

SCOTT COUNTY SCHOOL BOARD

MINUTES OF REGULAR MEETING – TUESDAY, JANUARY 8, 2019

The Scott County School Board met for a regular meeting on Tuesday January 8, 2019 at 6:30 p.m. at the Scott County School Board's Central Office, with the following members present:

William "Bill" R. Quillen, Jr., Chairman
David M. Templeton, Vice-Chairman
Larry L. Horton
Gail L. McConnell
Linda Gillenwater
Lon Stephen "Steve" Sallee, Jr.

ABSENT: None

OTHERS PRESENT: John I. Ferguson, Division Superintendent; Beverly Stidham, Purchasing Agent, Clerk of the Board; Angela Johnson, Head Start Payroll Clerk, Deputy Clerk of the Board; William Sturgill, School Board Attorney; Robert Sallee, Maintenance Supervisor; Brenda Robinette, Special Education Supervisor; Kathy Musick, VPE Representative; Amanda Clark, Heritage TV; Doris Boitnott, VEA Representative; Scot Fleming, Teacher/SCVEA Representative, Lisa Taylor, citizen; Billy Nash, Teacher-SCCTC; Dawn Williams, GCMS Teacher, 4-H Robotics Representative; Kasey Fioramanti; 4-H Robotics; Zach Salyer, Gate City High School student, Robotics team member; Ethan Billings, Gate City High School student, Robotics team member; Jason Fields, Gate City High School student, Robotics team member; Ethan Gibson, Gate City High School student, Robotics team member; Preston Cunningham, Gate City High School student, Robotics team member; Adam Fields, parent, 4-H Robotics; Mario Jarmillo, Gate City High School, Teacher-Robotics Representative.

CALL TO ORDER/MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE: Chairman Quillen called the regular meeting of the Scott County School Board to order at 6:30 p.m. and welcomed everyone to the meeting. The members and audience observed a moment of silence and Ms. Linda Gillenwater led in citing the *Pledge of Allegiance*.

ELECTION AND APPOINTMENT OF 2019 OFFICERS:

Chairman Quillen turned the meeting over to Superintendent Ferguson to conduct the organizational meeting to elect the 2019 School Board Chairman, Vice Chairman, Clerk of the Board and Deputy Clerk of the board.

ELECTION OF OFFICERS: Mr. Gail McConnell made the motion to nominate Mr. Bill Quillen as Chairman, with no other nominations being heard, this nomination was seconded by Ms. Linda Gillenwater, all members voting aye, the Board voted to approve Mr. Bill Quillen as School Board Chairman for the 2019 appointment.

Mr. Larry Horton made the motion to nominate Mr. David Templeton as Vice Chairman, with no other nominations being heard, this nomination was seconded by Mr. Bill Quillen, all members voting aye, the Board voted to approve Mr. David Templeton as School Board Vice Chairman for the 2019 appointment.

APPOINTMENT OF CLERK/DEPUTY CLERK: On a motion by Mr. David Templeton, seconded by Mr. Steve Sallee, all members voting aye, Mrs. Beverly Stidham was appointed as Clerk of the Board for 2019.

On a motion by Ms. Linda Gillenwater, seconded by Mr. Larry Horton, all members voting aye, the Board approved the appointment of Mrs. Angela Johnson as Deputy Clerk of the Board for 2019.

APPROVAL OF AGENDA: On a motion by Mr. Larry Horton, seconded by Mr. Gail McConnell, all members voting aye, the Board voted to approve the agenda with one correction, removing Item B.- Presentation from the Garland Company for the January 8, 2019 regular meeting.

APPROVAL OF MINUTES – DECEMBER 4, 2018 REGULAR MEETING: On a motion by Mr. Gail McConnell, seconded by Ms. Linda Gillenwater, all members voting aye, the Board voted to approve the minutes of the December 4, 2018 regular meeting as presented.

APPROVAL OF CLAIMS: On a motion by Mr. Larry Horton, seconded by Mr. Steve Sallee, all members voting aye, the Board approved the claims as presented on January 8, 2019 as follows:

School operating fund invoices & payroll direct deposit in the amount of \$604,198.53 as shown by warrants #8127346-&8127604 electronic payroll direct deposit in the amount of \$1,226,521.03 & electronic tax deposits in the amount of \$497,645.99. Cafeteria fund invoices and payroll in the amount of \$161,449.60 as shown by warrants #1019009-1019052 & electronic payroll direct deposit in the amount of \$37,059.28. Electronic payroll tax deposits in the amount of \$13,122.70. Head start invoices totaling \$47,466.21 as shown by warrants #16209-16279.

APPROVAL OF BOARD MEETING DATES: On a motion by Mr. Larry Horton, seconded by Mr. Steve Sallee, all members voting aye, the Board approved the following 2019/2020 Board meeting dates as presented:

SCOTT COUNTY SCHOOL BOARD MEETING DATES FOR 2019

**Location (unless otherwise noted) Scott County School Board Office
340 E. Jackson Street, Gate City, VA 24251**

Time: 6:30 p.m.

February 5, 2019 – (Tuesday) 6:15 p.m. Public Hearing for the 2019-2020 School Budget

Scott Co. Career & Technical Center

6:30 p.m. Regular Meeting – Scott Co. Career & Technical Center

March 5, 2019 (Tuesday)

April 9, 2019 (Tuesday)

May 7, 2019 (Tuesday)

June 4, 2019 (Tuesday)

July 9, 2019 (Tuesday)

August 6, 2019 (Tuesday)

September 5, 2019 (Thursday)

October 1, 2019 (Tuesday)

November 7, 2019 (Thursday)

December 3, 2019 (Tuesday)

January 7, 2020 (Tuesday)

PUBLIC COMMENT: Ms. Lisa Taylor addressed the Board voicing concern about bullying in the schools, wanting cameras in the classrooms for the special needs population, and she also spoke in favor of drug testing Scott County faculty. Ms. Taylor asked if special needs children could have gym class in the morning to release energy before settling into the routine of the morning instructional activities.

Ms. Dawn Williams, Mr. Adam Fields, Mr. Mario Aramillio, the 4-H Extension Agent and several Lego Robotic team members spoke to the Board on behalf of the benefits of the Robotics team. Ms. Williams spoke about the Coding Program, STEM education and how older students were mentoring

younger students in this field; she and the students each took a role in speaking about the benefits of opening up an extended field of study at the Career & Technical Center to further this study of education. She went on to state that several donors have awarded them grant money and all three high schools have had the 1st Robotics Team at the competition level. Jason Fields and Preston Cunningham, both wanting to study in Pre-Engineering, talked to the Board about college preparedness and helping others to join the Robotics team. Ms. Williams also elaborated that several recent graduates of the Robotics team have been offered great job opportunities upon college graduation and she felt like the experience from this program offered them resources to build from.

SUPERINTENDENT'S REPORT:

APPROVAL OF FISCAL YR. 2019-2020 BUDGET COMMITTEE: Superintendent Ferguson explained to the Board that each year members from the Board volunteer their time to serve on the Budget committee to help address the concerns to the Board as information changes concerning the Budget as Public School Districts wait each year for final budgets to be passed. He asked for nominations from the Board for two members to fill these positions.

On a motion by Mr. Bill Quillen seconded by Mr. Gail McConnell, all members voting aye, Mr. Steve Sallee and Mr. David Templeton were approved and accepted the nomination to serve on the 2019-2020 Budget committee.

MAINTENANCE UPDATE-MR. ROBERT SALLEE, MAINTENANCE SUPERVISOR: (Appendix A) Mr. Sallee spoke to the Board about SB 1359-the implementation of a Lead Water Testing Plan which requires each local school board to develop and implement a plan to test and, if necessary, remediate lead from high priority potable water sources in the local school system. He reported that his maintenance team would be working on this and would be seeking a vote at the next Board meeting to approve the plan to move forward with the implementation of the plan.

SECOND SEMESTER ALLOCATIONS: On a motion by Mr. David Templeton, seconded by Mr. Larry Horton, all members voting aye, the Board voted to approve the Seconded semester, 1st quarter Allocations as presented (Appendix B).

APPROVAL/UPDATE OF LEASE AGREEMENT: On a motion by Mr. Larry Horton, seconded by Mr. Steve Sallee, all members voting aye, the Board voted to approve the extension of the lease agreement between the Scott County School Board and the Gate City Fire Department for the sum of \$1.00 for the property located on Elm Street in Gate City, Virginia.

CLOSED MEETING: Mr. David Templeton made a motion to enter into closed meeting at 7:20 p.m. to discuss Teachers, Coaches, Nurses, Secretaries, and Custodians as provided in Section 2.2-3711 of the Code of Virginia, as amended, the motion was seconded by Mr. Gail McConnell, all members voting aye.

RETURN FROM CLOSED MEETING: All members present returned from the closed meeting at 9:20 p.m. with a roll call vote being held, and on a motion by Mr. David Templeton, seconded by Mr. Larry Horton, the Board returned to regular session and Mr. Templeton cited the following certification of the closed meeting.

CERTIFICATION OF CLOSED MEETING:

WHEREAS, the Scott County School Board has convened a closed meeting on the date pursuant to an affirmative recorded vote and in accordance with the provisions of the Freedom of the Information Act and,

WHEREAS, Section 2.2-3711 of the Code of Virginia requires certification, by this Scott County School Board that such meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED, that the Scott County School Board hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies and (ii) only such public matters as were identified in the motion convening the closed meeting were heard, discussed, or considered by the Scott County School Board in the closed meeting

ROLL CALL VOTE:

AYES: Bill Quillen, David Templeton, Steve Sallee, Gail McConnell, Larry Horton, and Linda Gillenwater.

NAYS: None.

ABSENT DURING THE MEETING: None.

ITEMS BY ASSISTANT SUPERINTENDENT JASON SMITH:

EMPLOYMENT:

On a motion by Mr. Larry Horton, seconded by Mr. Steve Sallee, all members voting aye, the Board approved the employment of James Mann, custodian, effective December 26, 2018.

On a motion by Ms. Linda Gillenwater, seconded by Mr. Steve Sallee, all members voting aye, the Board approved the employment of Darrin Pendleton, non-stipend assistant boys' soccer coach, Gate City High School, effective January 8, 2019.

On a motion by Mr. David Templeton, seconded by Mr. Larry Horton, all members voting aye, the Board voted to approve Audra Lucas as a substitute teacher, effective January 8, 2019.

