

TOWNSHIP OF OHIO

ORDINANCE NUMBER 324

AN ORDINANCE AMENDING THE EXISTING TOWNSHIP OF OHIO NON-UNIFORMED EMPLOYEES PENSION PLAN ("PLAN"), ALLEGHENY COUNTY, PENNSYLVANIA, IN ORDER TO AMEND THE PLAN TO ADD DEFINED CONTRIBUTION FEATURES AND TO COMPLY WITH THE FEDERAL AND COMMONWEALTH OF PENNSYLVANIA LAWS AND REGULATIONS IN EFFECT AS OF JANUARY 1, 2018.

WHEREAS, Township intends for this Plan to comply with the tax-exempt retirement plan requirement of the Internal Revenue Code of 1986 (as amended) Section 401(a) and, as a result, the Township adopts the attached Plan amendments.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED, by the Township of Ohio, Allegheny County, Pennsylvania and it is hereby ordained and enacted by the authority of the same as follows:

SECTION ONE: ESTABLISHMENT:

This Ordinance sets forth the details of the money purchase retirement plan provisions for full time, bargained for non-uniform employees of the Township of Ohio hired after January 1, 2017 pursuant to the provisions of Exhibit A and updates the Internal Revenue Code provisions as set forth in Exhibit A. This Ordinance is an amendment to the Non-Uniformed Employees Pension Plan as set forth in Ordinance No. 249.

SECTION TWO: SAVINGS PROVISION:

In the event that any provisions, section, sentence, clause or part of this Retirement Plan shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause, or part of the Plan, it being the intent of the Township of Ohio that such remainder shall remain in full force and effect.

SECTION THREE: AUTHORIZED SIGNATURE:

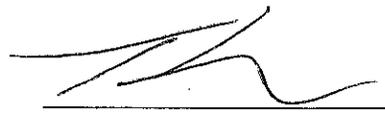
The Chairman or Secretary of the Township of Ohio Council are hereby authorized and directed to execute the Plan Documents.

ENACTED this 27<sup>th</sup> day of May 2018.

ATTEST:

TOWNSHIP OF OHIO

  
Secretary

  
Chairman, Board of Supervisors (SEAL)

**Exhibit A**

**ARTICLE XIII**

**MONEY PURCHASE PROVISIONS FOR FULL-TIME BARGAINED FOR  
EMPLOYEES HIRED ON OR AFTER JANUARY 1, 2017**

**Section 13.1 - Eligibility for Participation in Money Purchase Defined Contribution  
(DC) features**

Eligibility for Participation in this Article XIII is limited to Defined Contribution Employees who complete any forms required by the Plan Administrator. The benefits in this Article XIII shall be the exclusive benefits provided to Defined Contribution Employees. Notwithstanding anything to the contrary in this Plan, no bargained for Township employee (including any Participant eligible for participation in this Article XIII) hired after January 1, 2017 shall be eligible to participate in the Defined Benefit Features, Articles IV through VI of this Plan for any period of service after January 1, 2017. The provisions of this Article XIII found below apply only to Defined Contribution Employees.

**Section 13.2 - Definitions**

- (a) **Account Balance** means the balance of a Participant's Account held under this Article XIII. A Participant's Account Balance shall be composed of all amounts allocated under this Article XIII hereof (including the Employer Contribution Participant Account, the Employee Pre-Tax and Post-Tax Contribution Participant Account) (if any) and all related earnings thereon net of expenses thereon.
- (b) **Salary** means the Defined Contribution Employee's W-2 wages earned during the Plan Year. W-2 wages for this purpose shall mean the amount in Box-16 of the W-2 (also known as "state wages.")
- (c) **Administrator or Plan Administrator** means the individual or firm appointed by the Employer to administer the Plan. If no Administrator is appointed, the Administrator shall be the Township Manager.
- (d) **Defined Contribution Employee** shall mean any individual who is a bargained for non-uniformed employee hired by Ohio Township (Employer) after January 1, 2017 on a regular full-time basis, who is not a police officer and who is not eligible to participate under the provisions of any other pension plan employed by the Employer. For the purpose of this Article XIII, "full-time basis" shall mean a person who is regularly employed for at least thirty-five (35) hours per week. For the purposes of this Article XIII, part time employees and elected officials shall not be considered Defined Contribution Employees.
- (e) **Normal Retirement** means age 55 and 5 Years of Service.

