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**THE CITY OF ROCHESTER HILLS  
GROUP PENSION PLAN**

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## **THE CITY OF ROCHESTER HILLS GROUP PENSION PLAN**

THIS AGREEMENT, hereby made and entered into this 14th day of ~~February~~ **December, 2005**, by and between City of Rochester Hills (herein referred to as the “Employer”) and ~~Robert G. Spaman and Mark Ott~~ [**Julie Jenuwine**] and [**Kurt Dawson**] (herein both generally referred to as the “Trustee”).

### **WITNESSETH:**

WHEREAS, the Employer heretofore established a Money Purchase Pension Plan and Trust effective November 1, 1974, (hereinafter called the “Effective Date”) known as The City of Rochester Hills Group Pension Plan (herein referred to as the “Plan”) in recognition of the contribution made to its successful operation by its employees and for the exclusive benefit of its eligible employees; and

WHEREAS, under the terms of the Plan, the Employer has the ability to amend the Plan, provided the Trustee joins in such amendment if the provisions of the Plan affecting the Trustee are amended;

NOW, THEREFORE, effective December 14, ~~2004~~ **2005**, except as otherwise provided, the Employer and the Trustee in accordance with the provisions of the Plan pertaining to amendments thereof, hereby amend the Plan in its entirety and restate the Plan to provide as follows. **THIS RESTATEMENT WILL APPLY TO INDIVIDUALS EMPLOYED BY THE CITY ON AND AFTER THE EFFECTIVE DATE OF THE RESTATEMENT:**

### **ARTICLE I DEFINITIONS**

1.1 “Administrator” means the Employer unless another person or entity has been designated by the Employer pursuant to Section 2.2 to administer the Plan on behalf of the Employer.

1.2 “Anniversary Date” means the last day of the Plan Year.

1.3 “Annuity Starting Date” means, with respect to any Participant, the first day of the first period for which an amount is paid as an annuity, or, in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitles the Participant to such benefit.

1.4 “Beneficiary” means the person (or entity) to whom the share of a deceased Participant’s total account is payable, subject to the restrictions of Sections 6.2 and 6.6.

1.5 “Code” means the Internal, Revenue Code of 1986, as amended or replaced from time to time.

1.6 “Compensation” with respect to any Participant means such Participant’s wages for the Calendar Year ending with or within the Plan Year within the meaning of Code Section 3401(a) (for the purposes of income tax withholding at the source) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (~~such as the exception for agricultural labor in Code Section 3401(a)(2)~~).

For purposes of this Section, the determination of Compensation shall be made by including amounts which are contributed by the Employer pursuant to a salary reduction agreement and which are not includible in the gross income of the Participant under Code Sections 125, 132(f)(4) for Calendar Years beginning after December 31, 2000, 402(g)(3), 402(h)(1)(B), 403(b) or 457(b), and Employee contributions described in Code Section 414(h)(2) that are treated as Employer contributions.

For a Participant’s initial year of participation, Compensation shall be recognized as of such Employee’s effective date of participation pursuant to Section 3.2.

~~Compensation in excess of \$150,000 (or such other amount provided in the Code) shall be disregarded.~~

**FOR PLAN YEARS BEGINNING BEFORE JULY 1, 1996, THE ANNUAL COMPENSATION OF EACH PARTICIPANT TAKEN INTO ACCOUNT FOR DETERMINING ALL BENEFITS PROVIDED UNDER THE PLAN FOR ANY DETERMINATION PERIOD SHALL NOT INCLUDE ANY AMOUNTS IN EXCESS OF THE ANNUAL COMPENSATION LIMIT PROVIDED FOR IN IRC §401(A)(17) PRIOR TO THE OMNIBUS BUDGET RECONCILIATION ACT OF 1993 (“OBRA `93”) AND ADJUSTED FOR INFLATION IN THE MANNER PROVIDED BY IRC §401(A)(17). FOR PLAN YEARS BEGINNING ON OR AFTER JULY 1, 1996, THE ANNUAL COMPENSATION OF EACH EMPLOYEE TAKEN INTO ACCOUNT SHALL NOT EXCEED THE ANNUAL COMPENSATION LIMIT PROVIDED FOR IN IRC §401(A)(17), AS AMENDED BY OBRA `93. THIS LIMIT MAY BE ADJUSTED AS REQUIRED BY FEDERAL LAW FOR QUALIFIED GOVERNMENT PLANS AND SHALL BE FURTHER ADJUSTED FOR INFLATION IN THE MANNER PROVIDED BY IRC §401(A)(17). ANNUAL COMPENSATION MEANS COMPENSATION DURING THE PLAN YEAR OR SUCH OTHER CONSECUTIVE 12 MONTH PERIOD OVER WHICH COMPENSATION IS OTHERWISE DETERMINED UNDER THE PLAN.**

Such amount shall be adjusted for increases in the cost of living in accordance with Code Section 401(a)(17)(B), except that the dollar increase in effect on January 1 of any calendar year shall be effective for the Calendar Year beginning with such calendar year. For any short Calendar Year the Compensation limit shall be an amount equal to the Compensation limit for the calendar year in which the Calendar Year begins multiplied by the ratio obtained by dividing the number of full months in the short Calendar Year by twelve (12).

For Plan Years beginning after December 31, 1996, for purposes of determining Compensation, the family member aggregation rules of Code Section 401(a)(17) and Code Section 414(q)(6) (as in effect prior to the Small Business Job Protection Act of 1996) are eliminated.

1.7 “Contract” or “Policy” means any life insurance policy, retirement income policy or annuity contract (group or individual) issued pursuant to the terms of the Plan. In the event of any conflict between the terms of this Plan and the terms of any contract purchased hereunder, the Plan provisions shall control.

1.8 “Early Retirement Date” means the first day of the month (prior to the Normal Retirement Date) coinciding with or following the date on which a Participant or Former Participant attains age 55, and has completed at least 5 Years of Service with the Employer (Early Retirement Age). A Participant shall become fully Vested upon satisfying this requirement if still employed at his or her Early Retirement Age.

A Former Participant who separates from service after satisfying the service requirement for Early Retirement and who thereafter reaches the age requirement contained herein shall be entitled to receive benefits under this Plan.

1.9 “Eligible Employee” means all members of the City Council, the Mayor, all fulltime employees who are employed for forty (40) hours or more per week on a regular basis, all paid-on-call firefighters and all members of those collective bargaining units which elect to participate in this Plan including AFSCME #2491, AFSCME #1917 and IAFF, **LOCAL 3472**.

Employees classified by the Employer as independent contractors who are subsequently determined by the Internal Revenue Service to be Employees shall not be Eligible Employees.

1.10 “Employee” means any person who is employed by the Employer and excludes any person who is employed as an independent contractor. ~~Employee shall~~



~~include Leased Employees within the meaning of Code Sections 414(n)(2) and 414(o)(2) unless such Leased Employees are covered by a plan described in Code Section 414(n)(5) and such Leased Employees do not constitute more than 20% of the recipient's non-highly compensated work force.~~

1.11 “Employer” means City of Rochester Hills and any successor which shall maintain this Plan; and any predecessor which has maintained this Plan. The Employer is a tax-exempt governmental organization, with principal offices in the State of Michigan.

~~1.12 “Excess Aggregate Contributions” means, with respect to any Plan Year, the excess of the aggregate amount of the after-tax voluntary Employee contributions made pursuant to Section 4.6 and any qualified non elective contributions or elective deferrals taken into account pursuant to Section 4.8(c) on behalf of Highly Compensated Participants for such Plan Year, over the maximum amount of such contributions permitted under the limitations of Section 4.8(a) (determined by hypothetically reducing contributions made on behalf of Highly Compensated Participants in order of the actual contribution ratios beginning with the highest of such ratios).~~ **RESERVED**

1.13 “Fiduciary” means any person who (a) exercises any discretionary authority or discretionary control respecting management of the Plan or exercises any authority or control respecting management or disposition of its assets, (b) renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of the Plan or has any authority or responsibility to do so, or (c) has any discretionary authority or discretionary responsibility in the administration of the Plan.

1.14 “Fiscal Year” means the Employer’s accounting year of 12 months commencing on January 1 of each year and ending the following December 31.

1.15 “Forfeiture” means that portion of a Participant’s Account that is not Vested and occurs on ~~the earlier of:~~

- ~~(a) — the distribution of the entire Vested portion of a Participant’s Account, or~~
- ~~(b) — the last day of the Plan Year in which the Participant incurs five (5) consecutive A 1-Year Breaks in Service.~~

~~Furthermore, for purposes of paragraph (a) above, in the case of a Terminated Participant whose Vested benefit is zero, such Terminated Participant shall be deemed to have received a distribution of his Vested benefit upon his termination of employment. In addition, the term Forfeiture shall also include amounts deemed to be Forfeitures pursuant to any other provision of this Plan.~~

1.16 “Former Participant” means a person who has been a Participant, but who has ceased to be a Participant for any reason.

1.17 “415 Compensation” with respect to any Participant means such Participant’s wages for the Calendar Year ending with or within the Plan Year within the meaning of Code Section 3401 (a) (for the purposes of income tax withholding at the source) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (~~such as the exception for agricultural labor in Code Section 3401(a)(2)~~).

For “limitation years” beginning after December 31, 1997, for purposes of this Section, the determination of “415 Compensation” shall include any elective deferral (as defined in Code Section 402(g)(3)), and any amount which is contributed or deferred by the Employer at the election of the Participant and which is not includible in the gross income of the Participant by reason of Code Sections 125, 132(f)(4) for “limitation years” beginning after December 31, 2000 or 457.

~~1.18 “414(s) Compensation” means any definition of compensation that satisfies the nondiscrimination requirements of Code Section 414(s) and the Regulations thereunder. The period for determining 414(s) Compensation must be either the Plan Year or the calendar year ending with or within the Plan Year. An Employer may further limit the period taken into account to that part of the Plan Year or calendar year in which an Employee was a Participant in the component of the Plan being tested. The period used to determine 414(s) Compensation must be applied uniformly to all Participants for the Plan Year.~~

~~For Plan Years beginning after December 31, 1996, for purposes of this Section, the family member aggregation rules of Code Section 414(q)(6) (as in effect prior to the Small Business Job Protection Act of 1996) are eliminated.~~ **RESERVED**

~~1.19 “Highly Compensated Employee” means, for Plan Years beginning after December 31, 1996, an Employee described in Code Section 414(q) and the Regulations thereunder, and generally means any Employee who, \*for the “look back year”, had “415 Compensation” from the Employer in excess of \$80,000. The \$80,000 amount is adjusted at the same time and in the same manner as under Code Section 415(d), except that the base period is the calendar quarter ending September 30, 1996.~~

~~The “look back year” means the immediately preceding twelve (12) month period.~~

~~Notwithstanding the above, for the first Plan Year beginning after December 31, 1996, the “look back year” shall be the calendar year ending with or within the Plan Year for which testing is being performed, and the “determination year” (if applicable) shall be the period of time, if any, which extends beyond the “look back year” and ends on the last day of the Plan Year for which testing is being performed (the “lag period”).\*~~

~~A highly compensated former Employee is based on the rules applicable to determining Highly Compensated Employee status as in effect for the “determination year,” in accordance with Regulation 1.414(q) 1T, A 4 and IRS Notice 97 45 (or any superseding guidance).~~

~~In determining whether an Employee is a Highly Compensated Employee for a Plan Year beginning in 1997, the amendments to Code Section 414(q) stated above are treated as having been in effect for years beginning in 1996.~~

~~For purposes of this Section, for Plan Years beginning prior to January 1, 1998, the determination of “415 Compensation” shall be made by including amounts that would otherwise be excluded from a Participant’s gross income by reason of the application of Code Sections 125, 402(e)(3), 402(h)(1)(B), and, in the case of Employer contributions made pursuant to a salary reduction agreement, Code Section 403(b).~~

~~In determining who is a Highly Compensated Employee, Employees who are non-resident aliens and who received no earned income (within the meaning of Code Section 911(d)(2)) from the Employer constituting United States source income within the meaning of Code Section 861(a)(3) shall not be treated as Employees. Additionally, \*\* Leased Employees within the meaning of Code Sections 414(n)(2) and 414(o)(2) shall be considered Employees unless such Leased Employees are covered by a plan described in Code Section 414(n)(5) and are not covered in any qualified plan maintained by the Employer. The exclusion of Leased Employees for this purpose shall be applied on a uniform and consistent basis for all of the Employer’s retirement plans. Highly Compensated Former Employees shall be treated as Highly Compensated Employees without regard to whether they performed services during the “determination year.”~~

**RESERVED**

~~1.20 “Highly Compensated Participant” means any Highly Compensated Employee who is eligible to participate in the component of the Plan being tested.~~

**RESERVED.**

1.21 “Hour of Service” means (1) each hour for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer for the performance of duties (these hours will be credited to the Employee for the computation period in which the duties are performed); (2) each hour for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer (irrespective of whether the employment relationship has terminated) for reasons other than performance of duties (such as vacation, holidays, sickness, jury duty, disability, lay-off, military duty or leave of absence, **INCLUDING MATERNITY OR PATERNITY LEAVES OF ABSENCE**) during the applicable computation period; (3) each hour for which back pay is awarded or agreed to by the Employer without regard to mitigation of damages (these hours will be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made). The same Hours of Service shall not be credited both under (1) or (2), as the case may be, and under (3).

Notwithstanding (2) above, (i) ~~no more than 501 Hours of Service are required to be credited to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period);~~ (ii) an hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable worker's compensation, or unemployment compensation or disability insurance laws; and ~~(iii)~~ **(ii)** Hours of Service are not required to be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee.

For purposes of (2) above, a payment shall be deemed to be made by or due from the Employer regardless of whether such payment is made by or due from the Employer directly, or indirectly through, among others, a trust fund, or insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer, or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate.

1.22 "Income" means the income or losses allocable to Excess Deferred Compensation, Excess Contributions or Excess Aggregate Contributions which amount shall be allocated in the same manner as income or losses are allocated pursuant to Section 4.3(e).

1.23 "Investment Manager" means an entity that (a) has the power to manage, acquire, or dispose of Plan assets and (b) acknowledges fiduciary responsibility to the Plan in writing. Such entity must be a person, firm, or corporation registered as an investment adviser under the Investment Advisers Act of 1940, a bank, or an insurance company.

1.24 "Late Retirement Date" means the first day of the month coinciding with or next following a Participant's actual Retirement Date after having reached his or her Normal Retirement Date.

1.25 ~~"Leased Employee" means, for Plan Years beginning after December 31, 1996, any person (other than an Employee of the recipient Employer) who pursuant to an agreement between the recipient Employer and any other person or entity ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient Employer. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the recipient Employer shall be treated as provided by the recipient Employer. Furthermore, Compensation for a Leased Employee shall only include Compensation from the leasing organization that is attributable to services~~

~~performed for the recipient Employer. A Leased Employee shall not be considered an Employee of the recipient Employer:~~

~~(a) if such employee is covered by a money purchase pension plan providing:~~

~~(1) a nonintegrated employer contribution rate of at least 10% of compensation, as defined in Code Section 415(c)(3), but for Plan Years beginning prior to January 1, 1998, including amounts which are contributed by the Employer pursuant to a salary reduction agreement and which are not includible in the gross income of the Participant under Code Sections 125, 402(e)(3), 402(h) (1)(B), 403(b) or 457(b), and Employee contributions described in Code Section 414(h)(2) that are treated as Employer contributions, but for Plan Years beginning prior to January 1, 2001, excluding amounts that are not includible in gross income under Code Section 132(f)(4);~~

~~(2) immediate participation;~~

~~(3) full and immediate vesting; and~~

~~(b) if Leased Employees do not constitute more than 20% of the recipient Employer's non highly compensated work force.~~

### **RESERVED**

1.26 "Month of Service" means a calendar month during any part of which an Employee completed an Hour of Service. ~~Except, however, a Participant shall be credited with a Month of Service for each month during the 12 month computation period in which he has not incurred a 1 Year Break in Service.~~

1.27 ~~"Non Highly Compensated Participant" means, for Plan Years beginning after December 31, 1996, any Participant who is \*not\* a Highly Compensated Employee. \*. \*However, for the purposes of Section 4.8(a), if the prior year testing method is used, a Non Highly Compensated Participant shall be determined using the definition of Highly Compensated Employee in effect for the preceding Plan Year.\*~~

### **RESERVED.**

1.28 "Normal Retirement Age" means the Participant's 65 birthday, or the Participant's 5<sup>th</sup> anniversary of joining the Plan, if later, but in no event later than the Participant's 65 birthday, or the Participant's 5 anniversary of joining the Plan, if later. A Participant shall become fully Vested in the Participant's Account upon attaining Normal Retirement Age.

