

Oak Park

City Council Agenda

November 16, 2020





AGENDA
REGULAR CITY COUNCIL MEETING
38th CITY COUNCIL
OAK PARK, MICHIGAN
November 16, 2020
7:00 PM

1. CALL TO ORDER

2. ROLL CALL

3. APPROVAL OF AGENDA

4. CONSENT AGENDA

The following routine items are presented for City Council approval without discussion, as a single agenda item. Should any Council Member wish to discuss or disapprove any item it must be dropped from the blanket motion of approval and considered as a separate item.

A. Zoning Board of Appeals Meeting Minutes of July 28, 2020 and September 22, 2020

B. Planning Commission Meeting Minutes of July 13, 2020 and October 12, 2020

C. Request to approve Payment Application No. 2 for the 2020 Decorative Fence Project, M-695 to American Fence Co. of Warren, MI in the amount of \$84,375.43

D. Licenses New and Renewals submitted for November 16, 2020

5. RECOGNITION OF VISITING ELECTED OFFICIALS

6. SPECIAL RECOGNITION/PRESENTATIONS: None

7. PUBLIC HEARINGS: None

8. COMMUNICATIONS: None

9. SPECIAL LICENSES: None

10. ACCOUNTING REPORTS:

A. Approval for payment of invoices submitted by Garan, Lucow, Miller, P.C. for legal services in the total amount of \$14,769.99

11. BIDS: None

12. ORDINANCES: None

13. CITY ATTORNEY:

14. CITY MANAGER:

Administration

A. COVID-19 Update

Finance

B. Quarterly Investment Report for period ending 9/30/20

C. Quarterly Financial Report for period ending 9/30/20

- D. Resolution approving requested Budget Amendment #2021-2 for period ending 9/30/20
- E. Request to approve the renewal of Michigan Indigent Defense Commission (MIDC) Counsel Coordinator Professional Services Contracts subject to city attorney review and approval

Public Safety

- F. Request to approve the early purchase of the County Wide Radio Project in the amount of \$113,695.50 and authorize the use of the \$6,304.50 balance from the original estimate of \$120,000 to be used to cover the unknown expenses of adapting the system to current infrastructure/patrol vehicles

Human Resources

- G. Request to approve the Nationwide Loan Program Adoption Agreement

15. CALL TO THE AUDIENCE

Each speaker's remarks are a matter of public record; the speaker, alone, is responsible for his or her comments and the City of Oak Park does not, by permitting such remarks, support, endorse or accept the content, thereof, as being true or accurate. "Any person while being heard at a City Council Meeting may be called to order by the Chair, or any Council Member for failure to be germane to the business of the City, vulgarity, or personal attacks on persons or institutions." There is a three minute time limit per speaker.

16. CALL TO THE COUNCIL

17. ADJOURNMENT

The City of Oak Park will comply with the spirit and intent of the American with Disabilities Act. We will provide support and make reasonable accommodations to assist people with disabilities to access and participate in our programs, facilities and services. Accommodations to participate at a Council Meeting will be made with 7-day prior notice.

**CITY OF OAK PARK, MICHIGAN
ZONING BOARD OF APPEALS
JULY 28, 2020
MEETING MINUTES**

The meeting was called to order at 7:00 p.m. by Chairperson Huston via Zoom and Roll Call was made.

PRESENT: Chairperson Huston
Vice Chairperson Blumenkopf
Commissioner Anderson
Commissioner Andreski-Price
Commissioner Seligson
Commissioner Snider

ABSENT: None

OTHERS
PRESENT: City Planner Colton Dale
Community & Economic Development Director Kimberly Marrone
Deputy City Clerk Lisa Vecchio

APPROVAL OF ZONING BOARD OF APPEALS MINUTES OF NOVEMBER 26, 2019

MOTION BY Andreski-Price, SECONDED BY Snider, to approve the meeting minutes of November 26, 2019.

Vote: Yes: Anderson, Andreski-Price, Blumenkopf, Huston, Seligson, Snider
No: None

MOTION CARRIED

COMMUNICATIONS: None

OLD BUSINESS: None

NEW BUSINESS:

- a) **CASE 20-01:**
Kenyatta Spratt
701 Montclair St.
Detroit, Michigan

PROPERTY:
21331 Kipling
Oak Park, Michigan
Property Identification Number: 52-25-31-426-031

ORDINANCE REQUIREMENTS AND REQUEST:

Three variances are requested:

1. Article XVI, Section 1600, requires the minimum lot width of a parcel to be fifty (50) feet. The applicant is requesting a waiver of two (2) feet, nine (9) inches for two (2)

parcels, resulting in two (2) parcels, Parcel A being forty-eight (48) feet, two (2) inches and Parcel B being forty-eight (48) feet, one (1) inch.

2. Article XVI, requires that the sum of both side yards shall be fourteen (14) feet. The applicant is requesting a waiver of five (5) feet, four (4) inches on Parcel A to allow for the sum of both side yards to be eight feet (8), eight (8) inches.

3. Article XVI, requires that the sum of both side yards shall be fourteen (14) feet. The applicant is requesting a waiver of five (5) feet, four (4) inches on Parcel B to allow for the sum of both side yards to be eight feet (8), eight (8) inches.

STAFF FINDINGS OF FACT:

- 1) The subject parcel is zoned R-1, One Family Dwelling District.
- 2) Article XVI, Section 1600, requires the minimum lot width of a parcel to be fifty (50) feet.
- 3) The applicant is requesting a waiver of two (2) feet, nine (9) inches for two (2) parcels, resulting in two (2) parcels, Parcel A being forty-eight (48) feet, two (2) inches and Parcel B being forty-eight (48) feet, one (1) inch.
- 4) The lot dimensions of the subject parcel are 97.19 feet by 134.06 feet.
- 5) On the west side of Kipling St., between Cloverdale and Northend, fourteen of the sixteen parcels were originally platted with a lot widths ranging between 45.50 feet to 48.04 feet.
- 6) The parcel directly adjacent to the south has lot dimensions of ninety-five (95) feet by one hundred thirty-four (134) feet.
- 7) The original plat dimensions of the fourteen (14) lots to the North are similar to the parcels proposed and is consistent with the surrounding neighborhood.

MOTION BY Snider, SECONDED BY Seligson, to **approve** the request of Mr. Kenya Spratt, 701 Montclair St., Detroit, MI,

1. For a waiver of two (2) feet, nine (9) inches for two (2) parcels, from the provisions in Article XVI, Section 1600, resulting in two (2) parcels, Parcel A being forty-eight (48) feet, (2) inches and Parcel B being forty-eight (48) feet, one (1) inch.

VOTE: Yes: Anderson, Andreski-Price, Blumenkopf, Huston, Seligson, Snider
No: None

MOTION CARRIED

The Board expressed concern about the remainder of the variances, and staff recommends denial of the request due to carports not being a common feature in the neighborhood. The denial of the setbacks would not preclude the applicant from constructing a detached garage. Mr. Spratt explained that if the second and third variances are not approved, the plan would be to eliminate the side carports and construct a garage in the back of the lot.

MOTION BY Andreski-Price, SECONDED BY Blumenkopf, to **deny** the request of Mr. Kenya Spratt, 701 Montclair St., Detroit, MI,

2. Article XVI, requires that the sum of both side yards shall be fourteen (14) feet. The applicant is requesting a waiver of five (5) feet, four (4) inches on Parcel A to allow for the sum of both side yards to be eight feet (8), eight (8) inches.
3. Article XVI, requires that the sum of both side yards shall be fourteen (14) feet. The applicant is requesting a waiver of five (5) feet, four (4) inches on Parcel B to allow for the sum of both side yards to be eight feet (8), eight (8) inches.

VOTE: Yes: Anderson, Andreski-Price, Blumenkopf, Huston, Seligson, Snider
 No: None

MOTION CARRIED

ADJOURNMENT:

There being no objections, the meeting was adjourned at 7:22 p.m.

Lisa Vecchio, Deputy City Clerk/Director of Elections

**CITY OF OAK PARK, MICHIGAN
ZONING BOARD OF APPEALS
SEPTEMBER 22, 2020
MEETING MINUTES**

The meeting was called to order at 7:00 p.m. by Chairperson Huston via Zoom and Roll Call was made.

PRESENT: Chairperson Huston
Vice Chairperson Blumenkopf
Commissioner Andreski-Price
Commissioner Seligson
Commissioner Snider

ABSENT: Commissioner Anderson

OTHERS
PRESENT: Economic Development & Planning Specialist Colton Dale
Community & Economic Development Director Kimberly Marrone
Deputy City Clerk Lisa Vecchio

APPROVAL OF ZONING BOARD OF APPEALS MINUTES OF JULY 28, 2020

MOTION BY Snider, SECONDED BY Seligson, to approve the meeting minutes of July 28, 2020.

Vote: Yes: Anderson, Andreski-Price, Blumenkopf, Huston, Seligson, Snider
No: None

MOTION CARRIED

COMMUNICATIONS: None

OLD BUSINESS: None

NEW BUSINESS:

- a) **CASE 20-02:**
Kyle McKechine
8625 Capital St

PROPERTY:
8625 Capital St
Oak Park, Michigan
Property Identification Number: 52-25-33-152-010

ORDINANCE REQUIREMENTS AND REQUEST:
One variance is requested:

1. Article XVII, to allow for an existing building that does not meet the parking requirements of the Zoning Ordinance.

STAFF FINDINGS OF FACT:

- 1) Article XVII, Section 1726, G, requires that the proposed commercial kitchen provide 25 parking spaces on site.
- 2) The applicant is requesting a waiver to allow for the commercial kitchen to provide 14 parking spaces on site.
- 3) The property is currently zoned L-1, Light Industrial District.
- 4) The industrial building has existed on this site since 1958.
- 5) The proposed commercial kitchen would have 12 employees at the largest shift.
- 6) The largest shift begins at 4 p.m. when many businesses are not as active.
- 7) There are 7 on-street parking spaces in front of the building.
- 8) The site will include bike parking.
- 9) The site includes 16.88% landscaping with a requirement of 10%. The site could add additional parking spaces in the landscaped area but it is more beneficial to the overall site and district to retain the landscaping.
- 10) The proposed use has approximately 40% of the space for warehousing and the remainder for commercial kitchen.
- 11) The site would require the following amount of parking for both types of industrial uses:
 - Warehousing – 18 spaces
 - Manufacturing – 33 spacesUnless a portion of the building is removed this would be unachievable.

Mr. McKechnie explained that the facility would be used for commercial kitchen rental, where businesses could rent out spaces to produce commercial levels of cuisine. There will also be deliveries run out of the facility. Parking spaces will be allocated, as well as bike parking.

MOTION BY Snider, SECONDED BY Blumenkopf, to *approve* the request of Mr. Kyle McKechnie, 8625 Capital,

1. For a waiver from the provisions in Article XVII, Section 1726, G, to allow for the commercial kitchen to provide 14 parking spaces on site.

VOTE: Yes: Andreski-Price, Blumenkopf, Huston, Seligson, Snider
 No: None

MOTION CARRIED

ADJOURNMENT:

There being no objections, the meeting was adjourned at 7:10 p.m.

Lisa Vecchio, Deputy City Clerk/Director of Elections

**CITY OF OAK PARK PLANNING COMMISSION
MONDAY, JULY 13, 2020
MINUTES**

Meeting was called to order at 7:00 p.m. via Zoom by Chairperson Torgow and roll call was made.

PRESENT: Chairperson Torgow
Vice Chairperson Brown
Commissioner Burns
Commissioner Eizelman
Commissioner McClellan
Commissioner Seligson
Commissioner Tungate
Commissioner Walters-Gill

ABSENT: Commissioner Tkatch

OTHERS PRESENT: City Planner, Kevin Rulkowski
Community & Economic Development Director, Kim Marrone
Deputy City Clerk, Lisa Vecchio

3. APPROVAL OF AGENDA OF JULY 13, 2020:

MOTION by Brown, SECONDED by Seligson, to approve the agenda of July 13, 2020.

VOTE: Yes: All
No: None

MOTION CARRIED

4. APPROVAL OF MINUTES OF JUNE 8, 2020:

MOTION by Seligson, SECONDED by McClellan, to approve the minutes of June 8, 2020 with no corrections.

VOTE: Yes: All
No: None

MOTION CARRIED

5. COMMUNICATIONS/CORRESPONDENCE: None

6. ELECTION OF OFFICERS:

MOTION by Seligson, SECONDED by Walters-Gill, to nominate and elect Gary Torgow as Chairperson, Joe Brown as Vice Chairperson, and Michael Eizelman as Secretary.

VOTE: Yes: Brown, Burns, Eizelman, McClellan, Seligson, Torgow, Tungate, Walters-Gill
No: None

MOTION CARRIED

6. PUBLIC HEARING:

- A. Public Hearing to consider a request submitted by Kroger Grocery Store for Special Land Use approval for a Specially Designated Merchant and Specially Designated Distributor License (sales of packaged alcohol, beer & wine) to be located at 26200 Greenfield Road.**

Chairperson Torgow opened the Public Hearing at 7:05 pm. There were no comments.
Chairperson Torgow closed the Public Hearing at 7:07 pm.

- B. Planning Commission action regarding a request submitted by Kroger Grocery Store for Special Land Use approval for a Specially Designated Merchant and Specially Designated Distributor License (sales of packaged alcohol, beer & wine) to be located at 26200 Greenfield Road**

Chairperson Torgow referenced City Planner Rulkowski's report dated June 24, 2020:

A Public Hearing is scheduled for the July meeting to review the request of Kroger Grocery Store for Special Land Use approval for a Specially Designated Merchant and Specially Designated Distributor License (sales of packaged alcohol, beer & wine) to be located at 26200 Greenfield Road.

The Special Land Use section of the Zoning Ordinance (Article XIX) requires the proposed use for a Specially Designated Merchant and Specially Designated Distributor License (sales of packaged alcohol, beer & wine) to meet a number of general standards (Section 1900) as well as use specific standards for Regulated Uses (Section 1929).

Section 1900 General Standards:

- A. The proposed special land use shall be of such location, size and character that it will be in harmony with the appropriate and orderly development of the surrounding neighborhood and/or vicinity and applicable regulations of the zoning district in which it is to be located.*
- B. The proposed use shall be of a nature that will make vehicular and pedestrian traffic no more hazardous than is normal for the district involved, taking into consideration vehicular turning movements in relation to routes of traffic flow, proximity and relationship to intersections, adequacy of sight distances, location of and access to off-street parking, and provisions for pedestrian safety.*
- C. The location, size, intensity, site layout and periods of operation of any such proposed use shall be designed to eliminate any possible nuisance emanating therefrom which might be noxious to the occupants of any other nearby permitted uses, whether by reason of dust, noise, fumes, vibration, smoke or lights.*
- D. The proposed use shall be such that the proposed location and height of building or structures and location, nature and height of walls, fences and landscaping will not interfere with or discourage the appropriate development and use of adjacent land and buildings or unreasonably affect their value.*

E. The proposed use shall relate harmoniously with the physical and economic aspects of adjacent land uses as regards to prevailing shopping habits, convenience of access by prospective patrons, continuity of development, and need for particular services and facilities in specific areas of the city.

F. The proposed use is necessary for the public convenience at the proposed location.

G. The proposed use is designed, located, planned and to be operated that the public health, safety and welfare will be protected.

The Planning Division finds that the information contained in the application package and on the Site Plan satisfactorily meets the eight general standards identified in Section 1900 Special Land Uses in the Zoning Ordinance.

Section 1929 Regulated Uses, B

1. The proposed regulated use is not located within 1,000 feet of any other regulated use, regardless of community boundaries. Establishments with SDD and SDM licenses from the Michigan Liquor Control Commission, greater than 10,000 square feet of gross floor area, and devoting less than ten percent of the gross floor area to sales regulated by the SDD and SDM license, are exempt from the spacing requirement between regulated uses.

2. The proposed regulated use is not located within 500 feet of a school, park, or place of worship, regardless of community boundaries. Establishments with SDM licenses from the Michigan Liquor Control Commission, greater than 10,000 square feet of gross floor area, and devoting less than ten percent of the gross floor area to sales regulated by the SDM license, are exempt from this spacing requirement.

3. The layout of the site of the proposed regulated use and its relationship to streets providing access to the site shall be in a manner that vehicular and pedestrian traffic to and from such proposed regulated use and the potential assembly of persons connected therewith, will not be hazardous, endangering, or inconvenient to the surrounding neighborhood and commercial district.

4. The proposed regulated use will be compatible with adjacent uses of land, considering the proximity of residential dwellings, churches, schools, public structures, and other places of public gatherings.

5. The proposed regulated use will not contrary to the public interest or injurious to nearby properties.

6. The proposed regulated use will not have the possible effect of downgrading and blighting the surrounding neighborhood.

7. The proposed regulated use will not be contrary to any program of neighborhood conservation, nor will it interfere with any redevelopment projects.

8. The proposed regulated use will not reasonably be expected to diminish the value of properties in the immediate area.

9. *The proposed regulated use will be in compliance with all other applicable regulations, City Codes and state and federal laws.*

The proposed location of the SDM & SDD licensed facility meets the specific spacing requirements of Section 1929 B, 1 and 2. Information in the application indicates the sales area for alcoholic beverages as 352 square feet or less than one percent of the store's 88,536 gross floor area. The sales area is in compliance with the specific standards of Section 1929 B, 1 and 2 for SDM & SDD licensed facilities.

The Planning Division finds the submitted information demonstrates that the proposed SDM & SDD licensed facility satisfactorily meets use specific standards for Regulated Uses (Section 1929).

It is the recommendation of the Planning Division to approve the Special Land Use for a Specially Designated Merchant and Specially Designated Distributor License (sales of packaged alcohol, beer & wine) for Kroger Grocery Store to be located at 26200 Greenfield Road.

MOTION by Brown, SECONDED by Seligson, to approve the Special Land Use for a Specially Designated Merchant and Specially Designated Distributor License (sales of packaged alcohol, beer & wine) to be located at 26200 Greenfield Road.

VOTE: Yes: Brown, Burns, Eizelman, McClellan, Seligson, Torgow, Tungate, Walters-Gill
No: None

MOTION CARRIED

- C. Public Hearing to consider a request submitted by Pioneer Health Care Management – Oakridge Manor for Special Land Use approval for a 76 bed Skilled Nursing Facility to be located at 13200 Oak Park Blvd.**

Chairperson Torgow opened the public hearing at 7:09pm.

Fay Koday, 23841 Mortiz, expressed concern about the rental units lowering the home values in the area.

Chairperson Torgow closed the public hearing at 7:13pm.

- D. Planning Commission action regarding a request submitted by Pioneer Health Care Management – Oakridge Manor for Special Land Use approval for a 76 bed Skilled Nursing Facility to be located at 13200 Oak Park Blvd.**

A Public Hearing has been scheduled for the July meeting to review the request of Pioneer Health Care Management, 13200 Oak Park Boulevard, to construct a 76 bed skilled nursing facility, 43,660 square feet in size. The proposed use as a skilled nursing facility (Convalescent Home) is a Special Land Use that requires a Public Hearing and a Site Plan. The Planning Commission originally approved this Special Land Use on April 24, 2017 but the approval has now expired.

Special Land Use Standards

The Special Land Use section of the Zoning Ordinance (Article XIX) requires the proposed use to meet a number of general standards (Section 1900) as well as use specific standards for educational institutions (Section 1910).

Section 1900 General Standards:

- A. The proposed special land use shall be of such location, size and character that it will be in harmony with the appropriate and orderly development of the surrounding neighborhood and/or vicinity and applicable regulations of the zoning district in which it is to be located.*
- B. The proposed use shall be of a nature that will make vehicular and pedestrian traffic no more hazardous than is normal for the district involved, taking into consideration vehicular turning movements in relation to routes of traffic flow, proximity and relationship to intersections, adequacy of sight distances, location of and access to off-street parking, and provisions for pedestrian safety.*
- C. The location, size, intensity, site layout and periods of operation of any such proposed use shall be designed to eliminate any possible nuisance emanating therefrom which might be noxious to the occupants of any other nearby permitted uses, whether by reason of dust, noise, fumes, vibration, smoke or lights.*
- D. The proposed use shall be such that the proposed location and height of building or structures and location, nature and height of walls, fences and landscaping will not interfere with or discourage the appropriate development and use of adjacent land and buildings or unreasonably affect their value.*
- E. The proposed use shall relate harmoniously with the physical and economic aspects of adjacent land uses as regards to prevailing shopping habits, convenience of access by prospective patrons, continuity of development, and need for particular services and facilities in specific areas of the city.*
- F. The proposed use is necessary for the public convenience at the proposed location.*
- G. The proposed use is designed, located, planned and to be operated that the public health, safety and welfare will be protected.*

The Planning Division finds that the information contained in the application package and on the Site Plan satisfactorily meets the eight general standards identified in Section 1900 Special Land Uses in the Zoning Ordinance.

Section 1907 Convalescent or Rest Home

A convalescent or rest home, orphanage, or home for the elderly may be permitted, in certain districts as specified in this ordinance, subject to the following:

- A. All vehicular ingress and egress shall be directly onto a major or secondary thoroughfare as designated on the city's adopted master plan.*
- B. The minimum site size shall be two acres.*
- C. All buildings shall be set back at least 50 feet from all property lines.*
- D. There shall be a minimum of 25 square feet of outdoor recreation space per resident cared for, in such areas as garden's, patios, decks, and the like. Recreation space must be fully accessible and barrier-free.*

The Planning Division finds that the information contained in the application package and on the Site Plan satisfactorily meets the standards identified in Section 1907 Convalescent or Rest Home of the Special Land Uses section in the Zoning Ordinance.

Site Plan Review

A Site Plan is required as part of the Special Land Use process. The Site Plan has been reviewed to ensure that the proposed use would function properly on the site. The proposal calls for the construction of a one-story, 76 bed skilled nursing facility, which is 43,660 square feet in size. As the application describes the building will include a central kitchen, resident dining room, activity rooms, physical/occupational therapy rooms, and a salon.

The property was rezoned RM-1, Low-Rise Multi-Family Residential District in October of 2016 and skilled nursing facilities (convalescent homes) are permitted as Special Land Uses. The proposed use meets the minimum setback requirements of the Zoning Ordinance as well as the maximum building height requirement.

The one-story building has a residential appearance that is attractive and will blend well into the adjacent single family residential area as seen on the exterior elevations page. The 4.35 acre site provides more than the minimum requirement for outdoor recreation space including a building perimeter walkway, outdoor dining area and large lawn areas.

The Site Plan shows the potential for an 84 space wraparound parking lot on the western side of the property. The parking lot location has been selected to minimize the negative vehicle impacts to the adjacent single family homes. The Site Plan shows 50 parking spaces will be constructed with 34 parking spaces land banked if necessitated in the future. The number of parking spaces provided (50) exceeds the minimum number of parking spaces required for this type of use (19 spaces required, one for each four beds). In addition, there is a drop-off drive driveway in front of the building that includes a porte cochere to shelter people entering the building. A new break in the median on Oak Park Boulevard is identified on the Site Plan across from the drop-off driveway to facilitate traffic entering the site. The Engineering Division and Public Safety Department have reviewed this modification and have no issues with its general location. Final construction design of the entryways onto the site and the median modification need to be submitted to the Engineering Division for final approval.

A large storm water detention basin is shown on the Site Plan in the northeast corner of the property. The storm water basin will be enclosed by a 42" tall ornamental fence for safety purposes. At this time a storm water management plan has yet to be submitted to the Engineering Division for final review and approval.

The landscaping plan for the project shows a combination of new and existing trees and shrubs. The proposed landscaping plan satisfactorily meets the minimum Zoning Ordinance requirement for landscaping. The landscaping plan notes that an underground automatic irrigation system will be provided. The Site Plan indicates that a large concrete planter box will be removed in the southeast corner of the property near the sidewalk. This area was a concern in the 2017 Site Plan Review and has now been resolved.

A six-foot high vinyl screen fence is identified on the Site Plan along the north and east property lines to shield the facility from the adjacent residential properties. A screen fence detail is provided that is acceptable. The proposed screen fence on the east side of the property ends in line with the existing residential house to the east. This proposed ending point will adequately visually shield the adjacent home to the east.

A dumpster enclosure area is indicated on the Site Plan surrounded by landscaping. A dumpster enclosure detail will need to be submitted as part of the building plans that meets the Zoning Ordinance requirements.

The application materials include a photometric Site Plan that indicates no nuisance lighting will pass into adjacent residential properties as required by the Zoning Ordinance.

The identified ground equipment (generator and transformer) is screened as required by the Zoning Ordinance. Any additional ground or rooftop equipment will also need to be screened as required by the Zoning Ordinance.

A monument style sign is indicated on the Site Plan. A separate sign permit application must be submitted for this proposed sign.

Michele Curey of Pioneer Health explained that they plan to break ground late summer/early fall and the timeline for build is 1 year.

MOTION by Eizelman, SECONDED by Walters-Gill, to approve the Special Land Use and Site Plan for the proposed educational institution with the following conditions:

- 1) Approval by the Engineering Division of an acceptable storm water management plan.
- 2) Approval by the Engineering Division of the final construction design of the entryways onto the site and the median modification need to be submitted to the Engineering Department for final approval.
- 3) Approval by the Engineering Division and Public Safety Department of the locations of the fire hydrants and fire suppression building connections.
- 4) All ground and rooftop equipment screened as required by the Zoning Ordinance.
- 5) Dumpster enclosure detail which meets the Zoning Ordinance requirements to be submitted.
- 6) No signs are approved as part of the Site Plan Review process. A separate sign permit application must be submitted.

VOTE: Yes: Brown, Burns, Eizelman, McClellan, Seligson, Torgow, Tungate, Walters-Gill
No: None

MOTION CARRIED

E. Public Hearing to receive comments on proposed text amendments to Article XVII, General Provisions, Section 1709. Outdoor Dining. The proposed text amendment would allow for decorative outdoor lighting.

Chairperson Torgow opened the public hearing at 7:20pm. No comments from the public.
Chairperson Torgow closed the public hearing at 7:21pm.

F. Planning Commission action on proposed text amendments to Article XVII, General Provisions, Section 1709. Outdoor Dining.

Chairperson Torgow referenced Planning report dated June 24, 2020:

A Public Hearing is scheduled for the July meeting to consider proposed changes to the Outdoor Dining section of the Zoning Ordinance. The proposed text amendment would allow for decorative lighting in outdoor dining uses after review by the Planning Commission.

Sec. 1709. - Outdoor dining.

B. General standards.

6. *Lighting for the outdoor dining area shall be shielded downward and away from adjacent properties and installed so that the surface of light shall not be visible from adjacent properties or to passing traffic.* *The Planning Commission may approve decorative or accent lighting as an alternative to shielded light fixtures when it can be demonstrated that there will be no off-site glare and the proposed lighting method is necessary to preserve the intended character of the site.*

If the proposed text amendment is satisfactory to the Planning Commission, it is the recommendation of the Planning Division, to recommend to the City Council adoption of the attached proposed ordinance.

MOTION by Burns, SECONDED by McClellan, to approve the proposed text amendments to Article XVII, General Provisions, Section 1709. Outdoor Dining.

VOTE: Yes: Brown, Burns, Eizelman, McClellan, Seligson, Torgow, Tungate, Walters-Gill
No: None

MOTION CARRIED

G. Public Hearing to receive comments on proposed text amendments to Article XVIII, Signs, Section 1805. Exemptions to permitting, Section 1807. Specific sign standards and Section 1814. Variances. The proposed text amendments would correct reference errors, allow for an additional wall sign in some circumstances and limit the size of some temporary signs.

Chairperson Torgow opened the public hearing at 7:23pm. No comments from the public.
Chairperson Torgow closed the public hearing at 7:23pm.

H. Planning Commission action on proposed text amendments to Article XVIII, Signs, Section 1805. Exemptions to permitting, Section 1807. Specific sign standards and Section 1814. Variances.

Chairperson Torgow referenced Planning report dated June 24, 2020:

A Public Hearing is scheduled for the July meeting to consider proposed changes to the Signs section of the Zoning Ordinance. The proposed text amendment would correct a number of reference errors as well as make the following additions:

- 1) Add back the option to have one additional wall sign as a substitution for a freestanding sign. This provision was in the previous sign regulations and was inadvertently left out of the new regulations.*
- 2) Add a temporary sign size limitation of six square feet. A similar provision was in the previous sign regulations and was inadvertently left out of the new regulations.*

Attached are the redlined versions of the changes.

If the proposed text amendments are satisfactory to the Planning Commission, it is the recommendation of the Planning Division, to recommend to the City Council adoption of the attached proposed ordinance.

MOTION by Seligson, SECONDED by Eizelman, to approve the proposed text amendments to Article XVIII, Signs, Section 1805. Exemptions to permitting, Section 1807. Specific sign standards and Section 1814. Variances.

VOTE: Yes: Brown, Burns, Eizelman, McClellan, Seligson, Torgow, Tungate, Walters-Gill
No: None

MOTION CARRIED

- I. Public Hearing to receive comments on proposed text amendments to Article IV, R-1 One Family Residential, Sections 401. Permitted uses, and 402. Special land uses, and Article XIX, Section 1915. Public recreation uses. The proposed text amendments would modify regulations for recreation uses in single family residential districts.**

Chairperson Torgow opened the public hearing at 7:25pm. No comments from the public.
Chairperson Torgow closed the public hearing at 7:25pm.

- J. Planning Commission action on proposed text amendments to Article Article IV, R-1 One Family Residential, Sections 401. Permitted uses, and 402. Special land uses, and Article XIX, Section 1915. Public recreation uses.**

Chairperson Torgow referenced Planning report dated June 24, 2020:

A Public Hearing is scheduled for the July meeting to consider proposed changes to the R-1 One Family Dwelling District to address public and private recreation uses. The City Attorney's Office prepared the proposed text amendments that would:

- 1) Make publicly owned and operated parks, parkways and recreational facilities a permitted use in the R-1 One Family Dwelling District.*
- 2) Make private noncommercial recreational areas, institutional or community recreation centers, and nonprofit swimming pools a Special Land Use subject to a number of restrictions.*

Attached is a redlined version of the proposed changes.

If the proposed text amendments are satisfactory to the Planning Commission, it is the recommendation of the Planning Division, to recommend to the City Council adoption of the attached proposed ordinance.

MOTION by Brown, SECONDED by Seligson, to approve the proposed text amendments to Article XVIII, Signs, Section 1805. Exemptions to permitting, Section 1807. Specific sign standards and Section 1814. Variances.

VOTE: Yes: Brown, Burns, Eizelman, McClellan, Seligson, Torgow, Tungate
No: Walters-Gill

MOTION CARRIED

7. CONSENT AGENDA: None

8. MATTERS FOR CONSIDERATION:

A. OLD BUSINESS- none

B. NEW BUSINESS

1) Master Plan Review, Amendment and Process presentation to Planning Commission

Director Marrone explained that the amendments to the Master Plan would allow for pocket parks like the ones on 9 Mile Rd, and land use for industrial flex districts which includes multi-use business/residence facilities.

MOTION by Brown, SECONDED by Seligson, to approve the Master Plan.

VOTE: Yes: Brown, Burns, Eizelman, McClellan, Seligson, Torgow, Tungate, Walters-Gill
No: None

MOTION CARRIED

9. PLANNING COMMISSION MATTERS FOR DISCUSSION – from members only:

Director Marrone informed the Commission that City Planner Kevin Rulkowski has retired from the City of Oak Park.

Chairperson Torgow sent his thanks to Kevin Rulkowski for all his years and hard work for the City of Oak Park and the Planning Commission. He also thanked the Planning and Economic Development department for all of their hard work. He reminded everyone of the Public Safety Student Grant Award Ceremony that will be taking place on Wednesday, July 15 at 6:30pm.

Mayor McClellan reminded everyone of the Booksale at the Farmers Market on Wednesday, July 15 at the High School parking lot.

10. PUBLIC COMMENTS ON ITEMS NOT SCHEDULED FOR PUBLIC HEARING: None

11. ADJOURNMENT

There being no further business, Chairperson Torgow adjourned the meeting at 7:36 p.m.

Lisa Vecchio, Deputy City Clerk

**CITY OF OAK PARK PLANNING COMMISSION
MONDAY, OCTOBER 12, 2020
MINUTES**

Meeting was called to order at 7:00 p.m. via Zoom by Chairperson Torgow and roll call was made.

PRESENT: Chairperson Torgow
Vice Chairperson Brown
Commissioner Burns
Commissioner Eizelman (arrived at 7:02pm)
Commissioner McClellan
Commissioner Seligson
Commissioner Tungate
Commissioner Walters-Gill

ABSENT: Commissioner Tkatch

OTHERS PRESENT: Economic Development and Planning Specialist, Colton Dale
Community & Economic Development Director, Kim Marrone
Deputy City Clerk, Lisa Vecchio

3. APPROVAL OF AGENDA OF OCTOBER 12, 2020:

MOTION by McClellan, SECONDED by Walters-Gill, to approve the agenda of October 12, 2020.

VOTE: Yes: All
No: None

MOTION CARRIED

4. APPROVAL OF MINUTES OF JULY 13, 2020:

MOTION by Walters-Gill, SECONDED by McClellan, to approve the minutes of July 13, 2020 with one corrections.

VOTE: Yes: All
No: None

MOTION CARRIED

5. COMMUNICATIONS/CORRESPONDENCE:

A. 2019-2020 Annual Report of the City of Oak Park Planning Commission

The Annual Report was submitted into record of the Planning Commission.

