

Tuesday, February 20, 2018

**BOARD OF DIRECTORS
AMADOR FIRE PROTECTION DISTRICT
COUNTY ADMINISTRATION CENTER**

810 Court Street
Jackson, California 95642

A G E N D A

-- 10:30.m. --

Please Note: All Board of Directors meetings are recorded.

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, please contact the Clerk of the Board staff, at (209) 223-6391 or (209) 223-6646(fax). Requests must be made as early as possible and at least one-full business day before the start of the meeting. Assisted hearing devices are available in the Board Chambers for public use during all public meetings.

Pursuant to Government Code 54957.5, all materials relating to an agenda item for an open session of a regular meeting of the Board of Directors which are provided to a majority or all of the members of the Board by Board members, staff or the public within 72 hours of but prior to the meeting will be available for public inspection, at and after the time of such distribution, in the office of the Clerk of the Board of Directors, 810 Court Street, Jackson, California 95642, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., except for County holidays. Materials distributed to a majority or all of the members of the Board at the meeting will be available for public inspection at the public meeting if prepared by the members of the Board or District staff and after the public meeting if prepared by some other person. Availability of materials related to agenda items for public inspection does not include materials that are exempt from public disclosure under Government Code sections 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, or 6254.2.

PLEDGE OF ALLEGIANCE

AGENDA: Off-agenda items must be approved by the Board pursuant to Section 54954.2 of the Government Code.

PUBLIC MATTERS NOT ON THE AGENDA: Discussion items only; no action will be taken. Any person may address the Board at this time upon any subject within the jurisdiction of the AFPD Board of Directors; however, any matter that requires action may be referred to staff and/or Committee for a report and recommendation for possible action at a subsequent Board meeting. **Please note - there is a five (5) minute limit per topic.**

CONSENT AGENDA: NOTE: Items listed on the consent agenda are considered routine and may be enacted by one motion. Any item may be removed for discussion and made a part of the regular agenda at the request of any Board member.

ADMINISTRATIVE MATTERS

- (1) PROPOSED FLEXIBLE BENEFITS (125) PLAN:** Discussion and possible action relative to adopting resolution to authorize Board President to sign and execute subject plan.
- (2) AMADOR FIREFIGHTERS ASSOCIATION MOU:** Discussion and possible action relative to adopting resolution to authorize Board President to sign proposed memorandum of understanding between Amador Fire Protection District and Amador Firefighters Association.

- (3) VEHICLE MAINTENANCE REPORT:** Report of expenses for maintenance and repair of District vehicle fleet.
- (4) APPOINTMENT OF BOARD COMMITTEE MEMBERS – POLICY AND PLANS COMMITTEE:** Discussion and possible action relative to appointment of two (2) Board members to the Policy and Plans Committee.
- (5) SURPLUS PROPERTY R1:** Discussion and possible action relative to surplus and public auction of R-1.
- (6) SURPLUS PROPERTY 5108:** Discussion and possible action relative to surplus and public auction of 5108.

MISCELLANEOUS MATTERS

- (7) MINUTES:** Review and approval of the regular minutes of the Board of Directors meeting of January 16, 2018, as presented or revised.

CLOSED SESSION may be called for labor negotiations (pursuant to Government Code §54957.6), personnel matters (pursuant to Government Code §54957), real estate negotiations/acquisitions (pursuant to Government Code §54956.8), and/or pending or potential litigation (pursuant to Government Code §54956.9).

- (8) DISCIPLINE/DISMISSAL/RELEASE:** Discussion and possible action relative to subject matter (pursuant to Government Code §54957)
- (9) PROPERTY NEGOTIATION:** Discussion and possible action relative to real estate negotiations/acquisitions (pursuant to Government Code §54956.8)
- (10) CLOSED SESSION MINUTES:** Review and approval of the closed session minutes of the Board of Directors meeting of December 21, 2017, as presented or revised.

ADJOURNMENT

AGENDA TRANSMITTAL FORM

To: **Amador Fire Protection Board of Directors**

Date: 02/20/18

From: David Bellerive Phone Ext. 391
(Department Head - please type)

<input checked="" type="checkbox"/>	Regular Agenda
<input type="checkbox"/>	Consent Agenda
<input type="checkbox"/>	Blue Slip
<input type="checkbox"/>	Closed Session
Meeting Date Requested:	
<u>02/20/18</u>	

Department Head Signature *David Bellerive*

Agenda Title: PROPOSED FLEXIBLE BENEFITS (125) PLAN

Summary: (Provide detailed summary of the purpose of this item; attach additional page if necessary)

Discussion and possible action relative to adopting resolution to authorize Board President to sign proposed Flexible Benefits (125) plan through Mid America.

Recommendation/Requested Action:

Approve President to sign resolution approving proposed agreement

Fiscal Impacts (attach budget transfer form if appropriate)

None

Staffing Impacts None

Is a 4/5ths vote required?

Yes ☐

No ☒

Contract Attached:

Yes ☐

No ☐

N/A ☒

Resolution Attached:

Yes ☒

No ☐

N/A ☐

Ordinance Attached

Yes ☐

No ☐

N/A ☒

Committee Review?

N/A ☒

Name _____

Committee Recommendation:

Comments: _____

Request Reviewed by:

Chairman _____ Counsel _____

Auditor _____ GSA Director _____

CAO _____ Risk Management _____

Distribution Instructions:

FOR CLERK USE ONLY

Meeting Date 2/20/18 Time 10:30am Item # 1

Board Action: Approved Yes ___ No ___ Unanimous Vote: Yes ___ No ___

Ayes: _____ Resolution _____ Ordinance _____ Other: _____

Noes: _____ Resolution _____ Ordinance _____

Absent: _____ Comments: _____

Distributed on _____

A new ATF is required from _____

Department _____

Completed by _____

For meeting _____

of _____

I hereby certify this is a true and correct copy of action(s) taken and entered into the official records of the Amador Fire Protection District.

ATTEST: _____

AFPD Board Clerk

BEFORE THE BOARD OF DIRECTORS OF THE
AMADOR FIRE PROTECTION DISTRICT
COUNTY OF AMADOR, STATE OF CALIFORNIA

IN THE MATTER OF:

RESOLUTION APPROVING
AGREEMENT WITH MID AMERICA
PLAN DOCUMENT SECTION
125 FLEXIBLE BENEFIT PLAN

RESOLUTION NO. AFPD 18-

BE IT RESOLVED by the Board of Directors of the Amador Fire Protection District that said Board does hereby approve the agreement by and between the Amador Fire Protection District and Mid America on the terms and conditions contained therein as it relates to the plan document for a Section 125 Flexible Benefit Plan.

BE IT FURTHER RESOLVED that the President of said Board be and hereby is authorized to sign and execute said agreement on behalf of the Amador Fire Protection District.

The foregoing resolution was duly passed and adopted by the Board of Directors of the Amador Fire Protection District at a regular meeting thereof, held on the 20th day of February 2018, by the following vote:

AYES:

NOES:

ABSENT:

President, Board of Directors

ATTEST:
LINDSEY CLARK, Clerk of the
Amador Fire Protection District,
Amador County, California

AMADOR FIRE PROTECTION DISTRICT

810 Court Street, Jackson California 95642-2132 (209) 223-6391



MEMORANDUM

To: Honorable Board of Directors

From: David Bellerive, Fire Chief

Date: February 20, 2018

SUBJECT: Proposed Flexible Benefits (125) Plan

The District would like to offer this plan as an additional benefit to staff as part of our health benefits package. The District currently does not have a 125 plan, so all health benefits offered to our employees are deducted from their checks after tax. This 125 plan is offered through our current relationship with FDAC/ Mid America and would allow us to deduct employee benefit costs pretax saving both the employees and the District money on taxes.

The plan also includes a Health Savings Account, and a Dependent Day Care Account. These accounts are used for employees to lower their taxable income furthermore and use the monies in the accounts to pay for day care or medical expenses. These accounts are benefits that our employees have expressed would be a great benefit to them.

The cost of the plan is \$8.00 per participating employee per month, which would be paid by the employee through payroll deduction.

The administration of this plan will be provided by Mid America and time for the District's Administrative Staff would be minimal.

The only "risks" with this plan are that the monies that the employees choose to put into their health/daycare accounts, is paid by the District up front and then deducted over year through monthly payroll deductions. If an employee spends the monies in their account and then leaves employment before those monies have been fully deducted from their payroll, the District is liable for the monies not recovered by the employee. To offset this risk, at the end of the plan year any monies remaining in the employees' after the cutoff date is returned to the District to cover expenses that could be incurred by a former employee.

Staff Recommendation:

To approve the resolution authorizing Board President to sign and execute proposed Flexible Benefits (125) Plan with Mid America.

Flexible Benefits (125) Plan

IMPLEMENTATION BOOK



MidAmerica

Administrative & Retirement Solutions, Inc.

402 South Kentucky Ave., Suite 500, Lakeland, FL 33801
863.688.4500 / (FAX) 863.686.9557 / 800.430.7999

www.midamerica.biz

Information Form

Please complete this first page and the information provided will appear where applicable throughout the remaining documents. Not every space will be filled in, so please review the documents. If there is a space for you to complete, you may type directly in that area or click on the boxes that pertain to your plan.

Employer Name: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Employer Phone: _____

Employer Fax: _____

Tax ID Number: _____

Effective Date: _____

Plan Year End: _____

Open Enrollment Period: _____

Employer Contact for Plan Document & Compliance Updates:

Contact Name & Title: _____

Contact Phone Number: _____

Contact Email Address: _____

Employer Contact for Payroll (Contributions, Data Requirements and Billing)

Contact Name & Title: _____

Contact Phone Number: _____

Contact Email Address: _____

Employer Contact for Protected Health Information (HRA & FSA Only)

Contact Name & Title: _____

Contact Phone Number: _____

Contact Email Address: _____

Employer Contact for Finance (Required for Debit Cards)

Contact Name & Title: _____

Contact Phone Number: _____

Contact Email Address: _____

Table of Contents

	Tab
Overview.....	1
Adoption Agreement*	2
Plan Document.....	3
MidAmerica Service Agreement*	4
Exhibit A – Services.....	4
Exhibit B – HIPAA Business Associate Agreement*	4
Employer Administrative Procedures	5

**Requires employer signature(s)*

Overview

Flexible Spending Accounts (FSA), oftentimes called Section 125 Cafeteria plans, were formally created by Internal Revenue Code 125 of the Revenue Act of 1978. The Act allowed Employees to set aside money on a pre-tax basis to pay for certain expenses. Expenses eligible for reimbursement include required Employee contributions to an Employer sponsored health care plan, dependent care expenses and any health care expenses not covered by the Employer health care plan. Examples of these expenses include co-payments, deductibles, prescription drug purchases, eyeglasses and dental expenses or any other eligible uncovered medical expenses. Money deposited in FSAs must be used in the year it is deposited or the remaining balance is forfeited, unless a carryover provision is established.

Benefits to the Employer

The Employer obtains the intangible benefits of providing to participants a tax-free method of reimbursement of eligible medical premiums and expenses and dependent care expenses. The Employer also permanently saves the 7.65% FICA taxes (Social Security and Medicare) on all amounts contributed to the FSA.

Benefits to the Employee

The Employee's contributions are made on a pre-tax basis. The Employee receives immediate tax relief in the form of lower FICA payments as the Employee also saves the 7.65% FICA taxes (Social Security and Medicare). The Employee also receives annual income tax relief by reducing their overall taxable income.

Administration

Plan documents and implementation materials are provided. Employer representatives have direct access to our administrative and management personnel.

Employee Communications/Account Information

Employee needs are serviced by a national service center through a toll-free number. Annual statements are provided. Employees also have access to their personal account information over the Internet.

The Flexible Spending Account Plan is provided by:



Flexible Benefits (125) Plan
(Adopting the MidAmerica Administrative & Retirement Solutions, Inc.
Flexible Benefits (125) Plan Basic Plan Document)

ADOPTION AGREEMENT

for

Employer Address:

Employer Telephone Number:

Employer Identification Number:



The undersigned Employer, by executing this Adoption Agreement, hereby adopts and implements the terms of the Basic Plan Document of the MidAmerica Administrative & Retirement Solutions, Inc. Flexible Benefits (125) Plan (hereinafter referred to as “the Plan”) and agrees to abide by the terms of the Plan.

Effective Date. The Effective Date of the Plan is _____.

Plan Year. The Plan Year ends on _____.

With this Adoption Agreement, and by its authorized signature below, the Employer hereby makes the following designations.

Contribution Types. All funds for the Plan shall come exclusively from the Employee and shall be used to purchase the following Benefit Package Options:

- ☒ Option A: Group insurance contracts and prepaid health plan contracts for Employer-sponsored health insurance;
- ☐ Option B. Health Care Reimbursement Account (HCRA)
- ☐ Option C. Dependent Care Reimbursement Account (DCRA)

Eligible Classes and Participation Dates. The class or classes of Employees covered by this Plan for the selected Benefit Package Option(s) are designated below, with the applicable waiting period and minimum and maximum dollar amounts following:

- ☐ Class of Employee: _____
- ☐ Option A; waiting period: _____
- ☐ Option B; waiting period: _____
- Minimum dollar amount \$ _____; maximum dollar amount \$ _____
- ☐ Option C; waiting period: _____
- Minimum dollar amount \$ _____; maximum dollar amount \$ _____
-
- ☐ Class of Employee: _____
- ☐ Option A; waiting period: _____
- ☐ Option B; waiting period: _____
- Minimum dollar amount \$ _____; maximum dollar amount \$ _____
- ☐ Option C; waiting period: _____
- Minimum dollar amount \$ _____; maximum dollar amount \$ _____
-
- ☐ Class of Employee: _____
- ☐ Option A; waiting period: _____
- ☐ Option B; waiting period: _____
- Minimum dollar amount \$ _____; maximum dollar amount \$ _____
- ☐ Option C; waiting period: _____
- Minimum dollar amount \$ _____; maximum dollar amount \$ _____

Benefit Credits. The following amount shall be available as a Benefit Credit to each Participant to apply, at the Participant's discretion, towards the cost of one or more of the Benefit Package Options available under the Plan. Note: Benefit Credits, if selected below, are in addition to any Nonelective Contributions made by the Employer on behalf of each Participant.

Distribution Eligibility.

- ☐ Immediate (before exhausting HRA contributions.)
- ☐ Other _____

Debit or Stored-Value Card.

- ☐ Card to be offered to employees. ☐ Debit card ☐ Stored-value card
☐ No card to be offered to the employees.

Run-Off Times.

Claims for HCRA reimbursement must be submitted within 90 (ninety) days after the end of the Plan Year.
Claims for DCRA reimbursement must be submitted within 90 (ninety) days after the end of the Plan Year.

Participation by Terminated Employees.

Participation by Terminated Employees in HCRA:

Terminated employees will be allowed 0 (zero) days after termination of employment to continue incurring expenses plus 90 (ninety) days after termination of employment to submit expenses incurred prior to termination of employment.

Participation by Terminated Employees in DCRA:

Terminated employees will be allowed 0 (zero) days after termination of employment to continue incurring expenses plus 90 (ninety) days after termination of employment to submit expenses incurred prior to termination of employment.

Affiliated Employers. The following employers which are affiliated with the Employer are authorized to adopt the Plan:

Applicable Law. The Plan shall be governed under the laws of the State of _____.

Designation of Plan Administrator: The Employer hereby designates the following initial Plan Administrator: _____.

The Employer hereby agrees to the provisions of the Plan and has executed this Adoption Agreement on this _____ day of _____, 20____.

Name of Employer: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

Name of Employer CONTACT (print): _____

Title: _____

E-Mail: _____

Telephone: _____ Ext. _____

Fax: _____

IRS Circular 230 Notice: We are required to advise you no person or entity may use any tax advice in this communication or any attachment to (i) avoid any penalty under federal tax law or (ii) promote, market or recommend any purchase, investment or other action.

SLK_TOL #1135315-v5

Flexible Benefits (125) Plan
PLAN DOCUMENT
for



Plan Document Table of Contents

PREAMBLE 5

ARTICLE I – DEFINITIONS	6
1.01 Affiliated Employer	6
1.02 After-tax Contribution(s)	6
1.03 Anniversary Date	6
1.04 Benefit Credits	6
1.05 Benefit Package Option(s)	6
1.06 Board of Directors	6
1.07 Change in Status	6
1.08 Code	7
1.09 Committee	7
1.10 Compensation	7
1.11 Dependent	7
1.12 Dependent Care Reimbursement	7
1.13 Earned Income	7
1.14 Effective Date	8
1.15 Eligible Employment Related Expenses	8
1.16 Eligible Medical Expenses	8
1.17 Employee	8
1.18 Employer	9
1.19 ERISA	9
1.20 Health Care Reimbursement	9
1.21 Highly Compensated Individual	9
1.22 Key Employee	9
1.23 Nonelective Contribution(s)	9
1.24 Participant	9
1.25 Plan	9
1.26 Plan Administrator or Committee	9
1.27 Plan Year	9
1.28 Pre-tax Contribution(s)	10
1.29 Qualified Benefit	10
1.30 Qualifying Employment-Related Expenses	10
1.31 Qualifying Individual	10
1.32 Qualifying Services	10
1.33 Reimbursement Account(s) or Account(s)	11
1.34 Salary Reduction Agreement	11
1.35 Spouse	11
1.36 Student	11
ARTICLE II – ELIGIBILITY AND PARTICIPATION	12
2.01 Eligibility to Participate	12
2.02 Eligibility to Participate in Reimbursement Accounts	12
2.03 Termination of Participation	12
2.04 Qualifying Leave Under Family Leave Act	12
ARTICLE III – BENEFIT OPTIONS AND ELECTION PROCEDURE	13
3.01 Benefit Package Options	13
3.02 Description of Benefits Other than Cash	13
3.03 Election of Benefit Options in Lieu of Cash	13
3.04 Election and Salary Reduction Procedures	13
3.05 Change of Benefit Election	14
3.06 Impact of Termination of Employment on Election or Cessation of Eligibility	21

ARTICLE IV – PREMIUM PAYMENTS AND CREDITS AND DEBITS TO ACCOUNTS	22
4.01 Source of Benefit Funding	22
4.02 Allocations Irrevocable During Plan Year	22
4.03 Reduction of Certain Elections to Prevent Discrimination	22
4.04 Health Care Reimbursement Accounts	23
4.05 Dependent Care Reimbursement	23
ARTICLE V – BENEFITS	25
5.01 Qualified Benefits	25
5.02 Cash Benefit	26
5.03 Repayment of Excess Reimbursements	26
5.04 Termination of Reimbursement Benefits	26
5.05 COBRA Coverage	26
5.06 Coordination of Benefits Under HCRA	27
ARTICLE VI – PLAN ADMINISTRATION	28
6.01 Allocation of Authority	28
6.02 Provision for Third-Party Plan Service Providers	28
6.03 Fiduciary Liability	29
6.04 Compensation of Plan Administrator	29
6.05 Bonding	29
6.06 Payment of Administrative Expenses	29
6.07 Funding Policy	29
6.08 Disbursement Reports	30
6.09 Indemnification	30
6.10 Substantiation of Expenses	30
6.11 Reimbursement	30
6.12 Statements	30
ARTICLE VII – FUNDING AGENT	31
ARTICLE VIII – CLAIMS PROCEDURES	32
8.01 Application to Plan Benefits	32
8.02 Procedure if Benefits are Denied Under the Plan	32
8.03 Requirement for Written Notice of Claim Denial	32
8.04 Right to Request Hearing on Benefit Denial	32
8.05 Disposition of Disputed Claims	32
ARTICLE IX – AMENDMENT OR TERMINATION OF PLAN	34
9.01 Permanency	34
9.02 Employer's Right to Amend	34
9.03 Employer's Right to Terminate	34
9.04 Determination of Effective Date of Amendment or Termination	34
ARTICLE X – GENERAL PROVISIONS	35
10.01 Not an Employment Contract	35
10.02 Applicable Laws	35
10.03 Post-Mortem Payments	35
10.04 Non-Alienation of Benefits	35
10.05 Mental or Physical Incompetency	35
10.06 Inability to Locate Payee	35
10.07 Requirement for Proper Forms	35
10.08 Source of Payments	35
10.09 Multiple Functions	35
10.10 Tax Effects	36
10.11 Gender and Number	36
10.12 Headings	36
10.13 Incorporation by Reference	36

10.14	Severability	36
10.15	Effect of Mistake	36
10.16	Forfeiture of Unclaimed Reimbursement Account Benefits	36
ARTICLE XI – CONTINUATION COVERAGE UNDER COBRA		37
11.01	Continuation Coverage after Termination of Normal Participation	37
11.02	Who is a Qualified Beneficiary	37
11.03	Who is not a Qualified Beneficiary	37
11.04	What is a Qualifying Event	37
11.05	COBRA Not Applicable to Certain HCRA Participants	38
11.06	What Benefit is Available under Continuation Coverage	38
11.07	Notice Requirements	39
11.08	Election Period	39
11.09	Duration of Continuation Coverage	39
11.10	Automatic Termination of Continuation Coverage	40

FLEXIBLE BENEFITS PLAN

Adopting MidAmerica Administrative & Retirement Solutions, Inc. Basic Plan Document

PREAMBLE

The Employer hereby establishes a Flexible Benefits Plan (the “Plan”) for its Employees for purposes of providing eligible Employees with the opportunity to choose among the fringe benefits available under the Plan. The Plan is intended to qualify as a cafeteria plan under the provisions of Internal Revenue Code Section 125.

The Health Care Reimbursement Account (“HCRA”) is intended to qualify as a Code Section 105 medical expense reimbursement plan, and the Dependent Care Reimbursement Account (“DCRA”) is intended to qualify as a Code Section 129 dependent care assistance plan. Although printed within this one document, the HCRA and DCRA Plans are separate written plans for purposes of administration and all reporting and nondiscrimination requirements imposed by Sections 105 and 129 of the Code, as well as all applicable provisions of ERISA if the Employer is other than a governmental employer.

ARTICLE I**Definitions**

- 1.01 **Affiliated Employer** means any entity which, within the context of Code Section 414(b), (c), or (m), or other applicable regulations and IRS Notices, Revenue Procedures and the like will be considered with the Employer as a single employer for purposes of Code Section 125.
- 1.02 **After-tax Contribution(s)** means amounts withheld from an Employee's Compensation pursuant to a Salary Reduction Agreement, after any applicable state and federal taxes have been deducted, for purposes of purchasing one or more of the Benefit Package Options available under the Plan.
- 1.03 **Anniversary Date** means the first day of any Plan Year.
- 1.04 **Benefit Credits** means any amount which the Employer may provide to Participants to apply towards the cost of one or more of the Benefit Package Option(s) elected by the Participant. The amount of Benefit Credits allocated to eligible Participants may be adjusted upward or downward on an annual basis before the beginning of each Plan Year in the contributing Employer's sole discretion. The amount of Benefit Credits, if any, will be calculated each Plan Year in a uniform and nondiscriminatory manner based upon the Participant's dependent status, commencement date of the Participant's employment during the Plan Year and/or such other factors as the Employer shall determine. The Benefit Credits, if any, will be set forth in the Adoption Agreement (and/or the enrollment materials). Benefit Credits will not be disbursed to a Participant in the form of additional Compensation if the total cost of the Benefit Package Option(s) elected by the Participant is less than the Benefit Credits allocable thereto or if the Employee declines coverage under the Benefit Package Option(s).
- 1.05 **Benefit Package Option(s)** means those Qualified Benefits available to a Participant as selected in the Adoption Agreement, as the same may be amended and/or replaced from time to time.
- 1.06 **Board of Directors** means the Board of Directors of a non-governmental Employer. The Board of Directors, upon adoption of this Plan, appoints the Committee to act on the Employer's behalf in all matters regarding the Plan.
- 1.07 **Change in Status** means any of the events described below, as well as any other events included under subsequent changes to Code Section 125 or regulations issued under Code Section 125 which the Plan Administrator (in its sole discretion) chooses to incorporate in the Plan to be applied on a uniform and consistent basis:
- (a) **Legal Marital Status**. A change in a Participant's legal marital status, including marriage, death of a Spouse, divorce, legal separation or annulment;
 - (b) **Change in Number of Tax Dependents (as defined in Section 1.11)**. A change in the Participant's number of tax Dependents, including the birth of a child, the adoption or placement for adoption of a Dependent, or the death of a Dependent;

- (c) **Change in Employment Status.** Any of the following events that change the employment status of the Participant, the Participant's Spouse or the Participant's Dependent: a termination or commencement of employment; a strike or lockout; a commencement of or return from an unpaid leave of absence; and a change in worksite. In addition, if the eligibility conditions of the Plan or other employee benefit plan of the employer of the Participant, the Participant's Spouse or the Participant's Dependent depend on the employment status of that individual and there is a change in that individual's employment status with the consequence that the individual becomes (or ceases to be) eligible under the Plan, then that change constitutes a change in employment hereunder;
- (d) **Dependent Eligibility Requirements.** An event that causes a Participant's Dependent to satisfy (or cease to satisfy) the eligibility requirements for a particular benefit, such as attaining a specified age, getting married or ceasing to be a Student;
- (e) **Change in Residence.** A change in the place of residence of the Participant, the Participant's Spouse or the Participant's Dependent; or
- (f) **Adoption Assistance.** A commencement or termination of adoption proceedings under an adoption assistance program.

Note: See Section 3.05 for requirements that must be met to permit certain mid-year election changes on account of a Change in Status. In all events, a Participant's revocation of a Plan election during a Plan Year of coverage and new election for the remaining portion of the Plan Year must be consistent with the Change in Status.

- 1.08 **Code** means the Internal Revenue Code of 1986, as amended.
- 1.09 **Committee** or **Plan Administrator** means the person(s) appointed by the Employer with authority and responsibility to manage and direct the operation and administration of the Plan.
- 1.10 **Compensation** means the cash wages or salary paid to an Employee by the Employer before any reduction under Section 125 or Section 401(k) of the Code.
- 1.11 **Dependent** means any individual who is a tax dependent of the Participant as defined in Code Section 152(a); provided, however, that in the case of a divorced Employee (a) Dependent shall be defined as in Code Section 21(e)(5) (i.e. dependent of the parent with custody) for purposes of the Dependent Care Reimbursement Plan; and (b) for purposes of accident or health coverage, a child shall be considered a Dependent of both parents; provided, however, that for purposes of accident or health coverage, including the Health Care Reimbursement Account, Dependent means (1) any individual who is a tax dependent of the Participant as defined in Code Section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof, and (2) any child (as defined in Code Section 152(f)(1)) of the Participant who as of the end of the taxable year has not attained age twenty-seven (27).
- 1.12 **Dependent Care Reimbursement** shall have the meaning assigned to it by Section 5.01(b) of the Plan.

- 1.13 **Earned Income** means all income derived from wages, salaries, tips, self-employment, and other Employee Compensation (such as disability or wage continuation benefits), but does not include (a) any amounts received pursuant to any dependent care assistance program under Code Section 129, (b) any amount received as a pension or annuity, or (c) workers' compensation.
- 1.14 **Effective Date** means the date specified in the Adoption Agreement executed by the Employer.
- 1.15 **Eligible Employment-Related Expenses** means those Qualifying Employment-Related Expenses (as defined in Section 1.30) paid or incurred incident to maintaining or seeking gainful employment after the date of the Employee's participation in the Dependent Care Reimbursement Account and during the Plan Year, other than amounts paid to:
- (a) an individual with respect to whom a Dependent deduction is allowable under Code Section 151(a) to the Participant or his or her Spouse;
 - (b) the Participant's Spouse; or
 - (c) a child of the Participant who is under 19 years of age at the end of the year in which the expenses were incurred.
- 1.16 **Eligible Medical Expenses** means those expenses incurred by the Employee, or the Employee's Spouse or Dependents, after the date of the Employee's participation in the HCRA and during the Plan Year if the expense is for "medical care" as defined in Code Section 213(d), including, but not limited to, prescription and over-the-counter, but shall not include: (a) expenses for qualified long-term care services (as defined in Code Section 7702B(c)), (b) an expense incurred for the payment of premiums under a health insurance plan and (c) an expense that has been or will be reimbursed by any other source. For purposes of this Plan, an expense is "incurred" when the Participant or beneficiary is furnished the medical care or services giving rise to the claimed expense.
- Effective January 1, 2011, **Eligible Medical Expenses** is amended to mean those expenses incurred by the Employee, or the Employee's Spouse or Dependents, after the date of the Employee's participation in the HCRA and during the Plan Year if the expense is for "medical care" as defined in Code Section 213(d), including, but not limited to, prescription drugs and prescribed over-the-counter medicines or, but shall not include: (a) expenses for qualified long-term care services (as defined in Code Section 7702B(c)), (b) an expense incurred for the payment of premiums under a health insurance plan, (c) an expense that has been or will be reimbursed by any other source, and (d) an expense for a medicine or drug incurred on or after January 1, 2011 unless such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin. For purposes of this Plan, an expense is "incurred" when the Participant or beneficiary is furnished the medical care or services giving rise to the claimed expense.
- 1.17 **Employee** means an individual who the Employer classifies as a common-law employee and who is on the Employer's W-2 payroll, but does not include any leased employee (including, but not limited to, those individuals defined in Code Section 414(n)), or an individual classified by the Employer as a contract worker, independent contractor, temporary employee or casual employee, whether or not any such persons are on the

Employer's W-2 payroll, or any individual who performs services for the Employer but who is paid by a temporary or other employment agency such as "Kelly," "Manpower," etc., or any employee covered under a collective bargaining agreement, except as may otherwise be provided for in the collective bargaining agreement.

