

Metro | Agenda

Meeting: Metro Council
Date: Thursday, June 20, 2013
Time: 2 p.m.
Place: Metro, Council Chamber

CALL TO ORDER AND ROLL CALL

1. **INTRODUCTIONS**
2. **CITIZEN COMMUNICATION**
3. **PREVIEW OF JULY 12TH OXBOW AND BLUE LAKE PARKS' 50TH ANNIVERSARY CELEBRATION** Paul Slyman, Metro
4. **CONSIDERATION OF THE MINUTES FOR JUNE 13, 2013**
5. **ORDINANCES – SECOND READING**
 - 5.1 **Ordinance No. 13-1300**, For the Purpose of Adopting the Annual Budget for Fiscal Year FY 2013-14, Making Appropriations, Levy Ad Valorem Taxes, and Authorizing an Interfund Loan. **Tim Collier, Metro**
 - 5.1.1 Public Hearing on Ordinance No. 13-1300.
 - 5.2 **Ordinance No. 13-1305**, For the Purpose of Amending the FY 2012-13 Budget and Appropriations Scheduled for Changes in Operations. **Tim Collier, Metro**
 - 5.2.1 Public Hearing on Ordinance No. 13-1305.
6. **RESOLUTIONS**
 - 6.1 **Resolution No. 13-4439**, For the Purpose of Adopting the Capital Improvement Plan for Fiscal Years 2013-14 through 2017-18, Approving the Metropolitan Tourism Opportunity Competitiveness Account Projects and Re-Adopting Metro's Financial Policies. **Tim Collier, Metro**
7. **CHIEF OPERATING OFFICER COMMUNICATION**
8. **COUNCILOR COMMUNICATION**

ADJOURN

Television schedule for June 20, 2013 Metro Council meeting

<p>Clackamas, Multnomah and Washington counties, and Vancouver, WA Channel 30 – Community Access Network <i>Web site:</i> www.tvctv.org <i>Ph:</i> 503-629-8534 <i>Date:</i> Thursday, June 20</p>	<p>Portland Channel 30 – Portland Community Media <i>Web site:</i> www.pcmv.org <i>Ph:</i> 503-288-1515 <i>Date:</i> Sunday, June 23, 7:30 p.m. <i>Date:</i> Monday, June 24, 9 a.m.</p>
<p>Gresham Channel 30 - MCTV <i>Web site:</i> www.metroeast.org <i>Ph:</i> 503-491-7636 <i>Date:</i> Monday, June 24, 2 p.m.</p>	<p>Washington County Channel 30– TVC TV <i>Web site:</i> www.tvctv.org <i>Ph:</i> 503-629-8534 <i>Date:</i> Saturday, June 22, 11 p.m. <i>Date:</i> Sunday, June 23, 11 p.m. <i>Date:</i> Tuesday, June 25, 6 a.m. <i>Date:</i> Wednesday, June 26, 4 p.m.</p>
<p>Oregon City, Gladstone Channel 28 – Willamette Falls Television <i>Web site:</i> http://www.wftvmedia.org/ <i>Ph:</i> 503-650-0275 Call or visit web site for program times.</p>	<p>West Linn Channel 30 – Willamette Falls Television <i>Web site:</i> http://www.wftvmedia.org/ <i>Ph:</i> 503-650-0275 Call or visit web site for program times.</p>

PLEASE NOTE: Show times are tentative and in some cases the entire meeting may not be shown due to length. Call or check your community access station web site to confirm program times.

Agenda items may not be considered in the exact order. For questions about the agenda, call the Metro Council Office at 503-797-1540. Public hearings are held on all ordinances second read. Documents for the record must be submitted to the Regional Engagement and Legislative Coordinator to be included in the meeting record. Documents can be submitted by e-mail, fax or mail or in person to the Regional Engagement and Legislative Coordinator. For additional information about testifying before the Metro Council please go to the Metro web site www.oregonmetro.gov and click on public comment opportunities.

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Agenda Item No. 3.0

**Preview of July 12th Oxbow and Blue Lake Parks'
50th Anniversary Celebration**

Metro Council Meeting
Thursday, June 20, 2013
Metro, Council Chamber

Agenda Item No. 4.0

Consideration of the Minutes for June 13, 2013

Metro Council Meeting
Thursday, June 20, 2013
Metro, Council Chamber

Agenda Item No. 5.1

Ordinance No. 13-1300, For the Purpose of Adopting the
Annual Budget for Fiscal Year FY 2013-14, Making
Appropriations, Levy Ad Valorem Taxes, and Authorizing an
Interfund Loan.

Ordinances – Second Reading

Metro Council Meeting
Thursday, June 20, 2013
Metro, Council Chamber

BEFORE THE METRO COUNCIL

ADOPTING THE ANNUAL BUDGET FOR) ORDINANCE NO. 13-1300
 FISCAL YEAR FY 2013-14, MAKING)
 APPROPRIATIONS, LEVYING AD VALOREM) Introduced by Martha Bennett, Chief
 TAXES, AND AUTHORIZING AN INTERFUND) Operating Officer, with the concurrence of
 LOAN) Council President Tom Hughes

WHEREAS, the Multnomah County Tax Supervising and Conservation Commission held its public hearing on the annual Metro budget for the fiscal year beginning July 1, 2013, and ending June 30, 2014; and

WHEREAS, recommendations from the Multnomah County Tax Supervising and Conservation Commission have been received by Metro (attached as Exhibit A and made a part of the Ordinance) and considered; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The “Fiscal Year 2013-14 Metro Budget,” in the total amount of FOUR HUNDRED EIGHTY ONE MILLION SIX HUNDRED SIXTY SIX THOUSAND SIX HUNDRED TWENTY (\$481,666,620), attached hereto as Exhibit B, and the Schedule of Appropriations, attached hereto as Exhibit C, are hereby adopted.

2. The Metro Council does hereby levy ad valorem taxes, as provided in the budget adopted by Section 1 of this Ordinance, at the rate of \$0.0966 per ONE THOUSAND DOLLARS (\$1,000) of assessed value for operating rate levy; at the rate of \$0.0960 per ONE THOUSAND DOLLARS (\$1,000) of assessed values for local option rate levy and in the amount of THIRTY SEVEN MILLION SIX HUNDRED SEVENTY NINE THOUSAND FOUR HUNDRED NINETY SEVEN (\$37,679,497) for general obligation bond debt, said taxes to be levied upon taxable properties within the Metro District for the fiscal year 2013-14. The following allocation and categorization subject to the limits of Section 11b, Article XI of the Oregon Constitution constitute the above aggregate levy.

SUMMARY OF AD VALOREM TAX LEVY

	Subject to the General Government <u>Limitation</u>	Excluded from <u>the Limitation</u>
Operating Tax Rate Levy	\$0.0966/\$1,000	
Local Option Tax Rate Levy	\$0.0960/\$1,000	
General Obligation Bond Levy		\$37,679,497

3. In accordance with Section 2.02.040 of the Metro Code, the Metro Council hereby authorizes positions and expenditures in accordance with the Annual Budget adopted by Section 1

of this Ordinance, and hereby appropriates funds for the fiscal year beginning July 1, 2013, from the funds and for the purposes listed in the Schedule of Appropriations, Exhibit C.

4. The Parks and Natural Areas Local Option Levy Fund is hereby created for the purpose of accounting for property taxes received under the local option levy authorization approved by the voters of the Metro region in May 2013. Major revenue source for the fund includes but is not limited to property taxes. In the event of the elimination of this fund, any fund balance remaining shall revert to the General Fund.

5. An interfund loan from the Solid Waste Revenue Fund to the Natural Areas Local Option Levy Fund in an amount not to exceed \$5.0 million is hereby authorized. The loan will be made to provide cash flow for authorized levy expenditures prior to the receipt of the first tax revenues in November/December 2013. The loan, including interest at a rate equal to the average yield on Metro's pooled investments, will be repaid from the Natural Areas Local Option Levy Fund prior to June 30, 2014.

6. The Chief Operating Officer shall make the filings as required by ORS 294.458 and ORS 310.060, or as requested by the Assessor's Office of Clackamas, Multnomah, and Washington Counties.

7. This Ordinance being necessary for the health, safety, or welfare of the Metro area, for the reason that the new fiscal year begins July 1, 2013, and Oregon Budget Law requires the adoption of a budget prior to the beginning of the fiscal year, an emergency is declared to exist and the Ordinance takes effect upon passage.

ADOPTED by the Metro Council on this 20th day of June 2013.

Tom Hughes, Council President

ATTEST:

Approved as to Form:

Kelsey Newell, Recording Secretary

Alison Kean Campbell, Metro Attorney

PLACEHOLDER

Exhibit A to Ordinance No. 13-1300

Tax Supervising and Conservation Commission
Certification Letter

Anticipated June 2013

PLACEHOLDER

Exhibit B to Ordinance No. 13-1300

Proposed FY 2013-14 Metro Budget

Available online at:

<http://www.oregonmetro.gov/index.cfm/go/by.web/id=36700>

EXHIBIT C
Ordinance 13-1300
FY 2013-14 SCHEDULE OF APPROPRIATIONS

	Proposed Budget
GENERAL FUND	
Communications	2,657,948
Council Office	3,625,837
Finance & Regulatory Services	4,518,058
Human Resources	2,164,042
Information Services	3,890,095
Metro Auditor	712,882
Office of Metro Attorney	2,061,480
Oregon Zoo	31,465,451
Parks & Environmental Services	8,768,344
Planning and Development	13,780,023
Research Center	3,621,574
Sustainability Center	3,800,631
Former ORS 197.352 Claims & Judgments	0
Special Appropriations	4,776,465
Non-Departmental	
Debt Service	1,720,071
Interfund Transfers	4,496,409
Contingency	4,289,868
<i>Total Appropriations</i>	96,349,178
Unappropriated Balance	14,971,701
Total Fund Requirements	\$111,320,879
 GENERAL ASSET MANAGEMENT FUND	
Asset Management Program	9,131,075
Non-Departmental	
Interfund Transfers	0
Contingency	2,610,481
<i>Total Appropriations</i>	11,741,556
Unappropriated Balance	486,312
Total Fund Requirements	\$12,227,868
 GENERAL OBLIGATION BOND DEBT SERVICE FUND	
Debt Service	36,347,675
Unappropriated Balance	146,450
Total Fund Requirements	\$36,494,125
 GENERAL REVENUE BOND FUND	
Debt Service	2,869,322
Unappropriated Balance	5,393
Total Fund Requirements	\$2,874,715
 MERC FUND	
MERC	44,886,700
Non-Departmental	
Debt Service	0
Interfund Transfers	4,900,804
Contingency	8,459,107
<i>Total Appropriations</i>	58,246,611
Unappropriated Balance	11,455,264
Total Fund Requirements	\$69,701,875

EXHIBIT C
Ordinance 13-1300
FY 2013-14 SCHEDULE OF APPROPRIATIONS

	Proposed Budget
NATURAL AREAS FUND	
Sustainability Center	35,247,915
Non-Departmental	
Interfund Transfers	1,885,809
Contingency	20,000,000
<i>Total Appropriations</i>	57,133,724
Unappropriated Balance	9,129,631
Total Fund Requirements	\$66,263,355
 NATURAL AREAS LOCAL OPTION LEVY FUND	
Oregon Zoo	297,413
Parks & Environmental Services	2,296,544
Sustainability Center	5,227,100
Special Appropriations	750,000
Non-Departmental	
Interfund Transfers	929,953
Contingency	715,760
<i>Total Appropriations</i>	10,216,770
Unappropriated Balance	0
Total Fund Requirements	\$10,216,770
 OPEN SPACES FUND	
Sustainability Center	643,064
Total Fund Requirements	\$643,064
 OREGON ZOO INFRASTRUCTURE AND ANIMAL WELFARE FUND	
Oregon Zoo	25,765,168
Non-Departmental	
Interfund Transfers	242,153
Contingency	5,200,000
<i>Total Appropriations</i>	31,207,321
Unappropriated Balance	35,371,118
Total Fund Requirements	\$35,371,118
 CEMETERY PERPETUAL CARE FUND	
Unappropriated Balance	445,067
Total Fund Requirements	\$445,067
 REHABILITATION & ENHANCEMENT FUND	
Sustainability Center	327,996
Non-Departmental	
Interfund Transfers	114,602
Contingency	280,000
<i>Total Appropriations</i>	722,598
Unappropriated Balance	1,543,581
Total Fund Requirements	\$2,266,179
 RISK MANAGEMENT FUND	
Finance & Regulatory Services	2,616,951
Non-Departmental	
Interfund Transfers	301,961
Contingency	500,000
<i>Total Appropriations</i>	3,418,912
Unappropriated Balance	1,050,326
Total Fund Requirements	\$4,469,238

EXHIBIT C
Ordinance 13-1300
FY 2013-14 SCHEDULE OF APPROPRIATIONS

	<u>Proposed Budget</u>
SMITH AND BYBEE LAKES FUND	
Parks & Environmental Services	65,000
Non-Departmental	
Interfund Transfers	110,102
Contingency	200,000
<i>Total Appropriations</i>	375,102
Unappropriated Balance	3,225,467
Total Fund Requirements	\$3,600,569
 SOLID WASTE REVENUE FUND	
Finance & Regulatory Services	2,179,938
Sustainability Center	5,595,755
Parks & Environmental Services	44,626,676
Non-Departmental	
Interfund Transfers	7,766,403
Contingency	15,988,214
<i>Total Appropriations</i>	76,156,986
Unappropriated Balance	18,407,491
Total Fund Requirements	\$94,564,477
Total Appropriations	\$385,428,819
Total Unappropriated Balance	\$96,237,801
 TOTAL BUDGET	 \$481,666,620

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 13-1300 ADOPTING THE ANNUAL BUDGET FOR FISCAL YEAR 2013-14, MAKING APPROPRIATIONS, LEVYING AD VALOREM TAXES, AND AUTHORIZING AN INTERFUND LOAN

Date: April 3, 2013

Presented by: Martha Bennett
Chief Operating Officer

BACKGROUND

I am forwarding to the Metro Council for consideration and approval my proposed budget for fiscal year 2013-14.

Metro Council action, through Ordinance No. 13-1300 is the final step in the process for the adoption of Metro's operating financial plan for the forthcoming fiscal year. Final action by the Metro Council to adopt this plan must be completed by June 30, 2013.

Once the budget plan for fiscal year 2013-14 is approved by the Metro Council on May 2, 2013, the number of funds and the maximum tax levy cannot be amended without review and certification by the Tax Supervising and Conservation Commission. Adjustments, if any, by the Metro Council to increase the level of expenditures in a fund are limited to no more than 10 percent of the total value of any fund's expenditures in the period between Metro Council approval in early May 2013 and adoption in June 2013.

Exhibit A to this Ordinance will be available subsequent to the Tax Supervising and Conservation Commission hearing June 6, 2013. Exhibits B and C of the Ordinance will be available at the public hearing on April 25, 2013.

ANALYSIS/INFORMATION

1. **Known Opposition** – Metro Council hearings will be held on the Proposed Budget on April 25, 2013 and May 2, 2013. Opportunities for public comments will be provided. Opposition to any portion of the budget will be identified during that time.
2. **Legal Antecedents** – The preparation, review and adoption of Metro's annual budget is subject to the requirements of Oregon Budget Law, ORS Chapter 294. Oregon Revised Statutes 294.635 requires that Metro prepare and submit its approved budget to the Tax Supervising and Conservation Commission by May 15, 2013. The Commission will conduct a hearing on June 6, 2013 for the purpose of receiving information from the public regarding the Metro Council's approved budget. Following the hearing, the Commission will certify the budget to the Metro Council for adoption and may provide recommendations to the Metro Council regarding any aspect of the budget.
3. **Anticipated Effects** – Adoption of this ordinance will put into effect the annual FY 2013-14 budget, effective July 1, 2013.
4. **Budget Impacts** – The total amount of the proposed FY 2013-14 annual budget is \$481,666,620 and 752.55 FTE.

RECOMMENDED ACTION

The Chief Operating Officer recommends adoption of Ordinance No. 13-1300

Agenda Item No. 5.2

Ordinance No. 13-1305, For the Purpose of Amending the FY
2012-13 Budget and Appropriations Scheduled for Changes in
Operations.

Ordinances – Second Reading

Metro Council Meeting
Thursday, June 20, 2013
Metro, Council Chamber

BEFORE THE METRO COUNCIL

AMENDING THE FY 2012-13 BUDGET AND) ORDINANCE NO. 13-1305
APPROPRIATIONS SCHEDULE FOR CHANGES)
IN OPERATIONS) Introduced by Martha Bennett, Chief
) Operating Officer, with the concurrence of
) Council President Tom Hughes

WHEREAS, the Metro Council has reviewed and considered the need to increase appropriations within the FY 2012-13 Budget; and

WHEREAS, the need for the increase of appropriation has been justified; and

WHEREAS, adequate funds exist for other identified needs; and

WHEREAS, ORS 294.463(1) provides for transfers of appropriations within a fund, including transfers from contingency that do not exceed 15 percent of a fund’s appropriations, if such transfers are authorized by official resolution or ordinance of the governing body for the local jurisdiction, and

THE METRO COUNCIL ORDAINS AS FOLLOWS:

- 1. That the FY 2012-13 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled “Revision” of Exhibits A and B to this Ordinance for the purpose of increasing appropriations to provide for a change in operations.
- 2. This Ordinance being necessary for the immediate preservation of the public health, safety or welfare of the Metro area in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this _____ day of _____ 2013.

Tom Hughes, Council President

Attest:

Approved as to Form:

Kelsey Newell, Recording Secretary

Alison Kean Campbell, Metro Attorney

**Exhibit A
Ordinance No. 13-1305**

ACCT	DESCRIPTION	Current		Revision		Amended	
		FTE	Amount	FTE	Amount	FTE	Amount
General Fund							
Parks & Environmental Services							
Total Personnel Services		43.60	\$3,933,042	0.00	\$0	43.60	\$3,933,042
<i>Materials & Services</i>							
<i>GOODS Goods</i>							
	5201 Office Supplies		106,756		0		106,756
	5205 Operating Supplies		150,251		0		150,251
	5210 Subscriptions and Dues		6,129		0		6,129
	5214 Fuels and Lubricants		73,026		0		73,026
	5215 Maintenance & Repairs Supplies		201,652		0		201,652
	5225 Retail		13,000		0		13,000
<i>SVCS Services</i>							
	5240 Contracted Professional Svcs		660,634		(20,000)		640,634
	5250 Contracted Property Services		147,081		0		147,081
	5251 Utility Services		431,068		0		431,068
	5255 Cleaning Services		169,886		0		169,886
	5260 Maintenance & Repair Services		353,309		0		353,309
	5265 Rentals		59,845		0		59,845
	5280 Other Purchased Services		61,585		0		61,585
<i>IGEXP Intergov't Expenditures</i>							
	5300 Payments to Other Agencies		116,347		0		116,347
	5310 Taxes (Non-Payroll)		263,556		0		263,556
<i>OTHEXP Other Expenditures</i>							
	5450 Travel		5,290		0		5,290
	5455 Staff Development		33,412		0		33,412
Total Materials & Services			\$4,052,827		(\$20,000)		\$4,032,827
TOTAL REQUIREMENTS		43.60	\$7,985,869	0.00	(\$20,000)	43.60	\$7,965,869

Exhibit A
Ordinance No. 13-1305

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
General Fund							
Special Appropriations (Non-Departmental)							
<i>Materials & Services</i>							
<i>GOODS Goods</i>							
	5210 Subscriptions and Dues		40,000		0		40,000
<i>SVCS Services</i>							
	5240 Contracted Professional Svcs		130,725		0		130,725
	5246 Sponsorships		251,750		0		251,750
	5280 Other Purchased Services		50,000		0		50,000
<i>IGEXP Intergov't Expenditures</i>							
	5300 Payments to Other Agencies		3,084,353		0		3,084,353
	5305 Election Expenses		75,000		90,000		165,000
	5320 Government Assessments		500,000		0		500,000
<i>OTHEXP Other Expenditures</i>							
	5490 Miscellaneous Expenditures		50,000		0		50,000
Total Materials & Services			\$4,181,828		\$90,000		\$4,271,828
TOTAL REQUIREMENTS		0.00	\$4,181,828	0.00	\$90,000	0.00	\$4,271,828

Exhibit A
Ordinance No. 13-1305

ACCT	DESCRIPTION	Current		Revision		Amended	
		FTE	Amount	FTE	Amount	FTE	Amount
General Fund							
General Expenses							
<i>Interfund Transfers</i>							
<i>INDTEX Interfund Reimbursements</i>							
5800	Transfer for Indirect Costs						
	* to Risk Mgmt Fund-Liability		336,177		0		336,177
	* to Risk Mgmt Fund-Worker Comp		219,097		0		219,097
<i>EQTCHG Fund Equity Transfers</i>							
5810	Transfer of Resources						
	* to General Revenue Bond Fund-Zoo		403,320		0		403,320
	* to Gen'l Asset Mgmt Fund-Genl Cap Acct		230,000		0		230,000
	* to Gen'l Revenue Bond Fund-Debt Serv Acct		1,499,585		0		1,499,585
	* to MERC Fund (Tourism Opp. & Compt. Acct)		518,633		0		518,633
	* to Gen'l Asset Mgmt Fund-General R&R		661,000		0		661,000
	* to Gen'l Asset Mgmt Fund-IT R&R		303,100		0		303,100
	* to Gen'l Asset Mgmt Fund-Parks Cap Account		381,000		20,000		401,000
	* to Gen'l Asset Mgmt Fund-MRC R&R		288,000		0		288,000
	* to MERC Fund (one-time allocation)		50,000		0		50,000
	* to Gen'l Asset Mgmt Fund-Zoo Cap Acct		200,000		0		200,000
	* to Gen'l Asset Mgmt Fund-Parks R&R		329,400		0		329,400
	* to Solid Waste Revenue Fund		175,313		0		175,313
<i>LOANEX Interfund Loan - Expenditures</i>							
5860	Interfund Loan - Principal						
	* to MERC		2,200,000		0		2,200,000
Total Interfund Transfers			\$7,794,625		\$20,000		\$7,814,625
<i>Contingency & Unappropriated Balance</i>							
<i>CONT Contingency</i>							
5999	Contingency						
	* Contingency		1,568,219		0		1,568,219
	* Opportunity Account		206,100		(90,000)		116,100
<i>UNAPP Unappropriated Fund Balance</i>							
5990	Unappropriated Fund Balance						
	* Stabilization Reserve		2,430,861		0		2,430,861
	* Undesignated		1,666,574		0		1,666,574
	* PERS Reserve		4,613,474		0		4,613,474
	* Reserve for Future One-Time Expenditures		1,758,931		0		1,758,931
	* Reserved for Community Invest. Initiative		393,000		0		393,000
	* Reserved for Local Gov't Grants (CET)		2,128,369		0		2,128,369
	* Reserved for Cost Allocation Adjustments		382,035		0		382,035
	* Reserved for Future Planning Needs		72,438		0		72,438
	* Reserved for Equity Project		67,027		0		67,027
	* Reserved for Metro Export Initiative		50,000		0		50,000
	* Reserved for Capital		26,000		0		26,000
	* Reserved for Web Project		225,005		0		225,005
	* Reserve for Future Debt Service		639,414		0		639,414
Total Contingency & Unappropriated Balance			\$16,227,447		(\$90,000)		\$16,137,447
TOTAL REQUIREMENTS		457.39	\$111,795,899	0.00	\$0	457.39	\$111,795,899

**Exhibit A
Ordinance No. 13-1305**

ACCT	DESCRIPTION	Current		Revision		Amended	
		FTE	Amount	FTE	Amount	FTE	Amount
General Asset Management Fund							
General Asset Management Fund							
<i>Resources</i>							
<i>BEBAL</i>	<i>Beginning Fund Balance</i>						
3205	Restricted for Capital		1,410,778		0		1,410,778
3400	Unassigned Balance		5,155,469		0		5,155,469
3500	Assigned Balance		491,800		0		491,800
<i>GRANTS</i>	<i>Grants</i>						
4100	Federal Grants-Direct		800,000		0		800,000
4110	State Grants-Direct		233,900		0		233,900
<i>INTRST</i>	<i>Interest Earnings</i>						
4700	Interest on Investments		27,800		0		27,800
<i>DONAT</i>	<i>Contributions from Private Sources</i>						
4750	Donations and Bequests		30,000		0		30,000
<i>CAPGRT</i>	<i>Capital Contributions & Donations</i>						
4755	Capital Contributions & Donations		1,862,254		0		1,862,254
<i>MISCRV</i>	<i>Miscellaneous Revenue</i>						
4890	Miscellaneous Revenue		6,320		0		6,320
<i>EQTREV</i>	<i>Fund Equity Transfers</i>						
4970	Transfer of Resources						
	* from Solid Waste Revenue Fund		84,200		0		84,200
	* from General Fund (Regional Parks)		329,400		0		329,400
	* from General Fund-IT R&R		303,100		0		303,100
	* from General Fund-MRC R&R		288,000		0		288,000
	* from General Fund-Gen'l R&R		661,000		0		661,000
	* from General Fund		811,000		20,000		831,000
TOTAL RESOURCES			\$12,495,021		\$20,000		\$12,515,021
Total Materials & Services			\$368,643		\$0		\$368,643
<i>Capital Outlay</i>							
5700	Land		1,000,000		0		1,000,000
5710	Improve-Oth thn Bldg		3,178,392		20,000		3,198,392
5720	Buildings & Related		945,464		0		945,464
5730	Exhibits and Related		812,929		0		812,929
5740	Equipment & Vehicles		376,715		0		376,715
5745	Licensed Vehicles		263,333		0		263,333
5750	Office Furniture & Equip		901,170		0		901,170
5760	Railroad Equip & Facil		73,152		0		73,152
5790	Intangible Assets		180,000		0		180,000
Total Capital Outlay			\$7,731,155		\$20,000		\$7,751,155
Total Interfund Transfers			\$19,681		\$0		\$19,681
<i>Contingency & Unappropriated Balance</i>							
<i>CONT</i>	<i>Contingency</i>						
5999	Contingency						
	* Contingency		4,169,222		0		4,169,222
<i>UNAPP</i>	<i>Unappropriated Fund Balance</i>						
5990	Unappropriated Fund Balance						
	* Oregon Zoo Projects Account		206,320		0		206,320
Total Contingency & Unappropriated Balance			\$4,375,542		\$0		\$4,375,542
TOTAL REQUIREMENTS		0.00	\$12,495,021	-	\$20,000	0.00	\$12,515,021

Exhibit A
Ordinance No. 13-1305

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
Metro Exposition Recreation Commission Fund							
MERC Fund							
<i>Resources</i>							
<i>BEGBAL Beginning Fund Balance</i>							
3400	* Undesignated		3,696,912		0		3,696,912
3400	* Renewal & Replacement Reserve		13,439,072		0		13,439,072
3400	* Transient Lodging Tax Capital Reserve		792,214		0		792,214
3400	* New Capital / Business Strategy Reserve		5,423,569		0		5,423,569
3400	* Aramark Contract Capital Investment Reserve		425,000		0		425,000
<i>GRANTS Grants</i>							
4115	State Grant - Indirect		220,000		0		220,000
<i>LGSHRE Local Gov't Share Revenues</i>							
4130	Transient Lodging Tax (3% Excise Tax Fund)		9,985,127		0		9,985,127
4133	Visitor Development Fund Allocation		3,147,506		0		3,147,506
<i>GVCNTB Contributions from Governments</i>							
4145	Government Contributions		793,408		0		793,408
<i>CHGSVC Charges for Service</i>							
4500	Admission Fees		1,821,914		0		1,821,914
4510	Rentals		7,042,802		0		7,042,802
4550	Food Service Revenue		11,804,821		1,855,480		13,660,301
4560	Retail Sales		8,500		0		8,500
4570	Merchandising		15,000		0		15,000
4575	Advertising		25,697		0		25,697
4580	Utility Services		1,719,353		0		1,719,353
4590	Commissions		1,090,649		661,349		1,751,998
4620	Parking Fees		2,773,639		0		2,773,639
4645	Reimbursed Services		2,604,780		0		2,604,780
4647	Reimbursed Services - Contract		500,818		0		500,818
4650	Miscellaneous Charges for Svc		229,420		0		229,420
<i>INTRST Interest Earnings</i>							
4700	Interest on Investments		135,412		0		135,412
<i>DONAT Contributions from Private Sources</i>							
4750	Donations and Bequests		75,000		0		75,000
4755	Capital Donations and Bequests		0		0		0
4760	Sponsorship Revenue		134,100		0		134,100
<i>MISCRV Miscellaneous Revenue</i>							
4170	Fine & Forfeitures		4,023		0		4,023
4805	Financing Transaction		96,337		0		96,337
4890	Miscellaneous Revenue		20,700		0		20,700
4891	Refunds and Reimbursements		1,000		0		1,000
<i>LOANRV Interfund Loan - Resource</i>							
4960	Interfund Loan - Principal						
	* from General Fund		2,200,000		0		2,200,000
<i>EQTREV Fund Equity Transfers</i>							
4970	Transfer of Resources						
	* from General Fund (MTOCA)		518,633		0		518,633
	* from General Fund (one-time)		50,000		0		50,000
TOTAL RESOURCES			\$70,795,406		\$2,516,829		\$73,312,235
Total Personnel Services		181.50	\$17,403,962	-	\$0	181.50	\$17,403,962
<i>Materials & Services</i>							
<i>GOODS Goods</i>							
5201	Office Supplies		231,050		0		231,050
5205	Operating Supplies		268,845		0		268,845

Exhibit A
Ordinance No. 13-1305

ACCT	DESCRIPTION	Current		Revision		Amended	
		FTE	Amount	FTE	Amount	FTE	Amount
Metro Exposition Recreation Commission Fund							
MERC Fund							
5210	Subscriptions and Dues		59,790		0		59,790
5214	Fuels and Lubricants		17,050		0		17,050
5215	Maintenance & Repairs Supplies		477,840		0		477,840
5225	Retail		11,000		0		11,000
<i>SVCS</i>	<i>Services</i>						
5240	Contracted Professional Svcs		1,155,533		0		1,155,533
5245	Marketing Expense		2,700,046		0		2,700,046
5246	Sponsorship Expenditures		27,500		0		27,500
5247	Visitor Development Marketing		1,314,232		0		1,314,232
5251	Utility Services		2,672,173		0		2,672,173
5255	Cleaning Services		33,800		0		33,800
5260	Maintenance & Repair Services		1,035,311		0		1,035,311
5265	Rentals		551,629		0		551,629
5270	Insurance		21,500		0		21,500
5280	Other Purchased Services		443,150		642,282		1,085,432
5281	Other Purchased Services - Reimb		458,586		0		458,586
5291	Food and Beverage Services		9,862,144		1,651,941		11,514,085
5292	Parking Services		269,374		0		269,374
<i>IGEXP</i>	<i>Intergov't Expenditures</i>						
5300	Payments to Other Agencies		218,979		0		218,979
5310	Taxes (Non-Payroll)		15,800		0		15,800
5320	Government Assessments		2,200,000		0		2,200,000
<i>OTHEXP</i>	<i>Other Expenditures</i>						
5450	Travel		165,657		0		165,657
5455	Staff Development		120,669		0		120,669
5490	Miscellaneous Expenditures		9,500		0		9,500
Total Materials & Services			\$24,341,158		\$2,294,223		\$26,635,381
<u>Capital Outlay</u>							
5710	Improve-Oth thn Bldg		120,000		0		120,000
5720	Buildings & Related		2,510,883		0		2,510,883
5740	Equipment & Vehicles		771,194		0		771,194
5750	Office Furniture & Equip		47,000		0		47,000
Total Capital Outlay			\$3,449,077		\$0		\$3,449,077
Total Interfund Transfers			\$4,806,913		-		\$0
<u>Contingency and Ending Balance</u>							
<i>CONT</i>	<i>Contingency</i>						
5999	Contingency						
	* General Contingency		2,357,791		(1,705,305)		652,486
	* Renewal and Replacement		200,000		0		200,000
	* New Capital/Business Strategy Reserve		5,196,719		(642,282)		4,554,437
	* Contingency for Capital (TL TAX)		142,214		0		142,214
<i>UNAPP</i>	<i>Unappropriated Fund Balance</i>						
5990	Unappropriated Fund Balance						
	* Stabilization Reserve		620,500		0		620,500
	* New Capital/Business Strategy Reserve		0		2,570,193		2,570,193
	* Renewal & Replacement		12,277,072		0		12,277,072
Total Contingency and Ending Balance			\$20,794,296		\$222,606		\$21,016,902
TOTAL REQUIREMENTS		181.50	\$70,795,406	-	\$2,516,829	181.50	\$73,312,235

Exhibit B
Ordinance 13-1305
Schedule of Appropriations

	<u>Current</u> <u>Appropriation</u>	<u>Revision</u>	<u>Revised</u> <u>Appropriation</u>
GENERAL FUND			
Communications	2,627,325	0	2,627,325
Council Office	4,155,240	0	4,155,240
Finance & Regulatory Services	4,140,619	0	4,140,619
Human Resources	2,134,833	0	2,134,833
Information Services	3,586,823	0	3,586,823
Metro Auditor	717,764	0	717,764
Office of Metro Attorney	1,913,205	0	1,913,205
Oregon Zoo	31,227,511	0	31,227,511
Parks & Environmental Services	7,985,869	(20,000)	7,965,869
Planning and Development	14,456,370	0	14,456,370
Research Center	3,945,655	0	3,945,655
Special Appropriations	4,896,187	90,000	4,986,187
Non-Departmental			
Debt Service	1,654,290	0	1,654,290
Interfund Transfers	7,794,625	20,000	7,814,625
Contingency	1,774,319	(90,000)	1,684,319
<i>Total Appropriations</i>	<u>97,342,771</u>	<u>0</u>	<u>97,342,771</u>
Unappropriated Balance	14,453,128	0	14,453,128
Total Fund Requirements	<u>\$111,795,899</u>	<u>\$0</u>	<u>\$111,795,899</u>
GENERAL ASSET MANAGEMENT FUND			
Asset Management Program	8,099,798	20,000	8,119,798
Non-Departmental			
Interfund Transfers	19,681	0	19,681
Contingency	4,169,222	0	4,169,222
<i>Total Appropriations</i>	<u>12,288,701</u>	<u>20,000</u>	<u>12,308,701</u>
Unappropriated Balance	206,320	0	206,320
Total Fund Requirements	<u>\$12,495,021</u>	<u>\$20,000</u>	<u>\$12,515,021</u>
MERC FUND			
MERC	45,194,197	2,294,223	47,488,420
Non-Departmental			
Interfund Transfers	4,806,913	0	4,806,913
Contingency	7,896,724	(2,347,587)	5,549,137
<i>Total Appropriations</i>	<u>57,897,834</u>	<u>(53,364)</u>	<u>57,844,470</u>
Unappropriated Balance	12,897,572	2,570,193	15,467,765
Total Fund Requirements	<u>\$70,795,406</u>	<u>\$2,516,829</u>	<u>\$73,312,235</u>

All other appropriations remain as previously adopted

STAFF REPORT

FOR THE PURPOSE OF AMENDING THE FY 2012-13 BUDGET AND APPROPRIATIONS SCHEDULE FOR CHANGES IN OPERATIONS

Date: May 10, 2013

Prepared by: Kathy Rutkowski 503-797-1630

BACKGROUND

The following items have been identified as necessitating an amendment to the budget.

