

NOTICE AND AGENDA OF PUBLIC MEETING OF THE TRANSIT AUTHORITY OF LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (LEXTRAN) BOARD OF DIRECTORS

Due to the COVID-19 pandemic, state of emergency and Governor Beshear’s Executive Orders regarding social distancing, this meeting of the Lextran Board of Directors will be held via video-teleconference pursuant to Senate 150 (as signed by the Governor on March 30, 2020) and Attorney General Opinion 20-05, and in accordance with KRS 61.826, because it was not feasible to offer a primary physical location for the meeting.

Pursuant to KRS 96.A, the Lextran Board of Directors is to meet monthly. The next meeting will be: **Wednesday, August 19, 2020 at 10:00 a.m. EST**

Pursuant to KRS 61.810, the Board may enter into Closed Session, but shall not take any action in a Closed Session.

Pursuant to the Americans with Disabilities Act, persons with a disability may request a reasonable accommodation for assistance with the meeting or meeting materials. Please contact Jill Barnett at 859-255-7756. Requests made as early as possible should allow time to arrange the accommodation.

MEETING INSTRUCTIONS

Broadcast on YouTube at:

bit.ly/lextranmeeting

Held via Webex Video Conference:

Go to www.webex.com or download the app, and then when prompted:

Meeting number: 132 543 6084

Meeting password: fWVNV4dzm74

Audience or Lextran staff can join by phone:

312-535-8110 OR 408-418-9388

Enter Meeting Number and Password when prompted.

Contact Alan Jones at ajones@lextran.com for assistance or for access from outside the US

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BOARD OF DIRECTORS MEETING

August 19, 2020

10:00 a.m.

MEETING AGENDA

I.	Call to Order	10:00
II.	Public Comment on Agenda Items / Public Hearing	10:05 – 10:10
III.	Approval of July 2020 Board Meeting Minutes	10:10 – 10:15
IV.	Chair’s Report	10:15 – 10:20
V.	Informational Presentation on Lextran’s website	10:20 – 10:30
VI.	Lextran Monthly Performance Report – July	10:30 – 10:40
VII.	Action Items A. Resolution 2020-14 – Electric Motors Service and Repair B. Resolution 2020-15 – Lextran Pension Amendment No. 2	10:40 – 10:55
VIII.	Change Order	10:55 – 11:00
IX.	Old Business	
X.	New Business	
XI.	Proposed Agenda Items A. Pension Fund Management Update B. Update on Town Branch Trail project	11:00 – 11:05
XII.	Closed Session	
XIII.	Adjournment	11:10

BOARD OF DIRECTORS MEETING

BOARD MINUTES

July 22, 2020

MEMBERS PRESENT

Christian Motley, Board Chair

George Ward, Vice Chair

Harding Dowell

Peggy Henson

Jamie Rodgers

Rick Christman

Adrienne Thakur

MEMBERS ABSENT

Joe Smith

STAFF PRESENT

Carrie Butler, General Manager

Nikki Falconbury, Director of Finance and Human Resources

Fred Combs, Director of Planning, Technology, and Community Relations

John Givens, Director of Risk Management

Jim Barrett, Director of Maintenance

Jason Dyal, Director of Operations

Glenda Shoopman, Purchasing and Finance Coordinator

Emily Elliott, Community Relations Manager

Alan Jones, Systems Administrator

Anne-Tyler Morgan, Board Attorney via phone

OTHERS PRESENT

Via phone and web

I. CALL TO ORDER

Mr. Christian Motley called the July 22, 2020 meeting of the Lextran Board of Directors to order at 10:03 am.

Mr. Motley performed a roll call to determine which members were present. Quorum was achieved.

Due to the COVID-19 pandemic, state of emergency and Governor Beshear's Executive Orders regarding social distancing, this meeting of the Lextran Board of Directors was held via video-conference pursuant to Senate 150 (as signed by the Governor on March 30, 2020) and Attorney General Opinion 20-05, and in accordance with KRS 61.826, because it was not feasible to offer a primary physical location for the meeting.

II. PUBLIC COMMENT

There was no public comment.

III. APPROVAL OF MINUTES

Mr. Motley called for a motion to approve the board meeting minutes from June 17, 2020. Mr. Christman made a motion to approve and it was seconded by Ms. Henson. The motion passed unanimously.

IV. CHAIR'S REPORT

Mr. Motley shared the Chair's report and welcomed two new board members, Jamie Rodgers and Harding Dowell, to their first meeting. He commented on their backgrounds and current work they are doing. Ms. Rodgers and Mr. Dowell both stated their excitement to be joining and that they were looking forward to serving.

Mr. Motley directed people to find the Lextran Healthy Onboard Recovery Plan, which models the phased reopening of services that is available at www.lextran.com along with route and schedule information. Currently, masks are required for passengers and thanked folks for complying. Mr. Motley mentioned that we are testing a plastic barrier like ones in the grocery to protect operators. When passengers board at the front entrance and pay the fare, it is close between the operator and passengers, and we are looking to protect people as much as possible. It has been a rough time and grateful to operators, maintenance, and administration.

V. MONTHLY PERFORMANCE REPORT

Mr. Combs presented the Monthly Performance Report and Key Performance Indicators found on pages 10-14 of the July 20, 2020 board packet. Some of the highlights from last month include a shuttle from the Transit Center to Kroger Field for the primary election, Customer Service reopened at the Transit Center on June 29, and an internal training was held called, *Managing Your Team Through Crisis with Compassion*. There was still a large focus on pandemic response. Review of the fixed route ridership revealed a slow recovery with a similar pattern in paratransit. Paratransit is showing to have a slightly faster recovery. Comparing the end of the year statistics, we were down about 500,000 trips for fixed route. Revenue miles and hours remained down with the reductions in service. For safety, there was a reduction in the injury frequency rate and a continued low number of preventable accidents. For paratransit, the preventable accidents were very near to goal of two per 100,000 miles. Maintenance completed 100% of the scheduled preventative maintenance inspections. A postcard was received thanking Lextran for continuing service and cleaning and sanitizing. This speaks to the effort of the maintenance department and all their continued work and support from operations staff. Customer commendations and safety complaints are trending up on both fixed route and paratransit. Over the year on time performance was at or above 90% and operating expenses decreased for fixed route and paratransit.

Ms. Falconbury reviewed the Financial Statement found on pages 15-16 of the July 20, 2020 board packet. She pointed out that the sheet was marked unaudited because of adjustments and entries related to the end of the fiscal year. These will be seen at a later meeting when the audit is presented. Some grant funds have been received, putting the operating cash higher than usual. The accounts receivable will be adjusted. The Fifth Third loan for construction has met the halfway mark of 5 years. No buses were purchased this year, so a difference is noted. For revenue and expense, property taxes came in higher than budgeted which almost makes up the difference for waived passenger fare since March. The other variance is partly the lease payment and UK adjustments for COVID-19. Professional services and diesel fuel both came in under budget along with paratransit expenses due to reduced trips.

Mr. Ward asked a question about the work in process and where it would be distributed. Ms. Falconbury replied that work in process will get distributed to assets to account for buses and some equipment that were purchased.

Mr. Motley asked if operating expenses were down primarily from fuel and Ms. Falconbury confirmed yes.

VI. PRESENTATION

Ms. Butler presented the Strategic Planning Outlook for Fiscal Year 2020-2021 that can be found on pages 39-54 of the board packet.

She presented on the prior strategic planning efforts, with updates happening every few years with the most recent update in 2018. That update saw the institution of the current mission statement, new branding and the three key pillars. Strategic planning for 2020 began in January with multiple meetings, but progress began to slow when the pandemic hit in March. The format and process were the same for each meeting focusing on advantages, trends, challenges and opportunities/strengths.

Both general and industry-specific trends were discussed, including:

- Industry response to COVID-19
- Ridership recovery efforts
- Automation
- Electric vehicles and emissions reduction
- Increased demand for paratransit
- System redesign
- Mobility as a Service (MaaS)
- Fare-free and mobile ticketing
- Multi-generational workforce and culture
- Technology tension and communication strategies
- Response to commercial development
- Nicholasville Rd. corridor study

In addition, Ms. Butler highlighted some of the great work Lextran should celebrate, including:

- COVID-19 response
- RAMP program and progress

- Branding and website redesign
- Fleet replacement progress
- Recruiting and hiring
- Successful audit, grant awards, and regulatory submittals

Ms. Rogers asked about automation with user friendly apps and access to know if the bus is crowded. Ms. Butler replied that we do have the capability with our vendor, Avail and that staff will ensure we can accurately provide this information to the public.

Ms. Butler continued with Lextran's advantages, including our professionally trained staff and that the service is affordable, accessible, dependable. There are challenges facing Lextran, including a desire to increase frequency, maximize current service, and attract new riders. The biggest challenge currently is responding to a global pandemic. Everything that we try to do has a layer of making sure we are operating safely and effectively right now. Mr. Motley asked whether the word cloud (challenges slide) was drawn from board, staff, or a combination of these conversations. Ms. Butler stated that it was drawn from a staff meeting, but it was compared with the board notes and they were similar enough to summarize the challenges.

Ms. Butler mentioned that the mission statement, "we serve people and our community with mobility solutions," was still viewed as relevant, strong and very pertinent this year. The other element of past strategic planning that will continue is the three key pillars: deliver high quality product and service, demonstrate value to the community, and manage and sustain resources. These pillars will continue to be how Lextran frames and translates the mission into projects. Ms. Butler then reviewed priority updates for each of the key pillars.

There was a discussion with questions around the Transit Center and the Town Branch Trail project. Ms. Butler recommended that a future agenda item be on this topic. Mr. Motley asked if the board packet could be identified that included the plan for the fleet replacement program to refresh the conversation, and Mr. Ward noted that the notes are in the February packet.

Mr. Dowell asked if the Transit Center improvements would address the pedestrian access on Vine St. Ms. Butler replied that the part that is tied to the Town Branch Trail Project in Zone 2 will add a signalized pedestrian crosswalk near the Phoenix Building and just before Beck Alley. The other part of the project is to make improvements to the platform, placemaking in the space, and add real time information signage. Mr. Motley asked what was meant by signalized. Ms. Butler replied that when a pedestrian approaches that crossing, a light will stop traffic on Vine St. Mr. Combs clarified that there will be two signals and the one near Beck Alley will also serve as a bus prioritization signal for buses leaving the Transit Center. Mr. Dowell asked if this was like the crosswalk on N. Broadway near Transylvania University. Ms. Butler replied that it is a full stop with a traffic light and that she would ask if the Town Branch Project Manager could make a presentation regarding the project.

Ms. Rodgers mentioned the marketing of the value of Lextran service to the community using the example of the Meadowthorpe neighborhood benefitting from service. Ms. Butler added that even if someone is not riding they may be connected to someone who utilizes the service and noted the larger economic impact of transit.

Mr. Christman mentioned the CARES Act funding and asked for clarification on how the program would be utilized. Ms. Butler reiterated the Fiscal Year 2021 budget presentation that included the likelihood of a mid-year budget review, when perhaps more of the overall impact from the COVID-19 on things like fare collection, ridership, the length of the pandemic, staffing, property tax impacts, and uncertainty regarding federal dollars may be known. Ms. Henson brought up the fleet replacement in relation to the uncertainty and adding that project to the budget. Mr. Ward said that he and Mr. Motley had a recent conversation with Ms. Butler and Ms. Falconbury regarding the number of unknowns and the difficulty in creating a plan today. It will be an agenda item for the finance committee at the next meeting in September.

Mr. Motley states that he was hearing a desire to have a conversation on prioritization. Ms. Butler stated that finances were not the focus of this strategic planning presentation, in fact it is to deliberately think about priorities and other initiatives without being specifically bound to financial considerations. Ms. Butler thanked everyone for the engagement and a great conversation.

Mr. Motley asked if we have identified key stakeholders and how to engage them in a very intentional way. Ms. Butler stated that we want as many individuals' voices, but also key strategic stakeholders as well.

Ms. Henson asked for an update on the refinancing of the administrative building. This topic will be brought back to the Finance Committee at the September meeting for next steps. The Lextran Real Properties Board has approval on any refinancing of the 200 W. Loudon property. Mr. Motley mentioned a different discussion was warranted on the cadence of the refinancing and proposal process.

VII. ACTION ITEMS

a. Resolution – 2020-11 – Resolution to Award a Contract for Maintenance Uniforms

An RFP was issued on May 11 in anticipation of the completion of the current contract. Three proposals were submitted and reviewed by the evaluation committee. Cintas ranked the highest among the three proposals. The cost sheet is included. The term of the contract award is five years. Mr. Christman made a motion to approve resolution 2020-11, and it was seconded by Ms. Henson. The motion passed unanimously.

b. Resolution – 2020-12 – Resolution to Purchase Solid State Hard Drives for On-Board Surveillance System

Resolution 2020-12 is to purchase 65 solid state hard drives that are part of the interior and exterior onboard surveillance for Lextran buses, originally purchased in 2010 from a company called Verint (since re-named TSI). These will replace existing, aging hard drives. The price for each hard drive is \$817 and a cost analysis was done to verify that this was a fair and reasonable price. These are being purchased through TSI. The total price is \$53,000 and labor and installation will be handled internally. The source of the funds is part of the capital budget as an ITS line item.

Ms. Rodgers asked where the company is based. Mr. Givens replied they are in Pennsylvania and Ms. Butler added that Avail, the fixed route integrator, is also located there.

Ms. Henson asked if TSI was the sole source provider and if there would be ongoing maintenance costs involved. Ms. Butler replied that most of the cost is capital, but there is ongoing maintenance. It can mostly be managed by Lextran staff. Some of the hard drives have been replaced over the last ten years, but we feel this is the best course of action to keep as up to date as possible.

Mr. Christman made a motion to approve resolution 2020-12, and it was seconded by Ms. Henson. The motion passed unanimously.

c. Resolution – 2020-13 – Resolution for update of Bylaws of Lextran Board of Directors

Resolution 2020-13 proposes minor changes to the bylaws, including an address update to reflect 200 West Loudon Avenue. In Article 5, Section 4, a reference to the COO and Charter Appendix A was included as a typo and was removed. A copy of the annual disclosure statement was included, and it was sent to board members today. Mr. Motley mentioned he appreciated the removal of gendered language.

Ms. Henson made a motion to approve resolution 2020-13, and it was seconded by Ms. Rodgers. The motion passed unanimously.

d. Officer Elections

Mr. Ward proposed nominations for the Lextran Board of Directors Officers: Christian Motley as Board Chair, Adrienne Thakur as Vice Chair, and Nikki Falconbury as Secretary/Treasurer.

Mr. Motley asked if there were any questions or comments regarding the motion. Mr. Christman seconded the motion presented by Mr. Ward. The motion passed unanimously.

VIII.CHANGE ORDER

There were no change orders.

IX.OLD BUSINESS

There was no old business.

X.NEW BUSINESS

There was no new business.

XI.PROPOSED AGENDA ITEMS

There were no proposed agenda items for next month.

XII.CLOSED SESSION

No closed session

XIII.ADJOURNMENT

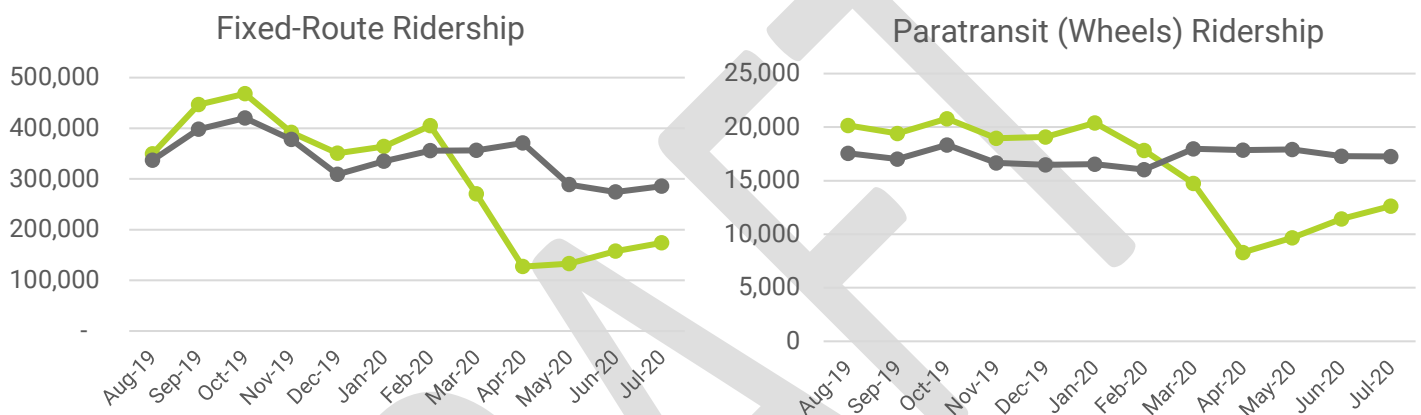
Mr. Motley called for a motion to adjourn the July 22, 2020 meeting of the Lextran Board of Directors. Ms. Henson made a motion to adjourn, seconded by Ms. Rodgers. The meeting adjourned by consensus at 11:23 a.m.

LEXTRAN MONTHLY PERFORMANCE REPORT – JULY 2020

We serve people and our community with mobility solutions.

Lextran released a phased “Healthy on Board” plan on July 8, and began requiring facial coverings for all passengers on July 10 in accordance with Governor Andy Beshear’s mandate. On Monday July 13, five routes resumed normal weekday service. The reinstatement of trips on these routes help address capacity issues that had been increasing. Later in the month, on July 27, Route 14 resumed service on a limited schedule in the campus area.

DEMONSTRATE VALUE TO THE COMMUNITY



Performance Indicator	Fixed Route System			Paratransit (Wheels)		
	This Month	FY21 YTD	FY20 YTD	This Month	FY20 YTD	FY19 YTD
System Production						
Total Ridership	173,700	173,700	274,617	12,625	12,625	19,753
Weekday Ridership	146,995	146,995	232,241	10,959	10,959	16,674
Saturday Ridership	12,269	12,269	22,585	803	803	1,430
Sunday Ridership	11,162	11,162	15,579	659	659	1,350
Holiday Ridership	3,274	3,274	4,212	204	204	299
Total Revenue Miles	123,744	123,744	147,312	91,804	91,804	141,142
Total Revenue Hours	11,627	11,627	15,251	7,516	7,516	11,251
Trips per Mile	1.40	1.40	1.86	0.14	0.14	0.14
Trips per Hour	14.94	14.94	18.01	1.68	1.68	1.76

- Ridership continues its gradual recovery with total ridership increasing by 10% over the previous month.
- Compared to the same time last year, fixed route ridership has declined 38% and paratransit ridership has fallen 36%.

