
FICA ALTERNATIVE RETIREMENT PLAN

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ARTICLE 1

PREAMBLE

- 1.1 **Plan.** The name of this Plan is the City of Manitowoc FICA Alternative Retirement Plan (the "Plan").
- 1.2 **Purpose.** The primary purpose of the Plan is to allow Employees of the Employer to benefit from a deferred compensation plan to enhance their retirement security. The Plan is intended to comply with the requirements of section 457(b) of the Internal Revenue Code of 1986, as amended.

ARTICLE 2

DEFINITIONS

2.1 **Definitions.** The following terms shall have the following meaning, unless a different meaning is clearly required by the context.

- (a) **Account.** "Account" means the record of each Participant's interest in the Trust Fund.
- (b) **Accrued Benefit.** "Accrued Benefit" means the value of the Account maintained on behalf of a Participant as of any given time.
- (c) **Adoption Agreement.** The "Adoption Agreement" means the separate agreement executed by the Employer and the Trustee which specifies information about the Employer and the Employer's selection of optional Plan provisions.
- (d) **Beneficiary.** "Beneficiary" means the person(s) or estate entitled to receive benefits under this Plan after the death of a Participant.
- (e) **Code.** "Code" means the Internal Revenue Code of 1986, as amended, and as interpreted by regulations and rulings.
- (f) **Compensation.** "Compensation" means the total amount of remuneration paid to an Employee for personal services rendered to the Employer for the Plan Year that would be payable to an Employee in the absence of any agreement to defer compensation under the Plan or under any other deferred compensation plan or arrangement of any kind.
- (g) **Disability.** "Disability," unless otherwise uniformly defined by the Plan Administrator in the Adoption Agreement, means that the Plan Administrator has determined that the Participant has satisfied requirements for Social Security Administration disability benefits.
- (h) **Effective Date.** "Effective Date" means the effective date of the Plan specified in the Adoption Agreement.
- (i) **EGTRRA.** "EGTRRA" means the Economic Growth and Tax Relief Reconciliation Act of 2001.
- (j) **Elective Deferral.** "Elective Deferral" means the Compensation, including accumulated sick pay, accumulated vacation pay or back pay, that a Participant defers as provided in the Adoption Agreement. Deferrals shall include any contributions designated as Employee

contributions but paid (picked up) by the Employer pursuant to Section 414(h) of the Code.

- (k) **Eligible Deferred Compensation Plan.** "Eligible Deferred Compensation Plan" means any plan defined in section 457(b) of the Code and includes this Plan.
- (l) **Eligible Employee.** "Eligible Employee" means an Employee who is eligible to participate in the Plan, as provided in the Adoption Agreement.
- (m) **Employee.** "Employee" means any person employed by and performs services for the Employer as a common law employee and who meets the other requirements of the Adoption Agreement. Unless excluded by the Adoption Agreement, Employee shall include Part-Time Employees, Seasonal Employees and Temporary Employees.

Whether an Employee is a Part-Time, Seasonal Employee or Temporary Employee with respect to the Plan shall be based on service in the position with respect to which allocations are earned and shall not take into account services in other positions with the Employer.

- (i) **Part-Time Employee:** "Part-Time Employee" means an Employee who normally works 20 hours or less per week, unless the position is designated as full-time by the Employer, e.g. post-secondary teachers. Elected officials and election workers (otherwise described in Code section 3121(b)(7)(F)(iv), but paid in excess of \$100 annually) shall not be considered Part-Time, Seasonal or Temporary Employees for purposes of the Plan.
 - (ii) **Seasonal Employee:** "Seasonal Employee" means an Employee who normally works on a full-time basis but for less than five months during any Plan Year.
 - (iii) **Temporary Employee.** "Temporary Employee" means an Employee who performs services under a contractual arrangement with the Employer for a duration of normally two years or less, or as designated by the Employer.
- (n) **Employer.** "Employer" means the Employer identified in the Adoption Agreement.
 - (o) **Hour of Service.** "Hour of Service" means:
 - (i) Each hour for which an Employee is paid, or entitled to payment, for the performance of service for the Employer;
 - (ii) Each hour for which an Employee is paid, or entitled to payment by the Employer without the performance of service (regardless of

whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability (as defined in section 6.1)), lay off, jury duty, military duty, or leave of absence (pursuant to this paragraph (2)), no more than 501 Hours of Service will be credited for any single continuous period--whether or not such period occurs in a single Plan Year or other computation period--and 29 C.F.R. section 2530.200b-2 and 3 shall govern the determination of an individual's Hours of Service); and

- (iii) Each hour for which back pay, regardless of any mitigation of damages, is either awarded or agreed to by the Employer.

The same Hours of Service will not be credited pursuant to paragraphs (i) or (ii), as the case may be, and paragraph (iii).

