

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
APPROVING A MONEY PURCHASE "RETIREMENT" PLAN WITH
INTERNATIONAL CITY MANAGERS ASSOCIATION
("ICMA") FOR CITY EMPLOYEES

RESOLUTION OF THE CITY OF SOLEDAD hereinafter,
("Employer").

WHEREAS, the "Employer" has employees rendering
valuable services; and

WHEREAS, the establishment of a money purchase
retirement plan benefits employees by providing funds for
retirement and funds for their beneficiaries in the event of
death; and

WHEREAS, the "Employer" desires that its money
purchase retirement plan be administered by the ICMA Retirement
Corporation and that the funds held under such plan be invested
in the ICMA Retirement Trust, a trust established by public
employers for the collective investment of funds held under
their retirement and deferred compensation plans:

NOW, THEREFORE, BE IT RESOLVED that the "Employer",
hereby establishes a money purchase retirement plan,
hereinafter, (the "Plan") in the form of:

The ICMA Retirement Corporation Prototype Money Purchase
Plan and Trust, pursuant to the specific provisions of
the Adoption Agreement (executed copy attached hereto).

The "Plan" shall be maintained for the exclusive
benefit of eligible employees and their beneficiaries; and

BE IT FURTHER RESOLVED that the "Employer" here
executes the ICMA Retirement Trust, attached hereto; and

BE IT FURTHER RESOLVED that the "Employer" hereby
agrees to serve as trustee under the "Plan" and to invest all
funds held under the "Plan" in the ICMA Retirement Trust; and

BE IT FURTHER RESOLVED that the CITY MANAGER shall be
the coordinator for the "Plan" and shall receive necessary
reports, notices, etc., from the ICMA Retirement Corporation or
the ICMA Retirement Trust, and shall cast, on behalf of the
"Employer", any required votes under the ICMA Retirement
Trust. Administrative duties relating to the "Plan" may be
further delegated to appropriate departments, and

BE IT FURTHER RESOLVED that the "Employer" hereby

BE IT FURTHER RESOLVED that the "Employer" hereby authorizes the CITY MANAGER to execute all necessary agreements with the ICMA Retirement Corporation incidental to the administration of the "Plan".

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Soledad duly held on the 23rd day of September, 1991 by the following vote:


AYES, and in favor thereof, Councilmembers: Fabian Barrera, Ben Jimenez, Jr., Fred Ledesma, Mayor Pro Tem John Holguin, Mayor Joe Ledesma

NOES, Councilmembers: None

ABSENT, Councilmembers: None


 MAYOR OF THE CITY OF SOLEDAD

ATTEST:


 CITY CLERK OF THE CITY OF SOLEDAD

ICMA RETIREMENT CORPORATION PROTOTYPE MONEY PURCHASE PLAN & TRUST

I PURPOSE

The Employer hereby adopts this Plan and Trust to provide funds for its Employees' retirement, and to provide funds for their Beneficiaries in the event of death. The benefits provided in this Plan shall be paid from the Trust. The Plan and the Trust forming a part hereof are adopted and shall be maintained for the exclusive benefit of eligible Employees and their Beneficiaries. Except as provided in Section 15.03, no part of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

II DEFINITIONS

- 2.01 **Account.** A separate record which shall be established and maintained under the Trust for each Participant, and which shall include all Participant subaccounts created pursuant to Article IV, plus any Participant Loan Account created pursuant to Section 14.03. Each subaccount created pursuant to Article IV shall include any earnings of the Trust and adjustments for withdrawals, and realized and unrealized gains and losses allocable thereto. The term "Account" may also refer to any of such separate subaccounts.
- 2.02 **Accounting Date.** The last working day of each calendar month.
- 2.03 **Adoption Agreement.** The separate agreement executed by the Employer and the Prototype Sponsor through which the Employer which adopts the Plan and elects among the various alternatives provided thereunder, and which upon execution, becomes an integral part of the Plan.
- 2.04 **Beneficiary.** The person or persons designated by the Participant who, subject to the requirements of Article XIII, shall receive any benefits payable hereunder in the event of the Participant's death. The designation of such Beneficiary shall be in writing to the Plan Administrator. A Participant may designate primary and contingent Beneficiaries. Where no designated Beneficiary survives the Participant, the Participant's Beneficiary shall be his/her surviving spouse or, if none, his/her estate.
- 2.05 **Break in Service.** A Period of Severance of at least twelve (12) consecutive months.

In the case of an individual who is absent from work for maternity or paternity reasons, the twelve (12) consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Break in Service. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of the birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.

- 2.06 **Code.** The Internal Revenue Code of 1986, as amended from time to time.

2.07 Covered Employment Classification. The group or groups of Employees eligible to make and/or have contributions to this Plan made on their behalf, as specified by the Employer in the Adoption Agreement.

2.08 Disability. A physical or mental impairment which in the opinion of the Plan Administrator is of such permanence and degree that a Participant is unable because of such impairment to perform any gainful activity for which he/she is suited by virtue of his/her experience, training, or education. The permanence and degree of such impairment shall be supported by medical evidence.

2.09 Earnings. Earnings, which form the basis for computing Employer contributions, are all of each Participant's W-2 earnings which are actually paid to the Participant during the Plan Year, plus any contributions made pursuant to a salary reduction agreement which are not includible in the gross income of the Employee under section 125, 402(a)(8), 402(h), 403(b), or 457(b) of the Code. Unless the Employer elects otherwise in the Adoption Agreement, Earnings shall exclude overtime compensation and bonuses.

Notwithstanding the foregoing, effective as of the first Plan Year beginning on or after January 1, 1989, the annual Earnings of each Participant taken into account under the Plan for any year shall not exceed \$200,000, or such greater amount as may be prescribed by the Secretary of the Treasury at the same time and in the same manner as under section 415(d) of the Code. In determining the Earnings of a Participant for purposes of this limitation, the rules of section 414(q)(6) of the Code shall apply, except in applying such rules, the term "family" shall include only the spouse of the Participant and any lineal descendants of the Participant who have not attained age nineteen (19) before the close of the year. If as a result of the application of such rules the adjusted \$200,000 limitation is exceeded, then the limitation shall be prorated among the affected individuals in proportion to each such individual's Earnings as determined under this Section prior to the application of this limitation.

2.10 Effective Date. The first day of the Plan Year during which the Employer adopts the Plan, unless the Employer elects in the Adoption Agreement an alternate date as the Effective Date of the Plan.

2.11 Employee. Any individual who performs services for the Employer or for any other employer required to be aggregated with the Employer under sections 414(b), (c), (m), or (o) of the Code, excluding independent contractors. Notwithstanding the foregoing, however, no individual who is a "self-employed individual" within the meaning of section 401(c)(1)(B) of the Code, or an "owner-employee" within the meaning of section 401(c)(3) of the Code shall be an Employee hereunder. A leased employee shall be an Employee in accordance with the provisions of Section 17.12.

2.12 Employer. The unit of state or local government or an agency or instrumentality of one (1) or more states or local governments that executes the Adoption Agreement.

2.13 Highly Compensated Employee. Any highly compensated active Employee or highly compensated former Employee.

A highly compensated active Employee includes any Employee who performs service for the Employer during the determination year and who during the look-back year: (i) received compensation from the Employer in excess of \$75,000 (as adjusted pursuant to section 415(d) of the Code), (ii) received compensation from the Employer in excess of \$50,000 (as adjusted pursuant to section 415(d) of the Code) and was a member of the top paid group for such year; or (iii) was an officer of the Employer and received compensation during such year that is greater than fifty percent (50%) of the dollar limitation in effect under section 415(b)(1)(A) of the Code. The term "Highly Compensated Employee" also includes (i) any Employee who is both described in the preceding sentence if the term "determination year" is substituted for the term "look-back year" and one (1) of the one hundred (100) Employees who received the most compensation from the Employer during the Plan Year; and (ii) any Employee who is a five percent (5%) owner at any time during the look-back year or determination year.

If no officer has satisfied the compensation requirement of (iii) above during either a determination year or a look-back year, the highest paid officer for such year shall be treated as a Highly Compensated Employee.

For the purposes of determining who is a "Highly Compensated Employee," the "determination year" shall be the Plan Year, and the "look-back year" shall be the twelve (12) month period immediately preceding the determination year

A highly compensated former Employee includes any Employee who separated from service (or was deemed to have separated) prior to the determination year, performs no service for the Employer during the determination year, and was a highly compensated active Employee for either the separation year or any determination year ending on or after the Employee's fifty-fifth (55th) birthday

If an Employee is, during a determination year or look-back year, a family member of either a five percent (5%) owner who is an active or former Employee or a Highly Compensated Employee who is one (1) of the ten (10) most Highly Compensated Employees ranked on the basis of compensation paid by the Employer during such year, then the family member and the five percent (5%) owner or top ten (10) Highly Compensated Employee shall be aggregated. In such case, the family member and five percent (5%) owner or top ten (10) Highly Compensated Employee shall be treated as a single Employee receiving compensation and Plan contributions or benefits equal to the sum of such compensation and contributions or benefits of the family member and five percent (5%) owner or top ten (10) Highly Compensated Employee. For purposes of this Section, family member includes the spouse, lineal ascendants and descendants of the Employee or former Employee and the spouses of such lineal ascendants and descendants

The determination of who is a Highly Compensated Employee, including the determinations of the number and identity of Employees in the top-paid group (the top one hundred (100) Employees) the number of Employees treated as officers and the compensation that is considered will be made in accordance with section 414(q) of the Code and the regulations thereunder

- 2.14 Hour of Service. Each hour for which an Employee is paid or entitled to payment for the performance of duties for the Employer
- 2.15 Non-highly Compensated Employee. Any Employee who is not a Highly Compensated Employee
- 2.16 Nonforfeitable Interest. The interest of the Participant or his/her Beneficiary (whichever is applicable) is that percentage of his/her Employer Contribution Account balance which has vested pursuant to Article VIII. A Participant shall, at all times, have a one hundred percent (100%) Nonforfeitable Interest in his/her Participant Contribution, Portable Benefits, and Voluntary Contribution Accounts.
- 2.17 Normal Retirement Age. The age which the Employer specifies in the Adoption Agreement, provided, however, this age may not exceed age 65 or any mandatory retirement age enforced by the Employer
- 2.18 Participant. An Employee or former Employee for whom contributions have been made under the Plan and who has not yet received all of the payments of benefits to which he/she is entitled under the Plan
- 2.19 Period of Service. For purposes of determining an Employee's initial or continued eligibility to participate in the Plan or the Nonforfeitable Interest in the Participant's Account balance derived from Employer contributions, an Employee will receive credit for the aggregate of all time period(s) commencing with the Employee's first day of employment or reemployment and ending on the date a Break in Service begins. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee will also receive credit for any Period of Severance of less than twelve (12) consecutive months. Fractional periods of a year will be expressed in terms of days

If the Employer is a member of an affiliated service group (under section 414(m) of the Code), a controlled group of corporations (under section 414(b) of the Code), or a group of trades or businesses under common control (under section 414(c) of the Code), or any other entity required to be aggregated with the Employer pursuant to section 414(o) of the Code and the regulations thereunder, service will be credited for any employment for any period of time for any other member of such group. Service will also be credited for

any individual required under section 414(n) of the Code or 414(o) of the Code and the regulations thereunder to be considered an Employee of any Employer aggregated under section 414(b), (c), or (m) of the Code.

Notwithstanding anything to the contrary herein, if the Plan is an amendment and restatement of a plan that previously calculated service under the hours of service method, service shall be credited in a manner that is at least as generous as that provided under Treas. Regs. section 1.410(a)-7(g)

- 2.20 **Period of Severance.** A continuous period of time during which the Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits, or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.
- 2.21 **Plan.** This Prototype Plan, as established by the Employer, including any elected provisions pursuant to the Adoption Agreement.
- 2.22 **Plan Administrator.** The Prototype Sponsor or any successor Plan Administrator.
- 2.23 **Plan Year.** The twelve (12) consecutive month period designated by the Employer in the Adoption Agreement.
- 2.24 **Prototype Plan.** The ICMA Retirement Corporation Prototype Money Purchase Plan.
- 2.25 **Prototype Sponsor.** The ICMA Retirement Corporation.
- 2.26 **Trust.** The Trust created under Article VII of the Plan which shall consist of all of the assets of the Plan derived from Employer and Participant contributions under the Plan, plus any income and gains thereon, less any losses, expenses, and distributions to Participants and Beneficiaries.

III ELIGIBILITY

- 3.01 **Service.** Except as provided in Sections 3.02 and 3.03 of the Plan, an Employee within the Covered Employment Classification who has completed a twelve (12) month Period of Service shall be eligible to participate in the Plan at the beginning of the payroll period next commencing thereafter. The Employer may elect in the Adoption Agreement to waive or reduce the twelve (12) month Period of Service.
- 3.02 **Age.** The Employer may designate a minimum age requirement, not to exceed age twenty-one (21), for participation. Such age, if any, shall be declared in the Adoption Agreement.
- 3.03 **Return to Covered Employment Classification.** In the event a Participant is no longer a member of Covered Employment Classification and becomes ineligible to make contributions and/or have contributions made on his/her behalf, such Employee will become eligible for contributions immediately upon returning to a Covered Employment Classification. In the event an Employee who is not a member of a Covered Employment Classification becomes a member, such Employee will be eligible to participate immediately if such Employee has satisfied the minimum age and service requirements and would have otherwise previously become a Participant.
- 3.04 **Service Before a Break in Service.** All Periods of Service with the Employer are counted toward eligibility, including Periods of Service before a Break in Service.

IV CONTRIBUTIONS

- 4.01 **Employer Contributions.** For each Plan Year, the Employer will contribute to the Trust an amount as

specified in the Adoption Agreement. The Employer's full contribution for any Plan Year shall be due and paid not later than thirty (30) working days after the close of the Plan Year. Each Participant will share in Employer contributions for the period beginning on the date the Participant commences participation under the Plan and ending on the date on which such Employee severs employment with the Employer or is no longer a member of a Covered Employment Classification, and such contributions shall be accounted for separately in his/her Employer Contribution Account. Notwithstanding anything to the contrary herein, if so elected by the Employer in the Adoption Agreement, an Employee shall be required to make contributions as provided pursuant to Section 4.03 or 4.04 in order to be eligible for Employer contributions to be made on his/her behalf to the Plan.