Lextran in the Media

- JULY 9, 2020 – LEXTRAN TO REQUIRE MASKS, OPEN MORE ROUTES
<https://www.wtvq.com/2020/07/09/lextran-to-require-masks-open-more-routes/>
- JULY 10, 2020 - LEXINGTON HEALTH DEPT. REPORTS 83 NEW CASES, HIGHEST ONE-DAY INCREASE
<https://www.wkyt.com/2020/07/10/lexington-health-dept-reports-83-new-cases-highest-one-day-increase/>
- JULY 13, 2020 - LEXTRANS REOPENS MORE ROUTES, ISSUES HEALTH REMINDERS
<https://www.wtvq.com/2020/07/13/lextrans-reopens-more-routes-issues-health-reminders/>
- JULY 17, 2020 – LEXINGTON TO OPEN COOLING CENTERS THIS WEEKEND
<https://www.lex18.com/news/covering-kentucky/lexington-to-open-cooling-centers-this-weekend>
- JULY 18, 2020 – LEXINGTON COOLING CENTERS OFFER PEOPLE RELIEF FROM HEAT
<https://www.lex18.com/news/lexington-cooling-centers-offer-people-relief-from-heat>
- JULY 20, 2020 – LEXINGTON EMERGENCY MANAGEMENT ISSUES HEAT ADVISORY FOR LEXINGTON
<https://www.lex18.com/news/lexington-emergency-management-issues-heat-advisory-for-lexington>

Meetings

- July 1 – MPO/KYTC/LFUCG Project Coordination Team
- July 2 – New Board Member Orientation
- July 7 – Mayor’s COVID-19 Stakeholder group
- July 9 – UK-Lextran Fall 2020 Discussion
- July 16 – UK-Lextran Fall 2020 Service Discussion
- July 16 – COA Kickoff Meeting
- July 21 – Mayor’s COVID-19 Stakeholder group
- July 27 – APTA Small Ops Committee Conference Call
- July 28 – US-27 Project Team Meeting
- July 29 – Transdev GM webinar: Safety Best Practices
- July 30 – Lextran COA

DELIVER A HIGH-QUALITY PRODUCT

Performance Indicator	Fixed Route System			Paratransit (Wheels)		
	This Month	FY21 YTD	FY20 YTD	This Month	FY21 YTD	FY20 YTD
Service Quality						
On-Time Performance	94.40%	94.40%	92.10%	94.19%	94.19%	90.43%
Farebox Recovery	0.00%	0.00%	6.71%	N/A	N/A	N/A
Operating Expenses	\$1,659,443	\$1,659,443	\$1,682,780	\$392,921	\$392,921	\$432,687
Per Mile	\$4.10	\$4.10	\$3.38	N/A	N/A	N/A
Per Hour	\$99.09	\$99.09	\$77.69	N/A	N/A	N/A
Customer Service	This Month	FY21 YTD	FY20 YTD	This Month	FY21 YTD	FY20 YTD
Customer Feedback Totals per 100k Trips	31.09	31.09	14.57	229.70	229.70	106.31
Commendations	0.00	0.00	1.09	31.68	31.68	15.19
Discourtesy	16.70	16.70	4.01	79.21	79.21	45.56
Late or Early	1.73	1.73	2.55	7.92	7.92	15.19
Safety	5.18	5.18	2.55	110.89	110.89	30.38
Passed Boarding	5.18	5.18	2.18	0.00	0.00	0.00
Information and Service Requests	1.15	1.15	1.09	0.00	0.00	0.00
Other	1.15	1.15	1.09	0.00	0.00	0.00
Call Length	0:56	0:56	1:11	1:05	1:05	1:09
Time to Abandon	1:19	1:19	0:30	0:22	0:22	0:48

- Complaints regarding late/early buses are trending down as on-time performance continues to trend up.
- Our Text-for-Next system was utilized 1,809 times in July and calls to customer service increased by 223% compared to the average in FY20. This was expected with the discontinuation of the IVR service, and because of service adjustments arising from the pandemic.

MANAGE AND SUSTAIN RESOURCES

Performance Indicator	Fixed Route System			Paratransit (Wheels)		
	This Month	FY21 YTD	FY20 YTD	This Month	FY21 YTD	FY20 YTD
Safety						
Preventable Accidents per 100,000 miles	1.55	1.55	2.04	0.94	0.94	2.45
Injury Frequency Rate	15.91	15.91	0.00	N/A	N/A	N/A
Days with No Preventable Accidents	29	29	28	30	30	29
Days of Lost Time	48	48	39	N/A	N/A	N/A
Workers Compensation Claims	2	2	0	N/A	N/A	N/A

- Preventable injuries are trending down in the first month of FY21 compared to FY20 for our fixed route system.
- Preventable accidents among paratransit (Wheels) service continues to trend down compared FY20.

Performance Indicator	Fixed Route System		
	This Month	FY21 YTD	FY20 YTD
Maintenance			
Miles between Road Calls	7,410	7,410	7,366
Percent of Preventive Maintenance Inspections on Schedule	100%	100%	100%

- Maintenance completed 100 percent (42 of 42) of scheduled preventative maintenance this month.
- Miles between road calls improved slightly (0.6%) compared to the same time last year.

Performance Indicator	Fixed Route System		
	This Month	Interviews	New Hires
Hiring and Recruiting			
Open Positions	20	0	0
Operations	10	0	0
Maintenance	6	3	1
Administration	4	0	0

Performance Indicator	Fixed Route System	
	This Month	FY21 YTD
Training Activities		
Post-Accident Remedial Training	1	1
Return to Work Training	2	2
Smith System Training/Refresher	62	62

Procurement

Financing Services	Due April 15, 2020	Under Review
Investment Consulting Services	Due April 20, 2020	Review by Pension Committee
Tire Lease	Due September 17, 2020	
Electric Bus	In Development	

DRAFT

Financials
BALANCE SHEET

as of July 31, 2020

	Current Year-To-Date	Last Year-to-Date
Assets		
Current assets		
Operating Cash	\$12,952,216	\$9,700,795
Project Loan Account	\$0	\$1,145,044
Accounts receivable	\$5,147,781	\$4,851,832
Inventory	\$691,791	\$638,478
Work in process	\$42,040	\$33,509
Prepaid	\$1,071,731	\$1,009,122
Total Current Assets	<u>\$19,905,559</u>	<u>\$17,378,781</u>
Long term note - Lextran Foundation Inc.	\$8,355,000	\$8,355,000
Long term asset - Pension	\$2,322,984	\$2,322,984
Total Long Term Assets	<u>\$10,677,984</u>	<u>\$10,677,984</u>
Net capital and related assets	\$25,979,942	\$25,452,700
Total Assets	<u><u>\$56,563,484</u></u>	<u><u>\$53,509,464</u></u>
Liabilities		
Current liabilities		
Accounts payable	\$344,486	\$1,089,337
Payroll liabilities	\$776,866	\$731,369
Short term note - Fifth Third Bank	\$970,535	\$941,698
Total Current Liabilities	<u>\$2,091,887</u>	<u>\$2,762,404</u>
Long term note - Fifth Third Bank	\$3,854,578	\$4,825,113
Long term liability - Pension	\$2,911,112	\$2,911,111
Total Long Term Liabilities	<u>\$6,765,690</u>	<u>\$7,736,224</u>
Net Position	\$47,705,907	\$43,010,836
Total Liabilities and Net Position	<u><u>\$56,563,484</u></u>	<u><u>\$53,509,464</u></u>

Financials
**STATEMENT OF REVENUES, EXPENSES AND CHANGE IN NET POSITION
JULY 2020**

		FY2021		FY 2020
Revenues	Actual	Budget	Variance	Actual
Property taxes	\$0	\$0	\$0	\$0
Passenger revenue	\$0	\$0	\$0	\$113,164
Federal funds	\$441,063	\$358,333	\$82,730	\$443,844
State funds	\$0	\$0	\$0	\$0
Advertising revenue	\$260,000	\$260,000	\$0	\$0
Other revenue	\$10,728	\$13,792	(\$3,064)	\$208,386
Total Revenues	\$711,791	\$632,125	\$79,666	\$765,393
Expenses				
Wages	\$742,095	\$810,764	(\$68,669)	\$764,694
Fringe benefits	\$463,255	\$473,810	(\$10,555)	\$452,194
Professional services	\$100,534	\$119,153	(\$18,618)	\$58,969
Materials and supplies	\$117,733	\$92,292	\$25,441	\$86,821
Fuel-Diesel	\$44,080	\$90,458	(\$46,379)	\$76,717
Fuel-Other	\$25,091	\$27,000	(\$1,909)	\$17,239
Utilities - Facilities	\$30,956	\$28,997	\$1,959	\$25,172
Utilities - Electric Bus	\$6,850	\$10,000	(\$3,150)	\$7,488
Insurance	\$61,397	\$68,167	(\$6,770)	\$58,293
Fuel taxes	\$15,917	\$18,750	(\$2,833)	\$25,460
Paratransit Expenses	\$426,679	\$525,000	(\$98,321)	\$496,346
Vanpool Expenses	\$1,200	\$2,100	(\$900)	\$2,100
Dues and subscriptions	\$28,346	\$3,167	\$25,179	\$1,275
Travel, training and meetings	\$16,013	\$14,825	\$1,188	\$4,328
Media advertising	\$1,524	\$15,417	(\$13,893)	\$31,834
Miscellaneous	\$1,416	\$4,966	(\$3,550)	\$750
Interest Expense	\$12,256	\$14,568	(\$2,312)	\$14,620
Leases and rentals	\$68,838	\$68,838	(\$0)	\$68,818
Depreciation	\$250,103	\$250,103	\$0	\$283,132
Total Expenses	\$2,414,283	\$2,638,374	(\$224,091)	\$2,476,249
Change in Net Position	(\$1,702,492)	(\$2,006,249)	\$303,757	(\$1,710,856)

MEMORANDUM

August 19, 2020

TO: Lextran Board of Directors

FROM: Carrie Butler, General Manager

SUBJECT: Resolution to Award a Contract for Electric Motors

Attached is a resolution requesting authority to award a contract for electric motors.

06-2020 was issued July 9, 2020 with proposals received on August 6, 2020. A staff evaluation committee reviewed and approved the proposals for compliance and responsiveness. Responsive proposals were received from three (3) qualified proposers:

- Southern Coach Parts Company
- Kirk's Automotive, Inc.
- Muncie Transit Supply

An evaluation committee ranked the proposals received. Kirk's Automotive, Inc. received the highest ranking and is recommended to be awarded the contract per the terms of their proposal and RFP 06-2020.

The core charge on remanufactured items is a deposit paid until the vendor receives the old part back. Once the old part is received, Lextran is credited that amount. The term of the contract awarded will be for one year with no options for an additional year.

Budget / Source of Funds: Preventative Maintenance Operating Expense / FTA 5307 Capital Budget

If you have any questions, please call me at 255-7756.

RESOLUTION 2020-14**TRANSIT AUTHORITY OF LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT****AUGUST 19, 2020**

WHEREAS, the Transit Authority of the Lexington-Fayette Urban County Government (Lextran) issued RFP 06-2020 for the provision of electric motors, and;

WHEREAS, RFP 06-2020 resulted in responsive proposals from three (3) qualified proposers, and;

WHEREAS, the proposal from Kirk's Automotive, Inc. was the highest ranked proposal, and;

NOW, THEREFORE BE IT RESOLVED, that the Board of Directors of the Transit Authority of the Lexington-Fayette Urban County Government (Lextran) hereby authorizes and directs the General Manager to execute a contract with Kirk's Automotive, Inc. for the provision of electric motors as per the terms of RFP 06-2020 and the proposal submitted by Kirk's Automotive, Inc., which are incorporated herein by reference..

MOTION: _____ **SECOND:** _____

CHAIRPERSON

DATE



**RFP #06-2020, Section 14.03 Cost
(Payment Terms Net 30 Days)**

Lextran Part #	OEM Number	Kirk's Part Number	Description	Unit Price	Core Price	Availability	Turnaround Time	Warranty
G142MTR	10479228	KRK10479228	Remanufactured Starter	\$235.00	\$50.00	In Stock at Kirk's	2 days	One Year from the Date of Installation
G142MTR	10479228	KHPKST4205	New Starter	\$265.00	Not Applicable	In Stock at Kirk's	2 days	One Year from the Date of Installation
G1G1019443R	50DN	KRK10459123	Remanufactured Alternator	\$645.00	\$100.00	In Stock at Kirk's	2 days	One Year from the Date of Installation
G1G1019443R	50DN	KHPK300HIPRO	New Alternator	\$949.00	Not Applicable	In Stock at Kirk's	2 days	One Year from the Date of Installation
G1C703	C703	KRKC703	Remanufactured Alternator	\$1,220.00	\$500.00	In Stock at Kirk's	2 days	One Year from the Date of Installation
G1C703	C703	C703	New Alternator	\$2,250.00	Not Applicable	In Stock at Kirk's	2 days	One Year from the Date of Installation
G1C706	C706	KRKC706	Remanufactured Alternator	\$1,175.00	\$200.00	In Stock at Kirk's	2 days	One Year from the Date of Installation
G1C706	C706	C706	New Alternator	\$2,150.00	Not Applicable	In Stock at Kirk's	2 days	One Year from the Date of Installation
0G1C803	C803	KRKC803D	Remanufactured Alternator	\$1,480.00	\$800.00	In Stock at Kirk's	2 days	One Year from the Date of Installation
G1C803	C803	C803D	New Alternator	\$3,210.00	Not Applicable	In Stock at Kirk's	2 days	One Year from the Date of Installation
G1104323R	1040323	104-323	Remanufactured Evaporator Motor	\$485.00	\$250.00	In Stock at Kirk's	2 days	One Year from the Date of Installation
G1104476	1040476	104-476	Remanufactured Condenser Motor	\$470.00	\$100.00	In Stock at Kirk's	2 days	One Year from the Date of Installation
G11040740	1040740	104-740	Remanufactured Condenser Motor	\$510.00	\$250.00	In Stock at Kirk's	2 days	One Year from the Date of Installation
G1104792	1040792	1040792	New Evaporator Motor	\$3,680.34	Not Applicable	Factory Stock	6 days	One Year from the Date of Purchase

MEMORANDUM

August 19, 2020

TO: Lextran Board of Directors

FROM: Carrie Butler, General Manager

SUBJECT: Amendment to the Lextran Employees Contributory Pension Plan

Attached is a copy of the proposed Amendment Number 2 to the Lextran Employees Contributory Pension Plan and Trust. The amendment has been reviewed and approved by the Pension Committee at the August 14, 2020 meeting.

This amendment is necessary to more clearly define the early retirement age for employees who are no longer in the service of the Authority. It is a non-substantive change. The Lextran Employees Contributory Pension Plan and Trust document with the proposed amendment is included for your reference.

Budget / Source of Funds: There is no direct spend for this resolution or amendment.

If you have any questions, please call me at 255-7756.

RESOLUTION 2020-15**TRANSIT AUTHORITY OF LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT****AUGUST 19, 2020**

BE IT RESOLVED, that the Board of Directors of the Transit Authority of the Lexington-Fayette Urban County Government authorizes the Chairperson of the Board to execute Amendment No. 1 to the Lextran Employees Contributory Pension Plan, which is attached hereto and incorporated herein by reference.

MOTION: _____ **SECOND:** _____

CHAIRPERSON_____
DATE*Continued...*

**AMENDMENT NO. 2 TO THE
LEXTRAN EMPLOYEES CONTRIBUTORY PENSION PLAN AND TRUST
AUGUST 19, 2020**

THIS AMENDMENT NO. 2 is made and adopted this ____ day of _____, 2020 by the Transit Authority of the Lexington-Fayette Urban County Government (hereinafter referred to as the "Company").

WITNESSETH:

By Plan document dated July 11, 1997, the Company adopted the Lextran Employees Contributory Pension Plan (the "Plan") for the exclusive benefit of eligible employees and their designated beneficiaries. The Plan was amended and restated as of January 1, 2002. Effective January 1, 2009, the Plan was again amended and restated. The Plan was most recently amended and restated effective January 1, 2014. Amendment No. 1 was effective as of January 1, 2016.

The Company has at all times intended that the Plan constitute a qualified plan under Section 401(a) of the Internal Revenue Code of 1986.

Now, THEREFORE, pursuant to ARTICLE VII of the Plan, the Company hereby adopts the following amendments to the Plan to be effective as of January 1, 2014, to clarify certain provisions relating to early retirement:

Section 5.05(b) is hereby amended to read as follows:

"(b) Earlier payments of benefits. However, the Administrator shall, at the election of the Participant, direct earlier payment of the Vested portion of the Participant's Accrued Benefit, provided the Participant has reached their Earliest Retirement Age as define in Section 1.14. Any distribution under this paragraph shall be made in a manner which is consistent with and satisfies the provisions of Section 5.6, including, but not limited to, notice and consent requirements of Code Sections 417 and 411(a)(11) and the Regulations thereunder."

CONTINUATION OF PLAN. Except as herein provided, the Plan shall, as amended, continue in full force and effect.

IN WITNESS WHEREOF, the Company's duly authorized representative has executed this document as of the day, month and year first above written.

**CHAIR, BOARD OF DIRECTORS
TRANSIT AUTHORITY OF LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**



LEXTRAN EMPLOYEES CONTRIBUTORY PENSION PLAN AND TRUST

DOCUMENT INFORMATION AND VERSIONS HERE

Title:	Lextran Employees Contributory Pension Plan and Trust
Description:	Legal trust document for the Lextran employees pension
Prepared by:	Administrative Staff / General Manager
Issuing Department:	Executive
Issue Date:	This document was amended and restated previously with this version approved by the Board of Directors for the Transit Authority of the Lexington-Fayette Urban County Government on <<TBD>> and reflected in the official, approved board minutes. Minutes are available by request or at http://www.lextran.com/about/board-of-directors under the Board Packets section.
Revision Number:	8
Approvals:	Lextran Board of Directors Resolution <<TBD>>
Name and Title of Accountable Executive:	Carrie Butler General Manager
Signature:	<hr/>

Revision Number	Date	Responsible Person	Description of Change
0	1964	Lexington Transit Corporation	New document
1	1978	Lextran	Adopting Lextran Employees Contributory Pension Plan
2	1989	Lextran	Amended / Restated
3	1997	Lextran	Amended / Restated
4	2002	Lextran	Amended / Restated
5	2009	Lextran	Amended / Restated
6	2014	Lextran	Amended / Restated
7	2016	Lextran	Amendment No. 1
Current	2020	Lextran	Amendment No. 2

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PREFACE

INSERT RESOLUTION

ARTICLE I. DEFINITIONS

Section 1.01 ACCRUED BENEFIT

"Accrued Benefit" means the retirement benefit a Participant is entitled to receive pursuant to the retirement benefit formula set forth in Section 5.1. In the event a Participant terminates employment prior to Normal Retirement Date, the Participant's Accrued Benefit shall be equal to the amount determined under the retirement benefit formula computed as of the Participant's date of termination of employment.

Notwithstanding anything herein to the contrary, a Participant's Accrued Benefit attributable to the retirement benefit formula at the close of any Plan Year coinciding with or next following the Participant's attainment of Normal Retirement Age shall be equal to the monthly retirement benefit formula determined pursuant to Section 5.1(d) based upon service determined at the close of any such Plan Year.

Section 1.02 ACCUMULATED EMPLOYEE CONTRIBUTION BENEFIT

"Accumulated Employee Contribution Benefit" derived from Employee Mandatory Contributions as of any applicable date in the form of an annual benefit commencing at Normal Retirement Age and nondecreasing for the life of the Participant is equal to the amount of the Employee Contribution Benefit divided by the "appropriate conversion factor" with respect to that form of benefit.

The "appropriate conversion factor" means the present value of an annuity in the form of that annual benefit commencing at Normal Retirement Age at a rate of \$1.00 per year, computed using an interest rate and mortality table which would be used under the Plan under Code Section 417(e)(3) and Regulation I .417(e)-1 (as of the "determination date").

If the Accumulated Employee Contribution Benefit is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at Normal Retirement Age, such benefit shall be the actuarial equivalent of such benefit (determined under Code Section 411(c)(2)(B)), as determined by the Commissioner of Internal Revenue.

Withdrawals from the Accumulated Employee Contribution Benefit are not permitted prior to termination of employment.

Section 1.03 ACT

"Act" means the Employee Retirement Income Security Act of 1974, as it may be amended from time to time. This is a governmental plan as that term is defined in in Section 414(d) of the Code and in Section 3(32) of the Act. Accordingly, the terms and provisions of the Act do not apply to this Plan.

Section 1.04 ACTUARIAL EQUIVALENT

"Actuarial Equivalent" means a form of benefit differing in time, period, or manner of payment from a specific benefit provided under the Plan but having the same value when computed using Pre-Retirement Table: 1983 Group Annuity Mortality Table (using the GA TT for Unisex version); Post-Retirement Table: 1983 Group Annuity Mortality Table (using the GA TT for Unisex version), Pre-Retirement Interest: 7.5; and Post-Retirement Interest: 7.5.