If the Employer does not maintain records of Hours of Service but maintains records and compensates an Employee in relation to other periods of service, that Employee shall accrue the following number of Hours of Service for the following units of time to which his Compensation relates:

UNITS OF TIME	HOURS OF SERVICE
Day	10 hours
Week	45 hours
Semi-monthly	95 hours
Monthly	190 hours

Hours of Service may be determined by any other reasonable, consistent and nondiscriminatory method chosen by the Plan Administrator.

(p) **Includible Compensation.**

- (i) **Pre-EGTRRA Definition.** On or before December 31, 2001, "Includible Compensation" means compensation for services performed for the Employer which is currently includible in gross income as reported on the Employee's federal income tax withholding statement (W-2 Form). In other words, it means Compensation reduced by the following amounts, to the extent such amounts are excludable from gross income: (1) amounts deferred under this Plan or any other Eligible Deferred Compensation Plan under Code Section 457; (2) amounts deferred under any Section 125 cafeteria plan; (3) contributions to a Section 401(k) cash or deferred arrangement; and (4) Employee Contributions to a tax-sheltered annuity plan qualified under Section 403(b). A Participant's Includible Compensation for a

taxable year shall be determined without regard to any community property laws.

- (ii) **EGTRRA Definition.** After December 31, 2001, "Includible Compensation" means Compensation for services performed for the Employer within the meaning of section 415(c)(3) of the Code and any applicable regulations, *i.e.*, gross income. In other words, Includible Compensation includes any Elective Deferral as defined in section 4.02(g)(3) of the Code and deferrals made under a cafeteria plan pursuant to Code section 125, a transportation plan pursuant to Code section 132(f)(4), and deferrals made pursuant to Code section 457. A Participant's Includible Compensation for a taxable year shall be determined without regard to any community property laws.

- (q) **Normal Retirement Age.** "Normal Retirement Age" means the age specified as such in the Adoption Agreement that is on or after the earlier of age 65 or the age at which Participants have the right to retire and receive, under the basic defined benefit pension plan of the Employer, immediate retirement benefits without reduction, and that is not later than age 70-1/2. If the Plan has Participants that include qualified police or firefighters as defined under Code section 415(b)(2)(H)(ii)(I), it may specify in the Adoption Agreement a Normal Retirement Age that is earlier than the specified Normal Retirement Age for other Participants but not earlier than age 40.

- (r) **Normal Retirement Date.** "Normal Retirement Date" means the first day of the calendar month coincident with or next following the Participant's attainment of Normal Retirement Age.

- (s) **Participant.** "Participant" means an Employee who has satisfied the eligibility and participation requirements of the Plan, as specified in the Adoption Agreement. Where appropriate, the term "Participant" shall also include any former Participant who has not yet received distribution of his or her Account.

- (t) **Plan.** "Plan" means this FICA Alternative Plan, as stated in this document and as amended from time to time.

- (u) **Plan Administrator.** "Plan Administrator" means the Employer, a person or Administrative Committee appointed by the Employer, as determined by the Adoption Agreement, who shall control and manage the operation and administration of the Plan.

- (v) **Plan Year.** "Plan Year" means the twelve-month period selected in the Adoption Agreement, except that the initial Plan Year shall begin on the Effective Date.

- (w) **Qualified Domestic Relations Order.** "Qualified Domestic Relations Order" ("QDRO") means a judgment, decree or other order made pursuant to a state domestic relations law which creates or assigns a right to an alternate payee, such as a dependent child, spouse, former spouse, or other dependent of the Participant, of all or a portion of the benefits payable to a Participant under the Plan.
- (x) **Termination of Service.** "Termination of Service" shall mean the Participant's permanent severance of employment with the Employer, within the meaning of Code section 457(d)(1)(A)(ii), for any reason.
- (y) **Trust Fund.** "Trust Fund" means the assets of the Plan held in trust by a Trustee, the assets of the Plan that consist of insurance contracts or policies issued by an insurance company and/or assets of the Plan held in custodial accounts pursuant to the requirement of section 457(g) of the Code.
- (z) **Trustee.** The "Trustee" means any person or persons or entity named in the Adoption Agreement and any successor(s) to the Trustee.
- (aa) **USERRA.** "USERRA" means the Uniformed Services Employment and Reemployment Rights Act of 1994. Benefits and service credit with respect to qualified military services will be provided as required by law.

2.2 **Construction.** Headings of articles, sections and subsections are for reference only; they are not to be considered in constructing the Plan. All references to statutory sections shall include the section so identified, as amended from time to time.

ARTICLE 3
PARTICIPATION

- 3.1 Eligibility Requirements.** An Employee eligible to participate in the Plan is any Employee identified as an Eligible Employer in the Adoption Agreement.
- 3.2 Participation.** An Eligible Employee participates in this Plan on the first day of employment.

