l. Other: _____, however, no earlier than the date of termination and not later than the last day of the Plan Year of the 5th consecutive Break in Service.

E6. Application of Forfeitures (Select all applicable. Must select a., or at least one of d. or e., but cannot select both d. and e. in the same column. If both d. and e. are selected (in different columns), the reduction option will apply before the supplement option.)
Note: If c. is not selected, then any restoration of Forfeitures will be accomplished by an additional Employer Contribution specifically allocated to the Participant's Account.

Note: Plans that provide for Matching Contributions subject to Forfeiture under Section 2.7.9 should select one or more of b., c., or d., even if Matching Contributions are immediately 100% vested.

Non-Elective Contribution Account, including QACA Non-Elective	Matching Contribution Account, including QACA Matching	
<input type="checkbox"/>	<input type="checkbox"/>	a. Not applicable, 100% immediate vesting or the Plan does not permit the selected type of Employer Contributions.
<input type="checkbox"/>	<input type="checkbox"/>	b. Reduce administrative expenses of the Plan.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	c. Restore forfeited account balances of rehires who are eligible for a restoration of Forfeitures. If that allocation is insufficient, the Employer shall make an additional contribution specifically allocated to the Participant's Account.
<input type="checkbox"/>	<input type="checkbox"/>	d. Reduce Employer Contributions, in a nondiscriminatory manner at the discretion of the Plan Administrator.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	e. Supplement Employer Contributions, in a nondiscriminatory manner at the discretion of the Plan Administrator.

Forfeitures shall be applied as of:

- f. Each Valuation Date.
- g. Each Anniversary Date.
- h. Each allocation date for Non-Elective Contributions.
- i. Each allocation date for Matching Contributions.
- j. Each allocation date for Non-Elective Contributions and Matching Contributions.

Forfeitures to be applied were determined:

- k. During the Plan Year.
- l. Since the prior Valuation Date.
- m. For the period before the prior Valuation Date.
- n. Since the prior allocation date.
- o. For the period before the prior allocation date.

E7. Requirement to Share in Allocation of Forfeitures - In order to share in the allocation of Forfeitures that supplement rather than reduce Employer Contributions, a Participant:

Non-Elective Contribution Account, including QACA Non-Elective	Matching Contribution Account, including QACA Matching	
<input type="checkbox"/>	<input type="checkbox"/>	a. Not applicable, 100% immediate vesting, or the Plan does not permit the selected type of Employer Contributions, or Forfeitures do not supplement Employer Contributions.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	b. Must be eligible to receive an allocation of the respective type of contribution.
<input type="checkbox"/>	<input type="checkbox"/>	c. All Participants are eligible to receive an allocation of Forfeitures. (May require testing.)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	d. Must be a Participant and employed on the date the Forfeiture is determined per E5., above. (May require testing.)
<input type="checkbox"/>	<input type="checkbox"/>	e. Must be a Participant and employed on the date the Forfeiture is applied per E6., above.
		If d. or e. is selected, Participants are also eligible in the Plan Year of death, retirement, or Disability, as indicated below. (Select all applicable.)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	f. In the Plan Year of death.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	g. In the Plan Year of retirement.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	h. In the Plan Year of Disability.

E8. Allocation of Forfeitures (Section 2.4.4) - Forfeitures are allocated: (Omit unless Forfeitures are allocated to Participants (item E6.e.))

Non-Elective Contribution Account, including QACA Non-Elective	Matching Contribution Account, including QACA Matching	
<input type="checkbox"/>	<input type="checkbox"/>	a. In the same manner as the respective Employer Contribution for the Plan Year. (Must select a. in the first column (Non-Elective), if Plan uses permitted disparity in the allocation formula for Non-Elective Contributions.)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	b. In proportion to each Participant's Compensation for the Plan Year.
<input type="checkbox"/>	N/A	c. In proportion to each Participant's Compensation for the Compensation Computation Period.
N/A	<input checked="" type="checkbox"/>	d. In proportion to Matching Contributions for the Plan Year.
N/A	<input type="checkbox"/>	e. In proportion to Elective Deferrals for the Plan Year.
N/A	<input type="checkbox"/>	f. In the same manner as Non-Elective Contributions.
<input type="checkbox"/>	<input type="checkbox"/>	g. As a flat dollar amount determined by dividing the Forfeiture amount by the number of Participants eligible to receive an allocation of Forfeitures.
N/A	<input type="checkbox"/>	h. In proportion to Matching Contributions for the Compensation Computation Period.
N/A	<input type="checkbox"/>	i. In proportion to Elective Deferrals for the Compensation Computation Period.

F. CODA Limitation Provisions

F1. ADP and ACP Tests (Sections 2.7.1 and 2.7.2) - Unless the Plan is a Safe Harbor 401(k) Plan, the Plan must pass the ADP and ACP Test on an annual basis.

Note: The same testing method must be used for both the Actual Deferral Percentage (ADP) Test and the Actual Contribution Percentage (ACP) Test UNLESS the Plan prohibits: (1) use of Elective Deferrals in the ACP Test (see Item F1.j.3.), (2) Recharacterization of Excess Contributions (see Item F3.a.), and (3) use of Qualified Matching Contributions in the ADP Test (see Item F1.e.3.) (Section 2.7.4).

ADP Test - Elective Deferrals

The method used in determining the ADP Test is: (Select all applicable.)

- a. Prior Year Testing. If this is not a successor plan, for the first Plan Year that this Plan permits any Participant to make Elective Deferrals, the ADP for NHCEs shall be:
 - a.1. 3%.
 - a.2. The ADP for NHCEs for the Current Year.
- b. Current Year Testing. (See Section 2.7.1(b) for rules to change this election.)

The ADP Test includes Elective Deferrals and: (Select c., or one each from the d. and e. options.)

- c. No other contributions are included.
- d. Qualified Non-Elective Contributions (QNECs).

Warning: Prevailing Wage Contributions that are treated as QNECs and used to pass the ADP Test are limited to 10% of Compensation.

- d.1. All QNECs.
- d.2. Only those QNECs needed to pass the ADP Test.
- d.3. QNECs are not to be included in the ADP test.

e. Qualified Matching Contributions (QMACs).

- e.1. All QMACs.
- e.2. Only those QMACs needed to pass the ADP Test.
- e.3. QMACs are not to be included in the ADP test.

ACP Test - Matching and Voluntary Employee Contributions

The method used in determining the ACP Test is: (Select all applicable.)

- f. Not applicable. The Plan does not permit Matching and Voluntary Employee Contributions.
- g. Prior Year Testing. If this is not a successor plan, for the first Plan Year that this Plan allows Matching Contributions, the ACP for NHCEs shall be:
 - g.1. 3%.
 - g.2. The ACP for NHCEs for the Current Year.
- h. Current Year Testing. (See Section 2.7.2(b) for rules to change this election.)

The ACP Test includes Matching and Voluntary Employee Contributions and: (Select i., or one each from the j., k., and l. options.)

- i. No other contributions are included.
- j. Elective Deferrals
 - j.1. All such Elective Deferrals.
 - j.2. Only those Elective Deferrals that are needed to pass the ACP test.
 - j.3. Elective Deferrals are not to be included in the ACP test.
- k. Qualified Non-Elective Contributions (QNECs)

Warning: Prevailing Wage Contributions that are treated as QNECs and used to pass the ACP Test are limited to 10% of Compensation.

- k.1. All such QNECs.
- k.2. Only those QNECs that are needed to pass the ACP test.
- k.3. QNECs are not to be included in the ACP test.

l. Qualified Matching Contributions (QMACs)

- l.1. All such QMACs.
- l.2. Only those QMACs that are needed to pass the ACP test.
- l.3. QMACs are not to be included in the ACP test.

F2. Excess Aggregate Contributions (Section 2.7.7) - Vested Excess Aggregate Contributions shall be distributed to the Participant. Forfeitures of Excess Aggregate Contributions (Matching Contributions) shall be:

- a. Applied to reduce Employer Contributions (i.e., Non-Elective, QNEC, QMAC, Matching).
- b. Allocated, after all other Forfeitures under the Plan, to each Participant's Matching Contribution Account in the ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year. Such Forfeitures will not be allocated to the Account of any Highly Compensated Employee.

F3. Recharacterization of Excess Contributions (Section 2.7.6) - In the event all Participants are eligible to make Voluntary Employee Contributions, the Employer may permit the recharacterization of Excess Contributions as Voluntary Employee Contributions (after-tax).

- a. Distribute all Excess Contributions.
- b. Recharacterize all Excess Contributions.
- c. Distribute or recharacterize Excess Contributions, as chosen by the Participant.

G. Distribution Provisions

G1. **Forms of Distribution (Section 2.5.2)** - (Select all applicable.)

Note: No spousal consent shall be required for a distribution if the only forms of distribution available or elected are lump sum distribution, partial distribution, or installments. If an annuity option of life or longer is selected, Qualified Joint and Survivor Annuity provisions apply.

- a. Lump sum distribution
 - a.1. without regard to amount.
 - a.2. not to exceed \$_____.
 - a.3. if the Participant has completed ____ Years of Service and has attained age ____.
- b. Partial non-periodic distribution. Ad hoc distributions at the times and in the amounts requested by the Participant or Beneficiary,
 - b.1. without regard to amount.
 - b.2. with the amount of any distribution to be at least \$_____ (\$200 or less) or the total remaining distributable benefit, if less.
- c. Installment payments paid:
 - c.1. over _____ years payable on an annual, quarterly, or monthly basis.
 - c.2. over a period of years selected by the Participant that is less than the life of the Participant payable on an annual, quarterly, or monthly basis.
 - c.3. Other: _____ *Note: This option is not considered a modification to the pre-approved plan.*
- d. Annuities
 - d.1. for not more than ____ years.
 - d.2. for the life of (Select all that apply.)
 - d.2.A. the Participant.
 - d.2.B. the Participant and spouse.
 - d.2.C. the Participant and a Designated Beneficiary. (Must also complete G4.)
 - d.3. for a certain period of: (Select all that apply.)
 - d.3.A. 5 years.
 - d.3.B. 10 years.
 - d.3.C. 15 years.
 - d.3.D. 20 years.and thereafter for the life of: (Select all that apply.)
 - d.3.E. the Participant.
 - d.3.F. the Participant and spouse.
 - d.3.G. the Participant and a Designated Beneficiary. (Must also complete G4.)
 - d.4. for a period certain selected by the Participant that is less than the life expectancy of (Select all that apply.)
 - d.4.A. the Participant.
 - d.4.B. the Participant and spouse.
 - d.4.C. the Participant and a Designated Beneficiary.
- e. Minimum distributable amount to nonvested Participants (Section 2.5.1(c)) - The Plan will provide the lesser of the account balance or \$_____ (amount cannot exceed \$100) to a Participant with no vested balance.

Direct and Participant Rollovers from the Plan

- f. Direct Rollovers by non-spouse beneficiary to an inherited IRA were permitted for distributions after ____/____/_____. (Enter a date on or after December 31, 2006 and prior to January 1, 2008 to indicate early adoption of this provision which is required for distributions after December 31, 2007. 2009 Interim Amendment item 3.)
- g. The Plan permits or permitted after-tax contributions and Direct and/or Participant rollover of after-tax amounts to a 403(b) annuity contract are permitted effective ____/____/_____. (Effective date January 1, 2007 or later. 2009 Interim Amendment item 2.) The Plan permits:
 - g.1. Direct rollovers of after-tax amounts to a 403(b) annuity contract.
 - g.2. Participant rollovers of after-tax amounts to a 403(b) annuity contract.

G2. **Mandatory Cash Out and Automatic Direct Rollover Provisions (Sections 2.5.3(c) and 2.5.3(d))** - Select one of a. or b, and complete d. If b. is selected, may also select c.)

- a. No mandatory cash out.
- b. The mandatory cash out threshold shall be \$5,000.00. (less than or equal to \$5,000)

The distribution will occur:

- b.1. As soon as administratively feasible.
- b.2. As soon as administratively feasible after the next Valuation Date.
- b.3. As soon as administratively feasible after the last day of the Plan Year.

(Warning: Exclusion of rollovers could trigger automatic rollover provisions if the Participant's total balance exceeds \$1,000.)

- c. Exclude Rollover Account when determining the value of the Participant's nonforfeitable Account balance for purposes of the Plan's involuntary cash out rules. This election shall apply with respect to distributions made after ____/____/_____. (Enter a date no earlier than December 31, 2001.), and with respect to Participants who separated from service after ____/____/_____. (Enter date. The date may be earlier than December 31, 2001.)
- d. Automatic Rollover. Subject to Section 2.5.3(d), the default form of distribution for Eligible Rollover Distributions that are greater than \$200.00 shall be a Direct Rollover. (Must be \$1,000 or less.)

G3. Qualified Survivor Annuity Percentages and One Year Marriage Rule (Section 2.5.6) - If a life annuity option is selected above (G1.d.2.A., G1.d.2.B., G1.d.3.E., or G1.d.3.F.), a Qualified Joint and Survivor Annuity must be provided for a married Participant and the Participant's Spouse. (If applicable, select one of a. through f. and select one of g. or h.)

Note: In addition to the percentage selected for the Qualified Joint and Survivor Annuity, a Participant must be permitted to elect an optional form of annuity. If the selected Qualified Joint and Survivor Annuity percentage is less than 75%, the Qualified Optional Survivor Annuity will be 75%. If the selected percentage is 75% or more, the Qualified Optional Survivor Annuity will be 50%.

- a. 50%.
- b. 66.67%.
- c. 75%.
- d. 100%.
- e. _____% (Specify the percentage. May not be less than 50% or greater than 100%.)
- f. Other percentage selected by the Participant which is not less than 50% nor more than 100%.

"One Year Marriage Rule" - (Section 2.5.6(d))

- g. Apply the "one year marriage rule".
- h. The "one year marriage rule" does not apply.

G4. Designated Beneficiary Survivor Annuity Percentages (Section 2.5.6) - If a joint and survivor annuity option for a Designated (non-spouse) Beneficiary is selected above (G1.d.2.C. and/or G1.d.3.G.), select the survivor annuity percentage(s) that a Participant may elect for the survivor's annuity payments. (Select a. or all applicable from b. through g.)

- a. Same as the Qualified Joint and Survivor percentage selected in G3.
- b. 50%.
- c. 66.67%.
- d. 75%.
- e. 100%.
- f. _____ % (Specify the percentage. May not be less than 50% or greater than 100%.)
- g. Other percentage selected by the Participant which is not less than 50% nor more than 100%.

G5. Distributable Event due to Disability - A distributable event due to Disability occurs:

- a. Termination Date. (Distributable event occurs upon the Participant's termination of employment.)
- b. The Participant's actual date of Disability, as determined by the Plan Administrator.
- c. ___ months after the Participant's actual date of Disability, as determined by the Plan Administrator.
- d. The date the Plan Administrator determines the Participant to be Disabled.

G6. Distribution Determination Date (Section 2.5.1(d)) - For distribution purposes due to a distributable event, the value of a Participant's vested account balance shall be determined as of: (Select one under each column.)

- * Column 1 establishes the Distribution Determination Date upon termination of employment for reasons other than death, Disability, or retirement, for all Accounts other than those specified under column 3 (Elective, Voluntary, Deductible Voluntary, and Rollover).
- * Column 2 establishes the Distribution Determination Date for a distributable event due to death, Disability, or retirement, for all Accounts other than those specified under column 3.
- * Column 3 establishes the Distribution Determination Date for Elective, Voluntary, Deductible Voluntary, and Rollover Accounts, for any distributable event.

Note: The value of investments in Accounts valued on a daily basis is always determined on the date of distribution.

Termination For Reasons Other than Death, Disability, or Retirement	Death, Disability, or Retirement	Elective, Voluntary, Deductible Voluntary, and Rollover Accounts	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. The last day of the Plan Year coinciding with or next following the date of the distributable event.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b. The Valuation Date coinciding with or next following the date of the distributable event.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. The Valuation Date coinciding with or immediately preceding the date of the distributable event.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	d. As soon as administratively feasible following the date of the distributable event, based on the preceding Valuation Date.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	e. The indicated date following ___ consecutive Breaks in Service. (Select one of e.1., e.2., or e.3. and complete e.4.)

Termination For Reasons Other than Death, Disability, or Retirement	Death, Disability, or Retirement	Elective, Voluntary, Deductible Voluntary, and Rollover Accounts	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	e.1. Valuation Date.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	e.2. Anniversary Date.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	e.3. Other Date. (Specify in the text box. e.g. "Last Day of the Plan Year")
___	___	___	e.4. Number of Breaks in Service
<input type="checkbox"/>	N/A	N/A	f. The Valuation Date preceding the Participant's Normal or Early Retirement Date

G7. Time of Distribution (Sections 2.5.1 and 2.5.4) - For distributions other than mandatory cash out distributions, the distribution shall be made as indicated below: (See G2. for mandatory cash out selections.)

Distributions to Participants who resign or are discharged for reasons other than death, Disability, or retirement shall be:

- a. Made within a reasonable period following the Distribution Determination Date.
- b. Made within a reasonable period following the Anniversary Date.
- c. Deferred until the Participant's Normal or Early Retirement Date.

Distributions to Participants who have a distributable event due to death, Disability, or retirement shall be:

- d. Made within a reasonable period following the Distribution Determination Date.
- e. Made within a reasonable period following the Anniversary Date.

Restriction on Immediate Distributions - Immediate distributions are only permitted if the Participant's vested account balance is less than:

- f. No Restriction.
- g. \$_____.

G8. Permissible Withdrawals under an EACA (Section 2.2.3(b)(7)) - If the Plan contains Eligible Automatic Contribution Arrangement features, the Plan may permit a Permissible Withdrawal of Elective Deferrals made through a default election, as elected below. (Select one.)

- a. Not applicable, the Plan does not contain EACA features, or Permissible Withdrawals are not permitted.
- b. The Plan permits a Permissible Withdrawal of Elective Deferrals made through a default election, within 90 days of the first automatic contribution under an Eligible Automatic Contribution Arrangement.
- c. The Plan permits a Permissible Withdrawal, however the election period for requesting a Permissible Withdrawal shall be limited to ___ days (at least 30 and no more than 90 days).

G9. In-service Distributions (Section 2.5.12) - For reasons other than hardship, in-service distributions are permitted as specified below. (See item G10 for hardship withdrawals and in-service distributions due to hardship.)

Warning: *In-service distributions are a protected benefit. If the Plan was in existence before the adoption of this Adoption Agreement, the selections under this item should be the same as, or more liberal than, the selections previously made, to avoid a cutback in protected benefits and to have uniform provisions apply to all Participants. However, if the Employer chooses to amend the in-service distribution provisions to make the provisions more restrictive, such an amendment will only apply to Eligible Employees hired on or after the effective date of such amendment. Further, the effective date of such an amendment to the in-service distribution provisions can be no earlier than the adoption date of the amendment.*

a. Amendment to in-service distribution provisions. (Select one of a.1. through a.3.)

- a.1. Not Applicable - New Plan or the selections below are identical to those previously made.
- a.2. The selections below reflect an amendment to in-service distribution provisions, and these selections are a liberalization (e.g. reduction in age requirement, availability of more Accounts), that will be effective as of the Effective Date of this Adoption Agreement and will apply to all Participants.
- a.3. The selections below reflect an amendment to the in-service distribution provisions, and these selections are more restrictive (e.g. imposition of limitations on the number of in-service distributions during a Plan Year). These in-service distribution provisions will apply only to Eligible Employees hired on or after the effective date for the in-service distribution provisions selected below. The effective date for these provisions is the later of the Adoption Date of this Adoption Agreement or ___/___/____ (specify date that is on or after the Adoption Date).

Note: If a.3. is selected, you must also specify the in-service distribution provisions under the prior plan, on the SPD screen.

b. Availability of in-service distributions. (Select one of b.1. through b.4. If b.2., b.3., or b.4. is selected, complete the remainder of this item G9.)

- b.1. No in-service distributions are permitted.
- b.2. In-service distributions are permitted only as a distribution from the Plan. In-Plan Roth conversion is not permitted.
- b.3. In-service distributions are permitted solely for In-Plan Roth conversion purposes. This provision may be selected only when the Plan has not previously permitted in-service distributions.
- b.4. In-service distributions are permitted for either In-Plan Roth conversion purposes or as a distribution from the Plan.
- b.5. Effective date of In-Plan Roth conversion provision: ___/___/____ (If b.3. or b.4. is selected, enter the effective date which may be no earlier than September 27, 2010.)

In-service distributions from Elective Deferrals and Accounts subject to age 59 1/2 restrictions

- c. In-service distributions are permitted from the following Accounts, if the Participant has attained age 59 1/2 and satisfied any additional requirements indicated under item d.:
 - c.1. Pre-tax Elective Deferrals.
 - c.2. Roth Deferrals.
 - c.3. ADP Test Safe Harbor Contributions.
 - c.4. Qualified Non-Elective Contributions.
 - c.5. Qualified Matching Contributions and Matching Contributions used in ADP Test.
 - c.6. QACA Safe Harbor Contributions.
- d. The following requirements must be satisfied to receive an in-service distribution from the Accounts selected in c.: (Select at least one of d.1. through d.4.)
 - d.1. Age 59 1/2 (Plan Provision).
 - d.2. Attainment of Normal Retirement Age, but no earlier than age 59 1/2.
 - d.3. Attainment of Early Retirement Age, but no earlier than age 59 1/2.
 - d.4. Age ____ (must be at least 59 1/2).

The Employer may choose to impose requirements in addition to an age requirement. (Select one of the following if, in addition to attaining the specified age, the Participant must also satisfy a participation and/or or years allocated requirement.)

- d.5. Amounts have been allocated for ____ years. (Must be at least 2.)
- d.6. Require participation for at least ____ years. (Must be at least 5.)
- d.7. Amounts have been allocated for ____ years (must be at least 2) **AND** require participation for at least ____ years (must be at least 5).
- d.8. Amounts have been allocated for 2.0 years (must be at least 2) **OR** require participation for at least 5.0 years (must be at least 5).

The Employer may choose to permit distributions from the Accounts indicated under c, as a "deemed severance distribution," for Participants on active duty for 30 days performing Qualified Military Service.

- d.9. Permit deemed severance distributions for Participants on active duty for 30 days performing Qualified Military Service.

Note: The age 59 1/2 requirement and any other requirements selected under d.1. through d.8. do not apply to a deemed severance distribution. However, upon receipt of a deemed severance distribution, the Participant must be suspended for a period of 6 months from making Elective Deferrals or employee contributions to the Plan.

In-service distributions from Non-Elective Contributions, Matching Contributions and ACP Test Safe Harbor Matching Contributions Accounts (Includes Prevailing Wage and Top-Heavy Minimum Contributions, but excludes all Employer Contributions subject to age 59 1/2 restrictions.) (See item G10. for in-service distributions due to hardship.)

- e. In-service distributions are permitted from the following Employer Contribution Accounts, if the Participant has satisfied the requirements indicated under item f.: (Select all that apply.)
 - e.1. Non-Elective Contributions.
 - e.2. Matching Contributions.
 - e.3. ACP Test Safe Harbor Matching Contributions.
- f. Specify the requirements to be satisfied to receive an in-service distribution from the Employer Contribution Accounts indicated under e.: (Select all that apply.)

Retirement Age

- f.1. Attainment of Normal Retirement Age.
- f.2. Attainment of Early Retirement Age.

Other requirements (Complete all that apply.)

- f.3. Attainment of age 59.5.

If requirements under f.4. through f.8. apply, then the Participant must attain the indicated age:

- f.3.A. **AND** meet the requirements indicated below.
- f.3.B. **OR** meet the requirements indicated below.
- f.4. Amounts have been allocated for 2.0 years. (Must be at least 2.)
- f.5. Require participation for at least 5.0 years. (Must be at least 5.)
- f.6. Amounts have been allocated for ____ years (must be at least 2) **AND** require participation for at least ____ years (must be at least 5).
- f.7. Amounts have been allocated for ____ years (must be at least 2) **OR** require participation for at least ____ years (must be at least 5).
- f.8. Vesting - Must be fully (100%) vested in all Plan Accounts to receive an in-service distribution. If additional requirements apply, as selected in f.3. through f.7., the Participant must satisfy those requirements as well as being 100% vested.

- g. Deemed severance distributions are also permitted from the Accounts indicated under e., for Participants on active duty for 30 days performing Qualified Military Service. The requirements selected under f. do not apply to a distribution due to deemed severance.

In-service distributions from Rollover Accounts, In-Plan Roth Rollover (conversion) Accounts, and Voluntary Contribution Accounts

- h. In-service distributions from the following Accounts are permitted, provided the conditions selected under i. are satisfied:
 - h.1. All Rollover Accounts, including Roth Rollover Accounts transferred into the Plan.
 - h.2. Rollover Accounts, excluding Roth Rollover Accounts transferred into the Plan.
 - h.3. In-Plan Roth Rollover (conversion) Accounts (does not include Roth Deferrals).
 - h.4. Voluntary Contribution Accounts.
- i. The following requirements must be satisfied to receive an in-service distribution from Rollover Accounts and Voluntary Contribution Accounts. (Select one.) (In-Plan Roth Rollover (conversion) Accounts, if any, are available for in-service distribution without restriction, however tax penalties may apply.)
 - i.1. None; a Participant may request distribution from these Accounts at any time.
 - i.2. Normal Retirement Age.
 - i.3. Early Retirement Age.
 - i.4. Age ____.
- j. Deemed severance distributions are also permitted from the Accounts indicated under h., for Participants on active duty for 30 days performing Qualified Military Service. The requirements selected under i. do not apply to a distribution due to deemed severance.
- k. The Employer may choose to limit the number of in-service distributions made to a Participant during a Plan Year and/or to set a minimum amount for any single in-service distribution, provided that such administrative provisions do not discriminate in favor of Highly Compensated Employees.

Warning: If the Plan was in existence before the adoption of this Adoption Agreement, the selections under G9.k. must be the same as the prior plan provisions (e.g. k.1. for Plans on an EGTRRA version All Valley Administrators LLC document.) to avoid an amendment to the in-service distribution provisions as described in the warning for item G9.a.

- k.1. No limitations on the number of in-service distributions made during a Plan Year and no minimum amount for an in-service distribution.
- k.2. The maximum number of in-service distributions made to any Participant during a Plan Year is _____. (One (1) request, regardless of the number of Accounts from which the distribution is to be taken, is considered a single in-service distribution.)
- k.3. The minimum amount of a single in-service distribution made to any Participant during a Plan Year is the lesser of \$ _____ or the total value of the vested account balances of the accounts eligible for in-service distribution. (Enter a value not to exceed \$1,000). (One (1) request, regardless of the number of Accounts from which the distribution is to be taken, is considered a single in-service distribution.)

G10. Hardship Withdrawals and In-service Distributions due to Hardship (Sections 2.5.10 and 2.5.12) - The Employer may permit hardship withdrawals and in-service distributions due to hardship, subject to the stated deemed hardship standards of Reg. 1.401(k)-1(d)(2)(iv) (the 6 criteria):

Hardship withdrawals from Elective Deferrals and Accounts subject to age 59 1/2 restrictions

- a. No hardship withdrawals are permitted from Elective Deferral Accounts, nor from any other Account subject to age 59 1/2 restrictions.
- b. Hardship withdrawals are permitted from the following Accounts:
 - b.1. Pre-tax Elective Deferrals.
 - b.2. Roth Deferrals.
 - b.3. ADP Test Safe Harbor Contributions, provided the Participant has attained age 59 1/2.
 - b.4. Qualified Non-Elective Contributions, provided the Participant has attained age 59 1/2.
 - b.5. Qualified Matching Contributions (Matching Contributions used in ADP Test), provided the Participant has attained age 59 1/2.
 - b.6. QACA Safe Harbor Contributions, provided the Participant has attained age 59 1/2.
- c. The maximum amount of Elective Deferrals eligible for a hardship withdrawal is: (select one)
 - c.1. The Participant's total Elective Deferrals (including Roth Deferrals, if selected in b.2.).
 - c.2. Elective Deferrals (including Roth Deferrals, if selected in b.2.) plus earnings that were credited to the Account before ____/____/_____. (Enter the later of December 31, 1988 OR the last day of Plan Year ending before July 1, 1989).

In-service distributions due to hardship from Non-Elective Contributions, Matching Contributions and ACP Test Safe Harbor Matching Contributions Accounts (Includes Top-Heavy Minimum Contributions, but excludes all Employer Contributions subject to age 59 1/2 restrictions.)

Warning: In-service distributions are protected benefits. If the Plan was in existence before the adoption of this Adoption Agreement, the selections under this item should be the same as, or more liberal than, the selections previously made, to avoid a cutback in protected benefits and to have uniform provisions apply to all Participants. However, if the Employer chooses to amend the in-service distribution provisions to make the provisions more restrictive, such an amendment will only apply to eligible employees hired on or after the effective date of such amendment. Further, the effective date of such an amendment to the in-service distribution provisions can be no earlier than the adoption date of the amendment.

- d. Amendment to the provisions for an in-service distribution due to hardship. (Select one of d.1. through d.3.)

- d.1. Not Applicable - New Plan or the selections below are identical to those previously made.
- d.2. The selections below reflect an amendment to in-service distribution provisions, and these selections are a liberalization (e.g. reduction in age requirement, availability of more Accounts) that will be effective as of the Effective Date of this Adoption Agreement and will apply to all Participants.
- d.3. The selections below reflect an amendment to the in-service distribution provisions, and these selections are more restrictive (e.g. imposition of limitations on the number of in-service distributions during a Plan Year). These in-service distribution provisions will apply only to Eligible Employees hired on or after the effective date for the in-service distribution provisions selected below. The effective date for these provisions is the later of the Adoption Date of this Adoption Agreement or ___/___/____ (specify date that is on or after the Adoption Date).

Note: If d.3. is selected, you must also specify the in-service distribution provisions under the prior plan, on the SPD screen.

- e. In-service distributions due to hardship are permitted from the following Employer Contribution Accounts, subject to the stated deemed hardship standards of Reg. 1.401(k)-1(d)(2)(iv) (the 6 criteria):
 - e.1. Non-Elective Contributions.
 - e.2. Matching Contributions.
 - e.3. ACP Test Safe Harbor Matching Contributions.
- f. The Employer may choose to impose requirements in addition to the criteria for hardship for an in-service distribution due to hardship from the Accounts selected in e. (Complete all that apply.)
 - f.1. Hardship only. No other requirements apply.
 - f.2. In addition to meeting the hardship criteria, the Participant must also satisfy: (Select f.2.A. or f.2.B. and indicate the additional requirement(s) under f.3.)
 - f.2.A. **All** of the requirements indicated in f.3. below.
 - f.2.B. **Any** of the requirements indicated in f.3. below.
 - f.3. The requirement(s) in addition to hardship criteria are:
 - f.3.A. Attainment of age ____.
 - f.3.B. Amounts have been allocated for ____ years. (Must be at least 2.)
 - f.3.C. Require participation for at least ____ years. (Must be at least 5.)
 - f.3.D. Amounts have been allocated for ____ years (must be at least 2) **AND** require participation for at least ____ years (must be at least 5).
 - f.3.E. Amounts have been allocated for ____ years (must be at least 2) **OR** require participation for at least ____ years (must be at least 5).
 - f.3.F. Vesting - Must be fully (100%) vested in all Plan Accounts to receive an in-service distribution due to hardship.

In-service distributions due to hardship from Rollover Accounts, In-Plan Roth Rollover (conversion) Accounts, and Voluntary Contribution Accounts

- g. In-service distributions due to hardship are permitted from the following Accounts:
 - g.1. All Rollover Accounts, including Roth Rollover Accounts transferred into the Plan.
 - g.2. Rollover Accounts, excluding Roth Rollover Accounts transferred into the Plan.
 - g.3. In-Plan Roth Rollover (conversion) Accounts.
 - g.4. Voluntary Contribution Accounts.
- h. The Employer may choose to limit the number of in-service distributions due to hardship made to a Participant during a Plan Year and/or to set a minimum amount for any single such distribution, provided that such administrative provisions do not discriminate in favor of Highly Compensated Employees.

Warning: *If the Plan was in existence before the adoption of this Adoption Agreement, the selections under G10.h. must be the same as the prior plan provisions (e.g. h.1. for Plans on an EGTRRA version All Valley Administrators LLC document.) to avoid an amendment to the in-service distribution provisions as described in the warning for item G10.d.*

 - h.1. No limitations on the number of in-service distributions due to hardship made during a Plan Year and no minimum amount for such distributions.
 - h.2. The maximum number of such distributions made to any Participant during a Plan Year is _____. (One (1) request, regardless of the number of Accounts from which the distribution is to be taken, is considered a single in-service distribution.)
 - h.3. The minimum amount of a single such distribution made to any Participant during a Plan Year is the lesser of \$_____ or the total value of the vested account balances of the accounts eligible for in-service distribution due to hardship. (Enter a value not to exceed \$1000.00.) (One (1) request, regardless of the number of Accounts from which the distribution is to be taken, is considered a single in-service distribution.)

G11. Qualified Domestic Relations Orders (Section 3.11.6) - The Employer may elect to permit distributions to an Alternate Payee pursuant to the terms of a Qualified Domestic Relations Order even if the Participant continues to be employed.

- a. Distributions to an Alternate Payee are not permitted while the Participant continues to be employed before the earliest possible retirement age pursuant to Code section 414(p).
- b. Distributions to an Alternate Payee are permitted while the Participant continues to be employed on or after the date a Domestic Relations Order is determined to be a Qualified Domestic Relations Order by the Plan Administrator.

G12. Required Minimum Distributions

- a. Required Beginning Date - The General Rule in Section 2.5.7(i)(4) states that minimum distributions to a Participant must begin by April 1 of the calendar year following the calendar year in which the Participant attains age 70 1/2.

Warning: If the Plan was in existence before the adoption of this Adoption Agreement, the choice between items G12.a.1. or G12.a.2. must be the same as the selection previously made.

- a.1. Required Beginning Date is age 70 1/2 for all Participants.
 - a.2. Exception for Non-5-Percent Owners. (The Required Beginning Date for Participants who are not 5-Percent Owners shall be the later of April 1st of the calendar year following the calendar year in which the Participant attains age 70 1/2, or April 1st of the calendar year following the calendar year in which the Participant retires.)
- b. If selected, Participants or Beneficiaries may elect to apply the 5-year rule to distributions regarding a Participant who dies before distributions begin.

H. Other Administrative Provisions

H1. **Earnings for Distribution Purposes (Section 3.1.2)** - The Employer may specify the manner in which earnings are allocated to Participants who receive distributions on any date other than a Valuation Date.

- a. Earnings will be credited solely as of the immediately preceding Valuation Date.
- b. Actual earnings will be credited to the date of distribution.

Note: Earnings and gains and losses on investments in Accounts that are valued on a daily basis are always credited to the date of distribution.

H2. **Earnings on Forfeiture Accounts (Section 3.1.3)**

- a. Will any Forfeiture Account holding the Plan's aggregate Forfeitures be subject to Trust earnings?
 - a.1. Yes.
 - a.2. No.

H3. **Investment Control (Section 4.5 of the Trust)** - The Employer may elect to permit Participants to control the investment of their Accounts. (Select a. or b. If b. is selected, complete the remainder of this item as appropriate.)

Note: If the options under investment control are compatible with the attached trust, choose the investment control provisions a. through g. If the attached trust has unique investment control provisions choose h. in which case the provisions of the trust will govern. Attaching a trust other than the All Valley Administrators LLC trust or another trust pre-approved for use with the All Valley Administrators LLC prototype will cause the Plan to be considered Individually Designed.

- a. Participants may not control their investments.
- b. Participants may control the investment of their Accounts, as provided below. The following elections apply to: (Select one of b.1. through b.3. Also, select one of c. or d., and complete the remainder of this item as applicable.)
 - b.1. Account balances as of the Effective Date of this Plan as well as future contributions.
 - b.2. Contributions made as of ___/___/___ and after. Participants may not control the investment of contributions made as of a prior date. (This option requires sub-accounts to be established as of the specified date.)
 - b.3. Other: _____ (Specify other provisions for determining the portions of a Participant's Accounts that the Participant may control. Indicate the Accounts subject to Participant control under option c. or d. The provision entered in this item b.3. must not discriminate in favor of Highly Compensated Employees. If this provision is not uniformly available, it must be tested for nondiscrimination.)

If b. is selected, specify the Accounts over which the Participant may exercise investment control, subject to the limitations of b.1., b.2., or b.3., by selecting one of c. or d.

- c. Participants may control the investments in all Accounts.
- d. Participants may control their investments solely with respect to amounts attributable to: (Select one or more.)
 - d.1. Non-Elective Contributions.
 - d.2. Qualified Non-Elective Contributions.
 - d.3. Qualified Matching Contributions.
 - d.4. Pre-tax Elective Deferrals.
 - d.5. ADP Test and QACA Safe Harbor Contributions (401(k)(12) or 401(m)(11)).
 - d.6. Matching Contributions.
 - d.7. Voluntary Contributions.
 - d.8. Roth Deferrals.
 - d.9. Deemed IRA Contributions.
 - d.10. Amounts held in a Rollover Account, including In-Plan Roth Rollover (conversion) Accounts.
- e. Must be 100% vested in directed Accounts.
- f. Elections to transfer investments to a Controlled Account may occur:
 - f.1. Only on a Valuation Date.
 - f.2. As of the date of election, provided such election is deemed feasible by the Trustee.
- g. This Plan is intended to comply with ERISA section 404(c). (Plan Administrator or appropriate Fiduciary shall ensure that the Plan provides Participants with the minimum options and information required by ERISA section 404(c) and the Regulations thereunder.)
- h. Not Applicable (see attached Trust).

H4. **Life Insurance Authorization (Section 3.10.1)** - The Employer may permit the purchase of Life Insurance Policies to provide incidental insurance benefits. (Select one.)

- a. No Life Insurance shall be purchased.
- b. The purchase of Life Insurance is permitted as provided under Part 3 Article X and the Life Insurance Policy adopted by the Employer.

H5. **Loans (Section 3.5.1)** - The Employer may elect to permit loans to Participants and Beneficiaries in accordance with a Participant loan program.

- a. Loans are permitted, in accordance with a Participant loan program.
- b. Loans are not permitted.

H6. **Rollovers / Portability (Section 3.9.3)** - The Employer may permit rollover of Eligible Rollover Distributions from other qualified plans and IRAs to this Plan. (Select all applicable and if the effective date of the selection is other than the Effective Date of this Plan, specify

below the provision's effective date.)

- a. Rollover Accounts are not permitted.
- b. Rollover Accounts are permitted only from other plans of the Employer:
 - b.1. Including Roth Rollovers effective ___/___/_____.
 - b.2. Excluding Roth Rollovers.
- c. The indicated types of Rollovers or Transfers are permitted, and the Plan will accept rollovers from the plans / IRAs indicated below. (To permit Rollovers or Transfers, select all that apply under this item c.)

Direct Rollover (Trust to Trust transfer)	Participant Rollover (within 60 days of the distribution)	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	c.1. Permitted, as indicated below, from:
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	c.2. A qualified plan described in Code sections 401(a) or 403(a), excluding after-tax employee contributions.
<input type="checkbox"/>	N/A	c.3. A qualified plan described in Code sections 401(a) or 403(a), including after-tax employee contributions.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	c.4. An annuity contract described in Code section 403(b). After-tax amounts:
<input type="checkbox"/>	<input type="checkbox"/>	c.4.A Will be accepted by the Plan effective ___/___/_____ (Effective date January 1, 2007 or later.)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	c.4.B Are excluded. The Plan will not accept rollover of after-tax amounts.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	c.5. An eligible plan under Code section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.
<input type="checkbox"/>	N/A	c.6. A Roth Deferral account in a qualified plan described in Code sections 401(a) or 403(a). (May select this option only if the Plan permits Roth Deferrals.)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	c.7. An Individual Retirement Account or Annuity described in Code sections 408(a) or (b) or 408A that is eligible to be rolled over:
<input type="checkbox"/>	<input type="checkbox"/>	c.7.A Including a Transfer/Rollover from a Roth IRA effective ___/___/_____ (May select this option only if the Plan permits Deemed IRA Accounts. Effective date January 1, 2008 or later.)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	c.7.B Excluding a Roth IRA. Transfer/ Rollover from a Roth IRA is not permitted.

- d. Rollovers are accepted:
 - d.1. Only after Participant enters Plan.
 - d.2. From Employees in an eligible class before Plan entry.

e. Rollovers and Transfers of in-kind assets are:

Note: Participant loans may be rolled over or transferred into the Plan only through trustee to trustee transfer.

- e.1. Permitted.
- e.2. Not permitted.
- e.3. Permitted, except Participant loans.
- e.4. Not permitted, except Participant loans.
- e.5. Permitted only if from other plans of the Employer.

H7. Multiple Plans Top-Heavy Provisions - The Employer that maintains a qualified defined benefit plan in which any Participant in the Plan is, was, or could become a Participant adds the following optional provisions that it deems necessary to satisfy Code section 416 because of the required aggregation of multiple plans:

- a. Not applicable - No other plan or other plan terminated prior to the Effective Date of this Adoption Agreement.
- b. A minimum contribution allocation of 5% of each eligible Non-Key Employee's total Compensation shall be provided in a defined contribution plan of the Employer.
- c. A minimum benefit of the lesser of 2% times Years of Service or 20% of each eligible Non-Key Employee's Average Compensation shall be provided in a defined benefit plan of the Employer.
- d. A minimum benefit of the lesser of 2% times Years of Service or 20% of each eligible Non-Key Employee's Average Compensation shall be provided in a defined benefit plan of the Employer but offset by the amount contributed on such eligible Non-Key Employee's behalf under any defined contribution plan of the Employer.
- e. Other - Specify: _____

Note: When selecting "e. Other" the method selected must preclude Employer discretion (method used must be definitely determinable and clearly stated). If c. or d. selected, should coordinate with any existing defined benefit plan.

H8. Top-Heavy Assumptions - (SKIP this question UNLESS the Employer also has a Defined Benefit Plan.) The interest rate and mortality table used to establish the present value of accrued benefits in order to calculate the Top-Heavy Ratio under Code section 416 shall be:

- a. Same as the following defined benefit plan: _____
- b. Interest Rate: _____
(Insert description of variable rate or enter fixed rate.)
Mortality table: _____
Note: The actuarial assumptions entered here should be coordinated with any existing defined benefit plan.

H9. Top-Heavy Duplications - If Employer maintains two or more defined contribution plans, the Employer has determined that a Minimum Top-Heavy Allocation will be provided as follows:

- a. Not applicable - No other plan or other plan terminated prior to the Effective Date of this Adoption Agreement.
- b. A minimum contribution of _____% of each Non-Key Participant's Compensation shall be provided by:
 - b.1. This Plan.
 - b.2. The following defined contribution plan: _____
 - b.3. Employees who will receive the minimum contribution under such other plan: _____

Note: Satisfying the Minimum Top-Heavy Allocation in another plan for some but not all of the Participants may cause the Plan to fail to satisfy the uniformity requirement of Treasury Regulations section 1.401(a)(4)-2(b)(2)(ii) for plans using a design-based safe harbor, even though all other requirements of the safe harbor are met.

H10. Multiple Plans Maximum Permitted Disparity (Section 2.3.5)

- a. The Employer does not sponsor any other qualified plans. (SKIP the remaining items in H10.)
- b. The Employer has another defined contribution plan, but no Participant in the Plan has ever participated in a defined benefit plan sponsored by the Employer. (SKIP items e. and f.)

(Complete items c. and d. only if the Plan formula is integrated (Formulas D13.s. through D13.v.))

If the maximum permitted disparity is exceeded:

- c. The allocation will be adjusted in this Plan, as selected below, if the Employer sponsors another defined contribution plan:
 - c.1. Allocation based pro-rata on Compensation.
 - c.2. Allocation based on the (Tier 2) excess contribution percentage (only available if allocation formula D13.s. selected).
 - c.3. Allocation based on the (Tier 1) base contribution percentage (only available if allocation formula D13.s. selected).
 - c.4. General test will be performed without recognizing imputed disparity (only available if allocation formula D13.s. or D13.v. is selected).
- d. Allocation or accrued benefit will be adjusted in another defined contribution plan of the Employer.

If the Employer also sponsors a defined benefit plan, for Plan Years on or after January 1, 1989, the Annual Overall Permitted Disparity Fraction equals:

- e. 1 (one).
- f. The value determined under the provisions of Reg. 1.401(l)-5.

H11. Trustee Authority - Subject to Section 2.2 of the Trust, if the Employer has appointed a group of 2 or more individuals to act as Trustee of the Plan, the Trustee may be bound by:

- a. Not Applicable (see attached Trust).
- b. The act of the majority.
- c. The act of any ____ (insert number) individuals acting in the capacity of the Trustee.

H12. Prior Plan Protected Benefits (Section 3.8.3) - The adoption of this Plan shall not reduce or eliminate any previously accrued protected benefits under Code section 411(d)(6). In the event that this Adoption Agreement does not reflect an optional form of payment or other protected benefit accrued under a prior plan, the Employer may elect to attach an appendix to this Adoption Agreement, describing all such prior plan protected benefits.

- a. Not Applicable.
- b. Appendix describing prior plan protected benefits is attached to this Adoption Agreement. Specify the contents of the appendix:

The name, address and telephone number of the Document Sponsor which is also the document provider, is:

Document Sponsor and Document Provider

All Valley Administrators LLC
7525 N. Cedar Ave., Suite 109
Fresno, CA 93720
(559) 447-1600

This Plan must be registered with the Document Sponsor within 60 days of adoption of this document, and the Document Serial Number assigned by the Document Sponsor shall be affixed to this signature page. The adopting Employer must notify the Document Sponsor if the Plan is terminated, merged, or of any changes in the name, address, or EIN of the adopting employer at least annually, and within 30 days of any request of the Document Sponsor. If the adopting Employer terminates its relationship with the Document Sponsor, its Plan will no longer be considered a pre-approved plan sponsored by the Document Sponsor.

Unregistered use of this document will result in the Plan no longer participating in this pre-approved plan, and the document will be considered an individually designed plan, without reliance on the opinion letter of the Document Sponsor, which could result in the disqualification of the Plan.

If the Employer's Plan fails to attain or retain qualification, such Plan will no longer participate in this pre-approved plan and will be considered an individually designed plan.

The Document Sponsor will inform the Employer of any amendments made to the Plan or of the discontinuance or abandonment of the Plan.

The adopting Employer may rely on an opinion letter issued by the Internal Revenue Service as evidence that the Plan is qualified under Code section 401 except to the extent provided in Revenue Procedure 2011-49.

The Employer may not rely on the opinion letter in certain other circumstances or with respect to certain qualification requirements that are specified in the opinion letter issued with respect to the Plan and in Revenue Procedure 2011-49.

In order to have reliance in such circumstances or with respect to such qualification requirements, application for a determination letter must be made to Employee Plans Determinations of the Internal Revenue Service.

This Adoption Agreement may be used only in conjunction with Basic Plan Document #03 (the All Valley Administrators LLC Prototype Defined Contribution Plan) Revised 3/31/2014.

* * *

The Employer hereby adopts the Plan as evidenced by the foregoing Adoption Agreement on this _____ day of _____, _____.

Employer:
City Of Mendota

Trustee:

City Manager

City Manager
Trustee

Finance Director

Finance Director
Trustee

Plan Serial Number: 20140906-0002-DXUC

Exhibit B

**All Valley Administrators LLC
PROTOTYPE
DEFINED CONTRIBUTION PLAN
Basic Plan 03**

**All Valley Administrators LLC PROTOTYPE
DEFINED CONTRIBUTION PLAN
Basic Plan 03**

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PART I

ARTICLE I

INTRODUCTION

1.1.1 Adoption and Title. The parties hereby adopt a Plan and the Trust Agreement to be known by the names set forth in the Adoption Agreement.

1.1.2 Effective Date. The provisions of this Plan and the Trust shall be effective as of the Effective Date set forth in the Adoption Agreement.

1.1.3 Purpose. This Plan and the Trust are established for the purpose of providing retirement benefits to Eligible Employees in accordance with the Plan and the Adoption Agreement. If the Employer designates the Plan as a Cash or Deferred Profit Sharing Plan (CODA) in the Adoption Agreement, the Plan is also intended to enable Eligible Employees to supplement their retirement by electing to have the Employer contribute amounts to the Plan and the Trust in lieu of payments to such Employees in cash and the Plan and the Trust are intended to satisfy the provisions of Code section 401(k). This Plan is intended to meet the requirements of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. L. 107-16 (with technical corrections made by the Job Creation and Worker Assistance Act of 2002 (JCWAA), Pub. L. 107-147), the Pension Funding Equity Act of 2004 (PFEA), Pub. L. 108-218, the Pension Protection Act of 2006 (PPA '06), Pub. L. 109-280, the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. 110-28, the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), Pub. L. 110-245, the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), Pub. L. 110-458, and the Small Business Jobs Act of 2010 (SBJA), Pub. L. 111-240.

ARTICLE II

DEFINITIONS

As used in this Plan, the Trust, and the Adoption Agreement, the following terms shall have the following meanings:

"Account": One or more accounts, as listed in Section 3.1.1, established as necessary by the Plan Administrator and maintained to account for assets held for the benefit of a Participant.

"Average Contribution Percentage"(ACP): The Actual Contribution Percentage determined in accordance with the provisions of Part II, Article VII.

"ACP Test Safe Harbor Account": An Account established and maintained for a Participant for accounting purposes with respect to his share of ACP Test Safe Harbor Contributions.

"ACP Test Safe Harbor Contributions": Matching Contributions described in Section 2.9.4.

"Act": The Employee Retirement Income Security Act of 1974, as amended from time to time.

"Average Deferral Percentage":(ADP): The Actual Deferral Percentage determined in accordance with the provisions of Part II, Article VII.

"ADP Test Safe Harbor Account": An Account established and maintained for a Participant for accounting purposes with respect to his share of ADP Test Safe Harbor Contributions.

"ADP Test Safe Harbor Contributions": Matching Contributions and Non-Elective Contributions described in Section 2.9.3.

"Alternate Payee": Any spouse, former spouse, child, or other dependent of a Participant who is recognized by a Qualified Domestic Relations Order as having a right to receive all, or a portion of, the benefits payable under this or any other plan of the Employer with respect to such Participant.

"Anniversary Date": Unless otherwise specified in the Adoption Agreement, the last day of each Plan Year.

Short Form. The Anniversary Date is the last day of the Plan Year.

"Annuity Starting Date": The first day of the first period for which an amount is paid as an annuity or any other form.

"Beneficiary": The person or persons entitled hereunder to receive the benefits that may be payable upon or after a Participant's death pursuant to Sections 3.6.1 and 3.6.2.

"Benefiting": A participant is treated as benefiting under the plan for any plan year during which the participant received or is deemed to receive an allocation in accordance with § 1.410(b)-3(a).

"Break in Service": The failure of an Employee to complete more than five hundred (500) Hours of Service or such lesser number specified in the Adoption Agreement during any twelve (12) consecutive month computation period. The computation periods shall be specified by the Employer in the Adoption Agreement. The computation period used for a Year of Service shall be used to determine a Break in Service for that purpose, and the same computation period used for a Year of Vesting Service shall be used to determine a Break in Service for purposes of vesting service. Under the Elapsed Time Method of service counting, the term "one year Period of Severance" shall be substituted for the term "1 year Break in Service." An individual reemployed pursuant to section 414(u) of the Code shall be treated with respect to the Plan as not having incurred a Break in Service with the Employer maintaining the Plan by reason of such individual's period of Qualified Military Service.

Short Form. For purposes of determining Break in Service, the above default provisions shall apply. For this purpose, the Eligibility Computation Periods following the initial period shall begin the first day of the Plan Year that commences prior to the first anniversary of the Employee's Employment Commencement Date.

"Catch-up Contributions": Elective Deferrals made to the Plan that are in excess of an otherwise applicable Plan limit and that are made by Participants who are age fifty (50) or over by the end of the applicable taxable year. See Section 2.2.2(b) for further discussion of Catch-up Contributions.

"Code": The Internal Revenue Code of 1986, as amended from time to time.

"Compensation": The compensation as defined in Section 3.2.5 and as specified in the Adoption Agreement (or Earned Income in the case of a Self-Employed Individual) that is actually paid to the Employee by the Employer during a Compensation Computation Period.

In the case of a Self-Employed Individual, Compensation means Earned Income during such period. Compensation for a Participant's initial year of participation shall be Compensation from the Participant's Entry Date or for the Plan Year, as elected in the Adoption Agreement.

For Plan Years beginning on or after January 1, 1994 and before January 1, 2002, the annual Compensation of each Participant taken into account for determining all benefits provided under the Plan for any Plan Year shall not exceed one hundred and fifty thousand dollars (\$150,000), as adjusted for increases in the cost-of-living in accordance with Code section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any Compensation Computation Period beginning in such calendar year.

For any Plan Year beginning after December 31, 2001, the annual Compensation of each Participant taken into account in determining allocations shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Code section 401(a)(17)(B). However, solely for purposes of determining a participant's allocations for Plan Years beginning after December 31, 2001, the annual Compensation limit in effect for determination periods beginning before January 1, 2002 is \$200,000. Annual Compensation means compensation during a Compensation Computation Period, which is either the Plan Year or such other consecutive twelve (12) month period over which compensation is otherwise determined under the Plan. If Compensation for any prior Compensation Computation Period is taken into account in determining a Participant's allocations for the current Plan Year, the Compensation for such prior Compensation Computation Period is subject to the

applicable annual compensation limit in effect under Code section 401(a)(17) for that prior period. The cost-of-living adjustment in effect for a calendar year applies to annual Compensation for the Compensation Computation Period that begins with or within such calendar year.

If a Compensation Computation Period consists of fewer than twelve (12) months, the annual Compensation limit is an amount equal to the otherwise applicable annual Compensation limit multiplied by a fraction, the numerator of which is the number of months in the short Compensation Computation Period, and the denominator of which is twelve (12).

If Compensation for any prior Compensation Computation Period is taken into account in determining a Participant's allocations for the current Plan Year, the Compensation for such prior Compensation Computation Period is subject to the applicable annual compensation limit in effect for that prior period.

If elected in the Adoption Agreement, the cash equivalent value of any unused PTO credit remaining after an Employee's severance of employment will be treated as Post-Severance Compensation where (i) the unused PTO credit was paid by the later of 2-1/2 months after the date of severance or the last day of the Limitation Year that includes the date of severance from employment; and (ii) the Plan permits an Employee to receive the cash equivalent value of the PTO credit directly in cash or make an election to defer this amount into the Plan had their severance from employment not occurred.

For purposes of Code sections 403(b)(3), 415(c)(3), and 457(e)(5), an Employee who is in Qualified Military Service shall be treated as receiving Compensation from the Employer during such period of Qualified Military Service equal to: (A) the Compensation the Employee would have received during such period if the Employee were not in Qualified Military Service, determined based on the rate of pay the Employee would have received from the Employer but for absence during the period of Qualified Military Service, or (B) if the Compensation the Employee would have received during such period was not reasonably certain, the Employee's average Compensation from the Employer during the 12-month period immediately preceding the Qualified Military Service (or, if shorter, the period of employment immediately preceding the Qualified Military Service).

Differential Wage Payment For Retirement Plan Purposes. The Employer who elects to make Differential Wage Payments to active duty members in Qualified Military Service shall treat the Differential Wage Payments as a payment of wages by the Employer to an Employee.

Treatment of Differential Wage Payments. For the purpose of the Plan:

- (i) an individual receiving a Differential Wage Payment shall be treated as an Employee of the Employer making the payment;
- (ii) the Differential Wage Payment shall be treated as Compensation; and
- (iii) the Plan shall not be treated as failing to meet the requirements of any plan qualification requirements under Code section 401(a) where a contribution or benefit is based on the Differential Wage Payment.

Short Form Standardized. Compensation for the Short Form Standardized Adoption Agreements. An Employee's Compensation shall be equal to total compensation as it is defined in Section 3.2.5(a) of the Plan that is actually paid to the Participant by the Employer during the Plan Year.

"Compensation Computation Period": The period specified as the Compensation Computation Period in the Adoption Agreement.

Short Form Standardized Adoption Agreement. The Compensation Computation Period for a Participant's initial Plan Year of Participation shall be Compensation from the Participant's Entry Date.

"Controlled Account": An Account established and maintained for a Participant for accounting purposes over which he is permitted, under the terms of the Plan and the Plan's investment policy, to exercise investment control.

"Deductible Voluntary Account": An Account established and maintained for a Participant for accounting purposes with respect to his Voluntary Employee Contributions that were deductible by the Participant at the time they were made.

"Deemed IRA Account": (Deemed IRA) An Account established and maintained for a Participant for accounting purposes that meets the applicable requirements for an Individual Retirement Account under Sections 3.12.1 (Deemed Pre-tax IRA), 3.12.2 (Deemed Roth IRA) and Code sections 408(q) and 408A to which he may make Deemed IRA Contributions.

"Deemed IRA Contribution": A Participant contribution designated as an IRA contribution to a Deemed IRA Account. Deemed IRA Contributions include Pre-tax IRA Contributions and Roth IRA Contributions.

"Deemed Section 125 Compensation": An amount not available to a Participant in cash in lieu of group health coverage (a forced reduction in pay) because the Participant is unable to certify that he has other health coverage. Therefore the Employee is included in the Employer's health plan. The amount withheld will be treated as Deemed Code section 125 Compensation only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

"Designated Beneficiary": The individual or Trust that is designated as the Beneficiary under the Plan and who is a designated beneficiary under Code section 401(a)(9) and Treasury Regulations section 1.401(a)(9)-4.

"Differential Wage Payment": For purposes of the Plan, the term "Differential Wage Payment" means any payment which: (i) is made by an Employer to an individual with respect to any period during which the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) while on active duty for a period of more than 30 days; and (ii) represents all or a portion of the wages the individual would have received from the Employer if the individual were performing services for the Employer. The Differential Wage Payment provisions shall apply to wages paid after December 31, 2008.

"Direct Rollover": A payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

"Disability": Notwithstanding anything contained in the Plan to the contrary, an Employer may elect in the Adoption Agreement the manner in which a Participant is determined to have a Disability. Such determination required to be made by the Plan Administrator in connection with the permanence and degree of a physical or mental impairment shall be made in a uniform and nondiscriminatory manner based on medical evidence.

Generally, a person is Disabled if he suffers from a medically determinable physical or mental impairment that may be expected to result in death or to last for a continuous period of not less than twelve (12) months and that renders him incapable of performing his duties.

Short Form. An Employee or Participant has a Disability if he suffers from a medically determinable physical or mental impairment that may be expected to result in death or to last for a continuous period of not less than 12 months and that renders him incapable of performing his duties or the Social Security Administration has determined that he is eligible to receive Social Security disability benefits or he has begun to receive payments under the long term disability program or a comparable disability program maintained by the Employer.

"Disabled": An Employee is Disabled if he has a Disability.

"Distributable Benefit": The benefit to which a Participant is entitled following termination of his employment or the date he is determined to be Disabled, if so elected in the Adoption Agreement.

"Distributee": An Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or the former Employee's spouse or former spouse who is an Alternate Payee under a Qualified Domestic Relations Order, are Distributees with regard to the interest of the spouse or former spouse. For distributions after December 31, 2006, a Distributee includes the Employee's or former Employee's nonspouse Designated Beneficiary, in which case, the distribution can only be transferred to a traditional or Roth IRA established on behalf of the nonspouse Designated Beneficiary for the purpose of receiving the distribution.

"Distribution Determination Date": The date as of which the Distributable Benefit of a Participant is determined, as discussed in Section 2.5.1(d).

"Early Retirement Age": The age specified as the Early Retirement Age, if any, in the Adoption Agreement.

Short Form. No election permitted.

"Early Retirement Date": The date specified as the Early Retirement Date, if any, in the Adoption Agreement.

"Earned Income": The net earnings from self-employment in the trade or business with respect to which the Plan is established for which personal services of the Participant are a material income-producing factor. Net earnings shall be determined without regard to items not included in gross income and the deductions allocable to such items but with regard to the deduction allowed to the taxpayer by Code section 164(f). Net earnings shall be reduced by contributions to a qualified plan to the extent deductible under Code section 404.

"Elapsed Time Method": A method of measuring service for purposes of eligibility to participate, vesting, and contribution allocations that determines service by reference to the total period of time that elapses while the Employee is employed (i.e., while the employment relationship exists) with the Employer or Employers maintaining this Plan. The Adoption Agreement may specify different methods to determine service for purposes of vesting, participation, and benefit accrual. Treasury Regulation section 1.410(a)-7 provides additional detail about the application of this method.

(a) General rule. For purposes of eligibility to participate and vesting, an Employee's service begins on his Employment Commencement Date, and service is counted until his Severance From Service Date, as such terms are defined in Subsection (f) below.

(b) "Service spanning" The following rules apply for purposes of eligibility to participate and vesting.