- 1.18 **Employer** means the Employer adopting this Plan and any Affiliated Employer authorized by the Employer to adopt the Plan and who adopts the Plan, provided, however, that when the Plan provides that "the Employer" has a certain power (e.g., the appointment of a Plan Administrator, entering into a contract with a third-party insurer, or amendment or termination of the Plan), the term shall not include Affiliated Employers adopting the Plan. Affiliated Employers who adopt the Plan shall be bound by the Plan as adopted and subsequently amended by the Employer until they withdraw in writing from participation herein. Affiliated Employers who have adopted the Plan will be listed in the Adoption Agreement. Affiliated Employers shall adopt the Plan by separate resolution and shall sign such documents as the Employer shall require.
- 1.19 **ERISA** shall mean the Employee Retirement Income Security Act of 1974, as amended. References herein to ERISA shall not apply to governmental Employers.
- 1.20 **Health Care Reimbursement** shall have the meaning assigned to it by Section 5.01(a) of the Plan.
- 1.21 **Highly Compensated Individual** means an individual defined under Code Section 105(h)(5), 125(e), or 414(q), as amended, as a "highly compensated individual" or a "highly compensated employee."
- 1.22 **Key Employee** means an individual who is a "key employee" as defined in Code Section 125(b)(2), as amended.
- 1.23 **Nonelective Contribution(s)** means any amount that the Employer, in its sole discretion, may contribute on behalf of each Participant to provide benefits for such Participant and his or her Dependents, if applicable, under one or more of the Benefit Package Option(s) offered under the Plan. The manner in which such amounts are applied towards the cost of the Benefit Package Option(s) shall be in the sole discretion of the Employer. The amount of Nonelective Contribution for each Participant may be adjusted upward or downward in the contributing Employer's sole discretion. The amount shall be calculated for each Plan Year in a uniform and nondiscriminatory manner based upon the Participant's dependent status, commencement or termination date of the Participant's employment during the Plan Year, and such other factors as the Employer shall determine. In no event will any Nonelective Contribution be disbursed to a Participant in the form of additional, taxable Compensation if the Employee declines coverage under one or more of the Benefit Package Option(s) offered under the Plan. Any unused Non-Elective Contributions shall be returned to the Employer.
- 1.24 **Participant** means an Employee who becomes a Participant pursuant to Article II.
- 1.25 **Plan** means this Flexible Benefits (125) Plan.

- 1.26 **Plan Administrator** or **Committee** means the person(s) appointed by the Employer with authority and responsibility to manage and direct the operation and administration of the Plan. If no such person is named, the Plan Administrator shall be the Employer.
- 1.27 **Plan Year** shall be the 12-month period indicated in the Adoption Agreement, provided, however, that a period of less than 12 months may be a Plan Year for the Initial Plan Year, the final Plan Year, and a transition period to a different Plan Year.
- 1.28 **Pre-tax Contribution(s)** means amounts withheld from an Employee's Compensation pursuant to a Salary Reduction Agreement, before any applicable state and federal taxes have been deducted, for purposes of purchasing one or more of the Benefit Package Options available under the Plan. This amount shall not exceed the premiums attributable to the most costly Benefit Package Option afforded hereunder, and for purposes of Code Section 125, shall be treated as an Employer contribution (this amount may, however, be treated as an Employee contribution for purposes of state insurance laws).
- 1.29 **Qualified Benefit** means any benefit excluded from the Employee's taxable income under Chapter 1 of the Code (other than Sections 106(b), 117, 124, 127, or 132) and any other benefit permitted by the Income Tax Regulations (i.e., any group-term life insurance coverage that is includable in gross income by virtue of exceeding the dollar limitation on nontaxable coverage under Code Section 79). Long-term care insurance is not a "Qualified Benefit."
- 1.30 **Qualifying Employment-Related Expenses** means those expenses that would be considered to be employment-related expenses under Code Section 21(b)(2) (relating to expenses for household and dependent care services necessary for gainful employment) if paid for by the Employee to provide Qualifying Services.
- 1.31 **Qualifying Individual** means:
- (a) a Dependent of the Participant who is under the age of 13;
 - (b) a Dependent of a Participant who is mentally or physically incapable of caring for himself or herself and who has the same principal place of residence as the Participant for more than one half of the Plan Year; or
 - (c) the Spouse of a Participant who is mentally or physically incapable of caring for himself or herself and who has the same principal place of residence as the Participant for more than one half of the Plan Year.
- 1.32 **Qualifying Services** means services relating to the care of a Qualifying Individual that enable the Participant or his or her Spouse to remain gainfully employed (or to actively seek gainful employment) which are performed:
- (a) in the Participant's home; or
 - (b) outside the Participant's home for (i) the care of a Dependent of the Participant who is under age 13, or (ii) the care of any other Qualifying Individual who resides at least 8 hours per day in the Participant's household. If the expenses are incurred for services provided by a dependent care center (i.e., a facility that provides care

for more than 6 individuals not residing at the facility), the center must comply with all applicable state and local laws and regulations.

- 1.33 **Reimbursement Account or Accounts** shall be the funding mechanism by which amounts are withheld from an Employee's Compensation and retained for reimbursement of eligible expenses as defined herein. No money shall actually be allocated to any individual Participant Account(s); any such Account(s) shall be of a memorandum nature, maintained by the Administrator for accounting purposes, and shall not be representative of any identifiable trust assets. No interest will be credited to or paid on amounts credited to the Participant Account(s).
- 1.34 **Salary Reduction Agreement** means the actual or deemed agreement pursuant to which an eligible Employee or Participant enrolls in the specific component Benefit Package Options with Pre-tax Contributions or After-tax Contributions in accordance with the provisions hereof. If the Employer utilizes an interactive voice response (IVR) system or web-based program for enrollment, the Salary Reduction Agreement may be maintained on an electronic database.
- 1.35 **Spouse** means an individual who is legally married to a Participant (and who is treated as a spouse under the Code), but for purposes of the Dependent Care Reimbursement Plan provisions, shall not include an individual legally separated from the Participant under a divorce or separate maintenance decree, nor shall it include an individual who, although married to the Participant, files a separate federal income tax return, maintains a separate, principal residence from the Participant during the last six months of the taxable year, and does not furnish more than one-half of the cost of maintaining the principal place of abode of the Qualifying Individual.
- 1.36 **Student** means an individual who, during each of five or more calendar months during the Plan Year, is a full-time student at any college or university, the primary function of which is the conduct of formal instruction, and which routinely maintains a regular faculty and curriculum and normally has an enrolled student body in attendance at the location where its educational activities are regularly presented.

ARTICLE II

Eligibility and Participation

- 2.01 **Eligibility to Participate.** Each Employee who is eligible for coverage or participation under any of the Benefit Package Options, as specified in the Adoption Agreement, shall be eligible to become a Participant in this Plan as of the time specified in the Adoption Agreement. The eligibility for Benefit Package Option(s) offered under the Plan shall be subject to any requirements specified in the applicable Benefit Package Option. The provisions of this Article are not intended to override any eligibility requirement(s) or waiting period(s) specified in the applicable Benefit Package Options.
- 2.02 **Eligibility to Participate in Reimbursement Accounts.** Each Employee shall become eligible to Participate in the Reimbursement Accounts upon satisfaction of the applicable eligibility requirement(s) set forth in the Adoption Agreement. Employees covered under a collective bargaining agreement will only be eligible to participate in Reimbursement Accounts if participation shall be provided for in the collective bargaining agreement.
- 2.03 **Termination of Participation.** Participation shall terminate on the earliest of: (a) the date an Employee ceases to be an Employee (except as otherwise provided in Section 5.05 for COBRA coverage); (b) when an Employee ceases to meet the eligibility requirements for the Benefit Package Option; (c) the date this Plan is amended to exclude the Employee or is terminated; or (d) the effective date of the Employee's election not to participate pursuant to applicable provisions of Article III. Subject to any specific limitations for any particular benefit which the Participant has elected: (a) participation shall be continued during a leave of absence for which the Participant continues to receive a salary from his or her employer and (b) participation shall be suspended during an unpaid leave of absence.
- 2.04 **Qualifying Leave Under Family Leave Act.** Notwithstanding any provision to the contrary herein, if a Participant goes on a qualifying unpaid leave under the Family and Medical Leave Act of 1993 ("FMLA"), to the extent required by the FMLA, the Employer will continue to maintain the Participant's medical coverage on the same terms and conditions as though he or she were still an active Employee (i.e., the Employer will continue to pay its share of the premium to the extent the Employee opts to continue his or her coverage). If the Employee opts to continue his or her coverage, the Employee may pay his or her share of the premium with after-tax dollars while on leave (or pre-tax dollars to the extent he or she receives Compensation during the leave), or the Employee may be given the option to pre-pay all or a portion of his or her share of the premium for the expected duration of the leave on a pre-tax salary reduction basis out of his or her pre-leave Compensation by making a special election to that effect prior to the date such Compensation would normally be made available to him or her (provided, however, that pre-tax dollars may not be utilized to fund coverage during the next plan year), or via other arrangements agreed upon between the Employee and the Employer (e.g., the Employer may fund coverage during the leave and withhold amounts upon the Employee's return). Upon return from such leave, the Employee will be permitted to re-enter the Plan on the same basis the Employee was participating in the Plan prior to his or her leave, or as otherwise required by the FMLA.

ARTICLE III

Benefit Package Options and Election Procedure

3.01 **Benefit Package Options.** A Participant may elect under this Plan to receive his or her total Compensation for any Plan Year in cash or designate that a specified portion of his or her Compensation be applied by the Employer toward any or a combination of the following benefit options:

- (a) **Option A:** Group insurance contracts and prepaid health plan contracts for Employer-sponsored health insurance;
- (b) **Option B:** Benefits available under the Health Care Reimbursement Account; and
- (c) **Option C:** Benefits available under the Dependent Care Reimbursement Account.

3.02 **Description of Benefits Other than Cash.** While the election to receive any of the optional benefits described herein may be made under this Plan, the benefits will be provided not by this Plan, but by the applicable health insurance policy, the Health Care Reimbursement Account or the Dependent Care Reimbursement Account, respectively. The types and amounts of benefits available under each option elected in the Adoption Agreement, the requirements for participating in such option, and the other terms and conditions of coverage and benefits under such option are as set forth and as in effect at any time in any health insurance policies or contracts that constitute (or are incorporated by reference in) any health plan, the Health Care Reimbursement Account and the Dependent Care Reimbursement Account. The benefit descriptions in such Plans and contracts, as in effect at any time, are hereby incorporated by reference into this Plan.

3.03 **Election of Benefit Options in Lieu of Cash.** A Participant may elect under this Plan to receive any or all of the benefit options elected in the Adoption Agreement in accordance with the procedure described in Section 3.04 hereof.

- (a) If Option A is made available by an Employer and a Participant elects Option A, the Participant's cash Compensation will first be reduced, and an amount equal to such reduction will be applied by the Employer to pay the Participant's share of the insurance premiums.
- (b) If Option B is made available by an Employer and a Participant elects the Health Care Reimbursement Account, the Participant's cash Compensation will be reduced, and an amount equal to the reduction will be credited by the Employer to a spending account as described in Section 4.04 hereof.
- (c) If Option C is made available by an Employer and a Participant elects the Dependent Care Reimbursement Account, the Participant's cash Compensation will be reduced, and an amount equal to the reduction will be credited by the Employer to a spending account as described in Section 4.05 hereof.

3.04 **Election and Salary Reduction Procedures.**

- (a) **Election Period.** Except as provided in Section 3.05, the benefit options may be elected, modified or revoked by a Participant only during an Election Period. The

Election Period for the initial Plan Year shall begin approximately 30 days prior to the commencement of the initial Plan Year, and each subsequent Election Period shall begin approximately 60 days prior to the commencement of the Plan Year. Election Periods shall, however, be at the sole discretion of the Employer and nothing herein shall invalidate the duration of an Election Period selected by an Employer. Each Election Period shall remain open until such date as the Plan Administrator shall determine, which date must be no later than the day before the next Plan Year.

Employees who are hired or become eligible after the Effective Date shall have an Election Period that shall commence prior to the Participant becoming eligible and shall end on such dates as the Plan Administrator shall establish. In no event shall such Election Period end after the coverage has begun.

- (b) **Election Procedures.** At the beginning of each Election Period, the Plan Administrator shall provide one or more written election forms and Salary Reduction Agreements to each eligible Employee. Each eligible Employee shall make his or her elections, revocations or modifications on the necessary forms and shall agree to any reduction in Compensation by executing a Salary Reduction Agreement.
- (c) **Modification of Election; Failure to Elect.** Except as provided herein for acceptable benefit changes, each election shall remain in effect for the applicable Plan Year for which such election applies. A Participant may modify or revoke an election to participate or elect to participate in any option during the Election Period for the next Plan Year. Each election is independent of the others.

A Participant in the prior Plan Year who fails to return a completed Salary Reduction Agreement to the Plan Administrator on or before the end of an Election Period shall be deemed to have completed the same election for Option A as in the prior Plan Year, and his or her Compensation shall be reduced in the same amount (or under the same guidelines) as in the prior Plan Year.

A Participant in the prior Plan Year who fails to return a completed Salary Reduction Agreement to the Plan Administrator on or before the end of an Election Period shall be deemed to have elected to receive his or her Compensation in cash in lieu of any amounts previously deducted for Options B and C, and he or she shall not be eligible to participate under this Plan in Options B and/or C (as permitted by the Employer) until the next Plan Year, unless the eligible Employee demonstrates a change in family status as defined in Section 3.05 or other event permitting an election change. The Participant's election for Option A in the prior Plan Year shall be continued for the next Plan Year.

An eligible Employee who has elected not to participate during the Plan Year is not eligible to enroll or re-enroll until the Election Period for the next succeeding Plan Year, unless the eligible Employee can demonstrate a change in status as defined in Section 3.05 or other event permitting an election change.

- 3.05 **Change of Benefit Election.** A Participant shall not make any changes to the Pre-tax Contribution amount or to the Participant's elected allocation of Benefit Credits, if any, except for election changes permitted under this section, and for changes made during the annual Election Period, changes caused by termination of employment (Section 3.06) and changes pursuant to the Family and Medical Leave Act (Section 2.04).

Except as provided in Section 3.05(b) for HIPAA special enrollment rights in the event of birth, adoption, or placement for adoption, all permissible election changes shall be effective on a prospective basis only (i.e., election changes will become effective no earlier than the first day of the first pay period coinciding with or immediately following the date that the election change was filed) but, as determined by the Plan Administrator, election changes may become effective later to the extent the coverage in the applicable component plan commences later.

- (a) **Change in Status.** A Participant may change his or her actual or deemed election under the Plan upon the occurrence of a Change in Status, but only if such election change is made on account of and corresponds with a Change in Status that affects eligibility for coverage under a plan of the Employer. A Change in Status that affects eligibility for coverage includes a Change in Status that results in an increase or decrease in the number of an Employee's family members (i.e., a Spouse and/or Dependents) who may benefit from the coverage. The Plan Administrator (in its sole discretion) shall determine, based on prevailing IRS guidance, whether a requested change is on account of and corresponds with a Change in Status.

Assuming the general consistency requirement is satisfied, a requested election change must also satisfy the following specific consistency requirements in order for a Participant to be able to alter his or her election based on the specified Change in Status:

- (1) **Loss of Dependent Eligibility.** For a Change in Status involving a Participant's divorce, annulment or legal separation from a Spouse, the death of a Spouse or a Dependent, or a Dependent ceasing to satisfy the eligibility requirements for coverage, a Participant may only elect to cancel accident or health insurance coverage for the Spouse involved in the divorce, annulment, or legal separation, the deceased Spouse or Dependent, or the Dependent who ceased to satisfy the eligibility requirements. Canceling coverage for any other individual under these circumstances would fail to correspond with that Change in Status.

Notwithstanding the foregoing, if the Participant, the Participant's Spouse or the Participant's Dependent becomes eligible for COBRA (or similar health plan continuation coverage under state law) under the Employer's Plan, the Participant may increase his or her election to pay for such coverage (this rule does not apply to a Participant's Spouse who becomes eligible for COBRA or similar coverage as a result of divorce).

- (2) **Gain of Coverage Eligibility Under Another Employer's Plan.** For a Change in Status in which a Participant, a Participant's Spouse, or a Participant's Dependent gains eligibility for coverage under another employer's cafeteria plan (or another employer's qualified benefit plan) as a result of a change in marital status or a change in employment status, a Participant may elect to cease or decrease coverage for that individual only if coverage for that individual becomes effective or is increased under the other employer's plan. The Plan Administrator may rely on a Participant's certification that the Participant has obtained or will obtain coverage under

the other employer's plan, unless the Employer has reason to believe that the Participant's certification is incorrect.

- (3) **Special Consistency Rule for DCRA.** With respect to the DCRA (when offered under the Plan), a Participant may change or terminate his or her election upon a Change in Status if (i) such change or termination is made on account of and corresponds with a Change in Status that affects eligibility for coverage or (ii) the election change is on account of and corresponds with a Change in Status that affects eligibility of dependent care expenses for the tax exclusion available under Code Section 129.
- (4) **Special Consistency Rule for Group Term Life Insurance, Disability and Dismemberment Coverage.** For any Change in Status, a Participant may elect either to increase or to decrease group-term life insurance, disability coverage, or accidental death and dismemberment coverage which may be offered under the Plan.
- (b) **HIPAA Special Enrollment Rights.** If a Participant, a Participant's Spouse or a Participant's Dependent is entitled to special enrollment rights under a group health plan, as required by HIPAA under Code Section 9801(f), then a Participant may revoke a prior election for group health plan coverage and make a new election (including an election for a Health Care Reimbursement Account) provided that the election change corresponds with such HIPAA special enrollment right. As required by HIPAA, a special enrollment right will arise if:
 - (1) A Participant or Spouse or Dependent declined to enroll in group health plan coverage because he or she had other coverage and eligibility for such other coverage is subsequently lost due to legal separation, divorce, death, termination of employment, reduction in hours, exhaustion of the maximum COBRA period, or the other coverage was non-COBRA coverage and employer contributions for such coverage were terminated; or
 - (2) A new Dependent is acquired as a result of marriage, birth, adoption, or placement for adoption. An election to add previously eligible Dependents as a result of the acquisition of a new Spouse or Dependent child shall be considered to be consistent with the special enrollment right. An election change on account of a HIPAA special enrollment attributable to the birth, adoption, or placement for adoption of a new Dependent child may, subject to the provisions of the underlying group health plan, be effective retroactively (up to 30 days).
- (c) **Certain Judgments, Decrees and Orders.** If a judgment, decree, or order (an "Order") resulting from a divorce, legal separation, annulment or change in legal custody (including a qualified medical child support order) requires accident or health coverage (including an election for Health Care Reimbursement) for a Participant's Dependent child (including a foster child who is a Dependent of the Participant), a Participant may (i) change his or her election to provide coverage for the Dependent child (provided that the Order requires the Participant to provide coverage), or (ii) change his or her election to revoke coverage for the Dependent child if the Order requires that another individual (including the Participant's

Spouse or former Spouse) provide coverage under that individual's plan and such coverage is actually provided.

- (d) **Medicare and Medicaid.** If a Participant, a Participant's Spouse, or a Participant's Dependent who is enrolled in a health or accident plan under this Plan becomes entitled to Medicare or Medicaid (other than coverage consisting solely of benefits under Section 1928 of the Social Security Act providing for pediatric vaccines), the Participant may prospectively reduce or cancel the health or accident coverage (including an election for Health Care Reimbursement) of the person becoming entitled to Medicare or Medicaid. Further, if a Participant, a Participant's Spouse, or a Participant's Dependent who has been entitled to Medicare or Medicaid loses eligibility for such coverage, the Participant may prospectively elect to commence or increase the accident or health coverage (including an election for Health Care Reimbursement) of that individual who loses Medicare or Medicaid eligibility.

- (e) **Change in Cost.**

The following rules are not applicable to Health Care Reimbursement Accounts under the Plan.

For purposes of this Section 3.05(e), "similar coverage" means coverage for the same category of benefits for the same individuals (e.g., family to family or single to single). For example, two plans that provide coverage for major medical are considered to be similar coverage. For purposes of this definition, a HCRA is not similar coverage with respect to an accident or health plan that is not a HCRA. This Plan may, in the Plan Administrator's discretion, treat coverage by another employer, such as a Spouse's or Dependent's employer, as similar coverage.

- (1) **Increase or Decrease for Insignificant Cost Changes.** Participants are required to increase their elective contributions (by increasing salary reductions or decreasing cash-out amounts, if applicable) to reflect insignificant increases in their required contribution for their Benefit Package Option(s) and decrease their elective contributions to reflect insignificant decreases in their required contribution. The Plan Administrator, in its sole discretion, on a uniform and consistent basis will determine whether an increase or decrease is insignificant based upon all the surrounding facts and circumstances, including, but not limited to, the dollar amount or percentage of the cost change. The Plan Administrator, on a reasonable and consistent basis, will automatically effectuate this increase or decrease in affected employees' elective contributions on a prospective basis.
- (2) **Significant Cost Increases.** If the Plan Administrator determines that the cost charged to an Employee of a Benefit Package Option(s) significantly increases during a Plan Year, the Participant may either (i) make a corresponding prospective increase in his or her elective contributions (by increasing salary reductions or decreasing cash-out amounts, if applicable), (ii) revoke his or her election for that coverage, and in lieu thereof, receive on a prospective basis coverage under another Benefit Package Option that provides similar coverage, or (iii) drop coverage prospectively if there is no other Benefit Package Option available that provides similar coverage.

The Plan Administrator (in its sole discretion) will decide, in accordance with prevailing IRS guidance, on a uniform and consistent basis, whether a cost increase is significant.

- (3) **Significant Cost Decreases.** If the Plan Administrator determines that the cost of any Benefit Package Option significantly decreases during a Plan Year, the Plan Administrator may permit the following election changes: (i) Participants who are enrolled in a Benefit Package Option other than the Benefit Package Option that has decreased in cost may change their election on a prospective basis to elect Benefit Package Option that has decreased in cost, and (ii) Employees who are otherwise eligible under Section 2.01 may elect the Benefit Package Option that has decreased in cost on a prospective basis, subject to the terms and limitations of the Benefit Package Option. The Plan Administrator (in its sole discretion) will decide, in accordance with prevailing IRS guidance and on a uniform and consistent basis, whether a cost decrease is significant.
- (4) **Limitation on Change in Cost Provisions for DCRA.** The above “Change in Cost” provisions (Sections 3.05(e)(1) – 3.05(e)(3)) apply to DCRA only if the cost change is imposed by a dependent care provider who is not a “relative” of the Employee. For this purpose, a relative is an individual who is related as described in Code Section 152(a)(1) through (8), incorporating the rules of Section 152(b)(1) and (2).

(f) **Change in Coverage.**

The following rules are not applicable to Health Care Reimbursement Accounts under the Plan.

The definition of “similar coverage” under Section 3.05(e) also applies to this Section 3.05(f).

- (1) **Significant Curtailment.** If coverage is “significantly curtailed” (as defined in subsection (i) below) Participants may elect similar coverage. In addition, as set forth in subsection (ii) below, if the coverage curtailment results in a “Loss of Coverage” (as defined in subsection (iii) below) Participants may drop coverage if no similar coverage is available. The Plan Administrator (in its sole discretion) will decide, in accordance with prevailing IRS guidance, on a uniform and consistent basis, whether a curtailment is “significant,” and whether a Loss in Coverage has occurred.
- (i) **Significant Curtailment Without Loss of Coverage.** If the Plan Administrator determines that a Participant’s coverage under a Benefit Package Option under this Plan (or the Participant’s Spouse’s or Dependent’s coverage under his or her employer’s plan) is significantly curtailed without a Loss of Coverage (for example, when there is a significant increase in the deductible, the co-pay, or the out-of-pocket cost-sharing limit under an accident or health plan) during a Plan Year, the Participant may revoke his or her election for the affected coverage, and in lieu thereof, prospectively elect coverage under another Benefit Package

Option that provides similar coverage. Coverage under a plan is deemed “significantly curtailed” only if there is an overall reduction in coverage provided under the Plan so as to constitute reduced coverage generally.

- (ii) **Significant Curtailment With a Loss of Coverage.** If the Plan Administrator determines that a Participant’s Benefit Package Option under this Plan (or the Participant’s Spouse’s or Dependent’s coverage under his or her employer’s plan) is significantly curtailed, and such curtailment results in a Loss of Coverage during a Plan Year, the Participant may revoke his or her election for the affected coverage, and may either prospectively elect coverage under another Benefit Package Option that provides similar coverage, or drop coverage if no other Benefit Package Option providing similar coverage is available.
- (iii) For purposes of this Section 3.05(f)(1), a “Loss of Coverage” means a complete loss of coverage (including the elimination of a Benefit Package Option, an HMO ceasing to be available where the Participant, Participant’s Spouse or Dependent resides, or a Participant, Spouse or Dependent losing all coverage under the Benefit Package Option by reason of an overall lifetime or annual limitation). In addition, the Plan Administrator, in its discretion, may treat the following as a Loss of Coverage:
 - a. a substantial decrease in the medical care providers available under the Benefit Package Option (such as a major hospital ceasing to be a member of a preferred provider network or a substantial decrease in the number of physicians participating in a preferred provider network or an HMO).
 - b. a reduction in benefits for a specific type of medical condition or treatment with respect to which the Participant, the Participant’s Spouse or the Participant’s Dependent is currently in a course of treatment; or
 - c. any other similar fundamental loss of coverage.

- (2) **Addition or Significant Improvement of a Benefit Package Option.** If, during a Plan Year, the Plan adds a new Benefit Package Option or significantly improves an existing Benefit Package Option, the Plan Administrator may permit the following election changes: (i) Participants who are enrolled in a Benefit Package Option other than the newly added or significantly improved Benefit Package Option may change their election on a prospective basis to elect the newly added or significantly improved Benefit Package Option, and (ii) Employees who are otherwise eligible under Section 2.01 may elect the newly added or significantly improved Benefit Package Option on a prospective basis, subject to the terms and limitations of the Benefit Package Option. The Plan Administrator (in its sole discretion) will decide, in accordance with

prevailing IRS guidance and on a uniform and consistent basis, whether there has been an addition or a significant improvement of a Benefit Package Option.

- (3) **Loss of Coverage Under Other Group Health Coverage.** A Participant may prospectively change his or her election to add group health coverage for the Participant, the Participant's Spouse, or the Participant's Dependent, if such individual(s) loses coverage under any group health coverage sponsored by a governmental or educational institution, including (but not limited to) the following: a state children's health insurance program ("SCHIP") under Title XXI of the Social Security Act; a medical care program of an Indian Tribal government (as defined in section 7701(a)(4)), the Indian Health Service, or a tribal organization; a state health benefits risk pool; or a foreign government group health plan, subject to the terms and limitations of the applicable Benefit Package Option(s).
- (4) **Change in Coverage Under Another Employer Plan.** A Participant may make a prospective election change that is on account of and corresponds with a change made under another employer plan (including a plan of the Employer or another employer), so long as: (i) the other cafeteria plan or qualified benefits plan permits its participants to make an election change that would be permitted under applicable IRS regulations; or (ii) the Plan permits Participants to make an election for a Plan Year which is different from the plan year under the other cafeteria plan or qualified benefits plan. The Plan Administrator shall determine, based on prevailing IRS guidance, whether a requested change is on account of and corresponds with a change made under the other employer plan.

Any change in an election affecting Reimbursement Accounts pursuant to this section also will change the maximum reimbursement for the period of coverage remaining in the Plan Year. Such maximum reimbursement for the period of coverage following an election change shall be calculated by adding the balance (if any) remaining in each of the Participant's Reimbursement Accounts as of the end of the portion of the Plan Year immediately preceding the change in election, to the total Plan Contributions scheduled to be made by the Participant during the remainder of such Plan Year to such Account(s).

