

**City of Lincoln**  
**Employees Retirement Plan and Trust**

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**City of Lincoln  
Employees Retirement Plan and Trust**

**This Agreement** is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2009, by the City of Lincoln, Nebraska a municipal corporation (hereafter referred to as the "Sponsoring Employer") and the City of Lincoln Retirement Committee (hereafter referred to as the "Trustee").

**I n t r o d u c t i o n**

- The Sponsoring Employer established a defined contribution pension plan (the "Plan") on April 1, 1961 in order to provide retirement and other incidental benefits to Employees who are eligible to participate in the plan;
- Effective as of November 4, 2009, the Sponsoring Employer elects to amend the Plan and Trust to comply with the applicable requirements of the Internal Revenue Code of 1986, as amended by the Uruguay Round Agreements Act, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Internal Revenue Service Restructuring and Reform Act of 1998, the Community Renewal Tax Relief Act of 2000, the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Job Creation and Workers Assistance Act of 2002, and all applicable rulings and regulations thereunder.

## ARTICLE 1 Definitions

### 1.1 Administrator

The term "Administrator" means the Sponsoring Employer unless the Sponsoring Employer appoints another Administrator pursuant to Section 8.1 of the Plan.

### 1.2 Adopting Employer

The term "Adopting Employer" means any entity which adopts this Plan with the consent of the Sponsoring Employer. An Employee's transfer to or from an Employer or Adopting Employer will not affect his or her Participant's Account balance, total Years of Service (or Periods of Service) and total Years of Service as a Participant (or Periods of Service as a Participant). Adopting Employers are subject to the following:

- (a) **Multiple Employer Plan Provisions Under Code §413(c).** Notwithstanding any other provision in this Plan to the contrary, unless this Plan is a collectively bargained plan under Regulation §1.413-1(a), the following provisions apply to any Adopting Employer that is not an Affiliated Employer of the Sponsor:
  - (1) **Instances of Separate Employer Testing.** Employees of any such Adopting Employer will be treated separately for testing under Code §401(a)(4), §401(k), §401(m) and, if the Sponsoring Employer and the Adopting Employer do not share Employees, Code §416. Furthermore, the terms of Code §410(b) will be applied separately on an employer-by-employer basis by the Sponsoring Employer (and the Adopting Employers which are part of the Affiliated Group which includes the Sponsor) and each Adopting Employer that is not an Affiliated Employer of the Sponsor, taking into account the generally applicable rules described in Code §401(a)(5), §414(b) and §414(c).
  - (2) **Instances of Single Employer Testing.** Employees of the Adopting Employer will be treated as part of a single Employer plan for purposes of eligibility to participate under Article 2 and under the provisions of Code §410(a). Furthermore, the terms of Code §411 relating to Vesting will be applied as if all Employees of all such Adopting Employers and the Sponsoring Employer were employed by a single Employer, except that the rules regarding Breaks in Service will be applied under such regulations as may be prescribed by the Secretary of Labor.
  - (3) **Common Trust.** Contributions made by any such Adopting Employer will be held in a common Trust Fund with contributions made by the Sponsor, and all such contributions will be available to pay the benefits of any Participant (or Beneficiary thereof) who is an Employee of the Sponsoring Employer or any such Adopting Employer.
  - (4) **Common Disqualification Provision.** The failure of either the Sponsoring Employer or any such Adopting Employer to satisfy the qualification requirements under the provisions of Code §401(a), as modified by the provisions of Code §413(c), will result in the disqualification of the Plan for all such Employers maintaining the Plan.
  - (5) **Plan Becomes Individually Designed.** If the combination of the Sponsoring Employer and/or any Adopting Employer creates a multiple employer plan as that term is defined in Code §413(c), this Plan will be deemed to be an individually designed plan.
- (b) **Plan Contributions.** Unless otherwise agreed to by the parties, or unless otherwise required by law, no Employer will have any obligation to make contributions to this Plan for or on behalf of the Employees of any other Employer. If an Employee is employed by more than one Employer, any contributions made on his or her behalf will be prorated between those Employers on the basis of Compensation received from each Employer. If any Employer is unable to make a contribution to the Plan for any Plan Year, any Employer which is an Affiliated Employer of such Employer may make an additional contribution to the Plan on behalf of any Employee of the non-contributing Employer. If one or more Adopting Employers are not Affiliated Employers of the Sponsoring Employer, (1) if the Plan was established after December 31, 1988, for each Adopting Employer which is not an Affiliated Employer with the Sponsoring Employer the method for determining Employer contributions will provide for an amount of required Employer contributions under Code §412 which is at least equal to that which would have been required if the Adopting Employer would have maintained a separate plan; and (2) if the Plan was established on

or before December 31, 1988, the amount of required Employer contributions under Code §412 will be determined as if all Participants were employed by a single Employer.

- (c) **Termination of Adoption.** An Adopting Employer may terminate participation in the Plan by delivering written notice to the Sponsoring Employer, the Administrator and the Trustee; but in accordance with Article 9, only the Sponsoring Employer can terminate the Plan. If a request for and approval of a transfer of assets from this Plan to any successor qualified retirement plan maintained by the Adopting Employer or its successor is not made in accordance with Section 9.3, Participants who are no longer Employees because an Adopting Employer terminates its Plan participation will only be entitled to the commencement of their benefits (1) in the case of Participants who are no longer Employees of an Adopting Employer that is an Affiliated Employer of the Sponsoring Employer, in accordance with Article 5 after their death, retirement, Disability or Termination of Employment from the Adopting Employer or former Adopting Employer; and (2) in the case of Participants who are no longer Employees of an Adopting Employer that is not an Affiliated Employer of the Sponsoring Employer, within a reasonable time thereafter as if the Plan had been terminated under Section 9.2.
- (d) **Plan Amendments.** Any amendment to this Plan that is adopted by the Sponsoring Employer, at any time, will be deemed to be accepted by any Adopting Employer.

### 1.3 Age

The term "Age" means actual attained age unless otherwise specified.

### 1.4 Allocation Period

The term "Allocation Period" means a period of 12 consecutive months or less for which (1) an Employer contribution is made and allocated under the terms of the Plan; (2) Forfeitures are allocated under the terms of the Plan; or (3) daily earnings and losses are allocated under the terms of the Plan.

### 1.5 Anniversary Date

The term "Anniversary Date" means December 31st.

### 1.6 Benefiting Participant

The term "Benefiting Participant" means a Participant who is eligible to receive an allocation of Employer contributions or Forfeitures under Section 3.2 as of the last day of an Allocation Period.

### 1.7 Beneficiary

The term "Beneficiary" means the person or persons designated by the Participant to whom the share of a deceased Participant's total account is payable, subject to the restrictions of Sections 4.3 and 5.2.

### 1.8 Break in Service

The term "Break in Service" means a 1-Year Period of Severance.

### 1.9 Code

The term "Code" means the Internal Revenue Code of 1986, as amended, and the regulations and rulings promulgated thereunder by the Internal Revenue Service. All citations to sections of the Code and regulations are to such sections as they may from time to time be amended or renumbered.

### 1.10 Code §3401 Compensation

The term "Code §3401 Compensation" means wages within the meaning of Code §3401(a) that are subject to income tax withholding at the source. Code §3401 Compensation is determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

### 1.11 Code §415 Compensation

The term "Code §415 Compensation" means earned income, wages, salaries, fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan, including, but not limited to, commissions paid salespersons, compensation for services based on a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a non-accountable plan as described in Reg. §1.62-2(c). For Limitation Years beginning after December 31, 1991, Code §415 Compensation includes amounts paid or made available. Notwithstanding the preceding sentence, Code §415 Compensation for a Participant in a defined contribution plan who is permanently and totally disabled (as defined

in Code §22(e)(3)) is the Code §415 Compensation such Participant would have received for the Limitation Year if the Participant had been paid at the rate of Code §415 Compensation paid immediately before becoming permanently and totally disabled; for Limitation Years beginning before January 1, 1997, such imputed Code §415 Compensation for the disabled Participant may be counted only if the Participant is not a HCE and contributions made on behalf of such Participant are nonforfeitable when made. Code §415 Compensation will be determined subject to the following provisions:

- (a) **Exclusion of Certain Amounts.** Code §415 Compensation does not include (1) Employer contributions to a plan of deferred compensation which are not includible in gross income for the taxable year in which contributed, or Employer contributions to a simplified employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation; (2) amounts realized from a non-qualified stock option, or when restricted stock or property held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture; (3) amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and (4) other amounts which receive special tax benefits, or contributions made by an Employer (whether or not under a salary deferral agreement) towards the purchase of an annuity described in Code §403(b) (whether or not the amounts are excludible from an Employee's gross income).
- (b) **Treatment of Elective Deferrals and Certain Other Amounts.** For Limitation Years beginning on or after January 1, 1998, Code §415 Compensation paid or made available will also include any elective deferrals as defined in Code §402(e)(3), and amounts contributed or deferred at the election of the Employee which were not includible in gross income by reason of Code §125, or Code §457. Code §415 Compensation will also include elective amounts that are not includible in the gross income of the Employee by reason of Code §72(f)(4) for Limitation Years beginning on or after January 1, 2001, (or if elected by the Administrator on a non-discriminatory basis, any earlier Limitation Year beginning on or after January 1, 1998).
- (c) **Treatment of Severance Pay.** Effective January 1, 2005, Compensation does not include amounts paid after termination of employment unless the payment is made within 2½ months after Severance of Employment and the Compensation falls into either of two categories: (1) payments the Employee would have received had he or she continue employment which are regular compensation, bonuses, commissions, overtime, etc.; or (2) payments for unused sick leave, vacation time, etc. which the employee could have used if employment continued. However, any other post-severance payments are not Compensation, even if the employee receives them within 2½ months after termination. Severance pay, nonqualified deferred compensation and parachute payments received after employment termination are never considered Compensation for Plan purposes. However, if an Employer continues to pay an Employee after the Employee enters active United States military duty, that pay is considered Compensation, provided it doesn't exceed the pay the Employee would have received if he or she had remained with the Employer.

## 1.12 Compensation

The term "Compensation" means, for each type of contribution, an Employee's Form W-2 Compensation for the Plan Year, subject to the following provisions:

- (a) **Treatment of Elective Deferrals and Certain Other Amounts.** Employer contribution amounts made pursuant to a salary deferral agreement which were not currently includible in an Employee's gross income by reason of Code §125, Code §402(e)(3), Code §402(h)(1)(B), and Code §403(b) will be included. Compensation will also include elective amounts that are not includible in the gross income of the Employee by reason of Code §72(f)(4) for Limitation Years beginning on or after January 1, 2001, (or if elected by the Administrator on a non-discriminatory basis, any earlier Limitation Year beginning on or after January 1, 1998).
- (b) **Exclusion of Certain Amounts Received By an Employee.** In determining Compensation for purposes other than the Code §415 limitations under Article 6, except with respect to any excluded amounts in (a) above, Compensation will be included in determining Compensation for Plan Years beginning on or after January 1, 1998. In addition, if elected by the Administrator on a non-discriminatory basis, Compensation will also include elective amounts that are not includible in the gross income of the Employee by reason of Code §132(f)(4), beginning with the Plan Year elected by the Administrator but not earlier than the Plan Year beginning on or after January 1, 1998.

- (c) **Compensation Received Prior To Becoming A Participant:** Amounts which would otherwise be considered Compensation under this paragraph but which are received by an Employee prior to the date the Employee becomes a Participant in the Plan will not be considered Compensation for purposes of this paragraph.
- (d) **Compensation Received While in an Ineligible Class.** Compensation for purposes of this paragraph (a) will exclude any amount received while an Employee is not a member of an eligible class of Employees as described in Section 2.1(a).
- (e) **Code §401(a)(17) Limit.** Notwithstanding any provision of this Section to the contrary, Compensation for any Compensation Determination Period will not exceed the limitation set forth in Code §401(a)(17) as in effect for that Compensation Determination Period. If a Compensation Determination Period is less than 12 consecutive months, the Code §401(a)(17) limitation will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12. If Compensation for any prior Compensation Determination Period is used in determining a Participant's Plan benefits for the current Plan Year, the Compensation for such prior Compensation Determination Period is subject to the applicable Code §401(a)(17) limitation as in effect for that prior period.

### 1.13 Disability

The term "Disability" means a physical or mental condition arising after an Employee has become a Participant which, totally and permanently prevents the Participant from performing his or her customary duties for the Employer. The determination as to whether a Participant has suffered a Disability will be made by a physician acceptable to the Administrator. If a difference of opinion arises between the Participant and the Administrator as to whether the Participant has suffered a Disability, it will be settled by a majority decision of three physicians, one to be appointed by the Administrator, one to be appointed by the Participant, and the third to be appointed by the two physicians first appointed herein.

Notwithstanding the foregoing to the contrary, the term Disability for purposes of this Plan will not include any disability arising from any of the following: chronic or excessive use of intoxicants or other substances, intentionally self-inflicted injury or sickness and an unlawful act or enterprise by the Participant.

### 1.14 Early Retirement Age

The term "Early Retirement Age" means the first day of any month coinciding with or next following the date a Participant attains Age 50 and completes 25 continuous Years of Service. For Eligible Employees employed prior to September 1, 2000, the Early Retirement Date shall be the earliest date resulting from either the above-mentioned provisions or the date a Participant attains age 55 and has completed at least 20 continuous Years of Service.

