

RTA EMPLOYEES DEFINED BENEFIT PLAN AND TRUST

Amended and Restated Effective
January 1, 2010

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INTRODUCTION

Effective July 21, 1986, the Corpus Christi Regional Transit Authority, now known as the Corpus Christi Regional Transportation Authority (herein the “Employer”) adopted the RTA Employees Defined Benefit Plan and Trust (herein the “Plan”) for the benefit of the eligible employees of the Employer.

Since the inception of this Plan it has been amended from time to time to make operational changes and also to keep the Plan in compliance with rules governing qualification requirements under Internal Revenue Code (the “Code”) Section 401(a).

Now this Plan is hereby being amended and restated effective January 1, 2010, in order to comply with applicable changes in the law (and various regulations and other guidance) caused by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the Job Creation and Worker Assistance Act of 2002 (JCWAA), the Pension Funding Equity Act of 2004 (PFEA), the American Jobs Creation Act of 2004 (AJCA), the Gulf Opportunity Zone Act of 2005 (GOZA), the Pension Protection Act of 2006 (PPA ‘06), the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), and the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA). The terms of this restatement shall be effective January 1, 2010 except as otherwise indicated herein for specified provisions or as required by applicable law or regulations.

This restatement is intended to comply with the 2009 Cumulative List for Cycle E filers set forth in IRS Notice 2009-98.

Unless otherwise stated with respect to a particular provision hereof, the provisions of this Plan, as so amended and restated, shall apply only to an Employee in Covered Service on or after the applicable effective date. Any retired Employee receiving benefits prior to January 1, 2010 and any former Employee who terminated Covered Service prior to January 1, 2010 shall have his rights to benefits determined under the Plan as in effect when his Covered Service terminated and shall not be entitled to any additional benefits under the amended and restated Plan as set forth herein unless the Plan Administrator specifically provides otherwise.

SECTION 1 DEFINITIONS

As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meanings indicated. Some of the words and phrases used in the Plan may not be defined in this Section 1, but, for convenience, are defined as they are introduced into the text.

- 1.01** “**Accrued Benefit**” means, as of the date of determination, the amount of monthly retirement income payable to a Participant determined in the same manner as the normal retirement benefit in Section 3.01(e) but based on Final Average Compensation and Years of Service as of the date of determination.
- 1.02** “**Actuarial Equivalent**” means a benefit of equivalent value computed in accordance with the actuarial factors provided for in Section 1.02(a):
- (a) UP-84 Annuity Mortality Table with the interest at the rate of seven percent (7%) per annum for all forms of payment.
 - (b) Notwithstanding the above, for the purposes of computing limitations on Plan benefits in accordance with Code Section 415 as specified in Section 3.09, the “Applicable Interest Rate” (as defined below in this Section 1.02(b) shall be substituted in place of the interest rate otherwise set forth in this Section 1.02(a) above, but only if the Applicable Interest Rate is greater than the interest rate otherwise set forth in Section 1.02(a). For purposes of this Section 1.02(a), “Applicable Interest Rate” shall mean the annual rate of interest on 30-year Treasury securities for the second calendar month preceding the Plan Year which contains the date as of which the present value is being determined. However, except as provided in Regulations, if a Plan amendment (including this amendment and restatement) changes the time for determining the “Applicable Interest Rate” (including an indirect change as a result of a change in the Plan Year), any distribution for which the Annuity Starting Date occurs in the one-year period commencing at the time the Plan amendment is effective (if the amendment is effective on or after the adoption date) must use the interest rate as provided under the terms of the Plan after the effective date of the amendment, determined at either the date for determining the interest rate before the amendment or the date for determining the interest rate after the amendment, whichever results in the larger distribution. If the Plan amendment is adopted retroactively (that is, the amendment is effective prior to the adoption date), the Plan must use the interest rate determination date resulting in the larger distribution for the period beginning with the effective date and ending one year after the adoption date. Notwithstanding the above, for Annuity Starting Dates in a Plan Year beginning on or after January 1, 2008, instead of using the annual rate of interest on 30-year U.S. Treasury securities, the Plan shall use the rate of interest determined by applicable interest rate described by Code Section 417(e) after its amendment by the Pension Protection Act of 2006 (PPA). Specifically, the applicable interest rate shall be the adjusted first, second, and third segment rates applied under the rules similar to the rules of Code Section 430(h)(2)(C) for the second calendar month preceding the first day of the calendar quarter during which the Participant’s Annuity Starting Date occurs. For this purpose, the first, second, and third segment rates are the first, second, and third segment rates which would be determined under Code Section 430(h)(2)(C) if:

- (1) Code Section 430(h)(2)(D) were applied by substituting the average yields for the month described in the preceding paragraph for the average yields for the 24-month period described in such section, and
 - (2) Code Section 430(h)(2)(G)(i)(II) were applied by substituting "Section 417(e)(3)(A)(ii)(II) for "Section 412(b)(5)(B)(ii)(II)," and
 - (3) The applicable percentage under Code Section 430(h)(2)(G) is treated as being 20% in 2008, 40% in 2009, 60% in 2010, and 80% in 2011.
- (c) In the event this Section is amended, the Actuarial Equivalent of a Participant's Accrued Benefit on or after the date of change shall be determined as the greater of (1) the Actuarial Equivalent of the Accrued Benefit as of the date of change computed on the old basis, or (2) the Actuarial Equivalent of the total Accrued Benefit computed on the new basis. Notwithstanding other language in this paragraph, if the Plan is amended as a result in a change in the Code or underlying Regulation, and that law change provides for relief from the anti cut-back provisions of Code Section 411(d)(6), then the "greater of" calculation in this paragraph may be waived in accordance with the change in the law.
- (d) Notwithstanding the above, for the purposes of limitation computations in accordance with Code Section 415 as specified in Section 3.09, the "Applicable Mortality Table" (as defined below in this Subsection (c)) shall be substituted in place of the mortality table otherwise set forth in Section 1.02(a) above. For purposes of this Section 1.02, "Applicable Mortality Table" shall mean the mortality table prescribed by Code Section 417(e)(3). Notwithstanding the foregoing, with respect to Annuity Starting Dates prior to December 31, 2002, the mortality rate shall be based on the mortality table prescribed in Revenue Ruling 95-6 and with respect to Annuity Starting Dates on or after December 31, 2002, (but before January 1, 2008) the mortality rate shall be based on the mortality table prescribed in Revenue Ruling 2001-62. Notwithstanding the above, for Annuity Starting Dates after January 1, 2008, the mortality rate shall be based upon the mortality table prescribed in Revenue Ruling 2007-62.

- 1.03 "Administrator"** means the individual, committee of individuals or corporation appointed by the Employer pursuant to Section 8 to administer the Plan. The Employer shall be the Administrator during any period of time when no other individual or corporation is serving as such.
- 1.04 "Annuity Starting Date"** shall mean the first day of the first period for which an amount is payable as an annuity, or in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitles the Participant to such benefit.
- 1.05 "Board"** means the Board of Directors of the Employer.
- 1.06 "Break in Service"** means a termination of service followed by the completion of a One-Year Break in Services.
- 1.07 "Code"** means the Internal Revenue Code of 1986, and amendments thereto.
- 1.08 "Compensation"** means compensation paid by an Employer to an Employee for services rendered to the Employer during a calendar year including regular salary, bonuses, overtime, and any Employee salary reduction under Code Section 125, 457 or 414(h). Compensation shall exclude Employer contributions or benefits under this Plan or any other Plan, personal leave

cash in, personal leave or health leave paid at retirement, severance pay, any car, tool or uniform allowances, and any other extraordinary compensation.

In addition to other applicable limitations set forth in the Plan and notwithstanding any other provisions of the Plan to the contrary, for Plan Years beginning on or after January 1, 1994, the annual Compensation of each Employee taken into account under the Plan shall not exceed the OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit is \$150,000 for determination periods beginning prior to January 1, 2002 and is \$200,000 for determination periods beginning on or after January 1, 2002, both as adjusted by the Commissioner for increases in the cost of living in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period and the denominator of which is 12. For Plan Years beginning on or after January 1, 1994, any reference in this Plan to the limitation under section 401(a)(17) of the Code shall mean the OBRA '93 annual compensation limit set forth in this provision.

If Compensation for any prior determination period is taken into account in determining an Employee's benefits accruing in the current Plan Year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first Plan Year beginning on or after January 1, 1994, the OBRA '93 annual compensation limit is \$150,000.

For purposes of computing Plan benefits Compensation shall include any differential pay for Qualified Military Service, if the Employer makes this type of differential pay to the Employee. Any such payments will be included in the Employee's benefit calculation as required by the Heroes Earnings Assistance and Tax Relief Act of 2008.

- 1.09 **“Early Retirement Age”** means age 55, if the Participant has completed 10 Years of Service.
- 1.10 **“Early Retirement Date”** means the first day of the month following the date the Participant becomes eligible for early retirement under Section 3.02
- 1.11 **“Effective Date”** means January 1, 2010, the date which this amended and restated Plan is effective. The original effective date of the Plan is July 21, 1986.
- 1.12 **“Employee”** means any person who is receiving remuneration for personal services rendered to the Employer, but excludes any person who is employed as an independent contractor.
- 1.13 **“Employer”** means Corpus Christi Regional Transportation Authority, formerly known as Corpus Christi Regional Transit Authority, a political subdivision of the State of Texas.
- 1.14 **“Fiduciary”** means a party named as a fiduciary in Section 8.01. Any party shall be considered a fiduciary of the Plan only to the extent of the powers and duties specifically allocated to such party under the Plan.
- 1.15 **“Final Average Compensation”** means an annual average determined by dividing the total Compensation received by the Participant during his final three consecutive calendar years by the

number of pay periods for which he received Compensation in such period, multiplied by the number of pay periods in a complete calendar year.

- 1.16 “Former Participant”** means an Employee whose participation has terminated and has not resumed hereunder.
- 1.17 “Fund”** means the total assets of the Plan and Trust.
- 1.18 “Hour of Service”** means each hour for which an Employee is paid, or entitled to payment, by the Employer by reason of:
- (1) the performance of duties; or
 - (2) the nonperformance of duties; or
 - (3) a back pay award or agreement with the Employer, irrespective of mitigation of damages.

No more than 501 Hours of Service shall be credited to an Employee for any single continuous period during which such employee performs no duties. The rules for recognizing Hours of Service to prevent a One-Year Break in Service are stated in Section 1.23.

Crediting Hours of Service to the applicable computation period as well as calculating Hours of Service for the nonperformance of duties shall be effectuated pursuant to Department of Labor Regulations Section 2530.200b-2(b), (c) and (f), (as presently constituted and as amended from time to time) which are herein incorporated by reference. The Department of Labor rules shall be used as a guide for this purpose even though as a local government agency the Employer is not subject to these Department of Labor rules.

- 1.19 “Joint Annuitant”** means the Spouse for a married Participant and the named annuitant for a unmarried Participant that has elected a Joint and Survivor Annuity form of benefit.
- 1.20 “Joint and Survivor Annuity”** shall mean a form of distribution that is paid over the joint lives of the Participant and his or her Spouse. The normal form of Joint and Survivor Annuity shall be paid with the Spouse receiving 50% of the benefit upon surviving the Participant. Other types of Joint and Survivor Annuities are available under Section 5.02
- 1.21 “Normal Retirement Age”** means age 62
- 1.22 “Normal Retirement Date”** means the first day of the month immediately following the Participant’s Normal Retirement Age
- 1.23 “One-Year Break in Service”** means a Plan Year during which the Employee has not completed more than 500 Hours of Service with the Employer. Solely for the purpose of determining whether a Participant has incurred a One-Year Break in Service, Hours of Service shall be recognized for the following authorized leaves of absence:
- (1) “Authorized leave of absence” means an unpaid, temporary cessation from active employment with the Employer pursuant to an established nondiscriminatory policy, whether occasioned by illness, military service, or any other reason.

- (2) A “maternity or paternity leave of absence” shall mean an absence from work for any period by reason of the Employee’s pregnancy, birth of the Employee’s, child, placement of the child with the Employee in connection with the adoption of such child, or any absence for the purpose of caring for such child for a period immediately following such birth or placement.
- (3) A “family/medical leave of absence” as required under the Family and Medical Leave Act.

No credit shall be given under this provision unless the Employee provides to the Administrator on a timely basis such information as is reasonably required to establish that the absence is for a reason described in this Subsection and the period of absence attributable to such reason. The total Hours of Service required to be credited for a “maternity or paternity leave of absence” or “family/medical leave” shall not exceed 501 Hours of Service. Hours of Service, which would normally have been credited but for the absence, shall be credited in the calendar year in which the absence begins, if needed to prevent a Break in Service, or in the calendar year immediately following the calendar year in which the absence begins.