1.29 "Normal Retirement Date" means the first day of the month coinciding with or next following the Participant's Normal Retirement Age.

1.30 “1-Year Break in Service” means ~~the applicable computation period during which an Employee has not completed more than 500 Hours of Service with the Employer. Further, solely for the purpose of determining whether a Participant has incurred a 1-Year Break in Service, Hours of Service shall be recognized for “authorized leaves of absence” and “maternity and paternity leaves of absence.” Years of Service and 1-Year Breaks in Service shall be measured on the same computation period.~~ **TWELVE (12) CONSECUTIVE MONTHS DURING WHICH NO HOURS OF SERVICE ARE CREDITED.**

~~“Authorized leave of absence” means an unpaid, temporary cessation from active employment with the Employer pursuant to an established nondiscriminatory policy, whether occasioned by illness, military service, or any other reason.~~

~~A “maternity or paternity leave of absence” means an absence from work for any period by reason of the Employee’s pregnancy, birth of the Employee’s child, placement of a child with the Employee in connection with the adoption of such child, or any absence for the purpose of caring for such child for a period immediately following such birth or placement. For this purpose, Hours of Service shall be credited for the computation period in which the absence from work begins, only if credit therefore is necessary to prevent the Employee from incurring a 1 Year Break in Service, or, in any other case, in the immediately following computation period. The Hours of Service credited for a “maternity or paternity leave of absence” shall be those which would normally have been credited but for such absence, or, in any case in which the Administrator is unable to determine such hours normally credited, eight (8) Hours of Service per day. The total Hours of Service required to be credited for a “maternity or paternity leave of absence” shall not exceed the number of Hours of Service needed to prevent the Employee from incurring a 1 Year Break in Service.~~

1.31 “Participant” means any Eligible Employee who participates in the Plan and has not for any reason become ineligible to participate further in the Plan.

1.32 “Participant Direction Procedures” means such instructions, guidelines or policies, the terms of which are incorporated herein, as shall be established pursuant to Section 4.7 and observed by the Administrator and applied to Participants who have Participant Directed Accounts.

1.33 “Participant’s Account” means the account established and maintained by the Administrator for each Participant with respect to such Participant’s total interest in the Plan and Trust resulting from the Employer contributions.

1.34 “Participant’s Directed Account” means that portion of a Participant’s interest in the Plan with respect to which the Participant has directed the investment in accordance with the Participant Direction Procedure.

1.35 “Plan” means this instrument, including all amendments thereto.

1.36 “Plan Year” means the Plan’s accounting year of twelve (12) months commencing on January 1 of each year and ending the following December 31.

1.37 ~~“Pre Retirement Survivor Annuity” means an immediate annuity for the life of the Participant’s spouse, the payments under which must be equal to the benefit which can be purchased with the accounts of a Participant~~ **RESERVED.**

1.38 “Regulation” means the Income Tax Regulations as promulgated by the Secretary of the Treasury or a delegate of the Secretary of the Treasury, and as amended from time to time.

1.39 “Retired Participant” means a person who has been a Participant, but who has become entitled to retirement benefits under the Plan.

1.40 “Retirement Date” means the date as of which a Participant retires for reasons other than Total and Permanent Disability, whether such retirement occurs on a Participant’s Normal Retirement Date, Early or Late Retirement Date.

**1.41 “SPOUSE” OR “SURVIVING SPOUSE” MEANS THE SPOUSE OR SURVIVING SPOUSE OF THE PARTICIPANT, PROVIDED THAT A FORMER SPOUSE WILL BE TREATED AS THE SPOUSE OR SURVIVING SPOUSE AND A CURRENT SPOUSE WILL NOT BE TREATED AS THE SPOUSE OR SURVIVING SPOUSE TO THE EXTENT PROVIDED UNDER AN ELIGIBLE DOMESTIC RELATIONS ORDER.**

1.42 ~~2~~ “Terminated Participant” means a person who has been a Participant, but whose employment has been terminated other than by death, Total and Permanent Disability or retirement.

1.42 ~~3~~ “Total and Permanent Disability” means a physical or mental condition of a Participant resulting from bodily injury, disease, or mental disorder which renders such Participant incapable of continuing any gainful occupation and which condition constitutes total disability under the federal Social Security Acts.

1.43 ~~4~~ “Trustee” means the person or entity named as trustee herein or in any separate trust forming a part of this Plan, and any successors.

1.44 ~~5~~ “Trust Fund” means the assets of the Plan and Trust as the same shall exist from time to time.

1.45 ~~6~~ “Valuation Date” means the Anniversary Date and may include any other date or dates deemed necessary or appropriate by the Administrator for the valuation of the Participants’ accounts during the Plan Year, which may include any day that the Trustee, any transfer agent appointed by the Trustee or the Employer or any stock exchange used by such agent, are open for business.

1.467 “Vested” means the non-forfeitable portion of any account maintained on behalf of a Participant.

1.478 “Voluntary Contribution Account” means the account established and maintained by the Administrator for each Participant with respect to the Participant’s total interest in the Plan resulting from the Participant’s after-tax voluntary Employee contributions made pursuant to Section 4.6.

1.489 “Year of Service” means credit with the Employer, determined to the nearest month, from his/her date of hire to his/her date of retirement, death, disability, or other termination of employment. For purposes of eligibility to participate, service shall be measured as Months of Service. For vesting and all other purposes of the Plan, service shall be measured as Months or Years of Service as specified in the relevant part of the Plan. For purposes hereof, 12 Months of Service shall be equal to one year.

## **ARTICLE II ADMINISTRATION**

### **2.1 POWERS AND RESPONSIBILITIES OF THE EMPLOYER**

(a) In addition to the general powers and responsibilities otherwise provided for in this Plan, the Employer shall be empowered to appoint and remove the Trustee and the Administrator from time to time as it deems necessary for the proper administration of the Plan to ensure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan and the Code. The Employer may appoint counsel, specialists, advisers, agents (including any nonfiduciary agent) and other persons as the Employer deems necessary or desirable in connection with the exercise of its fiduciary duties under this Plan. The Employer may compensate such agents or advisers from the assets of the Plan as fiduciary expenses (but not including any business (settlor) expenses of the Employer), to the extent not paid by the Employer.

(b) The Employer shall establish a “funding policy and method,” i.e., it shall determine whether the Plan has a short run need for liquidity (e.g., to pay benefits) or whether liquidity is a long run goal and investment growth (and stability of same) is a more current need, or shall appoint a qualified person to do so. The Employer or its delegate shall communicate such needs and goals to the Trustee, who shall coordinate such Plan needs with its investment policy. The



communication of such a “funding policy and method” shall not, however, constitute a directive to the Trustee as to the investment of the Trust Funds.

(c) The Employer shall periodically review the performance of any Fiduciary or other person to whom duties have been delegated or allocated by it under the provisions of this Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Employer or by a qualified person specifically designated by the Employer, through day-to-day conduct and evaluation, or through other appropriate ways.

## **2.2 DESIGNATION OF ADMINISTRATIVE AUTHORITY**

The Employer shall be the Administrator. The Employer may appoint any person, including, but not limited to, the Employees of the Employer, to perform the duties of the Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Employer. Upon the resignation or removal of any individual performing the duties of the Administrator, the Employer may designate a successor.

## **2.3 POWERS AND DUTIES OF THE ADMINISTRATOR**

The primary responsibility of the Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to construe the terms of the Plan and to determine all questions arising in connection with the administration, interpretation, and application of the Plan. Any such determination by the Administrator shall be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to be deemed a qualified plan under the terms of Code Section 401(a) and all regulations issued pursuant thereto. The Administrator shall have all powers necessary or appropriate to accomplish the Administrator’s duties under the Plan.

The Administrator shall be charged with the duties of the general administration of the Plan as set forth under the terms of the Plan, including, but not limited to, the following:

(a) the discretion to determine all questions relating to the eligibility of Employees to participate or remain a Participant hereunder and to receive benefits under the Plan;

(b) to compute, certify, and direct the Trustee with respect to the amount and the kind of benefits to which any Participant shall be entitled hereunder;

(c) to authorize and direct the Trustee with respect to all discretionary or otherwise directed disbursements from the Trust;

(d) to maintain all necessary records for the administration of the Plan;

(e) to interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan as are consistent with the terms hereof;

(f) to determine the size and type of any Contract to be purchased from any insurer, and to designate the insurer from which such Contract shall be purchased;

(g) to compute and certify to the Employer and to the Trustee from time to time the sums of money necessary or desirable to be contributed to the Plan;

(h) to consult with the Employer and the Trustee regarding the short and long-term liquidity needs of the Plan in order that the Trustee can exercise any investment discretion in a manner designed to accomplish specific objectives;

~~(i) to prepare and implement a procedure for notifying Participants and Beneficiaries of their rights to elect joint and survivor annuities and Pre-Retirement Survivor Annuities as required by the Code and regulations thereunder;~~

~~(j)~~—to determine the validity of, and take appropriate action with respect to, any ~~qualified~~ domestic relations order received by it; and

~~(k)~~**(J)** to assist any Participant regarding the Participant's rights, benefits, or elections available under the Plan.

## **2.4 RECORDS AND REPORTS**

The Administrator shall keep a record of all actions taken and shall keep all other books of account, records, policies, and other data that may be necessary for proper administration of the Plan and shall be responsible for supplying all information and reports to the Internal Revenue Service, Participants, Beneficiaries and others as required by law.

## **2.5 APPOINTMENT OF ADVISERS**

The Administrator, or the Trustee with the consent of the Administrator, may appoint counsel, specialists, advisers, agents (including nonfiduciary agents) and other persons as the Administrator or the Trustee deems necessary or desirable in connection with the administration of this Plan, including but not limited to agents and advisers to assist with the administration and management of the Plan, and thereby to provide, among such other duties as the Administrator may appoint, assistance with maintaining Plan records and the providing of investment information to the Plan's investment fiduciaries and to Plan Participants.

## **2.6 PAYMENT OF EXPENSES**

All expenses of administration may be paid out of the Trust Fund unless paid by the Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, or any person or persons retained or appointed by any Named Fiduciary incident to the exercise of their duties under the Plan, including, but not limited to, fees of accountants, counsel, Investment Managers, agents (including non-fiduciary agents) appointed for the purpose of assisting the Administrator or the Trustee in carrying out the instructions of Participants as to the directed investment of their accounts and other specialists and their agents, ~~the costs of any bonds required pursuant to Act Section 412,~~ and other costs of administering the Plan. Until paid, the expenses shall constitute a liability of the Trust Fund.

## **2.7 CLAIMS PROCEDURE**

Claims for benefits under the Plan may be filed in writing with the Administrator. Written notice of the disposition of a claim shall be furnished to the claimant within ninety (90) days after the application is filed, or such period as is required by applicable law. In the event the claim is denied, the reasons for the denial shall be specifically set forth in the notice in language calculated to be understood by the claimant, pertinent provisions of the Plan shall be cited, and, where appropriate, an explanation as to how the claimant can perfect the claim will be provided. In addition, the claimant shall be furnished with an explanation of the Plan's claims review procedure.

## **2.8 CLAIMS REVIEW PROCEDURE**

Any Employee, former Employee, or Beneficiary of either, who has been denied a benefit by a decision of the Administrator pursuant to Section 2.7 shall be entitled to request the Administrator to give further consideration to a claim by filing with the Administrator a written request for a hearing. Such request, together with a written statement of the reasons why the claimant believes the claim should be allowed, shall be filed with the Administrator no later than sixty (60) days after receipt of the written notification provided for in Section 2.7. The Administrator shall then conduct a hearing within the next sixty (60) days, at which the claimant may be represented by an attorney or any other representative of such claimant's choosing and expense and at which the claimant shall have an opportunity to submit written and oral evidence and arguments in support of the claim. At the hearing (or prior thereto upon five (5) business days written notice to the Administrator) the claimant or the claimant's representative shall have an opportunity to review all documents in the possession of the Administrator which are pertinent to the claim at issue and its disallowance. Either the claimant or the Administrator may cause a court reporter to attend the hearing and record the proceedings. In such event, a complete written transcript of the proceedings shall be furnished to both parties by the court reporter. The full expense of any such court reporter and such transcripts shall be borne by the party causing the court reporter to attend the hearing. A final decision as to the allowance of the claim shall be made by the Administrator within sixty (60) days of receipt of the appeal (unless there has been an extension of sixty (60) days due to special circumstances, provided the delay and the special circumstances occasioning it are communicated to the claimant within the sixty (60) day period). Such communication shall be written in a manner calculated to be understood by the claimant and shall include specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based.

### **ARTICLE III ELIGIBILITY**

#### **3.1 CONDITIONS OF ELIGIBILITY**

Except as may be otherwise provided, any Eligible Employee who has completed six (6) Months of Service shall be eligible to participate hereunder as of the date such Employee has satisfied such requirements. However, any Employee who was a Participant in the Plan prior to the effective date of this amendment and restatement shall continue to participate in the Plan. Paid-on-call firefighters shall be eligible to participate hereunder as of their date of hire. The Employer shall give each prospective Eligible Employee written notice of his **OR HER** eligibility to participate in the Plan prior to the close of the Plan year in which he or she first becomes an Eligible Employee.

#### **3.2 EFFECTIVE DATE OF PARTICIPATION**

An Eligible Employee shall become a Participant effective as of the date on which the Employee satisfies the eligibility requirements of Section 3.1.

In the event an Employee who is not a member of an eligible class of Employees becomes a member of an eligible class, such Employee will participate immediately if such Employee has satisfied the service requirements and would have otherwise previously become a Participant.

### **3.3 DETERMINATION OF ELIGIBILITY**

The Administrator shall determine the eligibility of each Employee for participation in the Plan based upon information furnished by the Employer. Such determination shall be conclusive and binding upon all persons, as long as the same is made pursuant to the Plan. Such determination shall be subject to review pursuant to Section 2.8.

### **3.4 TERMINATION OF ELIGIBILITY**

In the event a Participant shall go from a classification of an Eligible Employee to an ineligible Employee, such **INDIVIDUAL SHALL NO LONGER BE ELIGIBLE TO PARTICIPATE IN THE PLAN AND SHALL BECOME A** Former Participant ~~shall continue to vest in the Plan for each Year of Service completed while a noneligible Employee, until such time as the Participant's Account is forfeited or distributed pursuant to the terms of the Plan.~~ Additionally, the Former Participant's interest in the Plan shall continue to share in the earnings of the Trust Fund **UNTIL SUCH TIME AS THE PARTICIPANT'S ACCOUNT IS FORFEITED OR DISTRIBUTED PURSUANT TO THE TERMS OF THE PLAN.**

### **3.5 OMISSION OF ELIGIBLE EMPLOYEE**

If, in any Plan Year, any Employee who should be included as a Participant in the Plan is erroneously omitted and discovery of such omission is not made until after a contribution by the Employer for the year has been made and allocated, then the Employer shall make a subsequent contribution, if necessary after the application of Section 4.3(c), so that the omitted Employee receives a total amount which the Employee would have received (including both Employer contributions and earnings thereon) had the Employee not been omitted. Such contribution shall be made regardless of whether it is deductible in whole or in part in any taxable year under applicable provisions of the Code.

### **3.6 INCLUSION OF INELIGIBLE EMPLOYEE**

If, in any Plan Year, any person who should not have been included as a Participant in the Plan is erroneously included and discovery of such inclusion is not made until after a contribution for the year has been made and allocated, the Employer shall be entitled to recover the contribution made with respect to the ineligible person provided the error is discovered within twelve (12) months of the date on which it was made. Otherwise, the amount contributed with respect to the ineligible person shall constitute a Forfeiture for the Plan Year in which the discovery is made.

