

**CITY OF REDMOND  
EMPLOYEES' BENEFIT PLAN**

**AMENDED AND RESTATED**

**Effective January 1, 2023**

**TABLE OF CONTENTS**

	<u>Page</u>
PREFACE.....	v
<b>ARTICLE 1</b>	<b>NAME OF PLAN ..... 1-1</b>
1.1	Name of Plan..... 1-1
1.2	Effective Date..... 1-1
1.3	Exclusive Benefit ..... 1-1
<b>ARTICLE 2</b>	<b>DEFINITIONS ..... 2-1</b>
2.1	Active Participant..... 2-1
2.2	Actual Retirement ..... 2-1
2.3	Administrator or Plan Administrator ..... 2-1
2.4	Agent for the Service of Legal Process ..... 2-1
2.5	Beneficiary ..... 2-1
2.6	Compensation..... 2-2
2.7	Dependent Child..... 2-5
2.8	Disability ..... 2-5
2.9	Disabled Participant ..... 2-5
2.10	Employee..... 2-5
2.11	Employer ..... 2-5
2.12	Employment ..... 2-5
2.13	Highly Compensated Employee..... 2-6
2.14	Hourly Employee ..... 2-6
2.15	Inactive Participant..... 2-6
2.16	Interchangeable Word Usage ..... 2-6
2.17	Layoff..... 2-6
2.18	Leased Employees..... 2-6
2.19	Leave of Absence ..... 2-7
2.20	Maximum Compensation ..... 2-7
2.21	Normal Retirement Date ..... 2-7
2.22	Participant ..... 2-7
2.23	Plan..... 2-8
2.24	Plan Committee ..... 2-8
2.25	Plan Year ..... 2-8
2.26	Spouse ..... 2-8
2.27	Trust ..... 2-8
2.28	Trust Committee ..... 2-8
2.29	Trustee..... 2-8
2.30	Valuation Date ..... 2-8
<b>ARTICLE 3</b>	<b>ELIGIBILITY ..... 3-1</b>
3.1	Eligible Employees ..... 3-1
3.2	Election to Participate ..... 3-1
3.3	Hourly Employees Mandatory Participation..... 3-1

3.4	Designation of Beneficiary .....	3-2
3.5	Personal Data to Plan Committee .....	3-5
3.6	Address for Notification.....	3-5
<b>ARTICLE 4</b>	<b>CONTRIBUTIONS .....</b>	<b>4-1</b>
4.1	Basic Contributions and Salary Reduction Deferrals .....	4-1
4.2	Mandatory Contributions by Hourly Employees .....	4-1
4.3	Modification of Election .....	4-2
4.4	Cessation of Basic Contributions and Salary Reduction Deferrals.....	4-2
4.5	Extra Employee Contributions.....	4-3
4.6	Employer Contributions .....	4-3
4.7	Section 3121(b)(7)(F) Minimum Allocation for Hourly Employees .....	4-5
4.8	USERRA Contributions .....	4-5
4.9	Annual Additions Limit .....	4-8
4.10	Annual Additions Limit Code § 415 Aggregated Plans .....	4-9
4.11	Disposition of Excess Annual Additions .....	4-12
4.12	No Combined DCP/DBP Limitation.....	4-12
4.10	Definitions - ARTICLE 4.....	4-12
<b>ARTICLE 5</b>	<b>VALUATION AND ALLOCATION OF THE TRUST FUND .....</b>	<b>5-1</b>
5.1	Valuation of the Trust Fund .....	5-1
5.2	Participants' Accounts .....	5-1
5.3	Allocation and Adjustment of Participants' Accounts .....	5-2
<b>ARTICLE 6</b>	<b>WITHDRAWALS FROM A PARTICIPANT'S ACCOUNT.....</b>	<b>6-4</b>
6.1	Withdrawal of a Participant's Basic Contributions .....	6-4
6.2	Withdrawal of Extra Employee Contributions.....	6-4
6.3	Hardship Withdrawal .....	6-5
6.4	Financial Hardship .....	6-5
6.5	Effect of Withdrawals from a Participant's Account .....	6-8
6.6	Participant Loans.....	6-9
6.7	Withdrawal of a Participants Rollover Account .....	6-13
6.8	Withdrawal of a Participant's Accounts Prior to Severance of Employment .....	6-13
<b>ARTICLE 7</b>	<b>TIME AND METHOD OF PAYMENT OF BENEFITS .....</b>	<b>7-1</b>
7.1	Time of Distribution.....	7-1
7.2	Forms of Benefit .....	7-5
7.3	Notice and Consent .....	7-6
7.4	Amount of Benefit.....	7-7
7.5	Distribution Options for Rehired Participant .....	7-7
<b>ARTICLE 8</b>	<b>MINIMUM DISTRIBUTION RULES .....</b>	<b>8-1</b>
8.1	Maximum Time of Distribution.....	8-1
8.2	Minimum Distribution Requirements .....	8-1

ARTICLE 9	DISABILITY PENSION CONTINUATION BENEFITS .....	9-1
9.1	Deferral of Benefits in the Event of Disability .....	9-1
9.2	Supplemental Disability Benefits.....	9-1
9.3	Payment at Normal Retirement Date .....	9-2
9.4	Payment on Earlier Distribution.....	9-2
ARTICLE 10	[RESERVED] .....	10-1
ARTICLE 11	VESTING AND FORFEITURES .....	11-1
11.1	Vesting Schedule.....	11-1
11.2	Months of Participation.....	11-1
11.3	Disposition of Forfeitures .....	11-2
11.4	Restoration of Forfeited Account.....	11-2
11.5	Unclaimed Account Procedure .....	11-2
ARTICLE 12	ADMINISTRATION .....	12-1
12.1	Plan Committee.....	12-1
12.2	Officers and Duties .....	12-1
12.3	Decision-Making Procedure .....	12-1
12.4	Limits of Liability .....	12-2
12.5	Powers of Committee.....	12-2
12.6	Transmittal of Information.....	12-4
12.7	Expenses of Administration.....	12-4
12.8	Plan Communication, Interpretation and Construction.....	12-6
ARTICLE 13	AMENDMENT, TERMINATION AND DISCONTINUANCE OF CONTRIBUTIONS .....	13-1
13.1	Right of the Employer.....	13-1
13.2	Amendments to Qualify Plan.....	13-1
ARTICLE 14	MISCELLANEOUS PROVISIONS.....	14-1
14.1	Employee Rights .....	14-1
14.2	No Alienation.....	14-1
14.3	Distributions Under Domestic Relations Orders.....	14-1
14.4	Payments to Alternate Persons; Distribution of Small Accounts .....	14-3
14.5	Mergers and Consolidations.....	14-4
14.6	Headings and Subheadings .....	14-4
14.7	Counterparts .....	14-4
14.8	Construction.....	14-4
14.9	Direct Transfers.....	14-4
ARTICLE 15	BENEFIT APPLICATION AND REVIEW PROCEDURE.....	15-1
15.1	Benefit Application .....	15-1
15.2	Benefit Denials.....	15-1
ARTICLE 16	ROLLOVER DISTRIBUTION .....	16-1

16.1	Participant Rollover Contributions .....	16-1
16.2	Direct Rollovers .....	16-2
ARTICLE 17	CODE SECTION 401(k) AND CODE	
SECTION 401(m)	ARRANGEMENTS .....	17-1
17.1	401(k) Arrangement .....	17-1
17.2	Definitions .....	17-1
17.3	Special Rules for Deferral Contributions .....	17-3
17.4	Actual Deferral Percentage .....	17-6
17.5	Special Rules for Employer Matching Contributions/ Employee Contributions .....	17-6
17.6	Multiple Use Limitations .....	17-6
17.7	Time of Payment of Contributions .....	17-6

**PREFACE**  
**CITY OF REDMOND**  
**EMPLOYEES' BENEFIT PLAN**

THIS AMENDED AGREEMENT is made and entered into by and between the City of Redmond, a municipal corporation of the State of Washington, hereinafter called the Employer, and Matrix Trust Company, hereinafter called the Trustee.

WITNESSETH:

WHEREAS, the Employer did withdraw from coverage under the Federal Old Age, Survivors, Disability and Health Insurance Act and, in lieu thereof, did create a Benefit Trust Agreement, which was made effective on January 1, 1975, and at all times since that date has been in effect and contained provisions constituting a retirement plan for employees of this Employer; and

WHEREAS, the Agreement constitutes a Trust and a separate Employees' Benefit Plan; and

WHEREAS, the Employer has previously amended the Employees' Benefit Plan; and

WHEREAS, the parties now desire to further amend and completely restate the Employees' Benefit Plan to eliminate separate benefits for those employees previously treated as MEBT II or Hourly Employees and to allow them instead to participate in Social Security; and

WHEREAS, the Employer has authorized the execution of this Amended Agreement;

NOW, THEREFORE, the parties hereto mutually agree as follows:

The City of Redmond Employees' Benefit Plan previously entered into between these parties, as previously amended, is hereby amended in its entirety to read as follows:

**ARTICLE 1**  
**NAME OF PLAN**

1.1 **Name of Plan.** This Agreement shall be known as the City of Redmond Employees' Benefit Plan.

1.2 **Effective Date.** Unless otherwise stated herein, the provisions of this Amended and Restated Agreement are effective as of January 1, 2023. The original plan was established January 1, 1975. This Amendment is intended to eliminate separate benefits for those employees previously treated as MEBT II or Hourly Employees. Effective January 1, 2023, they will no longer participate. Employees hired after December 31, 2022, who are not Eligible Employees under Section 3.1 will not participate in this Plan. Any inconsistencies shall be construed to carry out this intent.

The Employer Contributions to this Plan (including Salary Reduction Deferrals and Matching Employer Contributions) shall not be dependent on Profits of the Employer; however, this Plan shall specifically be designated as, and operate as, a single profit sharing plan for all purposes of the Internal Revenue Code.

1.3 **Exclusive Benefit.** This Plan shall at all times be operated for the exclusive benefit of Participants and their beneficiaries. The Employer has no beneficial interest in any asset of the Trust and no part of any asset in the Trust may ever revert to or be repaid to an Employer, either directly or indirectly; nor, prior to the satisfaction of all liabilities with respect to the Participants and their Beneficiaries under the Plan, may any part of the corpus or income of the Trust Fund, or any asset of the Trust, be (at any time) used for, or diverted to, purposes other than the

exclusive benefit of the Participants or their Beneficiaries and for defraying reasonable expenses of administering the Plan.



## **ARTICLE 2 DEFINITIONS**

The following words and phrases shall have the meanings indicated, unless the context clearly requires another meaning.

2.1       **Active Participant** shall mean, as of any time, a Participant who is then making the contributions required under Section 4.1 of this Agreement. An Active Participant includes any participant who is unable to continue contributing under Section 4.1 because he or she reached the contribution limitations allowable under Section 4.1. Such participant would be considered an Active Participant that has contributed for at least 15 days for purposes of vesting under Article 11. He or she will continue to receive monthly vesting credits for every month during the remainder of the year he or she is employed by the City. The Plan Committee may establish rules governing such matters as it deems necessary to effectuate the intent of this Section 2.1 and 11.2.

2.2       **Actual Retirement** shall mean termination of a Participant's Employment with the Employer at or after the Participant's Normal Retirement Date as defined in Section 2.20 of this Agreement.

2.3       **Administrator or Plan Administrator** shall mean the Plan Committee, as defined in Section 2.23 of this Agreement.

2.4       **Agent for the Service of Legal Process** concerning this Agreement or this Plan shall be the Chairman of the Plan Committee.

2.5       **Beneficiary** shall mean any person designated as such in Section 3.4 of this Agreement to receive benefits after the death of a Participant hereunder. Whenever the rights of

Participants are defined herein, their beneficiaries, heirs, executors and administrators shall be bound thereby.

2.6 **Compensation** means the Participant's wages, salaries, fees for professional service and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the plan to the extent that the amounts are includable in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses, fringe benefits and reimbursements or other expense allowances under a non-accountable plan as described in Treas. Reg. § 1.62-2(c)).

Compensation under this Section 2.6 includes Elective Contributions. **Elective Contributions** are amounts excludable from the Employee's gross income under Code §§125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b), 408(p) or 457(b), and contributed by the Employer, at the Employee's election, to a cafeteria plan, a qualified transportation fringe benefit plan, a tax-sheltered annuity, a SIMPLE plan or a Code § 457(b) eligible deferred compensation plan. In addition, Compensation includes Employee contributions to any public retirement program under Code § 414(h) that are "picked up" by the Employer and are therefore treated as Employer contributions.

**Deemed 125 Compensation.** Deemed 125 Compensation is an amount that is excludable under Code § 106 that is not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. An amount will be treated as an amount under Code § 125 only if the Employer does not request or collect information regarding the Participants other health coverage as part of the enrollment process for the health plan.

**Exclusions from Compensation.** The term Compensation does not include:

(a) Employer contributions (other than Elective Contributions or '414(h) pick up contributions) to a plan of deferred compensation (including a simplified employee pension plan under Code § 408(k) or a simple retirement plan under Code § 408(p)) to the extent the contributions are not included in the gross income of the Employee for the taxable year in which contributed, and any distributions from a plan of deferred compensation (whether or not qualified), regardless of whether such amounts are includable in the gross income of the Employee when distributed; and

(b) Other amounts which receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includable in the gross income of the Employee and are not salary reduction amounts that are described in Code § 125).

(c) Other items of remuneration that are similar to any of the items listed in Subsections (a) and (b) immediately above.

(d) Compensation does not include reimbursements or other expense allowances, fringe benefits (cash and noncash), moving expenses, and welfare benefits. To the extent not included by the prior sentence, the following payments are not included because they are small amounts designed as incentive payments. To include them is administratively difficult and reduces the actual benefit to the employee. Wellness bonus, medical waiver, taxable tuition or education assistance, tool allowance, taxable relocation and clothing allowance.

Any reference in this Plan to Compensation is a reference to the definition in this Section 2.6, unless the Plan reference modifies this definition. The Plan Committee will take into account only Compensation actually paid during (or as permitted under the Code, paid for) the relevant period. A Compensation payment includes Compensation by the Employer through another person under the common paymaster provisions in Code § 3121 and 3306.

(A) **Compensation Dollar Limitation.** For any Plan Year, the Plan Committee in allocating

contributions must take into account only the first \$200,000 (or such larger amount as the Commissioner of Internal Revenue may prescribe) of any Participant's Compensation. Notwithstanding the foregoing, an Employee under a 401(k) arrangement may make Salary Reduction deferrals with respect to Compensation which exceeds the Plan Year Compensation limitation, provided such deferrals otherwise satisfy Code § 402(g) and other applicable limitations.

(B) **Post Severance Compensation.** Compensation includes Post-Severance Compensation as described in this Section 2.6(B). Post-Severance Compensation is Compensation paid after a Participant's Severance from Employment from the Employer, as further described in this Section 2.6(B). Any other payment paid after Severance from Employment that is not described in this Section 2.6(B) is not Compensation even if payment is made within the time period described below. Post-Severance Compensation does not include severance pay, parachute payments under Code §280G(b)(2) or payments under a nonqualified unfunded deferred compensation plan unless the payments would have been paid at that time without regard to Severance from Employment.

(1) **Regular pay.** The payment of 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, but only if 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 and only to the extent the Employer pays such amounts by the later of 2½ months after Severance from Employment or by the end of the Limitation Year that includes the date of such Severance from Employment.

(2) **Leave cashouts.** The payment of leave cashouts, if Compensation would have included those amounts 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 and only to the extent the Employer pays such amounts by the later of 2½ months after Severance from Employment or by the end of the Limitation Year that includes the date of such Severance from Employment.

(C) **Differential Wage Payments.** For Plan Years beginning after December 31, 2008, the Plan will treat Differential Wage Payments as Compensation for purposes of Elective Contributions only. Differential Wage Payment means differential wage payment as defined by Code §3401(h)(2).

2.7 **Dependent Child** shall mean a child of the Participant who is a dependent of the Participant as determined under Internal Revenue Code Section 152, as amended.

2.8 **Disability** shall have the same meaning as contained in the Long-term Disability Insurance maintained by the Employer for the benefit of its employees. The Plan Committee may require a certification from a licensed physician as to any Participant's Disability.

2.9 **Disabled Participant** shall mean a Participant whose Employment with the Employer has terminated by reason of Disability as defined in Section 2.8 of this Agreement.

2.10 **Employee** shall mean any person who is employed by the Employer as a Regular Full-Time or Part-Time Employee, as defined in the Employer's Personnel Manual. An Employee does not include any person identified by the Employer as an independent contractor or temporary agency employee even if that person is later reclassified as an employee by the Employer, any governmental agency, court of law or other governing body.

