

THE PENSION COMPANY

CONSULTING ACTUARIES

2300 THREE GALLERIA TOWER

13155 NOEL ROAD

DALLAS, TEXAS 75240

(972) 404-1600

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1-800-661-401K

April 20, 2010

**Time
Sensitive**

Ms. Maribel Saenz
Hidalgo County - Community Service Agency
PO Box 204
Edinburg, TX 78540

**Re: Hidalgo County Affiliated Departments Retirement Plan
Retirement Plan Adoption and Submission to Internal Revenue Service**

Dear Ms. Saenz:

Please find enclosed, for your review and approval, an amended and restated plan document and trust including Internal Revenue Service forms that are necessary for submission when requesting a favorable determination letter.

Please review these materials and sign where indicated.

- Ring Binder containing Plan Document and Trust, Resolution and Amendment (Including amendments missing from our records), Summary Plan Description, Administration Guide and IRS submission forms - Please keep this in your records.
- Plastic folder marked "Sign and Return" - Please sign all of these materials where indicated and return them to us as soon as possible.

A copy of the Summary Plan Description (SPD) should be given to each participant. Future participants should receive a copy of this SPD within 90 days of becoming a participant of the plan.

Upon receipt of the determination letter, our office will forward you a copy along with any additional required documentation. Please call your plan administrator at the numbers listed above should you have any questions or require further details regarding these documents or the submission to the Internal Revenue Service. We appreciate the opportunity to be of service to you and your employees.

Regards,



Erin Christopher

Enclosures

Hidalgo County Affiliated Departments Retirement Plan

**Budget and Management Department
Conference Room
2818 S. Bus. HWY 281
Edinburg, Texas 78539
(956) 292-7025**

**AGENDA
April 22, 2010
10:30 am**

- I. CALL MEETING TO ORDER**
- II. ROLL CALL**
- III. OLD BUSINESS: Discussion and possible action on make-up of Affiliated Plan.**
- IV. NEW BUSINESS: Updating, Amending, and/or Reinstating The Hidalgo County Affiliated Departments Retirement Plan Document for New IRS Law Changes.**
- V. OTHER**
- VI. ADJOURN**



Hidalgo County Head Start Program

Memorandum

Date:

To:

From:

Subject:

C. C.

Salaries and fringe benefits account for 87.7% or \$21.2 million of our annual budget. The remaining 12.3% of the budget is utilized to pay for supplies, equipment, repairs, utilities, maintenance, gasoline, etc. It becomes very important that we monitor expenditures and find ways to maximize and prudently utilize all of our federal dollars.

For this reason we have conducted a comprehensive review of our expenses in the fringe benefits category. Our analysis reflects expenses in the pension administration area that are incurred by the plan but initiated by the plan participants/employees. These costs have been historically absorbed by the pension plan, and not by the participants.

The participant originated costs include:

- \$4,272.00 annually for participant distributions. When an employee leaves our employment there is a charge that is associated with accounting for whatever funds distribution he/she is entitled to.
- \$21,280.00 annually for loan maintenance. These are charges for making and maintaining employee's loans.
- \$8,704.00 annually, for color statements. This is the cost of printing the fund statement we receive on a quarterly basis.
- \$47,304.00 for participating in the retirement fund.

Starting in January 2010 each participant of the pension plan will be responsible for their share of these expenses. Under participant distribution, when an employee leaves the plan he/she will be charged the current fee of \$80.00 to cover the expenses for terminating their participation in the pension plan. All employees who currently have loans or will be requesting a loan will have to pay the current quarterly processing and maintenance fee of \$20.00. Employees who chose to receive paper statement will have to pay the existing fee of \$2.30 per statement, each quarter. Receiving a quarterly statement is no longer necessary, employees can log on to the internet and print the information they need free of charge.

Each employee will pay for one half (\$6.25) of the participant's fee of \$12.50 per quarter. This measure will reduce the fee charged to plan by \$6.25 per employee per quarter. The other half (\$6.25) will be paid by the plan.

These new initiatives will save the Head Start Program approximately \$81,560 annually. The savings realized will be better utilized on more direct services to children and families of Head Start.

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DALLAS, TEXAS 75240

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FAX 972-404-1300

1-800-661-401K

Ms. Janie Vernon

Hidalgo County - Head Start Program

P.O. Box 0117

Edinburg, Texas 78540

DATE

INVOICE #

4/20/2010

44077

 COPY

STATEMENT FOR SERVICES RENDERED

DESCRIPTION	AMOUNT
Remaining Balance Due for Amending and Restating Hidalgo County Affiliated Departments Retirement Plan for New Law Changes	2,000.00
IRS Submission User Fee Illustrated on Form 8717	300.00
Please call Ginger Flynn at (972) 404-1600 should you have any questions regarding this billing.	Total \$2,300.00

Please make payments to:
THE PENSION COMPANY
13155 Noel Road, Suite 2300
Dallas, Texas 75240

**HIDALGO COUNTY AFFILIATED DEPARTMENTS
RETIREMENT PLAN**

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**HIDALGO COUNTY AFFILIATED DEPARTMENTS
RETIREMENT PLAN**

THIS AGREEMENT, hereby made and entered into this 21st day of April, 2010 by and between County of Hidalgo Community Service Agency; Hidalgo County Urban County Program; and Hidalgo County Head Start (herein referred to as the "Employer") and Rene A. Ramirez, Teresa Flores, Diana R. Serna and Maribel Navarro-Saena (herein referred to as the "Trustee").

W I T N E S S E T H:

WHEREAS, the Employer heretofore established a 401(k) Plan and Trust effective January 1, 1993, (hereinafter called the "Effective Date") known as County of Hidalgo Urban County Retirement Plan and which plan shall hereinafter be known as Hidalgo County Affiliated Departments Retirement 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 January 1, 2010, except as otherwise provided herein, 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:

**ARTICLE I
DEFINITIONS**

1.1 "Account" means any separate notational account established and maintained by the Administrator for each Participant under the Plan. The term "Participant's Account" or "Participant's Account Balance" generally means the sum of all Accounts being maintained for the Participant, which represents the Participant's total interest in the Plan. Section 6.8 contains a definition of "Participant's Account Balance" for purposes of that Section. To the extent applicable, a Participant may have any (or all) of the following notational Accounts:

- (a) the Elective Deferral Account
- (b) the Matching Contribution Account
- (c) the Nonelective Contribution Account
- (d) the Qualified Matching Contribution Account
- (e) the Qualified Nonelective Contribution Account
- (f) the Rollover Account
- (g) the Transfer Account
- (h) any other account, including an overlapping account or sub-account, necessary for the administration of the Plan

1.2 "ACP" means the actual contribution percentage that is equal to, for a specific group of Participants (either Highly Compensated Employees or Nonhighly Compensated Employees) for a Plan Year, the average of the ACRs (calculated separately for each Participant in such group). The ACP for each group shall be calculated to the nearest one-hundredth of one percent.

For purposes of computing an ACP, a Participant is an Eligible Employee who is eligible to have Matching Contributions or Qualified Matching Contributions made pursuant to Section 4.1(b) (whether or not a deferral election was made) allocated to such Participant's Matching Contribution Account or Qualified Matching Contribution Account for a "specific Plan Year". In addition, if an Employee contribution is required as a condition of participation in the Plan, any Employee who would be a Participant in the Plan if such Employee made such a contribution shall be treated (for purposes of the ACP test) as an eligible Participant on behalf of whom no Employee contributions are made. However, if a Participant has no 414(s) Compensation for the Plan Year, then such Participant shall be disregarded for purposes of calculating the ACP of a group.

For purposes of the above paragraph, the term "specific Plan Year" means, for Participants who are Highly Compensated Employees, the Plan Year being tested. If the current year testing method is being used, then the term "specific Plan Year" means, for Participants who are Nonhighly Compensated Employees, the Plan Year being tested. If the prior year testing method is being used, then the term "specific Plan Year" means, for Participants who are Nonhighly Compensated Employees, the Plan Year prior to the Plan Year being tested.

1.3 "ACP Test" means the actual contribution percentage test determined pursuant to Section 4.7.

1.4 "ACR" means the actual contribution ratio of each Participant, that is a ratio (expressed as a percentage) equal to (1) the Contribution Percentage Amounts of such Participant for such Plan Year, to (2) such Participant's 414(s) Compensation for such Plan Year.

Matching Contributions, Qualified Matching Contributions and Qualified Nonelective Contributions will be considered made for a Plan Year if made no later than the end of the twelve (12) month period beginning on the date after the close of the Plan Year.

The ACR for each Participant shall be calculated to the nearest one-hundredth of one percent.

1.5 "Act" means the Employee Retirement Income Security Act of 1974, as it may be amended from time to time.

1.6 "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. "Administrator" also includes any Qualified Termination Administrator (QTA) that has assumed the responsibilities of the Administrator in accordance with guidelines set forth by the Department of Labor.

1.7 "ADP" means the actual deferral percentage that is equal to, for a specific group of Participants (either Highly Compensated Employees or Nonhighly Compensated Employees) for a Plan Year, the average of the ADRs (calculated separately for each Participant in such group). The ADP for each group shall be calculated to the nearest one-hundredth of one percent.

For purposes of computing an ADP, a Participant is an Eligible Employee who is eligible to make Elective Deferrals pursuant to Section 4.2 (whether or not a deferral election was made) allocated to the Participant's Elective Deferral Account for a "specific Plan Year." However, if a Participant has no 414(s) Compensation for the Plan Year, then such Participant shall be disregarded for purposes of calculating the ADP of a group.

For purposes of the above paragraph, the term "specific Plan Year" means, for Participants who are Highly Compensated Employees, the Plan Year being tested. If the current year testing method is being used, then the term "specific Plan Year" means, for Participants who are Nonhighly Compensated Employees, the Plan Year being tested. If the prior year testing method is being used, then the term "specific Plan Year" means, for Participants who are Nonhighly Compensated Employees, the Plan Year prior to the Plan Year being tested.

1.8 "ADP Test" means the actual deferral percentage test determined pursuant to Section 4.5.

1.9 "ADR" means the actual deferral ratio of each Participant, that is a ratio (expressed as a percentage) equal to (1) the amount of Employer contributions actually paid over to the Plan on behalf of such Participant for such Plan Year, to (2) such Participant's 414(s) Compensation for such Plan Year.

For purposes of this definition of ADR, Employer contributions actually paid over to the Plan on behalf of any Participant shall include: (a) any Elective Deferrals made pursuant to the Participant's deferral election (including Excess Deferrals of any Highly Compensated Employee), but excluding (1) Excess Deferrals of any Nonhighly Compensated Employee that arise solely from Elective Deferrals made under this Plan or any other plans maintained by the Employer, and (2) Elective Deferrals that are taken into account in the ACP Test set forth in Section 4.7 (provided that the ADP Test is satisfied both with and without the exclusion of these Elective Deferrals); and (b) at the election of the Employer, Qualified Nonelective Contributions and Qualified Matching Contributions to the extent such contributions are not used to satisfy the ACP Test, as well as any contributions authorized by (and to the extent prescribed by) Section 4.6(c).

For purposes of computing a Participant's ADR, an Eligible Employee who would be a Participant but for the failure to make Elective Deferrals shall be treated as a Participant on whose behalf no Elective Deferrals are made.

The ADR for each Participant shall be calculated to the nearest one-hundredth of one percent.

1.10 "Affiliated Employer" means any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code Section 414(m)) which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to Regulations under Code Section 414(o).

1.11 "Anniversary Date" means the last day of the Plan Year.

1.12 "Annual Additions" means, for purposes of applying the limitations of Code Section 415, the sum credited to a Participant's Accounts for any Limitation Year of (1) Employer contributions, (2) Employee contributions, (3) forfeitures, (4) amounts allocated to an individual medical account, as defined in Code Section 415(f)(2) which is part of a pension or annuity plan maintained by the Employer, (5) amounts derived from contributions paid or accrued 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 and (6) allocations under a simplified employee pension plan.

Annual Additions do not include the transfers of funds from one plan to another. In addition, the following are not Annual Additions for the purposes of this definition: (1) rollover contributions as defined in Code Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3) and 457(e)(16); (2) repayments of loans made to a Participant from the Plan; (3) repayment of distributions received by an Employee pursuant to Code Section 411(a)(7)(B) (cash-outs); (4) repayment of distributions received by an Employee pursuant to Code Section 411(a)(3)(D) (mandatory contributions); (5) employee contributions to a simplified employee pension excludable from gross income under Code Section 408(k)(6).

1.13 "Beneficiary" means the person (or entity) to whom the share of a deceased Participant's interest in the Plan is payable. Section 6.8 contains a definition of "designated Beneficiary" for purposes of that Section.

1.14 "Code" means the Internal Revenue Code of 1986, as amended or replaced from time to time.

1.15 "Compensation" means, with respect to any Participant and except as otherwise provided herein, such Participant's wages, salaries, fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan as described in Regulation 1.62-2(c)) for a Plan Year (the "determination period"). Compensation for any Self-Employed Individual shall be equal to such individual's Earned Income.

Compensation shall exclude (a)(1) contributions made by the Employer to a plan of deferred compensation to the extent that the contributions are not includible in the gross income of the Participant for the taxable year in which contributed, (2) Employer contributions made on behalf of an Employee to a simplified employee pension plan described in Code Section 408(k) to the extent such contributions are excludable from the Employee's gross income, (3) any distributions from a plan of deferred compensation; (b) amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by an Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture; (c) amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and (d) other amounts which receive special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of any annuity contract described in Code Section 403(b) (whether or not the contributions are actually excludable from the gross income of the Employee).

For purposes of this Section, the determination of Compensation shall be made by:

(a) including amounts, for purposes of Elective Deferrals, 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), 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. For this purpose, effective January 1, 1998, amounts not includible in gross income under Code Section 125 shall be deemed to include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that the Participant has other health coverage, provided the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

(b) including pre-participation Compensation paid during the Plan Year while not a Participant in the component of the Plan for which Compensation is being used.

(c) effective for Plan Years beginning in and after 2009 including Post-Severance Compensation.

For Plan Years beginning on or after January 1, 2002, Compensation in excess of \$200,000 (or such other amount provided in the Code) shall be disregarded for all purposes other than for purposes of salary deferral elections pursuant to Section 4.2. 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 Plan Year beginning with or within such calendar year. For any "determination period" of less than twelve (12) months, the Compensation limit shall be an amount equal to the Compensation limit for the calendar year in which the "determination period" begins multiplied by the ratio obtained by dividing the number of full months in the short "determination period" by twelve (12). A "determination period" is not less than twelve (12) months solely because a Participant's Compensation does not include Compensation paid during a "determination period" while the Participant was not a Participant in the Plan (or a component of the Plan).

If any Employees are excluded from the Plan (or from any component of the Plan), then Compensation for any such Employees who become eligible or cease to be eligible to participate in the Plan (or in the component of the Plan) during a Plan Year shall only include Compensation while such Employees are Eligible Employees of the Plan (or of such component of the Plan).

For purposes of this Section, if the Plan is a plan described in Code Section 413(c) or 414(f) (a plan maintained by more than one Employer), the limitation applies separately with respect to the Compensation of any Participant from each Employer maintaining the Plan.

If, in connection with the adoption of any amendment, the definition of Compensation has been modified, then, except as otherwise provided herein, for Plan Years prior to the Plan Year which includes the adoption date of such amendment, Compensation means compensation determined pursuant to the terms of the Plan then in effect.

1.16 "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.

1.17 "Contribution Percentage Amounts" means the sum of any Matching Contributions which are made pursuant to Section 4.1(b); Qualified Matching Contributions (to the extent such Qualified Matching Contributions are not used to satisfy the ADP Test) and Qualified Nonelective Contributions (to the extent not used to satisfy the ADP Test), as well as any contributions authorized by (and to the extent

prescribed by) Section 4.8(g). In addition, Contribution Percentage Amounts may include Elective Deferrals, provided the ADP Test is met before the Elective Deferrals are used in the ACP Test and continues to be met following the exclusion of those Elective Deferrals that are used to meet the ACP Test. However, Contribution Percentage Amounts shall not include Matching Contributions that are forfeited either to correct Excess Aggregate Contributions or due to Code Section 401(a)(4) and the Regulations thereunder because the contributions to which they relate are Excess Deferrals, Excess Contributions, or Excess Aggregate Contributions.

1.18 **"Custodian"** means a person or entity that has custody of all or any portion of the Plan assets.

1.19 **"Designated Investment Alternative"** means a specific investment identified by name by the Employer (or such other Fiduciary who has been given the authority to select investment options) as an available investment under the Plan to which Plan assets may be invested by the Trustee pursuant to the investment direction of a Participant.

1.20 **"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 Procedures.

1.21 **"Directed Investment Option"** means a Designated Investment Alternative and any other investment permitted by the Plan and the Participant Direction Procedures to which Plan assets may be invested by the Trustee pursuant to the investment direction of a Participant.

1.22 **"Early Retirement Date."** This Plan does not provide for a retirement date prior to Normal Retirement Date.

1.23 **"Earned Income"** means with respect to a Self-Employed Individual, the net earnings from self-employment in the trade or business with respect to which the Plan is established, for which the personal services of the individual are a material income-producing factor. Net earnings will be determined without regard to items not included in gross income and the deductions allocable to such items. Net earnings are reduced by contributions by the Self-Employed Individual to a qualified Plan to the extent deductible under Code Section 404. In addition, net earnings shall be determined with regard to the deduction allowed to the Self-Employed Individual by Code Section 164(f).

If any combination of bonuses, commissions, tips, overtime, moving expenses, fringe benefits, or any other element of compensation is excluded from Compensation for the purpose of determining any contribution, then for the purpose of determining the amount of such contribution on behalf of any Self-Employed Individual, such person's Earned Income will be reduced in the same proportion that the "includible compensation" of "common law participants" bears to the "total compensation" of all "common law participants."

For purposes of the preceding paragraph, "common law participant" means a Participant who is neither a Highly Compensated Employee nor a Self-Employed Individual, "includible compensation" means the amount of Compensation taken into account in determining the amount of such contribution for "common law participants," and "total compensation" means the amount of Compensation that would have been taken into account in determining such contribution for "common law participants" if (1) no element of Compensation had been excluded in determining such contribution, and (2) all of the following are included in Compensation: any amount which is contributed by the Employer at the election of the Participant pursuant to a salary reduction agreement and which is not includible in the gross income of the Participant by reason of Code Sections 125, 132(f)(4), 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.

However, to the extent that the amount of "includible compensation" for "common law participants" includes any amount which is contributed by the Employer at the election of the Participant pursuant to a salary reduction agreement and which is not includible in the gross income of the Participant by reason of Code Sections 125, 132(f)(4), 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, then those amounts shall be added back to Earned Income after making the adjustment described in the preceding paragraph.

1.24 **"Elective Deferral"** means any Employer contributions made to the Plan at the election of the Participant in lieu of cash Compensation pursuant to Section 4.2. With respect to any taxable year, a Participant's Elective Deferrals is the sum of all employer contributions made on behalf of such Participant pursuant to an election to defer under any qualified cash or deferred arrangement ("CODA") 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) and any plan described under Code Section 501(c)(18), and any employer contributions made on the behalf of a Participant for the purchase of an annuity contract under Code Section 403(b) pursuant to a salary reduction agreement. Elective Deferrals shall not include any deferrals properly distributed as excess Annual Additions pursuant to Section 4.10(a).

1.25 **"Elective Deferral Account"** means the separate account established and maintained by the Administrator for each Participant with respect to the Participant's total interest in the Plan resulting from Elective Deferrals. Amounts in the Elective Deferral Account are nonforfeitable when made and are subject to the distribution restrictions of Section 4.2(c).

1.26 **"Eligible Employee"** means any Employee, except as provided below, and except as provided in any other particular provision for the limited purposes of that provision (e.g., ADP test). The following Employees shall not be eligible to participate in this Plan:

- (a) Employees of Affiliated Employers, unless such Affiliated Employers have specifically adopted this Plan in writing.

(b) An individual shall not be an Eligible Employee if such individual is not reported on the payroll records of the Employer as a common law employee. In particular, it is expressly intended that individuals not treated as common law employees by the Employer on its payroll records and out-sourced workers, are neither Employees nor Eligible Employees, and are excluded from Plan participation even if a court or administrative agency determines that such individuals are common law employees and not independent contractors. However, this paragraph shall not apply to partners or other Self-Employed Individuals unless the Employer treats them as independent contractors.

(c) Unless or until otherwise provided, Employees who became Employees as the result of a "Code Section 410(b)(6)(C) transaction" will not be Eligible Employees until the expiration of the transition period beginning on the date of the transaction and ending on the last day of the first Plan Year beginning after the date of the transaction. A Code Section 410(b)(6)(C) transaction is an asset or stock acquisition, merger, or similar transaction involving a change in the Employer of the Employees of a trade or business that is subject to the special rules set forth in Code Section 410(b)(6)(C).

1.27 "Employee" means any common law employee, Self-Employed Individual, Leased Employee or other person to the extent that the Code treats such an individual as an employee of the Employer for purposes of the Plan, such as (for certain purposes) any person who is employed by an Affiliated Employer.

1.28 "Employer" means County of Hidalgo Community Service Agency; Hidalgo County Urban County Program; and Hidalgo County Head Start and any successor which shall maintain this Plan; and any predecessor which has maintained this Plan. The Employer is a tax-exempt organization, with principal offices in the State of Texas. In addition, where appropriate, the term Employer shall include any Participating Employer.

1.29 "Excess Aggregate Contributions" means, with respect to any Plan Year, the excess of:

(a) The aggregate Contribution Percentage Amounts actually made on behalf of Participants who are Highly Compensated Employees for such Plan Year and taken into account in computing the numerator of the ACR, over

(b) The maximum Contribution Percentage Amounts permitted by the ACP Test of Section 4.7(a) (determined by hypothetically reducing contributions made on behalf of Participants who are Highly Compensated Employees in order of their ACRs beginning with the highest of such ACRs).

Such determination shall be made after first taking into account corrections of any Excess Deferrals pursuant to Section 4.2 and then taking into account any adjustments of any Excess Contributions pursuant to Section 4.6.

1.30 "Excess Contributions" means, with respect to a Plan Year, the excess of Elective Deferrals made on behalf of Participants who are Highly Compensated Employees for the Plan Year over the maximum amount of such contributions permitted under Section 4.5(a) (determined by hypothetically reducing contributions made on behalf of Participants who are Highly Compensated Employees in order of the ADRs beginning with the highest of such ADRs). Excess Contributions shall be treated as an Annual Addition pursuant to Section 1.12.

1.31 "Excess Deferrals" shall mean those Elective Deferrals of a Participant that either (1) are made during the Participant's taxable year and which exceed the dollar limitation under Code Section 402(g) (including, if applicable, the dollar limitation on catch-up contributions defined in Code Section 414(v)) for such year; or (2) are made during a calendar year and exceed the dollar limitation under Code Section 402(g) (including, if applicable, the dollar limitation on catch-up contributions defined in Code Section 414(v)) for the Participant's taxable year beginning in such calendar year, counting only Elective Deferrals made under this Plan and any other plan, contract or arrangement maintained by the Employer.

1.32 "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.

1.33 "Fiscal Year" means the Employer's accounting year of 12 months commencing on January 1 of each year and ending the following December 31.

1.34 "Forfeiture" means that portion of a Participant's Account that is not Vested, and which becomes a Forfeiture at the time described below:

The earlier of:

(a) the distribution of the entire Vested portion of the Participant's Account of a Participant who has severed employment with the Employer. For purposes of this provision, if the Participant has a Vested benefit of zero (determined without regard to the Participant's Qualified Voluntary Employee Contribution Account or Rollover Account), then such Participant shall be deemed to have received a distribution of such Vested benefit as of the date on which the severance of employment occurs, or

(b) the last day of the Plan Year in which a Participant who has severed employment with the Employer incurs five (5) consecutive 1-Year Breaks in Service.

In addition, the term "Forfeiture" shall also include amounts deemed to be Forfeitures pursuant to any other provisions of this Plan.

Regardless of the preceding provisions, if a Participant is eligible to share in the allocation of Forfeitures in the year in which the Forfeiture would otherwise occur, then the Forfeiture will not occur until the end of the subsequent Plan Year.

For purposes of this Plan, any Forfeiture will be disposed of in the Plan Year following the Plan Year in which the Forfeiture arises.

1.35 "Former Employee" means an Employee who had a severance from employment with the Employer or an Affiliated Employer.

1.36 "415 Compensation" with respect to any Participant means such Participant's wages, salaries, fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan as described in Regulation 1.62-2(c)) for a Plan Year. 415 Compensation for any Self-Employed Individual shall be equal to such individual's Earned Income.

415 Compensation shall exclude (a)(1) contributions made by the Employer to a plan of deferred compensation to the extent that, the contributions are not includible in the gross income of the Participant for the taxable year in which contributed, (2) Employer contributions made on behalf of an Employee to a simplified employee pension plan described in Code Section 408(k) to the extent such contributions are excludable from the Employee's gross income, (3) any distributions from a plan of deferred compensation; (b) amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by an Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture; (c) amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and (d) other amounts which receive special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of any annuity contract described in Code Section 403(b) (whether or not the contributions are actually excludable from the gross income of the Employee).

Notwithstanding the above, the determination of 415 Compensation shall be made by:

(a) including any Elective Deferrals, and any amount which is contributed by the Employer at the election of the Participant pursuant to a salary reduction agreement and which is not includible in the gross income of the Participant by reason of Code Sections 125, 132(f)(4), 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. For this purpose, effective January 1, 1998, amounts not includible in gross income under Code Section 125 shall be deemed to include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that the Participant has other health coverage, provided the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

(b) effective for Limitation Years and Plan Years beginning in and after 2009, including Post-Severance Compensation.

1.37 "414(s) Compensation" means 415 Compensation or any other 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.

1.38 "Highly Compensated Employee" means an Employee described in Code Section 414(q) and the Regulations thereunder, and generally means any Employee who:

(a) for the "look-back year" had 415 Compensation from the Employer in excess of \$80,000 and was in the Top-Paid Group for the "look-back year." 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 "determination year" means the Plan Year for which testing is being performed, and the "look-back year" means the immediately preceding twelve (12) month period.

In determining who is a Highly Compensated Employee, Employees who are nonresident 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. If an Employee who is a nonresident alien has U.S. source income, that Employee is treated as satisfying this definition if all of such Employee's U.S. source income from the Employer is exempt from U.S. income tax under an applicable income tax treaty. Additionally, all Affiliated Employers shall be taken into account as a single employer and 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."

1.39 "Highly Compensated Participant" means, for a particular Plan Year, a Participant who meets the definition of a Highly Compensated Employee in effect for that Plan Year.

1.40 "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) during the applicable computation period (these hours will be calculated and credited pursuant to Department of Labor regulation 2530.200b-2, which is incorporated herein by reference); (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) 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.

Each Employee shall be credited with such Employee's actual Hours of Service.

For purposes of this Section, Hours of Service will be credited for employment with any Affiliated Employers. The provisions of Department of Labor regulations 2530.200b-2(b) and (c) are incorporated herein by reference.

1.41 "Income" means the gains or losses for the "applicable computation period" allocable to an "excess amount", which amount shall be determined and allocated, at the discretion of the Administrator, using any of the methods set forth below:

(a) **Method of allocating Income.** The Administrator may use any reasonable method for computing the Income allocable to an "excess amount" for the "applicable computation period," provided that the method is used consistently for all Participants and for all corrective distributions under the Plan for the "applicable computation period," and is used by the Plan for allocating earnings to a Participant's "specific account(s)."

(b) **Alternative method of allocating Income.** The Administrator may allocate Income to an "excess amount" for the "applicable computation period" by multiplying the earnings for the "applicable computation period" allocable to the "Employer contributions" taken into account under the test or limitation giving rise to such "excess amount" by a fraction, the numerator of which is the "excess amount" for the Employee for the "applicable computation period," and the denominator of which is the sum of:

(1) The "specific account(s)" balance(s) taken into account under the test or limitation giving rise to such "excess amount" as of the beginning of the "applicable computation period," and

(2) Any additional amount of such "Employer contributions" made for the "applicable computation period" to the "specific account(s)."

(c) For purposes of calculating the Income attributable to Excess Deferrals of Section 4.2(f), the terms "applicable computation period", "Employer contributions", "excess amount", and "specific account(s)" will have the following substitutions:

(1) The taxable year of the Participant shall be substituted for the "applicable computation period";

(2) Elective Deferrals shall be substituted for "Employer contributions";

(3) Excess Deferrals shall be substituted for "excess amount"; and

(4) The Elective Deferral Account shall be substituted for the "specific account(s)."

(d) For purposes of calculating the Income attributable to Excess Contributions of Section 4.6(b), the terms "applicable computation period", "Employer contributions", "excess amount", and "specific account(s)" will have the following substitutions:

(1) The Plan Year shall be substituted for the "applicable computation period";

- (2) Elective Deferrals, and other contributions included in determining the ADR under Section 1.9, shall be substituted for "Employer contributions";
 - (3) Excess Contributions shall be substituted for "excess amount";
 - (4) The Elective Deferral Account, and, if included in the determination of the ADR under Section 1.9, the Qualified Matching Contribution and/or the Qualified Nonelective Contribution Account(s), shall be substituted for the "specific account(s)."
- (e) For purposes of calculating the Income attributable to Excess Aggregate Contributions of Section 4.8(b), the terms "applicable computation period", "Employer contributions", "excess amount", and "specific account(s)" will have the following substitutions:
- (1) The Plan Year shall be substituted for the "applicable computation period";
 - (2) Any Matching Contributions which are made pursuant to Section 4.1(b); Qualified Matching Contributions (to the extent such Qualified Matching Contributions are not used to satisfy the ADP Test) and Qualified Nonelective Contributions (to the extent not used to satisfy the ADP Test) shall be substituted for "Employer contributions." Elective Deferrals may be included in the substitution listed above, provided the ADP Test is met before the Elective Deferrals are used in the ACP Test and continues to be met following the exclusion of those Elective Deferrals that are used to meet the ACP Test. However, Matching Contributions that are forfeited either to correct Excess Aggregate Contributions or due to Code Section 401(a)(4) and the Regulations thereunder because the contributions to which they relate are Excess Deferrals, Excess Contributions, or Excess Aggregate Contributions shall not be included in the substitution listed above.
 - (3) Excess Aggregate Contributions shall be substituted for "excess amount";
 - (4) The Matching Contribution Account, Qualified Matching Contribution Account and Qualified Nonelective Contribution Account shall be substituted for the "specific account(s)."
- (f) With respect to Excess Contributions and Excess Aggregate Contributions, effective beginning with the first Plan Year beginning in 2006, Income for the period between the end of the Plan Year and the date of the distribution (the "gap period") is required to be distributed. A Plan will not fail to use a reasonable method for computing the Income that is allocable to Excess Contributions and Excess Aggregate Contributions merely because the Income allocable to Excess Contributions and Excess Aggregate Contributions is determined on a date that is no more than 7 days before the distribution. Income for the "gap period" shall be calculated by using any of the methods set forth below:
- (1) Safe harbor method of allocating "gap period" income. The Administrator may use the safe harbor method in this paragraph to determine the Income on Excess Contributions and Excess Aggregate Contributions for the "gap period." Under this safe harbor method, Income on Excess Contributions and Excess Aggregate Contributions for the "gap period" is equal to 10% of the Income allocable to Excess Contributions and Excess Aggregate Contributions for the Plan Year that would be determined under paragraph (b) above (with the appropriate substitutions of paragraph (d) and paragraph (e)), multiplied by the number of calendar months that have elapsed since the end of the Plan Year. For purposes of calculating the number of calendar months that have elapsed under this safe harbor method, a corrective distribution that is made on or before the fifteenth day of a month is treated as made on the last day of the preceding month and a distribution made after the fifteenth day of a month is treated as made on the last day of the month.
 - (2) Alternative method for allocating Plan Year and "gap period" income. The Administrator may determine the allocable Income for the aggregate of the Plan Year and the "gap period" by applying the alternative method provided by paragraph (b) above with respect to the entire period represented by the Plan Year and the "gap period", rather than just the Plan Year.

1.42 "Investment Manager" means any Fiduciary described in Act Section 3(38).

1.43 "Key Employee" means, for Plan Years beginning after December 31, 2001, an Employee as defined in Code Section 416(i) and the Regulations thereunder. Generally, any Employee or Former Employee (as well as each of the Employee's or Former Employee's Beneficiaries) is considered a Key Employee if the Employee or Former Employee, at any time during the Plan Year that contains the "determination date" is described in one of the following categories:

- (a) an officer of the Employer (as that term is defined within the meaning of the Regulations under Code Section 416) having annual 415 Compensation greater than \$130,000 (as adjusted under Code Section 416(i)(1) for Plan Years beginning after December 31, 2002).
- (b) a "five percent owner" of the Employer. "Five percent owner" means any person who owns (or is considered as owning within the meaning of Code Section 318) more than five percent (5%) of the outstanding stock of the Employer or stock possessing more than five percent (5%) of the total combined voting power of all stock of the Employer or, in the case of an unincorporated business, any person who owns more than five percent (5%) of the capital or profits interest in the Employer. In determining percentage ownership hereunder, employers that would otherwise be aggregated under Code Sections 414(b), (c), (m) and (o) shall be treated as separate employers.

(c) a "one percent owner" of the Employer having an annual 415 Compensation from the Employer of more than \$150,000. "One percent owner" means any person who owns (or is considered as owning within the meaning of Code Section 318) more than one percent (1%) of the outstanding stock of the Employer or stock possessing more than one percent (1%) of the total combined voting power of all stock of the Employer or, in the case of an unincorporated business, any person who owns more than one percent (1%) of the capital or profits interest in the Employer. In determining percentage ownership hereunder, employers that would otherwise be aggregated under Code Sections 414(b), (c), (m) and (o) shall be treated as separate employers. However, in determining whether an individual has 415 Compensation of more than \$150,000, 415 Compensation from each employer required to be aggregated under Code Sections 414(b), (c), (m) and (o) shall be taken into account.

In determining percentage ownership hereunder, employers that would otherwise be aggregated under Code Sections 414(b), (c), (m) and (o) shall be treated as separate employers. In determining whether an individual has 415 Compensation of more than \$150,000, 415 Compensation from each employer required to be aggregated under Code Sections 414(b), (c), (m) and (o) shall be taken into account.

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

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

A Leased Employee shall not be considered an employee of the recipient Employer if: (a) such employee is covered by a money purchase pension plan providing: (1) a non-integrated employer contribution rate of at least ten percent (10%) of compensation, as defined in Code Section 415(c)(3), (2) immediate participation, and (3) full and immediate vesting; and (b) leased employees do not constitute more than twenty percent (20%) of the recipient Employer's nonhighly compensated work force.

1.46 "Limitation Year" means the Plan Year. However, the Employer may elect a different Limitation Year by amending the Plan. All qualified plans maintained by the Employer must use the same Limitation Year. Furthermore, unless there is a change to a new Limitation Year, the Limitation Year will be a twelve (12) consecutive month period. In the case of an initial Limitation Year, the Limitation Year will be the twelve (12) consecutive month period ending on the last day of the initial Plan Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

1.47 "Matching Contribution" means any Employer contribution (including a contribution made at the Employer's discretion) to the Plan on account of a Participant's Elective Deferrals.

1.48 "Matching Contribution Account" means the separate account established and maintained by the Administrator for each Participant with respect to the Participant's total interest in the Plan resulting from Matching Contributions. However, if Matching Contributions are Qualified Matching Contributions, then such Qualified Matching Contributions shall be allocated to the Qualified Matching Contribution Account.

1.49 "Nonelective Contribution" means any Employer contribution (including a contribution made at the Employer's discretion) to the Plan, other than a Participant's Elective Deferrals, Matching Contributions, Qualified Matching Contributions and Qualified Nonelective Contributions.

1.50 "Nonelective Contribution Account" means the separate account established and maintained by the Administrator for each Participant with respect to the Participant's total interest in the Plan resulting from Nonelective Contributions.

1.51 "Nonhighly Compensated Employee/Participant" means any Employee who is not a Highly Compensated Employee. However, for purposes of Section 4.5(a) and Section 4.7(a), if the prior year testing method is used, a Nonhighly Compensated Employee shall be determined using the definition of Highly Compensated Employee in effect for the preceding Plan Year. A Nonhighly Compensated Participant is a Participant who is not a Highly Compensated Employee.

A Participant is a Nonhighly Compensated Participant for a particular Plan Year if such Participant does not meet the definition of a Highly Compensated Employee in effect for that Plan Year.

1.52 "Non-Key Employee" means any Employee or Former Employee (and such Employee's or Former Employee's Beneficiaries) who is not a Key Employee.

1.53 "Normal Retirement Age" means 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 (if the Participant is still employed by the Employer on or after that date).

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

1.55 "1-Year Break in Service" means, for purposes of eligibility for participation and vesting, 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.

For purposes of this definition, "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.

Furthermore, for purposes of this definition, "maternity and 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 "maternity and paternity leaves 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 "maternity and paternity leaves of absence" shall not exceed the number of Hours of Service needed to prevent the Employee from incurring a 1-Year Break in Service.

1.56 "Owner-Employee" means a sole proprietor who owns the entire interest in the Employer or a partner (or member in the case of a limited liability company treated as a partnership or sole proprietorship for federal income tax purposes) who owns more than 10% of either the capital interest or the profits interest in the Employer and who receives income for personal services from the Employer.

1.57 "Participant" means any Employee or Former Employee who has satisfied the requirements of Sections 3.1 and 3.2 and entered the Plan and is eligible to accrue benefits under the Plan. In addition, the term "Participant" also includes any individual who was a Participant (as defined in the preceding sentence) and who must continue to be taken into account under a particular provision of the Plan (e.g., because the Participant has an Account Balance in the Plan).

1.58 "Participant Direction Procedures" means such instructions, guidelines or policies, the terms of which are incorporated herein, as shall be established pursuant to Section 4.13 and observed by the Administrator and applied and provided to Participants who have Participant Directed Accounts.

1.59 "Participating Employer" means an Employer who adopts the Plan pursuant to Section 11.1.

1.60 "Plan" means this instrument, including all amendments thereto.

1.61 "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.

1.62 "Post-Severance Compensation" means payments made within 2 1/2 months after severance from employment (within the meaning of Code Section 401(k)(2)(B)(i)(I)) if they are payments that, absent a severance from employment, would have been paid to the Employee while the Employee continued in employment with the Employer and are regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation, and payments for accrued bona fide sick, vacation or other leave, but only if the Employee would have been able to use the leave if employment had continued. Any payments not described above are not considered compensation if paid after severance from employment, even if they are paid within 2 1/2 months following severance from employment, except for payments to an individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

1.63 "Qualified Matching Contribution" means any Employer contribution (including a contribution made at the Employer's discretion) to the Plan on account of a Participant's Elective Deferrals that are designated as such pursuant to Sections 4.6 and 4.8.

1.64 "Qualified Matching Contribution Account" means the separate account established and maintained by the Administrator for each Participant with respect to the Participant's total interest in the Plan resulting from Qualified Matching Contributions. Amounts in the Qualified Matching Contribution Account are nonforfeitable when made and are subject to the distribution restrictions of Section 4.2(c).

1.65 "Qualified Nonelective Contribution" means any Employer contributions to the Plan that are designated as such pursuant to Sections 4.1(c), 4.6 and 4.8 or any other provision of the Plan. Qualified Nonelective Contributions may be used to satisfy the ADP Test or the ACP Test. All such contributions shall be allocated to the Qualified Nonelective Contribution Account, and shall be fully vested and subject to the restrictions on distributions from that Account.

1.66 "Qualified Nonelective Contribution Account" means the separate account established and maintained by the Administrator for each Participant with respect to the Participant's total interest in the Plan resulting from Qualified Nonelective Contributions. Amounts in

the Qualified Nonelective Contribution Account are nonforfeitable when made and are subject to the distribution restrictions of Section 4.2(c).

1.67 "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.

1.68 "Retirement Date" means the date as of which a Participant retires whether such retirement occurs on a Participant's Normal Retirement Date or Late Retirement Date.

1.69 "Rollover Account" means the separate account established and maintained by the Administrator for each Participant with respect to such Participant's interest in the Plan resulting from amounts that are rolled over from another plan or Individual Retirement Account in accordance with Section 4.12. Amounts in the Rollover Account are nonforfeitable when made.

1.70 "Self-Employed Individual" means an individual, other than an independent contractor, who has Earned Income for the taxable year from the trade or business for which the Plan is established, and, also, an individual who would have had Earned Income but for the fact that the trade or business had no net profits for the taxable year. A Self-Employed Individual shall be treated as an Employee.

1.71 "Shareholder-Employee" means a Participant who owns more than five percent (5%) of the Employer's outstanding capital stock during any year in which the Employer elected to be taxed as a Small Business Corporation under the applicable Code Section.

1.72 "Terminated Participant" means a person who has been a Participant, but whose employment has been terminated other than by death or retirement.

1.73 "Top-Heavy Plan" means a plan described in Section 9.1(a).

1.74 "Top-Heavy Plan Year" means a Plan Year during which the Plan is a Top-Heavy Plan.

1.75 "Top-Paid Group" means the top-paid group as determined pursuant to Code Section 414(q) and the Regulations thereunder and generally means the top twenty percent (20%) of Employees who performed services for the Employer during the applicable year, ranked according to the amount of 415 Compensation received from the Employer during such year. All Affiliated Employers shall be taken into account as a single employer, and Leased Employees shall be treated as Employees if required pursuant to Code Section 414(n) or (o). Employees who are nonresident aliens 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. Furthermore, for the purpose of determining the number of Employees in any year, the following additional Employees may also be excluded, however, such Employees shall still be considered for the purpose of identifying the particular Employees in the Top-Paid Group:

- (a) Employees with less than six (6) months of service;
- (b) Employees who normally work less than 17 1/2 hours per week;
- (c) Employees who normally work less than six (6) months during a year; and
- (d) Employees who have not yet attained age twenty-one (21).

In addition, if ninety percent (90%) or more of the Employees of the Employer are covered under agreements the Secretary of Labor finds to be collective bargaining agreements between Employee representatives and the Employer, and the Plan covers only Employees who are not covered under such agreements, then Employees covered by such agreements shall be excluded from both the total number of active Employees as well as from the identification of particular Employees in the Top-Paid Group.

The foregoing exclusions set forth in this Section shall be applied on a uniform and consistent basis for all purposes for which the Code Section 414(q) definition is applicable. Furthermore, in applying such exclusions, the Employer may substitute any lesser service, hours or age.