ARTICLE 4

PLAN CONTRIBUTIONS

4.1 **Trust Fund.** All benefits provided under this Plan shall be paid from a Trust Fund as established in Article 7.

4.2 **Deferral of Compensation.** The Employer shall transfer, or otherwise credit to the account of each Participant, all deferrals made by such Participant as soon as practicable after the date on which such deferral would otherwise have been paid in cash and in no event more than ninety (90) days after such date. All other contributions shall be allocated or credited to each Participant as of a date not later than the last day of each Plan Year. Such deferrals and contributions shall be credited with earnings or losses from such date of allocation if they are not transferred to a trust or otherwise segregated. To the extent that deferrals and contributions are so segregated, earnings and losses shall be determined by the actual experience of the trust, annuity contract, or account to which they are transferred.

All Employee deferrals shall be fully vested.

4.3 **Maximum Limit on Annual Deferrals.**

- (a) **Pre-EGTRRA Limit.** Except as otherwise provided in this paragraph, on or before December 31, 2001, the maximum limit for annual deferrals for any Participant for any taxable year shall not exceed the lesser of \$7,500 (or such greater dollar amount adjusted for the cost-of-living in accordance with Section 457 of the Code for calendar years beginning after December 31, 1996) or 33-1/3 percent of the Participant's Includible Compensation (as defined before the adoption of EGTRRA) for the taxable year.
- (b) **EGTRRA Limit.** Except as otherwise provided in this paragraph, after December 31, 2001, the maximum limit for annual deferrals for any Participant for any taxable year shall not exceed the lesser of the Applicable Dollar Amount or 100% of the Participant's Includible Compensation (as defined under EGTRRA) for the taxable year. For the purposes of this section, the "Applicable Dollar Amount" is, for taxable years beginning in calendar year 2002, \$11,000; for taxable years beginning in calendar year 2003, \$12,000; for taxable years beginning in calendar year 2004, \$13,000; for taxable years beginning in calendar year 2005, \$14,000; or for taxable years beginning in calendar year 2006 or thereafter, \$15,000 or such greater dollar amount as adjusted for cost of

living increases in accordance with Code section 457(e)(15). Rollover contributions and plan-to-plan transfers will not be taken into account when determining the maximum limit under this paragraph.

- 4.4 Coordination with Other Plans.** If a Participant participates in more than one Eligible Deferred Compensation Plan, the total deferral shall be subject to the limitations specified in this section.

ARTICLE 5
DISTRIBUTIONS

5.1 Conditions for Distribution. Payments from the Plan to the Participant or Beneficiary shall be made according to the Adoption Agreement only upon one or more of the following events:

- (a) The Participant's Termination of Service;
- (b) The Participant's attainment of age 70-1/2 after Termination of Service or as otherwise provided in the Adoption Agreement;
- (c) The Participant's death (survivor benefits) or disability (disability benefits).

In addition to any other provisions of the Plan and Adoption Agreement, any distribution shall conform to the applicable requirements of the Code section 457(d), Code section 401(a)(9) and its regulations as they may be amended from time to time.

5.2 Termination of Service.

- (a) **Retirement Distribution.** Upon Termination of Service, the Participant shall be entitled to receive his or her Account under any payment option that satisfies the provisions of the Plan as described in section 5.3 of the Plan.
- (b) **Election of Benefit Commencement Date.** At any time after the date of his or her Termination of Service (and not later than his or her required beginning date, as specified in section 5.2(e) of the Plan), the Participant may elect to receive payment of his or her Account in one of the available payment options. Payment shall begin as soon as administratively practicable after the election.
- (c) **Default Benefit Commencement Date.** If the Participant does not elect otherwise, the Participant shall receive payment of his or her Account in an Annuity as described in section 5.3(b) of the Plan on the date that is necessary to satisfy the requirements of section 5.2(e) of the Plan below, i.e., the required beginning date.
- (d) **Change in Distribution Form.** After payment of a Participant's Account has begun, the Participant shall have the right to change his or her form of benefit (including the right to suspend payment of his or her Account), but

only to the extent allowed under the applicable investment product, the payment options as described in section 5.3 of the Plan, the Adoption Agreement and Code section 401(a)(9) and its regulations as they may be amended from time to time.

- (e) **Required Beginning Date.** Consistent with the requirements of Code section 401(a)(9)(C), a Retirement Distribution shall begin not later than April 1 of the Year following the Year during which the Participant attains age 70-1/2, or following the year during which the Participant has a Termination of Service, whichever occurs later.
- (f) **Required Distribution Amounts.** Any retirement distribution shall be made according to a payment option that complies with Code sections 457(d) and 401(a)(9) and its regulations as they may be amended from time to time.