### 1.15 Employee

The term "Employee" means (1) a regular employee, as defined in Chapter 2.76 of the Lincoln Municipal Code and who has been employed for more than twenty (20) hours per week and more than five (5) months in each year of the period of continuous employment required hereunder; and (2) any person who is considered a Leased Employee but who is not covered by a plan described in Code §414(n)(5), or is covered by a plan described in Code §414(n)(5) but Leased Employees constitute more than 20% of the Employer's non-highly compensated workforce. The determination of Employee status will be made in accordance with the following:

- (a) **Independent Contractors.** The term Employee will not include any individual who is not reported on the payroll records of the Employer or an Affiliated Employer as a common law employee. If such person is later determined by the Sponsoring Employer or by a court or governmental agency to be an Employee or to have been an Employee, he or she will only be eligible for Plan participation prospectively and may participate in the Plan as of the next entry date set forth in Section 2.2 following such determination and after the satisfaction of all other eligibility requirements. However, the Sponsoring Employer may elect at any time to amend the Plan at any time to reclassify any individual described herein as a member of an eligible class of Employees retroactively applied for one or more prior Plan Years because the Plan failed to satisfy for such Plan Year one of the tests set forth in Code §410(b)(1)(A) or Code §§410(b)(1)(B) and (C), or for any other reason required to maintain the tax exempt status of the Plan.
- (b) **Undocumented Workers.** The term Employee will not include any individual who does not possess the proper legal credentials necessary to work legally in the United States. If an individual enters the Plan and

is later determined to lack the necessary credentials, he or she will no longer be deemed an Employee and his or her Participant's Account, if any, will be deemed a Forfeiture.

- (c) **Employees Covered Under Another Retirement Plan.** The term Employee will not include employees covered under any other retirement plan funded by the City of Lincoln.

**1.16 Employer**

The term "Employer" means the Sponsoring Employer and any Adopting Employer. As to any Employee, the Employer at the time of reference means the employer of such Employee.

**1.17 Fiscal Year**

The term "Fiscal Year" means the Employer's 12 consecutive month accounting year beginning on September 1st and ending the following August 31st. If the Fiscal Year is changed, a short Fiscal Year will be established beginning the day after the last day of the Fiscal Year in effect before the change and ending on the last day of the new Fiscal Year.

**1.18 Forfeiture**

The term "Forfeiture" means the amount by which a Participant's Account balance exceeds his or her Vested Interest upon the earlier to occur of (a) the date the Participant receives a distribution of his or her Vested Interest under Article 5; or (b) the date the Participant incurs five consecutive Breaks in Service after Termination of Employment. No Forfeitures will occur solely as a result of the withdrawal of a Participant's own contributions and the actual earnings thereon to the Plan or a Participant's transfer to an Affiliated Employer or Adopting Employer. All Forfeitures will be placed in the Forfeiture Account pending allocation pursuant to Section 3.4.

The term Forfeiture will also mean any amounts removed from a Participant's Account for any reason (including but not limited to forfeiture as a result of an inadvertent violation of a Plan limit or the inclusion of an ineligible Employee) that cannot be returned to the Employer. No Forfeitures will occur solely as a result of either the withdrawal of a Participant's own contributions to the Plan or a Participant's transfer to an Adopting Employer. All Forfeitures will be held in the Forfeiture Account pending allocation pursuant to Section 3.4.

**1.19 Form W-2 Compensation**

The term "Form W-2 Compensation" means wages within the meaning of Code §3401(a) and all other payments of compensation actually paid or made available in gross income to an Employee by the Employer in the course of the Employer's trade or business for which the Employer is required to furnish the Employee a Form W-2 under Code §6041(d), §6051(a)(3) and §6052. Compensation must be determined without regard to any rules limiting remuneration included in wages based on the nature or location of the employment or services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

**1.20 Hour of Service**

The term "Hour of Service" means, with respect to any provision of the Plan in which service is determined by the elapsed time method, each hour for which an Employee is paid, or is entitled to payment, by the Employer or an Affiliated Employer for the performance of duties. With respect to any provision of the Plan in which service is determined by counting an Employee's Hours of Service, the meaning of the term "Hour of Service" will be determined in accordance with the following provisions:

- (a) **Determination of Hours.** The term Hour of Service means (1) each hour an Employee is paid, or entitled to payment, for the performance of duties for the Employer or an Affiliated Employer, which will be credited to the Employee for the computation period in which the duties are performed; (2) each hour for which an Employee is paid, or entitled to payment, by the Employer or an Affiliated Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence, except that no more than 501 hours will be credited under this clause (2) for any single continuous period (whether or not such period occurs in a single computation period); and (3) each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer or an Affiliated Employer, except that the same hours will not be credited both under clause (1) or clause (2) and under this clause (3), and these hours will be credited 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. Hours of Service will be calculated and credited pursuant to DOL Regulation §2530.200b-2(b) and (c), which are incorporated herein by reference.

- (b) **Maternity/Paternity Leave.** In determining if a Break in Service for participation and vesting has occurred in a computation period, an individual on Maternity or Paternity Leave will receive credit for up to 501 hours which would otherwise have been credited but for such absence, or in any case in which such hours cannot be determined, 8 hours per day of such absence. Hours credited for Maternity or Paternity Leave will be credited in the computation period in which the absence begins if the crediting is necessary to prevent a Break in Service in that period, or in all other cases, in the following computation period.
- (c) **Use of Equivalencies.** Notwithstanding paragraph (a), the Administrator may elect for all Employees or for one or more different classifications of Employees (provided such classifications are reasonable and are consistently applied) to apply one or more of the following equivalency methods in determining the Hours of Service of an Employee. Under such equivalency methods, an Employee will be credited with (1) 190 Hours of Service for each month he or she is paid or entitled to payment for at least one Hour of Service; or (2) 95 Hours of Service for each semi-monthly period in which he or she is paid or entitled to payment for at least one Hour of Service; (3) 45 Hours of Service for each week he or she is paid or entitled to payment for at least one Hour of Service; or (4) 10 Hours of Service for each day he or she is paid or entitled to payment for at least one Hour of Service.

#### **1.21 Leased Employee**

The term "Leased Employee" means, for Plan Years beginning on or after January 1, 1997, any person within the meaning of Code §414(n)(2) and §414(o) who is not reported on the payroll records of the Employer as a common law employee and who provides services to the Employer if (1) the services are provided under an agreement between the Employer and a leasing organization; (2) the person has performed services for the Employer or for the Employer and related persons as determined under Code §414(n)(6) on a substantially full time basis for a period of at least one year; and (3) the services are performed under the primary direction and control of the Employer. Contributions or benefits provided to a Leased Employee by the leasing organization which are attributable to services performed for the Employer will be treated as provided by the Employer. A Leased Employee will not be considered an Employee of the recipient if he or she is covered by a money purchase plan providing (1) a non-integrated Employer contribution rate of at least 10% of Code §415 Compensation, including amounts contributed by the Employer pursuant to a salary deferral agreement which are excludible from the Leased Employee's gross income under a cafeteria plan covered by Code §125, a cash or deferred plan under Code §401(k), a SEP under Code §408(k) or a tax-deferred annuity under Code §403(b), and also including, for Plan Years beginning on or after January 1, 2001, any elective amounts that are not includible in the gross income of the Leased Employee because of Code §132(f)(4); (2) immediate participation; and (3) full and immediate vesting. This exclusion is only available if Leased Employees do not constitute more than 20% of the recipient's non-highly compensated work force.

#### **1.22 Limitation Year**

The term "Limitation Year" means Plan year.

#### **1.23 Mandatory Employee Contribution**

The term "Mandatory Employee Contributions" means the specified percentage of his or her Compensation which a Participant contributes to the Plan in order to receive an allocation of Employer contributions and Forfeitures. With respect to the Allocation Period in which a Participant terminates employment, Mandatory Employee Contributions may not be required in order to share in the Employer contribution for an Allocation Period. The Employer shall apply such requirements in a uniform manner to all similarly situated Participants. Mandatory Employee Contributions will be considered "pick-up" contributions under Code §414(h). In order to be considered a "pick-up" contribution pursuant to section 414(h)(2) of the Code and be treated as an employer contribution as opposed to a cash or deferred election, such contribution must be in compliance with [Revenue Ruling 2006-43](#) and the Participant shall have no option to opt out of such contribution requirement.

#### **1.24 Mandatory Employee Contribution Account**

The term "Mandatory Employee Contribution Account" means the account to which a Participant's Mandatory Employee Contribution are allocated.

#### **1.25 Maternity or Paternity Leave**

The term "Maternity or Paternity Leave" means that an Employee is absent from work because of the Employee's pregnancy; the birth of the Employee's child; the placement of a child with the Employee in connection with the

adoption of such child by the Employee; or the need to care for such child for a period beginning immediately following the child's birth or placement as set forth above.

**1.26 Month of Service**

The term "Month of Service" means a calendar month during any part of which an Employee completed an Hour of Service. Except, however, a Participant shall be credited with a Month of Service for each month during the 12-month computation period in which he has not incurred a 1-Year Break in Service.

**1.27 Normal Form of Distribution**

The term "Normal Form of Distribution" means a lump sum.

**1.28 Normal Retirement Age**

The term "Normal Retirement Age" means the date a Participant reaches Age 62. There is no mandatory retirement Age.

**1.29 Normal Retirement Date**

The term "Normal Retirement Date" means the first day of the month coinciding with or next following the date a Participant reaches Normal Retirement Age.

**1.30 Optional Form of Distribution**

The term "Optional Form of Distribution" means a form of distribution other than the Normal Form of Distribution, as set forth in Section 5.1, Section 5.3 and Section 5.4.

**1.31 Participant**

The term "Participant" means any Employee who has met the eligibility and participation requirements of the Plan. However, an individual who is no longer an Employee will cease to be a Participant if his or her entire Plan benefit (1) is fully guaranteed by an insurance company and legally enforceable at the sole choice of such individual against such insurance company, provided that a contract, Policy, or certificate describing the individual's Plan benefits has been issued to such individual; (2) is paid in a lump sum distribution which represents such individual's entire interest in the Plan; or (3) is paid in some other form of distribution and the final payment thereunder has been made.

**1.32 Participant's Account**

The term "Participant's Account" means the account to which is credited a Participant's share of Employer contributions, earnings or losses, and, if applicable, Forfeitures.

**1.33 Period of Service**

With respect to any provision of the Plan in which service is determined by the elapsed time method, the term "Period of Service" means a period during which the Employee is employed with the Employer commencing on an Employee's Employment Commencement Date or Reemployment Commencement Date and ending on his or her Severance from Employment. For any provision of the Plan in which an Employee's service is determined by his or her Period of Service, a 1-Year Period of Service and all other Periods of Service will be determined in accordance with the following provisions:

- (a) **Credit for an Hour of Service as a Period of Service.** If an Employee performs an Hour of Service during a period which would otherwise be considered a Period of Severance under paragraph (c)(1) or (2) below, the Plan must count such period and the Employee will receive credit for such as a Period of Service.
- (b) **Employment Commencement Date.** The Employment Commencement Date is the first day an Employee performs an Hour of Service for the Employer. The Reemployment Commencement Date is the first day following a Period of Severance on which an Employee performs an Hour of Service for the Employer.
- (c) **Period of Severance.** A Period of Severance is the period beginning on the Severance from Employment and ending on the Reemployment Commencement Date. A Participant will incur a 1-Year Period of Severance if the Employee fails to perform an Hour of Service during a 12-consecutive month period following the earlier of either (1) the Severance from Employment on which an Employee retires, dies, quits or is discharged from employment by the Employer, or (2) the Severance from Employment on which an Employee remains absent from service with the Employer (with or without pay) for any reason

other than the Employee retiring, dying, quitting or being discharged from employment by the Employer, such as for vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. In the case of a Participant who is on Maternity or Paternity Leave, the 12-consecutive month period beginning on the first anniversary of the first day of such Maternity or Paternity Leave will not constitute a Period of Severance. If the Employee does perform an Hour of Service during the periods indicated in (1) or (2) above, the Plan must take into account such period and the Employee will receive credit for such as a Period of Service.

- (d) **Aggregating Periods of Service and Fractional Periods of Service.** A 1-Year Period of Service is a 12- consecutive month Period of Service. An Employee will receive credit for Periods of Service of less than 12 consecutive months by aggregating, subject to the limits in paragraph (f) and (g), all non-successive Periods of Service and all Periods of Service which are fractional years or which do not constitute a whole 1-Year Period of Service, whether or not consecutive. Fractional periods of a year are expressed in terms of days, on the basis that a day of service is credited if an Employee completes an Hour of Service during such day, and on the basis that 12 months of service (30 days being deemed to be a month in the case of the aggregation of fractional months) or 365 days of service equals a 1-Year Period of Service.
- (e) **Prior Service Credit.** An Employee will receive credit for all Periods of Service with the Employer. In addition, if the Employer maintains the plan of a predecessor employer, service with such employer will be treated as service for the Employer.
- (f) **Reemployment Before a 1-Year Period of Severance.** If an Employee incurs a Severance from Employment but is reemployed by an Employer or an Affiliated Employer before incurring a 1-Year Period of Severance, Periods of Service and employment (and if the Employee was a Participant and is reemployed by an Employer, Plan participation) will not be deemed to have been interrupted.
- (g) **Reemployment After a Period of Severance.** If an Employee terminates employment but is reemployed by the Employer or an Affiliated Employer after a 1-Year Period of Severance, his or her Periods of Service prior to the 1-Year Period of Severance will be counted retroactively only after such Employee has completed a 1-Year Period of Service from the Employee's Re-employment Commencement Date.

**1.34 Period of Severance**

See the definition Period of Service above.

**1.35 Plan**

The term "Plan" means the City of Lincoln Employees Retirement Plan and Trust established by the Sponsoring Employer, as amended from time to time.

**1.36 Plan Year**

The term "Plan Year" means the Plan's twelve month accounting year beginning January 1st and ending the following December 31st.

**1.37 Regulation**

The term "Regulation" means the Income Tax Regulations as promulgated by the Secretary of the Treasury or his delegate, and as amended and/or renumbered from time to time.

**1.38 Required Beginning Date**

Required Beginning Date. The term "Required Beginning Date" means the later of Age 70½ or actual retirement. Notwithstanding the foregoing, if a Participant made a distribution election prior to January 1, 1984 pursuant to §242(b) of the Tax Equity and Fiscal Responsibility Act (TEFRA), his or her benefit will be distributed at the time and in the manner set forth in the election provided it has not been revoked, and further provided that it provides a method of distribution of benefits which satisfies the provisions of Code §401(a)(9) as in effect prior to the enactment of TEFRA.

