

Governmental 401(a) Special Pay Plan

Volume Submitter Basic Plan Document

Governmental 401(a) Special Pay Plan - Basic Plan Document

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Governmental 401(a) Special Pay Plan - Basic Plan Document

The Employer hereby establishes and adopts this Governmental 401(a) Special Pay Plan pursuant to Code Section 401(a) for the purpose of providing benefits for eligible Employees of the Employer and their beneficiaries effective as of the date indicated in the Adoption Agreement. It is intended that this Plan shall be a governmental plan under Section 3(32) of ERISA and shall therefore, be exempt from Title I of ERISA.

W I T N E S S E T H:

WHEREAS, the Employer desires to provide for the retirement of certain Employees employed by the Employer by establishing a defined contribution plan for those Employees who now or may hereafter qualify for participation therein; and

WHEREAS, the Employer is authorized to adopt the Plan.

NOW, THEREFORE, in consideration of the premises, it is agreed as follows:

ARTICLE I

Definitions

1.1 **Account** or **Accounts** shall mean the aggregate of a Participant's Employer Contribution Account, Section 414(h) Pick-Up Contribution Account, Voluntary Contributions Account, Rollover Account, and/or such other accounts as the Plan Administrator may establish.

1.2 **Accumulated Leave** shall mean any sick leave or vacation leave accrued and unused by the Participant, as defined in the Adoption Agreement.

1.3 **Administrator** shall mean the Plan Administrator.

1.4 **Adoption Agreement** shall mean the agreement entered into by the Employer adopting the Governmental 401(a) Special Pay Plan.

1.5 **Anniversary Date** shall mean the last day of each Plan Year.

1.6 **Annual Additions** shall include, for any Limitation Year, the sum of:

(a) the amount of Employer Contributions and employee contributions allocated to the Participant during any Limitation Year under any qualified defined contribution plan maintained by the Employer;

(b) the amount of the Employee's contributions to any qualified defined contribution plan maintained by the Employer;

(c) any forfeitures allocated to the Participant under any qualified defined contribution plan maintained by the Employer;

(d) amounts allocated to an individual medical account, as defined in § 415(l)(2) of the Code, which is part of a pension or annuity plan maintained by the employer are treated as annual additions to a defined contribution plan. Also amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in § 419A(d)(3) of the Code, under a welfare benefit fund, as defined in § 419(e) of the Code, maintained by the employer are treated as annual additions to a defined contribution plan; and

(e) allocations under a simplified employee pension.

1.7 **Basic Plan Document** shall mean the Governmental 401(a) Special Pay Plan - Basic Plan Document set forth herein.

1.8 **Code** shall mean the Internal Revenue Code of 1986, as amended, or any successor statute. Reference to a specific section of the Code shall include a reference to any successor provision.

1.9 **Compensation** with respect to a Participant shall mean such Participant's compensation as specified in the Adoption Agreement that is paid during the applicable period. Except to the extent permitted by the Code, no Compensation in excess of the limit under Section 401(a)(17) of the Code (adjusted under such regulations as may be issued by the Secretary of the Treasury) shall be taken into account for any Employee. If a Plan Year consists of fewer than 12 months, the Compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the Plan Year, and the denominator of which is 12.

For any plan year beginning after December 31, 2001, the annual compensation of each participant taken into account in determining allocations shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with § 401(a)(17)(B) of the Code. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

1.10 **Effective Date** of this Plan shall be the Effective Date as set forth in the Adoption Agreement.

1.11 **Eligible Employee** means any individual Employee of the Employer who meets the criteria set forth in Section 4.1, and is in one or more of the classifications of Employees specified in the Adoption Agreement. An Eligible Employee shall not include a Leased Employee as defined in Section 1.18.

1.12 **Employee** shall mean a common law employee of the Employer, except that it shall not include any individual who is characterized by the Employer as an independent contractor, regardless of whether such individual is later recharacterized by a court or the IRS as a common law employee. The term employee shall also include any Leased Employee as defined in Section 1.18

1.13 **Employer** shall mean the Employer identified in the Adoption Agreement, and any successor that shall maintain this Plan, and any predecessor that has maintained this Plan.

1.14 **Employer Contributions** shall mean Employer contributions to the Plan made pursuant to Section 5.1(a).

1.15 **Employer Contribution Account** shall mean an account established pursuant to Section 6.2 with respect to Employer Contributions made pursuant to Section 5.1(a).

1.16 **Group Annuity Contract** shall mean any group annuity contract established under the Plan from which benefits provided for by the Plan are to be paid or are to be funded.

1.17 **Insurer** shall mean the insurance company with which the Employer has entered into a Group Annuity Contract. Such insurance company shall be qualified to do business in the state in which the Employer is incorporated or organized.

1.18 **Leased Employee** means any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with § 414(n)(6) of the Internal Revenue Code) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient. Contributions or benefits provided a leased employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer.

A leased employee shall not be considered an employee of the recipient if: (i) such employee is covered by a money purchase pension plan providing: (1) a nonintegrated employer contribution rate

of at least 10 percent of compensation, as defined in § 415(c)(3) of the Code, but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee's gross income under § 125, § 402(e)(3), § 402(h)(1)(B) or § 403(b) of the Code, (2) immediate participation, and (3) full and immediate vesting; and (ii) leased employees do not constitute more than 20 percent of the recipient's nonhighly compensated work force.