Elections Expense for Parks and Natural Areas Levy

Ordinance 12-1285, adopted by the Metro Council on September 20, 2013 provided funding for natural areas funding public involvement. The staff report stated that should the Metro Council consider moving forward with this effort an additional request will be made for election costs. The local option levy is on the ballot for May 21, 2013. Election expenses are estimated to be approximately \$165,000. The budget currently includes \$75,000 for election expenses that were not needed for Councilor elections in November. This action requests the transfer of an additional \$90,000 from the Council Opportunity Account to fund the estimated additional cost of the election.

Lone Fir Cremation Garden

The FY 2012-13 budget provided \$50,000 to develop a cremation garden at Lone Fir cemetery. This initial amount was inadequate to construct a facility meeting the standards appropriate for such a historic location. It was determined that operating funding from Parks and Environmental Services (PES) could be used to cover the gap between the amount proposed by the successful bidder and the available budget. This request transfers \$20,000 from the General Fund, PES operating budget to the General Asset Management Fund, Regional Parks account.

MERC Increased Operating Revenue

Food & beverage sales are greater than the original anticipated budget. The increase in revenue has an offsetting increase in expenditures. In addition, the accounting for the PCPA New Era Ticketing contract is creating a similar increase in revenue and off setting expenditures. Further explanation is provided below.

Oregon budget law does not allow the recognition and direct appropriation of this additional revenue without the benefit of a supplemental budget. This action transfers from contingency to materials and services to provide for the needed increase in food and beverage expense and ticketing expense. It also acknowledges the receipt of additional revenue but places the additional revenue in the unappropriated Fund Balance to replenish the reserves at year end.

Food and Beverage - Oregon Convention Center (OCC)

OCC food and beverage revenue forecast is \$9.8 million, an increase of \$1.6 million over the adopted budget of \$8.2 million. Food and beverage cost forecast is \$8.3 million, an increase of \$1.4 million over the adopted budget of \$6.9 million. The projected margin is 16.1 percent with net revenue of \$1.6 million. The original budget estimate was 16.34 percent. Several events have experienced stronger than expected food & beverage sales and OCC has booked five additional conventions this year.

Food and Beverage - Portland Center for Performing Arts (PCPA)

PCPA food and beverage revenue forecast is \$2.0 million, an increase of \$284,000 over the adopted budget of \$1.7 million. Food and beverage cost forecast is \$1.7 million, an increase of \$207,000 over the adopted budget of \$1.5 million. The projected margin is 15.8 percent with net revenue of \$316,000. The original budget estimate was 13.92 percent. Increased sales are a result of a strong concert schedule and Broadway season.

Food and Beverage - Portland Exposition Center (Expo)

Expo food and beverage revenue forecast is \$1.8 million, close to the adopted budget of \$1.9 million. Food and beverage cost forecast is \$1.6 million, an increase of \$65,000 over the adopted budget of \$1.5 million. The projected margin is 13.34 percent with net revenue of \$242,000; the original budget estimate was 19.28 percent and \$36,000. Labor costs are greater as Expo has invested in the culinary quality of the concession foods and customer experience. Reserve expenditures have also increased as well as operating costs to meet these standards. Concession price increases took place in February 2013 to offset these increases.

PCPA Ticketing Services

PCPA operating revenues continue to trend above the budget line. This trend is partially due to the first year of the new ticketing system. PCPA collects the full service charge then pays the ticketing company their ticket agency fee and pays the credit card expense reflected in a materials and service. Under the old system, the former ticketing company took their fee out prior to sending ticket commissions to us. The FY 2012-13 budget was developed before the new contract was in place. This action will amend the budget to reflect the change in accounting for the New Era ticketing contract.

ANALYSIS/INFORMATION

1. **Known Opposition:** None known.
2. **Legal Antecedents:** ORS 294.463(1) provides for transfers of appropriations within a fund, including transfers from contingency that do not exceed 15 percent of a fund's appropriation, if such transfers are authorized by official resolution or ordinance of the governing body for the local jurisdiction. ORS 294.463(3) provides for transfers of appropriations or of appropriations and a like amount of budget resources between funds of the municipal corporation when authorized by an official resolution or ordinance of the governing body stating the need for the transfer. ORS 294.338(2) allows for the expenditure in the year of receipt of grants, gifts, bequests, and other devices received by a municipal corporation in trust for a specific purpose. Metro's adopted financial policies require any project exceeding \$100,000 or an existing CIP project increasing greater than 20 percent to receive Council approval.
3. **Anticipated Effects:** This action provides changes to operations and capital as described above; funds election expenses for the May 21st local option levy, provides additional funding for a cremation garden at Lone Fir; and provides increased appropriation authority for additional food and beverage expenditures and ticketing commissions.

4. **Budget Impacts:** This action has the following impact on the FY 2012-13 budget:
- Funds election expenses for the May 21, 2013 primary election related to the Parks and Natural Areas local option levy measure;
 - Transfers \$20,000 from the General Fund to more adequately fund the cremation garden project at Lone Fir Cemetery;
 - Acknowledges \$2.5 million in additional revenue at various MERC facilities while also providing an additional \$2.3 million in associated appropriation expenditure authority.

RECOMMENDED ACTION

The Chief Operating Office recommends adoption of this Ordinance.

Agenda Item No. 6.1

Resolution No. 13-4429, For the Purpose of Adopting the Capital Improvement Plan for Fiscal Years 2013-14 through 2017-18, Approving the Metropolitan Tourism Opportunity Competitiveness Account Projects and Re-Adopting Metro's Financial Policies.

Resolutions

Metro Council Meeting
Thursday, June 20, 2013
Metro, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING THE) RESOLUTION NO. 13-4439
CAPITAL IMPROVEMENT PLAN FOR FISCAL) Introduced by Martha Bennett, Chief
YEARS 2013-14 THROUGH 2017-18, APPROVING) Operating Officer, with concurrence of
THE METROPOLITAN TOURISM OPPORTUNITY) the Council President
COMPETITIVENESS ACCOUNT PROJECTS AND)
RE-ADOPTING METRO'S FINANCIAL POLICIES)

WHEREAS, Metro recognizes the need to prepare a long-range plan estimating the timing, scale and cost of its major capital projects and equipment purchases; and

WHEREAS, Metro's Chief Operating Officer has directed the preparation of a Capital Improvement Plan for fiscal years 2013-14 through 2017-18 that projects Metro's major capital spending needs over the next five years;

WHEREAS, the Metro Council has reviewed the FY 2013-14 through FY 2017-18 Capital Improvement Plan; and

WHEREAS, the Metro Council has conducted a public hearing on the FY 2013-14 budget including the FY 2013-14 through FY 2017-18 Capital Improvement Plan; and

WHEREAS, the Metro Council approves projects funded by the Metropolitan Tourism Opportunity Competitiveness Account (MTOCA); and

WHEREAS, the Metro Council annually reviews and readopts its Comprehensive Financial Policies including the Capital Asset Management Policies; now therefore

BE IT RESOLVED that the Metro Council hereby authorizes the following:

1. That the FY 2013-14 through FY 2017-18 Capital Improvement Plan (CIP), summarized in Exhibit A, is hereby adopted.
2. That the FY 2013-14 capital projects from the FY 2013-14 through FY 2017-18 Capital Improvement Plan be included and appropriated in the FY 2013-14 budget.
3. That the Comprehensive Financial Policies, including the Capital Asset Management Policies, included as Exhibit B to this Resolution, are re-adopted and will be published in the FY 2013-14 budget.

ADOPTED by the Metro Council this ____ day of _____ 2013.

Tom Hughes, Metro Council President

Approved as to Form:

Alison Kean Campbell, Metro Attorney

Total Project Summary with Major Funding Source

Exhibit A
Resolution 13-4439

Finance and Regulatory Services								
	ID	Prior Years	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	Total
SOLID WASTE GENERAL ACCOUNT								
Solid Waste Information System (SWIS)	65720	825,000	180,000	0	0	0	0	1,005,000
TOTAL SOLID WASTE GENERAL ACCOUNT		825,000	180,000	0	0	0	0	1,005,000
SOLID WASTE RENEWAL AND REPLACEMENT ACCOUNT								
Enforcement Vehicle Replacement	76856	60,000	60,000	30,000	30,000	30,000	30,000	240,000
TOTAL SOLID WASTE RENEWAL AND REPLACEMENT ACCOUNT		60,000	60,000	30,000	30,000	30,000	30,000	240,000
TOTAL FINANCE AND REGULATORY SERVICES		885,000	240,000	30,000	30,000	30,000	30,000	1,245,000
FIVE YEAR TOTAL, FY 2013-14 THROUGH FY 2017-18	360,000	Total Number of Projects 2						

Major Funding Sources

	Prior Years	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
Fund Balance- Capital Reserve	825,000	180,000	0	0	0	0
Fund Balance- Renewal and Replacement	60,000	60,000	30,000	30,000	30,000	30,000
Total- Finance and Regulatory Services	885,000	240,000	30,000	30,000	30,000	30,000

Information Services								
	ID	Prior Years	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	Total
GENERAL FUND								
Metro Web	65663	160,175	431,930	0	0	0	0	592,105
TOTAL GENERAL FUND		160,175	431,930	0	0	0	0	592,105
GENERAL FUND RENEWAL AND REPLACEMENT								
Information Technology R&R Projects < \$100,000			176,003	269,722	285,913	195,704	432,301	1,359,643
Data Center	01514	206,200	80,300	0	0	0	0	286,500
Peoplesoft Upgrades (Regularly Scheduled)	65612	248,170	209,660	138,753	0	144,359	0	740,942
TOTAL GENERAL FUND RENEWAL AND REPLACEMENT		454,370	465,963	408,475	285,913	340,063	432,301	2,387,085
TOTAL INFORMATION SERVICES		614,545	897,893	408,475	285,913	340,063	432,301	2,979,190
FIVE YEAR TOTAL, FY 2013-14 THROUGH FY 2017-18	2,364,645	Total Number of Projects 4						

Major Funding Sources

	Prior Years	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
Fund Balance	160,175	431,930	0	0	0	0
Fund Balance- Renewal and Replacement	454,370	465,963	408,475	285,913	340,063	432,301
Total- Information Services	614,545	897,893	408,475	285,913	340,063	432,301

Total Project Summary with Major Funding Source

Exhibit A
Resolution 13-4439

Parks and Environmental Services								
	ID	Prior Years	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	Total
MRC GENERAL FUND RENEWAL AND REPLACEMENT								
Property Services R&R Projects < \$100,000			177,916	134,137	0	123,100	77,600	512,753
PES Fleet	70001		105,037	144,268	26,994	79,255	336,752	692,306
Metro Regional Center Roof Replacement	01320	0	512,404	0	0	0	0	512,404
Central Environmental System	TBD	0	0	126,800	0	0	0	126,800
MRC Daycare Carpets	TBD	0	0	0	156,000	0	0	156,000
Rooftop Air Handler RAC 1	TBD	0	0	0	250,000	0	0	250,000
Rooftop Air Handler RAC 2	TBD	0	0	0	175,000	0	0	175,000
Rooftop Air Handler RAC 3	TBD	0	0	0	0	0	125,000	125,000
TOTAL MRC GENERAL FUND RENEWAL AND REPLACEMENT		0	795,357	405,205	607,994	202,355	539,352	2,550,263
REGIONAL PARKS SPECIAL ACCOUNTS FUND								
Oxbow Park Improvements	TBD	0	364,778	0	0	0	0	364,778
TOTAL REGIONAL PARKS SPECIAL ACCOUNTS FUND		0	364,778	0	0	0	0	364,778
REGIONAL PARKS CAPITAL FUND								
Glendoveer Golf Course Improvements	GF104	70,000	261,000	0	0	0	0	331,000
Oxbow Erosion Reconstruction	TBD	0	148,250	0	0	0	0	148,250
TOTAL REGIONAL PARKS CAPITAL FUND		70,000	409,250	0	0	0	0	479,250
PARKS GENERAL FUND RENEWAL AND REPLACEMENT								
Parks R&R Projects < \$100,000			538,984	992,202	183,893	81,580	173,491	1,970,150
Blue Lake Trail	70234	0	195,595	0	0	0	0	195,595
Oxbow Park Gravel Roads	TBD	0	0	303,250	0	0	0	303,250
Glendoveer Golf Cart Path	TBD	0	0	160,000	0	0	0	160,000
Wrought Iron Fencing at Lone Fir	TBD	0	0	102,000	0	0	0	102,000
Paving at Blue Lake Park	TBD	0	0	206,500	0	0	0	206,500
Chinook Landing Boarding Dock and Steel Pilings	TBD	0	0	0	140,599	0	0	140,599
Chinook Landing Asphalt Pavement (5.2 acres)	TBD	0	0	0	0	270,700	0	270,700
TOTAL PARKS GENERAL FUND RENEWAL AND REPLACEMENT		0	734,579	1,763,952	324,492	352,280	173,491	3,348,794
SOLID WASTE GENERAL ACCOUNT								
Solid Waste General Account Non CIP Projects			280,000	175,000	10,000	10,000	10,000	485,000
Metro Central Organics/Food Handling Area Improvements	76872	230,000	150,000	0	0	0	0	380,000
Metro Central Storm Water Improvements	76873	25,000	400,000	0	0	0	0	425,000
Improvements to Metro South truck entrance/exit	76840	0	100,000	0	0	0	0	100,000
Metro South Camera Expansion	77102	0	100,000	0	0	0	0	100,000
Metro South Rainwater Harvesting	77101	0	10,000	90,000	0	0	0	100,000
Metro South Storm Water Treatment	77104	0	50,000	250,000	0	0	0	300,000
Metro Central Camera Expansion	77106	0	100,000	0	0	0	0	100,000
Disposal System (Road Map) Software	65770		150,000	0	0	0	0	150,000
Reader Board at Metro South Entrance	76833	0	0	200,000	0	0	0	200,000
Future Master Facility Plan Improvements	TBD	0	0	400,000	1,000,000	1,000,000	1,000,000	3,400,000
TOTAL SOLID WASTE GENERAL ACCOUNT		255,000	1,340,000	1,115,000	1,010,000	1,010,000	1,010,000	5,740,000

Total Project Summary with Major Funding Source

Exhibit A
Resolution 13-4439

	ID	Prior Years	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	Total
SOLID WASTE LANDFILL CLOSURE ACCOUNT								
St. Johns - Perimeter Dike Stabilization and Seepage Control	76986	763,283	3,000	3,000	0	0	0	769,283
St. Johns - Landfill Remediation	76995	0	1,000,000	1,000,000	0	0	0	2,000,000
SJLF- adapting flares to lower gas flow rates	77001	0	5,000	100,000	0	0	0	105,000
SJLF- Replace PLC and data device	77002	0	45,000	0	0	0	0	45,000
TOTAL SOLID WASTE LANDFILL CLOSURE ACCOUNT		763,283	1,053,000	1,103,000	0	0	0	2,919,283
SOLID WASTE RENEWAL AND REPLACEMENT ACCOUNT								
SW Renewal and Replacement Acct Non CIP			675,595	300,000	380,000	300,000	300,000	1,955,595
Metro Central - Replace Slow Speed Shredder	76889	0	50,000	550,000	0	0	0	600,000
Metro South - Modify Entry Way to Ops Bldg.	76842	0	175,000	0	0	0	0	175,000
Metro Central- Floor Repairs	76898	0	150,000	0	0	0	0	150,000
Metro South HHW Roof	76876	0	0	175,000	0	0	0	175,000
Metro South Bays -1 & 2 Ventilation System	76836	0	0	0	105,000	0	0	105,000
Metro Central - Compactor #3	TBD	0	0	0	0	1,400,000	0	1,400,000
Metro South - Compactor #2	TBD	0	0	0	0	1,000,000	0	1,000,000
Metro Central - Compactor #1	TBD	0	0	0	0	0	1,400,000	1,400,000
Metro Central- Conveyor #1	TBD	0	0	0	0	0	400,000	400,000
Metro South - Compactor #1	TBD	0	0	0	0	0	1,000,000	1,000,000
TOTAL SOLID WASTE RENEWAL AND REPLACEMENT ACCOUNT		0	1,050,595	1,025,000	485,000	2,700,000	3,100,000	8,360,595
TOTAL PARKS AND ENVIRONMENTAL SERVICES		1,088,283	5,747,559	5,412,157	2,427,486	4,264,635	4,822,843	23,762,963
FIVE YEAR TOTAL, FY 2013-14 THROUGH FY 2017-18	22,674,680			Total Number of Projects 45				

Major Funding Sources

	Prior Years	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
Fund Balance- Renewal and Replacement	0	2,580,531	3,194,157	1,417,486	3,254,635	3,812,843
Grants	0	73,250	0	0	0	0
Fund Balance- Capital Reserve	325,000	2,040,778	1,115,000	1,010,000	1,010,000	1,010,000
Fund Balance- Landfill Closure	763,283	1,053,000	1,103,000	0	0	0
Total- Parks and Environmental Services	1,088,283	5,747,559	5,412,157	2,427,486	4,264,635	4,822,843

Total Project Summary with Major Funding Source

Exhibit A
Resolution 13-4439

Sustainability Center								
	ID	Prior Years	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	Total
NATURAL AREAS FUND								
Natural Areas Acquisition		82,830,000	20,000,000	5,000,000	5,000,000	4,000,000	0	116,830,000
40 Mile Loop Trail Construction	71730	0	1,087,760	0	0	0	0	1,087,760
Natural Areas Information System (Terramet) Phase III	52004	650,000	350,000	0	0	0	0	1,000,000
TOTAL NATURAL AREAS FUND		83,480,000	21,437,760	5,000,000	5,000,000	4,000,000	0	118,917,760
REGIONAL PARKS CAPITAL FUND								
Canemah Bluff Phase I (Carryforward)	70494	44,000	75,000	0	0	0	0	119,000
Canemah Bluff Phase II	TBD	0	139,681	0	0	0	0	139,681
TOTAL REGIONAL PARKS CAPITAL FUND		44,000	214,681	0	0	0	0	258,681
TOTAL SUSTAINABILITY CENTER		83,524,000	21,652,441	5,000,000	5,000,000	4,000,000	0	119,176,441
FIVE YEAR TOTAL, FY 2013-14 THROUGH FY 2017-18	35,652,441		Total Number of Projects 5					

Major Funding Sources

	Prior Years	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
G.O. Bonds- Natural Areas	83,480,000	20,602,050	5,000,000	5,000,000	4,000,000	0
Fund Balance- Capital Reserve	44,000	214,681	0	0	0	0
Grants	0	835,710	0	0	0	0
Total- Sustainability Center	83,524,000	21,652,441	5,000,000	5,000,000	4,000,000	0

Total Project Summary with Major Funding Source

Exhibit A
Resolution 13-4439

VISITOR VENUES- MERC

Oregon Convention Center

	ID	Prior Years	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	Total
MERC FUND								
OCC - Original Roof Replacement	8R031	100,000	1,180,000	1,500,000	0	0	0	2,780,000
OCC - Replacement Dance Floors	8R051	0	126,000	0	0	0	0	126,000
OCC - Audio/Visual Equipment	8N022	0	100,000	0	0	0	0	100,000
OCC - Portland Ballroom Can Lighting Replacement	8R053	0	112,000	0	0	0	0	112,000
OCC - Process Loop Piping Replacement	8R054	0	185,000	0	0	0	0	185,000
OCC - Replace Chrome Entry Doors- Original Side	8R033	0	225,000	0	0	0	0	225,000
OCC - CCTV Replacement (Carryforward)	8R032	0	248,005					
OCC - Carpet Replacement	TBD	0	0	85,000	2,100,000	0	0	2,185,000
OCC - Upgrade Two-Way Radio System	TBD	0	0	275,000	0	0	0	275,000
OCC - Telecommunications VOIP Upgrade	TBD	0	0	185,000	0	0	0	185,000
OCC - Meeting Room Chair Replacement	TBD	0	0	0	960,000	0	0	960,000
OCC - HVAC Replacement Design and Engineering	TBD	0	0	0	200,000	0	0	200,000
OCC - Chiller Units Replacement	TBD	0	0	0	0	1,500,000	0	1,500,000
OCC - Cooling Tower (4) Replacement	TBD	0	0	0	0	725,000	0	725,000
OCC - Boiler Replacement (2)	TBD	0	0	0	0	500,000	0	500,000
OCC - Lobby Areas Furniture Replacement	TBD	0	0	0	0	400,000	0	400,000
OCC - Exhibit Hall Folding Chair Replacement	TBD	0	0	0	0	0	1,000,000	1,000,000
OCC - Table Replacement (Expansion Side)	TBD	0	0	0	0	0	475,000	475,000
OCC - Roof Replacement (Expansion Side)	TBD	0	0	0	0	0	1,800,000	1,800,000
TOTAL OREGON CONVENTION CENTER		100,000	2,176,005	2,045,000	3,260,000	3,125,000	3,275,000	13,733,000
FIVE YEAR TOTAL, FY 2013-14 THROUGH FY 2017-18	13,633,000			Total Number of Projects 19				

Major Funding Sources

	Prior Years	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
Fund Balance- Renewal and Replacement	100,000	1,741,005	2,045,000	3,260,000	3,125,000	3,275,000
TLT Capital Reserves		435,000	0	0	0	0
Total- Oregon Convention Center	100,000	2,176,005	2,045,000	3,260,000	3,125,000	3,275,000

Total Project Summary with Major Funding Source

Exhibit A
Resolution 13-4439

Portland Center for the Performing Arts								
	ID	Prior Years	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	Total
MERC FUND								
PCPA - AHH HVAC & Lighting Controls Updates	8N062	0	250,000	250,000	0	0	0	500,000
PCPA - AHH EIFS Replacement Phase II	8N063	0	175,000	0	0	0	0	175,000
PCPA - Keller Cooling Tower & Associated Piping	8R069	0	10,000	250,000	0	0	0	260,000
PCPA - Newmark Lighting Overhaul	8R072	0	56,000	42,000	130,000	0	0	228,000
PCPA - AHH Boilers	TBD	0	0	150,000	0	0	0	150,000
PCPA - ASCH Chiller and Associated Piping	TBD	0	0	10,000	350,000	0	0	360,000
PCPA - Keller Roof and Drains Replacement	TBD	0	0	250,000	300,000	300,000	0	850,000
PCPA - Keller Fore Stage (Pit) Elevator Lift	TBD	0	0	250,000	250,000	0	0	500,000
PCPA - Keller Front of House and Backstage Elevators	TBD	0	0	100,000	0	0	0	100,000
PCPA - AHH Elevators- Controllers and Interiors	TBD	0	0	0	150,000	150,000	0	300,000
PCPA - ASCH HVAC Controls Updates	TBD	0	0	0	262,000	0	0	262,000
PCPA - ASCH Portland Sign Renewal	TBD	0	0	0	100,000	100,000	0	200,000
PCPA - Keller Main Speakers	TBD	0	0	0	125,000	0	0	125,000
PCPA - Newmark Stage Floor	TBD	0	0	0	100,000	0	0	100,000
PCPA - AHH Roof	TBD	0	0	0	0	200,000	0	200,000
PCPA - ASCH Elevators Overhaul and Interiors	TBD	0	0	0	0	300,000	0	300,000
PCPA - AHH EIFS Replacement Phase III	TBD	0	0	0	0	0	350,000	350,000
PCPA - Keller HVAC Control Upgrades	TBD	0	0	0	0	0	350,000	350,000
PCPA - Keller Carpet Front of House	TBD	0	0	0	0	0	150,000	150,000
TOTAL PCPA		0	491,000	1,302,000	1,767,000	1,050,000	850,000	5,460,000
FIVE YEAR TOTAL, FY 2013-14 THROUGH FY 2017-18	5,460,000	Total Number of Projects 19						

Major Funding Sources

	Prior Years	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
Fund Balance- Renewal and Replacement	0	491,000	1,302,000	1,767,000	1,050,000	850,000
Total- PCPA	0	491,000	1,302,000	1,767,000	1,050,000	850,000

Total Project Summary with Major Funding Source

Exhibit A
Resolution 13-4439

Portland Expo Center								
	ID	Prior Years	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	Total
MERC FUND								
Expo - Portable Bleacher Replacement	8R007	130,000	50,000	0	0	0	0	180,000
Expo - Parking Lot Asphalt Maintenance/Replacement	8R040	100,000	50,000	50,000	50,000	60,000	60,000	370,000
Expo - Roof Repair - Hall D , Hall C	8R039/043	0	265,000	0	0	0	0	265,000
Expo - Hall D Lobby and Meeting Room Upgrades	8R042	0	100,000	0	0	0	0	100,000
Expo - Lighting Efficiency Improvements	8R044	0	384,003	0	0	0	0	384,003
Expo - Roof Repair - Hall E Lobby/Mtg Rooms	TBD	0	0	100,000	0	0	0	100,000
Expo - Electrical Upgrade - Halls A/B	TBD	0	0	140,000	0	0	0	140,000
Expo - Roof Repair - Hall D (Barrel)	TBD	0	0	0	200,000	0	0	200,000
Expo - Update Phone System	TBD	0	0	0	100,000	0	0	100,000
Expo - Roof Repair - Hall E Loading Dock/Storage	TBD	0	0	0	0	200,000	0	200,000
Expo - Roof Repair - Hall E (Barrel)	TBD	0	0	0	0	0	350,000	350,000
TOTAL EXPO CENTER		230,000	849,003	290,000	350,000	260,000	410,000	2,389,003
FIVE YEAR TOTAL, FY 2013-14 THROUGH FY 2017-18	2,159,003	Total Number of Projects 11						

Major Funding Sources

	Prior Years	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
Fund Balance- Renewal and Replacement	230,000	465,000	290,000	350,000	260,000	410,000
Grants	0	284,003	0	0	0	0
TLT Capital Reserves	0	100,000	0	0	0	0
Total- Expo Center	230,000	849,003	290,000	350,000	260,000	410,000

Total Project Summary with Major Funding Source

Exhibit A
Resolution 13-4439

Oregon Zoo								
	ID	Prior Years	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	Total
ZOO INFRASTRUCTURE AND ANIMAL WELFARE BOND FUND								
Elephant Habitat and Related Infrastructure	ZIP002	17,000,000	23,710,221	16,013,285	0	0	0	56,723,506
Remote Elephant Center	ZIP003	40,000	500,000	1,000,000	2,500,000	1,386,194	0	5,426,194
Condor Habitat	ZIP007	2,169,000	545,171	0	0	0	0	2,714,171
Education Center (CDZ)	ZIP006	860,000	144,725	1,479,310	10,665,513	517,233	0	13,666,781
Campus and Habitat Interpretive Design	ZIP013	426,000	101,225	1,231,489	710,912	313,683	510,530	3,293,839
One-percent for Art Design and Installation	ZIP012	97,795	107,575	107,575	107,575	107,575	107,575	635,668
Polar Bear Habitat	ZIP004	0	0	0	1,776,274	9,417,825	8,364,467	19,558,566
Primate and Rhino Habitats	ZIP005	0	0	0	0	670,558	2,753,931	3,424,489
TOTAL ZOO INFRASTRUCTURE AND ANIMAL WELFARE BOND FUND		20,592,795	25,108,917	19,831,659	15,760,274	12,413,068	11,736,503	105,443,215
ZOO CAPITAL FUND								
Bearwalk Remodel	ZBW06		45,000	0	0	0	0	45,000
Bond Commitment Elephant Lands	ZIP002	0	1,965,000	0	0	0	0	1,965,000
OZF Bond Commitment Remote Elephant Center	Zoo39	0	1,400,000	0	0	0	0	1,400,000
Stage Phase 1 Improvements	ZVS10	40,000	310,000	0	0	0	0	350,000
Cascade Grill Improvements	ZVS06	0	150,000	0	0	0	0	150,000
Commissary Modifications	ZVS08	200,000	100,000	0	0	0	0	300,000
Guest Amenities TBD	TBD	0	100,000	0	0	0	0	100,000
TOTAL ZOO CAPITAL FUND		240,000	4,070,000	0	0	0	0	4,310,000
GENERAL FUND RENEWAL AND REPLACEMENT								
Zoo R&R Projects < \$100,000			1,222,068	775,899	929,450	554,928	840,318	4,322,663
1500 kw Generator	ZRW052	0	1,000,000	0	0	0	0	1,000,000
Africa Interpretive Graphics	ZR37	0	108,856	0	0	0	0	108,856
Africafe Roof	ZRW001	8,000	203,000	0	0	0	0	211,000
Stellar Cove Ozone System	ZRW047	0	100,000	0	0	0	0	100,000
Zoo Parking Lot Renewal	ZR17	21,224	21,648	22,081	22,523	22,974	23,433	133,883
Zoo Railroad Track Replacement	ZR19	23,080	47,555	24,493	24,983	25,483	25,992	171,586
Perimeter USDA Fence 5 Replacement	Zoo24	59,620	60,813	62,029	63,270	64,535	65,826	376,093
Telephone System	TBD	0	0	259,543	0	0	0	259,543
Africafe Kitchen Elevator	TBD	0	0	120,000	0	0	0	120,000
Flooded Forest Interpretives	TBD	0	0	160,500	0	0	0	160,500
Swamp Building and Aviary Roof Replacement	TBD	0	0	102,600	0	0	0	102,600
Railroad Roundhouse Roof	TBD	0	0	0	128,883	0	0	128,883
Pig Holding and Exhibit Roof	TBD	0	0	0	0	0	131,286	131,286
Stellar Cove Digital Control System	TBD	0	0	0	0	0	121,899	121,899
Vet Medical Center X-Ray Machine	TBD	0	0	0	0	0	211,482	211,482
TOTAL GENERAL FUND RENEWAL AND REPLACEMENT		111,924	2,763,940	1,527,145	1,169,109	667,920	1,420,236	7,660,274
TOTAL OREGON ZOO		20,944,719	31,942,857	21,358,804	16,929,383	13,080,988	13,156,739	117,413,488
FIVE YEAR TOTAL, FY 2013-14 THROUGH FY 2017-18		96,468,769	Total Number of Projects 31					

Total Project Summary with Major Funding Source

Exhibit A
Resolution 13-4439

Major Funding Sources

	Prior Years	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
G.O. Bonds- Zoo	20,592,795	25,108,917	19,831,659	15,760,274	12,413,068	11,736,503
Donations	240,000	3,525,000	0	0	0	0
Fund Balance- Capital Reserve	0	545,000	0	0	0	0
Fund Balance- Renewal and Replacement	111,924	2,763,940	1,527,145	1,169,109	667,920	1,420,236
Total- Oregon Zoo	20,944,719	31,942,857	21,358,804	16,929,383	13,080,988	13,156,739

Parks and Natural Areas Levy

	ID	Prior Years	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	Total
PARKS LEVY FUND								
Parks Levy R&R < \$100,000			315,000	560,000	555,000	90,000		1,520,000
Blue Lake Entry Drive/Booth Renovation	TBD	0	200,000	0	0	0	0	200,000
Blue Lake Boat Concession Renovation	TBD	0			125,000			125,000
Blue Lake Native Landscaping Upgrades	TBD	0	100,000					100,000
Blue Lake Sports Feature Renovations	TBD	0		200,000				200,000
Blue Lake Traffic/Parking Improvements	TBD	0		200,000				200,000
Blue Lake Playground/Restroom Renovations	TBD	0		850,000				850,000
Blue Lake Office/Maintenance Bldg. Renovations	TBD	0		500,000				500,000
Blue Lake Pathway Renovations	TBD	0			150,000			150,000
Blue Lake Solar Power Installation	TBD	0			100,000			100,000
Blue Lake Utility Replacements	TBD	0			350,000			350,000
Blue Lake Swim Beach/Restroom Renovation	TBD	0			350,000			350,000
Blue Lake Additional Permanent Shelters	TBD	0			250,000			250,000
Blue Lake Drainage Improvements	TBD	0				100,000		100,000
Oxbow Play Area Renovations	TBD	0	200,000					200,000
Oxbow Maintenance Area Reconfiguration	TBD	0		250,000				250,000
Oxbow Office/Residence Renovation	TBD	0		200,000				200,000
Oxbow Restroom Construction	TBD	0		125,000				125,000
Oxbow Fire Road Repairs	TBD	0			100,000			100,000
Oxbow Cabins	TBD	0			200,000			200,000
Oxbow Additional Group Camp	TBD	0				125,000		125,000
Howell Shelter	TBD	0			120,000			120,000
Gleason- Broughton Beach Improvements	TBD	0			100,000			100,000
Gleason Entrance Booth/Gate	TBD	0			100,000			100,000
Sauvie Island Boat Ramp Dock Replacement	TBD	0		125,000				125,000
Smith and Bybee Ramp and Pathway Renovations	TBD	0		100,000				100,000
Sustainability Center Projects, TBD	TBD	0	750,000	750,000	750,000	750,000	750,000	3,750,000
TOTAL PARKS LEVY		0	1,565,000	3,860,000	3,250,000	1,065,000	750,000	10,490,000
FIVE YEAR TOTAL, FY 2013-14 THROUGH FY 2017-18		10,490,000		Total Number of Projects 27				

Major Funding Sources

	Prior Years	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
Local Options Levy	0	1,565,000	3,860,000	3,250,000	1,065,000	750,000
Total- Parks and Natural Areas Levy	0	1,565,000	3,860,000	3,250,000	1,065,000	750,000

FINANCIAL POLICIES

In 2004 the Metro Council enacted Resolution No. 04-3465, “adopting comprehensive financial policies for Metro.” Each year as part of the annual budget adoption process the Metro Council reviews the financial policies which provide the framework for the overall fiscal management of the agency. Operating independently of changing circumstances and conditions, these policies are designed to help safeguard Metro’s assets, promote effective and efficient operations and support the achievement of Metro’s strategic goals. Recently the Governmental Accounting Standards Board (GASB) issued Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*, which requires the Metro Council to make certain policy decisions regarding the use of resources and classifications of fund balance. In June 2010 the Metro Council took action to amend Metro’s Comprehensive Financial Policies to incorporate the GASB Statement No. 54 principles and to re-approve the policies. These changes are reflected in Budget and Financial Planning, section 2. These financial policies establish basic principles to guide Metro’s elected officials and staff in carrying out their financial duties and fiduciary responsibilities. The Chief Financial Officer shall establish procedures to implement the policies established in this document.