Notwithstanding the foregoing, the mortality table and the interest rate for the purposes of determining an Actuarial Equivalent amount (other than nondecreasing life annuities payable for a period not less than the life of a Participant or, in the case of a Pre-Retirement Survivor Annuity, the life of the surviving spouse) shall be the mortality table and the interest rates specified above or the "Applicable Mortality Table" and the "Applicable Interest Rate" described below, whichever produces the greater benefit

- (a) The "Applicable Mortality Table" means the mortality table prescribed by Code Section 417(e)(3). For any distribution with an Annuity Starting Date on or after the effective date of these Subsections and before the adoption date of these Subsections, if application of the amendment as of the Annuity Starting Date would have caused a reduction in the amount of any distribution, such reduction is not reflected in any payments made before the adoption date of these Subsections. However, the amount of any such reduction that is required under Code Section 415(b)(2)(B) must be reflected actuarially over any remaining payments to the Participant.
- (b) With respect to benefits with an Annuity Starting Date on or after January 1, 2008, the "Applicable Interest Rate" means the rate of interest determined by applicable interest rate described by Code Section 417(e) after its amendment by PP A. Specifically, the applicable interest rate shall be the adjusted first, second, and third segment rates applied under the rules similar to the rules of Code Section 430(h)(2)(C) determined as of the first calendar month preceding the first day of the calendar month during which the Annuity Starting Date occurs. For this purpose, the first, second, and third segment rates are the first, second, and third segment rates which would be determined under Code Section 430(h)(2)(C) if:
 - (i) Code Section 430(h)(2)(D) were applied by substituting the average yields for the month described in the preceding paragraph for the average yields for the 24-month period described in such section, and
 - (ii) Code Section 430(h)(2)(G)(i)(II) were applied by substituting "Section 417(e)(3)(A)(ii)(II) for "Section 412(b)(5)(B)(ii)(II)," and
 - (iii) The applicable percentage under Code Section 430(h)(2)(G) is treated as being 20% in 2008, 40% in 2009, 60% in 2010, and 80% in 2011.

In the event this Section is amended, the Actuarial Equivalent of a Participant's Accrued Benefit on or after the date of change shall be determined (unless otherwise permitted by law or Regulation) as the greater of (1) the Actuarial Equivalent of the Accrued Benefit as of the date of change computed on the old basis, or (2) the Actuarial Equivalent of the total Accrued Benefit computed on the new basis.

Section 1.05 ADMINISTRATOR

"**Administrator**" means the Pension Committee which has been designated by the Board of Directors of the Transit Authority of the Lexington-Fayette Urban County Government to administer the Plan on behalf of the Employer pursuant to Section 2.2 hereinafter. Any references in the Plan to the term "Retirement Committee" shall be replaced with the term "Pension Committee."



Section 1.06 ANNIVERSARY DATE

"Anniversary Date" means December 31.

Section 1.07 ANNUITY STARTING DATE

"Annuity Starting Date" means, with respect to any Participant, except as may be provided otherwise by a particular Plan provision, e.g., Section 5.16, the first day of the first period for which an amount is paid as an annuity, or, in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitles the Participant to such benefit.

Section 1.08 BENEFICIARY

"Beneficiary" means the person (or entity) to whom the share of a deceased Participant's interest in the Plan is payable. Section 5.4 contains a definition of "designated Beneficiary" for purposes of that Section.

Section 1.09 CODE

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

Section 1.10 COLLECTIVE BARGAINING AGREEMENT

"Collective Bargaining Agreement" means any written contract by and between the Union and the Employer, including any and all extensions thereto, renewal or renewals thereof, amendments or addenda thereof or thereto.

Section 1.11 COMPENSATION

"Compensation" with respect to any Participant means such Participant's wages as defined in Code Section 3401(a) and all other payments of compensation by the Employer (in the course of the Employer's trade or business) for a Plan Year (the "determination period") for which the Employer is required to furnish the Participant 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)).

Notwithstanding the foregoing, if compensation for any prior determination period is taken into account in determining a Participant's benefits for the current Plan Year, Compensation means compensation determined pursuant to the terms of the Plan then in effect.

Compensation Adjustments. For purposes of this Section, the determination of Compensation shall be made by:

- (a) excluding (even if includible in gross income) reimbursements or other expense allowances, fringe benefits (cash or noncash), moving expenses, deferred compensation, and welfare benefits.
- (b) including Military Differential Pay effective for Plan Years beginning after December 31, 2008.
- (c) including amounts which are contributed by the Employer pursuant to a salary reduction agreement and which are not includible in the gross income of the Participant under Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(l)(B), 403(b) or 457(b), and Employee contributions described in Code Section 414(h)(2) that are treated as Employer contributions.
- (d) making the following adjustments for amounts that are paid after a Participant's severance from employment with the Employer and by the later of 2 1/2 months after a Participant's severance from employment with the Employer or the end of the Limitation Year that includes the date of the Participant's severance from employment with the Employer. 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.
 - 1) Regular pay. Compensation shall include regular pay after severance of employment if:
 - (i) 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
 - (ii) 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.
 - 2) Leave cash-outs. Leave cash-outs shall be included in Compensation if those amounts would have been included in the definition of Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are 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.
 - 3) Deferred Compensation. Deferred compensation shall be included in Compensation if those amounts would have been included in the definition of Compensation if they were paid prior to the Participant's severance from employment with the Employer maintaining the Plan, and the amounts are received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid 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.
 - 4) Salary continuation payments for military service Participants. 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)(l)) 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 shall be excluded from Compensation for Plan Years beginning prior to January 1, 2009.

- 5) Salary continuation payments for disabled Participants. Compensation excludes compensation paid to a Participant who is permanently and totally disabled (as defined in Code Section 22(e)(3)).

Compensation Limit. The Compensation of each Participant taken into account in determining benefit accruals, shall not exceed \$200,000 (or such other amount provided in the Code). Such amount shall be adjusted for increases in the cost of living in accordance with Code Section 401 (a)(7)(B), except that the dollar increase in effect on January 1 of any calendar year shall be effective for the determination period beginning with or within such calendar year. For any short determination period, the Compensation limit shall be an amount equal to the Compensation limit for the calendar year in which the determination period begins multiplied by the ratio obtained by dividing the number of full months in the short determination period by twelve (12).

Section 1.12 "CONTRACT" OR "POLICY"

"Contract" or "Policy" means any life insurance policy, retirement income policy or annuity contract (group or individual) issued pursuant to the terms of the Plan. 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.

Section 1.13 EARLIEST RETIREMENT AGE

"Earliest Retirement Age" means the earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.

Section 1.14 EARLY RETIREMENT DATE

"Early Retirement Date" means the first day of the month (prior to the Normal Retirement Date) coinciding with or next following the date on which a Participant attains age 55, and has completed at least 15 Years of Service for eligibility with the Employer (Early Retirement Age). A Participant shall become fully Vested upon satisfying this requirement if still employed at Early Retirement Age. A Participant who separates from service after satisfying the service requirement for Early Retirement and who thereafter reaches the age requirement contained herein shall be entitled to receive his or her vested retirement benefits under this Plan.

Section 1.15 ELIGIBLE EMPLOYEE

"Eligible Employee" means any Employee, except as provided below, and except as provided in any other particular provision for the limited purposes of that provision. The following Employees shall not be eligible to participate in this Plan.

- (a) An individual shall not be an Eligible Employee if such individual is not reported on the payroll records of the Employer as a common law employee. In particular, it is expressly intended that individuals not treated as common law employees by the Employer on its payroll records and out-sourced workers, are neither Employees nor Eligible Employees, and are excluded from Plan participation even if a court or administrative agency determines that such individuals are common law employees and not independent contractors.
- (b) Unless or until otherwise provided, Employees who became Employees as the result of a "Code Section 410(b)(6)(C) transaction" will not be Eligible Employees until the expiration of the transition period beginning on the date of the transaction and ending on the last day of the first Plan Year beginning after the date of the transaction. A Code Section 410(b)(6)(C) transaction is an asset or stock acquisition, merger, or similar transaction involving a change in the Employer of the Employees of a trade or business that is subject to the special rules set forth in Code Section 410(b)(6)(C).
- (c) Any employees not classified by the Company as permanent, full-time employees.

Section 1.16 EMPLOYEE

"Employee" means any common law employee, Leased Employee or other person to the extent that the Code treats such an individual as an employee of the Employer for purposes of the Plan.

Section 1.17 EMPLOYEE MANDATORY CONTRIBUTION

"Employee Mandatory Contribution" means the amount a Participant is required to contribute to the Plan pursuant to Section 4.3 in order to be eligible to participate in Plan benefits.

Section 1.18 EMPLOYEE MANDATORY CONTRIBUTION BENEFIT

"Employee Mandatory Contribution Benefit" means the periodic payments made by Employees to the Trust Fund pursuant to the terms and conditions of the Collective Bargaining Agreement in effect between the Employer and the Union, or as otherwise contemplated by the Trust Agreement. Upon application to the Administrator, any Participant whose Covered Employment terminates at a time when such Participant fails to qualify for Total and Permanent Disability Benefits, Early Retirement Benefits, Normal Retirement Benefits, Joint and Survivor Benefits, Death Benefits or any other periodic or installment benefits payable under the terms and conditions set forth in this Plan shall receive a reimbursement of his or her Employee Mandatory Contributions together with interest on all such Employee Contributions at the rate of two per cent (2%) compounded annually from the January 1 next following the date of contribution to the first day of the month in which the Participant terminates Covered Employment. However, any such Participant who is a Vested Employee shall be entitled to Vested Benefits payable under the terms of the Plan with respect to Employer Contributions.

The Employer shall, solely for the purpose of compliance with Section 414(h) of the Code, pick up any Employee Mandatory Contributions required by the terms and provisions of this Plan for all Compensation earned on or after January 1, 1999, and the Employee Mandatory Contributions so picked up shall be as Employer Contributions in determining tax treatment under the Code and for

purposes of Section 141.010(10) of the Kentucky Revised Statutes. Therefore, Employee Mandatory Contributions shall not be included as gross income of the Participant until such time as the Employee Mandatory Contributions shall be distributed to the Participant. The Participant shall have no option to receive the amounts contributed directly instead of having them paid by the Employer to the Trustee.

Section 1.19 EMPLOYER

"Employer" means Transit Authority of the Lexington-Fayette Urban County Government and any successor which shall maintain this Plan; and any predecessor which has maintained this Plan. The Employer is a governmental entity, with principal offices in the

Commonwealth of Kentucky.

Section 1.20 FIDUCIARY

"Fiduciary" means any person who (a) exercises any discretionary authority or discretionary control respecting management of the Plan or exercises any authority or control respecting management or disposition of its assets, (b) renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of the Plan or has any authority or responsibility to do so, or (c) has any discretionary authority or discretionary responsibility in the administration of the Plan.

Section 1.21 "415 COMPENSATION"

"415 Compensation" with respect to any Participant means such Participant's wages as defined in Code Section 3401(a) and all other payments of compensation by the Employer (in the course of the Employer's trade or business) for a Plan Year for which the Employer is required to furnish the Participant a written statement under Code Sections 6041(d), 6051(a)(3) and 6052, plus amounts that would have been received and includible in taxable compensation but for an election under Code Section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b), plus Military Differential Pay for Limitation Years beginning on or after January 1, 2009. "415 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)). "415 Compensation" for any Self-Employed Individual shall be equal to such individual's Earned Income which is derived from the trade or business with respect to which such Plan is established.

Notwithstanding the above, the determination of 415 Compensation shall be made by:

- (a) making the following adjustments for amounts that are paid after a Participant's severance from employment with the Employer and by the later of 2 1/2 months after a Participant's severance from employment with the Employer or the end of the Limitation Year that includes the date of the Participant's severance from employment with the Employer. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered compensation within the meaning of Code Section 415(c)(3), even if payment is made within the time period specified above.
 - (i) 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 cash-outs shall be included in 415 Compensation 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 with the Employer and the amounts are 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.
- (iii) Deferred compensation shall be included in 415 Compensation 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 with the Employer maintaining the Plan and the amounts are received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid 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.
- (iv) 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)(l)) 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 shall be excluded in 415 Compensation for Limitation Years beginning prior to January 1, 2009.
- (v) 415 Compensation excludes compensation paid to a Participant who is permanently and totally disabled (as defined in Code Section 22(e)(3)).

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

Except as otherwise provided herein, if, in connection with the adoption of any amendment, the definition of 415 Compensation has been modified, then for Plan Years prior to the Plan Year which includes the adoption date of such amendment, 415 Compensation means compensation determined pursuant to the terms of the Plan then in effect.

415 Compensation shall not include amounts paid as compensation to a nonresident alien, as defined in Code Section 7701(b)(1)(B), who is not a Participant in the Plan to the extent the compensation is excludable from gross income and is not effectively connected with the conduct of a trade or business within the United States.

Section 1.22 HIGHLY COMPENSATED EMPLOYEE

"Highly Compensated Employee" means an Employee described in Code Section 414(q) and the Regulations thereunder, and generally means any Employee who:

- (a) was a "five percent owner" of the Employer at any time during the "determination year" or "look-back year." "Five percent owner" means any person who owns (or is considered as owning within the meaning of Code Section 3 18) more than five percent of the outstanding stock of the Employer or stock possessing more than five percent of the total combined voting power of all stock of the Employer or, in the case of an unincorporated business, any person who owns more than five percent of the capital or profits interest in the Employer. In determining percentage ownership hereunder, employers that would otherwise be aggregated under Code Sections 414(b), (c), (m) and (o) shall be treated as separate employers; or
- (b) for the "look-back year" had "415 Compensation" from the Employer in excess of \$80,000. The \$80,000 amount is adjusted at the same time and in the same manner as under Code Section 415(d), except that the base period is the calendar quarter ending September 30, 1996.

The "determination year" means the Plan Year for which testing is being performed, and the "look-back year" means the immediately preceding twelve (12) month period.

A highly compensated former Employee is based on the rules applicable to determining Highly Compensated Employee status as in effect for the "determination year," in accordance with Regulation 1.414(q)-I T, A-4 and IRS Notice 97-45 (or any superseding guidance).

In determining who is a Highly Compensated Employee, Employees who are non-resident aliens and who received no earned income (within the meaning of Code Section 91 1(d)(2)) from the Employer constituting United States source income within the meaning of Code Section 861 (a)(3) shall not be treated as Employees. If an Employee who is a nonresident alien has U.S. source income, that Employee is treated as satisfying this definition if all of such Employee's U.S. source income from the Employer is exempt from U.S. income tax under an applicable income tax treaty. Additionally, all Affiliated Employers shall be taken into account as a single employer and Leased Employees within the meaning of Code Sections 414(n)(2) and 414(o)(2) shall be considered Employees unless such Leased Employees are covered by a plan described in Code Section 414(n)(5) and are not covered in any qualified plan maintained by the Employer. The exclusion of Leased Employees for this purpose shall be applied on a uniform and consistent basis for all of the Employer's retirement plans. Highly Compensated former Employees shall be treated as Highly Compensated Employees without regard to whether they performed services during the "determination year."

Section 1.23 HIGHLY COMPENSATED PARTICIPANT

"Highly Compensated Participant" means, for a particular Plan Year, a Participant who meets the definition of a Highly Compensated Employee in effect for that Plan Year.

Section 1.24 HOUR OF SERVICE

"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 (these hours will be credited to the Employee for the computation period in which the duties are performed); (2) each hour for which a.t.t Employee is directly or indirectly compensated or entitled to compensation by the Employer (irrespective of whether the employment r 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 (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). The same Hours of Service shall not be credited both under (1) or (2), as the case may be, and under (3).

Notwithstanding (2) 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 5 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(2) above, 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.

Section 1.25 INVESTMENT MANAGER

"Investment Manager" means an entity that (a) has the power to manage, acquire, or dispose of Plan assets and (b) acknowledges fiduciary responsibility to the Plan in writing. Such entity must be a person, firm, or corporation registered as an investment adviser under the Investment Advisers Act of 1940, a bank, or an insurance company.

Section 1.26 LATE RETIREMENT DATE

"Late Retirement Date" means the first day of the month coinciding with or next following a Participant's actual Retirement Date after having reached Normal Retirement Date.

Section 1.27 LEASED EMPLOYEE

"Leased Employee" means any person (other than an Employee of the recipient Employer) who pursuant to an agreement between the recipient Employer and any other person or entity ("leasing organization") has performed services for the recipient (or for the recipient 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 recipient Employer. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the recipient Employer shall be treated as provided by the recipient Employer. Furthermore, Compensation for a Leased Employee shall only include Compensation from the leasing organization that is attributable to services performed for the recipient Employer. A Leased Employee shall not be considered an Employee of the recipient Employer:

- (a) (a) if such employee is covered by a money purchase pension plan providing:
 - (i) a nonintegrated employer contribution rate of at least 10% of compensation, as defined in Code Section 415(c)(3);
 - (ii) immediate participation;
 - (iii) full and immediate vesting; and
- (b) if leased employees do not constitute more than 20% of the recipient Employer's non-highly compensated work force.

Section 1.28 MILITARY DIFFERENTIAL PAY

"Military Differential Pay" means any differential wage payments made to an individual that represents an amount which, when added to the individual's military pay, approximates the amount of compensation that was paid to the individual while working for the Employer. Notwithstanding the preceding sentence, for years beginning after December 31, 2008, 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, and the differential wage payment is treated as 415 Compensation.

The Plan is not treated as failing to meet the requirements of any provision described in Code Section 414(u)(l)(C) (or corresponding plan provisions by reason of any contribution or benefit which is based on the differential wage payment. The preceding sentence 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 §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 Sections 410(b)(3), (4), and (5)).

Section 1.29 NON-HIGHLY COMPENSATED EMPLOYEE/PARTICIPANT

"Non-Highly Compensated Employee/Participant" means any Employee who is not a Highly Compensated Employee. A Participant is a Non-highly Compensated Participant for a particular Plan Year if such Participant does not meet the definition of a Highly Compensated Employee in effect for that Plan Year.

Section 1.30 NORMAL RETIREMENT AGE

"Normal Retirement Age" means the earlier of (i) the Participant's 65th birthday, or (ii) the date the Participant attains age 62 after completing at least ten (10) years of service. A Participant shall become fully Vested in the Participant's Normal Retirement Benefit upon attaining Normal Retirement Age.

1.31 "Normal Retirement Date" means the first day of the month coinciding with or next following the Participant's Normal Retirement Age.

Section 1.31 ONE-YEAR BREAK IN SERVICE

"1-Year Break in Service" means the applicable computation period during which an Employee has not completed more than 500 Hours of Service with the Employer. Further, solely for the purpose of determining whether a Participant has incurred a I-Year Break in Service, Hours of Service shall be recognized for "authorized leaves of absence" and "maternity and paternity leaves of absence." Years of Service and I-Year Breaks in Service shall be measured on the same computation period.

"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. 6

A "maternity or paternity leave of absence" means, for Plan Years beginning after December 31, 1984, 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 I-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 I-Year Break in Service.

Section 1.32 PARTICIPANT

"Participant" means any Employee or former Employee who has satisfied the requirements of Sections 3.1 and 3.2 and entered the Plan and is eligible to accrue benefits under the Plan. In addition, the term "Participant" also includes any individual who was a Participant (as defined in the preceding sentence) and who must continue to be taken into account under a particular provision of the Plan (e.g., because the Participant has an Accrued Benefit under the Plan).

Section 1.33 PLAN

"Plan" means this instrument, including all amendments thereto.

Section 1.34 PLAN YEAR

"Plan Year" means the Plan's accounting year of twelve (12) months commencing on January 1 of each year and ending the following December 31.

Section 1.35 PRE-RETIREMENT SURVIVOR ANNUITY

"Pre-Retirement Survivor Annuity" means an immediate annuity for the life of the surviving spouse of a Participant who dies prior to the Participant's Annuity Starting Date, the payment under which must be equal to the "minimum spouse's death benefit" provided in Section 5.4(c).

Section 1.36 PRESENT VALUE OF ACCRUED BENEFIT

"Present Value of Accrued Benefit" means the Actuarial Equivalent lump-sum amount of a Participant's Accrued Benefit at date of valuation. Notwithstanding the above, the Present Value of Accrued Benefit shall not be less than the Employee Contribution Benefit at date of valuation.

Section 1.37 REGULATION

"Regulation" means the Income Tax Regulations as promulgated by the Secretary of the Treasury or a delegate of the Secretary of the Treasury, and as amended from time to time.

Section 1.38 RETIRED PARTICIPANT

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

Section 1.39 RETIREMENT DATE

"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 Normal Retirement Date, Early or Late Retirement Date (see Section 5.1).

Section 1.40 SOCIAL SECURITY RETIREMENT AGE

"Social Security Retirement Age" means the age used as the retirement age under Section 216(1) of the Social Security Act, except that such Section shall be applied without regard to the age increase factor and as if the early retirement age under Section 216(1)(2) of such Act were 62.

Section 1.41 TERMINATED PARTICIPANT

"Terminated Participant" means a Participant who is no longer employed by any Participating Employer.