- 4.02 Forfeitures. All amounts forfeited by terminated Participants, pursuant to Section 8.06, shall be placed in a suspense account and used to reduce dollar for dollar Employer contributions otherwise required under the Plan for the next succeeding Plan Year and succeeding Plan Years, if necessary.
- 4.03 Mandatory Participant Contributions. If the Employer so elects in the Adoption Agreement, each eligible Employee shall make contributions at a prescribed rate as a requirement for his/her participation in the Plan. Once such an eligible Employee becomes a Participant hereunder, he/she shall not thereafter have the right to discontinue or vary the rate of such Mandatory Participant Contributions. Such contributions shall be accounted for separately in the Participant Contribution Account.
- 4.04 Matched Participant Contributions. If the Employer so elects in the Adoption Agreement, Employer contributions shall be made on behalf of an eligible Employee for a Plan Year only if the Employee agrees to make Matched Participant Contributions for that Plan Year. The rate of Employer contributions shall to the extent specified in the Adoption Agreement, be based upon the rate at which Matched Participant Contributions are made for that Plan Year. Matched Participant Contributions shall be accounted for separately in the Participant Contribution Account.
- 4.05 Voluntary Participant Contributions. If the Employer so elects in the Adoption Agreement, an eligible Employee may make voluntary (unmatched) contributions under the Plan for any Plan Year in any amount up to ten percent (10%) of his/her Earnings for such Plan Year. Such contributions shall be accounted for separately in the Participant's Voluntary Contribution Account. Such Account shall be at all times nonforfeitable by the Participant. Notwithstanding the foregoing, no Participant shall be allowed to make Voluntary Participant Contributions under this Plan if he/she is covered under another qualified plan maintained by the Employer which allows voluntary contributions thereunder.
- 4.06 Changes in Participant Election. A Participant may elect to change his/her rate of Matched Participant Contributions or Voluntary Participant Contributions, provided that no less than one (1) such change shall be allowed during any Plan Year. A Participant may discontinue such contributions at any time, provided that he/she may not resume such contributions for six (6) calendar months.
- 4.07 Portability of Benefits. An Employee within the Covered Employment Classification, whether or not he/she has satisfied the minimum age and service requirements of Article III, may transfer (rollover) his/her interest in a plan qualified under section 401(a) or 403(a) of the Code to this Plan, provided.
- (a) The distribution is on account of termination or discontinuance of the plan or the distribution represents a lump sum distribution which becomes payable on account of the Employee's separation from service, death, disability or after the Employee attains age fifty-nine and one-half (59-1/2),
 - (b) The amount distributed from the plan is transferred to this Plan no later than the sixtieth (60th) day after distribution was made from the plan,
 - (c) The distribution constituted the Employee's entire interest in the plan and was distributed within one (1) taxable year to the Employee and

- (d) In the case of a rollover, the amount transferred to this Plan does not exceed the amount of the distribution reduced by the Employee contributions (if any) to the plan (other than accumulated deductible voluntary contributions)

Such transfer (rollover) may also be through an Individual Retirement Plan qualified under section 408 of the Code where the Individual Retirement Plan was used as a conduit from the prior plan and the transfer is made in accordance with the rules provided at (a) through (d) of this paragraph and the transfer does not include any personal contributions or earnings thereon the Participant may have made to the Individual Retirement Plan

The amount transferred shall be deposited in the Trust and shall be credited to a Portable Benefits Account. Such Account shall be one hundred percent (100%) vested in the Employee.

V SPECIAL LIMITATIONS ON EMPLOYEE CONTRIBUTIONS AND MATCHING CONTRIBUTIONS

- 5 01 Applicability The special limitations of this Article are applicable only to Employee contributions and Matching Contributions that are subject to the special limitation of section 401(m) of the Code.
- 5 02 Limitations on Employee Contributions and Employer Matching Contributions.
- (a) The Average Contribution Percentage (hereinafter "ACP") for Participants who are Highly Compensated Employees for each Plan Year and the ACP for Participants who are Non-highly Compensated Employees for the same Plan Year must satisfy one (1) of the following tests
- (1) The ACP for Participants who are Highly Compensated Employees for the Plan Year shall not exceed the ACP for Participants who are Non-highly Compensated Employees for the same Plan Year multiplied by 1.25, or
 - (2) The ACP for Participants who are Highly Compensated Employees for the Plan Year shall not exceed the ACP for Participants who are Non-highly Compensated Employees for the same Plan Year multiplied by two (2), provided that the ACP for Participants who are Highly Compensated Employees does not exceed the ACP for Participants who are Non-highly Compensated Employees by more than two (2) percentage points.
- (b) Special Rules.
- (i) Multiple Use If one (1) or more Highly Compensated Employees participate in both a CODA and a plan subject to the ACP test maintained by the Employer, and the sum of the actual deferral percentage under the CODA ("ADP") and ACP of those Highly Compensated Employees subject to either or both tests exceeds the Aggregate Limit, then the ACP of those Highly Compensated Employees who also participate in a CODA will be reduced (beginning with such Highly Compensated Employee whose ACP is the highest) so that the limit is not exceeded. The amount by which each Highly Compensated Employee's Contribution Percentage Amounts is reduced shall be treated as an Excess Aggregate Contribution. The ADP and ACP of the Highly Compensated Employees are determined after any corrections required to meet the ADP and ACP tests. Multiple use does not occur if both the ADP and ACP of the Highly Compensated Employees does not exceed 1.25 multiplied by the ADP and ACP of the Non-highly Compensated Employees.
 - (2) For purposes of this Section, the Contribution Percentage for any Participant who is a Highly Compensated Employee and who is eligible to have Contribution Percentage

Amounts allocated to his/her account under two (2) or more plans described in section 401(a) of the Code, or arrangements described in section 401(k) of the Code that are maintained by the Employer, shall be determined as if the total of such Contribution Percentage Amounts was made under each plan. If a Highly Compensated Employee participates in two (2) or more cash or deferred arrangements that have different plan years, all cash or deferred arrangements ending with or within the same calendar year shall be treated as a single arrangement.

- (3) In the event that this Plan satisfies the requirements of sections 401(m), 401(a)(4) or 410(b) of the Code only if aggregated with one (1) or more other plans, or if one (1) or more other plans satisfy the requirements of such sections of the Code only if aggregated with this Plan, then this Section shall be applied by determining the Contribution Percentage of Employees as if all such plans were a single plan. For plan years beginning after December 31, 1989, plans may be aggregated in order to satisfy section 401(m) of the Code only if they have the same plan year.
- (4) For purposes of determining the Contribution Percentage of a Participant who is a five percent (5%) owner or one (1) of the ten (10) most highly paid Highly Compensated Employees, the Contribution Percentage Amounts and Earnings of such Participant shall include the Contribution Percentage Amounts and Earnings for the Plan Year of family members (as defined in section 414(q)(6) of the Code). Family members, with respect to Highly Compensated Employees, shall be disregarded as separate Employees in determining the Contribution Percentage both for Participants who are Non-highly Compensated Employees and for Participants who are Highly Compensated Employees.
- (5) For purposes of applying the ACP test, Employee Contributions are considered to have been made in the Plan Year in which contributed to the Trust. Matching Contributions will be considered made for a Plan Year if made no later than the end of the twelve (12) month period beginning on the day after the close of the Plan Year.
- (6) The Employer shall maintain records sufficient to demonstrate satisfaction of the ACP test.
- (7) The determination and treatment of the Contribution Percentage of any Participant shall satisfy such other requirements as may be prescribed by the Secretary of the Treasury.

5 03 Avoidance of Excess Aggregate Contributions. In the event that the Employer determines that the Plan may be unable to meet the ACP test, and notwithstanding anything to the contrary herein, the Employer may reject any Participant election under Article IV or reduce the amount of contributions elected, even if such election has already become effective, to assure that contributions on behalf of Highly Compensated Employees meet the limitations of such test. Any rejections of elections and any reduction of amounts elected shall be made by the Employer on a reasonable and nondiscriminatory basis.

5 04 Correction of Excess Aggregate Contributions.

- (a) General Rule. In the event that the Plan does not meet the ACP test, and notwithstanding any other provisions of the Plan, Excess Aggregate Contributions, plus any income and minus any loss allocable thereto, shall be forfeited, if forfeitable or if not forfeitable, distributed no later than the last day of each Plan Year to Participants to whose Accounts such Excess Aggregate Contributions were allocated for the preceding Plan Year. Excess Aggregate Contributions shall be allocated to Participants who are subject to the family member aggregation rules of section 414(q)(6) of the Code in the manner prescribed by the regulations. If such Excess Aggregate Contributions are distributed more than two and one-half (2-1/2) months after the last day of the Plan Year in which such excess amounts arose, a ten percent (10%) excise tax will be imposed.

on the Employer maintaining the Plan with respect to those amounts. Excess Aggregate Contributions shall be treated as Annual Additions, as defined under Section 6 05

- (b) **Determination of Allocable Income or Loss.** Excess Aggregate Contributions shall be adjusted for any income or loss up to the date of distribution. The income or loss allocable to Excess Aggregate Contributions is the sum of: (1) income or loss allocable to the Participant's Employee Contribution Account, Employer Contribution Account (if the Employer Contributions are Matching Contributions) for the Plan Year multiplied by a fraction, the numerator of which is such Participant's Excess Aggregate Contributions for the year and the denominator is the Participant's Account balance(s) attributable to Contribution Percentage Amounts without regard to any income or loss occurring during such Plan Year; and (2) ten percent (10%) of the amount determined under (1) multiplied by the number of whole calendar months between the end of the Plan Year and the date of distribution, counting the month of distribution if distribution occurs after the fifteenth (15th) of such month.
- (c) **Forfeiture or Distribution of Excess Aggregate Contributions.** Excess Aggregate Contributions shall be forfeited, if forfeitable, or distributed on a pro-rata basis from the Participant's Employee Contribution Account, Employer Contribution Account (if Employer contributions are Matching Contributions). Forfeitures of Excess Aggregate Contributions will be applied to reduce Employer contributions.

5 05 **Definitions.** For the purposes of this Article, the following definitions shall apply:

- (a) **Aggregate Limit.** The sum of (i) 125 percent of the greater of the ADP of the Non highly Compensated Employees under the CODA for the Plan Year or the ACP of Non-highly Compensated Employees under the Plan subject to Code section 401(m) for the Plan Year beginning with or within the Plan Year of the CODA and (ii) the lesser of 200% or two (2) plus the lesser of such ADP or ACP.
- (b) **Average Contribution Percentage.** The average of the Contribution Percentages of the Eligible Participants in a group.
- (c) **CODA.** A cash or deferred arrangement pursuant to section 401(k) of the Code.
- (d) **Contribution Percentage.** The ratio (expressed as a percentage) of the Participant's Contribution Percentage Amounts to the Participant's Earnings for the Plan Year (whether or not the Employee was a Participant for the entire Plan Year).
- (e) **Contribution Percentage Amounts.** The sum of the Employee contributions and Matching Contributions made under the Plan on behalf of the Participant for the Plan Year. Such Contribution Percentage Amounts shall include forfeitures of Excess Aggregate Contributions allocated to the Participant's Account which shall be taken into account in the year in which such forfeiture is allocated.
- (f) **Eligible Participant.** Any Employee who is eligible to make an Employee contribution or to receive a Matching Contribution (including forfeitures). If an Employee contribution is required as a condition of participation in the Plan, any Employee who would be a Participant in the Plan if such Employee made such a contribution shall be treated as an Eligible Participant on behalf of whom no Employee contributions are made.
- (g) **Employee Contribution.** Any contribution made to the Plan by or on behalf of a Participant that is included in the Participant's gross income in the year in which made and that is maintained under a separate account to which earnings and losses are allocated.
- (h) **Excess Aggregate Contributions.** With respect to any Plan Year, the excess of:

- (1) The Aggregate Contribution Percentage Amounts taken into account in computing the numerator of the Contribution Percentage actually made on behalf of Highly Compensated Employees for such Plan Year, over
 - (2) The maximum Contribution Percentage Amounts permitted by the ACP test (determined by reducing contributions made on behalf of Highly Compensated Employees in order of their Contribution Percentages beginning with the highest of such percentages)
- (i) Matching Contribution. An Employer Contribution made to this or any other defined contribution plan on behalf of a Participant on account of an Employee contribution made by such Participant, or on account of a Participant's elective deferral, under a plan maintained by the Employer

VI LIMITATION ON ALLOCATIONS

6.01 Participants Only in This Plan

- (a) If the Participant does not participate in and has never participated in another qualified plan or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer or an individual medical account, as defined by section 415(l)(2) of the Code maintained by the Employer, which provides an Annual Addition the amount of Annual Additions which may be credited to the Participant's Account for any Limitation Year will not exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan. If the Employer contribution that would otherwise be contributed or allocated to the Participant's Account would cause the Annual Additions for the Limitation Year to exceed the Maximum Permissible Amount the amount contributed or allocated will be reduced so that the Annual Additions for the Limitation Year will equal the Maximum Permissible Amount.
- (b) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant on the basis of a reasonable estimation of the Participant's Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.
- (c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.
- (d) If, pursuant to Subsection (c) or as a result of the allocation of forfeitures, there is an Excess Amount the excess will be disposed of as follows.
 - (1) Any Voluntary Participant Contributions to the extent they would reduce the Excess Amount, will be returned to the Participant,
 - (2) If after the application of paragraph (1) an Excess Amount still exists, and the Participant is covered by the Plan at the end of the Limitation Year, the Excess Amount in the Participant's Account will be used to reduce Employer contributions (including any allocation of forfeitures) for such Participant in the next Limitation Year and each succeeding Limitation Year if necessary,
 - (3) If after the application of paragraph (1) an Excess Amount still exists, and the Participant is not covered by the Plan at the end of the Limitation Year, the Excess Amount will be held unallocated in a Suspense Account. The Suspense Account will be applied to reduce future Employer contributions (including allocation of any forfeitures) for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year if necessary;

- (4) If a Suspense Account is in existence at any time during a particular Limitation Year, all amounts in the Suspense Account must be allocated and reallocated to Participants' accounts before any Employer or any Employee contributions may be made to the Plan for that Limitation Year. Excess Amounts may not be distributed to Participants or former Participants.

6.02 Participants in More than One Plan

- (a) This Section applies if, in addition to this Plan, the Participant is covered under another qualified master or prototype defined contribution plan maintained by the Employer, or a welfare benefit fund, as defined in section 419(e) of the Code maintained by the Employer, or an individual medical account, as defined by section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, during any Limitation Year. The Annual Additions which may be credited to a Participant's Account under this Plan for any such Limitation Year will not exceed the Maximum Permissible Amount reduced by the Annual Additions credited to a Participant's Account under the other plans and welfare benefit funds for the same Limitation Year. If the Annual Additions with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the Employer are less than the Maximum Permissible Amount and the Employer contribution that would otherwise be contributed or allocated to the Participant's Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual Additions under all such plans and funds for the Limitation Year will equal the Maximum Permissible Amount. If the Annual Additions with respect to the Participant under such other defined contribution plans and welfare benefit funds in the aggregate are equal to or greater than the Maximum Permissible Amount, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.
- (b) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant in the manner described in Section 6.01(b).
- (c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.
- (d) If, pursuant to Subsection (c) or as a result of the allocation of forfeitures, a Participant's Annual Additions under this Plan and such other plans would result in an Excess Amount for a Limitation Year, the Excess Amount will be deemed to consist of the Annual Additions last allocated, except that Annual Additions attributable to a welfare benefit fund or individual medical account will be deemed to have been allocated first regardless of the actual allocation date.
- (e) If an Excess Amount was allocated 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 be the product of,
- (1) The total Excess Amount allocated as of such date, multiplied by
 - (2) The ratio of (i) the Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan to (ii) the total Annual Additions allocated to the Participant for the Limitation Year as of such date under this and all the other qualified Master or Prototype defined contribution plans.
- (f) Any Excess Amount attributed to this Plan will be disposed of in the manner described in Section 6.01(d).

- 6 03 Participant in Another Defined Contribution Plan. If the Participant is covered under another qualified defined contribution plan maintained by the Employer which is not a Master or Prototype Plan, Annual Additions which may be credited to the Participant's Account under this Plan for any Limitation Year will be limited in accordance with Section 6.02 as though the other plan were a Master or Prototype Plan unless the Employer provides other limitations in the Adoption Agreement.
- 6 04 Participant in Defined Benefit Plan. If the Employer maintains, or at any time maintained, a qualified defined benefit plan covering any Participant in this Plan, the sum of the Participant's Defined Benefit Fraction and Defined Contribution Fraction will not exceed 1.0 in any Limitation Year. The Annual Additions which may be credited to the Participant's Account under this Plan for any Limitation Year will be limited in accordance with the Adoption Agreement.
- 6 05 Definitions. For the purposes of this Article, the following definitions shall apply:

(a) Annual Additions: The sum of the following amounts credited to a Participant's Account for the Limitation Year:

- (1) Employer contributions,
- (2) Forfeitures, and
- (3) Employee contributions.