General policies

1. Metro’s financial policies shall be reviewed annually by the Council and shall be published in the adopted budget.
2. Metro shall prepare its annual budget and Comprehensive Annual Financial Report consistent with accepted public finance professional standards.
3. The Chief Financial Officer shall establish and maintain appropriate financial and internal control procedures to assure the integrity of Metro’s finances.
4. Metro shall comply with all applicable state and federal laws and regulations concerning financial management and reporting, budgeting and debt administration.

Accounting, auditing and financial reporting

1. Metro shall annually prepare and publish a Comprehensive Annual Financial Report including financial statements and notes prepared in conformity with generally accepted accounting principles as promulgated by the Governmental Accounting Standards Board.
2. Metro shall maintain its accounting records on a basis of accounting consistent with the annual budget ordinance.
3. Metro shall have an independent financial and grant compliance audit performed annually in accordance with generally accepted auditing standards.

Budgeting and financial planning

1. As prescribed in Oregon budget law, total resources shall equal total requirements in each fund, including contingencies and fund balances. However, Metro considers a budget to be balanced whenever budgeted revenues equal or exceed budgeted expenditures. Beginning fund balances shall not be considered as revenue, nor shall contingencies or ending fund balances be considered expenditures, in determining whether a fund is in balance.
2. Metro shall maintain fund balance reserves that are appropriate to the needs of each fund. Targeted reserve levels shall be established and reviewed annually as part of the budget process. Use of fund balance to support budgeted operations in the General Fund, an operating fund, or a central service fund shall be explained in the annual budget document; such explanation shall describe the nature of the budgeted reduction in fund balance and its expected future impact. Fund balances in excess of future needs shall be evaluated for alternative uses.
 - a. The Metro Council delegates to the Chief Operating Officer the authority to assign (and un-assign) additional amounts intended to be used for specific purposes more narrow than the overall purpose of the fund established by Council. A schedule of such assignments shall be included within the adopted budget document.
 - b. Metro considers restricted amounts to have been spent prior to unrestricted (committed, assigned, or unassigned) amounts when an expenditure is incurred for purposes for which both restricted and unrestricted amounts are available. Within unrestricted amounts, committed amounts are considered to have been spent

first, followed by assigned amounts, and then unassigned amounts when an expenditure is incurred for purposes for which amounts in any of those unrestricted fund balance classifications could be used.

- c. The following information shall be specified by Council in the establishment of Stabilization Arrangements as defined in GASB Statement No. 54: a) the authority for establishing the arrangement (resolution or ordinance), b) the requirements, if any, for additions to the stabilization amount, c) the specific conditions under which stabilization amounts may be spent, and d) the intended stabilization balance.
3. Metro staff shall regularly monitor actual revenues and expenditures and report to Council at least quarterly on how they compare to budgeted amounts, to ensure compliance with the adopted budget. Any significant changes in financial status shall be timely reported to the Council.
4. Metro shall use its annual budget to identify and report on department or program goals and objectives and measures of performance.
5. A new program or service shall be evaluated before it is implemented to determine its affordability.
6. Metro shall authorize grant-funded programs and associated positions for a period not to exceed the length of the grant unless alternative funding can be secured.
7. Each operating fund will maintain a contingency account to meet unanticipated requirements during the budget year. The amount shall be appropriate for each fund.
8. Metro shall prepare annually a five-year forecast of revenues, expenditures, other financing sources and uses, and staffing needs for each of its major funds, identifying major anticipated changes and trends, and highlighting significant items which require the attention of the Council.
9. Metro will annually prepare a cost allocation plan prepared in accordance with applicable federal guidelines to maintain and maximize the recovery of indirect costs from federal grants, and to maintain consistency and equity in the allocation process.

Capital asset management

1. Metro shall budget for the adequate maintenance of capital equipment and facilities and for their orderly replacement, consistent with longer-term planning for the management of capital assets.
2. The Council's previously-adopted policies governing capital asset management are incorporated by reference into these policies.

Cash management and investments

1. Metro shall maintain an investment policy in the Metro Code, which shall be subject to annual review and re-adoption.
2. Metro shall schedule disbursements, collections and deposits of all funds to ensure maximum cash availability and investment potential.
3. Metro shall manage its investment portfolio with the objectives of safety of principal as the highest priority, liquidity adequate to needs as the second highest priority and yield from investments as its third highest priority.

Debt management

1. Metro shall issue long-term debt only to finance capital improvements, including land acquisition, that cannot be readily financed from current revenues, or to reduce the cost of long-term financial obligations.
2. Metro will not use short-term borrowing to finance operating needs unless specifically authorized by the Council.
3. Metro shall repay all debt issued within a period not to exceed the expected useful life of the improvements financed by the debt.
4. Metro shall fully disclose financial and pertinent credit information as it relates to Metro's outstanding securities.
5. Metro shall strive to obtain the highest credit ratings to ensure that borrowing costs are minimized and Metro's access to credit is preserved.
6. Equipment and vehicles should be financed using the least costly method, including comparison to direct cash expenditure. This applies to purchase using operating leases, capital leases, bank financing, company financing or any other purchase programs.

Revenues

1. Metro shall estimate revenues through an objective, analytical process.
2. Metro shall strive to maintain a diversified and balanced revenue system to protect it from short-term fluctuations in any one revenue source.
3. One-time revenues shall be used to support one-time expenditures or increase fund balance.
4. Metro shall pursue appropriate grant opportunities; however, before accepting any grant, Metro will consider the current and future implications of either accepting or rejecting it. The Chief Financial Officer may establish criteria to be used in evaluating the potential implications of accepting grants.

CAPITAL ASSET MANAGEMENT POLICIES

The following policies establish the framework for Metro's overall capital asset planning and management. They provide guidance for current practices and a framework for evaluation of proposals for future projects. These policies also seek to improve Metro's financial stability by providing a consistent approach to fiscal strategy. Adopted financial policies show the credit rating industry and prospective investors (bond buyers) the agency's commitment to sound financial management and fiscal integrity. Adherence to adopted policies ensures the integrity and clarity of the financial planning process and can lead to improvement in bond ratings and lower cost of capital.

1. Metro shall operate and maintain its physical assets in a manner that protects the public investment and ensures achievement of their maximum useful life.
Ensuring the maximum useful life for public assets is a primary agency responsibility. Establishing clear policies and procedures for monitoring, maintaining, repairing and replacing essential components of facilities is central to good management practices. It is expected that each Metro department will have written policies and procedures that address:
Multi-year planning for renewal and replacement of facilities and their major components;
Annual maintenance plans.
2. Metro shall establish a **Renewal and Replacement Reserve** account for each operating fund responsible for major capital assets.
Ensuring that the public receives the maximum benefit for its investments in major facilities and equipment requires an ongoing financial commitment. A **Renewal and Replacement Reserve** should initially be established based on the value of the asset and consideration of known best asset management practices. Periodic condition assessments should identify both upcoming renewal and replacement projects and the need to adjust reserves to support future projects. If resources are not sufficient to fully fund the Reserve without program impacts, the Council will be consider alternatives during the annual budget process. Establishing and funding the Reserve demonstrates Metro's ongoing capacity and commitment to these public investments.
3. Metro shall prepare, adopt and update at least annually a five-year **Capital Improvement Plan (CIP)**. The Plan will identify and set priorities for all major capital assets to be acquired or constructed by Metro. The first year of the adopted CIP shall be included in the **Proposed Budget**.
The primary method for Metro departments to fulfill the need for multi-year planning is the **Capital Improvement Planning** process. The CIP allows a comprehensive look at Metro's capital needs for both new facilities and renewal and replacement of existing ones, and allows the Council to make the necessary decisions to ensure financial resources match forecasted needs.
4. Capital improvement projects are defined as facility or equipment purchases or construction which results in a capitalized asset costing more than \$100,000 and having a useful (depreciable life) of five years or more. Also included are major maintenance projects of \$100,000 or more that have a useful life of at least five years.¹
A clear threshold ensures that the major needs are identified and incorporated in financial plans.

¹ Effective July 1, 2009, capital asset threshold was increased from \$50,000 to \$100,000 in accordance with Metro Resolution 08-3941A. This reflected a State of Oregon definition of a public improvement project.

5. An assessment of each Metro facility will be conducted at least every five years. The report shall identify repairs needed in the coming five years to ensure the maximum useful life of the asset. This information shall be the basis for capital improvement planning for existing facilities and in determining the adequacy of the existing Renewal and Replacement Reserves.
A foundation step for capital planning is an understanding of the current conditions of Metro facilities. It is expected that Metro departments have a clear, documented process for assessing facility condition at least every five years. The assessment processes may range from formal, contracted engineering studies to in-house methods such as peer reviews. The assessment should identify renewal and replacement projects that should be done within the following five years. The Renewal and Replacement Reserve account should be evaluated and adjusted to reflect the greater of the average renewal and replacement project needs over the coming five years or 2 percent of the current facility replacement value.
6. The Capital Improvement Plan will identify adequate funding to support repair and replacement of deteriorating capital assets and avoid a significant unfunded liability from deferred maintenance.
Using the information provided by facility assessments, Metro departments should use the CIP process to identify the resources necessary to keep facilities in an adequate state of repair. In situations where financial resources force choices between programs and facility repair, the annual budget process should highlight these policy choices for Council action.
7. A five-year forecast of revenues and expenditures will be prepared in conjunction with the capital budgeting process. The forecast will include a discussion of major trends affecting agency operations, incorporate the operating and capital impact of new projects, and determine available capacity to fully fund the Renewal and Replacement Reserve.
Incorporation of capital needs into agency five-year forecasts ensures that problem areas are identified early enough that action can be taken to ensure both the maintenance of Metro facilities and integrity of Metro services.
8. To the extent possible, improvement projects and major equipment purchases will be funded on a pay-as-you-go basis from existing or foreseeable revenue sources. Fund Balances above established reserve requirements may be used for one-time expenditures such as capital equipment or financing of capital improvements.
Preparing a CIP and incorporating it into five-year forecasts enables Metro to plan needed capital spending within foreseeable revenues. This minimizes the more costly use of debt for capital financing and ensures renewal and replacement of facility components takes place without undue financial hardship to operations.
9. Debt (including capital leases) may only be used to finance capital, including land acquisition, not ongoing operations. Projects that are financed through debt must have a useful service life at least equal to the debt repayment period.
Because interest costs impact taxpayers and customers, debt financing should be utilized only for the creation or full replacement of major capital assets.
10. When choosing funding sources for capital items, every effort should be made to fund enterprise projects either with revenue bonds or self-liquidating general obligation bonds. For the purpose of funding non-enterprise projects, other legally permissible funding sources, such as systems development charges, should be considered.
11. Acquisition or construction of new facilities shall be done in accordance with Council adopted facility and/or master plans. Prior to approving the acquisition or construction of a new asset, Council shall be presented with an estimate of the full cost to operate and maintain the facility through its useful life and the plan for meeting these costs. At the time of approval, Council will determine and establish the Renewal and Replacement Reserve policy for the asset to ensure resources are adequate to meet future major maintenance needs.
New Metro facilities should be planned within the overall business and service objectives of the agency. To ensure that the public gains the maximum utility from the new facility or capital asset, Metro should identify the full cost of building and operating the facility throughout its useful life. Resources generated from its operation or other sources should be identified to meet these needs.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 13-4439, FOR THE PURPOSE OF ADOPTING THE CAPITAL IMPROVEMENT PLAN FOR FISCAL YEARS 2013-14 THROUGH 2017-18, APPROVING THE METROPOLITAN TOURISM OPPORTUNITY COMPETITIVENESS PROJECTS AND RE-ADOPTING METRO’S FINANCIAL POLICIES

Date: June 6, 2013 Presented by: Tim Collier, Interim Director, Finance and Regulatory Services

BACKGROUND

A. The Capital Improvement Plan (CIP) for Fiscal Years 2013-14 through 2017-18 represents Metro’s long-range capital planning process. Metro has established a sound base to forecast the agency’s capital needs and balances those needs with available resources. If a project comes up unexpectedly during the year, departments must follow an established amendment process to submit the project to Council for approval.

Exhibit A provides a listing of the CIP projects and their major funding sources. The resolution approves the entire five-year capital plan and directs that projects for FY 2013-14 be approved, and project expenditures for FY 2013-14 be appropriated, as amended, in the FY 2013-14 budget.

The table below shows the number of projects by department or fund; Exhibit A to the Resolution shows the individual projects by department or fund. This year’s CIP remains dominated by bond projects.

	Total Projects	Prior Years	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	Five-Year Total	Total
Finance and Regulatory Svcs	2	885,000	240,000	30,000	30,000	30,000	30,000	360,000	1,245,000
Information Services	4	614,545	897,893	408,475	285,913	340,063	432,301	2,364,645	2,979,190
Parks and Environmental Svcs	45	1,088,283	5,747,559	5,412,157	2,427,486	4,264,635	4,822,843	22,674,680	23,762,963
Sustainability Center	5	83,524,000	21,652,441	5,000,000	5,000,000	4,000,000	0	35,652,441	119,176,441
Visitor Venues- MERC	49	330,000	3,516,008	3,637,000	5,377,000	4,435,000	4,535,000	21,500,008	21,830,008
Visitor Venues- Oregon Zoo	31	20,944,719	31,942,857	21,358,804	16,929,383	13,080,988	13,156,739	96,468,769	117,413,488
Parks and Natural Areas Levy	27	0	1,565,000	3,860,000	3,250,000	1,065,000	750,000	10,490,000	10,490,000
TOTAL	163	107,386,547	65,561,758	39,706,436	33,299,782	27,215,686	23,726,883	189,510,544	296,897,091

B. This resolution also provides for the annual review and re-adoption of Metro’s financial policies, including the Capital Asset Management Policies that are incorporated by reference. The policies are attached as Exhibit B to the resolution. No changes are recommended.

The current policies address six specific areas of financial management as well as a series of general policies. Several of these simply echo federal or state laws and regulations, or establish as policy certain practices that are currently in place. Highlights of those policies include:

- The policies will be reviewed annually by the Council and published in the adopted budget.
- The Chief Financial Officer will develop guidelines and procedures in a number of areas, including determination of fund balances appropriate to each major fund, determination of appropriate contingencies to be maintained and internal controls.
- A definition of a balanced budget is one in which current year revenues meet or exceed current year expenditures.

- Any use of fund balance in an operating fund will be fully explained in the adopted budget document.
- A study to assess the affordability of any new program will be done before the program is implemented.
- The Council's existing capital asset management policies are incorporated into this document, by reference.
- One-time revenues will be used to pay for one-time costs or add to fund balance.

C. This action also approves the Metro Tourism Opportunity and Competitiveness Account (MTOCA) projects at the Oregon Convention Center for FY 2013-14. The MTOCA funds (\$418,633) are appropriated in the General Fund and transferred to MERC as part of the annual budget process. This year the funds are utilized for a single non-capital project to develop options for satisfying the need for a minimum 500 hotel room block.

ANALYSIS/INFORMATION

1. **Known Opposition:** None.
2. **Legal Antecedents:** Metro's adopted financial policies require the annual adoption of a Capital Improvement Plan.
3. **Anticipated Effects:** The resolution signifies the Council has reviewed and approved the CIP covering FYs 2013-14 through 2017-18.

The cost of the 163 projects planned during the five years covered by this CIP is estimated to be \$189.5 million.

This resolution is the formal instrument by which the five-year plan will be adopted. Projects with planned expenditures in FY 2013-14 will be incorporated into the adopted budget.

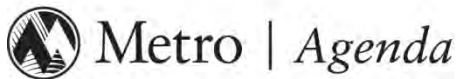
This resolution is the formal instrument to approve the Metro Tourism Opportunity and Competitiveness Account project for FY 2013-14.

4. **Budget Impacts:** The plan's FY 2013-14 expenditures (\$65.6 million) will be appropriated in the FY 2013-14 Adopted Budget.

RECOMMENDED ACTION

Resolution No. 13-4439 is an important component of the annual budget process. The Chief Operating Officer recommends adoption.

Materials following this page were distributed at the meeting.



REVISED, 6/19/13

Meeting: Metro Council
Date: Thursday, June 20, 2013
Time: 2 p.m.
Place: Metro, Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATION

3. CONSENT AGENDA

3.1 Consideration of the Minutes for June 13, 2013

3.2 **Resolution No. 13-4443**, For the Purpose of Amending Metro's 401(k) and 547 Retirement Savings Plans.

4. ORDINANCES – SECOND READING

4.1 **Ordinance No. 13-1300A**, For the Purpose of Adopting the Annual Budget for Fiscal Year FY 2013-14, Making Appropriations, Levy Ad Valorem Taxes, and Authorizing an Interfund Loan.

Tim Collier, Metro

4.1.1 Public Hearing on Ordinance No. 13-1300A.

4.2 **Ordinance No. 13-1305**, For the Purpose of Amending the FY 2012-13 Budget and Appropriations Scheduled for Changes in Operations.

Tim Collier, Metro

4.2.1 Public Hearing on Ordinance No. 13-1305.

5. RESOLUTIONS

5.1 **Resolution No. 13-4439**, For the Purpose of Adopting the Capital Improvement Plan for Fiscal Years 2013-14 through 2017-18, Approving the Metropolitan Tourism Opportunity Competitiveness Account Projects and Re-Adopting Metro's Financial Policies.

Tim Collier, Metro

5.2 **Resolution No. 13-4441**, For the Purpose of Recognizing the 50th Anniversary of Metro's Blue Lake and Oxbow Regional Parks and Designating July as Parks and Recreation Month.

Paul Slyman, Metro

6. CHIEF OPERATING OFFICER COMMUNICATION

7. COUNCILOR COMMUNICATION

ADJOURN

Television schedule for June 20, 2013 Metro Council meeting

<p>Clackamas, Multnomah and Washington counties, and Vancouver, WA Channel 30 – Community Access Network <i>Web site:</i> www.tvctv.org <i>Ph:</i> 503-629-8534 <i>Date:</i> Thursday, June 20</p>	<p>Portland Channel 30 – Portland Community Media <i>Web site:</i> www.pcmtv.org <i>Ph:</i> 503-288-1515 <i>Date:</i> Sunday, June 23, 7:30 p.m. <i>Date:</i> Monday, June 24, 9 a.m.</p>
<p>Gresham Channel 30 - MCTV <i>Web site:</i> www.metroeast.org <i>Ph:</i> 503-491-7636 <i>Date:</i> Monday, June 24, 2 p.m.</p>	<p>Washington County Channel 30– TVC TV <i>Web site:</i> www.tvctv.org <i>Ph:</i> 503-629-8534 <i>Date:</i> Saturday, June 22, 11 p.m. <i>Date:</i> Sunday, June 23, 11 p.m. <i>Date:</i> Tuesday, June 25, 6 a.m. <i>Date:</i> Wednesday, June 26, 4 p.m.</p>
<p>Oregon City, Gladstone Channel 28 – Willamette Falls Television <i>Web site:</i> http://www.wftvmedia.org/ <i>Ph:</i> 503-650-0275 Call or visit web site for program times.</p>	<p>West Linn Channel 30 – Willamette Falls Television <i>Web site:</i> http://www.wftvmedia.org/ <i>Ph:</i> 503-650-0275 Call or visit web site for program times.</p>

PLEASE NOTE: Show times are tentative and in some cases the entire meeting may not be shown due to length. Call or check your community access station web site to confirm program times.

Agenda items may not be considered in the exact order. For questions about the agenda, call the Metro Council Office at 503-797-1540. Public hearings are held on all ordinances second read. Documents for the record must be submitted to the Regional Engagement and Legislative Coordinator to be included in the meeting record. Documents can be submitted by e-mail, fax or mail or in person to the Regional Engagement and Legislative Coordinator. For additional information about testifying before the Metro Council please go to the Metro web site www.oregonmetro.gov and click on public comment opportunities.

Metro’s nondiscrimination notice

Metro respects civil rights. Metro fully complies with Title VI of the Civil Rights Act of 1964 that bans discrimination on the basis of race, color or national origin. For more information on Metro’s civil rights program, or to obtain a Title VI complaint form, visit www.oregonmetro.gov/civilrights or call 503-797-1536. Metro provides services or accommodations upon request to persons with disabilities and people who need an interpreter at public meetings. All Metro meetings are wheelchair accessible. If you need a sign language interpreter, communication aid or language assistance, call 503-797-1536 or TDD/TTY 503-797-1804 (8 a.m. to 5 p.m. weekdays) 7 business days in advance of the meeting to accommodate your request. For up-to-date public transportation information, visit TriMet’s website at www.trimet.org.



METRO COUNCIL MEETING

Meeting Summary

June 13, 2013

Metro, Council Chamber

Councilors Present: Council President Tom Hughes and Councilors Shirley Craddick, Sam Chase, Kathryn Harrington, Carlotta Collette, Bob Stacey, and Craig Dirksen

Councilors Excused: None

Council President Tom Hughes called the regular council meeting to order at 2 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

There were none.

3. CONSIDERATION OF THE MINUTES FOR JUNE 6, 2013

Motion:	Councilor Shirley Craddick moved to approve the June 6, 2013 Council minutes.
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Vote:	Council President Hughes, and Councilors Craddick, Collette, Harrington, Chase, Dirksen, and Stacey voted in support of the motion. The vote was 7 ayes, the motion <u>passed</u> .
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4. ORDINANCES - FIRST READING

4.1 **Ordinance No. 13-1305**, For the Purpose of Amending the FY 2012-13 Budget and Appropriations Scheduled for Changes in Operations.

Second read, public hearing and Council consideration and vote are scheduled for June 20, 2013.

5. ORDINANCES - SECOND READING

5.1 **Ordinance No. 13-1300**, For the Purpose of Adopting the Annual Budget for Fiscal Year FY 2013-14, Making Appropriations, Levy Ad Valorem Taxes, and Authorizing an Interfund Loan.

Council President Hughes gaveled and opened a public hearing on all proposed amendments to the FY 2013-14 Metro budget. Seeing no members of the public who wished to testify, the public hearing was closed.

Council President Hughes stated that the Council would consider amendments to the FY 2013-14 budget in the following order: (1) technical amendments submitted by each of the agency's departments, (2) amendments submitted by Metro Councilors, and (3) amendments submitted by the Chief Operating Officer. (Information on each of the proposed amendments has been included as part of the meeting record.)

AMENDMENT #1

Motion:	Councilor Kathryn Harrington moved to amend the FY 2013-2014 approved budget to include the 20 department-proposed amendments en bloc.
Second:	Councilor Carlotta Collette seconded the motion.

Mr. Tim Collier of Metro very briefly highlighted each of the 4 substantive department amendments which:

- Add a 1.0 FTE position in the Equity Strategy program;
- Extend a limited duration .075 FTE position in the Community Investment Initiative program;
- Add a 0.2 FTE position in the Parks department; and
- Increase by 0.25 FTE a position at the Oregon Zoo.

In addition to the 4 above amendments, Mr. Collier stated that the majority of the remaining 16 technical amendments were carry-forwards from the current fiscal year.

Councilors asked clarifying questions about loaning funds from the Solid Waste Revenue Fund to the Natural Areas Local Option Levy Fund. Staff clarified that while the agency's appropriation authority takes effect on July 1, natural areas levy funds will not be available until November 2013 and as such proposed to borrow from the agency's solid waste fund. Staff stated that the amount of money is not projected to be spent in the current year and as a result the agency is likely to earn more interest by loaning internally than in an external market.

Vote: Council President Hughes, and Councilors Craddick, Collette, Harrington, Chase, Dirksen, and Stacey voted in support of the motion. The vote was 7 ayes, the motion passed.

AMENDMENT #2

Motion:	Councilor Harrington moved to amend the FY 2013-2014 approved budget to provide resources to follow through on the Regional Active Transportation Plan strategies.
Second:	Councilor Bob Stacey seconded the motion.

Councilor Harrington introduced the amendment. Over the last two years, the region has been developing the first ever Regional Active Transportation Plan. The plan, working towards a final endorsement in the summer of 2013, will recommend pedestrian and bicycle network visions, policies and projects that help the region achieve its six desired

outcomes. The amendment, if approved, would allocate one-time monies in FY 2013-14 and FY 2014-15 to fund 1 FTE at \$110,000 and materials and services at \$25,000 each year. The budget amendment will provide the COO financial resources to finalize the plan's work program and ensure the appropriate human resources are in place to achieve the plan. Councilor Harrington acknowledged various letters that had been received in support of the amendment including: the Westside Transportation Alliance, Kaiser Permanente, City of Cornelius, Oregon Walks, Coalition for a Livable Future, Upstream Public Health, Cycle Oregon, 1000 Friends of Oregon, and the Bicycle Transportation Alliance.

Councilors thanked Councilor Harrington and Stacey for their leadership and proposing the amendment. Councilors highlighted the many benefits of active transportation including health, community and economic development, and reductions in greenhouse gas emissions.

Vote:

Council President Hughes, and Councilors Craddick, Collette, Harrington, Chase, Dirksen, and Stacey voted in support of the motion. The vote was 7 ayes, the motion <u>passed</u> .

AMENDMENT #3

Motion:	Councilor Collette moved to amend the FY 2013-2014 approved budget to include the Chief Operating Officer's amendment to restore the General Fund from the Fund Balance.
Second:	Councilor Sam Chase seconded the motion.

Ms. Martha Bennett stated that the Metro Council's approval of funds for the Regional Active Transportation Plan (Amendment #2) requires the COO-proposed amendments to be revised as follows:

- Proposed funding for a year-one active transportation position will be increased from \$135,000 to \$270,000 for FY 13-14; and
- The Council Opportunity Account will remain at \$250,000 and will not be increased by \$100,000 as originally proposed. The remainder of the funds needed for FY 14-15, which totals \$35,000, will come from the undesignated end fund balance.

Ms. Bennett quickly overviewed remainder of her proposed amendment's line items:
One-time or limited term expenditures

- Restore the stabilization reserve to the required Council policy level;
- Provide additional funds to the zoo concert stage reserve;
- Provide funding for the Enterprise Resource Planning Process implementation (e.g. integrating Metro's financial software);
- Provide funding for a capital improvement plan at Glendoveer Golf Course;
- Add a limited duration position in the Development Center;
- Provide funding for sustainability upgrades to renewal and replacement projects; and
- Provide funding for an external audit of Metro's payroll software.

Potentially ongoing expenditures

- Restore positions that were reduced from full to part-time FTE in the budget proposal in the Planning and Development department and Finance and Regulatory Services;
- Restore a position in the Planning and Development department;
- Increase materials and services in Information Services to allow contracting for database administrator services;
- Restore funds for an internship program in the Auditor’s Office; and
- Restore miscellaneous expenses in the Metro Council Office including internship opportunities.

Councilors noted that the Council has discussed each of the proposed sets of amendments in great detail during work sessions.

Vote:

Council President Hughes, and Councilors Craddick, Collette, Harrington, Chase, Dirksen, and Stacey voted in support of the motion. The vote was 7 ayes, the motion <u>passed</u> .

Motion:	Councilor Craig Dirksen moved to direct staff to incorporate the adopted amendments into an “A” version of the ordinance to consider on June 20, 2013.
Second:	Councilor Craddick seconded the motion.

Vote:

Council President Hughes, and Councilors Craddick, Collette, Harrington, Chase, Dirksen, and Stacey voted in support of the motion. The vote was 7 ayes, the motion <u>passed</u> .

Second read, public hearing and Council consideration and vote on Ordinance No. 13-1300A is scheduled for June 20, 2013.

6. RESOLUTIONS

6.1 **Resolution No. 13-4429**, For the Purpose of Authorizing the Chief Operating Officer to Grant an Easement to the American-Hellenic Educational Center (Camp Angelos).

Motion:	Councilor Craddick moved to approve Resolution No. 13-4429.
Second:	Councilor Harrington seconded the motion.

Ms. Kathleen Brennan-Hunter introduced the resolution. Metro purchased approximately 150 acres, known as the Springdale Natural Area, with funds from the 1995 open spaces bond measure. The property is located in the Sandy River Gorge and primarily consists of timbered slops that add scenic, water quality and habitat value to the property. Adjacent to the natural area is the American –Hellenic Educational Center (Camp Angelos) which was established in 1977. In 2011, Metro completed a professional survey of the natural area’s southern boundary and found a historic encroachment by Camp Angelos – an encroachment dating back prior to Metro’s ownership of the area. The resolution, if approved, would grant an easement to Camp Angelos for the historic encroachments on Metro property, and in return Camp Angelos has agreed to grant Metro an access easement to the Metro property in perpetuity. Ms. Brennan-Hunter also noted that the easement is

exempt from Metro's policy because the project specifically benefits a Metro natural area by providing necessary, permanent access required to manage and maintain the property.

Ms. Brennan-Hunter welcomed Mr. Bill Travis, a representative from Camp Angelos' Executive Board, to share a few words. Mr. Travis emphasized the camp's strong partnership with Metro, and stated that Metro staff has been unbelievable to work with. He stated that the camp would like to be good neighbors and continue its relationship with Metro. Camp Angelos hosts a variety of camps throughout the summer and school year, including Multnomah County's outdoor school.

Councilors thanked Mr. Travis for his comments and Camp Angelos for its continued partnership. Councilors clarified that the easement granted was only for one half of an acre (0.5 acres). In addition, staff clarified that should Camp Angelos have a future easement request, Metro staff would need to complete the same analysis and review the easement policy.

Vote:

Council President Hughes, and Councilors Craddick, Collette, Harrington, Chase, Dirksen, and Stacey voted in support of the motion. The vote was 7 ayes, the motion <u>passed</u> .

