

# LEBANON CITY COUNCIL AGENDA

January 13, 2016 (6:00 p.m.)

Santiam Travel Station  
750 3rd Street, Lebanon, Oregon

Mayor Paul Aziz

Council President Bob Elliott  
Councilor Robert Furlow

Councilor Jason Bolen  
Councilor Rebecca Grizzle

Councilor Floyd Fisher  
Councilor Wayne Rieskamp

## MISSION STATEMENT

*The City of Lebanon is dedicated to providing exceptional services and opportunities that enhance the quality of life for present and future members of the community.*

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## CALL TO ORDER / FLAG SALUTE

## ROLL CALL

## APPROVAL OF COUNCIL MINUTES: December 9, 2015 Regular Session Minutes

**CONSENT CALENDAR:** *The following item(s) are considered routine and will be enacted by one motion. There will not be a separate discussion of these items unless a Councilor so requests. In this case, the item(s) will be removed from the Consent Calendar and considered separately.*

<b>AGENDA:</b>	Lebanon City Council Agenda – January 13, 2016
<b>APPOINTMENTS:</b>	Budget Committee – Virginia Cloyd (Ward 2)
<b>BOARD MINUTES:</b>	Senior Advisory Committee – June 17, 2015
<b>EASEMENTS:</b>	Easement Agreement and ROW Easement Agreement with Robert & Michelle Egner for a Trail Segment

**PUBLIC COMMENTS:** *The Council welcomes all respectful comments regarding the City's business. Citizens may address the Council by approaching the microphone, signing in, and stating their name and address for the record. Each citizen is provided up to 5 minutes to provide comments to the Council. The Council may take an additional two minutes to respond. The City Clerk will accept and distribute written comments at a speaker's request.*

## REGULAR SESSION:

### 1) **Enterprise Zone Boundary Expansion**

Presented by: Gary Marks, City Manager

*Approval/Denial by RESOLUTION NO. 2016-1*

**2) Amending and Restatement of the VALIC Special Pay Plan**

Presented by: Dean Baugh, Finance Director

*Approval/Denial by RESOLUTION NO. 2016-2*

**3) Parks SDC Update**

Presented by: Ron Whitlatch, Engineering Services Director

*Approval/Denial by ORDINANCE BILL NO. 2016-1, ORDINANCE NO. 2870*

**4) Setting Fees for Medical Marijuana Facilities**

Presented by: Walt Wendolowski, Community Development Director

*Approval/Denial by RESOLUTION NO. 2016-3*

**5) Regulating Roadside Vendors (including Food Vendors)**

Presented by: Walt Wendolowski, Community Development Director

*Discussion*

**6) City Logo Discussion**

Presented by: Gary Marks, City Manager

*Discussion*

**7) City Manager's Report**

Presented by: Gary Marks, City Manager

*Discussion*

**ITEMS FROM COUNCIL**

**PUBLIC COMMENTS:** *An opportunity for citizens to comment on items of city business.*

**ITEMS FROM PRESS:** *An opportunity for the Press to ask questions pertaining to city business.*

**EXECUTIVE SESSION:** *Executive Sessions are closed to the public due to the highly confidential nature of the subject. It is unlawful to discuss anything outside of the Executive Session. Final action/decisions are to be made in open session.*

*Per ORS 192.660(2)(h) To consult with counsel concerning the legal rights and duties of the public body with regard to litigation or litigation likely to be filed.*

**REGULAR SESSION:** *Council may reconvene into open session should action be required.*

**ADJOURNMENT**

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**NEXT SCHEDULED COUNCIL MEETING(S)**

- February 10, 2016 (6 p.m.) Regular Session
- March 9, 2016 (6 p.m.) Regular Session



# *Approval of Minutes*

**LEBANON CITY COUNCIL**  
**MINUTES – DRAFT**  
**December 9, 2015**

**Council Present:** Council President Bob Elliott and Councilors Jason Bolen, Robert Furlow, Rebecca Grizzle and Wayne Rieskamp

**Staff Present:** City Attorney Tré Kennedy, City Manager Gary Marks, City Clerk Linda Kaser, Police Chief Frank Stevenson, Finance Director Dean Baugh and Community Development Director Walt Wendolowski

**CALL TO ORDER:** Council President Elliott called the Regular Session of the Lebanon City Council to order at 6:00 p.m. in the Santiam Travel Station Board Room.

**ROLL CALL:** Roll call was taken with Mayor Aziz and Councilor Fisher absent.

**APPROVAL OF CITY COUNCIL MINUTES**

*Councilor Grizzle moved, Councilor Bolen seconded, to approve the November 18, 2015 Noon Session Minutes as presented. The motion passed unanimously.*

**CONSENT CALENDAR**

***AGENDA:*** City of Lebanon Council Agenda – December 9, 2015  
***BOARD MINUTES:*** Library Advisory Board – October 13, 2015  
***LIQUOR LICENSE:*** Misty Meadows Winery, Inc. – New Outlet/Winery

*Councilor Rieskamp moved, Councilor Furlow seconded, to approve the Consent Calendar as presented. The motion passed unanimously.*

**PUBLIC COMMENTS**

Mark Borntrager, 500 Mayer Drive, submitted a letter discussing the increase in the homeless at Lebanon Plaza over the last year and a half. He spoke as a concerned citizen and from a business standpoint on behalf of his wife (who owns Marla's Décor & More), Bi-Mart, the nail salon, liquor store and Radio Shack because it is hurting business.

There is a group of homeless who loiter in the corner of the Plaza and are unruly, obnoxious and many times drunk. He is concerned for the safety of his wife, daughter and their customers. Problems they have encountered are: frightened customers, bike riding on walkways, drugs and shoplifting. He is not against the homeless; he and his family care about and do a lot for the community. There are some who are in need, but he feels that some take advantage of them and the system. His opinion is that while not all, most homeless are on drugs or alcohol. Business owners have contacted Commercial Investment Properties of Eugene who has provided security through the end of December, but he does not feel that security is the answer.

City Manager Marks stated that he is hopeful and believes there are solutions. Panhandling is a protected Constitutional right, but some of the peripheral activities (bike riding on walkways, smoking or harassment) can be used as a means to correct the problem.

Police Chief Stevenson stated that he invited the property management company, along with the tenants, to participate in a discussion about what steps can legally be taken to address the problem, but he has not yet received a response from Commercial Investment Properties. Marks stated that the Plaza and business owners need to make rules and regulations that can assist the police with enforcement.

Mr. Borntrager shared some hearsay and wondered if some business owners may be saying things that contribute to the problem.

Councilor Bolen commented that even if the Plaza's problem is resolved, it will just move to another area. The City has been trying to come up with solutions that are global to the City and not to specific properties. Lebanon does have a homeless problem, but panhandling is a separate issue. No citizen should feel fear, intimidation, or be potentially assaulted by someone who could possibly be under the influence of intoxicants. He applauded the property owner north of Walgreens who proactively cleared all of the brush to make the area more visible for police. Panhandling is a First Amendment right but the City can do its best to make this a safe and pleasant community.

Mr. Borntrager added that a news editorial stated that those who give to panhandlers are just enabling them.

*There were no further citizen comments.*

## **REGULAR SESSION**

### **1) Audit Presentation**

Finance Director Baugh introduced Accuity, LLC auditors Glen Kearns and Kori Sarrett, who briefly spoke about changes from last year. Ms. Sarrett indicated that both audit findings were not systemic. There was an over expenditure but she does not believe it was a systemic issue. Because it was between two departments, it should have come to Council. The thought was that it was interdepartmental so would not cause an overexpenditure.

The other finding was a timing issue; some of the payables (\$322,000) were not booked into the appropriate fiscal year. The Finance department was understaffed so they did not have time to make sure everything was correctly recorded. She believes this was remedied because a position was added back to the Finance department. Their recommendation is that a year-end review is built into that person's position.

She explained that there is a new pension reporting standard so all four parts that apply to every municipality have been recorded in the City's financial statements. This year, because of the overfunding of PERS, income of \$1.3 million was reported in the PERS expense.

Marks added that over the next six to eight years, this is an issue that will revisit itself as the State tries to correct the underfunding of the PERS system. The Director of the PERS program said to expect about a 20% increase per biennium over about the next three years, so this will have real consequences on the budgeting process. The catch-up is not to benefit any current employees but to keep up with what will be required to make payments to those who are currently retired.

He also stated that the Cadillac Tax and Affordable Healthcare Act will need to be watched closely. This may be a huge liability that could impact payroll expenses.

Ms. Sarrett indicated that there were no other noncompliance issues with public contracting or purchasing. Any issues they came across were not systemic but were related to timing.

Councilor Furlow asked about the implementation of policies that were changed within the last year or two to alleviate past problems. Mr. Kearns stated that they have seen the policies and procedures drafted, developed and implemented to the best of the City's ability, given staffing limitations and so forth. It was discussed with the Finance department that there can be the best policies and procedures but if there is insufficient staffing to implement them, things tend to slip through the cracks. The policies need to be continually reevaluated as times change. Ms. Sarrett added that they always test back to policy to make sure they are being followed. Good progress has been made as a result of communication between departments and management ensuring that those things happen.

There was discussion about why PERS became underfunded so drastically.

City Attorney Kennedy read the title of RESOLUTION NO. 2015-34. *Councilor Grizzle moved, Councilor Bolen seconded, to APPROVE RESOLUTION NO. 2015-34, A RESOLUTION ACCEPTING THE CITY OF LEBANON AUDIT REPORT FOR YEAR ENDING JUNE 30, 2015. The motion passed unanimously.*

## 2) Supplemental Budget Amendments

Baugh presented staff's recommendation to approve the resolution amending the FY 2015/16 Budget. The following changes are proposed:

### General Fund (100)

- o Increase Police (180) Sal/Ben funding for new Community Services Officer (CSO) position – \$38,650
- o Increase Administration (110) Contract Services – a) Strategic Plan contract and b) economic development projects – \$9,000
- o Increase Legislative (160) Equipment expense for upgrades to the Santiam Travel Station video and audio equipment – \$17,000
- o Decrease Non-Department (195) Working Contingency – 2% due to adjustment above – \$64,650

### Special Revenue Fund

- o Reduce Motel Tax (510) transfers to the VIP fund (559) – moving VIP expenses to a division of the Motel Tax fund
- o Increase Motel Tax (510) Materials & Services for VIP project expenses – a) underground electric for gazebo project and Strawberry Plaza expenses
- o Increase Motel Tax (510) Transfer In from Parks SDC (862) for Strawberry Plaza expenses
- o Increase Motel Tax (510) Materials & Services for Strawberry Plaza expenses
- o IT Department (542) – Increase Beginning Balance and Contingency accounts – as a fix to resolution 2015-33. Accounts misposted.
- o IT Department (542) – Increase Contract Services and increase Beginning Balance for an increase in contracted network support for current projects
- o Reduce VIP fund (559) Transfers from Motel Tax fund (510) and Improvements expenses. Moving VIP expenses to a division of the Motel Tax fund (510)
- o Parks SDC (862) move budget from Account 90022 to 90011. Misposted in original budget
- o Reduce Parks SDC (862) Beginning Balance and Improvements line items. Beginning balance lower than original budget
- o Increase Parks SDC (862) transfers to Motel Tax fund (510) for Strawberry Plaza expenses
- o Decrease Parks SDC (862) Improvements – Strawberry Plaza expenses moved to Fund 510

Councilor Furlow asked for the percentage and dollar amount left in contingency after these transfers out. Baugh reported that this leaves about \$84,000 in operating contingency, which he believes had a \$152,000 beginning balance. This operating contingency is 2% of the Budget.

Kennedy read the title of RESOLUTION NO. 2015-35. *Councilor Rieskamp moved, Councilor Furlow seconded, to APPROVE RESOLUTION NO. 2015-35, A RESOLUTION AUTHORIZING A SUPPLEMENTAL BUDGET AMENDMENT TO THE CITY OF LEBANON 2015-16 BUDGET. The motion passed unanimously.*

**3) Amending Resolution No. 2015-32 by Revoking "Only" the Moratorium on Medical Marijuana Dispensaries**

Kennedy explained that the proposed resolution modifies Resolution No. 2015-16 that banned the issuance of a business license to a medical marijuana facility. The modification is necessary to maintain the ban on recreational marijuana facilities, while allowing the establishment of medical marijuana facilities.

Kennedy confirmed for Councilor Furlow that this is necessary to clean up the previous Council action.

Kennedy read the title of RESOLUTION NO. 2015-36. *Councilor Grizzle moved, Councilor Bolen seconded, to APPROVE RESOLUTION NO. 2015-36, A RESOLUTION AMENDING RESOLUTION 2015-16 AND ALLOWING FOR THE ISSUANCE OF BUSINESS LICENSES FOR MEDICAL MARIJUANA ESTABLISHMENTS. The motion passed with 3 yeas (Bolen, Grizzle and Rieskamp) and 1 nay (Furlow).*

**4) Amending the Lebanon Municipal Code to Include Regulating Medical Marijuana Dispensaries**

Community Development Director Wendolowski proposed creating a new chapter in Title 5 of the Lebanon Municipal Code. The purpose statement is for medical marijuana dispensaries only and is to align regulations with State law. The second section lists definitions particular to this ordinance. The third speaks about licensing, which will be required, and its provisions. The fourth section emphasizes a background check, which is necessary before a license can be issued. A license will be required for anyone involved in the business (owner, counter or stock employees). It also requires the applicants to update any information. If this ordinance is approved, a fee resolution for this activity will come before Council next month.

Wendolowski did not provide specific zoning for dispensary locations because this is not a Development Code amendment. Dispensaries can only be located in places where offices are permitted outright, so this limits it to the Highway Commercial and Downtown Commercial zones. There is prohibition of operation in proximity of schools. If the Council would like this more defined, Development Code amendments will need to be done.

Operational requirements limit those who enter the facility to patrons who have a medical card; minors are prohibited from these establishments; all products must be labelled; hours are limited from 10:00 a.m. to 7:00 p.m.; and no free samples or consumption on site.

Wendolowski confirmed for Councilor Rieskamp that someone from a non-profit (fundraising or asking for a sponsorship) would not be allowed in the establishment unless they have a medical card. Responding to Councilor Bolen's inquiry about the intent behind this regulation, Wendolowski explained that this limits entry to those who really need to use the medical dispensary, as opposed to having the look and feel of a retail operation. Councilor Bolen felt that the benefit of not having non-cardholders in the establishment far outweighs the risk of soliciting donations when there are alternative methods for communicating with those proprietors. Councilor Rieskamp commented that this tightens the focus of those who do fundraising for non-profits.

Wendolowski confirmed for Councilor Furlow that the business must display a sign that states that this is a medical marijuana facility and that they have a license from the City.

Councilor Bolen asked whether the license will be tied to the business or to the physical address. Wendolowski indicated that the business owner and every person who works in the business will need to be licensed.

Responding to Councilor Bolen's question, Wendolowski stated that he thinks the license fee will be about \$50-\$100.

Kennedy read the title of ORDINANCE BILL NO. 2015-13, ORDINANCE NO. 2869. *Councilor Grizzle moved, Councilor Bolen seconded, to APPROVE ORDINANCE BILL NO. 2015-13, ORDINANCE NO. 2869, A BILL FOR AN ORDINANCE AMENDING TITLE 5 OF THE LEBANON MUNICIPAL CODE, ESTABLISHING REGULATIONS FOR MEDICAL MARIJUANA DISPENSARIES. The motion passed with Council President Elliott breaking the tie with 3 yeas (Bolen, Elliott and Grizzle) and 2 nays (Furlow and Rieskamp).*

#### 5) Proposed Building Fees Increase

Wendolowski presented a resolution proposing increases to some building fees. Building Services is self-sustaining; no General Funds are used. Since 2001, the department has tried to keep costs low by streamlining operations. There have also been some layoffs but operational costs have increased over time. Most of the changes reflect that the hourly rate (plan review and inspections) has increased, however some fees have decreased because of the ePermitting system. Staff tried to keep things within reasonable context looking at the cost of living over the last 14 years. Overall, the City is very competitive with other local communities.

Councilor Furlow commended staff for maintaining level charges over the years. He thinks it is now appropriate to consider the cost over that extended period of time to bring fees in line. This is fiscally sound and consistent with the policy that fees are appropriately increased incrementally over time, instead of large balloon increases.

Kennedy read the title of RESOLUTION NO. 2015-37. *Councilor Bolen moved, Councilor Furlow seconded, to APPROVE RESOLUTION NO. 2015-37, A RESOLUTION TO AMEND FEES AND CHARGES FOR ADMINISTRATION AND ENFORCEMENT OF THE BUILDING CODE PROGRAM. The motion passed unanimously.*

*Councilor President Elliott called for a five-minute recess.*

#### 6) Sno Temp Cold Storage Extended Tax Abatement Agreement

Marks requested Council approval for the South Santiam Enterprise Zone to enter into an agreement with Sno Temp Cold Storage for extended property tax abatement benefits. Lebanon is a cosponsor of the South Santiam Enterprise Zone, which makes the City a party to the agreement. This would not impact City of Lebanon tax revenues.

Councilor Grizzle felt that what benefits Albany also benefits Lebanon and vice versa.

Kennedy read the title of RESOLUTION NO. 2015-38. *Councilor Grizzle moved, Councilor Rieskamp seconded, to APPROVE RESOLUTION NO. 2015-38, A RESOLUTION APPROVING AN EXTENDED PROPERTY TAX ABATEMENT AGREEMENT BETWEEN THE CITY OF ALBANY, A COSPONSOR OF THE SOUTH SANTIAM ENTERPRISE ZONE AND SNO TEMP COLD STORAGE. The motion passed unanimously.*

#### 7) Pan Handling Limitations

Kennedy asked for Council direction on bringing an ordinance back for Council approval. Aggressive panhandling is becoming more of a problem in Lebanon. Pursuant to Oregon law, municipalities may impose reasonable time,

place and manner restrictions on panhandling, but cannot prohibit panhandling or loitering, because it would be a violation of federal and state constitutional rights. Three main issues the Council may want to address are:

1) *Vehicle Safety Risk* – The City may prohibit panhandling from any moving vehicle, whether on public or private property. The key issue to consider is whether the individual asking for money or the individual giving money, or both, should be subject to citation. Many local governments have shifted to citing the driver of a vehicle because they do not believe that citing only the panhandler serves as sufficient deterrent.

Kennedy confirmed for Councilor Rieskamp that a bicycle is considered a vehicle and is subject to all vehicle Codes while in the street.

2) *Captive Audience* – The City may prohibit panhandling from people where they are essentially a captive audience. Such places include: buses, public transportation stops, banks and check cashing facilities, ATMs, outdoor dining facilities, parking lots and gas pumps.

In response to Councilor Elliott's question regarding the Fire Department's Fill the Boot fundraiser, Kennedy indicated that a provision can be included for special events.

3) *Aggressive Panhandling* – The City may impose reasonable limitations on aggressive panhandling. Such provisions would ban panhandling in situations in which the person being solicited is placed in a situation in which they fear imminent bodily harm or commission of criminal act, or is intimidating to the person being solicited. Aggressive panhandling is most subject to challenge, depending on how it is written because it may be subjective.

Councilor Bolen asked Stevenson how the captive audience portion would work. Stevenson explained that this ordinance would give officers authority to actively investigate any complaint and take enforceable action.

Councilor Grizzle remarked that a bank owner would be able to call the police.

Councilor Bolen stated that the hope is to also make law abiding citizens realize that giving money from a vehicle is not what they should be doing. He understands that there is a homeless problem, but the City could encourage donating to those who provide resources. He would also not want the police burdened with panhandling calls.

Councilor Furlow questioned whether the Council would want to give the Police Chief guidance as to the fine or action. Kennedy stated that he and his staff feel that #1 and #2 would be violations and not criminal convictions because of the expense of providing public defenders. For those who do not show up in court, an arrest warrant could be issued. The standard fine is up to \$600, unless directed otherwise. Stevenson added that aggressive panhandling would be a chargeable offense (harassment, disorderly conduct or menacing).

Kennedy confirmed for Councilor Rieskamp that #1 would also apply to parking lots. Councilors Grizzle, Rieskamp and Elliott agreed that it should be a violation for both the person in the vehicle and the person panhandling. Councilors Grizzle and Furlow felt that there should be an educational campaign to encourage alternatives and discourage enabling because it perpetuates the problem. Kennedy stated that the educational point will be that it is dangerous because that is what justifies enforcement of this type of a statute. The greatest chance of success would be for the City to partner with other organizations to have a strong educational public campaign.

Councilor Bolen commented that unique branded signs posted in problem areas should include resources. He would like the campaign to be that the City is not anti-homeless or anti-poverty but are pro hand-up not handout. Kennedy shared that some communities use "hand-up dollars" that are redeemable for a limited number of items. Councilor Bolen stated that he would personally prefer to encourage using already established resources in the City.

There was discussion about expanding the alcohol impact zone to include the Lebanon Plaza. Stevenson explained that the zones enable police to exclude a problem individual from a certain area for a period of time. Violations are an automatic arrest for trespassing. He confirmed for Councilor Bolen that this includes public rights-of-way. Although there is panhandling at the Lebanon Plaza, there are more disorderly issues that make people feel unsafe. This would allow the police to remove those problematic individuals. Kennedy explained to Councilor Rieskamp that park exclusion is included in almost every plea bargain for these types of crimes. This has been very successful in the downtown area and in the parks.

Councilor Furlow stated that he would like Kennedy to include that an *Aggressive Panhandling* violation be a misdemeanor.

*Council provided a consensus for Kennedy to bring back an ordinance with provision for all three topics discussed, including violation of aggressive panhandling being a misdemeanor, and to include expanding the alcohol impact area to include the area around the Lebanon Plaza.*

Regarding the homeless sleeping on downtown benches, Stevenson indicated that in order to exclude someone from the alcohol impact zone, they must have a specific violation. Kennedy stated that the 9<sup>th</sup> Circuit determined that sleeping is a constitutionally protected right so any restriction that criminalizes the act of sleeping is unconstitutional. Unless a community can show that they have enough available beds, camping within the jurisdiction cannot be restricted or prohibited but time, place and manner can be regulated. The "no camping" rule in parks and public places can be enforced to a certain extent if it falls under the definition of camping, which is set forth in state law and local ordinance.

Kennedy stated that some cities have included provisions that prohibit sales of individual high alcoholic content drinks in alcohol impact zones. He is not sure if it can be applied to Lebanon because the law was originally drafted for areas with a population over 300,000. Councilor Furlow stated that he would like to see the three items implemented before going to this next level.

In response to Councilor Bolen's question, Kennedy explained that the alcohol impact zone ordinance would have to be amended to include the area and what social problem the City is trying to address.

Kennedy announced that he will have the ordinances (with an emergency clause) ready for the January meeting.

#### **8) City Manager's Report – Marks provided updates:**

*Chamber Forum Luncheon* – Marks and Mayor Aziz presented the State of the City address.

*Strategic Plan* – He also spoke about the Strategic Plan at the Chamber lunch. The first community survey ended this past Monday. The public is invited to the Task Force meeting at 6:00 p.m., next Monday, at the Library where the results of the survey will be discussed and the Task Force will begin the process of converting the ideas into workable plans.

*Chamber Economic Development Video* – The first cut was delivered last week. When finalized, it will be presented at a Council meeting.

#### **ITEMS FROM COUNCIL**

Councilor Grizzle stated that she thought the logo on the Vision poster was branded for the Vision but she noticed that it was shown at the Chamber luncheon and on the new website. She expressed concern that the City suddenly had a new logo without collaboratively discussing it. Council President Elliott agreed. Marks stated that this can be discussed at the next meeting.

**PUBLIC COMMENTS**

Heidi Filips, 316 E. Rose Street, stated that she was unaware of the marijuana dispensary issue and questioned whether there is really a need for a dispensary in Lebanon because there are many outside of town and there are plenty of people who have access to marijuana.

Councilor Grizzle shared that she has been approached by people who have a need, have transportation issues, or where traveling is a hardship. Ms. Filips felt that caretakers could bring it to their homes.

Councilor Bolen stated that there is a difference between recreational and medicinal marijuana. This is a medical service and he believes it belongs here. Ms. Filips expressed her opinion that it is easy to get a medical marijuana card. For the majority of people she knows who possess these cards, it is like a permission slip to use it recreationally.

Councilor Grizzle disagreed because she sees the need and feels there is no reason to restrict access in Lebanon for people who have a legitimate need. Ms. Filips stated that she was under the impression that citizens voted against having this in our area. Councilor Bolen explained that the County regulations do not override the City's.

Regarding the homeless, Ms. Filips stated that there are many ways to see to their needs. She and others give out food and she does not feel that we need to develop a currency. Councilors Bolen stated that he would not support developing currency.

**ITEMS FROM PRESS**

Matt DeBow, Lebanon Express, asked about the status of City Hall. Marks explained that the expert found no evidence of an asbestos release, but samples are being submitted for testing with results expected on Friday.

**ADJOURNMENT**

*Mayor Aziz adjourned the meeting at 8:07 p.m.*

*[Minutes prepared by Linda Kaser & Donna Trippett]*

Minutes Approved by the Lebanon City Council on this 13<sup>th</sup> day of January 2016.

\_\_\_\_\_  
Paul R. Aziz, Mayor   
Bob Elliott, Council President

ATTESTED:

\_\_\_\_\_  
Linda Kaser, City Clerk

# *Consent Calendar*

# *Appointments*



## *Administration*

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City Clerk/Recorder

### MEMORANDUM

**To:** Lebanon City Council

**Date:** January 13, 2016

**From:** Linda Kaser, City Clerk/Recorder

**Subject:** Budget Committee Appointment

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Mayor Aziz is happy to appoint Virginia Cloyd (Ward 2) to serve a three-year term on the City of Lebanon's Budget Committee at the January 13, 2016 City Council Meeting.

Virginia has extensive experience with public budgeting rules and regulations and served as the Director of Fiscal Affairs at LBCC from 1992 through 1997.

**Council Action: Mayoral appointments are confirmed by the Council through the Consent Calendar.**

/lgk

C: Mayor Paul R. Aziz  
Gary Marks, City Manager  
Dean Baugh, Finance Director  
Virginia Cloyd, Appointee

*Board & Committee*  
*Meeting Minutes*



## Senior Center

80 Tangent Street  
Lebanon OR 97355  
(541) 258-4919 ~ fax (541) 258-4956  
[www.ci.lebanon.or.us](http://www.ci.lebanon.or.us)

### ADVISORY BOARD MEETING

June 17<sup>th</sup>, 2015

## MINUTES

Members Present: Alice Unger, Darlene Johnson, Alice Unger, Cleora Wymore, Bob Elliott, Mary Sue Reynolds, Mac McNulty, Fran Bonnarens and Kindra Oliver

Absent: , Angie Kutsch

#### 1. WELCOME:

Alice opened the meeting at 10:00 a.m.

#### 2. MINUTES:

*Mac moved, Mary Sue seconded to approve the minutes from April 22<sup>nd</sup>, 2014, Advisory Board meeting. Motion passed unanimously.*

#### 3. CHAIRPERSON'S REPORT:

#### 4. REPORTS:

##### Meal Site:

- Tori is still looking for volunteers to drive/deliver meals and to help in the kitchen.

##### Senior Center:

- The Lebanon Budget Committee and City Council approved the FY15-16 budget. Our Activities Planner position will be full-time as of July 1<sup>st</sup>, 2015. Our Dispatcher/Scheduler for the Dial-a-Bus will continue at .8 FTE.
- Dial-a-Bus numbers are high and we continue to do the best we can to try and accommodate the ride requests and make sure people don't have long wait times for pick-ups and our drivers have a manageable schedule.
- Oregon Department of Transportation staff contacted us to see if we would apply for a Transit Growth Management (TGM) grant to create a Transit Development Plan (TDP). The City is currently starting the process to update the Transportation System Plan (TSP) and they like the idea of going through both processes at once. Lebanon is unique compared to many communities due to the economic growth over the years and there is a need for a TDP and to update the TSP.

- The building is getting a fresh coat of paint next couple of weeks. The paint was quite faded and cracking, especially on the south side of the building.
- The King's Chapel church is continuing to meet at the Senior Center on a regular basis. Currently, we have them scheduled through the end of the year.
- We received the Dial-a-Bus technical review with the state and their consultants and there were four minor changes recommended which have already been addressed or will be addressed.
- Our annual Luau is scheduled for Saturday, June 27<sup>th</sup>, 11:00-1:00. Thank you for the great partnerships with the Oaks, Willamette Manor, Brookdale, the Veteran's Home and Bridgecreek. We'll have great food, dancers and lots of fun!

#### **5. CONTINUING & NEW BUSINESS:**

- The question was asked if we could look into new signage for the front doors. Kindra will look into options for signage and get some cost estimates.
- Bob updated the group with City business and Mary Sue updated the group on LBCC's new building project and programs.

#### **6. ADJOURNMENT:**

*Rights-of-Way &*  
*Easements*



*Legal*

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John Kennedy, City Attorney

MEMORANDUM

**To:** City Council

**Date:** 1/6/2016

**From:** John Kennedy, City Attorney

**Subject:** Consent Calendar; Egners Easements

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Included in the Consent Calendar are two easements for Build Lebanon Trails. The easement from the Egners to the City provides a trail area. The easement from the City to the Egners provides the Egners with use of a small area that is outside the existing fence enclosing City property and which is already being used by the Egners.

**After Recording Return to:**

Robert and Michelle Egner  
37494 Beaton Lane  
Lebanon, OR 97355

Grantor: City of Lebanon  
925 Main Street  
Lebanon, Oregon 97355

Grantees: Robert and Michelle Egner  
37494 Beaton Lane  
Lebanon, OR 97355

**EASEMENT**

THIS EASEMENT ("**Agreement**") is made and entered into effective this 18 day of December, 2015, by Grantor and Grantees as identified above.

**RECITALS**

A. Grantor owns real property located in Linn County, Oregon generally identified as Account No. 1688562, 12S02W02-00-01400 in Linn County Oregon.

B. Grantees own real property located in Lebanon, Oregon referenced as Parcels 0168860 and 018309, identified by Statutory Warranty Deed recorded at Vol. 1508 Page 597,

B. The purpose of this Easement is to grant a perpetual easement for the benefit of Grantees over that portion of Grantor's property legally described in Exhibit A and generally described in Exhibit B attached hereto.

NOW, THEREFORE, based on the foregoing Recitals, the Grantor declares and states as follows:

**GRANT OF EASEMENT AND AGREEMENTS**

1. **Easement.** The Grantor hereby grants to the Grantees, an exclusive and perpetual easement ("**Easement**"). The Easement is for the benefit of Grantees and their guests or invitees.

2. **Run with the Land.** The Easement shall benefit the Grantees, and shall run with the land as to all real property burdened and benefited hereby. This Agreement and the Easement shall inure to the benefit and shall be binding upon the parties and their respective heirs, successors and assigns, lessees, mortgagees and beneficiaries under trust deeds.

3. **Indemnification.** The Grantees shall indemnify and hold harmless Grantor hereto from and against any and all claims arising from or in connection with their use of the Easement by such party or such party's respective successors, invitees or guests, together with all costs, expenses and

liabilities incurred in connection with each such claim or action or proceeding brought thereon, including, without limitation, all attorney fees and expenses.

4. **Attorney Fees.** In the event legal action is commenced in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred in the trial court and in the appeal therefrom. The term "**action**" shall be deemed to include action commenced in the bankruptcy courts of the United States and any other court of general or limited jurisdiction. The reference to "**costs**" includes, but is not limited to, deposition costs (discovery and otherwise), witness fees (expert and otherwise), out of pocket costs, title search and report expenses, survey costs, surety bonds and any other reasonable expenses.

5. **Injunctive Relief.** In the event of any violation or threatened violation of any of the agreements provided herein, the parties acknowledge that the nondefaulting party or parties will suffer damage which would be irreparable and not fully compensable by damage recovery. Consequently, the nondefaulting party or parties shall have, in addition to the right to collect damages and other rights and remedies as provided herein and by law, the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

IN WITNESS HEREOF, the Grantor has executed this Agreement as of the date set forth above.

*[Signature]*  
Robert Egnor

*Michelle Egnor*  
Michelle Egnor

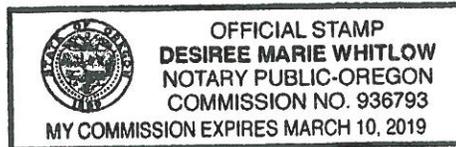
City of Lebanon

By: Gary B. Marks  
Its: City Manager

STATE OF OREGON            )  
  )ss.  
COUNTY OF LINN            )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of December, 2015, by Robert and Michelle Egnor .

*Desiree Marie Whitlow*  
Notary Public for *The Morley Thomas Law Firm*  
My Commission Expires: *3/10/19*



STATE OF OREGON        )  
                                  )ss.  
COUNTY OF LINN        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by Gary B Marks as City Manager for the City of Lebanon.

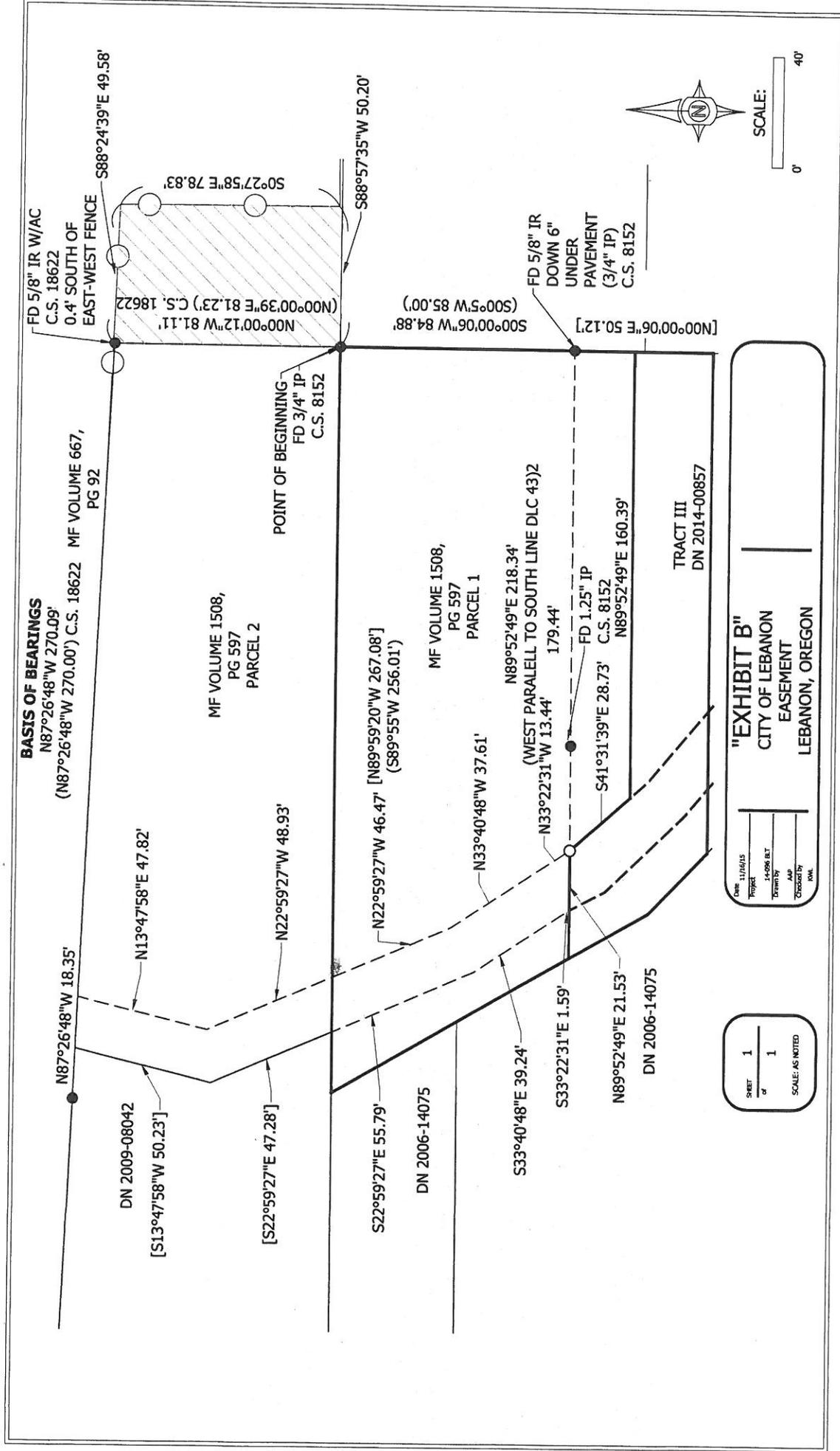
\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Exhibit A

City of Lebanon Easement

An area of land in the Northwest quarter of Section 11, Township 12 South, Range 2 West, Willamette Meridian, Linn County, Oregon. Being more particularly described as follows:

Beginning at a 3/4" iron pipe marking the Southeast corner of the land described as Parcel 2 in Linn County Deed Record Microfilm Volume 1508, Page 597; thence along the East line of said Deed record North 0°0'12" West 81.11 feet to a 5/8" iron rod; thence leaving said East line South 88°24'39" East 49.58 feet to a point; thence South 0°27'58" East 78.83 feet to a point; thence South 88°57'35" West 50.20 feet to the point of beginning.



**BASIS OF BEARINGS**

N87°26'48"W 270.09'  
(N87°26'48"W 270.00') C.S. 18622 MF VOLUME 667, PG 92



SCALE: 0 40'

DATE: 1/15/15	PROJECT:
DESIGNED BY:	DRAWN BY:
CHECKED BY:	IN CHARGE:

SHEET 1	OF 1
SCALE: AS NOTED	

**"EXHIBIT B"**  
CITY OF LEBANON  
EASEMENT  
LEBANON, OREGON

TRACT III  
DN 2014-00857

DN 2006-14075

N89°52'49"E 21.53'

S33°22'31"E 1.59'

S33°40'48"E 39.24'

N33°40'48"W 37.61'

DN 2006-14075

S22°59'27"E 55.79'

N22°59'27"W 46.47' [N89°59'20"W 267.08']  
(S89°55'W 256.01')

MF VOLUME 1508,  
PG 597  
PARCEL 1

(WEST PARALLEL TO SOUTH LINE DLC 43)2  
N89°52'49"E 218.34'  
179.44'

FD 1.25" IP  
C.S. 8152  
N89°52'49"E 160.39'

[N00°00'06"E 50.12']

S00°00'06"W 84.88'  
(500°5'W 85.00')

FD 5/8" IR  
DOWN 6"  
UNDER  
PAVEMENT  
(3/4" IP)  
C.S. 8152

S88°57'35"W 50.20'

S0°27'58"E 78.83'

S88°24'39"E 49.58'

DN 2009-08042

[S13°47'58"W 50.23']

N13°47'58"E 47.82'

N22°59'27"W 48.93'

MF VOLUME 1508,  
PG 597  
PARCEL 2

POINT OF BEGINNING  
FD 3/4" IP  
C.S. 8152

FD 5/8" IR W/AC  
C.S. 18622  
0.4' SOUTH OF  
EAST-WEST FENCE

N00°00'12"W 81.11'  
(N00°00'39"E 81.23') C.S. 18622

**After Recording Return to:**

City of Lebanon  
925 Main Street  
Lebanon, Oregon 97355

**RIGHT OF WAY EASEMENT AGREEMENT**

THIS RIGHT OF WAY EASEMENT AGREEMENT ("**Agreement**") is made and entered into effective this 18 day of December, 2015, by Robert and Michelle Egner (the "Egners") and the City of Lebanon (the "City" or "Lebanon").