1.19 **Limitation Year** shall mean the limitation year specified by the Employer in the Adoption Agreement. If a short limitation year is created because of an amendment changing the limitation year to a different 12-consecutive month period, the maximum permissible amount will not exceed the defined contribution dollar limitation multiplied by the following fraction: Number of months in the short limitation year/12. If the plan is terminated as of a date other than the last day of the limitation year, the plan is deemed to have been amended to change its limitation year and the maximum permissible amount shall be determined shall be prorated for the resulting short limitation year.

1.20 **Normal Retirement Age** means the date a Participant attains the age selected by the Employer as the Normal Retirement Age in the Adoption Agreement. At Normal Retirement Age a Participant shall become fully vested in his or her Account.

1.21 **Participant** shall mean any eligible Employee of the Employer who has become a Participant under the Plan. Participant shall include any former employee of the Employer who became a Participant under the Plan and who still has a balance in an Account under the Plan.

1.22 **Plan** shall mean this profit-sharing plan as described in the Adoption Agreement, as herein set forth, and as may be amended from time to time.

1.23 **Plan Administrator** shall mean the person specified in the Adoption Agreement as the plan administrator.

1.24 **Plan Year** shall mean the 12-month period set forth in the Adoption Agreement.

1.25 **Rollover Contributions Account** shall mean an account established pursuant to Section 6.2 with respect to Rollover Contributions made pursuant to Section 5.1(d).

1.26 **Section 414(h) Pick-Up Contribution Account** shall mean an account established pursuant to Section 6.2 with respect to Section 414(h) Pick-Up contributions made pursuant to Section 5.1(b).

1.27 **Section 415 Compensation** shall mean wages within the meaning of section 3401(a) (for purposes of income tax withholding at the source) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services

performed (such as the exception for agricultural labor in Code section 3401(a)(2)), plus amounts that would be included in wages but for an election under section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). **A differential wage payment shall be treated as a part of Section 415 Compensation for a payment made after December 31, 2008.** Amounts received by an employee pursuant to a nonqualified unfunded deferred compensation plan shall be treated as compensation in the year the amounts are actually received. Amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates shall not be included in compensation for the limitation year. Compensation shall include amounts paid within 2½ months after severance from employment (or the end of the limitation year that includes the date of severance) for 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, unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued; and amounts received by an employee pursuant to a nonqualified unfunded deferred compensation plan which would have been paid at the same time if employment had continued, but only to the extent includible in gross income. Compensation shall include post-severance compensation paid to any participant who is permanently and totally disabled.

1.28 **Terminated Participant** means a person who has been a Participant, but whose employment has been terminated other than by death, Total and Permanent Disability, or termination of employment after attainment of Normal Retirement Age.

1.29 **Total and Permanent Disability** shall mean the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A licensed physician chosen by the Administrator shall determine the disability of a Participant. However, if the condition constitutes total disability under the federal Social Security Acts, the Administrator may rely upon such determination that the Participant is Totally and Permanently Disabled for the purposes of this Plan. The determination shall be applied uniformly to all Participants.

1.30 **Trust** shall mean the trust established by the Trust Agreement.

1.31 **Trust Agreement** shall mean the agreement providing for the Trust Fund as it may be amended from time to time.

1.32 **Trust Fund** shall mean any trust fund established under the Trust Agreement from which benefits provided for by the Plan are to be paid or are to be funded.

1.33 **Trustee** shall mean the individual, individuals or corporation designated as trustee under the Trust Agreement.

1.34 **Valuation Date** shall mean Anniversary Date and such other date(s) each year as may be selected by the Plan Administrator.

1.35 **Valuation Period** shall mean the period beginning with the first day after a Valuation Date and ending with the next Valuation Date; provided, however, that the first Valuation Period shall begin on the Effective Date of the Plan.

1.36 **Voluntary Contributions Account** shall mean an account established pursuant to Section 6.2 with respect to Voluntary Contributions made pursuant to Section 5.1(d)

ARTICLE II

Establishment of the Plan

2.1 **Exclusive Benefit.** This Plan is created for the sole purpose of providing benefits to the Participants. Except as otherwise permitted by law, in no event shall any part of the principal or income of the Plan be paid to or reinvested in the Employer or be used for or diverted to any purpose whatsoever other than for the exclusive benefit of the Participants and their beneficiaries.

2.2 **Mistake of Fact.** Notwithstanding the foregoing provisions of Section 2.1, any contribution made by the Employer to this Plan by a mistake of fact may be returned to the Employer within one year after the payment of the contribution, or at the Employer's discretion, such contribution plus earnings thereon may be used to reduce the Employer's contribution obligation for a subsequent year.

2.3 **Participants' Rights.** The establishment of this Plan shall not be considered as giving any Employee, or any other person, any legal or equitable right against the Employer, the Insurer or Trustee, or the principal or the income of the Plan, except to the extent otherwise provided by law. The establishment of this Plan shall not be considered as giving any Employee, or any other person, the right to be retained in the employ of the Employer.

2.4 **Qualified Plan.** This Plan is intended to qualify under the Code as a tax-qualified employees' plan and to be a governmental plan under Code section 414(d), and the provisions of this Plan are to be interpreted accordingly.