2.11 **Employer** shall mean the City of Redmond, Washington, a municipal corporation.

2.12 **Employment** shall mean the period of time during which an Employee is actually employed by the Employer for Compensation (or by any employer which is a party to the Municipal Employees' Benefit Trust Agreement which such period immediately precedes service with this Employer) and any period in which the Employee is on a Leave of Absence.

2.13 **Highly Compensated Employee** [Reserved]

2.14 **Hourly Employee** shall mean any person employed by the City that is not currently enrolled in either Washington State Public Employees Retirement System ("PERS") or Washington State Law Enforcement Officers' and Fire Fighters' Retirement System ("LEOFF"), and any elected official who has not elected to participate in another Employer sponsored qualified Retirement system.

2.15 **Inactive Participant** shall mean a Participant who

(a) voluntarily terminates all contributions and deferrals required by Section 4.1 of this Agreement, but remains eligible to participate under Section 3.1 of this Agreement; or

(b) Any Participant on an uncompensated Leave of Absence.

2.16 **Interchangeable Word Usage.** Wherever appropriate, masculine pronouns shall include the feminine and reference to singular or plural shall be deemed to include the other.

2.17 **Layoff** shall mean termination of employment, without prejudice to the Employee "laid off", by reason of a reduction in the work force, or unavailability of funds to compensate such Employee, or elimination of such employment position, or other Employer-determined reason unrelated to the Employee's work performance, conduct or character. A discharge "for cause" is not included in the term "layoff".

2.18 **Leased Employees.** The Plan treats a Leased Employee as an Excluded Employee of the Employer. A Leased Employee is an individual (who otherwise is not an Employee of the Employer) who, pursuant to an agreement between the Employer and any other person (the "leasing organization"), has performed services for the Employer (or for the Employer and any persons related to the Employer within the meaning of Code §144(a)(3)) on a substantially full time basis for at least one year and who performs such services under the primary direction or control of the

Employer within the meaning of Code § 414(n)(2).

2.19 **Leave of Absence** means any:

(a) Temporary uncompensated leave of absence for sickness, maternity, or extended vacation, not to exceed six months' duration, provided that persons under similar circumstances shall be treated alike;

(b) Any compensated absence;

(c) Absence for military service, or significant civilian service for the United States, provided the absent Employee returns to service with the Employer within thirty (30) days of his or her release from such active military duty or service or any longer period during which his or her right to reemployment is protected by law.

2.20 **Maximum Compensation** for purposes of this Plan shall be 100% of the taxable wage base, as determined under Section 230 of the Social Security Act, in effect on the first day of the Plan Year. For clarification purposes, Maximum Compensation is intended to be those wages subject to taxation at the respective employee and employer tax rate set forth in Code sections 3101(a) and 3111(a), as amended (the OASDI rate) and not that portion above the OASDI base which is subject only to Hospital Insurance taxes. Temporary reductions to the Employee and/or Employer tax rates set forth above will not apply unless specifically adopted by the Employer.

2.21 **Normal Retirement Date** shall mean the earlier of

(a) a Participant's sixty-fifth (65th) birthday; or

(b) the earliest service retirement date for such Participant under any other retirement benefit program to which contributions for such Participant are made by the Employer whether benefits are actuarially reduced or not.

2.22 **Participant** shall mean any person for whom an account is maintained pursuant to

Section 5.2 of this Agreement

2.23 **Plan** shall mean this Employees' Benefit Plan of the Employer as it now exists or hereafter may be amended.

2.24 **Plan Committee** shall mean the group of individuals appointed as such pursuant to Section 12.1 of this Agreement.

2.25 **Plan Year** shall mean the twelve (12) month period ending on December 31.

2.26 **Spouse** shall mean a person married to an Employee except where it would conflict with Federal Law. The term "Spouse" shall not include a Spouse who is legally separated from the Employee or a Spouse who is otherwise separated from the Employee for a period of more than twelve (12) consecutive months. If any benefits under this Plan are provided by an insurance contract, then and in that event, the definition of the term "Spouse" contained in such insurance contract shall govern and control for such benefits.

2.27 **Trust** shall mean the Municipal Employees' Benefit Trust, a trust agreement existing between the Employer and the Trustee, to which this Agreement is attached and under the provisions of which the contributions to this Plan are administered, as such trust agreement now exists or hereafter may be amended.

2.28 **Trust Committee** shall mean the Committee appointed and acting under the terms of the Municipal Employees' Benefit Trust.

2.29 **Trustee** shall mean the person or persons who agree to serve as Trustee of the Trust, or any successor trustee or trustees who accepts in writing the position of Trustee.

2.30 **Valuation Date** shall mean last day of each month of each Plan Year and such other date or dates as may be designated by the Plan or Trust Committee.



### **ARTICLE 3 ELIGIBILITY**

3.1 **Eligible Employees.** Each Employee designated below is an Eligible Employee and is eligible to become a participant in this Plan on or after the date on which his or her Employment with the Employer commences.

- (a) Regular Full-Time or Regular Part-Time employees, as those terms are defined in the Employer's Personnel Manual;
- (b) members of the City Council of the Employer.

All other employee classifications are not eligible to participate. While members of the City Council are Eligible Employees, those who do not elect to participate in an Employer sponsored retirement system satisfying Code Section 3121(b)(7)(F) must participate in Social Security and will not be Eligible Employees for purposes of Employer Contributions under Section 4.6.

3.2 **Election to Participate.** Every Eligible Employee who wishes to participate in this Plan may elect to do so by notifying the Plan Committee in writing, on a form prescribed and supplied by the Plan Committee, of his or her acceptance of the terms and conditions of this Agreement and the Trust to which it is attached and of his or her agreement to make contributions and/or to have deferrals made on his or her account as required under Section 4.1 of this Agreement. The election to participate shall be effective on the payroll period next succeeding receipt by the Plan Committee of such notification, acceptance and agreement; except that a new Employee's election shall be effective on the date of hire.

3.3 **Hourly Employees.** Effective January 1, 2023, Hourly Employees shall not participate in the Plan.

3.4 **Designation of Beneficiary.** Any Participant may from time to time designate, in writing, any person or persons, contingently or successively, to whom the Trustee will pay his or her benefits (including any life insurance proceeds payable to the Participant's account) in the event of his or her death. The Plan Committee will prescribe the form for the written designation of Beneficiary and, upon the Participant's proper completion and filing of the form with the Plan Committee, the form effectively revokes all designations filed prior to that date by the same Participant. The Beneficiary designation of a married Participant or Participant with a state registered domestic partner (SRDP) is not valid (whether married or registered at the time of the designation or later) unless the Participant's Spouse or SRDP consents to the Beneficiary designation. The spousal or SRDP consent requirement in this paragraph does not apply if the Participant's Spouse or SRDP is the Participant's sole primary Beneficiary. A married or SRDP Participant's Beneficiary Designation is not valid unless the Participant's Spouse or SRDP has consented in writing, the Spouse's or SRDP's consent acknowledges the effect of the designation, and a Notary Public or the Plan Administrator (or his or her representative) witnesses and acknowledges the Spouse's or SRDP's consent.

The Plan Committee will accept as valid a consent which does not satisfy the spousal or SRDP consent requirements if the Plan Committee establishes that: (i) the Participant does not have a Spouse or SRDP; (ii) the Plan Committee is not able to locate Participant's Spouse or SRDP; (iii) the Participant is legally separated or has been abandoned (within the meaning of state law) and the Participant has a court order to that effect; or (iv) other circumstances exist under which applicable law excuses the spousal consent requirements. If the Participant's Spouse or SRDP is legally incompetent to give consent, the Spouse's or SRDP's legal guardian (even if the guardian is the Participant) may give consent.

If the Participant fails to name a Beneficiary in accordance with the above procedures, or if the Beneficiary (and all contingent or successive Beneficiaries) named by Participant predeceases the Participant, are invalid for any reason, or disclaim the Participant's benefit and the Plan Committee has accepted the disclaimer as valid under applicable law, then the Trustee will pay the Participant's benefit in the following order of priority:

- (a) The Participant's surviving Spouse or state registered domestic partner (unless 3.4(A) would apply); and if none to
- (b) The Participant's children, including adopted children, in equal shares by right of representation (one share for the benefit of each surviving child and one share for each child who predeceases the Participant with living descendants); and if none to;
- (c) The Participant's surviving parents, in equal shares; and if none to
- (d) The Participant's surviving brothers and sisters, in equal shares; or if none to
- (e) The Participant's estate.

(A) **Automatic Revocation of Spousal Designation.** A divorce decree, a decree of legal separation or dissolution, invalidation or termination of a state registered domestic partnership, revokes a Participant's prior designation, if any, of his or her Spouse, former Spouse or state registered domestic partner as his or her Beneficiary under the Plan unless a QDRO provides otherwise.

(B) **Death of Beneficiary.** If the Beneficiary survives the Participant but dies prior to distribution of the Participant's entire Vested Account Balance, the Trustee will distribute the remaining Vested Account Balance to the Beneficiary's estate unless: (i) the Participant's Beneficiary designation provides otherwise, or (ii) the Beneficiary has properly designated a

beneficiary. A Beneficiary may designate a beneficiary for the Participant's Account Balance remaining at the Beneficiary's death only if the Participant has not previously designated a successive contingent beneficiary and the Beneficiary's designation otherwise complies with the Plan terms. The Plan Committee will direct the Trustee as to the method and to whom the Trustee will make payment under this Section 3.04.

(C) **Simultaneous Death of Participant and Beneficiary.** If a Participant and his or her Beneficiary should die simultaneously, or under circumstances that render it difficult or impossible to determine who predeceased the other, then unless the Participant's Beneficiary designation otherwise specifies, the Plan Committee will presume conclusively that the Beneficiary predeceased the Participant.

(D) **Incapacitated Participant or Beneficiary.** If, in the opinion of the Plan Committee or the Trustee, a Participant or Beneficiary entitled to a Plan distribution is not able to care for his or her affairs because he or she is a minor child or because of a mental or physical condition, at the direction of the Plan Committee, the Trustee may make the distribution to the Participant's or Beneficiary's court-appointed guardian, or court-appointed conservator, conservator, trustee, custodian (including under a Uniform Transfers or Gifts to Minors Act), his or her attorney-in-fact or to another legal representative or person authorized under State law to receive the benefit upon furnishing evidence of such status satisfactory to the Plan Committee and to the Trustee. The Plan Committee and the Trustee do not have any liability with respect to payments so made and neither the Plan Committee nor the Trustee has any duty to make inquiry as to the competence of any person entitled to receive payments under the Plan. Notwithstanding the above, where a trust is named as a Designated Beneficiary, the Plan Committee and Trustee may distribute Plan benefits in accordance with the Participant's or Beneficiary's Beneficiary designation form although a trust beneficiary may

be incapacitated.

(E) **Inability to Determine Beneficiary.** In the event that the Plan Committee is unable to determine the identity of a Participant's Beneficiary under circumstances of competing claims or otherwise, the Plan Committee may file an interpleader action seeking an order of the court as to the determination of the Beneficiary. The Plan Committee, the Trustee and other Plan fiduciaries may act in reliance upon any proper order issued under this Section 3.4(E) in maintaining, distributing or otherwise disposing of a Participant's Account under the Plan terms, to any Beneficiary specified in the court's order.

3.5 **Personal Data to Plan Committee.** Each Participant and each Beneficiary of a deceased Participant must furnish to the Plan Committee such evidence, data or information as the Plan Committee considers necessary or desirable for the purpose of administering the Plan. The provisions of this Plan are effective for the benefit of each Participant upon the condition precedent that each Participant will furnish promptly full, true and complete evidence, data and information when requested by the Plan Committee, provided the Plan Committee advises each Participant of the effect of his or her failure to comply with its request.

3.6 **Address for Notification.** Each Participant and each Beneficiary of a deceased Participant must file with the Plan Committee from time to time, in writing, his or her post office address and any change of post office address. Any communication, statement or notice addressed to a Participant, or Beneficiary, at his or her last post office address filed with the Plan Committee, or as shown on the records of the Employer, binds the Participant, or Beneficiary, for all purposes of this Plan.

## **ARTICLE 4 CONTRIBUTIONS**

### **4.1 Basic Contributions and Salary Reduction Deferrals.**

(a) Every Eligible Employee who elects to participate in this Plan as provided in Section 3.2 of this Agreement, shall be required to contribute, on his or her own behalf, a Basic Contribution in such amount as the Participant may elect, subject to the limitations set forth below in this Section 4.1. Basic Contributions shall be deducted from the Participant's pay by the Employer. In addition to, or in lieu of, such Basic Contributions, a Participant may elect to defer receipt of a part of his or her salary or wages from the Employer (sometimes in this Agreement called "Salary Reduction Deferrals" or "deferrals"). The aggregate amount of the Basic Contributions and Salary Reduction Deferrals for any Participant shall be an amount equal to such Participant's Compensation (not to exceed, however, in total, "Maximum Compensation" as that term is defined in Section 2.19 of this Agreement), multiplied by one hundred percent (100%) of the then current employee's tax rate under the Federal Insurance Contributions Act, as amended; provided that, the amount of Basic Contributions and Salary Reduction Deferrals shall be reduced as to any Participant by the amount of any Medicare contribution required of such Participant by Code Section 3101(b), as amended or any other relevant statute.

(b) Salary Reduction Deferrals shall be maintained in a separate Account for record keeping purposes and shall be one hundred percent (100%) vested at all times. Except as otherwise provided herein, this Account shall be subject to all the terms of this Plan relating to the retirement accounts of Participants.

### **4.2 Mandatory Contributions by Hourly Employees.** Effective January 1, 2023,

Hourly Employees shall not participate in the Plan.

4.3 **Modification of Election.** By written election on a form prescribed and supplied by the Plan Committee, an Active Participant may change the amount of Basic Contributions and/or Salary Reduction Deferrals under Section 4.1 of this Agreement, within the limits specified in Section 4.1, in accordance with rules established by the Plan Committee. The permitted frequency of such changes shall be established by Plan Committee rule. The Plan Committee from time to time shall make such rules governing the permitted frequency of changes in the amount of Basic Contributions and/or Salary Reduction Deferrals as the Plan Committee, in its sole discretion, considers reasonable. Such rules shall be made and applied in a uniform and non-discriminatory manner.

4.4 **Cessation of Basic Contributions and Salary Reduction Deferrals.** By written election of the Participant on a form prescribed and supplied by the Plan Committee, Basic Contributions and Salary Reduction Deferrals under Section 4.1 of this Agreement may be discontinued entirely, in accordance with rules established by the Plan Committee. Such election shall become effective on the payroll period next succeeding receipt by the Plan Committee of written notification of such election, or on such earlier date as the Plan Committee may determine. Upon such election the Participant shall become an Inactive Participant and shall not be entitled to have such contributions and/or deferrals resumed for such period as shall be established by Plan Committee rule. The Plan Committee from time to time shall make such rules governing the minimum period required to elapse between the complete discontinuance of all contributions and deferrals and the resumption thereof as the Plan Committee, in its sole discretion, considers reasonable. Such rules shall be made and applied in a uniform and non-discriminatory manner. The Plan Committee shall continue to maintain the accounts of such Inactive Participant until such time

as said Participant's Employment with the Employer terminates. A Participant who becomes an Inactive Participant shall continue to receive vesting credit for Months of Participation for vesting purposes under Article 11 of this Agreement.

4.5 **Extra Employee Contributions.** When the maximum allowable aggregated amount of Basic Contributions and Salary Reduction Deferrals provided for under Section 4.1 of this Agreement are being made by or on behalf of a Participant, such Participant may contribute on his or her own behalf Extra Employee Contributions in such additional amounts as he or she may elect, provided that the sum of such contributions may not exceed the Participant's monthly Compensation. See Section 4.13(B) for the Annual Additions limitation for Extra Employee Contributions. See also Article 17 for limitations on Employee contributions. Such contributions may be made at the Participant's election either in the form of an after tax payroll deduction or in the form of Salary Reduction Deferrals. Contributions made in the form of Salary Reduction Deferrals shall be subject to all the restrictions of such Salary Reduction Deferrals as if made under Section 4.1 except no employer matching contribution shall be made under Section 4.6 with respect to any such contributions. For purposes of Article 17, any Salary Reduction Deferrals made under this Section 4.5 shall be treated as if made under Section 4.1. As such, any references to Extra Employee Contributions in that Article include only after tax contributions. Salary Reduction Deferrals under this Section 4.5 shall be allocated to the Salary Reduction Deferral Account.

