

**PEDERNALES ELECTRIC COOPERATIVE, INC.
EMPLOYEES DEFINED BENEFIT RETIREMENT PLAN**

Original Effective Date: January 1, 1964
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**PEDERNALES ELECTRIC COOPERATIVE, INC.
EMPLOYEES DEFINED BENEFIT RETIREMENT PLAN**

INTRODUCTION

Pedernales Electric Cooperative, Inc., the employer, has prepared this plan document to set forth the provisions of the Pedernales Electric Cooperative, Inc. Employees Defined Benefit Retirement Plan as amended and restated effective January 1, 2020, except as otherwise provided herein. The plan shall be administered by the plan administrator. The funds accumulated for the purpose of providing benefits specified by the plan shall be held in the trust described in Section 1.29.

The purpose of the plan is to provide a retirement program for the exclusive benefit of the eligible employees of the plan sponsor and any participating employer. Neither the plan sponsor, a participating employer, the plan administrator nor the trustee shall apply or interpret the terms of the plan in any manner that permits discrimination in favor of individuals who are officers, owners or highly compensated. All benefits payable by the plan shall be determined in accordance with the provisions of the plan document applied uniformly to all eligible individuals.

The plan sponsor intends that the plan and the related plan assets comply with the applicable provisions of the Internal Revenue Code of 1986 (the Code), as amended from time to time, relating to qualified employee retirement plans. It is further intended that the plan comply with the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), as amended from time to time. So far as is possible, the plan shall be administered in a manner consistent with the intent of qualifying under the Code and complying with ERISA.

The amendment and restatement of the plan effective January 1, 2020, shall have no effect on benefits accrued or paid under the plan as in effect prior to January 1, 2020.

ARTICLE 1

DEFINITIONS

As used herein, unless otherwise defined or required by the context, the following terms shall have the meanings indicated. Some of the terms used in the plan are not defined in this Article 1, but, for convenience, are defined as they are introduced in the text.

Section 1.01 - Accrued Benefit

A participant's accrued benefit is the monthly benefit payable in the normal form at normal retirement age determined at any point in time prior to his normal retirement age. Notwithstanding any provision of this plan to the contrary, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.

The amount of a participant's accrued benefit shall be calculated in the same manner as his normal retirement benefit pursuant to Section 4.01(c) using in the calculation years of benefit accrual service and compensation earned as of the determination date of the accrued benefit.

The accrued benefit is comprised of an employee derived accrued benefit and an employer derived accrued benefit.

At normal retirement age, a participant's accrued benefit is the normal retirement benefit pursuant to Section 4.01. Subsequent to normal retirement age, a participant's accrued benefit is the late retirement benefit pursuant to Section 4.03 as of the accrued benefit determination date.

The amount of a participant's accrued benefit shall be subject to the applicable provisions of Sections 4.02, 4.20 and 6.03(b).

The amount of a participant's accrued benefit will be reduced by the amount of any earlier determined accrued benefit the value of which has been previously distributed to the participant. Furthermore, a portion of a participant's accrued benefit may be assigned to an alternate payee as provided by a qualified domestic relations order as that term is defined in Code Section 414(p) and in such event, the amount of the participant's accrued benefit shall be reduced by the amount so partitioned to an alternate payee.

Furthermore, there shall be no benefit accrual service nor accrued benefit for any employee who does not become a participant of the plan on or before its final entry date of January 1, 2006.

Section 1.02 - Actuarially Equivalent

The term actuarially equivalent shall mean equality in value of the aggregate amounts expected to be received under different forms of payments and/or at different times determined under various situations and specifications as follows:

(a) **For Converting Payment Form Into Lifetime Monthly Payments and Certain Monthly Payments of 5 or More Years**

1984 Unisex Pensioner Mortality Table with a 3 year setback for all payees and interest at an effective annual rate of 8%.

(b) **For Converting Payment Form Into Single Payments and Certain Monthly Payments of Less Than 5 Years**

1984 Unisex Pensioner Mortality Table with a 3 year setback for all payees and interest at an effective annual rate of 8%.

(c) **For Converting Normal Retirement Benefit Into Late Retirement Benefit**

1/180 increase for each month late retirement payments are delayed beyond normal retirement.

(d) **For Converting Accrued Benefit Into Early Retirement Benefit**

1/12 of 5% reduction for each month early retirement payments precede normal retirement payments. No reduction shall be applied, however if the participant to whom early retirement payments are made terminated employment after satisfying the requirements for early retirement as specified in Section 4.04 and at the time such early retirement benefits commence has attained an age (in complete years and complete months) and completed years of benefit accrual service (in complete years and complete months) such that the sum of years of age and years of benefit accrual service totals to at least 80 years.

(e) **Code Section 417 Minimum Requirements**

Notwithstanding the preceding paragraphs of this Section 1.02, for purposes of determining the amount of a distribution in a form other than an annual benefit (1) that is nondecreasing for the life of the participant or, in the case of a qualified pre-retirement survivor annuity, the life of the participant's spouse; or (2) that decreases during the life of the participant merely because of the death of the surviving annuitant (but only if the reduction is to a level not below 50% of the annual benefit payable before the death of the surviving annuitant) or merely because of the cessation or reduction of Social Security supplements or qualified disability payments, actuarial equivalence will be determined on the basis of the applicable mortality table and applicable interest rate under Code Section 417(e), if it produces a benefit greater than that determined under Section 1.02(b).

The applicable mortality table means a mortality table, modified as appropriate by the Secretary, based on the mortality table specified for the plan year under subparagraph (A) of Code Section 430(h)(3) without regard to subparagraphs (C) or (D) of such section (or any successor applicable mortality table specified by the Commissioner).

The applicable interest rate shall be the adjusted first, second and third segment rates applied under the rules similar to the rules of Code Section 430(h)(2)(C), further described below within this paragraph, as specified by the Commissioner (or any successor applicable interest rate or rates specified by the Commissioner) for the lookback month and stability period specified below for purposes of this Section 1.02(e). The adjusted first, second and third segment rates are the first, second and third segment rates that would be determined under Code Section 430(h)(2)(C) if:

i) Code Section 430(h)(2)(D) were applied by substituting the average yields for the month described in clause (ii) below for the average yields for the 24-month period described in such section, and

ii) Code Section 430(h)(2)(G)(i)(II) were applied by substituting “IRC Section 417(e)(3)(A)(ii)(II)” for “IRC Section 412(b)(5)(B)(ii)(II).”

For purposes of this Section 1.02(e), the lookback month applicable to the stability period is the third calendar month preceding the first day of the stability period. The stability period is the successive period of one plan quarter that contains the annuity starting date for the distribution and for which the applicable interest rate remains constant. (For example, applicable interest rate specified by the Commissioner for July is used for the calendar quarter of October, November and December).

Notwithstanding the above, a plan amendment that changes the date for determining the applicable interest rate (including an indirect change as a result of a change in plan year), shall not be given effect with respect to any distribution during the period commencing one year after the later of the amendment’s effective date or adoption date, if, during such period and as a result of such amendment, the participant’s distribution would be reduced.

(f) **Required Observation of Article 5 Limitations and Code Section 411(c)(2)**

The preceding paragraphs of Section 1.02 shall not be applied to the extent such application would violate the benefit limitations of Article 5 or would not comply with the determination of any employee derived accrued benefit determination pursuant to Code Section 411(c)(2).

(g) **Preservation of Actuarial Equivalent Upon Plan Amendment**

Except for actuarial equivalent determinations that meet the conditions for Code Section 411(d)(6) relief under IRS Regulation 1.417(e)-1, if the basis of determining actuarial equivalency of a payment form is amended, the actuarial equivalent of such payment form on or after the date of the amendment shall be determined as the greater of (1) the actuarial equivalent of the payment form determined as of the amendment date computed on the prior basis of actuarial equivalency and then current accrued benefit and (2) the actuarial equivalent of the payment form determined as of any subsequent payment date computed on the amended basis of actuarial equivalency.

Section 1.03 - Average Monthly Compensation

For those participants not employed by the employer on or after January 1, 2002, a participant’s average monthly compensation during any given month shall be the result of dividing

the sum of his considered monthly compensation for each of 60 consecutive months of employment by 60. The consecutive months chosen shall be the ones producing the largest average monthly compensation. If a participant does not have considered monthly compensation from 60 months of employment, his average monthly compensation shall be determined from the available number of months of employment.

For those participants employed by the employer on or after January 1, 2002, a participant's average monthly compensation during any given month shall be the result of dividing the sum of his considered monthly compensation for each of 36 months of employment by 36. The 36 months chosen shall be 3 separate and non-overlapping 12 consecutive month periods producing the largest average monthly compensation. If a participant does not have considered monthly compensation from 36 months of employment, his average monthly compensation shall be determined from the available number of months of employment.

For purposes of computing a participant's average monthly compensation, a month of employment shall consist of any month if as of the first of such month the participant is actively employed and is not on a leave of absence, except as otherwise may be required under Code Section 414(u).

Section 1.04 - Beneficiary

A beneficiary shall be any person, persons, trust or other entity, duly and properly designated to receive the benefits which may become payable upon the death of a participant or other person. The plan administrator shall provide forms so that necessary primary and contingent beneficiaries can be designated.

Section 1.05 - Code

The term Code shall mean the Internal Revenue Code of 1986, as it may be amended from time to time and applicable final, temporary or proposed regulations issued thereunder. Reference to a section of the Code shall include that section and any comparable section or sections of future legislation that amends, supplements or supersedes such section and any regulations issued thereunder.

Section 1.06 - Compensation And Compensation Limitation

(a) **Compensation** - The term compensation for a given calendar year shall mean all of each participant's W-2 earnings as reported by the employer. W-2 earnings are wages within the meaning of Code Section 3401(a) and all other payments of compensation to an employee by the employer (in the course of the employer's trade or business) for which the employer is required to furnish the employee a written statement under Code Sections 6041(d), 6051(a)(3), and 6052. Compensation must be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)). Compensation shall also specifically include amounts that would have been included in such W-2 earnings except for the effect of any compensation reduction election made pursuant to Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 457 or 403(b). Compensation shall also include any amount considered to be deemed Code Section 125 compensation. An amount shall be considered deemed Code Section 125 compensation if it is an excludable amount that is not available to an employee in

cash in lieu of group health care coverage under a Code Section 125 arrangement because that employee is not able to certify that he has other health care coverage.

(b) **Compensation Limitation** - The annual compensation of each participant taken into account in determining benefits shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B). Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the plan determines compensation on a period of time that contains fewer than 12 calendar months, then the annual compensation limit is an amount equal to the annual compensation limit for the calendar year in which the compensation period begins multiplied by the ratio obtained by dividing the number of full months in the period by 12. If compensation for any prior year is taken into account in determining a participant's contributions or benefits for the current year, the compensation for such prior year is subject to the applicable annual compensation limit in effect for that prior year.

Notwithstanding the above, in determining benefits in plan years beginning on or after January 1, 2002, the annual compensation limit in effect for determination periods beginning before that date is \$200,000.

Section 1.07 - Considered Monthly Compensation

Considered monthly compensation for a given month with respect to any participant means such participant's monthly base rate of pay, determined as of the first day of such month. "Base pay" means payment for regularly scheduled hours of work, including pay in lieu of work (for example, for vacation days, jury duty, the first 20 days of military leave, administrative leave, and other types of paid leave), and pay in lieu of notice (a severance from employment initiated by the employer or the participant). "Base pay" does not include holiday bonuses, merit bonuses, or other bonuses; rotation allowance, auto allowance or other allowances; double time pay, overtime, or call-out pay; or deferred compensation; or, effective January 1, 2009, any differential wage payments as defined in Code Section 3401(h)(2) other than payments made for the first 20 days of a military leave of absence.

Section 1.08 - Disability

Disability shall mean the inability to engage in any substantial gainful activity by reason of any physical or mental impairment that can be expected to result in death or which is reasonably expected to be permanent. A participant shall be considered to be disabled within the meaning of this Section 1.08 if the participant meets at least one of the following criteria:

(a) The participant has been determined to be disabled for purposes of the Social Security Act, or

(b) The participant has been determined to be disabled for purposes of the Employer's long-term disability plan.

The disabled participant shall cooperate with the plan administrator in any reasonable requests for documentation needed to verify such disability, as applicable.

Section 1.09 – Effective Date

The Effective Date of this restatement shall mean January 1, 2020. The original effective date of the Plan was January 1, 1964.

Section 1.10 – Employee

The term employee shall mean any individual employed as a common law employee by the employer or any participating employer. Pursuant to the provisions of Sections 2.01, 2.02 and 2.03, any employee hired on or after July 1, 2005 will not be eligible to become a participant of this plan.

Notwithstanding any provision of this plan to the contrary, any individual receiving “differential wage payments” as defined in Code Section 3041(h)(2) shall be treated as an employee of the employer making the payment. Differential wage payments shall be considered as compensation for purposes of Plan Sections 1.06(a) and 5.05(c).

Section 1.11 - Employee Derived Accrued Benefit

The employee derived accrued benefit is that portion of a participant’s accrued benefit which is attributable to any required employee contributions made by the participant to the extent that the required employee contributions (plus applicable interest) have not been refunded to the participant. The amount of the employee derived accrued benefit as of a given determination date shall be determined as follows:

(a) first, determine as of the determination date the current balance of the required employee contributions reflecting interest credited thereon pursuant to Section 3.02;

(b) next, add to the amount determined in step (a) above future interest compounded annually from the determination date until the participant’s normal retirement age at an interest rate which would be used under the plan for Code Section 417(e)(3) as of the determination date or such other rate as may be called for under Code Section 411(c) as may be amended from time to time;

(c) finally, the sum of the amounts determined in steps (a) and (b) above would be converted into the normal form of benefit using the interest rate and mortality assumption which would be used under the plan for Code Section 417(e)(3) as of the determination date or such other factors as may be indicated by law or regulation under Code Section 411(c).

The lump sum, single payment actuarially equivalent value of any employee derived accrued benefit shall be the current balance of the required employee contributions with credited interest or, if larger, the present value determined pursuant to Section 1.02.

A participant shall be 100% vested at all times in his employee derived accrued benefit. The payment of all or part of a participant’s employee derived accrued benefit will not result in any reduction or forfeiture of such participant’s employer derived accrued benefit.

Section 1.12 - Employer

Employer shall mean Pedernales Electric Cooperative, Inc. and any participating employer.

Section 1.13 - Employer Derived Accrued Benefit

The employer derived accrued benefit in all years shall equal the excess, if any, of the accrued benefit over the employee derived accrued benefit.

Section 1.14 - Entry Date

The term entry date shall mean the date specified in Section 2.02 on which an eligible employee becomes a participant of this plan.

Section 1.15 - ERISA

ERISA shall mean the Employee Retirement Income Security Act of 1974, as may be amended from time to time and regulations issued thereunder. Reference to a section of ERISA shall include that section and any comparable section or sections of any future legislation that amends, supplements or supersedes such section and regulations issued thereunder.

Section 1.16 - Highly Compensated Employee

A highly compensated active employee includes any employee who performs service for the employer during the determination year and who, during the look-back year received compensation from the employer in excess of \$125,000, as adjusted pursuant to Code Section 415(d). The term highly compensated employee also includes employees who are five percent owners at any time during the look-back year or determination year.

The term compensation for purposes of this Section 1.16 shall mean wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the employer maintaining the plan to the extent that the amounts are includable in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in IRS Reg. 1.62-2(c)), and excluding the following: (a) employer contributions to a plan of deferred compensation which are not includible in the employee's gross income for the taxable year in which contributed, or employer contributions under a simplified employee pension plan, or any distributions from a plan of deferred compensation; (b) amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture; (c) amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and (d) other amounts which received special tax benefits, or contributions made by the employer (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in Code Section 403(b) (whether or not the contributions are actually excludable from the gross income of the employee). However, compensation shall include amounts deferred pursuant to Code Section 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 457 and 403(b).. If such Code Section 415(c)(3) definition does not include any amount considered to be deemed Code Section 125 compensation, then such amounts will be added

to the Code Section 415(c)(3) definition. An amount shall be considered deemed Code Section 125 compensation if it is an excludable amount that is not available to an employee in cash in lieu of group health care coverage under a Code Section 125 arrangement because that employee is not able to certify that he has other health care coverage.

For this purpose, the determination year shall be the plan year. The look-back year shall be the twelve-month period immediately preceding the determination year.

The determination of who is a highly compensated employee, including the determination of the compensation that is considered, will be made in accordance with Code Section 414(q) and the regulations thereunder.

A highly compensated former employee is based on the rules applicable to determining highly compensated employee status as in effect for that determination year, in accordance with Section 1.414(q)-1T, A-4 of the temporary Income Tax Regulations and Notice 97-45.

Section 1.17 - Hour of Service

Hour of service shall mean:

(a) Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer. These hours will be credited to the employee for the computation period in which the duties are performed; and

(b) Each hour for which an employee is paid, or entitled to payment, by the employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. No more than 501 hours of service will be credited under this paragraph for a single computation period (whether or not the period occurs in a single computation period). Hours under this paragraph will be calculated and credited pursuant to section 2530.200b-2 of the Department of Labor Regulations which are incorporated herein by this reference; and

(c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the employer. The same hours of service will not be credited both under paragraph (a) or paragraph (b), as the case may be, and under this paragraph (c). These hours will be credited to the employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement, or payment is made.

Hours of service will be credited for employment with other members of an affiliated service group (within the meaning of Code Section 414(m)), a controlled group of corporations (within the meaning of Code Section 414(b)), or a group of trades or businesses under common control (within the meaning of Code Section 414(c)), of which the employer is a member and any other entity required to be aggregated with the employer pursuant to Code Section 414(o). Hours of service will also be credited for any individual considered an employee under Code Sections 414(n) or 414(o).

Hours of service will be determined on the basis of actual hours for which an employee is paid or entitled to payment.

Section 1.18 - Normal Form

Normal form shall mean the anticipated and ordinary form of monthly retirement benefit payments made from the plan as specified in Section 4.01(b).

Section 1.19 - Normal Retirement Age

Normal retirement age is defined in Section 4.01(a).

Section 1.20 - Optional Payment Form

An optional payment form shall be any form of payment identified in Section 4.09(a) which is allowed under the plan and is actuarially equivalent to the otherwise available payment form.

Section 1.21 - Participant

Participant shall mean any employee who has satisfied the conditions for participation under this plan and who has become a participant hereunder. An active participant shall mean any participant who is currently employed by the employer. A vested terminated participant shall mean any former employee or former active participant who was an active participant and who is entitled to future or contingent benefits under the plan. A retired participant is any former employee to whom benefit payments hereunder have commenced.

Section 1.22 - Participating Employer

Participating employer shall mean an employer which is a member of the controlled group of employers which includes the plan sponsor and which elects to become a participating employer to this plan and such election is approved by the plan sponsor.

Section 1.23 - PBGC

The PBGC shall mean the Pension Benefit Guaranty Corporation.

Section 1.24 - Plan

Plan shall mean the Pedernales Electric Cooperative, Inc. Employees Defined Benefit Retirement Plan as described herein and as may be hereafter amended.

Section 1.25 - Plan Administrator

Plan administrator shall be the committee or individual appointed by the plan sponsor to direct the administration of the plan. The plan sponsor shall be the plan administrator if no other such committee or individual has been appointed. As of the Effective Date, the plan administrator is the Pedernales Electric Cooperative, Inc. Plan Administration Committee.

Section 1.26 - Plan Sponsor

Plan sponsor shall mean Pedernales Electric Cooperative, Inc., which established the plan, and any successor entity that continues the sponsorship of the plan.

Section 1.27 - Plan Year

The plan year for the plan shall be the 12-consecutive month period ending each December 31st.

Section 1.28 - Trustee

The term trustee shall refer to the individual trustees or corporate trustee which is appointed by the employer and agrees to serve as trustee to the plan assets.