ARTICLE III
Plan Administrator

3.1 Administration of the Plan.

(a) The Plan Administrator shall control and manage the operation and administration of the Plan.

(b) (1) If the Employer is the Plan Administrator, it may appoint a committee to assist in the administration of the Plan, which shall serve at the pleasure of the Employer. The Employer may pay all usual and reasonable expenses of the committee in whole or part. Any members of the committee who are employees of the Employer shall not receive compensation with respect to their services for the committee.

(2) The committee may elect one of its members as chairman, appoint a secretary, who may or may not be a committee member, and advise the Insurer or Trustee of its actions in writing. The secretary shall keep a record of all meetings and forward necessary communications to the Employer or the Insurer or Trustee. The committee may adopt such by-laws and regulations as it deems desirable for the conduct of its affairs. All decisions of the committee shall be made by a vote of the majority, including actions taken in writing without a meeting.

(3) The committee and the individual members thereof shall be indemnified by the Employer against any and all liabilities arising by reason of any act or failure to act made in good faith pursuant to the provisions of the Plan, including expenses reasonably incurred in the defense of any claim relating thereto.

3.2 Powers and Duties.

(a) The Plan Administrator shall have complete control over the administration of the Plan herein embodied, with all powers necessary to enable it to carry out its duties in that respect. Not in limitation, but in amplification of the foregoing, the Plan Administrator shall have the power and discretion to interpret or construe this Plan and to determine all questions that may arise as to the status and rights of the Participants and others hereunder.

(b) The Plan Administrator may promulgate such policies and make such rules and regulations for the proper administration of the Plan as it deems necessary.

3.3 **Direction of Insurer or Trustee.** It shall be the duty of the Plan Administrator to direct the Insurer or Trustee with regard to the distribution of benefits to the Participants and others hereunder.

3.4 **Conflict in Terms.** In the event of any conflict between the terms of this Plan and the Group Annuity Contract or Trust Agreement and the terms of any explanatory booklet or other description, the terms of this Plan and/or Group Annuity Contract or Trust Agreement shall control.

3.5 **Final Authority.** Except to the extent otherwise required by law, the decision of the Plan Administrator in matters within its jurisdiction shall be final, binding and conclusive upon each Employee and beneficiary and every other interested or concerned person or party.

3.6 **Appointment of Advisors and Delegation of Duties.**

(a) The Plan Administrator may appoint such accountants, counsel, specialists and other persons that it deems necessary and desirable in connection with the administration of this Plan.

(b) The Plan Administrator may designate one or more of its employees to perform the duties required of the Plan Administrator hereunder.

ARTICLE IV

Eligibility and Participation

4.1 **Eligibility and Participation.** Any Employee other than a Leased Employee who meets the eligibility requirements set forth in the Adoption Agreement shall be eligible to become a Participant in the Plan on the date provided in the Adoption Agreement. In the event an Employee who has satisfied the Plan's eligibility requirements and would otherwise have become a Participant shall go from a classification of a noneligible Employee to an Eligible Employee, such Employee shall become a Participant as of the date he or she becomes an Eligible Employee.

For purposes of the eligibility requirements set forth in the Adoption Agreement, a Participant shall be credited with one year for each 12 calendar month period in which the Participant was continuously employed by the Employer. A Participant shall receive credit for one-half year for any continuous 6-month period during which the Participant was continuously employed by the Employer.

For purposes of the vesting requirements set forth in the Adoption Agreement, a Participant shall receive one year of credit for each calendar year during which the Participant was continuously employed for at least 6 months during such calendar year.

A Participant who terminates employment shall forfeit all nonvested amounts immediately upon termination of employment.

4.2 **Former Eligible Employees.** In the event a Participant shall go from a classification of an Eligible Employee to a noneligible Employee (whether by reason of termination of employment or by reason of reclassification as an Employee other than an Eligible Employee), he shall become an inactive Participant and cease to be eligible for Contributions under Section 5.1 as of the date of such change. However, such Participant shall again be eligible to share in Contributions under Section 5.1 upon any date thereafter on which he again becomes an Eligible Employee.

ARTICLE V
Contributions to the Plan

5.1 **Method of Contributions.** Contributions to the Plan shall be made in the manner selected in the Adoption Agreement.

(a) **Employer Contributions.** The Employer shall contribute to the Plan the amount and form of contributions specified in the Adoption Agreement, subject to any limitations imposed under applicable law. Such contributions shall be allocated to the Participants' Employer Contributions Accounts in proportion to the value of their Accumulated Leave.

(b) **Section 414(h) Pick-Up Contributions.** Each Employee who is a Participant in this Plan shall contribute to the Plan the amount and form of contributions specified in the Adoption Agreement, subject to any limitations imposed under applicable law. The contributions made by each Employee under the Plan shall be designated as Employer contributions pursuant to Section 414(h) of the Code. Such designation is contingent upon the contributions being excluded from the Employees' gross income for federal income tax purposes. For all other purposes of the Plan, such contributions shall be considered mandatory employee contributions. Such contributions shall be allocated to the Participant's Section 414(h) Pick-Up Contributions Account.