**1.39 Retirement Committee**

The Term "Retirement Committee" means a committee established to supervise the operation of the Plan. However, the Employer will be responsible for the general administration of the Plan except for the specific functions which are delegated to the Retirement Committee.

- 1.40 Rollover Account**  
The terms "Rollover Account" means the account to which a Participant's Rollover Contributions, if any, are allocated.
- 1.41 Rollover Contribution (or Rollover)**  
The terms "Rollover Contribution" and "Rollover" mean an amount which is eligible for tax free rollover treatment and which is transferred to this Plan from a qualified retirement plan under Code §401(a), a qualified annuity under Code §403(b) and a governmental plan under Code §457(b).
- 1.42 Severance from Employment**  
The term "Severance from Employment" means the date on which an Employee retires, dies, quits or is discharged from employment by the Employer; or if earlier the first anniversary of the date on which an Employee remains absent from service with the Employer (with or without pay) for any reason other than the Employee retiring, dying, quitting or being discharged from employment by the Employer, such as for vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.
- 1.43 Sponsoring Employer**  
The term "Sponsoring Employer" means the City of Lincoln (and any successor thereto that elects to assume sponsorship of this Plan). The Sponsoring Employer must be a state government or a political subdivision thereof and/or any agency or instrumentality of either of the foregoing, including treating the District of Columbia as a State as provided under Code §7701(a)(10).
- 1.44 Termination of Employment**  
The term "Termination of Employment" means that a Participant has ceased to be an Employee for reasons other than retirement, death, or Disability.
- 1.45 Terminated Participant**  
The term "Terminated Participant" means a Participant who has ceased to be an Employee for reasons other than retirement, death or Disability.
- 1.46 Transfer Contribution**  
The term "Transfer Contribution" means a non-taxable transfer of a Participant's benefit directly from another qualified plan to this Plan (for example, as a result of a plan merger). For accounting and record keeping purposes, Transfer Contributions will be identical to Rollover Contributions.
- 1.47 Trustee**  
The term "Trustee" means the persons or entity named as trustee or trustees of the Trust. The term Trustee will also mean custodian if a custodian is appointed by the Sponsoring Employer.
- 1.48 Trust (or Trust Fund)**  
The term "Trust" or "Trust Fund" means the assets of the Plan. The term Trust or Trust Fund will also mean any custodial agreement entered into by the Sponsoring Employer.
- 1.49 Valuation Date**  
The term "Valuation Date" means the date on which the Trustee determines the value of the Trust Fund. The Trust Fund must be valued at least annually as of the last day of the Plan Year, but the Administrator can elect to have all or any portion of the assets of the Trust Fund valued more frequently, including, but not limited to, semi-annually, quarterly, monthly, or daily. The Administrator may implement additional Valuation Dates in order avoid prejudice with respect to any Participant.
- 1.50 Vested Aggregate Account**  
The term "Vested Aggregate Account" means a Participant's Vested Interest in the aggregate value of his or her Participant's Account and any accounts attributable to the Participant's own Plan contributions (including rollovers).
- 1.51 Vested, Vested Interest or Vesting**  
The terms "Vested," "Vested Interest," and "Vesting" mean a Participant's nonforfeitable percentage in a sub-account maintained on his or her behalf under the terms of the Plan. A Participant's Vested Interest in his or her Participant's Account will be determined in accordance with Section 4.6.

**1.52 Voluntary Employee Contribution**

The term Voluntary Employee Contribution means a non-deductible contribution made to the Plan by a Participant.

**1.53 Voluntary Employee Contribution Account**

The term Voluntary Employee Contribution Account means the account to which a Participant's Voluntary Employee Contributions, if any, are allocated.

## ARTICLE 2 Plan Participation

### 2.1 Eligibility Requirements

Any Employee who is in an eligible class of Employees (an "Eligible Employee") set forth in paragraph (a) below will become eligible, in accordance with the terms of this Section, to enter the Plan as a Participant on the applicable entry date described in Section 2.2. Any Employee who is not a member of an eligible class of Employees as set forth in paragraph (a) below is not eligible to participate in the Plan.

(a) **Age and Service Requirements**

With respect to an Employee who is not covered under any other retirement plan funded by the City of Lincoln, each such Eligible Employee will enter the Plan as a Participant on the applicable entry date described in Section 2.2 upon reaching Age 19 and completing six (6) months of service. Participation will be mandatory after reaching Age 40 and completing five (5) Years of Service.

(b) **Participation By Employees Whose Status Changes.** If an Employee who is not a member of the eligible class of Employees becomes a member of an eligible class, the Employee will participate in the Plan immediately if he or she has satisfied the minimum age and service requirements for that eligible class of Employees and would have previously become a Participant had he or she been a member of that eligible class. The participation of a Participant who becomes eligible and then ceases to be a member of an eligible class of Employees will be suspended and such Participant will be entitled to an allocation (and any applicable Forfeitures) for the Allocation Period only to the extent of any applicable Periods of Service completed while a member of the eligible class of Employees. Upon returning to an eligible class of Employees, a suspended Participant will resume eligibility. The Vested Interest of a Participant who ceases to be a member of an eligible class will continue to increase in accordance with Section 4.6.

(c) **Participation By Former Participants.** A former Participant will again become a Participant immediately upon returning to the employ of the Employer unless such former Participant's Periods of Service may be disregarded by reason of prior Breaks in Service.

### 2.2 Entry Date

An Eligible Employee who satisfies the applicable age and/or service requirements set forth in Section 2.1(a) will enter the Plan as a Participant on the entry date set forth below with respect to such Employee:

(a) **Entry Date.** With respect to an Employee who meets the Eligibility Requirements set forth in Section 2.1, such Employee will enter the Plan as a Participant effective as of the first full pay period of the month following the date on which the Employee agrees or is required to make Mandatory Employee Contributions pursuant to Section 3.5.

### 2.3 Waiver of Participation

An Employee who is otherwise eligible to participate in the Plan may elect to waive such participation in accordance with the following provisions:

(a) **Irrevocable Election.** An Eligible Employee may make a one-time irrevocable election to waive participation in the Plan. However, the Administrator may in its sole discretion elect not to make this option available to one or more Eligible Employees. The Employee's election to waive participation in the Plan must be in writing and must be delivered to the Administrator on or before the date the Employee first becomes eligible to participate in the Plan. Notwithstanding the foregoing however, once an Employee has become a Participant in the Plan, no waiver can be made, except as provided in paragraph (b) below.

(b) **Election to Waive Allocation.** Notwithstanding paragraph (a), a Participant may forego an allocation of Employer contributions to his or her Participant's Account for all or any Allocation Periods if such waiver does not have a direct or indirect impact on the overall remuneration paid to such Participant.

(c) **Administrative Requirements.** An Employee's election to waive participation or forego an allocation must be in writing and must be delivered to the Administrator on or before the date the Employee first becomes eligible to participate in the Plan in the case of a waiver under paragraph (a), and before the Participant is entitled to an allocation to his or her Participant's Account in the case of foregoing an

allocation under paragraph (b). The Administrator will furnish any form required to make an election under this Section, which may include the requirement for consent by the Employee's Spouse.

**2.4 Reemployment**

If an Employee incurs a Termination of Employment and is subsequently reemployed by the Employer or an Affiliated Employer, such Employee's Years of Service and/or Periods of Service for purposes of eligibility (as well as the time such Employee enters or reenters the Plan as a Participant) will be determined in accordance with the rules described in the definition of Periods of Service.

**2.5 Exclusion of an Eligible Employee**

If any Employee who should have been included as a Participant is erroneously excluded from the Plan in any Allocation Period and discovery of such omission is not made until after a contribution for that Allocation Period has been allocated, the Employer will correct the omission. Such omission can be corrected by one or more of the following methods: (1) by making an additional contribution to the Plan on behalf of the omitted Employee; (2) by allocating any available Forfeitures on behalf of the omitted Employee; or (3) by any other method of correction permitted under Revenue Procedure 2003-44 or any subsequent Revenue Procedure or guidance issued by the Internal Revenue Service.

**2.6 Inclusion of an Ineligible Employee**

If any person who should not have been included as a Participant is erroneously included in any Allocation Period and the discovery of the inclusion is not made until after a contribution has been allocated for that Allocation Period, and such ineligible Employee has not received a distribution of the amount erroneously allocated, such amount cannot be refunded to the Employer and will be applied as a Forfeiture for the Plan Year in which the error is discovered.

## ARTICLE 3 Contributions and Allocations

### 3.1 Employer Contributions

The Employer intends to make contributions for a particular Allocation Period in such amounts and at such times as the Employer may decide. The Employer does not guarantee either the making of the contributions or the payment of the benefits under the Plan. The Employer reserves the right to reduce, suspend or discontinue contributions for any reason at any time, provided however that if the Plan is deemed to be terminated as a result of such reduction, suspension or discontinuance, the provisions of Article 9 will apply. Employer contributions made to the Plan will be determined in accordance with the following provisions:

- (a) **Contribution Formula:** The Employer's contribution for any Allocation Period for the Benefiting Participants in each eligible class of Participants will be the amount described below with respect to such class of Participants:
  - (1) **Contribution for Employees hired prior to November 4, 2009.** With respect to an Employee who is hired by the Sponsoring Employer prior to November 4, 2009, the Employer's contribution will be an amount equal to 6.3% of his or her Compensation up to and including \$4800, plus 12% of his or her Compensation in excess of \$4800.
  - (2) **Contribution for Employees hired on or after November 4, 2009.** With respect to an Employee who is hired by the Sponsoring Employer on or after November 4, 2009, the Employer's contribution will be an amount equal to 3% of his or her Compensation up to and including \$4800, plus 6% of his or her Compensation in excess of \$4800.
- (b) **Contribution Period.** Any contribution made under the terms of the Plan may, at the election of the Administrator, be contributed (1) each payroll period; (2) each month; (3) each Plan quarter; (4) on an annual basis; or (5) on any other less than annual contribution period basis as determined by the Employer. The Employer may elect a different contribution period for each class of Participants. Contributions will be allocated to Benefiting Participants as of the last day of an applicable contribution period.
- (c) **Limitations on Contributions.** Notwithstanding any provision herein to the contrary, (1) no contribution will exceed the limitations set forth in Code §415; and (2) no contribution will be made for any Participant who is not a Benefiting Participant for an Allocation Period.
- (d) **Contribution For Mistakenly Excluded Employees.** Notwithstanding paragraphs (a) and (b), if an Employee should have been included as a Participant but is mistakenly excluded for any reason, the omission will be corrected as specified in Section 2.5.

### 3.2 Allocation of Employer Contributions

The Employer's contribution made on behalf of a Benefiting Participant for an Allocation Period under Section 3.1(a) will be allocated as of the last day of the Allocation Period to such Benefiting Participant's Account. A Participant will be a Benefiting Participant for an Allocation Period in accordance with the following provisions:

- (a) **Participants Employed on the Last Day of the Allocation Period.** Any Participant who is an Employee on the last day of the Allocation Period and who at any time during the Allocation Period was in an eligible class of Employees as set forth in Section 2.1(a) will be a Benefiting Participant for that Allocation Period regardless of the number of Hours of Service with which he or she is credited during the Allocation Period.
- (b) **Participants Who Terminate Before the Last Day of the Allocation Period.** Any Participant who terminates employment with the Employer before the last day of the Allocation Period (such Participant hereafter referred to in this paragraph as a "terminee") and who at anytime during the Allocation Period was in an eligible class of Employees as set forth in Section 2.1(a) will only be a Benefiting Participant for that Allocation Period in accordance with the following provisions:
  - (1) **Retired Participants.** A Participant who becomes a terminee before the last of the Allocation Period because of his or her retirement on or after Normal or Early Retirement Age will be a

Benefiting Participant for such Allocation Period regardless of the number of Hours of Service with which he or she is credited during the Allocation Period.

- (2) **Deceased Participants.** A Participant who becomes a terminnee before the last of the Allocation Period because of his or her death will be a Benefiting Participant for such Allocation Period regardless of the number of Hours of Service with which he or she is credited during the Allocation Period.
- (3) **Disabled Participants.** A Participant who becomes a terminnee before the last of the Allocation Period because of his or her Disability will be a Benefiting Participant for such Allocation Period regardless of the number of Hours of Service with which he or she is credited during the Allocation Period.
- (4) **Participants Who Terminate for Reasons Other than Retirement, Death or Disability.** A Participant who becomes a terminnee before the last of the Allocation Period for reasons other than retirement on or after Normal or Early Retirement Age, death or Disability will be a Benefiting Participant for such Allocation Period regardless of the number of Hours of Service with which he or she is credited during the Allocation Period.

### 3.3 Allocation of Daily Earnings and Losses

As of each Valuation Date, accounts which have not been distributed since the prior Valuation Date will have the net income of the Trust Fund earned since the prior Valuation Date allocated thereto in accordance with such rules and procedures as may be established by the Administrator; or accounts will be valued and adjusted as otherwise provided in paragraphs (a) and (b) below. Net income is the net of any interest, dividends, unrealized appreciation and depreciation, capital gains and losses, and investment expenses of the Trust Fund determined on each Valuation Date.

- (a) **Non-Segregated Accounts.** Accounts which have not been segregated from the general Trust Fund for investment purposes will have net income or loss allocated thereto in the ratio that the value of each such non-segregated account bears to the total value of all such non-segregated accounts on the Valuation Date. For purposes of this paragraph, the value of each such account on the Valuation Date will be determined on a time-weighted basis as determined by the Administrator. The Forfeiture Account, if any, will not share in the allocation made under this paragraph.
- (b) **Segregated Accounts and Policy Dividends.** Any accounts which have been segregated from the general Trust Fund for investment, including any Directed Investment Accounts that may be established under Section 7.3 and any other accounts (including Directed Investment Accounts) which are valued on a daily basis, will only have the net income earned thereon allocated thereto. Any insurance Policy dividends or credits will be allocated to the Participant's Account for whose benefit the Policy is held.