Section 1.42 TOTAL AND PERMANENT DISABILITY

"Total and Permanent Disability" means a determination of disability for Social Security benefits because of a total and permanent disability. However, no Participant shall be deemed to be totally and permanently disabled for the purpose of this Pension Plan if his or her incapacity consists of chronic alcoholism or addiction to narcotics or if such incapacity was contracted, suffered or incurred while he was engaged in a felonious enterprise, or resulted therefrom or resulted from an intentionally self-inflicted injury, or from an injury, wound or disability suffered or arising out of a state of war.

Section 1.43 TRUSTEE

"Trustee" means the person or entity named as trustee herein or in any separate trust forming a part of this Plan, and any successors.

Section 1.44 TRUST FUND

"Trust Fund" means the assets of the Plan and Trust as the same shall exist from time to time.

Section 1.45 UNION

"Union" means Division No. 639 of the Amalgamated Transit Union which has in effect with the Company a collective bargaining agreement provided for the establishment of a pension plan and trust fund and for the payment of contributions to such Fund.

Section 1.46 VESTED

"Vested" means the portion of a Participant's benefits under the Plan that are nonforfeitable.

Section 1.47 YEAR OF SERVICE

"Year of Service" means the computation period of twelve (12) consecutive months, herein set forth, during which an Employee has at least 2080 Hours of Service.

For purposes of eligibility for participation, the initial computation period shall begin with the date on which the Employee first performs an Hour of Service. The participation computation period shall shift to the 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 required Hours of Service in both the initial computation period and the Plan Year which includes the anniversary of the date on which the Employee first performed an Hour of Service, shall be credited with two (2) Years of Service for purposes of eligibility to participate. The participation computation period beginning after a 5-Year Break in Service shall be measured from the date on which an Employee again performs an Hour of Service.

For vesting purposes, the computation periods shall be the Plan Year, including periods prior to the Effective Date of the Plan.

The computation period shall be the Plan Year if not otherwise set forth herein.

ARTICLE II. ADMINISTRATION

Section 2.01 POWERS AND RESPONSIBILITIES OF THE EMPLOYER

- (a) Appointment of Trustee (or Insurer) and Administrator. In addition to the general powers and responsibilities otherwise provided for in this Plan, the Employer shall be empowered to appoint and remove the Trustee and the Administrator from time to time as it deems necessary for the proper administration of the Plan to ensure 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. The Employer may appoint counsel, specialists, advisers, agents (including any nonfiduciary agent) and other persons as the Employer deems necessary or desirable in connection with the exercise of its fiduciary duties under this Plan. The Employer may compensate such agents or advisers from the assets of the Plan as fiduciary expenses (but not including any business (settlor) expenses of the Employer), to the extent not paid by the Employer.
- (b) Appointment of investment Manager. The Employer may, by written agreement or designation, appoint at its option an Investment Manager (qualified under the Investment Company Act of 1940 as amended), investment adviser, or other agent to provide investment 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 Investment Manager or other agent shall have authority to direct the investment.
- (c) Funding policy and method. The Employer shall establish a "funding policy and method," i.e., it shall determine whether the Plan has a short run need for liquidity (e.g., to pay benefits) or whether liquidity is a long run goal and investment growth (and stability of same) is a more current need, or shall appoint a qualified person to do so. The Employer or its delegate shall communicate such needs and goals to the Trustee, who shall coordinate such Plan needs with its investment policy. The communication of such a "funding policy and method" shall not, however, constitute a directive to the Trustee as to the investment of the Trust Funds. Such "funding policy and method" shall be consistent with the objectives of this Plan.
- (d) Review of fiduciary performance. The Employer shall periodically review the performance of any Fiduciary or 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.
- (e) Employee Contribution Procedure. The Employer shall establish a procedure by which required Employee Mandatory Contributions are to be made to the Trustee pursuant to the Plan. Such procedure may be by payroll deduction or such other method as determined by the Employer.

Section 2.02 DESIGNATION OF ADMINISTRATIVE AUTHORITY

The Employer has delegated administrative duties set forth in Section 2.3 hereinafter to a Retirement Committee which shall consist of six (6) members - three (3) of whom shall be appointed by the Union (the "Union Members") and three (3) of whom shall be appointed by the Company (the "Company Members"). One of the Company Members shall be a member of the Board of Directors of the Transit Authority of the Lexington-Fayette Urban County Government and shall be appointed by said Board (the "Board Member").

Each of the members of the Retirement Committee shall have voting privileges for any matter coming before the Retirement Committee. At any time any vote or other action is taken by the Retirement Committee, the number of members qualified to act and vote shall always be considered equal. When three members are present for one group and two members are present for the other group, the two (2) members of the second group shall cast three (3) votes. Any action taken by the Retirement Committee shall be by majority vote of the members.

A quorum shall consist of two (2) Union Members and two (2) Company Members. Unless a quorum is present, no action shall be taken by the Retirement Committee.

Section 2.03 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 to determine all questions arising in connection with the administration, interpretation, and application of the Plan. Benefits under this Plan will be paid only if the Administrator decides in its discretion that the applicant is entitled to them. 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 Section 401(a) and all regulations issued pursuant thereto. The Administrator shall have the power and authority in its sole, absolute and uncontrolled discretion to control and manage the operation of the Plan and shall have all powers necessary to accomplish these purposes.

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

- (a) the discretion to determine all questions relating to the eligibility of Employees to participate or remain a Participant hereunder and to receive benefits under the Plan;
- (b) the authority to review and settle all claims against the Plan, including claims where the settlement amount cannot be calculated or is not calculated in accordance with the Plan's benefit formula. This authority specifically permits the Administrator to settle disputed claims for benefits and any other disputed claims made against the Plan;
- (c) to compute, certify, and direct the Trustee with respect to the amount and the kind of benefits to which any Participant shall be entitled hereunder;
- (d) to authorize and direct the Trustee with respect to all discretionary or otherwise directed disbursements from the Trust;
- (e) to maintain all necessary records for the administration of the Plan;
- (f) 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 including, but not limited to, adoption and revisions from time to time of an investment policy statement with respect to Plan assets;
- (g) to determine the size and type of any Contract to be purchased from any insurer and to designate the insurer from which such Contract shall be purchased. All Policies shall be issued on a uniform basis as of each Anniversary Date with respect to all Participants under similar circumstances;
- (h) to compute and certify to the Employer and to the Trustee from time to time the sums of money necessary or desirable to be contributed to the Plan;
- (i) to consult with the Employer and the Trustee regarding the short and long-term liquidity needs of the Plan in order that the Trustee can exercise any investment discretion (if the Trustee has such discretion) in a manner designed to accomplish specific objectives;
- (j) to prepare and implement a procedure for notifying prospective Eligible Employees of their requirement to make Employee Mandatory Contributions to the Plan as a condition of eligibility;
- (k) to prepare and implement a procedure for notifying Participants and Beneficiaries of their rights to elect qualified joint and survivor annuities and qualified pre-retirement survivor annuities as required by the Code and regulations thereunder;
- (l) to determine the validity of, and take appropriate action with respect to, any qualified domestic relations order received by it; and
- (m) to assist any Participant regarding the Participant's rights, benefits, or elections available under the Plan.

Section 2.04 RECORDS AND REPORTS

The Administrator shall keep a record of all actions taken and shall keep all other books of account, records, policies, 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.

Section 2.05 APPOINTMENT OF ADVISERS

The Administrator, or the Trustee with the consent of the Administrator, may appoint counsel, specialists, advisers, agents (including nonfiduciary agents) and other persons as the Administrator or the Trustee deems necessary or desirable in connection with the administration of this Plan, including but not limited to agents and 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 investment fiduciaries.

Section 2.06 PAYMENT OF EXPENSES

All reasonable 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, or any person or persons retained or appointed by any named Fiduciary incident to the exercise of their duties under the Plan, including, but not limited to, fees of accountants, counsel, Investment Managers, and other specialists and their agents, the costs of any bonds, and other costs of administering the Plan. Until paid, the expenses shall constitute a liability of the Trust Fund.

Section 2.07 CLAIMS PROCEDURE

Claims for benefits under the Plan may be filed in writing with the Administrator. Written notice of the disposition of a claim shall be furnished to the claimant within ninety (90) days (45 days if the claim involves disability benefits) after the application is filed, or such period as is required by applicable law. In the event the claim is denied, the reasons for the denial shall be specifically set forth in the notice in language calculated to be understood by the claimant, pertinent provisions of the Plan shall be cited, and, where appropriate, an explanation as to how the claimant can perfect the claim will be provided. In addition, the claimant shall be furnished with an explanation of the Plan's claims review procedure.

Section 2.08 CLAIMS REVIEW PROCEDURE

Any Employee, former Employee, or Beneficiary of either, who has been denied a benefit by a decision of the Administrator pursuant to Section 2.7 shall be entitled to request the Administrator to give further consideration to a claim by filing with the Administrator a written request for a hearing. Such request, together with a written statement of the reasons why the claimant believes the claim should be allowed, shall be filed with the Administrator no later than sixty (60) days (45 days if the claim involves disability benefits) after receipt of the written notification provided for in Section 2.7. The Administrator shall then conduct a hearing within the next sixty (60) days (45 days if the claim involves disability benefits), at which the claimant may be represented by an attorney or any other representative of such claimant's choosing and expense and at which the claimant shall have an

opportunity to submit written and oral evidence and arguments in support of the claim. At the hearing (or prior thereto upon five (5) business days written notice to the Administrator) the claimant or the claimant's representative shall have an opportunity to review all documents in the possession of the Administrator which are pertinent to the claim at issue and its disallowance. The full expense of any such court reporter and such transcripts shall be borne by the party causing the court reporter to attend the hearing. A final decision as to the allowance of the claim shall be made by the Administrator within sixty (60) days (45 days if the claim involves disability benefits) of receipt of the appeal (unless there has been an extension of sixty (60) days (45 days if the claim involves disability benefits) due to special circumstances, provided the delay and the special circumstances occasioning it are communicated to the claimant within the sixty (60) day period (45 days if the claim involves disability benefits)). Such communication shall be written in a manner calculated to be understood by the claimant and shall include specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based. Notwithstanding the preceding, to the extent any of the time periods specified in this Section are amended by law, then the time frames specified herein shall automatically be changed in accordance with such law or regulation.

If the Administrator, pursuant to the claims review procedure, makes a final written determination denying a Participant's or Beneficiary's benefit claim, then in order to preserve the claim, the Participant or Beneficiary must file an action with respect to the denied claim not later than one hundred eighty (180) days following the date of the Administrator's final determination.

ARTICLE III. ELIGIBILITY

Section 3.01 CONDITIONS OF ELIGIBILITY

- (a) **Eligibility.** For all Plan purposes, any Eligible Employee (i) who is employed as administrative staff and has completed a trial period of ninety (90) work days or (ii) who is a member of the Union and has completed a probationary period of ninety (90) work days shall be eligible to participate hereunder as of the date such Employee has satisfied such requirements. However, any Employee who was a Participant in the Plan prior to the effective date of this amendment and restatement shall continue to participate in the Plan.
- (b) **Months of service.** For purposes of this Section, an Eligible Employee will be deemed to have completed the required number of months of service if such Employee is in the employ of the Employer at any time after such months after the Employee's employment commencement date. Employment commencement date shall be the first day that the Employee is entitled to be credited with an Hour of Service for the performance of duty.

Section 3.02 EFFECTIVE DATE OF PARTICIPATION

- (a) **Effective date of participation.** An Eligible Employee shall become a Participant effective as of the first day of the month coinciding with or next following the date on which such Employee met the eligibility requirements of Section 3.1 (or if sooner, the first day of the following Plan Year), provided said Employee was still employed as of such date (or if not employed on such date, as of the date of rehire if a I-Year Break in Service has not occurred or, if later, the date that the Employee would have otherwise entered the Plan had the Employee not terminated employment).
- (b) **Ineligible to eligible classification.** If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise have become a Participant in the Plan, shall go from a classification of an ineligible Employee to an Eligible Employee, such Employee shall become a Participant in the Plan on the date such Employee becomes an Eligible Employee or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee.
- (c) **Eligible to ineligible classification.** If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise become a Participant in the Plan, shall go from a classification of an Eligible Employee to an ineligible class of Employees, such Employee shall become a Participant in the Plan on the date such Employee again becomes an Eligible Employee, or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee. However, if such Employee incurs five (5) consecutive I-Year Breaks in Service, eligibility will be determined under the Break in Service rules set forth in Section 3.5.

Section 3.03 DETERMINATION OF ELIGIBILITY

The Administrator shall determine the eligibility of each Employee for participation in the Plan based upon information furnished by the Employer. Such determination shall be conclusive and binding upon all persons, as long as the same is made pursuant to the Plan.

Section 3.04 CESSATION OF ELIGIBILITY

In the event a Participant shall go from a classification of an Eligible Employee to an ineligible Employee with respect to the Plan, then such Participant shall continue to Vest in the Plan for each Year of Service completed while an ineligible Employee.

Section 3.05 REHIRED EMPLOYEES AND BREAKS IN SERVICE

- (a) Reemployed before five (5) consecutive 1-Year Breaks in Service. If any Employee becomes a former Employee due to severance from employment with the Employer and is reemployed by the Employer before five (5) consecutive 1-Year Breaks in Service occur, then the former Employee's prior service shall count in the same manner as if severance from employment with the Employer had not occurred. If any Participant ceases to be a Participant due to severance from employment with the Employer and is reemployed by the Employer before five (5) consecutive 1-Year Breaks in Service occur, then the Participant shall resume participation (in the same manner as if severance from employment with the Employer had not occurred) as of the reemployment date.
- (b) Reemployed after five (5) consecutive 1-Year Breaks in Service ("rule of parity" provisions). If any Employee becomes a former Employee due to severance from employment with the Employer and is reemployed after a 5-Year Break in Service has occurred, Years of Service shall include Years of Service prior to the 5-year break in service subject to the following rules:
 - (i) Rule of parity. In the case of a Participant who under the Plan does not have a nonforfeitable right to any interest in the Plan resulting from Employer contributions, Years of Service before a period of consecutive 1-Year Breaks in Service will not be taken into account if the number of 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. Such aggregate number of Years of Service will not include any Years of Service disregarded under the preceding sentence by reason of prior period of five (5) consecutive 1-Year Breaks in Service.
 - (ii) Participation in Plan. If any Participant becomes a former Employee due to severance from employment with the Employer and is reemployed by the Employer before a 5-Year Break in Service occurs, the Former Employee shall become a Participant as of the reemployment date (provided the Employee is an Eligible Employee as of such date).

- (c) Non-duplication of benefits and buybacks. If any Participant becomes a former Employee due to severance of employment with the Employer and again becomes a Participant, such renewed participation shall not result in duplication of benefits. Accordingly, unless a repayment is made pursuant to the following provisions of this subsection, if such Participant has received a distribution of all or a portion of his or her Accrued Benefit, then the Participant's "Normal Retirement Benefit" and Accrued Benefit shall be actuarially reduced by the amount of such distribution.

If a Participant was not fully Vested at the time of a total distribution of his or her Vested Accrued Benefit, then the Participant may repay the amount of such distribution in order to restore the non-Vested portion of the Accrued Benefit. The Participant must make the repayment, with interest, within a period of the earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer or the close of the first period of five (5) consecutive I-Year Breaks in Service commencing after the distribution. Any repayment by a Participant shall be equal to the total of:

- (i) the amount of the distribution,
- (ii) interest on such distribution compounded annually at the rate of five percent (5%) per annum from the date of distribution to the date of repayment or to the last day of the first Plan Year ending on or after December 31, 1987, if earlier, and
- (iii) interest on the sum of (i) and (ii) above compounded annually at the rate of one-hundred twenty percent (120%) of the federal mid-term rate (as in effect under Code Section 1274 for the first month of a Plan Year) from the beginning of the first Plan Year beginning after December 31, 1987, or the date of distribution, whichever is later, to the date of repayment.

If a Participant terminates service with a vested Accrued Benefit equal to zero, the Participant shall be deemed to have received a distribution such Accrued Benefit, and if such Terminated Participant is reemployed by the Employer before incurring five (5) consecutive I-Year Breaks in Service, then such reemployed Participant shall be deemed to have repaid the deemed distribution plus interest as of the date of reemployment. If a Participant is deemed to receive a distribution pursuant to this paragraph, and the Participant resumes employment covered under this Plan before the date the Participant incurs five (5) consecutive I-year Breaks in Service, upon the reemployment of such Participant, the Employer-provided Accrued Benefit will be restored to the amount of such Accrued Benefit on the date of the deemed distribution.

Section 3.06 OMISSION OF ELIGIBLE EMPLOYEE; INCLUSION OF INELIGIBLE EMPLOYEE

If, in any Plan Year, any Employee who should be included as a Participant in the Plan is erroneously omitted and discovery of such omission is not made until after a contribution by the Employer for the year has been made and allocated, or any person who should not have been included as a Participant in the Plan is erroneously included, then the Employer shall apply the principles described by, and take corrective actions consistent with, the IRS Employee Plans Compliance Resolution System (as described in IRS Revenue Procedure 2008- 50 and any superseding Revenue Procedure).



ARTICLE IV. CONTRIBUTION AND VALUATION

Section 4.01 PAYMENT OF CONTRIBUTIONS

The Employer shall pay to the Trustee such amounts in cash as required as contributions pursuant to the Collective Bargaining Agreement with the Union.

Section 4.02 ACTUARIAL METHODS

In establishing the liabilities under the Plan and contributions thereto, the enrolled actuary will use such methods and assumptions as will reasonably reflect the cost of the benefits. The Plan assets are to be valued on the last day of the Plan Year (or on any other date determined by the Administrator) using any reasonable method of valuation that takes into account fair market value pursuant to Regulations. There must be an actuarial valuation of the Plan at least once every year.

Section 4.03 EMPLOYEE MANDATORY CONTRIBUTIONS

- (a) Authorization. Each Participant shall contribute the amounts required and set forth in the Collective Bargaining Agreement in effect between the Employer and the Union, or as otherwise contemplate by the Trust Agreement. Such contribution must generally be paid to the Trustee within a reasonable period of time after being received by the Employer. Such contribution shall be credited to the Participant's Accumulated Employee Contribution Benefit.
- (b) Full vesting. The Employee Contribution Benefit shall be fully Vested at all times.
- (c) Withdrawals. Withdrawals from the Accumulated Employee Mandatory Contributions Benefit are not permitted prior to termination of employment. Upon application to the Administrator, any Participant whose Covered Employment terminates at a time when such Participant fails to qualify for Total and Permanent Disability Benefits, Early Retirement Benefits, Normal Retirement Benefits, Joint and Survivor Benefits, Death Benefits or any other periodic or installment benefits payable under the terms and conditions set forth in this Plan shall receive a reimbursement of his or her Employee Mandatory Contributions together with interest on all such Employee Mandatory Contributions at the rate of two per cent (2%) compounded annually from the January 1 next following the date of contribution to the first day of the month in which the Participant terminates Covered Employment. However, any such Participant who is a Vested Employee shall be entitled to Vested Benefits payable under the terms of the Plan with respect to Employer Contributions.
- (d) Pick up contributions. The Employer shall, solely for the purpose of compliance with Section 414(h) of the Code, pick up any Employee Mandatory Contributions required by the terms and provisions of this Plan for all Compensation earned on or after January 1, 1999, and the Employee Mandatory Contributions so picked up shall be as Employer Contributions in determining tax treatment under the Code and for purposes of Section 141.010(10) of the Kentucky Revised Statutes. Therefore, Employee Mandatory Contributions shall not be included as gross income of the Participant until such time as the Employee Mandatory Contributions shall be distributed to the Participant. The Participant shall have no option to receive the amounts contributed directly instead of having them paid by the Employer to the Trustee.

Section 4.04 QUALIFIED MILITARY SERVICE

Notwithstanding any provision of this Pla.'1 to the contrary, contributions, benefits and service will be provided in accordance with Code Section 414(u).

ARTICLE V. BENEFITS

Section 5.01 RETIREMENT BENEFITS

- (a) Normal retirement benefit. The amount of monthly retirement benefit to be provided for each Participant who retires on the Participant's Normal Retirement Date shall be equal to the Participant's Accrued Benefit (herein called the Participant's Normal Retirement Benefit). A Participant's Accrued Benefit shall be a monthly amount equal to \$50 for each Year of Service with the Employer.