(c) **Accumulated Leave Contributions.** Contributions of the value of Accumulated Leave can be made to the Plan only if the Accumulated Leave contributed is leave that will be lost or forfeited by the Employee unless contributed to the Plan and the Employee has no opportunity to receive the value of the Accumulated Leave in cash where such leave is not used.

(d) **Voluntary Employee Contributions.** A Participant may make Voluntary Contributions to the Plan of up to a percentage of the Participant's Compensation as indicated in the Adoption Agreement, subject to any limitations imposed under applicable law. Such contributions shall be allocated to the Participant's Voluntary Contributions Account.

(e) Rollover Contributions.

(1) If elected by the Employer in the Adoption Agreement and with the consent of the Administrator, amounts that are considered "eligible rollover

distributions” in accordance with Code Section 402(c)(4) may be rolled over by an Eligible Employee, whether or not a Participant at the time, from an “eligible retirement plan.” The amounts rolled over from an eligible retirement plan shall be allocated to the Participant’s Rollover Contributions Account.

(2) For purposes of this Section, the term “eligible retirement plan” shall mean any other 401(a) plan, any 403(b) plan, and any governmental 457(b) plan, excluding after-tax employee contributions and any distributions from designated Roth accounts from such plans. For purposes of this Section, the term "amounts rolled over from an eligible retirement plan" shall mean:

(i) amounts rolled to the Plan directly from another eligible retirement plan;

(ii) distributions received by an Employee from another eligible retirement plan that are eligible for tax free rollover to a 401(a) plan and that are rolled over by the Employee to the Plan within sixty (60) days, following his receipt thereof;

(iii) amounts rolled over to the Plan under subparagraphs (i) and (ii) by an Employee who is also a surviving spouse or a spouse or former spouse who is an alternate payee as defined in Code Section 414(p).

5.2 Form and Timing of Contributions. Payments on account of the contributions due shall be made in cash. The Employer may make such payments at any time, in accordance with the requirements of applicable laws.

5.3 No Duty to Inquire. Neither the Insurer nor the Trustee shall have a right or duty to inquire into the amount of any contribution made by the Employer or the method used in determining the amount of any such contribution, or to collect the same, but the Insurer or Trustee shall be accountable only for funds actually received by it.

ARTICLE VI

Participants' Accounts and Allocation of Contributions

6.1 **Investment of Accounts.** Pursuant to Article IX, the assets of the Plan shall be invested in either a Group Annuity Contract or Trust Fund, as determined by the Employer, in which each Participant shall have an undivided interest. Such investments shall be invested in accordance with applicable state law and the requirements of section 401(a)(2) of the Code.

6.2 **Establishment of Accounts.** The Plan Administrator shall establish and maintain with respect to each Participant Accounts that shall reflect the Participant's interest in the Group Annuity Contract or Trust Fund with respect to contributions made to the Plan. Such Accounts shall include the Employer Contributions Account, the Section 414(h) Pick-Up Account, the Voluntary Contributions Account, and/or the Rollover Account, to the extent that Contributions Allocable to such Accounts are provided for in Section 5.1 of the Plan. The Plan Administrator may establish such additional accounts as are necessary to reflect a Participant's interest in the Group Annuity Contract or Trust Fund.

6.3 **Interests of Participants.** The interest of a Participant in the Group Annuity Contract or Trust Fund shall be the balance based upon the value of the Accounts at the time of retirement or other separation from service after making the adjustments required in Section 6.4.

6.4 **Adjustments to Accounts.** Subject to the provisions of Section 6.5, a Participant's Account shall be adjusted from time to time as follows:

(a) As of each Valuation Date, each of a Participant's Accounts shall be credited or charged, as the case may be, with a share of the earnings of the Group Annuity Contract or Trust Fund for the Valuation Period ending with such current Valuation Date as follows:

(1) As of each Valuation Date, the portion of the Participant's Accounts shall be credited or charged, as the case may be, with the earnings attributable to the Participant's interest in the Group Annuity Contract or Trust Fund for the Valuation Period ending with such current Valuation Date. The earnings and losses of the plan will be allocated to each participant's account in the ratio that such account balance bears to all account balances.

(2) As of each Valuation Date that is the last day of the Plan Year, or at such other times as determined by the Employer, the Accounts of a Participant

shall be credited with his share of the Contributions made with respect to the Plan Year ending with such Valuation Date. A Participant's share of the amount of the contribution for the Plan Year shall be determined pursuant to the provisions of Article V.

(b) As of each Valuation Date, each Account of a Participant shall be charged with the amount of any distribution made to the Participant or his beneficiary from such Account during the Valuation Period ending with such Valuation Date.

(c) For purposes of all computations required by this Article VI, the cash method of accounting shall be used, and the Group Annuity Contract or Trust Fund and the assets thereof shall be valued at their fair market value as of each Valuation Date.

(d) The Plan Administrator may adopt such additional accounting procedures as are necessary to accurately reflect each Participant's interest in the Group Annuity Contract or Trust Fund, which procedures shall be effective upon approval by the Employer. All such procedures shall be applied in a consistent, nondiscriminatory manner.