4.6 **Employer Contributions.** The Employer shall contribute from time to time the sum of:



(a) an amount determined as follows:

(1) the amount determined by multiplying each Eligible Employee's Compensation up to "Maximum Compensation," as that term is defined in Section 2.20 of this Agreement, by one hundred percent (100%) of the then current employer's tax rate under the Federal Insurance Contributions Act (Code sections 3111(a) and (b)), as amended, (for this purpose, these calculations shall be made as if the Employer had not withdrawn from the Federal Old Age, Survivors, Disability and Health Insurance Act), minus

(2) the amount of insurance premiums necessary to fund the Employer's survivor and disability insurance programs for the then current year.

Notwithstanding the foregoing provisions of this Section 4.6, for any Active Participant for which a Medicare contribution is required by Code § 3111(b), as amended or any other relevant statute, the amount of the Matching Employer Contribution for such Active Participant shall be reduced by the amount of the City's required Medicare contribution on behalf of such individual. Further, the City's aggregate contributions to this Plan shall be reduced by the aggregate required Medicare contributions on behalf of all Employees on account of whom a contribution would otherwise be made to this Plan.

The Matching Employer Contribution above, shall be paid into the Trust and held in an unallocated account. From such account, administrative expenses of the Plan and Trust not otherwise paid, shall be paid. Next, the Plan Committee shall allocate the amount required under Section 9.2 to the account of each Disabled Participant. Subject to any restoration allocation required under Section 11.5 or Section 4.8, the remaining amounts, together with investment earnings, or less investment losses, shall be allocated as of the last day of the Plan Year among those Active Participants who are Employees of the Employer on the last day of the Plan Year and those

Participants who have retired after reaching their normal retirement date during the Plan Year. Such amounts shall be allocated in the same proportion that the Matching Employer Contributions for each such Participant for the Plan Year under subsection (a) of this Section 4.6 bears to the total of all Matching Employer Contributions for the Plan Year under subsection (a) of this Section 4.6. Such amounts shall be reduced by any amount determined under Section 4.9 in determining an Employee's allocation.

(c) Employer contributions under subsection (a) of this Section 4.6 shall be made not less frequently than monthly. Employer contributions under subsection (b) shall be made at such times as determined by the Plan Committee but not later than the maximum time allowed by law.

4.7 **Section 3121(b)(7)(F) Minimum Allocation for Hourly Employees.** Effective January 1, 2023, Hourly Employees shall not participate in the Plan.

4.8 **USERRA Contributions.** This Section 4.8 applies to an Employee who: (i) has completed qualified military service under the Uniformed Service Employment and Re-employment Rights Act of 1994 ("USERRA"); (ii) the Employer has rehired under USERRA; and (iii) who is a Participant entitled to make-up contributions under Code § 414(u). This Section 4.8 also applies to an Employee who dies while performing Qualified Military Service, as provided in Section 4.8(K).

(A) **Employer Contributions.** The Employer will make up any Employer contributions that the Employer would have made and which the Plan Committee would have allocated to the Participant's Account had the Participant remained employed by the Employer during the period of qualified military service.

(B) **Compensation.** For purposes of this Section 4.8, the Plan Committee will determine an affected Participant's Compensation as follows. A Participant during his or her period of qualified military service is deemed to receive Compensation equal to that which the Participant would have

received had he or she remained employed by the Employer, based on the Participant's rate of pay that would have been in effect for the Participant during the period of military service. If the Compensation during such period would have been uncertain, the Plan Committee will use the Participant's actual average Compensation for the 12 month period immediately preceding the period of qualified military service, or if less, the period of employment.

(C) **Salary Reduction Deferrals/Employee Contributions.** If the Plan provides for Salary Reduction Deferrals or for Employee Contributions during a Participant's period of qualified military service, the Plan Committee will allow a Participant under this Section 4.8 to make-up such Salary Reduction Deferrals or Employee Contributions to his or her Account. The Participant may make up the maximum amount of Salary Reduction Deferrals or Employee Contributions which he or she under the Plan terms would have been able to contribute during the period of qualified military service (less any such amounts that the Participant actually contributed during such period) and the Participant must be permitted to contribute any lesser amount as the Plan would have permitted. The Participant must contribute any make-up contribution under this Section 4.8(C) commencing on his or her reemployment date and not later than 5 years following reemployment (or if less, a period equal to 3 times the length of the Participant's qualified military service triggering such make up contribution).

(D) **Matching Contributions.** The Employer will make-up any Matching Contributions that the Employer would have made and which the Plan Committee would have allocated to the Participant's Account during the period of qualified military service but based on any make-up Salary Reduction Deferrals or make-up Employee Contributions that the Participant contributes under Section 4.8(C).

(E) **Limitations/Testing.** Contributions under this Section 4.8 are Annual Additions and are tested under Sections 4.9 or 4.10 and 17.3 (402(g) limit) in the year to which such contributions are

allocated, but not in the year in which such contributions are made.

(1) **Differential Wage Payments.** Effective for Differential Wage Payments made after December 31, 2008, the Plan is not treated as failing to meet the requirements of any provision described in this Section 4.8(E) by reason of any contribution or benefit which is based on a Differential Wage Payment. The preceding sentence applies only if all Employees performing service in the uniformed services described in Code §3401(h)(2)(A) are entitled to receive Differential Wage Payments 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)). The Plan Committee operationally may determine, for purposes of any provision described in this Section 4.8(E), whether to take into account any Elective Deferrals, and if applicable, any Matching Contributions, attributable to Differential Wage Payments.

(F) **No Earnings.** A Participant receiving any make-up contribution under this Section 4.8 is not entitled to an allocation of any earnings on any such contributions prior to the time that the Employer actually makes the contributions (or timely deposits the Participant's own make-up Salary Reduction Deferrals or Employee Contributions) to the Trust.

(G) **No Forfeitures.** A Participant receiving any make-up allocation under this Section 4.8 is not entitled to an allocation of any forfeitures arising during the Participant's period of qualified military service.

(H) **Allocation Conditions.** For purposes of applying any Plan allocation conditions, the Plan Committee will treat any period of qualified military service as service, under the Plan.

(I) **Other Rules.** The Plan Committee in applying this Section 4.8 will apply any future written guidance addressing the application of USERRA to the Plan.

(J) Loan repayments (if permitted under the Plan) will be suspended as permitted under Code § 414(u)(4).

(K) **HEART Act Death Benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service, the Participant's Beneficiary is 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 employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.

4.9 **Annual Additions Limit.** The amount of Annual Additions which the Plan Committee may allocate under this Plan to a Participant's Account for a Limitation Year may not exceed the Annual Additions Limit.

(A) **Actions to Prevent Excess Amount.** If the Annual Additions the Plan Committee otherwise would allocate under the Plan to the Participant's Account for the Limitation Year would exceed the Annual Additions for the Limitation Year Limit, the Plan Committee will not allocate the Excess Amount, but will instead take any reasonable, uniform and nondiscriminatory action the Plan Committee determines necessary to avoid allocation of an Excess Amount. Such actions include, but are not limited to, those described in this Section 4.9(A). If the Plan includes a 401(k) arrangement and/or employee contributions, the Plan Committee will apply this Section 4.9 in a manner which maximizes the allocation to a Participant of Employer contributions (exclusive of the Participant's Salary Reduction Deferrals). Notwithstanding any contrary Plan provision, the Plan Committee, for the Limitation Year, may: (1) suspend or limit a Participant's additional Employee Contributions or Salary Reduction Deferrals; (2) notify the Employer to reduce the Employer's

future Plan contribution(s) as necessary to avoid allocation to a Participant of an Excess Amount; or (3) suspend or limit the allocation to a Participant of any Employer Contribution previously made to the Plan (exclusive of Salary Reduction Deferrals) or of any Participant forfeiture. If an allocation of Employer Contributions previously made (excluding a Participant's Salary Reduction Deferrals) or of Participant forfeitures would result in an Excess Amount to a Participant's Account, the Plan Committee will allocate the Excess Amount to the remaining Participants who are eligible for an allocation of Employer Contributions for the Plan Year in which the Limitation Year ends. The Plan Committee will make this allocation in accordance with the Plan's allocation method as if the Participant whose Account otherwise would receive the Excess Amount is not eligible for an allocation of Employer Contributions. If the Plan Committee allocates to a Participant an Excess Amount, the Plan Committee will dispose of the Excess Amount in accordance with Section § 4.11.

(B) **Estimated and Actual Compensation.** Prior to the determination of the Participant's actual Compensation for the Limitation Year, the Plan Committee may determine the Annual Additions Limit on the basis of the Participant's estimated annual Compensation for such Limitation Year. The Plan Committee will make this determination on a reasonable and uniform basis for all Participants similarly situated. The Plan Committee will reduce the allocation of any Employer Contribution (including the allocation of Participant forfeitures) based on estimated annual Compensation by any Excess Amounts carried over from prior years. As soon as is administratively feasible after the end of the Limitation Year, the Plan Committee will determine the Annual Additions Limit on the basis of the Participant's actual Compensation for such Limitation Year.

#### 4.10 **Annual Additions Limit Code § 415 Aggregated Plans.**

(A) **Aggregation of Code §415 Aggregated Plans.** For purposes of applying the Annual Additions Limit, all Code §415 Aggregated Plans are treated as one plan.

(1) **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.

(2) **Mid-year Aggregation.** Two or more Defined Contribution Plans that are not Code §415 Aggregated Plans 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 later in that Limitation Year they become Code §415 Aggregated Plans, provided that no Annual Additions are credited to the Participant's Account after the date on which the Plans are required to be aggregated.

(B) **Combined Plans Limitation.** The amount of Annual Additions which the Plan Committee may allocate under this Plan to a Participant's Account for a Limitation Year may not exceed the Combined Plans Limitation.

(1) **Prevention.** If the amount the Employer otherwise would allocate to the Participant's Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this Section 4.10(B) Combined Plans Limitation, the Employer will reduce the amount of its allocation to that Participant's Account in the manner described in Section 4.9(A), so the Annual Additions under all of the Code §415 Aggregated Plans for the Limitation Year will equal the Annual Additions Limit.

(2) **Correction.** If the Plan Committee allocates to a Participant an amount attributed to this Plan under Section 4.10(D) which exceeds the Combined Plans Limitation, the Plan Committee will dispose of the Excess Amount in accordance with Section 4.11

(C) **Estimated and Actual Compensation.** Prior to the determination of the Participant's actual Compensation for the Limitation Year, the Plan Committee may determine the Combined Plans Limitation on the basis of the Participant's estimated annual Compensation for such Limitation Year. The Plan Committee will make this determination on a reasonable and uniform basis for all Participants similarly situated. The Plan Committee will reduce the allocation of any Employer Contribution (including the allocation of Participant forfeitures) based on estimated annual Compensation by any Excess Amounts carried over from prior years. As soon as is administratively feasible after the end of the Limitation Year, the Plan Committee will determine the Combined Plans Limitation on the basis of the Participant's actual Compensation for such Limitation Year.

(D) **Ordering Rules.** If a Participant's Annual Additions under this Plan and the Code §415 Aggregated Plans result in an Excess Amount, such Excess Amount will consist of the Amounts last allocated. The Plan Committee will determine the Amounts last allocated by treating the Annual Additions attributable to a simplified employee pension as allocated first, followed by allocation to a welfare benefit fund or individual medical account, irrespective of the actual allocation date. If the Plan Committee allocates an Excess Amount to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributed to this Plan will equal the product of:

- (1) the total Excess Amount allocated as of such date, multiplied by
- (2) the ratio of (a) the Annual Additions allocated to the Participant as of such date for the Limitation Year under the Plan to (b) the total Annual Additions allocated to the Participant as of such date for the Limitation Year under this Plan and the Code §415 Aggregated Plans.



(E) **Disposition of Allocated Excess Amount Attributable to Plan.** The Plan Committee will dispose of any allocated Excess Amounts described in and attributed to this Plan under Section 4.10(D) as provided in Section 4.11.

4.11 **Disposition of Excess Annual Additions.** If a Participant's Account exceeds the Annual Additions Limit for the Limitation Year, then the Plan will correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Rev. Proc. 2008-50 or any applicable guidance.

4.12 **No Combined DCP/DBP Limitation.** If the Employer maintains a Defined Benefit Plan, or has ever maintained a Defined Benefit Plan which the Employer has terminated, this Plan does not calculate a combined 415 limit based on the Defined Benefit Plan and this Plan.

4.13 **Definitions - ARTICLE 4.** For purposes of Sections 4.9 and 4.13, the following terms shall apply:

(A) **Annual Additions.** Annual Additions means the sum of the following amounts allocated to a Participant's Account for a Limitation Year: (1) Employer contributions (including Participant Salary Reduction Deferral contributions); (2) forfeitures; (3) Employee contributions; (4) amounts allocated to an individual medical account (as defined in Code §415(l)(2)) included as part of a pension or annuity plan maintained by the Employer; (5) contributions paid or accrued attributable to post-retirement medical benefits allocated to the separate account of a key-employee (as defined in Code §419A(d)(3)) under a welfare benefit fund (as defined in Code §419(e)) maintained by the Employer; (6) amounts allocated under a Simplified Employee Pension Plan; and (7) corrected (distributed) Excess Contributions described in Code § 401(k) and corrected (distributed) Excess Aggregate Contributions described in Code § 401(m).

(1) **Exclusions.** Annual Additions do not include: (a) Catch-Up Contributions;

(b) Excess Deferrals which the Plan Committee corrects by distribution by April 15 of the following calendar year; (c) Designated IRA Contributions; (d) Restorative Payments; (e) Transfers to this Plan; (f) Rollover Contributions (as described in Code §§401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (g) Repayments of loans made to a Participant from the Plan; (h) 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; and (i) Employee contributions to a defined benefit plan under Code § 414(h) that are “picked up” by the Employer and are therefore treated as Employer contributions.

(2) **Date of 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.

(B) **Annual Additions Limit.** Annual Additions Limit means the lesser of (i) \$40,000 (or, if greater, the \$40,000 amount as adjusted under Code § 415(d), or (ii) one hundred percent (100%) of the Participant’s Compensation paid or accrued for the Limitation Year. If there is a short Limitation Year because of a change in Limitation Year, the Plan Committee will multiply the \$40,000 limitation (or larger limitation) by the following fraction:

$$\frac{\text{Number of months in the short Limitation Year}}{12}$$

The 100% Compensation referred to in (ii) does not apply to any contribution for medical benefits (within the meaning of Code § 401(h) or Code § 419A(f)(2)) which otherwise is an Annual Addition.

(1) **Certain Contributions Treated as Made to a Defined Contribution Plan.** Solely for purposes of Sections 4.9 through 4.12, the following contributions are treated as contributions to a Defined Contribution Plan: (i) mandatory employee contributions under Code § 411(c)(2)(C) made to a Defined Benefit Plan maintained by the Employer, unless such contributions are “picked up” by the Employer under Code §414(h)(2); (ii) contributions to an individual medical account (as defined in Code §415(1)(2)) included as part of a Defined Benefit Plan or annuity plan under Code §401(h) maintained by the Employer; and (iii) a welfare benefit fund under Code §419(e) maintained by the Employer to the extent there are post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code §419A(d)(3)).

(2) **Change of Limitation Year/Plan Termination.** The Employer may change the Limitation Year only by a Plan amendment. If the Employer terminates the Plan effective as of a date other than the last day of the Limitation Year, then the Plan is treated as if the Plan had been amended to change its Limitation Year.

(C) **Cessation of Affiliation.** 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 Treas. Reg. §§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 Treas. Reg. §§1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

(D) **Code § 415 Aggregated Plans.** Code § 415 Aggregated Plans means 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 and as described under Treas. Reg. § 1.415(f)-1.

(E) **Combined Plans Limitation.** The Combined Plans Limitation means the Annual Additions Limit, reduced by the sum of any Annual Additions allocated to the Participant's accounts for the same Limitation Year under the Code §415 Aggregated Plans.

(F) **Compensation.** Compensation for purposes of Code §415 testing means Compensation as defined in Section 2.6, except: Compensation does not include Employee contributions under Code § 414(h) that are "picked up" by the Employer and are therefore treated as Employer contributions and any other exclusion from Compensation (other than the exclusions described in paragraphs (a) through (c) of Section 2.6) does not apply.

(1) **Differential Wage Payment.** For years beginning after December 31, 2008, the Plan treats a Differential Wage Payment to an Employee as Compensation for purposes of the application the Annual Additions Limit.

(G) **Excess Amount.** Excess Amount means the excess of the Participant's Annual Additions for the Limitation Year over the Annual Additions Limit.