For this purpose, any Excess Amount applied under Sections 6.01(d) or 6.02(f) in the Limitation Year to reduce Employer contributions will be considered Annual Additions for such Limitation Year.

Amounts allocated, after March 31, 1984, to an individual medical account, as defined in section 415(1)(2) of the Code, which is part of a pension or annuity plan maintained by the Employer, are treated as Annual Additions to a defined contribution plan. Also, amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date which are attributable to post-retirement medical benefits allocated to the separate account of a key Employee, as defined in section 419A(d)(3) of the Code, under a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer, are treated as Annual Additions to a defined contribution plan.

(b) Compensation: A Participant's earned income, wages, salaries, and fees for professional services and other amounts received (without regard to whether an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits reimbursements, and expense allowances), and excluding the following:

- (1) Employer contributions to a plan of deferred compensation which are not includible in the Employee's gross income for the taxable year in which contributed, or Employer contributions under a simplified Employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation,
- (2) Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture,
- (3) Amounts realized from the sale, exchange, or other disposition of stock acquired under a qualified stock option, and

- (4) Other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) toward the purchase of an annuity described in section 403(b) of the Code (whether or not the amounts are actually excludable from the gross income of the Employee)

For purposes of applying the limitations of this Article, Compensation for a Limitation Year is the Compensation actually paid or includible in gross income during such year

Notwithstanding the preceding sentence, Compensation for a Participant in a defined contribution plan who is permanently and totally disabled (as defined in section 22(e)(3) of the Code) is the Compensation such Participant would have received for the Limitation Year if the Participant had been paid at the rate of Compensation paid immediately before becoming permanently and totally disabled, such imputed Compensation for the disabled Participant may be taken into account only if the Participant is not a highly compensated Employee (as defined in section 414(g) of the Code), and contributions made on behalf of such Participant are nonforfeitable when made

- (c) *Defined Benefit Fraction* A fraction the numerator of which is the sum of the Participant's Projected Annual Benefits under all the defined benefit plans (whether or not terminated) maintained by the Employer, and the denominator of which is the lesser of 125 percent of the dollar limitation determined for the Limitation Year under sections 415(b) and (d) of the Code or 140 percent of the Highest Average Compensation, including any adjustments under section 415(b) of the Code

Notwithstanding the above, if the Participant was a participant as of the first day of the first Limitation Year beginning after December 31, 1986, in one (1) or more defined benefit plans maintained by the Employer which were in existence on May 6, 1986, the denominator of this fraction will not be less than 125 percent of the sum of the annual benefits under such plans which the Participant had accrued as of the close of the last Limitation Year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plan after May 5, 1986. The preceding sentence applies only if the defined benefit plans individually and in the aggregate satisfied the requirements of section 415 of the Code for all Limitation Years beginning before January 1, 1987. For purposes of this paragraph, a Master or Prototype Plan with an opinion letter issued before January 1, 1983, which was adopted by the Employer on or before September 30, 1983, is treated as a plan in existence on July 1, 1982.

- (d) *Defined Contribution Dollar Limitation* \$30,000 or, if greater, one-fourth (1/4) of the defined benefit dollar limitation set forth in section 415(b)(1) of the Code as in effect for the Limitation Year
- (e) *Defined Contribution Fraction* A fraction, the numerator of which is the sum of the Annual Additions to the Participant's account under all the defined contribution plans (whether or not terminated) maintained by the Employer for the current and all prior Limitation Years (including the Annual Additions attributable to the Participant's nondeductible Employee contributions to all defined benefit plans, whether or not terminated, maintained by the Employer, and the Annual Additions attributable to all welfare benefit funds, as defined in section 419(e) of the Code, and individual medical accounts as defined in section 415(l)(2) of the Code, maintained by the Employer) and the denominator of which is the sum of the maximum aggregate amounts for the current and all prior Limitation Years of service with the Employer (regardless of whether a defined contribution plan was maintained by the Employer). The maximum aggregate amount in any Limitation Year is the lesser of 125 percent of the dollar limitation in effect under section 415(c)(1)(A) of the Code or thirty-five percent (35%) of the Participant's Compensation for such year

If the Employee was a Participant as of the first day of the first Limitation Year beginning after

December 31, 1986, in one (1) or more defined contribution plans maintained by the Employer which were in existence on May 6, 1986, the numerator of this fraction will be adjusted if the sum of this fraction and the Defined Benefit Fraction would otherwise exceed 1.0 under the terms of this Plan. Under the adjustment, an amount equal to the product of (1) the excess of the sum of the fractions over 1.0 multiplied by (2) the denominator of this fraction, will be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the end of the last Limitation Year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plan made after May 5, 1986, but using the section 415 of the Code limitation applicable to the first Limitation Year beginning on or after January 1, 1987.

The Annual Addition for any Limitation Year beginning before January 1, 1987 shall not be recomputed to treat all Employee contributions as Annual Additions.

- (f) **Employer.** The Employer that adopts this Plan, and all members of a controlled group of corporations (as defined in section 414(b) of the Code as modified by section 415(h) of the Code), all commonly controlled trades or businesses (as defined in section 414(c) of the Code as modified by section 415(h) of the Code) or affiliated service groups (as defined in section 414(m) of the Code) of which the adopting Employer is a part and any other entity required to be aggregated with the Employer pursuant to regulations under section 414(o) of the Code.
- (g) **Excess Amount.** The excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount.
- (h) **Highest Average Compensation.** The average Compensation for the three (3) consecutive years of service with the Employer that produce the highest average. A year of service with the Employer is the twelve (12) consecutive month period defined as the Limitation Year in the Adoption Agreement.
- (i) **Limitation Year.** A calendar year, or the twelve (12) consecutive month period elected by the Employer in the Adoption Agreement. All qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.
- (j) **Master or Prototype Plan.** A plan, the form of which is the subject of a favorable opinion letter from the Internal Revenue Service.
- (k) **Maximum Permissible Amount.** The maximum Annual Addition that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year shall not exceed the lesser of
 - (1) The Defined Contribution Dollar Limitation, or
 - (2) Twenty-five percent (25%) of the Participant's Compensation for the Limitation Year.

The Compensation limitation referred to in (2) shall not apply to any contribution for medical benefits (within the meaning of section 401(h) or section 419A(f)(2) of the Code) which is otherwise treated as an Annual Addition under section 415(l)(1) or 419A(d)(2) of the Code.

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve (12) consecutive month period, the Maximum Permissible Amount will not exceed the Defined Contribution Dollar Limitation multiplied by the following fraction:

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

- (1) Projected Annual Benefit: The annual retirement benefit (adjusted to an actuarially equivalent straight life annuity if such benefit is expressed in a form other than a straight life annuity or qualified joint and survivor annuity) to which the Participant would be entitled under the terms of the Plan assuming:
- (1) The Participant will continue employment until normal retirement age under the plan (or current age, if later), and
 - (2) The Participant's Compensation for the current Limitation Year and all other relevant factors used to determine benefits under the Plan will remain constant for all future Limitation Years

VII TRUST AND INVESTMENT OF ACCOUNTS

- 7 01 Trust. A Trust is hereby created to hold all of the assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 7 03. The trustee shall be the Employer or such other person which agrees to act in that capacity hereunder.
- 7 02 Investment Powers. The trustee or the Plan Administrator acting as agent for the trustee, shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is controlled by Participants, pursuant to Section 14 03.
- (a) To invest and reinvest the Trust without distinction between principal and income in any form of tangible or intangible property, real, personal, or mixed, and wherever situated, including, but not by way of limitation, common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, loans, notes, debentures, mortgages, certificates of deposit, interest, or participation, equipment trust certificates, commercial paper including but not limited to participation in pooled commercial paper accounts, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, and guaranteed interest contracts, deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit, and other forms of securities or investments of any kind, class, or character whatsoever and representing interests in any form of enterprise, wherever it may be located, organized, or operated within or without the United States of America, whether such investments are income producing or not, without being limited in any respect by statute or court rule or decision of any jurisdiction now or hereafter in force purporting to limit or otherwise affect such investments. Assets of the Trust may be invested in securities or new ventures that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.
 - (b) To invest and reinvest all or any part of the assets of the Trust in any common, collective, or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans qualified under section 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plan the declaration of trust of such common, collective, or commingled trust fund shall constitute a part of this Plan.
 - (c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration, or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other plan or trust qualified under section 401(a) of the Code or any other plan described in section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Plan Administrator, or such custodian as the Plan Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.

- (d) To purchase part interests in real property or in mortgages on real property, wherever such real property may be situated, and to delegate to a property manager or the holder or holders of a majority interest in such real property or mortgage on real property the management and operation of any part interest in such real property or mortgages.
- (e) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan
- (f) To retain, manage, operate, administer, divide, subdivide, partition, mortgage, pledge, improve, alter, demolish, remodel, repair, and develop in any manner any property, or any part of or partial interest in any property, real or personal, held in the Trust, to lease such property for any period of time, and to grant options to sell, exchange, lease, or otherwise dispose of any such property without regard to restrictions applicable to fiduciaries or others and without the approval of any court.
- (g) To sell for cash or credit, redeem, exchange for other property, convey, transfer, or otherwise dispose of any property held in the Trust in any manner and at any time, by private contract or at public auction or otherwise, and no other person shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition
- (h) To enter into contracts for or to make commitments either alone or in company with others to purchase or sell at any future date any property acquired for the Trust.
- (i) To vote or to refrain from voting any stocks, bonds, or other securities held in the Trust to exercise any other right appurtenant to any securities or other property held in the Trust, to give general or special proxies or powers of attorney with or without power of substitution with respect to such securities and other property, to exercise any conversion privileges, subscription rights, or other options or privileges with respect to such securities and other property and make any payments incidental thereto, and generally to exercise, personally or by general or limited power of attorney, any of the powers of an owner with respect to stocks, bonds, securities, or other property held in the Trust at any time
- (j) To oppose or to consent to and participate in any organization, reorganization, consolidation, merger, combination, readjustment of finances, or similar arrangement with respect to any corporation, company, or association, any of the securities of which are held in the Trust, to do any act with reference thereto, including the exercise of options, the making of agreements or subscriptions, and the payment of expenses, assessments, or subscriptions that may be deemed necessary or advisable in connection therewith, and to accept, hold, and retain any securities or other property that may be so acquired.
- (k) To deposit any property held in the Trust with any protective, reorganization, or similar committee and to delegate discretionary power thereto and to pay and agree to pay part of its expenses and compensation and any assessments levied with respect to any such property so deposited
- (l) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Plan Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition

of words or other action to indicate that property is held in a fiduciary or representative capacity, but the books and records of the Plan shall at all times show that all such investments are part of the Trust.

- (m) Upon such terms as may be deemed advisable by the Employer or the Plan Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the Plan, to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal
 - (n) To employ suitable consultants, depositories agents, and legal counsel on behalf of the Plan
 - (o) To make, execute, acknowledge, and deliver any and all deeds, leases mortgages, conveyances, contracts, waivers, releases, or other instruments in writing necessary or proper for the accomplishment of any of the foregoing powers
 - (p) To open and maintain any bank account or accounts in the name of the Plan the Employer, or any nominee or agent of the foregoing, including the Plan Administrator in any bank or banks.
 - (q) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein
- 7 03 Taxes and Expenses. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Plan Administrator, as may be agreed upon from time to time by the Employer and the Plan Administrator, and reimbursement for reasonable expenses incurred by the Plan Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting investment, and custodial services) shall also be paid from the Trust.
- 7 04 Payment of Benefits. The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Plan Administrator, or by any custodian or other person so authorized by the Employer to make such disbursement. The Plan Administrator custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer
- 7 05 Investment Funds. In accordance with uniform and nondiscriminatory rules established by the Employer and the Plan Administrator, the Participant may direct his/her Accounts to be invested in one (1) or more investment funds available under the Plan, provided, however, that the Participant's investment directions shall not violate any investment restrictions specified in the Adoption Agreement.
- 7 06 Valuation of Accounts. As of each Accounting Date, the Trust assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances, less amounts held in Participant Loan Accounts, as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and Beneficiaries.

- 7 07 Participant Loan Accounts Participant Loan Accounts shall be invested in accordance with Section 14 03 of the Plan Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Section 7 05

VIII VESTING

- 8 01 Vesting Schedule The portion of a Participant's Account attributable to Mandatory Participant Contributions, Matched Participant Contributions, or Voluntary Participant Contributions shall be at all times nonforfeitable by the Participant. A Participant shall have a Nonforfeitable Interest in the percentage of his/her Employer Contribution Account determined pursuant to the schedule elected by the Employer in the Adoption Agreement.
- 8 02 Crediting Periods of Service Except as provided in Section 8 03, all of an Employee's Periods of Service with the Employer are counted to determine the nonforfeitable percentage in the Employee's Account balance derived from Employer Contributions.
- 8 03 Service After Break in Service In the case of a Participant who has a Break in Service of at least five (5) years, all Periods of Service after such Breaks in Service will be disregarded for the purpose of determining the nonforfeitable percentage of the Employer-derived Account balance that accrued before such Break but both pre-Break and post-Break service will count for the purposes of vesting the Employer-derived Account balance that accrues after such Break. Both Accounts will share in the earnings and losses of the fund.
- In the case of a Participant who does not have a Break in Service of at least five (5) years, both the pre-Break and post-Break service will count in vesting both the pre-Break and post Break Employer-derived Account balance.
- 8 04 Vesting Upon Normal Retirement Age. Notwithstanding Section 8 01 of the Plan, a Participant shall have a Nonforfeitable Interest in his/her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 8 06 of the Plan, if he/she is employed on or after his/her Normal Retirement Age
- 8 05 Vesting Upon Death or Disability Notwithstanding Section 8 01 of the Plan, in the event of Disability or Death, a Participant shall have a Nonforfeitable Interest in his/her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 8 06 of the Plan.
- 8.06 Forfeitures. Except as provided in Sections 8 04 and 8 05 of the Plan, a Participant who separates from service prior to obtaining full vesting shall forfeit that percentage of his/her Employer Contribution Account balance which has not vested as of the date such Participant incurs a Break in Service of five (5) consecutive years or, if earlier, the date such Participant receives, or is deemed under the provisions of Section 10 04 to have received, distribution of the entire Nonforfeitable Interest in his/her Employer Contribution Account. Such forfeitures shall be allocated in the manner described in Section 4 02.
- 8.07 Reinstatement of Forfeitures If the Participant returns to the employment of the Employer before incurring a Break in Service of five (5) consecutive years, any amounts forfeited pursuant to Section 8 06 shall be reinstated to the Participant's Employer Contribution Account within a reasonable time after repayment by the Participant of the amount distributed to such Participant from his/her Employer Contribution Account; provided, however, that if such Participant forfeited his/her Account balance by reason of a deemed distribution, pursuant to Section 10 04, such amounts shall be automatically restored upon the reemployment of such Participant. Such repayment must be made before the earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer, or the date the Participant incurs a Break in Service of five (5) consecutive years

IX BENEFITS CLAIM

- 9 01 Claim of Benefits. A Participant, Employee, or Beneficiary shall notify the Plan Administrator in writing of a claim of benefits under the Plan. The Plan Administrator shall take such steps as may be necessary to facilitate the payment of such benefits to the Participant, Employee, or Beneficiary.
- 9 02 Appeal Procedure. If any claim for benefits is denied by the Plan Administrator, the Plan Administrator shall notify the claimant in writing of such denial, setting forth the specific reasons and citing reference to specific provisions of the Plan upon which the denial is based. An appeal period of sixty (60) days after receipt of the notification of denial shall be granted, and said notification shall advise the claimant of the appeal procedure. The claimant may file the appeal with the Employer, whose decision shall be final, to the extent allowed by law.