### 3.4 Allocation of Forfeitures

On each annual Valuation Date, the Administrator may elect to use all or any portion of the Forfeiture Account to pay administrative expenses incurred by the Plan. The portion of the Forfeiture Account which is not used to pay administrative expenses will be allocated first to restore Participants' Accounts per Section 5.7 and or Section 5.13 and/or to satisfy any contributions that maybe required pursuant to Section 2.5, and then the Forfeiture Account, will either be used to reduce the Employer's contribution for the current Allocation Period or a future Allocation Period.

### 3.5 Mandatory Employee Contributions

Each Participant who is in one of the eligible classes of Employees must make a Mandatory Employee Contribution to the Plan. Mandatory Employee Contributions will be allocated to a Mandatory Employee Contribution Account in which the Employee will have a 100% Vested Interest. Mandatory Employee Contribution Accounts will be made to the Plan in accordance with the following provisions:

- (a) **Contribution Formula.**

Each Participant who is in one of the eligible classes of Participants set forth below must make a Mandatory Employee Contribution for an Allocation Period as follows:

  - (1) **Contribution Formula for eligible employees.** With respect to an Employee, his or her Mandatory Employee Contribution for an Allocation Period will be an amount equal to 3% of

his or her Compensation up to and including \$4800 plus 6% of his or her Compensation in excess of \$4800.

- (b) **Contribution Period.** Any contribution made under this Section may be required, at the election of the Administrator, to be contributed (1) each payroll period; (2) each month; (3) each Plan quarter; (4) on an annual basis; or (5) on any other less than annual contribution period basis as determined by the Employer. The Employer may elect a different contribution period for each class of Participants. Contributions will be allocated to Benefiting Participants as of the last day of an applicable contribution period.
- (c) **Investment of Accounts.** Except for that portion of his or her Mandatory Employee Contribution Account which a Participant may be permitted to self-direct pursuant to Section 7.3 of the Plan, the Administrator may choose for investment purposes to either segregate Mandatory Employee Contribution Accounts into separate interest bearing accounts or to invest them as part of the general Trust Fund, in which case they will share in the allocation of daily earnings and losses under Section 3.3(a).

### 3.6 Voluntary Employee Contributions

Each Participant may make Voluntary Employee Contributions to the Plan at the discretion of the Employer. Such contributions will be allocated to a Voluntary Employee Contribution Account in which the Employee will have a 100% Vested Interest, and will be made to the Plan in accordance with the following provisions:

- (a) **Contribution Formula.** Each Participant may make a Voluntary Employee Contribution to the Plan in amounts ranging from 1% to 100% of Compensation.
- (b) **Contribution Period.** Any contribution made under this Section may be required, at the election of the Administrator, to be contributed (1) each payroll period; (2) each month; (3) each Plan quarter; (4) on an annual basis; or (5) on any other less than annual contribution period basis as determined by the Employer. The Employer may elect a different contribution period for each class of Participants. Contributions will be allocated to Benefiting Participants as of the last day of an applicable contribution period.
- (c) **Investment of Accounts.** Except for that portion of his or her Voluntary Employee Contribution Account which a Participant may be permitted to self-direct pursuant to Section 7.3, the Administrator may choose for investment purposes to either segregate Voluntary Employee Contribution Accounts into separate interest bearing accounts or to invest them as part of the general Trust Fund, in which case they will share in the allocation of daily earnings and losses under Section 3.3(a).

### 3.7 Rollover Contributions

Subject to any changes adopted by written notice and/or procedures established and adopted by the Administrator pursuant to Section 8.6, any Employee who has entered the Plan as a Participant can make Rollover Contributions to the Plan. Rollover Contributions will be allocated to a Participant's Rollover Account in which the Employee will have a 100% Vested Interest at all times. Except for that portion of a Participant's Rollover Account which a Participant may be permitted to self-direct under Section 7.3, the Administrator may choose for investment purposes to either segregate Rollover Accounts into separate interest bearing accounts or to invest them as part of the general Trust Fund, in which case such accounts will share in the allocation of daily earnings and losses under Section 3.3(a).

## **ARTICLE 4 Plan Benefits**

### **4.1 Benefit Upon Normal (or Early) Retirement**

Every Participant who has reached Normal (or Early) Retirement Age will be entitled upon Termination of Employment to receive his or her Vested Aggregate Account balance determined as of the most recent Valuation Date coinciding with or immediately preceding the date of distribution. Distribution will be made under Section 5.1.

### **4.2 Benefit Upon Late Retirement**

A Participant who has reached Normal Retirement Age may elect to remain employed and retire at a later date. Such Participant will continue to participate in the Plan and his or her Participant's Account will continue to receive allocations under Article 3. Upon actual retirement, the Participant will be entitled to his or her Vested Aggregate Account balance determined as of the most recent Valuation Date coinciding with or immediately preceding the date of distribution.

### **4.3 Benefit Upon Death**

Upon the death of a Participant prior to Termination of Employment, or upon the death of a Terminated Participant prior to distribution of his or her Vested Aggregate Account, his or her Beneficiary will be entitled to the Participant's Vested Aggregate Account balance determined as of the most recent Valuation Date coinciding with or immediately preceding the date of distribution. If any Beneficiary who is living on the date of the Participant's death dies prior to receiving his or her entire death benefit, the portion of such death benefit will be paid in a lump sum to the estate of such deceased Beneficiary. The Administrator's determination that a Participant has died and that a particular person has a right to receive a death benefit will be final. Distribution will be made under Section 5.2.

### **4.4 Benefit Upon Disability**

If a Participant suffers a Disability prior to Termination of Employment, or if a Terminated Participant suffers a Disability prior to distribution of his or her Vested Aggregate Account, he or she will be entitled to his or her Vested Aggregate Account balance determined as of the most recent Valuation Date coinciding with or immediately preceding the date of distribution.

### **4.5 Benefit Upon Termination of Employment**

A Participant who incurs a Termination of Employment will be entitled to his or her Vested Aggregate Account balance as of the most recent Valuation Date coinciding with or immediately preceding the date of distribution. Distribution to a Terminated Participant who does not die prior to distribution or who does not suffer a Disability prior to distribution will be made under Section 5.1.

### **4.6 Determination of Vested Interest**

A Participant's Vested Interest in his or her Participant's Account will be determined in accordance with the following provisions:

- (a) **100% Vesting Upon Retirement, Death or Disability.** A Participant will have a 100% Vested Interest in his or her Participant's Account upon reaching Normal Retirement Age prior to Termination of Employment. A Participant will also have a 100% Vested Interest therein upon his or her retirement at Early Retirement; his or her Disability prior to Termination of Employment; and his or her death prior to Termination of Employment.
- (b) **100% Vesting of Certain Accounts.** A Participant will at all times have a 100% Vested Interest in his or her Voluntary Contribution Account, Mandatory Contribution Account and Rollover Account.
- (c) **Vesting of All Other Contributions.** A Participant's Vested Interest in all other accounts not specified in paragraph (b) will be determined by the following vesting schedule based on the number of 1-Year Periods of Service the Participant has completed. In determining a Participant's Vested Interest under this paragraph, his or her 1-Year Periods of Service during the following period will be disregarded: during any period for which the Participant failed to make a required Mandatory Employee Contribution to the Plan.
  - (1) **Vesting Schedule for Eligible Employees.** With respect to an Eligible Employee, his or her Vested Interest in all other Employer contribution accounts will be determined by the following schedule:

<b>Years of Participation</b>	<b>Vested Percentage</b>
1	0%
2	0%
3	20%
4	40%
5	60%
6	80%
7	100%

**ARTICLE 5**  
**Distribution of Benefits**

**5.1 Distribution of Benefits**

- (a) At any time prior to the Participant's Early or Normal Retirement Date, a Participant may elect to receive, upon his Early or Normal Retirement Date, a pension benefit in the form of a lump sum, periodic withdrawal or any optional form established by the Retirement Committee and that can be provided under a purchased annuity contract.
- (b) If the Participant has elected an optional form of annuity, monthly payments will be made to the Participant commencing on his Annuity Starting Date, if he is then living, and terminating with the payment due prior to his death. However, a Retired Participant may elect to defer the date of the first annuity or lump sum payment to the first day of any month prior to age 70. If the benefit is paid in the form of an annuity, the amount of annuity benefit shall be the amount paid by the annuity contract purchased or otherwise provided by the Participant's Aggregate Account as of the date of the first payment. Any such annuity contract purchased by the Plan may be distributed to the Retired Participant and upon distribution, all obligations of the Plan to pay benefits to the Participant or his beneficiaries shall terminate, without exception.
- (c) In lieu of the normal form of benefit under this Section, any annuity form available under the group annuity contract held by the Employer for the Plan may be elected by the Participant. The optional annuity form must be specified in writing prior to the Participant's Annuity Starting Date. The income payable under any optional form will be in the amount purchased or otherwise provided by the Participant's Aggregate Account.
- (d) Notwithstanding any provision in the Plan to the contrary, the distribution of a Participant's benefits made on or after January 1, 1997, whether under the Plan or through the purchase of an annuity contract, shall be made in accordance with the following requirements and shall otherwise comply with Code Section 401(a)(9) and the Regulations thereunder (including Regulation 1.401(a)(9)-2), the provisions of which are incorporated herein by reference:

- (1) A Participant's benefits shall be distributed or must begin to be distributed not later than April 1st of the calendar year following the later of (i) the calendar year in which the Participant attains age 70 1/2 or (ii) the calendar year in which the Participant retires. Such distributions shall be equal to or greater than any required distribution.

Any Participant attaining age 70 1/2 in years after 1995 may elect by the April 1st of the calendar year following the year in which the Participant attained age 70 1/2 (or by December 31, 1997 in the case of a Participant attaining age 70 1/2 in 1996), to defer distributions until the calendar year following the calendar year in which the Participant retires.

Alternatively, distributions to a Participant must begin no later than the applicable April 1st as determined under the preceding paragraph and must be made over the life of the Participant (or the lives of the Participant and the Participant's designated Beneficiary) or the life expectancy of the Participant (or the life expectancies of the Participant and the Participant's designated Beneficiary) in accordance with Regulations.

- (2) Distributions to a Participant and the Participant's Beneficiaries shall only be made in accordance with the incidental death benefit requirements of Code Section 401(a)(9)(G) and the Regulations thereunder.
- (3) Any Participant who attains age 70 1/2 before 1997, but did not retire from employment with the Employer before January 1, 1997, may elect to cease distributions, provided that:
  - i payments recommence to the Participant with the same Beneficiary and in a form of benefit that is the same but for the cessation of distribution,
  - ii the individual who was the Participant's spouse on the Annuity Starting Date executed a general consent within the meaning of Regulation 1.401(a)-20, A-31, or

- iii the individual who was the Participant's spouse on the Annuity Starting Date executed a specific consent to waive a qualified joint and survivor annuity within the meaning of Regulation 1.401(a)-20, A-31, and the Participant is not married to that individual when benefits recommence.

With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2002, the Plan will apply the minimum distribution requirements of Code Section 401(a)(9) in accordance with the Regulations under Code Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final Regulations under Code Section 401(a)(9) or such other date specified in guidance published by the Internal Revenue Service.

- (e) For purposes of this Section, the life expectancy of a Participant and a Participant's spouse (other than in the case of a life annuity) shall be redetermined annually in accordance with Regulations. Life expectancy and joint and last survivor expectancy shall be computed using the return multiples in Tables V and VI of Regulation 1.72-9.
- (f) Subject to the spouse's right of consent afforded under the Plan, the restrictions imposed by this Section shall not apply if a Participant has, prior to January 1, 1984, made a written designation to have retirement benefits paid in an alternative method acceptable under Code Section 401(a)(9) as in effect prior to the enactment of the Tax Equity and Fiscal Responsibility Act of 1982.
- (g) All annuity Contracts 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.
- (h) If the value of a Participant's Vested Aggregate Account exceeds the Involuntary Cash-Out threshold, the Participant must consent to any distribution of such Vested Aggregate Account balance prior to his or her Required Beginning Date. For purposes of determining whether a distribution is subject to the Participant consent requirements, the Involuntary Cash-Out threshold is \$1,000. The Rollover Account shall be included in determining whether the Participant's Vested Aggregate Account exceeds the Involuntary Cash-Out threshold.

## **5.2 Distribution of Benefit Upon Death**

- (a) If a Participant dies prior to his Early or Normal Retirement Date, the Participant's Beneficiary(s) shall be entitled to the Participant's Aggregate Account at the time of death. The Participant's Aggregate Account may be received by the Beneficiary in the form of a single lump sum payment, straight life annuity or any other optional form of benefit specified by the Retirement Committee and provided under a purchased annuity contract.

If benefits are paid in the form of an annuity, the annuity shall be the amount paid by the annuity contract purchased or otherwise provided by the amount of the Beneficiary's share of the Participant's Aggregate Account as of the date of first payment. Upon the purchase and distribution of such annuity contract to the beneficiary, all obligations of the Plan to the Beneficiary shall be satisfied.

In the event that Participant dies after his Annuity Starting Date, the death benefit, if any, shall depend on the form of annuity benefit elected by the Participant.

- (b) By completing and delivering to the Retirement Committee a form provided for the purpose, a Participant may designate a Beneficiary and contingent Beneficiary to receive any death benefits payable under the Plan. The designation of a Beneficiary or contingent Beneficiary may be changed at any time. A designation or change will be effective when executed, without regard to whether the Participant is living at the time of receipt of such designation or change by the Retirement Committee.
- (c) Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant shall be made in accordance with the following requirements and shall otherwise comply with Code Section 401(a)(9) and the Regulations thereunder. If it is determined, pursuant to Regulations, that the

distribution of a Participant's interest has begun and the Participant dies before the entire interest has been distributed, the remaining portion of such interest shall be distributed at least as rapidly as under the method of distribution selected pursuant to Section 5.1 as of the date of death. If a Participant dies before receiving any distributions of the interest in the Plan or before distributions are deemed to have begun pursuant to Regulations, then the death benefit shall be distributed to the Participant's Beneficiaries by December 31st of the calendar year in which the fifth anniversary of the Participant's date of death occurs.