**RECITALS**

A. The Egners owns real property located in Lebanon, Oregon referenced as Parcels 0168860 and 018309 (the "Property"), as evidenced by Statutory Warranty Deed recorded at Vol. 1508 Page 597, attached hereto as Exhibit A and by reference incorporated herein.

B. The Egners wish to grant the City of Lebanon a Right of Way Easement across the Property as legally described in Exhibit B and referenced on Exhibit C, attached hereto and by reference incorporated herein.

**GRANT OF RIGHT OF WAY EASEMENT AND AGREEMENTS**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Egners agree as follows:

1. **Easement.** The Egners hereby grants to the City a perpetual and permanent easement and right-of-way ("**Easement**") over the portion of Parcels 1 and 2 described at Vol. 1508, Page 597 and described in Exhibits B and C, (the "**Easement Area**"), on the terms and conditions of this Agreement, including the right to enter upon the real property hereinafter described, construct paths or sidewalks, construct fencing as provided in this agreement, and to maintain and repair such paths, sidewalks or fencing, and the further right to remove trees, bushes, under-growth and other obstructions interfering with the location and maintenance of the said paths or sidewalks. All such construction, maintenance, removal and repair shall be at the City's expense. Except in the case of an emergency, the City will provide the Egners with 14-days written notice before the City or any of its agents, assigns, or other persons or entities acting on its behalf enters the Property to remove trees.

2. **Maintenance.** The permanent easement described herein grants to the City and to its successors, assigns, authorized agents or contractors, the perpetual right to enter upon said easement at any time that it may see fit for construction, maintenance, evaluation and/or repair purposes. The City shall maintain the Easement and keep it reasonably free from obstructions, including but not limited to leaves. The Egners should contact Lebanon Public Works at (541) 258-4916 with any maintenance requests. If however, the Egners have contacted Lebanon Public Works to request reasonable maintenance such reasonable maintenance has not been satisfactorily performed within 14 days of the request, the Egners may perform or cause to be performed the requested maintenance and recover the costs of reasonable maintenance from the City.

3. **Consideration and Condition.** In consideration of the easement granted herein, the City will guarantee the Egners, or their successors or assigns, at least one access point to the trail so long as this Agreement is in place. At its own expense, the City will construct and maintain a six-foot commercial grade cyclone fence along the entire west border of the Egners' property with one access point. At its own expense, the City will construct a six-foot cedar fence along the entire new south border of the Egners' property, which the Egners shall own and may maintain, remove, or rebuild thereafter at their own expense. As set forth above, the Egners shall contact Lebanon Public Works with any maintenance needs with respect to the cyclone and cedar fences. If, however, the Egners have contacted Lebanon Public Works to request reasonable maintenance and such maintenance has not been satisfactorily performed within 14 days of the request, the Egners may perform or cause to be performed the requested maintenance and recover the costs of maintenance from the City.

4. **Indemnification.** The City shall indemnify and hold harmless the Egners, or any assignee or successor of the Egners, from and against any and all claims arising from or in connection with use of the Right of Way Easement by the City or the Public, except any claims which are the result of any negligent action or grossly negligent inaction of the Egners.

5. **Injunctive Relief.** In the event of any violation or threatened violation of any of the agreements provided herein, the parties acknowledge that the nondefaulting party or parties will suffer damage which would be irreparable and not fully compensable by damage recovery. Consequently, the nondefaulting party or parties shall have, in addition to the right to collect damages and other rights and remedies as provided herein and by law, the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

  
\_\_\_\_\_  
Robert Egner

  
\_\_\_\_\_  
Michelle Egner

City of Lebanon

By: Gary B. Marks  
Its: City Manager

STATE OF OREGON        )  
  )ss.  
COUNTY OF LINN        )

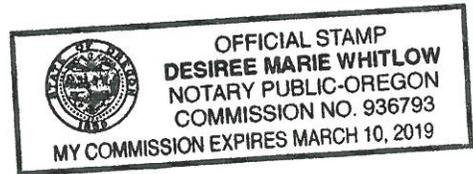
The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by Robert and Michelle Egner

Notary Public for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF OREGON        )  
  )ss.  
COUNTY OF LINN        )

The foregoing instrument was acknowledged before me this 18 day of December, 2015, by Gary B Marks as City Manager for the City of Lebanon.

Desiree Marie Whitlow  
Notary Public for The Morley Thomas Law Firm  
My Commission Expires: 3/10/19





LEGAL DESCRIPTION (Continued)

Order No. : 715861

or creek hereinabove described; thence Northwesterly down said slough or creek along the center thereof to a point West of the place of beginning; thence East parallel to the South line of said claim to the place of beginning.

TRACT II:

Beginning at the beginning point hereinabove described which is North 13.50 chains and West 16.667 chains from the Southeast corner of the Morgan Kees Donation Land Claim No. 43, in Township 12 South, Range 2 West of the Willamette Meridian, in Linn County, Oregon; and running thence South parallel to the East line of said Claim, 50 feet; thence West parallel to the South line of said claim to the center of the slough or creek hereinabove described; thence Northwesterly down the center of said slough or creek to a point West 3.879 chains from the place of beginning; thence East parallel to the South line of said Claim, 3.879 chains to the place of beginning.

TOGETHER WITH: An easement for roadway purposes over and across the following described tract for ingress and egress to be used in common with others:

Beginning at a 3/4 inch iron pipe which bears North 0°05' West 891.70 feet and South 89°55' West 1100.02 feet from the Southeast corner of the Morgan Kees Donation Land Claim No. 43 in Township 12 South, Range 2 West of the Willamette Meridian, Linn County, Oregon and running thence North 89°55' East parallel with the South line of said Claim, 639.41 feet to an iron pipe; thence South 12 feet; thence South 89°55' West 639.41 feet; thence North 0°05' West 12 feet to the place of beginning.

PARCEL II:

A parcel of land situated in the Morgan Kees Donation Land Claim No. 43 in Township 12 South, Range 2 West of the Willamette Meridian, Linn County, Oregon, more particularly described as follows, to wit:

Beginning at a point marked by a 3/4 inch iron pipe which is North 0°05' West 891.73 feet and South 89°55' West 1099.86 feet from the Southeast corner of said Morgan Kees Donation Land Claim; thence South 89°55' West to the Easterly bank of Marks Slough; thence Northerly along said Easterly bank 110 feet, more or less, to the point of intersection with the Southerly line of a twenty (20) foot strip of land as conveyed to the City of Lebanon, Oregon, by deed dated May 22, 1953, from the herein named Grantor; thence along the Southerly line of said strip of land South 87°26'48" East 375 feet, more or less, to a point which is North 0°05' West 87 feet, more or less, from the point of beginning; thence South 0°05' East to the point of beginning.

## Exhibit B

### Trail Easement

An area of land in the Northwest quarter of Section 11, Township 12 South, Range 2 West, Willamette Meridian, Linn County, Oregon. Being more particularly described as follows:

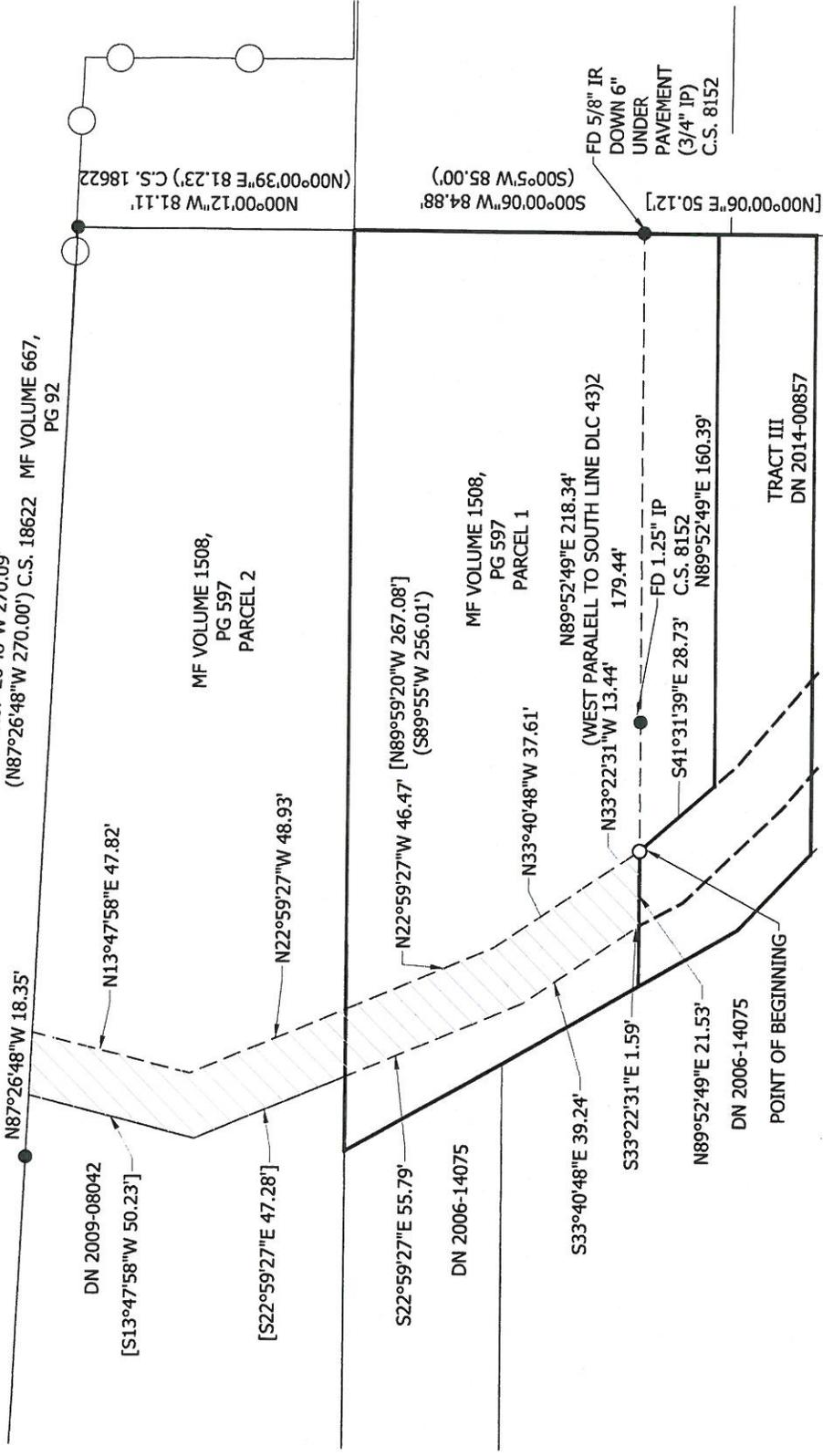
Beginning at a point on the on the South line of the land described as Parcel 1 in Linn County Deed Record Microfilm Volume 1508, Page 597, which bears North 89°52'49" East 179.44 feet from a 5/8" iron rod marking the Southeast corner of said Parcel 1; thence leaving said South line North 33°22'31" West 13.44 feet to a point; thence North 33°40'48" West 37.61 feet to a point; thence North 22°59'27" West 95.40 feet to a point; thence North 13°47'58" East 47.82 feet to a point on the North line of the land described as Parcel 2 in Linn County Deed Record Microfilm Volume 1508, Page 597 ; thence along said North line North 87°26'48" West 18.35 feet to a point thence leaving said North line South 13°47'58" West 50.23 feet to a point; thence South 22°59'27" East 47.28 feet to a point; thence South 22°59'27" East 55.79 feet to a point; thence South 33°40'48" East 39.24 feet to a point; thence South 33°22'31" East 1.59 feet to a point on said South line; thence along said South line North 89°52'49" East 21.53 feet to the point of beginning.

**BASIS OF BEARINGS**

N87°26'48"W 270.09'  
 (N87°26'48"W 270.00') C.S. 18622 MF VOLUME 667,  
 PG 92



SCALE:  
 0' 40'



**EXHIBIT**  
 C

**"EXHIBIT B"**  
 BUILD LEBANON TRAILS  
 EASEMENT  
 LEBANON, OREGON

DWG: 1117615  
 PROJECT: 14-006-BT  
 TOWN/PLAT: 14-006-BT  
 APP: 14-006-BT  
 CHECKED BY: [Signature]  
 DATE: 11/16/15

SHEET 1  
 OF 1  
 SCALE: AS NOTED

# Agenda Item 1



*Administration*  
City Clerk/Recorder

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**To:** Mayor Aziz and City Council

**Date:** December 2, 2015

**From:** Gary B. Marks, City Manager

**Subject:** Request to Amend the Enterprise Zone Boundary

---

This is a request for Council approval to amend the South Santiam Enterprise Zone to include additional area as identified in the attached Exhibit A.

A letter from John Pascone, Manager of the South Santiam Enterprise Zone, is included which provides the background for this request.

A resolution is attached for Council review and consideration.

**Council Action: Motion to approve A Resolution by Co-Sponsors of the South Santiam Enterprise Zone to Change an Enterprise Zone Boundary.**

/lgk



South Santiam Enterprise Zone  
Co-Sponsors

November 4, 2015

Linn County Board of Commissioners  
City of Albany, Wes Hare  
City of Lebanon, Gary Marks  
City of Millersburg, Barbara Castillo

By Consent: City of Tangent, Georgia Edwards

Re: Expansion of the South Santiam Enterprise Zone

I am requesting that you approve the expansion of the enterprise zone.

Recent opportunities have developed which have prompted me to ask for this action; the first is a potential project in our area looking at property that is not in the zone but could benefit from being included in the zone, the second is a pending expansion project on property which we thought was in the zone but because of previous regulatory limitations were not included but could also benefit from inclusion in the zone. Finally, because this process requires GIS mapping, we decided to take another look at properties that were not added previously but could be added due to the expansion of the limitations previously allowed.

In the past I have had to change the zone several times to accommodate various projects by including some sites and removing others. The City of Lebanon has allowed us to tag on to their South Santiam zone but the size limitations meant we had to pick and choose which of our Albany and Millersburg sites to include. This process has come back to haunt me several times because no sooner did we finalize the zone boundaries then another project pops up and the site turned out to not be in the zone. The cap at 12 square miles severely restricted us but the new cap of 15 square miles has allowed us to place all of the industrial zoned sites in Albany and Millersburg in the expanded zone and also include additional industrial property in the county outside of the three city's boundaries.

By including the potential project sites, we might encourage new investment which has the potential to grow the economy and add very good paying jobs. Tentative projects might be encouraged to proceed by being able to take advantage of enterprise zone benefits.

In addition, by being able to include more industrial property we can respond sooner to potential projects without having to go through the time consuming process of amending the enterprise zone again, our sites will already be in the zone.

As co-sponsors, I request that you pass a resolution approving the amendment. This could be at a regular meeting which also serves as a public hearing, which is required to amend the enterprise zone.

I will be happy to attend a work session to discuss this process if you feel it is necessary, prior to your public hearing and will certainly be present at the public hearing to answer any questions.

The taxing districts were notified by letter on August 31st which means the required 21 day notice to them has passed. Therefore, your public hearing can be held any time after receiving this request.

A draft resolution is also enclosed. Exhibit A, the property map referred to in the resolution is attached.

Thank you for your cooperation. By working together on economic development efforts such as this we can help build better communities for all of us.

Sincerely,

John Pascone  
President  
Co-Manager of the South Santiam Enterprise Zone

Copy, Sean Stevens, Business Oregon

**A RESOLUTION BY CO-SPONSORS OF THE )  
SOUTH SANTIAM ENTERPRISE ZONE TO )  
CHANGE AN ENTERPRISE ZONE BOUNDARY )**

**RESOLUTION NO. 2016-1**

**WHEREAS**, the City of Albany, City of Lebanon, City of Millersburg and Linn County are sponsors of the South Santiam Enterprise Zone. The City of Tangent, Scio and Lyons by Consent; and

**WHEREAS**, the enterprise zone has a total area of 14.94 square miles, as amended, it meets other statutory limitations on size and configuration, and it is depicted on a drawn-to-scale map (Exhibit A), and its boundary is described as a multi-page Excel spreadsheet file S\_SantaimEntZnTaxlot1072015Expansion.xlsxproperties (Exhibit B)\*; and

**WHEREAS**, the municipal corporations, school districts, special service districts, *etc.*, other than the sponsoring governments, that receive operating revenue through the levying of *ad valorem* taxes on real and personal property in any area of the enterprise zone, as amended, were each sent a notice regarding this boundary change; and

**WHEREAS**, the Co-Sponsors shall fulfill its duties and implement provisions [jointly with other co-sponsors] under ORS 285C.105 or elsewhere in ORS Chapter 285C and related parts of Oregon Law; and

**WHEREAS**, the enterprise zone does not grant or imply permission to develop land within the Zone without complying with prevailing zoning, regulatory and permitting processes and restrictions for applicable jurisdictions; nor does it indicate any intent to modify those processes or restrictions, except as otherwise in accordance with Comprehensive Plans as acknowledged by the State of Oregon Land Conservation and Development Commission; and

**WHEREAS**, the Co-Sponsors agree that adding new industrial properties to the zone would expand the economic opportunities and prosperity to the communities in the area; and

**WHEREAS**, the Co-Sponsors are interested in encouraging new business investment, job creation and higher incomes for local residents and greater diversity of economic activity.

**NOW, THEREFORE, BE IT RESOLVED:**

**Section 1.** Under ORS 285C.115, the Co-Sponsors do hereby change the boundary of the Oregon enterprise zone.

**Section 2.** The name of the zone shall remain The South Santiam Enterprise Zone.

**Section 3.** John Pascone, zone co-manager, is authorized to submit documentation of this enterprise zone boundary to the Oregon Business Development Department (OBDD) for purposes of a positive determination under section 18, chapter 648, Oregon Laws 2015 (Enrolled House Bill 2643) on behalf of the zone sponsors.

**Section 4.** This change of the South Santiam Enterprise Zone boundary takes effect on the date that [this resolution/the latest resolution of a sponsoring government] is adopted (or later, as so stipulated by OBDD in its determination following any revision or resubmission of documentation).

**Section 5.** Exhibit B is available from John Pascone, AMEDC Zone Co-Manager and Linn County GIS Department (*listing too large to include*).

Passed by the Lebanon City Council and executed by the Mayor on this 13<sup>th</sup> day of January, 2016 by a vote of \_\_\_\_ yeas and \_\_\_\_ nays.

CITY OF LEBANON, OREGON

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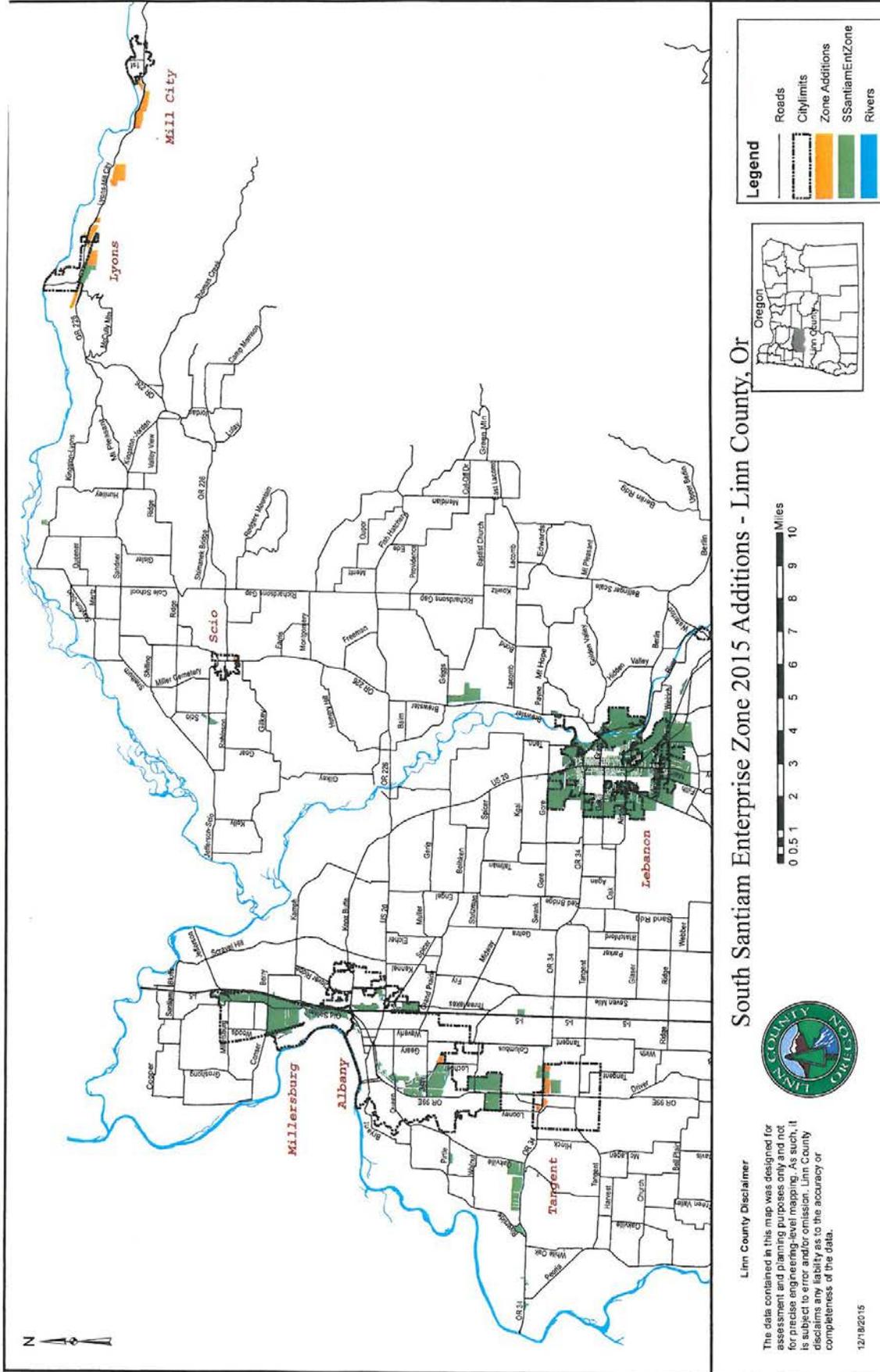
Paul R. Aziz, Mayor   
Bob Elliott, Council President

ATTESTED BY:

---

Linda Kaser, City Clerk

# EXHIBIT A



# Agenda Item 2



## MEMORANDUM

### *Finance Department*

<b>To:</b>	Mayor & Council	<b>Date:</b>	12/4/15
<b>From:</b>	Dean Baugh, Finance Director		
<b>Subject:</b>	VALIC Retirement Services Company Retirement Plan for Governmental Employers document amendments and restatements		

Currently the City of Lebanon has established the City of Lebanon Special Pay Plan (Plan) for the exclusive benefit of its employees and their beneficiaries, which Plan was originally effective as of January 1, 2002 and restated with resolution 2009-34.

October 30, 2015 the City received a notice from VALIC Retirement Services company notifying us that due to some IRS regulation changes that we need to restate our plan documents effective back to July 2015.

Notice: IRS regulations require retirement plan documents be updated periodically to incorporate law changes. The law changes incorporated in this restatement include:

- Pension Protection Act (PPA)
- Final regulations under IRS code section 415
- Heroes earnings assistance and relief tax act (HEART)
- Worker retiree and employer recovery act (WRERA)
- Small business jobs act (JOBS)

Failure to execute a restated document by April 30, 2016 deadline may result in costly corrections.

#### Attachments;

- Resolution 2016-2
- Resolution 2009-34
- Advisory Letter Number J593778a
- VALIC Retirement Services Company Retirement Plan for Governmental Employers, Basic Plan Document

#### Recommendations:

Staff recommends City Council approval of Resolution 2016-2.

Finance Department

**A RESOLUTION AUTHORIZING AMENDMENT ) RESOLUTION NO. 2016-2  
AND RESTATEMENT OF RETIREMENT PLAN )  
VIA ADOPTION OF VALIC RETIRMENT )  
SERVICES COMPANY RETIREMENT PLAN )  
FOR GOVERNMENTAL EMPLOYEES )**

**WHEREAS**, the City of Lebanon (Employer) previously established the City of Lebanon Special Pay Plan (Plan) for the exclusive benefit of its employees and their beneficiaries, which Plan was originally effective as of January 1, 2002; and

**WHEREAS**, the Employer retained the power to amend and/or terminate the Plan; and

**WHEREAS**, the Employer now desires to amend and restate the Plan by adopting the VALIC Retirement Services Company Retirement Plan for Governmental Employers document.

**NOW, THEREFORE, BE IT RESOLVED:**

**Section 1.** The Employer hereby amends and restates the Plan, effective July 1, 2015, by adopting the document titled "VALIC Retirement Services Company Retirement Plan for Governmental Employers," in the form and substance as the document heretofore presented to the governing body of the Employer.

**Section 2.** The appropriate representatives of the Employer be, and the same hereby are, authorized and directed to (i) execute the adoption agreement to the VALIC Retirement Services Company Retirement Plan for Governmental Employers document as approved; (ii) execute all other documents and to do all other things as may be necessary or appropriate to make the VALIC Retirement Services Company Retirement Plan for Governmental Employers document effective July 1, 2015 including the execution of any amendments required by the Internal Revenue Service in order to continue and maintain the qualified and exempt status of the Plan; (iii) execute any other documents required to obtain reliance on advisory letters issued to the VALIC Retirement Services Company Retirement Plan for Governmental Employers by the Internal Revenue Service.

Passed by the Lebanon City Council and executed by the Mayor on this 13<sup>th</sup> day of January, 2016 by a vote of \_\_\_\_yeas and \_\_\_\_nays.

CITY OF LEBANON, OREGON

\_\_\_\_\_  
Paul R. Aziz, Mayor   
Bob Elliott, Council President

ATTESTED BY:

\_\_\_\_\_  
Linda Kaser, City Clerk

RESOLUTION AUTHORIZING AMENDMENT )  
AND RESTATEMENT OF RETIREMENT PLAN VIA )  
ADOPTION OF VALIC RETIREMENT SERVICES )  
COMPANY GOVERNMENTAL VOLUME )  
SUBMITTER PLAN )

RESOLUTION NO. 34

For 2009

WHEREAS, City of Lebanon (hereinafter, the "Employer"), previously established the City of Lebanon Special Pay Plan (hereinafter, the "Plan") for the exclusive benefit of its employees and their beneficiaries, which Plan was originally effective as of January 1, 2002; and

WHEREAS, the Employer retained the power to amend and/or terminate the Plan; and

WHEREAS, the Employer now desires to amend and restate the Plan by adopting the VALIC Retirement Services Company Governmental Volume Submitter Plan document.

NOW THEREFORE, BE IT RESOLVED that the Employer hereby amends and restates that Plan, effective January 1, 2002, by adopting the document titled "VALIC Retirement Services Company Governmental Volume Submitter Plan," in the form and substance as the document heretofore presented to the governing body of the Employer; and

RESOLVED FURTHER, that the appropriate representatives of the Employer be, and the same hereby are, authorized and directed to: (i) execute the adoption agreement to the VALIC Retirement Services Company Governmental Volume Submitter Plan document as approved; (ii) execute all other documents and to do all other things as may be necessary or appropriate to make the VALIC Retirement Services Company Governmental Volume Submitter Plan document effective January 1, 2002, including the execution of any amendments required by the Internal Revenue Service in order to continue and maintain the qualified and exempt status of the Plan; and (iii) execute any other documents required to obtain reliance on advisory letters issued to the VALIC Retirement Services Company Governmental Volume Submitter Plan by the Internal Revenue Service.

Passed by the Lebanon City Council and signed by the Mayor this 14<sup>th</sup> day of October, 2009 by a vote of 5 for and 0 against.

CITY COUNCIL OF LEBANON, OREGON

Kenneth I Toomb  
Kenneth I. Toomb, Mayor   
Bob Elliott, Council President

ATTEST:

Linda Kaser  
Linda Kaser, City Clerk/Recorder

I certify that I have compared the foregoing copy with the original of record in our office and this is a true and exact copy.

Linda Kaser  
City Recorder for the City of Lebanon

10/14/09



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Plan Description: Volume Submitter Profit Sharing Plan  
FFN: 31558340002-001 Case: 201200204 EIN: 76-0519990  
Letter Serial No: J593778a  
Date of Submission: 04/04/2012

VALIC RETIREMENT SERVICES COMPANY  
2929 ALLEN PARKWAY, L11-40  
HOUSTON, TX 77019

Contact Person:  
Janell Hayes  
Telephone Number:  
513-263-3602  
In Reference To: TEGE:EP:7521  
Date: 03/31/2014

Dear Applicant:

In our opinion, the form of the plan identified above is acceptable under section 401 of the Internal Revenue Code for use by employers for the benefit of their employees. This opinion relates only to the acceptability of the form of the plan under the Internal Revenue Code. It is not an opinion of the effect of other Federal or local statutes.

You must furnish a copy of this letter, a copy of the approved plan, and copies of any subsequent amendments to adopting employers if the practitioner is authorized to amend the plan on their behalf, to each employer who adopts this plan. Effective on or after 10/31/2011, interim amendments adopted by the practitioner on behalf of employers must provide the date of adoption by the practitioner.

This letter considers the changes in qualification requirements contained in the 2010 Cumulative List of Notice 2010-90, 2010-52 I.R.B. 909.

Our opinion on the acceptability of the form of the plan is not a ruling or determination as to whether an employer's plan qualifies under Code section 401(a). However, an employer that adopts this plan may rely on this letter with respect to the qualification of its plan under Code section 401(a), as provided for in Rev. Proc. 2011-49, 2011-44 I.R.B. 608, and outlined below. The terms of the plan must be followed in operation.

Except as provided below, our opinion does not apply with respect to the requirements of Code sections 401(a)(4), 401(l), 410(b), and 414(s). Our opinion does not apply for purposes of Code section 401(a)(10)(B) and section 401(a)(16) if an employer ever maintained another qualified plan for one or more employees who are covered by this plan. For this purpose, the employer will not be considered to have maintained another plan merely because the employer has maintained another defined contribution plan(s), provided such other plan(s) has been terminated prior to the effective date of this plan and no annual additions have been credited to the account of any participant under such other plan(s) as of any date within the limitation year of this plan. Also, for this purpose, an employer is considered as maintaining another plan, to the extent that the employer maintains a welfare benefit fund defined in Code section 419(e), which provides postretirement medical benefits allocated to separate accounts for key employees as defined in Code section 419A(d)(3), or an individual medical account as defined in Code section 415(l)(2), which is part of a pension or annuity plan maintained by the employer, or a simplified employee pension plan.

Our opinion does not apply for purposes of the requirement of section 1.401(a)-1(b)(2) of the regulations applicable to a money purchase plan or target benefit plan where the normal retirement age under the employer's plan is lower than age 62.

This is not a ruling or determination with respect to any language in the plan that reflects Section 3 of the Defense of Marriage Act, Pub. L. 104-199, 110 Stat. 2419 (DOMA) or U.S. v. Windsor, 133 S. Ct. 2675 (2013), which invalidated that section.

This letter is not a ruling with respect to the tax treatment to be accorded contributions which are picked up by the governmental employing unit within the meaning of section 414(h)(2) of the Internal Revenue Code.

Our opinion applies with respect to the requirements of Code section 410(b) if 100 percent of all nonexcludable employees benefit under the plan. Employers that elect a safe harbor allocation formula and a safe harbor compensation definition can also rely on an advisory letter with respect to the nondiscriminatory amounts requirement under section 401(a)(4). If this plan includes a CODA or otherwise provides for contributions subject to sections 401(k) and/or 401(m), the advisory letter can be relied on with respect to the form of the nondiscrimination tests of 401(k)(3) and 401(m)(2) if the employer uses a safe harbor compensation definition. In the case of plans described in section 401(k)(12) or (13) and/or 401(m)(11) or (12), employers may also rely on the advisory letter with respect to whether the form of the plan satisfies the requirements of those sections unless the plan provides for the safe harbor contribution to be made under another plan.

The employer may request a determination (1) as to whether the plan, considered with all related qualified plans and, if appropriate, welfare benefit funds, individual medical benefit accounts, and simplified employee pension plans, satisfies the requirements of Code section 401(a)(16) as to limitations on benefits and contributions in Code section 415 and the requirements of Code section 401(a)(10)(B) as to the top-heavy plan requirements in Code section 416; (2) with respect to whether a money purchase or target benefit plan's normal retirement age which is earlier than age 62 satisfies the requirements of section 401(a)-1(b)(2) of the Income Tax Regulations; (3) that the plan is a multiple employer plan; (4) whether there has been a partial termination; and (5) to comply with published procedures of the Service (e.g. minimum funding waiver request). The employer may request a determination letter by filing an application with Employee Plans Determinations on Form 5307, with regard to item (1) above, and Form 5300, for items (2), (3), (4) and (5), without restating for the Cumulative List in effect when the application is filed.

If you, the volume submitter/practitioner, have any questions concerning the IRS processing of this case, please call the above telephone number. This number is only for use of the practitioner. Individual participants and/or adopting employers with questions concerning the plan should contact the volume submitter/practitioner. The plan's adoption agreement, if applicable, must include the practitioner's address and telephone number for inquiries by adopting employers.

If you write to the IRS regarding this plan, please provide your telephone number and the most convenient time for us to call in case we need more information. Whether you call or write, please refer to the Letter Serial Number and File Folder Number shown in the heading of this letter.

You should keep this letter as a permanent record. Please notify us if you modify or discontinue sponsorship of this plan.

Sincerely Yours,



Andrew E. Zuckerman  
Director, Employee Plans Rulings and Agreements

**VALIC Retirement Services Company**  
**Retirement Plan for Governmental Employers**  
**Adoption Agreement #001 – Profit Sharing Plan**  
**Advisory Letter Number: J593778a**

The undersigned, City of Lebanon ("Employer"), by executing this Adoption Agreement, elects to establish (or restate) a retirement plan (and trust, if applicable) (hereinafter, the "Plan") under the VALIC Retirement Services Company Retirement Plan for Governmental Employers (the "Basic Plan Document"). The Employer, subject to the Employer's elections in this Adoption Agreement, adopts fully the Plan provisions (and if applicable, the Trust provisions). The Adoption Agreement and the Basic Plan Document together constitute the Employer's entire Plan (and Trust, if applicable) document. All section references within this Adoption Agreement are Adoption Agreement section references unless the Adoption Agreement or the context indicates otherwise. All "Article" references, and all "Plan Section" references, are references to the applicable article or section of the Basic Plan Document.

The Employer makes the following elections, as permitted under the corresponding provisions of the Basic Plan Document:

**A. VOLUME SUBMITTER PRACTITIONER INFORMATION.**

VALIC Retirement Services Company  
Attn: Institutional Services  
2929 Allen Parkway, L8-10  
Houston, Texas 77019  
888-478-7020

**B. PLAN INFORMATION.**

1. Plan Name: City of Lebanon Special Pay Plan
2. Plan Number (e.g., 001, 002, etc.): 001
3. Effective Date: **(Note: The Effective Date for a new Plan or the Restated Effective Date for a restated Plan generally cannot be earlier than the first day of the Plan Year in which this plan or restatement is adopted. If this is a restatement to comply with the Pension Protection Act of 2006 ("PPA"), the Restated Effective Date may be the first day of the current Plan Year as the Plan contains applicable retroactive effective dates with respect to provisions affected by PPA and subsequent legislation/guidance. Section 414(h) pick-up contributions must relate solely to Compensation for services rendered after the later of the adoption or effective date of this Plan or restatement.)**
  - a.  This is a new Plan effective as of \_\_\_\_\_ (hereinafter "Effective Date").
  - b.  This amendment is a restatement of a previously established qualified plan which was originally effective January 1, 2002 (hereinafter "Effective Date"). The effective date of this restatement is July 1, 2015 (hereinafter "Restated Effective Date").
4. Plan Year/Limitation Year means the 12-consecutive month period (except for Short Plan Years) ending every (Check a. or b., and c., if applicable).
  - a.  December 31
  - b.  Other: June 30
  - c.  Short Plan Year commencing on \_\_\_\_\_ and ending on \_\_\_\_\_.
5. Anniversary Date (annual Valuation Date):
  - a.  last day of the Plan Year
  - b.  first day of the Plan Year

**C. EMPLOYER INFORMATION.**

1. Name of Employer: City of Lebanon
2. Address: 925 Main Street  
(Number and Street)  
Lebanon Oregon 97355  
(City) (State) (Zip Code)
3. Telephone Number: (541) 258-4212
4. Employer Identification Number: 93 – 6002199

5. By signing this Adoption Agreement, the Employer represents and affirms that it is a state or local governmental entity, as defined in Code section 414(d), and is a:
- a.  K-12 educational organization
  - b.  higher educational organization
  - c.  city or county government
  - d.  state government
  - e.  other governmental entity (specify) \_\_\_\_\_

6. Employer's Fiscal Year: June 30

**D. TRUST ELECTION.**

1. All or a portion of this Plan shall be Trusteed pursuant to Article V of the Plan.
- a.  No, this Plan shall be funded exclusively with annuity contracts pursuant to Article X.
  - b.  Yes, this Plan shall have a nondiscretionary Trustee (as described in Article V).
  - c.  Yes, this Plan shall have a discretionary Trustee (as described in Article V).

**E. SERVICE.**

1. PREDECESSOR EMPLOYER OR OTHER EMPLOYER.

This Plan shall recognize service with a predecessor Employer or other entity.