X COMMENCEMENT OF BENEFITS

- 10 01 Normal Commencement of Benefits. Unless the Participant elects otherwise, the distribution of a Participant's Account shall commence after the later of the date the Participant attains age sixty-five (65) (or Normal Retirement Age, if earlier) or the date the Participant terminates service with the Employer.

Notwithstanding the foregoing, unless the Participant elects otherwise, distribution of benefits will begin no later than the sixtieth (60th) day after the latest of the close of the Plan Year in which

- (a) The Participant attains age sixty five (65) (or Normal Retirement Age, if earlier)
- (b) The Participant terminates service with the Employer; or
- (c) Occurs the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan.

Notwithstanding the foregoing, the failure of a Participant and spouse to consent to a distribution while a benefit is immediately distributable shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this Section. An Account balance is immediately distributable if any part of the Account balance could be distributed to the Participant (or surviving spouse) before the Participant attains or would have attained (if not deceased) the later of Normal Retirement Age or age sixty-two (62).

- 10 02 Elective Commencement of Benefits. A Participant who retires, becomes Disabled, or separates from service for any other reason may elect by written notice to the Plan Administrator to have the distribution of benefits commence on a date earlier or later than that described in Section 10 01 of the Plan, provided that such earlier distribution complies with the age restrictions, if any, specified in the Adoption Agreement. Such election must be made in writing during the ninety (90) day period ending on the date as of which benefit payments are to commence. A Participant's election shall be revocable and may be amended by the Participant.
- 10 03 Transfer to Another Plan. Subject to Article XIII, if a Participant terminates employment and subsequently becomes employed with another unit of state or local government, or an agency or instrumentality of one (1) or more states or local governments, the Plan Administrator shall, at the written direction of such Participant, transfer all of such Participant's Nonforfeitable Interest in his/her Account, if and to the maximum extent permitted under the Code, to the new Employer's plan, provided that the new Employer certifies to the Plan Administrator that its plan provides for the acceptance of such a transfer.
- 10 04 De Minimis Accounts. Notwithstanding the foregoing provisions of this Article, if a Participant terminates service, and the value of his/her Nonforfeitable Interest in his/her Account is not greater than \$3,500, the Participant shall be paid his/her benefits as soon as practicable after such termination. For purposes of this

Section, if a Participant's Nonforfeitable Interest in his/her Account is zero, the Participant shall be deemed to have received a distribution of such Nonforfeitable Interest Account.

- 10 05 **Withdrawal of Voluntary Contributions.** A Participant may upon written request withdraw a part of or the full amount of his/her Voluntary Contribution Account. Such withdrawals may be made at any time, provided that no more than two (2) such withdrawals may be made during any Plan Year. No forfeiture will occur solely as the result of any such withdrawal.
- 10 06 **Latest Commencement of Benefits.** Notwithstanding anything to the contrary in this Article, benefits shall begin no later than the Participant's Required Beginning Date, as defined under Section 11 06, or as otherwise provided in Section 11 05.

XI DISTRIBUTION REQUIREMENTS

11 01 General Rules

- (a) Subject to the provisions of Article XIII, the requirements of this Article shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this Article apply to calendar years beginning after December 31, 1984.
- (b) All distributions required under this Article shall be determined and made in accordance with the proposed regulations under section 401(a)(9) of the Code, including the minimum distribution incidental benefit requirement of section 1 401(a)(9)-2 of the proposed regulations.

11 02 **Required Beginning Date.** The entire Nonforfeitable Interest of a Participant must be distributed or begin to be distributed no later than the Participant's Required Beginning Date.

11 03 **Limits on Distribution Periods.** As of the first Distribution Calendar Year, distributions, if not made in a single-sum, may only be made over one of the following periods (or a combination thereof):

- (a) The life of the Participant,
- (b) The life of the Participant and a Designated Beneficiary,
- (c) A period certain not extending beyond the Life Expectancy of the Participant, or
- (d) A period certain not extending beyond the Joint Life and Last Survivor Expectancy of the Participant and a Designated Beneficiary.

11 04 **Determination of Amount to Be Distributed Each Year.** If the Participant's Nonforfeitable Interest is to be distributed in other than a single-sum, the following minimum distribution rules shall apply on or after the Required Beginning Date.

- (a) **Individual Account.**
- (1) If a Participant's Benefit is to be distributed over (i) a period not extending beyond the Life Expectancy of the Participant or the Joint Life and Last Survivor Expectancy of the Participant and the Participant's Designated Beneficiary, or (ii) a period not extending beyond the Life Expectancy of the Designated Beneficiary, the amount required to be distributed for each calendar year, beginning with distributions for the first Distribution Calendar Year, must at least equal the quotient obtained by dividing the Participant's Benefit by the Applicable Life Expectancy.

- (2) For calendar years beginning before January 1, 1989, if the Participant's spouse is not the Designated Beneficiary, the method of distribution selected must assure that at least fifty percent (50%) of the present value of the amount available for distribution is paid within the Life Expectancy of the Participant.
- (3) For calendar years beginning after December 31, 1988, the amount to be distributed each year, beginning with distributions for the first Distribution Calendar Year, shall not be less than the quotient obtained by dividing the Participant's Benefit by the lesser of (i) the Applicable Life Expectancy, or (ii) if the Participant's spouse is not the Designated Beneficiary, the applicable divisor determined from the table set forth in Q&A-4 of section 1 401(a)(9)-2 of the proposed regulations. Distributions after the death of the Participant shall be distributed using the Applicable Life Expectancy in Subsection (1) as the relevant divisor without regard to Proposed Regulations section 1 401(a)(9) 2.
- (4) The minimum distribution required for the Participant's first Distribution Calendar Year must be made on or before the Participant's Required Beginning Date. The minimum distribution for other calendar years, including the minimum distribution for the Distribution Calendar Year in which the Employee's Required Beginning Date occurs must be made on or before December 31 of that Distribution Calendar Year
- (b) Other forms. If the Participant's Benefit is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of section 401(a)(9) of the Code and the proposed regulations thereunder

11 05 Death Distribution Provisions. Upon the death of the Participant, the following distribution provisions shall take effect.

- (a) If the Participant dies after distribution of his/her interest has commenced, the remaining portion of such interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death
- (b) If the Participant dies before distribution of his/her interest commences, the Participant's entire interest will be distributed no later than December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death except to the extent that an election is made to receive distributions in accordance with (1) or (2) below
 - (1) If any portion of the Participant's interest is payable to a Designated Beneficiary, distributions may be made over the life or over a period certain not greater than the Life Expectancy of the Designated Beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the Participant died,
 - (2) If the Designated Beneficiary is the Participant's surviving spouse, the date distributions are required to begin in accordance with Subsection (1) shall not be earlier than the later of (i) December 31 of the calendar year immediately following the calendar year in which the Participant died, and (ii) December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70-1/2)

If the Participant has not made an election pursuant to this Subsection by the time of his/her death, the Participant's Designated Beneficiary must elect the method of distribution no later than the earlier of (i) December 31 of the calendar year in which distributions would be required to begin under this Section, or (ii) December 31 of the calendar year which contains the fifth (5th) anniversary of the date of death of the Participant. If the Participant has no Designated Beneficiary, or if the Designated Beneficiary does not elect a method of distribution, distribution

of the Participant's entire interest must be completed by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death

- (c) For purposes of Subsection (b), if the surviving spouse dies after the Participant, but before payments to such spouse begin, the provisions of Subsection (b), with the exception of paragraph (2) therein, shall be applied as if the surviving spouse were the Participant.
- (d) For purposes of this Section, any amount paid to a child of the Participant will be treated as if it had been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority
- (e) For the purposes of this Section, distribution of a Participant's interest is considered to begin on the Participant's Required Beginning Date (or, if Subsection (c) is applicable, the date distribution is required to begin to the surviving spouse pursuant to Subsection (b)). If distribution in the form of an annuity irrevocably commences to the Participant before the Required Beginning Date, the date distribution is considered to begin is the date distribution actually commences.

11 06 Definitions. For the purposes of this Section, the following definitions shall apply

- (a) **Applicable Life Expectancy** The Life Expectancy (or Joint Life and Last Survivor Expectancy) calculated using the attained age of the Participant (or Designated Beneficiary) as of the Participant's (or Designated Beneficiary's) birthday in the applicable calendar year reduced by one (1) for each calendar year which has elapsed since the date Life Expectancy was first calculated. If Life Expectancy is being recalculated, the Applicable Life Expectancy shall be the Life Expectancy as so recalculated. The applicable calendar year shall be the first Distribution Calendar Year, and if Life Expectancy is being recalculated such succeeding calendar year
- (b) **Designated Beneficiary** The individual who is designated as the Beneficiary under the Plan in accordance with section 401(a)(9) of the Code and the proposed regulations thereunder
- (c) **Distribution Calendar Year** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to Section 11 05 above
- (d) **Life Expectancy** The Life Expectancy and Joint Life and Last Survivor Expectancy, respectively, as computed by use of the expected return multiples in Tables V and VI of section 1 72-9 of the income tax regulations. Unless otherwise elected by the Participant (or spouse, in the case of distributions described in Section 11 05(b)(2) above) by the time distributions are required to begin, Life Expectancies shall be recalculated annually. Such election shall be irrevocable as to the Participant (or spouse) and shall apply to all subsequent years. The Life Expectancy of a nonspouse Beneficiary may not be recalculated.
- (e) **Participant's Benefit.**
 - (1) The Account balance as of the last Accounting Date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions or forfeitures allocated to the Account balance as of dates in the valuation calendar year after such Accounting Date and decreased by distributions made in the valuation calendar year after such Accounting Date.
 - (2) For purposes of paragraph (1) above, if any portion of the minimum distribution for the

first Distribution Calendar Year is made in the second Distribution Calendar Year on or before the Required Beginning Date, the amount of the minimum distribution made in the second Distribution Calendar Year shall be treated as if it had been made in the immediately preceding Distribution Calendar Year

(f) Required Beginning Date

- (1) The Required Beginning Date of a Participant is the first day of April of the calendar year following the calendar year in which the Participant attains age seventy and one-half (70-1/2), or such later date as permitted under this Section or section 401(a)(9) of the Code
- (2) The Required Beginning Date of a Participant who attains age seventy and one-half (70-1/2) before January 1, 1988, shall be determined in accordance with (a) or (b) below
 - (a) Non-5-Percent Owners. The Required Beginning Date of a Participant who is not a 5 Percent Owner is the first day of April of the calendar year following the calendar year in which the later of retirement or attainment of age seventy and one half (70-1/2) occurs
 - (b) 5-Percent Owners. The Required Beginning Date of a Participant who is a 5 Percent Owner during any year beginning after December 31, 1979, is the first day of April following the later of
 - (i) The calendar year in which the Participant attains age seventy and one half (70-1/2), or
 - (ii) The earlier of the calendar year with or within which ends the Plan Year in which the Participant becomes a 5-Percent Owner, or the calendar year in which the Participant retires
- (3) The Required Beginning Date is April 1, 1990 for a Participant who is not a 5-Percent Owner who attains age seventy and one-half (70-1/2) during 1988 and who has not retired as of January 1, 1989
- (4) 5-Percent Owner. A Participant is treated as a 5-Percent Owner for purposes of this Section if such Participant is a 5-Percent Owner as defined in section 416(i) of the Code (determined in accordance with section 416 of the Code but without regard to whether the Plan is top-heavy) at any time during the Plan Year ending with or within the calendar year in which such owner attains age sixty-six and one-half (66-1/2) or any subsequent Plan Year
- (5) Once distributions have begun to a 5-Percent Owner under this Section, they must continue to be distributed, even if the Participant ceases to be a 5-Percent Owner in a subsequent year

11 07 Transitional Rule.

- (a) Notwithstanding the other requirements of this Article and subject to the requirements of Article XIII, distribution on behalf of any Employee, including a 5-Percent Owner, may be made in accordance with all of the following requirements (regardless of when such distribution commences)
 - (1) The distribution by the Trust is one which would not have disqualified such Trust under section 401(a)(9) of the Code as in effect prior to amendment by the Deficit Reduction Act of 1984

- (2) The distribution is in accordance with a method of distribution designated by the Employee whose interest in the Trust is being distributed or, if the Employee is deceased, by a Beneficiary of such Employee
 - (3) Such designation was in writing, was signed by the Employee or the Beneficiary, and was made before January 1, 1984
 - (4) The Employee had accrued a benefit under the Plan as of December 31, 1983
 - (5) The method of distribution designated by the Employee or the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Employee's death the Beneficiaries of the Employee listed in order of priority
- (b) A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Employee
 - (c) For any distribution which commences before January 1, 1984 but continues after December 31, 1983, the Employee, or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in Subsections (a)(1) and (5)
 - (d) If a designation is revoked, any subsequent distribution must satisfy the requirements of section 401(a)(9) of the Code and the proposed regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Trust must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy section 401(a)(9) of the Code and the proposed regulations thereunder, but for the section 242(b)(2) of the Code election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements in section 1.401(a)(9)-2 of the proposed regulations. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life). In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Q&A J-2 and Q&A J-3 shall apply

XII MODES OF DISTRIBUTION OF BENEFITS

- 12.01 Normal Mode of Distribution Unless an elective mode of distribution is elected in accordance with Article XIII, benefits shall be paid to the Participant in the form provided for in Article XIII.
- 12.02 Elective Mode of Distribution Subject to the requirements of Articles XI and XIII, a Participant may revocably elect to have his/her Account distributed in any one (1) of the following modes in lieu of the mode described in Section 12.01
 - (a) Equal Payments. Equal monthly, quarterly, semi-annual, or annual payments in an amount chosen by the Participant continuing until the Account is exhausted.
 - (b) Lump Sum. A lump sum payment.

- (c) Period Certain. Approximately equal monthly, quarterly, semi-annual, or annual payments, calculated to continue for a period certain chosen by the Participant
 - (d) Other Any other sequence of payments requested by the Participant.
- 12.03 Election of Mode. A Participant's election of a payment option must be made in writing between thirty (30) and ninety (90) days before the payment of benefits is to commence
- 12.04 Death Benefits. Subject to Articles XI and XIII
- (a) In the case of a Participant who dies before he/she has begun receiving benefit payments, the Participant's entire Nonforfeitable Interest shall then be payable to his/her Beneficiary within ninety (90) days of the Participant's death. A Beneficiary who is entitled to receive benefits under this Section may elect to have benefits commence at a later date, subject to the provisions of Section 11.05. The Beneficiary may elect to receive the death benefit in any of the forms available to the Participant under Section 12.02. If the Beneficiary is the Participant's surviving spouse, and such surviving spouse dies before payment commences, then this Section shall apply to the beneficiary of the Surviving Spouse as though such surviving spouse were the Participant.
 - (b) Should the Participant die after he/she has begun receiving benefit payments the Beneficiary shall receive the remaining benefits, if any, that are payable, under the payment schedule elected by the Participant. Notwithstanding the foregoing, the Beneficiary may elect to accelerate payments of the remaining balances, including but not limited to a lump sum distribution

XIII. SPOUSAL BENEFIT REQUIREMENTS

- 13.01 Application. The provisions of this Article shall take precedence over any conflicting provision in this Plan. The provisions of this Article shall apply to any Participant who is credited with any Period of Service with the Employer on or after August 23, 1984, and such other Participants as provided in Section 13.05
- 13.02 Qualified Joint and Survivor Annuity. Unless an optional form of benefit is selected pursuant to a Qualified Election within the ninety (90) day period ending on the Annuity Starting Date, a married Participant's Vested Account Balance will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant's Vested Account Balance will be paid in the form of a life annuity. The Participant may elect to have such annuity distributed upon the attainment of the Earliest Retirement Age under the Plan
- 13.03 Qualified Preretirement Survivor Annuity. If a Participant dies before benefits have commenced, then fifty percent (50%) of the Participant's Vested Account Balance shall be applied toward the purchase of an annuity for the life of the Surviving Spouse, the remaining portion shall be paid to such Beneficiaries (which may include such Spouse) designated by the Participant. Notwithstanding the foregoing, the Participant may waive the spousal annuity by designating a different Beneficiary within the Election Period pursuant to a Qualified Election. To the extent that less than one hundred percent (100%) of the Vested Account balance is paid to the Surviving Spouse, the amount of the Participant's Account derived from Employee contributions will be allocated to the Surviving Spouse in the same proportion as the amount of the Participant's Account derived from Employee contributions is to the Participant's total Vested Account Balance. The Surviving Spouse may elect to have such annuity distributed within a reasonable period after the Participant's death. Further, such Spouse may elect to receive any death benefit payable to him/her hereunder in any of the forms available to the Participant under Section 12.02.
- 13.04 Notice Requirements.