1.76 "Total Vested Benefit" means the total Participant's Vested Account balances derived from Employer and Employee contributions, including rollover contributions, whether Vested before or upon death.

1.77 "Transfer Account" means the separate account established and maintained by the Administrator for each Participant with respect to the Participant's total interest in the Plan resulting from amounts transferred to this Plan from a direct plan-to-plan transfer in accordance with Section 4.11. To the extent that the Plan is a direct or indirect transferee of a defined benefit or defined contribution pension plan, then the funds transferred to this Plan from such other plan shall be treated as funds that are subject to a life annuity form of payment as well as the survivor annuity requirements of Code Sections 401(a)(11) and 417 (and are part of the Participant's Pre-Retirement Survivor Annuity Account). The preceding sentence does not apply to amounts rolled over into a Participant's Rollover Account, even if from a pension plan.

1.78 "Trustee" means the person or entity named as trustee herein or in any separate trust forming a part of this Plan, and any successors, effective upon the written acceptance of such person or entity to serve as Trustee.

1.79 "Trust Fund" means the assets of the Plan and Trust as the same shall exist from time to time.

1.80 "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, is open for business. Nothing in this Plan requires or implies a uniform Valuation Date for all Accounts; thus certain valuation provisions that apply to an Account that is not valued on each business day will have no application, in operation, to an Account that is valued on each business day.

1.81 "Vested" means the nonforfeitable portion of any account maintained on behalf of a Participant.

1.82 "Year of Service" means the computation period of twelve (12) consecutive months, herein set forth, during which an Employee has at least 1,000 Hours of Service.

For purposes of eligibility for participation, the initial computation period shall begin with the date on which the Employee first performs an Hour of Service. The participation computation period shall shift to the Plan Year which includes the anniversary of the date on which the Employee first performed an Hour of Service. If there is a shift to the Plan Year, then an Employee who is credited with the required Hours of Service in both the initial computation period (or the computation period beginning after a 1-Year Break in Service) and the Plan Year which includes the anniversary of the date on which the Employee first performed an Hour of Service, shall be credited with two (2) Years of Service for purposes of eligibility to participate.

For vesting purposes, the computation periods shall be the Plan Year, including periods prior to the Effective Date of the Plan.

The computation period shall be the Plan Year if not otherwise set forth herein.

Notwithstanding the foregoing, for any short Plan Year, the determination of whether an Employee has completed a Year of Service shall be made in accordance with Department of Labor regulation 2530.203-2(c). However, in determining whether an Employee has completed a Year of Service for benefit accrual purposes in the short Plan Year, the number of the Hours of Service required shall be proportionately reduced based on the number of full months in the short Plan Year.

Years of Service with any Affiliated Employer shall be recognized.

In the event the method of crediting service is amended from the elapsed-time method to the hour-of-service method, an Employee will receive credit for Years of Service equal to:

(a) The number of Years of Service equal to the number of 1-year Periods of Service credited to the Employee as of the date of the amendment; and

(b) In the computation period which includes the date of the amendment, a number of Hours of Service (using the Hours of Service equivalency method elected in the Plan) to any fractional part of a year credited to the Employee under this Section as of the date of the amendment.

ARTICLE II ADMINISTRATION

2.1 POWERS AND RESPONSIBILITIES OF THE EMPLOYER

(a) **Appointment of Trustee and Administrator.** 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 Act, 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) **Appointment of Investment Manager.** The Employer may appoint, at its option, an Investment Manager (qualified under the Investment Company Act of 1940 as amended), investment adviser, or other agent to provide investment direction to the Trustee with respect to any or all of the Plan assets. Such appointment shall be given by the Employer in writing in a form acceptable to the Trustee and shall specifically identify the Plan assets with respect to which the Investment Manager or other agent shall have authority to direct the investment.

(c) **Funding policy and method.** 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. Such funding policy and method shall be consistent with the objectives of this Plan and with the requirements of Title I of the Act.

(d) **Review of fiduciary performance.** 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 ALLOCATION AND DELEGATION OF RESPONSIBILITIES

If more than one person is serving as Administrator, the responsibilities of each Administrator may be specified by the Employer and accepted in writing by each Administrator. In the event that no such delegation is made by the Employer, the Administrators may allocate the responsibilities among themselves, in which event the Administrators shall notify the Employer and the Trustee in writing of such action and specify the responsibilities of each Administrator. The Trustee thereafter shall accept and rely upon any documents executed by the appropriate Administrator until such time as the Employer or the Administrators file with the Trustee a written revocation of such designation.

2.4 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. Benefits under this Plan will be paid only if the Administrator decides in its discretion that the applicant is entitled to them. 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 shall comply with the terms of the Act 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) the authority to review and settle all claims against the Plan, including claims where the settlement amount cannot be calculated or is not calculated in accordance with the Plan's benefit formula. This authority specifically permits the Administrator to settle disputed claims for benefits and any other disputed claims made against the Plan;
- (c) 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;
- (d) to authorize and direct the Trustee with respect to all discretionary or otherwise directed disbursements from the Trust;
- (e) to maintain all necessary records for the administration of the Plan;
- (f) 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;
- (g) 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;
- (h) 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;
- (i) 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 (if the Trustee has such discretion) in a manner designed to accomplish specific objectives;
- (j) to prepare and implement a procedure to notify Eligible Employees that they may elect to have a portion of their Compensation deferred or paid to them in cash;

(k) to act as the named Fiduciary responsible for communications with Participants as needed to maintain Plan compliance with Act Section 404(c), including, but not limited to, the receipt and transmitting of Participant's directions as to the investment of their account(s) under the Plan and the formulation of policies, rules, and procedures pursuant to which Participants may give investment instructions with respect to the investment of their accounts;

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

(m) to assist any Participant regarding the Participant's rights, benefits, or elections available under the Plan.

2.5 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, Department of Labor, Participants, Beneficiaries and others as required by law.

2.6 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.

2.7 PAYMENT OF EXPENSES

All reasonable expenses of administration may be paid out of the Plan assets 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 nonfiduciary 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 (if permitted) 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. In addition, unless specifically prohibited under statute, regulation or other guidance of general applicability, the Administrator may charge to the Account of an individual Participant a reasonable charge to offset the cost of making a distribution to the Participant, Beneficiary, or alternate payee under a qualified domestic relation order, as defined in Code Section 414(p). If liquid assets of the Plan are insufficient to cover the fees of the Trustee or the Plan Administrator, then Plan assets shall be liquidated to the extent necessary for such fees. In the event any part of the Plan assets becomes subject to tax, all taxes incurred will be paid from the Plan assets. Until paid, the expenses shall constitute a liability of the Trust Fund.

2.8 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 or Department of Labor regulation. 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.

2.9 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 2.8 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 2.8. The Administrator shall then conduct a hearing within the next 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 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. 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 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. Notwithstanding the preceding, to the extent any of the time periods specified in this Section are amended by law or Department of Labor regulation, then the time frames specified herein shall automatically be changed in accordance with such law or regulation.

If the Administrator, pursuant to the claims review procedure, makes a final written determination denying a Participant's or Beneficiary's benefit claim, then in order to preserve the claim, the Participant or Beneficiary must file an action with respect to the denied claim not later than one hundred eighty (180) days following the date of the Administrator's final determination.

ARTICLE III ELIGIBILITY

3.1 CONDITIONS OF ELIGIBILITY

(a) **Eligibility.** Any Eligible Employee shall be eligible to participate hereunder on the date of such Employee's employment with the Employer. 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.

3.2 EFFECTIVE DATE OF PARTICIPATION

(a) **Effective date of participation - Elective Deferrals.** For the Elective Deferral component, an Eligible Employee shall become a Participant effective as of the first day of the month coinciding with or next following the date on which such Employee met the eligibility requirements of Section 3.1, provided said Employee was still employed as of such date (or if not employed on such date, as of the date of rehire if a 1-Year Break in Service has not occurred or, if later, the date that the Employee would have otherwise entered the Elective Deferral component had the Employee not terminated employment).

(b) **Effective date of participation - Matching Contributions.** For the Matching Contribution component, an Eligible Employee shall become a Participant effective as of the first day of the month coinciding with or next following the date on which such Employee met the eligibility requirements of Section 3.1, provided said Employee was still employed as of such date (or if not employed on such date, as of the date of rehire if a 1-Year Break in Service has not occurred or, if later, the date that the Employee would have otherwise entered the Matching Contribution component had the Employee not terminated employment).

(c) **Effective date of participation - Nonelective Contributions.** For the Nonelective Contribution component, an Eligible Employee shall become a Participant effective as of the first day of the Plan Year in which such Employee met the eligibility requirements of Section 3.1.

(d) **Ineligible to eligible classification.** If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise have become a Participant in the Plan, shall go from a classification of an ineligible Employee to an Eligible Employee, such Employee shall become a Participant in the Plan on the date such Employee becomes an Eligible Employee or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee.

(e) **Eligible to ineligible classification.** If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise become a Participant in the Plan, shall go from a classification of an Eligible Employee to an ineligible class of Employees, such Employee shall become a Participant in the Plan on the date such Employee again becomes an Eligible Employee, or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee. However, if such Employee incurs five (5) consecutive 1-Year Breaks in Service, eligibility will be determined under the Break in Service rules set forth in Section 3.5.

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 and the Act. Such determination shall be subject to review pursuant to Section 2.9.

3.4 TERMINATION OF ELIGIBILITY

In the event a Participant shall go from a classification of an Eligible Employee to an ineligible Employee with respect to the Plan, then such Participant shall continue to Vest in the Plan for each Year of Service completed while an ineligible Employee, until such time as the Participant's Account is forfeited or distributed pursuant to the terms of the Plan. Additionally, the Participant's interest in the Plan shall continue to share in the earnings of the Trust Fund.

3.5 REHIRED EMPLOYEES AND BREAKS IN SERVICE

(a) **Reemployed before five (5) consecutive 1-Year Breaks in Service.** If any Employee becomes a Former Employee due to severance from employment with the Employer and is reemployed by the Employer before five (5) consecutive 1-Year Breaks in Service occur, then the Former Employee's prior service shall count in the same manner as if severance from employment with the Employer had not occurred. If any Participant ceases to be a Participant due to severance from employment with the Employer and is reemployed by the Employer before five (5) consecutive 1-Year Breaks in Service occur, then the Participant shall resume participation (in the same manner as if severance from employment with the Employer had not occurred) as of the reemployment date.

(b) **Reemployed after five (5) consecutive 1-Year Breaks in Service ("rule of parity" provisions).** If any Employee becomes a Former Employee due to severance from employment with the Employer and is reemployed after a 5-Year Break in Service has occurred, Years of Service shall include Years of Service prior to the 5-year break in service subject to the following rules:

(1) **Rule of parity.** In the case of a 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 consecutive 1-Year Breaks in Service will not be taken into account if the number of consecutive 1-Year 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 period of five (5) consecutive 1-Year Breaks in Service.

(2) **Participation in Plan.** A Former Employee shall participate in the Plan as of the date of reemployment, or if later, as of the date that the Former Employee would otherwise enter the Plan pursuant to Sections 3.1 and 3.2 taking into account all service not disregarded in this subsection.

(c) **Vesting after five (5) consecutive 1-Year Breaks in Service.** After a Participant who has severed employment with the Employer incurs five (5) consecutive 1-Year Breaks in Service, the Vested portion of said 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.

(d) **Buyback provisions.** If any Participant severs employment with the Employer and is reemployed by the Employer before five (5) consecutive 1-Year Breaks in Service, and such Participant had received a distribution of the entire Vested interest prior to reemployment, then the forfeited account shall be reinstated only if the Participant repays the full amount which had been distributed. Such repayment must be made before the earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer or the close of the first period of five (5) consecutive 1-Year Breaks in Service commencing after the distribution. If a distribution occurs for any reason other than a severance of employment, the time for repayment may not end earlier than five (5) years after the date of distribution. In the event the Participant does repay the full amount distributed, the undistributed forfeited portion of the Participant's Account must be restored in full, unadjusted by any gains or losses occurring subsequent to the Valuation Date preceding the distribution. The source for such reinstatement may be Forfeitures occurring during the Plan Year. If such source is insufficient, then the Employer will contribute an amount which is sufficient to restore any such forfeited Accounts provided, however, that if a discretionary contribution is made for such year pursuant to Section 4.1(d), such contribution will first be applied to restore any such Accounts and the remainder shall be allocated in accordance with the terms of the Plan.

If a non-Vested Participant was deemed to have received a distribution and such Participant is reemployed by the Employer before five (5) consecutive 1-Year Breaks in Service, then such Participant will be deemed to have repaid the deemed distribution as of the date of reemployment.

3.6 ELECTION NOT TO PARTICIPATE

(a) **Irrevocable election not to participate.** An Employee may, subject to the approval of the Employer, elect voluntarily not to participate in every Qualified Plan maintained by the Employer. Such election must be made prior to the time the Employee first becomes eligible to participate under any Qualified Plan maintained by the Employer. The election not to participate must be irrevocable and communicated to the Employer, in writing, within a reasonable period of time before the date the Employee would have otherwise entered any Qualified Plan. "Qualified Plan" means, for purposes of this Section, a plan intended to be tax-qualified under Code Section 401(a).

(b) **Prior Plan document provision.** Notwithstanding anything in this Section to the contrary, if any prior Plan document of this Plan contained a provision permitting an Employee to make a revocable election not to participate and an Employee made such revocable election not to participate while that prior Plan document was in effect, then such Employee may irrevocably revoke such election at any time and participate in the Plan.

(c) **Effect on coverage, ADP and ACP Tests.** An Employee who elected not to participate under the Plan is treated as a nonbenefiting Employee for purposes of the minimum coverage requirements under Code Section 410(b). Furthermore, such Employee is not a Participant for purposes of the ADP Test or the ACP Test.

3.7 OWNER-EMPLOYEE LIMITATION

If this Plan provides contributions or benefits for one or more Owner-Employees, the contributions on behalf of any Owner-Employee shall be made only with respect to the Earned Income for such Owner-Employee which is derived from the trade or business with respect to which such Plan is established.

3.8 OMISSION OF ELIGIBLE EMPLOYEE; INCLUSION OF INELIGIBLE 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, or any person who should not

have been included as a Participant in the Plan is erroneously included, then the Employer shall apply the principles described by, and take corrective actions consistent with, the IRS Employee Plans Compliance Resolution System.

ARTICLE IV CONTRIBUTION AND ALLOCATION

4.1 FORMULA FOR DETERMINING EMPLOYER CONTRIBUTION

For each Plan Year, the Employer shall contribute to the Plan:

(a) **Salary reductions.** The amount that all Participants' Compensation was reduced pursuant to Section 4.2(a), which amount shall be Elective Deferrals.

(b) **Matching Contributions.** On behalf of each Participant who is eligible to share in Matching Contributions for the Plan Year, a discretionary Matching Contribution equal to a uniform percentage (to be determined each year by the Employer) of each such Participant's Elective Deferrals.

Except, however, in applying the matching percentage specified above, only salary reductions up to 7% of Compensation may be considered.

Matching Contributions shall be determined and any Compensation or dollar limitation used in determining such Matching Contributions shall be based on the Plan Year.

(c) **Qualified Nondollar Contribution.** On behalf of each Participant who is eligible to share in the Qualified Nondollar Contribution for the Plan Year, a discretionary Qualified Nondollar Contribution equal to a uniform percentage of each eligible individual's Compensation or 415 Compensation. Such Qualified Nondollar Contribution shall be allocated to the Qualified Nondollar Contribution Account.

(d) **Nondollar Contributions.** A discretionary amount, which amount, if any, shall be a Nondollar Contribution.

(e) **Top-Heavy contribution.** Additionally, to the extent necessary, the Employer shall contribute to the Plan the amount necessary to provide the top-heavy minimum contribution, even if it exceeds the amount that would be deductible under Code Section 404.

(f) **Form of contribution.** All contributions by the Employer shall be made in cash or in such property as is acceptable to the Trustee.

4.2 PARTICIPANT'S SALARY REDUCTION ELECTION

(a) **Deferral elections.** Each Participant may elect to defer a portion of Compensation which would have been received in the Plan Year (except for the deferral election) by up to the maximum amount which will not cause the Plan to violate the provisions of Sections 4.5(a) and 4.9. A deferral election (or modification of an earlier election) may not be made with respect to Compensation which is currently available on or before the date the Participant executed such election. For purposes of this Section, Compensation shall be determined prior to any reductions made pursuant to Code Sections 125, 132(f)(4), 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.

Notwithstanding anything in this Plan to the contrary, the Employer may impose a minimum elective deferral percentage of 1% as an administrative procedure applied on a uniform and consistent basis to all Participants.

For purposes of this Section, the annual dollar limitation of Code Section 401(a)(17) (\$200,000 as adjusted) shall not apply except that the Administrator may elect to apply such limit as part of the deferral election procedures established hereunder.

The amount that is deferred by a Participant shall be subject to the limitations of this Section, shall be an Elective Deferral, and shall be held for such Participant in the Elective Deferral Account.

(b) **Full vesting.** Each Participant's Elective Deferral Account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason.

(c) **Distribution restrictions.** Notwithstanding anything in the Plan to the contrary, effective with respect to distributions and transactions made after December 31, 2001, amounts (including any offset of loans) held in the Participant's Elective Deferral Account may not be distributed except as authorized by other provisions of this Plan, but in no event may such amounts be distributed earlier than:

- (1) a Participant's death or other severance of employment;
- (2) a Participant's attainment of age 59 1/2;

(3) effective beginning with the first Plan Year beginning in 2006, the termination of the Plan without the existence at the time of Plan termination of an alternative defined contribution plan or the establishment of an alternative defined contribution plan by the Employer or an Affiliated Employer within the period ending twelve months after distribution of all assets from the Plan maintained by the Employer. For this purpose, a defined contribution plan is not treated as an alternative defined contribution plan if the plan is an employee stock ownership plan (as defined in Code Section 4975(e)(7) or 409(a)), a simplified employee pension plan (as defined in Code Section 408(k)), a SIMPLE IRA plan (as defined in Code Section 408(p)), a plan or contract that satisfies the requirements of Code Section 403(b), or a plan that is described in Code Sections 457(b) or 457(f). Furthermore, if at all times during the 24-month period beginning 12 months before the date of the Plan's termination, fewer than 2% of the Participants in the Plan as of the date of Plan termination are eligible under the other defined contribution plan, then the other defined contribution plan is not an alternative defined contribution plan. Distributions from the terminating Plan may only be made in lump sum distributions, pursuant to and defined in Regulation 1.401(k)-1(d)(4)(ii);

(d) **Suspension due to hardship.** In the event a Participant has received a hardship distribution, on or after December 31, 2001 pursuant to Regulation 1.401(k)-1(d)(3)(iv)(E)(2) from this Plan or any other plan maintained by the Employer, then such Participant shall not be permitted to elect to have Elective Deferrals contributed to the Plan for a period of six months following the receipt of the distribution.

(e) **Deferrals limited to Code Section 402(g) dollar limit.** A Participant's "elective deferrals" made under this Plan and all other plans, contracts or arrangements of the Employer maintaining this Plan during any calendar year shall not exceed the dollar limitation. For this purpose, "elective deferrals" means, with respect to a calendar year, the sum of all Employer contributions made on behalf of such Participant pursuant to an election to defer under any qualified cash or deferred arrangement as described in Code Section 401(k), any salary reduction simplified employee pension (as defined 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 plans described under Code Section 501(c)(18), and any Employer contributions made on the behalf of a Participant for the purchase of an annuity contract under Code Section 403(b) pursuant to a salary reduction agreement. "Elective deferrals" shall not include any deferrals properly distributed as excess "Annual Additions" pursuant to Section 4.9. "Dollar limitation" shall mean the dollar limitation contained in Code Section 402(g) in effect for the Participant's taxable year beginning in such calendar year. In the case of a participant aged 50 and over by the end of the taxable year, the "dollar limitation" described in the preceding sentence shall be adjusted to include the amount of Elective Deferrals that may be treated as Catch-Up Contributions. The "dollar limitation" contained in Code Section 402(g) is \$10,500 for taxable years beginning in 2000 and 2001, increasing to \$11,000 for taxable years beginning in 2002 and increasing by \$1,000 for each year thereafter up to \$15,000 for taxable years beginning in 2006 and later years. After 2006 the \$15,000 limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code Section 402(g)(4). Any such adjustments will be in multiples of \$500.

(f) **Assigning Excess Deferrals to this Plan.** If a Participant's Elective Deferrals under this Plan together with any elective deferrals (as defined in Regulation 1.402(g)-1(b)) under another qualified cash or deferred arrangement (as described in Code Section 401(k)), a simplified employee pension (as described in Code Section 408(k)(6)), a simple individual retirement account plan (as described in Code Section 408(p)), a salary reduction arrangement (within the meaning of Code Section 3121(a)(5)(D)), or a trust described in Code Section 501(c)(18) cumulatively exceed the "dollar limitation" described in the subsection 4.2(e) of this Section, for such Participant's taxable year, then the Participant may assign to this Plan any Excess Deferrals made during a taxable year of the Participant by notifying the Administrator in writing on or before March 1 following the close of the Participant's taxable year, of the amount of the Excess Deferrals to be assigned to the Plan. A Participant shall be deemed to notify the Administrator of any Excess Deferrals that arise by taking into account only those Elective Deferrals made to this Plan and any other plan, contract, or arrangement of the Employer.

Notwithstanding any other provision of the Plan to the contrary, the Administrator may direct the Trustee to distribute such Excess Deferrals, plus any Income allocable to such Excess Deferrals, to the Participant not later than the first April 15th following the close of the Participant's taxable year. Such a distribution may be made to a Participant to whose account Excess Deferrals were assigned for the preceding year or/and who claims Excess Deferrals for such taxable year or calendar year. Any distribution of less than the entire amount of Excess Deferrals and Income shall be treated as a pro rata distribution of Excess Deferrals and Income. The amount of the distribution shall not exceed the Participant's Elective Deferrals under the Plan for the taxable year (and any Income allocable to such Excess Deferrals). If a distribution of Excess Deferrals is to be made on or before the last day of the Participant's taxable year, then each of the following conditions must be satisfied:

- (1) the distribution must be made after the date on which the Plan received the Excess Deferrals;
- (2) the Participant shall designate the distribution as Excess Deferrals; and
- (3) the Plan must designate the distribution as a distribution of Excess Deferrals.

Any distribution made pursuant to this Section shall be made first from unmatched Elective Deferrals and, thereafter, from Elective Deferrals which are matched.

Matching Contributions that relate to Excess Deferrals which are distributed pursuant to this Section 4.2(f) shall be treated as a Forfeiture.

(g) **Coordination with ADP Test.** Notwithstanding Section 4.2(f) above, a Participant's Excess Deferrals shall be reduced, but not below zero, by any distribution of Excess Contributions pursuant to Section 4.6 for the Plan Year beginning with or within the taxable year of the Participant.

(h) **Segregation.** Elective Deferrals made pursuant to this Section may be segregated into a separate account for each Participant in a federally insured savings account, certificate of deposit in a bank or savings and loan association, money market certificate, or other short-term debt security acceptable to the Trustee until such time as the allocations pursuant to Section 4.4 have been made.

(i) **No conditions to receive Elective Deferrals.** Notwithstanding anything herein to the contrary, Participants who terminated employment for any reason during the Plan Year shall share in the Elective Deferrals made by the Employer for the year of termination without regard to the Hours of Service credited.

(j) **Procedures to implement deferral elections.** The Employer and the Administrator may adopt a procedure to implement the salary reduction elections provided for herein. If such procedure is adopted, then the procedure shall include (and shall not be limited to) the following:

(1) A Participant must make an initial salary deferral election, or an election to receive cash in lieu of a salary deferral election, unless the Employer has implemented an automatic deferral election feature. If the Participant fails to make an initial salary deferral election, or an election to receive cash in lieu of a salary deferral election, if the automatic deferral election applies, then such Participant may thereafter make an election in accordance with the rules governing modifications. The Participant shall make such an election by entering into a salary reduction agreement with the Employer and filing such agreement with the Administrator. Such election shall initially be effective beginning with the pay period following the acceptance of the salary reduction agreement by the Administrator (or as soon thereafter as practical), shall not have retroactive effect and shall remain in force until revoked.

(2) A Participant may modify a prior salary deferral election at any time during the Plan Year and concurrently make a new election by filing a notice with the Administrator (in accordance with procedures established by the Administrator) within a reasonable time before the pay period for which such modification is to be effective. Any modification shall be implemented as soon as practical after being accepted by the Administrator, shall not have retroactive effect and shall remain in force until revoked.

(3) A Participant may elect to prospectively revoke the Participant's salary reduction agreement in its entirety at any time during the Plan Year by providing the Administrator with thirty (30) days written notice of such revocation (or upon such shorter notice period as may be acceptable to the Administrator). Such revocation shall become effective as of the beginning of the first pay period coincident with or next following the expiration of the notice period (or as soon thereafter as practical).

(4) Any notices or required actions under this subsection may be provided or made in accordance with Section 10.14.

4.3 TIME OF PAYMENT OF EMPLOYER CONTRIBUTION

Unless otherwise provided by contract or law, 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. If the Employer makes a contribution for a particular Plan Year after the close of that Plan Year, then the Employer will designate to the Administrator the Plan Year for which the Employer is making its contribution.

4.4 ALLOCATION OF CONTRIBUTION AND USAGE OF FORFEITURES AND EARNINGS

(a) **Separate accounting.** 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 a particular Account of each such Participant as set forth herein.

(b) **Allocation of contributions.** The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer contributions 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 as follows:

(1) **Elective Deferrals.** With respect to the Elective Deferrals made pursuant to Section 4.1(a), to each Participant's Elective Deferral Account.

(2) **Matching Contributions.** With respect to the Matching Contribution made pursuant to Section 4.1(b), to each Participant's Matching Contribution Account in accordance with Section 4.1(b).

Any Participant employed during the Plan Year shall be eligible to share in the Matching Contribution for the Plan Year.

(3) **Qualified Nondollar Contributions.** With respect to the Qualified Nondollar Contribution made pursuant to Section 4.1(c), to each Participant's Qualified Nondollar Contribution Account in accordance with Section 4.1(c).

The Employer may limit such Qualified Nondollar Contributions only to Participants who are Nonhighly Compensated Employees and/or Non-Key Employees. In addition, the Employer may condition such Qualified Nondollar Contributions only

to Participants who have completed a Year of Service (or portion thereof) during the Plan Year and/or who are employed on the last day of the Plan Year.

(4) **Nonelective Contributions.** With respect to the Nonelective Contribution made pursuant to Section 4.1(d), to each Participant's Nonelective Contribution Account in the same proportion that each such Participant's Compensation for the year bears to the total Compensation of all Participants for such year.

(5) **Entitlement to Nonelective Contribution.** Only Participants who are employed on the last day of the Plan Year shall be eligible to share in the discretionary contribution made pursuant to Section 4.1(d) for the year.

(c) **Usage of Forfeitures.** On or before each Anniversary Date, any Forfeitures may be made available to reinstate previously forfeited Account balances of Participants, if any, in accordance with Section 3.5(d), and any remaining Forfeitures may be used to satisfy any contribution that may be required pursuant to Section 3.8 or 6.10, or be used to pay any administrative expenses of the Plan. The remaining Forfeitures, if any, shall be allocated in the following manner:

(1) Forfeitures attributable to Matching Contributions made pursuant to Section 4.1(b) shall be treated as -Nonelective Contributions and shall be allocated among the Nonelective Contribution Accounts of Participants who are eligible to share in the allocation of Nonelective Contributions for the year, in the same proportion that the Compensation of each such Participant for the year bears to the total Compensation of all Participants for that year.

(2) Forfeitures attributable to Nonelective Contributions made pursuant to Section 4.1(d) shall be treated as Nonelective Contributions and shall be allocated among the Nonelective Contribution Accounts of Participants who are eligible to share in the allocation of Nonelective Contributions for the year, in the same proportion that the Compensation of each such Participant for the year bears to the total Compensation of all such Participants for the year.

However, if the usage of Forfeitures provided herein causes the Annual Additions to any Participant's Account to exceed the maximum permissible amount allowable by Code Section 415, then the excess Annual Additions shall be reallocated in accordance with Section 4.10.

(d) **Minimum required allocation to those not otherwise eligible to share.** For any Top-Heavy Plan Year, Employees not otherwise eligible to share in the allocation of contributions and Forfeitures as provided above, shall receive the minimum required allocation of Section 4.4(g) if eligible pursuant to the provisions of Section 4.4(j).

(e) **Allocation of earnings.** As of each Valuation Date, any earnings or losses (net appreciation or net depreciation) of the Trust Fund shall be allocated in the same proportion that each Participant's time weighted average nonsegregated accounts bear to the total of all Participants' time weighted average nonsegregated accounts as of such date. Earnings or losses with respect to a Participant's Directed Account shall be allocated in accordance with Section 4.13.

(f) **Incoming transfers and rollovers.** Participants' transfers from other qualified plans and rollovers 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.

(g) **Minimum required allocation for Top-Heavy Plan Years.** Notwithstanding the foregoing, for any Top-Heavy Plan Year, the sum of the Employer contributions and Forfeitures allocated to the Account of each Employee shall be equal to at least three percent (3%) of such Employee's 415 Compensation (reduced by contributions and forfeitures, if any, allocated to each Employee in any defined contribution plan included with this Plan in a required aggregation group). However, if (1) the sum of the Employer contributions and Forfeitures allocated to the Participant's Account of each Key Employee for such Top-Heavy Plan Year is less than three percent (3%) of each Key Employee's 415 Compensation and (2) this Plan is not required to be included in an aggregation group to enable a defined benefit plan to meet the requirements of Code Section 401(a)(4) or 410, then the sum of the Employer contributions and Forfeitures allocated to the Participant's Account of each Employee shall be equal to the largest percentage allocated to the Account of any Key Employee. However, in determining whether a Non-Key Employee has received the minimum required allocation, such Non-Key Employee's Elective Deferrals shall not be taken into account. The minimum allocation required (to the extent required to be nonforfeitable under Code Section 416(b)) may not be forfeited under Code Section 411(a)(3)(B) or 411(a)(3)(D).

However, no minimum required allocation shall be required in this Plan for any Employee who participates in another defined contribution plan subject to Code Section 412 included with this Plan in a required aggregation group, if the other defined contribution plan subject to Code Section 412 satisfies the minimum required allocation.

(h) **Top-Heavy contribution allocation.** For purposes of the minimum required allocation set forth above, the percentage allocated to the Account of any Key Employee who is a Participant shall be equal to the ratio of the sum of the Employer contributions and Forfeitures allocated on behalf of such Key Employee for the Plan Year divided by the 415 Compensation for such Key Employee for the Plan Year.

(i) **Matching contributions used to satisfy top-heavy contribution.** Effective with respect to Plan Years beginning after December 31, 2001, Matching Contributions shall be taken into account for purposes of satisfying the minimum required allocation of Code

Section 416(c)(2) and the Plan. The preceding sentence shall apply with respect to Matching Contributions under the Plan or, if the Plan provides that the minimum required allocation shall be met in another plan, such other plan. Matching Contributions that are used to satisfy the minimum required allocation shall be treated as Matching Contributions for purposes of the ACP Test and other requirements of Code Section 401(m).

(j) **Participants eligible for top-heavy allocation.** For any Top-Heavy Plan Year, the minimum required allocation set forth above shall be allocated to the Nonelective Contribution Account of all Employees who are Participants and who are employed by the Employer on the last day of the Plan Year regardless of the Employee's level of Compensation, including Employees who have (1) failed to complete a Year of Service; and (2) declined to make mandatory contributions (if required) or, in the case of a cash or deferred arrangement, Elective Deferrals to the Plan.

(k) **415 Compensation for top-heavy purposes.** For the purposes of this Section, 415 Compensation will be limited to the same dollar limitations set forth in Section 1.15, adjusted in such manner as permitted under Code Section 415(d).

(l) **Delay in processing transactions.** 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 or force majeure (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, 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.

4.5 ACTUAL DEFERRAL PERCENTAGE TEST

(a) **ADP Test.** The ADP for Highly Compensated Employees who are Participants for each Plan Year and the ADP for Nonhighly Compensated Employees who are Participants for each Plan Year (or for the preceding Plan Year if the prior year testing method is used) shall satisfy one of the following tests:

(1) The ADP for the group of Highly Compensated Employees who are Participants shall not exceed the ADP for the group of Nonhighly Compensated Employees who are Participants (for the preceding Plan Year if the prior year testing method is used to calculate the ADP for the group of Nonhighly Compensated Employees who are Participants) multiplied by 1.25, or

(2) The ADP for the group of Highly Compensated Employees who are Participants shall not exceed the ADP for the group of Nonhighly Compensated Employees who are Participants (for the preceding Plan Year, if the prior year testing method is used to calculate the ADP for the group of Nonhighly Compensated Employees who are Participants) by more than two percentage points. Furthermore, the ADP for the group of Highly Compensated Employees who are Participants shall not exceed the ADP for the group of Nonhighly Compensated Employees who are Participants (for the preceding Plan Year, if the prior year testing method is used to calculate the ADP for the group of Nonhighly Compensated Employees who are Participants) multiplied by 2.

(b) **Prior Year test upon amendment.** Notwithstanding the above, if the prior year test method is used to calculate the ADP for the group of Nonhighly Compensated Employees who are Participants for the first Plan Year of this amendment and restatement, then the ADP for the group of Nonhighly Compensated Employees who are Participants for the preceding Plan Year shall be calculated pursuant to the provisions of the Plan then in effect.

(c) **Participant regardless of deferral election.** For the purposes of Sections 4.5(a) and 4.6, a Participant shall be any Employee eligible to make a deferral election pursuant to Section 4.2 at any point during the Plan Year.

(d) **Aggregation with other plans.** In the event this Plan satisfies the requirements of Code Sections 401(a)(4), 401(k), or 410(b) only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such Code Sections only if aggregated with this Plan, then this Section shall be applied by determining the ADP of Employees as if all such plans were a single plan. If more than ten percent (10%) of the Employer's Nonhighly Compensated Employees are involved in a plan coverage change as defined in Regulation Section 1.401(k)-2(c)(4), then any adjustments to the Nonhighly Compensated Employees' ADP for the prior year will be made in accordance with such Regulations, unless the Employer has elected to use the current year testing method. Plans may be aggregated in order to satisfy Code Section 401(k) only if they have the same Plan Year and use the same ADP Testing method.

(e) **ADP of Highly Compensated Employee in multiple plans.** For the purposes of this Section, the ADP for any Participant who is a Highly Compensated Employee for the Plan Year and who is eligible to have Elective Deferrals (and Qualified Nonelective Contributions and/or Qualified Matching Contributions, if treated as Elective Deferrals for purposes of the ADP Test) allocated to the Participant's accounts under two or more cash or deferred arrangements described in Code Section 401(k) of the Employer or an Affiliated Employer, shall be determined as if such Elective Deferrals (and, if applicable, such Qualified Nonelective Contributions and/or Qualified Matching Contributions) were made under a single cash or deferred arrangement. If a Highly Compensated Employee participates in two or more cash or deferred arrangements of the Employer or an Affiliated Employer that have different plan years, then all Elective Deferrals made during the Plan Year under all such arrangements shall be aggregated. However, for Plan Years beginning before 2006, if the cash or deferred arrangements have different plan years, then all such cash or deferred arrangements ending with or within the same calendar year shall be treated as a single arrangement. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under the Regulations of Code Sections 401(k) or 410(b).

(f) **Testing method.** For the purpose of this Section, when calculating the ADP for the group of Nonhighly Compensated Employees who are Participants, the current year testing method shall be used. Once the current year testing method has been elected, then the Employer may elect to use the prior year testing method for a Plan Year only if the Plan has used the current year testing method for each of the preceding 5 Plan Years (or if lesser, the number of Plan Years that the Plan has been in existence) or if, as a result of a merger or acquisition described in Code Section 410(b)(6)(C)(i), the Employer maintains both a plan using prior year testing method and a plan using current year testing method and the change is made within the transition period described in Code Section 410(b)(6)(C)(ii).

(g) **Otherwise excludable Employee and early participation rules.** Notwithstanding anything in this Section to the contrary, the provisions of this Section and Section 4.6 may be applied separately (or will be applied separately to the extent required by Regulations) to each "plan" within the meaning of Regulation Section 1.401(k)-1(b)(4)(iv). For purposes of applying this provision, the Administrator may use any effective date of participation that is permitted under Code Section 410(b) provided such date is applied on a consistent and uniform basis to all Participants. Alternatively, the provisions of Code Section 401(k)(3)(F) may be used to exclude from consideration all Nonhighly Compensated Employees who have not satisfied the greatest minimum age and service requirements of Code Section 410(a)(1)(A).

(h) **Timing of allocations.** For purposes of determining the ADP Test, only Elective Deferrals, Qualified Nonelective Contributions and Qualified Matching Contributions that are contributed to the Plan prior to the end of the twelve (12) month period immediately following the Plan Year to which the contributions relate shall be considered.

(i) **Targeted Qualified Nonelective Contributions.** Notwithstanding the preceding, for Plan Years beginning in and after 2006, Qualified Nonelective Contributions cannot be taken into account in determining the ADR for a Plan Year for a Nonhighly Compensated Employee to the extent such contributions exceed the product of that Nonhighly Compensated Employee's 414(s) Compensation and the greater of five percent (5%) or two (2) times the Plan's "representative contribution rate." Any Qualified Nonelective Contribution taken into account under an ACP Test under Regulation Section 1.401(m)-2(a)(6) (including the determination of the representative contribution rate for purposes of Regulation Section 1.401(m)-2(a)(6)(v)(B)), is not permitted to be taken into account for purposes of this paragraph (including the determination of the representative contribution rate under this Section). For purposes of this subsection:

(1) The Plan's "representative contribution rate" is the lowest applicable contribution rate of any eligible Nonhighly Compensated Employee among a group of eligible Nonhighly Compensated Employees that consists of half of all eligible Nonhighly Compensated Employees for the Plan Year (or, if greater, the lowest "applicable contribution rate" of any eligible Nonhighly Compensated Employee in the group of all eligible Nonhighly Compensated Employees for the Plan Year and who is employed by the Employer on the last day of the Plan Year), and

(2) The "applicable contribution rate" for an eligible Nonhighly Compensated Employee is the sum of the Qualified Matching Contributions taken into account for the eligible Nonhighly Compensated Employee for the Plan Year and the Qualified Contributions made for the eligible Nonhighly Compensated Employee for the Plan Year, divided by the eligible Nonhighly Compensated Employee's 414(s) Compensation for the same period.

Restriction on Qualified Matching Contributions. Qualified Matching Contributions may only be used to calculate the ADP to the extent that such Qualified Matching Contributions are Matching Contributions that are not precluded from being taken into account for ACP Test purposes under the rules of Regulation Section 1.401(m)-2(a)(5)(ii).

Restrictions of Qualified Nonelective Contributions and Qualified Matching Contributions. Qualified Nonelective Contributions and Qualified Matching Contributions cannot be taken into account to determine the ADP to the extent such contributions are taken into account for purposes of satisfying any other ADP Test, any ACP Test, or the requirements of Regulation Sections 1.401(k)-3, 1.401(m)-3 or 1.401(k)-4. Thus, for example, Matching Contributions that are made pursuant to Regulation Section 1.401(k)-3(c) cannot be taken into account under the ADP Test. Similarly, if a plan switches from the current year testing method to the prior year testing method pursuant to Regulation Section 1.401(k)-2(c), then Qualified Nonelective Contributions that are taken into account under the current year testing method for a year may not be taken into account under the prior year testing method for the next year.

(j) **ADP when no Nonhighly Compensated Employees.** If, for the applicable year for determining the ADP of the Nonhighly Compensated Employees for a Plan Year, there are no eligible Nonhighly Compensated Employees, then the Plan is deemed to satisfy the ADP Test for the Plan Year.

(k) **Repeal of multiple use test.** The multiple use test described in Code Section 401(m) in effect prior to the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall not apply for Plan Years beginning after December 31, 2001.

4.6 ADJUSTMENT TO ACTUAL DEFERRAL PERCENTAGE TEST

(a) **Authority to correct.** In the event that the initial allocations of the Elective Deferrals made pursuant to Section 4.2 do not satisfy the ADP Test set forth in Section 4.5(a), the Administrator shall implement some or all of the provisions of this Section in order to correct such failure.

(b) **Corrective action.** The Participant who is the Highly Compensated Employee having the largest dollar amount of Elective Deferrals shall have a portion of such Participant's Elective Deferrals distributed until the amount of such Participant's remaining Elective Deferrals equals the Elective Deferrals of the Participant who is the Highly Compensated Employee having the second largest dollar amount of Elective Deferrals. This process shall continue until the total amount of Excess Contributions has been eliminated. In determining the amount of Excess Contributions to be distributed with respect to an affected Participant who is a Highly Compensated Employee as determined herein, such amount shall be reduced pursuant to Section 4.2(f) by any Excess Deferrals previously distributed to such affected Participant who is a Highly Compensated Employee for such Participant's taxable year ending with or within such Plan Year.

(1) **Corrective distribution.** With respect to the distribution of Excess Contributions pursuant to (a) above, such distribution:

- (i) may be postponed but not later than the last day of the twelve-month period following the Plan Year to which they are allocable;
- (ii) shall be made first from unmatched Elective Deferrals and, thereafter, proportionately from Elective Deferrals which are matched and the related Matching Contributions that are used in the ADP Test pursuant to Section 4.5;
- (iii) shall be adjusted for Income; and
- (iv) shall be designated by the Employer as a distribution of Excess Contributions (and Income).

Matching contributions which relate to Excess Contributions that are distributed pursuant to this subsection shall be treated as a Forfeiture to the extent required pursuant to Code Section 401(a)(4) and the Regulations thereunder, unless the related Matching Contribution is distributed as an Excess Contribution or as an Excess Aggregate Contribution.

(2) **Income and principal.** Any distribution of less than the entire amount of Excess Contributions shall be treated as a pro rata distribution of Excess Contributions and Income.

(3) **Related Matching Contributions.** Matching Contributions which relate to Excess Contributions shall be forfeited unless the related Matching Contribution is distributed as an Excess Aggregate Contribution pursuant to Section 4.8.