- (1)** The Period of Severance from the date an Employee severs employment due to a quit, discharge, or retirement to the date the Employee again performs an Hour of Service, within the meaning of Labor Regulations section 2530.200b-2(a)(1), counts as a Period of Service unless such Period of Severance is twelve (12) months or longer.
- (2)** If an Employee is absent from service for less than twelve (12) months for any other reason (e.g., layoff) and then quits, is discharged, or retires, the period of time during which the Employee may return and receive credit begins on the Severance From Service Date and ends one (1) year after the first day of absence (e.g., first day of layoff).
- (3)** If an Employee returns to service more than twelve (12) months after the date that service first ended, then such date shall be a Reemployment Commencement Date and the Plan shall resume counting the Employee's service from that date and shall not count the intervening Period of Severance.

As a result of the operation of these rules, a severance from service (e.g., a quit), or an absence (e.g., layoff) followed by a severance from service, never results in a period of time of more than one (1) year being required to be taken into account after an Employee severs from service or is absent from service.

(c) Additional Rules regarding Vesting.

- (1)** An Employee is credited with a number of Years of Vesting Service equal to the number of whole years of the Employee's Period of Service, whether or not the Employee completed such Periods of Service consecutively.
- (2)** The whole years of an Employee's Period of Service are determined by aggregating any non-successive Periods of Service and by aggregating any less than whole year Periods of Service (whether or not consecutive) on the basis that twelve (12) Months of Service or three hundred sixty-five (365) days of service equal a whole Year of Vesting Service. Fractional months are aggregated into Months of Service.
- (3)** After calculating an Employee's Period of Service in the manner prescribed in this Subsection, any remaining service that is less than a whole year, 12-month, or 365-day Period of Service is disregarded for purposes of determining an Employee's nonforfeitable percentage of accrued benefits derived from Employer Contributions.

(d) Contribution Allocations. For purposes of contribution allocations, an Employee's service is taken into account from his Participation Commencement Date until his Severance From Service Date. Periods of Severance under any circumstances are not taken into account.

(e) Break in Service Exception. If an Employee is absent from work for maternity or paternity reasons, the 12-consecutive month period ending on the first anniversary of the first day of such absence shall not constitute a Break in Service. For purposes of this Subsection, an absence of work for maternity or paternity reasons means an absence: (1) due to the Employee's pregnancy, (2) due to the birth of the Employee's child, (3) due to a child's placement with the Employee as part of the Employee's adoption of such child, or (4) to care for a child for a period beginning immediately following such birth or placement.

(f) Definitions.

- (1) Severance From Service Date:** A "severance from service" occurs on the earlier of:
- (i)** The date on which an Employee quits, retires, is discharged, or dies; or
 - (ii)** The first anniversary of the first date of a period in which an Employee remains absent from service (with or without pay) with the Employer or Employers maintaining the Plan for any reason other than a quit, retirement, discharge or death, such as vacation, holiday, sickness, Disability, leave of absence, or layoff.
- (2) Reemployment Commencement Date:** The first date, following a Period of Severance from service that is not required to be taken into account under the service spanning rules of Subsection (b), on which the Employee performs an Hour of Service within the meaning of Labor Regulations section 2530.200b-2(a)(1) for the Employer or Employers maintaining this Plan.
- (3) Participation Commencement Date:** The date a Participant first commences participation under the Plan.
- (4) Period Of Severance:** The period of time commencing on the Severance From Service Date and ending on the date on which the Employee again performs an Hour of Service within the meaning of Labor Regulations section 2530.200b-2(a)(1) for an Employer or Employers maintaining this Plan.
- (5) Period of Service:**
- (i) General Rule:** The period commencing on the Employee's Employment Commencement Date or Reemployment Commencement Date, whichever is applicable, and ending on the Severance from Service Date.
 - (ii) Aggregation Rule:** Periods of Service shall be aggregated unless such periods may be disregarded under Code sections 410(a)(5) or 411(a)(4).
 - (iii) Month of Service:** Thirty (30) days are deemed to be a Month of Service.

"Elective Account": An Account established and maintained for a Participant for accounting purposes with respect to his Elective Deferrals.

"Elective Deferrals": Any Employer contributions made to the Plan at the election of the Participant or operation of the Plan, in lieu of cash compensation, including a contribution made pursuant to a salary reduction agreement or other deferral mechanism.

With respect to any taxable year, a Participant's Elective Deferrals are the sum of all Employer contributions made on behalf of the Participant pursuant to an election to defer under any qualified CODA as described in Code section 401(k), any simplified employee pension cash or deferred arrangement as described in Code section 408(k)(6), any SIMPLE IRA Plan described in Code section 408(p), any plan as described under Code section 501(c)(18), and any employer contributions made on the behalf of a Participant for the purchase of an annuity contract under Code section 403(b) pursuant to a salary reduction agreement. Elective Deferrals shall not include any deferrals properly distributed as Excess Annual Additions.

For years beginning after 2005, the term "Elective Deferrals" includes Pre-tax Elective Deferrals and Roth Deferrals.

"Eligibility Computation Period": For purposes of determining Years of Service and Breaks in Service for purposes of eligibility, the initial Eligibility Computation Period is the twelve (12) consecutive month period beginning on the date the Employee first performs an Hour of Service for the Employer (Employment Commencement Date).

If in accordance with the election in the Adoption Agreement, the subsequent periods may be:

- (a)** The succeeding 12-consecutive month periods that commence with the first anniversary of the Employee's Employment Commencement Date. Or
- (b)** The first Plan Year that commences prior to the first anniversary of the Employee's Employment Commencement Date. An Employee who is credited with one thousand (1,000) Hours of Service in both the initial Eligibility Computation Period and the first Plan Year that commences prior to the first anniversary of the Employee's initial Eligibility Computation Period shall be credited with two (2) Years of Service for purposes of eligibility to participate.

Short Form. The Eligibility Computation Periods following the initial period shall begin the first day of the Plan Year that commences prior to the first anniversary of the Employee's Employment Commencement Date.

"Eligible Automatic Contribution Arrangement" (EACA): An arrangement in a cash or deferred plan as defined in Section 2.2.3(b) of this Plan under which an Employee that has not affirmatively elected to defer Compensation into the Plan will have an amount deferred on his behalf by the Plan Administrator.

Short Form. No election permitted.

"Eligible Employee": An Employee who has met the eligibility requirements of the Plan.

Short Form Standardized. The Plan shall exclude any Employee who is a nonresident alien (within the meaning of Code section 7701(b)(1)(B)) deriving no earned income (within the meaning of Code section 911(d)(2)) from the Employer that constitutes income from sources within the United States (within the meaning of Code section 861(a)(3)); and employees who are included in the unit of Employees covered by a collective bargaining agreement between the Employer and employee representatives, provided benefits were the subject of good faith bargaining and two percent (2%) or less of the employees of the Employer who are covered pursuant to that agreement are "professional employees" as defined in Treasury Regulations section 1.410(b)-9. For this purpose, the term "employee representatives" does not include any organization more than half of whose members are Employees who are owners, officers, or executives of the Employer.

"Eligible Retirement Plan": An eligible plan under Code section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and that agrees to separately account for amounts transferred into such

plan from this Plan, an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), an annuity plan described in Code section 403(a), an annuity contract described in Code section 403(b), or a qualified plan described in Code section 401(a), that accepts the Distributee's Eligible Rollover Distribution. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is an Alternate Payee under a Qualified Domestic Relation Order. If any portion of an Eligible Rollover Distribution is attributable to payments or distributions from a designated Roth Account, an Eligible Retirement Plan with respect to such portion shall include only another designated Roth Account of the individual from whose account the payments or distributions were made, or a Roth IRA of such individual

"Eligible Rollover Distribution": Any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's Designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code section 401(a)(9); any Hardship distribution; the portion of any other distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution that is reasonably expected to total less than two hundred dollars (\$200) during a year. For purposes of the \$200 rule, a distribution from a designated Roth Account and a distribution from other Accounts under the Plan are treated as made under separate plans.

A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax Employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code sections 408(a) or (b), or to a qualified defined contribution plan described in Code sections 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution that is includible in gross income and the portion of such distribution that is not so includible.

"Employee": A person who is currently or hereafter employed by the Employer, or by any other employer aggregated under Code sections 414(b), (c), (m), (n), or (o) and the regulations thereunder, including a Leased Employee subject to Code section 414(n) and a self-employed owner of an unincorporated employer, but, unless otherwise provided in the Adoption Agreement, excluding (a) an Employee who is a non-resident alien (within the meaning of Code section 7701(b)(1)(B) deriving no earned income (within the meaning of Code section 911(d)(2)) from the Employer that constitutes income from sources within the United States (within the meaning of Code section 861(a)(3)); and (b) employees who are included in the unit of Employees covered by a collective bargaining agreement between the Employer and employee representatives, provided benefits were the subject of good faith bargaining and two percent (2%) or less of the employees of the Employer who are covered pursuant to that agreement are "professional employees" as defined in Treasury Regulations section 1.410(b)-9. For this purpose, the term "employee representatives" does not include any organization more than half of whose members are Employees who are owners, officers, or executives of the Employer.

Except as otherwise provided in this paragraph, if the Employer elects in the Adoption Agreement to exclude Employees who became Employees as the result of a "Code section 410(b)(6)(C) transaction," then such Employees shall not be "Eligible Employees" prior to the expiration of the transition period beginning on the date of the transaction and ending on the last day of the first Plan Year beginning after the date of the transaction. A "Code section 410(b)(6)(C) transaction" is an asset or stock acquisition, merger, or similar transaction involving a change in the Employer of the Employees of a trade or business. However, if a separate trade or business becomes a Related Employer as the result of a "Code section 410(b)(6)(C) transaction," then Employees of such Related Employer will not be treated as "Eligible Employees" prior to the date the entity adopts the Plan as a participating Employer. For purposes of this Section, "Related Employer" means any trade or business related to the Employer by the application of Code sections 414(b), (c), (m), (n), or (o). In the case of a standardized plan, affected Employees shall become eligible to participate on the earlier of the adoption of this Plan by such separate entity or the expiration of the transition period.

Short Form. Employees who became Employees as the result of a "Code section 410(b)(6)(C) transaction," shall not be considered "Eligible Employees" prior to the expiration of the transition period described in the above paragraph.

In the case of non-standardized plans, notwithstanding any other provision of this Plan, individuals who are not contemporaneously classified as Employees of the Employer for purposes of the Employer's payroll system (including, without limitation, individuals employed by temporary help firms, technical help firms, staffing firms, employee leasing firms, professional employer organizations, or other staffing firms whether or not deemed to be "common law" Employees or Leased Employees are not considered to be Eligible Employees of the Employer and shall not be eligible to participate in the Plan. The preceding sentence shall not apply in the case of the Employer outsourcing its human resource functions for Employees that the Employer would otherwise treat as "common law" Employees. In the event any such individuals are reclassified as Employees for any purpose, (including without limitation, common law or statutory employees, by any action of any third party, including, without limitation, any government agency, or as a result of any private lawsuit, action, or administrative proceeding) such individuals shall notwithstanding such reclassification, remain ineligible for participation hereunder. Notwithstanding foregoing, the exclusive means for individuals who are not contemporaneously classified as an Employee of the Employer on the Employer's payroll system to become eligible to participate in this Plan is through an amendment to this Plan, duly executed by the Employer, that specifically renders such individuals eligible for participation hereunder.

This Plan is to be construed to exclude all individuals who are not considered Employees for purposes of the Employer's payroll system, and the Plan Administrator is authorized to do so, despite the fact that its decision may result in the inadvertent loss of the Plan's tax qualification requiring an amendment of the Plan's eligibility provisions.

"Employer": The Employer maintaining the Plan and those Employers required to be aggregated with the Employer under Code sections 414(b), (c), (m), or (o). An individual who owns the entire interest of an unincorporated trade or business is treated as the Employer. Also, a partnership is treated as the Employer of each partner and each Employee of the partnership as well as any of its affiliates, successors or assigns that adopt the Plan; provided, however, no mere change in the identity, form, or organization of the Employer shall affect its status under the Plan in any manner, and, if the name of the Employer is hereafter changed, a corresponding change shall be deemed to have been made in the name of the Plan and references herein to the Employer shall be deemed to refer to the Employer as it is then known.

"Employer Account": An Account established and maintained for a Participant for accounting purposes with respect to his share of Employer Contributions, Non-Elective Contributions, and Forfeitures.

"Employer Contribution": A contribution by the Employer to a money purchase pension plan, target benefit plan, or profit sharing plan other than a cash or deferred profit sharing plan.

"Employment Commencement Date": The date on which an Employee first performs an Hour of Service within the meaning of Labor Regulations section 2530.200b-2(a)(1) for the Employer or Employers maintaining this Plan.

"Entry Date": The date or dates specified as the Entry Date in the Adoption Agreement.

Short Form. The Entry Dates for Short Form standardized plans shall be the first day of the Plan Year or the first day of the seventh calendar month of the Plan Year coincident with or next following satisfaction of the eligibility requirements.

"Excess Aggregate Contributions": With respect to any Plan Year, the excess of:

- (a) The aggregate contribution percentage amounts taken into account in computing the numerator of the contribution percentage actually made on behalf of Highly Compensated Employees for such Plan Year, over
- (b) The maximum contribution percentage amounts permitted by the ACP test (determined by hypothetically reducing contributions made on behalf of Highly Compensated Employees in order of their contribution percentages beginning with the highest of such percentages). Such determination shall be made after first determining Excess Elective Deferrals and then determining Excess Contributions, as required in Part II, Article VII.

"Excess Annual Addition": The portion of the allocation of contributions and Forfeitures that cannot be added to a Participant's Accounts due to the limitations on Annual Additions contained in Part III, Article II.

"Excess Contributions": With respect to any Plan Year, the excess of:

- (a) The aggregate amount of Employer contributions actually taken into account in computing the ADP of Highly Compensated Employees for such Plan Year, over
- (b) The maximum amount of such contributions permitted by the ADP test (determined hypothetically by reducing contributions made on behalf of Highly Compensated Employees in order of their contribution percentages, beginning with the highest of such percentages).

"Excess Elective Deferrals": Those Elective Deferrals that are made either:

- (a) During the Participant's taxable year and exceed the dollar limitation under such Code section 402(g) (including, if applicable, the dollar limitation on Catch-up Contributions defined in Code section 414(v)) for such year) or a lesser limitation set by the Adoption Agreement; or
- (b) During a calendar year and exceed the dollar limitation under Code section 402(g) (including, if applicable, the dollar limitation on Catch-up Contributions defined in Code section 414(v)) for the Participant's taxable year beginning in such calendar year, or a lesser limitation set by the Adoption Agreement, counting only Elective Deferrals made under this Plan and any other plan, contract, or arrangement maintained by the Employer.

Excess Elective Deferrals shall be treated as Annual Additions under the Plan, unless such amounts are distributed no later than the first April 15 following the close of the Participant's taxable year.

"Fiduciary": The Plan Administrator, the Trustee, and any other person who has discretionary authority or control in the management of the Plan or the disposition of Trust assets.

"5-Percent Owner": A Participant who satisfies the definition of a 5-percent owner within the meaning of Code section 416(i) at any time during the Plan Year ending with or within the calendar year.

"Forfeitures": The non-vested portion of a Participant's Account balance that is forfeited on or after his termination of employment in accordance with Section 2.4.4 and may be allocated to other Participants, used to defray the administrative expenses of the Plan, or considered as part of the Employer's Contribution if permitted by Part II, Article III.

"Highly Compensated Employee" (HCE): Any Employee during a Plan Year who:

- (a) Was a 5-Percent Owner of the Employer at any time during the year or the preceding year, or
- (b) For the preceding year
 - (1) Had "compensation" from the Employer in excess of eighty thousand dollars (\$80,000) (as adjusted by the Secretary of the Treasury pursuant to Code section 415(d)), and
 - (2) If the Employer elects in the Adoption Agreement the application of this clause for such preceding year, was in the top-paid group of Employees for such preceding year.

For this purpose, an Employee is in the top-paid group of Employees for any year if such Employee is in the group consisting of the top twenty percent (20%) of the Employees when ranked on the basis of compensation paid during such year.

For these purposes, the applicable year of the Plan for which a determination is being made is called a "determination year" and the preceding twelve (12) month period is called a "look-back year."

The determination of whether an Employee had compensation in excess of eighty thousand dollars (\$80,000), as adjusted, shall be made based on compensation paid during the preceding Plan Year, unless the Employer has made a calendar year data election in the Adoption Agreement. The effect of the calendar year data election is that the look-back year becomes the calendar year beginning with or within the look-back year.

The top-paid group election and the calendar year data election must apply consistently to the determination years of all plans of the Employer.

Short Form. The top-paid group election shall always apply.

Generally, a former Employee shall be treated as a Highly Compensated Employee if:

- (1) Such Employee was a Highly Compensated Employee when such Employee separated from service or

- (2) Such Employee was an active Highly Compensated Employee for any Plan Year that ended on or after the Employee's fifty-fifth (55th) birthday.

The determination of whether a former Employee is a Highly Compensated Employee shall be based on the rules applicable to determining Highly Compensated Employee status as in effect for that determination year, in accordance with temporary Treasury Regulations sections 1.414(q)-1T, A-7 and A-4 and Notice 97-45.

The Plan Administrator shall apply rules to determine who is a Highly Compensated Employee as set forth in an administrative policy, so long as such rules are reasonable, nondiscriminatory, and uniformly and consistently applied.

"Hour of Service": An hour for which:

- (a) The Employee is paid, or entitled to payment by the Employer for the performance of duties. These hours will be credited to the Employee for the computation period in which the duties are performed.
- (b) The Employee is paid or entitled to payment by the Employer during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including Disability), layoff, jury duty, military duty, or leave of absence. These hours will be credited to the Employee for the computation period during which no duties are performed, beginning with the first Hour of Service to which the payment relates. No more than 501 Hours of Service will be credited under this Subsection for any single continuous period (whether or not such period occurs in a single computation period).
- (c) Back pay, irrespective of mitigation of damages, has been either awarded or agreed to by the Employer. These hours will be credited to the Employee for the period to which the award or agreement pertains rather than the period in which the award, agreement, or payment is made.

Hours of Service shall not be credited under both (a) and (b), above, as the case may be, and under (c) above. Notwithstanding the preceding, no Hours of Service shall be credited to the Employee by reason of a payment made or due under a plan maintained solely for the purpose of complying with applicable worker's compensation, or unemployment compensation or disability insurance laws, and no Hours of Service shall be credited by reason of a payment that solely reimburses an Employee for medical or medically related expenses incurred by the Employee. The determination of Hours of Service for reasons other than the performance of duties and the crediting of Hours of Service to computation periods shall be made in accord with the provisions of Labor Regulations sections 2530.200b-2(b) and (c) that are incorporated herein by reference.

Solely for the purposes of determining whether an Employee has incurred a Break in Service, an Employee shall be credited with the number of Hours of Service that would otherwise have been credited to such individual but for the absence, and in any case in which such hours cannot be determined, with eight (8) Hours of Service for any day that the Employee is absent from work by reason of the Employee's pregnancy, the birth of a child of the Employee, the placement of a child with the Employee in connection with the adoption of such child by the Employee or for purposes of caring for such child for a period beginning immediately following such birth or placement. Such Hours of Service shall be credited in the computation period in which the absence from work begins if such crediting is necessary to prevent the Employee from incurring a Break in Service in such period, and in any other case, in the immediately following computation period. Notwithstanding the foregoing, no credit shall be given for such service unless the Employee furnishes to the Plan Administrator information to establish that the absence from work is for the reasons indicated and the number of days for which there was such an absence.

In the event the Employer does not maintain records of the actual hours for which an Employee is paid or entitled to payment, credit for service shall be given in accordance with the method selected in the Adoption Agreement.

Short Form. If a record of hours is not maintained, an Employee will be credited with forty-Five (45) Hours of Service if he is credited with at least one (1) Hour of Service during the week.

Service with another business entity that is, along with the Employer, a member of a controlled group of corporations under Code section 414(b), an affiliated service group under Code section 414(m) or trades or businesses under common control under Code section 414(c), or that is otherwise required to be aggregated with the Employer pursuant to Code section 414(o) and the regulations issued thereunder shall be treated as service for the Employer. Hours of Service shall be credited for any individual considered an Employee for purposes of this Plan under Code sections 414(n) or 414(o) and the regulations issued thereunder.

If elected in the Adoption Agreement, service for a predecessor to the Employer, whether as an Employee or a self-employed person, will be treated as service for the Employer. If the Employer maintains the plan of a predecessor employer, service with such predecessor shall be treated as service for the Employer.

If elected in the Adoption Agreement, service with a prior employer whether as an Employee or a self-employer person will be treated as service for the Employer for legitimate business purposes so long as the grant of such service does not discriminate in favor of Highly Compensated Employees. Service with a prior employer shall be limited to 5 years.

"In-Plan Roth Conversion Account": An Account which maintains pre-tax Elective Deferrals or other Employer Contributions that have been converted to after-tax Roth contributions. If elected in the Adoption Agreement, if the Plan includes a designated Roth Deferral after September 27, 2010, it may permit a Participant to take an Eligible Rollover Distribution pursuant to Section 2.5.12 and transfer such amounts into an In-Plan Roth Conversion Account within the Plan. The Plan will maintain such records as are necessary for the proper reporting of in-plan Roth rollovers.

"Insurer": Any insurance company that has issued a Life Insurance Policy.

"Integration Level": The Integration Level shall be equal to the Taxable Wage Base or such lesser amount specified in the Adoption Agreement. The Integration Level shall be deemed to be the full amount specified in the Adoption Agreement, even though a Participant's Compensation may include less than a full year's compensation because either he commenced participation after the first day of the Compensation Computation Period or he terminated service prior to the end of the Compensation Computation Period.

"Joint and Survivor Annuity": An annuity for the life of the Participant with a survivor annuity for the life of the spouse (or other Beneficiary) that is not less than fifty percent (50%) and not more than one hundred percent (100%) of the amount of the annuity that is payable during the joint lives of the Participant and the spouse or other Beneficiary and that is the amount of benefit that can be purchased with the Participant's vested Account balances. The percentage of the survivor annuity shall be fifty percent (50%) unless a different percentage is elected by the Employer in the Adoption Agreement.

"Key Employee": For Plan Years beginning after December 31, 2001, an Employee or former Employee (including any deceased Employee) who, at any time during the Plan Year that includes the Determination Date (as defined in Subsection 2.6.2(g)) is either:

- (a) An officer of the Employer having an Annual Compensation (as defined in Subsection 2.6.2(b)) greater than one hundred thirty thousand dollars (\$130,000) (as adjusted by Code section 416(i) for Plan Years beginning after December 31, 2002);
- (b) A 5-Percent Owner; or
- (c) Any person who owns directly or indirectly more than one percent (1%) of the outstanding stock of the Employer or stock possessing more than one percent (1%) of the total combined voting power of all stock of the Employer or, in the case of an unincorporated Employer, the capital or profits interest in the Employer and has Annual Compensation (as defined in Subsection 2.6.2(b)) from the Employer of more than one hundred fifty thousand dollars (\$150,000).

The determination of who is a Key Employee shall be made in accordance with Code section 416(i)(1) and the regulations thereunder.

"Leased Employee": Any person (other than an Employee of the recipient) who, pursuant to an agreement between the recipient and any other person (the "leasing organization"), has performed services for the recipient (or for the recipient and related persons determined in accordance with Code section 414(n)(6)) on a substantially full time basis for a period of at least one (1) year and such services are performed under the primary direction or control of the recipient; provided, that any such person shall not be taken into account if:

- (a) Such person is covered by a money purchase pension plan providing
 - (1) A nonintegrated employer contribution rate of at least ten percent (10%) of compensation, as defined in Code section 415(c)(3) and Subsection 3.2.5(a)(iii) of the Plan, but including in compensation amounts contributed by the employer pursuant to a salary reduction agreement that are excludable from the person's gross income under Code sections 125, 132(f)(4), 402(e)(3), 402(h), or 403(b);
 - (2) Immediate participation; and
 - (3) Full and immediate vesting; and
- (b) Leased Employees do not constitute more than twenty percent (20%) of the workforce of the recipient who are not Highly Compensated Employees.

Contributions or benefits provided a Leased Employee by the leasing organization that are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer.

"Life Insurance Policy": A life insurance, group or individual annuity, deposit administration, or endowment policy or contract owned by the Trust, including any Life Insurance Policy on the life of a Participant, the life of someone in whom the Participant has an insurable interest, or the joint lives of a Participant and someone in whom the Participant has an insurable interest.

"Limitation Year": Unless otherwise specified in the Adoption Agreement, the Limitation Year shall be the Plan Year, provided that all qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year during which the amendment is made.

Short Form. The Limitation Year shall be the Plan Year.

"Mass Submitter": DATAIR Employee Benefits Systems, Inc.

"Matching Account": An Account established and maintained for a Participant for accounting purposes with respect to his share of Matching Contributions and Forfeitures.

"Matching Contribution": A contribution to the Plan by the Employer that matches in whole or in part an Elective Deferral on behalf of an electing Employee.

"Minimum Top-Heavy Allocation": The minimum allocation of a Participant for which provision is made in Sections 2.3.4 and 2.6.1.

"Non-Elective Contribution": A contribution to a cash or deferred profit sharing plan by the Employer that is not a Qualified Non-Elective Contribution, Matching Contribution, Elective Deferral, or Qualified Matching Contribution.

"Non-Highly Compensated Employee": Any Employee who does not meet the definition of a Highly Compensated Employee in effect for a particular Plan Year.

"Non-Key Employee": Any Employee who does not meet the definition of a Key Employee in effect for a particular Plan Year.

"Normal Retirement Age": The age specified as the Normal Retirement Age (NRA) in the Adoption Agreement, but in no event the later of age sixty-five (65) or the fifth (5th) anniversary of the participation in the Plan. For this purpose only, participation is assumed to commence as of the first day of the first Plan Year in which the Employee became a Participant. In the case of a money purchase pension plan:

- (1) the age may not be earlier than the earliest retirement age that is reasonably representative of the typical retirement age for the industry in which the Plan Participants work;
- (2) an age of 62 or older automatically meets this requirement;
- (3) the age selected must not be earlier than 55.

Normal retirement age is the age selected in the Adoption Agreement. If the Employer enforces a mandatory retirement age, the Normal Retirement Age is the lesser of that mandatory age or the age specified in the Adoption Agreement.

Short Form. The Normal Retirement Age is the later of age sixty-five (65) or the fifth (5th) anniversary of the participation in the Plan.

"Normal Retirement Date": The date specified in the Adoption Agreement as the Normal Retirement Date (NRD) but in no event more than six (6) months after the Participant attains his Normal Retirement Age.

Short Form. The date the Participant attains his Normal Retirement Age.

"Owner-Employee": An individual who is a sole proprietor or who is a partner owning more than ten percent (10%) of either the capital or profits interest of the partnership.

"Paid Time Off (PTO) Benefit": A benefit provided to employees through an Employer program that awards credits to be used to make a Paid Time Off Contribution to the Plan.

"Paid Time Off Contribution": The cash equivalent amount contributed to the Plan from a Paid Time Off plan maintained by the Employer that permits the transfer of any unused credits as an Employer Contribution or an Elective Deferral.

"Paid Time Off Contribution Account": An Account established to maintain Paid Time Off Contributions by the Employer on behalf of a Participant.

"Participant": Any Eligible Employee who enters the Plan after meeting the requirements of Section 2.1.1.

"Plan": The defined contribution plan for Employees as set forth in this Agreement, the Trust, and the Adoption Agreement, together with any amendments or supplements thereto.

"Plan Administrator": The person, persons, or entity appointed by the Employer to administer the Plan, or, if the Employer fails to make such appointment, the Employer.

"Plan Sponsor": The Plan Sponsor specified in the Adoption Agreement.

"Plan Year" or "Year": The twelve (12) consecutive month period designated by the Employer in the Adoption Agreement.

"Post Severance Compensation": Compensation paid a Participant after a severance of employment as defined in the definition of Compensation in Section 3.2.5 of the Plan.

"Preretirement Survivor Annuity": A survivor annuity for the life of the surviving spouse (or other Beneficiary) of the Participant purchasable with an amount equal to at least fifty percent (50%) of the vested Account balance of the Participant as of the date of the Participant's death, reduced if necessary, to reflect any security interest held by the Plan by reason of a loan outstanding to the Participant for which a valid spousal consent has been obtained.

"Pre-tax Elective Account": An Account established and maintained for a Participant for accounting purposes with respect to his Pre-tax Elective Deferrals.

"Pre-tax Elective Deferral": Any Elective Deferral that is not includible in the Participant's gross income at the time deferred.

"Pre-tax IRA Account": An Account established and maintained for a Participant for accounting purposes with respect to his Pre-tax IRA Deferrals.

"Pre-tax IRA Contribution": Any Deemed IRA Contribution that is not includible in the Participant's gross income at the time it is made.

"Prevailing Wage Contribution": An Employer Contribution made pursuant to the Davis Bacon Act or any other state or federal prevailing wage law.

Short Form. No election permitted.

"Primary Beneficiary under the Plan": An individual named as a Beneficiary under the Plan who has an unconditional right to all or a portion of the Employee's Account balance under the Plan upon the Employee's death.

"Qualified Automatic Contribution Arrangement" (QACA): An arrangement in a cash or deferred plan as defined in Section 2.2.3(c) of this Plan under which an Employee that has not affirmatively elected to defer Compensation into the Plan will have an amount deferred on his behalf by the Plan Administrator as well as certain other required Employer Contributions.

Short Form. No election permitted.

"Qualified Domestic Relations Order" (QDRO): A domestic relations order that creates or recognizes the existence of an Alternate Payee's right to receive all, or a portion of, the benefits payable with respect to a Participant under this or any other plan of the Employer and that the Plan Administrator has determined to satisfy the conditions of Code section 414(p).

"Qualified Joint and Survivor Annuity": A Joint and Survivor Annuity that is immediately payable and for which the Beneficiary is the Participant's spouse. The percentage of the survivor annuity shall be fifty percent (50%) unless a different percentage is elected by the Employer in the Adoption Agreement.

"Qualified Matching Account": An Account established and maintained for a Participant for accounting purposes with respect to his share of Qualified Matching Contributions.

"Qualified Matching Contribution": A Matching Contribution that is one hundred percent (100%) vested and nonforfeitable when made and that is distributable only in accordance with the distribution restrictions applicable to Elective Deferrals under the Plan, except that a Qualified Matching Contribution may not be distributed on account of Hardship prior to the Participant's attainment of age 59 1/2.

"Qualified Military Service": Any service in the uniformed services, whether on a voluntary or involuntary basis, including active duty, active duty for training, initial active duty for training, inactive training, full-time National Guard duty, and the period of time a person is absent to

determine his fitness to perform any such duty. Uniformed services refers to the Armed Forces, the Army National Guard, the Air National Guard, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency. Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to Qualified Military Service will be provided in accordance with section 414(u) of the Code and applicable DOL and Treasury rules and regulations.

"Qualified Non-Elective Account": An Account established and maintained for a Participant for accounting purposes with respect to his share of Qualified Non-Elective Contributions.

"Qualified Non-Elective Contribution": An Employer contribution to a cash or deferred profit sharing plan that is neither a Non-Elective Contribution, Matching Contribution, Qualified Matching Contribution, nor an Elective Deferral, that is one hundred percent (100%) vested and nonforfeitable when made, that a Participant may not elect to receive in cash, and that is distributable only in accordance with the distribution restrictions applicable to Elective Deferrals under the Plan, except that Qualified Non-Elective Contributions may not be distributed on account of Hardship prior to the Participant's attainment of age 59 1/2.

"Qualified Optional Survivor Annuity": An immediate annuity for the life of the Participant with a survivor annuity for the life of the spouse which is equal to the applicable percentage of the amount of the annuity which is payable during the joint lives of the Participant and the spouse and which is the amount of benefit which can be purchased with the Participant's vested Account Balance. If the percentage of the survivor annuity is less than seventy-five percent (75%), the applicable percentage is seventy-five percent (75%). If the percentage of the survivor annuity is greater than or equal to seventy-five percent (75%), the applicable percentage is fifty percent (50%).

"Qualified Preretirement Survivor Annuity": A Preretirement Survivor Annuity for which the Beneficiary is the Participant's spouse, and the benefit the Participant would have received is a Qualified Joint and Survivor Annuity (or the actuarial equivalent thereof).

"Qualifying Employer Securities or Real Property": Securities or real property of the Employer that the Trustee may acquire and hold pursuant to the applicable provisions of the Code and the Act.

"Rollover Account": An Account established and maintained for a Participant for accounting purposes with respect to amounts the Participant has rolled over to this Plan.

"Roth Deferral" (an after-tax contribution): Any Employer contribution made to the Plan at the election of the Participant that is: (1) designated irrevocably by the Participant at the time of the cash or deferred election as a Roth Deferral that is being made in lieu of all or a portion of the Elective Deferrals (pre-tax) the Participant is otherwise eligible to make under the Plan; (2) treated by the Employer as includible in the Participant's income at the time the Participant would have received the contribution amount in cash if the Participant had not made the deferral election; and (3) maintained by the Plan in a separate account. Roth Deferrals must satisfy all Plan restrictions applicable to Elective Deferrals.

Under the separate accounting requirement, contributions and withdrawals of designated Roth Deferrals must be credited and debited to a designated Roth Deferral Account maintained for the Participant who made the designation, and the Plan must maintain a record of the Participant's investment in the contract (i.e., designated Roth Deferrals that have not been distributed) with respect to the Participant's designated Roth Deferral Account. In addition, gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to the designated Roth Deferral Account and other accounts under the Plan. However, Forfeitures may not be allocated to the designated Roth Deferral Account. The separate accounting requirement applies at the time the designated Roth Deferral is contributed to the Plan and must continue to apply until the designated Roth Deferral Account is completely distributed.

A designated Roth Deferral must satisfy the requirements applicable to Elective Deferrals made under the Plan. Thus, Roth Deferrals are subject to the nonforfeitability and distribution restrictions applicable to Elective Deferrals and are taken into account under the ADP test of Section 2.7.1 in the same manner as Pre-tax Elective Deferrals.

Distributions from Roth Deferral Accounts (other than corrective distributions) are not includible in the Participant's gross income if made after the Participant's death, disability, or age 59-1/2 provided that such distribution occurs after five (5) years from the establishment of the Roth Deferral Account for the Participant. Earnings on corrective distributions of Roth Deferrals are includible in gross income in the same manner as earnings on corrective distributions of Pre-tax Elective Deferrals.

"Roth Deferral Account": An Account established and maintained for a Participant for accounting purposes with respect to his Roth Deferrals.

"Roth IRA Account" (Roth IRA): An Account established and maintained for a Participant for accounting purposes with respect to his Roth IRA Contributions.

"Roth IRA Contribution": (an after-tax contribution) Any Deemed IRA Contribution that is (1) designated irrevocably by the Participant at the time of the cash or deferred election as a Roth IRA Contribution; (2) treated by the Employer as includible in the Participant's income at the time the Participant would have received the contribution amount in cash if the Participant had not made the deferral election; and (3) maintained by the Plan in a separate account.

"Segregated Account": An Account established and maintained for a Participant for accounting purposes with respect to his interest in a Segregated Fund.

"Segregated Fund": Assets held in the name of the Trustee that have been segregated from the other assets of the Trust Fund in accordance with any of the provisions of the Plan.

"Self-Employed Individual": An individual who has Earned Income for the taxable year from the trade or business for which the Plan is established or who would have had Earned Income but for the fact that the trade or business had no net profits for the taxable year.

"Straight Life Annuity": An annuity payable in equal installments over the life of the Participant that terminates upon the Participant's death.

"Taxable Wage Base": The contribution and benefit base in effect under section 230 of the Social Security Act at the beginning of the Plan Year.

"True-up": The process of increasing an annual contribution that has been limited on a Compensation Computation Period basis to the amount and period determined when applying the limits elected in the Adoption Agreement.

"Trustee": The persons, corporations, associations, or combination of them who shall at the time be acting as such from time to time hereunder. The term "Trustee" as used herein shall also include a person holding the assets of a custodial account, an annuity contract, or other contract that is treated as a qualified trust pursuant to Code section 401(f), and references to the Trust Fund shall be construed to apply to such custodial account, annuity contract, or other contract.

"Trust Fund": All money and property of every kind and character held by the Trustee pursuant to the Plan.

"Valuation Date": The date or dates specified as the Valuation Date(s) in the Adoption Agreement.

Short Form Standardized. The Valuation date shall be the last day of the Plan Year.

"Voluntary Account": An Account established and maintained for a Participant for accounting purposes with respect to his Voluntary Employee Contributions that were not deductible by the Participant at the time they were made.

"Voluntary Employee Contributions": Pre-tax contributions made by a Participant at his discretion, prior to Plan Years beginning in 1987, and after-tax contributions made by a Participant at his discretion, but not including Roth Deferrals or Roth IRA Contributions.

"Year of Credited Service": A twelve (12) consecutive month period used in determining a Participant's benefit allocation. Unless otherwise specified in the Adoption Agreement, an Employee is granted a Year of Credited Service for each Plan Year in which he earns 1,000 Hours of Service (non-standardized plans) or 500 Hours of Service (standardized plans.) The Plan's benefit formula may limit or exclude certain Years of Credited Service in the calculation of a Participant's annual benefit allocation.

"Year of Service": A "Year of Service" is completed on the last day of a twelve (12) consecutive month period (computation period) specified in the Adoption Agreement during which an Employee completes at least one thousand (1,000) Hours of Service. If elected in the Adoption Agreement, the hours requirement for the completion of a Year of Service for a particular purpose can be less than one thousand (1,000) hours and can be satisfied before the end of the Eligibility Computation Period. For purposes of the Elapsed Time Method, a Year of Service means twelve (12) Months of Service, as defined in the definition of Elapsed Time Method in this Article, or such lesser number of months specified in the Adoption Agreement. All Years of Service shall be taken into account.

Short Form. The computation period for purposes of determining Years of Service shall be based on the Eligibility Computation Period defined for Short Form Adoption Agreements in the Plan.

"Year of Vesting Service": A "Year of Vesting Service" is the twelve (12) consecutive month period specified in the Adoption Agreement during which an Employee completes at least one thousand (1,000) Hours of Service or such lesser number of hours specified in the Adoption Agreement. For purposes of the Elapsed Time Method, a Year of Vesting Service means either Twelve (12) Months of Service, as defined in the definition of Elapsed Time Method in this Article, three hundred sixty-five (365) days of service, or such other period of service specified in the Adoption Agreement. The Plan Administrator shall take into account all Years of Vesting Service unless the Employer specifies exclusions in the Adoption Agreement.

Short Form. Years of Vesting Service shall be based on service during the Plan Year.

PART II

ARTICLE I

PARTICIPATION

2.1.1 Eligibility Requirements. Each Employee shall be eligible to participate in this Plan and receive an appropriate allocation of contributions upon satisfying the eligibility requirements set forth in the Adoption Agreement.

Under a plan with a cash or deferred arrangement ("CODA"), an Employee's eligibility to make Elective Deferrals may not be conditioned upon the completion of more than one (1) Year of Service or the attainment of more than age 21.

An Employee that is a member of an employee classification that indirectly imposes an Hours of Service requirement (e.g., part-time, seasonal, or temporary) shall be eligible to participate in the Plan in any Eligibility Computation Period in which the Employee attains age 21 and is credited with at least 1,000 Hours of Service, or such lesser age or Hours of Service required by the Plan.

2.1.2 Commencement of Participation. An eligible Employee shall become a Participant in the Plan on the applicable Entry Date selected in the Adoption Agreement.

Short Form Standardized. The Entry Dates for Short Form standardized plans shall be the first day of the Plan Year or the first day of the seventh calendar month of the Plan Year coincident with or next following satisfaction of the eligibility requirements.

2.1.3 Participation Upon Re-Employment.

(a) Re-Employment After Satisfying Eligibility Requirements

A Participant whose employment terminates and who is subsequently reemployed shall reenter the Plan immediately on the date of his reemployment notwithstanding the fact that he has received a distribution of all of his vested Benefit. In the event that an Employee completes the eligibility requirements set forth in the Adoption Agreement terminates his employment prior to the date he would have become a Participant, and he is subsequently reemployed after the date that he would have become a Participant, the Employee shall be deemed to have met the eligibility requirements as of the date of his reemployment and shall become a Participant on the date of his reemployment. If such Employee is reemployed prior to the date he would have become a Participant, had his employment had not terminated, he shall become a Participant as of the date he would have become a Participant if his employment had not terminated.

(b) Re-Employment Before Satisfying Eligibility Requirements

Except as provided in the next paragraph, an Employee who has not met the eligibility requirements and whose employment terminates and who is subsequently reemployed shall become a Participant in accordance with the provisions of Sections 2.1.1 and 2.1.2.

If the Plan has an eligibility requirement longer than one year, an Employee who terminates after completing a Year of Service and is subsequently reemployed prior to incurring a Break in Service shall receive credit for that Year of Service for purposes of eligibility under Sections 2.1.1 and 2.1.2. However, an Employee who incurs a Break in Service shall not receive credit for that Year of Service for the year prior to the break.

(c) An individual returning from a period of Qualified Military Service shall recommence participation in the Plan immediately upon reemployment.

2.1.4 Termination of Participation. An Employee who has become a Participant shall remain a Participant until the entire amount of his Distributable Benefit is distributed to him or in the event of his death, to his Beneficiary.

2.1.5 Plan Administrator's Determination. In the event any question arises regarding the eligibility of any person to become a Participant or the commencement of participation, the Plan Administrator shall determine such question and the Plan Administrator's decision shall be conclusive and binding.

2.1.6 One-time Election Not to Participate.

(a) Employees who made an election not to participate in this Plan or any other plan of the Employer pursuant to (b) and (c) below shall continue to be excluded from this Plan on and after the date the Plan is restated for the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). An election not to participate shall not be permitted on or after the date this Plan is timely restated for EGTRRA.

(b) With respect to non-standardized plans only, and notwithstanding anything contained in the Plan to the contrary, an Employer may have elected in the Adoption Agreement to permit an Employee to make an election not to participate in the Plan. The election should have:

- (1)** Include plans not yet established;
- (2)** Be for the duration of the Employee's employment with the Employer;
- (3)** Be a one-time irrevocable election;
- (4)** Be made no later than the first date an Employee becomes eligible under the Plan or any plan or arrangement of the Employer that is described in Code section 219(g)(5)(A) (whether or not such other plan or arrangement has terminated).

Such a one-time irrevocable election described in this Section shall not be treated as having been made pursuant to a cash or deferred election.

(c) In the case of an irrevocable election made on or before December 23, 1994:

- (1)** The election does not fail to be treated as a one-time irrevocable election under this Section merely because an Employee was previously eligible under another plan of the Employer (whether or not such other plan has terminated); and

- (2) In the case of a plan in which partners may participate, the election does not fail to be treated as a one-time irrevocable election under this Section merely because the election was made after the partner's commencement of employment or after the Employee first became eligible under any plan of the Employer, provided that the election was made before the first day of the first Plan Year beginning after December 31, 1988, or, if later, March 31, 1989.

2.1.7 Change in Status. If any Participant continues to be employed by the Employer or an affiliate for which service is required to be taken into account, but ceases to be a member of an eligible class of Employees for any reason (such as becoming covered by a collective bargaining agreement unless the collective bargaining agreement otherwise provides), the Participant shall continue to be a Participant until the entire amount of his benefit is distributed. The individual shall not be eligible for any Employer Contribution for purposes of Article III ("Allocations") during the period that the Participant is not an Eligible Employee for such reason. This means while a member of an ineligible class the Employee shall not receive an allocation of Employer Contributions. Such Participant shall continue to receive credit for Years of Vesting Service completed during the period for purposes of determining his vested and nonforfeitable interest in his Accounts. In the event that the individual subsequently again becomes a member of an eligible class of Employees, the individual shall participate immediately upon the date of such change in status.

If a Participant incurs a Break in Service and is subsequently reemployed, eligibility to participate shall be determined in accordance with Section 2.1.3. In the event that an individual who is not a member of an eligible class of Employees becomes a member of an eligible class, the individual shall participate immediately if such individual has satisfied the eligibility requirements and would have otherwise previously become a Participant and shall receive credit for Years of Vesting Service completed while in the ineligible class for purposes of determining his vested and nonforfeitable interest in his Accounts.

Any Participant who ceases to be a member of an eligible class of Employees and would otherwise be entitled to a Top-Heavy Minimum Contribution shall have any such contribution based on Compensation while a member of an eligible class of Employees.

2.1.8 Existing Participants. If an Employee was a Participant on the Effective Date of this Plan, under the provisions of the Plan as in effect immediately prior to the Effective Date, he shall be a Participant on the Effective Date and the provisions of Sections 2.1.1 and 2.1.2, pertaining to participation, shall not be applicable unless the Employee is a member of an excluded class, as provided in Section 2.1.7. The rights of a Participant who is a member of an excluded class and whose employment terminated prior to the Effective Date of this Plan shall be determined under the provisions of the Plan as in effect at the time of such termination.

2.1.9 Service Crediting Method. All Years of Service with the Employer shall be used in to determine eligibility and break in service. The Employer may elect in the Adoption Agreement to use the Hours of Service method, Elapsed Time Method or any of the optional service counting methods permitted within the Plan for eligibility to participate, vesting, and application of the benefit formula. Thus, for example, service for eligibility may be determined by counting actual hours worked, while service for vesting could be determined either by the equivalencies as provided in the Adoption Agreement or by the Elapsed Time Method.

ARTICLE II
CONTRIBUTIONS

2.2.1 Employer Contributions.

(a) Amount of Contribution.

- (1) **Money Purchase Pension Plan.** The Employer shall contribute to the Trust Fund each Plan Year such amount, including any Forfeitures to be applied, as set forth in the Adoption Agreement.
- (2) **Profit Sharing Plan.** The Employer may contribute to the Trust Fund each Plan Year such amount as elected in the Adoption Agreement.

Short Form Standardized Adoption Agreement. The Employer's Contribution to the Plan shall be discretionary, and not limited to profits.

(3) Cash or Deferred Profit Sharing Plan.

- (i) **Amount of Non-Elective Contribution.** The Employer shall contribute to the Trust Fund each Plan Year such amount as a Non-Elective Contribution as the Employer elected in the Adoption Agreement.

Short Form Standardized Adoption Agreement. The Employer's Non-Elective Contribution to the Plan shall be discretionary, and not limited to profits.

- (ii) **Amount of Matching Contribution.** Subject to applicable limitations provided by the Plan, the Employer shall contribute to the Trust Fund each Plan Year with respect to the amount of Elective Deferrals on behalf of each electing Employee, a Matching Contribution determined in the manner set forth in the Adoption Agreement, to the extent permitted under Code section 401(m). If elected in the Adoption Agreement, Catch-up Contributions will not be treated as Elective Deferrals in the calculation of Matching Contributions. If the Participants' Elective Deferral elections are made on an annual basis, but Elective Deferrals are taken from Compensation on some other basis, the Employer must True-Up Matching Contributions at the end of the Plan Year to an annual basis unless elected otherwise in the Adoption Agreement.

Short Form. Catch-up contributions will be matched at the same rate as Elective Deferrals.

- (iii) **Amount of Qualified Non-Elective Contribution and Qualified Matching Contribution.** The Employer may, if elected in the Adoption Agreement, contribute to the Trust Fund each Plan Year such amount as a Qualified Non-Elective Contribution or Qualified Matching Contribution as the Employer may determine. In addition, if the Employer has elected in the Adoption Agreement to use the Current Year Testing Method, in lieu of distributing Excess Contributions or Excess Aggregate Contributions as provided in Article VII below, and to the extent elected by the Employer in the Adoption Agreement, the Employer may make Qualified Non-Elective Contributions or Qualified Matching Contributions on behalf of Participants who are not Highly Compensated Employees that are sufficient to satisfy either the ADP test or the ACP test, or both, pursuant to regulations under the Code. Further, the Employer may always make Qualified Non-Elective Contributions and Qualified Matching Contributions pursuant to a correction permitted under Rev. Proc. 2013-12, the Employee Plans Compliance Resolution System, as it is amended from time to time.

- (iv) A Participant's contribution equals the excess of (i) over (ii) (but not less than zero) multiplied by the applicable factor in Table III (based on the number of years the Participant's Normal Retirement Age exceeds his current age and the interest rate selected in the Adoption Agreement).

- (v) If the Plan is amended to change the interest rate or mortality table, the applicable factors in Tables I, II, and III will be based on the new assumptions in the valuation coincident with or next following the effective date of the amendment. The theoretical reserve in (ii) above will be accumulated with the old interest rate for such valuation and the new interest rate for all subsequent valuations.

- (4) **Prevailing Wage Contribution** Notwithstanding any other provision of this subsection 2.2.1, the Employer may, if elected in the Adoption Agreement, contribute a required prevailing wage contribution. If the Employer elects in the Adoption Agreement such amounts may be used to reduce or offset other Employer Contributions. The Plan Administrator will determine the contribution to be reduced or offset.

Short Form. No election permitted.

- (5) **In-Kind Contributions** The contribution of property, other than Qualifying Employer Securities, to a profit sharing plan or cash or deferred profit sharing plan, shall be permitted, so long as the contribution is discretionary and the property is unencumbered. The contribution of Qualifying Employer Securities shall be permitted to a pension plan subject to the requirements of ERISA section 408(e).

- (6) **Paid Time-Off Contributions.** If elected in the Adoption Agreement, the Employer who maintains a paid time-off (PTO) benefit plan ("PTO Plan"), in addition to this qualified Plan and provides under the terms of the PTO Plan that any unused sick days, vacation days or other paid leave or time off days ("unused PTO credits") remaining at the end of the year (or other relevant period) shall be contributed to this Plan as a cash contribution. The Plan will accept the cash equivalent value of any Eligible Employee's unused PTO credits during their employment, on their retirement or other severance of employment events, as an Elective Deferral or Employer Contribution.

- (b) **Limitation.** The Employer's Contribution for any Plan Year shall not exceed the maximum amount deductible from the Employer's income for such year for federal income tax purposes under the applicable Code sections.

- (c) **Time of Contribution.** All Employer Contributions shall be delivered to the Trustee not later than the date fixed by law for the filing of the

Employer's federal income tax return for the Year for which such contribution is made (including any extensions of time granted by the Internal Revenue Service for filing such return).

- (d) **Determination of Amount to be Final.** The Employer's determination of the amount of its contribution hereunder shall be in all respects final, binding, and conclusive on all persons or parties having or claiming any rights under this Agreement or under the Plan and the Trust created hereby. Under no circumstances and in no event shall any Participant, Beneficiary, or other person or party have any right to examine the Employer's books or records. This subparagraph shall not operate to limit any right to review granted by ERISA.

2.2.2 Elective Deferrals Contributed by the Employer on Behalf of Electing Employees.

- (a) **Amount of Deferrals.** If the Plan is designated in the Adoption Agreement as a Cash or Deferred Profit Sharing Plan, each Participant may elect to have the Employer contribute to the Trust on his behalf for any Plan Year during which he is a Participant such amounts expressed either in dollars or in whole percentages of his Compensation as he may elect that would otherwise be payable by the Employer as Compensation. If permitted in the Adoption Agreement, all or a portion of such Deferrals may be designated Roth Deferrals by the Participant. Such amount cannot exceed the dollar limitation on Elective Deferrals provided by Code section 402(g) in effect at the beginning of the taxable year. In the case of a Participant age fifty (50) or over by the end of the taxable year, Elective Deferrals that do not exceed the dollar limitation described in the preceding sentence may also include any Elective Deferrals that are treated as Catch-up Contributions (described in Subsection (c) below) because of another limitation.

For taxable year 2012, the dollar limitation is \$17,000 (not including the separate limit on Catch-up Contributions). For subsequent taxable years, the Secretary of the Treasury will adjust the dollar limitation in multiples of \$500 for cost-of-living increases under Code section 402(g)(4).

Subsequent to reemployment after a period of Qualified Military Service, a Participant is entitled to make a contribution to make up Elective Deferrals he otherwise could have made if not for the period of Qualified Military Service. No such payment may exceed the amount the Participant would have been permitted or required to contribute had the Participant remained continuously employed by the Employer throughout the period of Qualified Military Service. Any payment to the Plan shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the Qualified Military Service, but not greater than five years.

Nevertheless, the Employer may impose reasonable limitations in a uniform, nondiscriminatory manner on the amounts contributed in order to satisfy applicable legal requirements and to ensure the deductibility of amounts contributed by the Employer to the Plan and any other qualified plan of deferred compensation. The Employer may elect in the Adoption Agreement to limit Elective Deferrals made on behalf of electing Employees to a percentage of Compensation that is less than the amount otherwise allowable by Code section 402(g). Where the Plan permits Elective Deferral and Catch-Up Contributions, the limit established by the Plan may not be a percentage that is less than seventy-five (75) percent.

Short Form Standardized Plans. There shall be a special election provided for bonuses.

- (b) **Catch-up Contributions.** If elected in the Adoption Agreement, a Participant may make Catch-up Contributions, which are Elective Deferrals made to the Plan that exceed an otherwise applicable Plan limit and that are made by Participants who are age fifty (50) or over by the end of the applicable taxable year. An otherwise applicable Plan limit is a limit in the Plan that applies to Elective Deferrals without regard to Catch-up Contributions, such as the limits on Annual Additions (see Section 3.2.1), the dollar limitation on Elective Deferrals under Code section 402(g) (not counting Catch-up Contributions), and the limit imposed by the ADP test under Code section 401(k)(3) (see Section 2.7.1), or any Employer-provided limit on the amount of Elective Deferrals. Catch-up Contributions for a Participant for a taxable year may not exceed the lesser of:

- (1) The dollar limit on Catch-up Contributions under Code section 414(v)(2)(B)(i) for the taxable year; or
- (2) When added to the Participant's other Elective Deferrals, one hundred percent (100%) of the Participant's Compensation for the taxable year.

All Catch-up eligible Participants shall be provided with an effective opportunity to make the same dollar amount of Catch-up Contributions.

Beginning in taxable year 2006, the dollar limit is \$5,000. For taxable years after 2006, the Secretary of the Treasury will adjust the dollar limit in multiples of \$500 for cost-of-living increases under Code section 414(v)(2)(c). The dollar limit for taxable year 2012 is \$5,500.

Catch-up Contributions are not subject to the limits on Annual Additions, are not counted in the ADP test, are not counted in determining the Minimum Top-Heavy Allocation (see Subsection 2.6.1(a)), and are not subject to any Employer-provided limit on the amount of Elective Deferrals. However, Catch-up Contributions made in prior years are counted in determining whether the Plan is Top-Heavy. (See Sections 2.6.1 and 2.6.2.)

Short Form. Catch-up Contributions are always permitted.

- (c) **Election.** The Plan Administrator shall determine the manner in which a Participant may elect to have Elective Deferrals made to the Plan on his behalf. The Plan Administrator shall establish reasonable periods during which the election may be made or modified and must allow at least one opportunity per Plan Year for a Participant to make or modify an election. Unless the Plan Administrator establishes another period during which the election may be made or modified, any such election may be made or modified during the thirty (30) day period preceding the first day of the Plan Year. A Participant may not make a retroactive election, and once an election is made, it shall remain in effect until modified or terminated. A Participant may revoke an election at any time. Except in the case of an in-plan Roth conversion pursuant to Section 2.5.12(f) (a rollover to a Participant's Roth Elective Deferral account from another Account of the Participant in this Plan), Elective Deferrals contributed to the Plan as one type, either Roth Deferrals or Pre-tax Elective Deferrals, may not later be reclassified as the other type.
- (d) **Payment of Contribution.** Elective Deferrals shall be remitted by the Employer to the Trustee or custodian on the earliest date that they can reasonably be segregated from the Employer's assets, but in no event later than the fifteenth (15th) business day of the month following the month in which the Participant contributions are withheld or received by the Employer, unless under the regulations an extension of up to 10 business days is granted by the Secretary of Labor with respect to Elective Deferrals received or withheld in a single month.

In the case of a small plan (less than one hundred (100) participants) the Department of Labor has provided a safe harbor option for depositing Participant contributions within seven (7) business days after the money is received or withheld from payroll. This seven day rule was finalized

as of January 14, 2010.

- (e) **Deferral Limitation After Hardship Distributions.** For Hardship distributions occurring before January 1, 2002, a Participant may not have Elective Deferrals made on his or her behalf for the taxable year following the taxable year of a Hardship distribution in excess of the applicable limit under Code section 402(g) for such taxable year less the amount of the Employee's Elective Deferrals for the taxable year of the Hardship distribution.

2.2.3 Automatic Compensation Reduction (ACR), Eligible Automatic Contribution Arrangements (EACA) and Qualified Automatic Contribution Arrangements QACA).

- (a) **ACR.** If elected in the Adoption Agreement, an Employee who becomes eligible to participate in the Plan and does not affirmatively elect to receive cash or have a specified amount contributed to the Plan shall have his Compensation automatically reduced by the percentage elected in the Adoption Agreement. This percentage shall be contributed to the Plan as a Pre-tax Elective Deferral. A Participant can make an affirmative election to make no Pre-Tax Elective Deferrals or to defer a different percentage of Compensation at any time.

The ACR is effective for any period in which an Employee has not made an affirmative election or until superseded by a subsequent election that is made in writing and filed with the Employer. Under the ACR the Employer will automatically reduce the Employee's Compensation within a reasonable time after giving notice of the arrangement and providing the Employee with an effective opportunity to make an affirmative election.

The Employee must receive a notice that explains the ACR and the Employee's right to elect to have no such ACR made or to alter the amount of those reductions, including the procedure for exercising that right and the timing for implementation of any such election. The Employee must be notified annually of his ACR and the Employee's right to change that percentage. Each notice period must provide the Employee with a reasonable period to exercise their right to make an affirmative election.

If elected in the Adoption Agreement, the Employer may elect to apply the ACR to:

- (i) current Participant who has an Elective Deferral election in effect for less than the ACR percentage elected in the Adoption Agreement,
- (ii) a current Participant who has no Elective Deferral election in effect,
- (iii) to all Participants hired after a specified date, or
- (iv) to Participants who do not make an Elective Deferral election within the reasonable period specified in the Plan.,

If that Participant thereafter makes an affirmative election to reduce his compensation by another percentage (or by zero percentage), then that affirmative election will be effective for pay periods beginning in the month following the date the Participant files the election with the Plan Administrator.

A Participant that is subject to an Automatic Compensation Reduction (ACR) shall have the amount of the ACR increased by the rate elected in the Adoption Agreement, unless elected otherwise by the Participant, beginning the first day of the calendar year following the calendar year in which an ACR first became effective. The total increase of the ACR shall be limited as elected in the Adoption Agreement.

- (b) **EACA.** If elected in the Adoption Agreement, the Plan may satisfy the requirement for an Eligible Automatic Contribution Arrangement using an Automatic Compensation Reduction (ACR) arrangement under section 1.401(k)-(1)(a)(2) and the uniform default percentage under section 1.414(w)-1 of the Treasury Regulations. If a Highly Compensated Employee participates in two or more cash or deferred arrangements of the Employer that have different plan years, all Elective Deferrals made during the Plan Year under all such arrangements shall be aggregated and all matching contributions received under these arrangements shall be aggregated. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under regulations under Code section 401(k) or 401(m).

If that Participant thereafter makes an affirmative election to reduce his compensation by another percentage (or by zero percentage), then that affirmative election will be effective for pay periods beginning in the month following the date the Participant files the election with the Plan Administrator.

- (1) **Definition.** For purposes of this Section 2.2.3(b), an "Eligible Automatic Contribution Arrangement" is an ACR arrangement under a cash or deferred profit sharing plan in which:

- (i) a Covered Employee may elect to have the Employer defer a portion of their Compensation as a Pre-tax Elective Deferral under the Plan or receive such amounts directly in cash;
- (ii) a Covered Employee, who fails to make an affirmative election is treated as having elected to have the Employer make such contributions in an amount equal to a uniform percentage of Compensation;
- (iii) the Employer has identified the group of Employees who will be covered under the EACA and to whom the default percentage will apply; and
- (iv) the Employer meets the Annual Notice Requirements of Section 2.2.3(d).

- (2) **Automatic Default Elective Contribution.** Default elective contributions will automatically be made for a Covered Employee who does not have an affirmative election in effect on or before the date the default election applies. The default election shall be effective no earlier than a reasonable period after receipt of the notice described in Section 2.2.3(d).

For the purpose of this Section, a default elective contribution shall be a Pre-tax Elective Deferral. The amount of the default elective contribution made for a Covered Employee in each pay period shall be based on a uniform default percentage elected in the Adoption Agreement, multiplied by the Covered Employee's Compensation for that pay period.

If elected in the Adoption Agreement, the default percentage applied to a Covered Employee's Compensation will increase by a designated percentage each Plan Year, beginning with the second Plan Year that begins after the Plan Year in which the initial default percentage first applies to that Covered Employee. Unless otherwise elected in the Adoption Agreement, the increase will be effective on the first day of the Plan Year.