- 1.24** “**Participant**” means any Employee covered by the Plan in accordance with the terms of Section 2 hereof.
- 1.25** “**Plan**” means the RTA Employees Defined Benefit Plan and Trust, the terms of which are set forth herein, including the Trust as contained herein and all amendments hereto which may hereafter be made.
- 1.26** “**Plan Year/ Limitation Year**” means any twelve month period beginning on January 1st and ending on the last day of December.
- 1.27** “**Pre-Retirement Survivor Annuity**” means the death benefit provided to the Spouse Beneficiary under Section 3.06
- 1.28** “**Qualified Military Service**”. Hour of Service also includes any Service the Plan must credit for contributions and benefits in order to satisfy the crediting of Service requirements of Code §414(u). The provisions of this Section 1.28 apply beginning December 12, 1994, or if the Employer’s Plan is effective after that date, as of the Plan’s Effective Date.
- 1.29** “**Rollover**” means a qualified distribution transferred from another employer’s qualified retirement plan or a qualified distribution transferred from this Plan to an Individual Retirement Annuity (IRA) or another employer’s qualified plan. This Plan will not accept Rollovers; however, the Plan will make a direct transfer of any qualified distribution that is not an annuity payment to an IRA or other qualified plan in accordance with the Participant’s instructions and the Unemployment Compensation Amendments of 1992 as provided for in Section 5.05.
- 1.30** “**Severance from Service Date**” means the earlier of
- (1) the date on which the Employee resigns, is discharged or dies; or
 - (2) the first anniversary of a period in which the Employee remains absent from employment (with or without pay) for any reason other than maternity or paternity leave of absence, resignation, discharge or death (such as vacation, holiday, sickness, disability, leave of absence or layoff).

(3) the second anniversary of a period in which the Employee remains absent from employment (with or without pay) for a maternity or paternity leave, including:

- (i) the individual's pregnancy; or
- (ii) childbirth; or
- (iii) adoption of a child; or
- (iv) child care immediately after the birth or adoption of a child;

provided, however, the period between the first and second anniversary will be treated as neither a period of severance nor a period of service.

1.31 “**Spouse**” means, as of any applicable date, a person who was recognized under the laws of the state of domicile as being married to the Participant.

1.32 “**Termination Date**” means the last day an Employee performs an Hour of Service for the Employer as determined by the personnel records of the Employer.

1.33 “**Trust or Trust Agreement**” means the agreement of trust between the Employer and Trustee as contained herein and forming a part of the Plan, which governs the continuation and maintenance of the trust fund, and all amendments thereto which may hereafter be made.

1.34 “**Trustee**” means such corporation, individual or individuals appointed by the Employer and named herein, or any substitute or successor Trustee.

1.35 “**Year of Service**” means a Plan Year in which an Employee completes 1,000 or more Hours of Service. If a Participant has fewer than 1,000 Hours of Service in his first and/or last Year of Service, his Years of Service shall be adjusted (to the nearest month) to reflect the number of months in his first and last Years of Service in which he completed at least 83 Hours of Service as a Participant.

Years of Service shall be adjusted, as applicable, for the following:

- (1) if any nonvested Former Participant is reemployed by the Employer before five consecutive One-Year Breaks in Service, his Years of Service prior to his reemployment shall be reinstated; and
- (2) if any vested Former Participant is reemployed by the Employer before benefit commencement, his Years of Service prior to his reemployment shall be reinstated; and
- (3) if any vested Former Participant is reemployed by the Employer and such Former Participant had received a distribution prior to his reemployment, his Years of Service prior to his reemployment shall be reinstated only after repayment of the prior distribution in full with interest at the rate of 5% per annum. Repayment must be made not later than the earlier of two years after reemployment or such time as the Former Participant incurs five consecutive One-Year Breaks in Service commencing after the distribution.

All Years of Service shall be aggregated for purposes of calculating a Participant's Accrued Benefit.

For purposes of vesting only, "Years of Service" shall include one year for each consecutive twelve-month period a Participant was employed by the City of Corpus Christi, Texas in its transit division immediately prior to becoming an Employee of the Employer under this Plan.

SECTION 2
ELIGIBILITY AND PARTICIPATION

2.01 ELIGIBILITY

Any Employee shall be eligible to participate in the Plan on the date of commencement of full-time employment or reemployment. For purposes of this Section, a full-time Employee shall be defined as any Employee who receives compensation from the Employer on the basis of an average of at least 40 hours of employment per week.

2.02 PARTICIPATION

Each Employee shall automatically become a Participant hereunder when first eligible as provided in Section 2.01 above.

Once an Employee has become a Participant, he will continue to be a Participant as long as he continues to be an Employee without a Break in Service and thereafter as long as he or his Beneficiary retains any right to benefits under the Plan.

SECTION 3
RETIREMENT DATES AND BENEFITS

3.01 NORMAL RETIREMENT

Normal retirement under the Plan is retirement of a Participant from the employ of the Employer on his Normal Retirement Date. In the event of normal retirement, payment of retirement income shall be governed by the following provisions of this Section 3.01.

- (a) **Normal Retirement Date.** The Normal Retirement Date of a Participant shall be the first day of the calendar month coincident with or immediately following the date he attains age 62. A Participant shall have a nonforfeitable right to his normal retirement benefit on the attainment of his Normal Retirement Age.
- (b) **Amount of Retirement Income.** The amount of annual retirement income payable to a Participant who retires on his Normal Retirement Date shall be an amount equal to 2% of his Final Average Compensation multiplied by his Years of Service. The annual retirement income shall be converted to a monthly retirement benefit by dividing by twelve.
- (c) **Amount of Benefit - Other Forms of Payment.** The monthly retirement benefit payable to a Participant who retires and who elects to receive a form of payment (or who fails or refuses to elect a form of payment and thereby receives the form of payment specified in paragraph 5.01) shall be an actuarially adjusted amount which is the Actuarial Equivalent of the benefit described in 3.01(d).
- (d) **Payment of Retirement Benefit.** The retirement income payable in the event of normal retirement shall be payable as a 50% Joint and Survivor Annuity if married and as a Life Annuity if unmarried. The first payment shall be made on the Participant's Normal Retirement Date and the last payment shall be the payment due in accordance with the option in effect.
- (e) **Reemployment of Normal Retired Participant:** If a Participant receiving monthly retirement benefit payments is reemployed as an Employee by the Employer, retirement benefits shall be suspended during any period of such reemployment. Upon his subsequent retirement, the Participant's Accrued Benefit will be recalculated based on his total aggregate Years of Service and Final Average Compensation at his subsequent retirement; provided, however, that his Accrued Benefit will be reduced by the Actuarial Equivalent value of the payments previously received.
- (f) **Benefit Suspension Notice.** If a Participant continues in the employ of his Employer past his Normal Retirement Date, then payments to such Participant shall not begin until his termination of employment. Any Participant whose benefits have been suspended pursuant to this subsection shall be notified of such suspension by personal delivery of first class mail during the first calendar month following the Participant's Normal Retirement Date. Such notice shall contain the following:
 - (1) A description of the specific reasons why benefit payments are being suspended;
 - (2) A general description of the Plan provisions relating to the suspension of payments;

- (3) A copy of the suspension provisions in the Plan;
- (4) The procedure contained in the Plan for affording a review of the suspension of benefits;
- (5) The procedure contained in the Plan for calculation of benefits upon reanimation of employment.

3.02 EARLY RETIREMENT

A Participant who has both attained his 55th birthday and has completed at least ten (10) Years of Service may retire at any time by giving at least 120 days prior written notice to the Employer. In the event of early retirement, payment of retirement income shall be governed by the following provisions of this Section 3.02.

- (a) **Early Retirement Date.** The Early Retirement Date of a Participant shall be the first day of the month coincident with or immediately following the date he retires from the service of an Employer under the provisions of this Section.
- (b) **Amount of Retirement Income:** The amount of monthly retirement income payable to a Participant who retires early under the provisions of this Section shall be equal to his Accrued Benefit reduced by 5% for each year by which the Participant's Early Retirement Date precedes his Normal Retirement Date.
- (c) **Amount of Benefit - Other Forms of Payment.** The monthly retirement benefit payable to a Participant who retires and who elects to receive a form of payment (or who fails or refuses to elect a form of payment and thereby receives the form of payment specified in paragraph 5.01) shall be an actuarially adjusted amount which is the Actuarial Equivalent of the benefit described in Section 3.02(d).
- (d) **Payment of Retirement Income.** The normal retirement benefit payable in the event of early retirement shall be payable as a 50% Joint and Survivor Annuity if married and as a Life Annuity if unmarried. The first payment shall be made as of the Participant's Early Retirement Date and the last payment shall be the payment due in accordance with the option in effect.
- (e) **Reemployment of Early Retiree.** If a Participant receiving monthly retirement benefit payments is reemployed as an Employee by the Employer, retirement benefits shall be suspended during any period of reemployment. Upon subsequent retirement, the Participant's Accrued Benefit will be recalculated based on his total aggregate Years of Service and Final Average Compensation at his subsequent retirement; provided, however, that his Accrued Benefit will be reduced by the Actuarial Equivalent value of the payments previously received by the Participant.

3.03 DISABILITY RETIREMENT

Employees determined to be disabled under terms of the Employer's long-term disability program as of June 1, 1999 shall be entitled to benefits under this Plan to the extent the Plan provisions in place on June 1, 1999 provided for such benefits.

3.04 POSTPONED RETIREMENT

Postponed retirement under the Plan is retirement of an Employee from the service of the Employer after his Normal Retirement Date. In the event of postponed retirement, payment of retirement income shall be governed by the following provisions of this Section.

- (a) **Postponed Retirement Date.** The Postponed Retirement Date of a Participant shall be the first day of the month coincident with or immediately following the date he retires from the service of the Employer after his Normal Retirement Date.
- (b) **Amount of Retirement Income.** The amount of monthly retirement income payable to a Participant who retires under the provisions of this Section shall be equal to his Accrued Benefit as of his Postponed Retirement Date.
- (c) **Amount of Benefit - Other Forms of Payment.** The monthly retirement benefit payable to a Participant who retires and who elects to receive a form of payment (or who fails or refuses to elect a form of payment and thereby receives the form of payment specified in paragraph 5.01), shall be an actuarially adjusted amount which is the Actuarial Equivalent of the benefit described in 3.04(d).
- (d) **Payment of Retirement Benefit.** The retirement income payable in the event of delayed retirement shall be payable as a 50% Joint and Survivor Annuity if married and as a Life Annuity if unmarried. The first payment shall be made as of the Participant's Postponed Retirement Date and the last payment shall be the payment due in accordance with the option in effect.
- (e) **Reemployment of Postponed Retired Participant.** If a Participant receiving monthly retirement benefit payments is reemployed as the Employee by the Employer, retirement benefits shall be suspended during any period of such reemployment. Upon his subsequent retirement, the Participant's Accrued Benefit will be recalculated based on his total aggregated Years of Service and Final Average Compensation at his subsequent retirement; provided, however, that his Accrued Benefit will be reduced by the Actuarial Equivalent value of the payments previously received by the Participant.

3.05 BENEFIT ON TERMINATION OF EMPLOYMENT

- (a) **Non-Vested Benefit.** A Participant who terminates employment with the Employer prior to the completion of three (3) Years of Service shall not be entitled to receive any benefits under the Plan. Further, such Participant who is zero percent vested shall be deemed to have been cashed out in accordance with Section 5.03 with respect to the value of his Accrued Benefit at his Termination Date.

- (b) **Vested Benefit.** A Participant who terminates employment prior to his Normal Retirement Date, for any reason other than his death or disability, after he has completed at least three (3) Years of Service, shall be entitled to a deferred monthly retirement benefit commencing on his Normal Retirement Date, provided he is then alive, in an amount equal to a vested percentage of his Accrued Benefit as follows:

Years of Service	Vested Percent
Less than 3 years	0%
3 years	20%
4 years	40%
5 years	60%
6 years	80%
7 or more years	100%

(c) **Reemployment with an Employer.**

- (1) If a Participant's employment with the Employer is terminated while he is entitled to the retirement income described in Section 3.05(b) hereof, and he subsequently reenters the employ of the Employer without having commenced benefit payments, he shall be entitled to the Years of Service he had as of his previous Termination Date in lieu of the Accrued Benefit to which he was entitled on such date.
- (2) If a Former Participant who received a cashout of his entire vested Accrued Benefit is reemployed as an Employee by the Employer, repayment of the prior distribution in full with interest at the rate of 5% per annum is required for restoration of his Years of Service prior to his reemployment.