(c) **Corrective contributions.** Notwithstanding the above, if the current year testing method is used, within twelve (12) months after the end of the Plan Year, the Employer may make a Qualified Nonelective Contribution or Qualified Matching Contribution in accordance with one of the following provisions which contribution shall be allocated either to the Qualified Nonelective Contribution Account or Qualified Matching Contribution Account of each Participant who is a Nonhighly Compensated Employee eligible to share in the allocation in accordance with such provision. If the prior year testing method is used, then neither a Qualified Nonelective Contribution nor a Qualified Matching Contribution may be made to correct a failed ADP test. The Employer shall provide the Administrator with written notification of the amount of the contribution being made and for which provision it is being made pursuant to:

(1) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Participants in an amount sufficient to satisfy one of the tests set forth in Section 4.5(a). Such contribution shall be allocated in the same proportion that each Nonhighly Compensated Employee's 414(s) Compensation for the year bears to the total 414(s) Compensation of all Nonhighly Compensated Employees for such year.

(2) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.5(a). Such contribution shall be allocated in the same proportion that each Nonhighly Compensated Employee's 414(s) Compensation for the year bears to the total 414(s) Compensation of all Nonhighly Compensated Employees for such year. However, for purposes of this contribution, Nonhighly Compensated Employees who are not employed at the end of the Plan Year shall not be eligible to share in the allocation and shall be disregarded.

(3) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.5(a). Such contribution shall be allocated in equal amounts (per capita).

(4) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.5(a). Such contribution shall be allocated in equal amounts (per capita). However, for purposes of this contribution, Nonhighly Compensated Employees who are not employed at the end of the Plan Year shall not be eligible to share in the allocation and shall be disregarded.

(5) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.5(a). Such contribution shall be allocated to the Qualified Nonelective Contribution Account of the Nonhighly Compensated Employee having the lowest 414(s) Compensation, until one of the tests set forth in Section 4.5(a) is satisfied, or until such Nonhighly Compensated Employee has received the maximum permissible amount pursuant to Section 4.9 or the maximum that may be taken into account in the ADP Test pursuant to Section 4.5(i) (Targeted Qualified Nonelective Contributions). This process shall continue until one of the tests set forth in Section 4.5(a) is satisfied.

(6) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.5(a). Such contribution shall be allocated to the Qualified Nonelective Contribution Account of the Nonhighly Compensated Employee having the lowest 414(s) Compensation, until one of the tests set forth in Section 4.5(a) is satisfied, or until such Nonhighly Compensated Employee has received the maximum permissible amount pursuant to Section 4.9 or the maximum that may be taken into account in the ADP Test pursuant to Section 4.5(i) (Targeted Qualified Nonelective Contributions). This process shall continue until one of the tests set forth in Section 4.5(a) is satisfied. However, for purposes of this contribution, Nonhighly Compensated Employees who are not employed at the end of the Plan Year shall not be eligible to share in the allocation and shall be disregarded.

(7) A Qualified Matching Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.5(a). Such contribution shall be allocated to the Qualified Matching Contribution Account of each Nonhighly Compensated Employee in the same proportion that each Nonhighly Compensated Employee's Elective Deferrals for the year bears to the total Elective Deferrals of all Nonhighly Compensated Employees.

(8) A Qualified Matching Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.5(a). Such contribution shall be allocated to the Qualified Matching Contribution Account of each Nonhighly Compensated Employee in the same proportion that each Nonhighly Compensated Employee's Elective Deferrals for the year bears to the total Elective Deferrals of all Nonhighly Compensated Employees. However, for purposes of this contribution, Nonhighly Compensated Employees who are not employed at the end of the Plan Year shall not be eligible to share in the allocation and shall be disregarded.

(9) A Qualified Matching Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.5(a). Such contribution shall be allocated to the Qualified Matching Contribution Account of the Nonhighly Compensated Employee having the lowest Elective Deferrals until one of the tests set forth in Section 4.5(a) is satisfied, or until such Nonhighly Compensated Employee has received the maximum permissible amount pursuant to Section 4.9, subject to the restriction on Qualified Matching Contributions imposed by the provisions of Section 4.7(g). This process shall continue until one of the tests set forth in Section 4.5(a) is satisfied.

(10) A Qualified Matching Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.5(a). Such contribution shall be allocated to the Qualified Matching Contribution Account of the Nonhighly Compensated Employee having the lowest Elective Deferrals until one of the tests set forth in Section 4.5(a) is satisfied, or until such Nonhighly Compensated Employee has received the maximum permissible amount pursuant to Section 4.9, subject to the restriction on Qualified Matching Contributions imposed by the provisions of Section 4.7(g). This process shall continue until one of the tests set forth in Section 4.5(a) is satisfied. However, for purposes of this contribution, Nonhighly Compensated Employees who are not employed at the end of the Plan Year shall not be eligible to share in the allocation and shall be disregarded.

Notwithstanding the above, 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 Nonelective Contributions for the first testing year for which the change is effective, any special Qualified Nonelective Contribution on behalf of Nonhighly Compensated Participants used to satisfy the ADP Test or the ACP Test under the current year testing method for the prior year testing year shall be disregarded.

(d) **Administrator may prevent projected failure.** If during a Plan Year, it is projected that the aggregate amount of Elective Deferrals to be allocated to all Highly Compensated Participants under this Plan would cause the Plan to fail the tests set forth in Section 4.5(a), then the Administrator may automatically reduce the deferral amount of affected Highly Compensated Participants, beginning with the Highly Compensated Participant who has the highest ADR until it is anticipated the Plan will pass the tests or until such Participant's ADR equals the ADR of the Highly Compensated Participant having the next highest ADR. This process may continue until it is anticipated that the Plan will satisfy one of the tests set forth in Section 4.5(a). Alternatively, the Employer may specify a maximum percentage of Compensation that may be deferred.

(e) **Excise tax after 2 1/2 months.** Any Excess Contributions (and Income) which are distributed on or after 2 1/2 months after the end of the Plan Year shall be subject to the ten percent (10%) Employer excise tax imposed by Code Section 4979.

4.7 ACTUAL CONTRIBUTION PERCENTAGE TEST

(a) **ACP Test.** The ACP for Highly Compensated Employees who are Participants for each Plan Year and the ACP for Nonhighly Compensated Employees who are Participants for each Plan Year (or for the preceding Plan Year if the prior year testing method is used) shall satisfy one of the following tests:

(1) The ACP for the group of Highly Compensated Employees who are Participants shall not exceed the ACP for the group of Nonhighly Compensated Employees who are Participants (for the preceding Plan Year if the prior year testing method is used to calculate the ACP for the group of Nonhighly Compensated Employees who are Participants) multiplied by 1.25; or

(2) The ACP for the group of Highly Compensated Employees who are Participants shall not exceed the ACP for the group of Nonhighly Compensated Employees who are Participants (for the preceding Plan Year, if the prior year testing method is used to calculate the ACP for the group of Nonhighly Compensated Employees who are Participants) by more than two percentage

points. Furthermore, the ACP for the group of Highly Compensated Employees who are Participants shall not exceed the ACP for the group of Nonhighly Compensated Employees who are Participants (for the preceding Plan Year, if the prior year testing method is used to calculate the ACP for the group of Nonhighly Compensated Employees who are Participants) multiplied by 2.

(b) **Prior-year test upon amendment.** Notwithstanding the above, if the prior year test method is used to calculate the ACP for the group of Nonhighly Compensated Employees who are Participants for the first Plan Year of this amendment and restatement, then the ACP for the group of Nonhighly Compensated Employees who are Participants for the preceding Plan Year shall be calculated pursuant to the provisions of the Plan then in effect.

(c) **Aggregation with other plans.** In the event that this Plan satisfies the requirements of Code Sections 401(a)(4), 401(m), or 410(b) only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such sections of the Code only if aggregated with this Plan (other than the average benefits test under Code Section 410(b)(2)(A)(ii)), then this Section shall be applied by determining the ACP of Employees as if all such plans were a single plan. If more than ten percent (10%) of the Employer's Nonhighly Compensated Employees are involved in a plan coverage change as defined in Regulation Section 1.401(m)-2(c)(4), then any adjustments to the Nonhighly Compensated Employees ACP for the prior year will be made in accordance with such Regulations, unless the Employer has elected to use the current year testing method. Plans may be aggregated in order to satisfy Code Section 401(m) only if they have the same Plan Year and use the same ACP testing method.

(d) **ACP of Highly Compensated Employee in multiple plans.** For the purposes of this Section, if a Highly Compensated Employee is a Participant under two (2) or more plans which are maintained by the Employer or an Affiliated Employer to which Matching Contributions, nondeductible Employee contributions, or both, are made, then all such contributions on behalf of such Highly Compensated Employee shall be aggregated for purposes of determining such Highly Compensated Employee's ACP. If the plans have different plan years, then all such contributions made during the Plan Year under all such arrangements shall be aggregated. However, for Plan Years beginning before 2006 this paragraph shall be applied by treating all plans ending with or within the same calendar year as a single plan. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under Regulations under Code Section 401(m).

(e) **Current year testing method.** For the purpose of this Section, when calculating the ACP for the group of Nonhighly Compensated Employees who are Participants, the current year testing method shall be used. Once the current year testing method has been elected, then the Employer may elect to use the prior year testing method for a Plan Year only if the Plan has used the current year testing method for each of the preceding 5 Plan Years (or if lesser, the number of Plan Years that the Plan has been in existence) or if, as a result of a merger or acquisition described in Code Section 410(b)(6)(C)(i), the Employer maintains both a plan using prior year testing method and a plan using current year testing method and the change is made within the transition period described in Code Section 410(b)(6)(C)(ii).

(f) **Otherwise excludable Employee and early participation rules.** Notwithstanding anything in this Section to the contrary, the provisions of this Section and Section 4.8 may be applied separately (or will be applied separately to the extent required by Regulations) to each plan within the meaning of Regulation Section 1.401(m)-1(b)(4). For purposes of applying this provision, the Administrator may use any effective date of participation that is permitted under Code Section 410(b) provided such date is applied on a consistent and uniform basis to all Participants. Alternatively, the provisions of Code Section 401(m)(5)(C) may be used to exclude from consideration all Nonhighly Compensated Employees who have not satisfied the greatest minimum age and service requirements of Code Section 410(a)(1)(A).

(g) **Targeted Matching Contributions.** Notwithstanding the preceding, for Plan Years beginning in and after 2006, a Matching Contribution (and a Qualified Matching Contribution not used in the ADP Test) with respect to an Elective Deferral for a year is not taken into account in determining the ACP for Nonhighly Compensated Employees to the extent it exceeds the greatest of:

- (1) five percent (5%) of the Participant's 414(s) Compensation for the year;
- (2) the Employee's Elective Deferrals for the year; and
- (3) the product of two (2) times the Plan's "representative matching rate" and the Participant's Elective Deferrals for the year.

For purposes of this subsection, the Plan's "representative matching rate" is the lowest "matching rate" for any eligible Nonhighly Compensated Employee among a group of Nonhighly Compensated Employees that consists of half of all eligible Nonhighly Compensated Employees in the Plan for the Plan Year who make Elective Deferrals for the Plan Year (or, if greater, the lowest "matching rate" for all eligible Nonhighly Compensated Employees in the Plan who are employed by the Employer on the last day of the Plan Year and who make Elective Deferrals for the Plan Year).

For purposes of this subsection, the "matching rate" for an Employee generally is the Matching Contributions (and Qualified Matching Contributions not used in the ADP Test) made for such Employee divided by the Employee's Elective Deferrals for the year. If the matching rate is not the same for all levels of Elective Deferrals for an Employee, then the Employee's "matching rate" is determined assuming that an Employee's Elective Deferrals are equal to six percent (6%) of 414(s) Compensation.

(h) **Targeted Qualified Nondiscriminatory Contributions.** Notwithstanding the preceding, for Plan Years beginning in and after 2006, Qualified Nondiscriminatory Contributions cannot be taken into account in determining the ACP for a Plan Year for a Nonhighly Compensated Employee to the extent such contributions exceed the product of that Nonhighly Compensated Employee's 414(s)

Compensation and the greater of five percent (5%) or two times the Plan's "representative contribution rate." Any Qualified Nonelective Contribution taken into account in the ADP test under Regulation Section 1.401(k)-2(a)(6) (including determination of the representative contribution rate for purposes of Regulation Section 1.401(k)-2(a)(6)(iv)(B)), is not permitted to be taken into account for purposes of this paragraph (including the determination of the representative contribution rate under this Section). For purposes of this subsection:

- (1) The Plan's "representative contribution rate" is the lowest applicable contribution rate of any eligible Nonhighly Compensated Employee among a group of eligible Nonhighly Compensated Employees that consists of half of all eligible Nonhighly Compensated Employees for the Plan Year (or, if greater, the lowest "applicable contribution rate" of any eligible Nonhighly Compensated Employee in the group of all eligible Nonhighly Compensated Employees for the Plan Year and who is employed by the Employer on the last day of the Plan Year), and
- (2) The "applicable contribution rate" for an eligible Nonhighly Compensated Employee is the sum of the Matching Contributions taken into account under this Section for the eligible Nonhighly Compensated Employee for the Plan Year and the Qualified Nonelective Contributions taken into account under this Section made for the eligible Nonhighly Compensated Employee for the Plan Year, divided by the eligible Nonhighly Compensated Employee's 414(s) Compensation for the same period.

Restrictions of Qualified Nonelective Contributions and Qualified Matching Contributions. Qualified Nonelective Contributions and Qualified Matching Contributions cannot be taken into account to determine the ACP to the extent such contributions are taken into account for purposes of satisfying any other ACP Test, any ADP Test, or the requirements of Regulation Sections 1.401(k)-3, 1.401(m)-3 or 1.401(k)-4. Thus, for example, Qualified Nonelective Contributions that are made pursuant to Regulation Section 1.401(k)-3(b) cannot be taken into account under the ACP Test. Similarly, if a plan switches from the current year testing method to the prior year testing method pursuant to Regulation Section 1.401(m)-2(c)(1), then Qualified Nonelective Contributions that are taken into account under the current year testing method for a year may not be taken into account under the prior year testing method for the next year.

- (i) **ACP when no Nonhighly Compensated Employees.** If, for the applicable year for determining the ACP of the Nonhighly Compensated Employees for a Plan Year, there are no eligible Nonhighly Compensated Employees, then the Plan is deemed to satisfy the ACP Test for the Plan Year.
- (j) **Repeal of multiple use test.** The multiple use test described in Code Section 401(m) in effect prior to the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall not apply for Plan Years beginning after December 31, 2001.

4.8 ADJUSTMENT TO ACTUAL CONTRIBUTION PERCENTAGE TEST

- (a) **Authority to correct.** In the event that the ACP Test set forth in Section 4.7(a) is not satisfied, the Administrator shall implement some or all of the provisions of this Section in order to correct such failure.

(b) **Corrective distribution or Forfeiture.** On or before the close of the following Plan Year, the Participant who is the Highly Compensated Employee having the largest dollar amount of Contribution Percentage Amounts shall have a portion of such Contribution Percentage Amounts (and Income allocable to such amounts) distributed or, if non-Vested, treated as a Forfeiture (including Income allocable to such Forfeitures) until the total amount of Excess Aggregate Contributions has been distributed, or until the amount of the Participant's Contribution Percentage Amounts equals the Contribution Percentage Amounts of the Participant who is a Highly Compensated Employee having the next largest amount of Contribution Percentage Amounts. This process shall continue until the total amount of Excess Aggregate Contributions has been distributed or forfeited. Any distribution and/or Forfeiture of Contribution Percentage Amounts shall be made in the following order:

- (1) Matching Contributions distributed and/or forfeited pursuant to Section 4.6(b);
- (2) Any remaining Matching Contributions.

If the distribution of Excess Aggregate Contributions attributable to Matching Contributions is not in proportion to the Vested and non-Vested portion of such Matching Contributions, then the Vested portion of the Participant's Matching Contribution Account after the distribution shall be subject to Section 6.5(e).

(c) **Source of corrective distribution or Forfeiture.** Any distribution and/or Forfeiture of less than the entire amount of Excess Aggregate Contributions (and Income) shall be treated as a pro rata distribution and/or Forfeiture 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). Forfeitures of Excess Aggregate Contributions shall be treated in accordance with Section 4.4.

(d) **Treatment of Excess Aggregate Contributions.** Excess Aggregate Contributions, including Matching Contributions that are treated as Forfeitures, shall be treated as Employer contributions for purposes of Code Sections 404 and 415 even if distributed from the Plan.

(e) **Ordering of tests.** The determination of the amount of Excess Aggregate Contributions with respect to any Plan Year shall be made after first determining the Excess Contributions, if any, to be treated as After-Tax Voluntary Contributions due to

recharacterization for the Plan Year of any other qualified cash or deferred arrangement (as defined in Code Section 401(k)) maintained by the Employer that ends with or within the Plan Year.

(f) **Administrator may prevent projected failure.** If during a Plan Year the projected aggregate Contribution Percentage Amounts to be allocated to all Participants who are Highly Compensated Employees under this Plan would, by virtue of the ACP Test of Section 4.7(a), cause the Plan to fail the ACP Test, then the Administrator may automatically reduce proportionately or in the order provided in Section 4.8(b) the projected share each affected Participant who is a Highly Compensated Employee of such contributions by an amount necessary to satisfy the ACP Test of Section 4.7(a).

(g) **Corrective contributions.** Notwithstanding the above, if the current year testing method is used, within twelve (12) months after the end of the Plan Year, the Employer may make a Qualified Nonelective Contribution, Qualified Matching Contribution, or Matching Contribution in accordance with one of the following provisions, which contribution shall be allocated to the Qualified Nonelective Contribution Account, Qualified Matching Contribution Account, or Matching Account of each Participant who is a Nonhighly Compensated Employee eligible to share in the allocation in accordance with such provision. If the prior year testing method is used, then neither a Qualified Nonelective Contribution nor Qualified Matching Contribution may be made to correct a failed ACP test. The Employer shall provide the Administrator with written notification of the amount of the contribution being made and for which provision it is being made pursuant to:

(1) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Participants in an amount sufficient to satisfy one of the tests set forth in Section 4.7(a). Such contribution shall be allocated in the same proportion that each Nonhighly Compensated Employee's 414(s) Compensation for the year bears to the total 414(s) Compensation of all Nonhighly Compensated Employees for such year.

(2) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.7(a). Such contribution shall be allocated in the same proportion that each Nonhighly Compensated Employee's 414(s) Compensation for the year bears to the total 414(s) Compensation of all Nonhighly Compensated Employees for such year. However, for purposes of this contribution, Nonhighly Compensated Employees who are not employed at the end of the Plan Year shall not be eligible to share in the allocation and shall be disregarded.

(3) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.7(a). Such contribution shall be allocated in equal amounts (per capita).

(4) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.7(a). Such contribution shall be allocated in equal amounts (per capita). However, for purposes of this contribution, Nonhighly Compensated Employees who are not employed at the end of the Plan Year shall not be eligible to share in the allocation and shall be disregarded.

(5) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.7(a). Such contribution shall be allocated to the Qualified Nonelective Contribution Account of the Nonhighly Compensated Employee having the lowest 414(s) Compensation, until one of the tests set forth in Section 4.7(a) is satisfied, or until such Nonhighly Compensated Employee has received the maximum permissible amount pursuant to Section 4.9, or the maximum that may be taken into account in the ACP Test pursuant to Section 4.7(h) (Targeted Qualified Nonelective Contributions). This process shall continue until one of the tests set forth in Section 4.7(a) is satisfied.

(6) A Qualified Nonelective Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.7(a). Such contribution shall be allocated to the Qualified Nonelective Contribution Account of the Nonhighly Compensated Employee having the lowest 414(s) Compensation, until one of the tests set forth in Section 4.7(a) is satisfied, or until such Nonhighly Compensated Employee has received the maximum permissible amount pursuant to Section 4.9, or the maximum that may be taken into account in the ACP Test pursuant to Section 4.7(h) (Targeted Qualified Nonelective Contributions). This process shall continue until one of the tests set forth in Section 4.7(a) is satisfied. However, for purposes of this contribution, Nonhighly Compensated Employees who are not employed at the end of the Plan Year shall not be eligible to share in the allocation and shall be disregarded.

(7) A Matching Contribution or Qualified Matching Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.7(a). Such contribution shall be allocated to the Qualified Matching Contribution Account of each Nonhighly Compensated Employee in the same proportion that each Nonhighly Compensated Employee's Elective Deferrals for the year bears to the total Elective Deferrals of all Nonhighly Compensated Employees.

(8) A Matching Contribution or Qualified Matching Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.7(a). Such contribution shall be allocated to the Qualified Matching Contribution Account of each Nonhighly Compensated Employee in the same proportion that each Nonhighly Compensated Employee's Elective Deferrals for the year bears to the total Elective Deferrals of all Nonhighly Compensated Employees. However, for purposes of this contribution, Nonhighly Compensated Employees who are not employed at the end of the Plan Year shall not be eligible to share in the allocation and shall be disregarded.

(9) A Matching Contribution or Qualified Matching Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.7(a). Such contribution shall be allocated to the Qualified Matching Contribution Account of the Nonhighly Compensated Employee having the lowest Elective Deferrals until one of the tests set forth in Section 4.7(a) is satisfied, or until such Nonhighly Compensated Employee has received the maximum permissible amount pursuant to Section 4.9, subject to the restriction on Targeted Matching Contributions imposed by the provisions of Section 4.7(g). This process shall continue until one of the tests set forth in Section 4.7(a) is satisfied.

(10) A Matching Contribution or Qualified Matching Contribution may be made on behalf of Nonhighly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 4.7(a). Such contribution shall be allocated to the Qualified Matching Contribution Account of the Nonhighly Compensated Employee having the lowest Elective Deferrals until one of the tests set forth in Section 4.7(a) is satisfied, or until such Nonhighly Compensated Employee has received the maximum permissible amount pursuant to Section 4.9, subject to the restriction on Targeted Matching Contributions imposed by the provisions of Section 4.7(g). This process shall continue until one of the tests set forth in Section 4.7(a) is satisfied. However, for purposes of this contribution, Nonhighly Compensated Employees who are not employed at the end of the Plan Year shall not be eligible to share in the allocation and shall be disregarded.

(h) **Excise tax.** Any Excess Aggregate Contributions (and Income) which are distributed on or after 2 1/2 months after the end of the Plan Year shall be subject to the ten percent (10%) Employer excise tax imposed by Code Section 4979.

4.9 MAXIMUM ANNUAL ADDITIONS

(a) **Maximum permissible amount.** Notwithstanding the foregoing, for Limitation Years beginning after December 31, 2001, the maximum Annual Additions credited to a Participant's Accounts for any Limitation Year shall equal the lesser of:

- (1) \$40,000 adjusted annually as provided in Code Section 415(d) pursuant to the Regulations, or
- (2) one-hundred percent (100%) of the Participant's 415 Compensation for such Limitation Year.

The percentage limitation in paragraph (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(l)(1).

For any short Limitation Year, the dollar limitation in paragraph (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) **Reasonable estimate permissible.** Prior to determining the Participant's actual 415 Compensation for the Limitation Year, the Employer may determine the maximum permissible amount for a Participant on the basis of a reasonable estimation of the Participant's 415 Compensation for the Limitation Year, uniformly determined for all Participants similarly situated. As soon as is administratively feasible after the end of the Limitation Year, the maximum permissible amount for the Limitation Year will be determined on the basis of the Participant's actual 415 Compensation for the Limitation Year.

(c) **Excess Annual Additions defined.** For purposes of this Article, the term "Excess Annual Additions" for any Participant for a Limitation Year means a Participant's Annual Additions under this Plan and such other plans of the Employer or Affiliated Employer that are in excess of the maximum permissible amount of Section 4.9 for a Limitation Year. The Excess Annual Additions will be deemed to consist of the Annual Additions last allocated, except that Annual Additions attributable to a simplified employee pension will be deemed to have been allocated first, followed by Annual Additions to a welfare benefit fund or individual medical account, and then by Annual Additions to a plan subject to Code Section 412, regardless of the actual allocation date.

(d) **Annual Additions can cease when maximum permissible amount reached.** 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 permissible amount, then the amount that would otherwise be contributed or allocated will be reduced so that the Annual Additions for the Limitation Year will equal the maximum permissible amount, and any such amounts which would have been allocated to such Participant may be allocated to other Participants.

(e) **All DC plans treated as one plan.** For the purpose of this Section, all qualified defined contribution plans (regardless of whether such plan has terminated) maintained by the Employer during a Limitation Year shall be treated as one defined contribution plan.

(f) **All Employees of Related Employers treated as employed by one Employer.** 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), then all Employees of such Employers shall be considered to be employed by a single Employer.

(g) **413(c) Plan.** If this is a plan described in Code Section 413(c) (other than a plan described in Code Section 414(f)), then all of the benefits or contributions attributable to a Participant from all of the Employers maintaining this Plan shall be taken into account in applying the limits of this Section with respect to such Participant. Furthermore, in applying the limitations of this Section with respect

to such a Participant, the total 415 Compensation received by the Participant from all of the Employers maintaining the Plan shall be taken into account.

(h)(1) DC Plans with same/different Anniversary Dates. If a Participant participates in more than one defined contribution plan maintained by the Employer that have different Anniversary Dates, then the maximum permissible amount under this Plan shall equal the maximum permissible amount 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, then 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 not subject to Code Section 412 maintained by the Employer which have the same Anniversary Date, then the maximum permissible amount under this Plan shall equal the product of (A) the maximum permissible amount 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.

4.10 ADJUSTMENT FOR EXCESS ANNUAL ADDITIONS

(a) **Disposal of Excess Annual Additions.** Allocation of Annual Additions to a Participant's Account for a Limitation Year generally will cease in accordance with Section 4.9(d) once the maximum permissible amount of Section 4.9 has been reached for such Limitation Year. However, if, as a result of the allocation of Forfeitures, 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 with respect to the maximum permissible amount of Section 4.9 or other facts and circumstances to which Regulation 1.415-6(b)(6) shall be applicable, the Annual Additions under this Plan would cause Excess Annual Additions for any Participant, then the Excess Annual Additions will be disposed of in one of the following ways, as uniformly determined by the Administrator for all Participants similarly situated.

(1) Any unmatched Elective Deferrals and, thereafter, proportionately from Elective Deferrals which are matched and Matching Contributions which relate to such Elective Deferrals, will be reduced to the extent they would reduce the Excess Annual Additions. The Elective Deferrals (and any gains attributable to such Elective Deferrals) shall be distributed to the Participant and the Matching Contributions (and any gains attributable to such Matching Contributions) will be used to reduce the Employer contribution in the next Limitation Year;

(2) If the Participant is covered by the Plan at the end of the Limitation Year, then the Excess Annual Additions will be used to reduce the Employer contribution (including allocation of any Forfeitures) for such Participant in the next Limitation Year, and each succeeding Limitation Year if necessary;

(3) If the Participant is not covered by the Plan at the end of the Limitation Year, then the Excess Annual Additions will be held unallocated in a "Section 415 suspense account." The "Section 415 suspense account" will be applied to reduce future Employer contributions (including allocation of any Forfeitures) 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, then the "Section 415 suspense account" 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, then 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 above, Excess Annual Additions may not be distributed to Participants.

(b) **Section 415 suspense account defined.** For purposes of this Section, the term "Section 415 suspense account" means an unallocated account equal to the sum of Excess Annual Additions for all Participants in the Plan during the Limitation Year.

4.11 PLAN-TO-PLAN TRANSFERS (OTHER THAN ROLLOVERS) FROM QUALIFIED PLANS

(a) **Transfers into this Plan.** With the consent of the Administrator (such consent must be exercised in a nondiscriminatory manner and applied uniformly to all Participants), amounts may be transferred (within the meaning of Code Section 414(l)) to this Plan from other tax qualified plans under Code Section 401(a), provided that the plan from which such funds are transferred permits the transfer to be made, the funds are not subject to the notice and consent requirements of Code Section 417 (i.e., qualified joint and survivor annuity requirements), and the transfer will not jeopardize the tax exempt status of the Plan or Trust or create adverse tax consequences for the Employer. Prior to accepting any transfers to which this Section applies, the Administrator may require satisfactory evidence that the amounts to be transferred meet the requirements of this Section. The transferred amounts shall be allocated to the Transfer Account of the Participant.

At the time of the transfer, the nonforfeitable percentage of the funds under the transferor plan shall apply, but thereafter shall increase (if applicable) for each Year of Service that the Participant completes after such transfer in accordance with the Vesting provisions of this Plan applicable to the type of Account represented by the transferred funds (e.g., transferred nonelective funds will be subject to the vesting schedule applicable to Nonelective Contributions under this Plan). If the vesting schedule applicable to a Transferred Account changes as a result of this paragraph, such change will be treated as an amendment to the vesting schedule for each affected Participant.

(b) **Accounting of transfers.** The Transfer Account of a Participant shall be held by the Trustee pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as provided in paragraph (d) of this Section. The Trustee shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee under the terms of this Plan.

(c) **Restrictions on elective deferrals.** Except as permitted by Regulations (including Regulation Section 1.411(d)-4), amounts attributable to elective deferrals (as defined in Regulation Section 1.401(k)-6), including amounts treated as elective deferrals, which are transferred from another qualified plan in a plan-to-plan transfer (other than a direct rollover) shall be subject to the distribution limitations provided for in Code Section 401(k)(2) and the Regulations.

(d) **Distribution of Transfer Account.** At Normal Retirement Date, or such other date when the Participant or the Participant's Beneficiary shall be entitled to receive benefits, the Transfer Account of a Participant shall be used to provide additional benefits to the Participant or the Participant's Beneficiary. Any distributions of amounts held in the Transfer Account shall be made in a manner which is consistent with and satisfies the provisions of Sections 6.5 and 6.6, including, but not limited to, all notice and consent requirements of Code Section 411(a)(11) and the Regulations thereunder. Furthermore, the Transfer Account shall be considered as part of a Participant's benefit in determining whether an involuntary cash-out of benefits may be made without Participant consent.

(e) **Segregation.** The Administrator may direct that Employee transfers made after a Valuation Date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at which time they may remain segregated or be invested as part of the general Trust Fund or be directed by the Participant pursuant to Section 4.13.

(f) **Protected benefits.** Notwithstanding anything herein to the contrary, a transfer directly to this Plan from another qualified plan (or a transaction having the effect of such a transfer) shall only be permitted if it will not result in the elimination or reduction of any "Section 411(d)(6) protected benefit" as described in Section 8.1(e).

(g) **Separate Accounts.** With respect to each Participant's Transfer Account, separate sub-accounts shall be maintained to the extent necessary to carry out the provisions of this Plan.

4.12 ROLLOVERS FROM OTHER PLANS

(a) **Acceptance of rollovers into the Plan.** This Section applies to a rollover from an eligible retirement plan into this Plan made on or after January 1, 2002. With the consent of the Administrator (such consent must be exercised in a nondiscriminatory manner and applied uniformly to all Participants), the Plan may accept a rollover by Participants, excluding Participants who are no longer employed as an Employee and including Eligible Employees, provided the rollover will not jeopardize the tax-exempt status of the Plan or create adverse tax consequences for the Employer. The rollover amounts shall be allocated to the Rollover Account of the Participant. The Rollover Account of a Participant shall be 100% Vested at all times and shall not be subject to Forfeiture for any reason.

(b) **Treatment of Rollover Account in the Plan.** The Rollover Account shall be held by the Trustee pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as provided in paragraph (c) of this Section. The Trustee shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee under the terms of this Plan.

(c) **Distribution of rollovers.** The Administrator, at the election of the Participant, shall direct the Trustee to distribute all or a portion of the amount credited to the Participant's Rollover Account at any time. Furthermore, amounts in the Participant's Rollover Account shall be considered as part of a Participant's benefit in determining whether the \$5,000 threshold has been exceeded for purposes of the timing or form of payments under the Plan as well as for the Participant consent requirements. Any distributions of amounts that are held in the Rollover Account shall be made in a manner which is consistent with and satisfies the provisions of Sections 6.5 and 6.6, including, but not limited to, all notice and consent requirements of Code Section 411(a)(11) and the Regulations thereunder.

(d) **Limits on accepting rollovers.** Prior to accepting any rollovers to which this Section applies, the Administrator may require the Employee to provide evidence that the amounts to be rolled over to this Plan meet the requirements of this Section. The Employer may instruct the Administrator, operationally and on a nondiscriminatory basis, to limit the source of rollovers that may be accepted by the Plan.

(e) **Rollovers maintained in a separate account.** The Administrator may direct that rollovers received after a Valuation Date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at

which time they may remain segregated or be invested as part of the general Trust Fund or be directed by the Participant pursuant to Section 4.13.

(f) **Definitions.** For purposes of this Section, the following definitions shall apply:

(1) The term "rollover" means: (i) amounts transferred to this Plan directly from another "eligible retirement plan;" (ii) distributions received by an Employee from other "eligible retirement plans" which are eligible for tax-free rollover to an "eligible retirement plan" and which are transferred by the Employee to this Plan within sixty (60) days following receipt thereof; and (iii) any other amounts which are eligible to be rolled over to this Plan pursuant to the Code.

(2) The term "eligible retirement plan" means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b) (other than an endowment contract), a qualified trust (an employees' trust described in Code Section 401(a) which is exempt from tax under Code Section 501(a)), an annuity plan described in Code Section 403(a), an eligible deferred compensation plan described in Code Section 457(b) which is maintained by an eligible employer described in Code Section 457(e)(1)(A), and an annuity contract described in Code Section 403(b).

4.13 PARTICIPANT DIRECTED INVESTMENTS

(a) **Directed Investments allowed.** 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 their entire 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) **Establishment of Participant Direction Procedures.** The Administrator will establish Participant Direction Procedures, to be applied in a uniform and nondiscriminatory manner, setting forth the permissible investment options under this Section, how often changes between investments may be made, and any other limitations and provisions that the Administrator may impose on a Participant's right to direct investments.

(c) **Administrative discretion.** The Administrator may, in its discretion, include or exclude by amendment or other action from the Participant Direction Procedures such instructions, guidelines or policies as it deems necessary or appropriate to ensure proper administration of the Plan, and may interpret the same accordingly.

(d) **Allocation of earnings.** 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.

(e) **Plan will follow investment directions.** 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 or force majeure (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, 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.

(f) **Section 404(e) provisions.** The Participant Direction Procedures shall provide an explanation of the circumstances under which Participants and their Beneficiaries may give investment instructions, including, but not limited to, the following to the extent required under the Department of Labor regulations or guidance:

(1) the conveyance of instructions by the Participants and their Beneficiaries to invest Participant Directed Accounts in Directed Investment Options;

(2) the name, address and phone number of the Fiduciary (and, if applicable, the person or persons designated by the Fiduciary to act on its behalf) responsible for providing information to the Participant or a Beneficiary upon request relating to the Directed Investment Options;

(3) applicable restrictions on transfers to and from any Designated Investment Alternative;

(4) any restrictions on the exercise of voting, tender and similar rights related to a Directed Investment Option by the Participants or their Beneficiaries;

(5) a description of any transaction fees and expenses which affect the balances in Participant Directed Accounts in connection with the purchase or sale of Directed Investment Options; and

(6) general procedures for the dissemination of investment and other information relating to the Designated Investment Alternatives as deemed necessary or appropriate, including but not limited to a description of the following:

(i) the investment vehicles available under the Plan, including specific information regarding any Designated Investment Alternative;

(ii) any designated Investment Managers; and

(iii) a description of the additional information which may be obtained upon request from the Fiduciary designated to provide such information.

(g) **Other documents.** Any information regarding investments available under the Plan, to the extent not required to be described in the Participant Direction Procedures, may be provided to the Participant in one or more written documents (or in any other form including, but not limited to, electronic media) which are separate from the Participant Direction Procedures and are not thereby incorporated by reference into this Plan.

(h) **Instructions, guidelines or policies.** The Administrator may, in its discretion, include or exclude by amendment or other action from the Participant Direction Procedures such instructions, guidelines or policies as it deems necessary or appropriate to ensure proper administration of the Plan, and may interpret the same accordingly.

4.14 QUALIFIED MILITARY SERVICE

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service will be provided in accordance with Code Section 414(u). Furthermore, loan repayments may be suspended under this Plan as permitted under Code Section 414(u)(4).

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 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 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. 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 4.4, 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 (subject to the provisions of Section 4.2(c)), or as soon thereafter as is practicable, the Administrator shall direct the distribution, at the election of the Participant, of the Participant's entire Vested interest in the Plan (or any portion thereof), in accordance with Section 6.5.

6.2 DETERMINATION OF BENEFITS UPON DEATH

- (a) **100% Vesting on death.** 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.
- (b) **Distribution upon death.** Upon the death of a Participant, the Administrator shall direct, in accordance with the provisions of Sections 6.6 and 6.7, the distribution of any remaining amounts credited to the accounts of the deceased Participant to such Participant's Beneficiary.
- (c) **Security for loans.** Any security interest held by the Plan by reason of an outstanding loan to the Participant shall be taken into account in determining the amount of the death benefit.
- (d) **Determination of death benefit by Administrator.** 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 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.
- (e) **Beneficiary designation.** The Beneficiary of the death benefit payable pursuant to this Section shall be the Participant's surviving spouse. Except, however, the Participant may designate a Beneficiary other than the spouse if:
 - (1) 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 notice (or in such other form as permitted by the Internal Revenue Service) 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.

- (f) **Beneficiary if no beneficiary elected by Participant.** In the event no valid designation of Beneficiary exists with respect to all or a portion of the death benefit, or if the Beneficiary of such death benefit is not alive at the time of the Participant's death and no contingent Beneficiary has been designated, then such 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 designated Beneficiary (or there is no designated Beneficiary, to the Beneficiary's estate).

- (g) **Divorce revokes spousal beneficiary designation.** 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 domestic relations order (within the meaning of Code Section 414(p)) provides otherwise or a subsequent beneficiary designation is made.

- (h) **Spousal consent.** Any consent by the Participant's spouse to waive any rights to the death benefit must be in writing (or in such other form as permitted by the Internal Revenue Service), must acknowledge the effect of such waiver, and be witnessed by a Plan representative or a notary public. Further, the spouse's consent must be irrevocable and must acknowledge the specific nonspouse Beneficiary.

6.3 DISABILITY RETIREMENT BENEFITS

No disability benefits, other than those payable upon termination of employment, are provided in this Plan.

6.4 DETERMINATION OF BENEFITS UPON TERMINATION

(a) **Payment on termination of employment.** If a Participant's employment with the Employer is terminated for any reason other than death 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 a distributable event had the Terminated Participant remained in the employ of the Employer (upon the Participant's death or Normal Retirement). However, at the election of the Participant, the Administrator shall direct the distribution of the entire Vested portion of the Terminated Participant's Account be payable to such Terminated Participant as soon as administratively feasible after termination of employment. 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 Section 411(a)(11) and the Regulations thereunder.

If the value of a Terminated Participant's Total Vested Benefit does not exceed \$5,000, then the Participant's Vested benefit shall be paid to such Participant in a single lump sum as soon as administratively feasible after termination of employment.

For purposes of this Section 6.4, if the value of a Terminated Participant's Vested benefit is zero, the Terminated Participant shall be deemed to have received a distribution of such Vested benefit.

(b) **Vesting schedule.** The Vested portion of the Account of any Participant attributable to Employer contributions shall be a percentage of the total amount credited to the Participant's Accounts determined on the basis of the Participant's number of Years of Service according to the following schedule(s):

(1) The Elective Deferral Account, the Qualified Matching Contribution Account and the Qualified Nonelective Contribution Account shall be 100% Vested regardless of a Participant's number of Years of Service.

(2) The Vested Portion of the Nonelective Contribution Account and the Vested portion of the Matching Contribution Account shall be determined in accordance with the following vesting schedule:

Vesting Schedule	
Years of Service	Percentage
1	33 %
2	66 %
3	100 %

(c) **No reduction in Vested percentage due to change in vesting schedule.** 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) **Time of application of vesting schedule liberalization.** In the absence of any provision to the contrary, any direct or indirect increase to a Participant's Vested percentage (at any point on a vesting schedule) will not apply to a Participant unless and until such Participant completes an Hour of Service after the effective date of such amendment.

(e) **100% Vesting on partial or full Plan termination.** Notwithstanding the vesting schedule above, upon the complete discontinuance of the Employer contributions to the Plan or 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.

(f) **Continuation of old schedule upon subsequent amendment if 3 years of service.** 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, or if the Plan is deemed amended by an automatic change to or from a top-heavy vesting schedule, then each Participant with an Hour of Service after such change and who has 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 such 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 date the amendment is adopted or deemed to be made 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) The Administrator, pursuant to the election of the Participant, shall direct the Trustee to distribute to a Participant or such Participant's Beneficiary the amount (if any) to which the Participant (or Beneficiary) has become entitled under the Plan in one lump-sum payment in cash.

(b) Effective with respect to distributions made on or after March 28, 2005, a distribution to a Participant who has a Total Vested Benefit which exceeds \$5,000 shall require such Participant's written consent (or in such other form as permitted by the Internal Revenue Service) if such distribution occurs during the time 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 such distribution may be made less than thirty (30) days after the notice required under Regulation 1.411(a)-11(c) 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.

(c) Effective with respect to distributions made on or after March 28, 2005, if a mandatory distribution greater than \$1,000 is made in accordance with the provisions of the Plan providing for an automatic distribution to a Participant without the Participant's consent, and the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover (in accordance with the direct rollover provisions of the Plan) or to receive the distribution directly, then the Administrator shall direct that the distribution be made in a direct rollover to an Individual Retirement Account described in Code Section 408(a) or an Individual Retirement Annuity described in Code Section 408(b), as designated by the Administrator. The Administrator may operationally implement this provision with respect to distributions that are \$1,000 or less.

(d) 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.

(e) 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:

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

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, and the relevant time is the time at which, under the Plan, the Vested percentage in the account cannot increase.

(f) Required minimum distributions (Code Section 401(a)(9)). Notwithstanding any provision in the Plan to the contrary, the distribution of a Participant's benefits shall be made in accordance with the requirements of Section 6.8.

6.6 DISTRIBUTION OF BENEFITS UPON DEATH

(a) The death benefit payable pursuant to Section 6.2 shall be paid to the Participant's Beneficiary in one lump-sum payment in cash subject to the rules of Section 6.8.

(b) Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant shall comply with the requirements of Section 6.8.