**B. Hutch's Jewelry, 23400 Greenfield Road, Final Site Plan Review-
Administrative Approval**

Director Marrone informed the Planning Commission the Site Plan for Hutch's Jewelry was eligible for administrative approval, and was approved by the Planning and Economic Development department.

C. Detroit Master Plan of Policies letter stating the plan is not inconsistent with Oak Park Master Plan

A letter was requested by and submitted to the City of Detroit from the City of Oak Park to state that their Master Plan was not inconsistent with the Master Plan of Oak Park.

6. PUBLIC HEARING:

A. Public Hearing to receive public comment on a Proposed Master Plan for the City of Oak Park

Chairperson Torgow opened the Public Hearing at 7:05 pm. There were no comments. Chairperson Torgow closed the Public Hearing at 7:06 pm.

7. CONSENT AGENDA: None

8. MATTERS FOR CONSIDERATION:

A. OLD BUSINESS- none

B. NEW BUSINESS

1) Consideration of Adoption of Proposed Master Plan for the City of Oak Park

Chairperson Torgow referenced Director Marrone's report dated September 29, 2020:

At the October 12th Planning Commission meeting a Public Hearing is scheduled to hear public comments on the Proposed Master Plan for the City of Oak Park. After receiving the public comments, the Planning Commission will have to decide whether to adopt the Proposed Master Plan as presented or seek further modification. The preparation and approval of a Master Plan for a community is considered the single most important duty of the Planning Commission. As such, the Michigan Planning Enabling Act of 2008 requires an affirmative vote of a super majority (2/3rds) of the members of the Planning Commission for approval.

125.3843. Sec. 43.

(2) The approval of the proposed master plan shall be by resolution of the planning commission carried by the affirmative votes of not less than 2/3 of the members of a city or village planning commission...

For this reason, each Planning Commissioner's attendance at the meeting is very important.

A Draft Master Plan was delivered to each Planning Commissioner for review. The Draft Master Plan represents months of information gathering, public input, and ongoing consultation between City staff and the Planning Commission. No fewer than four City staff members worked directly on the Draft Master Plan, in addition to many other City staff that contributed in a number of ways.

As required by the Municipal Planning Act, a copy of the Draft Master Plan was mailed to all the communities surrounding Oak Park and the Oakland County Coordinating Zoning Committee. At this point in time we have received comments from the City of Southfield and Oakland County planning staff indicating that Oak Park's Draft Master Plan is not inconsistent with their Master Plans. On September 15th the Oakland County Coordinating Zoning Committee met and voted to ratify the finding of the Oakland County planning staff indicating that Oak Park's Draft Master Plan is not inconsistent with the Master Plans of the communities surrounding Oak Park.

In the memorandum that accompanied the Draft Master Plan, it was noted that there were a few last minute amendments that were recommended by Oakland County. These included changes to the complete streets map (page 60) to reflect the elimination of Jackson Park to reflect the decrease of parks that the bike routes connects to from 13 to 12, revising the Zoning District Map (page 81) to be renamed "Future Land Use Map" and be more consistent with the Future Land Use Map in the 2017 Master Plan

So that there is complete clarity as to the Final Draft Master Plan that is being reviewed for approval, the version included in this packet is the one City staff is recommending for consideration.

It is with great pleasure that the Department of Economic Development recommends adoption of the presented Master Plan for the City of Oak Park.

MOTION by Ezielman, SECONDED by Walters-Gill, to adopt the Proposed Master Plan for the City of Oak Park as presented.

VOTE: Yes: Brown, Burns, Eizelman, McClellan, Seligson, Torgow, Tungate, Walters-Gill
No: None

MOTION CARRIED

9. PLANNING COMMISSION MATTERS FOR DISCUSSION – from members only:

Director Marrone informed the Planning Commission that the grand opening for the new Kroger is scheduled for November 6, 2020.

10. PUBLIC COMMENTS ON ITEMS NOT SCHEDULED FOR PUBLIC HEARING: None

11. ADJOURNMENT

There being no further business, Chairperson Torgow adjourned the meeting at 7:08 p.m.

Lisa Vecchio, Deputy City Clerk



BUSINESS OF THE CITY COUNCIL, OAK PARK, MICHIGAN

AGENDA OF: November 16, 2020

AGENDA#

SUBJECT: Payment Application No. 2 for the 2020 Decorative Fence Project, M-695.

DEPARTMENT: Technical & Planning/DPW – Engineering KJY

SUMMARY: Attached is Payment Application No. 2 for the 2020 Decorative Fence Project, M-695. This project is to add decorative fencing along the south side of 9 Mile Rd from Scotia to Rosewood and around the parking areas of the 45th District Court, Public Safety and City Hall. To date the project is approximately 40% complete.

FINANCIAL STATEMENT:

Original Contract Amount:	\$306,165.50
Change Order No. 1	<u>\$ 3,558.50</u>
Current Contract Amount:	\$309,724.50
 Total Completed to Date:	 \$123,122.26
Less Retainage:	\$ 12,312.23
Net Earned:	\$110,810.03
Deductions:	\$ 0.00
Balance:	\$110,810.03
Payments to Date:	<u>\$ 26,434.60</u>
Amount Due American Fence:	\$ 84,375.43

RECOMMENDED ACTION: It is recommended that Pay Application No. 2 for the 2020 Decorative Fence Project, M-695 to American Fence Co. of Warren, MI be approved for the amount of \$84,375.43. Funding is available in the General Fund (Account #101-18.443.970) for the City Hall Portion, the Court Building Fund (Account #470-70.900.970) for the Court portion and General Fund (Account #101-18.444.970) for the 9 Mile portion of this expenditure.

APPROVALS:

City Manager: _____ Department Director: KJY

Director of Finance: _____ Legal: NA

Budgeted:

EXHIBITS: Payment Application No. 2

PAYMENT APPLICATION

PROJECT: 2020 Decorative Fence Project
OWNER: City of Oak Park, Michigan
CONTRACTOR: American Fence & Supply Company
 21200 Schoenherr Rd.
 Warren, MI 48089

JOB NUMBER: M-695
APPLICATION NO.: 2
PERIOD ENDING: 11/6/20
PAGE: 1 of 2

Item No.	Description	Original Bid Quantity	Unit	Unit Price	Period Quantity	Period Amount	Quantity To Date	Amount To Date
1	Mobilization, Max 5%	1	LSUM	\$5,000.00	0.00	\$0.00	1.00	\$5,000.00
2	Remove Existing Fence Along South Side of 9 Mile Road From Scolia to Rosewood	2,600	LFT	\$6.99	673.16	\$6,051.71	673.16	\$6,051.71
3	Furnish and Install New 6' High Privacy Fence, Clay Color. Manufacture by Bufftech or Approved Equal	2,600	LFT	\$38.49	623.16	\$23,985.43	623.16	\$23,985.43
4	Furnish and Install New 4' W x 6' H Single Swing PVC Gate, Style to Match the Fence	0	EACH	\$1,491.00	0.00	\$0.00	0.00	\$0.00
5	6' PVC Coated Color Chain Link Fence w/Footings, 8 Gauge, 1 3/4" Mesh	580	LFT	\$29.55	494.00	\$14,597.70	494.00	\$14,597.70
6	6' Decorative Aluminum Fence w/ Footings	345	LFT	\$51.00	0.00	\$0.00	0.00	\$0.00
7	26' Decorative Aluminum Slide Gate	1	EACH	\$7,820.00	0.00	\$0.00	0.00	\$0.00
8	26' PVC Coated Color Chain Link Slide Gate	1	EACH	\$5,908.00	0.00	\$0.00	0.00	\$0.00
9	30' PVC Coated Color Chain Link Slide Gate	2	EACH	\$5,644.00	2.00	\$11,288.00	2.00	\$11,288.00
10	6' PVC Coated Color Chain Link Pedestrian Gate with Hardware	1	EACH	\$950.00	1.00	\$950.00	1.00	\$950.00
11	Variable Speed A/C Heavy-Duty Industrial Slide Gate Operator	2	EACH	\$11,359.50	0.00	\$0.00	0.00	\$0.00
12	A/C Heavy-Duty Industrial Slide Gate Operator	2	EACH	\$10,875.50	0.00	\$0.00	0.00	\$0.00
13	Long Range Hands-Free Identification Reader	4	EACH	\$2,722.50	0.00	\$0.00	0.00	\$0.00
14	UHF Hang Tag	250	EACH	\$4.99	0.00	\$0.00	0.00	\$0.00
15	Non-Reinforced Landscape Block Pier, 6 Foot	8	EACH	\$3,468.88	0.00	\$0.00	0.00	\$0.00
16	Pavement Removal, Modified SP	200	SYD	\$0.00	0.00	\$0.00	0.00	\$0.00
17	Conc. Pavt with Integral Curb and Gutter 7" Concrete, Modified SP	200	SYD	\$25.85	0.00	\$0.00	0.00	\$0.00
18	Sidewalk Concrete Non-Reinf 6" Conc. Sidewalk/Drive App. Modified SP	200	SFT	\$0.00	0.00	\$0.00	0.00	\$0.00
19	Aggregate Base Under Conc. 6" Crushed Limestone, Modified SP	200	SYD	\$0.00	0.00	\$0.00	0.00	\$0.00
20	Class A Sodding, Modified SP	305	SYD	\$8.20	0.00	\$0.00	0.00	\$0.00
21	Project Clean Up	1	LSUM	\$8,348.00	0.00	\$0.00	0.00	\$0.00
22	Inspection Crew Days	52	DAY	\$320.00	8.25	\$0.00	21.25	\$0.00
23	Install 1' Boulders Along Court Parking Lot	0	LSUM	\$3,558.50	0.00	\$0.00	1.00	\$3,558.50

ALTERNATE BID

2	Remove Existing Fence Between City Complex and Residential Area to the North	660	LFT	\$12.01	659.00	\$7,914.59	659.00	\$7,914.59
3	Furnish and Install New 6' High Privacy Fence - Clay Color, Chesterfield Style Manufactured by Bufftech or Approved Equal	660	LFT	\$43.95	659.00	\$28,963.05	659.00	\$28,963.05
4	Inspection Crew Days	40	DAY	\$320.00	13.50	\$0.00	13.50	\$0.00

\$93,750.48

\$123,122.26

PROJECT:
OWNER:
CONTRACTOR:

2020 Decorative Fence Project
City of Oak Park, Michigan
American Fence & Supply Company
21200 Schoenherr
Warren, MI 48089

JOB NUMBER: M-695
APPLICATION NO.: 1
PERIOD ENDING: 9/28/20
PAGE: 2 of 2

Original Contract Amount:	\$306,165.50
Alternate Bid:	\$40,511.00
Change Order No. 1:	\$3,558.50
New Contract Amount:	\$350,235.00

Earnings This Period:	\$93,760.48
Total Earnings to Date:	\$123,122.26
Less Retainage:	\$12,312.23
Net Earned:	\$110,810.03
Deductions:	\$0.00
Balance:	\$110,810.03
Payments to Date:	\$26,434.60

Amount Due: \$84,375.43

Accepted By:

American Fence & Supply Company

Joseph R. Jenkins
Joseph Jenkins (Nov 11, 2020)

Joseph Jenkins, Assistant City Engineer
City of Oak Park, Michigan

Date:

11-11-2020

Date:

11-11-2020

MERCHANT'S LICENSES - NOVEMBER 16TH, 2020

(Subject to All Departmental Approvals)

NEW MERCHANT	ADDRESS	FEES	BUSINESS TYPE
NEWTON STYLE ME	25201 COOLIDGE	\$ 150.00	MULTICULTURAL HAIR SALON

RENEWALS	ADDRESS	FEES	BUSINESS TYPE
FOOTLOCKER	21210 GREENFIELD	\$ 150.00	RETAIL ATHLETIC, FOOTWEAR APPAREAL AND ACCESSORIES.
KIDS FOOTLOCKER	21220 GREENFIELD	\$ 150.00	RETAIL ATHLETIC, FOOTWEAR APPAREAL AND ACCESSORIES.
FOOTACTION	21230 GREENFIELD	\$ 150.00	RETAIL ATHLETIC, FOOTWEAR APPAREAL AND ACCESSORIES.

OPERATING WITHOUT BL	ADDRESS	FEES	BUSINESS TYPE
A TASTE OF THE ORIENT	26661 COOLIDGE	\$ 900.00	FOOD SERVICE



1155 Brewery Park Blvd, Ste 200
Detroit, Michigan 48207
313-446-1530
Tax I.D. 38-1879991

Invoice 548707

November 6, 2020

Erik Tungate
City of Oak Park
14000 Oak Park Blvd.
Oak Park, MI 48327

Re: In Re: City of Oak Park

*Client 7406
Matter 1*

Statement for City Attorney Legal Services

For Legal Services Rendered Through Saturday, October 31, 2020

\$12,083.34

Fee Total

Costs Advanced:

Date	Description	Amount
10/14/20	Fee to Oakland County Register of Deeds for Satisfaction/Discharge of Mortgage, 15111 Nine Mile Road, Oak Park	30.00
10/15/20	Reproduction Charges 1 @ 0.15	0.15
10/15/20	Reproduction Charges 3 @ 0.15	0.45
10/23/20	Reproduction Charges 2 @ 0.15	0.30
10/23/20	Reproduction Charges 5 @ 0.15	0.75
Total Costs Advanced		\$ 31.65

Total Fees and Disbursements: \$12,114.99

In Re: City of Oak Park
11/06/20
Page 2

*Invoices for legal services are due upon receipt. To ensure proper application of your payment,
Please indicate our invoice number and client/matter number on your remittance.*



1155 Brewery Park Blvd, Ste 200
Detroit, Michigan 48207
313-446-1530
Tax I.D. 38-1879991

Invoice 548708

November 6, 2020

Erik Tungate
City of Oak Park
14000 Oak Park Blvd.
Oak Park, MI 48327

*Re: Oak Park Crown Pointe, LLC v City of Oak
Park*

*Client 7406
Matter 42*

Statement for City Attorney Legal Services

For Legal Services Rendered Through Saturday, October 31, 2020

\$ 225.00

Fee Total

Total Costs Advanced

\$ 0.00

Total Fees and Disbursements: \$ 225.00

*Invoices for legal services are due upon receipt. To ensure proper application of your payment,
Please indicate our invoice number and client/matter number on your remittance.*



1155 Brewery Park Blvd, Ste 200
Detroit, Michigan 48207
313-446-1530
Tax I.D. 38-1879991

Invoice 548709

November 6, 2020

Erik Tungate
City of Oak Park
14000 Oak Park Blvd.
Oak Park, MI 48327

*Re: Tina Polk and Richard Newton v City of Oak
Park, County of Oakland, et al.*

*Client 7406
Matter 24*

Statement for City Attorney Legal Services

For Legal Services Rendered Through Saturday, October 31, 2020

\$2,430.00

Fee Total

Total Costs Advanced

\$ 0.00

Total Fees and Disbursements: \$2,430.00

*Invoices for legal services are due upon receipt. To ensure proper application of your payment,
Please indicate our invoice number and client/matter number on your remittance.*



CITY OF OAK PARK

Saundra Crawford, Director
Department of Finance

Mayor
 Marian McClellan
Mayor Pro Tem
 Carolyn Burns
Council Members
 Solomon Radner
 Regina Weiss
 Julie Edgar
City Manager
 Erik Tungate

MEMORANDUM

Date: November 5, 2020

To: Erik Tungate, City Manager

From: Saundra Crawford, Finance Director
 Carl Johnson, Financial Assistant

Re: First Quarter FY 2020-21 Investment Report

The State of Michigan Public Act 213 of 2007 requires the City's investment officer to provide a written report quarterly to the governing body concerning the investment of all funds of the City that fall under Public Act 20. Public Act 20 governs how non-pension and non-OPEB funds can be invested. The attached report details the cash and investments (citywide for all funds) held by the City at September 30, 2020. The report includes a description of each investment by type, market and book values, current and yield to maturity interest rates and the number of days to maturity.

The first quarter investment report shows total citywide cash and investments of \$36,101,765 (market value) including cash in the operating account of \$2,278,237 (excluding outstanding checks and other adjustments), short-term investments in the Oakland County Investment Pool of \$31,040,210, money market of \$589 and long-term investments total \$2,782,729. The City has maximized investment return on short-term cash by utilizing the Oakland County Investment Pool and minimizing the amount maintained in the checking and daily depository accounts. Investment income for the months of July through September 2020 totaled \$85,248.

During the first quarter overall investment returns are still at the same low levels as in the fourth quarter of FY 2019-20; as Economists predicted. The return for the first quarter was approximately 0.94% primarily due to COVID-19 and the Federal Reserve rates nearly zero. As a result, the City is investing short-term and locking up longer term investments if the individual interest rate is favorable. Interest rates for the next quarter are expected to remain low and overall investment will continue to fall as long-term investments continue to mature.

City of Oak Park
Summary of Cash and Investments Held
September 30, 2020

	<u>Maturity Date</u>	<u>Market Value</u>	<u>Book Value</u>	<u>% of Portfolio</u>	<u>Current Interest Rate</u>	<u>YTM @ Cost</u>	<u>Days to Maturity</u>	<u>Investment Broker</u>
Cash								
Huntington Bank - Collection		\$ 2,278,237	\$ 2,278,237	6.31%	0.8000%	0.8000%	1	Huntington
Huntington Bank - Accounts Payable		-	-	0.00%	0.8000%	0.8000%	1	Huntington
Huntington Bank - Payroll		-	-	0.00%	0.8000%	0.8000%	1	Huntington
Money Market								
Fifth Third - Money Market		589	589	0.00%	0.0100%	0.0100%	1	Fifth Third
Comerica Securities - Money Market		-	-	0.00%	0.1800%	0.1800%	1	Comerica
Government Securities								
Municipal Bonds								
Paw Paw Public Schools	11/1/2020	110,206	110,045	0.30%	2.5000%	2.5000%	31	Fifth Third
Reeths-Puffer Mich Schs	5/1/2021	253,190	250,383	0.69%	2.5400%	2.5400%	212	Comerica
Reeths-Puffer Mich Schs	5/1/2021	253,190	250,383	0.69%	2.5400%	2.5400%	212	Comerica
Whitmore Lake Mich Pub Sch Dist	5/1/2021	506,300	501,125	1.39%	2.7100%	2.7100%	212	Comerica
Ypsilanti School District	5/1/2021	447,821	445,000	1.23%	2.1800%	2.1800%	212	Fifth Third
Kalkaska Mich Sch Bldg	5/1/2023	401,836	422,779	1.17%	6.1000%	6.1000%	942	Fifth Third
South Lyon Mich Comm Schools	5/1/2023	52,383	50,536	0.14%	2.7500%	2.7500%	942	Comerica
Certificate of Deposits								
American Express Centrnl	11/12/2020	501,280	500,000	1.39%	2.2500%	2.2500%	42	Huntington
Wells Fargo Bank NA	7/28/2022	155,930	150,000	0.42%	2.3000%	2.3000%	665	Fifth Third
Wells Fargo Bank NA	1/19/2023	100,594	100,000	0.28%	2.2500%	2.2500%	840	Fifth Third
Commercial Paper								
Investment Pool								
Oakland County Investment Pool		<u>31,040,210</u>	<u>31,040,210</u>	<u>85.99%</u>	1.7171%	1.7171%	1	Oakland County
Total		<u>\$ 36,101,765</u>	<u>\$ 36,099,286</u>	<u>100.00%</u>				



CITY OF OAK PARK

Saundra Crawford, Director
Department of Finance

Mayor
 Marian McClellan
Mayor Pro Tem
 Carolyn Burns
Council Members
 Solomon Radner
 Regina Weiss
 Julie Edgar
City Manager
 Erik Tungate

MEMORANDUM

Date: November 5, 2020

To: Erik Tungate, City Manager

From: Saundra Crawford

Re: 1st Quarter Budget to Actual Report, General Fund

The purpose of this memorandum is to highlight fiscal year-to-date revenue and expenditure activity through the first quarter ending September 30, 2020 (see attached report for budget-to-actual by department activity for the General Fund only). Through the first quarter, generally, revenues and expenditures should represent 25% of the annual budget.

GENERAL FUND

REVENUES

Total revenues for the first quarter total approximately \$15 million, representing approximately 69% of the annual budget. Overall revenues are on track with budget with the following items of note:

- **Property Tax Revenue** – City property tax levies are billed July 1 and payable in full without penalty by August 31, 2020. As of the end of the first quarter approximately 92% of the taxes billed had been paid. Any unpaid real property taxes will be purchased from the City by Oakland County in May 2021. Property tax revenue is the primary reason the overall revenues are at 69% to date.
- **Intergovernmental Revenue (State Revenue Sharing)** – The City receives six bi-monthly payments annually for state-shared revenue. The first quarter report reflects no fiscal 2020 payments as the August 31, 2020 payment by statute is included as part of the June 30, 2020 revenues. The City will receive payments on October 31, December 31, February 28, April 30, June 30 and August 31 (2021) related to the current fiscal year. The estimated annual revenue included in the budget totals \$3,391,000 which is significantly less than prior year due to the impact of COVID-19 on sales tax collections.

The State of Michigan has recently adjusted their fiscal year estimates for the City to \$3,570,123; the increase will be reflected in the first quarter budget amendment.

- Fines and forfeiture revenue received from the 45th District Court is budgeted for a total of \$1,700,000 of which \$370,189 or 22% was received in this first quarter. Overall court revenue continues to be less than prior year and less than budget due to COVID-19 and the reduced number of drivers on the road and tickets written. The court has done a good job reducing their costs to offset some of the lost revenue. The revenue received is used to offset a portion of the court's operating costs. Finance will continue to monitor both the court revenue and expenditure budgets and amended as necessary.
- Federal grants revenue is higher than originally anticipating as the City is receiving federal CARES funds passed through the State of Michigan and Oakland County related to the COVID-19 pandemic. The revenue will be used to offset both unbudgeted expenditures incurred since March 2020 along with reimbursement of some allowable budgeted costs (which will be used to offset some of the revenue lost). Finance will be bringing forward budget amendments for both the revenue and any related unbudgeted expenditures.
- Recreation program fees continue to lag behind both prior and the current year reduced budget due to the COVID-19 pandemic and related shutdown. Program fees are currently at approximately 28% of budget and historically represent closer to 40% through the first quarter. Some of the revenue loss has been offset by cost savings and budget amendments will be forthcoming in the second quarter to reflect the most recent projects.

EXPENDITURES

Total expenditures for the first quarter total approximately \$4.1 million, representing approximately 19% of the annual budget. Overall departmental expenditure budgets are on track with the following items of note (departments over 25%):

- The Human Resources Department is at 42% for the first quarter due to the retirement of the department director and the related unbudgeted payout off accumulated sick and vacation time. The payout amount has been included in the first quarter budget amendment.
- Elections is at 32% of their budget due to the timing of when the elections take place. The presidential primary was during the first quarter and the general election will be in November resulting in the majority of the budget being expended during the first six months of the year. The overall net budget for the department is in line with current annual projections.
- The Special Events Recreation Department is at 39% of their budget due to the seasonality nature of recreation programs. The overall net budget for the department is

in line with current annual projections. All other recreation departments are running significantly under budget due to the COVID-19 pandemic and will be amended during the second quarter (see note on recreation revenues above).

- Non-Departmental is currently at 28% of their budget as this department is primarily transfers to other funds and the majority of the transfers take place as needed.
- Communications Department is at 28% of their budget due to additional costs incurred from hiring a communications consultant to assist with COVID-19 and other related updates for the residents and business within the City. The increased cost is included in the first quarter budget amendment.

The unaudited Fiscal Year End 2019-20 shows a small use of fund balance of \$23,741 and includes favorable variances attributed to the various projects not completed. There are rollover budget requests in Budget Amendment #2021-2 for these funds. Overall the General Fund operations are in line with the annual budget. The projected fund balance remains at the targeted level of 21% of annual expenditures.

11/05/2020

REVENUE AND EXPENDITURE REPORT FOR CITY OF OAK PARK
 PERIOD ENDING 09/30/2020
 % Fiscal Year Completed: 25.21

GL NUMBER	END BALANCE 06/30/2020 NORM (ABNORM)	2020-21 ORIGINAL BUDGET	2020-21 AMENDED BUDGET	YTD BALANCE 09/30/2020 NORM (ABNORM)	AVAILABLE BALANCE NORM (ABNORM)	% BDGT USED
Fund 101 - GENERAL FUND						
00.000 - NONE	16,548,201.07	16,866,542.00	16,866,542.00	10,471,393.10	6,395,148.90	62.08
17.345 - PUBLIC SAFETY	4,359,192.38	4,607,643.00	4,607,643.00	4,368,420.99	239,222.01	94.81
19.752 - RECREATION ADMINISTRATION	224,186.89	247,385.00	247,385.00	232,152.01	15,232.99	93.84
TOTAL REVENUES	21,131,580.34	21,721,570.00	21,721,570.00	15,071,966.10	6,649,603.90	69.39
10.101 - COUNCIL AND MAYOR	56,937.40	60,479.00	60,479.00	7,526.83	52,952.17	12.45
11.172 - CITY MANAGER	364,518.85	383,122.00	383,122.00	73,361.58	309,760.42	19.15
11.270 - HUMAN RESOURCES	343,265.31	365,237.00	365,237.00	154,341.25	210,895.75	42.26
11.611 - ECONOMIC DEVELOPMENT	163,668.74	172,590.00	172,590.00	16,273.72	156,316.28	9.43
12.258 - MAGEMENT INFORMTN SERVICE	262,573.38	338,277.00	338,277.00	43,807.15	294,469.85	12.95
13.210 - CITY ATTORNEY	254,682.12	269,600.00	269,600.00	26,756.35	242,843.65	9.92
13.229 - PROSECUTING ATTORNEY	69,159.96	71,660.00	71,660.00	18,115.01	53,544.99	25.28
14.191 - ELECTIONS	250,011.50	266,196.00	266,196.00	86,468.10	179,727.90	32.48
14.215 - CITY CLERK	104,758.86	115,511.00	115,511.00	18,598.24	96,912.76	16.10
15.201 - FINANCE & ADMIN SERVICES	475,091.05	427,882.00	427,882.00	43,573.12	384,308.88	10.18
16.371 - INSPECTIONS	587,199.96	632,504.00	632,504.00	134,601.55	497,902.45	21.28
16.401 - TECH & PLANNING ADMIN.	191,240.55	182,510.00	182,510.00	35,038.99	147,471.01	19.20
16.447 - ENGINEERING	45,210.27	53,603.00	53,603.00	7,270.93	46,332.07	13.56
16.448 - STREET LIGHTING	369,293.50	400,000.00	400,000.00	62,100.82	337,899.18	15.53
17.345 - PUBLIC SAFETY	10,895,656.33	10,730,050.00	10,730,050.00	1,731,476.81	8,998,573.19	16.14
17.346 - PUBLIC SAFETY K-9	210,458.15	196,273.00	196,273.00	29,342.66	166,930.34	14.95
18.265 - BUILDING MAINTENANCE	633,485.50	725,103.00	725,103.00	158,225.56	566,877.44	21.82
18.441 - DPW ADMINISTRATION	17,292.25	19,460.00	19,460.00	3,658.22	15,801.78	18.80
18.443 - SHEPHERD PARK	85,678.32	317,443.00	317,443.00	27,631.15	289,811.85	8.70
18.444 - OTHER PARKS FORESTRY	124,467.49	508,152.00	508,152.00	42,312.18	465,839.82	8.33
19.752 - RECREATION ADMINISTRATION	357,465.85	382,869.00	382,869.00	60,300.43	322,568.57	15.75
19.753 - ATHLETICS	15,993.11	33,793.00	33,793.00	1,661.31	32,131.69	4.92
19.754 - OUTDOOR ACTIVITIES	30,888.63	61,877.00	61,877.00	214.34	61,662.66	0.35
19.755 - INSTRUCTIONAL ACTIVITIES	12,753.10	23,400.00	23,400.00	0.00	23,400.00	0.00
19.756 - SPECIAL RECREATION EVENTS	23,107.11	28,800.00	28,800.00	11,152.24	17,647.76	38.72
19.757 - SWIMMING POOL FACILITY	60,822.33	188,045.00	188,045.00	155.25	187,889.75	0.08
19.776 - SENIOR SERVICES	42,999.90	53,763.00	53,763.00	5,921.72	47,841.28	11.01
21.890 - NON DEPARTMENTAL	4,710,448.99	4,450,169.00	4,450,169.00	1,225,262.47	3,224,906.53	27.53
22.806 - COMMUNICATIONS & PUBLIC INFORMATION	229,104.12	263,202.00	263,202.00	73,976.00	189,226.00	28.11
TOTAL EXPENDITURES	21,155,321.70	21,721,570.00	21,721,570.00	4,099,123.98	17,622,446.02	18.87
TOTAL REVENUES	21,131,580.34	21,721,570.00	21,721,570.00	15,071,966.10	6,649,603.90	69.39
TOTAL EXPENDITURES	21,155,321.70	21,721,570.00	21,721,570.00	4,099,123.98	17,622,446.02	18.87
NET OF REVENUES & EXPENDITURES	(23,741.36)	0.00	0.00	10,972,842.12	(10,972,842.12)	100.00



BUSINESS OF THE CITY COUNCIL, OAK PARK, MICHIGAN

AGENDA OF: November 16, 2020

AGENDA #

SUBJECT: Approval of resolution to authorize Budget Amendment #2021-2

DEPARTMENT: Finance

SUMMARY: The City's annual budget was adopted on May 18, 2020 and is effective July 1st. The budget is adopted at the departmental level. In accordance with the State Budget Act, budget amendments are to be completed throughout the fiscal year in order to reflect the most current information available related to revenue and expenditure budgets. Budget amendments that have a positive or negative impact on fund balance or change the department total require Council approval. The proposed amendments are based on actual and projected activity-to-date.

The first quarter (9/30/20) budget amendment is attached and is also summarized below.

GENERAL FUND	
Unaudited Beginning Fund Balance July 1, 2020	\$ 4,345,540
Amended Budget as of September 30, 2020	\$ 0
Net Change in Fund Balance (Amendment #2021-1)	<u>\$ 0</u>
Estimated Ending Fund Balance June 30, 2021	<u><u>\$4,345,540</u></u>

The following are some additional detail related to the significant items included in the recommended amendment:

- Rollover expenditure budgets for various projects from fiscal year 2019-20 to complete in fiscal year 2020-21.
- Increase state shared revenue to match the State of Michigan's most recent revenue estimates.
- Increase federal grant revenue for revenue received from the state of Michigan in place of the August 2020 statutory revenue sharing payment.
- Adjust various contracts and salaries for any adjustments to date along with any payouts for retirements and related payroll costs.

Overall, this amendment allows for the projects from FY 2019-20 to be completed, and keeps the General Fund balanced on an annual basis when the budget was adopted in May 2020.

AUTHORITIES AND SPECIAL REVENUE FUNDS

- Economic Development Corporation Fund this amendment is for the use the remaining fund balance to support the COVID-19 Business Assistance Package.
- Corridor Improvement Authority this includes rollover budget from fiscal year 2019-20 were not spent on capital related items. The overall net of this amendment will allow completion of the projects budgeted.
- The Major and Local Streets Fund this includes roll over budgets from fiscal year 2019-20 that were not spent on capital related items. The overall net of these amendments will allow completion of the projects budgeted.

CAPTIAL PROJECT FUNDS

- Public Improvement Fund this includes rollover budget from fiscal year 2019-20 that were not spent on capital related items. The overall net of this amendment will allow completion of the project budgeted.
- City Owned Property Fund this includes rollover budget from fiscal year 2019-20 that were not spent on capital related items. The overall net of this amendment will allow completion of the project budgeted.

Note: The State of Michigan does not require budgets for any funds except the General and Special Revenue Funds. The City has chosen to be fiscally responsible and adopt budgets for all funds to assist in monitoring the overall financial activity of the City.

ENTERPRISE FUND

- The Water and Sewer Fund this includes roll over budgets from fiscal year 2019-20 that were not spent on capital related items. The overall net of these amendments will allow purchase of the capital items budgeted.

FINANCIAL STATEMENT: The proposed budget amendment has an impact on the fund balance of General Fund while keeping the estimated fund balance at approximately 21% of annual expenditures. The amendments to all other funds keep the fund balance at targeted ranges and are done in compliance with State of Michigan requirements and guidelines.