6.5 Limitation on Allocation of Contributions.

(a) Notwithstanding anything contained in this Plan to the contrary, the aggregate Annual Additions to a Participant's Accounts under this Plan and under any other defined contribution plans maintained by the Employer for any Limitation Year shall not exceed the lesser of \$40,000 (as adjusted under Section 415(d) of the Code) or 100% of the Participant's Section 415 Compensation.

(b) In the event that a) the Annual Additions, under the normal administration of the Plan, would otherwise exceed the limits set forth above for any Participant, and b) the Employer sponsors a Code Section 415(m) excess benefit plan, excess Annual Additions shall be contributed to the Employer's excess benefit plan.

ARTICLE VII
Benefits Under the Plan

7.1 Vesting.

(a) Upon a Participant's attainment of Normal (or early) Retirement Age, death, Total and Permanent Disability, or on termination of the Plan or complete discontinuance of contributions under the Plan, the vested portion of any Participant's Employer Contributions Account shall be 100%. Upon any other termination of a Participant's employment, the vested portion of any Participant's Employer Contributions Account shall be a percentage of such Account determined on the basis of the Participant's number of years in accordance with the vesting schedule selected by the Employer in the Adoption Agreement. A Participant is always fully vested in his Code Section 414(h) Pick-Up Contributions, Rollover Contributions and Voluntary Contributions.

(b) Any amount that is not vested will be considered to be a Forfeiture and will be used by the Employer for subsequent Employer Contributions or Employer Matching Contributions allocable under the Plan at the time described in the last paragraph of Section 4.1.

7.2 Distributions Under The Plan.

(a) Contributions and earnings under a Participant's **Section 414(h) Pick-Up Contribution Account** and Employer Contributions Account may not be distributed to a Participant (or, if applicable, the Beneficiary) until one of the following events has occurred:

- (1) attainment of Normal Retirement Age, regardless of whether the Participant has separated from service,
- (2) separation from service prior to Normal Retirement Age,
- (3) in the event of the Participant's death,
- (4) on termination of the Plan.

(b) Notwithstanding paragraph (a), amounts in a Participant's Rollover Contributions Account and Voluntary Contribution Account may be distributed at any time.

7.3 Termination Benefit.

(a) A Participant shall be entitled to a benefit under the Plan upon such Participant's termination of employment.

(b) Until a Participant receives a full distribution from the Plan he shall continue to be treated in all respects as a Participant.

(c) Upon the termination of employment of a Participant as provided in subsection (a) and subject to adjustment as provided in Section 8.4, such Participant shall be entitled to receive, at the time and in the manner described in Article VIII, a retirement benefit in an amount equal to the vested portion of the balance in his Accounts as of the Valuation Date concurring with or preceding the date of his termination, plus the amount of any contributions allocated subsequent to such Valuation Date.

7.4 Death Benefit.

(a) In the event of the death of a Participant and subject to adjustment as provided in Section 8.4, his beneficiary shall be entitled to receive, at the time and in the manner described in Article VIII, a death Benefit in an amount equal to 100% of the balance in his Account as of the Valuation Date concurring with or preceding the date of his death, plus the amount of any contributions allocated subsequent to such Valuation Date.

(b) At any time and from time to time, each Participant shall have the unrestricted right to designate a beneficiary to receive his death benefit and to revoke any such designation. Each designation or revocation shall be evidenced by written instrument filed with the Plan Administrator, signed by the Participant and bearing the signature of a witness to his signature. In the event that a Participant has not designated a beneficiary or beneficiaries, or if for any reason such designation shall be legally ineffective, or if such beneficiary or beneficiaries shall predecease the Participant, then the personal representative of the estate of such Participant shall be deemed to be the beneficiary designated to receive such death benefit, or if no personal representative is appointed for the estate of such Participant, then his next of kin under the statute of descent and distribution of the state of such Participant's domicile at the date of his death shall be deemed to be the beneficiary or beneficiaries to receive such death benefit.

(c) Notwithstanding the foregoing, effective with respect to deaths and disabilities occurring on or after January 1, 2007, in the case of a participant who dies while performing qualified military service, the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided under the plan had the participant resumed employment and then terminated employment on account of death.

ARTICLE VIII
Form and Payment of Benefits

8.1 Timing and Form.

(a) (1) Except as otherwise provided in this Article VIII, the amount of the termination or death benefit to which a Participant is entitled under Article VII shall be paid to him or, in the case of a death benefit, shall be paid to said Participant's beneficiary or beneficiaries as soon as practicable following the Participant's termination of employment or death.

(2) Notwithstanding paragraph (a)(1), above, a Participant may elect to defer the distribution of his benefit until any subsequent date elected by the Participant in writing pursuant to such procedures as the Administrator may adopt, but in no event later than the date described in subsection 8.1(b).

(b) Notwithstanding anything contained herein to the contrary, any distribution paid to a Participant pursuant to paragraph (a) (1) shall commence not later than April 1 of the year immediately following the calendar year in which the Participant reaches age 70½, or if later, April 1 of the year immediately following the calendar year in which the Participant terminates employment.

8.2 Manner of Payment.

(a) A Participant may choose a benefit distribution option as selected by the Employer in the Adoption Agreement.

(b) Each Participant shall have the right to designate a beneficiary for purposes of the optional form of benefit payment described in paragraph 8.2(a), above and to revoke any such designation. Each designation or revocation shall be evidenced by written instrument filed with the Plan Administrator and shall be effective upon filing with the Plan Administrator.