7. CHIEF OPERATING OFFICER COMMUNICATION

Ms. Bennett provided an update on:

- The Community Investment Initiative is sponsoring two events with speaker Mr. Tom Murphy, former Mayor of Pittsburgh and ULI fellow. The first event is scheduled for Monday, June 17 and the second on Tuesday, June 18.

8. COUNCILOR COMMUNICATION

Councilors provided updates on the following meetings or events: the Metro Policy Advisory Committee, Joint Policy Advisory Committee on Transportation and regional mayors' meeting. Highlighted upcoming meetings included the June 13 Annual Intertwine Alliance event, and June 14 Regional Disaster Planning Organization meeting.

Councilors also noted that the new Regional Active Transportation Plan brochure is now available, and that the timeline for the community planning and development grants has shifted. Details to follow shortly.

9. ADJOURN

There being no further business, Council President Hughes adjourned the regular meeting at 3:03 p.m. The Metro Council will convene the next regular council meeting on Thursday, June 20 at 2 p.m. at the Council Chamber.

Respectfully submitted,



Kelsey Newell, Regional Engagement & Legislative Coordinator

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF JUNE 13, 2013

Item	Topic	Doc. Date	Document Description	Doc. Number
3.0	Minutes	6/6/13	Council minutes for June 6, 2013	61313c-01
5.1	Exhibit A	6/6/13	Letter to the Metro Council from the Tax Supervising & Conservation Commission	61313c-02
5.1	Memo & Attachments	6/4/13	Department requested amendments to the FY 13-14 budget	61313c-03
5.1	Memo & Attachments	6/4/13	Councilor and COO amendments to the FY 13-14 budget	61313c-04
6.1	PowerPoint	N/A	Maps and images of the Camp Angelos and Springdale Natural Area.	61313c-05

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) RESOLUTION NO. 13-4443
METRO'S 401(K) AND 457 RETIREMENT)
SAVINGS PLANS) Introduced by Martha Bennett, Chief
) Operating Officer

WHEREAS, the Metro Council established an Employee Salary Savings Plan (the "401(k) Plan") in 1992 and adopted the Oregon Savings Growth Plan (the "457 Plan") in 1993 for the exclusive benefit of eligible employees; and

WHEREAS, the 401(k) Plan Committee, which consists of represented and non-represented employees, recently undertook an RFP for both voluntary retirement plans with assistance from an investment consultant specializing in volunteer retirement plans; and

WHEREAS, the 401(k) Plan Committee selected ICMA-RC to administer both the 401(k) and 457 Plans pursuant to its RFP process. ICMA-RC was chosen for several reasons, including that it works solely with public agencies, is well-equipped to serve an organization of Metro's size, allows employees to select from a large variety of funds for their retirement plans, and offers a brokerage window option to employees.

WHEREAS, Metro currently allows participants in the 401(k) Plan to take loans against their retirement account but does not have this feature in the 457 Plan, and finds that this loan option is a desirable, utilized employee benefit;

WHEREAS, Metro currently allows participants in the 401(k) Plan to invest money on an after-tax basis through a Roth account but does not have their feature in the 457 Plan, and finds that this option is a desirable, utilized employee benefit;

BE IT RESOLVED,

1. That the Metro Council approves Metro's transition to ICMA-RC's 401 Governmental Profit Sharing Plan & Trust Basic, an example of which is attached hereto as Exhibit "1."
2. That the Metro Council approves Metro's transition to ICMA-RC's 457 Governmental Deferred Compensation Plan & Trust, an example of which is attached hereto as Exhibit "2."
3. That the Metro Council approves utilization of Wilmington Trust as the new trustee for both Plans, as well as approves utilization of VantageTrust as the trustee for those funds operated by VantageTrust.
4. That the Metro Council will allow participants in the 457 Plan to take loans from their individual retirement accounts.
5. That the Metro Council will allow the 457 Plan to include a Roth investment account.

ADOPTED by the Metro Council this _____ day of June, 2013.

Tom Hughes, Council President

Approved as to Form:

Alison Kean Campbell, Metro Attorney

401 Governmental Profit Sharing Plan & Trust Basic Document



ICMA RETIREMENT CORPORATION GOVERNMENTAL PROFIT-SHARING PLAN & TRUST BASIC DOCUMENT

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**ICMA RETIREMENT CORPORATION
GOVERNMENTAL PROFIT-SHARING PLAN & TRUST**

I. PURPOSE

The Employer hereby adopts this Plan and Trust to provide funds for its Employees' retirement, and to provide funds for their Beneficiaries in the event of death. The benefits provided in this Plan shall be paid from the Trust. The Plan and the Trust forming a part hereof are adopted and shall be maintained for the exclusive benefit of eligible Employees and their Beneficiaries. Except as provided in Sections 4.13 and 14.03, no part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

II. DEFINITIONS

2.01 Account. A separate record which shall be established and maintained under the Trust for each Participant, and which shall include all Participant subaccounts created pursuant to Article IV, plus any Participant Loan Account created pursuant to Section 13.03. Each subaccount created pursuant to Article IV shall include any earnings of the Trust and adjustments for withdrawals, and realized and unrealized gains and losses allocable thereto. The term "Account" may also refer to any of such separate subaccounts.

2.02 Accounting Date. Each day that the New York Stock Exchange is open for trading, and such other dates as may be determined by the Plan Administrator, as provided in Section 6.06 for valuing the Trust's assets.

2.03 Adoption Agreement. The separate agreement executed by the Employer through which the Employer adopts the Plan and elects among the various alternatives provided thereunder, and which upon execution, becomes an integral part of the Plan.

2.04 Beneficiary. The person or persons (including a trust) designated by the Participant who shall receive any benefits payable hereunder in the event of the Participant's death. The designation of such Beneficiary shall be in writing to the Plan Administrator. A Participant may designate primary and contingent Beneficiaries. Where no designated Beneficiary survives the Participant or no Beneficiary is otherwise designated by the Participant, the Participant's Beneficiary shall be his/her surviving spouse or, if none, his/her estate.

Notwithstanding the foregoing, the Beneficiary designation is subject to the requirements of Article XII unless the Employer elects otherwise in the Adoption Agreement.

Notwithstanding the foregoing, where elected by the Employer in the Adoption Agreement (the "QJSA Election"), the Beneficiary designation is subject to the requirements of Article XVII.

Notwithstanding the foregoing, to the extent permitted by the Employer, a Beneficiary receiving required minimum distributions in accordance with Article X and not in a benefit form elected under Article XI or XII, may designate a Beneficiary to receive the required minimum distributions that would have otherwise been payable to the initial Beneficiary but for his or her death.

2.05 Break in Service. A Period of Severance of at least twelve (12) consecutive months.

In the case of an individual who is absent from work for maternity or paternity reasons, the twelve (12) consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Break in Service. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of the birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.

- 2.06 Catch-up Contributions.** Elective Deferrals made to the Plan that are in excess of an otherwise applicable plan limit and that are made by Participants who are age 50 or over by the end of their taxable years. An otherwise applicable plan limit is a limit in the Plan that applies to Elective Deferrals without regard to Catch-up Contributions, such as the limits on annual additions and the dollar limitation on Elective Deferrals under Code section 402(g) (not counting catch-up Contributions). Catch-up Contributions for a Participant for a taxable year may not exceed (1) the dollar limit on Catch-up Contributions under Code section 414(v)(2)(B)(i) for the taxable year or (2) when added to other Elective Deferrals, 75 percent of the Participant's Earnings for the taxable year. The dollar limit on Catch-up Contributions under Code section 414(v)(2)(B)(i) is \$1,000 for taxable years beginning in 2002, increasing by \$1,000 for each year thereafter up to \$5,000 for taxable years beginning in 2006 and later years. After 2006, the \$5,000 limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code section 414(v)(2)(C). Any such adjustments will be in multiples of \$500. Catch-up Contributions are not subject to the limits on annual additions. Provisions in the Plan relating to Catch-up Contributions apply to Elective Deferrals made after 2001.
- 2.07 Code.** The Internal Revenue Code of 1986, as amended from time to time.
- 2.08 Covered Employment Classification.** The group or groups of Employees eligible to make and/or have contributions to this Plan made on their behalf, as specified by the Employer in the Adoption Agreement.
- 2.09 Disability.** A physical or mental impairment which is of such permanence and degree that, as determined by the Employer, a Participant is unable because of such impairment to perform any substantial gainful activity for which he/she is suited by virtue of his/her experience, training, or education and that has lasted, or can be expected to last, for a continuous period of not less than twelve (12) months, or can be expected to result in death. The permanence and degree of such impairment shall be supported by medical evidence. If the Employer maintains a long-term disability plan, the definition of Disability shall be the same as the definition of disability in the long-term disability plan.
- 2.10 Earnings.**
- (a) **General Rule.** Earnings, which form the basis for computing Employer Contributions, are all of each Participant's W-2 earnings which are actually paid to the Participant during the Plan Year, plus any contributions made pursuant to a salary reduction agreement which are not includible in the gross income of the Employee under section 125, 402(e)(3), 402(h)(1)(B), 403(b), 414(h)(2), 457(b), or, effective January 1, 2001, 132(f)(4) of the Code. Earnings shall include any pre-tax contributions (excluding direct employer contributions) to an integral part trust of the Employer providing retiree health care benefits. Earnings shall also include any other earnings as defined and elected

by the Employer in the Adoption Agreement. Unless the Employer elects otherwise in the Adoption Agreement, Earnings shall exclude overtime compensation and bonuses.

- (b) **Limitation on Earnings.** For any Plan Year beginning after December 31, 2001, the annual Earnings of each Participant taken into account in determining allocations shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual Earnings means Earnings during the Plan Year or such other consecutive 12-month period over which Earnings is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual Earnings for the determination period that begins with or within such calendar year.

If a determination period consists of fewer than twelve (12) months, the annual Earnings limit is an amount equal to the otherwise applicable annual Earnings limit multiplied by the fraction, the numerator of which is the number of months in the short Plan Year and the denominator of which is twelve (12).

If Earnings for any prior determination period are taken into account in determining a Participant's allocations for the current Plan Year, the Earnings for such prior year are subject to the applicable annual Earnings limit in effect for that prior year.

- (c) **Limitations for Governmental Plans.** In the case of an eligible participant in a governmental plan (within the meaning of section 414(d) of the Code), the dollar limitation shall not apply to the extent the Earnings which are allowed to be taken into account under the Plan would be reduced below the amount which was allowed to be taken into account under the Plan as in effect on July 1, 1993, as adjusted for increases in the cost-of-living in accordance with section 401(a)(17)(B) of the Code. For purposes of this Section, an eligible participant is an individual who first became a Participant in the Plan during a Plan Year beginning before the first Plan Year beginning after December 31, 1993.

- 2.11 Effective Date.** The first day of the Plan Year during which the Employer adopts the Plan, unless the Employer elects in the Adoption Agreement an alternate date as the Effective Date of the Plan.
- 2.12 Employee.** Any individual who has applied for and been hired in an employment position and who is employed by the Employer as a common law employee; provided, however, that Employee shall not include any individual who is not so recorded on the payroll records of the Employer, including any such person who is subsequently reclassified by a court of law or regulatory body as a common law employee of the Employer. For purposes of clarification only and not to imply that the preceding sentence would otherwise cover such person, the term Employee does not include any individual who performs services for the Employer as an independent contractor, or under any other non-employee classification.
- 2.13 Employer.** The unit of state or local government or an agency or instrumentality of one (1) or more states or local governments that executes the Adoption Agreement.
- 2.14 Hour of Service.** Each hour for which an Employee is paid or entitled to payment for the performance of duties for the Employer.

- 2.15 Nonforfeitable Interest.** The nonforfeitable interest of the Participant or his/her Beneficiary (whichever is applicable) is that percentage of his/her Employer Contribution Account balance, which has vested pursuant to Article VII. A Participant shall, at all times, have a one hundred percent (100%) Nonforfeitable Interest in his/her Elective Deferral, Participant Contribution, Rollover, and Voluntary Contribution Accounts.
- 2.16 Normal Retirement Age.** The age which the Employer specifies in the Adoption Agreement. If the Employer enforces a mandatory retirement age, the Normal Retirement Age is the lesser of that mandatory age or the age specified in the Adoption Agreement.
- 2.17 Participant.** An Employee or former Employee for whom contributions have been made under the Plan and who has not yet received all of the payments of benefits to which he/she is entitled under the Plan. A Participant is treated as benefiting under the Plan for any Plan Year during which the participant received or is deemed to receive an allocation in accordance with Treas. Reg. section 1.410(b)-3(a).
- 2.18 Period of Service.** For purposes of determining an Employee's initial or continued eligibility to participate in the Plan or the Nonforfeitable Interest in the Participant's Account balance derived from Employer Contributions, an Employee will receive credit for the aggregate of all time period(s) commencing with the Employee's first day of employment or reemployment and ending on the date a Break in Service begins. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee will also receive credit for any Period of Severance of less than twelve (12) consecutive months. Fractional periods of a year will be expressed in terms of days.
- Notwithstanding anything to the contrary herein, if the Plan is an amendment and restatement of a plan that previously calculated service under the hours of service method, service shall be credited in a manner that is at least as generous as that provided under Treas. Regs. section 1.410(a)-7(g).
- 2.19 Period of Severance.** A continuous period of time during which the Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.
- 2.20 Plan.** This Plan as established by the Employer including any elected provisions pursuant to the Adoption Agreement. If the Employer has elected in the Adoption Agreement to permit Participants to make Elective Deferrals, this Plan is a profit-sharing plan containing a 401(k) arrangement.
- 2.21 Plan Administrator.** The person(s) or entity named to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described, which is the ICMA Retirement Corporation or any successor Plan Administrator.
- 2.22 Plan Year.** The twelve (12) consecutive month period designated by the Employer in the Adoption Agreement.
- 2.23 Trust.** The Trust created under Article VI of the Plan which shall consist of all of the assets of the Plan derived from Employer and Participant contributions under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

III. ELIGIBILITY

3.01 Service. Except as provided in Sections 3.02 and 3.03 of the Plan, an Employee within the Covered Employment Classification who has completed a twelve (12) month Period of Service shall be eligible to participate in the Plan at the beginning of the payroll period next commencing thereafter. The Employer may elect in the Adoption Agreement to waive or reduce the twelve (12) month Period of Service.

If the Employer maintains the plan of a predecessor employer, service with such employer shall be treated as Service for the Employer.

3.02 Age. The Employer may designate a minimum age requirement, not to exceed age twenty-one (21), for participation. Such age, if any, shall be declared in the Adoption Agreement.

3.03 Return to Covered Employment Classification. In the event a Participant is no longer a member of Covered Employment Classification and becomes ineligible to make contributions and/or have contributions made on his/her behalf, such Employee will become eligible for contributions immediately upon returning to a Covered Employment Classification. If such Participant incurs a Break in Service, eligibility will be determined under the Break in Service rules of the Plan.

In the event an Employee who is not a member of a Covered Employment Classification becomes a member, such Employee will be eligible to participate immediately if such Employee has satisfied the minimum age and service requirements and would have otherwise previously become a Participant.

3.04 Service Before a Break in Service. All Periods of Service with the Employer are counted toward eligibility, including Periods of Service before a Break in Service.

IV. CONTRIBUTIONS

4.01 Employer Contributions. For each Plan Year, the Employer will contribute to the Trust an amount as specified in the Adoption Agreement. The Employer's full contribution for any Plan Year shall be due and paid not later than thirty (30) working days after the close of the Plan Year. Each Participant will share in Employer Contributions for the period beginning on the date the Participant commences participation under the Plan and ending on the date on which such Employee severs employment with the Employer or is no longer a member of a Covered Employment Classification, and such contributions shall be accounted for separately in his Employer Contribution Account. Notwithstanding anything to the contrary herein, if so elected by the Employer in the Adoption Agreement, an Employee shall be required to make contributions as provided pursuant to Section 4.04 or 4.05 in order to be eligible for Employer Contributions to be made on his/her behalf to the Plan.

4.02 Forfeitures. All amounts forfeited by terminated Participants, pursuant to Section 7.06, shall be allocated to a suspense account and used to reduce dollar for dollar Employer Contributions otherwise required under the Plan for the current Plan Year and succeeding Plan Years, if necessary. Forfeitures may first be used to pay the reasonable administrative expenses of the Plan, with any remainder being applied to reduce Employer Contributions.

If no Employer Contributions are required under the Plan, forfeitures will be allocated in the ratio that the Earnings of each Participant bears to that of all Participants.

4.03 Elective Deferrals and Catch-up Contributions. If the Employer so elects in the Adoption Agreement, and subject to the limitations provided in Article V, a Participant may elect after he/she meets the eligibility requirements provided in Article III to have the Employer make payments either (1) as Elective Deferrals on his/her behalf, pursuant to a properly executed salary reduction agreement, whereby the Employee agrees to reduce his/her future Earnings by a specific amount, and the Employer to contribute such Elective Deferrals to the Trust on behalf of the Employee or (2) to the Employee directly in cash. Such a Participant, if age 50 or over by the end of his or her taxable year, is also permitted to make Catch-up Contributions. Elective Deferrals (and Catch-up Contributions) shall be made by payroll reduction, and shall be accounted for separately in the Participant's Elective Deferral Account. Such Account shall be at all times nonforfeitable by the Participant.

The Employer must provide a period(s), as elected in the Adoption Agreement, of not less than thirty (30) days at least once each calendar year during which a Participant may elect to commence Elective Deferrals and Catch-up Contributions. Such election may not be made retroactively. A Participant's election to commence Elective Deferrals must remain in effect until modified or terminated.

Notwithstanding anything to the contrary elsewhere contained in this Plan, Elective Deferrals and Catch-up Contributions are intended to be employer contributions within the meaning of the Code and regulations, not employee contributions, and relevant provisions shall be construed accordingly.

4.04 Mandatory Participant Contributions. If the Employer so elects in the Adoption Agreement, each eligible Employee shall make contributions at a rate prescribed by the Employer or at any of a range of specified rates, as set forth by the Employer in the Adoption Agreement, as a requirement for his/her participation (1) in the Plan or (2) in this portion of the Plan. Once an eligible Employee becomes a Participant and makes an election hereunder, he/she shall not thereafter have the right to discontinue or vary the rate of such Mandatory Participant Contributions. Such contributions shall be accounted for separately in the Participant Contribution Account. Such Account shall be at all times nonforfeitable by the Participant.

If the Employer so elects in the Adoption Agreement, the Mandatory Participant Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). Any contribution picked-up under this Section shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

To constitute a Pick-Up Contribution, (1) the Employer must specify that the contributions are being paid by the Employer in lieu of contributions by the Employee, and (2) the Employee must not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the Employer to the Plan.

4.05 Employer Matching Contributions of Voluntary Participant Contributions or Elective Deferrals. If the Employer so elects in the Adoption Agreement, Employer Matching Contributions shall be made on behalf of an eligible Employee for a Plan Year only if the Employee agrees to make Voluntary Participant Contributions or Elective Deferrals for that

Plan Year. The rate of Employer Contributions shall, to the extent specified in the Adoption Agreement, be based upon the rate at which Voluntary Participant Contributions or Elective Deferrals are made for that Plan Year. Employer Matching Contributions shall be accounted for separately in the Employer Contribution Account.

- 4.06 Voluntary Participant Contributions.** If the Employer so elects in the Adoption Agreement, an eligible Employee may make after-tax voluntary (unmatched) contributions under the Plan for any Plan Year in any amount up to twenty-five percent (25%) of his/her Earnings for such Plan Year. Matched and unmatched contributions shall be accounted for separately in the Participant's Voluntary Contribution Account. Such Account shall be at all times nonforfeitable by the Participant.
- 4.07 Deductible Employee Contributions.** The Plan will not accept deductible employee contributions which are made for a taxable year beginning after December 31, 1986. Contributions made prior to that date will be maintained in a Deductible Employee Contribution Account. The Account will share in the gains and losses under the Plan in the same manner as described in Section 6.06 of the Plan. Such Account shall be at all times nonforfeitable by the Participant.
- 4.08 Final Pay Contributions.** If the Employer so elects in the Adoption Agreement, Participants shall be eligible to make or receive Final Pay Contributions under this Plan in accordance with Article XVIII. Notwithstanding the foregoing, this election may only be made if the Employer also elects to make contributions under Section 4.01, or Section 4.04 that are picked-up by the Employer. In addition, discretionary contributions are (i) for the exclusive benefit of Employees or their beneficiaries and (ii) substantial and recurring in accordance with Treasury Regulations sections 1.401-1(a)(3) and 1.401-1(b)(2).
- 4.09 Accrued Leave Contributions.** If the Employer so elects in the Adoption Agreement, eligible Participants shall be eligible to make or receive Accrued Leave Contributions under this Plan in accordance with Article XIX. Notwithstanding the foregoing, this election may only be made if the Employer also elects to make contributions under Section 4.01, or Section 4.04 that are picked-up by the Employer. In addition, discretionary contributions are (i) for the exclusive benefit of Employees or their beneficiaries and (ii) substantial and recurring in accordance with Treasury Regulations sections 1.401-1(a)(3) and 1.401-1(b)(2).
- 4.10 Military Service Contributions.** Notwithstanding any provision of the Plan to the contrary, effective December 12, 1994, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with section 414(u) of the Code.
- Effective December 12, 1994, if the Employer has elected in the Adoption Agreement to make loans available to Participants, loan repayments shall be suspended under the Plan as permitted under section 414(u)(4) of the Code.
- 4.11 Changes in Participant Election.** A Participant may elect to change his/her rate of Elective Deferrals, Catch-up Contributions, or Voluntary Participant Contributions at any time or during an election period as designated by the Employer. A Participant may discontinue such contributions at any time or during an election period as designated by the Employer.

The Employer must provide a period of not less than thirty (30) days at least once each calendar year during which a Participant may elect to terminate an election or to modify the amount or frequency of his/her Elective Deferrals.

4.12 Portability of Benefits.

- (a) Unless otherwise elected by the Employer in the Adoption Agreement, the Plan will accept Participant (which shall include, for purposes of this subsection, an Employee within the Covered Employment Classification whether or not he/she has satisfied the minimum age and service requirements of Article III) rollover contributions and/or direct rollovers of distributions (including after-tax contributions) made after December 31, 2001 that are eligible for rollover in accordance with Section 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), or 457(e)(16) of the Code, from all of the following types of plans:
- (1) A qualified plan described in Section 401(a) or 403(a) of the Code;
 - (2) An annuity contract described in Section 403(b) of the Code;
 - (3) An eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state; and
 - (4) An individual retirement account or annuity described in Section 408(a) or 408(b) of the Code (including SEPs, and SIMPLE IRAs after two years of participating in the SIMPLE IRA).
- (b) Notwithstanding the foregoing, the Employer may reject the rollover contribution if it determines, in its discretion, that the form and nature of the distribution from the other plan does not satisfy the applicable requirements under the Code to make the transfer or rollover a nontaxable transaction to the Participant;
- (c) For indirect rollover contributions, the amount distributed from such plan must be rolled over to this Plan no later than the sixtieth (60th) day after the distribution was made from the plan, unless otherwise waived by the IRS pursuant to Section 402(c)(3) of the Code.
- (d) The amount transferred shall be deposited in the Trust and shall be credited to a Rollover Account. Such Account shall be one hundred percent (100%) vested in the Participant.
- (e) The Plan will accept accumulated deductible employee contributions as defined in section 72(o)(5) of the Code that were distributed from a qualified retirement plan and transferred (rolled over) pursuant to section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3) of the Code. Notwithstanding the above, this transferred (rolled over) amount shall be deposited to the Trust and shall be credited to a Deductible Employee Contributions Account. Such Account shall be one-hundred percent (100%) vested in the Participant.
- (f) A Participant may, upon approval by the Employer and the Plan Administrator, transfer his/her interest in another plan maintained by the Employer that is qualified under

section 401(a) of the Code to this Plan, provided the transfer is effected through a one-time irrevocable written election made by the Participant. The amount transferred shall be deposited in the Trust and shall be credited to sources that maintain the same attributes as the plan from which they are transferred. Such transfer shall not reduce the accrued years or service credited to the Participant for purposes of vesting or eligibility for any Plan benefits or features.

- 4.13 Return of Employer Contributions.** Any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the date of contribution.

V. LIMITATION ON ELECTIVE DEFERRALS AND ALLOCATIONS

- 5.01 Maximum Elective Deferrals.** Notwithstanding anything to the contrary herein, no Participant shall be permitted to have Elective Deferrals made under this Plan, or Elective Deferrals under any other plan, contract or arrangement maintained by the Employer, during any calendar year, in excess of the dollar limitation contained in section 402(g) of the Code in effect for the Participant's taxable year beginning in such calendar year. In the case of a Participant age 50 or over by the end of the taxable year, the dollar limitation described in the preceding sentence includes the amount of Elective Deferrals that can be Catch-up Contributions. The dollar limitation contained in Code section 402(g) is \$10,500 for taxable years beginning in 2000 and 2001 increasing to \$11,000 for taxable years beginning in 2002 and increasing by \$1,000 for each year thereafter up to \$15,000 for taxable years beginning in 2006 and later years. After 2006, the \$15,000 limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under section 402(g)(4). Any such adjustments will be in multiples of \$500.

5.02 Distribution of Excess Elective Deferrals.

- (a) A Participant may assign to this Plan any Excess Elective Deferrals made during a preceding taxable year of the Participant by providing the Plan Administrator with written notice on or before March 1 of the amount of Excess Elective Deferrals to be assigned to the Plan. A Participant is deemed to notify the Plan Administrator of any Excess Elective Deferrals that arise by taking into account only those Elective Deferrals made to this Plan and any other plan, contract or arrangement of this Employer.

Notwithstanding any other provisions of the Plan, Excess Elective Deferrals, plus any income and minus any loss allocable thereto, shall be distributed no later than April 15 to any Participant whose Excess Elective Deferrals were assigned for the preceding year and who claims Excess Elective Deferrals for such taxable year or calendar year.

Participants who claim Excess Elective Deferrals for the preceding taxable year must submit their claims in writing to the Plan Administrator on or before March 1.

- (b) Excess Elective Deferrals shall be adjusted for any income or loss up to the date of the distribution. The income or loss allocable to Excess Elective Deferrals is the sum of: (1) income or loss allocable to the Participant's Elective Deferral Account for the Taxable year multiplied by a fraction, the numerator of which is such Participant's Account balance attributable to Elective Deferrals without regard to any income or loss occurring during such taxable year; and (2) ten percent (10%) of the amount

determined under (1) multiplied by the number of whole calendar months between the end of the Participant's taxable year and the date of distribution, counting the month of distribution if distribution occurs after the fifteenth (15th) of such month.

5.03 Limitation on Annual Additions - Participants Only in This Plan.

- (a) If the Participant does not participate in, and has never participated in another qualified plan or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer, or an individual medical account, as defined by section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, the amount of Annual Additions which may be credited to the Participant's Account for any Limitation Year will not exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan. If the Employer Contribution that would otherwise be contributed or allocated to the Participant's Account would cause the Annual Additions for the Limitation Year to exceed the Maximum Permissible Amount, the amount contributed or allocated will be reduced so that the Annual Additions for the Limitation Year will equal the Maximum Permissible Amount.
- (b) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant on the basis of a reasonable estimation of the Participant's Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.
- (c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.
- (d) If, as a result of an inadvertent reasonable error in estimating the Maximum Permissible Amount for a Participant in accordance with Subsection (b) or pursuant to Subsection (c) or as a result of the allocation of forfeitures, there is an Excess Amount, the excess will be disposed of as follows:
 - (1) Any Mandatory Participant Contributions that are not "picked up" by the Employer or Voluntary Participant Contributions, to the extent they would reduce the Excess Amount, will be returned to the Participant;
 - (2) Any Elective Deferrals, to the extent they would reduce the Excess Amount, will be returned to the Participant;
 - (3) If after the application of paragraphs (1) or (2) 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 will be used to reduce Employer Contributions (including any allocation of forfeitures) for such Participant in the next Limitation Year, and each succeeding Limitation Year if necessary;
 - (4) If after the application of paragraphs (1) or (2) an Excess Amount still exists, and the Participant is not covered by the Plan at the end of the Limitation Year, the Excess Amount will be held unallocated in a suspense account. The suspense

account will be applied to reduce future Employer Contributions (including allocation of any forfeitures) for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year if necessary;

- (5) 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 or any Employee contributions may be made to the Plan for that Limitation Year. Excess Amounts in a suspense account may not be distributed to Participants or former Participants.

5.04 Limitation on Annual Additions - Participants in Another Defined Contribution Plan.

- (a) Unless the Employer provides other limitations in the Adoption Agreement, this Section applies if, in addition to this Plan, the Participant is covered under another qualified defined contribution plan maintained by the Employer, or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer, or an individual medical account, as defined by section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, during any Limitation Year. The Annual Additions which may be credited to a Participant's Account under this Plan for any such Limitation Year will not exceed the Maximum Permissible Amount reduced by the Annual Additions credited to a Participant's Account under the other plans and welfare benefit funds for the same Limitation Year. If the Annual Additions with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the Employer are less than the Maximum Permissible Amount and the Employer contribution that would otherwise be contributed or allocated to the Participant's Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual Additions under all such plans and funds for the Limitation Year will equal the Maximum Permissible Amount. If the Annual Additions with respect to the Participant under such other defined contribution plans and welfare benefit funds in the aggregate are equal to or greater than the Maximum Permissible Amount, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.
- (b) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant in the manner described in Section 5.03(b).
- (c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.
- (d) If, pursuant to Subsection (c) or as a result of the allocation of forfeitures, a Participant's Annual Additions under this Plan and such other plans would result in an Excess Amount for a Limitation Year, the Excess Amount will be deemed to consist of the Annual Additions last allocated, except that Annual Additions attributable to a welfare benefit fund or individual medical account will be deemed to have been allocated first regardless of the actual allocation date.

- (e) If an Excess Amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributed to this Plan will be the product of,
- (1) The total Excess Amount allocated as of such date, multiplied by
 - (2) The ratio of (i) the Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan to (ii) the total Annual Additions allocated to the Participant for the Limitation Year as of such date under this and all the other qualified prototype defined contribution plans.
- (f) Any Excess Amount attributed to this Plan will be disposed in the manner described in Section 5.03(d).

5.05 Definitions. For the purposes of this Article, the following definitions shall apply:

- (a) Annual Additions: The sum of the following amounts credited to a Participant's account for the Limitation Year:
- (1) Employer Contributions;
 - (2) Forfeitures;
 - (3) Employee contributions; and
 - (4) Allocations under a simplified employee pension.

Amounts allocated, after March 31, 1984, to an individual medical account, as defined in section 415(l)(2) of the Code, which is part of a pension or annuity plan maintained by the Employer, are treated as Annual Additions to a defined contribution plan.

For this purpose, any Excess Amount applied under Sections 5.03(d) or 5.04(f) in the Limitation Year to reduce Employer Contributions will be considered Annual Additions for such Limitation Year.

- (b) Compensation: A Participant's wages, salaries, and fees for professional services and other amounts received (without regard to whether an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in Treas. Reg. section 1.62-2(c))), and excluding the following:
- (1) Employer Contributions to a plan of deferred compensation which are not includible in the Employee's gross income for the taxable year in which contributed, or Employer Contributions under a simplified employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation; and
 - (2) Other amounts which received special tax benefits, or contributions made by

the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in section 403(b) of the Code (whether or not the amounts are actually excludable from the gross income of the Employee).

- (3) Notwithstanding the above, Compensation shall include:
- (a) any elective deferrals (as defined in section 402(g)(3) of the Code), and
 - (b) any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of sections 125, 132(f)(4) or 457 of the Code.

For purposes of applying the limitations of this Article, Compensation for a Limitation Year is the Compensation actually paid or made available during such year.

- (c) Defined Contribution Dollar Limitation: \$40,000, as adjusted for increases in the cost-of-living in accordance with section 415(d) of the Code.
- (d) Elective Deferrals: Any Employer Contributions made to the Plan at the election of the Participant, in lieu of cash compensation. With respect to any taxable year, a Participant's Elective Deferrals is the sum of all Employer Contributions made on behalf of such Participant pursuant to an election to defer under any qualified CODA described in section 401(k) of the Code, any salary reduction simplified employee pension described in section 408(k)(6) of the Code, any SIMPLE IRA described in section 408(p), and any plan described under section 501(c)(18) of the Code, and any Employer Contributions made on the behalf of the Participant for the purchase of an annuity contract under section 403(b) of the Code pursuant to a salary reduction agreement. Elective Deferrals shall not include any deferrals properly distributed as excess Annual Additions.
- (e) Employer: The Employer that adopts this Plan.
- (f) Excess Amount: The excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount.

Any Excess Amount shall include allocable income. The income allocable to an Excess Amount is equal to the sum of allocable gain or loss for the Plan Year and the allocable gain or loss for the period between the end of the Plan Year and the date of distribution (the gap period). The Plan may use any reasonable method for computing the income allocable to an Excess Amount, provided that the method is used consistently for all Participants and for all corrective distributions under the Plan for the Plan Year, and is used by the Plan for allocating income to Participants' Accounts.