RECOMMENDED ACTION: Approval of resolution to authorize Budget Amendment #2021-2

APPROVALS:

City Manager: _____ *ET* _____

Finance Director: _____ *SC* _____

City of Oak Park
Proposed Budget Amendments
September 30, 2020

<u>Account Number</u>	<u>Account Name</u>	<u>Amount</u>	<u>Description</u>
<u>General Fund</u>			
101-00.000-528.000	Federal Grants - SOM CRLGG	\$ 261,635	CARES grant rev in lieu August 2020 statutory rev sharing
101-00.000-574.000	State Grant - State Revenue Sharing	179,123	Increase per estimate from Department of Treasury
101-00.000-644.102	Community Center Rentals	(26,154)	Increase per activity to date (COVID-19 shutdown)
Total Revenue Increase (Decrease)		414,604	
101-11.270-702.000	Salaries and Wages	45,360	Increase for comp absences payout upon retirement
101-11.611-702.000	Salaries and Wages	21,460	Increase due to unplanned compensation adjustment
101-11.611-702.000	Salaries and Wages	17,784	Increase comp for part-time employee switch to full-time
101-11.611-864.000	Conferences & Workshops	625	From department 22.806
101-18.444-970.000	Capital Outlay	260,000	Rollover balance of 9 Mile Linear Park project
101-22.806-801.000	Professional Services	70,000	Additional funding for communications consultant
101-22.806-864.000	Conferences & Workshops	(625)	To department 11.611
Total Expenditure Increase (Decrease)		414,604	
Net Increase (Decrease) to Fund Balance		\$ -	
<u>Economic Development Corporation</u>			
110-00.000-640.000	Miscellaneous Fees	-	
Total Revenue Increase (Decrease)		\$ -	
110-15.201-956.000	Miscellaneous	12,624	COVID-19 Business Assistance Package
Total Expenditure Increase (Decrease)		\$ 12,624	
Net Increase (Decrease) to Fund Balance		\$ (12,624)	
<u>Major Streets Fund</u>			
202-00.000-664.000	Interest Income	\$ -	
Total Revenue Increase (Decrease)		\$ -	
202-18.479-970.000	Capital Outlay	200,000	Rollover balance of 10 Mile Pedestrian Island project
202-18.479-970.000	Capital Outlay	207,319	Rollover balance of 9 Mile Linear Park project
Total Expenditure Increase (Decrease)		\$ 407,319	
Net Increase (Decrease) to Fund Balance		\$ (407,319)	
<u>Local Streets Fund</u>			
203-00.000-664.000	Interest Income	\$ -	
Total Revenue Increase (Decrease)		\$ -	
203-18.479-970.000	Capital Outlay	34,835	Rollover balance of project M-681
203-18.479-970.000	Capital Outlay	131,306	Rollover balance of project M-698
Total Expenditure Increase (Decrease)		\$ 166,141	
Net Increase (Decrease) to Fund Balance		\$ (166,141)	
<u>Corridor Improvement Authority</u>			
251-00.000-546.001	State Grants - Other	4,000	Adjust to actual receipts to date
251-00.000-675.000	Donations	6,600	Adjust to actual receipts to date
Total Revenue Increase (Decrease)		\$ 10,600	
251-00.000-726.000	Materials and Supplies	13,500	Rollover planters and banners fro FY 19/20
251-00.000-970.001	Capital Outlay	15,000	Rollover balance of 11 Mile Streetscape project
251-00.000-970.001	Capital Outlay	40,000	Rollover balance of 9 Mile Linear Park project
251-00.000-970.002	Capital Outlay - Econ Dev Activity	10,000	Rollover balance of COVID-19 Business Assist. project
Total Expenditure Increase (Decrease)		\$ 78,500	
Net Increase (Decrease) to Fund Balance		\$ (67,900)	

**City of Oak Park
Proposed Budget Amendments
September 30, 2020**

<u>Public Improvement Fund</u>			
401-70.900-664.000	Interest Income	\$ -	
	Total Revenue Increase (Decrease)	\$ -	
401-70.900-970.000	Capital Outlay	239,207	Rollover balance of 9 Mile Linear Park project
	Total Expenditure Increase (Decrease)	\$ 239,207	
	Net Increase (Decrease) to Fund Balance	\$ (239,207)	
<u>City Owned Property Fund</u>			
402-00.000-664.000	Interest Income	\$ -	
	Total Revenue Increase (Decrease)	\$ -	
402-18.444-801.000	Professional Services	3,744	MoGo Annual Maintenance Contribution
402-18.444-970.000	Capital Outlay	82,000	Rollover balance of 9 Mile Linear Park project
	Total Expenditure Increase (Decrease)	\$ 85,744	
	Net Increase (Decrease) to Fund Balance	\$ (85,744)	
<u>Water and Sewer Fund</u>			
592-00.000-664.000	Interest Income	\$ -	
	Total Revenue Increase (Decrease)	\$ -	
592-18-540-970.000	Capital Outlay	52,875	Rollover balance of UIS SCADA project
592-18-550-930.000	Repairs & Maintenance	87,899	Rollover balance of project M-700
592-18-550-970.000	Capital Outlay	224,000	Rollover balance of project M-703
	Total Expenditure Increase (Decrease)	\$ 364,774	
	Net Increase (Decrease) to Fund Balance	\$ (364,774)	

Resolution

NOW, THEREFORE BE IT RESOLVED that the following
Budget Amendment #2021-2 is authorized:

	INCREASE (DECREASE)
GENERAL FUND	
REVENUES	
INTERGOVERNMENTAL	\$ 440,758
CHARGES FOR SERVICES	(26,154)
TOTAL REVENUES	<u>414,604</u>
EXPENDITURES	
HUMAN RESOURCES	45,360
COMMUNITY & ECONOMIC DEVELOPMENT	39,869
PUBLIC WORKS	260,000
PUBLIC INFORMATION	69,375
TOTAL EXPENDITURES	<u>414,604</u>
Net Increase to Fund Balance	<u>\$ -</u>
ECONOMIC DEVELOPMENT CORPORATION FUND	
REVENUES	
INTERGOVERNMENTAL	\$ -
TOTAL REVENUES	<u>-</u>
EXPENDITURES	
OPERATIONS	12,624
TOTAL EXPENDITURES	<u>12,624</u>
Net Increase to Fund Balance	<u>\$ (12,624)</u>
	INCREASE (DECREASE)
MAJOR STREETS FUND	
REVENUES	
INTEREST INCOME	\$ -
TOTAL REVENUES	<u>-</u>
EXPENDITURES	
CAPITAL OUTLAY	407,319
TOTAL EXPENDITURES	<u>407,319</u>
Net Increase to Fund Balance	<u>\$ (407,319)</u>
LOCAL STREETS FUND	
REVENUES	
INTEREST INCOME	\$ -
TOTAL REVENUES	<u>-</u>
EXPENDITURES	
CAPITAL OUTLAY	166,141
TOTAL EXPENDITURES	<u>166,141</u>
Net Increase to Fund Balance	<u>\$ (166,141)</u>

CORRIDOR IMPROVEMENT FUND

REVENUES

INTERGOVERNMENTAL	\$ 4,000
OTHER REVENUE	6,600
TOTAL REVENUES	<u>10,600</u>

EXPENDITURES

CAPITAL OUTLAY	78,500
TOTAL EXPENDITURES	<u>78,500</u>

Net Increase to Fund Balance	<u>\$ (67,900)</u>
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PUBLIC IMPROVEMENT FUND

REVENUES

INTEREST INCOME	\$ -
TOTAL REVENUES	<u>-</u>

EXPENDITURES

CAPITAL OUTLAY	239,207
TOTAL EXPENDITURES	<u>239,207</u>

Net Decrease to Fund Balance	<u>\$ (239,207)</u>
	INCREASE
	(DECREASE)

CITY OWNED PROPERTY FUND

REVENUES

INTEREST EARNINGS	\$ -
TOTAL REVENUES	<u>-</u>

EXPENDITURES

OPERATIONS	3,744
CAPITAL OUTLAY	82,000
TOTAL EXPENDITURES	<u>85,744</u>

Net Decrease to Fund Balance	<u>\$ (85,744)</u>
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WATER AND SEWER FUND

REVENUES

INTEREST EARNINGS	\$ -
TOTAL REVENUES	<u>-</u>

EXPENDITURES

REPAIRS AND MAINTENANCE	87,899
CAPITAL OUTLAY	276,875
TOTAL EXPENDITURES	<u>364,774</u>

Net Decrease to Fund Balance	<u>\$ (364,774)</u>
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I certify that the forgoing is a true and complete copy of a Resolution adopted by the City Council of the City of Oak Park at a regular Meeting held on this 16th day of November, 2020.

T. Edwin Norris, City Clerk



BUSINESS OF THE CITY COUNCIL, OAK PARK, MICHIGAN

AGENDA OF: November 16, 2020

SUBJECT: Renewal of Michigan Indigent Defense Commission (MIDC) Counsel Coordinator Professional Services Contracts

DEPARTMENT: Finance Department

SUMMARY: The MIDC was created by legislation in 2013 to ensure the State's public defense system is fair, cost-effective, and constitutional. The MIDC has released a set of standards to be followed by all courts in the State, which have been approved by the Department of Licensing and Regulatory Affairs. Each local system is asked to create a plan and cost analysis annually to ensure compliance with these standards, with costs for compliance being borne by the State. The City worked closely with the District Court and our local MIDC representative to complete a Compliance Plan and cost analysis for Fiscal Year 2020-21 resulting in a fully executed formal grant agreement on October 26, 2020. Our Plan this year includes renewals of the contracts for two Michigan Assigned Counsel Coordinators (MACC). A MACC is responsible for maintaining a roster of defense attorneys, evaluating performance, approving payments, authorizing investigative resources, working with the City's Finance Department to submit quarterly reports, and performing other duties to ensure the City's compliance with MIDC Standards.

FINANCIAL STATEMENT: The combined \$85,000 professional services contracts are fully funded by a State MIDC grant.

RECOMMENDED ACTION: Approve Counsel Coordinator Professional Services Contracts subject to further attorney review and approval.

APPROVALS:

City Manager: _____ *ET* _____

Director of Finance: _____ *SC* _____

Budgeted: ☒ *x*

Legal: _____

EXHIBITS: Two independent contractor agreements for MACC professional services.

INDEPENDENT CONTRACTOR AGREEMENT

This Agreement (the "Agreement") is made on October 1, 2020, by and between City of Oak Park, (the "City"), located at 14000 Oak Park Blvd., Michigan 48237 in the County of Oakland, and John Angott, (the "Independent Contractor" or "Contractor") located at 1902 N Connecticut Ave., Royal Oak, Michigan 48073.

RECITALS

WHEREAS, The Independent Contractor is being secured to provide services described below at the 45th District Court located at 13600 Oak Park Blvd., Oak Park, Michigan 48237, from the Contractor's principal place of business, or such other place as Contractor deems appropriate. The Independent Contractor represents that s/he has complied with all Federal, State and local laws regarding business permits, licenses, reporting requirements, tax withholding requirements, and other legal requirements of any kind that may be required to carry out said business and the Scope of Work which is to be performed as an Independent Contractor pursuant to this Agreement, consistent with the City of Oak Park and 45th District Court approved "Compliance Plan for Indigent Defense" which shall be incorporated by reference into this Agreement and if requested, shall provide his/her Employer Tax ID Number to City.

WHEREAS, The Independent Contractor holds itself out to the public to be a separate business entity and shall not be considered an employee or agent of the City.

WHEREAS, The City desires to hire and contract for the services of the Independent Contractor to perform tasks as set forth herein. The Independent Contractor assents to this Agreement and to act and perform as an Independent Contractor for the aforementioned City and is willing to do so on the terms and conditions as set forth below.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and conditions contained within this Agreement, the Parties agree as follows:

AGREEMENT

1. INDEPENDENT CONTRACTOR REPRESENTATION

The implementation of this Agreement does not constitute a hiring by either party. It is the intention of the parties that the Independent Contractor shall maintain an independent contractor status and shall not be considered an employee for any purposes, including, but not limited to, the application of the Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, provisions of the Federal Internal Revenue Code,

State Revenue and Taxations Code relating to income tax withholding, Workers' Compensation Insurance and other benefit payments and third party liability claims.

Therefore, staying within the Scope of Work, the Independent Contractor shall retain sole and absolute discretion in the manner and means for the carrying out of his/her activities and responsibilities contained in this Agreement. This Agreement shall not be construed or considered to be a partnership or joint venture, and the City shall not be held liable for any obligations incurred by the Independent Contractor, unless otherwise specifically authorized as such in writing. The Independent Contractor shall not act as an agent or representative of the City, superficially or otherwise, nor bind the City in any manner, unless specifically authorized to do so in writing.

2. RESPONSIBILITIES, DUTIES AND SCOPE OF WORK

The Independent Contractor agrees to devote the necessary amount of time, energy and attention required to satisfactorily complete, conclude and/or archive the following duties/responsibilities:

Indigent Counsel Coordinator shall be responsible for coordination of the 45th District Court indigent criminal defense program to ensure defendants who wish legal counsel receive competent legal representation in criminal proceedings in the 45th District Court consistent with the City of Oak Park and 45th District Court approved "Compliance Plan for Indigent Defense" which shall be incorporated by reference into this agreement.

It is expected that the above detailed services, tasks and responsibilities and term of this agreement shall run until September 30, 2021, barring any reasonably unforeseeable circumstances.

The Independent Contractor shall perform any and all responsibilities and duties that may be associated within the Scope of Work set for above, including, but not limited to, work which may already be in progress or any related change orders. The Independent Contractor shall have full discretion within the Scope of Work but shall not engage in any activity which is not expressly set forth by this Agreement without first obtaining prior written authorization.

3. DOCUMENTS, RECORDS OR BOOKS

Any and all documents, records or books which may be related to the Scope of Work, as set forth herein this Agreement, shall be maintained by the Independent Contractor and open to inspection by the City during regular working business hours. The documents, records and/or books to which the City shall be entitled to inspect and receive copies of

include, but are not limited to, any and all contract documents, orders, work product and other documents prepared in performance of the Scope of Work.

4. WORK SCHEDULE, EQUIPMENT AND SUPPLIES

The Independent Contractor shall report to requests for information and shall be available to meet, as requested by the City Manager of the City. However, the Independent Contractor shall not be required to follow or establish a regular or daily work schedule.

The Independent Contractor shall supply all necessary equipment, materials and supplies needed to complete the agreed upon Scope of Work.

5. COMPENSATION

The Independent Contractor shall be entitled to compensation for the performance of those tasks, responsibilities and/or duties related to the Scope of Work as follows:

Compensation Terms: Independent Counsel Coordinator shall submit invoices bi-weekly (26 annual invoice dates) to the 45th District Court Administrator who shall forward the invoice to the City of Oak Park Finance Department for payment.

Total Annual Compensation Amount: \$42,500.00

Bi-Weekly Compensation Amount: \$1,634.61

Said compensation shall become due and payable to the Independent Contractor upon receipt of an invoice by the City and payable pursuant to the following schedule and method:

Compensation Schedule: bi-weekly (26 weeks annually)

6. TAX WITHHOLDING

The City shall complete an IRS Form 1099 and shall proffer that IRS Form 1099 to the Independent Contractor within the filing timetables set pursuant to the Federal Tax Code. The Independent Contractor shall be required by law to file corporate and/or individual tax returns, and to pay said taxes pursuant to all provisions of applicable Federal, State and Local laws. The City shall not be liable to or required to reimburse the Contractor for any federal, state or local taxes or fees of any kind. The Independent Contractor agrees to indemnify the City for any damages or expenses, including any related attorney's fees, and legal expenses incurred by the City as a result of Independent Contractor's failure to make such required payments.

7. BENEFIT RIGHTS WAIVER

The Independent Contractor waives and foregoes any and all right to receive any benefits that may be provided by the City to its employees, including, but not limited to, health benefits, vacation, retirement, profit sharing plans, sick leave, and any retirement plans. The Independent Contractor acknowledges and agrees that if any government agency or court of law claims that the Independent Contractor is an employee, s/he agrees to waive coverage under these plans. This waiver is applicable to all non-salary benefits which might otherwise be found to accrue to the Independent Contractor by virtue of his/her Agreement with the City. This waiver is effective independently of the Independent Contractor's employment status as adjudicated for taxation purposes or for any other purpose.

8. NON-PARTNERSHIP OR OWNERSHIP CAUSE

Neither the Independent Contractor nor any of his/her representatives, agents or principals shall become or be considered an owner, partner, joint venture with or agent of the City or any of its subsidiaries, affiliates or related companies or businesses by reason of this Agreement or their relationship with the City unless otherwise declared or stipulated in a separate written agreement that has been signed and dated by all parties. Neither the City, Independent Contractor nor any representative, agent, principal, officer or anyone who may be retained by the Independent Contractor shall have any authority to bind the City in any respect unless otherwise set forth in a separate written agreement which has been signed and dated by all parties.

9. RETURN OF CITY PROPERTY

Upon the termination of this Agreement, or at the request of either party, each party shall promptly and immediately deliver to the other party any and all property in its possession or under its care and control belonging to the other party, including but not limited to, proprietary information, trade secrets, intellectual property, computers, equipment, pass keys, City identification, tools, documents, plans, recordings, software, and all related records and/or accounting/financial information.

10. EXPENSES

Both the Independent Contractor and the City agree to maintain separate financial accounts with regards to all expenses related to performing the Scope of Work. The Independent Contractor shall be solely responsible for payment of all his/her out of pocket expenses incurred pursuant to this Agreement unless otherwise provided in writing by the City. The Independent Contractor agrees to execute and deliver any agreements and documents prepared by the City and to do all other lawful acts required to establish, document and protect such rights.

11. TERMINATION OF AGREEMENT FOR CAUSE

If at any time the City believes that the Independent Contractor may not be adequately performing their obligations under this Agreement or may be likely to fail to complete their work/services on time as required by this Agreement, then the City may request from the Independent Contractor written assurances of performance and a written plan to correct observed deficiencies in the Independent Contractor's performance. Any failure to provide such written assurances constitutes grounds to declare a default under this Agreement.

The Independent Contractor, at such time, shall be deemed to be in default of this Agreement and the City may, in addition to any other legal or equitable remedies available to the City, terminate the Independent Contractor's right to proceed under this Agreement, for cause, should the Independent Contractor commit a breach of this Agreement and not cure said breach within ten (10) business days of the date of notice from the City demanding such cure; or if such failure is curable but not within the ten (10) day period required, within such period of time as is reasonably necessary to accomplish such cure. In addition, in order for the Independent Contractor to avail itself of this time period in excess of ten (10) business days from the date of the notice, the Independent Contractor must provide the City a written plan acceptable to and by the City to cure said breach, and then diligently commence and continue such cure in accordance to the written plan provided.

In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a Termination for Convenience, and the Independent Contractor shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered.

12. TERMINATION FOR CONVENIENCE

The City may terminate performance of the Independent Contractor's work and/or services under the Agreement pursuant to this paragraph in whole, or in part, whenever the City shall determine that termination is in their best interest. Termination shall be effected by delivery of a written notice to the Independent Contractor of termination specifying the extent to which performance of the work and/or services under this Agreement is terminated, and the date upon which termination shall become effective, which shall be no less than thirty (30) business days from the date the notice of termination is delivered. The Independent Contractor shall then be entitled to recover any costs expended up to that point plus a reasonable profit, but not other loss, damage, expense or liability may be claimed, requested or recovered.

The Independent Contractors may terminate and/or cancel this Contract (or any part thereof) at any time during the Term, any renewal, or any extension of this Contract, upon thirty (30) days written notice to the City, for any reason, including convenience, without incurring obligation or penalty of any kind. The effective date of termination or cancellation will be clearly stated in the written notice.

Except as provided in this Agreement, in no event shall either party be liable for any costs incurred by or on behalf of the other party after the effective date of the notice of termination. The termination pursuant to the provisions contained within this paragraph shall not be construed as a waiver of any right or remedy otherwise available to either party.

13. PROFESSIONAL CONDUCT

The Independent Contractor shall be required to treat all City employees, defendants, staff, witnesses, experts, others and other affiliates with respect and responsibility. The Independent Contractor shall be required to comply with all laws or regulations that will permit them to complete the Scope of Work.

14. GENERAL LIABILITY INSURANCE AND WORKERS' COMPENSATION COVERAGE

The Independent Contractor agrees to promptly provide to the City proof of General Liability Insurance, upon request of the City, and Workers' Compensation Coverage where required by law.

15. INDEPENDENT CONTRACTOR EMPLOYEES

All persons who have been hired by the Independent Contractor to assist in the performance of the duties, tasks and responsibilities that are necessary to complete the Scope of Work, shall be considered the employees of the Independent Contractor, unless otherwise specifically noted in an agreement signed by all parties. The Independent Contractor shall immediately provide proof of Workers' Compensation insurance and General Liability insurance on said employees, upon request of the City.

16. NOTICES

Any and all notices, which may be required hereunder by any party to the other party, shall be executed by either personal delivery in writing, or by mail, registered or certified, postage pre-paid with a return receipt requested. Mailed notices must be addressed to the parties at the addresses herein contained in this Agreement. However, each party may change their address, thus requiring written notice of such change of address in accordance with this section. Any hand delivered notice shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated after five (5) days of mailing. The Independent Contractor herein agrees to keep the City informed of any change of business

and/or mailing addresses, as well as telephone, facsimile, email, pager number or any other relevant means of contact and communication.

17. INJUNCTIVE RELIEF

The Independent Contractor herein acknowledges (1) the unique nature of the protections and provisions established and contained within this Agreement, (2) that the City shall suffer irreparable harm if the Independent Contractor should breach any of said protections or provisions, and (3) that monetary damages would be inadequate to compensate the City for said breach. Therefore, should the independent Contractor cause a breach of any of the provisions contained within this Agreement, then the City shall be entitled to injunctive relief, in addition to any other remedies at law or equity, to enforce such provisions.

18. INDEMNIFICATION

The Independent Contractor shall defend, indemnify, hold harmless, and insure the City from any and all potential damages, expenses or liabilities which may result from or arise out of any negligence or misconduct on part of the Independent Contractor, or from any breach or default of this Agreement which may be caused or occasioned by the acts of the Independent Contractor. The Independent Contractor shall also insure that all of its employees and affiliates take all actions necessary to comply with all herein contained terms and conditions established and set forth in this Agreement. Furthermore, the Independent Contractor shall name the City as an additional insured on all related insurance policies including worker's compensation and general liability. However, the Independent Contractors will have no obligation to indemnify the City for any indirect, incidental, special, punitive or consequential damages, including without limitation damages for lost profits.

19. ENTIRE AGREEMENT

This Agreement shall be considered a separate and an independent document of which it shall supersede any and all other Agreements, either oral or written, between the parties.

20. REPRESENTATION

All Parties to this Agreement herein acknowledge that no representation, inducements, promises or other agreements, orally or otherwise, have been made by any party hereto, or by anyone action on behalf of any party hereto, which are not included herein, and that no other agreement, statement or promise not contained within this Agreement shall be valid or binding. Any alteration or modification of this Agreement shall be effective only when done so in writing, signed and dated by all parties hereto.

21. COUNTERPARTS

This Agreement, at the discretion of the parties herein, may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute a single integrated document.

22. SEVERABILITY

In the event that any provision, clause, sentence, section or other part of the Contract is held to be invalid, illegal, inapplicable, unconstitutional, contrary to public policy, void or unenforceable in law to any person or circumstance, the balance of the Agreement shall nevertheless remain in full force and effect so long as the Purpose of the Agreement is not affected in any manner adverse to either party.

23. WAIVER

If either Party fails to enforce any provision contained within this Agreement, it shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

24. DRAFTING AMBIGUITIES

All Parties to this Agreement have reviewed and had the opportunity to revise this Agreement, have had the opportunity to have legal counsel review and or revise this Agreement. The rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or of any amendments or exhibits to this Agreement.

25. JURISDICTION AND VENUE

This Agreement is to be construed pursuant to the current laws of the State of Michigan. Jurisdiction and venue for any claim arising out of this Agreement shall be made in the State of Michigan, in the County of Oakland.

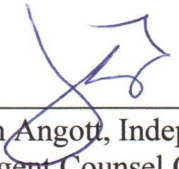
26. COPIES

Both the Independent Contractor and the City acknowledges that they have received a signed copy of this Agreement.

THE UNDERSIGNED HAVE READ, UNDERSTAND and ACCEPT THIS AGREEMENT, and by signing this Agreement, acknowledge they have authority to execute the Agreement, and all parties agree to all of the aforementioned terms, conditions and policies.

Erik Tungate, City of Oak Park
City Manager

Date: _____



John Angott, Independent Contractor-
Indigent Counsel Coordinator

Date: 10/21/2020

INDEPENDENT CONTRACTOR AGREEMENT

This Agreement (the "Agreement") is made on October 1, 2020, by and between City of Oak Park, (the "City"), located at 14000 Oak Park Blvd., Michigan 48237 in the County of Oakland, and Karolyn Miller, (the "Independent Contractor" or "Contractor") located at 3138 Royal Ave, Berkley, Michigan 48072.

RECITALS

WHEREAS, The Independent Contractor is being secured to provide services described below at the 45th District Court located at 13600 Oak Park Blvd., Oak Park, Michigan 48237, from the Contractor's principal place of business, or such other place as Contractor deems appropriate. The Independent Contractor represents that s/he has complied with all Federal, State and local laws regarding business permits, licenses, reporting requirements, tax withholding requirements, and other legal requirements of any kind that may be required to carry out said business and the Scope of Work which is to be performed as an Independent Contractor pursuant to this Agreement, consistent with the City of Oak Park and 45th District Court approved "Compliance Plan for Indigent Defense" which shall be incorporated by reference into this Agreement and if requested, shall provide his/her Employer Tax ID Number to City.

WHEREAS, The Independent Contractor holds itself out to the public to be a separate business entity and shall not be considered an employee or agent of the City.

WHEREAS, The City desires to hire and contract for the services of the Independent Contractor to perform tasks as set forth herein. The Independent Contractor assents to this Agreement and to act and perform as an Independent Contractor for the aforementioned City and is willing to do so on the terms and conditions as set forth below.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and conditions contained within this Agreement, the Parties agree as follows:

AGREEMENT

1. INDEPENDENT CONTRACTOR REPRESENTATION

The implementation of this Agreement does not constitute a hiring by either party. It is the intention of the parties that the Independent Contractor shall maintain an independent contractor status and shall not be considered an employee for any purposes, including, but not limited to, the application of the Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, provisions of the Federal Internal Revenue Code,

State Revenue and Taxations Code relating to income tax withholding, Workers' Compensation Insurance and other benefit payments and third party liability claims.

Therefore, staying within the Scope of Work, the Independent Contractor shall retain sole and absolute discretion in the manner and means for the carrying out of his/her activities and responsibilities contained in this Agreement. This Agreement shall not be construed or considered to be a partnership or joint venture, and the City shall not be held liable for any obligations incurred by the Independent Contractor, unless otherwise specifically authorized as such in writing. The Independent Contractor shall not act as an agent or representative of the City, superficially or otherwise, nor bind the City in any manner, unless specifically authorized to do so in writing.

2. RESPONSIBILITIES, DUTIES AND SCOPE OF WORK

The Independent Contractor agrees to devote the necessary amount of time, energy and attention required to satisfactorily complete, conclude and/or archive the following duties/responsibilities:

Indigent Counsel Coordinator shall be responsible for coordination of the 45th District Court indigent criminal defense program to ensure defendants who wish legal counsel receive competent legal representation in criminal proceedings in the 45th District Court consistent with the City of Oak Park and 45th District Court approved "Compliance Plan for Indigent Defense" which shall be incorporated by reference into this agreement.

It is expected that the above detailed services, tasks and responsibilities and term of this agreement shall run until September 30, 2021, barring any reasonably unforeseeable circumstances.

The Independent Contractor shall perform any and all responsibilities and duties that may be associated within the Scope of Work set for above, including, but not limited to, work which may already be in progress or any related change orders. The Independent Contractor shall have full discretion within the Scope of Work but shall not engage in any activity which is not expressly set forth by this Agreement without first obtaining prior written authorization.

3. DOCUMENTS, RECORDS OR BOOKS

Any and all documents, records or books which may be related to the Scope of Work, as set forth herein this Agreement, shall be maintained by the Independent Contractor and open to inspection by the City during regular working business hours. The documents, records and/or books to which the City shall be entitled to inspect and receive copies of

include, but are not limited to, any and all contract documents, orders, work product and other documents prepared in performance of the Scope of Work.

4. WORK SCHEDULE, EQUIPMENT AND SUPPLIES

The Independent Contractor shall report to requests for information and shall be available to meet, as requested by the City Manager of the City. However, the Independent Contractor shall not be required to follow or establish a regular or daily work schedule.

The Independent Contractor shall supply all necessary equipment, materials and supplies needed to complete the agreed upon Scope of Work.

5. COMPENSATION

The Independent Contractor shall be entitled to compensation for the performance of those tasks, responsibilities and/or duties related to the Scope of Work as follows:

Compensation Terms: Independent Counsel Coordinator shall submit invoices bi-weekly (26 annual invoice dates) to the 45th District Court Administrator who shall forward the invoice to the City of Oak Park Finance Department for payment.

Total Annual Compensation Amount: \$42,500.00

Bi-Weekly Compensation Amount: \$1,634.61

Said compensation shall become due and payable to the Independent Contractor upon receipt of an invoice by the City and payable pursuant to the following schedule and method:

Compensation Schedule: bi-weekly (26 weeks annually)

6. TAX WITHHOLDING

The City shall complete an IRS Form 1099 and shall proffer that IRS Form 1099 to the Independent Contractor within the filing timetables set pursuant to the Federal Tax Code. The Independent Contractor shall be required by law to file corporate and/or individual tax returns, and to pay said taxes pursuant to all provisions of applicable Federal, State and Local laws. The City shall not be liable to or required to reimburse the Contractor for any federal, state or local taxes or fees of any kind. The Independent Contractor agrees to indemnify the City for any damages or expenses, including any related attorney's fees, and legal expenses incurred by the City as a result of Independent Contractor's failure to make such required payments.

7. BENEFIT RIGHTS WAIVER

The Independent Contractor waives and foregoes any and all right to receive any benefits that may be provided by the City to its employees, including, but not limited to, health benefits, vacation, retirement, profit sharing plans, sick leave, and any retirement plans. The Independent Contractor acknowledges and agrees that if any government agency or court of law claims that the Independent Contractor is an employee, s/he agrees to waive coverage under these plans. This waiver is applicable to all non-salary benefits which might otherwise be found to accrue to the Independent Contractor by virtue of his/her Agreement with the City. This waiver is effective independently of the Independent Contractor's employment status as adjudicated for taxation purposes or for any other purpose.

8. NON-PARTNERSHIP OR OWNERSHIP CAUSE

Neither the Independent Contractor nor any of his/her representatives, agents or principals shall become or be considered an owner, partner, joint venture with or agent of the City or any of its subsidiaries, affiliates or related companies or businesses by reason of this Agreement or their relationship with the City unless otherwise declared or stipulated in a separate written agreement that has been signed and dated by all parties. Neither the City, Independent Contractor nor any representative, agent, principal, officer or anyone who may be retained by the Independent Contractor shall have any authority to bind the City in any respect unless otherwise set forth in a separate written agreement which has been signed and dated by all parties.

9. RETURN OF CITY PROPERTY

Upon the termination of this Agreement, or at the request of either party, each party shall promptly and immediately deliver to the other party any and all property in its possession or under its care and control belonging to the other party, including but not limited to, proprietary information, trade secrets, intellectual property, computers, equipment, pass keys, City identification, tools, documents, plans, recordings, software, and all related records and/or accounting/financial information.

10. EXPENSES

Both the Independent Contractor and the City agree to maintain separate financial accounts with regards to all expenses related to performing the Scope of Work. The Independent Contractor shall be solely responsible for payment of all his/her out of pocket expenses incurred pursuant to this Agreement unless otherwise provided in writing by the City. The Independent Contractor agrees to execute and deliver any agreements and documents prepared by the City and to do all other lawful acts required to establish, document and protect such rights.

11. TERMINATION OF AGREEMENT FOR CAUSE

If at any time the City believes that the Independent Contractor may not be adequately performing their obligations under this Agreement or may be likely to fail to complete their work/services on time as required by this Agreement, then the City may request from the Independent Contractor written assurances of performance and a written plan to correct observed deficiencies in the Independent Contractor's performance. Any failure to provide such written assurances constitutes grounds to declare a default under this Agreement.

The Independent Contractor, at such time, shall be deemed to be in default of this Agreement and the City may, in addition to any other legal or equitable remedies available to the City, terminate the Independent Contractor's right to proceed under this Agreement, for cause, should the Independent Contractor commit a breach of this Agreement and not cure said breach within ten (10) business days of the date of notice from the City demanding such cure; or if such failure is curable but not within the ten (10) day period required, within such period of time as is reasonably necessary to accomplish such cure. In addition, in order for the Independent Contractor to avail itself of this time period in excess of ten (10) business days from the date of the notice, the Independent Contractor must provide the City a written plan acceptable to and by the City to cure said breach, and then diligently commence and continue such cure in accordance to the written plan provided.

In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a Termination for Convenience, and the Independent Contractor shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered.

12. TERMINATION FOR CONVENIENCE

The City may terminate performance of the Independent Contractor's work and/or services under the Agreement pursuant to this paragraph in whole, or in part, whenever the City shall determine that termination is in their best interest. Termination shall be effected by delivery of a written notice to the Independent Contractor of termination specifying the extent to which performance of the work and/or services under this Agreement is terminated, and the date upon which termination shall become effective, which shall be no less than thirty (30) business days from the date the notice of termination is delivered. The Independent Contractor shall then be entitled to recover any costs expended up to that point plus a reasonable profit, but not other loss, damage, expense or liability may be claimed, requested or recovered.

The Independent Contractors may terminate and/or cancel this Contract (or any part thereof) at any time during the Term, any renewal, or any extension of this Contract, upon thirty (30) days written notice to the City, for any reason, including convenience, without incurring obligation or penalty of any kind. The effective date of termination or cancellation will be clearly stated in the written notice.

Except as provided in this Agreement, in no event shall either party be liable for any costs incurred by or on behalf of the other party after the effective date of the notice of termination. The termination pursuant to the provisions contained within this paragraph shall not be construed as a waiver of any right or remedy otherwise available to either party.

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The Independent Contractor shall be required to treat all City employees, defendants, staff, witnesses, experts, others and other affiliates with respect and responsibility. The Independent Contractor shall be required to comply with all laws or regulations that will permit them to complete the Scope of Work.