5.3 Payment Options for Retirement and Disability Benefits. Except in the event of the Participant's death, the full amount credited to the Participant's Account (including the earnings and net gain or loss), less any federal or state income tax required to be withheld, shall be distributed as instructed by the Participant, under one of the following payment options as they shall be amended from time to time:

- (a) **Annuity Starting Date.** The "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 entitle the Participant to such benefit. In the case of a benefit which is paid due to the disability of the Participant, the Annuity Starting Date shall be the first day of the first period in which a benefit is to be received by Participant by reason of such disability.

The provisions of this section shall apply only if the Participant does not die prior to his Annuity Starting Date.

- (b) **Annuity.** Unless the Participant elects a lump-sum payment pursuant to paragraph (c) of this section or is required to take a lump-sum payment pursuant to paragraph (c) of this section, the Plan Administrator shall transfer the full amount credited to the Participant's Account to an insurance carrier or annuity Employer selected by it, for the purchase of a single premium annuity on behalf of such Participant.
- (c) **Lump-Sum Payment.** A Participant may elect to receive his or her benefit in the form of a single cash payment. If provided in the Adoption Agreement, the Plan may require a mandatory lump-sum payment for Accounts not exceeding the dollar limit under Code section 411(a)(11)(A) without regard to rollover amounts, if the payments of benefits has not already commenced.

5.4 Application for Plan Benefits. When a Participant or Beneficiary desires to receive or commence a distribution under the Plan, he or she may file an application for distribution with the Plan Administrator. The application shall be in a form provided by or available from the Plan Administrator and shall indicate the form of payment the applicant prefers. The application will be acted upon by the Plan Administrator in accordance with Article 9 of the Plan.

5.5 Direct Rollover to Another Eligible Plan.

- (a) **Right to a Direct Rollover.** Within 30 days of being notified of the right to a direct rollover, a Distributee (including a surviving spouse) may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan in a direct rollover. A lump-sum rollover must be at least \$200. If a Distributee elects a direct rollover as to only a portion of his or her distributable Account, the amount to be paid in a direct rollover must equal at least \$500. Notice of a Distributee's right to a direct rollover shall be provided in accordance with Code section 402(f) no more than 90 days before the date of distribution. Failure to elect a direct rollover within 30 days from the date the notice is provided to the Distributee shall be deemed an election not to make a direct rollover.

The terms used in this subsection shall have the following meaning:

- (b) **Eligible Rollover Distribution.** Subject to section 5.6(a), 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: (1) 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; (2) any distribution to the extent such distribution is required under Code section 401(a)(9); (3) the portion of any distribution that is not includible in gross income; or (4) any distribution made upon hardship of the Distributee.
- (c) **Eligible Retirement Plan.** 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), an Eligible Deferred Compensation Plan described in Code section 457(b) which is maintained by an eligible governmental employer described in Code section 457(e)(1)(A) that will maintain a separate account for the rollover distribution or an annuity contract described in Code section 403(b).

- (d) **Distributee**. A Distributee, for purposes of this subsection, 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 Code section 414(p), are Distributees with regard to the interest of the spouse or former spouse.
- (e) **Direct Rollover**. Payment by the Plan to the eligible retirement plan specified by the Distributee that accepts the Distributee's rollover distribution.

5.6 Plan-to-Plan Transfer. Consistent with Code section 457(e)(10), a Participant may elect (in the forms prescribed by the Plan Administrator) to transfer his or her Account and his or her right in and to the Plan to another Eligible Deferred Compensation Plan of a state, political subdivision of a state or an agency or an instrumentality of a state or political subdivision of a state, provided that the Plan Administrator is satisfied that the other plan will accept the transferred amount and obligation.

5.7 Transfer to Purchase Permissive Service Credit. Consistent with Code section 457(e)(17), and to the extent allowed by the receiving defined benefit governmental plan, a Participant may elect to transfer any portion of his or her Account to a defined benefit plan sponsored by the Employer to purchase "permissive service credit," as that term is defined in Code section 415(n)(3)(A), if provided in the Adoption Agreement. Under this section, a Transfer to Purchase Permissive Service Credit does not violate the distribution requirements of section 457(b), even if transfer is made before a severance from employment.

ARTICLE 6

SURVIVOR BENEFITS

6.1 Payment Options for Spousal and Non-Spousal Beneficiaries.

Notwithstanding any provision of this Plan to the contrary, the following distribution options shall comply with sections 457(d) and 401(a)(9) of the Code and its regulations, as they may be amended from time to time.

(a) Survivor Annuity.

- (i) Spousal Beneficiaries. Unless a lump-sum payment is elected or required in accordance with paragraph (b), the surviving spouse of a Participant shall receive a survivor benefit in the form of a Survivor Annuity for the life of the Participant's spouse if (1) the Participant dies before his Annuity Starting Date, as defined in section 5.3(a) of the Plan; (2) the Participant was married on his date of death; and (3) the Participant's Accrued Benefit balance is in excess of the minimum amount designated in the Adoption Agreement.
- (ii) Non-Spousal Beneficiaries. A Participant may designate one or more Beneficiaries to receive a survivor benefit in lieu of the Participant's spouse.