- a.  No
- b.  Yes, service with \_\_\_\_\_ shall be recognized for purposes of (check all that apply):
  - (i)  eligibility
  - (ii)  vesting
  - (iii)  contribution accrual
  - (iv)  early retirement
  - (v)  normal retirement
  - (vi)  other: \_\_\_\_\_

2. SERVICE CREDITING METHODS.

If this Plan requires an annual service requirement to receive an Employer contribution as selected in Section G, the Hours of Service crediting method shall be used for this purpose, and the applicable computation period shall be the Plan Year (or Short Plan Year). The service crediting method for all other purposes shall be as follows:

- a. SERVICE CREDITING METHOD (select one)
  - (i)  Hours of Service crediting method
  - (ii)  elapsed time crediting method
- b. If the Hours of Service crediting method is selected in Section E.2.a.(i) above, then the following must be completed, and shall apply to all Employees:
  - (i) Hours of Service crediting method (select one of the following):
    - (a)  actual hours
    - (b)  days worked
    - (c)  months worked
    - (d)  other: \_\_\_\_\_
  - (ii) Year of Service means the applicable computation period during which an Employee has completed (select one of the following):
    - (a)  at least \_\_\_\_\_ Hours of Service. (May not exceed 2000 hours.)
    - (b)  other: \_\_\_\_\_
- c. Break in service rules (described in Plan Section 6.04(e)) will be applied under this Plan.
  - (i)  No
  - (ii)  Yes

- d. If the Hours of Service Crediting Method is selected in E.2.a.(i) above, then the following computation period elections must be completed, and shall apply to all Employees (select all applicable):
- (i) If service is required for eligibility, the computation period for eligibility shall begin on the date an Employee first performs an Hour of Service and
    - (a)  each anniversary thereof.
    - (b)  shift to the Plan Year which includes the first anniversary of the date on which the Employee first performed an Hour of Service.
  - (ii) If service is required for vesting, early retirement or normal retirement, the computation period for such purposes shall begin on the date an Employee first performs an Hour of Service and:
    - (a)  each anniversary thereof.
    - (b)  shift to the Plan Year which includes the first anniversary of the date on which the Employee first performed an Hour of Service.
    - (c)  end on the last day of each Plan Year.

**F. ELIGIBILITY REQUIREMENTS; INITIAL PLAN ENTRY; PLAN ENTRY DATE.**

**NOTE:** This Section F must not be completed in a manner which restricts an Employee's participation to the Plan Year in which that Employee terminates employment.

1. EXCLUDED CLASSIFICATIONS OF EMPLOYEES shall mean all Employees of the Employer checked below: (**NOTE:** Any classification under "other" must be objectively determinable and free from Employer discretion, and may not identify specific individuals (other than by eligible position or title). In addition, any classification under "other" must not exclude all employees other than a closed or finite group of individuals. Exclusions shall not apply to contributions under Section G.3.b. of this Adoption Agreement.)

<u>For all purposes of the Plan (Do not check items in additional columns if this column selected):</u>	<u>For purposes of Employee nonelective (414(h) pick-up) contributions:</u>	<u>For purposes of Employer matching contributions:</u>	<u>For purposes of Special Pay contributions and Employer contributions, other than Employer matching contributions:</u>
<input type="checkbox"/> N/A. No exclusions	<input type="checkbox"/> N/A. No exclusions	<input type="checkbox"/> N/A. No exclusions	<input type="checkbox"/> N/A. No exclusions
<input type="checkbox"/> hourly paid	<input type="checkbox"/> hourly paid	<input type="checkbox"/> hourly paid	<input type="checkbox"/> hourly paid
<input type="checkbox"/> salaried	<input type="checkbox"/> salaried	<input type="checkbox"/> salaried	<input type="checkbox"/> salaried
<input type="checkbox"/> union employees	<input type="checkbox"/> union employees	<input type="checkbox"/> union employees	<input type="checkbox"/> union employees
<input type="checkbox"/> non-resident aliens	<input type="checkbox"/> non-resident aliens	<input type="checkbox"/> non-resident aliens	<input type="checkbox"/> non-resident aliens
<input type="checkbox"/> Leased Employees	<input type="checkbox"/> Leased Employees	<input type="checkbox"/> Leased Employees	<input type="checkbox"/> Leased Employees
<input type="checkbox"/> Reclassified Employees (as defined in the basic plan document)	<input type="checkbox"/> Reclassified Employees (as defined in the basic plan document)	<input type="checkbox"/> Reclassified Employees (as defined in the basic plan document)	<input type="checkbox"/> Reclassified Employees (as defined in the basic plan document)
<input type="checkbox"/> employees who have not accumulated at least _____ Special Pay days.	<input type="checkbox"/> employees who have not accumulated at least _____ Special Pay days.	<input type="checkbox"/> employees who have not accumulated at least _____ Special Pay days.	<input type="checkbox"/> employees who have not accumulated at least _____ Special Pay days.
<input checked="" type="checkbox"/> other (see limitations in "Note" above) <u>All Employees not classified as Administrators, Confidential employees, City Manager, or AFSCME union employees.</u>	<input type="checkbox"/> other (see limitations in "Note" above) _____	<input type="checkbox"/> other (see limitations in "Note" above) _____	<input type="checkbox"/> other (see limitations in "Note" above) _____

2. CONDITIONS OF ELIGIBILITY (Plan Section 3.01).

Any Employee who is not a member of an excluded classification (Section F.1.) must satisfy the following minimum age and service requirements, if any, for participation in the Plan (other than contributions described in G.3.b.): (Check one of a. – e. May also check f., if applicable).

- a.  No age or service required.
- b.  Attainment of age \_\_\_\_\_ (not to exceed 26).
- c.  Completion of \_\_\_\_\_ (not to exceed 5) Year(s) of Service.
- d.  Completion of \_\_\_\_\_ (not to exceed 60) Month(s) of Service.
- e.  Other age or service requirement (not to exceed the parameters in b.- d. above): \_\_\_\_\_.
- f.  FOR NEW PLANS ONLY – Regardless of any of the above age or service requirements, any Employee who was employed on the Effective Date of the Plan shall be eligible to participate in Employer contributions as of such date. (Must also elect 3.f. below.)

3. EFFECTIVE DATE OF PARTICIPATION (Plan Section 3.02).

An Employee who has satisfied the requirements, if any, of Section F shall become a Participant as of: (Check one of a. – e.; check f. if applicable.)

- a.  such Employee's first Hour of Service (no age or service requirements).
- b.  the first day of the first payroll period coinciding with or next following the date the eligibility requirements are satisfied.
- c.  the earlier of the first day of the Plan Year or the first day of the seventh month of the Plan Year coinciding with or next following the date on which the eligibility requirements are satisfied.
- d.  the first day of the Plan Year next following the date the eligibility requirements are satisfied.
- e.  other: \_\_\_\_\_.
- f.  FOR NEW PLANS ONLY – Any Employee who was employed on the Effective Date of the Plan shall become a Participant on the Effective Date of the Plan. All other Employees shall become Participants as of the date selected in 3.a. through 3.e. above. (Must also elect 2.f. above.)

**G. CONTRIBUTIONS AND FORFEITURES.**

1. EMPLOYEE NONELECTIVE CONTRIBUTIONS (414(h) pick-up; Plan Section 4.01(c)):

- a.  N/A. No Employee nonelective contributions are allowed.
- b.  Employee nonelective contributions in the amount of \_\_\_\_\_ (must be greater than zero if selected) percent of Compensation shall be made to the Plan.

2. EMPLOYER MATCHING CONTRIBUTIONS:

a. Formulas (select all that apply):

- (i)  N/A. No Employer matching contributions in this Plan.
- (ii)  A discretionary percentage of a Participant's elective deferral contributions.
- (iii)  \_\_\_\_\_% of a Participant's elective deferral contributions. Elective deferral contributions in excess of \_\_\_\_\_% of a Participant's Compensation for the year shall not be matched. (Must also complete G.2.b. below.)
- (iv)  Equals the percentage of elective deferral contributions determined under the following schedule: (Must also complete G.2.b. below.)

Years of Service	Matching Percentage
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

Elective deferral contributions in excess of \_\_\_\_\_% of a Participant's Compensation for the year shall not be matched.

- (iv)  Other: \_\_\_\_\_.

b. Employer matching contributions shall be made based on elective deferral (pre-tax) contributions to the following plan(s) of the Employer (insert name of plan(s) to which the elective deferral contributions being matched will be made):

\_\_\_\_\_

3. EMPLOYER CONTRIBUTIONS (other than Employer matching contributions):

The Employer profit sharing contribution is:

- a.  EMPLOYER CONTRIBUTIONS GENERALLY (choose all that apply): *(Note: Contributions under this Section G.3.a. must be "substantial and recurring" in accordance with Treasury Regulation Sections 1.401-1(a)(3) and – 1(b)(2), and must be for the exclusive benefit of Employees or their Beneficiaries. The applicable dollar amount or percentage of Compensation in options (ii) through (v) below must be greater than zero.)*
- (i)  A discretionary amount to be allocated to each Participant's Account in the same proportion that each such Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for such Plan Year.
  - (ii)  A discretionary amount equal to \$\_\_\_\_\_ on behalf of each Participant per period indicated below:
    - (a)  calendar quarter
    - (b)  month
    - (c)  pay period
    - (d)  week
    - (e)  plan year
  - (iii)  A discretionary amount equal to \$\_\_\_\_\_ per Hour of Service up to \_\_\_\_\_ hours per Plan Year.
  - (iv)  A discretionary amount, equal to \_\_\_\_\_% of each Participant's Compensation for the Plan Year, or \$\_\_\_\_\_ on behalf of each Participant for the Plan Year. (May select either percentage of Compensation or dollar amount, but not both.)
  - (v)  A discretionary amount equal to \_\_\_\_\_% of each Participant's Compensation for the Plan Year, plus \_\_\_\_\_% of such Compensation in excess of \$\_\_\_\_\_ (Must be an amount which is less than the applicable "annual compensation limit" as specified in Plan Section 1.08).
  - (vi)  The Employer will make a separate discretionary contribution on behalf of each of the following classifications of Employees. Such contribution will be allocated in the following manner:
    - (a)  in the same ratio that each Participant's Compensation in that classification bears to the total Compensation of all Participants in that classification for the Plan Year.
    - (b)  in the same dollar amount for each Participant in that classification for the Plan Year.

Note: Must describe classifications by objective, determinable business criteria.

Classification 1: Administrators

Classification 2: Confidential employees

Classification 3: City Manager

Classification 4: AFSCME union employees

(vii)  Other: \_\_\_\_\_

- b.  CONTRIBUTIONS FOR PART-TIME, SEASONAL AND TEMPORARY EMPLOYEES: An amount equal to 7.5% of the Participant's Compensation for the entire Plan Year, reduced by the Employee Nonelective Contributions described in Section G.1. actually contributed to the Participant's account during such Plan Year, provided that such Contribution shall be made solely for Part-time, Seasonal, or Temporary Employees who are not otherwise covered by another qualifying public retirement system as defined for purposes of Treasury Regulation Section 31.3121(b)(7)-2.
- c.  SPECIAL PAY CONTRIBUTIONS: An amount equal to the Employee's current daily rate of pay, multiplied by the Participant's number of unused accumulated Special Pay Days in excess of 0 (enter 0 if no excluded days), but not to exceed N/A days (enter N/A if no upper limit).

Special Pay contributions shall be made with respect to: **SEE ADDENDUM**

- (i)  accumulated Vacation Pay Days
- (ii)  accumulated Sick Leave Days
- (iii)  both accumulated Vacation Pay and accumulated Sick Leave Days

Such contributions shall be made for a Plan Year:

- (i)  for any Employee who is terminating employment during such Plan Year and who has accumulated Special Pay Days described in this Section G.3.c.
- (ii)  for any active or terminating Employee with accumulated Special Pay Days described in this Section G.3.c.

4. HOURS REQUIRED TO SHARE IN ALLOCATION: An active Participant must work a specified number of Hours of Service in order to share in:

a. Employer matching contributions.

- (i)  No minimum number of hours is required.

(ii)  Yes, a Participant must work a minimum of \_\_\_\_\_ Hours of Service during such year. (May not exceed 2000 hours. This option not available if matching contributions are remitted to the Plan each pay period.)

b. Employer contributions described in Section G.3.a.

(i)  No minimum number of hours is required.

(ii)  Yes, a Participant must work a minimum of \_\_\_\_\_ Hours of Service during the Plan Year. (May not exceed 2000 hours. This option not available if Special Pay contributions are elected in Section G.3.c. This option also not available if Employer contributions are remitted to the Plan each pay period, or if an allocation period other than the Plan Year is selected in Section G.3.a.(ii).)

5. FORFEITURES (Plan Section 4.03(e)):

Forfeitures of Employer contributions under Sections G.2. and G.3.a. shall be:

a.  N/A. Employer contributions are 100% Vested.

b.  used to reduce future Employer contributions under this Plan.

c.  allocated to all Participants eligible to share in the allocations in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for the year.

d.  Other (*must require use/exhaustion of forfeitures as soon as administratively feasible*):

\_\_\_\_\_.

6. CONTRIBUTIONS AND FORFEITURES ALLOCATED TO TERMINATED PARTICIPANTS (Plan Section 4.03(e)):

For contributions described in Section G.2. only, a Terminated Participant shall share in the allocation of Employer matching contributions and forfeitures for the Plan Year as follows:

a.  A Participant must be employed on the last day of the Plan Year in order to share in the allocation.

b.  A Participant must be employed on the last day of the Plan Year in order to share in the allocation, unless termination was for reason of death, Total and Permanent Disability, early retirement or normal retirement.

c.  A Participant must be employed on the last day of the Plan Year in order to share in the allocation, unless such Participant worked at least \_\_\_\_\_ Hours of Service during such year. (May not exceed 2000 hours.)

d.  A Participant must be employed on the last day of the Plan Year in order to share in the allocation, unless termination was for reason of death, Total and Permanent Disability, early retirement or normal retirement, and such Participant worked at least \_\_\_\_\_ Hours of Service during such year. (May not exceed 2000 hours.)

e.  A Participant is not required to be employed on the last day of the Plan Year or work a minimum number of hours in order to share in the allocation.

For contributions described in Section G.3.a. only, a Terminated Participant shall share in the allocation of Employer contributions (other than Employer matching contributions) for the Plan Year or other allocation period as follows. Notwithstanding the period selected in Section G.3.a.(ii), forfeitures shall be allocated based on the Plan Year.

a.  A Participant must be employed on the last day of such Plan Year (or other applicable period as selected in Section G.3.a.(ii)) to share in the allocation of Employer contributions.

b.  A Participant must be employed on the last day of the Plan Year (or other allocation period as selected in Section G.3.a.(ii)) in order to share in the allocation, unless termination was for reason of death, Total and Permanent Disability, early retirement or normal retirement. Notwithstanding the period selected in Section G.3.a.(ii), forfeitures shall be allocated to any Participant employed on the last day of the Plan Year, unless termination was for reason of death, Total and Permanent Disability, early retirement or normal retirement.

c.  A Participant must be employed on the last day of the Plan Year (or other applicable period as selected in Section G.3.a.(ii)) in order to share in the allocation, unless such Participant worked at least \_\_\_\_\_ Hours of Service during such year. (May not exceed 2000 hours.) If Section G.3.a.(ii) is selected, then the Hours of Service requirement is applicable to allocation of forfeitures only.

d.  A Participant must be employed on the last day of the Plan Year (or other applicable period as selected in Section G.3.a.(ii)) in order to share in the allocation, unless termination was for reason of death, Total and Permanent Disability, early retirement or normal retirement, and such Participant worked at least \_\_\_\_\_ Hours of Service during such year. (May not exceed 2000 hours.) If Section G.3.a.(ii) is selected, then the Hours of Service requirement is applicable to allocation of forfeitures only.

e.  A Participant is not required to be employed on the last day of the Plan Year (or other applicable period as selected in Section G.3.a.(ii)) or work a minimum number of hours in order to share in the allocation.

7. FROZEN PLAN:

a.  N/A. Plan is not frozen.

b.  This Plan is a frozen plan effective \_\_\_\_\_. No contributions will be made to the Plan with respect to any period following the stated date.

8. CONTINUED BENEFIT ACCRUALS FOR PARTICIPANTS ON MILITARY LEAVE (Plan Section 12.02). Continued benefit accruals for the HEART Act will not apply unless elected below:

a.  The provisions of Plan Section 12.02 apply effective as of: (select one)

(i)  the first day of the 2007 Plan Year

(ii)  \_\_\_\_\_ (may not be earlier than first day of the 2007 Plan Year)

However, the provisions no longer apply effective as of: (select if applicable)

(iii)  \_\_\_\_\_

## H. COMPENSATION.

1. COMPENSATION with respect to any Participant means:

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

b.  415 safe-harbor compensation.

c.  Code section 3401 wages (wages for Federal income tax withholding).

However, Compensation shall exclude:

(i)  N/A. No exclusions

(ii)  overtime

(iii)  bonuses

(iv)  commissions

(v)  shift differential pay

(vi)  other \_\_\_\_\_

(Must be objectively determinable and applied in a uniform, nondiscriminatory basis, e.g., taxable reimbursements or other fringe benefits.)

2. Compensation shall be based on:

a.  the Plan Year.

b.  the Fiscal Year ending with or within the Plan Year.

c.  the calendar year ending with or within the Plan Year.

3. However, for an Employee's first year of participation, Compensation shall be recognized as of:

a.  the first day of the period selected in 2. above.

b.  the Participant's Effective Date of Participation (Section F.3.).

4. In addition, Compensation shall include compensation that is not currently includible in the Participant's gross income (salary reduction amounts) by reason of the application of Code Sections 125, 402(g)(3) or 457, and 132(f)(4).

a.  Yes

(i)  Code Section 125 elective deferrals will include deemed Code Section 125 compensation.

(ii)  Code Section 125 elective deferrals will not include deemed Code Section 125 compensation.

b.  No

5. Compensation for purposes of calculating contributions to the Plan will be determined:

a.  on an annual basis.

b.  on a payroll period basis (must also check (i) or (ii) below).

(i)  Contributions will be adjusted, if necessary, to meet the Plan formula on an annual basis.

(ii)  Contributions will not be adjusted to meet the Plan formula on an annual basis.

6. Differential wage payments (as described in Plan Section 12.03) will be treated, for Plan Years beginning after December 31, 2008, as Compensation for all Plan benefit purposes unless a. is elected below:

a.  In lieu of the above default provision, the Employer elects the following (select all that apply):

(i)  The inclusion is effective for Plan Years beginning after \_\_\_\_\_ (may not be earlier than December 31, 2008).

(ii)  The inclusion only applies to Compensation for purposes of Employee nonelective contributions.

(iii)  Differential wage payments shall not be treated as Compensation for purposes of any Plan benefit accruals.

7. Compensation paid after severance from employment (Plan Section 4.04). Note: The Employer only needs to complete Section H.7.b. in order to override the default provisions set forth in H.7.a., below. If the Plan will use all of the default provisions, then Section H.7.b. should be skipped.

- a. **Default provisions.** Unless the Employer elects otherwise in Section H.7.b. below, the following defaults will apply:
- (i) The provisions of the Plan setting forth the definition of compensation for purposes of Code § 415 (hereinafter referred to as "415 Compensation") shall be modified (with respect to amounts paid after Severance from Employment) by (1) including payments for unused sick, vacation or other leave and payments from nonqualified unfunded deferred compensation plans (Plan Section 4.04(d)(2)(ii)), (2) excluding salary continuation payments for participants on military leave (Plan Section 4.04(d)(2)(iii)), and (3) excluding salary continuation payments for disabled participants (Plan Section 4.04(d)(2)(iv)).
  - (ii) The "first few weeks rule" does not apply for purposes of 415 Compensation (Plan Section 4.04(d)(2)).
  - (iii) The Plan's definition of compensation for allocation purposes (hereinafter referred to as "Plan Compensation") shall be modified to provide for the same adjustments to Plan Compensation (for all contribution types) that are made to 415 Compensation pursuant to this Section H.7.
- b. In lieu of the default provisions in H.7.a., above, the following apply (select all that apply; if no selections are made, then the defaults apply):

**415 Compensation** (select all that apply):

- (i)  Exclude leave cashouts and deferred compensation (Plan Section 4.04(d)(2)(ii))
- (ii)  Include military continuation payments (Plan Section 4.04(d)(2)(iii))
- (iii)  Include disability continuation payments (Plan Section 4.04(d)(2)(iv)) for all participants, and the salary continuation will continue for the following fixed or determinable period: \_\_\_\_\_
- (iv)  Apply the administrative delay ("first few weeks") rule (Plan Section 4.04(d)(2))

**Plan Compensation** (select all that apply):

- (v)  No change from existing Plan provisions
- (vi)  Exclude all post-severance compensation
- (vii)  Exclude post-severance regular pay
- (viii)  Exclude leave cashouts and deferred compensation
- (ix)  Include post-severance military continuation payments
- (x)  Include post-severance disability continuation payments for all participants, and the salary continuation will continue for the following fixed or determinable period: \_\_\_\_\_
- (xi)  Other: \_\_\_\_\_

**Plan Compensation Special Effective Date.** The definition of Plan Compensation is modified as set forth herein effective as of the same date as the 415 Compensation change is effective unless otherwise specified:

- (xii)  \_\_\_\_\_ (enter the effective date)

**I. TRANSFERS AND ROLLOVERS FROM OTHER EMPLOYER PLANS** (Plan Section 4.06) will be allowed:

- 1.  No.
- 2.  Yes, for Participants only.
- 3.  Yes, for all Employees. (Must be selected for plans which intend to accept transfers or rollovers from Code Section 414(k) accounts under defined benefit plans for all Employees, regardless of their status as Participants.)

If I.2. or I.3. is chosen:

Distributions from a Participant's Rollover Account may be made at any time, even if there is no distributable event which permits a distribution of other accounts.

- a.  No
- b.  Yes

**J. VESTING.** (Plan Section 6.04(b)).

- 1. The vesting schedule(s) for Employer contributions (other than those described in G.1., G.3.b. or G.3.c.), based on number of Years of Service (or twelve month Periods of Service, if Elapsed Time) shall be as follows:

Employer contributions (other than matching):

- a.  100% immediate
- b.  \_\_\_\_\_ - Year Cliff (not to exceed 15 years)

Employer matching contributions:

- a.  100% immediate
- b.  \_\_\_\_\_ - Year Cliff (not to exceed 15 years)



2. Hardship distributions for expenses of Beneficiaries will be allowed effective as of August 17, 2006, unless a. or b. is elected below (applies only to plans that allow hardship distributions):
  - a.  Hardship distributions for Beneficiary expenses are allowed effective as of \_\_\_\_\_ (may not be earlier than August 17, 2006).
  - b.  Hardship distributions for Beneficiary expenses are not allowed.

**N. DISTRIBUTIONS UPON TERMINATION OF EMPLOYMENT** (Plan Section 6.04(a)). Distributions upon termination of employment shall not be made unless the following conditions have been satisfied:

1.  N/A. Immediate distributions may be made at Participant's election.
2.  The Participant has incurred \_\_\_\_\_ (not to exceed five (5)) 1-Year Break(s) in Service.
3.  The Participant has reached Early or Normal Retirement Age.
4.  Distributions may be made at the Participant's election on or after the Anniversary Date following termination of employment.

**O. RESTRICTIONS ON FORM OF DISTRIBUTIONS** (Plan Sections 6.05 and 6.06). If the Employer has designated one or more annuity contracts as eligible investments under the Plan, distributions under the Plan may be made in the form of an annuity. In all cases, distributions under the Plan may be made:

1.  in lump sums.
2.  in lump sums or installments.

**P. INVOLUNTARY DISTRIBUTIONS**

An immediate distribution of a terminated Participant's Vested interest in the Plan may be made without the consent of the Participant. Note: If the Employer elects 3. or 4., below, the Employer must select an IRA provider for automatic rollovers. See Plan Section 6.05(b).

1.  No.
2.  Yes, but only if the distribution does not exceed \$1,000.
3.  Yes, but only if the Participant's Vested interest does not exceed the cash-out limit in effect under Code Section 411(a)(11)(A) for the Plan Year that includes the date of distribution. For purposes of determining whether the Participant's Vested interest exceeds the cash-out limit, rollover contributions shall be (must select a. or b. below):
  - a.  excluded
  - b.  included
4.  Yes, regardless of the amount. Note: If any portion of the Participant's Vested interest is attributable to contributions for Part-time, Seasonal or Temporary Employees under Section G.3.b., distribution may not be made without the Participant's consent if the Participant's Vested interest is greater than the cash-out limit in effect under Code Section 411(a)(11)(A) for the Plan Year that includes the date of distribution.
5.  Other: \_\_\_\_\_.

**Q. NON-SPOUSAL ROLLOVERS** (Plan Section 6.14(g)). Non-spousal rollovers are allowed after December 31, 2006 unless 1. or 2. is elected below (Plan Section 6.14(g) provides that such distributions are always allowed after December 31, 2009):

1.  Non-spousal rollovers are not allowed prior to January 1, 2010.
2.  Non-spousal rollovers are allowed effective \_\_\_\_\_ (not earlier than January 1, 2007 and not later than December 31, 2009).

**R. IN-SERVICE DISTRIBUTIONS OF TRANSFERRED MONEY PURCHASE ASSETS** (Plan Section 6.10). In-service distributions (of amounts transferred to this Plan from a money purchase pension plan) will not be allowed unless 1. is elected below:

1.  In-service distributions (of amounts transferred to this Plan from a money purchase pension plan) will be allowed for Participants at age \_\_\_ (cannot be less than 62) effective as of the first day of the 2007 Plan Year unless another date is elected below:
  - a.  \_\_\_ (may not be earlier than the first day of the 2007 Plan Year).

**AND**, the following limitations apply to such in-service distributions:

- b.  The Plan already provides for in-service and the restrictions set forth in the Plan (e.g., minimum amount of distributions or frequency of distributions) are applicable to in-service distributions of amounts transferred from a money purchase plan.
- c.  N/A. No limitations.
- d.  The following elections apply to in-service distributions of transferred money purchase assets (select all that apply):
  - (i)  The minimum amount of a distribution is \$\_\_\_\_\_ (may not exceed \$1,000).
  - (ii)  No more than \_\_\_\_\_ distribution(s) may be made to a Participant during a Plan Year.
  - (iii)  Distributions may only be made from accounts that are fully Vested.
  - (iv)  In-service distributions may be made subject to the following provisions: \_\_\_\_\_ (must be definitely determinable and not subject to discretion).

**S. QUALIFIED RESERVIST DISTRIBUTIONS** (Plan Section 6.12). Qualified Reservist Distributions will not be allowed unless 1. is elected below:

1.  Qualified Reservist Distributions are allowed effective as of \_\_\_\_\_ (may not be earlier than September 12, 2001).

**T. DISTRIBUTIONS FOR "DEEMED" SEVERANCE OF EMPLOYMENT OF PARTICIPANT ON MILITARY LEAVE** (Plan Section 12.04). The Plan does not permit distributions pursuant to Plan Section 12.04 unless otherwise elected below:

1.  The Plan permits such distributions, effective January 1, 2007.  
2.  The Plan permits such distributions effective as of \_\_\_\_\_ (may not be earlier than January 1, 2007).

**U. WRERA (RMD WAIVERS FOR 2009)** (Plan Section 6.16). The provisions of Plan Section 6.16(a) apply (RMDs continue in accordance with the terms of the Plan for Participants or Beneficiaries receiving installment payments unless such Participant or Beneficiary elects otherwise, whereas RMDs are suspended for all other Participants and Beneficiaries) unless otherwise elected below:

1.  The provisions of Plan Section 6.16(b) apply (RMDs continue in accordance with the terms of the Plan for all Participants and Beneficiaries, unless otherwise elected by a Participant or Beneficiary).  
2.  The provisions of Plan Section 6.16(c) apply (RMDs continue in accordance with the terms of the Plan for all Participants and Beneficiaries, but only Participants or Beneficiaries receiving installment payments may elect otherwise).  
3.  Other: \_\_\_\_\_.

For purposes of Plan Section 6.16, the Plan will also treat the following as eligible rollover distributions in 2009: (If no election is made, then a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code §401(a)(9)(H)):

4.  2009 RMDs (as defined in Section 6.16(a) of the Plan) and installment payments that include 2009 RMDs.  
5.  2009 RMDs (as defined in Section 6.16(a) of the Plan) but only if paid with an additional amount that is an eligible rollover distribution without regard to Code §401(a)(9)(H).

**V. LOANS TO PARTICIPANTS** (Plan Section 11.01)

Loans to Participants shall be made:

1.  No (must be selected for plans that select G.3.b.)  
2.  Yes, for any reason  
3.  Yes, but only on account of hardship or financial need

**W. DIRECTED INVESTMENT ACCOUNTS** (Plan Section 4.09) are permitted for the interest in any one or more accounts:

1.  Yes, but subject to the following restrictions:  
    a.  No restrictions apply.  
    b.  Only if accounts are 100% vested.  
2.  No  
3.  Other: \_\_\_\_\_.

**X. DOMESTIC RELATIONS ORDERS** (Plan Section 6.13). Distributions to an "alternate payee" may be made prior to the time when the Participant is entitled to a distribution under the terms of the Plan:

1.  No  
2.  Yes

**Y. TOTAL AND PERMANENT DISABILITY** (Plan Section 1.45). Total and Permanent Disability will be determined based on the definition in Section 1.45 of the Plan unless an alternate definition is elected and described below:

1.  Alternate definition: \_\_\_\_\_

**RESTRICTIONS ON USE OF ADOPTION AGREEMENT:** This Adoption Agreement may be used solely in conjunction with the VALIC Retirement Services Company Retirement Plan for Governmental Employers (the Basic Plan Document). The Adoption Agreement and the Basic Plan Document together constitute the "volume submitter document" that is being adopted by the Employer.

**APPROVAL BY VOLUME SUBMITTER PRACTITIONER REQUIRED:** This volume submitter specimen document may be adopted only with the approval of the Volume Submitter Practitioner identified in Section A above. However, the adoption of this Plan, its qualification by the IRS, and the related tax consequences are the responsibility of the Employer and its independent tax and legal advisors. The Volume Submitter Practitioner will inform the adopting Employer of any amendments made to the volume submitter document, or of the discontinuance or abandonment of the volume submitter document.

**RELIANCE ON VOLUME SUBMITTER PLAN:** The adopting Employer may rely on an advisory letter issued to the Volume Submitter Practitioner by the Internal Revenue Service as evidence that the plan is qualified under Code Section 401 only if (1) the Employer's plan is identical to a volume submitter specimen plan with a currently valid favorable advisory letter, (2) the Employer has chosen only options permitted under the Adoption Agreement portion of the specimen document, (3) the Employer has followed the terms of the plan, and (4) all other conditions of section 19 of Revenue Procedure 2011-49 have been satisfied.

The Employer may not rely on an advisory letter in certain circumstances or with respect to certain qualification requirements as described in section 19 of Revenue Procedure 2011-49. For example, the Employer may not rely on an advisory letter with respect to the requirements of Section 415 if the Employer maintains or has ever maintained another plan covering some of the same participants. In those circumstances where an Employer is not permitted to rely on an advisory letter issued to the Volume Submitter Practitioner, either generally or with respect to a particular qualification requirement, the Employer may choose to apply to the Internal Revenue Service for a determination letter.

**CAUTION:** This volume submitter document has been designed for use solely by Employers that are state or local governmental entities. As such, it is designed solely for "governmental plans" that are exempt from Title I of ERISA and certain provisions of the Internal Revenue Code that otherwise apply to qualified plans. However, there may be restrictions under state or local law on a governmental Employer's right to establish its own qualified plan (or on the types of provisions that may be included in such plan). The Employer should consult with legal counsel to verify that the establishment of this plan (or the specific provisions elected in this Adoption Agreement) are not contrary to existing state law. Neither the Volume Submitter Practitioner nor its employees or representatives are authorized to provide legal or tax advice to the Employer or its employees or representatives. Failure to properly complete this Adoption Agreement may result in disqualification of the plan.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Name of Employer: City of Lebanon

Signed: \_\_\_\_\_

Printed name and title: \_\_\_\_\_

Name of Trustee\*: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed name and title: \_\_\_\_\_

Name of Co-Trustee\*: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed name and title: \_\_\_\_\_

Mailing Address of Trustee(s)\*:

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

Approval of Volume Submitter Practitioner: The Employer's adoption of this volume submitter document is approved by the Volume Submitter Practitioner, VALIC Retirement Services Company.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Appendix A**

**Special Effective Dates**

*Pursuant to Section 7.01(a) of the Basic Plan Document, the Employer may specify or change the effective date of one or more provisions of the Adoption Agreement by completing this Appendix A. The Employer may wish to specify one or more special effective dates if, for example, (i) certain Plan provisions will not be effective until a later date, or (ii) the Plan is being restated for the Pension Protection Act of 2006 (retroactive to the first day of the current Plan Year), and special effective dates are needed to reflect discretionary amendments to the Plan since the beginning of the Plan Year. However, no special effective date may be earlier than the Effective Date (or the Restated Effective Date, in the case of a restatement) of the Plan, and no special effective date shall result in the delay of a Plan provision beyond the permissible effective date under any applicable law. For periods prior to the special effective date(s) specified below, the Plan terms in effect prior to its restatement under this Adoption Agreement will control for purposes of the designated provisions.*

**SPECIAL EFFECTIVE DATES.** The following special effective dates apply: (select a. or all that apply)

- a.  **N/A.** The Employer is not electing any special effective dates.
- b.  **Eligibility Requirements.** The Eligibility and/or Entry Date provisions in Section F. are effective: \_\_\_\_\_
- c.  **Contributions and Forfeitures.** The Contribution and/or Forfeiture provisions in Section G. are effective: \_\_\_\_\_
- d.  **Compensation.** The Compensation provisions in Section H. are effective: \_\_\_\_\_
- e.  **Vesting.** The Vesting provisions in Section J. are effective: \_\_\_\_\_
- f.  **Other special effective date(s):** \_\_\_\_\_

**ADDENDUM**  
**TO**  
**CITY OF LEBANON**  
**SPECIAL PAY PLAN**

**ITEM ONE**

Section G.3.c. of Adoption Agreement #001 is hereby amended to read as follows:

**G. CONTRIBUTIONS AND FORFEITURES.**

3. EMPLOYER CONTRIBUTIONS (other than Employer matching contributions):

- c.  SPECIAL PAY CONTRIBUTIONS: [Note: If this option is selected, at least one additional Employer nonelective contribution must be selected under this section G. other than Employer Matching Contributions in G.2. or Contributions for Part-time, Seasonal and Temporary Employees in G.3.b.] An amount equal to the Employee's current daily rate of pay multiplied by the Participant's number of unused accumulated Special Pay Days in excess of 0 (enter 0 if no excluded days), but not to exceed N/A days (enter NA if no upper limit).

Special Pay Contributions for all Administrators and Confidential Employees shall be made with respect to:

- (i)  accumulated Vacation Pay Days
- (ii)  accumulated Sick Leave Days
- (iii)  both accumulated Vacation Pay and accumulated Sick Leave Days
- (iv)  accumulated Vacation hours up to 60 hours each year for any active Employee
- (v)  vacation accrual balance up to 250 hours maximum for terminated Employees

Special Pay Contributions for AFSCME Union members and Confidential Employees shall be made with respect to:

- (i)  accumulated Vacation Pay Days
- (ii)  accumulated Sick Leave Days
- (iii)  both accumulated Vacation Pay and accumulated Sick Leave Days
- (iv)  comp-time hours using formula from contract for active Employees
- (v)  balance of comp-time accrual for terminated Employees

Such contributions shall be made for a Plan Year:

- (i)  for any Employee who is terminating employment during such Plan Year and who has accumulated Special Pay Days described in this section G.3.c.
- (ii)  for any active or terminating Employee with accumulated Special Pay Days described in this section G.3.c. up to the maximum permitted days selected above or the total of all eligible Special Pay Days, whichever is less.

Notwithstanding any plan provisions to the contrary, for purposes of this section, Vacation pay shall be calculated in terms of hours rather than days.