- (3) **Affirmative Election.** To avoid having default elective contributions deducted from their Compensation, a Covered Employee must make a written affirmative election. Unless otherwise elected in the Adoption Agreement, each year a Covered Employee will be required to make an affirmative election to have a higher or lower percentage (or zero percentage) applied to their Compensation, otherwise the default election will automatically apply at the default percentage elected in the Adoption Agreement.
- (4) **Limitations.** To meet the limitations under Code sections 401(a)(17), 402(g), and 415(c) and to satisfy any suspension periods required after a Hardship distribution, the Employer may stop or reduce an Employee's contributions to the Plan.
- (5) **Covered Employees. A Covered Employee is an Employee who meets the eligibility requirements of the Plan and who is identified in the Adoption Agreement as a covered under the EACA.**
- (A) All Employees who are eligible to make Pre-tax Elective Deferrals to the Plan will be covered by the EACA and designated as Covered Employees, unless in the Adoption Agreement, the Employer identifies a specific group of Employees or classification of Employees to whom the default percentage will apply.
- (B) A Covered Employee will have a reasonable opportunity after receipt of the notice described in Section 2.2.3(d) of the Plan to make an affirmative election regarding Pre-tax Elective Deferrals (either to have no Pre-tax Elective Deferrals made to the Plan or to have a different amount of Elective Deferrals made on their behalf) before the default percentage in Section 2.2.3(b)(2) above is applied.
- (6) Unless otherwise elected by the Employer in the Adoption Agreement, when an Employee makes an affirmative election to make Elective Deferrals to the Plan at a percentage that is higher or lower than the default percent, that Employee shall cease to be a Covered Employee for the Plan Year and for the purpose of the default percentage in Section 2.2.3(b)(2) and the Annual Notice provisions in Section 2.2.3(d).
- (7) **Permissible Withdrawal.** The Covered Employee may request a Permissible Withdrawal from the Plan, no later than 90 days after the date on which the default elective contributions were first withheld from his Compensation. A "Permissible Withdrawal" is a distribution from the Plan of the default elective contribution made under an EACA that:
- (A) is made pursuant to a written election by a Covered Employee;
- (B) consists of the entire amount of contributions described in Section 2.2.3(b)(2) plus earnings attributable thereto through the date of the distribution; and
- (C) is includible in the Covered Employee's gross income for the taxable year in which the distribution is made.

The Plan may charge the Covered Employee a withdrawal fee in an amount and manner similar to the fee charged for processing a cash distribution from his account according to a written expense policy adopted by the Plan.

Notwithstanding the distribution provisions described in the Plan, spousal consent is not required for this distribution.

- (8) **Time for Making a Permissible Withdrawal Election.** The provision of Subsection 2.2.3(b)(7) shall not apply to a Covered Employee's withdrawal election, unless the election is made no later than 90 days after the date of their first default elective contribution. In the Adoption Agreement, the Employer may specify an earlier date for making this election, provided the election period is at least 30 days.
- (9) **Distribution Amount.** The provision of Subsection 2.2.3(b)(7) shall not apply to any election by a Covered Employee, unless the amount of the Permissible Withdrawal is limited to the amount of the default elective contributions made through the earlier of the second payroll period to which the default percentage first applied or the first payroll period that occurs 30 days before the effective date of the election. The amount of the distribution shall be adjusted for earnings, investment gain, or losses.
- (10) **Special Rules.** The amount distributed as a Permissible Withdrawal shall not be counted in the annual limitation on Elective Deferrals under Code section 402(g) for the calendar year in which the automatic contributions were contributed.
- (11) **Special Rules for Timing of Excess Contribution and Excess Aggregate Contribution.** For Plan Years beginning on or after January 1, 2010, where all eligible Non-Highly Compensated Employees and all eligible Highly Compensated Employees are designated as Covered Employees under EACA for the entire Plan Year, the Plan Administrator must distribute Excess Contributions and Excess Aggregate Contributions from the Plan no later than six (6) months after the last day of the Plan Year in which the excess amounts were determined.
- (12) **Tax Treatment of Excess Contributions.** For Plan Years beginning after December 31, 2008, a corrective distribution of Excess Contributions (adjusted for any income or losses) shall be included in an Employee's gross income in the tax year in which the distribution occurs.
- (13) **Forfeit of Employer Match under an Eligible Automatic Contribution Arrangement.** For Plan Years beginning after January 1, 2010, Employer Matching Contributions that are made on amounts distributed from the Plan as Permissible Withdrawals shall not be forfeited unless the matching contribution has been allocated to the Employee's account.

Short Form. No election permitted.

- (c) QACA If elected in the Adoption Agreement, the Plan shall satisfy the nondiscrimination requirements under Code section 401(k), by including the Safe Harbor contributions provision for a Qualified Automatic Contribution Arrangement and the Automatic Compensation Reduction (ACR) arrangement under sections 1.401(k)-3(j) and 1.401(k)-1(a)(2) of the Treasury Regulations. If a Highly Compensated Employee participates in two or more cash or deferred arrangements of the Employer that have different plan years, all Elective Deferrals made during the Plan Year under all such arrangements shall be aggregated and all matching contributions received under these arrangements shall be aggregated. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under regulations under Code section 401(k) or 401(m).
- (1) **Definition.** For purposes of this Section, a "Qualified Automatic Contribution Arrangement" is an ACR arrangement under which:

- (i) an Employee may elect to have the Employer defer a portion of their Compensation as a Pre-tax Elective Deferral under the Plan or to receive such amounts directly in cash;
 - (ii) an Employee who fails to make an affirmative election is treated as having elected to have the Employer make such contributions as Default Elective Contributions based on a predefined percentage of Compensation (default percentage);
 - (iii) the Employer will make either a Safe Harbor Matching Contribution or a Safe Harbor Non-Elective Contribution as described in Section 2.2.3(c)(7); and
 - (iv) the Employer meets the Annual Notice Requirements of Section 2.2.3(d).
- (2) **Default Elective Contribution.** Default Elective Contributions will automatically be made for an Employee who does not have an affirmative election in effect, on or before the date a default election applies. The default election shall be effective no earlier than a reasonable period after receipt of the notice described in Section 2.2.3(d).

For the purpose of this Section 2.2.3, Default Elective Contributions shall be Pre-tax Elective Deferrals. The amount of the Default Elective Contribution made for an Eligible Employee, in each pay period, shall be based on the Minimum Default Percentage specified in Subsection 2.2.3(c)(6) and elected in the Adoption Agreement, multiplied by the Employee's Compensation for that pay period.

- (3) **Affirmative Election.** To avoid having Default Elective Contributions deducted from their Compensation, an Eligible Employee must make a written affirmative election. Each year the Eligible Employee will be required to make an affirmative election to have a higher or lower percentage (or zero percentage) applied to their Compensation otherwise the default election will automatically apply at the default percentage described in Subsection 2.2.3(c)(6) and elected in the Adoption Agreement.
- (4) **Limitations.** To meet the limitations under Code sections 401(a)(17), 402(g), and 415(c) and to satisfy any suspension periods required after a hardship distribution, the Employer may stop or reduce an Employee's contributions to the Plan.
- (5) **Eligible Employee:** All Employees eligible to make Elective Deferrals to the Plan, will be covered by the QACA, unless otherwise specified in the Adoption Agreement.
 - (i) **Permissible Exclusion.** The Employer may elect, in the Adoption Agreement, to exclude current Participants who were eligible immediately before the effective date of these QACA provisions and had an affirmative election on file regarding Elective Deferrals.
 - (ii) **Statutory Exclusion.** The Employer may elect in the Adoption Agreement to exclude Employees who have not met the statutory eligibility requirements, as defined in Code section 410(b). This election will permit the Plan to exclude employees who have not yet reached age 21 and completed a Year of Service since their original Employment Commencement Date.
- (6) **Provisions for the Default Elective Contribution.** The Employer shall specify in the Adoption Agreement how the Default Elective Contribution will be determined for each Eligible Employee based on a minimum default percentage that will automatically increase after the initial period. Unless otherwise elected in the Adoption Agreement, the default percentage shall be uniformly applied to an Employee's Compensation under the ACR arrangement for the entire Plan Year and shall automatically increase for Plan Years after the initial period.
 - (i) **Minimum Default Percentage.** The Plan must have a Minimum Default Percentage that is at least three percent (3%) of an Employee's Compensation beginning with the initial period. The Minimum Default Percentage must be applied uniformly to all Eligible Employees, under a default election. The Minimum Default Percentage shall automatically increase for Plan Years beginning after the initial default election ("initial period"). Under the Automatic Escalator Method, the Minimum Default Percentage shall be at least:
 - (A) three percent (3%) during the initial period, which begins on the date the first Default Elective Contributions are made with respect to such Employee;
 - (B) four percent (4%) during the period ending on the last day of the first Plan Year which begins after the date on which the first Default Elective Contribution described in Subparagraph (i) is made with respect to such Employee;
 - (C) five percent (5%) during the second Plan Year following the Plan Year described in Subparagraph (A); and
 - (D) six percent (6%) during any subsequent Plan Year. Notwithstanding the preceding, an alternative to the Automatic Escalator Method may be elected in the Adoption Agreement;
 - (E) the Plan may elect to impose a higher percentage for the initial period and each Plan Year thereafter; or
 - (F) the Employer may elect in the Adoption Agreement to impose a uniform, flat percentage without annual increases, provided the Minimum Default Percentage does not exceed six (6) percent (6%) or the Maximum Default Percentage allowed under a QACA.
 - (ii) **Maximum Default Percentage.** The Maximum Default Percentage cannot exceed ten percent (10%). If elected in the Adoption Agreement, the Employer may specify a lower maximum for the Plan.
 - (iii) **Initial Period.** For the purpose of applying a Minimum Default Percentage, an initial period begins when the default election for this QACA provision is first applied to an Eligible Employee and ends on the last day of the following Plan Year. The timing for a default election will be determined under the Annual Notice provisions described in Section 2.2.3(d) of the Plan.

If elected in the Adoption Agreement, the Plan may elect to:

- (A) have a new initial period begin for an Employee who did not have any contributions made to the Plan during the entire Plan Year. and

(B) have the default percentage increase after the initial period on a date other than the first day of a Plan Year.

- (7) **Safe Harbor Contributions.** The Employer is required to make Matching Contributions or Non-Elective Contributions. In the Adoption Agreement, the Employer will select and contribute to the Plan one of the following types of Safe Harbor Contributions for each Plan Year for which the QACA is effective:
- (i) **Matching Contribution.** A Matching Contribution for each Non-Highly Compensated Employee in an amount equal to the sum of one hundred (100) percent (100%) of their Elective Deferrals, to the extent that such Elective Deferrals do not exceed one percent (1%) of their Compensation plus an additional Matching Contribution equal to fifty percent (50%) of the Eligible Employee's Elective Deferral that exceed one percent (1%) but does not exceed six percent (6%) of their Compensation; or
 - (ii) **Non-Elective Contribution.** A Non-Elective Contribution for each Eligible Employee in an amount equal to at least three percent (3%) of the Employee's Compensation; regardless as to whether or not the Employee elects to make Elective Deferral or Employee Voluntary Contributions to the Plan. Notwithstanding the preceding, if elected in the Adoption Agreement, the Employer may elect to contribute a Matching Contribution or Non-Elective Contribution in an amount equal to or greater than the percentage allowed herein, provided it satisfies the requirement of sections 1.401(k)-3(b) or 1.401(k)-3(c) of the Treasury Regulations.
 - (iii) **Special Requirements.** The Safe Harbor Matching Contributions or the Safe Harbor Non-Elective Contributions made under this Section 2.2.3(c) shall be subject to the following distribution restrictions and vesting requirements:
 - (A) Safe Harbor Contributions may not be withdrawn from the Plan before age 59-1/2, under the withdrawal restrictions described in section 1.401(k)-1(d) of the Treasury Regulations; and
 - (B) Safe Harbor Contributions must be one hundred percent (100%) vested after an Employee has completed two (2) Years of Service.

Short Form. No election permitted.

(d) Annual Notice Requirement. QACA and EACA

- (1) The Plan Administrator shall give each Employee to whom the Qualified Automatic Contribution Arrangement in Section 2.2.3(c) or Eligible Automatic Contribution Arrangement in Section 2.2.3(b) applies, a notice explaining the Employee's rights and obligations under the arrangement. The notice must be provided within a reasonable period before the beginning of each Plan Year and it must be:
- (i) sufficiently accurate and comprehensive to apprise the Employee of such rights and obligations and
 - (ii) written in a manner easily understood by the average Employee to whom the arrangement applies.
 - (iii) In the case of an EACA, the Employer shall also include within the notice the Covered Employee's right to make a Permissible Withdrawal pursuant to Subsection 2.2.3(a)(7) and the administrative procedures for making such an election.
- (2) **Timing and Form of Notice.** A notice shall not be treated as meeting the requirements of this Section with respect to an Eligible Employee unless:
- (i) the notice includes the level of the Default Elective Contribution that will be made for the affected Employee if he does not make an affirmative election;
 - (ii) the notice includes an explanation of the Employee's right to elect not to have Elective Deferral Contributions made on the Employee's behalf or to elect to have such contributions made at a different percentage;
 - (iii) the notice is given before the beginning of each Plan Year and gives the Employee a reasonable period after receipt of the notice to make an affirmative election.
 - (iv) the notice explains how Elective Deferrals and Safe Harbor or Employer Contributions made under the arrangement will be invested in the absence of any investment election by the Employee or where the Plan provides for two or more investment options.
- (3) **Reasonable Period.** A notice satisfies the timing requirements of this Section only if it is provided sufficiently early so that the Employee has a reasonable period of time, after receipt of the notice, to make the elections described in Sections 2.2.3(b)(3) and 2.2.3(c)(3). The timing of the notice is considered reasonable if it is provided no later than the first pay date in the second payroll period that begins after the date the notice was provided or the first pay date that occurs at least 30 days after the notice is given to a newly hired employee. Notwithstanding, the Plan cannot make the default election effective any later than the earlier of:
- (i) the pay date for the second payroll period that begins after the date the notice is provided; and
 - (ii) the first pay date that occurs at least 30 days after the notice is provided.
 - (iii) in the case of an EACA the Plan Administrator shall include within the notice the Covered Employee's right to make a Permissible Withdrawal pursuant to Subsections 2.2.3(b)(3) and (7) and the administrative procedures for making such an election.

2.2.4 Employee Contributions.

- (a) **Amount of Contribution.** Subject to the Employer's election in the Adoption Agreement, an Employee may make Voluntary Employee Contributions to the Plan on an after-tax basis. Voluntary Employee Contributions for Plan Years beginning after 1986 must meet the nondiscriminatory test of Code section 401(m). Such contributions will be maintained in a Voluntary Account and will be non-forfeitable at all times. The Voluntary Account will share in the gains and losses of the Trust according to the policy adopted pursuant to Section 3.1.3.

The Plan Administrator shall not accept deductible Voluntary Employee Contributions that are made for a taxable year beginning after December 31, 1986. Deductible Voluntary Employee contributions made prior to that date will be maintained in a Deductible Voluntary Account that will be nonforfeitable at all times. This Account will share in the gains and losses of the Trust according to the policy adopted pursuant to Section 3.1.3. No part of the Deductible Voluntary Account will be used to purchase life insurance.

- (b) **Withdrawal of Contributions.** Subject to the requirements of Section 2.5.5 regarding Qualified Joint and Survivor Annuities (if applicable), the Participant may withdraw any part of the Voluntary Account or Deductible Voluntary Account by making a written application to the Plan Administrator. The Plan Administrator may adopt such procedures with respect to such withdrawals as may be necessary or appropriate. At the Plan Administrator's direction, the Trustee shall distribute any such withdrawal to the Participant in accordance with those procedures. Except in the case of the Deductible Voluntary Account, such withdrawals shall not include any interest or other increment earned on such contributions if the Participant is still an Employee. No Forfeitures shall occur as a result of an Employee withdrawing such contributions. Notwithstanding the foregoing, the Employee's spouse must consent in writing to a withdrawal of Voluntary Employee Contributions subject to the spousal consent requirements of Subsection 2.5.5(c).

Short Form. Voluntary Employee Contributions not permitted.

2.2.5 Return of Contributions. The Trustee shall return contributions by the Employer, including Employer, Qualified Non-Elective, Non-Elective, Matching, and Qualified Matching Contributions, to the Employer in the following instances:

- (a) If a contribution is made by the Employer because of mistake of fact, then the Trustee shall return such contribution within one (1) year after its payment upon the Employer's written request.
- (b) Each contribution by the Employer is conditioned on initial qualification of the Plan under the applicable sections of the Code. If the Commissioner of Internal Revenue determines that the Plan does not initially qualify, then any contribution made incident to the initial qualification by the Employer shall be returned within one (1) year after the date of denial of initial qualification of the Plan, but only if the application for initial qualification is made by the time prescribed by law for filing the Employer's tax return for the taxable year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.
- (c) Each contribution by the Employer is conditioned upon the deductibility of the contribution under the applicable sections of the Code. If the deduction for part or all of a contribution is disallowed, the Trustee shall return such contribution, to the extent of the disallowance, within one (1) year after such disallowance.

2.2.6 Required Diversification For Plans That Hold Publicly Traded Securities. This Plan shall provide Applicable Individuals with the right to divest Employer Securities in his Accounts and reinvest those amounts in certain diversified investments.

- (a) In the case of the portion of an Applicable Individual's Account attributable to Voluntary Employee Contributions and Elective Deferrals invested in Employer Securities, the Plan shall provide the Applicable Individual the right to direct the Plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of Paragraph (c).
- (i) An Applicable Individual with respect to Elective Deferrals and Voluntary Employee Contributions is:
- (1) a Participant in the Plan;
 - (2) an Alternate Payee who has an account under the Plan; or
 - (3) a Beneficiary of a deceased Participant
- (b) In the case of the portion of the Account attributable to Employer Contributions other than Elective Deferrals invested in Employer Securities, an Applicable Individual may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of Paragraph (c).
- (i) An Applicable Individual with respect to the Employer Contributions is:
- (1) a Participant who has completed at least three (3) years of service;
 - (2) an Alternate Payee who has an Account under the Plan with respect to a Participant who has completed at least three (3) Years of Service; or
 - (3) a Beneficiary of a deceased Participant
- (c) **Investment options.**
- (1) The Plan shall offer not less than three (3) investment options, other than Employer Securities, to which an Applicable Individual may direct the proceeds from the divestment of Employer Securities. Each investment option must be diversified and have materially different risk and return characteristics.
 - (2) The Plan shall permit an election to divest or reinvest at least quarterly.
 - (3) The Plan shall not meet the requirements of this Section if the Plan imposes restrictions or conditions with respect to the investment of Employer Securities that are not imposed on the investment of other Plan assets. Notwithstanding, any restrictions or conditions imposed by under applicable securities laws shall apply.
- (d) Applicable Defined Contribution Plan. For purposes of this Section, the term "Applicable Defined Contribution Plan" means:
- (i) any defined contribution plan which holds any Publicly Traded Employer Securities and
 - (ii) does not include a one-participant retirement plan.
 - (1) The term "one-participant retirement plan" means a retirement plan that on the first day of the Plan Year:
 - (A) covers only one individual (or the individual and the individual's spouse) and the individual (or the individual and the

individual's spouse) owned one hundred percent (100%) of the plan sponsor (whether or not incorporated), or
(B) covers only one or more partners (or partners and their spouses) in the plan sponsor.

(2) The term "partner" includes a two percent (2%) shareholder (as defined in Code section 1372(b)) of an S Corporation.

(e) Certain plans treated as holding Publicly Traded Employer Securities.

- (i) In the case of Employer Securities that are not Publicly Traded Employer Securities, the Plan shall be treated as holding Publicly Traded Employer Securities if any Employer corporation, or any member of a Controlled Group of Corporations, which includes such Employer corporation, has issued a class of stock that is a Publicly Traded Employer Security.
- (ii) Exception for certain controlled groups with publicly traded securities, Clause (i) shall not apply to the Plan if:
 - (1) no Employer Corporation or Parent Corporation of an Employer Corporation has issued any publicly traded Employer Security, and
 - (2) no Employer Corporation or Parent Corporation of an Employer Corporation has issued any special class of stock that grants particular rights to, or bears particular risks for the holder or issuer with respect to any corporation described in Subparagraph (i) that has issued any Publicly Traded Employer Security.
- (iii) **Definitions.** For purposes of this Subparagraph:
 - (1) "**Controlled Group of Corporations**" has the meaning given such term by Code section 1563(a) , except that "50 percent" shall be substituted for "80 percent" each place it appears;
 - (2) "**Employer Corporation**" means a corporation which is an Employer maintaining the Plan; and
 - (3) "**Parent Corporation**" has the meaning given such term by Code section 424(e).

(f) Other definitions. For purposes of this Section:

- (i) "**Elective Deferrals**" means an Employer Contribution as described in Code section 402(g)(3)(A).
- (ii) "**Employer Security**" has the meaning given by Code section 407(d)(1) of the Employee Retirement Income Security Act of 1974.
- (iii) "**Employee Stock Ownership Plan**" has the meaning given by Code section 4975(e)(7).
- (iv) "**Publicly Traded Employer Securities**" means Employer Securities that are readily tradable on an established securities market.
- (v) "**Year of Service**" has the meaning given by Code section 411(a)(5).

(g) Transition rule for securities attributable to Employer Contributions.

- (i) Rules phased in over three (3) years.
 - (1) In the case of the portion of an Employer Account other than Elective Deferral Account consisting of Employer Securities acquired in a Plan Year beginning before January 1, 2007, Section (b) shall only apply to the Applicable Percentage of such securities. This subparagraph applies separately with respect to each class of securities.
 - (2) **Exception for certain Participants aged 55 or over.** The Transition Rules of Subparagraph (1) shall not apply to an Applicable Individual who is a Participant who has attained age 55 and completed at least three (3) Years of Service before the first Plan Year beginning after December 31, 2005.
- (ii) **Applicable Percentage.** For purposes of Subparagraph (1), the Applicable Percentage shall be determined as follows:

Plan year to which Section (b) applies	The Applicable Percentage is
First Year	33
Second Year	66
Third and following Years	100

- (h) **Effective Date.** The Diversification requirements of Section 2.2.6 shall apply to the Plan and are effective with respect to Plan Years beginning after December 31, 2006, subject to certain special effective date rules, including a special rule with respect to plans maintained pursuant to a collective bargaining agreement.

ARTICLE III

ALLOCATIONS

2.3.1 Basic Allocation. Unless otherwise elected by the Employer in the Adoption Agreement, as of the last day of the Plan Year, the contribution made by the Employer, including any Forfeitures to be allocated, with respect to the Plan Year shall be allocated among the Employer Accounts of Participants during the Plan Year, in the manner set forth in the Adoption Agreement; provided, that the Employer Contribution must satisfy the requirements of Code section 416 regardless of how the Adoption Agreement is completed.

2.3.2 Profit Sharing, Money Purchase Pension Plans. Unless otherwise elected by the Employer in the Adoption Agreement, as of the last day of the Plan Year, the Employer Contributions made by the Employer with respect to the Plan Year and Forfeitures shall be allocated among the Employer Accounts of Participants during the Plan Year in the manner set forth in the Adoption Agreement. A Participant is treated as benefiting under the Plan for any Plan Year during which the Participant received or is deemed to receive an allocation in accordance with Treasury Regulations section 1.410(b)-3(a). If a Plan is integrated with Social Security, Section 2.3.5 or 2.3.6, as the case may be, shall also apply.

(a) As elected by the Employer in the Adoption Agreement, the Employer will determine the total amount of contributions for each Plan Year and either (1) allocate such total amount to Participant groups (the "Participant Group Allocation method"), or (2) allocate such total amount using age weighted allocation rates (the "Age Weighted Allocation method"). Employer contributions will be allocated to each Eligible Employee.

(1) **Participant Group Allocation Method.** The Employer may elect in the Adoption Agreement to use one of two Participant Group Allocation methods for the purpose of allocating the Employer Contribution: (a) the "employee classification," method that permits the Employer to divide the Eligible Employees into groups under pre-defined classifications or (b) the "separate allocation group" method where each Eligible Employee comprises a separate allocation group for the purpose of allocating the Employer Contribution.

The allocation will be made as follows: First, the total amount of contributions is allocated among the deemed aggregated allocation groups in portions determined by the Employer. A deemed aggregated allocation group consists of all of the separate allocation groups that have the same allocation rate. Second, within each deemed aggregated allocation group, the allocated portion is allocated to each Employee in the ratio that such Employee's Compensation, as defined in Part 1 Article II of the Plan, bears to the total compensation of all Employees in the group. An allocation rate is the amount of contributions allocated to an Employee for a year, expressed as a percentage of compensation or dollar amount, as defined in Part 1 Article II of the Plan. If the Employer has elected in the Adoption Agreement, the "separate allocation groups" method, each Eligible Employee of the Employer will constitute a "separate allocation group" for purposes of allocating contributions. In the event that an Eligible Employee is included in more than one Participant allocation group, the Participant's share of the Employer Contribution allocated to each such group will be based on the Participant's Compensation for the part of the year the Participant was in the group.

The Employer will specify in written instructions to the Plan Administrator or Trustee, by no later than the due date of the Employer's tax return for the year to which the Employer Contribution relates, including extensions, the portion of such contribution to be allocated to each participant allocation group.

(2) **Age Weighted Allocation Method.** If the Age Weighted Allocation method is elected in the Adoption Agreement, the total Employer Contribution will be allocated to each Eligible Employee such that the equivalent benefit accrual rate for each Participant is identical. The equivalent benefit accrual rate is the annual annuity commencing at the Participant's testing age, expressed as a percentage of the Participant's Compensation as defined in Part 1 Article II of the Plan which is provided from the allocation of Employer Contributions and Forfeitures for the Plan Year, using standardized actuarial assumptions that satisfy section 1.401(a)(4)-12 of the Income Tax Regulations. The Employee's testing age is the later of Normal Retirement Age, or the Employee's current age.

(b) **Cross Testing.** The Employer may elect in the Adoption Agreement one of the following methods to meet the requirements of Treasury Regulation section 1.401(a)(4)-8.

(1) **Minimum Allocation Gateway Method.** For any Plan Year in which the Employer intends to rely on Treasury Regulation section 1.401(a)(4)-8 (cross testing) in satisfying Code section 401(a)(4), each Non-Highly Compensated Employee entitled to receive a Non-Elective Contribution under this Section 2.3.1 or under Section 2.9.3 shall receive a minimum allocation equal to the lesser of (a) one-third (1/3) of the highest allocation rate (as a percentage of Compensation) of any Highly Compensated Employee applied to his Compensation, as defined in Part I, Article II, or (b) five percent (5%) of his compensation as defined in Subsection 3.2.5(a)(iii). Compensation for a Participant's initial year of participation shall be measured either over the period starting from his Entry Date or over the twelve (12) month period ending in the initial year of participation, as elected in the Adoption Agreement under the Compensation Computation Period. If a defined benefit plan sponsored by the Employer is aggregated with this Plan for purposes of satisfying Code section 410(b) and the Employer intends to rely on Treasury Regulations section 1.401(a)(4)-9, then each Non-Highly Compensated Employee entitled to an allocation shall receive an allocation such that his aggregate normal allocation rate equals the lesser of (a) one-third (1/3) of the highest aggregate normal allocation rate (as a percentage of Compensation) of any Highly Compensated Employee or (b) five percent (5%) of his compensation as defined in Subsection 3.2.5(a)(iii); provided, if the highest aggregate normal allocation rate of any Highly Compensated Employee exceeds twenty-five percent (25%), each Non-Highly Compensated Employee shall receive six percent (6%) of his Compensation, if the highest aggregate normal allocation rate of any Highly Compensated Employee exceeds thirty percent (30%), each Non-Highly Compensated Employee shall receive seven percent (7%) of his Compensation, and if the highest aggregate normal allocation rate exceeds thirty-five percent (35%), each Non-Highly Compensated Employee shall receive seven and one-half percent (7.5%) of his Compensation. Notwithstanding anything in the Plan to the contrary, on or after June 5, 2009, in the event that the Plan is Top-Heavy for a Plan Year, any Non-Highly Compensated Employee eligible for a Minimum Top-Heavy Allocation in Subsection 2.6.1(a) of the Plan shall receive an allocation equal to the greater of the Minimum Top-Heavy Allocation or the amount determined above. Any allocation in excess to the Minimum Top-Heavy Allocation determined without regard to this provision must be made to this Plan and may not be made to another Plan in a Top-Heavy Allocation group.

(2) **Gradual Age or Service Schedule.** The Plan has a gradual age or service schedule for the Plan Year if the allocation formula for all Employees under the Plan provides for a single schedule of allocation rates under which; (1) The schedule defines a series of bands based solely on age, Years of Service, or the number of points representing the sum of age and Years of Service (age and

service points), under which the same allocation rate applies to all Employees whose age, Years of Service, or age and service points are within each band; and (2) The allocation rates under the schedule increase smoothly at regular intervals, within the meaning of this paragraph and the following two paragraphs of this section.

- (3) **Smoothly Increasing Schedule Of Allocation Rates.** A schedule of allocation rates increases smoothly if the allocation rate for each band within the schedule is greater than the allocation rate for the immediately preceding band (i.e., the band with the next lower number of years of age, Years of Service, or age and service points) but by no more than five (5) percentage points. However, a schedule of allocation rates will not be treated as increasing smoothly if the ratio of the allocation rate for any band to the rate for the immediately preceding band is more than two (2.0) or if it exceeds the ratio of allocation rates between the two immediately preceding bands.
- (4) **Regular Intervals.** A schedule of allocation rates has regular intervals of age, Years of Service, or age and service points, if each band, other than the band associated with the highest age, years of service, or age and service points, is the same length. For this purpose, if the schedule is based on age, the first band is deemed to be of the same length as the other bands if it ends at or before age 25. If the first age band ends after age 25, then, in determining whether the length of the first band is the same as the length of other bands, the starting age for the first age band is permitted to be treated as age 25 or any age earlier than 25. For a schedule of allocation rates based on age and service points, the rules of the preceding two sentences are applied by substituting 25 age and service points for age 25. For a schedule of allocation rates based on service, the starting service for the first service band is permitted to be treated as one year of service or any lesser amount of service.
- (5) **Minimum Allocation Rates Permitted.** A schedule of allocation rates under the Plan does not fail to increase smoothly at regular intervals, within the meaning of the preceding paragraphs of this Section, merely because a minimum uniform allocation rate is provided for all Employees or the minimum benefit described in section 416(c)(2) of the Code is provided for all Non-Key Employees (either because the Plan is Top-Heavy or without regard to whether the Plan is Top-Heavy) if the schedule satisfies one of the following conditions: (1) The allocation rates under the Plan that are greater than the minimum allocation rate can be included in a hypothetical schedule of allocation rates that increases smoothly at regular intervals, within the meaning of the preceding paragraphs of this section, where the hypothetical schedule has a lowest allocation rate no lower than one percent (1%) of Plan Year Compensation; or (2) For a Plan using a schedule of allocation rates based on age, for each age band in the schedule that provides an allocation rate greater than the minimum allocation rate, there could be an Employee in that age band with an equivalent accrual rate that is less than or equal to the equivalent accrual rate that would apply to an Employee whose age is the highest age for which the allocation rate equals the minimum allocation rate.

2.3.3 Cash or Deferred Profit Sharing Plans.

- (a) **Matching Contributions.** Unless otherwise specified in the Adoption Agreement, as of the last day of the Plan Year, the Matching Contribution made by the Employer with respect to the Plan Year, and Forfeitures, shall be allocated to the Matching Accounts of Participants for whom Elective Deferrals were made in the manner specified in the Adoption Agreement. If elected in the Adoption Agreement, Catch-up Contributions will not be treated as Elective Deferrals in the calculation of Matching Contributions allocated to Participant's Matching Accounts.

Short Form. Catch-up Contributions will always be matched.

Standardized Plans. In any tiered matching formula, the rate of Matching Contributions cannot increase as the rate of Elective Deferrals or Employee Contributions increases. For Plan Years beginning after 2005, matching formulas, other than a single percentage of Elective Deferrals or Voluntary Employee Contributions, such as flat-dollar or ones that target matches at lower paid Non-Highly Compensated Employees, must satisfy additional requirements specified in Regulations section 1.401(m)-2(a)(5).

- (b) **Pre-Tax Elective Deferrals.** The Pre-Tax Elective Deferrals by the Employer on behalf of an electing Employee shall be allocated to the Pre-Tax Elective Account of such electing Employee.
- (c) **Roth Deferrals.** The Roth Deferrals contributed by the Employer on behalf of an electing Employee shall be allocated to the Roth Deferral Account of such electing Employee.
- (d) **Qualified Non-Elective Contributions and Qualified Matching Contributions.** As of the last day of the Plan Year, the Qualified Non-Elective Contributions and Qualified Matching Contributions made by the Employer with respect to the Plan Year shall be allocated to the Qualified Non-Elective Account or Qualified Matching Account of Participants during the Plan Year in the manner specified in the Adoption Agreement.

2.3.4 Minimum Top-Heavy Allocation. In the event the Plan becomes a Top-Heavy Plan during any Plan Year, the provisions of Subsection 2.6.1(a) shall apply. The Employer may elect to make an additional allocation to meet the Minimum Top-Heavy requirement or otherwise follow the Plan provisions. The allocation of Employer contributions must satisfy the requirements of Code section 416 regardless of how the Adoption Agreement is completed. Elective Deferrals and Matching Contributions allocated to Key Employees, but not Catch-up Contributions, are taken into account for the purpose of determining the minimum contribution under Code section 416. However, Elective Deferrals (and, for Plan Years beginning before 2002, Matching Contributions) made on behalf of Non-Key Employees may not be taken into account for the purpose of satisfying the minimum contribution requirement under Code section 416.

2.3.5 Integration with Social Security - Profit Sharing Plans.

- (a) If the Employer has elected in the Adoption Agreement that the Plan shall be integrated with Social Security, then the applicable contributions plus Forfeitures shall be allocated to Participants' Accounts as follows (provided that Steps One and Two, below, need only be applied in years in which the Plan is Top-Heavy):

STEP ONE: Contributions and Forfeitures shall be allocated to each Participant's Account in the ratio that each Participant's Compensation bears to all Participant's Compensation, but not in excess of three percent (3%) of each Participant's Compensation

STEP TWO: Any contributions and Forfeitures remaining after the allocation in Step One will be allocated to each Participant's Account in the ratio that each Participant's Compensation for the Plan Year in excess of the Integration Level bears to the excess compensation of all Participants, but not in excess of three percent (3%).

STEP THREE: Any contributions and Forfeitures remaining after the allocation in Step Two (or starting with this Step Three if so elected in the Adoption Agreement, all contributions and Forfeitures) shall be allocated to each Participant's Account in the ratio that the sum of

each Participant's Compensation and Compensation in excess of the Integration Level bears to the sum of all Participants' Compensation and Compensation in excess of the Integration Level, but not in excess of the Maximum Profit Sharing Disparity Rate.

STEP FOUR: Any remaining contributions and Forfeitures shall be allocated to each Participant's account in the ratio that each Participant's Compensation for the Plan Year bears to all Participants' Compensation for that year.

The Maximum Profit Sharing Disparity Rate is equal to the lesser of:

- (1) Five and seven-tenths percent (5.7%) (minus the percentage of Compensation allocated in Step One, if any); or,
 - (2) Five and four-tenths percent (5.4%) (minus the percentage of Compensation allocated in Step One, if any) if the Integration Level (IL) is more than eighty percent (80%) but less than one hundred (100%) of the Taxable Wage Base (TWB) under section 230 of the Social Security Act at the beginning of the Plan Year; or
 - (3) Four and three-tenths percent (4.3%) (minus the percentage of Compensation allocated in Step One, if any) if the IL is greater than twenty percent (20%) of the TWB, but not more than eighty percent (80%) of the TWB, and greater than ten thousand dollars (\$10,000).
- (b) In the event the Plan is Top-Heavy and the Employer elects to use Steps Three and Four of Subsection (a) above, then allocations made due to Compensation greater than the Integration Level shall be reduced proportionately to the extent necessary to provide all Employees entitled to a Top-Heavy Minimum Allocation with the required allocation.
 - (c) **Annual overall permitted disparity limit.** Notwithstanding the formula elected in the Adoption Agreement, for any Plan Year this Plan benefits any Participant who benefits under another qualified plan or simplified employee pension, as defined in Code section 408(k), maintained by the Employer that provides for permitted disparity (or imputes disparity), the Employer will contribute for each eligible Participant an amount equal to the Excess Contribution Percentage multiplied by the Participant's total Compensation. For purposes of this Subsection, the "Excess Contribution Percentage" is the percentage of Compensation at which Employer-derived contributions are made with respect to Compensation at or above the Integration Level in a defined contribution plan.
 - (d) **Cumulative permitted disparity limit.** The cumulative permitted disparity limit for a Participant is thirty-five (35) total cumulative permitted disparity years. Total cumulative permitted years means the number of years credited to the Participant for allocation or accrual purposes under this Plan or any other qualified plan or simplified employee pension plan (whether or not terminated) ever maintained by the Employer. For purposes of determining the Participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year. If the Participant has not benefited under a defined benefit or target benefit plan for any year beginning on or after January 1, 1994, the Participant has no cumulative disparity limit.

2.3.6 Integration with Social Security - Money Purchase Plans.

- (a) **Annual overall permitted disparity limit.** Notwithstanding the formula elected in the Adoption Agreement, for any Plan Year this Plan benefits any Participant who benefits under another qualified plan or simplified employee pension, as defined in Code section 408(k), maintained by the Employer that provides for permitted disparity (or imputes disparity), the Employer will contribute for each eligible Participant an amount equal to the Excess Contribution Percentage multiplied by the Participant's total Compensation. For purposes of this Subsection, the "Excess Contribution Percentage" is the percentage of Compensation at which Employer-derived contributions are made with respect to Compensation at or above the Integration Level in a defined contribution plan.
- (b) **Cumulative permitted disparity limit.** Cumulative permitted disparity limit. The cumulative permitted disparity limit for a Participant is thirty-five (35) total cumulative permitted disparity years. Total cumulative permitted years means the number of years credited to the Participant for allocation or accrual purposes under this Plan or any other qualified plan or simplified employee pension plan (whether or not terminated) ever maintained by the Employer. For purposes of determining the Participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year. If the Participant has not benefited under a defined benefit or target benefit plan for any year beginning on or after January 1, 1994, the Participant has no cumulative disparity limit.
- (c) The Maximum Money Purchase Disparity Rate is equal to the lesser of the Base Contribution Percentage or the applicable percentage determined in accordance with the table below.

If the Integration Level:

is more than	but not more than	the applicable percentage is:
\$0	X*	5.7%
X* of TWB	80% of TWB	4.3%
80% of TWB If TWB	Y**	5.4% 5.7%

*X = the greater of ten thousand dollars (\$10,000) or twenty percent (20%) of the TWB

**Y = any amount more than eighty percent (80%) of the TWB but less than one hundred percent (100%) of the TWB.

If the Integration Level is equal to the Taxable Wage Base ("TWB"), the applicable percentage is five and seven-tenths percent (5.7%).

For purposes of this Subsection, the "Base Contribution Percentage" shall be the percentage of Compensation at which Employer-derived contributions are made with respect to Compensation at or below the Integration Level in a defined contribution plan.

- (d) **Top-Heavy Years.** In the event the Plan becomes Top-Heavy, the Employer shall make an additional contribution to the Plan to provide the Minimum Top-Heavy Allocation pursuant to Section 2.3.4.

2.3.7 Fail-Safe Allocation. Unless elected otherwise in the Adoption Agreement, failure of the coverage tests under section 410(b) of the Code requires correction using the principles set forth in this Section if such use is elected in the Adoption Agreement. Testing is done as of the last day of the Plan Year. With respect only to non-standardized plans and notwithstanding any provision of the Plan or Adoption Agreement to the contrary, if the Plan would otherwise fail to satisfy the requirements of Code section 410(b) and the regulations thereunder because Employer contributions have not been allocated to a sufficient number or percentage of Participants for the Plan Year, and the right to receive a contribution is conditioned upon participation on the last day of the Plan Year or the completion of more than five hundred (500) Hours of Service, or conditioned upon membership in a certain Employee classification, an additional contribution shall be made by the Employer and shall be allocated to the Employer Accounts of affected Participants, considering all the applicable exclusions of Code sections 410(b)(3) and (4) subject to the following provisions:

- (a) The NHCE Participants eligible to share in the allocation of the Employer's contribution shall be expanded to include the minimum number of NHCE Participants who are not otherwise eligible to the extent necessary to satisfy the ratio percentage test of Code section 410(b)(1)(B). The specific NHCE Participants who shall become eligible are those NHCE Participants who are members of an eligible classification of Employees, who are actively employed on the last day of the Plan Year, but have not met the Plan's Hours of Service requirement.

These Participants shall be given an allocation one Participant at a time beginning with the Participant with the greatest number of Hours of Service and continuing in descending order until the ratio percentage test is passed. If two or more Participants have the same number of Hours of Service then the Participant with the highest Compensation shall receive an allocation first. Fail-safe allocations shall be given to the smallest number of Participants that allows the Plan to pass the ratio percentage test.

- (b) If the ratio percentage test is still not satisfied, the NHCE Participants eligible to share in the allocation shall be further expanded to include the minimum number of NHCE Participants who are members of an eligible classification of Employees who are not employed on the last day of the Plan Year as is necessary to satisfy the ratio percentage test. The specific NHCE Participants who shall become eligible are those NHCE Participants who have completed the greatest number of Hours of Service (in excess of five hundred (500) hours) during the Plan Year.

These Participants shall be given an allocation one Participant at a time in descending order until the ratio percentage test is passed. If two or more Participants have been credited with the same number of Hours of Service then the Participant with the highest Compensation shall receive an allocation first.

- (c) If the ratio percentage test is still not satisfied, the NHCE Participants eligible to share in the allocation of the Employer's contribution shall be expanded to include the minimum number of NHCE Participants who are not otherwise eligible to the extent necessary to satisfy the ratio percentage test of Code section 410(b)(1)(B). The specific NHCE Participants who shall become eligible are those NHCE Participants who are members of an ineligible classification of Employees, who are actively employed on the last day of the Plan Year, and have met the Plan's Hours of Service requirement.

These Participants shall be given an allocation one Participant at a time beginning with the Participant with the greatest number of Hours of Service and continuing in descending order until the ratio percentage test is passed. If two or more Participants have the same number of Hours of Service then the Participant with the highest Compensation shall receive an allocation first. Fail-Safe allocations shall be given to the smallest number of Participants that allows the Plan to pass the ratio percentage test.

- (d) If the ratio percentage test is still not satisfied, the NHCE Participants eligible to share in the allocation shall be further expanded to include the minimum number of NHCE Participants who are members of an ineligible classification of NHCE Employees who are employed on the last day of the Plan Year but have not met the hours requirement of the Plan as is necessary to satisfy the ratio percentage test. The specific NHCE Participants who shall become eligible are those NHCE Participants who have completed the greatest number of Hours of Service during the Plan Year. These Participants shall be given an allocation one Participant at a time in descending order until the ratio percentage test is passed. If two or more Participants have been credited with the same number of Hours of Service then the Participant with the highest Compensation shall receive an allocation first.
- (e) If the ratio percentage test is still not satisfied, the NHCE Participants eligible to share in the allocation shall be further expanded to include the minimum number of NHCE Participants who are members of an ineligible classification of NHCE Employees who are not employed on the last day of the Plan Year as is necessary to satisfy the ratio percentage test. The specific NHCE Participants who shall become eligible are those NHCE Participants who have completed the greatest number of Hours of Service (in excess of five hundred (500) hours) during the Plan Year. These Participants shall be given an allocation one Participant at a time in descending order until the ratio percentage test is passed. If two or more Participants have been credited with the same number of Hours of Service then the Participant with the highest Compensation shall receive an allocation first.
- (f) The Employer may elect in the Adoption Agreement whether to apply this Section 2.3.7. If the Employer elects to apply this section 2.3.7 then for each Plan Year it is used, a list of each Participant benefiting on account of this Section and the associated percentage or dollar amount of Employer Contribution shall be prepared for each Plan Year and provided to the Plan Administrator or Trustee not later than the time prescribed by law for filing the return for such applicable taxable year (including any extensions), and shall be maintained as part of the administrative records of the Plan.

Short Form. This option not offered in Short Form Adoption Agreements.

2.3.8 Contributions on Behalf of Disabled Participants. If elected in the Adoption Agreement by the Employer, contributions will be made to the Plan on behalf of each Participant who has a Disability.

Short Form. This option not available in the Short Form Adoption Agreements.

2.3.9 Treatment in the Case of Death or Disability Resulting from Active Military Service.

- (a) In the Adoption Agreement, the Employer may elect for benefit accrual purposes to treat an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing Qualified Military Service, with respect to the Employer maintaining the Plan, as if the individual had resumed employment in accordance with the individual's reemployment rights under Code section 414(u) on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability. In the case of any such treatment, and subject to subparagraphs (b) and (c) of this Subparagraph, any full or partial compliance by the Plan with respect to the benefit accrual requirements of Code section 414(u)(8) with respect to such individual, shall be treated for purposes of Code section 414(u)(1) as if such compliance were required under such section.

(b) Nondiscrimination Requirements. The provisions of this Section 2.3.9 shall apply only if all individuals performing Qualified Military Service with respect to the Employer maintaining the Plan (as determined under Code sections 401(b), (c), (m), and (o)) who die or become disabled as a result of performing Qualified Military Service prior to reemployment by the Employer are credited with service and benefits on reasonably equivalent terms. (c) Determination of Benefits. The amount of Voluntary Employee Contributions and the amount of Elective Deferrals of an individual treated as reemployed under this Section 2.3.9 for purposes of applying Code section 414(u)(8)(C) shall be determined on the basis of the individual's average actual Voluntary Employee Contributions or Elective Deferrals for the lesser of:

- (1) the 12-month period of service with the Employer immediately prior to Qualified Military Service; or
- (2) the actual length of continuous service with the Employer, if service with the Employer is less than such 12-month period.

Short Form. The Employer will not, for benefit accrual purposes treat an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing Qualified Military Service, as if he were reemployed on the day preceding to his death of disability.

ARTICLE IV

VESTED BENEFITS

2.4.1 Vesting. A Participant shall at all times be one hundred percent (100%) vested and have a nonforfeitable interest in his Elective Deferral, Catch-up, Qualified Non-Elective, Qualified Matching, Prevailing Wage, Deductible Voluntary, and Voluntary Accounts. In addition, ADP Test Safe Harbor Contributions made pursuant to Section 2.9.3 of the Plan shall be one hundred percent (100%) vested at all times. The vested and nonforfeitable interest of the Participant in his Controlled Account shall be determined by reference to the Account from which the funds were originally transferred. The vested and nonforfeitable interest in a Participant's Employer and Matching Accounts shall be determined subject to the vesting schedule selected in the Adoption Agreement and shall not increase after the date the Participant terminates employment.

For the purpose in determining the vested and nonforfeitable interest of a Participant, all of an Employee's Years of Vesting Service with the Employer or Related Employers maintaining the Plan shall be applied to the vesting schedule selected for the Plan, unless otherwise elected in the Adoption Agreement.

Each period of Qualified Military Service served by an individual is, upon reemployment deemed to constitute service with the Employer for the purpose of determining the nonforfeitable interest of the Participant's Account balances under the Plan.

Changes in Vesting Schedule. The Employer may elect to amend the vesting schedule in the Adoption Agreement, provided the nonforfeitable interest of the Participant in his Employer and Matching Accounts is not less than the nonforfeitable interest in such Accounts under the Plan prior to the adoption the amendment.

Election of Former Schedule. Furthermore, each Participant with at least three (3) Years of Service with the Employer may elect within a reasonable period after the adoption of an amendment changing the vesting schedule, to have his nonforfeitable percentage computed under the Plan without regard to such amendment. An election shall be permitted by such a Participant, if the Participant has at least one Hour of Service in any Plan Year beginning on or after the effective date of the amendment. The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end on the latest of: (i) sixty (60) days after the amendment is adopted; (ii) 60 days after the amendment becomes effective; or (iii) sixty (60) days after the Participant is issued written notice of the amendment by the Employer. With respect to benefits accrued as of the later of the adoption or effective date of such amendment, the vested percentage of each Participant will be the greater of the vested percentage under the old vesting schedule or the vested percentage under the new vesting schedule.

Short Form Standardized Adoption Agreement. Participants are 100% vested upon participation.

- (a) **Normal or Postponed Retirement.** A Participant, on attaining his Normal Retirement Age shall be one hundred percent (100%) vested and have a nonforfeitable interest in his Employer and Matching Accounts. If a Participant continues in active employment following his Normal Retirement Age, he shall continue to participate under the Plan.
- (b) **Disability.** If a Participant terminates employment prior to his Normal Retirement Age due to a Disability, he shall be vested and have a nonforfeitable interest in his Employer and Matching Accounts as elected in the Adoption Agreement.
- (c) **Death.** In the event of the death of a Participant before termination of employment with the Employer and before Normal Retirement Age, the Participant shall be vested and have a nonforfeitable interest in his Employer and Matching Accounts as elected in the Adoption Agreement.

Short Form. In the event of the death of a Participant before termination of employment with the Employer and before Normal Retirement Age, he shall be fully vested and have a nonforfeitable interest in his Employer and Matching Accounts.

- (d) **Termination of Plan.** In the event of Plan termination (including termination resulting from a complete discontinuance of contributions by the Employer), each Participant employed by the Employer as of the date of such termination shall be one hundred percent (100%) vested and have a nonforfeitable interest in all of his Accounts. In the event of a partial Plan termination, each Participant employed by the Employer with respect to whom such partial termination has occurred shall be one hundred percent (100%) vested and have a nonforfeitable interest in all of his Accounts.
- (e) **Early Retirement, Resignation, or Discharge.** If the employment of a Participant terminates by reason of early retirement, resignation, or discharge prior to his Normal Retirement Age, he shall be vested and have a nonforfeitable interest in a percentage of his Employer and Matching Accounts taking into account all of his Years of Vesting Service as of such termination date in accordance with the schedule set forth in the Adoption Agreement.
- (f) **All Other Times.** A Participant shall be vested and have a nonforfeitable interest in a percentage of his Employer and Matching Accounts determined by taking into account all of his Years of Vesting Service in accordance with the schedule set forth in the Adoption Agreement.
- (g) **Elapsed Time Method.** If the Employer has elected in the Adoption Agreement to use the Elapsed Time Method to determine Years of Vesting Service, see the definition of that term for the rules that apply for purposes of vesting.

2.4.2 Leave of Absence. The Plan Administrator shall not treat a temporary cessation from active employment with the Employer pursuant to an authorized leave of absence in accordance with the nondiscriminatory policy of the Employer, whether occasioned by illness, military service, or any other reason, as either a termination of employment or a Break in Service so long as the Employee returns to employment in a manner consistent with the authorized leave of absence.

2.4.3 Re-Employment. Unless otherwise elected by the Employer in the Adoption Agreement, in the case of a Participant who has five (5) or more consecutive Breaks in Service, all Years of Vesting Service after such Breaks in Service shall be disregarded for vesting the Employer Account balance that accrued before such breaks, however, both pre-break and post-break service shall count for vesting the Employer Account balance that accrues after such breaks.

Account balances that accrued before and after such Break in Service shall share in the earnings and losses of the Trust Fund.

If a Participant receives a distribution from his Account when he has less than a one hundred percent (100%) vested and nonforfeitable interest in the Account and the Participant resumes employment covered under the Plan, the Plan Administrator shall restore the Participant's Employer-derived Account balance to the amount on the date of distribution if the Participant repays to the Plan the full amount of the distribution attributable to Employer Contributions including Elective Deferrals before the earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer, or the date the Participant incurs five (5) consecutive Breaks in Service following the date of the distribution. If a Participant is deemed to receive a distribution pursuant to this Section, and the Participant resumes employment covered under the Plan before the date the Participant incurs five (5) consecutive Breaks in Service, upon the reemployment of such Participant, the Plan Administrator shall restore the Employer Account balance of the Participant to the amount on the date of such deemed distribution as of the date of the reemployment of such Participant. This paragraph shall apply whether the distribution is an actual distribution or a deemed distribution.

2.4.4 Forfeitures. Unless otherwise elected in the Adoption Agreement, if a Participant terminates service and elects, in accordance with the provisions of the Plan, to receive the value of his vested Account balance, the nonvested portion shall be treated as a Forfeiture as of the earlier of the last day of the Plan Year in which the Plan Administrator distributes the Participant's entire vested interest, or the last day of the Plan Year of the 5th consecutive Break in Service. If the Participant elects to receive less than the entire vested portion of the Account balance derived from Employer contributions, the portion forfeited shall equal the total nonvested portion of such Account multiplied by a fraction, the numerator of which is the distributed amount attributable to Employer contributions and the denominator of which is the entire vested portion of such Account.

If a Participant terminates service, and the value of the Participant's vested Account balance derived from Employer and Employee contributions is not greater than five thousand dollars (\$5,000) (or a dollar amount that is less, if elected in the Adoption Agreement), and the Participant receives a distribution of the value of the entire vested portion of such Account balance, the Plan Administrator shall treat the nonvested portion as a Forfeiture, unless elected otherwise in the Adoption Agreement, as of the earlier of the last day of the Plan Year in which the Plan Administrator distributes the Participant's entire vested interest, or the last day of the Plan Year of the fifth (5th) consecutive Break in Service. If elected in the Adoption Agreement, the portion of the Account balance that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of Code sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16), shall be excluded from the Participant's Account balance for purposes of this Section. If a Participant would have received a distribution under the preceding but for the fact that the Participant's vested Account balance exceeded five thousand dollars (\$5,000), or such lesser amount as elected above, when the Participant terminated service and if at a later time such Account balance is reduced such that it is not greater than five thousand dollars (\$5,000), or such lesser amount as elected above, the Participant will receive a distribution of such Account balance and the Plan Administrator will treat the nonvested portion as a Forfeiture. If the value of a Participant's vested Account balance is zero, the Participant shall be deemed to have received a distribution of such vested Account balance. A Participant's vested Account balance shall not include accumulated deductible Employee contributions within the meaning of Code section 72(o)(5)(B) for Plan Years beginning prior to January 1, 1989.

Unless otherwise elected in the Adoption Agreement, the Plan Administrator shall allocate such Forfeiture in the same manner as a contribution by the Employer for the year in which said Forfeiture occurred. For each Plan Year that Forfeitures are allocated, the Plan Administrator shall designate the specific Employer Contribution or Contributions that the Forfeitures reduce or supplement. The Employer may elect in the Adoption Agreement to use Forfeitures to offset administrative expenses of the Plan to the extent the expenses are Plan expenses and not settlor expenses and any remaining Forfeitures shall be allocated in the same manner as a contribution by the Employer for the year in which said Forfeiture occurred. Forfeitures that are used to supplement a contribution will increase that contribution that was otherwise specified for the Plan Year. Forfeitures that are used to reduce a fixed required contribution reduce the amount that the Employer would otherwise have to contribute to the Plan for the Plan Year.

If a Participant is reemployed following a Break in Service and is entitled to restoration of any amount of his Account that was forfeited because of such Break in Service, the Plan Administrator shall restore such amount in the manner specified in the Adoption Agreement.

Short Form Standardized. Unless otherwise elected, each Plan Year Forfeitures shall be first applied to offset administrative expenses of the Plan to the extent the expenses are Plan expenses and not settlor expenses and then shall supplement the Employer Contribution.

If a Participant is re-employed following a Break in Service and is entitled to restoration of any amount of his Account that was forfeited because of such Break in Service, the Plan Administrator shall restore such amount from existing Forfeitures before they are used for any other purpose.

ARTICLE V

DISTRIBUTIONS

2.5.1 Distributable Benefit.

- (a) When a Participant incurs a severance of employment (for any reason) and he is no longer employed by the Employer or another Related Employer, he or his Beneficiary shall be entitled to a benefit equal to the vested and nonforfeitable interest in his Accounts as of the Distribution Determination Date. This shall include a Disability benefit if so elected in the Adoption Agreement. Such Accounts shall include the allocable share of contributions and Forfeitures, if any, that may be allocated to said Accounts as of such Distribution Determination Date and shall be determined after making the adjustments for which provision is made in the Plan.
- (b) If the value of the Participant's vested and nonforfeitable interest in the Plan at the time of his termination of employment is zero, the Participant shall be deemed to have received a distribution of such interest as his Distributable Benefit as of the date his employment terminated.
- (c) **Minimum Distributable Benefit.** If a Participant terminates service, and the value of the Participant's vested Account balance derived from Employer Contributions is zero, the Employer may elect in the Adoption Agreement to provide such Participant with a minimum Distributable Benefit.

Short Form. This option is not available in Short Form Adoption Agreements.

- (d) **Distribution Determination Date.** For purposes of determining the amount to be distributed, the Distribution Determination Date shall be determined in the manner specified in the Adoption Agreement.

Short Form. Distributions to Participants who resign, die, have a Disability, or are discharged prior to retirement shall be made at the Participant's election within a reasonable period as soon as practical following the date of termination, or date of Disability if so elected in the Adoption Agreement based on the preceding Valuation Date.

- (e) **Distributions following Distribution Determination Date.** Subject to the necessity, if any, of obtaining the consent of a Participant and spouse, distribution of a Participant's Distributable Benefit shall commence within a reasonable period after the Distribution Determination Date, unless otherwise elected by the Participant in accordance with the provisions of the Plan or as required by the provisions of the Plan. A distribution shall not be made to a Participant if he is reemployed prior to the date his benefit would have been distributed.

2.5.2 General Rules. Subject to the Employer's elections in the Adoption Agreement distribution shall be made by one of the following methods, as determined in accordance with the election of the Participant (or in the case of death, his Beneficiary) with such spousal consents as may be required by law.

Notwithstanding any election in the Adoption Agreement, Beneficiaries may elect to receive Required Minimum Distributions in the form of installment payments.

- (a) **Lump Sums.** Payments made in a single taxable year representing the Participant's entire Distributable Benefit. If the Participant fails to elect a distribution option and the Participant's vested Account balance is at or below the Mandatory Cash-out threshold of five thousand dollars (\$5,000), (or lesser threshold amount, elected in the Adoption Agreement), then in lieu of a lump sum distribution, payment shall be made pursuant to Subsection 2.5.3.(c) Mandatory Cash-out. The Employer may set a minimum Account balance to which this shall apply. This Mandatory Cash-out provision applies only if the terminating Participant fails to request affirmatively a cash payment, or a Direct Rollover to another qualified plan,(or an IRA designated by the terminating Participant). If the value of a Participant's vested Account balance exceeds the threshold amount, an immediate cashout shall not be made unless the Participant, and if applicable, his spouse, or his Beneficiary consent to such distribution.
- (b) **Installments.**
 - (1) Payments made in substantially equal annual, quarterly, or monthly installments over a period of more than one (1) taxable year but not in excess of the period designated in the Adoption Agreement, or if permitted, as selected by the Participant (provided that such period is not greater than the Participant's life expectancy or the joint life expectancy of Participant and the Participant's Designated Beneficiaries), plus accrued net income. If distribution is to be made in installments, the Plan Administrator may transfer the undistributed portion of the Distributable Benefit to a Segregated Account, from which installment payments shall thereafter be withdrawn from time to time.
 - (2) **Partial Nonperiodic Distribution.** If elected in the Adoption Agreement, ad hoc distributions at the times and in the amounts requested by the Participant or Beneficiary may be made subject to the limits, if any, in the Adoption Agreement.
- (c) **Annuities.** Payments made by the purchase and delivery of a single premium, nontransferable, fully refundable, annuity contract issued by a legal reserve life insurance company. Payments must provide for equal periodic payments for the life of the Participant, or upon the Participant's death for payments to continue to the Participant's Designated Beneficiary over a specified period as may be designated in the Adoption Agreement and as selected by the Participant. Notwithstanding the Employer may elect a period certain annuity distribution option in the Adoption Agreement, the annuity under this election shall be for a fixed duration that is less than the Participant's life expectancy as of the Annuity Starting Date. Such annuity shall conform to all provisions set forth herein. Any refund feature under such annuity contract following the death of the Participant shall inure to the benefit of the Participant's Beneficiary.

Notwithstanding, If the Distributable Benefit is subject to the funding standards of Code Section 412, the distribution to a married Participant shall be made in the form of a Qualified Joint and Survivor Annuity or in the form of a life annuity to an unmarried Participant, subject to the terms and provisions under Subsection 2.5.6.

Short Form. If an annuity form of distribution is selected in the Adoption Agreement the term of the annuity shall be for the joint life expectancy of the Participant and the Participant's spouse or Beneficiary. The survivor annuity percentage for any joint and survivor annuity shall be 50%.