### **3.7 REHIRED EMPLOYEES AND BREAKS IN SERVICE**

~~(a) — If any Participant becomes a Former Participant due to severance from employment with the Employer and is reemployed by the Employer before a 6 Month Break in Service occurs, the Former Participant shall become a Participant as of the reemployment date.~~

~~(b) — If any Participant becomes a Former Participant due to severance from employment with the Employer and is reemployed after a 6 Month Break in Service has occurred, Years of Service shall include Years of Service prior to the 6 Month Break in Service subject to the following rules:~~

~~(1) — In the case of a Former Participant who under the Plan does not have a nonforfeitable right to any interest in the Plan resulting from Employer contributions, Years of Service before a period of 6 Month Break in Service will not be taken into account if the number of consecutive 6 Month Breaks in Service equal or exceed the greater of (A) five (5) or (B) the aggregate number of pre break Years of Service. Such aggregate number of Years of Service will not include any Years of Service disregarded under the preceding sentence by reason of prior 6 Month Breaks in Service.~~

~~—— (2) — A Former Participant who has not had Years of Service before a 6 Month Break in Service disregarded pursuant to (1) above, and completes 6 Months of Service for eligibility purposes, shall participate in the Plan as of the date immediately following completion of the 6 Months of Service.~~

~~—— (c) — After a Former Participant who has severed employment with the Employer incurs five (5) consecutive 6 Months Breaks in Service, the Vested portion of said Former Participant's Account attributable to pre break service shall not be increased as a~~

~~result of post break service. In such case, separate accounts will be maintained as follows:——~~

~~(1)——one account for nonforfeitable benefits attributable to pre-break service; and~~

~~——(2)——one account representing the Participant's Employer derived account balance in the Plan attributable to post break service.~~

**(A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (C), VESTED FORMER PARTICIPANTS, WHO BECOME RE-EMPLOYED AS ELIGIBLE EMPLOYEES, MAY RESUME PARTICIPATION IN THE PLAN UPON THEIR DATE OF RE-EMPLOYMENT.**

**(B) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (C), NON-VESTED FORMER PARTICIPANTS, WHO BECOME RE-EMPLOYED AS ELIGIBLE EMPLOYEES MAY PARTICIPATE IN THE PLAN UPON SATISFACTION OF THE ELIGIBILITY REQUIREMENTS PROVIDED BY SECTION 3.1. UPON BECOMING PARTICIPANTS, EMPLOYEES SHALL HAVE PRIOR SERVICE CREDIT REINSTATED FOR VESTING PURPOSES AND SHALL BE CREDITED WITH SERVICE FROM DATE OF RE-EMPLOYMENT.**

**(C) FORMER CITY COUNCIL OR PAID-ON-CALL FIRE FIGHTER PARTICIPANTS, WHO BECOME RE-EMPLOYED AS ELIGIBLE EMPLOYEES, MAY PARTICIPATE IN THE PLAN UPON SATISFACTION OF THE ELIGIBILITY REQUIREMENTS PROVIDED BY SECTION 3.1. PRIOR PAID-ON-CALL FIRE FIGHTER SERVICE WILL NOT BE RECOGNIZED FOR VESTING PURPOSES, UNLESS THE ELIGIBLE EMPLOYEE IS RE-EMPLOYED AS A PROBATIONARY MEMBER OF THE ROCHESTER HILLS PROFESSIONAL FIRE FIGHTERS INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 3472 ("IAFF"). PRIOR CITY COUNCIL SERVICE WILL NOT BE RECOGNIZED FOR VESTING PURPOSES, UNLESS THE ELIGIBLE EMPLOYEE IS RE-EMPLOYED AS THE MAYOR.**

### **3.8 ELECTION NOT TO PARTICIPATE**

An Employee, for Plan Years beginning on or after the later of the adoption date or effective date of this amendment and restatement, may, subject to the approval of the Employer, elect voluntarily not to participate in the Plan. The election not to participate must be communicated to the Employer, in writing, within thirty (30) days before the beginning of the first Plan Year.

## **ARTICLE IV CONTRIBUTION AND ALLOCATION**

### **4.1 FORMULA FOR DETERMINING EMPLOYER CONTRIBUTION**

(a) The Employer shall make contributions over such period of years as the Employer may determine on the following basis. Except as otherwise provided herein, on behalf of each Participant eligible to share in allocations, for each year of such Participant's participation in this Plan, the Employer shall contribute 10% of such Participant's annual Compensation. Effective January 1, 1999, with respect to the AFSCME #1917 supervisors, the IAFF, **LOCAL 3472** members, the mayor, city council members, and the non-union employees, the Employer shall contribute 11 % of his or her annual Compensation on behalf of each Participant eligible to share in allocations. Effective for the Plan Year commencing January 1, 2000 and thereafter, the Employer shall contribute 12% of his or her annual Compensation on behalf of such Participants identified within the aforementioned classifications.

(b) Should the Employer, for any reason, fail to make a contribution for any year or should the Employer fail to make a contribution as provided for herein, then such deficiency shall be made up in subsequent years pursuant to Section 9.15.

(c) The Employer shall not contribute on behalf of any Participant who is not entitled to share in the allocation of the Employer contribution as provided in Section 4.3(d).

~~Notwithstanding the foregoing, the Employer's contribution for any Fiscal Year will generally not exceed the maximum amount allowable as a deduction to the Employer under the provisions of Code Section 404.~~

### **4.2 TIME OF PAYMENT OF EMPLOYER CONTRIBUTION**

The Employer may make its contribution to the Plan for a particular Plan Year at such time as the Employer, in its sole discretion, determines provided it is within the time prescribed by law. If the Employer makes a contribution for a particular Plan Year after the close of that Plan Year, the Employer will designate to the Trustee the Plan Year for which the Employer is making its contribution.



### 4.3 ACCOUNTING AND ALLOCATIONS

(a) The Administrator shall establish and maintain an account in the name of each Participant to which the Administrator shall credit as of each Anniversary Date, or other Valuation Date, all amounts allocated to each such Participant as set forth herein.

(b) The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer contribution for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the Administrator shall allocate such contribution to each Participant's Account in accordance with Section 4.1.

(c) On or before each Anniversary Date any amounts which became Forfeitures since the last Anniversary Date may be used to satisfy any contribution that may be required pursuant to Section 3.5 and/or 6.9, or be used to pay any administrative expenses of the Plan. The remaining Forfeitures, if any, shall be used to reduce the contribution of the Employer hereunder for the Plan Year in which such Forfeitures occur.

(d) Participants shall be eligible to share in the allocation of contributions for a Plan Year in accordance with the following:

(1) Any Participant actively employed during the Plan Year shall be eligible to share in the allocation of contributions for that Plan Year.

(2) Notwithstanding the foregoing, Participants who are not actively employed on the last day of the Plan Year due to Retirement (Early, Normal or Late), Total and Permanent Disability or death shall be eligible to share in the allocation of contributions for **THEIR MONTHS OF SERVICE DURING** that Plan Year.

(e) As of each Valuation Date, after allocation of Employer contributions, any earnings or losses (net appreciation or net depreciation) of the Trust Fund shall be allocated in the same proportion that each Participant's and Former Participant's nonsegregated accounts bear to the total of all Participants' and Former Participants' nonsegregated accounts as of such date. Earnings or losses with respect to a Participant's Directed Account shall be allocated in accordance with Section 4.7.

Participants' after-tax voluntary Employee contributions deposited in the general Trust Fund shall share in any earnings and losses (net appreciation or net depreciation) of the Trust Fund in the same manner provided above. Each

segregated account maintained on behalf of a Participant shall be credited or charged with its separate earnings and losses.

(f) Notwithstanding anything in this Section to the contrary, all information necessary to properly reflect a given transaction may not be available until after the date specified herein for processing such transaction, in which case the transaction will be reflected when such information is received and processed. Subject to express limits that may be imposed under the Code, the processing of any contribution, distribution or other transaction may be delayed for any legitimate business reason (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, force majeure, the failure of a service provider to timely receive values or prices, and the correction for errors or omissions or the errors or omissions of any service provider). The processing date of a transaction will be binding for all purposes of the Plan.

~~(g) Notwithstanding anything to the contrary, if this is a Plan that would otherwise fail to meet the requirements of Code Section 410(b)(1) and the Regulations thereunder because Employer contributions would not be allocated to a sufficient number or percentage of Participants for a Plan Year, then the following rules shall apply:~~

~~(1) The group of Participants eligible to share in the Employer's contribution for the Plan Year shall be expanded to include the minimum number of Participants who would not otherwise be eligible as are necessary to satisfy the applicable test specified above. The specific Participants who shall become eligible under the terms of this paragraph shall be those who have not separated from service prior to the last day of the Plan Year and have completed the greatest number of Hours of Service in the Plan Year.~~

~~(2) If after application of paragraph (1) above, the applicable test is still not satisfied, then the group of Participants eligible to share in the Employer's contribution for the Plan Year shall be further expanded to include the minimum number of Participants who have separated from service prior to the last day of the Plan Year as are necessary to satisfy the applicable test. The specific Participants who shall become eligible to share shall be those Participants who have completed the greatest number of Hours of Service in the Plan Year before terminating employment.~~

~~(3) Nothing in this Section shall permit the reduction of a Participant's accrued benefit. Therefore any amounts that have previously been allocated to Participants may not be reallocated to satisfy these~~

~~requirements. In such event, the Employer shall make an additional contribution equal to the amount such affected Participants would have received had they been included in the allocations, even if it exceeds the amount which would be deductible under Code Section 404. Any adjustment to the allocations pursuant to this paragraph shall be considered a retroactive amendment adopted by the last day of the Plan Year.~~

#### 4.4 MAXIMUM ANNUAL ADDITIONS

(a) ~~Notwithstanding the foregoing, for “limitation years” beginning after December 31, 1994, **ANY PROVISION IN THE PLAN TO THE CONTRARY**, the maximum “annual additions” credited to a Participant’s accounts for any “limitation year” shall equal the lesser of: (1) \$30,000 adjusted annually as provided in Code Section 415(d) **NOT EXCEED THE LIMITATIONS IN CODE SECTION 415, WHICH IS HEREBY INCORPORATED BY REFERENCE** pursuant to the Regulations, or (2) twenty five percent (25%) of the Participant’s “415 Compensation” for such “limitation year.”~~ If the Employer contribution that would otherwise be contributed or allocated to the Participant’s accounts would cause the “annual additions” for the “limitation year” to exceed the maximum “annual additions,” the amount contributed or allocated will be reduced so that the “annual additions” for the “limitation year” will equal the maximum “annual additions,” and any amount in excess of the maximum “annual additions,” which would have been allocated to such Participant may be allocated to other Participants. For any short “limitation year,” the dollar limitation in (1) above shall be reduced by a fraction, the numerator of which is the number of full months in the short “limitation year” and the denominator of which is twelve (12).

(b) For purposes of applying the limitations of Code Section 415, “annual additions” means the sum credited to a Participant’s accounts for any “limitation year” of (1) Employer contributions, (2) Employee contributions, **AND** (3) forfeitures, ~~(4) amounts allocated, after March 31, 1984, to an individual medical account, as defined in Code Section 415(1)(2) which is part of a pension or annuity plan maintained by the Employer and (5) amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post retirement medical benefits allocated to the separate account of a key employee (as defined in Code Section 419A(d)(3)) under a welfare benefit plan (as defined in Code Section 419(e)) maintained by the Employer. Except, however, the “415 Compensation” percentage limitation referred to in paragraph (a)(2) above shall not apply to: (1) any contribution for medical benefits (within the meaning of Code Section 419A(f)(2)) after separation from service which is otherwise treated as an “annual addition,” or (2) any amount otherwise treated as an “annual addition” under Code Section 415(1)(1).~~

(c) For purposes of applying the limitations of Code Section 415, the transfer of funds from one qualified plan to another is not an “annual addition.” In addition, the following are not Employee contributions for the purposes of Section 4.4(b)(2): (1) rollover contributions (as defined in Code Sections 402(e)(6), 403(a)(4), 403(b)(8) and 408(d)(3)); (2) repayments of loans made to a Participant from the Plan; (3) repayments of distributions received by an Employee pursuant to Code Section 411(a)(7)(B) (cash-outs); (4) repayments of distributions received by an Employee pursuant to Code Section 411(a)(3)(D) (mandatory contributions); and (5) Employee contributions to a simplified employee pension excludable from gross income under Code Section 408(k)(6).

(d) For purposes of applying the limitations of Code Section 415, the “limitation year” shall be the Calendar Year.

(e) For the purpose of this Section, all qualified defined contribution plans (whether terminated or not) ever maintained by the Employer shall be treated as one defined contribution plan.

~~(f) For the purpose of this Section, if the Employer is a member of a controlled group of corporations, trades or businesses under common control (as defined by Code Section 1563(a) or Code Section 414(b) and (c) as modified by Code Section 415(h)), is a member of an affiliated service group (as defined by Code Section 414(m)), or is a member of a group of entities required to be aggregated pursuant to Regulations under Code Section 414(o), all Employees of such Employers shall be considered to be employed by a single Employer.~~

~~(g) For the purpose of this Section, if this Plan is a Code Section 413(c) plan, each Employer who maintains this Plan will be considered to be a separate Employer.~~

~~(h)(1) If a Participant participates in more than one defined contribution plan maintained by the Employer which have different Anniversary Dates, the maximum “annual additions” under this Plan shall equal the maximum “annual additions” for the “limitation year” minus any “annual additions” previously credited to such Participant’s accounts during the “limitation year.”~~

~~(2) If a Participant participates in both a defined contribution plan subject to Code Section 412 and a defined contribution plan not subject to Code Section 412 maintained by the Employer which have the same Anniversary Date, “annual additions” will be credited to the Participant’s accounts under the defined contribution plan subject to Code Section 412 prior to crediting “annual additions” to the Participant’s accounts under the defined contribution plan not subject to Code Section 412.~~

~~(3) If a Participant participates in more than one defined contribution plan subject to Code Section 412 maintained by the Employer which have the same Anniversary Date, the maximum “annual additions” under this Plan shall equal the product of (A) the maximum “annual additions” for the “limitation year” minus any “annual additions” previously credited under subparagraphs (1) or (2) above, multiplied by (B) a fraction (i) the numerator of which is the “annual additions” which would be credited to such Participant’s accounts under this Plan without regard to the limitations of Code Section 415 and (ii) the denominator of which is such “annual additions” for all plans described in this subparagraph.~~

~~(F)~~ **(F)** Notwithstanding anything contained in this Section to the contrary, the limitations, adjustments and other requirements prescribed in this Section shall at all times comply with the provisions of Code Section 415 and the Regulations thereunder.

**(G) FOR PURPOSES OF ADJUSTING ANY BENEFIT OR LIMITATION UNDER SECTION 415 OF THE CODE, THE MORTALITY TABLE USED SHALL BE THE TABLE PRESCRIBED BY THE UNITED STATES SECRETARY OF THE TREASURY IN ACCORDANCE WITH SECTION 415(B)(2)(E)(V) OF THE CODE.**

#### **4.5 ADJUSTMENT FOR EXCESSIVE ANNUAL ADDITIONS**

(a) If, as a result of a reasonable error in estimating a Participant’s Compensation, a reasonable error in determining the amount of elective deferrals (within the meaning of Code Section 402(g)(3)) that may be made with respect to any Participant under the limits of Section 4.4 or other facts and circumstances to which Regulation 1.415-6(b)(6) shall be applicable, the “annual additions” under this Plan would cause the maximum “annual additions” to be exceeded for any Participant, the “excess amount” will be disposed of in one of the following manners, as uniformly determined by the Administrator for all Participants similarly situated.

(1) Any after-tax voluntary Employee contributions (plus attributable gains), to the extent they would reduce the “excess amount,” will be distributed to the Participant;

(2) If, after the application of subparagraph (1) above, an “excess amount” still exists, and the Participant is covered by the Plan at the end of the “limitation year,” the “excess amount” will be used to reduce the Employer contribution for such Participant in the next “limitation year,” and each succeeding “limitation year” if necessary;

(3) If, after the application of subparagraphs (1) and (2) above, an “excess amount” still exists, and the Participant is not covered by the Plan

at the end of the “limitation year,” the “excess amount” will be held unallocated in a “Section 415 suspense account.” The “Section 415 suspense account” will be applied to reduce future Employer contributions for all remaining Participants in the next “limitation year,” and each succeeding “limitation year” if necessary;

(4) If a “Section 415 suspense account” is in existence at any time during the “limitation year” pursuant to this Section, it will not participate in the allocation of investment gains and losses of the Trust Fund. If a “Section 415 suspense account” is in existence at any time during a particular “limitation year,” all amounts in the “Section 415 suspense account” must be allocated and reallocated to Participants’ accounts before any Employer contributions or any Employee contributions may be made to the Plan for that “limitation year.” Except as provided in (1) above, “excess amounts” may not be distributed to Participants or Former Participants.