(c) In no event shall payment extend beyond the life or life expectancy of the Participant or the joint lives or life expectancies of the Participant and his designated beneficiary. If the Participant dies before receiving the entire amount payable to him, the balance shall be distributed to his designated beneficiary at least as rapidly as under the method being used prior to the Participant's death.

(d) In the case of a death benefit, payment

(1) to the designated beneficiary shall begin within one year following the Participant's death (unless the designated beneficiary is the Participant's spouse, in which case such benefit shall begin no later than the date the Participant would have reached 70½) and shall not, in any event, extend beyond the life or life expectancy of the designated beneficiary; or

(2) to any other beneficiary shall be totally distributed within five years from the date of the Participant's death.

(e) The Participant (or his spouse) shall be permitted to elect whether life expectancies will be recalculated for purposes of distributions hereunder.

(f) Notwithstanding the foregoing, payments under the Plan shall satisfy the incidental death benefit requirements and all other applicable provisions of Section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder. The interval between payments for the annuity shall be uniform over the entire distribution period and shall not exceed one year. The amount that is required to be distributed on or before the participant's required beginning date (or if the participant dies before the required beginning date, the date distributions are required to begin) shall be the payment that is required for one payment interval. Once payments have commenced over a period, the period may only be changed in accordance with A-13 of Treas. Reg. § 1.401(a)(9)-6. Life (or joint and survivor) annuity payments must satisfy the minimum distribution incidental benefit requirements of A-2 of Treas. Reg. § 1.401(a)(9)-6. Except as otherwise provided in Treas. Reg. § 1.401(a)(9)-6 (such as permitted increases described in A-14 of this Treas. Reg. § 1.401(a)(9)-6), all payments (whether paid over an employee's life, joint lives, or a period certain) also must be nonincreasing.

8.3 **Lump Sum Payment.** Notwithstanding anything contained in this Plan to the contrary, if the value of all of a Participant's Accounts is not more than \$1,000, such Accounts shall at the election of the Participant be paid in a lump sum as soon as practicable following the Participant's termination of employment.

8.4 **Periodic Adjustments.** To the extent the balance of a Participant's Accounts has not been distributed and remains in the Plan, and notwithstanding anything contained in the Plan to the contrary, the value of such remaining balance shall share in allocations of the income (or loss) under the Group Annuity Contract or Trust Fund pursuant to the provisions of Article VI.

8.5 **Minor Beneficiaries.** In the event a distribution is to be made to a minor, the Administrator may direct that such distribution be paid to the legal guardian, or if none, to a parent of such Beneficiary or a responsible adult with whom the Beneficiary maintains his residence, or to the custodian for such Beneficiary under the Uniform Gift [Transfers] to Minors Act, to the extent that any distribution hereunder shall be permitted by the laws of the state in which Beneficiary resides. Such a payment to the legal guardian, custodian or parent of a minor Beneficiary shall fully discharge the Administrator, Employer, Plan, Trustee, and Insurer from further liability on account thereof.

8.6 **Location of Participant or Beneficiary Unknown.** In the event that all, or any portion of the distribution payable to a Participant or his beneficiary, hereunder shall remain unpaid after five (5) Plan Years solely by reason of the inability of the Administrator, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, to ascertain the whereabouts of such Participant or his beneficiary, the amount so distributable shall be treated as a forfeiture. In the event a Participant or beneficiary of such Participant is located subsequent to his benefit being reallocated, such benefit shall be restored by an additional contribution by the Employer.

8.7 **Direct Rollovers.**

(a) Notwithstanding any provisions of the Plan to the contrary that would otherwise limit a distributee's (as defined below) election under this paragraph, 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 (as defined below) paid directly to an eligible retirement plan (as defined below) specified by the distributee in a direct rollover (as defined below).

(b) For purposes of this paragraph, the following terms shall have the following meanings:

(1) 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 ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9), and the portion of any distribution that is not included in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). Effective January 1, 2002, an eligible rollover distribution shall include post-tax employee contributions to the Plan. Any portion of a distribution that consists of after-tax employee contributions which are not includible in gross income may be transferred only to (1) a traditional individual retirement account or annuity described in § 408(a) or (b) of the Code (a "traditional IRA") or a Roth individual retirement account or annuity described in § 408A of the Code (a "Roth IRA"); or (2) to a qualified plan or an annuity contract described in § 401(a) and § 403(b) of the Code, respectively, that agrees to separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), a qualified trust described in Code Section 401(a), a tax-sheltered annuity plan described in Code section 403(b), a governmental section 457 plan, an Individual Retirement Account (IRA) other than a SIMPLE IRA, Roth IRA or Education IRA that accepts the distributee's eligible rollover distribution, or, for effective for distributions on or after January 1, 2009, a Roth IRA. 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 domestic

relations order, to the extent that the order is one with which this Plan will comply pursuant to section 11.1.

(3) A distributee includes an Employee or former Employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a domestic relations order, to the extent that the order is one with which this Plan will comply pursuant to section 11.1, are distributees with regard to the interest of the spouse or former spouse. For distributions after December 31, 2006, a distributee includes the employee's or former employee's nonspouse designated beneficiary, in which case, the distribution can only be transferred to a traditional or Roth IRA established on behalf of the nonspouse designated beneficiary for the purpose of receiving the distribution.