An Employee who is eligible to become a Participant but declined to become a Participant during the applicable Election Period may become a Participant and file a Pre-tax Contribution election within thirty (30) days of the occurrence of an event described in Section 3.05 above, but only if the election under the new Salary Reduction Agreement is made on account of and corresponds with the event (as described above). A Participant otherwise entitled to make a new election under this Section must do so within thirty (30) days of the event (e.g., Change in Status, significant change in cost or coverage, Medicare or Medicaid eligibility, special enrollment right or judgment, decree, or order).

Elections made pursuant to this Section shall be effective for the balance of the Plan Year in which the election is made unless a subsequent event (described above) allows a further election change.

- 3.06 **Impact of Termination of Employment on Election or Cessation of Eligibility.** Termination of employment or cessation of eligibility shall automatically revoke any Salary Reduction Agreement. Except as provided below, if revocation occurs under this Section 3.06, no new election with respect to Pre-Tax Contributions may be made by such Participant during the remainder of the Plan Year. Except as otherwise provided in the applicable Benefit Package Options, former Participants who are rehired within thirty (30) days or less of the date of termination of employment will be reinstated with the same election(s) such individual had before termination. If a former Participant is rehired more than thirty (30) days following termination of employment and is otherwise eligible to participate in the Plan, the individual may make a new election.

Expenses may continue to be incurred for such period of time as specified in the Adoption Agreement for Options A and/or B.

ARTICLE IV

Premium Payments and Credits and Debits to Accounts

- 4.01 **Source of Benefit Funding.** The cost of coverage under the component Benefit Package Options shall be funded by Participant's Pre-tax and/or After-tax Contributions, Benefit Credits, if provided for in the Adoption Agreement, and any Nonelective Contributions. The component Benefit Package Options, and required contributions thereunder, shall be made known to employees in enrollment materials.
- (a) **Participant After-tax and/or Pre-tax Contributions.** Pre-tax or After-tax Contributions (as elected by the Employee) shall equal the contributions required from the Participant (less any Benefit Credits allocated thereto by the Participant, if provided for in the Adoption Agreement, or Nonelective Contributions allocated thereto by the Employer) for coverage of the Participant or the Participant's Spouse or Dependents under the Benefit Package Options elected by the Participant under this Plan. Amounts withheld from a Participant's Compensation as Pre-tax Contributions or After-tax Contributions shall be applied to fund benefits as soon as administratively feasible. The maximum amount of Pre-tax Contributions plus Benefit Credits, if any, and Nonelective Contributions shall not exceed the aggregate cost of the benefits elected.
- (b) **Benefit Credits.** The Employer may, but is not required to, make available to Participants Benefit Credits to apply, at the Participant's discretion, towards the cost of one or more of the Benefit Package Options chosen by the Participant. Benefit Credits will be available as set forth in the Adoption Agreement.
- (c) **Nonelective Contributions.** The Employer may, but is not required to, contribute Nonelective Contributions on behalf of each Participant for the purpose of providing one or more of the Benefit Package Options under the Plan. Nonelective Contributions will be provided as set forth in the enrollment material.
- 4.02 **Allocations Irrevocable During Plan Year.** Except as provided in Sections 3.05, 3.06, and 4.03, neither (a) the insurance coverages nor the Pre-Tax Contribution amounts withheld, therefore, (b) the amount to be credited to a Participant Account during the Plan Year pursuant to Sections 4.04 and 4.05, nor (c) the allocation of such amounts to the appropriate Account(s) of the Participant, can be changed during the Plan Year.
- 4.03 **Reduction of Certain Elections to Prevent Discrimination.** If the Plan Administrator determines, before or during any Plan Year, that the Plan may fail to satisfy for such Plan Year any requirement imposed by the Code or any limitation on Pre-tax Contributions allocable to Key Employees or to Highly Compensated Individuals, the Plan Administrator shall take such action(s) as it deems appropriate, under rules uniformly applicable to similarly situated Participants, to assure compliance with such requirement or limitation. Such action may include, without limitation, a modification or revocation of a Highly Compensated Individual's or Key Employee's election without the consent of such Employee.

4.04 **Health Care Reimbursement Accounts.**

- (a) **Debiting and Crediting of Accounts.** Each Participant's HCRA (if elected in the Adoption Agreement) will be credited with amounts withheld from the Participant's Compensation for Health Care Reimbursement, Benefit Credits (if any) and Nonelective Contributions by the Employer for HCRA purposes, if any. The Account will be debited for Health Care Reimbursements disbursed to the Participant in accordance with this document. The entire amount elected by the Participant on the Salary Reduction Agreement as an annual amount for the Plan Year for Health Care Reimbursement less any Health Care Reimbursements already disbursed shall be available to the Participant at any time during the Plan Year without regard to the balance in the Account (provided that the periodic contributions have been made). Thus, the maximum amount of Health Care Reimbursement at any particular time during the Plan Year will not relate to the amount which a Participant has had credited to his or her HCRA. In no event will the amount of Health Care Reimbursements in any Plan Year exceed the annual amount specified for the Plan Year in the Salary Reduction Agreement for Health Care Reimbursement. Any amount credited to the Account shall be forfeited by the Participant and restored to the Employer if it has not been applied to provide Health Care Reimbursement within such number of days following the end of the Plan Year for which the election was effective as shall be selected in the Adoption Agreement. Amounts so forfeited shall be used to offset administrative expenses or any use that is permitted within the applicable Department of Labor or Internal Revenue Service regulations.
- (b) **Source of Payments.** All Health Care Reimbursements derived hereunder shall be paid exclusively from the amounts in each Employee's HCRA funded by amounts withheld from the Employee's Compensation for HCRA purposes, Benefit Credits for HCRA purposes (if any) and Nonelective Contributions by the Employer for HCRA purposes (if any). In the event that an Employee's claim for Health Care Reimbursement benefits exceeds the amount currently available in the Employee's HCRA, the Employer shall pay the excess amount up to the amount elected by the Participant on the Salary Reduction Agreement for Health Care Reimbursement less any reimbursements already disbursed. Future Salary Reductions from the Employee shall then go to the Employer as reimbursement for the money so advanced on behalf of the Employee.
- (c) **Employer Risk.** If the Employee terminates employment before the Employer has been reimbursed for the money it has advanced on behalf of the Employee, the entire unreimbursed portion shall be deemed to be an "administrative expense" to be refunded to the Employer only by any unused Account balance(s) (if any) as provided in Section 4.04(a).

4.05 **Dependent Care Reimbursement.**

- (a) **Crediting and Debiting of Accounts.** Each Participant's DCRA (if elected in the Adoption Agreement) will be credited with amounts withheld from the Participant's Compensation for Dependent Care Reimbursement, Benefit Credits (if any) and Nonelective Contributions by the Employer for DCRA purposes (if any). The Account will be debited for Dependent Care Reimbursements disbursed to the Participant in accordance with this document. In the event that the amount in

the Account is less than the amount of reimbursable claims at any time during the Plan Year, the excess part of the claim will be carried over into following months (within the same Plan Year), to be paid out as the DCRA balance becomes adequate. In no event will the amount of Dependent Care Reimbursements exceed the amount credited to the DCRA for any Plan Year. Any amount allocated to the DCRA shall be forfeited by the Participant and restored to the Employer if it has not been applied to provide Dependent Care Reimbursement for the Plan Year within such number of days following the end of the Plan Year for which the election was effective as shall be selected in the Adoption Agreement. Amounts so forfeited shall be used to offset administrative costs or any use that is permitted within the applicable Internal Revenue Service regulations.

- (b) **Source of Payments.** All Dependent Care Reimbursement benefits derived hereunder shall be paid exclusively from the amounts in each Employee's DCRA funded by amounts withheld from the Employee's Compensation pursuant to the Salary Reduction Agreement for Dependent Care Reimbursement, Benefit Credits allocable thereto (if any), and Nonelective Contributions allocated by the Employer for Dependent Care Reimbursement Benefits (if any).

- 4.06 **Debit or Stored-Value Card.** If elected by the Employer in the Adoption Agreement, a debit or stored value card ("card") shall be available for Participant use to pay eligible HCRA expenses, subject to a provider's ability to accept a card. If a card is provided, under no circumstances shall the Employer have any responsibility for a payment which is denied when the Participant attempts to use a card and thereby obtain paperless adjudication of claims.

The Employer shall establish such policies, procedures and guidelines as shall assure that the substantiation requirements of Code section 125 and regulations promulgated thereunder, as well as all other applicable IRS guidance, are satisfied.

ARTICLE V**Benefits**

5.01 **Qualified Benefits.** The maximum benefit a Participant may elect under this Plan shall not exceed the sum of (i) the maximum Health Care Reimbursement under Section 5.01(a) (if elected in the Adoption Agreement) and (ii) the maximum Dependent Care Reimbursement under Section 5.01(b) (if elected in the Adoption Agreement). The Qualified Benefits available for election are one or more of the following:

- (a) **Health Care Reimbursement.** If elected in the Adoption Agreement, payment shall be made to the Participant in cash as reimbursement for Eligible Medical Expenses incurred by the Participant or his or her Dependents while he or she is an Employee, during the Plan Year for which the Participant's election is effective. These expenses must also be expenses which --
 - (1) are not covered, paid or reimbursed from any other source; and
 - (2) meet the criteria of tax deductibility as a medical or dental expense under Code Section 213, as amended and the regulations thereunder, and
 - (3) will not be taken as a deduction from income on the Participant's federal income tax return in any tax year; and
 - (4) do not exceed the amount that the Employee has elected to have credited to a HCRA for Health Care Reimbursement for the Plan Year less previous Health Care Reimbursements made during the Plan Year. The minimum and maximum amounts an Employee who elects Health Care Reimbursement Benefits may elect to have credited to a Health Care Reimbursement Account for a Plan Year is as indicated in the Adoption Agreement;
 - (5) are verified in writing to the satisfaction of the Administrator that a covered expense has been incurred with respect to which a Claim Form which meets the substantiation requirements of Section 6.10 has been submitted.
- (b) **Dependent Care Reimbursement.** If elected in the Adoption Agreement, payment shall be made to the Participant in cash as reimbursement for Eligible Employment-Related Expenses incurred by him or her while an Employee, during the Plan Year for which the Participant's election is effective, provided that the substantiation requirements of Section 6.10 have been complied with. No payment otherwise due a Participant hereunder shall exceed the smallest of:
 - (1) the Participant's Compensation for the applicable month; or
 - (2) the Earned Income of the Participant's Spouse for such month (Note: a Spouse of a Participant who is not employed during a month in which the Participant incurs Eligible Employment-Related Expenses and who is either incapacitated or a Student shall be deemed to have Earned Income in the amount of \$200 per month per Qualifying Individual for whom the

Participant incurs Eligible Employment-Related Expense(s), up to a maximum amount of \$400 per month); or

- (3) the amount the Participant has actually contributed to a Dependent Care Reimbursement Account for Dependent Care Reimbursement for the Plan Year less any prior Dependent Care Reimbursements during the Plan Year; or
- (4) Five Thousand Dollars (\$5,000), or, if the Participant is married and files a separate tax return, Two Thousand Five Hundred Dollars (\$2,500) (or any future aggregate limitations promulgated under Code Section 129) less any prior reimbursements during the Plan Year.

5.02 **Cash Benefit.** To the extent that a Participant does not elect to have the maximum amount of his or her Compensation contributed as a Pre-tax Contribution or After-tax Contribution hereunder, such amount not elected shall be paid to the Participant in the form of normal Compensation payments; provided, however, that any applicable Nonelective Contributions and/or Benefit Credits may not be received in the form of cash compensation.

5.03 **Repayment of Excess Reimbursements.** If, as of the end of any Plan Year, it is determined that a Participant has received payments under this Plan that exceed the amount of Eligible Medical Expenses and/or Eligible Employment-Related Expenses that have been substantiated by such Participant during the Plan Year as required by Section 6.10 hereof, the Plan Administrator shall give the Participant prompt written notice of any such excess amount, and the Participant shall repay the amount of such excess to the Employer within sixty (60) days of receipt of such notification.

5.04 **Termination of Reimbursement Benefits.** Coverage under the HCRA and/or DCRA shall cease as of the day in which a Participant is no longer employed by the Employer or when a premium payment for the respective plan(s) has been missed for any reason. Provided, however that Participants may submit claims for reimbursement for Eligible Employment-Related Expenses arising during the Plan Year at any time during the run-out period selected in the Adoption Agreement after the end of the Plan Year for which the election had been in effect, and to receive reimbursement hereunder. Participants in the HCRA may submit claims for reimbursement for Eligible Medical Expenses arising during the Plan Year and before the date of separation from service at any time during the run-out period selected in the Adoption Agreement after the end of the Plan Year for which the election had been in effect, and to receive reimbursement hereunder. Unless a COBRA election is made, Participants shall not be entitled to receive reimbursement for medical care expenses incurred after coverage ceases under this Section. Any unused reimbursement benefits at the expiration of the run-out period selected in the Adoption Agreement following the close of the Plan Year shall be treated in accordance with Section 4.04 or 4.05.

5.05 **COBRA Coverage.** Each Benefit Package Option made available under the Employer's Plan that is considered to be a "group health plan" under Code Section 4980B, because employees and their families are provided with health care benefits within the meaning of Code Section 213(d)(1), including the HCRA, shall contain the necessary provisions required by Code Section 4980B and ERISA Section 601, to ensure that such benefits may be continued, to the extent required by Code Section 4980B, on or after the occurrence of the qualifying events defined in Code Section 4980B(f)(3).

- 5.06 **Coordination of Benefits Under HCRA.** The HCRA is intended to pay benefits solely for otherwise unreimbursed medical expenses. Accordingly, it shall not be considered a group health plan for coordination of benefits purposes, and its benefits shall not be taken into account when determining benefits payable under any other plan.

ARTICLE VI**Plan Administration**

6.01 **Allocation of Authority.** The Board of Directors (or an authorized officer of the Employer), or in the case of a governmental employer, the appropriate governing body, shall appoint a Committee (the Plan Administrator) which shall keep the records for the Plan and shall control and manage the operation and administration of the Plan. The Plan Administrator shall have the exclusive right to interpret the Plan and to decide all matters arising thereunder, including the right to make determinations of fact, and construe and interpret possible ambiguities, inconsistencies, or omissions in the Plan and other documents related to the Plan. In the case of an insured Benefit Package Option, the insurer shall be the named fiduciary with respect to benefit claim determinations thereunder, and with respect to benefit claims shall have all of the powers of the Plan Administrator described herein. All determinations of the Plan Administrator with respect to any matter hereunder shall be conclusive and binding on all persons. Without limiting the generality of the foregoing, the Plan Administrator shall have the following powers and duties:

- (a) To require any person to furnish such reasonable information as he or she may request for the purpose of the proper administration of the Plan as a condition to receiving any benefits under the Plan;
- (b) To make and enforce such rules and regulations and prescribe the use of such forms as he or she shall deem necessary for the efficient administration of the Plan;
- (c) To decide on questions concerning the Plan and the eligibility of any Employee to participate in the Plan and to make or revoke elections under the Plan, in accordance with the provisions of the Plan;
- (d) To determine the amount of benefits which shall be payable to any person in accordance with the provisions of the Plan; to inform the Employer or insurer as appropriate, of the amount of such benefits; and to provide a full and fair review to any Participant whose claim for benefits has been denied in whole or in part;
- (e) To designate other persons to carry out any duty or power which may or may not otherwise be a fiduciary responsibility of the Plan Administrator, under the terms of the Plan;
- (f) To keep records of all acts and determinations, and to keep all such records, books of account, data and other documents as may be necessary for the proper administration of the Plan; and
- (g) To do all things necessary to operate and administer the Plan in accordance with its provisions.

6.02 **Provision for Third-Party Plan Service Providers.** The Plan Administrator, subject to approval of the Employer, may employ the services of such persons as it may deem necessary or desirable in connection with the operation of the Plan and to rely upon all tables, valuations, certificates, reports and opinions furnished thereby. Unless otherwise

provided in the service agreement, obligations under this Plan shall remain the obligation of the Employer.

- 6.03 **Fiduciary Liability.** To the extent permitted by law, the Plan Administrator shall not incur any liability for any acts or for failure to act except for their own willful misconduct or willful breach of this Plan.
- 6.04 **Compensation of Plan Administrator.** Unless otherwise determined by the Employer and permitted by law, any Plan Administrator who is also an employee of the Employer shall serve without compensation for services rendered in such capacity, but all reasonable expenses incurred in the performance of his or her duties shall be paid by the Employer.
- 6.05 **Bonding.** Unless otherwise determined by the Employer, or unless required by any federal or state law, the Plan Administrator shall not be required to give any bond or other security in any jurisdiction in connection with the administration of this Plan.
- 6.06 **Payment of Administrative Expenses.** All reasonable expenses incurred in administering the Plan shall be paid as indicated in the Administrative Services Agreement.
- 6.07 **Funding Policy.** The Employer shall have the right to enter into a contract with one or more insurance companies for the purposes of providing any benefits under the Plan and to replace any of such insurance companies or contracts. Any dividends, retroactive rate adjustments or other refunds of any type which may become payable under any such insurance contract shall not be assets of the Plan but shall be the property of, and shall be retained by the Employer. The Employer will not be liable for any loss or obligation relating to any insurance coverage except as is expressly provided herein. Such limitation shall include, but not be limited to, losses or obligations which pertain to the following:
- (a) Once insurance is applied for or obtained, the Employer will not be liable for any loss which may result from the failure to pay premiums to the extent premium notices are not received by the Employer;
 - (b) To the extent premium notices are received by the Employer, the Employer's liability for the payment of such premiums will be limited to such premiums and will not include liability for any other loss which results from such failure;
 - (c) The Employer will not be liable for the payment of any insurance premium or any loss which may result from the failure to pay an insurance premium if the benefits available hereunder are not enough to provide for such premium cost at the time it is due. In such circumstances, the Employee will be responsible for and see to the payment of such premiums. The Employer will undertake to notify a Participant if available benefits hereunder are not enough to provide for an insurance premium, but will not be liable for any failure to make such notification;
 - (d) When employment ends, the Employer will have no liability to take any step to maintain any policy in force except as may be specifically required otherwise herein, and the Employer will not be liable for or responsible to see to the payment of any premium after employment ends.

- 6.08 **Disbursement Reports.** The Plan Administrator shall issue directions to the Employer concerning all benefits which are to be paid from the Employer's general assets pursuant to the provisions of the Plan.
- 6.09 **Indemnification.** The Plan Administrator shall be indemnified by the Employer against claims, and the expenses of defending against such claims, resulting from any action or conduct relating to the administration of the Plan, except claims arising from gross negligence, willful neglect, or willful misconduct.
- 6.10 **Substantiation of Expenses.** Except as provided in Section 4.06 when a debit or stored-value card is used and different substantiation requirements apply, each Participant must submit a written Claim Form (on a form provided by the Plan Administrator) to the Plan Administrator to receive reimbursement for an incurred expense. The Claim Form shall be accompanied by a written statement/bill from an independent third party stating that the expense has been incurred and the amount thereof. The forms shall contain such evidence as the Plan Administrator shall deem necessary to substantiate the nature, the amount, and timeliness of any expenses that may be reimbursed.
- 6.11 **Reimbursement.** Reimbursements shall be made as soon as administratively feasible after the required forms and supporting information have been received by the Plan Administrator. Year-end expense reimbursement claims must be submitted to the Plan Administrator within such number of days as shall be specified in the Adoption Agreement after the close of the Plan Year for which the Salary Reduction Agreement is effective, and during which such expense was incurred in order to be eligible for reimbursement. Likewise, if a Participant terminates participation in the Plan with a credit balance in any Reimbursement Account, such Participant shall be entitled to submit to the Plan Administrator any claims for reimbursement for reimbursable expenses incurred prior to such cessation of Participation at any time within such number of days as shall be specified in the Adoption Agreement after the close of the Plan Year for which the Salary Reduction Agreement is effective. Terminated Participants shall have such additional number of days after the end of the Plan Year to incur expenses as shall be specified in the Adoption Agreement.
- 6.12 **Statements.** The Plan Administrator may periodically furnish each Participant with a statement, showing the amounts paid or expenses incurred by the Employer in providing Health Care and/or Dependent Care Reimbursement and the respective Reimbursement Account balance(s).

ARTICLE VII

Funding Agent

The Plan shall be funded with amounts withheld from Compensation pursuant to Salary Reduction Agreements. The Employer will apply all such amounts, without regard to their source, to pay for the welfare benefits provided herein as soon as administratively feasible and shall comply with all applicable regulations promulgated by the Department of Labor (“DOL”), taking into consideration any enforcement procedures adopted by the DOL.

ARTICLE VIII**Claims Procedures (Applicable to Non-Governmental Plans)**

- 8.01 **Application to Plan Benefits.** This Article shall not apply to benefits under the component Benefit Package Options, but shall only apply to issues germane to the benefits available under this Plan (i.e., such as a determination of: a Change in Status; change in cost or coverage; or eligibility and participation matters under this Plan document). This Article shall be the claims procedure applicable to the Health Care Reimbursement and the Dependent Care Reimbursement Plan(s).
- 8.02 **Procedure if Benefits Are Denied Under the Plan.** Any Employee, beneficiary, or his or her duly authorized representative may file a claim for a benefit to which the claimant believes that he or she is entitled, but that has been previously denied by the Plan Administrator. Such a claim must be in writing and delivered to the Plan Administrator in person or by mail, postage prepaid. Within thirty (30) days after receipt of such claim, the Plan Administrator shall send to the claimant, by mail, postage prepaid, notice of the granting or denying, in whole or in part, of such claim, unless special circumstances require an extension of time for processing the claim. In no event may the extension exceed thirty (30) days from the end of the initial period. If such extension is necessary, the claimant will be given a written notice to this effect prior to the expiration of the initial 30-day period. The Plan Administrator shall have full discretion to deny or grant a claim in whole or in part. If notice of the denial of a claim is not furnished in accordance with this Section 8.02, the claim shall be deemed denied and the claimant shall be permitted to exercise his or her right to review pursuant to Sections 8.04 and 8.05.
- 8.03 **Requirement for Written Notice of Claim Denial.** The Plan Administrator shall provide a written notice to every claimant who is denied a claim for benefits under this Article. Such written notice shall set forth in a manner calculated to be understood by the claimant, the following information:
- (a) The specific reason or reasons for the denial;
 - (b) Specific reference to pertinent Plan provisions on which the denial is based;
 - (c) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material is necessary, and
 - (d) An explanation of the Plan's claim review procedure.
- 8.04 **Right to Request Hearing on Benefit Denial.** Within sixty (60) days (180 days in the case of a claim for HCRA benefits) after the receipt by the claimant of written notification of the denial (in whole or in part) of his or her claim, the claimant or his or her duly authorized representative may make a written application to the Plan Administrator, in person or by certified mail, postage prepaid, to be afforded a review of such denial; may review pertinent documents; and may submit issues and comments in writing.
- 8.05 **Disposition of Disputed Claims.** Upon receipt of a request for review, the Plan Administrator shall make a prompt decision on the review matter. The decision on such review shall be written in a manner calculated to be understood by the claimant and shall

include specific reasons for the decision and specific references to the pertinent plan or insurance policy provisions on which the decision was based. The decision upon review shall be made not later than sixty (60) days after the Plan Administrator's receipt of a request for a review, unless special circumstances require an extension of time for processing, in which case a decision shall be rendered not later than one hundred twenty (120) days after receipt of a request for review. If an extension is necessary, the claimant shall be given written notice of the extension prior to the expiration of the initial sixty (60)-day period. If notice of the decision on the review is not furnished in accordance with this Section, the claim shall be deemed denied and the Claimant shall be permitted to exercise his or her right to a legal remedy.

ARTICLE IX**Amendment of Termination of Plan**

- 9.01 **Permanency.** While the Employer fully expects that this Plan will continue indefinitely, permanency of the Plan will be subject to the Employer's right to amend or terminate the Plan, as provided in Sections 9.02 and 9.03, below. Nothing in this Plan is intended to be or shall be construed to entitle any Participant, retired or otherwise, to vested or non-terminable benefits.
- 9.02 **Employer's Right to Amend.** The Employer reserves the right to amend at any time any or all of the provisions of the Plan. All amendments shall be made in writing and shall be approved by the Committee in accordance with its normal procedures for transacting business or by written consent of all Committee members. Alternatively, amendments may be made by the Employer or its Board of Directors or other governing body. Such amendments may apply retroactively or prospectively. Each Benefit Package Option shall be amended in accordance with the terms specified therein, or, if no amendment procedure is prescribed, in accordance with this section. Any amendment made by the Employer shall be deemed to be approved and adopted by any Affiliated Employer.
- 9.03 **Employer's Right to Terminate.** The Employer reserves the right to discontinue or terminate the Plan without prejudice at any time and for any reason without prior notice. Such decision to terminate the Plan shall be made in writing and shall be approved by the Board of Directors (or a duly authorized officer of the Employer) or by the Employer's governing body in accordance with its normal procedures for transacting business. Affiliated Employers may withdraw from participation in the Plan, but may not terminate the Plan.
- 9.04 **Determination of Effective Date of Amendment or Termination.** Any such amendment, discontinuance or termination shall be effective as of such date as the Employer shall determine. Subject to Sections 4.04(a) and 4.05(a), no amendment, discontinuance or termination shall allow the return to the Employer of any Reimbursement Account balance nor its use for any purpose other than for the exclusive benefit of the Participants and their beneficiaries.

ARTICLE X
General Provisions

- 10.01 **Not an Employment Contract.** Neither this Plan nor any action taken with respect to it shall confer upon any person the right to continue employment with the Employer.
- 10.02 **Applicable Laws.** The provisions of the Plan shall be construed, administered and enforced according to applicable federal law and the laws of the State identified in the Adoption Agreement to the extent not preempted.
- 10.03 **Post-Mortem Payments.** Any benefit payable under the Plan after the death of a Participant shall be paid to his or her surviving Spouse, otherwise, to his or her estate. If there is doubt as to the right of any beneficiary to receive any amount, the Plan Administrator may retain such amount until the rights thereto are determined, without liability for any interest thereon.
- 10.04 **Non-Alienation of Benefits.** Except as expressly provided by the Plan Administrator, no benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to do so shall be void. No benefit under the Plan shall in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any person.
- 10.05 **Mental or Physical Incompetency.** Every person receiving or claiming benefits under the Plan shall be presumed to be mentally and physically competent and of age until the Plan Administrator receives a written notice, in a form and manner acceptable to it, that such person is mentally or physically incompetent or a minor, and that a guardian, conservator or other person legally vested with the care of his or her estate has been appointed.
- 10.06 **Inability to Locate Payee.** If the Plan Administrator is unable to make payment to any Participant or other person to whom a payment is due under the Plan because the Plan Administrator cannot ascertain the identity or whereabouts of such Participants or other person after reasonable efforts have been made to identify or locate such person, such payment and all subsequent payments otherwise due to such Participant or other person shall be forfeited after a reasonable time after the date any such payment first became due.
- 10.07 **Requirement for Proper Forms.** All communications in connection with the Plan made by a Participant shall become effective only when duly executed on any forms as may be required and furnished by, and filed with, the Plan Administrator.
- 10.08 **Source of Payments.** The Employer and any insurance company contracts purchased or held by the Employer or funded pursuant to this Plan shall be the sole sources of benefits under the Plan. No Employee or beneficiary shall have any right to, or interest in, any assets of the Employer upon termination of employment or otherwise, except as provided from time to time under the Plan, and then only to the extent of the benefits payable under the Plan to such Employee or beneficiary.
- 10.09 **Multiple Functions.** Any person or group of persons may serve in more than one fiduciary capacity with respect to the Plan.

- 10.10 **Tax Effects.** Neither the Employer nor the Plan Administrator makes any warranty or other representation as to whether any salary reductions or payments made hereunder made to or on behalf of any Participant hereunder will be treated as excludable from gross income for local, state, or federal income tax purposes. If, for any reason, it is determined that any amount paid for the benefit of a Participant or beneficiary is includable in an Employee's gross income for local, federal, or state income tax purposes, then under no circumstances shall the recipient have any recourse against the Plan Administrator or the Employer with respect to any increased taxes or other losses or damages suffered by the Employee as a result thereof. The Plan is designed and is intended to be operated as a "cafeteria plan" under Code Section 125.
- 10.11 **Gender and Number.** Masculine pronouns include the feminine as well as the neuter genders, and the singular shall include the plural, unless indicated otherwise by the context.
- 10.12 **Headings.** The Article and Section headings contained herein are for convenience of reference only, and shall not be construed as defining or limiting the matter contained thereunder.
- 10.13 **Incorporation by Reference.** The actual terms and conditions of the separate component Benefit Package Options offered under this Plan are contained in separate, written documents governing each respective benefit and shall govern in the event of a conflict between the individual plan document and this Plan as to substantive content. To that end, each such separate document, as amended or subsequently replaced, is hereby incorporated by reference as if fully recited herein.
- 10.14 **Severability.** Should any part of this Plan subsequently be invalidated by a court of competent jurisdiction, the remainder thereof shall be given effect to the maximum extent possible.
- 10.15 **Effect of Mistake.** In the event of a mistake as to the eligibility or participation of an Employee, or the allocations made to the account of any Participant, or the amount of distributions made or to be made to a Participant or other person, the Plan Administrator shall, to the extent it deems possible, cause to be allocated or cause to be withheld or accelerated, or otherwise make adjustment of, such amounts as will in its judgment accord to such Participant or other person the credits to the account or distributions to which he or she is properly entitled under the Plan. Such action by the Plan Administrator may include withholding of any amounts due the Plan or the Employer from Compensation paid by the Employer.
- 10.16 **Forfeiture of Unclaimed Reimbursement Account Benefits.** Any Reimbursement Account payments that are unclaimed (e.g., uncashed benefit checks) by the close of the Plan Year following the Plan Year in which the Health or Dependent Care Expense was incurred shall be forfeited.