- (f) **Plan Year** means the calendar year.
- (g) **Trustee** means the individual or entity selected by the Employer to hold the assets of this Article XIII in trust for the Participants. Unless and until another appointment is made, the Employer shall be Trustee of the assets of the Plan.
- (h) **Valuation Date** means the last day of the calendar year and any other date selected by the Employer. However, to the extent any assets are invested with an insurance or other investment company, Valuation Dates shall be determined in accordance with the investment contract or arrangement. If the assets are self-directed, the Valuation Date shall be determined daily.

### **Section 13.3 - Contributions**

- (a) **Employer** - Beginning January 1, 2017 and each calendar year thereafter, the Employer shall make a contribution to the Plan that will be sufficient to satisfy the requirements of Section 13.4. Defined Contribution Employees hired between January 1, 2017 and the institution of this Money Purchase Plan shall be eligible to receive a contribution for their service during that time period which shall be allocated as soon as administratively feasible after the institution of this Money Purchase Plan.
- (b) **Employee** - As soon as administratively feasible after adoption of this Plan amendment, participants shall make a mandatory contribution of five (5%) percent of Salary into the Employee Pre-Tax Contribution Participant Account. Participants may also make voluntary contributions into Employee Post-Tax Contribution Participant Account up to 10% of Salary or such lesser amount as may be permitted under the Internal Revenue Code ("Code"). All mandatory employee contributions designated as such made on or after the first payroll after this Plan is adopted shall be paid or "picked up" by the Employer in lieu of contributions by the employees and thereafter treated as employer contributions for federal income taxation purposes within the meaning of Section 414(h)(2) of the Code. The mandatory contributions may be paid or picked up by a reduction in the cash salary, by an offset against future salary increases or a combination of both. Affected employees shall not have the option of choosing to receive the pickup contributions directly in lieu of having them paid by the Employer to the Plans. Notwithstanding the foregoing, contributions so picked up shall continue to be treated as employee contributions for all purposes of state and local law in the same manner and to the same extent as employee contributions made prior to the date of the pickup, including, by way of illustration and not limitation, being treated as part of the affected employee's compensation for both Pennsylvania and local income tax laws and for purposes of computing any benefits under the affected employee's pension plan.

## **Section 13.4 - Allocation of Contributions**

- (a) **Separate Accounts:** The Administrator shall maintain a separate Participant Account for each Participant setting forth the Participant's Account Balance. The Administrator shall make the allocations among such Participant Accounts as set forth in this Section which shall include employee contributions under 13.3(b) and employer contributions under 13.4(b) hereof.
- (b) **Employer Contributions** (made under 13.3(a), above) shall be allocated as of each allocation date among the Employer Contribution Participant Accounts of eligible Participants in the amount of three (3%) percent of the Salary that was paid to each such Participant since the previous allocation date. The last day of the Plan Year and any interim date chosen by the Employer and the Administrator shall be allocation dates. Once an allocation is made, the amount allocated shall become part of the Participant's Account Balance. An allocation of the Employer Contribution shall be made in the year a Participant terminates employment based upon the accrual of Salary during the final period of employment with the Employer. The amount of the Employer contribution may be amended or stopped all together.

## **13.5. Vesting**

A Participant who ceases to be an Employee in Employment for any reason other than death, Total and Permanent Disability, or Normal Retirement, and who has not completed five Years of Vesting Service shall be 0% vested in his Employer Contribution Participant Account. A Participant shall be immediately 100% vested in his Employer Contribution Participant Account upon death, Total and Permanent Disability or Normal Retirement or completion of five Years of Service.

Any portion of a Participant's Employer Contribution Account which is not vested upon termination of employment by death, Total and Permanent Disability, attainment of Normal Retirement Age or completion of five Years of Service shall be forfeited. Forfeited amounts shall be held in a suspense account until used to reduce the Employer's contributions.

If a Participant terminates employment and is later rehired, his Years of Service shall begin upon his rehire date.

A Participant shall be 100% vested in his Employee Contribution Account.