- (a) In the case of a Qualified Joint and Survivor Annuity as described in Section 13 02, the Plan Administrator shall, no less than thirty (30) days and no more than ninety (90) days prior to the Annuity Starting Date, provide each Participant within a reasonable period prior to the commencement of benefits a written explanation of (i) the terms and conditions of a Qualified Joint and Survivor Annuity; (ii) the Participant's right to make, and the effect of, an election to waive the Qualified Joint and Survivor Annuity form of benefit, (iii) the rights of a Participant's Spouse, and (iv) the right to make, and the effect of, a revocation of a previous election to waive the Qualified Joint and Survivor Annuity
- (b) In the case of a qualified preretirement survivor annuity as described in Section 13 03, the Plan Administrator shall provide each Participant within the applicable period for such Participant a written explanation of the qualified preretirement survivor annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements of Subsection (a) applicable to a Qualified Joint and Survivor Annuity

The applicable period for a Participant is whichever of the following periods ends last. (i) the period beginning with the first day of the Plan Year in which the Participant attains age thirty-two (32) and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age thirty-five (35), (ii) a reasonable period ending after the individual becomes a Participant, (iii) a reasonable period ending after Subsection (c) ceases to apply to the Participant (iv) a reasonable period ending after this Article first applies to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation from service in the case of a Participant who separates from service before attaining age thirty-five (35)

For purposes of applying the preceding paragraph a reasonable period ending after the enumerated events described in (ii), (iii), and (iv) is the end of the two (2) year period beginning one (1) year prior to the date the applicable event occurs, and ending one (1) year after that date. In the case of a Participant who separates from service before the Plan Year in which age thirty-five (35) is attained, notice shall be provided within the two (2) year period beginning one (1) year prior to separation and ending one (1) year after separation. If such a Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be redetermined

- (c) Notwithstanding the other requirements of this Section, the respective notices prescribed by this Section need not be given to a Participant if (1) the Plan "fully subsidizes" the costs of a Qualified Joint and Survivor Annuity or qualified preretirement survivor annuity, and (2) the Plan does not allow the Participant to waive the Qualified Joint and Survivor Annuity or qualified preretirement survivor annuity and does not allow a married Participant to designate a non-Spouse Beneficiary. For purposes of this Subsection (c), a plan fully subsidizes the costs of a benefit if no increase in cost or decrease in benefits to the Participant may result from the Participant's failure to elect another benefit.

13.05 Transitional Rules.

- (a) Any living Participant not receiving benefits on August 23, 1984, who would otherwise not receive the benefits prescribed by the previous Sections of this Article must be given the opportunity to elect to have the prior Sections of this Article apply if such Participant is credited with at least one (1) hour of service under this Plan or a predecessor plan in a Plan Year beginning on or after January 1, 1976, and such Participant had at least ten (10) years of vesting service when he/she separated from service.
- (b) Any living Participant not receiving benefits on August 23, 1984, who was credited with at least one (1) hour of service under this Plan or a predecessor plan on or after September 2, 1974, and who is not otherwise credited with any service in a Plan Year beginning on or after January 1, 1976, must be given the opportunity to have his/her benefits paid in accordance with Subsection (d)

(c) The respective opportunities to elect (as described in Subsections (a) and (b) above) must be afforded to the appropriate Participants during the period commencing on August 23, 1984, and ending on the date benefits would otherwise commence to said Participants.

(d) Any Participant who has elected pursuant to Subsection (b) and any Participant who does not elect under Subsection (a) or who meets the requirements of Subsection (a) except that such Participant does not have at least ten (10) years of vesting service when he/she separates from service, shall have his/her benefits distributed in accordance with all of the following requirements if benefits would have been payable in the form of a life annuity:

(1) Automatic joint and survivor annuity. If benefits in the form of a life annuity become payable to a married Participant who

(a) Begins to receive payments under the Plan on or after Normal Retirement Age, or

(b) Dies on or after Normal Retirement Age while still working for the Employer; or

(c) Begins to receive payments on or after the qualified early retirement age, or

(d) Separates from service on or after attaining Normal Retirement Age (or the qualified early retirement age) and after satisfying the eligibility requirements for the payment of benefits under the Plan and thereafter dies before beginning to receive such benefits,

then such benefits will be received under this Plan in the form of a Qualified Joint and Survivor Annuity, unless the Participant has elected otherwise during the election period described herein. Such election period must begin at least six (6) months before the Participant attains qualified early retirement age and end not more than ninety (90) days before the commencement of benefits. Any election hereunder will be in writing and may be changed by the Participant at any time.

(2) Election of early survivor annuity. A Participant who is employed after attaining the qualified early retirement age will be given the opportunity to elect, during the election period described herein, to have a survivor annuity payable on death. If the Participant elects the survivor annuity, payments under such annuity must not be less than the payments which would have been made to the Spouse under the Qualified Joint and Survivor Annuity if the Participant had retired on the day before his/her death. Any election under this provision will be in writing and may be changed by the Participant at any time. The election period begins on the later of (1) the ninetieth (90th) day before the Participant attains the qualified early retirement age, or (2) the date on which participation begins, and ends on the date the Participant terminates employment.

(3) For purposes of this Subsection (d)

(a) Qualified early retirement age is the latest of

(i) The earliest date, under the Plan, on which the Participant may elect to receive retirement benefits,

(ii) The first day of the 120th month beginning before the Participant reaches Normal Retirement Age, or

(iii) The date the Participant begins participation

(b) Qualified Joint and Survivor Annuity is an annuity for the life of the Participant with a survivor annuity for the life of the Spouse as described in Section 13 06(d)

13 06 Definitions. For the purposes of this Section, the following definitions shall apply:

- (a) Annuity Starting Date. The first day of the first period for which an amount is paid as an annuity or any other form
- (b) Election Period. The period which begins on the first day of the Plan Year in which the Participant attains age thirty-five (35) and ends on the date of the Participant's death. If a Participant separates from service prior to the first day of the Plan Year in which age thirty five (35) is attained, with respect to the Account balance as of the date of separation, the Election Period shall begin on the date of separation

Pre-age thirty-five (35) waiver. A Participant who will not yet attain age thirty five (35) as of the end of any current Plan Year may make a special Qualified Election to waive the qualified preretirement survivor annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age thirty-five (35). Such election shall not be valid unless the Participant receives a written explanation of the qualified preretirement survivor annuity in such terms as are comparable to the explanation required under Section 13 04(a). Qualified preretirement survivor annuity coverage will be automatically reinstated as of the first day of the Plan Year in which the Participant attains age thirty-five (35). Any new waiver on or after such date shall be subject to the full requirements of this Article.

- (c) Earliest Retirement Age. The earliest date on which, under the Plan, the Participant could elect to receive retirement benefits
- (d) Qualified Election. A waiver of a Qualified Joint and Survivor Annuity or a qualified preretirement survivor annuity. Any waiver of a Qualified Joint and Survivor Annuity or a qualified preretirement survivor annuity shall not be effective unless: (a) the Participant's Spouse consents in writing to the election, (b) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent), (c) the Spouse's consent acknowledges the effect of the election, and (d) the Spouse's consent is witnessed by a Plan representative or notary public. Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further Spousal consent). If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed a Qualified Election.

Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Section 13 04

- (e) **Qualified Joint and Survivor Annuity:** An immediate annuity for the life of the Participant with a survivor annuity for the life of the Spouse which is not less than fifty percent (50%) and not more than one hundred percent (100%) of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and which is the amount of benefit which can be purchased with the Participant's Vested Account Balance. The percentage of the survivor annuity shall be fifty percent (50%).
 - (f) **Spouse (Surviving Spouse)** The Spouse or Surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or Surviving Spouse and a current Spouse will not be treated as the Spouse or Surviving Spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.
 - (g) **Vested Account Balance** The aggregate value of the Participant's Vested Account balances derived from Employer and Employee contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the Participant's life. The provisions of this Article shall apply to a Participant who is vested in amounts attributable to Employer contributions, Employee contributions (or both) at the time of death or distribution.
- 13 07 **Annuity Contracts** Where benefits are to be paid in the form of a life annuity pursuant to the terms of this Article, a nontransferable annuity contract shall be purchased from a life insurance company and distributed to the Participant or Surviving Spouse, as applicable. The terms of any annuity contract purchased and distributed by the Plan shall comply with the requirements of this Plan and section 417 of the Code.

XIV LOANS TO PARTICIPANTS

14 01 Availability of Loans to Participants

- (a) If the Employer has elected in the Adoption Agreement to make loans available to Participants, a Participant may apply for a loan from the Plan subject to the limitations and other provisions of this Article.
- (b) The Employer shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by the Plan Administrator and are not inconsistent with the provisions of this Article, and that loans are made available to all Participants on a reasonably equivalent basis.

14 02 Terms and Conditions of Loans to Participants

Any loan by the Plan to a Participant under Section 14 01 of the Plan shall satisfy the following requirements:

- (a) **Availability** Loans shall be made available to all Participants on a reasonably equivalent basis.
- (b) **Nondiscrimination.** Loans shall not be made to Highly Compensated Employees in an amount greater than the amount made available to other Employees.
- (c) **Interest Rate** Loans must be adequately secured and bear a reasonable interest rate.
- (d) **Loan Limit.** No Participant loan shall exceed the present value of the Participant's Nonforfeitable Interest in his/her Account.
- (e) **Spousal Consent.** A Participant must obtain the consent of his/her Spouse, as defined under Section 13 06 if any, within the ninety (90) day period before the time the Account balance is used as security for the loan. Spousal consent shall be obtained no earlier than the beginning of the

ninety (90) day period that ends on the date on which the loan is to be so secured. The consent must be in writing, must acknowledge the effect of the loan, and must be witnessed by a Plan representative or notary public. Such consent shall thereafter be binding with respect to the consenting Spouse or any subsequent Spouse with respect to that loan. A new consent shall be required if the Account balance is used for renegotiation, extension, renewal, or other revision of the loan.

- (f) Foreclosure. In the event of default, foreclosure on the note and attachment of security will not occur until a distributable event occurs in the Plan.
- (g) Reduction of Account. If a valid spousal consent has been obtained in accordance with Subsection (e), then, notwithstanding any other provision of this Plan, the portion of the Participant's Vested Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than one hundred percent (100%) of the Participant's nonforfeitable Account balance (determined without regard to the preceding sentence) is payable to the surviving spouse, then the Account balance shall be adjusted by first reducing the nonforfeitable Account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the Surviving Spouse.
- (h) Amount of Loan. At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the Participant or Beneficiary from the Plan and from all other plans of the Employer that are qualified under section 401(a) of the Code shall not exceed the least of
 - (1) \$50,000, reduced by the excess (if any) of
 - (a) The highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan is made, over
 - (b) The outstanding balance of loans from the Plan on the date on which such loan is made, or
 - (2) The greater of
 - (a) \$10,000, or
 - (b) One-half (1/2) of the value of the Participant's Nonforfeitable Interest in all of his/her Accounts under this Plan, or
 - (3) The value of the Participant's Nonforfeitable Interest in his/her Employer Contribution, Participant Contribution, and Portable Benefits Accounts.

For the purpose of the above limitation, all loans from all plans of the Employer and other members of a group of employers described in sections 414(b), 414(c), and 414(m) and (o) of the Code are aggregated.

- (i) Application for Loan. The Participant must give the Employer adequate written notice, as determined by the Employer, of the amount and desired time for receiving a loan. No more than one (1) loan may be made by the Plan to a Participant in any Plan Year. No loan shall be approved if an existing loan from the Plan to the Participant is in default to any extent.

- (j) Length of Loan. The terms of the loan shall require the Participant to repay the loan in substantially equal installments of principal and interest, at least quarterly, over a period that does not exceed five (5) years from the date of the loan, provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time after the loan is made as the principal residence of the Participant, the five (5) year limit shall not apply. In this event, the period of repayment shall not exceed a reasonable period determined by the Employer. Principal installments and interest payments otherwise due may be suspended during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this Subsection (j), with a revised payment schedule (within such term) instituted at the end of such period of suspension.
- (k) Prepayment. The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.
- (l) Note. The loan shall be evidenced by a promissory note executed by the Participant and delivered to the Employer, and shall bear interest at a reasonable rate determined by the Employer.
- (m) Security. The loan shall be secured by an assignment of that portion of the Participant's right, title, and interest in and to his/her Employer Contribution Account (to the extent vested), Participant Contribution Account, and Portable Benefits Account that is equal to fifty percent (50%) of the Participant's Account (to the extent vested).
- (n) Assignment or Pledge. For the purposes of paragraphs (h) and (i) assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan.
- (o) Other Terms and Conditions. The Employer shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the qualification of the Plan and Trust under section 401(a) of the Code, or to prevent the treatment of the loan for tax purposes as a distribution to the Participant. The Employer, in its discretion for any reason, may fix other terms and conditions of the loan, not inconsistent with the provisions of this Article.

14.03 Participant Loan Accounts.

- (a) Upon approval of a loan to a Participant by the Employer, an amount not in excess of the loan shall be transferred from the Participant's other investment fund(s) described in Section 7.05 of the Plan, to the Participant's Loan Account as of the Accounting Date immediately preceding the agreed upon date on which the loan is to be made.
- (b) The assets of a Participant's Loan Account may be invested and reinvested only in promissory notes received by the Plan from the Participant as consideration for a loan permitted by Section 14.01 of the Plan or in cash. Uninvested cash balances in a Participant's Loan Account shall not bear interest. No person who is otherwise a fiduciary of the Plan shall be liable for any loss, or by reason of any breach, that results from the Participant's exercise of such control.
- (c) Repayment of principal and payment of interest shall be made by payroll deduction or, where repayment cannot be made by payroll deduction, by check, and shall be invested in one (1) or more other investment funds, in accordance with Section 7.05 of the Plan, as of the next Accounting Date after payment thereof to the Trust. The amount so invested shall be deducted from the Participant's Loan Account.
- (d) The Employer shall have the authority to establish other reasonable rules, not inconsistent with the provisions of the Plan, governing the establishment and maintenance of Participant Loan Accounts.

XV PLAN AMENDMENT, TERMINATION, AND OPTIONAL PROVISIONS

15.01 Amendment by Employer The Employer reserves the right, subject to Section 15.02 of the Plan, to amend the Plan from time to time by either:

- (a) Filing an amended Adoption Agreement to change, delete, or add any optional provision, or
- (b) Continuing the Plan in the form of an amended and restated Plan and Trust.