(H) **Formerly Affiliated Plan.** Formerly Affiliated Plan means 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 Treas. Reg. §§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 Treas. Reg. §§1.415(a)-1(f)(1) and (2)).

(I) **Predecessor Employer.** Predecessor Employer means a former 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 employer, but only if that benefit is provided under the plan maintained by the employer. For this purpose, the formerly affiliated plan rules in Treas. Reg. §1.415(f)-1(b)(2) apply as if the Employer and Predecessor Employer constituted a single employer under the rules described in Treas. Reg. §§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 Treas. Reg. §§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. 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.

(J) **Restorative Payment.** A Restorative Payment means 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 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 the Plan made pursuant to 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 are not Restorative Payments and generally constitute contributions that are considered Annual Additions.

**ARTICLE 5**  
**VALUATION AND ALLOCATION OF THE TRUST FUND**

5.1 **Valuation of the Trust Fund.** As of each Valuation Date, the Trustee shall revalue the net assets of the Trust and determine the then current fair market value of such assets. After completing such valuation, the Trustee shall report the fair market value of all Trust assets to the Trust Committee and the Plan Committee.

5.2 **Participants' Accounts.**

(a) **Eligible Employees.** The Plan Committee shall establish for each Eligible Employee under Section 3.1 of this Agreement who elects to participate in accordance with Section 3.2 of this Agreement a separately allocated account, which shall be the Participant's Account, and which shall consist of several sub-accounts:

(1) an Extra Employee Contribution Account, to which all Extra Employee Contributions made by such Participant shall be credited;

(2) a Basic Contribution Account, to which all Basic Contributions made by such Participant shall be credited;

(3) a Salary Reduction Deferral Account, to which all Salary Reduction Deferrals made by the Employer on behalf of such Participant shall be credited; and

(4) an Employer Contribution Account, to which all Matching Employer Contributions made by the Employer on behalf of such Participant shall be credited.

(5) A Rollover Contribution Account to which all rollover contributions made by the Participant shall be credited.

(6) Such other Accounts as the Plan Committee deems necessary to

properly administer the Plan.

(b) **Hourly Employees.** The Plan Committee shall continue to maintain a separately allocated account for each Hourly Employee, which shall be the Participant's Mandatory Contribution Account until such Account is fully distributed.

### 5.3 **Allocation and Adjustment of Participants' Accounts.**

(a) As of each Valuation Date, each Participant's Account shall be adjusted to reflect income received, distributions, adjustments, withdrawals, unrealized market value appreciation or depreciation and expenses charged to the Trust Fund, in the ratio that such Participant's Account bears to the total of all Participants' Accounts; provided that, such adjustments shall be determined separately for funds segregated pursuant to subsection (b) hereof. As of such date, each Participant's sub-accounts, and all portions thereof, shall be likewise adjusted to reflect the above factors in the ratio that such sub-accounts or portions thereof bear to the Participant's Account or sub-account, as the case may be, immediately prior to such adjustments. In making such allocation, contributions and deferrals received and distributions made during the period shall be credited with a proportional share of such allocation based on the assumption that all contributions and deferrals are received and distributions made uniformly throughout the period. To the extent that the Trustee invests in daily (or other periodically) priced and/or "unitized" funds and utilizes a periodically priced record-keeping system, the term "valuation date" shall mean each business day (or other appropriate period) throughout the Plan Year in which such funds are reported and allocated by the Plan record-keeper.

(b) Any Participant may direct the Plan Committee to segregate any part or a stated percentage of his or her Account into a segregated fund in accordance with this subsection (b). The segregated fund shall consist of such investments and investment media designed to preserve



principal and to reduce volatility as shall be elected by the Plan Committee and Trustee. In order to direct the segregation of his or her Account, a Participant must file a written election with the Plan Committee on a form to be supplied by the Plan Committee. In addition to the stated percentage of the Participant's Account to be segregated, the election shall specify a stated percentage of the Participant's future Contributions (e.g., Salary Reduction Deferrals, Basic Contributions, Extra Contributions, Rollover and Matching Employer Contributions) to be segregated pursuant thereto. A Participant shall have the right to so direct the Plan Committee not more than three (3) times prior to the payment of the Participant's entire Account with the earliest such direction not given sooner than the date which is three (3) years prior to the Participant's Normal Retirement Date. The Participant shall be eligible for this option upon stating his or her intent to retire coupled with the ability to actually retire under the Plan's definition of Normal Retirement Age. The Participant shall give any such direction in advance and such segregation shall take effect as soon as administratively practicable following such notice. Once made, an election is irrevocable and shall control the investment of the elected amounts, together with accretions thereon, but shall not govern subsequent contributions to the Participant's Account. Any such election shall include a prorated portion of each of the Participant's subaccounts. The allocation and adjustments listed in subsection (a) above shall be made to the segregated accounts in the ratio that each Participant's Account and subaccounts in the segregated fund bear to the total of all such Participants' Accounts and subaccounts, respectively. Notwithstanding the foregoing, the Plan Committee may in its discretion adopt rules to supplement the foregoing (including, without limitation, the allowance of more than three (3) elections), provided such rules are applied on a uniform and consistent basis.

(c) Notwithstanding the above, the Mandatory Contribution Accounts of any Hourly Employees shall be treated in accordance with subsection (b) above, as if the Participant

elected to segregate his or her entire Account. The Mandatory Contribution Account will remain in the Trust until the Employee terminates. However, in the event an Hourly Employee with a Mandatory Contribution Account becomes an Employee eligible to participate under Section 3.1 without a break in service, the Mandatory Contribution Account need no longer be invested as a segregated account under Subsection (b) above. At the Employer's option the Mandatory Contribution Account may be merged into the Basic Contribution Account to ease administration.

## **ARTICLE 6**

### **WITHDRAWALS FROM A PARTICIPANT'S ACCOUNT**

6.1 **Withdrawal of a Participant's Basic Contributions.** A Participant may elect in writing, on a form prescribed and supplied by the Plan Committee, to withdraw from his or her Basic Contribution Account (after-tax) such amount as he or she may elect, but not more than all of the then current balance of such account.

The Plan Committee shall establish non-discriminatory rules governing the frequency of withdrawals and other administrative details. The Plan Committee may impose a fee for the withdrawal (currently \$100) to be assessed against the Participant's account as further set forth in the Plan Committee Administrative Rules under Article 6.

I 6.2 **Withdrawal of Extra Employee Contributions.** A Participant may elect in writing, on a form prescribed and supplied by the Plan Committee, to withdraw from his or her Extra Employee Contribution Account (after-tax) such amount as he or she may elect, but not more than the then current balance of such account.

The Plan Committee may establish non-discriminatory rules governing the frequency of

withdrawals and other administrative details. The Plan Committee may impose a fee for the withdrawal (currently \$100) to be assessed against the Participant's account as further set forth in the Plan Committee Administrative Rules under Article 6.

## II 6.3 **Hardship Withdrawal.**

ARTICLE 3(a) **Withdrawal of Basic Contributions (After-Tax).** Notwithstanding any other provision of this Article 6, a Participant may, for reasons of Financial Hardship as defined in Sections 6.4(a) and (b), request the withdrawal from his or her Basic Contribution Account (after-tax) of a sum not exceeding the entire balance of such Account.

(b) **Withdrawal of Salary Reduction Deferrals.** Notwithstanding any other provision of this Article 6, a Participant may, for reasons of Financial Hardship as defined in Sections 6.4(a) and (c), request the withdrawal from his or her Pre-Tax Salary Reduction Deferral Account (Basic and/or Extra) of a sum not exceeding the entire balance of such Account. A hardship distribution will not include earnings on Salary Reduction Deferrals credited after December 31, 1988. The Plan has not adopted provisions expanding the sources available for hardship distributions, including earnings on amounts attributable to Salary Reduction Deferrals. QNECs and QMACs are not available for hardship distributions.

(c) **Committee Discretion.** The Plan Committee may, in its sole discretion, approve a request made under subsection (a) or (b) above upon satisfactory evidence of Financial Hardship as provided in Section 6.4.

## IV 6.4 **Financial Hardship.**

ARTICLE 5(a) **General.** The Plan Committee shall establish rules governing the Financial Hardship, and any other facet applicable, in its discretion, to Hardship Withdrawal. In exercising its discretion hereunder, the Plan Committee shall be guided by the following rules:

(1) The distribution must be made on account of the immediate and heavy

financial need of the Participant;

VI (2) The distribution must not exceed the amount necessary to satisfy such immediate and heavy financial need (including any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

I (b) **Basic Contribution Withdrawal (After-Tax).**

II (1) **Immediate and Heavy Financial Need.** For purposes of a withdrawal from a Participant's Basic Contribution Account pursuant to Section 6.3(a), the following is the exclusive list of events which shall be deemed to constitute an immediate and heavy financial need:

(i) Expenses for (or necessary to obtain) medical care that would be deductible under Internal Revenue Code Section 213(d), determined without regard to the limitations in Section 213(a) (relating to the applicable percentage of adjusted gross income and the recipients of the medical care) provided that, if the recipient of the medical care is not listed in Section 213(a), the recipient is a primary beneficiary under the plan (currently those listed include the Participant, the Participant's Spouse, or by any dependents of the Participant);

(ii) Purchase of a principal residence for the Participant, substantial improvement, alteration or reconstruction of the Participant's principal residence, or the need to repay a loan incurred for either of the foregoing purposes, provided that such loan repayment does not include regular mortgage or contact payments except as provided in subsection (iv) below;

(iii) Payment of any educational expense for the Participant, the Participant's Spouse, children or any dependent (as defined in Code Section 152 without regard to Section 152(b)(1), (b)(2) and (d)(1)(B)), or for a primary beneficiary under the plan;

(iv) Payments necessary to prevent the eviction of the Participant

from his or her principal residence or foreclosure of the mortgage on that residence;

(v) Payments for the burial or funeral expenses for the Participant's deceased parent, Spouse, children or dependents (as defined in Code Section 152 without regard to Section 152(d)(1)(B)), or for a deceased primary beneficiary under the plan;

(vi) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty loss deduction under Code § 165 (determined without regard to Section 165(h)(5) and whether the loss exceeds 10% of adjusted gross income);

(vii) Expenses and losses (including loss of income) incurred by the Participant on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 100-707, provided the Participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster; or

(viii) Any need the Revenue Service prescribes in a Revenue Ruling, Notice or other document of general applicability which satisfies the safe-harbor definition of hardship

III (2) **Distribution Necessary to Satisfy Need.** For purposes of a withdrawal from a Participant's Basic Contribution Account pursuant to Section 6.3(a), a distribution will be treated as necessary to satisfy the immediate and heavy financial need of the Participant if the amount of the distribution does not exceed the amount required to satisfy the financial need. In addition, the Participant satisfies the requirements of Section 6.4(c)(2).

(c) **Salary Reduction Deferral Withdrawal.**

IV (1) **Immediate and Heavy Financial Need.** For purposes of a withdrawal from a Participant's Salary Reduction Deferral Account (Basic and/or Extra) pursuant to

Section 6.3(b), the following is the exclusive list of events which shall be deemed to constitute an immediate and heavy financial need:

(i) Expenses for (or necessary to obtain) medical care that would be deductible under Internal Revenue Code Section 213(d) (determined without regard to the limitations in Section 213(a) (relating to the applicable percentage of adjusted gross income and the recipients of the medical care) provided that, if the recipient of the medical care is not listed in Section 213(a), the recipient is a primary beneficiary under the Plan (currently those listed include the Participant, the Participant's Spouse, or by any dependents of the Participant);

(ii) Costs directly related to the purchase of a principal residence for the Participant (excluding mortgage payments);

(iii) Payment of tuition, related educational fees, and room and board expenses, for up to the next 12 months of post-secondary education for the Participant, the Participant's Spouse, children, or dependents (as defined in Code Section 152 without regard to Section 152(b)(1), (b)(2) and (d)(1)(B)), or for a primary beneficiary under the plan;

(iv) Payments necessary to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage on that residence;

(v) Payments for the burial or funeral expenses for the Participant's deceased parent, Spouse, children or dependents (as defined in Code Section 152 without regard to Section 152(d)(1)(B)), or for a deceased primary beneficiary under the plan;

(vi) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty loss deduction under Code § 165 (determined without regard to Section 165(h)(5) and whether the loss exceeds 10% of adjusted gross income);

(vii) Expenses and losses (including loss of income) incurred by the Participant on account of a disaster declared by the Federal Emergency Management Agency

(FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 100-707, provided the Participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster; or

(viii) Any need the Revenue Service prescribes in a Revenue Ruling, Notice or other document of general applicability which satisfies the safe-harbor definition of hardship.

(2) **Distribution Necessary to Satisfy Need.**

(i) **Distribution may not exceed amount of need.** For purposes of a withdrawal from a Participant's Salary Reduction Deferral Account pursuant to Section 6.3(b), a distribution will be treated as necessary to satisfy the immediate and heavy financial need of the Participant if the amount of the distribution does not exceed the amount required to satisfy the financial need (including any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

(ii) **No alternative means reasonably available.** The Plan will not make a hardship withdrawal from a Participant's Salary Reduction Deferral Account pursuant to Section 6.3(b) to a Participant unless each of following requirements are satisfied:

(I) the Participant has obtained all other currently available distributions under the plan and all other plans of deferred compensation, whether qualified or nonqualified, maintained by the Employer;

(II) the Participant provides the Plan Committee a representation in writing (including by an electronic medium as defined in Treas. Reg. §1.401(a)-21(e)(3)), or in such other form as authorized in IRS guidance that he or she has insufficient cash or other liquid assets reasonably available to satisfy the need; and

(III) the Plan Committee does not have actual knowledge that is contrary to the representation.

(iii) Any additional method the Revenue Service prescribes in a Revenue Ruling, Notice or other document of general applicability to demonstrate that a distribution is necessary to satisfy an immediate and heavy financial need.

(d) **Limits.** Except for withdrawals pursuant to Section 6.4(c)(1)(iii), a Participant shall not be granted more than one (1) Hardship Withdrawal pursuant to this Article 6 in any twelve (12) month period; and in no event shall a Participant be granted approval of more than one (1) Hardship Withdrawal relative to purchase of a principal residence, substantial improvement, alteration or reconstruction of a principal residence or the need to repay a loan incurred for either of the foregoing purposes. The Plan Committee may establish non-discriminatory rules governing withdrawals and other administrative details.

(e) **Uniform Treatment.** In determining the existence of an immediate and heavy financial need and whether the distribution is necessary to satisfy such need, the Plan Committee shall act in a uniform and nondiscriminatory manner in accordance with the standards set forth in this Section 6.4.

(f) **Primary Beneficiary Under the Plan.** For purposes of Section 6.4(b) and 6.4(c), a “primary beneficiary under the plan” is an individual who is named as a beneficiary under the plan and has an unconditional right, upon the death of the Participant, to all or a portion of the Participant’s account balance under the plan.

(g) **No Suspension.** The Plan will not suspend the Participant from making Salary Reduction Deferrals or Employee Contributions to this Plan or any other qualified plan, a 403(b) plan, or an eligible governmental plan described in Section 1.457-2(f) as a condition of obtaining a hardship distribution from a Participant’s Salary Reduction Deferral Account.



**6.5 Effect of Withdrawals from a Participant's Account.** A Participant who makes a withdrawal under Section 6.1 shall be entitled to continue as an Active Participant and shall be entitled to continue to make contributions and/or have deferrals made on his or her behalf for the first such withdrawal from the Plan. However, there shall be a fee imposed for the withdrawal as further set forth in the Plan Committee Administrative Rules. For any subsequent withdrawal under Section 6.1, the Participant shall be treated as if he or she had ceased contributions pursuant to Section 4.4 and shall not be allowed to participate for the period specified therein. A Participant who makes a withdrawal under Section 6.2 or 6.3 shall be entitled to continue as an Active Participant and shall be entitled to continue to make contributions and/or have deferrals made on his or her behalf on account of this Plan. The adjusted balance of such Participant's Employer Contribution Account, together with future Matching Employer Contributions on behalf of such Participant, shall continue to vest in accordance with the vesting schedule set forth in Section 11.1 of this Agreement. No adjustment shall be made to a Participant's Employer Contribution Account as a result of any withdrawal under this Article 6. The Plan Committee shall establish rules governing the period of non-participation following a withdrawal of Basic Contributions under Section 6.1 or Extra Contributions under 6.2 and such other matters as the Committee determines necessary to effectuate this Section 6.5.