RETIREMENT:

On a motion by Mr. Larry Horton, seconded by Mr. Gail McConnell, all members voting aye, the Board approved the retirement of Tammy Farmer, nurse, effective December 31, 2018.

APPROVAL OF RESOLUTION OF 457B RETIREMENT PLAN: (APPENDIX C)


Mr. Jason Smith explained to the Board that in regards to the 457b Retirement plan that had been previously approved by the Board that is an incentive for employees to retire and have access to retirement funds upon separation from employment due to retirement. Admin Partners requires a resolution from the Board to establish this plan in place and Mr. Smith provided the information to the Board for their review.

On a motion by Mr. Steve Sallee, seconded by Mr. Larry Horton, all members voting aye, the Board approved the resolution of the 457b Retirement Plan as presented.

BOARD MEMBER COMMENTS: Ms. Linda Gillenwater wished Tammy Farmer the Best in her retirement. No other board comments were made at this time.

ADJOURNMENT: With no further business to discuss, the regular meeting of the Scott County School Board was adjourned at 9:25 p.m.


William "Bill" R. Quillen, Jr., Chairman


Beverly Stidham, Clerk

APPENDIX:

A: MAINTENANCE SB 1359 LEAD WATER TESTING PLAN

B: SECOND SEMESTER ALLOCATIONS

C: 457B RETIREMENT PLAN RESOLUTION

Scott County Public Schools Lead Water Testing Plan

SB 1359

The implementation of SB 1359 requires each local school board to develop and implement a plan to test and, if necessary, remediate lead from high priority potable water sources

References for testing policy

1. Virginia SB 1359 "Lead Testing of Potable Water"
2. EPA 3 T's for reducing lead in Drinking Water in Schools and Child Care Facilities
3. Virginia Department of Health (Mr. Jim Moore)
4. Virginia School Plant Management Association
5. Abingdon Office of Drinking Water (District 1 Engineer Mr. Rex Peppler)
6. Mr. Marc Edwards, Virginia Tech

Recommendations

- Schools built before 1986 are designated as high priority for testing.
- Take a first-draw sample on all fixtures that can be used as a potable water source for consumption or cooking.
- The areas recommended for testing throughout the division include school buildings, concession stands, band rooms, and sports facilities/fieldhouse's.
- Fixtures to be sampled include: Bubbler style water fountains, drinking water coolers, kitchen kettle filler faucet, kitchen sinks, hand wash sinks, home economic rooms, classroom lab sinks, nursing/clinic sinks, and ice machines.
- Testing for lead in the water systems for all schools using the first-draw method will require a 250 ml sample taken after a period of no use for 8-18 hours. School Maintenance will be allowed to draw the sample with an approved testing facility to complete the analysis. A threshold limit for additional testing or remediation is 20 ppb.
- Testing of the highest use fixtures will be priority, and other factors will depend on plumbing, water quality, lead results, budget, and competing priorities.
- Documentation and recording of testing results shall remain in the custody of the local school division.

2019 ALLOCATIONS
SECOND SEMESTER-1ST QTR.

| | COPIER | REM./INST. | CUSTODIAL | TOTAL |
|--------------|------------------|------------------|------------------|------------------|
| DPS | 1,750.00 | 2,400.00 | 3,600.00 | 7,750.00 |
| DIS | 1,000.00 | 550.00 | 900.00 | 2,450.00 |
| FBPS | 1,000.00 | 550.00 | 900.00 | 2,450.00 |
| HES | 1,000.00 | 1,100.00 | 1,800.00 | 3,900.00 |
| NES | 1,500.00 | 1,925.00 | 3,150.00 | 6,575.00 |
| RCI | 1,000.00 | 1,375.00 | 2,250.00 | 4,625.00 |
| SES | 2,750.00 | 4,400.00 | 5,875.00 | 13,025.00 |
| WCES | 2,125.00 | 2,750.00 | 4,500.00 | 9,375.00 |
| YES | 1,125.00 | 1,375.00 | 2,250.00 | 4,750.00 |
| GCMS | 1,700.00 | 2,750.00 | 4,500.00 | 8,950.00 |
| GCHS | 2,500.00 | 5,225.00 | 7,675.00 | 15,400.00 |
| TSHS | 1,020.00 | 1,650.00 | 2,700.00 | 5,370.00 |
| RCHS | 1,190.00 | 1,925.00 | 3,150.00 | 6,265.00 |
| SCCTC | 1,000.00 | 6,250.00 | 1,750.00 | 9,000.00 |
| TOTAL | 20,660.00 | 34,225.00 | 45,000.00 | 99,885.00 |

**Board Resolution to Adopt a 457(b) Deferred Compensation Plan
for Scott County Schools
A Public Education Organization**

WHEREAS, the **Scott County Schools** ("the Board"), wishes to adopt a deferred compensation plan for public education organizations that qualifies under §457(b) of the Internal Revenue Code (the "Code") for eligible employees. Copies of the Plan Document and Adoption Agreement are attached to this resolution.

NOW, THEREFORE, BE IT RESOLVED, that the Scott County Schools 457(b) Plan (the "Plan") be, and it hereby is, adopted by the District as of January 1, 2019 (the "Effective Date") as follows

RESOLVED, that the Board does hereby adopt the Plan, which will, at all times, conform to the requirements of Section 457(b) of the Code and all applicable regulations.

FURTHER RESOLVED that it is the intention of the Board that the Plan will conform with all federal and state statutory and regulatory requirements applicable to 457(b) plans, and shall not be subject to the requirements of Title I of ERISA because the employer is exempted from such requirements.

FURTHER RESOLVED that the Board authorizes Jason Smith, Assistant Superintendent to act on the Board's behalf with respect to this Plan, and to take any and all actions necessary or desirable to implement, maintain and administer the Plan set forth above in accordance with the Board's intentions, and all applicable state and federal laws.

IN WITNESS WHEREOF, the undersigned have adopted the foregoing resolutions as of the date set forth below.

For the Board:

Signature

Witness

Print Name and Title

Print Name

Dated: _____

Dated: _____

457(b) ELIGIBLE DEFERRED
COMPENSATION PLAN & TRUST FOR
GOVERNMENTAL EMPLOYERS

457(b) ELIGIBLE DEFERRED COMPENSATION PLAN & TRUST FOR GOVERNMENTAL ENTITIES PLAN DOCUMENT

The Employer whose name and signature appear on the attached Adoption Agreement hereby adopts an Eligible Deferred Compensation Plan & Trust and offers the Plan to all individuals who are now or who become eligible to participate in the Plan and who sign Deferral Agreements in accordance with the terms of the Plan. All references to this Plan shall also include the Trust.

ARTICLE I PURPOSE

- 1.01 Purpose:** This Plan is an "eligible deferred compensation plan" as defined in Section 457(b) of the Code. The purpose of the Plan is to allow Participants hereunder to defer receipt and taxation of portions of their compensation until future taxable years under the conditions provided herein, in accordance with Section 457 of the Code and the regulations thereunder.
- 1.02 Exclusive Benefit:** The Plan and Trust are established for the exclusive benefit of Participants and their Beneficiaries. Except as otherwise permitted by Section 457(g) of the Code, all assets and income of the Plan shall be held for the exclusive benefit of the Plan's Participants and their Beneficiaries.
- 1.03 Plan and Trust Tax Status:** The Plan is intended to be an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and the Trust is intended to be tax-exempt under Section 501(a) of the Code pursuant to Section 457(g) of the Code.

ARTICLE II DEFINITIONS

- 2.01 Administrator; Plan Administrator:** The person, committee or organization named in the Adoption Agreement, appointed to administer the Plan. If no person is named, the Employer shall be the Plan Administrator.
- 2.02 Account Balance:** The bookkeeping account maintained with respect to each Participant which reflects the value of the deferred Compensation credited to the Participant, including the Participant's Annual Deferrals, the earnings or loss of the Fund (net of Fund expenses) allocable to the Participant, any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant's death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account established under Article IV for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a Beneficiary after a Participant's death, and any account or accounts established for an alternate payee (as defined in section 414(p)(8) of the Code).
- 2.03 Annual Deferral:** The amount of compensation deferred under this Plan, whether by salary reduction (Elective Deferral) or by Nonelective Employer Contribution, with respect to a taxable year. Pursuant to the Adoption Agreement Annual Deferrals may include pre-tax salary reduction contributions and Designated Roth Elective Deferrals.
- 2.04 Applicable Life Expectancy:** The life expectancy (or joint and last survivor expectancy) calculated using the attained age of the Participant (or Designated Beneficiary) as of the Participant's (or

Designated Beneficiary's) birthday in the applicable calendar year reduced by one for each calendar year which has elapsed since the date life expectancy was first calculated. If the life expectancy is being redetermined, the applicable life expectancy shall be the life expectancy as so redetermined. The applicable calendar year shall be the first Distribution Calendar Year, and if life expectancy is being redetermined, each succeeding calendar year.

- 2.05 Beneficiary:** The designated person (or, if none, the Participant's estate) who is entitled to receive benefits under the Plan after the death of a Participant. A Participant may designate his Beneficiary in accordance with Section 6.15 hereunder. A change in the Beneficiary designation shall take effect when the election is accepted by the Trustee, Custodian, or Issuer.
- 2.06 Code:** The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.
- 2.07 Compensation:** All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under sections 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer compensation under Article IV).
- 2.08 Deferral Agreement:** A written agreement between an Employee and the Employer in which the Employee agrees to the terms of the Plan and designates compensation to be deferred under the Plan
- 2.09 Depository Agreement:** An optional written agreement between the Employer and an Institution in which the Institution agrees to become a depository for the amounts deferred in accordance with the terms of the Plan.
- 2.10 Designated Beneficiary:** The individual who is designated as the Beneficiary under the Plan in accordance with section 401(a)(9) of the Code.
- 2.11 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 which 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 pursuant to Section 6.08 of the Plan.
- 2.12 Elective Deferral:** The annual amount of Compensation that a Participant elects to defer under the provisions of the Plan pursuant to a properly executed salary reduction agreement.
- 2.13 Employee:** Each natural person, whether appointed or elected, who is employed by the Employer as a common law employee, excluding any employee who is included in a unit of employees covered by a collective bargaining agreement that does not specifically provide for participation in the Plan; and, if specified in the Adoption Agreement, an independent contractor who performs services for the Employer.
- 2.14 Employer:** The State, the political subdivision of the State, or the agency or instrumentality of the

State, or a political subdivision of the State, named in the Adoption Agreement, which has adopted the Plan.