(b) For purposes of this Article, “excess amount” for any Participant for a “limitation year” shall mean the excess, if any, of (1) the “annual additions” which would be credited to the Participant’s account under the terms of the Plan without regard to the limitations of Code Section 415 over (2) the maximum “annual additions” determined pursuant to Section 4.4.

(c) For purposes of this Section, “Section 415 suspense account” shall mean an unallocated account equal to the sum of “excess amounts” for all Participants in the Plan during the “limitation year.”

## **4.6 VOLUNTARY CONTRIBUTIONS**

(a) In order to allow Participants the opportunity to increase their retirement income, each Participant may, in accordance with nondiscriminatory procedures established by the Administrator, elect to make after-tax voluntary Employee contributions to the Plan. Such contributions must generally be paid to the Trustee within a reasonable period of time after being received by the Employer. The balance in each Participant’s Voluntary Contribution Account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason.

(b) A Participant may elect at any time to withdraw after-tax voluntary Employee contributions from such Participant’s Voluntary Contribution Account and the actual earnings thereon in a manner which is consistent with and satisfies the provisions of Section 6.5, ~~including, but not limited to, all notice and consent requirements of Code Sections 417 and 411(a)(11) and the Regulations thereunder.~~ If the Administrator maintains sub-accounts with respect to after-tax voluntary Employee contributions (and earnings thereon) which were made on or before a specified date, a Participant shall be

permitted to designate which sub-account shall be the source for withdrawal. Forfeitures of Employer contributions shall not occur solely as a result of an Employee's withdrawal of after-tax voluntary Employee contributions.

In the event such a withdrawal is made, ~~or in the event a Participant has received a hardship distribution pursuant to Regulation 1.401 (k)-1(d)(2)(iii)(B) from any other plan maintained by the Employer,~~ then the Participant shall be barred from making any after-tax voluntary Employee contributions for a period of twelve (12) months after receipt of the withdrawal or distribution.

(c) At Normal Retirement Date, or such other date when the Participant or his Beneficiary shall be entitled to receive benefits, the fair market value of the Voluntary Contribution Account shall be used to provide additional benefits to the Participant or his Beneficiary.

#### **4.7 DIRECTED INVESTMENT ACCOUNT**

(a) Participants may, subject to a procedure established by the Administrator (the Participant Direction Procedures) and applied in a uniform nondiscriminatory manner, direct the Trustee, in writing (or in such other form which is acceptable to the Trustee), to invest all of their accounts in specific assets, specific funds or other investments permitted under the Plan and the Participant Direction Procedures. That portion of the interest of any Participant so directing will thereupon be considered a Participant's Directed Account.

(b) As of each Valuation Date, all Participant Directed Accounts shall be charged or credited with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in the market value using publicly listed fair market values when available or appropriate as follows:

(1) to the extent that the assets in a Participant's Directed Account are accounted for as pooled assets or investments, the allocation of earnings, gains and losses of each Participant's Directed Account shall be based' upon the total amount of funds so invested in a manner proportionate to the Participant's share of such pooled investment; and

(2) to the extent that the assets in the Participant's Directed Account are accounted for as segregated assets, the allocation of earnings, gains and losses from such assets shall be made on a separate and distinct basis.

(c) Investment directions will be processed as soon as administratively practicable after proper investment directions are received from the Participant. No guarantee is made by the Plan, Employer, Administrator or Trustee that investment directions will be processed on a daily basis, and no guarantee is made in any respect regarding the processing time of an investment direction. Notwithstanding any other

provision of the Plan, the Employer, Administrator or Trustee reserves the right to not value an investment option on any given Valuation Date for any reason deemed appropriate by the Employer, Administrator or Trustee. Furthermore, the processing of any investment transaction may be delayed for any legitimate business reason (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, force majeure, the failure of a service provider to timely receive values or prices, and correction for errors or omissions or the errors or omissions of any service provider). The processing date of a transaction will be binding for all purposes of the Plan and considered the applicable Valuation Date for an investment transaction.

#### **4.8 ~~ACTUAL CONTRIBUTION PERCENTAGE TESTS~~ RESERVED.**

~~(a) The “Actual Contribution Percentage” for Plan Years beginning after December 31, 1996 for the Highly Compensated Participant group shall not exceed the greater of:~~

~~(1) 125 percent of such percentage for the Non Highly Compensated Participant group (for the preceding Plan Year if the prior year testing method is used to calculate the “Actual Contribution Percentage” for the Non Highly Compensated Participant group); or~~

~~(2) the lesser of 200 percent of such percentage for the Non Highly Compensated Participant group (for the preceding Plan Year if the prior year testing method is used to calculate the “Actual Contribution Percentage” for the Non Highly Compensated Participant group), or such percentage for the Non Highly Compensated Participant group (for the preceding Plan Year if the prior year testing method is used to calculate the “Actual Contribution Percentage” for the Non Highly Compensated Participant group) plus 2 percentage points. However, to prevent the multiple use of the alternative method described in this paragraph and Code Section 401(m)(9)(A), any Highly Compensated Participant eligible to make elective deferrals pursuant to any cash or deferred arrangement maintained by the Employer or an Affiliated Employer and to make Employee contributions or to receive matching contributions under this Plan or under any other plan maintained by the Employer or an Affiliated Employer shall have a combination of elective deferrals and Employee contributions and matching contributions reduced pursuant to Regulation 1.401 (m) 2 and Section 4.9(a). The provisions of Code Section 401 (m) and Regulations 1.401 (m) 1(b) and 1.401 (m) 2 are incorporated herein by reference.~~

~~(b) For the purposes of this Section and Section 4.9, “Actual Contribution Percentage” for a Plan Year means, with respect to the Highly Compensated Participant group and Non Highly Compensated Participant group (for the preceding Plan Year if the~~



~~prior year testing method is used to calculate the “Actual Contribution Percentage” for the Non Highly Compensated Participant group), the average of the ratios (calculated separately for each Participant in each group and rounded to the nearest one hundredth of one percent) of:~~

~~(1) — the sum of after tax voluntary Employee contributions made pursuant to Section 4.6 on behalf of each such Participant for such Plan Year; to~~

~~(2) — the Participant’s “414(s) Compensation” for such Plan Year.~~

~~Notwithstanding the above, if the prior year testing method is used to calculate the “Actual Contribution Percentage” for the Non Highly Compensated Participant group for the first Plan Year of this amendment and restatement, for purposes of Section 4.8(a), the “Actual Contribution Percentage” for the Non Highly Compensated Participant group for the preceding Plan Year shall be determined pursuant to the provisions of the Plan then in effect.~~

~~(c) — For purposes of determining the “Actual Contribution Percentage,” the Administrator may elect to take into account, with respect to Employees eligible to have after tax voluntary Employee contributions made pursuant to Section 4.6 allocated to their accounts, “elective deferrals” and “qualified non elective contributions” contributed to any plan maintained by the Employer. However, the Plan Year must be the same as the plan year of the plan to which the elective deferrals and the qualified non elective contributions are made.~~

~~(d) — For purposes of this Section and Code Sections 401(a)(4), 410(b) and 401(m), if two or more plans of the Employer to which matching contributions, Employee contributions, or both, are made are treated as one plan for purposes of Code Sections 401(a)(4) or 410(b) (other than the average benefits test under Code Section 410(b)(2)(A)(ii)), such plans shall be treated as one plan. In addition, two or more plans of the Employer to which matching contributions, Employee contributions, or both, are made may be considered as a single plan for purposes of determining whether or not such plans satisfy Code Sections 401(a)(4), 410(b) and 401(m). In such a case, the aggregated plans must satisfy this Section and Code Sections 401(a)(4), 410(b) and 401 (m) as though such aggregated plans were a single plan. Any adjustment to the Non Highly Compensated Participant actual contribution ratio for the prior year shall be made in accordance with Internal Revenue Service Notice 98-1 and any superseding guidance. Plans may be aggregated under this paragraph (d) only if they have the same plan year. Notwithstanding the above, for Plan Years beginning after December 31, 1996 if two or more plans which include cash or deferred arrangements are permissively aggregated under Regulation 1.410(b)-7(d), all plans permissively aggregated must use either the current year testing method or the prior year testing method for the testing year.~~

~~Notwithstanding the above, an employee stock ownership plan described in Code Section 4975(e)(7) or 409 may not be aggregated with this Plan for purposes of~~

determining whether the employee stock ownership plan or this Plan satisfies this Section and Code Sections 401(a)(4), 410(b) and 401(m).

~~(e) — If a Highly Compensated Participant is a Participant under two or more plans (other than an employee stock ownership plan as defined in Code Section 4975(e)(7) or 409) which are maintained by the Employer or an Affiliated Employer to which matching contributions, Employee contributions, or both, are made, all such contributions on behalf of such Highly Compensated Participant shall be aggregated for purposes of determining such Highly Compensated Participant's actual contribution ratio. However, if the plans have different plan years, this paragraph shall be applied by treating all plans ending with or within the same calendar year as a single plan.~~

~~(f) — For purposes of Sections 4.8(a) and 4.9, a Highly Compensated Participant and Non-Highly Compensated Participant shall include any Employee eligible to have after tax voluntary Employee contributions (whether or not after tax voluntary Employee contributions are made) allocated to the Participant's account for the Plan Year.~~

~~Notwithstanding the above, if the prior year testing method is used to calculate the "Actual Contribution Percentage" for the Non-Highly Compensated Participant group for the first Plan Year of this amendment and restatement, for the purposes of Section 4.8(a), a Non-Highly Compensated Participant shall include any such Employee eligible to have after tax voluntary Employee contributions (whether or not after tax voluntary Employee contributions are made) allocated to the Participant's account for the preceding Plan Year pursuant to the provisions of the Plan then in effect.~~

~~(g) — For the purpose of this Section, for Plan Years beginning after December 31, 1996, when calculating the "Actual Contribution Percentage" for the Non-Highly Compensated Participant group, the current year testing method shall be used. Any change from the current year testing method to the prior year testing method shall be made pursuant to Internal Revenue Service Notice 98-1, Section VII (or superseding guidance), the provisions of which are incorporated herein by reference.~~

~~(h) — Notwithstanding anything in this Section to the contrary, the provisions of this Section and Section 4.9 may be applied separately (or will be applied separately to the extent required by Regulations) to each plan within the meaning of Regulation 1.401(k)-1(g)(11). Furthermore, for Plan Years beginning after December 31, 1998, the provisions of Code Section 401 (k)(3)(F) may be used to exclude from consideration all Non-Highly Compensated Employees who have not satisfied the minimum age and service requirements of Code Section 410(a)(1)(A).~~

#### **~~4.9 ADJUSTMENT TO ACTUAL CONTRIBUTION PERCENTAGE TESTS~~**

**RESERVED**

~~(a) — In the event (or if it is anticipated) that, for Plan Years beginning after December 31, 1996, the “Actual Contribution Percentage” for the Highly Compensated Participant group exceeds (or might exceed) the “Actual Contribution Percentage” for the Non-Highly Compensated Participant group pursuant to Section 4.8(a), the Administrator (on or before the fifteenth day of the third month following the end of the Plan Year, but in no event later than the close of the following Plan Year) shall direct the Trustee to distribute to the Highly Compensated Participant having the largest dollar amount of after-tax voluntary Employee contributions made pursuant to Section 4.6, the portion of such contributions (and Income allocable to such contributions) until the total amount of Excess Aggregate Contributions has been distributed, or until the Participant’s remaining amount equals the amount of after-tax voluntary Employee contributions made pursuant to Section 4.6 of the Highly Compensated Participant having the second largest dollar amount of contributions. This process shall continue until the total amount of Excess Aggregate Contributions has been distributed.~~

~~(b) — Any distribution of less than the entire amount of Excess Aggregate Contributions (and Income) shall be treated as a pro rata distribution of Excess Aggregate Contributions and Income. Distribution of Excess Aggregate Contributions shall be designated by the Employer as a distribution of Excess Aggregate Contributions (and Income).~~

~~(c) — The determination of the amount of Excess Aggregate Contributions with respect to any Plan Year shall be made after first determining the excess contributions as defined in any qualified cash or deferred arrangement (as defined in Code Section 401(k)) maintained by the Employer, if any, to be treated as after-tax voluntary Employee contributions due to recharacterization for the plan year of any such qualified cash or deferred arrangement maintained by the Employer that ends with or within the Plan Year.~~

~~(d) — If during a Plan Year the projected aggregate amount of after-tax voluntary Employee contributions to be allocated to all Highly Compensated Participants under this Plan would, by virtue of the tests set forth in Section 4.8(a), cause the Plan to fail such tests, then the Administrator may automatically reduce proportionately or in the order provided in Section 4.9(a) each affected Highly Compensated Participant’s projected share of such contributions by an amount necessary to satisfy one of the tests set forth in Section 4.8(a).~~

~~(e) — Notwithstanding the above, within twelve (12) months after the end of the Plan Year, the Employer may make a “qualified non-elective contribution” on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 4.8(a). Such contribution shall be allocated to the Participant’s Account of each Non-Highly Compensated Participant in the same proportion that each Non-Highly Compensated Participant’s 414(s) Compensation for the year bears to the total 414(s) Compensation of all Non-Highly~~

~~Compensated Participants. A separate accounting shall be maintained with respect to such contributions.~~

~~However, if the prior year testing method is used, the “qualified non elective contribution” shall be allocated to the Participant’s Account on behalf of each Non-Highly Compensated Participant who was employed by the Employer on the last day of the prior Plan Year in the same proportion that each such Non-Highly Compensated Participant’s 414(s) Compensation for the prior year bears to the total 414(s) Compensation of all such Non-Highly Compensated Participants for the prior year. Such contribution shall be made by the Employer prior to the end of the current Plan Year. A separate accounting shall be maintained with respect to such contributions.~~

~~Notwithstanding the above, for Plan Years beginning after December 31, 1998, if the testing method changes from the current year testing method to the prior year testing method, then for purposes of preventing the double counting of “qualified non elective contributions” for the first testing year for which the change is effective, any “qualified non elective contribution” on behalf of Non-Highly Compensated Participants used to satisfy the “Actual Contribution Percentage” test under the current year testing method for the prior year testing year shall be disregarded.~~

~~(f) Any Excess Aggregate Contributions (and Income) which are distributed on or after 21/2 months after the end of the Plan Year shall be subject to the ten percent (10%) Employer excise tax imposed by Code Section 4979.~~

~~(g) For purposes of this Section and Section 4.8, the following definitions shall apply:~~

~~(1) “Elective deferrals” are contributions made pursuant to a salary reduction or other deferral mechanism. “Elective deferrals” are the sum of all Employer contributions made on behalf of a Participant pursuant to an election to defer under a qualified cash or deferred arrangement as described in Code Section 401(k), any salary reduction simplified employee pension described in Code Section 408(k)(6), any Simple IRA Plan described in Code Section 408(p), any eligible deferred compensation plan under Code Section 457, any plan described under Code Section 501(c)(18), and any Employer contributions made on behalf of a Participant for the purchase of an annuity contract under Code Section 403(b) pursuant to a salary reduction agreement. Elective deferrals shall not include any deferrals properly distributed as excess “annual additions”~~

~~(2) “Qualified non elective contributions” are contributions (other than a matching contribution) made by the Employer that the Participants may not elect to receive in cash until distributed from the Plan and that are distributable only in~~

~~accordance with the distribution provisions that are applicable to “elective deferrals.”~~

~~Such “elective deferrals” and “qualified non elective contributions” shall be fully Vested at all times and, except as otherwise provided herein, shall not be subject to Forfeiture for any reason. Such deferrals and contributions shall be treated as Employer matching contributions subject to Regulation 1.401 (m) 1(b)(5) which is incorporated herein by reference.~~

#### **4.10 QUALIFIED MILITARY SERVICE**

Notwithstanding any provision of this Plan to the contrary, effective December 12, 1994, contributions, benefits and service will be provided in accordance with Code Section 414(u).