3.06 DEATH BENEFIT PRIOR TO RETIREMENT

- (a) If the employment of a Participant is terminated by reason of his death prior to the completion of three (3) Years of Service, no death benefit shall be payable under the Plan.
- (b) If the employment of a Participant is terminated by reason of his death while in the employment of the Employer after the completion of three (3) Years of Service or after having terminated with at least three (3) Years of Service, then a death benefit shall be payable to the Participant's surviving Spouse equal to the "Pre-retirement Survivor Annuity". The "Pre-retirement Survivor Annuity" means a survivor annuity for the life of the deceased Participant's Spouse which provides payments to the surviving Spouse that are equal to the amounts that would have been paid to the surviving Spouse assuming:
 - (1) the Participant had separated from service on the earlier of his Termination Date or his date of death (service shall include period of disability),
 - (2) the Participant had survived to the earliest date he could have retired and elected the 50% Joint and Survivor Annuity Option.
 - (3) the Participant retired on such date, and
 - (4) the Participant died on the day after his benefits commenced.

If the Participant does not have a surviving Spouse, no death benefit shall be payable.

- (c) Effective for any death of a Participant after January 1, 2007 whose death occurs while the Participant is engaged in Qualified Military Service death benefits will be provided to the Participant's surviving Spouse in accordance with the requirements of the Heroes Earnings Assistance and Tax Relief Act of 2008.

3.07 DEATH BENEFIT AFTER RETIREMENT

If a Participant dies after retirement and was receiving monthly payments at the date of his death, no monthly benefit shall be continued to his designated Beneficiary, unless the Participant elected an option under Section 5.02 which provided for benefit payments to continue after his death.

3.08 PAYMENT OF DEATH BENEFITS

Notwithstanding any provision in this Plan to the contrary, if a Participant dies before benefit payments have commenced, such distribution payable upon death shall be available for payment to the surviving Spouse as of the last day of the month coincident with or next following the date the Participant would have attained his earliest retirement age or the date of death, if later; and shall be distributed in the form of a Life Annuity or one lump sum payment provided the lump sum payment is less than or equal to \$5,000.

3.09 MAXIMUM BENEFIT

(Note: Capitalized terms, if not defined in Article 1, are defined in Subsection (E) of this Section except as otherwise indicated.)

- (A) The limitations of this Section 3.09 shall apply in Limitation Years beginning on or after July 1, 2007, except as otherwise provided herein.
- (B) The Annual Benefit otherwise payable to a Participant at any time shall not exceed the Maximum Permissible Benefit. If the benefit the Participant would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the Maximum Permissible Benefit, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the Maximum Permissible Benefit.
- (C) If the Participant is, or has ever been, a Participant in another qualified defined benefit plan maintained by the Employer (or a predecessor Employer), the sum of the Participant's Annual Benefits from all such plans may not exceed the Maximum Permissible Benefit. Where the Participant's Employer-provided benefits under all such defined benefit plans (determined as of the same age) would exceed the Maximum Permissible Benefit applicable at that age, the Employer will reduce the rate of accrual in this Plan to the extent necessary so that the total Annual Benefit payable at any time under such plans will not exceed the Maximum Permissible Benefit.
- (D) The application of the provisions of this Section 3.09 shall not cause the Maximum Permissible Benefit for any Participant to be less than the Participant's Accrued Benefit under all the defined benefit plans of the Employer or a predecessor Employer as of the end of the last Limitation Year beginning before July 1, 2007, under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before

April 5, 2007, satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Code section 415 in effect as of the end of the last Limitation Year beginning before July 1, 2007, as described in section 1.415(a)-1(g)(4) of the regulations under the Code.

(E) **Definitions.** For purposes of this Section 3.09, the following terms shall be defined as follows:

- (1) **“Annual Benefit”** means a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this Section 3.09. For a Participant who has or will have distributions commencing at more than one Annuity Starting Date, the Annual Benefit shall be determined as of each such Annuity Starting Date (and shall satisfy the limitations of this Section 3.09 as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other Annuity Starting Dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to section 1.401(a)-20, Q&A 10(d), and with regard to section 1.415(b)1(b)(1)(iii)(B) and (C) of the regulations under the Code.

No actuarial adjustment to the benefit shall be made for (i) survivor benefits payable to a surviving Spouse under a Joint and Survivor Annuity to the extent such benefits would not be payable if the Participant’s benefit were paid in another form; (ii) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or (iii) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Code section 417(e)(3) and would otherwise satisfy the limitations of this Section 3.09, and the Plan provides that the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Section 3.09 applicable at the Annuity Starting Date, as increased in subsequent years pursuant to Code section 415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

The determination of the Annual Benefit shall take into account social security supplements described in Code section 411(a)(9) and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant section 1.411(d)-4, Q&A-3(c) of the regulations under the Code, but shall disregard benefits attributable to employee contributions or rollover contributions.

Effective for distributions in Plan Years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with Subsections (a) or (b) below.

- (a) **Benefit Forms Not Subject to § 417(e)(3).** The straight life annuity that is actuarially equivalent to the Participant’s form of benefit shall be determined under this Subsection (a) if the form of the Participant’s benefit is either (1) a nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the Participant (or, in the case of a pre-retirement survivor

annuity, the life of the surviving Spouse), or (2) an annuity that decreases during the life of the Participant merely because of (a) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code section 401(a)(11)).

- (i) Limitation Years beginning before July 1, 2007. For Limitation Years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount: (I) the interest rate and mortality table (or other tabular factor) specified in Section 1.02 of the Plan for adjusting benefits in the same form; and (II) a 5-percent (5%) interest rate assumption and the applicable mortality table defined in Section 1.02 of the Plan for that Annuity Starting Date.
- (ii) Limitation Years beginning on or after July 1, 2007. For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of (I) the annual amount of the straight life annuity (if any) payable to the Participant under the Plan commencing at the same Annuity Starting Date as the Participant's form of benefit; and (II) the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using a 5-percent (5%) interest rate assumption and the applicable mortality table defined in Section 1.02 of the Plan for that Annuity Starting Date.

(b) *Benefit Forms Subject to § 417(e)(3).* As a governmental plan there are no benefits subject to Code Section 417(3)(3).

- (2) ***“Annuity Starting Date”*** shall mean the first day of the first period for which an amount is paid as an annuity or any other form.
- (3) ***“Compensation”*** shall mean all of a Participant's wages within the meaning of Code section 3401(a) and all other payments of compensation to an Employee by his Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code sections 6041(d), 6051(a)(3), and 6052. Compensation shall be determined without regard to any rules under Code section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code section 3401(a)(2)). However, compensation shall exclude amounts paid or reimbursed by the Employer for moving expenses incurred by an Employee, but only to the extent that at the time of the payment it is reasonable to believe that these amounts are deductible by the employee under Code section 217.

For any self-employed individual, “Compensation” will mean earned income.

For Limitation Years beginning after December 31, 1991, for purposes of applying the limitations of this Section, Compensation for a limitation year is the Compensation actually made available during such limitation year.

For Limitation Years beginning on or after July 1, 2007, Compensation for a Limitation Year shall also include Compensation paid by the later of 2½ months after an Employee's severance from employment with the Employer or the end of the Limitation Year that includes the date of the Employee's severance from employment with the Employer, if:

- (i) the payment is regular Compensation for services during the Employee's regular working hours, or Compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a severance from employment, the payments would have been paid to the Employee while the Employee continued in employment with the Employer; or,
- (ii) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued; or
- (iii) the payment is received by the Employee pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includible in gross income.

Any payments not described above shall not be considered Compensation if paid after severance from employment, even if they are paid by the later of 2½ months after the date of severance from employment or the end of the Limitation Year that includes the date of severance from employment, except, (i) payments to an individual who does not currently perform services for the Employer by reason of Qualified Military Service (within the meaning of Code section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering Qualified Military Service; or (ii) compensation paid to a Participant who is permanently and totally disabled, as defined in Code section 22(e)(3), provided, salary continuation applies to all Participants who are permanently and totally disabled for a fixed or determinable period, or the Participant was not a highly compensated employee, as defined in Code section 414(q), immediately before becoming disabled.

Back pay, within the meaning of section 1.415(c)-2(g)(8) of the regulations under the Code, shall be treated as compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

For Limitation Years beginning after December 31, 1997, for purposes of applying the limitations of this Section 3.09, compensation paid or made available during such Limitation Year shall include any elective deferral (as defined in Code section 402(g)(3)), and any amount which is contributed or deferred by the Employer at the election of the employee and which is not includible in the gross income of the employee by reason of Code section 125 or Code section 457.

For Limitation Years beginning on and after January 1, 2001, for purposes of applying the limitations of this Section 3.09, Compensation paid or made available during such Limitation Years shall include elective amounts that are not includible in the gross income of the Employee by reason of Code section 132(f)(4).

- (4) **“Defined Benefit Compensation Limitation.”** As a governmental plan, this Plan is not subject to the 100% compensation limit of Code Section 415(b).
- (5) **“Defined Benefit Dollar Limitation”** shall mean, as of the effective date of this restatement, one hundred eighty thousand dollars (\$180,000) (the limit for the 2007 fiscal year), as may be automatically adjusted, effective January 1 of each year, by the Secretary of the Treasury under Code section 415(d) in such manner as the Secretary shall prescribe, and payable in the form of a straight-life annuity. A limitation as adjusted under Code section 415(d) will apply to Limitation Years ending with or within the calendar year for which the adjustment applies, but a Participant’s benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The automatic annual adjustment provided under Code section 415(d) shall apply to Participants who have had a severance from employment.
- (6) **“Employer”** shall, for purposes of this Section 3.09, mean the Employer that adopts this Plan, and all Participants of a Controlled Group (as modified by Code section 415(h)) of which the Employer is a Participant.
- (7) **“Highest Average Compensation”** shall mean the average Compensation for the three (3) consecutive Years of Service with the Employer that produces the highest average. If the Participant has less than three (3) consecutive Years of Service, the highest average will be based on the Participant’s longest consecutive period of Service, including fractions of years, but not less than one (1) year.

In the case of a Participant who is rehired by the Employer after a severance from employment, the Participant’s Highest Average Compensation shall be calculated by excluding all years for which the Participant performs no services for and receives no Compensation from the Employer (the “break period”) and by treating the years immediately preceding and following the break period as consecutive. A Participant’s Compensation for a Year of Service shall not include Compensation in excess of the limitation under Code section 401(a)(17) that is in effect for the calendar year in which such Year of Service begins.

- (8) **“Limitation Year”** shall mean the Plan Year. All qualified plans maintained by the Employer shall use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, then the new Limitation Year shall begin on a date within the Limitation Year in which the amendment is made.
- (9) **“Maximum Permissible Amount”** shall mean the lesser of the Defined Benefit Dollar Limitation and the Defined Benefit Compensation Limitation (both adjusted where required and to the extent applicable pursuant to Subsections (a) and (b) below).
 - (a) **Adjustment for Less Than 10 Years of Participation or Service.** If the Participant has less than ten (10) Years of Participation in the Plan, the Defined Benefit Dollar Limitation shall be multiplied by a fraction (i) the numerator of which is the number of Years (or part thereof, but not less than one (1) year) of

Participation in the Plan, and (ii) the denominator of which is 10. In the case of a Participant who has less than ten (10) Years of Service with the Employer, the Defined Benefit Compensation Limitation shall be multiplied by a fraction (i) the numerator of which is the number of Years (or part thereof, but not less than one (1) year) of Service with the Employer, and (ii) the denominator of which is 10.

(b) *Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62 or after Age 65.* Effective for benefits commencing in Limitation Years ending after December 31, 2001, the Defined Benefit Dollar Limitation shall be adjusted if the Annuity Starting Date of the Participant's benefit is before age 62 or after age 65. If the Annuity Starting Date is before age 62, the Defined Benefit Dollar Limitation shall be adjusted under Subsection (b)(i) below, as modified by Subsection (b)(iii). If the Annuity Starting Date is after age 65, the Defined Benefit Dollar Limitation shall be adjusted under Subsection (b)(ii) below, as modified by Subsection (b)(iii).

(i) *Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62.*

I. *Limitation Years Beginning Before July 1, 2007.* If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Subsection (a) above for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate specified and the mortality table (or other tabular factor) specified in Section 1.02 of the Plan; or (2) a five percent (5%) interest rate assumption and the applicable mortality table as defined in Section 1.02 of the Plan.

II. *Limitation Years Beginning on or After July 1, 2007.*

A. *Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement.* If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Subsection (9)(A) above for years of participation less than 10, if required) with actuarial equivalence computed using a five percent (5%) interest rate

assumption and the applicable mortality table for the Annuity Starting Date as defined in Section 1.02 of the Plan (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date).