## 6.6 Participant Loans.

(a) **General.** The Plan Committee may make loans on a nondiscriminatory basis to a Participant or to a Beneficiary in accordance with the loan policy established by the Plan Committee, provided: (1) the loan policy satisfies the requirements of Section 12.5(h); (2) loans are available to all Participants and Beneficiaries on a reasonably equivalent basis; (3) any loan is adequately secured and bears a reasonable rate of interest; (4) the loan provides for repayment within a specified time; (5) the default provisions of the note permit offset of the Participant's vested account balance only at the time when the Participant has a distributable event under the Plan, but without regard to whether the Participant consents to distribution as otherwise may be required under Section 7.3; and (6) the amount of the loan does not exceed (at the time the Plan extends the loan) the present value of the Participant's vested account balance.

(b) **Default on a Loan.** If a Participant defaults on a Plan loan made pursuant to a loan policy adopted by the Plan Committee pursuant to Section 12.5(h), the Plan Committee will treat the default of a loan as a taxable distribution in accordance with Code § 72(p) and regulations thereunder, 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 timing of the reduction (offset) of the Participant's vested account balance will be determined in accordance with this Section 6.8(b) and the Plan's loan policy.

The Plan treats a loan default as a distributable event except when based on the type of account used as collateral for the loan, a separate distribution event such as Severance of Employment would be required to offset the loan at the time of default. To the extent the loan is attributable to the Participant's Accounts that are subject to the Code § 401(k)(2)(B) distributions restrictions (e.g., Pre-Tax 401(k) Salary Reduction Deferral Contributions Account or Roth 401(k) Salary Reduction Deferral Contributions Account), the Trustee will not offset the Participant's

vested account balance prior to the earlier of the date the Participant incurs a Severance from Employment or the date the Participant attains age 59½. The Plan Committee will report the Participant's deemed distribution to the IRS. The Plan Committee, 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 Committee 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.

**Treatment of Loan as Participant-Directed.** The Plan Committee will treat a Plan loan made to a Participant as a Participant-Directed Account, even if the Plan otherwise does not permit a Participant to direct his or her Account investments. Where a loan is treated as a Participant-Directed Account, the borrowing Participant's Account alone shares in any interest paid on the loan, and the Account alone bears any expense or loss it incurs in connection with the loan. The Trustee may retain any principal or interest paid on the borrowing Participant's loan in a Segregated Account on behalf of the borrowing Participant until the Trustee deems it appropriate to add the loan payments to the Participant's Account under the Plan.

**6.7 Withdrawal of a Participant's Rollover Account.** A Participant may elect in writing, on a form prescribed and supplied by the Plan Committee, to withdraw his or her Rollover Account such amount as he or she may elect, but not more than the then current balance of such Account. The Plan Committee may establish non-discriminatory rules governing such withdrawals and administrative matters as it deems necessary to effectuate this Section 6.7.

**6.8 Withdrawal of a Participant's Accounts Prior to Severance of Employment.** A Participant, until he or she retires, has a continuing election to receive all or any portion of his or her accounts (including employer accounts) if he or she has attained age 59½. The Participant shall make this election by filing a written election with the Plan Committee and the Participant shall have

the right to choose any of the optional forms of benefits available under Section 7.2. The Plan Committee may establish non-discriminatory rules governing such withdrawals and administrative matters as it deems necessary to effectuate this Section 6.8.

**ARTICLE 7**  
**TIME AND METHOD OF PAYMENT OF BENEFITS**

7.1 **Time of Distribution.** Unless, pursuant to Section 7.2, the Participant or the Beneficiary elects in writing a different time or method of payment, the Plan Committee will direct the Trustee to commence distribution of a Participant's vested Accounts under Article 5 in accordance with this Section 7.1 upon a Participant's Severance of Employment for any reason.

A distribution date under this Article 7, unless otherwise specified within the Plan, is each day throughout the Plan Year or as soon as administratively practicable following such date.

(a) **Severance of Employment for a Reason Other Than Death.**

(1) **Participant's Vested Account Not Exceeding \$1,000.** If the Participant's Severance of Employment is for any reason other than death and the Participant's vested Account does not exceed \$1,000 (or if the amount set forth in Code Section 401(a)(31)(B) is amended, such new amount), the Plan Committee will direct the Trustee to distribute the Participant's vested Account, without his or her consent, in a lump sum on the first distribution date after the Participant's Severance of Employment or as soon as administratively practicable thereafter.

If a Participant would have received a distribution under the preceding sentence but for the fact that the Participant's vested Account exceeded \$1,000 when the Participant terminated service and if at a later time such Account is reduced such that it is not greater than \$1,000, the Participant will receive a distribution of such Account.

The Plan Committee, in accordance with the timing and other requirements for distributions under Section 7.1(a)(2), will give a distribution notice to a Participant who will receive a distribution under Section 7.1(a)(1) regarding his or her rollover rights and regarding involuntary distribution in

the case of the Participant's failure to timely respond to the notice.

(2) **Participant's Vested Account Exceeds \$1,000.** If the Participant's Severance of Employment is for any reason other than death and the Participant's vested Account exceeds \$1,000, the Plan Committee will direct the Trustee to commence distribution of the Participant's vested Account in a form and at the time elected by the Participant pursuant to Section 7.2.

A Participant eligible to make an election under Section 7.2 may elect to postpone distribution to a later date, subject to the minimum distribution rules. The Plan Committee will reapply the notice and consent requirements of Section 7.3 to any distribution that is postponed under this Section 7.1(a)(2).

In the absence of an election by the Participant, the Plan Committee will treat the Participant as having elected to postpone his or her distribution. At the applicable date, the Plan Committee then will direct the Trustee to distribute the Participant's vested Account in accordance with the minimum distribution rules in Section 8.2 and the applicable method of payment selected by the Participant in Section 7.2.

(3) **Disability.** If the Participant's Severance of Employment is because of his or her Disability, subject to the provisions of Article 9, the Plan Committee will direct the Trustee to pay the Participant's vested Account, at the same time and in the same form as if the Participant had incurred a Severance from Employment without Disability.

(4) **Layoff.** If the Participant's Severance of Employment is because of Layoff, the Plan Committee will direct the Trustee to pay the Participant's vested Account, at the same time and in the same form as if the Participant had incurred a Severance from Employment without a Layoff.

(5) **Determination of Vested Account/Investment in Money Market.** For purposes of determining whether a distribution exceeds \$1,000 (or if the amount set forth in Code Section 401(a)(31)(B) is amended, such new amount) and is \$5,000 or less, the Plan Committee will determine a Participant's vested Account as of the most recent valuation date prior to the distribution date. Notwithstanding the Participant's election to defer, the nonvested portion of such terminating Participant's Employer Contribution Account shall still be forfeited. Furthermore, in determining the value of the Participant's interest in the Plan, such amount shall include any rollover contributions (and earnings thereon) within the meaning of Code § 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16), as applicable. The Plan Committee may elect to invest any amounts deferred under this Section that are \$5,000 or less in accordance with Section 5.3(b).

(6) **Forfeiture.** If a Participant is partially vested in his or her Participant Account, A Participant's election under Section 7.1 to receive a distribution will result in the nonvested portion, if any, being treated as a forfeiture. In addition, notwithstanding a Participant's election to defer distribution under Section 7.1(a)(2), the nonvested portion of such terminating Participant's Employer Contribution Account will still be forfeited.

(b) **Distribution upon Death of the Participant.** The Plan Committee will direct the Trustee, in accordance with this Section 7.1(b) and subject to Section 8.2(D), to distribute to the Participant's Beneficiary the Participant's Account remaining in the Trust at the time of the Participant's death. The Plan Committee will determine the death benefit by reducing the Participant's Account by any security interest the Plan has against that Account by reason of an outstanding Participant loan.

(1) **Deceased Participant's Account Does Not Exceed \$1,000.** The Plan Committee, subject to the requirements of Section 8.2(D), will direct the Trustee to distribute or

commence distribution of the deceased Participant's Account Balance in a single cash sum, as soon as administratively practicable following the Participant's death or, if later, the date on which the Plan Committee receives notification of or otherwise confirms the Participant's death.

(2) **Deceased Participant's Account Exceeds \$1,000.** The Plan Committee, subject to the requirements of Section 8.2(D) or to the Beneficiary's written election (as authorized in this Section 7.1(b)(2)), will direct the Trustee to distribute or commence distribution of the deceased Participant's vested Account at the time and in the form elected by the Participant or, if applicable by the Beneficiary (as permitted under this Article 7). In the absence of an election, subject to the requirements of Section 8.2(D), the Plan Committee will deem the beneficiary to have made an election to defer the distribution and will direct the Trustee to distribute the Participant's vested benefit in accordance with the minimum distribution rules of Section 8.2 or at an earlier election of the Beneficiary.

If the death benefit is payable in full to the Participant's surviving Spouse, the surviving Spouse may elect distribution at any time or in any form (other than a joint and survivor annuity) this Article 7 would permit for a Participant. Upon the beneficiary's written request, the Plan Committee may accelerate payment of all, or any portion, of the Participant's unpaid benefit.

In the event payments are to be made over a period of five (5) years from the date of the Participant's death, the Participant's beneficiary shall have the right to elect to receive the Participant's remaining benefits in a single sum in cash or in monthly, quarterly or annual installments over a period not exceeding five (5) years from the date of the Participant's death. The beneficiary desiring installment payments shall notify the Trustee of such election in writing on a form prescribed and supplied by the Plan Committee.

(c) **Maintenance Fee on Deferred Accounts.** Participants electing to defer distributions



under Articles 7, 8 or 9 may have their accounts assessed a periodic maintenance fee to defray the administrative costs of maintaining their account. The Plan Committee may establish rules governing such matters as it deems necessary to effectuate this Section 7.1(c), including establishing the amount of the periodic maintenance fee and methods of assessing such fee.

7.2 **Forms of Benefit.** At the election of a Participant or Beneficiary, benefits may be paid in any of the following forms:

(a) In a single sum in cash.

(b) In monthly, quarterly or annual installments, as nearly equal as possible.

(c) In the form of a non-forfeitable and nontransferable annuity contract issued by an insurance company of the Participant's choice, authorized to issue such contract in the State of Washington. Such contract may provide for any series of life, period certain, joint and/or joint and contingent survivor payments so long as such term is not greater than the anticipated lives of the Participant and his or her Spouse.

(d) **Withdrawals under Article 6.** The Participant shall continue to be allowed to withdraw from his or her accounts as provided in Article 6.

(e) **Partial Distributions.** The Participant shall be allowed to elect a partial distribution from the accounts as he or she designates. To the extent permitted under Code § 72, he or she may designate the contract from which the Plan Committee should make his or her distribution (the after-tax contributions and earnings contract or all other contributions and earnings contract). He or she may take partial distributions from any of his or her available Plan Accounts under Article 5.

Under an installment distribution, the Participant or Beneficiary, at any time, may elect to accelerate the payment of all, or any portion of, the Participant's unpaid benefits. In addition,

subject to Section 7.5, the Participant or Beneficiary may elect to defer the payment of remaining benefits or reduce the amount of current installments. Such elections to defer or reduce installments will become effective as soon as administratively practicable following such election. Notwithstanding the foregoing, the Plan Committee may in its discretion adopt rules to supplement the foregoing, including placing limitations on the number and frequency of elections to modify installments if such elections are being made too frequently in practice, provided such rules are applied on a uniform and consistent basis. The Plan Committee may establish rules governing such other matters as it deems necessary to effectuate this Section 7.2.

### 7.3 **Notice and Consent.**

(a) **Distribution notice/annuity starting date.** At least 30 days and not more than 180 days prior to the Participant's annuity starting date, the Plan Committee must provide a written notice (or a summary notice as permitted under Treasury Regulations) to a Participant who is eligible to make an election under Section 7.1(a)(2) ("distribution notice"). The distribution notice must explain the optional forms of benefit in the Plan, including the material features and relative values of those options, and the Participant's right to postpone distribution until the applicable date described in Section 7.1(a)(2). The notice will describe the consequences of the Participant's failure to postpone the distribution. Also see Section 16.2(b) for provisions relating to a rollover notice. For all purposes of this Article 7, the term "annuity starting date" means the first day of the first period for which the Plan pays an amount as an annuity or in any other form but in no event is the "annuity starting date" earlier than a Participant's Severance of Employment with the Employer.

(b) **Consent Requirements/Participant Distribution Election.** A Participant must consent, in writing, following receipt of the distribution notice, to any distribution under this Section 7.1, if at the time of the distribution to the Participant, the distribution is not an involuntary

distribution under Section 7.1(a)(1). The Participant may reconsider his or her distribution election at any time prior to the annuity starting date and elect to commence distribution as of any other distribution date permitted under the Plan. A Participant may elect to receive distribution at any administratively practicable time which is earlier than 30 days following the Participant's receipt of the distribution notice, by waiving in writing the balance of the 30 days.

**7.4 Amount of Benefit.** The value of a Participant's or Beneficiary's Account for purposes of determining the amount of his or her Benefits shall be determined as of the Valuation Date immediately preceding the date of the distribution (where accounts are valued daily, this will be the Valuation Date immediately preceding processing of the distribution by the Trustee). The Account of a Participant electing to defer the commencement of benefits under Section 7.1 or electing to receive less than all of his or her Account shall continue to share in the allocation and adjustment of Participant Accounts as set forth in Section 5.3.

**7.5 Distribution Options for Rehired Participant.** A Participant that has terminated employment and is subsequently rehired may stop his or her distributions or continue to receive distributions according to a proper election made as a result of the termination but may not alter his or her election after the Participant has been rehired. However, if the Participant has attained age 59-1/2, until he or she retires, he or she has a continuing election to receive all or a portion of his or her accounts. The Participant shall make this election by filing a written election with the Plan Committee and the Participant shall have the right to choose any of the optional forms of benefits available under Section 7.2. The Plan Committee may establish rules governing such matters as it deems necessary to effectuate this Section 7.5.

**ARTICLE 8**  
**MINIMUM DISTRIBUTION RULES**

**8.1 Maximum Time of Distribution.**

(a) **Required Beginning Date.** Notwithstanding any provision of this Plan, a Participant's benefit payments must commence by the April 1 immediately following the calendar year in which the Participant attains age seventy and one-half (70-1/2), or if later, the April 1 immediately following the calendar year in which the Participant retires.

If any distribution commencement date described under this Plan, either by Plan provision or by Participant election (or nonelection), is later than the Participant's Required Beginning Date, the Plan Committee instead must direct the Trustee to make distribution on the Participant's Required Beginning Date in the amounts necessary to satisfy the rules in Section 8.2. A Participant's Required Beginning Date is the April 1 following the close of the calendar year in which the Participant retires or, if later, the April 1 following the close of the calendar year in which the Participant attains age 70-1/2.

(b) **Required Amount of Distribution.** See Section 8.2.

(c) **Distribution of Annuity Contract.** If a Participant's benefits are paid by distribution of an annuity contract, pursuant to Section 7.2(c), the distribution of such contract must take place by the maximum time specified in Section 8.2 and the contract must provide for a rate of payment which satisfies the rules of Section 8.2 and complies with the requirements of Code Section 401(a)(9) and the applicable Treasury regulations.

**8.2 Minimum Distribution Requirements.**

(A) **General Rules.**

(1) **Precedence.** The requirements of this Section will take precedence over any inconsistent provisions of the Plan.

(2) **Requirements of Treasury Regulations Incorporated.** All distributions required under this Section will be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Internal Revenue Code.

(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 interest will be distributed, or begin to be distributed, no later than as follows:

(a) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary, then, except as provided in Section F, below, distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70-1/2, if later.

(b) If the Participant's surviving Spouse is not the Participant's sole designated Beneficiary, then, except as provided in Section F, below, distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(c) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(d) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this Section (2) other than Section (2)(a), will apply as if the surviving Spouse were the Participant.

For purposes of this Section (B)(2) and Section (D), unless Section (B)(2)(d) applies, distributions are considered to begin on the Participant's required beginning date. If Section (B)(2)(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section (B)(2)(a). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Section (B)(2)(a)), the date distributions are considered to begin is the date distributions actually commence.

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

(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:

(a) the quotient obtained by dividing the Participant's account balance by the

distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2, of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(b) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's Spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401 (a)(9)-9, Q&A-3, of the Treasury regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the distribution calendar year.

(2) **Lifetime Required Minimum Distributions Continue Through Year of Participant's Death.** Required minimum distributions will be determined under this Section (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.**

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

(i) 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.

(ii) 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.

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

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

(2) **Death Before Date Distributions Begin.**

(a) **Participant Survived by Designated Beneficiary.** Except as provided in the Plan, 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 (D)(1).



