

101716 agenda

MCCOOK CITY COUNCIL

REGULAR MEETING

Monday - October 17, 2016
6:30 P.M. - City Council Chambers

- **Call to Order and Roll Call.**
 - **Open Meetings Act Announcement.**
**A copy of the Open Meetings Act is posted by the entrance to the Council Chambers and is available for public review.*
 - **Invocation.**
The McCook Ministerial Association - Tom Albertson - Peace Lutheran Church.
 - **Pledge of Allegiance.**
1. **Citizen's Comments.**
**The Council welcomes your input. You may address the Council at this time on items that are not on tonight's agenda. According to Nebraska Open Meeting Laws no action may be taken by Council.*

At the appropriate time during the meeting, citizens wishing to comment on tonight's Agenda items will be given an opportunity.
 2. **Announcements & Recognitions.**
 3. **Proclamation.**
 - A. Approve the proclamation designating the month of October 2016 as "Domestic Violence Awareness Month" and authorize the Mayor to sign.
[101716 dasas](#)
 4. **Consent Agenda.**
**The Consent Agenda is approved on one motion. Any item listed on the Consent Agenda may, by the request of any single Councilmember or public in attendance, be considered as a separate item under the Regular Agenda.*
 - A. Approve the minutes of the October 3, 2016 special City Council meeting.
[101716 minutes](#)
 - B. McCook Regular Employee Retirement Plan, amended 401(k) Profit Sharing Plan and Trust effective January 1, 2016 and that the authorized representatives are hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Plan.
[101716 emp pen \(2\)](#)
 - C. Adopt Resolution No. 2016-17 approving the recommendation of the Airport Advisory Commission to set the rent at \$125.00 per unit for the new six plex hangar at McCook Ben Nelson Regional Airport.
[101716 hangar rental](#)
 - D. Receive and file claim for damages from Joe Derauf and instruct that it be submitted to the City's insurance carrier for review and appropriate action.
[101716 derauf](#)
 - E. Receive and file the claims for the month of September 2016 as published October 7, 2016.
[101716 claims](#)
 - F. Approve the bid specifications for One (1) New 2016 or 2017 Police Package or Special Services Vehicle for use by the McCook Police Department and set the date to receive bids as November 7, 2016 at 1:30 P.M.
[101716 pol vehicle](#)
 - G. Approve Change Order No. 1 for the New 6 Place Hangar at the McCook Ben Nelson Regional Airport in the amount of \$2,805.20.
[101716 6 plex](#)
 5. **Regular Agenda.**
 - A. Approve, under suspension of the rules, Ordinance No. 2016-2944, amending the parameters bond ordinance relating to the authorization of up to \$10,000,000 in aggregate principal amount of Combined Utilities Revenue Refunding Bonds, Series 2016, of the City of McCook, Nebraska.

101716 bond ord

- B. Approve Ordinance No. 2016-2941 providing for the amendment to Appendix D, Sewer Department Rates and Fees, upon its third and final reading.

101716 sewer rates

- C. Approve Ordinance No. 2016-2942 amending Section 51.072 Determination of Use Charges, changing the language of how sewer usage is calculated for commercial and carwash facilities upon its third and final reading.

101716 sewer chgs

- D. Council Comments.

- **Adjournment.**

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- B. McCook Regular Employee Retirement Plan, amended 401(k) Profit Sharing Plan and Trust effective January 1, 2016 and that the authorized representatives are hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Plan.
- C. Adopt Resolution No. 2016-17 approving the recommendation of the Airport Advisory Commission to set the rent at \$125.00 per unit for the new six plex hangar at McCook Ben Nelson Regional Airport.
- D. Receive and file claim for damages from Joe Derauf and instruct that it be submitted to the City's insurance carrier for review and appropriate action.

- E. Receive and file the claims for the month of September 2016 as published October 7, 2016.
- F. Approve the bid specifications for One (1) New 2016 or 2017 Police Package or Special Services Vehicle for use by the McCook Police Department and set the date to receive bids as November 7, 2016 at 1:30 P.M.
- G. Approve Change Order No. 1 for the New 6 Place Hangar at the McCook Ben Nelson Regional Airport in the amount of \$2,805.20.

5. Regular Agenda.

- A. Approve, under suspension of the rules, Ordinance No. 2016-2944, amending the parameters bond ordinance relating to the authorization of up to \$10,000,000 in aggregate principal amount of Combined Utilities Revenue Refunding Bonds, Series 2016, of the City of McCook, Nebraska.
- B. Approve Ordinance No. 2016-2941 providing for the amendment to Appendix D, Sewer Department Rates and Fees, upon its third and final reading.
- C. Approve Ordinance No. 2016-2942 amending Section 51.072 Determination of Use Charges, changing the language of how sewer usage is calculated for commercial and carwash facilities upon its third and final reading.
- D. Council Comments.

▪ **Adjournment.**

**CITY MANAGER'S REPORT
OCTOBER 14, 2016 CITY COUNCIL MEETING**

ITEM: **3**

Approve the proclamation designating the month of October 2016 as "Domestic Violence Awareness Month" and authorize the Mayor to sign.

BACKGROUND:

Please refer to the attached letter of request from Sandy Krysl, Outreach Advocate for Domestic Abuse/Sexual Assault Services.

**FISCAL
IMPACT:** None.

RECOMMENDATION:

Approve the proclamation designating the month of October 2016 as "Domestic Violence Awareness Month" and authorize the Mayor to sign.

APPROVALS:



Lea Ann Doak, City Clerk-Treasurer

October 12, 2016



**Domestic Abuse/
Sexual Assault Services**

407 W. 5th
PO Box 714
McCook, NE 69001

Business Phone: 308-345-1612
24 hour Crisis Line: 345-5534
Toll-free Crisis Line: 877-345-5534
Website: www.dasas.net

September 30, 2016

City of McCook
Mayor Mike Gonzales
P.O. Box 1059
McCook, NE 69001

Dear Mayor Gonzales:

October is Domestic Violence Awareness Month. We are sending you the enclosed proclamation and asking you to proclaim October as an awareness month in your community.

Domestic violence is a prevalent problem across southwest Nebraska and all the United States. We are asking for your help in raising awareness and prevention efforts in McCook. To show you support the fight against Domestic Violence, please sign your name to this proclamation and post it in a visible place(s) in your community. We also ask that you send a quick email to das@dasas.net letting us know that you have proclaimed October as Domestic Violence Awareness Month in your community. This will help us get an accurate count of the number of communities across the state of Nebraska that have joined in the efforts to eliminate domestic violence.

Thank you for your continued support. If you have questions or would like further information on how to increase awareness and prevention efforts in your community, please contact our office at 308-345-1612. We look forward to working with you.

Sincerely,

Sandy Krysl

Sandy Krysl
Outreach Advocate

**Office of the Mayor
City of McCook
Proclamation**

- Whereas,** Domestic violence is widespread and affects over four million Americans each year;
- Whereas,** The problem of domestic violence is not confined to any group or groups of people, but crosses all economic, racial, gender, educational, religious, and societal barriers, and is sustained by societal indifference; and
- Whereas,** Home should be a place where a person is able to experience safety, acceptance, and unconditional love. Yet, for individuals experiencing domestic violence by their intimate partners, their home is filled with power, control, violence, and fear; and
- Whereas,** The children in homes where domestic violence exists are learning, hearing, and seeing that relationships are to be based on power, control, fear, and violence rather than respect, honesty, and other aspects of healthy relationships; and
- Whereas,** Domestic violence is never at the fault of the victims; and
- Whereas,** Nothing causes an individual to be abusive. Domestic violence is not caused by alcohol, drugs, stress, economic issues, mental illness, depression, or any other excuse. An abuser chooses to use these violent behaviors; and
- Whereas,** Victims of violence should have access to medical and legal services, counseling, transitional housing, and other supportive services so that they can escape the cycle of abuse;
- Whereas,** As individuals and as a community we need to increase our capacity to deal with domestic violence, supporting the victims/survivors in their quest for safety and dignity, and holding perpetrators accountable for their behavior; and
- Whereas,** Domestic Abuse Sexual Assault Services is dedicated to the elimination of domestic violence through prevention and community action throughout southwest Nebraska, promoting equality, safety and respect among all individuals and helping to empower all domestic violence victims/survivors; and

Now therefore, I, Mike Gonzales, Mayor of McCook, do hereby proclaim the month of October as

Domestic Violence Awareness Month

in the City of McCook and urge the citizens of our community to help end domestic violence by working together to support victims/survivors and raising awareness in an effort to promote social change.

In witness thereof I have hereunto
set my hand and caused this seal to be affixed

Domestic Violence



KNOWS No Boundaries

ATTEST _____

DATE _____

No one is immune to abuse.

CITY MANAGER'S REPORT
OCTOBER 17, 2016 CITY COUNCIL MEETING

ITEM: 4A

Approve the minutes of the October 3, 2016 regular City Council meeting.

BACKGROUND:

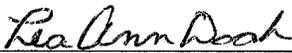
Receive and approve the minutes.

**FISCAL
IMPACT:** None.

RECOMMENDATION:

Approve the minutes of the October 3, 2016 regular City Council meeting.

APPROVALS:



Lea Ann Doak, City Clerk

October 13, 2016

MCCOOK CITY COUNCIL
October 3, 2016
6:30 P.M.

A MEETING OF THE MAYOR AND COUNCIL OF THE CITY OF MCCOOK, NEBRASKA convened in open, regular, and public session at 6:30 o'clock P.M. in the City Council Chambers.

Present: Mayor Gonzales, Councilmembers Hepp, Calvin, McDowell, Weedin.

Absent: None.

City Officials present: City Manager Schneider, City Attorney Mustion, City Clerk Doak, Police Detective Kinne, Utilities Director Dutcher, Fire Chief Harpham, and Public Works Director Potthoff.

Notice of the meeting was given in advance thereof by publication in the McCook Daily Gazette on September 29, 2016, the designated method of giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to the Mayor and members of the City Council and a copy of the Acknowledgment of Receipt of such notice is attached to these minutes. Availability of the agenda was communicated in the advance notice to the Mayor and Council. All proceedings hereafter shown were taken while the meeting was open to the attendance of the public.

Mayor Gonzales announced that a copy of the Open Meetings Act was posted by the entrance to the Council Chambers and available for public review. Invocation was provided by Bruce Lester, of the Evangelical Free Church. Following the Pledge of Allegiance to the flag of the United States of America, Mayor Gonzales called the meeting to order.

1. Citizen's Comments.

Scott Felker, 1304 Missouri Avenue, expressed concerns with vehicles speeding on West "M" Street between West 10th and West 14th, condition of some streets around town, and some nuisance properties that are in need of cleaning.

2. Announcements & Recognitions.

American Legion Chris Hanson Post Commander honored Tyler Neff as the Nebraska American Legion 2015 Firefighter/EMS Officer of the Year.

McCook Police Detective Kevin Hodgson was recognized for his graduation from the FBI National Academy Program at Quantico, Virginia. Nebraska receives six allotments annually for attendees at the academy. Including Detective Hodgson, the McCook Police Department Chief of Police Isaac Brown, Sergeant Kevin Darling, and Detective Larry Kinne are also past graduates of the academy.

3. Proclamation.

- A. Approve the proclamation designating October 9 through October 15, 2016 as "Fire Prevention Week" and authorize the Mayor to sign.

Upon a motion by Councilmember Calvin, seconded by Councilmember McDowell, the Council voted to approve the proclamation designating October 9 through October 15, 2016 as "Fire

Prevention Week” and authorize the Mayor to sign. The yeas and nays were called and the vote was as follows: YEA: Gonzales, Hepp, Calvin, McDowell, Weedin. NAY: None.

4. Consent Agenda.

- A. Approve the minutes of the September 19, 2016 special City Council meeting.

Upon a motion by Councilmember Calvin, seconded by Councilmember Weedin, the Council voted to approve the minutes of the September 19, 2016 special City Council meeting. The yeas and nays were called and the vote was as follows: YEA: Gonzales, Hepp, Calvin, McDowell, Weedin. NAY: None.

- B. Approve the application for a Special Designated Liquor License submitted by Loop Brewery, Liquor License #IK-093351, for a beer garden to be held at the Kiplinger Arena, 1412 West 5th Street, on November 16, 2016, from 10:00 A.M. to 12:00 A.M.

Upon a motion by Councilmember Calvin, seconded by Councilmember Weedin, the Council voted to approve the application for a Special Designated Liquor License submitted by Loop Brewery, Liquor License #IK-093351, for a beer garden to be held at the Kiplinger Arena, 1412 West 5th Street, on November 16, 2016, from 10:00 A.M. to 12:00 A.M. The yeas and nays were called and the vote was as follows: YEA: Gonzales, Hepp, Calvin, McDowell, Weedin. NAY: None.

- C. Receive and file report of sales tax receipts for Fiscal Year 2015-2016.

Upon a motion by Councilmember Calvin, seconded by Councilmember Weedin, the Council voted to receive and file report of sales tax receipts for Fiscal Year 2015-2016. The yeas and nays were called and the vote was as follows: YEA: Gonzales, Hepp, Calvin, McDowell, Weedin. NAY: None.

- D. Receive and file the Financial Report for the period ending August 31, 2016.

Upon a motion by Councilmember Calvin, seconded by Councilmember Weedin, the Council voted to receive and file the Financial Report for the period ending August 31, 2016. The yeas and nays were called and the vote was as follows: YEA: Gonzales, Hepp, Calvin, McDowell, Weedin. NAY: None.

- E. Ratify the Mayor’s appointments to the Senior Citizens Advisory Board, reappointing Harris “John” Anderson, Jim Hamill, and Sharon Parde terms expire September 2019.

Upon a motion by Councilmember Calvin, seconded by Councilmember Weedin, the Council voted to ratify the Mayor’s appointments to the Senior Citizens Advisory Board, reappointing Harris “John” Anderson, Jim Hamill, and Sharon Parde terms expire September 2019. The yeas and nays were called and the vote was as follows: YEA: Gonzales, Hepp, Calvin, McDowell, Weedin. NAY: None.

5. Regular Agenda.

- A. Consider the request from Alan Gunther and Kirk Dixon to install lights at the Bolles Canyon Skatepark using private donations.

Alan Gunther and Kirk Dixon, for safety, liability, and accessibility reasons, looked at lighting of the skate park. They requested permission to move forward with their project to have two solar-

powered light posts installed at the skate park. The solar lighting was chose because it eliminated the expense of boring underneath streets for installation of electricity. The group plans to install the lighting after the Parks Department has completed planned landscaping. Estimated cost of the project is \$7,750.

Upon a motion by Councilmember Hepp, seconded by Councilmember Weedon, the Council voted to approve the request from Alan Gunther and Kirk Dixon to install lights at the Bolles Canyon Skatepark using private donations. The yeas and nays were called and the vote was as follows: YEA: Gonzales, Hepp, Calvin, McDowell, Weedon. NAY: None.

- B. Ratify and approve the selection of MNB Insurance to serve as the City of McCook's Property Insurance Agent, with EMC to provide the city's insurance policy.

Larry Eisenmenger, MNB Insurance was present to address any questions from the Council.

Upon a motion by Councilmember Calvin, seconded by Councilmember McDowell, the Council voted to ratify and approve the selection of MNB Insurance to serve as the City of McCook's Property Insurance Agent, with EMC to provide the city's insurance policy. The yeas and nays were called and the vote was as follows: YEA: Gonzales, Hepp, Calvin, McDowell, Weedon. NAY: None.

- C. Approve Ordinance No. 2016-2941 providing for the amendment to Appendix D, Sewer Department Rates and Fees, upon its second reading.

Considered upon its second reading, Ordinance No. 2016-2941 entitled:

AN ORDINANCE PROVIDING FOR THE AMENDMENT OF FEE SCHEDULE - APPENDIX D, SEWER DEPARTMENT RATES AND FEES; OF THE CITY OF MCCOOK CODE OF ORDINANCES; PROVIDING FOR THE REPEAL OF ORDINANCE NO. 2012-2881 AND ANY AND ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING A TIME AND DATE FROM AND AFTER WHICH THIS ORDINANCE SHALL TAKE EFFECT AND BE ENFORCED.

now comes up on its second reading.

Ordinance No. 2016-2941 was read by title only. Motion was made by Councilmember Weedon, seconded by Councilmember McDowell, to approve Ordinance No. 2016-2941 on its second reading. The yeas and nays were called and the vote was as follows: YEA: Gonzales, Hepp, Calvin, McDowell, Weedon. NAY: None. Motion carried. Whereupon the Mayor declared said Ordinance No. 2016-2941 approved on its second reading.

- D. Approve Ordinance No. 2016-2942 amending Section 51.072 Determination of Use Charges, changing the language of how sewer usage is calculated for commercial and carwash facilities upon its second reading.

Considered upon its second reading, Ordinance No. 2016-2942 entitled:

AN ORDINANCE PROVIDING FOR THE AMENDMENT OF CHAPTER 51 - SEWER REGULATIONS, SECTION 51.072 DETERMINATION OF USE CHARGES; OF THE CITY OF MCCOOK CODE OF ORDINANCES; PROVIDING FOR THE REPEAL OF ANY AND ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING A TIME AND DATE FROM AND AFTER WHICH THIS ORDINANCE SHALL TAKE EFFECT AND BE ENFORCED.

now comes up on its second reading.

Ordinance No. 2016-2942 was read by title only. Motion was made by Councilmember Weedin, seconded by Councilmember Calvin, to approve Ordinance No. 2016-2942 on its second reading. The yeas and nays were called and the vote was as follows: YEA: Gonzales, Hepp, Calvin, McDowell, Weedin. NAY: None. Motion carried. Whereupon the Mayor declared said Ordinance No. 2016-2942 approved on its second reading.

E. Council Comments.

There were no Council Comments.

▪ **Adjournment.**

There being no further business to come before the Council, Mayor Gonzales declared the meeting adjourned at 7:28 P.M.

Michael D. Gonzales, Mayor

ATTEST:

Lea Ann Doak, City Clerk-Treasurer

CITY MANAGER'S REPORT
OCTOBER 14, 2016 CITY COUNCIL MEETING

ITEM: 4B

Approve Resolution No. 2016-18 providing for the adoption of the City of McCook Regular Employee Retirement Plan, amended 401(k) Profit Sharing Plan and Trust effective January 1, 2016 and that the authorized representatives are hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Plan.

BACKGROUND:

At the May 16, 2016 meeting, the Council approved the transfer of the Regular Employee Retirement plan assets to John Hancock and the switch to Benefit Plans, Inc. (BPI) as administrator. It is now necessary to approve the amended plan document reflecting these changes.

**FISCAL
IMPACT:** None.

RECOMMENDATION:

McCook Regular Employee Retirement Plan, amended 401(k) Profit Sharing Plan and Trust effective January 1, 2016 and that the authorized representatives are hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Plan.

APPROVALS:



Lea Ann Doak, City Clerk-Treasurer

October 12, 2016

RESOLUTION NO. 2016-18

The undersigned authorized representative of City of McCook (the Employer) hereby certifies that the following resolutions were duly adopted by the Employer on the date specified below, and that such resolutions have not been modified or rescinded as of the signature date below:

RESOLVED, that the form of amended 401(k) Profit Sharing Plan and Trust effective January 1, 2016, presented to this meeting is hereby approved and adopted and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Plan.

The undersigned further certifies that attached hereto are true copies of City of McCook Employee Retirement Plan as amended and restated, the Summary Plan Description and the Funding Policy and Method which are hereby approved and adopted.

PASSED AND APPROVED this 17th day of October, 2016.

Michael D. Gonzales, Mayor

ATTEST:

Lea Ann Doak, City Clerk-Treasurer

ADOPTING RESOLUTION

The undersigned authorized representative of City of McCook (the Employer) hereby certifies that the following resolutions were duly adopted by the Employer on the date specified below, and that such resolutions have not been modified or rescinded as of the signature date below:

RESOLVED, that the form of amended 401(k) Profit Sharing Plan and Trust effective January 1, 2016, presented to this meeting is hereby approved and adopted and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Plan.

The undersigned further certifies that attached hereto are true copies of City of McCook Employee Retirement Plan as amended and restated, the Summary Plan Description and the Funding Policy and Method which are hereby approved and adopted.

Date: _____

By: _____

[print name/title]

**CITY OF MCCOOK
EMPLOYEE RETIREMENT PLAN**

FUNDING POLICY AND METHOD

A pension benefit plan (as defined in the Employee Retirement Income Security Act of 1974) has been adopted by the company for the purpose of rewarding long and loyal service to the company by providing to employees additional financial security at retirement. Incidental benefits are provided in the case of disability, death or other termination of employment.

Since the principal purpose of the plan is to provide benefits at normal retirement age, the principal goal of the investment of the funds in the plan should be both security and long-term stability with moderate growth commensurate with the anticipated retirement dates of participants. Investments, other than "fixed dollar" investments, should be included among the plan's investments to prevent erosion by inflation. However, investments should be sufficiently liquid to enable the plan, on short notice, to make some distributions in the event of the death or disability of a participant.

**ADOPTION AGREEMENT FOR
BENEFIT PLANS, INC.
NON-STANDARDIZED 401(K) PROFIT SHARING PLAN**

CAUTION: Failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

EMPLOYER INFORMATION

(An amendment to the Adoption Agreement is not needed solely to reflect a change in this Employer Information Section.)

1. EMPLOYER'S NAME, ADDRESS, TELEPHONE NUMBER, TIN AND FISCAL YEAR

Name: City of McCook

Address: 505 West C Street
Street

McCook Nebraska 69001
City State Zip

Telephone: (308) 345-2022

Taxpayer Identification Number (TIN): 47-6006273

Employer's Fiscal Year ends: September 30th

2. TYPE OF ENTITY

- a. Corporation (including tax-exempt or non-profit Corporation)
- b. Professional Service Corporation
- c. S Corporation
- d. Limited Liability Company that is taxed as:
 - 1. a partnership or sole proprietorship
 - 2. a Corporation
 - 3. an S Corporation
- e. Sole Proprietorship
- f. Partnership (including limited liability)
- g. Other: Government exempt from ERISA (must be a legal entity recognized under federal income tax laws)

3. AFFILIATED EMPLOYERS/PARTICIPATING EMPLOYERS (Plan Sections 1.7 and 1.61). Is the Employer an Affiliated Employer (i.e., a member of a controlled group or an affiliated service group (within the meaning of Code §414(b), (c), (m) or (o)))?

- a. No
- b. Yes, the Employer is a member of (select one or both of 1. - 2. AND select one of 3. - 4. below):
 - 1. A controlled group
 - 2. An affiliated service group

AND, will any of the Affiliated Employers adopt the Plan as Participating Employers?

- 3. Yes (Complete a participation agreement for each Participating Employer.)
- 4. No (The Plan could fail to satisfy the Code §410(b) coverage rules.)

MULTIPLE EMPLOYER PLAN (Plan Article XIV). Will any Employers who are not Affiliated Employers adopt this Plan as part of a multiple employer plan (MEP) arrangement?

- c. No
- d. Yes (Complete a participation agreement for each Participating Employer.)

PLAN INFORMATION

(An amendment to the Adoption Agreement is not needed solely to reflect a change in the information in Questions 9. through 11.)

4. PLAN NAME:

City of McCook Employee Retirement Plan

Non-Standardized 401(k) Profit Sharing Plan

5. PLAN STATUS

- a. New Plan
 - b. Amendment and restatement of existing Plan
- PPA RESTATEMENT** (leave blank if not applicable)

1. This is an amendment and restatement to bring a plan into compliance with the Pension Protection Act of 2006 ("PPA") and other legislative and regulatory changes (i.e., the 6-year pre-approved plan restatement).

6. EFFECTIVE DATE (Plan Section 1.25) (complete a. if new plan; complete a. AND b. if an amendment and restatement)

Initial Effective Date of Plan

a. January 1, 1967 (enter month day, year) (hereinafter called the "Effective Date" unless 6.b. is entered below)

Restatement Effective Date. If this is an amendment and restatement, the effective date of the restatement (hereinafter called the "Effective Date") is:

b. January 1, 2016 (enter month day, year; may enter a restatement date that is the first day of the current Plan Year. Plan contains appropriate retroactive effective dates with respect to provisions for appropriate laws.)

7. PLAN YEAR (Plan Section 1.65) means, except as otherwise provided in d. below:

- a. the calendar year
- b. the twelve-month period ending on _____ (e.g., June 30th)
- c. other: _____ (e.g., a 52/53 week year ending on the date nearest the last Friday in December).

SHORT PLAN YEAR (Plan Section 1.76). Select below if there is a Short Plan Year (if the effective date of participation is based on a Plan Year, then coordinate with Question 15) (leave blank if not applicable):

d. beginning on _____ (enter month day, year; e.g., July 1, 2013) and ending on _____ (enter month day, year).

8. VALUATION DATE (Plan Section 1.86) means:

- a. every day that the Trustee (or Insurer), any transfer agent appointed by the Trustee (or Insurer) or the Employer, and any stock exchange used by such agent are open for business (daily valuation)
- b. the last day of each Plan Year
- c. the last day of each Plan Year half (semi-annual)
- d. the last day of each Plan Year quarter
- e. other (specify day or days): _____ (must be at least once each Plan Year)

NOTE: The Plan always permits interim valuations.

9. PLAN NUMBER assigned by the Employer

- a. 001
- b. 002
- c. Other: _____

10. TRUSTEE(S) OR INSURER(S) (Plan Sections 1.44 and 1.84):

a. **Insurer.** This Plan is funded exclusively with Contracts and the name of the Insurer(s) is:

(1) _____ (2) _____ (if more than 2, add names to signature page).

b. **Individual Trustee(s).** Individual Trustee(s) who serve as Trustee(s) over assets not subject to control by a corporate Trustee. (add additional Trustees as necessary)

Name(s)	Title(s)
<u>City of McCook</u>	<u>Trustee</u>
_____	_____
_____	_____

Non-Standardized 401(k) Profit Sharing Plan

Address and telephone number

- 1. Use Employer address and telephone number
- 2. Use address and telephone number below:

Address: _____
Street

_____ City _____ State _____ Zip

Telephone: _____

- c. **Corporate Trustee(s)** (add additional Trustees as necessary)

Name: _____

Address: _____

Street

_____ City _____ State _____ Zip

Telephone: _____

Directed/Discretionary Trustee. Unless otherwise specified below, if there is a corporate Trustee, it will serve as a Directed (nondiscretionary) Trustee (Plan Section 1.21) and if there is an individual Trustee, he or she will serve as a Discretionary Trustee (Plan Section 1.22) over all Plan assets (select all that apply; leave blank if defaults apply)

- d. Directed Trustee exceptions (leave blank if no exceptions):

Directed Trustee over specified Plan assets (select all that apply; leave blank if none apply)

- 1. The corporate Trustee will serve as Directed Trustee over the following assets: _____
- 2. The individual Trustee(s) will serve as Directed Trustee over the following assets: _____

Individual Trustee will serve as Directed Trustee (may not be selected with d.1. or d.2.)

- 3. over all Plan assets

- e. Discretionary Trustee exceptions (leave blank if no exceptions):

Discretionary Trustee over specified Plan assets (select all that apply; leave blank if none apply)

- 1. The individual Trustee(s) will serve as Discretionary Trustee over the following assets: _____
- 2. The corporate Trustee will serve as Discretionary Trustee over the following assets: _____

Corporate Trustee will serve as Discretionary Trustee (may not be selected with e.1. or e.2.)

- 3. over all Plan assets

NOTE: Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) or a separate agreement may be used to appoint a special Trustee for purposes of collecting delinquent contributions. If no such appointment is made, then except as provided in Plan Section 7.3(c), the Trustee will have such responsibility.

Separate trust. Will a separate trust agreement that is approved by the IRS for use with this Plan be used?

- f. No
- g. Yes

NOTE: If Yes is selected, an executed copy of the trust agreement between the Trustee and the Employer must be attached to this Plan. The Plan and trust agreement will be read and construed together. The responsibilities, rights and powers of the Trustee will be those specified in the trust agreement.

11. **ADMINISTRATOR'S NAME, ADDRESS AND TELEPHONE NUMBER**

(If none is named, the Employer will be the Administrator (Plan Section 1.5).)

- a. Employer (use Employer address and telephone number)
- b. Other:

Name: _____

Address: _____

Street

_____ City _____ State _____ Zip

Telephone: _____

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12. CONTRIBUTION TYPES

The selections made below must correspond with the selections made under the Contributions and Allocations Section of this Adoption Agreement.

FROZEN PLAN OR CONTRIBUTIONS HAVE BEEN SUSPENDED (Plan Section 4.1(c)) (optional)

- a. This is a frozen Plan (i.e., all contributions cease) (if this is a temporary suspension, select a.2):
1. All contributions ceased as of, or prior to, the effective date of this amendment and restatement and the prior Plan provisions are not reflected in this Adoption Agreement (may enter effective date at 3. below and/or select contributions at b. - h. (optional), skip questions 13-19 and 23-31)
 2. All contributions ceased or were suspended and the prior Plan provisions are reflected in this Adoption Agreement (must enter effective date at 3. below and select contributions at b. - h.)

Effective date

3. as of _____ (effective date is optional unless a.2. has been selected above or this is the amendment or restatement to freeze the Plan).

CONTRIBUTIONS

The Plan permits the following contributions (select one or more):

- b. **Elective Deferrals** (Question 25). Also select below if Roth Elective Deferrals are permitted.
1. Roth Elective Deferrals (Plan Section 1.73)
- c. **401(k) "ADP test safe harbor contributions"** (Question 27)
1. **401(k) "ADP test safe harbor contributions"** (other than QACA "ADP test safe harbor contributions") (Match, Nonelective)
 2. **QACA "ADP test safe harbor contributions"**
- d. **Employer matching contributions** (Question 28)
- e. **Employer profit sharing contributions** (includes "prevailing wage contributions") (Questions 29-30)
- f. **Rollover contributions** (Question 46)
- g. **After-tax voluntary Employee contributions** (Question 47)
- h. **SIMPLE 401(k) contributions** (Plan Section 13.1) (may not be selected with 12.c., 12.d., 12.e. or 12.g.)

ELIGIBILITY REQUIREMENTS

13. **ELIGIBLE EMPLOYEES** (Plan Section 1.28) means all Employees (including Leased Employees) EXCEPT those Employees who are excluded below or elsewhere in the Plan:

- a. **No excluded Employees.** There are no additional excluded Employees under the Plan (skip to Question 14).
- b. **Exclusions - same for all contribution types.** The following Employees are not Eligible Employees for all contribution types (select one or more of e. - k. below; also select 1. for each exclusion selected at e. - j.):
- c. **Exclusions - different exclusions apply.** The following Employees are not Eligible Employees for the designated contribution types (select one or more of d. - k. below; also select 1. OR all that apply of 2. - 4. for each exclusion selected at d. - j.):

NOTE: Unless otherwise specified in this Section, Elective Deferrals include Roth Elective Deferrals, after-tax voluntary Employee contributions, and rollover contributions; Matching includes QMACs; and Nonelective Profit Sharing includes QNECs. **"ADP test safe harbor contributions" (SH) (including those made pursuant to a QACA) and SIMPLE 401(k) contributions are subject to the exclusions for Elective Deferrals except as provided in Question 27.**

Exclusions	All Contributions		Elective Deferrals/SH	Matching	Nonelective Profit Sharing
d. No exclusions	N/A		2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
e. Union Employees (as defined in Plan Section 1.28)	1. <input checked="" type="checkbox"/>	OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
f. Nonresident aliens (as defined in Plan Section 1.28)	1. <input checked="" type="checkbox"/>	OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
g. Highly Compensated Employees (Plan Section 1.41)	1. <input type="checkbox"/>	OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
h. Leased Employees (Plan Section 1.49)	1. <input checked="" type="checkbox"/>	OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
i. Part-time/temporary/seasonal Employees.	1. <input type="checkbox"/>	OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>

A part-time, temporary or seasonal Employee is an Employee whose regularly scheduled service is less than _____ Hours of Service in the relevant eligibility computation period (as defined in Plan Section 1.88). However, if any such excluded Employee actually completes a Year of Service, then such Employee will no longer be part of this excluded class.

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- j. Other: 1. **OR** 2. 3. 4.
Uniformed personnel covered under other retirement plans and Contract Employees
 (must be definitely determinable, may not be based on age or length of service (except in a manner consistent with i. above) or level of Compensation, and, if using the average benefits test to satisfy Code §410(b) coverage testing, must be a reasonable classification)

- k. Other: _____ (must (1) specify contributions to which exclusions apply, (2) be definitely determinable and not based on age or length of service (except in a manner consistent with i. above) or level of Compensation, and, (3) if using the average benefits test to satisfy Code §410(b) coverage testing, be a reasonable classification).

14. **CONDITIONS OF ELIGIBILITY (Plan Section 3.1)**

- a. **No age or service required.** No age or service required for all contribution types (skip to Question 15).
 b. **Eligibility - same for all contribution types.** An Eligible Employee will be eligible to participate in the Plan for all contribution types upon satisfaction of the following (select one or more of e. - n. below; also select 1. (All Contributions) for each condition selected at e. - m.):
 c. **Eligibility - different conditions apply.** An Eligible Employee will be eligible to participate in the Plan upon satisfaction of the following either for all contribution types or to the designated contribution type (select one or more of d. - n. below; also select 1. OR all that apply of 2. - 4. for each condition selected at d. - m.):

NOTE: Unless otherwise specified in this Section, Elective Deferrals include Roth Elective Deferrals, after-tax voluntary Employee contributions, and rollover contributions (unless otherwise selected at Question 46); Matching includes QMACs; and Nonelective Profit Sharing includes QNECs. **"ADP test safe harbor contributions" (SH) (including those made pursuant to a QACA) and SIMPLE 401(k) contributions are subject to the conditions for Elective Deferrals except as provided in Question 27.**

Eligibility Conditions	All Contributions	Elective Deferrals/SH	Matching	Nonelective Profit Sharing
d. No age or service required	N/A	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
e. Age 20 1/2	1. <input type="checkbox"/>	OR 2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
f. Age 21	1. <input type="checkbox"/>	OR 2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
g. Age _____ (may not exceed 21)	1. <input type="checkbox"/>	OR 2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
h. _____ (not to exceed 12) months of service (elapsed time)	1. <input type="checkbox"/>	OR 2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
i. 1 Year of Service	1. <input type="checkbox"/>	OR 2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
j. 2 Years of Service	N/A	OR N/A	3. <input type="checkbox"/>	4. <input type="checkbox"/>
k. <u>three (3)</u> (not to exceed 12) consecutive month period from the Eligible Employee's employment commencement date and during which at least <u>one (1)</u> (not to exceed 1,000) Hours of Service are completed. If an Employee does not complete the stated Hours of Service during the specified time period, the Employee is subject to the 1 Year of Service requirement in i. above.	1. <input checked="" type="checkbox"/>	OR 2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
l. _____ (not to exceed 12) consecutive months of employment from the Eligible Employee's employment commencement date. If an Employee does not complete the stated number of months, the Employee is subject to the 1 Year of Service requirement in i. above.	1. <input type="checkbox"/>	OR 2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
m. Other: _____ (e.g., date on which 1,000 Hours of Service is completed within the computation period) (must satisfy the Notes below)	1. <input type="checkbox"/>	OR 2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
n. <input type="checkbox"/> Other: _____ (e.g., date on which 1,000 Hours of Service is completed within the computation period) (must specify contributions to which conditions apply and satisfy the Notes below)				

NOTE: If m. or n. is selected, the condition must be an age or service requirement that is definitely determinable and may not exceed age 21 and for Elective Deferrals, 1 Year of Service; for Employer matching and/or Nonelective profit sharing contributions, may not exceed 2 Years of Service. If more than 1 Year of Service is required for Employer matching and/or Nonelective profit sharing contributions, 100% immediate vesting is required.

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NOTE: If the service requirement is or includes a fractional year, then, except in a manner consistent with k., an Employee will not be required to complete any specified number of Hours of Service to receive credit for such fractional year. If expressed in months of service, then an Employee will not be required to complete any specified number of Hours of Service in a particular month, unless selected in k. above. In both cases, the Plan must use the elapsed time method to determine service, except that the Hours of Service method will be used for the 1 Year of Service override (e.g., options k. and l.). In such case, select the Hours of Service method at Question 17.

NOTE: Year of Service means Period of Service if elapsed time method is chosen.

Waiver of conditions. The service and/or age requirements specified above will be waived in accordance with the following (leave blank if there are no waivers of conditions):

- | Requirements waived | All
Contributions | Elective
Deferrals/SH | Matching | Nonelective
Profit Sharing | |
|--|-----------------------------|--------------------------|-----------------------------|-------------------------------|-----------------------------|
| o. <input type="checkbox"/> If employed on _____ the following requirements, and the entry date requirement, will be waived. The waiver applies to any Eligible Employee unless c. selected below. Such Employees will enter the Plan as of such date (select a. and/or b. AND c. if applicable; also select 1. OR all that apply of 2. - 4.): | 1. <input type="checkbox"/> | OR | 2. <input type="checkbox"/> | 3. <input type="checkbox"/> | 4. <input type="checkbox"/> |
| a. <input type="checkbox"/> service requirement (may let part-time Eligible Employees into the Plan) | | | | | |
| b. <input type="checkbox"/> age requirement | | | | | |
| c. <input type="checkbox"/> waiver is for: _____ (e.g., Employees of a specific division or Employees covered by a Code §410(b)(6)(C) acquisition) | | | | | |
| p. <input type="checkbox"/> If employed on _____ the following requirements, and the entry date requirement, will be waived. The waiver applies to any Eligible Employee unless c. selected below. Such Employees will enter the Plan as of such date (select a. and/or b. AND c. if applicable; also select 1. OR all that apply of 2. - 4.): | 1. <input type="checkbox"/> | OR | 2. <input type="checkbox"/> | 3. <input type="checkbox"/> | 4. <input type="checkbox"/> |
| a. <input type="checkbox"/> service requirement (may let part-time Eligible Employees into the Plan) | | | | | |
| b. <input type="checkbox"/> age requirement | | | | | |
| c. <input type="checkbox"/> waiver is for: _____ (e.g., Employees of a specific division or Employees covered by a Code §410(b)(6)(C) acquisition) | | | | | |

Amendment or restatement to change eligibility requirements

- q. This amendment or restatement (or a prior amendment and restatement) modified the eligibility requirements and the prior eligibility conditions continue to apply to the Eligible Employees specified below. If this option is NOT selected, then all Eligible Employees must satisfy the eligibility conditions set forth above.
1. The eligibility conditions above only apply to Eligible Employees who were not Participants as of the effective date of the modification.
 2. The eligibility conditions above only apply to individuals who were hired on or after the effective date of the modification.

15. **EFFECTIVE DATE OF PARTICIPATION (ENTRY DATE) (Plan Section 3.2)**

- a. **Entry date same for all contribution types.** An Eligible Employee who has satisfied the eligibility requirements will become a Participant in the Plan for all contribution types as of the entry date selected below (select one of c. - g., j. or k. below; also select 1. (All Contributions) for entry date selected at c. - g. or j.):
- b. **Entry date - different dates apply.** An Eligible Employee who has satisfied the eligibility requirements will become a Participant in the Plan for the designated contribution type as of the entry dates selected below (select one or more of c. - k. below; also select all that apply of 2. - 4. for each entry date selected at c. - j.)

NOTE: Option g. below can only be selected when eligibility for Elective Deferral purposes is six months of service or less and age is 20 1/2 or less. Options g.3. and g.4. may be selected when eligibility is 1 1/2 Years of Service or less and age is 20 1/2 or less and the Plan provides for 100% vesting.

NOTE: Unless otherwise specified in this Section or any other Section, Elective Deferrals include Roth Elective Deferrals, after-tax voluntary Employee contributions, and rollover contributions (unless otherwise selected at Question 46); Matching includes QMACs; and Nonelective Profit Sharing includes QNECs. **"ADP test safe harbor contributions" (SH) (including those made pursuant to a QACA) and SIMPLE 401(k) contributions are subject to the provisions for Elective Deferrals except as provided in Question 27.**

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Entry Date	All Contributions	OR	Elective Deferrals/SH	Matching	Nonelective Profit Sharing
c. Date requirements met	1. <input type="checkbox"/>	OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
d. First day of the month coinciding with or next following date requirements met	1. <input type="checkbox"/>	OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
e. First day of the Plan Year quarter coinciding with or next following date requirements met	1. <input checked="" type="checkbox"/>	OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
f. First day of Plan Year or first day of 7th month of Plan Year coinciding with or next following date requirements met	1. <input type="checkbox"/>	OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
g. First day of Plan Year coinciding with or next following date requirements met	1. <input type="checkbox"/>	OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
h. First day of Plan Year in which requirements met	N/A		N/A	3. <input type="checkbox"/>	4. <input type="checkbox"/>
i. First day of Plan Year nearest date requirements met	N/A		N/A	3. <input type="checkbox"/>	4. <input type="checkbox"/>
j. Other:	1. <input type="checkbox"/>	OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>

(must be definitely determinable and satisfy Note below)

k. Other: _____ (must specify contributions to which the conditions apply and must be definitely determinable and satisfy Note below)

NOTE: If j. or k. above is selected, then it must be completed in a manner that ensures an Eligible Employee who has satisfied the maximum age (21) and service requirements (1 Year (or Period) of Service (or more than 1 year if full and immediate vesting)) and who is otherwise entitled to participate, will become a Participant not later than the earlier of (a) 6 months after such requirements are satisfied, or (b) the first day of the first Plan Year after such requirements are satisfied, unless the Employee separates from service before such participation date.

SERVICE

16. **RECOGNITION OF SERVICE WITH OTHER EMPLOYERS** (Plan Sections 1.62 and 1.88)
- a. No service with other employers is recognized except as otherwise required by law (e.g., the Plan already provides for the recognition of service with Employers who have adopted this Plan as well as service with Affiliated Employers and predecessor Employers who maintained this Plan; skip to Question 17).
- b. Prior service with the designated employers is recognized as follows (answer c. and select one or more of c.1. - 3.; select d. - g. as applicable) (if more than 3 employers, attach an addendum to the Adoption Agreement or complete option 1. under Section B of Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections)):

Other Employer	Eligibility	Vesting	Contribution Allocation
c. <input type="checkbox"/> Employer name: _____	1. <input type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>
d. <input type="checkbox"/> Employer name: _____	1. <input type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>
e. <input type="checkbox"/> Employer name: _____	1. <input type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>
f. <input type="checkbox"/> Any entity the Employer acquires whether by asset or stock purchase, but only with respect to individuals who are employees of the acquired entity at the time of the acquisition	1. <input type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>

Limitations

g. The following provisions or limitations apply with respect to the recognition of prior service: _____ (e.g., credit service with X only on/following 1/1/13 or credit all service with entities the Employer acquires after 12/31/12)

NOTE: If the other Employer(s) maintained this qualified Plan, then Years (and/or Periods) of Service with such Employer(s) must be recognized pursuant to Plan Sections 1.62 and 1.88 regardless of any selections above.

17. **SERVICE CREDITING METHOD** (Plan Sections 1.62 and 1.88)

NOTE: The provisions set forth in the definition of Year of Service in Plan Section 1.88 will apply, including the following defaults, except as otherwise elected below:

1. A Year of Service means completion of at least 1,000 Hours of Service during the applicable computation period.

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2. Hours of Service (Plan Section 1.43) will be based on actual Hours of Service.
 3. For eligibility purposes, the computation period will be as defined in Plan Section 1.88 (i.e., shift to the Plan Year if the eligibility condition is one (1) Year of Service or less).
 4. For vesting and allocation purposes, the computation period will be the Plan Year.
 5. The one-year hold-out rule after a 1-Year Break in Service will not be used.
- a. **Elapsed time method.** (Period of Service applies instead of Year of Service) Instead of Hours of Service, elapsed time will be used for:
1. all purposes (skip to Question 18)
 2. the following purposes (select one or more):
 - a. eligibility to participate
 - b. vesting
 - c. sharing in allocations or contributions
- b. **Alternative definitions for the Hours of Service method.** Instead of the defaults, the following alternatives will apply for the Hours of Service method (select one or more):
1. **Eligibility computation period.** Instead of shifting to the Plan Year, the eligibility computation period after the initial eligibility computation period will be based on each anniversary of the date the Employee first completes an Hour of Service
 2. **Vesting computation period.** Instead of the Plan Year, the vesting computation period will be the date an Employee first performs an Hour of Service and each anniversary thereof.
 3. **Equivalency method.** Instead of using actual Hours of Service, an equivalency method will be used to determine Hours of Service for:
 - a. all purposes
 - b. the following purposes (select one or more):
 1. eligibility to participate
 2. vesting
 3. sharing in allocations or contributions

Such method will apply to:

 - c. all Employees
 - d. Employees for whom records of actual Hours of Service are not maintained or available (e.g., salaried Employees)
 - e. other: _____ (e.g., per-diem Employees only)

Hours of Service will be determined on the basis of:

 - f. days worked (10 hours per day)
 - g. weeks worked (45 hours per week)
 - h. semi-monthly payroll periods worked (95 hours per semi-monthly pay period)
 - i. months worked (190 hours per month)
 - j. bi-weekly payroll periods worked (90 hours per bi-weekly pay period)
 - k. other: _____ (e.g., option f. is used for per-diem Employees and option g. is used for on-call Employees)
 4. **Number of Hours of Service required.** Instead of 1,000 Hours of Service, Year of Service means the applicable computation period during which an Employee has completed at least _____ (not to exceed 1,000) Hours of Service for:
 - a. all purposes
 - b. the following purposes (select one or more):
 1. eligibility to participate
 2. vesting
 3. sharing in allocations or contributions

VESTING

18. **VESTING OF PARTICIPANT'S INTEREST** (Plan Section 6.4(b))
- a. N/A (no Employer Nonelective profit sharing contributions (other than "prevailing wage contributions"), matching contributions or QACA "ADP test safe harbor contributions"; skip to Question 20)
 - b. The vesting provisions selected below apply to all Participants unless otherwise selected below. In addition, option m. under Section B of Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) can be used to specify any exceptions to the provisions below.