## **13.6. Allocation of Gain or Loss**

- (a) **General Pooled Assets:** As of each Valuation Date, the Administrator shall determine the fair market value of all assets in the Plan that are not held in suspense accounts, segregated accounts or insurance contracts. Any gain or

loss on such assets since the previous Valuation Date shall be allocated among all Participant Accounts (except those Accounts held in segregated accounts) in proportion to Account Balances as of the previous Valuation Date.

- (b) **Segregated Accounts** (including Participant-Directed Investment Accounts): As of each Valuation Date, the Administrator shall determine the market value of all assets held in each segregated account. A separate allocation of gain or loss shall be made for each segregated account. If there is more than one Participant Account within a segregated account, the gain or loss since the previous Valuation Date for that segregated account shall be allocated in proportion to the Account Balances as of the previous Valuation Date.
- (c) **Holding Account:** Contributions made between allocation dates shall be allocated to a holding account which shall also hold any related earnings all of which shall be allocated to Participant Accounts pursuant to the process established by the Administrator and the Employer.
- (4) **Investment Contracts:** Notwithstanding subsections (1), (2), and (3) immediately above, if any Plan assets are invested through any arrangement with an insurance company or other investment organization, Accounts shall be valued, and gains, losses, costs, and expenses shall be allocated (but not less frequently than annually) in accordance with the terms of the applicable investment contract or arrangement.

### **13.7. Participant-Directed Investments**

Notwithstanding the provisions or the other sections of this Article, if the Administrator establishes such a policy, any Participant, Beneficiary, or alternate payee with an Account Balance under this Article may direct how to invest all, or a certain portion, of his Participant Account. The Employer or Administrator shall have sole discretion to determine what investment options will be made available to the Participants. All contributions, expenses, income or losses shall be allocated in accordance with the policies established under this section. To the extent that the Participants do not exercise their rights under this section, the allocation of expenses, income or losses may be made pursuant to Section 13.6 above or such other provisions set forth by the Plan Administrator and the Employer and the investment of their Accounts may be made pursuant to Section 13.6 immediately above or such other provisions set forth by the Plan Administrator and the Employer. To the extent permitted by law, the Trustee and Administrator shall be relieved of any fiduciary responsibility for investment decisions made pursuant to this section, provided, however, that the Plan Administrator or Trustee have followed the instructions of the Participant and that said instructions are in accordance with applicable law. Upon the death or incapacity of the Participant, the powers granted to the Participant under this section shall inure to the benefit of the Participant's Beneficiary, trustee or legal representative.

### 13.8. Distributions

- (a) **Applicability:** This section governs the distribution of vested Account Balances. Furthermore, distributions are subject to the requirements of the applicable provisions of the Internal Revenue Code as set forth in this Plan document.
- (b) **General Rule:** Distribution of a Participant's vested Account Balance shall be made in a lump sum as soon as it is administratively feasible to make distribution following a Participant's termination of employment with the Employer and subject to such limitations and conditions utilized by the Administrator. A Participant's Account Balance shall be valued as of the Valuation Date coincident with or immediately preceding the date of distribution. In the event that a Participant does not consent to accept a distribution pursuant to this provision, his Account Balance shall be rolled over to an Individual Retirement Account.
- (c) **Annuity Option:** Notwithstanding subsection (2) immediately above, if a Participant has a vested Account Balance in excess of \$5,000 and the Participant desires to convert his lump-sum benefit into an annuity, he may do so under the rules and conditions established by the Employer and the Administrator. This annuity shall be purchased from a third-party insurance firm selected by the Employer or the Administrator.
- (d) **Death Benefit:** Each Participant shall complete a beneficiary designation form designating the person to whom his Account Balance shall be paid upon his death. If no beneficiary designation form has been completed, the Participant's Account Balance shall be paid to his spouse, or if no spouse to his issue to be divided equally and, if no issue, to his Estate. All payments shall be made in a lump sum payment.
- (e) **Loans and Hardship Distributions:** Loans and hardship distributions of Plan assets are not permitted.

### 13.9 Administration

- (a) **Powers of the Employer.** The Employer shall have the following powers and duties:
  - (i) To appoint and remove, with or without cause, the Plan Administrator. If none is so appointed, the Plan Administrator shall be the Township Manager.
  - (ii) To amend or terminate the Plan;

- (iii) To appoint a committee to facilitate administration of the Plan and communications to Participants;
- (iv) To decide all questions or eligibility (1) for Plan participation, and (2) upon appeal by an Participant, Employee or Beneficiary, for the payment of benefits;
- (v) To engage professionals with regard to Plan matters and Plan's operation;
- (vi) To take all actions and to communicate to the Plan Administrator in writing all necessary information to carry out the terms of the Plan and Trust; and
- (vii) To notify the Plan Administrator in writing of the termination of the Plan.