**VALIC RETIREMENT SERVICES COMPANY  
RETIREMENT PLAN FOR GOVERNMENTAL EMPLOYERS  
Basic Plan Document**

**TABLE OF CONTENTS**

**ARTICLE I - DEFINITIONS.....4**

**ARTICLE II - ADMINISTRATION .....13**

2.01 POWERS AND RESPONSIBILITIES OF THE EMPLOYER ..... 13

2.02 DESIGNATION OF ADMINISTRATIVE AUTHORITY ..... 13

2.03 ALLOCATION AND DELEGATION OF RESPONSIBILITIES ..... 13

2.04 POWERS AND DUTIES OF THE ADMINISTRATOR..... 14

2.05 RECORDS AND REPORTS..... 14

2.06 APPOINTMENT OF ADVISERS ..... 15

2.07 INFORMATION FROM EMPLOYER..... 15

2.08 PAYMENT OF CONTRACT FEES ..... 15

2.09 PAYMENT OF EXPENSES ..... 15

2.10 MAJORITY ACTIONS..... 15

2.11 CLAIMS PROCEDURE ..... 15

2.12 CLAIMS REVIEW PROCEDURE..... 15

**ARTICLE III - ELIGIBILITY.....17**

3.01 CONDITIONS OF ELIGIBILITY ..... 17

3.02 EFFECTIVE DATE OF PARTICIPATION ..... 17

3.03 DETERMINATION OF ELIGIBILITY..... 17

3.04 TERMINATION OF ELIGIBILITY ..... 17

3.05 ELECTION NOT TO PARTICIPATE..... 18

**ARTICLE IV - CONTRIBUTION AND ALLOCATION.....19**

4.01 FORMULA FOR DETERMINING EMPLOYER’S CONTRIBUTION..... 19

4.02 TIME OF PAYMENT OF EMPLOYER’S CONTRIBUTION ..... 20

4.03 ALLOCATION OF CONTRIBUTIONS, FORFEITURES AND EARNINGS ..... 20

4.04 MAXIMUM ANNUAL ADDITIONS ..... 21

4.05 ADJUSTMENT FOR EXCESSIVE ANNUAL ADDITIONS..... 27

4.06 TRANSFERS AND ROLLOVERS FROM OTHER EMPLOYER PLANS ..... 28

4.07 VOLUNTARY EMPLOYEE CONTRIBUTIONS (EMPLOYEE AFTER-TAX  
CONTRIBUTIONS)..... 29

4.08 QUALIFIED VOLUNTARY EMPLOYEE CONTRIBUTIONS ..... 29

4.09 DIRECTED INVESTMENT ACCOUNT..... 30

**ARTICLE V - TRUSTEE AND CUSTODIAN.....31**

5.01 BASIC RESPONSIBILITIES OF THE TRUSTEE ..... 31

5.02 INVESTMENT POWERS AND DUTIES OF THE TRUSTEE..... 32

5.03 OTHER POWERS OF THE TRUSTEE ..... 33

5.04 DUTIES OF THE TRUSTEE REGARDING PAYMENTS ..... 35

5.05 TRUSTEE’S COMPENSATION AND EXPENSES AND TAXES ..... 35

5.06 ANNUAL REPORT OF THE TRUSTEE..... 35

5.07 RESIGNATION, REMOVAL AND SUCCESSION OF TRUSTEE ..... 36

5.08 TRUSTEE INDEMNIFICATION ..... 36

5.09 VALUATION OF THE TRUST FUND ..... 36

5.10 METHOD OF VALUATION..... 37

5.11 USE OF CUSTODIAL ACCOUNT..... 37

**ARTICLE VI - DETERMINATION AND DISTRIBUTION OF BENEFITS .....38**

6.01 DETERMINATION OF BENEFITS UPON RETIREMENT..... 38

6.02 DETERMINATION OF BENEFITS UPON DEATH ..... 38

6.03 DETERMINATION OF BENEFITS IN EVENT OF DISABILITY ..... 38

6.04 DETERMINATION OF BENEFITS UPON TERMINATION ..... 38

6.05	DISTRIBUTION OF BENEFITS.....	40
6.06	DISTRIBUTION OF BENEFITS UPON DEATH .....	41
6.07	TIME OF SEGREGATION OR DISTRIBUTION .....	42
6.08	DISTRIBUTION FOR MINOR BENEFICIARY .....	42
6.09	LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN .....	42
6.10	IN-SERVICE DISTRIBUTION .....	43
6.11	ADVANCE DISTRIBUTION FOR HARDSHIP .....	43
6.12	QUALIFIED RESERVIST DISTRIBUTIONS.....	44
6.13	LIMITATIONS ON BENEFITS AND DISTRIBUTIONS UNDER DOMESTIC RELATIONS ORDERS .....	44
6.14	DIRECT ROLLOVER .....	45
6.15	REQUIRED MINIMUM DISTRIBUTIONS .....	46
6.16	WAIVER OF 2009 REQUIRED MINIMUM DISTRIBUTIONS .....	49
6.17	PARTICIPANT DISTRIBUTION NOTIFICATION .....	51
<b>ARTICLE VII - AMENDMENT AND TERMINATION.....</b>		<b>52</b>
7.01	AMENDMENT BY EMPLOYER .....	52
7.02	AMENDMENT BY VOLUME SUBMITTER PRACTITIONER.....	52
7.03	TERMINATION .....	53
<b>ARTICLE VIII - MISCELLANEOUS .....</b>		<b>54</b>
8.01	EMPLOYER ADOPTIONS .....	54
8.02	PARTICIPANT'S RIGHTS .....	54
8.03	ALIENATION.....	54
8.04	CONSTRUCTION OF PLAN.....	55
8.05	GENDER AND NUMBER .....	55
8.06	LEGAL ACTION .....	55
8.07	PROHIBITION AGAINST DIVERSION OF FUNDS.....	55
8.08	EMPLOYER'S, ADMINISTRATOR'S AND TRUSTEE'S PROTECTIVE CLAUSE .....	55
8.09	INSURER'S PROTECTIVE CLAUSE.....	55
8.10	RECEIPT AND RELEASE FOR PAYMENTS .....	55
8.11	ACTION BY THE EMPLOYER .....	56
8.12	RESPONSIBLE PARTIES AND ALLOCATION OF RESPONSIBILITY.....	56
8.13	HEADINGS.....	56
8.14	APPROVAL BY INTERNAL REVENUE SERVICE.....	56
8.15	UNIFORMITY .....	57
<b>ARTICLE IX - PARTICIPATING EMPLOYERS.....</b>		<b>58</b>
9.01	ELECTION TO BECOME A PARTICIPATING EMPLOYER.....	58
9.02	REQUIREMENTS OF PARTICIPATING EMPLOYERS .....	58
9.03	DESIGNATION OF AGENT.....	58
9.04	EMPLOYEE TRANSFERS .....	58
9.05	PARTICIPATING EMPLOYER'S CONTRIBUTION AND FORFEITURES .....	58
9.06	AMENDMENT .....	59
9.07	DISCONTINUANCE OF PARTICIPATION.....	59
9.08	ADMINISTRATOR'S AUTHORITY .....	59
<b>ARTICLE X - CONTRACTS.....</b>		<b>60</b>
10.01	PURCHASE OF CONTRACTS.....	60
10.02	EMPLOYER DESIGNATED AS OWNER.....	60
10.03	TYPE OF CONTRACT(S).....	60
10.04	VOTING RIGHTS .....	60
10.05	CERTIFICATE OF PARTICIPATION.....	60
10.06	INSURER INDEMNIFICATION .....	60

<b>ARTICLE XI - LOANS, AUDITS AND TRANSFERS .....</b>	<b>61</b>
11.01 LOANS TO PARTICIPANTS .....	61
11.02 TRANSFER OF INTEREST .....	62
<b>ARTICLE XII - HEART ACT PROVISIONS .....</b>	<b>63</b>
12.01 DEATH BENEFITS .....	63
12.02 BENEFIT ACCRUAL.....	63
12.03 DIFFERENTIAL WAGE PAYMENTS.....	63
12.04 DEEMED SEVERANCE .....	63

ARTICLE I  
DEFINITIONS

As used in this Plan, the following words and phrases shall have the meanings set forth herein unless a different meaning is clearly required by the context:

1.01 “Administrator” means the Employer or such person(s) or entity designated by the Employer pursuant to Section 2.02 to administer the Plan on behalf of the Employer.

1.02 “Adoption Agreement” means the separate Agreement which is executed by the Employer and accepted by the Insurer (or Trustee, if applicable) and sets forth the elective provisions of this Plan and Trust as specified by the Employer.

1.03 “Affiliated Employer” means the Employer and any other entity that is required to be aggregated with the Employer under the provisions of the Code (or the Regulations or other IRS guidance) applicable to qualified retirement plans under Section 401(a) and/or Section 403(a) of the Code.

1.04 “Aggregate Account” means with respect to each Participant, the value of all accounts maintained on behalf of a Participant, whether attributable to Employer or Employee contributions.

1.05 “Anniversary Date” means the anniversary date specified in the Adoption Agreement.

1.06 “Beneficiary” means any person to whom a share of a deceased Participant’s interest in the Plan is payable, subject to Sections 6.02 and 6.06.

1.07 “Code” means the Internal Revenue Code of 1986, as amended or replaced from time to time.

1.08 “Compensation” with respect to any Participant means one of the following definitions, as selected in the Adoption Agreement:

(a) Compensation on Form W-2. Compensation is defined as wages, as defined in Code Section 3401(a), and all other payments of Compensation to an Employee by the Employer (in the course of the Employer’s trade or business) for which the Employer is required to furnish the Employee a written statement under Code Sections 6041(d),6051(a)(3) and 6052. Compensation must be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).

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

(c) 415 Safe-Harbor Compensation. Compensation is defined as wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in Regulation Section 1.62-2(c)), and excluding the following:

(1) Employer contributions to a plan of deferred compensation which are not includible in the Employee’s gross income for the taxable year in which contributed, or Employer

contributions under a simplified employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation;

(2) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

(3) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and

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

If so elected in the Adoption Agreement, Compensation shall be adjusted, as set forth herein and as otherwise elected in the Adoption Agreement, for the following types of compensation paid after a Participant's severance from employment with the Employer maintaining the Plan (or any other entity that is treated as the Employer pursuant to Code Section 414(b), (c), (m) or (o)). However, amounts described in subsections (d) and (e) below may only be included in Compensation to the extent such amounts are paid by the later of 2 1/2 months after severance from employment or by the end of the limitation year that includes the date of such severance from employment. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered Compensation, even if payment is made within the time period specified above.

(d) Regular pay. Unless otherwise elected in the Adoption Agreement, Compensation shall include regular pay after severance of employment if:

(1) The payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(2) The payment would have been paid to the Participant prior to a severance from employment if the participant had continued in employment with the Employer.

(e) Leave cashouts and deferred compensation. Leave cashouts shall be included in Compensation, unless otherwise elected in the Adoption Agreement, if those amounts would have been included in the definition of Compensation if they were paid prior to the participant's severance from employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued. In addition, deferred compensation shall be included in Compensation, unless otherwise elected in the Adoption Agreement, if the compensation would have been included in the definition of Compensation if it had been paid prior to the participant's severance from employment, and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the participant had continued in employment with the Employer and only to the extent that the payment is includible in the participant's gross income.

(f) Salary continuation payments for military service participants. Compensation does not include, unless otherwise elected in the Adoption Agreement, payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code Section 414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(g) Salary continuation payments for disabled Participants. Unless otherwise elected in the Adoption Agreement, Compensation does not include compensation paid to a participant who is permanently and totally disabled (as defined in Code Section 22(e)(3)). If elected, this provision shall apply to all participants for the period specified in the Adoption Agreement.

In addition, if specified in the Adoption Agreement, Compensation for all Plan purposes shall also include any elective deferral (as defined in Code Section 402(g)(3)), and any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of Code Section 125 or 457, and 132(f)(4).

If specified in the Adoption Agreement, amounts under Code Section 125 include any amounts not available to a Participant in cash in lieu of group health coverage because the participant is unable to certify that he or she has other health coverage (deemed Code Section 125 compensation). An amount will be treated as an amount under Code Section 125 only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

The annual compensation of each Participant taken into account in determining allocations for any Plan Year shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code (the "annual compensation limit"). 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. If a determination period consists of fewer than twelve (12) months, the "annual compensation limit" will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is twelve (12).

Notwithstanding the previous paragraph, the "annual compensation limit" for "eligible participants" shall be the greater of (i) the "annual compensation limit" as described in the previous paragraph, or (ii) the amount of compensation that was allowed to be taken into account under the Plan as in effect on July 1, 1993. Therefore, if the Plan as in effect on July 1, 1993 determined benefits without any limit on compensation, then the "annual compensation limit" in effect under this Section 1.08 will not apply to any "eligible participant" in any future year. For purposes of this paragraph, an "eligible participant" is an individual who first became a participant in the Plan prior to the first day of the first Plan Year beginning after the earlier of: (i) the last day of the Plan Year by which a plan amendment to reflect the requirements of Section 13212 of the Omnibus Budget Reconciliation Act of 1993 was both adopted and effective; or (ii) December 31, 1995. However, this paragraph shall not apply unless (i) the Plan was in effect on July 1, 1993, and (ii) the Plan was amended to incorporate by reference the annual compensation limitation under Section 401(a)(17) of the Code, effective (with respect to all participants other than the "eligible participants") for Plan Years beginning after December 31, 1995 (or earlier, if the Plan so provided). Any reference in any other section of this Plan to the limitation under Code Section 401(a)(17) shall mean the "annual compensation limit" set forth in this Section 1.08, but taking into account the special provisions of this paragraph.

Notwithstanding the following paragraph or any election in the Adoption Agreement, if the Plan is a 401(k) plan, then participants may not make elective deferrals with respect to amounts that are not 415 Compensation. However, for this purpose, 415 Compensation is not limited to the annual compensation limit of Code Section 401(a)(17).

Compensation for purposes of allocations (hereinafter referred to as Plan Compensation) shall be adjusted, unless otherwise elected in the Adoption Agreement, in the same manner as 415 Compensation pursuant to Section 4.04, except in applying Section 4.04, the term "limitation year" shall be replaced with the term "plan year" and the term "415 Compensation" shall be replaced with the term "Plan Compensation."

The provisions of the two preceding paragraphs (and the provisions above regarding post-severance compensation) shall apply for Plan Years beginning more than ninety (90) days after the close of the first regular legislative session (of the legislative body with authority to amend the Plan) that begins on or after July 1, 2007, unless an earlier effective date is specified in the Adoption Agreement.

1.09 “Contract” means any annuity contract (group or individual) issued by the Insurer. In the event of any conflict between the terms of this Plan and the terms of any Contract purchased hereunder, the Plan provisions shall control.

1.10 “Designated Investment Alternative” means a specific investment identified by name by the Employer (or such other responsible party who has been given the authority to select investment options) as an available investment under the Plan in which Plan assets may be invested by the Insurer (or Trustee, if applicable) pursuant to the investment direction of the Participant.

1.11 “Directed Investment Option” means one or more of the following to be acquired or disposed of pursuant to the investment direction of a Participant:

(a) a Designated Investment Alternative as defined in Section 1.10, or

(b) any other investment permitted by the Plan and the Participant Direction Procedures as set forth in Section 4.09.

1.12 “Early Retirement Age” means the date at which the Participant satisfies the age or service requirement, selected in the Adoption Agreement, at which time a Participant’s Account shall become fully vested.

1.13 “Employee” means any person who is employed by the Employer, but excludes any person who is providing services as an independent contractor. The term Employee shall also include Leased Employees as provided in Code Sections 414(n) or 414(o).

Employees of Affiliated Employers will not participate unless the Affiliated Employer becomes a Participating Employer as defined in Section 9.01.

1.14 “Employer” means the entity specified in the Adoption Agreement, any Participating Employer (as defined in Section 9.01) which shall adopt this Plan, any successor which shall maintain this Plan and any predecessor which has maintained this Plan.

1.15 “Fiscal Year” means the Employer’s accounting year as set forth in the Adoption Agreement.

1.16 “Forfeiture” means that portion of a Participant’s Account that is not Vested, and occurs upon the distribution (or deemed distribution) of the entire Vested portion of a Participant’s Account.

In the case of a Terminated Participant whose Vested benefit is zero, such Terminated Participant shall be deemed to have received a distribution of such Terminated Participant’s Vested benefit upon termination of employment. In addition, the term Forfeiture shall also include amounts deemed to be Forfeitures pursuant to any other provision of this Plan.

1.17 “Former Participant” means a person who has been a Participant, but who has ceased to be a Participant for any reason.

1.18 “Hour of Service” means (1) each hour for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer for the performance of duties during the applicable computation period; (2) each hour for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer (irrespective of whether the employment relationship has terminated) for reasons other than performance of duties (such as vacation, holidays, sickness, jury duty, disability, lay-off, military duty or leave of absence) during the applicable computation period; (3) each hour for which back pay is awarded or agreed to by the Employer without regard to mitigation of damages. The same Hours of Service shall not be credited both under (1) or (2), as the case may be, and under (3). These hours will be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made.

Notwithstanding the above, (i) no more than 501 Hours of Service are required to be credited to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period); (ii) an hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable worker's compensation, or unemployment compensation or disability insurance laws; and (iii) Hours of Service are not required to be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee.

For purposes of this Section, a payment shall be deemed to be made by or due from the Employer regardless of whether such payment is made by or due from the Employer directly, or indirectly through, among others, a trust fund, or insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer, or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate.

Hours of Service must be counted for the purpose of determining a Year of Service, a year of participation for purposes of accruing benefits, a 1-Year Break in Service, and employment commencement date (or reemployment commencement date).

Hours of Service will be credited for employment with all Affiliated Employers and for any individual considered to be a Leased Employee pursuant to Code Sections 414(n) or 414(o) and the Regulations thereunder.

Hours of Service will be determined on the basis of the method selected in the Adoption Agreement. If "actual hours" is selected, an Employee shall be credited on the basis of actual hours for which such Employee is paid or entitled to payment. If "days worked" is selected, an Employee shall be credited with ten (10) Hours of Service if under the Plan such Employee would be credited with at least one Hour of Service during the day. If "months worked" is selected, an Employee will be credited with one hundred ninety (190) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the month.

Hours of Service with any predecessor Employer which maintained this Plan shall be recognized. Hours of Service with any other predecessor Employer shall be recognized as specified in the Adoption Agreement.

1.19 "Insurer" means The Variable Annuity Life Insurance Company (VALIC) and any affiliate or subsidiary thereof, or any legal reserve insurance company which shall issue one or more Contracts under the Plan.

1.20 "Leased Employee" means any person (other than an Employee of the Employer) who pursuant to an agreement between the Employer and any other person ("leasing organization") has performed services for the Employer (or for the Employer and related persons determined in accordance with Code Section 414(n)(6)) 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 Employer. Contributions or benefits provided a leased employee by the leasing organization which are attributable to services performed for the Employer shall be treated as provided by the Employer.

A leased employee shall not be considered an Employee of the Employer if:

(a) such employee is covered by a money purchase pension plan providing:

(1) a nonintegrated employer contribution rate of at least ten percent (10%) of compensation, as defined in Code Section 415(c)(3), but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee's gross income under Code Sections 125, 402(e)(3), 402(h)(1)(B) or 403(b), or for Plan Years beginning on or after January 1, 2001, 132(f)(4), and

(2) immediate participation, and

(3) full and immediate vesting; and

(b) leased employees do not constitute more than twenty percent (20%) of the Employer's nonhighly compensated workforce.

1.21 "Month of Service" means a calendar month during which an Employee completes at least one Hour of Service.

1.22 "Normal Retirement Age" means the date at which the Participant satisfies the age or service requirement specified in the Adoption Agreement, at which time a Participant's Account shall become fully Vested.

1.23 "1-Year Break in Service" means the applicable computation period specified in the Adoption Agreement during which an Employee has not completed more than one-half (1/2) of the number of Hours of Service specified in the Adoption Agreement for a Year of Service with the Employer. However, for purposes of provisions utilizing the elapsed time method, the term "1-Year Break in Service" means a 12-consecutive month period beginning on the severance from service date or any anniversary thereof and ending on the next succeeding anniversary of such date; provided, however, that the Employee during such 12-consecutive month period does not complete an Hour of Service.

Further, solely for the purpose of determining whether a Participant has incurred a 1-Year Break in Service, Hours of Service shall be recognized for "authorized leaves of absence" and "maternity and paternity leaves of absence."

"Authorized leave of absence" means an unpaid, temporary cessation from active employment with the Employer pursuant to an established nondiscriminatory policy, whether occasioned by illness, military service, or any other reason.

A "maternity or paternity leave of absence" means an absence from work for any period by reason of the Employee's pregnancy, birth of the Employee's child, placement of a child with the Employee in connection with the adoption of such child, or any absence for the purpose of caring for such child for a period immediately following such birth or placement. For this purpose, Hours of Service shall be credited for the computation period in which the absence from work begins, only if credit therefore is necessary to prevent the Employee from incurring a 1-Year Break in Service, or, in any other case, in the immediately following computation period. The Hours of Service credited for a "maternity or paternity leave of absence" shall be those which would normally have been credited but for such absence, or, in any case in which the Administrator is unable to determine such hours normally credited, eight (8) Hours of Service per day. The total Hours of Service required to be credited for a "maternity or paternity leave of absence" shall not exceed the number of Hours of Service needed to prevent the Employee from incurring a 1-Year Break in Service.

1.24 "Participant" means any Employee who has satisfied the requirements of Section 3.01 and has not become a Former Participant.

1.25 "Participant Direction Procedures" means such instructions, guidelines or policies, the terms of which are incorporated herein, as shall be established pursuant to Section 4.09 and observed by the Administrator and applied and provided to Participants who have Participant Directed Accounts.

1.26 "Participant('s) Account" means the account established and maintained by the Administrator for each Participant with respect to such Participant's total interest under the Plan resulting from the Employer's contributions. If this is a Profit Sharing Plan which includes assets transferred (other than by a rollover) from a Money Purchase Plan, then a separate accounting shall be maintained with respect to that portion of the Participant's Account attributable to the Money Purchase Plan.

1.27 "Part-time Employee" means any Employee who normally works twenty (20) hours or less per week. For purposes of this definition, a teacher employed by a post-secondary institution is not considered part-time

if the teacher normally teaches classroom hours of one-half or more of the number of classroom hours normally considered to be full time employment.

1.28 “Period of Service” means (except for periods of service which may be disregarded on account of the “rule of parity” described in Section 6.04(e)) the aggregate of all periods commencing with the Employee’s first day of employment or reemployment with the Employer or Affiliated Employer and ending on the date a “Break in Service” begins. The first day of employment or reemployment is the first day the Employee performs an “Hour of Service.” An Employee will also receive credit for any Period of Severance of less than twelve (12) consecutive months. Fractional periods of a year will be expressed in terms of days.

For purposes of this Section, “Hour of Service” means each hour for which an Employee is paid or entitled to payment for the performance of duties for the Employer and “Break in Service” means a Period of Severance of at least twelve (12) consecutive months.

Periods of Service with any predecessor Employer which maintained this Plan shall be recognized. Periods of Service with any other predecessor Employer shall be recognized as specified in the Adoption Agreement.

Periods of Service with any Affiliated Employer shall be recognized.

1.29 “Period of Severance” means a continuous period of time during which the Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.

In the case of an individual who is absent from work for maternity or paternity reasons, the 12-consecutive month period beginning on the first anniversary of the first day of such absence shall not constitute a Period of Severance. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (a) by reason of the pregnancy of the individual, (b) by reason of the birth of a child of the individual, (c) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (d) for purposes of caring for such child for a period beginning immediately following such birth or placement.

1.30 “Plan” means this instrument (hereinafter referred to as VALIC Retirement Services Company Retirement Plan for Governmental Employers Basic Plan Document) including all amendments thereto, and the Adoption Agreement as adopted by the Employer.

This Plan is designed to qualify as a governmental plan as defined in Code Section 414(d). This Plan is established and maintained as a plan that is exempt from the requirements of Title I of the Employee Retirement Income Security Act (ERISA), as provided by Section 4 of such statute. While some provisions of the Plan may mirror provisions of ERISA, such provisions are included for the benefit of the Participants and are not intended to provide ERISA status or ERISA rights to Participants or their Beneficiaries.

1.31 “Plan Year” means the Plan’s accounting year as specified in the Adoption Agreement.

1.32 “Qualified Voluntary Employee Contribution Account” means the account established and maintained by the Administrator for each Participant with respect to such Participant’s total interest under the Plan resulting from the Participant’s tax-deductible qualified voluntary Employee contributions made pursuant to Section 4.08.

1.33 “Regulation” means the Income Tax Regulations as promulgated by the Secretary of the Treasury or such Secretary of the Treasury’s delegate, and as amended from time to time.

1.34 “Reclassified Employee” means an individual (including, but not limited to, independent contractors, persons the Employer pays outside of its payroll system and out-sourced workers) the Employer does not treat as an Employee for federal income tax withholding purposes under Code Section 3401(a), but who is later

reclassified, pursuant to a binding determination by a court or a governmental entity (other than the Employer), as an Employee or a Leased Employee of the Employer.

1.35 “Retired Participant” means a person who has been a Participant, but who has become entitled to retirement benefits under the Plan.

1.36 “Retirement Date” means the date as of which a Participant retires for reasons other than Total and Permanent Disability, whether such retirement occurs on a Participant’s Early or Normal Retirement age, or on a later date (see Section 6.01).

1.37 “Rollover Account” means the account established and maintained by the Administrator for each Employee with respect to such Employee’s total interest in the Plan resulting from amounts transferred from another employer plan or individual retirement account in accordance with Section 4.06. A separate account will also be maintained for any prior voluntary (after-tax) Employee contributions of each Participant.

1.38 “Seasonal Employee” means any Employee who normally works on a full-time basis less than five (5) months in a year.

1.39 “Short Plan Year” means, if specified in the Adoption Agreement, that the Plan Year shall be less than a twelve (12) month period. If chosen, the following rules shall apply in the administration of this Plan. In determining whether an Employee has completed a Year of Service for benefit accrual purposes in the Short Plan Year, the number of the Hours of Service required shall be proportionately reduced based on the number of days in the Short Plan Year. In the event a Plan amendment changes a vesting computation period, the first vesting computation period established under such amendment shall begin before the last day of the preceding vesting computation period and an Employee who is credited with the requisite Hours of Service to be credited with a Year of Service for vesting purposes in both the vesting computation period under the Plan before the amendment and the first vesting computation period under the Plan as amended shall be credited with two (2) Years of Service for those vesting computation periods.

1.40 “Sick Leave Day” means a day (as determined under a separate plan or program maintained by the Employer or pursuant to applicable local or state law) for which the Employee is entitled to payment of one day’s compensation by the Employer, when the Employee is physically or mentally unable to perform his or her duties or is otherwise absent from work for medical reasons.

1.41 “Special Pay Day” means accrued but unused Sick Leave Days or Vacation Pay Days, but only if such Special Pay Day represents leave for which the Employee has no right to request a cash payment.

1.42 “Tax-exempt” means exempt from Federal income tax under Code Section 501(a).

1.43 “Temporary Employee” means any Employee who performs services under a contractual arrangement that is expected to last two (2) years or less.

1.44 “Terminated Participant” means a person who has been a Participant, but whose employment has been terminated for any reason including death, Total and Permanent Disability or normal or early retirement.

1.45 “Total and Permanent Disability” means (unless the Employer elects a different definition in the Adoption Agreement) 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 twelve (12) months. The permanence and degree of such impairment shall be supported by medical evidence. The determination shall be applied uniformly to all Participants.

1.46 “Trustee” (applies only to trustee portion of the Plan) means the person or entity, if any, named in the Adoption Agreement and any successors.

1.47 “Trust Fund” (applies only to trustee portion of the Plan) means the assets of the Plan held in the Plan’s Trust as the same shall exist from time to time.

1.48 “Vacation Pay Day” means a day (as determined under a separate plan or program maintained by the Employer or pursuant to applicable local or state law) for which the Employee is entitled to payment of one day’s compensation by the Employer when the Employee is absent from work for vacation or holiday. Excluded from the term Vacation Pay Day is any day in which the Employee is entitled to the payment of compensation by the Employer while absent from work on account of jury duty, active military service, training or sabbatical.

1.49 “Valuation Date” means the Anniversary Date and each other date or dates deemed necessary or appropriate by the Administrator for the valuation of Participants’ Accounts during the Plan Year, which may include any day that the Insurer (or Trustee, if applicable), any transfer agent appointed by the Trustee or the Employer, or any stock exchange used by such agent, are open for business.

1.50 “Vested” means the nonforfeitable portion of any account maintained on behalf of a Participant.

1.51 “Volume Submitter Practitioner” means VALIC Retirement Services Company, a wholly-owned subsidiary of The Variable Annuity Life Insurance Company (“VALIC”).

1.52 “Voluntary Contribution Account” means the account established and maintained by the Administrator for each Participant with respect to such Participant’s total interest in the Plan resulting from the Participant’s nondeductible voluntary Employee contributions described in Section 4.07.

1.53 “Year of Service” means, except as otherwise specified in the Adoption Agreement and in the case of a Short Plan Year, the computation period of twelve (12) consecutive months, as herein set forth and in the Adoption Agreement, and during which an Employee has completed at least the number of Hours of Service specified in the Adoption Agreement.

The initial computation period shall begin with the date on which the Employee first performs an Hour of Service (employment commencement date). The computation period beginning after a 1-Year Break in Service shall be measured as elected in the Adoption Agreement. If an election is made to shift to the Plan Year, then after the initial computation period, the computation period shall shift to the current Plan Year which includes the anniversary of the date on which the Employee first performed an Hour of Service. An Employee who is credited with the number of Hours of Service specified in the Adoption Agreement in both the initial computation period and the first Plan Year which commences prior to the first anniversary of the Employee’s initial computation period, will be credited with two Years of Service.

Years of Service and breaks in service will be measured on the same computation period.

Years of Service with any predecessor Employer which maintained this Plan shall be recognized. Years of Service with any other predecessor Employer shall be recognized as specified in the Adoption Agreement.

Years of Service with any Affiliated Employer shall be recognized.

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

## ARTICLE II ADMINISTRATION

### 2.01 POWERS AND RESPONSIBILITIES OF THE EMPLOYER

(a) The Employer shall be empowered to appoint and remove the Insurer (or Trustee, if applicable), and Administrator from time to time as it deems necessary for the proper administration of the Plan to assure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan and the Code.

(b) The Employer shall periodically review the performance of the Trustee, the Plan Administrator, or any other person to whom duties have been delegated or allocated by it under the provisions of this Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Employer or by a qualified person specifically designated by the Employer, through day-to-day conduct and evaluation, or through other appropriate ways.

(c) Unless the Employer has elected to have a discretionary Trustee, the Employer (or its delegate) shall have the power and authority to select and monitor the investment alternatives under the Plan. Furthermore, unless the Employer elects under Section 4.09 to allow Participants to direct the investment of their Accounts, the Employer (or its delegate) shall direct the Insurer (or Trustee, if applicable) with respect to the investment of the assets of the Plan. If the Employer elects under Section 4.09 to allow Participants to direct the investment of their accounts, the Employer shall direct the Insurer (or Trustee, if applicable) with respect to the investment of any contributions which are forwarded to the Insurer (or Trustee) prior to the date on which the Participant completes the necessary paperwork with the Insurer or Trustee or takes such other action or actions as may be necessary to direct the investment of such amounts. Such direction shall be communicated to the Insurer (or Trustee) by means of an Employer-Directed Account Agreement between the Employer and the Insurer (or Trustee), which agreement will include a default investment option and a default beneficiary designation. This direction shall be effective only until such time as such Participant exercises his or her right to direct the investment of such amounts.

### 2.02 DESIGNATION OF ADMINISTRATIVE AUTHORITY

The Administrator of the Plan shall be the Employer unless the Employer appoints another person to serve as Administrator. Any person, including, but not limited to, the Employees of the Employer, shall be eligible to serve as an Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Employer. An Administrator may resign by delivering a written resignation to the Employer or be removed by the Employer by delivery of written notice of removal, to take effect at a date specified therein, or upon delivery to the Administrator if no date is specified.

The Employer, upon the resignation or removal of an Administrator, shall promptly designate in writing a successor to this position. If the Employer does not appoint an Administrator, the Employer will function as the Administrator.

### 2.03 ALLOCATION AND DELEGATION OF RESPONSIBILITIES

If more than one person is appointed as Administrator, the responsibilities of each Administrator may be specified by the Employer and accepted in writing by each Administrator. In the event that no such delegation is made by the Employer, the Administrators may allocate the responsibilities among themselves, in which event the Administrators shall notify the Employer and the Insurer (or Trustee, if applicable) in writing of such action and specify the responsibilities of each Administrator. The Insurer (or Trustee, if applicable) thereafter shall accept and rely upon any documents executed by the appropriate Administrator until such time as the Employer or the Administrators file with the Insurer (or Trustee, if applicable) a written revocation of such designation.

## 2.04 POWERS AND DUTIES OF THE ADMINISTRATOR

The primary responsibility of the Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to construe the terms of the Plan and determine all questions arising in connection with the administration, interpretation, and application of the Plan. Any such determination by the Administrator shall be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to be deemed a qualified plan under the terms of Code Sections 401(a) or 403(a), as amended from time to time. The Administrator shall have all powers necessary or appropriate to accomplish its duties under this Plan.

The Administrator shall be charged with the duties of the general administration of the Plan, including, but not limited to, the following:

- (a) to determine in the Administrator's sole discretion, all questions relating to the eligibility of Employees to participate or remain a Participant hereunder and to receive benefits under the Plan;
- (b) to compute, certify, and direct the Insurer (or Trustee, if applicable) with respect to the amount and the kind of benefits to which any Participant shall be entitled hereunder;
- (c) to authorize and direct the Insurer (or Trustee, if applicable) with respect to all nondiscretionary or otherwise directed disbursements from the Plan assets;
- (d) to maintain all necessary records for the administration of the Plan;
- (e) to interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan as are consistent with the terms hereof;
- (f) to compute and certify to the Employer from time to time the sums of money necessary or desirable to be contributed to the Plan;
- (g) to consult with the Employer and to direct the Insurer (or Trustee, if applicable) regarding the short- and long-term liquidity needs of the Plan in order to implement those objectives;
- (h) if the Employer elects to allow Participants to direct the investment of their accounts under the Plan, to act as the party responsible for communications with Participants, including, but not limited to, the receipt and transmitting of Participants' directions as to the investment of their accounts under the Plan and the formulation of policies, rules, and procedures pursuant to which Participants may give investment instructions with respect to the investment of their accounts;
- (i) to assist Participants regarding their rights, benefits, or elections available under the Plan; and
- (j) to determine the validity of, and take appropriate action with respect to, any domestic relations order received by it.

## 2.05 RECORDS AND REPORTS

The Administrator shall keep a record of all actions taken and shall keep all other books of account, records, and other data that may be necessary for proper administration of the Plan and shall be responsible for supplying all information and reports to the Internal Revenue Service, Participants, Beneficiaries and others as required by law.

## 2.06 APPOINTMENT OF ADVISERS

The Administrator may appoint counsel, specialists, advisers, and other persons as the Administrator deems necessary or desirable in connection with the administration of this Plan, including, but not limited to, advisers to assist with the administration and management of the Plan, and thereby to provide, among such other duties as the Administrator may appoint, assistance with maintaining Plan records and the providing of investment information to the Plan's Fiduciaries and to Plan Participants.

## 2.07 INFORMATION FROM EMPLOYER

To enable the Administrator to perform its functions, the Employer shall supply full and timely information to the Administrator on all matters relating to the Compensation of all Participants, their Hours of Service, their Years of Service or Periods of Service, their retirement, death, disability, or termination of employment, and such other pertinent facts as the Administrator may require; and the Administrator shall advise the Insurer (and/or the Trustee if applicable) of such of the foregoing facts as may be pertinent to the Insurer's (or the Trustee's) duties under the Plan. The Administrator may rely upon such information as is supplied by the Employer and shall have no duty or responsibility to verify such information. In turn, the Insurer (or Trustee) may rely upon such information as may be provided by the Administrator, and shall have no duty or responsibility to verify such information.

## 2.08 PAYMENT OF CONTRACT FEES

All fees and charges relating to any Contracts issued pursuant to the Plan shall be paid from the portion of the Participant's Account that is invested in such Contracts unless the Employer and the Insurer agree for such expenses to be paid by the Employer.

## 2.09 PAYMENT OF EXPENSES

Expenses of administration may be paid out of the Plan assets unless paid by the Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, including, but not limited to, fees of accountants, counsel, and other specialists and their agents, and other costs of administering the Plan. Until paid, the expenses shall constitute a liability of the Plan. Contract fees shall be paid in accordance with Section 2.08.

## 2.10 MAJORITY ACTIONS

Except where there has been an allocation and delegation of administrative authority pursuant to Section 2.03, if there shall be more than one Administrator, they shall act by a majority of their number, but may authorize one or more of them to sign all papers on their behalf.

## 2.11 CLAIMS PROCEDURE

Claims for benefits under the Plan may be filed in writing with the Administrator. Notice of the disposition of a claim shall be provided to the claimant within ninety (90) days after the claim is filed. If the claim is denied, the claimant must follow the claims review procedures in Section 2.12 before the claimant may take any legal action against the Plan.

## 2.12 CLAIMS REVIEW PROCEDURE

Any Participant, former Participant, or Beneficiary of either, who has been denied a benefit by a decision of the Administrator pursuant to Section 2.11 shall be entitled to request the Administrator to give further consideration to a claim by filing with the Administrator a written request for review of the claim (i.e., an appeal). Such request, together with a written statement of the reasons why the claimant believes such claims should be allowed, shall be filed with the Administrator no later than sixty (60) days after receipt of the notification provided for in Section 2.11. A final decision as to the allowance of the claim shall be made by the Administrator and communicated to the claimant within ninety (90) days of receipt of the written appeal (unless there has been an extension of up to ninety

(90) days due to special circumstances, provided the delay and the special circumstances occasioning it are communicated to the claimant within the ninety (90) day period).

## ARTICLE III ELIGIBILITY

### 3.01 CONDITIONS OF ELIGIBILITY

Any Employee who is not in an excluded classification of Employees (as set forth in the Adoption Agreement) shall be eligible to participate hereunder on the date such Employee has satisfied the age and service requirements specified in the Adoption Agreement. However, if this Plan is a restatement or amendment of a prior plan, any Employee who was a Participant in the Plan prior to the effective date of this amendment or restatement shall continue to be a Participant. No minimum age or service is required for contributions under Section G.3.b. of the Adoption Agreement, on behalf of Part-time, Seasonal and Temporary Employees.

For purposes of this section and any Adoption Agreement elections, the term “union employees” refers to Employees whose employment is governed by a collective bargaining agreement between the Employer and “employee representatives” under which retirement benefits were the subject of good faith bargaining. The term “non-resident aliens” refers to Employees who are non-resident aliens (within the meaning of Code Section 7701(b)(1)(B)) who received no earned income (within the meaning of Code Section 911(d)(2)) from the Employer which constitutes income from sources within the United States (within the meaning of Code Section 861(a)(3)). The term “reclassified employees” refers to workers who are treated by the Employer as Leased Employees or independent contractors but are later determined to be common law Employees of the Employer.

For purposes of this section and any Adoption Agreement elections, the term “elapsed time crediting method” means that service for purposes of eligibility or vesting will be based on Periods of Service (as defined in Section 1.28) and Periods of Severance (as defined in Section 1.29).

### 3.02 EFFECTIVE DATE OF PARTICIPATION

An Employee shall become a Participant as of the Effective Date of Participation specified in the Adoption Agreement. If said Employee is not employed on such date, but is reemployed before a 1-Year Break in Service has occurred, then such Employee shall become a Participant on the date of reemployment or, if later, the date the Employee would have otherwise entered the Plan had the Employee not terminated employment.

If an Employee, who has satisfied the Plan’s age and service requirements and would otherwise have become a Participant, shall change from an excluded classification of Employees to an included classification of Employees, such Employee shall become a Participant on the date such Employee is no longer in an excluded classification of Employees.

If an Employee, who has satisfied the Plan’s age and service requirements and would otherwise have become a Participant, shall become a member of an excluded classification of Employees and has not incurred a 1-Year Break in Service, such Employee shall become a Participant on the date such Employee again is not a member of an excluded classification of Employees. If such Employee does incur a 1-Year Break in Service, eligibility will be determined under the rules in Section 6.04(e).

### 3.03 DETERMINATION OF ELIGIBILITY

The Administrator shall determine the eligibility of each Employee for participation in the Plan. Such determination shall be conclusive and binding upon all persons, as long as the same is made pursuant to the Plan. Such determination shall be subject to review pursuant to Section 2.11.

### 3.04 TERMINATION OF ELIGIBILITY

In the event a Participant shall become a member of an excluded classification of Employees, such Former Participant shall continue to vest in the Plan for each Year of Service (or Period of Service if the Elapsed Time Method is used) completed until such time as the Participant’s Account shall be forfeited or distributed pursuant to

the terms of the Plan. Additionally, the Former Participant's interest in the Plan shall continue to share in the earnings.

### 3.05 ELECTION NOT TO PARTICIPATE

An Employee may, subject to the approval of the Employer, elect voluntarily not to participate in the Plan. The election not to participate must be communicated to the Employer, in writing, at least thirty (30) days before the beginning of a Plan Year. However, if the Employer elects, in Section G.3.b. of the Adoption Agreement, to make contributions for Part-time, Seasonal and Temporary Employees, such Employees may not elect not to participate. Furthermore, the foregoing election not to participate must be irrevocable and made either at Plan inception or when the Employee is first eligible to participate.