Vesting waiver. Employees who were employed on the date(s) indicated below and were Participants as of such date are 100% Vested. For Participants who enter the Plan after such date, the vesting provisions selected below apply (leave blank if no waiver applies):

 1. For all contributions. The vesting waiver applies to all contributions if employed on _____ (enter date)

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2. For designated contributions. The vesting waiver applies to (select one or more):
- a. Employer Nonelective profit sharing contributions if employed on _____
- b. Employer matching contributions if employed on _____
- c. QACA "ADP test safe harbor contributions" if employed on _____

Vesting for Employer Nonelective profit sharing contributions

- c. N/A (no Employer Nonelective profit sharing contributions (other than "prevailing wage contributions"); skip to f.)
- d. 100% vesting. Participants are 100% Vested in Employer Nonelective profit sharing contributions upon entering Plan (required if eligibility requirement is greater than one (1) Year (or Period) of Service).
- e. The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to Employer Nonelective profit sharing contributions:

1. 6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
2. 4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
3. 5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
4. 3 Year Cliff: 0-2 years-0%; 3 years-100%
5. Other - Must be at least as liberal as either 1. or 4. above in each year without switching between the two schedules:

Years (or Periods) of Service	Percentage
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%

Vesting for Employer matching contributions

- f. N/A (no Employer matching contributions; skip to j.)
- g. The schedule above will also apply to Employer matching contributions.
- h. 100% vesting. Participants are 100% Vested in Employer matching contributions upon entering Plan. (required if eligibility requirement is greater than 1 Year (or Period) of Service)
- i. The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to Employer matching contributions:

1. 6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
2. 4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
3. 5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
4. 3 Year Cliff: 0-2 years-0%; 3 years-100%
5. Other - must be at least as liberal as either 1. or 4. above in each year without switching between the two schedules:

Years (or Periods) of Service	Percentage
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%

Vesting for QACA safe harbor contributions

- j. N/A (no QACA "ADP test safe harbor contributions"; skip to Question 19)
- k. 100% vesting. Participants are 100% Vested in QACA "ADP test safe harbor contributions" upon entering Plan (skip to Question 19).
- l. The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to the Participant's Qualified Automatic Contribution Safe Harbor Account:

1. 100% after two years: 0-1 year-0%; 2 years-100%
2. Other - Must be at least as liberal as 1. above in each year:

Years (or Periods) of Service	Percentage
Less than 1	_____%
1	_____%
2	100%

19. **VESTING OPTIONS**

Excluded vesting service. The following Years of Service will be disregarded for vesting purposes (select all that apply; leave blank if none apply):

- a. Service prior to the initial Effective Date of the Plan or a predecessor plan (as defined in Regulations §1.411(a)-5(b)(3))
- b. Service prior to the computation period in which an Employee has attained age 18

Vesting for death, Total And Permanent Disability and Early Retirement Date. Regardless of the vesting schedule, a Participant will become fully Vested upon (select all that apply; leave blank if none apply):

- c. Death
- d. Total and Permanent Disability
- e. Early Retirement Date

NOTE: Unless otherwise elected at option v. under Section B of Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), the options above apply to QACA "ADP test safe harbor contributions," if any, as well as to Employer Nonelective profit sharing contributions and matching contributions.

RETIREMENT AGES

- 20. **NORMAL RETIREMENT AGE ("NRA")** (Plan Section 1.55) means:
 - a. **Specific age.** The date a Participant attains age 65 (see Note below).
 - b. **Age/participation.** The later of the date a Participant attains age _____ (see Note below) or the _____ (not to exceed 5th) anniversary of the first day of the Plan Year in which participation in the Plan commenced.

NOTE: A Participant's age specified above may not exceed 65 and, if this Plan includes transferred pension assets, may not be less than age 62 unless the Employer has evidence that the representative typical retirement age for the adopting Employer's industry is a lower age, but may be no less than age 55.

- 21. **NORMAL RETIREMENT DATE** (Plan Section 1.56) means, with respect to any Participant, the:
 - a. date on which the Participant attains "NRA"
 - b. first day of the month coinciding with or next following the Participant's "NRA"
 - c. first day of the month nearest the Participant's "NRA"
 - d. Anniversary Date coinciding with or next following the Participant's "NRA"
 - e. Anniversary Date nearest the Participant's "NRA"
 - f. Other: _____ (e.g., first day of the month following the Participant's "NRA").

- 22. **EARLY RETIREMENT DATE** (Plan Section 1.23)
 - a. N/A (no early retirement provision provided)
 - b. Early Retirement Date means the:
 - 1. date on which a Participant satisfies the early retirement requirements
 - 2. first day of the month coinciding with or next following the date on which a Participant satisfies the early retirement requirements
 - 3. Anniversary Date coinciding with or next following the date on which a Participant satisfies the early retirement requirements

Early retirement requirements

- 4. Participant attains age 55 **AND**, completes... (leave blank if not applicable)
 - a. at least seven (7) Years (or Periods) of Service for vesting purposes
 - b. at least _____ Years (or Periods) of Service for eligibility purposes

COMPENSATION

- 23. **COMPENSATION** with respect to any Participant is defined as follows (Plan Sections 1.18 and 1.40).

Base definition

 - a. Wages, tips and other compensation on Form W-2
 - b. Code §3401(a) wages (wages for withholding purposes)
 - c. 415 safe harbor compensation

NOTE: Plan Sections 1.18(d) and 1.40 provide that the base definition of Compensation includes deferrals that are not included in income due to Code §§401(k), 125, 132(f)(4), 403(b), 402(h)(1)(B)(SEP), 414(h)(2), & 457.

Determination period. Compensation will be based on the following "determination period" (this will also be the Limitation Year unless otherwise elected at option i. under Section B of Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections)):

- d. the Plan Year
- e. the Fiscal Year coinciding with or ending within the Plan Year
- f. the calendar year coinciding with or ending within the Plan Year

Adjustments to Compensation (for Plan Section 1.18). Compensation will be adjusted by:

- g. **No adjustments.** No adjustments to Compensation for all contribution types (skip to v. below).
- h. **Adjustments - same for all contribution types.** The following Compensation adjustments apply to all contribution types (select one or more of l. - u. below; also select 1. (All Contributions) for each adjustment selected at l. - t.):

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i. **Adjustments - different adjustments apply.** The following Compensation adjustments for the designated contribution type (select one or more of j. - u. below; also select 1. OR all that apply of 2. - 5. for each adjustment selected at j. - t.):

NOTE: Elective Deferrals include Roth Elective Deferrals, Matching includes QMACs and matching "ADP test safe harbor contributions" (including those made pursuant to a QACA), and Nonelective Profit Sharing includes QNECs unless specified otherwise. ADP Safe Harbor Nonelective includes nonelective "ADP test safe harbor contributions" (including those made pursuant to a QACA).

Adjustments	All Contributions	Elective Deferrals	Matching	Nonelective Profit Sharing	ADP Safe Harbor Nonelective
j. no Adjustments	N/A	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
k. excluding salary reductions (401(k), 125, 132(f)(4), 403(b), SEP, 414(h)(2) pickup, & 457)	N/A	N/A	N/A	4. <input type="checkbox"/>	5. <input type="checkbox"/>
l. excluding reimbursements or other expense allowances, fringe benefits (cash or non-cash), moving expenses, deferred compensation (other than deferrals specified in k. above) and welfare benefits.	1. <input type="checkbox"/> OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
m. excluding Compensation paid during the "determination period" while not a Participant in the component of the Plan for which the definition applies.	1. <input type="checkbox"/> OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
n. excluding Compensation paid during the "determination period" while not a Participant in <i>any</i> component of the Plan for which the definition applies.	1. <input type="checkbox"/> OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
o. excluding Military Differential Pay	1. <input type="checkbox"/> OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
p. excluding overtime	1. <input type="checkbox"/> OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
q. excluding bonuses	1. <input checked="" type="checkbox"/> OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
r. excluding commissions	1. <input type="checkbox"/> OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
s. excluding Compensation paid by an Affiliated Employer that has not adopted this Plan.	1. <input type="checkbox"/> OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
t. other:	1. <input type="checkbox"/> OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>

(e.g., describe Compensation from the elections available above or a combination thereof as to a Participant group (e.g., no exclusions as to Division A Employees and exclude bonuses as to Division B Employees); and/or describe another exclusion (e.g., exclude shift differential pay))

u. other: _____ (e.g., describe Compensation from the elections available above or a combination thereof as to a contribution source and Participant group (e.g., no exclusions as to Division A Employees and exclude bonuses as to Division B Employees); and/or describe another exclusion (e.g., exclude shift differential pay)).

NOTE: If p., q., r., s., t. or u. is selected, the definition of Compensation could violate the nondiscrimination rules. In addition, p., q., r., s., t. or u. are not recommended if the Plan is using the ADP/ACP safe harbor provisions.

Military Differential Pay special effective date (leave blank if not applicable)

v. If this is a PPA restatement and the provisions above regarding Military Differential Pay (included unless o. is selected) have a later effective date than Plan Years beginning after December 31, 2008, then enter the date such provisions were first effective: _____ (may not be earlier than January 1, 2009; for Plan Years beginning prior to January 1, 2009, Military Differential Pay is treated in accordance with the post-severance compensation provisions in the following Question).

24. POST-SEVERANCE COMPENSATION (415 REGULATIONS)

The following optional provision of the 415 Regulations will apply to Limitation Years beginning on or after July 1, 2007 unless otherwise elected below:

415 Compensation (post-severance compensation adjustments) (select all that apply at a. - b.; leave blank if none apply)

NOTE: Unless otherwise elected under a. below, the following defaults apply: 415 Compensation will **include** (to the extent provided in Plan Section 1.40), post-severance regular pay, leave cash-outs and payments from nonqualified unfunded deferred compensation plans.

- a. The defaults listed above apply except for the following (select one or more):
 - 1. Leave cash-outs will be **excluded**
 - 2. Nonqualified unfunded deferred compensation will be **excluded**
 - 3. Military Differential Pay will be **included** (Plan automatically includes for Limitation Years beginning after December 31, 2008)
 - 4. Disability continuation payments will be **included** for:
 - a. Nonhighly Compensated Employees only
 - b. all Participants and the salary continuation will continue for the following fixed or determinable period: _____
- b. The last paycheck ("administrative delay") rule will be applied (amounts paid in the first few weeks of a Limitation Year due to administrative delay relate back to the prior Limitation Year).

Plan Compensation (post-severance compensation adjustments)

- c. **Defaults apply.** For all contribution types, Compensation will **include** (to the extent provided in Plan Section 1.18 and to the extent such amounts would be included in Compensation if paid prior to severance of employment) post-severance regular pay, leave cash-outs, and payments from nonqualified unfunded deferred compensation plans (skip to n. below).
- d. **Exclude all post-severance compensation.** Exclude all post-severance compensation for all contribution types (skip to n. below).
- e. **Post-severance adjustments - same for all contribution types.** The defaults listed at c. apply except for the following for all contribution types (select one or more of i. - m. below; also select 1. (All Contributions) for each adjustment selected):
- f. **Post-severance adjustments - different adjustments apply.** The defaults listed at c. apply except for the following for the designated contribution type (select one or more of g. - m. below; also select 1. OR all that apply of 2. - 5. for each adjustment selected):

Adjustments	All Contributions	Elective Deferrals	Matching	Nonelective Profit Sharing	ADP Safe Harbor Nonelective
g. Defaults apply	N/A	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
h. Exclude all post-severance compensation (may violate the nondiscrimination requirements)	N/A	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
i. Regular pay will be excluded (may violate the nondiscrimination requirements)	1. <input type="checkbox"/> OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
j. Leave cash-outs will be excluded	1. <input type="checkbox"/> OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
k. Nonqualified unfunded deferred compensation will be excluded	1. <input type="checkbox"/> OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
l. Military Differential Pay will be included	1. <input type="checkbox"/> OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
m. Disability continuation payments will be included for:	1. <input type="checkbox"/> OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
a. <input type="checkbox"/> Nonhighly Compensated Employees only					
b. <input type="checkbox"/> all Participants and the salary continuation will continue for the following fixed or determinable period: _____					

NOTE: The above treatment of Military Differential Pay only applies to Plan Years beginning prior to January 1, 2009. For Plan Years beginning after such date, Military Differential Pay is not considered post-severance compensation and the provisions of Question 23 apply.

Post-severance compensation special effective date (leave blank if not applicable)

- n. If this is a PPA restatement and the post-severance compensation adjustments above for 415 Compensation or Plan Compensation applied other than the first day of the Plan Year beginning on or after July 1, 2007, then enter the date such provisions were first effective: _____

CONTRIBUTIONS AND ALLOCATIONS

25. SALARY DEFERRAL ARRANGEMENT - ELECTIVE DEFERRALS (Plan Section 12.2) (skip if Elective Deferrals NOT selected at Question 12.b.) (Roth Elective Deferrals are permitted if selected at Question 12.b.1)
- A. **Elective Deferral limit.** Each Participant may elect to have Compensation deferred by:
- up to _____%
 - from _____% (may not be less than 1%) to _____%
 - up to the maximum amount allowed by law (i.e., Code §§402(g) and 415)
- B. **Additional Elective Deferral limits.** Regardless of the above limits (if any), the following apply (select all that apply; leave blank if none apply):
- If a. or b. above is selected, a Participant may make a separate election to defer up to _____% of any irregular pay (e.g., bonus) regardless of the limitation in a. or b. above
 - For Participants who are HCEs determined as of the beginning of a Plan Year, then instead of 25.A. applying, the Elective Deferral limit is (must be equal to or lower than limit selected in 25.A.; may not be selected if HCEs are excluded at 13.g.1 or 13.g.2):
 - _____% of Compensation
 - the percentage equal to the Elective Deferral limit in effect under Code §402(g)(3) for the calendar year that begins with or within the Plan Year divided by the annual compensation limit in effect for the Plan Year under Code §401(a)(17)
 - other: _____ (e.g., must be a specific limit that only applies to some or all HCEs)
- C. **Catch-Up Contributions** (Plan Section 1.15). May eligible Participants make Catch-Up Contributions?
- No (skip to D. below)
 - Yes, and the following provisions apply:

Matching Catch-Up Contributions. Will Catch-Up Contributions be taken into account in applying any matching contribution under the Plan?

 - Yes
 - No (may not be selected if this Plan provides for matching "ADP test safe harbor contributions" or "ACP test safe harbor matching contributions")

Special effective date (may be left blank if effective date is same as the Plan or Restatement Effective Date)

 - The effective date of the Catch-Up Contribution provisions is _____ (enter special effective date)

Applying limits. If the amount of Elective Deferrals that may be made to the Plan is limited in A. and/or B. above, are Catch-Up Contributions aggregated with other Elective Deferrals in applying such limits?

 - No or N/A (there are no limits or Catch-Up Contributions may be made in addition to any imposed limits)
 - Yes (if selected, the limits in A. and/or B. must not be less than 75% of Compensation)
- D. **Elective Deferral special effective date** (may be left blank if effective date is same as the Plan or Restatement Effective Date)
- The effective date of the Elective Deferral component of the Plan is _____ (enter month day, year; may not be earlier than the date on which the Employer first adopts the Elective Deferral component of the Plan).
26. AUTOMATIC CONTRIBUTION ARRANGEMENT (Plan Section 12.2 and 12.9) (skip if Elective Deferrals are NOT selected at Question 12.b.)
- A. **Automatic Deferral provisions.** Will the Plan include Automatic Deferral provisions?
- No (skip to Question 27)
 - Yes, this Plan includes (select one):
 - A traditional Automatic Contribution Arrangement (not an Eligible Automatic Contribution Arrangement (EACA) or a Qualified Automatic Contribution Arrangement (QACA))
 - An Eligible Automatic Contribution Arrangement (EACA) but not a Qualified Automatic Contribution Arrangement (QACA)
 - A Qualified Automatic Contribution Arrangement (QACA) (a QACA, by definition, satisfies the requirements of an Eligible Automatic Contribution Arrangement (EACA)) (must be selected if QACA safe harbor contributions is selected at 12.c.2.)
- B. **Participants subject to the Automatic Deferral provisions.** The Automatic Deferral provisions apply to Employees who become Participants on or after the effective date of the Automatic Deferral provisions, except as otherwise provided herein.
- Application to existing Participants.** For Employees who became Participants prior to the effective date of the Automatic Deferral provisions (if an EACA and not a QACA, see the Note below; skip if new Plan):
- Provisions do not apply to existing Participants (may not be selected with QACA)
 - Provisions apply to existing Participants in accordance with the following (select one):
 - All Participants.** All Participants, regardless of any prior Salary Deferral Agreement.
 - Affirmative Election of at least Automatic Deferral amount.** All Participants, except those who have an Affirmative Election in effect on the effective date of the Automatic Deferral provisions that is at least equal to the Automatic Deferral amount and except as otherwise provided below with respect to the escalation of deferral provisions.

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- 3. **No existing Affirmative Election.** All Participants, except those who have an Affirmative Election in effect on the effective date of the Automatic Deferral provisions and except as otherwise provided below with respect to the escalation of deferral provisions.
- 4. **Escalation only.** Escalation provisions in Part D. below apply to all Participants, including those who become Participants on or after the effective date of the escalation provisions, who have Affirmative Elections. No other Automatic Deferral provisions apply. If selected, complete 26.f. under Part C. below with the percentage at which escalation applies and complete 26.j. under Part D. (may not be selected with QACA)
- e. Other (may not be used if a QACA): _____ (must be definitely determinable in accordance with Regulation §1.401-1(b)(1)(ii)).

NOTE: Option E.k.3. may be used to exclude other Participants from the Automatic Deferral provisions.

NOTE: If an EACA and not a QACA and c. is selected (i.e., EACA does not apply to existing Participants), then the six-month period for relief from the excise tax under Code §4979(f)(1) will not apply. In addition, effective for Plan Years beginning on or after January 1, 2010, the six-month period for relief from the excise tax will only apply if all HCEs and NHCEs are covered Employees under the EACA for the entire Plan Year (or for the portion of the Plan Year that such Employees are Eligible Employees under the Plan within the meaning of Code §410(b)).

C. Automatic Deferral amount. Unless a Participant makes an Affirmative Election, the Employer will withhold the following Automatic Deferral amount (only select one):

- f. 6% of Compensation for each payroll period (if a QACA, must not be more than 10% and may not be less than 3% if escalation provisions used in j. below or 6% if no escalation provisions are selected)
- g. \$_____ for each payroll period (may not be selected if a QACA or EACA)
- h. **QACA statutory minimum schedule** (may select even if Plan is not a QACA). Unless a modified QACA statutory schedule is selected below, the Employer will withhold from a Participant's Compensation each payroll period the percentage of Compensation set forth in the following, which is based on the Plan Year of application to a Participant: 1-2 years-3%; 3 years-4%; 4 years-5%; 5 or more-6%. (if selected, skip D.)
- 1. The following modified QACA statutory schedule will apply:

<u>Plan Year of application to a Participant</u>	<u>Automatic Deferral Percentage</u>
1 - 2	_____ % (not less than 3)
3	_____ % (not less than 4)
4	_____ % (not less than 5)
5	_____ % (not less than 6 and not more than 10)
6 and thereafter	_____ % (not less than 6 and not more than 10)

NOTE: If Plan only applies escalation provisions to Participants with Affirmative Elections then select f. above and enter the percentage at which escalation applies (e.g., if escalation only applies to Participants who have an Affirmative Election of 3% or greater, then enter 3%).

D. Escalation of Automatic Deferral amount (may not be selected with 26.h.)

- i. No escalation
- j. **Scheduled increases.** The initial Automatic Deferral amount will increase as selected below (may not be selected with h. above):
 - 1. by _____% of Compensation up to a maximum of _____% of Compensation (may not be selected if a QACA)
 - 2. by \$_____ up to a maximum of \$_____ (may not be selected if a QACA or EACA)
 - 3. other: _____ (in order to satisfy the QACA requirements (if applicable), an alternative Automatic Deferral amount schedule (i) must be uniform based on the number of years, or portions of years, since the beginning of the initial period for a Participant, (ii) must satisfy the minimum percentage requirement in h. above throughout the Plan Year, and (iii) must not exceed 10% of Compensation)

Timing of escalation

- 4. N/A (entry at j.3. includes timing provision)
- 5. The escalation provision above will apply as of:
 - a. each anniversary of the Participant's date of hire
 - b. each anniversary of the Participant's Entry Date
 - c. the first day of each Plan Year
 - d. the first day of each calendar year
 - e. other: _____ (must be a specified date that occurs at least annually after the Plan Year in which the Participant is first subject to the Automatic Contribution Arrangement).

First period of application. Unless selected below, the escalation provision above will apply as of the second period specified above that begins after the period in which the Participant first has contributions made pursuant to a default election.

- f. The escalation provision will apply as of the first period after the Participant first has contributions made pursuant to a default election (or the date of Affirmative Election if 6. or 7. below is selected).

Application to Participants with Affirmative Elections

Unless selected below, the escalation provisions will not apply to Participants with an Affirmative Election.

- 6. The escalation provisions apply to Participants with an Affirmative Election of at least _____% of Compensation.
- 7. The escalation provisions apply to Participants with an Affirmative Election in accordance with the following rules: ____ (must be definitely determinable in accordance with Regulation §1.401-1(b)(1)(ii) and if an EACA, must be uniform).

E. Other Automatic Deferral elections (leave blank if none apply)

k. **Optional elections** (select one or more)

Type of Elective Deferral. The Automatic Deferral is a Pre-Tax Elective Deferral unless selected below (may only be selected if Roth Elective Deferrals are selected at 12.b.1.):

- 1. the Automatic Deferral is a Roth Elective Deferral
- 2. other: _____ (e.g., 50% Pre-Tax and 50% Roth Elective Deferrals)

Excluded Participants. If this is not a QACA, then the following Participants are excluded from the Automatic Deferral provisions:

- 3. _____ (must be definitely determinable; e.g., union Employees or Participants employed in Division A) (may not be selected if a QACA). If this option is elected and the Plan is an EACA, then the six-month period for relief from the excise tax under Code §4979(f)(1) will not apply.

F. EACA elections (skip if NOT a QACA or EACA)

Permissible withdrawals. Does the Plan permit Participant permissible withdrawals (as described in Plan Section 12.2(b)(4)) within 90 days (or less) of first Automatic Deferral?

- l. No
- m. Yes, within 90 days of first Automatic Deferral
- n. Yes, within: _____ days (may not be less than 30 nor more than 90 days)

Affirmative Election. For Plan Years beginning on or after January 1, 2010, will Participants who make an Affirmative Election continue to be covered by the EACA provisions (i.e., their Affirmative Election will remain intact but they must receive an annual notice)? (skip if a QACA)

- o. Yes (if selected, then the annual notice must be provided to Participants)
- p. No (if selected, then the Plan cannot use the six-month period for relief from the excise tax of Code §4979(f)(1))

G. Special effective date (may be left blank if the effective date is the same as the Effective Date)

- q. The Automatic Deferral provisions are effective for Plan Years beginning after September 1, 2006 (if using an EACA or QACA and this is a PPA restatement and the provisions were effective prior to the Restatement Effective Date, then enter the date such provisions were first effective; may not be earlier than December 31, 2007)
- r. Other: _____ (If using an EACA or QACA and this is a PPA restatement and the provisions were effective prior to the Restatement Effective Date, then enter the date such provisions were first effective; may not be earlier than December 31, 2007. If there are multiple retroactive special effective dates (e.g., for a PPA restatement), complete this Question 26 based on the current Plan provisions and then duplicate this Question 26 and attach as an Appendix to indicate the special retroactive effective dates and provisions that applied.)

27. **401(k) ADP TEST SAFE HARBOR PROVISIONS** (Plan Sections 12.8 and 12.9) (skip if "ADP test safe harbor contributions" are NOT selected at Question 12.c.)

NOTE: If the Employer wants the discretion to determine whether the provisions will apply on a year-by-year basis, then the Employer may select 27.a. or b. and 27.d.3.

A. ADP and ACP test safe harbor. For any Plan Year in which any type of matching contribution is made, will the "ADP and ACP test safe harbor" provisions be used?

- a. No. Only the "ADP (and NOT the ACP) test safe harbor" provisions will be used.
- b. Yes. Both the "ADP and ACP test safe harbor" provisions will be used for any Plan Year in which any type of matching contribution is made. (If selected, complete the provisions of the Adoption Agreement relating to Employer matching contributions (i.e., Question 28) that will apply in addition to any selections made in c. below. Also, no allocation conditions may be imposed at 28.E. unless no HCEs are eligible to receive the matching contribution)

B. Safe harbor contribution. The Employer will make the following "ADP test safe harbor contribution" for the Plan Year:

NOTE: The "ACP test safe harbor" is automatically satisfied if the only matching contribution made to the Plan is either, as described below, (1) a basic matching contribution (traditional or QACA) or (2) an enhanced matching contribution (traditional or QACA) that does not provide a match on Elective Deferrals in excess of 6% of Compensation.

- c. **Safe harbor matching contribution** (select one of 1. - 4. **AND** one of 5. - 9.). The Employer will make matching "ADP test safe harbor contributions" to the Account of each "eligible Participant" as elected below.
 - 1. **Traditional basic matching contribution** (may not be selected if a QACA). The Employer will contribute an amount equal to the sum of 100% of the amount of the Participant's Elective Deferrals that do not exceed

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3% of the Participant's Compensation, plus 50% of the amount of the Participant's Elective Deferrals that exceed 3% of the Participant's Compensation but do not exceed 5% of the Participant's Compensation.

2. **Traditional enhanced matching contribution** (may not be selected if a QACA). The Employer will contribute an amount equal to the sum of:
- a. _____% (may not be less than 100%) of the Participant's Elective Deferrals that do not exceed _____% (may not be less than 3%; if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation, plus
 - b. _____% of the Participant's Elective Deferrals that exceed _____% (must be the same % entered at a.) of the Participant's Compensation but do not exceed _____% (if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation, plus
 - c. _____% of the Participant's Elective Deferrals that exceed _____% (must be the same % entered at b.) of the Participant's Compensation but do not exceed _____% (if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation.

NOTE: a., b. and c. must be completed so that, at any rate of Elective Deferrals, the matching contribution is at least equal to what the matching contribution would be if the Employer were making basic matching contributions (as defined in 27.c.1. above), but the rate of match cannot increase as Elective Deferrals increase. For example, if a. is completed to provide a matching contribution equal to 100% of Elective Deferrals up to 4% of Compensation, then b. and c. need not be completed.

3. **QACA basic matching contribution.** The Employer will contribute an amount equal to the sum of 100% of a Participant's Elective Deferrals that do not exceed 1% of Participant's Compensation, plus 50% of the Participant's Elective Deferrals that exceed 1% of the Participant's Compensation but do not exceed 6% of the Participant's Compensation.

4. **QACA enhanced matching contribution.** The Employer will contribute an amount equal to the sum of:
- a. _____% (may not be less than 100%) of the Participant's Elective Deferrals that do not exceed _____% (may not be less than 1%; if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation, plus
 - b. _____% of the Participant's Elective Deferrals that exceed _____% (must be the same % entered at a.) of the Participant's Compensation but do not exceed _____% (if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation, plus
 - c. _____% of the Participant's Elective Deferrals that exceed _____% (must be the same % entered at b.) of the Participant's Compensation but do not exceed _____% (if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation.

NOTE: a., b. and c. must be completed so that, at any rate of Elective Deferrals, the matching contribution is at least equal to what the matching contribution would be if the Employer were making QACA basic matching contributions (as defined in 27.c.3. above), but the rate of match cannot increase as Elective Deferrals increase. For example, if a. is completed to provide a matching contribution equal to 100% of Elective Deferrals up to 4% of Compensation, then b. and c. need not be completed.

Determination period. The matching "ADP test safe harbor contribution" above will be applied on the following basis (and Elective Deferrals and any Compensation or dollar limitation used in determining the matching contribution will be based on the applicable period):

- 5. the Plan Year
 - 6. each payroll period
 - 7. each month
 - 8. each Plan Year quarter
 - 9. each payroll unit (e.g., hour)
- d. **Safe harbor nonelective contributions** (select one)
- 1. **3% contribution.** The Employer will make a nonelective "ADP test safe harbor contribution" for the Plan Year to the Account of each "eligible Participant" in an amount equal to 3% of each Participant's Compensation.
 - 2. **Stated contribution.** The Employer will make a nonelective "ADP test safe harbor contribution" to the Account of each "eligible Participant" in an amount equal to _____% (may not be less than 3%) of each Participant's Compensation.
 - 3. **"Maybe" election.** The Employer may elect to make a nonelective "ADP test safe harbor contribution" after a Plan Year has commenced in accordance with the provisions of Plan Section 12.8(h). If this option d.3. is selected, the nonelective "ADP test safe harbor contribution" will be required only for a Plan Year for which the Plan is amended to provide for such contribution and the appropriate supplemental notice is provided to Participants.
- e. **Safe harbor contribution to another Plan.** The Employer will make a nonelective or matching "ADP test safe harbor contribution" to another defined contribution plan maintained by the Employer (specify the name of the other plan):
- _____

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C. **Excluded Participants.** For purposes of the "ADP test safe harbor contribution," the term "eligible Participant" means any Participant who is eligible to make Elective Deferrals unless otherwise excluded below (leave blank if no exclusions):

f. Exclusions (select one or more):

1. Highly Compensated Employees (HCEs). The Employer may, however, make a discretionary "ADP test safe harbor contribution" for the HCEs in a percentage that does not exceed the amount (or in the case of a matching "ADP test safe harbor contribution," the rate) provided to the NHCEs.
2. Employees who have not satisfied the greatest minimum age and service conditions permitted under Code §410(a) (i.e., age 21 and 1 Year of Service), with the following deemed effective date of participation:
 - a. the earlier of the first day of the first month or the first day of the seventh month of the Plan Year immediately following the date such conditions are satisfied
 - b. the first day of the Plan Year in which the requirements are met
 - c. other: _____ (not later than the earlier of (a) 6 months after such requirements are satisfied, or (b) the first day of the first Plan Year after such requirements are satisfied)
3. Union Employees (as defined in Plan Section 1.28)
4. Other: _____ (must be an HCE or an Employee who can be excluded under the permissive or mandatory disaggregation rules of Regulations §§1.401(k)-1(b)(4) and 1.401(m)-1(b)(4); e.g., Employees who have not completed 6 months of service)

D. **Special effective dates** (may be left blank if no special effective dates need to be specified in this Plan)

- g. **Safe harbor provisions (other than QACA).** The "ADP and ACP test safe harbor" provisions are effective for Plan Years beginning on and after: _____ (enter the first day of the Plan Year for which the provisions are effective and, if necessary, enter any other special effective dates that apply with respect to the provisions).
- h. **QACA provisions.** The QACA provisions are effective for Plan Years beginning after: _____ (if this is a PPA restatement and the provisions were effective prior to the Restatement Effective Date, then enter the date such provisions were first effective; may not be earlier than December 31, 2007)
- i. **Other:** _____ (If there are multiple retroactive special effective dates (e.g., for a PPA restatement), complete this Question 27 based on the current Plan provisions and then duplicate this Question 27 and attach as an Appendix to indicate the special retroactive effective dates and provisions that applied.)

E. **Elective Deferrals considered for matching contribution.** If a matching contribution is selected above, then the Plan will disregard a Participant's Elective Deferrals that are made prior to the date the matching contribution component of the Plan is effective with respect to such Participant unless otherwise elected below.

- j. The Plan will include a Participant's Elective Deferrals that are made prior to the date the matching contribution component of the Plan is effective with respect to such Participant.

28. **EMPLOYER MATCHING CONTRIBUTIONS** (Plan Section 12.1(a)(2)) (skip if matching contributions are NOT selected at Question 12.d.)

If the "ACP test safe harbor" provisions are being used (i.e., Question 27.b. is selected), then the Plan will only take into account Elective Deferrals up to 6% of Compensation in applying the matching contribution set forth below and the maximum discretionary matching contribution that may be made on behalf of any Participant is 4% of Compensation.

A. **Matching formula.**

- a. Employer matching contribution as follows (select 1. or 2.):
 1. **Discretionary.** The Employer may make matching contributions equal to a discretionary percentage, to be determined by the Employer, of the Participant's Elective Deferrals.
 - a. **Discretionary based on business units or location.** The Employer may determine a separate discretionary matching contribution for Participants working in different business units or locations.
 2. **Fixed - uniform rate/amount.** The Employer will make matching contributions equal to 100 % (e.g., 50) of the Participant's Elective Deferrals, plus (select a. or leave blank if not applicable):
 - a. an additional matching contribution of a discretionary percentage determined by the Employer,
 1. but not to exceed _____ % of Compensation (leave blank if not applicable)

Matching limit on Elective Deferrals. In determining the Employer matching contribution above, only the following will be matched. Elective Deferrals up to (select 3. OR 4.; leave blank if not applicable):

3. the percentage or dollar amount specified below (select one or both)
 - a. 6 % of a Participant's Compensation.
 - b. \$ _____.
4. a discretionary percentage of a Participant's Compensation or a discretionary dollar amount, the percentage or dollar amount to be determined by the Employer on a uniform basis for all Participants.

- b. **Discretionary - tiered.** The Employer may make matching contributions equal to a discretionary percentage of a Participant's Elective Deferrals, to be determined by the Employer, of each tier, to be determined by the Employer. The tiers may be based on the rate of a Participant's Elective Deferrals or Years of Service.

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- c. **Fixed - tiered.** The Employer will make matching contributions equal to a uniform percentage of each tier of each Participant's Elective Deferrals, 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. **Fixed - Years of Service.** The Employer will make matching contributions equal to a uniform percentage of each Participant's Elective Deferrals based on the Participant's Years of Service (or Periods of Service if the elapsed time method is selected), determined as follows (add additional tiers if necessary):

Years (or Periods) of Service	Matching Percentage
_____	_____%
_____	_____%
_____	_____%

For purposes of the above matching contribution formula, a Year (or Period) of Service means a Year (or Period) of Service for:

1. vesting purposes
2. eligibility purposes

In determining the Employer matching contribution above, only Elective Deferrals up to the percentage or dollar amount specified below will be matched (select all that apply; leave blank if not applicable):

3. _____% of a Participant's Compensation.
4. \$_____.

- e. Other: _____ (the formula described must satisfy the definitely determinable requirement under Reg. §1.401-1(b). If the formula is non-uniform, it is not a design-based safe harbor for nondiscrimination purposes.)

NOTE: If b., c., d. or e. above is selected, the Plan may violate the Code §401(a)(4) nondiscrimination requirements if the rate of matching contributions increases as a Participant's Elective Deferrals or Years (or Periods) of Service increase.

Maximum matching contribution. The matching contribution made on behalf of any Participant for any Plan Year will not exceed (leave blank if no limit on matching contribution):

- f. \$_____.
- g. _____% of Compensation.

- B. **Elective Deferrals considered for matching contribution.** The Plan will disregard a Participant's Elective Deferrals that are made prior to the date the matching contribution component of the Plan is effective with respect to such Participant unless otherwise elected below.

- h. The Plan will include a Participant's Elective Deferrals that are made prior to the date the matching contribution component of the Plan is effective with respect to such Participant.

- C. **Period of determination.** The matching contribution formula will be applied on the following basis (and Elective Deferrals and any Compensation or dollar limitation used in determining the matching contribution will be based on the applicable period):

- i. the Plan Year
- j. each payroll period
- k. each month
- l. each Plan Year quarter
- m. each payroll unit (e.g., hour)
- n. N/A (Plan only provides for discretionary matching contributions; i.e., a.1. or b. is selected above)

NOTE: For any discretionary match, the Employer will determine the calculation methodology at the time the matching contribution is determined.

- D. **QMACs (Plan Section 1.69).** The matching contributions will NOT be Qualified Matching Contributions (QMACs) unless otherwise selected below (leave blank if not applicable).

- o. The matching contributions will be QMACs (fully Vested and subject to restrictions on withdrawals as set forth in the Plan). Such contributions may be used in either the ADP or ACP test.

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E. **Allocation conditions** (Plan Section 12.3). Select p. OR q. and all that apply of r. - x. (**Note:** If the "ACP test safe harbor" provisions are being used (Question 27.b.), option p. below (no conditions) must be selected, unless no HCEs are eligible to receive the matching contribution.)

p. **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status on the last day of the Plan Year (skip r. - x.).

q. **Allocation conditions apply** (select one of 1. - 5. AND one of 6. - 9. below)

Conditions for Participants NOT employed on the last day of the Plan Year.

1. A Participant must complete more than _____ (not to exceed 500) Hours of Service (or _____ (not to exceed 3) months of service if the elapsed time method is selected).
2. A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected). (could cause the Plan to violate coverage requirements under Code §410(b))
3. Participants will NOT share in the allocations, regardless of service. (could cause the Plan to violate coverage requirements under Code §410(b))
4. Participants will share in the allocations, regardless of service.
5. Other: _____ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected))

Conditions for Participants employed on the last day of the Plan Year (options 7., 8. and 9. could cause the Plan to violate coverage requirements under Code §410(b))

6. No service requirement.
7. A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
8. A Participant must complete at least _____ (not to exceed 1,000) Hours of Service during the Plan Year.
9. Other: _____ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).

Waiver of conditions for Participants NOT employed on the last day of the Plan Year. If q.1., 2., 3., or 5. is selected, Participants who are not employed on the last day of the Plan Year in which one of the following events occur will be eligible to share in the allocations regardless of the above conditions (select all that apply; leave blank if none apply):

- r. Death
- s. Total and Permanent Disability
- t. Termination of employment on or after Normal Retirement Age
 1. or Early Retirement Date

Code §410(b) fail-safe. If q.2., 3., 5. and/or q.7., 8. or 9. is selected, the Code §410(b) ratio percentage fail-safe provisions (Plan Section 12.3(f)) will NOT apply unless selected below (leave blank if not applicable or fail-safe will not be used):

u. The Plan will use the Code §410(b) fail-safe provisions and must satisfy the "ratio percentage test" of Code §410(b).

Conditions based on period other than Plan Year. The allocation conditions above will be applied based on the Plan Year unless otherwise selected below. If selected, the above provisions will be applied by substituting the term Plan Year with the specified period (e.g., if Plan Year quarter is selected below and the allocation condition is 250 Hours of Service per quarter, enter 250 hours (not 1000) at q.8. above). (may not be selected with q.2. or q.7.)

- v. The Plan Year quarter.
- w. Payroll period.
- x. Other: _____ (must be definitely determinable and not subject to Employer discretion and may not be longer than a twelve month period).

F. **Additional matching contributions.** No additional matching contribution may be made unless otherwise selected below (leave blank if not applicable).

y. Additional matching contributions may be made (e.g., a matching contribution made on a periodic basis as well as a matching contribution based on the end of the Plan Year). Specify the additional matching contribution by attaching an addendum to the Adoption Agreement that duplicates this entire Question 28. If selected, the additional matching contribution applies to all Participants eligible to share in matching contributions except as otherwise specified in the addendum or below.

1. The additional matching contribution only applies to the following Participants: _____ (must be definitely determinable). (If the additional matching contribution is in lieu of the matching contribution set forth in 28A - E above then use Eligible Employee question to exclude these Participants from such matching contribution.)

G. **True-up contributions.** Under Period of determination above, if j. - m. is selected, does the Employer have the discretion to true-up the Employer matching contribution (i.e., apply the Employer matching contribution on a Plan Year basis)? (leave blank if not applicable).

z. Yes (may not be elected if the "ADP and/or ACP test safe harbor" provisions are being used).

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29. EMPLOYER PROFIT SHARING CONTRIBUTIONS (Plan Section 12.1(a)(3)) (skip Questions 29 and 30 if Employer profit sharing contributions are NOT selected at Question 12.e.)

A. Profit sharing formula (c. may be selected in addition to a., b. or d.)

- a. **Discretionary.** Discretionary contribution, to be determined by the Employer.
1. **Discretionary based on business units or location.** The Employer may determine a separate discretionary contribution for Participants working in different business units or locations.
- b. **Fixed.** Fixed contribution equal to _____% of Compensation of Participants eligible to share in allocations.
- c. **Prevailing wage contribution.** The Employer will make a "prevailing wage contribution" on behalf of each Participant who performs services subject to the Service Contract Act, Davis-Bacon Act or similar federal, state, or municipal prevailing wage statutes. The "prevailing wage contribution" will be an amount equal to the remaining balance of the prevailing wage defined bona-fide fringe benefit amount, based on the Participant's employment classification as designated on the appropriate prevailing wage determination, after the application of other prevailing wage defined bona-fide fringe payments. Specify the "prevailing wage contribution" by attaching an appendix to the Adoption Agreement that indicates the contribution rate(s) applicable to the prevailing wage employment/job classification(s). The "prevailing wage contribution" will not be subject to any age or service requirements set forth in Question 14, entry date provisions at Question 15, nor to any service or employment conditions set forth in Question 30 and will be 100% Vested.

Additional "prevailing wage contribution" provisions (select all that apply; leave blank if none apply)

1. **Offset.** The "prevailing wage contribution" made on behalf of a Participant for a Plan Year will reduce (offset) other Employer contributions allocated or contributed on behalf of such Participant for the Plan.
2. **Exclude Highly Compensated Employees.** Highly Compensated Employees will be excluded from receiving a "prevailing wage contribution."
3. **QNEC.** The "prevailing wage contribution" is considered a Qualified Nonelective Contribution (QNEC).
- d. Other: _____ (the formula described must satisfy the definitely determinable requirement under Reg. §1.401-1(b). If the formula is non-uniform, it is not a design-based safe harbor for nondiscrimination purposes.)

B. Contribution allocations. If a., b., or d. above is selected, the Employer Nonelective profit sharing contribution for a Plan Year will be allocated as follows:

e. **INCORPORATION OF CONTRIBUTION FORMULA.** In accordance with the contribution formula specified above (may only be selected if b. or d. above is selected).

f. **NON-INTEGRATED ALLOCATION**

1. in the same ratio as each Participant's Compensation bears to the total of such Compensation of all Participants
2. in the same dollar amount to all Participants (per capita)
3. in the same dollar amount per Hour of Service completed by each Participant
4. in the same proportion that each Participant's points bears to the total of such points of all Participants. A Participant's points with respect to any Plan Year will be computed as follows (select all that apply):
- a. _____ point(s) will be allocated for each Year of Service (or Period of Service).
However, the maximum Years (or Periods if elapsed time method is selected) of Service taken into account will not exceed:
1. _____ (leave blank if no limit on service applies).
Year of Service (or Period of Service if applicable), means:
2. service for eligibility purposes
3. service for vesting purposes
- b. _____ point(s) will be allocated for each full \$_____ (may not exceed \$200) of Compensation
- c. _____ point(s) will be allocated for each year of age as of the last day of the Plan Year

g. **INTEGRATED (PERMITTED DISPARITY) ALLOCATION**

In accordance with Plan Section 4.3(b)(2) based on a Participant's Compensation in excess of:

1. the Taxable Wage Base
2. _____% (not to exceed 100%) of the Taxable Wage Base (see Note below)
3. 80% of the Taxable Wage Base plus \$1.00
4. \$_____ (not greater than the Taxable Wage Base) (see Note below)

NOTE: The integration percentage of 5.7% will be reduced to:

1. 4.3% if 2. or 4. above is more than 20% and less than or equal to 80% of the Taxable Wage Base.
2. 5.4% if 3. is selected or if 2. or 4. above is more than 80% of the Taxable Wage Base.

h. **NON-SAFE HARBOR ALLOCATION METHODS**

1. **Grouping method.** Pursuant to Plan Section 4.3(b)(3)(vi), the classifications are (select a. or b.):
- a. Each Participant constitutes a separate classification.
- b. Participants will be divided into the following classifications with the allocation methods indicated under each classification.