- (d) **Alternative Distribution Methods.** Any alternative distribution method of equivalent value that was contained in the Plan at any time on or after the first day of the first Plan Year beginning after 1988 to which the Participant and spousal consents.

2.5.3 Methods of Distribution. Subject to the provisions of Section 2.5.7 and 2.5.8 below, any security interest in a loan from the Plan for which any necessary spousal consent has been obtained (to the extent such security interest is used as repayment of the loan), distribution shall be made by one of the following methods, as determined in accordance with the election of the Participant (or in the case of death, his Beneficiary) with such spousal consents as may be required by law. Notwithstanding any restrictions on optional forms of distribution in the Adoption Agreement, active Participants may elect to receive Required Minimum Distributions in the form of installment payments in the amount of the Required Minimum Distribution.

- (a) **Lump Sum Payment to Participant with 60-Day Rollover Option.** The Plan may pay a Distributable Benefit in a single sum distribution directly to a Participant, subject to the Spousal Consent requirements under Subsection 2.5.5 and the Automatic Rollover requirements under Subsection 2.5.3(d) below. Upon receipt and within sixty (60) days, a Participant may elect to transfer, rollover, or deposit to an individual retirement account or another qualified plan all or a portion of the Distributable Benefit that is an Eligible Rollover Distribution.
- (b) **Direct Rollovers.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Participant's election under the Plan, a Participant may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution that is equal to at least five hundred dollars (\$500) paid directly to an Eligible Retirement Plan specified by the Participant in a Direct Rollover. If an Eligible Rollover Distribution is less than five hundred dollars (\$500), a Participant may not make the election described in the preceding sentence to roll over a portion of the Eligible Rollover Distribution.
- (c) **Mandatory Cash-out.** The Employer may elect in the Adoption Agreement to require the mandatory distribution of a Participant's vested Account balance if its value, determined as of a date following the Participant's date of termination of employment with the Employer, is equal to no more than five thousand dollars (\$5,000) (or some lesser threshold amount as elected in the Adoption Agreement). If a distribution is required under this provision, the Participant will receive an immediate cash-out of his vested Account balance and no further benefits will be payable from the Plan. If the value of a Participant's vested Account balance exceeds the threshold amount, an immediate cash-out shall not be made unless the Participant, and if applicable, his spouse, or his Beneficiary consent to such distribution.

The Employer may elect in the Adoption Agreement to exclude that portion of a Participant's Account balance that is attributable to Rollover contributions (and earnings allocable thereto) within the meaning of Code sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) in the determination of the Participant's nonforfeitable Account balance. Short Form. In the case of the Short Form Adoption Agreement, the Mandatory Cash-Out amount shall always be \$1,000.

- (d) **Automatic Rollovers.** Effective for distributions on and after March 28, 2005, in the event a Mandatory Cash-out distribution is greater than one thousand dollars (\$1,000), or some lesser amount, in accordance with the provisions of Subsection 2.5.3(c), if the Participant does not elect to have such distribution paid directly to an Eligible Retirement Plan specified by the Participant in a Direct Rollover or to receive the distribution directly in accordance with Subsection 2.5.3(a), then the Plan Administrator will pay the distribution in a Direct Rollover to an individual retirement plan designated by the Plan Administrator. The Plan Administrator shall select an IRA trustee, custodian, or issuer (the "trustee") that is unrelated to the Employer, shall establish the IRA with that trustee on behalf of the terminating Participant who fails affirmatively to elect a Direct Rollover of a cash distribution, and make the initial investment choices for the account. For purposes of determining whether a mandatory distribution is greater than one thousand dollars (\$1,000), the portion of the Participant's distribution attributable to any rollover contribution is included.
- (e) If elected by the Employer in the Adoption Agreement, a Participant who has terminated employment may elect to receive a partial distribution of his vested Account Balance as he requests from time to time.

2.5.4 Commencement of Distributions. For purposes of determining when a Distributable Benefit can be distributed under this Article V, unless otherwise elected in the Adoption Agreement, by the Employer:

- (a) **Immediate Distribution.** A distribution to a Participant whose vested Account balance is Immediately Distributable. A Participant's Account Balance is Immediately Distributable if any part of the Account balance could be distributed to the Participant, (or surviving spouse), before the Participant attains, (or would have attained if not deceased), the later of age sixty-two (62) or his Normal Retirement Age.
- (1) **If the account is distributable,** due to the Participant's death, Disability, or attainment of Early or Normal Retirement Age, the Participant may elect (or his Beneficiary may elect) to begin distribution of his Distributable Benefit within a reasonable period after the Distribution Determination Date. A Participant (or his Beneficiary), when permitted under the terms of the Plan, may elect a deferred Distribution under Subsection (b) below.
 - (2) **If the account is immediately distributable,** the Participant shall have the distribution of his Distributable Benefit governed by Subsection (b) below.

Short Form. The Distribution Determination Date shall be as soon as practicable following the date of termination, based on the preceding Valuation Date.

- (b) **Deferred Distribution.** Except in the case of amounts subject to Subsection 2.5.6(l), or mandatory distributions for which a Participant's consent is not required, a Participant with a Distributable Benefit in excess of five thousand dollars (\$5,000) or the specified Mandatory Cashout threshold selected by the Employer in the Adoption Agreement, a Participant may elect to delay the commencement of distributions. Upon such an election, the distribution of a Participant's Distributable Benefit shall be deferred and must commence no later than the sixtieth (60th) day after the last day of the Plan Year in which the following occurs:
- (1) The Participant attains the earlier of age sixty-five (65) or the Normal Retirement Age;
 - (2) The Participant reaches the tenth (10th) anniversary of his participation in the Plan; or
 - (3) The Participant terminates his employment with the Employer.

A Participant who terminates employment before satisfying the age requirement for Normal Retirement, or Early Retirement Age, but has satisfied any service requirement shall be entitled to a distribution of his Distributable Benefit in accordance with Subsection (a) above

upon attaining such age.

The Plan Administrator shall notify the Participant and the Participant's spouse of the right to defer any distribution while the Participant's Account balance in the Plan is Immediately Distributable, as defined in Subsection 2.5.7(a). Such notice shall be given to the Participant at least thirty (30), but no more than one hundred eighty (180) days (90 days for Plan Years beginning before January 1, 2007) before the distribution. A Participant and the Participant's spouse may elect a distribution commencing less than thirty (30) days after the notice is provided to the Participant, if the notice clearly indicates that the Participant has at least thirty (30) days to decide whether to consent to the distribution. The failure of a Participant or the Participant's spouse to consent to a distribution while a benefit is Immediately Distributable shall be deemed to be an election to defer commencement of benefits under this Section. If the Plan meets the requirements of Subsection 2.5.5(c), only the Participant must consent to the distribution of an Account balance that is Immediately Distributable.

Such distribution may commence less than thirty (30) days after the notice required under Treasury Regulations section 1.411(a)-11(c) is given, provided that:

- (1) The Plan Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and if applicable, a particular distribution option),
 - (2) The Participant, after receiving the notice, affirmatively elects a distribution,
 - (3) The distribution commences more than seven (7) days after such explanation is provided,
 - (4) The Participant is permitted to revoke any affirmative distribution election at least until the Annuity Starting Date or, if later, at any time prior to the expiration of the seven (7) day period that begins the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant, and
 - (5) The Annuity Starting Date is a date after the date that the written explanation was provided to the Participant.
- (c) **Advance Distributions.** If the Employer elects in the Adoption Agreement to permit advance distribution to a Participant or his Beneficiary after his employment has terminated or after he reaches Normal Retirement Age but continues his employment, and before he is otherwise entitled to distribution of his Distributable Benefit but in no event earlier than a reasonable period following the Distribution Determination Date, the Trustee upon the request of the Participant or Beneficiary shall make advance distributions to him or to his Beneficiary. The aggregate of such advance distributions shall not exceed the sum of the vested and nonforfeitable interest in the Participant's Accounts.

Short Form. Advance Distributions always permitted.

If the Employer elects in the Adoption Agreement to forfeit nonvested amounts immediately upon distribution of the Employee's entire vested Account balance on termination of service, an Employee who terminates service and elects to receive the value of the Employee's vested Account balance shall forfeit the nonvested portion. If the Employee elects to receive a distribution of less than the entire vested portion of the Account balance derived from Employer Contributions, the part of the nonvested portion that is treated as a Forfeiture is the total nonvested portion multiplied by a fraction, the numerator of which is the amount of the distribution attributable to Employer Contributions and the denominator of which is the total value of the vested Employer derived Account balance.

Except as provided in the preceding paragraph, if a Participant receives a distribution that reduces the balance in his Employer Account when he has less than a one hundred percent (100%) vested and nonforfeitable interest in the Account, the amount, if any, of the Participant's vested and nonforfeitable interest in the undistributed balance of said Account at any relevant time shall not be less than an amount ("X") determined by the formula: $X = P (AB + (R \times D)) - (R \times D)$. For purposes of applying the formula: P is the vested percentage at the relevant time; AB is the Account balance at the relevant time; D is the amount of the distribution; and R is the ratio of the Account balance at the relevant time to the Account balance after distribution.

- (d) **Distribution upon Plan Termination.** In the event of Plan termination (including termination resulting from a complete discontinuance of contributions by the Employer), the Distribution Determination Date shall be the date of such termination. In the event of a partial Plan termination, the Distribution Determination Date for each Participant with respect to whom such partial termination has occurred shall be the last day of the Plan Year coinciding with or immediately following the date of such partial termination.
- (e) **Distribution upon Death.** In the event of the Participant's death, the Distributable Benefits shall be paid to the Participant's Designated Beneficiary according to the Required Minimum Distribution provision under Section 2.5.7. If the Participant dies before the distribution has begun under the Required Beginning Date of Subsection 2.5.7(b), unless the Plan or a Participant's Account is subject to Qualified Joint and Survivor Annuity requirement, then a Qualified Preretirement Survivor Annuity shall be payable to the Participant's Spouse, unless the Participant and Spouse elects to waive subject to Subsection 2.5.6(k).
- (f) **Distribution upon Disability.** In the event the Participant is determined to be Disabled, the Participant shall be entitled to receive his Distributable Benefit within a reasonable period as elected by the Employer in the Adoption Agreement.

If the Participant becomes Disabled after termination of employment, he shall be entitled to commence distribution of his vested Account balance as if he became Disabled prior to termination of employment, however his vested Account balance will not increase if the Participant becomes Disabled after the termination of his employment.

2.5.5 General Distributions Requirements. Where a Plan permits a distribution under the terms of this Article, the Plan Administrator must notify the Participant (or in the event of the Participant's death, the Participant's spouse or survivor) of their right to elect a distribution (or the right to elect an optional forms of payment) under the terms of the Plan.

- (a) **Notice and Consent.** The Plan Administrator shall notify the Participant of his right to a distribution by distributing the 402(f) Safe Harbor Tax Notice provided by the Internal Revenue Service and request an affirmative election to one of the distribution options under the Plan. The consent notice must be provided at least thirty (30) days but in no case more than one hundred and eighty (180) days (90 days for Plan Years beginning before January 1, 2007) before the distribution commence.

Generally, no payment can be made under the Plan until at least thirty (30) days after the Participant has received the consent notice. The consent notice must clearly inform the Participant that he has:

- (1) a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and if applicable, a particular distribution option),
- (2) a right to defer his distribution under Subsection 2.5.4, until he reaches the Plan's NRA and/or commencement date as elected by the employer in the Adoption Agreement, and, for Plan Years beginning after December 31, 2006, the consequences of failing to defer any distribution, and
- (3) a right to elect a Direct Rollover under Subsection 2.5.3.(b).

After receipt of the consent notice, the Participant has the right to waive all or a portion of the unexpired thirty (30) day notice period and affirmatively elects a distribution under the terms of the Plan.

Notwithstanding, where the Participant's vested Account balance derived from Employer and Employee Contribution is less than five thousand dollars (\$5,000) or some lesser amount elected by the Employer in the Adoption Agreement, the Participant will not be required to consent to a certain form or method of distribution or the waiver of the thirty (30) day notice period. Absent an affirmative election the Participant's distribution will be made as an Automatic Rollover under Subsection 2.5.3(d).

- (b) **Spousal Consent.** If payment in the form of a Qualified Joint and Survivor Annuity is not required with respect to a Participant and the value of a Participant's vested Account balance derived from Employer and Employee contributions exceeds five thousand dollars (\$5,000), and the Account balance is Immediately Distributable, then the Participant and the Participant's spouse must consent to any distribution of such Account Balance prior to reaching the Normal Retirement Age under the Plan. If payment in the form of a Qualified Joint and Survivor Annuity is required with respect to a Participant and the value of a Participant's vested Account balance derived from Employer and Employee contributions exceeds five thousand dollars (\$5,000), and the Account balance is Immediately Distributable, then the Participant and the Participant's spouse must consent to any distribution of such Account Balance prior to reaching the Normal Retirement Age under the Plan. The notice and consent requirements under Subsection 2.5.5 will apply.

Neither the consent of the Participant nor the Participant's spouse shall be required to the extent that a distribution is required to satisfy Code sections 401(a)(9) or 415.

- (c) **Exception to Spousal Consent Requirements.** If a plan designated as either a Cash or Deferred Arrangement or Profit Sharing Plan, unless otherwise elected by the Employer in the Adoption Agreement, a Participant shall not be required to obtain the consent of his spouse for any distribution or Participant loan if the following conditions are satisfied:

- (1) The Participant does not or cannot elect payments in the form of a life annuity; and
- (2) On the death of a Participant, the Participant's vested Account balance will be paid to the Participant's surviving spouse. If there is no surviving spouse or if the surviving spouse has consented in a manner conforming to a qualified election, then the Participant's vested Account balance will be paid to the Participant's Designated Beneficiary: or
- (3) The Employer has elected to apply the One Year Marriage Rule in the Adoption Agreement and the Participant was married less than one year on his date of death.

Notwithstanding, if a Participant's vested Account Balance in a plan designated as a Profit Sharing Plan or Cash or Deferred Arrangement contains any assets that were a direct or indirect transferee of a defined benefit plan, money purchase plan or target benefit plan, then spousal consent shall be required for that portion of the Plan that is subject to the joint and survivor annuity requirements of Code sections 401(a)(11) and 417.

2.5.6 Annuity and Consent Requirements. If the only forms of distribution selected by the Employer in the Adoption Agreement are annuities or if the Plan or Distributable Benefit is subject to the minimum funding requirement of Code section 412, the Participant's distribution will be subject to joint and survivor provisions of Code sections 401(a)(11) and 417. Money Purchase Pension Plans must always select the Qualified Joint and Survivor and Qualified Preretirement Survivor Annuity options.

Notwithstanding the other provisions of this Section, if the Plan is designated in the Adoption Agreement as a Cash or Deferred Profit Sharing Plan or a Profit Sharing Plan and the Participant does not select a life annuity distribution option, the Qualified Joint and Survivor Annuity and Qualified Preretirement Survivor Annuity forms of distribution shall not be available, except in the case of transfers under Subsection 3.9.3(b). However, a Participant's surviving spouse shall be entitled to elect distribution of the Participant's vested Account balance in the manner provided by Section 3.6.3.

- (a) **Automatic Qualified Joint and Survivor Annuity.** If benefits in the form of a life annuity become payable to a married Participant who:

- (i) Begins to receive payments under the Plan on or after Normal Retirement Age; or
- (ii) Dies on or after Normal Retirement Age while still working for the Employer; or
- (iii) Begins to receive payments on or after the qualified Early Retirement Age; or
- (iv) Separates from service on or after attaining Normal Retirement Age (or the qualified Early Retirement Age) and after satisfying the eligibility requirements for the payment of benefits under the Plan and thereafter dies before beginning to receive such benefits;

then such benefits will be received under this Plan in the form of a Qualified Joint and Survivor Annuity, unless the Participant has elected otherwise during the election period. The election period must begin at least six (6) months before the Participant attains qualified Early Retirement Age and end not more than ninety (90) days before the commencement of benefits. Any election hereunder will be in writing and may be changed by the Participant at any time.

- (b) **Terms of Annuity Contracts.** Any annuity contract distributed from the Plan must be nontransferable. The terms of any annuity contract purchased and distributed by the Plan to a Participant or a Participant's spouse shall comply with the requirements of the Plan as elected by the Employer in the Adoption Agreement.

- (c) **Survivor Annuity.** If elected by the Employer in the Adoption Agreement the Plan shall provide an immediate annuity for the life of the Participant and if the Participant is married, a survivor annuity for the life of the spouse which is not less than fifty (50) percent (or a

higher percentage as selected by the employer in the Adoption Agreement).

Unless a survivor annuity form of benefit is waived, pursuant to a qualified election within the applicable election period, a married Participant's vested Account balance shall be applied toward the purchase of a Qualified Joint and Survivor Annuity (QJSA) and an unmarried Participant's vested account balance shall be applied toward the purchase of a Straight Life Annuity (SLA). The Participant may elect to receive another form of payment or to receive a Qualified Optional Survivor Annuity within the applicable election period and waive the survivor annuity payments under the Plan.

A Qualified Optional Survivor Annuity (QOSA) is an optional form of benefit that provides a survivor annuity based on the survivor annuity provided under the Plan's Qualified Joint and Survivor Annuity as described in Subsection 2.5.6(j).

If the married Participant dies before the annuity start date, then the Participant's vested Account balance shall be applied toward the purchase of a Qualified Pre-retirement Survivor Annuity (QPSA). The value of the Qualified Pre-retirement Survivor Annuity shall not be less than the amount that would have been payable under the Qualified Joint and Survivor Annuity form of benefit. The surviving spouse may receive a payment under the Qualified Pre-retirement Survivor Annuity not later than the month in which the Participant would have attained the earliest retirement date under the Plan. Notwithstanding, the surviving spouse may elect to have such annuity distributed within a reasonable period after death.

- (d) Exception if Participant is not Married for One Year.** If the "One Year Marriage Rule" is elected in the Adoption Agreement, notwithstanding the foregoing, the benefits under the Plan shall not be provided automatically to the Surviving Spouse or in the form of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity unless the Participant and his spouse have been married throughout the one (1) year period ending on the earlier of the Participant's Annuity Starting Date or the date of the Participant's death. If a Participant marries within one (1) year before the Annuity Starting Date and the Participant and his spouse in such marriage have been married for at least a one (1) year period ending on or before the date of the Participant's death, the Participant and such spouse shall be treated as having been married throughout the required period. A former spouse shall be treated as the spouse or surviving spouse and a current spouse will not be treated as the spouse or surviving spouse, to the extent provided under a Qualified Domestic Relations Order as described in Code section 414(p).

Short Form. One Year Marriage Rule does not apply.

- (e) Notice and Consent to Distributions.** The Plan Administrator shall notify the Participant and the Participant's spouse of the right to elect this form of distribution or the right to elect an optional form under the terms of the Plan. Such notification shall include a general description of the material features and an explanation of the relative values of the optional forms of benefit available under the Plan in a manner that would satisfy the notice requirements of Code section 417(a)(3) and within a reasonable time before the Annuity Start Date.

- (f) Written Explanations of Qualified Joint and Survivor Annuity.** In general, the Plan Administrator shall provide each Participant, with a written explanation of:

- (1) The terms and conditions of a Qualified Joint and Survivor Annuity and of the Qualified Optional Survivor Annuity;
- (2) The Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit;
- (3) The rights of the Participant's spouse to consent to a Participant's election; and
- (4) The right to make and the effect of a revocation of an election.

The written explanation shall comply with the requirements of section 1.417(a)(3)-1 of the Income Tax Regulations.

- (g) Applicable Election Period (QJSA).** For the purpose of a Qualified Joint and Survivor Annuity the applicable election period shall be no less than thirty (30) days and no more than one hundred and eighty (180) days (90 days for Plan Years beginning before January 1, 2007) before the Annuity Starting Date with a written explanation of the survivor annuity option. During this period the Participant may elect a Qualified Optional Survivor Annuity.

- (h) Written Explanation of Qualified Preretirement Survivor Annuity.** The Plan Administrator shall provide to each Participant within the applicable election period, a written explanation of a Qualified Preretirement Survivor Annuity comparable to that provided with respect to a Qualified Joint and Survivor Annuity percentage elected in the Plan. The written explanation shall comply with the requirements of section 1.417(a)(3)-1 of the Income Tax Regulations.

- (i) Applicable Election Period (QPSA).** The Applicable election period for a Qualified Preretirement Survivor Annuity means with respect to a Participant, the later of the following periods:

- (1) The period beginning with the first day of the Plan Year in which the Participant attains age thirty-two (32) and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age thirty-five (35).
- (2) A reasonable period ending after the individual becomes a Participant.
- (3) A reasonable period ending after the Plan ceases to fully subsidize costs.
- (4) A reasonable period ending after Code section 401(a)(11) first applies to the Participant.
- (5) A reasonable period ending after separation from service in case of a Participant who separates before attaining age thirty-five (35). For purposes of applying the foregoing, a reasonable period ending after the enumerated events described in (2), (3) and (4) is the end of the two-year period beginning one (1) year prior to the date the applicable event occurs and ending one (1) year after that date. In the case of a Participant who separates from service before the Plan Year in which age thirty-five (35) is attained, notice shall be provided within the two-year period beginning prior to separation and ending one (1) year after separation. If such a Participant thereafter returns to employment with the Employer, the Applicable Period for such Participant shall be redetermined.

- (j) Qualified Optional Survivor Annuity.** Plans to which the Annuity and Consent requirements of Code sections 401(a)(11) and 417 apply must provide a Qualified Optional Survivor Annuity.

For purposes of a Qualified Optional Survivor Annuity, the term "Survivor Annuity Percentage" means the percentage by which the survivor

annuity under the plan's Qualified Joint and Survivor Annuity bears to an annuity payable during the joint lives of the Participant and his spouse. If the Survivor Annuity Percentage:

- (1) is less than seventy-five percent (75%), then the applicable percentage is seventy-five percent (75%); or
 - (2) is greater than or equal to seventy-five percent (75%), then the applicable percentage is fifty percent (50%).
- (k) **Election to Waive Annuity Payment.** At any time during the applicable election period, a Participant and his spouse may elect to waive the Qualified Joint and Survivor Annuity form of benefit or the Qualified Preretirement Survivor Annuity form of benefit (or both) and may revoke any such election. There is no limit to the number of times that an election or a revocation may be made by a Participant.
- (l) **Spousal Consent Required.** An election to waive the Qualified Joint and Survivor Annuity form of benefit or the Qualified Preretirement Survivor Annuity form of benefit (or both) shall not take effect unless:
- (1) the spouse of the Participant consents in writing to the election, and such election designates a specific Beneficiary, including any class of Beneficiaries or contingent Beneficiaries, or, solely in the case of a waiver of a Qualified Joint and Survivor Annuity, designates an alternative form of benefit, that may not be changed without spousal consent (unless the consent of the spouse expressly permits designations by the Participant without any requirement of further consent by the spouse),
 - (2) the spouse's consent acknowledges the effect of such election and is witnessed by a Plan representative or a notary public, or
 - (3) the Participant establishes to the satisfaction of the Plan Administrator that such consent cannot be obtained because there is no spouse, because the spouse cannot be located, or because of other circumstances permitted by applicable regulations.

Any consent by a spouse obtained under this provision (or establishment that the consent of a spouse may not be obtained) shall be effective only with respect to such spouse. A consent that permits designations by the Participant without any requirement of further consent by such spouse must acknowledge that the spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the spouse voluntarily elects to relinquish either or both of such rights.

A Participant may revoke a prior waiver without the consent of the spouse at any time before the commencement of benefits. The number of waivers and revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Notice and Consent to Distribution provision of this section.

If payment in the form of a Qualified Joint and Survivor Annuity is required with respect to a Participant and either the value of a Participant's vested Account balance derived from Employer and Employee contributions exceeds five thousand dollars (\$5,000) (or a lesser Mandatory Cashout amount selected in the Adoption Agreement), or there are remaining payments to be made with respect to a particular distribution option that previously commenced, prior to the Participant reaching the earliest retirement age under the Plan, then the Participant and the Participant's spouse must consent to any distribution from the Plan.

If payment in the form of a Qualified Joint and Survivor Annuity is required with respect to a Participant and the value of a Participant's vested Account balance derived from Employer and Employee contributions does not exceed five thousand dollars (\$5,000) (or a lesser Mandatory Cash-out amount selected in the Adoption Agreement), and the Account balance is Immediately Distributable, then the consent requirement will not apply to the distribution from the Plan.

If payment in the form of a Qualified Joint and Survivor Annuity is required with respect to a Participant or the Plan, and the vested Account balance is used as security for a loan from the Plan, the Participant's spouse must consent in writing and acknowledge the effect of using the vested Account balance on survivor benefit due under the Plan during the one hundred and eighty (180) day period ending on the date the loan is secured.

The consent of a Participant or Participant's spouse must in writing and obtained within the one hundred and eighty (180) day period (90 days for Plan Years beginning before January 1, 2007) ending on the Annuity Starting Date.

2.5.7 Required Minimum Distributions. All distributions required under this Article V shall be determined and made in accordance with Code section 401(a)(9) and the applicable regulations, including the minimum distribution incidental benefit requirements of Code section 401(a)(9)(G). In the event that a provision of this Plan conflicts with such requirements, such requirements shall govern.

As of the first Distribution Calendar Year (defined in Subsection 2.5.7(i)(1)), distributions, if not made in a single sum, may only be made over one of the following periods (or a combination thereof): (i) the life of the Participant; (ii) the life of the Participant and a Designated Beneficiary; (iii) a period certain not extending beyond the Life Expectancy of the Participant; or (iv) a period certain not extending beyond the joint and last survivor expectancy of the Participant and a Designated Beneficiary.

The amount that must be distributed under this section is the payment that is required for one payment interval. Such amount must be distributed by the Participant's Required Beginning Date (or, if the Participant dies before distributions begin, the date distributions are required to begin). Payment intervals are the period for which payments are made, e.g., monthly, bi-monthly, semi-annually, or annually, but in no event made at intervals longer than one (1) year.

The Plan was amended pursuant to section 401(a)(9)(H) of the Code to provide for the waiver of the Required Minimum Distributions for the 2009 Distribution Calendar Year. The Plan suspended all Required Minimum Distributions attributable to the 2009 Distribution Calendar Year. The otherwise Required Minimum Distributions were not required to be distributed from the Plan unless a Participant submitted a written request electing to receive a distribution for 2009. The Required Beginning Date for 2009 for any Participant who attained age seventy and one-half (70-1/2) in 2009 was postponed from April 1, 2010 until December 31, 2010. The Plan was not required to make a distribution under this provision until December 31, 2010 unless a Participant submitted a written request electing to receive a distribution for 2009. The Required Minimum Distribution payable during the lifetime of a Participant or after the death of a Participant to their Designated Beneficiary that was attributable to the 2009 Distribution Calendar Year was not distributed unless a Participant or the Designated Beneficiary submitted a written request electing to receive a distribution for 2009. Under this 2009 suspension of the Required Minimum Distribution a Participant or a Designated Beneficiary could have requested that the Plan make a Required Minimum Distribution for the 2009 Distribution Calendar Year by completing an individual election form. When made this distribution would be treated as an Eligible Rollover Distribution from the Plan. Where a Required Minimum Distribution was payable and the five year rule applies with respect to a deceased Participant's account, then the Required Minimum Distribution for the 2009 Distribution Calendar Year will be disregarded in the calculation of the five (5) year period; resulting in a one year extension of this rule.

(a) **Required Beginning Date.** Notwithstanding anything herein to the contrary, unless the Participant has made an appropriate TEFRA 242(b)(2) election, as described in Subsection 2.5.7(j), that has not been revoked or modified, the Participant's entire benefit shall be distributed, or begin to be distributed, to the Participant no later than the Required Beginning Date.

(b) **Timing of Distributions if Participant Dies Before Distributions Begin.**

- (1) If the Participant dies before required distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
- (i) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then, except as provided in the Adoption Agreement, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70 1/2), if later.
 - (ii) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then, except as provided in the Adoption Agreement, distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
 - (iii) If there is no Designated Beneficiary as of the date of the Participant's death who remains a Beneficiary as of September 30 of the year immediately following the year the Participant died, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (iv) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Subsection 2.5.7(b), other than Subsection 2.5.7(b)(1)(i), will apply as if the surviving spouse were the Participant.
- (2) For purposes of this Subsection 2.5.7(b) and Subsections 2.5.7(f) and (g), distributions are considered to begin on the Participant's Required Beginning Date unless Subsection 2.5.7(b)(1)(iv) applies. If Subsection 2.5.7(b)(1)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Subsection 2.5.7(b)(1)(i). If distributions under an annuity contract purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Subsection 2.5.7(b)(1)(i)), the date distributions are considered to begin is the date distributions actually commence.
- (3) If the Adoption Agreement permits Participants and Beneficiaries to elect the 5- year rule, the election must be made no later than the earlier of:
- (i) September 30 of the calendar year in which the distribution would be required under Subsections 2.5.7(b)(1)(i) or (ii), or
 - (ii) By September 30 of the calendar year that contains the fifth (5th) anniversary of the Participant's (or if applicable, the surviving spouse's) death.

If this election is made, then the Participant's entire interest must be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

Short Form. Participants or Beneficiaries may elect to apply the five (5) year rule to distributions regarding a Participant who dies before distributions begin.

(c) **Forms of Distribution.** Unless the Participant's interest is distributed in the form of an annuity contract purchased from an insurance company or in a single sum on or before the Required Beginning Date, distributions will be made in accordance with Subsections 2.5.7(d) and (f) as of the first Distribution Calendar Year. If the Participant's interest is distributed in the form of an annuity contract purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code section 401(a)(9) and the applicable regulations.

(d) **Required Minimum Distributions During Participant's Lifetime.** During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

- (1) The quotient obtained by dividing the Participant's Account Balance by the distribution period set forth in the Uniform Lifetime Table found in Treasury Regulations section 1.401(a)(9)-9, Q&A-2, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or
- (2) If the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Treasury Regulations section 1.401(a)(9)-9, Q&A-3, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

(e) **Lifetime Required Minimum Distributions Continue Through Year of Participant's Death.** Required Minimum Distributions will be determined under Subsection 2.5.7(d) beginning with the first Distribution Calendar Year and continuing up to, and including, the Distribution Calendar Year that includes the Participant's date of death.

(f) **Required Minimum Distributions On or After Date Required Distributions Begin.**

- (1) **Participant Survived by Designated Beneficiary.** If the Participant dies on or after the date required distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:
- (i) The Participant's remaining Life Expectancy is calculated in accordance with the Single Life Table found in Treasury Regulations section 1.401(a)(9)-9, Q&A-1, using the age of the Participant in the year of death, reduced by one for each subsequent year.

- (ii) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the surviving spouse is calculated using the Single Life Table found in Treasury Regulations section 1.401(a)(9)-9, Q&A-1, for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
 - (iii) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated under Participant's death, reduced by one for each subsequent year. If the form of distribution is an annuity, unless the Participant's sole Beneficiary is the Participant's spouse, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in section 1.409(a)(9)-9 or the Treasury regulations for the calendar year that contains the Annuity Starting Date. However if the Participant's sole Beneficiary is the Participant's spouse, the period certain is permitted to be as long as the joint life and last survivor expectancy of the Participant and the Participant's spouse, if longer than the applicable distribution period for the Participant, provided the period certain is not provided in conjunction with a life annuity.
- (2) **No Designated Beneficiary Survives.** If the Participant dies on or after the date required distributions begin and there is no Designated Beneficiary as of the Participant's date of death who remains a beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the Participant's remaining Life Expectancy under the Single Life Table calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(g) Distribution Amount If Participant Dies Before Date Required Distributions Begin.

- (1) **Participant Survived by Designated Beneficiary.** If the Participant dies before the date required distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in Subsection 2.5.7(f). If permitted in the Adoption Agreement, a Participant or Designated Beneficiary may elect to receive distributions over the five (5) year period described in Subsection 2.5.7(b)(3).
- (2) **No Designated Beneficiary Survives.** If the Participant dies before the date distributions begin and all Designated Beneficiaries, if any, as of the Participant's date of death are no longer Beneficiaries as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest must be completed by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death.
- (3) **Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin.** If all of the following are true, this Subsection 2.5.7(g) will apply as if the surviving spouse were the Participant:
 - (i) The Participant dies before the date distributions begin,
 - (ii) The Participant's surviving spouse is the Participant's sole Designated Beneficiary, and
 - (iii) The surviving spouse dies before distributions are required to begin to the surviving spouse under Subsection 2.5.4(b)(1).

(h) Asset Rollovers and Transfers.

If a Participant requests a rollover of his benefits to a qualified plan not maintained by the Employer during his first or subsequent Distribution Calendar Year, or a Participant's benefits are transferred to another qualified plan, such rollover or transfer shall be reduced by the Required Minimum Distribution for the Distribution Calendar Year under Code section 401(a)(9) and the reduction shall be distributed to the Participant by the appropriate date.

If the Plan receives a rollover or transfer with respect to a Participant who has reached his Required Beginning Date, the Plan shall distribute the Required Minimum Distribution under Code section 401(a)(9) beginning with the following calendar year. In the event that the beneficiary or method of distribution with respect to transferred assets differs from the Beneficiary or method of distribution of this Plan, the Plan will segregate the transferred assets and continue to distribute the benefits from the originating plan in accordance with the method of distribution and Life Expectancy of the originating plan.

(i) Definitions.

- (1) **Distribution Calendar Year.** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year that contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Subsection 2.5.7(b)(1). The Required Minimum Distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The Required Minimum Distribution for other Distribution Calendar Years, including the Required Minimum Distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.
- (2) **Life Expectancy.** Life Expectancy as computed by use of one of the following tables, found in Treasury Regulations section 1.401(a)(9)-9, as appropriate:
 - (i) Single Life Table;
 - (ii) Uniform Life Table; or
 - (iii) Joint and Last Survivor Table

(3) Participant's Account Balance. (For purposes of Required Minimum Distributions only.)

- (i) The calendar year immediately preceding the Distribution Calendar Year is the "valuation calendar year." The Participant's Account Balance as of the last Valuation Date in the valuation calendar year is increased by the amount of any contributions made and allocated or Forfeitures allocated to the Participant's Account Balance as of dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. If an amount is distributed or transferred from another source during the valuation calendar year, that amount is included in the Participant's Account Balance for the valuation calendar year regardless if such amount is transferred or rolled over to the Plan in the valuation calendar year or in the Distribution Calendar Year.
- (ii) Exception for second Distribution Calendar Year. For purposes of Subsection (i) above, if any portion of the minimum distribution for the first Distribution Calendar Year is made in the second Distribution Calendar Year on or before the Required Beginning Date, the amount of the minimum distribution made in the second Distribution Calendar Year shall be treated as if it had been made in the immediately preceding Distribution Calendar Year.

(4) Required Beginning Date.

- (i) **General rule.** The Required Beginning Date of a Participant is the first day of April of the calendar year following the calendar year in which the Participant attains age seventy and one-half (70-1/2).
- (ii) **Non-5-Percent Owner Exception.** If so elected in the Adoption Agreement, the Required Beginning Date of a Participant who is not a 5-Percent Owner shall be the first day of April of the calendar year following the later of the calendar year in which the Participant retires or the calendar year in which the Participant attains age seventy and one-half (70-1/2).

Short Form Standardized. In the case of the Short Form Standardized Adoption Agreements the Non-5-Percent Owner Exception does not apply.

(iii) Transition Rule:

- (A) If previously elected by the Employer, any Participant who is not a 5-Percent Owner and attains age seventy and one-half (70-1/2) in years after 1995 may elect by April 1 of the calendar year following the year in which the Participant attained age seventy and one-half (70-1/2), (or by December 31, 1997 in the case of a Participant attaining age seventy and one-half (70-1/2) in 1996) to defer distributions until the calendar year following the calendar year in which the Participant retires. If no such election is made the Participant who is not a 5-Percent Owner will begin receiving distributions by April 1 of the calendar year following the year in which the Participant attained age seventy and one-half (70-1/2) (or by December 31, 1997 in the case of a Participant attaining age seventy and one-half (70-1/2) in 1996).
- (B) If previously elected by the Employer, any Participant who attained age seventy and one-half (70-1/2) in years prior to 1997 but not earlier than January 1, 1996, was permitted to elect to stop distributions and recommence by the April 1 of the calendar year following the year in which the Participant retires. An Employer who adopted this option selected either:
 - (1) A new Annuity Starting Date upon recommencement, or
 - (2) No new Annuity Starting Date upon recommencement.
- (C) If previously elected by the Employer, the requirement that distributions begin no later than age seventy and one-half (70-1/2) only eliminated with respect to Employees who reach age seventy and one-half (70-1/2) in or after a calendar year that begins after the later of December 31, 1998, or the date that the Employer adopted the GUST Restatement of this Plan.
- (iv) **5-Percent Owner.** A Participant is treated as a 5-Percent Owner for purposes of this Section if such Participant is a 5-Percent Owner as defined in Part I, Article II at any time during the Plan Year ending with or within the calendar year in which such owner attains age seventy and one-half (70-1/2). Once distributions have begun to a 5-Percent Owner under this Section, they must continue to be distributed, even if the Participant ceases to be a 5-Percent Owner in a subsequent year.

(j) TEFRA Section 242(b)(2) Election.

- (1) Notwithstanding the other requirements of this Article and subject to the requirements of Sections 2.5.4 and 2.5.6, distribution on behalf of any Employee, including a 5-Percent Owner, may be made in accordance with all of the following requirements (regardless of when such distribution commences):
 - (i) The distribution by the Plan is one that would not have disqualified the Plan under Code section 401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.
 - (ii) The distribution is in accordance with a method of distribution designated by the Employee whose interest in the Plan is being distributed or, if the Employee is deceased, by a Beneficiary of such Employee.
 - (iii) Such designation was in writing, was signed by the Employee or the Beneficiary, and was made before January 1, 1984.
 - (iv) The Employee had an Account balance under the Plan as of December 31, 1983.
 - (v) The method of distribution designated by the Employee or the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Employee's death, the Beneficiaries of the Employee listed in order of priority.
- (2) A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Employee.

- (3) For any distribution that commences before January 1, 1984, but continues after December 31, 1983, the Employee or the Beneficiary to whom such distribution is being made will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in Subsections 2.5.7(j)(1)(i) and (v).
- (4) If a designation is revoked, any subsequent distribution must satisfy the requirements of Code section 401(a)(9) and the applicable regulations. If a designation is revoked subsequent to the date distributions to a Participant were required to begin, the Plan must distribute, by the end of the calendar year following the calendar year in which the revocation occurs, the total amount not yet distributed that would have been required to have been distributed to the Participant to satisfy Code section 401(a)(9) and the applicable regulations, but for the TEFRA section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).
- (5) If an amount is transferred or rolled over from one plan to another plan, the rules in Treasury Regulations section 1.401(a)(9)-8, Q&A 14 and Q&A 15 shall apply.

2.5.8 Nature of Distributions.

- (a) **Trust Fund and Segregated Funds.** Except as provided in Subsection (b) with regard to Life Insurance Policies and the Qualified Joint and Survivor Annuity requirements in Section 2.5.6, distribution of a Participant's Distributable Benefit shall consist of cash, property, or an annuity, or a combination thereof. If a distribution includes property, the property shall be valued at its fair market value as of the date of distribution.
- (b) **Insurance Policies.** In the event that the Trustee has purchased one or more Life Insurance Policies on the life of the Participant, or someone in whom the Participant has an insurable interest, the values and benefits available with respect to each such Policy shall be distributed as follows:
 - (1) If the Participant's employment terminates for any reason other than death, the Trustee, at the election of the Participant, shall either (i) surrender the Life Insurance Policy for its available cash value and distribute the proceeds as provided in Subsection (a) above or (ii) distribute the Life Insurance Policy to the Participant, provided the Participant's vested Account balance is at least equal to the policy's cash value.
 - (2) If the Participant dies, the Participant's Beneficiary shall be entitled to the full amount of the policy proceeds.

The Trustee shall apply for and be the owner of any Policies purchased under the terms of the Plan. The Policies must provide that the proceeds are payable to the Trustee subject to the Trustee's obligation to pay over the proceeds to the Participant's Beneficiary. A Participant's spouse will be the Designated Beneficiary of the proceeds of such Policies unless a qualified election has been made in accordance with Section 2.5.7 of the Plan, if applicable. Under no circumstances shall the Trust retain any part of the proceeds. In the event of any conflict between the terms of the Plan and the terms of any Policies purchased hereunder, the Plan provisions shall control.

- (3) In the event the Trustee purchases a Life Insurance Policy on the life of someone other than the Participant pursuant to this Plan, and such other person shall die, the Participant may withdraw the life insurance proceeds to the extent they exceed the policy's cash value immediately prior to such death.

2.5.9 Qualified Military Service. Distributions to Individuals Called to Active Duty. Any individual who receives a Qualified Reservist Distribution may, at any time during the two (2) year period beginning on the day after the end of the active duty period, make one or more repayment contributions to an Individual Retirement Plan of such individual in an aggregate amount not to exceed the amount of such distribution. The dollar limitations otherwise applicable to contributions to Individual Retirement Plans shall not apply to any contribution made pursuant to the preceding sentence. No deduction shall be allowed for any contribution pursuant to this Section. For purposes of this Subparagraph, the term "Qualified Reservist Distribution" means any distribution to an individual if:

- (a) such distribution is from an Individual Retirement Plan, or from amounts attributable to elective deferrals under a 401(k) plan, 403(b) annuity contract, or certain similar arrangements;
- (b) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code) was ordered or called to active duty for a period in excess of one hundred and seventy-nine (179) days or for an indefinite period; and
- (c) such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.
- (d) This Paragraph 2.5.9 is effective August 17, 2001, and applies to individuals ordered or called to active duty after September 11, 2001, and before December 31, 2007. Effective June 17, 2008, it also applies to individuals ordered or recalled to active duty after December 31, 2007.

2.5.10 Hardship Distributions of Elective Deferrals. If the Plan is designated in the Adoption Agreement as a Cash or Deferred Profit Sharing Plan, the Employer may elect in the Adoption Agreement to permit Hardship Distributions of Elective Deferrals. A Hardship Distribution is a distribution that meets the requirements of a distribution on account of immediate and heavy financial need enumerated in this Section 2.5.10. A Participant may request a distribution from the Plan as a result of immediate and heavy financial needs of the Participant to the extent that the distribution is necessary to satisfy such financial needs. The availability of Hardship Distributions to Participants is limited to Participants who have not terminated employment.

Effective August 17, 2006, the Plan may permit a Participant to request a Hardship Distribution where the Hardship or unforeseeable financial emergency occurs to the Participant's Primary Beneficiary.

Hardship distributions are subject to the spousal consent requirements contained in Code sections 401(a)(11) and 417 unless the Plan meets the exception of Subsection 2.5.5(c). The Plan Administrator shall determine whether a Participant has an immediate and heavy financial need. A distribution shall be deemed to be made on account of an immediate and heavy financial need if the distribution is due to:

- (a) Deductible medical expenses described in Code section 213(d) incurred or necessary for medical care of the Participant, his spouse,

dependents, or Primary Beneficiary under the Plan;

- (b) Purchase (excluding mortgage payments) of a principal residence for the Participant;
- (c) Cost of tuition and related educational fees and room and board expenses for the next twelve (12) months of postsecondary education for the Participant, his spouse, children or dependents; or
- (d) The need to prevent the eviction of the Participant from his principal residence or foreclosure on the mortgage of the Participant's principal residence.
- (e) Payments for funeral or burial expenses for the Participant's deceased parent, spouse, child or dependent. (For Plan Years beginning after 2005.)
- (f) Expenses to repair damage to the Participant's principal residence that would qualify for a casualty loss deduction under Code section 165 (determined without regard to whether the loss exceeds ten percent (10%) of adjusted gross income). (For Plan Years beginning after 2005.)

A distribution shall be considered as necessary to satisfy an immediate and heavy financial need of the Participant only if:

- (g) The Participant has obtained all distributions, other than Hardship distributions, and all nontaxable loans under all plans maintained by the Employer;
- (h) All plans maintained by the Employer provide that the Participant's Elective Deferrals and Voluntary Employee Contributions shall be suspended for six (6) months after the receipt of the Hardship Distribution; and
- (i) The distribution is not in excess of the amount of an immediate and heavy financial need (including amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

Short Form Standardized. Hardship Distributions are not permitted.

2.5.11 Distributions in the Event of Incapacity In the sole judgment of the Plan Administrator, if any Beneficiary entitled to benefits under the Plan is not capable of managing the benefit about to be distributed, such distribution may be made to legal representative of that Beneficiary, or in the case of a minor Beneficiary, the guardian or person in loco parentis to the minor Beneficiary recognized under state law. The Plan Administrator may require an order of a court of competent jurisdiction before making such distribution. If any person entitled to benefits is declared legally incapacitated by a court of proper jurisdiction, then the Plan Administrator shall direct the Trustee to make payments to the legal guardian or legal representative of the person or his estate.

2.5.12 In Service Distributions.

- (a) **Cash or Deferred Profit Sharing Plans.** If the Plan is designated in the Adoption Agreement as a Cash or Deferred Profit Sharing Plan, the Employer may elect to permit distributions of Elective Deferrals, Qualified Non-Elective Contributions, Qualified Matching Contributions, and ADP Test Safe Harbor Contributions to a Participant after attaining age fifty-nine and one-half (59-1/2) but only prior to his termination of employment. A Participant shall be entitled to receive a distribution of all or a part of these Accounts upon filing a written request with the Plan Administrator; provided, that no distribution shall be made unless the balance in the Account to be distributed has accumulated for at least two (2) years or the individual has been a Participant for five (5) or more Plan Years or on account of Hardship unless otherwise elected in the Adoption Agreement; and, the distribution of Elective Deferrals, Qualified Non-Elective Contributions, Matching Contributions (to the extent used in the ADP Test), Qualified Matching Contributions and ADP Test Safe Harbor Contributions must satisfy the limitations imposed by Section 2.7.8. In-service distributions due to Hardship must meet the Hardship requirements of Section 2.5.10.

The Adoption Agreement may provide that In Service distributions are available before age fifty-nine and one-half (59-1/2) for Accounts other than Elective Deferrals, Qualified Non-Elective Contributions, Qualified Matching Contributions, Matching Contributions that are used to pass the ADP test, and ADP Test Safe Harbor Contributions. In Service distributions from the Profit Sharing portion of a Cash or Deferred Profit Sharing Plan shall be governed by Subsection (b) below.

Short Form. In Service distributions are always available to Participants that are fully vested provided the balance in the Account to be distributed has accumulated for at least two (2) years or the individual has been a Participant for five (5) or more Plan Years or on account of Hardship. Elective Deferrals, Qualified Non-Elective Contributions, Qualified Matching Contributions, Matching Contributions that are used to pass the ADP test, and ADP Test Safe Harbor Contributions may not be a part of any In Service distribution prior to a Participant attaining age 59-1/2.

- (b) **Profit Sharing Plans.** The Adoption Agreement may provide that In-service Distributions are available before age fifty-nine and one-half (59-1/2) for Accounts other than Elective Deferrals, Qualified Non-Elective Contributions, Qualified Matching Contributions, Matching Contributions that are used to pass the ADP test, and ADP Test Safe Harbor Contributions but only prior to a Participant's termination of employment. In-Service Distributions from the Profit Sharing portion of a Cash or Deferred Profit Sharing Plan shall be governed by Subsection (b) below.

Short Form. In-service distributions are always available to Participants (but only prior to his termination of employment) that are fully vested provided the balance in the Account to be distributed has accumulated for at least two (2) years or the individual has been a Participant for five (5) or more Plan Years or on account of Hardship.

- (c) **Money Purchase Plans.** The Employer may elect in the Adoption Agreement to permit In-service distributions upon a Participant reaching his Normal Retirement Age or an age that may not be earlier than age 62. Short Form. In-service distributions are always permitted upon a Participant reaching his Normal Retirement Age.
- (d) **All Plans.** The Employer may elect in the Adoption Agreement to permit In-service Distributions at the election of the Participant for amounts held in a Rollover Account, in a Deductible Voluntary Account, or in a Voluntary Account regardless of age or periods of participation.

Short Form. In-service distributions are always permitted at the election of the Participant for amounts held in a Rollover Account, in a Deductible Voluntary Account, or in a Voluntary Account regardless of age or periods of participation.

- (e) **Spousal Consent.** In-service distributions are subject to the spousal consent requirements contained in Code sections 401(a)(11) and 417 unless the Plan meets the exception of Subsection 2.5.5(c).
- (f) **In-Plan Roth Conversion.** If the Plan is a Cash or Deferred Profit Sharing Plan permitting a Participant to contribute all or a portion of his Elective Deferrals to the Trust as designated Roth Deferrals (an after-tax deferral); and also contains distribution options that permit a Participant (active or former Participants with an Account Balance in the Plan) to request an Eligible Rollover Distribution from the Plan, the Employer may elect in the Adoption Agreement to include in the Plan an in-plan Roth conversion feature.

Notwithstanding, the Employer shall not amend the Plan to restrict or eliminate any distribution rights that a Participant is entitled to under the Plan (such as a right to an Immediate Distribution of the amount rolled over or right to an In-service Distribution existing under the terms of the Plan).

- (1) **Conversion.** The in-plan Roth conversion shall be made through a Direct Rollover election. Under the in-plan Roth conversion feature, all or a portion of an Eligible Rollover Distribution from a nondesignated Roth Account in this Plan is directly rolled into an In-plan Roth Rollover Conversion Account. An In-Plan Roth Conversion Account may be established for Eligible Rollover Distributions made on or after September 27, 2010.

Unless otherwise elected in the Adoption Agreement, any Eligible Rollover Distribution made under the Plan's In-service Distribution options that is otherwise eligible for a Direct Rollover election may be converted under the in-plan Roth conversion feature.

(2) Applicable Definitions.

- (i) In-plan Roth conversion means the Direct Rollover of amounts from a nondesignated Roth Account without removing the funds from the Plan into an In-plan Roth Conversion Account.
- (ii) In-plan Roth Conversion Account means a separate Participant subaccount within the Plan, that is treated as a designated Roth account under section 402A of the Code.
- (iii) Nondesignated Roth Account means any subaccount within the Plan that contains pre-tax contributions or earnings.

ARTICLE VI

CONTINGENT TOP HEAVY PROVISIONS

2.6.1 Top-Heavy Requirements. If the Plan becomes a Top-Heavy Plan during any Plan Year, the following provisions shall supersede any conflicting provisions in the Plan or Adoption Agreement and apply for such Plan Year:

- (a) Except as otherwise provided below, the Employer contributions and Forfeitures allocated on behalf of any Participant who is not a Key Employee shall not be less than the lesser of three percent of such Participant's Compensation, as defined in Section 2.6.2(b), or in the case where the Employer has no defined benefit plan that designates this Plan to satisfy Code section 401, the largest percentage of Employer Contributions and Forfeitures (not including Catch-up Contributions), as a percentage of the Key Employee's Compensation as defined in Section 2.6.2(b), and limited by Code section 401(a)(17), allocated on behalf of any Key Employee for that year. The Minimum Top-Heavy Allocation is determined without regard to any Social Security contribution. This Minimum Top-Heavy Allocation shall be made even though, under other Plan provisions, the Participant would not otherwise be entitled to receive an allocation, or would have received a lesser allocation for the year because of (i) the Participant's failure to complete one thousand (1,000) Hours of Service (or any equivalent provided in the Plan), or (ii) the Participant's failure to make mandatory Employee contributions to the Plan, or (iii) compensation less than a stated amount. The Employer may elect in the Adoption Agreement to have this provision provide Key Employees with the Top-Heavy minimum benefit. In the event the Employer sponsors a defined benefit plan that is subject to a freeze of all benefit accruals and the right to enter the plan, and is also a part of a Top-Heavy Aggregation Group that includes this Plan, and has elected to make a five percent (5%) Top-Heavy Contribution to this Plan, shall have that contribution requirement automatically reduced to the defined contribution Minimum Top-Heavy Contribution under this Section 2.6.1(a).

Elective Deferrals (and, for Plan Years beginning before 2002, Matching Contributions) may not be used to satisfy the Minimum Top-Heavy Allocation.

For purposes of computing the Minimum Top-Heavy Allocation, Compensation shall mean a Participant's Compensation as defined in the Adoption Agreement.

Short Form Standardized Adoption Agreement. A Participant's Compensation shall be equal to total compensation that is actually paid to the Participant by the Employer during the Plan Year and includes all information required to be reported under Code sections 6041, 6051, and 6052 (wages, tips, and other compensation as reported on Form W-2). Compensation includes wages, (within the meaning of Code section 3401(a)) and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code sections 6041(d), 6051(a)(3), and 6052. Such compensation must be determined without regard to any rules under Code section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code section 3401(a)(2)). In the case of a Self-Employed Individual, Compensation means Earned Income during such period. Compensation for a Participant's initial year of participation shall be Compensation from the Participant's Entry Date.

The Minimum Top-Heavy Allocation provided above shall not apply to any Participant who was not employed by the Employer on the last day of the Plan Year.

If so elected in the Adoption Agreement, the Minimum Top-Heavy Allocation provided above shall not apply to any Participant who is in a unit of Employees covered by a collective bargaining agreement between the Employer and Employee representatives, provided benefits were the subject of good faith bargaining and two percent (2%) or less of the Employees of the Employer who are covered pursuant to that agreement are professionals as defined in Treasury Regulations section 1.410(b)-9(g).

Short Form Standardized. Employees described in the preceding paragraph shall not receive a Minimum Top-Heavy Allocation under the provisions of this Plan.

The Minimum Top-Heavy Allocation provided above shall not apply to any Participant to the extent the Participant is covered under any other plan or plans of the Employer and the Employer has provided in the Adoption Agreement that the Minimum Top-Heavy Allocation or benefit requirement applicable to Top-Heavy plans will be met in the other plan or plans and the Participant receives the minimum allocation or benefit under such plan or plans.

Short Form Standardized. Any Top-Heavy Minimum Allocation required under the provisions of this Plan shall be made to this Plan.

- (b) The vested and nonforfeitable interest of each Participant shall be equal to the percentage determined under the vesting schedule specified in the Adoption Agreement if the Plan becomes a Top-Heavy Plan, or if no vesting schedule is specified, the percentage determined under the following schedule:

Years of Vesting Service	Percentage
Less than 2	0%
2	20%
3	40%
4	60%
5	80%
6	or more 100%

The Top-Heavy minimum vesting schedule applies to all benefits within the meaning of Code section 411(a)(7), except those attributable to Employee Contributions, including benefits accrued before the effective date of Code section 416 and benefits accrued before the Plan becomes Top-Heavy.

No decrease in a Participant's nonforfeitable percentage may occur in the event the Plan's status as Top-Heavy changes for any Plan Year. Any Minimum Top-Heavy Allocation required (to the extent required to be nonforfeitable under Code section 416(b)) may not be forfeited under Code sections 411(a)(3)(B) or (D).

2.6.2 Top-Heavy Definitions. The following terms, as used in this Plan, shall have the following meaning:

- (a) **"Aggregation Group"**: Each qualified retirement plan of the Employer in which a Key Employee is a participant and each other qualified retirement plan of the Employer that enables any plan in which a Key Employee is a participant to meet the requirements of Code sections 401(a)(4) or 410.
- (b) **"Annual Compensation"**: One of the following three (3) definitions of Compensation as defined elected in the Adoption Agreement:
- (i) **W-2 Wages**. Information required to be reported under sections 6041, 6051, and 6052 of the Code (wages, tips and other compensation as reported on Form W-2). Compensation is defined as wages within the meaning of section 3401(a) of the Code and all other payments of compensation to an employee by the employer (in the course of the employer's trade or business) for which the employer is required to furnish the employee a written statement under sections 6041(d), 6051(a)(3), and 6052. Compensation must be determined without regard to any rules under section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(2)).
 - (ii) **Section 3401(a) wages**. Compensation is defined as wages within the meaning of section 3401(a) of the Code for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(2)).
 - (iii) **415 Simplified Compensation**. Compensation is defined as wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includable in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in Treasury Regulation 1.62-2(c)), and excluding the following:
 - (1) Employer contributions to a plan of deferred compensation which are not includable in the Employee's gross income for the taxable year in which contributed, or
 - (2) Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
 - (3) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and
 - (4) other amounts which received special tax benefits, or contributions made by the employer (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in Code section 403(b) (whether or not the contributions are actually excludable from the gross income of the employee).

For any Self-Employed Individual, Compensation will mean earned income.

For purposes of applying the limitations of this Article, Compensation paid or made available during such limitation year shall include any Elective Deferral (as defined in Code section 402(g)(3)), and any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includable in the gross income of the Employee by reason of Code sections 125, 132(f)(4), 402(k), 402(h)(1)(B) or 457.

If elected by the Employer in the Adoption Agreement, amounts under Code section 125 include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage (deemed section 125 Compensation). An amount will be treated as an amount under Code section 125 only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

- (c) **"Top-Heavy Plan"**: For any Plan Year beginning after December 31, 1983, the Plan is Top-Heavy if any of the following conditions exists:
- (i) If the Top-Heavy Ratio for the Plan exceeds sixty percent (60%) and the Plan is not part of any Required Aggregation Group or Permissive Aggregation Group of plans.
 - (ii) If the Plan is a part of a Required Aggregation Group of plans but not part of a Permissive Aggregation Group and the Top-Heavy Ratio for the group of plans exceeds sixty percent (60%).
 - (iii) If the Plan is a part of a Required Aggregation Group and part of a Permissive Aggregation Group of plans and the Top-Heavy Ratio for the Permissive Aggregation Group exceeds sixty percent (60%).

SIMPLE 401(k) plans and certain Safe Harbor CODA plans that consist solely of a Safe Harbor CODA and Matching Contributions (sections 401(k)(12) and 401(m)(11) of the Code) including Qualified Automatic Contribution Arrangements, that satisfy the ACP Test Safe Harbor are not subject to the Top-Heavy requirements of section 416 of the Code provided contributions under the Plan go to all Employees eligible to make Elective Deferrals.

- (d) **"Top-Heavy Ratio"**:
- (i) If the Employer maintains one or more defined contribution plans (including any simplified Employee pension plan) and the Employer has not maintained any defined benefit plan that during the one (1) year period ending on the Determination Date(s) has or has had accrued benefits, the Top-Heavy Ratio for this Plan alone or for the Required or Permissive Aggregation Group as appropriate is a fraction, the numerator of which is the sum of the Account balances of all Key Employees as of the Determination Date(s) (including any part of any Account balance distributed in the one (1) year period ending on the Determination Date(s) (five (5) year period ending on the Determination Date in the case of a distribution made for a reason other than severance from employment, death, or Disability)), and the denominator of which is the sum of all Account balances (including any part of any Account balance distributed in the one (1) year period ending on the Determination Date(s) (five (5) year period ending on the Determination Date in the case of a distribution made for a reason other than severance from employment, death, or Disability)), both computed in accordance with Code section 416 and the regulations thereunder.

Both the numerator and denominator of the Top-Heavy Ratio are increased to reflect any contribution not actually made as of the Determination Date, but that is required to be taken into account on that date under Code section 416 and the regulations thereunder.

- (ii) If the Employer maintains one or more defined contribution plans (including any simplified Employee pension plan) and the Employer maintains or has maintained one or more defined benefit plans that during the one (1) year period ending on the Determination Date(s) has or has had any accrued benefits, the Top-Heavy Ratio for any Required or Permissive Aggregation Group as appropriate is a fraction, the numerator of which is the sum of Account balances under the aggregated defined contribution plan or plans for all Key Employees, determined in accordance with (i) above, and the present value of accrued benefits under the aggregated defined benefit plan or plans for all Key Employees as of the Determination Date(s), and the denominator of which is the sum of the Account balances under the aggregated defined contribution plan or plans for all Participants, determined in accordance with (i) above, and the present value of accrued benefits under the defined benefit plan or plans for all Participants as of the Determination Date(s), all determined in accordance with Code section 416 and the regulations thereunder. The accrued benefits under a defined benefit plan in both the numerator and denominator of the Top-Heavy Ratio are increased for any distribution of an accrued benefit made in the one (1) year period ending on the Determination Date (five (5) year period ending on the Determination Date in the case of a distribution made for a reason other than severance from employment, death or Disability beginning before January 1, 2002.
- (iii) For purposes of (i) and (ii) above, the value of Account balances and the present value of accrued benefits will be determined as of the most recent valuation date that falls within or ends with the twelve (12) month period ending on the Determination Date, except as provided in Code section 416 and the regulations thereunder for the first and second Plan Years of a defined benefit plan. The Account balances and accrued benefits of a Participant: (1) who is not a Key Employee but was a Key Employee in a prior year, or (2) who has not been credited with at least one (1) Hour of Service with any Employer maintaining the Plan at any time during the 1-year period ending on the Determination Date will be disregarded. The calculation of the Top-Heavy Ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Code section 416 and the regulations thereunder. Deductible Employee contributions will not be taken into account for purposes of computing the Top-Heavy Ratio, however Catch-up Contributions will be taken into account. When aggregating plans, the value of Account balances and accrued benefits will be calculated with reference to the Determination Dates that fall within the same calendar year.

