

## **The Town of Upper Marlboro**

RESOLUTION: 2022-17  
SESSION: Regular Town Meeting  
DATED: August 23<sup>rd</sup>, 2022

A RESOLUTION OF THE TOWN BOARD OF COMMISSIONERS OF THE TOWN OF UPPER MARLBORO TO AWARD A SUCCESSOR CONTRACT FOR TOWN EMPLOYEE AND COMMISSIONER LIFE INSURANCE AND AWARD A SEPARATE CONTRACT TO PROVIDE A SUPPLEMENTAL RETIREMENT BENEFIT FOR CERTAIN EMPLOYEES

**WHEREAS**, on or about November 10, 2020, the Board awarded a contract to Reliance Standard Life Insurance Company, which is about to lapse or terminate; and

**WHEREAS**, the Town has a desire to continue to provide its employees and elected officials with basic life insurance and desires to provide additional retirement benefits for certain employees who previously retired under the Maryland State Retirement program; and

**WHEREAS**, pursuant to Town's Charter Section 82-56. (Purchasing and Contracts) all expenditures for contracts and purchases with an anticipated cost of more than ten thousand dollars (\$10,000) shall be subject to competitive sealed bidding unless the Board, by unanimous vote of the full Board, finds another method of procurement to be more advantageous; and

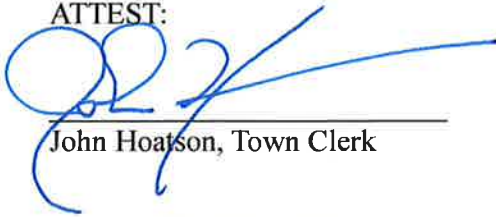
**WHEREAS**, the Board of Town Commissioners finds that a 457(b) plan is a type of tax-advantaged retirement plan for state and local government employees, and while the 457(b) shares a few features with the more familiar 401(k) plan, it also has some unusual features since a 457(b) is not subject to ERISA laws, withdrawals before age 59 1/2 are not subject to the 10% penalty tax imposed on most early 401(k) withdrawals; and

**WHEREAS**, the Board of Town Commissioners wishes to waive the formal request for bids process and accepts the recommendation from Insuraty to engage and award contracts to (i) MetLife to supply basic life, supplemental term life insurance and other employee benefit programs as described in a proposal dated July 26, 2022, and (ii) John Hancock Retirement Services to supply a Town of Upper Marlboro 457(B) Governmental Plan as described in a proposal dated July 18, 2022, which are both attached hereto and incorporated herein as Exhibits A & B; and

**WHEREAS**, the Town Board of Commissioners hereby finds that sufficient funds have been appropriated and that said two companies are responsible offerors whose proposals are the most advantageous to the Town taking into consideration price and the evaluation factors set forth in the request for proposals.

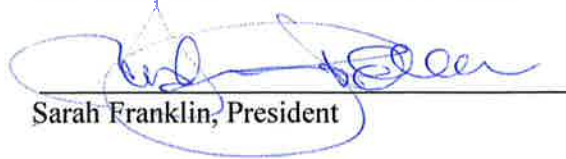
**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Commissioners for The Town of Upper Marlboro, sitting in regular session this 23rd day of August, 2022, that the Town Board of Commissioners hereby waived the formal request for bids, and authorize the President to award and execute the respective contracts to METROPOLITAN LIFE INSURANCE COMPANY t/a MetLife and JOHN HANCOCK RETIREMENT PLAN SERVICES LLC, attached hereto and incorporated by reference herein as Exhibits C & D for the amount of      and \$      per month respectively and to execute the relevant contract documents.

ATTEST:

  
\_\_\_\_\_  
John Hoatson, Town Clerk

Date: 8.23.22

THE TOWN OF UPPER MARLBORO

  
\_\_\_\_\_  
Sarah Franklin, President

\_\_\_\_\_  
Charles Colbert, Commissioner

  
\_\_\_\_\_  
Janice Duckett, Commissioner  
\_\_\_\_\_  
Thomas Hanchett, Commissioner  
\_\_\_\_\_  
Karen Lott, Commissioner

[Exhibit A, B, C & D – Proposals and Contracts]

CERTIFICATION

I, the undersigned, hereby certify that I am the Town Clerk of the Town of Upper Marlboro and that the Board of Town Commissioners of the Town of Upper Marlboro at a public meeting at which a quorum was present adopted this Resolution, and that said Resolution is in full force and effect and has not been amended or repealed.

In witness whereof, I have hereunto set my hand and seal of the municipal corporation, this 23 day of August, 2022.

  
\_\_\_\_\_  
John Hoatson, Town Clerk

Philip Miron •  
Lyle D. Foster  
Guy W. Murphy, Jr.  
Lori L. Holzwarth\*  
Nicholas Livers  
Laura G. Wiltshire  
Ray Slaton  
Kayce M. Chaney  
Sam Patterson  
Lucy Parks Shackelford\*\*\*

*Of Counsel*  
James W. Hyden  
Steven Napper  
Sam Strange\*\*

\*Also licensed in Missouri  
\*\*Also licensed in Tennessee  
\*\*\*Also licensed in Texas



**LITTLE ROCK**  
901 N. UNIVERSITY AVE  
LITTLE ROCK, AR 72207  
P - 501.376.8222  
F - 501.376.7047

**CONWAY**  
557 Locust Avenue  
Conway, AR 72034  
P - 501.336.8822  
F - 501.336.8688

**STUTTGART**  
721 S. Main Street  
Stuttgart, AR 72160  
P - 870.673.0083  
F - 870.673.0007

OUTSIDE CENTRAL AR - 888.670.8222  
HMF@HMFLLAW.NET  
[www.hmflaw.net](http://www.hmflaw.net)

October 24, 2022

SCANNED  
NOV 04 2022

COPY

Mr. Kyle Snyder  
The Town of Upper Marlboro  
14211 School Lane  
Upper Marlboro, MD 20772

**RE: The Town of Upper Marlboro 457b Retirement Plan**

Dear Mr. Snyder:

Hyden, Miron, & Foster PLLC has completed prototype plan format sponsored by our firm and compliant with the 457b Retirement Plan and other applicable rules and regulations which were required to be included in the Plan and any "tack on" amendments to the Plan since it was last updated several years ago. Hyden Miron & Foster, PLLC would again like to thank you for the opportunity to serve you in preparing the documents in your Retirement Plan.

It is extremely important that you closely read the cover letter previous emailed to you. You should understand **all sections of the comprehensive summary regarding your legal obligations as the Plan Sponsor to operate and maintain the Plan properly.** Failure to operate the plan properly could result in loss of the Plan's tax qualified status.

Please acknowledge receipt of the enclosed Plan Binder by signing and returning a copy of the Acknowledgement to our office in the prepaid self-addressed stamped envelope provided. If you have any questions, please let us know.

Sincerely,  
HYDEN, MIRON & FOSTER, PLLC

  
Cecilia Flores

Legal Assistant to Danny W. Broadrick  
[cecilia.flores@hmflaw.net](mailto:cecilia.flores@hmflaw.net)

/cf  
Enclosures  
cc: Danny W. Broadrick (via email only)

Philip Miron<sup>\*</sup>  
Lyle D. Foster  
Guy W. Murphy, Jr.  
Lori L. Holzwarth<sup>\*</sup>  
Nicholas Livers  
Laura G. Wiltshire  
Ray Slaton  
Kayce M. Chaney  
Sam Patterson  
Lucy Parks Shackelford<sup>\*\*\*</sup>

*Of Counsel*

James W. Hyden  
Steven Napper  
Sam Strange<sup>\*\*</sup>

<sup>\*</sup>Also licensed in Missouri  
<sup>\*\*</sup>Also licensed in Tennessee  
<sup>\*\*\*</sup>Also licensed in Texas



**LITTLE ROCK**  
901 N. UNIVERSITY AVE  
LITTLE ROCK, AR 72207  
P - 501.376.8222  
F - 501.376.7047

**CONWAY**  
557 Locust Avenue  
Conway, AR 72034  
P - 501.336.8822  
F - 501.336.8688

**STUTTGART**  
721 S. Main Street  
Stuttgart, AR 72160  
P - 870.673.0083  
F - 870.673.0007

OUTSIDE CENTRAL AR - 888.670.8222  
HMF@HMFLLAW.NET  
[www.hmflaw.net](http://www.hmflaw.net)

**Receipt Acknowledgment**  
**The Town of Upper Marlboro**

By signing below, I agree and acknowledge receipt of the Plan Binder for:

**The Town of Upper Marlboro 457b Retirement Plan**

**THE TOWN OF UPPER MARLBORO**

By: \_\_\_\_\_

Kyle Snyder

11/2/2022  
Date \_\_\_\_\_

**The Town of Upper  
Marlboro 457b  
Retirement Plan  
(Effective: January 1, 2022)**

**THE TOWN OF UPPER  
MARLBORO**

Prepared by:  
HYDEN, MIRON & FOSTER, PLLC  
901 N. University Avenue  
Little Rock, Arkansas 72207  
501-376-8222  
501-376-7047 Fax

## **TABLE OF CONTENTS**

### **Employer / Plan Administrator's Guide**

#### **1. Adoption Agreement**

#### **2. Amendments to Adoption Agreement**

Including: Amendment to Conform to Disability Claims Regulation

#### **3. Plan Document**

#### **4. Summary of 457 Plan Provisions**

Including: Summary of Material Modifications regarding  
Disability Claims Procedure

#### **5. Sponsoring Employer Resolution**

#### **6. Employer / Administrator's Forms Guide**

Including: Qualified Domestic Relations Order "Sample"

#### **7. Qualified Domestic Relations**

Including: Qualified Domestic Relations Order ("QDRO") Policy  
Qualified Domestic Relations Order - Template

#### **8. Employer Rollover Contributions Policy**

**EMPLOYER / ADMINISTRATOR'S  
FORMS GUIDE**

**NOTE:      FORMS REFERENCED IN THIS GUIDE  
             MAY BE OBTAINED FROM YOUR  
             THIRD-PARTY ADMINISTRATION FIRM**

## TO THE PLAN ADMINISTRATOR

The law imposes rules which, if not carefully followed, may subject the Plan Administrator, Employer, and Trustee to legal liability.

The following referenced Administrative Forms for the above-referenced Plan are either required under the Plan or by law, or they are necessary to properly administer the Plan. Below are instructions for the use of the available forms:

### **I. When the Plan Administrator receives a QUALIFIED DOMESTIC RELATIONS ORDER from a Participant or "Alternate Payee."**

The law requires that the Plan Administrator adopt a written procedure to deal with domestic relations orders that may be served on the Plan providing for the payment of the Participant's benefits to "alternate payees" (normally a former spouse or child). The Plan Administrator should sign the QUALIFIED DOMESTIC RELATIONS ORDER PROCEDURE when the Plan document is executed and MUST complete the QDRO DETERMINATION CHECKLIST, as well as follow all suspension, notification, and determination responsibilities outlined in the Procedure, when a domestic relations order is anticipated and/or received. **You MUST sign this procedure. A signed copy of the QDRO Procedure can be found in the "Administrator's Forms Guide and Policies" section of the plan documents that are posted on the secure website.**

**A "SAMPLE" QDRO Procedure form, checklist, template  
Order and Notices are attached.**

\*\*\*\*\*

### **The following forms have been included:**

#### **1. QUALIFIED DOMESTIC RELATIONS ORDER PROCEDURE**

The law requires that the Plan Administrator adopt a written procedure to deal with domestic relations orders that may be served on the Plan providing for the payment of Participant's benefits to "alternate payees" (normally a former spouse or child). The Plan Administrator should sign the QUALIFIED DOMESTIC RELATIONS ORDER PROCEDURE POLICY after the Plan document is executed and complete the QDRO DETERMINATION CHECKLIST WHEN A DOMESTIC RELATIONS ORDER IS RECEIVED. **You MUST SIGN this procedure policy.**

\*\*\*\*\*

**The following forms are available from your Third Party Administrator**



# ADOPTION AGREEMENT FOR ELIGIBLE GOVERNMENTAL 457 PLAN

The undersigned Employer, by executing this Adoption Agreement, establishes an Eligible 457 Plan ("Plan"). The Employer, subject to the Employer's Adoption Agreement elections, adopts fully the Plan provisions. This Adoption Agreement, the basic plan document and any attached Appendices, amendments, or agreements permitted or referenced therein, constitute the Employer's entire plan document. *All "Election" references within this Adoption Agreement or the basic plan document are Adoption Agreement Elections. All "Article" or "Section" references are basic plan document references. Numbers in parentheses which follow election numbers are basic plan document references.* Where an Adoption Agreement election calls for the Employer to supply text, the Employer may lengthen any space or line, or create additional tiers. When Employer-supplied text uses terms substantially similar to existing printed options, all clarifications and caveats applicable to the printed options apply to the Employer-supplied text unless the context requires otherwise. The Employer makes the following elections granted under the corresponding provisions of the basic plan document.