Definition of classifications. Define each classification and specify the method of allocating the contribution among members of each classification. Classifications specified below must be clearly defined in a manner that will not violate the definitely determinable allocation requirement of Regulation §1.401-1(b)(1)(ii). The design of the groups cannot be such that the only NHCEs

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benefiting under the Plan are those with the lowest amount of Compensation and/or the shortest periods of service and who may represent the minimum number of these Employees necessary to satisfy coverage under Code §410(b).

Classification A will consist of _____
The allocation method will be: pro rata based on Compensation
 equal dollar amounts (per capita)

Classification B will consist of _____
The allocation method will be: pro rata based on Compensation
 equal dollar amounts (per capita)

Classification C will consist of _____
The allocation method will be: pro rata based on Compensation
 equal dollar amounts (per capita)

Classification D will consist of _____
The allocation method will be: pro rata based on Compensation
 equal dollar amounts (per capita)

Additional classifications: _____ (specify the classifications and which of the above allocation methods (pro rata or per capita) will be used for each classification).

NOTE: In the case of Self-Employed Individuals (i.e., sole proprietors or partners), the requirements of Regulation §1.401(k)-1(a)(6) continue to apply and the allocation method should not be such that a cash or deferred election is created for a Self-Employed Individual as a result of application of the allocation method.

NOTE: If more than four (4) classifications, the additional classifications and allocation methods may be attached as an addendum to the Adoption Agreement or may be entered under Additional Classifications above.

Determination of applicable group. If a Participant shifts from one classification to another during a Plan Year, then unless selected below, the Participant is in a classification based on the Participant's status as of the last day of the Plan Year, or if earlier, the date of termination of employment. If selected below, the Administrator will apportion the Participant's allocation during a Plan Year based on the following:

1. Beginning of Plan Year. The classification will be based on the Participant's status as of the beginning of the Plan Year.
 2. Months in each classification. Pro rata based on the number of months the Participant spent in each classification.
 3. Days in each classification. Pro rata based on the number of days the Participant spent in each classification.
 4. One classification only. The Employer in a nondiscriminatory manner will direct the Administrator to place the Participant in only one classification for the entire Plan Year during which the shift occurs.
2. **Age-weighted method.** The Schedule of Age-Weighted Allocation Factors is set forth in attached Exhibit A (which is hereby incorporated by reference and made a part of the Plan) and will be based on the following interest rate (if no selection is made, c. will be deemed to have been selected):
- a. 7.5% interest
 - b. 8.0% interest
 - c. 8.5% interest
3. **Other:** _____ (the formula described must satisfy the definitely determinable requirement under Reg. §1.401-1(b). If the formula is non-uniform, it is not a design-based safe harbor for nondiscrimination purposes.)

30. **ALLOCATION CONDITIONS** (Plan Section 12.3). Requirements to share in allocations of Employer Nonelective profit sharing contributions and QNECs (as permitted by Plan Section 12.1(a)(4)) (select a. OR b. and all that apply of c. - f.)

a. **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status on the last day of the Plan Year (skip to Question 31).

b. **Allocation conditions apply** (select one of 1. - 5. AND one of 6. - 9. below)

Conditions for Participants NOT employed on the last day of the Plan Year

1. A Participant must complete more than _____ (not to exceed 500) Hours of Service (or _____ (not to exceed 3) months of service if the elapsed time method is selected).
2. A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected). (could cause the Plan to violate coverage requirements under Code §410(b))
3. Participants will NOT share in the allocations, regardless of service. (could cause the Plan to violate coverage requirements under Code §410(b))
4. Participants will share in the allocations, regardless of service.

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5. Other: _____ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).

Conditions for Participants employed on the last day of the Plan Year (options 7., 8. and 9. could cause the Plan to violate coverage requirements under Code §410(b))

6. No service requirement.
7. A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
8. A Participant must complete at least _____ (not to exceed 1,000) Hours of Service during the Plan Year.
9. Other: _____ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).

Waiver of conditions for Participants NOT employed on the last day of the Plan Year. If b.1., 2., 3., or 5. is selected, Participants who are not employed on the last day of the Plan Year in which one of the following events occur will be eligible to share in the allocations regardless of the above conditions (select all that apply; leave blank if none apply):

- c. Death
d. Total and Permanent Disability
e. Termination of employment on or after Normal Retirement Age
1. or Early Retirement Date

Code §410(b) fail-safe. If b.2., 3., 5. and/or b.7., 8. or 9. is selected, the Code §410(b) ratio percentage fail-safe provisions will NOT apply (Plan Section 4.3(m)) unless selected below (leave blank if not applicable or fail-safe will not be used):

- f. The Plan will use the Code §410(b) fail-safe provisions and must satisfy the ratio percentage test of Code §410(b).

31. **FORFEITURES** (Plan Sections 1.37 and 4.3(e))

Except as provided in Plan Section 1.37, a Forfeiture will occur:

- a. N/A (may only be selected if all contributions are fully Vested (default provisions at Plan Section 4.3(e) apply); skip to Question 32)
b. As of the earlier of (1) the last day of the Plan Year in which the former Participant incurs five (5) consecutive 1-Year Breaks in Service, or (2) the distribution of the entire Vested portion of the Participant's Account.
c. As of the last day of the Plan Year in which the former Participant incurs five (5) consecutive 1-Year Breaks in Service.

NOTE: (1) Forfeitures are disposed of in accordance with Employer direction that is consistent with Section 4.3(e).
(2) Effective for Plan Years beginning after the Plan Year in which this Plan document is adopted, Forfeitures may not be used to reduce Employer contributions which are required pursuant to the Code to be fully Vested when contributed to the Plan (such as QMACs, QNECs and "ADP test safe harbor contributions" other than QACA "ADP test safe harbor contributions"). The reallocation of Forfeitures could affect the Plan's top-heavy exemption (see Plan Section 12.8(f)). One approach to avoid this result is to provide for a discretionary matching contribution that satisfies the "ACP test safe harbor" provisions (i.e., select Question 27A.b. and select a discretionary matching contribution at Question 28) and then allocate Forfeitures as a matching contribution.

32. **ALLOCATION OF EARNINGS** (Plan Section 4.3(c))

Allocation of earnings with respect to amounts which are not subject to Participant investment direction and which are contributed to the Plan after the previous Valuation Date will be determined:

- a. N/A. (all assets in the Plan are subject to Participant investment direction)
b. by using a weighted average based on the amount of time that has passed between the date a contribution or distribution is made and the prior Valuation Date
c. by treating one-half of all such contributions as being a part of the Participant's nonsegregated Account balance as of the previous Valuation Date
d. by using the method specified in Plan Section 4.3(c) (balance forward method)
e. other: _____ (must be a definite predetermined formula that is not based on Compensation, that satisfies the nondiscrimination requirements of Regulation §1.401(a)(4)-4, and that is applied uniformly to all Participants)

33. **TOP-HEAVY MINIMUM ALLOCATION**

The minimum allocation requirements for any Top-Heavy Plan Year will be applied only to Non-Key Employee Participants unless selected below:

- a. The Top-Heavy minimum will be provided to both Key and Non-Key Employee Participants.

DISTRIBUTIONS

34. **FORM OF DISTRIBUTIONS** (Plan Sections 6.5 and 6.6)

Distributions under the Plan may be made in (select all that apply; must select at least one from a. - e. unless g. is selected below)

- a. lump-sums
b. substantially equal installments
c. partial withdrawals, provided the minimum withdrawal is \$ _____ (leave blank if no minimum)

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d. partial withdrawals or installments are only permitted for Participants or Beneficiaries who must receive required minimum distributions under Code §401(a)(9) except for the following (e.g., partial is not permitted for death benefits; leave blank if no exceptions):

1. _____

e. other: _____ (must be definitely determinable and not subject to Employer discretion)

NOTE: Regardless of the above, a Participant is not required to request a withdrawal of his or her total Account for an in-service distribution, a hardship distribution, or a distribution from the Participant's Rollover Account.

Annuities. Is the annuity form of distribution the normal form of distribution?

NOTE: If this Plan includes transferred pension assets, f.1. or g. below must be selected.

f. **Annuities are not allowed or are not the normal form of distribution** (except as indicated below). Plan Section 6.13(b) will apply and the joint and survivor rules of Code §§401(a)(11) and 417 will not apply to the Plan.

Special rules. An annuity form of distribution is available to certain Participants and/or with respect to only a portion of the Plan assets according to the following: (select all that apply)

1. **Pension assets.** Annuities are the normal form of distribution for assets that are transferred pension assets (Plan Section 6.13(a)).

2. **Annuity selected by Participant.** Plan Section 6.13(c) will apply and the joint and survivor rules of Code §§401(a)(11) and 417 will apply only if an annuity form of distribution is selected by a Participant.

However, the Participant may only select an annuity distribution according to the following:

a. _____ (leave blank if no conditions apply).

g. **Annuities are the normal form of distribution.** The qualified Joint and Survivor Annuity and Qualified Pre-Retirement Survivor Annuity provisions apply (Plan Section 6.13 will not apply and the joint and survivor rules of Code §§401(a)(11) and 417 will automatically apply).

Pre-Retirement Survivor Annuity

If the Plan permits an annuity form of payment under option f.1. or g. above, the Pre-Retirement Survivor Annuity (minimum Spouse's death benefit) will be equal to 50% of a Participant's interest in the Plan unless a different percentage is selected below (leave blank if default applies)

h. 100% of a Participant's interest in the Plan.

i. _____% (may not be less than 50%) of a Participant's interest in the Plan.

Cash or property. Distributions may be made in:

j. cash only, except for (select all that apply; leave blank if none apply):

1. insurance Contracts

2. annuity Contracts

3. Participant loans

4. property in an open brokerage window or similar arrangement

k. cash or property, except that the following limitation(s) apply: (leave blank if there are no limitations on property distributions):

1. _____

35. **CONDITIONS FOR DISTRIBUTIONS UPON SEVERANCE OF EMPLOYMENT.** Distributions upon severance of employment pursuant to Plan Section 6.4(a) will not be made unless the following conditions have been satisfied:

A. Accounts in excess of \$5,000

a. Distributions may be made as soon as administratively feasible following severance of employment.

b. Distributions may be made as soon as administratively feasible after the Participant has incurred _____ 1-Year Break(s) in Service (or Period(s) of Severance if the elapsed time method is selected).

c. Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following severance of employment.

d. Distributions may be made as soon as administratively feasible after the last day of the Plan Year quarter coincident with or next following severance of employment.

e. Distributions may be made as soon as administratively feasible after the Valuation Date coincident with or next following severance of employment.

f. Distributions may be made as soon as administratively feasible after _____ months have elapsed following severance of employment.

g. No distributions may be made until a Participant has reached Early or Normal Retirement Date.

h. Other: _____ (must be objective conditions which are ascertainable and are not subject to Employer discretion except as otherwise permitted in Regulation §1.411(d)-4 and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

B. Accounts of \$5,000 or less

i. Same as above

j. Distributions may be made as soon as administratively feasible following severance of employment.

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- k. Distributions may be made as soon as administratively feasible after the Participant has incurred _____ 1-Year Break(s) in Service (or Period(s) of Severance if the elapsed time method is selected).
- l. Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following severance of employment.
- m. Other: _____ (must be objective conditions which are ascertainable and are not subject to Employer discretion except as otherwise permitted in Regulation §1.411(d)-4 and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

C. **Timing after initial distributable event.** If a distribution is not made in accordance with the above provisions upon the occurrence of the distributable event, then a Participant may elect a subsequent distribution at any time after the time the amount was first distributable (assuming the amount is still distributable), unless otherwise selected below (may not be selected with 35.g. and 35.i.):

- n. Other: _____ (e.g., a subsequent distribution request may only be made in accordance with l. above (i.e., the last day of another Plan Year); must be objective conditions which are ascertainable and are not subject to Employer discretion except as otherwise permitted in Regulation §1.411(d)-4 and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

D. **Participant consent (i.e., involuntary cash-outs).** Should Vested Account balances less than a certain dollar threshold be automatically distributed without Participant consent (mandatory distributions)?

NOTE: The Plan provides that distributions of amounts of \$5,000 or less do not require spousal consent and are only paid as lump-sums.

- o. No, Participant consent is required for all distributions.
- p. Yes, Participant consent is required only if the distribution is over:
 - 1. \$5,000
 - 2. \$1,000
 - 3. \$_____ (less than \$1,000)

NOTE: If 2. or 3. is selected, rollovers will be included in determining the threshold for Participant consent.

Automatic IRA rollover. With respect to mandatory distributions of amounts that are \$1,000 or less, if a Participant makes no election, the amount will be distributed as a lump-sum unless selected below.

- 4. If a Participant makes no election, then the amount will be automatically rolled over to an IRA provided the amount is at least \$_____ (e.g., \$200).

E. **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.

- q. 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.

F. **Mandatory distribution at Normal Retirement Age.** Regardless of the above elections other than any mandatory distributions provided for in p. above, unless otherwise selected below, a Participant who has severed employment may elect to delay a distribution beyond the later of age 62 or the Participant's Normal Retirement Age (subject to Plan Section 6.8).

- r. A Participant who has severed employment may not elect to delay a distribution beyond the later of age 62 or the Participant's Normal Retirement Age.

36. **DISTRIBUTIONS UPON DEATH (Plan Section 6.8(b)(2))**

Distributions upon the death of a Participant prior to the "required beginning date" will:

- a. be made pursuant to the election of the Participant or "designated Beneficiary"
- b. begin within 1 year of death for a "designated Beneficiary" and be payable over the life (or over a period not exceeding the "life expectancy") of such Beneficiary, except that if the "designated Beneficiary" is the Participant's Spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2
- c. be made within 5 (or if lesser _____) years of death for all Beneficiaries
- d. be made within 5 (or if lesser _____) years of death for all Beneficiaries, except that if the "designated Beneficiary" is the Participant's Spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2 and be payable over the life (or over a period not exceeding the "life expectancy") of such "surviving Spouse"

NOTE: The elections above must be coordinated with the Form of distributions (e.g., if the Plan only permits lump-sum distributions, then options a., b. and d. would not be applicable).

37. **HARDSHIP DISTRIBUTIONS (Plan Sections 6.12 and/or 12.10)**

- a. Hardship distributions are NOT permitted (skip to Question 38).
- b. Hardship distributions are permitted from the following Participant Accounts:
 - 1. all Accounts
 - 2. only from the following Accounts (select one or more):
 - a. Pre-Tax Elective Deferral Account

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- b. Roth Elective Deferral Account
- c. Account(s) attributable to Employer matching contributions
- d. Account attributable to Employer Nonelective profit sharing contributions
- e. Rollover Account
- f. Transfer Account (other than amounts attributable to a money purchase pension plan)
- g. Other: _____ (specify Account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion)

NOTE: Distributions from a Participant's Elective Deferral Account are limited to the portion of such Account attributable to such Participant's Elective Deferrals (and earnings attributable thereto up to December 31, 1988). Hardship distributions are NOT permitted from a Participant's Qualified Nonelective Contribution Account, Qualified Matching Contribution Account, Accounts attributable to "ADP test safe harbor contributions" or Transfer Account attributable to pension assets (e.g., from a money purchase pension plan).

Additional limitations. The following limitations apply to hardship distributions:

- 3. N/A (no additional limitations)
- 4. Additional limitations (select one or more):
 - a. The minimum amount of a distribution is \$_____ (may not exceed \$1,000).
 - b. No more than _____ distribution(s) may be made to a Participant during a Plan Year.
 - c. Distributions may only be made from Accounts which are fully Vested.
 - d. A Participant does not include a Former Employee at the time of the hardship distribution.
 - e. Hardship distributions may be made subject to the following provisions: _____ (must be definitely determinable and not subject to Employer discretion).

Beneficiary Hardship. Hardship distributions for Beneficiary expenses are NOT allowed unless otherwise selected below.

- 5. Hardship distributions for expenses of Beneficiaries are allowed
Special effective date (may be left blank if effective date is same as the Plan or Restatement Effective Date; select a. and, if applicable, b.)
 - a. effective as of August 17, 2006 (if this is a PPA restatement and the provisions were effective prior to the Restatement Effective Date, then enter the date such provisions were first effective; may not be earlier than August 17, 2006)
 - b. eliminated effective as of _____.

Safe harbor hardship rules. Will the safe harbor hardship rules of Plan Section 12.10 apply to hardship distributions from all Accounts? (Note: The safe harbor hardship rules automatically apply to hardship distributions of Elective Deferrals.)

- 6. Yes. The provisions of Plan Section 12.10 apply to all hardship distributions.
- 7. No. The provisions of Plan Section 6.12 apply to hardship distributions from all Accounts other than a Participant's Elective Deferral Account.

38. **IN-SERVICE DISTRIBUTIONS (Plan Section 6.11)**

- a. In-service distributions are NOT permitted (except as otherwise selected for Hardship Distributions).
- b. In-service distributions may be made to a Participant who has not separated from service provided any of the following conditions have been satisfied (select one or more):
 - 1. Age
 - a. the Participant has attained age 59 1/2
 - b. the Participant has reached Normal Retirement Age
 - 2. the Participant has been a Participant in the Plan for at least _____ years (may not be less than five (5))
 - 3. the amounts being distributed have accumulated in the Plan for at least 2 years
 - 4. other: _____ (must satisfy the definitely determinable requirement under Regulations §401-1(b); may not be subject to Employer discretion; must be nondiscriminatory; and must be limited to a combination of items b.1. – b.3. or a Participant's disability)

More than one condition. If more than one condition is selected above, then a Participant only needs to satisfy one of the conditions, unless selected below:

- 5. A Participant must satisfy each condition

NOTE: Regardless of any elections above, distributions from a Participant's Elective Deferral Account, Qualified Matching Contribution Account, Qualified Nonelective Contribution Account and Accounts attributable to "ADP test safe harbor contributions" are subject to restrictions and generally may not be distributed prior to age 59 1/2. Distributions from a Transfer Account attributable to a money purchase pension plan are not permitted prior to age 62.

Account restrictions. In-service distributions are permitted from the following Participant Accounts:

- 6. all Accounts

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7. only from the following Accounts (select one or more):
- a. Pre-Tax Elective Deferral Account
 - b. Roth Elective Deferral Account
 - c. Account(s) attributable to Employer matching contributions (includes matching "ADP test safe harbor contributions")
 - d. Account attributable to Employer Nonelective profit sharing contributions
 - e. Qualified Nonelective Contribution Account (includes nonelective "ADP test safe harbor contributions")
 - f. Rollover Account
 - g. Transfer Account attributable to (select one or both):
 - 1. non-pension assets
 - 2. pension assets (e.g., from a money purchase pension plan)
 - h. Other: _____ (specify Account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion)

Limitations. The following limitations apply to in-service distributions:

8. N/A (no additional limitations)
9. Additional limitations (select one or more):
- a. The minimum amount of a distribution is \$ _____ (may not exceed \$1,000).
 - b. No more than _____ distribution(s) may be made to a Participant during a Plan Year.
 - c. Distributions may only be made from Accounts which are fully Vested.
 - d. Distributions from the Roth Elective Deferral Account (38.b.6. or 38.b.7.b. selected), may only be made if the distribution is a "qualified distribution."
 - e. In-service distributions may be made subject to the following provisions: _____ (must be definitely determinable and not subject to discretion).

39. **AGE 62 IN-SERVICE DISTRIBUTIONS FOR TRANSFERRED MONEY PURCHASE ASSETS (Plan Section 6.11)**

In-service distributions at age 62 will NOT be allowed (except as otherwise permitted under the Plan without regard to this provision) unless selected below (applies only for Transfer Accounts from a money purchase pension plan):

- a. In-service distributions will be allowed for Participants at age 62.

Special effective date. If this is a PPA restatement and the provision applied other than as of the first day of the 2007 Plan Year, then enter the date such provision was first effective: (leave blank if not applicable)

1. _____ (may not be earlier than the first day of the 2007 Plan Year).

Limitations. The following limitations apply to these in-service distributions:

2. The Plan already provides for in-service distributions and the restrictions set forth in the Plan (e.g., minimum amount of distributions or frequency of distributions) are applicable to in-service distributions at age 62.
3. N/A (no limitations)
4. The following elections apply to in-service distributions at age 62 (select one or more):
- a. The minimum amount of a distribution is \$ _____ (may not exceed \$1,000).
 - b. No more than _____ distribution(s) may be made to a Participant during a Plan Year.
 - c. Distributions may only be made from Accounts which are fully Vested.
 - d. In-service distributions may be made subject to the following provisions: _____ (must be definitely determinable and not subject to discretion).

40. **IN-PLAN ROTH ROLLOVER CONTRIBUTIONS (Plan Section 12.11) (skip if Roth Elective Deferrals NOT selected at Question 12.b.1.)**

- a. In-Plan Roth rollover contributions are NOT permitted (skip to Question 41).
- b. In-Plan Roth rollover contributions are permitted according to the following provisions.

Special effective date. (may be left blank if same as Plan or Restatement Effective Date)

1. _____ (if this is a PPA restatement and the provisions were effective prior to the Restatement Effective Date, then enter the date such provisions were first effective; may not be earlier than September 28, 2010)

Eligibility and type of rollover. Any Participant may elect an in-Plan Roth rollover contribution by direct rollover except as selected below (select all that apply; leave blank if none apply):

- c. **In-service distribution only.** Only Participants who are Employees may elect an in-Plan Roth rollover contribution. (if not selected, Terminated Participants may make an in-Plan Roth rollover contribution but only when entitled to an actual cash distribution)
- d. **No transfer of loans.** Loans may not be distributed as part of an in-Plan Roth rollover contribution. (if not selected, any loans may be transferred)

In-service distribution provisions. The Employer elects the following regarding in-service distributions from the Plan solely for purposes of making an in-Plan Roth rollover contribution:

- e. N/A (Plan's existing in-service distribution provisions apply) (may only be selected if Plan permits in-service distributions; skip to Question 41)

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- f. In-service distribution provisions. The Employer elects to permit in-service distributions as follows solely for purposes of making an in-Plan Roth rollover contribution (select one or more):
1. the Participant has attained age _____
 2. the Participant has _____ months of participation (specify minimum of 60 months)
 3. the amounts being distributed have accumulated in the Plan for at least _____ years (at least 2)
 4. other (describe): _____ (must satisfy the definitely determinable requirement under Regulations §401-1(b); may not be subject to Employer discretion; must be nondiscriminatory; and must be limited to a combination of items f.1. – f.3. or a Participant's disability)

More than one condition. If more than one condition is selected above, then a Participant only needs to satisfy one of the conditions, unless selected below:

5. A Participant must satisfy each condition

NOTE: Regardless of any election above to the contrary, in-Plan Roth rollover contributions are not permitted from a Participant's Elective Deferral Account, Qualified Matching Contribution Account, Qualified Nonelective Contribution Account and Accounts attributable to "ADP test safe harbor contributions" prior to age 59 1/2. Distributions from a Transfer Account attributable to a money purchase pension plan are not permitted prior to age 62.

Source of in-Plan Roth rollover contribution. Plan permits a direct rollover from the following qualifying sources:

6. all Accounts
7. only from the following qualifying sources (select one or more):
 - a. Pre-Tax Elective Deferral Account
 - b. Account(s) attributable to Employer matching contributions (includes any matching "ADP test safe harbor contributions")
 - c. Account attributable to Employer Nonelective profit sharing contributions
 - d. Qualified Nonelective Contribution Account (includes any nonelective "ADP test safe harbor contributions")
 - e. Rollover Account
 - f. Transfer Account
 - g. Other: _____ (specify Account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion; e.g., a Participant's Pre-Tax Deferral Account or Matching Contribution Account, but not the Participant's Nonelective Contribution Account)

Other limitations on direct in-Plan Roth rollover contribution (leave blank if none apply)

8. The following limitations apply (select one or more):
 - a. The minimum amount that may be rolled over is \$ _____ (may not exceed \$1,000).
 - b. Distributions may only be made from Accounts which are fully Vested.
 - c. In-service distributions may be made subject to the following provisions:
_____ (describe - must be definitely determinable and not subject to discretion).

Withholding. If the Plan does not permit an actual distribution upon the event triggering the right to elect the in-Plan Roth rollover contribution, then a Participant may not elect to have a portion of the amount that may be distributed as an in-Plan Roth rollover contribution distributed for tax withholding purposes unless selected below (leave blank if not applicable):

9. **Distribution for withholding.** A Participant may elect to have a portion of the amount that may be distributed as an in-Plan Roth rollover contribution distributed solely for purposes of federal or state income tax withholding related to the in-Plan Roth rollover contribution.

41. **QUALIFIED RESERVIST DISTRIBUTIONS** (Plan Section 6.18)

- a. Qualified reservist distributions are NOT permitted
- b. Qualified reservist distributions are permitted

Special effective date (may be left blank if same as Plan or Restatement Effective Date)

1. September 12, 2001 (if this is a PPA restatement and the provisions were effective prior to the Restatement Effective Date, then enter the date such provisions were first effective; may not be earlier than September 12, 2001)

42. **HEART ACT PROVISIONS** (Plan Section 6.18)

Continued benefit accruals.

- a. Continued benefit accruals will NOT apply
- b. Continued benefit accruals will apply

Special effective date. If this is a PPA restatement and the provision applied other than as of the first day of the 2007 Plan Year, then enter the date such provision was first effective: (leave blank if not applicable)

- c. for the Plan Years beginning after December 31, 2008 (may not be earlier than the first day of the 2007 Plan Year)

Distributions for deemed severance of employment

- d. The Plan does NOT permit distributions for deemed severance of employment
- e. The Plan permits distributions for deemed severance of employment

Special effective date (may be left blank if same as Plan or Restatement Effective Date)

- 1. for the Plan Years beginning after December 31, 2008 (if this is a PPA restatement and the provisions were effective prior to the Restatement Effective Date, then enter the date such provisions were first effective; may not be earlier than January 1, 2007)

NONDISCRIMINATION TESTING

- 43. **HIGHLY COMPENSATED EMPLOYEE** (Plan Section 1.41)
Top-Paid Group election and calendar year data election are not used unless selected below (the selections made for the latest year will continue to apply to subsequent Plan Years unless the Plan is amended) (select all that apply; leave blank if none apply):

- a. **Top-Paid Group election** will be used.
- b. **Calendar year data election** will be used (only applicable to non-calendar year Plan Year).

- 44. **ADP AND ACP TESTS** (Plan Sections 12.4 and 12.6)

NOTE: The selections made below for the latest year will continue to apply to subsequent Plan Years unless the Plan is amended. Also, the prior method will not apply if the Employer uses the discretionary nonelective "ADP test safe harbor contribution" described in Section 12.8(h) or if the Plan is amended during a Plan Year to eliminate an "ADP test safe harbor contribution."

ADP test. If applicable, the ADP ratio for NHCEs will be based on the current year ratio unless prior year testing method is selected below (leave blank if current year testing method is being used):

- a. **Prior year testing method.** The prior year ratio will be used. If this selection is made for the first year the Code §401(k) feature is added to this Plan (unless this Plan is a successor plan), then for the first Plan Year only, the amount taken into account as the ADP of Nonhighly Compensated Employees for the preceding Plan Year will be the greater of 3% or the actual percentage for the initial Plan Year.

ACP test. If applicable, the ACP ratio for NHCEs will be based on the current year ratio unless prior year testing method is selected below (leave blank if current year testing method is being used):

- b. **Prior year testing method.** The prior year ratio will be used. If this selection is made for the first year the Code §401(m) feature is added to this Plan (unless this Plan is a successor plan), then for the first Plan Year only, the amount taken into account as the ACP of NHCEs for the preceding Plan Year will be the greater of 3% or the actual percentage for the initial Plan Year.

Effective dates. (optional)

- c. **Current year testing method.** If the current year testing method is currently being used, enter the date it was first effective (used for purposes of applying the five year restriction on amending to the prior year testing method):

- 1. ADP test: _____ (may not be selected with 44.a.)
- 2. ACP test: _____ (may not be selected with 44.b.)

MISCELLANEOUS

- 45. **LOANS TO PARTICIPANTS** (Plan Section 7.6)

- a. New loans are NOT permitted.
- b. New loans are permitted.

NOTE: Regardless of whether new loans are permitted, if the Plan permits rollovers, then the Administrator may, in a uniform and nondiscriminatory manner, accept rollovers of loans into this Plan.

- 46. **ROLLOVERS** (Plan Section 4.6) (skip if rollover contributions are NOT selected at 12.f.)

Eligibility. Rollovers may be accepted from all Participants who are Employees as well as the following (select all that apply; leave blank if not applicable):

- a. Any Eligible Employee, even prior to meeting eligibility conditions to be a Participant
- b. Participants who are Former Employees

Distributions. When may distributions be made from a Participant's Rollover Account?

- c. At any time
- d. Only when the Participant is otherwise entitled to a distribution under the Plan

- 47. **AFTER-TAX VOLUNTARY EMPLOYEE CONTRIBUTIONS** (Plan Section 4.8) (skip if after-tax voluntary Employee contributions NOT selected at Question 12.g.)

Matching after-tax voluntary Employee contributions. There are no Employer matching contributions on after-tax voluntary Employee contributions unless elected below.

- a. After-tax voluntary Employee contributions are aggregated with Elective Deferrals for purposes of applying any matching contributions under the Plan.

PPA TRANSITION RULES

The following questions only apply if this is a PPA restatement (i.e., Question 5.b.1. is selected). If this is not a PPA restatement, then this Plan will not be considered an individually designed plan merely because the following questions are deleted from the Adoption Agreement.

NOTE: The following provisions are designed to be left unanswered if the selections do not apply to the Plan.

48. **PRIOR VESTING SCHEDULE FOR EMPLOYER NONELECTIVE PROFIT SHARING CONTRIBUTIONS.** The vesting schedule for amounts attributable to Employer Nonelective profit sharing contributions made prior to Plan Years beginning after December 31, 2006, is (leave blank if not applicable):
- a. _____ (enter the vesting schedule that applied prior to the Plan Year beginning in 2007; such schedule must satisfy 5-year cliff or 7-year graded and, if applicable, must provide for a top-heavy minimum schedule)
49. **WRERA - RMD WAIVERS FOR 2009 (Plan Section 6.8(f))**
- Suspension/continuation of RMDs.** Unless otherwise elected below, required minimum distributions (RMDs) for 2009 were suspended unless a Participant or Beneficiary elected to receive such distributions:
- a. RMDs for 2009 were suspended for any Participant or Beneficiary who was scheduled to receive his/her first RMD for 2009 or who did not make a continuing election prior to 2009 to receive his/her RMD (unless the Participant or Beneficiary made an election to receive such distribution). RMDs for 2009 were continued for any Participant or Beneficiary who had made a continuing election to receive an RMD prior to 2009 (unless the Participant or Beneficiary made an election to suspend such distribution).
- b. RMDs continued unless otherwise elected by a Participant or Beneficiary.
- c. RMDs continued in accordance with the terms of the Plan (i.e., no election available to Participants or Beneficiaries).
- d. Other: _____
- Direct rollovers.** The Plan also treated the following as "eligible rollover distributions" in 2009 (If no election is made, then a "direct rollover" was only offered for "2009 RMDs"):
- e. "2009 RMDs" and "Extended 2009 RMDs."
- f. "2009 RMDs" but only if paid with an additional amount that is an "eligible rollover distribution" without regard to Code §401(a)(9)(H).
50. **NON-SPOUSAL ROLLOVERS (Plan Section 6.15(d)).** Non-spousal rollovers are permitted effective for distributions after December 31, 2006 unless an alternative effective date is selected at a. below:
- a. Non-spousal rollovers are allowed effective _____ (may not be earlier than January 1, 2007 and not later than January 1, 2010; the Plan already provides for non-spousal rollovers effective as of January 1, 2010)

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The adopting Employer may rely on an opinion letter issued by the Internal Revenue Service as evidence that the Plan is qualified under Code §401 only to the extent provided in Rev. Proc. 2011-49 or subsequent guidance.

The Employer may not rely on the opinion letter in certain other circumstances or with respect to certain qualification requirements, which are specified in the opinion letter issued with respect to the Plan and in Rev. Proc. 2011-49 or subsequent guidance. In order to have reliance in such circumstances or with respect to such qualification requirements, application for a determination letter must be made to Employee Plans Determinations of the Internal Revenue Service.

This Adoption Agreement may be used only in conjunction with basic Plan document #10. This Adoption Agreement and the basic Plan document will together be known as Benefit Plans, Inc. Non-Standardized 401(k) Profit Sharing Plan #10-005.

The adoption of this Plan, its qualification by the IRS, and the related tax consequences are the responsibility of the Employer and its independent tax and legal advisors.

Benefit Plans, Inc. will notify the Employer of any amendments made to the Plan or of the discontinuance or abandonment of the Plan. Furthermore, in order to be eligible to receive such notification, the Employer agrees to notify Benefit Plans, Inc. of any change in address. In addition, this Plan is provided to the Employer either in connection with investment in a product or pursuant to a contract or other arrangement for products and/or services. Upon cessation of such investment in a product or cessation of such contract or arrangement, as applicable, the Employer is no longer considered to be an adopter of this Plan and Benefit Plans, Inc. no longer has any obligations to the Employer that relate to the adoption of this Plan.

With regard to any questions regarding the provisions of the Plan, adoption of the Plan, or the effect of an opinion letter from the IRS, call or write (this information must be completed by the sponsor of this Plan or its designated representative):

Name: Benefit Plans, Inc.
Address: 16924 Frances Street, Suite 100
Omaha Nebraska 68130
Telephone: (402) 891-0808

The Employer and Trustee (or Insurer), by executing below, hereby adopt this Plan:

EMPLOYER: City of McCook

By: _____ DATE SIGNED _____

TRUSTEE (OR INSURER):

[] The signature of the Trustee or Insurer appears on a separate agreement or Contract,

OR (add additional Trustee signature lines as necessary)

City of McCook

TRUSTEE OR INSURER DATE SIGNED _____

**APPENDIX A
SPECIAL EFFECTIVE DATES AND OTHER PERMITTED ELECTIONS**

A. Special effective dates/spin-offs/mergers (the following elections are optional; select any that apply):

- a. **Employer matching contributions.** The Employer matching contribution provisions under Question 28. are effective: _____.
- b. **Employer profit sharing contributions.** The Employer profit sharing contribution provisions under Questions 29. and 30. are effective: _____.
- c. **Distribution elections.** The distribution elections under Questions _____ (Choose 34. - 42. as applicable) are effective: _____.
- d. **Other special effective date(s):** _____. For periods prior to the specified special effective date(s), the Plan terms in effect prior to its restatement under this Adoption Agreement will control for purposes of the designated provisions. A special effective date may not result in the delay of a Plan provision beyond the permissible effective date under any applicable law.
- e. **Spin-off.** The Plan was a spin-off from the _____ (enter name of plan), which was originally effective _____ (enter effective date of original plan).
- f. **Merged plans.** The following plan(s) are merged into this Plan (enter applicable information; attach addendum if more than 4 merged plans):

	Name of merged plan	Merger date	Original effective date of merged plan
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____

B. Other permitted elections (the following elections are optional):

- a. **No other permitted elections**
- The following elections apply** (select one or more):
- b. **Deemed 125 compensation** (Plan Section 1.40). Deemed 125 compensation will be included in Compensation and 415 Compensation.
 - c. **Reemployed after five (5) 1-Year Breaks in Service ("rule of parity" provisions)** (Plan Section 3.5(d)). The "rule of parity" provisions in Plan Section 3.5(d) will not apply for (select one or both):
 - 1. eligibility purposes
 - 2. vesting purposes
 - d. **The "one-year hold-out" rule** described in Plan Section 3.5(e) will apply to (select one or both):
 - 1. determine eligibility (for all contributions types except Elective Deferrals)
 - 2. determine vesting
 - e. **Normal form of annuity.** If the Plan permits an annuity form of payment (e.g., if 34.f.1., f.2. or g. is selected), instead of a joint and 50% survivor annuity, the normal form of the qualified Joint and Survivor Annuity will be:
 - 1. joint and 100% survivor annuity
 - 2. joint and 75% survivor annuity
 - 3. joint and 66 2/3% survivor annuity
 - f. **Beneficiary if no beneficiary elected by Participant** (Plan Section 6.2(e)). In the event no valid designation of Beneficiary exists, then in lieu of the order set forth in Plan Section 6.2(e), the following order of priority will be used: _____ (specify an order of beneficiaries; e.g., children per stirpes, parents, and then step-children).
 - g. **Common, collective or pooled trust funds** (Plan Sections 7.2(c)(5) and/or 7.3(b)(6)). The name(s) of the common, collective or pooled trust funds available under the Plan is (are): _____.
 - h. **"Section 411(d)(6) protected benefits"** (Plan Section 8.1(b)). The following are Code §411(d)(6) protected benefits that are preserved under this Plan: In-service distributions for Disability prior to termination of employment will be allowed from the following accounts: salary deferrals, qualified matching contributions and matching contributions. Effective January 1, 2016, the Early Retirement Age is 55 and the completion of seven (7) Years of Service based on Vesting. Prior to January 1, 2016, the Early Retirement Age was age 55 and the 7th anniversary of participation in the Plan. (specify the protected benefits and the accrued benefits that are subject to the protected benefits).
 - i. **Limitation Year** (Plan Section 1.50). The Limitation Year for Code §415 purposes will be _____ (must be a consecutive twelve month period) instead of the "determination period" for Compensation.
 - j. **415 Limits when 2 or more defined contribution plans are maintained** (Plan Section 4.4). If any Participant is covered under another qualified defined contribution plan maintained by the Employer or an Affiliated Employer, or if the Employer or an Affiliated Employer maintains a welfare benefit fund, as defined in Code §419(e), or an individual

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medical account, as defined in Code §415(l)(2), under which amounts are treated as "annual additions" with respect to any Participant in this Plan, then the provisions of Plan Section 4.4(b) will apply unless otherwise specified below:

1. Specify, in a manner that precludes Employer discretion, the method under which the plans will limit total "annual additions" to the "maximum permissible amount" and will properly reduce any "excess amounts": _____

k. **Top-heavy duplications** (select one or more)

1. **Top-heavy duplications when 2 or more defined contribution plans are maintained** (Plan Section 4.3(f)). When a Non-Key Employee is a Participant in this Plan and another defined contribution plan maintained by the Employer that is subject to the top-heavy rules, indicate which method will be utilized to avoid duplication of top-heavy minimum benefits:

- a. The full top-heavy minimum will be provided in each plan.
 b. A minimum, non-integrated contribution of 3% of each Non-Key Employee's 415 Compensation will be provided in the Money Purchase Plan (or other plan subject to Code §412).
 c. Specify the method under which the plans will provide top-heavy minimum benefits for Non-Key Employees that will preclude Employer discretion and avoid inadvertent omissions, including any adjustments required under Code §415: _____.

NOTE: If b. or c. is selected then (1) an Employer may not rely on the opinion letter issued by the Internal Revenue Service with respect to the requirements of Code §416, and (2), if the plans do not benefit the same Participants, the uniformity requirement of the Regulations under Code §401(a)(4) may be violated.

2. **Top-heavy duplications when a defined benefit plan is maintained** (Plan Section 4.3(i)). When a Non-Key Employee is a Participant in this Plan and a non-frozen defined benefit plan maintained by the Employer that is subject to the top-heavy rules, indicate which method will be utilized to avoid duplication of top-heavy minimum benefits: (select one of a. - d. AND complete e. or select f.)

- a. The full top-heavy minimum will be provided in each plan (if selected, Plan Section 4.3(i) will not apply).
 b. 5% defined contribution minimum
 c. 2% defined benefit minimum will be made in the _____ (enter the name of the other plan)
 d. Specify the method under which the plans will provide top-heavy minimum benefits for Non-Key Employees that will preclude Employer discretion and avoid inadvertent omissions: _____.

NOTE: If b., c., or d. is selected then (1) an Employer may not rely on the opinion letter issued by the Internal Revenue Service with respect to the requirements of Code §416, and (2), if the plans do not benefit the same Participants, the uniformity requirement of the Regulations under Code §401(a)(4) may be violated.

AND, the "present value" (Plan Section 9.2) for top-heavy purposes will be based on:

- e. Interest Rate: _____
 Mortality Table: _____
 f. The interest rate and mortality table specified to determine "present value" for top-heavy purposes in the defined benefit plan.

AND, a Participant must be employed on the last day of the Plan Year in order to receive the top-heavy minimum (Plan Section 4.3(h)) unless elected below.

- g. A Participant is not required to be employed by the Employer on the last day of the Plan Year.

1. **Recognition of Service with other employers** (Plan Sections 1.62 and 1.88). Service with the following employers (in addition to those specified at Question 16) will be recognized as follows (select one or more; if more than 6 employers, attach an addendum to the Adoption Agreement):

	Eligibility	Vesting	Contribution Allocation
1. <input type="checkbox"/> Employer name: _____	a. <input type="checkbox"/>	b. <input type="checkbox"/>	c. <input type="checkbox"/>
2. <input type="checkbox"/> Employer name: _____	a. <input type="checkbox"/>	b. <input type="checkbox"/>	c. <input type="checkbox"/>
3. <input type="checkbox"/> Employer name: _____	a. <input type="checkbox"/>	b. <input type="checkbox"/>	c. <input type="checkbox"/>
4. <input type="checkbox"/> Employer name: _____	a. <input type="checkbox"/>	b. <input type="checkbox"/>	c. <input type="checkbox"/>
5. <input type="checkbox"/> Employer name: _____	a. <input type="checkbox"/>	b. <input type="checkbox"/>	c. <input type="checkbox"/>
6. <input type="checkbox"/> Employer name: _____	a. <input type="checkbox"/>	b. <input type="checkbox"/>	c. <input type="checkbox"/>

Limitations

7. The following provisions or limitations apply with respect to the recognition of prior service: _____ a. b. c.
 (e.g., credit service with X only on/following 1/1/13 or credit all service with entities the Employer acquires after 12/31/12)

m. **Other vesting provisions.** The following vesting provisions apply to the Plan (select one or more):

1. **Special vesting provisions.** The following special provisions apply to the vesting provisions of the Plan: _____ (must be definitely determinable, non-discriminatory under Code §401(a)(4) and otherwise satisfy the parameters set forth in Questions 18 and 19 and Plan Section 6.4.; e.g., rather than the schedule specified at Question 18, the 5-year graded schedule applies to amounts merged into the Plan from the XYZ Plan.)
2. **Pre-amendment vesting schedule.** (Plan Section 6.4(h)). If the vesting schedule has been amended and a different vesting schedule other than the schedule at Question 18 applies to any Participants, then the following provisions apply (must select one of a - d. AND complete e.):

Applicable Participants. The vesting schedules in Question 18 only apply to:

- a. Participants who are Employees as of _____ (enter date).
 b. Participants in the Plan who have an Hour of Service on or after _____ (enter date).
 c. Participants (even if not an Employee) in the Plan on or after _____ (enter date).
 d. Other: _____ (e.g., Participants in division A)

Vesting schedule

e. The schedule that applies to Participants not subject to the vesting schedule in Question 18 is:

Years (or Periods) of Service	Percentage
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

3. **Prior vesting schedule for Employer matching contributions.** The vesting schedule for amounts attributable to Employer matching contributions made prior to Plan Years beginning after December 31, 2001 is: _____ (enter the vesting schedule that applied prior to the Plan Year beginning in 2002; such schedule must satisfy 5-year cliff or 7-year graded and, if applicable, must provide for a top-heavy minimum schedule)

n. **Top-heavy vesting schedule** (Plan Section 6.4(e)).

Instead of any other vesting schedules set forth in the Plan, if this Plan becomes a Top-Heavy Plan, the following vesting schedule, based on number of Years of Service (or Periods of Service if the elapsed time method is selected) will apply:

1. 6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
 2. 3 Year Cliff: 0-2 years-0%; 3 years-100%
 3. Other - Must be at least as liberal as either 1. or 2. above in each year without switching between the two schedules. (if a different top-heavy schedule applies to different contribution sources, attach an addendum specifying the schedule that applies to each source):

Years (or Periods) of Service	Percentage
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

NOTE: This Section does not apply to the Account balance of any Participant who does not have an Hour of Service after the Plan has initially become top-heavy. Such Participant's Vested Account balance will be determined without regard to this Section.

o. **Leased Employees** (Plan Section 1.49)

1. **Offset of contributions to leasing organization plan.** The Employer will reduce allocations to this Plan for any Leased Employee to the extent that the leasing organization contributes to or provides benefits under a leasing organization plan to or for the Leased Employee and which are attributable to the Leased Employee's services for the Employer.