(b) **No Designated Beneficiary.** If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(c) **Death of Surviving Spouse before Distributions to Surviving Spouse Are Required to Begin.** If the Participant dies before the date distributions begin, the Participant's surviving Spouse is the Participant's sole designated Beneficiary, and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under Section (B)(2)(a), this Section (D)(2) will apply as if the surviving Spouse were the Participant.

(E) **Definitions.**

(1) **Designated Beneficiary.** The individual who is designated as the Beneficiary under Section 3.4 of the Plan and is the Designated Beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-4 of the Treasury regulations.

(2) **Distribution Calendar Year.** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Section (B)(2). 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.** Life expectancy as computed by use of the Single Life Table in Section 1.401 (a)(9)-9, Q&A-1, of the Treasury regulations.

(4) **Participant's Account Balance.** The account balance as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

(5) **Required Beginning Date.** The date specified in Section 8.1 of the Plan.

(F) **Election to Allow Participants or Beneficiaries to Elect 5-Year Rule.** Participants or Beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in Sections (B)(2) and (D)(2) of Section 8.2 of the Plan applies to distributions after the death of a Participant who has a Designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 8.2(B)(2) or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving Spouse's) death. If neither the Participant nor Beneficiary makes an election under this paragraph, distributions will be made in accordance with Sections (B)(2) and (D)(2) of Section 8.2 of the Plan.

**ARTICLE 9**  
**DISABILITY PENSION CONTINUATION BENEFITS**

9.1 **Deferral of Benefits in the Event of Disability.** A Disabled Participant may elect to defer receipt of his or her Participant's Account until his or her Normal Retirement Date. In the event of such election, such Disabled Participant shall be entitled to receive Pension Continuation Benefits in accordance with Section 9.2 of this Agreement.

Participants electing to defer distributions under this Section 9.1 may have their accounts assessed a periodic maintenance fee as set forth in Section 7.1(c)

9.2 **Pension Continuation Benefits.** A Disabled Participant who has elected to defer benefits in accordance with Section 9.1 of this Agreement, shall have allocated to his or her Participant's account an amount equal to one hundred eighty percent (180%) of the Basic Contributions and Salary Reduction Deferrals actually made by or on behalf of such Participant under Section 4.1 in the calendar month immediately preceding the date on which the illness or condition resulting in Disability commenced. However, if a change in pay status, work hours or other similar change occurs in the month of the disability which is unrelated to the disability, then the month in which the disability occurs shall determine the amount of the contribution. Such contributions by the Employer shall commence as of the date of termination of employment and shall continue until the earlier of:

- (a) Such Participant's Normal Retirement Date,
- (b) The date on which such Participant first receives a distribution from his or her Participant's Account subsequent to becoming Disabled, or
- (c) The Employee's ceasing to be Disabled as defined below.

However, for purposes of determining Normal Retirement Date for this Section 9.2, contributions shall continue until the earlier of a Participant's sixty-fifth (65<sup>th</sup>) birthday; or the earliest service retirement date for such Participant under any other retirement benefit program to which contributions for such Participant are made by the Employer where the Participant is entitled to receive full benefits (i.e., not actuarially reduced).

All contributions made pursuant to this Section 9.2 shall be fully vested in the Participant's Account. The limitations of Section 4.9 of this Agreement shall not apply to contributions made pursuant to this Section 9.2. Payments under this Section 9.2 may be provided by any applicable insurance policy.

For purposes of this Section 9.2, disability shall mean, in addition to any requirement under Section 2.8, the inability of any Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

**9.3 Payment at Normal Retirement Date.** Upon reaching his or her Normal Retirement Date, a Disabled Participant who has elected to defer receipt of his or her Participant's Account until his or her Normal Retirement Date pursuant to Section 9.1 of this Agreement shall be entitled to be paid in accordance with Article 7, provided that, any such payment shall be subject to the provisions of Article 8

**9.4 Payment on Earlier Distribution.** If a Disabled Participant, after having elected to defer receipt of his or her Participant's Account pursuant to Section 9.1 of this Agreement, elects to receive a distribution from such Account prior to his or her Normal Retirement Date, he or she shall be paid in accordance with Article 7.

**ARTICLE 10**  
**[RESERVED]**

**ARTICLE 11**  
**VESTING AND FORFEITURES**

11.1 **Vesting Schedule.** Participants shall be one hundred percent (100%) vested immediately on Death, Disability, Layoff or attainment of Normal Retirement Date. The balances in a Participant's Employer Contribution Account shall vest according to the following schedule:

<u>Months of Continuous Participation</u>	<u>Percentage Vested</u>
Less than twelve months .....	0.0%
Twelve months.....	33.33%
For each additional month .....	2.78%
36 or more months .....	100.0%

No Participant shall receive a reduction in the Participant's position on the vesting schedule as a result of the change in the vesting schedule. Participants shall be one hundred percent (100%) vested at all times in their Basic Contribution Accounts, Salary Reduction Deferral Accounts, Extra Contribution Accounts and Mandatory Contribution Accounts.

11.2 **Months of Participation.** For purposes of this Article 11, Months of Participation shall mean each calendar month during which a Participant was an Active Participant as defined in Section 2.1 of this Agreement for at least 15 days. See Section 2.1 regarding Participants that are unable to contribute but remain Active Participants because they have reached the maximum allowable contributions under Section 4.1. See Section 4.4 regarding Inactive Participants. Participants shall also be given credit for months of continuous participation with other employers who are parties to the Municipal Employees Benefit Trust Agreement provided (i) the Employee was an active participant under the terms of such plan as is maintained by the other employer immediately prior to his or her employment with this employer, and (ii) the Employee becomes an

Active Participant hereunder as of the date of employment and makes a full rollover of all his or her permissible benefits from the other employer Plan as soon as practical, or a direct transfer of such amounts is made between the two relevant plans.

11.3 **Disposition of Forfeitures.** Employer Contribution Account balances forfeited pursuant to Article 7 of this Agreement shall be allocated as part of, and in the same manner as, the Employer Contribution pursuant to Section 4.6(b).

11.4 **Rehire.** The Plan takes into account all “Months of Continuous Participation” an Eligible Employee completes with the Employer. As such, any Eligible Employee that is rehired will receive credit for all prior “Months of Continuous Participation.” This credit will apply to all new contributions to the Employer Account. It would not allow the Participant to increase vesting in a prior Employer Account because the nonvested amount, if any, was immediately forfeited at the time of termination. Note, any event which resulted in fully vesting the Participant in his or her prior Employer Account (such as layoff) does not result in adding additional “Months of Continuous Participation.” The rehired Participant will still begin employment with the actual “Months of Continuous Participation” he or she was credited with as a result of prior employment. For example, if a Participant had eighteen “Months of Continuous Participation” (50% vested) at the time of termination due to Layoff (which resulted in 100% vesting) and was later rehired, the Participant begins Participation in new Employer contributions at 50% vesting not 100%. This is effective for employees hired after December 31, 2022.

11.5 **Restoration of Forfeited Account.** No restoration of a prior forfeited Employer Contribution Account upon re-employment is permitted.

11.6 **Unclaimed Account Procedure.** If the Plan Committee is unable to locate any Participant or Beneficiary whose account becomes distributable under the terms of the Plan, the Plan

Committee will apply the provisions of this Section 11.5.

(a) **Attempt to Locate.** The Plan Committee will use one or more of the following methods to attempt to locate a Participant: (1) provide a distribution notice to the Participant at his or her last known address by certified or registered mail; (2) use of a commercial locator service, credit reporting agencies, the internet or other general search method; or (3) use of the Social Security Administration search program; (4) check with the administrator of other employee benefit plans of the Employer that may have more up-to-date information regarding the Participant's whereabouts; or (5) identify and contact the Participant's Beneficiary under Section 3.4. Regarding search methods (4) and (5) above, if the Plan Committee encounters privacy concerns, the Plan Committee may request that the Employer or other plan fiduciary (under (4)), or the Beneficiary (under (5)), contact the Participant or forward a letter requesting that the Participant contact the Plan Committee.

(b) **Failure to Locate.** If a lost Participant remains unlocated for 6 months following the date of the Plan Committee's last attempts to locate the lost Participant using one or more of the methods described in Section 11.5(a), the Plan Committee may forfeit the lost Participant's Account. If the Plan Committee will forfeit the lost Participant's Account, the forfeiture occurs at the end of the above-described 6 month period and the Plan Committee will allocate the forfeiture as part of, and in the same manner as, the Employer Contribution in accordance with Section 11.3. The Plan Committee under this Section 11.6(c) will forfeit the entire Account of the lost Participant, including employee and employer contributions. Pending forfeiture, the Plan Committee may direct the Trustee to segregate the Nonforfeitable Accrued Benefit in a segregated Account and to invest that segregated Account in federally insured interest bearing savings accounts or time deposits (or in a combination of both), or in other fixed income investments.



(c) **Subsequent Restoration of Forfeiture.** If a Participant whose Account was forfeited thereafter at any time but before the Plan has been terminated makes a claim for his or her forfeited Account, the Plan Committee will restore the forfeited Account to the same dollar amount as the amount forfeited, unadjusted for net income, gains or losses occurring subsequent to the forfeiture. The Plan Committee will make the restoration by the end of the calendar quarter following the calendar quarter in which the Participant makes the claim from the unallocated account established pursuant to Section 4.6. If the unallocated account is insufficient to enable the Plan Committee to make the required restoration, the Plan Committee shall continue to allocate amounts from the unallocated account as of each calendar quarter until the entire amount is restored. The Plan Committee will direct the Trustee to distribute the Participant's or Beneficiary's restored Accrued Benefit to him or her not later than 60 days after the close of the calendar quarter in which the Plan Committee restores the forfeited Accrued Benefit.

(d) **Nonexclusivity and Uniformity.** The provisions of Section 11.5 are intended to provide permissible but not exclusive means for the Plan Committee to administer the Accounts of missing Participants. The Plan Committee may utilize any other reasonable method to locate missing Participants and to administer the Account of such Participants, including the default rollover permitted under Revenue Ruling 2000-36 and such other methods as the Internal Revenue Service or the U.S. Department of Labor ("DOL") may in the future specify. The Plan Committee will apply Section 11.5 in a reasonable, uniform and nondiscriminatory manner, but may in determining a specific course of action as to a particular Account, reasonably take into account differing circumstances such as the amount of a Participant's Account, the expense in attempting to locate a Participant, the Plan Committee's ability to establish and the expense of establishing a rollover IRA, and other factors. The Plan Committee may establish rules governing such matters as

it deems necessary to effectuate this Section, including charging the Account of such Participant the reasonable expenses incurred under this Section 11.5 and which are associated with the missing Participant's Account without regard to whether or when the Plan Committee actually locates or makes a distribution to the Participant.

## **ARTICLE 12 ADMINISTRATION**

12.1 **Plan Committee.** The Employer shall appoint a Plan Committee consisting of seven (7) members, one of whom shall be the Finance Director, who shall hold office for a period of three (3) years from the date of appointment. Any member may be re-appointed for additional terms. Upon the expiration of a member's initial three (3) year term, the member will continue to hold office for additional one (1) year terms until a successor is appointed by the Employer. At least five (5) of the seven (7) Committee members must be Participants. Any Committee member may be removed by the Employer upon the recommendation of a majority of the remaining Committee members. Any member of the Committee may resign by notice in writing filed with the Trustee and with the Employer. Any vacancy among the members of the Committee shall be promptly filled by the Employer and shall be for the unexpired term of office, if applicable. Any vacancies unfilled for ninety (90) days shall be filled by majority vote of the remaining members of the Committee.

12.2 **Officers and Duties.** The Chair of the Committee shall be the Finance Director. The Plan Committee shall choose from among its members a Secretary. The Secretary shall keep minutes of the Committee's proceedings and all dates, records, and documents pertaining to the Committee's supervision of the Plan. The Committee shall adopt rules for the conduct of its meetings. The Committee may employ, and suitably compensate, such attorneys, actuaries, physicians, advisory, clerical or other employees as it may deem necessary for the performance of its duties.

12.3 **Decision-Making Procedure.** All actions of the Committee shall be determined by vote of a majority of its members. Either the Chairman or the Secretary may execute any certificate

or other written direction on behalf of the Committee. A member of the Committee shall not vote on any question relating exclusively to himself or herself; in the determination of any such question, the decision of a majority of the remaining members of the Committee shall govern. The members of the Committee shall serve without bond and without compensation for their services as such.

12.4 **Limits of Liability.** No member of the Committee shall be liable for any act or omission of any other member of the Committee, nor for any act or omission on his or her own part, except his or her own willful misconduct. The Employer shall indemnify and save harmless each member of the Committee from any and all liabilities arising out of his or her membership on the Committee, except liabilities arising out of his or her own willful misconduct. The Committee shall make available to Participants and beneficiaries, for examination during reasonable business hours, such records as pertain to the person wishing to examine the same.

12.5 **Powers of Committee.** The Committee shall administer and enforce the Plan in accordance with its terms and shall have all the powers convenient or necessary to accomplish that purpose including, but not limited to, the following powers:

(a) To determine all questions relating to the rights to benefits of Participants or the eligibility of Employees to become Participants;

(b) to certify to the Trustee the fact of Actual Retirement, Death, Disability, termination of Employment or of participation of any Participant;

(c) To interpret, construe and enforce the terms of the Plan and the rules and regulations it adopts, including interpretation of the Plan documents and documents related to the Plan's operation;

(d) to make and publish such rules for the administration of the Plan as are convenient and not inconsistent with the terms of this Agreement and the Trust;

(e) To engage the service of agents whom it may deem advisable to assist it with the performance of its duties;

(f) To review and render decisions respecting a claim (or denial of a claim for) a benefit under the Plan; and

(g) to adopt any amendments to the Plan on behalf of the Employer (without the approval of any other body); provided, such power of adoption is limited to amendments which the Plan Committee determines (1) will facilitate the administration of the Plan, (2) are in the best interests of the Participants and Beneficiaries, or (3) are necessary to maintain the Plan and/or Trust in tax-qualified status under Internal Revenue Code Section 401(a), 501(a), as amended, and any other relevant Internal Revenue Code Section, or conform to any other law, and (4) which do not increase the Employer's contributions under this Plan.

(h) to establish, in its sole discretion, a nondiscriminatory policy which the Trustee must observe in making loans, if any, to Participants and Beneficiaries. If the Plan Committee adopts a loan policy, the loan policy must be a written document and must include: (1) the identity of the person or positions authorized to administer the Participant loan program; (2) a procedure for applying for the loan; (3) the criteria for approving or denying a loan; (4) the limitations, if any, on the types and amounts of loans available; (5) the procedure for determining a reasonable rate of interest; (6) the types of collateral which may secure the loan; and (7) the events constituting default and the steps the Plan will take to preserve plan assets in the event of default. This Section 12.5(h) specifically incorporates a written loan policy as part of the Employer's Plan.

The Plan Committee shall have total and complete discretion to interpret and construe the Plan and to determine all questions arising in the administration, interpretation and application of the Plan. All decisions of the Plan Committee in matters properly coming before it according to the

terms of this Plan, and all actions taken by the Plan Committee in the proper exercise of its administrative powers, duties and responsibilities, will be final and binding upon all Employees, Participants and Beneficiaries and upon any person having or claiming any rights or interest in this Plan unless it can be shown that the decision, action, interpretation or determination was arbitrary and capricious. The Employer and the Plan Committee will make and receive any reports and information and retain any records necessary or appropriate to the administration of this Plan, to the performance of duties hereunder, or to satisfying any requirements imposed by law. In the performance of its duties, the Plan Committee will be entitled to rely on information furnished by an Employee, Participant or Beneficiary or by the Employer or Trustee.

12.6 **Transmittal of Information.** To enable the Committee to perform its functions, the Employer shall supply full and timely information concerning the compensation of Participants, their Actual Retirement, death, disability, termination of employment or of participation, and such other pertinent facts as the Committee may require. The Committee shall advise the Trustee of such facts as may be pertinent to the Trustee's administration of the Trust.

12.7 **Expenses of Administration.** All expenses of administering the Plan and Trust shall be paid out of the Trust Fund, unless otherwise provided for by the Employer. The Employer may, but shall not be obligated to, pay to the Trustee, in addition to the sums contributed by the Employer under Section 4.6 of this Agreement, such sums as the Employer, in its discretion, may determine in order to defray all or a portion of the expenses of administering the Plan and Trust.

The Plan Committee has discretion to determine the method of allocating reasonable Plan expenses that are charged to the Plan as a whole, and to determine which reasonable Plan expense the Plan will charge to an individual Participant's Account. The Plan Committee may adopt a reasonable, uniform and nondiscriminatory policy regarding the allocation of expenses. The Plan

Committee will inform the Trustee of any method of allocating Plan expenses the Plan Committee determines under this Section.