Section 1.29 - Trust, Trust Fund

The term trust or trust fund shall mean the assets held and invested by the trustee for the purpose of providing the benefits specified in the plan, to be administered in accordance with the terms of a separate agreement entered into with the trustee to provide for the holding of the assets of the trust, the terms of which are hereby incorporated by reference for all purposes to the extent not in conflict with the terms of the plan. In the event of such conflict, the terms of the plan shall prevail, except that the terms of the trust shall prevail in the case of any conflict with respect to the powers, rights and duties of the trustee.

As of the Effective Date, all plan assets are held pursuant to a trust agreement entered into with U.S. Bank National Association on May 9, 2018.

Section 1.30 - Vested Accrued Benefit

The term vested accrued benefit is the portion of the accrued benefit which, as of a given point in time, has become nonforfeitable.

Section 1.31 - Vested Percentage, Vesting Percentage

The term vested percentage or vesting percentage means the percentage (based on the vesting schedule and a participant's years of vesting service) that is applied to the participant's accrued benefit in determining his nonforfeitable interest in such accrued benefit.

Section 1.32 - Vesting Schedule

The vesting schedule shall be as follows:

<u>Years of Vesting Service</u>	<u>Vesting Percentage</u>
less than 5	0%
5 or more	100

A participant's vesting percentage shall always be 100% vested upon the attainment of his normal retirement age.

ARTICLE 2

ELIGIBILITY, PARTICIPATION AND SERVICE

Section 2.01 - Eligibility Requirements

Employees in the following classification(s) shall not be eligible to participate in the plan:

- (i) any employee whose first day of employment with the employer or any participating employer is on or after July 1, 2005;
- (ii) any employee whose first day of employment with the employer or any participating employer is before July 1, 2005, but who had not satisfied the eligibility requirements in (a) and (b) above by December 31, 2005; and
- (iii) any former employee whose first day of reemployment with the employer or any participating employer is on or after August 15, 2005.

No new participant will be eligible for admission to the plan on or after January 1, 2006, except as otherwise provided above or in Section 2.02. For these purposes, an employee's first day of employment (or reemployment) is the first day the employee performs one hour of service. Notwithstanding the foregoing or anything to the contrary contained elsewhere in the plan, with regard to any employees who would not otherwise be excluded from eligibility to participate under the above clauses (i), (ii), or (iii), in the event that any such employee transfers employment between the employer and any participating employer and such transfer involves the employee's termination of employment with one such entity and his immediate employment by the other such entity, such employee will still be eligible to participate in the plan if he meets the other eligibility requirements of the plan, even if such transfer events occur on or after July 1, 2005.

Section 2.02 - Participation Entry Date

An employee who has met the requirements of Section 2.01 shall become a participant on the entry date coincident with or first following his satisfaction of such requirements, but in no event later than January 1, 2006.

Any employee who was a participant in the plan as of December 31, 2019, shall continue as a participant effective January 1, 2020, subject to the plan's terms.

Notwithstanding the above provisions, any employee described in Section 4.19(b) who was formerly an employee of Kimble Electric Cooperative, Inc. and who was a participant of the NRECA Retirement & Security Program Defined Benefit Retirement Plan sponsored by the NRECA and adopted by the plan sponsor effective July 14, 2000, shall not have a participation entry date into this plan prior to December 31, 2001.

Notwithstanding the above provisions, any employee whose first day of employment with the employer or any participating employer is on or after July 1, 2005, any employee whose first day of employment is before July 1, 2005 but who has not satisfied the plan's eligibility

requirements by December 31, 2005, and any former employee whose first day of reemployment is on or after August 15, 2005, is not eligible to participate in the plan and shall not enter the plan on the January 1, 2006 entry date described above or on any other date.

Section 2.03 - Reemployment and Reparticipation Entry Date

Any former employee who was a participant in the plan prior to terminating employment with the employer shall become an active participant in the plan immediately upon his reemployment with the employer; provided, however, that no participant whose first date of reemployment with the employer is on or after August 15, 2005, will accrue any further benefits under the plan upon the participant's reemployment with the employer, either immediately or at any time thereafter. A former employee who terminated employment prior to becoming eligible to participate in the plan or the participant's applicable entry date, who did not become reemployed with the employer prior to August 15, 2005, shall not be entitled to enter the plan.

Section 2.04 - Service

(a) **Service** - Service shall mean any period of time during which an employee is employed by the employer. If the employer is a member of an affiliated service group (within the meaning of Code Section 414(m)), a controlled group of corporations (within the meaning of Code Section 414(b)), or a group of trades or businesses under common control (within the meaning of Code Section 414(c)), service will include any period of employment with any other member of such group. Service will also be credited for any individual required to be considered an employee of any employer aggregated under Code Section 414(b), (c), or (m) pursuant to Code Sections 414(n) or 414(o). Notwithstanding any provision of this plan to the contrary, service credit with respect to qualified military service will be provided in accordance with Code Section 414(u) and in accordance with Section 2.05(f).

(b) **Leave of Absence** - Leave of absence shall mean a specific and predetermined period of time without pay granted to an employee by the employer due to illness, injury, temporary reduction in work force, educational leave or other appropriate cause or any period of time granted during which the employee's reemployment rights are protected by law, provided (i) the employee returns to the service of the employer on or prior to the expiration of such leave or within the time his reemployment rights are protected by law, and (ii) all leaves of absence are granted or denied by the employer in a uniform and nondiscriminatory manner, treating employees in a similar circumstance in a like manner. A leave of absence granted under this paragraph shall be credited as employment service for all purposes of this plan.

(c) **Special Maternity or Paternity Absence** - An employee's absence from service (1) by reason of the employee's pregnancy, (2) by any reason of the employee giving birth, (3) by reason of the placement of a child with the employee in connection with the adoption of such child by such employee, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement shall not cause a break in service under Section 2.04(d) for the 12-consecutive month period ending on the first anniversary of the first day of such absence. Prior to the crediting of service under this paragraph, the plan administrator may require that the employee furnish such timely information as is reasonably required to establish that the cause of the absence is for the reasons identified above and to identify the period of time related to such absence.

(d) **Break in Service** - A break in service shall be a period of severance of at least 12-consecutive months. A period of severance is a continuous period of time during which the employee is not employed by the employer. Such period begins on the date the employee retires, quits or is discharged, or if earlier, the 12 month anniversary of the date on which the employee was otherwise first absent from service. However, in determining a 1-year period of service for purposes of initial eligibility to participate and a period of service for purposes of retention of eligibility to participate, in addition to taking into account an employee's period of service, a plan shall take into account the following periods of severance: (a) if an employee severs from service by reason of a quit, discharge or retirement and the employee then performs an hour of service within 12 months of the severance from service date, the plan is required to take into account the period of severance; and (b) notwithstanding the preceding provision described in (a), if an employee severs from service by reason of a quit, discharge or retirement during an absence from service of 12 months or less for any reason other than a quit, discharge, retirement or death, and then performs an hour of service within 12 months of the date on which the employee was first absent from service, the plan is required to take into account the period of severance. For purposes of determining the date on which an employee satisfies the service requirement for initial eligibility to participate in the plan when the elapsed time method of crediting service is used, an employee who completes a one-year period of service requirement on the first anniversary of his employment commencement date satisfies the minimum service requirement as of such date. Moreover, in determining whether an employee incurs a one-year break in service for eligibility purposes, the eligibility period used in Section 2.04(e) for measuring years of service after the initial eligibility computation period shall be used. In addition, an employee who separates from service and is reemployed prior to incurring a break in service shall continue to vest upon his reemployment, in both his pre-separation and post-separation benefit accruals, starting at the point he was at in the plan's vesting schedule at the time of his separation from service. Provided, however, no break in service shall include a period of absence precluded from such inclusion by Section 2.04(c).

(e) **Eligibility Service** - For determining an employee's eligibility to become a participant, 6 months of eligibility service is an aggregation of service totaling to 6 months where the employee will receive credit for the aggregate of all time period(s) during which the employee was employed in a capacity which would produce 1,000 or more hours of service in a 12-month period commencing with his first day of employment (or reemployment) and ending on the date that a break in service begins. The first day of employment (or reemployment) is the first day the employee performs one hour of service. Furthermore, any employee who has 6 months of service although not in a capacity which would produce 1,000 or more hours of service in a 12-month period but does, in fact, later complete 1,000 or more hours of service within the 12-month period commencing from date of employment (or anniversaries thereof) shall be deemed to have completed 6 months of eligibility service at the time he completed 6 months of service. All of an employee's service shall be considered for purposes of determining his eligibility service.

(f) **Year of Vesting Service** - For determining a participant's vested percentage, a year of vesting service is an aggregation of service totaling to 12 months (365 days) where the employee will receive credit for the aggregate of all time period(s) commencing with his first day of employment (or reemployment) and ending on the date that a break in service begins. The first day of employment (or reemployment) is the first day the employee performs an hour of service. Fractional periods of a year will be expressed in terms of days. All of a participant's service, including service prior to one or more Breaks in Service, shall be recognized in determining his years of vesting service.

(g) **Year of Benefit Accrual Service** - For determining a participant's accrued benefit, a year of benefit accrual service earned prior to January 1, 1994 is an aggregation of service totaling to 12 months (365 days) where the participant will receive credit for the aggregate of all time period(s) commencing with his employment (or reemployment) with the employer and ending on the date(s) on which he severs employment with the employer. Effective January 1, 1994, and for determining benefit accrual service credited after January 1, 1994, a year of benefit accrual service is an aggregation of service totaling to 12 months (365 days) where the participant will receive credit for the aggregate of all time period(s) during which the participant is employed in a capacity which would produce 1,000 or more hours of service in a 12-month period; provided, however, any participant who is not otherwise credited with any benefit accrual service during a given plan year will be credited with 1 year of benefit accrual service for such plan year if he is credited with 1,000 or more hours of service during such plan year. All of a participant's service with the employer, including service prior to one or more breaks in service, shall be recognized in determining his years of benefit accrual service credited in accordance with the above provisions. No benefit accrual service, however, will be recognized for any period of service that any required employee contributions pursuant to Section 3.02 were not made.

Furthermore, there shall be no benefit accrual service nor accrued benefit for any employee who does not become a participant in the plan on or before its final entry date of January 1, 2006, or as set forth in Section 2.03 with respect to reemployed employees.

Section 2.05 - Special Service Provisions

(a) **Predecessor Employers** - Service under Section 2.04(a) will be additionally credited for any service with (i) the Lower Colorado River Authority for those employees whose employment was transferred from such prior employer to the plan sponsor effective January 1, 1979 and (ii) the Kimble Electric Cooperative, Inc. for those employees who were previously employed by Kimble Electric Cooperative, Inc. on July 13, 2000 and whose subsequent employment with the plan sponsor has continued up to December 31, 2001 provided, however, the years of benefit accrual service credited for service prior to January 1, 2002 for the former Kimble Electric Cooperative, Inc. employees shall be the years shown in Addendum A.

(b) **Buyback Service Prior to 1985** - Any employee who has periods of employment (that are not already recognized as service under this plan) with any other electric cooperative in the State of Texas and who was a participant in such prior employer's pension plan may make a contribution to this plan for the express purpose of having such prior service recognized as eligibility service and benefit accrual service under this plan. The contribution attributed to such prior service shall be an amount equal to the product of (a) 3% of such employee's considered monthly compensation and (b) the number of months of prior service. An employee eligible for such prior service contribution must exercise his option no later than his participation entry date to this plan determined without regard to the crediting of any prior service. The plan administrator may provide for the installment payment of such optional contribution but shall have an appropriate rate of interest contributed to the plan by the employee who makes any such installment payments for prior service crediting in lieu of a single contribution amount. Any principal contributions made pursuant to this paragraph (but excluding any interest paid on installment payments) shall be 100% vested and shall be included with the required employee contributions of Section 3.02 in determining the employee derived accrued benefit. No optional contributions for prior service will be allowed for any employee hired on or after January 1, 1985. Effective January 1, 1994, any service being purchased pursuant to this Section 2.05(b) shall not require the future payment of

installment employee contributions, if any, in order for such service to be credited as eligibility service and benefit accrual service under this Section 2.05(b).

(c) **Crediting of Active Military Service** - Effective January 1, 1994, any employee who has active duty military service in any branch of the U.S. Armed Forces (Air Force, Army, Marine Corps, Navy or Coast Guard) performed prior to January 1, 1994 shall have such service credited as benefit accrual service under the plan provided such service is not already credited under Section 2.05(b) and subject to a maximum equal to the lesser of (i) 5 years or (ii) 1 year per 5 years of benefit accrual service earned without regard to this Section 2.05(c). Provided, however, no service shall be credited under this Section 2.05(c) that is currently credited in the determination of any military retirement system pension paid or payable to the employee. This Section 2.05(c) shall apply only to those employees actively employed on January 1, 1994.

(d) **Unused Sick Leave** - Those participants employed by the employer on or after January 1, 2002 who terminate employment after becoming eligible for early or normal retirement or due to their death or disability (as defined in Section 1.08) shall have any hours of accrued unused sick leave existing at date of termination as determined pursuant to the records of the employer, converted to years of benefit accrual service at the rate of 8 hours of unused sick leave equals 1 day of benefit accrual service. Any such accrued unused sick leave credited as benefit accrual service pursuant to this Section 2.05(d) shall not be credited towards Rule of 80 or early retirement eligibility under Section 1.02(d) and Section 4.04.

(e) **Maximum Benefit Accrual Service** - A participant's accrued benefit may not take into account more than 45 years of benefit accrual service resulting from service rendered or otherwise credited prior to April 1, 1999.

(f) **Qualified Military Service** - Notwithstanding any provision of this plan to the contrary, any participant's period of "qualified military service" as defined in Code Section 414(u)(5) shall be considered as leave of absence pursuant to Section 2.04(b) and specifically such period shall be considered as service for purposes of Sections 2.04(a), 2.04(f) and 2.04(g) and furthermore as service during which the employee is employed in a capacity which would produce 1,000 or more hours of service in a 12-month period for purposes of computing years of benefit accrual service under Section 2.04(g) provided such employee returns to active employment within the period of time his reemployment rights are protected.

ARTICLE 3

CONTRIBUTIONS

Section 3.01 - Contributions by Employer

Subject to the right of the employer to terminate the plan, the employer intends to contribute such amounts to the plan as are required to maintain the benefits provided herein. The contributions to the plan shall be in compliance with the applicable provisions of ERISA and Code Section 412.

All contributions made by the employer to the plan (including investment earnings thereon) may not be diverted to, or used for, purposes other than the exclusive benefit of the participants or their beneficiaries. Such exclusive benefit requirement shall not prevent (1) the application of plan assets to pay necessary and reasonable administrative expenses of the plan, (2) the return of excess assets to the employer determined upon the termination of the plan as specified in Section 9.04, (3) the return of a contribution made by the employer because of a mistake of fact where the return is made within one year of the contribution, and (4) the return of a contribution made incident to the initial qualification application where the Commissioner of Internal Revenue determines that the plan is not initially qualified under the Code and where the contribution is returned within one year of the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the employer's return for the taxable year in which the plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

Forfeitures arising because of severance of employment before an employee becomes eligible for a benefit or forfeitures arising from any other reason shall be applied to reduce the costs of this plan and shall not be used to increase the benefits otherwise payable hereunder.

Section 3.02 - Required Contributions by Employees

Effective January 1, 1990, no contributions by employees are required as a condition of participation under this plan. Furthermore, no deductible or nondeductible voluntary employee contributions are permitted to be made hereunder nor may any rollover or transfer payments be made to this plan.

Prior to January 1, 1990, as a condition to participate in this plan, an employee shall be required to contribute an amount payable monthly equal to 3% of his projected average monthly compensation at his normal retirement age assuming no change in current considered monthly compensation. Such required employee contributions shall be paid throughout an employee's participation in the plan but shall not be required after his normal retirement age. The plan administrator shall maintain an accounting for the required employee contributions made to the plan and shall prepare an accounting of the value of such required employee contribution accounts at the end of each plan year. The value of such accounts shall be a tabulation of the actual employee contributions plus an interest credit. The interest credit shall be 5% per annum for all plan years beginning prior to January 1, 1988. For all plan years commencing on or after January 1, 1988, the interest rate credited during such plan year shall be equal to 120% of the Federal mid-term rate (as in effect pursuant to Code Section 1274) as of the first day of such plan year or such other rate of interest as may be required by Code Section 411(c)(2) or its replacement. The employee contributions made under this plan are always 100% vested and determine along with Section 1.11 a participant's employee derived accrued benefit. A participant may not receive a distribution of any

mandatory employee contributions until his termination of employment unless such amounts are refunded to all active participants via plan amendment so providing for the pre-termination refund of mandatory employee contributions.

ARTICLE 4

BENEFITS AND PAYMENT OF BENEFITS

Section 4.01 - Normal Retirement Benefit

When a participant reaches his normal retirement age he shall be entitled to retire and to receive his normal retirement benefit payable in the normal form determined in accordance with the following provisions:

(a) **Normal Retirement Age** - A participant's normal retirement age shall be the later of (1) age 65 or (2) the date he attains his 5th anniversary of employment with the employer.

(b) **Normal Form** - The normal form of payment is a monthly annuity payable for the lifetime of the participant with a minimum of 120 monthly payments to be paid in the aggregate to the participant and as necessary, to his beneficiary. Payment in the normal form is subject to the requirements of Sections 4.11 and 4.15.

(c) **Normal Retirement Benefit** - A participant's normal retirement benefit shall be the monthly benefit payable in the normal form commencing on the first of the month coincident with or first following normal retirement age. Subject to the provisions of Sections 2.05(e), 4.02 and 4.17, the amount of a participant's normal retirement benefit shall be determined by the following formula:

1.75% of average monthly compensation multiplied by the participant's years of benefit accrual service.

In no event, however, shall the amount of a participant's normal retirement benefit be less than the amount of his accrued benefit determined as of his normal retirement age nor shall the amount be less than the amount of any early retirement benefit that may have been available to the participant prior to his normal retirement age. Notwithstanding any provision of this plan to the contrary, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.

Section 4.02 – Limitations on Benefit Accruals

(a) **General** - Benefit accruals shall be discontinued effective no later than with a Section 436 measurement date as of which the plan's Adjusted Funding Target Attainment Percentage for the plan year is either (i) certified by the plan's enrolled actuary to be less than 60 percent, or (ii) presumed to be less than 60 percent under Code Section 436 and the regulations thereunder. Thereafter, benefit accruals shall not restart at any time except as provided by way of a separate amendment to the plan subject to Sections 8.01 and 8.02. For this Section 4.02, the term Adjusted Funding Target Attainment Percentage has the same meaning as under IRS Reg. 1.436-1(j)(1), and the term Section 436 measurement date has the same meaning as under IRS Reg. 1.436-1(j)(8).

(b) **Special Rules Under PRA 2010** - For purposes of determining whether the accrual limitation under Section 4.02(a) applies to the plan, the AFTAP for a plan year shall be determined in accordance with the "Special Rule for Certain Years" under Code Section 436(j)(3) (except as

provided under section 203(b) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, if applicable).

(c) **Restoration of Lost Benefit Accruals under Section 4.02(a)** - Lost benefit accruals under Section 4.02(a) shall not be restored in whole or in part except by way of a separate amendment to the plan subject to Sections 8.01 and 8.02, the nondiscrimination requirements of Code Sections 410(b) and 401(a)(4) and the regulations thereunder, and any other requirement necessary in order to maintain the plan's compliance with the qualification requirements of the Internal Revenue Code and ERISA and the regulations thereunder.