Non-Standardized 401(k) Profit Sharing Plan

2. **Disregard one year requirement.** The definition of Leased Employee shall be applied by disregarding the requirement of performing services for at least one year, for the following contributions (select a. or all that apply of b.1. - b.3.) (Elective Deferrals include Roth Elective Deferrals, "ADP test safe harbor contributions" (including those made pursuant to a QACA) and SIMPLE 401(k) contributions, after-tax voluntary Employee contributions, and rollover contributions; Matching includes QMACs; and Nonelective Profit Sharing includes QNECs):
- a. All contributions
 - b. The following contributions (select all that apply)
 - 1. Elective Deferrals
 - 2. Matching contributions
 - 3. Nonelective Profit Sharing contributions
- p. **Minimum distribution transitional rules** (Plan Section 6.8(e)(5))

NOTE: This Section does not apply to (1) a new Plan, (2) an amendment or restatement of an existing Plan that never contained the provisions of Code §401(a)(9) as in effect prior to the amendments made by the Small Business Job Protection Act of 1996 (SBJPA), or (3) a Plan where the transition rules below do not affect any current Participants.

The "required beginning date" for a Participant who is not a "five percent (5%) owner" is:

- 1. April 1st of the calendar year following the year in which the Participant attains age 70 1/2. (pre-SBJPA rules continue to apply)
 - 2. April 1st of the calendar year following the later of the year in which the Participant attains age 70 1/2 or retires (the post-SBJPA rules), with the following exceptions (select one or both; leave blank if both applied effective as of January 1, 1996):
 - a. A Participant who was already receiving required minimum distributions under the pre-SBJPA rules as of January 1, 1996 (may not be earlier than January 1, 1996) was allowed to stop receiving distributions and have them recommence in accordance with the post-SBJPA rules. Upon the recommencement of distributions, if the Plan permits annuities as a form of distribution then the following apply:
 - 1. N/A (annuity distributions are not permitted)
 - 2. Upon the recommencement of distributions, the original Annuity Starting Date will be retained.
 - 3. Upon the recommencement of distributions, a new Annuity Starting Date is created.
 - b. A Participant who had not begun receiving required minimum distributions as of January 1, 1996 (may not be earlier than January 1, 1996) may elect to defer commencement of distributions until retirement. The option to defer the commencement of distributions (i.e., to elect to receive in-service distributions upon attainment of age 70 1/2) applies to all such Participants unless selected below:
 - 1. The in-service distribution option was eliminated with respect to Participants who attained age 70 1/2 in or after the calendar year that began after the later of (1) December 31, 1998, or (2) the adoption date of the restatement to bring the Plan into compliance with the SBJPA.
- q. **Other spousal provisions** (select one or more)
- 1. **One-year marriage rule.** For purposes of the Plan, other than for purposes of determining eligible hardship distribution expenses, an individual is treated as Spouse only if such individual was married throughout the one year period ending on the earlier of the Annuity Starting Date or the date of the Participant's death.
 - 2. **Definition of Spouse.** The term Spouse includes a spouse under federal law as well as the following:

 - 3. **Automatic revocation of spousal designation** (Plan Section 6.2(f)). The automatic revocation of a spousal Beneficiary designation in the case of divorce does not apply.
 - 4. **Timing of QDRO payment.** A distribution to an Alternate Payee shall not be permitted prior to the time a Participant would be entitled to a distribution.
- r. **Applicable law.** Instead of using the applicable laws set forth in Plan Section 10.4(a), the Plan will be governed by the laws of: _____
- s. **Total and Permanent Disability.** Instead of the definition at Plan Section 1.83, Total and Permanent Disability means: _____ (must be definitely determinable).
- t. **Other Trust provisions** (select any that apply)
- 1. **Special Trustee for collection of contributions.** The Employer appoints the following Special Trustee with the responsibility to collect delinquent contributions pursuant to Plan Section 7.1(b):
Name: _____
Title _____
 - a. _____
Address and telephone number
 - b. Use Employer address and telephone number
 - c. Use address and telephone number below:

Non-Standardized 401(k) Profit Sharing Plan

Address: _____
Street

City State Zip

Telephone: _____

NOTE: The Trustee named above is hereby appointed as a Trustee for the Plan, and is referred to as the Special Trustee. The sole responsibility of the Special Trustee is to collect contributions the Employer owes to the Plan. No other Trustee has any duty to ensure that the contributions received comply with the provisions of the Plan or is obliged to collect any contributions from the Employer. No Trustee, other than the Special Trustee, is obliged to ensure that funds deposited are deposited according to the provisions of the Plan. The Special Trustee must accept its position and agree to its obligations hereunder.

2. **Permissible Trust (or Custodial) modifications.** The Employer makes the following modifications to the Trust (or Custodial) provisions as permitted under Rev. Proc. 2011-49 (or subsequent IRS guidance) (select one or more of a. - c. below):

NOTE: Any elections below must not: (i) conflict with any Plan provision unrelated to the Trust or Trustee; or (ii) cause Plan to violate Code §401(a). In addition, this may not be used to substitute all of the Trust provisions in the Plan.

- a. **Investments.** The Employer amends the Trust provisions relating to Trust investments as follows:

b. **Duties.** The Employer amends the Trust provisions relating to Trustee (or Custodian) duties as follows: _____
c. **Other administrative provisions.** The Employer amends the other administrative provisions of the Trust as follows: _____

- u. **Other provisions for matching contributions** (select one or more)
1. **Match applied to elective deferrals to 403(b) arrangement.** In applying any matching contributions in this Plan, elective deferrals to a Code §403(b) arrangement will be aggregated with Elective Deferrals to this Plan.
2. **Matching contributions not used to satisfy top-heavy contribution** (Plan Section 4.3(j)). Employer matching contributions will NOT be taken into account for purposes of satisfying the minimum contribution requirements of Code §416(c)(2) and the Plan.

- v. **QACA safe harbor contributions vesting options.** The vesting options selected at Question 19 on the Adoption Agreement also apply to the Participant's Qualified Automatic Contribution Safe Harbor Account unless otherwise selected below (select all that apply):

Excluded service prior to initial Effective Date of Plan or a predecessor plan (as defined in Regulations §1.411(a)-5(b)(3))

1. applies
2. does not apply

Excluded service prior to the computation period in which an Employee has attained age 18

3. applies
4. does not apply

Full vesting upon death

5. applies
6. does not apply

Full vesting upon Total and Permanent Disability

7. applies
8. does not apply

ADMINISTRATIVE PROCEDURES

The following are optional administrative provisions. The Administrator may implement procedures that override any elections in this Section without a formal Plan amendment. In addition, modifications to these procedures will not affect an Employer's reliance on the Plan.

A. Loan limitations. Note: the separate loan program required by the DOL will override any inconsistent selections made below. (complete only if loans to Participants are permitted)

- a. Limitations (select one or more; leave blank if none apply):
 - 1. Loans will be treated as Participant directed investments.
 - 2. Loans will only be made for hardship or financial necessity as defined below (select a. or b.)
 - a. hardship reasons specified in Plan Section 12.10
 - b. other: _____ (specify financial necessity)
 - 3. The minimum loan will be \$ 1,000 (may not exceed \$1,000).
 - 4. A Participant may only have three (3) (e.g., one (1)) loan(s) outstanding at any time.
 - 5. All outstanding loan balances will become due and payable in their entirety upon severance of employment unless directly rolled over (if otherwise permitted) to another employer's plan.
 - 6. **Account restrictions.** Loans will only be permitted from the following Participant Accounts (select all that apply or leave blank if no limitations apply):
 - a. Pre-Tax Elective Deferral Account
 - b. Roth Elective Deferral Account
 - c. Account(s) attributable to Employer matching contributions (includes matching "ADP test safe harbor contributions")
 - d. Account attributable to Employer Nonelective profit sharing contributions
 - e. Qualified Nonelective Contribution Account (includes nonelective "ADP test safe harbor contributions")
 - f. Rollover Account
 - g. Transfer Account attributable to (select one or both):
 - 1. non-pension assets
 - 2. pension assets (e.g., from a money purchase pension plan)
 - h. Voluntary Contribution Account
 - i. Other: _____
- AND**, if loans are restricted to certain Accounts, the limitations of Code §72(p) and the adequate security requirement of the DOL Regulations will be applied:
- j. by determining the limits by only considering the restricted Accounts.
 - k. by determining the limits taking into account a Participant's entire interest in the Plan.

Additional loan provisions (select all that apply; leave blank if none apply)

- b. **Loan payments.** Loans are repaid by (if left blank, then payroll deduction applies unless Participant is not subject to payroll; e.g., partner who only has a draw):
 - 1. payroll deduction
 - 2. ACH (Automated Clearing House)
 - 3. check
 - a. Only for prepayment
- c. **Interest rate.** Loans will be granted at the following interest rate (if left blank, then 3. below applies):
 - 1. 0 percentage points over the prime interest rate
 - 2. _____%
 - 3. the Administrator establishes the rate in a nondiscriminatory manner
- d. **Refinancing.** Loan refinancing is allowed.

B. Life insurance. (Plan Section 7.5)

- a. Life insurance may not be purchased.
- b. Life insurance may be purchased...
 - 1. at the option of the Administrator
 - 2. at the option of the Participant

Limitations

- 3. N/A (no limitations)
- 4. The purchase of initial or additional life insurance will be subject to the following limitations (select one or more):
 - a. Each initial Contract will have a minimum face amount of \$_____.
 - b. Each additional Contract will have a minimum face amount of \$_____.
 - c. The Participant has completed _____ Years (or Periods) of Service.
 - d. The Participant has completed _____ Years (or Periods) of Service while a Participant in the Plan.
 - e. The Participant is under age _____ on the Contract issue date.
 - f. The maximum amount of all Contracts on behalf of a Participant may not exceed \$_____.
 - g. The maximum face amount of any life insurance Contract will be \$_____.

C. **Plan expenses and Forfeitures**

Plan expenses. Will the Plan assess against an individual Participant's Account certain Plan expenses that are incurred by, or are attributable to, a particular Participant based on use of a particular Plan service?

- a. No
- b. Yes

Use of Forfeitures

Other than Employer matching contributions. Forfeitures of amounts attributable to Employer contributions other than Employer matching contributions will be:

- c. added to any Employer discretionary contribution (e.g., matching or profit sharing) and allocated in the same manner
- d. used to reduce any Employer contribution (other than contributions that must be fully Vested when contributed such as QNECs, QMACs and "ADP test safe harbor" contributions that are not made pursuant to a QACA) (see Note below)
- e. added to any Employer matching contribution and allocated as an additional matching contribution
- f. allocated to all Participants eligible to share in the allocations of profit sharing contributions or Forfeitures in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year
- g. other: _____ (describe the treatment of Forfeitures in a manner that is definitely determinable and not subject to Employer discretion; e.g., Forfeitures attributable to transferred balances from Plan X are allocated as additional discretionary contributions only to former Plan X Participants)

Matching contributions. Forfeitures of amounts attributable to Employer matching contributions will be:

- h. N/A (same as above or no Employer matching contributions)
- i. used to reduce the Employer matching contribution (other than contributions that must be fully Vested when contributed such as QNECs, QMACs and "ADP test safe harbor" contributions that are not made pursuant to a QACA) (see Note below)
- j. added to any Employer matching contribution and allocated as an additional matching contribution
- k. added to any Employer discretionary profit sharing contribution
- l. used to reduce any Employer contribution (other than contributions that must be fully Vested when contributed such as QNECs, QMACs and "ADP test safe harbor" contributions that are not made pursuant to a QACA) (see Note below)
- m. other: _____ (describe the treatment of Forfeitures in a manner that is definitely determinable and not subject to Employer discretion; e.g., Forfeitures attributable to transferred balances from Plan X are allocated as additional discretionary contributions only to former Plan X Participants)

NOTE: Effective for Plan Years beginning after the Plan Year in which this Plan document is adopted, Forfeitures may not be used to reduce Employer contributions which are required pursuant to the Code to be fully Vested when contributed to the Plan (such as QMACs, QNECs and "ADP test safe harbor contributions" other than QACA "ADP test safe harbor contributions"). The reallocation of Forfeitures could affect the Plan's top-heavy exemption (see Plan Section 12.8(f)). One approach to avoid this result is to provide for a discretionary matching contribution that satisfies the "ACP test safe harbor" provisions (i.e., select Question 27A.b and select a discretionary matching contribution at Question 28) and then allocate Forfeitures as a matching contribution.

D. **Directed investments (Plan Section 4.10)**

- a. Participant directed investments are NOT permitted.
- b. Participant directed investments are permitted from the following Participant Accounts:
 - 1. all Accounts
 - 2. only from the following Accounts (select one or more):
 - a. Pre-Tax Elective Deferral Account
 - b. Roth Elective Deferral Account
 - c. Account(s) attributable to Employer matching contributions (includes matching "ADP test safe harbor contributions")
 - d. Account attributable to Employer Nonelective profit sharing contributions
 - e. Qualified Nonelective Contribution Account (includes nonelective "ADP test safe harbor contributions")
 - f. Rollover Account
 - g. Transfer Account
 - h. Voluntary Contribution Account
 - i. Other: _____ (specify Account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion)

Directed investment options (If directed investments are permitted, select all that apply; leave blank if none apply)

- c. **ERISA Section 404(c).** It is intended that the Plan comply with ERISA Section 404(c) with respect to the Accounts subject to Participant investment directions.
- d. **QDIA.** Plan will include a qualified default investment alternative.

Non-Standardized 401(k) Profit Sharing Plan

E. **Rollover limitations.** Will the Plan specify which sources of rollovers will be accepted? (skip if rollover contributions are NOT selected at 12.f.)

- a. No, Administrator determines in operation which sources will be accepted.
- b. Yes

Rollover sources. Indicate the sources of rollovers that will be accepted (select one or more)

- 1. **Direct rollovers.** Plan will accept a direct rollover of an eligible rollover distribution from (select one or more):
 - a. a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), excluding after-tax employee contributions
 - b. a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), including after-tax employee contributions
 - c. a plan described in Code §403(a) (an annuity plan), excluding after-tax employee contributions
 - d. a plan described in Code §403(a) (an annuity plan), including after-tax employee contributions
 - e. a plan described in Code §403(b) (a tax-sheltered annuity), excluding after-tax employee contributions
 - f. a plan described in Code §403(b) (a tax-sheltered annuity), including after-tax employee contributions
 - g. a governmental plan described in Code §457(b) (eligible deferred compensation plan)
 - h. if this Plan permits Roth Elective Deferrals, a Roth Elective Deferral Account from (select one or more):
 - 1. a qualified plan described in Code §401(a)
 - 2. a plan described in Code §403(b) (a tax-sheltered annuity)

Direct rollovers of Participant loan. The Plan will NOT accept a direct rollover of a Participant loan from another plan unless selected below (leave blank if default applies)

- i. The Plan will accept a direct rollover of a Participant loan
 - 1. only in the following situation(s): _____ (e.g., only from Participants who were employees of an acquired organization; leave blank if not applicable).
- 2. **Participant rollover contributions from other plans (i.e., not via a direct plan-to-plan transfer).** The Plan will accept a contribution of an eligible rollover distribution (select one or more):
 - a. a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan)
 - b. a plan described in Code §403(a) (an annuity plan)
 - c. a plan described in Code §403(b) (a tax-sheltered annuity)
 - d. a governmental plan described in Code §457(b) (eligible deferred compensation plan)
- 3. **Participant rollover contributions from IRAs:** The Plan will accept a rollover contribution of the portion of a distribution from a traditional IRA that is eligible to be rolled over and would otherwise be includible in gross income. Rollovers from Roth IRAs or a Coverdell Education Savings Account (formerly known as an Education IRA) are not permitted because they are not traditional IRAs. A rollover from a SIMPLE IRA is allowed if the amounts are rolled over after the individual has been in the SIMPLE IRA for at least two years.

F. **Elective Deferral procedure.** Participants may commence Elective Deferrals on the effective date of participation.

Optional date. Participants may also commence making Elective Deferrals on (leave blank if not applicable):

- a. _____ (must be at least once each calendar year)

Elective Deferral modifications. Participants may modify Elective Deferral elections:

- b. as of each payroll period
- c. on the first day of each month
- d. on the first day of each Plan Year quarter
- e. on the first day of the Plan Year or the first day of the 7th month of the Plan Year
- f. other: as designated under the Salary Reduction Agreement or other written procedures adopted but the Plan Administrator (must be at least once each calendar year)

Irregular pay (e.g., bonuses). Unless the Administrator has implemented separate procedures or selected below, a Participant is permitted to make a separate Elective Deferral election for irregular pay and the Participant's existing Elective Deferral election will not apply to such irregular pay.

- g. A Participant's existing Elective Deferral election will apply to irregular pay (provided such irregular pay is Compensation for Elective Deferral purposes) unless the Participant makes a different Elective Deferral election for such irregular pay.
- h. A Participant is not permitted to make a separate Elective Deferral election for irregular pay and the Participant's existing Elective Deferral election will apply to such irregular pay (provided such irregular pay is Compensation for Elective Deferral purposes).

Non-Standardized 401(k) Profit Sharing Plan

Escalation (leave blank if not applicable)

i. Include option for Participants to elect to automatically escalate an Affirmative Election in accordance with the following:

Escalation amount. A Participant's Affirmative Election will increase by:

1. _____% of Compensation
 - a. up to a maximum of _____% of Compensation (leave blank if no limit)
2. other: _____

Timing of escalation. The escalation will apply as of:

3. first day of each Plan Year
4. anniversary of date of participation
5. other: _____

First period of application. Unless selected below, the escalation provision above will apply as of the second period specified above that begins after the period in which the Participant first has contributions made pursuant to a default election.

6. The escalation provision will apply as of the first period after the Participant first has contributions made pursuant to a default election.

Suspended Elective Deferrals. If a Participant's Elective Deferrals must be suspended pursuant to a provision of the Plan (e.g., due to a hardship distribution or distribution due to military leave covered by the HEART Act), then a Participant is deemed to have made as of the date the suspension period begins, an Affirmative Election to have no Elective Deferrals made to the Plan unless otherwise selected below.

- j. the Participant's Affirmative Election will resume after the suspension period.
- k. the Participant is deemed to have no Affirmative Election after the suspension period (e.g., for purposes of applying any Automatic Deferral provisions).

Lapse of Affirmative Elections. Affirmative Elections will remain in effect until revoked or modified by a Participant unless selected below.

- l. Affirmative Elections lapse at the end of each Plan Year.

**CITY OF MCCOOK
EMPLOYEE RETIREMENT PLAN**

QUALIFIED DOMESTIC RELATIONS ORDER (QDRO) PROCEDURE

In the case of any domestic relations order (DRO) received by City of McCook Employee Retirement Plan, its status as a "qualified domestic relations order" (QDRO) under the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code will be determined under the following procedures. The Administrator is responsible for administering the QDRO Procedure. The purpose of the QDRO Procedure is to establish a reasonable and consistent procedure for determining the qualified status of a domestic relations order and for making distributions pursuant to a domestic relations order which qualifies under Internal Revenue Code Section 414(p).

Procedure prior to receipt of order: The Plan will apply the following procedure prior to the Plan's receipt of a domestic relations order.

1. Suspension of Participant distributions or loans. If the Administrator is on notice (verbal or written) regarding a pending domestic relations action (e.g., a divorce) and has a reasonable belief the Participant's account may become subject to a QDRO, the Administrator may suspend processing the Participant's distribution or loan requests pending resolution.

2. Removing hold on the account. After placing a hold on the account, the Administrator should notify the Participant of the hold on the account. In order to remove the hold, the Administrator should request the Participant to provide written confirmation that a court will not issue a QDRO with respect to the account; such as a property settlement agreement awarding the entire account to the Participant.

Procedure after receipt of order: The Plan will apply the following procedure whenever it receives a DRO which purports to be a QDRO.

1. Notice to Participant and to alternate payee. Within a reasonable time period after receipt of a domestic relations order, the Administrator will notify the Participant and any alternate payee of the receipt of the order, and will deliver to the Participant and to each alternate payee a copy of this QDRO Procedure. Any alternate payee may designate a representative to receive copies of notices that are to the alternate payee regarding a domestic relations order.

2. Notice to Trustee. The Administrator, within a reasonable time period after receipt of a domestic relations order, will notify the Trustee of the receipt of the order. The Administrator, for any period during which the Administrator (or a court of competent jurisdiction) is determining the issue of whether the order is a QDRO, will account separately for the amount of the Participant's benefit which is subject to the order. The Administrator will direct the Trustee to segregate the "QDRO amount" if possible.

3. Review of order. The Administrator will review the order within a reasonable time to determine its qualified status. The Administrator will complete a QDRO DETERMINATION CHECKLIST with respect to each order the Plan receives. In most circumstances, the Administrator will complete review of the order within 30 days of receipt. After review, the Administrator will determine whether the order is a QDRO.

4. Suspension of Participant investment or distributions. The Plan will suspend the Participant's right to direct any investments during the period the Administrator is determining the qualified status of the order. If the Participant is receiving benefits from the Plan at the time of receipt of the order, the Administrator will suspend distributions to the Participant to the extent the Administrator deems necessary to comply with the order should the Administrator determine the order is a QDRO.

5. Determination order is a QDRO. If the Administrator determines the order is a QDRO:

a. The Administrator will notify the Participant and each alternate payee that the order is a QDRO and the Plan will distribute amounts pursuant to the QDRO. The Administrator will notify the Participant and each alternate payee of the decision within ten days of the determination by mailing to each party a copy of the QDRO DETERMINATION CHECKLIST, which will include the Administrator's certification.

b. If the QDRO requires immediate payment, the Plan will pay the designated amounts as soon as administratively feasible. Payment of any amount the order required the Plan to pay during the determination period will include interest from the date the QDRO required the first payment, at the rate of interest determined to be reasonable. The rate of interest payable on a regular savings account is a reasonable rate of interest for this purpose.

c. If the Plan cannot make the distribution within 30 days of the determination of qualified status of the QDRO, the Administrator will advise the parties of the delay, of the reason for the delay and of the date by which the Plan expects to make payment.

d. The Administrator will advise the Participant when the Plan has completed payment to the alternate payee.

e. The Plan will maintain a separate accounting (which may include a segregated account) for each alternate payee until the Plan has completed benefit payments under the QDRO.

f. Each alternate payee is entitled to file with the Plan a beneficiary designation in the same manner as a Participant in the Plan.

- 6. Determination order is not a QDRO.** If the Administrator determines the order is not a QDRO:
- a. The Administrator will advise the Participant and each alternate payee of the adverse decision and of the reasons for the adverse decision. The Plan will advise the Participant and each alternate payee of the decision within ten days of the determination by mailing to each party a copy of the QDRO DETERMINATION CHECKLIST, which will include the Administrator's certification of the decision.
 - b. The Administrator will discontinue separate accounting for the amounts payable under the order. The Plan will pay the benefits to the party entitled to receive the benefits. If the Participant is not entitled to a present distribution of any of the segregated benefits, the Plan will continue to account for the Participant's benefits as if the Plan had not received the order.
 - c. If the Administrator determines the status of the order within the 18-month period beginning on the date the order would require the first payment, the Administrator may delay distribution of any benefits subject to the order if the Administrator has reason to believe a party will seek to cure the defects in the order. The Administrator will continue to delay distribution during the period the Administrator determines to be necessary to fulfill the Administrator's fiduciary duties under the Plan.
- 7. Consultation with legal counsel.** The Administrator will consult with the Plan's legal counsel in case of questions which arise with respect to the interpretation of any provision of the order or with respect to the qualified status of the order.

* * * * *

Adoption of QDRO Procedure

The Administrator of City of McCook Employee Retirement Plan adopts this QDRO Procedure on the date specified below.

Date: _____

By: _____
Administrator



**CITY OF MCCOOK
EMPLOYEE RETIREMENT PLAN**

PARTICIPANT LOAN PROGRAM

City of McCook Employee Retirement Plan permits loans to be made to Participants and their beneficiaries. However, before any loan is made, the Plan requires that a written loan program be established which sets forth the rules and guidelines for making Participant loans. This document shall serve as the required written loan program. In addition, the Administrator may use this document to serve as, or supplement, any required notice of the loan program to Participants and their beneficiaries. All references to Participants in this loan program shall only include Participants and their Beneficiaries or any alternate payee with respect to the Plan. Furthermore, it shall only include those individuals to the extent they are "parties in interest" as defined by ERISA Section 3(14).

The Administrator is authorized to administer the Participant Loan Program. A Participant must apply to the Administrator for a loan in the manner set forth by the Administrator.

1. Loan application. Any Participant may apply for a loan from the Plan. A Participant must apply for each loan with an application which specifies the amount of the loan desired, the requested duration for the loan and the source of security for the loan.

All loan applications will be considered by the Administrator within a reasonable time after the Participant applies for the loan. The Participant will be required to provide any supporting information deemed necessary by the Administrator.

2. Loan limitations and rules. The Administrator will not approve any loan to a Participant in an amount which exceeds 50% of his or her nonforfeitable account balance. The maximum aggregate dollar amount of loans outstanding to any Participant may not exceed \$50,000, reduced by the excess of the Participant's highest outstanding Participant loan balance during the 12-month period ending on the date of the loan over the Participant's current outstanding Participant loan balance on the date of the loan. With regard to any loan made pursuant to this program, the following rule(s) and limitation(s) shall apply, in addition to such other requirements set forth in the Plan:

- a. No loan in an amount less than \$1,000 will be granted to any Participant.
- b. A Participant can only have three (3) loan(s) currently outstanding from the Plan.
- c. All loans made pursuant to this program will be considered a directed investment from the account(s) of the Participant maintained under the Plan. As such, all payments of principal and interest made by the Participant will be credited only to the account(s) of such Participant. The Plan also will charge that portion of the Participant's account balances with expenses directly related to the origination, maintenance and collection of the note.
- d. Loan refinancing is not permitted.

3. Account restrictions. Loans may be made from any of the Participant's accounts in the Plan.

4. Evidence and terms of loan. The Administrator will document every loan in the form of a promissory note signed by the Participant for the face amount of the loan, together with a commercially reasonable rate of interest.

Any loan granted or renewed under this program will bear an interest rate equal to 0% above the prime rate. The interest rate will be fixed for the duration of the loan.

The loan must provide at least quarterly payments under a level amortization schedule. Generally, the Administrator will require that the Participant repay the loan by agreeing to payroll deduction or payment by check (for prepayments only).

The Administrator will fix the term for repayment of any loan, however, in no instance may the term of repayment be greater than five years, unless the loan qualifies as a home loan. A "home loan" is a loan used to acquire a dwelling unit which, within a reasonable time, the Participant will use as a principal residence.

Unless the Participant is a "party in interest" on the day after his or her termination of employment with the Employer, a loan becomes due and payable when the Participant terminates employment with the Employer unless directly rolled over (if otherwise permitted) to another employer's plan.

A loan, if not otherwise due and payable, is due and payable on termination of the Plan, notwithstanding any contrary provision in the promissory note. Nothing in this loan policy restricts the Employer's right to terminate the Plan at any time.

Participants should note the law treats the amount of any loan (other than a "home loan") not repaid five years after the date of the loan as a taxable distribution on the last day of the five year period or, if sooner, at the time the loan is in default. If a Participant extends a non-home loan having a five year or less repayment term beyond five years, the balance of the loan at the time of the extension is a taxable distribution to the Participant.

Participant Loan Program

5. Security for loan. The Plan will require that adequate security be provided by the Participant before a loan is granted. For this purpose, the Plan will consider a Participant's interest under the Plan to be adequate security. However, in no event will more than 50% of a Participant's vested interest in the Plan (determined immediately after origination of the loan) be used as security for the loan. Generally, it will be the policy of the Plan not to make loans which require security other than the Participant's vested interest in the Plan. However, if additional security is necessary to adequately secure the loan, then the Administrator will require that such security be provided before the loan will be granted.

6. Form of pledge. The pledge and assignment of a Participant's account balances will be in the form prescribed by the Administrator.

7. Military service. If a Participant separates from service (or takes a leave of absence) from the Employer because of service in the military and does not receive a distribution of his or her account balances, the Plan shall suspend loan repayments until the Participant's completion of military service. The Employer will provide the Participant with a written explanation of the effect of the Participant's military service upon his or her Plan loan. While the Participant is on active duty in the United States military, the interest rate on the loan shall not exceed six percent (6%), compounded annually.

8. Leave of absence/suspension of payment. The Administrator will suspend loan repayments for a period not exceeding one year which occurs during an approved leave of absence, either without pay from the Employer or at a rate of pay (after applicable employment tax withholdings) that is less than the amount of the installment payments required under the terms of the loan. The Administrator will provide the Participant with a written explanation of the effect of the leave of absence upon his or her Plan loan.

9. Payments after leave of absence. When payments resume following a payment suspension in connection with a leave of absence authorized in 7 or 8 above, the Participant shall select one of the following methods to repay the loan, plus accumulated interest:

- a. The Participant shall increase the amount of the required installments to an amount sufficient to amortize the remaining balance of the loan, plus accrued interest, over the remaining term of the loan.
- b. The Participant shall pay a balloon payment of the remaining unpaid principal and interest, at the conclusion of the term of the loan as determined in the promissory note.
- c. The Participant may extend the maturity of the loan and reamortize the payments over the remaining term of the loan. In no event shall the amount of the adjusted installment payment be less than the amount of the installment payment provided under the promissory note. In the case of a leave of absence described in item 8 above, the revised term of the loan shall not exceed the maximum term permitted under item 4 above. In the case of a leave of absence described in item 7 above, the revised term of the loan shall not exceed the maximum term permitted under item 4 above, augmented by the time the Participant was actually in United States military service.

10. Default. The Administrator will treat a loan in default if:

- a. any scheduled payment remains unpaid beyond the last day of the calendar quarter following the calendar quarter in which the Participant missed the scheduled payment; or
- b. the Participant makes or furnishes any false representation or statement to the Plan.

The Participant will have the opportunity to repay the loan, resume current status of the loan by paying any missed payment plus interest or, if distribution is available under the Plan, request distribution of the note. If the loan remains in default, the Administrator will offset the Participant's vested account balances by the outstanding balance of the loan to the extent permitted by law. The Administrator will treat the note as repaid to the extent of any permissible offset. Pending final disposition of the note, the Participant remains obligated for any unpaid principal and accrued interest.

* * * * *

ADOPTION OF LOAN PROGRAM

The Administrator of City of McCook Employee Retirement Plan adopts this Loan Program on the date specified below.

Date: _____

By: _____
Administrator

**CITY MANAGER'S REPORT
OCTOBER 17, 2016 CITY COUNCIL MEETING**

ITEM: 4C

RECOMMENDATION:

ADOPT RESOLUTION NO. 2016-17 APPROVING THE RECOMMENDATION OF THE AIRPORT ADVISORY COMMISSION TO SET THE RENT AT \$125.00 PER UNIT FOR THE NEW SIX PLEX HANGAR AT McCOOK BEN NELSON REGIONAL AIRPORT.

BACKGROUND:

At the meeting of the Airport Advisory Commission on October 10, 2016 it was recommended on a 4-1 vote by the members to set the rent at \$125.00 per unit for the new six plex hangar..

Type of Hangar	Current Rate
Tee Hangars	\$36.00
Standard hangar with sliding doors	\$45.00
Hangar used for storage purposes	\$65.00
Large 40' x 60' hangar	\$64.00
Small hangar with electric Bi-Fold doors	\$79.00
Large hangar with electric Bi-Fold doors	\$93.00
New six plex hangar	\$125.00

We currently have the following hangars:

- 4 Tee hangars
- 7 Sliders
- 12 Bi-folds
- 8 Bi-folds
- 1 40'x60' hangar
- 6 New Hangars

The Airport Advisory Commission is also recommending that current tenants have the first opportunity to upgrade to the new hangars if so desired. The Commission would also like to meet in the next couple of months to discuss the rent on the current hangars. We have attached a survey that was recently completed by the City of Blair concerning hangar rent at various airports.

**FISCAL
IMPACT:**

This new hangar, once full, should generate \$9,000.00 in annual revenue.

RECOMMENDATION:

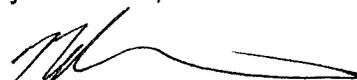
ADOPT RESOLUTION NO. 2016-17 APPROVING THE RECOMMENDATION OF THE AIRPORT ADVISORY COMMISSION TO SET THE RENT AT \$125.00 PER UNIT FOR THE NEW SIX PLEX HANGAR AT McCOOK BEN NELSON REGIONAL AIRPORT.

APPROVALS:



Kyle Pothhoff, Public Works Director

October 11, 2016



Nate Schneider, City Manager

October 11, 2016

RESOLUTION NO. 2016-17

A RESOLUTION AMENDING THE FEES FOR HANGAR RENTAL AT THE CITY OF MCCOOK, NEBRASKA, BEN NELSON REGIONAL AIRPORT; AMENDING THE CITY OF MCCOOK CODE OF ORDINANCES, BY ADDING APPENDIX N: HANGAR RENTAL FEES, TO CHAPTER 38: FEE SCHEDULE; AND REPEALING ALL OTHER RESOLUTIONS IN CONFLICT HEREWITH.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF MCCOOK, NEBRASKA:

SECTION 1. That the rates for hangar rental at the City of McCook, Nebraska, McCook Ben Nelson Regional Airport shall be as follows:

Individual T-Hangars	\$36.00 per month
Standard Hangar with sliding doors	\$45.00 per month
Hangar used for storage purposes	\$65.00 per month
Large 40' x 60' Hangar	\$64.00 per month
Small Hangar with Bi-Fold doors	\$79.00 per month
Large Hangar with Bi-Fold doors	\$93.00 per month
Six Plex Hangar (per unit)	\$125.00 per month

SECTION 2. These rates shall take effect and be in force as of November 1, 2016.

SECTION 3. Any and all other resolutions or parts of resolutions in conflict herewith are hereby repealed.

PASSED AND APPROVED this 17th day of October, 2016.

Michael D. Gonzales, Mayor

ATTEST:

Lea Ann Doak, City Clerk-Treasurer

2016 BTA HANGAR RENT SURVEY

NAME OF AIRPORT	TEE HANGAR W/SLIDING 39' DOOR, CONCRETE PAD (INDIVIDUAL DOOR, COMMUNITY HANGAR UP TO 10 HANGARS PER BUILDING)	PRIVATE TEE HANGAR 48' DOOR X 14X 39 BIFOLD DOORS/INSULATED/FULL CONCRETE FLOOR	EXECUTIVE HANGAR 52' DOOR X 16X 52 BIFOLD DOORS/INSULATED/FULL CONCRETE FLOOR	CORPORATE HANGAR 80X 90 W/75' DOOR INSULATED, HEATED FULL CONCRETE FLOOR	OTHER
Blair Municipal Airport	\$100.00	\$180.00	\$330.00	\$2,400.00	
Holdrege Airport Brewster Field	\$85.00	\$110.00			
Ainsworth	\$62.50	\$130.00	\$300.00		
Kearney Regional Airport	\$100.00	\$130 public 40 x 14x35	\$600.00	\$250.00 / per day	60x60 Hangar \$500.00
Eppley/Millard	\$160.00(41'bifold door, up to 20 hangars, concrete pad or full floor)	\$370 Eppley/\$335 Millard (41' door, pad or concrete floor, tenant pays heat)	NA	NA	60x80 Hangar \$800/150x150 \$3,500
York	\$75.00 41x12/\$100.00 44x12 \$125.00 44x15 / \$140.00 48x15			\$250.00 each - 75x75 - 2 stall	
Wayne	NA	\$146.80 40x13 800sq ft insulated \$160.00 40x13 1,000sq ft Insulated \$215.00 40x13 1,500sq ft Insulated \$110.00 40x13 1,000sq ft uninsulated \$125.40 40x13 1,140sq ft uninsulated \$149.60 40x13 1,360sq ft uninsulated	NA	\$1,100 100 x 100 w/1roll up garage door	*After the 2013 tornado, the insulated T-hangars were new, the 100x100 was rebuilt, and the uninsulated T-hangars were re-skinned & 7 new doors installed.
Auburn Farrington Field	\$50.00			\$115.00	
Norfolk Regional Airport		\$80&\$90 40x10.5 1,240 ft uninsulated \$90&\$101 40x10.5 1320sq ft Insulated \$220 45x14 1,335sq ft Insulated \$255 45x14 1,530sq ft Insulated \$300 45x14 1,800sq ft Insulated	\$180 & \$196 59x14.5 2,580 sq ft uninsulated \$450 60x20 3,900sq ft insulated		
Council Bluffs Airport	\$142 (private units w/bifold doors)	\$185 (42' door)	\$300 (+\$125 Heated)	\$1,250 60x60 +utilities	
GTE (Gothenburg Municipal)		\$75 - 39' bifold door \$90 - 39' sliding door \$100 - 44' bifold door			* 2 community hangars -hold 4 aircraft each \$75.00 per aircraft
CDR (Chadron Municipal)	\$95 - 8 & 4 plane carousel hangar	\$75 - Bulk or Barrel Hangar	NA	NA	
Genoa Municipal Airport		\$60 - 38' doors Individual hangar/concrete floor			*One turf runway 2500'
Western Nebraska Reginal Airport	\$59 - \$200 (Doors 39' to 50' to up to 14", full concrete floor, all w/elect, some insulation & heat)			\$1,100 to \$3,000 (different sizes & amenities, door sizes also vary)	
Alma		\$110 (nested T's, insulated, 42; bifold doors)			
Lexington	\$55	\$70 (not insulated)	\$90 (not insulated)		
KTIF Thomas County Thedford					*Airport leases lots for owner constructed hangars at \$270/year
Grant Municipal	\$75	NA	\$150 Box Hangar 50'x50'	NA	* 1 main hangar that rents for \$65 / mo no tie down fees

2016 BTA HANGAR RENT SURVEY

Broken Bow Municipal Airport	\$57.50 (44' Erect -a-tube bifold door w/walk in door T-shape concrete		\$115 (Concrete block ,50' bi-fold door, insulated)	\$350 - 80x80 53'6" bi fold door \$165 - 60x80 58' powerlift door	
David City	\$40 (4 individual T-hangar w/concrete floor) \$65 (1 square hangar sliding door)				
Hastings Municipal	Building #1- sliding doors \$60-\$200 Building #7-bifold doors \$60-\$185 **rates vary on aircraft/space utilized	Building #5 bifold doors \$50-\$73 Building #8 bifold doors \$75-\$145 Building #9 bifold doors \$50-\$108	Building #2 - overhead doors \$350 Building #3 overhead doors \$350 *multiple planes based on wing span	Building #11 70x100 overhead door \$750 ** Building #12 \$300 overhead doors (No charge - facility equipment)	*New 6 plane T-hangar w/electrical & 45' bi-fold doors, concrete floor being built now ..No price set at this time. Terminal Building - Area \$300 plus 70% of utilities - Office \$250 plus 30% of Utilities
Kimball Municipal Airport	\$50-\$60	\$130-\$160	\$350	NA	*Sizes are a little different so that is why the range in prices.
Stuart Atkinson	\$75 -bifold doors / not insulated				
Central City	\$85	\$140	\$200	NA	
Rock County Airport	\$62.50		\$105.00		
Beatrice Airport	\$65 (10 stall slide doors/no partitions - partial concrete)	\$85 40'x9'6"-bifold doors,partial concrete \$95 40'4"x 11.9-bifold doors, full concrete \$100 43'4"x14-bifold doors,full concrete	\$130 47'6" x 14' 47'6" x 14 (end stalls larger area included) bifold doors/full concrete \$155	\$600 70'x70' door opening 59'x17'7" (has heat but not included in rent) \$500 50x50 bifold door/full concrete	
Central NE Regional Airport	\$116-973 sq ft-elec door,concrete floor, not insulated \$116 2016 sq ft-concrete floor, sliding doors insulated \$226- 973/1211 sq ft -concrete floor,not insulated		\$585.56- 19722 sq ft , elec, office space \$964.08 -26114 sq ft elec, office space	\$3,455.50 - 24820 sq ft, elec , office area \$2,351.12 - 26152 sq ft - elec office area \$2718.42 16205 sq ft elec , office area	
Lincoln	\$135 - 40x10 - door \$135 - 40x9 door \$160 - 40x 11.5 door \$160 - 40x 12.5 door \$170 - 40.5 x 12.5 door	\$190 - 41.5 x 12 door -heat available \$240 - 41.5 x 12 door gas heat pd by tenant \$200 - 43.5 x 14.5 door \$210 - 43.5 x 14.5 gas heat pd by tenant	\$415/\$465 - 56 x 15.5 door \$500/\$855 - 56x16 door gas ht, water, ele pd by tenant	\$1,000 - 55.5 x 18 door - gas ht pd by tenant, metered elect \$1,225 - 60 x 18 door - gas ht pd by tenant, metered elec & water pd by LAA \$1,275 - 64.5 x 18 door - gas ht pd by tenant , metered elec	
Plattsmouth		\$125-old /\$130-new 40' part of concrete floor		\$1,000 80x100w/60' door	

CITY MANAGER'S REPORT
OCTOBER 17, 2016 CITY COUNCIL MEETING

ITEM: **4D**

Receive and file claim for damages from Joe Derauf and instruct that it be submitted to the City's insurance carrier for review and appropriate action.

BACKGROUND:

Attached to this report you will find the Property Damage Incident Form received from Joe Derauf.

This matter is being placed on the agenda for the Council to receive and file and forward to the insurance carrier for disposition.

**FISCAL
IMPACT:** None.

RECOMMENDATION:

Receive and file claim for damages from Joe Derauf and instruct that it be submitted to the City's insurance carrier for review and appropriate action.

APPROVALS:



Lea Ann Doak, City Clerk

October 12, 2016



GENERAL LIABILITY NOTICE OF OCCURRENCE / CLAIM

DATE (MM/DD/YYYY)

10/4/2016

AGENCY MNB Insurance Services 217 West 1st PO Box 30 McCook NE 69001-0030	INSURED LOCATION CODE	DATE OF LOSS AND TIME	AM
	CARRIER	PM	
CONTACT NAME: PHONE (A/C, No, Ext): (308) 345-6055 FAX (A/C, No): (308) 345-2663 E-MAIL ADDRESS: CODE: SUBCODE: AGENCY CUSTOMER ID: 00000697	POLICY NUMBER		

INSURED		INSURED'S MAILING ADDRESS	
NAME OF INSURED (First, Middle, Last) City of McCook		P.O. Box 1059 McCook, NE 69001-1059	
DATE OF BIRTH	FEIN (if applicable) 47-6006273	CONTACT: LORI SCHMIDT	
PRIMARY PHONE # 308-345-2022 ext. 224	<input type="checkbox"/> HOME <input checked="" type="checkbox"/> BUS <input type="checkbox"/> CELL SECONDARY PHONE #	PRIMARY E-MAIL ADDRESS: lori@cityofmccook.com	
		SECONDARY E-MAIL ADDRESS:	

CONTACT		<input checked="" type="checkbox"/> CONTACT INSURED	
NAME OF CONTACT (First, Middle, Last) LORI SCHMIDT		CONTACT'S MAILING ADDRESS Same as above	
PRIMARY PHONE #	<input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL SECONDARY PHONE #	PRIMARY E-MAIL ADDRESS:	
WHEN TO CONTACT M-F, 7:30 am - 4:30 pm CST		SECONDARY E-MAIL ADDRESS:	

OCCURRENCE		POLICE OR FIRE DEPARTMENT CONTACTED	
LOCATION OF OCCURRENCE		McCook, NE, PD.	
STREET: 306 Seminole Dr.		REPORT NUMBER	
CITY, STATE, ZIP: McCook, NE 69001			
COUNTRY: U.S.			
DESCRIBE LOCATION OF OCCURRENCE IF NOT AT SPECIFIC STREET ADDRESS: SAME AS ABOVE			
DESCRIPTION OF OCCURRENCE (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)			
A door @ my home was damaged as a result of a wellness check by the McCook Police Department of Emergency Medical Staff. I charged the replacement door & parts on my charge account at Barnette Lumber Company & paid local contractor, Alan Weintz, \$100 to repair this door on the date of service.			

TYPE OF LIABILITY				TYPE OF PREMISES			
PREMISES: INSURED IS	<input checked="" type="checkbox"/> OWNER	<input type="checkbox"/> TENANT		Residential -			
OWNER'S NAME & ADDRESS (if not insured)				PRIMARY PHONE #	<input type="checkbox"/> HOME <input type="checkbox"/> BUS <input checked="" type="checkbox"/> CELL	SECONDARY PHONE #	<input type="checkbox"/> HOME <input type="checkbox"/> BUS <input checked="" type="checkbox"/> CELL
Joe Derauf 306 SEMINOLE DR. McCook, NE 69001				308-737-8575	308-340-6948		
				PRIMARY E-MAIL ADDRESS: J-derauf@hotmail.com			
				SECONDARY E-MAIL ADDRESS:			
PRODUCTS: INSURED IS				TYPE OF PRODUCT			
MANUFACTURER'S NAME & ADDRESS (if not insured)				PRIMARY PHONE #	<input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL	SECONDARY PHONE #	<input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL
				PRIMARY E-MAIL ADDRESS:			
				SECONDARY E-MAIL ADDRESS:			
WHERE CAN PRODUCT BE SEEN?							