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This Agreement is to be construed pursuant to the current laws of the State of Michigan. Jurisdiction and venue for any claim arising out of this Agreement shall be made in the State of Michigan, in the County of Oakland.

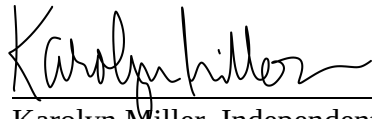
26. COPIES

Both the Independent Contractor and the City acknowledges that they have received a signed copy of this Agreement.

THE UNDERSIGNED HAVE READ, UNDERSTAND and ACCEPT THIS AGREEMENT, and by signing this Agreement, acknowledge they have authority to execute the Agreement, and all parties agree to all of the aforementioned terms, conditions and policies.

Erik Tungate, City of Oak Park
City Manager

Date: _____



Karolyn Miller, Independent Contractor-
Indigent Counsel Coordinator

Date: 10-21-20



BUSINESS OF THE CITY COUNCIL, OAK PARK, MICHIGAN

AGENDA OF: November 16, 2020

SUBJECT: County Wide Radio Project

DEPARTMENT: Public Safety

SUMMARY: The Department of Public Safety had budgeted \$120,000 for the County wide radio project in Capital Outlay for the fiscal year of 2021-2022. The current County Prep and Mobile Radio system has reached its sunset date and will have to be replaced. A portion of the cost will be absorbed by Oakland County through the use of 911 fees. The remaining balance will have to be covered by the individual agencies.

In February of 2020, we were advised by Oakland County what equipment we would be receiving. Based off the loose pricing provided by the County, we estimated that a budget of \$120,000 would cover the cost of the project. We were also advised to have the funds available for the fiscal year budget for 2021-2022.

In August of 2020, Oakland County had "locked in pricing" for the equipment which came in a little higher than originally estimated and some items require accessories that are not covered by the County. The new price is \$124,000. With that being said, the vendor providing the equipment is offering agencies an additional discount if the purchase order is placed by December 1, 2020.

If we take advantage of the early purchase discount, our price will be \$113,695.50. Which amounts to a savings of \$10,304.50. Public Safety would then be required to make payment 30 days after shipment. This would make the payment date January of 2021. In essence we would be making the purchase 5 months early to realize the additional savings of \$10,304.50.

If Council approves the early purchase I would respectfully request that the \$120,000 originally budgeted for the project remain to cover the costs of unknown expenses to adapt our telephone recording system to the new system and costs associated with wiring accessories for patrol vehicles. The expenses will not be known until the equipment and technicians are on site to evaluate both. After subtracting the \$113,695.50 from the \$120,000 originally budgeted,

this will leave a net of \$6,304.50 to cover the costs of the unknown expenses previously mentioned.

FINANCIAL STATEMENT: Costs Included in agenda summary

RECOMMENDED ACTION: It is recommended that City Council approve the early purchase of the County Wide Radio Project in the amount of \$113,695.50 and authorize the use of the \$6,304.50 balance from the original estimate of \$120,000 be used to cover the unknown expenses to adapt the system to our current infrastructure/patrol vehicles.

APPROVALS:

City Manager: _____ *ET* _____

Department Director: _____ *SCooper* _____

Director of Finance: _____ *SC* _____

Budgeted: ☐ Not budgeted

EXHIBITS: NA



BUSINESS OF THE CITY COUNCIL, OAK PARK, MICHIGAN

AGENDA OF: November 16, 2020

SUBJECT: Nationwide Loan Program Adoption

DEPARTMENT: Human Resources

SUMMARY: This item is to approve a Loan Program Adoption Agreement through Nationwide, one of the City's voluntary 457 programs.

FINANCIAL STATEMENT: N/A

RECOMMENDED ACTION: It is recommended that City Council approve the Loan Program Adoption Agreement.

APPROVALS:

City Manager: _____ *ET*

Department Director: _____ *MB*

Director of Finance: _____

Budgeted: ☐ Not budgeted

EXHIBITS: NA

**OAK PARK MI
457(B) DEFERRED COMPENSATION PLAN**

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ARTICLE I DEFINITIONS

1.01 "Account" means the separate Account(s) which the Plan Administrator or the Trustee maintains under the Plan for a Participant's Deferred Compensation. The Plan Administrator or Trustee may establish separate Accounts for multiple Beneficiaries of a Participant to facilitate required minimum distributions under Section 4.03 based on each Beneficiary's life expectancy.

1.02 "Accounting Date" means the last day of the Plan Year. The Plan Administrator will allocate Employer contributions and forfeitures for a particular Plan Year as of the Accounting Date of that Plan Year, and on such other dates, if any, as the Plan Administrator determines, consistent with the Plan's allocation conditions and other provisions.

1.03 "Beneficiary" means a person who the Plan or a Participant designates and who is or may become entitled to a Participant's Account upon the Participant's death. A Beneficiary who becomes entitled to a benefit under the Plan remains a Beneficiary under the Plan until the Plan Administrator or Trustee has fully distributed to the Beneficiary his or her Plan benefit. A Beneficiary's right to (and the Plan Administrator's or a Trustee's duty to provide to the Beneficiary) information or data concerning the Plan does not arise until the Beneficiary first becomes entitled to receive a benefit under the Plan.

1.04 "Code" means the Internal Revenue Code of 1986, as amended.

1.05 "Compensation"

(A) Uses and Context. Any reference in the Plan to Compensation is a reference to the definition in this Section 1.05, unless the Plan reference, or the Employer in the Adoption Agreement, modifies this definition. Except as the Plan otherwise specifically provides, the Plan Administrator will take into account only Compensation actually paid during (or as permitted under the Code, paid for) the relevant period. A Compensation payment includes Compensation paid by the Employer through another person under the common paymaster provisions in Code §§3121 and 3306. In the case of an Independent Contractor, Compensation means the amounts the Employer pays to the Independent Contractor for services, except as the Employer otherwise specifies in the Adoption Agreement. The Employer in the Adoption Agreement may elect to allocate contributions based on a Compensation within specified 12 month period which ends within a Plan Year.

(B) Base Definitions and Modifications. The Employer in the Adoption Agreement must elect one of the following base definitions of Compensation: W-2 Wages, Code §3401(a) Wages, or 415 Compensation. The Employer may elect a different base definition as to different Contribution Types. The Employer in the Adoption Agreement may specify any modifications thereto, for purposes of contribution allocations under Article III. If the Employer fails to elect one of the above-referenced definitions, the Employer is deemed to have elected the W-2 Wages definition.

(1) W-2 Wages. W-2 Wages means wages for federal income tax withholding purposes, as defined under Code §3401(a), plus all other payments to an Employee in the course of the Employer's trade or business, for which the Employer must furnish the Employee a written statement under Code §§6041, 6051, and 6052, but determined without regard to any rules that limit the remuneration included in wages based on the

nature or location of the employment or services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

(2) Code §3401(a) Wages (income tax wage withholding). Code §3401(a) Wages means wages within the meaning of Code §3401(a) for the purposes of income tax withholding at the source, but determined without regard to any rules that limit the remuneration included in wages based on the nature or the location of the employment or the services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

(3) Code §415 Compensation (current income definition/simplified compensation under Treas. Reg. §1.415(c)-2(d)(2)). Code §415 Compensation means the Employee's wages, salaries, fees for professional service and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits and reimbursements or other expense allowances under a nonaccountable plan as described in Treas. Reg. §1.62-2(c)).

Code §415 Compensation does not include:

(a) Deferred compensation/SEP/SIMPLE. Employer contributions (other than Elective Deferrals) to a plan of deferred compensation (including a simplified employee pension plan under Code §408(k) or to a simple retirement account under Code §408(p)) to the extent the contributions are not included in the gross income of the Employee for the Taxable Year in which contributed, and any distributions from a plan of deferred compensation (whether or not qualified), regardless of whether such amounts are includible in the gross income of the Employee when distributed.

(b) Option exercise. Amounts realized from the exercise of a non-qualified stock option (an option other than a statutory option under Treas. Reg. §1.421-1(b)), or when restricted stock or other property held by an Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture under Code §83.

(c) Sale of option stock. Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option as defined under Treas. Reg. §1.421-1(b).

(d) Other amounts that receive special tax benefits. Other amounts that receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includible in the gross income of the Employee and are not salary reduction amounts under Code §125).

(e) Other similar items. Other items of remuneration which are similar to any of the items in Sections 1.11(B)(3)(a) through (d).

(4) Alternative (general) 415 Compensation. Under this definition, Compensation means as defined in Section 1.05(B)(3) but with the addition of: (a) amounts described in Code §§104(a)(3), 105(a), or 105(h) but only to the extent that these amounts are includible in Employee's gross income; (b) amounts paid or reimbursed by the Employer for moving expenses incurred by the Employee, but only to the extent that at the time of payment it is reasonable to believe these amounts are not deductible by the Employee under Code §217; (c) the value of a nonstatutory option (an option other than a statutory option under Treas. Reg. §1.421-1(b)) granted by the Employer to the an Employee, but only to the extent that the value of the option is includible in the Employee's gross income for the Taxable Year of the grant; (d) the amount includible in the Employee's gross income upon the Employee's making of an election under Code §83(b); and (e) amounts that are includible in the Employee's gross income under Code §409A or Code §457(f)(1)(A) or because the amounts are constructively received by the Participant. [Note if the Plan's definition of Compensation is W-2 Wages or Code §3401(a) Wages, then Compensation already includes the amounts described in clause (e).]

(C) Deemed 125 Compensation. Deemed 125 Compensation means, in the case of any definition of Compensation which includes a reference to Code §125, amounts under a Code §125 plan of the Employer that are not available to a Participant in cash in lieu of group health coverage, because the Participant is unable to certify that he/she has other health coverage.

(D) Modification to Compensation. The Employer must specify in the Adoption Agreement the Compensation the Plan Administrator is to take into account in allocating Deferral Contributions to a Participant's Account. For all Plan Years other than the Plan Year in which the Employee first becomes a Participant, the Plan Administrator will take into account only the Compensation determined for the portion of the Plan Year in which the Employee actually is a Participant.

(E) Elective Contributions. Compensation under Section 1.05 includes Elective Contributions unless the Employer in the Adoption Agreement elects to exclude Elective Contributions. "Elective Contributions" are amounts excludible from the Employee's gross income under Code §§125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b), 408(p) or 457, and contributed by the Employer, at the Employee's election, to a cafeteria plan, a qualified transportation fringe benefit plan, a 401(k) arrangement, a SARSEP, a tax-sheltered annuity, a SIMPLE plan or a Code §457 plan.

(F) Post-Severance Compensation. Compensation includes Post-Severance Compensation to the extent the Employer elects in the Adoption Agreement or as the Plan otherwise provides. Post-Severance Compensation is Compensation paid after a Participant's Severance from Employment from the Employer, as further described in this Section 1.05(F). As the Employer elects, Post-Severance Compensation may include any or all of regular pay, leave cash-outs, or deferred compensation paid within the time period described in Section 1.05(F)(1), and may also include salary continuation for disabled Participants, all as defined below. Any other payment paid after Severance from Employment that is not described in this Section 1.05(F) is not Compensation even if payment is made within the time period described below. Post-Severance Compensation does not include severance pay, parachute payments under Code §280G(b)(2) or payments under a nonqualified unfunded deferred compensation plan unless the payments would have

been paid at that time without regard to Severance from Employment.

(1) Timing. Post-Severance Compensation includes regular pay, leave cashouts, or deferred compensation only to the extent the Employer pays such amounts by the later of 2 1/2 months after Severance from Employment or by the end of the Limitation Year that includes the date of such Severance from Employment.

(a) Regular pay. Regular pay means the payment of regular Compensation for services during the Participant's regular working hours, or Compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, but only if the payment would have been paid to the Participant prior to a Severance from Employment if the Participant had continued in employment with the Employer.

(b) Leave cash-outs. Leave cash-outs means payments for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued and if Compensation would have included those amounts if they were paid prior to the Participant's Severance from Employment.

(c) Deferred compensation. As used in this Section 1.05(F), deferred compensation means the payment of deferred compensation pursuant to an unfunded deferred compensation plan, if Compensation would have included the Deferred Compensation if it had been paid prior to the Participant's Severance from Employment, but only if the payment would have been paid at the same time if the Participant had continued in employment with the Employer and only to the extent that the payment is includible in the Participant's gross income.

(2) Salary continuation for disabled Participants. Salary continuation for disabled Participants means Compensation paid to a Participant who is permanently and totally disabled (as defined in Code §22(e)(3)).

(3) Differential Wage Payments. An individual receiving a Differential Wage Payment, as defined by Code §3401(h)(2), shall be treated as an employee of the employer making the payment and the Differential Wage Payment shall be treated as compensation for purposes of Code §457(b) and any other Internal Revenue Code section that references the definition of compensation under Code §415, including the definition of Includible Compensation as provided in Section 1.15.

1.06 "Deferral Contributions" means as the Employer elects on the Adoption Agreement, Salary Reduction Contributions, Nonelective Contributions and Matching Contributions. The Plan Administrator in applying the Code §457(b) limit will take into account Deferral Contributions in the Taxable Year in which deferred, or if later, in the Taxable Year in which the Deferral Contributions are no longer subject to a Substantial Risk of Forfeiture. The Plan Administrator in determining the amount of a Participant's Deferral Contributions disregards the net income, gain and loss attributable to Deferral Contributions unless the Deferral Contributions are subject to a Substantial Risk of Forfeiture. If a Deferral Contribution is subject to a Substantial Risk of Forfeiture, the Plan Administrator takes into the Deferral Contribution as adjusted for allocable net income, gain or loss in the Taxable Year in which the Substantial Risk of Forfeiture lapses.

1.07 **"Deferred Compensation"** means as to a Participant the amount of Deferral Contributions, Rollover Contributions and Transfers adjusted for allocable net income, gain or loss, in the Participant's Account.

1.08 **"Effective Date"** of this Plan is the date the Employer specifies in the Adoption Agreement. The Employer in the Adoption Agreement may elect special effective dates for Plan provisions the Employer specifies provided any such date(s) are permitted by the Code, by Treasury regulations, or by other applicable guidance.

1.09 **"Elective Deferrals"** means a contribution the Employer makes to the Plan pursuant to a Participant's Salary Reduction Agreement, as described in Section 3.02. The term "Elective Deferrals" includes Pre-Tax Elective Deferrals and Roth Elective Deferrals.

1.10 **"Employee"** means an individual who provides services for the Employer, as a common law employee of the Employer. The Employer in the Adoption Agreement must elect or specify any Employee, or class of Employees, not eligible to participate in the Plan (an "Excluded Employee"). See Section 1.16 regarding potential treatment of an Independent Contractor as an Employee.

1.11 **"Employer"** means the entity specified in the Adoption Agreement, any successor which shall maintain this Plan; and any predecessor which has maintained this Plan. In addition, where appropriate, the term Employer shall include any Participating Employer.

1.12 **"Employer Contribution"** means Nonelective Contributions or Matching Contributions.

1.13 **"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended.

1.14 **"Excess Deferrals"** means Deferral Contributions to a Governmental Eligible 457 Plan or to a Tax-Exempt Organization Eligible 457 Plan for a Participant that exceed the Taxable Year maximum limitation of Code §§457(b) and (e)(18).

1.15 **"Includible Compensation"** means, for the Employee's Taxable Year, the Employee's total Compensation within the meaning of Code §415(c)(3) paid to an Employee for services rendered to the Employer. Includible Compensation includes Deferral Contributions under the Plan, compensation deferred under any other plan described in Code §457, and any amount excludible from the Employee's gross income under Code §§401(k), 403(b), 125 or 132(f)(4) or any other amount excludible from the Employee's gross income for Federal income tax purposes. The Employer will determine Includible Compensation without regard to community property laws.

1.16 **"Independent Contractor"** means any individual who performs service for the Employer and who the Employer does not treat as an Employee or a Leased Employee. The Employer in the Adoption Agreement may elect to permit Independent Contractors to participate in the Plan. To the extent that the Employer permits Independent Contractor participation, references to Employee in the Plan include Independent Contractors and Compensation means the amounts the Employer pays to the Independent Contractor for services, except as the Employer otherwise specifies in the Adoption Agreement.

1.17 **"Leased Employee"** means an Employee within the meaning of Code §414(n).

1.18 **"Matching Contribution"** means an Employer fixed or discretionary contribution made or forfeiture allocated on account of Salary Reduction Contributions.

1.19 **"Nonelective Contribution"** means an Employer fixed or discretionary contribution not made as a result of a Salary Reduction Agreement and which is not a Matching Contribution.

1.20 **"Normal Retirement Age"** means the age the Employer specifies in the Adoption Agreement consistent with Section 3.05(B).

1.21 **"Participant"** is an Employee other than an Excluded Employee who becomes a Participant in accordance with the provisions of Section 2.01.

1.22 **"Plan"** means the 457 plan established or continued by the Employer in the form of this basic Plan and (if applicable) Trust Agreement, including the Adoption Agreement. The Employer in the Adoption Agreement must designate the name of the Plan. All section references within the Plan are Plan section references unless the context clearly indicates otherwise.

1.23 **"Plan Administrator"** is the Employer unless the Employer designates another person to hold the position of Plan Administrator. The Plan Administrator may be a Participant.

1.24 **"Plan Entry Date"** means the dates the Employer elects in Adoption Agreement.

1.25 **"Plan Year"** means the consecutive 12-month period the Employer elects in the Adoption Agreement.

1.26 **"Pre-Tax Elective Deferrals"** means a Participant's Salary Reduction Contributions which are not includible in the Participant's gross income at the time deferred and have been irrevocably designated as Pre-Tax Elective Deferrals by the Participant in his or her Salary Reduction Agreement. A Participant's Pre-Tax Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Pre-Tax Elective Deferrals.

1.27 **"Rollover Contribution"** means the amount of cash or property which an eligible retirement plan described in Code §402(c)(8)(B) distributes to an eligible Employee or to a Participant in an eligible rollover distribution under Code §402(c)(4) and which the eligible Employee or Participant transfers directly or indirectly to a Governmental Eligible 457 Plan. A Rollover Contribution includes net income, gain or loss attributable to the Rollover Contribution. A Rollover Contribution excludes after-tax Employee contributions, as adjusted for net income, gain or loss.

1.28 **"Roth Elective Deferrals"** means a Participant's Salary Reduction Contributions that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth Elective Deferrals by the Participant in his or her Salary Reduction Agreement. A Participant's Roth Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Roth Elective Deferrals. However, forfeitures may not be allocated to such account. The Plan must also maintain a record of a Participant's investment in the contract (i.e., designated Roth contributions that have not been distributed) and the year in which the Participant first made a Roth Elective Deferral.

1.29 **"Salary Reduction Agreement"** means a written agreement between a Participant and the Employer, by which

the Employer reduces the Participant's Compensation for Compensation not available as of the date of the election and contributes the amount as a Salary Reduction Contribution to the Participant's Account.

1.30 "Salary Reduction Contribution" means a contribution the Employer makes to the Plan pursuant to a Participant's Salary Reduction Agreement.

1.31 "Service" means any period of time the Employee is in the employ of the Employer. In the case of an Independent Contractor, Service means any period of time the Independent Contractor performs services for the Employer on an independent contractor basis. An Employee or Independent Contractor terminates Service upon incurring a Severance from Employment.

(A) Qualified Military Service. Service includes any qualified military service the Plan must credit for contributions and benefits in order to satisfy the crediting of Service requirements of Code §414(u). A Participant whose employment is interrupted by qualified military service under Code §414(u) or who is on a leave of absence for qualified military service under Code §414(u) may elect to make additional Salary Reduction Contributions upon resumption of employment with the Employer equal to the maximum Deferral Contributions that the Participant could have elected during that period if the Participant's employment with the Employer had continued (at the same level of Compensation) without the interruption of leave, reduced by the Deferral Contributions, if any, actually made for the Participant during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave). The Employer shall make appropriate make-up Nonelective Contributions and Matching Contributions for such a Participant as required under Code §414(u). The Plan shall apply limitations of Article III to all Deferral Contributions under this paragraph with respect to the year to which the Deferral Contribution relates.

(B) "Continuous Service" as the Adoption Agreement describes means Service with the Employer during which the Employee does not incur a Severance from Employment.

(C) "Severance from Employment."

(1) Employee. An Employee has a Severance from Employment when the Employee ceases to be an Employee of the Employer. A Participant does not incur a Severance from Employment if, in connection with a change in employment, the Participant's new employer continues or assumes sponsorship of the Plan or accepts a Transfer of Plan assets as to the Participant.

(2) Independent Contractor. An Independent Contractor has a Severance from Employment when the contract(s) under which the Independent Contractor performs services for the Employer expires (or otherwise terminates), unless the Employer anticipates a renewal of the contractual relationship or the Independent Contractor becoming an Employee. The Employer anticipates renewal if it intends to contract for the services provided under the expired contract and neither the Employer nor the Independent Contractor has eliminated the Independent Contractor as a potential provider of such services under the new contract. Further, the Employer intends to contract for services conditioned only upon the Employer's need for the services provided under the expired contract or the Employer's availability of funds. Notwithstanding the preceding provisions of this Section 1.31, the Plan Administrator will consider an Independent Contractor to have incurred a Severance from Employment: (a) if the Plan Administrator or Trustee will not pay any Deferred Compensation to an

Independent Contractor who is a Participant before a date which is at least twelve months after the expiration of the Independent Contractor's contract (or the last to expire of such contracts) to render Services to the Employer; and (b) if before the applicable twelve-month payment date, the Independent Contractor performs Service as an Independent Contractor or as an Employee, the Plan Administrator or Trustee will not pay to the Independent Contractor his or her Deferred Compensation on the applicable date.

(3) Deemed Severance. Notwithstanding Section 1.05(F), if the Employer elects in the Adoption Agreement, then if a Participant performs service in the uniformed services (as defined in Code §414(u)(12)(B)) on active duty for a period of more than 30 days, the Participant will be deemed to have a severance from employment solely for purposes of eligibility for distribution of amounts not subject to Code §412. However, the Plan will not distribute such a Participant's Account on account of this deemed severance unless the Participant specifically elects to receive a benefit distribution hereunder. If a Participant elects to receive a distribution on account of this deemed severance, then no Deferral Contributions may be made for the Participant during the 6-month period beginning on the date of the distribution. If a Participant would be entitled to a distribution on account of a deemed severance, and a distribution on account of another Plan provision, then the other Plan provision will control and the 6-month suspension will not apply.

1.32 "State" means (a) one of the 50 states of the United States or the District of Columbia, or (b) a political subdivision of a State, or any agency or instrumentality of a State or its political subdivision. A State does not include the federal government or any agency or instrumentality thereof.

1.33 "Substantial Risk of Forfeiture" exists if the Plan expressly conditions a Participant's right to Deferred Compensation upon the Participant's future performance of substantial Service for the Employer.

1.34 "Tax-Exempt Organization" means any tax-exempt organization other than a governmental unit or a church or qualified church-controlled organization within the meaning of Code §3121(w)(3).

1.35 "Taxable Year" means the calendar year or other taxable year of a Participant.

1.36 "Transfer" means a transfer of Eligible 457 Plan assets to another Eligible 457 Plan which is not a Rollover Contribution and which is made in accordance with Section 9.03.

1.37 "Trust" means the Trust created under the adopting Employer's Plan. A Trust required under a Governmental Eligible 457 Plan is subject to Article VIII. Any Trust under a Tax-Exempt Organization Eligible 457 Plan is subject to Section 5.09.

1.38 "Trustee" means the person or persons who as Trustee execute the Employer's Adoption Agreement, or any successor in office who in writing accepts the position of Trustee.

1.39 Type of 457 Plan. This Plan is an Eligible 457 Plan, which is a plan which satisfies the requirements of Code §457(b) and Treas. Reg. §§1.457-3 through -10. The Employer in the Adoption Agreement must specify whether the plan is either a Governmental Eligible 457 Plan or a Tax-Exempt Organization Eligible 457 Plan, as defined below:

(A) **"Governmental Eligible 457 Plan"** means an Eligible 457 Plan established by a State.

(B) **"Tax-Exempt Organization Eligible 457 Plan"** means an Eligible 457 Plan established by a Tax-Exempt Organization.

1.40 **"Vested"** means a Participant's Deferral Contributions that are not subject to a Substantial Risk of Forfeiture, including a vesting schedule.

ARTICLE II ELIGIBILITY AND PARTICIPATION

2.01 ELIGIBILITY. Each Employee who is not an Excluded Employee becomes a Participant in the Plan in accordance with the eligibility conditions and as of the Plan Entry Date the Employer elects in the Adoption Agreement. If this Plan is a restated Plan, each Employee who was a Participant in the Plan on the day before the Effective Date continues as a Participant in the Plan, irrespective of whether he/she satisfies the eligibility conditions in the restated Plan, unless the Employer indicates otherwise in the Adoption Agreement.

2.02 PARTICIPATION UPON RE-EMPLOYMENT. A Participant who incurs a Severance from Employment will re-enter the Plan as a Participant on the date of his or her re-employment. An Employee who satisfies the Plan's eligibility conditions but who incurs a Severance from Employment prior to becoming a Participant will become a Participant on the later of the Plan Entry Date on which he/she would have entered the Plan had he/she not incurred a Severance from Employment or the date of his or her re-employment. Any Employee who incurs a Severance from Employment prior to satisfying the Plan's eligibility conditions becomes a Participant in accordance with the Adoption Agreement.

2.03 CHANGE IN EMPLOYMENT STATUS. If a Participant has not incurred a Severance from Employment but ceases to be eligible to participate in the Plan, by reason of becoming an Excluded Employee, the Plan Administrator must treat the Participant as an Excluded Employee during the period such a Participant is subject to the Adoption Agreement exclusion. The Plan Administrator determines a Participant's sharing in the allocation of Employer Contributions by disregarding his or her Compensation paid by the Employer for services rendered in his or her capacity as an Excluded Employee. However, during such period of exclusion, the Participant, without regard to employment classification, continues to share fully in Plan income allocations under Section 5.07 and to accrue vesting service if applicable.

ARTICLE III DEFERRAL CONTRIBUTIONS/LIMITATIONS

3.01 AMOUNT.

(A) Contribution Formula. For each Plan Year, or other period the Employer specifies in the Adoption Agreement, the Employer will contribute to the Plan the type and amount of Deferral Contributions the Employer elects in the Adoption Agreement.

(B) Return of Contributions. The Employer contributes to this Plan on the condition its contribution is not due to a mistake of fact. If the Plan has a Trust, the Trustee, upon written request from the Employer, must return to the Employer the amount of the Employer's contribution (adjusted for net income, gain or loss) made by the Employer on account of a mistake of fact. The Trustee will not return any portion of the Employer's contribution under the provisions of this paragraph more than one year after the Employer made the contribution on account of a mistake of fact. In addition, if any Participant Salary Reduction Contribution is due to a mistake of fact, the Employer or the Trustee upon written request from the Employer shall return the Participant's contribution (adjusted for net income, gain or loss), within one year after payment of the contribution.

The Trustee will decrease the Employer contribution returnable for any losses attributable to it. The Trustee may require the Employer to furnish it whatever evidence the Trustee deems necessary to enable the Trustee to confirm the amount the Employer has requested be returned is properly returnable.

(C) Time of Payment of Contribution. If the Plan has a Trust, the Employer may pay its contributions for each Plan Year to the Trust in one or more installments and at such time(s) as the Employer determines, without interest. A Governmental Employer shall deposit Salary Reduction Contributions to the Trust within a period that is not longer than is reasonable for the administration of Participant Accounts.

3.02 SALARY REDUCTION CONTRIBUTIONS. The Employer in the Adoption Agreement must elect whether the Plan permits Salary Reduction Contributions, and also the Plan limitations, if any, which apply to Salary Reduction Contributions. Unless the Employer elects otherwise in the Adoption Agreement, all such limitations apply on a payroll basis.

(A) Deferral from Sick, Vacation and Back Pay. The Employer in the Adoption Agreement must elect whether to permit Participants to make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay.

(B) Automatic Enrollment. The Employer in the Adoption Agreement may provide for automatic Salary Reduction Contributions of a specified amount, subject to giving notice to affected Participants of the automatic election and of their right to make a contrary election.

A Governmental Employer under an Eligible 457 Plan may elect to provide an Eligible Automatic Contribution Arrangement ("EACA"). If the Employer elects to provide an EACA, the Employer will amend the Plan to add necessary language.

(C) Application to Leave of Absence and Disability. Unless a Participant in his or her Salary Reduction Agreement elects otherwise, the Participant's Salary Reduction Agreement shall continue to apply during the Participant's leave of absence or the Participant's disability (as the Plan Administrator shall

establish), if the Participant has Compensation other than imputed compensation or disability benefits.

(D) Post-severance deferrals limited to Post-Severance Compensation. Deferrals are permitted from an amount received following Severance from Employment only if the amount is Post-Severance Compensation.

3.03 MATCHING CONTRIBUTIONS. The Employer in the Adoption Agreement must elect whether the Plan permits Matching Contributions and, if so, the type(s) of Matching Contributions, the time period applicable to any Matching Contribution formula, and as applicable, the amount of Matching Contributions and the Plan limitations, if any, which apply to Matching Contributions. Any Matching Contributions apply to age 50 catch-up contributions, if any, and to any Normal Retirement Age catch-up contributions unless the Employer elects otherwise in the Adoption Agreement.

3.04 NORMAL LIMITATION. Except as provided in Sections 3.05 and 3.06, a Participant's maximum Deferral Contributions (excluding Rollover Contributions and Transfers) under this Plan for a Taxable Year may not exceed the lesser of:

(a) The applicable dollar amount as specified under Code §457(e)(15) (or such larger amount as the Commissioner of the Internal Revenue may prescribe), or

(b) 100% of the Participant's Includible Compensation for the Taxable Year.

3.05 NORMAL RETIREMENT AGE CATCH-UP CONTRIBUTION. If selected in the Adoption Agreement, a Participant may elect to make this catch-up election. For one or more of the Participant's last three Taxable Years ending before the Taxable Year in which the Participant attains Normal Retirement Age, the Participant's maximum Deferral Contributions may not exceed the lesser of:

(a) Twice the dollar amount under Section 3.04(a) Normal Limitation, or (b) the underutilized limitation.

(A) Underutilized Limitation. A Participant's underutilized limitation is equal to the sum of: (i) the normal limitation for the Taxable Year, and (ii) the normal limitation for each of the prior Taxable Years of the Participant commencing after 1978 during which the Participant was eligible to participate in the Plan and the Participant's Deferral Contributions were subject to the Normal Limitation or any other Code §457(b) limit, less the amount of Deferral Contributions for each such prior Taxable Year, excluding age 50 catch-up contributions.

(B) Normal Retirement Age. Normal Retirement Age is the age the Employer specifies in the Adoption Agreement provided that the age may not be: (i) earlier than the earliest of age 65 or the age at which Participants have the right to retire and receive under the Employer's defined benefit plan (or money purchase plan if the Participant is not eligible to participate in a defined benefit plan) immediate retirement benefits without actuarial or other reduction because of retirement before a later specified age; or (ii) later than age 70 1/2.

(1) Participant Designation. The Employer in the Adoption Agreement may permit a Participant to designate his or her Normal Retirement Age as any age including or between the foregoing ages.

(2) **Multiple 457 Plans.** If the Employer maintains more than one Eligible 457 Plan, the Plans may not permit any Participant to have more than one Normal Retirement Age under the Plans.

(3) **Police and Firefighters.** In a Governmental Eligible 457 Plan with qualified police or firefighter Participants within the meaning of Code §415(b)(2)(H)(ii)(I), the Employer in the Adoption Agreement may elect (or permit the qualified Participants to elect) a Normal Retirement Age as early as age 40 and as late as age 70 1/2.

(C) **Pre-2002 Coordination.** In determining a Participant's underutilized limitation, the Plan Administrator, in accordance with Treas. Reg. §1.457-4(c)(3)(iv), must apply the coordination rule in effect under now repealed Code §457(c)(2). The Plan Administrator also must determine the Normal Limitation for pre-2002 Taxable Years in accordance with Code §457(b)(2) as then in effect.

3.06 AGE 50 CATCH-UP CONTRIBUTION. An Employer sponsoring a Governmental Eligible 457 Plan must specify in the Adoption Agreement whether the Participants are eligible to make age 50 catch-up contributions.

If an Employer elects to permit age 50 catch-up contributions, all Employees who are eligible to make Salary Reduction Contributions under this Plan and who have attained age 50 before the close of the Taxable Year are eligible to make age 50 catch-up contributions for that Taxable Year in accordance with, and subject to the limitations of, Code §414(v). Such catch-up contributions are not taken into account for purposes of the provisions of the Plan implementing the required limitations of Code §457. If, for a Taxable Year, an Employee makes a catch-up contribution under Section 3.05, the Employee is not eligible to make age 50 catch-up contributions under this Section 3.06. A catch-up eligible Participant in each Taxable Year is entitled to the greater of the amount determined under Section 3.05 or Section 3.06 Catch-Up Amount plus the Section 3.04 Normal Limitation.

3.07 CONTRIBUTION ALLOCATION. The Plan Administrator will allocate to each Participant's Account his or her Deferral Contributions. The Employer will allocate Employer Nonelective and Matching Contributions to the Account of each Participant who satisfies the allocation conditions in the Adoption Agreement in the following manner:

(a) **Fixed match.** To the extent the Employer makes Matching Contributions under a fixed Adoption Agreement formula, the Plan Administrator will allocate the Matching Contribution to the Account of the Participant on whose behalf the Employer makes that contribution. A fixed Matching Contribution formula is a formula under which the Employer contributes a specified percentage or dollar amount on behalf of a Participant based on that Participant's Salary Reduction Contributions.