Section 4.03 - Late Retirement Benefit

If a participant continues his service with the employer beyond his normal retirement age, he shall be entitled to retire and to receive a late retirement benefit commencing on the first of the month coincident with or first following termination of employment. His late retirement benefit shall be a monthly benefit payable in the normal form in an amount which is the greater of (a) or (b) where (a) is the amount determined in the same manner as his normal retirement benefit pursuant to the formula in Section 4.01 and (b) is the amount which is actuarially equivalent to his normal retirement benefit determined at his normal retirement age.

Section 4.04 - Early Retirement Benefit

If a participant either (a) attains age 55 and has attained 10 or more years of benefit accrual service, or (b) is actively employed until the date (Rule of 80 date) his years of attained age and his years of benefit accrual service (both computed in complete years and complete months) total to 80 or more years, he shall be entitled to retire and to receive an early retirement benefit. His early retirement benefit shall be a monthly benefit payable in the normal form which is actuarially equivalent to his accrued benefit determined as of his date of early retirement.

Section 4.05 - Deferred Vested Retirement Benefit

If a participant's employment is terminated prior to early, normal or late retirement for causes other than his death or his disability, he shall be entitled to receive a deferred monthly benefit equal to the sum of (a) the product of his vested percentage and his employer derived accrued benefit determined as of the time of his termination and (b) his employee derived accrued benefit determined at the time of his termination with such vested deferred monthly benefit payable in the normal form at the participant's normal retirement age. In the event that the terminated participant satisfies the conditions required for early retirement subsequent to his termination of employment but prior to attaining his normal retirement age, he may elect at such subsequent time to receive an early retirement monthly benefit payable in the normal form which is actuarially equivalent to his vested accrued benefit.

A terminated participant with deferred vested benefits under this paragraph may elect an immediate actuarially equivalent lump sum payment in lieu of deferred payment of his vested accrued benefits, subject to automatic payment of Section 4.09(b) and lump sum availability of Section 4.09(a). No other optional form of payment is allowed under this paragraph prior to satisfaction of early or normal retirement eligibility other than those required by Section 4.15(b).

Section 4.06 - Disability Benefit

Notwithstanding any provision of this plan to the contrary, if a participant becomes disabled (as defined in Section 1.08) while performing qualified military service (as defined in Code Section 414(u)), the participant is entitled to the same benefits that would have been provided under this plan had the participant resumed employment on the day before his disability and then terminated employment on account of disability.

If a participant has his employment terminated due to his disability prior to his attaining early retirement eligibility, he shall be entitled to receive a disability benefit.

Such disability benefit shall be identical to a deferred vested retirement benefit determined in accordance with Section 4.05 provided, however, the participant's vested percentage shall automatically be 100% and the participant shall be automatically eligible for early retirement.

Section 4.07 - Death Benefit

(a) Pre-retirement Death Benefit

(1) Active Participant

Notwithstanding any provision of this plan to the contrary, if a participant dies while performing qualified military service (as defined in Code Section 414(u)), the survivors of the participant are entitled to the same benefits that would have been provided under this plan had the participant resumed employment on the day before his death and then terminated employment on account of death.

In the event of the death of an active participant prior to the commencement of payment of any benefits hereunder, a benefit which is the present value of his accrued benefit shall be paid to his beneficiary subject to Section 4.07(a)(3).

(2) Vested Terminated Participant

In the event of the death of a vested terminated participant prior to the commencement of payment of any retirement benefit hereunder, a benefit which is actuarially equivalent to his vested accrued benefit shall be paid to his beneficiary subject to Section 4.07(a)(3).

(3) Pre-retirement Surviving Spouse Annuity

Unless waived in accordance with Section 4.15, any vested participant who dies prior to the commencement of payment of any accrued benefits hereunder and who has a surviving spouse, a surviving spouse annuity shall be provided to such spouse. If such surviving spouse annuity becomes payable, the value of the death benefit paid under above paragraphs (1) and (2) to the beneficiary shall be reduced by the actuarial equivalent to the value of the surviving spouse annuity. An eligible surviving spouse of a deceased participant is the spouse legally married to the participant immediately prior to the participant's death subject to any prior spousal rights provided under a qualified domestic relations order as described in Code Section 414(p).

(4) **Form of Payment**

The form of payment made to a beneficiary shall be a monthly payment in the normal form or any available optional form listed in Section 4.09(a) as may be requested by the beneficiary. Such amount and form of payment, however, shall be actuarially equivalent to the death benefit otherwise payable under this Section 4.09(a).

(b) **Post-retirement Death Benefit**

In the event of the death of a participant to whom benefit payments have commenced, the payment of continuing benefits to any surviving spouse or other beneficiary shall be in accordance with the form of benefit payment under which the retired participant was receiving benefits at the time of his death.

(c) **Designation of Beneficiary**

Each participant or other recipient of payments hereunder shall be given the opportunity to designate a beneficiary or beneficiaries and from time to time the participant may file with the plan administrator a new or revised designation on such form as the plan administrator shall provide.

Section 4.08 – Shutdown or Other Unpredictable Contingent Event Benefits

This plan shall not provide for any benefits that become payable solely due to the partial or complete shutdown of a facility of the employer or due to any other unpredictable contingent event. The term unpredictable contingent event has the same meaning as under IRS Reg. 1.436-1(j)(9).

Section 4.09 - Actuarially Equivalent Optional Forms of Payment

In lieu of the payment of the benefits hereunder being made in the normal form of payment, a participant or beneficiary may elect to receive an optional form of payment which is actuarially equivalent to the anticipated normal form in accordance with the following provisions and subject to the provisions of Sections 4.10, 4.11, 4.14, and 4.15.

(a) **Optional Forms of Payment**

(1) **Option 1** - Monthly income payable throughout the lifetime of the recipient.

(2) **Option 2** - Monthly income payable throughout the lifetime of the recipient with 240 guaranteed monthly payments.

(3) **Option 3** - Monthly income payable throughout the lifetime of the recipient with 50% of such monthly income continuing after his death for the remaining lifetime, if any, of his joint pensioner.

(4) **Option 4** - Monthly income payable throughout the lifetime of the recipient with 50% of such monthly income continuing after his death for the remaining lifetime, if any, of his joint pensioner; however the initial monthly amount shall be paid for a specified guaranteed number of monthly payments equal to either 120 or 240 months.

(5) **Option 5** - Monthly income payable throughout the lifetime of the recipient with 75% of such monthly income continuing after his death for the remaining lifetime, if any, of his joint pensioner.

(6) **Option 6** - Monthly income payable throughout the lifetime of the recipient with 75% of such monthly income continuing after his death for the remaining lifetime, if any, of his joint pensioner; however the initial monthly amount shall be paid for a specified guaranteed number of monthly payments equal to 120 or 240 months.

(7) **Option 7** - Monthly income payable throughout the lifetime of the participant with 100% of such monthly income continuing after his death for the remaining lifetime, if any, of his joint pensioner.

(8) **Option 8** - Monthly income payable throughout the lifetime of the recipient with 100% of such monthly income continuing after his death for the remaining lifetime, if any, of his joint pensioner; however the initial amount shall be paid for a specified guaranteed number of monthly payments equal to either 120 or 240 months.

(9) **Option 9** - A single, lump sum payment. A single, lump sum payment, however, is not payable if the lump sum payment is greater than \$25,000, unless the benefit is payable due to the death of an active participant prior to his normal retirement age. Any recipient eligible to receive a lump sum death benefit payment on behalf of an active participant may in lieu of a lump sum payment elect a 60-month, 120-month, 180-month or 240-month term certain monthly payment option under this Option 9 optional form of payment.

(b) **Automatic Lump Sum Payment**

If an employee terminates service and the actuarial equivalent present value of the employee's vested accrued benefit derived from employer and employee contributions is not greater than \$5,000, subject to the limitation set forth below, the employee will receive an automatic distribution of the present value of the entire vested portion of such accrued benefit and the nonvested portion will be treated as a forfeiture. For purposes of this section, if the present value of an employee's vested accrued benefit is zero, the employee shall be deemed to have received a distribution of such vested accrued benefit. A participant's vested accrued benefit shall not include the portion that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of Code sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16).

In the event of a mandatory distribution greater than \$1,000 in accordance with the provision of Section 4.09(b) that is not being distributed to a surviving spouse, beneficiary or alternate payee under a QDRO, the amount shall not be distributed until the plan administrator receives specific participant direction to either: (i) pay the amount in a direct trustee-to-trustee transfer to an eligible plan identified by the participant, (ii) pay the amount (less applicable Federal Income Tax withholding) directly to the participant, or (iii) pay the amount based on a combination of (i) and (ii).

(c) **Determination of Present Value**

For purposes of determining the present value of payment made under Sections 4.09(b) and 4.09(a)(9), the present values shall be calculated as of the date of distribution pursuant to the applicable paragraphs of Section 1.02.

(d) **Minimum Monthly Payment**

Whenever the monthly benefits payable under this plan are less than \$50 the plan administrator may convert the monthly benefit to an actuarially equivalent payment form with a less frequent payment mode so that the resulting payment amounts are at least equal to \$50.

(e) **Nontransferable Annuity**

The payment of any monthly annuity hereunder in the form of an annuity contract purchased by the plan and distributed to a participant shall require that the annuity contract be nontransferable. Furthermore, the terms of such annuity contract purchased and distributed to a participant shall comply with all requirements of this plan.

Section 4.10 – Limitations on Prohibited Payments

(a) **Application and Definitions**

This Section 4.10 shall not apply to a plan for a plan year if the plan, under its own terms, has not provided for any benefit accruals with respect to any participant since September 1, 2005 through the most current Code Section 436 measurement date. For purposes of this Section 4.10(a), benefit accruals include any past-service benefit increase pursuant to a plan amendment and an increase in a benefit provided under the plan to take into account increases in the limitations under Code Section 415. Throughout Section 4.10, the term prohibited payment has the same meaning as under IRS Reg. 1.436-1(j)(6), the term Code Section 436 measurement date has the same meaning as under IRS Reg. 1.436-1(j)(8), and the term Adjusted Funding Target Attainment Percentage has the same meaning as under IRS Reg. 1.436-1(j)(1).

(b) **No Limited Payment of Prohibited Payments**

(1) **General**

A participant or beneficiary is not permitted to elect an optional form of benefit that includes a prohibited payment, nor shall the plan pay any prohibited payment to such participant or beneficiary, if the participant or beneficiary has an annuity starting date that occurs:

(i) on or after the Code Section 436 measurement date as of which the plan's Adjusted Funding Target Attainment Percentage for the plan year is certified to be less than 60 percent by the plan's enrolled actuary or is otherwise presumed to be less than 60 percent in accordance with the requirements of Code Section 436 and the regulations thereunder, unless or until the plan's enrolled actuary certifies the plan's Adjusted Funding Target Attainment Percentage for the plan year to be at least 60 percent in accordance with Code Section 436 and the regulations thereunder, provided such certification is made on or before the first day of the tenth month of such plan year, and

in the case such certification is not so made, the restrictions of this Section 4.10(b) shall continue through the end of the plan year, or

(ii) during any period in which the plan sponsor is a debtor in a case under Title 11, United States Code, or similar Federal or State law, except when the annuity starting date also occurs on or after the date the plan's enrolled actuary certifies the plan's Adjusted Funding Target Attainment Percentage for the current plan year to be not less than 100 percent in accordance with Code Section 436 and the regulations thereunder.

(2) **Administration of Restricted Optional Form Elections**

(i) **Deferral Rights**

If a participant or beneficiary requests an immediate distribution that includes a prohibited payment that is not permitted to be paid under Section 4.10(b)(1) as of his annuity starting date, the participant or beneficiary may elect to defer the benefit in accordance with any general right to defer commencement of benefits under the plan until such time that the limitation of Section 4.10(b)(1) no longer applies.

(ii) **Alternative Special Optional Payment Form**

Alternatively, under a special optional payment form permitted only when the limitation of Section 4.10(b)(1) applies, a participant or beneficiary unable to elect and receive an immediate single lump sum distribution may elect to commence benefits as of his initial annuity starting date in an immediate annuity form of payment, may do so in an optional form of payment that does not include a prohibited payment until the limitation on prohibited payments under Section 4.10(b)(1) no longer applies with respect to such participant or beneficiary, at which time their remaining monthly payments will be converted and paid in the form of a single lump sum, to the extent permitted under Section 4.10(c), determined under the terms of the plan as if the date of the first such monthly payment being converted is the annuity starting date for the remaining lump sum payment. In order for the participant or beneficiary to be eligible for this special optional form, spousal consent requirements must be satisfied upon election. In addition, for plan benefits excluding grandfathered benefits under Section 4.15 for former employees of Kimble Electric Cooperative, Inc., the special optional payment form will only be made available if the lump sum value of the participant's or beneficiary's entire benefit as of the initial annuity starting date of the participant or beneficiary is not more than the plan's lump sum ceiling dollar amount under Section 4.09(a)(9) for benefits not being paid due to the preretirement death of an active participant. If so, and if the special optional payment form is validly elected, the terminal lump sum payment made as part of the special optional payment form will be paid regardless of the amount.

(iii) **Commencement Rights**

Alternatively, when the limitation of Section 4.10(b)(1) applies, the participant may elect to commence any other optional form of distribution available under the plan with any annuity starting date permitted under the plan, provided the optional form of payment elected does not include a prohibited payment.

(c) **Limited Payment of Prohibited Payments**

The provisions of this Section 4.10(c) shall be applied on a one-time basis to any individual participant, in that if a participant is allowed to be paid a prohibited payment under Section 4.10(c)(1) or Section 4.10(c)(2) below, no additional prohibited payment may be made with respect to that participant while the limitation of this Section 4.10(c) remains in effect after his annuity starting date. Further, notwithstanding the lifting of the restrictions under Sections 4.10 (b) or 4.10(c), no participant may make a new election with respect to any restricted portion of benefit as defined in Section 4.10(c)(2)(ii)(A)(III) below for which payments have already commenced, except as may be specifically provided in Section 4.10(c)(2)(ii)(B)(II) below.

(1) **General**

A participant or beneficiary is not permitted to elect an optional form of benefit that includes a prohibited payment, nor shall the plan pay any prohibited payment to such participant or beneficiary, if the participant or beneficiary has an annuity starting date that occurs on or after the Code Section 436 measurement date as of which the plan's Adjusted Funding Target Attainment Percentage for the plan year is certified prior to the first day of the tenth month of the plan year to be less than 80 percent but at least 60 percent by the plan's enrolled actuary or is otherwise presumed to be less than 80 percent but at least 60 percent in accordance with the requirements of Code Section 436 and the regulations thereunder, provided such certification is made on or before the first day of the tenth month of such plan year (and in the case such certification is not so made, the restrictions of this Section 4.10(c) shall continue through the end of the plan year), and unless the present value, determined in accordance with Code Section 417(e)(3), of the portion of the benefit that is being paid in a prohibited payment does not exceed the lesser of:

(i) 50 percent of the present value, determined under the plan in accordance with Code Section 417(e)(3), of the benefit payable in the optional form of benefit that includes the prohibited payment, or

(ii) 100 percent of the PBGC maximum benefit guarantee amount, as set forth under IRS Reg. 1.436-1(d)(3)(iii)(C) and as determined and published by the PBGC.

For purposes of this Section 4.10(c)(1), if a benefit is being paid in an optional form for which any of the payments is greater than the payment available under a straight life annuity to the participant or beneficiary (plus any Social Security supplements described in the last sentence of Code Section 411(a)(9) payable to the participant or beneficiary) with the same annuity starting date, then the portion of the benefit that is being paid in a prohibited payment is the excess of each payment over the smallest payment during the participant's or beneficiary's lifetime under the optional form of benefit.

(2) **Administration of Restricted Optional Form Elections**

This Section 4.10(c)(2) applies only to a participant for whom his election of an optional form that contains a prohibited payment was not permitted due to the limitation of Section 4.10(c)(1).

(i) **Deferral Rights**

If, due to the limitation of Section 4.10(c)(1), a participant or beneficiary requests an immediate distribution that includes a prohibited payment that is only permitted to be paid on a partial basis under this Section 4.10(c)(2) as of their annuity starting date, the participant or beneficiary may elect to defer the benefit in accordance with any general right to defer commencement of benefits under the plan until such time that the limitation of Section 4.10(c)(1) no longer applies.

(ii) **Immediate Optional Form Elections**

The administration of immediate optional payment forms that include a prohibited payment shall be based on a bifurcation of those immediate optional payment forms into unrestricted and restricted portions of the benefit normally payable under the optional payment form as provided below.

(A) **Unrestricted and Restricted Portions**

(I) ***Preliminary Unrestricted Portion*** - The preliminary unrestricted portion of an optional form that includes a prohibited payment is either (aa) or (bb) below:

(aa) If the optional form includes a Social Security leveling feature or a refund of employee contributions feature, the preliminary unrestricted portion of the benefit is the optional form of benefit that would apply if the accrued benefit of the participant or beneficiary were 50 percent smaller without restriction.

(bb) For all other optional forms, the preliminary unrestricted portion of the benefit is 50 percent of the amount that would be payable without restriction.

(II) ***Final Unrestricted Portion*** - The final unrestricted portion of an optional form that includes a prohibited payment is the preliminary portion of that optional form reduced, to the extent necessary, so that the present value, determined under the plan in accordance with Code Section 417(e)(3), of the final unrestricted portion of the optional form of benefit does not exceed 100 percent of the PBGC maximum benefit guarantee amount, as set forth under IRS Reg. 1.436-1(d)(3)(iii)(C) and as determined and published by the PBGC. The final unrestricted portion shall hereafter be referred to as the unrestricted portion.

(III) ***Restricted Portion*** - The restricted portion of an optional form that includes a prohibited payment is the total benefit less the unrestricted portion.

(B) **Bifurcation**

To the extent that all necessary participant-related information is available to determine the actual bifurcated election available for each optional form that includes a prohibited payment, the plan may provide the applicable bifurcated benefit elections along with the optional forms that do not contain a prohibited payment and the right to defer commencement of benefits as provided under Section 4.10(c)(2)(i), provided the plan identifies the option that each bifurcation election replaces.

(I) ***Form of Bifurcation Election*** - If the participant or beneficiary elects as of his annuity starting date the payment of the unrestricted portion of an optional form that contains a prohibited payment, then the plan must permit the participant or beneficiary to elect as of his annuity starting date payment of the restricted portion of his benefit in any optional form of benefit that would not have included a prohibited payment if that optional form applied to the entire benefit of the participant or beneficiary. In this situation, the rules of IRS Reg. 1.417(e)-1 are applied separately to the separate optional forms providing the payment of the unrestricted and restricted portions of the benefit of the participant or beneficiary.

(II) ***Alternative Special Optional Bifurcated Payment Form*** - Alternatively, under a special optional bifurcated payment form permitted only when the limitation of this Section 4.10(c) applies, a participant or beneficiary unable to elect and receive an immediate single lump sum distribution may elect to commence benefits as of his initial annuity starting date in an optional bifurcated payment form that provides for the payment of unrestricted portion of the full lump sum value of his entire benefit as of his annuity starting date in accordance with the provisions of this Section 4.10(c), and the deferral of the portion of his entire benefit attributable to the restricted portion of the same full lump sum payment until the limitation on the partial payment of prohibited payments under Section 4.10(c)(1) no longer applies to the participant or beneficiary (and the limitation on prohibited payments under Section 4.10(b)(1) also does not apply), at which time such remaining portion of the participant's or beneficiary's entire benefit will be paid as a lump sum, determined under the terms of the plan based on an annuity starting date of the first day of the month coincident with or first following the date the limitation on the partial payment of prohibited payments under Section 4.10(c)(1) no longer applies to the participant or beneficiary (and the limitation on prohibited payments under Section 4.10(b)(1) also does not apply). In order for the participant or beneficiary to be eligible for this special optional bifurcated payment form, spousal consent requirements must be satisfied upon election. In addition, for plan benefits excluding grandfathered benefits under Section 4.19 for former employees of Kimble Electric Cooperative, Inc., the special optional bifurcated payment form will only be made available if the lump sum value of the participant's or beneficiary's entire benefit as of the initial annuity starting date of the participant or beneficiary is not more than the plan's lump sum ceiling dollar amount under Section 4.09(a)(9) for benefits not being paid due to the preretirement death of an active participant. If so, and if the special optional bifurcated payment form is validly elected, the terminal lump sum payment made as part of the special optional bifurcated payment form will be paid regardless of the amount.