(4) A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

8.8 Loans to Participants. This Section shall apply only if selected by the Employer in the Adoption Agreement.

(a) The Provider may, in the Administrator's sole discretion, make loans to Participants under the following circumstances: (1) loans shall be made available to all Participants and Beneficiaries on a reasonably equivalent basis; (2) loans shall bear a reasonable rate of interest; (3) loans shall be adequately secured; and (4) shall provide for periodic repayment over a reasonable period of time.

(b) Loans made pursuant to this Section (when added to the outstanding balance of all other loans made by the Plan to the Participant) shall be limited to the lesser of:

(1) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans from the Plan to the Participant during the one year period ending on the day before the date on which such loan is made, over the outstanding balance of loans from the Plan to the Participant on the date on which such loan was made, or

(2) one-half ($\frac{1}{2}$) of the present value of the non-forfeitable accrued benefit of the Employee under the Plan.

(c) For purposes of this limit, all plans of the Employer shall be considered one plan.

(d) Loans shall provide for level amortization with payments to be made not less frequently than quarterly over a period not to exceed five (5) years. However, loans used to acquire any dwelling unit which, within a reasonable time, is to be used (determined at the time the loan is made) as a principal residence of the Participant shall, provide for periodic repayment over a reasonable period to be determined by the Administrator of time that may exceed five (5) years.

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

(f) Any security interest held by the Plan by reason of an outstanding loan to the Participant shall be taken into account in determining the amount of the death benefit or single lump-sum payment.

(g) A Participant loan program shall be established which must include, but need not be limited to, the following:

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

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

ARTICLE IX

Funding Vehicle and Expenses of Administration

9.1 **Funding Vehicle.** The Employer may establish either a Group Annuity Contract or Trust Fund to hold the Plan assets. The Insurer or Trustee shall hold the Plan assets for use in accordance with the Plan under the Group Annuity Contract or Trust Agreement, respectively. The Group Annuity Contract or Trust Agreement may from time to time be amended in the manner therein provided. Similarly, the Insurer or Trustee may be changed from time to time in the manner provided in the Group Annuity Contract or Trust Agreement.

9.2 **Expenses of Administration.**

(a) (1) The assets held in the Group Annuity Contract or Trust Fund may be used to pay all expenses of the administration of the Plan, including the Insurer's or Trustee's compensation, the compensation of any investment manager, the expense incurred by the Plan Administrator in discharging its duties, all income or other taxes of any kind whatsoever that may be levied or assessed under existing or future laws upon or in respect of the Group Annuity Contract or Trust Agreement, and any interest that may be payable on money borrowed by the Insurer or Trustee for the purpose of the Plan.

(2) The Employer may pay the expenses of the Plan and the Group Annuity Contract or Trust Fund. Any such payment by the Employer shall not be deemed a contribution to this Plan.

(b) Notwithstanding anything contained herein to the contrary, no excise tax or other liability imposed upon the Insurer or Trustee, the Plan Administrator or any other person for failure to comply with the provisions of any federal law shall be subject to payment or reimbursement from the assets of the Plan.

(c) For its services, any Insurer or Trustee shall be entitled to receive reasonable compensation in accordance with its rate schedule in effect from time to time for the handling of assets of the Plan.

ARTICLE X
Amendment and Termination

10.1 **Restrictions on Amendment and Termination of Plan.** The Employer specifically reserves to itself the right at any time, and from time to time, to amend or terminate this Plan in whole or in part; provided, however, that no such amendment:

(a) shall have the effect of vesting in the Employer, directly or indirectly, any interest, ownership or control in any of the present or subsequent funds held subject to the terms of the Group Annuity Contract or Trust Agreement;

(b) shall cause or permit any property held subject to the terms of the Group Annuity Contract or Trust Agreement to be diverted to purposes other than the exclusive benefit of the Participants and their beneficiaries or for the administrative expenses of the Plan Administrator and the Group Annuity Contract or Trust Fund;

(c) shall reduce the then vested interest of a Participant;

(d) shall reduce the Account of any Participant; or

(e) shall increase the duties or liabilities of the Insurer or Trustee without its written consent.

10.2 **Amendment of Plan.** Subject to the limitations stated in Section 10.1, the Employer shall have the power to amend this Plan in any manner that it deems desirable, and, not in limitation but in amplification of the foregoing, it shall have the right to change or modify the method of allocation of contributions hereunder, to change any provision relating to the administration of this Plan and to change any provision relating to the distribution or payment, or both, of any of the assets of the Plan. Such amendments may be applied to existing Participants in the Plan or to new Participants, or both, and may reduce future allocation of contributions even with respect to existing Participants.

10.3 **Merger or Consolidation of Plan.** In the event of a merger or consolidation with, or transfer of assets or liabilities to any other plan, benefits on a termination basis will be no less after the merger, consolidation, or transfer than before the merger, consolidation, or transfer.

10.4 **Termination of Plan.** The Employer, in its sole and absolute discretion, may terminate this Plan, completely or partially, at any time without any liability whatsoever for such complete or partial termination. In any of such events, the affected Participants, notwithstanding any other provisions of this Plan, shall have fully vested interests in the amounts credited to their respective

Accounts at the time of such complete or partial termination of this Plan. All such vested interests shall be nonforfeitable.