(b) Lump-Sum Payment.

- (i) Mandatory Lump-Sum Payments for Small Accounts. If the present value of the Participant's Vested Accrued Benefit (including amounts which become Vested at his death) is not in excess of the amount designated under section 4.11(a)(11)(A) of the Code, disregarding rollover amounts, the Plan Administrator may pay such benefit in a single lump sum payment without obtaining the consent of the Participant, if provided in the Adoption Agreement and if the payment of benefits has not already commenced.
- (ii) Lump-Sum Election. A Participant may elect to provide his Benefit to his or her spouse or non-spousal Beneficiary(s) under this section in the form of a single cash payment. An election for a lump sum distribution under this paragraph may be made by the Participant prior to his death or by his or her Beneficiary at any time prior to the date payments commence.

6.2 Commencement of Survivor Benefit.

- (a) **Spousal Beneficiary.** If a survivor benefit is payable under section 6.1(a)(i) to a surviving spouse, the distribution of such benefit shall begin, if requested by such spouse, as soon as possible after the Participant's death and the allocation to his Account of any amounts to which he or she may be entitled for the Plan Year in which such death occurs. The Participant's surviving spouse may request that payment be delayed until a date not later than December 31 of the calendar year in which the Participant would have attained 70-1/2. Such distribution shall be made over the life of such spouse or over a period not extending beyond the spouse's life expectancy.
- (b) **Non-Spousal Beneficiary.** If a benefit is payable under section 6.1(a)(ii) to a Beneficiary other than the Participant's surviving spouse, such benefit shall be distributed over the life expectancy of such Beneficiary (or, if there shall be more than one Beneficiary, over the life of the Beneficiary with the shortest life expectancy), unless such benefit is paid in a lump sum. Any such distribution shall be paid or payment commenced not later than December 31 of the calendar year immediately following the Participant's death.
- (c) **No Beneficiary.** If a Participant dies before the distribution of his or her interest has begun and without naming any Beneficiary who survives the Participant, such Participant's Benefits shall be distributed on or before December 31 of the calendar year which includes the fifth anniversary of the death of the Participant.
- (d) **Change in Distribution Form.** If provided in the Adoption Agreement, once the payment of a Beneficiary's Account has commenced, the Beneficiary shall have the right to change his or her form of benefit (including the right to suspend payment of his or her Account), but only to the extent allowed under the applicable Investment Contract, the Payment Option and Code section 401(a)(9).

ARTICLE 7

FUNDING AND TRUST

7.1 **Compliance with Applicable Law.**

- (a) The following sections of this Article provide for the establishment of a Trust to hold any deferrals made by Participants, contributions made by the Employer, and any earnings if the Trust election has been designated under the Adoption Agreement. It shall be the responsibility of the Employer to determine whether such conditions are met at any time during the existence of the Plan.
- (b) If no Trust is utilized at any time under the Plan, then for the duration of such Plan, all assets of the Plan shall be held directly by the Employer. Any power, right or authority of the Trustee relating to the maintenance of the Trust or Trust Fund shall be deemed to be possessed by the Employer, but the Employer's powers shall not be limited to those available to a trustee under the applicable law. However, the Employer may delegate to the Plan Administrator all or a portion of its duties assumed under this Article.

7.2 **Acceptance of Trust.** The Trustee named in the Adoption Agreement is hereby appointed as the Trustee of the Trust, to take, hold, invest, administer, and distribute the Trust Fund in accordance with the provisions of the Plan and Trust effective as of the date hereof, and such Trustee hereby accepts such appointment in accordance with the terms of this Trust as of the date hereof. No duties or obligations shall be imposed upon the Trustee with respect to the Trust Fund unless they have been specifically undertaken by the Trustee by the express terms of this Trust.

7.3 **Receipt of Money and Other Assets.**

- (a) The Trustee shall receive such sums of money and other assets as are paid, or transferred to it by the Employer or Participants, or which are received as income from investments of the Trust Fund in accordance with the provisions of this Trust. The Trustee shall be under no duty to compute the amount of any contribution to be paid to it by the Employer or any Participant, to collect such amount, or to compute the amount which Participants are entitled to receive as benefits under the Plan, but shall be responsible only for property received by it pursuant to this Trust.

- (b) Subject to Section 7.04, if applicable, the Trustee shall invest and reinvest the principal and income of the Trust Fund in such securities or in such other property, real or personal, tangible or intangible, as the Trustee shall deem advisable, provided, however, that investments shall be so diversified as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so in the sole judgment of the Trustee.
- (c) The Trustee shall retain the funds received and invested by it and all increments and profits thereon until such time as it shall, from time to time, receive written directions from the Plan Administrator, directing it to make disposition of any portion of the Trust Fund.