- 1.15 Includible Compensation:** An Employee's Compensation with respect to a taxable year as defined under section 415(c)(3) of the Code for services rendered to the Employer, and increased by any compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer Compensation under Article IV).
- 1.16 Independent Contractor:** Any individual receiving cash remuneration from the Employer for services rendered to the Employer pursuant to one or more contracts provided such person is not an Employee.
- 2.17 Institution:** Any bank, savings and loan association, savings bank, insurance company, brokerage company, mutual fund, or other similar entity, which has signed a Depository Agreement. A reference to "Association" in a Depository Agreement or a Deferral Agreement previously entered into by the Employer shall be deemed to be a reference to "Institution." If the Institution is a bank, savings and loan association, or savings bank, its accounts must be insured by the FDIC.
- 2.18 Life Expectancy:** Life expectancy or joint and last survivor expectancy as computed by use of the expected return multiples under section 1.401(a)(9)-9 of the Income Tax Regulations.
- 2.19 Nonelective Employer Contributions:** A Nonelective Employer Contribution is a contribution made by an Eligible Employer for a Participant with respect to which the Participant does not have the choice to receive the contribution in cash or property. Nonelective Employer Contributions includes Employer Contributions that would be described in section 401(m) of the Code (referring to Employer Matching Contributions) if they were contributions to a qualified plan under section 401(a) of the Code.
- 2.20 Normal Retirement Age:** The age specified in the Adoption Agreement. If a Participant continues to work beyond the age(s) specified in the Adoption Agreement, Normal Retirement Age shall be the date or age designated by the Participant not later than the Employer's mandatory retirement age or the age at which the Participant actually incurs a severance from employment with the Employer.
- 2.21 Participant:** An individual who is currently deferring Compensation, or who has previously deferred Compensation under the Plan by salary reduction and who has not received a distribution of his or her entire benefit under the Plan. Only individuals who perform services for the Employer as an Employee may defer Compensation under the Plan.
- 2.22 Participant's Benefit:** The account balance as of the last day in the calendar year immediately preceding the Distribution Calendar Year.
- 2.23 PPA:** The Pension Protection Act of 2006, including any regulations or other guidance issued thereunder.
- 2.24 Plan:** This Eligible Deferred Compensation Plan (consisting of this Plan and Trust document and the Adoption Agreement signed by the Employer), which has been established by the Employer pursuant to the requirements of section 457 of the Code and the regulations thereunder.
- 2.25 Plan Ceiling:** The maximum amount of Compensation which may be deferred by a Participant under the Plan. In determining the amount of Compensation deferred, Compensation shall be

taken into account at its value in the Plan Year in which deferred.

- 2.26 Plan Year:** The 12-consecutive month period designated by the Employer in the Adoption Agreement. If nothing is elected, the Plan Year shall be the calendar year.
- 2.27 Required Beginning Date:** The April 1 of the calendar year following the calendar year in which the later of retirement or attainment of age 70-1/2 occurs.
- 2.28 Severance from Employment:** The term Severance from Employment means the date that the Employee dies, retires, or otherwise has a severance from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the Code).

An independent contractor is considered to have a Severance from Employment with the eligible Employer upon the expiration of the contract (or in the case of more than one contract, all contracts) under which services are performed for the eligible Employer if the expiration constitutes a good-faith and complete termination of the contractual relationship. Expiration does not constitute a good faith and complete termination of the contractual relationship if the eligible Employer anticipates a renewal of a contractual relationship or the independent contractor becoming an Employee. For this purpose, an eligible Employer is considered to anticipate the renewal of the contractual relationship with an independent contractor if it intends to contract again for the services provided under the expired contract, and neither the eligible Employer nor the independent contractor has eliminated the independent contractor as a possible provider of services under any such new contract. Further, an eligible Employer is considered to intend to contract again for the services provided under an expired contract if the eligible Employer's doing so is conditioned only upon incurring a need for the services, the availability of funds, or both.

Notwithstanding the preceding paragraphs of this Section, the Plan is considered to satisfy the requirement described above that no amounts deferred under the Plan be paid or made available to the Participant before the Participant has a Severance from Employment with the eligible Employer if, with respect to amounts payable to a Participant who is an independent contractor, an eligible plan provides that— (a) No amount will be paid to the participant before a date at least 12 months after the day on which the contract expires under which services are performed for the eligible Employer (or, in the case of more than one contract, all such contracts expire); and (b) No amount payable to the Participant on that date will be paid to the Participant if, after the expiration of the contract (or contracts) and before that date, the Participant performs services for the eligible Employer as an independent contractor or an Employee.

- 2.29 Trust Agreement:** The written agreement (or declaration) made by and between the Employer and the Trustee under which the Trust Fund is maintained pursuant to section 8.02.
- 2.30 Trust Fund:** The trust fund created under and subject to the Trust Agreement pursuant to section 8.01.
- 2.31 Trustee/Custodian/Issuer:** The bank, or insurance company (or a person who has demonstrated to the satisfaction of the Commissioner that the manner in which such person will administer the plan will be consistent with the requirements of section 457(g) of the Code, section 1.457-8 of the Regulations, and IRS Notice 98-8) named in the Adoption Agreement and accepting the Trust, or any successor or successors appointed by the Employer and accepting the Trust. If the Employer has designated a Custodian in the Adoption Agreement, the term "Custodian" shall be substituted for "Trustee" throughout this Plan, Trust and the Adoption Agreement. If the Employer has

designated an Issuer in the Adoption Agreement, the term "Issuer" shall be substituted for "Trustee" throughout this Plan, Trust and the Adoption Agreement.

- 2.32 Unforeseeable Emergency:** "Unforeseeable Emergency" means a severe financial hardship to a Participant or Beneficiary resulting from sudden illness or accident of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, or of a Participant's or Beneficiary's dependent (as defined in Section 152(a) of the Code), loss of the Participant's or Beneficiary's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary as the term is defined under section 1.457-6(c)(2) of the Income Tax Regulations. Such term shall include qualified hurricane distributions, if provided for under the Employer's Unforeseeable Emergency Policy. The need to send a Participant's child to college or the desire to purchase a home are examples of what are not considered to be Unforeseeable Emergencies. Whether or not a Participant has experienced an Unforeseeable Emergency will be determined by the Employer.
- 2.33 Valuation Date:** The Valuation Date shall be daily, unless another date is designated by the Employer in the Adoption Agreement.

ARTICLE III ELIGIBILITY AND PARTICIPATION

- 3.01 Eligibility:** Each Employee shall be eligible to participate in the Plan and defer Compensation hereunder immediately upon becoming employed by the Employer. Notwithstanding the preceding sentence, an Employer may at its option exclude certain classes or types of Employees from participation in the Plan.
- 3.02 Election Required for Participation:**
- (a) An Employee may elect to become a Participant by executing an election to defer a portion of his or her Compensation (and have that amount contributed as an Annual Deferral on his or her behalf) and filing it with the Administrator. This participation election shall be made on the Deferral Agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. The Administrator may establish a minimum deferral amount, and may change such minimums from time to time. The participation election shall also include designation of investment funds and a designation of Beneficiary. Any such election shall remain in effect until a new election is filed.
 - (b) Notwithstanding section 3.02(a) above, if the Employer has elected Mandatory Contributions in the Adoption Agreement, such contributions shall automatically be deducted from the Employee's Compensation at the rate or dollar amount indicated in the Adoption Agreement and shall be treated as an after-tax Employee Contribution. If so indicated such Mandatory Contribution shall be to the Plan and be treated as a contribution that satisfies section 3121(b)(7)(F) of the Code. It is the Employer's responsibility to determine whether this Plan will meet the requirements to be a social security replacement plan.
- 3.03 Commencement of Participation:** Unless the Employer elects Automatic Enrollment in the Adoption Agreement, an Employee shall become a Participant as soon as administratively practicable following the date the Employee files a participation election pursuant to Section 3.02. Such election shall become effective no earlier than the calendar month following the month in

which the election is made. A new Employee may defer compensation payable in the calendar month during which the Participant first becomes an Employee if an agreement providing for the deferral is entered into on or before the first day on which the Participant performs services for the Employer.

- 3.04 Information Provided by the Participant:** Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the plan, including, without limitation, whether the Employee is a participant in any other eligible plan under Code section 457(b).
- 3.05 Contributions Made Promptly:** Elective Deferrals by the Participant under the Plan shall be transferred to the Trust Fund within a period that is not longer than is reasonable for the proper administration of the Plan. For this purpose, Elective Deferrals shall be treated as contributed within a period that is not longer than is reasonable for the proper administration if the contribution is made to the Trust Fund within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant.
- 3.06 Amendment of Annual Deferrals Election:** Subject to other provisions of the Plan, a Participant may at any time revise his or her participation election, including a change of the amount of his or her Annual Deferrals, his or her investment direction and his or her designated Beneficiary. Unless the election specifies a later effective date, a change in the amount of the Annual Deferrals shall take effect as of the first day of the next following month or as soon as administratively practicable if later. A change in the investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees.
- 3.07 Leave of Absence:** Unless an election is otherwise revised, if a Participant is absent from work by leave of absence, Annual Deferrals under the Plan shall continue to the extent that Compensation continues.
- 3.08 Disability:** A disabled Participant may elect to make Elective Deferrals during any portion of the period of his or her disability to the extent that he or she has actual Compensation (not imputed Compensation and not disability benefits) from which to make contributions to the Plan and has not had a Severance from Employment.

ARTICLE IV DEFERRAL OF COMPENSATION AND OTHER CONTRIBUTIONS

- 4.01 Designation of Amount of Compensation to be Deferred:** An individual shall designate the dollar amount or percentage of his monthly or semimonthly compensation to be deferred under this Plan on a Deferral Agreement. The amount designated in the Deferral Agreement will be deferred from the Participant's Compensation for the first month of participation and for each subsequent month until and unless an amended Deferral Agreement is filed with the Employer or until the Participant terminates his participation by giving written notice to the Employer. An amended Deferral Agreement or termination will become effective on the first day of the first calendar month beginning thirty (30) days after the amended Deferral Agreement or notice of termination is filed with the Employer, or at such earlier time as is convenient for the Employer. See Section 4.10(e) for information regarding the initial deemed deferral election applicable to

automatic enrollment.