ARTICLE XI**Continuation Coverage Under COBRA**

The following provisions shall be applicable to the HCRA, and any other group health plan (as defined by Code section 4980B and 5000(b)(1) and the regulations promulgated thereunder) subject to COBRA that does not otherwise contain COBRA provisions. As noted in Section 11.05, COBRA coverage need not be extended to certain HCRA Participants. The intent of this Article is to extend only those continuation rights required by COBRA. To the extent greater rights are provided for hereunder, this Article shall be void.

Nothing herein shall require the Employer, if it is not otherwise subject to the COBRA requirements of the Code or any similar law, to comply with the requirements of such law.

- 11.01 **Continuation Coverage after Termination of Normal Participation.** During any Plan Year during which the Employer is subject to Code Section 4980B, each person who is a Qualified Beneficiary shall have the right to elect to continue coverage under the HCRA (or other group health plan subject to COBRA) upon the occurrence of a Qualifying Event that would otherwise result in such person losing coverage hereunder. Such extended coverage under the plan is known as “Continuation Coverage.”
- 11.02 Who is a “Qualified Beneficiary.” A “Qualified Beneficiary” is any person who is, as of the day before a Qualifying Event, covered under the group health plan and is (a) an Employee of the Employer, including persons who are considered to be “employees” within Code Section 401(c), directors and independent contractors (such persons are called “Covered Employees”), (b) the Spouse of the Covered Employee, or (c) a Dependent of the Covered Employee. A Covered Employee can be a Qualified Beneficiary only if the Qualifying Event consists of termination of employment (for any reason other than gross misconduct) or reduction of hours of the Covered Employee’s employment. A child born to or placed for adoption with a Covered Employee during Continuation Coverage will also be a Qualified Beneficiary. A retiree or other former Employee actively participating in the Plan by reason of a previous period of employment will be treated as a “Qualified Beneficiary.”
- 11.03 Who is not a “Qualified Beneficiary.” A person is not a Qualified Beneficiary if, as of such day, either the individual is covered under the Health Care Reimbursement Plan (or other group health plan subject to COBRA) by virtue of the election of Continuation Coverage by another person and is not already a Qualified Beneficiary by reason of a prior Qualifying Event, or is entitled to Medicare coverage under Title XVIII of the Social Security Act. Furthermore, an individual who fails to elect Continuation Coverage within the election period provided in Section 11.08, below, shall not be considered to be a Qualified Beneficiary.
- 11.04 What is a “Qualifying Event.” Any of the following shall be considered as a “Qualifying Event”:
- (a) death of a Covered Employee;
 - (b) termination (other than by reason of gross misconduct) of the Covered Employee’s employment or reduction of hours of employment;

- (c) divorce or legal separation of a Covered Employee from the employee's Spouse;
- (d) a Covered Employee becoming entitled to receive Medicare benefits under Title XVIII of the Social Security Act; or
- (e) a dependent child of a Covered Employee ceasing to be a Dependent.

In the case of any person treated as a "Covered Employee" but who is not a common-law employee, termination of "employment" means termination of the relationship that originally gave rise to eligibility to participate in the Health Care Reimbursement Plan (or other group health plan subject to COBRA).

11.05 COBRA Not Applicable to Certain HCRA Participants. In accordance with IRS regulations, COBRA continuation coverage will not be offered to HCRA participants under certain circumstances:

- (a) **Unavailability of COBRA in Subsequent Plan Years.** COBRA continuation will not be offered to a HCRA Participant in any Plan Year following the Plan Year in which the Qualifying Event occurs if:
 - (1) **HCRA is Exempt from HIPAA.** The HCRA is exempt from HIPAA (i.e., a major medical plan is available in addition to the HCRA, and the HCRA benefit does not exceed two times the salary reduction or, if greater, the salary reduction plus \$500); and
 - (2) **COBRA Premium Equals or Exceeds HCRA Benefit.** If for the plan year in which the Qualifying Event occurs, the maximum amount the Qualified Beneficiary could be required to pay for a full year of HCRA COBRA coverage equals or exceeds the maximum benefit available to the Qualified Beneficiary for the plan year.
- (b) **Unavailability of COBRA in Plan Year in which Qualifying Event Occurs.** COBRA continuation coverage will not be offered to a Qualified Beneficiary in the Plan Year in which the Qualifying Event occurred if:
 - (1) **Conditions in Section 11.05(a) are Satisfied.** The HCRA satisfies the conditions set forth in Section 11.05(a); and
 - (2) **Participant's Reimbursement Account Has a Deficit at the Time of the Qualifying Event.** Taking into account all claims submitted on or before the date of the Qualifying Event, the Qualified Beneficiary's remaining HCRA balance for the Plan Year is less than the maximum required COBRA premiums for the rest of the year -- i.e., the Participant's Reimbursement Account is in a deficit position.

The Plan Administrator will notify HCRA Participants as to their COBRA eligibility (if any).

11.06 **What Benefit is Available under Continuation Coverage.** Each person who is eligible to elect to continue coverage under this Article shall have the right to continue the level of coverage in effect for the Covered Employee on the day before the Qualifying Event (or a lesser level of coverage). A premium for Continuation Coverage shall be charged to Employees and Qualified Beneficiaries in such amounts and shall be payable at such times as are established by the Plan Administrator and permitted by applicable law.

11.07 **Notice Requirements.**

- (a) When an Employee becomes covered under this HCRA (or any other group health plan subject to COBRA), the Plan Administrator must inform the Participant (and Spouse, if any) in writing of the rights to continued coverage, as described in Article XI.
- (b) The Employer shall give the Plan Administrator (if different from the Employer) written notice of a Qualifying Event within thirty (30) days of the occurrence thereof.
- (c) Within fourteen (14) days of receipt of the Employer's notice, the Plan Administrator shall furnish each Qualifying Beneficiary with written notification of the termination of regular coverage under the HCRA (or any other group health plan subject to COBRA), as well as a recital of the rights of any such Beneficiary to elect Continuation Coverage, as required by Code Section 4980B and ERISA Section 601, in accordance with the terms of this Plan.
- (d) In the case of a Qualifying Event described in Section 11.04(c) or (e), a Covered Employee or a Qualified Beneficiary who is a Spouse or Dependent of such Employee must notify the Plan Administrator within sixty (60) days of the later of the occurrence thereof or the date coverage is lost as a result of the occurrence thereof. The Plan Administrator shall give written notification of Continuation Coverage rights to any other affected Qualified Beneficiaries within fourteen (14) days of receipt of the notice described in this Section 11.07(d).

Notwithstanding any of the foregoing, notification to a Qualified Beneficiary who is a Spouse of a Covered Employee is treated as notification to all other Qualified Beneficiaries residing with that person at the time notification is made.

11.08 **Election Period.** Any Qualified Beneficiary entitled to Continuation Coverage shall have 60 days from the later of the date of the notice required by Section 11.07 or the date coverage terminates as a result of the Qualifying Event in which to return a signed election to the Plan Administrator indicating the choice to continue benefits under this Plan.

11.09 **Duration of Continuation Coverage.** Except as otherwise provided in this Plan, Continuation Coverage shall extend for a period of 18 months after the date that regular coverage ceased due to occurrence of the initial Qualifying Event described in Section 11.04(b), unless during such 18-month period a subsequent Qualifying Event occurs, in which case, another election to extend coverage for 18 months shall be available to the Beneficiary. Except as otherwise provided in this Section, in the case of a Qualifying Event not described in Section 11.04(b), Continuation Coverage shall extend for a period of 36 months after the date that regular coverage ceased due to the occurrence of the Qualifying Event. In the case of a Qualified Beneficiary who is determined, under Title II or XVI of

the Social Security Act, to have been disabled within 60 days of a Qualifying Event, described in Section 11.04(b), Continuation Coverage with respect to such event shall extend for a period of 29 months after the date that regular coverage ceased due to the occurrence of the Qualifying Event if the Qualified Beneficiary has provided notice of such determination within sixty (60) days after the date of such determination and before the end of the initial 18 month Continuation Coverage period. In the event a Covered Employee becomes entitled to Medicare coverage, the period of Continuation Coverage for a Qualified Beneficiary, other than the Covered Employee for such Qualifying Event or any subsequent Qualifying Event, shall not terminate for a period of 36 months from the date the Covered Employee becomes entitled to Medicare benefits. In no event, however, shall Continuation Coverage extend more than 36 months beyond the date of the original Qualifying Event.

- 11.10 **Automatic Termination of Continuation Coverage.** Continuation Coverage shall automatically cease if (a) the Employer no longer offers the particular group health coverage to any of its employees, (b) the required premium for Continuation Coverage for a particular coverage is not paid within 30 days of the date due or within 45 days after the initial election of Continuation Coverage made pursuant to Section 11.08 (whichever is later), (c) an electing Qualified Beneficiary becomes covered under another group health plan other than a group health plan which may limit a Qualified Beneficiary's coverage because it involves a preexisting condition, or (d) an electing Qualified Beneficiary becomes eligible to receive benefits under Medicare.

IRS Circular 230 Notice: We are required to advise you no person or entity may use any tax advice in this communication or any attachment to (i) avoid any penalty under federal tax law or (ii) promote, market or recommend any purchase, investment or other action.

SLK_TOL #1125814-v

AMENDMENT TO ALLOW HEALTH FSA CARRYOVER AND OTHER OPTIONS

**ARTICLE I
PREAMBLE**

- 1.1 **Adoption and effective date of amendment.** The Employer adopts this Amendment to _____
(enter name of plan) ("Plan") to reflect recent law and regulatory changes. The sponsor intends this Amendment as good faith compliance with the requirements of these changes. This Amendment shall be effective on or after the dates the Employer elects in Article II below.
- 1.2 **Supersession of inconsistent provisions.** This Amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.

**ARTICLE II
ELECTIONS**

- 2.1 ☐ **Health FSA \$500 Carryover.** See Section 3.1 below. The effective date of this provision is _____ (enter the first day of the Plan Year beginning in 2013 or later as applicable).
- 2.2 ☐ **Elimination of Grace Period.** See Section 3.2 below. The effective date of this provision is _____ (enter the first day of the Plan Year beginning in 2013 or later).

**ARTICLE III
PROVISIONS**

3.1 **\$500 Carryover.**

A Participant in the Health Flexible Spending Account may roll over up to \$_____ (cannot be more than \$500) of unused amounts in the Health Flexible Spending Account remaining at the end of one Plan Year to the immediately following Plan Year. These amounts can be used during the following Plan Year for expenses incurred in that Plan Year. Amounts carried over do not affect the maximum amount of salary redirection contributions for the Plan Year to which they are carried over. Unused amounts are those remaining after expenses have been reimbursed during the runout period. These amounts may not be cashed out or converted to any other taxable or nontaxable benefit. Amounts in excess of \$_____ will be forfeited. The plan is allowed, but not required, to treat claims as being paid first from the current year amounts, then from the carryover amounts.

3.2 **Grace Period.**

The grace period provisions relating to the Health Flexible Spending Account are removed as of the effective date above.

This amendment has been executed this _____ day of _____, _____.

Name of Plan: _____

Name of Employer: _____

Print Name and Title: _____

By: _____
EMPLOYER

CERTIFICATE OF ADOPTING RESOLUTION

The undersigned authorized representative of _____ (the Employer) hereby certifies that the following resolutions were duly adopted by Employer on _____, _____, and that such resolutions have not been modified or rescinded as of the date hereof;

RESOLVED, that the Amendment to the _____ Plan (the Amendment) is hereby approved and adopted, and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the amendment.

The undersigned further certifies that attached hereto is a copy of the Amendment approved and adopted in the foregoing resolution.

Date: _____

Signed: _____

[print name/title]

**SUMMARY OF MATERIAL MODIFICATIONS
for the**

(Name of Plan)

**I
INTRODUCTION**

This is a Summary of Material Modifications regarding the _____ (“Plan”). This is merely a summary of the most important changes to the Plan and information contained in the Summary Plan Description (“SPD”) previously provided to you. It supplements and amends that SPD so you should retain a copy of this document with your copy of the SPD. If you have any questions, contact the Administrator. If there is any discrepancy between the terms of the Plan, as modified, and this Summary of Material Modifications, the provisions of the Plan will control.

**II
SUMMARY OF CHANGES**

1. Health Flexible Spending Account carryover

Effective _____, you will be eligible to carryover amounts left in your Health Flexible Spending Account, up to \$_____. This means that amounts you do not use during a Plan Year can be carried over to the next Plan Year and used for expenses incurred in the next Plan Year.

2. Grace Period

Effective _____, we are no longer using the "grace period" for the Health Flexible Spending Account. Therefore, for up to _____ in the following Plan Year, you will not be able to incur expenses to use any amounts that are left at the end of the prior Plan Year. This provision is being eliminated so that we can add the carryover provision above.

MidAmerica Administrative & Retirement Solutions, Inc.

ADMINISTRATIVE SERVICE AGREEMENT

for

THIS AGREEMENT, made this _____ day of _____, 20____, by and between _____, hereinafter referred to as “the Employer” and **MidAmerica Administrative & Retirement Solutions, Inc.**, hereinafter referred to as “MidAmerica,” specifies the services to be provided by MidAmerica for the Employer in the ongoing administration of the Employer’s Flexible Benefits (Section 125) Plan, hereinafter referred to as “the Plan,” under Internal Revenue Code Section 125 and the responsibilities of the Employer.

NOW, THEREFORE, for good and valuable consideration, the parties agree that MidAmerica will perform the following services on behalf of the Employer pursuant to the terms of this Agreement, and the Employer shall perform its responsibilities and make payments as described herein.

ARTICLE I. INTRODUCTION

1.1 Effective Date and Term

The effective date of this Agreement is _____ (“Effective Date”). The initial term shall be the three (3)-year period commencing on the Effective Date. Thereafter, this Agreement will renew automatically for successive periods of twelve (12) months unless this Agreement is terminated in accordance with the provisions of Section 6.6.

1.2 Scope of Undertaking

MidAmerica shall be an independent contractor with respect to the services it performs hereunder and shall not for any purpose be deemed an employee of the Employer nor shall MidAmerica and the Employer be deemed partners or engaged in a joint venture. MidAmerica does not assume any responsibility for any act or omission or breach of duty by the Employer, nor is MidAmerica in any way to be deemed an insurer, underwriter or guarantor with respect to any benefits payable under the Plan. Nothing in this Agreement shall be deemed to impose upon MidAmerica any obligation to any employee of the Employer or any person who is participating in the Plan. MidAmerica shall not be a fiduciary with respect to the Plan.

1.3 Definitions

“**Agreement**” means this Administrative Service Agreement, including all Exhibits hereto.

“**Card Transaction**” means a transaction by a Participant making use of the Alegeus Benefits Card.

“**Contribution Billing Reports**” has the meaning as described in Section 2.3.

“Debit Card Claims” means the claims received via debit or stored-value card transaction.

“Deposit Account” means the deposit account established by Alegeus Benefits from the Employer that is used to hold funds necessary to meet the obligations due to Plan Participants who enroll in the debit card program.

“Distribution Amounts” means the amounts reported to the Employer as the claim totals to be paid.

“Employer” has the meaning given in the Recitals.

“Effective Date” has the meaning given in Section 1.1.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended.

“Manual Claims” means the claims submitted via fax or mail.

“Minimum Balance” means the balance that the Employer will deposit and maintain in the Deposit Account and which will be a dollar amount of no less than the projected plan year contribution (including short plan years), considering sub accounts, for all Participants divided by 365 times 5, or such amount as may be determined by Alegeus Benefits from time to time. In order to maintain the minimum funding requirements, daily or weekly ACH transactions will be performed.

“Alegeus Benefits” means Alegeus Benefits Card Services, the Payment Card provider.

“Alegeus Benefits Card” means the Payment Card to be issued by Alegeus Benefits and used by Participants in the Plan.

“Payment Card” means a debit card or a stored-value card.

“Plan” means the Employer’s Flexible Benefits (125) Plan.

ARTICLE II. EMPLOYER RESPONSIBILITIES

2.1 Sole Responsibilities

The Employer gives MidAmerica the authority to act on behalf of the Employer in connection with the Plan but only as expressly stated in this Agreement, the Plan Document or as mutually agreed in writing by the Employer and MidAmerica.

2.2 Funding

The Employer shall promptly fund an account maintained for the payment of Plan benefits as described in Article IV and shall maintain that account as required by the terms of this agreement. The Employer will have no access to the funds deposited in the Deposit Account until the funds are returned pursuant to the terms in Section 6.6(e).

2.3 Information to MidAmerica

The Employer shall furnish the information requested by MidAmerica as determined necessary by MidAmerica for it to perform its functions hereunder, including information concerning the Plan and the eligibility of individuals to participate in and receive Plan benefits ("Contribution Billing Reports"). Such information shall be provided to MidAmerica at the time and in the manner agreed to by the Employer and MidAmerica. MidAmerica shall have no responsibility with regard to benefits paid in error due to the Employer's failure to timely provide or update such information. MidAmerica shall be entitled to rely on the completeness and accuracy of all information provided by the Employer, its delegates or employees.

The Employer shall be responsible for providing Contribution Billing Reports to MidAmerica. The Contribution Billing Reports by the Employer shall specify the effective date for each Participant who is added to or terminated from participation in the Plan. The Employer shall be responsible for ensuring the accuracy of its Contribution Billing Reports and shall bear the burden of proof in any dispute relating to the accuracy of its Contribution Billing Reports. MidAmerica shall have no liability, to the Employer and to any Participant, as a consequence of an inaccurate Contribution Billing Report. MidAmerica shall not have any obligation to credit the Employer for any claims expenses or administrative fees incurred or paid to MidAmerica as a consequence of the Employer failing to review Contribution Billing Reports for accuracy. MidAmerica shall be entitled to assume that all information provided by the Employer is complete and accurate and is under no duty to question the completeness or accuracy of such information.

2.4 Plan Documents

The Employer is responsible for the Plan's compliance with all applicable federal and state laws and regulations. The Employer acknowledges that MidAmerica is not providing tax or legal advice and that the Employer shall be solely responsible for determining the legal and tax status of the Plan.

2.5 Liability for Payment of Card Claims

The Employer is responsible for all ineligible and unauthorized transactions arising under the Alegeus Benefits Program. In no event will Alegeus Benefits or MidAmerica be liable for any such transactions. In the event an Alegeus Benefits Card is used for an ineligible expense, the Employer will credit the Deposit Account and use its best efforts to recover the funds from the Participant. The Employer will bear the loss of any uncollectible amounts from Participants. In the event that the Employer requests certain restricted merchant category codes be made available for use by Participants, the Employer will assume liability for any and all losses incurred either fraudulently or inadvertently by the Participant; in addition to all fees associated with incurred losses.

2.6 Non-Discretionary Duties; Additional Duties

MidAmerica and the Employer agree that the duties to be performed hereunder by MidAmerica are non-discretionary duties. MidAmerica and the Employer may agree to additional duties in writing as may be specified in the Exhibits from time to time.

2.7 Indemnification

The Employer shall indemnify MidAmerica and hold it harmless from and against all loss, liability, damage, expense, attorneys' fees or other obligations resulting from, or arising out of, any act or omission of the Employer in connection with the Plan or any claim, demand or lawsuit by Plan Participants and

beneficiaries against MidAmerica in connection with benefit payments or services performed hereunder. In addition, the Employer shall indemnify MidAmerica and hold it harmless from and against any liability, expense, demand or other obligation resulting from, or out of any premium charge, tax or similar assessment (federal or state), for which the Plan or the Employer is liable. The Employer shall also have the indemnification obligation described in Section 3.4.

2.8 Claims Appeals

The Employer shall make final determination regarding any claim for benefits on coverage that is appealed, including (a) any question of eligibility or entitlement of the claimant for coverage under the Plan, (b) any question with respect to the amount due; or (c) any other appeal.

ARTICLE III. MIDAMERICA RESPONSIBILITIES

3.1 Sole Responsibilities

MidAmerica's sole responsibilities shall be as described in this Agreement (including the obligations listed in any Exhibit to this Agreement). MidAmerica shall be responsible only to provide those certain reimbursement and recordkeeping services described herein.

3.2 Service Delivery

MidAmerica shall provide customer service personnel to be available by telephone during normal business hours as determined by MidAmerica. MidAmerica shall not be deemed in default of this Agreement, nor held responsible for, any cessation, interruption or delay in the performance of its obligations hereunder due to causes beyond its reasonable control, including, but not limited to, issues affecting telephone lines or communication, natural disasters, acts of God, labor controversies, civil disturbances, disruptions of public markets, wars or armed conflicts or the inability to obtain sufficient materials or services required in the conduct of its business, including Internet access, or any change in or the adoption of any law, judgment or decree.

3.3 Benefit Payment

MidAmerica shall, as agent of the Employer, operate under the express terms of this Agreement and the Plan. The Employer shall determine if persons covered by the Plan (as described in the Eligibility Reports) are entitled to benefits under the Plan, and MidAmerica shall pay Plan benefits in its usual and customary manner to Participants as set forth in this Agreement.

3.4 Prior Administration

MidAmerica shall have no duty or obligation with respect to claims incurred prior to the Effective Date ("Prior Reimbursement Requests"), if any, and/or Plan administration or other) services arising prior to the Effective Date ("Prior Administration"), if any, regardless of whether such services were/are to be performed prior to or after the Effective Date. The Employer agrees that (a) the Employer will be responsible for processing Prior Reimbursement Requests (including any run-off claims submitted after the Effective Date) and maintaining legally required records of all Prior Reimbursement Requests and Prior Administration sufficient to comply with applicable legal (e.g. IRS substantiation) requirements;

and (b) the Employer shall indemnify and hold MidAmerica harmless for any liability relating to Prior Reimbursement Requests and/or Prior Administration.

3.5 Reporting

MidAmerica shall make available to Participants via website a report showing their individual payment history and status of claims and the amounts and transactions in their individual accounts during the preceding month. MidAmerica shall include a statement of account balance on each distribution check mailed to the Participants. MidAmerica shall also provide a statement of account activity to each Participant 60 days prior to the end of the Plan Year.

Each of the Employer's employees will be provided a unique username/password combination to access MidAmerica's website. MidAmerica has no liability for costs, expenses or other ramifications resulting from the disclosure of username or password information by an employee of the Employer or the Employer.

3.6 Recordkeeping

MidAmerica shall maintain, for the duration of this Agreement, the usual and customary books, records and documents, including electronic records, that relate to the Plan and its Participants that MidAmerica has prepared or that has otherwise come within its possession. These books, records and documents, including electronic records are and shall remain after termination of this Agreement the property of MidAmerica.

3.7 Liability for Manual Claims

MidAmerica is responsible for payment of claims made pursuant to, and the benefits to be provided by, the Plan after funding by the Employer is received as outlined in Article IV. Except for expenses specifically assumed by MidAmerica in this Agreement, if any, the Employer is responsible for all expenses incident to the Plan.

3.8 Standard of Care; Erroneous Payments

MidAmerica shall use reasonable care and due diligence in the exercise of its powers and the performance of its duties under this Agreement. If MidAmerica makes any payment under this Agreement to an ineligible person, or if more than the correct amount is paid, MidAmerica shall make a diligent effort to recover any payment made to or on behalf of an ineligible person or any overpayment. However, MidAmerica will not be liable for such payment, unless MidAmerica would otherwise be liable under another provision of this Agreement.

3.9 Privacy

Except as noted herein, MidAmerica will not disclose to any third party any of Employer's information that is of a confidential nature, including employee-specific information. MidAmerica agrees to the HIPAA Business Associate Addendum for any program subject to HIPAA.

MidAmerica agrees to amend this Agreement as is necessary from time to time to comply with the requirements of the privacy rules under HIPAA or other legislation.

ARTICLE IV. BENEFIT PLAN PAYMENTS; THE EMPLOYER'S FUNDING RESPONSIBILITY

4.1 Funding and Payment of Manual Claims

For each applicable pay period, the Employer shall promptly forward a Contribution Billing Report. However, the Employer shall keep Participant contributions as part of the Employer's general assets. The Employer authorizes MidAmerica to pay Plan benefits by checks written (or other draft payment or debit) on a bank account established and maintained in the name of MidAmerica for the payment of Plan benefits. MidAmerica shall have sole authority to provide notifications, instructions or directions as may be necessary to accomplish the disbursement of such Plan funds to or on behalf of Participants in payment of approved claims. MidAmerica will notify the Employer of the amount of the distributions payable, and the Employer will transfer the monies to the bank account established and maintained in the name of MidAmerica.

4.2 Funding and Payment of Payment Card Claims

The Employer shall sign and maintain in effect an ACH agreement with Alegeus Benefits, as referenced in Exhibit C and agrees to comply with all the terms and conditions of said agreement. The Alegeus Benefits Program will not be provided to any Employer that has not signed and delivered an ACH Agreement, including a voided check or spec sheet for verification of account numbers. Pursuant to the ACH Agreement, Employer will pre-fund a Deposit Account established by Alegeus Benefits with the Minimum Balance prior to issuance of debit cards. For initial setup, aggregate elections from the prior plan year may be used, or a minimum of \$2,500. Once open enrollment has ended, an adjustment to the prefund amount will be conducted as necessary. Employer shall be notified in the event an additional prefund amount is required. The prefund amount will be reevaluated on an annual basis.

Electronic claims shall be paid through a daily or weekly ACH transfer, maintaining a prefund amount that is the greater of \$2,500 or up to 5% of the annual election, dependent upon replenishment frequency selected. Alegeus Benefits will monitor and ensure the Minimum Balance is maintained by using the 1Pay bennycard daily funding reports. In the event that Card Transactions reduce the balance in the Deposit Account to an amount less than the Minimum Balance, Alegeus Benefits will immediately initiate an ACH transfer of additional funds from the Employer to the Deposit Account in an amount sufficient to restore the Deposit Account to the Minimum Balance. Alegeus Benefits may increase the Minimum Balance at Alegeus Benefits' sole discretion or discontinue service for all relevant Employer Alegeus Benefits Cards, should the balance of the Deposit Account consistently fall below the Minimum Balance. Employer is responsible for any and all third party costs incurred by Alegeus Benefits as a result of not consistently maintaining the Minimum Balance. ACH is the only acceptable means for funds transfer.

4.3 Employer's Failure to Maintain Sufficient Funds for Benefit Payments

In the case that a Participating Employer does not forward the Distribution Amounts to MidAmerica in a timely manner, MidAmerica reserves the right to delay the payments of claims until monies are received.

4.4 Penalties for Non Payment of Payment Card Distribution Amounts

The Employer shall agree to the service charges as outlined in Exhibit A.

ARTICLE V. COMPENSATION

5.1 Fee Schedule

The Employer agrees to the fee schedule outlined in Exhibit A.

ARTICLE VI. GENERAL PROVISIONS

6.1 Severability; Headings

If any term of this Agreement is declared invalid by a court, the same will not affect the validity of any other provision, provided that the basic purposes of this Agreement are achieved through the remaining valid provisions. The headings of articles, sections and subsections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

6.2 Compliance; Non-Waiver

Failure by the Employer or MidAmerica to insist upon strict performance of any provision of this Agreement will not modify such provision, render it unenforceable, or waive any subsequent breach. No waiver or modification of any of the terms or provisions of this Agreement shall be valid unless in each instance the waiver or modification is accomplished pursuant to the amendment provisions of Section 6.3.

6.3 Assignment; Amendment

Neither the Employer nor MidAmerica may assign this Agreement without the other party's advance written consent. This Agreement may be amended only by written agreement of duly authorized officers of the Employer and MidAmerica.

6.4 No Third-Party Beneficiaries

This Agreement is made solely for the benefit of the Employer and MidAmerica. No other person shall acquire or have rights hereunder or by virtue of this Agreement.

6.5 Notices and Communications

(a) **Notices.** All notices provided for herein shall be sent by confirmed facsimile, or guaranteed overnight mail with tracing capability or by first class United States mail, with postage prepaid, addressed to the other party at their respective addresses set forth below or such other addresses as either party may designate in writing to the other from time to time for such purposes. All notices provided for herein shall be deemed given or made when received.