### **ARTICLE V VALUATIONS**

#### **5.1 VALUATION OF THE TRUST FUND**

The Administrator shall direct the Trustee, as of each Valuation Date, to determine the net worth of the assets comprising the Trust Fund as it exists on the Valuation Date. In determining such net worth, the Trustee shall value the assets comprising the Trust Fund at their fair market value (or their contractual value in the case of a Contract or Policy) as of the Valuation Date and shall deduct all expenses for which the Trustee has not yet obtained reimbursement from the Employer or the Trust Fund. The Trustee may update the value of any shares held in the Participant Directed Account by reference to the number of shares held by that Participant, priced at the market value as of the Valuation Date.

#### **5.2 METHOD OF VALUATION**

In determining the fair market value of securities held in the Trust Fund which are listed on a registered stock exchange, ~~the Administrator shall direct the Trustee to~~ **SHALL** value the same at the prices they were last traded on such exchange preceding the close of business on the Valuation Date. If such securities were not traded on the Valuation Date, or if the exchange on which they are traded was not open for business on the Valuation Date, then the securities shall be valued at the prices at which they were last traded prior to the Valuation Date. Any unlisted security held in the Trust Fund shall be valued at its bid price next preceding the close of business on the Valuation Date, which bid price shall be obtained from a registered broker or an investment banker. In determining the fair market value of assets other than securities for which trading or bid prices can be obtained, the Trustee may appraise such assets itself, or in its discretion, employ one or more appraisers for that purpose and rely on the values established by such appraiser or appraisers.

## **ARTICLE VI DETERMINATION AND DISTRIBUTION OF BENEFITS**

### **6.1 DETERMINATION OF BENEFITS UPON RETIREMENT**

Every Participant may terminate employment with the Employer and retire for the purposes hereof on the Participant's Normal Retirement Date or Early Retirement Date. However, a Participant may postpone the termination of employment with the Employer to a later date, in which event the participation of such Participant in the Plan, including the right to receive allocations pursuant to Section 4.3, shall continue until such Participant's Late Retirement Date. Upon a Participant's Retirement Date or attainment of Normal Retirement Date without termination of employment with the Employer, or as soon thereafter as is practicable, the Trustee shall distribute, at the election of the Participant, all amounts credited to such Participant's Account ~~in accordance with Section 6.5.~~

### **6.2 DETERMINATION OF BENEFITS UPON DEATH**

(a) Upon the death of a Participant before the Participant's Retirement Date or other termination of employment, all amounts credited to such Participant's Account shall become fully Vested. The Administrator shall direct the Trustee, in accordance with the provisions of Sections 6.6 and 6.7, to distribute the value of the deceased Participant's accounts to the Participant's Beneficiary.

(b) Upon the death of a Former Participant, the Administrator shall direct the Trustee, in accordance with the provisions of Sections 6.6 and 6.7, to distribute any

remaining Vested amounts credited to the accounts of a deceased Former Participant to such Former Participant's Beneficiary.

(c) The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant or Former Participant as the Administrator may deem desirable. The Administrator's determination of death and of the right of any person to receive payment shall be conclusive.

(d) Unless otherwise elected ~~in the manner prescribed in Section 6.6~~, the Beneficiary of the death benefit shall be the Participant's surviving spouse, ~~who shall receive such benefit in the form of a Pre-Retirement Survivor Annuity pursuant to Section 6.6~~. Except, however, the Participant may designate a Beneficiary other than the spouse. ~~if:~~

~~(1) — the Participant and the Participant's spouse have validly waived the Pre-Retirement Survivor Annuity in the manner prescribed in Section 6.6, and the spouse has waived the right to be the Participant's Beneficiary, or~~

~~(2) — the Participant is legally separated or has been abandoned (within the meaning of local law) and the Participant has a court order to such effect (and there is no "qualified domestic relations order" as defined in Code Section 414(p) which provides otherwise), or~~

~~(3) — the Participant has no spouse, or~~

~~(4) — the spouse cannot be located.~~

In such event, the designation of a Beneficiary shall be made on a form satisfactory to the Administrator. A Participant may at any time revoke a designation of a Beneficiary or change a Beneficiary by filing written (or in such other form as permitted by the Internal Revenue Service) notice of such revocation or change with the Administrator. ~~However, the Participant's spouse must again consent in writing (or in such other form as permitted by the Internal Revenue Service) to any change in Beneficiary unless the original consent acknowledged that the spouse had the right to limit consent only to a specific Beneficiary and that the spouse voluntarily elected to relinquish such right.~~

(e) In the event no valid designation of Beneficiary exists, or if the Beneficiary is not alive at the time of the Participant's death, the death benefit will be paid in the following order of priority to:

- (1) the Participant's surviving spouse;
- (2) the Participant's children, including adopted children, per stirpes;
- (3) the Participant's surviving parents, in equal shares; or
- (4) the Participant's estate.

If the Beneficiary does not predecease the Participant, but dies prior to distribution of the death benefit, the death benefit will be paid to the Beneficiary's estate.

(f) Notwithstanding anything in this Section to the contrary, if a Participant has designated the spouse as a Beneficiary, then a divorce decree or a legal separation that relates to such spouse shall revoke the Participant's designation of the spouse as a Beneficiary unless the decree or a ~~qualified~~ **AN ELIGIBLE** domestic relations order (~~within the meaning of Code Section 414(p)~~) provides otherwise.

### **6.3 DETERMINATION OF BENEFITS IN EVENT OF DISABILITY**

In the event of a Participant's Total and Permanent Disability prior to the Participant's Retirement Date or other termination of employment, all amounts credited to such Participant's Account shall become fully Vested. In the event of a Participant's Total and Permanent Disability, the Administrator, in accordance with the provisions of Sections 6.5 and 6.7, shall direct the distribution to such Participant of all Vested amounts credited to such Participant's Account.

### **6.4 DETERMINATION OF BENEFITS UPON TERMINATION**

(a) If a Participant's employment with the Employer is terminated for any reason other than death, Total and Permanent Disability or retirement, then such Participant shall be entitled to such benefits as are provided hereinafter pursuant to this Section 6.4.

Distribution of the funds due to a Terminated Participant shall be made on the occurrence of an event which would result in the distribution had the Terminated Participant remained in the employ of the Employer (upon the Participant's death, Total and Permanent Disability, Early or Normal Retirement). However, at the election of the



Participant, the Administrator shall direct the Trustee that the entire Vested portion of the Terminated Participant's Account to be payable to such Terminated Participant. Any distribution under this paragraph shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5, ~~including, but not limited to, all notice and consent requirements of Code Sections 417 and 411(a)(11) and the Regulations thereunder.~~

~~If, for Plan Years beginning after August 5, 1997, the value of a Terminated Participant's Vested benefit derived from Employer and Employee contributions does not exceed \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997) and, if the distribution is made prior to October 17, 2000, has never exceeded \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997) at the time of any prior distribution, then the Administrator shall direct the Trustee to cause the entire Vested benefit to be paid to such Participant in a single lump sum.~~

(b) A Participant shall become Vested in his or her Participant's Account upon satisfying the following service requirements:

(1) All regular, full-time employees, the Mayor and City Council Members hired, appointed, or elected prior to April 1, 1992, who have completed 20 Months of Service;

(2) All regular, full-time employees hired after April 1, 1992 who have completed 60 Months of Service;

(3) For Plan Years commencing on January 1, 1999, the Mayor and City Council Members who have completed 45 Months of Service;

(4) Paid-on-Call firefighters hired prior to July 1, 1991, who have completed 60 Months of Service; and

(5) Paid-on-Call firefighters hired after July 1, 1991 shall be immediately Vested.

(c) Notwithstanding the vesting schedule above, the Vested percentage of a Participant's Account shall not be less than the Vested percentage attained as of the later of the effective date or adoption date of this amendment and restatement.

(d) Notwithstanding the vesting schedule above, upon any full or partial termination of the Plan, all amounts then credited to the account of any affected Participant shall become 100% Vested and shall not thereafter be subject to Forfeiture.

(e) The computation of a Participant's nonforfeitable percentage of such Participant's interest in the Plan shall not be reduced as the result of any direct or indirect amendment to this Plan. In the event that the Plan is amended to change or modify any vesting schedule, or if the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage, then each Participant with at least three (3) Years of Service as of the expiration date of the election period may elect to have such Participant's nonforfeitable percentage computed under the Plan without regard to such amendment or change. If a Participant fails to make such election, then such Participant shall be subject to the new vesting schedule. The Participant's election period shall commence on the adoption date of the amendment and shall end sixty (60) days after the latest of:

- (1) the adoption date of the amendment,
- (2) the effective date of the amendment, or
- (3) the date the Participant receives written notice of the amendment from the Employer or Administrator.

## **6.5 DISTRIBUTION OF BENEFITS**

~~(a)(1) Unless otherwise elected as provided below, a Participant who is married on the Annuity Starting Date and who does not die before the Annuity Starting Date shall receive the value of all such Participant's benefits in the form of a joint and survivor annuity. The joint and survivor annuity is an annuity that commences immediately and shall be equal in value to a single life annuity. Such joint and survivor benefits following the Participant's death shall continue to the spouse during the spouse's lifetime at a rate equal to fifty percent (50%) of the rate at which such benefits were payable to the Participant. This joint and fifty percent (50%) survivor annuity shall be considered the designated qualified joint and survivor annuity and automatic form of payment for the purposes of this Plan. However, the Participant may, without spousal consent, elect to receive a smaller annuity benefit with continuation of payments to the spouse at a rate of seventy-five percent (75%) or one hundred percent (100%) of the rate payable to a Participant during the Participant's lifetime, which alternative joint and survivor annuity shall be equal in value to the automatic joint and fifty percent (50%) survivor annuity. An unmarried Participant shall receive the value of such Participant's benefit in the form of a life annuity. Such unmarried Participant, however, may elect in writing to waive the life annuity. The election must comply with the provisions of this Section as if it were an election to waive the joint and survivor annuity by a married Participant, but without the spousal consent requirement. The Participant may elect to have any annuity provided for in this Section distributed upon the attainment of the "earliest retirement age" under the Plan. The "earliest retirement age" is the earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.~~

~~(2) Any election to waive the joint and survivor annuity must be made by the Participant in writing (or in such other form as permitted by the Internal Revenue Service) during the election period and be consented to in writing (or in such other form as permitted by the Internal Revenue Service) by the Participant's spouse. If the spouse is legally incompetent to give consent, the spouse's legal guardian, even if such guardian is the Participant, may give consent. Such election shall designate a Beneficiary (or a form of benefits) that may not be changed without spousal consent (unless the consent of the spouse expressly permits designations by the Participant without the requirement of further consent by the spouse). Such spouse's consent shall be irrevocable and must acknowledge the effect of such election and be witnessed by a Plan representative or a notary public. Such consent shall not be required if it is established to the satisfaction of the Administrator that the required consent cannot be obtained because there is no spouse, the spouse cannot be located, or other circumstances that may be prescribed by Regulations. The election made by the Participant and consented to~~

~~by such Participant's spouse may be revoked by the Participant in writing (or in such other form as permitted by the Internal Revenue Service) without the consent of the spouse at any time during the election period. A revocation of a prior election shall cause the Participant's benefits to be distributed as a joint and survivor annuity. The number of revocations shall not be limited. Any new election must comply with the requirements of this paragraph. A former spouse's waiver shall not be binding on a new spouse.~~

~~(3) The election period to waive the joint and survivor annuity shall be the ninety (90) day period ending on the Annuity Starting Date.~~

~~(4) For purposes of this Section, spouse or surviving spouse means the spouse or surviving spouse of the Participant, provided that a former spouse will be treated as the spouse or surviving spouse and a current spouse will not be treated as the spouse or surviving spouse to the extent provided under a qualified domestic relations order as described in Code Section 414(p).~~

~~(5) With regard to the election, the Administrator shall provide to the Participant no less than thirty (30) days and no more than ninety (90) days before the Annuity Starting Date a written (or in such other form as permitted by the Internal Revenue Service) explanation of:~~

~~(i) the terms and conditions of the joint and survivor annuity,~~

~~(ii) the Participant's right to make, and the effect of, an election to waive the joint and survivor annuity,~~

~~(iii) the right of the Participant's spouse to consent to any election to waive the joint and survivor annuity, and~~

~~(iv) the right of the Participant to revoke such election, and the effect of such revocation.~~

~~(6) Notwithstanding the above, with respect to distributions made after December 31, 1996, if the Participant elects (with spousal consent, if applicable) to waive the requirement that the explanation be provided at least thirty (30) days before the Annuity Starting Date, the election period shall be extended to the thirtieth (30th) day after the date on which such explanation is provided to the Participant, unless the thirty (30) day period is waived pursuant to the following provisions:~~

~~Any distribution provided for in this Section 6.5 may commence less than thirty (30) days after the notice required by Code Section 417(a)(3) is given provided the following requirements are satisfied:~~

~~(i) — the Administrator clearly informs the Participant that the Participant has a right to a period of thirty (30) days after receiving the notice to consider whether to waive the joint and survivor annuity and to elect (with spousal consent) to a form of distribution other than a joint and survivor annuity;~~

~~(ii) — the Participant is permitted to revoke an affirmative distribution election at least until the Annuity Starting Date, or, if later, at any time prior to the expiration of the seven (7) day period that begins the day after the explanation of the joint and survivor annuity is provided to the Participant;~~

~~(iii) — the Annuity Starting Date is after the date that the explanation of the joint and survivor annuity is provided to the Participant. However, the Annuity Starting Date may be before the date that any affirmative distribution election is made by the Participant and before the date that the distribution is permitted to commence under (iv) below; and~~

~~(iv) — distribution in accordance with the affirmative election does not commence before the expiration of the seven (7) day period that begins the day after the explanation of the joint and survivor annuity is provided to the Participant.~~

~~(b) — In the event a married Participant duly elects pursuant to paragraph (a)(2) above not to receive benefits in the form of a joint and survivor annuity, or if such Participant is not married, in the form of a life annuity, the Administrator, pursuant to the election of the Participant, **OR BENEFICIARY IN THE EVENT OF PARTICIPANT'S DEATH**, shall direct the Trustee to distribute to a Participant or Beneficiary any amount to which the Participant or Beneficiary is entitled under the Plan in one or more of the following methods:~~

~~(1) One lump-sum payment in cash.~~

~~(2) Payments over a period certain in monthly, quarterly, semiannual, or annual cash installments. In order to provide such installment payments, the Administrator may (A) segregate the aggregate amount thereof in a separate, federally insured savings account, certificate of deposit in a bank or savings and loan association, money market certificate or other liquid short term security or (B) purchase a nontransferable annuity contract for a term certain (with no life contingencies) providing for such payment. The period over which such payment~~

is to be made shall not extend beyond the Participant's life expectancy (or the life expectancy of the Participant and the Participant's designated Beneficiary).

(3) — Purchase of ~~or providing~~ an annuity. **THE ANNUITY CONTRACT SHALL BE PURCHASED FROM AN INSURANCE COMPANY TO PROVIDE FOR FIXED PERIODIC PAYMENTS OVER A PERIOD OF TIME.** However, such annuity may not be in any form that will provide for payments over a period extending beyond either the life of the Participant (or the lives of the Participant and the Participant's designated Beneficiary) or the life expectancy of the Participant (or the life expectancy of the Participant and the Participant's designated Beneficiary).

(c) — ~~The present value of a Participant's joint and survivor annuity derived from Employer and Employee contributions may not, for Plan Years beginning after August 5, 1997, be paid without the Participant's and the Participant's spouse's written (or in such form as permitted by the Internal Revenue Service) consent if the value exceeds \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997) or, if the distribution is made prior to October 17, 2000, has ever exceeded \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997) at the time of any prior distribution and the benefit is "immediately distributable." However, spousal consent is not required if the distribution will be made in the form of a joint and survivor annuity and the benefit is "immediately distributable." A benefit is "immediately distributable" if any part of the benefit could be distributed to the Participant (or surviving spouse) before the Participant attains (or would have attained if not deceased) the later of the Participant's Normal Retirement Age or age 62. Any consent required by this Section 6.5(c) must be obtained not more than ninety (90) days before commencement of the distribution and shall be made in a manner consistent with Section 6.5(a)(2).~~

If, for Plan Years beginning after ~~August 5, 1997~~ **JANUARY 1, 1998**, the value of the Participant's benefit derived from Employer and Employee contributions does not exceed \$5,000 (\$3,500 for Plan Years beginning prior to ~~August 6, 1997~~ **JANUARY 1, 1998**) and, if the distribution is made prior to October 17, 2000, has never exceeded \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997) at the time of any prior ~~distribution~~, then the Administrator shall direct the Trustee to immediately distribute such benefit in a lump sum without the Participant's ~~and the Participant's spouse's~~ written consent. No distribution may be made under the preceding sentence after the Annuity Starting Date unless the Participant ~~and the Participant's spouse~~ **consent** in writing (or in such form as permitted by the Internal Revenue Service) to such distribution.