## 1. EMPLOYER (1.11).

Name: The Town of Upper Marlboro

Address: 14211 School Lane  
Street  
Upper Marlboro Maryland 20772  
City State Zip

Telephone: 301-627-6905

Taxpayer Identification Number (TIN): 52-6010777

## 2. PLAN NAME.

Name: The Town of Upper Marlboro 457b Retirement Plan

## 3. PLAN YEAR (1.25). Plan Year means the 12 consecutive month period (except for a short Plan Year) ending every (Choose one of a. or b. and choose c. if applicable): [Note: Complete any applicable blanks under Election c. with a specific date, e.g., "June 30" OR "the last day of February" OR "the first Tuesday in January." In the case of a Short Plan Year or a Short Limitation Year, include the year, e.g., "May 1, 2013."]

- a. ☒ **December 31.**
- b. ☐ **Plan Year:** ending: \_\_\_\_\_.
- c. ☐ **Short Plan Year:** commencing: \_\_\_\_\_ and ending: \_\_\_\_\_.

## 4. EFFECTIVE DATE (1.08). The Employer's adoption of the Plan is a (Choose one of a. or b. Complete c. if new plan OR complete c. and d. if an amendment and restatement. Choose e. if applicable):

- a. ☒ **New Plan.**
- b. ☐ **Restated Plan.** The Plan is a substitution and amendment of an existing 457 plan.

### Initial Effective Date of Plan

- c. ☒ January 1, 2022 (enter month day, year; hereinafter called the "Effective Date" unless 4d is entered below)

### Restatement Effective Date (If this is an amendment and restatement, enter effective date of the restatement.)

- d. ☐ \_\_\_\_\_ (enter month day, year)

### Special Effective Dates: (optional)

- e. ☒ **Describe:** November 1, 2022 (for Pre-Tax Elective Deferrals)

## 5. CONTRIBUTION TYPES. (If this is a frozen Plan (i.e., all contributions have ceased), choose a. only):

### Frozen Plan

- a. ☐ **Contributions cease.** All Contributions have ceased or will cease (Plan is frozen).
1. **Effective date of freeze:** \_\_\_\_\_ [Note: Effective date is optional unless this is the amendment or restatement to freeze the Plan.]

**Contributions.** The Employer and/or Participants, in accordance with the Plan terms, make the following Contribution Types to the Plan (Choose one or more of b. through d. if applicable):

- b. ☒ **Pre-Tax Elective Deferrals.** The dollar or percentage amount by which each Participant has elected to reduce his/her Compensation, as provided in the Participant's Salary Reduction Agreement (Choose one or more as applicable.):

And will Matching Contributions be made with respect to Elective Deferrals?

1. ☒ **Yes.** See Question 16.

2. ☐ **No.**

And will **Roth Elective Deferrals** be made?

3. ☐ **Yes.** [Note: The Employer may not limit Deferrals to Roth Deferrals only.]

4. ☒ **No.**

- c. ☒ **Nonelective Contributions.** See Question 17.

- d. ☒ **Rollover Contributions.** See Question 30.

6. **EXCLUDED EMPLOYEES (1.10).** The following Employees are Excluded Employees and are not eligible to participate in the Plan (Choose one of a. or b.):

- a. ☐ **No exclusions.** All Employees are eligible to participate.

- b. ☒ **Exclusions.** The following Employees are Excluded Employees (Choose one or more of 1. through 4.):

1. ☐ **Part-time Employees.** The Plan defines part-time Employees as Employees who normally work less than \_\_\_\_\_ hours per week.

2. ☐ **Hourly-paid Employees.**

3. ☒ **Leased Employees.** The Plan excludes Leased Employees.

4. ☐ **Specify:** \_\_\_\_\_

7. **INDEPENDENT CONTRACTOR (1.16).** The Plan (Choose one of a., b. or c.):

- a. ☐ **Participate.** Permits Independent Contractors to participate in the Plan.

- b. ☒ **Not Participate.** Does not permit Independent Contractors to participate in the Plan.

- c. ☐ **Specified Independent Contractors.** Permits the following specified Independent Contractors to participate: \_\_\_\_\_

[Note: If the Employer elects to permit any or all Independent Contractors to participate in the Plan, the term Employee as used in the Plan includes such participating Independent Contractors.]

8. **COMPENSATION (1.05).** Subject to the following elections, Compensation for purposes of allocation of Deferral Contributions means:

**Base Definition** (Choose one of a., b., c. or d.):

- a. ☒ Wages, tips and other compensation on Form W-2.

- b. ☐ Code §3401(a) wages (wages for withholding purposes).

- c. ☐ 415 safe harbor compensation.

- d. ☐ Alternative (general) 415 Compensation.

[Note: The Plan provides that the base definition of Compensation includes amounts that are not included in income due to Code §§401(k), 125, 132(f)(4), 403(b), SEP, 414(h)(2), & 457. Compensation for an Independent Contractor means the amounts the Employer pays to the Independent Contractor for services, except as the Employer otherwise specifies below.]

**Modifications to Compensation definition.** The Employer elects to modify the Compensation definition as follows (Choose one of e. or f.):

- e. ☒ **No modifications.** The Plan makes no modifications to the definition.

- f. ☐ **Modifications** (Choose one or more of 1. through 5.):

1. ☐ **Fringe benefits.** The Plan excludes all reimbursements or other expense allowances, fringe benefits (cash and noncash), moving expenses, deferred compensation and welfare benefits.

2. ☐ **Elective Contributions. [1.05(E)]** The Plan excludes a Participant's Elective Contributions.

3. ☐ **Bonuses.** The Plan excludes bonuses.
4. ☐ **Overtime.** The Plan excludes overtime.
5. ☐ **Specify:** \_\_\_\_\_

**Compensation taken into account.** For the Plan Year in which an Employee first becomes a Participant, the Plan Administrator will determine the allocation of matching and nonelective contributions by taking into account *(Choose one of g. or h.):*

- g. ☐ **Plan Year.** The Employee's Compensation for the entire Plan Year. *(N/A if no matching or nonelective contributions)*
- h. ☒ **Compensation while a Participant.** The Employee's Compensation only for the portion of the Plan Year in which the Employee actually is a Participant. *(N/A if no matching or nonelective contributions)*

9. **POST-SEVERANCE COMPENSATION (1.05(F)).** Compensation includes the following types of Post-Severance Compensation paid within any applicable time period as may be required *(Choose one of a. or b.):*

- a. ☒ **None.** The Plan does not take into account Post-Severance Compensation as to any Contribution Type except as required under the basic plan document.
- b. ☐ **Adjustments.** The following Compensation adjustments apply *(Choose one or more):*
1. ☐ **Regular Pay.** Post-Severance Compensation will include Regular Pay and it will apply to all Contribution Types.
  2. ☐ **Leave-Cashouts.** Post-Severance Compensation will include Leave Cashouts and it will apply to all Contribution Types.
  3. ☐ **Nonqualified Deferred Compensation.** Post-Severance Compensation will include Deferred Compensation and it will apply to all Contribution Types.
  4. ☐ **Salary Continuation for Disabled Participants.** Post-Severance Compensation will include Salary Continuation for Disabled Participants and it will apply to all Contribution Types.
  5. ☐ **Differential Wage Payments.** Post-Severance Compensation will include Differential Wage Payments (military continuation payments) and it will apply to all Contribution Types.
  6. ☐ **Describe alternative Post-Severance Compensation definition, limit by Contribution Type, or limit by Participant group:** \_\_\_\_\_

10. **NORMAL RETIREMENT AGE (1.20).** A Participant attains Normal Retirement Age under the Plan *(Choose one of a. or b.):*

- a. ☒ **Plan designation.** [Plan Section 3.05(B)] When the Participant attains age 65. *[Note: The age may not exceed age 70 1/2. The age may not be less than age 65, or, if earlier, the age at which a Participant may retire and receive benefits under the Employer's pension plan, if any.]*
- b. ☐ **Participant designation.** [Plan Section 3.05(B) and (B)(1)] When the Participant attains the age the Participant designates, which may not be earlier than age \_\_\_\_\_ and may not be later than age \_\_\_\_\_. *[Note: The age may not exceed age 70 1/2.]*

**Special Provisions for Police or Fire Department Employees** *(Choose c. and/or d. as applicable):*

- c. ☐ **Police department employees.** [Plan Section 3.05(B)(3)] *(Choose 1. or 2.):*
1. ☐ **Plan designation.** [Plan Section 3.05(B)] When the Participant attains age \_\_\_\_\_. *[Note: The age may not exceed age 70 1/2 and may not be less than age 40.]*
  2. ☐ **Participant designation.** [Plan Section 3.05(B) and (B)(1)] When the Participant attains the age the Participant designates, which may not be earlier than age \_\_\_\_\_ (no earlier than age 40) and may not be later than age \_\_\_\_\_. *[Note: The age may not exceed age 70 1/2.]*
- d. ☐ **Fire department employees.** [Plan Section 3.05(B)(3)] *(Choose 1. or 2.):*
1. ☐ **Plan designation.** [Plan Section 3.05(B)] When the Participant attains age \_\_\_\_\_. *[Note: The age may not exceed age 70 1/2 and may not be less than age 40.]*
  2. ☐ **Participant designation.** [Plan Section 3.05(B) and (B)(1)] When the Participant attains the age the Participant designates, which may not be earlier than age \_\_\_\_\_ (no earlier than age 40) and may not be later than age \_\_\_\_\_. *[Note: The age may not exceed age 70 1/2.]*

11. **ELIGIBILITY CONDITIONS (2.01).** *(Choose one of a. or b.):*

- a. ☒ **No eligibility conditions.** The Employee is eligible to participate in the Plan as of his/her first day of employment with the employer.

- b. ☐ **Eligibility conditions.** To become a Participant in the Plan, an Eligible Employee must satisfy the following eligibility conditions (*Choose one or more of 1., 2. or 3.*):
1. ☐ **Age.** Attainment of age \_\_\_\_\_.
  2. ☐ **Service.** Service requirement (*Choose one of a. or b.*):
    - a. ☐ **Year of Service.** One year of Continuous Service.
    - b. ☐ **Months of Service.** \_\_\_\_\_ month(s) of Continuous Service.
  3. ☐ **Specify:** \_\_\_\_\_.
12. **PLAN ENTRY DATE (1.24).** "Plan Entry Date" means the Effective Date and (*Choose one of a. through d.*):
- a. ☐ **Monthly.** The first day of the month coinciding with or next following the Employee's satisfaction of the Plan's eligibility conditions, if any.
  - b. ☐ **Annual.** The first day of the Plan Year coinciding with or next following the Employee's satisfaction of the Plan's eligibility conditions, if any.
  - c. ☒ **Date of hire.** The Employee's employment commencement date with the Employer.
  - d. ☐ **Specify:** \_\_\_\_\_.
13. **SALARY REDUCTION CONTRIBUTIONS (1.30).** A Participant's Salary Reduction Contributions under Election 5b. are subject to the following limitation(s) in addition to those imposed by the Code (*Choose one of a. or b.*):
- a. ☒ **No limitations.**
  - b. ☐ **Limitations.** (*Choose one or more of 1., 2. or 3.*):
    1. ☐ **Maximum deferral amount.** A Participant's Salary Reductions may not exceed: \_\_\_\_\_ (*specify dollar amount or percentage of Compensation*).
    2. ☐ **Minimum deferral amount.** A Participant's Salary Reductions may not be less than: \_\_\_\_\_ (*specify dollar amount or percentage of Compensation*).
    3. ☐ **Specify:** \_\_\_\_\_.

[Note: Any limitation the Employer elects in b.1. through b.3. will apply on a payroll basis unless the Employer otherwise specifies in b.3.]

**Special NRA Catch-Up Contributions (3.05).** The Plan (*Choose one of c. or d.*):

- c. ☐ **Permits.** Participants may make NRA catch-up contributions.  
**AND, Special NRA Catch-Up Contributions** (*Choose one of 1. or 2.*): (*N/A if no matching contributions*)
  1. ☐ will be taken into account in applying any matching contribution under the Plan.
  2. ☐ will not be taken into account in applying any matching contribution under the Plan.
- d. ☒ **Does not permit.** Participants may not make NRA catch-up contributions.

**Age 50 Catch-Up Contributions (3.06).** The Plan (*Choose one of e. or f.*):

- e. ☒ **Permits.** Participants may make age 50 catch-up contributions.  
**AND, Age 50 Catch-Up Contributions** (*Choose one of 1. or 2.*): (*N/A if no matching contributions*)
  1. ☒ will be taken into account in applying any matching contribution under the Plan.
  2. ☐ will not be taken into account in applying any matching contribution under the Plan.
- f. ☐ **Does not permit.** Participants may not make age 50 catch-up contributions.