(b) **Discretionary match.** To the extent the Employer makes Matching Contributions under a discretionary Adoption Agreement formula, the Plan Administrator will allocate the Matching Contributions to a Participant's Account in the same proportion that each Participant's Salary Reduction Contributions taken into account under the formula bear to the total Salary Reduction Contributions of all Participants.

(c) **Tiered match.** If the Matching Contribution formula is a tiered formula, the Plan Administrator will allocate separately the Matching Contributions with respect to each tier of Salary Reduction Contributions, in accordance with the tiered formula.

(d) **Discretionary nonelective.** The Plan Administrator will allocate discretionary Nonelective Contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year, unless the Employer elects otherwise in the Adoption Agreement.

(e) **Fixed nonelective.** The Plan Administrator will allocate fixed Nonelective Contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year, unless the Employer elects otherwise in the Adoption Agreement.

(f) **Other nonelective.** The Plan Administrator will allocate Nonelective Contributions for a Plan Year as specified in the Adoption Agreement.

3.08 ALLOCATION CONDITIONS. The Plan Administrator will determine the allocation conditions applicable to Nonelective Contributions or to Matching Contributions (or to both) in accordance with the Employer's elections in the Adoption Agreement. The Plan Administrator will not allocate to a Participant any portion of an Employer Contribution (or forfeiture if applicable) for a Plan Year or applicable portion thereof in which the Participant does not satisfy the applicable allocation condition(s).

3.09 ROLLOVER CONTRIBUTIONS. If elected in the Adoption Agreement, an Employer sponsoring a Governmental Eligible 457 Plan may permit Rollover Contributions.

(A) **Operational Administration.** The Employer, operationally and on a nondiscriminatory basis, may elect to limit an eligible Employee's right or a Participant's right to make a Rollover Contribution. Any Participant (or as applicable, any eligible Employee), with the Employer's written consent and after filing with the Trustee the form prescribed by the Plan Administrator, may make a Rollover Contribution to the Trust. Before accepting a Rollover Contribution, the Trustee may require a Participant (or eligible Employee) to furnish satisfactory evidence the proposed transfer is in fact a "Rollover Contribution" which the Code permits an employee to make to an eligible retirement plan. The Trustee, in its sole discretion, may decline to accept a Rollover Contribution of property which could: (1) generate unrelated business taxable income; (2) create difficulty or undue expense in storage, safekeeping or valuation; or (3) create other practical problems for the Trust.

(B) **Pre-Participation Rollover.** If an eligible Employee makes a Rollover Contribution to the Trust prior to satisfying the Plan's eligibility conditions, the Plan Administrator and Trustee must treat the Employee as a limited Participant (as described in Rev. Rul. 96-48 or in any successor ruling). A limited Participant does not share in the Plan's allocation of any Employer Contributions and may not make Salary Reduction Contributions until he/she actually becomes a Participant in the Plan. If a limited Participant has a Severance from Employment prior to becoming a Participant in the Plan, the Trustee will distribute his or her Rollover Contributions Account to the limited Participant in accordance with Article IV.

(C) **Separate Accounting.** If an Employer permits Rollover Contributions, the Plan Administrator must account separately for: (1) amounts rolled into this Plan from an eligible retirement plan (other than from another Governmental Eligible 457 plan); and (2) amounts rolled into this Plan from another Governmental Eligible 457 Plan. The Plan Administrator for purposes of ordering any subsequent distribution from this Plan,

may designate a distribution from a Participant's Rollover Contributions as coming first from either of (1) or (2) above if the Participant has both types of Rollover Contribution Accounts.

(D) May Include Roth Deferrals. If this Plan is an eligible governmental 457(b) plan which accepts Roth Elective Deferrals, then a Rollover Contribution may include Roth Deferrals made to another plan, as adjusted for Earnings. Such amounts must be directly rolled over into this Plan from another plan which is qualified under Code §401(a), from a 403(b) plan, or from an eligible governmental 457 plan. The Plan must account separately for the Rollover Contribution, including the Roth Deferrals and the Earnings thereon.

(E) In-Plan Roth Rollover Contributions. A Governmental Employer under an Eligible 457 Plan may elect to permit In-Plan Roth Rollover Contribution. If the Employer decides to permit In-Plan Roth Rollover Contributions, the Employer will amend the Plan to add necessary language.

3.10 DISTRIBUTION OF EXCESS DEFERRALS. In the event that a Participant has Excess Deferrals, the Plan will distribute to the Participant the Excess Deferrals and allocable net income, gain or loss, in accordance with this Section 3.10.

(A) Governmental Eligible 457 Plan. The Plan Administrator will distribute Excess Deferrals from a Governmental Eligible 457 Plan as soon as is reasonably practicable following the Plan Administrator's determination of the amount of the Excess Deferral.

(B) Tax-Exempt Organization Eligible 457 Plan. The Plan Administrator will distribute Excess Deferrals from a Tax-Exempt Organization Eligible 457 Plan no later than April 15 following the Taxable Year in which the Excess Deferral occurs.

(C) Plan Aggregation. If the Employer maintains more than one Eligible 457 Plan, the Employer must aggregate all such Plans in determining whether any Participant has Excess Deferrals.

(D) Individual Limitation. If a Participant participates in another Eligible 457 Plan maintained by a different employer, and the Participant has Excess Deferrals, the Plan Administrator may, but is not required, to correct the Excess Deferrals by making a corrective distribution from this Plan.

3.11 DEEMED IRA CONTRIBUTIONS. A Governmental Employer under an Eligible 457 Plan may elect to permit Participants to make IRA contributions to this Plan in accordance with the Code §408(q) deemed IRA rules. If the Employer elects to permit deemed IRA contributions to the Plan, the Employer will amend the Plan to add necessary IRA language and either the Rev. Proc. 2003-13 sample deemed IRA language or an appropriate substitute.

3.12 ROTH ELECTIVE DEFERRALS. The Employer may elect in the Adoption Agreement to permit Roth Elective Deferrals. Unless elected otherwise, Roth Elective Deferrals shall be treated in the same manner as Elective Deferrals. The Employer may, in operation, implement deferral election procedures provided such procedures are communicated to Participants and permit Participants to modify their elections at least once each Plan Year.

(A) Elective Deferrals. "Elective Deferral" means a contribution the Employer makes to the Plan pursuant to a Participant's Salary Reduction Agreement, as described in

Section 3.02. The term "Elective Deferrals" includes Pre-tax Elective Deferrals and Roth Elective Deferrals.

(B) Pre-Tax Elective Deferrals. "Pre-Tax Elective Deferrals" means a Participant's Salary Reduction Contributions which are not includible in the Participant's gross income at the time deferred and have been irrevocably designated as Pre-Tax Elective Deferrals by the Participant in his or her Salary Reduction Agreement. A Participant's Pre-Tax Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Pre-Tax Elective Deferrals.

(C) Roth Elective Deferrals. "Roth Elective Deferrals" means a Participant's Salary Reduction Contributions that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth Elective Deferrals by the Participant in his or her Salary Reduction Agreement. A Participant's Roth Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Roth Elective Deferrals. However, forfeitures may not be allocated to such account. The Plan must also maintain a record of a Participant's investment in the contract (i.e., designated Roth contributions that have not been distributed) and the year in which the Participant first made a Roth Elective Deferral.

(D) Ordering Rules for Distributions. The Administrator operationally may implement an ordering rule procedure for withdrawals (including, but not limited to, withdrawals on account of an unforeseeable emergency) from a Participant's accounts attributable to Pre-Tax Elective Deferrals or Roth Elective Deferrals. Such ordering rules may specify whether the Pre-Tax Elective Deferrals or Roth Elective Deferrals are distributed first. Furthermore, such procedure may permit the Participant to elect which type of Elective Deferrals shall be distributed first.

(E) Corrective distributions attributable to Roth Elective Deferrals. For any Plan Year in which a Participant may make both Roth Elective Deferrals and Pre-Tax Elective Deferrals, the Administrator operationally may implement an ordering rule procedure for the distribution of Excess Deferrals (Treas. Reg. §1.457-4(e)). Such an ordering rule may specify whether the Pre-Tax Elective Deferrals or Roth Elective Deferrals are distributed first, to the extent such type of Elective Deferrals was made for the year. Furthermore, such procedure may permit the Participant to elect which type of Elective Deferrals shall be distributed first.

(F) Loans. If Participant loans are permitted under the Plan, then the Administrator may modify the loan policy or program to provide limitations on the ability to borrow from, or use as security, a Participant's Roth Elective Deferral account. Similarly, the loan policy or program may be modified to provide for an ordering rule with respect to the default of a loan that is made from the Participant's Roth Elective Deferral account and other accounts under the Plan.

(G) Rollovers. A direct rollover of a distribution from Roth Elective Deferrals shall only be made to a Plan which includes Roth Elective Deferrals as described in Code §402A(e)(1) or to a Roth IRA as described in Code §408A, and only to the extent the rollover is permitted under the rules of Code §402(c).

The Plan shall accept a rollover contribution of Roth Elective Deferrals only if it is a direct rollover from another Plan which permits Roth Elective Deferrals as described in Code

§402A(e)(1) and only to the extent the rollover is permitted under the rules of Code §402(c). The Employer, operationally and on a uniform and nondiscriminatory basis, may decide whether to accept any such rollovers.

The Plan shall not provide for a direct rollover (including an automatic rollover) for distributions from a Participant's Roth Elective Deferral account if the amount of the distributions that are eligible rollover distributions are reasonably expected to total less than \$200 during a year. In addition, any distribution from a Participant's Roth Elective Deferrals are not taken into account in determining whether distributions from a Participant's other accounts are reasonably expected to total less than \$200 during a year. Furthermore, the Plan will treat a Participant's Roth Elective Deferral account and the Participant's other accounts as held under two separate plans for purposes of applying the automatic rollover rules. However, eligible rollover distributions of a Participant's Roth Elective Deferrals are taken into account in determining whether the total amount of the Participant's account balances under the Plan exceed the Plan's limits for purposes of mandatory distributions from the Plan.

The provisions of the Plan that allow a Participant to elect a direct rollover of only a portion of an eligible rollover distribution but only if the amount rolled over is at least \$500 is applied by treating any amount distributed from a Participant's Roth Elective Deferral account as a separate distribution from any amount distributed from the Participant's other accounts in the Plan, even if the amounts are distributed at the same time.

(H) Automatic Enrollment. If the Plan utilizes an automatic enrollment feature as described in Section 3.02(B), then any such automatic contribution shall be a Pre-Tax Elective Deferral.

(I) Operational Compliance. The Plan Administrator will administer Roth Elective Deferrals in accordance with applicable regulations or other binding authority.

3.13 BENEFIT ACCRUAL. If the Employer elects to apply this Section, then effective as of the date adopted, for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.

(A) Determination of benefits. The amount of Matching Contributions to be made pursuant to this Section 3.13 shall be determined as though the amount of Salary Reduction Contributions of an individual treated as reemployed under this Section on the basis of the individual's average actual Salary Reduction Contributions for the lesser of: (i) the 12-month period of service with the Employer immediately prior to qualified military service; or (ii) the actual length of continuous service with the Employer.

3.14 ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGEMENT (EACA). As elected in the Adoption Agreement, the Employer maintains a Plan with automatic enrollment provisions as an Eligible Automatic Contribution Arrangement ("EACA"). Accordingly, the Plan will satisfy the (1) uniformity requirements, and (2) notice requirements under this Section.

(A) Uniformity. The Automatic Deferral Percentage must be a uniform percentage of Compensation. All Participants in the EACA, are subject to Automatic Deferrals, except to the extent otherwise provided in this Plan. If a Participant's Affirmative Election expires or otherwise ceases to be in effect, the Participant will immediately thereafter be subject to Automatic Deferrals, except to the extent otherwise provided in this Plan. However, the Plan does not violate the uniform Automatic Deferral Percentage merely because the Plan applies any of the following provisions:

(a) Years of participation. The Automatic Deferral Percentage varies based on the number of plan years the Participant has participated in the Plan while the Plan has applied EACA provisions;

(b) No reduction from prior default percentage. The Plan does not reduce an Automatic Deferral Percentage that, immediately prior to the EACA's effective date was higher (for any Participant) than the Automatic Deferral Percentage;

(c) Applying statutory limits. The Plan limits the Automatic Deferral amount so as not to exceed the limits of Code Section 457(b)(2) (determined without regard to Age 50 Catch-Up Deferrals).

(B) EACA notice. The Plan Administrator annually will provide a notice to each Participant a reasonable period prior to each plan year the Employer maintains the Plan as an EACA ("EACA Plan Year").

(a) Deemed reasonable notice/new Participant. The Plan Administrator is deemed to provide timely notice if the Plan Administrator provides the EACA notice at least 30 days and not more than 90 days prior to the beginning of the EACA Plan Year.

(b) Mid-year notice/new Participant or Plan. If: (a) an Employee becomes eligible to make Salary Reduction Contributions in the Plan during an EACA Plan Year but after the Plan Administrator has provided the annual EACA notice for that plan year; or (b) the Employer adopts mid-year a new Plan as an EACA, the Plan Administrator must provide the EACA notice no later than the date the Employee becomes eligible to make Salary Reduction Contributions. However, if it is not practicable for the notice to be provided on or before the date an Employee becomes a Participant, then the notice will nonetheless be treated as provided timely if it is provided as soon as practicable after that date and the Employee is permitted to elect to defer from all types of Compensation that may be deferred under the Plan earned beginning on that date.

(c) Content. The EACA notice must provide comprehensive information regarding the Participants' rights and obligations under the Plan and must be written in a manner calculated to be understood by the average Participant in accordance with applicable guidance.

(C) EACA permissible withdrawal. If elected in the Adoption Agreement, a Participant who has Automatic Deferrals under the EACA may elect to withdraw all the Automatic Deferrals (and allocable earnings) under the provisions of this Section 3.14. Any distribution made pursuant to this Section will be processed in accordance with normal distribution provisions of the Plan.

(a) Amount. If a Participant elects a permissible withdrawal under this Section, then the Plan must make a

distribution equal to the amount (and only the amount) of the Automatic Deferrals made under the EACA (adjusted for allocable gains and losses to the date of the distribution). The Plan may separately account for Automatic Deferrals, in which case the entire account will be distributed. If the Plan does not separately account for the Automatic Deferrals, then the Plan must determine earnings or losses in a manner similar to the rules of Treas. Reg. §1.401(k)-2(b)(2)(iv) for distributions of excess contributions.

(b) Fees. Notwithstanding the above, the Plan Administrator may reduce the permissible distribution amount by any generally applicable fees. However, the Plan may not charge a greater fee for distribution under this Section than applies to other distributions. The Plan Administrator may adopt a policy regarding charging such fees consistent with this paragraph.

(c) Timing. The Participant may make an election to withdraw the Automatic Deferrals under the EACA no later than 90 days, or such shorter period as specified in the Adoption Agreement, after the date of the first Automatic Deferral under the EACA. For this purpose, the date of the first Automatic Deferral is the date that the Compensation subject to the Automatic Deferral otherwise would have been includible in the Participant's gross income. Furthermore, a Participant's withdrawal right is not restricted due to the Participant making an Affirmative Election during the 90 day period (or shorter period as specified in Adoption Agreement.).

(d) Rehired Employees. For purposes of this Section, an Employee who for an entire Plan Year did not have contributions made pursuant to a default election under the EACA will be treated as having not had such contributions for any prior Plan Year as well.

(e) Effective date of the actual withdrawal election: The effective date of the permissible withdrawal will be as soon as practicable, but in no event later than the earlier of (1) the pay date of the second payroll period beginning after the election is made, or (2) the first pay date that occurs at least 30 days after the election is made. The election will also be deemed to be an Affirmative Election to have no Salary Reduction Contributions made to the Plan.

(f) Related matching contributions. The Plan Administrator will not take any deferrals withdrawn pursuant to this section into account in computing the contribution and allocation of matching contributions, if any. If the Employer has already allocated matching contributions to the Participant's account with respect to deferrals being withdrawn pursuant to this Section, then the matching contributions, as adjusted for gains and losses, must be forfeited. Except as otherwise provided, the Plan will use the forfeited contributions to reduce future contributions or to reduce plan expenses.

(D) Compensation. Compensation for purposes of determining the amount of Automatic Deferrals has the same meaning as Compensation with regard to Salary Reduction Contributions in general.

(E) Definitions.

(a) Definition of Automatic Deferral. An Automatic Deferral is a Salary Reduction Contribution that results from the operation of this Article III. Under the Automatic Deferral, the Employer automatically will reduce by the Automatic Deferral Percentage as elected the Compensation of each Participant subject to the EACA. The Plan Administrator will cease to apply the Automatic Deferral to a Participant who makes an Affirmative Election as defined in this Section.

(b) Definition of Automatic Deferral Percentage/Increases. The Automatic Deferral Percentage is the percentage of Automatic Deferral (including any scheduled increase to the Automatic Deferral Percentage the Employer may elect).

(c) Effective date of EACA Automatic Deferral. The effective date of an Employee's Automatic Deferral will be as soon as practicable after the Employee is subject to Automatic Deferrals under the EACA, consistent with (a) applicable law, and (b) the objective of affording the Employee a reasonable period of time after receipt of the notice to make an Affirmative Election (and, if applicable, an investment election).

(d) Definition of Affirmative Election. An Affirmative Election is a Participant's election made after the EACA's Effective Date not to defer any Compensation or to defer more or less than the Automatic Deferral Percentage.

(e) Effective Date of Affirmative Election. A Participant's Affirmative Election generally is effective as of the first payroll period which follows the payroll period in which the Participant made the Affirmative Election. However, a Participant may make an Affirmative Election which is effective: (a) for the first payroll period in which he or she becomes a Participant if the Participant makes an Affirmative Election within a reasonable period following the Participant's entry date and before the Compensation to which the Election applies becomes currently available; or (b) for the first payroll period following the EACA's effective date, if the Participant makes an Affirmative Election not later than the EACA's effective date.

3.15 IN-PLAN ROTH ROLLOVER CONTRIBUTION

(a) Employer Election. The Employer in its Adoption Agreement in which the Employer has elected to permit Roth Deferrals also will elect whether to permit an In-Plan Roth Rollover Contribution in accordance with this Section with regard to otherwise distributable amounts and/or otherwise nondistributable amounts. If the Employer elects to permit such contributions, the Employer in its Adoption Agreement will specify the Effective Date thereof which may not be earlier than distributions made after September 27, 2010, and may not be earlier than January 1, 2013 in the case of rollovers of otherwise nondistributable amounts. An In-Plan Roth Rollover Contribution means a Rollover Contribution to the Plan that consists of a distribution or transfer from a Participant's Plan Account, other than a Roth Deferral Account, that the Participant transfers to the Participant's In-Plan Roth Rollover Contribution Account in the Plan, in accordance with Code §402(c)(4). In-Plan Roth Rollover Contributions will be subject to the Plan rules related to Roth Deferral Accounts, subject to preservation of protected benefits.

(b) Eligibility for Distribution and Rollover. A Participant may not make an In-Plan Roth Rollover Contribution with regard to an otherwise distributable amount which is not an Eligible Rollover Distribution.

(1) Parties eligible to elect. For purposes of eligibility for an In-Plan Roth Rollover, the Plan will treat a Participant's surviving spouse Beneficiary or alternate payee spouse or alternate payee former spouse as a Participant. A non-spouse Beneficiary may not make an In-Plan Roth Rollover.

(2) Distribution from partially Vested account. In-Plan Roth Rollovers are permitted only from Vested amounts allocated to a qualifying source but may be made from partially Vested Accounts. If a distribution is made to a Participant who

has not incurred a Severance from Employment and who is not fully Vested in the Participant's Account from which the In-Plan Roth Rollover Contribution is to be made, and the Participant may increase the Vested percentage in such Account.

(c) Form and Source of Rollover.

(1) Direct Rollover. An In-Plan Roth Rollover Contribution may be made only by a Direct Rollover.

(2) Account source. A Participant may make an In-Plan Roth Rollover from any account (other than a Roth account).

(3) Cash or in-kind. The Plan Administrator will effect an In-Plan Roth Rollover Contribution by rolling over the Participant's current investments to the In-Plan Roth Rollover Account. A Plan loan so rolled over without changing the repayment schedule is not treated as a new loan. However the Employer may provide that loans cannot be rolled over in an In-Plan Roth Rollover.

(4) No Rollover or Distribution Treatment. Notwithstanding any other Plan provision, an In-Plan Roth Rollover Contribution is not a Rollover Contribution for

purposes of the Plan. Accordingly: (a) if the Employer in its Adoption Agreement has elected \$5,000 as the Plan limit on Mandatory Distributions, the Plan Administrator will take into account amounts attributable to an In-Plan Roth Rollover Contribution, in determining if the \$5,000 limit is exceeded, regardless of the Employer's election as to whether to count Rollover Contributions for this purpose; (b) no spousal consent is required for a Participant to elect to make an In-Plan Roth Rollover Contribution; (c) protected benefits with respect to the amounts subject to the In-Plan Roth Rollover are preserved; and (d) mandatory 20% federal income tax withholding does not apply to the In Plan Roth Rollover Contribution.

(5) In-Plan Roth Rollover Contribution Account. An In-Plan Roth Rollover Contribution Account is a sub-account the Plan Administrator may establish to account for a Participant's Rollover Contributions attributable to the Participant's In-Plan Roth Rollover Contributions. The Plan Administrator has authority to establish such a sub-account, and to the extent necessary, may establish sub-accounts based on the source of the In-Plan Roth Rollover Contribution. The Plan Administrator will administer an In-Plan Roth Rollover Contribution Account in accordance with Code and the Plan provisions.

ARTICLE IV TIME AND METHOD OF PAYMENT OF BENEFITS

4.01 **DISTRIBUTION RESTRICTIONS.** Except as the Plan provides otherwise, the Plan Administrator or Trustee may not distribute to a Participant the amounts in his or her Account prior to one of the following events:

- (a) The Participant's attaining age 70 1/2;
- (b) The Participant's Severance from Employment; or
- (c) The Participant's death.

4.02 **TIME AND METHOD OF PAYMENT OF ACCOUNT.** The Plan Administrator, or Trustee at the direction of the Plan Administrator, will distribute to a Participant who has incurred a Severance from Employment the Participant's Vested Account under one or any combination of payment methods and at the time(s) the Adoption Agreement specifies. If the Adoption Agreement permits more than one time or method, the Plan Administrator, in the absence of a Participant election described below, will determine the time and method applicable to a particular Participant. In no event will the Plan Administrator direct (or direct the Trustee to commence) distribution, nor will the Participant elect to have distribution commence, later than the Participant's required beginning date, or under a method that does not satisfy Section 4.03.

(A) Participant Election of Time and Method. The Employer in the Adoption Agreement must elect whether to permit Participants to elect the timing and method of distribution of their Account in accordance with this Section 4.02. The Plan Administrator must consent to the specific terms of any such Participant election and the Plan Administrator in its sole discretion may withhold consent. Subject to the foregoing conditions, a Participant: (1) may elect to postpone distribution of his or her Account beyond the time the Employer has elected in the Adoption Agreement, to any fixed or determinable date including, but not beyond, the Participant's required beginning date; and (2) may elect the method of payment. A Participant in a Tax Exempt Organization Eligible 457 Plan may elect the timing and method of payment of his or her Account no later than 30 days before the date the Plan Administrator or Trustee first would commence payment of the Participant's Account in accordance with the Adoption Agreement. The Plan Administrator must furnish to the Participant a form for the Participant to elect the time and a method of payment. A Participant in a Governmental Eligible 457 Plan is not subject to any such requirement in election the timing or method of payment.

(B) Number of Initial Elections/Subsequent Elections. A Participant in a Tax-Exempt Organization Eligible 457 Plan may make any number of elections or revoke any prior election under Section 4.02(A) within the election period. Once the initial election period expires, a Participant, before payment would commence under the Participant's initial election, may make one additional election to defer (but not to accelerate) the timing of payment of his or her Account and also as to the method of payment.

(C) No Election/Default. If the Participant does not make a timely election regarding the time and method of payment, the Plan Administrator will pay or direct the Trustee to pay the Participant's Account in accordance with the Adoption Agreement.

(D) Mandatory Distribution. The Employer in the Adoption Agreement will elect whether the Plan will make Mandatory

Distributions. If the Employer elects Mandatory Distributions, the Employer may determine operationally whether to include Rollover Contributions in determining whether the Participant is subject to Mandatory Distributions.

4.03 **REQUIRED MINIMUM DISTRIBUTIONS.** The Plan Administrator may not distribute nor direct the Trustee to distribute the Participant's Account, nor may the Participant elect any distribution his or her Account, under a method of payment which, as of the required beginning date, does not satisfy the minimum distribution requirements of Code §401(a)(9) or which is not consistent with applicable Treasury regulations.

(A) General Rules.

(1) Precedence. The requirements of this Section 4.03 will take precedence over any inconsistent provisions of the Plan.

(2) Requirements of Treasury Regulations Incorporated. All distributions required under this Section 4.03 will be determined and made in accordance with the Treasury regulations under Code §401(a)(9).

(B) Time and Manner of Distribution.

(1) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.

(2) Death of Participant Before Distribution Begins. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(a) Spouse Designated Beneficiary. If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then, except as the Employer may elect in the Adoption Agreement, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant dies, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.

(b) Non-Spouse Designated Beneficiary. If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then, except as the Employer may elect in the Adoption Agreement, distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(c) No Designated Beneficiary. If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(d) Death of Spouse. If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 4.03(B)(2) other than Section 4.03(B)(2)(a), will apply as if the surviving spouse were the Participant.

For purposes of this Section 4.03(B) and Section 4.03(D), unless Section 4.03(B)(2)(d) applies, distributions are considered to begin on the Participant's required beginning date. If Section 4.03(B)(2)(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 4.03(B)(2)(a). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 4.03(B)(2)(a), the date distributions are considered to begin is the date distributions actually commence.

(3) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 4.03(C) and 4.03(D). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code §401(a)(9) and the Treasury regulations.

(C) Required Minimum Distributions during Participant's Lifetime.

(1) Amount of Required Minimum Distribution for Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(a) ULT. The quotient obtained by dividing the Participant's account balance by the number in the Uniform Life Table set forth in Treas. Reg. §1.401(a)(9)-9, using the Participant's attained age as of the Participant's birthday in the distribution calendar year; or

(b) Younger Spouse. If the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Treas. Reg. §1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(2) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 4.03(C) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(D) Required Minimum Distributions after Participant's Death.

(1) Death On or After Distributions Begin.

(a) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

(i) Participant's Life Expectancy. The Participant's remaining life expectancy is calculated using the attained age of the Participant as of the Participant's birthday in

the calendar year of death, reduced by one for each subsequent calendar year.

(ii) Spouse's Life Expectancy. If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the attained age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(iii) Non-Spouse's Life Expectancy. If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the attained age of the Beneficiary as of the Beneficiary's birthday in the calendar year following the calendar year of the Participant's death, reduced by one for each subsequent calendar year.

(b) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the calendar year after the calendar year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the calendar year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the attained age of the Participant as of the Participant's birthday in the calendar year of death, reduced by one for each subsequent calendar year.

(2) Death before Date Distributions Begin.

(a) Participant Survived by Designated Beneficiary. Except as the Employer may elect in the Adoption Agreement, if the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 4.03(D)(1).

(b) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(c) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 4.03(B)(2)(a), this Section 4.03(D)(2) will apply as if the surviving spouse were the Participant.

(d) 5-year or Life Expectancy rule; possible election. The Employer in its Adoption Agreement will elect whether distribution of the Participant's Account will be made in accordance with the life expectancy rule under Section 4.03(D)(2)(a) or the 5-year rule under Section 4.03(D)(2)(b). The Employer's election may permit a Designated Beneficiary to elect which of these rules will apply or may specify which rule applies. However, the life expectancy rule (whether subject to

election or not) applies only in the case of a Designated Beneficiary. The 5-year rule applies as to any Beneficiary who is not a Designated Beneficiary. A permitted election under this Section must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 4.03(D)(2)(a), or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death.

(E) Definitions.

(1) Designated Beneficiary. The individual who is designated as the Beneficiary under the Plan and is the designated beneficiary under Code §401(a)(9) and Treas. Reg. §1.401(a)(9)-1, Q&A-4.

(2) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which the distributions are required to begin under Section 4.03(B)(2). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(3) Life expectancy. Life expectancy as computed by use of the Single Life Table in Treas. Reg. §1.401(a)(9)-9.

(4) Participant's account balance. The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any Rollover Contributions or Transfers to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(5) Required beginning date. A Participant's required beginning date is the April 1 of the calendar year following the later of: (1) the calendar year in which the Participant attains age 70 1/2, or (2) the calendar year in which the Participant retires or such other date under Code §401(a)(9) by which required minimum distributions must commence.

4.04 DEATH BENEFITS. Upon the death of the Participant, the Plan Administrator must pay or direct the Trustee to pay the Participant's Account in accordance with Section 4.03. Subject to Section 4.03, a Beneficiary may elect the timing and method of payment in the same manner as a Participant may elect under Section 4.02, if such elections apply.

If a Participant dies while performing qualified military service (as defined in Code §414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death.

4.05 DISTRIBUTIONS PRIOR TO SEVERANCE FROM EMPLOYMENT. The Employer must elect in the Adoption Agreement whether to permit in-service distributions of a Participant's Vested Account under this Section 4.05, notwithstanding the Section 4.01 distribution restrictions.

(A) Unforeseeable Emergency. In the event of a Participant's or the Participant's spouse, dependents or beneficiaries' unforeseeable emergency, the Plan Administrator may make a distribution to a Participant who has not incurred a Severance from Employment (or who has incurred a Severance but will not begin to receive payments until some future date). In the event of an unforeseeable emergency, the Plan Administrator also may accelerate payments to a Participant or to a Beneficiary. The Plan Administrator will establish a policy for determining whether an unforeseeable emergency exists. An unforeseeable emergency is a severe financial hardship of a Participant or Beneficiary resulting from: (1) illness or accident of the Participant, the Beneficiary, or the Participant's or Beneficiary's spouse or dependent (as defined in Code §152(a)); (2) loss of the Participant's or Beneficiary's property due to casualty; (3) the need to pay for the funeral expenses of the Participant's or Beneficiary's spouse or dependent (as defined in Code §152(a)); or (4) other similar extraordinary and unforeseeable circumstances arising from events beyond the Participant's or Beneficiary's control, or which applicable law may define as an unforeseeable emergency. The Plan Administrator will not pay the Participant or the Beneficiary more than the amount reasonably necessary to satisfy the emergency need, which may include amounts necessary to pay taxes or penalties on the distribution. The Plan Administrator will not make payment to the extent the Participant or Beneficiary may relieve the financial hardship by cessation of deferrals under the Plan, through insurance or other reimbursement, or by liquidation of the individual's assets to the extent such liquidation would not cause severe financial hardship.

The Participant's Beneficiary is a person who a Participant designates and who is or may become entitled to a Participant's Plan Account upon the Participant's death.

(B) De minimis distribution. In accordance with the Employer's Adoption Agreement elections, the Plan Administrator may allow a Participant to elect to receive a distribution or the Plan Administrator will distribute (without a Participant election) any amount of the Participant's Account where: (1) the Participant's Account (disregarding Rollover Contributions) does not exceed \$5,000 (or such other amount as does not exceed the Code §411(a)(1)(A) dollar amount); (2) the Participant has not made or received an allocation of any Deferral Contributions under the Plan during the two-year period ending on the date of distribution; and (3) the Participant has not received a prior distribution under this Section 4.05(B).

(C) Distribution of Rollover Contributions. The Employer in the Adoption Agreement may elect to permit a Participant to request and to receive distribution of the Participant's Account attributable to Rollover Contributions (but not to Transfers) before the Participant has a distributable event under Section 4.01.

4.06 DISTRIBUTIONS UNDER QUALIFIED DOMESTIC RELATIONS ORDERS (QDROs).

Notwithstanding any other provision of this Plan, the Employer in the Adoption Agreement may elect to apply the QDRO provisions of this Section 4.06. If Section 4.06 applies, the Plan Administrator (and any Trustee) must comply with the terms of a QDRO, as defined in Code §414(p), which is issued with respect to the Plan.

(A) Time and Method of Payment. This Plan specifically permits distribution to an alternate payee under a QDRO at any time, notwithstanding any contrary Plan provision and irrespective of whether the Participant has attained his or her earliest retirement age (as defined under Code §414(p)) under the Plan. A distribution to an alternate payee prior to the Participant's attainment of earliest retirement age is available only if the QDRO specifies distribution at that time or permits an agreement between the Plan and the alternate payee to authorize an earlier distribution. Nothing in this Section 4.06 gives a Participant a right to receive distribution at a time the Plan otherwise does not permit nor authorizes the alternate payee to receive a form of payment the Plan does not permit.

(B) QDRO Procedures. The Plan Administrator must establish reasonable procedures to determine the qualified status of a domestic relations order. Upon receiving a domestic relations order, the Plan Administrator promptly will notify the Participant and any alternate payee named in the order, in writing, of the receipt of the order and the Plan's procedures for determining the qualified status of the order. Within a reasonable period of time after receiving the domestic relations order, the Plan Administrator must determine the qualified status of the order and must notify the Participant and each alternate payee, in writing, of the Plan Administrator's determination. The Plan Administrator must provide notice under this paragraph by mailing to the individual's address specified in the domestic relations order.