ACORD 3 (2013/01)

Page 1 of 4

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INS003 (201301)

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INJURED / PROPERTY DAMAGED

AGENCY CUSTOMER ID: 00000697

NAME & ADDRESS (Injured/Owner)			EMPLOYER'S NAME & ADDRESS		
PRIMARY PHONE #	<input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL	SECONDARY PHONE #	<input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL	PRIMARY PHONE #	<input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL
PRIMARY E-MAIL ADDRESS:			PRIMARY E-MAIL ADDRESS:		
SECONDARY E-MAIL ADDRESS:			SECONDARY E-MAIL ADDRESS:		
AGE	SEX	OCCUPATION			
WHERE TAKEN			WHAT WAS INJURED DOING?		
DESCRIBE PROPERTY (Type, model, etc.)			ESTIMATE AMOUNT	WHERE CAN PROPERTY BE SEEN?	

WITNESSES

NAME AND ADDRESS	PRIMARY PHONE #	<input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL	SECONDARY PHONE #	<input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL
PRIMARY E-MAIL ADDRESS:				
SECONDARY E-MAIL ADDRESS:				
NAME AND ADDRESS	PRIMARY PHONE #	<input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL	SECONDARY PHONE #	<input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL
PRIMARY E-MAIL ADDRESS:				
SECONDARY E-MAIL ADDRESS:				
NAME AND ADDRESS	PRIMARY PHONE #	<input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL	SECONDARY PHONE #	<input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL
PRIMARY E-MAIL ADDRESS:				
SECONDARY E-MAIL ADDRESS:				

REMARKS (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

REPORTED BY	REPORTED TO
-------------	-------------

APPLICABLE IN ALABAMA

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or who knowingly presents false information in an application for insurance is guilty of a crime and may be subject to restitution fines or confinement in prison, or any combination thereof.

APPLICABLE IN ALASKA

A person who knowingly and with intent to injure, defraud, or deceive an insurance company files a claim containing false, incomplete, or misleading information may be prosecuted under state law.

APPLICABLE IN ARIZONA

For your protection, Arizona law requires the following statement to appear on this form. Any person who knowingly presents a false or fraudulent claim for payment of a loss is subject to criminal and civil penalties.

**APPLICABLE IN ARKANSAS, DELAWARE, KENTUCKY, LOUISIANA, MAINE, MICHIGAN, NEW JERSEY,
NEW MEXICO, NEW YORK, NORTH DAKOTA, PENNSYLVANIA, RHODE ISLAND, SOUTH DAKOTA,
TENNESSEE, TEXAS, VIRGINIA, AND WEST VIRGINIA**

Any person who knowingly and with intent to defraud any insurance company or another person, files a statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact, material thereto, commits a fraudulent insurance act, which is a crime, subject to criminal prosecution and [NY: substantial] civil penalties. In LA, ME, TN, and VA, insurance benefits may also be denied.

APPLICABLE IN CALIFORNIA

For your protection, California law requires the following to appear on this form: Any person who knowingly presents a false or fraudulent claim for payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

APPLICABLE IN COLORADO

It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policy holder or claimant for the purpose of defrauding or attempting to defraud the policy holder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.

APPLICABLE IN THE DISTRICT OF COLUMBIA

Warning: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits, if false information materially related to a claim was provided by the applicant.

APPLICABLE IN FLORIDA

Pursuant to S. 817.234, Florida Statutes, any person who, with the intent to injure, defraud, or deceive any insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains any false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in S. 775.082, S. 775.083, or S. 775.084, Florida Statutes.

APPLICABLE IN HAWAII

For your protection, Hawaii law requires you to be informed that presenting a fraudulent claim for payment of a loss or benefit is a crime punishable by fines or imprisonment, or both.

APPLICABLE IN IDAHO

Any person who knowingly and with the intent to injure, defraud, or deceive any insurance company files a statement of claim containing any false, incomplete or misleading information is guilty of a felony.

APPLICABLE IN INDIANA

A person who knowingly and with intent to defraud an insurer files a statement of claim containing any false, incomplete, or misleading information commits a felony.

APPLICABLE IN KANSAS

Any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act.

APPLICABLE IN MARYLAND

Any person who knowingly or willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly or willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

APPLICABLE IN MINNESOTA

A person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime.

APPLICABLE IN NEVADA

Pursuant to NRS 686A.291, any person who knowingly and willfully files a statement of claim that contains any false, incomplete or misleading information concerning a material fact is guilty of a felony.

APPLICABLE IN NEW HAMPSHIRE

Any person who, with purpose to injure, defraud or deceive any insurance company, files a statement of claim containing any false, incomplete or misleading information is subject to prosecution and punishment for insurance fraud, as provided in RSA 638:20.

APPLICABLE IN OHIO

Any person who, with intent to defraud or knowing that he/she is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

APPLICABLE IN OKLAHOMA

WARNING: Any person who knowingly and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.

APPLICABLE IN WASHINGTON

It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

GENERAL LIABILITY INCIDENT FORM

Name of Company: CITY OF MCCOOK

Incident Information

Date of Incident: JUNE 19, 2016

Time of Incident: APPROX 6.30 PM

Location: 306 SEMINOLE DR.

Phone Number: 308-390-6998

Address: 306 SEMINOLE DRIVE

City: MCCOOK, NE, RED WILLOW State: CO Zip Code: 69001

Name of Person Reporting: JOE DERAUF

Injury

Name: _____ DOB: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Home Phone: _____ Cell/Work Phone: _____

Injury: _____

Did they seek medical care? YES or (NO) Any Fatalities: YES or (NO)

Where were they treated? _____

Property Damage

Description of property damaged: 1 STANDARD HOLLOW CORE DOOR, OAK

VENEER, DOOR KNOB, DOOR JAM & HINGES.

Estimate Value: \$ 300 - ACTUAL REPAIR COST - \$ 170 -

\$ 70. BARNETT LUMBER -

\$ 100 - CONTRACTOR TO REPAIR. ALAN WEINTZ - 308-340-9091

Claim Details I PAID MR. WEINTZ PERSONALLY ON THE DATE OF SERVICE.

What Happened: (Give as much detail as possible, include witness information if applicable):

THE CITY POLICE AND EMERGENCY MEDICAL STAFF

WERE DISPATCHED TO MY HOME FOR A WELLNESS CHECK.

MY DOORS WERE LOCKED AND I WAS ASLEEP. A

DOOR THAT IS ATTACHED TO MY KITCHEN THROUGH MY

GARAGE WAS BREACHED SO THEY COULD ENTER MY HOME.

Witness(es) Include written witness statements if applicable.

Name: Chief Marc Harpham Phone Number: 308-345-5710

Name: LAURA DERAUF Phone Number: 737-8575

Name: _____ Phone Number: _____

Name: _____ Phone Number: _____

Name: _____ Phone Number: _____

**CITY MANAGER'S REPORT
OCTOBER 17, 2016 CITY COUNCIL MEETING**

ITEM: **4E**

Receive and file the claims for the month of September 2016 as published October 7, 2016.

BACKGROUND:

Claims are presented to the Council and published each month as outline in the City Code of Ordinances.

Staff is always available to address any questions that the Council may have regarding a specific claim.

**FISCAL
IMPACT:** None.

RECOMMENDATION:

Receive and file the claims for the month of September 2016 as published October 7, 2016.

APPROVALS:



Lea Ann Doak, City Clerk

October 12, 2016

CITY OF MCCOOK
CLAIMS FOR SEPTEMBER, 2016
ABBREVIATIONS FOR LEGALS: PS - PERSONAL SERVICES; S- SUPPLIES; SC -
SERVICES & CHARGES; CO - CAPITAL OUTLAY; BT - BUDGET TRANSFERS

20/20 TECH-SC 1599.00; 4 STATE TRUCKS-S 1397.99; 7-D-S 67.90; 88 TACTICAL-SC 350.00; A&N REST.-SC 64.00; A&W FIRE EXT.-S 35.00; AMAZON-S 1536.81; AMERICAN AG LAB-SC 1059.50; AMERICANELEC-S 372.25; AMERICAN LEGAL PUB-SC 475.00; APCO, NE CH-SC 129.00; APPLIED CONNECTIVE TECH-SC 50.00; ARROW CAR WASH-S 13.28; AS CENTRAL SVC-SC 448.00; BAKER & TAYLOR-S 204.96; BANKERS TRUST-CO 301950.00; BARCO-S 2441.02, CO 18670.14; BARNETT'S-S 407.64; BARRETT'S CUSTOMS-S 125.00; BETTER HOMES & GARDENS-S 19.72; BIRCH COMM-SC 3088.36; BLACK HILLS CORP-S 1862.78; BCBS-SC 540.04; BROWN, I-SC 315.64; BSB CONST-CO 63411.49; BW TELCOM-SC 124.56; C&K-S 462.70; CAMBRIDGE TELE-SC 259.69; CARDIAC LIFE PROD-S 332.15; CARPENTER-BRELAND-S 265.00; CARQUEST-S 1108.37; CASEY'S-SC 29.94; CASH WA-S 8202.52; CENTER POINT-S 259.35; CENTRAL CITY SCALE-CO 712.00; CENTRAL HYDRAULIC-S 7145.00; CENTURY LINK-SC 893.99; CHIEF MOTEL-SC 130.00; CHIEF SUPPLY-S 165.73; CITY HEALTH INS-SC 121,538.00; CITY OF MCCOOK-PS 308710.14; CITY TRANSFER STA-SC 8.40; CITY UTILITIES 17334.91; COACH MASTERS-S 535.81; COMMON SCENTS-S 8448.79; CORNHUSKER CLEANING-S 329.90; CREATIVE PRODUCT SOURCE-SC 267.30; CROCKER, J-SC 441.72; CROCKER, T-SC 73.44; CULLIGAN (SALT)-S 38.40; D&L PEST-SC 116.00; D&S-S 909.24; DANIEL, T-SC 31.06; DANKO-S 161.73; DARLING, K-SC 140.00; DELL-SC 1932.63; DEMCO-S 186.941; DEVENY-S 2824.96; DIAMOND VOGEL-S 283.16; DOAK, L-SC 169.34; DULTMEIER-S 769.67; EAKES-S 3617.52; ED ROEHR SAFETY PROD-S 607.13; EMS-SC 3623.30; ESRI-SC 250.00; ETS CORP-SC 481.61; FASTENAL-S 1365.92; FICA-PS 15646.63; FIVE POINTS BANK-SC 1515.69; FORESTRY SUPPLIES-S 100.05; FV CO-OP-S 19970.07; FRONTIER DOOR-S 570.00; GALE GRP-S 186.61; GALLS-S 610.15; GARY'S-S 2168.00; GERHOLD-S 1349.51; GIS WORKSHOP-SC 6225.00; GLASS EXPRESS-SC 366.46; GOOGLE*SVCS-SC 279.16; GREAT PLAINS COMM-SC 357.48; HAMPTON INN-SC 207.90; HARPHAM, M-SC 180.00; HASLER-S 1000.00; HAUXWELL PUMP-S 3376.10; HAYS GRP-SC 7500.00; HENNING BROS LEASING-SC 59.00;

HEPP, J-SC 169.34; HIGH PLAINS RADIO-SC 50.00; HOBBY LOBBY-S 258.95; HODGSON, K-SC 794.80; HOLIDAY INN-SC 1079.40; IDEAL LINEN-S 266.58; INDELCO-S 385.65; INTERSTATE ALL BATTERY-S 104.31; INTERSTATE PROD-S 1071.19; ISLAND SPRINKLER-S 3007.93; J&A TRAFFIC-S 1102.34; J BAR J-SC 44140.93; JETCO-S 262.51; K&C-S 50023.76; K-C MOTOR-S 5681.76; KENZ & LESLIE-S 209.20; KIDS REFERENCE CO-S 364.48; KILDARE-S 4876.11; KNOWBUDDY RESOURCES-S 140.70; KOHL'S-S 966.24; LAWSON PRODUCTS-S 549.83; LINCOLN WINWATER WORKS-S 266.04; MAILFINANCE-SC 1890.00; MARC-S 213.45; MARRIOTT-SC 327.00; MARSDEN, T-SC 10.80; MC GAZETTE-SC 825.10; MC HUMANE SOCIETY-SC 3788.59; MPPD-SC 1963.23; MC SCHOOLS-SC 350.00; MCCOOKNET-SC 406.60; MEDC-SC 16761.05; MEDICARE-PS 4278.74; MICROMARKETING-S 2447.86; MID AM PAY PHONES-SC 40.00; MIDLANDS TOX-SC 35.00; MW LABS-SC 1028.50; MILLER & ASSOC-SC 2925.00; MOBOTREK-S 534.00; MOTOROLA-S 206.00; MOUSEL LAW-SC 3493.00; MUNICIPAL LIGHT-S 621.21; MUNICIPAL FIRE- SVC-CO 5243.00; MUNICIPAL SUPP-S 4048.90; MUTUAL OF OMAHA-SC 586.48; NE DEPT OF ENVIRO QUALITY-SC 625.00; NE DEPT OF HEALTH LABS-SC 1226.00; NE DEPT OF REVENUE-SC 18981.68; NE ENVIORN PRODUCT-S 7188.90; NE SALT & GRAIN-S 1610.25; NE TRUCK CTR-SC 2960.17; NICK'S DIST-S 2408.15; NE MACHINERY-S 640.80, CO 5056.82; NORTHERN SAFETY-S 2927.60; NPPD-SC 54585.24; NSA/POAN-SC 250.00; NSI LAB-SC 308.50; OFFICE DEPOT-S 275.39; O'KEEFE-S 1900.44; O'REILLY-S 59.90; ODEYS-S 805.98; ONE CALL CONCEPTS-SC 105.93; ORSCHELN-S 1865.11; OSAGE-S 503.69; PACHNER, J-SC 65.00; PARDE ELEC-S 1932.16; PAUL CONWAY SHIELDS-S 72.64; PHONES ETC-SC 560.00; PLAINS EQUIP GRP-S 1517.24; PLATTE VALLEY COMM-SC 1517.24; POPULAR SUBSCRIPTION SVC-S 1626.85; POTTHOFF, K-SC 169.34; QUILL-S 1376.14; RW TREAS-SC 100.00; RELIANCE BARCODE-S 202.53; SCHAMEL'S-S 1482.24; SCHMICK'S-S 3.29; SCHNEIDER, N-SC 60.00; SCHOENEMANN, M-SC 386.72; SCHOLASTIC-S 152.10; SEARS-S 560.79; SIRCHIE FINGER PRINT-SC 180.97; SW EQUIP CO-S 771.09; STERLING WEST-S 7800.00; STEVE'S ELEC-CO 2232.62; SUNSHINE FILTERS-S 185.06; SUNSHINE INDUST-S 637.72; SWANSON SIGN-SC 192.00; TASER INT'L-S 376.09; TASTE OF HOME-S 155.87; THOMPSON CO-S 2411.00; TITAN-S 177.80; TJ'S FUN CTR-SC 310.00; TRANE-S 1828.00; TREE REBATES-S 383.99; TYLER TECH-SC 633.21; U-SAVE

PHARM-S 297.24; ULTRAMAX-S 302.00; UMR-SC 182733.38; UNIQUE TECHNIQUE-S 624.00; USPS-SC 1270.57; USA BLUEBOOK-S 1087.15, CO 7060.94; USC FOUNDATION-SC 119.00; UTILITY REFUNDS-SC 520.36; VAN-DIEST-S 13483.87; VERIZON-SC1692.60; VOLZ-S 4727.66; W DESIGN-SC 8709.57; WPCI-SC 28.50; WAGNER CHEVY-S 2109.82; WAGNER FORD-S 353.45; WALMART-S 2393.13; WASTE SYSTEMS-S 48.05; WEATHERCRAFT CO-S 225.00; WEEDIN, G-SC 169.34; WEIS FIRE-S 252.78; WELLS FARGO EQUIP FINANCE-CO 36010.54, SC 127385.00; WESTERN TIRE-S 5658.17; WINDY PRAIRIE SYS-SC 3500.00; WOODS & AITKEN-SC 4173.36.

-s- Lea Ann Doak
City Clerk

Publish: October 7, 2016

CITY MANAGER'S REPORT
17 OCTOBER, 2016 CITY COUNCIL MEETING

ITEM: 4F

RECOMMENDATION:

APPROVE BID SPECIFICATIONS FOR ONE NEW 2016 OR 2017 POLICE PACKAGE OR SPECIAL SERVICES VEHICLE FOR USE BY THE POLICE DEPARTMENT

BACKGROUND:

The purchase of one (1) new Police Package or Special Service vehicle was approved in the 2016/2017 budget. Initiating the competitive bid process at this time will assure manufacturers sufficient time to place orders for the vehicle, since Police Package and Special Service vehicles are normally manufactured annually in early January of each year. The potential availability of new 2016 Police Package or Special Service vehicles makes inclusion of the 2016 vehicles in the bid process a viable option to conserve funds, while allowing new 2017 vehicles to be included in the bid process. Since the Police Department traditionally utilizes vehicles for more than 100,000 miles, the year of the vehicle selected is not an issue as long as the vehicles are new vehicles

The attached bid specifications will allow for the selection and purchase of a new Police Package or Special Service vehicle and will allow all manufacturers of Police Package and Special Service vehicles a competitive opportunity.

FISCAL IMPACT:

NONE. FUNDS ARE BUDGETED FOR PURCHASE OF THE VEHICLE

RECOMMENDATION:

APPROVED BID SPECIFICATIONS FOR ONE NEW 2016 OR 2017 POLICE PACKAGE OR SPECIAL SERVICES VEHICLE FOR USE BY THE POLICE DEPARTMENT

APPROVALS:


Isaac S. Brown, Police Chief

10-7-2016
Date


Nate Schneider, City Manager

10-11-16
Date

CITY OF McCook

BID SPECIFICATIONS

ONE (1) NEW

2016 OR 2017

POLICE PACKAGE VEHICLE
or
SPECIAL SERVICE VEHICLE

October 17, 2016

NOTICE TO BIDDERS

**ONE (1) NEW 2016 OR 2017
POLICE PACKAGE VEHICLE
or
SPECIAL SERVICE VEHICLE**

The City of McCook is accepting sealed bids for One (1) New 2016 or 2017 Police Package Vehicle or Special Service Vehicle for the Police Department. Bids will be accepted by the City Clerk at the McCook City Offices until 1:30 P.M. on November 7, 2016 and then such bids shall be publicly opened and read aloud in the City Council Chambers, McCook Municipal Center, 505 West "C" Street. Specifications and instructions to bidders are on file in the office of the City Clerk.

The Council reserves the right to reject any or all bids and to waive irregularities.

-s- Lea Ann Doak
 City Clerk
 PO Box 1059
 McCook, NE 69001

Publish: October 21 and 28 and November 4, 2016.

INSTRUCTIONS TO BIDDERS

1. Defined Terms.

Terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof.

- 1.1. Bidder - one who submits a Bid directly to the City as distinct from a sub-bidder, who submits a bid to a Bidder.
- 1.2. Issuing Office - the office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.
- 1.3. Successful Bidder - the lowest, responsible and responsive Bidder to whom the City (on the basis of the City's evaluation as hereinafter provided) makes an award.
- 1.4. Bidding Documents - includes the Advertisement or Invitation to Bid, Instructions to Bidders, and the Bid Form.

2. General.

- 2.1. One (1) new 2016 or 2017 Police Package Vehicle or Special Service Vehicle for the Police Department shall be F.O.B., McCook, Nebraska.
- 2.2. A tax exemption certificate will be furnished by the City of McCook.
- 2.3. Delivery date - within 90-days from award of bid.

3. Qualifications of Bidders.

To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit within five days after Bid opening upon the City's request detailed written evidence such as financial data, previous experience, present commitments and other such data as may be called for.

4. Interpretations and Addenda.

- 4.1. All questions about the meaning or intent of the Bidding Documents are to be directed to the Chief of Police. Interpretations or clarifications in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by the Clerk as having received the Bidding Documents. Questions received less than ten days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 4.2. Addenda may also be issued to modify the Bidding Documents as deemed advisable by the City.

5. Bid Form.

- 5.1. The Bid Form is included with the Bidding Documents.

- 5.2. All blanks on the Bid Form must be completed by printing in black ink or by typewriter.
- 5.3. The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).
- 5.4. The address and telephone number of communications regarding the Bid must be shown.

6. Submission of Bids.

Bids shall be submitted at the time and place indicated in the Advertisement for Bid and shall be enclosed in an opaque sealed envelope, marked with "*BID ON ONE (1) NEW 2016 OR 2017 POLICE PACKAGE VEHICLE OR SPECIAL SERVICE VEHICLE*", and name and address of Bidder. If the Bid is sent through the mail or other delivery system the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.

7. Modification and Withdrawal of Bids.

Bids may be modified or withdrawn by an appropriate document fully executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted any time prior to the opening of Bids.

8. Opening of Bids.

Bids will be opened and read aloud publicly in the City Council Chambers, McCook Municipal Center, 505 West "C" Street. An abstract of the amounts of the base Bids and major alternates (if any) will be made available to Bidders after the opening of Bids.

9. Award of Bid.

- 9.1. Owner reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, nonresponsive, unbalanced or conditional Bids and to reject the Bid of any Bidder if City believes that it would not be in its best interest to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by the City. The City also reserves the right to waive all informalities not involving price, time or changes in the Work and to negotiate contract terms with the Successful Bidder. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.
- 9.2. In evaluating Bids, the City will consider the qualifications of Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- 9.3. The City may conduct such investigations as the City deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders.
- 9.4. If the bid is to be awarded, it will be awarded to the Bidder whose evaluation by the City indicates that the award will be in the best interests of the City.

GENERAL SPECIFICATIONS

ONE (1) NEW 2016 OR 2017 POLICE PACKAGE VEHICLE or SPECIAL SERVICE VEHICLE

GENERAL:

It is the intent of these specifications to describe a new vehicle in sufficient detail to secure bids on comparable equipment. The vehicle desired under these specifications is for use as a police vehicle which will be operated principally on the streets of the City. The vehicle furnished under these specifications will be specially manufactured to meet all the requirements herein stated. These specifications represent the minimum qualities of the car desired, and the product furnished hereunder may exceed the specified values, providing the vehicle is compatible to the end use - both in engineering and makeup. All parts not specifically mentioned, which are necessary to provide a complete vehicle, shall be included in the bid and shall conform in strength, quality of material and workmanship to what is usually provided to the trade in general. The vehicle shall be a new, standard production model of the latest design in current production.

Any vehicle not conforming to these specifications will be rejected, and it will be the responsibility of the manufacturer to conform with the requirements unless deviations have been cited by the bidder.

INTENT:

It is the intent of the City not to be restrictive to any one manufacturer. However, the vehicle desired must meet the enclosed standards and any vehicle furnished which does not comply with the specifications will be rejected and returned to the bidder at his expense. All items appearing in the bidder's regular specifications which are in addition to these standards are assumed to be included in the bidder's proposal.

The vehicle furnished under these specifications shall be the latest model offered to the general trade, at least equal in every respect to the construction and performance characteristics shown in the manufacturer's specifications and descriptive literature for this type vehicle as manufactured and advertised for delivery in the continental United States and including all equipment normally offered and installed at the factory.

The vehicle must meet or exceed the following minimum specifications. Any additions, deletions or variations from the following specifications must be noted. These specifications shall be construed as minimum. Should the manufacturer's latest specifications exceed these, they shall be considered minimum and shall be furnished. It is also required that the bidder furnish descriptive literature and any additional specifications or information necessary to qualify the equipment he proposes to furnish.

Unless otherwise noted, all items specified must be factory-installed, inspected, tested and/or calibrated, as required, except that manufacturer's policies pertaining to dealer installation of minor accessories will be honored.

Other than where specifically noted, it is intended that the manufacturer will build the vehicle to these specifications and that the selling or servicing dealer will be required only to perform the pre-delivery service and not be required to modify, alter, exchange, assemble, install or paint various components to meet these specifications.

The vehicle shall be guaranteed to include all the latest engineering developments adopted by the company applying to transmissions, fuel injection, carburetors, engines and accessories. An

engine with oversized bores, undersized main bearings or non-standard size pins will not be acceptable under these specifications.

The vehicle shall be equipped with all legally required and manufacturer's recommended lights.

The vehicle shall comply with all current provisions of the National Traffic and Motor Vehicle Safety Act.

The bidder shall satisfy the City of McCook that he maintains a store or a branch store, with qualified servicemen and with provisions for storing a representative supply or parts for the machine offered and with provisions for securing parts from the manufacturer within a reasonable length of time.

The bidder shall supply one (1) parts book, one (1) service and repair manual, and one (1) operator's manual with the unit.

The bidder shall furnish (in writing) his guarantees and the length of the guarantees on all parts and labor for the machine.

Bidders must submit with their bid the latest printed specifications on the units they propose to furnish.

**MINIMUM SPECIFICATIONS FOR ONE (1) NEW 2016 OR 2017
POLICE PACKAGE VEHICLE
or
SPECIAL SERVICE VEHICLE**

Meets Specification - Please Indicate - (if other explain on comment line).

All items listed below are required. If there is an exception, a detailed explanation must be provided.

YES	EXCEPTION	I. <u>BODY</u>
_____	_____	<p style="text-align: center;">Factory Police Package: Required.</p> <p>A. Exterior color: Bright white, clearcoat or other factory color specified on order.</p> <p style="padding-left: 40px;">Interior color: Interior color and seat covering for white vehicle to be specified after bid has been awarded.</p>
_____	_____	B. Locks: Single key system. Three (3) set of keys required for the vehicle.
_____	_____	C. Doors: Rear passenger doors shall be equipped with lever to deactivate inside door release or electric door locks controlled from the driver's position. Package will include power windows.
_____	_____	D. Front Seats: Cloth front - bucket, 40-20-40, or 60/40 style seats. Seats shall be heavy duty construction guaranteed by manufacturer not to break down for three (3) years or 36,000 miles with heavy duty nylon cloth.
_____	_____	E. Rear Seats: Vinyl bench, if available. Seats shall be heavy duty construction guaranteed by manufacturer not to break down for three (3) years or 36,000 miles.
_____	_____	F. Headroom: A minimum of 38.6 inches of headroom shall be provided for the front seat occupants. Package shall include a removable headliner.
_____	_____	G. Air Conditioning: Best grade factory-installed air conditioner, manually controlled. To include all extra items normally included in the factory package.
_____	_____	H. Floor Coverings: Carpeted, or heavy duty rubber, both front and rear; trunk to have heavy duty mat.
_____	_____	I. Power Outlet: Required.
_____	_____	J. Windshield Wipers: Electrically operated, multiple speed, manually controlled with electric windshield washer and jets to each wiper blade. Wiper shall be of intermittent type.
_____	_____	K. Clock: To be electric. Clock in radio dial face is acceptable.

- | | | |
|--|-------|---|
| _____ | _____ | B. Transmission: Fully automatic, heavy duty, electronic four, five, or six speed, with low gear locked out, (if available). To be equipped with a factory engineered and installed oil cooler of suitable design to keep the automatic transmission fluid at an efficient temperature (if available). |
| _____ | _____ | C. Fuel Pump: May be mechanical or electric. If an electric fuel pump is installed, it must be equipped with a suppressor to prevent two-way radio interference. |
| _____ | _____ | D. Air Cleaner: to be of a dry type. |
| _____ | _____ | E. Cooling System: Heavy duty, maximum capacity radiator of a pressurized design is required, having a maximum cooling capacity adequate to provide a safe margin of cooling when operated under extreme conditions. A coolant recovery system is required. Hose clamps shall be the steel metal band or wire type, tightened by a screw. Dealer may change clamps. |
| Antifreeze to 34 degrees below zero Fahrenheit required. | | |
| _____ | _____ | F. Rear Axle Ratio: To be manufacturer's recommended ratio for this type of car. |
| _____ | _____ | G. Differential: To be equipped with heavy duty "sure-grip, positraction, traction-lok" or approved equal. |
| _____ | _____ | H. Exhaust System - to be manufacturer's recommended type for this type of vehicle. |

Comments _____

YES EXCEPTION

III. SUSPENSION SYSTEM

- | | | |
|-------|-------|--|
| _____ | _____ | A. Wheel Base: Minimum wheel base shall be 112 inches. |
| _____ | _____ | B. Suspension system: Will be heavy duty, radial tuned, equipped with heavy duty shock absorbers, front and rear, and stabilizer or sway bars suitable for high speed cornering. |
| _____ | _____ | C. Steering: Power steering required, with power steering cooler. |
| _____ | _____ | D. Steering Wheel: A tilt steering wheel of regular production model or approved deluxe model. |
| _____ | _____ | E. Brakes: Power, heavy duty fade-resistant front disc brakes, heavy duty lining rear brakes. (Disc brakes on all four wheels are acceptable, anti-lock braking system is acceptable). If equipped with anti-lock brakes, they must be designed so radio transmissions do not interfere. |
| _____ | _____ | F. Wheels: Five 17 or 18 inch size only with a 6 ½ inch minimum rim width designed for police work. Vehicle shall be factory equipped |

with four wheel covers, if available. Hubcaps or aftermarket wheel covers not acceptable.

- _____
- G. Tires: Five blackwall tubeless radial tires, with speed rating of H, certified for high speed police pursuit driving to be furnished with each vehicle. To be manufactured by the following companies - General, Goodyear, Goodrich, or "Non-recalled" Firestone. All-season tires desired if they can meet these specifications (Goodyear Eagle GT+4 or equal).

Comments _____

YES EXCEPTION IV. ELECTRICAL SYSTEM

The vehicle's electrical system shall be so designed as to minimize radiation and interference with and from 2-way radio systems.

- _____
- A. Ignition System: 12 volt, solid state, designed to provide maximum radio shielding to prevent interference with reception of two-way mobile radio installed in the car, also shielding to prevent interference from two-way mobile radio to the vehicle's electronic system. The wiring harness shall be high tension resistor wiring, high-heat resistance, silicone, high dielectric strength insulation which will operate continuously at 450 degrees F temperature.

- _____
- B. Battery: 12 volt, heavy duty, manufacturer's maximum cold cranking power battery. A terminal post connected to the positive battery cable and capable of carrying 45 amperes shall be provided in the engine compartment. This terminal shall be in a location easily accessible from the top side of the engine compartment and near the battery. If this is not available, the positive cable may be of the type that attaches to battery posts by means of a bolt and nut. (Battery cable spring-loaded or drive-on devices are not acceptable).

- _____
- C. Alternator: Minimum 220 ampere. Minimum capacity SAE output at engine curb idle speed not less than 45 amperes. Radio noise suppression devices where applicable. Alternator shall be of the type that parts and repairs are available at authorized dealers of the make of vehicle furnished.

- _____
- D. Voltage Regulator: Fully transistorized and sealed.

- _____
- E. Spark Plugs: Factory recommended. (Double gap spark plugs will not be acceptable).

- _____
- F. Bonding and Grounding: All components of the vehicle necessary to prevent interference with reception of 2-way radio installed in the car shall be adequately bonded and grounded.

- _____
- G. Auxiliary battery to allow power of owner installed accessory equipment, if available.

Comments _____

YES	EXCEPTION	V. <u>SPECIAL FEATURES</u>
_____	_____	A. Speedometer: Calibrated and properly geared for accuracy within two (2) miles throughout its entire speed range when installed and operated in the vehicle.
_____	_____	B. Electronic speed control.
_____	_____	C. Roof wiring - hole in roof, if available. At minimum must contain two #10 gauge, eight #12 gauge wires. Hole is 1-1/8", located approximately 29" from front header on roof and 6" inboard from the passenger side door; 24" of harness with grommet coiled and taped on roof exterior and 48" coiled on floor at RH kick panel; or contains two #10 gauge wires. Three feet of extra wire coiled under instrument panel and two feet coiled outside roof. Roof wiring is extended through the right side of roof hole, secured and sealed with a rubber grommet.
_____	_____	D. Courtesy lamp disable.
_____	_____	E. Auxiliary Fuse Block. Three circuits direct battery feed and three circuits ignition controlled. Circuits located under instrument panel. These circuits are connected to RPO police accessory feed wires and contain: -Three fuse holders, direct battery feed from 50-amp maxi fuse. -Three fuse holders, ignition controlled from 30-amp maxi fuse.

Comments _____

YES	EXCEPTION	VI. <u>MISCELLANEOUS</u>
_____	_____	A. The standard complement of tools, standard jack and wheel wrench, and a full size spare wheel shall be provided, together with facilities for storage.
_____	_____	B. Each unit shall be delivered to the purchaser with all wheels balanced and the front end aligned.
_____	_____	C. It shall be the responsibility of the manufacturer supplying the vehicle to maintain an adequate stock of all regular and special parts within the State of Nebraska to meet the continuing service and repair parts needs of the department without undue delay.
_____	_____	D. The manufacturer's standard warranty shall be stated in the bid. A minimum warranty of three (3) years, 36,000 miles, or the manufacturer's standard warranty, whichever is greater, is required.

A minimum of six (6) years, 100,000 miles rust warranty or manufacturer's standard corrosion warranty is required.

- E. The bidder shall submit a hourly rate for labor costs for all repairs to the vehicle by the bidder not covered by the manufacturers standard warranty for a minimum of five years or 100,000 miles, whichever occurs first.

Comments _____

NOTICE: ANY DEVIATIONS FROM THESE SPECIFICATIONS MUST BE SEPARATELY LISTED. OTHERWISE, IT WILL BE ASSUMED THAT THE BID MEETS THE SPECIFICATIONS IN ALL RESPECTS.

BID FORM

NOTE: This bid form must be accompanied by a complete set of specifications and a manufacturer's pamphlet on the vehicle proposed.

TOTAL PRICE

ONE (1) NEW 2016 OR 2017
POLICE PACKAGE VEHICLE

\$ _____

ONE (1) NEW 2016 OR 2017
SPECIAL SERVICE VEHICLE

\$ _____

HOURLY RATE FOR LABOR COSTS
OVER THE STANDARD WARRANTY

\$ _____

Delivery Date: _____

THE CITY OF McCook reserves the right to reject any or all bids, to waive any informality in bids, to accept in whole or in part any bid, and to exercise its own judgement as to the best proposal received.

**CONTACT PERSON: Ike Brown, Chief of Police
at 308/345-3450**

This bid submitted by _____

Signed _____

Title _____

Date _____

DATE

NOTICE OF AWARD

TO:

PROJECT: One (1) New 2016 or 2017 Police Package Vehicle OR
Special Services Vehicle
City of McCook Police Department

The City has considered the BID submitted by you for the above described project in response to its Advertisement for Bids and Information for Bidders dated October 17, 2016.

You are hereby notified that your BID has been accepted in the amount of \$_____ each for one (1) _____ Police Package or Special Service vehicle, with a delivery date of _____.

Please acknowledge receipt of this NOTICE OF AWARD by return mail to the City.

Dated this _____ day of _____, 2016.

CITY OF MCCOOK

Lea Ann Doak
City Clerk

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged this _____ day of _____, 2016.

(Authorized Signature)

(Title)

Specs sent to:

Wagner Ford-Mercury, Inc.
PO Box 750
McCook NE 69001

Deveny Motors
401 East "B" Street
McCook NE 69001

Janssen & Sons Ford
601 West 4th Avenue
Holdrege NE 68939

Wagner Chevrolet
PO Box 710
McCook NE 69001

Bill Summers Ford
I-80 & US Hwy 83
North Platte NE 69101

Jansen-Kool Honda
PO Box 279
McCook NE 69001

Janssen Chrysler Jeep Dodge
3101 S Jeffers
North Platte NE 69101

Gene Steffy Chrysler Jeep Dodge Ram
2545 East 23rd Avenue South
Fremont NE 68025-2463

**CITY MANAGER'S REPORT
OCTOBER 17, 2016 CITY COUNCIL MEETING**

ITEM: 4G

APPROVE CHANGE ORDER NO. 1 FOR THE NEW 6 PLACE HANGAR AT THE MCCOOK BEN NELSON REGIONAL AIRPORT IN THE AMOUNT OF \$2805.20.

BACKGROUND

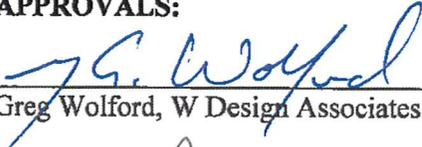
This change order adds 12 concrete pads to the individual walk doors on the new hangar. See the attached drawing. We have submitted this change order as a proposal to the NDA and FAA and they have indicated that they will approve it as submitted. With that approval, the FAA will pay 90%, leaving 10% or \$280.52 as McCook's share.

FISCAL IMPACT: None.

RECOMMENDATION:

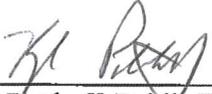
APPROVE CHANGE ORDER NO. 1 FOR THE NEW 6 PLACE HANGAR AT THE MCCOOK BEN NELSON REGIONAL AIRPORT IN THE AMOUNT OF \$2805.20.

APPROVALS:



Greg Wolford, W Design Associates

Date: 12 Oct 16



Kyle Potthoff, Public Works Director

Date: 10/13/16



Nate Schneider, City Manager

Date: 10/12/16

CHANGE
ORDER
WDA DOCUMENT CO1

OWNER
ARCHITECT
CONTRACTOR
OTHER



WDA

W DESIGN ASSOCIATES
Consulting Engineers and Architects

McCook, Nebraska Hastings, Nebraska
 (308) 345-2370 (402) 483-2377
 Fax (308) 345-2371 (402) 483-2378

PROJECT: City of McCook
name, address P.O. Box 1059
McCook, NE 69001

TO CONTRACTOR: Hackel Construction, Inc.
name, address 314 S 14th St., Ste 102
Ord, NE 68862

CHANGE ORDER NUMBER: _____ 1

DATE: _____ 7-Oct-16

ARCHITECT'S PROJECT NO: _____ 3-31-0052-14

CONTRACT FOR: New 6 Place Hangar
McCook Ben Nelson Regional Airport

The contract is changed as follows:

No.	ITEM DESCRIPTION	ADD	DEDUCT
1.	Contract Item 3. P-154 Subbase Course - 40 Sq. Yds. @ \$4.68	\$187.20	\$0.00
2.	Contract Item 7. P-501 6" Thick Concrete Taxiway Approach - 40 Sq. Yds. @ \$65.45	\$2,618.00	\$0.00
3.		\$0.00	\$0.00
4.		\$0.00	\$0.00
5.		\$0.00	\$0.00
SUBTOTAL		\$2,805.20	\$0.00
Profit and Overhead			
TOTAL		\$2,805.20	

Not valid until signed by the Owner, Architect and Contractor

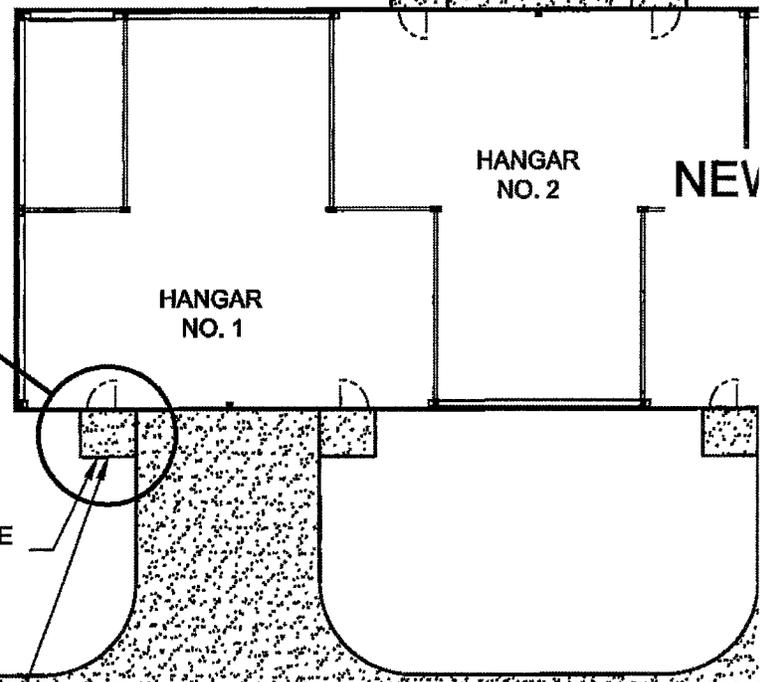
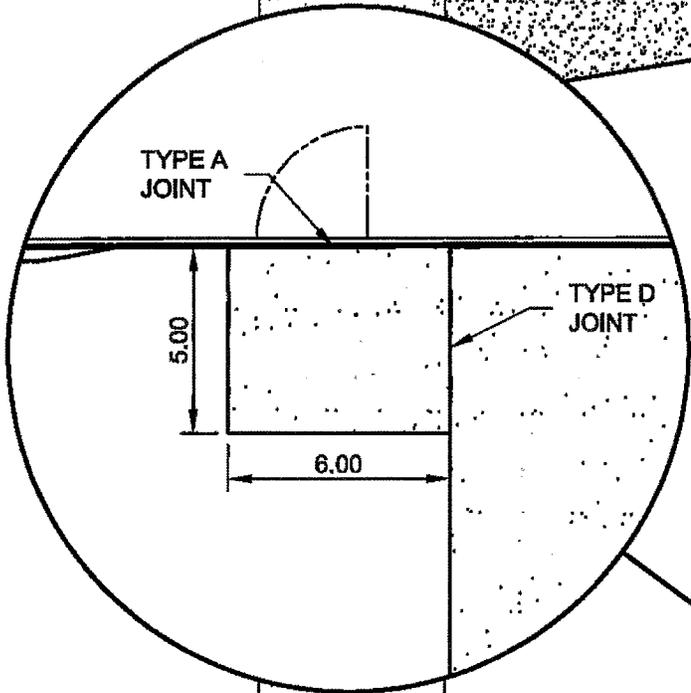
	Increased	Decreased	Total
The original Contract Sum was			\$568,682.44
Net change by previously authorized Change Orders	\$0.00	\$0.00	\$0.00
The Contract Sum prior to this Change Order was			\$568,682.44
The Contract Sum will be increased or decreased by this Change Order in the amount of	\$2,805.20	\$0.00	\$2,805.20
The new Contract Sum including this Change Order will be			\$571,487.64
The Contract Time will be changed by:			(3) DAYS
The date of Substantial Completion as of the date of this Change Order therefore is			NA

W Design Associates ARCHITECT	Hackel Construction, Inc. CONTRACTOR	City of McCook OWNER
P.O. BOX 99 address	314 S 14th St., Ste 102 address	P.O. Box 1059 address
McCook, NE 69001	Ord, NE 68862	McCook, NE 69001
BY 12 Oct 16	BY _____	BY _____
DATE	DATE	DATE

W DESIGN ASSOCIATES

CO1

McCOOK BEN



BUILD 3.33 SQ.YDS.
OF 6" THICK CONCRETE
HANGAR APPROACH.
12 THUS

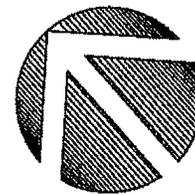
INSTALL 3.33 SQ.YDS.
OF 4" P-154 SUBBASE
COURSE. 12 THUS

This bar is one inch long on original drawing.

If not one inch on this sheet, adjust scales accordingly

WDA W DESIGN ASSOCIATES
CONSULTING ENGINEERS AND ARCHITECTS
McCOOK, NEBRASKA 68001
HASTINGS, NEBRASKA 68901

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NORTH

CHANG

SCALE: 1" = 20'-0"

**CITY MANAGER'S REPORT
OCTOBER 17, 2016 CITY COUNCIL MEETING**

5A

ITEM NO. ___ Approve, under suspension of the rules, Ordinance No. 2016-~~2944~~, amending the parameters bond ordinance relating to the authorization of up to \$10,000,000 in aggregate principal amount of Combined Utilities Revenue Refunding Bonds, Series 2016, of the City of McCook Nebraska.

BACKGROUND:

At the September 19, 2016 McCook City Council meeting, a parameters bond ordinance was passed that established the basic structure and requirements for the refunding of outstanding SRF loans through the issuance of new bonds. Since that last meeting, Brad Slaughter of Ameritas, Jenny Blankenship and Owen Gerard of PFM and bond council Steve Likes (bond counsel) of Kutak Rock, along with Staff, have been finalizing the structure of the preliminary official statement for our interview with Standard and Poor's. The interview has been completed and a bond rating will be issued shortly. As part of the process, Mr. Likes has recommended that we amend the parameters ordinance in order to ensure the language matches the final document.