14. **SICK, VACATION AND BACK PAY (3.02(A)).** The Plan (*Choose one of a. or b.*):

- a. ☒ **Permits.** Participants may make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay.
- b. ☐ **Does Not Permit.** Participants may not make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay.

15. **AUTOMATIC ENROLLMENT (3.02(B)).** Does the Plan provide for automatic enrollment (*Choose one of the following*) [Note: if Eligible Automatic Contribution Arrangement (EACA), select 15c and complete Questions 31 & 32]:

- a. ☒ **Does not apply.** Does not apply the Plan's automatic enrollment provisions.

b. ☐ **Applies.** Applies the Plan's automatic enrollment provisions. The Employer as a Pre-Tax Elective Deferral will withhold \_\_\_\_\_% from each Participant's Compensation unless the Participant elects a different percentage (including zero) under his/her Salary Reduction Agreement. The automatic election will apply to *(Choose one of 1. through 3.)*:

1. ☐ **All Participants.** All Participants who as of \_\_\_\_\_ are not making Pre-Tax Elective Deferrals at least equal to the automatic amount.

2. ☐ **New Participants.** Each Employee whose Plan Entry Date is on or following: \_\_\_\_\_.

3. ☐ **Describe Application of Automatic Deferrals:** \_\_\_\_\_.

c. ☐ **EACA.** The Plan will provide an Eligible Automatic Contribution Arrangement (EACA). Complete Questions 31 & 32.

16. **MATCHING CONTRIBUTIONS (3.03).** The Employer Matching Contributions under Election 5.b.1. are made as follows *(Choose one or more of a. through d.)*:

a. ☐ **Fixed formula.** An amount equal to \_\_\_\_\_ of each Participant's Salary Reduction Contributions.

b. ☒ **Discretionary formula.** An amount (or additional amount) equal to a matching percentage the Employer from time to time may deem advisable of each Participant's Salary Reduction Contributions.

c. ☐ **Tiered formula.** The Employer will make matching contributions equal to a uniform percentage of each tier of each Participant's Salary Reduction Contributions, determined as follows:

**NOTE:** Fill in only percentages or dollar amounts, but not both. If percentages are used, each tier represents the amount of the Participant's applicable contributions that equals the specified percentage of the Participant's Compensation (add additional tiers if necessary):

Tiers of Contributions (indicate \$ or %)	Matching Percentage
First _____	_____ %
Next _____	_____ %
Next _____	_____ %
Next _____	_____ %

d. ☐ **Specify:** \_\_\_\_\_.

**Time Period for Matching Contributions.** The Employer will determine its Matching Contribution based on Salary Reduction Contributions made during each *(Choose one of e. through h.)*:

e. ☒ **Plan Year.**

f. ☐ **Plan Year quarter.**

g. ☐ **Payroll period.**

h. ☐ **Specify:** \_\_\_\_\_.

**Salary Reduction Contributions Taken into Account.** In determining a Participant's Salary Reduction Contributions taken into account for the above-specified time period under the Matching Contribution formula, the following limitations apply *(Choose one of i. through l.)*:

i. ☒ **All Salary Reduction Contributions.** The Plan Administrator will take into account all Salary Reduction Contributions.

j. ☐ **Specific limitation.** The Plan Administrator will disregard Salary Reduction Contributions exceeding \_\_\_\_\_% of the Participant's Compensation.

k. ☐ **Discretionary.** The Plan Administrator will take into account the Salary Reduction Contributions as a percentage of the Participant's Compensation as the Employer determines.

l. ☐ **Specify:** \_\_\_\_\_.

**Allocation Conditions.** To receive an allocation of Matching Contributions, a Participant must satisfy the following allocation condition(s) *(Choose one of m. or n.)*:

m. ☐ **No allocation conditions.**

n. ☒ **Conditions.** The following allocation conditions apply to Matching Contributions *(Choose one or more of 1. through 4.)*:

1. ☐ **Service condition.** The Participant must complete the following number of months of Continuous Service during the Plan Year: \_\_\_\_\_.

2. ☒ **Employment condition.** The Participant must be employed by the Employer on the last day of the Plan Year.
3. ☐ **Limited Severance Exception.** Any condition specified in 1. or 2. does not apply if the Participant incurs a Severance from Employment during the Plan Year on account of death, disability or attainment of Normal Retirement Age in the current Plan Year or in a prior Plan Year.
4. ☐ **Specify:** \_\_\_\_\_.

17. **NONELECTIVE CONTRIBUTIONS (1.19).** The Nonelective Contributions under Election 5.c. are made as follows: *(Choose one):*

- a. ☒ **Discretionary - Pro-Rata.** An amount the Employer in its sole discretion may determine.
- b. ☐ **Fixed - Pro Rata.** \_\_\_\_\_ % of Compensation.
- c. ☐ **Other.** A Nonelective Contribution may be made as follows: \_\_\_\_\_.

**Allocation Conditions. (3.08).** To receive an allocation of Nonelective Contributions, a Participant must satisfy the following allocation condition(s) *(Choose one of d. or e.):*

- d. ☐ **No allocation conditions.**
- e. ☒ **Conditions.** The following allocation conditions apply to Nonelective Contributions *(Choose one or more of 1. through 4.):*
1. ☐ **Service condition.** The Participant must complete the following number of months of Continuous Service during the Plan Year: \_\_\_\_\_.
2. ☒ **Employment condition.** The Participant must be employed by the Employer on the last day of the Plan Year.
3. ☐ **Limited Severance Exception.** Any condition specified in 1. or 2. does not apply if the Participant incurs a Severance from Employment during the Plan Year on account of death, disability or attainment of Normal Retirement Age in the current Plan Year or in a prior Plan Year.
4. ☐ **Specify:** \_\_\_\_\_.

18. **TIME AND METHOD OF PAYMENT OF ACCOUNT (4.02).** The Plan will distribute to a Participant who incurs a Severance from Employment his/her Vested Account as follows:

**Timing.** The Plan, in the absence of a permissible Participant election to commence payment later, will pay the Participant's Account *(Choose one of a. through e.):*

- a. ☐ **Specified Date.** \_\_\_\_\_ days after the Participant's Severance from Employment.
- b. ☒ **Immediate.** As soon as administratively practicable following the Participant's Severance from Employment.
- c. ☐ **Designated Plan Year.** As soon as administratively practicable in the \_\_\_\_\_ Plan Year beginning after the Participant's Severance from Employment.
- d. ☐ **Normal Retirement Age.** As soon as administratively practicable after the close of the Plan Year in which the Participant attains Normal Retirement Age.
- e. ☐ **Specify:** \_\_\_\_\_.

**Method.** The Plan, in the absence of a permissible Participant election, will distribute the Participant's Account under one of the following method(s) of distribution *(Choose one or more of f. through j. as applicable):*

- f. ☒ **Lump sum.** A single payment.
- g. ☐ **Installments.** Multiple payments made as follows: \_\_\_\_\_.
- h. ☐ **Installments for required minimum distributions only.** Annual payments, as necessary under Plan Section 4.03.
- i. ☐ **Annuity distribution option(s):** \_\_\_\_\_.
- j. ☐ **Specify:** \_\_\_\_\_.

**Participant Election.** [Plan Sections 4.02(A) and (B)] The Plan *(Choose one of k., l. or m.):*

- k. ☐ **Permits.** Permits a Participant, with Plan Administrator approval of the election, to elect to postpone distribution beyond the time the Employer has elected in a. through e. and also to elect the method of distribution (including a method not described in f. through j. above).
- l. ☒ **Does not permit.** Does not permit a Participant to elect the timing and method of Account distribution.
- m. ☐ **Specify:** \_\_\_\_\_.

**Mandatory Distributions.** Notwithstanding any other distribution election, following Severance from Employment (*Choose n. or o.*):

- n. ☐ **No Mandatory Distributions.** The Plan will not make a Mandatory Distribution.
- o. ☒ **Mandatory Distribution.** If the Participant's Vested Account is not in excess of \$5,000 (unless a different amount selected below) as of the date of distribution, the Plan will make a Mandatory Distribution following Severance from Employment.
1. ☐ **Mandatory Distribution.** If the Participant's Vested Account is not in excess of \$\_\_\_\_\_ as of the date of distribution, the Plan will make a Mandatory Distribution following Severance from Employment.

**Rollovers in determination of \$5,000 threshold.** Unless otherwise elected below, amounts attributable to rollover contributions (if any) will be **included** in determining the \$5,000 threshold for timing of distributions, form of distributions or consent rules.

- p. ☒ **Exclude rollovers** (rollover contributions will be **excluded** in determining the \$5,000 threshold)

**NOTE:** Regardless of the above election, if the Participant consent threshold is \$1,000 or less, then the Administrator must include amounts attributable to rollovers for such purpose. In such case, an election to exclude rollovers above will apply for purposes of the timing and form of distributions.

19. **BENEFICIARY DISTRIBUTION ELECTIONS.** Distributions following a Participant's death will be made as follows (*Choose one of a. through d.*):

- a. ☒ **Immediate.** As soon as practical following the Participant's death.
- b. ☐ **Next Calendar Year.** At such time as the Beneficiary may elect, but in any event on or before the last day of the calendar year which next follows the calendar year of the Participant's death. (*N/A if participant is restricted*)
- c. ☐ **As Beneficiary elects.** At such time as the Beneficiary may elect, consistent with Section 4.03. (*N/A if participant is restricted*)
- d. ☐ **Describe:** \_\_\_\_\_

[*Note: The Employer under Election 19d. may describe an alternative distribution timing or afford the Beneficiary an election which is narrower than that permitted under Election 19c., or include special provisions related to certain beneficiaries, (e.g., a surviving spouse). However, any election under Election 19d. must require distribution to commence no later than the Section 4.03 required date.*]

20. **DISTRIBUTIONS PRIOR TO SEVERANCE FROM EMPLOYMENT (4.05).** A Participant prior to Severance from Employment may elect to receive a distribution of his/her Vested Account under the following distribution options (*Choose one of a. or b.*):

- a. ☐ **None.** A Participant may not receive a distribution prior to Severance from Employment.
- b. ☒ **Distributions.** Prior to Severance from Employment are permitted as follows (*Choose one or more of 1. through 4.*):
1. ☒ **Unforeseeable emergency.** A Participant may elect a distribution from his/her Account in accordance with Plan Section 4.05(A) (for the Participant, spouse, dependents or beneficiaries)
2. ☐ **De minimis exception.** [Plan Section 4.05(B)] If the Participant: (i) has an Account that does not exceed \$5,000; (ii) has not made or received an allocation of any Deferral Contributions under the Plan during the two-year period ending on the date of distribution; and (iii) has not received a prior Plan distribution under this de minimis exception, then (*Choose one of a., b. or c.*):
- a. ☐ **Participant election.** The Participant may elect to receive all or any portion of his/her Account.
- b. ☐ **Mandatory distribution.** The Plan Administrator will distribute the Participant's entire Account.
- c. ☐ **Hybrid.** The Plan Administrator will distribute a Participant's Account that does not exceed \$\_\_\_\_\_ and the Participant may elect to receive all or any portion of his/her Account that exceeds \$\_\_\_\_\_ but that does not exceed \$5,000.
3. ☐ **Age 70 1/2.** A Participant who attains age 70 1/2 prior to Severance from Employment may elect distribution of any or all of his/her Account.
4. ☐ **Specify:** \_\_\_\_\_

[*Note: An Employer need not permit any in-service distributions. Any election must comply with the distribution restrictions of Code Section 457(d).*]

21. **QDRO (4.06).** The QDRO provisions (*Choose one of a., b. or c.*):

- a. ☒ **Apply.**
- b. ☐ **Do not apply.**
- c. ☐ **Specify:** \_\_\_\_\_

22. **ALLOCATION OF EARNINGS (5.07(B))**. The Plan allocates Earnings using the following method (*Choose one or more of a. through f.*):

- a. ☒ **Daily**. See Section 5.07(B)(4)(a).
- b. ☐ **Balance forward**. See Section 5.07(B)(4)(b).
- c. ☐ **Balance forward with adjustment**. See Section 5.07(B)(4)(c). Allocate pursuant to the balance forward method, except treat as part of the relevant Account at the beginning of the Valuation Period \_\_\_\_\_% of the contributions made during the following Valuation Period: \_\_\_\_\_.
- d. ☐ **Weighted average**. See Section 5.07(B)(4)(d). If not a monthly weighting period, the weighting period is \_\_\_\_\_.
- e. ☐ **Directed Account method**. See Section 5.07(B)(4)(e).
- f. ☐ **Describe Earnings allocation method:** \_\_\_\_\_.