6.7 TIME OF DISTRIBUTION

Except as limited by Section 6.8, whenever a distribution is to be made, or a series of payments are to commence, the distribution or series of payments may be made or begun as soon as practicable. However, unless a 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 REQUIRED MINIMUM DISTRIBUTIONS

(a) General Rules

- (1) **Effective Date.** Unless otherwise specified, the provisions of this Section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2002 calendar year.
- (2) **Precedence.** The requirements of this Section shall apply to any distribution of a Participant's interest in the Plan and take precedence over any inconsistent provisions of the Plan.
- (3) **Requirements of Treasury Regulations Incorporated.** All distributions required under this Section will be determined and made in accordance with the Regulations under Code Section 401(a)(9) and the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G).

(b) Time and manner of distribution

- (1) **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.
- (2) **Death of Participant before distributions begin.** If the Participant dies before distributions begin, the Participant's entire death benefit will be distributed, or begin to be distributed, as follows:
 - (i) If the Participant or Beneficiary elects, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or, if the Participant's surviving spouse is the Participant's designated beneficiary, by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later. Alternatively, the Participant or Beneficiary may elect to have distribution of the Participant's death benefit be completed by the December 31 of the calendar year containing the fifth anniversary of the Participant's death. In the absence of any election (including the failure to commence required minimum distributions described by this Section by the December 31 of the calendar year immediately following the calendar year in which the Participant died), distribution of the Participant's death benefit shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (ii) If there is no beneficiary as of September 30 of the year following the year of the Participant's death, the distribution of the Participant's death benefit will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (iii) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 6.8(b), other than this paragraph, will apply as if the surviving spouse were the Participant. Thus, in all such cases, the time at which distributions must commence (or be completed by) shall be determined solely by reference to the year that the Participant died, and not the year in which the Participant would have attained age 70 1/2.

For purposes of this Section 6.8(b), unless a surviving spouse is electing to commence benefits based upon the date that the Participant would have attained age 70 1/2, distributions are considered to begin on the Participant's required beginning date. If the surviving-spouse election applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 6.8(b).

- (3) **Forms of distribution.** Unless the Participant's interest is distributed 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 Sections 6.8(c) and 6.8(d). All distributions under this Section 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 Section 411(a)(11) and the Regulations thereunder.

(c) Required minimum distributions during Participant's lifetime

- (1) **Amount of required minimum distribution for each distribution calendar year.** During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
 - (i) the quotient obtained by dividing the Participant's Account balance by the distribution period in the Uniform Lifetime Table set forth in Regulation Section 1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
 - (ii) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse and the spouse is more than 10 years younger than the Participant, the quotient obtained by dividing the Participant's Account balance by the number in the Joint and Last Survivor Table set forth in Regulation Section 1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(2) **Lifetime required minimum distributions continue through year of Participant's death.** Required minimum distributions will be determined under this Section 6.8(c) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(d) Required minimum distributions after Participant's death

(1) Death on or after date distributions begin.

(i) **Participant survived by designated beneficiary.** If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

(A) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(B) If the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(C) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(ii) **No designated beneficiary.** If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) Death before date distributions begin.

(i) **Participant survived by designated beneficiary.** Except as provided in Section 6.8(b)(3), if the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in Section 6.8(d)(1).

(ii) **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.

(iii) **Death of surviving spouse before distributions to surviving spouse are required to begin.** If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 6.8(b), this Section 6.8(d)(2) will apply as if the surviving spouse were the Participant.

(e) Definitions. For purposes of this Section, the following definitions apply:

(1) **"Designated beneficiary"** means the individual who is designated as the Beneficiary under the Plan and is the designated beneficiary under Code Section 401(a)(9) and Regulation Section 1.401(a)(9)-4, Q&A-4.

(2) **"Distribution calendar year"** means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's "required beginning date." For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 6.8(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's "required beginning date." The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's "required beginning date" occurs, will be made on or before December 31 of that distribution calendar year.

(3) "Life expectancy" means the life expectancy as computed by use of the Single Life Table in Regulation Section 1.401(a)(9)-9, Q&A-1.

(4) "Participant's account balance" means the "Participant's account balance" as of the last Valuation Date in the calendar year immediately preceding the Distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or Forfeitures allocated to the account balance as of dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. For this purpose, the Administrator may exclude contributions that are allocated to the account balance as of dates in the valuation calendar year after the Valuation Date, but that are not actually made during the valuation calendar year. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution calendar year if distributed or transferred in the valuation calendar year.

(5) "Required beginning date" means, with respect to any Participant, April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70 1/2 or the calendar year in which the Participant retires, except that benefit distributions to a 5-percent owner must commence by April 1 of the calendar year following the calendar year in which the Participant attains age 70 1/2.

(6) "5-percent owner" means a Participant who is a 5-percent owner as defined in Code Section 416 at any time during the Plan Year ending with or within the calendar year in which such owner attains age 70 1/2. Once distributions have begun to a 5-percent owner under this Section they must continue to be distributed, even if the Participant ceases to be a 5-percent owner in a subsequent year.

(f) Transition rules

(1) **Rules for plans in existence before 1997.** Any required minimum distribution rights conferred on participants in order to comply with (or as a means of complying with) the changes to Code Section 401(a)(9) made by the Small Business Jobs Protection Act of 1996 that were still in effect immediately prior to this restatement shall be preserved.

(2) **Applicable regulations.** Notwithstanding any Plan provision to the contrary, required minimum distributions before 2003 were made as follows:

(i) **2001.** Required minimum distributions for calendar year 2001 were made pursuant to the proposed Regulations under Code Section 401(a)(9) published in the Federal Register on January 17, 2001 (the "2001 Proposed Regulations"). If distributions were made in 2001 under the 1987 Proposed Regulations prior to the date in 2001 the plan began operating under the 2001 Proposed Regulations, the special transition rule in Announcement 2001-82, 2001-2 C.B. 123, applied.

(ii) **2002.** Required minimum distributions for calendar year 2002 were made in accordance with Code Section 401(a)(9) and the 1987 Proposed Regulations.

(g) Statutory (TEFRA) Transition Rules

(1) Notwithstanding the other provisions of this Section, other than the spouse's right of consent afforded under the Plan, distributions may be made on behalf of any Participant, including a five percent (5%) owner, who has made a designation in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and in accordance with all of the following requirements (regardless of when such distribution commences):

(i) The distribution by the Plan is one which would not have disqualified such plan under Code Section 401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.

(ii) The distribution is in accordance with a method of distribution designated by the Participant whose interest in the plan is being distributed or, if the Participant is deceased, by a Beneficiary of such Participant.

(iii) Such designation was in writing, was signed by the Participant or the Beneficiary, and was made before January 1, 1984.

(iv) The Participant had accrued a benefit under the Plan as of December 31, 1983.

(v) The method of distribution designated by the Participant or the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Participant's death, the Beneficiaries of the Participant listed in order of priority.

(2) A distribution upon death will not be covered by the transitional rule of this subsection unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Participant.

(3) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Participant, or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under

which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in (1)(i) and (1)(v) of this subsection.

(4) If a designation is revoked, any subsequent distribution must satisfy the requirements of Code Section 401(a)(9) and the Regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Code Section 401(a)(9) and the Regulations thereunder, but for the Section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).

(5) In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Regulation Section 1.401(a)(9)-8, Q&A-14 and Q&A-15, shall apply.

6.9 DISTRIBUTION FOR MINOR OR INCOMPETENT INDIVIDUAL

In the event a distribution is to be made to a minor or incompetent individual, then the Administrator may direct that such distribution be paid to the court-appointed legal guardian or any other person authorized under state law to receive such distribution, or if none, then in the case of a minor Beneficiary, to a parent of such Beneficiary, 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 guardian, custodian or parent of a minor or incompetent individual shall fully discharge the Trustee, Employer, and Plan from further liability on account thereof.

6.10 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 with respect to distributions made after March 28, 2005, if the Plan provides for mandatory distributions and the amount to be distributed to a Participant or Beneficiary does not exceed \$1,000, 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. Upon Plan termination, the portion of the distributable amount that is an eligible rollover distribution as defined in Plan Section 6.13 may 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). However, regardless of the preceding, a benefit that 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.

6.11 PRE-RETIREMENT DISTRIBUTION OF EMPLOYER CONTRIBUTIONS

At such time as a Participant shall have attained Normal Retirement Age, the Administrator, at the election of the Participant who has not severed employment with the Employer, shall direct the Trustee to distribute all or a portion of the amount then credited to all accounts maintained on behalf of the Participant.

In the event that the Administrator makes such a distribution, the Participant shall continue to be eligible to participate in the Plan on the same basis as any other Employee. Any distribution made pursuant to this Section shall be made in a manner consistent with Section 6.5, including, but not limited to, all notice and consent requirements of Code Section 411(a)(11) and the Regulations thereunder.

Notwithstanding anything in this Section to the contrary, pre-retirement distributions from a Participant's Elective Deferral Account, Qualified Nonelective Account, or Qualified Matching Account shall not be permitted prior to the Participant attaining age 59 1/2 or one of the other events described in Section 4.2(c).

6.12 QUALIFIED 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 qualified domestic relations order. Furthermore, a distribution to an alternate payee shall be permitted if such distribution is authorized by a qualified domestic relations order, even if the affected Participant has not separated from service and has not reached the earliest retirement age. For the purposes of this Section, the terms "alternate payee," "qualified domestic relations order" and "earliest retirement age" shall have the meaning set forth under Code Section 414(p).

6.13 DIRECT ROLLOVER

(a) **Right to direct partial rollover.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, effective for Plan Years beginning on or after January 1, 2002, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have only a portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. However, the minimum partial rollover must equal at least \$500.

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

(1) An "eligible rollover distribution" means any distribution described in Code Section 402(c)(4) and generally includes 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 (10) years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution reasonably expected to total less than \$200 during a year. Any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.

(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), (other than an endowment contract), a qualified trust (an employees' trust) described in Code Section 401(a) which is exempt from tax under Code Section 501(a) and which agrees to separately account for amounts transferred into such plan from this Plan, an annuity plan described in Code Section 403(a), an eligible deferred compensation plan described in Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality thereof which agrees to separately account for amounts transferred into such plan from this Plan, and an annuity contract described in Code Section 403(b) that accepts the distributee's eligible rollover distribution. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Code Section 414(p).

(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.

(c) **Participant Notice.** A Participant entitled to an eligible rollover distribution must receive a written explanation of his/her right to a direct rollover, the tax consequences of not making a direct rollover, and, if applicable, any available special income tax elections. The notice must be provided within the same 30-to-90 day timeframe applicable to the Participant consent notice. The direct rollover notice must be provided to all Participants, unless the total amount the Participant will receive as a distribution during the calendar year is expected to be less than \$200.

6.14 TRANSFER OF ASSETS FROM A MONEY PURCHASE PLAN

Notwithstanding any provision of this Plan to the contrary, to the extent that any optional form of benefit under this Plan permits a distribution prior to the Employee's attainment of Normal Retirement Age, death, disability, or severance from employment, and prior to Plan termination, the optional form of benefit is not available with respect to benefits attributable to assets (including the post-transfer earnings thereon) and liabilities that are transferred, within the meaning of Code Section 414(l), to this Plan from a money purchase pension plan qualified under Code Section 401(a) (other than any portion of those assets and liabilities attributable to after-tax voluntary employee contributions or to a direct or indirect rollover contribution).

6.15 CORRECTIVE DISTRIBUTIONS

Nothing in this Article shall preclude the Administrator from making a distribution to a Participant, to the extent such distribution is made to correct a qualification defect in accordance with the corrective procedures under any voluntary compliance program.

ARTICLE VII TRUSTEE

7.1 BASIC RESPONSIBILITIES OF THE TRUSTEE

(a) The Trustee shall have the following categories of responsibilities:

(1) To invest, manage, and control the Plan assets subject, however, to the direction of a Participant with respect to Participant Directed Accounts, the Employer, an Investment Manager or other agent appointed by the Employer;

- (2) At the direction of the Administrator, to pay benefits required under the Plan to be paid to Participants, or, in the event of their death, to their Beneficiaries; and
 - (3) To maintain records of receipts and disbursements and furnish to the Employer and/or Administrator for each Plan Year a written annual report pursuant to Section 7.8.
- (b) In the event that the Trustee shall be directed by a Participant (pursuant to the Participant Direction Procedures), the Employer, an Investment Manager or other agent appointed by the Employer with respect to the investment of any or all Plan assets, the Trustee shall have no liability with respect to the investment of such assets, but shall be responsible only to execute such investment instructions as so directed.
- (1) The Trustee shall be entitled to rely fully on the written (or other form acceptable to the Administrator and the Trustee, including, but not limited to, voice recorded) instructions of a Participant (pursuant to the Participant Direction Procedures), the Employer, or any Fiduciary or nonfiduciary agent of the Employer, in the discharge of such duties, and shall not be liable for any loss or other liability, resulting from such direction (or lack of direction) of the investment of any part of the Plan assets.
 - (2) The Trustee may delegate the duty of executing such instructions to any nonfiduciary agent, which may be an affiliate of the Trustee or any Plan representative.
 - (3) The Trustee may refuse to comply with any direction from the Participant in the event the Trustee, in its sole and absolute discretion, deems such directions improper by virtue of applicable law. The Trustee shall not be responsible or liable for any loss or expense which may result from the Trustee's refusal or failure to comply with any directions from the Participant.
 - (4) Any costs and expenses related to compliance with the Participant's directions shall be borne by the Participant's Directed Account, unless paid by the Employer.
- (c) The Trustee is accountable to the Employer for the funds contributed to the Plan by the Employer, but the Trustee does not have any duty to see that the contributions received comply with the provisions of the Plan. The Trustee is not obligated to collect any contributions from the Employer, nor is it under a duty to see that funds deposited with it are deposited in accordance with the provisions of the Plan.
- (d) The Trustee will credit and distribute the Trust Fund as directed by the Administrator. The Trustee is not obligated to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or whether the manner of making any payment or distribution is proper. The Trustee is accountable only to the Administrator for any payment or distribution made by it in good faith on the order or direction of the Administrator.
- (e) The Trustee may employ a bank or trust company pursuant to the terms of its usual and customary bank agency agreement, under which the duties of such bank or trust company shall be of a custodial, clerical and record-keeping nature.
- (f) The Trustee may employ and pay from the Trust Fund reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee may delegate to any agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Plan, and the Trustee may act or refrain from acting on the advice or opinion of any such person.

7.2 INVESTMENT POWERS AND DUTIES OF THE TRUSTEE

- (a) The Trustee shall invest and reinvest the Trust Fund to keep the Trust Fund invested without distinction between principal and income and in such securities or property, real or personal, wherever situated, as the Trustee shall deem advisable, including, but not limited to, stocks, common or preferred, open-end or closed-end mutual funds, bonds and other evidences of indebtedness or ownership, and real estate or any interest therein. The Trustee shall at all times in making investments of the Trust Fund consider, among other factors, the short and long-term financial needs of the Plan on the basis of information furnished by the Employer. In making such investments, the Trustee shall not be restricted to securities or other property of the character expressly authorized by the applicable law for trust investments; however, the Trustee shall give due regard to any limitations imposed by the Code or the Act so that at all times the Plan may qualify as a qualified plan pursuant to Code Section 401(a). The Trustee shall discharge its duties with respect to the Plan solely in the interest of the Participants and Beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.
- (b) The Trustee may transfer to a common, collective, pooled trust fund or money market fund maintained by any corporate Trustee or affiliate thereof hereunder, all or such part of the Trust Fund as the Trustee may deem advisable, and such part or all of the Trust Fund so transferred shall be subject to all the terms and provisions of the common, collective, pooled trust fund or money market fund which contemplate the commingling for investment purposes of such trust assets with trust assets of other trusts. The Trustee may transfer any part of the Trust Fund intended for temporary investment of cash balances to a money market fund maintained by any corporate trustee or affiliate thereof. The Trustee may withdraw from such common, collective, pooled trust fund or money market fund all or such part of the Trust Fund as the Trustee may deem advisable.

7.3 OTHER POWERS OF THE TRUSTEE

The Trustee, in addition to all powers and authorities under common law, statutory authority, including the Act, and other provisions of the Plan, shall have the following powers and authorities, to be exercised in the Trustee's sole discretion:

- (a) To purchase, or subscribe for, any securities or other property and to retain the same. In conjunction with the purchase of securities, margin accounts may be opened and maintained;
- (b) To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustee, by private contract or at public auction. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition, with or without advertisement;
- (c) To vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property. However, the Trustee shall not vote proxies relating to securities for which it has not been assigned full investment management responsibilities. In those cases where another party has such investment authority or discretion, the Trustee will deliver all proxies to said party, who will then have full responsibility for voting those proxies;
- (d) To cause any securities or other property to be registered in the name of the Trust, and the books and records of the Trustee shall at all times show that all such investments are part of the Trust Fund, or to cause any securities or other property to be registered in the Trustee's own name or in the name of a nominee or in a street name, provided such securities or other property are held on behalf of the Plan by (i) a bank or trust company, (ii) a broker or dealer registered under the Securities Exchange Act of 1934, or a nominee of such broker or dealer, or (iii) a clearing agency as defined in Section 3(a)(23) of the Securities Exchange Act of 1934;
- (e) To borrow or raise money for the purposes of the Plan in such amount, and upon such terms and conditions, as the Trustee shall deem advisable; and for any sum so borrowed, to issue a promissory note as Trustee, and to secure the repayment thereof by pledging all, or any part, of the Trust Fund; and no person lending money to the Trustee shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any borrowing;
- (f) To keep such portion of the Trust Fund in cash or cash balances as the Trustee may, from time to time, deem to be in the best interests of the Plan, without liability for interest thereon;
- (g) To accept and retain for such time as the Trustee may deem advisable any securities or other property received or acquired as Trustee hereunder, whether or not such securities or other property would normally be purchased as investments hereunder;
- (h) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (i) To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Plan (provided such arbitration does not apply to Participants or Beneficiaries), to commence or defend suits or legal or administrative proceedings, and to represent the Plan in all suits and legal and administrative proceedings;
- (j) To employ suitable agents and counsel and to pay their reasonable expenses and compensation, and such agent or counsel may also be agent or counsel for the Employer;
- (k) To apply for and procure from responsible insurance companies, to be selected by the Administrator, as an investment of the Trust Fund such annuity, or other Contracts (on the life of any Participant, or on the life of any person in whom a Participant has an insurable interest, or on the joint lives of a Participant and any person in whom the Participant has an insurable interest) as the Administrator shall deem proper; to exercise, at the direction of the person with the authority to do so, whatever rights and privileges may be granted under such annuity or other Contracts; to collect, receive, and settle for the proceeds of all such annuity or other Contracts as and when entitled to do so under the provisions thereof;
- (l) To invest funds of the Trust in time deposits or savings accounts bearing a reasonable rate of interest or in cash or cash balances without liability for interest thereon;
- (m) To invest in Treasury Bills and other forms of United States government obligations;
- (n) To invest in shares of investment companies registered under the Investment Company Act of 1940, including any money market fund advised by or offered through any corporate trustee or affiliate thereof;
- (o) To sell, purchase and acquire put or call options if the options are traded on and purchased through a national securities exchange registered under the Securities Exchange Act of 1934, as amended, or, if the options are not traded on a national securities exchange, are guaranteed by a member firm of the New York Stock Exchange regardless of whether such options are covered;

- (p) To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations;
- (q) To pool all or any of the Trust Fund, from time to time, with assets belonging to any other qualified employee pension benefit trust created by the Employer or any Affiliated Employer, and to commingle such assets and make joint or common investments and carry joint accounts on behalf of this Plan and Trust and such other trust or trusts, allocating undivided shares or interests in such investments or accounts or any pooled assets of the two or more trusts in accordance with their respective interests; and
- (r) To do all such acts and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to carry out the purposes of the Plan.

7.4 POWERS OF THE CUSTODIAN

The Employer may appoint a custodian of the Plan assets. A custodian has the same powers, rights and duties as a nondiscretionary Trustee. Any reference in the Plan to a Trustee also is a reference to a custodian unless the context of the Plan indicates otherwise. A limitation of the Trustee's liability by Plan provision also acts as a limitation of the custodian's liability. The Custodian will be protected from any liability with respect to actions taken pursuant to the direction of the Trustee, Plan Administrator, the Employer, an Investment Manager, a Named Fiduciary or other third party with authority to provide direction to the Custodian. The resignation or removal of the custodian shall be made in accordance with Section 7.10 as though the custodian were a Trustee.

7.5 ALLOCATION AND DELEGATION OF RESPONSIBILITIES

If more than one person is appointed as Trustee, the responsibilities of each Trustee may be specified by the Employer and accepted in writing by each Trustee. In the event that no such delegation is made by the Employer, the Trustees may allocate the responsibilities among themselves in a written document signed by all Trustees, in which event the Trustees shall notify the Employer and the Administrator in writing of such action and specify the responsibilities of each Trustee. The Administrator thereafter shall accept and rely upon any documents executed by the appropriate Trustee until such time as the Employer or the Trustees file with the Administrator a written revocation of such designation.

7.6 MAJORITY ACTION

Except where there has been an allocation and delegation of powers, if there shall be more than one Trustee, they shall act by a majority of their number, but may authorize one or more of them to sign papers on their behalf.

7.7 TRUSTEE'S COMPENSATION AND EXPENSES AND TAXES

The Trustee shall be paid such reasonable compensation as set forth in the Trustee's fee schedule (if the Trustee has such a schedule) or as agreed upon in writing by the Employer and the Trustee. However, an individual serving as Trustee who already receives full-time pay from the Employer shall not receive compensation from the Plan. In addition, the Trustee shall be reimbursed for any reasonable expenses, including reasonable counsel fees incurred by it as Trustee. Such compensation and expenses shall be paid from the Trust Fund unless paid or advanced by the Employer. All taxes of any kind whatsoever that may be levied or assessed under existing or future laws upon, or in respect of, the Trust Fund or the income thereof, shall be paid from the Trust Fund.

7.8 ANNUAL REPORT OF THE TRUSTEE

(a) **Annual report.** Within a reasonable period of time after the later of the Anniversary Date or receipt of the Employer contribution for each Plan Year, the Trustee, or its agent, shall furnish to the Employer and Administrator a written statement of account with respect to the Plan Year for which such contribution was made setting forth:

- (1) the net income, or loss, of the Trust Fund;
- (2) the gains, or losses, realized by the Trust Fund upon sales or other disposition of the assets;
- (3) the increase, or decrease, in the value of the Trust Fund;
- (4) all payments and distributions made from the Trust Fund; and
- (5) such further information as the Trustee and/or Administrator deems appropriate.

(b) **Employer approval of report.** The Employer, promptly upon its receipt of each such statement of account, shall acknowledge receipt thereof in writing and advise the Trustee and/or Administrator of its approval or disapproval thereof. Failure by the Employer to disapprove any such statement of account within thirty (30) days after its receipt thereof shall be deemed an approval thereof. The approval by the Employer of any statement of account shall be binding on the Employer and the Trustee as to all matters contained in the statement to the same extent as if the account of the Trustee had been settled by judgment or decree in an action for a judicial settlement of its account in a court of competent jurisdiction in which the Trustee, the Employer and all persons having or claiming an interest in the Plan were parties. However, nothing contained in this Section shall deprive the Trustee of its right to have its accounts judicially settled if the Trustee so desires.

7.9 AUDIT

- (a) **Duty to engage accountant.** If an audit of the Plan's records shall be required by the Act and the regulations thereunder for any Plan Year, the Administrator shall engage on behalf of all Participants an independent qualified public accountant for that purpose. Such accountant shall, after an audit of the books and records of the Plan in accordance with generally accepted auditing standards, within a reasonable period after the close of the Plan Year, furnish to the Administrator and the Trustee a report of the audit setting forth the accountant's opinion as to whether any statements, schedules or lists that are required by Act Section 103 or the Secretary of Labor to be filed with the Plan's annual report, are presented fairly in conformity with generally accepted accounting principles applied consistently.
- (b) **Payment of fees.** All auditing and accounting fees shall be an expense of and may, at the election of the Employer, be paid from the Trust Fund.
- (c) **Information to be provided to Administrator.** If some or all of the information necessary to enable the Administrator to comply with Act Section 103 is maintained by a bank, insurance company, or similar institution, regulated, supervised, and subject to periodic examination by a state or federal agency, then it shall transmit and certify the accuracy of that information to the Administrator as provided in Act Section 103(b) within one hundred twenty (120) days after the end of the Plan Year or such other date as may be prescribed under regulations of the Secretary of Labor.

7.10 RESIGNATION, REMOVAL AND SUCCESSION OF TRUSTEE

- (a) **Trustee resignation.** Unless otherwise agreed to by both the Trustee and the Employer, a Trustee may resign at any time by delivering to the Employer, at least thirty (30) days before its effective date, a written notice of resignation.
- (b) **Trustee removal.** Unless otherwise agreed to by both the Trustee and the Employer, the Employer may remove a Trustee at any time by delivering to the Trustee, at least thirty (30) days before its effective date, a written notice of such Trustee's removal.
- (c) **Appointment of successor.** Upon the death, resignation, incapacity, or removal of any Trustee, a successor may be appointed by the Employer; and such successor, upon accepting such appointment in writing and delivering same to the Employer, shall, without further act, become vested with all the powers and responsibilities of the predecessor as if such successor had been originally named as a Trustee herein. Until such a successor is appointed, the remaining Trustee or Trustees shall have full authority to act under the terms of the Plan.
- (d) **Appointment of successor prior to removal of predecessor.** The Employer may designate one or more successors prior to the death, resignation, incapacity, or removal of a Trustee. In the event a successor is so designated by the Employer and accepts such designation, the successor shall, without further act, become vested with all the powers and responsibilities of the predecessor as if such successor had been originally named as Trustee herein immediately upon the death, resignation, incapacity, or removal of the predecessor.
- (e) **Trustee's statement upon cessation of being Trustee.** Whenever any Trustee hereunder ceases to serve as such, the Trustee shall furnish to the Employer and Administrator a written statement of account with respect to the portion of the Plan Year during which the individual or entity served as Trustee. This statement shall be either (i) included as part of the annual statement of account for the Plan Year required under Section 7.8 or (ii) set forth in a special statement. Any such special statement of account should be rendered to the Employer no later than the due date of the annual statement of account for the Plan Year. The procedures set forth in Section 7.8 for the approval by the Employer of annual statements of account shall apply to any special statement of account rendered hereunder and approval by the Employer of any such special statement in the manner provided in Section 7.8 shall have the same effect upon the statement as the Employer's approval of an annual statement of account. No successor to the Trustee shall have any duty or responsibility to investigate the acts or transactions of any predecessor who has rendered all statements of account required by Section 7.8 and this subparagraph.

7.11 TRANSFER OF INTEREST

Notwithstanding any other provision contained in this Plan, the Trustee at the direction of the Administrator shall transfer the Vested interest, if any, of a Participant to another trust forming part of a pension, profit sharing or stock bonus plan maintained by such Participant's new employer and represented by said employer in writing as meeting the requirements of Code Section 401(a), provided that the trust to which such transfers are made permits the transfer to be made.

7.12 TRUSTEE INDEMNIFICATION

The Employer agrees to indemnify and hold harmless the Trustee against any and all claims, losses, damages, expenses and liabilities the Trustee may incur in the exercise and performance of the Trustee's power and duties hereunder, unless the same are determined to be due to gross negligence or willful misconduct.

7.13 EMPLOYER SECURITIES AND REAL PROPERTY

The Trustee shall be empowered to acquire and hold qualifying Employer securities and qualifying Employer real property, as those terms are defined in the Act, provided, however, that the Trustee shall not be permitted to acquire any qualifying Employer securities or qualifying Employer real property if, immediately after the acquisition of such securities or property, the fair market value of all qualifying Employer securities and qualifying Employer real property held by the Trustee hereunder should amount to more than 100% of the fair market value of all the assets in the Trust Fund.

ARTICLE VIII AMENDMENT, TERMINATION, MERGERS AND LOANS

8.1 AMENDMENT

(a) **General rule on Employer amendment.** 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) **Permissible amendments without affecting reliance.** The Employer may make the modifications described below without affecting reliance on the terms of the Plan. An Employer that amends the Plan for any other reason may not rely on the advisory letter that the terms of the Plan meet the qualification requirements of the Code. Permitted changes include: adding options permitted by the Plan; adding or deleting provisions that are optional under the volume submitter specimen plan; changing effective dates within the parameters of the volume submitter specimen plan; correcting obvious and unambiguous typographical errors; correcting cross-references that do not in any way change the original intended meaning of the provisions; adding a list of benefits that must be preserved as protected benefits within the meaning of Code Section 411(d)(6) and the regulations thereunder; amending provisions dealing with the administration of the Trust; a change to the name of the Plan, Employer, Trustee, custodian, Plan Administrator or any other fiduciary, the Plan Year; and any sample or model amendment published by the IRS (or other required good-faith amendments) which specifically provide that their adoption will not cause the plan to be treated as an individually designed plan.

(c) **Sponsoring practitioner amendments.** Effective March 31, 2008, the Employer (and every Participating Employer) expressly delegates authority to the sponsoring organization of this Volume Submitter Plan the right to amend the Plan by submitting a copy of the amendment to each Employer (and Participating Employer) who has adopted this Volume Submitter Plan, after first having received a ruling or favorable determination from the Internal Revenue Service that the Volume Submitter Plan as amended qualifies under Code Section 401(a) (unless a ruling or determination is not required by the IRS). However, the volume submitter practitioner shall cease to have the authority to amend on behalf of an Employer that adopts an impermissible plan type or impermissible plan provision (as described in IRS Announcement 2005-37 and any subsequent guidance). The volume submitter practitioner will maintain a record of the Employers that have adopted the Plan, and the practitioner will make reasonable and diligent efforts to ensure that adopting Employers adopt new documents when necessary. This subsection supersedes other provisions of the Plan to the extent those other provisions are inconsistent with this subsection.

(d) **Impermissible amendments.** 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.

(e) **Anti-cutback restrictions.** 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. The term "Section 411(d)(6) protected benefits" means benefits described in Code Section 411(d)(6)(A), early retirement benefits and retirement-type subsidies, and optional forms of benefit. An amendment which has the effect of decreasing a Participant's Account balance with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit. The preceding shall not apply to a Plan amendment that eliminates or restricts the ability of a Participant to receive payment of his or her Account under a particular optional form of benefit if the amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit being eliminated or restricted. For this purpose, a single-sum distribution form is otherwise identical only if the single-sum distribution form 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.

8.2 TERMINATION

(a) **Termination of Plan.** 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.

(b) **Distribution of assets.** Upon the full termination of the Plan, the Employer shall direct the distribution of the assets of the Plan to Participants in a manner which is consistent with the provisions of Section 6.5 except that no Participant or spousal consent is required. 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(e).

(c) **Abandoned plan.** If the Employer, in accordance with DOL guidance, abandons the Plan, then the Trustee (or Insurer) or other party permitted to take action as a qualified terminal administrator (QTA), may terminate the Plan in accordance with applicable Department of Labor and IRS regulations and other guidance.

8.3 MERGER, CONSOLIDATION OR TRANSFER OF ASSETS

This Plan 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(e).

8.4 LOANS TO PARTICIPANTS

(a) **Permitted loans.** The Trustee (or the Administrator if the Trustee is a nondiscretionary Trustee or if loans are treated as Participant directed investments pursuant to this Plan) may, in the Trustee's (or, if applicable, the Administrator's) sole discretion, make Plan loans to Participants or Beneficiaries under the following circumstances: (1) loans shall be made available to Participants and Beneficiaries on a reasonably equivalent basis; (2) loans shall not be made available to Highly Compensated Employees in an amount greater than the amount that is made available to other Participants and Beneficiaries; (3) loans shall bear a reasonable rate of interest; (4) loans shall be adequately secured; and (5) loans shall provide for periodic repayment over a reasonable period of time. Furthermore, no Plan loan shall exceed a Participant's Vested interest in the Plan.

(b) **Plan loans for Owner-Employees or Shareholder-Employees.** Effective for Plan loans made after December 31, 2001, the Plan provisions prohibiting Plan loans to any Owner-Employee or Shareholder-Employee shall cease to apply.

(c) **Prohibited assignment or pledge.** An assignment or pledge of any portion of a Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance Contract purchased under the Plan, shall be treated as a Plan loan under this Section.

(d) **Loan program.** The Administrator shall be authorized to establish a Participant Loan Program to provide for loans under the Plan. The Participant Loan Program shall be established in accordance with Department of Labor regulation Section 2550.408(b)-1(d)(2) providing for loans by the Plan to parties-in-interest under this Plan, such as Participants or Beneficiaries. In order for the Administrator to implement such Participant Loan Program, a separate written document forming a part of this Plan must be adopted, which document shall specifically include, but need not be limited to, the following:

- (1) the identity of the person or positions authorized to administer the Participant loan program;
- (2) a procedure for applying for loans;
- (3) the basis on which loans will be approved or denied;
- (4) limitations, if any, on the types and amounts of loans offered;
- (5) the procedure under the program for determining a reasonable rate of interest;
- (6) the types of collateral which may secure a Participant loan; and
- (7) the events constituting default and the steps that will be taken to preserve Plan assets in the event such default.

Such Participant Loan Program shall be contained in a separate written document which, when properly executed, is hereby incorporated by reference and made a part of the Plan. Furthermore, such Participant Loan Program may be modified or amended in writing from time to time without the necessity of amending this Plan.

(e) **Loan default.** Notwithstanding anything in this Plan to the contrary, if a Participant or Beneficiary defaults on a Plan loan made pursuant to this Section and such loan is secured by the Participant's interest in the Plan, then, to the extent provided in the Participant loan program, a Participant's interest may be offset by the amount subject to the security to the extent there is a distributable event permitted by the Code or Regulations.

(f) **Loans subject to Plan terms.** Notwithstanding anything in this Section to the contrary, any Plan loans made prior to the date this amendment and restatement is adopted shall be subject to the terms of the Plan in effect at the time such loan was made.

ARTICLE IX TOP-HEAVY

9.1 TOP-HEAVY PLAN REQUIREMENTS

(a) **Top-Heavy requirements.** For any Top-Heavy Plan Year, the Plan shall provide the special vesting requirements of Code Section 416(b) pursuant to Section 6.4 of the Plan and the minimum required allocation of Code Section 416(c) pursuant to Section 4.4 of the Plan.

9.2 DETERMINATION OF TOP-HEAVY STATUS

(a) **Definition of Top-Heavy Plan.** This Plan shall be a Top-Heavy Plan if any of the following conditions exists:

- (1) if the "top-heavy ratio" for this Plan exceeds sixty percent (60%) and this Plan is not part of any "required aggregation group" or "permissive aggregation group";
- (2) if this Plan is a part of a "required aggregation group" but not part of a "permissive aggregation group" and the "top-heavy ratio" for the group of plans exceeds sixty percent (60%); or
- (3) if this Plan is a part of a "required aggregation group" and part of a "permissive aggregation group" and the "top-heavy ratio" for the "permissive aggregation group" exceeds sixty percent (60%).

(b) **Top-heavy ratio.** "Top-heavy ratio" means, with respect to a "determination date":

- (1) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan (as defined in Code Section 408(k)) and the Employer has not maintained any defined benefit plan which during the 5-year period ending on the "determination date" has or has had accrued benefits, the top-heavy ratio for this plan alone or for the "required aggregation group" or "permissive aggregation group" as appropriate is a fraction, the numerator of which is the sum of the account balances of all Key Employees as of the "determination date" (including any part of any account balance distributed in the 1-year period ending on the "determination date") (5-year period ending on the "determination date" in the case of a distribution made for a reason other than severance from employment, death or disability and in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002), and the denominator of which is the sum of all account balances (including any part of any account balance distributed in the 1-year period ending on the "determination date") (5-year period ending on the "determination date" in the case of a distribution made for a reason other than severance from employment, death or disability and in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002), both computed in accordance with Code Section 416 and the Regulations thereunder.

Both the numerator and denominator of the top-heavy ratio are increased to reflect any contribution not actually made as of the "determination date," but which is required to be taken into account on that date under Code Section 416 and the Regulations thereunder.

- (2) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer maintains or has maintained one or more defined benefit plans which during the 5-year period ending on the "determination date" has or has had any accrued benefits, the top-heavy ratio for any "required aggregation group" or "permissive aggregation group" as appropriate is a fraction, the numerator of which is the sum of account balances under the aggregated defined contribution plan or plans for all Key Employees, determined in accordance with (1) above, and the present value of accrued benefits under the aggregated defined benefit plan or plans for all Key Employees as of the "determination date," and the denominator of which is the sum of the account balances under the aggregated defined contribution plan or plans for all participants, determined in accordance with (1) above, and the present value of accrued benefits under the defined benefit plan or plans for all participants as of the "determination date," all determined in accordance with Code Section 416 and the Regulations thereunder. The accrued benefits under a defined benefit plan in both the numerator and denominator of the top-heavy ratio are increased for any distribution of an accrued benefit made in the 1-year period ending on the "determination date" (5-year period ending on the "determination date" in the case of a distribution made for a reason other than severance from employment, death or disability and in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002).

- (3) For purposes of (1) and (2) above, the value of account balances and the present value of accrued benefits will be determined as of the most recent "valuation date" that falls within or ends with the 12-month period ending on the "determination date," except as provided in Code Section 416 and the Regulations thereunder for the first and second plan years of a defined benefit plan. The account balances and accrued benefits of a participant (i) who is not a Key Employee but who was a Key Employee in a prior year, or (ii) who has not been credited with at least one Hour of Service with any Employer maintaining the plan at any time during the 1-year period (5-year period in determining whether the Plan is top-heavy for Plan Years beginning before January 1, 2002) ending on the "determination date" will be disregarded. The calculation of the top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Code Section 416 and the Regulations thereunder. Deductible employee contributions will not be taken into account for purposes of computing the top-heavy ratio. When aggregating plans the value of account balances and accrued benefits will be calculated with reference to the "determination dates" that fall within the same calendar year.

The accrued benefit of a participant other than a Key Employee shall be determined under (i) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the employer, or (ii) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of Code Section 411(b)(1)(C).

(4) The calculation of top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account, will be made in accordance with Code Section 416 and the regulations thereunder.

(c) **Determination date.** "Determination date" means, for any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first Plan Year of the Plan, "determination date" means the last day of that Plan Year.

(d) **Permissive aggregation group.** "Permissive aggregation group" means the "required aggregation group" of plans plus any other plan or plans of the Employer or any Affiliated Employer which, when considered as a group with the required aggregation group, would continue to satisfy the requirements of Code Sections 401(a)(4) and 410.

(e) **Required aggregation group.** "Required aggregation group" means: (1) each qualified plan of the Employer or any Affiliated Employer in which at least one Key Employee participates or participated at any time during the Plan Year containing the determination date or any of the four preceding plan years (regardless of whether the plan has terminated), and (2) any other qualified plan of the Employer or any Affiliated Employer which enables a plan described in (1) to meet the requirements of Code Sections 401(a)(4) or 410.

(f) **Valuation Date.** "Valuation date" means the date elected by the Employer as of which account balances or accrued benefits are valued for purposes of calculating the "top-heavy ratio."

ARTICLE X MISCELLANEOUS

10.1 PARTICIPANT'S 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.

10.2 ALIENATION OF BENEFITS

(a) **General rule.** Subject to the exceptions provided below, and as otherwise permitted by the Code and the Act, no benefit which shall be payable 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, except to such extent as may be required by law.

(b) **Exception for loans.** Subsection (a) shall not apply to the extent a Participant or Beneficiary is indebted to the Plan, by reason of a loan made pursuant to Section 8.4. At the time a distribution is to be made to or for a Participant's or Beneficiary's benefit, such proportion of the amount to be distributed as shall equal such indebtedness shall be paid to the Plan, to apply against or discharge such indebtedness. Prior to making a payment, however, the Participant or Beneficiary must be given written notice by the Administrator that such indebtedness is to be so paid in whole or part from the Participant's Account. If the Participant or Beneficiary does not agree that the indebtedness is a valid claim against the Vested Participant's Account, the Participant or Beneficiary shall be entitled to a review of the validity of the claim in accordance with procedures provided in Sections 2.8 and 2.9.

(c) **Exception for QDRO.** 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. 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 domestic relations order, a former spouse of a Participant shall be treated as the spouse or surviving spouse for all purposes under the Plan.

(d) **Exception for certain debts to Plan.** 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 in accordance with Code Sections 401(a)(13)(C) and (D).

10.3 CONSTRUCTION AND INTERPRETATION OF PLAN

(a) **Applicable state laws.** This Plan and Trust shall be construed and enforced according to the Code, the Act and the laws of the State of Texas, other than its laws respecting choice of law, to the extent not pre-empted by Federal law.

(b) **Single subsections.** This Plan and Trust may contain single subsections. The existence of such single subsections shall not constitute scrivener's errors.

(c) **Separate Accounts.** Unless otherwise specified by a particular provision, the term "separate account" does not require a separate fund, only a notational entry in a recordkeeping system.

10.4 GENDER AND NUMBER

(a) **Masculine and feminine.** 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.

(b) **Singular and plural.** 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.

10.5 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.

10.6 PROHIBITION AGAINST DIVERSION OF FUNDS

(a) **General rule.** 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 or their Beneficiaries.

(b) **Mistake of fact.** In the event the Employer shall make an excessive contribution under a mistake of fact pursuant to Act Section 403(c)(2)(A), 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.

10.7 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.

10.8 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.

10.9 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.

10.10 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.

10.11 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 Administrator shall act as the named Fiduciary responsible for communicating with the Participant according to the Participant Direction Procedures. 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.

10.12 HEADINGS

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

10.13 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 after the date the initial qualification is denied, 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.

10.14 ELECTRONIC MEDIA

The Administrator may use telephonic or electronic media to satisfy any notice requirements required by this Plan, to the extent permissible under regulations (or other generally applicable guidance). In addition, a Participant's consent to an immediate distribution may be provided through telephonic or electronic means, to the extent permissible under regulations (or other generally applicable guidance). The Administrator also may use telephonic or electronic media to conduct plan transactions such as enrolling Participants, making (and changing) deferral elections, electing (and changing) investment allocations, applying for Plan loans, and other transactions, to the extent permissible under regulations (or other generally applicable guidance).