(C) Accounting. If any portion of the Participant's Account Balance is payable under the domestic relations order during the period the Plan Administrator is making its determination of the qualified status of the domestic relations order, the Plan Administrator must maintain a separate accounting of the amounts payable. If the Plan Administrator determines the order is a QDRO within 18 months of the date amounts first are payable following receipt of the domestic relations order, the Plan Administrator will distribute or will direct the Trustee to distribute the payable amounts in accordance with the QDRO. If the Plan Administrator does not make its determination of the qualified status of the order within the 18-month determination period, the Plan Administrator will distribute or will direct the Trustee to distribute the payable amounts in the manner the Plan would distribute if the order did not exist and will apply the order prospectively if the Plan Administrator later determines the order is a QDRO.

To the extent it is not inconsistent with the provisions of the QDRO, the Plan Administrator may segregate or may direct the Trustee to segregate the QDRO amount in a segregated investment account. The Plan Administrator or Trustee will make any payments or distributions required under this Section 4.06 by separate benefit checks or other separate distribution to the alternate payee(s).

(D) Permissible QDROs. A domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order ("QDRO") will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.

4.07 DIRECT ROLLOVER OF ELIGIBLE ROLLOVER DISTRIBUTIONS – GOVERNMENTAL PLAN.

(A) Participant Election. A Participant (including for this purpose, a former Employee) in a Governmental Eligible 457 Plan may elect, at the time and in the manner the Plan

Administrator prescribes, to have any portion of his or her eligible rollover distribution from the Plan paid directly to an eligible retirement plan specified by the Participant in a direct rollover election. For purposes of this election, a "Participant" includes as to their respective interests, a Participant's surviving spouse and the Participant's spouse or former spouse who is an alternate payee under a QDRO.

(B) Rollover and Withholding Notice. At least 30 days and not more than 180 days prior to the Trustee's distribution of an eligible rollover distribution, the Plan Administrator must provide a written notice (including a summary notice as permitted under applicable Treasury regulations) explaining to the distributee the rollover option, the applicability of mandatory 20% federal withholding to any amount not directly rolled over, and the recipient's right to roll over within 60 days after the date of receipt of the distribution ("rollover notice").

(C) Default distribution or rollover. Except as provided in Paragraph (D), in the case of a Participant who does not elect timely to roll over or to receive distribution of his or her Account, the Plan Administrator or the Trustee, at the Plan Administrator's direction, may distribute to the Participant or may directly roll over the Participant's Account in accordance with the Plan's rollover notice.

(D) Mandatory default rollover. If (1) the Plan is a Governmental Eligible 457 Plan, (2) the Plan makes a mandatory distribution after the Code §401(a)(31)(B) Effective Date, greater than \$1,000, and (3) the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly, then the Plan Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Plan Administrator.

(E) Non-spouse beneficiary rollover right. A non-spouse beneficiary who is a "designated beneficiary" under Section 4.03(E)(1), by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an individual retirement account the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.

(1) Certain requirements not applicable. Although a non-spouse beneficiary may roll over directly a distribution as provided in Section 4.07(E), the distribution is not subject to the direct rollover requirements of Code §401(a)(31) (including the automatic rollover provisions of Code §401(a)(31)(B)), the notice requirements of Code §402(f) or the mandatory withholding requirements of Code §3405(c). If a non-spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a "60-day" rollover.

(2) Trust beneficiary. If the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code §401(a)(9)(E).

(3) Required minimum distributions not eligible for rollover. A non-spouse beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. §1.401(a)(9)-3, A-4(c), in

determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

(F) Definitions. The following definitions apply to this Section:

(1) Eligible rollover distribution. An eligible rollover distribution is any distribution of all or any portion of a Participant's Account, except an eligible rollover distribution does not include: (a) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's designated Beneficiary, or for a specified period of ten years or more; (b) any Code §401(a)(9) required minimum distribution; (c) any unforeseeable emergency distribution; and (d) any distribution which otherwise would be an eligible rollover distribution, but where the total distributions to the Participant during that calendar year are reasonably expected to be less than \$200.

(2) Eligible retirement plan. An eligible retirement plan is an individual retirement account described in Code §408(a), an individual retirement annuity described in Code §408(b), an annuity plan described in Code §403(a), a qualified plan described in Code §401(a), an annuity contract (or custodial agreement) described in Code §403(b), or an eligible deferred compensation plan described in Code §457(b) and maintained by an Employer described in Code §457(e)(1)(A), which accepts the Participant's, the Participant's spouse or alternate payee's eligible rollover distribution.

A Participant or beneficiary may elect to roll over directly an eligible rollover distribution to a Roth IRA described in Code §408A(b). For this purpose, the term "eligible rollover distribution" includes a rollover distribution described in this Section.

(3) Direct rollover. A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

(4) Mandatory distribution. A mandatory distribution is an eligible rollover distribution without the Participant's consent before the Participant attains the later of age 62 or Normal

Retirement Age (see paragraph 3.05 (B)). A distribution to a beneficiary is not a mandatory distribution.

(5) 401(a)(31)(B) Effective Date. The 401(a)(31)(B) Effective Date is the date of the close of the first regular legislative session of the legislative body with the authority to amend the Plan that begins on or after January 1, 2006.

4.08 ELECTION TO DEDUCT FROM DISTRIBUTION.

An Eligible Retired Public Safety Officer may elect annually for that taxable year to have the Plan deduct an amount from a distribution which the Eligible Retired Public Safety Officer otherwise would receive and include in income. The Plan will pay such deducted amounts directly to pay qualified health insurance premiums.

(A) Direct payment. The Plan will pay directly to the provider of the accident or health insurance plan or qualified long-term care insurance contract the amounts the Eligible Retired Public Safety Officer has elected to have deducted from the distribution. Such amounts may not exceed the lesser of \$3,000 or the amount the Participant paid for such taxable year for qualified health insurance premiums, and which otherwise complies with Code §402(l).

(B) Definitions.

(1) Eligible retired public safety officer. An "Eligible Retired Public Safety Officer" is an individual who, by reason of disability or attainment of Normal Retirement Age, is separated from service as a Public Safety Officer with the Employer.

(2) Public safety officer. A "Public Safety Officer" has the same meaning as in Section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(9)(A)).

(3) Qualified health insurance premiums. The term "qualified health insurance premiums" means premiums for coverage for the Eligible Retired Public Safety Officer, his or her spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in Code §7702B(b)).

ARTICLE V

PLAN ADMINISTRATOR - DUTIES WITH RESPECT TO PARTICIPANTS' ACCOUNTS

5.01 TERM/VACANCY. The Plan Administrator will serve until his or her successor is appointed. In case of a vacancy in the position of the Plan Administrator, the Employer will exercise any and all of the powers, authority, duties and discretion conferred upon the Plan Administrator pending the filling of the vacancy.

5.02 POWERS AND DUTIES. The Plan Administrator will have the following powers and duties:

- (a) To select a committee to assist the Plan Administrator;
- (b) To select a secretary for the committee, who need not be a member of the committee;
- (c) To determine the rights of eligibility of an Employee to participate in the Plan and the value of a Participant's Account;
- (d) To adopt rules and procedures and to create administrative forms necessary for the proper and efficient administration of the Plan provided the rules, procedures and forms are not inconsistent with the terms of the Plan;
- (e) To construe and enforce the terms of the Plan and the rules and regulations the Plan Administrator adopts, including interpretation of the Plan documents and documents related to the Plan's operation;
- (f) To direct the distribution of a Participant's Account;
- (g) To review and render decisions respecting a claim for (or denial of a claim for) a benefit under the Plan;
- (h) To furnish the Employer with information which the Employer may require for tax or other purposes;
- (i) To establish a policy in making distributions for unforeseeable emergencies;
- (j) To establish under a Governmental Eligible 457 Plan, policies regarding the receipt of Rollover Contributions and default rollover distributions;
- (k) To establish a policy regarding the making and the receipt of Transfers;
- (l) To establish a policy regarding Participant or Beneficiary direction of investment;
- (m) To engage the services of any person to invest any Account under this Plan and to direct such person to make payment to a Participant of his or her Vested Account;
- (n) To establish under a Governmental Eligible 457 Plan, a policy (see Section 5.02(A)) which the Trustee must observe in making loans, if any, to Participants and Beneficiaries;
- (o) To undertake correction of any Plan failures as necessary to preserve eligible Plan status; and
- (p) To undertake any other action the Plan Administrator deems reasonable or necessary to administer the Plan.

The Plan Administrator shall have total and complete discretion to interpret and construe the Plan and to determine all questions arising in the administration, interpretation and application of the Plan. Any determination the Plan

Administrator makes under the Plan is final and binding upon any affected person.

(A) Loan Policy. In a Governmental Eligible 457 Plan, the Plan Administrator, in its sole discretion, may establish, amend or terminate from time to time, a nondiscriminatory policy which the Trustee must observe in making Plan loans, if any, to Participants and to Beneficiaries. If the Plan Administrator adopts a loan policy, the loan policy must be a written document and must include: (1) the identity of the person or positions authorized to administer the participant loan program; (2) the procedure for applying for a loan; (3) the criteria for approving or denying a loan; (4) the limitations, if any, on the types and amounts of loans available; (5) the procedure for determining a reasonable rate of interest; (6) the types of collateral which may secure the loan; and (7) the events constituting default and the steps the Plan will take to preserve Plan assets in the event of default. A loan policy the Plan Administrator adopts under this Section 5.02(A) is part of the Plan, except that the Plan Administrator may amend or terminate the policy without regard to Section 9.01.

(B) QDRO Policy. If the QDRO provisions of Section 4.06 apply, the Plan Administrator will establish QDRO procedures.

5.03 COMPENSATION. The Plan Administrator and the members of the Committee will serve without compensation for services, but the Employer will pay all expenses of the Plan Administrator and Committee.

5.04 AUTHORIZED REPRESENTATIVE. The Plan Administrator may authorize any one of the members of the Committee, if any, or the Committee's Secretary, to sign on the Plan Administrator's behalf any Plan notices, directions, applications, certificates, consents, approvals, waivers, letters or other documents.

5.05 INDIVIDUAL ACCOUNTS/RECORDS. The Plan Administrator will maintain a separate Account in the name of each Participant to reflect the value of the Participant's Deferred Compensation under the Plan. The Plan Administrator will maintain records of its activities.

5.06 VALUE OF PARTICIPANT'S ACCOUNT. The value of each Participant's Account consists of his or her accumulated Deferred Compensation, as of the most recent Accounting Date or any later date as the Plan Administrator may determine.

5.07 ACCOUNT ADMINISTRATION, VALUATION AND EXPENSES.

(A) Individual Accounts. The Plan Administrator, as necessary for the proper administration of the Plan, will maintain, or direct the Trustee to maintain, a separate Account, or multiple Accounts, in the name of each Participant to reflect the Participant's Account Balance under the Plan. The Plan Administrator will make its allocations of Employer Contributions and of Earnings, or will request the Trustee to make such allocations, to the Accounts of the Participants as necessary to maintain proper Plan records and in accordance with the applicable: (i) Contribution Types; (ii) allocation conditions; (iii) investment account types; and (iv) Earnings allocation methods. The Plan Administrator may also maintain, or direct the Trustee to maintain, a separate temporary Account for Participant forfeitures which occur during a Plan Year, pending their accrual and allocation in accordance with the Plan terms, or for other special items as the Plan Administrator

determines is necessary and appropriate for proper plan administration.

(1) By Contribution Type. The Plan Administrator, will establish Plan Accounts for each Participant as necessary to reflect his or her Accounts attributable to the following Contribution Types and the Earnings attributable thereto: Pre-Tax Deferrals, Roth Deferrals, Matching Contributions, Nonelective Contributions, Rollover Contributions (including Roth versus pre-tax amounts), and Transfers.

(2) By investment account type. The Plan Administrator will establish separate Accounts for each Participant as necessary to reflect his or her investment account types as described below:

(a) Pooled Accounts. A Pooled Account is an Account which for investment purposes is not a Segregated Account or a Participant-Directed Account. If any or all Plan investment Accounts are Pooled Accounts, each Participant's Account has an undivided interest in the assets comprising the Pooled Account. In a Pooled Account, the value of each Participant's Account Balance consists of that proportion of the net worth (at fair market value) of the Trust Fund which the net credit balance in his or her Account (exclusive of the cash value of incidental benefit insurance contracts) bears to the total net credit balance in the Accounts of all Participants plus the cash surrender value of any insurance contracts held by the Trustee on the Participant's life. As of each Valuation Date, the Plan Administrator must reduce a Participant-Directed Account for any forfeiture arising from Section 5.07 after the Plan Administrator has made all other allocations, changes or adjustments to the Account (excluding Earnings) for the valuation period.

(b) Participant-Directed Accounts. A Participant-Directed Account is an Account that the Plan Administrator establishes and maintains or directs the Trustee to establish and maintain for a Participant to invest in one or more assets that are not pooled assets held by the Trust, such as assets in a brokerage account or other property in which other Participants do not have any interest. As the Plan Administrator determines, a Participant-Directed Account may provide for a limited number and type of investment options or funds, or may be open-ended and subject only to any limitations imposed by applicable law. A Participant may have one or more Participant-Directed Accounts in addition to Pooled or Segregated Accounts. A Participant-Directed Account is credited and charged with the Earnings. As of each Valuation Date, the Plan Administrator must reduce a Participant-Directed Account for any forfeiture arising from Section 5.07 after the Plan Administrator has made all other allocations, changes or adjustments to the Account (excluding Earnings) for the valuation period.

(c) Segregated Accounts. A Segregated Account is an Account the Plan Administrator establishes and maintains or directs the Trustee to establish and maintain for a Participant: (i) to facilitate installment payments; (ii) to hold a QDRO amount; (iii) to prevent a distortion of Plan Earnings allocations; or (iv) for such other purposes as the Plan Administrator may direct. A Segregated Account receives all income it earns and bears all expense or loss it incurs. The Trustee will invest the assets of a Segregated Account consistent with the purpose for which the Plan Administrator or Trustee established the Account. As of each Valuation Date, the Plan Administrator must reduce a Segregated Account for any forfeiture arising after the Plan

Administrator has made all other allocations, changes or adjustments to the Account (excluding Earnings) for the Valuation Period. Notwithstanding anything in this Section to the contrary, transferred amounts are not required to be separately accounted for and may be combined with the corresponding Account maintained in this Plan provided all rights, benefits and features and other attributes are identical with respect to each account, or are identical after the combination and such combination does not result in the impermissible elimination of any Code §411(d)(6) protected benefits.

(3) Amount of Account/distributions. The amount of a Participant's Account, as determined by the Plan Administrator, is equal to the sum of all contributions, Earnings and other additions credited to the Account, less all distributions (including distributions to Beneficiaries and to alternate payees and also including disbursement of Plan loan proceeds), expenses and other charges against the Account as of a Valuation Date or other relevant date. For purposes of a distribution under the Plan, the amount of a Participant's Account Balance is determined based upon its value on the Valuation Date immediately preceding or coinciding with the date of the distribution. If any or all Plan investment Accounts are Participant-Directed Accounts, the directing Participant's Account Balance consists of the assets held within the Participant-Directed Account and the value of the Account is determined based upon the fair market value of such assets.

(4) Account statements. As soon as practicable after the Accounting Date of each Plan Year, the Plan Administrator will deliver to each Participant (and to each Beneficiary) a statement reflecting the amount of his or her Account Balance in the Trust as of the statement date or most recent Valuation Date. No Participant, except the Plan Administrator/Participant or Trustee/Participant, has the right to inspect the records reflecting the Account of any other Participant.

(B) Allocation of Earnings. This Section 5.07(B) applies solely to the allocation of Earnings of the Trust Fund. The Plan Administrator will allocate Employer Contributions and Participant forfeitures, if any, in accordance with Article III. Earnings means the net income, gain or loss earned by a particular Account, by the Trust, or with respect to a contribution or to a distribution, as the context requires.

(1) Allocate as of Valuation Date. As of each Valuation Date, the Plan Administrator must adjust Accounts to reflect Earnings for the Valuation Period since the last Valuation Date.

(2) Definition of Valuation Date. A Valuation Date under this Plan is each: (a) Accounting Date; (b) Valuation Date the Employer elects in the Adoption Agreement; or (c) Valuation Date the Plan Administrator establishes. The Employer in the Adoption Agreement or the Plan Administrator may elect alternative Valuation Dates for the different Contribution Types which the Plan Administrator maintains under the Plan.

(3) Definition of Valuation Period. The Valuation Period is the period beginning on the day after the last Valuation Date and ending on the current Valuation Date.

(4) Allocation methods. The Plan Administrator will allocate Earnings to the Participant Accounts in accordance with the daily valuation method, balance forward method, balance

forward with adjustment method, weighted average method, Participant-Directed Account method, or other method the Employer elects under the Adoption Agreement. The Employer in the Adoption Agreement may elect alternative methods under which the Plan Administrator will allocate the Earnings to the Accounts reflecting different Contribution Types or investment Account types which the Plan Administrator maintains under the Plan. The Plan Administrator first will adjust the Participant Accounts, as those Accounts stood at the beginning of the current Valuation Period, by reducing the Accounts for any forfeitures, distributions, and loan disbursement payments arising under the Plan, for expenses charged during the Valuation Period to the Accounts (expenses directly related to a Participant's Account). The Plan Administrator then, subject to the restoration allocation requirements of the Plan, will allocate Earnings under the applicable valuation method.

(a) Daily valuation method. If the Employer in the Adoption Agreement elects to apply the daily valuation method, the Plan Administrator will allocate Earnings on each day of the Plan Year for which Plan assets are valued on an established market and the Trustee is conducting business. Under the daily valuation method, all assets subject to such method are subject to daily valuation. The assets may be held in Participant-Directed Accounts or in Accounts which are subject to Trustee or other fiduciary investment direction.

(b) Balance forward method. If the Employer in the Adoption Agreement elects to apply the balance forward method, the Plan Administrator will allocate Earnings pro rata to the adjusted Participant Accounts, since the last Valuation Date.

(c) Balance forward with adjustment method. If the Employer in the Adoption Agreement elects to apply the balance forward with adjustment method, the Plan Administrator will allocate pursuant to the balance forward method, except it will treat as part of the relevant Account at the beginning of the Valuation Period the percentage of the contributions made as the Employer elects in the Adoption Agreement, during the Valuation Period the Employer elects in the Adoption Agreement.

(d) Weighted average method. If the Employer in the Adoption Agreement elects to apply a weighted average allocation method, the Plan Administrator will allocate pursuant to the balance forward method, except it will treat a weighted portion of the applicable contributions as if includible in the Participant's Account as of the beginning of the Valuation Period. The weighted portion is a fraction, the numerator of which is the number of months in the Valuation Period, excluding each month in the Valuation Period which begins prior to the contribution date of the applicable contributions, and the denominator of which is the number of months in the Valuation Period. The Employer in the Adoption Agreement may elect to substitute a weighting period other than months for purposes of this weighted average allocation.

(e) Participant-Directed Account method. The Employer in the Adoption Agreement must elect to apply the Participant-Directed Account method to any Participant-Directed Account under the Plan. Under the Participant-Directed Account method: (i) each Participant-Directed Account is credited and charged with the Earnings such Account generates; (ii) the Employer's election, if any, in the Adoption Agreement of another method for the allocation of Earnings will not apply to any Participant-Directed Account; and (iii) the Participant-

Directed Account may be valued as often as daily, but will be valued at least annually, and all assets in the Account are not necessarily valued on the same frequency. An Account which is subject to the Participant-Directed Account method includes an individual brokerage account or similar account in title to the Trustee for the benefit of the Participant.

(C) Allocation of Net Income, Gain or Loss (No Trust). In a Tax-Exempt Eligible 457 Plan that does not maintain a trust the Plan Administrator will allocate net income, gain or loss in accordance with this provision. As of each Accounting Date (and each other valuation date determined under the Adoption Agreement), the Plan Administrator will adjust Accounts to reflect net income, gain or loss, if any, since the last Accounting Date or Account valuation. The Employer in the Adoption Agreement will elect the method for allocating net income gain or loss. The Plan Administrator will continue to allocate net income, gain and loss to a Participant's Account subject to an installment distribution, until the Account is fully distributed.

5.08 ACCOUNT CHARGED. The Plan Administrator will charge all distributions made to a Participant or to his or her Beneficiary, or transferred under Section 9.03 from his or her Account, against the Account of the Participant when made.

5.09 OWNERSHIP OF FUND/TAX-EXEMPT ORGANIZATION. If the Employer is a Tax-Exempt Organization, the Plan is an unfunded plan and all Deferred Compensation, property and rights to property purchased by Deferred Compensation and all income attributable thereto remain, until paid or made available under the Plan, the sole property and rights of the Employer, subject only to the claims of the Employer's general creditors. No Participant or Beneficiary will have any vested interest or secured or preferred position with respect to an Account or have any claim against the Employer except as a general creditor. No Participant or Beneficiary shall have any right to sell, assign, transfer or otherwise convey his or her Account or any interest in his or her Deferred Compensation. The Employer or the Plan Administrator, acting as the Employer's agent, may enter into a trust agreement solely for the purpose of investing all or part of the Accounts, which will be subject to the claims of the Employer's general creditors, and in which the Participants or Beneficiaries will not have a vested interest nor a secured or preferred position or have any claim except as the Employer's general creditor. The Employer may not purchase life insurance contracts under this Plan unless the Employer retains all incidents of ownership in such contracts, the Employer is the sole beneficiary of such contracts and the Employer is not under any obligation to transfer the contracts or pass through the proceeds to any Participant or to his or her Beneficiary. The Employer may adopt and attach to the Plan as "Appendix A," the Internal Revenue Service Model Rabbi Trust under Rev. Proc. 92-64 (as amended) to hold the assets of a Tax-Exempt Organization Eligible 457 Plan. If the Employer adopts the Model Rabbi Trust, the Plan incorporates by reference the provisions of the Model Rabbi Trust as if fully set forth herein.

5.10 PARTICIPANT DIRECTION OF INVESTMENT. Subject to the terms of the Plan Administrator's adopted policy, if any, and also to written consent of the Trustee, if the Plan has a Trust, a Participant will have the right to direct the investment or re-investment of the assets comprising the Participant's Account. The Plan Administrator will account separately for the Participant-Directed Accounts. The Participant's right to direct investment does not give the Participant any vested interest or secured or preferred position with respect to assets over which he/she has investment responsibility.

5.11 VESTING/SUBSTANTIAL RISK OF FORFEITURE. The Employer in the Adoption Agreement may

elect to apply a vesting schedule or to specify any other Substantial Risk of Forfeiture applicable to any or all Deferral Contributions.

(A) Forfeiture Allocation. The Employer in the Adoption Agreement must elect the method the Plan Administrator will use to allocate any Participant forfeitures, including those related to lost Participants under Section 5.14. However, if a forfeiture allocation method is not selected in the adoption agreement, forfeitures are allocated as an Employer Contribution. The Plan Administrator will allocate a forfeiture in the Plan Year in which the forfeiture occurs or in the next following Plan Year.

5.12 PRESERVATION OF ELIGIBLE PLAN STATUS.

The Plan Administrator may elect to sever from this Plan and to treat as a separate 457 plan, the Accounts of any Participants who have Excess Deferrals that the Plan Administrator has not corrected in accordance with Section 3.10 or in the case of any other Code §457(b) failure that the Employer may not otherwise correct, and which failure would result in the Plan ceasing to be an Eligible 457 Plan. In such event, the Plan Administrator will take any necessary or appropriate action consistent with the Employer's maintenance of separate 457 plans and with preservation of Eligible 457 Plan status of this Plan.

5.13 LIMITED LIABILITY. The Employer will not be liable to pay plan benefits to a Participant in excess of the value of the Participant's Account as the Plan Administrator determines in accordance with the Plan terms. Neither the Employer nor the Plan Administrator will be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

5.14 LOST PARTICIPANTS. If the Plan Administrator is unable to locate any Participant or Beneficiary whose Account becomes distributable (a "lost Participant"), the Plan Administrator will apply the provisions of this Section 5.14.

(A) Attempt to Locate. The Plan Administrator will attempt to locate a lost Participant and may use one or more of the following methods: (1) provide a distribution notice to the lost Participant at his or her last known address by certified or registered mail; (2) use a commercial locator service, the internet or other general search method; (3) use the Social Security Administration or PBGC search program; or (4) use such other methods as the Plan Administrator believes prudent.

(B) Failure to Locate. If a lost Participant remains unlocated for 6 months following the date the Plan Administrator first attempts to locate the lost Participant using one or more of the methods described in Section 5.14(A), the Plan Administrator may forfeit the lost Participant's Account. If the Plan Administrator forfeits the lost Participant's Account, the forfeiture occurs at the end of the above-described 6-month period and the Plan Administrator will allocate the forfeiture in accordance with Section 5.11. The Plan Administrator under this Section 5.14(B) will forfeit the entire Account of the lost Participant, including Salary Reduction Contributions.

If a lost Participant whose Account was forfeited thereafter at any time but before the Plan has been terminated makes a claim for his or her forfeited Account, the Plan Administrator will restore the forfeited Account to the same dollar amount as the amount forfeited, unadjusted for net income, gains or losses occurring subsequent to the forfeiture. The Plan Administrator will make the restoration in the Plan Year in which the lost Participant makes the claim, first from the amount, if any, of Participant forfeitures the Plan Administrator otherwise would allocate for the Plan Year, then from the amount, if any, of Trust net income or gain for the Plan Year and last from the amount or

additional amount the Employer contributes to the Plan for the Plan Year. The Plan Administrator will distribute the restored Account to the lost Participant not later than 60 days after the close of the Plan Year in which the Plan Administrator restores the forfeited Account.

(C) Nonexclusivity and Uniformity. The provisions of this Section 5.14 are intended to provide permissible but not exclusive means for the Plan Administrator to administer the Accounts of lost Participants. The Plan Administrator may utilize any other reasonable method to locate lost Participants and to administer the Accounts of lost Participants, including the default rollover under Section 4.07(C) and such other methods as the Revenue Service or the U.S. Department of Labor ("DOL") may in the future specify. The Plan Administrator will apply Section 5.14 in a reasonable manner, but may in determining a specific course of action as to a particular Account, reasonably take into account differing circumstances such as the amount of a lost Participant's Account, the expense in attempting to locate a lost Participant, the Plan Administrator's ability to establish and the expense of establishing a rollover IRA, and other factors. The Plan Administrator may charge to the Account of a lost Participant the reasonable expenses incurred under this Section 5.14 and which are associated with the lost Participant's Account.

5.15 PLAN CORRECTION. The Plan Administrator, in conjunction with the Employer and Trustee as appropriate, may undertake such correction of Plan errors as the Plan Administrator deems necessary, including but not limited to correction to maintain the Plan's status as an Eligible 457 Plan. The Plan Administrator under this Section 5.15 also may undertake Plan correction in accordance with any correction program that the Internal Revenue Service makes applicable to 457 plans.

ARTICLE VI PARTICIPANT ADMINISTRATIVE PROVISIONS

6.01 BENEFICIARY DESIGNATION. A Participant from time to time may designate, in writing, any person(s) (including a trust or other entity), contingently or successively, to whom the Plan Administrator or Trustee will pay the Participant's Account (including any life insurance proceeds payable to the Participant's Account) in the event of death. A Participant also may designate the method of payment of his or her Account. The Plan Administrator will prescribe the form for the Participant's written designation of Beneficiary and, upon the Participant's filing the form with the Plan Administrator, the form revokes all designations filed prior to that date by the same Participant. A divorce decree, or a decree of legal separation, revokes the Participant's designation, if any, of his or her spouse as his or her Beneficiary under the Plan unless the decree or a QDRO provides otherwise. The foregoing revocation provision (if applicable) applies only with respect to a Participant whose divorce becomes effective on or following the date the Employer executes the Adoption Agreement, unless the Employer in the Adoption Agreement specifies a different effective date.

6.02 NO BENEFICIARY DESIGNATION. If a Participant fails to name a Beneficiary in accordance with Section 6.01, or if the Beneficiary named by a Participant predeceases the Participant, then the Plan Administrator will pay the Participant's remaining Account in accordance with Article IV in the following order of priority, to:

- (a) The Participant's surviving spouse; or
- (b) The Participant's children (including adopted children), in equal shares by right of representation (one share for each surviving child and one share for each child who predeceases the Participant with living descendants); and if none to
- (c) Parents. The Participant's surviving parents, in equal shares; and if none to
- (d) The Participant's estate.

If the Beneficiary survives the Participant, but dies prior to distribution of the Participant's entire Account, the Trustee will pay the remaining Account to the Beneficiary's estate unless: (1) the Participant's Beneficiary designation provides otherwise; or (2) the Beneficiary has properly designated a beneficiary. A Beneficiary only may designate a beneficiary for the Participant's Account Balance remaining at the Beneficiary's death, if the Participant has not previously designated a successive contingent beneficiary and the Beneficiary's designation otherwise complies with the Plan terms. The Plan Administrator will direct a Trustee if applicable as to the method and to whom the Trustee will make payment under this Section 6.02.

6.03 SALARY REDUCTION AGREEMENT.

(A) General. A Participant must elect to make Salary Reduction Contributions on a Salary Reduction Agreement form the Plan Administrator provides for this purpose. The Salary Reduction Agreement must be consistent with the Employer's Adoption Agreement elections and the Plan Administrator in a Salary Reduction Agreement may impose such other terms and limitations as the Plan Administrator may determine.

(B) Election Timing. A Participant's Salary Reduction Agreement may not take effect earlier than the first day of the calendar month following the date the Participant executes the

Salary Reduction Agreement and as to Compensation paid or made available in such calendar month. However, if an Employee is eligible to become a Participant during the Employee's calendar month of hire, the Employee may execute a Salary Reduction Agreement on or before the date he/she becomes an Employee, effective for the month in which he/she becomes an Employee.

(C) Sick, Vacation and Back Pay. If the Employer in the Adoption Agreement permits Participants to make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay, a Participant who will incur a Severance from Employment may execute a Salary Reduction Agreement before such amounts are paid or made available provided: (i) such amounts are paid or made available before the Participant incurs the Severance; and (ii) the Participant is an Employee in that month.

(D) Modification of Salary Reduction Agreement. A Participant's Salary Reduction Agreement remains in effect until a Participant modifies it or ceases to be eligible to participate in the Plan. A Participant may modify his or her Salary Reduction Agreement by executing a new Salary Reduction Agreement. Any modification will become effective no earlier than the beginning of the calendar month commencing after the date the Participant executes the new Salary Reduction Agreement. Filing a new Salary Reduction Agreement will revoke all Salary Reduction Agreements filed prior to that date. The Employer or Plan Administrator may restrict the Participant's right to modify his or her Salary Reduction Agreement in any Taxable Year.

6.04 PERSONAL DATA TO PLAN ADMINISTRATOR. Each Participant and each Beneficiary of a deceased Participant must furnish to the Plan Administrator such evidence, data or information as the Plan Administrator considers necessary or desirable for the purpose of administering the Plan. The provisions of this Plan are effective for the benefit of each Participant upon the condition precedent that each Participant will furnish promptly full, true and complete evidence, data and information when requested by the Plan Administrator, provided the Plan Administrator advises each Participant of the effect of his or her failure to comply with its request.

6.05 ADDRESS FOR NOTIFICATION. Each Participant and each Beneficiary of a deceased Participant must file with the Plan Administrator from time to time, in writing, his or her address and any change of address. Any communication, statement or notice addressed to a Participant, or Beneficiary, at his or her last address filed with the Plan Administrator, or as shown on the records of the Employer, binds the Participant, or Beneficiary, for all purposes of this Plan.

6.06 PARTICIPANT OR BENEFICIARY INCAPACITATED. If, in the opinion of the Plan Administrator or of the Trustee, a Participant or Beneficiary entitled to a Plan distribution is not able to care for his or her affairs because of a mental condition, a physical condition, or by reason of age, the Plan Administrator or at the direction of the Plan Administrator, the Trustee, may make the distribution to the Participant's or Beneficiary's guardian, conservator, trustee, custodian (including under a Uniform Transfers or Gifts to Minors Act) or to his or her attorney-in-fact or to other legal representative upon furnishing evidence of such status satisfactory to the Plan Administrator and to the Trustee. The Plan Administrator and the Trustee do not have any liability with respect to payments so made and neither the Plan Administrator nor the Trustee has any duty to make inquiry as to the competence of any person entitled to receive payments under the Plan.

ARTICLE VII MISCELLANEOUS

7.01 NO ASSIGNMENT OR ALIENATION. A Participant or Beneficiary does not have the right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments under the Plan or Trust and the Plan Administrator and the Trustee will not recognize any such anticipation, assignment, or alienation. The payments and the rights under this Plan are nonassignable and nontransferable. Furthermore, a Participant's or Beneficiary's interest in the Trust is not subject to attachment, garnishment, levy, execution or other legal or equitable process.

7.02 EFFECT ON OTHER PLANS. This Plan does not affect benefits under any other retirement, pension, or benefit plan or system established for the benefit of the Employer's Employees, and participation under this Plan does not affect benefits receivable under any such plan or system, except to the extent provided in such plan or system.

7.03 WORD USAGE. Words used in the masculine will apply to the feminine where applicable, and wherever the context of the Plan dictates, the plural will be read as the singular and the singular as the plural.

7.04 STATE LAW. The laws of the state of the Employer's principal place of business will determine all questions arising with respect to the provisions of this Plan, except to the extent Federal law supersedes State law.