(b) **Duties of the Plan Administrator** – The Plan Administrator shall have the following powers and duties.

- (i) To construe and interpret the provisions of the Plan;
- (ii) To maintain and provide such returns, reports, schedules, descriptions, and individual Account statements, as are required by law within the times prescribed by law; and to furnish to the Employer, upon request, copies of any or all such materials, and further, to make copies of such instruments, reports, descriptions, and statements as are required by law available for examination by Participants and such of their Beneficiaries who are or may be entitled to benefits under the Plan in such places and in such manner as required by law;
- (iii) To obtain from the Employer such information as shall be necessary for the proper administration of the Plan;
- (iv) To determine the amount, manner, and time of payment of benefits hereunder;
- (v) To appoint and retain such agents, counsel, and accountants for the purpose of properly administering the Plan;
- (vi) To distribute assets of the Trust to each Participant and Beneficiary in accordance with the terms of this Section 13.9;
- (vii) To pay expenses from the Trust; and

- (viii) To do such other acts reasonably required to administer the Plan in accordance with its provisions or as may be provided for or required by law.
- (c) **Protection of the Employer:** The Employer shall not be liable for the acts or omissions of the Plan Administrator, but only to the extent that such acts or omissions do not result from the Employer's failure to provide accurate or timely information as required or necessary for proper administration of the Plan.
- (d) **Protection of the Plan Administrator:** The Plan Administrator may rely upon any certificate, notice or direction purporting to have been signed on behalf of the Employer which the Plan Administrator believes to have been signed by a duly designated official of the Employer.
- (e) **Resignation or Removal of Plan Administrator:** The Plan Administrator may resign at any time effective upon sixty (60) days prior written notice to the Employer. The Plan Administrator may be removed by the Employer at any time upon sixty (60) days prior written notice to the Plan Administrator. Upon the resignation or removal of the Plan Administrator, the Employer may appoint a successor Plan Administrator; failing such appointment, the Employer shall assume the powers and duties of Plan Administrator. Upon the resignation or removal of the Plan Administrator, any Trust assets invested by or held in the name of the Plan Administrator shall be transferred to the trustee in cash or property, fair market value, except that the return of Trust assets invested in a contract issued by an insurance company shall be governed by the terms of that contract.
- (f) **No Termination Penalty:** The Plan Administrator shall have no authority or discretion to impose any termination penalty upon its removal.
- (g) **Decisions of the Plan Administrator:** All constructions, determinations, and interpretations made by the Plan Administrator pursuant to this Section or by the Employer pursuant to this Section shall be final and binding on all persons participating in the Plan, given deference in all courts of law to the greatest extent allowed by applicable law, and shall not be overturned or set aside by any court of law unless found to be arbitrary or capricious, or made in bad faith.

### 13.10 Miscellaneous

- (a) **Nonguarantee of Employment:** Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee, or as a right of an Employee to be continued in the employment of the Employer, as a limitation of the right of the Employer to discharge any of its Employees, with or without cause.

- (b) **Rights to Trust Assets:** No Employee or Beneficiary shall have any right to, or interest in, any assets of the Trust upon termination of his/her employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable under the Plan to such Employee or Beneficiary out of the assets of the Trust. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the Trust and none of the fiduciaries shall be liable therefor in any manner.
- (c) **Nonforfeiture of Benefits:** Subject only to the specific provisions of this Plan, nothing shall be deemed to deprive a Participant of his/her right to the nonforfeitable interest to which he/she becomes entitled in accordance with the provisions of the Plan.
- (d) **Incompetency of Payee:** In the event any benefit is payable to a minor or incompetent person, to a person otherwise under legal disability, or to a person who, in the sole judgment of the Employer, is by reason of advanced age, illness, or other physical or mental incapacity incapable of handling the disposition of his/her property, the Employer may apply the whole or any part of such benefit directly to the care, comfort, maintenance, support, education, or use of such person or pay or distribute the whole or any part of such benefit to:
- (i) The parent of such person;
  - (ii) The guardian, committee, or other legal representative, wherever appointed, of such person;
  - (iii) The person with whom such person resides;
  - (iv) Any person having the care and control of such person; or
  - (v) Such person personally.