10.5 **Termination Procedure.** In the event the Employer decides to terminate this Plan, after payment of all expenses and proportional adjustments of individual Accounts to reflect such expenses and other changes in the value of the Group Annuity Contract or Trust Fund as of the date of termination, each affected Participant (or the beneficiary of any such Participant) shall then be entitled to receive any amount then credited to his Account in accordance with the form of payment prescribed by Article VIII.

10.6 **Initial Qualification of Plan.** Notwithstanding the provisions of Section 10.1, if it is finally determined that the Plan does not qualify under the Code, then, in that event, the Plan shall terminate as of the date of such final determination and the Plan Administrator shall direct the Insurer or Trustee to pay the then aggregate of the balances in the Accounts under the Plan to the appropriate Participants (provided such payment is made within one year after the date of the final determination). The Participants and their beneficiaries shall have no further rights under the Plan, and the Insurer or Trustee shall be discharged of all obligations and duties under the Plan.

ARTICLE XI

Miscellaneous

11.1 **Alienation.** Except to the extent permitted under this Plan and the Adoption Agreement in the case of Plan loans, no Participant or beneficiary of a Participant shall have any right to assign, transfer, appropriate, encumber, commute, anticipate or otherwise alienate his interest in this Plan or any payments to be made thereunder; no benefits, payments, rights or interests of a Participant or beneficiary of a Participant of any kind or nature shall be in any way subject to legal process to levy upon, garnish or attach the same for payment of any claim against the Participant or beneficiary of a Participant; and no Participant or beneficiary of a Participant shall have any right of any kind whatsoever with respect to the Group Annuity Contract or Trust Fund, or any estate or interest therein, or with respect to any other property or right, other than the right to receive such distributions as are lawfully made out of the Group Annuity Contract or Trust Fund, as and when the same respectively are due and payable under the terms of this Plan.

Notwithstanding the foregoing, in accordance with Code Section 414(p)(1) as modified by Code Section 414(p)(11), a Participant's benefit may be the subject of a domestic relations order between the Participant and the alternate payee (as defined in Code Section 414(p)(8)) if the order is determined by the Administrator to be a domestic relations order that would constitute a qualified domestic relations order if the Plan were not a governmental plan. The Administrator shall adopt reasonable procedures to determine the status of domestic relations orders and to administer the distributions thereunder. Distributions may be made immediately to an alternate payee pursuant to a domestic relations order before the date on which the Participant attains the earliest retirement age as defined in Code Section 414(p)(4)(B).

11.2 **Effect of Plan.** This Plan shall not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect that such discharge shall have upon him as a Participant of this Plan.

11.3 **Governing Law.** This Plan shall be administered, construed and enforced according to the state and local laws of the state specified in the Adoption Agreement, except to the extent such laws have been expressly preempted by federal law.

11.4 **Gender and Number.** Throughout this Plan, and whenever appropriate, the masculine gender shall be deemed to include the feminine and neuter; the singular, the plural; and vice versa.

11.5 **Military Service.** Notwithstanding any provision of this plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with Code Section 414(u).

11.6 **Claims Procedures.**

(a) Claims for benefits under the Plan may be made by a Participant or a beneficiary of a Participant on forms supplied by the Plan Administrator. Written notice of the disposition of a claim shall be furnished to the claimant by the Administrator within ninety (90) days after the application is filed with the Administrator, unless special circumstances require an extension of time for processing, in which event action shall be taken as soon as possible, but not later than one hundred eighty (180) days after the application is filed with the Administrator; and, in the event that no action has been taken within such ninety (90) or one hundred eighty (180) day period, the claim shall be deemed to be denied for the purposes of subsection 11.6(b). In the event that the claim is denied, the denial shall be written in a manner calculated to be understood by the claimant and shall include the specific reasons for the denial, specific references to pertinent Plan provisions on which the denial is based, a description of the material information, if any, necessary for the claimant to perfect the claim, an

explanation of why such material information is necessary and an explanation of the claim review procedure.

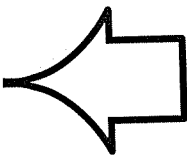
(b) If a claim is denied (either in the form of a written denial or by the failure of the Plan Administrator, within the required time period, to notify the claimant of the action taken), a claimant or his duly authorized representative shall have sixty (60) days after the receipt of such denial to petition the Plan Administrator in writing for a full and fair review of the denial, during which time the claimant or his duly authorized representative shall have the right to review pertinent documents and to submit issues and comments in writing. The Plan Administrator shall promptly review the claim and shall make a decision not later than sixty (60) days after receipt of the request for review, unless special circumstances require an extension of time for processing, in which event a decision shall be rendered as soon as possible, but not later than one hundred twenty (120) days after the receipt of the request for review. If such an extension is required because of special circumstances, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension. The decision of the review shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, with specific references to the Plan provisions on which the decision is based.

IN WITNESS WHEREOF, this Plan has been executed this _____ day of _____, 20__.

By: CITY OF MANITOWOC
EMPLOYER

Justin M. Nickels, Mayor

Jennifer Hudon, City Clerk



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