The "Normal Retirement Benefit" of each Participant shall not be less than the largest periodic benefit that would have been payable to the Participant upon separation from service at or prior to Normal Retirement Age under the Plan exclusive of social security supplements, premiums on disability or term insurance, and the value of disability benefits not in excess of the "Normal Retirement Benefit." For purposes of comparing periodic benefits in the same form, commencing prior to and at Normal Retirement Age, the greater benefit is determined by converting the benefit payable prior to Normal Retirement Age into the same form of annuity benefit payable at Normal Retirement Age and comparing the amount of such annuity payments.

The Employer must ensure that the benefit formula described by this subsection continues to provide meaningful benefits within the meaning of Code Section 401(a)(26).

- (b) Early retirement. A Participant may elect to retire on an Early Retirement Date. In the event that a Participant makes such an election, such Participant shall be entitled to receive an Early Retirement Benefit equal to the Participant's Accrued Benefit payable at the Participant's Normal Retirement Date. However, if a Participant so elects, such Participant may receive payment of an Early Retirement Benefit commencing on the first day of the month coinciding with or next following the Participant's Early Retirement Date, which Early Retirement Benefit shall equal the Participant's Accrued Benefit reduced by one-half of one percent for each month the Participant's Early Retirement Date precedes the Participant's Normal Retirement Date.
- (c) Normal form of distribution. The Normal Retirement Benefit payable to a Participant pursuant to this Section 5.01 shall be a monthly pension commencing on the Participant's Retirement Date and continuing for life. However, the form of distribution of such benefit shall be determined pursuant to the provisions of Section 5.6.

Section 5.02 PAYMENT OF RETIREMENT BENEFITS

When a Participant retires, the Administrator shall immediately take pursuant to the Plan all necessary steps and execute all required documents to cause the payment of the Participant's Accrued Benefit pursuant to the Plan.

Section 5.03 DISABILITY RETIREMENT BENEFITS

- (a) Disability benefit. If a Participant becomes Totally and Permanently Disabled pursuant to Section 1.49 after (i) completing at least fifteen (15) years of service immediately preceding his or her disability ("immediately preceding" meaning twelve (12) months from the date the Participant terminates service with the Employer) and (ii) after attaining age 55 and by reason thereof such Participant's status as an Employee ceases, then said disabled Participant shall be entitled to receive the Participant's Accrued Benefit. In the event of a Participant's Total and Permanent Disability, the Administrator shall direct the Trustee to commence payment of the benefits payable hereunder pursuant to the provisions of Sections 5.6 and 5.9 as though the Participant had retired.
- (b) Time of determination of benefit. The benefit payable pursuant to (a) above shall be computed as of the first day of the month next following receipt of his or her application by the Administrator.
- (c) Benefit After Normal Retirement Age. The Disability Retirement Benefits shall be payable only during continued disability and until the Participant's attainment of his or her Normal Retirement Age. A Participant who is receiving Disability Retirement Benefits shall, upon attainment of his or her Normal Retirement Age, begin receiving a Normal Retirement Benefit as set forth in Section 5.1 (a) and his or her right to receive a future Disability Retirement Benefit shall cease.
- (d) Recovery of Disabled Participant. In the event a temporarily disabled Participant recovers and is re-employed but subsequently retires, benefits shall resume as of the first day of the month following subsequent retirement if such a Participant satisfies the requirements of either Section 5.1 (a) or Section 5.1 (b) of this Plan. The benefit payable upon such subsequent retirement shall be calculated as if the Participant were then first retired but shall be based on service as of his or her latest retirement.
- (e) Termination of Benefits. Disability Retirement Benefits shall be terminated:
 - (i) If the Participant's Social Security disability award is revoked by the Social Security Administrator; or,
 - (ii) If the Participant is no longer disabled pursuant to the provisions of this Plan; or,
 - (iii) If the Participant attains his or her Normal Retirement Age; or,
 - (iv) If the Participant dies.
- (f) Contingent Early Retirement Pension Pending Disability Determination.
 - (i) A Participant who is applying for Disability Retirement Benefits may, if eligible, elect on his or her application to begin receiving a Contingent Early Retirement Benefit. To be eligible for a Contingent Early Retirement Benefit, the Participant must have applied for and be awaiting a determination by the Social Security Administration on his or her eligibility for a Social Security Disability award or must have a pending appeal of an unfavorable determination by the Social

Security Administration on his or her eligibility for a Social Security Disability award. Additionally, the Participant must be eligible for an Early Retirement Benefit. The amount of the Contingent Early Retirement Benefit shall be calculated as an Early Retirement Benefit pursuant to Section 5.1 (b).

- (ii) The Contingent Early Retirement Benefit shall be adjusted as follows:
 - A. Upon determination by the Social Security Administration that the Participant has incurred a Total and Permanent Disability, the Participant's Contingent Early Retirement Benefit shall be converted to a Disability Retirement Benefit pursuant to Section 5.3 and shall be payable beginning on the first day of the month next following the date the disability award is granted by the Social Security Administration. However, there shall be adjustment to a Participant's Contingent Early Retirement Benefit if the Participant fails to provide the Retirement Committee with a copy of the Social Security disability award within 120 days of the issuance of such award. The benefits to any such Participant who fails to give such timely notice to the Retirement Committee shall automatically be converted to an Early Retirement Benefit.
 - B. In the event that a Participant does not obtain a Social Security disability award, his or her Contingent Early Retirement Benefits shall automatically be converted to an Early Retirement Benefit pursuant to the terms of Section 5.1(b).

Section 5.04 DEATH BENEFITS

- (a) Proof of death and beneficiary. The Administrator may require such proper proof of death and such evidence of the right of any person to receive the death benefit payable as a result of the death of a Participant as the Administrator may deem desirable. The Administrator's determination of death and the right of any person to receive payment shall be conclusive.
- (b) Death Benefits. The Spouse or Beneficiary of a deceased Participant upon proper proof of death to the Trustees may be eligible to receive a Pre-Retirement Death Benefit provided the deceased Participant died before he or she received any Normal Retirement Benefit payments.

The Spouse of a deceased Participant shall be eligible for either the Type 1 or Type 2 Pre-Retirement Death Benefit, but not both. No more than one (1) Pre-Retirement Death Benefit shall be paid or payable to the Spouse or Beneficiary of a deceased Participant. No benefits shall be paid as a Type 1 Pre-Retirement Benefit unless the Participant had at least five (5) years of Continuous Service. Type 2 Pre-Retirement Benefits shall not be paid unless the Participant had at least fifteen (15) years of Continuous Service and had attained at least the age of fifty-five (55) prior to his or her death.

However, the Spouse of a deceased Participant shall receive the Qualified Pre-Retirement Survivor Annuity ("QPSA") as set forth in Section 5.7(b) if the QPSA will provide a higher benefit than the death benefits under Section 5.4. The Spouse of a deceased Participant may receive benefits under Section 5.4 or 5.7 but not under both Sections of the Plan.

- (c) Description and amount of Death Benefits. Pre-Retirement Death Benefits shall be paid in either of two (2) methods as follows:
- (i) Type 1 - Lump Sum Payment of Employee Contributions:
The Beneficiary of a Participant who dies after completing at least five (5) years of Continuous Service shall receive a lump sum payment of 100% of the Employee Contributions made by the deceased Participant, reduced by the total amount of any Retirement or disability benefits which were paid at any time to the Participant from the Plan, plus an allocation of interest as provided in Section 4.3 (c) herein.
 - (ii) Type 2 - Survivor Benefit:
For a married Participant who was in active service at the time of his or her death and who had attained the age of fifty-five and who had completed at least ten (10) years of Continuous Service, a Pre-Retirement Death Benefit shall be paid to his or her Surviving Spouse. The Surviving Spouse shall receive a monthly benefit beginning immediately and payable for life equal to one half of the retirement benefit which would have been payable to the Participant if he or she had retired on the date of his or her 65th birthday. For this purpose the monthly benefit payable to the Participant shall be computed as fifty percent (50%) of the Normal Retirement Benefit as described in Section 5.1(a) herein.
- (d) When paid. The Spouse or Beneficiary of a deceased Participant who meets the eligibility requirements for the Type I Death Benefit shall have the lump sum benefits paid on the first day of the calendar month following the date the Trustees approve the Spouse or Beneficiary's application for Death Benefits.
- The Spouse of a deceased Participant who meets the eligibility requirements for the Type 2 Pre-Retirement Death Benefit shall have a pension commencement date as of the first day of the calendar month next following the date of the Participant's death. Monthly benefits will continue for the lifetime of the Spouse with the last payment to be made on the first day of the calendar month preceding the death of the spouse.
- (e) Distribution beginning before death. If the Participant dies after distribution of his or her interest has begun, the remaining portion of such interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.
- (f) Distribution beginning after death. If the Participant dies before distribution of his or her interest begins, distribution of the Participant's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death except to the extent that an election is made to receive distributions in accordance with (1) or (2) below:
- (i) if any portion of the Participant's interest is payable to a designated Beneficiary, distributions may be made over the life or over a period certain not greater than the life expectancy of the designated Beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the Participant died;
 - (ii) if the designated Beneficiary is the Participant's Surviving Spouse, the date distributions are required to begin in accordance with (a) above shall not be earlier than the later of (1)

December 31 of the calendar year immediately following the calendar year in which the Participant died and (2) December 31 of the calendar year in which the Participant would have attained age 70½.

If the Participant has not made an election pursuant to this section regarding distributions beginning after death by the time of his or her death, the Participant's designated Beneficiary must elect the method of distribution no later than the earlier of (1) December 31 of the calendar year in which distributions would be required to begin under this section, or (2) December 31 of the calendar year which contains the fifth anniversary of the date of death of the Participant. If the Participant has no designated Beneficiary, or if the designated Beneficiary does not elect a method of distribution, distribution of the Participant's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

- (g) **Designation of Beneficiary.** Each Employee becoming a Participant hereunder shall designate in writing, in such form and manner as shall be prescribed by the Administrator, one or more Beneficiaries or contingent Beneficiaries of the benefits which may be payable by reason of such Participant's death. Subject to such rules and regulations as the Administrator may promulgate, a Participant may from time to time change such designation of Beneficiary, provided no change shall be effective until receipt of the new designation by the Administrator. The most recent effective designation of Beneficiary shall supersede all prior designations. A designation of Beneficiary shall be effective only if the designated Beneficiary survives the Participant and any prior designated Beneficiary.
- (h) **Beneficiary.** The Beneficiary of the death benefit shall be the Participant's spouse, who shall receive such benefit in the form of a Pre-Retirement Survivor Annuity pursuant to Section 5. 7. If the Participant's spouse shall have predeceased the Participant or has ceased to be the Participant's spouse as of the date of the Participant's death, the Death Benefit shall be paid to the Participant's children, if any, in equal shares. For the purposes of this provision, the term "child" or "children" shall include sons, daughters, step-sons, step-daughters or legally adopted children of the Participant at least one half of whose support was received from the deceased Participant the year preceding his or her death. If no current spouse or children or child be alive, the Death Benefit shall be paid to the executor or administrator of the estate of the deceased Participant.
- (i) **Additional 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 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.

Section 5.05 TERMINATION OF EMPLOYMENT BEFORE RETIREMENT

- (a) Latest time for Payment. Payment to a Participant of the Vested portion of such Participant's Accrued Benefit, unless such Participant otherwise elects, shall begin not later than the 60th day after the close of the Plan Year in which the latest of the following events occurs:
- (1) the date on which the Participant attains the earlier of age 65 or the Normal Retirement Age specified herein; (2) the 10th anniversary of the year in which the Participant commenced participation in the Plan; or (3) the date the Participant terminates service with the Employer.
- (b) Earlier payments of benefits. However, the Administrator shall, at the election of the Participant, direct earlier payment of the Vested portion of the Participant's Accrued Benefit, provided the Participant has reached their Earliest Retirement Age as define in Section 1.14. Any distribution under this paragraph shall be made in a manner which is consistent with and satisfies the provisions of Section 5.6, including, but not limited to, notice and consent requirements of Code Sections 417 and 411(a)(11) and the Regulations thereunder."
- (c) Usage of Forfeitures. That portion of a Terminated Participant's Accrued Benefit that is forfeited shall be used only to reduce future costs of the Plan.
- (d) Timing of Forfeitures. That portion of a Terminated Participant's Accrued Benefit that is not Vested shall become a forfeiture on the earlier of:
- (i) the distribution of the entire Vested portion of the Accrued Benefit of such Terminated Participant. For purposes of this provision, if a Terminated Participant has a Vested Accrued Benefit of zero (0), then such Terminated Participant shall be deemed to have received a distribution of such Vested Accrued Benefit as of the date that such Terminated Participant terminated employment with the Employer, or
- (ii) the last day of the Plan Year in which such Terminated Participant incurs five (5) consecutive One-Year Breaks in Service.
- (e) Vesting Schedule. The Vested portion of any Participant's Accrued Benefit shall be a percentage of the Participant's Accrued Benefit determined on the basis of the Participant's number of Years of Service according to the following schedule:

Vesting Schedule	
Years of Service	Percentage
Less than 5	0%
5	100%

(f) Vesting upon this restatement. Notwithstanding the vesting schedule above, the Vested percentage of a Participant's Accrued Benefit 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.

(g) Vesting upon subsequent amendment. 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 Plan. In the event that the Plan is amended to change or modify any

vesting schedule, or if the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage, then each Participant with an Hour of Service after such change and who has at least three (3) Years of Service as of the expiration date of the election period may elect to have such Participant's nonforfeitable percentage computed under the Plan without regard to such amendment or change. If a Participant fails to make such election, then such Participant shall be subject to the new vesting schedule. The Participant's election period shall commence on the adoption date (or deemed adoption date) of the amendment and shall end sixty (60) days after the latest of:

- (i) the adoption date (or deemed adoption date) of the amendment,
- (ii) the effective date of the amendment, or
- (iii) the date the Participant receives written notice of the amendment from the Employer or Administrator.

Section 5.06 DISTRIBUTION OF BENEFITS

(a) Qualified joint and survivor annuity.

- (i) Unless otherwise elected as provided below, a Participant who is married on the Annuity Starting Date and who does not die before the Annuity Starting Date shall receive benefits in the form of a joint and survivor annuity. The joint and survivor annuity is an annuity that commences immediately and shall be the Actuarial Equivalent of the Participant's Accrued Benefit. Such joint and survivor benefits following the Participant's death shall continue to the spouse during the spouse's lifetime at a rate equal to 50% of the rate at which such benefits were payable to the Participant. This joint and fifty percent (50%) survivor annuity shall be considered the designated qualified joint and survivor annuity and automatic form of payment for the purposes of this Plan. However, the Participant may, without spousal consent, elect to receive an alternative annuity benefit with continuation of payments to the spouse at a rate of seventy-five percent (75%) or one hundred percent (100%) of the rate payable to a Participant during the Participant's lifetime, which alternative joint and survivor annuity shall be the Actuarial Equivalent of the designated joint and survivor annuity. An unmarried Participant shall receive the Actuarial Equivalent of such Participant's benefit in the form of a life annuity. Such unmarried Participant, however, may elect in writing to waive the life annuity. The election must comply with the provisions of this Section as if it were an election to waive the joint and survivor annuity by a married Participant, but without the spousal consent requirement.
- (ii) Any election to waive the joint and survivor annuity must be made by the Participant in writing (or in such other form as permitted by the Internal Revenue Service) during the election period and be consented to in writing (or in such other form as permitted by the Internal Revenue Service) by the Participant's spouse. If the spouse is legally incompetent to give consent, the spouse's legal guardian, even if such guardian is the Participant, may give consent. Such election shall designate a Beneficiary (or a form of benefits) that may not be changed without spousal consent (unless the consent of the spouse expressly permits designations by the Participant without the requirement of further consent by the spouse). Such spouse's consent

shall be irrevocable and must acknowledge the effect of such election and be witnessed by a Plan representative or a notary public. Such consent shall not be required if it is established to the satisfaction of the Administrator that the required consent cannot be obtained because there is no spouse, the spouse cannot be located, or other circumstances that may be prescribed by Regulations. The election made by the Participant and consented to by such Participant's spouse may be revoked by the Participant in writing (or in such other form as permitted by the Internal Revenue Service) without the consent of the spouse at any time during the election period. A revocation of a prior election shall cause the Participant's benefits to be distributed as a joint and survivor annuity. The number of revocations shall not be limited. Any new election must comply with the requirements of this paragraph. A former spouse's waiver shall not be binding on a new spouse.

- (iii) The election period to waive the joint and survivor annuity shall be the one hundred eighty (180) day period (ninety (90) day period for Plan Years beginning before January 1, 2007) ending on the Annuity Starting Date.
- (iv) For purposes of this Section, spouse or surviving spouse means the spouse or surviving spouse of the Participant, provided that a former spouse will be treated as the spouse or surviving spouse and a current spouse will not be treated as the spouse or surviving spouse to the extent provided under a qualified domestic relations order as described in Code Section 414(p).
- (v) With regard to the election, the Administrator shall provide to the Participant no less than thirty (30) days and no more than one hundred eighty (180) days (ninety (90) days for Plan Years beginning before January 1, 2007) before the Annuity Starting Date a written (or in such other form as permitted by the Internal Revenue Service) explanation of:
 - 1. the terms and conditions of the joint and survivor annuity,
 - 2. the Participant's right to make, and the effect of, an election to waive the joint and survivor annuity,
 - 3. the right of the Participant's spouse to consent to any election to waive the joint and survivor annuity, and
 - 4. the right of the Participant to revoke such election, and the effect of such revocation.
- (vi) Notwithstanding the above, if the Participant elects (with spousal consent, if applicable) to waive the requirement that the explanation be provided at least thirty (30) days before the Annuity Starting Date, the election period shall be extended to the thirtieth (30th) day after the date on which such explanation is provided to the Participant, unless the thirty (30) day period is waived pursuant to the following provisions.
Any distribution provided for in this Section 5.6 may commence less than thirty (30) days after the notice required by Code Section 417(a)(3) is given provided the following requirements are satisfied:

- 1) the Administrator clearly informs the Participant that the Participant has a right to a period of thirty (30) days after receiving the notice to consider whether to waive the joint and survivor annuity and to elect (with spousal consent) to a form of distribution other than a joint and survivor annuity;
- 2) the Participant is permitted to revoke an affirmative distribution election at least until the Annuity Starting Date, or, if later, at any time prior to the expiration of the seven (7) day period that begins the day after the explanation of the joint and survivor annuity is provided to the Participant;
- 3) the Annuity Starting Date is after the date that the explanation of the joint and survivor annuity is provided to the Participant. However, the Annuity Starting Date may be before the date that any affirmative distribution election is made by the Participant and before the date that the distribution is permitted to commence under (iv) below; and
- 4) distribution in accordance with the affirmative election does not commence before the expiration of the seven (7) day period that begins the day after the explanation of the joint and survivor annuity is provided to the Participant.

- (b) Consent to timing of distribution. The present value of a Participant's Accrued Benefit derived from Employer and Employee contributions may not be paid without the Participant's and the Participant's spouse's written consent (or in such other form as permitted by the Internal Revenue Service) if the value exceeds \$5,000, and the benefit is "immediately distributable." However, spousal consent is not required if the distribution will be made in the form of a qualified joint and survivor annuity and the benefit is "immediately distributable." A benefit is "immediately distributable" if any part of the benefit could be distributed to the Participant (or surviving spouse) before the Participant attains (or would have attained if not deceased) the later of the Participant's Normal Retirement Age or age 62. Any consent required by this Section 5.6(b) must be obtained not more than one hundred eighty (180) days (ninety (90) days for Plan Years beginning before January 1, 2007) before commencement of the distribution and shall be made in a manner consistent with Section 5.6(a)(2).
- (c) Form of Payment. If the value of the Participant's benefit derived from Employer and Employee contributions does not exceed \$5,000, then distribution may only be made as an immediate lump-sum payment. This distribution will be made regardless of the Participant's and the Participant's spouse's written consent. No distribution may be made under the preceding sentence after the Annuity Starting Date unless the Participant and the Participant's spouse consent in writing (or in such other form as permitted by the Internal Revenue Service) to such distribution.
- (d) Consent requirements. The following rules will apply to the consent requirements set forth above:
- (i) No consent shall be valid unless the Participant has received a general description of the material features and an explanation of the relative values of the optional forms of benefit available under the Plan that would satisfy the notice requirements of Code Section 417.
 - (ii) The Participant must be informed of the right to defer receipt of the distribution, and for notices provided in Plan Years beginning after December 31, 2006, such notification must also include a description of how much larger benefits will be if the commencement of distributions is deferred. If a Participant fails to consent, it shall be deemed an election to defer the commencement of payment of any benefit. However, any election to defer the receipt of benefits shall not apply with respect to distributions which are required under Section 5.8.
 - (iii) Notice of the rights specified under this paragraph shall be provided no less than thirty (30) days and no more than one hundred eighty (180) day period (ninety (90) day period for Plan Years beginning before January 1, 2007) before the Annuity Starting Date.
 - (iv) Written (or such other form as permitted by the Internal Revenue Service) consent of the Participant to the distribution must not be made before the Participant receives the notice and must not be made more than one hundred eighty (180) days (ninety (90) days for Plan Years beginning before January 1, 2007) before the Annuity Starting Date.
 - (v) No consent shall be valid if a significant detriment is imposed under the Plan on any Participant who does not consent to the distribution. Any such distribution may commence

less than thirty (30) days, subject to Section 5.6(a)(6), after the notice required under Regulation 1.411 (a)-1 l(c) is given, provided that: (1) the Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and (2) the Participant, after receiving the notice, affirmatively elects a distribution.