The receipt of the person to whom any such payment or distribution is so made shall be full and complete discharge of the Plan's requirements therefor.

- (e) **Inability to Locate Payee:** Anything to the contrary herein notwithstanding, if the Employer is unable, after reasonable effort, to locate any Participant or Beneficiary to whom an amount is payable hereunder, such amount shall be forfeited and held in the Trust for application against the next succeeding Employer Contribution or contributions required to be made hereunder. Notwithstanding the foregoing, however, such amount shall be reinstated, by means of an additional Employer contribution, if and when a claim for the forfeited amount is subsequently made by the Participant or beneficiary or if the Employer receives proof of death of such person, satisfactory to the Employer. To the extent not inconsistent with applicable law, any benefits lost by reason of

escheat under applicable state law shall be considered forfeited and shall not be reinstated.

- (f) **Mergers, Consolidations, and Transfer of Assets:** The Plan shall not be merged into or consolidated with any other plan, nor shall any of its assets or liabilities be transferred into any such other plan, unless each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer that is equal to or greater than the benefit he/she would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Plan had then terminated).
- (g) **Employer Records:** Records of the Employer as to an Employee's or Participant's Period of Service, termination of service and the reason therefor, leaves of absence, reemployment, earnings, and salary will be conclusive on all persons, unless determined to be incorrect.
- (h) **Applicable Law:** The Plan shall be construed under the laws of the Commonwealth of Pennsylvania, except to the extent superseded by federal law. The Plan is established with the intent that it meets the requirements under the Code. The provisions of this Plan shall be interpreted in conformity with these requirements.

In the event of any conflict between the Plan and a policy or contract issued hereunder, the Plan provisions shall control; provided, however, no Plan amendment shall supersede an existing policy or contract unless such amendment is required to maintain qualification under Section 401(a) and 414(d) of the Code.

### **13.11. Trust**

A Trust is hereby created to hold all the assets under this Article XIII for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust including investment expenses and reasonable compensation of Plan Administrator and reimbursement of reasonable expenses of Plan Administrator and impacts Participant Accounts as provided in Sections 13.6 and 13.7 hereof.

The Trustee or the Plan Administrator acting as agent for the Trustee shall have all such powers of a Trustee as are permitted under the laws of the Commonwealth of Pennsylvania.

### **13.12 Amendment**

The Employer may amend the provisions of this Article XIII subject to the conditions and limitations of State law. The power to amend specifically includes the power to increase, decrease or stop Employer or Employee contributions and terminate the Plan.

### **13.13 Document Coordination**

The Defined Contribution provisions of this Article XIII shall be construed in conformance with the following provisions of Plan document: Article II (Definitions), Article III (Administration), and Article XIV (Applicable Provisions of the Internal Revenue Code) (Articles II, III, and XIV are the "Coordinated Provisions"), except where Coordinated Provisions conflict with the Defined Contribution provisions hereof of Article XIII.

## **ARTICLE XIV**

### **APPLICABLE PROVISIONS OF THE INTERNAL REVENUE CODE**

#### **14.1 Intent to Comply with Internal Revenue Code**

The Employer intends that this Plan shall meet all the pertinent requirements established for a governmental plan (as defined in Internal Revenue Code §414(d)) under Internal Revenue Code §401(a), as amended, and the Plan shall be interpreted, wherever possible, to comply with the terms of said Code and all formal regulations and rulings pertinent to the Plan and trust agreement.

#### **14.2 Definitions**

The following definitions apply for purposes of this Article only:

- (a) **"Leased Employee"** shall mean any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient.
- (b) **"Limitation Year"** shall mean the Plan Year.

#### **14.3 Limit on Compensation**

Compensation is subject to the limitation under Code Section 401(a)(17), which is \$270,000 for the Plan Year and Limitation Year beginning in 2017. The limit is automatically adjusted periodically, without formal amendment, for changes in the law and cost-of-living adjustments under Code Section 401(a)(17).

#### 14.4 Leased Employees and Independent Contractors

Leased Employees and independent contractors are not eligible to participate in this Plan. Any person whom the Employer does not regard as being an Employee shall not be eligible to participate.