10.15 PLAN CORRECTION

The Administrator in conjunction with the Employer may undertake such correction of Plan errors as the Administrator deems necessary, including correction to preserve tax qualification of the Plan under Code Section 401(a) or to correct a fiduciary breach under the Act. Without limiting the Administrator's authority under the prior sentence, the Administrator, as it determines to be reasonable and appropriate, may undertake correction of Plan document, operational, demographic and employer eligibility failures under a method described in the Plan or under the IRS Employee Plans Compliance Resolution System ("EPCRS") or any successor program to EPCRS. The Administrator, as it determines to be reasonable and appropriate, also may undertake or assist the appropriate Fiduciary or Plan official in undertaking correction of a fiduciary breach, including correction under the DOL Voluntary Fiduciary Correction Program ("VFC") or any successor program to VFC. For example, to correct an operational error, the Administrator may require the Trustee to distribute Elective Deferrals or Vested Matching Contributions, including earnings, from the Plan where such amounts result from an operational error other than a failure of Code Section 415, Code Section 402(g), or a failure of the ADP Test or the ACP Test.

10.16 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.

ARTICLE XI PARTICIPATING EMPLOYERS

11.1 ADOPTION BY OTHER EMPLOYERS

Notwithstanding anything herein to the contrary, with the consent of the Employer and Trustee, any other corporation or entity, whether an Affiliated Employer or not, may adopt this Plan and all of the provisions hereof, and participate herein and be known as a Participating Employer, by a properly executed document evidencing said intent and will of such Participating Employer.

11.2 REQUIREMENTS OF PARTICIPATING EMPLOYERS

- (a) **Same Trustee for all.** Each such Participating Employer shall be required to use the same Trustee as provided in this Plan.
- (b) **Holding and investing assets.** The Trustee may, but shall not be required to, commingle, hold and invest as one Trust Fund all contributions made by Participating Employers, as well as all increments thereof.
- (c) **Payment of expenses.** Unless the Employer otherwise directs, any expenses of the Plan which are to be paid by the Employer or borne by the Trust Fund shall be paid by each Participating Employer in the same proportion that the total amount standing to the credit of all Participants employed by such Employer bears to the total standing to the credit of all Participants.

11.3 DESIGNATION OF AGENT

Each Participating Employer shall be deemed to be a party to this Plan; provided, however, that with respect to all of its relations with the Trustee and Administrator for the purpose of this Plan, each Participating Employer shall be deemed to have designated irrevocably the Employer as its agent. Unless the context of the Plan clearly indicates the contrary, the word "Employer" shall be deemed to include each Participating Employer as related to its adoption of the Plan.

11.4 EMPLOYEE TRANSFERS

In the event an Employee is transferred between Participating Employers, accumulated service and eligibility shall be carried with the Employee involved. No such transfer shall effect a termination of employment hereunder, and the Participating Employer to which the Employee is transferred shall thereupon become obligated hereunder with respect to such Employee in the same manner as was the Participating Employer from whom the Employee was transferred.

11.5 PARTICIPATING EMPLOYER CONTRIBUTION AND FORFEITURES

Any contribution or Forfeiture subject to allocation during each Plan Year shall be determined and allocated separately by each Participating Employer, and shall be allocated only among the Participants eligible to share of the Employer or Participating Employer making the contribution or by which the forfeiting Participant was employed. On the basis of the information furnished by the Administrator, the Trustee shall keep separate books and records concerning the affairs of each Participating Employer hereunder and as to the accounts and credits of the Employees of each Participating Employer. The Trustee may, but need not, register Contracts so as to evidence that a particular Participating Employer is the interested Employer hereunder, but in the event of an Employee transfer from one Participating Employer to another, the employing Employer shall immediately notify the Trustee thereof.

11.6 AMENDMENT

Any Participating Employer that is an Affiliated Employer hereby authorizes the Employer to make amendments on its behalf, unless otherwise agreed among all affected parties. If a Participating Employer is not an Affiliated Employer, then amendment of this Plan by the Employer at any time when there shall be a Participating Employer shall, unless otherwise agreed to by the affected parties, only be by the written action of each and every Participating Employer and with the consent of the Trustee where such consent is necessary in accordance with the terms of this Plan.

11.7 DISCONTINUANCE OF PARTICIPATION

Any Participating Employer shall be permitted to discontinue or revoke its participation in the Plan at any time. At the time of any such discontinuance or revocation, satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Trustee. The Employer shall have the right to discontinue or revoke the participation in the Plan of any Participating Employer by providing 45 days notice to such Participating Employer. The Trustee shall thereafter transfer, deliver and assign Contracts and other Trust Fund assets allocable to the Participants of such Participating Employer to such new Trustee as shall have been designated by such Participating Employer, in the event that it has established a separate qualified retirement plan for its employees provided, however, that no such transfer shall be made if the result is the elimination or reduction of any Section 411(d)(6) protected benefits as described in Section 8.1(e). If a separate plan has not been established, at the time of such continuance or revocation for whatever reason, the assets and liabilities, Contracts and other Trust Fund assets allocable to such Participating Employer's participation in this Plan shall be spun off pursuant to Code Section 414(l) and such spun off assets shall constitute a retirement plan of the Participating Employer with such Participating Employer becoming sponsor and the individual who has signed the Supplemental Participation Agreement on behalf of the Participating Employer becoming Trustee for this purpose. Such individual shall agree to this appointment by virtue of signing the Supplemental Participation Agreement. If such individual is no longer an Employee of the Participating Employer, then the Participating Employer shall appoint a Trustee. If no successor is designated, the Trustee shall retain such assets for the Employees of said Participating Employer pursuant to the provisions of Article VII hereof. In no such event shall any part of the corpus or income of the Trust Fund as it relates to such Participating Employer be used for or diverted for purposes other than for the exclusive benefit of the Employees of such Participating Employer.

11.8 ADMINISTRATOR'S AUTHORITY

The Administrator shall have authority to make any and all necessary rules or regulations, binding upon all Participating Employers and all Participants, to effectuate the purpose of this Article.

11.9 PROVISIONS APPLIED SEPARATELY (OR JOINTLY) FOR PARTICIPATING NON-AFFILIATED EMPLOYERS

(a) **Separate status.** The Plan Administrator will apply the definition of Compensation and perform the tests listed in this Section, separately for each Participating Employer other than an Affiliated Employer of such Participating Employer. For this purpose, the Employees of each Participating Employer (and its Affiliated Employers), and their allocations and accounts, shall be treated as though they were in separate plan. Any correction action, such as additional contributions or corrective distributions, shall only affect the Employees of the Participating Employer (and its Affiliated Employers, if any). The tests subject to this separate treatment are:

- (1) The ADP Test.
- (2) The ACP Test.
- (3) Nondiscrimination testing as described in Code Section 401(a)(4) and the applicable Regulations.
- (4) Coverage testing as described in Code Section 410(b) and the Regulations.
- (5) Status as a Highly Compensated Employee under Section 1.38.

(b) **Joint status.** The following tests shall be performed for the plan as whole, without regard to employment by a particular Participating Employer:

- (1) Applying the annual addition limitation in Section 4.9, including the related Compensation definition.
- (2) Applying the Code Section 402(g) limitation in Section 4.2.

11.10 TOP-HEAVY APPLIED SEPARATELY FOR PARTICIPATING NON-AFFILIATED EMPLOYERS

The Plan will apply the Top-Heavy Plan provisions separately to each Participating Employer other than an Affiliated Employer of such Participating Employer. The Plan will be considered separate plans for each Participating Employer and its Employees for purposes of determining whether such a separate plan is top-heavy under Section 9.1 or is entitled to the exemption described in such Section. For purposes of applying this Article to a Participating Employer, the Participating Employer and any entity which is an Affiliated Employer to that Participating Employer shall be the "Employer" for purposes of Section 9.1, and the terms "Key Employee" and "Non-Key Employee" shall refer only to the Employees of that Participating Employer and/or its Affiliated Employers. If such a Participating Employer's separate plan is top-heavy, then:

- (a) **Highest contribution rate.** The Plan Administrator shall determine the highest Key Employee contribution rate under Section 4.4(g) by reference to the Key Employees and their allocations in the separate plan of that Participating Employer;
- (b) **Top-Heavy minimum allocation.** The Plan Administrator shall determine the amount of any required top-heavy minimum allocation separately for that separate plan under Section 4.4(g); and
- (c) **Plan which will satisfy.** The Participating Employer shall make any additional contributions Section 4.4(g) requires.

11.11 HIGHLY COMPENSATED EMPLOYEE STATUS

Status as a Highly Compensated Employee under Section 1.38 shall be determined separately with respect to each Participating Employer (and all its Affiliated Employers).

11.12 SERVICE

An Employee's service includes all Hours of Service and Years of Service with any and all Participating Employers and their Affiliated Employers. An Employee who terminates employment with one Participating Employer and immediately commences employment with another Participating Employer has not separated from service and has not had a severance from employment.

11.13 REQUIRED MINIMUM DISTRIBUTIONS

If a Participant is a 5-percent owner (under Section 6.8(e)(6)) of any Participating Employer for which the Participant is an Employee in the Plan Year the Participant attains age 70 1/2, then the Participant's required beginning date under Section 6.8 shall be the April 1 of the calendar year following the close of the calendar year in which the Participant attains age 70 1/2.

IN WITNESS WHEREOF, this Plan has been executed the day and year first above written.

County of Hidalgo Community Service Agency; Hidalgo County
Urban County Program; and Hidalgo County Head Start

By _____
Rene A. Ramirez

TRUSTEES:

By _____
Rene A. Ramirez

By _____
Teresa Flores

By _____
Diana R. Serna

By _____
Maribel Navarro-Sacna

ADOPTING RESOLUTION

The undersigned authorized representative of County of Hidalgo Community Service Agency; Hidalgo County Urban County Program; and Hidalgo County Head Start (the Employer) hereby certifies that the following resolutions were duly adopted by the Employer on April 21, 2010, and that such resolutions have not been modified or rescinded as of the date hereof:

RESOLVED, that the form of amended and restated 401(k) Plan and Trust effective January 1, 2010, presented to this meeting is hereby approved and adopted and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Plan, including any separate amendments being concurrently adopted.

The undersigned further certifies that attached hereto as Exhibits A, B, and C, respectively, are true copies of Hidalgo County Affiliated Departments Retirement Plan, the Summary Plan Description and the Funding Policy and Method, which are hereby approved and adopted.

Date: April 21, 2010

By _____
Teresa Flores, Head Start Program

By _____
Diana R. Serna, Urban County Program

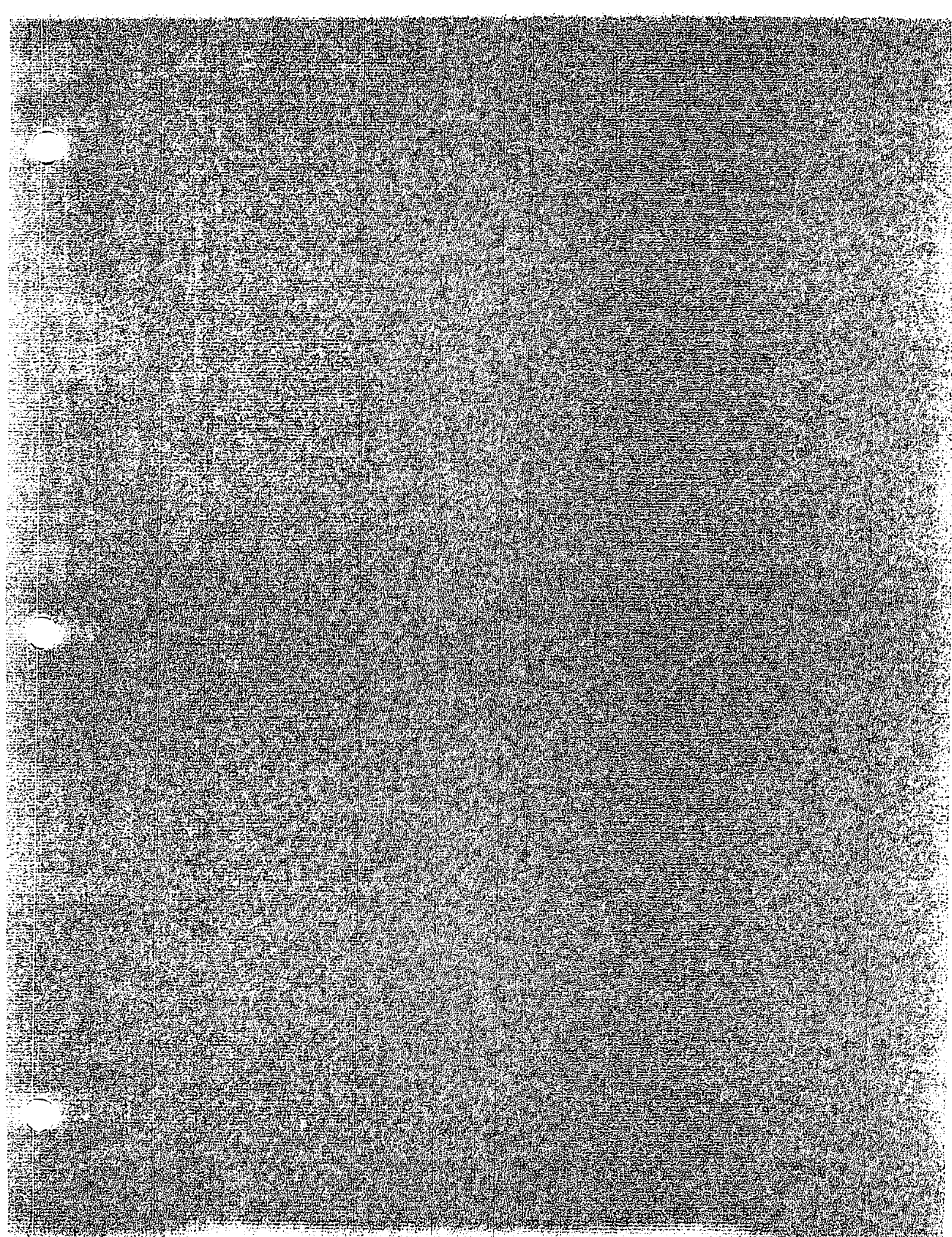
By _____
Maribel Navarro – Saena, Community Service Agency

**HIDALGO COUNTY AFFILIATED DEPARTMENTS
RETIREMENT PLAN**

FUNDING POLICY AND METHOD

A pension benefit plan (as defined in the Employee Retirement Income Security Act of 1974) has been adopted by the company for the purpose of rewarding long and loyal service to the company by providing to employees additional financial security at retirement. Incidental benefits are provided in the case of disability, death or other termination of employment.

Since the principal purpose of the plan is to provide benefits at normal retirement age, the principal goal of the investment of the funds in the plan should be both security and long-term stability with moderate growth commensurate with the anticipated retirement dates of participants. Investments, other than "fixed dollar" investments, should be included among the plan's investments to prevent erosion by inflation. However, investments should be sufficiently liquid to enable the plan, on short notice, to make some distributions in the event of the death or disability of a participant.



**AMENDMENT FOR PENSION PROTECTION ACT AND HEART ACT
HIDALGO COUNTY AFFILIATED DEPARTMENTS
RETIREMENT PLAN**

**ARTICLE I
PREAMBLE**

- 1.1 **Effective date of Amendment.** The Employer adopts this Amendment to the Plan to reflect recent law changes. This Amendment is effective as indicated below for the respective provisions.
- 1.2 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Employer's election.** The Employer adopts all the default provisions of this Amendment except as otherwise elected in Article II.
- 1.4 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.
- 1.5 **Effect of restatement of Plan.** If the Employer restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates PPA provisions).

**ARTICLE II
EMPLOYER ELECTIONS**

The Employer only needs to complete the questions in Sections 2.2 through 2.7 below in order to override the default provisions set forth below.

- 2.1 **Default Provisions.** Unless the Employer elects otherwise in this Article, the following defaults will apply:
 - a. **If the Plan has a vesting schedule for nonelective contributions that does not meet the Pension Protection Act of 2006 (PPA), then the vesting schedule for any Employer nonelective contributions for Participants who complete an Hour of Service in a Plan Year beginning after December 31, 2006, will be the schedule below. Such schedule will apply to all nonelective contributions, even those made prior to January 1, 2007.**

If the Plan has a 7-year graded vesting schedule, then the vesting schedule will be a 6-year graded schedule (20% after 2 years of vesting service and an additional 20% for each year thereafter).

If the Plan has a 5-year cliff vesting schedule, then nonelective contributions will be nonforfeitable upon the completion of 3 years of vesting service.
 - b. **Nonspousal beneficiary rollovers are allowed effective for distributions made after 12/31/06.**
 - c. **Hardship distributions for expenses of a beneficiary are not allowed.**
 - d. **The option to permit in-service distributions at age 62 (with respect to amounts attributable to a money purchase pension plan, target benefit plan, or any other defined contribution plan that has received a transfer of assets from a pension plan) is not adopted.**
 - e. **Qualified Reservist Distributions are not allowed.**
 - f. **Continued benefit accruals pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) are not provided.**
- 2.2 **Vesting (Article III).** The default vesting schedule applies unless a. is elected below.
 - a. ☐ In lieu of the above default vesting provisions, the employer elects the following schedule:
 - 1. ☐ 3 year cliff (a Participant's accrued benefit derived from employer nonelective contributions is nonforfeitable upon the Participant's completion of three years of vesting service).
 - 2. ☐ 6 year graded schedule (20% after 2 years of vesting service and an additional 20% for each year thereafter).

3. ☐ Other (must be at least as liberal as 1. or 2. above at each point in time):

Years of vesting service	Nonforfeitable percentage
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

The vesting schedule set forth herein only applies to Participants who complete an Hour of Service in a Plan Year beginning after December 31, 2006, and, unless b. is elected below, applies to all nonelective contributions subject to a vesting schedule.

- b. ☐ The vesting schedule will only apply to nonelective contributions made in Plan Years beginning after December 31, 2006 (the prior schedule will apply to nonelective contributions made in prior Plan Years).

- 2.3 **Non-spousal rollovers (Article VII).** Non-spousal rollovers are allowed after December 31, 2006 unless a. is elected below (Article VII provides that such distributions are always allowed after December 31, 2009):

- a. ☐ Use the following instead of the default (select one):
1. ☐ Non-spousal rollovers are not allowed.
 2. ☐ Non-spousal rollovers are allowed effective _____ (not earlier than January 1, 2007 and not later than January 1, 2010).

- 2.4 **Hardships (Article VIII).** Hardship distributions for expenses of beneficiaries will not be allowed unless elected below:

- a. ☐ Hardship distributions are allowed for beneficiary expenses (See IRS Notice 2007-7) (applies only for 401(k) or profit sharing plans that allow hardship distributions) effective as of August 17, 2006 unless another date is elected below:
1. ☐ _____ (may not be earlier than August 17, 2006).

- 2.5 **In-service distributions (Article IX).** In-service distributions at age 62 will not be allowed (except as otherwise permitted under the Plan without regard to this Amendment) unless elected below:

- a. ☐ In-service distributions will be allowed for Participants at age 62 (generally applies only for money purchase (including target benefit) plans, but may apply to any other defined contribution plans that have received a transfer of assets from a pension plan) effective as of the first day of the 2007 Plan Year unless another date is elected below:
1. ☐ _____ (may not be earlier than the first day of the 2007 Plan Year).

AND, the following limitations apply to in-service distributions:

2. ☐ The Plan already provides for in-service distributions and the restrictions set forth in the Plan (e.g., minimum amount of distributions or frequency of distributions) are applicable to in-service distributions at age 62.
3. ☐ N/A. No limitations.
4. ☐ The following elections apply to in-service distributions at age 62 (select all that apply):
 - a. ☐ The minimum amount of a distribution is \$_____ (may not exceed \$1,000).
 - b. ☐ No more than _____ distribution(s) may be made to a Participant during a Plan Year.
 - c. ☐ Distributions may only be made from accounts which are fully Vested.
 - d. ☐ In-service distributions may be made subject to the following provisions: _____ (must be definitely determinable and not subject to discretion).

- 2.6 **Qualified Reservist Distributions (Article X).** Qualified Reservist distributions will not be allowed unless elected below:

- a. ☐ Qualified Reservist Distributions are allowed effective as of _____ (may not be earlier than September 12, 2001).

- 2.7 **Continued benefit accruals (Article XV).** Continued benefit accruals for the Heart Act (Amendment Section 15.2) will not apply unless elected below:

- a. ☐ The provisions of Amendment Section 15.2 apply.

ARTICLE III NONELECTIVE CONTRIBUTION VESTING

- 3.1 **Applicability.** This Article applies to Participants who complete an Hour of Service in a Plan Year beginning after December 31, 2006, with respect to accrued benefits derived from employer nonelective contributions made in Plan Years beginning after December 31, 2006. Unless otherwise elected by the employer in Amendment Section 2.2 above, this Article also will apply to all nonelective contributions subject to a vesting schedule, including nonelective contributions allocated under the Plan terms as of a date in a Plan Year beginning *before* January 1, 2007.

- 3.2 **Vesting schedule.** A Participant's accrued benefit derived from employer nonelective contributions vests as provided in Amendment Section 2.1.a, or if applicable, Amendment Section 2.2.

**ARTICLE IV
PARTICIPANT DISTRIBUTION NOTIFICATION**

- 4.1 **180-day notification period.** For any distribution notice issued in Plan Years beginning after December 31, 2006, any reference to the 90-day maximum notice period prior to distribution in applying the notice requirements of Code §§402(f) (the rollover notice), 411(a)(11) (Participant's consent to distribution), and 417 (notice under the joint and survivor annuity rules) will become 180 days.
- 4.2 **Notice of right to defer distribution.** For any distribution notice issued in Plan Years beginning after December 31, 2006, the description of a Participant's right, if any, to defer receipt of a distribution also will describe the consequences of failing to defer receipt of the distribution. For notices issued before the 90th day after the issuance of Treasury regulations (unless future Revenue Service guidance otherwise requires), the notice will include: (i) a description indicating the investment options available under the Plan (including fees) that will be available if the Participant defers distribution; and (ii) the portion of the summary plan description that contains any special rules that might affect materially a Participant's decision to defer.

**ARTICLE V
ROLLOVER OF AFTER-TAX/ROTH AMOUNTS**

- 5.1 **Direct rollover to qualified plan/403(b) plan.** For taxable years beginning after December 31, 2006, a Participant may elect to transfer employee (after-tax) or Roth elective deferral contributions by means of a direct rollover to a qualified plan or to a 403(b) plan that agrees to account separately for amounts so transferred, including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income.

**ARTICLE VI
DIVESTMENT OF EMPLOYER SECURITIES**

- 6.1 **Rule applicable to elective deferrals and employee contributions.** For Plan Years beginning after December 31, 2006, if any portion of the account of a Participant (including, for purposes of this Article VI, a beneficiary entitled to exercise the rights of a Participant) attributable to elective deferrals or employee contributions is invested in publicly-traded Employer securities, the Participant may elect to direct the Plan to divest any such securities, and to reinvest an equivalent amount in other investment options which satisfy the requirements of Section 6.3.
- 6.2 **Rule applicable to Employer contributions.** If any portion of a Participant's account attributable to nonelective or matching contributions is invested in publicly-traded Employer securities, then a Participant who has completed at least 3 years of vesting service, or a beneficiary of any deceased Participant entitled to exercise the right of a Participant, may elect to direct the Plan to divest any such securities, and to reinvest an equivalent amount in other investment options which satisfy the requirements of Section 6.3.
- a. **Three-year phase-in applicable to Employer contributions.** For Employer securities acquired with nonelective or matching contributions during a Plan Year beginning before January 1, 2007, the rule described in this Section 6.2 only applies to the percentage of the Employer securities (applied separately for each class of securities) as follows:
- | <u>Plan Year</u> | <u>Percentage</u> |
|------------------|-------------------|
| 2007 | 33 |
| 2008 | 66 |
| 2009 | 100 |
- b. **Exception to phase-in for certain age 55 Participants.** The 3-year phase-in rule of Section 6.2.a does not apply to a Participant who has attained age 55 and who has completed at least 3 years of service before the first Plan Year beginning after December 31, 2005.
- 6.3 **Investment options.** For purposes of this Article VI, other investment options must include not less than 3 investment options, other than Employer securities, to which the Participant may direct the proceeds of divestment of Employer securities required by this Article VI, each of which options is diversified and has materially different risk and return characteristics. The Plan must provide reasonable divestment and reinvestment opportunities at least quarterly. Except as provided in regulations, the Plan may not impose restrictions or conditions on the investment of Employer securities which the Plan does not impose on the investment of other Plan assets, other than restrictions or conditions imposed by reason of the application of securities laws or a condition permitted under IRS Notice 2006-107 or other applicable guidance.
- 6.4 **Exceptions for certain plans.** This Article VI does not apply to a one-participant plan, as defined in Code §401(a)(35)(E)(iv), or to an employee stock ownership plan ("ESOP") if: (i) there are no contributions to the ESOP (or related earnings) attributable to elective deferrals or matching contributions; and (ii) the ESOP is a separate plan, for purposes of Code §414(I), from any other defined benefit plan or defined contribution plan maintained by the same employer or employers.

- 6.5 **Treatment as publicly traded Employer securities.** Except as provided in Treasury regulations or in Code §401(a)(35)(F)(ii) (relating to certain controlled groups), a plan holding Employer securities which are not publicly traded Employer securities is treated as holding publicly traded Employer securities if any Employer corporation, or any member of a controlled group of corporations which includes such Employer corporation (as defined in Code §401(a)(35)(F)(iii)) has issued a class of stock which is a publicly traded Employer security.

ARTICLE VII DIRECT ROLLOVER OF NON-SPOUSAL DISTRIBUTION

- 7.1 **Non-spouse beneficiary rollover right.** For distributions after December 31, 2009, and unless otherwise elected in Section 2.3 of this Amendment, for distributions after December 31, 2006, a non-spouse beneficiary who is a "designated beneficiary" under Code §401(a)(9)(E) and the regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an individual retirement account the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.
- 7.2 **Certain requirements not applicable.** Although a non-spouse beneficiary may roll over directly a distribution as provided in Section 7.1, any distribution made prior to January 1, 2010 is not subject to the direct rollover requirements of Code §401(a)(31) (including Code §401(a)(31)(B), the notice requirements of Code §402(f) or the mandatory withholding requirements of Code §3405(c)). If a non-spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a "60-day" rollover.
- 7.3 **Trust beneficiary.** If the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code §401(a)(9)(E).
- 7.4 **Required minimum distributions not eligible for rollover.** A non-spouse beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. §1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

ARTICLE VIII DISTRIBUTION BASED ON BENEFICIARY HARDSHIP

- 8.1 **Beneficiary-based distribution.** If elected in Amendment Section 2.4.a, then beginning as of the date specified in such Section, a Participant's hardship event, for purposes of the Plan's safe harbor hardship distribution provisions pursuant to Treas. Reg. §1.401(k)-1(d)(3)(iii)(B), includes an immediate and heavy financial need of the Participant's primary beneficiary under the Plan, that would constitute a hardship event if it occurred with respect to the Participant's spouse or dependent as defined under Code §152 (such hardship events being limited to educational expenses, funeral expenses and certain medical expenses). For purposes of this Article, a Participant's "primary beneficiary under the Plan" is an individual who is named as a beneficiary under the Plan and has an unconditional right to all or a portion of the Participant's account balance under the Plan upon the Participant's death.

ARTICLE IX IN-SERVICE PENSION DISTRIBUTIONS

- 9.1 **Age 62 distributions.** If elected in Amendment Section 2.5.a, then beginning as of the date specified in such Section, if the Plan is a money purchase pension plan, a target benefit plan, or any other defined contribution plan that has received a transfer of assets from a pension plan, a Participant who has attained age 62 and who has not separated from employment may elect to receive a distribution of his or her vested account balance (or in case of a transferee plan, of the transferred account balance).

ARTICLE X QUALIFIED RESERVIST DISTRIBUTION

- 10.1 **401(k) distribution restrictions.** If elected in Amendment Section 2.6, then effective as of the date specified in such Section, the Plan permits a Participant to elect a Qualified Reservist Distribution, as defined in this Article X.
- 10.2 **Qualified Reservist Distribution defined.** A "Qualified Reservist Distribution" is any distribution to an individual who is ordered or called to active duty after September 11, 2001, if: (i) the distribution is from amounts attributable to elective deferrals in a 401(k) plan; (ii) the individual was (by reason of being a member of a reserve component, as defined in section 101 of title 37, United

States Code) ordered or called to active duty for a period in excess of 179 days or for an indefinite period; and (iii) the Plan makes the distribution during the period beginning on the date of such order or call, and ending at the close of the active duty period.

ARTICLE XI OTHER 401(k)/401(m) PLAN PROVISIONS

- 11.1 **Gap period income on distributed excess contributions and excess aggregate contributions.** This Section applies to excess contributions (as defined in Code §401(k)(8)(B)) and excess aggregate contributions (as defined in Code §401(m)(6)(B)) made with respect to Plan Years beginning after December 31, 2007. The Plan administrator will not calculate and distribute allocable income for the gap period (i.e., the period after the close of the Plan Year in which the excess contribution or excess aggregate contribution occurred and prior to the distribution).
- 11.2 **Gap period income on distributed excess deferrals.** With respect to 401(k) plan excess deferrals (as defined in Code §402(g)) made in taxable year 2007, the Plan administrator must calculate allocable income for the taxable year and also for the gap period (i.e., the period after the close of the taxable year in which the excess deferral occurred and prior to the distribution); provided that the Plan administrator will calculate and distribute the gap period allocable income only if the Plan administrator in accordance with the Plan terms otherwise would allocate the gap period allocable income to the Participant's account. With respect to 401(k) plan excess deferrals made in taxable years after 2007, gap period income may not be distributed.
- 11.3 **Plan termination distribution availability.** For purposes of determining whether the Employer maintains an alternative defined contribution plan (described in Treas. Reg. §1.401(k)-1(d)(4)(i)) that would prevent the Employer from distributing elective deferrals (and other amounts, such as QNECs, that are subject to the distribution restrictions that apply to elective deferrals) from a terminating 401(k) plan, an alternative defined contribution plan does not include an employee stock ownership plan defined in Code §§4975(e)(7) or 409(a), a simplified employee pension as defined in Code §408(k), a SIMPLE IRA plan as defined in Code §408(p), a plan or contract that satisfies the requirements of Code §403(b), or a plan that is described in Code §§457(b) or (f).

ARTICLE XII QUALIFIED OPTIONAL SURVIVOR ANNUITY

- 12.1 **Right to Elect Qualified Optional Survivor Annuity.** Effective with respect to Plan Years beginning after December 31, 2007, a participant who elects to waive the qualified joint and survivor annuity form of benefit, if offered under the Plan, is entitled to elect the "qualified optional survivor annuity" at any time during the applicable election period. Furthermore, the written explanation of the joint and survivor annuity shall explain the terms and conditions of the "qualified optional survivor annuity."
- 12.2 **Definition of Qualified Optional Survivor Annuity.**
- a. **General.** For purposes of this Article, the term "qualified optional survivor annuity" means an annuity:
- (1) For the life of the participant with a survivor annuity for the life of the spouse which is equal to the "applicable percentage" of the amount of the annuity which is payable during the joint lives of the Participant and the spouse, and
- (2) Which is the actuarial equivalent of a single annuity for the life of the participant.
- Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.
- b. **Applicable percentage.** For purposes of this Section, the "applicable percentage" is based on the survivor annuity percentage (i.e., the percentage which the survivor annuity under the Plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the participant and the spouse). If the survivor annuity percentage is less than 75 percent, then the "applicable percentage" is 75 percent; otherwise, the "applicable percentage" is 50 percent.

ARTICLE XIII DIRECT ROLLOVER TO ROTH IRA

- 13.1 **Roth IRA rollover.** For distributions made after December 31, 2007, a participant may elect to roll over directly an eligible rollover distribution to a Roth IRA described in Code §408A(b).

ARTICLE XIV QUALIFIED DOMESTIC RELATIONS ORDERS

- 14.1 **Permissible QDROs.** Effective April 6, 2007, a domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order ("QDRO") will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another

domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.

- 14.2 **Other QDRO requirements apply.** A domestic relations order described in Section 14.1 is subject to the same requirements and protections that apply to QDROs.

ARTICLE XV HEART ACT PROVISIONS

- 15.1 **Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code § 414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death.
- 15.2 **Benefit accrual.** If the Employer elects in Amendment Section 2.7 to apply this Section 15.2, then for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled on or after January 1, 2007 (as defined under the terms of the Plan) while performing qualified military service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.
- a. **Determination of benefits.** The Plan will determine the amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under this Section 15.2 for purposes of applying paragraph Code §414(u)(8)(C) on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of: (i) the 12-month period of service with the Employer immediately prior to qualified military service; or (ii) if service with the Employer is less than such 12-month period, the actual length of continuous service with the Employer.
- 15.3 **Differential wage payments.** For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined by Code §3401(h)(2), is treated as an employee of the employer making the payment, (ii) the differential wage payment is treated as compensation, and (iii) the Plan is not treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.
- 15.4 **Severance from employment.** Notwithstanding Section 15.3(i), for purposes of Code §401(k)(2)(B)(i)(I), an individual is treated as having been severed from employment during any period the individual is performing service in the uniformed services described in Code §3401(h)(2)(A).
- a. **Suspension of deferrals.** If an individual elects to receive a distribution by reason of severance from employment, death or disability, the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.
- b. **Nondiscrimination requirement.** Section 15.3(iii) applies only if all employees of the Employer performing service in the uniformed services described in Code §3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code §3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code §§410(b)(3), (4), and (5)).

This Amendment has been executed this 1st day of October, 2009.

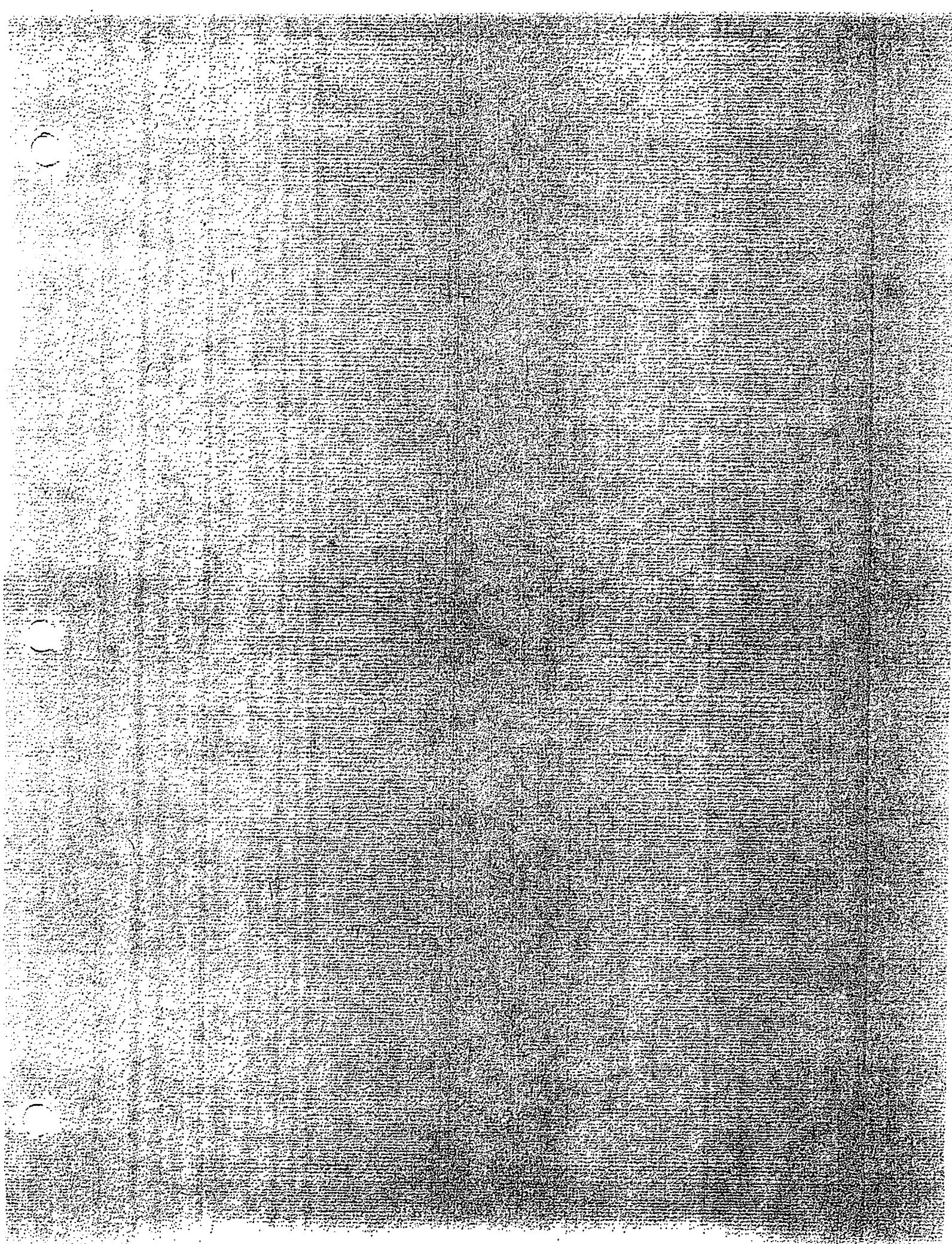
Name of Plan: Hidalgo County Affiliated Departments Retirement Plan

County of Hidalgo Community Service Agency; Hidalgo County
Urban County Program; and Hidalgo County Head Start

By _____
Teresa Flores, Head Start Program

By _____
Diana R. Serna, Urban County Program

By _____
Maribel Navarro – Saena, Community Service Agency



**AMENDMENT FOR THE FINAL 415 REGULATIONS
HIDALGO COUNTY AFFILIATED DEPARTMENTS
RETIREMENT PLAN**

**ARTICLE I
PREAMBLE**

- 1.1 **Effective date of Amendment.** This Amendment is effective for limitation years and plan years beginning on or after July 1, 2007, except as otherwise provided herein.
- 1.2 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Employer's election.** The Employer adopts all Articles of this Amendment, except those Articles that the Employer specifically elects not to adopt.
- 1.4 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.
- 1.5 **Effect of restatement of Plan.** If the Employer restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates the final Code §415 Regulation provisions).

**ARTICLE II
EMPLOYER ELECTIONS**

The Employer only needs to complete the questions in Section 2.2 in order to override the default provisions set forth below. If the Plan will use all of the default provisions, then these questions should be skipped.

- 2.1 **Default Provisions.** Unless the Employer elects otherwise in Section 2.2, the following defaults will apply:
 - a. The provisions of the Plan setting forth the definition of compensation for purposes of Code §415 (hereinafter referred to as "415 Compensation"), as well as compensation for purposes of determining highly compensated employees pursuant to Code §414(q) and for top-heavy purposes under Code §416 (including the determination of key employees), shall be modified by (1) including payments for unused sick, vacation or other leave and payments from nonqualified unfunded deferred compensation plans (Amendment Section 3.2(b)), (2) excluding salary continuation payments for participants on military service (Amendment Section 3.2(c)), and (3) excluding salary continuation payments for disabled participants (Amendment Section 3.2(d)).
 - b. The "first few weeks rule" does not apply for purposes of 415 Compensation (Amendment Section 3.3).
 - c. The provision of the Plan setting forth the definition of compensation for allocation purposes (hereinafter referred to as "Plan Compensation") shall be modified to provide for the same adjustments to Plan Compensation (for all contribution types) that are made to 415 Compensation pursuant to this Amendment.
- 2.2 **In lieu of default provisions.** In lieu of the default provisions above, the following apply: (select all that apply; if no selections are made, then the defaults apply)

415 Compensation. (select all that apply):

 - a. ☐ Exclude leave cashouts and deferred compensation (Section 3.2(b))
 - b. ☐ Include military continuation payments (Section 3.2(c))
 - c. ☐ Include disability continuation payments (Section 3.2(d)):
 - 1. ☐ For Nonhighly Compensated Employees only
 - 2. ☐ For all participants and the salary continuation will continue for the following fixed or determinable period: _____
 - d. ☐ Apply the administrative delay ("first few weeks") rule (Section 3.3)

Plan Compensation. (select all that apply):

NOTE: Elective Deferrals include Roth Elective Deferrals, Matching includes QMACs, and Nonelective includes QNECs unless specified otherwise. For all Plans other than 401(k) plans, do not make any selections at 1. – 4. in the table below.

	Elective Deferrals	Matching	Nonelective Profit Sharing	ADP Safe Harbor
e. ☐ Default provisions apply	1. ☐	2. ☐	3. ☐	4. ☐
f. ☐ No change from existing Plan provisions	1. ☐	2. ☐	3. ☐	4. ☐
g. ☐ Exclude all post-severance compensation	1. ☐	2. ☐	3. ☐	4. ☐
h. ☐ Exclude post-severance regular pay	1. ☐	2. ☐	3. ☐	4. ☐
i. ☐ Exclude leave cashouts and deferred compensation	1. ☐	2. ☐	3. ☐	4. ☐
j. ☐ Include military continuation payments	1. ☐	2. ☐	3. ☐	4. ☐
k. ☐ Include disability continuation payments:	1. ☐	2. ☐	3. ☐	4. ☐
a. ☐ For Nonhighly Compensated Employees only				
b. ☐ For all participants and the salary continuation will continue for the following fixed or determinable period:				

l. ☐ Other _____ (describe)				

Plan Compensation Special Effective Date. The definition of Plan Compensation is modified as set forth herein effective as of the same date as the 415 Compensation change is effective unless otherwise specified:

m. _____ (enter the effective date)

ARTICLE III FINAL SECTION 415 REGULATIONS

3.1 **Effective date.** The provisions of this Article III shall apply to limitation years beginning on and after July 1, 2007.

3.2 **415 Compensation paid after severance from employment.** 415 Compensation shall be adjusted, as set forth herein and as otherwise elected in Article II, for the following types of compensation paid after a Participant's severance from employment with the Employer maintaining the Plan (or any other entity that is treated as the Employer pursuant to Code §414(b), (c), (m) or (o)). However, amounts described in subsections (a) and (b) below may only be included in 415 Compensation to the extent such amounts are paid by the later of 2 1/2 months after severance from employment or by the end of the limitation year that includes the date of such severance from employment. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered 415 Compensation within the meaning of Code §415(c)(3), even if payment is made within the time period specified above.

(a) **Regular pay.** 415 Compensation shall include regular pay after severance of employment if:

(1) The payment is regular compensation for services during the participant's regular working hours, or compensation for services outside the participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(2) The payment would have been paid to the participant prior to a severance from employment if the participant had continued in employment with the Employer.