However, in the event that the Participant's spouse (determined as of the date of the Participant's death) is the designated Beneficiary, then in lieu of the preceding rules, distributions must be made over the life of the spouse (or over a period not extending beyond the life expectancy of the spouse) and must commence on or before the later of: (1) December 31st of the calendar year immediately following the calendar year in which the Participant died; or (2) December 31st of the calendar year in which the Participant would have attained age 70 1/2. If the surviving spouse dies before distributions to such spouse begin, then the 5-year distribution requirement of this Section shall apply as if the spouse was the Participant.

- (d) For purposes of this Section, the life expectancy of a Participant and a Participant's spouse (other than in the case of a life annuity) shall be redetermined annually in accordance with Regulations. Life expectancy and joint and last survivor expectancy shall be computed using the return multiples in Tables V and VI of Regulation 1.72-9.
- (e) For purposes of this Section, any amount paid to a child of the Participant will be treated as if it had been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.
- (f) Subject to the spouse's right of consent afforded under the Plan, the restrictions imposed by this Section shall not apply if a Participant has, prior to January 1, 1984, made a written designation to have death benefits paid in an alternative method acceptable under Code Section 401(a)(9) as in effect prior to the enactment of the Tax Equity and Fiscal Responsibility Act of 1982.

## ARTICLE 6 Code §415 Limitations

### 6.1 Maximum Annual Additions

The maximum Annual Addition (as defined in paragraph (c) below) made to a Participant's various accounts maintained under the Plan for any Limitation Year beginning after December 31, 1986, will not exceed the lesser of the Dollar Limitation set forth in Section 6.1(a) or the Compensation Limitation set forth in Section 6.1(b), as follows:

- (a) **Dollar Limitation.** For Limitation Years beginning on or after January 1, 2002, the Dollar Limitation is \$40,000 as adjusted in accordance with Code §415(d).
- (b) **Compensation Limitation.** For Limitation Years beginning on or after January 1, 2002, the Compensation Limitation is an amount equal to 100% of the Participant's Section 415 Compensation for the Limitation Year. However, this limitation will not apply to any contribution made for medical benefits within the meaning of Code §401(h) or Code §419A(f)(2) after Termination of Employment which is otherwise treated as an Annual Addition under Code §415(l)(1) or Code §419A(d)(2).
- (c) **Annual Additions.** Annual Additions are the sum of the following amounts credited to a Participant's Account for the Limitation Year: (1) Employer contributions; (2) Employee contributions; (3) Forfeitures; (4) amounts allocated, after March 31, 1984, to an individual medical account, as defined in Code §415(l)(2), which is part of a pension or annuity plan maintained by the Employer; and (5) amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, that are attributable to post-retirement medical benefits, allocated to the separate account of a Key Employee, as defined in Code §419A(d)(3), under a welfare fund, as defined in Code §419(e), maintained by the Employer. Notwithstanding the foregoing, a Participant's Annual Additions do not include rollovers, loan repayments, Catch-up Contributions, repayments of prior Plan distributions or prior distributions of Mandatory Contributions, direct transfers of contributions from another plan to this Plan, deductible contributions to a simplified employee pension plan, or voluntary deductible contributions.

### 6.2 Adjustments to Maximum Annual Addition

In applying the limitation on Annual Additions set forth in Section 6.1, the following adjustments must be made:

- (a) **Short Limitation Year.** In a Limitation Year of less than 12 months, the Defined Contribution Dollar Limitation in Section 6.1(a) will be adjusted by multiplying it by the ratio that the number of months in the short Limitation Year bears to 12.
- (b) **Multiple Defined Contribution Plans.** If a Participant participates in multiple defined contribution plans sponsored by the Employer which have different Anniversary Dates, the maximum Annual Addition in this Plan for the Limitation Year will be reduced by the Annual Additions credited to the Participant's accounts in the other defined contribution plans during the Limitation Year. If a Participant participates in multiple defined contribution plans sponsored by the Employer which have the same Anniversary Date, then (1) if only one of the plans is subject to Code §412, Annual Additions will first be credited to the Participant's account in the plan that is subject to Code §412; and (2) if more than one of the plans is subject to Code §412, the maximum Annual Addition in this Plan for a given Limitation Year will be equal to the product of the maximum Annual Addition for such Limitation Year minus any other Annual Additions previously credited to the Participant's account under clause (1) above, multiplied by the ratio that the Annual Additions which would be credited to a Participant's accounts hereunder without regard to the limitations in Section 6.1 bears to the Annual Additions for all plans described in this clause (2).
- (c) **Multiple Plans and Multiple Employers.** All defined benefit plans (whether terminated or not) sponsored by the Employer will be treated as one defined benefit plan, and all defined contribution plans (whether terminated or not) sponsored by the Employer will be treated as one defined contribution plan. In addition, all Affiliated Employers will be considered a single Employer.

### 6.3 Adjustment for Excessive Annual Additions

If for any Limitation Year the Annual Additions allocated to a Participant's Account exceeds the maximum amount permitted under Section 6.1 above because of an allocation of Forfeitures, a reasonable error in estimating a Participant's Compensation, a reasonable error in determining the amount of elective contributions (within the meaning of Code §402(g)(3)), or because of other limited facts and circumstances that the Commissioner finds

justify the availability of the rules set forth in this Section, then such Participant's Account will be adjusted as follows in order to reduce the excess Annual Additions:

- (a) **Return of Employee Contributions.** First, Voluntary Employee Contributions, will be calculated. Such Voluntary Employee Contributions plus attributable earnings, will be returned to the Participant.
- (b) **Excess Used To Reduce Employer Contributions If Participant Is Still Covered By The Plan.** If, after the application of paragraph (a), an excess amount still exists and the Participant is covered by the Plan at the end of the Limitation Year, the excess amount in the Participant's Account plus applicable earnings thereon, if any, will be used to reduce Employer contributions (including any allocation of Forfeitures) for such Participant in the next Limitation Year, and in each succeeding Limitation Year if necessary.
- (c) **Excess Used To Reduce Employer Contributions If Participant Is Not Covered By The Plan.** If, after the application of paragraph (a), an excess amount still exists and the Participant is not covered by the Plan at the end of a Limitation Year, the excess amount, plus applicable earnings thereon, if any, will be held unallocated in a suspense account. The suspense account will be applied to reduce future Employer contributions (including the allocation of any Forfeitures) for all remaining Participants in the next Limitation Year, and in each succeeding Limitation Year if necessary.
- (d) **Suspense Account.** If a suspense account is in existence at any time during a Limitation Year pursuant to this Section, such suspense account will not participate in the allocation of the Trust's investment gains and losses. If a suspense account is in existence at any time during a particular Limitation Year, all amounts in the suspense account must be allocated and reallocated to Participants' Accounts before any Employer Contributions or any Employee contributions may be made to the Plan for that Limitation Year. Excess amounts may not be distributed to Participants or former Participants.

**ARTICLE 7**  
**Loans, Insurance and Directed Investments**

**7.1 Loans to Participants**

Loans to Participants are not permitted.

**7.2 Insurance on Participants**

The purchase of policies on the life of a Participant is not permitted.

**7.3 Directed Investment Accounts**

Pursuant to procedures established by the Administrator and promulgated under Section 8.6, Participants can direct the investment of one or more of their accounts under the Plan. Investment directives will only be given in accordance with an administrative policy regarding directed investments.

## **ARTICLE 8**

### **Duties of the Administrator**

#### **8.1 Appointment, Resignation, Removal and Succession**

Each Administrator appointed will continue until his death, resignation, or removal, and any Administrator may resign by giving 30 days written notice to the Sponsoring Employer. If an Administrator dies, resigns, or is removed, his successor will be appointed as promptly as possible, and such appointment will become effective upon its acceptance in writing by such successor. Pending the appointment and acceptance of any successor Administrator, any then acting or remaining Administrator will have full power to act.

#### **8.2 General Powers and Duties**

The powers and duties of the Administrator will include (1) appointing the Plan's attorney, accountant, actuary, or any other party needed to administer the Plan; (2) directing the Trustees with respect to payments from the Trust Fund; (3) deciding if a Participant is entitled to a benefit; (4) communicating with Employees regarding their participation and benefits under the Plan, including the administration of all claims procedures; (5) filing any returns and reports with the Internal Revenue Service or other governmental agency; (6) reviewing and approving any financial reports, investment reviews, or other reports prepared by any third party; (7) making any findings of fact the Administrator deems necessary to proper Plan administration; and (8) construing and resolving any question of Plan interpretation. The Administrator's interpretation of Plan provisions, and any findings of fact, including eligibility to participate and eligibility for benefits, are final and will not be subject to "de novo" review unless shown to be arbitrary and capricious.

#### **8.3 Appointment of Administrative Committee**

The Sponsoring Employer may elect to appoint one or more members to an Administrative/Advisory Committee to be known as the "Committee" (or such other name as the Sponsoring Employer may select), to which the Sponsoring Employer may delegate certain of its responsibilities as Administrator. Members of the Committee need not be Participants or beneficiaries, and officers and directors of the Employer will not be precluded from serving as members. A member will serve until his or her resignation, death, or disability, or until removed. In the event of any vacancy arising by reason of the death, disability, removal, or resignation of a member, the Sponsoring Employer may, but is not required to, appoint a successor to serve in his or her place. The Committee will select a chairman and a secretary from among its members. Members of the Committee will serve in such capacity without compensation. The Committee will act by majority vote. The proper expenses of the Committee, and the compensation of its agents appointed pursuant to Section 8.8 of the Plan, if any, will be paid directly by the Employer.

#### **8.4 Multiple Administrators**

If more than one Administrator has been appointed by the Sponsoring Employer, the Administrators may delegate specific responsibilities among themselves, including the authority to execute documents unless the Sponsoring Employer revokes such delegation. The Sponsoring Employer and Trustee will be notified in writing of any such delegation of responsibilities, and the Trustee thereafter may rely upon any documents executed by the appropriate Administrator.

#### **8.5 Correcting Administrative Errors**

The Administrator may take any steps it considers necessary and appropriate to remedy administrative or operational errors, including, but will not be limited to the following: (1) taking any action required under the employee plans compliance resolution system of the Internal Revenue Service, any asset management or fiduciary conduct error correction program available through the Internal Revenue Service or other governmental administrative agency; (2) a reallocation of Plan assets; (3) adjustments in amounts of future payments to Participants, Beneficiaries or Alternate Payees; and (4) institution and prosecution of actions to recover benefit payments made in error or on the basis of incorrect or incomplete information.

#### **8.6 Promulgating Notices and Procedures**

The Sponsoring Employer and Administrator are given the power and responsibility to promulgate certain written notices, policies and/or procedures under the terms of the Plan and disseminate them to Participants, and the Administrator may satisfy such responsibility by the preparation of any such notice, policy and/or procedure in a written form which can be published and communicated to a Participant in one or more of the following ways: (1) by distribution in hard copy; (2) through distribution of a summary plan description or summary of material modifications thereto which sets forth the policy or procedure with respect to a right, benefit or feature offered under the Plan; (3) by e-mail, either to a Participant's personal e-mail address or his or her Employer-maintained e-mail address; and (4) by publication on a web-site accessible by the Participant, provided the Participant is

notified of said web-site publication. Any notice, policy and/or procedure provided through an electronic medium will only be valid if the electronic medium which is used is reasonably designed to provide the notice, policy and/or procedure in a manner no less understandable to the Participant than a written document, and under such medium, at the time the notice, policy and/or procedure is provided, the Employee may request and receive the notice, policy and/or procedure on a written paper document at no charge.

#### **8.7 Employment of Agents and Counsel**

The Administrator may appoint such actuaries, accountants, custodians, counsel, agents, consultants, service companies and other persons deemed necessary or desirable in connection with the administration and operation of the Plan. Any person or company so appointed will exercise no discretionary authority over investments or the disposition of Trust assets, and their services and duties will be ministerial only and will be to provide the Plan with those things required by law or by the terms of the Plan without in any way exercising any fiduciary authority or responsibility under the Plan. The duties of a third party Administrator will be to safe-keep the individual records for all Participants and to prepare all required actuarial services and disclosure forms under the supervision of the Administrator and any Fiduciaries of the Plan. It is expressly stated that the third party Administrator's services are only ministerial in nature and that under no circumstances will such third party Administrator (1) exercise any discretionary authority whatsoever over Plan Participants, Plan investments, or Plan benefits; or (2) be given any authority or discretion concerning the management and operation of the Plan that would cause them to become Fiduciaries of the Plan.

#### **8.8 Compensation and Expenses**

The Administrator may receive such compensation as agreed upon between the Sponsoring Employer and the Administrator, provided that any person who already receives full-time pay from the Employer may not receive any fees for services to the Plan as Administrator or in any other capacity. In addition, the Employer will pay all reasonable expenses incurred by the Administrator in the performance of its duties under this Plan. If the Employer fails to pay such expenses, the Trustee will reimburse the Administrator out of the Trust Fund. Expenses will be paid by each Adopting Employer in the ratio that each Adopting Employer's Participants' Accounts bears to the total of all the Participants' Accounts maintained by this Plan.

#### **8.9 Qualified Domestic Relations Orders**

A Qualified Domestic Relations Order, or QDRO, is a signed domestic relations order issued by a State Court which creates, recognizes or assigns to an alternate payee(s) the right to receive all or part of a Participant's Plan benefit. An alternate payee is a Spouse, former Spouse, child, or other dependent of a Participant who is treated as a Beneficiary under the Plan as a result of the QDRO. The Administrator will determine if a domestic relations order is a Qualified Domestic Relations Order based on an Administrative Policy Regarding Qualified Domestic Relations Orders.