(b) **Addresses.** The MidAmerica address for notices as described above is MidAmerica Administrative & Retirement Solutions, Inc., 402 S. Kentucky Avenue, Suite 500, Lakeland, FL 33801.

(c) **Communications.** The Employer agrees that MidAmerica may communicate confidential, protected, privileged or otherwise sensitive information to the Employer through a named contact designated by the Employer (“Named Contact”) and specifically agrees to indemnify MidAmerica and hold it harmless; (i) for any such communication directed to the Employer through the Named Contact attempted via fax, mail, telephone, e-mail or any other media, acknowledging the possibility that such communication may be inadvertently misrouted or intercepted; and (ii) from any claim for the improper use or disclosure of any health information by MidAmerica where such information is used or disclosed in a manner consistent with its duties and responsibilities hereunder.

6.6 Termination of Agreement

(a) **Automatic.** This Agreement shall automatically terminate as of the earliest of the following:

- (i) the effective date of any legislation which makes the Plan and/or this Agreement illegal;
- (ii) the date the Employer becomes insolvent, or bankrupt or subject to liquidation, receivership or conservatorship; or
- (iii) the termination date of the Plan, subject to any agreement between the Employer and MidAmerica regarding payment of benefits after the Plan is terminated.

(b) **Optional.** This Agreement may be terminated as of the earliest of the following:

- (i) by MidAmerica upon the failure of the Employer to submit required payments;
- (ii) by MidAmerica upon the failure of the Employer to perform its obligations in accordance with this Agreement;
- (iii) by the Employer upon the failure of MidAmerica to perform its obligations in accordance with this Agreement; or
- (iv) by either the Employer or MidAmerica as of the end of the term of this Agreement by giving the other party sixty (60) days’ written notice.

(c) **Limited Continuation After Termination.** If the Plan is terminated, the Employer and MidAmerica may mutually agree in writing that this Agreement shall continue for the purpose of payment of any Plan benefit, expense or claims incurred prior to the date of Plan termination. In addition, if this Agreement is terminated while the Plan continues in effect, this Agreement shall continue for the purpose of payment of any claims for which request for reimbursements has been received by MidAmerica before the date of such termination. If this Agreement is continued in accordance with this subsection, the Employer shall pay the required monthly post-termination service charges.

(d) **Survival of Certain Provisions.** Termination of this Agreement shall not terminate the rights or obligations of either party arising out of a period prior to such termination. The indemnity confidentiality and privacy provisions of this Agreement shall survive its termination.

(e) **Return of Unused Pre-Funds Upon Termination.** Upon termination of the Plan, all unused pre-funds remaining in the deposit account will be returned to the Employer 120 days following the effective date of termination in the same manner the pre-funds were received. This waiting period will allow funds to remain in the deposit account for the purpose of settling card transactions during the 120 days that a participant may dispute a debit card claim which incurred prior to termination.

6.7 Complete Agreement; Governing Law

This Agreement (including the Exhibits) is the full Agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and representations between the parties. Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing and signed by both parties. This Agreement shall be construed, enforced, and governed by the laws of the State of Florida.

IN WITNESS WHEREOF, the Employer and MidAmerica have caused this Agreement to be executed in their names by their duly authorized officers.

Name of the Employer: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

MidAmerica Administrative & Retirement Solutions, Inc.

Signature: _____

Print Name: Trent Teesdale, CEBS

Title: Sr. Vice President of Business Development

Date: _____

EXHIBIT A SERVICES AND FEES

Capitalized terms used in this Exhibit and not defined have the meanings given in the Agreement.

Fees:

There will be a \$8.00 per participant per month administrative fee for participation in the plan, which includes \$1.00 debit card fee. Both fees will be paid by the Participant.

Services Included:

The Employer is responsible for all legal requirements and administrative obligations with regard to the Plan, except for the following administrative duties (to be performed by MidAmerica):

- 1) MidAmerica shall make available (by electronic medium and paper copy) enrollment and reimbursement forms and instructions for filing Participant claims.
- 2) Upon receiving instructions from the Employer with regard to a Participant's change in status or other event that permits an allowable change under IRS regulations and the Plan Document, MidAmerica shall make the requested change in the participants election as soon as practicable.
- 3) MidAmerica shall make initial decisions with regard to Participant claims and typically disburse any benefit payments that it determines to be due on the 15th and last business day of the month. Benefit payments shall be made to the Participant.
- 4) MidAmerica shall notify Participants with regard to any claims that are denied due to inadequate substantiation or data submission and provide an adequate period of time for the Participant to resubmit the claim.

Services Not Included:

In addition to services described in the Agreement for which MidAmerica is not responsible, MidAmerica is not responsible for the following:

- 1) The Employer's compliance with Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") and/or HIPAA.

Exhibit B
HIPAA BUSINESS ASSOCIATE ADDENDUM

THIS HIPAA BUSINESS ASSOCIATE ADDENDUM (“**Addendum**”) supplements and is made a part of _____ Agreement (“**Agreement**”) by and between MidAmerica Administrative & Retirement Solutions, Inc. (“**MidAmerica**”), which is acting as the Business Associate to a health plan covered by the HIPAA Privacy & Security Rule, and _____ (“**Covered Entity**”), and is effective as of _____ (the “**Addendum Effective Date**”).

RECITALS:

WHEREAS, Covered Entity wishes to disclose certain information to MidAmerica pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“**PHI**”) (as hereinafter defined); and

WHEREAS, the parties intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“**HIPAA**”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (“HIPAA Privacy & Security Rule”) and other applicable laws; and

WHEREAS, the HIPAA Privacy & Security Rule (as hereinafter defined) requires the parties to enter into a contract containing specific requirements prior to the disclosure of PHI;

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

1. **Definitions.**

Unless otherwise defined, terms used in this Addendum have the same meaning as those terms in the HIPAA Privacy & Security Rule.

- a. “Business Associate” means MidAmerica.
- b. “Covered Entity” means _____.
- c. “HIPAA Privacy & Security Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information or the HIPAA Security Standards found at 45 CFR Parts 160-164.
- d. “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future

payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

e. “Designated Record Set” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

f. “Treatment” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

g. “Payment” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

h. “Health Care Operations” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

2. Obligations of Business Associate.

a. Use or Disclosure of PHI. MidAmerica agrees not to use or disclose PHI, other than as permitted or required by the Agreement or as Required By Law.

b. Prohibited Uses and Disclosures. MidAmerica shall not use PHI other than as permitted by the HIPAA Privacy & Security Rule or this Addendum. MidAmerica shall not disclose PHI in any manner that would constitute a violation of the Privacy Rule if disclosed by the Covered Entity, except that MidAmerica may disclose PHI in a manner permitted pursuant to this Addendum.

c. Appropriate Safeguards. MidAmerica shall implement appropriate safeguards as are necessary to protect the confidentiality of PHI or to prevent its use or disclosure of PHI other than as permitted by this Addendum or the HIPAA Privacy & Security Rule.

d. Reporting of Improper Use or Disclosure. MidAmerica shall report to Covered Entity any use or disclosure of PHI other than as provided for by this Addendum of which it becomes aware. MidAmerica further agrees to mitigate, to the extent possible, the harmful effects of the unauthorized disclosure.

e. Disclosure to Agents. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), MidAmerica agrees to ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of MidAmerica agree to the same restrictions, conditions, and requirements that apply to MidAmerica with respect to such information.

f. Access to PHI. MidAmerica agrees to provide individuals with access to their PHI, as held in a Designated Record Set by MidAmerica, in order to meet the requirements under 45 CFR 164.524.

g. Amendment of PHI. MidAmerica agrees to make any amendment(s) to PHI it holds in a Designated Record Set, as directed by the Covered Entity pursuant to 45 CFR 164.526.

h. Accounting Rights. MidAmerica agrees to document and provide a description of any disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. MidAmerica agrees to provide such information to Covered Entity, or to an individual at the direction of the Covered Entity, in order for Covered Entity to comply with the accounting requirements in 45 CFR 164.528.

i. Governmental Access to Records. MidAmerica shall make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services (the “**Secretary**”) for purposes of determining Covered Entity’s compliance with the HIPAA Privacy & Security Rule within a reasonable time of a request for the same.

j. Covered Entity's Right to Restrict. MidAmerica agrees to comply, upon communication by Covered Entity, with any restrictions to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522.

k. HIPAA Security Standards. MidAmerica agrees to comply with the HIPAA Privacy & Security Rule with respect to any Electronic PHI (“EPHI”) that MidAmerica holds on behalf of the Plan.

1. MidAmerica agrees to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to EPHI to prevent use or disclosure of PHI other than as provided for by the Addendum.

2. MidAmerica agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains, or transmits on behalf of Covered Entity, as required in the HIPAA Privacy & Security Rule.

3. MidAmerica agrees to ensure that any agent, including a subcontractor, to whom it provides EPHI agrees to implement reasonable and appropriate safeguards to protect such information.

4. MidAmerica agrees to report to Covered Entity any security incident under the HIPAA Privacy & Security Rule of which it becomes aware, including the identities of any individual whose EPHI was breached.

l. Responsibilities If Security Breach. MidAmerica shall notify Covered Entity immediately if there is a breach by either MidAmerica or one of its agents of unsecured PHI, as defined in, and consistent with, the HITECH Act and any regulations or guidance issued thereunder, including 45 CFR Part 164, Subpart D. Such notification shall:

1. Be made in writing to the Covered Entity's Privacy Officer or other designated party.

2. Be made within sixty (60) days of discovery.

3. Include the names of the individuals whose information was breached, the circumstances surrounding the breach, the date of the breach and date of discovery, the information breached, any steps the individuals should take to protect themselves, the steps MidAmerica (or its agent) is taking to investigate the breach, mitigate losses, and

protect against future breaches, and a contact person for more information.

If requested by MidAmerica, Covered Entity shall allow MidAmerica to approve the content of any notification in advance.

If requested by Covered Entity, MidAmerica shall notify the individuals involved, or the media or the US Department of Health and Human Services, as applicable, in accordance with the HITECH Act, and regulations or guidance issued thereunder, including 45 CFR Part 164, Subpart D. For purposes of this provision, MidAmerica is considered an independent contractor of Covered Entity.

3. **Permitted Uses and Disclosures by Business Associate.**

a. **Disclosures Generally.** Except as otherwise provided in this Addendum, MidAmerica may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the HIPAA Privacy & Security Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

b. **To Carry Out Covered Entity Obligations.** To the extent MidAmerica is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, MidAmerica agrees to comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

c. **Management and Administration.**

1. MidAmerica may use PHI for the proper management and administration of MidAmerica or to carry out the legal responsibilities of MidAmerica.

2. MidAmerica may disclose PHI for the proper management and administration of MidAmerica, provided that disclosures are: (a) required by law or (b) MidAmerica obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it is disclosed to the person, and the person notifies MidAmerica of any instances of which it is aware in which the confidentiality of the information has been breached.

d. **Data Aggregation and De-Identification.** Except as otherwise limited in this Addendum, MidAmerica may use PHI to provide Data Aggregation services to Covered Entity or to de-identify PHI. Once information is de-identified this Addendum shall not apply.

e. **Required By Law.** MidAmerica may use or disclose PHI as required by law.

4. **Termination.**

a. **Material Breach.** A breach by MidAmerica of any material provision of this Addendum shall constitute a material breach of the Agreement and shall provide grounds for termination of the Agreement by Covered Entity. In the event of such breach, Covered Entity shall provide MidAmerica with written notice of the breach and thirty (30) days in which to cure the

breach. If the breach is not cured within thirty (30) days, Covered Entity shall terminate the Agreement.

b. Effect of Termination. Upon termination of the Agreement for any reason, MidAmerica shall return or destroy all PHI that MidAmerica or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, MidAmerica shall continue to extend the protections of Section 2 of this Addendum to such information, and limit further use or disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible.

5. **Amendment.**

a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA Privacy & Security Rule and other applicable laws relating to the security or confidentiality of PHI. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Privacy & Security Rule or other applicable laws.

b. Amendment of Addendum. This Addendum may be modified or amended by mutual agreement of the parties at any time without amendment of the Agreement.

6. **Conflicts.** The terms and conditions of this Addendum will override and control any conflicting term or condition of the Agreement. All non-conflicting terms and conditions of the Agreement will remain in full force and effect.

7. **Relationship of Parties.** The parties intend that MidAmerica is an independent contractor and not an agent of Covered Entity.

Covered Entity Health Plan

Name of Employer: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

MidAmerica Administrative & Retirement Solutions, Inc.

Signature: _____

Print Name: Trent Teesdale, CEBS

Title: Sr. Vice President of Business Development

Date: _____

Flexible Benefits (125) Plan
SUMMARY PLAN DESCRIPTION
for



Summary Plan Description Table of Contents

	<u>Page</u>
<i>Introduction</i>	3
<i>Type of Plan</i>	4
<i>Definitions</i>	4
<i>Plan Administration</i>	4
<i>Participation in the Plan</i>	4
<i>Benefit Elections</i>	5
<i>Claims for Reimbursement</i>	7
<i>Miscellaneous</i>	8
<i>Appendix A, Specific Information</i>	10

Introduction

Your Employer has established a Flexible Benefits Plan (“Plan”) by adopting the Basic Plan Document for the MidAmerica Administrative & Retirement Solutions, Inc. Flexible Benefits (125) Plan to enable eligible employees to elect to receive a non-cash benefit that is excluded from gross income for federal tax purposes to use for eligible medical expenses. This Summary Plan Description (“SPD”) describes the terms of the Plan. The SPD attempts to make the main features of the Plan understandable. However, in the event of a discrepancy between this SPD and the terms of the Plan, the terms of the Plan shall control.

Your Employer reserves the right to amend and/or terminate the Plan at any time. No rights that have been earned prior to the time of amendment or termination will be affected.

You should review the attachments to this SPD which describe Health Care Reimbursement Accounts (“HCRA”) and Dependent Care Reimbursement Accounts (“DCRA”) before deciding whether these programs are right for you.

Type of Plan

The Plan is intended to qualify as a “cafeteria plan” within the meaning of section 125 of the Internal Revenue Code. This means the Plan permits Participants to elect to receive a portion of their compensation either in the form of cash or in the form of non-cash benefits provided under the Plan.

See Appendix A (Specific Information) for specific information about the Plan.

Definitions

Whenever used in this SPD, the following terms, when capitalized, shall have the following meanings unless the context clearly requires a different meaning:

1. “Effective Date” means the date specified on Appendix A.
2. “Eligible Employee” means a category of Employee that is selected by your Employer to participate in the Plan. More detail appears on Appendix A.
3. “Employee” means an individual employed by your Employer who receives W-2 earnings. The term “Employee” does not include a self-employed person.
4. “Employer” means the sponsor of the Plan. Affiliated Employers may also have adopted the Plan.
5. “Participant” means any individual who is in an eligible class of employees and who has satisfied the eligibility requirements of the Plan and has chosen to participate in the Plan by completing and filing a Flexible Benefits Plan Enrollment Form with the Employer.
6. “Plan” means the Flexible Benefits (125) Plan as adopted by your Employer as may be amended from time to time.
7. “Plan Year” means the period beginning on the effective date of the Plan and ending on the last day of the Plan Year as specified on Appendix A and each 12 consecutive month period after the end of the Plan Year.

Plan Administration

Your Employer has the responsibility for the administration of the Plan and for carrying out the Plan's provisions. Your Employer has entered into an agreement with MidAmerica Administrative & Retirement Solutions, Inc. ("MidAmerica") to perform specified administrative services for the Plan. MidAmerica is responsible only for performing the specific services that it has agreed to perform for your Employer.

Participation in the Plan

Commencement of Participation. When you become an Eligible Employee, you may become a Participant in the Plan upon completing and filing a Flexible Benefits Plan Enrollment Form with your Employer.

Cessation of Participation. Your participation in the Plan will end on the earlier of the date the Plan terminates or the date on which you cease to be an Eligible Employee.

Conditions for Participation. If you are an Eligible Employee, you must do or agree to the following:

1. You must complete all applications, election forms and other documents that your Employer asks you to complete.
2. Permit your Employer or MidAmerica to obtain information from your doctor, hospitals or other medical care providers concerning any claim that you submit for reimbursement; and
3. When requested, provide copies of any reports, bills or other information requested by your Employer or MidAmerica.

Benefit Elections

Each year you may elect to have a part of your compensation used to provide one or more of the Benefit Package Options specified in the Plan.

Each year your Employer will establish the maximum and minimum amounts that you may use to purchase Benefit Package Options and will communicate those amounts to you in the enrollment materials. Subject to limitations imposed by your Employer and the applicable law, each year you may choose one or more of the Benefit Package Options available to you by making a written election by the time prescribed by your Employer.

If you make a valid election to have all or a portion of the amount subject to election used for the purchase of Benefit Package Options, your Employer will reduce your cash compensation by the amount you designate and that amount will be used to provide your elected benefits. Your Employer may adjust your election of a non-cash benefit to the extent that your Employer deems, in its sole discretion, necessary to satisfy requirements of the Internal Revenue Code.

Your Employer may also determine to provide Benefit Credits that you may use to purchase Benefit Package Options. If available, those Benefit Credits will be set forth on Appendix A.

Your Employer may also choose to make a contribution on your behalf to purchase Benefit Package Options. If so, that information will be set forth on Appendix A. No amount of any such contribution may be paid to you as cash compensation.

Within a reasonable period of time prior to the beginning of each Plan Year, your Employer will give you a Flexible Benefits Plan Enrollment Form on which you may make your elections. You may elect a Benefit Package Option by specifying your election on the form provided. **Any election you make on this form will be effective for the next Plan Year and may not be changed during the Plan Year unless you have a permissible Change in Family Status (see below).**

By selecting a Benefit Package Option (other than one provided for by an Employer contribution or Benefit Credits), you agree that your cash compensation (i.e., your pay check) will be reduced as follows:

1. If you elect the payment of health insurance premiums (for your Employer's group medical plan), your cash compensation will be reduced by your share of the premium. Generally, if you decide to drop the insurance or change it when you do not have a Change in Family Status (see below), your compensation reductions are required to continue throughout the year.
2. If you elect a Health Care Reimbursement Account ("HCRA") or a Dependent Care Reimbursement Account ("DCRA"), a bookkeeping reimbursement account will be established in your name and your cash compensation will be reduced by the amount you designate. The amount will be credited to your HCRA or DCRA, as appropriate. If you do not spend the entire amount credited to your HCRA or your DCRA, that amount is required by law to be forfeited. It may not be paid to you as compensation.
3. If you cease to be an eligible Employee because of a change in employment status or classification (but not termination of employment), no further reductions will be made from your compensation. However, any balances in your HCRA or DCRA may continue to be used during the Plan Year to reimburse you for any allowable medical expenses or employment-related dependent care expenses incurred during the Plan Year.

If your change in employment status resulted from a leave of absence, you may arrange to have your compensation reduction deducted prior to the commencement of your leave or made up when you return. You should see your Employer for details.

If you cease to be an eligible Employee because of termination of employment, your rights to reimbursement are as described on Appendix A.

4. When you are on unpaid FMLA leave, you may pay your share of the cost of the Benefit Package Option you selected:
 - a. By pre-payment before commencement of leave through pre-tax or after-tax contributions from any taxable compensation;
 - b. On the same schedule as payments would have been made if you were not on leave; or
 - c. By arranging for your Employer to advance the payments while you are on leave, to be made up by you when you return from your leave.

Benefit Elections by New Participants. Within a reasonable period before a new Employee will become a Participant, your Employer will provide you with the necessary forms to complete to participate in the Plan. If you complete the appropriate forms and return them to your Employer by the due date your Employer establishes (which will not be later than the date you would have become a Participant), your election will be effective as of the date on which you become a Participant.

Failure to Elect. If you do not make an initial election in the manner described above, all your compensation will be paid to you in cash. This means that you will have no pre-tax elections in effect.

If you have made an election in a prior Plan Year for a HCRA or a DCRA, your election WILL NOT be carried forward to the next Plan Year. You must complete a new form for each Plan Year. This means that if you do not complete a form for a Plan Year, you will have nothing deducted from your paychecks to pay medical expenses or dependent care expenses on a pre-tax basis.

However, if you made an election in a prior Plan Year to have health insurance premiums paid on a pre-tax basis and you do not return an enrollment form, your prior year's election WILL BE carried forward to the next Plan Year. That means that insurance premiums for the coverage you have in place will continue to be deducted from your paycheck.

Irrevocability of Election. Once you make an election for compensation reduction, you are bound by that election for the entire Plan Year unless you have a Change in Family Status. This includes the following events:

- a. A change in your marital status.
- b. A change in your number of dependents.
- c. A change in your residence or the residence of your spouse or dependents.
- d. A change in your or your spouse's employment and, for elections with respect to your Employer's group accident or health coverage, a change with respect to that coverage.
- e. Such other events that may occur that may be permitted by law.

You should see your Employer or the Plan Administrator for details, as the law is very particular as to what constitutes a change in family status for which you may change your election. This list is only a general summary to provide you some idea as to the permissible events.

If one of the permitted events occurs, you may change your election prospectively by providing written notice to your Employer on a form acceptable to your Employer within 30 days of the event (or by the end of the special enrollment period under HIPAA), provided that the requested change in your election is consistent with your Change in Family Status or your change in accident or health coverage. The Plan reserves the right to adjust the allocation if there are claims incurred prior to the Change in Family Status which would result in a payable amount in excess of your new election.

Adjustment by Your Employer. If your Employer determines at any time that the Plan may fail to satisfy any nondiscrimination requirements of the Internal Revenue Code, your Employer will take such steps as it deems appropriate to avoid such failure. Your Employer may, without limitation, exclude Participants from coverage or modify Participant elections, with or without the affected Participant's consent, to the extent that your Employer deems necessary to satisfy the applicable nondiscrimination requirements.

Automatic Termination of Election. Your election will terminate automatically on the date you cease to be a Participant, even though you may still be entitled to one or more of the benefits described earlier.

Funding. The cost of Benefit Package Options is paid directly from your Employer's general assets. No assets will be set aside specifically to fund the payment of any benefits.

Prohibition Against Alienation of Benefits You do not have the right to sell, assign, transfer, pledge or otherwise encumber any of your benefits under the Plan. This means that you cannot use your rights under the Plan as security for a loan or for any other purpose before you actually receive the benefit.

Claims for Reimbursement

Filing a Claim

Claims for benefits under your insurance policies must be filed with the relevant insurance company.

If you are enrolled in the HCRA or the DCRA, you should file your claim for reimbursement from the Plan for any covered medical expenses you or your family have incurred or dependent care expenses you incurred since you enrolled for the year should be submitted to MidAmerica Administrative & Retirement Solutions, Inc. at:

DEPT: FSA Department
P.O. Box 24927
Lakeland, FL 33802

Or sent via fax: to (863) 688-4200

Your Employer can provide the proper printed forms necessary to file your claim or they may be found on the web at www.midamerica.biz. For medical expenses, you will also need to provide proper evidence of the amount and nature of the medical expenses such as a bill or invoice, and an Explanation of Benefits denying the claim or other evidence that your insurance coverage will exclude that expense.

If your claim is covered, you will receive reimbursement for the amount of the expense within the timeframe specified on your Plan Highlights, and your HCRA or DCRA balance, as appropriate, will be decreased by the amount paid.

Debit or Stored-Value Card

Your Employer may elect to provide all participants with a debit or stored-value card (“payment card”) for the purpose of electronically accessing and debiting your HCRA and DCRA when an eligible medical expense is incurred. Because it is a debit or stored-value card, you will not be able to spend more than your HCRA/DCRA balance. If the funds are not in your HCRA/DCRA account, the transaction will simply be denied.

The payment card allows reimbursement to be made at the point of sale without the need for you to wait to obtain reimbursement for a check to be issued or a direct deposit made into your bank account. The payment card provides for instant reimbursements for eligible 213(d) expenses, although additional documentation may be required in certain circumstances.

You will be provided more information as to how your payment card is to be used. However, general guidelines for use of the card are as follows:

- (1) In the event a sale does goes through that results in expenses being paid that are not properly payable from your HCRA/DCRA (for example, your prescription co-pay plus a \$10.99 DVD are paid for at the pharmacy counter), MidAmerica will take the following steps to recover the \$10.99:
 - a. Send you a letter asking you to reimburse your HCRA/DCRA for the ineligible expense of \$10.99.

- b. If you do not do this, the excess payment can be deducted from future reimbursement paid to you for proper expenses.
 - c. Finally, your employer may be asked by MidAmerica to payroll deduct that amount in order to reimburse your HCRA/DCRA.
- (2) Your payment card may be suspended or cancelled at any time upon notification by MidAmerica or your employer.
 - (3) You will have access to your entire 12-month elected amount on the first day of the plan year.
 - (4) You may pay for eligible medical expenses from your HCRA/DCRA either by using the payment card when you make your purchase or the service is provided or by submitting a Claims Form (hard copy) to MidAmerica.
 - (5) Any monies left in your HCRA/DCRA after the end of the plan year are available until the end of the run out period to reimburse you for proper medical expenses incurred during the plan year, but you must submit a request for reimbursement using a Claim Form or submitting an online claim. If your Employer has elected a Carryover Provision, up to \$500 of your HCRA funds will be carried into the next plan year.

Claims Procedure

If your benefit request or other claim for benefits from your HCRA or DCRA is denied in whole or in part for any reason, you will be notified in writing within 30 days after if the claim is filed. (This period may be extended by your Employer for up to 30 days, provided your Employer determines that such an extension is necessary due to circumstances beyond its control and notifies you in writing before the expiration of the initial 30-day period.) The notice of denial you receive will give the reasons why the claim was turned down. You will be informed of the specific provision or provisions of the Plan on which your Employer's decision was based, and will be told what additional information or material (if any) you would need to submit to support your claim.

If your claim is denied, you are entitled to request a review of the denial of your claim for benefits by the Plan Administrator. You must request this appeal to the Plan Administrator in writing within 60 days after your receipt of the notice of denial (180 days, in the case of a claim for benefits from a HCRA). The final written decision of the Plan Administrator will be delivered to you within 60 days of the receipt of the appeal. (This period may be extended by the Plan Administrator for up to an additional 60 days if the Plan Administrator determines that special circumstances make such extension necessary, and notifies you in writing of the extension before the expiration of the initial 60-day period.) The decision will be in writing and will include both specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based.

Miscellaneous

Requests for Plan Information

You have the right to inspect all Plan documents and to make copies of the documents. All Plan documents can be reviewed and copied during normal business hours at your Employer's main place of operations. In accordance with Internal Revenue Service regulations, your Employer may charge a reasonable fee for copies. Any such request or other requests regarding Plan operation should be directed to the person responsible for your Employer's payroll or other person your Employer may designate.

Plan Administrator's Powers

The Plan Administrator is empowered and authorized to make rules and regulations and establish procedures with respect to the plans and to determine or resolve all questions that may arise as to the eligibility, benefits, status and right of any person claiming benefits under the benefit plans. The Plan Administrator has the power and authority to construe and interpret the Plan and to correct any defect, supply any omissions, or reconcile any inconsistencies in the Plan.

While it is anticipated that the SPD adequately describes the material provisions of the benefit plans, it is the plan documents which ultimately govern the plans along with the rules and regulations and other procedures developed by your Employer.

No Additional Employment Rights

Nothing in the Plan or this SPD in any way creates an express or implied contract of employment. Your employment may be suspended, changed, or otherwise terminated by either you or your Employer at any time.

Federal Income Tax Consequences.

Although your Employer intends that non-cash benefits under the Plan will not be subject to federal income tax, neither your Employer nor the Plan Administrator nor MidAmerica makes any commitment or guarantee that any benefits under the Plan will be excluded from your gross income for federal or state income tax purposes. You should consult a tax professional for advice concerning how the Plan might affect your tax liability.

Your Private Health Information

Your Employer and the Plan have and will continue to honor the confidentiality of your private health information. You may obtain copies of the Plan's privacy procedures and Privacy Statement from your Employer.

Amendment and Termination

Your Employer intends to continue this Plan indefinitely. However, certain circumstances may require that the Plan be amended or terminated. Your Employer reserves the right to amend, modify, or terminate the Plan.