(d) The following rules will apply to the consent requirements set forth in subsection (c):

(1) No consent shall be valid unless the Participant has received a general description of the material features and an explanation of the relative values of the optional forms of benefit available under the Plan ~~that would satisfy the notice requirements of Code Section 417.~~

(2) The Participant must be informed of the right to defer receipt of the distribution. If a Participant fails to consent, it shall be deemed an election to defer the commencement of payment of any benefit. However, any election to defer the receipt of benefits shall not apply with respect to distributions which are required under Section 6.5(e).

(3) Notice of the rights specified under this paragraph shall be provided no less than thirty (30) days and no more than ninety (90) days before the Annuity Starting Date.

Notwithstanding the above, the Annuity Starting Date may be a date prior to the date the explanation is provided to the Participant if the distribution does not commence until at least thirty (30) days after such explanation is provided, ~~subject to the waiver of the thirty (30) day period as provided for in Section 6.5(a)(6).~~

(4) Written (or such other form as permitted by the Internal Revenue Service) consent of the Participant to the distribution must not be made before the Participant receives the notice and must not be made more than ninety (90) days before the Annuity Starting Date.

(5) No consent shall be valid if a significant detriment is imposed under the Plan on any Participant who does not consent to the distribution.

Any such distribution may commence less than thirty (30) days, ~~subject to Section 6.5(a)(6), after the notice required under Regulation 1.411(a)-11(e) is given, provided that: (1) the Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and (2) the Participant, after receiving the notice, affirmatively elects a distribution.~~

(e) Notwithstanding any provision in the Plan to the contrary, the distribution of a Participant's benefits made on or after January 1, 1997, whether under the Plan or through the purchase of an annuity contract, shall be made in accordance with the following requirements and shall otherwise comply with Code Section 401(a)(9) and the Regulations thereunder (including Regulation 1.401(a)(9)-2), the provisions of which are incorporated herein by reference:

(1) A Participant's benefits shall be distributed or must begin to be distributed not later than April 1st of the calendar year following the later of (i) the calendar year in which the Participant attains age 70 1/2 or (ii) the calendar year in which the Participant retires, ~~provided, however, that this clause (ii) shall not apply in the case of a Participant who is a "five (5) percent owner" at any time during the Plan Year ending with or within the calendar year in which such owner attains age 70 1/2.~~ Such distributions shall be equal to or greater than any required distribution.

Any Participant attaining age 70 1/2 in years after 1995 may elect by the April 1st of the calendar year following the year in which the Participant attained age 70 1/2 (or by December 31, 1997 in the case of a Participant attaining age 70 1/2 in 1996), to defer distributions until the calendar year following the calendar year in which the Participant retires.

Alternatively, distributions to a Participant must begin no later than the applicable April 1st as determined under the preceding paragraph and must be made over the life of the Participant (or the lives of the Participant and the Participant's designated Beneficiary) or the life expectancy of the Participant (or the life expectancies of the Participant and the Participant's designated Beneficiary) in accordance with Regulations.

(2) Distributions to a Participant and the Participant's Beneficiaries shall only be made in accordance with the incidental death benefit requirements of Code Section 401(a)(9)(G) and the Regulations thereunder.

~~(3) Any Participant who is not a "five (5) percent owner" and who attains age 70 1/2 before 1997, but did not retire from employment with the Employer before January 1, 1997, may elect to cease distributions, provided that:~~

~~(i) payments recommence to the Participant with the same Beneficiary and in a form of benefit that is the same but for the cessation of distribution,~~

~~(ii) the individual who was the Participant's spouse on the Annuity Starting Date executed a general consent within the meaning of Regulation 1.401(a) 20, A 31, or~~

~~(iii) the individual who was the Participant's spouse on the Annuity Starting Date executed a specific consent to waive a qualified joint and survivor annuity within the meaning of Regulation 1.401(a) 20, A 31, and the Participant is not married to that individual when benefits recommence.~~

~~However, in order to comply with this paragraph (3), consent of the individual who was the Participant's spouse on the Annuity Starting Date is required prior to recommencement if the Participant chooses to recommence benefits either in a different form than the form in which they were being distributed prior to the cessation of distributions or with a different Beneficiary and if:~~



~~(i) the original form was a qualified joint and survivor annuity within the meaning of Code Section 417(b), or~~

~~(ii) the individual who was the Participant's spouse on the Annuity Starting Date originally executed a specific consent to waive a qualified joint and survivor annuity within the meaning of Regulation 1.401(a)-20, A-31, and the Participant is still married to that individual when benefits recommence.~~

Notwithstanding the above, the Annuity Starting Date upon recommencement of benefits shall be the Annuity Starting Date when benefits originally commenced pursuant to paragraph (1) above.

With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2002, the Plan will apply the minimum distribution requirements of Code Section 401(a)(9) in accordance with the Regulations under Code Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final Regulations under Code Section 401(a)(9) or such other date specified in guidance published by the Internal Revenue Service.

(f) For purposes of this Section, the life expectancy of a Participant and a Participant's spouse (other than in the case of a life annuity) may, at the election of the Participant or the Participant's spouse, be redetermined in accordance with Regulations. The election, once made, shall be irrevocable. If no election is made by the time distributions must commence, then the life expectancy of the Participant and the Participant's spouse shall not be subject to recalculation. Life expectancy and joint and last survivor expectancy shall be computed using the return multiples in Tables V and VI of Regulation 1.72-9.

~~(g) Subject to the spouse's right of consent afforded under the Plan, the restrictions imposed by this Section shall not apply if a Participant has, prior to January 1, 1984, made a written designation to have retirement benefits paid in an alternative method acceptable under Code Section 401(a)(9) as in effect prior to the enactment of the Tax Equity and Fiscal Responsibility Act of 1982.~~

(h) All annuity Contracts under this Plan shall be non-transferable when distributed. Furthermore, the terms of any annuity Contract purchased and distributed to a Participant or spouse shall comply with all of the requirements of the Plan.

~~(i) If a distribution is made to a Participant who has not severed employment and who is not fully Vested in the Participant's Account and the Participant may increase the Vested percentage in such account, then, at any relevant time the Participant's Vested portion of the account will be equal to an amount ("X") determined by the formula:~~

$$\text{X equals } P(\text{AB plus D}) - D$$

~~For purposes of applying the formula: P is the Vested percentage at the relevant time, AB is the account balance at the relevant time, and D is the amount of distribution.~~

## **6.6 DISTRIBUTION OF BENEFITS UPON DEATH**

(a) ~~Unless otherwise elected as provided below,~~ a Vested Participant who dies before the Annuity Starting Date and who has a surviving spouse shall have the ~~Pre-Retirement Survivor Annuity~~ **BENEFIT** paid to the surviving spouse. The Participant's spouse may direct that payment of the ~~Pre-Retirement Survivor Annuity~~ **BENEFIT** commence within a reasonable period after the Participant's death. If the spouse does not so direct, payment of such benefit will commence at the time the Participant would have attained the later of Normal Retirement Age or age 62. However, the spouse may elect a later commencement date. Any distribution to the Participant's spouse shall be subject to the rules specified in Section 6.6(g)(C).

(b) ~~Any election to waive the Pre-Retirement Survivor Annuity before the Participant's death must be made by the Participant in writing (or in such other form as permitted by the Internal Revenue Service) during the election period and shall require the spouse's irrevocable consent in the same manner provided for in Section 6.5(a)(2). Further, the spouse's consent must acknowledge the specific nonspouse Beneficiary. Notwithstanding the foregoing, the nonspouse Beneficiary need not be acknowledged, provided the consent of the spouse acknowledges that the spouse has the right to limit consent only to a specific Beneficiary and that the spouse voluntarily elects to relinquish such right.~~

(c) ~~The election period to waive the Pre-Retirement Survivor Annuity shall begin on the first day of the Plan Year in which the Participant attains age thirty five (35) and end on the date of the Participant's death. An earlier waiver (with spousal consent) may be made provided a written (or in such other form as permitted by the Internal Revenue Service) explanation of the Pre-Retirement Survivor Annuity is given to the Participant and such waiver becomes invalid at the beginning of the Plan Year in which the Participant turns age thirty five (35). In the event a Vested Participant separates from service prior to the beginning of the election period, the election period shall begin on the date of such separation from service.~~

(d) ~~With regard to the election, the Administrator shall provide each Participant within the applicable period, with respect to such Participant (and consistent with Regulations), a written (or in such other form as permitted by the Internal Revenue Service) explanation of the Pre-Retirement Survivor Annuity containing comparable information to that required pursuant to Section 6.5(a)(5). For the purposes of this paragraph, the term "applicable period" means, with respect to a Participant, whichever of the following periods ends last:~~

(1) ~~The period beginning with the first day of the Plan Year in which the Participant attains age thirty two (32) and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age thirty five (35);~~

~~(2) — A reasonable period after the individual becomes a Participant;~~

~~(3) — A reasonable period ending after the Plan no longer fully subsidizes the cost of the Pre Retirement Survivor Annuity with respect to the Participant;~~

~~(4) — A reasonable period ending after Code Section 401(a)(11) applies to the Participant; or~~

~~(5) — A reasonable period after separation from service in the case of a Participant who separates before attaining age thirty five (35). For this purpose, the Administrator must provide the explanation beginning one (1) year before the separation from service and ending one (1) year after such separation. If such a Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be redetermined.~~

~~For purposes of applying this Section 6.6(d), a reasonable period ending after the enumerated events described in paragraphs (2), (3) and (4) is the end of the two (2) year period beginning one (1) year prior to the date the applicable event occurs, and ending one (1) year after that date.~~

~~(e) — If the present value of the Pre Retirement Survivor Annuity derived from Employer and Employee contributions does not exceed \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997) and, if the distribution is made prior to October 17, 2000, has never exceeded \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997) at the time of any prior distribution, then the Administrator shall direct the immediate distribution of the present value of the Pre Retirement Survivor Annuity to the Participant's spouse. No distribution may be made under the preceding sentence after the Annuity Starting Date unless the spouse consents in writing (or in such other form as permitted by the Internal Revenue Service) to such distribution. If the value exceeds \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997) or, if the distribution is made prior to October 17, 2000, has ever exceeded \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997) at the time of any prior distribution, then an immediate distribution of the entire amount of the Pre Retirement Survivor Annuity may be made to the surviving spouse, provided such surviving spouse consents in writing (or in such other form as permitted by the Internal Revenue Service) to such distribution. Any consent required under this paragraph must be obtained not more than ninety (90) days before commencement of the distribution and shall be made in a manner consistent with Section 6.5(a)(2).~~

~~(f) — (1) — To the extent the death benefit is not paid in the form of a Pre-Retirement Survivor Annuity, it **THE BENEFIT** shall be paid to the Participant's Beneficiary by either of the following methods **PROVIDED FOR IN SECTION 6.5**, as elected by the Participant (or if no election has been made prior to the Participant's death, by the Participant's Beneficiary), subject to the rules specified in Section 6.6(g):~~

~~(i) — One lump sum payment in cash.~~

~~(ii) — Payment in monthly, quarterly, semi-annual, or annual cash installments over a period to be determined by the Participant or the Participant's Beneficiary. After periodic installments commence, the Beneficiary shall have the right to direct the Trustee to reduce the period over which such periodic installments shall be made, and the Trustee shall adjust the cash amount of such periodic installments accordingly.~~

~~(2) — In the event the death benefit payable pursuant to Section 6.2 is payable in installments, then, upon the death of the Participant, the Administrator may direct the Trustee to segregate the death benefit into a separate account, and the Trustee shall invest such segregated account separately, and the funds accumulated in such account shall be used for the payment of the installments.~~

~~(g) — (C) Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant shall be made in accordance with the following requirements and shall otherwise comply with Code Section 401(a)(9) and the Regulations thereunder. If the death benefit is paid in the form of a Pre-Retirement Survivor Annuity, then distributions to the Participant's surviving spouse must commence on or before the later of: (1) December 31st of the calendar year immediately following the calendar year in which the Participant died; or (2) December 31st of the calendar year in which the Participant would have attained age 70 1/2. If it is determined, pursuant to Regulations, that the distribution of a Participant's interest has begun and the Participant dies before the entire interest has been distributed, the remaining portion of such interest shall be distributed at least as rapidly as under the method of distribution selected pursuant to Section 6.5 as of the date of death. If a Participant dies before receiving any distributions of the interest in the Plan or before distributions are deemed to have begun pursuant to Regulations (and distributions are not to be made in the form of a Pre-Retirement Survivor Annuity), then the death benefit shall be distributed to the Participant's Beneficiaries by December 31st of the calendar year in which the fifth anniversary of the Participant's date of death occurs.~~

However, the 5-year distribution requirement of the preceding paragraph shall not apply to any portion of the deceased Participant's interest which is payable to or for the benefit of a designated Beneficiary. In such event, such portion may, at the election of the Participant (or the Participant's designated Beneficiary), be distributed over the life of such designated Beneficiary (or over a period not extending beyond the life expectancy of such designated Beneficiary) provided such distribution begins not later than December 31st of the calendar year immediately following the calendar year in which the Participant died. However, in the event the Participant's spouse (determined as of the date of the Participant's death) is the designated Beneficiary, the requirement that distributions commence within one year of a Participant's death shall not apply. In lieu thereof, distributions must commence on or before the later of: (1) December 31st of the calendar year immediately following the calendar year in which the Participant died; or (2) December 31st of the calendar year in which the Participant would have attained age 70 $\frac{1}{2}$ . If the surviving spouse dies before distributions to such spouse begin, then the 5-year distribution requirement of this Section shall apply as if the spouse was the Participant.

~~(h)~~**(D)** For purposes of Section 6.6~~(g)~~**(C)**, the election by a designated Beneficiary to be excepted from the 5-year distribution requirement must be made no later than December 31st of the calendar year following the calendar year of the Participant's death. Except, however, with respect to a designated Beneficiary who is the Participant's surviving spouse, the election must be made by the earlier of, (1) December 31st of the calendar year immediately following the calendar year in which the Participant died or, if later, December 31st of the calendar year in which the Participant would have attained age 70  $\frac{1}{2}$ ; or (2) December 31st of the calendar year which contains the fifth anniversary of the date of the Participant's death. An election by a designated Beneficiary must be in writing (or in such other form as permitted by the Internal Revenue Service) and shall be irrevocable as of the last day of the election period stated herein. In the absence of an election by the Participant or a designated Beneficiary, the 5-year distribution requirement shall apply.

~~(i)~~**(E)** For purposes of this Section, the life expectancy of a Participant and a Participant's spouse (other than in the case of a life annuity) may, at the election of the Participant or the Participant's spouse, be redetermined in accordance with Regulations. The election, once made, shall be irrevocable. If no election is made by the time distributions must commence, then the life expectancy of the Participant and the Participant's spouse shall not be subject to recalculation. Life expectancy and joint and last survivor expectancy shall be computed using the return multiples in Tables V and VI of Regulation 1.72-9.

~~(j)~~**(F)** For purposes of this Section, any amount paid to a child of the Participant will be treated as if it had been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.

~~(k)~~(G) Subject to the spouse's right of consent afforded under the Plan, the restrictions imposed by this Section shall not apply if a Participant has, prior to January 1, 1984, made a written designation to have death benefits paid in an alternative method acceptable under Code Section 401(a)(9) as in effect prior to the enactment of the Tax Equity and Fiscal Responsibility Act of 1982.

## **6.7 TIME OF SEGREGATION OR DISTRIBUTION**

Except as limited by Sections 6.5 and 6.6, whenever the Trustee is to make a distribution or to commence a series of payments the distribution or series of payments may be made or begun on such date or as soon thereafter as is practicable. However, unless a Former Participant elects in writing to defer the receipt of benefits (such election may not result in a death benefit that is more than incidental), the payment of benefits shall begin not later than the sixtieth (60th) day after the close of the Plan Year in which the latest of the following events occurs: (a) the date on which the Participant attains the earlier of age 65 or the Normal Retirement Age specified herein; (b) the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan; or (c) the date the Participant terminates service with the Employer.