Most of the changes are routine. There were some important modifications. The updated ordinance no longer has an acceleration clause should default occur. Instead, an 'Events of Default' Section has been added that spells out the steps that would occur should there be a failure on the part of the City to follow through on the terms. Also, additional provisions emphasizing the use of debt service reserve funds to fund the debt service fund in order to pay principal amounts on the bonds have been added to the ordinance.

RECOMMENDATIONS:

ITEM NO. ___ Approve, under suspension of the rules, Ordinance No. 2016-~~2944~~, amending the parameters bond ordinance relating to the authorization of up to \$10,000,000 in aggregate principal amount of Combined Utilities Revenue Refunding Bonds, Series 2016, of the City of McCook Nebraska.

APPROVALS:



Nathan A. Schneider, City Manager

October 11, 2016



Lea Ann Doak, City Clerk

October 11, 2016

~~September 19,~~October 17, 2016
McCook, Nebraska

The Mayor and City Council (the “City Council”) of the City of McCook, Nebraska (the “City”) met in open and general session at 6:30 p.m. on Monday, ~~September 19,~~October 17, 2016 in the City Council Chambers in the McCook Municipal Center, located at 505 West C Street, McCook, Nebraska. Advance publicized notice of such meeting was given in strict accordance with the provisions of Article 14, Chapter 84, Reissue Revised Statutes of Nebraska, as amended (the “Open Meetings Act”), and set forth (a) the time, date, and place of such meeting, (b) that such meeting would be open to the attendance of the public and (c) that an agenda of then known subjects to be taken up at such meeting could be obtained from the office of the City Clerk (the “City Clerk”). A copy of said advance publicized notice was ordered annexed to the minutes of this meeting as Attachment 1. Advance notice of this meeting was simultaneously given to all members of the City Council, and a copy of their acknowledgment of receipt of such notice is attached to these minutes as Attachment 2. Availability of the agenda was communicated in the publicized notice and in the notice to the members of the City Council of this meeting. Additionally, reasonable efforts were made to provide advance notification of the meeting to all news media requesting the same of the time, date and place of the meeting.

Mayor _____ presided, and the City Clerk, _____, recorded the proceedings. The following Council Members were present: _____
_____.

The following Council Members were absent: _____. A quorum being present and the meeting duly convened, the following proceedings were had and done.

The Mayor publicly stated to all in attendance that a current copy of the Open Meetings Act was available for review and indicated the location of such copy in the room where the meeting was

being held. All proceedings of the City Council were taken while the convened meeting was open to the attendance of the public.

* * * * *

(Other Proceedings)

* * * * *

Council Member _____ introduced and moved the adoption of an ordinance entitled:

AN ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF MCCOOK, NEBRASKA OF ITS COMBINED UTILITIES REVENUE REFUNDING BONDS, IN ONE OR MORE SERIES AND IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$10,000,000; PRESCRIBING THE FORM AND DETAILS OF THE BONDS AND THE COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AUTHORIZING CERTAIN OFFICERS TO DETERMINE THE PRINCIPAL AMOUNT, THE MATURITIES, THE INTEREST RATES, THE REDEMPTION PROVISIONS, THE FINANCIAL COVENANTS AND OTHER TERMS AND PROVISIONS RELATING TO THE BONDS AND TO ENTER INTO A CONTRACT ON BEHALF OF THE CITY WITH THE PURCHASER OF SAID BONDS; PLEDGING THE REVENUES OF THE CITY'S SEWER, WATER AND SOLID WASTE COLLECTION SYSTEMS TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS; DESIGNATING THE BONDS AS QUALIFIED TAX-EXEMPT OBLIGATIONS; ADOPTING CERTAIN POST ISSUANCE TAX COMPLIANCE AND DISCLOSURE POLICIES AND PROCEDURES WITH RESPECT TO THE BONDS; AUTHORIZING THE AMENDMENT OF A LOAN AGREEMENT WITH THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY; PROVIDING FOR THE PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM; REPEALING ORDINANCE NO. _____ OF THE CITY; AND AUTHORIZING CERTAIN ACTIONS AND DOCUMENTS AND PRESCRIBING OTHER MATTERS RELATING THERETO

Said Ordinance, the full text of which is attached hereto as Attachment 3, was designated as Ordinance No. _____, and the title thereof was approved.

Following the reading of the title of Ordinance No. _____, Council Member _____ moved that the statutory rule requiring that ordinances be read by title on three different days be dispensed with so that Ordinance No. _____ might be introduced, read by

title and then moved for final passage on the same day, without the same being read in full, which motion was seconded by Council Member _____. The yeas and nays were called and the vote was as follows: "YEA": _____

_____;

"NAY": _____. Absent and/or not voting: _____.

The motion to suspend the statutory rule, having been agreed upon by three-fourths (3/4) of the Members of the City Council present and acting, was by the Mayor declared passed and adopted.

Council Member _____ then moved that Ordinance No. _____ be passed, which motion was seconded by Council Member _____. The Mayor then stated, "The question is, shall Ordinance No. _____ be passed and adopted?" The yeas and nays were called, the vote being as follows: "YEA": _____

_____;

"NAY": _____. Absent and not voting: _____.

Having been agreed upon by a majority of all of the Members of the City Council present and ac, the Mayor declared Ordinance No. _____ passed and adopted. In the presence of the City Council, the Mayor signed and approved Ordinance No. _____, and the City Clerk attested its passage and approval and affixed the City Clerk's signature thereto.

* * * * *

(Other Proceedings)

* * * * *

Motion for adjournment and meeting adjourned.

Mayor

ATTEST:

City Clerk

ATTACHMENT 1

AFFIDAVIT OF PUBLICATION OF NOTICE OF MEETING

[To be attached and include Notice of Meeting]

ATTACHMENT 2

**ACKNOWLEDGMENT OF RECEIPT OF
NOTICE OF MEETING**

The undersigned members of the City Council of the City of McCook, Nebraska, acknowledge receipt of advance notice of a meeting of said body, and the agenda for such meeting, held at 6:30 p.m. on Monday, ~~September 19,~~October 17, 2016 at the City Council Chambers in the McCook Municipal Center, located at 505 West C Street in McCook, Nebraska.

Dated this ~~19~~17th day of ~~September~~October, 2016.

ATTACHMENT 3

Bond Ordinance

CITY OF MCCOOK, NEBRASKA

ORDINANCE NO. ____

PASSED ~~SEPTEMBER 19,~~OCTOBER 17, 2016

Authorizing

Not to Exceed
\$10,000,000
City of McCook, Nebraska
Combined Utilities Revenue Refunding Bonds
Series 2016

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AN ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF MCCOOK, NEBRASKA OF ITS COMBINED UTILITIES REVENUE REFUNDING BONDS, IN ONE OR MORE SERIES AND IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$10,000,000; PRESCRIBING THE FORM AND DETAILS OF THE BONDS AND THE COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AUTHORIZING CERTAIN OFFICERS TO DETERMINE THE PRINCIPAL AMOUNT, THE MATURITIES, THE INTEREST RATES, THE REDEMPTION PROVISIONS, THE FINANCIAL COVENANTS AND OTHER TERMS AND PROVISIONS RELATING TO THE BONDS AND TO ENTER INTO A CONTRACT ON BEHALF OF THE CITY WITH THE PURCHASER OF SAID BONDS; PLEDGING THE REVENUES OF THE CITY'S SEWER, WATER AND SOLID WASTE COLLECTION SYSTEMS TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS; DESIGNATING THE BONDS AS QUALIFIED TAX-EXEMPT OBLIGATIONS; ADOPTING CERTAIN POST ISSUANCE TAX COMPLIANCE AND DISCLOSURE POLICIES AND PROCEDURES WITH RESPECT TO THE BONDS; AUTHORIZING THE AMENDMENT OF A LOAN AGREEMENT WITH THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY; PROVIDING FOR THE PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM; REPEALING ORDINANCE NO. _____ OF THE CITY; AND AUTHORIZING CERTAIN ACTIONS AND DOCUMENTS AND PRESCRIBING OTHER MATTERS RELATING THERETO

WHEREAS, The City of McCook, Nebraska (the "**Issuer**"), is a political subdivision and city of the first class duly organized and existing under the laws of the State of Nebraska (the "**State**");

WHEREAS, The Issuer owns and operates a revenue-producing sanitary sewer plant and system, a revenue-producing water distribution system and a revenue-producing solid waste collection system serving the Issuer and its inhabitants within the Issuer's service area (collectively, the "**Systems**," as hereinafter more fully defined); and

WHEREAS, The Issuer has previously entered into a loan contract with the Nebraska Department of Environmental Quality ("**NDEQ**") dated February 10, 2000 in the original principal amount not to exceed ~~\$1,750,000~~1,903,003 to pay the costs of certain additions and improvements to the Issuer's Sewer System (the "**2000 NDEQ Sewer Note**"), of which \$127,129.48 is presently outstanding; and

WHEREAS, The Issuer has previously entered into a loan contract with NDEQ dated February 14, 2005 in the original principal amount not to exceed \$9,922,000, for the purpose of financing the costs of constructing certain additions and improvements to the Issuer's Water system (the "**2005 NDEQ Water Note**"), of which \$6,734,479.28 is presently outstanding; and

WHEREAS, The Issuer has previously entered into a loan contract with NDEQ dated April 5, 2005 in the original principal amount of \$4,200,000, of which \$3,800,000 was for the purpose of

financing the costs of certain additions and improvements to the Issuer's Sewer System and \$400,000 was for the purpose of financing the costs of constructing certain additions and improvements to the Issuer's Water System (the "2005 NDEQ Sewer/Water Note" and together with the 2000 NDEQ Sewer Note and the 2005 NDEQ Water Note, the "NDEQ Notes" or the "Prior Obligations"), of which \$2,154,772.67 is presently outstanding.

WHEREAS, Since the issuance of the NDEQ Notes, the rates of interest available in the markets have declined such that the Issuer can effect a savings in interest costs by providing for the prepayment of the NDEQ Notes through the issuance of its combined utilities revenue refunding bonds pursuant to Sections 10-142 and 18-1803 through 18-1805 Reissue Revised Statutes of Nebraska, as amended (collectively, the "Act"); and

WHEREAS, The NDEQ Notes are subject to prepayment at any time at a price equal to the outstanding principal amount, plus accrued interest on such principal amount to the date of redemption; and

WHEREAS, The Issuer has on hand no debt service or other sinking fund monies for the payment of principal and interest on the NDEQ Notes other than monies, if any, which are to be deposited in accordance with Section 5.02 hereof; and

WHEREAS, To provide funds for the prepayment of the NDEQ Notes, it is necessary and advisable that the Issuer issue its combined utilities revenue refunding bonds in accordance with the provisions of the Act, which bonds will be payable from the revenues of the Systems; and

WHEREAS, In connection with the issuance of such refunding bonds, it is necessary that the Issuer enter into an amendment with NDEQ regarding a loan contract April 9, 2014 in the original principal amount not to exceed ~~\$2,086,810~~, 1,320,072, originally entered into for the purpose of financing the costs of constructing certain additions and improvements to the Issuer's Water system (the "2014 NDEQ Water Note"), of which \$1,210,524.62 is presently outstanding; and

WHEREAS, All conditions, acts and things required by law to exist or to be done precedent to the issuance of bonds pursuant to the Act do exist and have been done as required by law.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MCCOOK, NEBRASKA, AS FOLLOWS:

ARTICLE I

DEFINITIONS

In addition to words and terms defined elsewhere herein, the following capitalized words and terms as used in this Ordinance shall have the following meanings:

"Act" means Sections 18-1803 through 18-1805 and Section 10-142 of the Reissue Revised Statutes of Nebraska, as amended.

“*Authorized Officer*” means the Mayor, the City Clerk, the City Treasurer or any individual authorized to act on behalf of any such officer.

“*Bond Counsel*” means Kutak Rock LLP, Omaha, Nebraska, or other attorney or firm of attorneys with a nationally recognized standing in the field of municipal bond financing selected by the Issuer.

“*Bondowner*” or “*Registered Owner*” when used with respect to any Bond means the Person in whose name such Bond is registered on the Bond Register.

“*Bond Payment Date*” means any date on which principal of or interest on any Bond is payable at the Maturity thereof or on any Interest Payment Date.

“*Bond Purchase Agreement*” means the Bond Purchase Agreement between the Issuer and the Original Purchaser relating to the purchase and sale of the Bonds.

“*Bond Register*” means the books for the registration, transfer and exchange of Bonds kept at the office of the Paying Agent.

“*Bonds*” means the Issuer’s Combined Utilities Revenue Refunding Bonds, Series 2016, in the original aggregate principal amount of not to exceed \$10,000,000, authorized to be issued pursuant to this Ordinance.

“*Business Day*” means a day other than a Saturday, Sunday or holiday on which the Paying Agent is scheduled in the normal course of its operations to be open to the public for conduct of its operations.

“*Cede & Co.*” means Cede & Co., as nominee name of The Depository Trust Company, New York, New York.

“*City Council*” means the Mayor and Council Members who governs the actions of the Issuer.

“*Code*” means the Internal Revenue Code of 1986, as amended, and the applicable regulations of the Treasury Department proposed or promulgated thereunder.

“*Consultant*” means an independent financial advisor, engineer or engineering firm, having a favorable reputation for skill and experience in the construction, financing and operation of public utilities and the preparation of management studies and financial feasibility studies in connection therewith, selected by the Issuer for the purpose of carrying out the duties imposed on the Consultant by this Ordinance.

“*Debt Service Fund*” means the fund by that name created by Section 5.01 hereof.

“*Debt Service Requirements*” means the aggregate principal payments (whether at maturity or pursuant to scheduled mandatory sinking fund redemption requirements) and interest payments on all System Revenue Bonds for the period of time for which calculated; provided, however, that for purposes of calculating such amount, principal and interest shall be excluded from the

determination of Debt Service Requirements to the extent that such principal or interest is payable from amounts released from the Debt Service Reserve Fund as provided herein or deposited in trust, escrowed or otherwise set aside for the payment thereof with the Paying Agent or other commercial bank or trust company having full trust powers.

“*Debt Service Reserve Fund*” means the fund by that name created by Section 5.01 hereof.

“*Debt Service Reserve Requirement*” means the amount on the date of original issuance and delivery of the Bonds equal to or less than the least of (i) 10% of the stated principal amount of the Bonds, (ii) the maximum Debt Service Requirements for the Bonds during any fiscal year, or (iii) 125% of the average annual Debt Service Requirements for the Bonds over the term of the Bonds, subject to adjustment as described herein. The initial Debt Service Reserve Requirement for the Bonds shall be determined in accordance with Section 2.12 herein.

“*Defaulted Interest*” means interest on any Bond that is payable but not paid on any Interest Payment Date.

“*Defeasance Obligations*” means any of the following obligations:

(a) United States Government Obligations that are not subject to redemption in advance of their maturity dates; or

(b) obligations of any state or political subdivision of any state the interest on which is excluded from gross income for federal income tax purposes and which meet the following conditions:

(i) the obligations are (A) not subject to redemption prior to maturity or (B) the trustee for such obligations has been given irrevocable instructions concerning their calling and redemption and the issuer of such obligations has covenanted not to redeem such obligations other than as set forth in such instructions;

(ii) the obligations are secured by cash or United States Government Obligations that may be applied only to principal of, premium, if any, and interest payments on such obligations;

(iii) such cash and the principal of and interest on such United States Government Obligations serving as security for the obligations, plus any cash in the escrow fund, are sufficient to meet the liabilities of the obligations;

(iv) such cash and United States Government Obligations serving as security for the obligations are held in an escrow fund by an escrow agent or a trustee irrevocably in trust;

(v) such cash and United States Government Obligations serving as security for the obligations are not available to satisfy any other claims, including those against the trustee or escrow agent; and

(vi) the obligations are rated in at least the second highest rating category by Moody's Investors Service, Inc. (presently "Aa") or Standard & Poor's Ratings Group (presently "AA").

"Expenses" means all reasonable and necessary expenses of operation, maintenance and repair of the Systems and keeping the Systems in good repair and working order (other than interest paid on System Revenue Bonds and depreciation and amortization charges during the period of determination), determined in accordance with generally accepted accounting principles, including, without limiting the generality of the foregoing, current maintenance charges, expenses of reasonable upkeep and repairs, salaries, wages, costs of materials and supplies, Paying Agent fees and expenses, annual audits, periodic Consultant's reports, properly allocated share of charges for insurance, the cost of purchased water, gas and power, if any, obligations (other than for borrowed money or for rents payable under capital leases) incurred in the ordinary course of business, liabilities incurred by endorsement for collection or deposit of checks or drafts received in the ordinary course of business, short-term obligations incurred and payable within a particular fiscal year, other obligations or indebtedness incurred for the purpose of leasing (pursuant to a true or operating lease) equipment, fixtures, inventory or other personal property, and all other expenses incident to the operation of the Systems, but shall exclude all general administrative expenses of the Issuer not related to the operation of the Systems.

"Insurance Consultant" means an individual or firm selected by the Issuer qualified to survey risks and to recommend insurance coverage for entities engaged in operations similar to those of the Systems and having a favorable reputation for skill and experience in making such surveys and recommendations.

"Interest Payment Date" means such dates as determined by an Authorized Officer in accordance with Section 2.12 hereof, until maturity or earlier redemption, or any other date on which interest shall be paid.

"Maturity" when used with respect to any Bond means the date on which the principal of such Bond becomes due and payable as therein and herein provided, whether at the Stated Maturity thereof or call for optional or mandatory redemption or otherwise.

"Maximum Annual Debt Service" means the maximum amount of Debt Service Requirements as computed for the then current or any future fiscal year.

"NDEQ Notes" has the meaning set forth in the recitals hereto, but does not include the 2014 NDEQ Water Note.

"Net Revenues Available for Debt Service" means, for the period of determination, all Revenues less all Expenses as determined in accordance with generally accepted accounting principles.

"Operation and Maintenance Fund" means the fund by that name created by Section 5.01 hereof.

"Ordinance" means this Ordinance as from time to time amended in accordance with the terms hereof.

“*Original Purchaser*” means Ameritas Investment Corp., the original purchaser of the Bonds.

“*Outstanding*” means, when used with reference to Bonds, as of any particular date, all Bonds theretofore issued and delivered hereunder, except the following Bonds:

- (a) Bonds theretofore cancelled by the Paying Agent or delivered to the Paying Agent for cancellation;
- (b) Bonds deemed to be paid in accordance with the provisions of Article XI hereof; and
- (c) Bonds in exchange for or in lieu of which other Bonds have been registered and delivered hereunder.

“*Parity Bonds*” means the 2014 NDEQ Water Note and any parity bonds or other long-term obligations payable out of the net income and revenues of the Systems hereafter issued or incurred in accordance with the provisions of this Ordinance and standing on a parity and equality with the Bonds with respect to the payment of principal and interest out of the net income and Revenues of the Systems, so long as any such bonds remain outstanding and unpaid or until provision is made for the payment and defeasance of such bonds.

“*Parity Ordinance*” means the ordinances under which any Parity Bonds are hereafter issued.

“*Participants*” means those financial institutions for which the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

“*Paying Agent*” means such financial institution as determined by an Authorized Officer in accordance with Section 2.12 hereof, and its successors and assigns.

“*Permitted Investments*” means any securities and obligations permitted under the laws, statues and Constitution of the State for investment of the Issuer’s moneys held in the funds referred to in Section 5.01 hereof.

“*Person*” means any natural person, corporation, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof or other public body.

“*Prior Obligations*” has the meaning set forth in the recitals hereto.

“*Project Fund*” means the fund by that name created by Section 5.01 hereof.

“*Record Date*” for the interest payable on any Interest Payment Date means the fifteenth day (whether or not a Business Day) immediately preceding each Interest Payment Date.

“*Redemption Date*,” when used with respect to any Bond to be redeemed, means the date fixed for such redemption pursuant to the terms of this Ordinance; and when used with respect to the NDEQ Notes, means the date of delivery of the Bonds.

“*Redemption Price*,” when used with respect to any Bond to be redeemed, means the price at which such Bond is to be redeemed pursuant to the terms of this Ordinance, including the applicable redemption premium, if any, but excluding installments of interest whose Stated Maturity is on or before the Redemption Date.

“*Replacement Bonds*” means Bonds issued to the beneficial owners of the Bonds in accordance with Section 2.09(b) hereof.

“*Revenue Fund*” means the fund by that name created by Section 5.01 hereof.

“*Revenues*” means all income and revenues derived from the operation of the Systems, including investment and rental income, net proceeds from business interruption insurance (if any) the principal of gifts, bequests, contributions, grants and donations available to pay debt service of System Revenue Bonds and actually received during such period, and any amounts deposited in escrow in connection with the acquisition, construction, remodeling, renovation and equipping of facilities to be applied during the period of determination to pay interest on System Revenue Bonds, but excluding any profits or losses on the early extinguishment of debt or on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets, and also excluding the principal of gifts, bequests, contributions, grants and donations which are specifically restricted by the donor, testator or grantor to a particular purpose which is inconsistent with their use for the payment of debt service on System Revenue Bonds.

“*Securities Depository*” means, initially, The Depository Trust Company, New York, New York, and its successors and assigns.

“*Special Record Date*” means the date fixed by the Paying Agent pursuant to Section 2.04 hereof for the payment of Defaulted Interest.

“*State*” means the State of Nebraska.

“*Stated Maturity*,” when used with respect to any Bond or any installment of interest thereon, means the date specified in such Bond and this Ordinance as the fixed date on which the principal of such Bond or such installment of interest is due and payable.

“*Surplus Fund*” means the fund by that name created by Section 5.01 hereof.

“*System*” or “*Systems*” means, collectively, the sanitary sewer system of the Issuer presently serving the sewer users (the “*Sewer System*”), the water distribution system of the Issuer presently serving the water users (the “*Water System*”), and the solid waste collection system of the Issuer presently serving the solid waste disposers (the “*Solid Waste System*”), including, respectively, the plants and all appurtenances thereto, together with all extensions, improvements and repairs thereto hereafter made or acquired by the Issuer.

“*System Revenue Bonds*” means, collectively, the Bonds, the Parity Bonds and all other revenue bonds which are payable out of, or secured by an interest in, the income and Revenues derived from the operation of the Systems.

“*United States Government Obligations*” means bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the principal of and interest on which are fully and unconditionally guaranteed as to full and timely payment by, the United States of America, including evidences of a direct ownership interest in future interest or principal payments on obligations issued or guaranteed by the United States of America (including the interest component of obligations of the Resolution Funding Corporation), or securities which represent an undivided interest in such obligations, which obligations are rated in the highest rating category by a nationally recognized rating service, and such obligations are held in a custodial or trust account for the benefit of the Issuer.

ARTICLE II

AUTHORIZATION OF BONDS

Section 2.01. Authorization of Bonds. At such time as the present value savings to the Issuer resulting from the issuance of the Bonds herein authorized would equal or exceed 4% of the principal amount of each of the Prior Obligations secured by and payable from the Water System Revenues and the Prior Obligations secured by and payable from the Sewer System Revenues, the Issuer is authorized and directed to issue one or more series of Bonds, designated “Combined Utilities Revenue Refunding Bonds, Series 2016”, with such other designations as may be appropriate, in an aggregate principal amount not to exceed \$10,000,000, for the purpose of providing funds to redeem and prepay the Prior Obligations.

Section 2.02. Description of Bonds. The Bonds shall consist of fully registered bonds without coupons, numbered from R-1 upward, with such other designation as the Authorized Officers, or each individually, shall deem appropriate, in denominations of \$5,000 or whole multiples thereof. The Bonds, as originally issued or issued upon transfer, exchange or substitution, shall be substantially in the form set forth in Exhibit A attached hereto, with such changes acceptable to the Authorized Officers, or each individually, and bond counsel. The Bonds shall be dated, shall be due and payable on the dates and in the amounts (subject to optional and mandatory redemption as provided in Article III hereof), and shall bear interest at the rates per annum as set forth in the Award Certificate as defined in Section 2.12 hereof, computed on the basis of a 360-day year of twelve 30-day months, from the date thereof or from the most recent Interest Payment Date to which interest has been paid or duly provided for, payable each Interest Payment Date.

Section 2.03. Designation of Paying Agent. The Paying Agent shall be the paying agent for the payment of the principal or Redemption Price of and interest on the Bonds and the bond registrar with respect to the registration, transfer and exchange of the Bonds. If the Paying Agent is other than the City Treasurer, the Paying Agent shall serve in such capacities under the terms of an agreement entitled “Bond Registrar and Paying Agent Agreement” between the Issuer and the Paying Agent (the “**Paying Agent Agreement**”) in the such form as the Authorized Officers, or each individually, shall deem appropriate and necessary. The Authorized Officers, or each

individually, may execute the Paying Agent Agreement on behalf of the Issuer. The Paying Agent shall have only such duties and obligations as are expressly specified by this Ordinance and the Registrar and Paying Agent Agreement, and no other duties or obligations shall be implied to the Paying Agent.

The Issuer will at all times maintain a Paying Agent meeting the qualifications herein described for the performance of the duties hereunder. The Issuer reserves the right, and does hereby authorize the Authorized Officers, or each individually, to appoint a successor Paying Agent by (a) filing with the Paying Agent then performing such function notice of the termination of such Paying Agent and appointing a successor, and (b) causing notice of the appointment of the successor Paying Agent to be given by first-class mail to each Registered Owner. No resignation or removal of the Paying Agent shall become effective until a successor has been appointed and has accepted the duties of Paying Agent.

Unless the Paying Agent is the City Treasurer, every Paying Agent appointed hereunder shall at all times be a commercial banking association or corporation or trust company organized and doing business under the laws of the United States or of a state of the United States, authorized under such laws to exercise trust powers and subject to supervision or examination by federal or state regulatory authority

The Paying Agent shall be paid the usual fees and expenses for its services in connection therewith, which fees and expenses shall be paid as other Expenses are paid.

Section 2.04. Method and Place of Payment of Bonds. The principal or Redemption Price of and interest on the Bonds shall be payable in any coin or currency of the United States of America that, on the respective dates of payment thereof, is legal tender for the payment of public and private debts. The principal or Redemption Price of each Bond shall be paid at Maturity by check or draft to the Person in whose name such Bond is registered on the Bond Register at the Maturity thereof, upon presentation and surrender of such Bond at the designated office of the Paying Agent.

The interest payable on each Bond on any Interest Payment Date shall be paid to the Registered Owner of such Bond as shown on the Bond Register at the close of business on the Record Date for such interest by check or draft mailed by the Paying Agent to such Registered Owner at the address shown on the Bond Register or in the case of an interest payment to any Registered Owner of \$100,000 or more in aggregate principal amount of Bonds, by electronic transfer to such Registered Owner upon written notice given to the Paying Agent by such Registered Owner not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions, including the bank (which shall be in the continental United States), ABA routing number and account number to which such Registered Owner wishes to have such transfer directed.

Notwithstanding the foregoing provisions of this Section, any Defaulted Interest with respect to any Bond shall cease to be payable to the Registered Owner of such Bond on the relevant Record Date and shall be payable to the Registered Owner in whose name such Bond is registered at the close of business on the Special Record Date for the payment of such Defaulted Interest, which Special Record Date shall be fixed as hereinafter specified in this paragraph. The Issuer

shall notify the Paying Agent in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment (which date shall be at least 30 days after receipt of such notice by the Paying Agent) and shall deposit with the Paying Agent at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Paying Agent for such deposit prior to the date of the proposed payment. Following receipt of such funds, the Paying Agent shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment. The Paying Agent shall promptly notify the Issuer of such Special Record Date and, in the name and at the expense of the Issuer, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed by first-class mail, postage prepaid, to each Registered Owner of a Bond entitled to such notice at the address of such Registered Owner as it appears on the Bond Register not less than 10 days prior to such Special Record Date.

The Paying Agent shall keep a record of payment of principal and Redemption Price of and interest on all Bonds and shall at least annually forward a copy or summary of such records to the Issuer.

Section 2.05. Registration, Transfer and Exchange of Bonds. As long as any of the Bonds remain Outstanding, the Issuer will cause the Bond Register to be kept at the designated office of the Paying Agent for the registration, transfer and exchange of Bonds as herein provided. Each Bond when issued shall be registered in the name of the Owner thereof on the Bond Register.

Bonds may be transferred and exchanged only on the Bond Register as provided in this Section. Upon surrender of any Bond at the designated office of the Paying Agent, the Paying Agent shall transfer or exchange such Bond for a new Bond or Bonds in any authorized denomination of the same Stated Maturity and in the same aggregate principal amount as the Bond that was presented for transfer or exchange. Bonds presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in a form and with guarantee of signature satisfactory to the Paying Agent, duly executed by the Registered Owner thereof or by the Registered Owner's duly authorized agent.

In all cases in which the privilege of transferring or exchanging Bonds is exercised, the Paying Agent shall authenticate and deliver Bonds in accordance with the provisions of this Ordinance. The Issuer shall pay the fees and expenses of the Paying Agent for the registration, transfer and exchange of Bonds provided for by this Ordinance and the cost of printing a reasonable supply of registered bond blanks. Any additional costs or fees that might be incurred in the secondary market, other than fees of the Paying Agent, are the responsibility of the Registered Owners of the Bonds. If any Registered Owner fails to provide a correct taxpayer identification number to the Paying Agent, the Paying Agent may make a charge against such Registered Owner sufficient to pay any governmental charge required to be paid as a result of such failure.

The Issuer and the Paying Agent shall not be required (a) to register the transfer or exchange of any Bond after notice calling such Bond or portion thereof for redemption has been given or during the period of 15 days immediately preceding the first mailing of such notice of redemption (b) to issue, transfer or exchange Bonds from the Record Date to the next Interest Payment Date, or (c) to register the transfer or exchange of any Bond during a period beginning at

the opening of business on the day after receiving written notice from the Issuer of its intent to pay Defaulted Interest and ending at the close of business on the date fixed for the payment of Defaulted Interest pursuant to Section 2.04 hereof.

The Issuer and the Paying Agent may deem and treat the Person in whose name any Bond is registered on the Bond Register as the absolute owner of such Bond, whether such Bond is overdue or not, for the purpose of receiving payment of, or on account of, the principal or Redemption Price of and interest on said Bond and for all other purposes. All payments so made to any such Registered Owner or upon the Registered Owner's order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Issuer nor the Paying Agent shall be affected by any notice to the contrary.

At reasonable times and under reasonable regulations established by the Paying Agent, the Bond Register may be inspected and copied by the Registered Owners (or a designated representative thereof) of 10% or more in principal amount of the Bonds then Outstanding or any designated representative of such Registered Owners to be evidenced to the satisfaction of the Paying Agent.

Section 2.06. Execution, Authentication and Delivery of Bonds. The Mayor and the Clerk (including anyone authorized to act on his or her behalf) are hereby authorized and directed to prepare and execute the Bonds as herein specified and, when duly executed, to deliver the Bonds to the Paying Agent for authentication. Each of the Bonds, including any Bonds issued in exchange or as substitution for the Bonds initially delivered, shall be signed by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of the Clerk. In case any officer whose signature appears on any Bonds ceases to be such officer before the delivery of such Bonds, such signature shall nevertheless be valid and sufficient for all purposes, as if such person had remained in office until delivery. Any Bond may be signed by such Persons who at the actual time of the execution of such Bond are the proper officers to sign such Bond although at the date of such Bond such Persons may not have been such officers.

The Bonds shall have endorsed thereon a certificate of authentication substantially in the form set forth in Exhibit A attached hereto, which shall be manually executed by an authorized officer or employee of the Paying Agent, but it shall not be necessary that the same officer or employee sign the certificate of authentication on all of the Bonds that may be issued hereunder at any one time. No Bond shall be entitled to any security or benefit under this Ordinance or be valid or obligatory for any purpose unless and until such certificate of authentication has been duly executed by the Paying Agent. Such executed certificate of authentication upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Ordinance. Upon authentication, the Paying Agent shall deliver the Bonds to the Original Purchaser, upon payment of the purchase price of the Bonds plus accrued interest thereon to the date of their delivery.

Section 2.07. Mutilated, Destroyed, Lost and Stolen Bonds. If (a) any mutilated Bond is surrendered to the Paying Agent, or the Issuer and the Paying Agent receive evidence to their satisfaction of the destruction, loss or theft of any Bond, and (b) there is delivered to the Paying Agent such security or indemnity as may be required by the Paying Agent, then, in the absence of notice to the Paying Agent that such Bond has been acquired by a bona fide purchaser, the Issuer

shall execute and, upon the Issuer request, the Paying Agent shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Bond, a new Bond of the same Stated Maturity and of like tenor and principal amount. If any such mutilated, destroyed, lost or stolen Bond has become or is about to become due and payable, the Issuer in its discretion may pay such Bond instead of issuing a new Bond. Upon the issuance of any new Bond under this Section, the Issuer may require the payment by the Registered Owner of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Paying Agent) connected therewith. Every new Bond issued pursuant to this Section shall constitute a replacement of the prior obligation of the Issuer and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds.

Section 2.08. Cancellation and Destruction of Bonds Upon Payment. All Bonds that have been paid or redeemed or that otherwise have been surrendered to the Paying Agent, either at or before maturity, shall be cancelled by the Paying Agent immediately upon the payment, redemption and surrender thereof to the Paying Agent and subsequently destroyed in accordance with the customary practices of the Paying Agent and applicable record retention laws. The Paying Agent shall execute a certificate in duplicate describing the Bonds so cancelled and destroyed and shall file an executed counterpart of such certificate with the Issuer.

Section 2.09. Book-Entry Bonds; Securities Depository.

(a) The Bonds shall initially be registered to Cede & Co., the nominee for the Securities Depository, and no beneficial owner will receive certificates representing their respective interests in the Bonds, except if the Paying Agent issues Replacement Bonds as provided in paragraph (b) hereof. It is anticipated that during the term of the Bonds, the Securities Depository will make book-entry transfers among its Participants and receive and transmit payment of principal of, premium, if any, and interest on, the Bonds to the Participants until and unless the Paying Agent authenticates and delivers Replacement Bonds to the beneficial owners as described in paragraph (b).

(b) (i) If the Issuer determines (A) that the Securities Depository is unable to properly discharge its responsibilities, or (B) that the Securities Depository is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended (the “Exchange Act”), or (C) that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Bondowner other than Cede & Co. is no longer in the best interests of the beneficial owners of the Bonds, or (ii) if the Paying Agent receives written notice from Participants having interests in not less than 50% of the Bonds Outstanding, as shown on the records of the Securities Depository (and certified to such effect by the Securities Depository), that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Bondowner other than Cede & Co. is no longer in the best interests of the beneficial owners of the Bonds, then the Paying Agent shall notify the Bondowners of such determination or such notice and of the availability of certificates to Owners requesting the same, and the Paying Agent shall register in the name of and authenticate and deliver Replacement Bonds to the beneficial owners or their nominees in principal amounts representing the interest of each, making such adjustments as it may find necessary or appropriate as to accrued

interest and previous calls for redemption; provided, that in the case of a determination under clause (i)(A) or (i)(B) of this paragraph (b), the Issuer, with the consent of the Paying Agent, may select a successor securities depository in accordance with Section 2.09(c) hereof to effect book-entry transfers. In such event, all references to the Securities Depository herein shall relate to the period of time when the Securities Depository has possession of at least one Bond. Upon the issuance of Replacement Bonds, all references herein to obligations imposed upon or to be performed by the Securities Depository shall be deemed to be imposed upon and performed by the Paying Agent, to the extent applicable with respect to such Replacement Bonds. If the Securities Depository resigns and the Issuer, the Paying Agent or Bondowners are unable to locate a qualified successor of the Securities Depository in accordance with Section 2.09(c) hereof, then the Paying Agent shall authenticate and cause delivery of Replacement Bonds to Bondowners, as provided herein. The Paying Agent may rely on information from the Securities Depository and its Participants as to the names of the beneficial owners of the Bonds. The cost of printing Replacement Bonds shall be paid for by the Issuer.

(c) If the Securities Depository resigns, is unable to properly discharge its responsibilities, or is no longer qualified to act as a securities depository and registered clearing agency under the ~~Securities Exchange Act of 1934, as amended~~, the Issuer may appoint a successor Securities Depository provided the Paying Agent receives written evidence satisfactory to the Paying Agent with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such successor Securities Depository shall be a securities depository which is a registered clearing agency under the ~~Securities Exchange Act of 1934, as amended~~, or other applicable statute or regulation that operates a securities depository upon reasonable and customary terms. The Paying Agent upon its receipt of a Bond or Bonds for cancellation shall cause the delivery of Bonds to the successor Securities Depository in appropriate denominations and form as provided herein.

Section 2.10. Preliminary and Final Official Statement. The Preliminary Official Statement, in the form presented to and reviewed by the City Council, and filed in the records of the Issuer, is ratified and approved, and the final Official Statement is hereby authorized and approved by supplementing, amending and completing the Preliminary Official Statement, with such changes and additions thereto as are necessary to conform to and describe the transaction. The use and public distribution of the Preliminary Official Statement and the Official Statement by the Original Purchaser in connection with the reoffering of the Bonds is hereby authorized. The proper officials of the Issuer are hereby authorized to execute and deliver a certificate pertaining to such Preliminary Official Statement and Official Statement as prescribed therein, dated as of the date of payment for and delivery of the Bonds.

For the purpose of enabling the Original Purchaser to comply with the requirements of Rule 15c2-12(b)(1) of the Securities and Exchange Commission, the Issuer deems the information regarding the Issuer and the Bonds contained in the Preliminary Official Statement to be “final” as of its date, except for the omission of such information as is permitted by Rule 15c2-12(b)(1), and the appropriate officers of the Issuer are hereby authorized, if requested, to provide the Original Purchaser a letter or certification to such effect and to take such other actions or execute such other documents as such officers in their reasonable judgment deem necessary to enable the Original Purchaser to comply with the requirement of such Rule.

The Issuer agrees to provide to the Original Purchaser within seven business days of the date of the sale of Bonds sufficient copies of the final Official Statement to enable the Original Purchaser to comply with the requirements of Rule 15c2-12(b)(4) of the Securities and Exchange Commission and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

Section 2.11. Sale of Bonds. In accordance with and subject to the provisions of Section 2.12, the Authorized Officer, or each individually, is hereby authorized to sell the Bonds through a negotiated sale to the Original Purchaser and to enter into the Bond Purchase Agreement between the Issuer and the Original Purchaser, under which the Issuer agrees to sell the Bonds to the Original Purchaser, upon the terms and conditions set forth therein and with such changes therein as shall be approved by the Authorized Officer.

Section 2.12. Parameters and Authorization of Award Certificate. The Authorized Officer, or each individually, is authorized and directed, in the exercise of his or her independent judgment and absolute discretion, to hereafter, from time to time, specify, set, designate, determine, establish and appoint, as the case may be, and in each case in accordance with and subject to the provisions of this Ordinance pursuant to a certificate executed at the time the Bond Purchase Agreement shall be signed (the “**Award Certificate**”): (a) the dates of original issue; (b) the aggregate principal amount of Bonds to be issued, not exceeding aggregate principal amount set forth in Section 2.01; (c) the dates and years in which a principal maturity of the Bonds shall occur and the principal amount of the Bonds to mature in each of such years; (d) the date of final maturity of the Bonds, which shall in no event be later than December 15, 2036; (e) the dates upon which the Bonds shall be sold; (f) the rates of interest to be carried by each maturity of the Bonds, such that the true interest cost of the Bonds shall not exceed 3.00%; (g) the method by which such rate or rates of interest shall be calculated; (h) the Interest Payment Dates for the Bonds; (i) the redemption dates and prices and all terms relating thereto, including the amount and maturity date of any Bonds issued as “term bonds” and the amount of each sinking fund installment therefor, and all terms relating thereto, if any; (j) the identity of the Paying Agent; (k) any financial covenants, including modifications of those set forth herein; (l) the form, content, terms and provisions of the Bond Purchase Agreement entered into by the Issuer with the Original Purchaser; (m) the purchase price for the Bonds, which shall not be less than 96.00% of the aggregate principal amount thereof (inclusive of the Original Purchaser’s discount (which shall not exceed 1.00% of the aggregate principal amount of the Bonds and any original issue discount); (n) the form and contents of any preliminary and final official statement or other offering materials of the Issuer utilized in connection with any offering or sale of the Bonds to the public; (o) the types and the amounts of any reserves; (p) such covenants and other security as may be necessary in addition to those set forth in this Ordinance; (q) the initial Debt Service Reserve Requirement; (r) the form, content, terms, and provisions of any closing and other documentation executed and delivered by the Issuer in connection with the authorization, issuance, sale and delivery of the Bonds; (s) the date or dates of prepayment of the Prior Obligations, if other than the date of delivery of the Bonds, and (t) all of the other terms of the Bonds not otherwise determined or fixed by the provisions of this Ordinance.

ARTICLE III

REDEMPTION OF BONDS

Section 3.01. Optional and Mandatory Redemption of Bonds.

(a) **Optional Redemption by City.** At the option of the Issuer, the Bonds or portions thereof may be called for redemption and payment prior to their Stated Maturity on the dates and at the Redemption Prices determined by the Authorized Officers, or each individually, in accordance with the provisions of **Section 2.12** hereof.

(b) **Mandatory Redemption.** The Authorized Officers, or each individually, may designate in the Award Certificate certain Bonds as “**Term Bonds**”, portions of which are to be redeemed on the dates (each such date being herein referred to as a “**Sinking Fund Payment Date**”) and in the amounts (hereinafter referred to as a “**Mandatory Sinking Fund Payment**”) set forth in such certificate. The Paying Agent shall select and call for redemption, in accordance with this subsection (b), from the Term Bonds the amounts specified by such Authorized Officer in the Award Certificate, and the Term Bonds selected by the Paying Agent shall become due and payable on such date.

At its option, to be exercised on or before the 45th day next preceding any mandatory Redemption Date, the Issuer may: (i) deliver to the Paying Agent for cancellation Term Bonds subject to mandatory redemption on said mandatory Redemption Date, in any aggregate principal amount desired; or (ii) furnish the Paying Agent funds, together with appropriate instructions, for the purpose of purchasing any Term Bonds subject to mandatory redemption on said mandatory Redemption Date from any Registered Owner thereof whereupon the Paying Agent shall expend such funds for such purpose to such extent as may be practical; or (iii) receive a credit with respect to the mandatory redemption obligation of the Issuer under this Section for any Term Bonds subject to mandatory redemption on such mandatory Redemption Date which, prior to such date, have been redeemed (other than through the operation of the mandatory redemption requirements of this **Section 301(b)**) and cancelled by the Paying Agent and not theretofore applied as a credit against any redemption obligation under this **Section 301(b)**. Each Term Bond so delivered or previously purchased or redeemed shall be credited at 100% of the principal amount thereof on the obligation of the Issuer to redeem Term Bonds of the same Stated Maturity on such mandatory Redemption Date, and any excess of such amount shall be credited on future mandatory redemption obligations for Term Bonds of the same Stated Maturity in chronological order, and the principal amount of Term Bonds of the same Stated Maturity to be redeemed by operation of the requirements of this Section shall be accordingly reduced. If the Issuer intends to exercise any option granted by the provisions of clauses (i), (ii) or (iii) above, the Issuer will, on or before the 45th day next preceding each mandatory Redemption Date, furnish the Paying Agent a written certificate indicating to what extent the provisions of said clauses (i), (ii) and (iii) are to be complied with respect to such mandatory redemption payment.

Section 3.02. Selection of Bonds To Be Redeemed.

(a) The Paying Agent shall call Bonds for redemption and payment and shall give notice of such redemption as herein provided upon receipt by the Paying Agent at least

45 days prior to the Redemption Date of written instructions of the Issuer specifying the principal amount, Stated Maturities, Redemption Date and Redemption Prices of the Bonds to be called for redemption. The Paying Agent may in its discretion waive such notice period so long as the notice requirements set forth in Section 3.03 hereof are met. The foregoing provisions of this paragraph shall not apply in the case of any mandatory redemption of Bonds hereunder, and Bonds shall be called by the Paying Agent for redemption pursuant to such mandatory redemption requirements without the necessity of any action by the Issuer and whether or not the Paying Agent holds moneys available and sufficient to effect the required redemption.

(b) Bonds shall be redeemed only in the principal amount of \$5,000 or whole multiples thereof. When less than all of the Outstanding Bonds are to be redeemed, such Bonds shall be redeemed from the Stated Maturities selected by the Issuer, and Bonds of less than a full Stated Maturity shall be selected by the Paying Agent in \$5,000 units of principal amount in such equitable manner as the Paying Agent may determine.