[Note: The Employer under Election 22f. may describe Earnings allocation methods from the elections available under Election 22 and/or a combination thereof as to any: (i) Participant group (e.g., Daily applies to Division A Employees OR to Employees hired after "x" date. Balance forward applies to Division B Employees OR to Employees hired on/before "x" date.); (ii) Contribution Type (e.g., Daily applies as to Discretionary Nonelective Contribution Accounts. Participant-Directed Account applies to Fixed Nonelective Contribution Accounts); (iii) investment type, investment vendor or Account type (e.g., Balance forward applies to investments placed with vendor A and Participant-Directed Account applies to investments placed with vendor B OR Daily applies to Participant-Directed Accounts and balance forward applies to pooled Accounts).]

23. **HEART ACT PROVISIONS (1.31(C)(3)/3.13)**. The Employer elects to (*Choose one of a. or b. and c. or d.*):

**Continued Benefit Accruals.**

- a. ☒ **Not apply the benefit accrual provisions of Section 3.13.**
- b. ☐ **Apply the benefit accrual provisions of Section 3.13.**

**Distributions for deemed severance of employment (1.31(C)(3))**

- c. ☐ **The Plan does NOT permit distributions for deemed severance of employment.**
- d. ☒ **The Plan permits distributions for deemed severance of employment.**

24. **VESTING/SUBSTANTIAL RISK OF FORFEITURE (5.11)**. A Participant's Deferral Contributions are [Note: If a Participant incurs a Severance from Employment before the specified events or conditions, the Plan will forfeit the Participant's non-vested Account. Caution: if a Deferral is subject to vesting schedule or other substantial risk of forfeiture, it does not count as a deferral for purposes of the annual deferral limit until the year it is fully vested.] (*Choose all that apply of a. through d.*):

- a. ☒ **100% Vested/No Risk of Forfeiture**. Immediately Vested without regard to additional Service and no Substantial Risk of Forfeiture. The following contributions are 100% Vested:
  - 1. ☒ **All Contributions**. (skip to 25.)
  - 2. ☐ **Only the following contributions**. (select all that apply):
    - a. ☐ **Salary Reduction Contributions**.
    - b. ☐ **Nonelective Contributions**.
    - c. ☐ **Matching Contributions**.
- b. ☐ **Forfeiture under Vesting Schedule**. Vested according to the following:

**Contributions affected**. The following contributions are subject to the vesting schedule (*Choose one or more of 1., 2. or 3.*):

- 1. ☐ **Salary Reduction Contributions**.
- 2. ☐ **Nonelective Contributions**.
- 3. ☐ **Matching Contributions**.
- 4. ☐ **Vesting Schedule**.

Years of Service

Vested Percentage

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_%  
\_\_\_\_\_%  
\_\_\_\_\_%  
\_\_\_\_\_%  
\_\_\_\_\_%



For vesting purposes, a "Year of Service" means:

5. \_\_\_\_\_.

[Note: It is extremely rare to apply a vesting schedule to Salary Reduction Contributions.]

- c. ☐ **Substantial Risk of Forfeiture.** Vested only when no longer subject to the following Substantial Risk of Forfeiture as follows:

**Contributions affected.** The following contributions are subject to the substantial risk of forfeiture under c. (Choose one or more of 1., 2. or 3.):

1. ☐ **Salary Reduction Contributions.**
2. ☐ **Nonelective Contributions.**
3. ☐ **Matching Contributions.**

**Risk Provisions:** Vested only when no longer subject to the following Substantial Risk of Forfeiture as follows (Choose one of 4. or 5.):

4. ☐ The Participant must remain employed by the Employer until \_\_\_\_\_, unless earlier Severance from Employment occurs on account of death or disability, as the Plan Administrator shall establish.
5. ☐ **Specify:** \_\_\_\_\_.

**Additional Provisions** (Choose d. if applicable)

- d. ☐ **Specify:** \_\_\_\_\_.

**FORFEITURE ALLOCATION.** [Plan Sections 5.11(A) and 5.14] The Plan Administrator will allocate any Plan forfeitures as selected below. The Employer has the option to use forfeitures to pay plan expenses first and then allocate the remaining forfeitures in accordance with the selections below: (Choose one of the following):

- e. ☐ **Additional Contributions.** As the following contribution type (Choose one of 1. or 2.):

1. ☐ **Nonelective.** As an additional Nonelective Contribution.
2. ☐ **Matching.** As an additional Matching Contribution.

- f. ☐ **Reduce Fixed Contributions.** To reduce the following fixed contribution (Choose one of 1. or 2.):

1. ☐ **Nonelective.** To reduce the Employer's fixed Nonelective Contribution.
2. ☐ **Matching.** To reduce the Employer's fixed Matching Contribution.

- g. ☐ **Specify:** \_\_\_\_\_.

25. **TRUST PROVISIONS.** The following provisions apply to Article VIII of the Plan (Choose as applicable; leave blank if not applicable):

- a. ☐ **Modifications.** The Employer modifies the Article VIII Trust provisions as follows: \_\_\_\_\_. The remaining Article VIII provisions apply.
- b. ☐ **Substitution.** The Employer replaces the Trust with the Trust Agreement attached to the Plan.

26. **CUSTODIAL ACCOUNT/ANNUITY CONTRACT (8.16).** The Employer will hold all or part of the Deferred Compensation in one or more custodial accounts or annuity contracts which satisfy the requirements of Code §457(g) (Choose a. or b., c. if applicable):

- a. ☒ **Custodial account(s).**
- b. ☐ **Annuity contract(s).**
- c. ☐ **Specify:** \_\_\_\_\_.

[Note: The Employer under c. may wish to identify the custodial accounts or annuity contracts or to designate a portion of the Deferred Compensation to be held in such vehicles versus held in the Trust.]

27. **VALUATION.** In addition to the last day of the Plan Year, the Trustee (or Plan Administrator as applicable) must value the Trust Fund (or Accounts) on the following Valuation Date(s) (Choose one of a. or b.):

- a. ☐ **No additional Valuation Dates.**
- b. ☒ **Additional Valuation Dates.** (Choose one or more of 1., 2. or 3.):
  1. ☒ **Daily Valuation Dates.** Each business day of the Plan Year on which Plan assets for which there is an established market are valued and the Trustee or Employer is conducting business.
  2. ☐ **Last day of a specified period.** The last day of each \_\_\_\_\_ of the Plan Year.

3. ☐ Specified Valuation Dates: \_\_\_\_\_

[Note: The Employer under Election 26b.3. may describe Valuation Dates from the elections available under Election 26b. and/or a combination thereof as to any: (i) Participant group (e.g., No additional Valuation Dates apply to Division A Employees OR to Employees hired after "x" date. Daily Valuation Dates apply to Division B Employees OR to Employees hired on/before "x" date.); (ii) Contribution Type (e.g., No additional Valuation Dates apply as to Discretionary Nonelective Contribution Accounts. The last day of each Plan Year quarter applies to Fixed Nonelective Contribution Accounts); (iii) investment type, investment vendor or Account type (e.g., No additional Valuation Dates apply to investments placed with vendor A and Daily Valuation Dates apply to investments placed with vendor B OR Daily Valuation Dates apply to Participant-Directed Accounts and no additional Valuation Dates apply to pooled Accounts).]

28. TRUSTEE (Select all that apply; leave blank if not applicable.):

- a. ☒ Individual Trustee(s) who serve as Trustee(s) over assets not subject to control by a corporate Trustee. (Add additional Trustees as necessary.)

Name(s)

Title(s)

David Burse

Police Chief

Kyle Snyder

City Administrator

**Address and Telephone number** (Choose one of 1. or 2.):

1. ☒ Use Employer address and telephone number.
2. ☐ Use address and telephone number below:

Address:

Street

City

State

Zip

Telephone:

- b. ☐ Corporate Trustee

Name:

Address:

Street

City

State

Zip

Telephone:

**AND**, the Corporate Trustee shall serve as:

- c. ☐ a Directed (nondiscretionary) Trustee over all Plan assets except for the following:

- d. ☐ a Discretionary Trustee over all Plan assets except for the following:

29. PLAN LOANS (5.02(A)). The Plan permits or does not permit Participant Loans (Choose one of a. or b.):

- a. ☒ Does not permit.
- b. ☐ Permitted pursuant to the Loan Policy.

30. **ROLLOVER CONTRIBUTIONS (3.09)**. The Rollover Contributions under Election 5.d. are made as follows:

**Who may roll over** (*Choose one of a. or b.*):

- a. ☐ **Participants only.**
- b. ☒ **Eligible Employees or Participants.**

**Sources/Types.** The Plan will accept a Rollover Contribution (*Choose one of c. or d.*):

- c. ☒ **All.** From any Eligible Retirement Plan and as to all Contribution Types eligible to be rolled into this Plan.
- d. ☐ **Limited.** Only from the following types of Eligible Retirement Plans and/or as to the following Contribution Types:

**Distribution of Rollover Contributions** (*Choose one of e., f. or g.*):

- e. ☒ **Distribution without restrictions.** May elect distribution of his/her Rollover Contributions Account in accordance with Plan Section 4.05(C) at any time.
- f. ☐ **No distribution.** May not elect to receive distribution of his/her Rollover Contributions Account until the Plan has a distributable event under Plan Section 4.01.
- g. ☐ **Specify:** \_\_\_\_\_

31. **EACA Automatic Deferral Provisions (3.14).**

**Participants subject to the Automatic Deferral Provisions.** The Automatic Deferral Provisions apply to Employees who become Participants after the Effective Date of the EACA (except as provided in d. below). Employees who became Participants prior to such Effective Date are subject to the following (a. – d. are optional):

- a. ☐ **All Participants.** All Participants, regardless of any prior Salary Reduction Agreement, unless and until a Participant makes an Affirmative Election after the Effective Date of the EACA.
- b. ☐ **Election of at least Automatic Deferral amount.** All Participants, except those who, on the Effective Date of the EACA, are deferring an amount which is at least equal to the Automatic Deferral Percentage.
- c. ☐ **No existing Salary Reduction Agreement.** All Participants, except those who have in effect a Salary Reduction Agreement on the effective date of the EACA regardless of the Salary Reduction Contribution amount under the Agreement.
- d. ☐ **Describe:** \_\_\_\_\_

**Automatic Deferral Percentage.** Unless a Participant makes an Affirmative Election, the Employer will withhold the following Automatic Deferral Percentage (select e. or f.):

- e. ☐ **Constant.** The Employer will withhold \_\_\_\_\_% of Compensation each payroll period.

**Escalation of deferral percentage** (select one or leave blank if not applicable)

1. ☐ **Scheduled increases.** This initial percentage will increase by \_\_\_\_\_% of Compensation per year up to a maximum of \_\_\_\_\_ of Compensation.
2. ☐ **Other** (described Automatic Deferral Percentage): \_\_\_\_\_

**Automatic Deferral Optional Elections**

- f. ☐ **Optional elections** (select all that apply or leave blank if not applicable)

**Suspended Salary Reduction Contributions.** If a Participant's Salary Reduction Contributions are suspended pursuant to a provision of the Plan (e.g., distribution due to military leave covered by the HEART Act), then a Participant's Affirmative Election will expire on the date the period of suspension begins unless otherwise elected below.

1. ☐ A Participant's Affirmative Election will resume after the suspension period.

**Special Effective Date.** Provisions will be effective as of the earlier of the Effective Date of the EACA provisions unless otherwise specified below.

2. ☐ Special Effective Date: \_\_\_\_\_

32. **In-Plan Roth Rollover Contributions.**

- a. ☐ **Yes, allowed.**

**Effective Date** (enter date)

1. ☐ In-Plan Roth Rollover Effective Date: \_\_\_\_\_

33. **In-Plan Roth Rollover Transfers.**

- a. ☐ **Yes, allowed.**

**Effective Date** (enter date)

1. ☐ In-Plan Roth Rollover Transfers Effective Date: \_\_\_\_\_

This Plan is executed on the date(s) specified below:

**Use of Adoption Agreement.** Failure to complete properly the elections in this Adoption Agreement may result in disqualification of the Employer's Plan. The Employer only may use this Adoption Agreement only in conjunction with the corresponding basic plan document.

EMPLOYER: The Town of Upper Marlboro

By: 

10/17/2022

DATE SIGNED

David Burse



TRUSTEE

David A Burse

DATE SIGNED

Kyle Snyder



TRUSTEE

10/17/2022

DATE SIGNED

AMENDMENT TO CONFORM TO DISABILITY CLAIMS REGULATION

ARTICLE I  
PREAMBLE

- 1.1 **Effective date of Amendment.** The prototype sponsor and/or volume submitter practitioner, on behalf of the Employer, adopts this Amendment to the Plan effective for claims filed after April 1, 2018.
- 1.2 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Effect of restatement of Plan.** If the Employer restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates these provisions).
- 1.4 **Adoption by prototype sponsor/volume submitter practitioner.** The prototype sponsor or volume submitter practitioner hereby adopts this Amendment on behalf of all adopting employers.