No amendment to the Plan shall be effective to the extent that it has the effect of decreasing a Participant's accrued benefit. Notwithstanding the preceding sentence, a Participant's Account balance may be reduced to the extent permitted under section 412(c)(8) of the Code. For purposes of this paragraph, a Plan amendment which has the effect of decreasing a Participant's Account balance or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit. Furthermore, if the vesting schedule of the Plan is amended, in the case of an Employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date) of such Employee's right to his/her Employer-derived accrued benefit will not be less than his percentage computed under the plan without regard to such amendment.

The Employer may (1) change the choice of options in the Adoption Agreement, (2) add overriding language in the Adoption Agreement when such language is necessary to satisfy sections 415 or 416 of the Code because of the required aggregation of multiple plans, and (3) add certain model amendments published by the Internal Revenue Service which specifically provide that their adoption will not cause the Plan to be treated as individually designed. An Employer that amends the Plan for any other reason, including a waiver of the minimum funding requirement under section 412(d) of the Code, will no longer participate in this Prototype Plan and will be considered to have an individually designed plan.

15.02 Amendment of Vesting Schedule If the Plan's vesting schedule is amended, or the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage or if the Plan is deemed amended by an automatic change to or from a top-heavy vesting schedule, each Participant may elect, within a reasonable period after the adoption of the amendment or change, to have the nonforfeitable percentage computed under the Plan without regard to such amendment or change.

The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end on the latest of

- (a) Sixty (60) days after the amendment is adopted
- (b) Sixty (60) days after the amendment becomes effective, or
- (c) Sixty (60) days after the Participant is issued written notice of the amendment by the Employer or Plan Administrator

15.03 Termination by Employer The Employer reserves the right to terminate this Plan. However, in the event of such termination, no part of the Trust shall be used or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries, except as provided in this Section.

Upon Plan termination or partial termination, all Account balances shall be valued at their fair market value and the Participant's right to his/her Employer Contribution Account shall be one hundred percent (100%) vested and nonforfeitable. Such amount and any other amounts held in the Participant's other Accounts shall be maintained for the Participant until paid pursuant to the terms of the Plan.

Any amounts held in the Suspense Account after allocations to the extent permitted under section 415 of the Code shall be paid to the Employer.

If the Employer's Plan fails to attain or retain qualification under section 401 of the Code, such Plan will no longer participate in this Prototype Plan and will be considered an individually designed Plan.

- 15 04 Discontinuance of Contributions A permanent discontinuance of contributions to the Plan by the Employer, unless an amended and restated Plan is established, shall constitute a Plan termination
- 15 05 Amendment by Prototype Sponsor The Prototype Sponsor may amend this Plan upon thirty (30) days written notification to the Employer; provided, however, that any such amendment must be for the express purpose of maintaining compliance with applicable federal laws and regulations of the Internal Revenue Service.
- 15 06 Optional Provisions. Any provision which is optional under this Plan shall become effective if and only if elected by the Employer and agreed to by the Prototype Sponsor

XVI. ADMINISTRATION

- 16 01 Powers of the Employer The Employer shall have the following powers and duties
- (a) To appoint and remove, with or without cause the Plan Administrator;
 - (b) To amend or terminate the Plan pursuant to the provisions of Article XV,
 - (c) To appoint a committee to facilitate administration of the Plan and communications to Participants;
 - (d) To decide all questions of eligibility (1) for Plan participation, and (2) upon appeal by any Participant, Employee, or Beneficiary, for the payment of benefits
 - (e) To engage an independent qualified public accountant, when required to do so by law, to prepare annually the audited financial statements of the Plan's operation,
 - (f) To take all actions and to communicate to the Plan Administrator in writing all necessary information to carry out the terms of the Plan and Trust,
 - (g) To notify the Plan Administrator in writing of the termination of the Plan, and
 - (h) To administer and keep all necessary records for any loan permitted under Article XIV of the Plan
- 16 02 Duties of the Plan Administrator The Plan Administrator shall have the following powers and duties.
- (a) To construe and interpret the provisions of the Plan,
 - (b) To maintain and provide such returns, reports, schedules, descriptions, and individual Account statements, except with respect to any loan permitted under Article XIV, as are required by law within the times prescribed by law and to furnish to the Employer, upon request, copies of any or all such materials, and further, to make copies of such instruments, reports, descriptions, and statements as are required by law available for examination by Participants and such of their Beneficiaries who are or may be entitled to benefits under the Plan in such places and in such manner as required by law;
 - (c) To obtain from the Employer such information as shall be necessary for the proper administration of the Plan,

- (d) To determine the amount, manner, and time of payment of benefits hereunder;
 - (e) To appoint and retain such agents, counsel, and accountants for the purpose of properly administering the Plan,
 - (f) To distribute assets of the Trust to each Participant and Beneficiary in accordance with Article XI of the Plan,
 - (g) To pay expenses from the Trust pursuant to Section 7.03 of the Plan, and
 - (h) To do such other acts reasonably required to administer the Plan in accordance with its provisions or as may be provided for or required by law
- 16.03 Protection of the Employer The Employer shall not be liable for the acts or omissions of the Plan Administrator, but only to the extent that such acts or omissions do not result from the Employer's failure to provide accurate or timely information as required or necessary for proper administration of the Plan
- 16.04 Protection of the Plan Administrator The Plan Administrator may rely upon any certificate, notice, or direction purporting to have been signed on behalf of the Employer which the Plan Administrator believes to have been signed by a duly designated official of the Employer
- 16.05 Resignation or Removal of Plan Administrator The Plan Administrator may resign at any time effective upon sixty (60) days prior written notice to the Employer. The Plan Administrator may be removed by the Employer at any time upon sixty (60) days prior written notice to the Plan Administrator. Upon the resignation or removal of the Plan Administrator, the Employer may appoint a successor Plan Administrator; failing such appointment, the Employer shall assume the powers and duties of Plan Administrator. Upon the resignation or removal of the Plan Administrator, any Trust assets invested by or held in the name of the Plan Administrator shall be transferred to the trustee in cash or property, at fair market value, except that the return of Trust assets invested in a contract issued by an insurance company shall be governed by the terms of that contract.
- 16.06 No Termination Penalty The Plan Administrator shall have no authority or discretion to impose any termination penalty upon its removal

XVII MISCELLANEOUS

- 17.01 Nonguarantee of Employment. Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee or as a right of an Employee to be continued in the employment of the Employer, as a limitation of the right of the Employer to discharge any of its Employees, with or without cause
- 17.02 Rights to Trust Assets. No Employee or Beneficiary shall have any right to, or interest in, any assets of the Trust upon termination of his/her employment or otherwise except as provided from time to time under this Plan, and then only to the extent of the benefits payable under the Plan to such Employee or Beneficiary out of the assets of the Trust. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the Trust and none of the fiduciaries shall be liable therefor in any manner
- 17.03 Nonalienation of Benefits. Except as provided in Section 17.04 of the Plan, benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, prior to actually being received by the person entitled to the benefit under the terms of the Plan, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or otherwise dispose of any right to benefits payable hereunder, shall be void. The Trust shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any person entitled to benefits hereunder

- 17 04 **Qualified Domestic Relations Order** Notwithstanding Section 17 03 of the Plan, amounts may be paid with respect to a Participant pursuant to a domestic relations order, but if and only if the order is determined to be a qualified domestic relations order within the meaning of section 414(p) of the Code or any domestic relations order entered before January 1, 1985
- 17 05 **Nonforfeitability of Benefits.** Subject only to the specific provisions of this Plan, nothing shall be deemed to deprive a Participant of his/her right to the Nonforfeitable Interest to which he/she becomes entitled in accordance with the provisions of the Plan
- 17 06 **Incompetency of Payee** In the event any benefit is payable to a minor or incompetent, to a person otherwise under legal disability, or to a person who, in the sole judgment of the Employer, is by reason of advanced age, illness, or other physical or mental incapacity incapable of handling the disposition of his/her property, the Employer may apply the whole or any part of such benefit directly to the care, comfort, maintenance support, education, or use of such person or pay or distribute the whole or any part of such benefit to
- (a) The parent of such person,
 - (b) The guardian, committee, or other legal representative wherever appointed of such person,
 - (c) The person with whom such person resides
 - (d) Any person having the care and control of such person, or
 - (e) Such person personally
- The receipt of the person to whom any such payment or distribution is so made shall be full and complete discharge therefor
- 17 07 **Inability to Locate Payee.** Anything to the contrary herein notwithstanding, if the Employer is unable, after reasonable effort, to locate any Participant or Beneficiary to whom an amount is payable hereunder, such amount shall be forfeited and held in the Trust for application against the next succeeding Employer contribution or contributions required to be made hereunder. Notwithstanding the foregoing, however, such amount shall be reinstated, by means of an additional Employer contribution, if and when a claim for the forfeited amount is subsequently made by the Participant or Beneficiary or if the Employer receives proof of death of such person, satisfactory to the Employer. Any benefits lost by reason of escheat under applicable state law shall be considered forfeited and shall not be reinstated
- 17 08 **Mergers, Consolidations, and Transfer of Assets** The Plan shall not be merged into or consolidated with any other plan, other than a plan which amends and restates this Plan, nor shall any of its assets or liabilities be transferred into any such other plan, unless each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer that is equal to or greater than the benefit he/she would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Plan had then terminated)
- 17 09 **Employer Records.** Records of the Employer as to an Employee's or Participant's Period of Service termination of service and the reason therefor, leaves of absence, reemployment, Earnings, and Compensation will be conclusive on all persons, unless determined to be incorrect.
- 17 10 **Controlled Groups and Affiliated Service Groups.**
- (a) Except as provided in Section 6 05(f), all Employees of all corporations which are members of a controlled group of corporations (as defined in section 414(b) of the Code) and all Employees of all trades or businesses (whether or not incorporated) which are under common control (as defined in section 414(c) of the Code) will be treated as employed by a single Employer

- (b) All Employees of all members of an affiliated service group (as defined in section 414(m) of the Code) will be treated as employed by a single Employer
 - (c) All Employees of any entity required to be aggregated with the Employer pursuant to section 414(o) of the Code and the regulations thereunder will be treated as employees by a single Employer
- 17 11 Gender and Number The masculine pronoun, whenever used herein, shall include the feminine pronoun and the singular shall include the plural, except where the context requires otherwise
- 17 12 Leased Employees. Any leased employee deemed to be an employee of an employer as provided in sections 414(n) or (o) under the Code, shall be treated as an Employee of the Employer or of any other Employer required to be aggregated with such Employer under sections 414(b), (c), (m), or (o) of the Code, however contributions or benefits provided by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer. The preceding sentence shall not apply to any leased Employee if (i) such employee is covered by a money purchase pension plan providing: (1) a nonintegrated employer contribution rate of at least ten percent (10%) of compensation, as defined in section 415(c)(3) of the Code, but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee's gross income under sections 125, 402(a)(8), 402(h), or 403(b) of the Code, (2) immediate participation, and (3) full and immediate vesting and (ii) leased employees do not constitute more than twenty percent (20%) of the recipient's Non-Highly Compensated workforce. For purposes of this paragraph, the term "leased employee" means any person (other than an Employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with section 414(n)(6) of the Code) on a substantially full-time basis for a period of at least one (1) year and such services are of a type historically performed by Employees in the business field of the recipient Employer
- 17 13 Applicable Law The Plan shall be construed under the laws of the State where the Employer is located, except to the extent superseded by federal law. The Plan is established with the intent that it meets the requirements under the Code. The provisions of this Plan shall be interpreted in conformity with these requirements

In the event of any conflict between the Plan and a policy or contract issued hereunder, the Plan provisions shall control, provided, however, no Plan amendment shall supersede an existing policy or contract unless such amendment is required to maintain qualification under section 401 of the Code.

XVIII. TOP-HEAVY PROVISIONS

- 18.01 General Rule. If the Plan is or becomes top-heavy, the provisions of this Article will supersede any conflicting provisions in the Plan or Adoption Agreement.
- 18.02 Definitions. If the Plan is or becomes top-heavy in any Plan Year, the following top-heavy definitions apply
- (a) Compensation Earnings; provided that regardless of any election by the Employer in the Adoption Agreement, Compensation as used herein shall include all overtime and bonus compensation
 - (b) Determination Date For any Plan Year, the last day of the preceding Plan Year or, in the case of the first Plan Year of the Plan, the last day of that Plan Year
 - (c) Key Employee: Any Employee or former Employee (and the Beneficiaries of such Employee)

who at any time during the determination period was an officer of the Employer if such individual's annual Compensation exceeds 150 percent (150%) of the dollar limitation under section 415(b)(1)(A) of the Code, an owner (or considered an owner under section 318 of the Code) of one (1) of the ten (10) largest interests in the Employer if such individual's annual Compensation exceeds one hundred percent (100%) of the dollar limitation under section 415(c)(1)(A) of the Code, a 5-percent owner of the Employer, or a 1-percent owner of the Employer who has an annual Compensation of more than \$150,000. Annual Compensation means compensation as defined in section 415(c)(3) of the Code, but including amounts contributed pursuant to a salary reduction agreement which are excludable from the Employee's gross income under sections 125, 402(a)(8), 402(h), or 403(b) of the Code. The determination period is the Plan Year containing the Determination Date and the four (4) preceding Plan Years.

The determination of who is a Key Employee will be made in accordance with section 416(i)(1) of the Code and the regulations thereunder.

- (d) **Non-key Employee.** Any Employee who does not meet the definition of Key Employee.
- (e) **Permissive Aggregation Group.** The Required Aggregation Group plus any other qualified plans maintained by the Employer, but only if such group would satisfy in the aggregate the requirements of sections 401(a)(4) and 410 of the Code. The Employer shall determine which plan to take into account in determining the Permissive Aggregation Group.
- (f) **Present Value.** The Present Value based on the interest and mortality rates specified in the defined benefit plan aggregated with this Plan for the purpose of determining the top-heavy ratio.
- (g) **Required Aggregation Group.**
 - (1) Each qualified Plan of the Employer in which at least one (1) Key Employee participates or participated at any time during the determination period (regardless of whether the Plan has terminated), and
 - (2) Any other qualified Plan of the Employer which enables a plan described in (1) to meet the requirements of sections 401(a)(4) or 410 of the Code.
- (h) **Valuation Date.** For purposes of computing the top-heavy ratio, the Valuation Date shall be the last day of each Plan Year.

18.03 **Determination of Top-Heavy Status.** The Plan is top-heavy if any of the following conditions exists.

- (a) If the top-heavy ratio for this Plan exceeds sixty percent (60%) and this Plan is not part of any Required Aggregation Group or Permissive Aggregation Group of plans.
- (b) If this Plan is a part of a Required Aggregation Group of plans, but not part of a Permissive Aggregation Group, and the top-heavy ratio for the group of plans exceeds sixty percent (60%).
- (c) If this Plan is a part of a Required Aggregation Group and part of a Permissive Aggregation Group of plans and the top-heavy ratio for the Permissive Aggregation Group exceeds sixty percent (60%).

18.04 **Top-Heavy Ratios**

- (a) If the Employer maintains one (1) or more defined contribution plans (including any simplified employee pension plan) and the Employer has not maintained any defined benefit plan which during the five (5) year period ending on the Determination Date(s) has or has had accrued

benefits, the top-heavy ratio for this Plan alone or for the Required or Permissive Aggregation Group as appropriate is a fraction, the numerator of which is the sum of the account balances of all Key Employees as of the Determination Date(s) (including any part of any account balance distributed in the five (5) year period ending on the Determination Date(s)), and the denominator of which is the sum of all Account balances (including any part of any Account balance distributed in the five (5) year period ending on the Determination Date(s)), both computed in accordance with section 416 of the Code and the regulations thereunder. Both the numerator and denominator of the top-heavy ratio are increased to reflect any contribution not actually made as of the Determination Date, but which is required to be taken into account on that date under section 416 of the Code and the regulations thereunder.