The accrued benefit of a Participant other than a Key Employee shall be determined under: (a) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the Employer, or (b) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of Code section 411(b)(1)(C).

- (e) **"Permissive Aggregation Group"**: The Required Aggregation Group of plans plus any other plan or plans of the Employer that, when considered as a group with the Required Aggregation Group, would continue to satisfy the requirements of Code sections 401(a)(4) and 410.
- (f) **"Required Aggregation Group"**:
 - (i) Each qualified plan of the Employer in which at least one Key Employee participates or participated at any time during the Plan Year containing the Determination Date (regardless of whether the plan has terminated).
 - (ii) Any other qualified plan of the Employer that enables a plan described in (i) to meet the requirements of Code sections 401(a)(4) or 410.
- (g) **"Determination Date"**: For any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first Plan Year of the Plan, the last day of that year.
- (h) **"Valuation Date"**: The last Valuation Date in the last Plan Year as of which account balances or accrued benefits are valued for purposes of calculating the Top-Heavy Ratio. In the case of the first Plan Year the Valuation Date for determining the Top-Heavy Ratio is the last day of the Plan Year.

Short Form. The Valuation Date shall be the last day of the prior Plan Year.
- (i) **"Present Value"**: Present value shall be based only on the interest and mortality rates specified in the Adoption Agreement.

Short Form. Top-Heavy Assumptions. (This provision shall apply if the Employer also has a Defined Benefit Plan.) The interest rate used to establish the present value of accrued benefits in order to calculate the Top-Heavy Ratio under Code section 416 shall be the Applicable Interest Rate defined in section 417(e) of the Code and the mortality table used shall be the Applicable Mortality Table defined in section 417(e) of the Code.

ARTICLE VII

SPECIAL CODA LIMITATIONS

2.7.1 Limitation on Deferral Percentage for Highly Compensated Employees.

(a) **Prior Year Testing.** The Employer may elect in the Adoption Agreement to use the current year ADP for all eligible Highly Compensated Employees. The ADP of all Eligible Highly Compensated Employees must not exceed the greater of the prior year's ADP for all Participants who were Non-Highly Compensated Employees in such year multiplied by:

- (1) One and twenty-five one-hundredths (1.25); or
- (2) Two (2.0), but in no event more than two (2) percentage points greater than the prior Plan Year ADP of such Non-Highly Compensated Employees.

The Employer may switch from Prior Year Testing to Current Year testing for any Plan Year.

For the first Plan Year that the Plan permits any Participant to make Elective Deferrals and this is not a successor plan, the ADP of Non-Highly Compensated Employees for the prior Plan Year shall be deemed to be three percent (3%) or, at the Employer's election, the test shall use actual data for the first Plan Year to determine the ADP of eligible Non-Highly Compensated Employees.

(b) **Current Year Testing.** The Employer may elect in the Adoption Agreement to use the current Plan Year ADP for all eligible Non-Highly Compensated Employees rather than the ADP for the prior Plan Year. Once the Employer has made this election, it may change to Prior Year Testing only if the Plan meets the requirements of Treasury Regulations section 1.401(k)-2(c)(1)(ii), including that:

- (1) The Plan has used Current Year Testing for each of the preceding five (5) Plan Years or, if lesser, the number of Plan Years that the Plan has been in existence; or
- (2) As a result of a merger or acquisition described in Code section 410(b)(6)(C)(i), the Employer maintains both a plan using Prior Year Testing and a plan using Current Year Testing, and the change is made within the transition period described in Code section 410(b)(6)(C)(ii).

Short Form. The testing method selected must be used for both the Actual Deferral Percentage Test and the Actual Contribution Percentage Test;

(c) **Other Rules.** An Employee who would be a Participant but for the failure to have Elective Deferrals made on his behalf shall be treated as a Participant on whose behalf no Elective Deferrals are made. For purposes of the ADP test compensation may be compensation for the entire Plan Year whether or not the Participant was a Participant for the entire Plan Year or compensation from a Participant's Plan Entry Date determined each year by the Plan Administrator and applied to all eligible Participants in a uniform and non-discriminatory manner.

For purposes of determining the ADP test, Elective Deferrals (other than Catch-up Contributions), Qualified Non-Elective Contributions, and Qualified Matching Contributions must be made before the last day of the twelve (12) month period immediately following the Plan Year to which the contributions relate.

Pursuant to Code section 410(b)(4)(B), the Employer may elect to treat that portion of the Plan that benefits only Participants who satisfy age and service conditions under the Plan that are lower than the greatest minimum age and service conditions permitted under Code section 410(a) ("Otherwise Excludable Employees") and that portion of the Plan that benefits Participants that meet the greatest minimum age and service conditions permitted under Code section 410(a) ("Not Otherwise Excludable Employees") as two (2) separate plans for purposes of Code section 401(k), and the ADP test need not be satisfied with respect to both plans in order for one of the plans to pass the ADP test. An Employee's membership in the class of Otherwise Excludable Employees shall be determined using either the Plan's Entry Date provision or the earlier of the first day of the next Plan Year of 6 months after completing the greatest minimum age and service conditions of Code section 410(a) as determined each year by the Plan Administrator.

Elective Deferrals that are made as Catch-up Contributions after a period of Qualified Military Service pursuant to Section 2.2.2(a) shall not be used to determine a Participant's deferral percentage when the ADP of Participants is calculated for a particular Plan Year.

The determination and treatment of the ADP amounts of any Participant shall satisfy such other requirements as may be prescribed by the Secretary of the Treasury.

Use of Qualified Non-Elective Contributions in the ADP or ACP test requires compliance with Reg. 1.401(k)-2(a)(6)(iv) or Reg. 1.401(m)-2(a)(6)(v), respectively, that require the Qualified Non-Elective Contribution be no greater than 5% of a Participant's compensation or no more than twice a "representative contribution rate" determined by analyzing the Qualified Non-Elective Contributions provided to all Non-Highly Compensated Employees.

Short Form. The Employer may make Qualified Non-Elective Contributions at its discretion in a nondiscriminatory manner on behalf of Participants that are not Highly Compensated Employees that are eligible to make Elective Deferrals to the extent necessary to satisfy the ADP or ACP test beginning with the lowest paid Non-Highly Compensated Employees. For purposes of the ADP test, the amount of Qualified Non-Elective Contributions and Qualified Matching Contributions taken into account shall be only those contributions that are needed to pass the ADP test.

2.7.2 Limitation on Matching Contributions.

(a) **Prior Year Testing.** The Employer may elect in the Adoption Agreement to use the current year ACP for eligible Highly Compensated Employees which must not exceed the greater of the prior year's ACP for all Participants who were Non-Highly Compensated Employees in such year multiplied by:

- (1) One and twenty-five one-hundredths (1.25); or

- (2) Two (2.0), but in no event more than two (2) percentage points greater than the prior Plan Year ACP of such Non-Highly Compensated Employees.

The Employer may switch from Prior Year Testing to Current Year Testing for any Plan Year.

For the first Plan Year that the Plan permits any Participant to make Elective Deferrals and this is not a successor plan, the ACP of Non-Highly Compensated Employees for the prior Plan Year shall be deemed to be three percent (3%) or, at the Employer's election, the test shall use actual data of the first Plan Year to determine the ACP for eligible Non-Highly Compensated Employees.

- (b) **Current Year Testing.** The Employer may elect in the Adoption Agreement to use the current Plan Year ACP for all eligible Non-Highly Compensated Employees rather than the ACP of the prior Plan Year. Once the Employer has made this election, it may change to Prior Year Testing only if the Plan meets the requirements of Treasury Regulations sections 1.401(m)-2(c)(1) and 1.401(k)-2(c)(1)(ii), including that:
- (1) The Plan has used Current Year Testing for each of the preceding five (5) Plan Years or, if lesser, the number of Plan Years that the Plan has been in existence; or
 - (2) As a result of a merger or acquisition described in Code section 410(b)(6)(C)(i), the Employer maintains both a plan using Prior Year Testing and a plan using Current Year Testing, and the change is made within the transition period described in Code section 410(b)(6)(C)(ii).

Short Form. The testing method selected must be used for both the Actual Deferral Percentage Test and the Actual Contribution Percentage Test;

- (c) **Other Rules.** If so elected in the Adoption Agreement, the Employer may include Qualified Non-Elective Contributions in the contribution percentage amounts. In order to be taken into account in the calculation of the ACP for a year under Current Year Testing, a Qualified Non-Elective Contribution or Qualified Matching Contribution must be allocated as of a date within the year using current data and must actually be paid to the Trust no later than the end of the 12-month period following the end of the Plan Year to which the contribution relates. The Employer may also elect to use Elective Deferrals in the contribution percentage amounts so long as the ADP test is met before the Elective Deferrals are used in the ACP test and continues to be met following the exclusion of those Elective Deferrals that are used to meet the ACP test. An ACP shall be rounded to the nearest hundredth of a percentage point. If an Elective Deferral or other contribution by an Employee is required as a condition of participation in the Plan, any Employee who would be a Participant if such Employee made such a contribution shall be treated as an eligible Participant on behalf of whom no such contributions are made. For purposes of the ACP test compensation may be compensation for the entire Plan Year whether or not the Participant was a Participant for the entire Plan Year or compensation from a Participant's Plan Entry Date determined each year by the Plan Administrator and applied to all eligible Participants in a uniform and non-discriminatory manner.

The amount of Excess Aggregate Contributions for a Plan Year shall be determined only after first determining the Excess Contributions that are treated as Voluntary Contributions due to recharacterization.

Pursuant to Code section 410(b)(4)(B), the Employer may elect to treat that portion of the Plan that benefits only Participants who satisfy age and service conditions under the Plan that are lower than the greatest minimum age and service conditions permitted under Code section 410(a) ("Otherwise Excludable Employees") and that portion of the Plan that benefits Participants that meet the greatest minimum age and service conditions permitted under Code section 410(a) ("Not Otherwise Excludable Employees") as two (2) separate plans for purposes of Code section 401(m), and the ACP test need not be satisfied with respect to both plans in order for one of the plans to pass the ACP test. An Employee's membership in the class of Otherwise Excludable Employees shall be determined using either the Plan's Entry Date provision or the earlier of the first day of the next Plan Year of 6 months after completing the greatest minimum age and service conditions of Code section 410(a) as determined each year by the Plan Administrator.

Employee contributions are considered to have been made in the Plan Year in which contributed to the Trust. Matching Contributions, Voluntary Employee Contributions, Qualified Non-Elective Contributions, and Qualified Matching Contributions shall be considered made for a Plan Year if made no later than the end of the twelve-month period beginning on the day after the close of the Plan Year.

The Employer shall maintain records sufficient to demonstrate satisfaction of the ACP test and the amount of Qualified Non-Elective Contributions and Qualified Matching Contributions used in such test.

The determination and treatment of the contribution percentage of any Participant shall satisfy such other requirements as may be prescribed by the Secretary of the Treasury.

Qualified Matching Contributions may be used with Current Year testing method only if the contribution is made within the 12-month period following the last day of the Prior Year. Use of Qualified Matching Contributions in the ADP or ACP test requires compliance with Reg. 1.401(k)-2(a)(6)(iv) or Reg. 1.401(m)-2(a)(6)(v), respectively, that require the Qualified Matching Contribution be no greater than 5% of a Participant's compensation or no more than twice a "representative contribution rate" determined by analyzing the Qualified Matching Contributions provided to all Non-Highly Compensated Employees.

Short Form. The Employer may make Qualified Matching Contributions at its discretion, in a nondiscriminatory manner, on behalf of Participants that are not Highly Compensated Employees that receive Matching Contributions to the extent necessary to satisfy the ADP or ACP test beginning with the lowest paid Non-Highly Compensated Employees. For purposes of the ACP test, the amount of Qualified Matching Contributions and Qualified Non-Elective Contributions taken into account shall be only those contributions that are needed to pass the ACP test.

2.7.3 Multiple Plan Limitations For ADP and ACP Testing.

- (a) No Participant shall be permitted to have Elective Deferrals made under this Plan, or any other qualified plan maintained by the Employer, during any taxable year, in excess of the dollar limitation contained in Code section 402(g)(1) in effect at the beginning of such taxable year.
- (b) The ADP for any Participant who is a Highly Compensated Employee for the Plan Year and who is eligible to have Elective Deferrals (and Qualified Matching Contributions, and Qualified Non-Elective Contributions if treated as Elective Deferrals for purposes of the ADP test) allocated to his Accounts under two or more arrangements described in Code section 401(k) that are maintained by the Employer,

shall be determined as if such Elective Deferrals and, if applicable, such Qualified Matching Contributions and Qualified Non-Elective Contributions were made under a single arrangement. If a Highly Compensated Employee participates in two or more cash or deferred arrangements of the Employer that have different plan years, all Elective Deferrals made during the Plan Year under all such arrangements shall be aggregated. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under regulations under Code section 401(k).

- (c) In the event that this Plan satisfies the requirements of Code sections 401(k), 401(a)(4), or 410(b) only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such sections of the Code only if aggregated with this Plan, then this Section shall be applied by determining the ADP of Employees as if all such plans were a single plan. If more than ten percent (10%) of the Employer's Non-Highly Compensated Employees are involved in a plan coverage change as defined in Treasury Regulations section 1.401(k)-2(c)(4), then any adjustments to the Non-Highly Compensated Employee ADP for the prior year will be made in accordance with such Regulations, unless the Employer has elected in the Adoption Agreement to use the Current Year Testing method. Plans may be aggregated in order to satisfy Code section 401(k) only if they have the same Plan Year and use the same ADP testing method.
- (d) The ACP for any Participant who is a Highly Compensated Employee and who is eligible to have contribution percentage amounts allocated to his or her Accounts under two or more plans described in Code section 401(a), or arrangements described in Code section 401(k), that are maintained by the Employer, shall be determined as if the total of such contribution percentage amounts was made under each plan. If a Highly Compensated Employee participates in two or more cash or deferred arrangements that have different plan years, all types of contributions includible in the ACP test from all such arrangements that were made during the Plan Year shall be aggregated. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under regulations under Code section 401(m).
- (e) In the event that this Plan satisfies the requirements of Code sections 401(m), 401(a)(4), or 410(b) only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such Code sections only if aggregated with this Plan, then Section 2.7.2 shall be applied by determining the ACP of Employees as if all such plans were a single plan. If more than ten percent (10%) of the Employer's Non-Highly Compensated Employees are involved in a plan coverage change as defined in Treasury Regulations section 1.401(m)-2(c)(4), then any adjustments to the Non-Highly Compensated Employee ACP for the prior year will be made in accordance with such regulations, unless the Employer has elected in the Adoption Agreement to use the Current Year Testing method. Plans may be aggregated in order to satisfy Code section 401(m) only if they have the same Plan Year and use the same ACP testing method.

2.7.4 Different Testing Methods for Elective Deferrals and Matching Contributions The Plan must use the same testing method for the ADP test under Section 2.7.1 and the ACP test under Section 2.7.2 unless the Employer prohibits the use of Elective Deferrals in the ACP test and Recharacterization of Excess Contributions and the use of Qualified Matching Contributions in the ADP test.

Short Form. The testing method selected must be used for both the Actual Deferral Percentage Test and the Actual Contribution Percentage Test;

2.7.5 Distribution of Excess Elective Deferrals. A Participant may assign to the Plan any Excess Elective Deferrals made during a taxable year of the Participant by notifying the Plan Administrator on or before March 15th of each calendar year of the amount of the Excess Elective Deferrals to be assigned to the Plan. A Participant is deemed to notify the Plan Administrator of any Excess Elective Deferrals that arise by taking into account only those Elective Deferrals made to this Plan and any other plans of the Employer.

Notwithstanding any other provision of the Plan, Excess Elective Deferrals, plus any income and minus any loss allocable thereto, shall be distributed no later than April 15th to any Participant to whose Account Excess Elective Deferrals were assigned for the preceding year and who claims Excess Elective Deferrals for such taxable year. For years beginning after 2005, distribution of Excess Elective Deferrals for a year shall be made first from the Participant's Pre-tax Elective Account to the extent Pre-tax Elective Deferrals were made for the year, unless the Participant specifies otherwise. For taxable years beginning before January 1, 2006, income or loss allocable to the period between the end of the taxable year and the date of distribution (the "gap-period") could be disregarded in determining income or loss on Excess Elective Deferrals for such years. Gap-period income loss must be included in any distribution of Excess Elective Deferrals occurring in taxable years beginning in 2007, but must be excluded from any distribution of Excess Elective Deferrals occurring in taxable years beginning after 2007.

Excess Elective Deferrals distributed under this Section shall be adjusted for any income or loss based on a reasonable method of computing the allocable income or loss. The method selected must be applied consistently to all Participants and used for all corrective distributions under the Plan for the Plan Year, and must be the same method that is used by the Plan for allocating income or loss to Participants' Accounts. The income allocable to Excess Deferrals is equal to the allocable gain or loss through the end of the Plan Year for which the Deferrals were made.

One reasonable method treats the income and loss allocable to Excess Elective Deferrals as the sum of:

- (a) Income or loss allocable to the Participant's Elective Account for the taxable year, multiplied by a fraction, the numerator of which is such Participant's Excess Elective Deferrals for the year and the denominator is the Participant's Account balance attributable to Elective Deferrals without regard to any income or loss occurring during such taxable year; and
- (b) Ten percent (10%) of the amount determined under (a) multiplied by the number of whole calendar months between the end of the Participant's taxable year and the date of the distribution, counting the month of distribution if distribution occurs after the 15th of such month. The Gap-period calculation is not applicable after the end of the 2007 Plan Year.

2.7.6 Distribution of Excess Contributions. If elected by the Employer in the Adoption Agreement, if the Plan permits all Participants to make Voluntary Employee Contributions, Elective Deferrals allocated to a Highly Compensated Employee as Excess Contributions will be re-characterized as Voluntary Employee Contributions (after-tax). A Participant must or may, as elected by the Employer in the Adoption Agreement, treat Excess Contributions allocated to him or her as an amount distributed to the Participant and then contributed by the Participant to the Plan. Re-characterized amounts will remain nonforfeitable. A Highly Compensated Employee may not recharacterize an amount to the extent that such amount in combination with other Voluntary Employee Contributions made by that Employee would exceed any stated limit under the Plan on Voluntary Employee Contributions.

Re-characterization must occur no later than two and one-half (2-1/2) months after the last day of the Plan Year in which such Excess Contributions arose and is deemed to occur no earlier than the date the last Highly Compensated Employee is informed in writing of the amount re-characterized and the consequences thereof.

If elected in the Adoption Agreement, Excess Contributions that are not recharacterized, plus any income and minus any loss allocable thereto, shall be distributed no later than twelve (12) months after the last day of each Plan Year to Highly Compensated Employees to whose Accounts

such Excess Contributions were allocated for such Plan Year, except to the extent such Excess Contributions are classified as Catch-up Contributions. For years beginning after 2005, distribution of Excess Contributions for a year shall be made first from the Participant's Pre-tax Elective Account to the extent Pre-tax Elective Deferrals were made for the year, unless the Participant specifies otherwise. For Plan years beginning before 2006, income or loss allocable to the period between the end of the Plan Year and the date of distribution (the "gap-period") could be disregarded in determining income or loss on Excess Aggregate Contributions for such years. Gap-period income or loss must be included in any distribution of Excess Aggregate Contributions occurring in Plan Years beginning in 2006 and 2007, but must be excluded from any distribution of Excess Aggregate Contributions occurring in Plan Years beginning after 2007.

The amount of Excess Contributions (and allocable income) to be distributed under this Section of the Plan or the amount of Excess Contributions recharacterized under this Section of the Plan with respect to a Participant for a Plan Year, is reduced by any amounts previously distributed to the Participant from the Plan to correct Excess Deferrals for the Participant's taxable year ending with or within the Plan Year in accordance with Code section 402(g)(2).

The amount required to be distributed to correct an Excess Deferral to an Employee for a taxable year is reduced by any Excess Contributions (and allocable income) previously distributed or excess contributions recharacterized with respect to the Participant for the Plan Year beginning with or within the taxable year. The amount of Excess Contributions includible in the gross income of the Employee, and the amount of Excess Contributions reported by the payer or Plan Administrator as includible in the gross income of the Participant, does not include the amount of a reduction under section 1.402(g)-1(e)(6) of the Treasury regulations.

Excess Contributions are applied to Highly Compensated Employees with the largest amounts of Elective Deferrals taken into account when calculating the ADP test for the Plan Year in which the excess arose, beginning with the Highly Compensated Employee with the largest contribution and continuing in descending order until all the Excess Contributions have been allocated. To the extent that a Highly Compensated Employee has not reached his Catch-up Contribution limit under the Plan, Excess Contributions allocated to such Highly Compensated Employee are Catch-up Contributions and will not be treated as Excess Contributions. If such excess amounts (other than Catch-up Contributions) are distributed more than two and one-half (2-1/2) months after the last day of the Plan Year in which such excess amounts arose, a ten percent (10%) excise tax will be imposed on the Employer maintaining the Plan with respect to such amounts.

Excess Contributions shall be treated as Annual Additions under Part III, Article II even if distributed to the Participant.

Excess Contributions distributed under this Section shall be adjusted for any income or loss based on a reasonable method of computing the allocable income or loss. The method selected must be applied consistently to all Participants and used for all corrective distributions under the Plan for the Plan Year, and must be the same method that is used by the Plan for allocating income or loss to Participants' Accounts. For Plan Years beginning after 2005, income or loss allocable to the period between the end of the Plan Year and the date of distribution may not be disregarded in determining income or loss.

One reasonable method treats the income and loss allocable to Excess Contributions as the sum of:

- (a) Income or loss allocable to the Participant's Elective Account (and, if applicable, the Qualified Non-Elective Account or the Qualified Matching Account, or both) for the Plan Year, multiplied by a fraction, the numerator of which is such Participant's Excess Contributions for the year and the denominator is the Participant's Account balance attributable to Elective Deferrals (and Qualified Non-Elective Contributions or Qualified Matching Contributions, or both, if any such contributions are included in the ADP test) without regard to any income or loss occurring during such Plan Year; and
- (b) Ten percent (10%) of the amount determined under (a) multiplied by the number of whole calendar months between the end of the Plan Year and the date of the distribution, counting the month of distribution if distribution occurs after the 15th of such month.

Matching Contributions attributable to Excess Contributions that have been returned shall be forfeited according to the requirements of Section 2.7.9.

Excess Contributions applied to a Participant shall be distributed from the Participant's Elective Account and Qualified Matching Account (if applicable) in proportion to the Participant's Elective Deferrals and Qualified Matching Contributions (to the extent used in the ADP test) for the Plan Year. Excess Contributions shall be distributed from the Participant's Qualified Non-Elective Account only to the extent that such Excess Contributions exceed the amount of Excess Contributions in the Participant's Elective Account and Qualified Matching Account.

2.7.7 Distribution of Excess Aggregate Contributions. Notwithstanding any other provision of this Plan, Excess Aggregate Contributions, plus any income and minus any loss allocable thereto, shall be forfeited, if forfeitable, or if not forfeitable, distributed no later than twelve (12) months after a Plan Year to Participants to whose accounts such Excess Aggregate Contributions were allocated for such Plan Year. For Plan Years beginning after December 31, 2008, a corrective distribution of Excess Aggregate Contributions (adjusted for any income or loss) shall be included in an Employee's gross income in the tax year in which the distribution occurs.

Excess Aggregate Contributions are applied to Highly Compensated Employees with the largest contribution percentage amounts taken into account in calculating the ACP test for the year in which the excess arose, beginning with the Highly Compensated Employee with the largest contribution percentage amount and continuing in descending order until all the Excess Aggregate Contributions have been allocated. If such Excess Aggregate Contributions are distributed more than two and one-half (2-1/2) months after the last day of the Plan Year in which such excess amounts arose, a ten percent (10%) excise tax will be imposed on the Employer maintaining the Plan with respect to those amounts. However, for Plan Years beginning on or after January 1, 2010 where all eligible Non-Highly Compensated Employees and all eligible Highly Compensated Employees are Covered Employees under the Eligible Automatic Contribution Arrangement for the entire Plan Year, the Plan Administrator must distribute Excess Aggregate Contributions from the Plan no later than six (6) months after the last day of the Plan Year in which the excess amounts were determined.

Excess Aggregate Contributions distributed under this Section shall be adjusted for any income or loss based on a reasonable method of computing the allocable income or loss. The method selected must be applied consistently to all Participants and used for all corrective distributions under the Plan for the Plan Year, and must be the same method that is used by the Plan for allocating income or loss to Participants' Accounts. For Plan Years beginning after 2005, income or loss allocable to the period between the end of the Plan Year and the date of distribution may not be disregarded in determining income or loss. For Plan Years beginning on or after January 1, 2008, the income allocable to Excess Aggregate Contributions is equal to the allocable gain or loss through the end of the Plan Year for which the ACP Test is being corrected.

One reasonable method treats the income and loss allocable to the Participant's Excess Aggregate Contributions as the sum of:

- (a) Income or loss allocable to the Participant's Voluntary Account, Matching Account, Qualified Matching Account, (if any, and if all amounts

therein are not used in the ADP test) and, if applicable, Qualified Non-Elective Contribution and Elective Deferral Accounts for the Plan Year, multiplied by a fraction, the numerator of which is such Participant's Excess Aggregate Contributions for the year and the denominator is the balance(s) of the Participant's Account previously described, if any such contributions are included in the ACP test without regard to any income or loss occurring during such Plan Year; and

- (b) Ten percent (10%) of the amount determined under (a) multiplied by the number of whole calendar months between the end of the Plan Year and the date of the distribution, counting the month of distribution if distribution occurs after the 15th of such month.

Forfeitures of Excess Aggregate Contributions may either be reallocated to the accounts of Participants who are not Highly Compensated Employees or applied to reduce Employer contributions, as elected by the Employer in the Adoption Agreement.

Short Form. Forfeitures of Excess Aggregate Contributions shall be applied to reduce Employer contributions.

Excess Aggregate Contributions allocated to a Participant shall be forfeited, if forfeitable, or distributed on a pro-rata basis from the Participant's Voluntary, Matching, and Qualified Matching Accounts (and, if applicable, the Participant's Qualified Non-Elective Account or Elective Account, or both).

2.7.8 Limitation on Distributions. Except as otherwise provided in this Article, Elective Deferrals, Qualified Non-Elective Contributions, Qualified Matching Contributions, and income allocable thereto are not distributable to a Participant or his Beneficiary in accordance with such Participant's or Beneficiary's election prior to severance from employment, death, or Disability. Such amounts may, however, be distributed upon:

- (a) Termination of the Plan without the establishment of another defined contribution plan, other than an employee stock ownership plan (as defined in Code sections 4975(e)(7) or 409(a)) or a simplified employee pension plan as defined in Code section 408(k), a SIMPLE IRA plan as defined in Code section 408(p), a plan or contract described in Code section 403(b) or a plan described in Code section 457(b) or (f) at any time during the period beginning on the date of plan termination and ending twelve (12) months after all assets have been distributed from the Plan. Such a distribution must be made in a lump sum.
- (b) The attainment of age fifty-nine and one-half (59-1/2).
- (c) The Hardship of a Participant in accordance with Section 2.5.10.
- (d) The Participant's call to active duty after September 11, 2001, (because of the Participant's status as a member of a reserve component) for a period of at least 180 days (90 days for Plan Years beginning before January 1, 2007) or for an indefinite period. (A "qualified reservist distribution.")
- (e) The Participant's service in the uniformed services while on active duty for a period of at least 30 days. If a Participant receives a distribution under this provision, the Participant's Elective Deferrals (and Employee Contributions) will be suspended for 6 months after receipt of the distribution.
- (f) A federally declared disaster, where resulting legislation authorizes such a distribution.

All such distributions are subject to the spousal and Participant consent requirements, if applicable, contained in Code sections 401(a)(11) and 417 unless the Plan meets the exception of Subsection 2.5.5(c). In addition, distributions that are triggered by any of the first three events enumerated above must be made in a lump sum.

2.7.9 Forfeiture of Matching Contributions. Matching Contributions shall be forfeited when:

- (a) The Elective Deferral to which the Matching Contribution or Qualified Matching Contribution relates is returned because it was determined to be Excess Deferrals (unless the Excess Deferrals are for Non-Highly Compensated Employees), Excess Contributions, or Excess Annual Additions; or
- (b) The Employee contribution to which the Matching Contribution relates is returned because it was determined to be either Excess Aggregate Contributions or Excess Annual Additions.

The requirements of this Section shall be met in whole or in part if the Matching Contribution in question is returned to the Participant as an Excess Aggregate Contribution.

Following the forfeiture of Matching Contributions pursuant to this Section, the highest rate of Matching Contribution allocated to any Highly Compensated Employee may not exceed the lowest rate of Matching Contribution allocated to any Non-Highly Compensated Employee eligible to receive an allocation of Matching Contributions under this Plan or under all plans in a mandatory or permissive aggregation group. This provision shall not apply in the case of a Non-Highly Compensated Employee whose allocation of Matching Contributions is limited by the application of Code section 415. Allocation of Forfeitures under this Section shall be governed by elections regarding the allocation of the forfeiture of Matching Contributions in the Adoption Agreement.

Short Form. The Plan Administrator shall allocate such Forfeiture in the same manner as a Matching Contribution by the Employer for the year in which said Forfeiture occurred. For each Plan Year that Forfeitures are allocated, the Plan Administrator shall designate the specific Employer Contribution or Contributions that the Forfeitures reduce or supplement.

ARTICLE VIII

SIMPLE 401(k) LIMITATIONS

Notwithstanding any provision in the Plan or Adoption Agreement to the contrary, during any year for which the Employer has elected to treat this Plan as a SIMPLE 401(k) plan under Code sections 401(k)(11) and 401(m)(10), this Article VIII and the attendant election of the Adoption Agreement or any amendment thereof shall prevail.

2.8.1 Establishing a SIMPLE 401(k) Plan. If the Employer has elected in the Adoption Agreement to have the 401(k) SIMPLE Provisions apply, then the provisions of this Article shall apply for a Year only if (a) the Employer is an Eligible Employer and (b) no contributions are made, or benefits accrued for services during the Year, on behalf of any Eligible Employee under any other plan, contract, pension, or trust described in Code section 219(g)(5)(A) or (B) maintained by the Employer. To the extent that any other provision of the Plan is inconsistent with the provisions of this Article, the provisions of this Article govern.

2.8.2 Definitions.

- (a) **"Compensation"** means, for purposes of Sections 2.8.2(b), 2.8.3, and 2.8.4 of this Article, the sum of the wages, tips, and other compensation from the Employer subject to federal income tax withholding (as described in Code section 6051(a)(3)) and the Employee's salary reduction contributions made under this or any other section 401(k) plan, and, if applicable, Elective Deferrals under a section 408(p) SIMPLE IRA Plan, a SARSEP, or a section 403(b) annuity contract and compensation deferred under a section 457 plan, required to be reported by the Employer on Form W-2 (as described in Code section 6051(a)(8)). For Self-Employed Individuals, Compensation means net earnings from self-employment determined under Code section 1402(a) prior to subtracting any contributions made under this Plan on behalf of the individual. The provisions of the Plan implementing the limit on compensation under Code section 401(a)(17) apply to the Compensation under Sections 2.8.3 and 2.8.4 of this Article.
- (b) **"Eligible Employer"** means, with respect to any Year (as defined in Subsection 2.8.2(d) below), an employer that had no more than one hundred (100) employees who received at least five thousand dollars (\$5,000) of Compensation from the Employer for the preceding Year. In applying the preceding sentence, all employees of controlled groups of corporations under Code section 414(b), all employees of trades or businesses (whether incorporated or not) under common control under Code section 414(c), all employees of affiliated service groups under Code section 414(m), and leased employees required to be treated as the Employer's employees under Code section 414(n), are taken into account.

An Eligible Employer that elects to have the 401(k) SIMPLE Provisions apply to the Plan and that fails to be an Eligible Employer for any subsequent Year is treated as an Eligible Employer for the two (2) Years following the last Year the Employer was an Eligible Employer. If the failure is due to any acquisition, disposition, or similar transaction involving an Eligible Employer, the preceding sentence applies only if the provisions of Code section 410(b)(6)(C)(i) are satisfied.

- (c) **"Eligible Employee"** means, for purposes of the 401(k) SIMPLE Provisions, any Employee who is entitled to make Elective Deferrals under the terms of the Plan.
- (d) **"Year"** means the calendar year.

2.8.3 Salary Reduction Contributions.

- (a) Each Eligible Employee may make a salary reduction election to have his or her Compensation reduced for the Year in any amount selected by the Employee subject to the limitation in Subsection 2.8.3(b). The Employer will make a salary reduction contribution to the Plan, as an Elective Deferral, in the amount by which the Employee's Compensation has been reduced.
- (b) The total salary reduction contribution for the Year cannot exceed ten thousand dollars (\$10,000) for any Employee. To the extent permitted by law, this amount will be adjusted to reflect any annual cost-of-living increases announced by the IRS. After 2005, the ten thousand dollar (\$10,000) limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code section 408(p)(2)(E). Any such adjustments will be in multiples of five hundred dollars (\$500).
- (c) The amount of a Participant's salary reduction contributions permitted for a Year is increased for Participants aged fifty (50) or over by the end of the Year by the amount of allowable Catch-up Contributions. Allowable Catch-up Contributions are twenty-five hundred dollars (\$2,500) for 2006. After 2006, the twenty-five hundred dollar (\$2,500) limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code section 414(v)(2)(C). Any such adjustments will be in multiples of five hundred dollars (\$500). Catch-up Contributions are otherwise treated the same as other salary reduction contributions.

2.8.4 Other Contributions.

- (a) **Matching Contributions.** Each Year, the Employer will contribute a Matching Contribution to the Plan on behalf of each Employee who makes a salary reduction election under Section 2.8.3. The amount of the Matching Contribution will be equal to the Employee's salary reduction contribution up to a limit of three percent (3%) of the Employee's Compensation for the full Year.
- (b) **Non-Elective Contribution.** For any Year, instead of a Matching Contribution, the Employer may elect to contribute a Non-Elective Contribution of two percent (2%) of Compensation for the full Year for each Eligible Employee who received at least five thousand dollars (\$5,000) of Compensation (or such lesser amount as elected by the Employer in the Adoption Agreement) for the Year.

2.8.5 Limitation on Other Contributions. No Employer or Employee contributions may be made to this Plan for the Year other than a salary reduction contributions described in Section 2.8.3, Matching or Non-Elective Contributions described in Section 2.8.4, and rollover contributions described in Treasury Regulations section 1.402(c)-2, Q&A-1(a).

2.8.6 Section 415 Limitations. The provisions of the Plan implementing the limitations of Code section 415 apply to contributions made pursuant to Sections 2.8.3 (other than Catch-up Contributions) and 2.8.4.

2.8.7 Election and Notice Requirements.

(a) Election Period

- (1) In addition to any other election periods provided under the Plan, each Eligible Employee may make or modify a salary reduction election during the 60-day period immediately preceding each January 1.
- (2) For the Year an Employee becomes eligible to make salary reduction contributions under the 401(k) SIMPLE Provisions, the 60-day election period requirement of Subsection 2.8.7(a)(1) is deemed satisfied if the Employee may make or modify a salary reduction election during a 60-day period that includes either the date the Employee becomes eligible or the day before.
- (3) Each Employee may terminate a salary reduction election at any time during the Year.

(b) Notice Requirements

- (1) The Employer will notify each Eligible Employee prior to the 60-day election period described in Subsection 2.8.7(a) that he can make a salary reduction election or modify a prior election during that period.
- (2) The notification described in Subsection 2.8.7(b)(1) will indicate whether the Employer will provide a three-percent (3%) Matching Contribution described in Subsection 2.8.4(a) or a two-percent(2%) Non-Elective Contribution described in Subsection 2.8.4(b).

2.8.8 Vesting Requirements. All benefits attributable to contributions described in Sections 2.8.3 and 2.8.4 are nonforfeitable at all times, and all previous contributions made under the Plan are nonforfeitable as of the beginning of the Year the 401(k) SIMPLE Provisions apply.

2.8.9 Top-Heavy Rules. The Plan is not treated as a Top-Heavy plan under Code section 416 for any Year for which this Article applies.

2.8.10 Nondiscrimination Tests. The ADP and ACP tests described in Sections 2.7.1 and 2.7.2 of the Plan are treated as satisfied for any Year for which this Article applies.

2.8.11 Revocation. An amendment to have the 401(k) SIMPLE Provisions no longer apply is effective the next January 1.

ARTICLE IX

SAFE HARBOR CODA PROVISIONS

2.9.1 Safe Harbor CODA Rules.

- (a) If the Employer has elected in the Adoption Agreement to make a Safe Harbor CODA contribution pursuant to Code section 401(k)(12) or 401(k)(13), this Article shall apply for the Plan Year and any provisions relating to the ADP test described in Code section 401(k)(3) or the ACP test described in Code section 401(m)(2) shall not apply.

If the Employer has not elected a Safe Harbor CODA contribution option, the Employer may amend the Plan not later than thirty (30) days before the last day of the Plan Year to specify that the Safe Harbor Non-Elective Contribution method will be used for the Plan Year, provided the Notice Requirement of Subsection 2.9.1(c) below, is met.

- (b) If the Employer has not elected a Safe Harbor contribution option, the Plan must satisfy the ADP (and, if applicable, ACP) test for the Plan Year.
- (c) **Notice Requirement.** For the purpose of a Safe Harbor contribution pursuant to Code section 401(k)(12), at least thirty (30) days, or any other reasonable period but not more than ninety (90) days, before the beginning of the Plan Year, the Employer must provide each Eligible Employee with a comprehensive notice of the Employee's rights and obligations under the Plan, written in a manner calculated to be understood by the average Eligible Employee, as described in Code section 401(k)(12)(D) and the applicable regulations. If an Employee becomes eligible after the Employer distributes the notice for a particular Plan Year, the Employer must provide the notice no more than ninety (90) days before such Employee becomes eligible but not later than the date the Employee becomes eligible.

For the purpose of a Safe Harbor contribution pursuant to Code section 401(k)(13), the Employer shall give each Employee to whom the Qualified Automatic Contribution Arrangement in Section 2.2.3(c) applies, a notice that meets the requirements of Section 2.2.3(d).

The Employer reserves the right to amend the Plan to make a Safe Harbor Non-Elective Contribution under Subsection 2.9.1(b) above. If the Employer wishes to exercise that right, the notice given to Eligible Employees before the beginning of the Plan Year must provide that: (i) the Plan may be amended during the Plan Year to provide that the Employer will make a Safe Harbor Non-Elective Contribution of at least three percent (3%) to the Plan for the Plan Year, and (ii) if the Plan is so amended, the Employer will give a supplemental notice to Eligible Employees thirty (30) days prior to the last day of the Plan Year informing them of such an amendment.

- (d) **Election Periods.** In addition to any other election periods provided under the Plan, each Eligible Employee may make or modify a deferral election during the 30-day period immediately following receipt of the notice described in Subsection 2.9.1(c) above.
- (e) **Timing of Matching Contributions.** The Employer may also elect in the Adoption Agreement to meet the matching contribution requirements of this Article IX either (i) with respect to the Plan Year as a whole, or (ii) separately with respect to each payroll period (or with respect to all payroll periods ending with or within each month or plan-year quarter) taken into account under the Plan for the Plan Year (the "payroll period method"). The payroll period method applies only for purposes of satisfying the ADP Safe Harbor Matching Contribution requirements of Section 2.9.3 of the Plan and the ACP Safe Harbor Matching Contribution requirements of Section 2.9.4 of the Plan, if applicable.

Short Form. Safe Harbor Matching Contributions shall be made on an annual basis.

- (f) **Interaction With Other Plan Provisions.** For any Plan Year in which the Plan relies on this Article instead of Subsection 2.7.2 to satisfy Code section 401(k)(3), the Plan is treated as having used Current Year Testing for purposes of Sections 2.7.1 and 2.7.2. The Plan cannot switch to Prior Year Testing under those Sections unless the Plan meets the requirements of Treasury Regulations section 1.401(k)-2(c)(1)(ii).

(g) **Suspension, Reduction, or Discontinuance of a Safe Harbor Matching Contribution option.**

- (1) Pursuant to the Treasury Regulations sections 1.401(k)-3(g) and 1.401(m)-3h) the Employer may elect to suspend, reduce, or discontinue the Safe Harbor Matching Contributions on Elective Deferrals provided:

- (A) all Eligible Employees are provided a notice of the suspension;
- (B) all Eligible Employees are given a reasonable opportunity (including a reasonable period after receipt of the notice), prior to the discontinuance of the Safe Harbor Matching Contributions, to change their cash or deferred elections and, if applicable, their Employee Contribution elections;
- (C) The Plan satisfies the Safe Harbor Matching Contribution requirement with respect to Safe Harbor Compensation paid through the effective date of the Amendment;
- (D) The ADP and/or the ACP test will be satisfied for the entire Plan Year in which the Safe Harbor Matching Contribution was reduced or suspended; using the current year testing method described in Treasury Regulations 1.401(k)-2(a)(2)(ii) and 1.401(m)-2(a)(1)(ii); and
- (E) The Plan must continue to provide Safe Harbor Matching Contributions on Elective Deferrals (or if applicable Voluntary Employee Contributions) until the effective date of the Amendment.

- (2) The Plan is no longer a safe harbor plan described in Code sections 401(k)(12), 401(k)(13), 401(m)(11), or 401(m)(12) for the entire Plan Year. Accordingly, the Plan is not described in section 416(g)(4)(H) of the Code and, thus, will be subject to the Top-Heavy rules under section 416.

- (h) **Suspension, Reduction or Discontinuance of a Safe Harbor Non-Elective Contribution option.** The Employer may elect to suspend, reduce, or discontinue the Safe Harbor Non-Elective Contribution option provided the Employer has incurred a substantial business hardship (comparable to a substantial business hardship described in Code section 412(c)).

- (1) For purposes of this subsection the factors taken into account in determining a substantial business hardship shall include (but shall not be limited to) whether or not:
 - (A) the Employer is operating at an economic loss,
 - (B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,
 - (C) the sales and profits of the industry concerned are depressed or declining, and
 - (D) it is reasonable to expect that the Plan will be continued only if the Safe Harbor Non-Elective Contributions are suspended.
- (2) The Employer may elect to suspend, reduce, or discontinue the Safe Harbor Non-Elective Contribution with an effective date on the later of the date that is 30 days after:
 - (A) all Eligible Employees are provided a notice of the suspension;
 - (B) Eligible Employees are given a reasonable opportunity (including a reasonable period after receipt of this notice) prior to the reduction or suspension of the Safe Harbor Non-Elective Contributions to change their cash or deferred elections and, if applicable, their Voluntary Employee Contribution elections;
 - (C) The Employer makes the Safe Harbor Non-Elective Contribution with respect to Safe Harbor Compensation paid through the effective date of the amendment. The Plan must pro-rate the otherwise applicable compensation limit under section 401(a)(17) of the Code in accordance with the requirements of section 1.401(a)(17)-1(b)(3)(iii)(A) of the Treasury Regulations
- (3) The Plan is no longer a safe harbor plan described in section 401(k)(12), 401(k)(13), 401(m)(11), or 401(m)(12) of the Code for the entire Plan Year. Accordingly, the Plan is not described in section 416(g)(4)(H) of the Code and, thus, will be subject to the top-heavy rules under section 416. Safe Harbor Matching Contributions and Safe Harbor Non-Elective Contributions are immediately nonforfeitable regardless of the age and service of the Participant, or whether the Participant is employed on a specific date.

(i) Interaction with the Top-Heavy Rules.

- (1) If the Plan is Top-Heavy, within the meaning of Subsection 2.6.2(c), an ADP Test Safe Harbor Non-Elective Contribution provided pursuant to Subsection 2.9.3(a) can be counted toward the Plan's Top-Heavy Minimum Contribution requirement. To the extent that the ADP Test Safe Harbor Non-Elective Contribution and other eligible Employer Contributions are less than the Plan's Top-Heavy Minimum Contribution requirement for a particular Participant, then that Participant must receive the an additional contribution sufficient to satisfy the applicable Top-Heavy Minimum Contribution requirement. Although for purposes of the ADP Test Safe Harbor Non-Elective Contribution, the Plan can limit a Participant's compensation to a portion of the Plan Year, the Plan must calculate the Top-Heavy Minimum Contribution using the Participant's compensation for the entire Plan Year.
- (2) Effective for Plan Years beginning after December 31, 2001, an ADP Test Safe Harbor Matching Contribution provided pursuant to Subsection 2.9.3(a) can be counted toward the Plan's Top-Heavy Minimum Contribution requirement. To the extent that the ADP Test Safe Harbor Matching Contribution and other eligible Employer Contributions are less than the Plan's Top-Heavy Minimum Contribution requirement for a particular Participant, then that Participant must receive the an additional contribution sufficient to satisfy the applicable Top-Heavy Minimum Contribution requirement.
- (3) If the Plan receives only Elective Deferrals, (including Catch-up Contributions) and contributions pursuant to this Article in a Plan Year, Code section 416(g)(4)(H) provides that the Plan will be deemed not to be Top-Heavy even if it would otherwise be considered a Top-Heavy Plan pursuant to Subsection 2.6.2(c). This rule is effective for Plan Years beginning after December 31, 2001. To meet this requirement for a particular Plan Year, no other Employer Contributions may be allocated to Participants for that Plan Year, including the allocation of any Forfeitures. In addition, all Matching Contributions must satisfy the requirements of Code section 401(m)(11).

- (j) This Article Governs.** To the extent that any other provision of the Plan is inconsistent with the provisions of this Article, the provisions of this Article shall govern.

2.9.2 Definitions.

- (a) **"Compensation"** is defined in Part I, Article II, except, for purposes of this Article, no dollar limit, other than the limit imposed by Code section 401(a)(17), applies to the Compensation of a Non-Highly Compensated Employee. However, solely for purposes of determining the Compensation subject to a Participant's deferral election, the Employer may use an alternative definition to the one described in the preceding sentence, provided such alternative definition is a reasonable definition within the meaning of Treasury Regulations section 1.414(s)-1(d)(2) and permits each Participant to elect sufficient Elective Deferrals to receive the maximum amount of Matching Contributions (determined using the definition of Compensation described in the preceding sentence) available to the Participant under the Plan.
- (b) **"Eligible Employee"** means an Employee eligible to make Elective Deferrals under the Plan for any part of the Plan Year or who would be eligible to make Elective Deferrals but for a suspension due to a Hardship distribution described in Section 2.5.10 or to statutory limitations, such as Code sections 402(g) and 415. The Employer may elect in the Adoption Agreement to exclude Participants from the ADP Safe Harbor or ACP Safe Harbor portion of the Plan who have not completed a Year of Service since their original Employment Commencement Date, or have not yet reached age 21, and are not employed on the earlier of the first day of the next Plan Year after meeting the preceding requirements or 6 months after meeting the preceding requirements.

2.9.3 ADP Test Safe Harbor Contributions.

- (a) **ADP Test Safe Harbor Contributions Options.** The Employer may elect in the Adoption Agreement to make a Qualified Automatic Contribution Arrangement, Basic or Enhanced Safe Harbor Matching Contributions, or Safe Harbor Non-Elective Contributions, for the Plan Year to this Plan in lieu of satisfying the ADP testing requirements under Sections 2.7.1 et Seq.

- (1) In the case where the Employer elects to make ADP Test Safe Harbor Contributions for the Plan Year, unless the Employer elects in the Adoption Agreement to make Enhanced Matching Contributions or Safe Harbor Non-Elective Contributions, the Employer will contribute for the Plan Year a Safe Harbor Matching Contribution to the Plan on behalf of each Eligible Employee equal to (i) one hundred percent (100%) of the amount of the Employee's Elective Deferrals that do not exceed three percent (3%) of the Employee's Compensation for the Plan Year, plus (ii) fifty percent (50%) of the amount of the Employee's Elective Deferrals that exceed three percent (3%) of the Employee's Compensation but that do not exceed five percent (5%) of the Employee's Compensation ("Basic Matching Contributions").
- (2) Notwithstanding the requirement in (a) above that the Employer make ADP Test Safe Harbor Contributions to this Plan, a non-standardized plan may provide in the Adoption Agreement that ADP Test Safe Harbor Contributions will be made to the defined contribution plan indicated in the Adoption Agreement. However, such contributions will be made to this Plan unless (i) each Employee eligible under this Plan is also eligible under the other plan and (ii) the other plan has the same plan year as this Plan.

Short Form. ADP Test Safe Harbor Contributions must be made to this Plan.

- (3) The Participant's Account balance derived from ADP Test Safe Harbor Contributions is nonforfeitable and may not be distributed earlier than separation from employment, death, Disability, an event described in Code section 401(k)(10), or, in the case of a profit sharing plan, the attainment of age fifty-nine and one-half (59-1/2). No distributions on account of Hardship are permitted. In addition, such contributions must satisfy the ADP Test Safe Harbor without regard to permitted disparity under Code section 401(l).
- (b) **Suspension of ADP Safe Harbor Contributions.** If the Plan is making Matching Contributions under Subsection (a), the Plan may be amended to reduce or eliminate such Contributions by complying with the requirements of Section 2.9.1

2.9.4 ACP Test Safe Harbor Matching Contributions.

- (a) In addition to the ADP Test Safe Harbor Contribution Options described in Subsection 2.9.3(a) of this Article, the Employer will make the ACP Test Safe Harbor Matching Contributions, if any, indicated in the Adoption Agreement for the Plan Year.
- (b) ACP Test Safe Harbor Matching Contributions will be vested as indicated in the Adoption Agreement, but, in any event, such contributions shall be fully vested at Normal Retirement Age, upon the complete or partial termination of the Plan, or upon the complete discontinuance of Employer Contributions. Forfeitures of nonvested ACP Test Safe Harbor Matching Contributions will be used to reduce the Employer's Contribution.

PART III

ARTICLE I

ACCOUNTING

3.1.1 Accounts. All income, profits, recoveries, contributions, and any and all moneys, securities, and properties of any kind at any time received or held by the Trustee shall be held as a commingled Trust Fund, except to the extent such assets are transferred to a Segregated Fund or Controlled Account. For accounting purposes, the Plan Administrator shall, as necessary, establish and maintain the following Accounts for each Participant:

- (a) Employer Account
- (b) Controlled Account
- (c) Elective Account
- (d) Matching Account
- (e) Qualified Matching Account
- (f) Qualified Non-Elective Account
- (g) Voluntary Account
- (h) Deductible Voluntary Account
- (i) Pre-tax Elective Account
- (j) Roth Deferral Account
- (k) Deemed IRA Account
- (l) Pre-tax IRA Account
- (m) Roth IRA Account
- (n) Rollover Account
- (o) ADP Test Safe Harbor Account
- (p) ACP Test Safe Harbor Account
- (q) Segregated Account
- (r) In-Plan Roth Conversion Account
- (s) Paid Time-Off Contribution Account

If, to fulfill any purposes of the Plan, assets are either deposited initially or transferred to a Segregated Fund for the benefit of a Participant, the Plan Administrator shall establish and maintain a Segregated Account for the Participant. If a Participant elects to exercise investment control over all or a portion of his Accounts, the Plan Administrator shall establish and maintain a Controlled Account for the Participant.

3.1.2 Valuation Adjustments.

- (a) As of each Valuation Date, the following adjustments shall be made to each Participant's Accounts in a manner consistent with the Plan's recordkeeping system:
 - (1) **Distributions.** Any distribution made to or on behalf of a Participant since the last preceding Valuation Date shall be deducted from the Participant's Account from which the distribution was made.
 - (2) **Expenses.** Expenses earmarked for an individual Participant, if any, shall reduce his Account balance.
 - (3) **Contributions.** Each Participant's Account shall be increased by his portion of any Employer Contributions, Non-Elective Contributions, other contributions to the Plan by the Employer, Elective Deferrals, any allocated Forfeitures, and any other contributions made on behalf of the Participant.
 - (4) **Forfeitures.** If a Participant terminates employment with the Employer, is less than one hundred percent (100%) vested, and forfeits the non-vested portion of his Account, then his Account and the amount available for distribution shall be reduced by the amount of such Forfeiture. To the extent that the Plan provides additional allocations from Forfeitures, the Accounts of those eligible for such an allocation will increase.
 - (5) **Adjustment to Fair Market Value.** The Trustee shall appraise all moneys, securities, and other property in the Trust Fund, including Segregated Funds and Controlled Accounts but excluding Life Insurance Policies, at the then fair market value for each asset. In determining such value, all income and contributions, if any, received by the Trustee from the Employer or Participants shall be included and all expenses shall be deducted, such amounts being determined under the accounting method of the Trust. If the total net value so determined by the Trustee exceeds (or is less than) the total amount in the respective Accounts of all Participants, the excess (or deficiency) shall be added to (or deducted from) the respective Accounts of all Participants in the ratio

that each such Participant's Account bears to the total amount in all such Accounts.

- (6) **Insurance.** If this Plan is funded by individual contracts that provide a Participant's benefit under the Plan, such individual contracts shall constitute the Participant's Account balance. If this Plan is funded by group annuity contracts or group insurance contracts, premiums or other consideration received by the insurance company must be allocated to Participants' Accounts under the Plan. Payments made since the last preceding Valuation Date for Life Insurance Policies on the life of a Participant or someone in whom the Participant has an insurable interest (including without limitation payments of premiums and interest on policy loans) shall be deducted from the Account of the Participant from which the payment was made. Dividends or credits received since the last preceding Valuation Date on any Life Insurance Policy shall be added to the Account of the Participant from which the premiums for such Life Insurance Policy have been paid.
- (7) **Loans.** The issuance of a loan to a Participant reduces the Account from which it is issued and increases the Participant's outstanding loan obligation. Loan repayments, including principal and interest, shall increase the Account to which the repayment is made and decrease the outstanding loan obligation.
- (8) **Transfers To or From Segregated Funds.** To the extent that funds are transferred to a Segregated Fund from the general assets of the Trust or from a Segregated Fund to the general assets of the Trust pursuant to any of the provisions of the Plan, the Account from which the funds were transferred shall be decreased and the Account to which the funds were transferred shall be increased for each affected Participant.
- (b) Every adjustment made pursuant to this Section shall be considered as having been made no later than the applicable Valuation Date pursuant to policies established by the Trustee in a nondiscriminatory manner. The Trustee's determination regarding the valuation of assets and charges or credits to the individual Accounts of the respective Participants shall be conclusive and binding on all persons. If funds are transferred from the Trust Fund to a Segregated Fund as of any date other than a Valuation Date pursuant to the terms of the Plan, the adjustment made pursuant to this Section shall be made as of the date such transfer was made, as if such date is a Valuation Date. If any Participant receives a distribution pursuant to the terms of the Plan as of any date other than a Valuation Date, then the adjustments made pursuant to this Section shall be made in the manner specified in the Adoption Agreement.

Short Form. Adjustments for distributions made between Valuation Dates shall not be made. Distributions will be valued as of the preceding Valuation Date.

3.1.3 Allocation of Earnings, Gains, and Losses. As of each Valuation Date, the net income of the Trust Fund recognized since the prior Valuation Date will be allocated among Participant Accounts in a nondiscriminatory manner according to policies established by the Trustee. Net income is the interest, dividends, net gains or losses from the sale of investments, and unrealized appreciation (depreciation) in Trust Fund assets, less investment expenses of the Trust Fund. The portion of a Participant's Account held in a Controlled Account shall not participate in the allocation of earnings of this Section, but instead shall be credited with the actual earnings of such Controlled Account. In the event that the Participant's Accounts (or portion thereof) are invested in assets that are valued on a daily basis, his Account shall reflect the daily activity of such assets and the method of allocating earnings described above shall not apply.

Short Form. Earnings will be credited solely as of the immediately preceding Valuation Date to Participants who receive distributions on any date other than a Valuation Date.

3.1.4 Interim Valuations. It is contemplated that the Trust Fund will be valued by the Trustee and allocations made only on a Valuation Date. At any time that the Plan's valuations are not performed on a daily basis, should it be necessary to make distributions under the provisions hereof and the Plan Administrator in good faith determines that, because of (a) an extraordinary change in general economic conditions, (b) the occurrence of some casualty materially affecting the value of the Trust Fund or a substantial part thereof, or (c) a significant fluctuation in the value of the Trust Fund has occurred since the immediately preceding Valuation Date, the Plan Administrator may, in his sole discretion, exercised in a nondiscriminatory manner, prevent the payee from receiving a substantially greater or lesser amount than what he would be entitled to, based on current values, and cause a re-valuation of the Trust Fund to be made and a reallocation of the interests therein as of the date the payee's right of distribution becomes fixed. The Plan Administrator's determination to make such special valuation and the valuation of the Trust Fund as determined by the Trustee shall be conclusive and binding on all persons ever interested hereunder. Such interim valuation shall not discriminate in favor of Highly Compensated Employees.

3.1.5 Earnings on Forfeitures In the event that a Participant forfeits part of his Account balance, such Forfeiture shall not be credited with earnings after the date the Forfeiture is recognized pursuant to Section 2.4.4.

3.1.6 Plan Expenses Reasonable expenses for administration, investments, and processing shall be charged against the Trust Fund earnings, paid by the Employer, or allocated among terminated and active Participants according to an expense policy adopted by the Employer and applied in a uniform manner consistent with DOL and Treasury regulations.

ARTICLE II

LIMITATIONS

3.2.1 Limitations on Annual Additions. The Annual Additions contributed or allocated to a Participant's Account for a Limitation Year shall not exceed the Maximum Permissible Amount, as determined in Section 3.2.2. If the total amounts contributed or allocated would otherwise produce Annual Additions in excess of the Maximum Permissible Amount, the allocations or contributions shall be reduced pursuant to Section 3.2.3 so that the Annual Additions for the Limitation Year equal the Maximum Permissible Amount.

If a Participant participates in, or has ever participated in, any of the following types of plans or funds maintained by the Employer, then the Annual Additions derived from the allocations of all such plans and this Plan credited to a Participant shall not exceed the lesser of the Maximum Permissible Amount for the Limitation Year or any other limitation contained in the Plan:

- (a) Another qualified defined contribution plan;
- (b) A welfare benefit fund, as defined in Code section 419(e), under which amounts attributable to post-retirement medical benefits are held in separate accounts for Key Employees;
- (c) An individual medical account, as defined in Code section 415(l)(2); or
- (d) A simplified employee pension, as defined in Code section 408(k)

If such Annual Additions exceed the Maximum Permissible Amount for the Limitation Year, the amounts contributed or allocated shall be reduced in accordance with Section 3.2.4 so that the Annual Additions under all such plans and funds for the Limitation Year will equal the Maximum Permissible Amount.

3.2.2 Determination of Annual Additions and Maximum Permissible Amount.

- (a) **Annual Additions.** The term "Annual Additions" shall mean the sum of the following amounts credited to a Participant's Accounts for the Limitation Year:
- (1) Employer Contributions;
 - (2) Employee contributions;
 - (3) Forfeitures;
 - (4) Excess Elective Deferrals, Excess Contributions and Excess Aggregate Contributions;
 - (5) Amounts allocated after March 31, 1984, to an individual medical account, as defined in Code section 415(l)(2), that is part of a pension or annuity plan maintained by the Employer;
 - (6) Amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, that are attributable to post-retirement medical benefits held in separate accounts for Key Employees under a welfare benefit fund as defined in Code section 419(e), maintained by the Employer; and
 - (7) Allocations under a simplified employee pension as defined in Code section 408(k).

For this purpose, Excess Elective Deferrals are disregarded to the extent distributed to the Participant. Excess Contributions and Excess Aggregate Contributions are included even if distributed to the Participant. Any other amounts are disregarded if they are held in a suspense account or reallocated to other Participants in accordance with Section 3.2.3. Any excess amounts applied under Section 3.2.3 to reduce Employer Contributions in a Limitation Year are considered Annual Additions for such Limitation Year.

Exception for Restorative Payments. Restorative payments allocated to a Participant's Account, which include payments made to restore losses to the Plan resulting from actions (or a failure to act) by a Fiduciary for which there is a reasonable risk of liability under Title I of ERISA or under other applicable federal or state law, where similarly situated Participants are similarly treated, do not give rise to an Annual Addition for any Limitation Year.

If, in a particular Limitation Year, the Employer contributes an amount to an Employee's account with respect to a prior Limitation Year and such contribution is required by reason of a Period of Qualified Military Service, then such contribution is not considered an Annual Addition with respect to the Employee for that particular Limitation Year in which the contribution is made, but, in accordance with section 414(u)(1)(B) of the Code, is considered an Annual Addition for the Limitation Year to which the contribution relates.