(A) **Plan Expenses Charged to the Plan as a Whole: Pro rata or per Capita Allocations.** If the Plan Committee charges a Plan expense to the Accounts of Participants, the Plan Committee may allocate the Plan expense either on a pro rata basis or on a per capita basis, as the Plan Committee in the exercise of its discretion deems reasonable and nondiscriminatory. The “pro rata” method of allocating an expense means the expense is charged on the basis of assets in the Participant’s Account. The “per capita” method of allocating an expense means the expense is charged equally to each Participant’s Account, without regard to the assets in the Participant’s Account.

(B) **Plan Expenses Charged to an Individual Participant’s Account.** The Plan Committee, except as prohibited by applicable law, may charge a Participant’s Account for any reasonable administrative expenses incurred by the Plan directly related to that Account. The Plan Committee may charge a Participant’s Account for distributions made from that Account to the Participant, to his or her Beneficiary or to an alternate payee, including a disbursement payment for a Participant loan. The Plan Committee may charge a Participant’s Account for the reasonable administrative expenses incurred in connection with a distribution made from that Account, even if the reasonable administrative expenses exceed the Participant’s Account Balance. See Section 11.6 regarding charges attributable to the search of a lost Participant.

(C) **Charges to Former-Employee Participants.** The Plan Committee may charge reasonable Plan administrative expenses to the Account of former-Employee Participants even if the Plan Committee does not charge reasonable Plan administrative expenses to the Accounts of current-Employee Participants. The Plan Committee may charge the Accounts for former-Employee Participants either on a prorate basis or on another reasonable basis.

(D) **Fee Recapture Account.** A Fee Recapture Account is an account designated to receive amounts which a Plan service provider receives in the form of 12b-1 fees, sub-transfer agency fees, shareholder servicing fees or similar amounts (also known as “revenue sharing”), which are received by the service provider from a source other than the Plan and which are in excess of the amount the Plan agrees to pay and/or the service provider agrees to receive in connection with services provided to the Plan, and into which such amounts are deposited. The Plan Committee in its discretion may use a Fee Recapture Account to pay non-settlor Plan Expenses or may treat a Recapture Account, for allocation purposes, as earnings. The Plan Committee will exercise its discretion in a reasonable, uniform and nondiscriminatory manner.

#### 12.8 **Plan Communication, Interpretation and Construction.**

(A) **Plan Committee’s Discretion/Nondiscriminatory Administration.** The Plan Committee has total and complete discretion to interpret and construe the Plan and to determine all questions arising in the administration, interpretation and application of the Plan. Any determination the Plan Committee makes under the Plan is final and binding upon any affected person. The Plan Committee must exercise all of its Plan powers and discretion and perform all of its duties in a uniform and nondiscriminatory manner.

(B) **Written Communications.** All Plan-related communications by any party must be in writing (which subject to Section 12.8(C) may include an electronic communication). All Participant or Beneficiary notices, designations, elections, consents or waivers must be made in a form the Plan Committee (or, as applicable, the Trustee) specifies or otherwise approves. Any person entitled to notice under the Plan may waive the notice or shorten the notice period unless such actions are contrary to applicable law.



(C) **Use of Electronic Media.** The Plan Committee may use an electronic medium to give or receive any Plan notice, communicate any Plan policy, conduct any written Plan communication, satisfy any Plan filing or other compliance requirement and conduct any other Plan transaction to the extent permissible under applicable law. A Participant or a Participant's Spouse, to the extent authorized by the Plan Committee, may use any electronic medium to make or provide any Beneficiary designation, election, notice, consent or waiver under the Plan, to the extent permissible under applicable law. Any reference in this Plan to a "form," a "notice," an "election," a "consent," a "waiver," a "designation," a "policy" or to any other Plan-related communication includes an electronic version thereof as permitted under applicable law.

(D) **Evidence.** Anyone, including the Employer, required to give data, statements or other information relevant under the terms of the Plan ("evidence") may do so by certificate, affidavit, document or other form which the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. The Plan Committee and the Trustee are protected fully in acting and relying upon any evidence described under the immediately preceding sentence.

(E) **Plan Terms Binding.** The Plan is binding upon the Employer, Trustee, Plan Committee, all service providers to the Plan, Participants, Beneficiaries and all other persons entitled to benefits, and upon the successors and assigns of the foregoing persons.

(F) **Construction/Severability.** The Plan, the Trust and all other documents to which they refer, will be interpreted consistent with and to preserve tax qualification of the Plan under Code §401(a) and tax exemption of the Trust under Code §501(a) and also consistent with other applicable law. To the extent permissible under applicable law, any provision which a court (or other entity with binding authority to interpret the Plan) determines to be inconsistent with such construction and

interpretation, is deemed severed and is of no force or effect, and the remaining Plan terms will remain in full force and effect.

**ARTICLE 13**  
**AMENDMENT, TERMINATION AND DISCONTINUANCE OF CONTRIBUTIONS**

13.1 **Right of the Employer.** The Employer shall have the right at any time to reduce, suspend or completely discontinue its contributions hereunder and to terminate or partially terminate this Agreement by delivering to the Trustee written notice of such discontinuance or termination.

Upon complete discontinuance of the Employer's contributions, or full or partial termination of the Trust, all affected Participants' Accounts and rights to benefits shall become fully vested and shall not thereafter be subject to forfeiture except to the extent the law or regulations may preclude such vesting in order to prevent discrimination in favor of officers or highly-compensated Employees. Upon final termination of the Trust, the Employer shall direct the Trustee to distribute all assets remaining in the Trust, after payment of any expenses properly chargeable against the Trust, to the Participants in accordance with the value credited to such Participants as of the date of such termination, in cash or in kind and in such manner as the Trustee shall determine. The Employer may amend provisions of the Plan, provided that no such amendment shall enlarge the duties or liabilities of the Trustee without its consent.

13.2 **Amendments to Qualify Plan.** The Employer may at any time amend the Plan, in the event such amendment is necessary to qualify the Plan for tax exemption notwithstanding that such amendment may have the effect of depriving a Participant or beneficiary of a right or benefit which has accrued.

**ARTICLE 14**  
**MISCELLANEOUS PROVISIONS**

14.1 **Employee Rights.** The Plan shall not confer upon an Employee any right to be continued as such nor give any Participant, or any other person whomsoever, any legal or equitable rights against the Employer or the Trustee, unless the same shall be specifically provided for in this Plan and Trust or conferred by affirmative action of the Employer in accordance with the Plan and Trust.

14.2 **No Alienation.**

(a) Except as provided in subsection (b) and Section 14.3 below, no Participant, former Participant, Disabled Participant or Beneficiary shall have any power to alienate, dispose of, pledge or encumber his or her interest in the Plan and Trust while the same shall be in the possession or control of the Trustee nor shall the Trustee recognize any assignment thereof either in whole or in part, nor shall any such interest be subject to attachment, garnishment, execution following judgment or other legal process while in the hands of the Trustee.

(b) If a Participant, former Participant or Disabled Participant is indebted in any way to the Employer, and such indebtedness has not been paid in full by the time of any distribution of benefits to such person under this Plan, then the Employer shall have the right to direct that payment shall first be made to the Employer in the full amount of such indebtedness and the balance distributed to such person. The Plan Committee shall direct the Trustee to make payments in accordance with this provision. This provision shall take precedence over any other provision of the Plan relating to Plan distributions.

14.3 **Distributions Under Domestic Relations Orders.** Nothing contained in this Plan

prevents the Trustee, in accordance with the direction of the Plan Committee, from complying with the provisions of a qualified domestic relations order (as defined in Code § 414(p)). This Plan specifically permits distribution to an alternate payee under a qualified domestic relations order at any time, irrespective of whether the Participant has attained age fifty (50). A distribution to an alternate payee prior to the Participant's attainment of age fifty (50) is available if the order specifies distribution at that time or permits an election by the alternate payee to authorize an earlier distribution. Payment may be made to the Alternate Payee, in the absence of specific instructions, as though the Participant had terminated employment on the date of the order or the date the order requires payment to begin. Nothing in this Section 14.3 gives a Participant a right to receive distribution at a time otherwise not permitted under the Plan nor does it permit the alternate payee to receive a form of payment not otherwise permitted under the Plan.

The Plan Committee will establish reasonable procedures to determine the qualified status of a domestic relations order. Upon receiving a domestic relations order the Plan Committee will promptly notify the Participant and any alternate payee named in the order, in writing, of the receipt of the order and the Plan's procedures for determining the qualified status of the order. Within a reasonable period of time after receiving a domestic relations order, the Plan Committee will determine the qualified status of the order and will notify the Participant and each alternate payee, in writing, of its determination. The Plan Committee will provide notice under this Section 14.3 by mailing to the individual's address specified in the domestic relations order, or in a manner consistent with Department of Labor regulations applicable to ERISA plans.

If any portion of the Participant's benefits under this Plan are payable during the period the Plan Committee is making its determination of the qualified status of the domestic relations order, the Plan Committee will make a separate accounting of the amounts payable. If the Plan Committee

determines the order is a qualified domestic relations order within 18 months of the date amounts first are payable following receipt of the domestic relations order, the Plan Committee will direct the Trustee to distribute the payable amounts in accordance with the order. If the Plan Committee does not make its determination of the qualified status of the order within the 18 month determination period, the Plan Committee will direct the Trustee to distribute the payable amount in the manner the Plan would distribute if the order did not exist and will apply the order prospectively if the Plan Committee later determines the order is a qualified domestic relations order.

To the extent it is not consistent with the provisions of the qualified domestic relations order, the Plan Committee may direct the Trustee to invest any partitioned amount in a segregated subaccount or separate account and to invest the account in Federally insured, interest-bearing savings account(s) or time deposit(s) (or a combination of both), or in other fixed income investments. A segregated subaccount remains a part of the Trust, but it alone shares in any income it earns and it alone bears any expense or loss it incurs. The Trustee will make any payments or distributions required under this Section 14.3 by separate benefit checks or other separate distribution to the alternate payee(s).

Notwithstanding any other provision in this Plan, the Participant's and/or the Alternate Payee's Account that is the subject of a domestic relations order shall alone bear any expenses in connection with processing the domestic relations order and determination of its qualified status.

#### **14.4 Payments to Alternate Persons; Distribution of Small Accounts.**

(a) If the Trustee deems any person incapable of receiving benefits to which he or she is entitled by reason of minority, illness, infirmity, or other incapacity, he or she may make payment directly for the benefit of such person or to any person selected by the Plan Committee to receive such payment. Such payments shall, to the extent thereof, discharge all liability of the

Trustee, and the Fund.

(b) Any payment to any Participant, retired or disabled Participant or legal representative or beneficiary, in accordance with the provisions of this Agreement, shall to the extent thereof be in full satisfaction of all claims hereunder against the Trustee, the Administrator, the Plan Committee and the Employer, any of whom may require such Participant, retired or disabled Participant, legal representative or beneficiary, as a condition precedent to such payment, to execute a receipt and release therefor in such form as shall be determined by the Trustee, the Plan Committee or the Employer as the case may be.

14.5 **Mergers and Consolidations.** This Plan and Trust may not merge or consolidate with, or transfer its assets or liabilities to, any other plan unless each Participant in the Plan would (if the Plan subsequently terminated) receive a benefit of equal or greater value immediately after the merger or consolidation than the benefit he or she would have received immediately before such merger or consolidation (if the Plan had then terminated).

14.6 **Headings and Subheadings.** The headings and subheadings in this Agreement are inserted for convenience of reference only and are not to be considered in construction of the provisions hereof.

14.7 **Counterparts.** This Agreement has been executed in counterparts each of which shall be deemed an original.

14.8 **Construction.** This Agreement and the Trust to which it is attached shall be construed, administered and governed in all respects by the laws of the State of Washington except to the extent superseded by Federal Law or it would conflict with Federal Law.

14.9 **Direct Transfers.** The Trustee possesses the specific authority to enter into direct transfer of assets agreements with the trustees of other retirement plans described in Code Sec-

tion 401(a) and to accept the direct transfer of plan assets, or to transfer plan assets, as a party to any such agreement.



**ARTICLE 15**  
**BENEFIT APPLICATION AND REVIEW PROCEDURE**

15.1 **Benefit Application.** All applications for Plan benefits shall be sent to the Plan Committee on forms prescribed by it, signed by the Participant, or, if for a death benefit, by the Participant's beneficiary. Such application shall be acted on within thirty (30) days after receipt. If any application is denied in whole or in part, the Plan Committee, within a reasonable time after receipt of the application, (based upon the Plan Committee's customary procedures in processing such claims) shall notify the applicant, advise him or her of his or her right to review, and set forth, in a manner calculated to be understood by the applicant, specific reasons for such denial, specific references to the Plan provisions on which the denial is based, a description of any additional information or material necessary for him or her to perfect his or her application, an explanation of why such material is necessary, and an explanation of the Plan's review procedure.

15.2 **Benefit Denials.** In the event a Participant's application for benefits is denied in whole or in part, he or she or his or her duly authorized representative may appeal such denial to the Plan Committee for a full and fair review thereof by sending to the Plan Committee a written request for review within ninety (90) days after receiving notice of denial. The Plan Committee shall give the applicant an opportunity to review pertinent documents in preparing his or her request for review. The request shall set forth all grounds on which it is based, supporting facts and other matters which the applicant deems pertinent. The Plan Committee may require the applicant to submit such additional facts, documents, or other material as it deems necessary or advisable in making its review and shall act upon such request within sixty (60) days after receipt thereof unless special circumstances require further time. If the Plan Committee confirms the denial in whole or in

part, the Plan Committee shall notify the applicant, setting forth in a manner calculated to be understood by him, specific reasons for denial and specific references to Plan provisions on which the decision was based.

**ARTICLE 16**  
**ROLLOVER DISTRIBUTION**

16.1 **Participant Rollover Contributions.** Any Participant, with the Plan Committee's consent and after filing any form(s) prescribed by the Plan Committee, may make a "Rollover Contribution" to the Trust. A Rollover Contribution means an amount of cash or property (including a participant loan from another plan) which the Code permits an Eligible Employee or Participant to transfer directly or indirectly to this Plan from another Eligible Retirement Plan (or vice versa) within the meaning of Code § 402(c)(8)(B) and Section 16.2(d)(2).

(A) **Policy Regarding Rollover Acceptance.** Before accepting a Rollover Contribution, the Plan Committee may require an Employee to furnish satisfactory evidence that the proposed transfer is in fact a Rollover Contribution which the Code permits an Employee to make to a qualified plan. The Committee in its sole discretion, may decline to accept a Rollover Contribution of property which could: (i) generate unrelated business taxable income; (ii) create difficulty or undue expense in storage, safekeeping or valuation; (iii) create other administrative problems for the Plan or Trust.

The Plan Committee, operationally and on a uniform and nondiscriminatory basis, may limit the source of Rollover Contributions that may be accepted by this Plan. The Plan Committee may adopt, amend or terminate any procedures and rules as it deems necessary or desirable to comply with the requirements and guide its decisions regarding Rollover Contributions it will accept.

The Trustee will invest the Rollover Contribution as part of and in the same manner as the rest of the Trust Fund. As of the Accounting Date (or other valuation date) for each Plan Year, the Plan Committee will allocate and credit the net income (or net loss) from an Employee's Rollover Contributions Account and the increase or decrease in the fair market value of the assets of the

Rollover Contributions Account in the same manner as all other Participant Accounts.

## 16.2 Direct Rollovers.

(A) **Participant Election.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Participant's election under this Article, a Participant may elect, at the time and in the manner prescribed by the Plan Committee, to have any portion of an Eligible Rollover Distribution from the Plan paid directly to an Eligible Retirement Plan specified by the Participant in a Direct Rollover. For purposes of this Section 16.2, a Participant includes as to their respective interests, a Participant's surviving Spouse and the Participant's Spouse or former Spouse who is an alternate payee under a QDRO. A non-Spouse Designated Beneficiary also has rollover rights as described in Section 16.2(e). The Plan Committee may develop procedures as it deems necessary or desirable to comply with the requirements applicable to direct transfers, including any exceptions to the requirements and subsequent changes made by law or Treasury regulations.