(d) **Special Rules Under PRA 2010 for Payments Under Social Security Leveling Options**

For purposes of determining whether the limitations under Section 4.10(b) or 4.10(c) apply to payments under a social security leveling option, within the meaning of Code Section 436(j)(3)(C)(i), the AFTAP for a plan year shall be determined in accordance with the "Special Rule for Certain Years" under Code Section 436(j)(3) of the Internal Revenue Code and the regulations or other published guidance thereunder issued by the Internal Revenue Service.

(e) **Cessation of Restriction**

Following the close of the period during which a limitation under Section 4.10(b) or Section 4.10(c) applied (e.g., following a timely certification by the plan's enrolled actuary that the plan's Adjusted Funding Target Attainment Percentage for the plan year is at least 80 percent), a participant or beneficiary with an annuity starting date following such period may elect any optional form of

distribution permitted under the plan, even if an optional form was considered to have included a prohibited payment during such period of limitation; provided, however, that in no event may a participant or beneficiary change an election made during such period of limitation of an optional form of payment with respect to any restricted portion of benefit, unrestricted portion of benefit or accrued benefit for which payment has already commenced.

Section 4.11 - Automatic Joint and Survivor Annuity

Unless waived in accordance with the provisions of Section 4.15, any payment of a participant's accrued benefits under this plan, whether by early, normal, late or disability retirement, shall be subject to the joint and survivor annuity provisions of Section 4.15.

Section 4.12 - Qualified Optional Survivor Annuity

Any waiver of a qualified joint and survivor annuity or a qualified preretirement survivor annuity shall not be effective unless the participant may elect the qualified optional survivor annuity at any time during the election period described in Section 4.15(e)(1). For this purpose, the qualified optional survivor annuity means an annuity (i) for the life of the participant with a survivor annuity for the life of the spouse which is equal to the applicable percentage of the amount of the annuity which is payable during the joint lives of the participant and the spouse, and (ii) which is the actuarial equivalent of a single annuity for the life of the participant. For purposes of the preceding sentence, if the survivor annuity percentage described in Section 4.15(d)(4): (i) is less than 75 percent, the applicable percentage is 75 percent, and (ii) is greater than or equal to 75 percent, the applicable percentage is 50 percent.

Section 4.13 - Conditions of Payments

(a) Events Causing Payments

No benefits attributable to employer contributions will be paid from this plan prior to a participant's termination of employment, death or disability or upon the plan's termination.

(b) Commencement of Payment

Unless a participant elects otherwise in writing, commencement of payment will begin no later than the 60th day after the latest of the close of the plan year in which:

- (1) the participant attains normal retirement age,
- (2) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or
- (3) the participant terminates service with the employer.

Notwithstanding the foregoing, the failure of a participant and spouse to consent to a distribution while a benefit is immediately distributable, within the meaning of Section 4.13(c)(3), shall be deemed to be an election to defer commencement of payment of any benefit.

(c) **Restrictions on Immediate Distributions**

(1) **General**

If the present value of a participant's vested accrued benefit derived from employer and employee contributions, if any, determined in accordance with Section 4.09(c), exceeds (or at the time of any prior distribution exceeded) \$5,000 or there are remaining payments to be made with respect to a particular distribution option that previously commenced, and the accrued benefit is immediately distributable, the participant and the participant's spouse (or where either the participant or the spouse has died, the survivor) must consent to any distribution of such accrued benefit. A participant's vested accrued benefit shall not include the portion that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of Code sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16). The consent of the participant and the participant's spouse shall be obtained in writing within the 180-day period ending on the annuity starting date. The annuity starting date is the first day of the first period for which an amount is paid as an annuity or any other form. The plan administrator shall notify the participant and the participant's spouse of the right to defer any distribution until the participant's accrued benefit is no longer immediately distributable. Such notification shall include a general description of the material features, and an explanation of the relative values of the optional forms of benefit available under the plan in a manner that would satisfy the notice requirements of Code Section 417(a)(3) and IRS Reg. 1.417(a)-3. Such notification shall also include a description of how much larger benefits will be if the commencement of distributions is deferred. The notification shall be provided no less than 30 days and no more than 180 days prior to the annuity starting date. The written explanation may be delivered after the annuity starting date (such annuity starting date may not precede the employee's termination of employment) provided the election period does not end before the 30th day after the date on which the explanation is provided; however, such 30 day period may be waived via participant election (with applicable spousal consent) provided the distribution commences more than 7 days after the explanation is provided.

(2) **Inapplicability of Restriction**

Notwithstanding the foregoing, only the participant need consent to the commencement of a distribution in the form of the qualified joint and survivor annuity, as described in Section 4.15(d)(4), while the accrued benefit is immediately distributable. Neither the consent of the participant nor the participant's spouse shall be required to the extent that a distribution is required to satisfy Code Section 401(a)(9) or Code Section 415 (see Section 4.14 and Article 5).

(3) **Immediately Distributable**

An accrued benefit is immediately distributable if any part of the accrued benefit could be distributed to the participant (or surviving spouse) before the participant attains (or would have attained if not deceased) the later of normal retirement age or age 62.

Section 4.14 – Minimum Distribution Requirements

(a) General Rules

(1) Precedence and Effective Date.

Subject to Section 4.15, Spousal Rights Requirements, the requirements of this article shall apply to any distribution of a participant's interest and will take precedence over any inconsistent provisions of this plan.

(2) Requirements of Regulations Incorporated

All distributions required under this article shall be determined and made in accordance with the regulations under section 401(a)(9) and the minimum distribution incidental benefit requirement of section 401(a)(9)(G) of the Code.

(3) Limits on Distribution Periods

As of the first distribution calendar year, distributions to a participant, if not made in a single-sum, may only be made over one of the following periods:

- (i) the life of the participant,
- (ii) the joint lives of the participant and a designated beneficiary,
- (iii) a period certain not extending beyond the life expectancy of the participant,

or

(iv) a period certain not extending beyond the joint life and last survivor expectancy of the participant and a designated beneficiary.

(b) Time and Manner of Distribution

(1) Required Beginning Date

The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's required beginning date.

(2) Death of Participant Before Distributions Begin

If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(i) If the participant's surviving spouse is the participant's sole designated beneficiary, then, except as provided in the plan, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70½, if later.

(ii) If the participant's surviving spouse is not the participant's sole designated beneficiary, then, except as provided in the plan, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.

(iii) If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(iv) If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to the surviving spouse begin, this section (b)(2), other than section (b)(2)(i), will apply as if the surviving spouse were the participant.

For purposes of this section (b)(2) and section (e), distributions are considered to begin on the participant's required beginning date (or, if section (b)(2)(iv) applies, the date distributions are required to begin to the surviving spouse under section (b)(2)(i)). If annuity payments irrevocably commence to the participant before the participant's required beginning date (or to the participant's surviving spouse before the date distributions are required to begin to the surviving spouse under section (b)(2)(i)), the date distributions are considered to begin is the date distributions actually commence.

(3) **Forms of Distribution**

Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with sections (c), (d) and (e). If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the Treasury regulations. Any part of the participant's interest which is in the form of an individual account described in section 414(k) of the Code will be distributed in a manner satisfying the requirements of section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.

(c) **Determination of Amount to be Distributed Each Year**

(1) **General Annuity Requirements**

If the participant's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:

(i) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;

(ii) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in section (d) or (e);

(iii) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;

(iv) payments will either be nonincreasing or increase only as follows:

(A) by an annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index for a 12-month period ending in the year during which the increase occurs or a prior year;

(B) by a percentage increase that occurs at specified times and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index since the annuity starting date, or if later, the date of the most recent percentage increase;

(C) by a constant percentage of less than 5 percent per year, applied not less frequently than annually;

(D) as a result of dividend or other payments that result from actuarial gains, provided:

(I) actuarial gain is measured not less frequently than annually,

(II) the resulting dividend or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured),

(III) the actuarial gain taken into account is limited to actuarial gain from investment experience,

(IV) the assumed interest rate used to calculate such actuarial gains is not less than 3 percent, and

(V) the annuity payments are not increased by a constant percentage as described in (C) of this section (c)(2)(iv)

(E) to the extent of the reduction in the amount of the participant's payments to provide for a survivor benefit, but only if there is no longer a survivor benefit because the beneficiary whose life was being used to determine the distribution period described in section (d) dies or is no longer the participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code;

(F) to provide a final payment upon the participant's death not greater than the excess of the actuarial present value of the participant's accrued benefit (within the meaning of Section 411(a)(7) of the Code) calculated as of the annuity starting date using the applicable interest rate and applicable mortality table defined in Section 1.02(e) (or, if greater, the total amount of employee contributions) over the total payments before the participant's death;

(G) to allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the participant's death; or

(H) to pay increased benefits that result from a plan amendment.

(2) **Amount Required to be Distributed by Required Beginning Date and Later Payment Intervals**

The amount that must be distributed on or before the participant's required beginning date (or, if the participant dies before distributions begin, the date distributions are required to begin under section 2.2(b)(2)(i) or (ii)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's required beginning date.

(3) **Additional Accruals After First Distribution Calendar Year**

Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(d) **Requirements for Annuity Distributions that Commence During Participant's Lifetime**

(1) **Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse**

If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspouse beneficiary, annuity payments to be made on or after the participant's required beginning date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in section 1.401(a)(9)-6, Q&A 2(c)(2), in the manner described in Q&A 2(c)(1), of the regulations, to determine the applicable percentage. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

(2) **Period Certain Annuities**

Unless the participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the participant's lifetime may not exceed the applicable distribution period for the participant under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9, Q&A-2, of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the participant reaches age 70, the applicable distribution period for the participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9, Q&A-2, of the Treasury regulations plus the excess of 70 over the age of the participant as of the participant's birthday in the year that contains the annuity starting

date. If the participant's spouse is the participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the participant's applicable distribution period, as determined under this section (d)(2), or the joint life and last survivor expectancy of the participant and the participant's spouse as determined under the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9, Q&A-3, of the Treasury regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

(e) Requirements For Minimum Distributions where Participant Dies After Distributions Begin

If the participant dies after distribution of his or her interest begins in the form of an annuity meeting the requirements of this Section 4.14, the remaining portion of the participant's interest will continue over the remaining period over which distributions commenced.

(f) Requirements for Minimum Distributions Where Participant Dies Before Date Distributions Begin

(1) Participant Survived by Designated Beneficiary

Except as provided in the plan, if the participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the participant's entire interest will be distributed, beginning no later than the time described in section (b)(2)(i) or (ii), over the life of the designated beneficiary or over a period certain not exceeding:

(i) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the participant's death; or

(ii) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(2) No Designated Beneficiary

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

(3) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin

If the participant dies before the date distribution of his or her interest begins, the participant's surviving spouse is the participant's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this section (f) will apply as if the surviving spouse were the participant, except that the time by which distributions must begin will be determined without regard to section (b)(2)(i).

(g) **Changes to Annuity Payment Period**

(1) **Permitted Changes**

An annuity payment period may be changed only in association with an annuity payment increase described in section (c)(1)(iv) or in accordance with section (g)(2).

(2) **Reannuitization**

An annuity payment period may be changed and the annuity payments modified in accordance with that change if the conditions in section (g)(3) are satisfied and:

(i) the modification occurs when the participant retires or in connection with a plan termination;

(ii) the payment period prior to modification is a period certain without life contingencies; or

(iii) the annuity payments after modification are paid under a qualified joint and survivor annuity over the joint lives of the participant and a designated beneficiary, the participant's spouse is the sole designated beneficiary, and the modification occurs in connection with the participant's becoming married to such spouse.

(3) **Conditions**

The conditions in this section (g)(3) are satisfied if:

(i) the future payments after the modification satisfy the requirements of Code section 401(a)(9), section 1.401(a)(9) of the regulations, and this Section 4.14 (determined by treating the date of the change as a new annuity starting date and the actuarial present value of the remaining payments prior to modification as the entire interest of the participant);

(ii) for purposes of section 415 and section 417 of the Code, the modification is treated as a new annuity starting date;

(iii) after taking into account the modification, the annuity (including all past and future payments) satisfies the requirements of section 415 of the Code (determined as the original annuity starting date, using the interest rates and mortality tables applicable to such date); and

(iv) the end point of the period certain, if any, for any modified payment period is not later than the end point available to the employee at the original annuity starting date under section 401(a)(9) of the Code and this Section 4.14.

(h) **Payments to a Surviving Child**

(1) **Special rule**

For purposes of this Section 4.14, payments made to a participant's surviving child until the child reaches the age of majority (or dies, if earlier) shall be treated as if such payments were made to the surviving spouse to the extent the payments become payable to the surviving spouse upon cessation of the payments to the child.

(2) **Age of Majority**

For purposes of this Section 4.14, a child shall be treated as having not reached the age of majority if the child has not completed a specified course of education and is under the age of 26. In addition, a child who is disabled within the meaning of Code section 72(m)(7) when the child reaches the age of majority shall be treated as having not reached the age of majority so long as the child continues to be disabled.

(i) **Definitions**

(1) **Actuarial gain.**

The difference between an amount determined using the actuarial assumptions (i.e., investment return, mortality, expense, and other similar assumptions) used to calculate the initial payments before adjustment for any increases and the amount determined under the actual experience with respect to those factors. Actuarial gain also includes differences between the amount determined using actuarial assumptions when an annuity was purchased or commenced and such determined using actuarial assumptions used in calculating payments at the time the actuarial gain is determined.

(2) **Designated beneficiary**

The individual who is designated by the participant (or the participant's surviving spouse) as the beneficiary of the participant's interest under the plan and who is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-4 of the regulations.

(3) **Distribution calendar year.**

A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to section (b)(2).

(4) **Eligible cost-of-living index**

An index described in paragraphs (b)(2), (b)(3) or (b)(4) of section 1.401(a)(9)-6, Q&A-14, of the regulations.

(5) **Life expectancy**

Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9, Q&A-1, of the Treasury regulations.

(6) **Required Beginning Date**

(i) **General Rule**

The required beginning date of a participant is April 1 of the calendar year following the later of the calendar year in which the participant attains age 70½ or the calendar year in which the participant retires, except that benefit distributions to a 5-percent owner must commence by April 1 for the calendar year following the calendar year in which the participant attains age 70½.

Any participant (other than a 5-percent owner) attaining age 70½ may elect by April 1 of the calendar year following the calendar year in which the participant attains age 70½ to defer distributions until April 1 of the calendar year following the calendar year in which the participant retires. If no such election is made the participant will begin receiving distributions by April 1 of the calendar year following the year in which the participant attained age 70½.

(ii) **Actuarial Increase**

Except with respect to a 5-percent owner, a participant's accrued benefit will be actuarially increased to take into account the period after age 70½ in which the participant does not receive any benefits under the plan. The actuarial increase will begin on April 1 following the calendar year in which the employee attains age 70½ and will end on the date on which benefits commence after retirement in an amount sufficient to satisfy IRC section 401(a)(9). The amount of actuarial increase payable as of the end of the period for actuarial increases will be no less than the actuarial equivalent of the participant's retirement benefits that would have been payable as of the date the actuarial increase must commence plus the actuarial equivalent of additional benefits accrued after the date, reduced by the actuarial equivalent of any distributions made after that date. The actuarial increase under this section is not in addition to the actuarial increase required for that same period under IRC section 411 to reflect the delay in payments after normal retirement, except that the actuarial increase required under this section will be provided even during the period during which an employee is in IRC section 203(a)(3)(B) service. For purposes of IRC section 411(b)(1)(H), the actuarial increase required under this section will reduce the benefit accrual otherwise required under IRC section 411(b)(1)(H)(i), except that the rules on the suspension of benefits are not applicable.

(7) **5-percent owner**

A participant is treated as a 5-percent owner for purposes of this Section 4.14 if the participant is a 5-percent owner as defined in section 416 of the Code at any time during the plan year ending with or within the calendar year in which such owner attains age 70½. Once distributions have begun to a 5-percent owner under this Section 4.14, they must continue to be distributed, even if the participant ceases to be a 5-percent owner in a subsequent year.

(j) **TEFRA Section 242(b)(2) Elections**

(1) Notwithstanding the other requirements of this Section 4.14 and subject to the joint and survivor annuity requirements in Section 4.15, distribution on behalf of any employee, including a 5-percent owner, who has made a designation under section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (a “section 242(b)(2) election”) may be made in accordance with all of the following requirements (regardless of when such distribution commences):

(i) The distribution by the plan is one which would not have disqualified such plan under IRC section 401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.

(ii) The distribution is in accordance with a method of distribution designated by the employee whose interest in the plan is being distributed or, if the employee is deceased, by a beneficiary of such employee.

(iii) Such designation was in writing, was signed by the employee or the beneficiary, and was made before January 1, 1984.

(iv) The employee had accrued a benefit under the plan as of December 31, 1983.

(v) The method of distribution designated by the employee or the beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the employee’s death, the beneficiaries of the employee listed in order or priority.

(2) A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the employee.

(3) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the employee, or the beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in subsections (j)(l)(i) and (v).

(4) If a designation is revoked, any subsequent distribution must satisfy the requirements of IRC section 401(a)(9) of the Code and the regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy IRC section 401(a)(9) of the Code and the regulations thereunder, but for the IRC section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).

(5) In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in IRS Reg. 1.401(a)(9) - 8, Q&A-14 and Q&A-15, shall apply.

Section 4.15 - Spousal Rights Requirements

(a) **General**

The benefit distributions under this plan are subject to Code requirements which provide spousal rights and protection. Accordingly, all distributions under this plan are subject to the requirements of Code Sections 401(a)(11) and 417. These requirements are identified in this Section 4.15 and shall apply to any participant who is credited with one hour of service with the employer on or after August 23, 1984 and to any other individual identified in Section 4.15(f).

(b) **Qualified Joint and Survivor Annuity**

Any participant with vested accrued benefits who survives until the annuity starting date shall have such vested accrued benefits paid as a qualified joint and survivor annuity unless such qualified joint and survivor annuity has been waived and another form of payment has been selected pursuant to a qualified election made within the 180-day period ending on the annuity starting date. On or after attainment of earliest retirement age, the participant may elect payment of his qualified joint and survivor annuity.

(c) **Qualified Pre-retirement Survivor Annuity**

Benefits to be paid to the surviving spouse of a participant who dies before the annuity starting date will be determined as follows unless another form of payment has been selected within the election period pursuant to a qualified election.

(1) **Death After Earliest Retirement Age**

If a participant dies after the earliest retirement age, the participant's surviving spouse, if any, will receive the same benefit that would be payable if the participant had retired with an immediate qualified joint and survivor annuity on the day before the participant's date of death.

The surviving spouse may elect to commence payment under such annuity within one month after the participant's death. The actuarial value of benefits which commence later than the date on which payments would have been made to the surviving spouse under a qualified joint and survivor annuity in accordance with this provision shall be adjusted to reflect any delayed payment.

(2) **Death Before Earliest Retirement Age**

If a participant dies on or before the earliest retirement age, the participant's surviving spouse (if any) will receive the same benefit that would be payable if the participant had: (A) separated from service on the date of death (or date of separation from service, if earlier); (B) survived to the earliest retirement age; (C) retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and; (D) died on the day after the earliest retirement age.