- (g) Excess Elective Deferrals: Those Elective Deferrals of a Participant that either (1) are made during the Participant's taxable year and exceed the dollar limitation under Code section 402(g) (including, if applicable, the dollar limitation on Catch-up Contributions defined in section 414(v) for such year); or (2) are made during a calendar year and exceed the dollar limitation under Code section 402(g) (including, if applicable, the dollar limitation on Catch-up Contributions defined in section 414(v)) for the

Participant's taxable year beginning in such calendar year, counting only Elective Deferrals made under this Plan and any other plan, contract or arrangement maintained by the Employer. Excess Elective Deferrals shall be treated as Annual Additions, as defined under Section 5.05, unless such amounts are distributed no later than the first April 15 following the close of the Participant's taxable year.

- (h) **Limitation Year:** A calendar year, or the twelve (12) consecutive month period elected by the Employer in the Adoption Agreement. All qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.
- (i) **Maximum Permissible Amount:** Except for Catch-up Contributions described in Code section 414(v), the maximum Annual Addition that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year shall not exceed the lesser of:
 - (1) The Defined Contribution Dollar Limitation, or
 - (2) One hundred percent (100%) (25% for Limitation Years before January 1, 2002) of the Participant's Compensation for the Limitation Year.

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

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

Number of months in the short Limitation Year: 12

VI. TRUST AND INVESTMENT OF ACCOUNTS

- 6.01 Trust.** A Trust is hereby created to hold all of the assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The trustee shall be the Employer or such other person which agrees to act in that capacity hereunder.
- 6.02 Investment Powers.** The trustee or the Plan Administrator, acting as agent for the trustee, shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is controlled by Participants, pursuant to Section 13.03.
 - (a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, notes, debentures, mortgages, certificates of deposit, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts

and certificates of deposit. Assets of the Trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.

- (b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans qualified under section 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plan, the declaration of trust of such common, collective, or commingled trust fund shall constitute a part of this Plan.
- (c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other plan or trust qualified under section 401(a) of the Code or any other plan described in section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Plan Administrator, or such custodian as the Plan Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.
- (d) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.
- (e) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Plan Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.
- (f) Upon such terms as may be deemed advisable by the Employer or the Plan Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the Plan, to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.

- (g) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.
- (h) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Plan Administrator, in any bank or banks.
- (i) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

- 6.03 Taxes and Expenses.** All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Plan Administrator, as may be agreed upon from time to time by the Employer and the Plan Administrator, and reimbursement for reasonable expenses incurred by the Plan Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust. However, no person who is a fiduciary within the meaning of section 3(21)(A) of ERISA and regulations promulgated thereunder, and who receives full-time pay from the Employer may receive compensation from the Trust, except for expenses properly and actually incurred.
- 6.04 Payment of Benefits.** The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Plan Administrator, or by any custodian or other person so authorized by the Employer to make such disbursement. Benefits under this Plan shall be paid only if the Plan Administrator, custodian or other person decides in his/her discretion that the applicant is entitled to them. The Plan Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.
- 6.05 Investment Funds.** In accordance with uniform and nondiscriminatory rules established by the Employer and the Plan Administrator, the Participant may direct his/her Accounts to be invested in one (1) or more investment funds available under the Plan; provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Employer and shall not include any investment in collectibles, as defined in section 408(m) of the Code.
- 6.06 Valuation of Accounts.** As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances, as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and Beneficiaries.
- 6.07 Participant Loan Accounts.** Participant Loan Accounts shall be invested in accordance with Section 13.03 of the Plan. Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Section 6.05.

VII. VESTING

7.01 Vesting Schedule. The portion of a Participant's Account attributable to Elective Deferrals, Catch-up Contributions, Mandatory Participant Contributions, and Voluntary Participant Contributions, and the earnings thereon, shall be at all times nonforfeitable by the Participant. A Participant shall have a Nonforfeitable Interest in the percentage of his/her Employer Contribution Account established under Section 4.01, 4.05, 18.02(a), and 19.02(a) determined pursuant to the schedule elected by the Employer in the Adoption Agreement.

7.02 Crediting Periods of Service. Except as provided in Section 7.03, all of an Employee's Periods of Service with the Employer are counted to determine the nonforfeitable percentage in the Employee's Account balance derived from Employer Contributions. If the Employer maintains the plan of a predecessor employer, service with such employer will be treated as service for the Employer.

For purposes of determining years of service and Breaks in Service for the purposes of computing a Participant's nonforfeitable right to the Account balance derived from Employer Contributions, the twelve (12) consecutive month period will commence on the date the Employee first performs an hour of service and each subsequent twelve (12) consecutive month period will commence on the anniversary of such date.

7.03 Service After Break in Service. In the case of a Participant who has a Break in Service of at least five (5) years, all Periods of Service after such Breaks in Service will be disregarded for the purpose of determining the nonforfeitable percentage of the Employer-derived Account balance that accrued before such Break, but both pre-Break and post-Break service will count for the purposes of vesting the Employer-derived Account balance that accrues after such Break. Both Accounts will share in the earnings and losses of the fund.

In the case of a Participant who does not have a Break in Service of at least five (5) years, both the pre-Break and post-Break service will count in vesting both the pre-Break and post-Break Employer-derived Account balance.

In the case of a Participant who does not have any nonforfeitable right to the Account balance derived from Employer Contributions, years of service before a period of consecutive one (1) year Breaks in Service will not be taken into account in computing eligibility service if the number of consecutive one (1) year Breaks in Service in such period equals or exceeds the greater of five (5) or the aggregate number of years of service. Such aggregate number of years of service will not include any years of service disregarded under the preceding sentence by reason of prior Breaks in Service.

If a Participant's years of service are disregarded pursuant to the preceding paragraph, such Participant will be treated as a new Employee for eligibility purposes. If a Participant's years of service may not be disregarded pursuant to the preceding paragraph, such Participant shall continue to participate in the Plan, or, if terminated, shall participate immediately upon reemployment.

7.04 Vesting Upon Normal Retirement Age. Notwithstanding Section 7.01 of the Plan, a Participant shall have a Nonforfeitable Interest in his/her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 7.06 of the Plan, if he/she is employed on or after his/her Normal Retirement Age.

- 7.05 Vesting Upon Death or Disability.** Notwithstanding Section 7.01 of the Plan, in the event of Disability or death, a Participant or his/her Beneficiary shall have a Nonforfeitable Interest in his/her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 7.06 of the Plan.
- 7.06 Forfeitures.** Except as provided in Sections 7.04 and 7.05 of the Plan or as otherwise provided in this Section 7.06, a Participant who separates from service prior to obtaining full vesting shall forfeit that percentage of his/her Employer Contribution Account balance which has not vested as of the date such Participant incurs a Break in Service of five (5) consecutive years or, if earlier, the date such Participant receives, or is deemed under the provisions of Section 9.04 to have received, distribution of the entire Nonforfeitable Interest in his/her Employer Contribution Account.
- No forfeiture will occur solely as a result of a Participant's withdrawal of Employee Contributions.
- Forfeitures shall be allocated in the manner described in Section 4.02.
- 7.07 Reinstatement of Forfeitures.** If the Participant returns to the employment of the Employer before incurring a Break in Service of five (5) consecutive years, any amounts forfeited pursuant to Section 7.06 shall be reinstated to the Participant's Employer Contribution Account on the date of repayment by the Participant of the amount distributed to such Participant from his/her Employer Contribution Account; provided, however, that if such Participant forfeited his/her Account balance by reason of a deemed distribution, pursuant to Section 9.04, such amounts shall be automatically restored upon the reemployment of such Participant. Such repayment must be made before the earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer, or the date the Participant incurs a Break in Service of five (5) consecutive years.

VIII. BENEFITS CLAIM

- 8.01 Claim of Benefits.** A Participant or Beneficiary shall notify the Plan Administrator in writing of a claim of benefits under the Plan. The Plan Administrator shall take such steps as may be necessary to facilitate the payment of such benefits to the Participant or Beneficiary.
- 8.02 Appeal Procedure.** If any claim for benefits is initially denied by the Plan Administrator, the claimant shall file the appeal with the Employer, whose decision shall be final, to the extent provided by Section 15.07.

IX. COMMENCEMENT OF BENEFITS

- 9.01 Normal and Elective Commencement of Benefits.** A Participant who retires, becomes Disabled or incurs a severance from employment (separation from service for Plan Years beginning before 2002) for any other reason may elect by written notice to the Plan Administrator to have his or her vested Account balance benefits commence on any date, provided that such distribution complies with Section 9.02. Such election must be made in writing during the ninety (90) day period ending on the date as of which benefit payments are to commence. A Participant's election shall be revocable and may be amended by the Participant.

Except as otherwise provided under the Plan, a Participant's Elective Deferrals and income allocable thereto are not distributable to a Participant or his/her Beneficiary(ies), in accordance with

such Participant's or Beneficiary(ies) election, earlier than upon the Participant's severance from employment (separation from service for Plan Years beginning before 2002), death, or Disability.

The failure of a Participant to consent to a distribution while a benefit is immediately distributable, within the meaning of section 9.02 of the Plan, shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this section.

9.02 Restrictions on Immediate Distributions. Notwithstanding anything to the contrary contained in Section 9.01 of the Plan, if the value of a Participant's vested Account balance is at least \$1,000, and the Account balance is immediately distributable, the Participant must consent to any distribution of such Account balance. The Participant's consent shall be obtained in writing during the ninety (90) day period ending on the date as of which benefit payments are to commence. No consent shall be required, however, to the extent that a distribution is required to satisfy section 401(a)(9) or 415 of the Code.

The Plan Administrator shall notify the Participant of the right to defer any distribution until the Participant's Account balance is no longer immediately distributable. Such notification shall include a general description of the material features, and an explanation of the relative values of, the optional forms of benefit available under the Plan in a manner that would satisfy section 417(a)(3) of the Code, and shall be provided no less than thirty (30) and no more than ninety (90) days before the date as of which benefit payments are to commence. However, distribution may commence less than thirty (30) days after the notice described in the preceding sentence is given, provided the distribution is one to which sections 401(a)(11) and 417 of the Code do not apply or, if the QJSA Election is made by the Employer in the Adoption Agreement, the waiver requirements of Section 17.04(a) are met, the Plan Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and the Participant, after receiving the notice affirmatively elects a distribution.

In addition, upon termination of this Plan, if the Plan does not offer an annuity option (purchased from a commercial provider) and if the Employer does not maintain another 401(a) defined contribution plan, the Participant's Account balance will, without the Participant's consent, be distributed to the Participant in a lump sum. However, if the Employer maintains another 401(a) defined contribution plan, the Participant's Account will be transferred, without the Participant's consent, to the other plan if the Participant does not consent to an immediate distribution.

An Account balance is immediately distributable if any part of the Account balance could be distributed to the Participant (or surviving spouse) before the Participant attains or would have attained (if not deceased) the later of Normal Retirement Age or age sixty-two (62).

For purposes of determining the applicability of the foregoing consent requirements to distributions made before the first day of the first plan year beginning after December 31, 1988, the Participant's vested Account balance shall not include amounts attributable to accumulated deductible employee contributions within the meaning of section 72(o)(5)(B) of the Code.

9.03 Transfer to Another Plan.

- (a) If a Participant becomes eligible to participate in another plan maintained by the Employer that is qualified under section 401(a) of the Code, the Plan Administrator

shall, at the written election of such Participant, transfer all or part of such Participant's Account to such plan, provided the plan administrator for such plan certifies to the Plan Administrator that its plan provides for the acceptance of such a transfer. Such transfers shall include those transfers of the nonforfeitable interest of a Participant's Account made for the purchase of service credit in defined benefit plans maintained by the Employer. For purposes of this Plan, any such transfer shall not be considered a distribution to the Participant subject to spousal consent as described in Section 9.11.

- (b) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.
- (c) Definitions. For the purposes of Subsection (b), the following definitions shall apply:

- (1) Eligible Rollover Distribution. 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 section 401(a)(9) of the Code; (iii) any hardship distribution; and (iv) the portion of any other distribution(s) that is not includible in gross income.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- (2) Eligible Retirement Plan. (i) an individual retirement account described in section 408(a) of the Code or an individual retirement annuity described in section 408(b) of the Code (collectively, an "IRA"); (ii) an annuity plan described in section 403(a) of the Code; (iii) an annuity contract described in section 403(b) of the Code; (iv) an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan; or (v) a qualified plan described in section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a

qualified domestic relations order, as defined in section 414(p) of the Code.

- (3) Distributee. Participant; in addition, the Participant's surviving spouse and the spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse.
- (4) Direct Rollover. A payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

9.04 De Minimis Accounts. Notwithstanding the foregoing provisions of this Article, prior to January 1, 2002, if a Participant terminates service, and the value of his/her Nonforfeitable Interest in his/her Account is not greater than the dollar limit under section 411(a)(11)(A) of the Code, the Participant's benefit shall be paid (to the extent it constitutes an Eligible Rollover Distribution) in the form of a direct rollover to the Plan Administrator's designated IRA, unless he/she affirmatively elects to receive a cash payment or a Direct Rollover in accordance with procedures established by the Plan Administrator.

On or after January 1, 2002, if a Participant terminates service, and the value of his/her Nonforfeitable Interest in his/her Account is less than \$1,000, the Participant's benefit shall be paid as soon as practicable to the Participant in a single lump sum distribution. If the value of the Participant's Account is at least \$1,000 but not more than the dollar limit under section 411(a)(11)(A) of the Code, the Participant may elect to receive his/her Nonforfeitable Interest in his/her Account. Such distribution shall be made as soon as practicable following the request, in a lump sum.

For purposes of this Section, if a Participant's Nonforfeitable Interest in his/her Account is zero, the Participant shall be deemed to have received a distribution of such Nonforfeitable Interest in his/her Account.

9.05 Withdrawal of Voluntary Contributions. A Participant may upon written request withdraw a part of or the full amount of his/her Voluntary Contribution Account. Such withdrawals may be made at any time, provided that no more than two (2) such withdrawals may be made during any calendar year. No forfeiture will occur solely as the result of any such withdrawal.

9.06 Withdrawal of Deductible Employee Contributions. A Participant may upon written request withdraw a part of or the full amount of his/her Deductible Employee Contribution Account. Such withdrawals may be made at any time, provided that no more than two (2) such withdrawals may be made during any calendar year. No forfeiture will occur solely as the result of any such withdrawal.

9.07 Hardship Withdrawals.

- (a) Where elected by the Employer in the Adoption Agreement for a profit-sharing plan containing a 401(k) arrangement, distribution of nonforfeitable amounts attributable to Employer Contributions and/or Elective Deferrals (including Catch-up Contributions but not including earnings attributable to Elective Deferrals accrued after December 31, 1988) may be made to a Participant in the event of hardship. A hardship distribution may only be made on account of an immediate and heavy financial need of the Employee and where the distribution is necessary to satisfy the immediate and heavy financial need.

- (b) Special Rules:
- (1) The following are the only financial needs considered immediate and heavy (or as otherwise provided for under Treasury Regulation section 1.401(k)-1(d)(3)(iii)(B) or any subsequent guidance thereto):
 - (a) Expenses for medical care (within the meaning of section 213(d) of the Code) previously incurred or necessary to obtain medical care for the Employee, the Employee's spouse or dependents;
 - (b) Costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Employee;
 - (c) Payment of tuition and related educational fees for the next twelve (12) months of post-secondary education for the Employee, the Employee's spouse, children or dependents;
 - (d) Payments necessary to prevent the eviction of the Employee from, or a foreclosure on the mortgage of, the Employee's principal residence; or
 - (e) Payments for funeral or burial expenses for the Employee's deceased parent, spouse, child or dependent and expenses to repair damage to the Employee's principal residence that would qualify for a casualty loss deduction under Code section 165 (determined without regard to whether the loss exceeds 10 percent of adjusted gross income). The last two needs (funeral expenses and home repair) only apply to Plan Years beginning after 2005.
 - (2) A distribution will be considered as necessary to satisfy an immediate and heavy financial need of the employee only if:
 - (a) The distribution is not in excess of the amount of an immediate and heavy financial need, including amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution;
 - (b) The Employee has obtained all distributions, other than hardship distributions, and all nontaxable loans under all plans maintained by the Employer; and
 - (c) All plans maintained by the Employer provide that the Employee's Elective Deferrals (and Employee contributions) will be suspended for six (6) months (12 months, for hardship distributions before 2002) after the receipt of the hardship distribution;

9.08 In-Service Distributions.

If elected by the Employer in the Adoption Agreement, a Participant who has attained age 59½ and has a Nonforfeitable Interest in his/her entire Employer Contribution Account shall, upon written request, receive a distribution of a part of or the full amount of the balance in any or all

of his vested Accounts. Such distributions may be requested at any time, provided that no more than two (2) such distributions may be made during any calendar year.

Unless otherwise elected by the Employer in the Adoption Agreement, a Participant who has reached age 70½ regardless of his Nonforfeitable Interest in his/her entire Employer Contribution Account, shall, upon written request, receive a distribution of a part of or the full amount of the balance in any or all of his vested Accounts. Such distributions may be requested at any time, provided that no more than two (2) such distributions may be made during any calendar year.

- 9.09 In-Service Distribution from Rollover Account.** Where elected by the Employer in the Adoption Agreement, a Participant that has a separate account attributable to rollover contributions to the Plan, may at any time elect to receive a distribution of all or any portion of the amount held in the Rollover Account.
- 9.10 Latest Commencement of Benefits.** Notwithstanding anything to the contrary in this Article, benefits shall begin no later than the Participant's Required Beginning Date, as defined under Section 10.05, or as otherwise provided in Section 10.04.
- 9.11 Spousal Consent.** Notwithstanding the foregoing, if the Employer elected the QJSA Election in the Adoption Agreement, a married Participant must first obtain his or her spouse's notarized consent to request a distribution (other than a Qualified Joint and Survivor Annuity), withdrawal, or rollover under this Article IX.

X. DISTRIBUTION REQUIREMENTS

10.01 General Rules.

- (a) Subject to the provisions of Article XII or XVII if so elected by the Employer in the Adoption Agreement, the requirements of this Article shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this Article X apply to calendar years beginning after December 31, 2002.

With respect to distributions under the Plan made in or for Plan Years beginning on or after January 1, 2002 and prior to January 1, 2003, the Plan will apply the minimum distribution requirements of section 401(a)(9) of the Code in accordance with the regulations under section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary.

- (b) All distributions required under this Article shall be determined and made in accordance with the regulations under section 401(a)(9) of the Code, and the minimum distribution incidental benefit requirement of section 401(a)(9)(G) of the Code.
- (c) Limits on Distribution Periods. As of the first Distribution Calendar Year, distributions to a Participant, if not made in a single-sum, may only be made over one of the following periods:
- (1) The life of the Participant,
 - (2) The joint lives of the Participant and a designated Beneficiary,

- (3) A period certain not extending beyond the life expectancy of the Participant, or
 - (4) A period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated Beneficiary.
- (d) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Article X, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

10.02 Time and Manner of Distribution

- (a) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.
- (b) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (1) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
 - (2) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
 - (3) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (4) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 10.02(b), other than Section 10.02(b)(1), will apply as if the surviving spouse were the Participant.

For purposes of this Section 10.02(b) and Section 10.04, unless Section 10.02(b)(4) applies, distributions are considered to begin on the Participant's required beginning date. If Section 10.02(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 10.02(b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 10.02(b)(1)), the date distributions are considered to begin is the date distributions actually commence.

- (c) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 10.03 and 10.04. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations.

10.03 Required Minimum Distributions During Participant's Lifetime

- (a) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
- (1) the quotient obtained by dividing the Participant's Account Balance by the distribution period set forth in the Uniform Lifetime Table found in Section 1.401(a)(9)-9, Q&A-2, of the Final Income Tax Regulations using the Participant's age as of the Participant's birthday in the distribution calendar year; or
 - (2) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3, of the regulations using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.
- (b) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 10.03 beginning with the first distribution calendar year and continuing up to, and including, the distribution calendar year that includes the Participant's date of death.

10.04 Required Minimum Distributions After Participant's Death

- (a) Death On or After Date Distributions Begin.
- (1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:
 - (a) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
 - (b) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the

Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

- (c) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (2) **No Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (b) Death Before Date Required Distributions Begin.
 - (1) Participant Survived by Designated Beneficiary. If the Participant dies before the date required distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 10.04(a).
 - (2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 10.02(b)(1), this Section 10.04(b) will apply as if the surviving spouse were the Participant.

10.05 Definitions

- (a) Designated Beneficiary. The individual who is designated by the Participant (or the Participant's surviving spouse) as the Beneficiary of the Participant's interest under the Plan and who is the designated Beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-4 of the regulations.

- (b) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 10.02(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.
- (c) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1, of the regulations.
- (d) Participant's Account Balance. The Account Balance as of the last Accounting Date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account Balance as of dates in the valuation calendar year after the Accounting Date and decreased by distributions made in the valuation calendar year after the Accounting Date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- (e) Required Beginning Date. The Required Beginning Date of a Participant is April 1 of the calendar year following the later of the calendar year in which the Participant attains age seventy and one-half (70½), or the calendar year in which the Participant retires.

XI. MODES OF DISTRIBUTION OF BENEFITS

- 11.01 Normal Mode of Distribution.** Unless an elective mode of distribution is elected as provided in Section 11.02, benefits shall be paid to the Participant in the form of a lump sum payment.

Notwithstanding the foregoing, where the Employer made the "QJSA Election" in the Adoption Agreement, unless an elective mode of distribution is elected in accordance with Article XVII, benefits shall be paid to the Participant in the form provided for in Article XVII.

- 11.02 Elective Mode of Distribution.** Subject to the requirements of Articles X, XII and XVII, a Participant may revocably elect to have his/her Account distributed in any one (1) of the following modes in lieu of the mode described in Section 11.01:

- (a) Equal Payments. Equal monthly, quarterly, semi-annual, or annual payments in an amount chosen by the Participant continuing until the Account is exhausted.
- (b) Period Certain. Approximately equal monthly, quarterly, semi-annual, or annual payments, calculated to continue for a period certain chosen by the Participant.
- (c) Other. Any other sequence of payments requested by the Participant.

- (d) Lump Sum. Where the Employer did make the QJSA Election in the Adoption Agreement, a Participant may also elect a lump sum payment.

11.03 Election of Mode. A Participant's election of a payment option must be made in writing between thirty (30) and ninety (90) days before the payment of benefits is to commence.

11.04 Death Benefits. Subject to Article X (and Article XII or XVII if so elected by the Employer in the Adoption Agreement),

- (a) In the case of a Participant who dies before he/she has begun receiving benefit payments, the Participant's entire Nonforfeitable Interest shall then be payable to his/her Beneficiary within ninety (90) days of the Participant's death. A Beneficiary who is entitled to receive benefits under this Section may elect to have benefits commence at a later date, subject to the provisions of Article X. The Beneficiary may elect to receive the death benefit in any of the forms available to the Participant under Sections 11.01 and 11.02. If the Beneficiary is the Participant's surviving spouse, and such surviving spouse dies before payment commences, then this Section shall apply to the beneficiary of the surviving spouse as though such surviving spouse were the Participant.
- (b) Should the Participant die after he/she has begun receiving benefit payments, the Beneficiary shall receive the remaining benefits, if any, that are payable, under the payment schedule elected by the Participant. Notwithstanding the foregoing, the Beneficiary may elect to accelerate payments of the remaining balances, including but not limited to, a lump sum distribution.

XII. SPOUSAL DEATH BENEFIT REQUIREMENTS

12.01 Application. Unless otherwise elected by the Employer in the Adoption Agreement, on or after January 1, 2006, the provisions of this Article shall take precedence over any conflicting provision in this Plan. The provisions of this Article, known as the "Beneficiary Spousal Consent Election," shall apply to any Participant who is credited with any Period of Service with the Employer on or after August 23, 1984, and such other Participants as provided in Section 12.04.

12.02 Spousal Death Benefit.

- (a) On the death of a Participant, the Participant's Vested Account Balance will be paid to the Participant's Surviving Spouse. If there is no Surviving Spouse, or if the Participant has waived the spousal death benefit, as provided in Section 12.03, such Vested Account Balance will be paid to the Participant's designated Beneficiary.
- (b) The Surviving Spouse may elect to have distribution of the Vested Account Balance commence within the ninety (90) day period following the date of the Participant's death, or as otherwise provided under Section 11.04. The Account balance shall be adjusted for gains or losses occurring after the Participant's death in accordance with the provisions of the Plan governing the adjustment of Account balances for other types of distributions.

12.03 Waiver of Spousal Death Benefit.

- (a) The Participant may waive the spousal death benefit described in Section 12.02 at any time; provided that no such waiver shall be effective unless: (a) the Participant's Spouse consents in writing to the election; (b) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent); (c) the Spouse's consent acknowledges the effect of the election; and (d) the Spouse's consent is witnessed by a Plan representative or notary public. If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed to meet the requirements of this Section.

Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited.

12.04 Definitions. For the purposes of this Section, the following definitions shall apply:

- (a) Spouse (Surviving Spouse): The Spouse or Surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or Surviving Spouse and a current Spouse will not be treated as the Spouse or Surviving Spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.
- (b) Vested Account Balance: The aggregate value of the Participant's vested Account balances derived from Employer and Employee contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the Participant's life. The provisions of this Article shall apply to a Participant who is vested in amounts attributable to Employer Contributions, Employee contributions (or both) at the time of death or distribution.

XIII. LOANS TO PARTICIPANTS**13.01 Availability of Loans to Participants.**

- (a) If the Employer has elected in the Adoption Agreement to make loans available to Participants, a Participant may apply for a loan from the Plan subject to the limitations and other provisions of this Article.
- (b) The Employer shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by the Plan Administrator and are not inconsistent with the provisions of this Article, and that loans are made available to all Participants on a reasonably equivalent basis.

13.02 Terms and Conditions of Loans to Participants. Any loan by the Plan to a Participant under Section 13.01 of the Plan shall satisfy the following requirements:

- (a) **Availability.** Loans shall be made available to all Participants on a reasonably equivalent basis.
- (b) **Nondiscrimination.** Loans shall not be made to highly compensated Employees in an amount greater than the amount made available to other Employees.
- (c) **Interest Rate.** Loans must be adequately secured and bear a reasonable interest rate.
- (d) **Loan Limit.** No Participant loan shall exceed the present value of the Participant's Nonforfeitable Interest in his/her Account.
- (e) **Foreclosure.** In the event of default, foreclosure on the note and attachment of security will not occur until a distributable event occurs in the Plan.
- (f) **Reduction of Account.** Notwithstanding any other provision of this Plan, the portion of the Participant's vested Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than one hundred percent (100%) of the Participant's nonforfeitable Account balance (determined without regard to the preceding sentence) is payable to the surviving spouse, then the Account balance shall be adjusted by first reducing the nonforfeitable Account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving spouse.
- (g) **Amount of Loan.** At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the Participant or Beneficiary from the Plan and from all other plans of the Employer that are qualified employer plans under section 72(p)(4) shall not exceed the lesser of:
 - (1) \$50,000, reduced by the excess (if any) of
 - (a) The highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan is made, over
 - (b) The outstanding balance of loans from the Plan on the date on which such loan is made; or
 - (2) One-half (½) of the value of the Participant's Nonforfeitable Interest in all of his/her Accounts under this Plan (or \$10,000, if greater, for loans prior to January 1, 2006).

For the purpose of the above limitation, all loans from all qualified employer plans, including 457(b) plans, under Code section 72(p)(4) are aggregated.

- (h) **Application for Loan.** The Participant must give the Employer adequate written notice, as determined by the Employer, of the amount and desired time for receiving a loan. No more than one (1) loan may be made by the Plan to a Participant in any calendar year. No loan shall be approved if an existing loan from the Plan to the Participant is in default to any extent.
- (i) **Length of Loan.** The terms of any loan issued or renegotiated after December 31, 1993, shall require the Participant to repay the loan in substantially equal installments of principal and interest, at least quarterly (except as otherwise provided in Treasury Regulation section 1.72(p)-1, Q&A-9 for certain leave of absence and military leave), over a period that does not exceed five (5) years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time after the loan is made as the principal residence of the Participant, the five (5) year limit shall not apply. In this event, the period of repayment shall not exceed a reasonable period determined by the Employer. Principal installments and interest payments otherwise due may be suspended during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this Subsection (i), with a revised payment schedule (within such term) instituted at the end of such period of suspension. If the Participant fails to make any installment payment, the Plan Administrator may, according to Treasury Regulation 1.72(p)-1, allow a cure period, which cure period cannot continue beyond the last day of the calendar quarter following the calendar quarter in which the required installment payment was due.
- (j) **Prepayment.** The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.
- (k) **Note.** The loan shall be evidenced by a promissory note executed by the Participant and delivered to the Employer, and shall bear interest at a reasonable rate determined by the Employer.

Unless waived by a Participant, any plan loan that is outstanding on the date that active duty military service begins will accrue interest at a rate of no more than 6% during the period of military service in accordance with the provisions of the Servicemembers Civil Relief Act (SCRA), 50 USC App. § 526 and subject to the notice requirements contained therein. This limitation applies even if loan payments are suspended during the period of military service as permitted under the Plan and Treasury regulations.

- (l) **Security.** The loan shall be secured by an assignment of that portion the Participant's right, title and interest in and to his/her Employer Contribution Account (to the extent vested), Participant Contribution Account, and Rollover Account that is equal to fifty percent (50%) of the Participant's Account (to the extent vested).
- (m) **Assignment or Pledge.** For the purposes of paragraphs (h) and (i), assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan.
- (n) **Spousal Consent.** If the Employer elected the QJSA Election in the Adoption Agreement, the Participant must first obtain his or her spouse's notarized consent to the loan.

- (o) **Other Terms and Conditions.** The Employer shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the qualification of the Plan and Trust under section 401(a) of the Code, or to prevent the treatment of the loan for tax purposes as a distribution to the Participant. The Employer, in its discretion for any reason, may fix other terms and conditions of the loan, not inconsistent with the provisions of this Article.

13.03 Participant Loan Accounts.

- (a) Upon approval of a loan to a Participant by the Employer, an amount not in excess of the loan shall be transferred from the Participant's other investment fund(s), described in Section 6.05 of the Plan, to the Participant's Loan Account as of the Accounting Date immediately preceding the agreed upon date on which the loan is to be made.
- (b) The assets of a Participant's Loan Account may be invested and reinvested only in promissory notes received by the Plan from the Participant as consideration for a loan permitted by Section 13.01 of the Plan or in cash. Uninvested cash balances in a Participant's Loan Account shall not bear interest. No person who is otherwise a fiduciary of the Plan shall be liable for any loss, or by reason of any breach, that results from the Participant's exercise of such control.
- (c) Repayment of principal and payment of interest shall be made by payroll deduction or, where repayment cannot be made by payroll deduction, by check, and shall be invested in one (1) or more other investment funds, in accordance with Section 6.05 of the Plan, as of the next Accounting Date after payment thereof to the Trust. The amount so invested shall be deducted from the Participant's Loan Account.
- (d) The Employer shall have the authority to establish other reasonable rules, not inconsistent with the provisions of the Plan, governing the establishment and maintenance of Participant Loan Accounts.

XIV. PLAN AMENDMENT, TERMINATION AND OPTIONAL PROVISIONS

14.01 Amendment by Employer. The Employer reserves the right, subject to Section 14.02 of the Plan, to amend the Plan from time to time by either:

- (a) Filing an amended Adoption Agreement to change, delete, or add any optional provision, or
- (b) Continuing the Plan in the form of an amended and restated Plan and Trust.

No amendment to the Plan shall be effective to the extent that it has the effect of decreasing a Participant's accrued benefit. Notwithstanding the preceding sentence, a Participant's Account balance may be reduced to the extent permitted under section 412(c)(8) of the Code. For purposes of this paragraph, a Plan amendment which has the effect of decreasing a Participant's Account balance or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit. Furthermore, if the vesting schedule of the Plan is amended, in the case of an Employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the

nonforfeitable percentage (determined as of such date) of such Employee's right to his/her Employer-derived accrued benefit will not be less than his percentage computed under the plan without regard to such amendment.

No amendment to the Plan shall be effective to eliminate or restrict an optional form of benefit. The preceding sentence shall not apply to a Plan amendment that eliminates or restricts the ability of a Participant to receive payment of his or her Account balance under a particular optional form of benefit if the amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit being eliminated or restricted. For this purpose, a single-sum distribution form is otherwise identical only if the single-sum distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the Participant) except with respect to the timing of payments after commencement.

The Employer may (1) change the choice of options in the Adoption Agreement, (2) add overriding language in the Adoption Agreement when such language is necessary to satisfy sections 415 or 416 of the Code because of the required aggregation of multiple plans, (3) amend administrative provisions of the trust or custodial document in the case of a nonstandardized plan and make more limited amendments in the case of a standardized plan such as the name of the plan, employer, trustee or custodian, plan administrator and other fiduciaries, the trust year, and the name of any pooled trust in which the Plan's trust will participate, (4) add certain sample or model amendments published by the Internal Revenue Service or other required good faith amendments which specifically provide that their adoption will not cause the plan to be treated as individually designed, and (5) add or change provisions permitted under the Plan and/or specify or change the effective date of a provision as permitted under the Plan and correct obvious and unambiguous typographical errors and/or cross-references that merely correct a reference but that do not in any way change the original intended meaning of the provisions.