Notwithstanding the foregoing, the failure of a Participant and, if applicable, the Participant's spouse, to consent to a distribution that is "immediately distributable" (within the meaning of Section 6.5), shall be deemed to be an election to defer the commencement of payment of any benefit sufficient to satisfy this Section.

## **6.8 DISTRIBUTION FOR MINOR OR INCOMPETENT BENEFICIARY**

In the event a distribution is to be made to a minor or incompetent Beneficiary, then the Administrator may direct that such distribution be paid to the legal guardian, or if none in the case of a minor Beneficiary, to a parent of such Beneficiary or a responsible adult with whom the Beneficiary maintains residence, or to the custodian for such Beneficiary under the Uniform Gift to Minors Act or Gift to Minors Act, if such is permitted by the laws of the state in which said Beneficiary resides. Such a payment to the legal guardian, custodian or parent of a minor Beneficiary shall fully discharge the Trustee, Employer, and Plan from further liability on account thereof.

## **6.9 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN**

In the event that all, or any portion, of the distribution payable to a Participant or Beneficiary hereunder shall, at the later of the Participant's attainment of age 62 or Normal Retirement Age, remain unpaid solely by reason of the inability of the Administrator, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, to ascertain the whereabouts of such Participant or Beneficiary, the amount so distributable shall be treated as a Forfeiture pursuant to the Plan. Notwithstanding the foregoing, effective January 1, 2001, or if later, the adoption date of this amendment and restatement, if the value of a Participant's Vested benefit derived from Employer and Employee contributions does not exceed \$5,000 (\$3,500 for Plan Years beginning prior to ~~August 6, 1997~~ **JANUARY 1, 1998**), then the amount distributable may, in the sole discretion of the Administrator, either be treated as a Forfeiture, or be paid directly to an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b) at the time it is determined that the whereabouts of the Participant or the Participant's Beneficiary cannot be ascertained. In the event a Participant or Beneficiary is located subsequent to the Forfeiture, such benefit shall be restored, first from Forfeitures, if any, and then from an additional Employer contribution if necessary. However, regardless of the preceding, a benefit which is lost by reason of escheat under applicable state law is not treated as a Forfeiture for purposes of this Section nor as an impermissible forfeiture under the Code.

#### **6.10 ~~QUALIFIED~~ ELIGIBLE DOMESTIC RELATIONS ORDER DISTRIBUTION**

All rights and benefits, including elections, provided to a Participant in this Plan shall be subject to the rights afforded to any "alternate payee" under a ~~N~~ "qualified **ELIGIBLE** domestic relations order." Furthermore, a distribution to an "alternate payee" shall be permitted if such distribution is authorized by a ~~N~~ "qualified **ELIGIBLE** domestic relations order," even if the affected Participant has not separated from service and has not reached the "earliest retirement age" under the Plan. For the purposes of this Section, "alternate payee," "qualified **ELIGIBLE** domestic relations order" and "earliest retirement age" shall have the meaning set forth under ~~Code Section 414(p)~~ **MICHIGAN LAW.**

#### **6.11 IRC MINIMUM DISTRIBUTION REQUIREMENTS**

**DISTRIBUTIONS FROM THE PLAN SHALL COMPLY WITH THE REQUIREMENTS OF IRC § 401(A)(9) AND THE REGULATIONS THEREUNDER. A PARTICIPANT'S INTEREST IN THE TRUST MUST BEGIN TO BE DISTRIBUTED BY THE LATER OF (I) APRIL 1 OF THE CALENDAR YEAR FOLLOWING THE CALENDAR YEAR**

THAT THE PARTICIPANT ATTAINS THE AGE OF 70½, OR (II) APRIL 1 OF THE CALENDAR YEAR THE PARTICIPANT RETIRES.

(A) EFFECTIVE DATE. THE PROVISIONS OF THIS SECTION WILL APPLY FOR PURPOSES OF DETERMINING REQUIRED MINIMUM DISTRIBUTIONS FOR CALENDAR YEARS BEGINNING WITH THE 2003 CALENDAR YEAR.

(B) PRECEDENCE. THE REQUIREMENTS OF THIS SECTION WILL TAKE PRECEDENCE OVER ANY INCONSISTENT PROVISIONS OF THE PLAN.

(C) REQUIREMENTS OF TREASURY REGULATIONS INCORPORATED. ALL DISTRIBUTIONS REQUIRED UNDER THIS SECTION SHALL BE DETERMINED AND MADE IN ACCORDANCE WITH THE TREASURY REGULATIONS UNDER SECTION 401(A)(9) OF THE INTERNAL REVENUE CODE.

(D) TEFRA SECTION 242(B)(2) ELECTIONS. NOTWITHSTANDING THE OTHER PROVISIONS OF THIS SECTION, OTHER THAN PARAGRAPH (C), DISTRIBUTIONS MAY BE MADE UNDER A DESIGNATION MADE ON OR BEFORE JANUARY 1, 1984 IN ACCORDANCE WITH SECTION 242(B)(2) OF THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT (TEFRA) AND THE PROVISIONS OF THE PLAN THAT RELATE TO SECTION 242(B)(2) OF TEFRA.

TIME AND MANNER OF DISTRIBUTION

(E) 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.

(F) 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:

(I) IF THE PARTICIPANT'S SURVIVING SPOUSE IS THE PARTICIPANT'S SOLE DESIGNATED BENEFICIARY, THEN, EXCEPT AS PROVIDED IN THE PLAN, 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.

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(II) IF THE PARTICIPANT'S SURVIVING SPOUSE IS NOT THE PARTICIPANT'S SOLE DESIGNATED BENEFICIARY, THEN, EXCEPT AS PROVIDED IN THE PLAN, DISTRIBUTIONS TO THE DESIGNATED BENEFICIARY WILL BEGIN BY DECEMBER 31 OF THE CALENDAR YEAR IMMEDIATELY FOLLOWING THE CALENDAR YEAR IN WHICH THE PARTICIPANT DIED.

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(III) 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.

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(IV) IF THE PARTICIPANT'S SURVIVING SPOUSE IS THE PARTICIPANT'S SOLE DESIGNATED BENEFICIARY AND THE SURVIVING SPOUSE DIES AFTER THE PARTICIPANT BUT BEFORE DISTRIBUTIONS TO THE SURVIVING SPOUSE BEGIN, THIS PARAGRAPH (F) WILL APPLY, OTHER THAN PARAGRAPH (F)(I), AS IF THE SURVIVING SPOUSE WERE THE PARTICIPANT.

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FOR PURPOSES OF PARAGRAPH (F) AND PARAGRAPHS (K), (L) AND (M), DISTRIBUTIONS ARE CONSIDERED TO BEGIN ON THE PARTICIPANT'S REQUIRED BEGINNING DATE (OR, IF PARAGRAPH (F)(IV) APPLIES, THE DATE DISTRIBUTIONS ARE REQUIRED TO BEGIN TO THE SURVIVING SPOUSE UNDER PARAGRAPH (F)(I)). IF ANNUITY PAYMENTS 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 PARAGRAPH (F)(I)), THE DATE DISTRIBUTIONS ARE CONSIDERED TO BEGIN IS THE DATE DISTRIBUTIONS ACTUALLY COMMENCE.

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(G) FORM 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 PARAGRAPHS (H) THROUGH (M) OF THIS SECTION. 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 IRC AND THE TREASURY REGULATIONS. ANY PART OF THE PARTICIPANT'S INTEREST WHICH IS IN THE FORM OF AN INDIVIDUAL ACCOUNT DESCRIBED IN SECTION 414(K) OF THE IRC WILL BE DISTRIBUTED IN A MANNER SATISFYING THE REQUIREMENTS OF SECTION 401(A)(9) OF THE IRC AND THE TREASURY REGULATIONS THAT APPLY TO INDIVIDUAL ACCOUNTS.

DETERMINATION OF AMOUNT TO BE DISTRIBUTED EACH YEAR.

(H) GENERAL ANNUITY REQUIREMENTS. IF THE PARTICIPANT'S INTEREST IS PAID IN THE FORM OF ANNUITY DISTRIBUTIONS UNDER THE PLAN, PAYMENTS UNDER THE ANNUITY WILL SATISFY THE FOLLOWING REQUIREMENTS:

(I) THE ANNUITY DISTRIBUTIONS WILL BE PAID IN PERIODIC PAYMENTS MADE AT INTERVALS NOT LONGER THAN ONE YEAR;

(II) THE DISTRIBUTION PERIOD WILL BE OVER A LIFE (OR LIVES) OR OVER A PERIOD CERTAIN NOT LONGER THAN THE PERIOD DESCRIBED IN PARAGRAPHS (K) THROUGH (M);

(III) ONCE PAYMENTS HAVE BEGUN OVER A PERIOD CERTAIN, THE PERIOD CERTAIN WILL NOT BE CHANGED EVEN IF THE PERIOD CERTAIN IS SHORTER THAN THE MAXIMUM PERMITTED

(I) AMOUNT REQUIRED TO BE DISTRIBUTED BY REQUIRED BEGINNING DATE. THE AMOUNT THAT MUST BE DISTRIBUTED ON OR BEFORE THE PARTICIPANT'S REQUIRED BEGINNING DATE OR, IF THE PARTICIPANT DIES BEFORE DISTRIBUTIONS BEGIN, THE DATE DISTRIBUTIONS ARE REQUIRED TO BEGIN UNDER PARAGRAPHS (F)(I) OR (II) IS THE PAYMENT THAT IS REQUIRED FOR ONE PAYMENT INTERVAL. THE SECOND PAYMENT NEED NOT BE MADE UNTIL THE END OF THE NEXT PAYMENT INTERVAL EVEN IF THAT PAYMENT INTERVAL ENDS IN THE NEXT CALENDAR YEAR. PAYMENT INTERVALS ARE THE PERIODS FOR WHICH PAYMENTS ARE RECEIVED, E.G., BI-MONTHLY, MONTHLY, SEMI-ANNUALLY, OR ANNUALLY. ALL OF THE PARTICIPANT'S BENEFIT ACCRUALS AS OF THE LAST DAY OF THE FIRST DISTRIBUTION CALENDAR YEAR WILL BE INCLUDED IN THE CALCULATION OF THE AMOUNT OF THE ANNUITY PAYMENTS FOR

**PAYMENT INTERVALS ENDING ON OR AFTER THE PARTICIPANT'S  
REQUIRED BEGINNING DATE.**

- (J) ADDITIONAL ACCRUALS AFTER FIRST DISTRIBUTION CALENDAR YEAR. ANY ADDITIONAL BENEFITS ACCRUING TO THE PARTICIPANT IN A CALENDAR YEAR AFTER THE FIRST DISTRIBUTION CALENDAR YEAR WILL BE DISTRIBUTED BEGINNING WITH THE FIRST PAYMENT INTERVAL ENDING IN THE CALENDAR YEAR IMMEDIATELY FOLLOWING THE CALENDAR YEAR IN WHICH SUCH AMOUNT ACCRUES.**

**REQUIREMENTS FOR MINIMUM DISTRIBUTIONS WHERE PARTICIPANT DIES BEFORE DATE DISTRIBUTIONS BEGIN.**

- (K) PARTICIPANT SURVIVED BY DESIGNATED BENEFICIARY. IF THE PARTICIPANT DIES BEFORE THE DATE DISTRIBUTION OF HIS OR HER INTEREST BEGINS AND THERE IS A DESIGNATED BENEFICIARY, THE PARTICIPANT'S ENTIRE INTEREST WILL BE DISTRIBUTED, BEGINNING NO LATER THAN THE TIME DESCRIBED IN PARAGRAPHS (F)(I) OR (II), OVER THE LIFE OF THE DESIGNATED BENEFICIARY OR OVER A PERIOD CERTAIN NOT EXCEEDING:**

**(I) UNLESS THE ANNUITY STARTING DATE IS BEFORE THE FIRST DISTRIBUTION CALENDAR YEAR, THE LIFE EXPECTANCY OF THE DESIGNATED BENEFICIARY DETERMINED USING THE BENEFICIARY'S AGE AS OF THE BENEFICIARY'S BIRTHDAY IN THE CALENDAR YEAR IMMEDIATELY FOLLOWING THE CALENDAR YEAR OF THE PARTICIPANT'S DEATH; OR**

**(II) IF THE ANNUITY STARTING DATE IS BEFORE THE FIRST DISTRIBUTION CALENDAR YEAR, THE LIFE EXPECTANCY OF THE DESIGNATED BENEFICIARY DETERMINED USING THE BENEFICIARY'S AGE AS OF THE BENEFICIARY'S BIRTHDAY IN THE CALENDAR YEAR THAT CONTAINS THE ANNUITY STARTING DATE.**

- (L) 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**

- (M) DEATH OF SURVIVING SPOUSE BEFORE DISTRIBUTIONS TO SURVIVING SPOUSE BEGIN. IF THE PARTICIPANT DIES BEFORE THE DATE DISTRIBUTION OF HIS OR HER INTEREST BEGINS, AND THE PARTICIPANT'S SURVIVING SPOUSE IS THE PARTICIPANT'S SOLE DESIGNATED BENEFICIARY, AND THE SURVIVING SPOUSE DIES BEFORE DISTRIBUTIONS TO THE SURVIVING SPOUSE BEGIN, THIS SECTION WILL APPLY AS IF THE SURVIVING SPOUSE WERE THE PARTICIPANT,**

**EXCEPT THAT THE TIME BY WHICH DISTRIBUTIONS MUST BEGIN WILL BE DETERMINED WITHOUT REGARD TO PARAGRAPH (F)(I).**

**DEFINITIONS.**

**(N) DESIGNATED BENEFICIARY. THE INDIVIDUAL WHO IS DESIGNATED AS THE BENEFICIARY UNDER THE PLAN AND IS THE DESIGNATED BENEFICIARY UNDER SECTION 401(A)(9) OF THE CODE AND SECTION 1.401(A)(9)-1, Q&A-4, OF THE TREASURY REGULATIONS.**

**(O) 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 PARAGRAPH (F).**

**(P) LIFE EXPECTANCY. LIFE EXPECTANCY AS COMPUTED BY USE OF THE SINGLE LIFE TABLE IN SECTION 1.401(A)(9)-9 OF THE TREASURY REGULATIONS.**

**(Q) REQUIRED BEGINNING DATE. THE DATE SPECIFIED IN THIS SECTION.**

**ARTICLE VII  
DIRECT ROLLOVERS**

**7.1 DIRECT ROLLOVER**

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a "distributee's" election under this Section, a "distributee" may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an "eligible rollover distribution" that is equal to at least \$500 paid directly to an "eligible retirement plan" specified by the "distributee" in a "direct rollover."

(b) For purposes of this Section the following definitions shall apply:

(1) An "eligible rollover distribution" is any distribution of all or any portion of the balance to the credit of the "distributee," except that an "eligible rollover distribution" does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the "distributee" or the joint lives (or joint life expectancies) of the "distributee" and the "distributee's" designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); ~~the portion of any other distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); any hardship distribution described in Code Section 401(k)(2)(B)(i)(IV); and any~~

other distribution that is reasonably expected to total less than \$200 during a year. **FOR PURPOSES OF THE DIRECT ROLLOVER PROVISION, A PORTION OF A DISTRIBUTION SHALL NOT FAIL TO BE AN ELIGIBLE ROLLOVER DISTRIBUTION MERELY BECAUSE THE PORTION CONSISTS OF AFTER-TAX EMPLOYEE CONTRIBUTIONS WHICH ARE NOT INCLUDIBLE IN GROSS INCOME. HOWEVER, SUCH PORTION MAY BE PAID ONLY TO AN INDIVIDUAL RETIREMENT ACCOUNT OR ANNUITY DESCRIBED IN IRC §408(A) OR (B), OR TO A QUALIFIED PLAN DESCRIBED IN IRC §§401(A) OR 403(B) THAT AGREES TO SEPARATELY ACCOUNT FOR AMOUNTS SO TRANSFERRED, INCLUDING SEPARATELY ACCOUNTING FOR THE PORTION OF SUCH DISTRIBUTION WHICH IS INCLUDIBLE IN GROSS INCOME AND THE PORTION OF SUCH DISTRIBUTION WHICH IS NOT SO INCLUDIBLE.**

(2) An “eligible retirement plan” is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), **AN ANNUITY CONTRACT DESCRIBED IN IRC §403(B), AN ELIGIBLE PLAN UNDER IRC §457 WHICH IS MAINTAINED BY A STATE, POLITICAL SUBDIVISION OF A STATE AND WHICH AGREES TO SEPARATELY ACCOUNT FOR AMOUNTS TRANSFERRED INTO SUCH PLAN OR A QUALIFIED TRUST DESCRIBED IN IRC §401(A), THAT ACCEPTS THE DISTRIBUTEES’ ELIGIBLE ROLLOVER DISTRIBUTION** or a qualified trust described in Code Section 401(a), that accepts the “distributee’s” “eligible rollover distribution.” However, in the case of an “eligible rollover distribution” to the surviving spouse, an “eligible retirement plan” is an individual retirement account or individual retirement annuity. **THE DEFINITION OF ELIGIBLE RETIREMENT PLAN SHALL ALSO APPLY IN THE CASE OF A DISTRIBUTION TO A SURVIVING SPOUSE OR TO A SPOUSE OR FORMER SPOUSE WHO IS THE ALTERNATE PAYEE UNDER A DOMESTIC RELATIONS ORDER.**

(3) A “distributee” includes an Employee or former Employee. In addition, the Employee’s or former Employee’s surviving spouse and the Employee’s or former Employee’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are “distributees” with regard to the interest of the spouse or former spouse.