For purposes of this Section 4.15(c)(2) and subject to the provisions of Section 4.13(c), a surviving spouse may direct the commencement of payments no later than the month in which the participant would have attained the earliest retirement age. Benefits commencing after the earliest retirement age will be the actuarial equivalent of the benefit to which the surviving spouse would have been entitled if benefits had commenced at the earliest retirement age under an immediate qualified joint and survivor annuity in accordance with this Section 4.15(c)(2).

(3) **Benefit Attributable to Employee Contributions**

For the purposes of Section 4.15(c), the benefit payable to the surviving spouse shall be attributable to employee contributions, if any and if applicable, in the same proportion as the total accrued benefit derived from employee contributions is to the accrued benefit of the participant.

(d) **Definitions**

(1) **Election Period**

The period which begins on the first day of the plan year in which the participant attains age 35 and ends on the date of the participant's death. If a participant separates from service prior to the first day of the plan year in which age 35 is attained, with respect to benefits accrued prior to separation, the election period shall begin on the date of separation. A participant who will not yet attain age 35 as of the end of any current plan year may make a special qualified election to waive the qualified pre-retirement survivor annuity for the period beginning on the date of such election and ending on the first day of the plan year in which the participant will attain age 35. Such election shall not be valid unless the participant receives a written explanation of the qualified pre-retirement survivor annuity in such terms as are comparable to the explanation required under Section 4.15(e). Qualified pre-retirement survivor annuity coverage will be automatically reinstated as of the first day of the plan year in which the participant attains age 35. Any new waiver on or after such date shall be subject to the full requirements of this Section 4.15.

(2) **Earliest Retirement Age**

The earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(3) **Qualified Election**

A waiver of a qualified joint and survivor annuity or a qualified pre-retirement survivor annuity. Any waiver of a qualified joint and survivor annuity or a qualified pre-retirement survivor annuity shall not be effective unless: (A) the participant's spouse consents in writing to the election; (B) the election designates a specific alternate beneficiary, including any class of beneficiaries or any contingent beneficiaries, which may not be changed without spousal consent (or the spouse expressly permits designations by the participant without further spousal consent); (C) the spouse's consent acknowledges the effect of the election; and (D) the spouse's consent is witnessed by a plan representative or notary public. Additionally, a participant's waiver of the qualified joint and survivor annuity will not be effective unless the election designates a form of benefit payment which may not be changed without spousal consent (or the spouse expressly permits designations by the participant without any further spousal consent). If it is established to

the satisfaction of a plan representative that such written consent may not be obtained because there is no spouse or the spouse cannot be located, a waiver will be deemed a qualified election.

Any consent by a spouse obtained under this provision (or establishment that the consent of a spouse may not be obtained) shall be effective only with respect to such spouse. A consent that permits designations by the participant without any requirement of further consent by such spouse must acknowledge that the spouse has the right to limit consent to a specific beneficiary, and a specific form of benefit where applicable, and that the spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a participant without the consent of the spouse at any time prior to the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the participant has received notice as provided in Section 4.15(e).

A qualified election under this section shall not be effective unless the participant may elect the qualified optional survivor annuity, as described in Section 4.12, during the applicable election period, as described in Section 4.15(d)(1).

(4) **Qualified Joint and Survivor Annuity**

An annuity commencing immediately which is the actuarial equivalent of the normal form of benefit. For a married participant, the qualified joint and survivor annuity is the annuity identified in Section 4.09(a)(3) with the spouse designated as the joint pensioner. For an unmarried participant, the qualified joint and survivor annuity is a single life annuity. The qualified joint and survivor annuity for a married participant must be at least as valuable as any other optional form of benefit payable under the plan at the same time.

(5) **Spouse (Surviving Spouse)**

The spouse or surviving spouse of the participant, provided that a former spouse will be treated as the spouse or surviving spouse and a current spouse will not be treated as the spouse or surviving spouse to the extent provided under a qualified domestic relations order as described in Code Section 414(p).

(6) **Annuity Starting Date**

The first day of the first period for which an amount is paid as an annuity or any other form.

The annuity starting date for disability benefits shall be the date such benefits commence if the disability benefit is not an auxiliary benefit. An auxiliary benefit is a disability benefit which does not reduce the benefit payable at normal retirement age.

(7) **Vested Accrued Benefit**

The value of the participant's vested accrued benefit derived from employer and employee contributions (including rollovers). The provisions of this Section 4.15 shall apply to a participant who is vested in amounts attributable to employer contributions, employee contributions (or both) at the time of death or distribution.

(e) **Notice Requirements**

(1) **Qualified Joint and Survivor Annuity**

In the case of a qualified joint and survivor annuity as described in Section 4.15(b), the plan administrator shall provide a written explanation to each participant no less than 30 days and no more than 180 days prior to the annuity starting date of: (i) the terms and conditions of a qualified joint and survivor annuity; (ii) the participant's right to make and the effect of an election to waive the qualified joint and survivor annuity form of benefit; (iii) the rights of a participant's spouse; (iv) the right to make, and the effect of, a revocation of a previous election to waive the qualified joint and survivor annuity; and (v) the relative values of the various optional forms of benefit under the plan as provided in IRS Reg. 1.417(a)-3. The annuity starting date for a distribution in a form other than a qualified joint and survivor annuity may be less than 30 days after receipt of the written explanation described in the preceding paragraph provided: (a) the participant has been provided with information that clearly indicates that the participant has at least 30 days to consider whether to waive the qualified joint and survivor annuity and elect (with spousal consent) to receive a form of distribution other than a qualified joint and survivor annuity; (b) the participant is permitted to revoke any affirmative distribution election at least until the annuity starting date or, if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the qualified joint and survivor annuity is provided to the participant; and (c) the annuity starting date is a date after the date that the written explanation was provided to the participant.

Notwithstanding the above paragraph, the annuity starting date may be a date prior to the date the written explanation is provided to the participant if the distribution does not commence until at least 30 days after such written explanation is provided, subject to the waiver of the 30-day period as provided for in the above paragraph.

The notice requirements described in this section in the case of a qualified joint and survivor annuity also apply in the case of a qualified optional survivor annuity, as described in Section 4.12.

(2) **Qualified Pre-retirement Survivor Annuity**

In the case of a qualified pre-retirement survivor annuity as described in Section 4.15(c), the plan administrator shall provide each participant within the applicable period for such participant, a written explanation of the qualified pre-retirement survivor annuity in such terms and in such a manner as would be comparable to the explanation provided for meeting the requirements of Section 4.15(e)(1) applicable to a qualified joint and survivor annuity.

The applicable period for a participant is whichever of the following periods ends last: (A) the period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35; (B) a reasonable period ending after the individual becomes a participant; (C) a reasonable period ending after Section 4.15(e)(3) ceases to apply to the participant; (D) a reasonable period ending after this Section 4.15 first applies to the participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation of service in case of a participant who separates from service before attaining age 35.

For purposes of the preceding paragraph, a reasonable period ending after the enumerated events described in (B), (C) and (D) is the end of the two year period beginning one year prior to the date the applicable event occurs and ending one year after that date. In the case of a participant who separates from service before the plan year in which age 35 is attained, notice shall be provided within the two year period beginning one year prior to separation and ending one year after separation. If such a participant thereafter returns to employment with the employer, the applicable period for such participant shall be redetermined.

(3) **Nonapplication**

Notwithstanding the other requirements of this Section 4.15(e), the respective notices prescribed need not be given to a participant if (A) the plan “fully subsidizes” the costs of a qualified joint and survivor annuity or qualified pre-retirement survivor annuity, and (B) the plan does not allow the participant to waive the qualified joint and survivor annuity or qualified pre-retirement survivor annuity and does not allow a married participant to designate a nonspouse beneficiary. For purposes of Section 4.15(e)(3), a plan fully subsidizes the costs of a benefit if under the plan no increase in cost or decrease in benefits to the participant may result from the participant’s failure to elect another benefit. Prior to the time the plan allows the participant to waive the qualified pre-retirement survivor annuity, the plan may not charge the participant for the cost of such benefit by reducing the participant’s benefits under the plan or by any other method.

(f) **Retroactive Annuity Starting Date**

(1) The participant may elect a retroactive annuity starting date. A retroactive annuity starting date shall mean an annuity starting date affirmatively elected by a participant that occurs on or before the date the written explanation required in Section 4.15(e)(1) is provided to the participant. A participant cannot elect a retroactive annuity starting date that precedes the date upon which the participant could have otherwise started receiving benefits under the terms of the plan in effect as of the retroactive annuity starting date. Future periodic payments with respect to a participant who elects a retroactive annuity starting date must be the same as the future periodic payments, if any, that would have been paid with respect to the participant had payments actually commenced on the retroactive annuity starting date.

The participant must receive a make-up payment to reflect any missed payment or payments for the period from the retroactive annuity starting date to the date of the actual make-up payment (adjusted for interest at the rate specified in Section 1.02(a) from the date the missed payment(s) would have been made to the date of the actual make-up payment. Annuity payments that otherwise satisfy the requirements of a qualified joint and survivor annuity under Section 4.15(d)(4) will not fail to be treated as a qualified joint and survivor annuity for purposes of Section 5.05(b) because a retroactive annuity starting date is elected and a make-up payment is made.

(2) The participant’s spouse (including an alternate payee who is treated as a spouse under a qualified domestic relation order as described in Code section 414(p)), determined as if the date distributions commence were the participant’s annuity starting date, shall consent to the distribution in a manner that would satisfy the requirements of Section 4.15(d)(3). The spousal consent requirement of this section (e)(2) does not apply if the amount of such spouse’s survivor annuity payments under the retroactive annuity starting date election is no less than the amount that the survivor payments to such spouse would have been under an optional form of benefit that would

satisfy the requirements to be qualified joint and survivor annuity under Section 4.15(d)(4) and that has an annuity starting date after the date the explanation required by Section 4.15(e)(1) was provided.

If the participant's spouse as of the retroactive annuity starting date would not be the participant's spouse determined as if the date distributions commence was the participant's annuity starting date, consent of that former spouse is not needed to waive the qualified joint and survivor annuity with respect to the retroactive annuity starting date, unless otherwise provided under a qualified domestic relations order as described in Code section 414(p).

(3) The written explanation required by Section 4.15(e)(1) shall be provided no less than 30 days and no more than 180 days before the date of the first payment of benefits pursuant to the retroactive annuity starting date, and the election to receive the distribution shall be made after the written explanation is provided and on or before the date of the first payment.

(4) When the date the distribution commences is substituted for the annuity starting date for all purposes (including for purposes of determining the applicable interest rate and the applicable mortality table under Section 1.02(e)), the distribution (including interest adjustments) must satisfy the requirements of Section 1.02(e). However, if the date the distribution commences is 12 months or less from the retroactive annuity starting date and the form of the benefit would have been excepted from Code section 417(e)(3) if the distribution had actually commenced on the retroactive annuity starting date, the requirement to apply Article 5 of the plan as of the date the distribution commences does not apply. The benefit determined as of the retroactive annuity starting date must satisfy the requirements of Article 5 of the plan with the applicable interest rate and the applicable mortality table determined as of that date.

In the case of a form of benefit that would have been subject to Code section 417(e)(3) if distributions had commenced as of the retroactive annuity starting date, the distribution shall be not less than the benefit produced by applying the applicable interest rate and the applicable mortality table under Section 1.02(e) determined as of the date the distribution actually commences to the annuity form that corresponds to the annuity form that was used to determine the benefit amount as of the retroactive annuity starting date. The benefit determined as of the retroactive annuity starting date must satisfy the requirements of Code section 417(e)(3) with the applicable interest rate and the applicable mortality table determined as of that date.

(g) **Transitional Rules**

(1) Any living participant not receiving benefits on August 23, 1984, who would otherwise not be covered by the preceding provisions of Section 4.15 must be given the opportunity to elect to have such provisions apply if such participant is credited with at least one hour of service under this plan or a predecessor plan in a plan year beginning on or after January 1, 1976, and such participant had at least 10 years of vesting service when he separated from service.

(2) Any living participant not receiving benefits on August 23, 1984, who was credited with at least one hour of service under this plan or a predecessor plan on or after September 2, 1974, and who is not otherwise credited with any service in a plan year beginning on or after January 1, 1976, must be given the opportunity to have his benefits paid in accordance with Section 4.15(g)(4).

(3) The respective opportunities to elect (as described in Sections 4.15(g)(1) and 4.15(g)(2) above) must be afforded to the appropriate participants during the period commencing on August 23, 1984, and ending on the date benefits would otherwise commence to said participants.

(4) Any participant who has elected pursuant to Section 4.15(g)(2) and any participant who does not elect under Section 4.15(g)(1) or who meets the requirements of Section 4.15(g)(1) except that such participant does not have at least 10 years of vesting service when he separates from service, shall have his benefits distributed in accordance with all of the following requirements if benefits would have been payable in the form of a life annuity:

(A) **Automatic joint and survivor annuity**

If benefits in the form of a life annuity become payable to a married participant who:

(i) begins to receive payments under the plan on or after normal retirement age; or

(ii) dies on or after normal retirement age while still working for the employer; or

(iii) begins to receive payments on or after the qualified early retirement age; or

(iv) separates from service on or after attaining normal retirement age (or the qualified early retirement age) and after satisfying the eligibility requirements for the payment of benefits under the plan and thereafter dies before beginning to receive such benefits;

then such benefits will be received under this plan in the form of a qualified joint and survivor annuity, unless the participant has elected otherwise during the election period. The election period must begin at least 6 months before the participant attains qualified early retirement age and end not more than 90 days before the commencement of benefits. Any election hereunder will be in writing and may be changed by the participant at any time.

(B) **Election of early survivor annuity.**

A participant who is employed after attaining the qualified early retirement age will be given the opportunity to elect, during the election period, to have a survivor annuity payable on death. If the participant elects the survivor annuity, payments under such annuity must not be less than the payments which would have been made to the spouse under the qualified joint and survivor annuity if the participant had retired on the day before his or her death. Any election under this provision will be in writing and may be changed by the participant at any time. The election period begins on the later of (1) the 90th day before the participant attains the qualified early retirement age, or (2) the date on which participation begins, and ends on the date the participant terminates employment.

(C) **Definitions.**

Qualified early retirement age is the latest of: the earliest date, under the plan, on which the participant may elect to receive retirement benefits; the first day of the 120th month beginning before the participant reaches normal retirement age, or; the date the participant begins participation. Qualified joint and survivor annuity is an annuity for the life of the participant with a survivor annuity for the life of the spouse as described in Section 4.15(d)(4).

Section 4.16 - Eligible Rollover Distributions

(a) **General**

This section applies to distributions made after December 31, 2001. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this Article 4, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution that is at least \$500 paid directly to an eligible retirement plan specified by the distributee in a direct rollover. If an eligible rollover distribution is less than \$500, a distributee may not make the election described in the preceding sentence to rollover a portion of the eligible rollover distribution.

(b) **Special Rules and Definitions**

(1) **Eligible Rollover Distribution**

An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

(A) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;

(B) any distribution to the extent such distribution is required under Code Section 401(a)(9);

(C) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities);

(D) any other distribution(s) that is reasonably expected to total less than \$200 during a year; and

(E) any similar items designated by the Commissioner in revenue rulings, notices, and other guidance of general applicability.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, such portion may be transferred to (1) an individual retirement account or annuity described in Code Section 408(a) or (b); or (2) to a qualified trust or to an annuity contract described in Code Section 403(b), if such trust or contract provides for separate accounting for amounts so transferred (including interest thereon), including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable.

(2) **Eligible Retirement Plan**

An eligible retirement plan is an (i) eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan, (ii) an individual retirement account described in Code Section 408(a) and individual retirement annuity described in Code Section 408(b), (iii) an annuity plan described in Code Section 403(a), (iv) an annuity contract described in Code Section 403(b), (v) a qualified defined contribution plan described in Code Section 401(a), that accepts the distributee's eligible rollover distribution, or (vi) a Roth IRA described in Code Section 408A. The plan administrator shall not be responsible for determining the eligibility of any "distributee" to make a rollover to a Roth IRA.

(3) **Distributee**

A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse. A distributee also includes the participant's nonspouse designated beneficiary under Section 4.07(c). In the case of a nonspouse beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in Code Section 408(a) or Code Section 408(b) ("IRA") that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code Section 402(c)(11). Also, in this case, the determination of any required minimum distribution under Code Section 401(a)(9) that is ineligible for rollover shall be made in accordance with IRS Notice 2007-7, Q&A 17 and 18, 2007-5 I.R.B. 395.

(4) **Direct Rollover**

A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

Section 4.17 - Preservation of Prior Plan Benefit Provisions

The benefit formula for Section 4.01(c) shall reflect a 2.03% benefit factor in lieu of the 1.75% benefit factor for any benefit accrual service of participants under the Pedernales Pension Plan under the National Rural Electric Cooperative Association during the period from January 1974 through December 1, 1977.

Section 4.18 - Ad Hoc Retiree and Beneficiary Benefit Increases

The monthly benefits provided under this plan for recipients in pay status may be periodically reviewed by the plan sponsor for the purpose of determining the appropriateness of any cost of living increases and determining whether an increase can be made in light of the current funding of the plan. Such review is conducted solely at the discretion of the plan sponsor. Any recommended increases that may result from such review can be enacted only by the plan sponsor via plan amendment pursuant to Section 8.01(b). This section creates no rights to review, nor does it create any rights to future increases.

Effective January 1, 2002, any monthly benefit that was being paid as of December 31, 2001 to a retiree or beneficiary shall be increased by an amount equal to 2% per year or partial year that such monthly benefit has been in pay status since January 1, 1994 through December 31, 2001.

For example, a benefit that commenced pay status December 31, 1994 or earlier would be increased 16%; a benefit that commenced July 1, 1999 would be increased 6%; and a benefit that commenced December 1, 2001 would be increased 2%.

Section 4.19 - Merger of Kimble Electric Cooperative, Inc. Retirement Plan

(a) **General**

Effective December 31, 2001, the Retirement & Security Program Defined Benefit Retirement Plan sponsored by the plan sponsor through the National Rural Electric Cooperative Association ("NRECA") on behalf of those former employees of Kimble Electric Cooperative, Inc. who became employees of the plan sponsor in July, 2000 is merged into this plan. This Section 4.19 describes those special provisions applicable to the participants of this merged plan.

(b) **Participants Affected**

The active and former employees subject to this Section 4.19 are those individuals who were participants as of July 14, 2000 of the NRECA Retirement & Security Program sponsored by Kimble Electric Cooperative, Inc. who have remaining accrued benefits under such plan as of December 31, 2001. Those individuals are identified in Addendum A. All such individuals shall become participants of this plan effective December 31, 2001.

(c) **Participants in Pay Status**

Those participants in payment status as of December 31, 2001 will continue to have their existing monthly payments, as shown in Addendum A, continue with all future amounts payable on or after January 1, 2002 to be paid from this plan. The form of payment and the terms of those benefits will continue unchanged except as modified by the cost of living adjustment as described in Section 4.19(d)(3) below. The ad hoc increase effective January 1, 2002 described in Section 4.18 does not apply to the participants identified in this Section 4.19(c).

(d) **Active Participants**

Those employees who are active employees with accrued benefits under the NRECA Retirement & Security Program shall have the following special provisions applied to the determination of their accrued benefit amounts and provisions under this plan. Except where this Section 4.19(d) calls for special benefit provisions, all other plan provisions shall apply equally to those active employees described herein.

(1) **Normal Retirement Benefit Formula**

The normal retirement benefit formula shall be identical to that of Section 4.01(c) except a 2.0% factor shall be used instead of 1.75% for those years of benefit accrual service credited under the NRECA Retirement & Security Program as of December 31, 2001. For example, a former Kimble Electric Cooperative, Inc. employee with 10 years of benefit accrual service as of December 31, 2001 who accrues 10 additional years of benefit accrual service after December 31, 2001 would have a total accrued benefit equal to 37.5% of average monthly compensation (10 years times 2.0% plus 10 years times 1.75%). In no event shall the normal retirement benefit for a former Kimble Electric Cooperative, Inc. employee be less than his accrued normal retirement benefit payable as a 10-year certain and life annuity earned under the NRECA Retirement & Security Program as of December 31, 2001.