(B) **Rollover and Withholding Notice.** At least 30 days but not more than 180 days prior to the Trustee's distribution of an Eligible Rollover Distribution, the Plan Committee must provide a written notice (including a summary notice as permitted under applicable Treasury regulations) explaining to the distributee the rollover option, the applicability of mandatory 20% federal income tax withholding to any amount not directly rolled over, and the recipient's right to roll over the distribution within 60 days after the date of receipt of the distribution ("rollover notice"). If applicable, the rollover notice also must explain the availability of income averaging and the exclusion of net unrealized appreciation. A recipient of an Eligible Rollover Distribution (whether he or she elects a Direct Rollover or elects to receive the distribution), also may elect to receive distribution at any administratively practicable time which is earlier than 30 days following receipt of the rollover notice. The distribution notice must include a description of a Participant's right, if

any, to defer receipt of a distribution and also must describe the consequences of failing to defer receipt of the distribution. The specific notice content must comply with Applicable law.

(C) **Limitation on Employee Contribution and Roth Rollovers.**

(1) **Employee Contributions.** The non-taxable portion of a Participant's Employee Contribution Account only may be transferred by means of a Direct Rollover to a qualified Defined Contribution Plan described in Code §§401(a) or 403(a), or for taxable years beginning after December 31, 2006, to a Code §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. The non-taxable portion of a Participant's Employee Contributions also may be transferred by a Direct Rollover or by a 60-day rollover to an Individual Retirement Plan. For purposes of a rollover of a distribution which includes both Employee Contributions and pre-tax amounts, the Plan Committee will treat the first amounts rolled over as attributable to the pre-tax amounts.

(2) **Roth Deferrals.** Except as otherwise described, the provisions of this Section 16.2(c) apply for taxable years commencing on or after January 1, 2006. A Participant's Roth Deferral Account only may be transferred by means of a Direct Rollover to a qualified defined contribution plan described in Code §401(k), to a Code §403(b) plan that permits Roth deferrals, or, commencing January 1, 2011, to a governmental 457(b) plan which permits Roth deferrals. A Participant also may transfer the taxable portion of his or her Roth Deferral Account by a 60-day rollover to a qualified defined contribution plan under Code §401(k), to a Code §403(b) plan, or commencing January 1, 2011, to a governmental 457(b) plan. A Participant's Roth Deferral Account also may be transferred by a Direct Rollover or by a 60-day rollover to a Roth Individual Retirement Plan.

(D) **Definitions.** The following definitions apply to this Section 16.2:

(1) **Direct Rollover.** A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan the distributee specifies in his or her Direct Rollover election.

(2) **Eligible Retirement Plan.** An Eligible Retirement Plan is an individual retirement account described in Code §408(a), an individual retirement annuity described in Code §408(b), an annuity plan described in Code §403(a), a qualified trust described in Code §401(a), an arrangement described in Code §403(b), an eligible governmental deferred compensation plan described in Code §457(b), or for distributions made after December 31, 2007, a Roth IRA described in Code §408A(b). However, with regard to a Participant's Roth Deferral Account, an Eligible Retirement Plan is a Roth IRA described in Code §408A, a Roth account in another 401(k) plan which permits Roth deferrals, a Roth account in a 403(b) plan which permits Roth deferrals or for distributions made after December 31, 2010, a Roth account in an eligible governmental 457(b) plan which permits Roth deferrals.

(3) **Eligible Rollover Distribution.** An Eligible Rollover Distribution is any distribution of all or any portion of the Participant's Vested Account Balance, except: (a) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's Designated Beneficiary, or for a specified period of ten years or more; (b) any distribution to the extent required under Code § 401(a)(9); (c) the portion of any distribution which is not includible in gross income (except for Roth Deferral Accounts, Employee Contributions and determined without regard to the exclusion of net unrealized appreciation with respect to employer securities); (d) any hardship distribution; (e) a corrective distribution made under Article 4; (f) a deemed distribution resulting from a defaulted Participant loan which is not

also an offset distribution; (g) any other distributions described in Treas. Reg. § 1.402(c)-2; and (h) as to a Direct Rollover, any distribution which otherwise would be an Eligible Rollover Distribution, but where the total distributions to the Participant during that calendar year are reasonably expected to be less than \$200. For purposes of clause (h), a Participant's Roth Deferral Account is deemed to constitute a separate plan that is subject to a separate \$200 limit. The Plan Committee, in a form on which a Participant may elect a Direct Rollover, may restrict a Participant from directly rolling over only a part of an Eligible Rollover Distribution where the distribution amount does not exceed \$500. In the case of such distribution exceeding \$500, the Plan Committee's form may require that any amount the Participant elects to directly roll over be equal to \$500 or a lesser specified amount.

(4) **Individual Retirement Plan (or IRA).** An Individual Retirement Plan (or IRA) is an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b), and, as the context requires, includes a Roth individual retirement account or a Roth individual retirement annuity.

(E) **Non-Spouse Designated Beneficiary Direct Rollover.** For distributions made after December 31, 2006, a non-Spouse Designated Beneficiary (including a trust which qualifies as a Designated Beneficiary), by a Direct Rollover, may roll over an Eligible Rollover Distribution to an Eligible Retirement Plan; provided that for this purpose, an Eligible Retirement Plan is an Individual Retirement Plan that the non-Spouse Designated Beneficiary establishes for purposes of receiving the distribution and which is treated as an inherited IRA under Code §408(d)(3)(C). If a non-Spouse Designated Beneficiary receives a distribution from the Plan, the distribution is not eligible for a 60-day rollover.

(1) **Certain Requirements Not Applicable Before 2010.** Although a non-Spouse Designated Beneficiary may roll over directly a distribution as provided in this Section 16.2(e), 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)).

(2) **Required Minimum Distributions Not Eligible for Rollover.** A non-Spouse Designated Beneficiary may not roll over an amount which is a required minimum distribution. If the Participant dies before his or her required beginning date and the non-Spouse Designated Beneficiary rolls over to an IRA the maximum amount eligible for rollover, the Beneficiary may elect to use either the Life Expectancy rule under Section 8.2(D)(2)(a) or the 5-year rule under Section 8.2(D)(2)(b), in determining the required minimum distributions from the IRA that receives the non-Spouse Beneficiary's Direct Rollover distribution.



**ARTICLE 17**  
**CODE SECTION 401(k) AND CODE SECTION 401(m) ARRANGEMENTS**

17.1 **401(k) Arrangement.** The Employer contribution described in Section 4.1 is a Code § 401(k) arrangement. An Employee who is eligible to participate in the Code § 401(k) arrangement may file a salary reduction agreement with the Plan Committee. The salary reduction agreement may not be effective earlier than the Employee's participation date under Article 3. A salary reduction agreement must specify the amount of Compensation or percentage of Compensation the eligible Employee wishes to defer.

A salary reduction agreement executed by an eligible Employee may not be effective earlier than its execution date, and in no event earlier than the Employee's Plan Entry Date. The salary reduction agreement shall apply only to Compensation (including increases in Compensation) which becomes currently available to the Employee after the effective date of the salary reduction agreement.

17.2 **Definitions.** For purposes of this Article 17, the following definitions apply:

(a) **Allocable Income and Gap Period Allocable Income** means net income or net loss allocable to a corrective distribution. To calculate Allocable Income for the Plan Year, the Plan Committee will use: (i) a uniform and nondiscriminatory method which reasonably reflects the manner used by the Plan to allocate income to Participants' Accounts; or (ii) the "alternative method" under Treas. Reg. ' 1.401(k)-2(b)(2)(iv)(C). To calculate Gap Period Allocable Income, the Plan Committee may use either of the foregoing methods or may apply the "safe harbor method" under Treas. Reg. ' 1.401(k)-2(b)(2)(iv)(D). Under a reasonable method, the Plan Committee may determine the Allocable Income as of a date which is not more than 7 days prior to the date of the

corrective distribution. The Plan Committee will not calculate and distribute Gap Period Allocable Income with respect to Excess Deferrals made in Taxable Years which begin after December 31, 2007.

(b) **Catch-Up Contribution** means Deferral Contributions, by a Participant who is eligible to make Catch-Up Contributions, which exceed: (a) a Plan limit on Salary Reduction Deferrals, under Section 4.1, if any; (b) the Annual Additions Limit, under Section 4.9; or (c) the Code § 402(g) Limit, under Section 17.2. See Section 17.3(C) regarding Catch-Up Contributions.

(c) **Code § 414(s) Compensation** [Reserved.]

(d) **Deferral contributions** means the sum of the Salary Reduction Deferral contributions the Employer contributes at the election of an eligible Employee for the Plan Year, pursuant to Section 4.1 or 4.5.

(e) **Distribution Restrictions** means the Plan will not permit distribution of the Salary Reduction Deferrals (nor earnings on those contributions) except in the event of (1) the Participant's death, disability, severance from employment or attainment of age 59-1/2, (2) financial hardship satisfying the requirements of Code § 401(k) and the applicable Treasury regulations, (3) a plan termination, without establishment of a successor defined contribution plan. A distribution described in clause (3), if made after March 31, 1988, must be a lump sum distribution, as required under Code § 401(k)(10).

(f) **Employee contributions** means contributions made by a Participant on an after-tax basis, whether voluntary or mandatory, and designated, at the time of contribution, as an employee (or nondeductible) contribution. Salary Reduction Deferrals are not Employee contributions. Basic Contributions, Mandatory Contributions and after tax Extra Employee Contributions, made pursuant to Section 4.1, 4.2 and 4.5 of the Plan, are Employee Contributions.

(g) **Matching contributions** means the contributions made by the Employer on account of Basic Contributions or on account of Salary Reduction Deferrals under a Code § 401(k) arrangement. Matching Contributions include participant forfeitures allocated on account of Salary Reduction Deferrals or Basic Contributions.

(h) **Nonelective Contributions** means contributions made by the Employer which are not subject to a deferral election by an Employee and which are not matching contributions.

(i) **Salary Reduction Deferrals** means all Salary Reduction Deferrals which the Employer contributes to the Trust at the election of an Eligible Employee. Salary Reduction Deferrals do not include amounts which have become currently available to the Employee prior to the election nor amounts designated as after-tax Basic Contributions or after tax Extra Employee Contributions at the time of deferral or contribution.

17.3 **Special Rules for Deferral Contributions.** The following rules shall apply for purposes of all Salary Reduction Deferrals to the Plan:

(A) **Annual Salary Reduction Deferral Limitation.** An Employee's Salary Reduction Deferrals for a taxable year may not exceed the Code § 402(g) Limit for such taxable year.

(1) **Definitions.**

(a) **402(g) Limit** means the amount determined by the Secretary of the Treasury under Code § 402(g) and adjusted annually (\$17,500 effective January 1, 2013).

(b) **Excess Deferrals** means the amount of Salary Reduction Deferrals for a taxable year which exceeds the 402(g) Limit.

An Employee's total amount of Salary Reduction Deferrals for a calendar year is the sum of the Salary Reduction Deferral contributions under Section 4.1 and 4.5 which the Participant elects to

have the Employer contribute to the Plan (or to any other plan maintained by the Employer).

(2) **Suspension after Reaching 402(g) Limit.** If the Employer determines the Employee's Salary Reduction Deferrals to the Plan for a taxable year would exceed the 402(g) Limit, the Employer will not make any additional Salary Reduction Deferrals with respect to that Employee for the remainder of that taxable year, and will pay in cash to the Employee any amounts which would result in the Employee's Salary Reduction Deferrals for the taxable year exceeding the 402(g) Limit.

(3) **Correction of Excess Deferral.** If the Plan Committee determines an Employee's Salary Reduction Deferrals already contributed to the Plan for a calendar year exceed the 402(g) Limit, the Plan Committee will distribute the Excess Deferrals, as adjusted for Allocable Income under Section 17.2(a), no later than April 15 of the following calendar year (or if later, the date permitted under Code §§ 7503 or 7508(A) as to Gap Period income. See Section 17.2(a).

(4) **415 Interaction.** If the Plan Committee distributes the Excess Deferrals by the appropriate April 15, the Excess Deferral is not an Annual Addition under Section 4.9, and the Plan Committee may make the distribution irrespective of any other provision under this Plan or under the Code. Salary Reduction deferrals distributed to an Employee as an Excess Amount in accordance with Section 4.9 are not taken into account under the Employee's 402(g) limit.

(5) **More Than One Plan.** If an Employee participates in another plan subject to the 402(g) Limit under which he or she makes Salary Reduction Deferrals pursuant to a Code § 401(k) arrangement, elective deferrals under a SARSEP, elective contributions under a SIMPLE IRA or salary reduction contributions to a tax-sheltered annuity (irrespective of whether the Employer maintains the other plan), the Employee may provide the Plan Committee a written claim for excess deferrals made to the Plan for a calendar year. The Eligible Employee must submit the claim no

later than the March 1 but in any event no later than April 10 following the close of the particular calendar year and the claim must specify the amount of the Employee's Salary Reduction Deferrals under this Plan which are Excess Deferrals. The Plan Committee may require the Participant to provide reasonable evidence of the existence of and the amount of the Participant's Excess Deferrals. If the Plan Committee receives a timely claim which it approves, it will distribute to the Employee the Excess Deferral, as adjusted for Allocable Income, which the Employee has assigned to this Plan in accordance with the distribution procedure described in this Section 17.3.

(B) **Allocable Income.** For purposes of making a distribution of Excess Deferrals pursuant to this Section 17.3, allocable income means net income or net loss allocable to the Excess Deferrals for the calendar year in which the Employee made the Excess Deferral, determined in a manner which is uniform, nondiscriminatory and reasonably reflective of the manner used by the Plan to allocate income to Participant's accounts. See Section 17.2(a).

(C) **Catch-Up Contributions.**

(1) **Eligibility.** A Participant is eligible to make Catch-Up Contributions if he or she is eligible to make Salary Reduction Deferrals and is at least age 50 or will attain age 50 before the end of the taxable year in which he or she will make Catch-Up Contributions. A Participant who dies or who incurs a Separation from Service before actually attaining age 50 or remain employed by the Employer in such taxable year is eligible to make a Catch-Up Contribution.

(2) **Limit on Catch-Up Contributions.** A Participant's Catch-Up Contributions for a taxable year may not exceed the lesser of: (a) 100% of the Participant's Compensation for the taxable year when added to other Deferral Contributions; or (b) the Catch-Up Deferral dollar limit in effect for the taxable year. The Catch-Up dollar limit is \$5,500 for 2013. After the 2013 taxable year, the Catch-Up Deferral dollar limit will be adjusted by the Secretary of the Treasury for cost-of-

living increases under Code § 414(v)(2)(C) in multiples of \$500.

(3) **Treatment of Catch-Up Contributions.** Catch-Up Contributions are not (a) subject to the Annual Addition limitation under Section 4.9 or (b) subject to the 402(g) Limit under Section 17.3. Otherwise, Catch-Up contributions are treated as other Salary Reduction Deferrals.

(4) **Universal Availability.** If the Employer maintains more than one applicable plan within the meaning of Treasury Reg. ' 1.414(v)-1(g)(1), and any of the applicable plans permit Catch-Up Contributions, then any Participant eligible to make Catch-Up Contributions in any such plans must be permitted to have the same effective opportunity to make the same dollar amount of Catch-Up Contributions. Any Plan-imposed limit on total Salary Reduction Deferrals including Catch-Up deferrals may not be less than 75% of a Participant's gross Compensation.

17.4 **Actual Deferral Percentage ("ADP") Test.** [Reserved.] These rules do not apply to governmental plans.

17.5 **Special Rules for Employer Matching Contributions/Employee Contributions.** [Reserved.] These rules do not apply to governmental plans.

17.6 **Multiple Use Limitation.** [Reserved.] These rules do not apply to governmental plans.

17.7 **Time of Payment of Contributions.** The Employer must make Salary Reduction Deferral contributions to the Trust within an administratively reasonable period of time after withholding the corresponding Compensation from the Participant. Furthermore, the Employer must make Salary Reduction Deferral contributions, Employer matching contributions (including qualified Employer matching contributions) and qualified Employer nonelective contributions no later than the time prescribed by the Code or by the applicable Treasury regulations. Salary Reduction Deferral contributions are Employer contributions for all purposes under this Plan, except

to the extent the Code or Treasury regulations prohibit the use of these contributions to satisfy the qualification requirements of the Code.

IN WITNESS WHEREOF, the parties hereto have caused this City of Redmond Employees' Benefit Plan to be executed this 15th day of December, 2022.

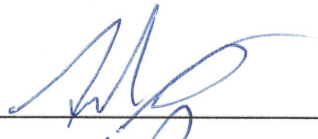
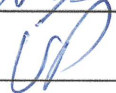
MATRIX TRUST COMPANY

CITY OF REDMOND, WASHINGTON

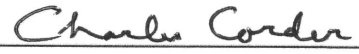
TRUSTEE

EMPLOYER

By:

  
\_\_\_\_\_  
Its:   
\_\_\_\_\_

By:

  
\_\_\_\_\_  
Its: MEBT Plan Chair  
\_\_\_\_\_