- (b) **Maximum Permissible Amount.** Except for Catch-up Contributions, the term "Maximum Permissible Amount" shall mean, for any Limitation Year beginning on or after January 1, 2002, the lesser of:
- (1) Forty thousand dollars (\$40,000), as adjusted for increases in the cost-of-living under Code section 415(d), or
 - (2) One hundred percent (100%) of a Participant's compensation, as defined in Subsection 3.2.5(a), for the Limitation Year.

The compensation limit referred to in (2) above shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code sections 401(h) or 419A(f)(2)) that is otherwise treated as an Annual Addition.

Prior to determining a Participant's actual Compensation for a Limitation Year, the Employer may determine the Maximum Permissible Amount for the Participant based on a reasonable estimate of the Participant's Compensation for the Limitation Year, uniformly determined for all Participants similarly situated. As soon as is administratively feasible after the end of the Limitation Year, the Employer shall determine the Maximum Permissible Amount for the Limitation Year based on the Participant's actual Compensation for the Limitation Year.

(c) **Short Limitation Year.** If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve (12) consecutive month period, the limitation determined in subsection (b)(1) above shall be multiplied by a fraction, the numerator of which is the number of months in the short Limitation Year and the denominator of which is twelve (12). Any new Limitation Year must begin within the Limitation Year in which the amendment is made.

3.2.3 Excess Annual Additions. If, due to the allocation of Forfeitures, a reasonable estimation of a Participant's Compensation that exceeds his actual Compensation, or a miscalculation in a Participant's Elective Deferrals, a Participant's Annual Additions exceed his Maximum Permissible Amount for the Limitation Year, the Employer must correct such amount using the methods permitted in the Employer Compliance Resolution System defined in Revenue Procedure 2008-50 as amended from time to time.

3.2.4 Participation in Certain Other Plans. If the Annual Additions with respect to the Participant under such other plans and funds maintained by the Employer are less than the Maximum Permissible Amount and the Employer Contribution that would otherwise be contributed or allocated to the Participant's Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated shall be reduced so that the Annual Additions under all such plans and funds for the Limitation Year shall equal the Maximum Permissible Amount. If the Annual Additions with respect to the Participant under such other plans and funds in the aggregate are equal to or greater than the Maximum Permissible Amount, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.

If a Participant's Annual Additions under this Plan and such other plans and funds maintained by the Employer would result in an excess amount for a Limitation Year, such excess shall be distributed or reallocated according to the provisions of Section 3.2.3, and the excess amount shall be deemed to consist of the Annual Additions last allocated. In addition, allocations to qualified defined contribution plans shall be adjusted first, followed by adjustments to allocations to a simplified employee pension, followed by adjustments to allocations to an individual medical account, followed by adjustments to allocations to a welfare benefit fund, as those terms are referenced in Section 3.2.1.

If the excess amount was allocated to a Participant on an allocation date of this Plan that coincides with an allocation date of another plan, the excess amount attributed to this Plan will be the product of:

- (i) The total excess amount allocated as of such date, times
- (ii) The ratio of (I) the Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan to (II) the total Annual Additions allocated to the Participant for the Limitation Year as of such date under this and all the other qualified prototype defined contribution plans. Any excess amount attributed to this Plan will be disposed in the manner described in Section 3.2.3.

If the Participant is covered under another qualified defined contribution plan maintained by the Employer that is not a prototype plan, Annual Additions that may be credited to the Participant's Account under this Plan for any Limitation Year shall be limited as provided above as though the other plan were a prototype plan unless the Employer specifies other limitations in the Adoption Agreement.

For purposes hereof, the excess amount is the excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount and a prototype plan is a plan the form of which is the subject of a favorable opinion letter from the Internal Revenue Service.

3.2.5 Definitions. For purposes of this Article, the terms below have the following meanings:

- (a) **Compensation.** As elected by the Employer in the Adoption Agreement, Compensation shall mean all of a Participant's:
 - (i) **Wages, Tips, and Other Compensation Box on Form W-2.** Compensation includes Information required to be reported under sections 6041, 6051, and 6052 of the Code. Compensation is defined as wages, within the meaning of section 3401(a) of the Code, and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee written statement under sections 6041(d), 6051(a)(3), and 6052 of the Code. Compensation shall be determined without regard to any rules under section 3401(a) of the Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(2) of the Code).
 - (ii) **Section 3401(a) Wages.** Wages as defined in Code section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(2) of the Code).
 - (iii) **Section 415 Simplified Compensation.** Wages, salaries, differential wage payments under section 3401(h) of the Code and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment for the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including but not limited to commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in Treasury Regulations section 1.62-2(c) of the Code), but excluding items described in Section 3.2.5(iv)(II)(A) through (E).
 - (iv) **Section 415 Compensation.** Except as otherwise provided in this Subparagraph (iv) Section 415 Compensation shall mean, compensation from the Employer within the meaning of section 415(c)(3) of the Code, which is used for purposes of section 415 and regulations promulgated under section 415, and includes all items of remuneration described in SubParagraph (iv)(I) of this section, but excludes the items of remuneration described in SubParagraph (iv)(II) of this section. Paragraphs (i) (ii) and (iii) of this section provides safe harbor definitions of Compensation that are permitted to be provided in the Plan in lieu of the generally applicable definition of compensation contained in this Paragraph (iv).
 - (I) **Items Includible As Compensation.** For purposes of applying the limitations of section 415, except as otherwise provided in this section, the term compensation means remuneration for services of the following types:
 - (A) The Employee's wages, salaries, fees for professional services, and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan, to the extent that the amounts are includible in gross income (or to the extent amounts would have been received and includible in gross income but for an election under sections 125(a), 132(f)(4), 402(e)(3),

402(h)(1)(B), 402(k), or 457(b) of the Code). These amounts include, but are not limited to, commissions paid to salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan as described in Section 1.62-2(c) of the Code.

- (B) In the case of an Employee who is an Employee within the meaning of section 401(c)(1) of the Code and regulations promulgated thereunder, the Employee's Earned Income (as described in section 401(c)(2) of the Code and regulations promulgated thereunder), plus amounts deferred at the election of the Employee that would be includible in gross income but for the rules of sections 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Code.
- (C) Amounts described in sections 104(a)(3), 105(a), or 105(h) of the Code, but only to the extent that these amounts are includible in the gross income of the Employee.
- (D) Amounts paid or reimbursed by the Employer for moving expenses incurred by an Employee, but only to the extent that at the time of the payment it is reasonable to believe that these amounts are not deductible by the Employee under section 217 of the Code.
- (E) The value of a nonstatutory option (which is an option other than a statutory option as defined in section 1.421-1(b) of the Treasury Regulations) granted to an Employee by the Employer, but only to the extent that the value of the option is includible in the gross income of the Employee for the taxable year in which granted.
- (F) The amount includible in the gross income of an Employee upon making the election described in section 83(b) of the Code.
- (G) Amounts that are includible in the gross income of an Employee under the rules of section 409A or section 457(f)(1)(A) of the Code or because the amounts are constructively received by the Employee.

(II) Items Not Includible As Compensation.

- (A) Contributions (other than elective contributions described in sections 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b) of the Code) made by the Employer to a plan of deferred compensation (including a simplified employee pension described in section 408(k) of the Code or a simple retirement account described in section 408(p) of the Code, and whether or not qualified) to the extent that the contributions are not includible in the gross income of the Employee for the taxable year in which contributed. In addition, any distributions from a plan of deferred compensation (whether or not qualified) are not considered as compensation for section 415 purposes, regardless of whether such amounts are includible in the gross income of the Employee when distributed. However, if the Plan so provides, any amounts received by an Employee pursuant to a nonqualified unfunded deferred compensation plan are permitted to be considered as compensation for section 415 purposes in the year the amounts are actually received, but only to the extent such amounts are includible in the Employee's gross income.
- (B) Amounts realized from the exercise of a nonstatutory option (which is an option other than a statutory option as defined in section 1.421-1(b) of the Treasury Regulations), or when restricted stock or other property held by an Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture (see section 83 of the Code and regulations promulgated thereunder).
- (C) Amounts realized from the sale, exchange, or other disposition of stock acquired under a statutory stock option (as defined in section 1.421-1(b) of the Code).
- (D) Other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the Employee and are not salary reduction amounts that are described in section 125 of the Code).
- (E) Other items of remuneration that are similar to any of the items listed in SubParagraphs (I)(A) through (I)(E) of this section.

Notwithstanding the preceding sentence, if elected in the Adoption Agreement, Compensation for a Participant who is permanently and totally disabled (as defined in Code section 22(e)(3)) is the Compensation such Participant would have received for the Limitation Year if the Participant had been paid at the rate of Compensation paid immediately before becoming permanently and totally disabled.

Short Form Standardized. A Participant's Compensation shall be equal to total compensation defined in Section 3.2.5(a)(iv) above that is actually paid to the Participant by the Employer during the Limitation Year. In the case of a Self-Employed Individual, Compensation means Earned Income during such period. Compensation for a Participant's initial year of participation shall be Compensation from the Participant's Entry Date. For Limitation Years beginning after December 31, 1991, for purposes of applying the limitations of this Article, Compensation for a Limitation Year is the Compensation actually paid or made available during such Limitation Year. No Compensation shall be imputed to a Disabled Participant.

- (b) For Limitation Years beginning on or after July 1, 2007, or such earlier date as specified in the Adoption Agreement, Compensation for a Limitation Year shall also include Compensation paid by the later of 2-1/2 months after an Employee's severance from employment with the Employer or the end of the Limitation Year that includes the date of the Employee's severance from employment with the Employer, if:
 - (i) the payment is regular Compensation for services during the Employee's regular working hours, or Compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a severance from employment, the payments would have been paid to the Employee while the Employee continued in employment with the Employer; or, if the Employer so elects in the Adoption Agreement;

Or, if the Employer so elects in the Adoption Agreement,

- (ii) the payment is for unused accrued bona fide sick, vacation or other leave that the Employee would have been able to use if employment had continued; or

- (iii) the payment is received by the Employee pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includible in gross income.

Any payments not described above shall not be considered Compensation if paid after severance from employment, even if they are paid by the later of 2-1/2 months after the date of severance from employment or the end of the Limitation Year that includes the date of severance from employment, except, if elected by the Employer in the Adoption Agreement, Compensation paid to a Participant who is permanently and totally disabled, as defined in section 22(e)(3) of the Code, provided, as elected by the Employer in the Adoption Agreement, salary continuation applies to all Participants who are permanently and totally disabled for a fixed or determinable period, or the Participant was not a Highly Compensated Employee, as defined in Part 1 Article 2 of the Plan immediately before becoming disabled.

Back pay, within the meaning of section 1.415(c)-2(g)(8) of the Treasury Regulations, shall be treated as Compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and Compensation that would otherwise be included under this definition.

Compensation paid or made available during a Limitation Year shall include amounts that would otherwise be included in Compensation but for an election under sections 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Code.

Unless the Employer elects otherwise in the Adoption Agreement, Compensation shall not include Deemed 125 Compensation. Deemed section 125 Compensation is an amount that is excludable under section 106 of the Code that is not available to Participant in cash in lieu of group health coverage under a section 125 arrangement solely because the Participant is unable to certify that he or she has other health coverage. Amounts are Deemed section 125 Compensation only if the Employer does not request or otherwise collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

If elected by the Employer in the Adoption Agreement, Compensation shall not include amounts paid as Compensation to a nonresident alien, as defined in section 7701(b)(1)(B) of the Code, who is not a Participant in the Plan to the extent the Compensation is excludable from gross income and is not effectively connected with the conduct of a trade or business within the United States.

- (c) **Certain de minimis timing differences.** Notwithstanding the provisions of this Section 3.2.5, the Employer may elect in the Adoption Agreement whether to include in Compensation for the Limitation Year amounts earned during the Limitation Year but not paid during the Limitation Year solely because of the timing of pay periods and pay dates if:
 - (i) These amounts are paid during the first few weeks of the next Limitation Year;
 - (ii) The amounts are included on a uniform and consistent basis with respect to all similarly situated Employees; and
 - (iii) No Compensation is included in more than one Limitation Year.
- (d) **Employer.** Employer shall mean the employer that adopts this Plan and all members of a group of employers that constitutes a controlled group of corporations or trades or businesses under common control (as defined in Code sections 414(b) and (c), as modified by Code section 415(h)), or an affiliated service group (as defined in Code section 414(m)) of which the adopting employer is part and any other entity required to be aggregated with the Employer under Code section 414(o) and the regulations issued thereunder.

3.2.6 Controlled Businesses. If this Plan provides contributions or benefits for one or more Owner-Employees who control both the business for which this Plan is established and one or more other trades or businesses, this Plan must, when looked at as a single plan, satisfy Code section 401(a), and contributions on behalf of any Owner-Employee may be made only with respect to the Earned Income of such Owner-Employee that is derived from the trade or business with respect to which this Plan is established.

ARTICLE III

FIDUCIARIES

3.3.1 Standard of Conduct. The duties and responsibilities of the Plan Administrator with respect to the Plan shall be carried out (a) in a non-discriminatory manner; (b) for the exclusive benefit of Participants and their Beneficiaries; (c) by defraying the reasonable expenses of administering the Plan; (d) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; (e) by diversifying the investments of the Plan to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and (f) in accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with the provisions of the Act.

3.3.2 Individual Fiduciaries. At any time that a group of individuals is acting in the same Fiduciary capacity, the Employer shall determine the number of such persons who shall act in such capacity from time to time. Such persons shall be appointed by the Employer and may or may not be Participants or Employees of the Employer. Unless otherwise provided for by agreement or by direction of the Employer, any action taken by a group of individuals acting as Plan Administrator shall be taken at the direction of a majority of such persons, or, if the number of such persons is two (2), by unanimous consent.

3.3.3 Disqualification from Service. No person shall be permitted to serve as a Fiduciary, custodian, counsel, agent, or employee of the Plan or as a consultant to the Plan who has been convicted of any of the criminal offenses specified in the Act.

3.3.4 Bonding. Except as otherwise permitted by law, every Fiduciary or other person who handles funds or other property or assets of the Plan shall be bonded in accordance with the requirements of the Act.

3.3.5 Prior Acts. No Fiduciary shall be liable for any acts occurring prior to the period of time during which the Fiduciary was actually serving in such capacity with respect to the Plan.

3.3.6 Insurance and Indemnity. The Employer may purchase or cause the Trustee to purchase and keep current as an authorized expense liability insurance for the Plan, its Fiduciaries, and any other person to whom any financial or other administrative responsibility with respect to the Plan and the Trust is allocated or delegated, from and against any and all liabilities, costs, and expenses incurred by such persons as a result of any act or omission to act in connection with the performance of the duties, responsibilities, and obligations under the Plan and under the Act; provided that any such insurance policy purchased with Plan assets permits subrogation by the insurer against the Fiduciary in the case of breach by such Fiduciary.

Unless otherwise determined and communicated to affected parties by the Employer, the Employer shall indemnify and hold harmless each such person, other than a corporate trustee, for and from any such liabilities, costs, and expenses that are not covered by any such insurance, except to the extent that any such liabilities, costs, or expenses are judicially determined to be due to the gross negligence or willful misconduct of such person. No Plan assets may be used for any such indemnification.

3.3.7 Expenses. Expenses incurred by the Plan Administrator or the Trustee in the administration of the Plan and the Trust, including appropriate fees for legal services regarding the Plan, such compensation to the Trustee as may be agreed upon in writing from time to time between the Employer and the Trustee, and all other proper charges and expenses of the Plan Administrator or the Trustee and of their agents and counsel shall be paid by the Employer, or at its election at any time or from time to time, may be charged against the assets of the Trust, but until so paid shall constitute a charge upon the assets of the Trust.

The Trustee shall have the authority to charge the Trust Fund for its compensation and reasonable expenses unless paid or contested by written notice by the Employer within sixty (60) days after mailing of the written billing by the Trustee. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon the assets of the Trust or the income thereof shall be paid from such assets. Notwithstanding the foregoing, no compensation shall be paid to any Employee for services rendered under the Plan and the Trust as a Trustee.

3.3.8 Agents, Accountants, and Legal Counsel. The Plan Administrator shall have authority to employ suitable agents, custodians, investment counsel, accountants and legal counsel who may, but need not be, legal counsel for the Employer. The Plan Administrator and the Trustee shall be fully protected in acting upon the advice of such persons. The Trustee shall at no time be obliged to institute any legal action or to become a party to any legal action unless the Trustee has been indemnified to the Trustee's satisfaction for any fees, costs, and expenses to be incurred in connection therewith.

3.3.9 Investment Manager. Any fiduciary (other than the trustee or named fiduciary as defined in section 402(a)(2) of ERISA):

- (a) who has the power to manage, acquire, or dispose of any asset of the plan; and
- (b) who (i) is registered as an investment advisor under the Investment Advisers Act of 1940; (ii) is not registered as an investment adviser under such Act by reason of paragraph (1) of section 203A(a) of such act, is registered as an investment adviser under the laws of the State (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary's registration under the laws of such State, also filed a copy of such form with the Secretary; (iii) is a bank, as defined in the Act; or (iv) is an insurance company qualified to perform services described in subparagraph (a) under the laws of more than one State; and
- (c) has acknowledged in writing that he is a fiduciary with respect to the Plan.

In the event an investment manager is so appointed, the Trustee shall not be liable for the acts or omissions of such investment manager or be under any obligation to invest or otherwise manage that part of the Trust Fund that is subject to the management of the investment manager. The Employer shall notify the Trustee in writing of any appointment of an investment manager, and shall provide the Trustee with the investment manager's written acknowledgment that it is a Fiduciary with respect to the Plan

3.3.10 Finality of Decisions or Acts. Except for the right of a Participant or Beneficiary to appeal the denial of a claim, any decision or action of the Plan Administrator or the Trustee made or done in good faith upon any matter within the scope of authority and discretion of the Plan Administrator or the Trustee shall be final and binding upon all persons. In the event of judicial review of actions taken by any Fiduciary within the scope of his duties in accordance with the terms of the Plan and the Trust, such actions shall be upheld unless determined to have been

arbitrary and capricious.

3.3.11 404(c) Election. The Employer may designate in the Adoption Agreement that this Plan is intended to be administered pursuant to Labor Regulations section 2550.404c-1 as an ERISA section 404(c) Plan.

ARTICLE IV

PLAN ADMINISTRATOR

3.4.1 Administration of Plan. The Employer shall designate the Plan Administrator from time to time. The primary responsibility of the Plan Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Plan Administrator shall administer the Plan and shall construe and determine all questions of interpretation or policy in his sole discretion, exercised in a nondiscriminatory manner. The Plan Administrator may correct any defect, supply any omission, or reconcile any inconsistency in such manner and to such extent as he shall deem necessary or advisable to carry out the purpose of the Plan; provided, however, that any interpretation or construction shall be done in a nondiscriminatory manner and shall be consistent with the intent that the Plan shall continue to be a qualified Plan pursuant to the Code, and shall comply with the terms of the Act. The Plan Administrator shall have all powers necessary or appropriate to accomplish his duties under the Plan.

- (a) The Plan Administrator shall be responsible for the general administration of the Plan, including but not limited to the following duties:
- (1) To determine all questions relating to the eligibility of an Employee to participate in the Plan or to remain a Participant in the Plan.
 - (2) To compute, certify, and direct the Trustee with respect to the amount and kind of benefits to which any Participant is entitled.
 - (3) To collect all contributions or other payments, as applicable, and transfer them to the Trustee.
 - (4) To authorize and direct the Trustee with respect to all disbursements from the Trust Fund.
 - (5) To maintain all the necessary records for the administration of the Plan.
 - (6) To interpret the provisions of the Plan and to make and publish rules and regulations for the Plan as the Plan Administrator may deem reasonably necessary for the proper and efficient administration of the Plan and consistent with its terms.
 - (7) To select the Insurer to provide any Life Insurance Policy to be purchased for any eligible Participant.
 - (8) To advise the Fiduciary responsible for Plan investments regarding the short and long-term liquidity needs of the Plan in order that the Fiduciary might direct its investment accordingly.
 - (9) To advise, counsel, and assist any Participant regarding any rights, benefits, or elections available under the Plan.
 - (10) To instruct the Trustee regarding the management, investment, and reinvestment of the Trust Fund unless the investment authority has been delegated to the Trustee or an investment manager.
- (b) The Plan Administrator shall also be responsible for preparing and filing such annual disclosure reports and tax forms as may be required from time to time by the Secretary of Labor, the Secretary of the Treasury, or other governmental authorities.
- (c) Whenever the Plan Administrator determines it is in the best interest of the Plan and its Participants or Beneficiaries, the Plan Administrator may request such variances, deferrals, extensions, or exemptions or make such elections for the Plan as may be available under the law.
- (d) The Plan Administrator shall procure bonding for all persons dealing with the Plan or its assets as may be required by law.

3.4.2 Disclosure Requirements. Every Participant covered under the Plan and every Beneficiary receiving benefits under the Plan shall receive from the Plan Administrator a summary plan description and such other information as may be required by law or by the terms of the Plan.

3.4.3 Information Generally Available. The Plan Administrator shall make copies of this Plan and the Trust, the Adoption Agreement, the summary plan description, latest annual report, Life Insurance Policies, or other instruments under which the Plan was established or is operated available for examination by any Participant or Beneficiary in the principal office of the Plan Administrator and such other locations as may be necessary to make such information reasonably accessible to all interested parties. Subject to a reasonable charge to defray the cost of furnishing such copies, the Plan Administrator shall, upon written request of any Participant or Beneficiary, furnish a copy of any of the above documents to the respective party.

3.4.4 Statement of Account. Upon written request to the Plan Administrator once during any twelve (12) month period, a Participant or Beneficiary shall be furnished with a written statement, based on the latest available information, of his then vested Account balance and the earliest date upon which the same will become fully vested and nonforfeitable. The statement shall also include a notice to the Participant of any benefits that are forfeitable if the Participant dies before a certain date.

3.4.5 Explanation of Rollover Treatment. The Plan Administrator shall, when making a distribution eligible for rollover treatment, provide a written explanation to the recipient of the provisions under which such distribution will not be subject to tax if transferred to an Eligible Retirement Plan within sixty (60) days after the date on which the recipient received the distribution and, if applicable, the provisions of law pertaining to the tax treatment of lump sum distributions.

3.4.6 Electromechanical Communications. Electromechanical communications are permitted, but not required, among all parties to a communication regarding the Plan, including the Employer, Trustee, Plan Administrator, and Participant. Each Plan Fiduciary may adopt policies to govern its use of electromechanical communications, including policies developed by third parties working with the Fiduciary on Plan matters. Effective for Plan Years beginning on or after 2007 for Participants' elections and notices done through an electronic medium, the Plan must satisfy section 1.401(a)-21 of the Treasury regulations.

The Trustee (or other agent appointed for this purpose) may, but is not required to, act upon receipt of directions (including, without limitation, directions pursuant to voice response systems, facsimile, or other electromechanical means) with regard to all Plan transactions. The Trustee may comply with such direction and will incur no liability for doing so. If the Trustee permits the use of electromechanical directions, the giving of such directions shall have the same meaning as if the directions were in writing and delivered as a document.

In the sole judgment of the Plan Administrator, if any Participant or Beneficiary entitled to benefits is not capable of managing his benefits under the Plan, any election that may be made by a Participant or Beneficiary may be made by the legal representative of such individual.

If the Plan Administrator, in his sole discretion, exercised in a nondiscriminatory manner, is not satisfied with the power of a legal representative to act on behalf of a Participant or Beneficiary, the Plan Administrator may require an order of a court of competent jurisdiction.

3.4.7 Elections on Behalf of an Incapacitated Person. . In the sole judgment of the Plan Administrator, if any person entitled to benefits under the Plan is incapacitated, any election that such person is permitted to make under the Plan may be made by the legal representative of such person.

If the Plan Administrator, in its sole discretion, exercised in a nondiscriminatory manner, is not satisfied with the power of a legal representative to act on behalf of a person, the Plan Administrator may require an order from a court of competent jurisdiction.

ARTICLE V

PARTICIPANT LOANS

3.5.1 Authorization. If the Employer elects in the Adoption Agreement to permit loans to Participants or Beneficiaries, the Plan Administrator shall establish a Participant loan program in compliance with Treasury Regulations and Labor Regulations section 2550.408b. The terms of such Participant loan program shall be in writing and shall constitute part of the Plan. Such terms shall include:

- (a) The identity of the person or positions authorized to administer the Participant loan program;
- (b) A procedure for applying for loans;
- (c) The basis on which loans will be approved or denied;
- (d) Limitations (if any) on the loan amount available, the number of loans, and the permitted purposes for a loan;
- (e) The procedure under the program for determining a reasonable rate of interest;
- (f) The types of collateral that may secure a Participant loan; and
- (g) The events constituting default and the steps that will be taken to preserve Plan assets in the event of default.

Short Form. Plans based on the Short Form Standardized Adoption Agreement permit loans to Participants.

3.5.2 Spousal Consent. Subject to Subsection 2.5.5(c), a Participant must obtain the written consent of his spouse, if any, to the use of the Participant's interest in the Plan as security for a Participant loan within ninety (90) days before the date on which the loan is to be so secured, unless the Participant establishes the consent of the spouse cannot be obtained or the total value of the Participant's Accounts is less than \$5,000. A new consent must be obtained whenever the amount of the loan is increased or if the loan is renegotiated, extended, renewed, or otherwise revised. The consent must acknowledge the effect of such consent and be witnessed by a Plan representative or a notary public. Such consent shall thereafter be binding with respect to the consenting spouse or any subsequent spouse with respect to that loan.

If a valid spousal consent has been obtained, then notwithstanding any other provision of the Plan, the portion of the Participant's vested Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than the entire amount of the Participant's vested Account balance (determined without regard to the preceding sentence) is payable to the surviving spouse, the Account balance shall first be reduced by the amount of the security used as repayment of the loan before determining the benefit payable to each Beneficiary, including the surviving spouse.

3.5.3 Limitations. Except as provided in the Participant loan program, in no event shall the amount loaned to any Participant or Beneficiary, when added to the outstanding balance of all other loans to the Participant or Beneficiary, exceed the lesser of (a) fifty thousand dollars (\$50,000.00) (reduced by the excess, if any, of the highest outstanding balance of loans from the Plan during the one-year period ending on the day before the date on which the loan was made over the outstanding balance of loans from the Plan on the date on which such loan was made) or (b) one-half (-1/2) of the vested and nonforfeitable interest in his Accounts, determined as of the Valuation Date coinciding with or immediately preceding such loan or ten thousand dollars (\$10,000), if greater.

For purposes hereof, all loans from all plans of the Employer and other members of a group of employers described in Code sections 414(b), (c), (m), and (o) shall be aggregated. All loans must be adequately secured and bear a reasonable interest rate. No Participant loan shall exceed the present value of the Participant's vested Account balance. In the event of a default, foreclosure on the note evidencing the loan and attachment of the security shall not occur until a distributable event occurs.

3.5.4 Availability. If loans are authorized in the Adoption Agreement, they must be available to all Participants and Beneficiaries on a reasonably equivalent basis without regard to any individual's race, color, religion, sex, age, or national origin. Loans shall not be made available to Highly Compensated Employees in an amount greater than the amount made available to other Employees.

3.5.5 Default. In the event of default, foreclosure on the note and attachment of security will not occur until a distributable event occurs for the Participant.

3.5.6 Qualified Military Service. If elected in the Participant loan program, the obligation to repay any loan made to a Participant who is performing service in the uniformed services shall be suspended, as permitted under Code section 414(u)(4). Such a suspension of loan repayments shall not trigger a distribution under Code section 72(p) or constitute a loan default.

ARTICLE VI

BENEFICIARIES

3.6.1 Designation of Beneficiaries. Subject to the provisions of Sections 2.5.5 and 2.5.6, each Participant shall have the right to designate a Beneficiary or Beneficiaries and contingent or successive Beneficiaries to receive any benefits provided by this Plan that become payable upon the Participant's death. The Participant may change the Beneficiaries at any time or times by the filing of a new designation with the Plan Administrator, and the most recent designation shall govern.

In the absence of a designation, the Designated Beneficiary shall be the surviving spouse of the Participant, unless such surviving spouse consents in writing to an alternate designation and the terms of such consent acknowledge the effect of such alternate designation and the consent is witnessed by a representative of the Plan or by a notary public. The designation of a Beneficiary other than the spouse of the Participant or the designation of an optional form of benefit with the consent of such spouse may not be changed without the consent of such spouse, and any consent must acknowledge the specific nonspouse Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, unless the spouse expressly permits designations by the Participant without any further spousal consent.

Regardless of any prior designation, a Participant, at any time, may designate his spouse as Beneficiary, and with respect to Accounts providing annuities, may also designate the form of benefit as a Qualified Joint and Survivor Annuity.

In the event the Participant is divorced, the ex-spouse shall be treated as having predeceased the Participant and benefits will go to the secondary Designated Beneficiaries or if none survive the Participant, to his surviving children, equally, or if none, such other heirs, or the executor or administrator of his estate, as the Plan Administrator shall select. In the event the Participant intends that his ex-spouse remain his Beneficiary, a post-divorce Beneficiary designation must be completed naming the ex-spouse as a Designated Beneficiary.

Any consent by a spouse obtained under this provision (or establishment that the consent of a spouse may not be obtained) shall be effective only with respect to such spouse. A consent that permits designations by the Participant without any requirement of further consent by such spouse must acknowledge that the spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the spouse voluntarily elects to relinquish either or both of such rights. A Participant may revoke a prior waiver without the consent of the spouse at any time prior to the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Sections 2.5.5 and 2.5.6.

3.6.2 Absence or Death of Beneficiaries. Except with respect to the process of any life insurance payable upon the death of the Participant, if a Participant dies without having a Beneficiary designation then in force, or if all of the Participant's Designated Beneficiaries predecease him, his Beneficiary shall be his surviving spouse, or if none, his surviving children, equally, or if none, such other heirs, or the executor or administrator of his estate, as the Plan Administrator shall select.

Unless otherwise designated by the Participant, if a Participant dies and is survived by some, but not all, of his Designated Beneficiaries, such surviving Beneficiaries shall be deemed his sole Beneficiaries. In the event that a surviving Beneficiary dies before the complete distribution of the deceased Participant's interest, the estate of such Beneficiary shall be deemed to be the Beneficiary of the undistributed portion of such interest.

3.6.3 Surviving Spouse Election. If the Plan is designated in the Adoption Agreement as a Cash or Deferred Profit Sharing Plan or a Profit Sharing Plan and the Employer does not elect a life annuity form of distribution in the Adoption Agreement, a surviving spouse, who has not consented to an alternate designation under Section 3.6.1, above, may elect to have distribution of the Participant's vested Account balance commence within the 90-day period following the date of the Participant's death. The Account balance shall be adjusted for gains or losses occurring after the Participant's death in accordance with the provisions of the Plan governing the adjustment of Account balances for other types of distributions, as well as for the outstanding balance of any Plan loan to the Participant.

3.6.4 Right to Direct on Behalf of a Participant or Beneficiary. In the event a Participant's Designated Beneficiary is a minor, the Plan Administrator may pay any benefits provide by the Plan to: (1) a court appointed legal guardian, (2) custodial account, inherited IRA or trust account established for the sole benefit of the minor or (3) hold the benefit within the plan until the beneficiary reaches legal majority, subject to Code section 401(a)(9) and the applicable regulations, including the minimum distribution incidental benefit requirements of Code section 401(a)(9)(G).

ARTICLE VII

CLAIMS

3.7.1 Claim Procedure (Non-Disability). Any Participant or Beneficiary who is entitled to a payment of a benefit for which provision is made in this Plan shall file a written claim with the Plan Administrator on such forms as shall be furnished to him by the Plan Administrator and shall furnish such evidence of entitlement to benefits as the Plan Administrator may require. The Plan Administrator shall notify the Participant or Beneficiary in writing of the amount of benefit to which he is entitled, the duration of such benefit, the time the benefit is to commence, and other pertinent information concerning his benefit.

If the Plan Administrator denies a claim for benefit, in whole or in part, the Plan Administrator shall provide adequate notice in writing to the Participant or Beneficiary whose claim for benefit has been denied within ninety (90) days after receipt of the claim unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing is required, the Plan Administrator shall furnish written notice to the Participant or Beneficiary indicating the special circumstances and the date by which a final decision is expected to be rendered. In no event shall the period of extension exceed one hundred eighty (180) days after receipt of the claim. The notice of denial of the claim shall set forth (a) the specific reason or reasons for the denial; (b) specific reference to pertinent Plan provisions on which the denial is based; (c) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and (d) a statement that any appeal of the denial must be made by giving to the Plan Administrator, within sixty (60) days after receipt of the notice of the denial, written notice of such appeal, such notice to include a full description of the pertinent issues and basis of the claim. The Participant or Beneficiary (or his duly authorized representative) may review pertinent documents and submit issues and comments in writing to the Plan Administrator. If the Participant or Beneficiary fails to appeal such action to the Plan Administrator in writing within the prescribed period of time, the Plan Administrator's adverse determination shall be final, binding, and conclusive. Benefits under this Plan will be paid only if the Plan Administrator decides in his discretion, exercised in a nondiscriminatory manner, that the applicant is entitled to them.

3.7.2 Appeal (Non-Disability). If the Plan Administrator receives from a Participant or a Beneficiary, within the prescribed period of time, a notice of an appeal of the denial of a claim for benefit, such notice and all relevant materials shall immediately be submitted to the Employer. The Employer may hold a hearing or otherwise ascertain such facts as it deems necessary and shall render a decision that shall be binding upon both parties.

The Employer's decision shall be made within sixty (60) days after the Plan Administrator receives the notice of appeal, unless special circumstances require an extension of time for processing, in which case the Employer shall render a decision as soon as possible but not later than one hundred twenty (120) days after receipt of the request for review. If such an extension of time is required, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension. The Employer's decision shall be in writing, shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, as well as specific references to the pertinent Plan provisions on which the decision is based, and shall be promptly furnished to the claimant. Benefits under this Plan will be paid only if the Employer decides in its discretion, exercised in a nondiscriminatory manner, that the applicant is entitled to them.

3.7.3 Claims Involving Disability. Any Participant who is entitled to a payment of a Disability benefit for which provision is made in this Plan shall file a written claim with the Plan Administrator on such forms as shall be furnished to him by the Plan Administrator and shall furnish such evidence of entitlement to benefits as the Plan Administrator may require. The Plan Administrator shall notify the Participant in writing of the approval or denial of the claim within forty-five (45) days of the date the claim was filed. If the claim is approved, the Plan Administrator shall furnish a written explanation of the amount of Disability benefit to which the Participant is entitled, the duration of such benefit, the time the benefit is to commence, and other pertinent information concerning his benefit.

If the Plan Administrator denies a claim for a Disability benefit, in whole or in part, the Plan Administrator shall provide adequate notice in writing to the Participant whose claim for benefit has been denied within a reasonable time after the claim is filed but no later than forty-five (45) days after receipt of the claim unless special circumstances require an extension of time for processing the claim. Such an extension shall be for a period no greater than thirty (30) days. If such an extension of time for processing is required, the Plan Administrator shall furnish written notice to the Participant within the initial 45-day period indicating the special circumstances and the date by which a final decision is expected to be rendered. If, prior to the end of the first 30-day extension period, the Plan Administrator determines that due to matters beyond the control of the Plan, a decision cannot be rendered within that extension period, the period for making the determination may be extended for up to an additional thirty (30) days, provided that the Plan Administrator notifies the claimant, prior to the expiration of the first 30-day extension period, of the circumstances requiring the extension and the date as of which the Plan Administrator expects to render a decision. In the case of such an extension the notice of extension shall specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues, and the claimant shall be afforded at least forty-five (45) days with which to provide the specified information. The Participant (or his duly authorized representative) may review pertinent documents and submit issues and comments in writing to the Plan Administrator. If the Participant fails to appeal such action to the Plan Administrator in writing within the prescribed period of time, the Plan Administrator's adverse determination shall be final, binding, and conclusive. Benefits under this Plan will be paid only if the Plan Administrator determines in his sole discretion exercised in a nondiscriminatory manner, that the Participant is entitled to them.

3.7.4 Claims Appeal Involving Disability. If the Plan Administrator receives from a Participant, within 180 days of the denial of the claim, a notice of an appeal of the denial, such notice and all relevant materials shall immediately be submitted to the Employer. The Employer may hold a hearing or otherwise ascertain such facts as it deems necessary and shall render a decision that shall be binding upon both parties.

The Employer's decision shall be made within forty-five (45) days after the Plan Administrator receives the notice of appeal, unless special circumstances require an extension of time for processing, in which case the Employer shall render a decision as soon as possible but not later than ninety (90) days after receipt of the request for review by the Plan Administrator. If such an extension of time is required, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension. The Employer's decision shall be in writing, shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, as well as specific references to the pertinent Plan provisions on which the decision is based, and shall be promptly furnished to the claimant. Benefits under this Plan will be paid only if the Employer determines in his sole discretion, exercised in a nondiscriminatory manner, that the Participant is entitled to them.

ARTICLE VIII

AMENDMENT AND TERMINATION

3.8.1 Right to Amend.

- (a) The Employer may at any time or times amend the Plan, Trust, and the provisions of the Adoption Agreement, in whole or in part. The Employer specifically reserves the right to amend the Plan retroactively. Subject to Subsection (b), an Employer that amends the Plan shall no longer participate in this Prototype Plan and shall be considered to have an individually designed plan.
- (b) The Employer may change the choice of options in the Adoption Agreement, add overriding language in the Adoption Agreement when such language is necessary to satisfy Code sections 415 or 416 because of the required aggregation of multiple plans, and add certain sample or model amendments published by the Internal Revenue Service or other required good faith amendments that specifically provide that their adoption shall not cause the Plan to be treated as individually designed. An Employer that amends the Plan for any other reason, including a waiver of the minimum funding requirements under Code section 412(d), shall no longer participate in this Prototype Plan and shall be considered to have an individually designed plan.

An Employer that has adopted a standardized Prototype Plan may amend the Trust or custodial account document provided such amendment merely involves the specifications of the names of the Plan, Employer, Trustee or custodian, Plan Administrator or other Fiduciaries, the Trust Year, or the name of any pooled trust in which the Plan's Trust will participate.

An Employer that has adopted a non-standardized Prototype Plan will not be considered to have an individually designed plan merely because the Employer amends administrative provisions of the Trust or custodial account document (such as provisions relating to investments and duties of Trustees) so long as the amended provisions are not in conflict with any other provision of the Plan and do not cause the Plan to fail to qualify under Code section 401(a).

An Employer may also add or change provisions permitted under the Plan and/or specify or change the effective date of a provision as permitted under the Plan and correct obvious and unambiguous typographical errors and/or cross-references that merely correct a reference but that do not in any way change the original intended meaning of the provisions.

3.8.2 Manner of Amending. The Employer shall make each Plan amendment by delivery to the Trustee of a copy of the Employer resolution that sets forth such amendment.

3.8.3 Limitations On Amendments.

- (a) No Plan amendment shall:
 - (1) Directly or indirectly operate to give the Employer any interest whatsoever in the assets of the Trust or custodial account or to deprive any Participant or Beneficiary of his vested and nonforfeitable interest in the assets of the Trust as then constituted, or cause any part of the income or corpus of the Trust to be used for, or diverted to, purposes other than the exclusive benefit of Employees or their Beneficiaries;
 - (2) Increase the duties or liabilities of the Trustee without the Trustee's prior written consent;
 - (3) Change the vesting schedule under the Plan if the nonforfeitable percentage of the Account balance derived from Employer Contributions (determined as of the later of the date such amendment is adopted or the date such amendment becomes effective) of any Participant is less than such nonforfeitable percentage computed without regard to such amendment; or
 - (4) Reduce or eliminate the accrued benefit of a Participant within the meaning of Code section 411(d)(6), except to the extent permitted under Code section 412(c)(8) or to the extent permitted under sections 1.411(d)-3 and 1.411(d)-4 of the regulations. An amendment that has the effect of decreasing a Participant's Account balance with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit.
- (b) If a Plan amendment changes the vesting schedule or the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage or if the Plan is deemed amended by an automatic change to or from a Top-Heavy vesting schedule, each Participant who has completed three (3) Years of Vesting Service (or in the case of Participants who do not have at least one (1) Hour of Service in any Plan Year beginning after 1988, five (5) or more Years of Vesting Service) may elect within a reasonable period after the adoption of such amendment to have his nonforfeitable percentage computed without regard to such amendment or change. The period during which such Participant may make the election shall commence with the date the amendment is adopted or deemed to be made and shall end on the latest of sixty (60) days after the latest of the date:
 - (1) The amendment is adopted;
 - (2) The amendment becomes effective; or
 - (3) The Employer or Plan Administrator issues the Participant written notice of the amendment.
- (c) No Plan amendment shall eliminate or restrict an optional form of benefit. The preceding sentence shall not apply to a Plan amendment that eliminates or restricts the ability of a Participant to receive payment of his or her Account balance under a particular optional form of benefit if the amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit eliminated or restricted. For purposes of this condition, a single-sum distribution form is otherwise identical only if it is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provided greater rights to the Participant) except with respect to the timing of payments after commencement.

3.8.4 Plan Termination. The Employer may elect to terminate the Plan or termination may occur based on certain business transactions. Upon termination, the Plan must provide for the immediate one hundred percent (100%) vesting of the nonforfeitable interest in all of an affected Participant's account balance. Notwithstanding the effective date of the termination, the Trust will continue until the entire Distributable Benefit of each Participant has been distributed.

- (a) **Voluntary Termination.** The Employer may terminate the Plan at any time by delivering to the Trustee an instrument in writing that designates such termination. Following termination of the Plan, the Trust will continue until the entire Distributable Benefit of each Participant has been distributed.
- (b) **Involuntary Termination.** The Plan shall terminate if: (a) the Employer is dissolved or adjudicated bankrupt or insolvent in appropriate proceedings, or if a general assignment is made by the Employer for the benefit of creditors, or (b) the Employer loses its identity by consolidation or merger into one or more corporations or organizations, unless within ninety (90) days after such consolidation or merger, such corporations or organizations elect to continue the Plan.
- (c) **Partial Termination.** The Plan shall be subject to the rules under section 411(d)(3) of the Code, where it has been determined that a partial termination has occurred by reason of: (1) a plan amendment that adversely affect the rights of the Employees, or (2) by the Employer's severance of a group of Employees who were previously covered under the Plan. Such determination shall depend on the facts and circumstances. Notwithstanding, if the Employer's turnover rate is at least twenty percent (20%) due to severance of employment, there is a presumption that a partial termination of the Plan has occurred. If a partial termination occurs, all Participants who had a severance from employment on account of the Partial Termination during the period shall become immediately 100% vested in their account.
- (d) **Liquidation of all Unallocated Accounts.** Following the termination of the Plan, the Employer will allocate any unallocated amounts due to excess annual additions or forfeitures that are held in a suspension account subject to limitation in section 415(c) of the Code. Notwithstanding any unallocated amounts remaining that exceed the limitations imposed under section 415(c) of the Code to the extent set forth in rules prescribed by the Commissioner shall revert to the Employer.
- (e) **Limitation on Establishing a Successor Plan in the Case of a Cash or Deferred Arrangement.** The Employer who elects to terminate a Plan that is designated in the Adoption Agreement as a Cash or Deferred Profit Sharing Plan and thereafter liquidates the Trust may not establish a new plan any time during the period beginning on the effective date of the Plan's termination and ending twelve (12) months after all assets have been distributed from the Plan, and further, a distribution may not be made under Article V if the Employer establishes or maintains an alternative defined contribution plan. For purposes of the preceding sentence, the term "Employer" is applied as of the date of plan termination, and a plan is an alternative defined contribution plan only if it is a defined contribution plan that exists at any time during the period beginning on the date of plan termination and ending 12 months after distribution of all assets from the terminated plan. However, if at all times during the 24-month period beginning 12 months before the date of plan termination, fewer than 2% of the employees who were eligible under the defined contribution plan that includes the cash or deferred arrangement as of the date of plan termination are eligible under the other defined contribution plan, the other plan is not an alternative defined contribution plan. In addition, a defined contribution plan is not treated as an alternative defined contribution plan if it is an employee stock ownership plan as defined in Code sections 4975(e)(7) or 409(a), a simplified employee pension as defined in Code section 408(k), a SIMPLE IRA plan as defined in section 408(p), a plan or contract that satisfies the requirements of Code section 403(b), or a plan that is described in Code sections 457(b) or (f).

3.8.5 Withdrawal By Employer. The Employer may withdraw from participation under the Plan without terminating the Trust upon making a transfer of the Trust assets to another Plan, which shall be deemed to constitute an amendment in its entirety of the Trust.

3.8.6 Powers Pending Final Distribution. Until final distribution of the assets of the Trust, the Plan Administrator and Trustee shall continue to have all the powers provided under this Plan as are necessary for the orderly administration, liquidation, and distribution of the assets of the Trust.

3.8.7 Delegation to Sponsor. The Employer expressly delegates authority to the Plan Sponsor the right to amend any part of the Plan on its behalf to the extent necessary to preserve the qualified status of the Plan. For purposes of amendments by the Plan Sponsor, the Mass Submitter shall be recognized as the agent of the Plan Sponsor. If the Plan Sponsor does not adopt the amendments made by the Mass Submitter, the Plan shall no longer be identical to or a minor modifier of the Mass Submitter plan. The Plan Sponsor shall submit a copy of the amendment to each Employer who has adopted the Plan after first having received a ruling or favorable determination from the Internal Revenue Service that the Plan as amended satisfies the applicable requirements of the Code. The Employer may revoke the authority of the Plan Sponsor to amend the Plan on its behalf by written notice to the Plan Sponsor of such revocation.

However, for purposes of reliance on an opinion or determination letter, the Plan Sponsor will no longer have the authority to amend the Plan on behalf of the Employer as of the date (1) the Employer amends the plan to incorporate a type of plan described in section 6.03 of Rev. Proc. 2011-49 that is not permitted under the M&P program, or (2) the Internal Revenue Service notifies the Employer, in accordance with section 24.03 of Rev. Proc. 2011-49, that the Plan is an individually designed plan due to the nature and extent of Employer amendments to the Plan.

ARTICLE IX

PORTABILITY

3.9.1 Continuance by Successor. In the event of the dissolution, consolidation, or merger of the Employer, or the sale by the Employer of its assets, the resulting successor person or persons, firm, or corporations may continue this Plan by (a) adopting the Plan by appropriate resolution; (b) appointing a new Trustee as though the Trustee (including all members of a group of individuals acting as Trustee) had resigned; and (c) executing a proper agreement with the new Trustee. In such event, each Participant in this Plan shall have an interest in the Plan after the dissolution, consolidation, merger, or sale of assets at least equal to the interest that he had in the Plan immediately before the dissolution, consolidation, merger, or sale of assets. Any Participants who do not accept a position with such successor within a reasonable time shall be deemed to be terminated. If, within ninety (90) days from the effective date of such dissolution, consolidation, merger, or sale of assets, such successor does not adopt this Plan, as provided herein, the Plan shall automatically be terminated and deemed an involuntary termination.

3.9.2 Merger With Other Plan. In the event of the merger or consolidation with, or transfer of assets or liabilities to, any other deferred compensation plan and trust, each Participant shall have an interest in such other plan that is equal to or greater than the interest that he had in this Plan immediately before such merger, consolidation, or transfer, and if such other plan thereafter terminates, each Participant shall be entitled to a Distributable Benefit that is equal to or greater than the Distributable Benefit to which he would have been entitled immediately before such merger, consolidation, or transfer if this Plan had then been terminated, as adjusted for any investment gains or losses since such merger, consolidation, or transfer.

3.9.3 Transfers and Rollovers From Other Plans.

(a) The Employer may cause all or any of the assets held in connection with any other plan or trust that is maintained by the Employer for the benefit of its Employees and satisfies the applicable requirements of the Code relating to qualified plans and trusts to be transferred to the Trustee, whether such transfer is made pursuant to a merger or consolidation of this Plan with such other plan or trust within the meaning of Code section 414(l) or for any other allowable purpose. Any such assets so transferred to the Trustee shall be accompanied by written instructions from the Employer, or the trustee, custodian, or individual holding such assets, setting forth the name of each Employee for whose benefit such assets have been transferred and showing separately the respective contributions by the Employer and by the Employee and the current value of the assets attributable thereto.

Upon receipt by the Trustee of such assets, the Trustee shall place such assets in appropriate Accounts for each Employee. If the transferor plan maintained a vesting schedule that differs from the schedule maintained under this Plan, the vesting schedule of this Plan shall apply, but eligible Participants shall have the option to apply the vesting schedule of the transferor plan to the transferred assets in a manner consistent with the provisions of Section 3.8.3(b).

(b) If assets are transferred to the Plan from a defined benefit pension plan, money purchase pension plan, target benefit pension plan, stock bonus or profit sharing plan that are subject to the survivor annuity requirements of Code sections 401(a)(11) and 417, such transferred assets shall remain subject to such requirements, and this Plan shall provide life annuity distribution options as provided under the transferor plan. Unless this Plan is also subject to such survivor annuity requirements, the annuity distribution option shall only apply to those assets that were transferred and any earnings thereon.

Any such transferred assets and associated earnings shall be distributed to the Participant only if: (1) he terminates employment with the Employer, attains Normal Retirement Age, becomes Disabled, or dies, (2) the Plan should subsequently terminate, or (3) the Employer spins off the business unit to which the Participant is a member. To implement the restrictions on distributions this Subsection imposes, the Plan must maintain separate accounting between the benefits attributable to the transferred account balances and all other Account balances of each Participant who has Account balances attributable to such transfers.

(c) At the direction of the sponsoring Employer, the Trustee shall accept the transfer of account balances from another plan of Employees that have become Employees of the sponsoring Employer due to the spin-off of the business unit to which they belong.

(d) If elected in the Adoption Agreement, the Plan will accept rollovers of Eligible Rollover Distributions made after December 31, 2001, from the types of plans specified in the Adoption Agreement, beginning on the effective date specified in the Adoption Agreement. Such rollover amounts shall be placed in a Rollover Account for the benefit of the Employee in question.

Unless otherwise provided by the Employer in the Adoption Agreement, the Plan will accept a rollover contribution to a Roth Elective Deferral Account only if it is a Direct Rollover from another Roth elective deferral account under an applicable retirement plan described in Code section 402A(e)(1) and only to the extent the rollover is permitted under the rules of Code section 402(c).

The Plan will not provide for a Direct Rollover (including an automatic rollover) for distributions from a Participant's Roth Elective Deferral Account if the amount of the distributions that are Eligible Rollover Distributions are reasonably expected to total less than \$200 during a year. In addition, any distribution from a Participant's Roth Elective Deferral Account is not taken into account in determining whether distributions from a Participant's other accounts are reasonably expected to total less than \$200 during a year. However, Eligible Rollover Distributions from a participant's Roth Elective Deferral Account are taken into account in determining whether the total amount of the Participant's Account balances under the plan exceeds \$1,000 for purposes of mandatory distributions from the Plan.

The provisions of the Plan that allow a Participant to elect a Direct Rollover of only a portion of an Eligible Rollover Distribution but only if the amount rolled over is at least \$500 is applied by treating any amount distributed from the Participant's Roth Elective Deferral Account as a separate distribution from any amount distributed from the Participant's other accounts in the Plan, even if the amounts are distributed at the same time.

Short Form. The Plan will accept rollovers of Eligible Rollover Distributions made after December 31, 2001 from, a qualified plan described in Code sections 401(a) or 403(a), including after-tax employee contributions, an annuity contract described in Code sections 403(b), excluding after-tax employee contributions and an eligible plan under Code section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

Short Form. The Plan will accept Participant Rollovers of an Eligible Rollover Distribution from a qualified plan described in Code sections 401(a) or 403(a), excluding after-tax employee contributions, an annuity contract described in Code sections 403(b), excluding after-tax employee contributions, an eligible plan under Code section 457(b) that is maintained by a state, political subdivision of a state, or any agency

or instrumentality of a state or political subdivision of a state and an Individual Retirement Account or Annuity described in Code sections 408(a) or (b) that is eligible to be rolled over and would otherwise be includible in gross income. Rollovers are accepted only after Participant enters Plan.

3.9.4 Transfer to Other Plans.

- (a) The Trustee, upon written direction by the Employer, shall transfer some or all of the assets held under the Trust to another plan or trust of the Employer or any other employer meeting the requirements of the Code relating to qualified plans and trusts, whether such transfer is made pursuant to a merger or consolidation of this Plan with such other plan or trust or for any other allowable purpose.

At the direction of the Employer, the Trustee shall spin-off a portion of the Plan assets to a plan of the buyer of a portion of the assets of the Employer. The amount of the spin-off shall be the portion of the assets representing the Account balances of Participants who are terminated due to the sale. In order to be a part of the spin-off, a Participant must become employed by the buyer within one year of the date of sale.

In addition, upon the termination of employment of any Participant and receipt by the Plan Administrator of a request in writing, the Participant may request that any distribution from the Trust to which he is entitled shall be transferred to an individual retirement account, an individual retirement annuity, or any other plan or trust that is maintained by some other employer for the benefit of its employees and satisfies the applicable Code requirements relating to qualified plans and trusts. Upon receipt of any such written request, the Plan Administrator shall cause the Trustee to transfer the assets so directed and, as appropriate, shall direct the Insurer to transfer to the new trustee any applicable insurance policies issued for the benefit of the Participant.

- (b) Transfer to Nonqualified Foreign Trust If the interest of a Participant or Beneficiary under the Plan is transferred into a nonqualified foreign trust or the assets and liabilities are transferred into a plan described in Section 1165 of the Puerto Rico Code shall be a taxable distribution. For this purpose a "Nonqualified Foreign Trust" is a trust: (i) created or organized outside of the United States or (ii) attached to a plan created or organized outside of the United States and is not subject to the Internal Revenue Code.
- (c) Exception with respect to Paragraph (b) above.
- (1) The Plan Administrator of a pension, profit sharing or stock bonus plan and trust created or organized in Puerto Rico may elect under Section 1022(i)(2)(A) of the Employee Retirement Income Security Act of 1974 (ERISA), to be treated as a qualified trust under Code section 501(a). For purposes of ERISA 1022(i): (i) the plan must cover participants who are all "bona fide" residents of Puerto Rico; or (ii) the plan must covers participants who perform labor or services primarily within Puerto Rico, regardless of his place of residence; and (iii) the plan is exempt from income tax under the laws of Puerto Rico.
- (2) Upon such an election, the plan shall be treated as a qualified trust under Code section 401(a).

ARTICLE X

INSURANCE

3.10.1 Participants Insurable at Standard Rates. The Trustee, when directed by the Plan Administrator, and in accordance with the provisions specified in the Adoption Agreement, shall provide incidental insurance benefits by purchasing for each Participant insurable at standard rates, either term insurance, universal life insurance, or ordinary life insurance policies. The manner in which insurance benefits are provided under this Part III Article X must not discriminate in favor of Highly Compensated Employees.

Short Form. Life insurance may be purchased at the option of the Plan Administrator.

Said Life Insurance Policies shall provide a death benefit, prior to the Normal Retirement Date, equal to the proceeds of such policies, subject to the following provisions:

- (a) The Trustee may invest any portion or all of the assets of the Trust Fund that are attributable to a Participant in the purchase of group or individual Life Insurance Policies issued on the life of the Participant or in the case of a profit sharing plan (including a 401(k) plan), someone in whom the Participant has an insurable interest and for the benefit of the Participant with the consent of the Participant, subject to the following conditions, as they are represented by the Plan Administrator:
- (1) If "Ordinary Life Insurance Policies" are purchased, the aggregate life insurance premiums must be less than one-half (1/2) of the aggregate Employer contributions and Forfeitures allocated to the Participant's Account at any particular time, without regard to Trust earnings, capital gains, or losses. For purposes of this Plan, the term "Ordinary Life Insurance Policies" shall mean policies with both nondecreasing death benefits and nonincreasing premiums.
 - (2) The aggregate Premiums paid for Life Insurance Policies that are either term, universal or any other policies that are not ordinary whole life Policies shall not at any time exceed twenty-five percent (25%) of the aggregate amount of Employer Contributions and Forfeitures that have been allocated to the Accounts of such Participant.
 - (3) The sum of one-half (1/2) of the aggregate premiums for Ordinary Life Insurance Policies and all premiums for other Life Insurance Policies shall not at any time exceed twenty-five percent (25%) of the aggregate amount of Employer Contributions and Forfeitures that have been allocated to the Accounts of such Participant.
 - (4) For purposes of this Section, a Participant's Elective Deferrals are considered Employer contributions.
 - (5) The Employer may elect in the Plan's policy on insurance to set minimum amounts for the initial amount of insurance purchased as well as for the purchase of additional amounts. The minimum amount shall be expressed in terms of the face amount of the insurance and may not be greater than one thousand dollars (\$1,000). The Plan's policy on insurance may require that insurance must be purchased in multiples not to exceed one thousand dollars (\$1,000).
- (b) In the case of a profit sharing plan (including a 401(k) plan) that permits In Service distributions to a Participant prior to his Normal Retirement Date in accordance with Subsection 2.5.12(a) or (b), the amount that may be distributed to the Participant may be used to purchase Life Insurance Policies without limitation unless otherwise specified in the Plan's policy on insurance. Voluntary Employee Contributions and rollovers from other plans may also be used to purchase Life Insurance Policies without limitation.

3.10.2 Uninsurable Participants. For each Participant found by an Insurer to be uninsurable, the Trustee, when requested by the Plan Administrator, shall purchase a retirement annuity contract on the life of such Participant with a death benefit before Normal Retirement Date in an amount equal to the cash surrender value of such contract. The Participant must consent to the purchase of such a retirement annuity contract.

3.10.3 Participants Insurable at Above Standard Rates. If an Insurer finds a Participant to be uninsurable, except at above standard rates, the Trustee, when requested by the Plan Administrator, shall pay premiums that do not exceed the percentage of standard rates specified in the Plan's policy on insurance. The face value of any insurance policy shall be limited by the percentage of the aggregate Employer Contributions and Forfeitures allocated to the Participant's Account that the Employer dedicated to purchase insurance. The Participant must consent to the purchase of any insurance policy above standard rates.

3.10.4 Purchase of Policies. No Life Insurance Policy will be purchased under the Plan unless at the time of purchase it benefits an active Participant and such policy or separate definite written agreement between the Employer and the Insurer provides that no value or credits determined by the Insurer (on account of dividends, earnings, or other experience rating credits, or surrender or cancellation credits) with respect to such policy may be paid or returned to the Employer or diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries. Any Life Insurance Policy must provide that any proceeds are payable to the Trustee, subject to the Trustee's obligation to transfer such proceeds to the Beneficiary. Under no circumstances shall the Trust retain any part of the proceeds.

If, at any time, a policy described herein shall not be available from or shall be determined to be invalid or unenforceable by an Insurer, the Trustee, when directed by the Plan Administrator, shall purchase a policy or make such other alternative arrangements that, in the opinion of the Plan Administrator, conform most closely to the descriptions herein. In the event of a conflict between the terms of the Plan and the terms of any Life Insurance Policy, the Plan provisions shall control.

3.10.5 Applications for Policies. The Trustee shall be the applicant, owner, and beneficiary for all Life Insurance Policies required under the terms of the Plan. Any Life Insurance Policy distributed from the Plan must be nontransferable. The terms of any Life Insurance Policy purchased and distributed by the Plan to a Participant or spouse shall comply with the requirements of the Plan. The Trustee shall not be responsible for the validity or execution of any Life Insurance Policy, failure of an Insurer to pay proceeds when due, or failure of any policy to meet requirements or conform to the provisions of the Plan.

3.10.6 Incidents of Ownership. The Trustee shall have the right to receive all sums payable under the terms of all Life Insurance Policies issued hereunder. The Trustee shall be the complete and absolute owner of the Life Insurance Policies held in the Trust and of each and every incident of ownership therein and shall have the power to exercise the rights, options, and privileges of an absolute owner with respect to the Life Insurance Policies, subject to the provisions of the Plan. The Plan Administrator shall have the power to deal with and settle all claims.

3.10.7 Payment of Premiums. In a Plan Year in which the Employer Contributions are less than the amount required to sustain insurance premiums, the Plan Administrator shall direct the Trustee to take one of the following steps with respect to payment of insurance premiums on Life Insurance Policies:

- (a) Pay premiums due on policies from the Participant's Account, within the limits of 3.10.1 and 3.10.3 above,
- (b) Pay premiums due on policies from the Participant's Account using the balance described in 3.10.1(b) above,
- (c) Surrender any policies for their cash surrender values and add such amount to the Participant's Account,
- (d) Convert the cash surrender value of any policies to paid up insurance for which there will be no further premiums, or
- (e) Offer to sell any policies to the Participant for their cash surrender value for transfers or distributions made on or before February 13, 2004. Distributions or transfers of policies after February 13, 2004 shall be valued at Fair Market Value.