- (e) **Mandatory Distributions.** This Subsection shall be effective with respect to distributions made on and after March 28, 2005. The provisions of this Subsection do not affect the other provisions of the Plan relating to the form or timing of a distribution nor the consent rules that are applicable with respect to individuals other than Participants.
- (i) If a mandatory distribution of the Participant's Vested Accrued Benefit that is greater than \$1,000 is made in accordance with the provisions of the Plan providing for an automatic distribution to a Participant without the Participant's consent, and the Participant does not elect to have such distribution paid directly to an "eligible retirement plan" specified by the Participant in a direct rollover (in accordance with the direct rollover provisions of the Plan) or to receive the distribution directly, then the Administrator shall direct that the distribution be made in a direct rollover to an Individual Retirement Account described in Code Section 408(a) or an Individual Retirement Annuity described in Code Section 408(b). The Administrator may operationally implement this provision with respect to distributions that are \$1,000 or less.
- (f) All annuity Contracts (if any) that are purchased under this Plan shall be non-transferable when distributed. Furthermore, the terms of any annuity Contract purchased and distributed to a Participant or spouse shall comply with all of the requirements of the Plan.

Section 5.07 DISTRIBUTION OF BENEFITS UPON DEATH

- (a) **Qualified Pre-Retirement Survivor Annuity (QPSA).** A Vested Participant who dies before the Annuity Starting Date and who has a surviving spouse shall have the death benefit paid to the surviving spouse in the form of a Pre-Retirement Survivor Annuity. The Participant's spouse may direct that payment of the Pre-Retirement Survivor Annuity commence within a reasonable period after the Participant's death (but not later than the month in which the Participant would have attained the Earliest Retirement Age under the Plan if the Participant dies on or before the Earliest Retirement Age). If the spouse does not so direct, payment of such benefit will commence at the time the Participant would have attained the later of Normal Retirement Age or age 62. However, the spouse may elect a later commencement date, subject to the rules specified in Section 5.8. An unmarried Participant who dies before the Annuity Starting Date shall have the Accumulated Employee Contribution Benefit paid to the Participant's Beneficiary in the form of a life annuity.
- (b) **Consent.** If the present value of the Pre-Retirement Survivor Annuity derived from Employer and Employee contributions does not exceed \$5,000 at the time of distribution, then the Administrator shall direct the immediate distribution of the present value of the Pre-Retirement Survivor Annuity to the Participant's spouse. No distribution may be made under the preceding sentence after the Annuity Starting Date unless the spouse consents in writing (or in such other form as permitted by the Internal Revenue Service) to such distribution. If the value exceeds \$5,000, then an immediate distribution of the entire amount of the Pre-Retirement Survivor Annuity may be made to the surviving spouse, provided such surviving spouse consents in writing (or in such other form as permitted by the Internal Revenue Service) to such distribution. Any consent required under this paragraph must be obtained not more than one hundred eighty (180) days (ninety (90) days for Plan Years beginning before January 1, 2007) before commencement of the distribution and shall be made in a manner consistent with Section 5.6(a)(2). The present value in this regard shall be determined as provided in Section 1.41.
- (c) All annuity Contracts (if any) that are purchased under this Plan shall be non-transferable when distributed. Furthermore, the terms of any annuity Contract purchased and distributed to a spouse shall comply with all of the requirements of the Plan.

Section 5.08 MINIMUM DISTRIBUTION REQUIREMENTS

- (a) **General Rules.**
- (i) **Effective date.** The provisions of this Section are effective January 1, 2004; however, except as otherwise provided herein, the provisions of this Section will first apply for purposes of determining required minimum distributions for calendar years beginning on and after January 1, 2006.
- (ii) **Requirements of Treasury regulations incorporated.** All distributions required under this Section shall be determined and made in accordance with Code Section 401(a)(9), including

the incidental death benefit requirement in Code Section 401(a)(9XG), and the Regulations thereunder.

- (iii) Precedence. Subject to the qualified joint and survivor annuity requirements of the Plan, the requirements of this Section shall take precedence over any inconsistent provisions of the Plan.
- (iv) TEFRA Section 242(b)(2) elections.

- 1) Notwithstanding the other provisions of this Section, other than Section 5.8(a)(2), distributions may be made on behalf of any Participant, including a five percent (5%) owner, who has made a designation in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and in accordance with all of the following requirements (regardless of when such distributions commence):
 - a) The distribution by the Plan is one which would not have disqualified such plan under Code Section 401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.
 - b) The distribution is in accordance with a method of distribution designated by the Participant whose interest in the plan is being distributed or, if the Participant is deceased, by a beneficiary of such Participant.
 - c) Such designation was in writing, was signed by the Participant or beneficiary, and was made before January 1, 1984.
 - d) The Participant had accrued a benefit under the Plan as of December 31, 1983.
 - e) The method of distribution designated by the Participant or the beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Participant's death, the beneficiaries of the Participant listed in order of priority.
- 2) A distribution upon death will not be covered by the transitional rule of this Subsection unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Participant.
- 3) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Participant, or the beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in (i)(A) and (i)(E) of this Subsection.

- 4) If a designation is revoked, any subsequent distribution must satisfy the requirements of Code Section 401(a)(9) and the Regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Code Section 401 (a)(9) and the Regulations thereunder, but for the Section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).
- 5) In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Regulation Section 1.401(a)(9)-8, Q&A-14 and Q&A-15, shall apply.

(b) Time and manner of distribution.

- (i) Required beginning date. 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."
- (ii) Death of participant before distributions begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - 1) Life expectancy rule, spouse is beneficiary. If the Participant's surviving spouse is the Participant's sole "Designated Beneficiary," then distributions to the surviving spouse will begin by December 31st of the calendar year immediately following the calendar year in which the Participant died, or by December 31st of the calendar year in which the Participant would have attained age 70 1/2, if later.

For purposes of this Section 5.8(b) and Section 5.8(e), distributions are considered to begin on the Participant's "Required Beginning Date" (or, if Section 5.8(b)(2)(i) applies, the date distributions are required to begin to the surviving spouse under Section 5.8(b)(2)(i)). If annuity payments 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 Section 5.8(b)(2)(i)), the date distributions are considered to begin is the date distributions actually commence.

- (iii) Form of distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the "Required

Beginning Date," as of the first "Distribution Calendar Year" distributions will be made in accordance with Sections 5.8(c), 5.8(d), and 5.8(e). 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 thereunder.

- (c) Determination of amount to be distributed each year.
 - (i) General annuity requirements. A Participant who is required to begin payments as a result of attaining his or her "Required Beginning Date," whose interest has not been distributed in the form of an annuity purchased from an insurance company or in a single sum before such date, may receive such payments in the form of annuity payments under the Plan. Payments under such annuity must satisfy the following requirements:

- 1) The annuity distributions will be paid in periodic payments made at intervals not longer than one year;
- 2) The distribution period will be over a life (or lives) or over a period certain not longer than the period described in Section 5.8(d) or 5.8(e);
- 3) Once payments have begun over a period certain, a Participant may elect a change in the period certain with associated modifications in the annuity payments provided the following conditions are satisfied:
 - a) If, in a stream of annuity payments that otherwise satisfies Code Section 401(a)(9), a Participant elects to change the annuity payment period and the annuity payments are modified in association with that change, this modification will not cause the distributions to fail to satisfy Code Section 401(a)(9) provided the conditions set forth in Subsection (B) below are satisfied, and one of the following applies:
 - i) The modification occurs at the time that the Participant retires or in connection with a Plan termination;
 - ii) The annuity payments prior to modification are annuity payments paid over a period certain without life contingencies; or
 - iii) The annuity payments after modification are paid under a qualified joint and survivor annuity over the joint lives of the Participant and a "Designated Beneficiary," the Participant's spouse is the sole "Designated Beneficiary," and the modification occurs in connection with the Participant becoming married to such spouse.
 - b) In order to modify a stream of annuity payments in accordance with this Subsection, all of the following conditions must be satisfied:
 - i) The future payments under the modified stream satisfy Code Section 401(a)(9) and this Section (determined by treating the date of the change as a new Annuity Starting Date and the actuarial present value of the remaining payments prior to modification as the entire interest of the Participant);
 - ii) For purposes of Code Sections 415 and 417, the modification is treated as a new Annuity Starting Date;
 - iii) After taking into account the modification, the annuity stream satisfies Code Section 415 (determined at the original Annuity Starting Date, using the interest rates and mortality tables applicable to such date); and

- iv) The end point of the period certain, if any, for any modified payment period is not later than the end point available under Code Section 401 (a)(9) to the Participant at the original Annuity Starting Date.
- 4) Payments will either be nonincreasing or increase only to the extent permitted by one of the following conditions:
- a) By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that for a 12-month period ending in the year during which the increase occurs or the prior year;
 - b) By a percentage increase that occurs at specified times (e.g., at specified ages) and does not exceed the cumulative total of annual percentage increases in an "Eligible Cost-of-Living Index" since the Annuity Starting Date, or if later, the date of the most recent percentage increase. In cases providing such a cumulative increase, an actuarial increase may not be provided to reflect the fact that increases were not provided in the interim years;
 - c) To the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in Section 5.8(d) dies or is no longer the Participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p);
 - d) To allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the Participant's death;
 - e) To pay increased benefits that result from a Plan amendment or other increase in the Participant's Accrued Benefit under the Plan;
 - f) By a constant percentage, applied not less frequently than annually, at a rate that is less than five percent (5%) per year;
 - g) To provide a final payment upon the death of the Participant that does not exceed the excess of the actuarial present value of the Participant's accrued benefit (within the meaning of Code Section 41 t(a)(7)) calculated as of the Annuity Starting Date using the applicable interest rate and the applicable mortality table under Code Section 417(e) (or, if greater, the total amount of Employee Mandatory Contributions) over the total of payments before the death of the Participant; or
 - h) As a result of dividend or other payments that result from "Actuarial Gains," provided:
 - i) Actuarial gain is measured not less frequently than annually;

- ii) The resulting dividend or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured);
 - iii) The "Actuarial Gain" taken into account is limited to "Actuarial Gain" from investment experience;
 - iv) The assumed interest rate used to calculate such "Actuarial Gains" is not less than three percent (3%); and
 - v) The annuity payments are not also being increased by a constant percentage as described in Subsection (F) above.
- (ii) Amount required to be distributed by required beginning date.
- 1) In the case of a Participant whose interest in the Plan is being distributed as an annuity pursuant to Subsection (1) above, the amount that must be distributed on or before the Participant's "Required Beginning Date" (or, if the Participant dies before distributions begin, the date distributions are required to begin under Section 5.8(b)(2)(i)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first "Distribution Calendar Year" will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's "Required Beginning Date."
 - 2) In the case of a single sum distribution of a Participant's entire accrued benefit during a "Distribution Calendar Year," the amount that is the required minimum distribution for the "Distribution Calendar Year" (and thus not eligible for rollover under Code Section 402(c)) is determined under this paragraph. The portion of the single sum distribution that is a required minimum distribution is determined by treating the single sum distribution as a distribution from an individual account Plan and treating the amount of the single sum distribution as the Participant's account balance as of the end of the relevant valuation calendar year. If the single sum distribution is being made in the calendar year containing the "Required Beginning Date" and the required minimum distribution for the Participant's first "Distribution Calendar Year" has not been distributed, the portion of the single sum distribution that represents the required minimum distribution for the Participant's first and second "Distribution Calendar Year" is not eligible for rollover.
- (iii) Additional accruals after first distribution calendar year. Any additional benefits accruing to the Participant in a calendar year after the first "Distribution Calendar Year" will be distributed beginning with the first payment interval ending in the calendar year immediately following the

calendar year in which such amount accrues. Notwithstanding the preceding, the Plan will not fail to satisfy the requirements of this paragraph and Code Section 401(a)(9) merely because there is an administrative delay in the commencement of the distribution of the additional benefits accrued in a calendar year, provided that the actual payment of such amount commences as soon as practicable. However, payment must commence no later than the end of the first calendar year following the calendar year in which the additional benefit accrues, and the total amount paid during such first calendar year must be no less than the total amount that was required to be paid during that year under this paragraph.

- (iv) Death after distributions begin. If a Participant dies after distribution of the Participant's interest begins in the form of an annuity meeting the requirements of this Section, then the remaining portion of the Participant's interest will continue to be distributed over the remaining period over which distributions commenced.
- (d) Annuity distributions that commence during participant's lifetime.
- (i) Joint life annuities where the Beneficiary Is the Participant's Spouse. If distributions commence under a distribution option that is in the form of a joint and survivor annuity for the joint lives of the Participant and the Participant's spouse, the minimum distribution incidental benefit requirement will not be satisfied as of the date distributions commence unless, under the distribution option, the periodic annuity payment payable to the survivor does not at any time on and after the Participant's "Required Beginning Date" exceed the annuity payable to the Participant. In the case of an annuity that provides for increasing payments, the requirement of this Paragraph will not be violated merely because benefit payments to the beneficiary increase, provided the increase is determined in the same manner for the Participant and the beneficiary. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and the Participant's spouse and a period certain annuity, the preceding requirements will apply to annuity payments to be made to the "Designated Beneficiary" after the expiration of the period certain.
 - (ii) Joint life annuities where the Beneficiary is not the Participant's Spouse. If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a beneficiary other than the Participant's spouse, the minimum distribution incidental benefit requirement will not be satisfied as of the date distributions commence unless under the distribution option, the annuity payments to be made on and after the Participant's "Required Beginning Date" will satisfy the conditions of this Paragraph. The periodic annuity payment payable to the survivor must not at any time on and after the Participant's "Required Beginning Date" exceed the applicable percentage of the annuity payment payable to the Participant using the table set forth in Q&A-2(c)(2) of Section 1.401(a)(9)-6 of the Regulations. The applicable percentage is based on the adjusted Participant/beneficiary age difference. The adjusted Participant/beneficiary age difference is determined by first calculating the excess of the age of the Participant over the age of the beneficiary based on their ages on their birthdays in a calendar year. If the Participant is younger than age 70, the age difference determined in the previous sentence is reduced by the number of years that the Participant is younger than age 70 on the Participant's birthday in the calendar year that contains the Annuity Starting Date. In the case of an annuity that provides

for increasing payments, the requirement of this Paragraph will not be violated merely because benefit payments to the beneficiary increase, provided the increase is determined in the same manner for the Participant and the beneficiary. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a non-spouse beneficiary and a period certain annuity, the preceding requirements will apply to annuity payments to be made to the "Designated Beneficiary" after the expiration of the period certain.

- (iii) Period certain annuities. Unless the Participant's spouse is the sole "Designated Beneficiary" and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Regulation Section 1.401(a)(9)-9 for the calendar year that contains the Annuity Starting Date. If the Annuity Starting Date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Regulation Section 1.401(a)(9)-9 plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the Annuity Starting Date. If the Participant's spouse is the Participant's sole "Designated Beneficiary" and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this Section 5.8(d)(3), or the joint life and last survivor expectancy of the Participant and the Participant's spouse as determined under the Joint and Last Survivor Table set forth in Regulation Section 1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the calendar year that contains the Annuity Starting Date.
- (e) Minimum distributions where participant dies before date distributions begin.
 - (i) Participant survived by designated beneficiary and life expectancy rule. If the Participant dies before the date distribution of his or her interest begins and there is a "Designated Beneficiary," the Participant's entire interest will be distributed, beginning no later than the time described in Section 5.8(b)(2)(i), over the life of the "Designated Beneficiary" or over a period certain not exceeding:
 - 1) Unless the Annuity Starting Date is before the first "Distribution Calendar Year," the "Life Expectancy" of the "Designated Beneficiary" determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or
 - 2) If the Annuity Starting Date is before the first Distribution Calendar Year, the "Life Expectancy" of the "Designated Beneficiary" determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the Annuity Starting Date.
- (f) Definitions.
 - (i) Actuarial Gain.

"Actuarial Gain" means the difference between an amount determined using the actuarial assumptions (i.e., investment return, mortality, expense, and other similar assumptions) used to calculate the initial payments before adjustment for any increases and the amount determined under the actual experience with respect to those factors. Actuarial Gain also includes differences between the amount determined using actuarial assumptions when an annuity was purchased or commenced and such amount determined using actuarial assumptions used in calculating payments at the time the Actuarial Gain is determined.

(ii) Designated Beneficiary.

"Designated Beneficiary" means the individual who is designated as the beneficiary under Section 5.4 of the Plan and is the designated beneficiary under Code Section 401 (a)(9) and Regulation Section I .401(a)(9)-4.

(iii) Distribution Calendar Year.

"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 pursuant to Section 5.8(b).

(iv) Eligible cost-of-living index.

An "Eligible Cost-of-Living Index" means an index described below:

- 1) A consumer price index that is based on prices of all items (or all items excluding food and energy) and issued by the Bureau of Labor Statistics, including an index for a specific population (such as urban consumers or urban wage earners and clerical workers) and an index for a geographic area or areas (such as a given metropolitan area or state); or
- 2) A percentage adjustment based on a cost-of-living index described in Subsection (i) above, or a fixed percentage, if less. In any year when the cost-of-living index is lower than the fixed percentage, the fixed percentage may be treated as an increase in an Eligible Cost-of-Living Index, provided it does not exceed the sum of:
 - a) The cost-of-living index for that year, and
 - b) The accumulated excess of the annual cost-of-living index from each prior year over the fixed annual percentage used in that year (reduced by any amount previously utilized under this Subsection (ii)).

(v) Life expectancy.

"Life Expectancy" means the life expectancy as computed by use of the Single Life Table in Regulation Section I.401(a)(9)-9, Q&A-1.

(vi) Required beginning date.

"Required Beginning Date" means the April 1st of the calendar year following the later of (1) the calendar year in which the Participant attains age 70 1/2, or (2) if the Participant is not a "five (5) percent owner" at any time during the Plan Year ending with or within the calendar year in

which the Participant attains age 70 1/2, then the calendar year in which the Participant retires. "5-percent owner" means a Participant who is a 5-percent owner as defined in Code Section 416(i)(1)(B)(i) at any time during the Plan Year ending with or within the calendar year in which such owner attains age 70 1/2.

Section 5.09 TIME OF SEGREGATION OR DISTRIBUTION

Except as limited by Sections 5.6 and 5.7, whenever the Trustee is to make a distribution or to commence a series of payments the distribution or series of payments may be made or begun on such date or as soon thereafter as is practicable. However, unless a Participant elects in writing to defer the receipt of benefits (such election may not result in a death benefit that is more than incidental), the payment of benefits shall begin not later than the sixtieth (60th) day after the close of the Plan Year in which the latest of the following events occurs: (a) the date on which the Participant attains the earlier of age 65 or the Normal Retirement Age specified herein; (b) the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan; or (c) the date the Participant terminates service with the Employer.

Notwithstanding the foregoing, the failure of a Participant and, if applicable, the Participant's spouse, to consent to a distribution that is "immediately distributable" (within the meaning of Section 5.6), shall be deemed to be a **TJ** election to defer commencement of payment of any benefit sufficient to satisfy this Section.