#### 14.5 Limit on Accrued Benefit

- (a) **General Rule.** Except as otherwise provided, this Plan shall at all times comply with the provisions of Code Section 415 and the regulations thereunder, the terms of which are specifically incorporated herein by reference. If a benefit payable to a Participant under this Plan would otherwise exceed the limit under Code Section 415, the benefit will be reduced to the maximum permissible benefit.
- (b) **Effective Date.** If there is more than one permitted effective date for any change, the change shall be effective as of the latest permissible effective date; however, any adjustment in the dollar limit under Code Section 415(b)(1)(A), whether required or permissible, shall take effect automatically as of the earliest permissible effective date. Effective as of January 1, 2008 the “applicable mortality table” and “applicable interest rate” are found in Rev. Rul. 2007-67. The “applicable mortality table” in Rev. Rul. 2001-62 was effective from December 31, 2002 through December 31, 2007.
- (c) **No Reduction in Accrued Benefits.** Notwithstanding the above, no change in the limits under this Article shall reduce the benefit of any Participant.
- (d) **Multiple Plans.** If a Participant also participates in one or more other plans that are required to be aggregated with this Plan for purposes of determining the limits under Code Section 415(b), and if the aggregated benefits would otherwise exceed the limit under Code Section 415(b), then benefits shall be reduced first under this Plan.
- (e) **Mandatory Contributions.** Participant Contributions are annual additions, and any benefit attributable to Participant Contributions is not included in the benefit subject to the limits of Code Section 415(b). This subsection does not apply to contributions “picked-up” in accordance with Code Section 414(h).
- (f) **Permissive Service Credit.** Effective as of January 1, 1998, if a Participant makes a purchase of permissive service credit (within the meaning of Code Section 415(n)) under the Plan, the benefit derived from the contributions made to purchase the service credit shall be treated as part of the benefit subject to the limitations under this section.

## 14.6 Limit on Annual Additions

- (a) **Annual Additions** - Except as otherwise provided, annual additions (which include Participant Contributions) under this Plan shall at all times comply with the provisions of Code Section 415(c) and the regulations thereunder, the terms of which are specifically incorporated herein by reference. If an annual addition would otherwise exceed the limit under Code Section 415(c), the excess annual addition will be eliminated in accordance with methods permitted under Rev. Proc. 2008-50 (Rev. Proc. 2006-27 prior to 2009) or its successor.
- (b) **Multiple Plans** - If a Participant also participates in one or more other plans that are required to be aggregated with this Plan for purposes of determining the limits under Code Section 415(c), and if the annual additions would otherwise exceed the limit under Code Section 415(c), annual additions will first be reduced under the other plan. If there is more than one other plan, annual additions will first be reduced under the plan with the greatest amount of annual additions.
- (c) **Effective Date** – The limits under which Code Section 415(c) are adjusted periodically in accordance with changes in the law or cost of living adjustments without the need for a plan amendment. If there is more than one permissible effective date for any required change relating to Code Section 415(c), then the change shall be effective as of the earliest permissible effective date.
- (d) **415(c) Compensation** - For the purposes of this Section, "compensation" includes only those items specified in Treas. Reg. §1.415(c)-2(b)1 or (2) and excludes all items listed in Treas. Reg. §1.415(c)-2(c), the terms of which are specifically incorporated herein by reference. Effective as of January 1, 2009, to the extent required by the Heroes Earnings Assistance Tax Relief Tax Act of 2008 (HEART Act), differential wage payments shall be included in Compensation

## 14.7 Direct Rollovers

- (a) If a Participant, a spousal beneficiary, or an alternate payee (who is a spouse or former spouse of a Participant) is entitled (under other provisions of this Plan) to receive an "eligible rollover distribution" of at least two hundred (\$200) dollars, the distributee may elect that the Plan Administrator transfer all or part (provided that the part is at least five hundred (\$500) dollars) to any "eligible retirement plan" capable of accepting such a transfer.
- (b) For purposes of this section, the following definitions shall apply:

- (1) An “eligible rollover distribution” is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9); (iii) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), and (iv) effective as of January 1, 2002, any hardship distribution. Effective as of January 1, 2002 clause (iii) does not apply to any after-tax Participant contributions that are paid to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified defined contribution plan described in Code Section 401(a) or 403(a), or effective as of January 1, 2007, any 403(b) annuity contract that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.
  