4.02 Maximum Deferral Amount/ Plan Ceiling: Except as provided in Sections 4.06, 4.07 and 4.10, the Plan Ceiling for a Taxable Year shall be the lesser of:

- (a) The applicable annual dollar amount specified in section 457(e)(15) of the Code; or
- (b) 100% of the Participant's Includible Compensation for the Taxable Year.

For purposes of determining the Plan Ceiling under this 4.02, the annual deferral amount shall not include rollover amounts received by this 457 Plan.

4.03 Basic Annual Limitation: The maximum amount of the Annual Deferral under the Plan for any calendar year shall not exceed the lesser of (i) the Applicable Dollar Amount or (ii) the Participant's Includible Compensation for the calendar year. The Applicable Dollar Amount is the amount established under section 457(e)(15) of the Code applicable as set forth below:

| For the following years | The Applicable Dollar Amount is |
|-------------------------|---|
| 2002 | \$11,000 |
| 2003 | \$12,000 |
| 2004 | \$13,000 |
| 2005 | \$14,000 |
| 2006 | \$15,000 |
| 2007 - 2008 | \$15,500 |
| 2009 - 2010 | \$16,500 |
| 2011 | \$16,500 |
| 2012 | \$17,000 |
| 2013 - 2014 | \$17,500 |
| 2015 - 2017 | \$18,000 |
| 2018 | \$18,500 |
| 2019 and beyond | adjusted for cost-of-living to the extent provided under section 415(d) of the Code |

4.04 Minimum Deferrals: The amount, if any, specified in the Adoption Agreement.

4.05 Roth Deferrals:

(a) General Application

- (1) This Article will apply to contributions beginning with the effective date specified in the Adoption Agreement but in no event before the first day of the first taxable year beginning on or after January 1, 2011.
- (2) If elected by the Employer in the Adoption Agreement, the Plan will accept Roth Deferrals made on behalf of Participants. A Participant's Roth Deferrals will be allocated to a separate account maintained for such deferrals as described below.
- (3) Unless specifically stated otherwise, Roth Deferrals will be treated as Annual Deferrals for all purposes under the Plan.

(b) Separate Accounting

- (1) Contributions and withdrawals of Roth Deferrals will be credited and debited to the Roth Deferral account maintained for each Participant.
- (2) The Plan will maintain a record of the amount of Roth Deferrals in each Participant's account.
- (3) Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Roth Deferral account and the Participant's other accounts under the Plan.
- (4) No contributions other than Roth Deferrals and properly attributable earnings will be credited to each Participant's Roth Deferral account.

(c) Direct Rollovers

- (1) Notwithstanding section 4.15 of the Plan, a direct rollover of a distribution from a Roth Deferral account under the Plan will only be made to another Roth Deferral account under an applicable retirement plan described in section 402A(e)(1) or to a Roth IRA described in §408A, and only to the extent the rollover is permitted under the rules of section 402(c).
- (2) Unless otherwise provided by the Employer in the Adoption Agreement, the Plan will accept a rollover contribution to a Roth Deferral account only if it is a direct rollover from another Roth Deferral account under an applicable retirement plan described in section 402A(e)(1) and only to the extent the rollover is permitted under the rules of section 402(c).
- (3) The Plan will not provide for a direct rollover (including an automatic rollover) for distributions from a Participant's Roth 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 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 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.
- (4) 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 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.

(d) Correction of Excess Contributions

- (1) If elected in the Adoption Agreement, in the case of a distribution of excess contributions, a Highly Compensated Employee may designate the extent to which the excess amount is composed of pre-tax Deferrals and Roth Deferrals but only to the extent such types of deferrals were made for the year.
- (2) If the Highly Compensated Employee does not or cannot designate which type of Deferrals is to be distributed, the Plan will distribute pre-tax Deferrals first.

(e) Definition of Roth Deferrals

A Roth Deferral is an Elective Deferral 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 pre-tax Deferrals the Participant is otherwise eligible to make under the Plan; and
- (2) Treated by the employer as includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a cash or deferred election.

4.06 Age 50 Catch-up Annual Deferral Contributions: If elected by the Employer in the Adoption Agreement, a Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Annual Deferrals, up to the maximum age 50 catch-up Annual Deferrals for the year. The maximum dollar amount of the age 50 catch-up Annual Deferrals for a year is as follows:

| For the following years | The Maximum Age 50 Catch-up Dollar Amount is |
|-------------------------|---|
| 2002 | \$1,000 |
| 2003 | \$2,000 |
| 2004 | \$3,000 |
| 2005 | \$4,000 |
| 2006 - 2008 | \$5,000 |
| 2009 - 2014 | \$5,500 |
| 2015 - 2018 | \$6,000 |
| 2019 and beyond | adjusted for cost-of-living to the extent provided under the Code |

4.07 Special 3-year 457 Plan Catch-Up Limitation: If the applicable year is one of a Participant's last 3 calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this Section 4.07 exceeds the amount computed under Sections 4.03 and 4.06, then the Annual Deferral limit under this Article IV shall be the lesser of:

- (a) An amount equal to 2 times the Section 4.03 Applicable Dollar Amount for such year; or
- (b) The sum of:
 - (1) An amount equal to (A) the aggregate Section 4.03 limit for the current year plus each prior calendar year beginning after December 31, 2001 during which the Participant was an Employee under the Plan, minus (B) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus
 - (2) An amount equal to (A) the aggregate limit referred to in section 457(b)(2) of the Code for each prior calendar year beginning after December 31, 1978 and before January 1, 2002 during which the Participant was an Employee (determined without regard to Sections 4.06 and 4.07), minus (B) the aggregate contributions to Pre-2002 Coordination Plans for such years.

However, in no event can the deferred amount be more than the Participant's Compensation for the year.

4.08 Restriction on Special 3-year Catch-Up: A Participant who has used the special 3-year catch-up provision in Section 4.07 or a comparable provision in another eligible deferred compensation plan, has retired, and is subsequently employed or reemployed by the Employer may not again utilize the special 3-year catch-up provision, even if the provision was used in less than all of the three taxable Years ending before the Participant attained Normal Retirement Age.

4.09 Other Contributions to this Plan:

- (a) Employer Nonelective and Matching Contributions. This Plan shall also accept Employer Nonelective Contributions as well as Employer Matching Contributions.
- (b) Mandatory Employee Contributions. Notwithstanding section 4.09(a) above, if the Employer has elected Mandatory Employee Contributions in the Adoption Agreement, such contributions shall automatically be deducted from the Employee's Compensation at the rate or dollar amount indicated in the Adoption Agreement and shall be treated as an after-tax Employee Contribution. If so indicated such Mandatory Contribution shall be to the Plan and be treated as a contribution that satisfies section 3121(b)(7)(F) of the Code. It is the Employer's responsibility to determine whether this Plan will meet the requirements to be a social security replacement plan.
- (c) Pick-Up Contributions. If elected in the Adoption Agreement, the Employer may elect to have contributions made under section 414(h) as "pick-up" contributions that satisfy such section 414(h) of the Code. These contributions shall be treated as Employer contributions for all purposes and not as an Employee Contribution.
- (d) The total of all contributions made within a specific Plan Year shall not exceed the limitations outlined under sections 4.03, 4.06, and 4.07.

4.10 Special Rules: For purposes of this Article IV, the following rules shall apply:

- (a) Participant Covered By More Than One Eligible Plan. If the Participant is or has been a participant in one or more other eligible plans within the meaning of section 457(b) of the Code, then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Article IV. For this purpose, the Administrator shall take into account any other such eligible plan maintained by the Employer and shall also take into account any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.
- (b) Pre-Participation Years. In applying Section 4.07, a year shall be taken into account only if (i) the Participant was eligible to participate in the Plan during all or a portion of the year and (ii) Compensation deferred, if any, under the Plan during the year was subject to the Basic Annual Limitation described in Section 4.03 or any other plan ceiling required by section 457(b) of the Code.

- (c) **Pre-2002 Coordination Years.** For purposes of Section 4.07(b)(2), "contributions to Pre-2002 Coordination Plans" means any employer contribution, salary reduction or elective contribution under any other eligible Code section 457(b) plan, or a salary reduction or elective contribution under any Code section 401(k) qualified cash or deferred arrangement, Code section 402(h)(1)(B) simplified employee pension (SARSEP), Code section 403(b) annuity contract, and Code section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in section 501(c)(18) of the Code, including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 4.07(b)(2) to the extent that the total of such contributions does not exceed the aggregate limit referred to in section 457(b)(2) of the Code for that year.
- (d) **Disregard Excess Deferral.** For purposes of Sections 4.03, 4.06 and 4.07, an individual is treated as not having deferred compensation under a plan for a prior taxable year to the extent Excess Deferrals under the plan are distributed, as described in Section 4.12. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an Excess Deferral for those prior years.
- (e) **Special Rule for Automatic Enrollment.**
 - (1) **Automatic Enrollment for New Employees:** If elected by the Employer in the Adoption Agreement, for purposes of applying this Section 4.10, a new Employee is deemed to have elected to become a Participant and to have his or her Compensation reduced by the percentage if any elected in the Adoption Agreement (and have that amount contributed as an Elective Deferral on his or her behalf), at the time the Employee is hired, and to have agreed to be bound by all the terms and conditions of the Plan. If the Plan permits Roth Elective Deferrals, then the automatic enrollment Elective Deferral will be deposited as a regular Pre-Tax Elective Deferral, unless a different default election applies on the Salary Reduction Agreement. Contributions made under this automatic participation provision shall be made to the Funding Vehicle or Vehicles selected for this purpose for all new Employees by the Administrator. Any Employee who automatically becomes a Participant under this Section 4.10(e) shall file a designation of Beneficiary with the Funding Vehicle or Vehicles to which contributions are made. If no designation is filed with the Funding Vehicle or Vehicles, or if all named beneficiaries are no longer alive then the following defaults shall apply: first the spouse of the Employee; if there is no spouse then any surviving children, if there are no surviving children, then the Employee's Estate.
 - (2) **Right to File a Different Election; Notice to Employee:** This Section 4.10(e) shall not apply to the extent an Employee files an election for a different percentage reduction or elects to have no Compensation reduction, or designates a different Funding Vehicle to receive contributions made on his or her behalf. Any new Employee shall receive a statement at the time he or she is hired that describes the Employee's rights and obligations under this Section 4.10(e) (including the information in this Section 4.10(e) and identification of how the Employee can file an election or make a designation as described in the preceding sentence, and the refund right under Section 4.10(e)(3), including the specific name and location of the person to whom any such election or designation may be

filed), and how the contributions under this Section 4.10(e) will be invested.