(b) **Leave cashouts and deferred compensation.** Leave cashouts shall be included in 415 Compensation, unless otherwise elected in Section 2.2 of this Amendment, if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the participant's severance from employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other leave, but only if the participant would have been able to use the leave if employment had continued. In addition, deferred compensation shall be included in 415 Compensation, unless otherwise elected in Section 2.2 of this Amendment, if the compensation would have been included in the definition of 415 Compensation if it had been paid prior to the participant's severance from employment, and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the participant had continued in employment with the Employer and only to the extent that the payment is includible in the participant's gross income.

(c) **Salary continuation payments for military service participants.** 415 Compensation does not include, unless otherwise elected in Section 2.2 of this Amendment, payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code §414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(d) **Salary continuation payments for disabled Participants.** Unless otherwise elected in Section 2.2 of this Amendment, 415 Compensation does not include compensation paid to a participant who is permanently and totally disabled (as defined in Code §22(e)(3)). If elected, this provision shall apply to either just non-highly compensated participants or to all participants for the period specified in Section 2.2 of this Amendment.

- 3.3 **Administrative delay ("the first few weeks") rule.** 415 Compensation for a limitation year shall not include, unless otherwise elected in Section 2.2 of this Amendment, amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates. However, if elected in Section 2.2 of this Amendment, 415 Compensation for a limitation year shall include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next limitation year, the amounts are included on a uniform and consistent basis with respect to all similarly situated participants, and no compensation is included in more than one limitation year.
- 3.4 **Inclusion of certain nonqualified deferred compensation amounts.** If the Plan's definition of Compensation for purposes of Code §415 is the definition in Regulation Section 1.415(c)-2(b) (Regulation Section 1.415-2(d)(2) under the Regulations in effect for limitation years beginning prior to July 1, 2007) and the simplified compensation definition of Regulation 1.415(c)-2(d)(2) (Regulation Section 1.415-2(d)(10) under the Regulations in effect for limitation years prior to July 1, 2007) is not used, then 415 Compensation shall include amounts that are includible in the gross income of a Participant under the rules of Code §409A or Code §457(f)(1)(A) or because the amounts are constructively received by the Participant. [Note if the Plan's definition of Compensation is W-2 wages or wages for withholding purposes, then these amounts are already included in Compensation.]
- 3.5 **Definition of annual additions.** The Plan's definition of "annual additions" is modified as follows:
- (a) **Restorative payments.** Annual additions for purposes of Code §415 shall not include restorative payments. A restorative payment is a payment made to restore losses to a Plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under ERISA or under other applicable federal or state law, where participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are restorative payments only if the payments are made in order to restore some or all of the plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). This includes payments to a plan made pursuant to a Department of Labor order, the Department of Labor's Voluntary Fiduciary Correction Program, or a court-approved settlement, to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty under ERISA are not restorative payments and generally constitute contributions that are considered annual additions.
- (b) **Other Amounts.** Annual additions for purposes of Code §415 shall not include: (1) The direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (2) Rollover contributions (as described in Code §§401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(c)(16)); (3) Repayments of loans made to a participant from the Plan; and (4) Repayments of amounts described in Code §411(a)(7)(B) (in accordance with Code §411(a)(7)(C)) and Code §411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code §414(d)) as described in Code §415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.
- (c) **Date of tax-exempt Employer contributions.** Notwithstanding anything in the Plan to the contrary, in the case of an Employer that is exempt from Federal income tax (including a governmental employer), Employer contributions are treated as credited to a participant's account for a particular limitation year only if the contributions are actually made to the plan no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the employer keeps its books) with or within which the particular limitation year ends.
- 3.6 **Change of limitation year.** The limitation year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's limitation year, then the Plan is treated as if the Plan had been amended to change its limitation year.
- 3.7 **Excess Annual Additions.** Notwithstanding any provision of the Plan to the contrary, if the annual additions (within the meaning of Code §415) are exceeded for any participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure 2006-27 or any superseding guidance, including, but not limited to, the preamble of the final §415 regulations.

3.8 Aggregation and Disaggregation of Plans.

(a) For purposes of applying the limitations of Code §415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the Employer (or a "predecessor employer") under which the participant receives annual additions are treated as one defined contribution plan. The "Employer" means the Employer that adopts this Plan and all members of a controlled group or an affiliated service group that includes the Employer (within the meaning of Code §§414(b), (c), (m) or (o)), except that for purposes of this Section, the determination shall be made by applying Code §415(h), and shall take into account tax-exempt organizations under Regulation Section 1.414(c)-5, as modified by Regulation Section 1.415(a)-1(f)(1). For purposes of this Section:

(1) A former Employer is a "predecessor employer" with respect to a participant in a plan maintained by an Employer if the Employer maintains a plan under which the participant had accrued a benefit while performing services for the former Employer, but only if that benefit is provided under the plan maintained by the Employer. For this purpose, the formerly affiliated plan rules in Regulation Section 1.415(f)-1(b)(2) apply as if the Employer and predecessor Employer constituted a single employer under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor employer relationship, such as a transfer of benefits or plan sponsorship.

(2) With respect to an Employer of a participant, a former entity that antedates the Employer is a "predecessor employer" with respect to the participant if, under the facts and circumstances, the employer constitutes a continuation of all or a portion of the trade or business of the former entity.

(b) **Break-up of an affiliate employer or an affiliated service group.** For purposes of aggregating plans for Code §415, a "formerly affiliated plan" of an employer is taken into account for purposes of applying the Code §415 limitations to the employer, but the formerly affiliated plan is treated as if it had terminated immediately prior to the "cessation of affiliation." For purposes of this paragraph, a "formerly affiliated plan" of an employer is a plan that, immediately prior to the cessation of affiliation, was actually maintained by one or more of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)), and immediately after the cessation of affiliation, is not actually maintained by any of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)). For purposes of this paragraph, a "cessation of affiliation" means the event that causes an entity to no longer be aggregated with one or more other entities as a single employer under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the employer under the employer affiliation rules of Regulation Section 1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

(c) **Midyear Aggregation.** Two or more defined contribution plans that are not required to be aggregated pursuant to Code §415(f) and the Regulations thereunder as of the first day of a limitation year do not fail to satisfy the requirements of Code §415 with respect to a participant for the limitation year merely because they are aggregated later in that limitation year, provided that no annual additions are credited to the participant's account after the date on which the plans are required to be aggregated.

ARTICLE IV PLAN COMPENSATION

- 4.1 **Compensation limit.** Notwithstanding Amendment Section 4.2 or any election in Amendment Section 2.2, if the Plan is a 401(k) plan, then participants may not make elective deferrals with respect to amounts that are not 415 Compensation. However, for this purpose, 415 Compensation is not limited to the annual compensation limit of Code §401(a)(17).
- 4.2 **Compensation paid after severance from employment.** Compensation for purposes of allocations (hereinafter referred to as Plan Compensation) shall be adjusted, unless otherwise elected in Amendment Section 2.2, in the same manner as 415 Compensation pursuant to Article III of this Amendment if those amounts would have been included in Compensation if this was paid prior to the Participant's severance from employment, except in applying Article III, the term "limitation year" shall be replaced with the term "plan year" and the term "415 Compensation" shall be replaced with the term "Plan Compensation."
- 4.3 **Option to apply Plan Compensation provisions early.** The provisions of this Article shall apply for Plan Years beginning on and after July 1, 2007, unless another effective date is specified in Section 2.2 of this Amendment.

This Amendment has been executed this 15th day of September, 2009.

Name of Plan: Hidalgo County Affiliated Departments Retirement Plan

County of Hidalgo Community Service Agency; Hidalgo County
Urban County Program; and Hidalgo County Head Start

By _____
Teresa Flores, Head Start Program

By _____
Diana R. Serna, Urban County Program

By _____
Maribel Navarro – Saena, Community Service Agency

Dated: April 21, 2010

By: Teresa Flores, Head Start Program

By: Diana R. Serna, Urban County Program

By: Maribel Navarro-Saena, Community Service Agency

* * * * *

1 Limiting the availability of a plan loan to any participant who is a "party in interest" has the effect of narrowing the group of *non-employees* eligible for a plan loan. In general, a *former* employee, beneficiary (in pay status) or an alternate payee spouse is *not* a "party in interest," and therefore is not eligible for a plan loan. The DOL takes the position a participant loan program may not satisfy the requirement to be available on a reasonably equivalent basis unless loans are available to all "*parties in interest*," including "parties in interest" who are former employees. See DOL Reg. §2550.408b-1(b)(1) and DOL Adv. Op. 89-30A. In general, a former employee "party in interest" is an owner with a large account balance who has elected to leave his/her account balance in the plan or a fiduciary. Restricting loans to former employees who are "parties in interest" does not create a discrimination issue because the Treasury regulations provide a special rule which permits the plan, for discrimination testing purposes, to treat as employees any former employees who are "parties in interest." Treas. Reg. §1.401(a)(4)-10(c). For a further discussion of the requirement to make participant loans available on a reasonably equivalent basis, see the ERISA Research Guide section entitled "Participant Loans," Part I.B.

2 Generally, a plan which treats participant loans as participant directed investments will not impose a creditworthiness standard because a default will not affect any other participant's account and because of the additional administrative burden and costs. However, a plan may impose a creditworthiness standard to obtain a participant loan. If a plan chooses to impose such a standard it should apply the standard in a nondiscriminatory manner. DOL Reg. §2550.408b-1(b)(1)(ii).

3 A "related employer" includes any business aggregated with the Employer under Code §414(b), (c), or (m).

4 An employer may permit a participant to borrow an amount not exceeding \$10,000 without regard to his/her *vested* account balance. However, since the plan may not use more than 50% of the vested account balance as security, the plan would need to obtain additional collateral.

5 See DOL Reg. §2550.408b-1(b)(2) and Treas. Reg. §1.401(a)(4)-4(b)(2)(ii)(E). A minimum loan not exceeding \$1,000 does not violate either the nondiscriminatory availability or the prohibited transaction exemption requirements. A plan that imposes a loan minimum in excess of \$1,000, must be able to satisfy the nondiscriminatory availability test (Treas. Reg. §1.401(a)(4)-4(e)), and must satisfy a "facts and circumstances" test to satisfy the prohibited transaction exemption requirements that: (1) loans are available on a reasonably equivalent basis to all participants; and (2) loans, in amount, do not favor highly compensated employees.

6 If the participant has a loan outstanding from any plan of the Employer or a related employer, and that loan has been treated as a taxable deemed distribution, then any subsequent loan will be a taxable deemed distribution unless the participant provides collateral other than the participant's vested interest in the plan or else the participant consents to having payment made through payroll withdrawal.

7 Because of the need to make loans available to parties in interest who may be former employees, the "due on termination" provision does not apply to parties in interest. The "due on termination" provision does not apply to a non-employee death beneficiary or to a non-employee alternate payee who is a party in interest and therefore eligible for a plan loan.

8 The loan policy may suspend payments, for a period not exceeding one year, during a participant's non-military leave of absence. Treas. Reg. §1.72(p)-1, A-9. A leave of absence may be without pay from the employer or at a rate of pay, after tax withholding, less than the installment payment amount.

9 The loan policy may suspend payments for all or any part of a participant's military leave of absence. The 5-year limit in the sample language is not required, but might be imposed as a reasonable administrative limitation. The suspension may also apply to "nonqualified military service" where the participant is not entitled to reemployment rights under USERRA. Code §§414(u)(4) and (5) and Treas. Reg. §1.72(p)-1, A-9.

10 This is the maximum rate a lender can charge a debtor who is on active military duty. 50 USC App. 526.

11 The "following calendar quarter" rule is the maximum cure period the regulations permit. Treas. Reg. §1.72(p)-1, A-10(a). The loan policy may specify a shorter cure period.

12 The policy treats loan default as a distributable event (consistent with PPD's prototype plan) except where (e.g., pledge of money purchase or 401(k) deferral balances) distribution and loan offset may not be available at the time of default.

**HIDALGO COUNTY AFFILIATED DEPARTMENTS
RETIREMENT PLAN**

SUMMARY PLAN DESCRIPTION

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HIDALGO COUNTY AFFILIATED DEPARTMENTS RETIREMENT PLAN

SUMMARY PLAN DESCRIPTION

INTRODUCTION TO YOUR PLAN

What kind of Plan is this?

Hidalgo County Affiliated Departments Retirement Plan (the "Plan") has been adopted to provide you with the opportunity to save for retirement on a tax-advantage basis. This Plan is a type of qualified retirement plan commonly referred to as a 401(k) Plan. As a Participant under the Plan, you may elect to contribute a portion of your compensation to the Plan.

Types of Contributions. The following types of contributions may be made under this Plan:

- employee salary deferrals
- employee rollover contributions
- employer matching contributions
- employer profit sharing contributions

What information does this Summary provide?

This Summary Plan Description ("SPD") contains information regarding when you may become eligible to participate in the Plan, your Plan benefits, your distribution options, and many other features of the Plan. You should take the time to read this SPD to get a better understanding of your rights and obligations in the Plan.

In this summary, your Employer has addressed the most common questions you may have regarding the Plan. If this SPD does not answer all of your questions, please contact the Administrator or other plan representative. The Administrator is responsible for responding to questions and making determinations related to the administration, interpretation, and application of the Plan. The name and address of the Administrator can be found at the end of this SPD in the Article entitled "General Information About the Plan."

This SPD describes the Plan's benefits and obligations as contained in the legal Plan document, which governs the operation of the Plan. The Plan document is written in much more technical and precise language and is designed to comply with applicable legal requirements. If the non-technical language in this SPD and the technical, legal language of the Plan document conflict, the Plan document always governs. If you wish to receive a copy of the legal Plan document, please contact the Administrator.

The Plan and your rights under the Plan are subject to federal laws, such as the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code, as well as some state laws. The provisions of the Plan are subject to revision due to a change in laws or due to pronouncements by the Internal Revenue Service (IRS) or Department of Labor (DOL). Your Employer may also amend or terminate this Plan. If the provisions of the Plan that are described in this SPD change, your Employer will notify you.

ARTICLE I PARTICIPATION IN THE PLAN

How do I participate in the Plan?

You may begin participating under the Plan once you have satisfied the eligibility requirements and reached your "Entry Date." The following describes the eligibility requirements and Entry Dates that apply. You should contact the Administrator if you have questions about the timing of your Plan participation.

Salary Deferrals

Excluded Employees. There are no Excluded Employees for purposes of salary deferrals.

Eligibility Conditions. You will be eligible to participate for purposes of salary deferrals on your date of hire. However, you will actually enter the Plan once you reach the Entry Date as described below.

Entry Date. For purposes of salary deferrals, your Entry Date will be the first day of the month coinciding with or next following the date you satisfy the eligibility requirements.

Matching Contributions

Excluded Employees. There are no Excluded Employees for purposes of the matching contributions provided under the Plan.

Eligibility Conditions. You will be eligible to participate for purposes of matching contributions on your date of hire. However, you will actually enter the Plan once you reach the Entry Date as described below.

Entry Date. For purposes of matching contributions, your Entry Date will be the first day of the month coinciding with or next following the date you satisfy the eligibility requirements.

Profit Sharing Contributions

Excluded Employees. There are no Excluded Employees for purposes of the profit sharing contributions provided under the Plan.

Eligibility Conditions. You will be eligible to participate for purposes of profit sharing contributions on your date of hire. However, you will actually enter the Plan once you reach the Entry Date as described below.

Entry Date. For purposes of profit sharing contributions, your Entry Date will be the first day of the Plan Year during which you satisfy the eligibility requirements.

What happens if I'm a Participant, terminate employment and then I'm rehired?

If you are no longer a Participant because you terminated employment, and you are rehired, then you will be able to participate in the Plan on your date of rehire provided you are otherwise eligible to participate in the Plan.

ARTICLE II EMPLOYEE CONTRIBUTIONS

What are salary deferrals and how do I contribute them to the Plan?

Salary Deferrals. As a Participant under the Plan, you may elect to reduce your compensation by a specific percentage or dollar amount and have that amount contributed to the Plan on a pre-tax basis as a salary deferral. Your taxable income is reduced by the deferral contribution so you pay less in federal income taxes (however, the amount you defer is still counted as compensation for purposes of Social Security taxes). Later, when the Plan distributes the deferrals and earnings, you will pay the taxes on those deferrals and the earnings. Therefore, federal income taxes on the deferral contributions and on the earnings are only postponed. Eventually, you will have to pay taxes on these amounts.

Deferral procedure. The amount you elect to defer will be deducted from your pay in accordance with a procedure established by the Administrator. You may elect to defer a portion of your salary as of your Entry Date. Such election will become effective as soon as administratively feasible after it is received by the Administrator. Your election will remain in effect until you modify or terminate it.

Deferral modifications. You are permitted to revoke your salary deferral election any time during the Plan Year. You may make any other modification on the first day of any payroll period or in accordance with any other procedure that your Employer provides. Any modification will become effective as soon as administratively feasible after received by the Administrator.

Deferral Limit. As a Participant, you may elect to defer a percentage of your compensation each year instead of receiving that amount in cash. Your total deferrals in any taxable year may not exceed a dollar limit which is set by law. The limit for 2010 is \$16,500. After 2010, the dollar limit may increase for cost-of-living adjustments. See the paragraph below called "Annual dollar limit." The Administrator will notify you of the maximum percentage you may defer.

Annual dollar limit. You should also be aware that the annual dollar limit on the amount you may defer is an aggregate limit that applies to all deferrals you may make under this Plan and any other cash or deferred arrangements (including tax-sheltered 403(b) annuity contracts, simplified employee pensions or other 401(k) plans) in which you may be participating. Generally, if your total deferrals under all cash or deferred arrangements for a calendar year exceed the annual dollar limit, then the excess must be returned to you in order to avoid adverse tax consequences. For this reason, it is desirable to request in writing that these excess deferrals be returned to you.

If you are in more than one plan, you must decide which plan or arrangement you would like to return the excess. If you decide that the excess should be distributed from this Plan, you must communicate this in writing to the Administrator no later than the March 1st following the close of the calendar year in which such excess deferrals were made. However, if the entire dollar limit is exceeded in this Plan or any other plan your Employer maintains, then you will be deemed to have notified the Administrator of the excess. The Administrator will then return the excess deferrals and any earnings to you by April 15th.

Allocation of deferrals. The Administrator will allocate the amount you elect to defer to an account maintained on your behalf. You will always be 100% vested in this account (see the Article in this SPD entitled "Vesting"). This means that you will always be entitled to all amounts that you defer. This money will, however, be affected by any investment gains or losses. If there is an investment gain, then the balance in your account will increase. If there is an investment loss, then the balance in your account will decrease.

Distribution of deferrals. The rules regarding distributions of amounts attributable to your salary deferrals are explained later in this SPD. However, if you are a highly compensated employee (generally more than 5% owners or individuals receiving wages in excess of certain amounts established by law), a distribution of certain amounts attributable to your salary deferrals may have to be returned to you if certain nondiscrimination requirements are not met. The Administrator will notify you when a distribution is required.

What are rollover contributions?

Rollover contributions. At the discretion of the Administrator, once you become a Participant (for so long as you remain employed), or if you are an eligible employee still within the waiting period, you may be permitted to deposit into the Plan distributions you have received from other plans and certain IRAs. Such a deposit is called a "rollover" and may result in tax savings to you. You may ask the Administrator or Trustee of the other plan or IRA to directly transfer (a "direct rollover") to this Plan all or a portion of any amount that you are entitled to receive as a distribution from such plan. Alternatively, if you received a distribution from a prior plan, you may elect to deposit any amount eligible to be rolled over within 60 days of your receipt of the distribution. You should consult qualified counsel to determine if a rollover is permitted and in your best interest.

Rollover account. Your rollover will be accounted for in a "rollover account." You will always be 100% vested in your "rollover account" (see the Article in this SPD entitled "Vesting"). This means that you will always be entitled to all amounts in your rollover account. Rollover contributions will be affected by any investment gains or losses.

Withdrawal of rollover contributions. You may withdraw the amounts in your "rollover account" at any time.

ARTICLE III EMPLOYER CONTRIBUTIONS

In addition to any deferrals you elect to make, your Employer may make additional contributions to the Plan. This Article describes Employer contributions that may be made to the Plan and how your share of the contributions is determined.

What is the Employer matching contribution and how is it allocated?

Matching Contribution. Your Employer may make a discretionary matching contribution equal to a uniform percentage of your salary deferrals. Each year, your Employer will determine the amount of the discretionary percentage.

Limit on matching percentage. In applying this matching percentage, however, salary deferrals for each year that exceed 7% of your compensation for such period will not be considered. For example, if you defer 6% of compensation for six months and then change your deferral to 0% for the remaining six months of the year, then you will have deferred 3% of compensation for the purposes of determining your matching contribution.

Allocation conditions. You will always share in the matching contribution regardless of the amount of service you complete during the Plan Year.

What is the Employer profit sharing contribution and how is it allocated?

Profit sharing contribution. Each year, your Employer may make a discretionary profit sharing contribution to the Plan. Your share of any contribution is determined below.

Allocation conditions. In order to share in the profit sharing contribution you must satisfy the following conditions:

- If you are employed on the last day of the Plan Year, you will share regardless of the amount of service you complete during the Plan Year.

Your share of the contribution. The profit sharing contribution will be "allocated" or divided among Participants eligible to share in the contribution for the Plan Year.

Your share of the profit sharing contribution is determined by the following fraction:

$$\text{Profit Sharing Contribution} \times \frac{\text{Your Compensation}}{\text{Total Compensation of All Participants Eligible to Share}}$$

For example: Suppose the profit sharing contribution for the Plan Year is \$20,000. Employee A's compensation for the Plan Year is \$25,000. The total compensation of all Participants eligible to share, including Employee A, is \$250,000. Employee A's share will be:

$$\$20,000 \times \frac{\$25,000}{\$250,000} \text{ or } \$2,000$$

What are forfeitures and how are they allocated?

Definition of forfeitures. In order to reward employees who remain employed with the Employer for a long period of time, the law permits a "vesting schedule" to be applied to certain contributions that your Employer makes to the Plan. This means that you will not be entitled ("vested") in all of the contributions until you have been employed with the Employer for a specified period of time (see the Article entitled "Vesting"). If a Participant terminates employment before being fully vested, then the non-vested portion of the terminated Participant's account balance remains in the Plan and is called a forfeiture. Forfeitures may be used by the Plan for several purposes.

Allocation of forfeitures. Forfeitures will be allocated as follows:

- Forfeitures may first be used to pay any administrative expenses.
- Any remaining forfeitures attributable to amounts other than Employer matching contributions will be allocated to Participants in the same proportion that the compensation for each Participant bears to the total compensation of all Participants.
- Any remaining forfeitures attributable to matching contributions will be allocated to Participants in the same proportion that the compensation for each Participant bears to the total compensation of all Participants.

ARTICLE IV COMPENSATION AND ACCOUNT BALANCE

What compensation is used to determine my Plan benefits?

Definition of compensation. For the purposes of the Plan, compensation has a special meaning. Compensation is generally defined as your total compensation that is subject to income tax and paid to you by your Employer during the Plan Year. Amounts paid to you after you terminate employment are generally not treated as compensation (except as may be provided below, and then only if paid by the earlier of 2 1/2 months following termination, or if later, the end of the plan year of termination). If you are a self-employed individual, your compensation will be equal to your earned income. The following describes the adjustments to compensation that may apply for the different types of contributions provided under the Plan.

Salary Deferrals

Adjustments to compensation. The following adjustments to compensation will be made for purposes of salary deferrals:

- salary deferrals to this Plan and to any other plan or arrangement (such as a cafeteria plan) will be included

Matching Contributions

Adjustments to compensation. No adjustments will be made to compensation for purposes of matching contributions.

Profit Sharing Contributions

Adjustments to compensation. No adjustments will be made to compensation for purposes of profit sharing contributions.

Is there a limit on the amount of compensation which can be considered?

The Plan, by law, cannot recognize annual compensation in excess of a certain dollar limit. The limit for the Plan Year beginning in 2010 is \$245,000. After 2010, the dollar limit may increase for cost-of-living adjustments.

Is there a limit on how much can be contributed to my account each year?

Generally, the law imposes a maximum limit on the amount of contributions that may be made to your account and any other amounts allocated to any of your accounts during the Plan Year, excluding earnings. Beginning in 2010, this total cannot exceed the lesser of \$49,000 or 100% of your annual compensation. After 2010, the dollar limit may increase for cost-of-living adjustments.

How is the money in the Plan invested?

The Trustee of the Plan has been designated to hold the assets of the Plan for the benefit of Plan Participants and their beneficiaries in accordance with the terms of this Plan. The trust fund established by the Plan's Trustee will be the funding medium used for the accumulation of assets from which Plan benefits will be distributed.

Participant directed investments. You will be able to direct the investment of your entire interest in the Plan. The Administrator will provide you with information on the investment choices available to you, the procedures for making investment elections, the frequency with which you can change your investment choices and other important information. You need to follow the procedures for making investment elections and you should carefully review the information provided to you before you give investment directions. If you do not

direct the investment of your applicable Plan accounts, then your accounts will be invested in accordance with the default investment alternatives established under the Plan. These default investments will be made in accordance with specific rules under which the fiduciaries of the Plan, including the Employer, the Trustee and the Plan Administrator, will be relieved of any legal liability for any losses resulting from the default investments. The Plan Administrator has or will provide you with a separate notice which details these default investments and your right to switch out of the default investment if you so desire.

The Plan is intended to comply with Section 404(c) of ERISA (the Employee Retirement Income Security Act). If the Plan complies with this Section, then the fiduciaries of the Plan, including your Employer, the Trustee and the Administrator, will be relieved of any legal liability for any losses which are the direct and necessary result of the investment directions that you give.

Earnings or losses. When you direct investments, your accounts are segregated for purposes of determining the earnings or losses on these investments. Your account does not share in the investment performance of other Participants who have directed their own investments. You should remember that the amount of your benefits under the Plan will depend in part upon your choice of investments. Gains as well as losses can occur and your Employer, the Administrator, and the Trustee will not provide investment advice or guarantee the performance of any investment you choose.

Will Plan expenses be deducted from my account balance?

Expenses allocated to all accounts. The Plan permits the payment of Plan expenses to be made from the Plan's assets. If expenses are paid using the Plan's assets, then the expenses will generally be allocated among the accounts of all Participants in the Plan. These expenses will be allocated either proportionately based on the value of the account balances or as an equal dollar amount based on the number of Participants in the Plan. The method of allocating the expenses depends on the nature of the expense itself. For example, certain administrative (or recordkeeping) expenses would typically be allocated proportionately to each Participant. If the Plan pays \$1,000 in expenses and there are 100 Participants, your account balance would be charged \$10 (\$1,000/100) of the expense.

Expenses allocated to individual accounts. There are certain other expenses that may be paid just from your account. These are expenses that are specifically incurred by, or attributable to, you. For example, if you are married and get divorced, the Plan may incur additional expenses if a court mandates that a portion of your account be paid to your ex-spouse. These additional expenses may be paid directly from your account (and not the accounts of other Participants) because they are directly attributable to you under the Plan. The Administrator will inform you when there will be a charge (or charges) directly to your account.

Your Employer may, from time to time, change the manner in which expenses are allocated.

ARTICLE V VESTING

What is my vested interest in my account?

In order to reward employees who remain employed with the Employer for a long period of time, the law permits a "vesting schedule" to be applied to certain contributions that your Employer makes to the Plan. This means that you will not be entitled ("vested") in all of the contributions until you have been employed with the Employer for a specified period of time.

100% vested contributions. You are always 100% vested (which means that you are entitled to all of the amounts) in your accounts attributable to the following contributions:

- salary deferrals
- rollover contributions

Vesting schedules. Your "vested percentage" for certain Employer contributions is based on vesting Years of Service. This means at the time you stop working for a reason other than your death or retirement, your account balance attributable to contributions subject to a vesting schedule is multiplied by your vested percentage. The result, when added to the amounts that are always 100% vested as shown above, is your vested interest in the Plan, which is what you will actually receive from the Plan. You will always, however, be 100% vested if you are employed on or after your Normal Retirement Age, or if you die while employed by your Employer.

Your "vested percentage" in your account attributable to profit sharing contributions is determined under the following schedule.

Vesting Schedule Profit Sharing Contributions		
Years of Service		Percentage
1		33%
2		66%
3		100%

Matching Contributions. Your "vested percentage" in your account attributable to matching contributions is determined under the following schedule.

Vesting Schedule Matching Contributions		
Years of Service		Percentage
1		33%
2		66%
3		100%

How is my service determined for vesting purposes?

Year of Service. To earn a Year of Service, you must be credited with at least 1,000 Hours of Service during a Plan Year. The Plan contains specific rules for crediting Hours of Service for vesting purposes. The Administrator will track your service and will credit you with a Year of Service for each Plan Year in which you are credited with the required Hours of Service, in accordance with the terms of the Plan. If you have any questions regarding your vesting service, you should contact the Administrator.

Hour of Service. You will be credited with your actual Hours of Service for:

- (a) each hour for which you are directly or indirectly compensated by the Employer for the performance of duties during the Plan Year;
- (b) each hour for which you are directly or indirectly compensated by the Employer for reasons other than the performance of duties (such as vacation, holidays, sickness, disability, lay-off, military duty, jury duty or leave of absence during the Plan Year); and
- (c) each hour for back pay awarded or agreed to by the Employer.

You will not be credited for the same Hours of Service both under (a) or (b), as the case may be, and under (c).

What service is counted for vesting purposes?

Service with the Employer. In calculating your vested percentage, all service you perform for the Employer will generally be counted. However, there are some exceptions to this general rule.

Break in Service rules. If you terminate employment and are rehired, you may lose credit for prior service under the Plan's Break in Service rules.

For vesting purposes, you will have a Break in Service if you complete less than 501 Hours of Service during the computation period used to determine whether you have a Year of Service. However, if you are absent from work for certain leaves of absence such as a maternity or paternity leave, you may be credited with enough Hours of Service to prevent a Break in Service.

Five-year Break in Service rule. The five-year Break in Service rule applies only to Participants who had no vested interest in the Plan when employment had terminated. If you were not vested in any amounts when you terminated employment and you have five 1-Year Breaks in Service (as defined above), all the service you earned before the 5-year period no longer counts for vesting purposes. Thus, if you return to employment after incurring five 1-Year Breaks in Service, you will be treated as a new employee (with no service) for purposes of determining your vested percentage under the Plan.

Military Service. If you are a veteran and are reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, your qualified military service may be considered service with the Employer. If you may be affected by this law, ask the Administrator for further details.

What happens to my non-vested account balance if I'm rehired?

If you have no vested interest in the Plan when you leave, your account balance will be forfeited. However, if you are rehired before incurring five 1-Year Breaks in Service, your account balance as of your termination date will be restored, unadjusted for any gains or losses.

If you are partially vested in your account balance when you leave, the non-vested portion of your account balance will be forfeited on the earlier of the date:

- (a) of the distribution of your vested account balance, or
- (b) when you incur five consecutive 1-year Breaks in Service.

If you received a distribution of your vested account balance and are rehired, you may have the right to repay this distribution. If you repay the entire amount of the distribution, your Employer will restore your account balance with your forfeited amount. You must repay this distribution within five years from your date of reemployment, or, if earlier, before you incur five 1-Year Breaks in Service. If you were 100% vested when you left, you do not have the opportunity to repay your distribution.

What happens if the Plan becomes a "top-heavy plan"?

Top-heavy plan. A retirement plan that primarily benefits "key employees" is called a "top-heavy plan." Key employees are certain owners or officers of your Employer. A plan is generally a "top-heavy plan" when more than 60% of the plan assets are attributable to key employees. Each year, the Administrator is responsible for determining whether the Plan is a "top-heavy plan."

Top-heavy rules. If the Plan becomes top-heavy in any Plan Year, then non-key employees may be entitled to certain "top-heavy minimum benefits," and other special rules will apply. These top-heavy rules include the following:

- Your Employer may be required to make a contribution on your behalf in order to provide you with at least "top-heavy minimum benefits."
- If you are a Participant in more than one Plan, you may not be entitled to "top-heavy minimum benefits" under both Plans.

ARTICLE VI DISTRIBUTIONS PRIOR TO TERMINATION

Can I withdraw money from my account while working?

In-service distributions. You may be entitled to receive an in-service distribution. However, this distribution is not in addition to your other benefits and will therefore reduce the value of the benefits you will receive at retirement. This distribution is made at your election and will be made in accordance with the forms of distributions available under the Plan.

Conditions. Generally you may receive a distribution from the Plan prior to your termination of employment provided you satisfy any of the following conditions:

- you have reached Normal Retirement Age

Also, the law restricts any in-service distributions from certain accounts which are maintained for you under the Plan before you reach age 59 1/2. These accounts are the ones set up to receive your salary deferral contributions and other Employer contributions which are used to satisfy special rules for 401(k) plans. Ask the Administrator if you need more details.

ARTICLE VII BENEFITS AND DISTRIBUTIONS UPON TERMINATION OF EMPLOYMENT

When can I get money out of the Plan?

This Plan is designed to provide you with retirement benefits. However, distributions are permitted if you die. In addition, certain payments are permitted when you terminate employment for any other reason. The rules under which you can receive a distribution are described in this Article. The rules regarding the payment of death benefits to your beneficiary are described in the Article entitled "Benefits and Distributions Upon Death."

You may receive a distribution of the vested portion of some or all of your accounts in the Plan for the following reasons:

- termination of employment for reasons other than death, disability or retirement
- normal retirement

You may also receive distributions while you are still employed with the Employer. (See the Article entitled "Distributions Prior to Termination" for a further explanation.)

What happens if I terminate employment before death or retirement?

If your employment terminates for reasons other than death or normal retirement, you will be entitled to receive only the "vested percentage" of your account balance.

If your vested account balance exceeds \$5,000, you may elect to have your vested account balance distributed to you as soon as administratively feasible following your termination of employment.

If your vested account balance does not exceed \$5,000, a distribution of your vested account balance will be made to you, regardless of whether you consent to receive it, as soon as administratively feasible following your termination of employment. (See the question entitled "How will my benefits be paid to me?" for an explanation of how these amounts will be paid.)

Amounts in your rollover account will be considered as part of your benefit in determining whether the \$5,000 threshold for timing of payments described above has been exceeded as well as for determining if the value of your vested account balance exceeds the \$5,000 threshold used to determine whether you must consent to a distribution.

What happens if I terminate employment at Normal Retirement Date?

Normal Retirement Date. You will attain your Normal Retirement Age when you reach your 65 birthday, or your 5 anniversary of joining the Plan, if later. Your Normal Retirement Date is the first day of the month coinciding with or next following your Normal Retirement Age.

Payment of benefits. You will become 100% vested in all of your accounts under the Plan if you retire on or after your Normal Retirement Age. However, the actual payment of benefits generally will not begin until you reach your Normal Retirement Date (even if employment has not terminated). In such event, a distribution will be made, at your election, as soon as administratively feasible. If you remain employed past your Normal Retirement Date, you may generally defer the receipt of benefits until you actually terminate employment. In such event, benefit payments will begin as soon as feasible at your request, but not later than age 70 1/2. (See the question entitled "How will my benefits be paid to me?" for an explanation of how these benefits will be paid.)

How will my benefits be paid to me?

Lump-sum distributions only. All distributions from the Plan will be made in a single lump-sum payment. If your vested account balance exceeds \$5,000, you must consent to the distribution before it may be made.

Delaying distributions. You may delay the distribution of your vested account balance unless a distribution is required to be made, as explained earlier, because your vested account balance does not exceed \$5,000. However, if you elect to delay the distribution of your vested account balance, there are rules that require that certain minimum distributions be made from the Plan. If you are a 5% owner, distributions are required to begin not later than the April 1st following the end of the year in which you reach age 70 1/2. If you are not a 5% owner, distributions are required to begin not later than the April 1st following the later of the end of the year in which you reach age 70 1/2 or retire. You should see the Administrator if you think you may be affected by these rules.

Medium of payment. Benefits under the Plan will generally be paid to you in cash.

ARTICLE VIII BENEFITS AND DISTRIBUTIONS UPON DEATH

What happens if I die while working for the Employer?

If you die while still employed by the Employer, then 100% of your account balance will be used to provide your beneficiary with a death benefit.

Who is the beneficiary of my death benefit?

Married Participant. If you are married at the time of your death, your spouse will be the beneficiary of the entire death benefit unless an election is made to change the beneficiary. IF YOU WISH TO DESIGNATE A BENEFICIARY OTHER THAN YOUR SPOUSE, YOUR SPOUSE MUST IRREVOCABLY CONSENT TO WAIVE ANY RIGHT TO THE DEATH BENEFIT. YOUR SPOUSE'S CONSENT

MUST BE IN WRITING, BE WITNESSED BY A NOTARY OR A PLAN REPRESENTATIVE AND ACKNOWLEDGE THE SPECIFIC NONSPOUSE BENEFICIARY.

If you are married and you change your designation, then your spouse must again consent to the change. In addition, you may elect a beneficiary other than your spouse without your spouse's consent if your spouse cannot be located.

Unmarried Participant. If you are not married, you may designate a beneficiary on a form to be supplied to you by the Administrator.

No beneficiary designation. At the time of your death, if you have not designated a beneficiary or your beneficiary is also not alive, the death benefit will be paid in the following order of priority to:

- (a) your surviving spouse
- (b) your children, including adopted children in equal shares (and if a child is not living, that child's share will be distributed to that child's heirs)
- (c) your surviving parents, in equal shares
- (d) your estate

How will the death benefit be paid to my beneficiary?

Lump sum only. The death benefit will be paid to your beneficiary in a single lump-sum payment.

When must the last payment be made to my beneficiary?

The law generally restricts the ability of a retirement plan to be used as a method of retaining money for purposes of your death estate. Thus, there are rules that are designed to ensure that death benefits are distributable to beneficiaries within certain time periods.

Regardless of the method of distribution selected, if your designated beneficiary is a person (rather than your estate or some trusts) then minimum distributions of your death benefit will begin by the end of the year following the year of your death ("1-year rule") and must be paid over a period not extending beyond your beneficiary's life expectancy. If your spouse is the beneficiary, then under the "1-year rule," the start of payments will be delayed until the year in which you would have attained age 70 1/2 unless your spouse elects to begin distributions over his or her life expectancy before then. However, instead of the "1-year rule" your beneficiary may elect to have the entire death benefit paid by the end of the fifth year following the year of your death (the "5-year rule"). Generally, if your beneficiary is not a person, your entire death benefit must be paid under the "5-year rule."

Since your spouse has certain rights to the death benefit, you should immediately report any change in your marital status to the Administrator.

What happens if I'm a Participant, terminate employment and die before receiving all my benefits?

If you terminate employment with the Employer and subsequently die, your beneficiary will be entitled to your remaining interest in the Plan at the time of your death. The provision in the Plan providing for full vesting of your benefit upon death does not apply if you die after terminating employment.

ARTICLE IX TAX TREATMENT OF DISTRIBUTIONS

What are my tax consequences when I receive a distribution from the Plan?

Generally, you must include any Plan distribution in your taxable income in the year in which you receive the distribution. The tax treatment may also depend on your age when you receive the distribution. Certain distributions made to you when you are under age 59 1/2 could be subject to an additional 10% tax.

Can I elect a rollover to reduce or defer tax on my distribution?

Rollover or Direct Transfer. You may reduce, or defer entirely, the tax due on your distribution through use of one of the following methods:

- (a) **60-day rollover.** The rollover of all or a portion of the distribution to an Individual Retirement Account or Annuity (IRA) or another employer retirement plan willing to accept the rollover. This will result in no tax being due until you begin withdrawing funds from the IRA or other qualified employer plan. The rollover of the distribution, however, **MUST** be made within strict time frames (normally, within 60 days after you receive your distribution). Under certain circumstances all or a portion of a distribution may not qualify for this rollover treatment. In addition, most distributions will be subject to mandatory federal income tax withholding at a rate

of 20%. This will reduce the amount you actually receive. For this reason, if you wish to roll over all or a portion of your distribution amount, the direct transfer option described in paragraph (b) below would be the better choice.

(b) **Direct rollover.** For most distributions, you may request that a direct transfer (sometimes referred to as a direct rollover) of all or a portion of a distribution be made to either an Individual Retirement Account or Annuity (IRA) or another employer retirement plan willing to accept the transfer. A direct transfer will result in no tax being due until you withdraw funds from the IRA or other employer plan. Like the rollover, under certain circumstances all or a portion of the amount to be distributed may not qualify for this direct transfer. If you elect to actually receive the distribution rather than request a direct transfer, then in most cases 20% of the distribution amount will be withheld for federal income tax purposes.

Automatic IRA Rollover. If a mandatory distribution is being made to you because your vested interest in the Plan does not exceed \$5,000 and the amount of the distribution exceeds \$1,000, then the law may require that your distribution be directly rolled over to an IRA. If you do not make an affirmative election to either receive or roll over the distribution, then the Plan must roll over your distribution to an IRA. The IRA provider selected by the Plan will invest the rollover funds in a type of investment designed to preserve principal and provide a reasonable rate of return and liquidity (e.g., an interest-bearing account, a certificate of deposit or a money market fund). The IRA provider will charge your account for any expenses associated with the establishment and maintenance of the IRA and with the IRA investments. You may transfer the IRA funds to any other IRA you choose. You will be provided with details regarding the IRA at the time you are entitled to a distribution. However, you may contact the Plan Administrator at the address and telephone number indicated in this SPD for further information regarding the Plan's automatic rollover provisions, the IRA provider, and the fees and expenses associated with the IRA.

Tax Notice. WHENEVER YOU RECEIVE A DISTRIBUTION, THE ADMINISTRATOR WILL DELIVER TO YOU A MORE DETAILED EXPLANATION OF THESE OPTIONS. HOWEVER, THE RULES WHICH DETERMINE WHETHER YOU QUALIFY FOR FAVORABLE TAX TREATMENT ARE VERY COMPLEX. YOU SHOULD CONSULT WITH QUALIFIED TAX COUNSEL BEFORE MAKING A CHOICE.

ARTICLE X LOANS

Is it possible to borrow money from the Plan?

Yes, you may request a Participant loan from all your accounts using an application form provided by the Administrator. Your ability to obtain a Participant loan depends on several factors. The Administrator will determine whether you satisfy these factors.

What are the loan rules and requirements?