ARTICLE IV  
CONTRIBUTION AND ALLOCATION

4.01 FORMULA FOR DETERMINING EMPLOYER'S CONTRIBUTION

(a) For a Money Purchase Plan –

On behalf of each Participant eligible to share in allocations, for each year of such Participant's participation in this Plan, the Employer shall contribute the amount specified in the Adoption Agreement. All contributions by the Employer shall be made in cash.

(b) For a Profit Sharing Plan –

For each Plan Year, the Employer, in its sole discretion, may contribute to the Plan such amount as specified in the Adoption Agreement, which may be either a discretionary amount (to be determined in the Employer's sole discretion) or a fixed dollar or percentage amount. All contributions by the Employer shall be made in cash.

(c) 414(h) pick up contributions –

If selected in the Adoption Agreement, eligible Employees who become Participants under this Plan in accordance with the provisions of Article III shall be deemed to have authorized the Employer to deduct from such Participant's Compensation, prior to its payment, a percentage of such Participant's Compensation, as a nonelective contribution to the Plan. The amount of the nonelective contribution shall be picked up by the Participant's Employer as provided for in Section 414(h)(2) of the Code. The Participant shall not have the option to receive this picked up contribution directly and such contributions shall be paid by the Employer directly to the Insurer (or Trustee, if applicable).

(d) Employer matching contributions –

If specified in the Adoption Agreement, the Employer shall make a matching contribution equal to the percentage of elective deferrals specified for each Participant eligible to share in the allocations of the matching contribution. The Employer must specify in the Adoption Agreement the plan to which the elective deferral contributions being matched shall be made.

(e) Contributions for Part-time, Seasonal and Temporary Employees –

If specified in the Adoption Agreement, the Employer shall make a contribution in the amount of 7.5% of Compensation, reduced by Employee Nonelective Contributions, for each Participant who is also a Part-time, Seasonal or Temporary Employee.

(f) Special Pay contributions –

If specified in the Adoption Agreement, the Employer shall make a nonelective "leave conversion" contribution for each Participant eligible to share in such contributions equal to the Participant's current daily rate of pay multiplied by the number of unused accumulated Special Pay days that the Participant has accumulated, as of the end of the Plan Year, in excess of the minimum number of Special Pay days set forth in the Adoption Agreement. The Employer may elect in the Adoption Agreement to make such Special Pay contributions on account of accumulated Vacation Pay Days, accumulated Sick Leave Days, or both Vacation Pay Days and Sick Leave Days. The Employer may also elect, in the Adoption Agreement, to convert unused accumulated Special Pay Days to employer Special Pay contributions each Plan Year (including the Plan Year in which the Participant terminates employment with the Employer), or solely in the Plan Year in which the Participant terminates employment.

(g) Offset for contributions to certain merged plans –

Notwithstanding any other provision of the Plan or the Adoption Agreement, if one or more qualified defined contribution plans (“Merged Plans”) is/are merged into (or onto) this Plan after the first day of a Plan Year, any Employer contribution obligation under this Section 4.01 and/or Section G of the Adoption Agreement for the Plan Year of the merger that is based on a Participant’s Compensation for the entire Plan Year shall be offset by any substantially similar Employer contributions that are made to, or on account of, the Merged Plans for such Plan Year.

#### 4.02 TIME OF PAYMENT OF EMPLOYER’S CONTRIBUTION

The Employer shall pay to the Insurer (or Trustee, if applicable) its contribution to the Plan as soon as administratively feasible, but no later than the time required by law to be considered an Annual Addition (as defined in Section 4.04(d)) for the Plan Year to which the Employer contribution is attributed. For purposes of this section, contributions must be made to the Plan no later than the 15<sup>th</sup> day of the tenth calendar month following the end of the Plan Year with or within which the limitation year ends, or such other time as specified under Code Section 415 and the Regulations thereunder.

#### 4.03 ALLOCATION OF CONTRIBUTIONS, FORFEITURES AND EARNINGS

(a) The Administrator shall establish and maintain an account in the name of each Participant to which the Administrator shall credit, as of each Anniversary Date, or other Valuation Date, all amounts allocated to each such Participant as set forth herein.

(b) The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer’s contributions, if any, for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the Administrator shall allocate such contribution as follows:

(1) For a Money Purchase Plan:

(i) The Employer’s contribution shall be allocated to each Participant’s Account in the manner set forth in Section 4.01 herein and as specified in the Adoption Agreement.

(ii) Except, however, if elected in the Adoption Agreement for any Plan Year, the Employer shall not contribute on behalf of a Participant who performs less than the Hours of Service set forth in the Adoption Agreement during any Plan Year. The Employer may not make such an election for Employer nonelective contributions (other than matching contributions) if the Employer has elected to make Special Pay contributions.

(2) For a Profit Sharing Plan:

(i) If the Employer elects (in the Adoption Agreement) a discretionary profit sharing contribution formula, the Employer’s contribution shall be allocated to each Participant’s Account in the same proportion that each such Participant’s Compensation for the Plan Year bears to the total Compensation of all Participants for such Plan Year. If the Employer elects (in the Adoption Agreement) a fixed profit sharing contribution formula, the Employer’s contribution shall be allocated in accordance with such formula. In the event that the Employer elects (in the Adoption Agreement) to make separate discretionary contributions for separate classifications of Participants, the Employer will annually notify the Trustee (or Insurer), in writing, of the amounts of the contribution(s), if any, that it is making for each classification of Participants described in the Adoption Agreement for the Plan Year. The Plan Administrator will allocate and credit for the Plan Year the Employer contribution (and forfeitures, if any) for a particular classification to the account of each Participant within

the classification who is entitled to a contribution for the Plan Year in the manner selected in the Adoption Agreement.

(ii) Except, however, if elected in the Adoption Agreement, a Participant who performs less than the Hours of Service set forth in the Adoption Agreement during any Plan Year shall not share in the Employer's contribution for that Plan Year. The Employer may not make such an election for Employer nonelective contributions (other than matching contributions) if the Employer has elected to make Special Pay Contributions.

(3) Notwithstanding anything herein to the contrary, any Participant who terminated employment during the Plan Year shall or shall not share in the allocations of the Employer's contributions and Forfeitures, based on whether the Participant completed the requirements set forth in the Adoption Agreement.

(c) Except as provided in Section 4.09(b), as of each Anniversary Date or other Valuation Date, before allocation of Employer contributions and Forfeitures, any earnings or losses (net appreciation or net depreciation) in the value of the Plan's assets (exclusive of assets segregated for distribution) shall be allocated in the same proportion that each Participant's and Former Participant's nonsegregated accounts bear to the total of all Participants' and Former Participants' nonsegregated accounts as of such date. If any nonsegregated account of a Participant has been distributed prior to the Anniversary Date or other Valuation Date subsequent to a Participant's termination of employment, no earnings or losses shall be credited to such account.

(d) Participants' Accounts shall be debited for annuity payments made, if any, and credited with any dividends or interest earned on Contracts.

(e) As of each Anniversary Date any amounts which became Forfeitures since the last Anniversary Date shall first be made available to satisfy any contribution that may be required pursuant to Section 6.09 or be used to pay any administrative expenses of the Plan. The remaining Forfeitures, if any, shall be treated in accordance with the Adoption Agreement. Provided, however, that in the event the allocation of Forfeitures provided herein shall cause the "Annual Addition" (as defined in Section 4.04) to any Participant's Account to exceed the amount allowable by the Code, the excess shall be reallocated in accordance with Section 4.04(a)(4). Except, however, if elected in the Adoption Agreement, a Participant who fails to satisfy the conditions set forth in the Adoption Agreement during any Plan Year shall not share in the Plan Forfeitures for that year.

(f) If a Former Participant is reemployed after five (5) consecutive 1-Year Breaks in Service, then separate accounts shall be maintained as follows:

(1) one account for nonforfeitable benefits attributable to pre-break service; and

(2) one account representing the Former Participant's employer derived account balance in the Plan attributable to post-break service.

#### 4.04 MAXIMUM ANNUAL ADDITIONS

(a) (1) If the Participant does not participate in, and has never participated in another qualified plan maintained by the Employer, or a welfare benefit fund (as defined in Code Section 419(e)), maintained by the Employer, or an individual medical account (as defined in Code Section 415(l)(2)) maintained by the Employer, or a simplified employee pension, as defined in Code Section 408(k), maintained by the Employer which provides "Annual Additions," the amount of "Annual Additions" which may be credited to the Participant's Accounts for any "Limitation Year" shall not exceed the lesser of the "Maximum Permissible Amount" or any other limitation contained in this Plan. If the Employer contribution that would otherwise be contributed or

allocated to the Participant's accounts would cause the "Annual Additions" for the "Limitation Year" to exceed the "Maximum Permissible Amount," the amount contributed or allocated will be reduced so that the "Annual Additions" for the "Limitation Year" will equal the "Maximum Permissible Amount."

(2) Prior to determining the Participant's actual "415 Compensation" for the "Limitation Year," the Employer may determine the "Maximum Permissible Amount" for a Participant on the basis of a reasonable estimation of the Participant's "415 Compensation" for the "Limitation Year," uniformly determined for all Participants.

(3) As soon as is administratively feasible after the end of the "Limitation Year," the "Maximum Permissible Amount" for such "Limitation Year" shall be determined on the basis of the Participant's actual "415 Compensation" for such "Limitation Year."

(b) (1) This subsection (b) applies if, in addition to this Plan, the Participant is covered under another qualified defined contribution plan maintained by the Employer, or a welfare benefit fund (as defined in Code Section 419(e)) maintained by the Employer, or an individual medical account (as defined in Code Section 415(1)(2)) maintained by the Employer, or a simplified employee pension as defined in Code Section 408(k) maintained by the Employer which provides "Annual Additions" during any "Limitation Year." The "Annual Additions" which may be credited to a Participant's accounts under this Plan for any such "Limitation Year" shall not exceed the "Maximum Permissible Amount" reduced by the "Annual Additions" credited to a Participant's accounts under the other plans and welfare benefit funds, individual medical accounts, and simplified employee pensions for the same "Limitation Year." If the "Annual Additions" with respect to the Participant under other defined contribution plans, welfare benefit funds, individual medical accounts and simplified employee pensions maintained by the Employer are less than the "Maximum Permissible Amount" and the Employer contribution that would otherwise be contributed or allocated to the Participant's accounts under this Plan would cause the "Annual Additions" for the "Limitation Year" to exceed this limitation, the amount contributed or allocated will be reduced so that the "Annual Additions" under all such plans and welfare benefit funds for the "Limitation Year" will equal the "Maximum Permissible Amount." If the "Annual Additions" with respect to the Participant under such other defined contribution plans, welfare benefit funds, individual medical accounts and simplified employee pensions in the aggregate are equal to or greater than the "Maximum Permissible Amount," no amount will be contributed or allocated to the Participant's account under this Plan for the "Limitation Year."

(2) Prior to determining the Participant's actual "415 Compensation" for the "Limitation Year," the Employer may determine the "Maximum Permissible Amount" for a Participant in the manner described in Section 4.04(a)(2).

(3) As soon as is administratively feasible after the end of the "Limitation Year," the "Maximum Permissible Amount" for the "Limitation Year" will be determined on the basis of the Participant's actual "415 Compensation" for the "Limitation Year."

(4) If, pursuant to Section 4.04(b)(3) or Section 4.05, a Participant's "Annual Additions" under this Plan and such other plans would result in an "Excess Amount" for a "Limitation Year," the "Excess Amount" will be deemed to consist of the "Annual Additions" last allocated, except that "Annual Additions" attributable to a simplified employee pension will be deemed to have been allocated first, followed by "Annual Additions" to a welfare benefit fund or individual medical account, and then by "Annual Additions" to a plan subject to Code Section 412, regardless of the actual allocation date.

(5) If an "Excess Amount" was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the "Excess Amount" attributed to this Plan will be the product of:

(i) the total “Excess Amount” allocated as of such date, times;

(ii) the ratio of (1) the “Annual Additions” allocated to the Participant for the “Limitation Year” as of such date under this Plan to (2) the total “Annual Additions” allocated to the Participant for the “Limitation Year” as of such date under this and all the other qualified defined contribution plans.

(6) Any “Excess Amount” attributed to this Plan will be disposed in the manner described in Section 4.04(a)(4).

(c) For purposes of applying the limitations of Code Section 415, the transfer of funds from one qualified plan to another is not an “Annual Addition.” In addition, the following are not Employee contributions for the purposes of Section 4.04(d)(1):

(1) rollover contributions (as defined in Code Sections 402(c)(4), 403(a)(4), 403(b)(8), 408(d)(3) and 457(e)(16)); and

(2) Employee contributions to a simplified employee pension excludable from gross income under Code Section 408(k)(6).

(d) For purposes of this Section, the following terms shall be defined as follows:

(1) “Annual Additions” means the sum credited to a Participant’s accounts for any Limitation Year of:

(i) Employer contributions (including elective deferrals and Employee nonelective contributions that are picked up pursuant to Section 414(h) of the Code);

(ii) Employee (after-tax) contributions;

(iii) Forfeitures;

(iv) amounts allocated, after March 31, 1984, to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by the Employer;

(v) amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code Section 419A(d)(3)) under a welfare benefit fund (as defined in Code Section 419(e)) maintained by the Employer; and

(vi) allocations under a simplified employee pension.

Except, however, the 415 Compensation percentage limitation referred to in paragraph (e)(7)(ii) below shall not apply to:

(1) any contribution for medical benefits (within the meaning of Code Section 419A(f)(2)) after separation from service which is otherwise treated as an “Annual Addition,” or

(2) any amount otherwise treated as an “Annual Addition” under Code Section 415(l)(1).

For this purpose, any “Excess Amount” applied under Sections 4.04(a)(4) and 4.04(b)(6) in the “Limitation Year” to reduce Employer contributions shall be considered “Annual Additions” for such “Limitation Year.”

Effective for Limitation Years beginning more than ninety (90) days after the close of the first regular legislative session (of the legislative body with authority to amend the Plan) that begins on or after July 1, 2007, the Plan’s definition of “Annual Additions” is modified as follows:

(1) Restorative payments. Annual additions for purposes of Code Section 415 shall not include restorative payments. A restorative payment is a payment made to restore losses to a plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under applicable federal or state law, where participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are restorative payments only if the payments are made in order to restore some or all of the plan’s losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the plan). This includes payments to a plan made pursuant to a court approved settlement to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty are not restorative payments and generally constitute contributions that are considered Annual Additions.

(2) Other Amounts. Annual additions for purposes of Code Section 415 shall not include: (i) The direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (ii) Rollover contributions (as described in Code Section 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (iii) Repayments of loans made to a participant from the Plan; and (iv) Repayments of amounts described in Code Section 411(a)(7)(B) (in accordance with Code § 411(a)(7)(C)) and Code Section 411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code Section 414(d)) as described in Code Section 415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.

(3) Date of tax-exempt Employer contributions. Notwithstanding anything in the Plan to the contrary, in the case of an Employer that is exempt from Federal income tax (including a governmental employer), Employer contributions are treated as credited to a Participant’s Account for a particular Limitation Year only if the contributions are actually made to the Plan no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the Employer keeps its books) with or within which the particular Limitation Year ends.

(2) “415 Compensation” means a Participant’s Compensation as elected in the Adoption Agreement. However, regardless of any selection made in the Adoption Agreement, 415 Compensation shall include any elective deferral (as defined in Code Section 402(g)(3)), and any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of Sections 125, 457, and 132(f)(4). Any exclusions from Compensation selected in the Adoption Agreement shall not apply for purposes of the definition of 415 Compensation.

Effective for Limitation Years beginning more than ninety (90) days after the close of the first regular legislative session (of the legislative body with authority to amend the Plan) that begins on or after July 1, 2007, 415 Compensation shall be adjusted, as set forth herein and as otherwise elected in the Adoption Agreement, for the following types of compensation paid after a Participant's severance from employment with the Employer maintaining the Plan (or any other entity that is treated as the Employer pursuant to Code Section 414(b), (c), (m) or (o)). However, amounts described in subsections (i) and (ii) below may only be included in 415 Compensation to the extent such amounts are paid by the later of 2 1/2 months after severance from employment or by the end of the limitation year that includes the date of such severance from employment. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered 415 Compensation within the meaning of Code Section 415(c)(3), even if payment is made within the time period specified above.

(i) Regular pay. 415 Compensation shall include regular pay after severance of employment if:

(1) The payment is regular compensation for services during the participant's regular working hours, or compensation for services outside the participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(2) The payment would have been paid to the participant prior to a severance from employment if the participant had continued in employment with the Employer.

(ii) Leave cashouts and deferred compensation. Leave cashouts shall be included in 415 Compensation, unless otherwise elected in the Adoption Agreement, if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the participant's severance from employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other leave, but only if the participant would have been able to use the leave if employment had continued. In addition, deferred compensation shall be included in 415 Compensation, unless otherwise elected in the Adoption Agreement, if the compensation would have been included in the definition of 415 Compensation if it had been paid prior to the participant's severance from employment, and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the participant had continued in employment with the Employer and only to the extent that the payment is includible in the participant's gross income.

(iii) Salary continuation payments for military service participants. 415 Compensation does not include, unless otherwise elected in the Adoption Agreement, payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code Section 414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(iv) Salary continuation payments for disabled Participants. Unless otherwise elected in the Adoption Agreement, 415 Compensation does not include compensation paid to a participant who is permanently and totally disabled (as defined in Code Section 22(e)(3)). If elected, this provision shall apply to all participants for the period specified in the Adoption Agreement.

415 Compensation for a Limitation Year shall not include, unless otherwise elected in the Adoption Agreement, amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates. However, if elected in the Adoption Agreement, 415

Compensation for a limitation year shall include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next limitation year, the amounts are included on a uniform and consistent basis with respect to all similarly situated participants, and no compensation is included in more than one limitation year.

If the Plan's definition of Compensation for purposes of Code Section 415 is the definition in Regulation Section 1.415(c)-2(b) (Regulation Section 1.415-2(d)(2) under the Regulations in effect for Limitation Years beginning prior to July 1, 2007) and the simplified compensation definition of Regulation Section 1.415(c)-2(d)(2) (Regulation Section 1.415-2(d)(10) under the Regulations in effect for Limitation Years prior to July 1, 2007) is not used, then 415 Compensation shall include amounts that are includible in the gross income of a Participant under the rules of Code Section 409A or Code Section 457(f)(1)(A) or because the amounts are constructively received by the Participant. [Note if the Plan's definition of Compensation is W-2 wages or wages for withholding purposes, then these amounts are already included in Compensation.]

(3) "Defined Contribution Dollar Limitation" means \$40,000 (as adjusted for increases in the cost-of-living under Code Section 415(d)).

(4) "Employer" means the Employer that adopts this Plan and all Affiliated Employers, except that for purposes of this Section, Affiliated Employers shall be determined pursuant to the modification made by Code Section 415(h).

(5) "Excess Amount" means the excess of the Participant's "Annual Additions" for the "Limitation Year" over the "Maximum Permissible Amount."

(6) "Limitation Year" means the Compensation year (a twelve (12) consecutive month period) as elected by the Employer in the Adoption Agreement. All qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

The Limitation Year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's limitation year, then the Plan is treated as if the Plan had been amended to change its limitation year.

(7) "Maximum Permissible Amount" means the maximum "Annual Addition" that may be contributed or allocated to a Participant's account under the Plan for any "Limitation Year." Except to the extent permitted under Section 414(v) of the Code, if applicable, the Annual Addition that may be contributed or allocated to a Participant's account under the Plan for any Limitation Year shall not exceed the lesser of:

- (i) the "Defined Contribution Dollar Limitation" or
- (ii) 100 percent of the Participant's 415 Compensation for the Limitation Year.

The compensation limit referred to in (ii) shall not apply to any contribution for medical benefits after separation from service (within the meaning of Section 401(h) or Section 419A(f)(2) of the Code) which is otherwise treated as an Annual Addition.

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

Number of months in the short “Limitation Year”

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12

(e) For purposes of applying the limitations of Code Section 415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the Employer (or a “predecessor employer”) under which the Participant receives Annual Additions are treated as one defined contribution plan. The “Employer” means the Employer that adopts this Plan and all members of a controlled group or an affiliated service group that includes the Employer (within the meaning of Code Section 414(b), (c), (m) or (o)), except that for purposes of this Section, the determination shall be made by applying Code Section 415(h), and shall take into account tax-exempt organizations under Regulation Section 1.414(c)-5, as modified by Regulation Section 1.415(a)-1(f)(1). For purposes of this Section:

(1) A former Employer is a “predecessor employer” with respect to a participant in a plan maintained by an Employer if the Employer maintains a plan under which the participant had accrued a benefit while performing services for the former Employer, but only if that benefit is provided under the plan maintained by the Employer. For this purpose, the formerly affiliated plan rules in Regulation Section 1.415(f)-1(b)(2) apply as if the Employer and predecessor Employer constituted a single employer under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor employer relationship, such as a transfer of benefits or plan sponsorship.

(2) With respect to an Employer of a participant, a former entity that antedates the Employer is a “predecessor employer” with respect to the participant if, under the facts and circumstances, the employer constitutes a continuation of all or a portion of the former entity.

(f) For purposes of aggregating plans for Code Section 415, a “formerly affiliated plan” of an employer is taken into account for purposes of applying the Code Section 415 limitations to the employer, but the formerly affiliated plan is treated as if it had terminated immediately prior to the “cessation of affiliation.” For purposes of this paragraph, a “formerly affiliated plan” of an employer is a plan that, immediately prior to the cessation of affiliation, was actually maintained by one or more of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)), and immediately after the cessation of affiliation, is not actually maintained by any of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)). For purposes of this paragraph, a “cessation of affiliation” means the event that causes an entity to no longer be aggregated with one or more other entities as a single employer under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the employer under the employer affiliation rules of Regulation Section 1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

(g) Two or more defined contribution plans that are not required to be aggregated pursuant to Code Section 415(f) and the Regulations thereunder as of the first day of a limitation year do not fail to satisfy the requirements of Code Section 415 with respect to a participant for the limitation year merely because they are aggregated later in that limitation year, provided that no annual additions are credited to the participant’s account after the date on which the plans are required to be aggregated.

(h) The limitations, adjustments and other requirements prescribed in this section shall at all times comply with the provisions of Code Section 415 and the Regulations thereunder.

4.05 ADJUSTMENT FOR EXCESSIVE ANNUAL ADDITIONS

If as a result of:

- (a) the allocation of Forfeitures,
- (b) a reasonable error in estimating a Participant's annual 415 Compensation,
- (c) a reasonable error in determining the amount of elective deferrals (within the meaning of Code Section 402(g)(3)) that may be made with respect to a Participant,
- (d) or other facts and circumstances to which Regulation Section 1.415-6(b)(6) shall be applicable, the "Annual Additions" under this Plan would cause the maximum provided in Section 4.04 to be exceeded, the Administrator shall treat the excess in accordance with Section 4.04(a)(4).

Notwithstanding any provision of the Plan to the contrary, if the Annual Additions (within the meaning of Code Section 415) are exceeded for any Participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure 2008-50 or any superseding guidance, including, but not limited to, the preamble of the final Section 415 regulations.

#### 4.06 TRANSFERS AND ROLLOVERS FROM OTHER EMPLOYER PLANS

(a) As specified in the Adoption Agreement and with the consent of the Administrator, amounts may be transferred or rolled over on behalf of any Employee from other employer plans or individual retirement accounts, provided that the employer plan or account from which such funds are transferred permits the transfer to be made and, in the opinion of legal counsel for the Employer, the transfer or rollover will not jeopardize the qualified status of the Plan (or the Tax-exempt status of the related Trust, if applicable) or create adverse tax consequences for the Employer. The amounts transferred or rolled over shall be set up in a separate account herein referred to as a Rollover Account. Such account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason. No amounts attributable to deductible Employee contributions (as defined in Code Section 219) may be rolled over or transferred to this Plan.

(b) Amounts in a Rollover Account shall be held by the Insurer (or Trustee, if applicable) pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Employee, in whole or in part, except as provided in Paragraphs (c), (d), (e) of this Section.

(c) Amounts attributable to elective contributions (as defined in Regulation Section 1.401(k)-1(g)(3), or for Plan Years beginning on or after January 1, 2006, Regulations section 1.401(k)-6), including amounts treated as elective contributions, which are transferred from another employer plan in a plan-to-plan transfer shall be subject to the distribution limitations provided for in Regulation Section 1.401(k)-1(d).

(d) A separate account will be maintained by the Administrator for any transferred voluntary Employee contributions of each Participant, and earnings and losses on such voluntary Employee contributions will be allocated to the separate account. A Participant may, upon a written request submitted to the Administrator, withdraw all or a portion of such transferred voluntary Employee contributions at any time. Such written request must be consistent with and satisfy all notice requirements of Code Section 402(f) and the Regulations thereunder.

(e) At Normal Retirement Age, or such other date when the Employee or the Employee's Beneficiary shall be entitled to receive benefits as set forth in the Plan and Adoption Agreement, the fair market value of the Rollover Account shall be used to provide additional benefits to the Employee or the Employee's Beneficiary. If elected in the Adoption Agreement, distributions of rollovers may be made at any time, even if there is no distributable event which permits distribution of other accounts. Any distributions of amounts held in a Rollover Account shall be made in a manner which is consistent with and satisfies the provisions of Section 6.05, including, but not limited to, all notice requirements of Code

Section 402(f). Furthermore, such amounts shall be considered as part of an Employee's benefit in determining whether an involuntary cash-out of benefits without such Employee's consent may be made.

(f) For purposes of this section, the term "employer plan" shall mean any tax-qualified plan under Code Section 401(a), 403(a), 403(b), or 457(b) maintained by a state or local governmental entity. The term "amounts transferred or rolled over from other employer plans" shall mean:

(1) amounts transferred to this Plan directly from another employer plan by means of a trustee-to-insurer (or trustee-to-trustee or insurer-to-insurer) transfer; and

(2) eligible rollover distributions payable to or received by an Employee from another employer plan which are eligible for tax-free rollover to an employer plan and which are directly transferred to this Plan or are transferred by the Employee to this Plan within sixty (60) days following such Employee's receipt thereof. .

(g) Prior to accepting any transfers to which this section applies, the Administrator may require the Employee to establish that the amounts to be transferred to this Plan meet the requirements of this section and may also require the Employee to provide an opinion of counsel satisfactory to the Employer that the amounts to be transferred meet the requirements of this section.

(h) If the Employer has elected in the Adoption Agreement to allow rollovers from other plans, the Employer, operationally and on a nondiscriminatory basis, may limit the source of rollover contributions that may be accepted by this Plan.

#### 4.07 VOLUNTARY EMPLOYEE CONTRIBUTIONS (EMPLOYEE AFTER-TAX CONTRIBUTIONS)

(a) If this is an amendment or restatement of a plan that previously permitted voluntary nondeductible (after-tax) Employee contributions, then such voluntary Employee contributions shall be held in a separate account as defined in Section 1.52.

(b) The balance in each Participant's Voluntary Contribution Account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason.

(c) A Participant may elect to withdraw nondeductible voluntary Employee contributions from such Participant's Voluntary Contribution Account and the actual earnings thereon in a manner which is consistent with and satisfies the provisions of Section 6.05, including, but not limited to, all notice requirements of Code Section 402(f). If the Administrator maintains sub-accounts with respect to nondeductible voluntary Employee contributions (and earnings thereon) which were made on or before a specified date, a Participant shall be permitted to designate which sub-account shall be the source for the withdrawal. No Forfeitures shall occur solely as a result of an Employee's withdrawal of nondeductible voluntary Employee contributions.

(d) At Normal Retirement Age, or such other date when the Participant or such Participant's Beneficiary shall be entitled to receive benefits, the fair market value of the Voluntary Contribution Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary.

#### 4.08 QUALIFIED VOLUNTARY EMPLOYEE CONTRIBUTIONS

(a) If this is an amendment or restatement of a Plan that previously permitted deductible voluntary Employee contributions, then each Participant who made a qualified voluntary employee contribution within the meaning of Code Section 219(e)(2) as it existed prior to the enactment of the Tax Reform Act of 1986, shall have such Participant's contribution held in a separate Qualified Voluntary Employee Contribution Account which shall be fully Vested at all times. Such contributions, however, shall not be permitted if they are attributable to taxable years beginning after December 31, 1986.

(b) A Participant may, upon written request delivered to the Administrator, make withdrawals from such Participant's Qualified Voluntary Employee Contribution Account. Any distribution shall be made in a manner which is consistent with and satisfies the provisions of Section 6.05, including, but not limited to, all notice requirements of Code Section 402(f).

(c) At Normal Retirement Age, or such other date when the Participant or the Participant's Beneficiary shall be entitled to receive benefits, the fair market value of the Qualified Voluntary Employee Contribution Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary.

#### 4.09 DIRECTED INVESTMENT ACCOUNT

(a) If elected in the Adoption Agreement, except as provided below, all Participants may direct the investment of all or a portion of their individual account balances within limits set by the Employer. Participants may direct the Insurer (or Trustee, if applicable) in writing to invest their account in specific assets, specific funds or other investments permitted under the Plan and the Participant Direction Procedures. That portion of the interest of any Participant which is subject to investment direction of such Participant will be considered a Participant Directed Investment Account. With respect to Participants under age 18 (or the applicable age of majority), the Administrator may direct that such Participant's accounts be invested in the Designated Investment Option available under the Plan that has the lowest risk of loss.

(b) As of each Valuation Date, all Participant Directed Investment Accounts shall be charged or credited with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in the market value using publicly listed fair market values when available or appropriate as follows:

(1) To the extent that the assets in a Participant Directed Investment Account are accounted for as pooled assets or investments, the allocation of earnings, gains and losses of each Participant's Account shall be based upon the total amount of funds so invested, in a manner proportionate to the Participant's share of such pooled investment.

(2) To the extent that the assets in the Participant Directed Account are accounted for as segregated assets, the allocation of earnings, gains and losses from such assets shall be made on a separate and distinct basis.

(c) Any information regarding investments available under the Plan, to the extent not required to be described in the Participant Direction Procedures, may be provided to the Participant in one or more written documents which are separate from the Participant Direction Procedures and are not thereby incorporated by reference into this Plan.

(d) The Administrator may, at its discretion, include in or exclude by amendment or other action from the Participant Direction Procedure such instructions, guidelines or policies as it deems necessary or appropriate to ensure proper administration of the Plan, and may interpret the same accordingly.

ARTICLE V  
TRUSTEE AND CUSTODIAN  
(APPLICABLE ONLY TO TRUSTEED PLAN  
OR PORTION OF PLAN ASSETS HELD IN TRUST OR CUSTODIAL ACCOUNT)

5.01 BASIC RESPONSIBILITIES OF THE TRUSTEE

In the event this is a Trusteed Plan, the Trustee shall have the responsibilities in this Article V with respect to any assets which are not held in Annuity Contracts subject to the terms of Article X. If a discretionary Trustee is selected in the Adoption Agreement, then the Trustee has full discretion and authority with regard to the investment of the Plan assets, except with respect to assets under the control or direction of an investment manager, the Employer, the Administrator or a Participant. If a nondiscretionary Trustee is selected in the Adoption Agreement, then the Trustee will not have any discretion or authority with regard to the Plan assets, but must act solely as a directed Trustee of funds contributed. A nondiscretionary Trustee is authorized and empowered with the following rights, powers, and duties, each of which the nondiscretionary Trustee exercises solely as directed Trustee in accordance with the written direction of the investment manager, the Employer, the Administrator or a Participant. If the nondiscretionary Trustee should be directed but is not, the Employer is responsible for providing necessary direction.

The nondiscretionary Trustee has no duty to review or to make recommendations regarding investments made at the written direction of the investment manager, Employer or Participant. The nondiscretionary Trustee must retain any investment obtained at the written direction of the investment manager, Employer or Participant until further directed in writing to dispose of such investment. The nondiscretionary Trustee is not liable in any manner or for any reason for making, retaining or disposing of any investment pursuant to any written direction described in this paragraph. Furthermore, to the extent permitted by law, the Employer agrees to indemnify and to hold the nondiscretionary Trustee harmless from any damages, costs or expenses, including reasonable counsel fees, which the nondiscretionary Trustee may incur as a result of any claim asserted against the nondiscretionary Trustee arising out of the nondiscretionary Trustee's compliance with any written direction described in this paragraph.

(a) The Trustee shall have the power to invest, manage, and control the Plan assets subject, however, to the direction of the Employer, the Administrator, a Participant or any agent of the Employer as to all or a portion of the assets of the Plan as follows:

(1) To the extent and in the manner permitted by the Participant Direction Procedures, if permitted in the Adoption Agreement, a Participant may direct the Trustee with respect to the investment or reinvestment of the Participant's Accounts under the Plan in such pooled investments (including, but not limited to the pooled funds of the Trustee) as are made available by agreement between the Trustee and the Employer.

(2) The Employer may by written agreement or designation appoint at its option an investment adviser or other agent to provide direction to the Trustee with respect to any or all of the Plan assets. Such appointment shall be given by the Employer in writing in a form acceptable to the Trustee and shall specifically identify the Plan assets with respect to which the agent shall have authority to direct the investment.

(3) In the event that the Trustee shall be directed by a Participant (pursuant to the Participant Direction Procedures), the Employer, or other agent appointed by the Employer with respect to the investment of any or all Plan assets, the Trustee shall have no liability with respect to the investment of such assets, but shall be responsible only to execute such investment instruction as so directed.

(4) The Trustee shall be entitled to rely fully on the written instructions of a Participant pursuant to the Participant Direction Procedures, the Employer, or any fiduciary or nonfiduciary agent of the Employer, in the discharge of such duties, and shall not be liable for any loss or other liability resulting from such direction (or lack of direction) of the investment of any part of the Plan assets.

(5) The Trustee may delegate the duty to execute such instructions to any nonfiduciary agent, which may be an affiliate of the Trustee or any Plan representative.

(6) The Trustee may refuse to comply with any direction from the Participant in the event the Trustee, in its sole and absolute discretion, deems such instructions improper by virtue of applicable law. The Trustee shall not be responsible or liable for any loss or expense which may result from the Trustee's refusal or failure to comply with any directions from the Participant.

(7) Any costs and expenses related to compliance with the Participant's directions shall be borne by the Participant Directed Investment Account, unless paid by the Employer.

(i) At the direction of the Administrator, the Trustee shall have the power to pay benefits required under the Plan to be paid to Participants, or, in the event of their death, to their Beneficiaries;

(ii) The Trustee shall maintain records of receipts and disbursements and furnish to the Employer and/or Administrator for each Plan Year a written annual report per Section 5.06; and

(iii) If there shall be more than one Trustee, they shall act by a majority of their number, but may authorize one or more of them to sign papers on their behalf.

## 5.02 INVESTMENT POWERS AND DUTIES OF THE TRUSTEE

The Trustee shall have the following investment powers and duties, which shall be exercisable in the Trustee's sole discretion (if the Trustee is a discretionary Trustee), or at the direction of the Employer, the Administrator, a designated investment manager or a Participant (if the Trustee is a directed, nondiscretionary Trustee):

(a) The Trustee shall, except as otherwise provided in this Plan, invest and reinvest the Trust Fund to keep the Trust Fund invested without distinction between principal and income and in such securities or property, real or personal, wherever situated, as the Trustee shall deem advisable, including, but not limited to, stocks, common or preferred, bonds and other evidences of indebtedness or ownership, and real estate or any interest therein. The Trustee shall at all times in making investments of the Trust Fund consider, among other factors, the short and long-term financial needs of the Plan on the basis of information furnished by the Employer. In making such investments, the Trustee shall not be restricted to securities or other property of the character expressly authorized by the applicable law for trust investments; however, the Trustee shall give due regard to any limitations imposed by the Code so that at all times this Plan may qualify as a qualified Plan and Trust.

(b) The Trustee may employ a bank or trust company pursuant to the terms of its usual and customary bank agency agreement, under which the duties of such bank or trust company shall be of a custodial, clerical and record-keeping nature.

(c) With respect to assets in a Participant's Directed Investment Account, the Participant or Beneficiary shall direct the Trustee with regard to any voting, tender and similar rights associated with the ownership of such assets, (i.e., the "Stock Right(s)") as follows:

(1) Each Participant or Beneficiary shall direct the Trustee to vote or otherwise exercise such Stock Rights in accordance with the provisions, conditions and terms of any such Stock Right(s);

(2) Such directions shall be provided to the Trustee by the Participant or Beneficiary in accordance with the procedure as established by the Administrator. The Trustee shall vote or

otherwise exercise such Stock Right(s) with respect to which it has received directions to do so under this Section; and

(3) To the extent to which a Participant or Beneficiary does not instruct the Trustee to vote or otherwise exercise such Stock Right(s), such Participants or Beneficiaries shall be deemed to have directed the Trustee that such Stock Rights remain nonvoted and unexercised.

(d) The Trustee may from time to time transfer to a common, collective, or pooled trust fund maintained by any corporate Trustee hereunder pursuant to Revenue Ruling 81-100, all or such part of the Trust Fund as the Trustee may deem advisable, and such part or all of the Trust Fund so transferred shall be subject to all the terms and provisions of the common, collective, or pooled trust fund which contemplate the commingling for investment purposes of such trust assets with trust assets of other trusts. The Trustee may withdraw from such common, collective, or pooled trust fund all or such part of the Trust Fund as the Trustee may deem advisable.

(e) Amounts attributable to contributions for Part-time, Seasonal and Temporary Employees pursuant to Section 4.01(e) shall be held in a separate account that is subject to general fiduciary standards, and these amounts shall be credited with the actual earnings of the assets held in such account.