At such time the Trustee shall make the disbursement or payment directed by the Plan Administrator. Unless otherwise agreed, the Plan Administrator, not the Trustee, shall maintain accounts or other appropriate records showing the interest of each Participant in the Plan.

- 7.4 **Valuation of Assets.** As of the last day of each Plan Year, and at such other times as the Plan Administrator shall direct or the Trustee shall deem necessary or desirable, the Trustee shall ascertain the fair market value of the accounts as of such day, and, within sixty (60) days thereafter, such valuation shall be certified to the Plan Administrator.
- 7.5 **Report of Trustee.** Not later than ninety (90) days after the last day of each Plan Year, and not later than ninety (90) days following the termination of the Plan or the Trust, the Trustee shall render a detailed accounting of its transactions to the Plan Administrator, to the extent such deadlines are administratively feasible. Each such accounting shall set forth all investments, receipts, disbursements, and other transactions effected by the Trustee during such Plan Year or during the period from the closing date of such last preceding accounting to the date of the termination of the Plan or Trust. As a part of each such accounting, the Trustee shall (1) set forth in summary form the receipts and disbursements of the Trustee for the applicable accounting period; (2) include a description and the cost and proceeds of sale of all securities and other property purchased or sold during the period; and (3) itemize all money, securities, real property, insurance policies, and any other assets held in the Trust Fund at the end of such period. In the absence of notice to the Trustee by the Plan Administrator of any objections to any such accounting or part thereof within ninety (90) days after its receipt, the Plan Administrator shall be deemed to have approved the accounting.
- 7.6 **Powers of the Trustee.** The Trustee shall have all of the powers, rights and privileges conferred upon, and granted to, Trustees under the trust laws of the state in which the Employer is located. Without limiting the generality of the foregoing, the Trustee shall be authorized to buy and sell property on such terms as it deems advisable, to enter into contracts and leases, to borrow money and to

mortgage or pledge any Trust property, to employ agents, to engage in litigation as plaintiff or defendant, to exercise all rights of ownership of stock owned by the Trust and to pay any expenses or assessments against the Trust or its property.

- 7.7 **Multiple Trustees.** If there shall be more than one Trustee, a majority of the Trustees shall control. Such Trustees may, however, allocate the responsibility for management of the Trust among themselves in such manner as they desire. Any such allocation of responsibility shall be evidenced by a written resolution of the Trustees.
- 7.8 **Dealings with the Trustee.** No person purchasing from the Trustee or paying money or delivering property to the Trustee, or having any other transaction with the Trustee, shall be obligated to see that the money or other thing of value received by the Trustee is actually needed or properly applied or otherwise as to the proprieties or expediencies of any act of the Trustee.
- 7.9 **Compensation of the Trustee.** The Trustee shall be entitled to reasonable compensation for its services in administering and distributing the Trust Fund (unless such Trustee is an employee of the Employer) and to reimbursement for expenses. It is the Employer's intention to pay the Trustee for all expenses. However, until the Trustee receives payment from the Employer, it may retain out of the monies belonging to the Trust reasonable compensation for its services and reimbursement for expenses.
- 7.10 **Indemnification of the Trustee.** The Employer shall indemnify and hold harmless the Trustee from any liability, claim, expense, or damages which the Trustee incurs by reason of, or which results in whole or in part from, the Trustee's reliance on any facts or any directions and elections communicated in writing by the Employer or the Plan Administrator, or from the failure of the Employer or the Plan Administrator to communicate any facts, directions and/or elections under the Plan, or any changes therein required to be given by the Plan Administrator to the Trustee under the provisions of the Plan or the Trust.
- 7.11 **Resignation and Removal of Trustee.** The Employer may remove the Trustee at any time by giving thirty (30) days written notice to the Trustee, and the Trustee may resign at any time, by giving thirty (30) days written notice to the Employer, or such shorter notice as may be acceptable to the Employer. On resignation of a Trustee, a successor Trustee shall be named by the Employer.
- 7.12 **Protective Clause.** Neither the Employer, the Trustee nor the Plan Administrator shall be responsible for the validity of any contract of insurance issued in connection with the Plan or Trust or for the failure on the part of the insurer to make payments provided by such contract, or for the action of any person which may delay payment or render a contract null and void or unenforceable in whole or in part.

7.13 Inclusion by Reference. If anything in this Article 7 conflicts with Code section 457(g), or any interpretive rules, regulations or other announcements by the Department of Treasury, this Article 7 shall be interpreted as including such other rules by reference. Nothing in this Article 7 shall be allowed to conflict with Code section 457(g).