3.10.8 Discontinuance of Policies. The Trustee or other Fiduciary responsible for making investment decisions may discontinue the investment in Life Insurance Policies at any time. If the Plan provides for Participant-directed investments, life insurance, as an investment option, may be eliminated at any time by the Plan Administrator. If life insurance investment options are discontinued, the Plan Administrator, in its sole discretion, exercised in a nondiscriminatory manner, may offer to sell the policies to the Participant, or to another person, provided the prohibited transaction exemption requirements of the Department of Labor are satisfied.

3.10.9 Protection of the Insurer. An Insurer shall not be responsible for the validity of the Plan or the Trust and shall have no responsibility for action taken or not taken by the Trustee, for determining the propriety of accepting premium payments or other contributions, for making payments in accordance with the direction of the Trustee, or for the application of such payments. The Insurer shall be fully protected in dealing with any representative of the Employer or any one of a group of individuals acting as Trustee. Until an Insurer receives written notice of a change of Trustee at its home office, the Insurer shall be fully protected in dealing with any party acting as Trustee according to the latest information received by the Insurer at its home office.

3.10.10 No Responsibility for Act of Insurer. Neither the Employer, the Plan Administrator, nor the Trustee shall be responsible for any of the following, nor shall they be liable for instituting action in connection with:

- (a) The validity of Life Insurance Policies or policy provisions;
- (b) Failure or refusal by the Insurer to provide benefits under a policy;
- (c) An act by a person that may render a policy invalid or unenforceable; or
- (d) Inability to perform or delay in performing an act, which inability or delay is occasioned by a provision of a policy or a restriction imposed by the Insurer.

ARTICLE XI

MISCELLANEOUS

3.11.1 No Reversion to Employer.

- (a) Except as specifically provided in the Plan, no part of the corpus or income of the Trust shall revert to the Employer or be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.
- (b) **Reversion Upon Termination.** Notwithstanding Paragraph (a), any other Plan provision or section 1.401(a)-2 of the Treasury Regulations, upon termination of the Plan, amounts contributed to the Plan that exceed the limitations imposed under section 415(c) of the Code, to the extent set forth in rules prescribed by the Commissioner shall revert to the Employer.

3.11.2 Employer Actions. Any action by the Employer pursuant to the provisions of the Plan shall be evidenced by appropriate resolution or by written instrument executed by any person authorized by the Employer to take such action.

3.11.3 Execution of Receipts and Releases. Any payment to any person eligible to receive benefits under this Plan, in accordance with the provision of the Plan or the Trust, shall, to the extent thereof, be in full satisfaction of all claims hereunder. The Plan Administrator may require such person, as a condition precedent to such payment, to execute a receipt and release therefore in such form as it shall determine.

3.11.4 Rights of Participants Limited. Neither the creation of this Plan and the Trust nor anything contained in this Plan or the Adoption Agreement shall be construed as giving any Participant, Beneficiary, or Employee any equity or other interest in the assets, business, or affairs of the Employer, or the right to complain about any action taken by or about any policy adopted or pursued by the Employer, or as giving any Employee the right to be retained in the service of the Employer; and all Employees shall remain subject to discharge to the same extent as if the Plan had never been executed. Prior to the time that distributions are made in conformity with the provisions of the Plan, neither the Participants nor their spouses, Beneficiaries, heirs-at-law, or legal representatives shall receive or be entitled to receive cash or any other thing of current exchangeable value from either the Employer or the Trustee as a result of the Plan or the Trust.

3.11.5 Inalienability. The right of any Participant or his Beneficiary in any distribution hereunder or to any Account shall not be subject to alienation, assignment, or transfer, voluntarily or involuntarily, by operation of law or otherwise, except as may be expressly permitted herein. No Participant shall assign, transfer, or dispose of such right, nor shall any such right be subjected to attachment, execution, garnishment, sequestration, or other legal, equitable, or other process. The preceding shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined to be a Qualified Domestic Relations Order or any domestic relations order entered before January 1, 1985.

The preceding provisions shall not apply to judgments, orders, and decrees issued, and settlement agreements entered into, on or after August 5, 1997, that offset a Participant's benefits provided under this Plan if:

- (a) The order or requirement to pay arises:
 - (1) Under a judgment of conviction for a crime involving this Plan,
 - (2) Under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of Part 4 of Subtitle B of Title I of the Act, or
 - (3) Pursuant to a settlement agreement between the Secretary of Labor and the Participant, or a settlement agreement between the Pension Benefit Guaranty Corporation and the Participant, in connection with a violation (or alleged violation) of Part 4 of such subtitle by a Fiduciary or any other person,
- (b) The judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the Plan against the Participant's benefits provided under the Plan, and
- (c) In a case in which the survivor annuity requirements of Code section 401(a)(11) apply with respect to distributions from the Plan to the Participant, if the Participant has a spouse at the time at which the offset is to be made:
 - (1) Either such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the Plan (or it is established to the satisfaction of a Plan representative that such consent may not be obtained by reason of circumstances described in Code section 417(a)(2)(B)), or an election to waive the right of the spouse to either a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity is in effect in accordance with the requirements of Code section 417(a),
 - (2) Such spouse is ordered or required in such judgment, order, decree, or settlement to pay an amount to the Plan in connection with a violation of Part 4 of such subtitle, or
 - (3) In such judgment, order, decree, or settlement, such spouse retains the right to receive the survivor annuity under a Qualified Joint and Survivor Annuity or under a Qualified Preretirement Survivor Annuity,) where such survivor annuity equals the survivor annuity determined under the Plan assuming that:
 - (i) The Participant terminated employment on the date of the offset,
 - (ii) There was no offset,
 - (iii) Benefits commence at the Participant's Normal Retirement Date (or current age if later),
 - (iv) The Qualified Joint and Survivor Annuity survivor percentage is fifty percent (50%) (even if another percentage is selected in the definition of Qualified Joint and Survivor Annuity), and
 - (v) The Qualified Preretirement Survivor Annuity is fifty percent (50%) of such Qualified Joint and Survivor Annuity.

In the event a Participant's benefits are attached by order of any court, the Plan Administrator may bring an action for a declaratory judgment in a court of competent jurisdiction to determine the proper recipient of the benefits to be paid by the Plan. During the pendency of the action, the Plan Administrator shall cause any benefits payable to be paid to the court for distribution by the court as it considers appropriate.

3.11.6 Qualified Domestic Relations Orders. The Plan Administrator shall adhere to the terms of any judgment, decree, or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a Participant and is made pursuant to a state domestic relations law (including a community property law) and that creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable with respect to a Participant.

Any such domestic relations order must clearly specify the name and last known mailing address of the Participant and the name and mailing address of each Alternate Payee covered by the order, the amount or percentage of the Participant's benefit to be paid by the Plan to each such Alternate Payee, or the manner in which such amount or percentage is to be determined, the number of payments or period to which such order applies, and each plan to which such order applies.

Any such domestic relations order shall not require the Plan to provide any type or form of benefit or any option not otherwise provided under the Plan, to provide increased benefits, or the payment of benefits to an Alternate Payee that are required to be paid to another Alternate Payee under another order previously determined to be a Qualified Domestic Relations Order. Notwithstanding the foregoing sentence, the Employer may elect to permit distributions to an Alternate Payee before the Participant has separated from service, on or after the date on which the Participant attains or would have attained the earliest retirement age under the Plan, as if the Participant had retired on the date on which such payment is to begin under such order. For this purpose, the "earliest retirement age" under the Plan means the earlier of: (a) the date on which the Participant is entitled to a distribution under the Plan, or (b) the later of the date the Participant attains age fifty (50), or the earliest date on which the Participant could begin receiving benefits under the Plan if the Participant separated from service. A Domestic Relations Order that otherwise satisfies the requirements for a Qualified Domestic Relations Order ("QDRO") will not fail to be a QDRO solely because the order is issued after, or revises, another order or QDRO or solely because of the time at which the order is issued.

The payment of benefits to an Alternate Payee before the Participant has severed from employment shall be determined as if the Participant had retired, or otherwise terminated employment, on the date on which such payment is to begin under the Qualified Domestic Relations Order, (but taking into account only the benefits actually accrued), and may be paid in any form in which such benefits may be paid under the Plan to the Participant (other than the form of a Joint and Survivor Annuity with respect to the Alternate Payee and his subsequent spouse).

If the Employer so elects in the Adoption Agreement, distributions to an Alternate Payee are permitted while the Participant continues to be employed on or after the date a Domestic Relations Order is determined to be a Qualified Domestic Relations Order by the Plan Administrator.

To the extent provided in the Qualified Domestic Relations Order, the former spouse of a Participant shall be treated as a surviving spouse of such Participant for purposes of Code sections 401(a)(11) and 417 (and any spouse of the Participant shall not be treated as a spouse of the Participant for such purposes) and if married for at least one (1) year to the Participant, the surviving former spouse shall be treated as meeting the requirements of Code section 417(d).

The Plan Administrator shall promptly notify the Participant and each Alternate Payee of the receipt of a domestic relations order by the Plan and the Plan's procedures for determining the qualified status of domestic relations orders. Within a reasonable period after receipt of a domestic relations order, the Plan Administrator shall determine whether such order is a Qualified Domestic Relations Order and shall notify the Participant and each Alternate Payee of such determination. If the Participant or any affected Alternate Payee disagrees with the determinations of the Plan Administrator, the Plan Administrator shall treat the disagreeing party as a claimant and follow the claims procedure of the Plan. The Plan Administrator may bring an action for a declaratory judgment in a court of competent jurisdiction to determine the proper recipient of the benefits to be paid by the Plan.

During any period in which the issue of whether a domestic relations order is a Qualified Domestic Relations Order is being determined (by the Plan Administrator, by a court of competent jurisdiction or otherwise), the Plan Administrator shall separately account for the amounts that would have been payable to the Alternate Payee during such period if the order had been determined to be a Qualified Domestic Relations Order. If, within the eighteen (18) month period beginning on the date on which the first payment would be required to be made under the domestic relations order, the order (or modification thereof) is determined to be a Qualified Domestic Relations Order, the Plan Administrator shall pay the segregated amounts, including any interest thereon, to the person or persons entitled thereto. If within such eighteen (18) month period it is determined that the order is not a Qualified Domestic Relations Order or the issue whether such order is a Qualified Domestic Relations Order is not resolved, then the Plan Administrator shall pay the segregated amounts, including any interest thereon, to the person or persons who would have been entitled to such amounts if there had been no order. Any determination that an order is a Qualified Domestic Relations Order that is made after the close of the eighteen (18) month period shall be applied prospectively only.

Short Form. Distributions to an Alternate Payee are permitted while the Participant continues to be employed, upon determination by the Plan Administrator that a domestic relations order is a Qualified Domestic Relations Order, pursuant to Code section 414(p).

3.11.7 Missing Persons. If the Trustee mails by registered or certified mail, postage prepaid, to the last known address of a Participant or Beneficiary, a notification that the Participant or Beneficiary is entitled to a distribution and if (a) the notification is returned by the post office because the addressee cannot be located at such address and if neither the Employer, the Plan Administrator nor the Trustee shall have any knowledge of the whereabouts of such Participant or Beneficiary within three (3) years from the date such notification was mailed, or (b) within three (3) years after such notification was mailed to such Participant or Beneficiary, he does not respond thereto by informing the Trustee of his whereabouts, the ultimate disposition of the then undistributed vested Account balance of such Participant or Beneficiary shall be determined in accordance with the then applicable Federal laws, rules, and regulations.

3.11.8 Notices. Any notice or direction to be given in accordance with the Plan shall be deemed to have been effectively given if hand delivered to the recipient or sent by certified mail, return receipt requested, to the recipient at the recipient's last known address. At any time that a group of individuals is acting in a Fiduciary capacity, notice to such Fiduciary may be given by giving notice to any one or more of such individuals.

3.11.9 Governing Law. The provisions of this Plan shall be construed, administered, and enforced in accordance with the provisions of the Act and, to the extent applicable, the laws of the state specified in the Adoption Agreement. All contributions to the Trust shall be deemed to take place in such state.

3.11.10 Severability of Provisions. In the event that any provision of this Plan shall be held to be illegal, invalid, or unenforceable for any reason, said illegality, invalidity, or unenforceability shall not affect the remaining provisions, but shall be fully severable, and the Plan shall be

construed and enforced as if said illegal, invalid, or unenforceable provisions had never been inserted herein.

3.11.11 Gender and Number. Whenever appropriate, words used in the singular shall include the plural, and the masculine gender shall include the feminine gender and vice versa.

3.11.12 Binding Effect. The Plan and Adoption Agreement, and all actions and decisions hereunder, shall be binding upon the heirs, executors, administrators, successors, and assigns of any and all parties hereto and Participants, present and future, and their Beneficiaries.

ARTICLE XII

Deemed IRA

3.12.1 Deemed Pre-tax IRA.

This Section shall apply after December 31, 2005, if the Employer elects to permit Participants to make Pre-tax IRA contributions to the Plan.

- (a) The Pre-tax IRA Account shall be established for the exclusive benefit of the Participant or his Beneficiaries.
- (b) The maximum permissible annual contribution shall be:
- (1) Except in the case of a rollover contribution (as permitted by Code sections 402(c), 402(e)(6), 403(a)(4), 403(b)(8), 403(b)(10), 408(d)(3), and 457(e)(16)), no contributions will be accepted unless they are in cash, and the total of such contributions shall not exceed:
- Three thousand dollars (\$3,000) for any taxable year beginning in 2002 through 2004;
Four thousand dollars (\$4,000) for any taxable year beginning in 2005 through 2007; and
Five thousand dollars (\$5,000) for any taxable year beginning in 2008 and years thereafter.
- After 2008, the limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code section 219(b)(5)(C). Such adjustments will be in multiples of \$500.
- (2) In the case of a Participant who is fifty (50) or older, the annual cash contribution limit is increased by:
- Five hundred dollars (\$500) for any taxable year beginning in 2002 through 2005; and
One thousand dollars (\$1,000) for any taxable year beginning in 2006 and years thereafter.
- (3) No contributions will be accepted under a SIMPLE IRA plan established by any employer pursuant to Code section 408(p). Also, no transfer or rollover of funds attributable to contributions made by a particular employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is, an IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the two (2) year period beginning on the date the Participant first participated in that employer's SIMPLE IRA plan.
- (c) If the Trust acquires collectibles within the meaning of Code Section 408(m) after December 31, 1981, for the benefit of any Pre-tax IRA Account, those Trust assets will be treated as a distribution in an amount equal to the cost of such collectibles.
- (d) No part of the Trust funds attributable to a Pre-tax IRA Contribution will be invested in life insurance contracts.
- (e) Distributions before death must commence no later than when the Participant attains age seventy and one-half (70-1/2).
- (1) Notwithstanding any provision of this Section to the contrary, the distribution of the Participant's interest in the Pre-tax IRA Account shall be made in accordance with the requirements of Code section 408(a)(6) and the regulations thereunder, the provisions of which are herein incorporated by reference. If distributions are made from an annuity contract purchased from an insurance company, distributions thereunder must satisfy the requirements of Q&A-4 of Treasury Regulations section 1.401(a)(9)-6, rather than Subsections (2), (3), and (4) below and Subsection (f). The Required Minimum Distributions calculated for an IRA created under this Section may be withdrawn from another IRA of the Participant in accordance with Q&A-9 of Treasury Regulations section 1.408-8.
- (2) The entire value of the Account of the Participant for whose benefit the Account is maintained will commence to be distributed no later than the first day of April following the calendar year in which such Participant attains age seventy and one-half (70-1/2) (the "required beginning date") over the life of such Participant or the lives of such Participant and his Designated Beneficiary.
- (3) The amount to be distributed each year, beginning with the calendar year in which the Participant attains age seventy and one-half (70-1/2) and continuing through the year of death, shall not be less than the quotient obtained by dividing the value of the IRA created under this Section (as determined under Subsection (h)) as of the end of the preceding year by the distribution period in the Uniform Lifetime Table in Q&A-2 of Treasury Regulations section 1.401(a)(9)-9, using the Participant's age as of his birthday in the year. However, if the Participant's sole Designated Beneficiary is his surviving spouse and such spouse is more than ten (10) years younger than the Participant, then the distribution period is determined under the Joint and Last Survivor Table in Q&A-3 of Treasury Regulations section 1.401(a)(9)-9, using the ages as of the Participant's and spouse's birthdays in the year.
- (4) The Required Minimum Distribution for the year the Participant attains age seventy and one-half (70-1/2) can be made as late as April 1 of the following year. The Required Minimum Distribution for any other year must be made by the end of such year.
- (f) **Death On or After Required Beginning Date.** If the Participant dies on or after the required beginning date, the remaining portion of his interest will be distributed at least as rapidly as follows:
- (1) If the Designated Beneficiary is someone other than the Participant's surviving spouse, the remaining interest will be distributed over the remaining life expectancy of the Designated Beneficiary, with such life expectancy determined using the Beneficiary's age as of his birthday in the year following the year of the Participant's death, or over the period described in Subsection (3) below if longer.
- (2) If the Participant's sole Designated Beneficiary is the Participant's surviving spouse, the remaining interest will be distributed over such spouse's life or over the period described in Subsection (3) below if longer. Any interest remaining after such spouse's death will be distributed over such spouse's remaining life expectancy determined using the spouse's age as of his birthday in the year of the spouse's death, or, if the distributions are being made over the period described in Subsection (3) below, over such period.
- (3) If there is no Designated Beneficiary, or if applicable by operation of Subsections (f)(1) or (f)(2) above, the remaining interest will be distributed over the individual's remaining life expectancy determined in the year of the individual's death.

- (4) The amount to be distributed each year under Subsections (1), (2), or (3), beginning with the calendar year following the calendar year of the Participant's death, is the quotient obtained by dividing the value of the IRA created under this Section as of the end of the preceding year by the remaining life expectancy specified in such Subsection. Life expectancy is determined using the Single Life Table in Q&A-1 of Treasury Regulations section 1.401(a)(9)-9. If distributions are being made to a surviving spouse as the sole Designated Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's or Participant's age in the year specified in Subsections (1), (2), or (3) and reduced by 1 for each subsequent year.
- (g) **Death Before Required Beginning Date.** If the Participant dies before the required beginning date, his entire interest will be distributed at least as rapidly as follows:
- (1) If the Designated Beneficiary is someone other than the Participant's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Participant's death, over the remaining life expectancy of the Designated Beneficiary, with such life expectancy determined using the age of the Beneficiary as of his birthday in the year following the year of the Participant's death, or, if elected, in accordance with Subsection (3) below.
- (2) If the Participant's sole Designated Beneficiary is the Participant's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Participant's death (or by the end of the calendar year in which the Participant would have attained age seventy and one-half (70-1/2), if later), over such spouse's life, or, if elected, in accordance with Subsection (3) below. If the surviving spouse dies before distributions are required to begin, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's Designated Beneficiary's remaining life expectancy determined using such Beneficiary's age as of his birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with Subsection (3) below. If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his birthday in the year of the spouse's death.
- (3) If there is no Designated Beneficiary, or if applicable by operation of Subsections (1) or (2) above, the entire interest will be distributed by the end of the calendar year containing the fifth anniversary of the Participant's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under Subsection (2) above).
- (4) The amount to be distributed each year under Subsections (1) or (2) is the quotient obtained by dividing the value of the IRA created under this Section as of the end of the preceding year by the remaining life expectancy specified in such Subsection. Life expectancy is determined using the Single Life Table in Q&A-1 of Treasury Regulations section 1.401(a)(9)-9. If distributions are being made to a surviving spouse as the sole Designated Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's age in the year specified in Subsections (1) or (2) and reduced by 1 for each subsequent year.
- (h) The "value" of the IRA created under this Section includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of Treasury Regulations section 1.408-8.
- (i) If the sole Designated Beneficiary is the Participant's surviving spouse, the spouse may elect to treat the IRA created under this Section as his own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a Beneficiary.
- (j) The interest of a Participant in the balance in his Account is nonforfeitable at all times.
- (k) **Trust Provisions.**
- (1) The trustee of a Deemed IRA Account must be a bank, as required by Code section 408(a)(2), or if the trustee is not a bank as defined in Code section 408(n), the Trustee must have received approval from the Commissioner of the Internal Revenue Service to serve as a nonbank trustee or nonbank custodian pursuant to Treasury Regulations section 1.408-2(e).
- (2) The requirements of Code section 408(a)(5) regarding commingling of assets do not apply to Deemed IRAs. Accordingly, the assets of a Deemed IRA may be commingled for investment purposes with those of the Plan. However, the restrictions on the commingling of Plan and IRA assets with other assets apply to the assets of the Plan and Deemed IRA Accounts established under this Plan.
- (l) Separate records will be maintained for the interest of each Participant.
- (m) The trustee of the Deemed IRA Accounts shall furnish annual calendar-year reports concerning the status of the Deemed IRA Accounts and such information concerning Required Minimum Distributions as is prescribed by the Commissioner of Internal Revenue.
- (n) The non-bank trustee or custodian shall substitute another trustee or custodian if the non-bank trustee or custodian receives notice from the Commissioner of Internal Revenue that such substitution is required because it has failed to comply with the requirements of Treasury Regulations section 1.408-2(e).
- (o) For purposes of this Section, "compensation" means wages, salaries, professional fees, or other amounts derived from or received for personal services actually rendered (including, but not limited to commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, and bonuses) and includes earned income, as defined in Code section 401(c)(2) (reduced by the deduction the self employed individual takes for contributions made to a self-employed retirement plan). For purposes of this definition, Code section 401(c)(2) shall be applied as if the term trade or business for purposes of Code section 1402 included service described in Subsection (c)(6). Compensation does not include amounts derived from or received as earnings or profits from property (including but not limited to interest and dividends) or amounts not includible in gross income. Compensation also does not include any amount received as a pension or annuity or as deferred compensation. The term "compensation" shall include any amount includible in the Participant's gross income under Code section 71 (determined without regard to Code section 112) with respect to a divorce or separation instrument described in Code section 71(b)(2)(A). Compensation also includes any Differential Wage Payments as defined in Code section 3401(h)(2).

3.12.2 Deemed Roth IRA.

This Section shall apply after December 31, 2005, if the Employer elects to permit Participants to make Roth IRA contributions to this Plan.

- (a) A Roth IRA Account shall be established for the exclusive benefit of the Participant or his Beneficiaries.
- (b) The maximum permissible annual contribution shall be:
 - (1) Except in the case of a qualified rollover contribution or a recharacterization (as defined in Subsection (6) below), no contribution will be accepted unless it is in cash and the total of such contributions to all the Participant's Roth IRAs for a taxable year does not exceed the applicable amount (as defined in Subsection (2) below), or the Participant's compensation (as defined in Subsection (8) below), if less, for that taxable year. The contribution described in the previous sentence that may not exceed the lesser of the applicable amount or the Participant's compensation is referred to as a "regular contribution." A "qualified rollover contribution" is a rollover contribution that meets the requirements of Code section 408(d)(3), except the one-rollover-per-year rule of Code section 408(d)(3)(B) does not apply if the rollover contribution is from an IRA other than a Roth IRA (a "nonRoth IRA"). Contributions may be limited under Subsections (3) through (5) below. The applicable amount is shall not exceed:

Three thousand dollars (\$3,000) for any taxable year beginning in 2002 through 2004;
 Four thousand dollars (\$4,000) for any taxable year beginning in 2005 through 2007; and
 Five thousand dollars (\$5,000) for any taxable year beginning in 2008 and years thereafter.

After 2008, the limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code section 219(b)(5)(C). Such adjustments will be in multiples of five hundred dollars (\$500).

- (2) In the case of a Participant who is fifty (50) or older, the annual cash contribution limit is increased by:
 - Five hundred dollars (\$500) for any taxable year beginning in 2002 through 2005; and
 - One thousand dollars (\$1,000) for any taxable year beginning in 2006 and years thereafter.
- (3) **Regular Contribution Limit.** If Subsections (i) and/or (ii) below apply, the maximum regular contribution that can be made to all the Participant's Roth IRAs for a taxable year is the smaller amount determined under Subsections (i) or (ii).
 - (i) The maximum regular contribution is phased out ratably between certain levels of modified adjusted gross income ("modified AGI," defined in Subsection (7) below) in accordance with the following table:

Filing Status	Full Contribution	Phase-out Range Modified AGI	No Contribution
Single or Head of Household	\$95,000 or less	Between \$95,000 and \$110,000	\$110,000 or more
Joint Return or Qualifying Widow(er)	\$150,000 or less	Between \$150,000 and \$160,000	\$160,000 or more
Married Separate Return	\$0	Between \$0 and \$10,000	\$10,000 or more

If the Participant's modified AGI for a taxable year is in the phase-out range, the maximum regular contribution determined under this table for that taxable year is rounded up to the next multiple of ten dollars (\$10) and is not reduced below two hundred dollars (\$200) After 2006, the dollar amount above will be adjusted by the Secretary of the Treasury for cost of living increases under Code section 408A(c)(3). Such adjustments are in multiples of \$1,000.

- (ii) If the Participant makes regular contributions to both Roth and nonRoth IRAs for a taxable year, the maximum regular contribution that can be made to all the individual's Roth IRAs for that taxable year is reduced by the regular contributions made to the Participant's nonRoth IRAs for the taxable year.
- (4) **Qualified Rollover Contribution Limit.** A rollover from a nonRoth IRA cannot be made to this IRA if, for the year the amount is distributed from the nonRoth IRA, (i) the Participant is married and files a separate return, (ii) the Participant is not married and has modified AGI in excess of one hundred thousand dollars (\$100,000), or (iii) the Participant is married and together the Participant and the Participant's spouse have modified AGI in excess of one hundred thousand dollars (\$100,000). For purposes of the preceding sentence, a husband and wife are not treated as married for a taxable year if they have lived apart at all times during that taxable year and file separate returns for the taxable year.
- (5) **SIMPLE IRA Limits.** No contributions will be accepted under a SIMPLE IRA plan established by any employer pursuant to Code section 408(p). Also, no transfer or rollover of funds attributable to contributions made by a particular employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is, an IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the two (2) year period beginning on the date the individual first participated in that employer's SIMPLE IRA plan.
- (6) **Recharacterization.** A regular contribution to a nonRoth IRA may be recharacterized pursuant to the rules in Treasury Regulations section 1.408A-5 as a regular contribution to this IRA, subject to the limits in Subsection (3) above.
- (7) **Modified AGI.** For purposes of (3) and (4) above, a Participant's modified AGI for a taxable year is defined in Code section 408A(c)(3)(C)(i) and does not include any amount included in adjusted gross income as a result of a rollover from a nonRoth IRA (a "conversion").
- (8) **Compensation.** For purposes of Subsection (b) above, compensation is defined as wages, salaries, professional fees, or other amounts derived from or received for personal services actually rendered (including, but not limited to commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, and bonuses) and includes earned income, as defined in Code section 401(c)(2) (reduced by the deduction the self-employed individual takes for contributions made to a self-employed retirement plan). For purposes of this definition, Code section 401(c)(2) shall be applied as if the term trade or business for purposes of Code section 1402 included service described in Subsection (c)(6). Compensation does not include amounts derived from or received as earnings or profits from property (including but not limited to interest and dividends) or amounts not includible in gross income. Compensation also does not include any amount received as a pension or annuity or as deferred compensation. The term "compensation" shall include any amount includible in the individual's gross income under Code section 71 with respect to a divorce or separation instrument described in Code section 71(b)(2)(A). Further, compensation includes deferrals under Code sections 125, 132(f)(4), 402(k), 402(h)(2)(B) and 457. In the case of a married

Participant filing a joint return, the greater compensation of his spouse is treated as his own compensation, but only to the extent that such spouse's compensation is not being used for purposes of the spouse making a contribution to a Roth IRA or a deductible contribution to a nonRoth IRA.

- (c) If the trust acquires collectibles within the meaning of Code section 408(m) after December 31, 1981, for the benefit of any Roth IRA Account, those trust assets will be treated as a distribution in an amount equal to the cost of such collectibles.
- (d) No part of the Trust funds attributable to a Roth IRA Contribution will be invested in life insurance contracts.
- (e) No amount is required to be distributed prior to the death of the Participant for whose benefit the account was originally established.
- (f) **Distribution upon Death.**
 - (1) Notwithstanding any provision of this Section to the contrary, the distribution of the Participant's interest in the Roth IRA Account shall be made in accordance with the requirements of Code section 408(a)(6), as modified by Code section 408A(c)(5), and the regulations thereunder, the provisions of which are herein incorporated by reference. If distributions are made from an annuity contract purchased from an insurance company, distributions thereunder must satisfy the requirements of Temporary Treasury Regulations section 1.401(a)(9)-6T (taking into account Code section 408A(c)(5)), rather than the distribution rules in Subsections (2), (3), and (4) below.
 - (2) Upon the death of the Participant, his entire interest will be distributed at least as rapidly as follows:
 - (i) If the Designated Beneficiary is someone other than the Participant's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Participant's death, over the remaining life expectancy of the Designated Beneficiary, with such life expectancy determined using the age of the Beneficiary as of his birthday in the year following the year of the Participant's death, or, if elected, in accordance with Subsection (iii) below.
 - (ii) If the Participant's sole Designated Beneficiary is the Participant's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Participant's death (or by the end of the calendar year in which the Participant would have attained age seventy and one-half (70-1/2), if later), over such spouse's life expectancy, or, if elected, in accordance with Subsection (iii) below. If the surviving spouse dies before distributions are required to begin, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's Designated Beneficiary's remaining life expectancy determined using such Beneficiary's age as of his birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with Subsection (iii) below. If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his birthday in the year of the spouse's death.
 - (iii) If there is no Designated Beneficiary, or if applicable by operation of Subsection (i) or (ii) above, the entire interest will be distributed by the end of the calendar year containing the fifth anniversary of the Participant's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under Subsection (ii) above).
 - (iv) The amount to be distributed each year under Subsection (i) or (ii) is the quotient obtained by dividing the value of the IRA created under this Section as of the end of the preceding year by the remaining life expectancy specified in such Subsection. Life expectancy is determined using the Single Life Table in Q&A-1 of Treasury Regulations section 1.401(a)(9)-9. If distributions are being made to a surviving spouse as the sole Designated Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's age in the year specified in Subsections (i) or (ii) and reduced by 1 for each subsequent year.
 - (3) The "value" of the IRA created under this Section includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of Treasury Regulations section 1.408-8.
 - (4) If the sole Designated Beneficiary is the Participant's surviving spouse, the spouse may elect to treat the IRA created under this Section as his own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a Beneficiary.
- (g) The interest of a Participant in the balance in his Account is nonforfeitable at all times.
- (h) **Trust Provisions.**
 - (1) The trustee of a Deemed IRA Account must be a bank, as required by Code section 408(a)(2), or if the trustee is not a bank as defined in Code section 408(n), the trustee must have received approval from the Commissioner of the Internal Revenue Service to serve as a nonbank trustee or nonbank custodian pursuant to Treasury Regulations section 1.408-2(e).
 - (2) The requirements of Code section 408(a)(5) regarding commingling of assets do not apply to Deemed IRA Accounts. Accordingly, the assets of a Deemed IRA Account may be commingled for investment purposes with those of the Plan. However, the restrictions on the commingling of Plan and IRA assets with other assets apply to the assets of the Plan and the Deemed IRA Accounts established under this Plan.
 - (i) Separate records will be maintained for the interest of each Participant.
- (j) The trustee of the Deemed IRA Accounts shall furnish annual calendar-year reports concerning the status of the Deemed IRA Accounts and such information concerning Required Minimum Distributions as is prescribed by the Commissioner of Internal Revenue.
- (k) The non-bank trustee or custodian shall substitute another trustee or custodian if the non-bank trustee or custodian receives notice from the Commissioner of Internal Revenue that such substitution is required because it has failed to comply with the requirements of Treasury Regulations section 1.408-2(e).

Appendix A
Age-Weighted Tables
Table I

NRA	UP84	- male/female	8.50%	7.50%	G71 - male	8.50%
	7.50%	8.00%			8.00%	
50	133.39558	127.81104	122.64462	133.87491	128.27223	123.08767
51	131.68326	126.25593	121.22873	132.15556	126.71284	121.66974
52	129.91096	124.64274	119.75675	130.37691	125.09602	120.19650
53	128.08231	122.97462	118.23141	128.53619	123.41915	118.66534
54	126.19427	121.24857	116.65005	126.63053	121.67908	117.07298
55	124.24537	119.46290	115.01035	124.65642	119.87202	115.41560
56	122.23012	117.61205	113.30687	122.60942	117.99381	113.68869
57	120.15072	115.69789	111.54129	120.48454	116.03902	111.88699
58	118.01011	113.72295	109.71577	118.27602	114.00182	110.00446
59	115.81245	111.69104	107.83357	115.98196	111.88010	108.03873
60	113.55288	109.59709	105.88958	113.61351	109.68388	105.99902
61	111.23508	107.44439	103.88693	111.17770	107.42004	103.89146
62	108.86392	105.23735	101.82937	108.67722	105.09058	101.71801
63	106.44537	102.98163	99.72218	106.11093	102.69407	99.47675
64	103.98697	100.68415	97.57192	103.47950	100.23073	97.16756
65	101.49368	98.34959	95.38290	100.79213	97.70930	94.79850
66	98.97540	95.98734	93.16400	98.06584	95.14576	92.38490
67	96.44411	93.60886	90.92637	95.31689	92.55574	89.94173
68	93.89662	91.21125	88.66695	92.55865	89.95208	87.48110
69	91.32062	88.78211	86.37369	89.79449	87.33800	85.00626
70	88.70352	86.30928	84.03460	87.04327	84.73176	82.53467
71	86.04948	83.79645	81.65305	84.32727	82.15516	80.08784
72	83.36293	81.24763	79.23264	81.65112	79.61276	77.67027
73	80.64861	78.66750	76.77767	78.99038	77.08109	75.25922
74	77.92240	76.07114	74.30287	76.31234	74.52798	72.82319
75	75.19300	73.46702	71.81622	73.59988	71.93665	70.34555
76	72.47065	70.86510	69.32745	70.85419	69.30790	67.82691
77	69.76697	68.27672	66.84769	68.10189	66.66751	65.29201
78	67.09586	65.71559	64.39026	65.39577	64.06704	62.79139
79	64.44038	63.16517	61.93914	62.76892	61.53910	60.35702
80	61.81054	60.63528	59.50387	60.22700	59.08950	57.99492

NRA	G71 - female			G83 - male		
	7.50%	8.00%	8.50%	7.50%	8.00%	8.50%
50	144.90527	138.26324	132.16028	138.63492	132.59926	127.03027
51	143.60635	137.11101	131.13533	137.10255	131.22171	125.78854
52	142.23274	135.88840	130.04425	135.50742	129.78433	124.49022
53	140.78142	134.59258	128.88425	133.84552	128.28325	123.13102
54	139.24881	133.21983	127.65148	132.11209	126.71333	121.70618
55	137.63167	131.76671	126.34254	130.30165	125.06941	120.21023
56	135.92700	130.22987	124.95377	128.40761	123.34502	118.63663
57	134.13313	128.60760	123.48346	126.42384	121.53326	116.97877
58	132.24942	126.89888	121.93011	124.34516	119.62924	115.23140
59	130.27652	125.10399	120.29366	122.16888	117.63004	113.39128
60	128.21500	123.22312	118.57417	119.89545	115.53522	111.45762
61	126.06589	121.25681	116.77169	117.52676	113.34643	109.43158
62	123.82951	119.20499	114.88587	115.06712	111.06731	107.31606
63	121.50521	117.06681	112.91550	112.52366	108.70404	105.11699
64	119.09157	114.84023	110.85811	109.90545	106.26530	102.84183
65	116.58681	112.52340	108.71172	107.22400	103.76178	100.50089
66	113.98596	110.11094	106.47042	104.49343	101.20648	98.10645
67	111.28113	107.59468	104.12611	101.72785	98.61320	95.67153
68	108.46410	104.96593	101.66982	98.93819	95.99223	93.20585
69	105.54134	102.23046	99.10625	96.13028	93.34889	90.71464
70	102.53171	99.40595	96.45211	93.30456	90.68378	88.19812
71	99.46349	96.51942	93.73310	90.45657	87.99231	85.65193
72	96.37133	93.60395	90.98105	87.57864	85.26683	83.06821
73	93.27601	90.67967	88.21532	84.66842	82.50491	80.44450
74	90.18710	87.75586	85.44496	81.73067	79.71081	77.78463
75	87.11538	84.84304	82.68002	78.77675	76.89552	75.09910
76	84.06201	81.94230	79.92174	75.82433	74.07600	72.40433
77	81.02953	79.05620	77.17252	72.89544	71.27376	69.72120
78	78.02448	76.19112	74.43866	70.00987	68.50821	67.06872
79	75.05164	73.35197	71.72505	67.18340	65.79488	64.46223
80	72.12192	70.54948	69.04218	64.42863	63.14638	61.91418

NRA	G83 - female			I71 - male		
	7.50%	8.00%	8.50%	7.50%	8.00%	8.50%
50	147.91302	140.92288	134.51962	136.59149	130.66277	125.19499
51	146.76982	139.91631	133.63052	135.09132	129.30840	123.96842
52	145.56105	138.84839	132.68423	133.55057	127.91486	122.70451
53	144.28224	137.71524	131.67719	131.96756	126.48077	121.40180
54	142.93045	136.51337	130.60559	130.34036	125.00422	120.05840
55	141.50316	135.24040	129.46710	128.66701	123.48285	118.67197
56	139.99799	133.89372	128.25923	126.94415	121.91390	117.23962
57	138.41386	132.47191	126.98009	125.16914	120.29424	115.75829
58	136.74878	130.97319	125.62766	123.33832	118.62031	114.22449
59	135.00087	129.39540	124.20000	121.44854	116.88880	112.63481
60	133.16838	127.73611	122.69443	119.49602	115.09599	110.98557
61	131.24841	125.99266	121.10789	117.47707	113.23811	109.27267
62	129.23820	124.16174	119.43694	115.38790	111.31123	107.49220
63	127.13458	122.24028	117.67835	113.22541	109.31195	105.64069
64	124.93456	120.22482	115.82841	110.98680	107.23723	103.71486
65	122.63529	118.11200	113.88367	108.67109	105.08606	101.71346
66	120.23364	115.89850	111.84019	106.27953	102.85897	99.63642
67	117.72697	113.58125	109.69447	103.81445	100.55810	97.48575
68	115.11600	111.16051	107.44659	101.27956	98.18649	95.26405
69	112.40616	108.64074	105.10009	98.67918	95.74812	92.97465
70	109.60621	106.03004	102.66224	96.01785	93.24705	90.62141
71	106.72905	103.34048	100.14451	93.30055	90.68764	88.20808
72	103.79031	100.58642	97.56031	90.53223	88.07468	85.73910
73	100.80493	97.78230	94.92322	87.71814	85.41285	83.21877
74	97.78660	94.94115	92.24557	84.86385	82.70737	80.65186
75	94.74739	92.07442	89.53842	81.97568	79.96405	78.04391
76	91.69794	89.19222	86.81143	79.06057	77.18962	75.40114
77	88.64714	86.30317	84.07282	76.12621	74.39142	72.73066
78	85.60244	83.41460	81.32977	73.18116	71.57761	70.04018
79	82.56990	80.53235	78.58787	70.23399	68.75650	67.33794
80	79.55392	77.66068	75.85136	67.29335	65.93657	64.63201

NRA	171 - female			183 - male		
	7.50%	8.00%	8.50%	7.50%	8.00%	8.50%
50	145.27345	138.55022	132.37967	140.91751	134.59421	128.77736
51	144.00299	137.42172	131.37393	139.58740	133.40520	127.71147
52	142.66699	136.23143	130.31013	138.20573	132.16762	126.59975
53	141.26707	134.98100	129.18979	136.76822	130.87721	125.43825
54	139.80559	133.67233	128.01442	135.27022	129.52931	124.22237
55	138.28543	132.30786	126.78642	133.70628	128.11873	122.94695
56	136.70839	130.88954	125.50736	132.07126	126.64031	121.60671
57	135.07635	129.41867	124.17855	130.35991	125.08850	120.19650
58	133.38971	127.89588	122.80050	128.56627	123.45756	118.71015
59	131.64841	126.32069	121.37219	126.68475	121.74173	117.14211
60	129.84888	124.68968	119.89085	124.71191	119.93716	115.48811
61	127.98476	122.99654	118.34991	122.64626	118.04228	113.74637
62	126.04571	121.23108	116.73965	120.48904	116.05761	111.91704
63	124.01839	119.38033	115.04700	118.24356	113.98596	110.00253
64	121.88731	117.42877	113.25709	115.91489	111.83218	108.00687
65	119.63954	115.36368	111.35684	113.50918	109.60117	105.93467
66	117.26546	113.17531	109.33646	111.03240	107.29890	103.79118
67	114.76195	110.85983	107.19194	108.49094	104.93080	101.58132
68	112.13113	108.41859	104.92365	105.89092	102.50282	99.31059
69	109.37867	105.85674	102.53592	103.23881	100.02051	96.98409
70	106.51318	103.18160	100.03551	100.54041	97.48946	94.60693
71	103.54390	100.40190	97.42999	97.80114	94.91457	92.18357
72	100.48090	97.52644	94.72774	95.02578	92.30039	89.71836
73	97.33402	94.56453	91.93686	92.21877	89.65089	87.21460
74	94.11313	91.52514	89.06599	89.38364	86.96923	84.67558
75	90.82800	88.41741	86.12322	86.52577	84.26062	82.10585
76	87.48845	85.25047	83.11730	83.65211	81.53162	79.51167
77	84.10457	82.03371	80.05694	80.77127	78.79035	76.90089
78	80.68719	78.77757	76.95184	77.89309	76.04643	74.28268
79	77.24883	75.49375	73.81338	75.02843	73.31034	71.66727
80	73.80450	72.19685	70.65545	72.18888	70.59340	69.06559

NRA	I83 - female			G83 - 50/50 blend		
	7.50%	8.00%	8.50%	7.50%	8.00%	8.50%
50	148.15100	141.09944	134.64568	142.96988	136.50050	130.55119
51	147.05406	140.13394	133.79305	141.61377	135.29164	129.47044
52	145.90085	139.11630	132.89178	140.19287	134.02167	128.33231
53	144.68849	138.04356	131.93953	138.70319	132.68671	127.13249
54	143.41400	136.91241	130.93291	137.14035	131.28218	125.86707
55	142.07372	135.24040	135.71965	135.50061	129.80421	124.53176
56	140.66418	133.89372	134.46191	133.77962	128.24854	123.12223
57	139.18233	132.47191	133.13576	131.97313	126.61064	121.63393
58	137.62485	130.97319	131.73755	130.07793	124.88714	120.06329
59	135.98819	129.39540	130.26413	128.09181	123.07571	118.40765
60	134.27019	128.71306	123.56113	126.01379	121.17482	116.66528
61	132.46928	127.08224	122.08134	123.84377	119.18411	114.83548
62	130.58479	125.37126	120.52419	121.58291	117.10397	112.9183
63	128.61720	123.57960	118.88966	119.23342	114.93645	110.91517
64	126.56706	121.70795	117.17753	116.79882	112.68443	108.82849
65	124.43398	119.75546	115.38697	114.28428	110.35238	106.66235
66	122.21593	117.71976	113.51550	111.69566	107.94578	104.42131
67	119.90926	115.59705	111.55884	109.03972	105.47054	102.11105
68	117.50813	113.38139	109.51103	106.32292	102.93255	99.73679
69	115.00637	111.06619	107.36526	103.55064	100.33683	97.30324
70	112.40035	108.64758	105.11721	100.72765	97.68764	94.81405
71	109.69025	106.12501	102.76605	97.85741	94.98814	92.27195
72	106.87985	103.50166	100.31418	94.94323	92.24105	89.6795
73	103.97594	100.78369	97.76710	91.99074	89.45176	87.04153
74	100.98827	97.98005	95.13290	89.00923	86.62891	84.36604
75	97.92718	95.10007	92.42042	86.01041	83.78374	81.66405
76	94.80299	92.15358	89.63850	83.00905	80.93050	78.94916
77	91.62602	89.15000	86.79614	80.02145	78.08511	76.23672
78	88.40592	86.09861	83.90184	77.06220	75.26165	73.54055
79	85.15211	83.00822	80.96399	74.14289	72.47154	70.87187
80	81.87574	79.88931	77.99260	71.27254	69.72387	68.23969

NRA	GAR		
	7.50%	8.00%	8.50%
50	144.66357	138.03784	131.95119
51	143.30405	136.82698	130.86949
52	141.86853	135.54434	129.72020
53	140.35698	134.18947	128.50233
54	138.76709	132.76016	127.21368
55	137.09410	131.25116	125.84917
56	135.33905	129.66351	124.40922
57	133.50423	127.99902	122.89558
58	131.59505	126.26231	121.31211
59	129.61377	124.45566	119.66088
60	127.55850	122.57665	117.93940
61	125.43149	120.62740	116.14915
62	123.24136	118.61538	114.29734
63	120.98935	116.54224	112.38506
64	118.68845	114.41988	110.42379
65	116.33940	112.24870	108.41366
66	113.94389	110.03037	106.35605
67	111.50807	107.77058	104.25637
68	109.02035	105.45798	102.10343
69	106.45750	103.06983	99.87505
70	103.81262	100.59907	97.56403
71	101.07156	98.03152	95.15617
72	98.24187	95.37407	92.65754
73	95.34370	92.64577	90.08628
74	92.37423	89.84346	87.43903
75	89.33565	86.96893	84.71690
76	86.23708	84.03058	81.92786
77	83.08691	81.03609	79.07889
78	79.93101	78.03008	76.21336
79	76.78197	75.02472	73.34282
80	73.65159	72.03147	70.47867

Age-Weighted

TABLE II

years to NRA	discount factor		
	7.50%	8.00%	8.50%
at or over NRA	1.00000	1.00000	1.00000
1	0.93023	0.92593	0.92166
2	0.86533	0.85734	0.84946
3	0.80496	0.79383	0.78291
4	0.74880	0.73503	0.72157
5	0.69656	0.68058	0.66505
6	0.64796	0.63017	0.61295
7	0.60275	0.58349	0.56493
8	0.56070	0.54027	0.52067
9	0.52158	0.50025	0.47988
10	0.48519	0.46319	0.44229
11	0.45134	0.42888	0.40764
12	0.41985	0.39711	0.37570
13	0.39056	0.36770	0.34627
14	0.36331	0.34046	0.31914
15	0.33797	0.31524	0.29414
16	0.31439	0.29189	0.27110
17	0.29245	0.27027	0.24986
18	0.27205	0.25025	0.23028
19	0.25307	0.23171	0.21224
20	0.23541	0.21455	0.19562
21	0.21899	0.19866	0.18029
22	0.20371	0.18394	0.16617
23	0.18950	0.17032	0.15315
24	0.17628	0.15770	0.14115
25	0.16398	0.14602	0.13009
26	0.15254	0.13520	0.11990
27	0.14190	0.12519	0.11051
28	0.13200	0.11591	0.10185
29	0.12279	0.10733	0.09387
30	0.11422	0.09938	0.08652
31	0.10625	0.09202	0.07974
32	0.09884	0.08520	0.07349
33	0.09194	0.07889	0.06774
34	0.08553	0.07305	0.06243
35	0.07956	0.06763	0.05754
36	0.07401	0.06262	0.05303
37	0.06885	0.05799	0.04888
38	0.06404	0.05369	0.04505
39	0.05958	0.04971	0.04152
40	0.05542	0.04603	0.03827
41	0.05155	0.04262	0.03527
42	0.04796	0.03946	0.03251
43	0.04461	0.03654	0.02996
44	0.04150	0.03383	0.02761
45	0.03860	0.03133	0.02545
46	0.03591	0.02901	0.02345
47	0.03340	0.02686	0.02162
48	0.03107	0.02487	0.01992
49	0.02891	0.02303	0.01836
50	0.02689	0.02132	0.01692

Appendix B
INSURANCE ADDENDUM

Notwithstanding anything in the Plan to the contrary, if the Employer elects in the Adoption Agreement to fund the Plan exclusively with Insurance Contracts, the Plan shall be deemed a "Non-Trusteed Plan". As such, the following provisions shall apply, and all references to the Trustee and the Trust Fund shall be construed to apply to the annuity contracts as described in this Addendum. Any duties of the Trustees, including but not limited to the establishment of a Participant loan program, that do not expressly apply to the annuity contracts shall apply to the Plan Administrator.

1. Purchase of Contracts. The benefits provided under this Plan shall be funded exclusively through the purchase of annuity Contracts issued by an Insurance Company. The provisions of this Addendum shall apply to any such Contracts which, as determined by the Employer, will not be held by the Trustee. The Employer shall pay within a reasonable period of time all contributions that are made to this Plan to the Insurer for the purchase of such Contracts.

2. Employer Designated as Owner Each Contract shall designate the Employer as sole owner, with rights reserved to said Employer to exercise those rights or options contained therein that apply to the owner of the Contract. All such Contracts shall be held by the Employer who shall have the power and right to take such actions with respect to such Contracts as shall be in accordance with this Plan for the exclusive purpose of providing benefits to Participants. The Employer shall be treated as Trustee to the extent that the Contracts are treated as trusts pursuant to Code Section 401(f).

3. Type of Contracts(s) The Employer shall have the right to determine whether to have fixed of a combination of fixed and variable Contracts and whether to have group or individual Contracts. The Employer shall base its decision on which Contract(s) would be more beneficial for the Participants and on the administrative tasks imposed by each Contract. Such decision shall be in the sole discretion, exercised in a nondiscriminatory manner, of the Employer.

4. Voting Rights The Employer shall solicit and act in accordance with the instructions of the Participant in regard to any voting rights that pertain to a Contract for a variable accumulation of benefits. During the accumulation period, Participants will have the right to instruct the Employer with respect to the votes attributable to any Vested interest they have in the Contract. All other votes entitled to be cast during the accumulation period may be cast by the Employer in its sole discretion, exercised in a nondiscriminatory manner,. During the annuity period, every Participant will have the right to instruct the Employer with respect to all votes attributable to the amount of assts established in the appropriate separate account to meet the annuity obligations related to such Participant. The Insurer will provide all notices and proxy materials to the Employer for distribution to the Participants. The Employer may cast all votes for which instruction were not received in accordance with the Employer's sole discretion, exercised in a nondiscriminatory manner.

5. Certificate of Participant The Insurer shall issue a certificate of participant and/or a Contract, as applicable, to each Participant. Each such certificate of participation shall set forth in substance the benefits or other rights to which such Participant is entitled under the Contract.

6. Insurer Indemnification The Employer agrees to indemnify and hold harmless the Insurer against any and all claims, losses, damages, expenses and liabilities the Insurer may incur in the exercise and performance of the Insurer's duties hereunder, unless the same are determined to be due to gross negligence or willful misconduct on the part of the Insurer.

Appendix C
CLAIMS PROCEDURE ADDENDUM

The Plan is hereby amended as follows:

Section 3.7 is deleted in its entirety and replaced with the following:

3.7.1 Claim Procedure (Non-Disability). Any Participant or Beneficiary who is entitled to a payment of a benefit for which provision is made in this Plan shall file a written claim with the Plan Administrator on such forms as furnished by the Plan Administrator and shall furnish such evidence of entitlement to benefits as the Plan Administrator may require. The Plan Administrator shall notify the Participant or Beneficiary in writing of the amount of benefit to which he is entitled, the duration of such benefit, the time the benefit is to commence, and other pertinent information concerning his benefit.

If the Plan Administrator denies a claim for benefits, in whole or in part, the Plan Administrator shall provide adequate notice in writing to the Participant or Beneficiary whose claim for benefits has been denied within ninety (90) days after receipt of the claim unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing is required, the Plan Administrator shall furnish written notice to the Participant or Beneficiary indicating the special circumstances and the date by which a final decision is expected to be rendered. In no event shall the period of extension exceed one hundred eighty (180) days after receipt of the claim. The notice of denial of the claim shall include (a) the specific reason or reasons for the denial; (b) specific reference to pertinent Plan provisions on which the denial is based; (c) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and (d) a statement that any appeal of the denial must be made by giving to the Plan Administrator, within sixty (60) days after receipt of the notice of the denial, written notice of such appeal, such notice to include a full description of the pertinent issues and basis of the claim. The Participant or Beneficiary (or his duly authorized representative) may review pertinent documents and submit issues and comments in writing to the Plan Administrator. If the Participant or Beneficiary fails to appeal such action to the Plan Administrator in writing within the prescribed period of time, the Plan Administrator's adverse determination shall be final, binding, and conclusive. Benefits under this Plan will be paid only if the Plan Administrator decides in his discretion that the applicant is entitled to them.

3.7.2 Appeal (Non-Disability). If the Plan Administrator receives from a Participant or a Beneficiary, within the prescribed period of time, a notice of an appeal of the denial of a claim for benefit, such notice and all relevant materials shall immediately be submitted to the Employer. The Employer may hold a hearing or otherwise ascertain such facts as it deems necessary and shall render a decision that shall be binding upon both parties.

The Employer's decision shall be made within sixty (60) days after the Plan Administrator receives the notice of appeal, unless special circumstances require an extension of time for processing, in which case the Employer shall render a decision as soon as possible but not later than one hundred twenty (120) days after receipt of the request for review. If such an extension of time is required, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension. The Employer's decision shall be in writing, shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, as well as specific references to the pertinent Plan provisions on which the decision is based, and shall be promptly furnished to the claimant. Benefits under this Plan granted pursuant to such an appeal will be paid only if the Employer decides in its discretion that the applicant is entitled to them.

3.7.3 Claims Involving Disability. If the Plan Administrator receives a Disability claim from a Participant or a Beneficiary, and the final determination of Disability is being made by the Plan Administrator, the claim shall be reviewed in accordance with this subsection. If a claim for a Disability benefit is denied by the Plan Administrator, in whole or in part, the Plan Administrator shall provide adequate notice, in writing, to the Participant or Beneficiary whose claim for benefit has been denied. The notice must be provided within forty-five (45) days after receipt of the claim that has been filed in accordance with the reasonable procedures of the Plan unless the Plan Administrator determines that an extension of time of up to thirty (30) days is required due to matters beyond control of the Plan. If such an extension is required the Plan Administrator shall furnish written notice of the extension prior to the end of the initial forty-five (45) day period. The notice of extension must include information to indicate the special circumstances that required the extension and the date by which the Plan Administrator will issue their determination (no later than thirty (30) days beyond the end of the first deadline). If prior to the end of the first extension period the Plan Administrator determines that another extension is required due to matters beyond the control of the Plan, the deadline can be extended for a further thirty (30) days. If such further extension is required, the Plan Administrator shall furnish written notice of the extension prior to the end of the above notice period. The notice of extension must include information to indicate the special circumstances giving rise to the extension and the date by which the Plan Administrator will issue their determination. In no event will the determination extend more than thirty (30) days beyond the end of the first deadline. Both notices of extension must contain (1) the standards on which the determination is being made, (2) the unresolved issues that prevent the Plan Administrator from making the decision, and (3) the additional information that would be needed to allow the Plan Administrator to make the decision. After receipt of an extension notice the Participant or Beneficiary will have no less than forty-five (45) days to provide the information specific as need for the decision.

Following receipt of notice of the Plan Administrator decision the Participant or Beneficiary will have one hundred and eighty (180) days to appeal such denial. Upon receipt of such appeal, the Plan Administrator must act within forty-five (45) days.

In addition, with respect to a claim for Disability benefits as described above, the Participant or Beneficiary must be provided, free of charge, any new or additional evidence or rationale obtained by the Plan during pendency of appeal. The Participant or Beneficiary shall have the right to review and respond to the additional information. This information must include any new or additional evidence considered, relied upon, or generated by the Plan, insurer, or other person making the benefit determination in connection with the claim. This information must be provided as soon as possible and sufficiently in advance of the Plan's decision on appeal to give the Participant or Beneficiary a reasonable opportunity to respond.

All claims subject to this Section 3.7.3 must be adjudicated in a manner designed to ensure the independence and impartiality of the persons involved in making the decision. Therefore, decisions regarding hiring, compensation, termination, promotion, or similar matters with respect to any individual must not be made based upon the likelihood that the individual will support the denial of the Disability claim. In addition, with respect to a Disability claim, both the initial denial letter and any appeal denial letter must be provided in a culturally and linguistically appropriate manner and must specifically set forth the following:

1. The specific basis for disagreeing with any determination by the Social Security Administration or other third party disability payer, or any views of health care professionals or vocational professionals treating a claimant, regardless of whether the information was relied upon.
2. If the adverse determination is based on a medical necessity, experimental treatment, or similar exclusion or limit, either (1) an explanation of the scientific or clinical judgment for the determination, or (2) the denial letter must make a statement that such an explanation will be made available upon request at no charge.

3. All internal rules, guidelines, protocols, standards or other similar criteria that were relied upon in denying the claim or a statement that such criteria do not exist.
4. A statement that the Participant or Beneficiary is entitled to receive, upon request and free of charge, relevant documents.
5. In the case of an appeal denial letter, the letter must describe any contractual limitation period for a lawsuit and the expiration date for that limitation period along with a statement that the limitation period may not expire before the conclusion of the Plan's internal appeals process.
6. If a claimant's address is in a county where at least 10% of the individuals in that population are literate only in the same non-English language (as determined by the United States Census Bureau), the notices must include a statement in the non-English language about the availability of language services. In addition, the Plan must provide a customer assistance process (such as a telephone hotline) with oral language services in the non-English language and provide written notices in that language upon request.

Failure to adhere to the special requirements applicable to benefit determinations pursuant to this Section 3.7.3 will result in the Participant or Beneficiary being deemed to have exhausted the Plan's administrative remedies, thus giving such Participant or Beneficiary the right to pursue court action, unless the violation was de minimis; non-prejudicial; attributable to good cause or matters beyond the Plan's control; in the context of on-going good-faith exchange of information; and not reflective of a pattern or practice of non-compliance.

The administrative remedies available under the Plan with respect to claims for disability benefits will not be deemed exhausted based on de minimis violations that do not cause, and are not likely to cause, prejudice or harm to the claimant so long as the Plan demonstrates that the violation was for good cause or due to matters beyond the control of the Plan and that the violation occurred in the context of an ongoing, good faith exchange of information between the Plan and the claimant. This exception is not available if the violation is part of a pattern or practice of violations by the Plan. The claimant may request a written explanation of the violation from the Plan, and the Plan must provide such explanation within ten (10) days, including a specific description of its basis, if any, for asserting that the violation should not cause the administrative remedies available under the Plan to be deemed exhausted. If a court rejects the claimant's request for immediate review under on the basis that the Plan met the standards that the violation was de minimis; non-prejudicial; attributable to good cause or matters beyond the Plan's control, the claim shall be considered as re-filed on appeal upon the Plan's receipt of the decision of the court. Within a reasonable time after the receipt of the decision, the Plan shall provide the claimant with notice of the resubmission.

3.7.4 Claims Appeal Involving Disability. If the Plan Administrator receives a notice of an appeal of the denial of a claim for benefit from a Participant or a Beneficiary, within the prescribed period of time, such notice and all relevant materials shall immediately be submitted to the Employer. The Employer may hold a hearing or otherwise ascertain such facts as it deems necessary and shall render a decision, which shall be binding upon both parties.

The decision of the Employer shall be made within sixty (60) days (forty-five (45) days for Disability claims) after the receipt by the Plan Administrator of the notice of appeal, unless special circumstances require an extension of time for processing, in which case a decision of the Employer shall be rendered as soon as possible but not later than one hundred twenty (120) days after receipt of the request for review. If such an extension of time is required, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension. The decision of the Employer shall be in writing, shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, as well as specific references to the pertinent Plan provisions on which the decision is based and shall be promptly furnished to the claimant. Benefits under this Plan granted pursuant to such an appeal will be paid only if the Employer decides in his discretion that the applicant is entitled to them.

Exhibit C

**ALL VALLEY ADMINISTRATORS LLC
PROTOTYPE
DEFINED CONTRIBUTION TRUST
Basic Plan 03**

**ALL VALLEY ADMINISTRATORS LLC PROTOTYPE
DEFINED CONTRIBUTION TRUST
Basic Plan 03**

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ARTICLE I

INTRODUCTION

1.1 Creation and Title. The Employer and the undersigned Trustee(s) hereby create a Trust to be known by the name set forth in the Adoption Agreement. All terms used herein have the same meaning as described in the All Valley Administrators LLC Prototype Defined Contribution Plan 03.

1.2 Subject to the Requirements of the Plan. Numerous Plan provisions describe the role and duties of the Trustee regarding the Plan. Such provisions are hereby incorporated by reference and apply to the Trustee in the same manner as if they were stated in this Trust Agreement. This Trust is subject to the terms of the Plan, and the Plan shall control in the event of any conflict between the Plan document and this Agreement.

1.3 Effective Date. The provisions of this Trust shall be effective as of the Effective Date specified in the most recent Adoption Agreement unless modified herein.