(2) **Normal Form of Payment**

The dollar amount of any accrued benefit earned as of December 31, 2001 shall have as its normal form of payment the normal form of payment specified under the NRECA Retirement & Security Program as of December 31, 2001, i.e., life only for single participants and joint and 50% to surviving spouse for married participants. All other amounts of accrued benefits will have the normal form of payment specified in Section 4.01(b).

(3) **Automatic Cost of Living Adjustment**

The dollar amount of any accrued benefits earned as of December 31, 2001 and subsequently paid in annuity form, shall be subject to an automatic cost of living adjustment for participants who retire from active service under the plan's early, normal or late retirement provisions. The adjustment occurs on the annual anniversaries of the first date that retirement monthly payments commence. Benefits shall be adjusted based on the adjustment determined as of January 1 of the year and effective for each participant as of each anniversary date of the commencement of benefits to the participant or other recipient in an amount determined by multiplying the monthly benefit the participant or other recipient was receiving immediately prior to the adjustment by 50% of the annual percentage change in the Consumer Price Index determined as

of the September 30 immediately preceding the year of each cost-of-living increase; provided, however, that benefits shall never be increased in any calendar year by more than 10%. The annual percentage change in the Consumer Price Index shall be determined by subtracting (i) the average Consumer Price Index for the 12-month period ending on the September 30 of the year immediately preceding the year in which the determination is made from (ii) the average Consumer Price Index for the 12-month period ending on the September 30 of the year in which the determination is made, and dividing the result by (i). The term "Consumer Price Index" means the Urban Index issued by the Bureau of Labor Statistics of the United States Department of Labor.

(4) **Lump Sum Optional Payment**

The fixed dollar amount of any accrued benefit earned as of December 31, 2001 shall be available to be paid as a lump sum optional form of payment pursuant to Section 4.09(a)(9) without the maximum lump sum payment limit of \$25,000. The basis of actuarial equivalence for determining the amount of the lump sum amount associated with the accrued benefit earned as of December 31, 2001 shall be as described in Section 4.19(d)(9).

(5) **Early Retirement Benefit**

The dollar amount of any accrued benefit earned as of December 31, 2001 may be paid as an actuarially equivalent early retirement monthly benefit commencing the first of any month which follows the attainment of age 55 or, if earlier, as permitted by Section 4.04. The basis of actuarial equivalence for the early retirement monthly benefit associated with the December 31, 2001 accrued benefit shall be based on Section 1.02(d) or, if greater, an amount equal to the accrued benefit reduced 1/180 for each of the first 60 months and further reduced 1/360 for each of the next 60 months by which early retirement precedes the first of the month coincident or first following normal retirement age.

(6) **Optional Payment Forms**

The dollar amount of any accrued benefit earned as of December 31, 2001 shall be payable in the following optional forms of payment in addition to the normal form of Section 4.19(d)(2) and lump sum option of Section 4.19(d)(4):

- i. 10-years certain and life annuity
- ii. life only annuity
- iii. joint and 66 2/3% to surviving spouse
- iv. a joint and 75% to surviving spouse
- v. joint and 100% to surviving spouse
- vi. joint and 100%, 66 2/3% or 50% to surviving joint pensioner.
- vii. a combination of a percentage of one of any allowable monthly annuity plus a percentage of the lump sum option of Section 4.19(d)(2) where the percentage of the lump sum option selected is a multiple of 10% not to exceed 90% and the percentage of the monthly annuity is 100% less the lump sum percentage.

(7) **Actuarial Equivalence**

The amounts of the optional monthly payment forms payable under this Section 4.19(d) shall be determined as the amount actuarially equivalent to the unreduced form of payment as follows:

- i. 10-years certain and life; accrued benefit amount multiplied by 1.08
- ii. life only annuity; accrued benefit amount multiplied by 1.19
- iii. joint and 66 2/3% to surviving spouse; accrued benefit amount multiplied by 0.96
- iv. for joint and 75% to surviving spouse; accrued benefit amount multiplied by 0.94
- v. joint and 100% to surviving spouse; accrued benefit amount multiplied by 0.87
- vi. joint and 100%, 66 2/3% or 50% to surviving joint pensioner other than the participant's spouse; accrued benefit amount multiplied by appropriate factor from the following table

Nonspouse Pensioner				
Age vs Participant Age (Completed Whole)	<u>Survivor Benefit Percentage</u>			
	<u>100%</u>	<u>66.67%</u>	<u>50%</u>	
20 or more years older	1.14	1.16	1.17	
15-19 years older	1.11	1.13	1.14	
10-14 years older	1.07	1.11	1.13	
5-9 years older	1.01	1.07	1.1	
Less than 5 years				
Difference	0.94	1.01	1.05	
5-9 years younger	0.87	0.96	1	
10-14 years younger	0.82	0.93	0.98	
15-19 years younger	0.77	0.88	0.94	
20 or more years younger	0.75	0.87	0.93	

(8) **Vesting Schedule** –

The vesting schedule applied to the accrued benefits earned both prior and after December 31, 2001 for those participants identified in Section 4.19(d) shall be as follows:

<u>Years of Vesting Service</u>	<u>Vesting Percentage</u>
Less than 1	0%
1	10
2	20
3	30
4	40
5 or more	100

For purposes of the above schedule, one year of vesting service will be credited for each calendar year in which a participant works one or more hours of service.

(9) **Lump Sum Actuarial Equivalence and Methodology**

Any lump sum payment made under Section 4.19(d)(4) shall be the actuarial equivalent of the dollar amount accrued benefit determined as of December 31, 2001 pursuant to the following basis of actuarial equivalence:

(i) **Benefits Accrued Prior to January 1, 1984**

the 1984 Unisex Pensioner Mortality Table and interest at an annual effective rate of 6%, or, if producing a larger amount, the basis described in (ii) below.

(ii) **Benefits Accrued Subsequent to December 31, 1983 and Prior to January 1, 2000**

the 1984 Unisex Pensioner Mortality Table and PBGC interest rates (deferred and immediate) which would be used by the PBGC on the January 1st of the calendar year of payment to value lump sum payments for a non-multiemployer pension plan provided, however, the interest rate used for post normal retirement date payments would be determined by the following formula: $i-(i-3)/2$, but not greater than i , where i is the PBGC immediate interest rate.

The basis of actuarial equivalence specified under this subparagraph (ii) shall cease to apply for calendar years commencing on or after (A) the effective date of any change in methodology utilized by the PBGC for valuing lump sum payments under a non-multiemployer pension plan, e.g., any change in mortality table or methodology for determining interest rates including, *inter alia*, the circumstances when either the immediate or deferred rate is used; or (B) the date the PBGC ceases to publish the interest rates used for valuing lump sum payments under a non-multiemployer plan.

(iii) **Minimum**

Notwithstanding the above, the sum of (i) and (ii) above shall not be less than the sum of the amounts determined under (i) and (ii) using instead the basis of actuarial equivalence specified in (iv) below.

(iv) **Benefits Accrued Subsequent to December 31, 1999**

The basis described in Section 1.02(e) except the stability period shall be calendar year and the lookback month shall be the prior November. Furthermore, the interest rate used for post normal retirement date payments would be determined by the following formula: $i-(i-4)/2$, but not greater than i , where i is the otherwise applicable interest rate.

(v) **Methodology**

In computing the lump sum actuarial equivalent hereunder (A) the accrued benefit is assumed payable at normal retirement age or payment date if later, (B) the normal form of payment of the accrued benefit is first converted to a life only annuity amount by the 1.19 factor of Section 4.19(d)(7)(ii) so the payment form valued is a life only actuarial equivalent and (C) the

computed lump sum factors shall be based on half-year ages and shall change only when a participant attains his next birthday.

Section 4.20 - Transition Provisions

(a) General

In response to Code Sections and IRS regulations that have become effective subsequent to the plan's inception, certain plan provisions and related benefits must undergo transition to maintain compliance. This Section 4.20 identifies the necessary transition provisions and their effective dates.

(b) Accrued Benefits of Code Section 401(a)(17) Employees

A Code Section 401(a)(17) employee is any employee whose current accrued benefit on or after the first plan year beginning on or after January 1, 1994 is based on compensation for a year beginning prior to the first day of the first plan year beginning on or after January 1, 1994 that exceeded \$150,000. Notwithstanding any other plan provision, such Code Section 401(a)(17) employee's accrued benefit will be the greater of (1) or (2) where (1) is the employee's accrued benefit determined with respect to the benefit formula applicable for the plan year beginning on or after January 1, 1994, as applied to the employee's total years of service taken into account under the plan for the purposes of benefit accruals and (2) is the sum of (i) plus (ii) where (i) is the employee's accrued benefit as of the last day of the last plan year beginning before January 1, 1994, frozen in accordance with IRS Regulations Section 1.401(a)(4)-13 and (ii) is the employee's accrued benefit determined under the benefit formula applicable for the plan year beginning on or after January 1, 1994, as applied to the employee's years of service credited to the employee for plan years beginning on or after January 1, 1994, for purposes of benefit accruals.

(c) Fresh-Start Benefit Accrual Rules

In order to apply the fresh-start rules of IRS Regulations Section 1.401(a)(4)-13(c), the following provisions and definitions shall apply.

(1) Determination of Accrued Benefit.

Each participant's accrued benefit will be equal to the greater of (i) or (ii) where (i) is the accrued benefit determined with respect to the current benefit formula as applied to the participant's total years of service taken into account under the plan for the purposes of benefit accrual and where (ii) is the sum of (A) plus (B) where (A) is the participant's frozen accrued benefit, if any, and (B) is the participant's accrued benefit determined with respect to the current benefit formula as applied to the participant's years of service taken into account under the plan for the purposes of benefit accrual beginning after the fresh-start date.

(2) Frozen Accrued Benefit

A participant's frozen accrued benefit is the amount of the participant's accrued benefit determined in accordance with the provisions of the plan applicable in the year containing the latest fresh-start date, determined as if the participant terminated employment with the employer

as of the latest fresh-start date, without regard to any amendment made to the plan after that date. If this plan has not had a fresh-start date, the participant's frozen accrued benefit will be zero.

If, as of the latest fresh-start date, the amount of a participant's frozen accrued benefit was limited by the application of Code Section 415, the participant's frozen accrued benefit will be increased for years after the latest fresh-start date to the extent permitted under Code Section 415(d)(1). In addition, the frozen accrued benefit of a participant whose frozen accrued benefit includes the top-heavy minimum benefits provided in Article 6 of the plan, will be increased to the extent necessary to comply with the average compensation requirement of Code Section 416(c)(1)(D)(i).

If the plan's normal form of benefit in effect on the latest fresh-start date is not the same as the normal form under the plan after the latest fresh-start date and/or the normal retirement age for any participant on that date was greater than the normal retirement age for that participant under the plan after the latest fresh-start date, the frozen accrued stated benefit will be expressed as an actuarially equivalent benefit in the normal form under the plan after the latest fresh-start date, commencing at the participant's normal retirement age under the plan in effect after the latest fresh-start date.

(3) **Fresh-Start Date**

Fresh-start date means the last day of a plan year preceding a plan year for which any amendment of the plan that directly or indirectly affects the amount of a participant's benefit determined under the current benefit formula (such as an amendment to the definition of compensation used in the current benefit formula or a change in the normal retirement age of the plan) is made effective.

(d) **Adjustments to Frozen Accrued Benefit**

IRS Regulations Section 1.401(a)(4)-13(d) allows, under certain conditions, for adjustments to be made in the frozen accrued benefit amount due to compensation changes occurring after the last fresh-start date that occurs before the first plan year beginning on or after January 1, 1994. Such adjustments to the frozen accrued benefit are not provided under this plan.

(1) **Minimum Post Fresh-Start Date Accruals**

With respect to benefits accruing during plan years beginning after the plan's latest fresh-start date, each participant will accrue a benefit of not less than 0.5% of average monthly compensation per year of benefit accrual service earned after the latest fresh-start date.

(2) **Minimum Benefit Adjustment for Permitted Disparity**

If this plan was a defined benefit excess plan as of the latest fresh-start date, each participant's frozen accrued benefit will be increased, to the extent necessary, if any, so that the base benefit percentage, determined with reference to all years of benefit accrual service as of the latest fresh-start date, is not less than 50 percent of the excess benefit percentage as of the latest fresh-start date, determined with reference to all years of benefit accrual service as of the latest fresh-start date. For this purpose, a defined benefit excess plan is a defined benefit plan under which the rate at which employer-provided benefits are determined with respect to average annual

compensation above the integration level under the plan is greater than the rate at which employer-provided benefits are determined with respect to average annual compensation at or below the integration level. If this plan was a PIA offset plan as of the latest fresh-start date, each participant's offset applied to determine the frozen accrued benefit will be decreased, to the extent necessary, if any, so that it does not exceed 50 percent of the benefit determined without applying the offset, taking into account all years of benefit accrual service as of the latest fresh-start date. For this purpose, a PIA offset plan is a plan that applies the plan's benefit rates uniformly regardless of an employee's compensation, but that reduces an employee's benefit by a stated percentage of the employee's primary insurance amount under the Social Security Act. In the case of a plan that provides for permitted disparity other than an excess benefit plan or a PIA offset plan, each participant's frozen accrued benefit will be increased, to the extent necessary, if any, in a manner that is economically equivalent to the adjustment required for an excess benefit plan or a PIA offset plan.

(3) **Adjusted Frozen Accrued Benefits**

The participant's frozen accrued benefit, as adjusted above, as applicable, will be multiplied by a fraction (not less than 1), the numerator of which is the participant's average monthly compensation, as defined in Section 1.03, for the current plan year, and the denominator of which is the participant's average monthly compensation for the plan year ending on the latest fresh-start date, determined in the same manner as the numerator. This paragraph shall not apply for any Code Section 401(a)(17) employee's adjusted frozen accrued benefit; instead, the following Section 4.20(d)(4) shall apply for such employees.

(4) **Adjusted Frozen Accrued Benefits for Code Section 401(a)(17) Employees**

If this plan satisfies the requirements of IRS Regulations Section 1.401(a)(4)-13(d) for a fresh-start as of the last day of the last plan year beginning before January 1, 1994, then, notwithstanding any other provisions of the plan, any Code Section 401(a)(17) employee's accrued benefit, frozen in accordance with IRS Regulations Section 1.401(a)(4)-13 as of a fresh-start date, is adjusted to reflect increases in the employee's compensation after the fresh-start date. However, this adjustment may be made only if the adjustment will not cause the plan to fail to satisfy the consistency requirement of IRS Regulations Section 1.401(a)(4)-13(c), as modified by IRS Proposed Regulations Section 1.401(a)(17)-1(e).

In determining a Code Section 401(a)(17) employee's accrued benefit in any plan year beginning on or after January 1, 1994, the portion of the employee's frozen accrued benefit attributable to plan years beginning before January 1, 1994, will be determined in accordance with Method A for statutory Code Section 401(a)(17) employees and Method B for Code Section 401(a)(17) employees other than statutory Code Section 401(a)(17) employees.

A statutory Code Section 401(a)(17) employee means an employee whose current accrued benefit as of a date on or after the first day of the first plan year beginning on or after January 1, 1994, is based on compensation for a year beginning prior to the first day of the first plan year beginning on or after January 1, 1989, that exceeded \$200,000.

A Code Section 401(a)(17) employee means an employee whose current accrued benefit as of a date on or after the first day of the first plan year beginning on or after January 1,

1994 is based on compensation for a year beginning prior to the first day of the first plan year beginning on or after January 1, 1994, that exceeded \$150,000.

Method A
(statutory Code Section 401(a)(17) employees)

- Step 1: Determine each statutory Code Section 401(a)(17) employee's accrued benefit as of the last day of the last plan year beginning before January 1, 1989, frozen in accordance with IRS Regulations Section 1.401(a)(4)-13.
- Step 2: Adjust the amount in step 1 up through the last day of the last plan year beginning before the first plan year beginning on or after January 1, 1994, under the method provided under the plan for increasing the amount in step 1 to take into account increases in compensation in plan years beginning on or after January 1, 1989. However, if the plan does not provide for such increases, the amount in step 2 shall be equal to the amount in step 1.
- Step 3: Determine the statutory Code Section 401(a)(17) employee's accrued benefit as of the last day of the last plan year beginning before January 1, 1994, frozen in accordance with IRS Regulations Section 1.401(a)(4)-13.
- Step 4: Subtract the amount determined in step 2 from the amount determined in step 3.
- Step 5: Adjust the amount in step 4 by multiplying it by the following fraction (not less than 1). The numerator of the fraction is the statutory Code Section 401(a)(17) employee's average compensation determined for the current year (as limited by Code Section 401(a)(17)), using the same definition and compensation formula in effect as of the last day of the last plan year beginning before January 1, 1994. The denominator of the fraction is the employee's average compensation for the last day of the last plan year beginning before January 1, 1994, using the definition and compensation formula in effect as of the last day of the last plan year beginning before January 1, 1994.
- Step 6: Adjust the amount in step 1 by multiplying it by the following fraction (not less than 1). The numerator of the fraction is the statutory Code Section 401(a)(17) employee's average compensation for the current year (as limited by Code Section 401(a)(17)), using the same definition of compensation and compensation formula in effect as of the last day of the last plan year beginning before January 1, 1989. The denominator of the fraction is the employee's average compensation for the last day of the last plan year beginning before January 1, 1989, using the definition and compensation formula in effect as of the last day of the last plan year beginning before January 1, 1989.
- Step 7: Add the amounts determined in step 5, and the greater of steps 6 or 2.

Method B
(Code Section 401(a)(17) employees other than
statutory Code Section 401(a)(17) employees)

- Step 1: Determine the accrued benefit of each Code Section 401(a)(17) employee other than statutory Code Section 401(a)(17) employees as of the last day of the plan year beginning

before January 1, 1994, frozen in accordance with IRS Regulations Section 1.401(a)(4)-13.

Step 2: Adjust the amount in step 1 by multiplying it by the following fraction (not less than 1). The numerator of the fraction is the average compensation of the Code Section 401(a)(17) employee who is not a statutory Code Section 401(a)(17) employee determined for the current year (as limited by Code Section 401(a)(17)), using the same definition and compensation formula in effect as of the last day of the last plan year beginning before January 1, 1994. The denominator of the fraction is the employee's average compensation for the last day of the last plan year beginning before January 1, 1994, using the definition and compensation formula in effect as of the last day of the last plan year beginning before January 1, 1994.

Section 4.21 – Merger of Envision Utility Software Corporation Employees Defined Benefit Plan

(a) **General**

Effective December 31, 2003, the Envision Utility Software Corporation Employees Defined Benefit Plan sponsored by Envision Utility Software Corporation is merged into the Pedernales Electric Cooperative, Inc. Employees Defined Benefit Retirement Plan. Effective with this merger, the Envision Utility Software Corporation Employees Defined Benefit Plan is no longer in existence. This Section 4.21 describes those special provisions applicable to the participants of this merged plan.

(b) **Participating Employer**

Effective December 31, 2003 Envision Utility Software Corporation shall become a participating employer as defined in Section 1.22 as such employer has elected to become a participating employer hereunder and such election has been approved by the Plan Sponsor via resolution by the Pedernales Electric Cooperative, Inc. Board of Directors.

(c) **Participants Affected**

All participants of the Envision Utility Software Corporation Employees Defined Benefit Plan as of December 31, 2003 shall become participants of the Pedernales Electric Cooperative, Inc. Employees Defined Benefit Retirement Plan effective December 31, 2003. Any other Envision Utility Software Corporation employees who prospectively satisfy the eligibility provisions of Section 2.01 will become participants of this plan as specified by Section 2.02 via entry dates on or after January 1, 2004.