ARTICLE 8

PLAN ADMINISTRATION

- 8.1 Appointment of Plan Administrator.** The Employer may appoint a Plan Administrator consisting of one or more persons to carry out the daily management of the Plan. A Plan Administrator consisting of more than one person is called an Administrative Committee. Any person, including, but not limited to, Employees of the Employer, shall be eligible to serve as Plan Administrator. A Plan Administrator who is an employee of the Employer shall not be compensated beyond his or her regular compensation as an Employee of the Employer. If the Employer fails to appoint a Plan Administrator, the Employer shall serve as the Plan Administrator.

The Plan Administrator shall act on behalf of the Employer in all matters relating to the administration of the Plan. The Plan Administrator shall have supervisory authority and shall be responsible for all discretionary decisions in the administration of the Plan. Decisions of and actions by the Plan Administrator shall be conclusive and binding to all persons. The expenses incurred by the Plan Administrator in the proper administration of the Plan shall be paid by the Employer. The Employer may charge such expense against the Accounts in a manner it deems equitable.

The Plan Administrator shall:

- (a) establish procedural rules and regulations facilitating operation of the Plan;
- (b) adopt, amend, or revoke rules, regulations and the Plan document for proper administration of the Plan;
- (c) determine all questions which arise out of interpretation or application of Plan provisions or the rules and regulations established for its administration;
- (d) review periodically the condition of any Plan investments and make changes in investment vehicles and alternatives as deemed appropriate;
- (e) require any person to furnish any information as it may request for the purpose of the proper administration of the Plan as a condition to receiving any benefit under the Plan;

- (f) provide the Participants with all information and reports required by the Plan or by law, including at least annually to each Participant a statement of his or her Account as of the close of the preceding Plan Year;
- (g) establish and deduct appropriate Participant fee(s), annual maintenance fee, and/or other charges against a Participant's account to defray the reasonable and appropriate expenses of administering the Plan;
- (h) employ accountants, counsel or other persons as it deems necessary or beneficial in connection with Plan administration; and
- (i) determine if a domestic relations order with respect to a Participant's Account constitutes a qualified domestic relations order as defined in Code section 414(p).

8.2 Administrative Committee Procedures. If the Plan Administrator is an Administrative Committee, it shall act by a majority of its members at the time in office, either by vote at a meeting or in writing without a meeting. The Administrative Committee may authorize any one or more of its members to execute any document or documents on behalf of the Administrative Committee, in which event the Administrative Committee shall notify the Trustee of the member or members so designated. The Trustee shall accept and rely upon any document executed by such member or members as representing action by the Administrative Committee until the Administrative Committee shall file with the Trustee a written revocation of such designation.

8.3 Records and Notices. The Plan Administrator shall keep a record of all its proceedings and acts and shall maintain all such books of accounts, records and other data as may be necessary for proper Plan administration. The Plan Administrator shall notify the Trustee of any action taken by the Plan Administrator which affects the Trustee's Plan obligations or rights and, when required, shall notify any other interested parties.

8.4 Investment Manager or Investment Committee. If an Investment Manager and/or Investment Committee is appointed by the Employer, such Investment Manager or Investment Committee shall serve at the satisfaction of the Employer, except that any such appointee may resign at any time. No member of any Investment Committee shall receive any Compensation for services, but shall be reimbursed for expenses reasonably incurred in the performance of its duties. The appointment of such Investment Committee or Investment Manager shall not affect the status of the deferrals made by Participants as assets of the Employer.

Any such Investment Manager or Investment Committee shall be the named fiduciary for asset management and control and at all times have the responsibility for investment decisions involving the acquisition and disposition of assets over which it exercises discretionary investment authority. An Investment Committee

may, at the request of the Employer, assist the Employer in evaluating the performance of the Trustee.

- 8.5 Indemnification.** The Employer shall indemnify the Plan Administrator, each agent of the Plan Administrator and each other fiduciary with respect to the Plan from all expenses and liabilities arising from any act or omission, to the extent required by the Employer's bylaws, court decision or individual agreement with such fiduciary, but not in any event when the same is judicially determined to be due to the gross negligence, willful misconduct or fraud of such member. The Employer may purchase insurance to the extent deemed appropriate in connection with such indemnification.

ARTICLE 9

BENEFIT CLAIMS PROCEDURES

- 9.1 **Claim Procedures.** Any Participant or Beneficiary under the Plan may file a written claim for a Plan benefit with the Plan Administrator or with a person named by the Plan Administrator to receive claims under the Plan.
- 9.2 **Notice of Claim Denial.** If any claim for Benefits is denied, the Plan Administrator shall notify the claimant in writing. The notice of the denial of Benefits shall state the specific reason for such denial and cite any applicable provisions of the Plan upon which the denial is based. If the claim can be perfected, the Plan Administrator shall request such information and state the reason for requesting such additional information in the notice to the claimant. The claimant shall be entitled to appeal the decision to the Plan Administrator for a period of sixty (60) days after receipt of the notification of denial. The claimant shall be advised that the failure to perfect and appeal within the sixty (60) day period shall make the Plan Administrator's decision conclusive. The Plan Administrator shall furnish the claimant or his personal representative any Plan information needed to perfect the claimant's appeal.