#### **8.10 Appointment of an Investment Manager**

The Administrator, with the consent of the Employer, may appoint an Investment Manager to manage and control the investment of all or any portion of the Trust Fund. Each Investment Manager will be either be (1) an investment advisor registered under the Investment Advisors Act of 1940; (2) a bank as defined in that Act; or (3) an insurance company qualified to manage, acquire or dispose of any asset of the Trust under the laws of more than one state. An Investment Manager will acknowledge in writing that it is a Fiduciary of the Plan. The Administrator will enter into an agreement with the Investment Manager specifying the duties and compensation of the Investment Manager and further specifying any other terms and conditions under which the Investment will be retained. The Trustee will not be liable for any act or omission of an Investment Manager, and will not be liable for following the advice of an Investment Manager with respect to any duties delegated by the Administrator to the Investment Manager. The Administrator will have the power to determine the portion of the Plan's assets to be invested by a designated Investment Manager and to establish investment objectives and guidelines for the Investment Manager to follow.

## ARTICLE 9 Amendment, Termination and Merger

### 9.1 Plan Amendment

The Plan can be amended at any time in accordance with the following provisions:

- (a) **Amendment by the Sponsoring Employer.** Subject to the requirements and limitations set forth in paragraphs (c) and (d) below, the Sponsoring Employer will have the right at any time to amend the Plan in the following manner: (1) the Sponsoring Employer may change any optional selections under the Plan; (2) the Sponsoring Employer may add additional language where authorized under the Plan; (3) the Sponsoring Employer may change the addendums to the Plan from time to time without having to reexecute of the Plan; (4) the Sponsoring Employer may add any model amendments or sample amendments promulgated by the IRS which specifically provide that their adoption will not cause the Plan to be treated as an individually designed plan; (5) the Sponsoring Employer may adopt any amendments that it deems necessary to satisfy the requirements for resolving qualification failures under the IRS' compliance resolution programs; and (6) the Sponsoring Employer may adopt an amendment to cure a coverage or nondiscrimination testing failure, as permitted under applicable Treasury regulations. The ability to amend the Plan as authorized under this Section applies only to the Sponsoring Employer that executes the signature page of the Plan. Any amendment to the Plan by the Sponsoring Employer under this Section also applies to any Affiliated Employer that participates under the Plan as an Adopting Employer. The Sponsoring Employer's amendment of the Plan from one type of defined contribution plan (e.g., a money purchase plan) into another type of defined contribution plan (e.g., a profit sharing plan) will not result in a partial termination or any other event that would require full vesting of some or all Plan Participants.
- (b) **Manner of Amendment.** Any amendments by the Sponsoring Employer can be made by either (1) substituting pages with the new elections (or new addendum) and executing an "Amendment By Page Substitution" and attaching it as part of the Plan; (2) by executing an "Amendment By Section Replication" in which the section or sections (or addendum or addendums) to be changed are reproduced with the new elections indicated, and attaching it as part of the Plan; or (3) by executing a properly worded resolution and attaching it as part of the Plan.
- (c) **General Requirements.** An amendment by the Sponsoring Employer must be in writing. However, no such amendment or modification (1) can increase the responsibilities of the Trustee or Administrator without their written consent; (2) can deprive any Participant or Beneficiary of the benefits to which he is entitled from the Plan; (3) can result in a decrease in the amount of any Participant's Account except as may be permitted under the terms of Code §412(c)(8) if applicable; or (4) can, except as otherwise provided, permit any part of the Trust Fund (other than as required to pay taxes and administration expenses) to be used for or diverted to purposes other than the exclusive benefit of the Participants or their Beneficiaries, or cause or permit any portion of the Trust Fund to revert to or become the property of the Employer. In addition, unless the provisions of paragraph (e) are satisfied, no amendment to the Plan will have the effect of eliminating or restricting the ability of a Participant or other payee to receive payment of his or her Account balance or benefit entitlement under a particular optional form of benefit provided under the Plan.

### 9.2 Termination By Sponsoring Employer

The Sponsoring Employer at any time can terminate the Plan and Trust in whole or in part in accordance with the following provisions:

- (a) **Termination of Plan.** The Sponsoring Employer can terminate the Plan and Trust by filing written notice thereof with the Administrator and Trustee and by completely discontinuing contributions to the Plan. Upon any such termination, the Trust Fund will continue to be administered until distribution has been made to the Participants and other payees, which distribution must occur as soon as administratively feasible after the termination of the Plan, and must be made in accordance with the provisions of Article 5 of the Plan. However, the Administrator may elect not to distribute the Accounts of Participants and other payees upon termination of the Plan but instead to transfer the entire Trust Fund assets and liabilities attributable to this terminated Plan to another qualified plan maintained by the Employer or its successor.
- (b) **Vesting Requirement.** Upon complete termination of the Plan, or upon a complete discontinuance of contributions to the Plan, any Participant who is affected by such termination all Participants who have

not incurred a Termination of Employment and all Participants who have incurred a Termination of Employment but have not incurred 5 consecutive Breaks in Service will have a 100% Vested Interest in his or her unpaid Participant Account. Upon partial termination of the Plan only those Participants who have incurred a Termination of Employment on account of the event which caused the partial termination but have not incurred 5 consecutive Breaks in Service will automatically have a 100% Vested Interest in his or her unpaid Participant Account to the date of partial termination.

- (c) **Discontinuance of Contributions.** The Sponsoring Employer may at any time completely discontinue contributions to the Plan but continue the Plan in operation in all other respects, in which event the Trust Fund will continue to be administered until eventual full distribution of all benefits has been made to the Participants and other payees in accordance with Article 5 after their death, retirement, Disability or other Termination of Employment. Any discontinuance of contributions without a notice of termination from the Sponsoring Employer to the Administrator and Trustee will not constitute a termination of the Plan.

### **9.3 Termination of Participation by Adopting Employer**

Any Adopting Employer may by written resolution terminate its participation in the Plan at any time by notification to the Sponsoring Employer, the Administrator, and the Trustee. Such Adopting Employer may thereupon request a transfer of Trust Fund assets attributable to its Employees from this Plan to any successor qualified retirement plan maintained by the Adopting Employer or its successor. The Administrator may, however, refuse to make such transfer if in its considered opinion such transfer would operate to the detriment of any Participant, jeopardize the continued qualification of the Plan, or if such transfer does not comply with any requirements of the Internal Revenue Service. If no such transfer is made, the provisions in the definition of Adopting Employer in Article 1 will apply with respect to the payment of benefits for Employees of such Adopting Employer.

## ARTICLE 10 Trustee Provisions

### 10.1 Appointment, Resignation, Removal and Succession

This Plan will have one or more individual Trustees, a corporate Trustee, or any combination thereof, appointed as follows:

- (a) **Appointment.** Each Trustee will be appointed and will serve until a successor has been named or until such Trustee's resignation, death, incapacity, or removal, in which event the Sponsoring Employer will name a successor Trustee. The term Trustee will include the original and any successor Trustees.
- (b) **Resignation.** A Trustee may resign at any time by giving written notice to the Sponsoring Employer, unless such notice is waived by the Sponsoring Employer. The Sponsoring Employer may remove a Trustee at any time by giving such Trustee written notice. Such removal may be with or without cause. Unless waived in writing by the Sponsor, if any Trustee who is an Employee or an elected or appointed official resigns or terminates employment with the Sponsoring Employer or an Adopting Employer, such termination will constitute an immediate resignation as a Trustee of the Plan.
- (c) **Successor Trustee.** Each successor Trustee will succeed to the title to the Trust by accepting his appointment in writing and by filing such written acceptance with the former Trustee and the Sponsoring Employer. The former Trustee, upon receipt of such acceptance, will execute all documents and perform all acts necessary to vest the Trust Fund's title of record in any successor Trustee. No successor Trustee will be personally liable for any act or failure to act of any predecessor Trustee.
- (d) **Merger.** If any corporate Trustee, before or after qualification, changes its name, consolidates or merges with another corporation, or otherwise reorganizes, any resulting corporation which succeeds to the fiduciary business of such Trustee will become a Trustee hereunder in lieu of such corporate Trustee.

### 10.2 Investment Alternatives of the Trustee

The Trustees will implement an investment program based on the Sponsoring Employer's investment objectives. In addition to powers given by law, the Trustees may:

- (a) **Property.** Invest the Trust Fund in any form of property, including common and preferred stocks, exchange covered call options, bonds, money market instruments, mutual funds, savings accounts, certificates of deposit, Treasury bills, insurance policies and contracts, or in any other property, real or personal, foreign or domestic, having a ready market including securities issued by an institutional Trustee and/or affiliate of the institutional Trustee. An institutional Trustee may invest in its own deposits provided such deposits bear a reasonable interest rate. The Trustee may retain, manage, operate, repair, improve and mortgage or lease for any period on such terms as it deems proper any real estate or personal property held by the Trustee, including the power to demolish any building or other improvements in whole or part. The Trustee may erect buildings or other improvements, make leases that extend beyond the term of this Trust, and foreclose, extend, renew, assign, release or partially release and discharge mortgages or other liens.
- (b) **Pooled Funds.** The Trustee may transfer any assets of the Trust Fund to a collective trust established to permit the pooling of funds of separate pension and profit-sharing trusts or to any other common, collective, or commingled trust fund which has been or may hereafter be established and maintained by the Trustee and/or affiliates of an institutional Trustee. Such commingling of assets of the Fund with assets of other qualified trusts is specifically authorized, and to the extent of the investment of the Trust Fund in such a group or collective trust, the terms of the instrument establishing the group or collective trust will be a part hereof as though set forth herein.
- (c) **Cash Reserves.** The Trustee may retain in cash as much of the Trust Fund as the Trustee may deem advisable to satisfy the liquidity needs of the Plan and to deposit any cash held in the Trust Fund in a bank account without liability for the highest rate of interest available. If a bank is acting as Trustee, such Trustee is specifically given authority to invest in deposits of such Trustee. The Trustee may also hold cash un-invested at any time and from time to time and in such amount or to such extent as the Trustee deems prudent, and the Trustee will not be liable for any losses which may be incurred as the result of the failure to invest same, except to the extent that may otherwise be provided herein.

- (d) **Reorganizations.** The Trustee may join in or oppose the reorganization, recapitalization, consolidation, sale or merger of corporations or properties, upon such terms as the Trustee deems wise.
- (e) **Registration of Securities.** The Trustee may cause any securities or other property to be registered in the Trustee's own name or in the name of the Trustee's nominee or nominees, and may hold any investments in bearer form, but the records of the Trustee will at all times show such investments as part of the Trust.
- (f) **Proxies.** The Trustee may vote proxies and if appropriate pass them on to any investment manager which may have directed the investment in the equity giving rise to the proxy.
- (g) **Ownership.** The Trustee may exercise all ownership rights with respect to any assets held in the Trust.
- (h) **Other Investments.** The Trustee may accept and retain for such time as the Trustee deems advisable any securities or other property received or acquired as Trustee, whether or not such securities or property would normally be purchased as investments hereunder.
- (i) **Loans to the Trust.** The Trustee may borrow or raise money for purposes of the Plan in such amounts, and upon such terms and conditions, as the Trustee deems advisable; and for any sum so borrowed, the Trustee may issue a promissory note as Trustee, and secure repayment of the loan by pledging all, or any part, of the Trust Fund as collateral. No person lending money to the Trustee will be bound to see to the application of the money lent or to inquire into the validity or propriety of any borrowing.
- (j) **Agreements With Banks.** The Trustee may with the consent of the Sponsoring Employer and upon such terms as they in their discretion deem necessary, enter into an agreement with a bank or trust company providing for (a) the deposit of all or part of the funds and property of the Trust with such bank or trust company, (b) the appointment of such bank or trust company as the agent or custodian of the Trustees for investment purposes, with such discretion in investing and reinvesting the funds of the Trust as the Trustees deem it necessary or desirable to delegate.
- (k) **Litigation.** The Trustee may begin, maintain, or defend any litigation necessary in connection with the administration of the Plan, except that the Trustee will not be obliged or required to do so unless indemnified to its satisfaction.
- (l) **Claims, Debts and Damages.** The Trustee may settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Plan.
- (m) **Margin Accounts, Options and Commodities Trading.** The Trustee may engage in the following activities: borrowing on margin, buying options, writing covered options, options spreads/straddles, and future/commodities trading.
- (n) **Miscellaneous.** The Trustee may do all such acts and exercise all such rights, although not specifically mentioned herein, as the Trustee deems necessary to carry out the purposes of the Plan. The Trustee will not be restricted to securities or other property of the character expressly authorized by applicable law for trust investments, subject to the requirement that the Trustee discharge his duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of similar character and with similar aims by diversifying the investments to minimize the risks of large losses unless under the circumstances it is clearly prudent not to do so.

### 10.3 Valuation of the Trust

On each Valuation Date, the Trustee will determine the net worth of the Trust Fund. The fair market value of securities that are listed on a registered stock exchange will be the prices at which they were last traded on such exchange preceding the close of business on the Valuation Date. If the securities were not traded on the Valuation Date, or if the exchange on which they are traded was not open for business on the Valuation Date, then the securities will be valued at the prices at which they were last traded prior to the Valuation Date. Any unlisted security will be valued at its bid price next preceding the close of business on the Valuation Date, which bid price will be obtained from a registered broker or an investment banker. To determine the fair market value of assets other than securities for which trading or bid prices can be obtained, the Trustee may use any reasonable method to determine the value of such assets, or may elect to employ one or more appraisers for that purpose and rely on the values established by such appraiser or appraisers.

**10.4 Compensation and Expenses**

The Trustee will be reimbursed for all of its expenses, either from the Trust Fund or from the Sponsoring Employer, and will be paid reasonable compensation as agreed upon from time to time with the Sponsoring Employer; but no person who receives full-time pay from the Employer will receive any fees for services to the Plan as Trustee or in any other capacity. Expenses will be paid by each Adopting Employer in the ratio that each Adopting Employer's Participants' Accounts bears to the total of all the Participants' Accounts maintained by this Plan.