14.02 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 the Participant's nonforfeitable percentage, each Participant may elect, within a reasonable period after the adoption of the amendment or change, to have the nonforfeitable percentage computed under the Plan without regard to such amendment or change.

The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end on the latest of:

- (a) Sixty (60) days after the amendment is adopted;
- (b) Sixty (60) days after the amendment becomes effective; or
- (c) Sixty (60) days after the Participant is issued written notice of the amendment by the Employer or Plan Administrator.

14.03 Termination by Employer. The Employer reserves the right to terminate this Plan. However, in the event of such termination no part of the Trust shall be used or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries, except as provided in this Section.

Upon Plan termination or partial termination, all Account balances shall be valued at their fair market value and the Participant's right to his/her Employer Contribution Account shall be one

hundred percent (100%) vested and nonforfeitable. Such amount and any other amounts held in the Participant's other Accounts shall be maintained for the Participant until paid pursuant to the terms of the Plan.

Any amounts held in a suspense account, after all liabilities of the Plan to Participants and Beneficiaries have been satisfied or provided for, shall be paid to the Employer in accordance with the Code and regulations thereunder.

In the event that the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Internal Revenue Code, any contribution made by the Employer incident to that initial qualification must be returned to the Employer within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the Employer's return for the year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

- 14.04 Discontinuance of Contributions.** A permanent discontinuance of contributions to the Plan by the Employer, unless an amended and restated Plan is established, shall constitute a Plan termination. In the event of a complete discontinuance of contributions under the Plan, the Account balance of each affected Participant shall be nonforfeitable.
- 14.05 Amendment by Plan Administrator.** The Plan Administrator may amend this Plan upon thirty (30) days written notification to the Employer; provided, however, that any such amendment must be for the express purpose of maintaining compliance with applicable federal laws and regulations of the Internal Revenue Service. Such amendment shall become effective unless, within such 30-day period, the Employer notifies the Administrator, in writing, that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as Administrator hereunder.
- 14.06 Optional Provisions.** Any provision which is optional under this Plan shall become effective if and only if elected by the Employer and agreed to by the Plan Administrator.

XV. ADMINISTRATION

- 15.01 Powers of the Employer.** The Employer shall have the following powers and duties:
- (a) To appoint and remove, with or without cause, the Plan Administrator;
 - (b) To amend or terminate the Plan pursuant to the provisions of Article XIV;
 - (c) To appoint a committee to facilitate administration of the Plan and communications to Participants;
 - (d) To decide all questions of eligibility (1) for Plan participation, and (2) upon appeal by any Participant, Employee or Beneficiary, for the payment of benefits;
 - (e) To engage an independent qualified public accountant, when required to do so by law, to prepare annually the audited financial statements of the Plan's operation;
 - (f) 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

- (g) To notify the Plan Administrator in writing of the termination of the Plan.

15.02 Duties of the Plan Administrator. The Plan Administrator shall have the following powers and duties:

- (a) To construe and interpret the provisions of the Plan;
- (b) 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;
- (c) To obtain from the Employer such information as shall be necessary for the proper administration of the Plan;
- (d) To determine the amount, manner, and time of payment of benefits hereunder;
- (e) To appoint and retain such agents, counsel, and accountants for the purpose of properly administering the Plan;
- (f) To distribute assets of the Trust to each Participant and Beneficiary in accordance with Article X of the Plan;
- (g) To pay expenses from the Trust pursuant to Section 6.03 of the Plan; and
- (h) 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.

15.03 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.

15.04 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.

15.05 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, at 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.

- 15.06 No Termination Penalty.** The Plan Administrator shall have no authority or discretion to impose any termination penalty upon its removal.
- 15.07 Decisions of the Plan Administrator.** All constructions, determinations, and interpretations made by the Plan Administrator pursuant to Section 15.02(a) or (d) or by the Employer pursuant to Section 15.01(d) 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.

XVI. MISCELLANEOUS

- 16.01 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.
- 16.02 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.
- 16.03 Nonalienation of Benefits.** Except as provided in Sections 16.04 and 16.06 of the Plan, benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, prior to actually being received by the person entitled to the benefit under the terms of the Plan; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The Trust shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.
- 16.04 Qualified Domestic Relations Order.** Notwithstanding Section 16.03 of the Plan, amounts may be paid with respect to a Participant pursuant to a domestic relations order, but if and only if the order is determined to be a qualified domestic relations order within the meaning of section 414(p) of the Code or any domestic relations order entered before January 1, 1985.
- 16.05 Nonforfeitability 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.
- 16.06 Incompetency of Payee.** In the event any benefit is payable to a minor or incompetent, 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:

- (a) The parent of such person;
- (b) The guardian, committee, or other legal representative, wherever appointed, of such person;
- (c) The person with whom such person resides;
- (d) Any person having the care and control of such person; or
- (e) Such person personally.

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

- 16.07 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.
- 16.08 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).
- 16.09 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 Compensation will be conclusive on all persons, unless determined to be incorrect.
- 16.10 Gender and Number.** The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.
- 16.11 Applicable Law.** The Plan shall be construed under the laws of the State where the Employer is located, 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.

XVII. SPOUSAL BENEFIT REQUIREMENTS

- 17.01 Application.** Effective as of January 1, 2006, where elected by the Employer in the Adoption Agreement (the “QJSA Election”), the provisions of this Article shall take precedence over any conflicting provision in this Plan. If elected, the provisions of this Article shall apply to any Participant who is credited with any Period of Service with the Employer on or after August 23, 1984, and such other Participants as provided in Section 17.05.
- 17.02 Qualified Joint and Survivor Annuity.** Unless an optional form of benefit is selected pursuant to a Qualified Election within the ninety (90) day period ending on the Annuity Starting Date, a married Participant’s Vested Account Balance will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant’s Vested Account Balance will be paid in the form of a Straight Life Annuity. The Participant may elect to have such annuity distributed upon the attainment of the Earliest Retirement Age under the Plan.
- 17.03 Qualified Preretirement Survivor Annuity.** If a Participant dies before the Annuity Starting Date, then fifty percent (50%) of the Participant’s Vested Account Balance shall be applied toward the purchase of an annuity for the life of the Surviving Spouse; the remaining portion shall be paid to such Beneficiaries (which may include such Spouse) designated by the Participant. Notwithstanding the foregoing, the Participant may waive the spousal annuity by designating a different Beneficiary within the Election Period pursuant to a Qualified Election. To the extent that less than one hundred percent (100%) of the vested Account balance is paid to the Surviving Spouse, the amount of the Participant’s Account derived from Employee contributions will be allocated to the Surviving Spouse in the same proportion as the amount of the Participant’s Account derived from Employee contributions is to the Participant’s total Vested Account Balance. The Surviving Spouse may elect to have such annuity distributed within a reasonable period after the Participant’s death. Further, such Spouse may elect to receive any death benefit payable to him/her hereunder in any of the forms available to the Participant under Section 11.02.
- 17.04 Notice Requirements.**
- (a) In the case of a Qualified Joint and Survivor Annuity as described in Section 17.02, the Plan Administrator shall, no less than thirty (30) days and no more than ninety (90) days prior to the Annuity Starting Date, provide each Participant a written explanation of: (i) the terms and conditions of a Qualified Joint and Survivor Annuity; (ii) the Participant’s right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit; (iii) the rights of a Participant’s Spouse; and (iv) the right to make, and the effect of, a revocation of a previous election to waive the Qualified Joint and Survivor Annuity. However, if the Participant, after having received the written explanation, affirmatively elects a form of distribution and the Spouse consents to that form of distribution (if necessary), benefit payments may commence less than 30 days after the written explanation was provided to the Participant, provided that the following requirements are met:
- (1) The Plan Administrator provides information to the Participant clearly indicating that the Participant has a right to at least 30 days to consider whether

to waive the Qualified Joint and Survivor Annuity and consent to a form of distribution other than a Qualified Joint and Survivor Annuity;

- (2) The Participant is permitted to revoke an affirmative distribution election at least until the Annuity Starting Date, or if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant;
 - (3) The Annuity Starting Date is after the date that the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant; and
 - (4) Distribution in accordance with the affirmative election does not commence before the expiration of the 7-day period that begins after the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant.
- (b) In the case of a Qualified Preretirement Survivor Annuity as described in Section 17.03, the Plan Administrator shall provide each Participant within the applicable period for such Participant a written explanation of the Qualified Preretirement Survivor Annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements of Subsection (a) applicable to a Qualified Joint and Survivor Annuity.

The applicable period for a Participant is whichever of the following periods ends last:

- (i) the period beginning with the first day of the Plan Year in which the Participant attains age thirty-two (32) and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age thirty-five (35);
 - (ii) a reasonable period ending after the individual becomes a Participant;
 - (iii) a reasonable period ending after Subsection (c) ceases to apply to the Participant;
 - (iv) a reasonable period ending after this Article first applies to the Participant.
- Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation from service in the case of a Participant who separates from service before attaining age thirty-five (35).

For purposes of applying the preceding paragraph, a reasonable period ending after the enumerated events described in (ii), (iii) and (iv) is the end of the two (2) year period beginning one (1) year prior to the date the applicable event occurs, and ending one (1) year after that date. In the case of a Participant who separates from service before the Plan Year in which age thirty-five (35) is attained, notice shall be provided within the two (2) year period beginning one (1) year prior to separation and ending one (1) year after separation. If such a Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be redetermined.

- (c) Notwithstanding the other requirements of this Section, the respective notices prescribed by this Section need not be given to a Participant if (1) the Plan “fully subsidizes” the costs of a Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity, and (2) the Plan does not allow the Participant to waive the Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity and does not allow a married Participant to designate a non-Spouse Beneficiary. For purposes of this Subsection (c), a plan fully subsidizes the costs of a benefit if no increase in cost or decrease in benefits to the Participant may result from the Participant’s failure to elect another benefit.

17.05 Definitions. For the purposes of this Section, the following definitions shall apply:

- (a) **Annuity Starting Date:** The first day of the first period for which an amount is paid as an annuity or any other form.
- (b) **Election Period:** The period which begins on the first day of the Plan Year in which the Participant attains age thirty-five (35) and ends on the date of the Participant's death. If a Participant separates from service prior to the first day of the Plan Year in which age thirty-five (35) is attained, with respect to the Account balance as of the date of separation, the Election Period shall begin on the date of separation.

Pre-age thirty-five (35) waiver: A Participant who will not yet attain age thirty-five (35) as of the end of any current Plan Year may make a special Qualified Election to waive the Qualified Preretirement Survivor Annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age thirty-five (35). Such election shall not be valid unless the Participant receives a written explanation of the Qualified Preretirement Survivor Annuity in such terms as are comparable to the explanation required under Section 17.04(a). Qualified Preretirement Survivor Annuity coverage will be automatically reinstated as of the first day of the Plan Year in which the Participant attains age thirty-five (35). Any new waiver on or after such date shall be subject to the full requirements of this Article.

- (c) **Earliest Retirement Age:** The earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.
- (d) **Qualified Election:** A waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity. Any waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity shall not be effective unless: (a) the Participant's Spouse consents in writing to the election; (b) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent); (c) the Spouse's consent acknowledges the effect of the election; and (d) the Spouse's consent is witnessed by a Plan representative or notary public. Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further Spousal consent). If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed a Qualified Election.

Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations

shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Section 17.04.

- (e) **Qualified Joint and Survivor Annuity:** An immediate annuity for the life of the Participant with a survivor annuity for the life of the Spouse which is fifty percent (50%) of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and which is the amount of benefit which can be purchased with the Participant's Vested Account Balance.
- (f) **Spouse (Surviving Spouse):** The Spouse or Surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or Surviving Spouse and a current Spouse will not be treated as the Spouse or Surviving Spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.
- (g) **Straight Life Annuity:** An annuity payable in equal installments for the life of the Participant that terminates upon the Participant's death.
- (h) **Vested Account Balance:** The aggregate value of the Participant's vested Account balances derived from Employer and Employee contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the Participant's life. The provisions of this Article shall apply to a Participant who is vested in amounts attributable to Employer Contributions, Employee contributions (or both) at the time of death or distribution.

17.06 Annuity Contracts. Where benefits are to be paid in the form of a life annuity pursuant to the terms of this Article, a nontransferable annuity contract shall be purchased from a life insurance company and distributed to the Participant or Surviving Spouse, as applicable. The terms of any annuity contract purchased and distributed by the Plan shall comply with the requirements of this Plan and section 417 of the Code.

XVIII. FINAL PAY CONTRIBUTIONS

18.01 Eligibility. Effective as of January 1, 2006, if elected by the Employer in the Adoption Agreement, Final Pay Contributions on behalf of each Participant equal to the equivalent of the accrued unpaid final pay, as defined in the Adoption Agreement ("Final Pay"), shall be contributed to the Plan.

18.02 Contribution Amount. At the election of the Employer in the Adoption Agreement, the Final Pay Contributions may be made as either (a) Employer Final Pay Contributions, or (b) Employee Designated Final Pay Contributions, as described below.

- (a) Employer Final Pay Contributions. The Employer shall contribute to the Plan for each Participant the equivalent of a designated amount of accrued unpaid final pay upon termination of employment of the Participant, as the Employer so elects in the Adoption Agreement. The Employer's contribution for any Plan Year shall be due and paid not later than the time prescribed by applicable law.

The Employer Final Pay Contributions shall be accounted for in the Employer Contribution Account.

- (b) Employee Designated Final Pay Contributions. The Employer shall contribute to the Plan for each Participant all or any portion of a Participant's Final Pay, as elected by the Participant. The Employer may limit the amount of Final Pay to be elected to be contributed to the Plan. Once elected, an Employee's election shall remain in force and may not be revised or revoked.

The Employee Designated Final Pay Contributions shall be accounted for in the Participant Contribution Account, and are nonforfeitable by the Participant at all times.

The Employee Designated Final Pay Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). The contributions shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

A Participant cannot elect to receive cash in lieu of any Final Pay Contribution.

- 18.03 Equivalencies.** The Final Pay Contribution shall be determined by multiplying the Participant's current daily rate of pay from the Employer times the amount of accrued unpaid leave being converted.
- 18.04 Excess Contributions.** Final Pay Contributions are limited to the extent of applicable law and any Code limitation. No Final Pay Contribution shall be made to the extent that it would exceed the applicable Code section 415 limitation, as set forth in Article V. Any excess contributions as a result of the Code section 415 limitation shall remain in the Participant's leave bank.

XIX. ACCRUED LEAVE CONTRIBUTIONS

- 19.01 Eligibility.** Effective as of January 1, 2006, if elected by the Employer in the Adoption Agreement, Accrued Leave Contributions on behalf of each eligible Participant equal to the equivalent of the accrued unpaid leave, as defined in the Adoption Agreement ("Accrued Leave"), shall be contributed to the Plan. Eligibility for Accrued Leave Contributions is limited to only those Participants or class of Participants that the Employer elects in the Adoption Agreement.
- 19.02 Contribution Amount.** At the election of the Employer in the Adoption Agreement, the Accrued Leave Contributions may be made as either (a) Employer Accrued Leave Contributions, or (b) Employee Designated Accrued Leave Contributions, as described below.
- (a) Employer Accrued Leave Contributions. The Employer shall contribute to the Plan for each eligible Participant the equivalent of a designated amount of accrued unpaid leave each year, as the Employer so elects in the Adoption Agreement. The Employer's contribution for any Plan Year shall be due and paid not later than the time prescribed by applicable law.

The Employer Accrued Leave Contributions shall be accounted for in the Employer Contribution Account.

- (b) Employee Designated Accrued Leave Contributions. The Employer shall contribute to the Plan for each eligible Participant all or any portion of a Participant's Accrued Leave,

as elected by the Participant. The Employer may limit the amount of Accrued Leave to be elected to be contributed to the Plan. Once elected, an Employee's election shall remain in force and may not be revised or revoked.

The Employee Designated Accrued Leave Contributions shall be accounted for in the Participant Contribution Account, and are nonforfeitable by the Participant at all times.

The Employee Designated Accrued Leave Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). The contributions shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

A Participant cannot elect to receive cash in lieu of any Accrued Leave Contribution.

19.03 Equivalencies. The Accrued Leave Contribution shall be determined by multiplying the Participant's current daily rate of pay from the Employer times the amount of accrued unpaid leave being converted.

19.04 Excess Contributions. Accrued Leave Contributions are limited to the extent of applicable law and any Code limitation. No Accrued Leave Contribution shall be made to the extent that it would exceed the applicable Code section 415 limitation, as set forth in Article V. Any excess contributions as a result of the Code section 415 limitation shall remain in the Participant's leave bank.

DECLARATION OF TRUST

This Declaration of Trust (the "Group Trust Agreement") is made as of the 19th day of May, 2001, by Vantage Trust Company, which declares itself to be the sole Trustee of the trust hereby created.

WHEREAS, the ICMA Retirement Trust was created as a vehicle for the commingling of the assets of governmental plans and governmental units described in Section 818(a)(6) of the Internal Revenue Code of 1986, as amended, pursuant to a Declaration of Trust dated October 4, 1982, as subsequently amended, a copy of which is attached hereto and incorporated by reference as set out below (the "ICMA Declaration"); and

WHEREAS, the trust created hereunder (the "Group Trust") is intended to meet the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, and is established as a common trust fund within the meaning of Section 391:1 of Title 35 of the New Hampshire Revised Statutes Annotated, to accept and hold for investment purposes the assets of the Deferred Compensation and Qualified Plans held by and through the ICMA Retirement Trust.

NOW, THEREFORE, the Group Trust is created by the execution of this Declaration of Trust by the Trustee and is established with respect to each Deferred Compensation and Qualified Plan by the transfer to the Trustee of such Plan's assets in the ICMA Retirement Trust, by the Trustees thereof, in accord with the following provisions:

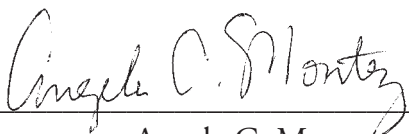
1. Incorporation of ICMA Declaration by Reference; ICMA By-Laws. Except as otherwise provided in this Group Trust Agreement, and to the extent not inconsistent herewith, all provisions of the ICMA Declaration are incorporated herein by reference and made a part hereof, to be read by substituting the Group Trust for the Retirement Trust and the Trustee for the Board of Trustees referenced therein. In this respect, unless the context clearly indicates otherwise, all capitalized terms used herein and defined in the ICMA Declaration have the meanings assigned to them in the ICMA Declaration. In addition, the By-Laws of the ICMA Retirement Trust, as the same may be amended from time-to-time, are adopted as the By-Laws of the Group Trust to the extent not inconsistent with the terms of this Group Trust Agreement.

Notwithstanding the foregoing, the terms of the ICMA Declaration and By-Laws are further modified with respect to the Group Trust created hereunder, as follows:

- (a) any reporting, distribution, or other obligation of the Group Trust vis-à-vis any Deferred Compensation Plan, Qualified Plan, Public Employer, Public Employer Trustee, or Employer Trust shall be deemed satisfied to the extent that such obligation is undertaken by the ICMA Retirement Trust (in which case the obligation of the Group Trust shall run to the ICMA Retirement Trust); and
 - (b) all provisions dealing with the number, qualification, election, term and nomination of Trustees shall not apply, and all other provisions relating to trustees (including, but not limited to, resignation and removal) shall be interpreted in a manner consistent with the appointment of a single corporate trustee.
2. Compliance with Revenue Procedure 81-100. The requirements of Revenue Procedure 81-100 are applicable to the Group Trust as follows:
- (a) Pursuant to the terms of this Group Trust Agreement and Article X of the By-Laws, investment in the Group Trust is limited to assets of Deferred Compensation and Qualified Plans, investing through the ICMA Retirement Trust.
 - (b) Pursuant to the By-Laws, the Group Trust is adopted as a part of each Qualified Plan that invests herein through the ICMA Retirement Trust.
 - (c) In accord with the By-Laws, that part of the Group Trust's corpus or income which equitably belongs to any Deferred Compensation and Qualified Plan may not be used for or diverted to any purposes other than for the exclusive benefit of the Plan's employees or their beneficiaries who are entitled to benefits under such Plan.
 - (d) In accord with the By-Laws, no Deferred Compensation Plan or Qualified Plan may assign any or part of its equity or interest in the Group Trust, and any purported assignment of such equity or interest shall be void.
3. Governing Law. Except as otherwise required by federal, state or local law, this Declaration of Trust (including the ICMA Declaration to the extent incorporated herein) and the Group Trust created hereunder shall be construed and determined in accordance with applicable laws of the State of New Hampshire.
4. Judicial Proceedings. The Trustee may at any time initiate an action or proceeding in the appropriate state or federal courts within or outside the state of New Hampshire for the settlement of its accounts or for the determination of any question of construction which may arise or for instructions.

IN WITNESS WHEREOF, the Trustee has executed this Declaration of Trust as of the day and year first above written.

VANTAGETRUST COMPANY

By 
 Angela C. Montez

Assistant Corporate Secretary

ICMA-RC Services LLC, a wholly owned broker-dealer subsidiary of ICMA-RC, member FINRA/SIPC.



ATTN: NEW BUSINESS UNIT
P.O. BOX 96220
WASHINGTON, DC 20090-6220
1-800-669-7400
WWW.ICMARC.ORG
EN ESPAÑOL LLAME AL 1-800-669-8216

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457 Governmental Deferred Compensation Plan & Trust



DEFERRED COMPENSATION PLAN AND TRUST

As Amended and Restated Effective January 1, 2006

Article I. Purpose

The Employer hereby establishes and maintains the Employer's Deferred Compensation Plan and Trust, hereafter referred to as the "Plan." The Plan consists of the provisions set forth in this document.

The primary purpose of this Plan is to provide retirement income and other deferred benefits to the Employees of the Employer and the Employees' Beneficiaries in accordance with the provisions of Section 457 of the Internal Revenue Code of 1986, as amended (the "Code").

This Plan shall be an agreement solely between the Employer and participating Employees. The Plan and Trust forming a part hereof are established and shall be maintained for the exclusive benefit of Participants and their Beneficiaries. No part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

Article II. Definitions

- 2.01 Account.** The bookkeeping account maintained for each Participant reflecting the cumulative amount of the Participant's Deferred Compensation, including any income, gains, losses, or increases or decreases in market value attributable to the Employer's investment of the Participant's Deferred Compensation, and further reflecting any distributions to the Participant or the Participant's Beneficiary and any fees or expenses charged against such Participant's Deferred Compensation.
- 2.02 Accounting Date.** Each business day that the New York Stock Exchange is open for trading, as provided in Section 6.06 for valuing the Trust's assets.
- 2.03 Administrator.** The person or persons named in writing to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described. The Employer may remove any person as Administrator upon 75 days' advance notice in writing to such person, in which case the Employer shall name another person or persons to act as Administrator. The Administrator may resign upon 75 days' advance notice in writing to the Employer, in which case the Employer shall name another person or persons to act as Administrator.
- 2.04 Automatic Distribution Date.** April 1 of the calendar year after the Plan Year the Participant attains age 70½ or, if later, has a Severance Event.
- 2.05 Beneficiary.** The person or persons designated by the Participant in his or her Joinder Agreement who shall receive any benefits payable hereunder in the event of the Participant's death. In the event that the Participant names two or more Beneficiaries, each Beneficiary shall be entitled to equal shares of the benefits payable at the Participant's death, unless otherwise provided in the Participant's Joinder Agreement. If no beneficiary is designated in the Joinder Agreement, if the Designated Beneficiary predeceases the Participant, or if the designated Beneficiary does not survive the Participant for a period of fifteen (15) days, then the estate of the Participant shall be the Beneficiary. If a married Participant resides in a community or marital property state, the Participant shall be responsible for obtaining appropriate consent of his or her spouse in the event the Participant designates someone other than his or her spouse as Beneficiary. The preceding sentence shall not apply with respect to a Deemed IRA under Article IX.
- 2.06 Deemed IRA.** A separate account or annuity established under the Plan that complies with the requirements of Section 408(q) of the Code, the Income Tax Regulations thereunder, and any other IRS guidance.

- 2.07 Deferred Compensation.** The amount of Includible Compensation otherwise payable to the Participant which the Participant and the Employer mutually agree to defer hereunder, any amount credited to a Participant's Account by reason of a transfer under Section 6.09 or 6.10, a rollover under Section 6.11, or any other amount which the Employer agrees to credit to a Participant's Account.
- 2.08 Dollar Limitation.** The applicable dollar amount within the meaning of Section 457(b)(2)(A) of the Code, as adjusted for the cost-of-living in accordance with Section 457(e)(15) of the Code.
- 2.09 Employee.** Any individual who provides services for the Employer, whether as an employee of the Employer or as an independent contractor, and who has been designated by the Employer as eligible to participate in the Plan.
- 2.10 Employer.** _____, which is a political subdivision, agency or instrumentality of the [State/Commonwealth] of _____, described in Section 457(e)(1)(A) of the Code.
- 2.11 457 Catch-Up Dollar Limitation.** Twice the Dollar Limitation.
- 2.12 Includible Compensation.** Includible Compensation of a Participant means "compensation," as defined in Section 415(c)(3) of the Code, for services performed for the Employer. Includible Compensation shall be determined without regard to any community property laws. For purposes of a Participant's Joinder Agreement only and not for purposes of the limitations in Article V, Includible Compensation shall include pre-tax contributions (excluding direct employer contributions) to an integral part trust of the employer providing retiree health care benefits.
- 2.13 Joinder Agreement.** An agreement entered into between an Employee and the Employer, including any amendments or modifications thereof. Such agreement shall fix the amount of Deferred Compensation, specify a preference among the investment alternatives designated by the Employer, designate the Employee's Beneficiary or Beneficiaries, and incorporate the terms, conditions, and provisions of the Plan by reference.
- 2.14 Normal Limitation.** The maximum amount of Deferred Compensation for any Participant for any taxable year (other than amounts referred to in Sections 6.09, 6.10, and 6.11).
- 2.15 Normal Retirement Age.** Age 70½, unless the Participant has elected an alternate Normal Retirement Age by written instrument delivered to the Administrator prior to a Severance Event. A Participant's Normal Retirement Age determines the period during which a Participant may utilize the 457 Catch-Up Dollar Limitation of Section 5.02(b) hereunder. Once a Participant has to any extent utilized the catch-up limitation of Section 5.02(b), his Normal Retirement Age may not be changed.

A Participant's alternate Normal Retirement Age may not be earlier than the earliest date that the Participant will become eligible to retire and receive immediate, unreduced retirement benefits under the Employer's basic defined benefit retirement plan covering the Participant (or a money purchase pension plan in which the Participant also participates if the Participant is not eligible to participate in a defined benefit plan), and may not be later than the date the Participant will attain age 70½. If the Participant will not become eligible to receive benefits under a basic defined benefit retirement plan (or money purchase pension plan, if applicable) maintained by the Employer, the Participant's alternate Normal Retirement Age may not be earlier than 65 and may not be later than age 70½. In no event may a Participant's normal retirement age be different than the normal retirement age under the Employer's other 457(b) plans, if any.

In the event the Plan has Participants that include qualified police or firefighters (as defined under Section 415(b)(2)(H)(ii)(I) of the Code), a normal retirement age may be designated for such qualified police or firefighters that is not earlier than age 40 or later than age 70½. Alternatively, qualified police or firefighters may be permitted to designate a normal retirement age that is between age 40 and age 70½.

- 2.16 Participant.** Any Employee who has joined the Plan pursuant to the requirements of Article IV. For purposes of section 6.11 of the Plan, the term Participant includes an employee or former Employee of the Employer who has not yet received all of the payments of benefits to which he/she is entitled under the Plan.
- 2.17 Percentage Limitation.** 100 percent of the participant's Includible Compensation available to be contributed as Deferred Compensation for the taxable year.
- 2.18 Plan Year.** The calendar year.
- 2.19 Retirement.** The first date upon which both of the following shall have occurred with respect to a participant: Severance Event and attainment of age 65.
- 2.20 Severance Event.** A severance of the Participant's employment with the Employer within the meaning of Section 457(d)(1)(A)(ii) of the Code.

In general, a Participant shall be deemed to have experienced a Severance Event for purposes of this Plan when, in accordance with the established practices of the Employer, the employment relationship is considered to have actually terminated. In the case of a Participant who is an independent contractor of the Employer, a Severance Event shall be deemed to have occurred when the Participant's contract under which services are performed has completely expired and terminated, there is no foreseeable possibility that the Employer will renew the contract or enter into a new contract for the Participant's services, and it is not anticipated that the Participant will become an Employee of the Employer, or such other events as may be permitted under the Code.

- 2.21 Trust.** The Trust created under Article VI of the Plan which shall consist of all compensation deferred under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

Article III. Administration

- 3.01 Duties of the Employer.** The Employer shall have the authority to make all discretionary decisions affecting the rights or benefits of Participants which may be required in the administration of this Plan. The Employer's decisions shall be afforded the maximum deference permitted by applicable law.
- 3.02 Duties of Administrator.** The Administrator, as agent for the Employer, shall perform nondiscretionary administrative functions in connection with the Plan, including the maintenance of Participants' Accounts, the provision of periodic reports of the status of each Account, and the disbursement of benefits on behalf of the Employer in accordance with the provisions of this Plan.

Article IV. Participation in the Plan

- 4.01 Initial Participation.** An Employee may become a Participant by entering into a Joinder Agreement prior to the beginning of the calendar month in which the Joinder Agreement is to become effective to defer compensation not yet earned, or such other date as may be permitted under the Code. A new employee may defer compensation in the calendar month during which he or she first becomes an employee if a Joinder Agreement is entered into on or before the first day on which the employee performs services for the Employer.
- 4.02 Amendment of Joinder Agreement.** A Participant may amend an executed Joinder Agreement to change the amount of Includible Compensation not yet earned which is to be deferred (including the reduction of such future deferrals to zero). Such amendment shall become effective as of the beginning of the calendar month commencing after the date the amendment is executed, or such other date as may be permitted under the Code. A Participant may at any time amend his or her Joinder Agreement to change the designated Beneficiary, and such amendment shall become effective immediately.

Article V. Limitations on Deferrals

5.01 Normal Limitation. Except as provided in Section 5.02, the maximum amount of Deferred Compensation for any Participant for any taxable year, shall not exceed the lesser of the Dollar Limitation or the Percentage Limitation.

5.02 Catch-Up Limitations.

- (a) *Catch-up Contributions for Participants Age 50 and Over:* A Participant who has attained the age of 50 before the close of the Plan Year, and with respect to whom no other elective deferrals may be made to the Plan for the Plan Year by reason of the Normal Limitation of Section 5.01, may enter into a Joinder Agreement to make elective deferrals in addition to those permitted by the Normal Limitation in an amount not to exceed the lesser of:
- (1) The applicable dollar amount as defined in Section 414(v)(2)(B) of the Code, as adjusted for the cost-of-living in accordance with Section 414(v)(2)(C) of the Code; or
 - (2) The excess (if any) of
 - (i) The Participant's Includible Compensation for the year, or
 - (ii) Any other elective deferrals of the Participant for such year which are made without regard to this Section 5.02(a).

An additional contribution made pursuant to this Section 5.02(a) shall not, with respect to the year in which the contribution is made, be subject to any otherwise applicable limitation contained in Section 5.01 above, or be taken into account in applying such limitation to other contributions or benefits under the Plan or any other plan. This Section 5.02(a) shall not apply in any year to which a higher limit under Section 5.02(b) applies.

- (b) *Last Three Years Catch-up Contribution:* For each of the last three (3) taxable years for a Participant ending before his or her attainment of Normal Retirement Age, the maximum amount of Deferred Compensation shall be the lesser of:
- (1) The 457 Catch-Up Dollar Limitation, or
 - (2) The sum of
 - (i) The Normal Limitation for the taxable year, and
 - (ii) The Normal Limitation for each prior taxable year of the Participant commencing after 1978 less the amount of the Participant's Deferred Compensation for such prior taxable years. A prior taxable year shall be taken into account under the preceding sentence only if (x) the Participant was eligible to participate in the Plan for such year, and (y) compensation (if any) deferred under the Plan (or such other plan) was subject to the Normal Limitation.

5.03 Sick, Vacation and Back Pay. If the Employer so elects, a Participant may defer all or a portion of the value of the Participant's accumulated sick pay, accumulated vacation pay and/or back pay, provided that such deferral does not cause total deferrals on behalf of the Participant to exceed the Dollar Limitation or Percentage Limitation (including any Catch-up Dollar Limitation) for the year of deferral. The election to defer such sick, vacation and/or back pay must be made in a manner and at a time permitted under Section 1.457-4(d) of the Income Tax Regulations.