ARTICLE 10

AMENDMENT AND TERMINATION

- 10.1 Amendment.** The Employer shall have the right to amend this Plan, at any time and from time to time, in whole or in part, without the consent of Participants or Beneficiaries, provided no amendment shall impair the rights of Participants or Beneficiaries with respect to deferred compensation before amendment or modification. The Employer shall notify each Participant in writing of any material Plan amendment.
- 10.2 Termination.** Although the Employer has established this Plan with the intent to maintain the Plan indefinitely, the Employer may terminate or discontinue the Plan in whole or in part at any time. Upon termination of the Plan, the Employer reserves the right to make distributions to Participants at such time and in such manner as the Employer may deem advisable, provided such payment would not contravene the terms of section 457(b) of the Code, or any of its regulations, as they may be amended from time to time.

ARTICLE 11

MISCELLANEOUS

- 11.1 **Limitation of Rights and Employment Relationship.** The Plan shall not be construed as giving a Participant or other person any legal or equitable right against the Employer except as provided in the Plan. This Plan shall not give any Participant the right to continued employment with the Employer or otherwise limit the rights of the Employer.
- 11.2 **Limitation on Assignment.** Benefits under this Plan may not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge or encumbrance. Any attempt to do so shall be void. Plan benefits shall not be subject to or liable for the debts, contracts, liabilities, engagements or torts of the Participant or his or her Beneficiaries.
- 11.3 **Qualified Domestic Relations Orders ("QDRO").** Upon receipt of a domestic relations order issued by a court or administrative agency of competent jurisdiction relating to a Participant's Account in the Plan, the Plan Administrator shall determine whether such domestic relations order constitutes a qualified domestic relations order as defined in Code section 414(p). The Plan Administrator shall establish reasonable procedures to determine the qualified status of a domestic relations order and to administer distributions mandated by a QDRO. Such procedures may include, on a uniform and nondiscriminatory basis, rules providing for the distribution of nonforfeitable benefits to the alternate payee at an earlier time than benefits might otherwise be available to the Participant. However, such procedures may not permit distribution be made to the alternate payee in a payment form not otherwise available under the Plan. Distributions to the alternate payee may be made in any form available to the Participant under the Plan, other than a qualified joint and survivor annuity with a subsequent spouse of the alternate payee.

Payments made to an alternate payee under the terms of a QDRO will not cause the Plan to violate restrictions on distributions if QDRO requirements are met. Tax treatment of distributions under the terms of a QDRO are subject to the requirements of section 414(p)(12) of the Code.

11.4 Unclaimed Benefits. If a payee cannot be located, the Plan Administrator shall delay payment for the time provided under the unclaimed property law of the Employer's state. Upon the expiration of that time, the Plan Administrator shall pay over any amount as directed by law.

11.5 Dispute as to Proper Payee. If a dispute arises as to the proper payee of any payment(s), the Plan Administrator, in its sole discretion may withhold or cause to withhold any payment(s) until the dispute is finally determined by a court of competent jurisdiction or is settled by all parties concerned.

11.6 Plan Merger or Transfer of Assets. This Plan may be merged or consolidated with, or some or all of the assets of the Plan transferred to any other Eligible Deferred Compensation Plan of a state, political subdivision of a state or an agency or an instrumentality of a state or political subdivision of a state maintained for the benefit of some or all of the Participants. Such merger, consolidation or transfer of assets may be authorized by resolutions adopted by the Trustees or the Employer, provided, however, that at the time of such transfer, each Participant shall be entitled to receive a benefit immediately after the merger, consolidation or transfer which is at least equal to the benefit the Participant would have been entitled to receive immediately before the merger, consolidation or transfer if the Plan had been then terminated.

The Plan Administrator may agree to accept transfers to this Plan from any other Eligible Deferred Compensation Plan of a state, political subdivision of a state or an agency or an instrumentality of a state or political subdivision of a state in connection with a merger or consolidation of such plans or a direct transfer of assets from such plans. The Plan Administrator may also provide for the establishment of separate Accounts or records for such amounts if it deems such Account to be necessary or expedient.

11.7 Severability. If any provision of this Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining provisions of the Plan. The provision shall be fully severable and the Plan shall be construed and enforced as if the illegal or invalid provision had never been inserted within the Plan.

11.8 Governing Law. The validity, construction, and effect of this Plan and its enforcement shall be determined by the laws of the state in which the Employer is located.

11.9 Binding Effect. The provisions of this Plan shall be binding upon each Participant and each Beneficiary or other person entitled to any Benefits under the Plan, their heirs, personal representatives, and assigns.