- (3) **Refund of Contributions:** An Employee for whom contributions have been automatically made under Section 4.10(e)(1) may elect to withdraw all of the contributions made on his or her behalf under Section 4.10(e)(1), including the attributable gains or losses thereon through the date of the withdrawal. This withdrawal right is available only if the withdrawal election is made within 90 days after the date of the first contribution made under Section 4.10(e)(1). This rule does not apply to Employers who do not adopt Automatic Enrollment.

4.11 Qualified Governmental Excess Benefit Arrangement: Benefits provided under a qualified governmental excess benefit arrangement as defined in §415(m)(3), shall not be taken into account in determining whether this Plan is an eligible deferred compensation plan.

4.12 Correction of Excess Deferrals: If the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under section 457(b) of the Code for which the Participant provides information that is accepted by the Administrator, then the Annual Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant.

4.13 Remittance of Employee Deferrals: Employee Deferrals must be transferred to this Trust within a period that is not longer than a reasonable period for the administration of the Plan.

4.14 Protection of Persons Who Serve in a Uniformed Service:

- (a) An Employee whose employment is interrupted by qualified military service under Code section 414(u) or who is on a leave of absence for qualified military service under Code section 414(u) may elect to make additional Annual Deferrals upon resumption of employment with the Employer equal to the maximum Annual Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).
- (b) **Certain Benefit Accruals and Employer Contributions:** If elected by the Employer in the Adoption Agreement, plans are permitted but not required supply additional benefit accruals or Employer Contributions to participants who die or become disabled while engaged in active military service. Plans may elect to treat participants who die or become disabled while performing active military service in the same manner as the current rules apply to military personnel that are rehired. If this is elected or the Plan may deem such a participant to have been rehired on the day before the date of death or disability, and then, accordingly, provide him/her with some or all of the benefit accruals that he/she would have been entitled to under USERRA had he/she actually returned to work. If this additional benefit is offered pursuant to section 414(u) of the Code then the Plan must comply with two conditions. First,

all participants performing military service must be treated on a reasonably equivalent basis and therefore may not discriminate in favor of highly compensated employees. Second, if a plan benefit is contingent on employee contributions or elective deferrals, the Employer must determine the benefit by looking at the average of the contributions or deferrals actually made by the participant during the twelve months prior to military service, or, if less, the length of time he/she was employed. This optional provision can be applied to deaths and disabilities occurring on or after January 1, 2007.

- (c) **Differential Wages:** "Differential Wage Payments" must be considered Compensation for purposes this Plan. A "Differential Wage Payment" is any payment made by an Employer to an Employee who is performing active military service that represents all or some of the wages that the Employee would have received from the Employer if he/she were still actively employed. Employees may also make contributions to this Plan from Differential Wage Payments or become entitled to additional benefits under the Plan on the basis of the Differential Wage Payments. This provision is effective on the first day of the Plan Year beginning in 2009.

4.15 Eligible Rollover Contributions to the Plan:

- (a) A Participant who is an Employee and who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. The Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of section 402(c)(8)(B) of the Code.
- (b) For purposes of this Section 4.15(b), an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (1) any installment payment for a period of 10 years or more, (2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, or (c) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9) of the Code. In addition, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution.
- (c) The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under section 457(b) of the Code. In addition, the Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is an eligible governmental plan under section 457(b) of the Code.

4.16 Plan-to-Plan Transfers to the Plan: At the direction of the Employer, the Administrator may permit a class of Participants who are participants in another eligible governmental plan under

section 457(b) of the Code to transfer assets to the Plan as provided in this Section 4.16. Such a transfer is permitted only if the other plan provides for the direct transfer of each Participant's interest therein to the Plan. The Administrator may require in its sole discretion that the transfer be in cash or other property acceptable to the Administrator. The Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with section 457(e)(10) of the Code and section 1.457-10(b) of the Income Tax Regulations and to confirm that the other plan is an eligible governmental plan as defined in section 1.457-2(f) of the Income Tax Regulations. The amount so transferred shall be credited to the Participant's Account Balance and shall be held, accounted for, administered and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan, except that the transferred amount shall not be considered an Annual Deferral under the Plan in determining the maximum deferral under this Article IV.

ARTICLE V INVESTMENT OF DEFERRED AMOUNTS

- 5.01 Investment of Deferred Amounts:** The amounts deferred on behalf of a Participant under the Plan shall be promptly remitted to the Institution and invested in the approved investments of the Institution designated by the Participant on his Deferral Agreement. The approved investments of the Institution, Trustee, Custodian or Issuer which are currently available to Participants shall be designated on the Depository Agreement executed by the Institution or as an amendment thereto. Changes in investments shall be made only upon the written request of the Participant with the written consent of the Employer.

ARTICLE VI DISTRIBUTIONS

- 6.01 Benefit Distributions At Retirement or Other Severance from Employment:** Upon retirement or other Severance from Employment (other than due to death), a Participant is entitled to receive a distribution of his or her Account Balance under any form of distribution permitted under Section 6.03 commencing at the date elected under Section 6.02. If a Participant does not elect otherwise, the distribution shall be paid as soon as practicable following Normal Retirement Age or, if later, following retirement or other Severance from Employment and payment shall be made in installments of the minimum annual payments described in paragraph (b) of Section 6.03 pursuant to the individual's election on a distribution form acceptable to the Trustee, Custodian, or Issuer.
- 6.02 Election of Benefit Commencement Date:** A Participant may elect to commence distribution of benefits at any time after retirement or other Severance from Employment by a notice or distribution form filed with the Trustee, Custodian, or Issuer before the date on which benefits are to commence. However, in no event may distribution of benefits commence later than the date described in Article VII.
- 6.03 Forms of Distribution:** In an election to commence benefits under Section 6.02, a Participant entitled to a distribution of benefits under this Article VI may elect to receive payment in any form of distribution, if selected by the Employer in the Adoption Agreement. If no election is made the forms of distributions will be dependent on the available payment methods available through the investments.

- 6.04 Death Benefit Distributions:** Commencing in the calendar year following the calendar year of the Participant's death, the Participant's Account Balance shall be paid to the Beneficiary pursuant to this section 6.04.

Alternatively, if the Beneficiary with respect to the Participant's Account Balance is a natural person, at the Beneficiary's election, distribution can be made in annual installments with the distribution period determined under this paragraph. If the Beneficiary is the Participant's surviving spouse, the distribution period is equal to the Beneficiary's life expectancy using the single life table in section 1.401(a)(9)-9, A-1, of the Income Tax Regulations for the spouse's age on the spouse's birthday for that year and shall be redetermined each subsequent year. If the Beneficiary is not the Participant's surviving spouse, the distribution period is the Beneficiary's life expectancy determined in the year following the year of the Participant's death using the single life table in section 1.401(a)(9)-9, A-1, of the Income Tax Regulations for the Beneficiary's age on the Beneficiary's birthday for that year, reduced by one for each year that has elapsed after that year. For any year, a Beneficiary can elect distribution of a greater amount (not to exceed the amount of the remaining Account Balance) in lieu of the amount calculated using this formula.

- 6.05 Account Balances of \$1,000 or Less:** Notwithstanding Sections 6.02, 6.03 and 6.04, if the amount of a Participant's Account Balance is not in excess of \$1,000 on the date that payments commence under Section 6.03 or on the date of the Participant's death, then payment shall be made to the Participant (or to the Beneficiary if the Participant is deceased) in a lump sum equal to the Participant's Account Balance as soon as practicable following the Participant's retirement, death, or other Severance from Employment.
- 6.06 Amount of Account Balance:** Except as provided in Section 6.03, the amount of any payment under this Article VI shall be based on the amount of the Account Balance on the preceding Valuation Date.
- 6.07 Revocation of Prior Election:** Any election made under this Article VI may be revoked at any time.
- 6.08 Latest Distribution Date:** In no event shall any distribution under this Article VI begin later than the later of (a) April 1 of the year following the calendar year in which the Participant attains age 70 1/2 or (b) April 1 of the year following the year in which the Participant retires or otherwise has a Severance from Employment. If distributions commence in the calendar year following the later of the calendar year in which the Participant attains age 70 1/2 or the calendar year in which the Severance from Employment occurs, the distribution on the date that distribution commences must be equal to the annual installment payment for the year that the Participant has a Severance from Employment determined under paragraph (b) of Section 6.03 and an amount equal to the annual installment payment for the year after Severance from Employment determined under paragraph (b) of Section 6.03 must also be paid before the end of the calendar year of commencement. The requirements of the 70 1/2 or severance payment after attaining age 70 1/2 shall satisfy Article VII.
- 6.09 In-Service Distributions From Rollover Account:** If a Participant has a separate account attributable to rollover contributions to the plan, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

6.10 Unforeseeable Emergency Distribution:

- (a) Distribution. If the Participant has an unforeseeable emergency before retirement or other Severance from Employment, the Participant may elect to receive a lump sum distribution equal to the amount requested or, if less, the maximum amount determined by the Administrator to be permitted to be distributed under this Section 6.10.
- (b) Unforeseeable emergency distribution standard. A distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the plan.
- (c) Distribution necessary to satisfy emergency need. Distributions because of an unforeseeable emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

6.11 Distributions for Certain Account Balances of \$5,000 or Less: If elected by the Employer in the Adoption Agreement, the Plan may adopt one of the following options for In-Service distributions. An Employer may not adopt both provisions.

- (a) Mandatory In-Service Distributions: If elected in the Adoption Agreement, the Plan shall distribute the total amount payable under the Plan to a Participant who is an active Employee of an eligible employer if the following requirements are met:
 - (1) the total amount payable to the Participant under the Plan does not exceed \$5,000 (or the dollar limit under section 411(a)(11) of the Internal Revenue Code, if greater);
 - (2) the participant has not previously received an in-service distribution of the total amount payable to the participant under the Plan; and
 - (3) no amount has been deferred under the Plan with respect to the participant during the two-year period ending on the date of the in-service distribution.
- (b) Voluntary In-Service Distributions: If elected in the Adoption Agreement, a participant who is an active employee of an eligible employer shall receive a distribution of the total amount payable to the participant under the Plan if the following requirements are met:
 - (1) the total amount payable to the participant under the Plan does not exceed \$5,000 (or the dollar limit under section 411(a)(11) of the Internal Revenue Code, if greater);
 - (2) the participant has not previously received an in-service distribution of the total amount payable to the participant under the Plan;
 - (3) no amount has been deferred under the Plan with respect to the participant during the two-year period ending on the date of the in-service distribution; and

- (4) the participant elects to receive the distribution.