There are various rules and requirements that apply to any loan, which are outlined in this question. In addition, your Employer has established a written loan program which explains these requirements in more detail. You can request a copy of the loan program from the Administrator. Generally, the rules for loans include the following:

- Loans are available to Participants on a reasonably equivalent basis. Loans will be made to Participants who are creditworthy. The Administrator may request that you provide additional information, such as financial statements, tax returns and credit reports to make this determination.
- All loans must be adequately secured. You must sign a promissory note along with a loan pledge. Generally, you must use your vested interest in the Plan as security for the loan, provided the outstanding balance of all your loans does not exceed 50% of your vested interest in the Plan. In certain cases, the Administrator may require you to provide additional collateral to receive a loan.
- You will be charged a commercially reasonable rate of interest for any loan received from the Plan. The Administrator will determine a reasonable rate of interest by reviewing the interest rates charged for similar types of loans by other lenders. The interest rate will be fixed for the duration of the loan.
- If approved, your loan will provide for level amortization with payments to be made not less frequently than quarterly. Generally, the term of your loan may not exceed five (5) years. However, if the loan is for the purchase of your principal residence, the Administrator may permit a longer repayment term. Generally, the Administrator will require that the Participant repay the loan by agreeing to payroll deduction. If you have an unpaid leave of absence or go on military leave while you have an outstanding loan, please contact the Administrator to find out your repayment options.
- The amount the Plan may loan to you is limited by rules under the Internal Revenue Code. Any new loans, when added to the outstanding balance of all other loans from the Plan, will be limited to the lesser of:

(a) \$50,000 reduced by the excess, if any, of your highest outstanding balance of loans from the Plan during the one-year period ending on the day before the date of the new loan over your current outstanding balance of loans as of the date of the new loan; or

(b) 1/2 of your vested interest in the Plan.

- The maximum number of Plan loans that you may have outstanding at any one time is one (1).
- Loans will only be granted if you incur a financial hardship or have a specified financial need. Examples of financial hardship which would qualify for a loan include significant health expenses or a loss of income due to illness, disability or death of you or your dependents; costs of establishing, avoiding eviction from, or repairing damage to your principal residence; payment of college education expenses, including graduate studies, for you or your dependents; and the cost of funeral expenses for a member of your immediate family.
- If you fail to make payments when they are due under the terms of the loan, you will be considered to be "in default." The Administrator will consider your loan to be in default if any scheduled loan repayment is not made by the end of the calendar quarter following the calendar quarter in which the missed payment was due. The Plan would then have authority to take all reasonable actions to collect the balance owed on the loan. This could include filing a lawsuit or foreclosing on the security for the loan. Under certain circumstances, a loan that is in default may be considered a distribution from the Plan and could be considered taxable income to you. In any event, your failure to repay a loan will reduce the benefit you would otherwise be entitled to from the Plan.

The Administrator may periodically revise the Plan's loan policy. If you have any questions on Participant loans or the current loan policy, please contact the Administrator.

ARTICLE XI PROTECTED BENEFITS AND CLAIMS PROCEDURES

Are my benefits protected?

As a general rule, your interest in your account, including your "vested interest," may not be alienated. This means that your interest may not be sold, used as collateral for a loan (other than for a Plan loan), given away or otherwise transferred. In addition, your creditors may not attach, garnish or otherwise interfere with your account.

Are there any exceptions to the general rule?

There are two exceptions to this general rule. The Administrator must honor a "qualified domestic relations order." A "qualified domestic relations order" is defined as a decree or order issued by a court that obligates you to pay child support or alimony, or otherwise allocates a portion of your assets in the Plan to your spouse, former spouse, child or other dependent. If a qualified domestic relations order is received by the Administrator, all or a portion of your benefits may be used to satisfy that obligation. The Administrator will determine the validity of any domestic relations order received. You and your beneficiaries can obtain, without charge, a copy of the QUALIFIED DOMESTIC RELATIONS ORDER PROCEDURE from the Administrator.

The second exception applies if you are involved with the Plan's operation. If you are found liable for any action that adversely affects the Plan, the Administrator can offset your benefits by the amount that you are ordered or required by a court to pay the Plan. All or a portion of your benefits may be used to satisfy any such obligation to the Plan.

Can the Plan be amended?

Your Employer has the right to amend the Plan at any time. In no event, however, will any amendment authorize or permit any part of the Plan assets to be used for purposes other than the exclusive benefit of Participants or their beneficiaries. Additionally, no amendment will cause any reduction in the amount credited to your account.

What happens if the Plan is discontinued or terminated?

Although your Employer intends to maintain the Plan indefinitely, your Employer reserves the right to terminate the Plan at any time. Upon termination, no further contributions will be made to the Plan and all amounts credited to your accounts will become 100% vested. Your Employer will direct the distribution of your accounts in a manner permitted by the Plan as soon as practicable. (See the question entitled "How will my benefits be paid to me?" for a further explanation.) You will be notified if the Plan is terminated.

How do I submit a claim for Plan benefits?

Benefits will be paid to you and your beneficiaries without the necessity for formal claims. However, if you think an error has been made in determining your benefits, then you or your beneficiaries may make a request for any Plan benefits to which you believe you are entitled. Any such request should be in writing and should be made to the Administrator.

If the Administrator determines the claim is valid, then you will receive a statement describing the amount of benefit, the method or methods of payment, the timing of distributions and other information relevant to the payment of the benefit.

What if my benefits are denied?

Your request for Plan benefits will be considered a claim for Plan benefits, and it will be subject to a full and fair review. If your claim is wholly or partially denied, the Administrator will provide you with a written or electronic notification of the Plan's adverse determination.

This written or electronic notification must be provided to you within a reasonable period of time, but not later than 90 days after the receipt of your claim by the Administrator, unless the Administrator determines that special circumstances require an extension of time for processing your claim. If the Administrator determines that an extension of time for processing is required, written notice of the extension will be furnished to you prior to the termination of the initial 90-day period. In no event will such extension exceed a period of 90 days from the end of such initial period. The extension notice will indicate the special circumstances requiring an extension of time and the date by which the Plan expects to render the benefit determination.

In the case of a claim for disability benefits, if disability is determined by a physician (rather than relying upon a determination of disability for Social Security purposes), then instead of the above, the Administrator will provide you with written or electronic notification of the Plan's adverse benefit determination within a reasonable period of time, but not later than 45 days after receipt of the claim by the Plan. This period may be extended by the Plan for up to 30 days, provided that the Administrator both determines that such an extension is necessary due to matters beyond the control of the Plan and notifies you, prior to the expiration of the initial 45-day period, of the circumstances requiring the extension of time and the date by which the Plan expects to render a decision. If, prior to the end of the first 30-day extension period, the Administrator determines that, due to matters beyond the control of the Plan, a decision cannot be rendered within that extension period, the period for making the determination may be extended for up to an additional 30 days, provided that the Administrator notifies you, prior to the expiration of the first 30-day extension period, of the circumstances requiring the extension and the date as of which the Plan expects to render a decision. In the case of any such extension, the notice of extension will specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues, and you will be afforded at least 45 days within which to provide the specified information.

The Administrator's written or electronic notification of any adverse benefit determination must contain the following information:

- (a) The specific reason or reasons for the adverse determination.
- (b) Reference to the specific Plan provisions on which the determination is based.
- (c) A description of any additional material or information necessary for you to perfect the claim and an explanation of why such material or information is necessary.
- (d) Appropriate information as to the steps to be taken if you or your beneficiary want to submit your claim for review.
- (e) In the case of disability benefits where disability is determined by a physician:
 - (i) If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of the rule, guideline, protocol, or other similar criterion will be provided to you free of charge upon request.
 - (ii) If the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to your medical circumstances, or a statement that such explanation will be provided to you free of charge upon request.

If your claim has been denied, and you want to submit your claim for review, you must follow the Claims Review Procedure in the next question.

What is the Claims Review Procedure?

Upon the denial of your claim for benefits, you may file your claim for review, in writing, with the Administrator.

- (a) **YOU MUST FILE THE CLAIM FOR REVIEW NO LATER THAN 60 DAYS AFTER YOU HAVE RECEIVED WRITTEN NOTIFICATION OF THE DENIAL OF YOUR CLAIM FOR BENEFITS.**

HOWEVER, IF YOUR CLAIM IS FOR DISABILITY BENEFITS AND DISABILITY IS DETERMINED BY A PHYSICIAN, THEN INSTEAD OF THE ABOVE, YOU MUST FILE THE CLAIM FOR REVIEW NO LATER THAN 180 DAYS FOLLOWING RECEIPT OF NOTIFICATION OF AN ADVERSE BENEFIT DETERMINATION.

- (b) You may submit written comments, documents, records, and other information relating to your claim for benefits.
- (c) You may review all pertinent documents relating to the denial of your claim and submit any issues and comments, in writing, to the Administrator.
- (d) You will be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to your claim for benefits.

- (e) Your claim for review must be given a full and fair review. This review will take into account all comments, documents, records, and other information submitted by you relating to your claim, without regard to whether such information was submitted or considered in the initial benefit determination.

In addition to the Claims Review Procedure above, if your claim is for disability benefits and disability is determined by a physician, then the Claims Review Procedure provides that:

- (a) Your claim will be reviewed without deference to the initial adverse benefit determination and the review will be conducted by an appropriate named fiduciary of the Plan who is neither the individual who made the adverse benefit determination that is the subject of the appeal, nor the subordinate of such individual.
- (b) In deciding an appeal of any adverse benefit determination that is based in whole or part on medical judgment, the appropriate named fiduciary will consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment.
- (c) Any medical or vocational experts whose advice was obtained on behalf of the Plan in connection with your adverse benefit determination will be identified, without regard to whether the advice was relied upon in making the benefit determination.
- (d) The health care professional engaged for purposes of a consultation under (b) above will be an individual who is neither an individual who was consulted in connection with the adverse benefit determination that is the subject of the appeal, nor the subordinate of any such individual.

The Administrator will provide you with written or electronic notification of the Plan's benefit determination on review. The Administrator must provide you with notification of this denial within 60 days after the Administrator's receipt of your written claim for review, unless the Administrator determines that special circumstances require an extension of time for processing your claim. If the Administrator determines that an extension of time for processing is required, written notice of the extension will be furnished to you prior to the termination of the initial 60-day period. In no event will such extension exceed a period of 60 days from the end of the initial period. The extension notice will indicate the special circumstances requiring an extension of time and the date by which the Plan expects to render the determination on review. However, if claim relates to disability benefits and disability is determined by a physician, then 45 days will apply instead of 60 days in the preceding sentences. In the case of an adverse benefit determination, the notification will set forth:

- (a) The specific reason or reasons for the adverse determination.
- (b) Reference to the specific Plan provisions on which the benefit determination is based.
- (c) A statement that you are entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to your claim for benefits.
- (d) In the case of disability benefits where disability is determined by a physician:
 - (i) If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of the rule, guideline, protocol, or other similar criterion will be provided to you free of charge upon request.
 - (ii) If the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to your medical circumstances, or a statement that such explanation will be provided to you free of charge upon request.

If you have a claim for benefits which is denied, then you may file suit in a state or Federal court. However, in order to do so, you must file the suit no later than 180 days after the Administrator makes a final determination to deny your claim.

What are my rights as a Plan Participant?

As a Participant in the Plan you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all Plan Participants are entitled to:

- (a) Examine, without charge, at the Administrator's office and at other specified locations, all documents governing the Plan and a copy of the latest annual report (Form 5500 Series) filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration.
- (b) Obtain, upon written request to the Administrator, copies of documents governing the operation of the Plan, including insurance contracts and collective bargaining agreements, and copies of the latest annual report (Form 5500 Series) and updated summary plan description. The Administrator may make a reasonable charge for the copies.

(c) Receive a summary of the Plan's annual financial report. The Administrator is required by law to furnish each Participant with a copy of this summary annual report.

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

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

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of Plan documents or the latest annual report from the Plan and do not receive them within 30 days, you may file suit in a Federal court. In such a case, the court may require the Administrator to provide the materials and pay you up to \$110.00 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Administrator.

If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or Federal court. In addition, if you disagree with the Plan's decision or lack thereof concerning the qualified status of a domestic relations order or a medical child support order, you may file suit in Federal court. You and your beneficiaries can obtain, without charge, a copy of the qualified domestic relations order ("QDRO") procedures from the Administrator.

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

What can I do if I have questions or my rights are violated?

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

ARTICLE XII GENERAL INFORMATION ABOUT THE PLAN

There is certain general information which you may need to know about the Plan. This information has been summarized for you in this Article.

Plan Name

The full name of the Plan is Hidalgo County Affiliated Departments Retirement Plan.

Plan Number

Your Employer has assigned Plan Number 001 to your Plan.

Plan Effective Dates

This Plan was originally effective on January 1, 1993. The amended and restated provisions of the Plan become effective on January 1, 2010. However, this restatement was made to conform the Plan to new tax laws and some provisions may be retroactively effective.

Other Plan Information

Valuations of the Plan assets are generally made annually on the last day of the Plan Year 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. Certain distributions are based on the Anniversary Date of the Plan. This date is the last day of the Plan Year.

The Plan's records are maintained on a twelve-month period of time. This is known as the Plan Year. The Plan Year begins on January 1 and ends on December 31.

The Plan and Trust will be governed by the laws of Texas to the extent not governed by federal law.

Benefits provided by the Plan are NOT insured by the Pension Benefit Guaranty Corporation (PBGC) under Title IV of the Employee Retirement Income Security Act of 1974 because the insurance provisions under ERISA are not applicable to this type of Plan.

Service of legal process may be made upon your Employer. Service of legal process may also be made upon the Trustee or Administrator.

Employer Information

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

County of Hidalgo Community Service Agency; Hidalgo County Urban County Program; and Hidalgo County Head Start
100 East Cano, 2nd Floor
Edinburg, Texas 78539
74-2512905

Plan Administrator Information

The Plan Administrator is responsible for the day-to-day administration and operation of the Plan. For example, the Administrator maintains the Plan records, including your account information, provides you with the forms you need to complete for Plan participation, and directs the payment of your account at the appropriate time. The Administrator will also allow you to review the formal Plan document and certain other materials related to the Plan. If you have any questions about the Plan or your participation, you should contact the Administrator. The Administrator may designate other parties to perform some duties of the Administrator.

The Administrator has the complete power, in its sole discretion, to determine all questions arising in connection with the administration, interpretation, and application of the Plan (and any related documents and underlying policies). Any such determination by the Administrator is conclusive and binding upon all persons.

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

County of Hidalgo Community Service Agency; Hidalgo County Urban County Program; and Hidalgo County Head Start
100 East Cano, 2nd Floor
Edinburg, Texas 78539
956-318-2619

Plan Trustee Information and Plan Funding Medium

All money that is contributed to the Plan is held in a trust fund. The Trustees are responsible for the safekeeping of the trust fund and must hold and invest Plan assets in a prudent manner and in the best interest of you and your beneficiaries. The trust fund established by the Plan's Trustee(s) will be the funding medium used for the accumulation of assets from which benefits will be distributed. While all the Plan assets are held in a trust fund, the Administrator separately accounts for each Participant's interest in the Plan.

The names and address of the Plan's Trustees are:

Rene A. Ramirez
Teresa Flores
Diana R. Serna
Maribel Navarro-Saena
100 East Cano, 2nd Floor
Edinburg, Texas 78539

The Trustees shall collectively be referred to as Trustee throughout this Summary Plan Description.

LOAN POLICY

The Plan Administrator of the Hidalgo County Affiliated Departments Retirement Plan ("Plan") adopts the following loan policy pursuant to the terms of the Plan. As a participant or beneficiary under the Plan, you may receive a loan only as permitted by this loan policy.

1. LOAN APPLICATION. A participant must apply for each loan in writing with an application which specifies the amount of the loan desired, the requested duration for the loan and the source of security for the loan. Any Plan participant may apply for a loan from the Plan. For purposes of this loan policy, the term "participant" means:

- ☒ (a) Any participant, beneficiary or alternate payee with respect to the Plan.
- ☐ (b) Any participant, beneficiary or alternate payee who is a "party in interest" as defined in ERISA §3(14).¹ Every current employee is a "party in interest."

2. LOAN APPROVAL.² In processing a participant's loan application, the Plan Administrator:

- ☐ (a) will not approve any loan if a participant is not creditworthy. In order to be creditworthy, the participant must have established in his or her community a reputation which would entitle him or her to a similar loan from a commercial or business lender. In applying for the loan from the Plan, each participant must give full authority to the Plan Administrator to investigate the participant's creditworthiness.
- ☒ (b) will not investigate the participant's creditworthiness, if the participant completes and submits a loan application.

3. LIMITATION ON LOAN AMOUNT. Except as indicated below, the Plan Administrator will not approve any loan to a participant in an amount which exceeds 50% of his or her vested accrued benefit (account balances), as reflected by the books and records of the Plan. The maximum aggregate dollar amount of loans outstanding to any participant at the time the loan is made (including loans from any other plan maintained by the Employer or any related employer³), may not exceed \$50,000, reduced by the excess of the participant's highest outstanding participant loan balance during the 12-month period ending on the date of the loan over the participant's current outstanding participant loan balance on the date of the loan.⁴ The following loan amount limitations apply:

- ☐ (a) A participant may not request a loan for less than \$1,000.⁵
- ☐ (b) A participant may not request a loan for less than \$_____.

4. LIMITATION ON NUMBER OF LOANS. The maximum number of Plan loans a participant may leave outstanding at one time, including any refinancing of an existing loan is:

- ☒ (a) One.
- ☐ (b) Two.
- ☐ (c) (Specify) _____.
- ☐ (d) In addition, a participant who has an outstanding plan loan (whether from the Plan or any other plan maintained by the Employer or a related employer) that is in default may not receive another loan.
- ☐ (e) In addition, a participant who has an outstanding plan loan (whether from the Plan or any other plan maintained by the Employer or a related employer) that had at any time been treated as a taxable deemed distribution may not receive another loan.

Participant Loans

5. **PURPOSE OF LOAN.** A participant may request a Plan loan for:

- ☒ (a) Any reasonable purpose.
- ☐ (b) One or any combination of the following purposes: (1) the purchase, construction or improvement of a residence or other real estate; (2) the purchase of a vehicle (including an automobile, van, truck or recreational vehicle); (3) tuition and other educational expenses; (4) medical and dental expenses; or (5) funeral expenses of a family member.
- ☐ (c) (Specify) _____

6. **EVIDENCE AND TERMS OF LOAN.** The Plan Administrator will document every Plan loan with a promissory note, pledge of the participant's account balance or other acceptable collateral and such other documentation as the Plan Administrator may require the participant to execute or provide. The promissory note will specify the amount of the loan, together with a commercially reasonable rate of interest. A participant's promissory note, pledge and assignment of account balances and any other Plan loan documentation required by the Plan Administrator will be in the form prescribed by the Plan Administrator.

- ☐ (a) A Plan loan will provide a fixed rate of interest of:
 - ☐ (1) two percent (2%) above the prime interest rate as published from time to time in the Money Section of USA Today.
 - ☐ (2) (Specify) _____
- ☒ (b) The Plan Administrator will determine whether the interest rate is commercially reasonable at the time it approves the loan.

The loan must provide at least quarterly payments under a level amortization schedule. If the participant is currently employed by the Employer, the Plan Administrator will require the participant receiving a loan from the Plan to enter into a payroll deduction agreement to repay the loan. *If the participant enters into a payroll deduction arrangement to repay the loan, the participant is responsible for making certain that the employer is withholding the proper loan payments. If the participant determines that a loan payment has not been withheld, the participant must notify the employer and arrange for a make-up loan payment(s) by the end of the loan cure period, if any (see ¶12). If the participant does not make the missed loan payment(s) by the close of the cure period, the loan will be in default and the participant will be subject to adverse federal income tax consequences.* If the participant is not currently employed by the Employer, the Plan Administrator may require additional collateral for the loan.⁶

The Plan Administrator will fix the term for repayment of any loan, however, in no instance may the term of repayment be greater than five years, unless the loan qualifies as a home loan. The Plan Administrator may fix the term for repayment of a home loan for a period not to exceed:

- ☒ (a) 15 years
- ☐ (b) years

A "home loan" is a loan used to acquire a dwelling unit which, within a reasonable time, the participant will use as a principal residence. Participants should note the law treats the amount of any loan (other than a "home loan") not repaid five years after the date of the loan as a taxable distribution on the last day of the five year period or, if sooner, at the time the loan is in default. If a participant extends a non-home loan having a five year or less repayment term beyond five years, the balance of the loan at the time of the extension is a taxable distribution to the participant.

7. **ACCELERATION OF THE LOAN.** Notwithstanding any contrary provision in a participant's Plan loan documents, all Plan loans are subject to the following provisions:

- ☐ (a) Unless the participant is a "party in interest" on the day after his/her termination of employment with the Employer, a loan, if not otherwise due and payable, is due and payable on the date the participant terminates employment with the Employer.⁷
- ☒ (b) The plan does not accelerate the loan upon a participant's termination of employment with the Employer.
- ☐ (c) Upon termination of the plan, a loan, if not otherwise due and payable, and if not directly rolled to another qualified plan, is due and payable on the date of plan termination.

8. SECURITY FOR LOAN. A participant must secure each loan with an irrevocable pledge and assignment of 50% of the nonforfeitable amount of the borrowing participant's account balances under the Plan. The plan also may require additional collateral.

9. LEAVE OF ABSENCE/SUSPENSION OF PAYMENT. The Plan Administrator:

- ☐ (a) will
- ☒ (b) will not

suspend loan repayments for a period not exceeding one year which occurs during an approved leave of absence.⁸ The Plan Administrator will provide the participant with a written explanation of the effect of the leave of absence upon his/her Plan loan.

10. MILITARY SERVICE/SUSPENSION OF PAYMENT. If a participant separates from service (or takes a leave of absence) from the Employer because of service in the United States military and does not receive a distribution of his/her account balances, the Plan:

- ☒ (a) will
- ☐ (b) will not

suspend loan repayments until the participant's completion of military service or until the participant's fifth anniversary of commencement of military service, if earlier.⁹ The Plan Administrator will provide the participant with a written explanation of the effect of the participant's military service upon his/her Plan loan. While the participant is on active duty in the United States military, the interest rate on the loan shall not exceed six percent (6%), compounded annually.¹⁰

11. PAYMENTS AFTER LEAVE OF ABSENCE. When payments resume following a payment suspension in connection with a leave of absence authorized in ¶9 or ¶10 above, the participant shall select one of the following methods to repay the loan, plus accumulated interest:

- (a) The participant shall increase the amount of the required installments to an amount sufficient to amortize the remaining balance of the loan, plus accrued interest, over the remaining term of the loan.
- (b) The participant shall pay a balloon payment of the remaining unpaid principal and interest, at the conclusion of the term of the loan as determined in the promissory note.
- (c) The participant may extend the maturity of the loan and reamortize the payments over the remaining term of the loan. In no event shall the amount of the adjusted installment payment be less than the amount of the installment payment provided under the promissory note. In the case of a leave of absence described in ¶9, the revised term of the loan shall not exceed the maximum term permitted under ¶6 hereof. In the case of a leave of absence described in ¶10, the revised term of the loan shall not exceed the maximum term permitted under ¶6 hereof, augmented by the time the participant was actually in United States military service.

12. DEFAULT/RISK OF LOSS. The Plan Administrator will treat a participant's loan in default if:

Participant Loans

- ☒ (a) any scheduled payment remains unpaid beyond the last day of the calendar quarter following the calendar quarter in which the participant missed the scheduled payment; ¹¹ or
- ☐ (b) there is the making or furnishing of any representation or statement to the Plan by or on behalf of the participant which proves to have been false in any material respect when made or furnished.
- ☐ (c) (*Specify*) _____.

Prior to the date of default described above, the participant may bring the loan current by paying the missed payment(s) plus accrued interest. Upon a loan default, the participant will incur a taxable deemed distribution, but the Plan will not offset (reduce) the participant's account to discharge the loan unless the participant also has incurred a distributable event under the Plan. The Plan treats a loan default as a distributable *event* except where based on the type of account used as collateral for the loan, a separate distribution event such as separation from service would be required to offset the loan at the time of default.¹² The Plan Administrator will report the participant's deemed distribution to the IRS. The Plan Administrator, upon the participant's incurring a distributable event, will offset the participant's vested account balance by the outstanding balance of the loan. The Plan Administrator will treat the note as repaid to the extent of any permissible offset. Pending final disposition of the note, the participant remains obligated for any unpaid principal and accrued interest.

13. PARTICIPANT-DIRECTED INVESTMENT/SOURCE OF LOAN PROCEEDS. The Plan Administrator intends this loan program not to place other participants at risk with respect to their interests in the Plan. In this regard, the Plan Administrator will administer any participant loan as a participant directed-investment of that portion of the participant's vested account balance equal to the outstanding principal balance of the loan. If this plan permits Roth deferrals, the Plan Administrator will make the loan (*choose one*):¹³

- ☐ (a) *Roth first.* First from the participant's Roth deferral account, and if the loan amount (consistent with the amount limitation in Section 3) exceeds the participant's Roth deferral account, from the participant's other account(s).
- ☐ (b) *Non-Roth first.* First from the participant's account(s) other than the participant's Roth deferral account, and if the loan amount (consistent with the amount limitation in Section 3) exceeds the participant's Roth deferral account, from the participant's other account(s).
- ☐ (c) *Participants' choice.* From the account (either the Roth deferral account or the participant's other account(s)) as the participant chooses in his/her loan application.

The Plan will credit that portion of the participant's account balances with the interest earned on the note and with principal payments received from the participant. The Plan also will charge that portion of the participant's account balance *with expenses directly related to the origination, maintenance and collection of the note.*¹⁴

14. FEES. The Plan Administrator will charge a participant the following fees for each participant loan:

- ☒ (a) Loan set-up fee of: \$85.00.
- ☐ (b) Annual loan maintenance fee of: _____.

The Plan will charge the participant's account the annual loan maintenance fee for each calendar year (or portion thereof) in which the loan is outstanding, other than for portions of a year during which the participant is in United States military service.

15. AMENDMENT AND INTERPRETATION OF POLICY. The Plan Administrator is charged under the Plan with establishing and administering this loan policy. The Plan Administrator may modify this policy from time to time or may terminate the Plan loan program. The Plan Administrator has discretion to interpret the provisions of this loan policy. The Plan Administrator's decisions regarding the application or interpretation of this loan policy are final and binding on participants.

Dated: April 21, 2010

By: Teresa Flores, Head Start Program

By: Diana R. Serna, Urban County Program

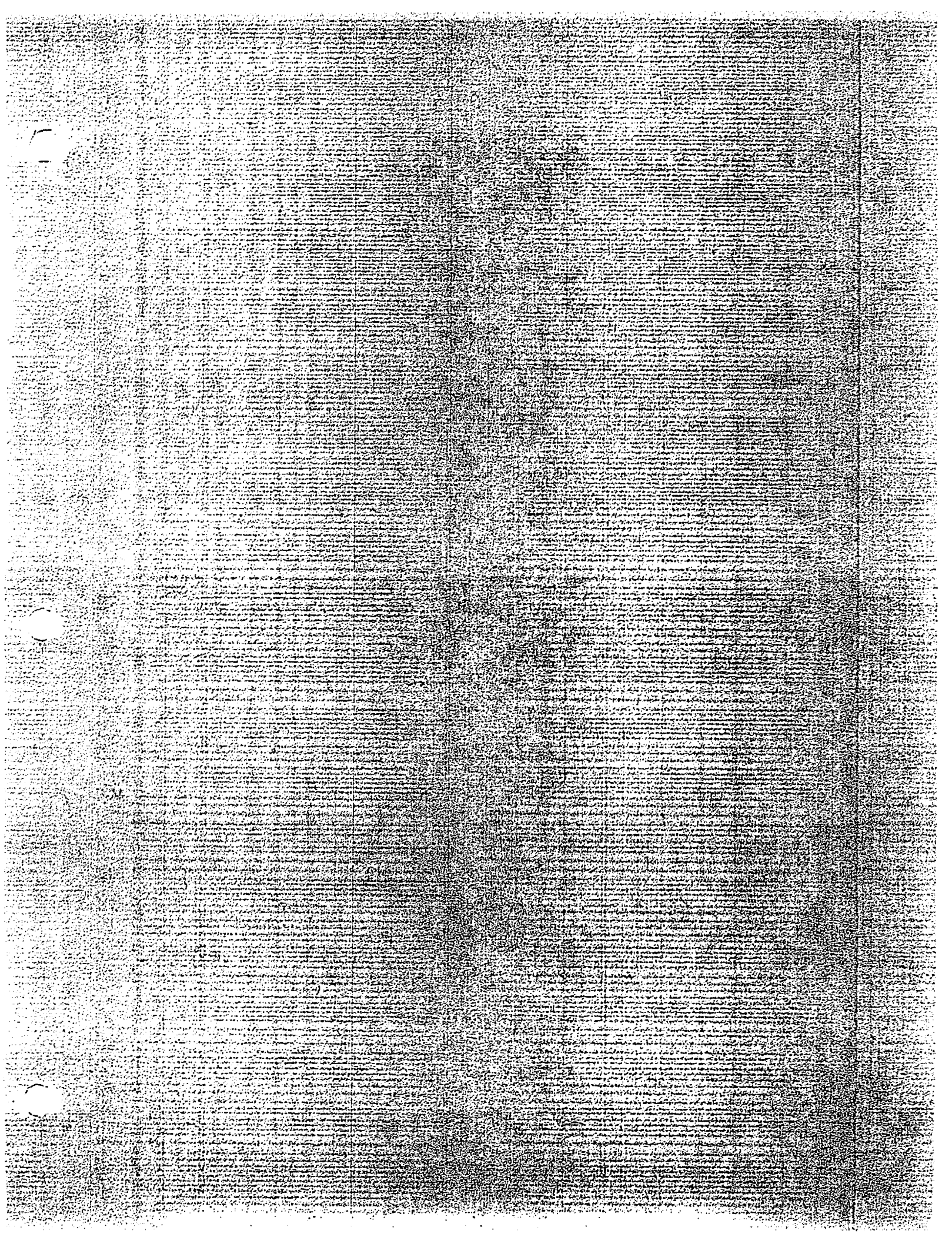
By: Maribel Navarro-Saena, Community Service Agency

* * * * *

- 1 Limiting the availability of a plan loan to any participant who is a "party in interest" has the effect of narrowing the group of *non-employees* eligible for a plan loan. In general, a *former* employee, beneficiary (in pay status) or an alternate payee spouse is *not* a "party in interest," and therefore is not eligible for a plan loan. The DOL takes the position a participant loan program may not satisfy the requirement to be available on a reasonably equivalent basis unless loans are available to all "*parties in interest*," including "*parties in interest*" who are former employees. See DOL Reg. §2550.408b-1(b)(1) and DOL Adv. Op. 89-30A. In general, a former employee "party in interest" is an owner with a large account balance who has elected to leave his/her account balance in the plan or a fiduciary. Restricting loans to former employees who are "parties in interest" does not create a discrimination issue because the Treasury regulations provide a special rule which permits the plan, for discrimination testing purposes, to treat as employees any former employees who are "parties in interest." Treas. Reg. §1.401(a)(4)-10(c). For a further discussion of the requirement to make participant loans available on a reasonably equivalent basis, see the ERISA Research Guide section entitled "Participant Loans," Part I.B.
- 2 Generally, a plan which treats participant loans as participant directed investments will not impose a creditworthiness standard because a default will not affect any other participant's account and because of the additional administrative burden and costs. However, a plan may impose a creditworthiness standard to obtain a participant loan. If a plan chooses to impose such a standard it should apply the standard in a nondiscriminatory manner. DOL Reg. §2550.408b-1(b)(1)(ii).
- 3 A "related employer" includes any business aggregated with the Employer under Code §414(b), (c), or (m).
- 4 An employer may permit a participant to borrow an amount not exceeding \$10,000 without regard to his/her *vested* account balance. However, since the plan may not use more than 50% of the vested account balance as security, the plan would need to obtain additional collateral.
- 5 See DOL Reg. §2550.408b-1(b)(2) and Treas. Reg. §1.401(a)(4)-4(b)(2)(ii)(E). A minimum loan not exceeding \$1,000 does not violate either the nondiscriminatory availability or the prohibited transaction exemption requirements. A plan that imposes a loan minimum in excess of \$1,000, must be able to satisfy the nondiscriminatory availability test (Treas. Reg. §1.401(a)(4)-4(e)), and must satisfy a "facts and circumstances" test to satisfy the prohibited transaction exemption requirements that: (1) loans are available on a reasonably equivalent basis to all participants; and (2) loans, in amount, do not favor highly compensated employees.
- 6 If the participant has a loan outstanding from any plan of the Employer or a related employer, and that loan has been treated as a taxable deemed distribution, then any subsequent loan will be a taxable deemed distribution unless the participant provides collateral other than the participant's vested interest in the plan or else the participant consents to having payment made through payroll withdrawal.
- 7 Because of the need to make loans available to parties in interest who may be former employees, the "due on termination" provision does not apply to parties in interest. The "due on termination" provision does not apply to a non-employee death beneficiary or to a non-employee alternate payee who is a party in interest and therefore eligible for a plan loan.
- 8 The loan policy may suspend payments, for a period not exceeding one year, during a participant's non-military leave of absence. Treas. Reg. §1.72(p)-1, A-9. A leave of absence may be without pay from the employer or at a rate of pay, after tax withholding, less than the installment payment amount.
- 9 The loan policy may suspend payments for all or any part of a participant's military leave of absence. The 5-year limit in the sample language is not required, but might be imposed as a reasonable administrative limitation. The suspension may also apply to "nonqualified military service" where the participant is not entitled to reemployment rights under USERRA. Code §§414(u)(4) and (5) and Treas. Reg. §1.72(p)-1, A-9.
- 10 This is the maximum rate a lender can charge a debtor who is on active military duty. 50 USC App. 526.
- 11 The "following calendar quarter" rule is the maximum cure period the regulations permit. Treas. Reg. §1.72(p)-1, A-10(a). The loan policy may specify a shorter cure period.
- 12 The policy treats loan default as a distributable event (consistent with PPD's prototype plan) except where (e.g., pledge of money purchase or 401(k) deferral balances) distribution and loan offset may not be available at the time of default.

Participant Loans

- ¹³ The taxation rules apply separately to the Roth account and other accounts. Code §402A(d)(4). The election in this section therefore will determine the portion of the participant's account to which the plan will credit the loan payment and, in case of a loan default, the taxation consequences of a deemed distribution.
- ¹⁴ The practitioner should modify item 13 if the plan does not treat a participant loan as a directed investment. However, failure to treat the loan as a directed investment will require other means of protecting the other participants from loss and may render inadequate the 50% security interest in the vested account balance. See DOL Reg. §2550.408b-1.



HIDALGO COUNTY AFFILIATED DEPARTMENTS RETIREMENT PLAN

INTRODUCTION

This manual is intended to assist you, as the Plan Administrator, in complying with the rules governing Plan administration. Failure to properly administer a plan can result in Plan disqualification and/or substantial penalties imposed by the Internal Revenue Service (IRS) or the Department of Labor (DOL). Failure to adhere to the plan's specific provisions constitutes an operational violation. We urge you to work closely with your service provider in interpreting the Plan's provisions, as many terms used in the Plan have meanings quite distinct from their everyday meaning.

The manual is divided into five sections:

- I. Plan Installation. Details what must be done when the Plan is installed, and if the Plan is submitted to the IRS (not required).
- II. Employee Enrollment and Communication. Describes what must be done to enroll employees in the Plan.
- III. Record Keeping and Reporting Requirements. Details the annual tax filings and various reports to participants that are required on an ongoing basis.
- IV. Operational Duties. Describes what must be done upon the occurrence of various events such as the retirement, death or termination of employment of a participant.
- V. Sample Documents, Information and Administrative Forms.

This manual is only a guide. It is not to be construed as offering legal or actuarial advice. It is intended to get you started in setting up proper records and performing other duties that will enable your Plan advisor to complete and file the various forms referred to in this manual on a timely basis. Comprehensive and accurate records will also enable the Plan advisor to assist you effectively in the event of an IRS audit of the Plan or upon the filing of claims for benefits by participants and beneficiaries.

Note also that the Plan must be able to demonstrate that it has administrative policies and procedures in place in order to make self corrections under the IRS Employee Plans Compliance Resolution Program. In other words, if the operational defect arises from a lack of policies and procedures, it will be difficult, and perhaps impossible, to convince the IRS that the Plan Administrator is entitled to make a self-correction of that defect. Instead, sanctions will become payable to the IRS.

We urge you to work closely with the Plan advisor, and to provide advance notice of anything that might affect the Plan, especially changes in the firm's ownership or its relationship to any other companies, or the acquisition or termination of a group of participants. Many aspects of the plan's operation can create participant rights that may not be retroactively infringed, and it is best to assess the affect of a major change in the business on the Plan before the change occurs.

You have been furnished with an Administrative Forms Package (see Section V) with instructions. These forms are referred to throughout this manual (in capital letters) and should be utilized as indicated.

I INSTALLATION OF THE PLAN

Summary Plan Description

A Summary Plan Description (SPD) is required to be distributed to each participant. The SPD is to be written in easily understood language, and its purpose is to describe the benefits offered under the Plan, the rights of participants, and other important provisions. For a plan amendment and restatement, a new SPD, incorporating modifications to the Plan, must be furnished to participants no later than 210 days after the close of the Plan Year in which the change was adopted. We recommend, however, that the SPD be distributed as soon as administratively feasible.

The requirement to use easily understood language may, at times, conflict with the proliferation of complex plan designs and the promulgation of equally complex regulations. Furthermore, if there is a conflict between the terms of the Plan and the SPD, then many courts will require that the Plan follow the provisions that are more favorable to participants. As in all matters pertaining to the Plan, you should not hesitate to engage the services of a professional advisor in drafting the SPD.

The Department of Labor has the authority to request a copy of the SPD, and can impose a civil penalty for failure to comply with such request within 30 days.

Bonding

A bond must be obtained for Plan "fiduciaries." A Plan fiduciary is any person or entity who handles the Plan's assets, including, but not limited to, the Plan Administrator, Trustee and Employer. The minimum bond required is generally the greater of \$1,000 or 10% of the

assets of the Plan. However, the amount of the required bond might be higher if a certain percentage of the assets are in investments that have a higher risk of loss due to fraud or dishonesty (e.g., real property).

However, a bond need not be secured for fiduciaries that are banks or insurance companies. Bonding is also not required when the employer sponsoring the Plan is wholly owned by an individual and/or his or her spouse (whether or not in the form of a corporation) or one or more self-employed individuals (and their spouses) and where such individual(s) and spouse(s) are the only employees.

Administrator's Tax Identification Number

The Plan Administrator (even if the Plan Administrator is a sole proprietorship) is required to have an IRS Identification Number. This may be obtained by filing IRS Form SS-4, Application for Employer Identification Number. However, since the Employer is the Administrator, you may elect to use its Employer Identification Number instead.

Trust's Tax Identification Number

The Trust is generally required to have an IRS Identification Number. The Plan may be required to furnish an Identification Number when establishing accounts with financial institutions. The Identification Number may also be needed for some returns (e.g., Form 990-T). Even though the Trust is generally not an Employer, the Identification Number may be obtained by filing IRS Form SS-4, Application for Employer Identification Number.

Notice to Interested Parties

If the Plan is being filed with the IRS for approval, then the Employer is required to give advance notice to "Interested Parties." The "Notice to Interested Parties" must be provided by any method that reasonably ensures that all interested parties will receive the notice (e.g., be posted in at least one conspicuous place at the Employer's place of business). "Interested Parties" generally means all employees. Since this application for Plan approval is to amend and restate a current Plan, "Interested Parties" also include participants and anyone receiving benefits under the Plan.

The Notice to Interested Parties must be posted no less than 10 days nor more than 24 days prior to the date the application for determination is filed with the IRS. The Notice allows interested parties to submit written comments to the IRS or Department of Labor concerning qualification of the Plan.

II EMPLOYEE ENROLLMENT AND COMMUNICATION

Plan Eligibility

Once the Plan has been adopted, you must determine who is eligible to participate in the Plan. The Plan's eligibility requirements are specified in the Plan. It is important to obtain a complete list of current employees, along with their birth dates and dates they began service with the Employer.

Many operational violations occur because of the incorrect treatment of former participants who are rehired. In many cases, these former participants re-participate in the Plan immediately upon rehire.

During the Plan Year, you should continually update your list of employees to determine if anyone has met the requirements to become a participant. Once an employee becomes eligible to participate, you must:

1. Inform the employee that he or she is now eligible to participate in the Plan;
2. Have the employee complete a DESIGNATION OF BENEFICIARY form and a SALARY DEFERRAL AGREEMENT;
3. Furnish the employee with any other necessary Administrative Forms (see instructions for using Administrative Forms in Section V); and
4. Give the employee a copy of the SPD within 90 days of the date he or she becomes a participant.

Participant Contributions

This Plan permits each participant to defer a portion of his or her compensation to the Plan. It is important that each participant complete and sign the SALARY DEFERRAL AGREEMENT form.

The Plan permits participants or eligible employees to transfer or roll over money from other retirement plans or individual retirement accounts into this Plan. The rules and laws governing these transfers and rollovers are very complex, and no rollovers or transfers from a participant or eligible employees should be accepted until you check with the Plan advisor.

III RECORD KEEPING AND REPORTING REQUIREMENTS

As Plan Administrator it is essential that you keep complete and accurate records of all Plan activity on an ongoing basis. This will simplify the reporting and disclosure procedures and will enable your Plan advisor to file the necessary forms on a timely basis. Substantial penalties may be incurred if the Plan fails to file complete and accurate reports by the applicable deadline.

RECORDS

The following records must be kept:

1. A list of current employees and participants that shows:
 - (i) Date of birth
 - (ii) Date of original hire
 - (iii) Marital status
2. Hours worked by each employee;
3. Each employee's compensation;
4. Dates of termination of employment and all dates of rehire; and
5. Records of the Plan's investment activities.

Annual Filing Requirement: DOL ("Form 5500" or "Annual Report")

Each year, the Plan Administrator is required to file a series of forms (Form 5500) with the DOL, which submission is sometimes called "the annual report." The information required depends on various factors such as the number of participants and investment activity during the Plan Year. It is generally due by the last day of the 7th month after the end of the Plan Year. The Plan advisor may assist you in the preparation of this annual filing.

REPORTING

Filing Requirements for Payment of Benefits

The following forms are required *only* if Plan benefits have been paid to any participant during the Plan Year:

1. Form 1099-R must be furnished to any participant who receives a distribution from the Plan (or elects a direct rollover) no later than the January 31st following the calendar year of the distribution (or rollover).
2. Form 1096, essentially a transmittal form, must include copies of all 1099-Rs for the Plan Year and must be filed with the IRS Center no later than the last day of February following the calendar year in which the distributions or rollovers were made.