Section 5.10 DISTRIBUTION FOR MINOR OR INCOMPETENT BENEFICIARY

In the event a distribution is to be made to a minor or incompetent individual, then the Administrator may direct that such distribution be paid to the court-appointed legal guardian or any other person authorized under state law to receive such distribution, or if none, then in the case of a minor Beneficiary, to a parent of such Beneficiary, or to the custodian for such Beneficiary under the Uniform Gift to Minors Act or Gift to Minors Act, if such is permitted by the laws of the state in which said Beneficiary resides. Such a payment to the guardian, custodian or parent of a minor or incompetent individual shall fully discharge the Trustee, Employer, and Plan from further liability on account thereof.

Section 5.11 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, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, to ascertain the whereabouts of such Participant or Beneficiary, the amount so distributable shall be forfeited and shall be used to reduce the cost of the Plan. Notwithstanding the foregoing, if the value of a Participant's Vested benefit derived from Employer and Employee contributions 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 Section 408(a) or an individual retirement annuity described in Code Section 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 benefit being forfeited, such benefit shall be restored

unadjusted for earnings or losses. However, regardless of the preceding, a benefit which 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.

Section 5.12 EFFECT OF SOCIAL SECURITY ACT

Benefits being paid to a Participant or Beneficiary under the terms of the Plan may not be decreased by reason of any post-separation Social Security benefit increases or by the increase of the Social Security wage base under Title II of the Social Security Act. Benefits to which a Participant has a Vested interest may not be decreased by reason of an increase in a benefit level or wage base under Title II of the Social Security Act.

Section 5.13 QUALIFIED DOMESTIC RELATIONS ORDER DISTRIBUTION

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 qualified domestic relations order. Furthermore, a distribution to an alternate payee shall be permitted if such distribution is authorized by a qualified domestic relations order, even if the affected Participant has not separated from service and has not reached the Earliest Retirement Age. For the purposes of this Section, "alternate payee" and "qualified domestic relations order" shall have the meaning set forth under Code Section 414(p).

A domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order ("QDRO") will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time the order is issued, including issuance after the Participant's death. A domestic relations order described in this paragraph is subject to the same requirements and protections that apply to QDROs.

Section 5.14 5.14 LIMITATION OF BENEFITS ON TERMINATION

- (a) Restrictions applicable to restricted employee. Benefits distributed to a "restricted employee" are restricted such that the payments are no greater than an amount equal to the payment that would be made on behalf of such individual under a straight life annuity that is the Actuarial Equivalent of the sum of the individual's Accrued Benefit, the individual's other benefits under the Plan (other than a social security supplement within the meaning of Regulation Section 1.411 (a)-7(c)(4)(ii)), and the amount the individual is entitled to receive under a social security supplement. However, the limitation of this Section 5.14 shall not apply if:
 - (i) after payment of the benefit to an individual described above, the value of Plan assets equals or exceeds one-hundred-ten percent (110%) of the value of current liabilities;
 - (ii) the value of the benefits for an individual described above is less than 1 percent of the value of current liabilities before distribution; or
 - (iii) the value of the benefits payable under the Plan to an individual described above does not exceed \$5,000.

- (b) Benefit For purposes of this Section, benefit includes any periodic income, any withdrawal values payable to a living Participant, and any death benefits not provided for by insurance on the individual's life.
- (c) Payment permitted if security provided. An individual's otherwise restricted benefit may be distributed in full to the affected individual if, prior to receipt of the restricted amount, the individual enters into a written agreement with the Administrator to secure repayment to the Plan of the restricted amount. The restricted amount is the excess of the amounts distributed to the individual (accumulated with reasonable interest) over the amounts that could have been distributed to the individual under the straight life annuity described above (accumulated with reasonable interest). The individual may secure repayment of the restricted amount upon distribution by:
 - (i) entering into an agreement for promptly depositing in escrow with an acceptable depository, property having a fair market value equal to at least one-hundred-twenty-five percent (125%) of the restricted amount;
 - (ii) providing a bank letter of credit in an amount equal to at least one-hundred percent (100%) of the restricted amount; or
 - (iii) posting a bond equal to at least one-hundred percent (100%) of the restricted amount. The bond must be furnished by an insurance company, bonding company or other surety for federal bonds.

- (d) Escrow. The escrow arrangement described in (c)(l) above may permit an individual to withdraw from escrow amounts in excess of one-hundred-twenty-five percent (125%) of the restricted amount. If the market value of the property in an escrow account falls below one-hundred-ten percent (110%) of the remaining restricted amount, the individual must deposit additional property to bring the value of the property held by the depository up to one-hundred-twenty-five percent (125%) of the restricted amount. The escrow arrangement may provide that the individual has the right to receive any income from the property placed in escrow, subject to the individual's obligation to deposit additional property, as set forth in the preceding sentence.
- (e) Limitation on bond or letter of credit. A surety or bank may release any liability on a bond or letter of credit in excess of one-hundred percent (100%) of the restricted amount.
- (f) Restrictions no longer apply. If the Administrator certifies to the depository, surety or bank that the individual (or the individual's estate) is no longer obligated to repay any restricted amount, a depository may deliver to the individual any property held under an escrow arrangement, and a surety or bank may release any liability on an individual's bond or letter of credit.
- (g) Definition of Restricted Employee. For purposes of this Section, "Restricted Employee" means any Highly Compensated Employee or former Highly Compensated Employee. However, a Highly Compensated Employee or former Highly Compensated Employee need not be treated as a "Restricted Employee" in the current year if the Highly Compensated Employee or former Highly Compensated Employee is not one of the twenty-five (25) (or larger number chosen by the Employer) nonexcludable Employees and former Employees of the Employer with the largest amount of compensation in the current or any prior year.

Section 5.15 DIRECT ROLLOVER

- (a) Right to direct rollover. 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 eligible rollover distribution, or any portion of an eligible rollover distribution that is equal to at least \$500, paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (b) Definitions. For purposes of this Section the following definitions shall apply:
 - (i) 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 often years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); the portion of any other distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized

appreciation with respect to employer securities); any hardship distribution; and any other distribution that is reasonably expected to total less than \$200 during a year.

Notwithstanding the above, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax voluntary Employee contributions which are not includible in gross income. However, such portion may be transferred only to (1) an individual retirement account or annuity described in Code Section 408(a) or (b), or (2) for taxable years beginning after December 31, 2001 and before January 1, 2007, to a qualified trust that is part of a defined contribution plan 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, or (3) for taxable years beginning after December 31, 2006, to a qualified trust or to an annuity contract described in 403(b), if such trust or contract 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.

- (ii) An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), (other than an endowment contract), a qualified defined contribution plan described in Code Section 401(a) that accepts the distributee's rollover distribution, an annuity plan described in Code Section 403(a), an eligible deferred compensation plan described in Code Section 457(b) which is maintained by an eligible employer described in Code Section 457(e)(1)(A), and an annuity contract described in Code Section 403(b), that accepts the distributee's eligible rollover distribution. The definition of "eligible retirement plan" shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Code Section 414(p). In the case of "distributee" who is a non-spouse designated beneficiary, (1) the direct rollover may be made only to an individual retirement account described in Code Section 408(a) or annuity described in Code Section 408(b) ("IRA") that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code Section 402(c)(1), and (2) the determination of any required minimum distribution required under Code Section 401(a)(9) that is ineligible for rollover shall be made in accordance with Notice 2007-7, Q&A 17 and 18.

For taxable years beginning after December 31, 2006, a Participant may elect to transfer Employee (after-tax) contributions by means of a direct rollover to a qualified plan or to a Code Section 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.

For distributions after December 31, 2006, 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 be an "eligible rollover distribution."

For distributions made after December 31, 2007, a Participant or beneficiary may elect to roll over directly an "eligible rollover distribution" to a Roth IRA described in Code Section 408A(b).

- (iii) A "distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse. A distributee also includes the Participant's non-spouse designated beneficiary under Section 5.4 of the Plan.
 - (iv) A "direct rollover" is a payment by the Plan to the eligible retirement plan specified by the distributee.
- (c) Participant notice. A Participant entitled to an eligible rollover distribution must receive a written explanation of the right to a direct rollover, the tax consequences of not making a direct rollover, and, if applicable, any available special income tax elections. The notice must be provided within the same 30 - 180 day timeframe applicable to the Participant consent notice. The direct rollover notice must be provided to all Participants, unless the total amount the Participant will receive as a distribution during the calendar year is expected to be less than \$200.

ARTICLE VI. CODE SECTION 415 LIMITATIONS

Section 6.01 ANNUAL BENEFIT

- (a) Annual Benefit. For purposes of this Article, "annual benefit" means a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this Article. For a Participant who has or will have distributions commencing at more than one Annuity Starting Date, the "Annual Benefit" shall be determined as of each such Annuity Starting Date (and shall satisfy the limitations of this article as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other Annuity Starting Dates. For this purpose, the determination of whether a new Annuity Starting Date has occurred shall be made without regard to Regulations Section 1.401(a)-20, Q&A 1 O(d), and with regard to Regulations Section 1.415(b)(1)(iii)(B) and (C). No actuarial adjustment to the benefit shall be made for (a) survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the Participant's benefit were paid in another form; (b) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or (c) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Code Section 417(e)(3) and would otherwise satisfy the limitations of this Article, and the Plan provides that the amount payable under the form of benefit in any "limitation year" shall not exceed the limits of this Article applicable at the Annuity Starting Date, as increased in subsequent years pursuant to Code Section 415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

The determination of the "Annual Benefit" shall take into account social security supplements described in Code Section 41 J(a)(9) and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant Regulations Section 1.41 I(d)-4, Q&A-3(c), but shall disregard benefits attributable to Employee contributions or rollover contributions.

The "Annual Benefit" otherwise payable to a Participant under the Plan at any time shall not exceed the "Maximum Permissible Benefit" described by Section 6.2. If the benefit the Participant would otherwise accrue in a "limitation year" would produce an "Annual Benefit" in excess of the "Maximum Permissible Benefit," then the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the "Maximum Permissible Benefit."

- (b) Grandfather provision. The application of the provisions of this Section shall not cause the maximum permissible benefit for any Participant to be less than the Participant's accrued benefit under all the defined benefit plans of the Employer or a predecessor employer as of the end of the last "limitation year" beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, Regulations, and other published guidance relating to Code Section 415 in effect as of the end of the last "limitation year" beginning before July 1, 2007, as described in Regulation Section 1.415(a)-(g)(4).
- (c) High three-year average compensation. For purposes of the Plan's provisions reflecting Code Section 415(b)(3) (i.e., limiting the annual benefit payable to no more than 100% of the Participant's average annual compensation), a Participant's average compensation shall be the average compensation for the three (3) consecutive years of service with the Employer that produces the highest average, except that a Participant's compensation for a year of service shall not include Compensation in excess of the limitation under Code Section 401(a)(17) that is in effect for the calendar year in which such year of service begins. If the Participant has less than three consecutive years of service, compensation shall be averaged over the Participant's longest consecutive period of service, including fractions of years, but not less than one year. In the case of a Participant who is rehired by the Employer after a severance of employment, the Participant's high three-year average compensation shall be calculated by excluding all years for which the Participant performs no services for and receives no compensation from the Employer (the "break period"), and by treating the years immediately preceding and following the break period as consecutive.
- (d) Old-Law Benefit. Notwithstanding the foregoing, the Old Law Benefit shall be determined on the basis of Code Section 415(b)(2)(E) as in effect on December 7, 1994.

Section 6.02 MAXIMUM ANNUAL BENEFIT

- (a) Maximum benefit. Notwithstanding the foregoing and subject to the exceptions and adjustments below, the maximum "annual benefit" payable to a Participant under this Plan in any "limitation year" shall equal the lesser of:
 - (i) Defined Benefit Dollar Limitation. \$160,000, as adjusted, effective January 1 of each year, under Code Section 415(d) in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. Such dollar limitation as adjusted under Code Section 415(d) will apply to "limitation years" ending with or within the calendar year for which the adjustment applies; or
 - Post-Severance Adjustment to Dollar Limit. In the case of a Participant who has had a severance from employment with the Employer, the defined benefit dollar limitation applicable to the Participant in any "limitation year" beginning after the date of severance shall be automatically adjusted under Code Section 415(d).

- (ii) **Defined Benefit Compensation Limitation.** One hundred percent (100%) of the Participant's "415 Compensation" averaged over the three consecutive "limitation years" (or actual number of "limitation years" for Employees who have been employed for less than three consecutive "limitation years") during which the Employee had the greatest aggregate "415 Compensation" from the Employer.

Post-Severance Adjustment to Compensation Limit. In the case of a Participant who has had a severance from employment with the Employer, the defined benefit compensation limitation applicable to the Participant in any "limitation year" beginning after the date of severance shall be automatically adjusted under Code Section 415(d).

- (b) Limitation year. For purposes of applying the limitations of Code Section 415, the "limitation year" shall be the Plan Year. 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.

Section 6.03 ADJUSTMENTS TO ANNUAL BENEFIT AND LIMITATIONS

- (a) Adjustment for Early Payment (Limitation Years beginning on or after July 1, 2007). If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the "Defined Benefit Dollar Limitation" for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the "Defined Benefit Dollar Limitation" (adjusted under Plan Section 6.3(f) for years of participation less than ten (10), if required) with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for the Annuity Starting Date (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date). However, if the Plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the "Defined Benefit Dollar Limitation" for the Participant's Annuity Starting Date is the lesser of the limitation determined under the preceding sentence and the "Defined Benefit Dollar Limitation" (adjusted under Plan Section 6.3(f) for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this Section and without applying the provisions of Section 6.3(e).
- (b) Adjustment for Early Payment (Limitation Years beginning prior to July 1, 2007). If the "annual benefit" of a Participant begins prior to age 62, then for Limitation Years beginning before July 1, 2007, the Defined Benefit Dollar Limitation of Section 6.2(a)(i) applicable to the Participant at the earlier age is the actuarial equivalent of the dollar limitation under Code Section 415(b)(1)(A) (as adjusted under Code Section 415(d)), with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate and mortality table or other tabular factor specified in the Plan for determining Actuarial Equivalence for early retirement purposes, or (2) a five percent (5%) interest rate assumption and the "applicable mortality table."

- (c) Adjustment for Late Payment (Limitation Years beginning on or after July 1, 2007). If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the "Defined Benefit Dollar Limitation" at the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the "Defined Benefit Dollar Limitation" (adjusted under Plan Section 6.3(f) for years of participation less than ten (10), if required), with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for that Annuity Starting Date as defined in Plan Section 1.4 (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date). However, if the plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the "Defined Benefit Dollar Limitation" at the Participants Annuity Starting Date is the lesser of the limitation determined under the preceding sentence and the "Defined Benefit Dollar Limitation" (adjusted under Plan Section 6.3(f) for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan at the Participant's Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 65, both determined without applying the limitations of this Article and without applying the provisions of Section 6.3(e). For this purpose, the adjusted immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Participant who is age 65 and has the same accrued benefit as the Participant.
- (d) Adjustment for Late Payment (Limitation Years beginning before July 1, 2007). If the "annual benefit" of a Participant begins after age 65, then for Limitation Years beginning before July 1, 2007, the Defined Benefit Dollar Limitation of Section 6.2(a)(l) applicable to the Participant at the earlier age is the actuarial equivalent of the dollar limitation under Code Section 415(b)(l)(A) (as adjusted under Code Section 415(d)), with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate an mortality table or other tabular factor specified in the Plan for determining Actuarial Equivalence for early retirement purposes, or (2) a five percent (5%) interest rate assumption and the "applicable mortality table."

- (e) No Mortality Adjustment for Certain Payments. Except as provided in Section 6.3(a) and Section 6.3(c), no adjustment shall be made to the "Defined Benefit Dollar Limitation" to reflect the probability of a Participant's death between the Annuity Starting Date and age 62, or between age 65 and the Annuity Starting Date, as applicable, if benefits are not forfeited upon the death of the Participant prior to the Annuity Starting Date. To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Participant's death if the Plan does not charge Participants for providing a qualified preretirement survivor annuity, as defined in Code Section 417(c) upon the Participant's death.
- (f) Adjustment for Less Than 10 Years of Participation or Service. If a Participant has fewer than 10 years of participation in the Plan, then the Defined Benefit Dollar Limitation of Section 6.2(a)(1) shall be multiplied by a fraction, the numerator of which is the number of years (or part thereof) of participation in the Plan, and the denominator of which is 10. However, in no event shall such fraction be less than 1/10th.

Furthermore, if a Participant has fewer than 10 years of service with the Employer, then the Defined Benefit Compensation Limitation of Section 6.2(a)(2) shall be multiplied by a fraction, the numerator of which is the number of years (or part thereof) of service with the Employer, and the denominator of which is 10. However, in no event shall such fraction be less than 1/10th.

For purposes of this Subsection, "year of participation" means each accrual computation period for which the following conditions are met: (1) the Participant is credited with at least the number of Hours of Service for benefit accrual purposes, required under the terms of the Plan in order to accrue a benefit for the accrual computation period, and (2) the Participant is included as a Participant under the eligibility provisions of the Plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a year of participation credited to the Participant shall equal the amount of benefit accrual service credited to the Participant for such accrual computation period. A Participant who is permanently and totally disabled within the meaning of Code Section 415(c)(3)(C)(i) for an accrual computation period shall receive a year of participation with respect to the period. In addition, for a Participant to receive a year of participation (or part thereof) for an accrual computation period, the Plan must be established no later than the last day of such accrual computation period. In no event will more than one year of participation be credited for any 12-month period.

- (g) Actuarial Equivalence. For purposes of adjusting the "annual benefit" to a straight life annuity, the equivalent "annual benefit" shall be (i) for Limitation Years beginning on or after July 1, 2007, the greater of the annual amount of the straight life annuity commencing at the same Annuity Starting Date, and the annual amount of a straight life annuity commencing at the same Annuity starting date that has the same actuarial present value as the Participant's form of benefit computed using five percent (5%) interest rate assumption and the "Applicable Mortality Table," and (ii) for Limitation Years beginning before July 1, 2007, the annual amount of a straight life annuity commencing at the same Annuity starting Date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount: (1) the interest rate and mortality table or other tabular factor specified in the plan for adjusting benefits in the same form; and (2) a five percent (5%) interest rate assumption and the "Applicable Mortality Table." If the "annual benefit" is paid in a form other than a nondecreasing life annuity payable for a period not less than the life of a Participant or, in the case of a Pre-Retirement Survivor Annuity, the life of the surviving spouse, the "Applicable Interest Rate" shall be substituted for five percent (5%) in the preceding sentence. With respect to Plan Years beginning after December 31, 2003 but not after December 31, 2005, for purposes of adjusting the "annual benefit" to a straight life annuity, if the "annual benefit" is paid in any form other than a nondecreasing life annuity payable for a period not less than the life of a Participant or, in the case of a Pre-Retirement Survivor Annuity, the life of the surviving spouse, then the equivalent "annual benefit" shall be the greater of (1) the equivalent "annual benefit" computed using the Plan interest rate and Plan mortality table (or other tabular factor), or (2) the equivalent "annual benefit" computed using five and one-half percent (5.5%) and the "applicable mortality table." With respect to Plan Years beginning after December 31, 2005, for purposes of adjusting the "annual benefit" to a straight life annuity, if the "annual benefit" is paid in any form other than a nondecreasing life annuity payable for a period not less than the life of a Participant or, in the case of a Pre-Retirement Survivor Annuity, the life of the surviving spouse, then the equivalent "annual benefit" shall be the greatest of (1) the equivalent "annual benefit" computed using the Plan interest rate and Plan mortality table (or other tabular factor), or (2) the equivalent "annual benefit" computed using five and one-half percent (5.5%) and the "applicable mortality table," or (3) 100/105 of the equivalent "annual benefit" computed using the "applicable interest rate" and the "applicable mortality table." For Annuity Starting Dates beginning in or after 2009, if the Plan is maintained by an eligible employer as defined in Code Section 408(p)(2)(C)(i), the Actuarially Equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greater annual amount: (a) the interest rate and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and (b) a 5.5 percent (5.5%) interest rate assumption and the Applicable Mortality Table.

For purposes of this subsection, the applicable mortality table for Plan Years prior to January 1, 2009 is described by IRS Revenue Ruling 2001-62, and for subsequent years, the applicable mortality table is described by IRS Revenue Ruling 2007-67.