APPENDIX A
SPECIFIC INFORMATION

Name of Plan	Amador Fire Protection District Flexible Benefits Plan
Name and Address of Employer	Amador Fire Protection District 810 Court Street Jackson, CA 95642
Name and Address of Plan Administrator	MidAmerica Administrative & Retirement Solutions, Inc. 402 S. Kentucky Ave, Suite 500 Lakeland, FL 33801
Employer Identification Number	
Agent for Service of Legal Process	
Address and Telephone Number of MidAmerica Administrative & Retirement Solutions, Inc.	DEPT: 125 ADMIN 402 South Kentucky Avenue Suite 500 Lakeland, Florida 33801 1-855-329-0095
Type of Administration	Flexible Benefit Plan
Original Effective Date	March 1, 2018
Plan Year Ending Date	December 31
Basis of Keeping Records	Plan Year
HCRA Election Limit	IRS Maximum
DCRA Election Limit	IRS Maximum
Eligibility Requirement	All eligible employees
New Hire Waiting Period	N/A
Address to Submit Claims	402 South Kentucky Avenue Suite 500 Lakeland, Florida 33801 FAX: 863-688-4200
Frequency of Claim Payments	Daily
Claims Run Out Period	90 days
Termination Run Out Period	90 days
Availability of Funds - HCRA	1 st day of plan year
Availability of Funds – DCRA	As money is deducted from paycheck
Forfeiture of Funds	After claims run out period
Terminated Participant Forfeiture of Funds	After termination run out period

IRS Circular 230 Notice: We are required to advise you no person or entity may use any tax advice in this communication or any attachment to (i) avoid any penalty under federal tax law or (ii) promote, market or recommend any purchase, investment or other action.

AGENDA TRANSMITTAL FORM

To: Amador Fire Protection Board of Directors

Date: 02/20/18

From: David Bellerive Phone Ext. 391
(Department Head - please type)

Department Head Signature 

<input checked="" type="checkbox"/>	Regular Agenda
<input type="checkbox"/>	Consent Agenda
<input type="checkbox"/>	Blue Slip
<input type="checkbox"/>	Closed Session
Meeting Date Requested:	
<u>02/20/18</u>	

Agenda Title: AMADOR FIREFIGHTERS ASSOCIATION MOU

Summary: (Provide detailed summary of the purpose of this item; attach additional page if necessary)

Discussion and possible action relative to adopting resolution to authorize Board President to sign proposed memorandum of understanding between Amador Fire Protection District and Amador Firefighters Association.

Recommendation/Requested Action:

Approve President to sign resolution approving proposed memorandum of understanding

Fiscal Impacts (attach budget transfer form if appropriate)

Staffing Impacts None

None

Is a 4/5ths vote required?

Yes ☐

No ☒

Contract Attached: Yes ☐ No ☐ N/A ☒

Resolution Attached: Yes ☒ No ☐ N/A ☐

Ordinance Attached: Yes ☐ No ☐ N/A ☒

Committee Review?

N/A ☒

Name _____

Committee Recommendation: _____

Comments: _____

Request Reviewed by:

Chairman _____ Counsel _____

Auditor _____ GSA Director _____

CAO _____ Risk Management _____

Distribution Instructions: _____

FOR CLERK USE ONLY

Meeting Date 2/20/18 Time 10:30am Item # 2

Board Action: Approved Yes ___ No ___ Unanimous Vote: Yes ___ No ___

Ayes: _____ Resolution _____ Ordinance _____ Other: _____

Noes: _____ Resolution _____ Ordinance _____

Absent: _____ Comments: _____

Distributed on _____

A new ATF is required from _____

Department _____

Completed by _____

For meeting _____

of _____

I hereby certify this is a true and correct copy of action(s) taken and entered into the official records of the Amador Fire Protection District.

ATTEST: _____

AFPD Board Clerk

BEFORE THE BOARD OF DIRECTORS OF THE
AMADOR FIRE PROTECTION DISTRICT
COUNTY OF AMADOR, STATE OF CALIFORNIA

IN THE MATTER OF:

RESOLUTION APPROVING
EMPLOYEE AGREEMENT WITH
THE AMADOR FIREFIGHTERS
ASSOCIATION

RESOLUTION NO. 18-

BE IT RESOLVED by the Board of Directors of the Amador Fire Protection District, that said Board does hereby approve the employee bargaining agreement by and between Amador Fire Protection District and the Amador Firefighters Association on the terms and conditions contained therein.

BE IT FURTHER RESOLVED that the President of said Board is hereby authorized to sign and execute said agreement on behalf of Amador Fire Protection District.

The foregoing resolution was duly passed and adopted by the Board of Directors of the Amador Fire Protection District at a regular meeting thereof, held on the 20th day of February 2018, by the following vote:

AYES:

NOES:

ABSENT:

President, Board of Directors

ATTEST:
LINDSEY CLARK, Clerk of the
Amador Fire Protection District,
Amador County, California

2018-20
MEMORANUDM OF UNDERSTANDING

Between The

AMADOR FIRE PROTECTION DISTRICT
AND
THE AMADOR FIREFIGHTERS ASSOCIATION

ARTICLE 1 – PARTIES

The Parties to this Memorandum of Understanding (hereinafter referred to as the “MOU”) are the Amador Fire Protection District of Amador County, California (hereinafter referred to as the “District”), and the Amador Firefighters Association (hereinafter referred to as the “Association”). The Parties agree as follows:

ARTICLE 2 – RECOGNITION, ASSOCIATION DUES and BUSINESS

- 2.1 Recognition - The District recognizes the Association as the exclusive bargaining agent for regular full-time probationary or non-probationary employees in the classifications of Firefighter, Fire Engineer, and Fire Captain. Nothing herein is intended to exclude from the bargaining unit full-time employees who are placed on temporary light duty involving a temporarily reduced work schedule or who are on a leave of absence.
- 2.2 Employee Defined - For purposes of this MOU the term “employee” refers to a bargaining unit member(s) as provided in this Article.
- 2.3 Modification of Bargaining Unit - Any dispute between the parties over the inclusion in or exclusion from the bargaining unit of classifications or positions other than those listed in Section 2.1 immediately above shall be addressed and resolved through a timely petition to the California Public Employee Relations Board. Such disputes may not be processed through the Grievance Procedure set forth in this MOU.
- 2.4 Employee Financial Obligations to Association - Subject to the terms of this Article, each employee who is a member of the bargaining unit shall either pay monthly Association dues or pay a service fee in lieu of dues if the employee elects to forego Association membership.
- 2.5 Deduction from Wages - An employee in the bargaining unit may elect to have his or her monthly Association dues or service fees in lieu of dues (or dues or service fees less non-chargeable amounts to which the employee has objected pursuant to section 12.4 below) deducted from his or her paycheck (to the extent the amount of the check is sufficient to do so) by signing, dating, and submitting to the Chief, or Chief’s designee,

the authorization form required by the District for such deduction. The authorization will take effect on the first of the first pay period beginning after the signed and dated authorization form is received by the Chief or Chief's designee. Authorization for such deduction may be withdrawn at the employee's discretion by a written notice signed and dated by the employee and delivered to the Chief or Chief's designee. Such withdrawal of authorization to deduct will take effect on the first day of the first pay period beginning after the withdrawal notice is received by the Chief or Chief's designee.

- 2.6 Religious Objections - An employee who objects to the transmission of his or her service fee to the Association based on bona fide religious beliefs may direct that his or her service fee be tendered to a non-religious charity of his or her choosing.
- 2.7 Non-Chargeable Assessments - The Association must provide each bargaining unit member with advance notice of that portion of the monthly Association dues amount that it anticipates it will expend for political or ideological purposes that are non-chargeable under applicable law (to employees who object to contributing toward such expenditures), and shall provide the required appeal and opt-out procedures, as prescribed and in conformity with the requirements set forth by the U.S. Supreme Court in Chicago Teachers v. Hudson, Knox v. Service Employees International Association (SEIU), Local 1000, and any subsequent U.S. Supreme Court decisions that modify or supplement the requirements stated in the above cited decisions.
- 2.8 Timing of Deductions - The District may deduct authorized dues or service fees monthly or over lesser intervals, at its discretion. The District will provide for the transmission of the collected dues and fees to the Association at least once per month.
- 2.9 Association Access - The Association representatives shall have reasonable access to employees at their assigned stations provided that they shall not interfere with the employee's performance of their duties. The Association representative shall advise the Chief or the Chief's designee at least two (2) hours in advance of the representative's intent to conduct Association business at a station other than one at which the representative is then regularly assigned. To the extent feasible, the Association shall conduct its business at stations in areas separated from administrative rooms or rooms where District emergency service equipment is stored. The Association will reimburse the District for the cost of repairs required due to negligent or intentional actions or omissions by Association representatives (employee or non-employee), that cause damage to District property.
- 2.10 Negotiations Release Time - Except in an emergency and subject to operational staffing requirements, the District will release from scheduled duty up to two (2) bargaining unit members designated by the Association without loss of pay or benefits to participate as Association representatives in meet and confer meetings with the District required under this MOU. Not less than seven (7) days or more than twenty-one (21) days before a scheduled negotiations meeting, the Association must notify the Chief or the Chief's

designee, in writing, of the names of the employees that it desires to have released from duty to attend the meeting.

- 2.11 Defense and Indemnification - The Association shall defend, indemnify, and hold the District, its agents, officers, officials, contractors, and employees harmless from, for and against all claims arising, in whole or in part, from the terms or application of this Article, except that this will not apply to a grievance filed by the Association or a bargaining unit member under Article 19, Grievance Procedure, of this MOU to enforce employee authorized dues or service fee deductions or the withdrawal of authorization for such deductions.

ARTICLE 3 - NON-DISCRIMINATION

The District and Association agree that neither they nor employees will unlawfully discriminate against any member of the bargaining unit because of mental, physical or sensory handicap, age, sex, marital status, race, color, sexual orientation, national origin, creed, religion, political affiliation, or because of their membership in any other protected class under applicable state or federal anti-discrimination law, or for joining or participating in any employee organization or refraining therefrom.

ARTICLE 4 – DISTRICT’S RIGHT TO DECIDE AND IMPLEMENT DECISIONS

Except to the extent expressly abridged by a provision of this MOU, the District hereby acquires and possesses without limitation, and subject to the terms of Article 25 (**Waiver of Duty to Meet and Confer**) below, the exclusive right to exercise all rights, privileges, powers, and authority conferred upon the District by law or this MOU including, but not limited to, the rights, privileges, powers and authority to:

- A. Manage the affairs of the District, and to determine all issues of policy not otherwise addressed or resolved in this MOU;
- C. Maintain, expand, reduce, or discontinue any District service, operation, or function at any time;
- D. Determine or change, from time to time, the nature of any or all District services, operations, and functions, and the manner and means by which they are carried out including, but not limited to, their financing, choice, design, and use of facilities, locations, equipment, organizational structures, and technology used in such services, operations, and functions;
- E. Determine or change, from time to time, numbers and composition of the District’s work force;

- F. Direct the workforce and determine, modify, or terminate work assignments, and assign work to employees;
- G. The right to schedule work, determine work schedules, and assign employee work schedules;
- H. Use volunteers including, but not limited to, volunteer firefighters in any number, schedule, or for any duration;
- I. Enter into and commit any District employee(s) to adhere to and effectuate mutual aid agreements or pacts;
- J. The right to contract, or subcontract, any services, operations, and functions, or to transfer work to other regular District personnel;
- K. The right to reduce the workforce and lay off employees from work;
- L. The right to discipline employees for any lawful reason, for probationary employees, and for just cause for employees who have successfully completed probation;
- M. Recruit, examine for knowledge and physical job fitness, hire, transfer or promote employees;
- N. Discipline employees by written reprimand, suspension without pay, temporary reduction in pay in-lieu-of unpaid suspension, demotion or termination of District employment;
- O. The right to establish, modify, or abolish any job classification(s) including the determination of duties, required knowledge and skills, essential tasks, minimum and desirable qualifications, physical and psychological requirements;
- P. Determine the proper allocation of a position to a job classification and to effectuate such allocation;
- Q. Establish, determine, modify, or eliminate quantitative or qualitative productivity or performance standards;
- R. Evaluate employee conduct or performance;
- S. Maintain order and efficiency at all District facilities and operations;

- T. Determine, promulgate, implement, modify, and enforce or eliminate rules governing employee conduct related to their District employment including, but not limited to, on-the-job cooperation, compliance with orders, timekeeping practices, language, appearance, safety requirements and practices, and non-District employment;
 - U. Define limits governing Association activities of employee organizations on District property or at locations where District employees are assigned to work, within the limitations of applicable law and this MOU;
 - V. Take all lawful steps to carry out, or protect, any District service, operation, function, equipment, facility, or employee, or member of the public, during any work stoppage, strike, work slowdown, or other job action against the District by its employees, or during any bona fide emergency;
 - W. Adopt, eliminate, or revise all District policies, practices, procedures, resolutions, or regulations provided that such action in a particular instance does not conflict with a specific provision of this MOU;
 - X. The right to assign vehicles to employees for use in the course of their District employment or to terminate such assignment; and
 - Y. Train or procure training for employees and to determine training requirements and programs.
- 8.2 Except and only to the extent specifically and expressly abridged by this MOU, the District's exercise of the foregoing rights is not subject to appeal.

ARTICLE 5 - NO STRIKE

Employees shall refrain from engaging in any strike, non-informational picketing, slowdown, sit-down, work stoppage, or any other failure, in whole or in part, to faithfully and fully perform the duties of their position whether such activity is in connection with a primary or secondary labor dispute or in sympathy with other workers or causes. Violation of this Article will result in discharge. In the case of an employee who has not completed probation following initial hire or rehire, the discharge will not be subject to appeal. For an employee who has completed probation following initial hire or rehire any appeal shall be confined to the question of whether the employee violated this Article and, if not, the appropriate remedy under this MOU.

ARTICLE 6 - USE OF NON-UNIT RESOURCES

The District may employ and use non-bargaining unit members to perform bargaining unit work including, but not limited to, District employees, volunteer firefighters, part-time employees,

temporary employees, or outside contractors or governmental entities to the extent the District, in its discretion, deems such necessary or desirable to carry out District services, and nothing in this MOU may be construed to inhibit, impair or impede the District in its exercise of such discretion. However, except in an emergency, if the use of such non-unit resources would directly cause the layoff of a bargaining unit member(s), the District will notify the Association President in writing of the anticipated layoff(s) and provide the Association an opportunity to meet to discuss the anticipated layoff before it is implemented. The Fire Chief will schedule such meeting to occur within seven (7) calendar days following the transmittal of notice under this Article. The layoffs may be implemented after the seven (7) day period, subject to early implementation occasioned by an emergency.

ARTICLE 7 - WORK SCHEDULES

- 7.1 The District may include in any employee's work schedule any hour(s) of the day or day(s) of the week as deemed appropriate by the Fire Chief.
- 7.2 If the Chief determines that any employee's services are required on a day for which the Chief previously authorized the employee to take vacation or holiday time off, the leave will be canceled. Except in an emergency, the District will make a good faith effort to give the employee as much advance notice of the cancelation as is feasible.

ARTICLE 8 - BASE WAGE RATES, LONGEVITY PAY, AND PAY FOR WORK IN HIGHER CLASSIFICATION

- 8.1 The base wage rates and ranges for job classifications covered by this MOU are set forth in Appendix "A", which is attached hereto and by this reference incorporated herein. Said rates and ranges reflect a two percent (2%) base wage rate increase effective on the first day of the pay period following adoption of this MOU by the District Board of Directors, an additional two percent (2%) increase effective on the first day of the pay period beginning one year after the date this MOU is adopted by the District Board of Directors, and an additional two percent (2%) base wage rate increase effective on the first day of the pay period beginning two years after the date this MOU is adopted by the District Board of Directors. Employees shall be paid in accordance with said schedules; provided, that said rates are minimum rates. The Employer may pay amounts in excess of such rates at any time or discontinue any such excess amount, at its discretion. The District may hire a newly hired employee(s) at any step of the applicable base wage range, at its discretion.
- 8.2 Effective on the first day of the pay period beginning on or after this MOU is adopted by the Board of Directors, the District will provide a regular full-time employee a one and one-half percent (1.5%) increase in his or her base wage rate on the first day of the first pay period beginning on or after the date the employee completes five (5) years of continuous active service as a regular full-time employee. The increase will be calculated based on the employee's base hourly rate of pay at the time of the increase as set forth in Appendix A of this MOU. The District will provide an additional one and one-half

percent (1.5%) increase in a regular full-time employee's base wage rate, as set forth in Appendix A of this MOU, on the first day of the first pay period beginning on or after the date the employee completes ten (10) years of continuous active service as a regular full-time employee. The five (5) year longevity increase will not be included in the base on which the amount of the ten year increase is calculated but, rather, will be added to the ten year increase after its calculation; i.e. they each will have the same dollar value. All authorized leaves of absence that may be lawfully excluded from the calculation of service will be excluded except paid vacation, sick leave, holidays, bereavement leaves, and employer designated paid administrative leaves. However, leaves that are excluded, while not counted toward the service requirement, will not terminate the periods of contiguous qualifying continuous service which shall be bridged for purposes of longevity pay eligibility. Longevity pay under this subsection 8.2 will be paid prospectively only; not retroactively. [Example: An employee on the payroll with eight years of qualifying active continuous service at the time this 2018-2021 MOU is adopted by the Board of Directors will begin receiving the five year 1.5% longevity increase prospectively on the first day of the first pay period beginning on or after the Board adopts this 2018-2021 MOU, not retroactively to the date he or she reached the five year continuous service threshold, Similarly, an employee with eleven years of qualifying active continuous service at the time the Board adopts this 2018-21 MOU will commence receiving both the five and ten year longevity increases prospectively effective on the first day of the first pay period following Board adoption of this 2018-2021 MOU.]

- 8.3 An employee who is temporarily assigned by the District to work in a budgeted position in a higher classification for at least eight (8) consecutive shifts shall be compensated at a straight time rate that is not less than five percent (5%) greater than the employee's base hourly wage rate (plus longevity pay) that the employee would have earned in his or her normally assigned position and classification, but not to exceed the maximum rate of the higher classification. For purposes of this subsection 8.3, a "higher classification" is one that has a higher maximum base wage rate as set forth in Appendix A of this MOU.

ARTICLE 9 - OVERTIME WORK AND PAY

- 9.1 The District may require any employee to work overtime hours beyond his or her regular work schedule at its discretion. All overtime worked must be authorized in advance by the District, except in an emergency.
- 9.2 The District may designate and implement any available Fair Labor Standards Act ("FLSA") compliant pay calculation period or change said designation and pay period from time to time at its discretion. The District will notify the Union President, in writing, and post or otherwise give direct or constructive notice of such a change not later than thirty (30) days before the effective date of the change as determined by the District.

- 9.3 Overtime hours worked shall be compensated at one and one-half (1½) times the employee's regular straight time hourly rate of pay. To the extent permitted by law, hours worked for overtime pay eligibility purposes shall exclude time spent on paid or unpaid leaves of absence.

ARTICLE 10 - PAY DATES AND PAYROLL ERRORS

- 10.1 Pay Dates. Members of the bargaining unit will be paid once each month on dates determined by the District, consistent with practices in effect at the time this MOU is adopted. However, the District may determine and implement a different schedule of pay dates or adopt more frequent pay dates at any time, in its discretion. To the extent it has sufficient notice from the Amador County Auditor, the District will make reasonable efforts to provide the Association with thirty (30) days advance notice of the contemplated change of pay dates.
- 10.2 Corrections of Wage Underpayments or Leave Balance Errors. If an employee believes that the amount of his or her wages or accumulated leave balances on his or her paycheck or paystub are in error, he or she shall notify the Chief or his or her designee in writing of the specific apparent error. The Chief or the Chief's designee will investigate the matter and cause the prompt correction of any verified erroneous underpayment of wages or erroneous leave balance (normally at the next pay date if feasible). If the District independently detects an underpayment of wages or an erroneous leave balance(s), it will notify the affected employee in writing of the error and cause the prompt correction of the error (normally at the next pay date if feasible).
- 10.3 Corrections of Overpayments of Wages. If an employee believes that the amount wages he or she has been paid is greater than the amount due, he or she must promptly notify the Chief or Chief's designee in writing of the apparent error(s). If the District independently identifies such an apparent overpayment of wages, it shall notify the affected employee in writing of the apparent error. In either case, the Chief or the Chief's designee will investigate the matter. If the Chief or Chief's designee verifies that an overpayment of wages has taken place, the Chief or designee shall notify the employee in writing of the specific amount(s) of the error(s) and a proposed method for the employee's repayment of the overpayment to the District. Such method may include either a one-time lump sum payment or a scheduled recovery over a reasonable period. In either case, the repayment may be by payroll deduction, but only if authorized in writing by the employee. The District may not deduct or recover overpaid wages from the employee except with the employee's written consent or by court order.

ARTICLE 11 - HEALTH INSURANCE

- 11.1 All eligible full-time employees and their eligible family members may participate in District – procured medical, dental and vision plans, currently provided through the Fire Districts Association of California, Employee Benefit Authority (“FDAC/EBA”). The District reserves the right to select one or more substitute or alternative carriers for each

or all benefit plans (medical, dental, vision), and to modify benefits at its discretion; provided that any substitute or alternative medical plan of benefits must conform to any applicable requirements under applicable state or federal law then in effect.

- 11.2 Plan Years commence on January 1 of each calendar year and conclude on December 31. Except as noted below, for Plan Year 2018 the District will contribute up to the following maximum amounts toward the monthly premium cost of medical insurance coverage for full-time employees, not to exceed the price of the applicable plan at the applicable level of enrollment:

<u>Plan/Year</u>	<u>Level of Enrollment</u>	<u>District Monthly Contribution</u>
Medical/2018	Employee Only	\$699.51
	Employee + 1	\$1316.71*
	Employee + 2 or more	\$1711.71*
Dental/2018	Employee Only	\$41.67
	Employee + 1	\$81.27
	Employee + Family	\$135.4
Vision/2018	Employee Only	\$6.41
	Employee + 1	\$12.85
	Employee + Family	\$20.68

In recognition of an increase in the District's percentage share of premium for two party and family coverage (changing from a 75%/25% split to 80%/20% split), these amounts reflect contribution levels effective on the first premium due date falling on or after the date the Board of Directors adopts this 2018-20 MOU.

- 11.3 Medical Contributions Plan Years 2019 and 2020. For Plan Years 2019 and 2020 the following shall apply with respect to medical insurance contributions:
- A. Employee Only Coverage: The District's maximum contribution toward the applicable employee only monthly premium for medical insurance shall be a flat dollar amount equal to the price of the plan in which the employee has enrolled but not to exceed eighty-five percent (85%) of the premium charged for the Basic PPO plan at the employee only level of enrollment.
 - B. Two-Party and Family Coverage: The District's maximum contribution toward the two-party or family premium for medical insurance shall be a flat dollar amount equal to the price of the plan in which the employee has enrolled but not to exceed eighty percent (80%) of the premium charged for the Basic PPO plan at the applicable level of enrollment.

- 11.4 Dental Contributions Plan Year 201 2019, and 2020. For dental Plan Years 201 2019, and 2020, the District's maximum contribution toward the monthly premium for dental insurance shall be a flat dollar amount equal to ninety percent (90%) of the premium charged at the employee's respective level of enrollment.
- 11.5 Vision Contributions Plan Years 201 2019 and 2020. For vision Plan Year 2019 and 2020, the District's maximum contribution toward the monthly premium for vision insurance shall be a flat dollar amount equal to one hundred percent (100%) of the premium charged at the employee's respective level of enrollment.
- 11.6 Status Quo for Successor Bargaining Purposes: For Plan years after 2020, the flat dollar amount of the District contribution at each level of enrollment as specified above for medical, dental, and vision coverage, respectively, the will not increase except as provided for, if at all, through the negotiations over a successor to this MOU.
- 11.7 Full-time employees who can document that they have alternative medical, dental, or vision coverage that complies with any applicable legal requirements may elect to waive District coverage by written notice to the District during either the initial new employee enrollment process or during a subsequent open enrollment period. Eligible full-time employees who waive coverage who desire to resume coverage under the applicable District plan may do so during an annual open enrollment period. Eligible full-time employees who waive medical, dental, or vision coverage under the applicable District plan will be paid the following amounts, as applicable:
- | | |
|------------------------|----------|
| Waive medical coverage | \$630.94 |
| Waive dental coverage | \$41.27 |
| Waive vision coverage | \$6.35 |
- 11.8 The District will provide life insurance for each employee in the amount of ten thousand dollars (\$10,000) through a carrier of its choice.

ARTICLE 12 - VACATION LEAVE

- 12.1 All regular full-time probationary and regular full-time non-probationary employees covered by this Agreement shall begin to earn paid vacation time according to the schedules set forth below. Vacation time begins to accrue beginning with the employee's first date of employment. However, employees will not be eligible to take paid vacation time until after satisfactory completion of six (6) months of employment with the District.

Full-time employees shall earn and accrue paid vacation leave on a prorated monthly basis (based on normally scheduled hours) in accordance with the following:

A. First five years of employment:

- | | | |
|-----|---|------------|
| (1) | Twenty-four (24) hour shift employees - | 10.0 hours |
| (2) | Non-twenty-four (24) hour shift employees – | 8.03 hours |
| (3) | Forty (40) hour employees – | 7.14 hours |

B. Six or more years of employment:

- | | | |
|-----|---|-------------|
| (1) | Twenty-four (24) hour shift employees - | 14.0 hours |
| (2) | Non-twenty-four (24) hour Shift employees – | 11.24 hours |
| (3) | Forty (40) hour employees - | 10 hours |

12.2 Vacation leave shall be accrued and recorded at the end of each month.

12.3 No employee shall be eligible to accrue more than a maximum of twice their annual vacation accrual rate specified above. Once the maximum accrued number of vacation hours is reached, vacation accrual will cease until the vacation balance falls below the allowed maximum. If the employee subsequently uses enough vacation to fall below the allowed maximum, the employee will start accruing vacation leave from that date forward until the ceiling is reached again.

12.4 Upon dismissal from or termination of District employment an employee's accrued but unused vacation leave shall be paid to the employee at their final base rate of pay.

12.5 Vacations schedules and times will be determined by the District in a manner the Chief deems consistent with the needs of efficient operations. Each November 1 the District will post a schedule of available vacation times for the following calendar year. Each employee will be permitted to submit to the Chief, or the Chief's designee, a written bid for posted vacation times until November 30 of the same year. Such bids must be in increments of not less than a full twenty four (24) hour shift or a full work day, as dictated by the employee's assigned work schedule. The Chief will award available vacation times based on seniority as determined by length of continuous District service; provided, that the Chief may, at the Chief's discretion or that of the Chief's designee, deviate from District service based seniority to ensure that the number of personnel in each job classification available for duty are, in the Chief's judgment or that of the Chief's designee, sufficient to ensure effective and efficient District services. Vacation times remaining on the vacation schedule after the annual bid concludes will be awarded by the Chief or the Chief's designee on a first come first served basis without regard for seniority; provided, that the Chief or Chief's designee may deviate from the first come

first served order at the Chief's or designee's discretion if he or she deems it necessary to ensure that sufficient numbers of personnel in each job classification are available for duty to ensure effective and efficient District services.

Vacation requests outside the annual bid process may be for a full twenty-four (24) hour shift or full work day, as dictated by the employee's assigned work schedule, or for partial shifts or work days as follows:

- Twelve (12) hours for a twenty-four (24) hour shift employee;
- Four (4) hours for a non-twenty-four (24) hour shift employee; or
- Four (4) hours for a forty (40) hour employee.

- 12.6 When an employee's District service terminates, the District will pay the employee for his or her accrued unused vacation leave at the employee's base hourly rate of pay at the effective date of termination.

ARTICLE 13 – HOLIDAY LEAVE

- 13.1 Each regular full-time twenty-four (24) hour shift employee shall receive one hundred twenty (120) hours of pay per year in lieu of holiday leave.
- 13.2 Holiday leave pay for twenty-four (24) hour shift employees shall be calculated first by multiplying each affected employee's regular straight time base hourly rate of pay by one hundred twenty (120) hours. The resulting amount shall then be divided by the number of pay periods in a calendar year. The resulting quotient shall be distributed evenly across all pay periods within the calendar year, but will not be paid for periods of unpaid leave.
- 13.3 Each regular full-time non-twenty-four (24) hour shift employee, other than 40 hour employees, shall receive ninety (90) hours of pay per year in lieu of holiday leave.
- 13.4 Holiday leave pay for non-twenty-four (24) hours shift employees shall be calculated first by multiplying each affected employee's regular straight time base hourly rate of pay by ninety (90) hours. The resulting amount shall then be divided by the number of pay periods in a calendar year. The resulting quotient shall be distributed evenly across all pay periods within the calendar year, but will not be paid for periods of unpaid leave.
- 13.5 Each regular full-time forty (40) hour employee shall be granted paid holiday leave receive ninety (90) hours of pay per year in lieu of holiday leave.
- 13.6 Pay in lieu of holiday leave shall be adjusted and applied prospectively to account for any change in the employee's base straight time hourly rate of pay.
- 13.7 Each regular full-time forty (40) hour employee shall be granted paid holiday leave at their respective straight time base rate of pay for the following holidays:

<u>Occasion</u>	<u>Date</u>
• New Year's Day	January 1
• Martin Luther King's Birthday	Third Monday in January
• Presidents' Day	Third Monday in February
• Memorial Day	Last Monday in May
• Independence Day	July 4
• Columbus Day	Second Monday in October
• Veterans Day	November 11
• Thanksgiving	Fourth Thursday in November
• Day after Thanksgiving	Friday following Thanksgiving
• Christmas Eve	December 24
• Christmas Day	December 25

13.8 Each regular full-time forty (40) hour employee shall also be granted holiday leave with pay on any day declared by the President of the United States or Governor of California, and designated in writing as a holiday by the Chair of the Board of Directors, as a public day of fast, mourning or Thanksgiving, or public holiday for all District employees.