B. *Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement.* If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the lesser of the limitation determined under Subsection (B)(i)II.A above and the Defined Benefit Dollar Limitation (adjusted under Subsection (9)(A) for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the Participant's Annuity Starting Date to the annual amount of the immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this Section 3.09.

(ii) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement After Age 65.

I. Limitation Years Beginning Before July 1, 2007. If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Subsection (9)(A) above for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate and the mortality table (or other tabular factor) specified in Section 1.02 of the Plan; or (2) a five-percent (5%) interest rate assumption and the applicable mortality table defined in Section 1.02 of the Plan.

II. Limitation Years Beginning Before July 1, 2007.

A. *Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement.* If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's

Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Subsection (9)(A) above for Years of Participation less than 10, if required), with actuarial equivalence computed using a five percent (5%) interest rate assumption and the applicable mortality table for that Annuity Starting Date as defined in Section 1.02 of the Plan (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date).

B. *Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement.* If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's Annuity Starting Date is the lesser of the limitation determined under Subsection (B)(ii)II.A. and the Defined Benefit Dollar Limitation (adjusted under Subsection (9)(A) above for Years of Participation less than 10, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 65, both determined without applying the limitations of this Section 3.09. For this purpose, the adjusted immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Participant who is age 65 and has the same accrued benefit as the Participant.

(iii) Notwithstanding the other requirements of this Subsection (9)(B), no adjustment shall be made to the Defined Benefit Dollar Limitation to reflect the probability of a Participant's death between the Annuity Starting Date and age 62, or between age 65 and the Annuity Starting Date, as applicable, if benefits are not forfeited upon the death of the Participant prior to the Annuity Starting Date. To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Participant's death if the Plan does not charge Participants for providing a preretirement

survivor annuity, as defined in Code section 417(c) upon the Participant's death.

C. *Minimum benefit permitted.* Notwithstanding anything else in this definition to the contrary, the benefit otherwise accrued or payable to a Participant under this Plan shall be deemed not to exceed the Maximum Permissible Benefit if:

- (i) the retirement benefits payable for a Limitation Year under any form of benefit with respect to such Participant under this Plan and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the Employer do not exceed \$10,000 multiplied by a fraction (I) the numerator of which is the Participant's number of Years (or part thereof, but not less than one (1) year) of Service (not to exceed 10) with the Employer, and (II) the denominator of which is 10; and
 - (ii) the Employer (or a predecessor Employer) has not at any time maintained a defined contribution plan in which the Participant participated (for this purpose, mandatory employee contributions under a defined benefit plan, individual medical accounts under § 401(h), and accounts for postretirement medical benefits established under § 419A(d)(1) are not considered a separate defined contribution plan).
- (10) ***“Year of Participation”*** shall mean each accrual computation period (computed to fractional parts of a year) for which the following conditions are met: (i) the Participant is credited with at least the number of Hours of Service for benefit accrual purposes, required under the terms of the Plan in order to accrue Benefit Service, and (ii) the Participant is included as a Participant under the eligibility provisions of the plan for at least one day of the period of Benefit Service. If these two (2) conditions are met, the portion of a Year of Participation credited to the Participant shall equal the amount of Benefit Service credited to the Participant for such accrual computation period. A Participant who is permanently and totally disabled within the meaning of Code section 415(c)(3)(C)(i) for an accrual computation period shall receive a Year of Participation with respect to that period. In addition, for a Participant to receive a Year of Participation (or part thereof) for an accrual computation period, the Plan must be established no later than the last day of such accrual computation period. In no event will more than one Year of Participation be credited for any twelve (12) month period.

(F) Notwithstanding any provision of this Section 3.09, the application of this Section shall be subject to such rules as may be prescribed by the Secretary of the Treasury.

3.10 QUALIFIED MILITARY SERVICE

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

In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified

military service) provided under the Plan as if the participant had resumed and then terminated employment on account of death or Disability.

SECTION 4
JOINT ANNUITANT

4.01 DESIGNATION OF JOINT ANNUITANT

- (a) Each unmarried Participant who elects a Joint and Survivor Annuity Option shall, on a form provided for that purpose, designate a Joint Annuitant to receive the benefits, if any, which may be payable in the event of his death after retirement pursuant to the provisions of Section 5.

- (b) Each married Participant's Joint Annuitant is automatically his Spouse. A married Participant may not designate someone other than his Spouse as his Joint Annuitant.

SECTION 5
OPTIONAL FORMS OF RETIREMENT INCOME

5.01 ELECTION OF RETIREMENT BENEFITS

- (a) Prior to his Early Retirement Date, Normal Retirement Date, Postponed Retirement Date, or Disability Retirement Date, whichever is applicable, each Participant shall elect the form in which his retirement income shall be paid from the authorized forms of payment described in Section 5.02.
- (b) At least 30 days and not more than 90 days prior to the Participant's annuity starting date, the Administrator must provide a written notice (or a summary notice as permitted under Treasury regulations) to a Participant who is eligible to make an election under Section 5.01 ("distribution notice"). The distribution notice must explain the optional forms of benefit in the Plan, including the material features and relative values of those options, and the Participant's right to postpone distribution until the applicable date described in this Section. For all purposes of this Section 5, the term "annuity starting date" means the first day of the first period for which the Plan pays an amount as an annuity or in any other form but in no event is the "annuity starting date" earlier than a Participant's Separation from Service.
- (c) A Participant must consent, in writing, following receipt of the distribution notice, to any distribution under this Section 5.01, if at the time of the distribution to the Participant, the Participant's Vested Account Balance exceeds \$5,000 and the Participant has not attained the later of Normal Retirement Age or age 62. Accounts which are distributable prior to the foregoing applicable age are "immediately distributable." The Participant may reconsider his/her distribution election at any time prior to the annuity starting date and elect to commence distribution as of any other distribution date permitted under the Plan. A Participant may elect to receive distribution at any administratively practicable time which is earlier than 30 days following the Participant's receipt of the distribution notice, by waiving in writing the balance of the 30 days.

5.02 DESCRIPTION OF OPTIONS

The optional forms of payment available on a Participant's Annuity Starting Date shall be the Actuarial Equivalent of the normal form of payment, the Life Annuity for unmarried Participants and the 50% Joint and Survivor Annuity for married Participants. Spousal consent is not required for election of an optional form of payment, since only the Spouse may be the Joint Annuitant of the Participant and only a Joint and Survivor Annuity Option is available to a married Participant. The normal forms and all optional forms of payment available are as follows:

Normal Form for Unmarried Participants - Life Annuity:

A monthly retirement benefit payable to the Participant during his lifetime, with payments to cease upon his death.

Normal Form for Married Participants - 50% Joint and Survivor Annuity:

A monthly retirement benefit which shall be payable during the retired Participant's lifetime, with 50% of the benefit amount continuing to the Spouse after the death of the Participant for the lifetime of the Spouse.

Option A - Joint and Survivor Annuity Options:

A modified monthly retirement benefit which shall be payable during the retired Participant's lifetime, with a previously designated percentage (50%, 66 2/3%, 75% or 100%) of the benefit amount continuing to the Joint Annuitant after the death of the Participant for the lifetime of the Joint Annuitant. A married Participant may not designate someone other than his Spouse as his Joint Annuitant.

Option B – Automatic Cashout under \$5 000.00:

A single lump sum payment computed on the basis of Actuarial Equivalence specified in Section 1.02 will be paid in accordance with Section 5.04 in lieu of a monthly benefit, provided the lump sum payment is equal to or less than \$5,000.00. In the event that the lump sum payment exceeds \$1,000.00, said amount shall be directly rolled over into an individual retirement account described in Section 7701(a)(37) of the Code. In the event that the distributee does not make an election under Section 5.05 specifying the individual retirement account, the lump sum payment shall be directly rolled over into the same individual retirement account established for such distribution under the RTA Employees Defined contribution Plan and Trust.

Unless a Participant elects otherwise, payment of Accrued Benefits shall begin not later than the 60th day after the closed of the Plan Year in which occurs the latest of:

- (a) the Participant's 62nd birthday;
- (b) the 10th anniversary of the year in which the Participant commenced participation in the Plan; or
- (c) the Participant's termination date.

5.03 CASHOUT PROVISION:

- (a) **Termination of Employment:** In accordance with Section 5.02, Option B, if the Actuarial Equivalent of the Accrued Benefit at the time of payment is equal to or less than \$5,000, the terminated Participant will automatically be paid a single lump sum payment in lieu of a monthly benefit. In accordance with Section 3.05(a), a Participant who is zero percent vested shall be deemed to be cashed out as of his date of termination of employment. Payments made under this paragraph shall discharge all rights of a Participant under the Plan except as provided in Section 5.03(b) below, and shall be made to the Participant by the end of the second Plan Year following the Plan Year in which such Participant incurs a One-Year Break in Service.
- (b) **Reemployment:** Any Participant who received a distribution of his entire nonforfeitable benefit as provided in Subsection (a) immediately above, and resumes employment covered under this Plan with the Employer, shall have his Years of Service restored upon

reemployment if repayment of the previously distributed amount is made with interest at 5% per annum.

5.04 SPECIAL COMMENCEMENT AND MINIMUM DISTRIBUTION OF BENEFITS RULE.

(A) General Rules.

- (1) ***Precedence and Effective Date.*** The requirements of this Section 5.04 shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this Section 5.04 apply to calendar years beginning after December 31, 2002.
- (2) ***Requirements of Regulations Incorporated.*** All distributions required under this Section 5.04 shall be determined and made in accordance with section 401(a)(9) of the Code, including the incidental death benefit requirement in section 401(a)(9)(G) of the Code, and the Regulations thereunder.
- (3) ***Limits on Distribution Periods.*** As of the first distribution calendar year, distributions to a Participant, if not made in a single sum, may only be made over one of the following periods:
 - (a) the life of the Participant,
 - (b) the joint lives of the Participant and a designated beneficiary,
 - (c) a period certain not extending beyond the life expectancy of the Participant, or
 - (d) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a designated beneficiary.

(B) Time and Manner of Distribution.

- (1) ***Required Beginning Date.*** The Participant's entire interest will be distributed, or begin to be distributed, no later than the Participant's required beginning date.
- (2) ***Death of Participant Before Distributions Begin.*** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (a) If the Participant's surviving Spouse is the Participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
 - (b) If the Participant's surviving Spouse is not the Participant's sole designated beneficiary, then, unless an election to the contrary is made pursuant to this Subsection (b), distributions to the designated beneficiary will begin by December 31 of the calendar year containing the fifth anniversary of the Participant's death. The foregoing will apply to all distributions other than distributions to a surviving Spouse.

Notwithstanding the preceding paragraph, a Participant or designated beneficiary may elect to have distributions to the designated beneficiary begin by December 31 of the calendar year immediately following the calendar year in which the Participant died. Such election must be made no later than the earlier of September 30 of the calendar year in which distributions would be required to begin under Section 5.04(B)(2) hereof, or by September 30 of the calendar year which contains the fifth anniversary of the participant's (or, if applicable, surviving Spouse's) death. If neither the Participant nor Beneficiary makes such an election, distributions will be made in accordance with the first paragraph of this Subsection (b).

- (c) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (d) If the Participant's surviving Spouse is the Participant's sole designated beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse are required to begin, this Subsection (B)(2), other than Subsection (A), will apply as if the surviving Spouse were the Participant.

For purposes of this Subsection (B)(2) and Section 5.04(E), unless Section 5.04(B)(2)(d) applies, distributions are considered to begin on the Participant's required beginning date. If Section 5.04(B)(2)(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section 5.04(B)(2)(a). If distributions under an annuity meeting the requirements of this Section 5.04 commence to the Participant before the Participant's required beginning date (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Section 5.04(B)(2)(a)), the date distributions are considered to begin is the date distributions actually commence.

- (3) **Forms of Distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Subsections (C), (D) and (E) of this Section 5.04. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and section 1.401(a)(9) of the Regulations. Any part of the Participant's interest which is in the form of an individual account described in section 414(k) of the Code will be distributed in a manner satisfying the requirements of section 401(a)(9) of the Code and section 1.401(a)(9) of the Regulations that apply to individual accounts.

(C) Determination of Amount to be Distributed Each Year.