**10.5 Payments From the Trust Fund**

The Trustee will pay Plan benefits and other payments as the Administrator directs, and the Trustee will not be responsible for the propriety of such payments. Any payment made to a Participant, or a Participant's legal representative or Beneficiary in accordance with the terms of the Plan will, to the extent of such payment, be in full satisfaction of all claims arising against the Trust, the Trustee, the Employer, and the Plan Administrator. Any payment or distribution made from the Trust is contingent on the recipient executing a receipt and release acceptable to the Trustee, Administrator, or Employer.

**10.6 Payment of Taxes**

The Trustee will pay all taxes of the Trust Fund, including property, income, transfer and other taxes which may be levied or assessed upon or in respect of the Trust Fund or any money, property or securities forming a part of the Trust Fund. The Trustee may withhold from distributions to any payee such sum as the Trustee may reasonably estimate as necessary to cover federal and state taxes for which the Trustee may be liable, which are, or may be, assessed with regard to the amount distributable to such payee. Prior to making any payment, the Trustee may require such releases or other documents from any lawful taxing authority and may require such indemnity from any payee or distributee as the Trustee deems necessary.

**10.7 Accounts, Records and Reports**

The Trustee will keep accurate records reflecting its administration of the Trust and will make them available to the Administrator for review and audit. At the request of the Administrator, the Trustee will, within 90 days of such request, file with the Administrator an accounting of its administration of the Trust Fund during such period or periods as the Administrator determines. The Administrator will review the accounting and notify the Trustee within 90 days if the report is disapproved, providing the Trustee with a written description of the items in question. The Trustees will have 60 days to provide the Administrator with a written explanation of the items in question. If the Administrator again disapproves of the report, the Trustee will file its accounting in a court of competent jurisdiction for audit and adjudication.

**10.8 Employment of Agents and Counsel**

The Trustee may employ such agents, counsel, consultants, or service companies as it deems necessary and may pay their reasonable expenses and compensation. The Trustee will not be liable for any action taken or omitted by the Trustee in good faith pursuant to the advice of such agents and counsel. Any agent, counsel, consultant, service company and/or its successors will exercise no discretionary authority over investments or the disposition of Trust assets, and their services and duties will be ministerial only and will be to provide the Plan with those things required by law or by the terms of the Plan without in any way exercising any fiduciary authority or responsibility under the Plan.

**10.9 Division of Duties and Indemnification**

The division of duties and the indemnification of the Trustees of this Plan will be governed by the following provisions:

- (a) **No Guarantee Against Loss.** The Trustees will have the authority and discretion to manage and control the Trust Fund to the extent provided in this instrument, but they do not guarantee the Trust Fund in any manner against investment loss or depreciation in asset value, or guarantee the adequacy of the Fund to meet and discharge all or any liabilities of the Plan. Furthermore, the Trustees will not be liable for the making, retention or sale of any investment or reinvestment made by it, as herein provided, or for any loss to or diminution of the Trust Fund, or for any other loss or damage which may result from the discharge of its duties hereunder, except to the extent it is judicially determined that the Trustees have failed to exercise the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and like aims.

- (b) **Representations of the Sponsoring Employer.** The Sponsoring Employer warrants that all directions issued to the Trustees by it or the Plan Administrator will be in accordance with the terms of the Plan.
- (c) **Directions by Others.** The Trustees will not be answerable for any action taken pursuant to any direction, consent, certificate, or other paper or document on the belief that the same is genuine and signed by the proper person. All directions by the Sponsoring Employer, a Participant or the Administrator will be in writing. The Administrator will deliver to the Trustees certificates evidencing the individual or individuals authorized to act as the Administrator and will deliver to the Trustees specimens of their signatures.
- (d) **Duties and Obligations Limited By the Plan.** The duties and obligations of the Trustees will be limited to those expressly imposed upon it by this Plan or subsequently agreed upon by the parties. Responsibility for administrative duties required under the Plan or applicable law not expressly imposed upon or agreed to by the Trustees, will rest solely with the Sponsoring Employer and with the Administrator.
- (e) **Indemnification of the Trustees.** The Trustees will be indemnified and saved harmless from and against any and all liability to which the Trustees may be subjected, including all expenses reasonably incurred in its defense, for any action or failure to act resulting from compliance with the instructions of the Sponsoring Employer, the employees or agents of the Sponsoring Employer, the Plan Administrator, or any other Fiduciary to the Plan, and for any liability arising from the actions or non-actions of any predecessor Trustees or Fiduciary or other Fiduciaries of the Plan.
- (f) **Trustees Not Responsible for Application of Payments.** The Trustees will not be responsible in any way for the application of any payments it is directed to make or for the adequacy of the Fund to meet and discharge any and all liabilities under the Plan.
- (g) **Multiple Trustees.** If more than one Trustee is appointed, any single Trustee may act independently in undertaking any act and/or transaction on behalf of the Trust unless the Trustees have agreed by a majority vote that a particular action, including signing documents or checks, must be approved by a majority vote before it can be undertaken.
- (h) **Trustees as Participants or Beneficiaries.** Trustees will not be prevented from receiving any benefits to which they may be entitled as Participants or Beneficiaries as long as the benefits are computed and paid on a basis consistent with the terms of the Plan as applied to all other Participants and Beneficiaries.
- (i) **Limitation of Liability.** No Trustee will be liable for the act of any other Trustee or Fiduciary unless the Trustee has knowledge of such act.
- (j) **No Self-Dealing.** The Trustees will not (1) deal with the assets of the Trust Fund in their own interest or for their own account; (2) in their individual or in any other capacity, act in any transaction involving the Trust Fund on behalf of a party (or represent a party) whose interests are adverse to the interests of the Plan, or its Participants or Beneficiaries; or (3) receive any consideration for their own personal accounts from any party dealing with the Plan in connection with a transaction involving assets of the Trust Fund.

#### **10.10 Investment Manager**

The Trustee will not be liable for any act or omission of an Investment Manager appointed by the Administrator pursuant to Section 8.10, and the Trustee will not be liable for following the advice of an Investment Manager with respect to any duties delegated by the Administrator to the Investment Manager.

#### **10.11 Exclusive Benefit Rule**

All contributions made by the Employer to the Trust Fund will be used for the exclusive benefit of the Participants and their Beneficiaries and will not be used for nor diverted to any other purpose except the payment of the costs of maintaining the Plan.

#### **10.12 Superseding Trust or Custodial Agreement**

If any assets of the Plan are invested in a separate trust or custodial account maintained by a Trustee or custodian, the provisions of such separate trust or custodial agreement will supersede all provisions of this Article 7 with respect such assets except for Section 10.11 and, in the absence of a specific provision in such separate trust or custodial agreement regarding the valuation of securities held by the Trust Fund, Section 10.3. If such separate trust or custodial account should for any reason fail, be found invalid or terminate prior to the termination of this

Plan and the distribution of all the assets hereof, this Article 7 will be deemed to have again become effective immediately prior to such failure, invalidity or termination.

## **ARTICLE 11**

### **Miscellaneous Provisions**

#### **11.1 No Contract of Employment**

Except as otherwise provided by law, neither the establishment of this Plan, any modification hereto, the creation of any fund or account, nor the payment of any benefits, will be construed as giving any Participant or other person any legal or equitable rights against the Employer, any officer or Employee thereof, or the Trustee, except as herein provided. Further, under no circumstances will the terms of employment of any Participant be modified or otherwise affected by this Plan.

#### **11.2 Title to Assets**

No Participant or Beneficiary will have any right to, or any interest in, any assets of the Trust upon separation from service with the Employer, Affiliated Employer, or Adopting Employer, except as otherwise provided by the terms of the Plan.

#### **11.3 Qualified Military Service**

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

#### **11.4 Severability of Provisions**

If any Plan provision is held invalid or unenforceable, such invalidity or unenforceability will not affect any other provision of this Plan, and this Plan will be construed and enforced as if such provision had not been included.

#### **11.5 Gender and Number**

Words used in the masculine gender will be construed as though they were also used in the feminine or neuter gender where applicable, and words used in the singular form will be construed as though they were also used in the plural form where applicable.

#### **11.6 Headings and Subheadings**

Headings and subheadings are inserted for convenience of reference. They constitute no part of this Plan and are not to be considered in its construction.

#### **11.7 Legal Action**

In any claim, suit or proceeding concerning the Plan and/or Trust which is brought against the Trustee or Administrator, this Plan and Trust will be construed and enforced according to the laws of the state in which the Sponsoring Employer maintains its principal place of business, to the extent that is not preempted by the provisions of ERISA. Furthermore, unless otherwise prohibited by law, either the Sponsoring Employer or the Trust, in the sole discretion of the Sponsoring Employer, will reimburse the Trustee and/or the Administrator for all costs, attorneys fees and other expenses associated with any such claim, suit or proceeding.

#### **11.8 Qualified Plan Status**

This Plan and the related Trust Agreement are intended to be a qualified retirement plan under the provisions of Code §401(a) and §501(a).

#### **11.9 Mailing of Notices to Administrator, Employer or Trustee**

Notices, documents or forms required to be given to or filed with the Administrator, the Employer or the Committee will be either hand delivered or mailed by first class mail, postage prepaid, to the Committee or the Employer, at the Employer's principal place of business. Any notices, documents or forms required to be given to or filed with the Trustee will be either be hand delivered or mailed by first class mail, postage prepaid, to the Trustee at its principal place of business.

#### **11.10 Participant Notices and Waivers of Notices**

Whenever written notice is required to be given under the terms of this Plan, such notice will be deemed to be given on the date that such written notice is either hand delivered to the recipient or deposited at a United States Postal Service Station, first class mail, postage paid. Notice may be waived by any party entitled to receive written notice concerning any matter under the terms of this Plan.

#### **11.11 No Duplication of Benefits**

There will be no duplication of benefits under the Plan because of employment by more than one participating Employer.

**11.12 Evidence Furnished Conclusive**

Anyone required to give evidence under the terms of the Plan may do so by certificate, affidavit, document or other information that the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. The Plan Fiduciaries will be fully protected in acting and relying upon any evidence described under this Section.

**11.13 Release of Claims**

Any payment to a Participant or Beneficiary, his or her legal representative, or to a guardian or committee appointed for such Participant or Beneficiary, will, to the extent thereof, be in full satisfaction of all claims hereunder against the Administrator and the Trustee, 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 determined by the Administrator or the Trustee.

**11.14 Multiple Copies of Plan And/or Trust**

This Plan, the related Trust Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which will constitute one and the same Agreement or Trust Agreement, as the case may be, and will be binding on the respective successors and assigns of the Employer and all other parties.

**11.15 Limitation of Liability and Indemnification**

In addition to and in furtherance of any other limitations provided in the Plan, and to the extent permitted by applicable law, the Employer will indemnify and hold harmless its board of directors (collectively and individually), if any, the Administrative/Advisory Committee (collectively and individually), if any, and its officers, Employees, and agents against and with respect to any and all expenses, losses, liabilities, costs, and claims, including legal fees to defend against such liabilities and claims, arising out of their good-faith discharge of responsibilities under or incident to the Plan, excepting only expenses and liabilities resulting from willful misconduct. This indemnity will not preclude such further indemnities as may be available under insurance purchased by the Employer or as may be provided by the Employer under any by-law, agreement, vote of shareholders or disinterested directors, or otherwise, as such indemnities are permitted under state law. Payments with respect to any indemnity and payment of expenses or fees under this Section will be made only from assets of the Employer, and will not be made directly or indirectly from assets of the Trust.

**11.16 Written Elections and Forms**

Whenever the word "written" or the words "in writing" are used, such words will include any method of communication permitted by the Department of Labor with respect to such documentation. In a similar manner, the word "form" will include any other method of election permitted under current law. Such alternative methods will include, but not be limited to, electronic modes to the extent permitted by law.

**11.17 Exclusive Benefit Rule**

All contributions made by the Employer or an Affiliated Employer to the Trust Fund will be used for the exclusive benefit of the Participants who are Employees of the Employer or Affiliated Employer and for their Beneficiaries and will not be used for nor diverted to any other purpose except the payment of the costs of maintaining the Plan. All contributions made by an Adopting Employer who is not an Affiliated Employer will be used for the exclusive benefit of the Participants who are Employees of the Adopting Employer and for their Beneficiaries and will not be used for nor diverted to any other purpose except the payment of the Adopting Employers' proportionate costs of maintaining the Plan.

**11.18 Dual and Multiple Trusts**

Plan assets are may be held in two or more separate trusts, or in trust and by an insurance company or by a trust and under a custodial agreement. Plan assets may also be held in a common trust.

**IN WITNESS WHEREOF**, this Plan and Trust have been executed by the Employer and the Trustee as of the day, month and year set forth on page 1 of this Agreement.

**City of Lincoln**

By \_\_\_\_\_

**INTERIM AMENDMENT #1**  
**FINAL §415 AND §411(d)(6) REGULATIONS AND RELIEF FOR HURRICANES KATRINA,  
WILMA AND RITA**

**B-1.01 Compliance with Plan Qualification Requirements.** The provisions of this amendment are intended to qualify as a good-faith amendment to document the Plan's compliance with the final regulations under Code §415 and the provisions of Section 1400Q of the Gulf Opportunity Zone Act of 2005. The provisions of this amendment supersede any contrary provisions under the Plan.

**B-2.01 Effective Date of Amendments.**

- (a) **Code §415 regulations.** Unless specifically designated otherwise, the amendments under Section B-3.01 addressing the provisions under the final Code §415 regulations are effective for Limitation Years beginning on or after July 1, 2007.
- (b) **Code §411(d)(6) regulations.** The amendments under Section B-3.02 addressing the application of the anti-cutback rules under Code §411(d)(6) are effective for Plan amendments adopted after August 9, 2006.
- (c) **Hurricane Katrina, Wilma and Rita amendments.** The amendments under Section B-3.03 addressing the provisions of Section 1400Q of the Gulf Opportunity Zone Act of 2005 relating to distributions and loans made to Participants residing in areas affected by Hurricanes Katrina, Rita and Wilma are only effective to the extent a distribution or loan has been made to a qualified individual pursuant to the provisions of Section B-3.03.