- (2) An “eligible retirement plan” is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to a surviving spouse, prior to January 1, 2002, an eligible retirement plan was an individual retirement account or individual retirement annuity. Effective as of January 1, 2002, an “eligible retirement plan” includes an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. Effective as of January 1, 2008 a Roth IRA is an “eligible retirement plan”.
  
- (3) A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p)(11), are distributees with regard to the interest of the spouse or former spouse.

## **14.8 Minimum Required Distributions**

Notwithstanding any provision in this Plan to the contrary, the distribution of a Participant's benefits shall be made in accordance with the requirements of Code Section 401(a)(9). For purposes of complying with Code Section 401(a)(9), life expectancies were determined in accordance with the 1987 proposed regulations prior to January 1, 2003 and with the final regulations (§1.401(a)(9)-1 through §1.401(a)(9)-9) on or after January 1, 2003.

- (a) Distribution of a Participant's benefits shall begin not later than April 1<sup>st</sup> of the calendar year following the later of:
  - (1) the calendar year in which the Participant attains age seventy and one-half (70½), or
  - (2) the calendar year in which the Participant retires.

Distributions must be made over a period not exceeding the life of the Participant or the joint lives a Participant and his Beneficiary.

- (b) Distributions to a Participant and his Beneficiaries shall only be made in accordance with the incidental death benefit requirements of Code Section 401(a)(9)(G) and the regulations thereunder. If a Participant receives a joint and survivor annuity and the beneficiary is not the Participant's spouse, life expectancy shall be determined using the Uniform Lifetime Table of Treasury regulation §1.401(a)(9)-9.
- (c) This section does not authorize the payment of any benefit in any form not permitted under another provision of the Plan.

## **14.9 Approved Domestic Relations Orders**

All rights and benefits, including elections, provided to a Participant in this Plan shall be subject to the rights afforded to any "alternate payee" under what is recognized pursuant to State law support provisions or as a "approved domestic relations order."

## **14.10 Credit for 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 Code Sections 401(a)(37) and 414(u).

#### **14.11 Vesting Upon Plan Termination**

Upon the termination of this Plan, or complete discontinuance of contributions (within the meaning of pre-ERISA Code Section 401(a)(7)) to this Plan, each Employee (who is not already 100% vested) as of the date of such termination or discontinuance shall become vested to the extent that the Plan is funded.

#### **14.12 Mandatory Lump Sum Distributions**

Effective as of January 1, 2006, unless the Participant consents to the distribution, any lump-sum distribution in excess of \$1000 made to a Participant prior to the Participant's attainment of Normal Retirement Age shall be rolled over by the Plan Administrator into an Individual Retirement Account established by the Plan Administrator for that purpose.

#### **14.13 Non-Spousal Rollover**

Effective January 1, 2007, if a Beneficiary who is not a surviving spouse is entitled to receive what would otherwise be an "eligible rollover distribution", the Beneficiary may, in accordance with Code Section 402(c)(11), make a trustee-to-trustee transfer of that amount to an IRA or individual retirement annuity (other than an endowment contract); provided that:

- (a) the transfer is made not later than the end of the fourth year after the year of the Participant's death; and
- (b) the account or annuity to which the amount is transferred is treated as an inherited IRA or individual retirement annuity in accordance with Code Section 408(d)(3)(C).

#### **14.14 Full Vesting at Normal Retirement Age**

A Participant's Normal Retirement Benefit shall be 100% vested upon attainment of his Normal Retirement Age.

#### **14.15 Forfeitures**

Forfeitures shall not be used to increase the benefits of any Participant in this Plan but may be used to reduce Employer contributions to the Plan.

#### **14.16 Exclusive Benefit**

The Plan is maintained for the exclusive benefit of its Participants and Beneficiaries.

#### **14.17 No Reversion to Employer**

At no time shall it be possible for the Plan assets to be used for, or diverted to, any purpose other than for the exclusive benefit of the Participants and their Beneficiaries, except that contributions made by the Employer may be returned to the Employer if:

- (a) The contribution was made due to a mistake of fact and the contribution is returned within one year of the mistaken payment of the contribution; or
- (b) The Plan is terminated.