- (1) **General Annuity Requirements.** If the participant's interest is to be paid in the form of annuity distributions under the Plan, payments under the annuity shall satisfy the following requirements:

- (a) the annuity distributions will be paid in periodic payments made at uniform intervals not longer than one year;
- (b) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Sections 5.04(D) or (E) hereof;
- (c) once payments have begun over a period, the period will be changed only in accordance with Section 5.04(F) hereof;
- (d) payments will either be nonincreasing or increase only as follows:
 - (i) by an annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index for a 12-month period ending in the year during which the increase occurs or a prior year;
 - (ii) by a percentage increase that occurs at specified times and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index since the annuity starting date, or if later, the date of the most recent percentage increase;
 - (iii) by a constant percentage of less than 5 percent per year, applied not less frequently than annually;
 - (iv) as a result of dividend or other payments that result from actuarial gains, provided:
 - a. actuarial gain is measured not less frequently than annually,
 - b. the resulting dividend or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured),
 - c. the actuarial gain taken into account is limited to actuarial gain from investment experience,
 - d. the assumed interest rate used to calculate such actuarial gains is not less than 3 percent, and
 - e. the annuity payments are not increased by a constant percentage as described in Section 5.04(c)(1)(D)3 hereof;
 - (v) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit, but only if there is no longer a survivor benefit because the Beneficiary whose life was being used to determine the distribution period described in Subsection (d) below dies or is no longer the Participant's Beneficiary pursuant to a qualified domestic relations order within the meaning of section 414(p) of the Code;

- (vi) to provide a final payment upon the Participant's death not greater than the excess of the actuarial present value of the Participant's accrued benefit (within the meaning of section 411(a)(7) of the Code) calculated as of the Annuity Starting Date using the interest rate and mortality table defined in Section 1.02 of the Plan (or, if greater, the total amount of employee contributions, if any) over the total of payments before the Participant's death;
- (vii) to allow a Beneficiary to convert the survivor portion of a Joint and survivor annuity into a single sum distribution upon the Participant's death; or
- (viii) to pay increased benefits that result from a Plan amendment.

- (2) ***Amount Required to be Distributed by Required Beginning Date and Later Payment Intervals.*** The amount that must be distributed on or before the Participant's required beginning date (or, if the Participant dies before distributions begin, the date distributions are required to begin under Section 5.04(B)(2)(a) or (b) hereof) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's required beginning date.
- (3) ***Additional Accruals After First Distribution Calendar Year.*** Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such benefit accrues.

(D) Requirements For Annuity Distributions That Commence During Participant's Lifetime.

- (1) ***Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse.*** If the Participant's interest is being distributed in the form of a Joint and Survivor Annuity for the joint lives of the Participant and a nonspouse Beneficiary, annuity payments to be made on or after the Participant's required beginning date to the designated beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant, using the table set forth in section 1.401(a)(9)-6, Q&A2(c)(2), in the manner described in Q&A 2(c)(1), of the Regulations, to determine the applicable percentage. If the form of distribution combines a Joint and Survivor Annuity for the joint lives of the Participant and a nonspouse Beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.
- (2) ***Period Certain Annuities.*** Unless the Participant's Spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9, Q&A-2, of the Regulations

for the calendar year that contains the Annuity Starting Date. If the Annuity Starting Date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9, Q&A-2, of the Regulations plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the Annuity Starting Date. If the Participant's Spouse is the Participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this Subsection (D)(2), or the joint life and last survivor expectancy of the Participant and the participant's Spouse as determined under the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9, Q&A-3, of the Regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the calendar year that contains the Annuity Starting Date.

(E) Requirements For Minimum Distributions After the Participant's Death.

- (1) ***Death After Distributions Begin.*** If the Participant dies after distribution of his or her interest begins in the form of an annuity meeting the requirements of this Section 5.04, the remaining portion of the Participant's interest will continue to be distributed over the remaining period over which distributions commenced.
- (2) ***Death Before Distributions Begin.***
 - (a) ***Participant Survived by Designated Beneficiary.*** Subject to Subsection (1) below, if the Participant dies before distributions of his or her interest begins and there is a designated beneficiary, then the Participant's entire interest will be distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death. The foregoing will apply to all distributions other than distributions to a surviving Spouse.

Notwithstanding the preceding paragraph, a Participant or designated beneficiary may elect to have the Participant's entire interest distributed, beginning no later than the time described in Section 5.04(B)(2)(a) or (b), over the life of the designated beneficiary or over a period certain not exceeding:

- (i) unless the Annuity Starting Date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or
- (ii) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the Annuity Starting Date.

The foregoing election must be made no later than the earlier of September 30 of the calendar year in which distributions would be required to begin under Section 5.04(B)(2) hereof, or by September 30 of the calendar year which contains the fifth anniversary of the participant's (or, if applicable, surviving Spouse's) death.

If neither the Participant nor Beneficiary makes such an election, distributions will be made in accordance with the first paragraph of this Subsection (a).

- (b) *No Designated Beneficiary.* If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (c) *Death of Surviving Spouse Before Distributions to Surviving Spouse Begin.* If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving Spouse is the Participant's sole designated beneficiary, and the surviving Spouse dies before distributions to the surviving Spouse begin, this Section 5.04(E) will apply as if the surviving Spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Section 5.04(B)(2)(a).

(F) Changes to Annuity Payment Period.

- (1) *Permitted Changes.* An annuity payment period may be changed only in association with an annuity payment increase described in Section 5.04(C)(1)(d) hereof or in accordance with Section 5.04(F)(2) hereof.
- (2) *Reannuitization.* An annuity payment period may be changed and the annuity payments modified in accordance with that change if the conditions in Subsection (3) below are satisfied and:
 - (a) the modification occurs when the Participant retires or in connection with a plan termination;
 - (b) the payment period prior to modification is a period certain without life contingencies; or
 - (c) the annuity payments after modification are paid under a Joint and Survivor Annuity over the joint lives of the Participant and a designated beneficiary, the Participant's Spouse is the sole designated beneficiary, and the modification occurs in connection with the Participant's becoming married to such Spouse.
- (3) *Conditions.* The conditions in this Subsection (3) are satisfied if:
 - (a) the future payments after the modification satisfy the requirements of section 401(a)(9) of the Code, section 1.401(a)(9) of the Regulations, and this Section 5.04 (determined by treating the date of the change as a new Annuity Starting Date and the actuarial present value of the remaining payments prior to modification as the entire interest of the Participant);
 - (b) for purposes of sections 415 and 417 of the Code, the modification is treated as a new Annuity Starting Date;
 - (c) after taking into account the modification, the annuity (including all past and future payments) satisfies the requirements of section 415 of the Code

(determined at the original Annuity Starting Date, using the interest rates and mortality tables applicable to such date); and

- (d) the end point of the period certain, if any, for any modified payment period is not later than the end point available to the employee at the original Annuity Starting Date under section 401(a)(9) of the Code and this Section 5.04.

(G) Payments to a Surviving Child.

- (1) **Special rule.** For purposes of this Section 5.04, payments made to a Participant's surviving child until the child reaches the age of majority (or dies, if earlier) shall be treated as if such payments were made to the surviving Spouse to the extent the payments become payable to the surviving Spouse upon cessation of the payments to the child.
- (2) **Age of majority.** For purposes of this Subsection (G), a child shall be treated as having not reached the age of majority if the child has not completed a specified course of education and is under the age of 26. In addition, a child who is disabled within the meaning of § 72(m)(7) when the child reaches the age of majority shall be treated as having not reached the age of majority so long as the child continues to be disabled.

(H) Definitions. The following terms used in this Section 5.04 shall have the meaning ascribed below:

- (1) **Actuarial gain.** The difference between an amount determined using the actuarial assumptions (*i.e.*, investment return, mortality, expense, and other similar assumptions) used to calculate the initial payments before adjustment for any increases and the amount determined under the actual experience with respect to those factors. Actuarial gain also includes differences between the amount determined using actuarial assumptions when an annuity was purchased or commenced and such amount determined using actuarial assumptions used in calculating payments at the time the actuarial gain is determined.
- (2) **Designated beneficiary.** The individual who is designated by the Participant (or the participant's surviving Spouse) as the Beneficiary of the Participant's interest under the Plan and who is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-4 of the Regulations.
- (3) **Distribution calendar year.** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 5.04(B)(2) hereof.
- (4) **Eligible cost-of-living index.** An index described in paragraphs (b)(2), (b)(3) or (b)(4) of section 1.401(a)(9)-6, Q&A-14, of the Regulations.
- (5) **Life expectancy.** Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9, Q&A-1, of the Regulations.

(6) **Required beginning date.**

- (a) The required beginning date of a Participant is April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70½ or the calendar year in which the Participant retires, except that benefit distributions to a 5-percent owner must commence by April 1 of the calendar year following the calendar year in which the participant attains age 70½, regardless of whether such owner retires by the end of such year.
- (b) Any Participant (other than a 5-percent owner) attaining age 70½ in years after 1995 but before 2002 may elect by April 1 of the calendar year following the calendar year in which the participant attains age 70½, (or by December 31, 1997 in the case of a Participant attaining age 70½ in 1996) to defer distributions until April 1 of the calendar year following the calendar year in which the participant retires. If no such election is made the Participant will begin receiving distributions by April 1 of the calendar year following the year in which the Participant attained age 70½.
- (c) Except with respect to a 5-percent owner, a Participant's accrued benefit will be actuarially increased to take into account the period after age 70½ in which the Participant does not receive any benefits under the Plan. The actuarial increase will begin on April 1 following the calendar year in which the Employee attains age 70½ (January 1, 1997, in the case of an Employee who attains age 70½ prior to 1996), and will end on the date on which benefits commence after retirement in an amount sufficient to satisfy section 401(a)(9) of the Code. The amount of actuarial increase payable as of the end of the period for actuarial increases will be no less than the Actuarial Equivalent of the Participant's retirement benefits that would have been payable as of the date the actuarial increase must commence plus the Actuarial Equivalent of additional benefits accrued after that date, reduced by the Actuarial Equivalent of any distributions made after that date. The actuarial increase under this Subsection is not in addition to the actuarial increase required for that same period under section 411 of the Code to reflect the delay in payments after normal retirement, except that the actuarial increase required under this Subsection will be provided even during the period during which an Employee is in section 203(a)(3)(B) of the Code service. For purposes of section 411(b)(1)(H) of the Code, the actuarial increase will be treated as an adjustment attributable to the delay in distribution of benefits after the attainment of Normal Retirement Age. Accordingly, to the extent permitted under section 411(b)(1)(H) of the Code, the actuarial increase required under this Section 5.04 will reduce the benefit accrual otherwise required under section 411(b)(1)(H)(i) of the Code, except that the rules on the suspension of benefits are not applicable.

- (7) **5-percent owner.** A Participant is treated as a 5-percent owner for purposes of this Section 5.04 if the Participant is a 5-percent owner as defined in section 416 of the Code at any time during the plan year ending with or within the calendar year in which such owner attains age 70½. Once distributions have begun to a 5-percent owner under this Section 5.04, they must continue to be distributed, even if the Participant ceases to be a 5-percent owner in a subsequent year.

(I) TEFRA § 242(b)(2) Elections.

- (1) Notwithstanding the other requirements of this Section 5.04 a distribution on behalf of any Employee, including a 5-percent owner, who has made a designation under section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (a “Section 242(b)(2) election”) may be made in accordance with all of the following requirements (regardless of when such distribution commences):
 - (A) The distribution by the Plan is one which would not have disqualified such plan under section 401(a)(9) of the Code as in effect prior to amendment by the Deficit Reduction Act of 1984.
 - (B) The distribution is in accordance with a method of distribution designated by the Employee whose interest in the Plan is being distributed or, if the Employee is deceased, by a Beneficiary of such Employee.
 - (C) Such designation was in writing, was signed by the Employee or the Beneficiary, and was made before January 1, 1984.
 - (D) The Employee had accrued a benefit under the Plan as of December 31, 1983.
 - (E) The method of distribution designated by the Employee or the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Employee’s death, the Beneficiaries of the Employee listed in order of priority.
- (2) A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Employee.
- (3) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Employee, or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in Subsections (1)(A) and (E) above.
- (4) If a designation is revoked any subsequent distribution must satisfy the requirements of section 401(a)(9) of the Code and the Regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy section 401(a)(9) of the Code and the Regulations thereunder, but for the Section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the

designation, directly or indirectly (for example, by altering the relevant measuring life).