6.12 Rollover Distributions:

- (a) A Participant or the Beneficiary of a deceased Participant (or a Participant's spouse or former spouse who is an Alternate Payee under a domestic relations order, as defined in section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect to have any portion of an eligible rollover distribution (as defined in section 402(c)(4) of the Code) from the Plan paid directly to an eligible retirement plan (as defined in section 402(c)(8)(B) of the Code) specified by the Participant in a direct rollover. In the case of a distribution to a Beneficiary who at the time of the Participant's death was neither the spouse of the Participant nor the spouse or former spouse of the Participant who is an Alternate Payee under a domestic relations order, a direct rollover is payable only to a traditional individual retirement account or traditional individual retirement annuity (IRA) that has been established on behalf of the Beneficiary as an inherited traditional IRA (within the meaning of section 408(d)(3)(C) of the Code).
- (b) For purposes of this Section 6.12, an eligible rollover distribution means any distribution of all or any portion of a Participant's Account Balance, except that an eligible rollover distribution does not include (a) any installment payment under Section 6.03 for a period of 10 years or more (b) any distribution made under Section 6.10 as a result of an unforeseeable emergency, or (c) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9). In addition, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution.
- (c) For distributions made after December 31, 2007, Participants must be given the option to directly rollover to a Roth IRA as a qualified rollover contribution pursuant to section 408A(e) of the Code. Pursuant to section 402(c)(11) of the Code, a plan may, but is not required to permit rollovers by nonspouse Beneficiaries and a rollover by a nonspouse Beneficiary must be made in a Direct Rollover to a Roth IRA. A surviving spouse Beneficiary who makes a rollover to a Roth IRA from this Plan may elect either to treat the Roth IRA as his or her own or establish the Roth IRA in the name of the decedent with the surviving spouse as the Beneficiary.

6.13 Nonspouse Beneficiary Direct Rollover

- (a) This Plan shall permit a direct trustee-to-trustee transfer of any portion of a benefit payable upon the death of a Participant may be distributed from this Plan to an individual retirement plan described in section 408(a) or (b) of the Code (an "IRA") that is established for the purpose of receiving the distribution on behalf of a Designated Beneficiary who is a nonspouse beneficiary. The transfer is treated as a direct rollover of an eligible rollover distribution for purposes of section 402(c) of the Code.

The IRA of the nonspouse beneficiary is treated as an inherited IRA within the meaning of section 408(d)(3)(C) of the Code.

- (b) This Plan shall offer a direct rollover of a distribution to a nonspouse beneficiary who is a Designated Beneficiary within the meaning of section 401(a)(9)(E) of the Code, provided that the distributed amount satisfies all the requirements to be an eligible rollover distribution other than the requirement that the distribution be made to the participant or the participant's spouse. The direct rollover must be made to an IRA established on behalf of the Designated Beneficiary that will be treated as an inherited IRA pursuant to the provisions of section 402(c)(11) of the Code. If a nonspouse beneficiary elects a direct rollover, the amount directly rolled over is not includible in gross income in the year of the distribution.
- (c) Section 402(c)(11) of the Code provides that a direct rollover of a distribution by a nonspouse beneficiary is a rollover of an eligible rollover distribution only for purposes of section 402(c) of the Code. Therefore, the distribution is not subject to the direct rollover requirements of section 401(a)(31) of the Code, the notice requirements of section 402(f) of the Code, or the mandatory withholding requirements of section 3405(c) of the Code. If an amount distributed from a plan is received by a nonspouse beneficiary, the distribution is not eligible for rollover.
- (d) This Plan may make a direct rollover to an IRA on behalf of a trust where the trust is the named beneficiary of a decedent, provided the beneficiaries of the trust meet the requirements to be designated beneficiaries within the meaning of section 401(a)(9)(E) of the Code. In such a case, the beneficiaries of the trust are treated as having been designated as beneficiaries of the decedent for purposes of determining the distribution period under section 401(a)(9) of the Code, if the trust meets the requirements set forth in Treasury Regulation section 1.401(a)(9)-4, Q&A-5, with respect to the IRA.
- (e) Determination of Required Minimum Distributions:

General rule. If the Employee dies before his or her Required Beginning Date, the required minimum distributions for purposes of determining the amount eligible for rollover with respect to a nonspouse beneficiary are determined under either the 5-year rule described in section 401(a)(9)(B)(ii) of the Code or the life expectancy rule described in section 401(a)(9)(B)(iii) of the Code, as elected by the Participant. If no election is made the default minimum shall be determined under the life expectancy rule described in section 401(a)(9)(B)(iii). Under either rule, no amount is a required minimum distribution for the year in which the Employee dies. The rule in Treasury Regulation section 1.402(c)-2, Q&A-7(b) (relating to distributions before an Employee has attained age 70½) does not apply to nonspouse beneficiaries.

Five-year rule. Under the 5-year rule described in section 401(a)(9)(B)(ii) of the Code, no amount is required to be distributed until the fifth calendar year following the year of the Employee's death. In that year, the entire amount to which the beneficiary is entitled under the plan must be distributed. Thus, if the 5-year rule applies with respect to a nonspouse beneficiary who is a designated beneficiary within the meaning of section 401(a)(9)(E) of the Code, for the first 4 years after the year the Employee dies, no amount payable to the beneficiary is ineligible for direct rollover as a required minimum distribution. Accordingly, the beneficiary is permitted to directly roll over the beneficiary's entire benefit until the end of the

fourth year (but, the 5-year rule must also apply to the IRA to which the rollover contribution is made). On or after January 1 of the fifth year following the year in which the Employee died, no amount payable to the beneficiary is eligible for rollover.

Life expectancy rule. (1) *General rule.* If the life expectancy rule described in section 401(a)(9)(B)(iii) of the Code applies, in the year following the year of death and each subsequent year thereafter, there is a required minimum distribution. The amount not eligible for rollover includes all undistributed required minimum distributions for the year in which the direct rollover occurs and any prior year (even if the excise tax under section 4974 of the Code has been paid with respect to the failure in the prior years). (2) *Special rule.* If, under Treasury Regulation section 1.401(a)(9)-3, Q&A, paragraph (b) or (c) the 5-year rule applies, the nonspouse Designated Beneficiary may determine the required minimum distribution under the plan using the life expectancy rule in the case of a distribution made prior to the end of the year following the year of death. However, in order to use this rule, the required minimum distributions under the IRA to which the direct rollover is made must be determined under the life expectancy rule using the same Designated Beneficiary.

- (f) If an Employee dies on or after his or her Required Beginning Date, within the meaning of section 401(a)(9)(C) of the Code, for the year of the Employee's death, the required minimum distribution not eligible for rollover is the same as the amount that would have applied if the Employee were still alive and elected the direct rollover. For the year after the year of the Employee's death and subsequent years thereafter, see Q&A-5 of Treasury Regulation section 1.401(a)(9)-5, Q&A-5, to determine the applicable distribution period to use in calculating the required minimum distribution. As in the case of death before the Employee's Required Beginning Date, the amount not eligible for rollover includes all undistributed required minimum distributions for the year in which the direct rollover occurs and any prior year, including years before the Employee's death.
- (g) Under section 402(c)(11) of the Code, an IRA established to receive a direct rollover on behalf of a nonspouse Designated Beneficiary is treated as an inherited IRA within the meaning of section 408(d)(3)(C) of the Code. The required minimum distribution requirements set forth in section 401(a)(9)(B) of the Code and the regulations thereunder apply to the inherited IRA. The rules for determining the required minimum distributions under the Plan with respect to the nonspouse beneficiary also apply under the IRA. Thus, if the Employee dies before his or her Required Beginning Date and the 5-year rule in section 401(a)(9)(B)(ii) of the Code applied to the nonspouse Designated Beneficiary under the plan making the direct rollover, the 5-year rule applies for purposes of determining required minimum distributions under the IRA. If the life expectancy rule applied to the nonspouse Designated Beneficiary under the plan, the required minimum distribution under the IRA must be determined using the same applicable distribution period as would have been used under the plan if the direct rollover had not occurred. Similarly, if the Employee dies on or after his or her Required Beginning Date, the required minimum distribution under the IRA for any year after the year of death must be determined using the same applicable distribution period as would have been used under the plan if the direct rollover had not occurred.
- (h) Notwithstanding anything else to the contrary in this Plan, if the nonspouse Beneficiary has not made an election for required minimum calculations, the minimum shall be calculated based on single life expectancy.

- (i) Effective for Plan Years beginning after December 31, 2009, plans are required to provide a direct rollover option for non-spouse beneficiaries and must provide a 402(f) notice pursuant to the Workers Retiree and Employer Recovery Act of 2008.

6.14 Election of Distribution: An election to receive distribution of amounts deferred under the Plan in accordance with this Article VI shall be made in writing on a form signed by the Participant or his Beneficiary and approved by the Employer. The election may be made after the Participant separates from service with the Employer, is eligible for an in-service distribution pursuant to sections 6.10 or 6.11, or dies. If no election is made by the Required Beginning Date the distribution shall be determined based upon the distribution period in the uniform lifetime distribution period table in Regulation section 1.401(a)(9)-9. However, no payment will be made until the Participant (with the consent of the Employer) provides the Trustee, Custodian or Issuer with a proper distribution request acceptable to the Trustee, Custodian or Issuer.

6.15 Beneficiary Designation: A Participant may designate any person, trust, organization or estate to receive the balance in his Account at his death by filing a written Beneficiary Designation with the Employer prior to his death. If the Participant dies without designating a Beneficiary, the balance in the Participant's Account will be paid to the Participant's spouse, but if the Participant has no surviving spouse, to the Participant's children in equal shares, but if the Participant has no surviving children, to the Participant's estate.