For Plan Years beginning before January 1, 2009, pursuant to proposed IRS regulations issued under Section 415 of the Code, the Plan may permit deferrals from compensation, including sick, vacation and back pay, so long as the amounts are paid within 2½ months following severance from employment and the other requirements of Sections

457(b) and 415 of the Code are met. For Plan Years beginning on or after January 1, 2009, pursuant to final IRS regulations issued under Section 415 of the Code, the Plan may permit deferrals from compensation, including sick, vacation and back pay, so long as the amounts are paid by the later of: (i) 2½ months following severance from employment, and (ii) the end of the calendar year that includes the date of such severance from employment, and the other requirements of Sections 457(b) and 415 of the Code are met. Additionally, the agreement to defer such amounts must be entered into prior to the first day of the month in which the amounts otherwise would be paid or made available.

- 5.04 Other Plans.** Notwithstanding any provision of the Plan to the contrary, the amount excludible from a Participant's gross income under this Plan or any other eligible deferred compensation plan under Section 457(b) of the Code shall not exceed the limits set forth in Sections 457(b) and 414(v) of the Code.
- 5.05 Excess Deferrals.** Any amount that exceeds the maximum Dollar Limitation or Percentage Limitation (including any applicable Catch-Up Dollar Limitation) for a taxable year, shall constitute an excess deferral for that taxable year. Any excess deferral shall be distributed in accordance with the requirements for excess deferrals under the Code and Section 1.457-4(e) of the Income Tax Regulations or other applicable Internal Revenue Service guidance.
- 5.06 Protection of Person Who Serves in a Uniformed Service.** An Employee whose employment is interrupted by qualified military service under Section 414(u) of the Code or who is on leave of absence for qualified military service under Section 414(u) of the Code may elect to contribute additional Deferred Compensation upon resumption of employment with the Employer equal to the maximum Deferred Compensation that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Includible Compensation) without the interruption or leave, reduced by Deferred Compensation, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

Article VI. Trust and Investment of Accounts

- 6.01 Investment of Deferred Compensation.** A Trust is hereby created to hold all the assets of the Plan (except Deemed IRA contributions and earnings thereon held pursuant to Article IX) for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The trustee shall be the Employer or such other person that agrees to act in that capacity hereunder.
- 6.02 Investment Powers.** The trustee or the Administrator, acting as agent for the trustee, shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is directed by Participants, pursuant to Section 6.05 or to the extent that such powers are restricted by applicable law.
- (a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, loans, notes, debentures, certificates of deposit, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit. Assets of the Trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.
 - (b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans described under Sections 457 or 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plans the declaration of trust of such commonly collective, or commingled trust fund shall constitute a part of this Plan.
 - (c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled

or collective basis with the assets of any other 457 plan or trust qualified under Section 401(a) of the Code or any other plan described in Section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Administrator, or such custodian as the Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.

- (d) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.
- (e) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.
- (f) Upon such terms as may be deemed advisable by the Employer or the Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the Plans to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.
- (g) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.
- (h) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Administrator, in any bank or banks.
- (i) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

6.03 Taxes and Expenses. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon the Plan, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Administrator, as may be agreed upon from time to time by the Employer and the Administrator, and reimbursement for reasonable expenses incurred by the Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust.

6.04 Payment of Benefits. The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Administrator, or by any custodian or other person so authorized by the Employer to make such disbursement. The Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.

6.05 Investment Funds. In accordance with uniform and nondiscriminatory rules established by the Employer and the Administrator, the Participant may direct his or her Accounts to be invested in one (1) or more investment

funds available under the Plan; provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Employer. Neither the Employer, the Administrator, nor any other person shall be liable for any losses incurred by virtue of following such directions or with any reasonable administrative delay in implementing such directions.

- 6.06 Valuation of Accounts.** As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and Beneficiaries.
- 6.07 Participant Loan Accounts.** Participant loan accounts shall be invested in accordance with Section 8.03 of the Plan. Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Sections 6.05 and 6.06.
- 6.08 Crediting of Accounts.** The Participant's Account shall reflect the amount and value of the investments or other property obtained by the Employer through the investment of the Participant's Deferred Compensation pursuant to Sections 6.05 and 6.06. It is anticipated that the Employer's investments with respect to a Participant will conform to the investment preference specified in the Participant's Joinder Agreement, but nothing herein shall be construed to require the Employer to make any particular investment of a Participant's Deferred Compensation. Each Participant shall receive periodic reports, not less frequently than annually, showing the then current value of his or her Account.
- 6.09 Post-Severance Transfers Among Eligible Deferred Compensation Plans.**
- (a) *Incoming Transfers:* A transfer may be accepted from an eligible deferred compensation plan maintained by another employer and credited to a Participant's or Beneficiary's Account under the Plan if:
- (1) In the case of a transfer for a Participant, the Participant has had a Severance Event with that employer and become an Employee of the Employer;
 - (2) The other employer's plan provides that such transfer will be made; and
 - (3) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer.
- The Employer may require such documentation from the predecessor plan as it deems necessary to effectuate the transfer in accordance with Section 457(e)(10) of the Code, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. The Employer may refuse to accept a transfer in the form of assets other than cash, unless the Employer and the Administrator agree to hold such other assets under the Plan.
- (b) *Outgoing Transfers:* An amount may be transferred to an eligible deferred compensation plan maintained by another employer, and charged to a Participant's or Beneficiary's Account under this Plan, if:
- (1) In the case of a transfer for a Participant, the Participant has a Severance Event with the Employer and becomes an employee of the other employer;
 - (2) The other employer's plan provides that such transfer will be accepted;
 - (3) The Participant or Beneficiary and the employers have signed such agreements as are necessary to assure that the Employer's liability to pay benefits to the Participant has been discharged and assumed by the other employer; and

- (4) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer.

The Employer may require such documentation from the other plan as it deems necessary to effectuate the transfer, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. Such transfers shall be made only under such circumstances as are permitted under Section 457 of the Code and the regulations thereunder.

6.10 Transfers Among Eligible Deferred Compensation Plans of the Employer.

- (a) *Incoming Transfers.* A transfer may be accepted from another eligible deferred compensation plan maintained by the Employer and credited to a Participant's or Beneficiary's Account under the Plan if:
- (1) The Employer's other plan provides that such transfer will be made;
 - (2) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and
 - (3) The Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Plan unless the Participant or Beneficiary is performing services for the Employer.
- (b) *Outgoing Transfers.* A transfer may be accepted from another eligible deferred compensation plan maintained by the Employer and credited to a Participant's or Beneficiary's Account under the Plan if:
- (1) The Employer's other plan provides that such transfer will be accepted;
 - (2) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and
 - (3) The Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Employer's other eligible deferred compensation plan unless the Participant or Beneficiary is performing services for the Employer.

6.11 Eligible Rollover Distributions.

- (a) *Incoming Rollovers:* An eligible rollover distribution may be accepted from an eligible retirement plan and credited to a Participant's Account under the Plan. The Employer may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of Section 402(c)(8)(B) of the Code. The Plan shall separately account (in one or more separate accounts) for eligible rollover distributions from any eligible retirement plan.
- (b) *Outgoing Rollovers:* Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (c) *Definitions:*
- (1) *Eligible Rollover Distribution:* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not

include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Sections 401(a)(9) and 457(d)(2) of the Code; and any distribution made as a result of an unforeseeable emergency of the employee. For purposes of distributions from other eligible retirement plans rolled over into this Plan, the term eligible rollover distribution shall not include 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), such as after-tax contributions.

- (2) *Eligible Retirement Plan:* An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Sections 403(a) or 403(b) of the Code, a qualified trust described in Section 401(a) of the Code, or an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by an eligible governmental employer described in Section 457(e)(1)(A) of the Code, that accepts the distributee's eligible rollover distribution.
- (3) *Distributee:* 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 Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.
- (4) *Direct Rollover:* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

6.12 Trustee-to-Trustee Transfers to Purchase Permissive Service Credit. All or a portion of a Participant's Account may be transferred directly to the trustee of a defined benefit governmental plan (as defined in Section 414(d) of the Code) if such transfer is (a) for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under such plan, or (b) a repayment to which Section 415 of the Code does not apply by reason of subsection (k)(3) thereof, within the meaning of Section 457(e)(17) of the Code.

6.13 Treatment of Distributions of Amounts Previously Rolled Over From 401(a) and 403(b) Plans and IRAs. For purposes of Section 72(t) of the Code, a distribution from this Plan shall be treated as a distribution from a qualified retirement plan described in Section 4974(c)(1) of the Code to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in Section 4974(c) of the Code).

6.14 Employer Liability. In no event shall the Employer's liability to pay benefits to a Participant under this Plan exceed the value of the amounts credited to the Participant's Account; neither the Employer nor the Administrator shall be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

Article VII. Benefits

7.01 Retirement Benefits and Election on Severance Event.

- (a) *General Rule:* Except as otherwise provided in this Article VII, the distribution of a Participant's Account shall commence as of a Participant's Automatic Distribution Date, and the distribution of such benefits shall be made in accordance with one of the payment options described in Section 7.02. Notwithstanding the foregoing, but subject to the following paragraphs of this Section 7.01, the Participant may elect following a Severance Event to have the distribution of benefits commence on a fixed determinable date other than that described in the preceding sentence, but not later than April 1 of the year following the year of the Participant's Retirement or attainment of age 70½, whichever is later. The Participant's right to change his or her election with respect to commencement of the distribution of benefits shall not be restrained by this Section 7.01.

Notwithstanding the foregoing, the Administrator, in order to ensure the orderly administration of this provision, may establish a deadline after which such election to defer the commencement of distribution of benefits shall not be allowed.

- (b) *Loans*: Notwithstanding the foregoing provisions of this Section 7.01, no election to defer the commencement of benefits after a Severance Event shall operate to defer the distribution of any amount in the Participant's loan account in the event of a default of the Participant's loan.

7.02 Payment Options. As provided in Sections 7.01, 7.04 and 7.05, a Participant may elect to have value of the Participant's Account distributed in accordance with one of the following payment options, provided that such option is consistent with the limitations set forth in Section 7.03:

- (a) Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Participant, continuing until his or her Account is exhausted;
- (b) One lump-sum payment;
- (c) Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain chosen by the Participant;
- (d) Annual Payments equal to the minimum distributions required under Section 401(a)(9) of the Code, including the incidental death benefit requirements of Section 401(a)(9)(G), over the life expectancy of the Participant or over the life expectancies of the Participant and his or her Beneficiary;
- (e) Payments equal to payments made by the issuer of a retirement annuity policy acquired by the Employer;
- (f) A split distribution under which payments under options (a), (b), (c) or (e) commence or are made at the same time, as elected by the Participant under Section 7.01, provided that all payments commence (or are made) by the latest benefit commencement date permitted under Section 7.01;
- (g) Any other payment option elected by the Participant and agreed to by the Employer and Administrator.

A Participant's selection of a payment option under Subsections (a), (c), or (g) above may include the selection of an automatic annual cost-of living increase. Such increase will be based on the rise in the Consumer Price Index for All Urban Consumers (CPI-U) from the third quarter of the last year in which a cost-of-living increase was provided to the third quarter of the current year. Any increase will be made in periodic payment checks beginning the following January.

7.03 Limitation on Options. No payment option may be selected by a Participant under subsections 7.02(a) or (c) unless the amount of any installment is not less than \$100. No payment option may be selected by a Participant under Sections 7.02, 7.04, or 7.05 unless it satisfies the requirements of Sections 401(a)(9) and 457(d)(2) of the Code, including that payments commencing before the death of the Participant shall satisfy the incidental death benefit requirements under Section 401(a)(9)(G) of the Code.

7.04 Minimum Required Distributions. Notwithstanding any provision of the Plan to the contrary, the Plan shall comply with the minimum required distribution rules set forth in Sections 457(d)(2) and 401(a)(9) of the Code, including the incidental death benefit requirements of Section 401(a)(9)(G) of the Code.

7.05 Post-Retirement Death Benefits.

- (a) Should the Participant die after he or she has begun to receive benefits under a payment option, the remaining payments, if any, under the payment option shall continue until the Administrator receives notice of the Participant's death. Upon notification of the Participant's death, benefits shall be payable to the Participant's Beneficiary commencing not later than December 31 of the year following the year of the Participant's death, provided that the Beneficiary may elect to begin benefits earlier than that date.

- (b) In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining benefits payable under the payment option applicable to the Beneficiary shall, subject to the requirements set forth in Section 7.04, be paid to an additional beneficiary designated by the Beneficiary. If no additional beneficiary is named, payment shall be made to the Beneficiary's estate in a lump sum.
- (c) In the event that the Participant's estate is the Beneficiary, payment shall be made to the estate in a lump sum.

7.06 Pre-Retirement Death Benefits.

- (a) Should the Participant die before he or she has begun to receive the benefits provided by Section 7.01, the value of the Participant's Account shall be payable to the Beneficiary commencing not later than December 31 of the year following the year of the Participant's death, provided that the Beneficiary may elect to begin benefits earlier than that date.
- (b) In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining value of the Participant's Account shall be paid to the estate of the Beneficiary in a lump sum. In the event that the Participant's estate is the Beneficiary, payment shall be made to the estate in a lump sum.

7.07 Unforeseeable Emergencies.

- (a) In the event an unforeseeable emergency occurs, a Participant or Beneficiary may apply to the Employer to receive that part of the value of his or her Account that is reasonably needed to satisfy the emergency need. If such an application is approved by the Employer, the Participant or Beneficiary shall be paid only such amount as the Employer deems necessary to meet the emergency need, but payment shall not be made to the extent that the financial hardship may be relieved through cessation of deferral under the Plan, insurance or other reimbursement, or liquidation of other assets to the extent such liquidation would not itself cause severe financial hardship.
- (b) An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship of a Participant or Beneficiary resulting from an illness or accident of the participant or beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent (as defined in Section 152 of the Code, and, for taxable years beginning on or after January 1, 2005, without regard to Sections 152(b)(1), (b)(2), and (d)(1)(B) of the Code); loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or the Beneficiary. For example, the imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Finally, the need to pay for the funeral expenses of a spouse or a dependent (as defined in section 152 of the Code, and, for taxable years beginning on or after January 1, 2005, without regard to Sections 152(b)(1), (b)(2), and (d)(1)(B) of the Code) may also constitute an unforeseeable emergency. Except as otherwise specifically provided in this Section 7.07(b), the purchase of a home and the payment of college tuition are not unforeseeable emergencies.

7.08 In-Service Distribution of Rollover Contributions. Effective January 1, 2006, the Employer may elect to allow Participants to receive an in-service distribution of amounts attributable to rollover contributions to the Plan. If the Employer has elected to make such distributions available, a Participant that has a separate account attributable to rollover contributions to the Plan may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

7.09 In-Service Distribution to Participants Age 70½ or Older. A Participant who has reached age 70½ and has not yet had a Severance Event, may, at any time, request a distribution of all or a part of his or her Account. A Participant may only receive two (2) such distributions pursuant to this Section 7.09 in any calendar year.

7.10 Distribution De Minimis Accounts. Notwithstanding the foregoing provisions of this Article VII:

- (a) *Mandatory Distribution.* If the value of a Participant's Account is less than \$1,000, the Participant's Account shall be paid to the Participant in a single lump sum distribution, provided that:
 - (1) No amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution; and
 - (2) There has been no prior distribution under the Plan to the Participant pursuant to this Section 7.10.
- (b) *Voluntary Distribution.* If the value of the Participant's Account is at least \$1,000 but not more than the dollar limit under Section 411(a)(11)(A) of the Code, the Participant may elect to receive his or her entire Account in a lump sum payment if:
 - (1) No amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution; and
 - (2) There has been no prior distribution under the Plan to the Participant pursuant to this Section 7.10.

Article VIII. Loans to Participants

8.01 Availability of Loans to Participants.

- (a) The Employer may elect to make loans available to Participants in this Plan. If the Employer has elected to make loans available to Participants, a Participant may apply for a loan from the Plan subject to the limitations and other provisions of this Article. However, no loans are available from Deemed IRAs.
- (b) The Employer shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by the Administrator and are not inconsistent with the provisions of this Article, and that loans are made available to all Participants on a reasonably equivalent basis.

8.02 Terms and Conditions of Loans to Participants. Any loan by the Plan to a Participant under Section 8.01 of the Plan shall satisfy the following requirements:

- (a) *Availability.* Loans shall be made available to all Participants on a reasonably equivalent basis.
- (b) *Interest Rate.* Loans must be adequately secured and bear a reasonable interest rate.
- (c) *Loan Limit.* No Participant loan shall exceed the present value of the Participant's Account.
- (d) *Foreclosure.* In the event of default on any installment payment, the outstanding balance of the loan shall be a deemed distribution. In such event, an actual distribution of a plan loan offset amount will not occur until a distributable event occurs in the Plan.
- (e) *Reduction of Account.* Notwithstanding any other provision of this Plan, the portion of the Participant's Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan.
- (f) *Amount of Loan.* At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the Participant from the Plan and from all other plans of the Employer that are either eligible deferred compensation plans described in section 457(b) of the Code or qualified employer plans under Section 72(p)(4) of the Code shall not exceed the lesser of:

- (1) \$50,000, reduced by the excess (if any) of
 - (i) The highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan is made; or
 - (ii) The outstanding balance of loans from the Plan on the date on which such loan is made; or
 - (2) One-half of the value of the Participant's interest in all of his or her Accounts under this Plan.
- (g) *Application for Loan.* The Participant must give the Employer adequate written notice, as determined by the Employer, of the amount and desired time for receiving a loan. No more than one (1) loan may be made by the Plan to a Participant's in any calendar year. No loan shall be approved if an existing loan from the Plan to the Participant is in default to any extent.
- (h) *Length of Loan.* Any loan issued shall require the Participant to repay the loan in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed five (5) years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time (determined at the time of the loan is made) after the loan is made as the principal residence of the Participant, the five (5) year limit shall not apply. In this event, the period of repayment shall not exceed a reasonable period determined by the Employer. Principal installments and interest payments otherwise due may be suspended for up to one (1) year during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this subsection (h), with a revised payment schedule (within such term) instituted at the end of such period of suspension.
- (i) *Prepayment.* The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.
- (j) *Promissory Note.* The loan shall be evidenced by a promissory note executed by the Participant and delivered to the Employer, and shall bear interest at a reasonable rate determined by the Employer.
- (k) *Security.* The loan shall be secured by an assignment of the participant's right, title and interest in and to his or her Account.
- (l) *Assignment or Pledge.* For the purposes of paragraphs (f) and (g), assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan.
- (m) *Other Terms and Conditions.* The Employer shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the qualification of the Plan and Trust under Section 457 of the Code, or to prevent the treatment of the loan for tax purposes as a distribution to the Participant. The Employer, in its discretion for any reason, may also fix other terms and conditions of the loan, including, but not limited to, the provision of grace periods following an event of default, not inconsistent with the provisions of this Article and Section 72(p) of the Code, and any applicable regulations thereunder.

8.03 Participant Loan Accounts.

- (a) Upon approval of a loan to a Participant by the Employer, an amount not in excess of the loan shall be transferred from the Participant's other investment fund(s), described in Section 6.05 of the Plan, to the Participant's loan account as of the Accounting Date immediately preceding the agreed upon date on which the loan is to be made.

- (b) The assets of a Participant's loan account may be invested and reinvested only in promissory notes received by the Plan from the Participant as consideration for a loan permitted by Section 8.01 of the Plan or in cash. Uninvested cash balances in a Participant's loan account shall not bear interest. Neither the Employer, the Administrator, nor any other person shall be liable for any loss, or by reason of any breach, that results from the Participant's exercise of such control.
- (c) Repayment of principal and payment of interest shall be made by payroll deduction or, where repayment cannot be made by payroll deduction, by check, and shall be invested in one (1) or more other investment funds, in accordance with Section 6.05 of the Plan, as of the next Accounting Date after payment thereof to the Trust. The amount so invested shall be deducted from the Participant's loan account.
- (d) The Employer shall have the authority to establish other reasonable rules, not inconsistent with the provisions of the Plan, governing the establishment and maintenance of Participant loan accounts.

Article IX. Deemed IRAs

9.01 General. This Article IX of the Plan reflects section 602 of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), as amended by the Job Creation and Worker Assistance Act of 2002. This Article is intended as good faith compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and guidance issued thereunder. This Article IX shall supersede the provisions of the Plan to the extent that those provisions are inconsistent with the provisions of this Article IX.

Effective for Plan Years beginning after December 31, 2002, the Employer may elect to allow Employees to make voluntary employee contributions to a separate account or annuity established under the Plan that complies with the requirements of Section 408(q) of the Code and any regulations promulgated thereunder (a "Deemed IRA"). The Plan shall establish a separate account for the designated Deemed IRA contributions of each Employee and any earnings properly allocable to the contributions, and maintain separate recordkeeping with respect to each such Deemed IRA.

9.02 Voluntary Employee Contributions. For purposes of this Article, a voluntary employee contribution means any contribution (other than a mandatory contribution within the meaning of Section 411(c)(2) of the Code) that is made by the Employee and which the Employee has designated, at or prior to the time of making the contribution, as a contribution to which this Article applies.

9.03 Deemed IRA Trust Requirements. This Article shall satisfy the trust requirement under Section 408(q) of the Code and the regulations thereto. IRAs established pursuant to this Article shall be held in one or more trusts or custodial accounts (the "Deemed IRA Trusts"), which shall be separate from the Trust established under the Plan to hold contributions other than Deemed IRA contributions. The Deemed IRA Trusts shall satisfy the applicable requirements of Sections 408 and 408A of the Code, which requirements are set forth in section 9.05 and 9.06, respectively, and shall be established with a trustee or custodian meeting the requirements of Section 408(a)(2) of the Code ("Deemed IRA Trustee"). To the extent that the assets of any Deemed IRAs established pursuant to this Article are held in a Deemed IRA Trust satisfying the requirements of this Section 9.03, such Deemed IRA Trust, and any amendments thereto, is hereby adopted as a trust maintained under this Plan with respect to the assets held therein, and the provisions of such Deemed IRA Trust shall control so long as any assets of any Deemed IRA are held thereunder.

9.04 Reporting Duties. The Deemed IRA Trustee shall be subject to the reporting requirements of Section 408(i) of the Code with respect to all Deemed IRAs that are established and maintained under the Plan.

9.05 Deemed Traditional IRA Requirements. Deemed IRAs established in the form of traditional IRAs shall satisfy the following requirements:

- (a) *Exclusive Benefit.* The Deemed IRA account shall be established for the exclusive benefit of an Employee or his or her Beneficiaries.

(b) *Maximum Annual Contributions.*

- (1) Except in the case of a rollover contribution (as permitted by Sections 402(c), 402(e)(6), 403(a)(4), 403(b)(8), 403(b)(10), 408(d)(3) and 457(e)(16) of the Code), no contributions will be accepted unless they are in cash, and the total of such contributions shall not exceed:

\$3,000 for any taxable year beginning in 2002 through 2004;
 \$4,000 for any taxable year beginning in 2005 through 2007; and
 \$5,000 for any taxable year beginning in 2008 and years thereafter.

After 2008, the limit will be adjusted by the Secretary of the Treasury for cost-of-living-increases under Section 219(b)(5)(C) of the Code. Such adjustments will be in multiples of \$500.

- (2) In the case of an Employee who is 50 or older, the annual cash contribution limit is increased by:

\$500 for any taxable year beginning in 2002 through 2005; and
 \$1,000 for any taxable year beginning in 2006 and thereafter.

- (3) No contributions will be accepted under a SIMPLE IRA plan established by any employer pursuant to Section 408(p) of the Code. Also, no transfer or rollover of funds attributable to contributions made by a particular employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is an IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the 2-year period beginning on the date the Employee first participated in that employer's SIMPLE IRA plan.

- (c) *Collectibles.* If the Deemed IRA Trust acquires collectibles with within the meaning of Section 408(m) of the Code after December 31, 1981, Deemed IRA Trust assets will be treated as a distribution in an amount equal to the cost of such collectibles.

- (d) *Life Insurance Contracts.* No part of the Deemed IRA Trust funds will be invested in life insurance contracts.

(e) *Minimum Required Distributions.*

- (1) Notwithstanding any provision of this Deemed IRA to the contrary, the distribution of the Employee's interest in the account shall be made in accordance with the requirements of Section 408(a)(6) of the Code and the Income Tax Regulations thereunder, the provisions of which are herein incorporated by reference. If distributions are made from an annuity contract purchased from an insurance company, distributions thereunder must satisfy the requirements of Q&A-4 of Section 1.401(a)(9)-6T of the Income Tax Regulations (or Section 1.401(a)(9)-6 of the Income Tax Regulations, as applicable), rather than paragraphs (2), (3) and (4) below and Section 9.05(f). The minimum required distributions calculated for this IRA may be withdrawn from another IRA of the Employee in accordance with Q&A-9 of Section 1.408-8 of the Income Tax Regulations.
- (2) The entire value of the account of the Employee for whose benefit the account is maintained will commence to be distributed no later than the first day of April following the calendar year in which such Employee attains age 70½ (the "required beginning date") over the life of such Employee or the lives of such Employee and his or her Beneficiary.
- (3) The amount to be distributed each year, beginning with the calendar year in which the Employee attains age 70½ and continuing through the year of death shall not be less than the quotient obtained by dividing the value of the IRA (as determined under section 9.05(f)(3)) as of the end of the preceding year by the distribution period in the Uniform Lifetime Table in Q&A-2 of Section 401(a)(9)-9 of the Income Tax Regulations, using the Employee's age of his or her birthday in the year. However, if the Employee's sole Beneficiary is his or her surviving spouse and such spouse is more than 10 years younger than the Employee, then the distribution period is determined under the Joint

and Last Survivor Table in Q&A-3 of Section 1.401(a)(9)-9 of the Income Tax Regulations, using the ages as of the Employee's and spouse's birthdays in the year.

- (4) The required minimum distribution for the year the Employee attains age 70½ can be made as late as April 1 of the following year. The required minimum distribution for any other year must be made by the end of such year.
- (f) *Distribution Upon Death.*
- (1) *Death On or After Required Beginning Date.* If the Employee dies on or after the required beginning date, the remaining portion of his or her interest will be distributed at least as rapidly as follows:
- (i) If the Beneficiary is someone other than the Employee's surviving spouse, the remaining interest will be distributed over the remaining life expectancy of the Beneficiary, with such life expectancy determined using the Beneficiary's age as of his or her birthday in the year following the year of the Employee's death, or over the period described in paragraph (1)(iii) below if longer.
 - (ii) If the Employee's sole Beneficiary is the Employee's surviving spouse, the remaining interest will be distributed over such spouse's life or over the period described in paragraph (1)(iii) below if longer. Any interest remaining after such spouse's death will be distributed over such spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death, or, if the distributions are being made over the period described in paragraph (1)(iii) below, over such period.
 - (iii) If there is no Beneficiary, or if applicable by operation of paragraph (1)(i) or (1)(ii) above, the remaining interest will be distributed over the Employee's remaining life expectancy determined in the year of the Employee's death.
 - (iv) The amount to be distributed each year under paragraph (1)(i), (ii), or (iii), beginning with the calendar year following the calendar year of the Employee's death, is the quotient obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of Section 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's or Employee's age in the year specified in paragraph 1(i), (ii), or (iii) and reduced by 1 for each subsequent year.
- (2) *Death Before Required Beginning Date.* If the Employee dies before the required beginning date, his or her entire interest will be distributed at least as rapidly as follows:
- (i) If the Beneficiary is someone other than the Employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Employee's death, over the remaining life expectancy of the Beneficiary, with such life expectancy determined using the age of the Beneficiary as of his or her birthday in the year following the year of the Employee's death, or, if elected, in accordance with paragraph (2)(iii) below.
 - (ii) If the Employee's sole Beneficiary is the Employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Employee's death (or by the end of the calendar year in which the Employee would have attained age 70½, if later), over such spouse's life, or, if elected, in accordance with paragraph (2)(iii) below. If the surviving spouse dies before distributions are required to begin, the

remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's Beneficiary's remaining life expectancy determined using such Beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with paragraph (2)(iii) below. If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death.

- (iii) If there is no Beneficiary, or if applicable by operation of paragraph (2)(i) or (2)(ii) above, the entire interest will be distributed by the end of the calendar year containing the fifth anniversary of the Beneficiary's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under paragraph (2)(ii) above).
 - (iv) The amount to be distributed each year under paragraph (2)(i) or (ii) is the quotient to be obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of Section 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's age in the year specified in paragraph (2)(i) or (ii) and reduced by 1 for each subsequent year.
 - (v) The "value" of the IRA includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of Section 1.408-8 of the Income Tax Regulations.
 - (vi) If the sole Beneficiary is the Employee's surviving spouse, the spouse may elect to treat the IRA as his or her own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a Beneficiary.
- (g) *Nonforfeitable.* The interest of an Employee in the balance in his or her Deemed IRA account is nonforfeitable at all times.
 - (h) *Reporting.* The Deemed IRA Trustee of a Deemed Traditional IRA shall furnish annual calendar-year reports concerning the status of the Deemed IRA account and such information concerning required minimum distributions as is prescribed by the Commissioner of Internal Revenue.
 - (i) *Substitution of Deemed IRA Trustee.* If the Deemed IRA Trustee is a non-bank trustee or custodian, the non-bank trustee or custodian shall substitute another trustee or custodian if the non-bank trustee or custodian receives notice from the Commissioner of Internal Revenue that such substitution is required because it has failed to comply with the requirements of Section 1.408-2(e) of the Income Tax Regulations and Section 1.408-2T of the Income Tax Regulations.

9.06 Deemed Roth IRA Requirements. Deemed IRAs established in the form of Roth IRAs shall satisfy the following requirements:

- (a) *Exclusive Benefit.* The Deemed Roth IRA shall be established for the exclusive benefit of an Employee or his or her Beneficiaries.
- (b) *Maximum Annual Contributions.*
 - (1) *Maximum Permissible Amount.* Except in the case of a qualified rollover contribution or recharacterization (as defined in (6) below), no contribution will be accepted unless it is in cash and the total of such contributions to all the Employee's Roth IRAs for a taxable year does not exceed

the applicable amount (as defined in (2) below), or the Employee's compensation (as defined in (8) below) if less, for that taxable year. The contribution described in the previous sentence that may not exceed the lesser of the applicable amount or the Employee's compensation is referred to as a "regular contribution." A "qualified rollover contribution" is a rollover contribution that meets the requirements of Section 408(d)(3) of the Code, except the one-rollover-per-year rule of Section 408(d)(3)(B) does not apply if the rollover contribution is from another IRA other than a Roth IRA (a "nonRoth IRA"). Contributions may be limited under (3) through (5) below.

(2) *Applicable Amount.* The applicable amount is determined under (i) or (ii) below:

(i) If the Employee is under age 50, the applicable amount is:

\$3,000 for any taxable year beginning in 2002 through 2004;
 \$4,000 for any taxable year beginning in 2005 through 2007; and
 \$5,000 for any taxable year beginning in 2008 and years thereafter.

(ii) If the Employee is 50 or older, the applicable amount is:

\$3,500 for any taxable year beginning in 2002 through 2004;
 \$4,500 for any taxable year beginning in 2005;
 \$5,000 for any taxable year beginning in 2006 through 2007; and
 \$6,000 for any taxable year beginning in 2008 and years thereafter.

After 2008, the limits in paragraph (2)(i) and (ii) above will be adjusted by the Secretary of the Treasury for cost-of-living increases under Section 219(b)(5)(C) of the Code. Such adjustments will be in multiples of \$500.

(3) If (i) and/or (ii) below apply, the maximum regular contribution that can be made to all the Employee's Roth IRAs for the taxable year is the smaller amount determined under (i) or (ii).

(i) The maximum regular contribution is phased out ratably between certain levels of modified adjusted gross income ("modified AGI," defined in (7) below) in accordance with the following table:

Filing Status	Modified AGI		
	Full Contribution	Phase-out Range	No Contribution
Single or Head of Household	\$95,000 or less	Between \$95,000 and \$110,000	\$110,000 or more
Joint Return or Qualifying Widower	\$150,000 or less	Between \$150,000 and \$160,000	\$160,000 or more
Married-Separate Return	\$0	Between \$0 and \$10,000	\$10,000 or more

If the Employee's modified AGI for a taxable year is in the phase-out range, the maximum regular contribution determined under this table for that taxable year is rounded up to the next multiple of \$10 and not reduced below \$200.