(c) In the case of a partial redemption of Bonds when Bonds of denominations greater than \$5,000 are then Outstanding, then for all purposes in connection with such redemption, each \$5,000 of face value shall be treated as though it were a separate Bond of the denomination of \$5,000. If it is determined that one or more, but not all, of the \$5,000 units of face value represented by any Bond are selected for redemption, then upon notice of intention to redeem such \$5,000 unit or units, the Registered Owner of such Bond or the Registered Owner's duly authorized agent shall present and surrender such Bond to the Paying Agent (i) for payment of the Redemption Price and interest to the Redemption Date of such \$5,000 unit or units of face value called for redemption, and (ii) for exchange, without charge to the Registered Owner thereof, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Registered Owner of any such Bond fails to present such Bond to the Paying Agent for payment and exchange as aforesaid, such Bond shall, nevertheless, become due and payable on the Redemption Date to the extent of the \$5,000 unit or units of face value called for redemption (and to that extent only).

Section 3.03. Notice and Effect of Call for Redemption. Unless waived by any Registered Owner of Bonds to be redeemed, official notice of any redemption shall be given by the Paying Agent on behalf of the Issuer by mailing a copy of an official redemption notice by first-class mail at least 30 days prior to the Redemption Date (or such shorter period as may be acceptable to the then-Registered Owner), to the Original Purchaser of the Bonds and each Registered Owner of the Bonds to be redeemed at the address shown on the Bond Register.

All official notices of redemption shall be dated and shall contain the following information:

- (a) the Redemption Date;
- (b) the Redemption Price;

(c) if less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption of any Bonds, the respective principal amounts) of the Bonds to be redeemed;

(d) a statement that on the Redemption Date, the Redemption Price will become due and payable upon each Bond or portion thereof called for redemption and that interest thereon shall cease to accrue from and after the Redemption Date; and

(e) the place where such Bonds are to be surrendered for payment of the Redemption Price, which shall be the designated corporate trust office of the Paying Agent.

The failure of any Registered Owner to receive notice given as heretofore provided or an immaterial defect therein shall not invalidate any redemption.

Prior to any Redemption Date, the Issuer shall deposit with the Paying Agent an amount of money sufficient to pay the Redemption Price of all the Bonds or portions of Bonds that are to be redeemed on that date.

Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds to be redeemed shall become due and payable on the Redemption Date, at the Redemption Price therein specified, and from and after the Redemption Date (unless the Issuer defaults in the payment of the Redemption Price), such Bonds or portion of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with such notice, the Redemption Price of such Bonds shall be paid by the Paying Agent. Installments of interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the Registered Owner a new Bond or Bonds of the same Stated Maturity in the amount of the unpaid principal as provided herein. All Bonds that have been redeemed shall be cancelled and destroyed by the Paying Agent as provided herein and shall not be reissued.

In addition to the foregoing notice, further notice shall be given by the Paying Agent on behalf of the Issuer as set out below, but no defect in said further notice or any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if official notice thereof is given as above prescribed.

(a) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (i) the CUSIP numbers of all Bonds being redeemed; (ii) the date of issue of the Bonds as originally issued; (iii) the rate of interest borne by each Bond being redeemed; (iv) the Stated Maturity of each Bond being redeemed; and (v) any other descriptive information needed to identify accurately the Bonds being redeemed; and

(b) Each check or other transfer of funds issued for the payment of the Redemption Price of Bonds being redeemed shall bear or have enclosed the CUSIP number of the Bonds being redeemed with the proceeds of such check or other transfer.

The Paying Agent is also directed to comply with any mandatory or voluntary standards established by the Securities and Exchange Commission then in effect for processing redemptions

of municipal securities. Failure to comply with such standards shall not affect or invalidate the redemption of any Bond.

So long as the Securities Depository is effecting book-entry transfers of the Bonds, the Issuer or the Paying Agent shall provide the notices specified in this Section to the Securities Depository. It is expected that the Securities Depository shall, in turn, notify its Participants and that the Participants, in turn, will notify or cause to be notified the beneficial owners. Any failure on the part of the Securities Depository or a Participant, or failure on the part of a nominee of a beneficial owner of a Bond (having been mailed notice from the Paying Agent, a Participant or otherwise) to notify the beneficial owner of the Bond so affected, shall not affect the validity of the redemption of such Bond.

ARTICLE IV

SECURITY FOR BONDS

The Bonds are limited, special obligations of the Issuer payable solely from, and secured as to the payment of principal, premium and interest by a pledge of the Revenues, which include all income and revenues derived from the operation of the Systems, including investment and rental income, net proceeds from business interruption insurance (if any) the principal of gifts, bequests, contributions, grants and donations available to pay debt service of System Revenue Bonds and actually received during such period, and any amounts deposited in escrow in connection with the acquisition, construction, remodeling, renovation and equipping of facilities to be applied during the period of determination to pay interest on System Revenue Bonds, but excluding any profits or losses on the early extinguishment of debt or on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets, and also excluding the principal of gifts, bequests, contributions, grants and donations which are specifically restricted by the donor, testator or grantor to a particular purpose which is inconsistent with their use for the payment of debt service on System Revenue Bonds. The Issuer hereby pledges said Revenues to the payment of the principal of, the premium and the interest on the Bonds.

The Bonds are further secured by amounts in the Debt Service Reserve Fund.

The Bonds shall not be or constitute a general obligation of the Issuer, nor shall they constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision, limitation or restriction. The taxing power of the Issuer is not pledged to the payment of debt service on the Bonds. Nothing contained in this Ordinance shall be construed as imposing on the Issuer any duty or obligation to levy any taxes either to meet any obligation incurred herein or to pay the principal of or interest on the Bonds.

The covenants and agreements of the Issuer contained in this Ordinance and in the Bonds shall be for the equal benefit, protection and security of the legal owners of any or all of the Bonds, all of which Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the principal of, the premium and the interest on the Bonds, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Ordinance. The Bonds shall stand on a parity and be equally and ratably secured with respect to the payment of principal, premium and interest from

the net income and revenues derived from the operation of the Systems and in all other respects with any Parity Bonds. The Bonds shall not have any priority with respect to the payment of principal, premium or interest from said net income and revenues or otherwise over the Parity Bonds, and the Parity Bonds shall not have any priority with respect to the payment of principal, premium or interest from said net income and revenues or otherwise over the Bonds.

ARTICLE V

FUNDS; DEPOSIT AND APPLICATION OF BOND PROCEEDS

Section 5.01. Establishment of Funds. There are hereby created and ordered to be established and maintained by the Treasurer of the Issuer the following separate funds to be known respectively as follows:

- (a) Combined Utilities Systems Cost of Issuance Fund (the “**Cost of Issuance Fund**”);
- (b) Combined Utilities System Revenue Fund (the “**Revenue Fund**”);
- (c) Combined Utilities System Operation and Maintenance Fund (the “**Operation and Maintenance Fund**”);
- (d) Debt Service Fund for Combined Utilities Revenue Refunding Bonds, Series 2016 (the “**Debt Service Fund**”);
- (e) Debt Service Reserve Fund for Combined Utilities Revenue Refunding Bonds, Series 2016 (the “**Debt Service Reserve Fund**”); and
- (f) Combined Utilities Surplus Fund (the “**Surplus Fund**”).

The funds referred to in paragraphs (a) through (f) of this Section shall be maintained and administered by the Issuer solely for the purposes and in the manner as provided in this Ordinance so long as any of the Bonds remain Outstanding within the meaning of this Ordinance.

Section 5.02. Deposit of Bond Proceeds. The net proceeds received from the sale of the Bonds shall be deposited simultaneously with the delivery of the Bonds, as follows:

- (a) All accrued interest received from the sale of the Bonds shall be deposited in the Debt Service Fund and applied in accordance with Section 6.02(b) hereof.
- (b) An amount equal to the Debt Service Reserve Requirement from the proceeds of the Bonds (with a credit for funds of the Issuer or moneys related to the Prior Obligations deposited in the debt service reserve fund related to such obligations, if any) shall be deposited in the Debt Service Reserve Fund and applied in accordance with Section 6.02(c) hereof.

(c) Certain proceeds, together with moneys currently held in the debt service fund with respect to the NDEQ Notes, shall be deposited with the Treasurer of the Issuer and used to prepay the NDEQ Notes on their Redemption Date together with all interest thereon accrued to such date.

(d) The remaining balance of the proceeds of the Bonds shall be deposited in the Cost of Issuance Fund and applied in accordance with Section 5.03 hereof.

Section 5.03. Application of Moneys in the Cost of Issuance Fund. Moneys in the Cost of Issuance Fund shall be used solely for the purposes of paying the costs of issuing the Bonds. Upon the prepayment of the NDEQ Notes, but in no event later than six months from the date of issuance of the Bonds, any surplus moneys remaining in the Cost of Issuance Fund and not required for the payment of unpaid costs thereof shall be deposited in the Debt Service Fund.

Section 5.04. Prepayment of NDEQ Notes. The outstanding aggregate principal amount of the NDEQ Notes are hereby called for prepayment on the delivery date of the Bonds, or such other date as may be determined by an Authorized Officer in accordance with Section 2.12 hereof, at a prepayment price equal to the outstanding aggregate principal amount of the NDEQ Notes on such date of prepayment plus all accrued and unpaid interest to such date. The Authorized Officers, or each individually, is directed to take any and all actions necessary to effect the prepayment of the NDEQ Notes.

ARTICLE VI

APPLICATION OF REVENUES

Section 6.01. Revenue Fund. The Issuer covenants and agrees that from and after the delivery of the Bonds, and continuing as long as any of the Bonds remain Outstanding hereunder, all of the Revenues derived and collected from the operation of the Systems shall as and when received be paid and deposited into the Revenue Fund. Said Revenues shall be segregated and kept separate and apart from all other moneys, revenues, funds and accounts of the Issuer and shall not be commingled with any other moneys, revenues, funds and accounts of the Issuer. The Revenue Fund shall be administered and applied solely for the purposes and in the manner provided in this Ordinance.

Section 6.02. Application of Moneys in Funds. The Issuer covenants and agrees that from and after the delivery of the Bonds and continuing, so long as any of the Bonds shall remain Outstanding, it will on the first day of each month administer and allocate all of the moneys then held in the Revenue Fund as follows:

(a) ***Operation and Maintenance.*** There shall first be paid and credited to the Operation and Maintenance Fund (i) the Expenses of the Systems as the same become due and payable and the reasonable and (ii) the customary charges of the Registrar.

(b) ***Debt Service Fund.*** There shall next be paid and credited to the Debt Service Fund, to the extent necessary to meet on each Bond Payment Date the payment of all interest on and principal of the Bonds, the following sums:

(i) Beginning with the month following the month in which the Bonds are issued and delivered, and continuing each month thereafter so long as any of the Bonds remain Outstanding and unpaid, an amount not less than one-sixth (or such equal pro rata percentage for any shorter or longer period) of the amount of interest that will become due on the Bonds on the next succeeding Interest Payment Date; and

(ii) Beginning with the month following the month in which the Bonds are issued and delivered, and continuing each month thereafter so long as any of the Bonds remain Outstanding and unpaid, an amount not less than one-twelfth (or such equal pro rata percentage for any shorter or longer period) of the amount of principal that will become due on the Bonds on the next succeeding Maturity date.

Any amounts deposited in the Debt Service Fund as accrued interest in accordance with Section 5.02(a) hereof shall be credited against the Issuer's payment obligations as set forth in Section 6.02(b)(i) above. All amounts paid and credited to the Debt Service Fund shall be expended and used by the Issuer for the sole purpose of paying the interest on and the principal of the Bonds as and when the same become due at Maturity and on each Interest Payment Date, as applicable.

The amounts required to be paid and credited to the Debt Service Fund pursuant to this Section shall be made at the same time and on a parity with the amounts at the time required to be paid and credited to the debt service funds established for the payment of principal and interest on any Parity Bonds pursuant to the provisions of the respective Parity Ordinances. If at any time the moneys in the Revenue Fund are insufficient to make in full the payments and credits at the time required to be made to the Debt Service Fund and to the debt service funds established to pay the principal of and interest on any Parity Bonds, the available moneys in the Revenue Fund shall be divided among such debt service funds in proportion to the respective principal amounts of said series of bonds at the time outstanding which are payable from the moneys in said debt service funds.

(c) ***Debt Service Reserve Fund.*** After all payments and credits required at the time to be made under the provisions of paragraphs (a) and (b) of this Section have been made, there shall next be paid and credited to the Debt Service Reserve Fund the sum, if any, necessary to maintain the balance of the Debt Service Reserve Fund at the Debt Service Reserve Requirement. ~~Except as hereinafter provided in this Section, all amounts paid and credited to the Debt Service Reserve Fund shall be expended and used by the Issuer solely to prevent any default in the payment of interest on, premium, if any, or principal of the Bonds on any Maturity date or Interest Payment Date if the moneys in the Debt Service Fund are insufficient to pay the interest on, premium, if any, or principal of said Bonds when due. So long as the Debt Service Reserve Fund aggregates the Debt Service Reserve Requirement, no further payments into said Fund shall be required.~~ The amounts required to be paid and credited to the Debt Service Reserve Fund pursuant to this Section shall be made at the same time and on a parity with the amounts at the time required to be paid and credited to the debt service reserve funds established for the Parity Bonds, if any, under the provisions of the [related](#) Parity Ordinances, ~~if any.~~

All income derived from the investment of amounts on deposit in the Debt Service Reserve Fund shall remain in, and be credited to, such fund until such time as the amount on deposit in the Debt Service Reserve Fund is equal to the Debt Service Reserve Requirement, and thereafter all such investment income shall be transferred to the Debt Service Fund. ~~If upon a valuation of the investments on deposit in the Debt Service Reserve Fund, the amount on deposit in the Debt Service Reserve Fund exceeds the Debt Service Reserve Requirement, the Trustee shall transfer from the Debt Service Reserve Fund to the Debt Service Fund an amount equal to such excess.~~

Except as hereinafter provided in this Section, all amounts paid and credited to the Debt Service Reserve Fund shall be expended and used by the Issuer solely to prevent any default in the payment of interest on, premium, if any, or principal of the Bonds on any Maturity date or Interest Payment Date if the moneys in the Debt Service Fund are insufficient to pay the interest on, premium, if any, or principal of said Bonds when due.

Moneys in the Debt Service Reserve Fund may be used to call the Bonds for redemption and payment prior to their Stated Maturity, provided all of the Bonds at the time Outstanding are called for payment and funds are available to pay the same according to their terms. If fewer than all Bonds are to be redeemed and prepaid, on such such redemption date the Debt Service Reserve Requirement shall be recalculated as of such date, and all moneys in excess of such requirement shall be used to redeem and prepay Bonds on such date. In addition, moneys in the Debt Service Reserve Fund shall be transferred to the Debt Service Fund and applied to pay the principal of the Bonds on the dates and in the amounts set forth in the Award Certificate described in Section 2.12 hereof. Moneys in the Debt Service Reserve Fund shall be used to pay and retire the last Outstanding Bonds unless such Bonds and all interest thereon are otherwise paid.

If at any time the moneys in the Revenue Fund are insufficient to make in full the payments and credits at the time required to be made to the Debt Service Reserve Fund and to the debt service reserve funds established to protect the payment of any Parity Bonds, the available moneys in the Revenue Fund shall be divided among such debt service reserve funds in proportion to the respective principal amounts of said series of bonds at the time outstanding which are payable from the moneys in such debt service reserve funds.

(d) ***Surplus Fund.*** After all payments and credits required at the time to be made under the provisions of paragraphs (a), (b) and (c) of this Section have been made, all moneys remaining in the Revenue Fund shall be paid and credited to the Surplus Fund. Moneys in the Surplus Fund may be expended and used for the following purposes as determined by the Authorized Officer, or each individually:

(i) Paying the cost of the operation, maintenance and repair of the Systems to the extent necessary after the application of the moneys held in the Operation and Maintenance Fund under the provisions of paragraph (a) of this Section;

(ii) Paying the cost of extending, enlarging, improving and/or repairing the Systems;

(iii) Preventing default in, anticipating payments into or increasing the amounts in the Debt Service Fund or the Debt Service Reserve Fund referred to in paragraphs (b) or (c) of this Section, or any one of them, or establishing or increasing the amount of any debt service fund or debt service reserve fund created by the Issuer for the payment of any Parity Bonds;

(iv) Calling, redeeming and paying prior to Stated Maturity, or, at the option of the Issuer, purchasing in the open market at the best price obtainable not exceeding the redemption price (if any bonds are callable), the Bonds or any Parity Bonds, including principal, interest and redemption premium, if any; or

(v) Any other lawful purpose in connection with the operation of the Systems and benefiting the Systems.

So long as any of the Bonds remain Outstanding, no moneys derived from the operation of the Systems shall be diverted to the general governmental or municipal functions of the Issuer.

(e) ***Deficiency of Payments Into Funds.*** If at any time the revenues derived from the operation of the Systems are insufficient to make any payment on the date or dates hereinbefore specified, the Issuer will make good the amount of such deficiency by making additional payments or credits out of the first available revenues thereafter received from the operation of the Systems, such payments and credits being made and applied in the order hereinbefore specified in this Section.

Section 6.03. Transfer of Funds to Paying Agent. The Treasurer or other Authorized Officer is hereby authorized and directed to withdraw from the Debt Service Fund, and, to the extent necessary to prevent a default in the payment of either principal of or interest on the Bonds, from the Debt Service Reserve Fund and the Surplus Fund as provided in Section 6.02 hereof, sums sufficient to pay the principal of, premium, if any, and interest on the Bonds as and when the same become due on any Bond Payment Date, and to forward such sums to the Paying Agent in a manner which ensures the Paying Agent will have available funds in such amounts on or before the Business Day immediately preceding each Bond Payment Date. If, through lapse of time or otherwise, the Registered Owners of Bonds are no longer entitled to enforce payment of their obligations, it shall be the duty of the Paying Agent forthwith to return said funds to the Issuer. All moneys deposited with the Paying Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Ordinance.

Section 6.04. Payments Due on Saturdays, Sundays and Holidays. In any case where a Bond Payment Date is not a Business Day, then payment of principal, Redemption Price or interest need not be made on such Bond Payment Date but may be made on the next succeeding Business Day with the same force and effect as if made on such Bond Payment Date, and no interest shall accrue for the period after such Bond Payment Date.

Section 6.05. Nonpresentment of Bonds. If any Bond is not presented for payment when the principal thereof becomes due at Maturity, if funds sufficient to pay such Bond have been made available to the Paying Agent, all liability of the Issuer to the Registered Owner thereof

for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold such funds, without liability for interest thereon, for the benefit of the Registered Owner of such Bond, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Ordinance or on, or with respect to, said Bond. If any Bond is not presented for payment within four years following the date when such Bond becomes due at Maturity, the Paying Agent shall repay to the Issuer the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Issuer, and the Registered Owner thereof shall be entitled to look only to the Issuer for payment, and then only to the extent of the amount so repaid to it by the Paying Agent, and the Issuer shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

ARTICLE VII

DEPOSIT AND INVESTMENT OF MONEYS

(a) Money in each of the funds and accounts created by and referred to in this Ordinance shall be deposited in a bank or banks that are members of the Federal Deposit Insurance Corporation. All such deposits shall be continuously and adequately secured by the banks holding such deposits as provided by the laws of the United States of America or their state of incorporation.

(b) Money held in any fund or account referred to in this Ordinance may be invested in Permitted Investments; provided, however, that no such investment shall be made for a period extending longer than the date when the money invested may be needed for the purpose for which such fund or account was created. All earnings on any investments held in any fund or account shall accrue to and become a part of such fund or account. All earnings on investments held in the Debt Service Reserve Fund shall accrue to and become a part of such Fund until the amount on deposit in the Debt Service Reserve Fund shall aggregate the Debt Service Reserve Requirement; thereafter, all such earnings shall be credited to the Debt Service Fund. In determining the amount held in any fund or account under any of the provisions of this Ordinance, obligations shall be valued at the lower of the cost or the market value thereof; provided, however, that investments held in the Debt Service Reserve Fund shall be valued at market value only. If and when the amount held in any fund or account shall be in excess of the amount required by the provisions of this Ordinance, the Issuer shall direct that such excess be paid and credited to the Debt Service Fund.

(c) So long as any Parity Bonds remain outstanding and unpaid, any investments made pursuant to this Article shall be subject to any restrictions in the Parity Ordinance with respect to the funds and accounts created by and referred to in the Parity Ordinance.

ARTICLE VIII

GENERAL COVENANTS AND PROVISIONS

The Issuer covenants and agrees with each of the Registered Owners of any of the Bonds that so long as any of the Bonds remain Outstanding and unpaid, it will, acting by and through the City Council, comply with each of the following covenants:

Section 8.01. Efficient and Economical Operation. The Issuer will continuously own and will operate the Systems as revenue-producing facilities in an efficient and economical manner and will keep and maintain the same in good repair and working order. The Issuer will establish and maintain such rules and regulations for the use of the Systems as may be necessary to assure maximum utilization and most efficient operation of the Systems.

Section 8.02. Rate Covenant. The Issuer in accordance with and subject to applicable legal requirements will fix, establish, maintain and collect such rates and charges for the use and services furnished by or through the Systems as will produce revenues sufficient to (a) pay the costs of the operation and maintenance of the Systems, (b) pay the principal of and interest on the System Revenue Bonds then outstanding as and when the same become due at the Maturity thereof or on any Interest Payment Date, (c) enable the Issuer to have in each fiscal year Net Revenues Available for Debt Service not less than 110% of Maximum Annual Debt Service on all System Revenue Bonds at the time outstanding and (d) provide reasonable and adequate reserves for the payment of all System Revenue Bonds then outstanding and the interest thereon and for the protection and benefit of the Systems as provided in this Ordinance. The Issuer will require the prompt payment of accounts for service rendered by or through the Systems and will promptly take whatever action is legally permissible to enforce and collect delinquent charges. The Issuer will, from time to time as often as necessary, in accordance with and subject to applicable legal requirements, revise the rates and charges aforesaid in such manner as may be necessary or proper so that the Net Revenues Available for Debt Service will be sufficient to cover the obligations under this Section and otherwise under the provisions of this Ordinance. If in any fiscal year the Net Revenues Available for Debt Service are less than 110% of Maximum Annual Debt Service on all System Revenue Bonds then outstanding, the Issuer will immediately employ a Consultant to make recommendations with respect to such rates and charges. A copy of the Consultant's report and recommendations shall be filed with the City Clerk and the Original Purchaser of the Bonds and shall be furnished to any Registered Owner of the Bonds requesting a copy of the same, at the cost of such Registered Owner. The Issuer shall, to the extent feasible, follow the recommendations of the Consultant.

Section 8.03. Reasonable Charges for All Services. None of the facilities or services provided by the Systems will be furnished to any user (excepting the Issuer itself) without a reasonable charge being made therefor. If the revenues derived from the Systems are at any time insufficient to pay the reasonable Expenses of the Systems and also to pay all interest on and principal of the Bonds as and when the same become due, then the Issuer will thereafter pay into the Revenue Fund a fair and reasonable payment in accordance with effective applicable rates and charges for all services provided by the Systems, and such payments will continue so long as the same may be necessary in order to prevent or reduce the amount of any default in the payment of the interest on or principal of the Bonds.

Section 8.04. Restrictions on Mortgage or Sale of System. The Issuer will not mortgage, pledge or otherwise encumber the Systems or any part thereof, nor will it sell, lease or otherwise dispose of the Systems or any material part thereof; provided, however, the Issuer may:

(a) sell at fair market value any portion of the Systems which has been replaced by other similar property of at least equal value, or which ceases to be necessary for the efficient operation of the Systems, and in the event of sale, the Issuer will apply the proceeds to either (i) redemption of Outstanding Bonds in accordance with the provisions governing repayment of Bonds in advance of Stated Maturity, or (ii) replacement of the property so disposed of by other property the revenues of which shall be incorporated into the Systems as hereinbefore provided;

(b) cease to operate, abandon or otherwise dispose of any property which has become obsolete, nonproductive or otherwise unusable to the advantage of the Issuer;

(c) lease, (i) as lessor, any real or personal property which is unused or unimproved, or which has become obsolete, nonproductive or otherwise unusable to the advantage of the Issuer, or which is being acquired as a part of a lease/purchase financing for the acquisition and/or improvement of such property; and/or (ii) as lessee, with an option of the Issuer to purchase, any real or personal property for the extension and improvement of the Systems; property being leased as lessor and/or lessee pursuant to this paragraph (c) shall not be treated as part of the Systems for purposes of this Section 8.05 and may be mortgaged, pledged or otherwise encumbered; or

(c) grant a security interest in equipment to be purchased with the proceeds of any loan, lease or other obligation undertaken in accordance with Article IX hereof; or

(d) sell, lease or convey all or substantially all of the Systems to another entity or enter into a management contract with another entity if:

(i) The transferee entity is a political subdivision organized and existing under the laws of the State, or instrumentality thereof, or an organization described in Section 501(c)(3) of the Code, and expressly assumes in writing the due and punctual payment of the principal of and premium, if any, and interest on all outstanding System Revenue Bonds according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Ordinance;

(ii) If there remains unpaid any System Revenue Bond which bears interest that is not includable in gross income under the Code, the Issuer receives an opinion of Bond Counsel, in form and substance satisfactory to the Issuer, to the effect that under then existing law the consummation of such sale, lease or conveyance, whether or not contemplated on any date of the delivery of such System Revenue Bond, would not cause the interest payable on such System Revenue Bond to become includable in gross income under the Code;

(iii) The Issuer receives a certificate of the Consultant which demonstrates and certifies that immediately upon such sale or conveyance the

transferee entity will not, as a result thereof, be in default in the performance or observance of any covenant or agreement to be performed or observed by it under this Ordinance;

(iv) Such transferee entity possesses such licenses to operate the Systems as may be required if it is to operate the Systems; and

(v) The Issuer receives an opinion of Bond Counsel, in form and substance satisfactory to the Issuer, as conclusive evidence that any such sale, lease or conveyance, and any such assumption, is permitted by law and complies with the provisions of this Section.

Section 8.05. Insurance. The Issuer will carry and maintain insurance with respect to the Systems and its operations against such casualties, contingencies and risks (including, but not limited to, property and casualty, fire and extended coverage insurance upon all of the properties being parts of the Systems insofar as the same are of an insurable nature, public liability, worker's compensation and employee dishonesty insurance), such insurance to be of the character and coverage and in such amounts as would normally be carried by other enterprises engaged in similar activities of comparable size and similarly situated. In the event of loss or damage, the Issuer, with reasonable dispatch, will use the proceeds of such insurance in reconstructing and replacing the property damaged or destroyed, or in paying the claims on account of which such proceeds were received, or if such reconstruction or replacement is unnecessary or impracticable, then the Issuer will pay and deposit the proceeds of such insurance into the Revenue Fund. The Issuer will annually review the insurance it maintains with respect to the Systems to determine that it is customary and adequate to protect its property and operations. The Issuer may elect to be self-insured for all or any part of the foregoing requirements if (a) the Issuer annually obtains a written evaluation with respect to such self-insurance program from an Insurance Consultant, (b) the evaluation is to the effect that the self-insurance program is actuarially sound, (c) unless the evaluation states that such reserves are not necessary, the Issuer deposits and maintains adequate reserves for the self-insurance program with a corporate trustee, who may be the Paying Agent, and (d) in the case of workers' compensation, adequate reserves created by the Issuer for such self-insurance program are deposited and maintained in such amount and manner as are acceptable to the State. The Issuer shall pay any fees and expenses of such Insurance Consultant in connection therewith. The cost of all insurance obtained pursuant to the requirements of this Section shall be paid as an Expense out of the Revenues of the Systems.

Section 8.06. Books, Records and Accounts. The Issuer will install and maintain proper books, records and accounts (entirely separate from all other records and accounts of the Issuer) in which complete and correct entries will be made of all dealings and transactions of or in relation to the Systems. Such accounts shall show the amount of Revenues received from the Systems, the application of such Revenues, and all financial transactions in connection therewith. Said books shall be kept by the Issuer according to standard accounting practices as applicable to the operation of facilities comparable to the Systems.

Section 8.07. Annual Budget. Prior to the commencement of each fiscal year, the Issuer will cause to be prepared and filed with the Treasurer a budget setting forth the estimated receipts and expenditures of the Systems, or a separate schedule for the Systems within the Issuer's overall

budget, for the next succeeding fiscal year. The Clerk, promptly upon the filing of said budget in ~~the City~~the City Clerk's office, will mail a copy of said budget to the Original Purchaser of the Bonds. Said annual budget shall be prepared in accordance with the laws and regulations of the State.

Section 8.08. Annual Audit. After the end of each fiscal year, the Issuer will cause an audit to be made of the Systems, or a separate schedule within the Issuer's audited financial statements, for the preceding fiscal year by a certified public accountant or firm of certified public accountants to be employed for that purpose and paid from the revenues of the Issuer. Said annual audit shall cover in reasonable detail the operations of the Systems during such fiscal year. As soon as possible after the completion of the annual audit, the City Council shall review such audit, and if the audit discloses that proper provision has not been made for all of the requirements of this Ordinance, the Issuer will promptly cure such deficiency and will promptly proceed to increase the rates and charges to be charged for the use and services furnished by the Systems as may be necessary to adequately provide for such requirements.

Within 30 days after the completion of each such audit, a copy thereof shall be filed in the office of the City Clerk, and a duplicate copy of the audit shall be mailed to the Original Purchaser of the Bonds. Such audits shall at all times during the usual business hours be open to the examination and inspection by any taxpayer, any user of the services of the Systems, any Registered Owner of any of the Bonds, or by anyone acting for or on behalf of such taxpayer, user or Registered Owner.

~~As soon as possible after the completion of the annual audit, the City Council shall review such audit, and if the audit discloses that proper provision has not been made for all of the requirements of this Ordinance, the Issuer will promptly cure such deficiency and will promptly proceed to increase the rates and charges to be charged for the use and services furnished by the Systems as may be necessary to adequately provide for such requirements.~~

Section 8.09. Right of Inspection. The Original Purchaser of the Bonds and any Registered Owner or Owners of 10% of the principal amount of the Bonds then Outstanding shall have the right at all reasonable times to inspect the Systems and all records, accounts and data relating thereto, and shall be furnished all such information concerning the Systems and the operation thereof which the Original Purchaser or such Registered Owner or Owners may reasonably request.

Section 8.10. Administrative Personnel. The Issuer shall use its best efforts to employ at all times administrative personnel experienced and well qualified to operate the Systems. The Issuer further agrees that such administrative personnel shall be employed in sufficient numbers to ensure that the Systems will be operated in a prudent and efficient manner, following procedures generally accepted within the public utilities industry in the United States of America.

Section 8.11. Rules and Regulations. The Issuer will establish and maintain such rules and regulations for the use of the Systems as may be necessary to assure maximum occupancy and use thereof.

Section 8.12. Performance of Duties and Covenants. The Issuer will faithfully and punctually perform all duties, covenants and obligations with respect to the operation of the Systems now or hereafter imposed upon the Issuer by the Constitution and laws of the State and by the provisions of this Ordinance.

Section 8.13. Tax Covenants.

(a) The Issuer covenants that (i) it will comply with all applicable provisions of the Code, including Sections 103 and 141 through 150, necessary to maintain the exclusion from federal gross income of the interest on the Bonds, and (ii) it will not use or permit the use of any proceeds of Bonds or any other funds of the Issuer, or take or permit any other action, or fail to take any action, which would adversely affect the exclusion from federal gross income of the interest on the Bonds. The Issuer will also adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with other applicable future law, in order to ensure that the interest on the Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the Issuer.

(b) The Issuer covenants that (i) it will use the proceeds of the Bonds as soon as practicable for the purposes for which the Bonds are issued, and (ii) it will not invest or directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the Issuer in any manner, or take or omit to take any action, that would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code.

(c) The Issuer covenants and agrees that it will pay or provide for the payment from time to time of all amounts required to be rebated to the United States pursuant to Section 148(f) of the Code and any Treasury Regulations applicable to the Bonds from time to time. The ~~District~~Issuer specifically covenants to pay or cause to be paid to the United States the required amounts of rebatable arbitrage at the times when due, if any.

(d) The Issuer covenants that it will not use any portion of the proceeds of the Bonds, including any investment income earned on such proceeds, directly or indirectly, (i) in a manner that would cause any Bond to be a “private activity bond” within the meaning of Section 141(a) of the Code, or (ii) to make or finance a loan to any Person.

(e) The Issuer hereby designates the Bonds as “qualified tax-exempt obligations” as defined in Section 265(b)(3) of the Code. In addition, the Issuer hereby represents that:

(i) the aggregate face amount of all tax-exempt obligations (other than private activity bonds which are not “qualified 501(c)(3) bonds” and certain refunding bonds) which will be issued by the Issuer (and all subordinate entities thereof) during the calendar year in which the Bonds are issued is not reasonably expected to exceed \$10,000,000; and

(ii) the Issuer (including all subordinate entities thereof) will not issue an aggregate principal amount of tax-exempt obligations (other than private activity bonds that are not “qualified 501(c)(3) bonds” and certain refunding bonds)

during the calendar year in which the Bonds are issued, including the Bonds, in excess of \$10,000,000, without first obtaining an opinion of Bond Counsel that the designation of the Bonds as “qualified tax-exempt obligations” will not be adversely affected.

Any Authorized Officer is hereby authorized to take such other action as may be necessary to make effective the designation in this paragraph (e).

(f) The foregoing covenants shall remain in full force and effect notwithstanding the defeasance of the Bonds pursuant to Article XI of this Ordinance or any other provision of this Ordinance, until the final Maturity of all Bonds Outstanding.

(g) The Issuer adopts the Post-Issuance Tax Compliance Procedures attached to this Ordinance as Exhibit B to ensure that all applicable post-issuance requirements of federal income tax law needed to preserve the tax-exempt status of the Bonds that are intended to be tax-exempt are met. The Issuer designates the Treasurer as the “responsible person” for implementing such procedures. The Issuer reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as it may determine. The Issuer also reserves the right to change such policies and procedures from time to time, without notice.

Section 8.14. Continuing Disclosure.

(a) The Issuer (i) authorizes and directs any Authorized Officer to execute and deliver, on the date of the issuance of the Bonds, a Continuing Disclosure Undertaking (the “**Undertaking**”) in such form that satisfies the requirements of Rule 15c2-12 promulgated under the ~~Securities and Exchange Act of 1934, as amended~~ (“**Rule 15c2-12**”) and is acceptable to the Original Purchaser and Bond Counsel and (ii) covenants that it will comply with and carry out all of the provisions of the Undertaking. The Authorized Officers, or each individually, may designate a dissemination agent thereunder to assist with compliance. Notwithstanding any other provisions of this Ordinance, failure of the Issuer to comply with the Undertaking will not be considered a default under this Ordinance or the Bonds; however, any Bondholder or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Issuer to comply with its obligations under this Section and the Undertaking. For purposes of this Section, “Beneficial Owner” means any person who (i) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (ii) is treated as the owner of any Bonds for federal income tax purposes.

(b) The Issuer hereby adopts the Disclosure Policies and Procedures attached to this Ordinance as Exhibit C to ensure the Issuer satisfies the requirements of Rule 15c2-12 and the Undertaking. The Issuer reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as it may determine. The ~~District~~Issuer also reserves the right to change such policies and procedures from time to time, without notice.

ARTICLE IX

ADDITIONAL BONDS AND OBLIGATIONS

Section 9.01. Senior Lien Bonds. So long as any of the Bonds remain Outstanding, the Issuer will not issue any additional bonds or incur or assume any other debt obligations appearing as liabilities on the balance sheet of the Issuer for the payment of moneys determined in accordance with generally accepted accounting principles, including capital leases as defined by generally accepted accounting principles, payable out of the net income and revenues of the Systems or any part thereof which are superior to the Bonds.

Section 9.02. Parity Lien Bonds. The Issuer covenants and agrees that so long as any of the Bonds remain Outstanding, it will not issue any additional Parity Bonds payable out of the net income and revenues of the Systems or any part thereof which stand on a parity or equality with the Bonds unless the following conditions are met:

(a) The Issuer shall not be in default in the payment of principal of or interest on any Bonds or any Parity Bonds at the time outstanding or in making any payment at the time required to be made into the respective funds and accounts created by and referred to in this Ordinance or any Parity Ordinance (unless such additional revenue bonds or obligations are being issued to provide funds to cure such default); and

(b) The Issuer shall obtain a certificate of a Consultant showing either of the following:

(i) The annual Net Revenues Available for Debt Service derived by the Issuer from the operation of the Systems, for the two fiscal year(s) immediately preceding the issuance of Parity bonds shall have been equal to at least 110% of the Maximum Annual Debt Service required to be paid out of said revenues in any succeeding fiscal year on account of both principal (at maturity or upon mandatory redemption) and interest becoming due with respect to all System Revenue Bonds of the Issuer, including the Parity Bonds proposed to be issued. In determining the Net Revenues Available for Debt Service for the purpose of this clause, the Consultant may adjust said Net Revenues Available for Debt Service by adding thereto, if the Issuer has made any increase in rates for the use and services of the Systems and such increase has not been in effect during all of the two fiscal year(s) immediately preceding the issuance of Parity Bonds, the amount, as estimated by the Consultant, of the additional Net Revenues Available for Debt Service which would have resulted from the operation of the Systems during said two preceding fiscal year(s) had such rate increase been in effect for the entire period; or

(ii) The annual Net Revenues Available for Debt Service projected to be derived by the Issuer from the operation of the Systems for the two fiscal year(s) immediately following the fiscal year in which the improvements to the Systems, the cost of which is being financed by such additional bonds, are to be in commercial operation, shall be equal to at least 110% of the Maximum Annual Debt Service required to be paid out of said revenues in any succeeding fiscal year

following commencement of operation of such System improvements, on account of both principal (at maturity or upon mandatory redemption) and interest becoming due with respect to all System Revenue Bonds of the Issuer, including the Parity Bonds proposed to be issued. In determining the projected Net Revenues Available for Debt Service for the purpose of this clause, the Consultant may adjust said net revenues by adding thereto any estimated increase in Net Revenues Available for Debt Service resulting from any increase in rates for the use and services of the Systems which, in the opinion of the Consultant, are economically feasible and reasonably considered necessary based on projected operations of the Systems.

Additional revenue bonds of the Issuer issued under the conditions set forth in this Section shall stand on a parity with the Bonds and shall enjoy complete equality or lien on and claim against the net revenues of the Systems with the Bonds, and the Issuer may make equal provision for paying said bonds and the interest thereon out of the Revenue Fund and may likewise provide for the creation of reasonable debt service funds and debt service reserve funds for the payment of such additional bonds and the interest thereon out of moneys in the Revenue Fund.

Section 9.03. Junior Lien Bonds and Other Obligations. Nothing in this Section contained shall prohibit or restrict the right of the Issuer to issue additional revenue bonds or other revenue obligations for any lawful purpose in connection with the operation of the facility and benefiting the Systems and to provide that the principal of and interest on said revenue bonds or obligations shall be payable out of the revenues of the Systems, provided, at the time of the issuance of such additional revenue bonds or obligations, the Issuer is not in default in the performance of any covenant or agreement contained in this Ordinance (unless such additional revenue bonds or obligations are being issued to provide funds to cure such default), and provided, further, that such additional revenue bonds or obligations shall be junior and subordinate to the Bonds so that if at any time the Issuer shall be in default in paying either interest on or principal of the Bonds, or if the Issuer is in default in making any payments required to be made by it under the provisions of Sections 6.02(a), (b) and (c) of this Ordinance, the Issuer shall make no payments of either principal of or interest on said junior and subordinate revenue bonds or obligations until said default or defaults be cured. In the event of the issuance of any such junior and subordinate revenue bonds or obligations, the Issuer, subject to the provisions aforesaid, may make provision for paying the principal of and interest on said revenue bonds or obligations out of moneys in the Revenue Fund.

Section 9.04. Refunding Bonds. The Issuer shall have the right, without complying with the provisions of Section 9.02 hereof, to refund any of the Bonds under the provisions of any law then available, and the refunding bonds so issued, shall enjoy complete equality of pledge with any of the Bonds which are not refunded, if any, upon the revenues of the Systems; provided, however, that if only a portion of the Bonds are refunded and if said Bonds are refunded in such manner that the refunding bonds bear a higher average rate of interest or become due on a date earlier than that of the Bonds which are refunded, then said Bonds may be refunded without complying with the provisions of Section 9.02 hereof only by and with the written consent of the Registered Owners of a majority in principal amount of the Bonds not refunded.

ARTICLE X

DEFAULT AND REMEDIES

~~Section 10.01. Acceleration of Maturity Upon Default.~~ The Issuer covenants and agrees that if it defaults in the payment of the principal of or interest on any of the Bonds as the same becomes due on any Bond Payment Date, or if the Issuer or the City Council or any of the officers, agents or employees thereof fail or refuse to comply with any of the provisions of this Ordinance or of the Constitution or statutes of the State, and such default continues for a period of 60 days after written notice specifying such default has been given to the Issuer by the Registered Owner of any Bond then Outstanding, then, at any time thereafter and while such default continues, the Registered Owners of 25% in principal amount of the Bonds then Outstanding may, by written notice to the Issuer filed in the office of the Clerk or delivered in person to said Clerk, declare the principal of all Bonds then Outstanding to be due and payable immediately, and upon any such declaration given as aforesaid, all of said Bonds shall become and be immediately due and payable, anything in this Ordinance or in the Bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that if at any time after the principal of said Outstanding Bonds has been so declared to be due and payable, all arrears of interest upon all of said Bonds, except interest accrued but not yet due on such Bonds, and all arrears of principal upon all of said Bonds has been paid in full and all other defaults, if any, by the Issuer under the provisions of this Ordinance and under the provisions of the statutes of the State have been cured, then and in every such case the Registered Owners of a majority in principal amount of the Bonds then Outstanding, by written notice to the Issuer given as hereinbefore specified, may rescind and annul such declaration and its consequences, but no such rescission or annulment shall extend to or affect any subsequent default or impair any rights consequent thereon. Events of Default. The following constitute “Events of Default” under this Ordinance:

(a) failure by the Issuer to pay any payment of principal of, premium, if any, and interest on the Bonds when due;

(b) failure by the Issuer to make any other payment required to be made hereunder, and such default shall continue for a period of 15 days;

(c) failure by the Issuer to observe and perform any other covenant, condition or agreement contained herein on its part to be observed or performed for a period of 30 days after written notice is given to the Issuer specifying such failure and requesting that it be remedied, provided that if the failure stated in such notice cannot be corrected within such 30-day period, no Event of Default shall exist if corrective action is instituted by the Issuer within the applicable period and diligently pursued until the default is corrected, but in no event for longer than 90 days; or

(d) determination that any representation or warranty made by the Issuer herein was untrue in any material respect when made.

Section 10.02. Other Remedies. The provisions of this Ordinance, including the covenants and agreements herein contained, shall constitute a contract between the Issuer and the Registered Owners of the Bonds, and the Registered Owner or Owners of not less than 10% in

principal amount of the Bonds at the time Outstanding shall have the right for the equal benefit and protection of all Registered Owners of Bonds similarly situated:

(a) by mandamus or other suit, action or proceedings at law or in equity to enforce the rights of such Registered Owner or Owners against the Issuer and its officers, agents and employees, and to require and compel duties and obligations required by the provisions of this Ordinance or by the Constitution and laws of the State;

(b) by suit, action or other proceedings in equity or at law to require the Issuer, its officers, agents and employees to account as if they were the trustees of an express trust; and

(c) by suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Registered Owners of the Bonds.

Section 10.03. Limitation on Rights of Bondowners. No one or more Bondowners secured hereby shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Registered Owners of such Outstanding Bonds.

Section 10.04. Remedies Cumulative. No remedy conferred herein upon the Bondowners is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred herein. No waiver of any default or breach of duty or contract by the Registered Owner of any Bond shall extend to or affect any subsequent default or breach of duty or contract or shall impair any rights or remedies consequent thereon. No delay or omission of any Bondowner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the Registered Owners of the Bonds by this Ordinance may be enforced and exercised from time to time and as often as may be deemed expedient. If any suit, action or proceeding taken by any Bondowner on account of any default or to enforce any right or exercise any remedy has been discontinued or abandoned for any reason, or has been determined adversely to such Bondowner, then, and in every such case, the Issuer and the Registered Owners of the Bonds shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Bondowners shall continue as if no such suit, action or other proceeding had been brought or taken.

Section 10.05. ~~No Obligation To Levy Taxes.~~ ~~Nothing contained in this Ordinance shall be construed as imposing on the Issuer any duty or obligation to levy any taxes either to meet any obligation incurred herein or to pay the principal of or interest on the Bonds.~~ Default Rate. Upon any Event of Default, the stated interest rate on each Bond shall automatically increase by 4.00% (400 basis points) per annum.