6.16 Distribution for Benefit of Participant or Beneficiary: If the Employer receives satisfactory evidence that any person entitled to receive a distribution is, at the time such distribution is payable, physically, mentally, or legally incompetent to receive the distribution and to give a valid receipt therefore, and that an individual or institution is then maintaining or has custody of such person, and that no guardian, committee or other representative of the estate of such person has been appointed, the Employer may direct the Institution to make the distribution to such individual or institution maintaining or having custody of such person, and the receipt of such individual or institution shall be valid and complete discharge for the payment of the distribution.

6.17 Plan-to-Plan Transfers from the Plan:

- (a) At the direction of the Employer, the Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account Balance transferred to another eligible governmental plan within the meaning of section 457(b) of the Code and section 1.457-2(f) of the Income Tax Regulations. A transfer is permitted under this Section 6.17(a) for a Participant only if the Participant has had a Severance from Employment with the Employer and is an employee of the entity that maintains the other eligible governmental plan. Further, a transfer is permitted under this Section 6.17(a) only if the other eligible governmental plan provides for the acceptance of plan-to plan transfers with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.
- (b) Upon the transfer of assets under this Section 6.17, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such

documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 6.17 (for example, to confirm that the receiving plan is an eligible governmental plan under paragraph (a) of this Section 6.17, and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to section 1.457-10(b) of the Income Tax Regulations.

6.18 Permissive Service Credit Transfers:

- (a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan. A transfer under this Section 6.18(a) may be made before the Participant has had a Severance from Employment, or other distributable event.
- (b) A transfer may be made under Section 6.18(a) only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code. Such term may include service credit for periods for which there is no performance of service, and may include service credited in order to provide an increased benefit for service credit which a participant is receiving under the defined benefit plan.

6.19 In-Plan Roth Rollovers:

- (a) Adoption and Effective Date of In-Plan Roth Rollovers (IRRs): If elected in the Adoption Agreement, the Plan shall accept IRRs. This Section is intended as good faith compliance with the requirements of the Small Business Jobs and Credit Act of 2010 (SBJCA) and is to be construed in accordance with Small Business Act of 2010 (SBJA) and the guidance issued thereunder. This Section 6.19 of the Plan shall be effective for distributions made on or after the date indicated in the Adoption Agreement, but in no event earlier than January 1, 2011.
- (b) Supersession of Inconsistent Provisions: This Amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- (c) Rollovers from Deferral Plans to Designated Roth Accounts: The following shall be considered a part of the Employer's Plan with respect to distributions made after the Enactment Date:
 - (1) Qualified Rollover Contributions: Participants will be given the opportunity upon reaching a distributable event under the Plan to rollover from any amounts available under the Plan to the Designated Roth Account under this Plan.
 - (2) In-Plan Roth Rollovers: An "In-Plan Roth Rollover (IRR)" shall refer to an amount that is distributable under the Plan and such amount is rolled over into the Designated Roth Account under the Plan. Such amounts must be kept separately accounted for, for purposes of reporting.
 - (3) Additional Reporting and Recordkeeping: Until such time that the IRS or any other agency provides guidance that would not require certain recordkeeping actions, the

Employer shall be obligated to maintain separate records with respect to each "in-plan" conversion that occurs.

- (4) Taxable Rollovers to Designated Roth Accounts: Notwithstanding sections 402(c), 403(b)(8), and 457(e)(16), in the case of any distribution to which this paragraph applies:
 - (A) There shall be included in gross income any amount which would be includible were it not part of a Qualified Rollover Contribution;
 - (B) Section 72(t) of the Code shall not apply;
 - (C) 20% Withholding does not apply under section 3405(c);
- (d) Distributions to Which Amendment Relates: In the case of an applicable retirement plan which includes a qualified Roth contribution program, this amendment shall apply to a distribution from such plan other than from a Designated Roth Account which is contributed in a qualified rollover contributions (within the meaning of section 408A(e)) to the Designated Roth Account maintained under such Plan for the benefit of the individual to whom the distribution is made.
- (e) Distributions to Surviving Spouses and Alternate Payee Spouses: This amendment shall apply to Surviving spouse Beneficiaries as well as Alternate Payee Spouses pursuant to a QDRO distribution.

ARTICLE VII REQUIRED MINIMUM DISTRIBUTIONS

- 7.01 Effective Date:** The provisions of this section Article will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
- 7.02 Precedence:** The requirements of this Article will take precedence over any inconsistent provisions of the Plan.
- 7.03 Requirements of Treasury Regulations Incorporated:** All distributions required under this Article will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Internal Revenue Code.
- 7.04 Required Beginning Date:** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.
- 7.05 Death of Participant Before Distributions Begin:** If the Participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (a) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then, except as provided in this amendment, 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 70½, if later.
 - (b) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then, except as provided in this amendment, distributions to the Designated Beneficiary will begin

by December 31 of the calendar year immediately following the calendar year in which the Participant died.

- (c) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (d) 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 section 7.05, other than section 7.05(a), will apply as if the surviving spouse were the Participant.

For purposes of this section 7.05, unless section 7.05(d) applies, distributions are considered to begin on the Participant's Required Beginning Date. If section 7.05(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under section 7.05(a). If distributions under an annuity 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 section 7.05(a)), the date distributions are considered to begin is the date distributions actually commence. A Designated Beneficiary who is receiving payments under the 5-year rule may make a new election to receive payments under the life expectancy rule until December 31, 2003, provided that all amounts that would have been required to be distributed under the life expectancy rule for all distribution calendar years before 2004 are distributed by the earlier of December 31, 2003 or the end of the 5-year period.

7.06 Forms of Distribution: Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with this Article VII. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the Treasury regulations.

7.07 Amount of Required Minimum Distribution For Each Distribution Calendar Year: During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

- (a) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
- (b) 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 section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

7.08 Lifetime Required Minimum Distributions Continue Through Year of Participant's Death:

Required minimum distributions will be determined under this Article VII beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

7.09 Death On or After Date Distributions Begin:

- (a) **Participant Survived by Designated Beneficiary:** If the Participant dies on or after the date 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:
 - (1) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
 - (2) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated 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.
 - (3) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (b) **No Designated Beneficiary:** If the Participant dies on or after the date distributions begin and there is no Designated 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 calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

7.10 Death Before Date Distributions Begin:

- (a) **Participant Survived by Designated Beneficiary:** Except as provided in this amendment, if the Participant dies before the date 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 this Article.
- (b) **No Designated Beneficiary:** If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the

Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

- (c) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin: If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under section 7.05(a), this section 7.10 will apply as if the surviving spouse were the Participant.

7.11 Definitions:

- (a) Designated Beneficiary: The individual who is designated as the beneficiary under section 2.10 of the Plan and is the Designated Beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.
- (b) 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 which 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 section 2.02. 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.
- (c) Life expectancy: Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.
- (d) Participant's account balance: The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the 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. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- (e) Required Beginning Date: The Required Beginning Date shall be the April 1 following the later of the year in which the Participant attains the age of 70 ½ or the year in which the Participant retires.

ARTICLE VIII MISCELLANEOUS PROVISIONS

- 8.01 Non-Assignability:** Except as provided in Section 8.02 and 8.03, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's

creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.

8.02 Domestic Relation Orders:

- (a) Notwithstanding Section 8.01, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order"), then the amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.
- (b) The term Alternate Payee is defined to include a spouse, former spouse, child or other dependent of a Participant who is assigned under a qualified domestic relations order (as defined in §414(p) of the Code) a right to receive all or a portion of the benefits payable with respect to a Participant.

8.03 IRS Levy: Notwithstanding Section 8.01, the Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

8.04 Mistaken Contributions: If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

8.05 Payments to Minors and Incompetents: If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

8.06 Procedure When Distributee Cannot Be Located: The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Employer's or the Administrator's records, (b) notification sent to the Social Security Administration or the Pension

Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Trust Fund shall continue to hold the benefits due such person.

- 8.07 Administration of the Plan:** The Employer shall be responsible for the general administration of the Plan and shall administer the Plan in accordance with its terms. The Employer shall determine all questions arising in the administration, interpretation and operation of the Plan, and in so doing may consult with and rely upon such legal and other opinions as it deems necessary and proper. The Employer shall maintain such records, render such reports and take such actions as may be necessary for administration of the Plan or required by law or regulation. The duties and responsibilities of the Employer in such matters may be delegated to an agent or representative. The Institution, if applicable under a separate agreement, will provide reasonable assistance in preparation of records and reports.
- 8.08 Loss of Plan Eligibility:** If this Plan is administered by the Employer in a manner which is inconsistent with the requirements of the Plan or of Section 457(b) of the Code and any regulations thereunder, the Plan shall be treated as not meeting such requirements as of the first Plan Year beginning more than 180 days after the date of notification by the Internal Revenue Service of the inconsistency, unless the Employer corrects the inconsistency before the first day of such Plan Year.
- 8.09 Liability of Institution:** The Institution shall not be liable for administration of the Plan or for effecting compliance with the eligibility requirements of the Plan and Section 457(b) of the Code. The Institution shall have no liability in connection with investment of the amounts it receives other than that arising from its own negligence. The Institution shall not be liable for acts of collection agents, for any loss in transit or for any loss incurred in handling collection items. All Accounts are subject to the Institution's charter and bylaws and all applicable statutes and regulations.
- 8.10 Amendment of the Plan:** The Employer shall have the right at any time to amend the Plan in any manner it deems necessary or advisable in order to maintain the Plan and the Accounts established hereunder as an eligible deferred compensation plan as provided in Section 457 of the Code and any regulation thereunder. No amendment to the Plan shall cause or permit any portion of the funds invested pursuant to the Plan to revert to or become the property of a Participant except as permitted by Section 457 of the Code or any other applicable law or regulation. Each amendment shall be made in writing and shall state therein the date on which it is effective.
- 8.11 Termination of Plan:** The Employer shall have the right at any time to terminate or suspend the Plan after thirty (30) days prior written notice to the Institution and the Participants. In the event of termination or suspension, the balances of Accounts maintained under the Plan may be retained by the Institution to be distributed in accordance with the Plan, may be transferred to another institution or investment medium, or may be distributed to the Employer, as shall be directed in writing by the Employer. In no event shall a termination or suspension of the Plan result in the distribution to a Participant prior to the time at which such distribution would otherwise be made under Articles VI or VII of the Plan.