7.05 EMPLOYMENT NOT GUARANTEED. Nothing contained in this Plan, or any modification or amendment to the Plan, or in the creation of any Account, or the payment of any benefit, gives any Employee, Participant or Beneficiary any right to continue employment, any legal or equitable right against the Employer, the Plan Administrator, the Trustee, any other Employee of the Employer, or any agents thereof except as expressly provided by the Plan.

7.06 NOTICE, DESIGNATION, ELECTION, CONSENT AND WAIVER. All notices under the Plan and all Participant or Beneficiary designations, elections, consents or waivers must be in writing and made in a form the Plan Administrator specifies or otherwise approves. To the extent permitted by Treasury regulations or other applicable guidance, any Plan notice, election, consent or waiver may be transmitted electronically. Any person entitled to notice under the Plan may waive the notice or shorten the notice period except as otherwise required by the Code.

ARTICLE VIII TRUST PROVISIONS—GOVERNMENTAL ELIGIBLE 457 PLAN

8.01 GOVERNMENTAL ELIGIBLE 457 PLAN. The provisions of this Article VIII apply to a Governmental Eligible 457 Plan and do not apply to a Tax-Exempt Organization Eligible 457 Plan. The Employer in the Adoption Agreement may elect to substitute another trust (attached to this Plan as "Appendix A") or to modify any provision of Article VIII, consistent with Code §457(g) and applicable Treasury regulations.

8.02 ACCEPTANCE/HOLDING. The Trustee accepts the Trust created under the Plan and agrees to perform the duties and obligations imposed. The Trustee must hold in trust under this Article VIII, all Deferred Compensation until paid in accordance with the Plan terms.

8.03 RECEIPT OF CONTRIBUTIONS. The Trustee is accountable to the Employer for the funds contributed to it by the Employer or the Plan Administrator, but the Trustee does not have any duty to see that the contributions received comply with the provisions of the Plan.

8.04 FULL INVESTMENT POWERS. The Trustee has full discretion and authority with regard to the investment of the Trust, except with respect to a Trust asset under Participant direction of investment, in accordance with Section 8.12. The Trustee is authorized and empowered, but not by way of limitation, to exercise and perform the following powers, rights and duties:

(a) To invest any part or all of the Trust in any common or preferred stocks, open-end or closed-end mutual funds, put and call options traded on a national exchange, United States retirement plan bonds, corporate bonds, debentures, convertible debentures, commercial paper, U. S. Treasury bills, U. S. Treasury notes and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts of any type, mortgages, notes or other property of any kind, real or personal, and to buy or sell options on common stock on a nationally recognized options exchange with or without holding the underlying common stock, as a prudent person would do under like circumstances. Any investment made or retained by the Trustee in good faith will be proper but must be of a kind constituting a diversification considered by law suitable for trust investments;

(b) To retain in cash so much of the Trust as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust in a bank account at reasonable interest;

(c) To invest, if the Trustee is a bank or similar financial institution supervised by the United States or by a State, in any type of deposit of the Trustee (or a bank related to the Trustee within the meaning of Code §414(b)) at a reasonable rate of interest or in a common trust fund as described in Code §584, or in a collective investment fund, the provisions of which the Trust incorporates by this reference, which the Trustee (or its affiliate, as defined in Code §1504) maintains exclusively for the collective investment of money contributed by the bank (or its affiliate) in its capacity as Trustee and which conforms to the rules of the Comptroller of the Currency;

(d) To manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or personal, in such manner, for such

considerations and on such terms and conditions as the Trustee decides;

(e) To credit and distribute the Trust as directed by the Plan Administrator of the Plan. The Trustee will not be obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustee will be accountable only to the Plan Administrator for any payment or distribution made by it in good faith on the order or direction of the Plan Administrator;

(f) To borrow money, to assume indebtedness, extend mortgages and encumber by mortgage or pledge;

(g) To compromise, contest, arbitrate or abandon claims and demands, in the Trustee's discretion;

(h) To have with respect to the Trust all of the rights of an individual owner, including the power to exercise any and all voting rights associated with Trust assets, to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, to tender shares and to exercise or sell stock subscriptions or conversion rights;

(i) To lease for oil, gas and other mineral purposes and to create mineral severances by grant or reservation; to pool or unitize interest in oil, gas and other minerals; and to enter into operating agreements and to execute division and transfer orders;

(j) To hold any securities or other property in the name of the Trustee or its nominee, with depositories or agent depositories or in another form as it may deem best, with or without disclosing the trust relationship;

(k) To perform any and all other acts in its judgment necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust;

(l) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until a court of competent jurisdiction makes a final adjudication;

(m) To file all tax returns required of the Trustee;

(n) To furnish to the Employer and the Plan Administrator an annual statement of account showing the condition of the Trust and all investments, receipts, disbursements and other transactions effected by the Trustee during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year, which accounts will be conclusive on all persons, including the Employer and the Plan Administrator, except as to any act or transaction concerning which the Employer or the Plan Administrator files with the Trustee written exceptions or objections within 90 days after the receipt of the accounts; and

(o) To begin, maintain or defend any litigation necessary in connection with the administration of the Trust, except that the Trustee will not be obliged or required to do so unless indemnified to its satisfaction.

(A) Nondiscretionary Trustee. The Employer in the Adoption Agreement may elect to appoint a Nondiscretionary Trustee, subject to this Section 8.04(A). The Nondiscretionary Trustee does not have any discretion or authority with regard to the

investment of the Trust, but must act solely as a directed Trustee hereunder. The Nondiscretionary Trustee is authorized and empowered to exercise and perform the above Section 8.04 powers, rights and duties provided that the Trustee shall act solely as a directed Trustee and only in accordance with the written direction of the Employer, the Plan Administrator or of a Participant as applicable. The Nondiscretionary Trustee is not liable for making, retaining or disposing of any investment or for taking or failing to take any other action, in accordance with proper Employer, Plan Administrator or Participant direction.

8.05 RECORDS AND STATEMENTS. The records of the Trustee pertaining to the Trust will be open to the inspection of the Plan Administrator and the Employer at all reasonable times and may be audited from time to time by any person or persons as the Employer or Plan Administrator may specify in writing. The Trustee will furnish the Plan Administrator whatever information relating to the Trust the Plan Administrator considers necessary.

8.06 FEES AND EXPENSES FROM FUND. The Trustee will receive reasonable annual compensation in accordance with its fee schedule as published from time to time. The Trustee will pay from the Trust all fees and expenses the Trustee reasonably incurs in its administration of the Trust, unless the Employer pays the fees and expenses.

8.07 PROFESSIONAL AGENTS. The Trustee may employ and pay from the Trust reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee may delegate to any agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Trust, and the Trustee may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

8.08 DISTRIBUTION OF CASH OR PROPERTY. The Trustee may make distribution under the Plan in cash or property, or partly in each, at its fair market value as determined by the Trustee.

8.09 RESIGNATION AND REMOVAL. The Trustee or the Custodian may resign its position by giving written notice to the Employer and to the Plan Administrator. The Trustee's notice must specify the effective date of the Trustee's resignation, which date must be at least 30 days following the date of the Trustee's notice, unless the Employer consents in writing to shorter notice.

The Employer may remove a Trustee or a Custodian by giving written notice to the affected party. The Employer's notice must specify the effective date of removal which date must be at least 30 days following the date of the Employer's notice, except where the Employer reasonably determines a shorter notice period or immediate removal is necessary to protect Plan assets.

8.10 SUCCESSOR TRUSTEE.

(A) Appointment. In the event of the resignation or the removal of a Trustee, where no other Trustee continues to service, the Employer must appoint a successor Trustee if it intends to continue the Plan. If two or more persons hold the position of Trustee, in the event of the removal of one such person, during any period the selection of a replacement is pending, or during any period such person is unable to serve for any reason, the remaining person or persons will act as the Trustee. If the Employer fails to appoint a successor Trustee as of the effective date of the Trustee resignation or removal and no other Trustee remains, the Trustee will treat the Employer as

having appointed itself as Trustee and as having filed the Employer's acceptance of appointment as successor Trustee with the former Trustee.

(B) Automatic Successor. Any corporation which succeeds to the trust business of the Trustee, or results from any merger or consolidation to which the Trustee is a party, or is the transferee of substantially all the Trustee's assets, will be the successor to the Trustee under this Trust. The successor Trustee will possess all rights, duties and powers under this Trust as if the successor Trustee were the original Trustee. Neither the Trustee nor the successor Trustee need provide notice to any interested person of any transaction resulting in a successor Trustee. The successor Trustee need not file or execute any additional instrument or perform any additional act to become successor Trustee.

8.11 VALUATION OF TRUST. The Trustee will value the Trust as of each Accounting Date to determine the fair market value of the Trust assets. The Trustee will value the Trust on such other date(s) the Plan Administrator may direct.

8.12 PARTICIPANT DIRECTION OF INVESTMENT. Consistent with the Plan Administrator's policy adopted under Section 5.02(1), the Trustee may consent in writing to permit Participants in the Plan to direct the investment to the Trust assets. The Plan Administrator will advise the Trustee of the portion of the Trust credited to each Participant's Account under the Plan, and subject to such Participant direction. As a condition of Participant direction, the Trustee may impose such conditions, limitations and other provisions as the Trustee may deem appropriate and as are consistent with the Plan Administrator's policy. The Trustee will report to the Plan Administrator the net income, gain or losses incurred by each Participant-Directed Account separately from the net income, gain or losses incurred by the general Trust during the Trust Year.

8.13 THIRD PARTY RELIANCE. No person dealing with the Trustee will be obliged to see to the proper application of any money paid or property delivered to the Trustee, or to inquire whether the Trustee has acted pursuant to any of the terms of the Trust. Each person dealing with the Trustee may act upon any notice, request or representation in writing by the Trustee, or by the Trustee's duly authorized agent, and will not be liable to any person whomsoever in so doing. The certificate of the Trustee that it is acting in accordance with the Trust will be conclusive in favor of any person relying on the certificate.

8.14 INVALIDITY OF ANY TRUST PROVISION. If any clause or provision of this Article VIII proves to be or is adjudged to be invalid or void for any reason, such void or invalid clause or provision will not affect any of the other provisions of this Article VIII and the balance of the Trust provisions will remain operative.

8.15 EXCLUSIVE BENEFIT. The Trustee will hold all the assets of the Trust for the exclusive benefit of the Participants and their Beneficiaries and neither the Employer nor the Trustee will use or divert any part of the corpus or income of the Trust for purposes other than the exclusive benefit of the Participants and Beneficiaries of the Plan. The Employer will not have any right to the assets held by the Trustee and the Trust assets will not be subject to the claims of the Employer's creditors or, except as provided in Section 4.06, of the creditors of any Participant or Beneficiary. No Participant or Beneficiary shall have any right to sell, assign, transfer or otherwise convey his or her Account or any interest in his or her Deferred Compensation. Notwithstanding the foregoing, the Plan Administrator may pay from a Participant's or Beneficiary's Account the amount the Plan Administrator finds is lawfully

demand under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary. The Trust created under the Employer's Plan is irrevocable and its assets will not inure to the benefit of the Employer.

8.16 SUBSTITUTION OF CUSTODIAL ACCOUNT OR ANNUITY CONTRACT. The Employer in the Adoption Agreement may elect to use one or more custodial accounts or annuity contracts in lieu of or in addition to the Trust established in this Article VIII. Any such custodial account or annuity contract must satisfy the requirements of Code §457(g)(3) and applicable Treasury regulations.

8.17 GROUP TRUST AUTHORITY. Notwithstanding any contrary provision in this Plan, the Trustee may, unless restricted in writing by the Plan Administrator, transfer assets of the Plan to a group trust that is operated or maintained exclusively for the commingling and collective investment of monies provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under Code §401(a), individual retirement accounts that are exempt under Code §408(e), and eligible governmental plans that meets the requirements of Code §457(b). For this purpose, a trust includes a custodial account that is treated as a trust under Code §401(f) or under Code §457(g)(3). For purposes of valuation, the value of the interest maintained by the Plan in such group trust shall be the fair market value of the portion of the group trust held for Plan, determined in accordance with generally recognized valuation procedures.

ARTICLE IX AMENDMENT, TERMINATION, TRANSFERS

9.01 AMENDMENT BY EMPLOYER/SPONSOR. The Employer has the right at any time and from time to time:

(a) To amend this Plan and Trust Agreement and the Adoption Agreement in any manner it deems necessary or advisable in order to continue the status of this Plan as an Eligible 457 Plan; and

(b) To amend this Plan and Trust Agreement and the Adoption Agreement in any other manner, including deletion, substitution or modification of any Plan, Trust or Adoption Agreement provision.

The Employer must make all amendments in writing. The Employer may amend the Plan by an Adoption Agreement election, by addenda, by separate amendment, or by restatement of the Adoption Agreement or Plan. Each amendment must state the date to which it is either retroactively or prospectively effective. The Employer also may not make any amendment that affects the rights, duties or responsibilities of the Trustee or the Plan Administrator without the written consent of the affected Trustee or the Plan Administrator.

9.02 TERMINATION/FREEZING OF PLAN. The Employer has the right, at any time, to terminate this Plan or to cease (freeze) further Deferral Contributions to the Plan. Upon termination or freezing of the Plan, the provisions of the Plan (other than provisions permitting continued Deferral Contributions) remain operative until distribution of all Accounts. Upon Plan termination, the Plan Administrator or Trustee shall distribute to Participants and Beneficiaries all Deferred Compensation as soon as is reasonably practicable following termination.

9.03 TRANSFERS. The Employer may enter into a Transfer agreement with another employer under which this Plan: (a) may accept a Transfer of a Participant's Account in the other employer's Eligible 457 Plan; or (b) may Transfer a Participant's (or Beneficiary's) Account in this Plan to the other employer's Eligible 457 Plan. The plan sponsors of the plans involved in the Transfer both must be States or both must be Tax-Exempt Organizations and the plans must provide for Transfers. The Participant or Beneficiary, after the Transfer will have Deferred Compensation in the recipient plan at least equal to his or her Deferred Compensation in the transferring plan immediately before the Transfer. Any Transfer also must comply with applicable Treasury regulations, and in particular Treas. Reg. §§1.457-10(b)(2) as to post-severance transfers between Governmental Eligible 457 Plans; 1.457-10(b)(3) as to transfers of all assets between Governmental Eligible 457 Plans; 1.457-10(b)(4) as to transfers between Governmental Eligible 457 Plans of the same Employer; and 1.457-10(b)(5) as to post-severance transfers between Tax-Exempt Organization Eligible 457 Plans. The Plan Administrator will credit any Transfer accepted under this Section 9.03 to the Participant's Account and will treat the transferred amount as a Deferral Contribution for all purposes of this Plan except the Plan Administrator, will not treat such Transfer as a Deferral Contribution subject to the limitations of Article III. In addition, in the case of a Transfer between Tax-Exempt Organization Eligible Plans, the recipient plans shall apply a Participant's distribution elections made under the transferor plan in accordance with Treas. Reg. §1.457-10(b)(6)(ii). The Plan's Transfer of any Participant's or Beneficiary's Account under this Section 9.03 completely discharges the Employer, the Plan Administrator, the Trustee and the Plan from any liability to the Participant or Beneficiary for any Plan benefits.

9.04 PURCHASE OF PERMISSIVE SERVICE CREDIT.

A Participant in a Governmental Eligible 457 Plan, prior to otherwise incurring a distributable event under Article IV, may direct the Trustee to transfer all or a portion of his or her Account to a governmental defined benefit plan (under Code §414(d)) for: (a) the purchase of permissive service credit (under Code §415(n)(3)(A)) under such plan, or (b) the repayment of contributions and earnings previously refunded with respect to a forfeiture of service credited under the plan (or under another governmental plan within the same State) to which Code §415 does not apply by reason of Code §415(k)(3).

ADOPTION AGREEMENT FOR ELIGIBLE GOVERNMENTAL 457 PLAN

The undersigned Employer, by executing this Adoption Agreement, establishes an Eligible 457 Plan ("Plan"). The Employer, subject to the Employer's Adoption Agreement elections, adopts fully the Plan provisions. This Adoption Agreement, the basic plan document and any attached Appendices, amendments, or agreements permitted or referenced therein, constitute the Employer's entire plan document. *All "Election" references within this Adoption Agreement or the basic plan document are Adoption Agreement Elections. All "Article" or "Section" references are basic plan document references. Numbers in parentheses which follow election numbers are basic plan document references.* Where an Adoption Agreement election calls for the Employer to supply text, the Employer may lengthen any space or line, or create additional tiers. When Employer-supplied text uses terms substantially similar to existing printed options, all clarifications and caveats applicable to the printed options apply to the Employer-supplied text unless the context requires otherwise. The Employer makes the following elections granted under the corresponding provisions of the basic plan document.

1. EMPLOYER (1.11).

Name: Oak Park MI

Address: 14000 Oak Park BLVD
Street

Oak Park Michigan 48237-2082
City State Zip

Telephone: (248) 691-7492

Taxpayer Identification Number (TIN): 386004641

2. PLAN NAME.

Name: Oak Park MI 457(b) Deferred Compensation Plan

3. **PLAN YEAR (1.25).** Plan Year means the 12 consecutive month period (except for a short Plan Year) ending every (Choose one of a. or b. and choose c. if applicable): [Note: Complete any applicable blanks under Election c. with a specific date, e.g., "June 30" OR "the last day of February" OR "the first Tuesday in January." In the case of a Short Plan Year or a Short Limitation Year, include the year, e.g., "May 1, 2013."]

- a. ☒ **December 31.**
- b. ☐ **Plan Year:** ending: _____.
- c. ☐ **Short Plan Year:** commencing: _____ and ending: _____.

4. **EFFECTIVE DATE (1.08).** The Employer's adoption of the Plan is a (Choose one of a. or b. Complete c. if new plan OR complete c. and d. if an amendment and restatement. Choose e. if applicable):

- a. ☐ **New Plan.**
- b. ☒ **Restated Plan.** The Plan is a substitution and amendment of an existing 457 plan.

Initial Effective Date of Plan

- c. ☒ March 1, 1979 (enter month day, year; hereinafter called the "Effective Date" unless 4d is entered below)

Restatement Effective Date (If this is an amendment and restatement, enter effective date of the restatement.)

- d. ☒ October 22, 2020 (enter month day, year)

Special Effective Dates: (optional)

- e. ☐ **Describe:** _____.

5. **CONTRIBUTION TYPES.** (If this is a frozen Plan (i.e., all contributions have ceased), choose a. only):

Frozen Plan

- a. ☐ **Contributions cease.** All Contributions have ceased or will cease (Plan is frozen).
1. **Effective date of freeze:** _____ [Note: Effective date is optional unless this is the amendment or restatement to freeze the Plan.]

Contributions. The Employer and/or Participants, in accordance with the Plan terms, make the following Contribution Types to the Plan (Choose one or more of b. through d. if applicable):

- b. ☒ **Pre-Tax Elective Deferrals.** The dollar or percentage amount by which each Participant has elected to reduce his/her Compensation, as provided in the Participant's Salary Reduction Agreement (Choose one or more as applicable.):

And will Matching Contributions be made with respect to Elective Deferrals?

1. ☐ Yes. See Question 16.

2. ☒ No.

And will Roth Elective Deferrals be made?

3. ☒ Yes. [Note: The Employer may not limit Deferrals to Roth Deferrals only.]

4. ☐ No.

- c. ☐ **Nonelective Contributions.** See Question 17.

- d. ☒ **Rollover Contributions.** See Question 30.

6. **EXCLUDED EMPLOYEES (1.10).** The following Employees are Excluded Employees and are not eligible to participate in the Plan (Choose one of a. or b.):

- a. ☒ **No exclusions.** All Employees are eligible to participate.

- b. ☐ **Exclusions.** The following Employees are Excluded Employees (Choose one or more of 1. through 4.):

1. ☐ **Part-time Employees.** The Plan defines part-time Employees as Employees who normally work less than _____ hours per week.

2. ☐ **Hourly-paid Employees.**

3. ☐ **Leased Employees.** The Plan excludes Leased Employees.

4. ☐ **Specify:** _____

7. **INDEPENDENT CONTRACTOR (1.16).** The Plan (Choose one of a., b. or c.):

- a. ☒ **Participate.** Permits Independent Contractors to participate in the Plan.

- b. ☐ **Not Participate.** Does not permit Independent Contractors to participate in the Plan.

- c. ☐ **Specified Independent Contractors.** Permits the following specified Independent Contractors to participate:

[Note: If the Employer elects to permit any or all Independent Contractors to participate in the Plan, the term Employee as used in the Plan includes such participating Independent Contractors.]

8. **COMPENSATION (1.05).** Subject to the following elections, Compensation for purposes of allocation of Deferral Contributions means:

Base Definition (Choose one of a., b., c. or d.):

- a. ☒ Wages, tips and other compensation on Form W-2.

- b. ☐ Code §3401(a) wages (wages for withholding purposes).

- c. ☐ 415 safe harbor compensation.

- d. ☐ Alternative (general) 415 Compensation.

[Note: The Plan provides that the base definition of Compensation includes amounts that are not included in income due to Code §§401(k), 125, 132(f)(4), 403(b), SEP, 414(h)(2), & 457. Compensation for an Independent Contractor means the amounts the Employer pays to the Independent Contractor for services, except as the Employer otherwise specifies below.]

Modifications to Compensation definition. The Employer elects to modify the Compensation definition as follows (Choose one of e. or f.):

- e. ☒ **No modifications.** The Plan makes no modifications to the definition.

- f. ☐ **Modifications** (Choose one or more of 1. through 5.):

1. ☐ **Fringe benefits.** The Plan excludes all reimbursements or other expense allowances, fringe benefits (cash and noncash), moving expenses, deferred compensation and welfare benefits.

2. ☐ **Elective Contributions. [1.05(E)]** The Plan excludes a Participant's Elective Contributions.

3. ☐ **Bonuses.** The Plan excludes bonuses.
4. ☐ **Overtime.** The Plan excludes overtime.
5. ☐ **Specify:** _____

Compensation taken into account. For the Plan Year in which an Employee first becomes a Participant, the Plan Administrator will determine the allocation of matching and nonelective contributions by taking into account *(Choose one of g. or h.):*

- g. ☐ **Plan Year.** The Employee's Compensation for the entire Plan Year. *(N/A if no matching or nonelective contributions)*
- h. ☐ **Compensation while a Participant.** The Employee's Compensation only for the portion of the Plan Year in which the Employee actually is a Participant. *(N/A if no matching or nonelective contributions)*

9. **POST-SEVERANCE COMPENSATION (1.05(F)).** Compensation includes the following types of Post-Severance Compensation paid within any applicable time period as may be required *(Choose one of a. or b.):*

- a. ☐ **None.** The Plan does not take into account Post-Severance Compensation as to any Contribution Type except as required under the basic plan document.
- b. ☒ **Adjustments.** The following Compensation adjustments apply *(Choose one or more):*
 1. ☒ **Regular Pay.** Post-Severance Compensation will include Regular Pay and it will apply to all Contribution Types.
 2. ☒ **Leave-Cashouts.** Post-Severance Compensation will include Leave Cashouts and it will apply to all Contribution Types.
 3. ☒ **Nonqualified Deferred Compensation.** Post-Severance Compensation will include Deferred Compensation and it will apply to all Contribution Types.
 4. ☐ **Salary Continuation for Disabled Participants.** Post-Severance Compensation will include Salary Continuation for Disabled Participants and it will apply to all Contribution Types.
 5. ☐ **Differential Wage Payments.** Post-Severance Compensation will include Differential Wage Payments (military continuation payments) and it will apply to all Contribution Types.
 6. ☐ **Describe alternative Post-Severance Compensation definition, limit by Contribution Type, or limit by Participant group:** _____

10. **NORMAL RETIREMENT AGE (1.20).** A Participant attains Normal Retirement Age under the Plan *(Choose one of a. or b.):*

- a. ☐ **Plan designation.** [Plan Section 3.05(B)] When the Participant attains age _____. *[Note: The age may not exceed age 70 1/2. The age may not be less than age 65, or, if earlier, the age at which a Participant may retire and receive benefits under the Employer's pension plan, if any.]*
- b. ☒ **Participant designation.** [Plan Section 3.05(B) and (B)(1)] When the Participant attains the age the Participant designates, which may not be earlier than age 65 and may not be later than age 70 1/2. *[Note: The age may not exceed age 70 1/2.]*

Special Provisions for Police or Fire Department Employees *(Choose c. and/or d. as applicable):*

- c. ☒ **Police department employees.** [Plan Section 3.05(B)(3)] *(Choose 1. or 2.):*
 1. ☐ **Plan designation.** [Plan Section 3.05(B)] When the Participant attains age _____. *[Note: The age may not exceed age 70 1/2 and may not be less than age 40.]*
 2. ☒ **Participant designation.** [Plan Section 3.05(B) and (B)(1)] When the Participant attains the age the Participant designates, which may not be earlier than age 40 (no earlier than age 40) and may not be later than age 70 1/2. *[Note: The age may not exceed age 70 1/2.]*
- d. ☒ **Fire department employees.** [Plan Section 3.05(B)(3)] *(Choose 1. or 2.):*
 1. ☐ **Plan designation.** [Plan Section 3.05(B)] When the Participant attains age _____. *[Note: The age may not exceed age 70 1/2 and may not be less than age 40.]*
 2. ☒ **Participant designation.** [Plan Section 3.05(B) and (B)(1)] When the Participant attains the age the Participant designates, which may not be earlier than age 40 (no earlier than age 40) and may not be later than age 70 1/2. *[Note: The age may not exceed age 70 1/2.]*

11. **ELIGIBILITY CONDITIONS (2.01).** *(Choose one of a. or b.):*

- a. ☒ **No eligibility conditions.** The Employee is eligible to participate in the Plan as of his/her first day of employment with the employer.
- b. ☐ **Eligibility conditions.** To become a Participant in the Plan, an Eligible Employee must satisfy the following eligibility conditions *(Choose one or more of 1., 2. or 3.):*
 1. ☐ **Age.** Attainment of age _____.

2. ☐ **Service.** Service requirement (Choose one of a. or b.):
- a. ☐ **Year of Service.** One year of Continuous Service.
- b. ☐ **Months of Service.** _____ month(s) of Continuous Service.

3. ☐ **Specify:** _____.

12. **PLAN ENTRY DATE (1.24).** "Plan Entry Date" means the Effective Date and (Choose one of a. through d.):

- a. ☐ **Monthly.** The first day of the month coinciding with or next following the Employee's satisfaction of the Plan's eligibility conditions, if any.
- b. ☐ **Annual.** The first day of the Plan Year coinciding with or next following the Employee's satisfaction of the Plan's eligibility conditions, if any.
- c. ☒ **Date of hire.** The Employee's employment commencement date with the Employer.
- d. ☐ **Specify:** _____.

13. **SALARY REDUCTION CONTRIBUTIONS (1.30).** A Participant's Salary Reduction Contributions under Election 5b. are subject to the following limitation(s) in addition to those imposed by the Code (Choose one of a. or b.):

- a. ☒ **No limitations.**
- b. ☐ **Limitations.** (Choose one or more of 1., 2. or 3.):
1. ☐ **Maximum deferral amount.** A Participant's Salary Reductions may not exceed: _____ (specify dollar amount or percentage of Compensation).
2. ☐ **Minimum deferral amount.** A Participant's Salary Reductions may not be less than: _____ (specify dollar amount or percentage of Compensation).
3. ☐ **Specify:** _____.

[Note: Any limitation the Employer elects in b.1. through b.3. will apply on a payroll basis unless the Employer otherwise specifies in b.3.]

Special NRA Catch-Up Contributions (3.05). The Plan (Choose one of c. or d.):

- c. ☒ **Permits.** Participants may make NRA catch-up contributions.
- AND, Special NRA Catch-Up Contributions (Choose one of 1. or 2.): (N/A if no matching contributions)**
1. ☐ will be taken into account in applying any matching contribution under the Plan.
2. ☐ will not be taken into account in applying any matching contribution under the Plan.
- d. ☐ **Does not permit.** Participants may not make NRA catch-up contributions.

Age 50 Catch-Up Contributions (3.06). The Plan (Choose one of e. or f.):

- e. ☒ **Permits.** Participants may make age 50 catch-up contributions.
- AND, Age 50 Catch-Up Contributions (Choose one of 1. or 2.): (N/A if no matching contributions)**
1. ☐ will be taken into account in applying any matching contribution under the Plan.
2. ☐ will not be taken into account in applying any matching contribution under the Plan.
- f. ☐ **Does not permit.** Participants may not make age 50 catch-up contributions.

14. **SICK, VACATION AND BACK PAY (3.02(A)).** The Plan (Choose one of a. or b.):

- a. ☒ **Permits.** Participants may make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay.
- b. ☐ **Does Not Permit.** Participants may not make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay.

15. **AUTOMATIC ENROLLMENT (3.02(B)).** Does the Plan provide for automatic enrollment (Choose one of the following) [Note: if Eligible Automatic Contribution Arrangement (EACA), select 15c and complete Questions 31 & 32]:

- a. ☒ **Does not apply.** Does not apply the Plan's automatic enrollment provisions.

- b. ☐ **Applies.** Applies the Plan's automatic enrollment provisions. The Employer as a Pre-Tax Elective Deferral will withhold _____% from each Participant's Compensation unless the Participant elects a different percentage (including zero) under his/her Salary Reduction Agreement. The automatic election will apply to (Choose one of 1. through 3.):
1. ☐ **All Participants.** All Participants who as of _____ are not making Pre-Tax Elective Deferrals at least equal to the automatic amount.
 2. ☐ **New Participants.** Each Employee whose Plan Entry Date is on or following: _____.
 3. ☐ **Describe Application of Automatic Deferrals:** _____.
- c. ☐ **EACA.** The Plan will provide an Eligible Automatic Contribution Arrangement (EACA). Complete Questions 31 & 32.
16. **MATCHING CONTRIBUTIONS (3.03).** The Employer Matching Contributions under Election 5.b.1. are made as follows (Choose one or more of a. through d.):
- a. ☐ **Fixed formula.** An amount equal to _____ of each Participant's Salary Reduction Contributions.
 - b. ☐ **Discretionary formula.** An amount (or additional amount) equal to a matching percentage the Employer from time to time may deem advisable of each Participant's Salary Reduction Contributions.
 - c. ☐ **Tiered formula.** The Employer will make matching contributions equal to a uniform percentage of each tier of each Participant's Salary Reduction Contributions, determined as follows:

NOTE: Fill in only percentages or dollar amounts, but not both. If percentages are used, each tier represents the amount of the Participant's applicable contributions that equals the specified percentage of the Participant's Compensation (add additional tiers if necessary):

Tiers of Contributions (indicate \$ or %)	Matching Percentage
First _____	_____ %
Next _____	_____ %
Next _____	_____ %
Next _____	_____ %

- d. ☐ **Specify:** _____.

Time Period for Matching Contributions. The Employer will determine its Matching Contribution based on Salary Reduction Contributions made during each (Choose one of e. through h.):

- e. ☐ **Plan Year.**
- f. ☐ **Plan Year quarter.**
- g. ☐ **Payroll period.**
- h. ☐ **Specify:** _____.

Salary Reduction Contributions Taken into Account. In determining a Participant's Salary Reduction Contributions taken into account for the above-specified time period under the Matching Contribution formula, the following limitations apply (Choose one of i. through l.):

- i. ☐ **All Salary Reduction Contributions.** The Plan Administrator will take into account all Salary Reduction Contributions.
- j. ☐ **Specific limitation.** The Plan Administrator will disregard Salary Reduction Contributions exceeding _____% of the Participant's Compensation.
- k. ☐ **Discretionary.** The Plan Administrator will take into account the Salary Reduction Contributions as a percentage of the Participant's Compensation as the Employer determines.
- l. ☐ **Specify:** _____.

Allocation Conditions. To receive an allocation of Matching Contributions, a Participant must satisfy the following allocation condition(s) (Choose one of m. or n.):

- m. ☐ **No allocation conditions.**
- n. ☐ **Conditions.** The following allocation conditions apply to Matching Contributions (Choose one or more of 1. through 4.):
 1. ☐ **Service condition.** The Participant must complete the following number of months of Continuous Service during the Plan Year: _____.