13.9 When a forty (40) hour employee's holiday falls on the employee's first regularly scheduled day of rest, the holiday will be observed on the preceding work day. If the holiday falls on the employee's second or third day of rest, the employee will observe the holiday on his next regularly scheduled work day. If the holiday falls within the period of an employee's approved leave with pay (e.g. vacation or sick leave), the holiday will be treated as holiday leave and the employee's paid leave balance will not be charged for the day.

13.10 A forty (40) hour employee who is not in paid status the day before and after a holiday is not eligible for holiday leave for that holiday. However, this requirement does not apply to an employee in uncompensated status who is in authorized unpaid status during a waiting period arising out of the employee's job related injury or illness.

ARTICLE 14 – SICK LEAVE

- 14.1 Regular full-time probationary and non-probationary employees of the District shall be entitled to accrue sick leave at the applicable rate set forth below:
- Twenty-four (24) hour shift employees - 10 hours per completed month of continuous service;
 - Non-Twenty-four (24) hour shift employees - 8.03 hours per completed month of continuous service;
 - Forty (40) hour employees – 7.14 hours per completed month of continuous service.
- 14.2 Unused sick leave will accumulate from year to year with no accumulation maximum. Accrual of sick leave will be recorded at the end of each calendar month.
- 14.3 Sick leave only accrues for continuous full-time service to the District. Sick leave does not accrue during any period an employee is on paid or unpaid leave, or when receiving State Disability Insurance or Worker's Compensation Insurance benefits.
- 14.4 Paid sick leave is a conditional benefit intended to protect an employee against a loss of earnings when absence is necessitated by illness or injury. It is not intended as additional holiday, vacation or other such paid time off. Sick leave may be used only in case of actual illness or injury of the employee or the employee's spouse, children, or other dependents, unless otherwise provided by District policy or applicable law.
- 14.5 The District may, at the Chief's discretion, require a satisfactory statement of a licensed physician whenever the employee misses work due to an illness, injury or disability. Subject to the requirements of applicable law, the District may require the employee to provide a physician's statement that verifies that the employee is or was not able to work due to incapacitating illness or injury of the employee or a covered relation as set forth in paragraph .4 above, the beginning and actual or projected ending date of the incapacity, or that the employee is able to return to unrestricted duty work without presenting an imminent danger to the employee's safety or the safety of others. A physician's statement required under this paragraph must be signed and dated by the physician, and must be delivered to the Chief or the Chief's designee as promptly as reasonably possible under the relevant circumstances. Provision of the required verification statement is a condition of eligibility to use accrued sick leave or to return to work.

- 14.6 An employee taking bereavement leave pursuant to District policy will be compensated at his or her base rate of pay (plus any applicable longevity pay) for up to three shifts of such leave, and will not be charged sick leave for those days.

ARTICLE 15 - PROBATIONARY PERIODS

- 15.1 Each newly hired or rehired employee shall serve a probationary period of twelve (12) months of work, unbroken by termination, dismissal, or layoff.
- 15.2 A promoted employee will serve a probationary period of twelve (12) months of work, unbroken by termination, dismissal, or layoff.
- 15.3 To the extent permitted by law, leaves of absence, paid or unpaid, will not count toward completion of the twelve (12) months of work required to pass probation.
- 15.4 A newly hired or rehired employee in a probationary period serves at the will of the District and may be terminated from District service for any lawful reason at the District's discretion. Such termination shall not be subject to appeal. A newly hired or rehired employee who successfully completes the probationary period is, for the purposes of termination or layoff only, as those terms are defined and governed by this MOU, considered a permanent employee and may be terminated from District service only as provided by Article 17 or 19 of this MOU.
- 15.5 Promotional probationary status will be governed by the following provisions:
- A. An employee who is promoted after completing probation as a newly hired or rehired employee serves in the promotional position at the will of the District and may be terminated from the promotional position and returned to the classification in which he or she last completed the probationary period, at the discretion of the District. In such case, termination from the promotional position is not subject to appeal.
 - B. If the employee described in subsection A above did not pass new hire or rehire probation before promotion, he or she continues to serve at the will of the District and the District may, at its discretion, terminate the employee from District service. Such termination is not subject to appeal.
 - C. As an alternative to termination as provided in subsection B immediately above, the District may elect to return the employee to a position in the classification held at the time the employee was newly hired or rehired. In such case the employee shall continue to serve at the will of the District until he or she completes the portion of the probationary period remaining at the time he or she was promoted from that classification.

- D. An employee who is promoted after completing probation as a newly hired or rehired employee may be terminated for cause from District service and not returned to their former classification.

ARTICLE 16 - INVESTIGATIONS

- 16.1 When a firefighter who has passed his or her new hire or rehire probationary period is under investigation, and subjected to interrogation by his or her commanding officer, or by any other member designated by the District, that could lead to punitive action, interrogation shall be conducted under accordance the following conditions:
- A. The interrogation shall be conducted at a reasonable hour, at a time when the firefighter is on duty, unless an imminent threat to the safety of the public requires otherwise. If the interrogation does occur during off-duty time of the firefighter being interrogated, the firefighter shall be compensated for any off-duty time in accordance with regular department procedures. The firefighter's compensation shall not be reduced as a result of any work missed while being interrogated.
 - B. The firefighter under investigation shall be informed, prior to the interrogation, of the rank, name, and command of the officer or other person in charge of the interrogation, the interrogating officer, and all other persons to be present during the interrogation. All questions directed to the firefighter under interrogation shall be asked by and through no more than two interrogators at one time.
 - C. The firefighter under investigation shall be informed of the nature of the investigation prior to any interrogation.
 - D. The interrogating session shall be for a reasonable period taking into consideration the gravity and complexity of the issue being investigated. The person under interrogation shall be allowed reasonable breaks to attend to his or her own personal physical necessities.
 - E. The firefighter under interrogation shall not be subjected to offensive language or threatened with punitive action. A promise of reward shall not be made as an inducement to answering any question. The employer shall provide to, and obtain from, an employee a formal grant of immunity from criminal prosecution, in writing, before the employee may be compelled to respond to incriminating questions in an interrogation. Subject to that grant of immunity, a firefighter refusing to respond to questions or submit to interrogations shall be informed that the failure to answer questions directly related to the investigation or interrogation may result in punitive action.
 - F. The District shall not cause the firefighter under interrogation to be subjected to visits by the press or news media without his or her express written consent free

of duress, and the firefighter's photograph, home address, telephone number, or other contact information shall not be given to the press or news media without his or her express written consent.

- G. A statement made during interrogation by a firefighter under duress, coercion, or threat of punitive action shall not be admissible in any subsequent judicial proceeding, except that this subsection G shall not prevent the admissibility of statements otherwise made by the firefighter under interrogation in any civil action, including administrative actions, brought by that firefighter, or that firefighter's exclusive representative, arising out of a disciplinary action.

ARTICLE 17 - DISCIPLINARY ACTION

- 17.1 Disciplinary action may take the form of a written reprimand, suspension without pay, temporary pay reduction in lieu of suspension without pay, permanent pay reduction, demotion, or discharge from employment. Oral reprimands may be employed but shall be treated as counseling and forewarning under this MOU, and are not subject to appeal.
- 17.2 Probationary employees may be subject to disciplinary action for any lawful reason and such action is not subject to appeal.
- 17.3 Non-probationary employees may be subject to disciplinary action for just cause including, but not limited to:
 - A. Inadequate performance;
 - B. Evident unfitness or unsuitability for service;
 - C. Incompetence;
 - D. Inefficiency;
 - E. Negligence in the performance of the employee's duties;
 - F. Activity in violation of the no strike provision of this MOU or any other legal limitation on job related conduct.
 - G. Unauthorized leave of absence;
 - H. Insubordination;
 - I. Refusal, or failure, to perform work in accordance with District or state job safety requirements;

- J. Falsification of District records including but not limited to operational records, timekeeping records, other documents or oral reports, or an employment application or fraud or misrepresentation in securing any District employment or benefit or advantage;
- K. Sexual harassment or other discriminatory conduct in violation of this MOU, District policy, or applicable law;
- L. Engaging in any outside employment, activity, or enterprise that is incompatible, conflicts with, or is detrimental to the employee's safe and proper performance of his or her District employment duties or to the duties, functions, or responsibilities of the District;
- M. Political activity in violation of state or federal law or District policy.
- N. Dishonesty;
- O. Misuse, malicious damage to, or theft of District equipment, facilities, or other property, tangible or intangible;
- P. Conviction of any felony;
- Q. Conviction of any misdemeanor committed while on duty, or any misdemeanor involving moral turpitude;
- R. Discourteous or disrespectful treatment toward another employee, or toward a member of the public, while on duty, or off duty if the discourteous or disrespectful treatment relates to District employment.
- S. Failure to affirmatively cooperate with other District employees or other individuals or persons carrying out District functions including, but not limited to withholding assistance or providing inadequate assistance;
- T. Reporting to work or working while in possession of or under the influence of alcohol or legally prohibited substances or of any drug or substance that would interfere with the full performance of the employee's duties;
- U. Breach of medical or other confidentiality requirements imposed by law or District policy;
- V. Engaging in discriminatory activity in violation of Section 3 of this MOU or other applicable District policy;
- W. Inability, or incapacity, to perform assigned job duties; or

- X. Other behavior, during or outside of duty hours, that impairs or tends to impair the performance of District services by the District, District employees or associated agencies, contractors or personnel.
- Y. Any other breach of the obligations of employment, whether express or implied.

ARTICLE 18 - SKELLY AND LUBEY HEARINGS

The District may determine and employ such procedures as it deems appropriate and sufficient to carry out Skelly hearings and Lube name clearing hearings, when required.

ARTICLE 19 – LAYOFF

- 19.1 The District may reduce the number of bargaining unit positions or layoff one or more bargaining unit members (or a combination thereof), by classification when it determines, in its discretion, that such action is in the District's best interests. If a layoff involves occupied positions, the District will determine the order of employee layoff. In making such determination, the District will consider seniority within the classification and with the District, as well as the merit as reflected in the performance evaluations on file with the District.
- 19.2 For purposes of this Article "seniority" includes only the employee's unbroken period of continuous District service. Continuous service is broken by dismissal, resignation, retirement, or other such break in service. Periods of unauthorized leave do not count toward seniority but will constitute a break in continuous service if longer than five (5) of the employee's regularly scheduled shifts; PROVIDED, that the Chief may, in the Chief's discretion on an occasion by occasion and case by case basis, waive such a break in service for purposes of this Article. Except as otherwise required by law, periods of authorized unpaid leave are excluded from the calculation of continuous service but do not constitute a break in continuous service.
- 19.3 The District may, at its discretion, reassign an employee who is laid off from his or her position to a vacant and available position within the bargaining unit if the employee meets the minimum qualifications for the position.
- 19.4 District employees who are subject to layoff outside the bargaining unit who meet the minimum qualifications for a classification in the bargaining unit may, with the Chief's permission, bump into a vacant or filled bargaining unit position, provided that the employee has greater continuous District service than the bargaining unit member that would be bumped, if any. The calculation of seniority shall be subject to subsection .2 above.
- 19.5 Probationary employees have no rights under this Article. Probationary employees in the classification affected by the layoff will be terminated before any non-probationary employee in that classification is subject to bumping or layoff.

- 19.6 Except in an emergency declared by the Board of Directors, the District will provide an employee in the bargaining unit who is subject to lay off from District service with at least fourteen (14) days advance written notice of such action.
- 19.7 If authorized by the Board, the District may offer a severance package to an employee whose service with the District is or will be terminated by virtue of layoff under this article, conditioned on the employee agreeing to a comprehensive release of claims satisfactory to the Board. Such package may contain such compensatory benefits as the Board may authorize, in its discretion.
- 19.8 If authorized by the Board, the District may offer an early retirement incentive program to employees within one or more lawfully defined offeree classes (that may or may not include entire job classifications) with such terms as the Board, in its discretion, determines are suitable for potentially inducing early retirements. Any employee accepting an early retirement incentive offer must, as a condition of such offer, agree to a comprehensive release of claims satisfactory to the Board.
- 19.9 For purposes of this Article, “subject to layoff” means that the employee’s position has been or will be eliminated or vacated by the District so that the employee’s continued employment will terminate, or that the employee occupies a position into which a more senior employee is entitled to bump under the terms of this Article.

ARTICLE 20 - GRIEVANCE PROCEDURE

- 20.1 A grievance is an alleged breach of this MOU (including a breach of any then current District policy that governs the subject within the scope of representation that is the subject of the alleged breach) involving the meaning, interpretation or application of its terms. Employees are strongly encouraged by both parties to this Agreement to meet with their immediate supervisor to discuss the issues that they are concerned about, prior to filing a grievance under the procedures set forth below.
- 20.2 Any grievance filed shall include the following information in writing:
- A. The specific provision(s) of this Agreement (or District policy) allegedly misinterpreted or misapplied;
 - B. The facts pertinent to the grievance, including the names of parties and witnesses and other pertinent individuals or person, locations and dates of significant events, and how the grievant believes the MOU has been breached, so that the District will have a clear understanding of the grievance.
 - C. A copy of all relevant documents, except those legally privileged, within the employee’s or Association’s possession or reasonably within either’s control that tend to prove the alleged misinterpretation or misapplication;

- D. The alleged adverse effect(s) resulting from said alleged misapplication or misinterpretation of this MOU (or District policy) and the name(s) of each employee affected in the manner specified; and,
 - E. The remedy requested within the terms of this MOU (or District policy) that would make the employee whole for the alleged misinterpretation or misapplication.
- 20.3 If the District fails to respond to a the grievance within the time provided by the applicable step of the procedure, the grievance will automatically advance to the next Step upon expiration of the time allotted for the response at the step at which response was not made. Failure by a grievant to adhere to a submission deadline at any step of this procedure shall mean that the grievance is terminated, and that the grievant waives any right to further appeal of the grievance. However, nothing in this MOU shall preclude the parties from agreeing in writing in advance to an extension of the time allotted for submitting or responding to a grievance; provided that such agreement must include a date that will serve as the new submission or response deadline.
- 20.4 A grievant may terminate a grievance at any time by giving written notice to the Fire Chief.
- 20.5 If multiple grievances are filed involving the same issue(s) or substantially the same transaction(s) or occurrence(s), the District may elect to have the issues addressed jointly in one hearing on all the grievances. Nothing herein will be construed to permit class grievances that do not specify each member of the affected class by name.
- 20.6 Offers to settle a grievance may not be raised in any forum except by the express written consent for such disclosure by the party making the offer.
- 20.7 Grievance settlements must have a reasonable basis in the written terms of the MOU. No such settlements will establish a precedent except by the express signed written agreement of the Fire Chief and the authorized Association signatory. The District shall be entitled to rely on the representation of the Association President with respect to whether the signatory has sufficient authorization to sign such an agreement. Absent such an agreement, a grievance settlement shall not be raised in any forum, except for the sole purpose of the enforcement or defense of the settlement in the particular instance giving rise to the underlying grievance.
- 20.8 Grievances shall be filed and processed in the following times, manner, and sequence:

STEP 1 -BATTALION CHIEF

The grievance must be presented to the Battalion Chief at step 1 within thirty (30) calendar days of the occurrence of the alleged breach or of the date when the grievant

reasonably could have known of the facts giving rise to the grievance. Within thirty (30) working days after receipt of a timely grievance, the Battalion Chief will respond to the grievance.

STEP 2 – FIRE CHIEF

If the grievance is not answered or resolved at Step 1, the employee may, within ten (10) days after the Battalion Chief's response is received or due, whichever is earlier, submit the grievance in writing, (as submitted at Step 1 along with any response received from the Battalion Chief) to the Fire Chief. The Fire Chief or his representative(s) and the affected employee(s) or his or her Association representative shall meet within twenty-five (25) days to discuss and, if feasible, attempt to resolve the grievance. Unless settled at this meeting, the Fire Chief will respond to the grievance within thirty-five (35) days after receipt of the grievance.

STEP 3 – MEDIATION

- A. If the grievance is not answered or resolved at Step 1 or Step 2, the grievance may be submitted to mediation. A request for mediation shall be presented in writing to the Fire Chief within seven (7) calendar days after the response of the Fire Chief is received or due, whichever is earlier. The parties shall then jointly request the services of a mediator from the California State Mediation and Conciliation Service.
- B. The parties shall schedule mediation to occur as soon as practicable after contact from the mediator.
- C. The mediator's role will be to facilitate efforts to achieve a voluntary settlement of the dispute acceptable to the parties. The mediator will have no authority to bind the parties to any settlement terms or to enforce any settlement reached. The mediator shall not issue any public statement of fact or opinion on the matter in mediation.
- D. All statements, written or oral, made in mediation meetings or directly in connection with the mediation process, shall be treated as confidential and may not be disclosed outside of mediation meetings, nor may any attendee disclose outside of mediation meetings any document submitted in mediation meetings or directly in connection with mediation unless the document was otherwise disclosed by the submitting party outside of mediation.
- E. Either party may terminate the mediation process not sooner than thirty (30) days following the first meeting with the mediator or forty-five (45) days after the grievance is submitted at step 2, whichever is earlier, except that the parties may agree in writing to an earlier termination of the mediation process.

- F. Any charge for the services or expense of the mediator will be shared equally by the District and the Association.

STEP 4 – BINDING ARBITRATION

- A. If the parties are unable to resolve the grievance at step 3 (or if the remaining lower step(s) is waived by mutual agreement), the Association or, on a grievance challenging an appealable disciplinary action, the employee may submit the matter to binding arbitration by written notice to the Fire Chief within seven (7) calendar days after the mediation is concluded pursuant to step 3 above.
- B. The representatives of the parties to the arbitration may select an arbitrator by mutual agreement. If they do not do so within ten (10) days after the grievance is timely submitted to arbitration either party may request a list from the California State Mediation and Conciliation Service of the names of seven (7) impartial arbitrators. The Parties shall alternately strike names from the list until only one is remaining. The order of striking as between the Parties will be determined by lot. The remaining arbitrator will be notified of his or her selection by either party with a copy of the notice to the other.
- C. Sixty-five percent (65%) of the fees and expenses of the arbitrator will be paid by the losing party, and the remaining thirty-five percent (35%) will be paid by the prevailing party. The arbitrator shall designate one of the parties as the losing party in the arbitrator's award, and the other party will be the prevailing party.
- D. A court reporter will be retained to produce a transcript of the hearing. The fees and expenses of the court reporter and of one copy of the transcript each for the representative of each side and the arbitrator shall be shared equally.
- E. Each party shall bear the cost of its own presentation including, but not limited to, advocate fees and expenses, presentation preparation, hearing representation, briefs, if any, reproduction, travel, phone, and mail costs, witness fees, and any other such costs.
- F. The decision of an arbitrator on matters properly before the arbitrator is final and binding on the employees, Association, and District.
- G. Any remedy awarded by an arbitrator under this MOU shall be a legal remedy intended to make the grievant whole, less mitigating factors, and may include a retroactive effective date not earlier than sixty (60) days prior to the date the grievance was filed at step 1.
- H. Arbitrators referred to in this MOU are not interest arbitrators. Therefore, arbitrators shall have no power to add to, subtract from, amend or modify this written Memorandum of Understanding or District policies or procedures.

ARTICLE 21 - JOB CLASSIFICATION CHANGES

- 21.1 The District may delete, add to, subtract from or otherwise revise any existing job classification(s) or create a new bargaining unit job classification(s) at its discretion.
- 21.2 If the District creates a new job classification or substantially revises an existing job classification, it shall establish a wage rate for that new or revised classification based on its need to recruit and retain sufficient personnel to carry out District services specified in the classification description, on an on-going basis.
- 21.3 The District will give the Association President ten (10) business days' advance written notice of the new or revised classification description and attendant wage rate. During that period the Association may dispute the proposed wage rate by delivering written notice of the specifics of its disagreement to the Fire Chief. If the District's rate is disputed, the District and Association representatives shall meet within ten (10) business days after the District receives the Association notice to discuss the disputed rate. The new or revised classification and wage rate established by the District under subsection .1 above will take effect ten (10) days following upon delivery of the notice to the Association as provided in this Section .3.
- 21.4 If the parties are unable to agree on the wage rate in the meeting specified in .3 above, the Association will, if it desires to further challenge the District rate, submit the matter to arbitration as a grievance at step 3 of the Grievance Procedure within the time limit specified therein. The parties shall thereafter process the dispute as provided in that Step 3; provided, that the arbitrator shall confine him/herself to the question of procedural compliance with this section and, on the merits, to the sole question of whether the wage rate established by the District is at least the minimum rate reasonably necessary to meet the District's need to recruit and retain sufficient personnel to carry out District services specified in the classification description on an on-going basis. If the arbitrator concludes that the rate is sufficient, the District may continue with the rate as proposed. If the Arbitrator determines that the rate established by the District is not sufficient under the foregoing standard, the Arbitrator shall state the minimum amount that the Arbitrator believes would prospectively meet the standard. Thereafter the District may, within thirty (30) business days after receipt of the arbitrator's award, withdraw the proposed new classification or revision and attendant wage rate and prospectively reinstate the pre-existing classification(s) and rate or it may retain the new classification or revision and prospectively adopt a revised wage rate that meets at least the minimum rate identified as sufficient by the arbitrator as provided above.

ARTICLE 22 – TAX DEFERRED RETIREMENT ARRANGEMENT

The Parties acknowledge that the District has offered an IRS section 401(a) pension plan and a section 457 deferred compensation plan, subject to the terms set forth in the District's policy

and procedures manual (August 20, 2013 Revision). Subject to the requirements of applicable law, the District may terminate any such plan or any matching contribution it makes to such a plan at any time after the earliest expiration date of this MOU set forth in Article 27, Term of MOU.

ARTICLE 23 - SUPREMACY OF MOU

- 23.1 The provisions of this MOU prevail over District policies, practices, and procedures to the extent, if any, that such policies, practices or procedures clearly conflict or are clearly inconsistent with the express terms of this MOU. With that exception and except as provided in section 23.2 below, District policies, practices, and procedures as they exist on the effective date of this MOU, shall continue to govern the terms and conditions of District employment of bargaining unit members.
- 23.2 If the District desires to establish a new policy or procedure or revise a pre-existing policy or procedure, and if such revised or new policy or procedure involves a decision within the scope of representation or a decision the impact of which falls within the statutory scope of representation, the District will provide the Association President (or another Association Officer in the absence of the President) a copy of the new or revised policy or procedure and written notice of the District's intention to implement the new or revised policy or procedure. Within ten (10) business days after the District delivers such notice to the Union, the Union may request to meet to discuss the new or revised policy or procedure. Such request shall be in writing and delivered to the District Fire Chief or his or her designee within ten (10) business days after receipt of the notice by the Association President (or applicable officer in the absence of the President). Discussions pursuant to such request shall commence within ten (10) business days after the District's receipt of the notice and shall conclude within thirty (30) days after the discussions commence. The District may thereafter implement the revised or new policy or procedure, as originally proposed or as modified pursuant to the discussions conducted pursuant to the Union's request submitted as set forth above, by written notice to the Association President (or another Association Officer in the absence of the President). Such new or revised policy or procedure must be reasonable.

ARTICLE 24 - SEVERABILITY

- 24.1 If a court or administrative agency of competent jurisdiction declares, rules, or orders any provision of this MOU unlawful and unenforceable, and such declaration, ruling, or order is upheld through appeals, if any, the effect of such declaration or order will be confined to the specific provision of this order described in the declaration or ruling. If the declaration or order is appealed and a Stay of enforcement of the order or declaration is issued, the application and enforcement of the provision will be suspended pending the ruling on the final appeal. If not appealed or if the declaration, ruling or order is upheld on appeal, the provision will be deemed null and void. If the declaration, ruling or order has retroactive effect the provision will be deemed null and void as of the retroactive

effective date. Invalidation and severance of a provision of this MOU shall not invalidate any remaining provisions, which shall continue in full force and effect.

- 24.2 If permanent severance of a provision of this MOU is required, the District and the Association shall, within thirty (30) days after the declaration, ruling or order is announced and any appeals have concluded, and following a request by either party, meet and attempt to negotiate a mutually agreeable substitute for the severed provision.

ARTICLE 25 - WAIVER OF DUTY TO MEET AND CONFER

The Parties acknowledge the District's limited financial, administrative, and management resources, the complexity of employer obligations under applicable law, their mutual interest in limiting transaction costs in the conduct of day to day District affairs, and in limiting conflict during the term of the Memorandum of Understanding. Therefore, after extensive discussion of each of the subjects addressed in Article 4 (**District's Rights To Decide And Implement Decisions**) as well as extensive discussion of the remaining terms of this MOU, the parties hereby intend to clearly and unmistakably waive any right or duty either party may have to meet and confer during the life of this MOU over the decision, effect or impact of any District decision or action addressed specifically or generally by the language of this MOU. The Parties further agree that, to the fullest extent permitted by applicable law, the extensive enumeration of District rights set forth in this MOU, and the remaining terms of this MOU, each of which resulted from exhaustive negotiations, are intended as a clear and unmistakable waiver of any obligation the District might otherwise have to negotiate over its decision(s) concerning any subject matter within the scope of representation, as defined under California Government Code §3504 et.seq., or over the impact or effect of such decision(s), during the term of this MOU, whether or not any such subject is addressed generally or specifically by this MOU, and whether or not any such subject was negotiated, or was within the specific contemplation or knowledge of either the District or the Association, during negotiations leading to this MOU. Nothing herein shall preclude negotiations over any subject matter within the scope of representation as part of successor MOU negotiations conducted pursuant to Article 27 (**Term of MOU**) below or over a substitute provision necessitated by operation of Article 24 (**Severability**).

ARTICLE 26 - ENTIRE AGREEMENT

This written MOU sets forth the full and complete MOU between the District and the Association on all subjects generally or specifically addressed and contained herein and shall supersede all prior formal or informal agreements, memoranda of understanding, policies, practices, procedures, or resolutions thereon. There are no valid or binding representations, practices, inducements, promises, or agreements, oral or otherwise, between the District and the Association, except those embodied in writing herein.

ARTICLE 27 - TERM OF MOU

This MOU shall take effect on the date it is adopted by the District Board of Directors following ratification by the Association membership and signing by an authorized Association

representative, and will remain in effect for two years thereafter. This MOU shall automatically renew from year to year in one year terms thereafter unless, between one hundred fifty (150) and one hundred eighty (180) days before the three year anniversary date of this MOU or the subsequent annual termination date, either party delivers to the other written notice of its desire to negotiate the terms of a successor MOU.

Signed this _____ day of _____, 2018.

For the District:

For the Association:

Richard M. Forster, Chairman
Board of Directors

Justin Yelinek, President

David Bellerive, Fire Chief

NEGOTIATED:

NEGOTIATED:

Chuck Flesher, Labor Relations
Consultant and Chief Negotiator
Mastagni, Holstedt, P.C.

Darrell Murray, Chief Negotiator
Industrial Employers and Distributors
Association

**APPENDIX A
BASE WAGE RATE SCHEDULE**

YEAR 1

The following base hourly wage rates will apply effective on the first day of the first pay period beginning on or after the date this 2018-2021 MOU is adopted by the Board of Directors:

<u>Classification</u>	Step:* <u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>
Firefighter (non-24 Hour shift rate)	16.61	17.11	17.62	18.14	18.69
Firefighter (24 hour shift rate)	12.97	13.37	13.76	14.18	14.61
Fire Engineer	14.95	15.40	15.87	16.33	16.82
Fire Captain	16.47	16.96	17.48	17.99	18.52

* See below after YEAR 3

YEAR 2

The following base hourly wage rates will apply effective on the first day of the first pay period beginning on or after the one year anniversary date of this MOU's adoption by the Board of Directors:

<u>Classification</u>	Step:* <u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>
Firefighter (non-24 Hour shift rate)	16.94	17.45	17.97	18.50	19.06
Firefighter (24 hour shift rate)	13.23	13.64	14.03	14.46	14.90
Fire Engineer	15.25	15.71	16.19	16.66	17.16
Fire Captain	16.80	17.30	17.83	18.35	18.89

* See below after YEAR 3

YEAR 3

The following base hourly wage rates will apply effective on the first day of the first pay period beginning on or after two year anniversary date of this MOU's adoption by the Board of Directors:

<u>Classification</u>	Step:* <u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>
Firefighter (non-24 Hour shift rate)	17.28	17.80	18.33	18.87	19.44
Firefighter (24 hour shift rate)	13.50	13.91	14.32	14.75	15.20
Fire Engineer	15.56	16.02	16.51	16.99	17.50
Fire Captain	17.14	17.65	18.19	18.72	19.27

***Step Increase Conditions:**

An employee's initial step assignment on entry into District service will be determined by the District in its exclusive discretion.