ARTICLE II  
AMENDMENT PROVISION

Notwithstanding anything in the Plan to the contrary, the Plan Administrator shall follow procedures which conform to the requirements of Department of Labor Regulation §2560.503-1.

\* \* \* \* \*

This amendment is hereby adopted by the prototype sponsor and/or volume submitter practitioner on behalf of all adopting employers.

Danny W. Broadrick 3/14/18  
(signature and date)

Danny W. Broadrick, PLLC Member

Prototype Sponsor and/or Volume Submitter Practitioner Name:

Hyden, Miron & Foster, PLLC

**THE TOWN OF UPPER MARLBORO  
457B RETIREMENT PLAN**

## TABLE OF CONTENTS

<b>ARTICLE I, DEFINITIONS</b>	
1.01	Account..... 1
1.02	Accounting Date ..... 1
1.03	Beneficiary..... 1
1.04	Code..... 1
1.05	Compensation ..... 1
1.06	Deferral Contributions ..... 2
1.07	Deferred Compensation ..... 3
1.08	Effective Date ..... 3
1.09	Elective Deferrals ..... 3
1.10	Employee..... 3
1.11	Employer ..... 3
1.12	Employer Contribution ..... 3
1.13	ERISA..... 3
1.14	Excess Deferrals ..... 3
1.15	Includible Compensation ..... 3
1.16	Independent Contractor..... 3
1.17	Leased Employee..... 3
1.18	Matching Contribution..... 3
1.19	Nonelective Contribution..... 3
1.20	Normal Retirement Age..... 3
1.21	Participant..... 3
1.22	Plan..... 3
1.23	Plan Administrator..... 3
1.24	Plan Entry Date..... 3
1.25	Plan Year..... 3
1.26	Pre-Tax Elective Deferrals..... 3
1.27	Rollover Contribution..... 3
1.28	Roth Elective Deferrals..... 3
1.29	Salary Reduction Agreement..... 3
1.30	Salary Reduction Contribution..... 4
1.31	Service..... 4
1.32	State..... 4
1.33	Substantial Risk of Forfeiture ..... 4
1.34	Tax-Exempt Organization..... 4
1.35	Taxable Year..... 4
1.36	Transfer..... 4
1.37	Trust..... 4
1.38	Trustee ..... 4
1.39	Type of 457 Plan..... 4
1.40	Vested..... 5

#### **ARTICLE II, ELIGIBILITY AND PARTICIPATION**

2.01	Eligibility..... 6
2.02	Participation upon Re-Employment..... 6
2.03	Change in Employment Status..... 6

#### **ARTICLE III, DEFERRAL CONTRIBUTIONS/LIMITATIONS**

3.01	Amount..... 7
3.02	Salary Reduction Contributions..... 7
3.03	Matching Contributions..... 7
3.04	Normal Limitation ..... 7
3.05	Normal Retirement Age Catch-Up Contribution ..... 7
3.06	Age 50 Catch-Up Contribution ..... 8
3.07	Contribution Allocation ..... 8
3.08	Allocation Conditions..... 8
3.09	Rollover Contributions ..... 8
3.10	Distribution of Excess Deferrals..... 9
3.11	Deemed IRA Contributions ..... 9
3.12	Roth Elective Deferrals..... 9
3.13	Benefit Accrual..... 10
3.14	Eligible Automatic Contribution Arrangement

(EACA)..... 10
3.15 In-Plan Roth Rollover Contribution ..... 11

#### **ARTICLE IV, TIME AND METHOD OF PAYMENT OF BENEFITS**

4.01	Distribution Restrictions..... 13
4.02	Time and Method of Payment of Account..... 13
4.03	Required Minimum Distributions..... 13
4.04	Death Benefits ..... 15
4.05	Distributions Prior to Severance from Employment... 15
4.06	Distributions Under Qualified Domestic Relations Orders (QDROs) ..... 15
4.07	Direct Rollover of Eligible Rollover Distributions – Governmental Plan..... 16
4.08	Election to Deduct from Distribution ..... 17

#### **ARTICLE V, PLAN ADMINISTRATOR - DUTIES WITH RESPECT TO PARTICIPANTS' ACCOUNTS**

5.01	Term/Vacancy ..... 18
5.02	Powers and Duties..... 18
5.03	Compensation..... 18
5.04	Authorized Representative ..... 18
5.05	Individual Accounts/Records ..... 18
5.06	Value of Participant's Account ..... 18
5.07	Account Administration, Valuation and Expenses ..... 18
5.08	Account Charged..... 20
5.09	Ownership of Fund/Tax-Exempt Organization ..... 20
5.10	Participant Direction of Investment..... 20
5.11	Vesting/Substantial Risk of Forfeiture ..... 20
5.12	Preservation of Eligible Plan Status ..... 21
5.13	Limited Liability ..... 21
5.14	Lost Participants..... 21
5.15	Plan Correction..... 21

#### **ARTICLE VI, PARTICIPANT ADMINISTRATIVE PROVISIONS**

6.01	Beneficiary Designation..... 22
6.02	No Beneficiary Designation ..... 22
6.03	Salary Reduction Agreement..... 22
6.04	Personal Data to Plan Administrator ..... 22
6.05	Address for Notification..... 22
6.06	Participant or Beneficiary Incapacitated..... 22

#### **ARTICLE VII, MISCELLANEOUS**

7.01	No Assignment or Alienation..... 23
7.02	Effect on Other Plans ..... 23
7.03	Word Usage..... 23
7.04	State Law..... 23
7.05	Employment Not Guaranteed ..... 23
7.06	Notice, Designation, Election, Consent and Waiver... 23

#### **ARTICLE VIII, TRUST PROVISIONS—GOVERNMENTAL ELIGIBLE 457 PLAN**

8.01	Governmental Eligible 457 Plan..... 24
8.02	Acceptance/Holding ..... 24
8.03	Receipt of Contributions..... 24
8.04	Full Investment Powers ..... 24
8.05	Records and Statements..... 25
8.06	Fees and Expenses from Fund..... 25
8.07	Professional Agents..... 25
8.08	Distribution of Cash or Property ..... 25
8.09	Resignation and Removal..... 25
8.10	Successor Trustee..... 25
8.11	Valuation of Trust ..... 25

8.12	Participant Direction of Investment .....	25
8.13	Third Party Reliance .....	25
8.14	Invalidity of Any Trust Provision .....	25
8.15	Exclusive Benefit.....	25
8.16	Substitution of Custodial Account or Annuity Contract .....	26
8.17	Group Trust Authority .....	26

## ARTICLE IX, AMENDMENT, TERMINATION, TRANSFERS

9.01	Amendment by Employer/Sponsor.....	27
9.02	Termination/Freezing of Plan.....	27
9.03	Transfers.....	27
9.04	Purchase of Permissive Service Credit .....	27



## ARTICLE I DEFINITIONS

1.01 "**Account**" means the separate Account(s) which the Plan Administrator or the Trustee maintains under the Plan for a Participant's Deferred Compensation. The Plan Administrator or Trustee may establish separate Accounts for multiple Beneficiaries of a Participant to facilitate required minimum distributions under Section 4.03 based on each Beneficiary's life expectancy.

1.02 "**Accounting Date**" means the last day of the Plan Year. The Plan Administrator will allocate Employer contributions and forfeitures for a particular Plan Year as of the Accounting Date of that Plan Year, and on such other dates, if any, as the Plan Administrator determines, consistent with the Plan's allocation conditions and other provisions.

1.03 "**Beneficiary**" means a person who the Plan or a Participant designates and who is or may become entitled to a Participant's Account upon the Participant's death. A Beneficiary who becomes entitled to a benefit under the Plan remains a Beneficiary under the Plan until the Plan Administrator or Trustee has fully distributed to the Beneficiary his or her Plan benefit. A Beneficiary's right to (and the Plan Administrator's or a Trustee's duty to provide to the Beneficiary) information or data concerning the Plan does not arise until the Beneficiary first becomes entitled to receive a benefit under the Plan.

1.04 "**Code**" means the Internal Revenue Code of 1986, as amended.

### 1.05 "Compensation"

(A) **Uses and Context.** Any reference in the Plan to Compensation is a reference to the definition in this Section 1.05, unless the Plan reference, or the Employer in the Adoption Agreement, modifies this definition. Except as the Plan otherwise specifically provides, the Plan Administrator will take into account only Compensation actually paid during (or as permitted under the Code, paid for) the relevant period. A Compensation payment includes Compensation paid by the Employer through another person under the common paymaster provisions in Code §§3121 and 3306. In the case of an Independent Contractor, Compensation means the amounts the Employer pays to the Independent Contractor for services, except as the Employer otherwise specifies in the Adoption Agreement. The Employer in the Adoption Agreement may elect to allocate contributions based on a Compensation within specified 12 month period which ends within a Plan Year.

(B) **Base Definitions and Modifications.** The Employer in the Adoption Agreement must elect one of the following base definitions of Compensation: W-2 Wages, Code §3401(a) Wages, or 415 Compensation. The Employer may elect a different base definition as to different Contribution Types. The Employer in the Adoption Agreement may specify any modifications thereto, for purposes of contribution allocations under Article III. If the Employer fails to elect one of the above-referenced definitions, the Employer is deemed to have elected the W-2 Wages definition.

(1) **W-2 Wages.** W-2 Wages means wages for federal income tax withholding purposes, as defined under Code §3401(a), plus all other payments to an Employee in the course of the Employer's trade or business, for which the Employer must furnish the Employee a written statement under Code §§6041, 6051, and 6052, but determined without regard to any rules that limit the remuneration included in wages based on the

nature or location of the employment or services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

(2) **Code §3401(a) Wages (income tax wage withholding).** Code §3401(a) Wages means wages within the meaning of Code §3401(a) for the purposes of income tax withholding at the source, but determined without regard to any rules that limit the remuneration included in wages based on the nature or the location of the employment or the services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

(3) **Code §415 Compensation (current income definition/simplified compensation under Treas. Reg. §1.415(c)-2(d)(2)).** Code §415 Compensation means the Employee's wages, salaries, fees for professional service and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits and reimbursements or other expense allowances under a nonaccountable plan as described in Treas. Reg. §1.62-2(c)).

Code §415 Compensation does not include:

(a) **Deferred compensation/SEP/SIMPLE.** Employer contributions (other than Elective Deferrals) to a plan of deferred compensation (including a simplified employee pension plan under Code §408(k) or to a simple retirement account under Code §408(p)) to the extent the contributions are not included in the gross income of the Employee for the Taxable Year in which contributed, and any distributions from a plan of deferred compensation (whether or not qualified), regardless of whether such amounts are includible in the gross income of the Employee when distributed.

(b) **Option exercise.** Amounts realized from the exercise of a non-qualified stock option (an option other than a statutory option under Treas. Reg. §1.421-1(b)), or when restricted stock or other property held by an Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture under Code §83.

(c) **Sale of option stock.** Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option as defined under Treas. Reg. §1.421-1(b).

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

(e) **Other similar items.** Other items of remuneration which are similar to any of the items in Sections 1.11(B)(3)(a) through (d).

**(4) Alternative (general) 415 Compensation.** Under this definition, Compensation means as defined in Section 1.05(B)(3) but with the addition of: (a) amounts described in Code §§104(a)(3), 105(a), or 105(h) but only to the extent that these amounts are includible in Employee's gross income; (b) amounts paid or reimbursed by the Employer for moving expenses incurred by the Employee, but only to the extent that at the time of payment it is reasonable to believe these amounts are not deductible by the Employee under Code §217; (c) the value of a nonstatutory option (an option other than a statutory option under Treas. Reg. §1.421-1(b)) granted by the Employer to the an Employee, but only to the extent that the value of the option is includible in the Employee's gross income for the Taxable Year of the grant; (d) the amount includible in the Employee's gross income upon the Employee's making of an election under Code §83(b); and (e) amounts that are includible in the Employee's gross income under Code §409A or Code §457(f)(1)(A) or because the amounts are constructively received by the Participant. [Note if the Plan's definition of Compensation is W-2 Wages or Code §3401(a) Wages, then Compensation already includes the amounts described in clause (e).]

**(C) Deemed 125 Compensation.** Deemed 125 Compensation means, in the case of any definition of Compensation which includes a reference to Code §125, amounts under a Code §125 plan of the Employer that are not available to a Participant in cash in lieu of group health coverage, because the Participant is unable to certify that he/she has other health coverage.

**(D) Modification to Compensation.** The Employer must specify in the Adoption Agreement the Compensation the Plan Administrator is to take into account in allocating Deferral Contributions to a Participant's Account. For all Plan Years other than the Plan Year in which the Employee first becomes a Participant, the Plan Administrator will take into account only the Compensation determined for the portion of the Plan Year in which the Employee actually is a Participant.