(d) **Nonactive Participants**

Those participants or beneficiaries of the Envision Utility Software Corporation Employees Defined Benefit Retirement Plan in payment status as of December 31, 2003 will continue to have their existing monthly payments, as shown in Addendum B, continue with all future amounts payable on or after January 1, 2004 to be paid from this plan. The form of payment and the terms of those benefits will continue unchanged. Further, any nonactive participants with vested accrued benefits under the Envision Utility Software Corporation Employees Defined Benefit Retirement

Plan as of December 31, 2003 not in pay status will have such future deferred benefits, as shown in Addendum B, paid from this plan. The amounts and terms of those vested accrued benefits will be unchanged.

(e) **Active Participants**

Those employees who are active employees and participants of the Envision Utility Software Corporation Employees Defined Benefit Plan as of December 31, 2003 shall become active participants of this plan effective December 31, 2003. These participants shall have their benefits determined under the provisions of this plan effective December 31, 2003 without variation except as is specified in Section 4.21(f).

(f) **CSI Retirement Plan Coordination**

(1) **Predecessor Employer**

Service under Section 2.04(a) will be additionally credited for any service recognized under the CSI Retirement Plan for those employees whose employment was transferred from Cooperative Services, Inc. to Envision Utility Software Corporation in 1995. The amount of any such service, if any, is identified in Addendum C to this plan.

(2) **Accrued Benefit Offset**

The normal retirement benefit formula in Section 4.01(c) shall be reduced by the amount of any CSI Retirement Plan Accrued Benefit Offset identified in Addendum C to this plan.

ARTICLE 5

LIMITATIONS ON BENEFITS

Section 5.01 - General

Benefits provided under this plan shall be subject to the overall limitations identified in this Article 5, in accordance with the requirements of the Code.

Section 5.02 - Single Plan Participation

If a participant is not and has never been a participant in another qualified plan maintained by the employer, then the annual benefit otherwise payable to a participant under the plan at any time shall not exceed the maximum permissible benefit. If the benefit that a participant would otherwise accrue in a limitation year would produce an annual benefit in excess of the maximum permissible benefit, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the maximum permissible benefit.

Notwithstanding anything else in this Article 5 to the contrary, the benefit otherwise accrued or payable to a participant under this plan shall be deemed not to exceed the defined benefit dollar limitation if:

(i) the retirement benefits payable for a plan year under any form of benefit with respect to such participant under this plan and under all other defined benefit plans (regardless of whether terminated) ever maintained by the employer do not exceed \$10,000 multiplied by a fraction - the numerator of which is the participant's number of years (or part thereof, but less than one year) of service (not to exceed 10) with the employer, and the denominator of which is 10; and

(ii) the employer (or a predecessor employer) has not at any time maintained a defined contribution plan in which the participant participated (for this purpose, mandatory employee contributions under a defined benefit plan, individual medical accounts under Code section 401(h), and accounts for postretirement medical benefits established under Code section 419A(d)(1) are not considered a separate defined contribution plan)..

Section 5.03 - Multiple Plan Participation

(a) **Additional Defined Benefit Plan**

If the participant is, or has ever been, a participant in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the employer or a predecessor employer, the sum of the participant's annual benefits from all such plans may not exceed the maximum permissible benefit. Where the participant's employer-provided benefits under all such defined benefit plans (determined as of the same age) would exceed the maximum permissible benefit applicable at that age, the rate of accrual of such other defined benefit plans currently maintained shall be reduced proportionately so that the resulting annual benefits do not exceed the maximum permissible amount. If further reduction in the annual benefit is necessary, then the annual benefits from this plan shall be reduced as necessary.

(b) **Additional Defined Contribution Plan**

Reserved.

Section 5.04 - Preservation of Accrued Benefit

In the case of an individual who was a participant in one or more defined benefit plans of the employer as of the first day of the first limitation year beginning after December 31, 1994, the application of the limitations of this Article 5 shall not cause the maximum permissible amount for such individual under all such defined benefit plans to be less than the individual's Retirement Protection Act of 1994 (RPA '94) old law benefit. The preceding sentence applies only if such defined benefit plans met the requirements of Section 415 of the Internal Revenue Code on December 7, 1994.

The application of the provisions of this Article 5 shall not cause the maximum permissible benefit for any participant to be less than the participant's accrued benefit under all the defined benefit plans of the employer or a predecessor employer as of the end of the last limitation year beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Code section 415 in effect as of the end of the last limitation year beginning before July 1, 2007, as described in IRS Reg. 1.415(a)-1(g)(4).

Section 5.05 - Definitions Applicable to Section 5.02, 5.03 and 5.04

(a) **Annual Additions**

Reserved.

(b) **Annual Benefit**

A benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this Article. For a participant who has or will have distributions commencing at more than one annuity starting date, the annual benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this Article as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to IRS Reg. 1.401(a)-20, Q&A 10(d), and with regard to IRS Reg. 1.415(b)-1(b)(1)(iii)(B) and (C).

No actuarial adjustment to the benefit shall be made for (i) survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the participant's benefit were paid in another form; (ii) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or (iii) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Code section

417(e)(3) and would otherwise satisfy the limitations of this Article, and the plan provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this Article applicable at the annuity starting date, as increased in subsequent years pursuant to Code section 415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

The determination of the annual benefit shall take into account social security supplements described in Code section 411(a)(9) and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant IRS Reg. 1.411(d)-4 Q&A-3(c), but shall disregard benefits attributable to employee contributions or rollover contributions.

Effective for distributions in plan years beginning before January 1, 2004, the actuarially equivalent straight life annuity is equal to the greater of the annuity benefit computed using the interest rate specified in the plan for adjusting benefits in the same form and the applicable mortality table defined in Section 1.02(e), and the annuity benefit computed using a 5 percent interest rate assumption and the applicable mortality table defined in Section 1.02(e). In determining the actuarially equivalent straight life annuity for a benefit form other than a nondecreasing annuity payable for a period of not less than the life of the participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or decreases during the life of the participant merely because of (a) the death of the survivor annuitant (but only if the reduction is not below 50% of the annual benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of Social Security supplements of qualified disability payments (as defined in Section 401(a)(11)), “the applicable interest rate, as defined in Section 1.02(e)”, will be substituted for “a 5 percent interest rate assumption” in the preceding sentence.

The determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with section (b)(1) or section (b)(2).

(1) **Benefit Forms Not Subject to Code Section 417(e)(3)**

The straight life annuity that is actuarially equivalent to the participant’s form of benefit shall be determined under this section (b)(1) if the form of the participant’s benefit is either (i) a nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or (ii) an annuity that decreases during the life of the participant merely because if (a) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code section 401(a)(11)).

The actuarially equivalent straight life annuity is equal to the greater of (a) the annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the participant’s form of benefit; and (b) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant’s form of benefit, computed using 5 percent interest rate assumption and the applicable mortality table defined in Section 1.02(e) for that annuity starting date.

(2) **Benefit Forms Subject to Code Section 417(e)(3)**

The straight life annuity that is actuarially equivalent to the participant's form of benefit shall be determined under this paragraph if the form of the participant's benefit is other than a benefit form described in section (b)(1). In this case, the actuarially equivalent straight life annuity shall be determined as follows:

(i) **Annuity Starting Date in Plan Years Beginning After 2005**

If the annuity starting date of the participant's form of benefit is in a plan year beginning after 2005, the actuarially equivalent straight life annuity is equal to the greatest of (a) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using the interest rate specified in Section 1.02(a) and the mortality table (or other tabular factor) specified in Section 1.02(e) for adjusting benefits in the same form; (b) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table defined in Section 1.02(e); and (c) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using the applicable interest rate defined in Section 1.02(e) and the applicable mortality table defined in Section 1.02(e), divided by 1.05.

(ii) **Annuity Starting Date in Plan Years Beginning in 2004 or 2005**

If the annuity starting date of the participant's form of benefit is in a plan year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using whichever of the following produces the greater annual amount: (a) the interest rate specified in Section 1.02(a) and the mortality table (or other tabular factor) specified in Section 1.02(e) for adjusting benefits in the same form; and (b) a 5.5 percent interest rate assumption and the applicable mortality table defined in Section 1.02(e).

If the annuity starting date of the participant's benefit is on or after the first day of the first plan year beginning in 2004 and before December 31, 2004, the application of this section (b)(2)(ii) shall not cause the amount payable under the participant's form of benefit to be less than the benefit calculated under the plan, taking into account the limitations of this Article, except that the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using whichever of the following produces the greatest annual amount:

(A) the interest rate specified in Section 1.02(a) and the mortality table (or other tabular factor) specified in Section 1.02(e) for adjusting benefits in the same form;

(B) the applicable interest rate defined in Section 1.02(e) and the applicable mortality table defined in Section 1.02(e); and

(C) the applicable interest rate defined in Section 1.02(e) (as in effect on the last day of the last plan year beginning before January 1, 2004, under provisions of the plan then adopted and in effect) and the applicable mortality table defined in Section 1.02(e).

(c) **Compensation**

Compensation is defined as wages, within the meaning of Code section 3401(a), and all other payments of compensation to an employee by the employer (in the course of the employer's trade or business) for which the employer is required to furnish the employee a written statement under Code sections 6041(d), 6051(a)(3), and 6052 (wages, tips and other compensation as reported on Form W-2). Compensation shall be determined without regard to any rules under Code section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agriculture labor in Code section 3401(a)(2)). Compensation shall also include amounts that would otherwise be included in compensation but for an election under Code sections 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b).

Except as provided herein, compensation for a limitation year is the compensation actually paid or made available during such limitation year. Compensation for a limitation year shall include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next limitation year, the amounts are included on a uniform and consistent basis with respect to all similarly situated employees, and no compensation is included in more than one limitation year.

Compensation for a limitation year shall also include compensation paid by the later of 2½ months after an employee's severance from employment with the employer maintaining the plan or the end of the limitation year that includes the date of the employee's severance from employment with the employer maintaining the plan, if:

(1) the payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or,

(2) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued; or

(3) the payment is received by the employee pursuant to a nonqualified, unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includible in gross income.

Any payments not described above shall not be considered compensation if paid after severance from employment, even if they are paid by the later of 2½ months after the date of severance from employment or the end of the limitation year that includes the date of severance from employment; except, payments to an individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of Code section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

Back pay, within the meaning of IRS Reg. 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

Compensation paid or made available during such limitation year shall include amounts that would otherwise be included in compensation but for an election under Code section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

Compensation shall also include deemed Code section 125 compensation. Deemed Code section 125 compensation is an amount that is excludable under Code section 106 that is not available to a participant in cash in lieu of group health coverage under a Code section 125 arrangement solely because the participant is unable to certify that he or she has other health coverage. Amounts are deemed Code section 125 compensation only if the employer does not request or otherwise collect information regarding the participant's other health coverage as part of the enrollment process for the health plan.

(d) **Defined Benefit Compensation Limitation**

100 percent of a participant's high three-year average compensation, payable in the form of a straight life annuity.

In the case of a participant who is rehired after a severance from employment, the defined benefit compensation limitation is the greater of 100 percent of the participant's high three-year average compensation, as determined prior to the severance from employment (including any adjustments as applicable) or 100 percent of the participant's high three-year average compensation as determined after the severance from employment.

In the case of a participant who has had a severance from employment with the employer, the defined benefit compensation limitation applicable to the participant in any limitation year beginning after the date of severance shall be automatically adjusted by multiplying the limitation applicable to the participant in the prior limitation year by the annual adjustment factor under Code section 415(d) that is published in the Internal Revenue Bulletin. The adjusted compensation limit shall apply to limitation years ending with or within the calendar year of the date of the adjustment, but a participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.

(e) **Defined Benefit Dollar Limitations**

\$160,000, to be automatically adjusted under Code section 415(d) as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to limitation years ending with or within the calendar year of the date of the adjustment, but a participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The automatic annual adjustment of the defined benefit dollar limitation under Code section 415(d) shall apply to participants who have had a separation from employment.

(f) **Defined Benefit and Defined Contribution Fractions**

Reserved.

(g) **Formerly Affiliated Plan of the Employer**

A plan that, immediately prior to the cessation of affiliation, was actually maintained by the employer and, immediately after the cessation of affiliation, is not actually maintained by the employer. For this purpose, cessation of affiliation means the event that causes an entity to no longer be considered the employer, such as the sale of a member controlled group of corporations, as defined in Code section 414(b), as modified by Code section 415(h), to an unrelated corporation, or that causes a plan to not actually be maintained by the employer, such as transfer of plan sponsorship outside a controlled group.

(h) **Employer**

For purposes of this Article 5, the employer that sponsors this plan, and all members of a controlled group of corporations (as defined in Code Section 414(b) and as modified by Code Section 415(h)), all commonly controlled trades or businesses (as defined in Code Section 414(c) and as modified by Code Section 415(h)), or affiliated service groups (as defined in Code Section 414(m)) of which the sponsoring employer is a part, and any other entity required to be aggregated with the employer pursuant to regulations under Code Section 414(o).

(i) **Highest Three -Year Average Compensation**

The average compensation for the three consecutive years of service (or, if the participant has less than three consecutive years of service, the participant's longest consecutive period of service, including fractions of years, but not less than one year) with the employer that produces the highest average. A year of service with the employer is the 12-consecutive month period defined in section 2.04(f) the plan. In the case of a participant who is rehired by the employer after a severance from employment, the participant's high three-year average compensation shall be calculated by excluding all years for which the participant performs no services for and receives no compensation from the employer (the break period) and by treating the years immediately preceding and following the break period as consecutive. A participant's compensation for a year of service shall not include compensation in excess of the limitation under Code section 401(a)(17) that is in effect for the calendar year in which such year of service begins.

(j) **Limitation Year**

A calendar year or such other 12-consecutive month period that may be specified in writing by the employer. All qualified plans maintained by the employer must use the same limitation year. If the limitation year is amended to a different 12-consecutive month period, the new limitation year must begin on a date within the limitation year in which the amendment is made. The limitation year shall be the calendar year.

(k) **Maximum Permissible Benefit**

(1) The lesser of the defined benefit dollar limitation or the defined benefit compensation limitation, except that the defined benefit compensation limitation shall not apply to a governmental plan as defined under Code section 414(d), a collectively bargained plan that is described in Code section 415(b)(7), or to a participant in a church plan (i.e., a plan maintained by an organization described in Code section 3121(w)(3)(A)) who has never been a highly

compensated employee (within the meaning of Code section 414(q)) of the organization. The defined benefit compensation limitation shall be applied to a participant in a church plan who is a highly compensated employee in accordance with IRS Reg. 1.415(a)(7)(iv)(B).

(2) If the participant has less than 10 years of participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction -- (i) the numerator of which is the number of years (or part thereof) of participation in the plan, and (ii) the denominator of which is 10. In the case of a participant who has less than ten years of service with the employer, the defined benefit compensation limitation shall be multiplied by a fraction -- (i) the numerator of which is the number of years (or part thereof) of service with the employer, and (ii) the denominator of which is 10.

(3) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62 or after Age 65

The defined benefit dollar limitation shall be adjusted if the annuity starting date of the participant's benefit is before age 62 or after age 65. If the annuity starting date of the participant's benefit is before age 62 or after age 65. If the annuity starting date is before age 62, the defined benefit dollar limitation shall be adjusted under section (k)(4), as modified by section (k)(6). If the annuity starting date is after age 65, the defined benefit dollar limitation shall be adjusted under section (k)(5), as modified by section (k)(6).

(4) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62

(A) Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement

If the annuity starting date for the participant's benefit is prior to age 62 and the plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation of the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under section (k)(2) for years of participation less than 10, if required) with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for the annuity starting date as defined in Section 1.02(e) (and expressing the participant's age based on completed calendar months as of the annuity starting date).

(B) Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement

If the annuity starting date for the participant's benefit is prior to age 62 and the plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation for the participant's annuity starting date is the lesser of the limitation determined under section (k)(4)(A) and the defined benefit dollar limitation (adjusted under section (k)(2) for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the participant's annuity starting date to the annual amount of the immediately

commencing straight life annuity under the plan at age 62, both determined without applying the limitations of this Article.

(5) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement after age 65

(A) Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement

If the annuity starting date for the participant's benefit is after age 65 and the plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under section (k)(2) for years of participation less than 10, if required), with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for that annuity starting date as defined in Section 1.02(e) (and expressing the participant's age based on completed calendar months as of the annuity starting date).

(B) Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement

If the annuity starting date for the participant's benefit is after age 65 and the plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the participant's annuity starting date is the lesser of the limitation determined under section (k)(5)(A) and the defined benefit dollar limitation (adjusted under section (k)(2) for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan at the participant's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the plan at age 65, both determined without applying the limitations of this Article. For this purpose, the adjusted immediately commencing straight life annuity under the plan at the participant's annuity starting date is the annual amount of such annuity payable to the participant, computed disregarding the participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the plan at age 65 is the annual amount of such annuity that would be payable under the plan to a hypothetical participant who is age 65 and has the same accrued benefit as the participant.

(6) Notwithstanding the other requirements of sections (k)(4) and (k)(5), no adjustment shall be made to the defined benefit dollar limitation to reflect the probability of a participant's death between the annuity starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the participant prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the participant's death if the plan does not charge participants for providing a qualified preretirement survivor annuity, as defined in Code section 417(c), upon the participant's death.

(l) **Predecessor Employer**

If the employer maintains a plan that provides a benefit which the participant accrued while performing services for a former employer, the former employer is a predecessor employer with respect to the participant in the plan. A former entity that antedates the employer is also a predecessor employer with respect to a participant if, under the facts and circumstances, the employer constitutes a continuation of all or a portion of the trade or business of the former entity.

(m) **Social Security Retirement Age**

Age 65 in the case of a participant attaining age 62 before January 1, 2000 (i.e., born before January 1, 1938), age 66 for a participant attaining age 62 after December 31, 1999, and before January 1, 2017 (i.e., born after December 31, 1937, but before January 1, 1955), and age 67 for a participant attaining age 62 after December 31, 2016 (i.e., born after December 31, 1954).

(n) **Severance from Employment**

An employee has a severance from employment when the employee ceases to be an employee of the employer maintaining the plan. An employee does not have a severance from employment if, in connection with a change of employment, the employee's new employer maintains the plan with respect to the employee.

(o) **Year of Participation**

The participant shall be credited with a year of participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met: (1) the participant is credited with at least the number of hours of service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the plan in order to accrue a benefit for the accrual computation period, and (2) the participant is included as a participant under the eligibility provisions of the plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a year of participation credited to the participant shall equal the amount of benefit accrual service credited to the participant for such accrual computation period. A participant who is permanently and totally disabled within the meaning of Code Section 415(c)(3)(C)(i) for an accrual computation period shall receive a year of participation with respect to that period. In addition, for a participant to receive a year of participation (or part thereof) for an accrual computation period, the plan must be established no later than the last day of such accrual computation period. In no event will more than one year of participation be credited for any 12-month period.

(p) **Year of Service**

For purposes of section 5.05(i), the participant shall be credited with a year of service (computed to fractional parts of a year) for each accrual computation period for which the participant is credited with at least the number of hours of service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the plan in order to accrue a benefit for the accrual computation period, taking into account only service with the employer or a predecessor employer.

Section 5.06 - Other Rules Applicable to Sections 5.02, 5.03, 5.04 and 5.05

(a) Benefits Under Terminated Plans

If a defined benefit plan maintained by the employer has terminated with sufficient assets for the payment of benefit liabilities of all plan participants and a participant in the plan has not yet commenced benefits under the plan, the benefits provided pursuant to the annuities purchased to provide the participant's benefits under the terminated plan at each possible annuity starting date shall be taken into account in applying the limitations of this Article. If there are not sufficient assets for the payment of all participants' benefit liabilities, the benefits taken into account shall be the benefits that are actually provided to the participant under the terminated plan.