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

5.05 ELIGIBLE ROLLOVER DISTRIBUTIONS

(A) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section 5.05, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution that is equal to at least \$500 paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(B) Definitions

- (1) **Eligible Rollover Distribution:** An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); any other distribution that is reasonably expected to total less than \$200 during a year; and, effective January 1, 1999, a hardship withdrawal, as such term is defined in section 401(k)(2)(B)(i)(IV) of the Code which is attributable to the Participant's elective contributions under Treasury regulations section 1.401(k)-1(d)(2)(ii).
- (2) **Eligible Retirement Plan:** An Eligible Retirement Plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity contract described in section 403(b) of the Code, an eligible plan under section 457(b) of the Code which is maintained by a state, or political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan, or a qualified plan described in section 401(a) of the Code that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to a surviving spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in section 414(p) of the Code. Furthermore, for distributions made after December 31, 2007, a Participant or Beneficiary may elect to roll over directly any Eligible Rollover Distribution to a Roth IRA as such is described in section 408A(b) of the Code, to the extent that such rollover is not otherwise prohibited to be made by such Participant or Beneficiary under other provisions of the Code.

- (3) **Distributee:** A Distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse.
- (4) **Direct Rollover:** A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.
- (5) **Non-Spouse Beneficiary Rollover Rights:** For distributions after December 31, 2009, a non-spouse beneficiary who is a "designated beneficiary" under section 401(a)(9)(E) of the Code and the Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an Individual Retirement Account (IRA) the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an "eligible rollover distribution" under section 401(a)(31) of the Code. Although a non-spouse beneficiary may roll over directly a distribution as provided in Section 5.05, the distribution, if made prior to January 1, 2010, is not subject to the direct rollover requirements of section 401(a)(31) of the Code (including section 401(a)(31)(B) of the Code), the notice requirements of section 402(f) of the Code or the mandatory withholding requirements of section 3405(c) of the Code. If a non-spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a 60-day (non-direct) rollover.

If the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of section 401(a)(9)(E) of the Code. A non-spouse beneficiary may not roll over an amount that is a required minimum distribution, as determined under applicable Treasury Regulations and other Internal Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treasury Regulations Section 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

**SECTION 6
METHOD OF FINANCING**

6.01 ESTABLISHMENT OF FUNDING

The Employer shall designate the Trustee to serve as herein provided. The Trust Agreement, the terms of which are, or shall be, incorporated herein, as applicable, shall govern the establishment of the Fund from which the benefits provided by the Plan shall be paid.

6.02 EMPLOYER CONTRIBUTIONS

The Employer shall contribute to the Fund from time to time amounts based upon the recommendations of the Plan's Actuary, in order to fund the costs of the Plan on an acceptable basis. All Employer contributions when made to the Fund and all property and funds of the Fund, including income from investments and from all other sources, shall be retained for the exclusive benefit of Participants and their Beneficiaries, and shall be used to pay retirement income provided hereunder or to pay expenses of administration of the Plan and the Fund.

6.03 PARTICIPANT CONTRIBUTIONS

No contributions shall be required of or permitted by any Participant under this Plan.

6.04 FUNDING POLICY

The Employer shall establish a funding policy and method consistent with Plan objectives in order that the long range and short range financial needs of the Plan may be determined and communicated to the Trustee.

6.05 MISCELLANEOUS

- (a) Any actuarial gains arising from actual experience or forfeitures under the Plan shall be used to reduce the Employer contributions and will not be used to increase any benefits payable under this Plan.
- (b) No person shall have any interest in or right to the Fund or any part thereof, except as expressly provided in the Plan.

**SECTION 7
AMENDMENT AND TERMINATION**

7.01 AMENDMENT OF THE PLAN

The Employer shall have the right, at any time, to amend any or all of the provisions of the Plan by resolution of the Board; provided, however, that no such amendment shall authorize or permit any part of the Fund to be diverted to purposes other than for the exclusive benefit of Participants and their beneficiaries; and further provided that no amendment shall have the effect of revesting in the Employer any portion of the Fund. No such amendment which affects the rights, duties or responsibilities of the Trustee may be made without the Trustee's written consent. Any such amendment shall become effective as provided therein upon its execution. The Trustee shall not be required to execute any such amendment unless the Trust provisions contained herein are a part of this agreement and the amendment affects the duties of the Trustee hereunder.

7.02 TERMINATION OF THE PLAN

It is expected that this Plan will be continued indefinitely, but the Employer expressly reserves the right to terminate or partially terminate the Plan and its contributions thereunder at any time by resolution of its Board and by giving written notice of such termination or discontinuation of its contribution to the Trustee. Such resolution shall specify the effective date, which shall not be earlier than the first day of the Plan Year which includes the date of resolution. If the Employer terminates or partially terminates the Plan, or if it is otherwise entirely terminated, the Trustee shall continue to administer the Fund as instructed by the Administrator. In the event of the termination, partial termination or complete discontinuance of Employer contributions, the Accrued Benefit of each affected Participant, to the extent funded, shall become fully vested and nonforfeitable as of the date of such termination, partial termination or complete discontinuance of contributions in the manner hereinafter provided in this Section 7.02. No further contributions will be made by the Employer. As soon as it may do so, the Employer shall cause all amounts held in the Trust Fund to be allocated and distributed in the manner set forth in Section 7.03.

7.03 DISTRIBUTION OF FUNDS UPON TERMINATION

In the event the Plan shall be terminated or partially terminated, the present value of benefits shall be determined as of the Plan termination date and the assets of the Trust Fund shall be allocated to the extent they shall be sufficient, after providing for expenses of administration, in the order or precedence set forth below:

(a) FIRST,

- (1) To benefits which are being paid as of three years prior to the date of termination of the Plan, with the amount to be allocated to each such benefit, based on the provisions of the Plan in effect during the five-year period immediately preceding the date of termination under which such benefit would be least.
- (2) To benefits which would have been paid as of three years prior to date of termination (i) if the Participant had retired prior to the three-year period and (ii) if his benefits had commenced (in the normal form of annuity under the Plan) as of the beginning of such three-year period, with the amount to be allocated to each such benefit

determined under the provisions of the Plan in effect during the five-year period preceding the date of termination under which the benefit would be the least.

For purposes of (1) above, the lowest benefit in pay status during a three-year period shall be considered the benefit in pay status for such period.

- (b) SECOND, to all other vested Accrued Benefits as determined under Section 3.05.
- (c) THIRD, to all other Accrued Benefits attributable to non-vested Participants.

If the assets available for allocation to any class specified above are insufficient to satisfy in full the benefits of all individuals within that class, the assets shall be allocated pro rata among such individuals on the basis of present value (as of the termination date) of their respective benefits.

7.04 METHOD OF PAYMENT

The Employer shall arrange for the Trustee to liquidate the assets held in the Fund and shall secure a statement of the liquidated value of such assets. The Employer may direct the purchase from an insurance company of an annuity contract or contracts which provides the benefits to which each Participant or his beneficiary is entitled or to pay a lump sum amount to each Participant or his beneficiary, such lump sum amount to be the Actuarial Equivalent of the benefit to which such person is entitled. The Trustee shall distribute the assets in accordance with the directions of the Employer.

**SECTION 8
MANAGEMENT AND ADMINISTRATION**

8.01 IDENTIFICATION OF THE FIDUCIARIES

The parties listed below are the Fiduciaries of the Plan who have authority to control and manage the operation and administration of the Plan.

- (a) The Employer
- (b) The Administrator
- (c) The Trustee(s)

8.02 GENERAL FIDUCIARY DUTIES

- (a) Fiduciaries of the Plan shall discharge their duties under the Plan solely in the interest of the Participants and their beneficiaries for the exclusive purpose of providing benefits to Participants and their beneficiaries and for defraying reasonable expenses of administering the Plan.
- (b) Fiduciaries of the Plan shall not have the authority to delegate fiduciary responsibilities except as otherwise provided in Section 8.03, and without prior approval of such delegation by the Employer.
- (c) Plan Fiduciaries shall have authority to delegate non-fiduciary powers and duties to other parties pursuant to their authority to administer the Plan. Such delegation shall not cause the delegates to become Fiduciaries under the Plan.
- (d) Each Plan Fiduciary is responsible for the duties and responsibilities which are specifically allocated to him under Section 8.03, and is responsible for no other duties under the Plan.
- (e) A Plan Fiduciary may serve, upon approval by the Employer, in more than one Fiduciary capacity with respect to the Plan.
- (f) A Plan Fiduciary may employ one or more persons to render advice with regard to any responsibility he has under the Plan.

8.03 ALLOCATION OF FIDUCIARY

The Plan Fiduciaries shall have the powers and duties as specified herein, and shall be responsible for no other powers and duties under the Plan.

(a) The Employer

The Employer shall be responsible for establishing and amending the Plan, terminating the Plan, and appointing the Administrator and other parties as provided herein.

The Employer will make contributions to the Plan in amounts sufficient to provide the benefits specified by the Plan. The Employer will indemnify and hold harmless the

Administrator, members of the respective Board and any other person or organization which is deemed to be a "Fiduciary" under either statutory or common law, from and against any damages, judgments, settlements, costs, charges or expenses incurred in connection with the defense of any action, suit or proceedings to which they may be a party or with which they may be threatened or in connection with any appeal therefrom by virtue of any act or omission not involving willful or gross negligence in their respective capacities for the Plan; provided, however, that notwithstanding anything to the contrary herein, the foregoing indemnification shall be extended and be effective only to the extent that the same shall be valid and enforceable under all applicable laws.

(b) The Administrator

The Administrator shall have complete control of the administration of the Plan hereunder, with all powers necessary to enable it properly to carry out its duties in that respect. Not in limitation, but in amplification of the foregoing, the Administrator shall have the power to construe said Plan and to determine all questions that shall arise thereunder, and shall also have all the powers elsewhere herein conferred upon it. It shall decide all questions relating to the eligibility of Employers to participate in the benefits of this Plan, and shall determine the benefits of this Plan to which any Participant or his Beneficiary may be entitled, subject to the Claims Procedure of the Employer, as set forth in Section 10.

The Administrator shall not have the power in any way to modify or amend the Plan. It shall have the power to appoint an enrolled actuary, advisors, consultants, and such other experts as it deems necessary. The Administrator shall not, in its delegation of responsibilities, have the power to transfer, delegate, or restrict fiduciary responsibility for the Plan unless approved by the Employer as an amendment to the Plan.

The Administrator shall approve forms and establish rules and procedures to be followed by the Participants or their beneficiaries in filing application for benefits and in furnishing and verifying proofs necessary to establish age, Years of Service, Compensation, and any other matter required in order to establish the right to benefits in accordance with the Plan.

The Administrator shall receive all applications for benefits and, upon receipt of such an application, it shall determine all facts which are necessary to establish the right of the applicant to benefits under the provisions of the Plan and the amount thereof as herein provided. Upon request, the Administrator shall afford any applicant the right of a hearing with respect to any findings of fact or determination following procedures in Section 10.13.

A summary of the significant acts and determinations of the Administrator shall be duly recorded, and all such records, together with such other documents as may be necessary for the administration of the Plan shall be preserved. Such records and documents shall, at all times, be open for inspection by the Employer.

The Administrator shall have prepared and distributed to Participants information concerning the Plan, at the expense of the Employer, and in such manner as it shall deem appropriate.

To enable the Administrator to perform its functions, the Employer shall provide such personnel and services as may be needed and shall supply full and timely information to the Administrator of all matters regarding Participants which relate to Compensation, length of Year of Service, retirement, death or other causes for termination of the employment, and

such other pertinent facts as the Administrator may require. The Employer shall furnish any records to the Administrator for their examination which the Administrator shall deem necessary to execute its duties under the Plan.

The Administrator shall advise the Trustee of such facts and issue such instruction as may be required in the administration of the Plan.

The Administrator and the Employer shall be entitled to rely upon all tables, valuations, certificates and reports made by a qualified public accountant. The Administrator, the Employer and its officers, the Trustee shall not incur liability with respect to any action taken or suffered by them in good faith in reliance upon the advice or opinion of any enrolled actuary, qualified public accountant or attorney.

(c) **The Trustee**

The Trustee shall be appointed by the Employer and shall have the powers and duties as set forth in Section 9 of this Plan document.

8.04 NON-FIDUCIARY FUNCTIONS

(a) **Authority**

The named Fiduciaries in Section 8.01 shall be the only parties empowered by the Plan with any discretionary authority or discretionary control over the Plan, and shall be the only persons with fiduciary responsibility as defined in Section 8.01. All other individuals associated with the operation and administration of the Plan shall be limited and restricted in power and responsibility such that they serve in an advisory capacity only, with no final discretionary authority or control; all action being subject to review and approval by the applicable Fiduciary.

(b) **Advisors**

The employer shall have the authority to appoint advisors to the Plan as it sees fit so that the Fiduciaries may better perform their functions. All recommendations and decisions of these Advisors will be in an advisory role only and will be reviewed by, and subject to approval of the applicable Fiduciary.