**(E) Elective Contributions.** Compensation under Section 1.05 includes Elective Contributions unless the Employer in the Adoption Agreement elects to exclude Elective Contributions. "Elective Contributions" are amounts excludible from the Employee's gross income under Code §§125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b), 408(p) or 457, and contributed by the Employer, at the Employee's election, to a cafeteria plan, a qualified transportation fringe benefit plan, a 401(k) arrangement, a SARSEP, a tax-sheltered annuity, a SIMPLE plan or a Code §457 plan.

**(F) Post-Severance Compensation.** Compensation includes Post-Severance Compensation to the extent the Employer elects in the Adoption Agreement or as the Plan otherwise provides. Post-Severance Compensation is Compensation paid after a Participant's Severance from Employment from the Employer, as further described in this Section 1.05(F). As the Employer elects, Post-Severance Compensation may include any or all of regular pay, leave cash-outs, or deferred compensation paid within the time period described in Section 1.05(F)(1), and may also include salary continuation for disabled Participants, all as defined below. Any other payment paid after Severance from Employment that is not described in this Section 1.05(F) is not Compensation even if payment is made within the time period described below. Post-Severance Compensation does not include severance pay, parachute payments under Code §280G(b)(2) or payments under a nonqualified unfunded deferred compensation plan unless the payments would have

been paid at that time without regard to Severance from Employment.

**(1) Timing.** Post-Severance Compensation includes regular pay, leave cashouts, or deferred compensation only to the extent the Employer pays such amounts by the later of 2 1/2 months after Severance from Employment or by the end of the Limitation Year that includes the date of such Severance from Employment.

**(a) Regular pay.** Regular pay means the payment of regular Compensation for services during the Participant's regular working hours, or Compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, but only if the payment would have been paid to the Participant prior to a Severance from Employment if the Participant had continued in employment with the Employer.

**(b) Leave cash-outs.** Leave cash-outs means payments for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued and if Compensation would have included those amounts if they were paid prior to the Participant's Severance from Employment.

**(c) Deferred compensation.** As used in this Section 1.05(F), deferred compensation means the payment of deferred compensation pursuant to an unfunded deferred compensation plan, if Compensation would have included the Deferred Compensation if it had been paid prior to the Participant's Severance from Employment, but only if the payment would have been paid at the same time if the Participant had continued in employment with the Employer and only to the extent that the payment is includible in the Participant's gross income.

**(2) Salary continuation for disabled Participants.** Salary continuation for disabled Participants means Compensation paid to a Participant who is permanently and totally disabled (as defined in Code §22(e)(3)).

**(3) Differential Wage Payments.** An individual receiving a Differential Wage Payment, as defined by Code §3401(h)(2), shall be treated as an employee of the employer making the payment and the Differential Wage Payment shall be treated as compensation for purposes of Code §457(b) and any other Internal Revenue Code section that references the definition of compensation under Code §415, including the definition of Includible Compensation as provided in Section 1.15.

1.06 "Deferral Contributions" means as the Employer elects on the Adoption Agreement, Salary Reduction Contributions, Nonelective Contributions and Matching Contributions. The Plan Administrator in applying the Code §457(b) limit will take into account Deferral Contributions in the Taxable Year in which deferred, or if later, in the Taxable Year in which the Deferral Contributions are no longer subject to a Substantial Risk of Forfeiture. The Plan Administrator in determining the amount of a Participant's Deferral Contributions disregards the net income, gain and loss attributable to Deferral Contributions unless the Deferral Contributions are subject to a Substantial Risk of Forfeiture. If a Deferral Contribution is subject to a Substantial Risk of Forfeiture, the Plan Administrator takes into the Deferral Contribution as adjusted for allocable net income, gain or loss in the Taxable Year in which the Substantial Risk of Forfeiture lapses.

1.07 **"Deferred Compensation"** means as to a Participant the amount of Deferral Contributions, Rollover Contributions and Transfers adjusted for allocable net income, gain or loss, in the Participant's Account.

1.08 **"Effective Date"** of this Plan is the date the Employer specifies in the Adoption Agreement. The Employer in the Adoption Agreement may elect special effective dates for Plan provisions the Employer specifies provided any such date(s) are permitted by the Code, by Treasury regulations, or by other applicable guidance.

1.09 **"Elective Deferrals"** means a contribution the Employer makes to the Plan pursuant to a Participant's Salary Reduction Agreement, as described in Section 3.02. The term "Elective Deferrals" includes Pre-Tax Elective Deferrals and Roth Elective Deferrals.

1.10 **"Employee"** means an individual who provides services for the Employer, as a common law employee of the Employer. The Employer in the Adoption Agreement must elect or specify any Employee, or class of Employees, not eligible to participate in the Plan (an "Excluded Employee"). See Section 1.16 regarding potential treatment of an Independent Contractor as an Employee.

1.11 **"Employer"** means the entity specified in the Adoption Agreement, any successor which shall maintain this Plan; and any predecessor which has maintained this Plan. In addition, where appropriate, the term Employer shall include any Participating Employer.

1.12 **"Employer Contribution"** means Nonelective Contributions or Matching Contributions.

1.13 **"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended.

1.14 **"Excess Deferrals"** means Deferral Contributions to a Governmental Eligible 457 Plan or to a Tax-Exempt Organization Eligible 457 Plan for a Participant that exceed the Taxable Year maximum limitation of Code §§457(b) and (e)(18).

1.15 **"Includible Compensation"** means, for the Employee's Taxable Year, the Employee's total Compensation within the meaning of Code §415(c)(3) paid to an Employee for services rendered to the Employer. Includible Compensation includes Deferral Contributions under the Plan, compensation deferred under any other plan described in Code §457, and any amount excludible from the Employee's gross income under Code §§401(k), 403(b), 125 or 132(f)(4) or any other amount excludible from the Employee's gross income for Federal income tax purposes. The Employer will determine Includible Compensation without regard to community property laws.

1.16 **"Independent Contractor"** means any individual who performs service for the Employer and who the Employer does not treat as an Employee or a Leased Employee. The Employer in the Adoption Agreement may elect to permit Independent Contractors to participate in the Plan. To the extent that the Employer permits Independent Contractor participation, references to Employee in the Plan include Independent Contractors and Compensation means the amounts the Employer pays to the Independent Contractor for services, except as the Employer otherwise specifies in the Adoption Agreement.

1.17 **"Leased Employee"** means an Employee within the meaning of Code §414(n).

1.18 **"Matching Contribution"** means an Employer fixed or discretionary contribution made or forfeiture allocated on account of Salary Reduction Contributions.

1.19 **"Nonelective Contribution"** means an Employer fixed or discretionary contribution not made as a result of a Salary Reduction Agreement and which is not a Matching Contribution.

1.20 **"Normal Retirement Age"** means the age the Employer specifies in the Adoption Agreement consistent with Section 3.05(B).

1.21 **"Participant"** is an Employee other than an Excluded Employee who becomes a Participant in accordance with the provisions of Section 2.01.

1.22 **"Plan"** means the 457 plan established or continued by the Employer in the form of this basic Plan and (if applicable) Trust Agreement, including the Adoption Agreement. The Employer in the Adoption Agreement must designate the name of the Plan. All section references within the Plan are Plan section references unless the context clearly indicates otherwise.

1.23 **"Plan Administrator"** is the Employer unless the Employer designates another person to hold the position of Plan Administrator. The Plan Administrator may be a Participant.

1.24 **"Plan Entry Date"** means the dates the Employer elects in Adoption Agreement.

1.25 **"Plan Year"** means the consecutive 12-month period the Employer elects in the Adoption Agreement.

1.26 **"Pre-Tax Elective Deferrals"** means a Participant's Salary Reduction Contributions which are not includible in the Participant's gross income at the time deferred and have been irrevocably designated as Pre-Tax Elective Deferrals by the Participant in his or her Salary Reduction Agreement. A Participant's Pre-Tax Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Pre-Tax Elective Deferrals.

1.27 **"Rollover Contribution"** means the amount of cash or property which an eligible retirement plan described in Code §402(c)(8)(B) distributes to an eligible Employee or to a Participant in an eligible rollover distribution under Code §402(c)(4) and which the eligible Employee or Participant transfers directly or indirectly to a Governmental Eligible 457 Plan. A Rollover Contribution includes net income, gain or loss attributable to the Rollover Contribution. A Rollover Contribution excludes after-tax Employee contributions, as adjusted for net income, gain or loss.

1.28 **"Roth Elective Deferrals"** means a Participant's Salary Reduction Contributions that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth Elective Deferrals by the Participant in his or her Salary Reduction Agreement. A Participant's Roth Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Roth Elective Deferrals. However, forfeitures may not be allocated to such account. The Plan must also maintain a record of a Participant's investment in the contract (i.e., designated Roth contributions that have not been distributed) and the year in which the Participant first made a Roth Elective Deferral.

1.29 **"Salary Reduction Agreement"** means a written agreement between a Participant and the Employer, by which

the Employer reduces the Participant's Compensation for Compensation not available as of the date of the election and contributes the amount as a Salary Reduction Contribution to the Participant's Account.

1.30 **"Salary Reduction Contribution"** means a contribution the Employer makes to the Plan pursuant to a Participant's Salary Reduction Agreement.

1.31 **"Service"** means any period of time the Employee is in the employ of the Employer. In the case of an Independent Contractor, Service means any period of time the Independent Contractor performs services for the Employer on an independent contractor basis. An Employee or Independent Contractor terminates Service upon incurring a Severance from Employment.

(A) **Qualified Military Service.** Service includes any qualified military service the Plan must credit for contributions and benefits in order to satisfy the crediting of Service requirements of Code §414(u). A Participant whose employment is interrupted by qualified military service under Code §414(u) or who is on a leave of absence for qualified military service under Code §414(u) may elect to make additional Salary Reduction Contributions upon resumption of employment with the Employer equal to the maximum Deferral Contributions that the Participant could have elected during that period if the Participant's employment with the Employer had continued (at the same level of Compensation) without the interruption of leave, reduced by the Deferral Contributions, if any, actually made for the Participant during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave). The Employer shall make appropriate make-up Nonelective Contributions and Matching Contributions for such a Participant as required under Code §414(u). The Plan shall apply limitations of Article III to all Deferral Contributions under this paragraph with respect to the year to which the Deferral Contribution relates.

(B) **"Continuous Service"** as the Adoption Agreement describes means Service with the Employer during which the Employee does not incur a Severance from Employment.

(C) **"Severance from Employment."**

(1) **Employee.** An Employee has a Severance from Employment when the Employee ceases to be an Employee of the Employer. A Participant does not incur a Severance from Employment if, in connection with a change in employment, the Participant's new employer continues or assumes sponsorship of the Plan or accepts a Transfer of Plan assets as to the Participant.

(2) **Independent Contractor.** An Independent Contractor has a Severance from Employment when the contract(s) under which the Independent Contractor performs services for the Employer expires (or otherwise terminates), unless the Employer anticipates a renewal of the contractual relationship or the Independent Contractor becoming an Employee. The Employer anticipates renewal if it intends to contract for the services provided under the expired contract and neither the Employer nor the Independent Contractor has eliminated the Independent Contractor as a potential provider of such services under the new contract. Further, the Employer intends to contract for services conditioned only upon the Employer's need for the services provided under the expired contract or the Employer's availability of funds. Notwithstanding the preceding provisions of this Section 1.31, the Plan Administrator will consider an Independent Contractor to have incurred a Severance from Employment: (a) if the Plan Administrator or Trustee will not pay any Deferred Compensation to an

Independent Contractor who is a Participant before a date which is at least twelve months after the expiration of the Independent Contractor's contract (or the last to expire of such contracts) to render Services to the Employer; and (b) if before the applicable twelve-month payment date, the Independent Contractor performs Service as an Independent Contractor or as an Employee, the Plan Administrator or Trustee will not pay to the Independent Contractor his or her Deferred Compensation on the applicable date.

(3) **Deemed Severance.** Notwithstanding Section 1.05(F), if the Employer elects in the Adoption Agreement, then if a Participant performs service in the uniformed services (as defined in Code §414(u)(12)(B)) on active duty for a period of more than 30 days, the Participant will be deemed to have a severance from employment solely for purposes of eligibility for distribution of amounts not subject to Code §412. However, the Plan will not distribute such a Participant's Account on account of this deemed severance unless the Participant specifically elects to receive a benefit distribution hereunder. If a Participant elects to receive a distribution on account of this deemed severance, then no Deferral Contributions may be made for the Participant during the 6-month period beginning on the date of the distribution. If a Participant would be entitled to a distribution on account of a deemed severance, and a distribution on account of another Plan provision, then the other Plan provision will control and the 6-month suspension will not apply.

1.32 **"State"** means (a) one of the 50 states of the United States or the District of Columbia, or (b) a political subdivision of a State, or any agency or instrumentality of a State or its political subdivision. A State does not include the federal government or any agency or instrumentality thereof.