### 5.03 OTHER POWERS OF THE TRUSTEE

The Trustee, in addition to all powers and authorities under common law, statutory authority and other provisions of this Plan, shall have the following powers and authorities, except as otherwise provided in this Plan, exercisable at the Trustee's sole discretion (if the Trustee is a discretionary trustee), or at the direction of the Employer, the Administrator, or designated investment manager or Participant (if the Trustee is a directed nondiscretionary Trustee):

(a) To purchase, or subscribe for, any securities or other property and to retain the same. In conjunction with the purchase of securities, margin accounts may be opened and maintained;

(b) To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustee, by private contract or at public auction. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition, with or without advertisement;

(c) To vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property. However, the Trustee shall not vote proxies relating to securities for which it has not been assigned full investment management responsibilities. In those cases where another party has such investment authority or discretion, the Trustee will deliver all proxies to said party who will then have full responsibility for voting those proxies;

(d) To cause any securities or other property to be registered in the Trustee's own name or in the name of one or more of the Trustee's nominees, and to hold any investments in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust Fund;

(e) To borrow or raise money for the purposes of the Plan in such amount, and upon such terms and conditions, as the Trustee shall deem advisable; and for any sum so borrowed, to issue a promissory note as Trustee, and to secure the repayment thereof by pledging all, or any part, of the Trust Fund; and no person lending money to the Trustee shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any borrowing;

- (f) To keep such portion of the Trust Fund in cash or cash balances as the Trustee may, from time to time, deem to be in the best interests of the Plan, without liability for interest thereon;
- (g) To accept and retain for such time as it may deem advisable any securities or other property received or acquired by it as Trustee hereunder, whether or not such securities or other property would normally be purchased as investments hereunder;
- (h) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (i) To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Plan, to commence or defend suits or legal or administrative proceedings, and to represent the Plan in all suits and legal and administrative proceedings;
- (j) To employ suitable agents and counsel and to pay their reasonable expenses and compensation, and such agent or counsel may or may not be agent or counsel for the Employer;
- (k) To apply for and procure from the Insurer as an investment of the Trust Fund such Contracts as the Administrator shall deem proper; to exercise, at any time or from time to time, whatever rights and privileges may be granted under such Contracts; to collect, receive, and settle for the proceeds of all such Contracts as and when entitled to do so under the provisions thereof;
- (l) To invest funds of the Trust in time deposits or savings accounts bearing a reasonable rate of interest in the Trustee's bank;
- (m) To invest in Treasury Bills and other forms of United States government obligations;
- (n) To sell, purchase and acquire put or call options if the options are traded on and purchased through a national securities exchange registered under the Securities Exchange Act of 1934, as amended, or, if the options are not traded on a national securities exchange, are guaranteed by a member firm of the New York Stock Exchange;
- (o) To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations;
- (p) To pool all or any of the Trust Fund, from time to time, with assets belonging to any other qualified employee pension benefit trust created by the Employer or any Affiliated Employer, and to commingle such assets and make joint or common investments and carry joint accounts on behalf of this Plan and such other trust or trusts, allocating undivided shares or interests in such investments or accounts or any pooled assets of the two or more trusts in accordance with their respective interests;
- (q) To appoint an agent or agents to assist the Trustee in carrying out any investment instructions of Participants and any fiduciary or responsible party;
- (r) To do all such acts and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to carry out the purposes of the Plan.
- (s) To invest in shares of investment companies registered under the Investment Company Act of 1940.
- (t) Directed Investment Account. If elected in the Adoption Agreement, each Participant may direct the Trustee to separate and keep separate all or a portion of such Participant's interest in the Plan; and further each Participant is authorized and empowered, in such Participant's sole and absolute discretion, to give directions to the Trustee in such form as the Trustee may require concerning the

investment of the Participant's Directed Investment Account, which directions must be followed by the Trustee. Neither the Trustee nor any other persons including the Administrator or otherwise shall be under any duty to question any such direction of the Participant or to review any securities or other property, real or personal, or to make any suggestions to the Participant in connection therewith, and the Trustee shall comply as promptly as practicable with directions given by the Participant hereunder. Any such direction may be of a continuing nature or otherwise and may be revoked by the Participant at any time in such form as the Trustee may require. The Trustee may refuse to comply with any direction from the Participant in the event the Trustee, in its sole and absolute discretion, deems such directions improper by virtue of applicable law, and in such event, the Trustee shall not be responsible or liable for any loss or expense which may result. Any costs and expenses related to compliance with the Participant's directions shall be borne by the Participant Directed Investment Account.

Notwithstanding anything hereinabove to the contrary, the Trustee shall not invest any portion of a Participant Directed Investment Account in "collectibles" within the meaning of that term as employed in Code Section 408(m).

#### 5.04 DUTIES OF THE TRUSTEE REGARDING PAYMENTS

At the direction of the Administrator, the Trustee shall, from time to time, in accordance with the terms of the Plan, make payments out of the Plan assets. The Trustee shall not be responsible in any way for the application of such payments.

#### 5.05 TRUSTEE'S COMPENSATION AND EXPENSES AND TAXES

The Trustee shall be paid such reasonable compensation as set forth in the Trustee's fee schedule (if the Trustee has such a schedule) or as agreed upon in writing by the Employer and the Trustee. An individual serving as Trustee who already receives full-time pay from the Employer shall not receive compensation from this Plan. In addition, the Trustee shall be reimbursed for any reasonable expenses, including reasonable counsel fees incurred by it as Trustee. Such compensation and expenses shall be paid from the Trust Fund unless paid or advanced by the Employer. All taxes of any kind and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect of, the Trust Fund or the income thereof, shall be paid from the Trust Fund.

#### 5.06 ANNUAL REPORT OF THE TRUSTEE

Within a reasonable period of time after the later of the Anniversary Date or receipt of the Employer's contribution for each Plan Year, the Trustee, or its agent, shall furnish to the Employer and Administrator a written statement of account with respect to the Plan Year for which such contribution was made setting forth:

- (a) the net income, or loss, of the Trust Fund;
- (b) the gains, or losses, realized by the Trust Fund upon sales or other disposition of the assets;
- (c) the increase, or decrease, in the value of the Trust Fund;
- (d) all payments and distributions made from the Trust Fund; and
- (e) such further information as the Trustee and/or Administrator deems appropriate. The Employer, forthwith upon its receipt of each such statement of account, shall acknowledge receipt thereof in writing and advise the Trustee and/or Administrator of its approval or disapproval thereof. Failure by the Employer to disapprove any such statement of account within sixty (60) days after its receipt thereof shall be deemed an approval thereof. The approval by the Employer of any statement of account shall be binding as to all matters embraced therein as between the Employer and the Trustee to the same extent as if the account of the Trustee had been settled by judgment or decree in an action for a judicial settlement of its account in a court of competent jurisdiction in which the Trustee, the Employer and all persons having

or claiming an interest in the Plan were parties; provided, however, that nothing herein contained shall deprive the Trustee of its right to have its accounts judicially settled if the Trustee so desires.

#### 5.07 RESIGNATION, REMOVAL AND SUCCESSION OF TRUSTEE

(a) The Trustee may resign at any time by delivering to the Employer, at least sixty (60) days before its effective date, a written notice of resignation.

(b) The Employer may remove the Trustee by mailing by registered or certified mail, addressed to such Trustee at the Trustee's last known address, at least sixty (60) days before its effective date, a written notice of such Trustee's removal.

(c) Upon the death, resignation, incapacity, or removal of any Trustee, a successor may be appointed by the Employer; and such successor, upon accepting such appointment in writing and delivering same to the Employer, shall, without further act, become vested with all the estate, rights, powers, discretions, and duties of the predecessor with like respect as if such Trustee were originally named as a Trustee herein. Until such a successor is appointed, the remaining Trustee or Trustees shall have full authority to act under the terms of the Plan.

(d) The Employer may designate one or more successors prior to the death, resignation, incapacity, or removal of a Trustee. In the event a successor is so designated by the Employer and accepts such designation, the successor shall, without further act, become vested with all the estate, rights, powers, discretions, and duties of such successor's predecessor with the like effect as if such successor were originally named as Trustee herein immediately upon the death, resignation, incapacity, or removal of the predecessor.

(e) Whenever any Trustee hereunder ceases to serve as such, the Trustee shall furnish to the Employer and Administrator a written statement of account with respect to the portion of the Plan Year during which the individual or entity served as Trustee. This statement shall be either (i) included as part of the annual statement of account for the Plan Year required under Section 5.06 or (ii) set forth in a special statement. Any such special statement of account should be rendered to the Employer no later than the due date of the annual statement of account for the Plan Year. The procedures set forth in Section 5.06 for the approval by the Employer of annual statements of account shall apply to any special statement of account rendered hereunder and approval by the Employer of any such special statement in the manner provided in Section 5.06 shall have the same effect upon the statement as the Employer's approval of an annual statement of account. No successor to the Trustee shall have any duty or responsibility to investigate the acts or transactions of any predecessor who has rendered all statements of account required by Section 5.06 and this subsection.

#### 5.08 TRUSTEE INDEMNIFICATION

To the extent permitted by law, the Employer agrees to indemnify and save harmless the Trustee against any and all claims, losses, damages, expenses and liabilities the Trustee may incur in the exercise and performance of the Trustee's powers and duties hereunder, unless the same are determined to be due to gross negligence or willful misconduct.

#### 5.09 VALUATION OF THE TRUST FUND

The Administrator shall direct the Trustee, as of each Valuation Date, to determine the net worth of the assets comprising the Trust Fund as it exists on the Valuation Date prior to taking into consideration any contribution to be allocated for that Plan Year. In determining such net worth, the Trustee shall value the assets comprising the Trust Fund at their fair market value as of the Valuation Date.

## 5.10 METHOD OF VALUATION

In determining the fair market value of securities held in the Trust Fund which are listed on a registered stock exchange, the Administrator shall direct the Trustee to value the same at the prices they were last traded on such exchange preceding the close of business on the Valuation Date. If such securities were not traded on the Valuation Date, or if the exchange on which they are traded was not open for business on the Valuation Date, then the securities shall be valued at the prices at which they were last traded prior to the Valuation Date. Any unlisted security held in the Trust Fund shall be valued at its bid price next preceding the close of business on the Valuation Date, which bid price shall be obtained from a registered broker or an investment banker. In determining the fair market value of assets other than securities for which trading or bid prices can be obtained, the Trustee may appraise such assets itself or employ one or more appraisers for that purpose and rely on the values established by such appraiser or appraisers.

## 5.11 USE OF CUSTODIAL ACCOUNT

In the event that the Employer elects, in Section D.1.b. of the Adoption Agreement, to have all or a portion of the Plan's assets held in trust by a nondiscretionary Trustee, the Employer may, in lieu of or in addition to appointing a Trustee and creating a trust, appoint a bank (as defined in Code Section 408(n)), or another person who meets the requirements for a non-bank custodian under Code Section 401(f)(2), to serve as the custodian ("Custodian") of such assets, and may direct the Custodian to hold such assets in an account ("Custodial Account") that, but for the fact that it is not a trust, would otherwise constitute a qualified trust under Code Section 401(a). If the Employer makes the election described in this Section 5.11, the Custodial Account shall, for all purposes under the Plan, be treated as the Plan's Trust Fund (as described in Section 1.47), and the Custodian shall, for all purposes under the Plan, be treated as the nondiscretionary trustee of such Trust Fund. Consequently, any reference in the Plan to the Trustee shall be treated as a reference to the Custodian of the Custodial Account, and the Custodian shall have all the powers, duties and responsibilities of a nondiscretionary Trustee as set forth under Article V; provided, however, that the Custodian shall not have the power to, and shall not be permitted to, invest the assets of the Trust Fund in a common, collective or pooled trust fund maintained by a corporate Trustee, as described in Section 5.02(d).

ARTICLE VI  
DETERMINATION AND DISTRIBUTION OF BENEFITS

6.01 DETERMINATION OF BENEFITS UPON RETIREMENT

Upon the Participant's attainment of Normal Retirement Age or Early Retirement Age, all amounts credited to a Participant's Account shall become fully Vested. However, a Participant may postpone the termination of employment with the Employer to a later date, in which event the participation of such Participant in the Plan, including the right to receive allocations pursuant to Section 4.03, shall continue until such Participant's Retirement Date. Upon a Participant's Retirement Date, or as soon thereafter as is practicable, all amounts credited to such Participant's Account shall be distributable in accordance with Section 6.05.

6.02 DETERMINATION OF BENEFITS UPON DEATH

(a) Upon the death of a Participant before the Participant's Retirement Date or other termination of employment, all amounts credited to such Participant's Account shall, if elected in the Adoption Agreement, become fully Vested. The Administrator shall direct the Insurer (or Trustee, if applicable), in accordance with the provisions of Sections 6.06 and 6.07, to distribute the value of the deceased Participant's Vested accounts to the Participant's Beneficiary.

(b) Upon the death of a Former Participant, the Administrator shall direct, in accordance with the provisions of Sections 6.06 and 6.07, the Insurer (or Trustee, if applicable), to distribute the value of any remaining Vested amounts credited to the accounts of such deceased Former Participant to such Former Participant's Beneficiary.

(c) The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant or Former Participant as the Administrator may deem desirable. The Administrator's determination of death and of the right of any person to receive payment shall be conclusive.

(d) The designation of a Beneficiary shall be made on a form satisfactory to the Administrator. A Participant may at any time revoke a designation of a Beneficiary or change a Beneficiary by filing written notice of such revocation or change with the Administrator. In the event no valid designation of Beneficiary exists at the time of the Participant's death, the death benefit shall be payable to the Participant's estate.

(e) In the event of any conflict between the terms of this Plan and the terms of any Contract issued hereunder, the Plan provisions shall control.

6.03 DETERMINATION OF BENEFITS IN EVENT OF DISABILITY

In the event of a Participant's Total and Permanent Disability prior to the Participant's Retirement Date or other termination of employment, all amounts credited to such Participant's Account shall, if elected in the Adoption Agreement, become fully Vested. In such event, the Administrator, in accordance with the provisions of Sections 6.05 and 6.07, shall direct the Insurer (or Trustee, if applicable) to distribute to such Participant all Vested amounts credited to such Participant's Account in a manner consistent with Section 6.05, including, but not limited to, all notice requirements of Code Section 402(f).

6.04 DETERMINATION OF BENEFITS UPON TERMINATION

(a) Distribution of the funds due to a Terminated Participant shall be made on the occurrence of an event which would result in the distribution had the Terminated Participant remained in the employ of the Employer (upon the Participant's death, Total and Permanent Disability, or Retirement Date). However, at the election of the Participant, the Administrator shall direct the Insurer (or Trustee, if applicable) to cause the entire Vested portion of the Terminated Participant's Account to be payable to such

Terminated Participant provided the conditions, if any, set forth in the Adoption Agreement have been satisfied.

Any distribution under this paragraph shall be made in a manner which is consistent with and satisfies the provisions of Section 6.05, including but not limited to, the notice requirements under Code Section 402(f).

(b) The Vested portion of any Participant's Account shall be a percentage of such Participant's Account determined on the basis of the Participant's number of Years of Service (or twelve month Periods of Service if the Elapsed Time Method is elected) according to the vesting schedule specified in the Adoption Agreement. Notwithstanding any other provision of this Plan to the contrary, contributions for Part-time, Seasonal and Temporary Employees pursuant to Section 4.01(e), Special Pay contributions and Employee non-elective contributions, shall be 100% immediately vested.

(c) Notwithstanding the vesting schedule above, upon any termination of the Plan or in the case of a profit sharing plan the complete discontinuance of contributions to the Plan, all amounts credited to the account of any affected Participant shall become 100% Vested and shall not thereafter be subject to Forfeiture.

(d) If this is an amended or restated Plan, then notwithstanding the vesting schedule specified in the Adoption Agreement, the Vested percentage of a Participant's Account shall not be less than the Vested percentage attained as of the later of the effective date or adoption date of this amendment and restatement. The computation of a Participant's nonforfeitable percentage of such Participant's interest in the Plan shall not be reduced as the result of any direct or indirect amendment to this Article.

(e) This subsection (e) applies if break in service rules have been selected in the Adoption Agreement.

(1) If any Former Participant shall be reemployed by the Employer before a 1-Year Break in Service occurs, the Former Participant shall continue to participate in the Plan in the same manner as if such termination had not occurred.

(2) If any Former Participant shall be reemployed by the Employer, and such Former Participant had received a distribution of the entire Vested interest prior to reemployment, the forfeited account shall not be reinstated.

(3) If any Former Participant is reemployed after a 1-Year Break in Service has occurred, Years of Service (or Periods of Service) shall include Years of Service (or Periods of Service) prior to the 1-Year Break in Service subject to the following rules:

(i) Any Former Participant who under the Plan does not have a nonforfeitable right to any interest in the Plan resulting from Employer contributions shall lose credits if the consecutive 1-Year Breaks in Service equal or exceed the greater of (A) five (5) or (B) the aggregate number of pre-break Years of Service (or Periods of Service);

(ii) After five (5) consecutive 1-Year Breaks in Service, a Former Participant's Vested Account balance attributable to pre-break service shall not be increased as a result of post-break service;

(iii) A Former Participant who is reemployed and who has not had Years of Service (or Periods of Service) before a 1-Year Break in Service disregarded pursuant to (i) above, shall participate in the Plan as of the date of reemployment.

(iv) If a Former Participant completes a Year of Service (a 1-Year Break in

Service previously occurred, but employment had not terminated), the Former Participant shall participate in the Plan retroactively from the first day of the Plan Year during which one (1) Year of Service (or Period of Service) is completed.

(f) In determining Years of Service (or Periods of Service) for purposes of vesting under the Plan, Years of Service (or Periods of Service) shall be excluded as specified in the Adoption Agreement.

#### 6.05 DISTRIBUTION OF BENEFITS

(a) The Trustee (or Insurer) will make Plan distributions in the form of cash except where (1) the Plan is a restated Plan and under the prior Plan, distribution in the form of property (“in-kind distribution”) is a Protected Benefit, or (2) the Employer is terminating the Plan, and in the reasonable judgment of the Administrator, some or all Plan assets may not within a reasonable time for making final distributions of Plan assets, be liquidated to cash or may not be so liquidated without undue loss in value. Under clause (2), the Administrator will direct the Trustee (or Insurer) to make Plan termination distributions to Participants and Beneficiaries in cash, in-kind or in a combination of these forms, in a reasonable and nondiscriminatory manner which may take into account the preferences of the distributees. All in-kind distributions will be made based on the current fair market value of the property, as determined by the Administrator.

(b) The portion of a Participant’s benefit derived from Employer contributions will generally not be paid without the Participant’s consent. If elected in the Adoption Agreement, the Administrator will distribute such benefit in a lump-sum without such Participant’s consent. If any portion of the Participant’s benefit is derived from contributions made for Part-time, Seasonal or Temporary Employees pursuant to Section 4.01(e), no distribution will be made without the Participant’s consent if the Participant’s Vested Interest is greater than the cash-out limit in effect under Code Section 411(a)(11)(A) for the Plan Year which includes the date of distribution. If, in the Adoption Agreement, the Employer elects to distribute a terminated Participant’s Vested account without the Participant’s consent, but only if the Participant’s Vested account balance does not exceed \$1,000, then the value of the Participant’s Vested account shall be determined by including the portion of the account balance that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of Code Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16).

For distributions on or after March 28, 2005, in the event of a mandatory distribution greater than \$1,000 (but not greater than the cash-out limit in effect under Code Section 411(a)(11)(A)) in accordance with the provisions of this Section 6.05(b) (or any other section of the Plan relating to involuntary distributions), if the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly, then the Administrator will direct the Trustee (or Insurer) to pay the distribution in a direct rollover to an individual retirement plan designated by the Administrator. In such event, the Administrator shall:

- (1) Select and enter into a written agreement with an IRA service provider that is willing to accept small account distributions as rollovers;
- (2) Select a default IRA investment that meets regulatory requirements;
- (3) Execute the necessary documents to establish an IRA on the Participant’s behalf; and
- (4) Ensure that Participants are provided with a detailed written explanation of the default IRA, including a description of the investment, the fees associated with the IRA, notification that the distribution may be transferred by the Participant to another individual retirement plan, as well as the name, address, and phone number of a plan contact for additional information.

(c) The Participant's consent shall not be required for any distribution required under Section 6.15, below.

(d) Notwithstanding any provision in the Plan to the contrary, distributions shall be made in accordance with Section 6.15 and shall otherwise comply with Code Section 401(a)(9) and the Regulations thereunder.

(e) All Contracts purchased for purposes of the payment of benefits under this Plan shall be non-transferable.

(f) If a distribution is made at a time when a Participant who has not terminated employment is not fully Vested in the Participant's Account and the Participant may increase the Vested percentage in such account:

(1) A separate account shall be established for the Participant's interest in the Plan as of the time of the distribution, and

(2) At any relevant time the Participant's Vested portion of the separate account shall be equal to an amount ("X") determined by the formula:

$$X \text{ equals } P(AB \text{ plus } (RxD)) - (R \times D)$$

For purposes of applying the formula: P is the Vested percentage at the relevant time, AB is the account balance at the relevant time, D is the amount of distribution, R is the ratio of the account balance at the relevant time to the account balance after distribution, and the relevant time is the time at which, under the Plan, the vested percentage in the account cannot increase .

(g) The Administrator, pursuant to the election of the Participant, shall direct the Insurer (or Trustee, if applicable) to distribute to a Participant or the Participant's Beneficiary any amount to which the Participant or Beneficiary is entitled under the Plan in one or more of the following methods which are permitted pursuant to the Adoption Agreement:

(1) One lump -sum payment in cash;

(2) Payments in monthly, quarterly, semiannual, or annual cash installments after first having:

(i) purchased a nontransferable annuity Contract for such payment, or,

(ii) if a trustee Plan, segregated the aggregate amount thereof in a separate savings account or certificate of deposit in a bank or savings and loan association, money market certificate or other liquid short-term security. The period over which such payment is to be made shall not extend beyond the Participant's life expectancy (or the life expectancy of the Participant and the Participant's designated Beneficiary);

(3) Payments in the form of an annuity. However, such annuity may not be in any form that will provide for payments over a period extending beyond either the life of the Participant (or the lives of the Participant and the Participant's designated Beneficiary) or the life expectancy.

## 6.06 DISTRIBUTION OF BENEFITS UPON DEATH

(a) If the Participant dies before his entire Vested Account is distributed to him, his remaining Vested interest in the Plan shall be distributed to his designated Beneficiary by either of the following methods, as elected by the Participant (or, if no election has been made prior to the Participant's

death, by the Participant's Beneficiary) subject to the rules specified in Section 6.06(b) and the selections made in the Adoption Agreement:

- (1) One lump-sum payment in cash;
- (2) In the form of an annuity over the life expectancy of the Participant's Beneficiary.
- (3) In the form of installments. In the event the death benefit is payable in
- (4) installments, then, upon the death of the Participant, the Administrator may direct that the death benefit be segregated and invested separately, and that the funds accumulated in the segregated account be used for the payment of the installments.

(b) Notwithstanding the above, if the Participant's Vested account balance as of the date of death does not exceed the amount selected in the Adoption Agreement (for involuntary distributions), the entire Vested account balance shall be distributed as soon as administratively practicable in a single lump sum subject to the mandatory rollover to IRA provisions of Section 6.05(b). The value of a Participant's Vested account balance shall be determined by including the portion of the account balance that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of Code Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16).

(c) Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant shall be made in accordance with Section 6.15 and shall otherwise comply with Code Section 401(a)(9) and the Regulations thereunder.

(d) In the event that less than 100% of a Participant's interest in the Plan is distributed to such Participant's spouse, the portion of the distribution attributable to the Participant's Voluntary Contribution Account shall be in the same proportion that the Participant's Voluntary Contribution Account bears to the Participant's total interest in the Plan.

#### 6.07 TIME OF SEGREGATION OR DISTRIBUTION

Except as limited by Sections 6.05 and 6.06, whenever the Insurer (or Trustee, if applicable) is to make a distribution or commence a series of payments on or as of an Anniversary Date, the distribution or series of payments may be made or begun on such date or as soon thereafter as is practicable.

#### 6.08 DISTRIBUTION FOR MINOR BENEFICIARY

In the event a distribution is to be made to a minor Beneficiary, then the Administrator may direct that such distribution be paid to the legal guardian or to the custodian for such Beneficiary under the applicable state Uniform Transfers (Gifts) to Minors Act, if such is permitted by the laws of the state in which said Beneficiary resides. Such a payment to the legal guardian or custodian of a minor Beneficiary shall fully discharge the Insurer (or Trustee, if applicable), Employer, and Plan from further liability on account thereof.

#### 6.09 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN

In the event that all, or any portion, of the distribution payable to a Participant or Beneficiary hereunder shall, at the later of the Participant's attainment of age 62 or Normal Retirement Age, remain unpaid solely by reason of the inability of the Administrator to ascertain the whereabouts of such Participant or Beneficiary, the amount so distributable may, in the sole discretion of the Administrator, either be treated as a Forfeiture or be paid directly to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b). In addition, if the Plan provides for mandatory distributions, and the amount to be distributed to a Participant or Beneficiary does not exceed \$1,000, then the amount distributable may, in the sole discretion of the Administrator, either be treated as a Forfeiture or be paid directly to an individual retirement account described in

Code §408(a) or an individual retirement annuity described in Code §408(b) at the time it is determined that the whereabouts of the Participant or the Participant's Beneficiary cannot be ascertained. In the event a Participant or Beneficiary is located subsequent to the Forfeiture, such benefit shall be restored, first from Forfeitures, if any, and then from an additional Employer contribution, if necessary. Upon Plan termination, the portion of the distributable amount that is an "eligible rollover distribution," as defined in Section 6.14(b)(1), may be paid directly to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b). However, regardless of the preceding, a benefit that is lost by reason of escheat under applicable state law is not treated as a Forfeiture for purposes of this Section nor as an impermissible forfeiture under the Code.

#### 6.10 IN-SERVICE DISTRIBUTION

For Profit Sharing Plans, if elected in the Adoption Agreement, at such time as the conditions specified in the Adoption Agreement have been satisfied, the Administrator, at the election of the Participant, shall direct the distribution of up to the entire amount then credited to the accounts maintained on behalf of the Participant. However, no such distribution from the Participant's Account shall occur prior to 100% Vesting. In the event that the Administrator makes such a distribution, the Participant shall continue to be eligible to participate in the Plan on the same basis as any other Employee. Any distribution made pursuant to this section shall be made in a manner consistent with Section 6.05, including, but not limited to, the notice requirements of Code Section 402(f) and the Regulations thereunder. The provisions of the paragraph shall not apply to contributions made pursuant to Section G.3.b. of the Adoption Agreement on behalf of Part-time, Seasonal and Temporary Employees.

Except as provided in the following paragraph, to the extent that any optional form of benefit under this Plan permits a distribution prior to the Participant's retirement, death, Total and Permanent Disability, or severance from employment, and prior to Plan termination, the optional form of benefit is not available with respect to benefits attributable to assets (including the post-transfer earnings thereon) and liabilities that are transferred, within the meaning of Code Section 414(l), to this Plan from a Money Purchase Pension Plan qualified under Code Section 401(a) (other than any portion of those assets and liabilities attributable to voluntary Employee contributions).

If elected in the Adoption Agreement, then beginning as of the date specified in the Adoption Agreement, if the Plan is a money purchase pension plan (or a profit sharing plan that has received a transfer of assets from a pension plan), a Participant who has attained age 62, but has not separated from employment, may elect to receive a distribution of up to 100% of the Vested portion of the Participant's Account (or, in the case of a transferee plan, of up to the entire amount attributable to such transferred assets).

#### 6.11 ADVANCE DISTRIBUTION FOR HARDSHIP

(a) For Profit Sharing Plans, if elected in the Adoption Agreement, the Administrator, at the election of the Participant, shall direct the distribution to any Participant in any one Plan Year up to the lesser of 100% of the Participant's Account valued as of the last Anniversary Date or other Valuation Date or the amount necessary to satisfy the immediate and heavy financial need of the Participant. Any distribution made pursuant to this section shall be deemed to be made as of the first day of the Plan Year or, if later, the Valuation Date immediately preceding the date of distribution, and the account from which the distribution is made shall be reduced accordingly. Withdrawal under this section shall be authorized only if the distribution is on account of:

- (1) Medical expenses described in Code Section 213(d) incurred by the Participant, the Participant's spouse, or any of the Participant's dependents (as defined in Code Section 152) or expenses necessary for these persons to obtain medical care;
- (2) The purchase (excluding mortgage payments) of a principal residence for the Participant;
- (3) Funeral expenses for a member of the Participant's family;

(4) Payment of tuition and related educational fees for the next twelve (12) months of post-secondary education for the Participant, the Participant's spouse, children, or dependents;

(5) The need to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage of the Participant's principal residence: or

(6) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code Section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

(b) No such distribution shall be made from the Participant's Account until such account has become fully Vested.

(c) Any distribution made pursuant to this section shall be made in a manner which is consistent with and satisfies the provisions of Section 6.05, including, but not limited to, all notice requirements of Code Section 402(f).

(d) The provisions of the paragraph shall not apply to contributions made pursuant to Section G.3.b. of the Adoption Agreement on behalf of Part-time, Seasonal and Temporary Employees.

(e) Unless otherwise elected in the Adoption Agreement, then effective as of August 17, 2006, a Participant's hardship event, for purposes of the Plan's hardship distribution provisions, includes an immediate and heavy financial need of the Participant's primary Beneficiary under the Plan, that would constitute a hardship event if it occurred with respect to the Participant's spouse or dependent as defined under Code Section 152 (such hardship events being limited to educational expenses, funeral expenses and certain medical expenses). For purposes of this subparagraph (e), a Participant's "primary Beneficiary under the Plan" is an individual who is named as a Beneficiary under the Plan and has an unconditional right to all or a portion of the Participant's account balance under the Plan upon the Participant's death.

#### 6.12 QUALIFIED RESERVIST DISTRIBUTIONS

If elected in the Adoption Agreement, then effective as of the date specified in the Adoption Agreement, the Plan permits a Participant to elect a Qualified Reservist Distribution, as defined in this Section 6.12.

A "Qualified Reservist Distribution" is any distribution to an individual who is ordered or called to active duty after September 11, 2001, if: (i) the distribution is from amounts attributable to elective deferrals in a 401(k) plan; (ii) the individual was (by reason of being a member of a reserve component, as defined in Section 101 of Title 37, United States Code) ordered or called to active duty for a period in excess of 179 days or for an indefinite period; and (iii) the Plan makes the distribution during the period beginning on the date of such order or call, and ending at the close of the active duty period.

#### 6.13 LIMITATIONS ON BENEFITS AND DISTRIBUTIONS UNDER DOMESTIC RELATIONS ORDERS

All rights and benefits, including elections, provided to a Participant in this Plan shall be subject to the rights afforded to any "alternate payee" under a "domestic relations order" ("DRO") as defined in Code Section 414(p). Furthermore, if elected in the Adoption Agreement, a distribution to an "alternate payee" shall be permitted if such distribution is authorized by a DRO, even if the affected Participant is not yet entitled to a distribution under the terms of the Plan.

Effective April 6, 2007, a domestic relations order will not fail to be a DRO: (i) solely because the order is issued after, or revises, another domestic relations order or DRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death. Such a domestic relations order is subject to the same requirements and protections that apply to DROs.

## 6.14 DIRECT ROLLOVER

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) 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 (10) years or more; any distribution that is required under Section 401(a)(9) of the Code; or any distribution which is made on account of hardship. However, the portion of any eligible rollover distribution that consists of after-tax employee contributions which are not includible in gross income may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, 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.

(c) An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code or a qualified trust described in Section 401(a) of the Code, or an annuity contract described in Section 403(b) of the Code that accepts the distributee's eligible rollover distribution. An eligible retirement plan shall also mean an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. This 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 alternative payee under a domestic relations order.

(d) A distributee includes a Participant or Former Participant. In addition, the Participant's or Former Participant's surviving spouse and the Participant's or Former Participant's spouse or former spouse who is the alternate payee under a domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse.

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

(f) For taxable years beginning after December 31, 2006, a Participant may elect to transfer employee (after-tax) or Roth elective deferral contributions by means of a direct rollover to a qualified plan or to a 403(b) plan that agrees to account separately for amounts so transferred, including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income.

(g) For distributions after December 31, 2009, and unless otherwise elected in the Adoption Agreement, for distributions between January 1, 2007 and December 31, 2009, a non-spouse Beneficiary who is a "designated beneficiary" under Code Section 401(a)(9)(E) and the regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an individual retirement account the Beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution. For purposes of this paragraph, the following additional provisions shall apply:

(1) Although a non-spouse Beneficiary may roll over directly a distribution as provided in this subsection (g), any distribution made prior to January 1, 2010 is not subject to the

direct rollover requirements of Code Section 401(a)(31) (including Code Section 401(a)(31)(B), the notice requirements of Code Section 402(f) or the mandatory withholding requirements of Code Section 3405(c)). If a non-spouse Beneficiary receives a distribution from the Plan, the distribution is not eligible for a “60-day” rollover.

(2) If the Participant’s named Beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code Section 401(a)(9)(E).

(3) A non-spouse Beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse Beneficiary rolls over to an IRA the maximum amount for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. Section 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary’s distribution.

(h) For distributions made after December 31, 2007, a Participant may elect to roll over directly an eligible rollover distribution to a Roth IRA described in Code Section 408A(b).

#### 6.15 REQUIRED MINIMUM DISTRIBUTIONS

(a) Except as otherwise provided in Subsection (g) below, the provisions of this section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year. The requirements of this section will take precedence over any inconsistent provisions of the Plan. All distributions required under this section will be determined and made in accordance with the Regulations under Section 401(a)(9) and the minimum distribution incidental benefit requirement of Section 401(a)(9)(G) of the Code. Notwithstanding the other provisions of this section, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that relate to Section 242(b)(2) of TEFRA.

(b) The Participant’s entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant’s required beginning date. If the Participant dies before distributions begin, the Participant’s entire interest will be distributed, or begin to be distributed, no later than as follows:

(1) If the Participant’s surviving spouse is the Participant’s sole designated Beneficiary, then except as provided in subsection (f), below, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70-1/2, if later.

(2) If the Participant’s surviving spouse is not the Participant’s sole designated Beneficiary, then except as provided in subsection (f), below, distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(3) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant’s death, the Participant’s entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant’s death.

(4) If the Participant’s surviving spouse is the Participant’s sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the

surviving spouse begin, this subsection (b), other than paragraph (b)(1), will apply as if the surviving spouse were the Participant.

For purposes of this subsection (b) and subsection (d), unless paragraph (b)(4) applies, distributions are considered to begin on the Participant's required beginning date. If paragraph (b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under paragraph (b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under paragraph (b)(1)), the date distributions are considered to begin is the date distributions actually commence.

Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with subsections (c) and (d) of this section. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Regulations.

(c) During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(1) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2 of the Regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(2) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3 of the Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

Required minimum distributions will be determined under this subsection (c) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(d) (1) If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

(i) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(iii) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(2) If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(3) Except as provided in subsection (f) below, if the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in paragraphs (d)(1) and (d)(2).

(4) If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(5) If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under paragraph (b)(1), paragraphs (d)(3) – (5) will apply as if the surviving spouse were the Participant.

(e) Definitions.

(1) "Designated Beneficiary" means the individual who is designated as the Beneficiary under Section 6.02 of the Plan and is the designated Beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-4 of the Regulations.

(2) "Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under subsection (b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(3) "Life expectancy" means life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1 of the Regulations.

(4) "Participant's account balance" means the account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The

account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(5) “Required beginning date” means April 1st of the calendar year following the later of:

- (i) the calendar year in which the Participant attains age 70-1/2; or
- (ii) the calendar year in which the Participant retires.

(f) For purposes of paragraphs (b)(1), (b)(2) and (d)(3) of this Section 6.15, Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule applies to distributions after the death of a Participant who has a designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under paragraphs (b)(1) or (b)(2), or by September 30 of the calendar year which contains the fifth anniversary of the Participant’s (or, if applicable, the surviving spouse’s) death. If neither the Participant nor the beneficiary makes an election under this paragraph, distributions will be made in accordance with paragraphs (b)(1) or (b)(2) and (d)(3).

#### 6.16 WAIVER OF 2009 REQUIRED MINIMUM DISTRIBUTIONS

(a) This subsection (a) applies unless the Employer elects (in the Adoption Agreement) to apply the provisions of subsection (b) or (c), below. Notwithstanding the provisions of Code Section 401(a)(9)(H), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) (“2009 RMDs”), and who would have satisfied that requirement by receiving distributions that are one or more payments in a series of installments (that include 2009 RMDs), will continue to receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect not to receive the distributions that include 2009 RMDs. For all other Participants and Beneficiaries, the requirement to receive the 2009 RMD shall be suspended in accordance with Code Section 401(a)(9)(H).

(b) This subsection (b) applies if the Employer so elects in the Adoption Agreement. Notwithstanding the provisions of Code Section 401(a)(9)(H), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) (“2009 RMDs”), and who would have satisfied that requirement by receiving distributions that are either (1) equal to the 2009 RMDs or (2) one or more payments in a series of installments (that include 2009 RMDs), will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence.

(c) This subsection (c) applies if the Employer so elects in the Adoption Agreement. Notwithstanding the provisions of Code Section 401(a)(9)(H), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) (“2009 RMDs”), and who would have satisfied that requirement by receiving distributions that are either (1) equal to the 2009 RMDs or (2) one or more payments in a series of installments (that include the 2009 RMDs), will receive those distributions for 2009. However, Participants and Beneficiaries receiving installments will be given the opportunity to elect not to receive the distributions that include 2009 RMDs.

(d) Notwithstanding the provisions of the Plan relating to required minimum distributions under Code Section 401(a)(9), and solely for purposes of applying the direct rollover provisions of the Plan, certain additional distributions in 2009, as elected by the Employer in the Adoption Agreement, will be treated as eligible rollover distributions. If no election is made by the Employer in the Adoption

Agreement, then a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code Section 401(a)(9)(H).

## 6.17 PARTICIPANT DISTRIBUTION NOTIFICATION

For any distribution notice issued in Plan Years beginning after December 31, 2006, any reference to the 90-day maximum notice period prior to distribution in applying the notice requirements of Code Section 402(f) (the rollover notice) will become 180 days.

ARTICLE VII  
AMENDMENT and TERMINATION

7.01 AMENDMENT BY EMPLOYER

(a) The Employer shall have the right at any time to amend the Adoption Agreement, but limited to changes to the choice of options in the Adoption Agreement. The Employer may also add certain IRS sample or model amendments or other required good faith amendments which specifically provide that their adoption will not cause its Plan to be treated as individually designed. The Employer may specify or change the effective date of a provision as permitted under the Plan and correct obvious and unambiguous typographical errors and/or cross-references that merely correct a reference but that do not in any way change the original intended meaning of the provisions. However, no such amendment shall authorize or permit any part of the Plan's assets (other than such part as is required to pay administration expenses) to be used for or diverted to purposes other than for the exclusive benefit of the Participants or their Beneficiaries or estates; no such amendment shall cause any reduction in the account balance of any Participant or cause or permit any portion of the Plan's assets to revert to or become property of the Employer; and no such amendment which affects the rights, duties or responsibilities of the Insurer (or Trustee, if applicable) and Administrator may be made without the Insurer's (or Trustee's, if applicable) and Administrator's written consent. Any such amendment shall become effective upon delivery of a new duly executed Adoption Agreement, provided that the Insurer (or Trustee, if applicable) shall, in writing, consent to the terms of such amendment.

(b) Any other amendment of the Plan or the non-elective portions of the Adoption Agreement by the Employer shall result in this Plan's being treated as an individually-designed plan for which the Employer will have to apply to the appropriate key district of the Internal Revenue Service for a determination letter if the Employer wants assurance that the Plan meets the requirements of the Code.