- (b) If the Employer maintains one (1) or more defined contribution plans (including any simplified employee pension plan) and the Employer maintains or has maintained one (1) or more defined benefit plans which during the five (5) year period ending on the Determination Date(s) has or has had any accrued benefits, the top-heavy ratio for any Required or Permissive Aggregation Group as appropriate is a fraction, the numerator of which is the sum of Account balances under the aggregated defined contribution plan or plans for all Key Employees, determined in accordance with (a) above, and the Present Value of accrued benefits under the aggregated defined benefit plan or plans for all Key Employees as of the Determination Date(s), and the denominator of which is the sum of the Account balances under the aggregated defined contribution plan or plans for all Participants, determined in accordance with (a) above, and the Present Value of accrued benefits under the defined benefit plan or plans for all Participants as of the Determination Date(s) all determined in accordance with section 416 of the Code and the regulations thereunder. The accrued benefits under a defined benefit plan in both the numerator and denominator of the top-heavy ratio are increased for any distribution of an accrued benefit made in the five (5) year period ending on the Determination Date.
- (c) For purposes of (a) and (b) above, the value of Account balances and the Present Value of accrued benefits will be determined as of the most recent Valuation Date that falls within or ends with the twelve (12) month period ending on the Determination Date, except as provided in section 416 of the Code and the regulations thereunder for the first and second Plan Years of a defined benefit plan. The Account balances and accrued benefits of a Participant (1) who is not a Key Employee but who was a Key Employee in a prior year, or (2) who has not been credited with at least one (1) hour of service with any Employer maintaining the Plan at any time during the five (5) year period ending on the Determination Date will be disregarded. The calculation of the top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with section 416 of the Code and the regulations thereunder. Deductible Employee contributions will not be taken into account for purposes of computing the top-heavy ratio. When aggregating plans the value of Account balances and accrued benefits will be calculated with reference to the Determination Dates that fall within the same calendar year.

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

- 18 05 Vesting Schedule. For any Plan Year in which this Plan is top-heavy, the Nonforfeitable Interest of each Employee in his/her Account balance attributable to Employer contributions shall be determined on the basis of the following: one hundred percent (100%) vesting at all times. The minimum vesting schedule applies to all benefits within the meaning of section 411(a)(7) of the Code except those attributable to Employee contributions, including benefits accrued before the effective date of section 416 of the Code and benefits accrued before the Plan became top-heavy. Further, no decrease in a Participant's nonforfeitable percentage may occur in the event the Plan's status as top-heavy changes for any Plan Year.

However, this Section does not apply to the Account balances of any Employee who does not have an hour of service after the Plan has initially become top-heavy and such Employee's Account balance attributable to Employer contributions and forfeitures will be determined without regard to this Section

If the vesting schedule under the Plan shifts in or out of the above schedule for any Plan Year because of the Plan's top-heavy status, such shift is an amendment to the vesting schedule and the election in Section 15 02 of the Plan applies.

18 06 Minimum Employer Contribution

- (a) Except as otherwise provided in Subsection (c) below, the Employer contributions and forfeitures allocated on behalf of any Participant who is not a Key Employee for any Plan Year for which the Plan is top-heavy shall not be less than the lesser of three percent (3%) of such Participant's compensation or in the case where the Employer has no defined benefit plan that designates this Plan to satisfy section 401 of the Code, the largest percentage of Employer contributions and forfeitures, as a percentage of the first \$200,000 of the Key Employee's compensation, allocated on behalf of any Key Employee for that year. The minimum allocation is determined without regard to any Social Security contribution. This minimum allocation shall be made even though, under other Plan provisions, the Participant would not otherwise be entitled to receive an allocation, or would have received a lesser allocation for the year because of (i) the Participant's failure to complete 1,000 Hours of Service (or any equivalent provided in the Plan), or (ii) the Participant's failure to make Mandatory Participant Contributions to the Plan or (iii) compensation less than a stated amount.
- (b) For purposes of computing the minimum allocation, compensation will mean W-2 earnings for the taxable year ending with or within the Plan Year, and Employer Contributions shall not include either elective deferrals or matching contributions.
- (c) The provision in Subsection (a) above shall not apply to any Participant who was not employed by the Employer on the last day of the Plan Year.
- (d) The minimum allocation required (to the extent required to be nonforfeitable under section 416(b) of the Code) may not be forfeited under section 411(a)(3)(B) or 411(a)(3)(D) of the Code.

18 07 Additional Contribution If the contribution rate for the Plan Year with respect to a Non-Key Employee described in Section 18 06 is less than the minimum contribution, the Employer will increase its contribution for such Employee to the extent necessary so his/her contribution rate for the Plan Year will equal the guaranteed minimum contribution. The Employer shall allocate the additional contribution to the account of the Non-Key Employee for whom the Employer makes the contribution.

◆ *Declaration of
Trust of
ICMA
Retirement
Corporation*

DECLARATION OF TRUST OF ICMA RETIREMENT CORPORATION

ARTICLE I. NAME DEFINITIONS

Section 1.1 Name The Name of the Trust, as amended and restated hereby, is the ICMA Retirement Trust

Section 1.2 Definitions Wherever they are used herein, the following terms shall have the following respective meanings

- (a) **Bylaws** The bylaws referred to in Section 4.1 hereof as amended from time to time
- (b) **Deferred Compensation Plan** A deferred compensation plan established and maintained by a Public Employer for the purpose of providing retirement income and other deferred benefits to its employees in accordance with the provision of Section 457 of the Internal Revenue Code of 1954 as amended
- (c) **Employees.** Those employees who participate in Qualified Plans
- (d) **Employer Trust.** A trust created pursuant to an agreement between RC and a Public Employer for the purpose of investing and administering the funds set aside by such Employer in connection with its Deferred Compensation agreements with its employees or in connection with its Qualified Plan
- (e) **Guaranteed Investment Contract.** A contract entered into by the Retirement Trust with insurance companies that provides for a guaranteed rate of return on investments made pursuant to such contract.
- (f) **ICMA** The International City Management Association.
- (g) **ICMA/RC Trustees.** Those Trustees elected by the Public Employers who, in accordance with the provisions of Section 3.1(a) hereof are also members, or former members, of the Board of Directors of ICMA or RC
- (h) **Investment Adviser** The Investment Adviser that enters into a contract with the Retirement Trust to provide advice with respect to investment of the Trust Property
- (i) **Portfolios.** The Portfolios of investment established by the Investment Adviser to the Retirement Trust, under the supervision of the Trustees, for the purpose of providing investments for the Trust Property
- (j) **Public Employee Trustees.** Those Trustees elected by the Public Employers who, in accordance with the provision of Section 3.1(a) hereof are full-time employees of Public Employers
- (k) **Public Employer Trustees.** Public Employers who serve as trustees of the Qualified Plans.
- (l) **Public Employer** A unit of state or local government, or any agency or instrumentality thereof, that has adopted a Deferred Compensation Plan or a Qualified Plan and has executed this Declaration of Trust.
- (m) **Qualified Plan** A plan sponsored by a Public Employer for the purpose of providing retirement income to its employees which satisfies the qualification requirements of Section 401 of the Internal Revenue Code, as amended
- (n) **RC** The International City Management Association Retirement Corporation
- (o) **Retirement Trust.** The Trust created by the Declaration of Trust.
- (p) **Trust Property** The amounts held in the Retirement Trust on behalf of the Public Employers in connection with Deferred Compensation Plans and on behalf of the Public Employer Trustees for the exclusive benefit of Employees pursuant to Qualified Plans. The Trust Property shall include any income resulting from the investment to the amounts so held
- (q) **Trustees** The Public Employee Trustees and ICMA/RC Trustees elected by the Public Employers to serve as members of the Board of Trustees of the Retirement Trust

ARTICLE II CREATION AND PURPOSE OF THE TRUST, OWNERSHIP OF TRUST PROPERTY

Section 2.1 Creation The Retirement Trust is created and established by the execution of this Declaration of Trust by the Trustees and the Public Employers

Section 2.2 Purpose The purpose of the Retirement Trust is to provide for the commingled investment of funds held by the Public Employers in connection with their Deferred Compensation and Qualified Plans. The Trust Property shall be invested in the Portfolios in Guaranteed Investment Contracts and in other investments recommended by the Investment Adviser under the supervision of the Board of Trustees. No part of the Trust Property will be invested in securities issued by Public Employers

Section 2.3 Ownership of Trust Property The Trustees shall have legal title to the Trust Property. The Public Employers shall be the beneficial owners of the portion of the Trust Property allocable to the Deferred Compensation Plans. The portion of the Trust Property allocable to the Qualified Plans shall be held for the Public Employer Trustees for the exclusive benefit of the Employees

ARTICLE III TRUSTEES

Section 3.1 Number and Qualification of Trustees

(a) The Board of Trustees shall consist of nine Trustees. Five of the Trustees shall be full-time employees of a Public Employer (the Public Employee Trustees) who are authorized by such Public Employer to serve as Trustee. The remaining four Trustees shall consist of two persons who, at the time of election to the Board of Trustees, are members of the Board of Directors of ICMA and two persons who, at the time of election, are members of the Board of Directors of RC (the ICMA/RC Trustees). One of the Trustees who is a director of ICMA, and one of the Trustees who is a director of RC shall, at the time of election, be full-time employees of a Public Employer

(b) No person may serve as a Trustee for more than one term in any ten-year period

Section 3.2 Election and Term (a) Except for the Trustees appointed to fill vacancies pursuant to Section 3.5 hereof, the Trustees shall be elected by a vote of a majority of the Public Employers in accordance with the procedures set forth in the By-Laws. (b) At the first election of Trustees, three Trustees shall be elected for a term of three years, three Trustees shall be elected for a term of two years and three Trustees shall be elected for a term of one year. At each subsequent election, three Trustees shall be elected

for a term of three years and until his or her successor is elected and qualified

Section 3.3 Nominations The Trustees who are full-time employees of Public Employers shall serve as the Nominating Committee for the Public Employee Trustees. The Nominating Committee shall choose candidates for Public Employee Trustees in accordance with the procedures set forth in the By-Laws.

Section 3.4 Resignation and Removal (a) Any Trustee may resign as Trustee (without need for prior or subsequent accounting) by an instrument in writing signed by the Trustee and delivered to the other Trustees and such resignation shall be effective upon such delivery, or at a later date according to the terms of the instrument. Any of the Trustees may be removed for cause, by a vote of a majority of the Public Employers. (b) Each Public Employee Trustee shall resign his or her position as Trustee within sixty days of the date on which he or she ceases to be a full-time employee of a Public Employer.

Section 3.5 Vacancies The term of office of a Trustee shall terminate and a vacancy shall occur in the event of the death, resignation, removal, adjudicated incompetence or other incapacity to perform the duties of the office of a Trustee. In the case of a vacancy, the remaining Trustees shall appoint such person as they in their discretion shall see fit (subject to the limitations set forth in this Section), to serve for the unexpired portion of the term of the Trustee who has resigned or otherwise ceased to be a Trustee. The appointment shall be made by a written instrument signed by a majority of the Trustees. The person appointed must be the same type of Trustee (i.e., Public Employee Trustee or ICMA/RC Trustee) as the person who has ceased to be a Trustee. An appointment of a Trustee may be made in anticipation of a vacancy to occur at a later date by reason of retirement or resignation, provided that such appointment shall not become effective prior to such retirement or resignation. Whenever a vacancy in the number of Trustees shall occur, until such vacancy is filled as provided in this Section 3.5, the Trustees in office, regardless of their number, shall have all the powers granted to the Trustees and shall discharge all the duties imposed upon the Trustees by this Declaration. A written instrument certifying the existence of such vacancy signed by a majority of the Trustees shall be conclusive evidence of the existence of such vacancy.

Section 3.6 Trustees Serve In Representative Capacity By executing this Declaration, each Public Employer agrees that the Public Employee Trustees elected by the Public Employers are authorized to act as agents and representatives of the Public Employers collectively.

ARTICLE IV POWERS OF TRUSTEES

Section 4.1 General Powers The Trustees shall have the power to conduct the business of the Trust and to carry on its operations. Such power shall include, but shall not be limited to, the power to

- (a) receive the Trust Property from the Public Employers, Public Employer Trustees or other Trustee of any Employer Trust,
- (b) enter into a contract with an Investment Adviser providing, among other things, for the establishment and operation of the Portfolios, selection of the Guaranteed Investment Contracts in which the Trust Property may be invested, selection of the other investments for the Trust Property and the payment of reasonable fees to the Investment Adviser and to any sub-investment adviser retained by the Investment Adviser;
- (c) review annually the performance of the Investment Adviser and approve annually the contract with such Investment Adviser;

- (d) invest and reinvest the Trust Property in the Portfolios, the Guaranteed Interest Contracts and in any other investment recommended by the Investment Adviser, but not including securities issued by Public Employers, provided that if a Public Employer has directed that its monies be invested in specified Portfolios or in a Guaranteed Investment Contract, the Trustees of the Retirement Trust shall invest such monies in accordance with such directions,
- (e) keep such portion of the Trust Property in cash or cash balances as the Trustees, from time to time, may deem to be in the best interest of the Retirement Trust created hereby without liability for interest thereon,
- (f) accept and retain for such time as they may deem advisable any securities or other property received or acquired by them as Trustees hereunder, whether or not such securities or other property would normally be purchased as investment hereunder,
- (g) cause any securities or other property held as part of the Trust Property to be registered in the name of the Retirement Trust or in the name of a nominee, and to hold any investments in bearer form but the books and records of the Trustees shall at all times show that all such investments are a part of the Trust Property,
- (h) make execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted,
- (i) vote upon any stock, bonds, or other securities, give general or special proxies or powers of attorney with or without power of substitution, exercise any conversion privileges, subscription rights or other options, and make any payments incidental thereto, oppose, or consent to, or otherwise participate in, corporate reorganizations or to other changes affecting corporate securities, and delegate discretionary powers and pay any assessments or charges in connection therewith, and generally exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held as part of the Trust Property,
- (j) enter into contracts or arrangements for goods or services required in connection with the operation of the Retirement Trust, including, but not limited to, contracts with custodians and contracts for the provision of administrative services,
- (k) borrow or raise money for the purposes of the Retirement Trust in such amount, and upon such terms and conditions, as the Trustees shall deem advisable, provided that the aggregate amount of such borrowings shall not exceed 30% of the value of the Trust Property. No person lending money to the Trustees shall be bound to see the application of the money lent or to inquire into its validity, expediency or propriety of any such borrowing,
- (l) incur reasonable expenses as required for the operation of the Retirement Trust and deduct such expenses from of the Trust Property,
- (m) pay expenses properly allocable to the Trust Property incurred in connection with the Deferred Compensation Plans, Qualified Plans, or the Employer Trusts and deduct such expenses from the portion of the Trust Property to whom such expenses are properly allocable,
- (n) pay out of the Trust Property all real and personal property taxes, income taxes and other taxes of any and all kinds which, in the opinion of the Trustees, are properly levied, or assessed under existing or future laws upon, or in respect of, the

Trust Property and allocate any such taxes to the appropriate accounts,

- (o) adopt, amend and repeal the bylaws, provided that such bylaws are at all times consistent with the terms of this Declaration of Trust;
- (p) employ persons to make available interests in the Retirement Trust to employers eligible to maintain a Deferred Compensation Plan under Section 457 or a Qualified Plan under Section 401 of the Internal Revenue Code, as amended,
- (q) issue the Annual Report of the Retirement Trust and the disclosure documents and other literature used by the Retirement Trust;
- (r) make loans, including the purchase of debt obligations, provided that all such loans shall bear interest at the current market rate,
- (s) contract for, and delegate any powers granted hereunder to, such officers, agents, employees, auditors and attorneys as the Trustees may select, provided that the Trustees may not delegate the powers set forth in paragraphs (b), (c) and (o) of this Section 4.1 and may not delegate any powers if such delegation would violate their fiduciary duties,
- (t) provide for the indemnification of the Officers and Trustees of the Retirement Trust and purchase fiduciary insurance,
- (u) maintain books and records, including separate accounts for each Public Employer, Public Employer Trustee or Employer Trust and such additional separate accounts as are required under, and consistent with, the Deferred Compensation or Qualified plan of each Public Employer, and
- (v) do all such acts, take all such proceedings, and exercise all such rights and privileges although not specifically mention herein, as the Trustees may deem necessary or appropriate to administer the Trust Property and to carry out the purposes of the Retirement Trust.