ARTICLE XI

DEFEASANCE

When any or all of the Bonds or the interest payments thereon have been paid and discharged, then the requirements contained in this Ordinance and the pledge of revenues made hereunder and all other rights granted hereby shall terminate with respect to the Bonds so paid and discharged. Bonds or the interest payments thereon shall be deemed to have been paid and discharged within the meaning of this Ordinance if there has been deposited with the Paying Agent, or other commercial bank or trust company located in the State and having full trust powers, at or prior to the Stated Maturity or Redemption Date of said Bonds, in trust for and irrevocably appropriated thereto, money and/or Defeasance Obligations which, together with the interest to be earned thereon, will be sufficient for the payment of the principal or Redemption Price of said Bonds, and/or interest to accrue on such Bonds to the Stated Maturity or Redemption Date, as the case may be, or if default in such payment shall have occurred on such date, then to the date of the tender of such payments; provided, however, that if any such Bonds shall be redeemed prior to the Stated Maturity thereof, (a) the Issuer shall have elected to redeem such Bonds, and (b) either notice of such redemption shall have been given, or the Issuer shall have given irrevocable instructions, or shall have provided for an escrow agent to give irrevocable instructions, to the Paying Agent to redeem such Bonds in compliance with Section 3.02(a) of this Ordinance. Any money and Defeasance Obligations that at any time shall be deposited with the Paying Agent or other commercial bank or trust company by or on behalf of the Issuer, for the purpose of paying and discharging any of the Bonds or the interest payments thereon, shall be and are hereby assigned, transferred and set over to the Paying Agent or other bank or trust company in trust for the respective Registered Owners of the Bonds, and such money shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All moneys and Defeasance Obligations deposited with the Paying Agent or other bank or trust company shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Ordinance.

ARTICLE XII

MISCELLANEOUS PROVISIONS

Section 12.01. Amendments. The rights and duties of the Issuer and the Bondowners, and the terms and provisions of the Bonds or of this Ordinance, may be amended or modified at any time in any respect by Ordinance of the Issuer with the written consent of the Registered Owners of not less than a majority in principal amount of the Bonds then Outstanding, such consent to be evidenced by an instrument or instruments executed by such Registered Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the Clerk, but no such modification or alteration shall:

- (a) extend the maturity of any payment of principal or interest due upon any Bond;
- (b) effect a reduction in the amount which the Issuer is required to pay by way of principal of or interest on any Bond;

- (c) permit the creation of a lien on the revenues of the Systems prior or equal to the lien of the Bonds or Parity Bonds;
- (d) permit preference or priority of any Bonds over any other Bonds; or
- (e) reduce the percentage in principal amount of Bonds required for the written consent to any modification or alteration of the provisions of this Ordinance.

Any provision of the Bonds or of this Ordinance may, however, be amended or modified by Ordinance duly adopted by the City Council of the Issuer at any time in any respect with the written consent of the Registered Owners of all of the Bonds at the time Outstanding.

Without notice to or the consent of any Bondowners, the Issuer may amend or supplement this Ordinance for the purpose of curing any formal defect, omission, inconsistency or ambiguity therein or in connection with any other change therein which is not materially adverse to the interests of the Bondowners.

Every amendment or modification of the provisions of the Bonds or of this Ordinance shall be expressed in an ordinance adopted by the City Council of the Issuer amending or supplementing the provisions of this Ordinance and shall be deemed to be a part of this Ordinance. A certified copy of every such amendatory or supplemental Ordinance, if any, and a certified copy of this Ordinance shall always be kept on file in the office of the Clerk, and shall be made available for inspection by the Registered Owner of any Bond or a prospective purchaser or owner of any Bond authorized by this Ordinance, and upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental Ordinance or of this Ordinance will be sent by the Clerk to any such Bondowner or prospective Bondowner.

Any and all modifications made in the manner hereinabove provided shall not become effective until there has been filed with the Clerk a copy of the Ordinance of the Issuer hereinabove provided for, duly certified, as well as proof of any required consent to such modification by the Registered Owners of the Bonds then Outstanding. It shall not be necessary to note on any of the Outstanding Bonds any reference to such amendment or modification.

The Issuer shall furnish to the Paying Agent a copy of any amendment to the Bonds or this Ordinance made hereunder which affects the duties or obligations of the Paying Agent under this Ordinance.

Section 12.02. Notices, Consents and Other Instruments by Bondowners. Any notice, consent, request, direction, approval, objection or other instrument required by this Ordinance to be signed and executed by the Bondowners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Bondowners in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Ordinance, and shall be conclusive in favor of the Issuer and the Paying Agent with regard to any action taken, suffered or omitted under any such instrument, namely:

- (a) The fact and date of the execution by any Person of any such instrument may be proved by a certificate of any officer in any jurisdiction who by law has power to

take acknowledgments within such jurisdiction that the Person signing such instrument acknowledged before such officer the execution thereof, or by affidavit of any witness to such execution.

(b) The Bond Register shall prove the fact of ownership of Bonds, the amount or amounts, numbers and other identification of Bonds, and the date of holding the same.

In determining whether the Registered Owners of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Ordinance, Bonds owned by the Issuer shall be disregarded and deemed not to be Outstanding under this Ordinance, except that, in determining whether the Bondowners shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Bondowners know to be so owned shall be so disregarded. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Bondowners the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Issuer.

Section 12.03. Further Authority. The officers of the Issuer, including the Mayor and Clerk, shall be, and they hereby are, authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 12.04. Severability. If any Section or other part of this Ordinance, whether large or small, is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Ordinance.

Section 12.05. Governing Law. This Ordinance shall be governed by and constructed in accordance with the applicable laws of the State.

Section 12.06. Amendment of 2014 NDEQ Note. The Authorized Officers, or each individually, is authorized to enter into an amendment relating to the 2014 NDEQ Note, the effect of which is to pledge the System Revenues to the 2014 NDEQ Note on a parity with the Bonds and other Parity Obligations.

Section 12.07. Effective Date; Publication in Pamphlet Form. This Ordinance shall take effect and be in full force from and after its passage by the City Council and approval by the Mayor and upon its publication in pamphlet form as provided by law.

Section 12.08. Repealing Ordinances Inconsistent Herewith; Ratifying Previous Actions. This Ordinance repeals, amends and restates in its entirety Ordinance No. _____ previously approved and adopted by the Council on September 19, 2016; provided, however, that all actions taken by the Council and all officers of the City in connection with the issuance, sale and delivery of the Bonds is ratified, approved and confirmed.

PASSED AND APPROVED this ~~19~~¹⁷th day of ~~September~~^{October}, 2016.

ATTEST:

Mayor

City Clerk

**EXHIBIT A TO ORDINANCE
(FORM OF BONDS)**

EXCEPT AS OTHERWISE PROVIDED IN THE ORDINANCE (REFERRED TO HEREIN), THIS GLOBAL BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO ANOTHER NOMINEE OF THE SECURITIES DEPOSITORY (AS DEFINED HEREIN) OR TO A SUCCESSOR SECURITIES DEPOSITORY OR TO A NOMINEE OF A SUCCESSOR SECURITIES DEPOSITORY.

UNITED STATES OF AMERICA
STATE OF NEBRASKA

Registered
No. R-

Registered
\$

THE CITY OF MCCOOK, NEBRASKA
COMBINED UTILITIES REVENUE REFUNDING BOND
SERIES 2016

Interest Rate	Maturity Date	Dated Date of Bonds	CUSIP Number
---------------	---------------	---------------------	--------------

June 15,

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: _____ DOLLARS

The City of McCook, Nebraska, a political subdivision of the State of Nebraska (the "Issuer"), for value received, promises to pay to the registered owner shown above, or registered assigns, but solely from the source and in the manner herein specified, the principal amount shown above on the maturity date shown above, and to pay interest thereon, but solely from the source and in the manner herein specified, at the interest rate per annum shown above (computed on the basis of a 360-day year of twelve 30-day months) from the Dated Date shown above or from the most recent interest payment date to which interest has been paid or duly provided for, payable semiannually on June 15 and December 15 in each year, beginning on December 15, 201__, until said principal amount has been paid.

The principal or redemption price of this Bond shall be paid at maturity by check or draft or upon earlier redemption to the person in whose name this Bond is registered at the maturity or redemption date thereof, upon presentation and surrender of this Bond at the designated corporate trust office of _____ in the _____, Nebraska (the "Paying Agent"). The interest payable on this Bond on any interest payment date shall be paid to the person in whose name this Bond is registered on the Bond Register at the close of business on the Record Date for such interest by check or draft mailed by the Paying Agent to such registered owner at the address shown on the Bond Register or at such other address as is furnished to the Paying Agent in writing by such registered owner or in the case of an interest payment to any registered owner of \$100,000 or more in aggregate principal amount of Bonds, by electronic transfer to such registered owner upon written notice given to the Paying Agent by such registered owner not less than 15 days prior

to the Record Date for such interest, containing the electronic transfer instructions, including the bank (which shall be in the continental United States), ABA routing number and account number to which such Registered Owner wishes to have such transfer directed.

THE TERMS AND PROVISIONS OF THIS BOND ARE CONTINUED ON THE REVERSE SIDE HEREOF, AND SUCH CONTINUED TERMS AND PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS THOUGH FULLY SET FORTH AT THIS PLACE.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Ordinance until the Certificate of Authentication hereon has been executed by the Paying Agent.

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the Bonds have existed, happened and been performed in due time, form and manner as required by law, and that before the issuance of the Bonds, provision has been duly made for the collection and segregation of the revenues of the Systems and for the application of the same as provided in the Ordinance.

IN WITNESS WHEREOF, the City of McCook, Nebraska, has executed this Bond by causing it to be signed by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its Clerk.

THE CITY OF MCCOOK, NEBRASKA

By _____
Mayor

ATTEST:

Clerk

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds of the issue described in the within-mentioned Ordinance.

Registration Date:

_____, as Paying
Agent

By _____
Name _____
Title _____

ADDITIONAL PROVISIONS

This Bond is one of a duly authorized series of bonds of the Issuer designated “Combined Utilities Revenue Refunding Bonds, Series 2016,” aggregating the principal amount of \$ _____ (the “Bonds”), issued by the Issuer for the purpose of refunding outstanding indebtedness of the Issuer, under the authority of and in full compliance with the Constitution and laws of the State of Nebraska, including particularly Sections 10-142 and 18–1803 through 18–1805 of the Reissue Revised Statutes of Nebraska, as amended, and pursuant to an ordinance duly adopted by the governing body of the Issuer (herein called the “Ordinance”). Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Ordinance.

At the option of the Issuer, Bonds or portions thereof maturing on _____ 15, 202____, and thereafter may be called for redemption and payment prior to maturity on _____, 2021, and thereafter in whole or in part at any time from the Stated Maturities selected by the Issuer (Bonds of less than a full maturity to be selected in multiples of \$5,000 principal amount in such equitable manner as the Paying Agent shall designate) at par plus accrued interest thereon to the redemption date.

Bonds maturing on _____ 15, _____, are subject to mandatory redemption and payment prior to maturity pursuant to the mandatory redemption requirements of the Ordinance on 1, _____, and on each _____ 1 thereafter prior to maturity, at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date.

Notice of redemption, unless waived, is to be given by the Paying Agent by mailing an official redemption notice by first-class mail at least 30 days prior to the redemption date (or such shorter date as may be acceptable to the then registered owner), to the original purchaser(s) of the Bonds and each Registered Owner of each of the Bonds to be redeemed at the address shown on the Bond Register. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the Issuer defaults in the payment of the redemption price), such Bonds or portions of Bonds shall cease to bear interest.

The Bonds are special obligations of the Issuer payable solely from, and secured as to the payment of principal and interest by a pledge of, the revenues derived from the operation of the sanitary sewer system of the Issuer, the water treatment and distribution system of the Issuer and the solid waste collection system of the Issuer (collectively, the “Systems”), and the taxing power of the Issuer is not pledged to the payment of the Bonds either as to principal or interest. The Bonds shall not be or constitute a general obligation of the Issuer, nor shall they constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter provision, limitation or restriction. Under the conditions set forth in the Ordinance, the Issuer has the right to issue parity bonds and other obligations payable from the same source and secured by the same revenues as the Bonds; provided, however, that such additional bonds may be so issued only in accordance with and subject to the covenants, conditions and restrictions relating thereto set forth in the Ordinance.

The Issuer hereby covenants and agrees with the Registered Owner of this Bond that it will keep and perform all covenants and agreements contained in the Ordinance, and will fix, establish,

maintain and collect such rates, fees and charges for the use and services furnished by or through the Systems, as will produce revenues sufficient to pay the costs of operation and maintenance of the Systems, pay the principal of and interest on the Bonds as and when the same become due, and provide reasonable and adequate reserve funds. Reference is made to the Ordinance for a description of the covenants and agreements made by the Issuer with respect to the collection, segregation and application of the revenues of the Systems, the nature and extent of the security for the Bonds, the rights, duties and obligations of the Issuer with respect thereto, and the rights of the Registered Owners thereof.

The Bonds are issuable in the form of fully registered Bonds without coupons in the denomination of \$5,000 or any whole multiple thereof.

This Bond may be transferred or exchanged, as provided in the Ordinance, only on the Bond Register upon surrender of this Bond together with a written instrument of transfer or exchange satisfactory to the Paying Agent duly executed by the Registered Owner or the Registered Owner's duly authorized agent, and thereupon a new Bond or Bonds in any authorized denomination of the same maturity and in the same aggregate principal amount shall be issued to the transferee in exchange therefor as provided in the Ordinance and upon payment of the charges therein prescribed. The Issuer and the Paying Agent may deem and treat the person in whose name this Bond is registered on the Bond Register as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

The Bonds are being issued by means of a book-entry system with no physical distribution of bond certificates to be made except as provided in the Ordinance. One Bond certificate with respect to each date on which the Bonds are stated to mature or with respect to each form of Bonds, registered in the nominee name of the Securities Depository, is being issued and required to be deposited with the Securities Depository and immobilized in its custody. The book-entry system will evidence positions held in the Bonds by the Securities Depository's participants, the beneficial ownership of the Bonds in authorized denominations being evidenced in the records of such participants. Transfers of ownership shall be effected on the records of the Securities Depository and its participants pursuant to rules and procedures established by the Securities Depository and its participants. The Issuer and the Paying Agent will recognize the Securities Depository nominee, while the registered owner of this Bond, as the owner of this Bond for all purposes, including (i) payments of principal of, and redemption premium, if any, and interest on, this Bond, (ii) notices and (iii) voting. Transfer of principal, interest and any redemption premium payments to participants of the Securities Depository, and transfer of principal, interest and any redemption premium payments to beneficial owners of the Bonds by participants of the Securities Depository, will be the responsibility of such participants and other nominees of such beneficial owners. The Issuer and the Paying Agent will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, the Securities Depository nominee, its participants or persons acting through such participants. While the Securities Depository nominee is the owner of this Bond, notwithstanding the provision hereinabove contained, payments of principal of, redemption premium, if any, and interest on this Bond shall be made in accordance with existing arrangements among the Issuer, the Paying Agent and the Securities Depository.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Print or Type Name, Address and Social Security Number
or other Taxpayer Identification Number of Transferee

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints agent to transfer the within Bond on the Bond Register kept by the Paying Agent for the registration thereof, with full power of substitution in the premises.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Bond in every particular.

Signature Guaranteed By:

Name of Eligible Guarantor Institution as defined by SEC Rule 17 Ad-15 (17 C.F.R. 240.17 Ad-15)

By _____
Name _____
Title _____

EXHIBIT B TO ORDINANCE

Post-Issuance Compliance Procedures

General

In connection with the issuance of the Bonds, the Issuer will execute a tax compliance certificate (the “**Tax Certificate**”) that describes the requirements and provisions of the Code that must be followed in order to maintain the tax-exempt status of interest on such bonds. In addition, the Tax Certificate will contain the reasonable expectations of the Issuer at the time of issuance of the Bonds with respect to the use of the gross proceeds of such bonds and the assets to be financed or refinanced with the proceeds thereof. These Procedures supplement and support the covenants and representations made by the Issuer in the Tax Certificate related to specific issues of tax-exempt obligations. In order to comply with the covenants and representations set forth in the Bond documents and in the Tax Certificate, the Issuer tracks and monitors the actual use of the proceeds of the Bonds, the investment and expenditure of the Bond proceeds and the assets financed or refinanced with the proceeds of such bonds over their life.

Designation of Responsible Person

The Treasurer of the Issuer shall maintain an inventory of Bonds and assets financed which contains the pertinent data to satisfy the Issuer’s monitoring responsibilities. Any transfer, sale or other disposition of bond-financed assets must be reviewed and approved by the Treasurer.

Post-Issuance Compliance Requirements

External Advisors/Documentation

The Issuer shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Bonds will continue to qualify for tax-exempt status. Those requirements and procedures shall be documented in the Tax Certificate and/or other documents finalized at or before issuance of the Bonds. Those requirements and procedures shall include future compliance with applicable arbitrage rebate requirements and all other applicable post-issuance requirements of federal tax law throughout (and in some cases beyond) the term of the Bonds.

The Issuer also shall consult with bond counsel and other legal counsel and advisors, as needed, following issuance of the Bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with future contracts with respect to the use of Bond-financed or refinanced assets.

The Issuer shall train and employ or otherwise engage expert advisors (a “**Rebate Analyst**”) to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds, unless the Tax Certificate documents that arbitrage rebate will not be applicable to the Bonds.

Unless otherwise provided by the Ordinance or other authorizing documents relating to the Bonds, unexpended Bond proceeds shall be held in a segregated account, and the Issuer, pursuant to the terms of the Ordinance, shall manage the investment of Bond proceeds. The Issuer shall prepare regular, periodic statements regarding the investments and transactions involving Bond proceeds.

Arbitrage Rebate and Yield

Unless the Tax Certificate documents that arbitrage rebate will not be applicable to the Bonds, the Issuer shall be responsible for:

- engaging the services of a Rebate Analyst and, prior to each rebate calculation date, causing the account holder to deliver periodic statements concerning the investment of Bond proceeds to the Rebate Analyst;
- providing to the Rebate Analyst additional documents and information reasonably requested by the Rebate Analyst;
- monitoring efforts of the Rebate Analyst;
- assuring payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond is redeemed;
- during the construction period of each capital project financed in whole or in part by the Bonds, monitoring the investment and expenditure of Bond proceeds and consulting with the Rebate Analyst to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months, 18 months or 24 months, as applicable, following the issue date of the Bonds; and
- retaining copies of all arbitrage reports and account statements as described below under “Record Keeping Requirements”.

The Issuer, in the Tax Certificate and/or other documents finalized at or before the issuance of the Bonds, has agreed to undertake the tasks listed above (unless the Tax Certificate documents that arbitrage rebate will not be applicable to an issue of the Bonds).

Use of Bond Proceeds and Bond-Financed or Refinanced Assets:

The Issuer shall be responsible for:

- monitoring the use of Bond proceeds and the use of Bond-financed or refinanced assets (*e.g.*, facilities, furnishings or equipment) throughout the term of the Bonds to ensure compliance with covenants and restrictions set forth in the Tax Certificate;
- maintaining records identifying the assets or portion of assets that are financed or refinanced with proceeds of the Bonds, including a final allocation of Bond proceeds as described below under “Record Keeping Requirements”;
- consulting with bond counsel and other legal counsel and advisers in the review of any contracts or arrangements involving use of Bond-financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the Tax Certificate;
- maintaining records for any contracts or arrangements involving the use of Bond-financed or refinanced assets as described below under “Record Keeping Requirements”;
- conferring at least annually with personnel responsible for Bond-financed or refinanced assets to identify and discuss any existing or planned use of Bond-financed or refinanced assets, to ensure that

those uses are consistent with all covenants and restrictions set forth in the Tax Certificate; and

- to the extent that the Issuer discovers that any applicable tax restrictions regarding use of Bond proceeds and bond-financed or refinanced assets will or may be violated, consulting promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified bonds, if such counsel advises that a remedial action is necessary.

The Issuer, in the Tax Certificate and/or other documents finalized at or before the issuance of the Bonds, has agreed to undertake the tasks listed above.

All relevant records and contracts shall be maintained as described below.

Record Keeping Requirements

The Issuer shall be responsible for maintaining the following documents for the term of the Bonds (including refunding bonds, if any) plus at least three years:

- a copy of the Bond closing transcript(s) and other relevant documentation delivered to the Issuer at or in connection with closing of the issue of the Bonds, including any elections made by the Issuer in connection therewith;
- a copy of all material documents relating to capital expenditures financed or refinanced by Bond proceeds, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, draw requests for Bond proceeds and evidence as to the amount and date for each draw down of Bond proceeds, as well as documents relating to costs paid or reimbursed with Bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds, including a final allocation of Bond proceeds;
- a copy of all contracts and arrangements involving the use of Bond-financed or refinanced assets;
- copies of all statements and reports, including arbitrage reports, prepared with respect to the Issuer's bonds; and
- a copy of all records of investments, investment agreements, arbitrage reports and underlying documents, including statements, in connection with any investment agreements, and copies of all bidding documents, if any.

EXHIBIT C TO ORDINANCE

Disclosure Policies and Procedures

Purpose of Disclosure Policies and Procedures

The issuance and sale of certain municipal bonds, notes, certificates of participation or other obligations (collectively, “**Obligations**”) are subject to certain federal and state securities laws, including Rule 15c2-12 (the “**Rule**”) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”). The Rule requires that an underwriter, prior to purchasing or selling an issue of Obligations in a principal amount over \$1,000,000, obtain a written agreement from the issuer of such Obligations to provide certain financial information or operating data on an annual basis and notices of the occurrence of certain enumerated events with the Municipal Securities Rulemaking Board (“**MSRB**”) using the MSRB’s Electronic Municipal Market Access system (“**EMMA**”).

The Issuer has previously issued or may in the future issue Obligations subject to the Rule, and in connection with such issuances the Issuer has entered and/or will enter into one or more Continuing Disclosure Certificates or Continuing Disclosure Undertakings (collectively, the “**Undertakings**”) in accordance with the Rule. Pursuant to such Undertakings, the Issuer has covenanted or will covenant to comply with the Rule by timely making the required filings. These Policies and Procedures are intended to assure that all filings required under the Rule are made timely and completely and meet all requirements of the Rule.

Designation of Issuer Representative; Maintenance of List and Files

The “**Issuer Representative**” for the Issuer shall be the City Clerk of the Issuer and any alternate or assistant as such City Clerk shall appoint. The Issuer Representative is directed to employ the policies and procedures described herein. The Issuer Representative shall be knowledgeable and familiar with the provisions of each Undertaking as to the type, format and content of the financial information or operating data to be included in each Annual Report required to be made thereunder, the instances in which notice of the occurrence of certain events must be given, and the timing requirements for the filing thereof. The Issuer and the Issuer Representative recognize and acknowledge that the terms, requirements and filing deadlines may vary by Undertaking.

The Issuer Representative shall maintain a current list for each fiscal year identifying each issue of Obligations of the Issuer outstanding during such fiscal year setting forth the name, original principal amount, date of issuance and CUSIP numbers for each such issue and the dates by which the Annual Reports are required to be submitted to the MSRB using EMMA, such list to be accompanied by copies of the related Undertakings.

Dissemination Agents

The Issuer and the Issuer Representative may utilize the services of a financial institution or other provider to act as dissemination agent (each, a “**Dissemination Agent**”) in filing the disclosures and notices described herein and performing the duties of the Dissemination Agent in accordance with the terms of the applicable Undertaking. The Dissemination Agent shall review and be familiar with the contents and filing requirements of the particular Undertaking and with the procedures for making the filings required under such Undertaking with the MSRB using the EMMA system. The Issuer Representative shall coordinate the preparation and submission of the required information with such Dissemination Agent to ensure full compliance with the requirements of the Rule and the applicable Undertakings.

Annual Financial Filings

The Issuer Representative will review the Undertaking related to each outstanding issue of Obligations to determine the financial information required to be included in the Annual Report (i.e., the Issuer's audited financial statements and certain other financial information or operating data with respect to the Issuer, if applicable (the "**Annual Report**")) required to be filed annually with the MSRB using the EMMA system, and the deadline by which such information must be filed. Unless required otherwise by an Undertaking and as permitted by EMMA filing procedures, the Issuer Representative may file identical Annual Reports with respect to each issue of the Issuer's Obligations. The Issuer Representative shall be knowledgeable and familiar with the specific requirements for the filing of a Notice of Failure to File the Annual Report by the date(s) required under the terms of each Undertaking, if applicable.

The Issuer Representative shall timely initiate the process of preparing the financial information or operating data required to be submitted under each Undertaking as part of the Annual Report. The Issuer Representative shall assemble the information as soon as it becomes available and determine the scope of additional information to be required and also contact the auditors to establish a schedule for completion and submission for the Audited Financial Statements.

The Issuer Representative will timely file the Annual Report, or will cause the Dissemination Agent to file the Annual Report, with the MSRB using the EMMA system. If the Audited Financial Statements are not then available, unaudited financial information may be filed with the MSRB using EMMA and the Audited Financial Statements shall be filed within 10 business days of their receipt and acceptance.

Listed Event Filings

The Issuer Representative will review the Undertaking related to each outstanding issue of Obligations for the listed events which, upon the occurrence thereof, require prompt notices to be filed with the MSRB using the EMMA system. The Issuer Representative will monitor the Obligations and the Issuer's operations for occurrences of any such events and will actively evaluate whether an event may be a listed event as set forth in the Issuer's outstanding Undertakings. After obtaining actual knowledge of such an event, the Issuer Representative will promptly contact the Issuer's bond counsel and the Dissemination Agent, if any, to determine whether the Issuer must file notice of the event with the MSRB under one or more of its Undertakings. Upon a determination that the Issuer must file such notice, the Issuer Representative will file the appropriate notice, or will cause the Dissemination Agent to file such notice, with the MSRB using the EMMA system within ten (10) business days after the occurrence of the listed event or as the Issuer's bond counsel may otherwise direct.

Reports of Issuer Representative; Record Retention

The Issuer Representative shall provide to the Mayor and City Council of the Issuer, any Dissemination Agent and the underwriter of each issue of Obligations confirmation from EMMA received upon the filing of each Annual Report and any other filings made with the MSRB using the EMMA system promptly upon receipt of each such confirmation.

The Issuer Representative shall maintain records with respect to the filings with the MSRB using EMMA, including, but not limited to, EMMA posting receipts showing the dates and nature or contents of all filings for each issue of Obligations outstanding during each fiscal year. Such records shall be kept for at least 5 years after the respective issue of Obligations is no longer outstanding.

Familiarity with EMMA Submission Process

The Issuer Representative shall register with EMMA and review the on-line process of filing with EMMA located at www.emma.msrb.org in order to submit the required information. The MSRB market Information Department can also be contacted at 703.797.6668. A tutorial is available at the website and a practice submission is available as well. The Issuer Representative also shall enroll the Issuer in EMMA's reminder system to ensure timely performance of its responsibilities and obligations.

Notwithstanding the foregoing, if the Issuer has retained a Dissemination Agent to assist with making the filings required by the Issuer's Undertakings and to remind the Issuer of its filing deadlines, the Issuer Representative need not register with EMMA or enroll in EMMA's reminder system.

Training

To ensure adequate resources to comply with the Rule, the Issuer Representative shall develop a training process aimed at providing additional assistance in preparing required information. The training process shall be conducted at least annually and shall encompass a review of the EMMA submission process and an understanding of the timing requirements necessary for full compliance. The retention by the Issuer of a Dissemination Agent to assist it with compliance under its Undertakings and the Rule may be deemed part of such training process.

Review of Offering Document in Connection with Primary Offerings

In connection with a new issue of Obligations, the Issuer Representative, together with such Issuer officials as the Issuer Representative deems appropriate, shall promptly review upon receipt the offering document by which such Obligations shall be offered and sold. For any issue of Obligations subject to the Rule, prior to the distribution of the related offering document the Issuer shall deem the information concerning the Issuer in such offering document as accurate and complete in all material respects (except for such information as permitted to be omitted by the Rule) as of the date of such offering document. The Issuer shall confirm prior to the final pricing of the Obligations that the information concerning the Issuer in the offering document does not contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

NOTICE OF PUBLICATION
OF ORDINANCE NO. _____
IN PAMPHLET FORM

Public Notice is hereby given that at a meeting of the Mayor and City Council of the City of McCook, Nebraska, held at 6:30 p.m. on June 19, 2016 there was passed and adopted Ordinance No. _____ entitled:

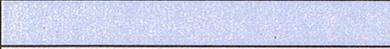
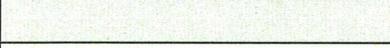
AN ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF MCCOOK, NEBRASKA OF ITS COMBINED UTILITIES REVENUE REFUNDING BONDS, IN ONE OR MORE SERIES AND IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$10,000,000; PRESCRIBING THE FORM AND DETAILS OF THE BONDS AND THE COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AUTHORIZING CERTAIN OFFICERS TO DETERMINE THE PRINCIPAL AMOUNT, THE MATURITIES, THE INTEREST RATES, THE REDEMPTION PROVISIONS, THE FINANCIAL COVENANTS AND OTHER TERMS AND PROVISIONS RELATING TO THE BONDS AND TO ENTER INTO A CONTRACT ON BEHALF OF THE CITY WITH THE PURCHASER OF SAID BONDS; PLEDGING THE REVENUES OF THE CITY'S SEWER, WATER AND SOLID WASTE COLLECTION SYSTEMS TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS; DESIGNATING THE BONDS AS QUALIFIED TAX-EXEMPT OBLIGATIONS; ADOPTING CERTAIN POST ISSUANCE TAX COMPLIANCE AND DISCLOSURE POLICIES AND PROCEDURES WITH RESPECT TO THE BONDS; AUTHORIZING THE AMENDMENT OF A LOAN AGREEMENT WITH THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY; PROVIDING FOR THE PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM; REPEALING ORDINANCE NO. _____ OF THE CITY; AND AUTHORIZING CERTAIN ACTIONS AND DOCUMENTS AND PRESCRIBING OTHER MATTERS RELATING THERETO

Said Ordinance has been published in pamphlet form, and copies of said Ordinance as published in pamphlet form are available for inspection and distribution at the Office of the City Clerk at the City Office.

City Clerk

Document comparison by Workshare Professional on Monday, October 10, 2016
11:26:13 PM

Input:	
Document 1 ID	netdocuments://4824-9850-4759/3
Description	Ameritas McCook Combined Utilities Revenue Refunding 2016 PROCEEDINGS INCLUDING BOND ORDINANCE
Document 2 ID	netdocuments://4842-0426-6042/1
Description	Ameritas McCook Combined Utilities Revenue Refunding 2016 AMENDED AND RESTATED BOND ORDINANCE
Rendering set	standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	59
Deletions	52
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	119

**CITY MANAGER'S REPORT
OCTOBER 17, 2016 CITY COUNCIL MEETING**

ITEM: 5B

RECOMMENDATION:

Approve Ordinance No. 2016-2941 providing for the amendment to Appendix D, Sewer Department Rates and Fees, upon its third and final reading.

BACKGROUND:

Please refer to the attached City Manager's Report prepared for the September 19, 2016 council meeting.

FISCAL

IMPACT: None.

RECOMMENDATION:

Approve Ordinance No. 2016-2941 providing for the amendment to Appendix D, Sewer Department Rates and Fees, upon its third and final reading.

APPROVALS:



Lea Ann Doak, City Clerk

October 13, 2016

**CITY MANAGER'S REPORT
SEPTEMBER 19, 2016 CITY COUNCIL MEETING**

ITEM: 4C

RECOMMENDATION:

Introduce and approve on first reading Ordinance No. 2016-2941 providing for the amendment to Appendix D, Sewer Department Rates and Fees.

BACKGROUND:

Upon completing the 2016 review of the Sewer Enterprise Fund, Public Financial Management (PFM) is recommending that the base fee for residential and commercial customer be increased by \$1.00 per month. The increase will raise the base charge which includes the first 333 cubic feet of usage from \$14.279 per month to \$15.279 for residential and from \$21.259 to 22.259 for commercial. The per 100 cubic feet fee will not change from the current amount of \$3.299 for both residential and commercial.

During the current budget year (10-1-15 to 9-30-16) 39,898 bills will be sent to the user of the McCook Public Owned Sewer System. Using the number of bills from this year carried forward to next budget will translate to approximately \$40,000 for the Sewer Enterprise Fund per year with users paying \$12 more per year. The last rate increase was 3.25% in 2012, and was on both the base and 100 cubic feet charge.

FISCAL IMPACT: An estimated \$ 40,000 increase in Sewer Enterprise revenue.

RECOMMENDATION:

Introduce and approve on first reading Ordinance No. 2016-2941 providing for the amendment to Appendix D, Sewer Department Rates and Fees.

APPROVALS:



Lea Ann Doak, City Clerk

9/15/16

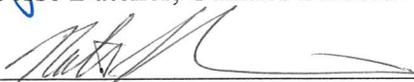
Date



Jesse Dutcher, Utilities Director

9-13-16

Date



Nate Schneider, City Manager

9-13-16

Date

ORDINANCE NO. 2016-2941

AN ORDINANCE PROVIDING FOR THE AMENDMENT OF FEE SCHEDULE - APPENDIX D, SEWER DEPARTMENT RATES AND FEES; OF THE CITY OF MCCOOK CODE OF ORDINANCES; PROVIDING FOR THE REPEAL OF ORDINANCE NO. 2012-2881 AND ANY AND ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING A TIME AND DATE FROM AND AFTER WHICH THIS ORDINANCE SHALL TAKE EFFECT AND BE ENFORCED.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MCCOOK, NEBRASKA:

SECTION 1. That Fee Schedule - Appendix D, Sewer Department Rates and Fees; Section D - Sewer Use Charges, shall be amended to read as follows:

D. Sewer Use Charges.

1. Residential. The residential sewer use charges provided for in Section 51.072 are as follows:

Minimum Charges of \$15.279 per month based on the first 333 cubic feet of water usage.

Residential Rate - \$3.299 per 100 cubic feet for everything over 333 cubic feet water usage.

2. Commercial. The commercial sewer use charges provided for in Section 51.072 are as follows:

Minimum Charge of \$22.259 per month based on the first 333 cubic feet of water usage.

Commercial Rate - \$3.299 per 100 cubic feet for everything over 333 cubic feet water usage.

3. Sewage Disposal at the Treatment Plant. All sewage that is transported by truck or any vehicle to the plant for disposal will be assessed a fee of \$. 10 per gallon.

SECTION 2. Ordinance No. 2012-2881 and any and all other ordinances or parts of ordinances in conflict herewith shall be and are hereby repealed.

SECTION 3. This ordinance shall take effect with the bills dated November 1, 2016 and be in full force from and after its passage, approval, and publication as required by law in its entirety or in pamphlet form, as the case may be.

PASSED AND APPROVED this _____ day of _____, 2016.

- s - Michael D. Gonzales, Mayor

ATTEST:

-s- Lea Ann Doak, City Clerk

**CITY MANAGER'S REPORT
OCTOBER 17, 2016 CITY COUNCIL MEETING**

ITEM: 5C

RECOMMENDATION:

Approve Ordinance No. 2016-2942 amending Section 51.072 Determination of Use Charges, changing the language of how sewer usage is calculated for commercial and carwash facilities upon its third and final reading.

BACKGROUND:

Please refer to the attached City Manager's Report prepared for the October 3, 2016 council meeting.

**FISCAL
IMPACT:** None.

RECOMMENDATION:

Approve Ordinance No. 2016-2942 amending Section 51.072 Determination of Use Charges, changing the language of how sewer usage is calculated for commercial and carwash facilities upon its third and final reading.

APPROVALS:



Lea Ann Doak, City Clerk

October 13, 2016

ORDINANCE NO. 2016-2942

AN ORDINANCE PROVIDING FOR THE AMENDMENT OF CHAPTER 51 - SEWER REGULATIONS, SECTION 51.072 DETERMINATION OF USE CHARGES; OF THE CITY OF MCCOOK CODE OF ORDINANCES; PROVIDING FOR THE REPEAL OF ANY AND ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING A TIME AND DATE FROM AND AFTER WHICH THIS ORDINANCE SHALL TAKE EFFECT AND BE ENFORCED.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MCCOOK, NEBRASKA:

SECTION 1. That Chapter 51 - Sewer Regulations, Section 51.072 Determination of Use Charges; shall be amended to read as follows:

“§ 51.072 DETERMINATION OF USE CHARGES.

(A) Residential users served by the sewerage system shall pay the charges provided for by ordinance of the City Council and set out in Chapter 38, Fee Schedule. Sewer charge shall be based on water consumed annually during the months of December, January, and February. One-third of that charge will be billed monthly, starting with the bill mailed on or about May 1. In the case of multiple dwelling units or trailer courts served by a single meter, the rate shall be the same as for residential units served by the meter, provided the minimum charge for sewer service shall be the minimum average charge times the number of units that have used any quantity of water during the months of December, January, and February, or 333 cubic feet of water usage times the number of units that have used any quantity of water during those months, whichever is smaller. The sewage contribution of a new residential user either within or without the corporate limits of the city with no established winter months water record shall be based on the regular average charge until such time as the base contribution of sewage is determined. Use of minimum charge for schools during summer months will be determined by the city.

(B) Commercial users served by the sewage system shall pay the charges provided by ordinance of the City Council and set out in Chapter 38, Fee Schedule. Sewer charge shall be based on water consumed during the months of December, January, and February. One-third of that charge will be billed monthly, starting with the bill mailed on or about May 1. In the case of industries discharging only non-process related wastewater, the rate shall be the same as for commercial users. In the case of vehicle washing facilities, the rate shall be the same as for commercial users and based on water consumed monthly.

(C) (1) Industrial users contributing process waste to the sewerage system shall be billed monthly and charged according to the average daily contribution of flow, suspended solids, and BOD. The formula for determining the total amount to be charged each industrial process waste contributor is as follows:

$$A = \frac{(1/3) C (Vu)}{V} + \frac{(1/3) C (Su)}{S} = \frac{(1/3) C (Bu)}{B}$$

- Where
- A= Amount owed by industrial user for sewage treatment and collection
 - C= Total sewage treatment collection expense for the year
 - Vu= Volume of flow from industrial user (gallons)
 - V= Total volume of flow to sewer system (gallons)
 - Su= Suspended solids from industrial user (pounds)
 - S= Total suspended solids to sewer system (pounds)
 - Bu= BOD from industrial user (pounds)
 - B= Total BOD to sewer system (pounds)

(2) Obtaining and analyzing sewage samples for use in determining the industrial sewer use charge to be billed against a given industrial user shall be the responsibility of the city and performed according to § 51.041 of this chapter.

(D) All sewage that is transported by truck or any vehicle to the plant for disposal shall pay the charges provided for by ordinance of the City Council and set out in Chapter 38, Fee Schedule.

SECTION 2. Any and all other ordinances or parts of ordinances in conflict herewith shall be and are hereby repealed.

SECTION 3. This ordinance shall take effect and be in full force from and after its passage, approval, and publication as required by law in its entirety or in pamphlet form, as the case may be.

PASSED AND APPROVED this _____ day of _____, 2016.

- s - Michael D. Gonzales, Mayor

ATTEST:

-s- Lea Ann Doak, City Clerk

**CITY MANAGER'S REPORT
OCTOBER 3, 2016 CITY COUNCIL MEETING**

ITEM: 5D

RECOMMENDATION:

APROVE ON SECOND READING ORDINANCE NO. 2016-2942 AN AMENDMENT TO 51.072 DETERMINATION OF USE CHARGES CHANGING THE LANGUAGE OF HOW SEWER USAGE IS CALCULATED FOR COMMERCIAL AND CARWASH FACILITIES.

BACKGROUND:

Ordinance 51.072 sets how sewer usage is determined. The language in the ordinance states that residential users are billed monthly based on water usage in December, January and February. Commercial users have been calculated using the same method for a number of years. The months of December, January and February are used because these are months when outside water use is not common. Therefore water passing through the water meter is going into the city sewer and thus used to set the usage amount.

Currently 51.072 state that commercial is billed using the "*first billing quarter of each year*". By the end of the first quarter, ie March some irrigation is being utilized.

The requested change, strikes the current references to *the first quarter* and *the quarter* and inserts the months of December, January and February and changes the amount of cubic feet from 900 to 333. Which brings the language for commercials in line with residential users.

With one class exclusion Vehicle Washing Facilities typically see much higher usage during the winter months. Therefore it has also been the policy of the Sewer Department to calculate the usage for carwashes based on the amount of water they use each month. This has worked out well since none of the carwash businesses have irrigation and all of the water passing through the meter goes to the sanitary sewer. The language change in the ordinance will bring the ordinance in line with policy.

FISCAL

IMPACT: None

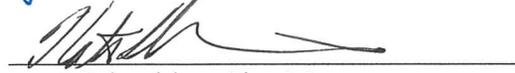
RECOMMENDATION:

APROVE ON SECOND READING ORDINANCE NO. 2016-2942 AN AMENDMENT TO 51.072 DETERMINATION OF USE CHARGES CHANGING THE LANGUAGE OF HOW SEWER USAGE IS CALCULATED FOR COMMERCIAL AND CARWASH FACILITIES.

APPROVALS:



Jesse Dutcher, Utility Director



Nate Schneider, City Manager



Lea Ann Doak, City Clerk

September 29, 2016

Date

September 29, 2016

Date

September 29, 2016

Date

ORDINANCE NO. 2016-2942

AN ORDINANCE PROVIDING FOR THE AMENDMENT OF CHAPTER 51 - SEWER REGULATIONS, SECTION 51.072 DETERMINATION OF USE CHARGES; OF THE CITY OF MCCOOK CODE OF ORDINANCES; PROVIDING FOR THE REPEAL OF ANY AND ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING A TIME AND DATE FROM AND AFTER WHICH THIS ORDINANCE SHALL TAKE EFFECT AND BE ENFORCED.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MCCOOK, NEBRASKA:

SECTION 1. That Chapter 51 - Sewer Regulations, Section 51.072 Determination of Use Charges; shall be amended to read as follows:

“§ 51.072 DETERMINATION OF USE CHARGES.

(A) Residential users served by the sewerage system shall pay the charges provided for by ordinance of the City Council and set out in Chapter 38, Fee Schedule. Sewer charge shall be based on water consumed annually during the months of December, January, and February. One-third of that charge will be billed monthly, starting with the bill mailed on or about May 1. In the case of multiple dwelling units or trailer courts served by a single meter, the rate shall be the same as for residential units served by the meter, provided the minimum charge for sewer service shall be the minimum average charge times the number of units that have used any quantity of water during the ~~quarter, the~~ **months of December, January, and February**, or ~~900~~ **333** cubic feet of water usage times the number of units that have used any quantity of water during ~~that quarter~~ **those months**, whichever is smaller. The sewage contribution of a new residential user either within or without the corporate limits of the city with no established ~~first quarter~~ **winter months** water record shall be based on the regular average charge until such time as the base contribution of sewage is determined. Use of minimum charge for schools during summer months will be determined by the city.

(B) Commercial users served by the sewage system shall pay the charges provided by ordinance of the City Council and set out in Chapter 38, Fee Schedule. Sewer charge shall be based on water consumed during the ~~first billing quarter of each year.~~ **months of December, January, and February.** One-third of that charge will be billed monthly, starting with the bill mailed on or about May 1. In the case of industries discharging only non-process related wastewater, the rate shall be the same as for commercial users. **In the case of vehicle washing facilities, the rate shall be the same as for commercial users and based on water consumed monthly.**

(C) (1) Industrial users contributing process waste to the sewerage system shall be billed monthly and charged according to the average daily contribution of flow, suspended solids, and BOD. The formula for determining the total amount to be charged each industrial process waste contributor is as

follows:

$$A = \frac{(1/3) C (Vu)}{V} + \frac{(1/3) C (Su)}{S} = \frac{(1/3) C (Bu)}{B}$$

Where A= Amount owed by industrial user for sewage treatment and collection
C= Total sewage treatment collection expense for the year
Vu= Volume of flow from industrial user (gallons)
V= Total volume of flow to sewer system (gallons)
Su= Suspended solids from industrial user (pounds)
S= Total suspended solids to sewer system (pounds)
Bu= BOD from industrial user (pounds)
B= Total BOD to sewer system (pounds)

(2) Obtaining and analyzing sewage samples for use in determining the industrial sewer use charge to be billed against a given industrial user shall be the responsibility of the city and performed according to § 51.041 of this chapter.

(D) All sewage that is transported by truck or any vehicle to the plant for disposal shall pay the charges provided for by ordinance of the City Council and set out in Chapter 38, Fee Schedule.

SECTION 2. Any and all other ordinances or parts of ordinances in conflict herewith shall be and are hereby repealed.

SECTION 3. This ordinance shall take effect and be in full force from and after its passage, approval, and publication as required by law in its entirety or in pamphlet form, as the case may be.

PASSED AND APPROVED this _____ day of _____, 2016.

- s - Michael D. Gonzales, Mayor

ATTEST:

-s- Lea Ann Doak, City Clerk