(c) **Personnel**

The Employer may designate an individual or a single department of the Employer, to be responsible for direct contact with the Participants of the Plan except as otherwise herein provided. It shall keep all personnel records as required by law or as is necessary to administer the Plan.

**SECTION 9
TRUST FUND AND TRUSTEE**

9.01 TRUST FUND

The assets of the Fund shall be held, administered, and invested by the Trustee. The Fund shall consist of all payments by the Employer to the Trustee as provided in Section 6 and earnings from investments. The assets of the Fund shall be valued as of the end of each Plan Year at the then existing market value.

9.02 AMENDMENT OF TRUST

The Employer shall have the right at any time, by an instrument in writing duly executed, acknowledged and delivered to the Trustee, to modify, alter or amend this Plan and Trust Agreement in whole or in part; provided, however, that the duties, powers and liability of the Trustee hereunder shall not be changed without its written consent, and provided further, that no such amendment shall have the effect of reverting in the Employer any part of the principal or income of the Fund.

9.03 DISCONTINUANCE OF TRUST AND VESTING

The Employer expressly reserves the right to terminate this Plan and Trust Agreement at any time. Upon termination of the Plan by the Employer, or complete discontinuance of contributions thereunder, having the effect of termination, the rights of each Participant to benefits accrued to the date of such termination or discontinuance, to the extent then funded, shall be nonforfeitable. In either case, the Trustee shall, upon instructions from the Employer, continue to administer the Fund as provided in Section 7.02. No part of the Fund shall at any time revert to the Employer.

9.04 APPOINTMENT

The Trustee shall be appointed by and serve at the pleasure of the Employer. If a vacancy should occur, a successor Trustee shall be appointed by the Employer.

9.05 POWERS OF TRUSTEE

The Trustee shall retain the contributions received by it and shall hold, invest, and manage the Trust and income therefrom pursuant to the terms of the Plan and perform its duties with the care, skill, and prudence under the circumstances then prevailing that a man in a like capacity and familiar with such matters would use in the conduct of a similar enterprise with similar aims.

The Trustee shall be accountable for all Contributions actually received by it but need not inquire into the source of any money or property transferred to it, nor into the authority or right of the transferor of such money or property to transfer such to the Trustee. All responsibility for determining the amount, timing, and type of payments made to the Trustee, or otherwise establishing a funding policy consistent with the objectives of the Plan shall be upon the Employer.

The Trustee shall have no duty or obligation to require payment of any contributions to the Trust, or to see that any payment made to it is computed in accordance with the provisions of the Plan,

or to be otherwise responsible for the adequacy of the Trust to meet and discharge any liabilities under the Plan.

The Trustee shall have all the powers and authority necessary, proper, or convenient for the performance of its Trustee duties and for the preservation, management, and direction of the Fund, including all powers granted by law and other sections or provisions of this Plan and Trust, and including by way of example and not by way of limitation, the following powers:

- (a) **Purchase and Sale of Property.** To purchase, sell, subscribe for, exchange, convey, transfer, or otherwise dispose of any property, real or personal, or securities and to hold and retain the same in the Fund.
- (b) **Exercise of Owner's Rights.** To vote upon any stocks, bonds or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights, or other options, and to make any payments incidental thereto; to oppose or consent to or otherwise to participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held as part of the Fund.
- (c) **Registration of Investments.** To cause any securities or other property held as part of the Fund to be registered in its own name or in the name of one or more of its nominees, and to hold any investments in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Fund.
- (d) **Borrowing and Lending.** To borrow or raise money for the purposes of the Trust in such amount, and upon such terms and conditions, as the Trustee shall deem advisable; and, for any such amount so borrowed, to issue a promissory note signed by the Trustee, and to secure the repayment thereof by pledging all, or any part, of the Fund.
- (e) **Retention of Cash.** The assets of the Trust Fund may consist, in whole or in part, of deposits in the Trustee, an affiliate or any other bank or similar financial institution which is a fiduciary of the Plan if (i) such bank or financial institution is supervised by the United States or a State and (ii) such deposits bear a reasonable rate of interest.
- (f) **Retention of Property Acquired.** To accept and retain for such time as it may deem advisable, any securities or other property received or acquired by it as Trustee hereunder, whether or nor such securities or other property would normally be purchased as investments hereunder.
- (g) **Execution of Instruments.** To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.
- (h) **Settlement of Claims and Debts.** To settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Fund, to commence or defend suits or legal administrative proceedings and to represent the Fund in all, suits and legal and administrative proceedings, at the cost and expense of the Trust.

- (i) **Employment of Agents and Counsel.** To employ suitable agents and counsel (who may, but need not be, counsel for the Employer), and pay their reasonable expenses and compensation from the Trust, unless paid by the Employer.
- (j) **Mutual Funds.** To invest and reinvest all or any part of the Fund through the medium of any mutual funds managed or sponsored by or through affiliates of the Trustee.
- (k) **Collateralized Loans.** To lend securities held in the fund to institutions, such as broker-dealers, where such securities are secured continuously by collateral in cash, cash equivalents, or U.S. Government Securities maintained on a current basis at an amount at least equal to the market value of the securities loaned.
- (l) **Releases.** To require, before making any payment, such releases, indemnities, or other documents from any local, state, or federal taxing authority, governmental body, department, or agency, or from any person or persons claiming an interest in the Trust as the Trustee may consider necessary or proper for its protection without any liability for payment of interest on funds retained by it pending receipt by it or such releases, indemnities, or other documents.
- (m) **Power to do any Necessary Act.** To do all such acts, take all such proceedings and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to administer the Fund, and to carry out the purposes of this Trust.

9.06 INVESTMENTS OF TRUST

- (a) **General Investment Powers of Trustee.** Subject to the provisions of this Section 9.06 and Section 9.07, the Trustee is expressly granted the right to sell at public or private sale, for cash or upon credit, upon such terms as the Trustee may consider advisable, or otherwise to dispose of any property, real or personal, in which the Trust may from time to time be invested or reinvested, to invest and reinvest any cash, principal and any non-distributable income received or held by the Trustee in such stocks (whether common or preferred) and in such bonds, securities, insurance contracts, and other property, real or personal, as the Trustee in its discretion may deem prudent and advisable, whether or not productive of income, and the Trustee in its choice of investments or reinvestments shall be limited to those which are permissible for Trustees under law or by agreement between the Employer and the Trustee, it being the Employer's intention to give the Trustee unlimited power of investment and reinvestment in real and personal property to the extent permitted by law as though they were the absolute owner in fee simple of the Trust property.
- (b) **Investment in Pooled Fund.** Notwithstanding the provisions of Section 9.06, if a bank is acting as Trustee, the Employer specifically authorizes the Trustee to invest all or any portion of the assets comprising the Trust Fund in any collective investment trust which at the time of the investment provides for the pooling of the assets of Plans described in Code Section 401(a). This authorization applies solely to a collective investment trust the Trustee maintains and only if the Trustee has received a determination letter from the Internal Revenue Service to the effect the collective investment trust is exempt from Federal income tax or has an application pending for such a letter. The provisions of the collective investment trust agreement, as amended by the Trustee from time to time, are by this reference incorporated within the Plan and Trust. The provision of the collective investment trust shall govern any investment of Plan assets in that trust. Further, said bank, if Trustee, may invest in its own certificates of deposit, savings accounts or other time deposit accounts

and may maintain certain trust assets in its own checking accounts, without liability for interest thereon.

9.07 DIRECTING THE TRUSTEES

The Employer may provide the Trustees with written investment policy guidelines and directions to assist the Trustee respecting investments, and shall be responsible for making periodic reviews of the investment performance of the Trustee. The Trustee shall have no liability in properly following such guidelines and directions, but will be subject to the General Fiduciary Duties of Section 8.02 hereof.

In the event responsibility for direction of the management and investment of all or any of the assets of the Trust is given to any other person other than the Trustee pursuant to direction of the Employer, the Trustee shall be relieved of all liability with respect to the management and investment of such assets so long as such person retains such responsibility and, may conclusively rely upon and shall be protected in acting on any written order from the Employer, and the Trustee's responsibility shall be limited to holding such assets as a custodian, providing account services, disbursing benefits as authorized, and executing such investment instructions only as directed by the Employer.

9.08 RESIGNATION OF TRUSTEE

The Trustee may resign as Trustee of the Fund, at any time by giving sixty (60) days prior written notice to the Employer and to the Board, or with the consent of the Employer, may resign at any time. If the Trustee should resign, at such time as the resignation becomes effective, the Trustee shall render to the Employer an account of its administration of the Fund during the period following that covered by its last annual account, and shall perform all acts necessary to transfer and deliver the assets of the Fund to its successor.

9.09 REMOVAL OF TRUSTEE

The Employer may remove the Trustee at any time upon the delivery of sixty (60) days prior written notice to the Trustee. In the event of such removal, the Trustee shall be under the same duty to account for, transfer and deliver the assets of the Fund to the successor as provided in the case of the Trustee's resignation.

9.10 SUCCESSOR TRUSTEE

In the event of vacancy in the trusteeship of this Trust occurring at any time, the Employer shall designate and appoint a qualified successor Trustee. Any such successor Trustee shall have all the rights and powers herein conferred upon the original Trustee. In such event, on the appointment of such successor, the retiring Trustee shall promptly turn over to such successor all assets held by the Trustee and shall make a final accounting to the Employer. The successor Trustee shall have no responsibility except to receive such money and property from the retiring Trustee and to hold and administer the same thereafter in accordance with this Plan and Trust and shall not be responsible for any act or omission of the retiring Trustee, and shall not be required to make any claim against the retiring Trustee unless the Employer shall in writing request the successor to make demand against such retiring Trustee. Any such successor Trustee shall have and may exercise all the rights, powers and duties of the Trustee as fully and to the same extent as if it had originally been named Trustee herein.

9.11 ACCOUNTING

The Trustee shall, within sixty (60) days after the end of such Plan Year, render to the Employer a report of its administration of this Trust during the preceding Plan Year.

9.12 LIABILITY OF TRUSTEE

The Trustee shall not be liable for the making, retention or sale of any investment authorized hereunder nor for a failure to make, retain or sell any investment nor shall the Trustees be liable for any loss to or diminishment of the Fund.

9.13 EXPENSES

The Employer may pay all expenses incurred in the administration of the Plan, including expenses and fees of the Trustee, but it shall not be obligated to do so; except that any such expenses and fees not so paid by the Employer shall be paid from the Fund. All expenses not paid by the Employer and all other proper charges and disbursements of the Trustee including taxes of any kind whatsoever which may be levied or assessed under existing or future laws upon or in respect to the Fund or the Trust created hereby, shall be paid by the Trustee out of, and shall constitute a first charge upon, the Fund.

9.14 NOTIFICATION TO TRUSTEE

Any action by the Employer pursuant to any of the provisions of this agreement shall be evidenced by a resolution of the Board certified by an officer of the Employer or the Administrator. Any notice, direction, order, request, certification or instruction of the Employer or Administrator to the Trustee shall be in writing. The Trustee shall be entitled to rely conclusively upon any and all such notices, directions, orders, requests, certifications and instructions received by it from the Employer or Administrator, and shall act and be fully protected in acting in accordance therewith. The Employer shall furnish the Trustee from time to time with certified copies of resolutions evidencing the appointment and to termination of the Administrator and the Trustee shall be entitled to rely conclusively upon such resolutions as evidence of the identity of the Administrator and shall not be charged with notice of any change with respect thereto until the Employer shall have furnished the Trustee with certified copies of resolutions relative to such change.

9.15 DISBURSEMENTS

Upon written direction (which may be a continuing direction) from the Administrator as to the name of any person to whom money is to be paid from the Fund and the amount thereof, the Trustee shall draw checks in the name of the person designated by the Administrator and deliver such checks in such manner and in such amounts and at such time as the Administrator shall direct. In the event the Trustee shall deem it necessary to withhold any distribution pending compliance with legal requirements with respect to probate of wills, appointment of personal representatives, payment of or provision for estate or inheritance taxes, or for death duties or otherwise, the Trustee shall notify the Administrator and shall thereafter take no action pending receipt of the Administrator's instructions to distribute and an agreement from the Employer in form satisfactory to the Trustee, protecting it from any liability arising out of noncompliance with such requirements. When the Administrator directs that any payment is to be made only during or until the time a certain condition exists regarding the payee, any payment made by the Trustee in good faith, without actual notice or knowledge of the changed status or condition of the payee,

shall be considered to have been properly made by the Trustee and made in accordance with the direction of the Administrator.