7.02 AMENDMENT BY VOLUME SUBMITTER PRACTITIONER

(a) Effective as of the date of the advisory letter, the Volume Submitter Practitioner may, from time to time, amend the plan (without the Employer's consent) in order to conform the Plan to any requirement for qualification of the Plan (and the related Trust, if applicable) under the sections of the Code applicable to "governmental plans," as defined in Section 414(d) of the Code. Such amendments may address changes in the Code, the related Treasury regulations, revenue rulings, or other statements published by the Internal Revenue Service. The Volume Submitter Practitioner may not amend the Plan in any manner which would modify any election made by the Employer under the Plan without the Employer's written consent. Furthermore, the Volume Submitter Practitioner may not amend the Plan in any manner which would violate the proscriptions of Section 7.01(a), above. The Volume Submitter Practitioner's authority to amend the plan shall cease as of the date the Internal Revenue Service requires the Employer to file a Form 5300 as an individually designed plan because of substantial modifications of the specimen plan. If the Employer is required to obtain a determination letter in order to have reliance (for example, because the Employer has modified the specimen plan), the Volume Submitter Practitioner's authority to amend the Plan shall be conditioned on the Employer's plan being covered by a favorable determination letter.

(b) The Volume Submitter Practitioner shall furnish each adopting Employer with a copy of the approved Plan, copies of any subsequent amendments, and the most recently issued IRS advisory letter. The Volume Submitter Practitioner shall maintain, or have maintained on its behalf, a record of the names, business addresses and taxpayer identification numbers of all Employers that have adopted the Plan, and shall make reasonable and diligent efforts to ensure that adopting Employers have received and are aware of all Plan amendments and that such Employees adopt new documents as necessary. If the Volume Submitter Practitioner reasonably concludes that an Employer's plan may no longer be a qualified plan, the Volume Submitter Practitioner shall (i) notify the Employer accordingly, (ii) advise the Employer about the adverse tax consequences that may result from loss of the plan's qualified status, and (iii) inform the Employer about the availability of the Employee Plans Compliance Resolution System (EPCRS).

### 7.03 TERMINATION

(a) The Employer shall have the right at any time to terminate the Plan by delivering to the Insurer (or trustee, if applicable) and Administrator advanced written notice of such prospective termination. Upon termination of the Plan or, in the case of a profit sharing plan the complete discontinuance of contributions to the Plan, all amounts credited to the affected Participants' Accounts shall become 100% Vested and shall not thereafter be subject to Forfeiture, and all unallocated amounts, including Forfeitures, shall be allocated to the accounts of all Participants in accordance with the provisions hereof.

(b) Upon the termination of the Plan, the Employer shall direct the distribution of the assets to Participants in a manner which is consistent with and satisfies the provisions of Section 6.05. Distributions to a Participant shall be made in any form otherwise permitted by the Plan.

(c) Notwithstanding the foregoing, in the event this is a Money Purchase Plan which provides that Forfeitures must be used to reduce Employer contributions, any Forfeitures which cannot be reallocated may revert to the Employer. However, this provision shall not apply until the end of the fifth calendar year following the date the Plan provision was adopted.

ARTICLE VIII  
MISCELLANEOUS

8.01 EMPLOYER ADOPTIONS

(a) Any state or local governmental entity may, with the approval of the Volume Submitter Practitioner, become the Employer hereunder by executing the Adoption Agreement in a form satisfactory to the Insurer (or Trustee, if applicable) and it shall provide such additional information as the Insurer (or Trustee, if applicable) may require.

(b) Except as otherwise provided in this Plan, the adoption of this Plan by the Employer and the participation of its Participants shall be separate and apart from that of any other employer and its participants hereunder.

8.02 PARTICIPANT'S RIGHTS

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 which such discharge shall have upon the Employee as a Participant of this Plan.

8.03 ALIENATION

(a) Subject to the exceptions provided below, no benefit which shall be payable to any person (including a Participant or the Participant's Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized except to such extent as may be required by law.

(b) This provision shall not apply to the extent a Participant or Beneficiary is indebted to the Plan by reason of a loan made pursuant to Section 11.01. At the time a distribution is to be made to or for a Participant's or Beneficiary's benefit, such proportion of the amount to be distributed as shall equal such indebtedness shall be paid to the Plan, to apply against or discharge such indebtedness. Prior to making a payment, however, the Participant or Beneficiary must be given written notice by the Administrator that such indebtedness is to be so paid in whole or part from the Participant's Account. If the Participant or Beneficiary does not agree that the indebtedness is a valid claim against the Participant's Vested Account, the Participant or Beneficiary shall be entitled to a review of the validity of the claim in accordance with procedures provided in Sections 2.11 and 2.12.

(c) This provision shall not apply to amounts set aside or otherwise distributed to an "alternate payee" under a "domestic relations order," as defined in Code Section 414(p). The Administrator shall establish a written procedure to administer distributions under such domestic relations orders. Further, to the extent provided under a domestic relations order, a former spouse of a Participant shall be treated as the spouse or surviving spouse for all purposes under the Plan.

(d) Notwithstanding any provision of this section to the contrary, an offset to a Participant's accrued benefit against an amount that the Participant is ordered or required to pay the Plan with respect to a judgment, order, or decree issued, or a settlement entered into, on or after August 5, 1997, shall be permitted in accordance with Code Section 401(a)(13)(C) and (D).

#### 8.04 CONSTRUCTION OF PLAN

This Plan and Trust shall be construed and enforced according to the Code and the laws of the State or Commonwealth in which the Employer's principal office is located, other than its laws respecting choice of law.

#### 8.05 GENDER AND NUMBER

Wherever any words are used herein in the masculine, feminine or neutral gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

#### 8.06 LEGAL ACTION

In the event any claim, suit, or proceeding is brought regarding the Plan established hereunder to which the Insurer (or Trustee, if applicable) or the Administrator may be a party, and such claim, suit, or proceeding is resolved in favor of the Insurer (or Trustee, if applicable) or Administrator, they shall be entitled to be reimbursed from the Plan assets for any and all costs, attorney's fees, and other expenses pertaining thereto incurred for which the Insurer (or Trustee) or the Administrator shall have become liable.

#### 8.07 PROHIBITION AGAINST DIVERSION OF FUNDS

(a) Except as provided below and otherwise specifically permitted by law, it shall be impossible by operation of the Plan (or of the Trust, if any) by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of any Plan assets maintained pursuant to the Plan or any funds contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Participants, Retired Participants, or their Beneficiaries.

(b) In the event the Employer shall make a contribution under a mistake of fact, the Employer may demand repayment of such contribution at any time within one (1) year following the time of payment and the Insurer (or Trustee, if applicable) shall return such amount to the Employer within the one (1) year period. Earnings of the Plan attributable to the contributions may not be returned to the Employer but any losses attributable thereto must reduce the amount so returned.

#### 8.08 EMPLOYER'S, ADMINISTRATOR'S AND TRUSTEE'S PROTECTIVE CLAUSE

Neither the Employer nor the Administrator (nor the Trustee, if applicable) nor their successors, shall be responsible for the validity of any Contract issued hereunder or for the failure on the part of the Insurer to make payments provided by any 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.

#### 8.09 INSURER'S PROTECTIVE CLAUSE

The Insurer who shall issue Contracts hereunder shall not have any responsibility for the validity of this Plan or for the tax or legal aspects of this Plan. The Insurer shall be protected and held harmless in acting in accordance with any written direction of the Employer or Administrator (or Trustee, if applicable), and shall have no duty to see to the application of any funds paid to the Administrator (or Trustee, if applicable), nor be required to question any actions directed by the Employer or Administrator. In the event of any conflict between the terms of this Plan and the terms of any Contract issued hereunder, the Plan provisions shall control.

#### 8.10 RECEIPT AND RELEASE FOR PAYMENTS

Any payment to any Participant, the Participant's legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of this Plan, shall, to the

extent thereof, be in full satisfaction of all claims hereunder against the Insurer (or Trustee, if applicable) and the Employer, either of whom may require such Participant, legal representative, Beneficiary, guardian or committee, as a condition precedent to such payment, to execute a receipt and release thereof in such form as shall be determined by the Insurer or Employer. Any authorization of, or request for, payment directed to the Insurer shall be signed by the Administrator and/or Participant or Beneficiary.

#### 8.11 ACTION BY THE EMPLOYER

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

#### 8.12 RESPONSIBLE PARTIES AND ALLOCATION OF RESPONSIBILITY

(a) The “responsible parties” of this Plan are (1) the Employer, (2) the Administrator and, if there is a discretionary Trustee, the Trustee. The responsible parties shall have only those specific powers, duties, responsibilities, and obligations as are specifically given them under the Plan, including but not limited to any agreement allocating or delegating their responsibilities, the terms of which are incorporated herein by reference. Unless otherwise indicated herein or pursuant to such agreement(s), the Employer shall have the duties specified in Article II hereof, as the same may be allocated or delegated thereunder, including but not limited to the responsibility for making the contributions provided for under Section 4.01, and shall have the authority:

- (1) to appoint and remove the Insurer (or Trustee); and
- (2) to amend or terminate, in whole or in part, the Plan.

(b) The Administrator shall have the responsibility for the administration of the Plan, including but not limited to the items specified in Article II of the Plan, as the same may be allocated or delegated thereunder.

(c) The Trustee (if any) shall have the responsibility of management and control of the Plan assets that are not held in Contracts, including but not limited to the acquisition and disposition of Plan assets except to the extent it shall act under the direction of the Employer, the Administrator, or Participants pursuant to Article II and Article V of the Plan.

Each responsible party warrants that any directions given, information furnished, or action taken by it shall be in accordance with the provisions of the Plan, authorizing or providing for such direction, information or action. Furthermore, each responsible party may rely upon any such direction, information or action of another responsible party as being proper under the Plan, and is not required under the Plan to inquire into the propriety of any such direction, information or action. It is intended under the Plan that each responsible party shall be responsible for the proper exercise of its own powers, duties, responsibilities and obligations under the Plan as specified or allocated hereunder. No responsible party shall guarantee the Plan assets in any manner against investment loss or depreciation in asset value. Any person or group may serve in more than one responsible party capacity.

#### 8.13 HEADINGS

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

#### 8.14 APPROVAL BY INTERNAL REVENUE SERVICE

Notwithstanding anything herein to the contrary, if, pursuant to an application timely filed by or on behalf of the Plan, the Commissioner of Internal Revenue Service or the Commissioner’s delegate should determine that the Plan does not initially qualify as a qualified plan under Code Sections 401 and 501, and such determination is

not contested, or if contested, is finally upheld, then if the Plan is a new plan, it shall be void ab initio and all amounts contributed to the Plan, by the Employer, less expenses paid, shall be returned within one year of the date the initial qualification is denied and the Plan shall terminate, and the Insurer (or Trustee, if applicable) shall be discharged from all further obligations. If the disqualification relates to an amended plan, then the Plan shall operate as if it had not been amended and restated. For purposes of this section, an application is timely filed if filed by such date as the Secretary of the Treasury may prescribe for plans maintained by governmental employers.

#### 8.15 UNIFORMITY

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner.

ARTICLE IX  
PARTICIPATING EMPLOYERS

9.01 ELECTION TO BECOME A PARTICIPATING EMPLOYER

Notwithstanding anything herein to the contrary, with the consent of the Employer and Insurer (or Trustee, if applicable), any Affiliated Employer that is also a state or local governmental entity may adopt this Plan and all of the provisions hereof, and participate herein and be known as a Participating Employer, by a properly executed document evidencing said intent and will of such Participating Employer.

9.02 REQUIREMENTS OF PARTICIPATING EMPLOYERS

(a) Each Participating Employer shall be required to select the same Adoption Agreement provisions as those selected by the Employer other than the Plan Year, the Fiscal Year, and such other items that must, by necessity, vary among employers.

(b) Each such Participating Employer shall be required to use the same Insurer (or Trustee, if a trustee Plan) as provided in this Plan.

(c) The Insurer (or Trustee, if applicable) may, but shall not be required to, commingle, hold and invest as one fund all contributions made by Participating Employers, as well as all increments thereof.

(d) The transfer of any Participant from or to an Employer participating in this Plan, regardless of whether the Participant is an Employee of the Employer or a Participating Employer, shall not affect such Participant's rights under the Plan, and all amounts credited to such Participant's Account as well as accumulated service time with the transferor or predecessor, and length of participation in the Plan, shall continue to the credit of such Participant.

(e) Any expenses of the Plan which are to be paid by the Employer shall be paid by each Participating Employer in the same proportion that the total amount standing to the credit of all Participants employed by such Employer bears to the total standing to the credit of all Participants.

9.03 DESIGNATION OF AGENT

Each Participating Employer shall be deemed to be a part of this Plan; provided, however, that with respect to all of its relations with the Insurer (or Trustee, if applicable) and Administrator for purposes of this Plan, each Participating Employer shall be deemed to have designated irrevocably the Employer as its agent. Unless the context of the Plan clearly indicates the contrary, the word "Employer" shall be deemed to include each Participating Employer as related to its adoption of the Plan.

9.04 EMPLOYEE TRANSFERS

It is anticipated that an Employee may be transferred between Participating Employers, and in the event of any such transfer, accumulated service and eligibility shall be carried with the Employee involved. No such transfer shall effect a termination of employment hereunder, and the Participating Employer to which the Employee is transferred shall thereupon become obligated hereunder with respect to such Employee in the same manner as was the Participating Employer from whom the Employee was transferred.

9.05 PARTICIPATING EMPLOYER'S CONTRIBUTION AND FORFEITURES

Any contribution or Forfeiture subject to allocation during each Plan Year shall be allocated among all Participants of all Participating Employers in accordance with the provisions of this Plan. On the basis of the information furnished by the Administrator, the Insurer (or Trustee, if applicable) may keep separate books and records concerning the affairs of each Participating Employer hereunder and as to the accounts and credits of the Employees of each Participating Employer. The Insurer (or Trustee, if applicable) may, but need not, register

Contracts so as to evidence that a particular Participating Employer is the interested Employer hereunder, but in the event of an Employee transfer from one Participating Employer to another, the employing Employer shall immediately notify the Insurer (or Trustee, if applicable) thereof.

#### 9.06 AMENDMENT

This Plan may be amended by the Employer at any time without any action by each and every Participating Employer hereunder. However, the Employer may only amend this Plan with the consent of the Insurer (or Trustee, if applicable) where such consent is necessary in accordance with the terms of this Plan.

#### 9.07 DISCONTINUANCE OF PARTICIPATION

Any Participating Employer shall be permitted to discontinue or revoke its participation in the Plan at any time. At the time of any such discontinuance or revocation, satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Insurer (or Trustee, if applicable). The Insurer (or Trustee, if applicable) shall thereafter transfer, deliver and assign Contracts and other fund assets allocable to the Participants of such Participating Employer to such new Insurer (or Trustee, if applicable) as shall have been designated by such Participating Employer, in the event that it has established a separate pension plan for its Employees. If no successor is designated, the Insurer (or Trustee, if applicable) shall retain such assets for the Employees of said Participating Employer pursuant to the provisions of Article V hereof. In no such event shall any part of the corpus or income of the fund as it relates to such Participating Employer be used for or diverted for purposes other than for the exclusive benefit of the Employees of such Participating Employer.

#### 9.08 ADMINISTRATOR'S AUTHORITY

The Administrator shall have authority to make any and all necessary rules or regulations, binding upon all Participating Employers and all Participants, to effectuate the purpose of this Article.

ARTICLE X  
CONTRACTS  
(APPLIES ONLY TO ANNUITY CONTRACTS OR  
PORTION OF PLAN FUNDED WITH ANNUITY CONTRACTS)

10.01 PURCHASE OF CONTRACTS

The benefits provided under this Plan may be funded through the purchase of Contracts issued by The Variable Annuity Life Insurance Company (VALIC) or any other authorized Insurer. The provisions of this Article shall apply to any such Contracts which, as determined by the Employer, will not be held by the Trustee. The Employer shall pay within a reasonable period of time all contributions which are made to this Plan to the Insurer for the purchase of such Contracts.

10.02 EMPLOYER DESIGNATED AS OWNER

Each Contract shall designate the Employer as sole owner, with rights reserved to said Employer to exercise those rights or options contained therein that apply to the owner of the Contract. All such Contracts shall be held by the Employer who shall have the power and right to take such actions with respect to such Contracts as shall be in accordance with this Plan for purposes of providing benefits to Participants. The Employer shall be treated as trustee to the extent that the Contracts are treated as trusts pursuant to Code Section 401(f).

10.03 TYPE OF CONTRACT(S)

The Employer shall have the right to determine whether to have fixed or combination fixed and variable Contracts and whether to have group or individual Contracts. The Employer shall base its decision on which Contract(s) would be more beneficial for the Participants and on the administrative tasks imposed by each Contract. Such decision shall be in the sole discretion of the Employer.

10.04 VOTING RIGHTS

The Employer shall solicit and act in accordance with the instructions of the Participant in regard to any voting rights which pertain to a Contract for variable accumulation of benefits. During the accumulation period, Participants will have the right to instruct the Employer with respect to the votes attributable to any Vested interest they have in the Contract. All other votes entitled to be cast during the accumulation period may be cast by the Employer in its sole discretion. During the annuity period, every Participant will have the right to instruct the Employer with respect to all votes attributable to the amount of assets established in the appropriate separate account to meet the annuity obligations related to such Participant. The Insurer will provide all notices and proxy materials to the Employer for distribution to the Participants. The Employer may cast all votes for which instructions were not received in accordance with the Employer's sole discretion.

10.05 CERTIFICATE OF PARTICIPATION

The Insurer shall issue a certificate of participation and/or a Contract, as applicable, to each Participant. Each such certificate of participation shall set forth in substance the benefits or other rights to which such Participant is entitled under the Contract.

10.06 INSURER INDEMNIFICATION

To the extent permitted by law, the Employer agrees to indemnify and hold harmless the Insurer against any and all claims, losses, damages, expenses and liabilities the Insurer may incur in the exercise and performance of the Insurer's duties hereunder, unless the same are determined to be due to gross negligence or willful misconduct on the part of the Insurer.

ARTICLE XI  
LOANS, AUDITS AND TRANSFERS

11.01 LOANS TO PARTICIPANTS

(a) If specified in the Adoption Agreement, the Administrator (or Trustee, if applicable) may authorize loans to Participants or Beneficiaries under the following circumstances:

- (1) loans shall be made available to all Participants on a reasonably equivalent basis;
- (2) loans shall bear a reasonable rate of interest;
- (3) loans shall be adequately secured;
- (4) loans shall provide for periodic repayment over a reasonable period of time, as defined in subsection (d) below; and
- (5) loans shall not be made for an amount less than the minimum loan amount stated in the Contracts.

(b) Loans shall be evidenced by a legally enforceable agreement that specifies the amount and date of the loan and the repayment schedule. Such agreement must be either:

- (1) in a written paper document or
- (2) in an electronic medium under a system that is accessible to participants, and under which (i) only participants may make the loan request, (ii) participants are provided with an opportunity to review, confirm, modify or rescind their request, and (iii) the participant receives either a written or electronic confirmation of the request.

(c) Loans shall be permitted from all contribution sources, including rollovers.

(d) 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) the greater of (i) one-half (1/2) of the present value of the non-forfeitable accrued benefit of the Employee under the Plan, or (ii) \$10,000.

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

(e) 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 of time that may exceed five (5) years. Loan repayments must be suspended under this Plan as permitted under Code Section 414(u)(4).

(f) 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.

(g) Notwithstanding anything in this Plan to the contrary, if a Participant or Beneficiary defaults on a loan made pursuant to this section that is secured by the Participant's interest in the Plan, then a Participant's interest may be offset by the amount subject to the security to the extent there is a distributable event permitted by the Code or Regulations.

(h) 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, including what constitutes a hardship or financial need if selected in the Adoption Agreement;
- (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.

(i) Such Participant loan program shall be contained in a separate written document. Furthermore, such Participant loan program may be modified or amended in writing from time to time without the necessity of amending this Section. In the event of any conflict between the terms of this Plan and a separate loan program, the terms of the Plan will control.

#### 11.02 TRANSFER OF INTEREST

Notwithstanding any other provision contained in this Plan, the Insurer (or Trustee, if applicable) at the direction of the Administrator may transfer the Vested interest, if any, of a Participant's Account to another trust or Contract forming part of a pension, profit sharing, or stock bonus plan meeting the requirements of Code Section 401(a) or 403(a), provided that the trust or Contract to which such transfers are made permits the transfer to be made.

ARTICLE XII  
HEART ACT PROVISIONS

12.01 DEATH BENEFITS

In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.

12.02 BENEFIT ACCRUAL

If the Employer elects in the Adoption Agreement to apply this Section 12.02, then effective as of the date specified in the Adoption Agreement, for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.

The Plan will determine the amount of Employee contributions and the amount of elective deferrals of an individual treated as reemployed under this Section 12.02 for purposes of applying paragraph Code Section 414(u)(8)(C) on the basis of the individual's average actual Employee contributions or elective deferrals for the lesser of: (i) the 12-month period of service with the Employer immediately prior to qualified military service; or (ii) the actual length of continuous service with the Employer.

12.03 DIFFERENTIAL WAGE PAYMENTS

For years beginning after December 31, 2008: (a) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), is treated as an employee of the employer making the payment; (b) the differential wage payment is treated as compensation for purposes of Code Section 415(c)(3) and Treasury Reg. Section 1.415(c)-2 (e.g., for purposes of Code Section 415, top-heavy provisions of Code Section 416, determination of highly compensated employees under Code Section 414(q), and applying the 5% gateway requirement under the Code Section 401(a)(4) regulations); and (c) the Plan is not treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) (or corresponding plan provisions, including, but not limited to, Plan provisions related to the ADP or ACP test) by reason of any contribution or benefit which is based on the differential wage payment. The Plan Administrator operationally may determine, for purposes of the provisions described in Code Section 414(u)(1)(C), whether to take into account any deferrals, and if applicable, any matching contributions, attributable to differential wages. Differential wage payments (as described herein) will also be considered Compensation for all Plan purposes unless otherwise elected in the Adoption Agreement.

Subsection 12.03(c) above applies only if all employees of the Employer performing service in the uniformed services described in Code Section 3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code Section 3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the Employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code Section 410(b)(3), (4), and (5)).

12.04 DEEMED SEVERANCE

Notwithstanding subsection 12.03(a), if a Participant performs service in the uniformed services (as defined in Code Section 414(u)(12)(B)) on active duty for a period of more than 30 days, the Participant will be deemed to have a severance from employment solely for purposes of eligibility for distribution of amounts not subject to Code Section 412. However, the Plan will not distribute such a Participant's account on account of this deemed severance from employment unless (i) the Employer elects in the Adoption Agreement to allow such distributions, and (ii) the

Participant specifically elects to receive a benefit distribution hereunder. If a Participant elects to receive a distribution on account of this deemed severance, then the individual may not make an elective deferral or employee contribution to this Plan (or any other plan of the Employer) during the 6-month period beginning on the date of the distribution. If a Participant would be entitled to a distribution on account of a deemed severance, and a distribution on account of another Plan provision (such as a Qualified Reservist Distribution), then the other Plan provision will control and the 6-month suspension will not apply.

# Agenda Item 3



## MEMORANDUM

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### *Engineering Services*

**To:** Mayor Aziz and City Council

**Date:** January 6, 2016

**From:** Ron Whitlatch, Engineering Services Manager

**Subject:** Ordinance Amending Chapter 13.12 System Development Charges

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#### **RECOMMENDATION**

Staff is recommending that City Council approve an Ordinance to amend the language of the System Development Charges (SDCs) to include an exemption for Mini-Warehouse Facilities. Staff is also recommending some minor cleanup of the language in the Exemption Section.

#### **BACKGROUND**

Parks SDCs are based on square footage of new construction. Due to a couple of recent applications of Mini-Warehouse Facilities, Staff has realized that these facilities, however large in square footage, have one or two employees and therefore have no significant impact on the Parks System.

Staff also modified the language in the Exemption Section to allow the charge of Storm Water SDCs on additions to Single Family Dwellings. Storm Water SDCs are calculated based on impervious surface.

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Engineering Services

## Existing Language

### Section 110. EXEMPTIONS:

- A. Structures and uses established and existing within the City limits on or before January 1, 1977 (except when new structures are created) are exempt from the charge, except water and sewer charges, to the extent of the structure or use existing on that date and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this subsection shall pay the water or sewer charges pursuant to the terms of this ordinance upon the receipt of a permit to connect to the water or sewer system.
- ~~B. Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the International Building Code, are exempt from all portions of the system development charge.~~
- B. An alteration, ~~addition~~, replacement or change in use that does not increase the parcel's or structure's use of a capital improvement are exempt from all portions of the system development charge.
- C. Mini-Warehouse Facilities as described in the Land Development Code are exempt from the Parks System Development Charge.**
- D. Projects financed by city revenue are exempt from all portions of the systems development charge.

A BILL FOR AN ORDINANCE AMENDING )  
SECTION 110 OF CHAPTER 13.12 SYSTEM )  
DEVELOPMENT CHARGES – EXEMPTIONS )  
 ) ORDINANCE BILL NO. 2016-1  
 )  
 )  
 ) ORDINANCE NO. 2870

**THE CITY OF LEBANON ORDAINS AS FOLLOWS:**

**Section 1.** Section 13.12.110 of Chapter 13.12 of the Lebanon Municipal Code is hereby replaced in its entirety with the following:

- A. Structures and uses established and existing within the City limits on or before January 1, 1977 (except when new structures are created) are exempt from the charge, except water and sewer charges, to the extent of the structure or use existing on that date and to the extent of the parcel of Land as it is constituted on that date. Structures and uses affected by this subsection shall pay the water or sewer charges pursuant to the terms of this ordinance upon the receipt of a permit to connect to the water or sewer system.
- B. An alteration, replacement or change in use that does not increase the parcel's or structure's use of a capital improvement are exempt from all portions of the system development charge.
- C. Mini-Warehouse Facilities as described in the Land Development Code are exempt from the Parks System Development Charge.
- D. Projects financed by city revenue are exempt from all portions of the systems development charge.

Passed by the Lebanon City Council and executed by the Mayor on this on this 13<sup>th</sup> day of January, 2016 by a vote of \_\_\_\_yeas and \_\_\_\_nays.

CITY OF LEBANON, OREGON

\_\_\_\_\_  
Paul R. Aziz, Mayor   
Bob Elliott, Council President

ATTESTED BY:

\_\_\_\_\_  
Linda Kaser, City Clerk

# Agenda Item 4



# MEMORANDUM

## Community Development Department

**To:** Paul Aziz, Mayor  
Lebanon City Council

**Date:** January 4, 2016

**From:** Walt Wendolowski, AICP; Community Development Director

**Subject:** Medical Marijuana Dispensaries – Fee Schedule

### I. INTRODUCTION

The City Council approved the establishment of the medical marijuana dispensaries at their December meeting. Council directed staff to return with an appropriate fee schedule.

### II. PROPOSED FEES

The dispensary ordinance requires background checks for the owner and all employees. This is similar to the requirements for liquor licenses, taxis and second-hand sellers. Further, the associated permit are renewed annually. Using these factors as a model, staff recommends the following fees schedule:

Medical Marijuana Dispensary – Annual License	
Business	\$200
Each employee (other than business owner)	\$50

During the December Council meeting staff suggested the fee would be in the range of \$50 to \$100. Combining the “Business” fee with the fee for individual employees, staff finds the average license fee for the business is within the \$50 to \$100 estimate suggested by staff. For the record, staff also reviewed dispensary fees in other communities:

- Albany - \$150
- Beaverton - \$100, \$75 annual renewal
- Gresham – \$5,250 (Completeness Review and Registration)
- Springfield - \$1,071

Also for the record, Corvallis and Sweet Home do not charge a fee.

### III. RECOMMENDATION

A fee resolution is attached if the Council finds the proposed fees acceptable.

**A RESOLUTION AMENDING RESOLUTION ) RESOLUTION NO. 2016-3  
NO. 2015-31 "AMENDING FEES AND CHARGES )  
FOR CITY SERVICES" BY SETTING LICENSING )  
FEES FOR MEDICAL MARIJUANA DISPENSARIES )**

**WHEREAS**, the Lebanon City Council Adopted Ordinance Bill No. 2015-13, Ordinance No. 2869, establishing regulations for medical marijuana dispensaries; and

**WHEREAS**, the City Manager has caused a review of fees and charges in order to fully reimburse the City for the actual cost of providing medical marijuana dispensary licenses; and

**WHEREAS**, the City Council has reviewed the basis for establishing such fees as described in EXHIBIT A.

**THEREFORE, THE LEBANON CITY COUNCIL RESOLVES AS FOLLOWS:**

**Section 1:** The following fees amendment attached hereto as EXHIBIT A and incorporated herein by this reference are adopted by the City and shall become *effective immediately upon approval*.

Passed by the Lebanon City Council by a vote of \_\_\_\_\_ for and \_\_\_\_\_ against on this 13<sup>th</sup> day of January, 2016.

CITY COUNCIL OF LEBANON OREGON

\_\_\_\_\_  
Paul Aziz, Mayor   
Bob Elliott, Council President

**ATTESTED:**

\_\_\_\_\_  
Linda Kaser, City Clerk

# EXHIBIT "A" CITY OF LEBANON FEES AND CHARGES

Effective January 13, 2016 - Supercedes All Previous Schedules

TYPES OF FEES	CURRENT FEES
<b>ADMINISTRATIVE FEES (CITY CLERK'S OFFICE)</b>	
<b>Copies:</b>	
Audio/Video Copies	\$15.00 1st / \$5.00 add'l
Black/White - Letter 8-1/2" x 11", Legal 8-1/2" x 14" (per side)	\$0.25
Black/White - Executive 11" x 17" (per side)	\$0.50
Color copies (each side)	\$0.50
<b>Non Sufficient Funds (NSF)</b> (charge back fees for debit/credit card & returned checks)	\$30.00
<b>Liquor License (original application)</b>	*\$100.00
Annual Renewal of a Liquor License	*\$35.00
Change Application (in ownership, location, or privilege)	*\$75.00
Temporary Application (valid for one calendar year -- covers multiple events)	*\$35.00
	<i>*Not to exceed per ORS</i>
<b>Notary Services</b> ( <i>Municipal Court Personnel</i> ):	
An acknowledgement; verification upon an oath or affirmation; certifying a copy of a document; witnessing or attesting a signature; and protesting commercial paper, except a check drawn on insolvent financial institution in which case the fee is \$0.	<i>Not to exceed \$5.00</i>
Administering an oath or affirmation without a signature; taking a deposition, each page; and all other notarial acts not specified.	<i>Not to exceed \$1.00</i>
<b>Public Records Request:</b> (all requests must be made on a City Public Records Request Form)	
If request exceeds \$25.00, the requester's authorization is required to proceed with request. If request exceeds \$100.00, a deposit may be required before commencing work.	<b>May require 50% deposit</b>
Archived Electronic Information Retrieval	\$100.00/hr
<b>Voters' Pamphlets:</b>	
Candidate Filing Fee (with or without photo)	\$35.00
<b>BUSINESS / CITIZEN SERVICES &amp; DEVELOPMENT CENTER FEES</b>	
<b>Animal Keeping Permit</b>	\$35.00
<b>Banner Permit</b> (\$30 permit + \$65 installation)	\$95.00
<b>Business License Fees*</b> (after July 1 prorated):	
Auctions	\$150/year, \$25/each
Drug Paraphernalia Sales	\$250.00
Medical Marijuana Dispensary Licenses - Annual Operator License	\$200.00
Annual Employee License (other than Dispensary Owner) Valid for One Year	\$50.00
Secondhand Buyers and Sellers Annual Fee	\$75.00
Taxi Licenses - Annual Operator License	\$200.00
Annual Additional Vehicle	\$150.00
Annual Taxi Driver Permit Valid for One Year	\$30.00
<b>Business Registration Fees - Initial Application</b>	\$25.00
Annual Renewal - submitted late	\$20.00
Annual Renewal - timely submitted (no changes)	\$0.00
Annual Renewal - with changes (ownership, responsible person, location or contact information)	\$7.50
<b>Gambling License - Annual License</b>	\$200.00
License for One-day Special Event (City property only)	\$50.00
License for One-day Special Event / Non-profit Organization	\$20.00
<b>Liquor License</b>	<i>See Administration/City Clerk's Office Fees</i>
<b>Parade Permit</b>	\$20.00
<b>Non-Profit Organizations</b>	N/A

TYPES OF FEES	CURRENT FEES
<b>BUSINESS / CITIZEN SERVICES &amp; DEVELOPMENT CENTER FEES (continued)</b>	
<b>Parking Permit (per ORS 10.24.142):</b>	
Annual Residential	\$75.00
Daily	\$15.00
<b>Peddler and Solicitors:</b>	
1-30 Days	\$15.00
31- 60 Days	\$25.00
61 Days to 6 Months	\$30.00
More than 6 Months, up to 1 Year	\$40.00
<b>Public Event Applications:</b>	
1-Day Event	\$100.00
2-3 Day Event	\$150.00
Master Permit	\$250.00
Transfer of Ownership/Change of Location or Name	\$10.00
Non-Profit Organizations	N/A
<b>RV Permit (1 - 15 days)</b>	\$35.00
Renewal Periods - 15 Days (no more than two renewals)	\$25.00 each
<b>Santiam Travel Station (North End Only):</b>	
Passenger Lobby (North End)	\$5.00/hour
<b>ENGINEERING FEES</b>	
<b>Basic Right-of-Way Encroachment Fee</b>	\$65.00
<b>Bid Document</b>	\$50.00
<b>Contractor Pre-qualification</b>	\$50.00
<b>Deferral of Improvements</b>	\$200.00
<b>Easement/ROW Dedication Process Fee</b>	\$125.00 each
<b>Engineering Fees:</b>	
Developer Assurance Agreement	\$100.00
Engineered Site Plan Review (Engineering)	\$500 + \$350/acre
Reapplication Fee (for up to "2" resubmittals)	33% of original fee
New Residential Site Plan Review (Engineering)	\$50.00
Street/Alley Vacation (Engineering)	\$1,200.00
Easement Vacation (Engineering)	\$750.00
<b>Public Improvement Drawing Review</b> (for up to "2" resubmittals)	\$250.00 + 3% of const.
<b>Public Improvement Permit:</b>	
First \$50,000 of Construction Cost	\$250.00 +4% of cost up to \$50,000
Amount above \$50,000	\$250.00 +3% of cost above \$50,000
<b>Right-of Way Encroachment Surcharges:</b>	
Curb Cut	\$1.50/sf; \$20.00 min
Street Pavement Cut	\$1.00/sf; \$30.00 min
4" Sanitary Connection	\$55.00
6" Sanitary Connection	\$110.00
4" Storm Connection	\$30.00
6"-8" Storm Connection	\$90.00
Over 8" Storm Connection	\$125.00
<b>Standard Drawings</b>	\$20.00
<b>FINANCE FEES</b>	
<b>Audit Report</b> (available at no charge online or at the Library)	\$25.00
<b>Budget Document</b> (available at no charge online or at the Library)	\$50.00
<b>Collection Fee</b> (accounts turned over to Linn Co. or collection agency)	\$100.00
<b>Fax Service</b> (for public)	\$2.00 first page/.75 each add'l pg
<b>Foreclosures Notice</b>	\$100.00

TYPES OF FEES	CURRENT FEES
<b>FINANCE FEES (continued)</b>	
Housing Rehab Payoff and Reconveyance	\$50.00
Lien Search (online)	\$25.00
Non Sufficient Funds (NSF) (charge back fees for debit/credit card & returned checks)	\$30.00
Payment Extension Fee	\$5.00
Tall Weeds & Grass Abatement (if not abated within 7 days)	\$100.00
<b>GIS DIVISION FEES</b>	
City Street Map with UGB	\$12.00
Zoning Map	\$25.00
Custom Data	\$75.00/hour
City wide GIS on CD	\$75.00
<b>LIBRARY FEES</b>	
Collection Fee (accounts turned over to collection agency)	\$10.00
<b>Community Meeting Room Rental Fees:</b>	
Rental per Hour - (2-hour minimum) (depending on time and entity)	\$10.00 - \$25.00
Refundable Deposit (depending on time and entity)	\$100.00 or \$250.00
Refundable key deposit, after hours use	\$200.00
Non-refundable After Hours Use	\$35.00
Non-Refundable Weekend use	\$50.00
PA System	\$10.00
AV System	\$20.00
<b>Copies (self-serve, per page):</b>	
B/W Letter 8-1/2" x 11", Legal 8-1/2" x 14"	\$0.10
B/W Executive 11x17	\$0.20
Color Letter 8-1/2" x 11", Legal 8-1/2" x 14"	\$0.50
Color Executive 11x17	\$1.00
Interlibrary Loan (per item)	\$3.00
Lost Item Processing Fee (plus replacement cost of item)	\$3.00
Lost Library Card Fee	\$1.00
<b>Non-resident Cards:</b>	
Household (12-month)	\$50.00
Household (6-month)	\$30.00
Senior Citizen (60+ years) Household (12-month)	\$40.00
Overdue Items per Day per Item (up to a maximum of \$5.00)	\$0.20
Overdue (cumulative fines up to a maximum of \$25.00)	\$25.00
Reservation Fee (per item)	\$0.50
<b>MUNICIPAL COURT FEES</b>	
Appeal to Linn County Circuit Court - <i>inadvertently left off of 2013 Fees Schedule</i>	\$25.00 (plus certified copy cost)
Certified Copy (\$6.00 for certification/\$.25 per sheet)	\$6.25 minimum
<b>Court Costs:</b>	
Cite or Arrest Warrant	\$50.00
Notice of Court Action of Driving Privileges to DMV	\$15.00
<b>Court Costs (per Trial):</b>	
Confinement Fee/Day	\$20.00
Criminal (non-jury - if convicted)	\$20.00
Jury trial (if convicted)	\$50.00
Traffic (if convicted)	\$15.00
DUII Diversion Extension Fee	\$25.00
Expungement Filing Fee (State mandated)(waived for charges not filed or dismissed)	\$252.00
Expungement Packet Fee	\$5.00