(4) A “direct rollover” is a payment by the Plan to the “eligible retirement plan” specified by the “distributee.”

**(5) NOTWITHSTANDING ANY OTHER PLAN PROVISION, IN THE EVENT OF A MANDATORY DISTRIBUTION GREATER THAN \$1,000 IN ACCORDANCE WITH THE PROVISIONS OF SECTION 6.5, IF THE PARTICIPANT DOES NOT ELECT TO HAVE SUCH**

**DISTRIBUTION PAID DIRECTLY TO AN ELIGIBLE RETIREMENT PLAN SPECIFIED IN A DIRECT ROLLOVER OR TO RECEIVE THE DISTRIBUTION DIRECTLY, THEN THE PLAN ADMINISTRATOR WILL PAY THE DISTRIBUTION IN A DIRECT ROLLOVER TO AN INDIVIDUAL RETIREMENT PLAN DESIGNATED BY THE PLAN ADMINISTRATOR.**

**ARTICLE VIII  
AMENDMENT, TERMINATION AND MERGERS**

**8.1 AMENDMENT**

(a) The Employer shall have the right at any time to amend this Plan, subject to the limitations of this Section. However, any amendment which affects the rights, duties or responsibilities of the Trustee or Administrator may only be made with the Trustee's or Administrator's written consent. Any such amendment shall become effective as provided therein upon its execution. The Trustee shall not be required to execute any such amendment unless the amendment affects the duties of the Trustee hereunder.

(b) No amendment to the Plan shall be effective if it authorizes or permits any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries or estates; or causes any reduction in the amount credited to the account of any Participant; or causes or permits any portion of the Trust Fund to revert to or become property of the Employer.

(c) Except as permitted by Regulations (including Regulation 1.411(d)-4 or other IRS guidance, no Plan amendment or transaction having the effect of a Plan amendment (such as a merger, plan transfer or similar transaction) shall be effective if it eliminates or reduces any "Section 411(d)(6) protected benefit" or adds or modifies conditions relating to "Section 411(d)(6) protected benefits" which results in a further restriction on such benefits unless such "Section 411(d)(6) protected benefits" are preserved with respect to benefits accrued as of the later of the adoption date or effective date of the amendment. "Section 411(d)(6) protected benefits" are benefits described in Code Section 411(d)(6)(A), early retirement benefits and retirement-type subsidies, and optional forms of benefit. A Plan amendment that eliminates or restricts the ability of a Participant to receive payment of the Participant's interest in the Plan under a particular optional form of benefit will be permissible if the amendment satisfies the conditions in (1) and (2) below:

(1) The amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit eliminated or restricted. For purposes of this condition (1), a single-sum distribution form is otherwise identical only if it is identical in all respects to the eliminated or restricted optional form of

benefit (or would be identical except that it provides greater rights to the Participant) except with respect to the timing of payments after commencement.

(2) The amendment is not effective unless the amendment provides that the amendment shall not apply to any distribution with an Annuity Starting Date earlier than the earlier of: (i) the ninetieth (90th) day after the date the Participant receiving the distribution has been furnished a summary that reflects the amendment or (ii) the first day of the second Plan Year following the Plan Year in which the amendment is adopted.

## **8.2 TERMINATION**

(a) The Employer shall have the right at any time to terminate the Plan by delivering to the Trustee and Administrator written notice of such termination. Upon any full or partial termination, all amounts credited to the affected Participants' Accounts shall become 100% Vested as provided in Section 6.4 and shall not thereafter be subject to forfeiture, and all unallocated amounts, including Forfeitures, shall be allocated to the accounts of all Participants in accordance with the provisions hereof.

(b) Upon the full termination of the Plan, the Employer shall direct the distribution of the assets of the Trust Fund to Participants in a manner which is consistent with and satisfies the provisions of Section 6.6. Distributions to a Participant shall be made in cash or through the purchase of irrevocable nontransferable deferred commitments from an insurer. Except as permitted by Regulations, the termination of the Plan shall not result in the reduction of "Section 411(d)(6) protected benefits" in accordance with Section 8.1(c).

## **8.3 MERGER, CONSOLIDATION OR TRANSFER OF ASSETS**

This Plan and Trust may be merged or consolidated with, or its assets and/or liabilities may be transferred to any other plan and trust only if the benefits which would be received by a Participant of this Plan, in the event of a termination of the Plan immediately after such transfer, merger or consolidation, are at least equal to the benefits the Participant would have received if the Plan had terminated immediately before the transfer, merger or consolidation, and such transfer, merger or consolidation does not otherwise result in the elimination or reduction of any "Section 411(d)(6) protected benefits" in accordance with Section 8.1(c).

# **ARTICLE IX MISCELLANEOUS**

## **9.1 PARTICIPANTS RIGHTS**

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

## 9.2 ALIENATION

(a) Subject to the exceptions provided below, and as otherwise permitted by the Code, no benefit which shall be payable out of the Trust Fund to any person (including a Participant or the Participant's Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized by the Trustee, except to such extent as may be required by law.

(b) Subsection (a) shall not apply to a ~~“qualified domestic relations order” defined in Code Section 414(p), and those other domestic relations orders permitted to be so treated by the Administrator under the provisions of the Retirement Equity Act of 1984.~~ **ADOPTED IN ACCORDANCE WITH MICHIGAN LAW.** The Administrator shall establish a written procedure to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Further, to the extent provided under a ~~“qualified~~ **AN “ELIGIBLE** domestic relations order,” **UNDER MICHIGAN PUBLIC ACT 46 OF 1991, AS AMENDED,** a former spouse of a Participant shall be treated as the spouse or surviving spouse for all purposes under the Plan.

~~(c) — Subsection (a) shall not apply to an offset to a Participant's accrued benefit against an amount that the Participant is ordered or required to pay the Plan with respect to a judgment, order, or decree issued, or a settlement entered into, on or after August 5, 1997, in accordance with Code Sections 401(a)(13)(C) and (D). In a case in which the survivor annuity requirements of Code Section 401(a)(11) apply with respect to distributions from the Plan to the Participant, if the Participant has a spouse at the time at which the offset is to be made:~~

~~(1) — either such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the Plan (or it is established to the satisfaction of a Plan representative that such consent may not be obtained by reason of circumstances described in Code Section 417(a)(2)(B)), or an election to waive the right of the spouse to either a qualified joint and survivor annuity or a qualified pre-retirement survivor annuity is in effect in accordance with the requirements of Code Section 417(a);~~



~~(2) such spouse is ordered or required in such judgment, order, decree or settlement to pay an amount to the Plan in connection with a violation of fiduciary duties, or~~

~~(3) in such judgment, order, decree or settlement, such spouse retains the right to receive the survivor annuity under a qualified joint and survivor annuity provided pursuant to Code Section 401(a)(11)(A)(i) and under a qualified pre-retirement survivor annuity provided pursuant to Code Section 401(a)(11)(A)(ii).~~

### **9.3 CONSTRUCTION OF PLAN**

This Plan and Trust shall be construed and enforced according to the Code and Regulations that apply to governmental entities and the laws of the State of Michigan.

### **9.4 GENDER AND NUMBER**

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

### **9.5 LEGAL ACTION**

In the event any claim, suit, or proceeding is brought regarding the Trust and/or Plan established hereunder to which the Trustee, the Employer or the Administrator may be a party, and such claim, suit, or proceeding is resolved in favor of the Trustee, the Employer or the Administrator, they shall be entitled to be reimbursed from the Trust Fund for any and all costs, attorney's fees, and other expenses pertaining thereto incurred by them for which they shall have become liable.

### **9.6 PROHIBITION AGAINST DIVERSION OF FUNDS**

(a) Except as provided below and otherwise specifically permitted by law, it shall be impossible by operation of the Plan or of the Trust, by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of any Trust Fund maintained pursuant to the Plan or any funds contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Participants, Former Participants, or their Beneficiaries.

(b) In the event the Employer shall make an excessive contribution under a mistake of fact, the Employer may demand repayment of such excessive contribution at any time within one (1) year following the time of payment and the Trustees shall return such amount to the Employer within the one (1) year period. Earnings of the Plan

attributable to the contributions may not be returned to the Employer but any losses attributable thereto must reduce the amount so returned.

## **9.7 BONDING**

~~Every Fiduciary, except a bank or an insurance company, shall be bonded in an amount not less than 10% of the amount of the funds such Fiduciary handles; provided, however, that the minimum bond shall be \$1,000 and the maximum bond, \$500,000. The amount of funds handled shall be determined at the beginning of each Plan Year by the amount of funds handled by such person, group, or class to be covered and their predecessors, if any, during the preceding Plan Year, or if there is no preceding Plan year, then by the amount of the funds to be handled during the then current year. The bond shall provide protection to the Plan against any loss by reason of acts of fraud or dishonesty by the Fiduciary alone or in connivance with others. The surety shall be a corporate surety company. Notwithstanding anything in the Plan to the contrary, the cost of such bonds shall be an expense of and may, at the election of the Administrator, be paid from the Trust Fund or by the Employer.~~ **RESERVED**

## **9.8 EMPLOYER'S AND TRUSTEE'S PROTECTIVE CLAUSE**

The Employer, Administrator and Trustee, and their successors, shall not be responsible for the validity of any Contract issued hereunder or for the failure on the part of the insurer to make payments provided by any such Contract, or for the action of any person which may delay payment or render a Contract null and void or unenforceable in whole or in part.

## **9.9 INSURER'S PROTECTIVE CLAUSE**

Except as otherwise agreed upon in writing between the Employer and the insurer, an insurer which issues any Contracts hereunder shall not have any responsibility for the validity of this Plan or for the tax or legal aspects of this Plan. The insurer shall be protected and held harmless in acting in accordance with any written direction of the Trustee, and shall have no duty to see to the application of any funds paid to the Trustee, nor be required to question any actions directed by the Trustee. Regardless of any provision of this Plan, the insurer shall not be required to take or permit any action or allow any benefit or privilege contrary to the terms of any Contract which it issues hereunder, or the rules of the insurer.

## **9.10 RECEIPT AND RELEASE FOR PAYMENTS**

Any payment to any Participant, the Participant's legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of the Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Trustee and the Employer, either of whom may require such Participant, legal representative, Beneficiary, guardian or committee, as a condition precedent to such payment, to execute a receipt and release thereof in such form as shall be determined by the Trustee or Employer.

### **9.11 ACTION BY THE EMPLOYER**

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

### **9.12 NAMED FIDUCIARIES AND ALLOCATION OF RESPONSIBILITY**

The "named Fiduciaries" of this Plan are (1) the Employer, (2) the Administrator, (3) the Trustee and (4) any Investment Manager appointed hereunder. The named Fiduciaries shall have only those specific powers, duties, responsibilities, and obligations as are specifically given them under the Plan including, but not limited to, any agreement allocating or delegating their responsibilities, the terms of which are incorporated herein by reference. In general, the Employer shall have the sole responsibility for making the contributions provided for under Section 4.1; and shall have the authority to appoint and remove the Trustee and the Administrator; to formulate the Plan's "funding policy and method"; and to amend or terminate, in whole or in part, the Plan. The Administrator shall have the sole responsibility for the administration of the Plan, including, but not limited to, the items specified in Article II of the Plan, as the same may be allocated or delegated thereunder. The Trustee shall have the sole responsibility of management of the assets held under the Trust, except to the extent directed pursuant to Article II or with respect to those assets, the management of which has been assigned to an Investment Manager, who shall be solely responsible for the management of the assets assigned to it, all as specifically provided in the Plan. Each named Fiduciary warrants that any directions given, information furnished, or action taken by it shall be in accordance with the provisions of the Plan, authorizing or providing for such direction, information or action. Furthermore, each named Fiduciary may rely upon any such direction, information or action of another named Fiduciary as being proper under the Plan, and is not required under the Plan to inquire into the propriety of any such direction, information or action. It is intended under the Plan that each named Fiduciary shall be responsible for the proper exercise of its own powers, duties, responsibilities and obligations under the Plan as specified or allocated herein. No named Fiduciary shall guarantee the Trust Fund in any manner against investment loss or depreciation in asset value. Any person or group may serve in more than one Fiduciary capacity.

### **9.13 HEADINGS**

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

#### **9.14 APPROVAL BY INTERNAL REVENUE SERVICE**

Notwithstanding anything herein to the contrary, if, pursuant to an application for qualification filed by or on behalf of the Plan by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan is adopted, or such later date that the Secretary of the Treasury may prescribe, the Commissioner of Internal Revenue Service or the Commissioner's delegate should determine that the Plan does not initially qualify as a tax-exempt plan under Code Sections 401 and 501, and such determination is not contested, or if contested, is finally upheld, then if the Plan is a new plan, it shall be void ab initio and all amounts contributed to the Plan by the Employer, less expenses paid, shall be returned within one (1) year and the Plan shall terminate, and the Trustee shall be discharged from all further obligations. If the disqualification relates to an amended plan, then the Plan shall operate as if it had not been amended.

#### **9.15 UNIFORMITY**

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner. In the event of any conflict between the terms of this Plan and any Contract purchased hereunder, the Plan provisions shall control.

#### **~~9.16 WAIVER OF FUNDING~~**

~~(a) In the event that the minimum funding requirement for a particular Plan Year has been waived in whole or in part, then, an Adjusted Account Balance shall be established for each Participant which shall reflect the Account balance the Participant would have had, had the waived amount been contributed. The Adjusted Account Balance shall remain in effect until such time as the value of the Participant's Account equals the value of the Participant's Adjusted Account Balance:~~

~~(1) The excess of the value of each Participant's Adjusted Account Balance over the value of the Participant's Account balance will be credited with earnings equal to 150 percent of the Federal mid-term rate (as in effect under Code Section 1274 for the first month of such Plan Year).~~

~~(2) The waiver payment to be made by the Employer in the year after the waiver is granted shall at least equal the amount necessary to amortize over 5 years, at the appropriate interest rate, the excess of the sum of the Adjusted Account Balances over the total value of the Trust Fund attributable to Employer contributions. In the next year, the excess for such subsequent year, if any, is amortized over 4 years. In each succeeding year the amortization period is reduced by one year. The Employer may, however, make such larger payments at any time as the Employer shall deem appropriate.~~

~~(3) — An unallocated Waiver Suspense Account shall be created, to which shall be made all payments designed to reduce the waived deficiency. If at the time of a distribution, the non forfeitable portion of a Participant's Adjusted Account Balance exceeds that Participant's actual Account balance, that Participant will receive the larger amount to the extent that there are then funds in the unallocated Waiver Suspense Account to cover the excess. If at any time, a Participant may not be able to receive a total distribution of the entire non-forfeitable portion of the Participants Adjusted Account Balance, such Participant would receive subsequent distributions derived from future waiver payments.~~

~~(b) — When the total value of the Trust Fund equals the sum of the Adjusted Account Balances, the Waiver Suspense Account shall be allocated to the affected Participants so that each Participant's actual Account balance equals that Participant's Adjusted Account Balance.~~

{SIGNATURE PAGE FOLLOWS }