- 8.12 Termination of Institution's Participation:** The Institution shall have the right to terminate its participation in the Plan as a depository upon thirty (30) days prior written notice to the Employer and Participants. The Institution may terminate its functions as depository with respect to amounts already in the Institution, as to amounts to be received by the Institution in the future, or as to both amounts currently invested and to be received. Upon written instructions from the Employer, the Institution shall transfer the funds invested under the Plan to another institution or other investment medium.
- 8.13 Not Employment Contract:** The establishment of or participation in this Plan shall not be construed as giving any Participant or other person any legal or equitable right against the Employer except as provided in the Plan. The terms of employment of a Participant shall not be modified or affected by the Plan.
- 8.14 No Representation:** The Employer and the Institution do not represent or guarantee that any particular federal income tax consequence will result from participation in this Plan. Participants are advised to consult their tax advisors to determine the tax consequences of participation. The Employer makes no representation or guarantee with respect to the investments made pursuant to the Plan, and the Employer shall have no liability for any investment losses.
- 8.15 Word Usage:** Words used in the Plan in the singular shall include the plural and the plural the singular where applicable, and the masculine shall include the feminine or common gender where appropriate.
- 8.16 Headings:** The headings and subheadings in the Plan are inserted for convenience and reference and are not to be used in construing this instrument or any provision thereof.
- 8.17 Governing Law:** The Plan and every provision thereof shall be construed and its validity determined according to the laws of the State or Commonwealth named in the Adoption Agreement.

ARTICLE IX

TRUST AGREEMENT

9.01 Trust Requirement:

- (a) Trust: Notwithstanding any contrary provision of the Plan, in accordance with section 457(g) of the Code, all amounts of compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in trust for the exclusive benefit of participants and beneficiaries under the Plan. Any trust under the Plan shall be established pursuant to a written agreement that constitutes a valid trust under the law of the state indicated in the Adoption Agreement.
- (b) Custodial Account - Notwithstanding any contrary provision of the Plan, in accordance with section 457(g) of the Code, all amounts of compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in one or more custodial accounts for the exclusive benefit of participants and beneficiaries under the Plan. For purposes of this paragraph, the custodian of any custodial account created pursuant to the Plan must be a bank, as described

in section 408(n) of the Code, or a person who meets the nonbank trustee requirements of paragraphs (2)-(6) of section 1.408-2(e) of the Income Tax Regulations relating to the use of non-bank trustees.

- (c) Annuity Contract - Notwithstanding any contrary provision of the Plan, including any annuity contract issued under the plan, in accordance with section 457(g) of the Code, all amounts of compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in one or more annuity contracts, as defined in section 401(g) of the Code, issued by an insurance company qualified to do business in the state where the contract was issued, for the exclusive benefit of participants and beneficiaries under the Plan. For this purpose, the term "annuity contract" does not include a life, health or accident, property, casualty, or liability insurance contract.

9.02 Trustee's Duties:

- (a) The Trustee must maintain ownership of the Investments. To the extent of Investments under a group trust, collective investment fund, or other pooled investment, the Trustee's participation (whether or not measured by shares or units) in the group-trust, collective investment fund, or other pooled investment is the form of ownership.
- (b) The Trustee has no investment duties under the Plan and Trust. Except for use of a processing account, the Trustee shall not invest any money or property of the Trust other than under the Investments selected by the Employer as instructed by Participants and Beneficiaries.

The parties acknowledge that the Plan requires Participants and Beneficiaries to direct the investment of their plan accounts among the plan investments and any funds or options under those Investments. The Employer is responsible for the selection of the plan investments and shall disclose the available investments on a form provided to Participants. The Trustee has no duty to consider the prudence of any investment of any kind. The Trustee has no duty to and shall not inquire into any Participant's or Beneficiary's investment direction.

9.03 Trustee's Powers: Subject to the limitations stated in Section 9.04 of the Plan and otherwise by this Article IX, the Trustee has all powers provided by any applicable statute and otherwise at law or in equity (including the common law), and has the following specified powers in addition to and not by limitation upon any such powers.

- (a) The Trustee delegates to the Plan Administrator authority to exercise any of the Trustee's rights or powers under the Investments. The Trustee shall oversee the Plan Administrator's actions so as to have reasonable assurance that the Investments are used according to the Plan and not for any improper purpose.
- (b) The Trustee has power to adjust, settle, contest, compromise and arbitrate any claims, debts, of damages due or owing to or from the Trust, and to sue, commence or defend any legal proceedings relating to the Trust.
- (c) Subject to applicable local government procurement law, the Trustee has power to employ (at

the expense of the Trust) suitable agents, accountants, attorneys, lawyers, legal assistants, consultants, and counsel of any kind; and to pay their fees or expenses and compensation out of the Trust assets, or to reimburse the Plan Administrator for any such fees or expenses and compensation it has already paid if the Plan Administrator instructs the Trustee that the Plan Administrator incurred or if the Trustee incurred such expense for the purpose of Plan and Trust administration.

9.04 Trustee's Limitations:

- (a) The Trustee shall not invest any money or property of the Trust other than under a permitted Plan Investment.
- (b) Each Employer sends Contributions to the Trustee or its agent to be invested under the Investments. The Trustee shall not receive any Contributions.
- (c) Trustee shall not give any investment direction or instruction of any kind, except as instructed by the Plan Administrator.
- (d) To the extent required by Section 457(g) of the Code, the Trustee has no power to use or divert any part of the Trust assets or income to purposes other than for the exclusive benefit of the Participants and their Beneficiaries under the Plan.

**ARTICLE X
LOANS TO PARTICIPANTS**

10.01 Loans. General Rules:

- (a) If elected by the Employer in the Adoption Agreement, a Participant who is an Employee may apply for and receive a loan from his or her Account Balance as provided in this Article X.
- (b) Any such loan may not be for an amount less than the minimum amount specified by the Administrator. If not specified by the Administrator, the minimum loan amount shall be \$1,000. The provisions of the Employer's Loan Policy, if any, shall supersede any provisions or procedures contained in this Article X.
- (c) Enforceable Agreement Requirement. A loan does not satisfy the requirements of this paragraph unless the loan is evidenced by a legally enforceable agreement (which may include more than one document) and the terms of the agreement demonstrate compliance with the requirements of section 72(p)(2) and this Section. Therefore, the agreement must specify the amount and date of the loan and the repayment schedule. The agreement does not have to be signed if the agreement is enforceable under applicable law without being signed. The agreement must be set forth in a written paper document.
- (d) Any additional requirements will be outlined in the Plan's Loan Policy and Procedures.

10.02 Maximum Loan Amount: No loan to a Participant hereunder may exceed the lesser of:

- (a) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Administrator (not taking into account any payments made

during such one-year period), or

- (b) one half of the value of the Participant's vested Account Balance (as of the Valuation Date immediately preceding the date on which such loan is approved by the Administrator).

For purposes of this Section 10.02, any loan from any other plan maintained by a participating employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan under this Section 10.02 to exceed the amount that would otherwise be permitted in the absence of this paragraph.

10.03 Terms of Loan: The terms of the loan shall:

- (a) require level amortization with payments not less frequently than quarterly throughout the repayment period, except that alternative arrangements for repayment may apply in the event that the borrower is on an bona fide unpaid leave of absence for a period not to exceed one year for leaves other than a qualified military leave within the meaning of section 414(u) of the Code or for the duration of a leave which is due to qualified military service;
- (b) require that the loan be repaid within five years unless the Participant certifies in writing to the Administrator that the loan is to be used to acquire any dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as a principal residence of the Participant; and
- (c) provide for interest at a rate equal to one percentage point above the prime rate on the first business day of the month in which the loan is approved by the Administrator, or such other reasonable interest rate as specified in the Employer's Loan Policy.

10.04 Security for Loan; Default:

- (a) Security. Any loan to a Participant under the Plan shall be secured by the pledge of the portion of the Participant's interest in the Plan invested in such loan.
- (b) Default. In the event that a Participant fails to make a loan payment under this Article IX within 90 days after the date such payment is due, a default on the loan shall occur. In the event of such default, all remaining payments on the loan shall be immediately due and payable.

In the case of any default on a loan to a Participant, the Administrator shall apply the portion of the Participant's interest in the Plan held as security for the loan in satisfaction of the loan on the date of Severance from Employment. In addition, the Administrator shall take any legal action it shall consider necessary or appropriate to enforce collection of the unpaid loan, with the costs of any legal proceeding or collection to be charged to the Account Balance of the Participant.

Notwithstanding anything elsewhere in the Plan to the contrary, in the event a loan is outstanding hereunder on the date of a Participant's death, his or her estate shall be his or her Beneficiary as to the portion of his or her interest in the Plan invested in such loan (with the Beneficiary or

Beneficiaries as to the remainder of his or her interest in the Plan to be determined in accordance with otherwise applicable provisions of the Plan).

10.05 Repayment: The Participant may be required, as a condition to receiving a loan, to enter into an irrevocable agreement authorizing the Employer to make payroll deductions from his or her Compensation as long as the Participant is an Employee and to transfer such payroll deduction amounts to the Trustee in payment of such loan plus interest. Repayments of a loan may be made by payroll deduction of equal amounts (comprised of both principal and interest) from each paycheck, with the first such deduction to be made as soon as practicable after the loan funds are disbursed; provided however, that a Participant may prepay the entire outstanding balance of his loan at any time and provided, further, that if any payroll deductions cannot be made in full because a Participant is on an unpaid leave of absence or is no longer employed by a participating employer (that has consented to make payroll deductions for this purpose) or the Participant's paycheck is insufficient for any other reason, the Participant shall pay directly to the Plan the full amount that would have been deducted from the Participant's paycheck, with such payment to be made by the last business day of the calendar month in which in which the amount would have been deducted.

10.06 Failure to Make Loan Payment: If a Participant fails to make a loan payment when due, such Participant will have 90 days (or such other reasonable period established by the Employer, disclosed to Participants, and applied on a uniform basis) after such loan payment due date to cure such default. If the Participant fails to make the loan payment by the end of the cure period, one or more of the following options will be applied on a uniform basis for all Participants under the Plan's written loan policy:

- (a) If permitted under the maximum Participant loan limits, a new loan will be created in the amount of the amount in default;
- (b) The amount in default will be reported as a deemed distribution for the tax year in which the cure period (as described in the Employer's Loan Policy) expired; or
- (c) The amount in default will be deducted from the Participant's vested account balance, when a distributable event occurs.