- (h) Time of Adjustment. For purposes of Sections 6.1, 6.3(a) and 6.3(c), no adjustments under Code Section 415(d) shall be taken into account before the "limitation year" for which such adjustment first takes effect.
- (i) Benefits not Subject to Adjustment. For purposes of Section 6.1, no actuarial adjustment to the benefit is required for (1) the value of a qualified joint and survivor annuity, (2) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, pre-retirement death benefits, and post-retirement medical benefits), and (3) the value of post-retirement cost-of-living increases made in accordance with Code Section 415(d) and Regulation 1.415-3(c)(2)(iii). The "annual benefit" does not include any benefits attributable to after-tax voluntary Employee contributions or rollover contributions, or the assets transferred from a qualified plan that was not maintained by the Employer.
- (j) Old Law Benefit. Notwithstanding the foregoing, if the benefit is not payable in the form of an annual benefit within the meaning of Code Section 415(b)(2)(A), the equivalent annual benefit determined in Section 6.3(g) is computed separately with respect to the Old Law Benefit (not to exceed the total Plan benefit) and the portion of the total Plan benefit that exceeds the Old Law Benefit. The determination of the annual benefit that is equivalent to the portion of the Plan benefit that is in excess of the Old Law Benefit must reflect the changes to Code Section 415 and the regulations thereunder since made by Section 1449(b) of the Small Business Job Protection Act of 1996 to Code Section 415(b)(2)(A) as provided in Section 6.3(g). The results of these two separate computations are added together to determine the equivalent annual benefit.

Section 6.04 ANNUAL BENEFIT NOT IN EXCESS OF \$10,000

This Plan may pay an "annual benefit" to any Participant in excess of the Participant's maximum "annual benefit" if the "annual benefit" derived from Employer contributions under this Plan and all other defined benefit plans maintained by the Employer does not in the aggregate exceed \$10,000 for the "limitation year" or for any prior "limitation year" and the Employer has not at any time maintained a defined contribution plan, a welfare benefit fund under which amounts attributable to post-retirement medical benefits are allocated to separate accounts of key employees (as defined in Code Section 419(A)(4)(3)), or an individual medical account in which the Participant participated. For purposes of this paragraph, if this Plan provides for voluntary or mandatory Employee contributions, such contributions will not be considered a separate defined contribution plan maintained by the Employer.

However, if a Participant has fewer than 10 years of service with the Employer, then the \$10,000 threshold of the previous paragraph shall be multiplied by a fraction, the numerator of which is the number of years (or part thereof) of service with the Employer, and the denominator of which is 10. However, in no event shall such fraction be less than 1/10th.

Section 6.05 OTHER RULES

- (a) Benefits under terminated plans. If a defined benefit plan maintained by the Employer has terminated with sufficient assets for the payment of benefit liabilities of all plan Participants and a Participant in the plan has not yet commenced benefits under the plan, the benefits provided pursuant to the annuities purchased to provide the Participant's benefits under the terminated plan at each possible Annuity Starting Date shall be taken into account in applying the limitations of this Article. If there are not sufficient assets for the payment of all Participants' benefit liabilities, the benefits taken into account shall be the benefits that are actually provided to the Participant under the terminated plan.
- (b) Benefits transferred from the Plan. If a Participant's benefits under a defined benefit plan maintained by the employer are transferred to another defined benefit plan maintained by the employer and the transfer is not a transfer of distributable benefits pursuant Regulations Section 1.411(d)-4, Q&A-3(c), the transferred benefits are not treated as being provided under the transferor plan (but are taken into account as benefits provided under the transferee plan). If a Participant's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan that is not maintained by the Employer and the transfer is not a transfer of distributable benefits pursuant to Regulations Section 1.411 (d)-4, Q&A-3(c), then the transferred benefits are treated by the Employer's Plan as if such benefits were provided under annuities purchased to provide benefits under a plan maintained by the Employer that terminated immediately prior to the transfer with sufficient assets to pay all Participants' benefit liabilities under the Plan. If a Participant's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan in a transfer of distributable benefits pursuant to Regulations Section 1.411 (d)-4, Q&A-3(c), the amount transferred is treated as a benefit paid from the transferor plan.
- (c) Formerly affiliated plans of the Employer. A formerly affiliated plan of an Employer shall be treated as a plan maintained by the Employer, but the formerly affiliated plan shall be treated as if it had terminated immediately prior to the cessation of affiliation with sufficient assets to pay Participants' benefit liabilities under the Plan and had purchased annuities to provide benefits. A formerly affiliated plan of the Employer means a plan that, immediately prior to the cessation of affiliation, was actually maintained by the Employer and, immediately after the cessation of affiliation, is not actually maintained by the Employer. For this purpose, cessation of affiliation means the event that causes an entity to no longer be considered the Employer, such as the sale of a member controlled group of corporations, as defined in Code Section 414(b), as modified by Code Section 415(h), to an unrelated corporation, or that causes a plan to not actually be maintained by the Employer, such as transfer of plan sponsorship outside a controlled group.

- (d) Plans of a "Predecessor Employer". If the Employer maintains a defined benefit plan that provides benefits accrued by a Participant while performing services for a "Predecessor Employer," then the Participant's benefits under a plan maintained by the "Predecessor Employer" shall be treated as provided under a plan maintained by the Employer. However, for this purpose, the plan of the "Predecessor Employer" shall be treated as if it had terminated immediately prior to the event giving rise to the "Predecessor Employer" relationship with sufficient assets to pay participants' benefit liabilities under the plan, and had purchased annuities to provide benefits; the Employer and the "Predecessor Employer" shall be treated as if they were a single employer immediately prior to such event and as unrelated employers immediately after the event; and if the event giving rise to the predecessor relationship is a benefit transfer, the transferred benefits shall be excluded in determining the benefits provided under the plan of the "Predecessor Employer". A former entity that antedates the Employer is also a "Predecessor Employer" with respect to a Participant if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.
- (e) Employer. "Employer" means, for purposes of this Article, the Employer that adopts this plan, and all members of a controlled group of corporations, as defined in Code Section 414(b), as modified by Code Section 415(h)), all commonly controlled trades or businesses (as defined in Code Section 414(c), as modified, except in the case of a brother-sister group of trades or businesses under common control, by Code Section 415(h)), or affiliated service groups (as defined in Code Section 414(m)) of which the adopting Employer is a part, and any other entity required to be aggregated with the employer pursuant to Code Section 414(o).
- (f) Adjustment if in two defined benefit plans. If the Participant is, or has ever been, a participant in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the Employer or a "Predecessor Employer", the sum of the Participant's "Annual Benefits" from all such plans may not exceed the "Maximum Permissible Benefit." Where the Participant's employer-provided benefits under all such defined benefit plans (determined as of the same age) would exceed the "Maximum Permissible Benefit" applicable at that age, the Employer shall set forth in an Addendum the method by which the plans will limit a Participant's benefit accruals under one or both of the plans so as to avoid exceeding any limitation imposed by this Section.
- (g) Special rules. The limitations of this Article shall be determined and applied taking into account the rules in Regulations Section 1.415(f)-(d), (e) and (h).

ARTICLE VII. PLAN AMENDMENT

Section 7.01 AMENDMENT

- (a) General rule on Employer amendment. The Employer shall have the right at any time to amend this Plan, subject to the limitations of this Section. Any such amendment shall become effective as provided therein upon its execution, and unless otherwise provided in the amendment, shall only apply to those Participants who have an Hour of Service after the effective date of the amendment. The Trustee shall not be required to execute any such amendment unless the amendment affects the duties of the Trustee hereunder.
- (b) Impermissible amendments. No amendment to the Plan shall be effective if it authorizes or permits any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries or estates; or causes or permits any portion of the Trust Fund to revert to or become property of the Employer.
- (c) Anti-cutback restrictions. Except as permitted by Regulations, no Plan amendment or transaction having the effect of a Plan amendment (such as a merger, plan transfer or similar transaction) shall be effective to the extent it eliminates or reduces any Section 411(d)(6) protected benefit or adds or modifies conditions relating to Section 411(d)(6) protected benefits which results in a further restriction on such benefit unless such Section 411(d)(6) protected benefits are preserved with respect to benefits accrued as of the later of the adoption date or effective date of the amendment. "Section 411(d)(6) protected benefits" are benefits described in Code Section 411(d)(6)(A), early retirement benefits and retirement-type subsidies, and optional forms of benefit. Notwithstanding the preceding, a Participant's Accrued Benefit, early retirement benefit, retirement-type subsidy, or optional form of benefit may be reduced to the extent permitted under Code Section 412(c)(8) (for Plan Years beginning on or before December 31, 2007) or Code Section 412(d)(2) (for Plan Years beginning after December 31, 2007), or to the extent permitted under Regulations Sections 1.411(d)-3 and 1.411(d)-4.
- (d) Increase In current liability. For Plan Years beginning on or before December 31, 2007, if this Plan is amended and an effect of such amendment is to increase current liability (as defined in Code Section 401(a)(29)(E) (as then in effect)) under the Plan for a Plan Year, and the funded current liability percentage of the Plan for the Plan Year in which the amendment takes effect is less than sixty percent (60%), including the amount of the unfunded current liability under the Plan attributable to the amendment, the amendment shall not take effect until the Employer (or any member of a controlled group which includes the Employer) provides security to the Plan. The form and amount of such security shall satisfy the requirements of Code Section 401(a)(29)(B) and (C) (as then in effect). Such security may be released provided the requirements of Code Section 401(a)(29)(D) (as then in effect) are satisfied.
- (e) No age-related curtailment. No amendment shall be effective to the extent that it reduces or eliminates benefit accruals because of the attainment of any age.

- (f) Permissible reductions. Notwithstanding the subsections above, a Participant's Accrued Benefit, early retirement benefit, retirement-type subsidy, or optional form of benefit may be reduced to the extent permitted under Code Section 412(c)(8) (for Plan Years beginning on or before December 31, 2007) or Code Section 412(d)(2) (for Plan Years beginning after December 31, 2007), or to the extent permitted under Regulations Sections 1.411(d)-3 and 1.411(d)-4.

ARTICLE VIII. PLAN TERMINATION

Section 8.01 TERMINATION OF PLAN

- (a) Plan termination. The Employer shall have the right to terminate the Plan by delivering to the Trustee and Administrator written notice of such termination. Upon any termination (full or partial), all amounts shall be allocated in accordance with the provisions hereof and the Accrued Benefit, to the extent funded as of such date, of each affected Participant shall become fully Vested and shall not thereafter be subject to forfeiture. However, Participants who were not fully Vested at the time they received a complete distribution of their Vested benefits prior to the date of termination, shall not become entitled to any additional Vested benefits on account of Plan termination. The preceding sentence does not apply to Participants affected by a partial termination by operation of law. Upon full termination of the Plan, the Employer shall direct the distribution of the assets in the Trust Fund to the Participants in a manner which is consistent with Section 5.6. In such case, the Trustee shall distribute the assets to the remaining Participants in the Plan and to retired Participants in cash or through the purchase of irrevocable deferred commitments from an insurer, subject to provision for expenses of administration or liquidation. Such distributions shall be allocated in the following order to the extent of the sufficiency of such assets, basing such allocation on the Accrued Benefit for each such Participant at the date of termination of the Plan:
- (i) to provide pensions to retired Participants who have retired under the Plan prior to its termination without reference to the order of retirement;
 - (ii) to provide Normal Retirement Benefits to Participants who have reached their Normal Retirement Dates but have not retired on the date of termination, without reference to the order in which they shall have reached their 'Normal Retirement Date;
 - (iii) to provide Normal Retirement Benefits to Participants who have not yet reached their Normal Retirement Date on the date of termination, without reference to the order in which they will reach their Normal Retirement Date. Such benefits will be based upon Accrued Benefits as of the date of termination. The balance, if any, of the assets due to erroneous actuarial computation held by the Trust Fund after such allocation shall be returned to the Employer, but only after the satisfaction of all liabilities with respect to Participants and pensions under the Plan. The portion of the excess attributable to Employee contributions will be paid to the Participants who made these contributions.



- (b) If the Employer abandons the Plan, then the Trustee (or Insurer) may terminate the Plan in accordance with applicable IRS regulations and other guidance.

Section 8.02 LIMITATION OF BENEFITS ON PLAN TERMINATION

In the event of Plan termination, the benefit of any Highly Compensated Participant or any highly compensated former Employee shall be limited to a benefit that is nondiscriminatory under Code Section 401(a)(4) (see Section 5.14).

ARTICLE IX. MERGER, CONSOLIDATION OR TRANSFER OF ASSETS

Section 9.01 MERGER, CONSOLIDATION, AND TRANSFER REQUIREMENTS

Before this Plan can be merged or consolidated with any other qualified plan, or its assets or liabilities transferred to any other qualified plan, the Administrator must secure (and file with the Secretary of Treasury at least thirty (30) days beforehand) a certification from a government-enrolled actuary that the benefits which would be received by a Participant of this Plan, in the event of a termination of the Plan immediately after such transfer, merger or consolidation, are at least equal to the benefits the Participant would have received if the Plan had terminated immediately before the transfer, merger or consolidation, and such transfer, merger or consolidation does not otherwise result in the elimination or reduction of any "Section 411 (d)(6) protected benefits" as described in Section 7.1.

ARTICLE X. MISCELLANEOUS

Section 10.01 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.

Section 10.02 10.2 ALIENATION

- (a) General rule. Subject to the exceptions provided below, and as otherwise permitted by the Code, no benefit which shall be payable out of the Trust Fund 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 by the Trustee, except to such extent as may be required by law.
- (b) Exception for QDROs. Subsection (a) shall not apply to a "qualified domestic relations order" defined in Code Section 414(p), and those other domestic relations orders permitted to be so treated by the Administrator under the provisions of the Retirement Equity Act of 1984. The Administrator shall establish a written procedure to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Further, to the extent provided under a "qualified domestic relations order," a former spouse of a Participant shall be treated as the spouse or surviving spouse for all purposes under the Plan.
- (c) Exception for certain debts to Plan. Subsection (a) shall not apply to 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 in accordance with Code Sections 401(a)(13)(C) and (D).

Section 10.03 CONSTRUCTION OF PLAN

- (a) Applicable state laws. This Plan shall be construed and enforced according to the Code and the laws of the Commonwealth of Kentucky, other than its laws respecting choice of law.
- (b) Single subsections. This Plan may contain single subsections. The existence of such single subsections shall not constitute scrivener's errors.

Section 10.04 GENDER AND NUMBER

- (a) Masculine and feminine. Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply.
- (b) Singular and plural. 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.

Section 10.05 LEGAL ACTION

In the event any claim, suit, or proceeding is brought regarding the Trust and/or Plan established hereunder to which the Trustee, the Employer or the Administrator may be a party, and such claim, suit, or proceeding is resolved in favor of the Trustee, the Employer or the Administrator, they shall be entitled to be reimbursed from the Trust Fund for any and all costs, attorney's fees, and other expenses pertaining thereto incurred by them for which they shall have become liable.

Section 10.06 PROHIBITION AGAINST DIVERSION OF FUNDS

- (a) General rule. Except as provided below and otherwise specifically permitted by law, it shall be impossible by operation of the Plan or of the Trust, by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of any Trust Fund maintained pursuant to the Plan or any funds contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Participants or their Beneficiaries.
- (b) Mistake of fact. In the event the Employer shall make an excessive contribution under a mistake of fact, the Employer may demand repayment of such excessive contribution at any time within one (1) year following the time of payment and the Trustees 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.
- (c) Except as specifically stated in the Plan, any contribution made by the Employer to the Plan (if the Employer is not tax-exempt) is conditioned upon the deductibility of the contribution by the Employer under the Code and, to the extent any such deduction is disallowed, the Employer may, within one (1) year following the final determination of the disallowance, whether by agreement with the Internal Revenue Service or by final decision of a competent jurisdiction, demand repayment of such disallowed contribution and such contribution shall be returned to the Employer within one (1) year following the disallowance. Earnings of the Plan attributable to the contribution may not be returned to the Employer, but any losses attributable thereto must reduce the amount so returned.

Section 10.07 EMPLOYER'S AND TRUSTEE'S PROTECTIVE CLAUSE

The Employer, Administrator and Trustee, and their successors, shall not 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.

Section 10.08 INSURER'S PROTECTIVE CLAUSE

Except as otherwise agreed upon in writing between the Employer and the insurer, an insurer which issues any 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 Trustee, and shall have no duty to see to the application

of any funds paid to the Trustee, nor be required to question any actions directed by the Trustee. Regardless of any provision of this Plan, the insurer shall not be required to take or permit any action or allow any benefit or privilege contrary to the terms of any Contract which it issues hereunder, or the rules of the insurer.

Section 10.09 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 the Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Trustee 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 Trustee or Employer.

Section 10.10 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.

Section 10.11 NAMED FIDUCIARIES AND ALLOCATION OF RESPONSIBILITY

The "named Fiduciaries" of this Plan are (1) the Employer, (2) the Administrator, (3) the Trustee, and (4) any Investment Manager appointed hereunder. The named Fiduciaries 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. In general, the Employer shall have the sole responsibility for making the contributions provided for under Section 4.1; and shall have the authority to appoint and remove the Trustee and the Administrator; and to amend or terminate, in whole or in part, the Plan. The Administrator pursuant to the delegation as set forth in Section 2.2 hereinabove shall have the sole responsibility for the administration of the Plan, including, but not limited to, formulation of the Plan's "funding policy and method"; adoption and maintenance of an investment policy statement; and the items specified at Article II of the Plan, as the same may be allocated or delegated thereunder. The Trustee shall have the sole responsibility of management of the assets held under the Trust, except to the extent directed pursuant to Article II or with respect to those assets, the management of which has been assigned to an Investment Manager, who shall be solely responsible for the management of the assets assigned to it, all as specifically provided in the Plan. Each named Fiduciary 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 named Fiduciary may rely upon any such direction, information or action of another named Fiduciary 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 named Fiduciary shall be responsible for the proper exercise of its own powers, duties, responsibilities and obligations under the Plan as specified or allocated herein. No named Fiduciary shall guarantee the Trust Fund in any manner against investment loss or depreciation in asset value. Any person or group may serve in more than one Fiduciary capacity.

Section 10.12 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.

Section 10.13 APPROVAL BY INTERNAL REVENUE SERVICE

Notwithstanding anything herein to the contrary, if, pursuant to an application for qualification filed by or on behalf of the Plan by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan is adopted, or such later date that the Secretary of the Treasury may prescribe, the Commissioner of Internal Revenue Service or the Commissioner's delegate should determine that the Plan does not initially qualify as a tax-exempt 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 (1) year after the date the initial qualification is denied, and the Plan shall terminate, and the Trustee 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.

Section 10.14 UNIFORMITY

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner. In the event of any conflict between the terms of this Plan and any Contract purchased hereunder, the Plan provisions shall control.

Section 10.15 ELECTRONIC MEDIA

The Administrator may use telephonic or electronic media to satisfy any notice requirements required by this Plan, to the extent permissible under regulations (or other generally applicable guidance). In addition, a Participant's consent to an immediate distribution may be provided through telephonic or electronic means, to the extent permissible under regulations (or other generally applicable guidance). The Administrator also may use telephonic or electronic media to conduct plan transactions such as enrolling Participants, electing (and changing) investment allocations, applying for Plan loans, and other transactions, to the extent permissible under regulations (or other generally applicable guidance).

Section 10.16 PLAN CORRECTION

The Administrator in conjunction with the Employer may undertake such correction of Plan errors as the Administrator deems necessary, including correction to preserve tax qualification of the Plan under Code Section 401 (a) or to correct a fiduciary breach. Without limiting the Administrator's authority under the prior sentence, the Administrator, as it determines to be reasonable and appropriate, may undertake correction of Plan document, operational, demographic and employer eligibility failures under a method described in the Plan or under the IRS Employee Plans Compliance Resolution System ("EPCRS") or any successor program to EPCRS. The Administrator, as it determines to be reasonable and appropriate, also may undertake or assist the appropriate Fiduciary or Plan official in undertaking correction of a fiduciary breach.



IN WITNESS WHEREOF, this Plan has been executed the day and year first above written.

Lextran Change Order Report

August 2020

Contractor	Type of Service	Original Price	Change	Reason for Change	Prior Change Orders
S&D Construction	Construction/Bus Stop Improvements	\$32,930.56	\$32,930.56	Nine stops have been shifted from the first phase to the second phase of RAMP construction due to engineering work. Lextran and S&D Construction have agreed to shift nine stops that were originally planned for the second phase of RAMP to the first phase with no change in total contract cost.	\$11,184.00