1.4 Purpose. The Plan and this Trust are established to provide retirement benefits to Eligible Employees in accordance with the Plan and the Adoption Agreement.

1.5 Plan Administration. The Plan is administered by the Plan Administrator. The Trustee shall act according to the Plan Administrator's directions unless such directions are inconsistent with the terms of the Plan or applicable law.

ARTICLE II

TRUSTEE

2.1 Acceptance of Trust. The Trustee, by the execution of this Trust Agreement, agrees to act in accordance with the express terms and conditions hereof and the Plan.

2.2 Trustee Capacity - Co-Trustees.

- (a) The Trustee may be a bank, trust company, or other corporation possessing trust powers under applicable state or federal law or one or more individuals or any combination thereof.
- (b) The term "Trustee" as used herein also includes any person holding the assets of a custodial account, an annuity contract, or other contract that is treated as a qualified trust pursuant to Code section 401(f), and references to the Trust Fund shall be construed to apply to such custodial account, annuity contract, or other contract.
- (c) At any time that a group of individuals is acting as Trustee, the number of such persons who shall act in such capacity from time to time shall be determined by the Employer. The Employer shall appoint such persons, who may or may not be Participants or Employees of the Employer. When there are two (2) or more Trustees, they may allocate specific responsibilities, obligations, or duties among themselves by their written agreement. An executed copy of such written agreement shall be delivered to and retained by the Plan Administrator. Unless otherwise elected by the Employer in the Adoption Agreement, any action taken by the Trustees shall be taken at the direction of a majority of such Trustees, or, if the number of such Trustees is two (2), by unanimous consent.

2.3 Resignation, Removal, and Successors. Any Trustee may resign at any time by delivering to the Employer a written notice of resignation to take effect at a date specified therein, which shall not be less than thirty (30) days after the delivery thereof; the Employer may waive such notice. The Trustee may be removed by the Employer with or without cause, by tendering to the Trustee a written notice of removal to take effect at a date specified therein.

Upon such removal or resignation of a Trustee, the Employer shall either appoint a successor Trustee who shall have the same powers and duties as those conferred upon the resigning or discharged Trustee, or, if a group of individuals is acting as Trustee, determine that a successor shall not be appointed and the number of Trustees shall be reduced by one (1).

2.4 Consultations. The Trustee shall be entitled to advice of counsel, which may be counsel for the Plan or the Employer, in any case in which the Trustee shall deem such advice necessary. The Trustee shall not be liable for any action taken or omitted in good faith reliance upon the advice of such counsel.

With the exception of those powers and duties specifically allocated to the Trustee by the express terms of the Plan, it shall not be the responsibility of the Trustee to interpret the terms of the Plan, and the Trustee may request, and is entitled to receive, guidance and written direction from the Plan Administrator on any point requiring construction or interpretation of the Plan documents.

2.5 Rights, Powers, and Duties. The rights, powers, and duties of the Trustee are:

- (a) The Trustee shall have exclusive authority, discretion, and responsibility for the management and control of the assets of the Trust Fund in accordance with the provisions of the Plan and any amendments thereto, but the Employer may limit the exclusive authority, discretion, and responsibility of the Trustee by written direction delivered to the Trustee. The duties of the Trustee under the Plan shall be determined solely by the express provisions hereof, and no other further duties or responsibilities shall be implied. Subject to the terms of the Plan, the Trustee shall be fully protected and shall incur no liability in acting in reliance upon the written instructions or directions of the Employer, the Plan Administrator, a duly designated investment manager, or any other named Fiduciary.
- (b) The Trustee shall have all powers necessary or convenient for the orderly and efficient performance of its duties hereunder, including but not limited to those specified in this Section. The Trustee shall have the power generally to do all acts, whether or not expressly authorized, that the Trustee in the exercise of its fiduciary responsibility may deem necessary or desirable for the protection of the Trust Fund and the assets thereof.
- (c) The Trustee shall have the power to collect and receive any and all moneys and other property due the Plan and to give full discharge and release therefore; to settle, compromise, or submit to arbitration any claims, debts, or damages due to or owing to or from the Trust Fund; to commence or defend suits or legal proceedings whenever, in the Trustee's judgment, any interest of the Trust Fund requires it; and to represent the Trust Fund in all suits or legal proceedings in any court of law or equity or before any other body or tribunal. Claims that are not subject to arbitration are ERISA claims, claims involving participants and claims that affect the qualification of the Plan.
- (d) The Trustee shall cause any Life Insurance Policies or assets of the Trust Fund to be registered in its name as Trustee and shall be authorized to exercise any and all ownership rights regarding these assets, subject to the terms of the Plan.
 - (i) The requirements of paragraph (d) of this Section will not fail to be satisfied merely because securities of a plan are held in the name of a nominee or in street name, provided such securities are held on behalf of the Plan by:
 - (A) A bank or trust company that is subject to supervision by the United States or a State, or a nominee of such bank or trust company;
 - (B) A broker or dealer registered under the Securities Exchange Act of 1934, or a nominee of such broker or dealer; or
 - (C) A "clearing agency," as defined in section 3(a)(23) of the Securities Exchange Act of 1934, or its nominee.
 - (ii) Where a corporation described in section 501(c)(2) of the Internal Revenue Code holds property on behalf of the Plan, the requirements of paragraph (d) of this Section are satisfied with respect to such property if all the stock of such corporation is held in trust on behalf of the Plan by one or more trustees.
 - (iii) If the assets of an entity in which the Plan invests include Plan assets by reason of the Plan's investment in the entity, the requirements of paragraph (d) of this Section are satisfied with respect to such investment if the indicia of ownership of the Plan's

interest in the entity are held in trust on behalf of the Plan by one or more trustees.

- (e) The Trustee may temporarily hold cash balances and shall be entitled to deposit any funds received in a bank account in the name of the Trust Fund in any bank selected by the Trustee, including the banking department of a corporate Trustee, if any, pending disposition of such funds in accordance with the Plan. Any such deposit may be made with or without interest.
- (f) The Trustee shall pay the premiums and other charges due and payable at any time on any Life Insurance Policies as the Plan Administrator may direct, provided funds for such payments are then available in the Trust. The Trustee shall be responsible only for such funds and Life Insurance Policies that it actually receives as Trustee and shall have no obligation to make payments other than from such funds and cash values of Life Insurance Policies.
- (g) If the whole or any part of the Trust Fund shall become liable for the payment of any estate, inheritance, income, or other tax that the Trustee shall be required to pay, the Trustee shall have full power and authority to pay such tax out of any moneys or other property in its possession for the Account of the person whose Plan interest is so liable. Prior to making any payment, the Trustee may require such releases or other documents from any lawful taxing authority as it shall deem necessary. The Trustee shall not be liable for any nonpayment of tax when it distributes an interest hereunder on instructions from the Plan Administrator.
- (h) The Trustee shall keep a full, accurate, and detailed record of all transactions of the Trust, which the Employer and the Plan Administrator shall have the right to examine at any time during the Trustee's regular business hours. As of the close of each Plan Year, the Trustee shall furnish the Plan Administrator with a statement of account setting forth all receipts, disbursements, and other transactions effected by the Trustee during the year. The Plan Administrator shall promptly notify the Trustee in writing of his approval or disapproval of the statement of account.

The Plan Administrator's failure to provide written disapproval of the statement within sixty (60) days after receipt shall be considered an approval. Except as otherwise required by law, the Plan Administrator's approval shall be binding on all matters embraced in any statement to the same extent as if the statement of the Trustee had been settled by judgment or decree of a court of competent jurisdiction under which the Trustee, Employer, and all persons having or claiming any interest in the Trust Fund were parties; provided, however, that the Trustee may have its account judicially settled if it so desires.

- (i) The Trustee is hereby authorized to execute all necessary receipts and releases to any parties concerned; and shall be under a duty, upon being advised by the Plan Administrator that the proceeds of any Life Insurance Policies are payable, to give reasonable assistance to the Beneficiary designated therein to collect such sums as may appear to be due and upon payment, transfer such sums to the Beneficiary.
- (j) If, at any time, as the result of the death of the Participant, there is a dispute regarding the person to whom payment or delivery of moneys or property should be made by the Trustee, or regarding any action to be taken by the Trustee, the Trustee may postpone such payment, delivery, or action, retaining the funds or property involved, until such dispute shall have been resolved in a court of competent jurisdiction, the Trustee shall have been indemnified to its satisfaction, or it has received written direction from the Plan Administrator.
- (k) Anything in this instrument to the contrary notwithstanding, the Trustee shall have no duty or responsibility with respect to the determination of matters pertaining to the eligibility of any Employee to become or remain a Participant under the Plan, the amount of benefit to which any Participant or Beneficiary shall be entitled under the Plan, or the size and type of any Life Insurance Policy to be purchased from any Insurer for any Participant under the Plan; all such responsibilities being vested in the Plan Administrator.

2.6 Right of Trustee to Contributions. Unless provided with written direction to the contrary, by the Employer or the Plan Administrator, the Trustee shall have no duty to require any contribution to be made or to determine whether contributions delivered to the Trustee by the Employer comply with the provisions of this Agreement. The Trustee shall be notified in writing of the Named Fiduciary to whom such responsibility has been assigned. In this case, the Trustee shall be accountable only for funds actually received by the Trustee.

If the Plan has two or more Named Fiduciaries or Trustees assigned this duty, it may be allocated to a single Named Fiduciary or Trustee. The Employer or Plan Administrator may also provide that a Named Fiduciary may direct the Trustee as to this responsibility or may appoint an Investment Manager to take on this duty. To the extent the nature and scope of the Trustee's responsibilities are specifically limited in the Plan documents, Trust Agreement or by written direction, it will be the responsibility of the Named Fiduciary with the authority to hire and monitor Trustees to assure that all Trustee responsibilities with respect to the management and control of the Plan's assets (including collecting delinquent contributions) have been properly assigned to a Trustee, Investment Manager or Named Fiduciary.

The Plan must make systematic, reasonable and diligent efforts to collect delinquent Employer Contributions. The steps necessary to discharge this duty to collect contributions will depend on the available facts. In determining what collection actions to take, a Named Fiduciary must weigh the value of the Plan assets involved, the likelihood of a successful recovery, and the expenses expected to be incurred. Among other factors, the Named Fiduciary may take into account the Employer's solvency in deciding whether to expend Plan assets to pursue a claim.

2.7 Trustee Indemnification. The Employer shall indemnify and hold harmless the Trustee for and from the assertion or occurrence of any liability to a Participant or Beneficiary for any action taken or omitted by the Trustee pursuant to any written direction to the Trustee from the Employer or the Plan Administrator. Such indemnification obligation of the Employer shall not be applicable to the extent that any such liability is covered by insurance.

2.8 Changes in Trustee Authority. If a successor Trustee is appointed, neither an Insurer nor any other person who has previously had dealings with the former Trustee shall be chargeable with knowledge of such appointment or change until furnished with written notice. Until such notice, the Insurer and any other such party shall be fully protected in relying on any action taken or signature presented that would have been proper in accordance with information previously received.

ARTICLE III

FIDUCIARY DUTIES

3.1 Standard of Conduct. The duties and responsibilities of the Trustee with respect to the Plan shall be carried out (a) in a non-discriminatory manner; (b) for the exclusive benefit of Participants and their Beneficiaries; (c) by defraying the reasonable expenses of administering the Plan; (d) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; (e) by diversifying the investments of the Plan to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and (f) in accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with the provisions of the Act.

3.2 Individual Fiduciaries. At any time that a group of individuals is acting in the same Fiduciary capacity, the number of such persons who shall act in such capacity from time to time shall be determined by the Employer. Such persons shall be appointed by the Employer and may or may not be Participants or Employees of the Employer. Unless otherwise elected by the Employer in the Adoption Agreement, any action taken by a group of individuals acting in such capacity shall be taken at the direction of a majority of such persons, or, if the number of such persons is two (2), by unanimous consent.

3.3 Incorporation of Plan Provisions Regarding Fiduciaries. The provisions of Sections 3.3.3 through 3.3.11 of the Plan are hereby incorporated by reference, and such provisions shall apply to the Trustee in the same manner as they apply to any other Fiduciary.

ARTICLE IV

TRUST ASSETS

4.1 Trustee is Exclusive Owner. All assets held by the Trustee, whether in the Trust Fund or Segregated Funds, shall be owned exclusively by the Trustee, and no Participant or Beneficiary shall have any individual ownership thereof. Participants and their Beneficiaries shall share in the assets of the Trust, its net earnings, profits and losses, only as provided in the Plan.

4.2 Investments. The Trustee shall invest and reinvest the Trust Fund without distinction between income and principal in one or more of the following ways, as the Trustee shall from time to time determine:

- (a) The Trustee may invest the Trust Fund or any portion thereof in obligations issued or guaranteed by the United States of America or of any instrumentality thereof, or in other bonds, notes, debentures, mortgages, preferred or common stocks, options to buy or sell stocks or other securities, mutual fund shares, limited partnership interests, commodities, real estate or any interest therein, or in such other property, real or personal, as the Trustee shall determine.
- (b) The Trustee may cause the Trust Fund or any portion thereof to be invested in a common trust fund established and maintained by a national or other bank regulated by the Federal Deposit Insurance Corporation, for the collective investment of fiduciary funds, even though the bank is acting as the Trustee or investment manager, provided such common trust fund is a qualified trust under the applicable Code section, or corresponding provisions of future federal internal revenue laws, and is exempt from income tax under the applicable Code section. In the event any assets of the Trust Fund are invested in such a common trust fund, the Declaration of Trust creating such common trust fund, as it may be amended from time to time, shall be incorporated into the Plan by reference and made a part thereof.

Further, all or any portion of the assets subject to this Trust Agreement may be invested in any collective investment fund maintained exclusively for the investment of assets of (i) exempt, qualified employee benefit trusts and (ii) collective investment funds consisting exclusively of assets of such qualified trust. The assets so invested shall be subject to all the provisions of the instrument establishing such collective investment fund, as such instrument may be amended from time to time. Such instrument, as amended from time to time, is hereby incorporated and made a part of this Trust Agreement and shall control notwithstanding any contrary provision of this Trust Agreement or the Plan.

- (c) The Trustee may deposit any portion of the Trust Fund in savings accounts in federally insured banks or savings and loan associations or invest in certificates of deposit issued by any such bank or savings and loan association. The Trustee may retain, without liability for interest, any portion of the Trust Fund in cash balances pending investment thereof or payment of expenses.
- (d) The Trustee may buy and sell put and call options, covered or uncovered, engage in spreads, straddles, ratio writing and other forms of options trading, including sales of options against convertible bonds, and sales of Standard & Poor futures contracts, and trade in and maintain a brokerage account on a cash or margin basis.
- (e) The Trustee may invest any portion or all of the assets of the Trust Fund that are attributable to the vested and nonforfeitable interest in the Accounts of a Participant in the purchase of group or individual Life Insurance Policies issued on the life of the Participant or family member for the benefit of the Participant with the consent of the Participant, subject to the following conditions, as they are represented by the Plan Administrator:
 - (i) If ordinary Life Insurance Policies are used, the aggregate life insurance premiums must be less than one-half (1/2) of the aggregate Employer Contributions and Forfeitures allocated to the Participant's Account at any particular time, without regard to Trust earnings, capital gains and losses; for purposes of this Plan, the term "Ordinary Life Insurance Policies" shall mean Policies with both nondecreasing death benefits and nonincreasing premiums.
 - (ii) The aggregate premiums paid for Life Insurance Policies on the life of any Participant or family member that are either term, universal or any other contracts which are not ordinary whole life Policies shall not at any time exceed twenty-five percent (25%) of the aggregate amount of Employer Contributions and Forfeitures that have been allocated to the Accounts of such Participant.
 - (iii) The sum of one-half of the aggregate premiums for ordinary whole Life Insurance Policies and all premiums for other Life Insurance Policies shall not at any time exceed twenty-five percent (25%) of the aggregate amount of Employer Contributions and Forfeitures that have been allocated to the Accounts of such Participant.
 - (iv) If the Plan permits in-service distributions to a Participant prior to his Normal Retirement Date, the amount that may be distributed to the Participant may be applied to the purchase of Life Insurance Policies.
- (f) The Trustee may invest the Trust Fund or any portion thereof to acquire or hold Qualifying Employer Securities or Real Property, provided that the portion so invested shall not exceed the amount allowed as an investment under the Act. There shall be no limit on the acquisition of Qualifying Employer Securities in an individual account balance plan in which Participants may direct the Trustee to buy Qualifying Employer Securities on their behalf.
- (g) If permitted, the Participant may direct the purchase of life insurance on his life, on the joint lives of the Participant and someone in whom the Participant has an insurable interest, or on the life of someone in whom the Participant has an insurable interest. The amount that can be used to pay life insurance premiums shall be determined according to this Section.

4.3 Administration of Trust Assets.

Subject to the limitations expressly set forth here and in the Plan, the Trustee shall have the following powers and authority in connection with the administration of the assets of the Trust:

- (a) To hold and administer all contributions made by the Employer to the Trust Fund and all income or other property derived therefrom as a single Trust Fund, except as otherwise provided in the Plan. Receive contributions of property to the Plan as long as the Plan is not a pension plan, the contribution is discretionary and the property is not encumbered;
- (b) To manage, control, sell, convey, exchange, petition, divide, subdivide, improve, repair, grant options, sell upon deferred payments, lease without limit as determined for any purpose, compromise, arbitrate, or otherwise settle claims in favor of or against the Trust Fund,

institute, compromise, and defend actions and proceedings, and to take any other action necessary or desirable in connection with the administration of the Trust Fund;

- (c) To vote any stock, bonds, or other securities of any corporation or other issuer; otherwise consent to or request any action on the part of any such corporation or other issuer; to give general or special proxies or powers of attorney, with or without power of substitution; to participate in any reorganization, recapitalization, consolidation, merger, or similar transaction with respect to such securities; to deposit such stocks or other securities in any voting trusts, or with any protective or like committee, or with the trustee, or with the depositories designated thereby; to exercise any subscription rights and conversion privileges or other options and to make any payments incidental thereto; and generally to do all such acts, execute all such instruments, take all such proceedings and exercise all such rights, powers, and privileges with respect to the stock or other securities or property constituting the Trust Fund as if the Trustee were the absolute owner thereof;
- (d) To apply for and procure, at the election of any Participant, Life Insurance Policies on the life of the Participant or someone in whom the Participant has an insurable interest; to exercise whatever rights and privileges may be granted to the Trustee under such Policies, and to cash in, receive, and collect such Policies or the proceeds therefrom as and when entitled to do so under the provisions thereof;
- (e) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (f) To register any investment held in the Trust in the Trustee's own name or in the name of a nominee for the benefit of the Plan, or to hold any investment in bearer form, provided that the books and records of the Trustee shall at all times show that all such investments are part of the Trust;
- (g) To borrow money for the purposes of the Plan in such amounts and upon such terms and conditions as the Trustee deems appropriate;
- (h) To commingle the assets of the Trust Fund with the assets of other similar trusts that are exempt from income tax, whether sponsored by the Employer, an affiliate of the Employer, or an unrelated employer, provided that the books and records of the Trustee shall at all times show the portion of the commingled assets that are part of the Trust; and
- (i) To do all acts whether or not expressly authorized that the Trustee may deem necessary or proper for the protection of the property held hereunder.

4.4 Segregated Funds.

Unless otherwise determined by the Trustee to be imprudent, the Trustee shall invest and reinvest each Segregated Fund without distinction between income and principal. Such accounts shall be held for the benefit of the Participant for whom such Segregated Fund is established in accordance with the terms of the Plan, and the Participant's Segregated Account shall be credited with any interest earned in connection with such accounts. If the Trustee determines that an alternative investment is appropriate, the Trustee may invest the Segregated Fund in any manner permitted with respect to the Trust Fund and such Segregated Fund shall be credited with the net income or loss or net appreciation or depreciation in value of such investments. No Segregated Fund shall share in any Employer Contributions or Forfeitures, any net income or loss from, or net appreciation or depreciation in value of, any investments of the Trust Fund, or any allocation for which provision is made in the Plan that is not specifically attributable to the Segregated Fund.

4.5 Investment Control Option.

If the Employer elects in the Adoption Agreement to permit Participants to direct the investment of their Accounts, each Participant may elect to transfer funds that do not exceed the balances in his Trustee-directed Accounts to a Controlled Account and exercise investment control of those funds by appropriate direction to the Trustee.

To the extent that the funds to be transferred from a Participant's Account include his share of an Employer Contribution or other funds that have not yet been received by the Trustee, such transfer shall not occur until the Trustee receives such funds. Funds transferred to a Controlled Account on behalf of the Participant shall be thereafter be invested by the Trustee in such property, real or personal (other than collectibles), as the Participant shall direct from time to time in writing, unless policies adopted pursuant to Section 3.4.6 of the Plan permit electromechanical communications in this context. The Participant may not direct the Trustee to make distributions or loans to himself, nor to make loans to the Employer, and the Trustee may limit the investment alternatives available to the Participant in a uniform and nondiscriminatory manner.

A Participant shall make such election by giving notice thereof to the Trustee as the Trustee deems necessary, and such notice shall specify the source and amount of such funds to be transferred. Any such election shall be at the absolute discretion of the individual Participant and shall be binding upon the Trustee unless the Trustee has actual knowledge that such transaction is a prohibited transaction under the Code or the Act. Upon any such election being made, the amount of such funds to be transferred shall be deducted from his Trustee-directed Accounts as appropriate and added to a Controlled Account of the Participant. All earnings thereafter received with respect to such transferred funds, as well as any appreciation or depreciation in his investments, shall be added to or deducted from his Controlled Account.

If the Employer elects to follow ERISA section 404(c), the Plan Administrator or appropriate Fiduciary shall ensure that the Plan provides Participants with the minimum options and information required by ERISA section 404(c) and the regulations thereunder.

If a Participant elects to transfer funds from his Trustee-directed Accounts to a Controlled Account as of a date other than a Valuation Date, the Trustee may defer such transfer until the next succeeding Valuation Date or may make such transfer, provided that the Trustee determines that the assets in the Trust Fund are such that it is feasible and practical to make such transfer. As of the date of such transfer, adjustments to the Participant's Accounts shall be made as if such date is a Valuation Date.

As of any Valuation Date, the Participant may elect to have all or any portion of any cash contained in his Controlled Account transferred back to the general assets of the Trust Fund, in which case the Trustee shall again invest such cash as part of the general assets of the Trust Fund. A Participant shall make such election by giving notice to the Trustee, in the manner that the Trustee deems necessary, and the notice shall specify the amount of cash to be transferred. The amount of such funds so transferred shall be deducted from the Participant's Controlled Account and added to the appropriate Account of the Participant. Any such election shall be at the absolute discretion of the individual Participant and shall be binding upon the Trustee.

The Trustee shall not have any investment responsibility with respect to a Participant's Controlled Account. In the event that a Participant elects to have any such funds transferred to a Controlled Account and invested in particular securities or assets pursuant to this Section, the Trustee shall not be liable for any loss or damage resulting from the investment decision of the Participant.

ARTICLE V

AMENDMENT AND TERMINATION

5.1 Amendments.

The Employer may at any time or times amend this Trust, in whole or in part.

5.2 Manner of Amending.

Each amendment of this Trust shall be made by delivery to the Trustee of a copy of the Employer resolution that sets forth such amendment.

5.3 Limitations On Amendments.

(a) No amendment to this Trust shall:

- (1) Directly or indirectly operate to give the Employer any interest whatsoever in the assets of the Trust or a custodial account or to deprive any Participant or Beneficiary of his vested and nonforfeitable interest in the assets of the Trust as then constituted, or cause any part of the income or corpus of the Trust to be used for, or diverted to purposes other than the exclusive benefit of Employees or their Beneficiaries; or
- (2) Increase the duties or liabilities of the Trustee without the Trustee's prior written consent.

(b) The Employer may amend the Trust or custodial account document provided such amendment merely involves the specifications of the names of the Plan, Employer, Trustee or custodian, Plan Administrator or other Fiduciaries, the Trust Year, or the name of any pooled trust in which the Plan's Trust will participate.

(c) The Plan will not be considered to have an individually designed plan merely because the Employer amends administrative provisions of the Trust or custodial account document (such as provisions relating to investments and duties of Trustees) so long as the amended provisions are not in conflict with any other provision of the Plan and do not cause the Plan to fail to qualify under Code section 401(a).

5.4 Trustee Powers Pending Final Distribution.

Sections 3.8.4 through 3.8.6 of the Plan provide for the termination or partial termination of the Plan and the withdrawal of an Employer from participation in the Plan. Until final distribution of the assets of the Trust, the Trustee shall continue to have all the powers provided under the Plan and this Trust as are necessary for the orderly administration, liquidation, and distribution of the assets of the Trust.

5.5 Delegation to Sponsor.

The Employer expressly delegates authority to the Plan Sponsor the right to amend any part of this Trust on its behalf to the extent necessary to preserve the qualified status of the Plan. For purposes of amendments by the Plan Sponsor, the Mass Submitter shall be recognized as the agent of the Plan Sponsor. If the Plan Sponsor does not adopt the amendments made by the Mass Submitter, the Plan shall no longer be identical to or a minor modifier of the Mass Submitter plan. The Plan Sponsor shall submit a copy of the amendment to each Employer who has adopted the Plan after first having received a ruling or favorable determination from the Internal Revenue Service that the Plan as amended satisfies the applicable requirements of the Code.

ARTICLE VI

MISCELLANEOUS

6.1 No Reversion to Employer.

Except as specifically provided in the Plan, no part of the corpus or income of the Trust shall revert to the Employer or be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

6.2 Persons Dealing With Trustee Protected.

No person dealing with the Trustee shall be required or entitled to see to the application of any money paid or property delivered to the Trustee, or determine whether the Trustee is acting pursuant to the authorities granted to the Trustee hereunder or to authorizations or directions herein required. The certificate of the Trustee that the Trustee is acting in accordance with the Plan shall protect any person relying thereon.

6.3 Notices.

Any notice or direction to be given in accordance with this Trust shall be deemed to have been effectively given if hand delivered to the recipient or sent by certified mail, return receipt requested, to the recipient at the recipient's last known address. At any time that a group of individuals is acting as Trustee or in a Fiduciary capacity, notice to the Trustee or such Fiduciary may be given by giving notice to any one or more of such individuals.

6.4 Governing Law.

The provisions of this Trust shall be construed, administered, and enforced in accordance with the provisions of the Act and, to the extent applicable, the laws of the state specified in the Adoption Agreement. All contributions to the Trust shall be deemed to take place in such state.

6.5 Severability of Provisions.

In the event that any provision of this Trust shall be held to be illegal, invalid, or unenforceable for any reason, said illegality, invalidity or unenforceability shall not affect the remaining provisions, but shall be fully severable and the Trust shall be construed and enforced as if said illegal, invalid or unenforceable provisions had never been inserted herein.

6.6 Gender and Number.

Whenever appropriate, words used in the singular shall include the plural, and the masculine gender shall include the feminine gender and vice versa.

6.7 Qualification Under Internal Revenue Laws.

The Employer intends that the Trust qualify under the applicable Code provisions. Until advised to the contrary, the Trustee may assume that the Trust is so qualified and is entitled to tax exemption under the Code. If the Plan of the Employer fails to attain or retain qualification, the Employer's Plan shall no longer participate in the Prototype Plan and shall be considered an individually designed plan.

The Employer and the Trustee(s) hereby adopt the foregoing Trust on this _____ day of _____, _____.

Employer:
City Of Mendota

Trustee:

City Manager

City Manager
Trustee

Finance Director

Finance Director
Trustee

AGENDA ITEM

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CRISTIAN GONZALEZ, CITY MANAGER

SUBJECT: PROPOSED AMENDMENTS TO THE MENDOTA CANNABIS ORDINANCE TO MODIFY THE LOCATION REQUIREMENTS FOR COMMERCIAL CANNABIS RETIAL BUSINESSES

DATE: AUGUST 27, 2019

BACKGROUND:

In light of the developments to state laws and regulations regarding commercial cannabis retail businesses, in 2019 the City enacted Ordinance No. 19-06, which amended Chapter 8.36 of the Mendota Municipal Code (MMC) to eliminate the City’s ban on cannabis dispensaries, and added Chapter 8.37 to the MMC, which established regulations for the operation of commercial cannabis businesses, including cannabis dispensaries (referred to as “commercial cannabis retail businesses”). Among other things, Ordinance No. 19-06 established location requirements for cannabis retail businesses, including a requirement that no cannabis retail business shall be located within 800 feet of another cannabis retail business, a school, a day care center, or a youth center. This requirement is now codified in Section 8.37.090 of the MMC.

At the same time, the City also initiated proceedings to amend its zoning code to permit commercial cannabis retail businesses in its primary commercial district, the C-3 Zone, as the City’s existing Cannabis Overlay District is not located in a commercial use area, and it is believed that commercial cannabis retail is suitable to being located in a commercial use area.

On July 16, 2019, the City Planning Commission considered a proposed ordinance amending the City’s Zoning Code to permit a limited number of commercial cannabis retail businesses in the C-3 district subject to a conditional use permit. The Planning Commission recommended approval of the proposed ordinance on the condition that the City amend Section 8.37.090 to provide that no cannabis retail business shall be located within 500 feet of another cannabis retail business, a school, a day care center, or a youth center, rather than 800 feet as originally required when Ordinance No. 19-06 was adopted.

On August 12, 2019 the City Council conducted a public hearing and first reading for Ordinance 19-08. At the conclusion of the public hearing, the City Council voted to accept the Planning Commission’s recommendation and directed staff to amend Section 8.37.090 of the MMC to provide that no cannabis retail business shall be located within 500 feet of another cannabis retail business, a school, a day care center, or a youth center.

DISCUSSION:

In accordance with the Planning Commissions' recommendation and the City Council's direction, this Ordinance No. 19-09 makes only one change to the MMC. It amends Section 8.37.090 to provide that no cannabis retail business shall be located within **500 feet** of another cannabis retail business, a school, a day care center, or a youth center. Currently, Section 8.37.090 provides that no cannabis retail business shall be located within **800 feet** of another cannabis retail business, a school, a day care center, or a youth center.

FISCAL IMPACT:

None

RECOMMENDATION:

Staff recommends that that City Council move to introduce the Ordinance No. 19-09 and give first reading, by title only, with second reading waived.

ATTACHMENTS:

Adopted Resolution No. PC 19-02: A Resolution of the Planning Commission of the City of Mendota recommending Approval of Proposed Zoning Code Amendments to Permit Commercial Cannabis Retail Businesses in the C-3 District subject to a Conditional Use Permit.

Boundary Map (800 Feet)

Boundary Map (500 Feet)

**BEFORE THE PLANNING COMMISSION
OF THE
CITY OF MENDOTA, STATE OF CALIFORNIA**

RESOLUTION NO. PC 19-02

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MENDOTA
RECOMMENDING APPROVAL OF PROPOSED ZONING CODE AMENDMENTS TO
PERMIT COMMERCIAL CANNABIS RETAIL BUSINESSES IN THE C-3 DISTRICT
SUBJECT TO A CONDITIONAL USE PERMIT**

WHEREAS, in 2012, as amended in 2016 and 2017, the City adopted Chapter 8.36 of the Mendota Municipal Code (MMC) pertaining to recreational and medical cannabis activities (Cannabis Ordinance), which banned commercial cannabis cultivation, commercial deliveries of cannabis, and cannabis dispensaries in the City based upon various health, safety and welfare and land use findings relating to cannabis cultivation, dispensing, and consumption, which findings are incorporated herein by reference; and

WHEREAS, in 2017, the City enacted Ordinance No. 17-13, which created the Commercial Cannabis Overlay District to allow the establishment of commercial cannabis businesses involving the cultivation, manufacturing, distribution, and testing of cannabis products in a limited area of the City, but retained the ban on cannabis dispensaries;

WHEREAS, in light of the developments to state laws and regulations regarding commercial cannabis retail businesses, the City Council directed staff to prepare an ordinance permitting commercial cannabis uses and permitting a limited number of commercial cannabis retail businesses in its primary commercial district, the C-3 district, subject to a conditional use permit.

WHEREAS, in 2019, the City enacted Ordinance No. 19-06, which amended Chapter 8.36 of the MMC to eliminate the ban on cannabis dispensaries, and added Chapter 8.37 to the MMC, which established regulations for the operation of commercial cannabis businesses, including cannabis dispensaries, referred to therein as commercial cannabis retail businesses;

WHEREAS, Ordinance No. 19-06 contemplated an amendment to the City's Zoning Code to permit commercial cannabis retail businesses in the C-3 district subject to a conditional use permit;

WHEREAS, pursuant to Section 17.08.040, amendments to the City's Zoning Code which change any property from one district to another, or impose any regulation not heretofore imposed, or remove or modify any such regulations heretofore imposed shall be initiated and adopted by the procedure specified therein;

WHEREAS, the proposed amendments to the Zoning Code, attached hereto as Exhibit "A" and incorporated herein by this reference, remove or modify a regulation

heretofore imposed and are therefore subject to the procedure specified in Section 17.08.040;

WHEREAS, pursuant to Section 17.08.040(G)(3), if the Planning Commission determines that it is appropriate to recommend approval of the proposed amendments to the City Council, it must do so by adopting a resolution to that effect.

WHEREAS, the Planning Commission determines to recommend approval of the proposed amendments with the request that the City Council consider modifications to the location requirements for commercial cannabis retail businesses, including reducing the distance from which such businesses must be located from certain parcels; and


NOW, THEREFORE, BE IT RESOLVED, by the Planning Commission of the City of Mendota, State of California, the proposed amendments to the zoning code, attached hereto as Exhibit "A," are hereby recommended for approval by the City Council.



Albert Escobedo, Chairperson

ATTEST:

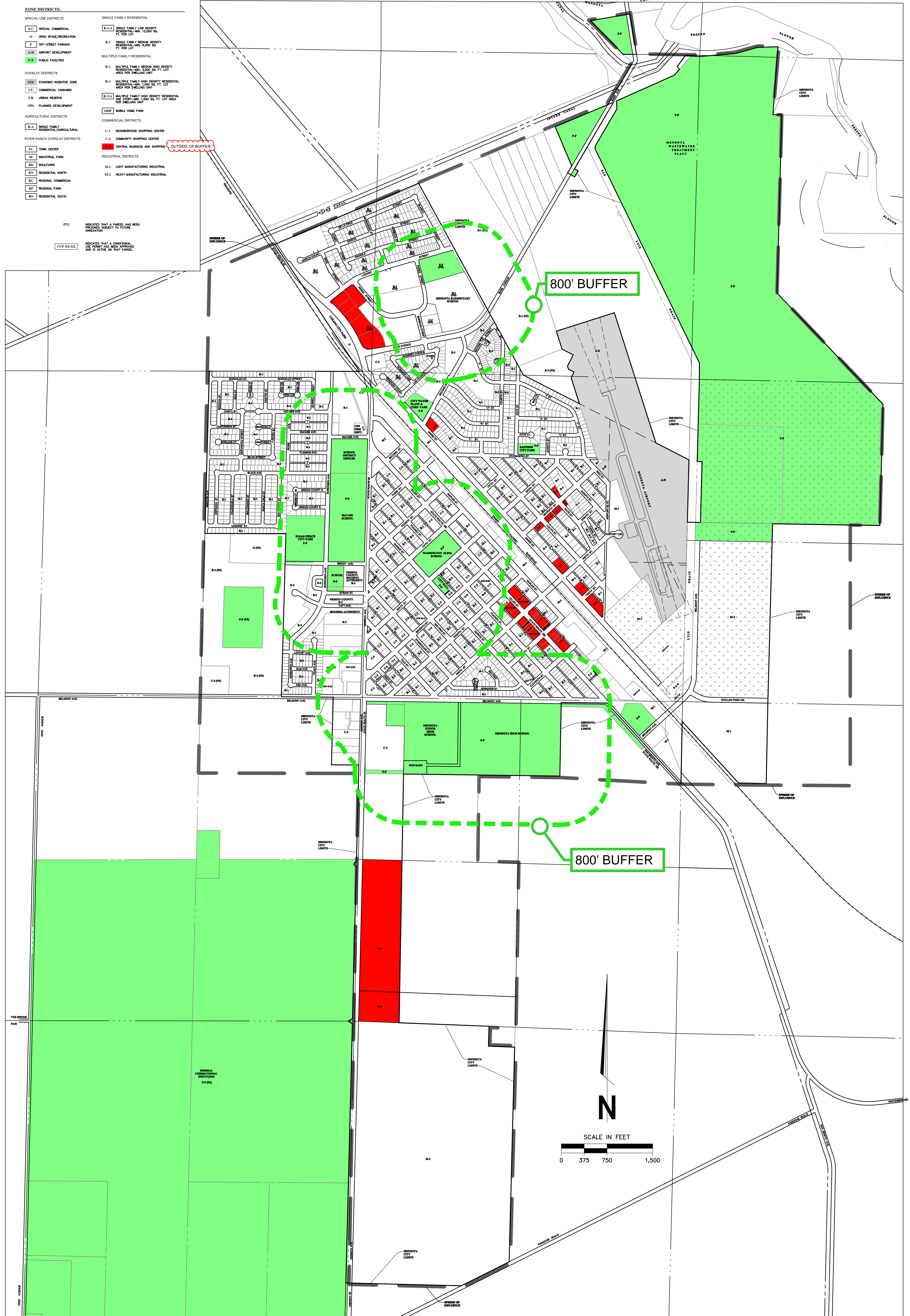
I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the Planning Commission at a regular meeting of said Commission, held at the Mendota City Hall on the 16th day of July, 2019, by the following vote:

AYES: 5 – Vice-Chairperson Escobedo, Commissioners Alonso, Gutierrez, Leiva, and Romero
NOES: 0
ABSENT: 1 – Chairperson Luna
ABSTAIN: 0


Celeste Cabrera-Garcia, City Clerk



- ZONE DISTRICTS:**
- SPECIAL USE DISTRICTS**
- S-C SPECIAL COMMERCIAL
 - O OPEN SPACE/RECREATION
 - P OFF-STREET PARKING
 - A-D AIRPORT DEVELOPMENT
 - P-F PUBLIC FACILITIES
- OVERLAY DISTRICTS**
- E-EZ ECONOMIC INCENTIVE ZONE
 - C-C COMMERCIAL CANNABIS
 - U-R URBAN RESERVE
 - FPD PLANNED DEVELOPMENT
- AGRICULTURAL DISTRICTS**
- R-A SINGLE FAMILY RESIDENTIAL/AGRICULTURAL
- RIVER RANCH OVERLAY DISTRICTS**
- TC TOWN CENTER
 - IP INDUSTRIAL PARK
 - BD BOLDENING
 - RS RESIDENTIAL NORTH
 - RC REGIONAL COMMERCIAL
 - RP REGIONAL PARK
 - RS RESIDENTIAL SOUTH
- SINGLE FAMILY RESIDENTIAL**
- R-1 SINGLE FAMILY LOW DENSITY RESIDENTIAL-MIN. 1,000 SQ. FT. PER LOT
 - R-1.1 SINGLE FAMILY MEDIUM DENSITY RESIDENTIAL-MIN. 8,000 SQ. FT. PER LOT
 - R-2 MULTIPLE FAMILY MEDIUM HIGH DENSITY RESIDENTIAL-MIN. 1,000 SQ. FT. LOT AREA PER DWELLING UNIT
 - R-3 MULTIPLE FAMILY HIGH DENSITY RESIDENTIAL-MIN. 1,000 SQ. FT. LOT AREA PER DWELLING UNIT
 - R-3.1 MULTIPLE FAMILY HIGH DENSITY RESIDENTIAL-MIN. 1,000 SQ. FT. LOT AREA PER DWELLING UNIT
 - R-3.2 MULTIPLE FAMILY HIGH DENSITY RESIDENTIAL-MIN. 1,000 SQ. FT. LOT AREA PER DWELLING UNIT
- MULTIPLE FAMILY RESIDENTIAL**
- M-1 LIGHT MANUFACTURING INDUSTRIAL
 - M-2 HEAVY MANUFACTURING INDUSTRIAL
- COMMERCIAL DISTRICTS**
- C-1 NEIGHBORHOOD SHOPPING CENTER
 - C-2 COMMUNITY SHOPPING CENTER
 - C-3 CENTRAL BUSINESS AND SHOPPING
- INDUSTRIAL DISTRICTS**
- I-1 INDUSTRIAL
- OTHER**
- FPD INDICATES THAT A PARCEL HAS BEEN PREVIOUSLY SUBJECT TO FUTURE ANNEXATION
 - CUPXXXX INDICATES THAT A CONVEYANCE OF THE PROPERTY HAS BEEN PROVIDED AND IS ACTIVE ON THE PARCEL



CITY OF MENDOTA

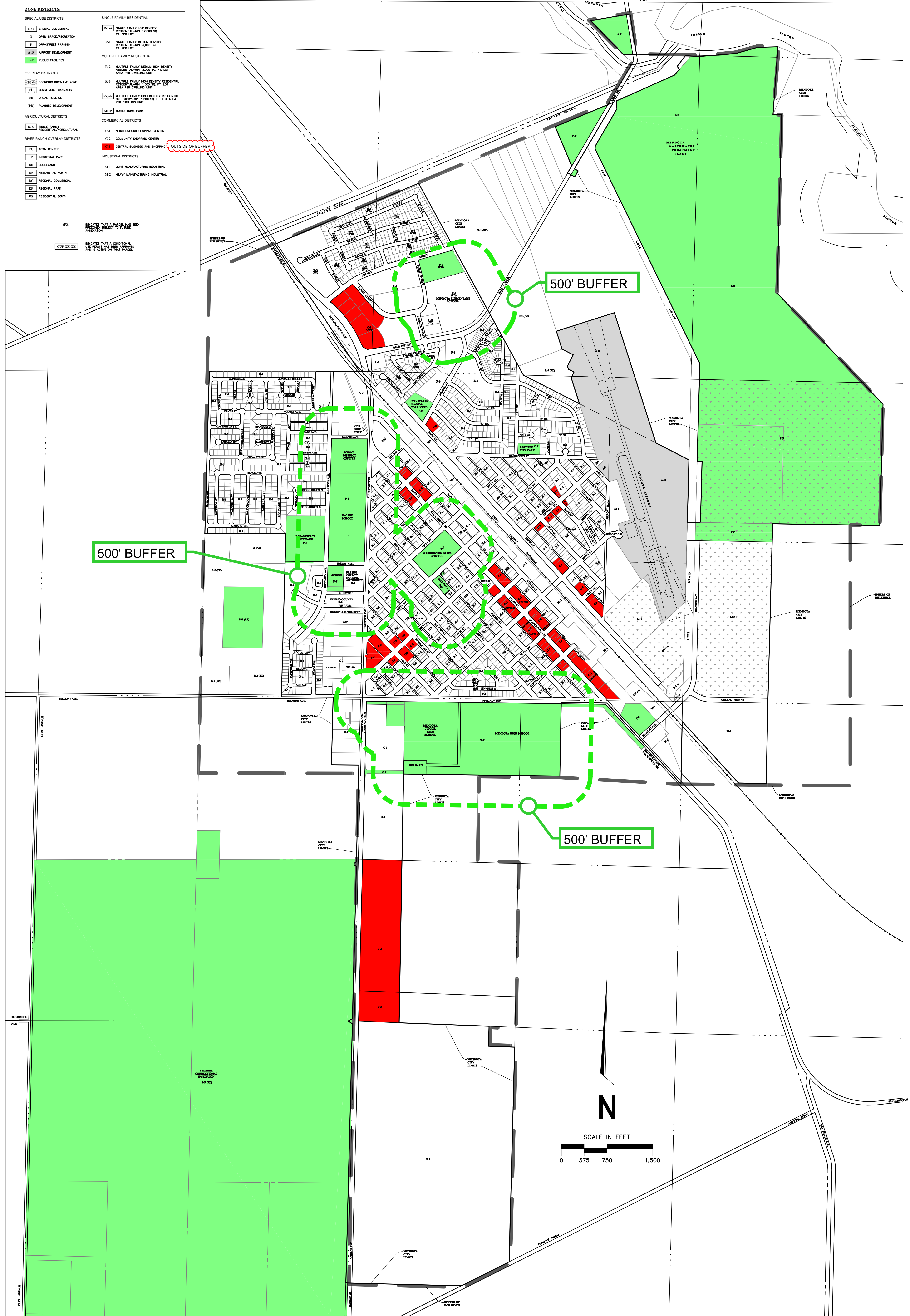
OFFICIAL ZONING MAP

DEPICTING PARCELS ZONED C-3 OUTSIDE OF A 800 FOOT BUFFER FROM SCHOOLS & YOUTH CENTERS

ZONE DISTRICTS:			
SPECIAL USE DISTRICTS			
S-C SPECIAL COMMERCIAL	R-1-A SINGLE FAMILY LOW DENSITY RESIDENTIAL-1/4 AC. 12,000 SQ. FT. PER LOT		
O OPEN SPACE/RECREATION	R-1 SINGLE FAMILY MEDIUM DENSITY RESIDENTIAL-MIN. 6,000 SQ. FT. PER LOT		
P OFF-STREET PARKING	MULTIPLE FAMILY RESIDENTIAL		
A-D AIRPORT DEVELOPMENT	R-2 MULTIPLE FAMILY MEDIUM-HIGH DENSITY RESIDENTIAL-MIN. 3,000 SQ. FT. LOT AREA PER DWELLING UNIT		
PF PUBLIC FACILITIES	R-3 MULTIPLE FAMILY HIGH DENSITY RESIDENTIAL-MIN. 1,500 SQ. FT. LOT AREA PER DWELLING UNIT		
OVERLAY DISTRICTS			
EEZ ECONOMIC INCENTIVE ZONE	R-3-A MULTIPLE FAMILY HIGH DENSITY RESIDENTIAL-MIN. 1,500 SQ. FT. LOT AREA PER DWELLING UNIT		
CC COMMERCIAL CANNABIS	R-3-A-1 MULTIPLE FAMILY HIGH DENSITY RESIDENTIAL-MIN. 1,500 SQ. FT. LOT AREA PER DWELLING UNIT		
UR URBAN RESERVE	SRP SINGLE HOME PARK		
FD PLANNED DEVELOPMENT	COMMERCIAL DISTRICTS		
AGRICULTURAL DISTRICTS		C-1 NEIGHBORHOOD SHOPPING CENTER	
R-A SINGLE FAMILY RESIDENTIAL/AGRICULTURAL	C-2 COMMUNITY SHOPPING CENTER	C-3 CENTRAL BUSINESS AND SHOPPING	
RIVER RANCH OVERLAY DISTRICTS		INDUSTRIAL DISTRICTS	
TC TOWN CENTER	IP INDUSTRIAL PARK	M-1 LIGHT MANUFACTURING INDUSTRIAL	M-2 HEAVY MANUFACTURING INDUSTRIAL
RD BOWLING	RS RESIDENTIAL NORTH		
RS RESIDENTIAL NORTH	RC RESIDENTIAL COMMERCIAL		
RP RESIDENTIAL PARK	RS RESIDENTIAL SOUTH		

(PZ) INDICATES THAT A PARCEL HAS BEEN PREVIOUSLY ZONED SUBJECT TO FUTURE AMENDATION

(CUP XXXX) INDICATES THAT A PARCEL IS ZONED FOR CUP THAT IS UNAPPROVED AND IS ACTIVE ON THAT PARCEL



CITY OF MENDOTA

OFFICIAL ZONING MAP

DEPICTING PARCELS ZONED C-3 OUTSIDE OF A 500 FOOT BUFFER FROM SCHOOLS & YOUTH CENTERS

**BEFORE THE CITY COUNCIL
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO**

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MENDOTA AMENDING
THE CITY'S CANNABIS ORDINANCE TO
MODIFY THE LOCATION REQUIREMENTS
FOR COMMERCIAL CANNABIS RETAIL
BUSINESSES**

ORDINANCE NO. 19-09

WHEREAS, in 2019, the City enacted Ordinance No. 19-06, which amended Chapter 8.36 of the Mendota Municipal Code (MMC) to eliminate the ban on cannabis dispensaries, and added Chapter 8.37 to the MMC, which established regulations for the operation of commercial cannabis businesses, including cannabis dispensaries, referred to therein as commercial cannabis retail businesses;

WHEREAS, in light of the developments to state laws and regulations regarding commercial cannabis retail businesses, the City initiated proceedings to amend its zoning code to permit a limited number of commercial cannabis retail businesses in its primary commercial district, the C-3 district, subject to a conditional use permit;

WHEREAS, on July 16, 2019, the City's Planning Commission recommended approval of a proposed ordinance amending the City's zoning code to permit a limited number of commercial cannabis retail businesses in the C-3 district, subject to a conditional use permit, on the condition that the City amend Section 8.37.090 of the MMC to provide that cannabis retail business shall be located at least 500 feet from other cannabis retail businesses, schools, day care centers, and youth centers, rather than at least 800 feet, as originally required in Ordinance No. 19-06;

WHEREAS, on August 12, 2019 the City Council voted to accept the Planning Commission's recommendation and directed staff to amend Section 8.37.090 of the MMC to provide that cannabis retail business shall be located at least 500 feet from other cannabis retail businesses, schools, day care centers, and youth centers, rather than at least 800 feet;

WHEREAS, staff has prepared this Ordinance No. 19-09 to amend Section 8.37.090 of the MMC to provide that cannabis retail business shall be located at least 500 feet from other cannabis retail businesses, schools, day care centers, and youth centers, rather than at least 800 feet.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MENDOTA, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The Recitals set forth above are incorporated herein and by this reference made an operative part hereof.

SECTION 2. Section 3 amends Title 8, Chapter 8.37, Section 8.37.090, Subdivision (B) by modify the distance requirement from 800 feet to 500 feet.

SECTION 3. Title 8, Chapter 8.37, Section 8.37.090 is hereby amended to read as follows:

8.37.090 – Additional Location Requirements for Retail Cannabis Businesses

- A. All cannabis retail businesses must be located on property zoned C-3 (Central Business and Shopping) and must meet all of the requirements for development in that zone.
- B. All properties in which the cannabis retail business is located shall be no closer than ~~eight~~five hundred (~~8~~500) feet from any parcel containing any of the following:
 - 1. A cannabis retail business.
 - 2. A school providing instruction for any grades pre-school through 12 (whether public, private, or charter, including pre-school, transitional kindergarten, and K-12).
 - 3. A day care center licensed by the state Department of Social Services that is in existence at the time a complete commercial cannabis business permit application is submitted.
 - 4. A youth center that is in existence at the time a complete commercial cannabis business permit application is submitted.

SECTION 4. Severability. If any part of this Ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed the remainder of this Ordinance, as if such invalid portion thereof had been deleted.

SECTION 5. The City Council hereby finds and determines that its adoption of this Ordinance is not subject to environmental review under the Public Resources Code, § 21000 *et seq.*, the California Environmental Quality Act (CEQA), because the amendments do not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and therefore are not considered a “project” under CEQA. (Pub. Res. Code, § 21065; 14 Cal. Code Regs., § 15378(a).) Further, the uses permitted as a result of the amendment contained herein may never actually occur and therefore any potential environmental impacts remain wholly speculative. (14 Cal. Code Regs., §15064(d)(3).) Finally, any uses permitted as a result of the amendment contained herein will be subject to environmental review under CEQA prior to the issuance of a

conditional use permit. Accordingly, the City Clerk is hereby directed to file a Notice of Exemption.

SECTION 6.This ordinance shall take effect thirty (30) days after its passage.

SECTION 7.The Mayor shall sign and the City Clerk shall certify to the passage of this Ordinance and will see that it is published and posted in the manner required by law.

* * * * *

The foregoing ordinance was introduced on the 27th day of August, 2019 and duly passed and adopted by the City Council of the City of Mendota at a regular meeting thereof held on the 10th day of September, 2019 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Robert Silva, Mayor

ATTEST:

Celeste Cabrera-Garcia, City Clerk

APPROVED AS TO FORM:

John Kinsey, City Attorney

AGENDA ITEM – STAFF REPORT

TO: HONORABLE MEMBERS OF THE CITY COUNCIL
FROM: GREGG ANDREOTTI, CHIEF OF POLICE
VIA: CRISTIAN GONZALEZ, CITY MANAGER
SUBJECT: 2019 WEED ABATEMENT ASSESSMENTS PUBLIC HEARING
DATE: AUGUST 27, 2019

BACKGROUND

City of Mendota Code Enforcement has performed abatements on properties within the City with weeds on them constituting a public nuisance. A total of 3 properties were forcibly abated.

Following a first “initial” notice and a second “courtesy” notice, properties were checked for compliance, and if they still failed were informed that if they did not comply, the City would proceed with a forced abatement. While some property owners abated the nuisance on their own, those that did not do so were forcefully abated by a private contractor hired by the City.

The attached resolution includes the cost that will be assessed to each parcel to recover City cost incurred through abatement. The Cost Report and Summary attached to the resolution was submitted and filed with the City Clerk. All detected properties were abated before the 4th of July holiday in order to decrease the risk of a destructive fire on those properties. This is what is being considered by Council to be added to the 2019 tax rolls.

A notice of this public hearing was posted on each property and mailed to each property owner impacted, along with a Notice of Public Hearing, posted on the kiosk outside City Hall on or before August 27, 2019. Letters were also mailed out to the property owners detailing the amount that is owed, notifying them that they have the ability to pay the abatement costs prior to the assessment and that they also have the right to submit a written or oral protest before or during the public hearing at this Council meeting.

Each property owner will have the corresponding amount levied on their annual property tax bill to be paid.

FISCAL IMPACT:

Approximately \$5862.51 spent to abate, which will be recovered by assessing the property owner on their tax bill.

RECOMMENDED ACTION:

Council adopt Resolution No. 19-63 authorizing the Placement of Special Assessments on the 2019 Tax Roll for the 2019 Nuisance Abatement Costs.

**BEFORE THE CITY COUNCIL
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MENDOTA IN THE
MATTER OF AUTHORIZING THE
PLACEMENT OF SPECIAL ASSESSMENTS
ON THE 2019/2020 TAX ROLL FOR 2019
NUISANCE ABATEMENT COSTS**

RESOLUTION NO. 19-63

WHEREAS, the City of Mendota pursuant to Mendota Municipal Code Chapter (MMC) 8.20 served due process to property owners to abate nuisances on their properties; and

WHEREAS, weed abatement notices were posted and mailed to all property owners; and

WHEREAS, the property owners failed to abate nuisances on their properties after receiving notice by the City to do so; and

WHEREAS, the City thereafter forcibly abated the respective nuisances in compliance with California code and MMC Section 8.20.080, which entitles the City to reimbursement for said costs, which are not based on property valuation; and

WHEREAS, notices were given to the property owners that they could protest or object to the Cost Report and Account to the City Council at a public hearing held on August 13, 2019; and

WHEREAS, the City Council of the City of Mendota conducted said public hearing on August 27, 2019 and, upon conclusion of the hearing, by motion allowed or overruled any or all objections; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Mendota, hereby approves the following costs (as reflected in the Cost Report & Account) attached hereto as Exhibit "A" and authorizes the placement of the expense of said abatement on the tax roll (Tax Code 6657), as provided in MMC Section 8.20.130, of each individual parcel as an assessment to be collected on the annual tax assessment bill as follows:

<u>APN</u>	<u>FEE</u>
013-086-13	\$2,475.17
013-133-09	\$1,725.17
013-313-17S	\$1,662.17

THEREFORE, BE IT FURTHER RESOLVED, that the abated weeds, grasses, dead trees, dead shrubs and waste matter constitute a public nuisance and on that basis was abated by the City in accordance with Chapter 8.20 of the Mendota Municipal Code.

Robert Silva, Mayor

ATTEST:

I Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 27th day of August 2019 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Celeste Cabrera-Garcia, City Clerk

City of Mendota
2019 Weed Abatement
Cost Report and Account Summary

Exhibit A

1. APN Number: 013-086-13

2025 6th ST

Fees:	Types	
Tractor Disking	A	\$600.00
Mobilization	A	\$0.00
Manual Labor	A	\$220.00
Debris Remediation	A	\$228.00
Administrative Fee	A	\$150.00
Legal Assessment Fee	A	\$930.17
Code Enforcement Fees	A	\$120.00
Miscellaneous Fees Per Parcel	B	\$225.00
Total:		\$2,475.17

2. APN Number: 013-133-09

Tractor Disking	A	\$300.00
Mobilization	A	\$0.00
Manual Labor	A	\$0.00
Debris Remediation	A	\$0.00
Administrative Fee	A	\$150.00
Legal Assessment Fee	A	\$930.17
Code Enforcement Fees	A	\$120.00
Miscellaneous Fees Per Parcel	B	\$225.00
Total:		\$1,725.17

3. APN NUMBER: 013-313-17S

557 4th ST

Tractor Disking	A	\$0.00
Mobilization	A	\$109.00
Manual Labor	A	\$128.00
Debris Remediation	A	\$0.00
Administrative Fee	A	\$150.00
Legal Assessment Fee	A	\$930.17
Code Enforcement Fees	A	\$120.00
Miscellaneous Fees Per Parcel	B	\$225.00
Total:		\$1,662.17

Grand Total of Assessments: \$5,862.51

ADMINISTRATIVE SERVICES DEPARTMENT REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS
FROM: JENNIFER LEKUMBERRY, DIRECTOR OF ADMINISTRATIVE SERVICES
VIA: CRISTIAN GONZALEZ, CITY MANAGER
SUBJECT: MONTHLY REPORT (JULY 2019)
DATE: AUGUST 27, 2019

HUMAN RESOURCES

- Labor Negotiations
- Assisted employees with enrollment into EOB Retrieve Program
- Held interviews for Maintenance Worker position
- Held an on-boarding meeting for the candidate hired for the position of Maintenance Worker
- Held one exit interview

RISK MANAGEMENT

- **Claims**
- There were no new claims against the City
- **Worker's Compensation Claims**
 - There was one new worker's compensation claim
- **Dog Bite Appeal Hearing**
 - There was one dog bite appeal hearing

SENIOR CENTER

- There was a daily average of 11 participants at the Senior Center

SPECIAL PROJECTS

- Completed the RMA Employee Census Update

Grant Information

Grant Name	Application Due Date	Award Date	Agency: Federal/State/County/ Private	Pass-thru	Matching	Award Amount	Purpose of Grant	Notes	Approved
Per Capita Grant Program	6/3/2019	Late Summer '19	State	N	N	TBD	Local park rehabilitation, creation and improvement grants	One-time basis	
Tobacco Grant Program	7/12/2019	9/30/2019	State	NA	N	\$ 89,909.00	Tobacco Ordinance, Retailers Compliance Checks and Community Outreach	Reimbursement Grant	
National Public Lands Day	7/19/2019	8/2/2019	Private	N	N	\$ 1,500.00	Demonstrate Volunteerism, Community Engagement and Importance of giving back to Public Lands.	\$500 Stipend; \$1,000 in-kind contribution	N
California Aid to Airports Program	7/31/2019	10/31/2019	State	N	N	\$ 10,000.00	Annual credit grant to fund operational costs at the airport.		
National Fitness Campaign 2020	8/1/2019	TBD	Private	N	Y	\$ 30,000.00	Fitness Court	Applying for grant in conjunction with Prop.68	
Proposition 68 - Parks	8/5/2019	TBD	State	NA	N	TBD	New Construction of Community Center and Park Recreation Features	Reimbursement Grant	
Rubberized Pavement Grant Program	10/3/2019	12/1/2019	State	N	N	\$ 350,000.00	City Hall alley way		
SB 2 Planning Grant Program	11/30/2019	TBD	State	N	N	up to \$160,000	Update planning documents and processes of housing approvals/production		
Beverage Container Recycling City/County Payment Program	12/17/2019	2/28/2020	State	N	N	\$ 5,000.00	Litter prevention and cleanup; Public education promoting beverage container recycling	If you don't expend the full \$5,000.00, you must repay CalRecycle.	

Key: Applied for Grants

In process
Approved
Denied

Potential Grant Opportunities

Grants	Priority by Council	Application Due Date	Agency	Matching	Award Amount	Purpose of Grant	Comments by Council or Staff
Tire-Derived Product Grant Program		TBD	State	TBD	up to \$150,000	Landscape Projects or Playground Projects with tire-derived products	
Access to Historical Records: Archival Projects		10/3/2019	Federal	Y	up to \$100,000	Digitize public records and make freely available online	
Clean, Safe and Reliable Drinking Water		Open	State	TBD	TBD	Planning grant for water storage; pressure booster and water quality	
Community Facilities Direct Loan & Grant Program		Open	Federal	TBD	TBD	Construction of Police Department	
Community Facilities Direct Loan & Grant Program		Open	Federal	TBD	TBD	Construction of Animal Control Facility	
Walmart Community Grant		12/31/2019	Private	N	up to \$5,000	Quality of life; Community and economic development; Public Safety; Environmental sustainability	
Proposition 68 - Parks		TBD	State	N	up to \$8,000.00	Improvements to Mendota Pool Park	