1.33 **"Substantial Risk of Forfeiture"** exists if the Plan expressly conditions a Participant's right to Deferred Compensation upon the Participant's future performance of substantial Service for the Employer.

1.34 **"Tax-Exempt Organization"** means any tax-exempt organization other than a governmental unit or a church or qualified church-controlled organization within the meaning of Code §3121(w)(3).

1.35 **"Taxable Year"** means the calendar year or other taxable year of a Participant.

1.36 **"Transfer"** means a transfer of Eligible 457 Plan assets to another Eligible 457 Plan which is not a Rollover Contribution and which is made in accordance with Section 9.03.

1.37 **"Trust"** means the Trust created under the adopting Employer's Plan. A Trust required under a Governmental Eligible 457 Plan is subject to Article VIII. Any Trust under a Tax-Exempt Organization Eligible 457 Plan is subject to Section 5.09.

1.38 **"Trustee"** means the person or persons who as Trustee execute the Employer's Adoption Agreement, or any successor in office who in writing accepts the position of Trustee.

1.39 **Type of 457 Plan.** This Plan is an Eligible 457 Plan, which is a plan which satisfies the requirements of Code §457(b) and Treas. Reg. §§1.457-3 through -10. The Employer in the Adoption Agreement must specify whether the plan is either a Governmental Eligible 457 Plan or a Tax-Exempt Organization Eligible 457 Plan, as defined below:

## Eligible 457 Plan

(A) "**Governmental Eligible 457 Plan**" means an Eligible 457 Plan established by a State.

(B) "**Tax-Exempt Organization Eligible 457 Plan**" means an Eligible 457 Plan established by a Tax-Exempt Organization.

1.40 "**Vested**" means a Participant's Deferral Contributions that are not subject to a Substantial Risk of Forfeiture, including a vesting schedule.

## ARTICLE II ELIGIBILITY AND PARTICIPATION

2.01 **ELIGIBILITY.** Each Employee who is not an Excluded Employee becomes a Participant in the Plan in accordance with the eligibility conditions and as of the Plan Entry Date the Employer elects in the Adoption Agreement. If this Plan is a restated Plan, each Employee who was a Participant in the Plan on the day before the Effective Date continues as a Participant in the Plan, irrespective of whether he/she satisfies the eligibility conditions in the restated Plan, unless the Employer indicates otherwise in the Adoption Agreement.

2.02 **PARTICIPATION UPON RE-EMPLOYMENT.** A Participant who incurs a Severance from Employment will re-enter the Plan as a Participant on the date of his or her re-employment. An Employee who satisfies the Plan's eligibility conditions but who incurs a Severance from Employment prior to becoming a Participant will become a Participant on the later of the Plan Entry Date on which he/she would have entered the Plan had he/she not incurred a Severance from Employment or the date of his or her re-employment. Any Employee who incurs a Severance from Employment prior to satisfying the Plan's eligibility conditions becomes a Participant in accordance with the Adoption Agreement.

2.03 **CHANGE IN EMPLOYMENT STATUS.** If a Participant has not incurred a Severance from Employment but ceases to be eligible to participate in the Plan, by reason of becoming an Excluded Employee, the Plan Administrator must treat the Participant as an Excluded Employee during the period such a Participant is subject to the Adoption Agreement exclusion. The Plan Administrator determines a Participant's sharing in the allocation of Employer Contributions by disregarding his or her Compensation paid by the Employer for services rendered in his or her capacity as an Excluded Employee. However, during such period of exclusion, the Participant, without regard to employment classification, continues to share fully in Plan income allocations under Section 5.07 and to accrue vesting service if applicable.

## ARTICLE III DEFERRAL CONTRIBUTIONS/LIMITATIONS

### 3.01 AMOUNT.

**(A) Contribution Formula.** For each Plan Year, or other period the Employer specifies in the Adoption Agreement, the Employer will contribute to the Plan the type and amount of Deferral Contributions the Employer elects in the Adoption Agreement.

**(B) Return of Contributions.** The Employer contributes to this Plan on the condition its contribution is not due to a mistake of fact. If the Plan has a Trust, the Trustee, upon written request from the Employer, must return to the Employer the amount of the Employer's contribution (adjusted for net income, gain or loss) made by the Employer on account of a mistake of fact. The Trustee will not return any portion of the Employer's contribution under the provisions of this paragraph more than one year after the Employer made the contribution on account of a mistake of fact. In addition, if any Participant Salary Reduction Contribution is due to a mistake of fact, the Employer or the Trustee upon written request from the Employer shall return the Participant's contribution (adjusted for net income, gain or loss), within one year after payment of the contribution.

The Trustee will decrease the Employer contribution returnable for any losses attributable to it. The Trustee may require the Employer to furnish it whatever evidence the Trustee deems necessary to enable the Trustee to confirm the amount the Employer has requested be returned is properly returnable.

**(C) Time of Payment of Contribution.** If the Plan has a Trust, the Employer may pay its contributions for each Plan Year to the Trust in one or more installments and at such time(s) as the Employer determines, without interest. A Governmental Employer shall deposit Salary Reduction Contributions to the Trust within a period that is not longer than is reasonable for the administration of Participant Accounts.

**3.02 SALARY REDUCTION CONTRIBUTIONS.** The Employer in the Adoption Agreement must elect whether the Plan permits Salary Reduction Contributions, and also the Plan limitations, if any, which apply to Salary Reduction Contributions. Unless the Employer elects otherwise in the Adoption Agreement, all such limitations apply on a payroll basis.

**(A) Deferral from Sick, Vacation and Back Pay.** The Employer in the Adoption Agreement must elect whether to permit Participants to make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay.

**(B) Automatic Enrollment.** The Employer in the Adoption Agreement may provide for automatic Salary Reduction Contributions of a specified amount, subject to giving notice to affected Participants of the automatic election and of their right to make a contrary election.

A Governmental Employer under an Eligible 457 Plan may elect to provide an Eligible Automatic Contribution Arrangement ("EACA"). If the Employer elects to provide an EACA, the Employer will amend the Plan to add necessary language.

**(C) Application to Leave of Absence and Disability.** Unless a Participant in his or her Salary Reduction Agreement elects otherwise, the Participant's Salary Reduction Agreement shall continue to apply during the Participant's leave of absence or the Participant's disability (as the Plan Administrator shall

establish), if the Participant has Compensation other than imputed compensation or disability benefits.

**(D) Post-severance deferrals limited to Post-Severance Compensation.** Deferrals are permitted from an amount received following Severance from Employment only if the amount is Post-Severance Compensation.

**3.03 MATCHING CONTRIBUTIONS.** The Employer in the Adoption Agreement must elect whether the Plan permits Matching Contributions and, if so, the type(s) of Matching Contributions, the time period applicable to any Matching Contribution formula, and as applicable, the amount of Matching Contributions and the Plan limitations, if any, which apply to Matching Contributions. Any Matching Contributions apply to age 50 catch-up contributions, if any, and to any Normal Retirement Age catch-up contributions unless the Employer elects otherwise in the Adoption Agreement.

**3.04 NORMAL LIMITATION.** Except as provided in Sections 3.05 and 3.06, a Participant's maximum Deferral Contributions (excluding Rollover Contributions and Transfers) under this Plan for a Taxable Year may not exceed the lesser of:

(a) The applicable dollar amount as specified under Code §457(e)(15) (or such larger amount as the Commissioner of the Internal Revenue may prescribe), or

(b) 100% of the Participant's Includible Compensation for the Taxable Year.

**3.05 NORMAL RETIREMENT AGE CATCH-UP CONTRIBUTION.** If selected in the Adoption Agreement, a Participant may elect to make this catch-up election. For one or more of the Participant's last three Taxable Years ending before the Taxable Year in which the Participant attains Normal Retirement Age, the Participant's maximum Deferral Contributions may not exceed the lesser of:

(a) Twice the dollar amount under Section 3.04(a) Normal Limitation, or (b) the underutilized limitation.

**(A) Underutilized Limitation.** A Participant's underutilized limitation is equal to the sum of: (i) the normal limitation for the Taxable Year, and (ii) the normal limitation for each of the prior Taxable Years of the Participant commencing after 1978 during which the Participant was eligible to participate in the Plan and the Participant's Deferral Contributions were subject to the Normal Limitation or any other Code §457(b) limit, less the amount of Deferral Contributions for each such prior Taxable Year, excluding age 50 catch-up contributions.

**(B) Normal Retirement Age.** Normal Retirement Age is the age the Employer specifies in the Adoption Agreement provided that the age may not be: (i) earlier than the earliest of age 65 or the age at which Participants have the right to retire and receive under the Employer's defined benefit plan (or money purchase plan if the Participant is not eligible to participate in a defined benefit plan) immediate retirement benefits without actuarial or other reduction because of retirement before a later specified age; or (ii) later than age 70 1/2.

**(1) Participant Designation.** The Employer in the Adoption Agreement may permit a Participant to designate his or her Normal Retirement Age as any age including or between the foregoing ages.

(2) **Multiple 457 Plans.** If the Employer maintains more than one Eligible 457 Plan, the Plans may not permit any Participant to have more than one Normal Retirement Age under the Plans.

(3) **Police and Firefighters.** In a Governmental Eligible 457 Plan with qualified police or firefighter Participants within the meaning of Code §415(b)(2)(H)(ii)(I), the Employer in the Adoption Agreement may elect (or permit the qualified Participants to elect) a Normal Retirement Age as early as age 40 and as late as age 70 1/2.

(C) **Pre-2002 Coordination.** In determining a Participant's underutilized limitation, the Plan Administrator, in accordance with Treas. Reg. §1.457-4(c)(3)(iv), must apply the coordination rule in effect under now repealed Code §457(c)(2). The Plan Administrator also must determine the Normal Limitation for pre-2002 Taxable Years in accordance with Code §457(b)(2) as then in effect.

3.06 **AGE 50 CATCH-UP CONTRIBUTION.** An Employer sponsoring a Governmental Eligible 457 Plan must specify in the Adoption Agreement whether the Participants are eligible to make age 50 catch-up contributions.

If an Employer elects to permit age 50 catch-up contributions, all Employees who are eligible to make Salary Reduction Contributions under this Plan and who have attained age 50 before the close of the Taxable Year are eligible to make age 50 catch-up contributions for that Taxable Year in accordance with, and subject to the limitations of, Code §414(v). Such catch-up contributions are not taken into account for purposes of the provisions of the Plan implementing the required limitations of Code §457. If, for a Taxable Year, an Employee makes a catch-up contribution under Section 3.05, the Employee is not eligible to make age 50 catch-up contributions under this Section 3.06. A catch-up eligible Participant in each Taxable Year is entitled to the greater of the amount determined under Section 3.05 or Section 3.06 Catch-Up Amount plus the Section 3.04 Normal Limitation.

3.07 **CONTRIBUTION ALLOCATION.** The Plan Administrator will allocate to each Participant's Account his or her Deferral Contributions. The Employer will allocate Employer Nonelective and Matching Contributions to the Account of each Participant who satisfies the allocation conditions in the Adoption Agreement in the following manner:

(a) **Fixed match.** To the extent the Employer makes Matching Contributions under a fixed Adoption Agreement formula, the Plan Administrator will allocate the Matching Contribution to the Account of the Participant on whose behalf the Employer makes that contribution. A fixed Matching Contribution formula is a formula under which the Employer contributes a specified percentage or dollar amount on behalf of a Participant based on that Participant's Salary Reduction Contributions.

(b) **Discretionary match.** To the extent the Employer makes Matching Contributions under a discretionary Adoption Agreement formula, the Plan Administrator will allocate the Matching Contributions to a Participant's Account in the same proportion that each Participant's Salary Reduction Contributions taken into account under the formula bear to the total Salary Reduction Contributions of all Participants.

(c) **Tiered match.** If the Matching Contribution formula is a tiered formula, the Plan Administrator will allocate separately the Matching Contributions with respect to each tier of Salary Reduction Contributions, in accordance with the tiered formula.

(d) **Discretionary nonelective.** The Plan Administrator will allocate discretionary Nonelective Contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year, unless the Employer elects otherwise in the Adoption Agreement.

(e) **Fixed nonelective.** The Plan Administrator will allocate fixed Nonelective Contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year, unless the Employer elects otherwise in the Adoption Agreement.

(f) **Other nonelective.** The Plan Administrator will allocate Nonelective Contributions for a Plan Year as specified in the Adoption Agreement.

3.08 **ALLOCATION CONDITIONS.** The Plan Administrator will determine the allocation conditions applicable to Nonelective Contributions or to Matching Contributions (or to both) in accordance with the Employer's elections in the Adoption Agreement. The Plan Administrator will not allocate to a Participant any portion of an Employer Contribution (or forfeiture if applicable) for a Plan Year or applicable portion thereof in which the Participant does not satisfy the applicable allocation condition(s).