2. ☐ **Employment condition.** The Participant must be employed by the Employer on the last day of the Plan Year.
3. ☐ **Limited Severance Exception.** Any condition specified in 1. or 2. does not apply if the Participant incurs a Severance from Employment during the Plan Year on account of death, disability or attainment of Normal Retirement Age in the current Plan Year or in a prior Plan Year.
4. ☐ **Specify:** _____

17. **NONELECTIVE CONTRIBUTIONS (1.19).** The Nonelective Contributions under Election 5.c. are made as follows: *(Choose one):*

- a. ☐ **Discretionary - Pro-Rata.** An amount the Employer in its sole discretion may determine.
- b. ☐ **Fixed - Pro Rata.** _____ % of Compensation.
- c. ☐ **Other.** A Nonelective Contribution may be made as follows: _____

Allocation Conditions. (3.08). To receive an allocation of Nonelective Contributions, a Participant must satisfy the following allocation condition(s) *(Choose one of d. or e.):*

- d. ☐ **No allocation conditions.**
- e. ☐ **Conditions.** The following allocation conditions apply to Nonelective Contributions *(Choose one or more of 1. through 4.):*
1. ☐ **Service condition.** The Participant must complete the following number of months of Continuous Service during the Plan Year: _____
2. ☐ **Employment condition.** The Participant must be employed by the Employer on the last day of the Plan Year.
3. ☐ **Limited Severance Exception.** Any condition specified in 1. or 2. does not apply if the Participant incurs a Severance from Employment during the Plan Year on account of death, disability or attainment of Normal Retirement Age in the current Plan Year or in a prior Plan Year.
4. ☐ **Specify:** _____

18. **TIME AND METHOD OF PAYMENT OF ACCOUNT (4.02).** The Plan will distribute to a Participant who incurs a Severance from Employment his/her Vested Account as follows:

Timing. The Plan, in the absence of a permissible Participant election to commence payment later, will pay the Participant's Account *(Choose one of a. through e.):*

- a. ☐ **Specified Date.** _____ days after the Participant's Severance from Employment.
- b. ☒ **Immediate.** As soon as administratively practicable following the Participant's Severance from Employment.
- c. ☐ **Designated Plan Year.** As soon as administratively practicable in the _____ Plan Year beginning after the Participant's Severance from Employment.
- d. ☐ **Normal Retirement Age.** As soon as administratively practicable after the close of the Plan Year in which the Participant attains Normal Retirement Age.
- e. ☐ **Specify:** _____

Method. The Plan, in the absence of a permissible Participant election, will distribute the Participant's Account under one of the following method(s) of distribution *(Choose one or more of f. through j. as applicable):*

- f. ☒ **Lump sum.** A single payment.
- g. ☒ **Installments.** Multiple payments made as follows: as elected by the Participant
- h. ☐ **Installments for required minimum distributions only.** Annual payments, as necessary under Plan Section 4.03.
- i. ☐ **Annuity distribution option(s):** _____
- j. ☒ **Specify:** Partial Lump Sum, as elected by the Participant

Participant Election. [Plan Sections 4.02(A) and (B)] The Plan *(Choose one of k., l. or m.):*

- k. ☒ **Permits.** Permits a Participant, with Plan Administrator approval of the election, to elect to postpone distribution beyond the time the Employer has elected in a. through e. and also to elect the method of distribution (including a method not described in f. through j. above).
- l. ☐ **Does not permit.** Does not permit a Participant to elect the timing and method of Account distribution.
- m. ☐ **Specify:** _____

Mandatory Distributions. Notwithstanding any other distribution election, following Severance from Employment (Choose *n.* or *o.*):

- n. ☐ **No Mandatory Distributions.** The Plan will not make a Mandatory Distribution.
- o. ☒ **Mandatory Distribution.** If the Participant's Vested Account is not in excess of \$5,000 (unless a different amount selected below) as of the date of distribution, the Plan will make a Mandatory Distribution following Severance from Employment.
 - 1. ☒ **Mandatory Distribution.** If the Participant's Vested Account is not in excess of \$ 1,000 as of the date of distribution, the Plan will make a Mandatory Distribution following Severance from Employment.

Rollovers in determination of \$5,000 threshold. Unless otherwise elected below, amounts attributable to rollover contributions (if any) will be included in determining the \$5,000 threshold for timing of distributions, form of distributions or consent rules.

- p. ☐ **Exclude rollovers** (rollover contributions will be excluded in determining the \$5,000 threshold)

NOTE: Regardless of the above election, if the Participant consent threshold is \$1,000 or less, then the Administrator must include amounts attributable to rollovers for such purpose. In such case, an election to exclude rollovers above will apply for purposes of the timing and form of distributions.

19. **BENEFICIARY DISTRIBUTION ELECTIONS.** Distributions following a Participant's death will be made as follows (Choose one of *a.* through *d.*):

- a. ☐ **Immediate.** As soon as practical following the Participant's death.
- b. ☐ **Next Calendar Year.** At such time as the Beneficiary may elect, but in any event on or before the last day of the calendar year which next follows the calendar year of the Participant's death. (N/A if participant is restricted)
- c. ☒ **As Beneficiary elects.** At such time as the Beneficiary may elect, consistent with Section 4.03. (N/A if participant is restricted)
- d. ☐ **Describe:** _____

[Note: The Employer under Election 19d. may describe an alternative distribution timing or afford the Beneficiary an election which is narrower than that permitted under Election 19c., or include special provisions related to certain beneficiaries, (e.g., a surviving spouse). However, any election under Election 19d. must require distribution to commence no later than the Section 4.03 required date.]

20. **DISTRIBUTIONS PRIOR TO SEVERANCE FROM EMPLOYMENT (4.05).** A Participant prior to Severance from Employment may elect to receive a distribution of his/her Vested Account under the following distribution options (Choose one of *a.* or *b.*):

- a. ☐ **None.** A Participant may not receive a distribution prior to Severance from Employment.
- b. ☒ **Distributions.** Prior to Severance from Employment are permitted as follows (Choose one or more of 1. through 4.):
 - 1. ☒ **Unforeseeable emergency.** A Participant may elect a distribution from his/her Account in accordance with Plan Section 4.05(A) (for the Participant, spouse, dependents or beneficiaries)
 - 2. ☒ **De minimis exception.** [Plan Section 4.05(B)] If the Participant: (i) has an Account that does not exceed \$5,000; (ii) has not made or received an allocation of any Deferral Contributions under the Plan during the two-year period ending on the date of distribution; and (iii) has not received a prior Plan distribution under this de minimis exception, then (Choose one of *a.*, *b.* or *c.*):
 - a. ☒ **Participant election.** The Participant may elect to receive all or any portion of his/her Account.
 - b. ☐ **Mandatory distribution.** The Plan Administrator will distribute the Participant's entire Account.
 - c. ☐ **Hybrid.** The Plan Administrator will distribute a Participant's Account that does not exceed \$ _____ and the Participant may elect to receive all or any portion of his/her Account that exceeds \$ _____ but that does not exceed \$5,000.
 - 3. ☒ **Age 70 1/2.** A Participant who attains age 70 1/2 prior to Severance from Employment may elect distribution of any or all of his/her Account.
 - 4. ☐ **Specify:** _____

[Note: An Employer need not permit any in-service distributions. Any election must comply with the distribution restrictions of Code Section 457(d).]

21. **QDRO (4.06).** The QDRO provisions (Choose one of *a.*, *b.* or *c.*):

- a. ☒ **Apply.**
- b. ☐ **Do not apply.**
- c. ☐ **Specify:** _____

22. **ALLOCATION OF EARNINGS (5.07(B)).** The Plan allocates Earnings using the following method (Choose one or more of a. through f.):

- a. ☒ **Daily.** See Section 5.07(B)(4)(a).
- b. ☐ **Balance forward.** See Section 5.07(B)(4)(b).
- c. ☐ **Balance forward with adjustment.** See Section 5.07(B)(4)(c). Allocate pursuant to the balance forward method, except treat as part of the relevant Account at the beginning of the Valuation Period _____% of the contributions made during the following Valuation Period: _____.
- d. ☐ **Weighted average.** See Section 5.07(B)(4)(d). If not a monthly weighting period, the weighting period is _____.
- e. ☐ **Directed Account method.** See Section 5.07(B)(4)(e).
- f. ☐ **Describe Earnings allocation method:** _____

[Note: The Employer under Election 22f. may describe Earnings allocation methods from the elections available under Election 22 and/or a combination thereof as to any: (i) Participant group (e.g., Daily applies to Division A Employees OR to Employees hired after "x" date. Balance forward applies to Division B Employees OR to Employees hired on/before "x" date.); (ii) Contribution Type (e.g., Daily applies as to Discretionary Nonelective Contribution Accounts. Participant-Directed Account applies to Fixed Nonelective Contribution Accounts); (iii) investment type, investment vendor or Account type (e.g., Balance forward applies to investments placed with vendor A and Participant-Directed Account applies to investments placed with vendor B OR Daily applies to Participant-Directed Accounts and balance forward applies to pooled Accounts).]

23. **HEART ACT PROVISIONS (1.31(C)(3)/3.13).** The Employer elects to (Choose one of a. or b. and c. or d.):

Continued Benefit Accruals.

- a. ☐ **Not apply the benefit accrual provisions of Section 3.13.**
- b. ☒ **Apply the benefit accrual provisions of Section 3.13.**

Distributions for deemed severance of employment (1.31(C)(3))

- c. ☒ **The Plan does NOT permit distributions for deemed severance of employment.**
- d. ☐ **The Plan permits distributions for deemed severance of employment.**

24. **VESTING/SUBSTANTIAL RISK OF FORFEITURE (5.11).** A Participant's Deferral Contributions are [Note: If a Participant incurs a Severance from Employment before the specified events or conditions, the Plan will forfeit the Participant's non-vested Account. Caution: if a Deferral is subject to vesting schedule or other substantial risk of forfeiture, it does not count as a deferral for purposes of the annual deferral limit until the year it is fully vested.] (Choose all that apply of a. through d.):

- a. ☒ **100% Vested/No Risk of Forfeiture.** Immediately Vested without regard to additional Service and no Substantial Risk of Forfeiture. The following contributions are 100% Vested:
 - 1. ☒ **All Contributions.** (skip to 25.)
 - 2. ☐ **Only the following contributions.** (select all that apply):
 - a. ☐ **Salary Reduction Contributions.**
 - b. ☐ **Nonelective Contributions.**
 - c. ☐ **Matching Contributions.**
- b. ☐ **Forfeiture under Vesting Schedule.** Vested according to the following:

Contributions affected. The following contributions are subject to the vesting schedule (Choose one or more of 1., 2. or 3.):

- 1. ☐ **Salary Reduction Contributions.**
- 2. ☐ **Nonelective Contributions.**
- 3. ☐ **Matching Contributions.**
- 4. ☐ **Vesting Schedule.**

Years of Service

Vested Percentage

_____%
_____%
_____%
_____%
_____%

For vesting purposes, a "Year of Service" means:

5. _____

[Note: It is extremely rare to apply a vesting schedule to Salary Reduction Contributions.]

c. ☐ **Substantial Risk of Forfeiture.** Vested only when no longer subject to the following Substantial Risk of Forfeiture as follows:

Contributions affected. The following contributions are subject to the substantial risk of forfeiture under c. (Choose one or more of 1., 2. or 3.):

1. ☐ **Salary Reduction Contributions.**
2. ☐ **Nonelective Contributions.**
3. ☐ **Matching Contributions.**

Risk Provisions: Vested only when no longer subject to the following Substantial Risk of Forfeiture as follows (Choose one of 4. or 5.):

4. ☐ The Participant must remain employed by the Employer until _____, unless earlier Severance from Employment occurs on account of death or disability, as the Plan Administrator shall establish.
5. ☐ **Specify:** _____

Additional Provisions (Choose d. if applicable)

d. ☐ **Specify:** _____

FORFEITURE ALLOCATION. [Plan Sections 5.11(A) and 5.14] The Plan Administrator will allocate any Plan forfeitures as selected below. The Employer has the option to use forfeitures to pay plan expenses first and then allocate the remaining forfeitures in accordance with the selections below: (Choose one of the following):

- e. ☐ **Additional Contributions.** As the following contribution type (Choose one of 1. or 2.):
 1. ☐ **Nonelective.** As an additional Nonelective Contribution.
 2. ☐ **Matching.** As an additional Matching Contribution.
- f. ☐ **Reduce Fixed Contributions.** To reduce the following fixed contribution (Choose one of 1. or 2.):
 1. ☐ **Nonelective.** To reduce the Employer's fixed Nonelective Contribution.
 2. ☐ **Matching.** To reduce the Employer's fixed Matching Contribution.
- g. ☐ **Specify:** _____

25. **TRUST PROVISIONS.** The following provisions apply to Article VIII of the Plan (Choose as applicable; leave blank if not applicable):

- a. ☐ **Modifications.** The Employer modifies the Article VIII Trust provisions as follows: _____. The remaining Article VIII provisions apply.
- b. ☐ **Substitution.** The Employer replaces the Trust with the Trust Agreement attached to the Plan.

26. **CUSTODIAL ACCOUNT/ANNUITY CONTRACT (8.16).** The Employer will hold all or part of the Deferred Compensation in one or more custodial accounts or annuity contracts which satisfy the requirements of Code §457(g) (Choose a. or b., c. if applicable):

- a. ☒ **Custodial account(s).**
- b. ☒ **Annuity contract(s).**
- c. ☐ **Specify:** _____

[Note: The Employer under c. may wish to identify the custodial accounts or annuity contracts or to designate a portion of the Deferred Compensation to be held in such vehicles versus held in the Trust.]

27. **VALUATION.** In addition to the last day of the Plan Year, the Trustee (or Plan Administrator as applicable) must value the Trust Fund (or Accounts) on the following Valuation Date(s) (Choose one of a. or b.):

- a. ☐ **No additional Valuation Dates.**
- b. ☒ **Additional Valuation Dates.** (Choose one or more of 1., 2. or 3.):
 1. ☒ **Daily Valuation Dates.** Each business day of the Plan Year on which Plan assets for which there is an established market are valued and the Trustee or Employer is conducting business.
 2. ☐ **Last day of a specified period.** The last day of each _____ of the Plan Year.

28. TRUSTEE (Select all that apply; leave blank if not applicable):

- | Name(s) | Title(s) |
|---------|----------|
| | |
| | |
| | |

Telephone: _____

- Telephone: _____

d. [] a Discretionary Trustee over all Plan assets except for the following:

- b. ☒ **Eligible Employees or Participants.**

Sources/Types. The Plan will accept a Rollover Contribution (Choose one of c. or d.):

- c. ☐ **All.** From any Eligible Retirement Plan and as to all Contribution Types eligible to be rolled into this Plan.
- d. ☒ **Limited.** Only from the following types of Eligible Retirement Plans and/or as to the following Contribution Types:
From any Eligible Retirement Plan eligible to be rolled into this Plan excluding non-Roth After-Tax contributions

Distribution of Rollover Contributions (Choose one of e., f. or g.):

- e. ☒ **Distribution without restrictions.** May elect distribution of his/her Rollover Contributions Account in accordance with Plan Section 4.05(C) at any time.
- f. ☐ **No distribution.** May not elect to receive distribution of his/her Rollover Contributions Account until the Plan has a distributable event under Plan Section 4.01.
- g. ☐ **Specify:** _____

31. EACA Automatic Deferral Provisions (3.14).

Participants subject to the Automatic Deferral Provisions. The Automatic Deferral Provisions apply to Employees who become Participants after the Effective Date of the EACA (except as provided in d. below). Employees who became Participants prior to such Effective Date are subject to the following (a. – d. are optional):

- a. ☐ **All Participants.** All Participants, regardless of any prior Salary Reduction Agreement, unless and until a Participant makes an Affirmative Election after the Effective Date of the EACA.
- b. ☐ **Election of at least Automatic Deferral amount.** All Participants, except those who, on the Effective Date of the EACA, are deferring an amount which is at least equal to the Automatic Deferral Percentage.
- c. ☐ **No existing Salary Reduction Agreement.** All Participants, except those who have in effect a Salary Reduction Agreement on the effective date of the EACA regardless of the Salary Reduction Contribution amount under the Agreement.
- d. ☐ **Describe:** _____

Automatic Deferral Percentage. Unless a Participant makes an Affirmative Election, the Employer will withhold the following Automatic Deferral Percentage (select e. or f.):

- e. ☐ **Constant.** The Employer will withhold _____% of Compensation each payroll period.

Escalation of deferral percentage (select one or leave blank if not applicable)

1. ☐ **Scheduled increases.** This initial percentage will increase by _____% of Compensation per year up to a maximum of _____ of Compensation.
2. ☐ **Other** (described Automatic Deferral Percentage): _____

Automatic Deferral Optional Elections

- f. ☐ **Optional elections** (select all that apply or leave blank if not applicable)

Suspended Salary Reduction Contributions. If a Participant's Salary Reduction Contributions are suspended pursuant to a provision of the Plan (e.g., distribution due to military leave covered by the HEART Act), then a Participant's Affirmative Election will expire on the date the period of suspension begins unless otherwise elected below.

1. ☐ A Participant's Affirmative Election will resume after the suspension period.

Special Effective Date. Provisions will be effective as of the earlier of the Effective Date of the EACA provisions unless otherwise specified below.

2. ☐ **Special Effective Date:** _____

32. In-Plan Roth Rollover Contributions.

- a. ☐ **Yes, allowed.**

Effective Date (enter date)

1. ☐ In-Plan Roth Rollover Effective Date: _____

33. In-Plan Roth Rollover Transfers.

- a. ☐ **Yes, allowed.**

Effective Date (enter date)

1. ☐ In-Plan Roth Rollover Transfers Effective Date: _____

This Plan is executed on the date(s) specified below:

Use of Adoption Agreement. Failure to complete properly the elections in this Adoption Agreement may result in disqualification of the Employer's Plan. The Employer only may use this Adoption Agreement only in conjunction with the corresponding basic plan document.

EMPLOYER: Oak Park MI

By: _____

DATE SIGNED



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Nationwide Retirement Solutions Governmental 457(b) Plan Loan Procedures

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Plan Name: **Oak Park MI 457(b) Deferred Compensation Plan**

Nationwide Retirement Solutions, Inc. ("NRS") agrees as the Administrative Service Provider to administer loans in accordance with the terms of these Plan Loan Procedures and the attached **"Plan Election Worksheet"** (see Addendum A) as approved by the Plan Sponsor of the Plan. The Plan Sponsor directs the Plan Administrator of the Plan to administer loans in accordance with this document. The Plan Sponsor or the Plan Administrator may amend these Plan Loan Procedures within any constraints placed by NRS. Any such amendments shall bind the Plan Sponsor and the Plan Administrator. The Plan Sponsor is encouraged to consult with legal advisors in determining whether the procedures identified herein are appropriate for the Plan.

The Plan Sponsor and Plan Administrator (collectively the "Client") acknowledge that NRS may need to make changes from time-to-time to the administrative procedures set forth herein and may request amendments to the Plan documents to maintain the Plan's Loan Program. In such a case, NRS will provide the Client with timely notice of such changes as they become necessary.

The following Plan Loan Procedures shall govern Participant loans offered in the Plan Sponsor's 457(b) Plan ("Plan"):

- 1. Loan Administration** - Client delegates to NRS certain administrative duties regarding the administration of loans from the Plan, which are set forth herein and which may be modified by NRS upon timely notice to and acceptance by the Plan Sponsor.
- 2. Loan Eligibility** - Any Plan Participant, who falls into one of the employee statuses that the Client has elected, is eligible for a loan from the Plan. Each Participant is entitled to one outstanding loan from the Plan at any time. In addition, a Participant who has defaulted on a previous loan shall not be eligible for another loan from the Plan until all defaulted loans are repaid in full, including accrued interest.
- 3. Loan Initiation and Loan Application** - In order to receive a loan from the Plan, an eligible Participant must complete all required documents provided in the Loan Application and return them to NRS. Before a loan is issued, the Participant must enter into a legally enforceable Loan Agreement as provided by NRS in the Loan Application, on behalf of the Plan. A loan initiation fee will be deducted from the Participant's account(s) after the loan has been funded by the Participant's account(s).
- 4. Loan Security** - By accepting a loan, the Participant is giving the Plan a security interest in his or her vested Plan balance equal to the total loan amount, but not to exceed 50% of the Participant's vested Plan balance.
- 5. Loan Money Source** - A loan shall be modeled taking into account the Participant's entire Plan account balance. Loans shall be funded only from a Participant's available Plan account pre-tax money sources. To the extent that a Participant has a self-directed brokerage account, no funding from such self-directed brokerage account shall be permitted.
- 6. Minimum and Maximum Loan Term** - The minimum and maximum loan term over which a loan may be repaid is the term elected by the Client. Except as otherwise provided herein, the maximum loan term shall not exceed 5 years.
- 7. Minimum/Maximum Loan Amount** - The minimum loan amount permitted shall be the amount elected by the Client. The maximum amount of any loan permitted under the Plan shall comply with Section 72(p) of the Internal Revenue Code and (when added to the outstanding balance of all other loans from all plans sponsored by the same employer) is the lesser of (i) \$50,000, reduced by the excess (if any) of (A) the highest outstanding balance of loans from all plans sponsored by the same employer, during the one-year period ending on the day before the date on which the loan was made over (B) the outstanding balance of loans from all plans sponsored by the same employer, on the date on which the loan is made, or (ii) one half of the present value of the Participant's vested account balance.

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Governmental 457(b) Plan Loan Procedures

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Plan Name: **Oak Park MI 457(b) Deferred Compensation Plan**

8. Loan Amortization - Each loan shall be amortized with interest accruing immediately, with repayments beginning approximately 30 days from the date the loan is processed, in substantially equal repayments consisting of principal and interest during the term of the loan. Repayments of principal and interest shall be made in a manner and pursuant to the terms set forth in the Loan Agreement. The amount of the final payment may be higher or lower depending upon the Participant's repayment history.

9. Loan Repayment - Repayment of any loan made to a Participant shall be made in a manner and pursuant to the terms set forth in the Loan Agreement. Loans must be repaid according to the repayment method elected by the Client. The Participant receiving a loan shall be required to furnish the information and authorization necessary to effectuate the foregoing repayments prior to the commencement of a loan. In the event that a Participant elects to receive a distribution from the Plan that is less than 100% of his outstanding account balance at a time when such person has a loan outstanding, the Participant shall continue to make repayments on the loan.

10. Loan Prepayment - The entire amount of a loan, including outstanding principal and any accrued interest, may be paid without penalty prior to the end of the term of the loan in the manner prescribed by NRS.

11. Loan Overpayment - In the event that NRS receives a loan overpayment, any amount over the repayment amount due will be applied or refunded according to the administrative policies of NRS.

12. Cure Period - If a Participant fails to make a loan repayment when due, the missed repayment must be made within the cure period elected by the Client.

13. Default - If any repayment is not received by NRS by the end of the cure period, the entire amount of the loan will be defaulted and treated as a deemed distribution, effective as of the end of the cure period elected by the Client. A deemed distribution is treated as a distribution from the Plan for federal (and possibly state or local) income tax purposes; therefore amounts treated as a deemed distribution will be subject to federal, state and/or local income taxes, and certain excise taxes and penalties may apply. NRS will issue a Form 1099-R to the Participant reflecting the deemed distribution. Any payment made on a defaulted loan will be applied to the outstanding balance of the loan including accrued interest. Such repayment(s), following the date of default, will be treated as after tax amounts and the Participant will receive tax basis in his or her Plan account for such amounts.

The entire loan, including any accrued interest, will also be due and payable immediately in the event of the death of the Participant. The outstanding balance of the loan will be treated as a deemed distribution following the date of notification of such death provided such notification is in good order as determined by NRS.

14. Loans Offered from Other Administrative Service Providers - In the event the employer offers the Plan through multiple service providers, the Client and/or Participant and not NRS shall at all times remain responsible for ensuring that any loan received under the Plan is in accordance with the limits in Section 7. NRS shall apply the maximum loan amount limit and any other limits imposed under the Internal Revenue Code without regard to any other loans received by the Participant from any other administrative service provider(s) under this Plan or any other plan maintained by the Plan Sponsor.

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Governmental 457(b) Plan Loan Procedures

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Plan Name: **Oak Park MI 457(b) Deferred Compensation Plan**

15. Suspension of Loan Repayments.

a. **Military Leave of Absence** - A Participant's obligation to repay any loan under the Plan may be suspended as may be required by law, during the period in which the Participant is performing service in the United States military. The Participant must resume repayment of the loan upon his or her completion of military service and the outstanding loan balance, including any accrued interest and fees, must be repaid and may be re-amortized over a period that does not exceed the latest permissible term for a loan under the regulations plus the period of the military service. While the Participant is on active duty in the United States military, the interest rate on the loan shall not exceed 6%, compounded annually unless the Participant elects in writing during or after his or her military leave of absence to have the loan's higher existing interest rate, if applicable, apply to the loan. The Plan Sponsor assumes responsibility to notify NRS when a Participant begins and returns from a military leave of absence.

b. **Non-Military Leave of Absence** - In addition, a Participant's obligation to repay any loan under the Plan may be suspended during the period (not to exceed one year) while the Participant is on an approved non-military leave of absence and the Participant provides requested documentation regarding the non-military leave of absence from his or her employer. The Participant must resume repayment of the loan upon the earlier of his or her return from non-military leave of absence, or one year of suspension. At such point the outstanding loan balance, including any accrued interest and fees, must be repaid or may be re-amortized over a period that does not exceed the latest permissible term for a loan under the regulations. The Plan Sponsor assumes responsibility to notify NRS when a Participant begins and returns from a non military leave of absence.

16. **Loan Interest Rate** - The interest rates for a loan shall be commensurate with interest rates being charged by entities in the business of lending money under similar circumstances. The loan interest rate will be the Prime Rate plus an additional amount expressed as a percentage elected by the Client, plus any other administrative and/or asset fees, as applicable. The Prime Rate shall be the prime rate published by the Wall Street Journal two weeks prior to the end of the most current calendar-year quarter and the new rate will be effective on the first day of the new calendar quarter. The loan interest rate may be adjusted for Participants performing service in the United States military as may be required by law (See Provision 15a.)

17. **Fees** - Fees described in these loan procedures will appear as administrative charges on Participant statements. These fees are subject to change by NRS upon reasonable notice to the Plan Sponsor.

a. **Loan Initiation Fee** - A loan initiation fee of \$50 will be deducted from the Participant's account at the time the loan is funded.

b. **Annual Loan Maintenance Fee** - An annual loan maintenance fee of \$50 will be deducted from the Participant's account on the anniversary date of the original loan initiation, until the loan is repaid in full or the loan has defaulted. In the event that the loan defaults, the annual loan maintenance fee will no longer be assessed and the annual loan default fee described below (See Provision 17f) will be applied.

c. **Asset Fees** - The amount of the outstanding loan balance will be subject to the maximum asset fee, administrative charge or such other fees NRS is entitled to receive under its separate agreement with the Plan Sponsor.

d. **Insufficient Funds Fee** - If NRS is unable to process an ACH debit repayment or personal check on the date due, through no fault of NRS, a fee of \$25 will be deducted from the Participant's account.

e. **Loan Default Fee** - At the time a loan is treated as a deemed distribution, a \$50 fee will be deducted from the Participant's account.

f. **Annual Loan Default Fee** - An annual loan default fee of \$50 will be deducted from the Participant's account on the anniversary date of the original loan default until the loan is repaid in full or offset.

Nationwide Retirement Solutions

Governmental 457(b) Plan Loan Procedures

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Plan Name: **Oak Park MI 457(b) Deferred Compensation Plan**

18. Loans for the Purchase of a Principal Residence - All loans issued by the Plan will be general purpose loans to be repaid in no more than five years unless the Client elects to offer loans for the purchase of the Participant's principal residence. If the Client elects to allow loans for the purchase of a principal residence, all of the provisions of this document will apply unless otherwise specified.

19. Loan Correction - In the event a loan correction becomes necessary, at the Plan Sponsor's direction, NRS may undertake methods prescribed by the IRS or through any IRS correction program.

20. Adoption of Plan Loan Procedures - The undersigned Plan Sponsor or Plan Administrator, as applicable, hereby adopt these Plan Loan Procedures effective for loans issued on or after the Effective Date set forth below, and instructs NRS to administer loans made to Plan Participants in accordance with these terms and the Client elections made on the attached "Plan Election Worksheet" (See Addendum A). Prior to implementing a loan program, the Plan Sponsor acknowledges or acknowledged the following: (i) that the Plan Sponsor has decided to offer loans under the Plan and the Plan Administrator is instructing NRS to administer loans under the Plan; (ii) that the Plan Sponsor understands that, as a result of offering loans under the Plan, the Plan Participants could be subject to adverse tax consequences upon default of the loan; (iii) that the Plan Sponsor has independently weighed these risks, and despite the risks has determined that offering loans under the Plan is in the best interest of Plan Participants; (iv) that any previous loan procedures or loan reference documents other than the Plan Document itself, are hereby superseded by these Plan Loan Procedures; and (v) NRS shall not be liable for any adverse tax consequences described in (ii), except as specifically stated under paragraph 14 herein, resulting from the Plan Sponsor's decision to offer loans under the Plan.

Plan Sponsor Name ("Sponsor"): Oak Park MI
Street Address: 14000 Oak Park BLVD
City, State, Zip Code: Oak Park, MI 48237-2082
Signer's Email Address:
Plan Name ("Plan"): Oak Park MI 457(b) Deferred Compensation Plan
Plan Number: 0037117001
Plan Sponsor or Plan Administrator Signature:
Title:
Date of Adoption*: * Unless otherwise indicated below, the Date of Adoption shall be the Effective Date.
Effective Date:

An executed copy of these Procedures (including the attached Addendum A - Plan Election Worksheet) should be returned to Nationwide Retirement Solutions.



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Nationwide Retirement Solutions Governmental 457(b) Plan Loan Procedures

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Addendum A - Plan Election Worksheet

The following provisions identify Plan elections which are incorporated and made a part of the attached "Plan Loan Procedures." In the event that an election is not made within any section, Nationwide Retirement Solutions ("NRS") will administer the loan program according to current NRS policies as listed under each provision below. The current NRS policies may be changed by NRS at any time. Unless otherwise specified, only one election is allowed per provision.

The elections contained herein apply solely to the Plan. Any provisions, including limitations, do not extend to any other plans offered by the Sponsor.

1. Loan Eligibility:

Plan elects to allow the following Participants the ability to initiate a loan under the Plan. The Plan Sponsor is solely responsible for informing NRS of any future changes in the Participant's employment status (check all that apply).

- ☒ Employed
- ☒ Approved Non-military Leave of Absence (only available for ACH)
- ☒ Military Leave of Absence (only available for ACH)
- ☒ Disabled (only available for ACH)
- ☒ Retired (only available for ACH)
- ☒ Terminated (only available for ACH)

Current NRS Policy: All listed Participant employment statuses are eligible to initiate a loan if ACH is the elected repayment method (See Provision 4). If the repayment method elected is Payroll Deduction (See Provision 4), the only eligible Participant employment status is Employed.

2. General Purpose Loan Terms:

2(a). Minimum Loan Term

Plan elects the following minimum loan term:

- ☒ One year
- ☐ Other - Specify minimum loan term: _____ (not to be less than six months)

Current NRS Policy: The minimum loan term is one year.

2(b). Maximum Loan Term

Plan elects the following maximum loan term:

- ☒ Five years
- ☐ Other - Specify maximum loan term: _____ (not to exceed a term of five years)

Current NRS Policy: The maximum loan term is five years.

3. Minimum Loan Amount:

Plan elects to have a minimum loan amount of:

- ☒ \$1,000
- ☐ Other - Specify minimum loan amount: \$_____ (not to be less than \$500)

Current NRS Policy: The minimum loan amount is \$1,000.

4. Repayment Method:

Plan elects to provide Participants with one of the following loan repayment methods:

- ☒ Monthly Automated Clearing House ("ACH")
- ☐ Payroll Deduction (Plan Sponsor will be required to provide a payroll calendar.
(This repayment method is limited to Employed status - see Provision 1)

Current NRS Policy: Monthly ACH is the repayment method.

Nationwide Retirement Solutions

Governmental 457(b) Plan Loan Procedures

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Addendum A - Plan Election Worksheet

5. Cure Period:

If a Participant misses a scheduled loan repayment, the missed repayment must be received by the end of the specified cure period. Plan elects to apply a cure period with the following length:

☒ 31 Days

☐ 60 Days

☐ 90 Days

☐ The quarter following the quarter in which the scheduled repayment was missed

Current NRS Policy: The cure period is 31 days when ACH is the elected repayment method

(See Provision 4). The cure period is 60 days when the repayment method elected is Payroll Deduction (See Provision 4).

6. Loan Interest Rate:

Plan elects the following interest rate for Participant loans:

☐ Prime Rate plus 1% plus applicable fees

☒ Prime Rate plus 2% plus applicable fees

☐ Prime Rate plus _____% (not to be lower than 0%) plus applicable fees

Current NRS Policy: Prime Rate plus 2% plus applicable fees.

7. Loans for the Purchase of a Principal Residence:

7(a). Plan elects to permit loans for the purchase of the Participant's principal residence:

☒ Yes

☐ No

In the event Plan elects to allow Principal Residence loans, only one Principal Residence loan outstanding at a time is permitted. The Principal Residence loan is included in the maximum number of outstanding loans (See Provision 2 of the Plan Loan Procedures). Additionally, the Participant will be required to sign a Principal Residence Certificate and provide NRS with sufficient additional documents to support the purchase of a principal residence. Internet initiation is not available for Principal Residence loans.

Current NRS Policy: Principal Residence loans are not allowed.

7(b). Minimum Loan Term: Plan elects to have a minimum loan term for Principal Residence loans of:

☒ Five years

☐ Other - Specify minimum loan term: _____ (not to be less than one year)

Current NRS Policy: Principal Residence loans have a minimum term of five years.

7(c). Maximum Loan Term: Plan elects to have a maximum loan term for Principal Residence loans of:

☒ 15 Years

☐ Other - Specify maximum loan term: _____ (not to exceed a term of 30 years)

Current NRS Policy: Principal Residence loans have a maximum term of 15 years.

8. Internet Utilization:

Plan elects to allow Participants to use the internet for:

☐ Only the modeling of loans

☒ Both modeling and initiation of loans

☐ Plan declines the use of the internet for either the modeling or initiation of loans

Current NRS Policy: Participants can use the internet for modeling and initiation of loans.

Loan initiation on the internet is limited to General Purpose loans. Principal Residence loans will not be initiated electronically. Additional limitations exist for particular repayment methods and employment statuses.