- (ii) If the Employee makes regular contributions to both Roth and nonRoth IRAs for a taxable year, the maximum regular contribution that can be made to all the Employee's Roth IRAs for that taxable year is reduced by the regular contributions made to the Employee's nonRoth IRAs for the taxable year.
- (4) *Qualified Rollover Contribution Limit.* A rollover from a nonRoth IRA cannot be made to this IRA if, for the year the amount is distributed from the nonRoth IRA, (i) the Employee is married and files a separate return, (ii) the Employee is not married and has modified AGI in excess of \$100,000 or (iii) the Employee is married and together the Employee and the Employee's spouse have modified AGI in excess of \$100,000. For purposes of the preceding sentence, a husband and wife are not treated as married for a taxable year if they have lived apart at all times during that taxable year and file separate returns for the taxable year.
 - (5) *SIMPLE IRA Limits.* No contributions will be accepted under a SIMPLE IRA plan established by any employer pursuant to Section 408(p) of the Code. Also, no transfer or rollover of funds attributable to contributions made by a particular employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is, an IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the 2-year period beginning on the date the Employee first participated in that employer's SIMPLE IRA plan.
 - (6) *Recharacterization.* A regular contribution to a nonRoth IRA may be recharacterized pursuant to the rules in Section 1.408A-5 of the Income Tax Regulations as a regular contribution to this IRA, subject to the limits in (3) above.
 - (7) *Modified AGI.* For purposes of (3) and (4) above, an Employee's modified AGI for a taxable year is defined in Section 408A(c)(3)(C)(i) of the Code and does not include any amount included in adjusted gross income as a result of a rollover from a nonRoth IRA (a "conversion").
 - (8) *Compensation.* For purposes of (1) above, compensation is defined as wages, salaries, professional fees, or other amounts derived from or received for personal services actually rendered (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses) and includes earned income, as defined in Section 401(c)(2) of the Code (reduced by the deduction the self-employed individual takes for contributions made to a self-employed retirement plan). For purposes of this definition, Section 401(c)(2) of the Code shall be applied as if the term trade or business for purposes of Section 1402 of the Code included service described in subsection (c)(6). Compensation does not include amounts derived from or received as earnings or profits from property (including but not limited to interest and dividends) or amounts not includible in gross income. Compensation also does not include any amount received as a pension or annuity or as deferred compensation. The term "compensation" shall include any amount includible in the Employee's gross income under Section 71 of the Code with respect to a divorce or separation instrument described in subparagraph (A) of Section 71(b)(2) of the Code. In the case of a married Employee filing a joint return, the greater compensation of his or her spouse is treated as his or her own compensation but only to the extent that such spouse's compensation is not being used for purposes of the spouse making a contribution to a Roth IRA or a deductible contribution to a nonRoth IRA.
- (c) *Collectibles.* If the Deemed IRA Trust acquires collectibles within the meaning of Section 408(m) of the Code after December 31, 1981, Deemed IRA Trust assets will be treated as a distribution in an amount equal to the cost of such collectibles.

- (d) *Life Insurance Contracts.* No part of the Deemed IRA Trust funds will be invested in life insurance contracts.
- (e) *Distributions Before Death.* No amount is required to be distributed prior to the death of the Employee for whose benefit the account was originally established.
- (f) *Minimum Required Distributions.*
- (1) Notwithstanding any provision of this IRA to the contrary, the distribution of the Employee's interest in the account shall be made in accordance with the requirements of Section 408(a)(6) of the Code, as modified by section 408A(c)(5), and the regulations thereunder, the provisions of which are herein incorporated by reference. If distributions are made from an annuity contract purchased from an insurance company, distributions thereunder must satisfy the requirements of section 1.401(a)(9)-6T of the Temporary Income Tax Regulations (taking into account Section 408A(c)(5) of the Code) (or Section 1.401(a)(9)-6 of the Income Tax Regulations, as applicable), rather than the distribution rules in paragraphs (2), (3) and (4) below.
- (2) Upon the death of the Employee, his or her entire interest will be distributed at least as rapidly as follows:
- (i) If the Beneficiary is someone other than the Employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the year of the Employee's death, over the remaining life expectancy of the Beneficiary, with such life expectancy determined using the age of the beneficiary as of his or her birthday in the year following the year of the Employee's death, or, if elected, in accordance with paragraph (2)(iii) below.
- (ii) If the Employee's sole Beneficiary is the Employee's surviving spouse, the entire interest will be distributed starting by the end of the calendar year following the calendar year of the Employee's death (or by the end of the calendar year in which the Employee would have attained age 70½, if later), over such spouse's life, or, if elected, in accordance with paragraph (2)(iii) below. If the surviving spouse dies before distributions are required to begin, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's Beneficiary's remaining life expectancy determined using such Beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with paragraph (2)(iii) below. If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death.
- (iii) If there is no Beneficiary, or if applicable by operation of paragraph (2)(i) or (2)(ii) above, the entire interest will be distributed the end of the calendar year containing the fifth anniversary of the Employee's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under paragraph 2(ii) above).
- (iv) The amount to be distributed each year under paragraph (2)(i) or (ii) is the quotient obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of Section 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's age in the year specified in paragraph (2)(i) or (ii) and reduced by 1 for each subsequent year.

- (3) The “value” of the IRA includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of Section 1.408-8 of the Income Tax Regulations.
- (4) If the sole Beneficiary is the Employee’s surviving spouse, the spouse may elect to treat the IRA as his or her own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a Beneficiary.
- (g) *Nonforfeitable.* The interest of an Employee in the balance in his or her account is nonforfeitable at all times.
- (h) *Reporting.* The Deemed IRA Trustee of a Deemed Roth IRA shall furnish annual calendar-year reports concerning the status of the Deemed IRA account and such information concerning required minimum distributions as is prescribed by the Commissioner of Internal Revenue.
- (i) *Substitution of Deemed IRA Trustee.* If the Deemed IRA Trustee is a non-bank trustee or custodian, the non-bank trustee or custodian shall substitute another trustee or custodian if the non-bank trustee or custodian receives notice from the Commissioner of Internal Revenue that such substitution is required because it has failed to comply with the requirements of Section 1.408-2(e) of the Income Tax Regulations and Section 1.408-2T of the Income Tax Regulations.

Article X. Non-Assignability

10.01 General. Except as provided in Article VIII and Section 10.02, no Participant or Beneficiary shall have any right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights are expressly declared to be non-assignable and non-transferable.

10.02 Domestic Relations Orders.

- (a) *Allowance of Transfers:* To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) that (1) relates to the provision of child support, alimony payments, or marital property rights and (2) is made pursuant to a state domestic relations law, and (3) is permitted under Sections 414(p)(11) and (12) of the Code, any portion of a Participant’s Account may be paid or set aside for payment to a spouse, former spouse, child, or other dependent of the Participant (an “Alternate Payee”). Where necessary to carry out the terms of such an order, a separate Account shall be established with respect to the Alternate Payee who shall be entitled to make investment selections with respect thereto in the same manner as the Participant. Any amount so set aside for an Alternate Payee shall be paid in accordance with the form and timing of payment specified in the order. Nothing in this Section shall be construed to authorize any amount to be distributed under the Plan at a time or in a form that is not permitted under Section 457(b) of the Code and is explicitly permitted under the uniform procedures described in Section 10.2(d) below. Notwithstanding the foregoing sentence, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State, then the amount of the Participant’s Account shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order. Any payment made to a person pursuant to this Section shall be reduced by any required income tax withholding.
- (b) *Release from Liability to Participant:* The Employer’s liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to an Alternate Payee to paragraph (a) of this Section and the Participant and his or her Beneficiaries shall be deemed to have released the Employer and the Plan Administrator from any claim with respect to such amounts.

- (c) *Participation in Legal Proceedings*: The Employer and Administrator shall not be obligated to defend against or set aside any judgment, decree, or order described in paragraph (a) or any legal order relating to the garnishment of a Participant's benefits, unless the full expense of such legal action is borne by the Participant. In the event that the Participant's action (or inaction) nonetheless causes the Employer or Administrator to incur such expense, the amount of the expense may be charged against the Participant's Account and thereby reduce the Employer's obligation to pay benefits to the Participant. In the course of any proceeding relating to divorce, separation, or child support, the Employer and Administrator shall be authorized to disclose information relating to the Participant's Account to the Alternate Payee (including the legal representatives of the Alternate Payee), or to a court.
- (d) *Determination of Validity of Domestic Relations Orders*: The Administrator shall establish uniform procedures for determining the validity of any domestic relations order. The Administrator's determinations under such procedures shall be conclusive and binding on all parties and shall be afforded the maximum amount of deference permitted by law.

10.03 IRS Levy. Notwithstanding Section 10.01, the Administrator may pay from a Participant's or Beneficiary's Account balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

10.04 Mistaken Contribution. To the extent permitted by applicable law, if any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

10.05 Payments to Minors and Incompetents. If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such persons as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

10.06 Procedure When Distributee Cannot Be Located. The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Employer or Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guarantee Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Trust shall continue to hold the benefits due such person.

Article XI. Relationship to Other Plans and Employment Agreements

This Plan serves in addition to any other retirement, pension, or benefit plan or system presently in existence or hereinafter established for the benefit of the Employer's employees, and participation hereunder shall not affect benefits receivable under any such plan or system. Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement between any Participant and the Employer or to give any Participant the right to be retained in the employ of the Employer. Nor shall anything herein be construed to modify the terms of any employment contract or agreement between a Participant and the Employer.

Article XII. Amendment or Termination of Plan

The Employer may at any time amend this Plan provided that it transmits such amendment in writing to the Administrator at least 30 days prior to the effective date of the amendment. The consent of the Administrator shall not be required in order for

such amendment to become effective, but the Administrator shall be under no obligation to continue acting as Administrator hereunder if it disapproves of such amendment.

The Administrator may at any time propose an amendment to the Plan by an instrument in writing transmitted to the Employer at least 30 days before the effective date of the amendment. Such amendment shall become effective unless, within such 30-day period, the Employer notifies the Administrator in writing that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as Administrator hereunder.

The Employer may at any time terminate this Plan. In the event of termination, assets of the Plan shall be distributed to Participants and Beneficiaries as soon as administratively practicable following termination of the Plan. Alternatively, assets of the Plan may be transferred to an eligible deferred compensation plan maintained by another eligible governmental employer within the same State if (a) all assets held by the Plan (other than Deemed IRAs) are transferred; (b) the receiving plan provides for the receipt of transfers; (c) the Participants and Beneficiaries whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and (d) the Participants or Beneficiaries whose deferred amounts are being transferred is not eligible for additional annual deferrals in the receiving plan unless the Participants or Beneficiaries are performing services for the employer maintaining the receiving plan.

Except as may be required to maintain the status of the Plan as an eligible deferred compensation plan under Section 457(b) of the Code or to comply with other applicable laws, no amendment or termination of the Plan shall divest any Participant of any rights with respect to compensation deferred before the date of the amendment or termination.

Article XIII. Applicable Law

This Plan and Trust shall be construed under the laws of the state where the Employer is located and is established with the intent that it meet the requirements of an “eligible deferred compensation plan” under Section 457(b) of the Code, as amended. The provisions of this Plan and Trust shall be interpreted wherever possible in conformity with the requirements of that Section of the Code.

In addition, notwithstanding any provision of the Plan to the contrary, the Plan shall be administered in compliance with the requirements of Section 414(u) of the Code.

Article XIV. Gender and Number

The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.

DECLARATION OF TRUST

This Declaration of Trust (the “Group Trust Agreement”) is made as of the 19th day of May, 2001, by Vantage Trust Company, which declares itself to be the sole Trustee of the trust hereby created.

WHEREAS, the ICMA Retirement Trust was created as a vehicle for the commingling of the assets of governmental plans and governmental units described in Section 818(a)(6) of the Internal Revenue Code of 1986, as amended, pursuant to a Declaration of Trust dated October 4, 1982, as subsequently amended, a copy of which is attached hereto and incorporated by reference as set out below (the “ICMA Declaration”); and

WHEREAS, the trust created hereunder (the “Group Trust”) is intended to meet the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, and is established as a common trust fund within the meaning of Section 391:1 of Title 35 of the New Hampshire Revised Statutes Annotated, to accept and hold for investment purposes the assets of the Deferred Compensation and Qualified Plans held by and through the ICMA Retirement Trust.

NOW, THEREFORE, the Group Trust is created by the execution of this Declaration of Trust by the Trustee and is established with respect to each Deferred Compensation and Qualified Plan by the transfer to the Trustee of such Plan’s assets in the ICMA Retirement Trust, by the Trustees thereof, in accord with the following provisions:

- (a) *Incorporation of ICMA Declaration by Reference; ICMA By-Laws.* Except as otherwise provided in this Group Trust Agreement, and to the extent not inconsistent herewith, all provisions of the ICMA Declaration are incorporated herein by reference and made a part hereof, to be read by substituting the Group Trust for the Retirement Trust and the Trustee for the Board of Trustees referenced therein. In this respect, unless the context clearly indicates otherwise, all capitalized terms used herein and defined in the ICMA Declaration have the meanings assigned to them in the ICMA Declaration. In addition, the By-Laws of the ICMA Retirement Trust, as the same may be amended from time-to-time, are adopted as the By-Laws of the Group Trust to the extent not inconsistent with the terms of this Group Trust Agreement.

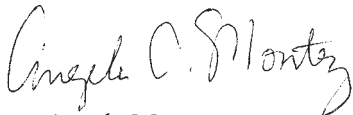
Notwithstanding the foregoing, the terms of the ICMA Declaration and By-Laws are further modified with respect to the Group Trust created hereunder, as follows:

1. any reporting, distribution, or other obligation of the Group Trust vis-à-vis any Deferred Compensation Plan, Qualified Plan, Public Employer, Public Employer Trustee, or Employer Trust shall be deemed satisfied to the extent that such obligation is undertaken by the ICMA Retirement Trust (in which case the obligation of the Group Trust shall run to the ICMA Retirement Trust); and
 2. all provisions dealing with the number, qualification, election, term and nomination of Trustees shall not apply, and all other provisions relating to trustees (including, but not limited to, resignation and removal) shall be interpreted in a manner consistent with the appointment of a single corporate trustee.
- (b) *Compliance with Revenue Procedure 81-100.* The requirements of Revenue Procedure 81-100 are applicable to the Group Trust as follows:
1. Pursuant to the terms of this Group Trust Agreement and Article X of the By-Laws, investment in the Group Trust is limited to assets of Deferred Compensation and Qualified Plans, investing through the ICMA Retirement Trust.
 2. Pursuant to the By-Laws, the Group Trust is adopted as a part of each Qualified Plan that invests herein through the ICMA Retirement Trust.
 3. In accord with the By-Laws, that part of the Group Trust’s corpus or income which equitably belongs to any Deferred Compensation and Qualified Plan may not be used for or diverted to any purposes other than for the exclusive benefit of the Plan’s employees or their beneficiaries who are entitled to benefits under such Plan.

4. In accord with the By-Laws, no Deferred Compensation Plan or Qualified Plan may assign any or part of its equity or interest in the Group Trust, and any purported assignment of such equity or interest shall be void.
- (c) *Governing Law.* Except as otherwise required by federal, state or local law, this Declaration of Trust (including the ICMA Declaration to the extent incorporated herein) and the Group Trust created hereunder shall be construed and determined in accordance with applicable laws of the State of New Hampshire.
- (d) *Judicial Proceedings.* The Trustee may at any time initiate an action or proceeding in the appropriate state or federal courts within or outside the state of New Hampshire for the settlement of its accounts or for the determination of any question of construction which may arise or for instructions.

IN WITNESS WHEREOF, the Trustee has executed this Declaration of Trust as of the day and year first above written.

VANTAGETRUST COMPANY

By: 

Name: Angela Montez

Title: Assistant Secretary

ICMA-RC Services LLC, a wholly owned broker-dealer subsidiary of ICMA-RC, member FINRA/SIPC.



**ATTN.: RECORDS MANAGEMENT UNIT
P.O. BOX 96220
WASHINGTON, DC 20090-6220
1-800-669-7400
WWW.ICMARC.ORG
EN ESPAÑOL LLAME AL 1-800-669-8216**

BKT000-014-200902-454

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 13-4443, FOR THE PURPOSE OF AMENDING METRO'S 401(K) AND 457 RETIREMENT PLANS

Date: June 18, 2013

Prepared by: Jodi Wilson, Benefits Manager
503-797-1723

BACKGROUND

Metro provides eligible employees with two voluntary retirement investment accounts, namely a 401(k) Plan and a 457 Plan. Metro's 401(k) Committee recently conducted a formal Request for Proposal with the assistance of an investment consultant specializing in voluntary retirement plans, and has selected ICMA-RC as the new plan administrator for both plans. Pursuant to this selection, Human Resources seeks Council approval for related technical and administrative changes and enhancements to the Plans. Specifically, Human Resources seeks approval to adopt ICMA-RC's 401 Governmental Profit Sharing Plan & Trust Basic, adopt ICMA-RC's 457 Governmental Deferred Compensation Plan & Trust, utilize Wilmington Trust as the new trustee for both Plans, as well as utilize VantageTrust as the trustee for those funds operated by VantageTrust, and add loan and Roth components to the 457 Plan. These changes do not substantially change the Plan Document, but rather change the service plan provider and administrator. The majority of the funds themselves with the greatest dollar value of investments will remain the same under the new plan administrator.

ANALYSIS/INFORMATION

1. **Known Opposition:** None
2. **Legal Antecedents :** Metro Resolution No. 03-3387 and Metro Employee Salary Savings Plan 2010 Restatement, Article 7.2.2 and Metro Resolution No. 03-3387.
3. **Anticipated Effects:** Metro will transition its 401(k) and 457 Plans to standard plan documents provided by ICMA, thereby requiring less legal involvement by OMA and outside counsel, use Wilmington Trust as well as VantageTrust as trustees for the Plans, and offer loan and Roth components to the 457 Plan. These changes are anticipated to provide higher quality of investment options and service at the same or reduced cost to plan participants and Metro.
4. **Budget Impacts:** No negative budget impact.

RECOMMENDED ACTION

The Chief Operating Officer recommends Council adoption of the attached Resolution.

BEFORE THE METRO COUNCIL

ADOPTING THE ANNUAL BUDGET FOR) ORDINANCE NO. 13-1300A
 FISCAL YEAR FY 2013-14, MAKING)
 APPROPRIATIONS, LEVYING AD VALOREM) Introduced by Martha Bennett, Chief
 TAXES, AND AUTHORIZING AN INTERFUND) Operating Officer, with the concurrence of
 LOAN) Council President Tom Hughes

WHEREAS, the Multnomah County Tax Supervising and Conservation Commission held its public hearing on the annual Metro budget for the fiscal year beginning July 1, 2013, and ending June 30, 2014; and

WHEREAS, recommendations from the Multnomah County Tax Supervising and Conservation Commission have been received by Metro (attached as Exhibit A and made a part of the Ordinance) and considered; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The “Fiscal Year 2013-14 Metro Budget,” in the total amount of FOUR HUNDRED NINETY MILLION SIX HUNDRED THIRTY FIVE THOUSAND FIVE HUNDRED SEVEN (\$490,635,507), attached hereto as Exhibit B, and the Schedule of Appropriations, attached hereto as Exhibit C, are hereby adopted.

2. The Metro Council does hereby levy ad valorem taxes, as provided in the budget adopted by Section 1 of this Ordinance, at the rate of \$0.0966 per ONE THOUSAND DOLLARS (\$1,000) of assessed value for operating rate levy; at the rate of \$0.0960 per ONE THOUSAND DOLLARS (\$1,000) of assessed values for local option rate levy and in the amount of THIRTY SEVEN MILLION SIX HUNDRED SEVENTY NINE THOUSAND FOUR HUNDRED NINETY SEVEN (\$37,679,497) for general obligation bond debt, said taxes to be levied upon taxable properties within the Metro District for the fiscal year 2013-14. The following allocation and categorization subject to the limits of Section 11b, Article XI of the Oregon Constitution constitute the above aggregate levy.

SUMMARY OF AD VALOREM TAX LEVY

	Subject to the General Government <u>Limitation</u>	Excluded from <u>the Limitation</u>
Operating Tax Rate Levy	\$0.0966/\$1,000	
Local Option Tax Rate Levy	\$0.0960/\$1,000	
General Obligation Bond Levy		\$37,679,497

3. In accordance with Section 2.02.040 of the Metro Code, the Metro Council hereby authorizes positions and expenditures in accordance with the Annual Budget adopted by Section 1

of this Ordinance, and hereby appropriates funds for the fiscal year beginning July 1, 2013, from the funds and for the purposes listed in the Schedule of Appropriations, Exhibit C.

4. The Parks and Natural Areas Local Option Levy Fund is hereby created for the purpose of accounting for property taxes received under the local option levy authorization approved by the voters of the Metro region on May 21, 2013. Major revenue source for the fund includes but is not limited to property taxes. In the event of the elimination of this fund, any fund balance remaining shall revert to the General Fund.

5. An interfund loan from the Solid Waste Revenue Fund to the Natural Areas Local Option Levy Fund in an amount not to exceed \$5.0 million is hereby authorized. The loan will be made to provide cash flow for authorized levy expenditures prior to the receipt of the first tax revenues in November/December 2013. The loan, including interest at a rate equal to the average yield on Metro's pooled investments, will be repaid from the Natural Areas Local Option Levy Fund prior to June 30, 2014.

6. An interfund loan from the General Fund to the MERC Fund in an amount not to exceed \$2.2 million is hereby authorized. The loan will be made to provide financing of the Eastside Streetcar Local Improvement District assessment on the Oregon Convention Center. The loan, including interest at a rate equal to the average yield on Metro's pooled investments, will be repaid from Oregon Convention Center revenues and/or reserves. Repayment will be over a period not to exceed ten years beginning FY 2013-14 and provide for a minimum of \$220,000 annual principal payments due no later than June 30th of each fiscal year

7. The Chief Operating Officer shall make the filings as required by ORS 294.458 and ORS 310.060, or as requested by the Assessor's Office of Clackamas, Multnomah, and Washington Counties.

8. This Ordinance being necessary for the health, safety, or welfare of the Metro area, for the reason that the new fiscal year begins July 1, 2013, and Oregon Budget Law requires the adoption of a budget prior to the beginning of the fiscal year, an emergency is declared to exist and the Ordinance takes effect upon passage.

ADOPTED by the Metro Council on this 20th day of June 2013.

Tom Hughes, Council President

ATTEST:

Approved as to Form:

Kelsey Newell, Recording Secretary

Alison Kean Campbell, Metro Attorney

EXHIBIT A
Ordinance No. 13-1300A



June 6, 2013

Metro Council
600 NE Grand Avenue
Portland , Oregon 97232

Dear President Hughes and Councilors:

The Tax Supervising and Conservation Commission met on June 6, 2012 to review, discuss and conduct a public hearing on Metro's 2013-14 Approved Budget. This hearing was conducted pursuant to ORS 294.605 to 294.705 to confirm compliance with applicable laws and to determine the adequacy of estimates necessary to support efficient and economical administration of the district.

The budget was filed timely on May 7, 2013. The Commission hereby certifies by a majority vote of members of the Commission that it has no objections or recommendations to make with respect to the budget.

For 2013-14, estimates were judged to be reasonable for the purpose shown and the document was found to be in substantial compliance with Local Budget Law. The budget estimates and levy amounts, as shown in the approved budget, are shown on the attached page.

Please file a complete copy of the adopted budget with the Commission no later than August 31, 2013.

We appreciate having the opportunity to discuss this budget with you.

Yours very truly,

TAX SUPERVISING & CONSERVATION COMMISSION

Javier Fernandez, Chair




Susan Schneider, Vice Chair



Brendan P. Watkins, Commissioner



Terry McCall, Commissioner



Steven B. Nance, Commissioner

Commissioners

Javier Fernandez, Chair
Terry McCall
Steven B. Nance
Susan Schneider
Brendan P. Watkins

EXHIBIT A
Ordinance No. 13-1300A

Metro
2013-14 Approved Budget

June 6, 2013

	<u>Budget Estimates</u>	<u>Unappropriated Portion</u>
General Fund	\$111,320,879	\$14,971,701
General Obligation Bond Debt Service Fund	36,494,125	146,450
General Asset Management Fund	12,227,868	486,312
General Revenue Bond Fund	2,874,715	5,393
MERC Fund	69,701,875	11,455,264
Natural Areas Fund	66,263,355	9,129,631
Open Spaces Fund	643,064	0
Zoo Infrastructure Fund	66,578,439	35,371,118
Parks & Natural Areas Local Option Levy Fund	10,216,770	0
Pioneer Cemetery Perpetual Care Fund	445,067	445,067
Rehabilitation & Enhancement Fund	2,266,179	1,543,581
Risk Management Fund	4,469,238	1,050,326
Smith & Bybee Wetlands Fund	3,600,569	3,225,467
Solid Waste Revenue Fund	94,564,477	18,407,491
Total Budget Estimates	\$481,666,620	\$96,237,801

Property Tax Levies, as approved by Budget Committee:

Permanent Rate – General Government	\$0.0966 / \$ 1,000 AV
Parks/Natural Areas Local Option – General Government	\$0.0960 / \$1,000 AV
Debt Service - Not Subject to Limit	\$37,679,497

[Handwritten signature]

EXHIBIT C
Ordinance 13-1300A
FY 2013-14 SCHEDULE OF APPROPRIATIONS

	Adopted Budget
GENERAL FUND	
Communications	2,701,648
Council Office	3,938,637
Finance & Regulatory Services	4,628,354
Human Resources	2,219,337
Information Services	3,915,095
Metro Auditor	725,382
Office of Metro Attorney	2,061,480
Oregon Zoo	31,585,451
Parks & Environmental Services	8,818,344
Planning and Development	14,216,023
Research Center	3,644,374
Sustainability Center	3,916,131
Special Appropriations	5,350,265
Non-Departmental	
Debt Service	1,720,071
Interfund Transfers	7,146,409
Contingency	4,290,572
<i>Total Appropriations</i>	100,877,573
Unappropriated Balance	15,946,701
Total Fund Requirements	\$116,824,274
GENERAL ASSET MANAGEMENT FUND	
Asset Management Program	10,018,546
Non-Departmental	
Contingency	2,785,481
<i>Total Appropriations</i>	12,804,027
Unappropriated Balance	686,312
Total Fund Requirements	\$13,490,339
GENERAL OBLIGATION BOND DEBT SERVICE FUND	
Debt Service	36,347,675
Unappropriated Balance	146,450
Total Fund Requirements	\$36,494,125
GENERAL REVENUE BOND FUND	
Debt Service	2,869,322
Unappropriated Balance	5,393
Total Fund Requirements	\$2,874,715
MERC FUND	
MERC	47,913,967
Non-Departmental	
Interfund Transfers	5,131,804
Contingency	10,979,029
<i>Total Appropriations</i>	64,024,800
Unappropriated Balance	8,770,342
Total Fund Requirements	\$72,795,142

EXHIBIT C
Ordinance 13-1300A
FY 2013-14 SCHEDULE OF APPROPRIATIONS

	Adopted Budget
NATURAL AREAS FUND	
Sustainability Center	35,247,915
Non-Departmental	
Interfund Transfers	1,885,809
Contingency	20,000,000
<i>Total Appropriations</i>	57,133,724
Unappropriated Balance	9,129,631
Total Fund Requirements	\$66,263,355
NATURAL AREAS LOCAL OPTION LEVY FUND	
Oregon Zoo	297,413
Parks & Environmental Services	2,296,544
Sustainability Center	5,227,100
Special Appropriations	750,000
Non-Departmental	
Interfund Transfers	929,953
Contingency	715,760
<i>Total Appropriations</i>	10,216,770
Unappropriated Balance	0
Total Fund Requirements	\$10,216,770
OPEN SPACES FUND	
Sustainability Center	643,064
Total Fund Requirements	\$643,064
OREGON ZOO INFRASTRUCTURE AND ANIMAL WELFARE FUND	
Oregon Zoo	25,765,168
Non-Departmental	
Interfund Transfers	242,153
Contingency	5,200,000
<i>Total Appropriations</i>	31,207,321
Unappropriated Balance	35,371,118
Total Fund Requirements	\$35,371,118
CEMETERY PERPETUAL CARE FUND	
Unappropriated Balance	445,067
Total Fund Requirements	\$445,067
REHABILITATION & ENHANCEMENT FUND	
Sustainability Center	330,990
Non-Departmental	
Interfund Transfers	114,602
Contingency	280,000
<i>Total Appropriations</i>	725,592
Unappropriated Balance	1,549,335
Total Fund Requirements	\$2,274,927

EXHIBIT C
Ordinance 13-1300A
FY 2013-14 SCHEDULE OF APPROPRIATIONS

	<u>Adopted Budget</u>
RISK MANAGEMENT FUND	
Finance & Regulatory Services	2,616,951
Non-Departmental	
Interfund Transfers	301,961
Contingency	500,000
<i>Total Appropriations</i>	3,418,912
Unappropriated Balance	1,050,326
Total Fund Requirements	\$4,469,238
SMITH AND BYBEE LAKES FUND	
Parks & Environmental Services	65,000
Non-Departmental	
Interfund Transfers	110,102
Contingency	200,000
<i>Total Appropriations</i>	375,102
Unappropriated Balance	3,225,467
Total Fund Requirements	\$3,600,569
SOLID WASTE REVENUE FUND	
Finance & Regulatory Services	2,179,938
Sustainability Center	5,842,884
Parks & Environmental Services	45,107,091
Non-Departmental	
Interfund Transfers	7,766,403
Contingency	15,293,514
<i>Total Appropriations</i>	76,189,830
Unappropriated Balance	17,475,653
Total Fund Requirements	\$93,665,483
Total Appropriations	\$396,833,712
Total Unappropriated Balance	\$93,801,795
TOTAL BUDGET	\$490,635,507

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF RECOGNIZING THE)	RESOLUTION NO. 13-4441
50 th ANNIVERSARY OF METRO'S BLUE LAKE)	
AND OXBOW REGIONAL PARKS AND)	Introduced by Paul Slyman, Parks and
DESIGNATING JULY AS PARKS AND)	Environmental Services Director
RECREATION MONTH)	

WHEREAS, Metro parks and natural areas are an integral part of the Portland metropolitan region; and

WHEREAS, Metro parks and natural areas are vitally important to establishing and maintaining the quality of life in our community, ensuring the health of all citizens, and contributing to the economic and environmental well-being of the region; and

WHEREAS, Metro parks and nature programs build healthy, active communities that aid in the prevention of chronic disease and improve the mental and emotional health of all citizens; and

WHEREAS, Metro parks and natural areas increase the region's economic prosperity through increased property values, increased tourism, the attraction and retention of businesses, and crime reduction; and

WHEREAS, Metro parks and natural areas are fundamental to the environmental well-being of our community; and

WHEREAS, Metro parks and natural areas improve water quality, protect groundwater, improve the quality of the air we breathe, provide vegetative buffers to development, and protect and improve habitat for wildlife; and

WHEREAS, Metro parks and natural areas ensure the ecological beauty of our community and provide a place for children and adults to connect with nature and recreate outdoors; and

WHEREAS, Metro Council wishes to recognize that 2013 marks the 50th anniversary of both Blue Lake and Oxbow regional parks; and

WHEREAS, Metro Council wishes to recognize the 50th anniversary and the benefits derived from parks and natural areas by inviting the entire community to a free day in Blue Lake and Oxbow regional parks on Friday, July 12, 2013; and

WHEREAS, the U.S. House of Representatives has designated July as Parks and Recreation Month; now therefore,

BE IT RESOLVED that the Metro Council officially recognizes July as Parks and Recreation Month in the Portland metropolitan region, and recognizes and celebrates the 50th anniversary of Blue Lake and Oxbow regional parks by providing free admission to both parks on July 12, 2013.

ADOPTED by the Metro Council this ____ day of June, 2013.

Tom Hughes, Council President

Approved as to Form:

Alison Kean Campbell, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 13-4441, FOR THE PURPOSE OF
RECOGNIZING THE 50TH ANNIVERSARY OF METRO'S BLUE LAKE AND OXBOW
REGIONAL PARKS AND DESIGNATING JULY AS PARKS AND RECREATION MONTH

Date: June 14, 2013

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BACKGROUND

Metro parks and natural areas are vitally important to establishing and maintaining the quality of life in our community, ensuring the health of all citizens, and contributing to the economic and environmental well-being of the region. Two signature Parks, Blue Lake and Oxbow, have served the people of this region since 1963 and Metro is honoring them by through a series of promotions and by designating July as Parks and Recreation Month.

One promotion includes the designation of Friday July 12, 2013, as a free-entry day to Metro's Blue Lake and Oxbow Parks. Other promotions include new branding on park worker shirts, a geocache competition for commemorative coins, and enhanced media coverage.

Metro staff will present information on Oxbow and Blue Lake parks at the Metro Council meeting scheduled for July 11, 2013, at Gresham City Hall.

ANALYSIS/INFORMATION

1. **Known Opposition** None.
2. **Legal Antecedents** U.S. House of Representatives 111th Congress (2009) Resolution 288 Recognizing July as National Park and Recreation Month; Metro Code Title X
3. **Anticipated Effects** If this Resolution is adopted, Metro Council will officially recognize the 50th Anniversaries of Blue Lake and Oxbow Parks. They will also designate July as Parks and Recreation Month in the Metro Region and allow free access to Blue Lake and Oxbow Regional Parks on Friday, July 12, 2013.
4. **Budget Impacts** There is no cost to implementing this resolution. The missed revenue on the free day of July 12 is greatly exceeded by the good will, community building, and healthy benefits associated with serving our community and getting them outdoors.

RECOMMENDED ACTION

Approve the Resolution as drafted and join Metro staff in our parks and natural areas.