3.09 **ROLLOVER CONTRIBUTIONS.** If elected in the Adoption Agreement, an Employer sponsoring a Governmental Eligible 457 Plan may permit Rollover Contributions.

(A) **Operational Administration.** The Employer, operationally and on a nondiscriminatory basis, may elect to limit an eligible Employee's right or a Participant's right to make a Rollover Contribution. Any Participant (or as applicable, any eligible Employee), with the Employer's written consent and after filing with the Trustee the form prescribed by the Plan Administrator, may make a Rollover Contribution to the Trust. Before accepting a Rollover Contribution, the Trustee may require a Participant (or eligible Employee) to furnish satisfactory evidence the proposed transfer is in fact a "Rollover Contribution" which the Code permits an employee to make to an eligible retirement plan. The Trustee, in its sole discretion, may decline to accept a Rollover Contribution of property which could: (1) generate unrelated business taxable income; (2) create difficulty or undue expense in storage, safekeeping or valuation; or (3) create other practical problems for the Trust.

(B) **Pre-Participation Rollover.** If an eligible Employee makes a Rollover Contribution to the Trust prior to satisfying the Plan's eligibility conditions, the Plan Administrator and Trustee must treat the Employee as a limited Participant (as described in Rev. Rul. 96-48 or in any successor ruling). A limited Participant does not share in the Plan's allocation of any Employer Contributions and may not make Salary Reduction Contributions until he/she actually becomes a Participant in the Plan. If a limited Participant has a Severance from Employment prior to becoming a Participant in the Plan, the Trustee will distribute his or her Rollover Contributions Account to the limited Participant in accordance with Article IV.

(C) **Separate Accounting.** If an Employer permits Rollover Contributions, the Plan Administrator must account separately for: (1) amounts rolled into this Plan from an eligible retirement plan (other than from another Governmental Eligible 457 plan); and (2) amounts rolled into this Plan from another Governmental Eligible 457 Plan. The Plan Administrator for purposes of ordering any subsequent distribution from this Plan,



may designate a distribution from a Participant's Rollover Contributions as coming first from either of (1) or (2) above if the Participant has both types of Rollover Contribution Accounts.

**(D) May Include Roth Deferrals.** If this Plan is an eligible governmental 457(b) plan which accepts Roth Elective Deferrals, then a Rollover Contribution may include Roth Deferrals made to another plan, as adjusted for Earnings. Such amounts must be directly rolled over into this Plan from another plan which is qualified under Code §401(a), from a 403(b) plan, or from an eligible governmental 457 plan. The Plan must account separately for the Rollover Contribution, including the Roth Deferrals and the Earnings thereon.

**(E) In-Plan Roth Rollover Contributions.** A Governmental Employer under an Eligible 457 Plan may elect to permit In-Plan Roth Rollover Contribution. If the Employer decides to permit In-Plan Roth Rollover Contributions, the Employer will amend the Plan to add necessary language.

**3.10 DISTRIBUTION OF EXCESS DEFERRALS.** In the event that a Participant has Excess Deferrals, the Plan will distribute to the Participant the Excess Deferrals and allocable net income, gain or loss, in accordance with this Section 3.10.

**(A) Governmental Eligible 457 Plan.** The Plan Administrator will distribute Excess Deferrals from a Governmental Eligible 457 Plan as soon as is reasonably practicable following the Plan Administrator's determination of the amount of the Excess Deferral.

**(B) Tax-Exempt Organization Eligible 457 Plan.** The Plan Administrator will distribute Excess Deferrals from a Tax-Exempt Organization Eligible 457 Plan no later than April 15 following the Taxable Year in which the Excess Deferral occurs.

**(C) Plan Aggregation.** If the Employer maintains more than one Eligible 457 Plan, the Employer must aggregate all such Plans in determining whether any Participant has Excess Deferrals.

**(D) Individual Limitation.** If a Participant participates in another Eligible 457 Plan maintained by a different employer, and the Participant has Excess Deferrals, the Plan Administrator may, but is not required, to correct the Excess Deferrals by making a corrective distribution from this Plan.

**3.11 DEEMED IRA CONTRIBUTIONS.** A Governmental Employer under an Eligible 457 Plan may elect to permit Participants to make IRA contributions to this Plan in accordance with the Code §408(q) deemed IRA rules. If the Employer elects to permit deemed IRA contributions to the Plan, the Employer will amend the Plan to add necessary IRA language and either the Rev. Proc. 2003-13 sample deemed IRA language or an appropriate substitute.

**3.12 ROTH ELECTIVE DEFERRALS.** The Employer may elect in the Adoption Agreement to permit Roth Elective Deferrals. Unless elected otherwise, Roth Elective Deferrals shall be treated in the same manner as Elective Deferrals. The Employer may, in operation, implement deferral election procedures provided such procedures are communicated to Participants and permit Participants to modify their elections at least once each Plan Year.

**(A) Elective Deferrals.** "Elective Deferral" means a contribution the Employer makes to the Plan pursuant to a Participant's Salary Reduction Agreement, as described in

Section 3.02. The term "Elective Deferrals" includes Pre-tax Elective Deferrals and Roth Elective Deferrals.

**(B) Pre-Tax Elective Deferrals.** "Pre-Tax Elective Deferrals" means a Participant's Salary Reduction Contributions which are not includible in the Participant's gross income at the time deferred and have been irrevocably designated as Pre-Tax Elective Deferrals by the Participant in his or her Salary Reduction Agreement. A Participant's Pre-Tax Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Pre-Tax Elective Deferrals.

**(C) Roth Elective Deferrals.** "Roth Elective Deferrals" means a Participant's Salary Reduction Contributions that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth Elective Deferrals by the Participant in his or her Salary Reduction Agreement. A Participant's Roth Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Roth Elective Deferrals. However, forfeitures may not be allocated to such account. The Plan must also maintain a record of a Participant's investment in the contract (i.e., designated Roth contributions that have not been distributed) and the year in which the Participant first made a Roth Elective Deferral.

**(D) Ordering Rules for Distributions.** The Administrator operationally may implement an ordering rule procedure for withdrawals (including, but not limited to, withdrawals on account of an unforeseeable emergency) from a Participant's accounts attributable to Pre-Tax Elective Deferrals or Roth Elective Deferrals. Such ordering rules may specify whether the Pre-Tax Elective Deferrals or Roth Elective Deferrals are distributed first. Furthermore, such procedure may permit the Participant to elect which type of Elective Deferrals shall be distributed first.

**(E) Corrective distributions attributable to Roth Elective Deferrals.** For any Plan Year in which a Participant may make both Roth Elective Deferrals and Pre-Tax Elective Deferrals, the Administrator operationally may implement an ordering rule procedure for the distribution of Excess Deferrals (Treas. Reg. §1.457-4(e)). Such an ordering rule may specify whether the Pre-Tax Elective Deferrals or Roth Elective Deferrals are distributed first, to the extent such type of Elective Deferrals was made for the year. Furthermore, such procedure may permit the Participant to elect which type of Elective Deferrals shall be distributed first.

**(F) Loans.** If Participant loans are permitted under the Plan, then the Administrator may modify the loan policy or program to provide limitations on the ability to borrow from, or use as security, a Participant's Roth Elective Deferral account. Similarly, the loan policy or program may be modified to provide for an ordering rule with respect to the default of a loan that is made from the Participant's Roth Elective Deferral account and other accounts under the Plan.

**(G) Rollovers.** A direct rollover of a distribution from Roth Elective Deferrals shall only be made to a Plan which includes Roth Elective Deferrals as described in Code §402A(e)(1) or to a Roth IRA as described in Code §408A, and only to the extent the rollover is permitted under the rules of Code §402(c).

The Plan shall accept a rollover contribution of Roth Elective Deferrals only if it is a direct rollover from another Plan which permits Roth Elective Deferrals as described in Code

§402A(e)(1) and only to the extent the rollover is permitted under the rules of Code §402(c). The Employer, operationally and on a uniform and nondiscriminatory basis, may decide whether to accept any such rollovers.

The Plan shall not provide for a direct rollover (including an automatic rollover) for distributions from a Participant's Roth Elective Deferral account if the amount of the distributions that are eligible rollover distributions are reasonably expected to total less than \$200 during a year. In addition, any distribution from a Participant's Roth Elective Deferrals are not taken into account in determining whether distributions from a Participant's other accounts are reasonably expected to total less than \$200 during a year. Furthermore, the Plan will treat a Participant's Roth Elective Deferral account and the Participant's other accounts as held under two separate plans for purposes of applying the automatic rollover rules. However, eligible rollover distributions of a Participant's Roth Elective Deferrals are taken into account in determining whether the total amount of the Participant's account balances under the Plan exceed the Plan's limits for purposes of mandatory distributions from the Plan.

The provisions of the Plan that allow a Participant to elect a direct rollover of only a portion of an eligible rollover distribution but only if the amount rolled over is at least \$500 is applied by treating any amount distributed from a Participant's Roth Elective Deferral account as a separate distribution from any amount distributed from the Participant's other accounts in the Plan, even if the amounts are distributed at the same time.

**(H) Automatic Enrollment.** If the Plan utilizes an automatic enrollment feature as described in Section 3.02(B), then any such automatic contribution shall be a Pre-Tax Elective Deferral.

**(I) Operational Compliance.** The Plan Administrator will administer Roth Elective Deferrals in accordance with applicable regulations or other binding authority.

**3.13 BENEFIT ACCRUAL.** If the Employer elects to apply this Section, then effective as of the date adopted, for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.

**(A) Determination of benefits.** The amount of Matching Contributions to be made pursuant to this Section 3.13 shall be determined as though the amount of Salary Reduction Contributions of an individual treated as reemployed under this Section on the basis of the individual's average actual Salary Reduction Contributions for the lesser of: (i) the 12-month period of service with the Employer immediately prior to qualified military service; or (ii) the actual length of continuous service with the Employer.

**3.14 ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGEMENT (EACA).** As elected in the Adoption Agreement, the Employer maintains a Plan with automatic enrollment provisions as an Eligible Automatic Contribution Arrangement ("EACA"). Accordingly, the Plan will satisfy the (1) uniformity requirements, and (2) notice requirements under this Section.

**(A) Uniformity.** The Automatic Deferral Percentage must be a uniform percentage of Compensation. All Participants in the EACA, are subject to Automatic Deferrals, except to the extent otherwise provided in this Plan. If a Participant's Affirmative Election expires or otherwise ceases to be in effect, the Participant will immediately thereafter be subject to Automatic Deferrals, except to the extent otherwise provided in this Plan. However, the Plan does not violate the uniform Automatic Deferral Percentage merely because the Plan applies any of the following provisions:

**(a) Years of participation.** The Automatic Deferral Percentage varies based on the number of plan years the Participant has participated in the Plan while the Plan has applied EACA provisions;

**(b) No reduction from prior default percentage.** The Plan does not reduce an Automatic Deferral Percentage that, immediately prior to the EACA's effective date was higher (for any Participant) than the Automatic Deferral Percentage;

**(c) Applying statutory limits.** The Plan limits the Automatic Deferral amount so as not to exceed the limits of Code Section 457(b)(2) (determined without regard to Age 50 Catch-Up Deferrals).

**(B) EACA notice.** The Plan Administrator annually will provide a notice to each Participant a reasonable period prior to each plan year the Employer maintains the Plan as an EACA ("EACA Plan Year").

**(a) Deemed reasonable notice/new Participant.** The Plan Administrator is deemed to provide timely notice if the Plan Administrator provides the EACA notice at least 30 days and not more than 90 days prior to the beginning of the EACA Plan Year.

**(b) Mid-year notice/new Participant or Plan.** If: (a) an Employee becomes eligible to make Salary Reduction Contributions in the Plan during an EACA Plan Year but after the Plan Administrator has provided the annual EACA notice for that plan year; or (b) the Employer adopts mid-year a new Plan as an EACA, the Plan Administrator must provide the EACA notice no later than the date the Employee becomes eligible to make Salary Reduction Contributions. However, if it is not practicable for the notice to be provided on or before the date an Employee becomes a Participant, then the notice will nonetheless be treated as provided timely if it is provided as soon as practicable after that date and the Employee is permitted to elect to defer from all types of Compensation that may be deferred under the Plan earned beginning on that date.

**(c) Content.** The EACA notice must provide comprehensive information regarding the Participants' rights and obligations under the Plan and must be written in a manner calculated to be understood by the average Participant in accordance with applicable guidance.

**(C) EACA permissible withdrawal.** If elected in in the Adoption Agreement, a Participant who has Automatic Deferrals under the EACA may elect to withdraw all the Automatic Deferrals (and allocable earnings) under the provisions of this Section 3.14. Any distribution made pursuant to this Section will be processed in accordance with normal distribution provisions of the Plan.

**(a) Amount.** If a Participant elects a permissible withdrawal under this Section, then the Plan must make a