TYPES OF FEES	CURRENT FEES
<b>MUNICIPAL COURT FEES (continued)</b>	
Fee for Turning to Collection (customer pays directly to collection agency)	40% of the principal balance
Jury Fee (if canceled after arrival of jurors)	\$10.00/juror
Late Payments	\$20.00
Non Sufficient Funds (NSF) (charge back fees for debit/credit card & returned checks)	\$30.00
Payment Extension Fee	\$30.00
Payment Extension Interest	(9% per annum)
Suspension Packet Administration Fee (if convicted)	\$12.00
<b>PARK FEES - SHELTER &amp; CAMPING FEES</b>	
Booth Park Shelter	\$15.00
Century Park Shelter	\$30.00
Christopher Columbus Park Shelter	\$15.00
Ralston Park Gazebo	\$55.00
River Park Main Shelter	\$50.00
River Park Horseshoe Area Picnic Table Shelter	\$20.00
River Park Alcoholic Beverage Permit (must provide proof of liability insurance)	Non-refundable \$25.00
Wynn Mill	\$25.00
<b>Camping:</b>	
Daily Rate	\$24.00
Senior/Military Discount	\$22.00
Group Discount (3 or more sites)	\$20.00
Weekly Rate	\$130.00
Senior/Military Discount	\$125.00
Monthly Rate	\$450.00
Construction Workers in the City of Lebanon	\$350.00
Extra Vehicle (per night)	\$5.00
Sewage Dump Station Fee	\$5.00
Cancellation Fee	\$12.00
<b>PLANNING / LAND USE FEES</b>	
<b>Note:</b> For land use applications that require more than one approval, the applicant shall be charged the highest	
Administrative Review	\$450.00
Annexation	\$1,500.00
Appeal of Planning Commission Decision	\$500.00
Appeal of Staff Decision	\$250.00
Code Interpretation	\$100.00
Comprehensive Plan Map Amendment	\$2,000.00
Comprehensive Plan Documents	\$25.00
Conditional Use Permit: Residential / Commercial / Industrial	\$1,500.00
Development Code	\$40.00
Extension of Time Request	25% of original fee
<b>Historic Reviews and Register Updates:</b>	
Administrative	\$300.00
Quasi-Judicial	\$600.00
Legislative	\$1,000.00
Home Occupation	\$50.00
Lot Line Adjustment	\$250.00
Measure 56 Mailing	Actual Cost
Ministerial Review	\$150.00
Modification to Approved Application	25% of application
Non-Conforming Uses and Developments	\$450.00

TYPES OF FEES	CURRENT FEES
<b>PLANNING / LAND USE FEES (continued)</b>	
<b>Partition</b>	\$450.00
<b>Planned Development - Preliminary</b>	\$2,500.00
Final Plan - Ministerial	\$200.00
Final Plan - Administrative	\$450.00
Final Plan - Qausi-Judicial	\$750.00
<b>Residential Plot Plan Review</b>	\$25.00
<b>Residential Remodels</b> (fee incurred if outside of original footprint)	\$25.00
<b>Sidewalk Café Permit</b>	\$65.00/annually
<b>Sign Review</b>	\$75.00
<b>Subdivision:</b>	
Tentative Plat	\$2,000.00 + \$15/lot
Final Plat	\$800.00 + \$15/lot
<b>Tree Felling</b> (steep slopes)	**\$150.00 + \$5.00/tree
<b>Temporary Use</b>	\$35.00
<b>UGB Amendment</b>	Actual Costs
<b>Variance:</b>	
Class 1 - Minor Adjustment	\$150.00
Class 2 - Adjustment	\$450.00
Class 3 - Variance	\$1,000.00
<b>Zone Change</b>	\$1,000.00
<b>POLICE DEPARTMENT FEES</b>	
<b>Abandoned Vehicle Abatement</b> (if not abated within 10 days)	\$50.00
<b>Alarm Permits</b>	\$10.00
<b>Archived Reports</b> (up to 10 pages)	\$10.00
Additional Pages	\$1.00/page
<b>Crash Report</b>	\$5.00
Information Exchange Only	No Charge
<b>Dog Permit</b> (for potentially dangerous dogs per ORS)	\$50.00
<b>Deferral Classes, Other</b> (\$35 to \$50 maximum) (seatbelt/cell phone)	\$50.00
<b>False Alarm Billing - 1st Alarm</b>	\$0.00
2nd Alarm and Each Subsequent Alarm	\$25.00
<b>Incident</b>	\$1.00 each
<b>Letter of Clearance</b> (includes the required local records check)	\$15.00
<b>Local Records Check</b> (waive fee for Armed Forces)	\$10.00
<b>Ordinance Research/Copy</b> (up to 5 pages)	\$5.00
Additional Pages	\$1.00 page
<b>Police Case Reports - Current Report</b>	\$10.00
<b>Photographs</b> (copied on paper or disc)	\$5.00/sheet or \$10.00/disc
<b>Public Fingerprinting</b>	\$20.00
Additional Cards	\$5.00
<b>Vehicles:</b>	
Boot Removal Fee	\$50.00
Impounded Vehicle Release (Admin. Fee)	\$100.00
<b>SENIOR CENTER FEES</b>	
<b>Bus Transportation:</b>	
Seniors and Disabled Persons (one-way)	\$1.00
Public (one-way)	\$2.00
5 years of Age and Under	Free

TYPES OF FEES	CURRENT FEES
<b>SENIOR CENTER FEES (continued)</b>	
<b>Copies:</b>	
Letter 8-1/2" x 11" or Legal 8-1/2" x 14"	\$0.25
Color Copies (Letter or Legal)	\$0.50
<b>Facility Rental (dependent on space, time and entity renting)</b>	<b>\$10.00-\$35.00/hr/room</b>
Refundable Deposit - Non-Profit, Government or Public Group	\$100.00
Refundable Deposit - Private Groups	\$250.00
Non-refundable After Hours Use for Kitchen or Auditorium Rental	\$35.00
Non-refundable Fee for Weekend Cleanup (Functions over 100 People)	\$50.00
Open/Close Partitions in Auditorium or Between Classrooms 1 & 2	\$35.00
PA System, Slide Projector or TV/VCR	\$10.00
Audio/Visual System (including Projector)	\$20.00
<b>WATER / WASTEWATER SPECIAL SERVICE FEES Community Development Department Functions</b>	
<b>Backflow Prevention Devices Re-inspection Fee</b>	<b>\$50.00</b>
<b>Contaminated Waste Dump Permit</b>	<b>\$250.00</b>
<b>Fire Hydrant Charges:</b>	
Deposit	\$500.00
Deposit - Santiam Canal Industrial Park	\$50.00
Meter Installation	\$25.00
<b>Industrial Pretreatment Program Fees</b>	<b>\$500.00</b>
Initial Issue for 1 to 5 Years	\$250.00
Annual Monitoring & Compliance Review	.085/per gallon
<b>IPP Hauled Waste Dump Fee - per gallon</b>	<b>\$250.00</b>
<b>IPP Wastewater Discharge Permit Application</b>	<b>\$250.00</b>
<b>IPP Contaminated Waste Discharge Permit: Issued for &lt; or less</b>	<b>\$25.00</b>
<b>Meter Charges:</b>	
3/4" Water Meter Service Connection Fee	\$850.00
1", 1 1/2", 2" Water Meters (cost of materials & labor - deposit required)	Actual Cost
Installing a 3/4" Meter to an Existing Service	\$165.00
Installing a 1" Meter to an Existing Service	\$200.00
Installing a 1 1/2 " Meter to an Existing Service	\$1,215.00
Installing a 2" Meter to an Existing Service	\$1,400.00
<b>Water Retest Fee</b>	<b>\$200.00/300 linear foot</b>
<b>WATER / WASTEWATER SPECIAL SERVICE FEES Finance/Utility Billing Department Functions</b>	
<b>Customer Service Charges:</b>	
After Hours Meter Turn On	\$100.00
Credit Check	\$20.00
Deposit-Owner (refundable) - currently reflected in the Water Resolution	\$200.00
Deposit-Owner with Bad Payment History	\$300.00
Deposit (Renter/Non-owner) (non-refundable until account reconciled/closed)	\$200.00
Deposit (Renter/Non-owner with bad payment history) (non-refundable until account reconciled and closed)	\$300.00
Door Hanger	\$15.00
Late Payment Fee/Utility Bill (added to late payment notice)	\$5.00 + 2% delinquent amount
Non Sufficient Funds (Charge Back Fees for debit/credit card & returned checks)	\$30.00
<b>Meter Equipment/Service Charges:</b>	
Hand Valve - 3/4"	\$35.00
Lock-Off (Meter)	\$50.00

TYPES OF FEES	CURRENT FEES
<b>WATER / WASTEWATER SPECIAL SERVICE FEES</b> <b>Finance/Utility Billing Department Functions (continued)</b>	
Lower or Raise Water Meter	<b>Actual Cost (\$50 Minimum)</b>
Move Water Meter Location	<b>Actual Cost (\$50 Minimum)</b>
Remove an Existing and Replace a Water Meter Box	<b>Actual Cost</b>
Remove Meter due to Tampering	<b>\$100.00</b>
Replace a Damaged Meter Lid	<b>\$35.00</b>
Replace a Damaged Meter Lock	<b>\$50.00</b>
Replace a Damaged Meter Locking Cap	<b>\$50.00</b>
Replace a Damaged Meter (by customer tampering)	<b>\$500.00</b>
Replace a Damaged Meter Resetter	<b>\$60.00</b>
Test Water Meter (refund when test indicates meter runs fast)	<b>\$25.00</b>
Test Water Meter - if an independent agency is requested	<b>\$100.00</b>
Water Meter Box	<b>\$70.00</b>
<b>Tampering with City Property:</b>	
First Violation within a 24-month Period	<b>\$25.00</b>
2nd Violation	<b>\$50.00</b>
3rd Violation and each Subsequent Violation	<b>\$250.00</b>



# Agenda Item 5



## MEMORANDUM

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### *Community Development Department*

**To:** Paul Aziz, Mayor  
Lebanon City Council

**Date:** January 5, 2016

**From:** Walt Wendolowski, AICP; Community Development Director

**Subject:** Temporary Use

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#### I. INTRODUCTION

The City Council discussed the issue of temporary vendors at their December meeting. The concern was on the visual and aesthetic aspects of temporary businesses, especially those located along Highway 20 (South Santiam Highway).

The purpose of this memorandum is to discuss some options available to the Council.

#### II. TEMPORARY USES

The subject businesses are operated as temporary uses (see Attachment "A" for current regulations). Generally, uses are limited to retail activities, cannot occupy required vehicle parking spaces, cannot interfere with traffic and are limited to 90-days in a single location. After 90-days the business may relocate to another site. In effect, the business may operate for 360-days within a year. These regulations also apply to fireworks and Christmas tree sales.

It would appear there are three basic approaches to address aesthetic and visual concerns:

1. Ban Temporary Uses – This avoids the issues of temporary business altogether but does eliminate fireworks and Christmas tree sales. It may be possible to limit temporary uses to the latter two; however, in discussions with the City Attorney this may not be legally supportable.
2. Limit Display Area – One visual issue is the size of a temporary display. Except for encroachment on required parking spaces and traffic interference, there are no effective limits on display size. In reviewing possible area limitations, staff considered 300 square feet as reasonable, roughly the size of two conventional parking spaces. This limit may not work for fireworks and Christmas tree sales, although it may be possible to exempt these activities from the area limitation.

3. Limit Duration – As noted, a business may effectively remain in the City for a period of 360-days per year. One option is to limit the temporary business to a maximum of 90-days (or 45-days) within a calendar year. This will not have any impact on fireworks or Christmas tree sales. However, the difficulty will be in enforcement, as multiple owners may operate the same business over the course of a year.

From a planning standpoint, a temporary business provides an entrepreneurial opportunity, potentially evolving into a brick and mortar site. This needs to be balanced with visual and aesthetic concerns of a temporary business. To this end, staff suggests:

- Limit the display area, exempting fireworks and Christmas tree sales from this provision. Staff suggested 300 square feet as a starting point.
- Limit the duration of a business to a maximum of 90-days within a calendar year.

Additional work will be needed on the particular language and enforcement procedures. However, the restrictions will potentially limit the visual impact of temporary uses while not affecting those more traditional (and often non-profit operated) fireworks and Christmas tree sales.

### III. CONCLUSION

Staff will proceed based on the Council's direction. If some consensus is reached it may be possible to present the material before the Planning Commission in February and return to the City Council in March.

## ATTACHMENT "A"

### 16.19.110 Temporary Uses

#### A. Purpose

The purpose of these regulations is to provide standards for the establishment of temporary businesses and similar uses within the City.

#### B. Permitted Uses

Where allowed, the following temporary uses shall be permitted subject to the following limitations and requirements:

##### 1. Tree and Fireworks

Christmas tree or fireworks sales are permitted subject to the following:

- a. The sales shall be limited to Commercial zones, except that sales may occur on those properties containing public or semi-public uses, such as schools or churches, regardless of the underlying zone.
- b. Unless otherwise exempted by provisions in this Section, the sales activity shall be subject to provisions in Chapter 16.08 of this Code.

##### 2. Commercial Activities

Amusement and recreational services and retail sales and services are permitted in all Commercial zones, subject to the following:

- a. The business may be operated from a vehicle, temporary structure or a vacant building.
- b. The activity is located on the same lot for no more than 90 days in any calendar year.
- c. The required parking for the primary uses on the same lot is not reduced below Ordinance requirements.
- d. The use does not block driveways, driveway entrances or parking aisles.
- e. The activity conforms to all signage requirements in Chapter 18 of this Code.
- f. The activity conforms to all setback requirements applicable to the lot and zone.
- g. The operator of a temporary use shall provide the required information, pay the applicable fee, obtain and display the required temporary business permit.
- h. The operator of a temporary use shall obtain all permits required by other agencies including those required for food handling and sales, and the sale of fireworks.
- i. Temporary uses located within Residential zones shall not operate beyond 9:00 PM.

### **3. Temporary Construction Facilities**

Mobile offices, temporary power equipment and temporary structures used by personnel and to store equipment during construction, provided the structures are located on the construction site and not used as dwellings. There is no restriction as to the zoning.

### **4. Yard Sales and Auctions**

Yard sales or auctions in any zone, provided there are not more than four sales in a calendar year, with each sale not to exceed three consecutive days. Merchandise and signs shall remain on private property. This Section does not limit the number of times, or duration, that public agencies may conduct sales or auctions regard agency land, equipment, supplies or other materials.

### **5. Additional Permitted Temporary Uses**

The City Council may, by resolution, authorize additional permitted temporary uses during a specific event or festival and set forth reasonable types of uses, appropriate zones for such uses, and any time restrictions the Council finds necessary to protect the health, safety and welfare of the public.

## **C. Temporary Use Permit**

### **1. Permit Required**

With the exception of temporary construction facilities, yard sales and auctions, each temporary use allowed under this Section of the Code shall be required to obtain a permit from City Hall to operate within the City.

### **2. Procedure**

#### **a. Requests**

- (1)** Requests for a Temporary Use shall be made in writing to the Planning Official.
- (2)** Decisions on Temporary Use requests shall be made utilizing a Ministerial Review process (see Section 16.20.030 in Chapter 16.20 of this Code).
- (3)** Applicants may request that their Ministerial Review be heard by the Planning Commission.
- (4)** Mailed notices shall include summary of Temporary Use ruling.

#### **b. Decision to Approve a Temporary Use**

- (1)** The Planning Official shall have the authority to Decisions on Temporary Use requests using the Ministerial Review process, or
- (2)** Refer the Ministerial Review request to the Planning Commission for its interpretation in a public hearing.
- (3)** The review process, either by the Planning Official or on referral to the Planning Commission, shall follow all the applicable provisions of Chapter 16.20 of this Code.

#### **c. Appeal**

A decision by the Planning Official may be appealed to the Planning Commission.

### **3. Application Requirements**

A request for a temporary use permit shall submit the following information:

- a. A signed statement from the property owner or lessee of the primary use on said property: (1) granting permission for the property to be used by the permit applicant, (2) copy of a property deed, ground lease or similar evidence of ownership for subject property, (3) specifying the day(s) for which permission is granted, (4) containing the name, mailing address and telephone number of the owner or lessee, and (5) acknowledging responsibility to ensure all litter, trash and materials on the property associated with the temporary use are removed within two days after the temporary use ceases.
- b. A signed statement from the permit applicant: (1) specifying the permit applicant's name, permanent home or business address (not P.O. Box), home or business telephone number, (2) specifying the type of use proposed by the applicant, (3) attaching proof that any applicable state or federal licenses or other requirements to engage in the temporary use proposed by the applicant have been granted by the appropriate governmental agencies, (4) acknowledging responsibility to ensure that all litter, trash and materials on the property associated with the temporary use are removed within two days after the temporary use ceases.
- c. Each application shall be accompanied by a site plan to demonstrate compliance with these provisions. The site plan shall be to an approximate scale, preferably on an 8½" x 11" sheet of paper. The site plan shall include the following: (1) locations of all existing structures, (2) proposed location of temporary use, (3) parking spaces and aisles within the parking lot, (4) driveways, and (5) streets.

### **4. Decision Criteria**

The decision criteria are established in this Section of the Code in conjunction with any applicable criteria from the land use zone in which the temporary use is proposed.

### **5. Issuance of Permit**

After approval by the Decision Making Authority, the permit shall be issued by the City, upon payment of the applicable fee, and evidence the intended use conforms to the applicable requirements set forth in this Section of the Code.

### **6. Length of Operation**

In determining the length of operation of a temporary use, the use will be deemed continuous from the first day that the permit was issued. The use will be deemed discontinued upon cessation of the temporary use, restoration of the premises as set forth herein, and surrender of the permit to the City, whichever occurs last. The applicant may apply and be granted approval up to six months in advance of the effective issuance of the permit.

### **7. Revocation**

The temporary business permit may be revoked in the event that the operating business does not conform to the requirements specified in this Section of the Code, or if any of the information in the above noted application is false.

# Agenda Item 6



## MEMORANDUM

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### *Administration*

**To:** Paul Aziz, Mayor  
Lebanon City Council  
**From:** Gary Marks, City Manager  
**Subject:** City Logo

**Date:** January 4, 2015

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### I. INTRODUCTION

During the December 9, 2015 City Council meeting, Councilor Grizzle requested that the Council be updated on the status of the City logo versus the logo that had been introduced for the Strategic Planning effort. In response, I agreed to schedule a report and discussion with the Council for the January 13, 2016 Council meeting.

### II. CURRENT REPORT

During 2015, the City Council readopted the City's historic motto, "The City that Friendliness Built!" and the community participated in developing a vision statement, "Lebanon is a Friendly and Thriving Community". The vision statement is founded on seven focus areas. Within the list of focus areas, "Small town values" serves a foundational role in articulating the community's core values. Specifically among these values are, "Welcoming", "Connectedness", and "Inclusivity & Diversity".

The objective of the visioning process was to inform the City and other community organizations about the community's values and aspirations for its future such that changes may be made and plans set in place to help move the community toward its desired vision or outcome.

The City Council, acting in its policymaking role, adopted the Vision Statement at the June 10, 2015 City Council meeting.

As the City Manager, it is my role to assimilate such Council-adopted policies and accordingly direct how the City's day-to-day operations may need to change and also how the City may need to adjust how it presents itself. The issue of the City's logo speaks directly to the latter.

In that context, I have been impressed that the City's branding is out-of-sync with the developments of the past year. Thus, I moved forward with an effort to have new images developed that I hoped would better represent the community and, therefore, help build a new brand that reflects our core values. As such, I caused a new logo to be introduced along with the unveiling of the community vision as part of the Strategic Action Plan launch event this past November 18<sup>th</sup>.

I have seen the rebranding of a City and creation of a new logo as an administrative function that, hopefully, is in-line with policy and the vision. As such, the following is the narrative description of the logo unveiled at the November 18<sup>th</sup> Council meeting.

The primary focus of the logo is the City's motto, "The City that Friendliness Built!" I picked this focus because it represents an adopted statement that concisely captures the core values articulated by the community through the vision process.

A stylized sun, symbolizing the bright future, optimism, enlightenment and hope provides the main visual representation of the motto. The sun rays take on human form as they approach the outer perimeter with the resulting "individuals" embracing each other in friendliness. The overall image is intended to create a pleasing visual experience that brings the ideas of connectedness, inclusivity and diversity among people. The sun image also provides an abstract suggestion of a gear wheel, emblematic of business and industry. This imagery speaks to the idea of the thriving community expressed in the vision.

The colors used in the logo are emblematic as well. In the study of color psychology yellow is regarded as the color of happiness, harmony and enlightenment. This color was included in the logo to represent the friendliness aspects of the vision. Likewise, the color blue represents peace, compassion and caring; important aspects of an inclusive and diverse community. Red is the bold color and conveys the ideas of strength, action and vitality. It represents the idea of a thriving community.

Creating new logos is a tricky business. It is essentially a subjective exercise. I know that not everyone will like any logo that may be developed. While I see the creation of a new logo and the branding aspects of the City as administrative roles, I hope the Council will find the "Friendliness" logo to be an accurate and acceptable image for the City and community. Of course, I will abandon this image if the Council finds it unacceptable.



# Agenda Item 7

I. A. **ADMINISTRATION** – Gary Marks, City Manager

- **Lebanon Strategic Action Planning Project.** The Strategic Action Plan Task Force met on December 14<sup>th</sup> to continue work on development of the community strategic plan. I feel the Task Force is making good progress. The bulk of the work of the Task Force will take place in January through a series of four meetings. Besides my participation at the Task Force meeting I also worked frequently in December with the City's project consultant, Erik Jensen, in management of the process and the preparation of project documents and visuals.
- **Economic Development.** As the Council is aware, the costs associated with wetlands mitigation has dampened the City's ability to attract new businesses and employers to the community in recent years. In an effort to find a solution I have been working with the Cascades West Regional Consortium (of which I serve as the Treasurer) to try to find a regional solution. The Consortium met on December 18<sup>th</sup> to further discuss potential strategies. We anticipate a meeting soon with representatives of the City of Eugene to learn more about the potential of creating and maintaining a publicly-held wetlands mitigation bank. Eugene built its own bank several years ago and has evidently had success with it. On other economic development fronts, I met with Jason Williams on December 10<sup>th</sup> to further discuss plans for improvements at Ralston Park related to the old gas station. Jason is working with landscape architect Brad Stangeland to develop options for the Park Board and City Council to consider. The new McDonald's opened on December 14<sup>th</sup> with a packed house on hand and Mayor Aziz participating in the ribbon cutting with the franchise owners. The new McDonald's facility represents a great improvement over the old building and the vacant Fire Pit Tavern that was next door. Finally, I was excited to meet with and welcome Chris Kopp to the community on December 4<sup>th</sup>. Chris and his wife recently moved to Lebanon from Colorado. They are the new owners of the former Buyers' Market building on Main Street. Chris is a metal artisan/sculptor and specialty fabricator. He is currently working to refurbish the building to facilitate his business.
- **AFSCME Negotiations.** The City's agreement with the AFSCME Union will expire on June 30<sup>th</sup>. Preparations to negotiate a new agreement began on December 16<sup>th</sup> with a meeting of management representatives to review the existing agreement. A notice of intent to negotiate an agreement was subsequently submitted to the union as required. I anticipate a series of negotiating sessions over the next few months. I met with Union President Casey McMillin on December 8<sup>th</sup> to discuss the upcoming negotiations and other matters. We are both hopeful for a smooth negotiation process. I will update the Council as matters warrant.
- **Community/Regional/Professional Meetings.** During the month of December I participated in three important outreach functions. On December 1<sup>st</sup> I hosted the City's annual Employee Appreciation Event at the Samaritan Center. The event was well attended with about 80 staff members present. Tenure awards were presented to various staff members, holiday gift cards were distributed and I spoke to the group about the ongoing development of the strategic action plan. Mayor Aziz and I spoke at the December 4<sup>th</sup> Chamber luncheon. Mayor Aziz presented his "State of the City" program and I updated the group on the City's vision and strategic action plan processes. Finally, the City hosted the Chamber's "Business After Hours" event at the Library on the evening of December 17<sup>th</sup>. Approximately 75 people attended. I spoke to the group about the City's strategic action plan process. Leigh Matthews Bock (Administration), Carol Dinges and Paulina Wilcox (Library) worked together in advance to stage the event and provide a very enjoyable evening for all. December also included my normal participation with the Lebanon Rotary and Optimist Clubs and the Cascade West Council of Government's monthly City Managers' lunch meeting.

## B. HUMAN RESOURCES – Debi Shimmin, HR Generalist

- **City Volunteer Program.** We are in the process of creating a structured citywide volunteer program designed to guide employees and citizens alike who want to use their specific skill set to foster stewardship of our community programs and services. Built-in to the program is a volunteer screening policy that includes criteria for exclusion. The policy will also include a qualification process, rights and responsibilities, training, and supervision.
- **Collective Bargaining Agreement – AFSCME.** The AFSCME collective bargaining agreement is set to expire on June 30, 2016. Management has begun the process of initiating negotiations with the AFSCME leadership.
- **Employee Medical Files.** We continue the updating of the employee medical files, when time permits, and hope to have this project completed in 2016.
- **Employee Handbook.** The committee's final meeting is scheduled for January 6, where we will review the last three chapters before submitting a final draft to the City Manager for his review.
- **Open Enrollment – Health Care and Flexible Spending.** The Open Enrollment for flexible spending accounts and the mini open enrollment for health care coverage was completed by the employees and updates were made to the employee's benefit providers. On another note, congress pushed back the 2018 date for the Cadillac tax implementation to 2020.
- **Safety/Wellness Committee.** The Safety/Wellness committee will be focusing its efforts in 2016 on training staff and becoming compliant by June 2016, with Global Harmonized System (GHS) for Classification and Labelling of Chemicals, formally called MSDS. GHS is an internationally agreed-upon system, created by the United Nations designed to replace the various classification and labeling standards used in different countries by using a consistent criteria on a global level. It is a set of guidelines for ensuring the safe production, transport, handling, use and disposal of hazardous materials. To learn more, go to <https://www.osha.gov/dsg/hazcom/HCSFactsheet.html>

## II. LEGISLATIVE / CITY CLERK – Linda Kaser, City Clerk

- **Advisory Boards/Committees:**
  - Budget Committee* - We currently have four (4) vacant positions: two in Ward 1, one in Ward 2 and one in Ward 3. We've received one promising application from someone residing in Ward 2. Dean has also reached out to other members whose terms expire this month but has only heard back from one member to date. **Councilors:** *Please solicit potential members within your wards. Applicants should complete/submit a Boards & Commissions Application Form which can be found online or they can always contact me for assistance.*
  - Senior Advisory Committee* – A press release was sent out seeking applicants to serve on this Committee. Those interested should submit their application no later than January 19. The Advisory Board will review the applications and make a final recommendation for the Mayor to appoint someone at the February City Council Meeting.
- **City Council Chambers Upgrades.** A big screen television is expected to be mounted on the west wall in time for the next Council meeting. This addition will benefit those Councilors at the front of the dais so that they do not have to crane their necks to view PowerPoint presentations. The current screen will work simultaneously with the new TV.
- **Events.** It's been a busy month with all the holiday activities plus: The Chamber Forum Lunch, Employee Appreciation Event, and Chamber After-Hours hosted by the Library.
- **Liquor License Application(s).** One liquor license was received for Misty Meadows Winery, Inc. The first winery license to be issued within the city limits.
- **Medical Marijuana Licensing Fees.** I met with Community Development staff to determine what the appropriate fees would be to recommend to Council at the January 13 meeting for medical marijuana dispensaries and their employees. In sum, the recommendation would be to handle this business license much

like liquor licensing and taxi cab licensing with annual renewal fees and background/compliance checks. The proposed resolution would simply be an amendment to the existing City Fees' Schedule.

- **OAMR Records Management Committee.** With the Cities Records Retention Schedule updated, we are now currently working in conjunction with the State Archivist on the City Records Management Manual, specifically the Electronic Records Chapter.
- **Employee Handbook.** I'm in the process of rewriting existing Chapter 26 Public Records and Public Information for HR as their committee is currently reviewing that Chapter next month.
- **Records Management.** We are currently entering all of our agreements/contracts to a newly created spreadsheet to better organize and track agreements/contracts. This should prove beneficial in not only adhering to the retention laws but in reminding departments when a contract/agreement is up for renewal consideration.

### III. COMMUNITY DEVELOPMENT – Walt Wendolowski, Director

#### A. Planning

- The Commission did not hold a meeting in December and will not meet in January.
- The Department approved a Minor Adjustment to a fence setback requirement at the new mini-storage warehouse on Weirich Drive.
- The Transportation System Plan Update is moving along with Public Advisory Committee nearly in place. Again, project completion is expected by July 2017 and the Council will be involved through-out the process.

#### B. Building

- The City processed 42 permits in November, receiving \$28,525 in fees on \$2,848,611 in valuation. For the current fiscal year, the City received \$184,479 in fees on \$19,187,544 in valuation. This compares very favorably to a similar period in fiscal year 2014/15 where the City received \$92,753 in fees on \$8,124,392 in valuation.

### IV. ENGINEERING SERVICES – Ron Whitlatch, Director

- Staff is continuing to work with Carollo Engineers on design and permitting of a new River intake. At this point we are waiting for National Marine Fisheries review of the project. It is anticipated that we will have permits in March/April 2016. Beginning in January, H2O Innovations will start a pilot test on the membranes that were procured in October. This pilot test is being done in order to verify that the membranes being supplied can meet all of the required parameters that were set in the contract. The pilot test will run until the first part of March 2016 and is taking place at the existing Water Treatment Plant. On January 7, 2016, Staff and Carollo Engineers will be meeting to go over 60% design plans for the project. At that time we will have an updated cost estimate as well.
- During the month of December staff has spent a large amount of time on issues regarding the Albany Canal. We have been trading draft agreements back and forth in hopes of coming up with a version that both Cities can agree too. If a mutual agreement between the two cities can be made, it will be brought to City Council for review and approval.
- A Request for Quotes has been sent out to three contractors to provide a price to reconstruct 500 feet of sanitary sewer on the east end of Elmore Street. The existing sanitary sewer has multiple failure locations and residents are starting to see backups in their laterals. It is anticipated that this work will begin in January 2016.
- The Oak Street Improvements project is complete, and final payment has been issued.
- Staff was unsuccessful in receiving quotes to replace sidewalk access ramps on Fifth Street. This was going to be added to the Oak Street project; however the Contractor has indicated that they are not in a position to complete it now. Staff will re-advertise the ramps for construction early next spring.
- Staff is moving forward with the Airport Road Extension Project. This project is tentatively scheduled for construction in 2017. Currently, we have a consultant under contract to delineate wetlands. We are also

advertising a request for proposals for a Traffic Engineering Firm to model future traffic and intersection functionality at all of the intersections within the project limits.

- Construction of the Santiam Riverfront Estates residential subdivision is complete. Work to fix an area of asphalt that is substandard is expected to be completed soon. Home construction has begun.
- The Samaritan Hotel/Restaurant outdoor pool is nearly complete.
- The additional street and utility improvements are nearly complete in the north area of the Samaritan Campus project. The improvements included widening the east side of 5th Street north of Pioneer School. However, we reviewed and approved plans to continue the 5th Street improvements to the south edge of the future LBCC Medical Occupations Building. This street continuation area is under construction. Improvements will include additional parking on the west side of 5th Street in front of Pioneer School.
- The 9<sup>th</sup> Street Apartments is complete and a Certificate of Occupancy has been issued.
- Construction of the public improvements for the Santiam River Place 3 Subdivision located along the west side of Kokanee Way is complete. The subdivision includes 12 single family lots. Staff continues to review home site plans. The first three homes are completed. Additional homes are under construction.
- Construction of the Samaritan Medical Apartments is nearing completion. The site contains 120 units located just west of the Samaritan Event Center. Staff reviewed and approved a variance to allow privacy fencing and additional landscaping. Landscaping and irrigation are nearly complete.
- The Human Bean coffee shop is under construction at the southeast corner of Milton and Santiam Hwy (old Hasty Freeze site). The building is nearly complete.
- Revised final site plans are expected soon for the expansion of the Linn-Benton Community College Advanced Transportation Technology Center at the far west end of the City on Oak Street.
- Construction of the new Linn-Benton Community College Health Occupations Center has commenced. The site has been excavated and rocked. 5<sup>th</sup> Street widening is under construction. Storm drainage utilities are in. Street excavation and base rock are completed. The public water line extension is nearly complete.
- Expansion of the Lebanon Hospital Emergency Department continues. The public sanitary sewer was extended north to the northern driveway and the helicopter pad was relocated. Site utilities and foundations are installed.
- Staff reviewed site plans and public improvement drawings for the Conser "Aspen Place" Apartments on 2nd Street just south of Airport Rd. Site excavation and base rock placement are complete.
- Construction of the Bender Storage project located on Weirich Drive just east of the Lebanon Fire District Station #34 is underway. The self-storage complex is planned to be constructed in two phases that will include fully enclosed storage units within 6 different buildings and 49 covered storage units that will be available to store vehicles such as RVs, boats, cars, trucks, etc.
- Home construction continues in the Eagle View Subdivision (east of South Main south of Joy) and Heather Estates Subdivision (west of South Main Road south of Joy). Staff continues to review site plans for additional homes.

#### V. FINANCE SERVICES – Dean Baugh, Director

- City auditors (Accuity LLC) presented the final 6/30/15 Audit to the City Council at the December Council meeting, once document is signed it will be posted on the City website
- Working with Springbrook to finish the installation of the Purchase Order system, planning on go live this fall
- Working with Springbrook to move our accounting software to their cloud platform
- Working with Zion bank and bond attorney to move paying agent duties to Zion bank
- Continued our analysis of the proposed IVR system, another option allowing customers to pay their utility bills over the phone 24 hours per day
- Attended the Chamber after hours at the Library on Dec 17, the event was sponsored by the City
- Accounts Payable; FY15/16 payments made in December, 559 invoices were processed for payments of \$1,396,971.33

- Utility Billing for December:
- 5872 Billing statements mailed by the end of December
- 754 Accounts received a penalty (past due 12/15/15)
- 278 lien letters mailed to property owners
- 140 accounts were locked off for non-payment on 12/15/15 for bills due 11/16/15.
- 7- pre-lock off notices were delivered to -7- Mult-Family buildings, accounts paid and not locked off
- 119 accounts were reconnected the same week. The balance were vacant properties or the tenants moved out and property is back in the owner's name.
- Total of 554 Service orders: 42 Move Outs, 76 Move ins, 11 Turn offs, 35 Turn on, 141 reconnects, 31 read request, 5 Dead meters, 18 Leak Checks, 1 Lid Hazard checks, 140 Lock offs, 17 Meter Change out, 1 New Meter Installations, 0 Pressure check, 36 misc. other.

	Jan 15	Feb 15	Mar 15	April 15	May 15	June 15	July 15	Aug 15	Sept 15	Oct 15	Nov 15	Dec 15	1 yr. ago Dec 14
Billing Statement	5595	5596	5971	5618	5619	5993	5660	5651	6001	5642	5685	5872	5989
Penalty applied	834	898	865	998	936	741	759	1371	1038	1236	997	754	864
Lock Offs	107	93	115	112	91	105	132	77	140	85	105	140	114

**VI. INFORMATION TECHNOLOGY SERVICES – Brent Hurst, Director**

- Routine user break-fix issues and maintenance of City & Fire network.
- Routine updates to mapping systems, printing of maps for maintenance, and updating of "as-builts".
- In progress with upgrades to Travel Station visual presentations.
- In progress with upgrades to Ralston Park security system.

**VII. LIBRARY – Carol Dinges, Director**

- An outcome of the early learning workgroup was that I was invited to take part in the Head Start Advisory meeting on December 9, 2015.
- LPL will be co-sponsoring a series of adult programs entitled *Choosing Wellness* with COMP-NW:
  - January 12 at 6:30 pm: Finding Balance
  - February 9 at 6:30 pm: Activity
  - March 8 at 6:30 pm: Mindfulness & Spirituality

**VIII. MAINTENANCE – Jason Williams, Director**

- We are operating business as usual with normal day to day operations.

**IX. POLICE – Frank Stevenson, Chief of Police**

- The Community Services division continues to remain active, facilitating many community activities including Holidays In The Park, our annual Shop-With-A-Cop event, presenting 'Map Your Neighborhood' (a program designed to assist the community in emergency preparedness) to Senior Center members, instructing traffic safety class, giving a tour of the Lebanon Justice Center to a local Cub Scout troop, and teaching a class to Warming Shelter volunteers.

- LPD launched a new program called Safe Exchange. This program is designed to provide a safe location for families to make custodial exchanges and assist residents with exchange of products purchased or sold online. There is a designated area in front of the Justice Center where online buyers/sellers and parents or guardians can meet to make needed exchanges. So far, this program has been successful and the site has been used often.
- Shop-With-A-Cop was held on December 12th at Wal-Mart and was another success. We had the pleasure of getting to shop with 56 less-fortunate children.
- We received over 40 applications for the newly-created Community Service Officer position. The process is still ongoing and we expect to interview approximately 15 qualified candidates on January 5th and 6th.
- As of December 21st, 112 individuals were booked and released, brought to Lebanon Municipal Court or Linn County court, transported to/from Linn County Jail, or sentenced to Lebanon Municipal Jail. A combined 122 days were served by inmates in the Lebanon Jail.
- The Patrol Division had approximately 1,898 calls for service, made 92 arrests, wrote 174 reports and issued 36 traffic citations. We had a total of 50 Part 1 crimes (i.e., criminal mischief, domestic abuse, burglary, robbery assault and theft).
- Detectives have been working on several burglary cases, thefts, narcotic investigations and child abuse cases. A total of 4 cases were assigned to detectives for direct follow-up, and 7 cases were sent to them for review and/or additional information. Detectives were able to clear 5 very involved cases this month including several burglary/theft cases, child abuse cases and narcotics-related cases.
- The Lebanon Police Department, in partnership with Dr. Adam Kirkpatrick of Lebanon, will be handing out tickets for people doing good deeds. LPD officers may be looking for people using crosswalks, driving properly, using turn signals, pedestrians yielding at sidewalks, etc. When the person gets the *good deed ticket*, they are able to take that ticket to one of 3 locations (Big Town Hero, 1847 Bar and Grill or The Growler Café, all in Lebanon). Each ticket is redeemable for up to \$10 off their meal and can be used one time only. Each ticket will have an expiration date. Dr. Adam Kirkpatrick has donated \$500 for this program to work, so that will mean in this first round of tickets, 50 people will get a good deed ticket. This is a great opportunity for Lebanon Police to engage in the community in a positive way. It is small things, like this, that can make a big difference in someone's life. So in Lebanon, it might be a good thing to get a ticket! - a *good deed ticket*, that is.

**X. SENIOR SERVICES – Kindra Oliver, Director**

- We received \$16,000 in revenue for the Dial-a-Bus fund for our Energy Incentive Project through the Department of Energy. We have another certificate for \$44,000 in tax credits that we're currently looking for a pass-through partner as well. Please contact Kindra for more information on how the program works.
- January events can be found on the website and Facebook.

# \*Executive Session

*Per ORS 192.660(2)(h) To consult with counsel concerning the legal rights and duties of the public body with regard to litigation or litigation likely to be filed.*

*\* Executive Sessions are closed to the public due to the highly confidential nature of the subject. It is unlawful to discuss anything outside of the Executive Session.*