Miscellaneous Filing Requirements

1. If the Plan engages in a business activity (as distinguished from investment activity), the income generated from the activity is generally considered unrelated business taxable income. Form 990-T is filed only if the Plan has unrelated business taxable income that is greater than or equal to \$1,000 for the Plan Year. This form must be filed no later than the 15th day of the 4th month following the end of the Plan Year.
2. Form 5330 must be filed to report excise taxes if there were any prohibited transactions or nondeductible contributions during the year.

Summary Annual Report to Participants

The major report that must be furnished to each participant on an annual basis is the Summary Annual Report (SAR). The SAR is a "plain English" explanation of the information contained on the Form 5500 (described earlier). The SAR must contain the following information:

1. The value of the Trust assets as of the first and last day of the Plan Year;

2. Plan expenses incurred during the Plan Year; and
3. Insurance information, if the Plan has any investment in insurance contracts.

The SAR must also state that the participant has the right to examine, at any time during reasonable hours, the Plan's annual report (Form 5500), the accountant's report (generally required for Plans with at least 100 participants), and, if applicable, a list of any Plan transactions involving at least 5% of Plan assets or involving "interested parties."

A sample Summary Annual Report is included in Section V.

The SAR must be furnished to participants on or before the last day of the 9th month following the end of the Plan Year. This deadline is extended if the Employer has received an extension for filing Form 5500.

Every calendar quarter, the Plan Administrator must provide each participant with a statement showing the value of his or her account(s) in the Plan and showing his or her vested percentage. The statement is also required to include other information, such as a cite to the Department of Labor website for information regarding diversifying investments.

IV OPERATIONAL DUTIES

Sections I, II and III discuss the duties that are performed on an initial or annual basis by the Plan Administrator. However, many other events are likely to occur during the life of the Plan that will require the Plan Administrator to perform certain tasks.

When a Participant Terminates Employment

A participant with a vested interest who terminates employment for any reason should be furnished with the applicable distribution package below.

1. **Vested account balance not exceeding \$5,000.** If the Participant's vested account balance is \$5,000 or less, provide the following:

- (1) PARTICIPANT DISTRIBUTION ELECTION (VESTED ACCOUNT BALANCE DOES NOT EXCEED \$5,000)
- (2) TAX NOTICE (ROLLOVER OPTIONS)

If the Participant's vested account balance is less than \$200, the Plan does not need to provide a direct rollover option and does not withhold on the distribution. Therefore, you can make a cash-out distribution of less than \$200 without providing this distribution package.

2. **Vested account balance exceeds \$5,000.** If the Participant's vested account balance exceeds \$5,000, provide the following distribution package:

- (1) PARTICIPANT DISTRIBUTION NOTICE (VESTED ACCOUNT BALANCE EXCEEDS \$5,000)
- (2) PARTICIPANT DISTRIBUTION ELECTION (VESTED ACCOUNT BALANCE EXCEEDS \$5,000)
- (3) TAX NOTICE (ROLLOVER OPTIONS)
- (4) POSTPONEMENT OF DISTRIBUTION ELECTION

3. **Direct rollovers.** The participant may elect to roll over or directly transfer any "eligible rollover distribution" from this Plan to another eligible retirement plan, or to receive the distribution directly. (For an explanation of what qualifies as an "eligible rollover distribution," see the Section entitled "Withholding From Distributions.")

4. **Withholding.** At the time of any distribution that does not qualify as an "eligible rollover distribution," you must provide the participant with a NOTICE OF WITHHOLDING ON PAYMENTS form describing tax withholding for payments from qualified plans and the WITHHOLDING ELECTION form.

5. **1099-R.** Provide the participant with Form 1099-R no later than the January 31st following the end of the calendar year of the distribution (or direct rollover).

When a Participant Dies

The Plan Administrator should have each employee complete a DESIGNATION OF BENEFICIARY form upon becoming eligible to participate in the Plan and upon any change in marital status. If a participant has not properly designated a beneficiary, then the participant's death benefit must be paid to the beneficiary specified by the Plan.

Upon the death of a participant prior to the payment of his or her benefits from the Plan, the Plan's death benefit must be paid in the following manner:

1. **Unmarried participants.** The entire death benefit is to be paid in accordance with the participant's instructions, as specified on the DESIGNATION OF BENEFICIARY form. If no instructions can be found, the benefit will be paid in accordance with the Plan document. The Plan Administrator should provide the beneficiary with the NON-SPOUSE BENEFICIARY DISTRIBUTION ELECTION form and the TAX NOTICE (ROLLOVER OPTIONS) form.
2. **Married participants.** For married participants, the entire death benefit is to be paid to the participant's spouse. However, the participant may designate someone other than his or her spouse as the beneficiary, provided the spouse consents in writing. To do this, the participant must complete the DESIGNATION OF BENEFICIARY form. If the surviving spouse is the beneficiary, then after the death of the participant, the Plan Administrator should provide the spouse with the SURVIVING SPOUSE DISTRIBUTION ELECTION form and the TAX NOTICE (ROLLOVER OPTIONS) form. Otherwise the designated beneficiary should be provided with the NON-SPOUSE BENEFICIARY DISTRIBUTION ELECTION form and the TAX NOTICE (ROLLOVER OPTIONS) form.

Required Minimum Distributions

Certain distributions are required to be made when a participant who is a more-than-5% owner reaches age 70 1/2 or when any other participant reaches the later of age 70 1/2 or retirement. The portion that is required to be distributed cannot be rolled over because it is a required minimum distribution that must be paid to the participant. The required minimum distribution package should include:

1. PARTICIPANT DISTRIBUTION NOTICE (VESTED ACCOUNT BALANCE EXCEEDS \$5,000)
2. PARTICIPANT DISTRIBUTION ELECTION
3. TAX NOTICE (ROLLOVER OPTIONS)
4. NOTICE OF WITHHOLDING ON PAYMENTS
5. WITHHOLDING ELECTION

In-Service Withdrawals

If a participant requests an in-service withdrawal, then the following distribution package should be provided:

1. IN-SERVICE WITHDRAWAL APPLICATION
2. TAX NOTICE (ROLLOVER OPTIONS)

Plan Loans

The Plan allows loans to be made to participants within certain limits. The participant must complete a promissory note for all loans. Since the rules relating to loans are complex, you should always consult legal counsel or your Plan advisor prior to making a Plan loan. Violation of the rules governing Plan loans can result in severe penalties.

If a participant requests a Plan loan, the following loan package should be provided:

1. PARTICIPANT LOAN PROGRAM
2. APPLICATION FOR PARTICIPANT LOAN
3. PROMISSORY NOTE
4. IRREVOCABLE PLEDGE AND ASSIGNMENT

Directed Investments

The Plan allows a participant to direct the investment of his or her interest in the Plan. You should not question the soundness of any direction by the participant, as you are generally not responsible for any loss caused by your compliance with the participant's directions. You and the financial institution implementing the directed investment program should develop a participant direction procedure detailing how the direction of investments should be carried out. These procedures are not included with the Administrative Forms because they vary from institution to institution.

In some cases, participants will not provide an affirmative investment direction. Under DOL Regulations, relief may be available to a fiduciary who invests the assets of those participants who fail to make an affirmative investment election. One of the requirements for this relief is that the Plan provide a notice to participants within a reasonable period of time before first having amounts contributed to the Plan

that are subject to investment direction and before each subsequent Plan Year. This notice must contain Plan specific information regarding the investments permitted under the Plan and the procedures that are used to implement participant investment directions. Accordingly, the Qualified Default Investment Notice may need to be modified to reflect the investment rules and procedures applicable to the Plan.

Withholding From Distributions

The law generally requires the Plan Administrator to withhold income taxes from amounts that are distributed to a participant from the Plan. Different rules apply depending on whether the distribution qualifies as an "eligible rollover distribution." An "eligible rollover distribution" is any distribution from the plan that qualifies for tax-free rollover to another plan other than:

1. Substantially equal payments spread over a period of at least 10 years or over the lifetime (or expected lifetime) of the participant (or the participant and/or designated beneficiary);
2. Distributions to correct a failed nondiscrimination test; and
3. Payments which are required to meet the minimum distribution rules.

A participant entitled to receive an "eligible rollover distribution" can generally elect to have the amount directly transferred to an IRA or to another employer sponsored retirement plan. If a participant elects this option, the Plan Administrator is not required to withhold any portion for income taxes. If the participant instead elects to receive payment of an "eligible rollover distribution," the Plan Administrator must withhold 20% of the amount that would have otherwise been paid to the participant.

If a participant receives a distribution which is not an "eligible rollover distribution," then withholding of income taxes is voluntary. The recipient may elect to waive withholding entirely. However, unless the recipient makes this election, the Plan Administrator is required to withhold for income taxes. For this purpose, periodic payments from the plan are treated the same as ordinary wage income with the amount of withholding dependent on the size of the payments and the number of exemptions claimed by the recipient. Withholding applies to non-periodic payments at a rate of 10% (or in some special cases, to qualified total distributions under special tables issued by the IRS).

For distributions that do not qualify as "eligible rollover distributions," you must supply the participant with the NOTICE OF WITHHOLDING ON PAYMENTS form, along with the WITHHOLDING ELECTION form. For periodic payments, this form must be furnished no earlier than six months prior to the date the first payment is to be made. In addition, each recipient of periodic payments must be given, at least once each year, the form explaining the participant's right to change or revoke a previous election made relating to withholding. Also, the participant must be given the form detailing his or her right to waive having the distribution subject to withholding. The waiver form must contain a statement that failure to have taxes withheld may subject the participant to the estimated tax rules and that penalties may be imposed for failure to comply.

Qualified Domestic Relations Orders (QDROs)

As a general rule, Plan assets are not subject to the claims of creditors, i.e., they are not subject to alienation. There is an exception to this rule, for a Qualified Domestic Relations Order, or QDRO. A QDRO is an order, issued by a state court, that gives a spouse, former spouse, child or other legal dependent of the participant the right to any part of the participant's interest in the Plan.

You must adopt and follow the QUALIFIED DOMESTIC RELATIONS ORDER PROCEDURE. This procedure tells you how to determine whether a QDRO is valid. You are strongly advised to obtain legal counsel in determining whether a domestic relations order is a QDRO. Payment of benefits must be made in compliance with a valid QDRO, provided the QDRO does not conflict with the terms of the Plan.

Claims Procedure

If a claim for benefits is denied, you must provide a detailed, written explanation of the reasons for the denial. You should support your position by referring to specific Plan sections. The denial, by law, must be given to the participant no later than 90 days following the date the claim was filed.

A participant whose claim has been denied has 60 days (or 180 days for certain disability benefit claims) to file a written request for a review following the date he or she received the denial. This period may be extended in some instances to 120 days. The review process is covered in more detail in the Plan document and in the SPD, and must be strictly followed. If the review is denied, a written explanation must be given to the participant no later than 60 days (or 45 days for certain disability claims) following the date the claim was filed (an extension to 120 days is possible in some instances). Once the appeals process is exhausted, the participant may take his or her claim to state or Federal court provided the suit is filed with the court within 180 days after the claim is denied.

Summary Plan Description: Updates

If the Plan is not amended, the Plan Administrator is required to supply each participant with an updated SPD every 10 years, measured from the date the SPD was first issued.

If the Plan is amended in a substantial manner, each participant must receive either a new SPD or a Summary of Material Modifications (SMM) which describes the modifications in detail. This SPD or SMM must be given to each participant no later than 210 days after the end of the Plan Year in which the amendment or modification became effective, though in most cases it is recommended that they be distributed promptly. You should consult your Plan advisor to determine if and when changes to the SPD are necessary or appropriate. If SMMs are provided rather than revised SPDs, then a revised SPD needs to be distributed within five years since the last complete SPD was distributed.

Forms Available to Participants

Participants have the right to inspect certain reports and forms concerning the Plan, and to obtain copies of those reports. Access must be provided at reasonable times and at no cost, though the participant may be charged a copying fee if he or she requests copies. The forms available for inspection include:

1. Form 5500 or 5500-EZ—within 60 days of the participant's written request for inspection.
2. Form 5307 or 5300 (if the Plan is submitted to the IRS).
3. Plan document, insurance contracts, and any collective bargaining agreements.

Amendment of the Plan

The Employer has the right to amend or terminate the Plan at any time. Certain requirements must be met when the Plan is amended or terminated, and legal counsel should be consulted prior to doing so. Plans must be completely updated for all laws and regulations in effect on the date of termination, even if such an amendment would not be required yet if the plan was not terminating.

The acquisition or sale (or merger) of any business can have profound and unanticipated effects on the operation of the Plan. In addition, certain related companies must be treated as a single employer in conducting coverage and nondiscrimination tests. Whenever there is going to be a major change in the Employer's ownership or in its relationship to other companies, or whenever a major change in the Employer's demographics is imminent, it is essential to contact the Plan advisor as soon as possible. In many cases, waiting until after there has been a significant change may limit the ability to make Plan design changes or prevent operational violations.

V

SAMPLE DOCUMENTS, INFORMATION AND ADMINISTRATIVE FORMS

The information and sample documents contained in this section are intended to illustrate some of the subjects covered in the preceding pages. Many of the other issues are covered in the Administrative Forms Package and the instructions covering usage of those forms.

Sample Summary Annual Report

The sample provided below presents a typical Summary Annual Report (SAR).

Compliance Calendar: Defined Contribution Plan

The calendar presents the activities that must be completed by the Plan Administrator, and the corresponding deadlines.

Administrative Forms and Instruction Package

You have been supplied with a set of sample administrative forms, along with instructions. References to these forms have been made throughout this Guide to indicate their importance and when they are to be utilized.

**EXHIBIT A
SUMMARY ANNUAL REPORT
FOR
HIDALGO COUNTY AFFILIATED DEPARTMENTS
RETIREMENT PLAN**

This is a summary of the annual report for Hidalgo County Affiliated Departments Retirement Plan, for (period covered by this report). The annual report has been filed with the Employee Benefits Security Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

Basic Financial Statement

Benefits under the Plan are provided by (indicate funding arrangements). Plan expenses were \$ _____. These expenses included \$ _____ in administrative expenses and \$ _____ in benefits paid to participants and beneficiaries, and \$ _____ in other expenses. A total of _____ persons were participants in or beneficiaries of the Plan at the end of the Plan Year, although not all of these persons had yet earned the right to receive benefits.

[If the Plan is funded other than solely by allocated insurance contracts:]

The value of Plan assets, after subtracting liabilities of the Plan, was \$ _____ as of (the end of the Plan Year), compared to \$ _____ as of (the beginning of the Plan Year). During the Plan Year the Plan experienced an (increase) (decrease) in its net assets of \$ _____. This (increase) (decrease) includes unrealized appreciation or depreciation in the value of Plan assets; that is, the difference between the value of the Plan's assets at the end of the year and the value of the assets at the beginning of the year or the cost of assets acquired during the year. The Plan had total income of \$ _____, including Employer contributions of \$ _____, Employee contributions of \$ _____, (gains) (losses) of \$ _____, from the sale of assets, and earnings from investments of \$ _____.

[If any funds are used to purchase allocated insurance contracts:]

The Plan has (a) contract(s) with (name of insurance carrier(s)) which allocate(s) funds toward (state whether individual policies, group deferred annuities or other). The total premiums paid for the Plan Year ending (date) were \$ _____.

Your Rights to Additional Information

You have the right to receive a copy of the full annual report, or any part thereof, on request. The items listed below are included in that report:

[Note--list only those items which are actually included in the latest annual report]

1. an accountant's report;
2. financial information and information on payments to service providers;
3. assets held for investment;
4. fiduciary information, including non-exempt transactions between the Plan and parties-in-interest (that is, persons who have certain relationships with the Plan);
5. loans or other obligations in default or classified as uncollectible;
6. leases in default or classified as uncollectible;
7. transactions in excess of 5 percent of the Plan assets;
8. insurance information including sales commissions paid by insurance carriers; and
9. information regarding any common or collective trusts, pooled separate accounts, master trusts or 103-12 investment entities in which the Plan participates.

To obtain a copy of the full annual report, or any part thereof, write or call the office of (name), who is (state title: e.g., the Plan Administrator), (business address and telephone number). The charge to cover copying costs will be \$ _____ for the full annual report, or \$ _____ per page for any part thereof.

[Note--use this paragraph for a small plan that has met the requirements to waive the annual examination and report of an independent qualified public accountant.]

The Plan has met the requirements to waive the annual examination and report of an independent qualified public accountant. As of the end of the Plan Year, the following regulated financial institution(s) held or issued Plan assets that qualified under the waiver: (name of regulated financial institution(s) and the amount of the qualifying Plan assets). The Plan has been issued a fidelity bond by (name of company). The bond provides some protection for the Plan against losses through fraud or dishonesty and covers any person handling certain Plan assets required by the EBSA. You have the right to examine or receive from the Plan Administrator, on request and at no charge, copies of statements from the regulated financial institutions describing the qualifying Plan assets and evidence of the required bond. If you are unable to examine or obtain these documents, contact an EBSA Regional Office for assistance. Information about contacting EBSA regional offices can be found on the Internet at <http://www.dol.gov/ebsa>.

[Note--use this paragraph for all other plans.]

You also have the right to receive from the Plan Administrator, on request and at no charge, a statement of the assets and liabilities of the Plan and accompanying notes, or a statement of income and expenses of the Plan and accompanying notes, or both. If you request a copy of the full annual report from the Plan Administrator, these two statements and accompanying notes will be included as part of that report. The charge to cover copying costs given above does not include a charge for the copying of these portions of the report because these portions are furnished without charge.

You also have the legally protected right to examine the annual report at the main office of the Plan (address), (at any other location where the report is available for examination), and at the U.S. Department of Labor in Washington, D.C., or to obtain a copy from the U.S. Department of Labor upon payment of copying costs. Requests to the Department should be addressed to:

Employee Benefits Security Administration
U.S. Department of Labor
Public Disclosure Room, Room Suite N-1513
200 Constitution Avenue, N.W.
Washington, D.C. 20210

**EXHIBIT B
COMPLIANCE CALENDAR**

REPORT or FORM	WHEN DUE	REPORT RECIPIENT
Form 5500 Annual Report with appropriate Schedules	7 months after each Plan Year end	DOL. Copy to each Participant if requested in writing.
Form 5500EZ Annual Report (1 Participant with assets greater than \$250,000)	7 months after each Plan Year end	DOL. Copy to each Participant if requested in writing.
Summary Annual Report (SAR)	9 months after each Plan Year end	Participants and Beneficiaries.
Form 1099-R (Recipients of distributions from Plan)	January 31st following Calendar Year of distribution	Participant receiving distribution. Copy to IRS with Transmittal Form 1096.
Form 945 (Annual Return of Withholding Federal Income Tax)	January 31st following year of withholding	IRS
Form 8109 (Federal Tax Deposit Coupon)	Same as ER's payroll Tax Deposit Schedule	IRS
Form W-4P (Withholding Certificate for Pension or Annuity Payments)	See instructions to form	IRS
Form 1096 (Annual Summary and Transmittal of Information Returns)	Last day of February following Calendar Year of distribution	IRS
Form 990-T (Unrelated business income of Plan's Trust in excess of \$1,000 or more)	By 15th day of 4th month following Plan Year end	IRS, with payment.

Form

5307

(Rev. March 2008)

Department of the Treasury
Internal Revenue Service**Application for Determination for
Adopters of Master or Prototype or
Volume Submitter Plans**

(Under sections 401(a) and 501(a) of the Internal Revenue Code)

OMB No. 1545-0202

For IRS Use Only

Review the Procedural Requirements Checklist before submitting this application.

1a Number Assigned under Section 6.19
of Revenue Procedure 2007-6 -

1b Name of plan sponsor (employer if single-employer plan)

COUNTY OF HIDALGO COMMUNITY SERVICE AGENCY; HIDALGO COUNTY URBAN COUNTY PROGRAM; AND
HIDALGO COUNTY HEAD START

1c Address of plan sponsor (if a P.O. Box, see instructions)

100 EAST CANO, 2ND FLOOR

1d City

EDINBURG

1e State

TX

1f Zip Code

78539

1g Country

USA

1h Employer identification number

74-2512905

1i Telephone number

956-318-2619

1j Fax number

1k Employer's tax
year end (MM)

12

2a Person to contact if more information is needed. (See instructions)
(If a Power of Attorney is attached, check box and do not complete this line.)☒

Contact person's name

2b Contact person's address

2c City

2d State

2e Zip Code

2f Telephone number

2g Fax number

If more space is needed for any item, attach additional sheets the same size as this form. Identify each additional sheet with the plan sponsor's name and EIN and identify each item.

Under penalties of perjury, I declare that I have examined this application, including accompanying statements and schedules, and to the best of my knowledge and belief, it is true, correct, and complete.

SIGN HERE ►

Date ►

April 21, 2010

Type or print name

Rene A. Ramirez

Type or print title

Trustee



3a Determination requested for (enter applicable number in box)

☒

1 - Initial Qualification

2 - Request after Initial Qualification

3 - Standardized Plans (See Instructions)

b If line 3a is 1, please enter the date the plan was signed

c Enter number of amendments included

d Enter the date the amendment(s) reflected in 3c were signed (If more than 4 see instructions)

(i)

(ii)

(iii)

(iv)

e Enter the date the amendment(s) were effective (If more than 4 see instructions)

(i)

(ii)

(iii)

(iv)

Yes No

f ☒ ☐ Has the plan received a determination letter?

If "No," submit copies of all prior plan(s) and/or adoption agreement(s).

g If 3f is "Yes," enter the date of the latest letter (See Instructions)

h Enter the number of amendments since the last determination letter

i ☒ ☐ Have interested parties been given the required notification of this application? (See Instructions)

j ☒ ☐ Does the plan have a cash or deferred arrangement (section 401(k))?

k ☒ ☐ Does the plan have matching contributions (section 401(m))?

l ☐ ☒ Does the plan have after-tax employee voluntary contributions (section 401(m))?

m ☐ ☒ Does the plan utilize the permitted disparity rules of section 401(l) when allocating contributions or benefits?

n ☐ ☒ Is this plan an offset arrangement with any other plans? (If "Yes," attach a separate statement providing the name, EIN, and plan type of the other plan that is part of the arrangement. See Instructions)



4a Name of plan (If plan name exceeds 70 characters, including spaces, see instructions):

HIDALGO COUNTY AFFILIATED DEPARTMENTS RETIREMENT PLAN

b Enter 3-digit plan number (See instructions)

001

c Enter month plan year ends

12

d Enter plan's original effective date

01011993

e Enter number of participants (See instructions)

1092

5 Indicate type of plan by entering the number from the list below:

1

1 — profit sharing and/or 401(k)

4 — defined benefit but not cash balance

2 — money purchase

(See instructions)

3 — target benefit

5 — 401(k) safe harbor

Yes No

6a ☐ ☒ Is the employer a member of an affiliated service group?**b** ☐ ☒ Is the employer a member of a controlled group of corporations or a group of trades or businesses under common control?

If 6a and/or 6b is "Yes," see instructions.

7a(1) ☐ ☒ Is this a master or prototype plan?**a(2)** If "Yes," Date of Opinion letter ▶**a(3)** Serial Number ▶**b(1)** ☒ ☐ Is this a volume submitter plan?**b(2)** If "Yes," Date of Advisory letter ▶

03/31/2008

b(3) Serial Number ▶

M590873A

c ☐ ☒ Are there modifications to the volume submitter plan or are there addenda to the adoption agreement?**d** ☐ ☒ Are there any "Other" boxes selected in the adoption agreement? (See instructions)**8a** ☐ ☒ Is this a governmental plan?**b** ☐ ☐ If "Yes," is the plan a state level plan?**c** ☐ ☒ Is this a nonelecting church plan?**d** ☐ ☒ Is this a collectively bargained plan? (See Regulations section 1.410(b)-9)

8 (continued)

- | | Yes | No | |
|----|-------------------------------------|-------------------------------------|--|
| e | ☐ | ☒ | Is this a section 412(l) plan? |
| f | ☐ | ☒ | Has this plan been involved in a merger? (If "Yes," see instructions) |
| g | ☐ | ☒ | Has the plan been amended or restated to change the type of plan? (If "Yes," see instructions) |
| 9a | ☐ | ☒ | Do you maintain any other qualified plan(s) under section 401(a)? |
| | | | If "Yes," attach required statement per instructions.
If "No," skip to line 9d. |
| b | ☐ | ☐ | Do you maintain another plan of the same type (i.e. both this plan and the other plan are defined contribution plans or both are defined benefit plans) that covers non-key employees who are also covered under this plan? |
| | | | If "Yes," when the plan is top-heavy, do the non-key employees covered under both plans receive the required top-heavy minimum contribution or benefit under: (See instructions) |
| | ☐ | ☐ | (1) This plan, or |
| | ☐ | ☐ | (2) The other plan? |
| c | ☐ | ☐ | If this is a defined contribution plan, do you maintain a defined benefit plan (or if this is a defined benefit plan, do you maintain a defined contribution plan) that covers non-key employees who are also covered under this plan? If "Yes," when the plan is top-heavy, do non-key employees covered under both plans receive: (See instructions) |
| | ☐ | ☐ | (1) The top-heavy minimum benefit under the defined plan, |
| | ☐ | ☐ | (2) At least a 5% minimum contribution under the defined contribution plan, |
| | ☐ | ☐ | (3) The minimum benefit offset by benefits provided by the defined contribution plan, or |
| | ☐ | ☐ | (4) Benefits under both plans that, using a comparability analysis, are at least equal to the minimum benefit? |
| d | ☒ | ☐ | Does the plan prevent the possibility that the section 415 limitations will be exceeded for any employee who is (or was) a participant in this plan and any other plan of the employer? |



- | | Yes | No | |
|-----|-------------------------------------|-------------------------------------|--|
| 10a | ☐ | ☒ | Does any amendment to the plan reduce or eliminate any section 411(d)(6) protected benefit including an amendment adopted after September 6, 2000, to eliminate the joint and survivor annuity form of benefit? (See instructions) |
| b | ☒ | ☐ | Are trust earnings and losses allocated on the basis of account balances in a defined contribution plan? If "No," attach a statement explaining how they are allocated. |
| | | | Is this plan or trust currently under examination or is any issue related to this plan or trust currently pending before the: |
| c | ☐ | ☒ | • Internal Revenue Service, |
| d | ☐ | ☒ | • Department of Labor, |
| e | ☐ | ☒ | • Pension Benefit Guaranty Corporation, |
| f | ☐ | ☒ | • Voluntary Compliance Resolution Program of the Employee Plans Compliance Resolution System (EPCRS), or |
| g | ☐ | ☒ | • Any Court. |
- If "Yes," attach a statement explaining the issues involved and the contact person's name (IRS Agent, DOL Investigator, etc.) and telephone number.

Optional determination request regarding the ratio percentage test. A determination regarding the average benefit test may be requested by attaching Schedule Q (Form 5300). (See instructions)

- 11 ☐ ☐ Is this a request for a determination regarding the ratio percentage test of Regs. section 1.410(b)-2(b)(2) or a request for a determination regarding one of the special requirements of Regs. section 1.410(b)-2(b)(5), (6), or (7)? If "Yes," complete only lines 11a through 11n for a ratio percentage test determination, or complete only line 11o for a determination regarding one of the special requirements. If "No," skip to line 12.
- a ☐ ☐ Is this plan disaggregated into two or more separate plans that are not section 401(k), 401(m), or profit sharing plans? If "Yes," see the instructions and attach separate schedules for each disaggregated portion.
- b ☐ ☐ Does the employer receive services from any leased employees as defined in section 414(n)?
- c Coverage date (MMDDYYYY). See instructions for inserting date.
- d Total number of employees (including self-employed individuals) (employer-wide)
- e Statutory and regulatory exclusions under this plan (do not count an employee more than once):
- (1) Number of employees excluded because of minimum age or years of service required
- (2) Number of employees excluded because of inclusion in a collective bargaining unit
- (3) Number of employees excluded because they terminated employment with less than 501 hours of service and were not employed on the last day of the plan year



11e (continued)

(4) Number of employees excluded because employed by other qualified separate lines of business (QSLOBs)

(5) Number of employees excluded because they were nonresident aliens with no earned income from sources within the United States

f Total statutory and regulatory exclusions (add lines 11e(1) through 11e(5))

g Nonexcludable employees (subtract line 11f from line 11d)

h Number of nonexcludable employees on line 11g who are highly compensated employees (HCEs)

i Number of nonexcludable HCEs on line 11h benefiting under the plan

j Number of nonexcludable employees who are nonhighly compensated employees (NHCEs) (subtract line 11i from 11g)

k Number of nonexcludable NHCEs on line 11j benefiting under the plan

l Ratio percentage (See instructions)

m Enter the ratio percentage for the following, if applicable:

(1) Section 401(k) part of the plan

(2) Section 401(m) part of the plan

Yes No

n ☐ ☐

Are the results on line 11i or 11m based on the aggregated coverage of more than one plan? If "Yes," attach a statement listing the names, plan numbers, EINs, and benefit/allocation formula of the other plans. All aggregated plans should be filed concurrently.

o If the plan satisfied coverage using one of the special requirements of Regulations section 1.410(b)-2(b)(5), (6), or (7) enter the letter from the list below that identifies the special rule.

☐

A = 1.410(b)-2(b)(5) - No NHCEs employed

B = 1.410(b)-2(b)(6) - No HCEs benefit

C = 1.410(b)-2(b)(7) - Collectively bargained only



Determination request regarding the nondiscrimination design-based safe harbors of section 401(a)(4). See instructions

Yes No

- 12 ☐ ☐ Is this a request for a determination regarding a design-based safe harbor under section 401(a)(4)?

Design-based nondiscrimination safe harbors:

- a ☐ ☐ Does the plan provide for disparity in contributions or benefits that is intended to meet the permitted disparity requirements of section 401(l)? If "Yes," answer line 12b. Otherwise, skip to line 12c.
- b ☐ ☐ Do the provisions of the plan ensure that the overall permitted limits will not be exceeded?

- c Enter the letter ("A" - "G") from the list below that identifies the safe harbor intended to be satisfied.

A = 1.401(a)(4)-2(b)(2) defined contribution (DC) plan with uniform allocation formula

B = 1.401(a)(4)-3(b)(3) unit credit defined benefit (DB) plan

C = 1.401(a)(4)-3(b)(4)(i)(C)(1) unit credit DB fractional rule plan

☐

D = 1.401(a)(4)-3(b)(4)(i)(C)(2) flat benefit DB plan

E = 1.401(a)(4)-3(b)(5) insurance contract plan

F = 1.401(a)(4)-8(b)(3) target benefit plan

G = 1.401(a)(4)-8(c)(3)(iii)(b) cash balance plan

- d List the plan section(s) that satisfy the safe harbor (including, if applicable, the permitted disparity requirements)



User Fee for Employee Plan Determination, Opinion, and Advisory Letter Request

► Attach to determination letter application.

For
IRS
Use
Only

OMB No. 1545-1772

Amount paid _____

1 Name of plan sponsor (employer if single-employer plan)

County of Hidalgo Community Service Agency; Hidalgo County Urban County Program; and Hidalgo County

2 Sponsor's employer identification number
74-2512905

3 Plan number
001

4 Plan name

Hidalgo County Affiliated Departments Retirement Plan

Caution. If you qualify for the exemption from user fees for small business employers, complete only the certification below (see the instructions on page 2 for details). For all other applications, leave the certification blank and check the appropriate box in column A or B of line 5.

Certification

I certify that the application for a determination letter on the qualified status of the plan listed above meets the conditions for exemption from user fees described in section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001.

Sign Here ► _____

Date ► April 21, 2010

Type or print name and title ► Rene A. Ramirez, Trustee

Form Submitted		Fee Schedule	
		A with Demo 5 and/or Demo 6:	B no Demo 5 and no Demo 6:
5a Form 5300:	☐ \$ 1,800	☐ \$ 1,000	
b Form 5307:	☐ \$ 1,000	☐ \$ 300	
c Form 5310:	☐ \$ 1,800	☐ \$ 1,000	
d			
e Multiple employer plans (Form 5300):			
(1) 2 to 10 Forms 5300 submitted	☐ (1) \$ 2,300	☐ (1) \$ 1,500	
(2) 11 to 99 Forms 5300 submitted	☐ (2) \$ 2,300	☐ (2) \$ 1,500	
(3) 100 to 499 Forms 5300 submitted	☐ (3) \$ 15,000	☐ (3) \$ 10,000	
(4) Over 499 Forms 5300 submitted	☐ (4) \$ 15,000	☐ (4) \$ 10,000	
f Multiple employer plans (Form 5310):			
(1) 2 to 10 employers maintaining the plan	☐ (1) \$ 2,300	☐ (1) \$ 1,500	
(2) 11 to 99 employers maintaining the plan	☐ (2) \$ 2,300	☐ (2) \$ 1,500	
(3) 100 to 499 employers maintaining the plan	☐ (3) \$ 15,000	☐ (3) \$ 10,000	
(4) Over 499 employers maintaining the plan	☐ (4) \$ 15,000	☐ (4) \$ 10,000	
g Volume submitter:			
(1) Specimen plan		☐ (1) \$ 9,000	
(2) Lead specimen plan (see Rev. Proc. 2005-16)		☐ (2) \$ 9,000	
(3) Specimen plan identical to lead specimen plan (see Rev. Proc. 2005-16)		☐ (3) \$ 200	
h Master & Prototype (M&P):			
(1) Mass Submitter - per basic plan document with one adoption agreement		☐ (1) \$ 9,000	
(2) Mass Submitter - per each additional adoption agreement		☐ (2) \$ 650	
(3) Sponsor's identical adoption of M&P Mass Submitter basic plan document - per adoption agreement		☐ (3) \$ 200	
(4) Sponsor's minor modification of M&P Mass Submitter basic plan document - per adoption agreement		☐ (4) \$ 650	
(5) Nonmass submission by M&P sponsor - per adoption agreement		☐ (5) \$ 9,000	
(6) Advisory letter for additional optional provisions - per Mass Submitter basic plan document		☐ (6) \$ 650	
(7) Addition of new adoption agreement for approved plan - per Mass Submitter adoption agreement		☐ (7) \$ 650	
(8) Assumption of sponsorship of an approved M&P plan		☐ (8) \$ 200	
(9) Mass Submitter/sponsor - per trust document in excess of 10		☐ (9) \$ 650	
i Group trust		☐ \$ 750	

TNA



Power of Attorney and Declaration of Representative

► Type or print. ► See the separate instructions.

OMB No. 1545-0150

For IRS Use Only

Received by:

Name _____

Telephone _____

Function _____

Date / /

Part I Power of Attorney

Caution: Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer(s) must sign and date this form on page 2, line 9.

Taxpayer name(s) and address County of Hidalgo Community Service Agency; Hidalgo County Urban County Program; and Hidalgo County Head Start 100 East Cano, 2nd Floor Edinburg, TX 78539	Social security number(s) _____	Employer identification number 74-2512905
	Daytime telephone number 956-318-2619	Plan number (if applicable) 001

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address Bree Gibson 13155 Noel Road, Suite 2300 Dallas, Texas 75240	CAF No. 0305-53266R Telephone No. (972) 404-1600 Fax No. (972) 404-1300 Check if new: Address ☐ Telephone No. ☐ Fax No. ☐
Name and address	CAF No. _____ Telephone No. _____ Fax No. _____ Check if new: Address ☐ Telephone No. ☐ Fax No. ☐
Name and address Michele Lellouche 1660 Prudential Drive Jacksonville, FL 32207	CAF No. 0200-23587R Telephone No. (904) 399-5888 Fax No. (904) 399-5551 Check if new: Address ☐ Telephone No. ☐ Fax No. ☐

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

3 Tax matters

Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty (see the instructions for line 3)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s) (see the instructions for line 3)
Qualification of Employee Benefit Plan	Form 5307	IRS Determination Letter

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. Specific Uses Not Recorded on CAF. ☐

5 Acts authorized. The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative or add additional representatives, the power to sign certain returns, or the power to execute a request for disclosure of tax returns or return information to a third party. See the line 5 instructions for more information.

Exceptions. An unenrolled return preparer cannot sign any document for a taxpayer and may only represent taxpayers in limited situations. See Unenrolled Return Preparer on page 1 of the instructions. An enrolled actuary may only represent taxpayers to the extent provided in section 10.3(d) of Treasury Department Circular No. 230 (Circular 230). An enrolled retirement plan administrator may only represent taxpayers to the extent provided in section 10.3(e) of Circular 230. See the line 5 instructions for restrictions on tax matters partners. In most cases, the student practitioner's (levels k and l) authority is limited (for example, they may only practice under the supervision of another practitioner).

List any specific additions or deletions to the acts otherwise authorized in this power of attorney: Michele Lellouche is restricted to Volume Submitter plan language qualification

6 Receipt of refund checks. If you want to authorize a representative named on line 2 to receive, BUT NOT TO ENDORSE OR CASH, refund checks, initial here _____ and list the name of that representative below.

Name of representative to receive refund check(s) ►

7 Notices and communications. Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2.

- a If you also want the second representative listed to receive a copy of notices and communications, check this box ☐
 b If you do not want any notices or communications sent to your representative(s), check this box ☐

8 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here ☐
YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.

9 Signature of taxpayer(s). If a tax matter concerns a joint return, both husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

▶ IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.

Signature Date Title (if applicable)

Rene A. Ramirez

Print Name

□□□□

PIN Number

Print name of taxpayer from line 1 if other than individual

Signature Date Title (if applicable)

Print Name

□□□□
PIN Number

Part II Declaration of Representative

Caution: Students with a special order to represent taxpayers in qualified Low Income Taxpayer Clinics or the Student Tax Clinic Program (levels k and l), see the instructions for Part II.

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Circular 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent under the requirements of Treasury Department Circular No. 230.
 - d Officer—a bona fide officer of the taxpayer's organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer's immediate family (for example, spouse, parent, child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
 - h Unenrolled Return Preparer—the authority to practice before the Internal Revenue Service is limited by Circular 230, section 10.7(c)(1)(viii). You must have prepared the return in question and the return must be under examination by the IRS. See Unenrolled Return Preparer on page 1 of the instructions.
 - k Student Attorney—student who receives permission to practice before the IRS by virtue of their status as a law student under section 10.7(d) of Circular 230.
 - l Student CPA—student who receives permission to practice before the IRS by virtue of their status as a CPA student under section 10.7(d) of Circular 230.
 - r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED. See the Part II instructions.

Designation—Insert above letter (a–r)	Jurisdiction (state) or identification	Signature	Date
a	TX		
a	FL	Michele Lellouche	4/20/2010

Tax Information Authorization

- ▶ Do not sign this form unless all applicable lines have been completed.
- ▶ Do not use this form to request a copy or transcript of your tax return. Instead, use Form 4506 or Form 4506-T.

OMB No. 1545-1185

For IRS Use Only

Received by:

Name _____

Telephone _____

Function _____

Date ____/____/____

1 Taxpayer Information. Taxpayer(s) must sign and date this form on line 7.

Taxpayer name(s) and address (type or print)

County of Hidalgo Community Service Agency; Hidalgo County
Urban County Program; and Hidalgo County Head Start
100 East Cano, 2nd Floor
Edinburg, TX 78539

Social security number(s)

Employer identification number

74-2512905

Daytime telephone number

956-318-2619

Plan number (if applicable)

001

2 Appointee. If you wish to name more than one appointee, attach a list to this form.

Name and address

Please See Attached Appointee List

CAF No. _____

Telephone No. _____

Fax No. _____

Check if new: Address ☐ Telephone No. ☐ Fax No. ☐

3 Tax matters. The appointee is authorized to inspect and/or receive confidential tax information in any office of the IRS for the tax matters listed on this line. Do not use Form 8821 to request copies of tax returns.

(a) Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty	(b) Tax Form Number (1040, 941, 720, etc.)	(c) Year(s) or Period(s) (see the instructions for line 3)	(d) Specific Tax Matters (see instr.)
Qualification of Employee Benefit Plan	Form 5307	IRS Determination Letter	

4 Specific use not recorded on Centralized Authorization File (CAF). If the tax information authorization is for a specific use not recorded on CAF, check this box. See the instructions on page 4. If you check this box, skip lines 5 and 6 . . . ▶ ☐

5 Disclosure of tax information (you must check a box on line 5a or 5b unless the box on line 4 is checked):

a If you want copies of tax information, notices, and other written communications sent to the appointee on an ongoing basis, check this box . . . ▶ ☐

b If you do not want any copies of notices or communications sent to your appointee, check this box. . . ▶ ☐

6 Retention/revocation of tax information authorizations. This tax information authorization automatically revokes all prior authorizations for the same tax matters you listed on line 3 above unless you checked the box on line 4. If you do not want to revoke a prior tax information authorization, you must attach a copy of any authorizations you want to remain in effect and check this box . . . ▶ ☐

To revoke this tax information authorization, see the instructions on page 4.

7 Signature of taxpayer(s). If a tax matter applies to a joint return, either husband or wife must sign. If signed by a corporate officer, partner, guardian, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute this form with respect to the tax matters/periods on line 3 above.

▶ IF NOT SIGNED AND DATED, THIS TAX INFORMATION AUTHORIZATION WILL BE RETURNED.

▶ DO NOT SIGN THIS FORM IF IT IS BLANK OR INCOMPLETE.

April 21, 2010

Signature

Date

Signature

Date

Rene A. Ramirez

Trustee

Print Name

Title (if applicable)

Print Name

Title (if applicable)

☐ ☐ ☐ ☐ ☐ PIN number for electronic signature

☐ ☐ ☐ ☐ ☐ PIN number for electronic signature

Form 8821 – Attached Appointee List

2 Appointee. If you wish to name more than one appointee, attach a list to this form.			
Name and address		CAF No.	0304-36435R
Robbie Christopher		Telephone No.	(972) 404-1600
13155 Noel Road, Suite 2300		Fax No.	(972) 404-1300
Dallas, Texas 75240		Check if new: Address ☐ Telephone No. ☐ Fax No. ☐	
Name and address		CAF No.	6506-19318R
Vicki Stevens		Telephone No.	(972) 404-1600
13155 Noel Road, Suite 2300		Fax No.	(972) 404-1300
Dallas, Texas 75240		Check if new: Address ☐ Telephone No. ☐ Fax No. ☐	