An employee will remain in a step for a period of one year before he or she will be eligible for an increase to the next step, if any, of the applicable base wage range.

An eligible employee's movement to the next step of the applicable base wage range is not automatic but, rather, will be based on whether, in the District's exclusive judgment, the employee has rendered satisfactory performance so as to merit the increase.

Step increases will take effect on the first day of the first full pay period on or after the District approves the increase, but not before the employee has completed at least one year of service since his or her initial employment or last step increase, whichever is later.

AGENDA TRANSMITTAL FORM

- ☒ Regular Agenda

☐ Consent Agenda

☐ Blue Slip

☐ Closed Session

Meeting Date Requested:

2/20/18

To: Amador Fire Protection Board of Directors

Date: 2/20/18

From: David Bellerive Phone Ext. 391
(Department Head - please type)

Department Head Signature 

Agenda Title:

VEHICLE MAINTENANCE REPORT

Summary: (Provide detailed summary of the purpose of this item; attach additional page if necessary)

Report of expenses for maintenance and repair of District vehicle fleet.

Recommendation/Requested Action:

Review attached report

Fiscal Impacts (attach budget transfer form if appropriate)

None

Staffing Impacts

None

Is a 4/5ths vote required?

Yes ☐

No ☒

Contract Attached:

Yes ☐

No ☐

N/A ☒

Resolution Attached:

Yes ☐

No ☐

N/A ☒

Ordinance Attached

Yes ☐

No ☐

N/A ☒

Committee Review?

N/A ☒

Name

Committee Recommendation:

Comments:

Request Reviewed by:

Chairman _____ Counsel _____

Auditor _____ GSA Director _____

CAO _____ Risk Management _____

Distribution Instructions:

FOR CLERK USE ONLY

Meeting Date

2/20/18

Time

10:30am

Item #

3

Board Action: Approved Yes ___ No ___ Unanimous Vote: Yes ___ No ___

Ayes: _____ Resolution _____ Ordinance _____ Other: _____

Noes: _____ Resolution _____ Ordinance _____

Absent: _____ Comments: _____

Distributed on

Completed by

A new ATF is required from

Department

For meeting

of

I hereby certify this is a true and correct copy of action(s) taken and entered into the official records of the Amador Fire Protection District.

ATTEST: _____

AFPD Board Clerk

Vehicle Description	VIN License Number	Odometer Reading	Repair Hours / Comments (out of service, Misc., etc. if applicable)	Dates	Maintenance Performed (description)	January Total Cost this Month	Total Cost of Vehicle starting July 2016
C-5100 - 2015 Ford Explorer AWD	1FM5K8AR7FGB25939 {E} 1460509	23,075				\$0.00	\$294.62
C-5101 - 2010 Ford Expedition XLT 4x4	1FMJU1G59AEA43199 {E} 1305976	167,228		8/15/17 10/31/2017	Jackson Tire - 4 New Cooper Tires (\$834.99) Steins - Rplc Transmission, C-Service, Fix Clunking in rear (\$4801.80)	\$0.00	\$7,725.50
C-5103 - 2016 Ford F250 4x4	1FT7X2B60GEA66410 {E} 1485648	33,689		8/15/17 8/29/17 9/12/17 11/7/17 12/27/17 1/9/18	Elk Grove Ford - Warranty Work (\$0.00) Steins - C Svc (\$115.14) Riebes - Pre Dexcool (\$12.92) Riebes - Foamtune-up (\$25.84) Jackson Tire - 4 Tire Rotation (\$20.00) Steins Auto - A Service (\$82.49)	\$82.49	\$626.76
C-5104 - Chief 2011 Ford F250 4x4	1FT7X2B62BEA30761 {E} 1306800	96,659		8/29/17 10/31/2017 11/28/17 1/16/18 1/30/18	Jackson Tire - 4 New GY Tires (\$960.46) Autozone - Oil (\$6.10) Steins - B Svc. (\$114.06) Steins - A Svc. (\$82.49) Jackson Tire - 1 New Tire (\$240.12)	\$322.61	\$2,734.75
C-5105 - Chief 2012 Ford Expedition 4x4	1FMJU1G5XCEF67187 {E} 1401123	71,211		7/25/2017 10/17/2017 12/5/17 12/12/17 12/12/17	Foothill Garage & Wrecking - 4 New Tires (\$1025.94) Steins - Headlights Repair (\$141.37) Jackson Tire - Mount Winter Tires (\$34.00) Riebes - Wiper Blades (\$21.52) Steins - C Service (\$390.07)	\$0.00	\$3,636.58
C-5106 -2009 Ford F250 4x4	1FTSX21569EA15399 {E} 1294991	68,681		12/27/17	Steins - C Service (799.80)	\$0.00	\$3,055.78
P-5108 - 2002 Ford Expedition	1FMZU73E02ZB69571 {E} 1178037		Not in use	9/12/17 9/19/17 10/3/2017	Riebes - Battery and Parts (\$155.25) Steins - A svc. (\$74.54) America's Tire - 4 New Tires (\$521.40)	\$0.00	\$1,847.32
Rescue 1 1999 Ford F350 4x4	1FDWF37F8XEB48328 {E} 1013917		OOS - Blown Gasket at Station 116	8/1/17 11/7/2017 11/28/17 12/12/17 1/16/18	Riebes - Antifreeze (\$49.52) Doug Veerkamp - B Service (\$411.90) Doug Veerkamp - Tow (\$660.00) Riebes - Coolant (\$31.22) Steins - Coolant Bottle Repair (\$104.46)	\$104.46	\$3,217.24

Vehicle Description	VIN License Number	Odometer Reading	Repair Hours / Comments (out of service, Misc., etc. if applicable)	Dates	Maintenance Performed (description)	January Total Cost this Month	Total Cost of Vehicle starting July 2016
E-113 1991 KME 4x4	1HTSEPCR4NH415881 {E} 349699	82,325		7/25/2017 8/1/17 8/29/17 9/12/17 9/12/17 9/12/17 12/19/17 1/9/18 1/30/18 1/30/18 1/30/18	Jackson Tire - 4 New Tires (\$1850.55) Buckhorn Hardwre - Fuse blade, misc. (\$11.59) Amador Steel - Rear Compartment Door Repair (\$32.32) Plymouth Hardware - Nuts and Bolts, Misc. (\$15.88) Pine Grove Hardware - Inverter Parts (\$54.55) Riebes - Tubing seals, conduit wire, battery parts (\$79.57) Doug Veerkamps - Air leak at Pump Switch, Dash Control Valve, Gear Box Leak (\$762.20) Riebes - Lamps/Lights (\$8.99) US Bank - LED Light Bar / Fog Lights (\$76.99) US Bank - LED Lights (\$31.90) Doug Veerkamp - A Service, Ck air sys., Pump shift light inop (\$3533.37)	\$3,651.25	\$15,283.70
SQ-115 2008 Ford F350	1FDWX37RX8EC15309 {E} 1281212	100,229		11/7/2017 1/9/18	Doug Veerkamp - B Service (\$366.33) Riebes - Wiper Blades (\$17.52)	\$17.52	\$781.12
WT-5116 2015 Kenworth	2NKHJJ8X9FM437394 {E} 1410351	2,254		7/25/2017 1/9/18	Doug Veerkamp - B Service (\$582.93) Doug Veerkamp - Parts only to repair hood latch strap & hood lock (\$167.45)	\$167.45	\$1,312.69
WT-5126 2007 Kenworth	2NKMZH8X67M199258 {E} 1212617	17,515		10/3/17 12/12/17	Doug Veerkamp - Repair In Op Engine Brake (\$378.32) Doug Veerkamp - Repair In Op Engine Brake & Blown Gasket (\$494.44)	\$0.00	\$2,999.44
E-5141 2003 HME	44KFT42822WZ20024 {E} 1159077		OOS Multiple Repairs at Burtons	7/10/2017 8/1/17 8/1/17 10/3/2017 12/12/17 12/27/17 1/9/18 1/9/18 1/9/18 1/30/18 1/30/18 1/30/18 1/30/18	Riebes Auto Parts - Switch, Wiring, Fuse, etc. (\$117.15) Veerkamps - B Svc + A/C Inop (\$1307.32) Burtons Fire - Repair Driveline and Foam Sys (\$8890.85) Lynch's Automotive - Remove Driveline and Replace (for welder) (\$262.50) US Bank - Headlights (\$44.95) Jackson Tire - 2 New Tires (\$1038.47) US Bank/United Tires - New Tires from strike team (\$905.50) LN Curtis - Strainer Screen (\$27.96) Riebes - Oil Cap and Napa Grease/Car (\$18.00) Burton's Fire - Windshield Repair (\$250.00) Jackson Tire - 3 new rear tires (\$1590.41) US Bank - Streamlights for rear (\$341.70) US Bank - Steel Rod and & Spring for Door (\$21.60)	\$3,155.17	\$29,540.38
SQ-145 2003 Ford F350 4X4	1FDWF37P23ED60337 {E} 1159107	42,409		8/22/17 12/5/17	Steins - EBrake & Batteries (\$483.76) Jackson Tire - 4 New Tires (\$805.00)	\$0.00	\$2,300.00
WT-146 1996 International	1HTSDADR7TH397632 {E} 035872	39,777		11/21/17 1/30/18 1/30/18	Jackson Tire Service - 1 Tire and repair steel wheel (\$298.96) Riverview International - Parts to repair leak (\$309.80) US Bank - Halogen Light Bulbs (\$37.86)	\$347.66	\$4,068.94

Vehicle Description	VIN License Number	Odometer Reading	Repair Hours / Comments (out of service, Misc., etc. if applicable)	Dates	Maintenance Performed (description)	January Total Cost this Month	Total Cost of Vehicle starting July 2016
U-5210 2000 Ford Explorer 4x4	1FMPU16LXYLB47751 {E} 1022891	107,711		7/18/2017 8/8/17	Steins Auto Care B Svc (\$111.94) Steins Auto Care - Tow in Died on Road, Alternator, Freon, dye (\$613.71)	\$0.00	\$725.65
E-5111 2015 Rosenbauer 4x4	54F2CB417FWM11449 {E} 1488122		OOS due to auto accident 12/18/17	8/1/17 8/15/17 8/22/17 8/29/17 9/26/2017 10/17/17 11/7/17 11/28/17 12/5/17 12/5/17 12/12/17	Riebes - Fuse (\$8.07) Burtons Fire - Mud Flap (\$44.51) Cummins - Warranty Work value of \$4478.65 - (\$100.00) Jackson Tire - 2 dismount/remount Super Sing (\$70.00) Veerkamp - B Service (\$786.58) Riebes - Cap (\$6.45) Jackson Tire - 2 Tires + Mount (\$2024.36) Doug Veerkamp - Tow (\$660.00)(to be reimbursed by Burtons) Burtons Fire - Lower Pump / Transmission Leak (\$1056.60) Partially covered under warranty Jackson Tire - 2 New Tires (\$1108.47) Riebes - Snow Cables (\$430.98)	\$0.00	\$8,315.44
E-211 1991 KME	1HTSDPCR9NH416110 {E} 366231	35,262		11/7/2017 12/12/17	Riebes - Battery, Tubes. Core Deposit, Misc. Parts (\$471.62) Riebes - Wiper Blades (\$11.83)	\$0.00	\$4,755.11
E-214 2008 Ford F550	1FDAX57R58EB35812 {E}1281210	28,781		7/10/2017 12/12/2017 1/9/18 1/16/18 1/16/18	Riebes - Light Bulbs (\$93.71) Riebes - Wiper Blades (\$11.83) Riebes - Lamp/Lights (\$10.97) US Bank - LED Lights (\$26.99) Plymouth Ace Hardware - Misc. Parts (\$7.32)	\$45.28	\$2,981.85
WT-216 2015 Kenworth	2NKHJHJ8X7FM437393 {E}1410352	3,498		8/22/17 11/7/17 12/12/17	Doug Veerkamps - A svc (\$527.93) Burton's - Knob Handle (\$69.04) Riebes - Wiper Blades (\$11.83)	\$0.00	\$1,139.33
E-5221 2003 HME	44KFT42842WZ20025 {E} 1159078	103,473		8/22/17 9/12/17 10/3/17 10/3/17 10/17/2017 10/17/2017 10/31/2017 10/31/2017 11/7/2017 11/7/2017 12/5/2017 12/5/2017 12/5/17 12/12/17 12/12/17 1/9/18	Veerkamps - P/S Leak & A/C Inop & Rplc Power Steering Box (\$1907.43) Plymouth Hardware - Toggle Switch, Parts (\$7.) Supply Cache - Brass Pump Assembly (\$94.45) L.N. Curtis - Barrell Strainer (\$189.10) Riebes - Emer Lmp (\$27.99) Plymouth Ace Hardware - Plug and cable ties (\$7.31) Fastenal - supplies to repair roll up doors (\$276.43) Real Truck Works - supplies to repair roll up doors (\$39.60) Riebes - Cab Lift Parts (\$11.84) Plymouth Ace Hardware - Door Repair Parts (\$31.42) Plymouth Ace Hardware - Misc. Nuts/Bolts (\$5.25) Plymouth Ace Hardware - Misc. Nuts/Bolts (\$10.52) Jackson Tire - 2 New Tires + all rotation (\$1078.47) Riebes - Lift Support and light bulbs (\$41.99) Riebes - Wiper Blades (\$12.91) Doug Veerkamp - A Service (\$569.41)	\$569.41	\$12,658.16

Vehicle Description	VIN License Number	Odometer Reading	Repair Hours / Comments (out of service, Misc., etc. if applicable)	Dates	Maintenance Performed (description)	January Total Cost this Month	Total Cost of Vehicle starting July 2016
E-222 1991 KME	1HTSDPCRONH416111 {E} 349698	54,755		9/12/17 10/3/2017 10/31/2017 12/12/17	Plymouth Hardware - Bulbs (\$10.77) Crimp Supply - Car Battery/ Welding Cable (\$37.12) Veerkamps - Rplc Radiator and Lower Radiator Hose (\$1854.14) Riebes - Wiper Blades (\$12.91)	\$0.00	\$2,851.12
E-223 1998 International	1HTSDADR6WH551543 {E} 993299	41,448		8/8/17 8/22/17 8/22/17 9/12/17 9/12/17 10/17/2017 10/31/2017 11/7/2017 1/16/18	Jackson Tire - 4 New GY Tires (\$2043.64) Auto Zone - Misc. Parts (\$60.37) Ferguson - Pipe Repair (\$43.18) Plymouth Hardware - Misc. Parts (\$55.00) Riebes - Misc. Tubes/Parts (\$82.38) Lynch's - Fuel Rings Replc, Replc Batteries, Replc Starter (\$1701.72) Veerkamps - Repair Leak Power Steering, Rplc Gear Box & Rplc Hose (\$1292.38) Riebes - Lights (\$62.45) Plymouth Ace Hardware - Nuts & Bolts (\$14.14)	\$14.14	\$9,668.92
E-231 1992 Freightliner	1FV6HLBB8NL481046 {E}352799	63,312		7/25/2017	Doug Veerkamp - B Service (\$525.94)	\$0.00	\$7,926.91
E-234 1992 Ford F350 4x4	2FDKF38G7NCA42025 {E} 292907	33,199		7/10/17 8/1/17 11/7/17	Jackson Tire - 4 new tires (\$727.63) Ace Hardware - Oil (\$9.26) Doug Veerkamps - A Service (\$260.99)	\$0.00	\$2,968.67
WT-236 2007 Kenworth	2NKMHZ8X87M199259 {E} 1212616	10,060		12/12/17	Riebes - Wiper Blades (\$12.91)	\$0.00	\$865.30
E-5361 2016 Rosenbauer	54F2CA512GWM11580 {E} 1425867	12,299		9/5/17 10/31/2017 12/19/17	Veerkamp - A service (\$547.79) Amador Steel - Light bracket repair (\$48.49) Jackson Tire - Rotate 6 Tires (\$60.00)	\$0.00	\$1,123.56
E-5364 2008 Ford 4x4	1FDAW57R38EC53893 {E} 1356272	33,252		7/10/2017 7/25/2017 10/3/2017	Riebes - LED back up lights (\$56.75) Burtons - 2.5 30x400 Guage (\$67.59) Feld Fire - Paratech Inline Relief Valve (\$352.94)	\$0.00	\$10,275.09
E-5368 2007 E-ONE	4ENGAAA8371002458 {E} 1356273	68,039		7/18/17 8/22/17 10/17/2017 10/31/2017 11/7/17 1/16/18 1/23/18	Jackson Tire - Tire Rotation (\$70) Burtons - Pump D/C Pressure Guage (\$120.61) Riebes - Air Filter and Thermo Sleeve (\$282.77) Burtons - Pump Shift (\$153.52) Burtons - Tow Service + Rebuild Hale VPS shifter pump (\$916.16) Doug Veerkamp - A Service (\$580.59) Jackson Tire - 2 new tires (\$1439.02)	\$2,289.61	\$21,388.73
						\$10,767.05	\$167,068.66

AGENDA TRANSMITTAL FORM

To: Amador Fire Protection Board of Directors

Date: 02/20/2018

From: David Bellerive Phone Ext. x391
(Department Head - please type)

☒ Regular Agenda
☐ Consent Agenda
☐ Blue Slip
☐ Closed Session
Meeting Date Requested:
02/20/2018

Department Head Signature David Bellerive

Agenda Title: APPOINTMENT OF BOARD COMMITTEE MEMBERS

Summary: (Provide detailed summary of the purpose of this item; attach additional page if necessary)

Discussion and possible action relative to appointment of two (2) Board members to the following:

Appointment to Amador Fire Protection District Policy and Plans Committee

Recommendation/Requested Action:

Appointment by President of Board members, as requested

Fiscal Impacts (attach budget transfer form if appropriate)

Staffing Impacts

Is a 4/5ths vote required?

Yes ☐

No ☒

Contract Attached:

Yes ☐

No ☐

N/A ☒

Resolution Attached:

Yes ☐

No ☐

N/A ☒

Ordinance Attached

Yes ☐

No ☐

N/A ☒

Comments:

Committee Review?

N/A ☒

Name

Committee Recommendation:

Request Reviewed by:

Chairman _____ Counsel _____

Auditor _____ GSA Director _____

CAO _____ Risk Management _____

Distribution Instructions:

FOR CLERK USE ONLY

Meeting Date 2/20/18 Time 10:30am Item # 4

Board Action: Approved Yes ___ No ___ Unanimous Vote: Yes ___ No ___

Ayes: _____ Resolution _____ Ordinance _____ Other: _____

Noes _____ Resolution _____ Ordinance _____

Absent: _____ Comments: _____

Distributed on

Completed by

A new ATF is required from

Department

For meeting

of

I hereby certify this is a true and correct copy of action(s) taken and entered into the official records of the Amador Fire Protection District.

ATTEST: _____

AFPD Board Clerk

AGENDA TRANSMITTAL FORM

To: Amador Fire Protection Board of Directors

Date: 02/20/18

From: David Bellerive Phone Ext. x391
(Department Head - please type)

Department Head Signature 

<input checked="" type="checkbox"/>	Regular Agenda
<input type="checkbox"/>	Consent Agenda
<input type="checkbox"/>	Blue Slip
<input type="checkbox"/>	Closed Session
Meeting Date Requested:	
<u>02/20/18</u>	

Agenda Title: SURPLUS PROPERTY

Summary: (Provide detailed summary of the purpose of this item; attach additional page if necessary)

Discussion and possible action relative to surplus and public auction of:

R-1 1999 Ford F-350 Mini Pumper VIN: 1FDWF37F8XEB48328

Upon taking R-1 in for service last month and becoming aware that it is in need of major repair, the District believes it would be most beneficial to not put additional resources into this engine and instead surplus it and take it to public auction. This engine is currently out of service.

Recommendation/Requested Action:

Authorize surplus and disposition of engine, as requested.

Fiscal Impacts (attach budget transfer form if appropriate)

Staffing Impacts

Is a 4/5ths vote required?

Yes ☐

No ☒

Contract Attached:

Yes ☐

No ☐

N/A ☒

Resolution Attached:

Yes ☐

No ☐

N/A ☒

Ordinance Attached

Yes ☐

No ☐

N/A ☒

Comments:

Committee Review?

N/A ☒

Name

Committee Recommendation:

Request Reviewed by:

Chairman _____ Counsel _____

Auditor _____ GSA Director _____

CAO _____ Risk Management _____

Distribution Instructions:

n/a

FOR CLERK USE ONLY

Meeting Date 2/20/18 Time 10:30 am Item # 4 5

Board Action: Approved Yes ___ No ___ Unanimous Vote: Yes ___ No ___

Ayes: _____ Resolution _____ Ordinance _____ Other: _____

Noes: _____ Resolution _____ Ordinance _____

Absent: _____ Comments: _____

Distributed on

A new ATF is required from

Department

Completed by

For meeting

of

I hereby certify this is a true and correct copy of action(s) taken and entered into the official records of the Amador Fire Protection District.

ATTEST: _____

AFPD Board Clerk

AGENDA TRANSMITTAL FORM

To: Amador Fire Protection Board of Directors

Date: 02/20/18

From: David Bellerive Phone Ext. x391
(Department Head - please type)

☒ Regular Agenda
☐ Consent Agenda
☐ Blue Slip
☐ Closed Session
Meeting Date Requested:
02/20/18

Department Head Signature 

Agenda Title: SURPLUS PROPERTY

Summary: (Provide detailed summary of the purpose of this item; attach additional page if necessary)

Discussion and possible action relative to surplus and public auction of:

5108 2002 Ford Expedition VIN: 1FMZU73E02ZB69571

This vehicle is 16 years old and has 132,350 miles on it. This vehicle is coming due for major services and has multiple repairs that are needing to be done. The District believes it would be most beneficial to not put additional resources into this vehicle and instead surplus it and take it to public auction.

Recommendation/Requested Action:

Authorize surplus and disposition of vehicle, as requested.

Fiscal Impacts (attach budget transfer form if appropriate)

Staffing Impacts

Is a 4/5ths vote required?

Yes ☐

No ☒

Contract Attached: Yes ☐ No ☐ N/A ☒

Resolution Attached: Yes ☐ No ☐ N/A ☒

Ordinance Attached: Yes ☐ No ☐ N/A ☒

Committee Review?

N/A ☒

Name

Committee Recommendation:

Comments:

Request Reviewed by:

Chairman _____ Counsel _____

Auditor _____ GSA Director _____

CAO _____ Risk Management _____

Distribution Instructions:

n/a

FOR CLERK USE ONLY

Meeting Date 2/20/18 Time 10:30am Item # 46

Board Action: Approved Yes ___ No ___ Unanimous Vote: Yes ___ No ___

Ayes: _____ Resolution _____ Ordinance _____ Other: _____

Noes _____ Resolution _____ Ordinance _____

Absent: _____ Comments: _____

Distributed on

Completed by

A new ATF is required from

Department

For meeting

of

I hereby certify this is a true and correct copy of action(s) taken and entered into the official records of the Amador Fire Protection District.

ATTEST: _____

AFPD Board Clerk

AGENDA TRANSMITTAL FORM

To: Amador Fire Protection Board of Directors

Date: 2/20/18

From: David Bellerive Phone Ext. x391
(Department Head - please type)

Department Head Signature 

<input checked="" type="checkbox"/>	Regular Agenda
<input type="checkbox"/>	Consent Agenda
<input type="checkbox"/>	Blue Slip
<input type="checkbox"/>	Closed Session
Meeting Date Requested:	
<u>2/20/18</u>	

Agenda Title: MINUTES

Summary: (Provide detailed summary of the purpose of this item; attach additional page if necessary)

Review and approval of the Board of Directors regular minutes of January 16, 2018 as presented or revised.

Recommendation/Requested Action:

Approve minutes as presented or revised

Fiscal Impacts (attach budget transfer form if appropriate)

n/a

Staffing Impacts n/a

Is a 4/5ths vote required?

Yes ☐

No ☒

Contract Attached: Yes ☐ No ☐ N/A ☒

Resolution Attached: Yes ☐ No ☐ N/A ☒

Ordinance Attached: Yes ☐ No ☐ N/A ☒

Committee Review?

N/A ☒

Name _____

Committee Recommendation: _____

Comments: _____

Request Reviewed by:

Chairman _____ Counsel _____

Auditor _____ GSA Director _____

CAO _____ Risk Management _____

Distribution Instructions:

n/a

FOR CLERK USE ONLY

Meeting Date 2/20/18 Time 10:30am Item # 67

Board Action: Approved Yes ___ No ___ Unanimous Vote: Yes ___ No ___

Ayes: _____ Resolution _____ Ordinance _____ Other: _____

Noes: _____ Resolution _____ Ordinance _____

Absent: _____ Comments: _____

Distributed on _____

A new ATF is required from _____

Department _____

Completed by _____

For meeting _____

of _____

I hereby certify this is a true and correct copy of action(s) taken and entered into the official records of the Amador Fire Protection District.

ATTEST: _____

AFPD Board Clerk

**AMADOR FIRE PROTECTION DISTRICT
BOARD OF DIRECTORS**

Meeting Was Recorded
On MP3
No. AFD 18-01

Jackson, California
Tuesday January 30, 2018
10:02 a.m.

The Board of Directors of the Amador Fire Protection District met in the County Administration Center, 810 Court Street, Jackson, California, on the above date pursuant to adjournment, and the following proceedings were had, to wit:

Present:

Richard M. Forster, President, Director
Lynn Morgan, Vice President, Director
Pat Crew, Director
Frank Axe, Director
Brian Oneto, Director

Staff:

David Bellerive, Fire Chief
Lindsey Clark, Clerk of the Board

AGENDA

MOTION: It was moved by Director Forster, seconded by Director Crew, and unanimously carried to approve the agenda, as presented.

Absent: Director Oneto

PUBLIC MATTERS NOT ON THE AGENDA: Fire Chief David Bellerive informed the Board of the continuation letters the District has been receiving thanking us for responding CA wildland fires.

Fire Chief David Bellerive informed the Board that Engine 5111 was in an automotive accident and it was anticipated that it would be out of service for multiple months.

At 10:06am Director Oneto Arrived.

CLOSED SESSION: At 10:09 a.m., the Board recessed into closed session. The following persons were present during portions of this closed session: Fire Chief David Bellerive, Darrel Murray, IDEA. This portion of the meeting was not recorded on tape.

REGULAR SESSION: At 10:45a.m., the Board reconvened into regular session. The following matters were reviewed during closed session:

Conference with Labor Negotiators: Discussion only, no actions taken

Property Negotiations: No action taken, direction given to staff.

Confidential Minutes:

MOTION: It was moved by Director Forster, seconded by Director Crew, and unanimously carried to approve the confidential minutes of December 21, 2017, as presented.

ADMINISTRATIVE MATTERS

At 10:45 Director Forster Left the meeting.

Vehicle Maintenance Report: Direction to staff to provide miles driven on a quarterly basis.

Appointment of Board Committee Members – Policy and Plans Committee: Direction to staff to postpone a motion and represent at next meeting.

Appointment of Board Committee Members – Personnel Committee:

MOTION: It was moved by Director Oneto, seconded by Director Crew and unanimously carried to appoint Directors Crew and Forster to the Personnel Committee for the 2018 calendar year. **Absent: Director Forster**

Appointment of Board Committee Members – Amador Fire Protection Authority Board:

MOTION: It was moved by Director Crew, seconded by Director Oneto and unanimously carried to appoint Directors Oneto as the primary representative and Director Morgan as the alternate representative to the Amador Fire Protection Authority Board for the 2018 calendar year.

Absent: Director Forster

Appointment of Board Committee Members – Jackson Rancheria Ad Hoc Committee:

Direction to staff to postpone a motion and represent at next meeting.

Appointment of Board Committee Members – Property Committee: Direction to staff to postpone a motion and represent at next meeting.

Adopt an annual meeting schedule for year 2018: Discussion ensued relative to subject topic.

MOTION: It was moved by Director Crew, seconded by Director Oneto and unanimously carried to approve the 2018 meeting schedule with the understanding that the time will be confirmed on a monthly basis.

Absent: Director Forster

MISCELLANEOUS MATTERS

Regular Minutes of December 21, 2017:

MOTION: It was moved by Director Crew, seconded by Director Oneto, and carried to approve the minutes of December 21, 2017 as presented.

Absent: Director Forster

ADJOURNMENT: At 10:58a.m., President Morgan adjourned the meeting until February 14, 2018 at 3:00p.m.

President, Amador Fire Protection District