9.16 INDEMNIFICATION OF TRUST

The Employer agrees to defend the Trustee against any claim, and to indemnify the Trustee against any liability including any tax, and including reasonable attorney's fees, incurred as a result of a claim asserted by any person or persons or entity (including a governmental entity) under the laws of any state or of the United States with respect to any action of the Trustee pursuant to a direction of the Administrator, the Employer or the agent thereof.

**SECTION 10
MISCELLANEOUS**

10.01 HEADINGS

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

10.02 CONSTRUCTION

In the construction of the Plan, the masculine shall include the feminine and the singular the plural in all cases where such meanings would be appropriate.

The laws of the State of Texas shall govern, control and determine all questions arising with respect to the Plan and the interpretation and validity of the provisions of this Plan.

10.03 SPENDTHRIFT CLAUSE

Subject to the exception provided below, all benefits are intended for the protection of the Participants and their Beneficiaries. No benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void, nor shall any such benefit be in any manner liable for or subject to the debts, contracts, liabilities, engagement or torts of the person entitled to such benefit, except as specifically provided in the Plan.

This provision shall not apply to a "qualified domestic relations order" defined in Code Section 414(p), and those other domestic relations orders permitted to be so treated by the Administrator under the provisions of the Retirement Equity Act of 1984. The Administrator shall establish a written procedure to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Further, to the extent provided under a "qualified domestic relations order," a former spouse of a Participant shall be treated as the spouse or surviving spouse for all purposes under the Plan.

10.04 EMPLOYMENT

Participation in the Plan shall not give any Employee the right to be retained in the employ of any Employer, nor, upon dismissal or upon his voluntary termination of employment, to have any right or interest in the Fund other than as herein provided.

10.05 LEGALLY INCOMPETENT

If any Participant or Payee is a minor, or, in the judgment of the Administrator, is otherwise legally incapable of personally receiving and giving a valid receipt for any payment due him hereunder, the Administrator may, unless and until claim shall have been made by a duly appointed guardian or trust for such person, direct that such payment or any part thereof be made to such person's spouse, child, parent, brother or sister or other person deemed by the Administrator to have incurred expense for or assumed responsibility for the expenses of such person.

10.06 UNIFORM ADMINISTRATION

The Employer, through the Administrator, shall administer the Plan in a uniform and consistent manner with respect to all Participants and shall not permit discrimination.

10.07 BENEFITS SUPPORTED ONLY BY FUND

Neither the Trustee, the Administrator, nor the Employer guarantees the Trust from loss or depreciation, nor do they guarantee any payment to any person. The liability of the Trustee, the Employer, and the Administrator to make any payment is limited to the available assets of the Trust. In no event will the Employer, or any of its officers, participants of the Employer or agents of the Employer, be liable in their individual capacities to any person whomsoever, under the provisions of the Plan, except that any officer or employee, while serving as a Fiduciary under the Plan, will have the responsibility provided therein.

10.08 PARTICIPANT STATEMENTS

The Employer shall provide to each Participant or any surviving Spouse or beneficiary receiving benefits under the Plan, at least once each year, a statement of such person's interest in the Plan.

10.09 FORFEITURE OF VESTED BENEFITS

The vested portion of any Employer provided benefit may be forfeited or suspended only under the following circumstances:

- (1) Suspended for any period of reemployment with same employer, or
- (2) Forfeited on account of the Participant's death (subject to the Pre-Retirement Survivor Annuity, the 50% joint and Survivor Annuity and the early or normal retirement annuity options selected by the Participant).

Forfeitures arising from any cause whatsoever under this Plan shall not be applied to increase the benefits any Participant would otherwise receive under the Plan at any time prior to the termination of the Plan or the complete discontinuance of Employer contributions hereunder. Forfeitures shall be applied to reduce the Employer's contributions under the Plan in the then current or subsequent years.

10.10 DISAPPEARANCE OF PARTICIPANT OR PAYEE

In the event that any Participant, beneficiary or Joint Annuitant receiving or entitled to receive benefits under the Plan should disappear and fail to respond within sixty (60) days to a written notice sent him by the Administrator by registered or certified mail (return receipt requested), postage prepaid, informing him of his entitlement to receive benefits under the Plan, the Administrator shall suspend benefits payable until either the Participant or his beneficiary (whichever is applicable) is located or a court of competent jurisdiction directs payment.

10.11 COMPLIANCE WITH APPLICABLE LAWS

The Employer, through the Administrator, shall interpret and administer the Plan in such manner that the Plan shall remain in compliance with applicable subsections of Sections 401 and 501 of

the Internal Revenue Code and with Texas Government Code - Title 8, Subtitle A regarding public retirement systems.

10.12 MERGER

In the event of any merger or consolidation of the Plan with any other Plan, or the transfer of assets or liabilities by the Plan to another Plan, each Participant must be entitled to receive (assuming that the Plan then terminated) a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit such Participant would have been entitled to receive immediately before the merger, consolidation, or transfer (assuming that the Plan had then terminated). The foregoing shall not be deemed to require continuation of the Plan in the event of merger or other reorganization of the Employer and the Employer reserves the right to terminate the Plan according to the terms hereof.

10.13 CLAIMS PROCEDURE

(a) Initial Stage

In the event the Administrator denies a claim for benefits under the Plan submitted by a Participant, Joint Annuitant or beneficiary, hereinafter referred to as Claimant, the Administrator shall provide adequate notice in writing to the Claimant, within a reasonable time after receipt of the claim setting forth, in a manner calculated to be understood by the Claimant, the following:

- (1) specific reason(s) for the denial;
- (2) specific reference(s) to Plan provisions on which the denial is based;
- (3) a description of any materials or information necessary to perfect the claim and why they are necessary;
- (4) an explanation of the appeal procedure of the Plan.

Upon request, the Administrator shall afford any claimant the right of a hearing with respect to any finding of fact or determination.

(b) Appellate Stage

A claimant shall have sixty (60) calendar days from the date of the denial of a claim for benefits by the Administrator, in order to appeal such denial. In order to perfect an appeal, a claimant or his duly authorized representative, must request such appeal in writing. Such request must be made to the Administrator within the aforementioned sixty (60) day period. A claimant or his duly authorized representative shall be allowed to review pertinent documents and submit issues and comments to the Administrator in writing relative to the appeal. The Administrator shall afford the claimant a full and impartial hearing on his claim for benefits. At such hearing, Administrator shall review all written comments and issues submitted by the claimant as well as hear and review oral arguments, if any, presented by the claimant or his authorized representative.

The Administrator shall make a decision relative to the claim. Such decision will be rendered within a reasonable time following receipt of the written request for review submitted by the

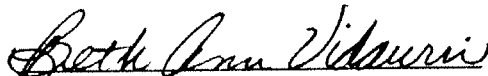
claimant. The decision on review shall be in writing and shall include specific reasons for the decision and specific references to plan provisions on which the decision is based, and shall be written in a manner calculated to be understood by the Claimant.

10.14 INTERNAL REVENUE SERVICE APPROVAL

Notwithstanding anything to the contrary elsewhere provided in this Plan, this amended and restated Plan and Trust is made on the condition that the same shall be approved and qualified initially by the Secretary of the Treasury, or a duly authorized representative, as meeting the requirements of the Internal Revenue Code of 1986 as amended and the regulation issued thereunder, and in the event qualification is denied, or cannot be obtained by amendment, the Plan and Trust shall thereupon become null and void and of no effect.

IN WITNESS WHEREOF, the Employer and Trustee have caused Plan and Trust Agreement to be duly executed this 1st day of November, 2010.

ATTEST:


Assistant Secretary

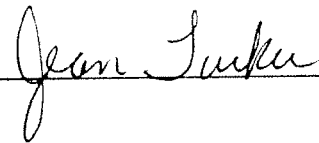
EMPLOYER:
CORPUS CHRISTI REGIONAL TRANSPORTATION
AUTHORITY

By: 
Crystal Lyons
Chairman of the Board

ATTEST:



TRUSTEE:
WELLS FARGO BANK, N.A.

By: 

Corpus Christi Regional Transportation Authority



Resolution

WHEREAS, the Corpus Christi Regional Transportation Authority, (the "Employer") has adopted and maintains the RTA Employees Defined Benefit Plan and Trust (the "Plan") in order to provide retirement benefits to its employees; and

WHEREAS, the Employer desires to amend the Plan to make certain changes requested by the Internal Revenue Service as part of the determination letter request process; and

WHEREAS, pursuant to the terms of the Plan, the Board of Directors of the Corpus Christi Regional Transportation Authority (the "Board") has the right at any time to amend and restate the Plan by written instrument duly executed; and

WHEREAS, the Board has reviewed a draft of a proposed First Amendment to the RTA Employees Defined Benefit Plan and Trust, a copy of which is attached to this resolution, and has found such amended and restated document to be suitable in all respects for the purpose aforesaid; and

WHEREAS, after consultation and deliberation, the Board finds it in the best interests of the Employer and the Plan, and not in contravention of the Employer's enabling legislation or by-laws, to adopt the First Amendment as of the effective dates set forth therein;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CORPUS CHRISTI REGIONAL TRANSPORTATION AUTHORITY THAT:

Section 1. The Board hereby amends the Plan by approving and adopting the First Amendment to the RTA Employees Defined Benefit Plan and Trust substantially in the form attached hereto, to be effective as of the dates set forth therein but generally effective January 1, 2010;

Section 2. Any officer of the Employer is hereby authorized, empowered and directed to execute the amended and restated plan document and the participation agreements (with such non-material modifications to such documents, if any, as such officer deems appropriate) and such other papers, documents and instruments as are necessary, proper and convenient to effect the purposes of these resolutions at such times and with such effective dates as may be deemed most advisable; and

Section 3. Any officer of the Employer is hereby authorized, empowered and directed to take any other action and execute any other papers, documents, instruments and Plan amendments as may be necessary, proper and convenient to assure the continued qualification of the Plan under the law, including but not limited to application to the Internal Revenue Service for a favorable determination letter and preparation of any amendments or supplemental materials required in connection therewith.

DULY PASSED AND ADOPTED this 07 day of December, 2011.

ATTEST:

Secretary

CORPUS CHRISTI REGIONAL
TRANSPORTATION AUTHORITY

By: 
Chairman

FIRST AMENDMENT
TO THE
RTA EMPLOYEES DEFINED BENEFIT PLAN AND TRUST

(As Amended and Restated Effective January 1, 2010)

Pursuant to Section 7.01 of the RTA Employees Defined Benefit Plan and Trust (the "Plan"), the Corpus Christi Regional Transportation Authority (the "Employer") hereby amends the Plan, effective January 1, 2010, as follows:

1. The first sentence of Section 1.08 is amended so that the first paragraph shall read as follows:

"1.08 "Compensation" means compensation paid by an Employer to an Employee for services rendered to the Employer during a calendar year including regular salary, bonuses, overtime, and any Employee salary reduction under Code Section 125, 132(f), 457 or 414(h). Compensation shall exclude Employer contributions or benefits under this Plan or any other plan, personal leave cashed in, personal leave or health leave paid at retirement, severance pay, any car, tool or uniform allowances, and any other extraordinary compensation."
2. Section 9.17 is added to read as follows:

"9.17 Prohibition against Diversion of Funds

 - (a) Except as provided below, and by Section 10.14, and otherwise specifically permitted by law), it shall be impossible by operation of the Plan or of the Trust, by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of any Trust Fund maintained pursuant to the Plan or any funds contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Participants, Former Participants, or their Beneficiaries.
 - (b) In the event the Company shall make an excessive contribution under a mistake of fact pursuant to Act Section 403(c)(2)(A), the Company may demand repayment of such excessive contribution at any time within one year following the time of payment and the Trustees shall return such amount to the Company within the one-year period. Earnings of the Plan attributable to the contributions may not be returned to the Company but any losses attributable thereto must reduce the amount so returned.
 - (c) Except as specifically stated in the Plan, any contribution made by the Company to the Plan (if the Company is not tax-exempt) is conditioned upon the deductibility of the contribution by the Company under the Code and, to the extent any such deduction is disallowed, the Company may, within one year following the final determination of the disallowance, whether by agreement with the Internal

Revenue Service or by final decision of a competent jurisdiction, demand repayment of such disallowed contribution and such contribution shall be returned to the Company within one year following the disallowance. Earnings of the Plan attributable to the contribution may not be returned to the Company, but any losses attributable thereto must reduce the amount so returned.”

IN WITNESS WHEREOF, Corpus Christi Regional Transportation Authority has caused this First Amendment to the RTA Employees Defined Benefit Plan and Trust to be executed by its duly authorized officers on this 07 day of December, 2011.

CORPUS CHRISTI REGIONAL
TRANSPORTATION AUTHORITY

By: _____

Title: _____

John Valle
Chairman