Section 4.2 Distribution of Trust Property Distributions of the Trust property shall be made to, or on behalf of, the Public Employer or Public Employer Trustee in accordance with the terms of the Deferred Compensation Plans, Qualified Plans or Employer Trusts. The Trustees of the Retirement Trust shall be fully protected in making payments in accordance with the directions of the Public Employers, Public Employer Trustees or other Trustee of the Employer Trusts without ascertaining whether such payments are in compliance with the provision of the Deferred Compensation or Qualified Plans, or the agreements creating the Employer Trusts.

Section 4.3 Execution of Instruments The Trustees may unanimously designate any one or more of the Trustees to execute any instrument or document on behalf of all, including but not limited to the signing or endorsement of any check and the signing of any applications, insurance and other contracts, and the action of such designated Trustee or Trustees shall have the same force and effect as if taken by all the Trustees.

ARTICLE V DUTY OF CARE AND LIABILITY OF TRUSTEES

Section 5.1 Duty of Care In exercising the powers hereinbefore granted to the Trustees, the Trustees shall perform all acts within their authority for the exclusive purpose of providing benefits for the Public Employers in connection with Deferred Compensation Plans and Public Employer Trustees pursuant to Qualified Plans, and shall perform such acts with the care, skill, prudence and diligence in the circumstances then prevailing that a prudent person acting in

a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims

Section 5.2 Liability The Trustees shall not be liable for any mistake of judgment or other action taken in good faith, and for any action taken or omitted in reliance in good faith upon the books of account or other records of the Retirement Trust, upon the opinion of counsel, or upon reports made to the Retirement Trust by any of its officers, employees or agents or by the Investment Adviser or any sub-investment adviser, accountants, appraisers or other experts or consultant selected with reasonable care by the Trustees, officers or employees of the Retirement Trust. The Trustees shall also not be liable for any loss sustained by the Trust Property by reason of any investment made in good faith and in accordance with the standard of care set forth in Section 5.1

Section 5.3 Bond No Trustee shall be obligated to give any bond or other security for the performance of any of his or her duties hereunder

ARTICLE VI. ANNUAL REPORT TO SHAREHOLDERS

The Trustees shall annually submit to the Public Employers and Public Employer Trustees a written report of the transactions of the Retirement Trust, including financial statements which shall be certified by independent public accountants chosen by the Trustees

ARTICLE VII DURATION OR AMENDMENT OF RETIREMENT TRUST

Section 7.1 Withdrawal A Public Employer or Public Employer Trustee may, at any time, withdraw from this Retirement Trust by delivering to the Board of Trustees a written statement of withdrawal. In such statement, the Public Employer or Public Employer Trustee shall acknowledge that the Trust Property allocable to the Public Employer is derived from compensation deferred by employees of such Public Employer pursuant to its Deferred Compensation Plan or from contributions to the accounts of Employees pursuant to a Qualified Plan, and shall designate the financial institution to which such property shall be transferred by the Trustees of the Retirement Trust or by the Trustee of the Employer Trust.

Section 7.2 Duration The Retirement Trust shall continue until terminated by the vote of a majority of the Public Employers, each casting one vote. Upon termination, all of the Trust Property shall be paid out to the Public Employers, Public Employer Trustees or the Trustees of the Employer Trusts, as appropriate

Section 7.3 Amendment The Retirement Trust may be amended by the vote of a majority of the public Employers, each casting one vote

Section 7.4 Procedure A resolution to terminate or amend the Retirement Trust or to remove a Trustee shall be submitted to a vote of the Public Employers if (i) a majority of the Trustees so direct, or; (ii) a petition requesting a vote signed by not less than 25 percent of the Public Employers is submitted to the Trustees

ARTICLE VIII. MISCELLANEOUS

Section 8.1 Governing Law Except as otherwise required by state or local law, this Declaration of Trust and the Retirement Trust hereby created shall be construed and regulated by the laws of the District of Columbia.

Section 8.2 Counterparts This Declaration may be executed by the Public Employers and Trustees in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

◆ *ICMA
Retirement
Corporation
Prototype Money
Purchase Plan & Trust
Adoption Agreement #001*

ICMA RETIREMENT CORPORATION
PROTOTYPE MONEY PURCHASE PLAN
& TRUST ADOPTION AGREEMENT
(#001)

The Employer hereby establishes a Money Purchase Plan and Trust to be known as City of Soledad

Money Purchase Plan & Trust

(the "Plan") in the form of the ICMA Retirement Corporation Prototype Money Purchase Plan and Trust. This Plan is an amendment and restatement of an existing defined contribution money purchase plan Yes No

If yes, please specify the name of the defined contribution money purchase plan which this Plan hereby amends and restates:

I. Employer City of Soledad

II Prototype Sponsor:

Name. ICMA Retirement Corporation
Address 777 N Capitol Street, N.E
Washington, D C 20002-4240
Telephone Number: (202) 962-4600

III The Effective Date of the Plan shall be the first day of the Plan Year during which the Employer adopts the Plan, unless an alternate Effective Date is hereby specified

October 1, 1991

IV Plan Year will mean

- The twelve (12) consecutive month period that coincides with the limitation year (See Section 6.05(i) of the Plan)
- The twelve (12) consecutive month period commencing on July 1 and each anniversary thereof

V Normal Retirement Age shall be age 59½ (not to exceed age 65)

VI. ELIGIBILITY REQUIREMENTS

1 The following group or groups of Employees are eligible to participate in the Plan.

- All Employees
- All Full-Time Employees
- Salaried Employees
- Non-Union Employees
- Management Employees
- Public Safety Employees
- General Employees
- Other (specify below)

Classified Employees, Management & Mid-Management (Except Sworn Officers)

2. The Employer hereby waives or reduces the requirement of a twelve (12) month Period of Service for participation. The required Period of Service shall be N/A (write N/A if an Employee is eligible to participate upon employment)

If this waiver or reduction is elected, it shall apply to all Employees within the Covered Employment Classification

3 A minimum age requirement is hereby specified for eligibility to participate. The minimum age requirement is N/A (not to exceed age 21 Write N/A if no minimum age is declared.)

VII. CONTRIBUTION PROVISIONS

1 The Employer shall contribute as follows (choose one)

- Fixed Employer Contributions With or Without Mandatory Participant Contributions

The Employer shall contribute on behalf of each Participant 6.5 % of Earnings or \$ _____ for the Plan Year (subject to the limitations of Article VI of the Plan) Each Participant is required to contribute 5.5 % of Earnings or \$ _____ for the Plan Year as a condition of participation in the Plan. (Write "0" if no contribution is required.) If Participant contributions are required under this option, a Participant shall not have the right to discontinue or vary the rate of such contributions after becoming a Plan Participant.

The Employer hereby elects to "pick up" the Mandatory/Required Participant Contribution

Yes No

[Note to Employer: Neither an opinion letter issued by the Internal Revenue Service with respect to the Prototype Plan, nor a determination letter issued to an adopting Employer is a ruling by the Internal Revenue Service that Participant contributions that are picked up by the Employer are not includable in the Participant's gross income for federal income tax purposes. The Employer may seek such a ruling

Picked up contributions are excludable from the Participant's gross income under Section 414(h)(2) of the Internal Revenue Code of 1986 only if they meet the requirements of Rev Rul 81-35, 1981-1 C.B. 255. Those requirements are (1) that the Employer must specify that the contributions, although designated as Employee contributions, are being paid by the Employer in lieu of contributions by the Employee, and (2) the Employee must not have the option of receiving the contributed amounts directly instead of having them paid by the Employer to the Plan.]

Fixed Employer Match of Participant Contributions.

The Employer shall contribute on behalf of each Participant _____% of Earnings for the Plan Year (subject to the limitations of Articles V and VI of the Plan) for each Plan Year that such Participant has contributed _____% of Earnings or \$_____. Under this option there is a single, fixed rate of Employer contributions, but a Participant may decline to make the required Participant contributions in any Plan Year, in which case no Employer contribution will be made on the Participant's behalf in that Plan Year.

Variable Employer Match of Participant Contributions.

The Employer shall contribute on behalf of each Participant an amount determined as follows (subject to the limitations of Articles V and VI of the Plan)

_____% of the contributions made by the Participant for the Plan Year (not including Participant contributions exceeding _____% of Earnings or \$_____),

PLUS _____% of the contributions made by the Participant for the Plan Year in excess of those included in the above paragraph (but not including Participant contributions exceeding in the aggregate _____% of Earnings or \$_____)

Employer contributions on behalf of a Participant for a Plan Year shall not exceed \$_____ or _____% of Earnings, whichever is _____ more or _____ less.

2. Each Participant may make a voluntary (unmatched), after-tax contribution, subject to the limitations of Section 404 and Articles V and VI of the Plan

Yes No

3. Employer contributions and Participant contributions shall be contributed to the Trust in accordance with the following payment schedule

15th & last day of month

VIII. EARNINGS

Earnings, as defined under Section 2.09 of the Plan, shall include

- (a) Overtime Yes No
- (b) Bonuses Yes No

IX. LIMITATION ON ALLOCATIONS

If the Employer (i) maintains or ever maintained another qualified plan in which any Participant in this Plan is (or was) a participant or could possibly become a participant, and/or (ii) maintains a welfare benefit fund (as defined in Section 419(e) of the Code) or an individual medical account (as defined in Section 415(l)(2) of the Code, under which amounts are treated as Annual Additions with respect to any Participant in this Plan, the Employer hereby agrees to limit contributions to all such plans as provided herein, if necessary, in order to avoid excess contributions (as described in Sections 6.03 and 6.04 of the Plan)

A. If the Participant is covered under another qualified defined contribution plan maintained by the Employer, other than a Master or Prototype Plan, the provisions of Section 6.02(a) through (f) of the Plan will apply as if the other plan were a Master or Prototype Plan, unless another method has been indicated below

- Other Method (Provide the method under which the plans will limit total Annual Additions to the Maximum Permissible Amount, and will properly reduce any excess amounts, in a manner that precludes Employer discretion.)

B. If the Participant is or has ever been a participant in a defined benefit plan maintained by the Employer, and if the limitation in Section 6.04 of the Plan would be exceeded, then the Participant's Projected Annual Benefit under the defined benefit plan shall be reduced in accordance with the terms thereof to the extent necessary to satisfy such limitation. If such plan does not provide for such reduction, or if the limitation is still exceeded after the reduction, annual additions shall be reduced to the extent necessary in the manner described in Sections 6.01 through 6.03. The methods of avoiding the limitation described in this paragraph will not apply if the Employer indicates another method below

- Other Method. (Note to Employer: Provide below language which will satisfy the 1.0 limitation of section 415(e) of the Code. Such language must preclude Employer discretion. See section 1.415-1 of the Regulations for guidance.)

C. The limitation year is the following twelve (12) consecutive month period.

July 1 - June 30

X. VESTING PROVISIONS

The Employer hereby specifies the following vesting schedule, subject to (1) the minimum vesting requirements as noted and (2) the concurrence of the Plan Administrator

<u>Years of Service Completed</u>	<u>Specified Percent Vesting</u>	<u>Minimum Vesting Requirements**</u>
Less than One	<u>0</u> %	No minimum
One	<u>20</u> %	No minimum
Two	<u>40</u> %	No minimum
Three	<u>60</u> %	Not less than 20%
Four	<u>80</u> %	Not less than 40%
Five	<u>100</u> %	Not less than 60%
Six	<u> </u> %	Not less than 80%
Seven or more	<u>100</u> %	Must equal 100%

(**These minimum vesting requirements conform to the Code's three- to seven-year vesting schedule. If the employee becomes 100% vested by the completion of five years of service, there is no minimum for years three and four.)

XI INVESTMENT OPTION

- A Participant may direct his/her investment only to or into an investment option that provides a guarantee of principal.
- A Participant may direct his/her investment of not more than _____ % in an investment option which does not provide any guarantee of principal
- A Participant may direct his/her investment, without restriction, among various investment options available under the Trust.
- Specify any other investment restrictions.

No limit on employee portion & vested portion of employer contribution
Non-vested portion = guarantee

XII BENEFITS UPON SEPARATION

- 1 Upon separation from service for reason other than death, disability, or attainment of Normal Retirement Age, the Participant may elect to commence receiving benefits from the following accounts, without regard to age.
- a) Employer Contribution Account (Nonforfeitable Interest) Yes No
 - b) Participant Contribution Account (if applicable) Yes No
 - c) Participant Portable Benefits Account Yes No

- 2. If "no" to any of the above, the earliest age at which the Employer will allow a distribution from the Employer Contribution Account, the Participant Portable Benefits Account, and/or the Participant Contribution Account, if applicable, is _____
- 3. Notwithstanding Subsection (2) above, a distribution shall be made pursuant to Section 10.04 of the Plan, De Minimis Accounts. Further, the Participant shall be entitled to request that his/her entire Nonforfeitable Interest in his/her Account be transferred to another plan, pursuant to Section 10.03 of the Plan.

XIII. Loans are permitted under the Plan, as provided in Article XIV Yes No

NOTE Upon termination, the loan has to be repaid in full

XIV The Employer hereby attests that it is a unit of state or local government or an agency or instrumentality of one or more units of state or local government.

XV The Prototype Sponsor hereby agrees to inform the Employer of any amendments to the Plan made pursuant to Section 15.05 of the Plan or of the discontinuance or abandonment of the Plan.

XVI. The Employer hereby appoints the Prototype Sponsor as the Plan Administrator pursuant to the terms and conditions of the ICMA RETIREMENT CORPORATION PROTOTYPE MONEY PURCHASE PLAN & TRUST

The Employer hereby agrees to the provisions of the Plan & Trust.

XVII. The Employer hereby acknowledges it understands that failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

XVIII. An adopting Employer may not rely on a notification letter issued to the Prototype Sponsor by the Internal Revenue Service as evidence that the Plan is qualified under section 401 of the Internal Revenue Code. In order to obtain reliance with respect to plan qualification, the Employer must apply to the appropriate key district office for a determination letter

This Adoption Agreement may be used only in conjunction with basic Plan document number 001

In Witness Whereof, the Employer hereby causes this Agreement to be executed on this 23rd day of September, 19 91

EMPLOYER Accepted. ICMA RETIREMENT CORPORATION

By: [Signature] By: _____

Title: City Manager Title _____

Attest: Betty Burns Attest. _____
 Betty Burns, Deputy City Clerk

These prototype documents have been submitted to the IRS for approval as to form. It is anticipated that such IRS approval will be received at some time during 1991. When that occurs, ICMA Retirement Corporation will distribute the approved version of the prototype documents for adoption by employers.