**B-3.01 Final Regulations Under Code §415.**

- (a) **Post-Severance Compensation.** Effective for the first limitation year beginning on or after July 1, 2007 Compensation includes compensation that is paid after an Employee severs employment with the Employer, provided the compensation is paid by the later of 2½ months after severance from employment with the Employer maintaining the Plan or the end of the Limitation Year that includes such date of severance from employment. For this purpose, compensation paid after severance of employment may only be included in Total Compensation to the extent such amounts would have been included as compensation if they were paid prior to the Employee's severance from employment.

For purposes of applying this subsection (a) the following amounts that are paid after a Participant's severance of employment are included in Total Compensation:

- (1) **Regular pay.** Compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments;
- (2) **Unused leave payments.** Payment for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued; and
- (3) **Deferred compensation.** Payments received by an Employee pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the Employee at the same time if the Employee had continued in employment and only to the extent that the payment is includible in the Employee's gross income.

Other post-severance payments (such as severance pay, parachute payments within the meaning of Code §280G(b)(2), or post-severance payments under a nonqualified unfunded deferred compensation plan that would not had been paid if the Employee had continued in employment) are not included as Total Compensation, even if such amounts are paid within the time period described in this subsection (a).

In determining the amount of a Participant's Employer Contributions, Plan Compensation may not include any amounts that do not satisfy the requirements of this subsection (a) or subsection. The exclusion of post-severance compensation from the definition of Plan Compensation that is otherwise includible in Total

Compensation may cause the Plan to fail the nondiscriminatory compensation rules under Treas. Reg. §1.414(s)-1.

(b) **Continuation payments for military service and disabled Participants.**

(1) **Payments for military service.** Compensation does not include any payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as defined in Code §414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(2) **Payments following permanent and total disability.** Compensation does not include compensation paid to a Participant who is permanently and totally disabled (as defined in Code §22(e)(3)). The Plan may take into account compensation the Participant would have received for the year if the Participant was paid at the rate of compensation paid immediately before becoming permanently and totally disabled (if such compensation is greater than the Participant's compensation determined without regard to this subsection (2)), provided contributions made with respect to amounts treated as compensation under this subsection (2) are nonforfeitable when made.

(c) **Definition of Compensation.** The definition of compensation under Treas. Reg. §1.415-2(b) includes amounts that are includible in the gross income of an Employee under the rules of Code §409A or §457(f)(1)(A) or because the amounts are constructively received by the Employee.

(d) **Few weeks rule.** Compensation for a Limitation Year may include amounts earned during that Limitation Year but not paid during that Limitation Year solely because of the timing of pay periods and pay dates if:

(1) These amounts are paid during the first few weeks of the next limitation year;

(2) The amounts are included on a uniform and consistent basis with respect to all similarly situated employees; and

(3) No compensation is included in more than one limitation year.

(e) **Restorative payments.** Restorative payments are not considered Annual Additions for any Limitation Year. For this purpose, restorative payments are payments made to restore losses to the Plan resulting from actions (or a failure to act) by a fiduciary for which there is a reasonable risk of liability under applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments. Examples of restorative payments include payments made pursuant to a Department of Labor order, the Department of Labor's Voluntary Fiduciary Correction Program, or a court-approved settlement, to restore losses to the Plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty are not restorative payments and generally constitute contributions that give rise to Annual Additions.

(f) **Corrective provisions.** The Plan is amended to eliminate any specific correction methods for correcting excess annual additions. If the Plan is eligible for self correction under Rev. Proc. 2006-27 (or successive guidance), the Employer may use reasonable correction methods (including the correction methods described in § 1.415-6(b)(6) of the 1981 IRS regulations) to the extent permitted under the IRS correction program.

(g) **Change of Limitation Year.** Where there is a change of Limitation Year, a "short" Limitation Year exists for the period beginning with the first day of the Limitation Year and ending on the day before the change in Limitation Year is effective. For this purpose, if the Plan is terminated effective as of a date other than the last day of the Limitation Year, the Plan is treated as if it were amended to change its Limitation Year.

**B-3.02 Protection of Benefits under Code §411(d)(6).**

(a) **Amendment of vesting schedule.** If the Plan's vesting schedule is amended or the Plan is amended in any way that directly or indirectly affects the computation of a Participant's nonforfeitable percentage, or if the Plan is deemed amended by an automatic change to or from a top-heavy vesting schedule, in the case of an

Employee who is a Participant as of the later of the date such amendment or change is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date) of such Employee's account balance will not be less than the percentage computed under the Plan without regard to such amendment or change. With respect to benefits accrued as of the later of the adoption or effective date of the amendment, the vested percentage of each Participant will be the greater of the vested percentage under the old vesting schedule or the vested percentage under the new vesting schedule.

- (b) **Reduction of accrued benefit.** A Plan amendment may not decrease the accrued benefit of any Participant, except as provided in Code §412(c)(8), or other applicable law. For purposes of this section, a plan amendment includes any changes to the terms of a plan, including changes resulting from a merger, consolidation, or transfer (as defined in Code §414(l)) or a Plan termination. The rules of this subsection (b) apply to a Plan amendment that decreases a Participant's benefit, or otherwise places greater restrictions or conditions on a Participant's right to protected benefits, even if the amendment merely adds a restriction or condition that is permitted under the vesting rules in Code §411. However, such an amendment does not violate this subsection (b) to the extent it applies with respect to benefits that accrue after the applicable amendment date. An amendment that satisfies the applicable requirements under DOL Reg. §2530.203-2(c) relating to Vesting Computation Periods does not fail to satisfy the requirements of this subsection (b) merely because the amendment changes the Plan's Vesting Computation Period.

**B-3.03 Special Distribution and Loan Rules for Participants Affected by Hurricanes Katrina, Rita, And Wilma.**

- (a) **In general.** This Section B-3.03 sets forth the provisions of Section 1400Q of the Gulf Opportunity Zone Act of 2005 relating to distributions and loans made to Participants residing in areas affected by Hurricanes Katrina, Rita and Wilma. The provisions of this Section B-3.03 will apply only to the extent a distribution or loan has been made to a qualified individual pursuant to the provisions of this Section B-3.03. If the Plan does not operationally apply the rules under this Section B-3.03, such provisions do not apply to the Plan. To the extent this Section B-3.03 applies to the Plan, the provisions of this Section B-3.03 supersede any inconsistent provisions of the Plan or loan program.
- (b) **Tax-favored withdrawals of Qualified Hurricane Distributions.**
- (1) **Eligibility for Qualified Hurricane Distribution.** A Qualified Individual may take a Qualified Hurricane Distribution without regard to any distribution restrictions otherwise applicable under the Plan. A Qualified Hurricane Distribution is not subject to the early distribution penalty under Code §72(t).
- (i) **Definition of Qualified Hurricane Distribution.** A Qualified Hurricane Distribution is a distribution to a qualified individual as described in Code §1400Q(a)(4)(A).
- (ii) **Limit on amount of Qualified Hurricane Distributions.** The aggregate amount of Qualified Hurricane Distributions received by an individual for any taxable year (from all plans maintained by the Employer and any member of a controlled group which includes the Employer) may not exceed the excess (if any) of \$100,000, over the aggregate amounts treated as Qualified Hurricane Distributions received by such individual for all prior taxable years.
- (2) **Income inclusion spread over 3-year period.** Unless a qualified individual elects not to have this paragraph apply for any taxable year, a Qualified Hurricane Distribution is not required to be included in gross income for the taxable year of distribution but shall be included in gross income ratably over the 3-taxable year period beginning with the taxable year of the distribution.
- (3) **Repayment of Qualified Hurricane Distribution.** A Participant who received a Qualified Hurricane Distribution from the Plan or another eligible retirement plan (as defined in Code §402(c)(8)(B)) may, at any time during the 3-year period beginning on the day after the receipt of such distribution, make one or more rollover contributions to the Plan in an aggregate amount that does not exceed the amount of such Qualified Hurricane Distribution. This subsection (3) only applies if the Plan permits rollover contributions.

IN WITNESS WHEREOF, this Amendment has been executed this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

City of Lincoln, Nebraska

By \_\_\_\_\_

**INTERIM AMENDMENT #2**  
**PENSION PROTECTION ACT OF 2006 (PPA)**

**C-1.01 Compliance with Pension Protection Act of 2006.** The provisions of this amendment are intended to qualify as a good-faith amendment to document the Plan's compliance with the plan qualification requirements under the Pensions Protection Act of 2006 (PPA) and other IRS guidance. This amendment supersedes any contrary provisions under the Plan.

**C-2.01 Qualification Requirements under PPA.**

- (a) **Vesting Requirements.** Effective for Plan Years beginning on or after January 1, 2007, any employer contributions under the Plan will vest in accordance with the vesting schedule designated under the Plan.
- (1) **Permissible vesting schedules.** Effective for Plan Years beginning on or after January 1, 2007, any Employer Contributions provided under the Plan must vest in accordance with either a three-year cliff vesting schedule or a six-year graded vesting schedule. Under the 3-year cliff vesting schedule, an Employee is 100% vested after 3 Years of Service. Prior to the third Year of Service, the vesting percentage is zero. Under the 6-year graded vesting schedule, an Employee vests in his/her Employer Contribution Account in the following manner:
- After 2 Years of Service – 20% vesting  
After 3 Years of Service – 40% vesting  
After 4 Years of Service – 60% vesting  
After 5 Years of Service – 80% vesting  
After 6 Years of Service – 100% vesting
- (2) **Application of vesting schedule.** The vesting schedules above do not apply to governmental plan sponsors not subject to ERISA.
- (b) **Direct Rollover by Non-Spouse Beneficiary.** Effective for distributions made on or after January 1, 2007, a non-spouse beneficiary (as defined in Code §401(a)(9)(E)) may elect to directly rollover an Eligible Rollover Distribution to an individual retirement account under Code §408(a) or an individual retirement annuity under Code §408(b). In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an Eligible Rollover Distribution. In applying this subsection (b), a non-spouse rollover will not be subject to the direct rollover requirements under Code §401(a)(31), the rollover notice requirements under Code §402(f) or the mandatory withholding requirements under Code §3405(c).
- (c) **Direct Rollover of Non-Taxable Amounts.** Notwithstanding any other provision of the Plan, effective for taxable years beginning on or after January 1, 2007, an Eligible Rollover Distribution may include the portion of any distribution that is not includible in gross income. For this purpose, an Eligible Retirement Plan includes a Defined Contribution or Defined Benefit Plan qualified under Code §401(a) and a tax-sheltered annuity plan under Code §403(b), provided the rollover is accomplished through a direct rollover and the recipient Eligible Retirement Plan separately accounts for any amounts attributable to the rollover of any nontaxable distribution and earnings thereon.
- (d) **Rollovers to Roth IRA.** For distributions occurring on or after January 1, 2008, a Participant or beneficiary (including a non-spousal beneficiary to the extent permitted under subsection (b) above), may rollover an Eligible Rollover Distribution to a Roth IRA, provided the Participant (or beneficiary) satisfies the requirements for making a Roth contribution under Code §408A(c)(3)(B). Any amounts rolled over to a Roth IRA will be included in gross income to the extent such amounts would have been included in gross income if not rolled over (as required under Code §408A(d)(3)(A)). For purposes of this subsection (d), the Plan Administrator is not responsible for assuring the Participant (or beneficiary) is eligible to make a rollover to a Roth IRA.

- (e) **Distribution Notice Periods.** Notwithstanding any other provision of the Plan, effective for Plan Years beginning on or after January 1, 2007, the period for providing the rollover notice as required under Code §402(f) and the period for providing the notice regarding Participant (and spousal) consent as required under Code §417 will be no less than 30 days and no more than 180 days before the date of distribution.
- (f) **Content of Notice of a Participant's Right to Defer Receipt of a Distribution.** Effective for Plan Years beginning on or after January 1, 2007, the notice relating to a Participant's right to defer receipt of a distribution under Code §411(a)(11) must include a description of the consequences of a Participant's decision not to defer the receipt of a distribution.
- (g) **Qualified Domestic Relations Orders.** Effective April 6, 2007, a domestic relations order otherwise meeting the requirements to be a qualified domestic relations order (QDRO) under Code §414(p)(3) shall not fail to be treated as a QDRO solely because:
- (1) the order is issued after, or revises, another domestic relations order or QDRO; or
  - (2) of the time at which the order is issued, including orders issued after the death of the Participant.
- Any QDRO described in this subsection (g) shall be subject to the same requirements and protections which apply to QDROs under Code §414(p)(7).
- (h) **In-Service Distributions from Pension Plans.** For Plan Years beginning after January 1, 2007, if the Plan is a pension plan (e.g., a money purchase plan or a plan that holds transferred assets from a money purchase plan), a Participant may not receive an in-service distribution of his/her vested Account Balance prior to attainment of Normal Retirement Age.
- (i) **Penalty-Free Withdrawals for Individuals Called to Active Duty.** Effective September 11, 2001, the distribution provisions applicable to elective deferrals include a Qualified Reservist Distribution, as defined in subsection (1) below. If a Participant takes a Qualified Reservist Distribution, such distributions will not be subject to the 10% penalty tax under Code §72(t).
- (1) **Qualified Reservist Distribution.** For purposes of this subsection (i), a Qualified Reservist Distribution means any distribution to an individual if:
    - (i) such distribution is from amounts attributable to elective deferrals described in Code §402(g)(3)(A) or (C) or Code §501(c)(18)(D)(iii),
    - (ii) such individual was (by reason of being a member of a reserve component (as defined in §101 of Title 37 of the United States Code)) ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and
    - (iii) such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.
  - (2) **Active duty.** For purposes of this subsection (i), a Qualified Reservist Distribution will only be available for individuals who are ordered or called into active duty after September 11, 2001, and before December 31, 2007.

IN WITNESS WHEREOF, this Amendment has been executed this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

City of Lincoln, Nebraska

By \_\_\_\_\_