(b) Benefits Transferred From the Plan

If a participant's benefits under a defined benefit plan maintained by the employer are transferred to another defined benefit plan maintained by the employer and the transfer is not a transfer of distributable benefits pursuant IRS Reg. 1.411(d)-4, Q&A-3(c), the transferred benefits are not treated as being provided under the transferor plan (but are taken into account as benefits provided under the transferee plan). If a participant's benefits under a defined benefit plan maintained by the employer are transferred to another defined benefit plan that is not maintained by the employer and the transfer is not a transfer of distributable benefits pursuant to IRS Reg. 1.411(d)-4, Q&A-3(c), the transferred benefits are treated by the employer's plan as if such benefits were provided under annuities purchased to provide benefits under a plan maintained by the employer that terminated immediately prior to the transfer with sufficient assets to pay all participants' benefit liabilities under the plan. If a participant's benefit under a defined benefit plan maintained by the employer are transferred to another defined benefit plan in a transfer of distributable benefits pursuant IRS Reg. 1.411(d)-4, Q&A-3(c), the amount transferred is treated as a benefit paid from the transferor plan.

(c) Formerly Affiliated Plans of the Employer

A formerly affiliated plan of an employer shall be treated as a plan maintained by the employer, but the formerly affiliated plan shall be treated as if it had terminated immediately prior to the cessation of affiliation with sufficient assets to pay participants' benefit liabilities under the plan and had purchased annuities to provide benefits.

(d) Plans of a Predecessor Employer

If the employer maintains a defined benefit plan that provides benefits accrued by a participant while performing services for a predecessor employer, the participant's benefits under a plan maintained by the predecessor employer shall be treated as provided under a plan maintained by the employer. However, for this purpose, the plan of the predecessor employer shall be treated as if it had terminated immediately prior to the event giving rise to the predecessor employer relationship with sufficient assets to pay participants' benefit liabilities under the plan, and had purchased annuities to provide benefits; the employer and the predecessor employer shall be treated as if they were a single employer immediately prior to such event and as unrelated employers immediately after the event; and if the event giving rise to the predecessor relationship is a benefit transfer, the transferred benefits shall be excluded in determining the benefits provided under the plan of the predecessor employer.

(e) **Special Rules**

The limitations of this article shall be determined and applied taking into account the rules in IRS Reg. 1.415(f)-1(d), (e) and (h).

(f) **Aggregation with Multiemployer Plans.**

(1) If the employer maintains a multiemployer plan, as defined in Code section 414(f), and the multiemployer plan so provides, only the benefits under the multiemployer plan that are provided by the employer shall be treated as benefits provided under a plan maintained by the employer for purposes of this Article.

(2) A multiemployer plan shall be disregarded for purposes of applying the compensation limitation of Sections 5.05(d) and 5.05(k)(2) to a plan which is not a multiemployer plan.

Section 5.07 - Early Plan Termination Limitations

(a) **Limitations**

Benefits distributed to any of the 25 most highly compensated active and former highly compensated employees with the greatest compensation in the current or any prior year are restricted such that the annual payments are no greater than an amount equal to the payment that would be made on behalf of the employee under a single life annuity that is the actuarial equivalent of the sum of the employee's accrued benefit, the employee's other benefits under the plan (other than a social security supplement within the meaning of Section 1.411(a)-7(c)(4)(ii) of Income Tax Regulations), and the amount the employee is entitled to receive under a social security supplement.

The preceding paragraph shall not apply if: (1) after payment of the benefit to an employee described in the preceding paragraph, the value of plan assets equals or exceeds 110% of the value of current liabilities, as defined in Code Section 412(l)(7), (2) the value of the benefits for an employee described above is less than 1% of the value of current liabilities, or (3) the value of the benefits payable under the plan to an employee described above does not exceed the automatic lump sum payment threshold set forth in Section 4.09(b).

For purposes of this section, benefit includes loans in excess of the amount set forth in Code Section 72(p)(2)(A), any periodic income, any withdrawal values payable to a living employee, and any death benefits not provided for by insurance on the employee's life.

(b) **Lump Sum Payments**

Notwithstanding the other applicable restrictions on distributions of benefits described in this Section 5.07, an employee's otherwise restricted benefit may be distributed in full to the affected employee if prior to receipt of the restricted amount, the employee enters into written agreement with the plan administrator to secure repayment to the plan of the restricted amount. The restricted amount is the excess of the amounts distributed to the employee (accumulated with reasonable interest) over the amounts that could have been distributed to the employee under the straight life annuity described in Section 5.07(a) (accumulated with reasonable interest). The

employee may secure repayment of the restricted amount upon distribution by: (1) entering into an agreement for promptly depositing in escrow with an acceptable depository property having a fair market value equal to at least 125 percent of the restricted amount, (2) providing a bank letter of credit in an amount equal to at least 100 percent of the restricted amount, or (3) posting a bond equal to at least 100 percent of the restricted amount. If the employee elects to post bond, the bond will be furnished by an insurance company, bonding company or other surety for federal bonds.

The escrow arrangement may provide that an employee may withdraw amounts in excess of 125 percent of the restricted amount. If the market value of the property in an escrow account falls below 110 percent of the remaining restricted amount, the employee must deposit additional property to bring the value of the property held by the depository up to 125 percent of the restricted amount. The escrow arrangement may provide that employee may have the right to receive any income from the property placed in escrow, subject to the employee's obligation to deposit additional property, as set forth in the preceding sentence. A surety or bank may release any liability on a bond or letter of credit in excess of 100 percent of the restricted amount.

If the plan administrator certifies to the depository, surety or bank that the employee (or the employee's estate) is no longer obligated to repay any restricted amount, a depository may redeliver to the employee any property held under an escrow agreement, and a surety or bank may release any liability on an employee's bond or letter of credit.

ARTICLE 6

TOP HEAVY PROVISIONS

Section 6.01 - General Application

In the event that the plan should become a top heavy plan pursuant to Code Section 416 in any plan year beginning after December 31, 1983, the provisions of this Article 6 will become applicable and will supersede any conflicting provisions contained elsewhere in the plan.

Section 6.02 - Top Heavy Definitions

(a) **Key Employee**

In determining whether the plan is top-heavy, key employee means any employee or former employee (including any deceased employee) who at any time during the plan year that includes the determination date was an officer of the employer having annual compensation greater than \$130,000 (as adjusted under section 416(i)(1) of the Code), a 5-percent owner of the employer, or a 1-percent owner of the employer having annual compensation of more than \$150,000. For this purpose, annual compensation means Code Section 415(c)(3) compensation as defined at the end of this section 6.02(a). The determination of who is a key employee will be made in accordance with Code Section 416(i)(1) and the applicable regulations and other guidance of general applicability issued thereunder.

For purposes of this section 6.02(a), Code Section 415(c)(3) compensation for a given plan year shall mean wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the employer maintaining the plan to the extent that the amounts are includable in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in IRS Reg. 1.62-2(c)), and excluding the following: (a) employer contributions to a plan of deferred compensation which are not includible in the employee's gross income for the taxable year in which contributed, or employer contributions under a simplified employee pension plan, or any distributions from a plan of deferred compensation; (b) amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture; (c) amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and (d) other amounts which received special tax benefits, or contributions made by the employer (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in Code Section 403(b) (whether or not the contributions are actually excludable from the gross income of the employee).

(b) **Top Heavy Plan**

A plan is top heavy if any of the following conditions exist:

(1) The top heavy ratio for the plan exceeds 60% and the plan is not part of any required aggregation group or permissive aggregation group of plans,

(2) The plan is part of a required aggregation group of plans (but is not part of a permissive aggregation group) and the top heavy ratio for the group of plans exceeds 60%, or

(3) The plan is part of a required aggregation group of plans and part of a permissive aggregation group and the top heavy ratio for the permissive aggregation group exceeds 60%.

(c) **Top Heavy Ratio**

The top heavy ratio shall be determined as follows:

(1) If the employer maintains one or more defined benefit plans and the employer has not maintained any defined contribution plan (including any simplified employee pension plan) which during the 5-year period ending on the determination date(s) has or has had account balances, the top heavy ratio for this plan alone or for the required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of the present value of accrued benefits of all key employees as of the determination date(s) [including any part of an accrued benefit distributed in the 1-year period ending on the determination date(s) (or 5-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability)], and the denominator of which is the sum of all the present values of all accrued benefits (including any part of an accrued benefit distributed in the 1-year period ending on the determination date(s) (or 5-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability)), determined in accordance with Code Section 416 and the regulations thereunder.

(2) If the employer maintains one or more defined benefit plans and the employer maintains or has maintained one or more defined contribution plans (including any simplified employee pension plan) which during the 5-year period ending on the determination date(s) has or has had any account balances, the top heavy ratio for any required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of the present value of accrued benefits under the aggregated defined benefit plan or plans for all key employees, determined in accordance with subparagraph (1) above, and the sum of account balances under the aggregated defined contribution plan or plans for all key employees as of the determination date(s), and the denominator of which is the sum of the present values of accrued benefits under the aggregated defined benefit plan or plans, determined in accordance with subparagraph (1) above, for all participants and the sum of the account balances under the aggregated defined contribution plan or plans for all participants as of the determination date(s), all determined in accordance with Code Section 416 and the regulations thereunder. The account balances under a defined contribution plan in both the numerator and denominator of the top heavy ratio are increased for any distribution of an account balance made in the 1-year period ending on the determination date (5-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability).

(3) For purposes of subparagraphs (1) and (2) above, the value of account balances and the present value of accrued benefits will be determined as of the most recent valuation date that falls within or ends with the 12-month period ending on the determination date, except as provided in Code Section 416 and the regulations thereunder for the first and second plan years of a defined benefit plan. The account balances and accrued benefits of a participant (i) who is not a key employee but who was a key employee in a prior year, or (ii) who has not been credited with at least one hour of service with any employer maintaining the plan at any time during the 1-year period ending on the determination date will be disregarded. The calculation of the top heavy ratio, and the extent to which distributions, rollovers, and transfers are to be taken into account will be made in accordance with Code Section 416 and the regulations thereunder. Deductible employee contributions will not be taken into account for purposes of computing the top heavy ratio. When aggregating plans the value of account balances and accrued benefits will be calculated with reference to the determination dates that fall within the same calendar year.

(4) The accrued benefit of a participant other than a key employee shall be determined under the method, if any, that uniformly applies for accrual purposes under all defined

benefit plans maintained by the employer or, if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of Code Section 411(b)(1)(C).

(d) **Required Aggregation Group**

(i) Each qualified plan of the employer in which at least one key employee participates or participated at any time during the plan year containing the determination date or any of the four preceding plan years (regardless of whether the plan has terminated), and

(ii) any other qualified plan of the employer which enables a plan described in (i) to meet the requirements of Code sections 401(a)(4) or 410.

(e) **Permissive Aggregation Group**

A permissive aggregation group consists of the required aggregation group of plans plus any other plan or plans of the employer which, when considered as a group with the required aggregation group, would continue to satisfy the requirements of Code Section 401(a)(4) and 410.

(f) **Determination Date**

The determination date used in calculating the top heavy ratio applicable to a plan year shall be the last day of the preceding plan year or in the case of the first plan year, the last day of such plan year. The valuation date used to determine the present value of accrued benefits shall be the most recent such date in the 12-month period ending on the determination date. The valuation date for a plan year is the date used for computing plan costs for minimum funding requirements, regardless if a valuation is performed for such plan year or not.

(g) **Present Value of Accrued Benefit**

In determination of the top heavy ratio, the actuarial basis for computing the present value of accrued benefits shall be 5% annual interest rate and post-retirement mortality equal to the 1984 Unisex Pensioner Mortality Table with a 3 year age setback for all participants.

Section 6.03 - Provisions of Top Heavy Plans

(a) **Minimum Vesting Schedule**

In any plan year that the plan is a top heavy plan, the following minimum vesting schedule shall automatically apply:

<u>Years of Vesting Service</u>	<u>Vesting Percentage</u>
less than 3	0%
3 or more	100

The minimum vesting schedule applies to all benefits within the meaning of Code Section 411(a)(7) (except those attributable to employee contributions) including benefits accrued before the effective date of Code Section 416 and benefits accrued before the plan became top-heavy. Further, no decrease in a participant's nonforfeitable percentage may occur in the event the plan's

status as top-heavy changes for any plan year. However, this paragraph does not apply to the accrued benefits of any employee who does not have an hour of service after the plan has initially become top-heavy and such employee's accrued benefits attributable to employer contributions will be determined without regard to this paragraph.

(b) **Minimum Accrued Benefit**

A top heavy plan shall provide a minimum accrued benefit expressed as a life annuity commencing at normal retirement age based solely on employer contributions. The amount of the minimum accrued benefit on behalf of a participant at a point in time shall be equal to the product of his average monthly compensation for the five consecutive years when the employee had the highest compensation as defined in Section 1.06 and the lesser of 2.00% per year of service and 20.0%. For purposes of this minimum accrued benefit, years of service shall constitute years of vesting service earned after December 31, 1983 and during plan years that the plan is a top heavy plan. The minimum accruals under this paragraph shall apply even though other plan provisions would generate lesser or no accruals on behalf of a participant because (1) he fails to make any required employee contributions to the plan, (2) his compensation is less than a stated amount, (3) he is not employed on a certain date within a plan year, or (4) the plan is or becomes integrated with Social Security benefits. No accrual shall be provided for a year in which the plan does not benefit any key employee or former key employee.

Furthermore, in the event any participant is both a participant in this plan and any other plan (either defined benefit or defined contribution) maintained by the employer, this defined benefit plan will provide the minimum accrued benefit described in this Section 6.03(b).

(c) **Nonforfeitable of Minimum Accrued Benefits**

The minimum benefit accrual required by Section 6.03(b), to the extent required to be nonforfeitable under Code Section 416(b), may not be forfeited pursuant to any plan provisions under Code Section 411(a)(3)(B) or 411(a)(3)(D).

(d) **Compensation Limit**

In addition to any other limitation of Section 1.06, for any plan year in which the plan is top heavy only the first \$150,000 (or such larger amount as may be permissible pursuant to Code Section 401(a)(17)) of each participant's annual compensation will be taken into account for purposes of determining benefits under this plan.

(e) **Code Section 415(e) Limitation Adjustments**

Reserved.

(f) **Election of Vesting Schedule**

The provision of Section 8.01(c) relating to participant election regarding change in vesting schedule shall specifically apply in the situation where the vesting schedule applicable to a plan year is to change due to a change in top heavy plan status.

Section 6.04 - Collective Bargaining Agreements

The requirement of Section 6.03 shall not apply with respect to any employee included in a unit of employees covered by a collective bargaining agreement between employee representatives and the employer or a related employer if retirement benefits were the subject of good faith bargaining between such employee representatives and the employer or related employer.

ARTICLE 7

ADMINISTRATION

Section 7.01 - Powers and Duties of the Plan Administrator

The plan administrator shall have responsibility for the general supervision and administration of the plan and its assets and shall have all powers necessary to accomplish such duties. The plan administrator shall be a fiduciary of the plan. The plan administrator shall discharge its duties solely in the interest of all participants and beneficiaries. The plan administrator shall have the right, power and authority to:

(a) make rules and regulations for the administration of the plan which are not inconsistent with the terms and provisions hereof;

(b) construe all terms, provisions, conditions and limitations of the plan, and any construction thereof made by it in good faith shall be final and conclusive on all parties at interest;

(c) correct any defect or supply any omission or reconcile any inconsistency that may appear in the plan in such manner and to such extent as it shall deem expedient to carry the plan into effect for the greatest benefit of all interested parties, and its judgement of such expedience shall be final and conclusive on all parties at interest;

(d) select, employ and compensate from time to time such investment consultants, actuaries, accountants, investment managers, attorneys and other agents and employees as it may deem necessary or advisable in the proper and efficient administration of the plan. Any agent or employee so selected by the plan administrator may be a person or a firm then, theretofore or thereafter servicing the employer in any capacity;

(e) select from time to time the issuing company or companies from which insurance or annuity contracts, if any, may be purchased and to determine the form, type and kind of such contracts;

(f) determine all questions relating to the eligibility of employees to become participants and to determine the benefits which each may be entitled to receive and the time of payment thereof;

(g) determine all questions relating to the administration of the plan when differences of opinion arise between interested parties, whenever it is deemed advisable, to determine such questions in order to promote the uniform administration of the plan for the greatest benefit of all parties concerned;

(h) authorize and direct payment from the plan assets all benefits provided for hereunder;

(i) exercise such authority and responsibility as it deems appropriate in order to comply with ERISA and applicable governmental regulations issued thereunder relating to records of service, accrual of benefits and the nonforfeitability of such under the plan; required notifications; annual registration with the Internal Revenue Service; annual reports to the Department of Labor and reports and premium payments to the PBGC as may be applicable;

(j) carry out a funding policy consistent with the purpose of the plan and the requirements of applicable law, as may be appropriate from time to time. The Board of Directors of the plan sponsor shall promulgate a funding policy and shall amend the same from time to time in its discretion, to provide guidance to the trustee in the investment of the plan assets. No funding policy or amendment thereof shall be binding on the trustee until communicated in writing to the trustee. The plan sponsor may engage one or more investment managers to assist it in the formulation and amendment of the funding policy. The trustee shall invest plan assets in a manner consistent with the most recent funding policy or amendment thereof and shall have no liability as a fiduciary to any plan participant, the plan, or any other person for its acts or omissions in the investment of plan assets to the extent that such acts or omissions are required by and are prudent under the funding policy as it may be amended from time to time. As part of such funding policy, the plan administrator shall direct the trustee, investment counsel, custodian, investment manager, insurance company or other persons having authority and discretion so as to provide sufficient cash assets to meet the liquidity requirements of the plan. The discretion of the trustee, investment counsel, custodian, investment manager, insurance company or other persons having authority and discretion to manage and control the assets of the plan in investing and reinvesting the principal and income of the plan shall be subject to the funding policy, and any changes thereof from time to time, as the plan sponsor may adopt and communicate to the trustee, investment counsel, custodian, investment manager, insurance company or other above referenced persons in writing. It shall be the duty of the trustee, investment counsel, custodian, investment manager, insurance company or other such persons to act strictly in accordance with such funding policy, and any changes therein, as so communicated from time to time in writing;

(k) delegate specific fiduciary responsibilities (other than those of the trustee with respect to the trust fund). Any such delegation shall be made in writing and in accordance with the plan administrator's usual procedures for taking action, shall be made in a prudent manner, and shall be reviewed periodically; and

(l) serve as agent for service of legal process in matters related to the plan.

Section 7.02 - Action of the Plan Administrator Committee

If a committee, a majority of the members of the committee comprising the plan administrator shall constitute a quorum for the transaction of business and shall have full power to act hereunder. Any written memorandum signed by the secretary or any member of the committee who has been authorized to act on behalf of the committee shall have the same force and effect as a formal resolution adopted in open meeting. Minutes of all meetings of any committee and a record of any action taken by the plan administrator shall be kept in written form. The plan administrator shall give to a trustee, insurance company or other entity any order, direction, consent or advice required under the terms of the plan, and such trustee, insurance company or other entity shall be entitled to rely on any instrument duly signed and delivered to it as evidencing the action of the plan administrator.

A member of any committee comprising the plan administrator may not vote or decide upon any matter relating solely to himself or vote in any case in which his individual right or claim to any benefit under the plan is particularly involved. If in any case in which an individual member of such committee is so disqualified to act and the remaining members cannot agree, the employer will

appoint a temporary substitute member to exercise all of the powers of a qualified member concerning the matter in which the disqualified member is not qualified to act.

Section 7.03 - Indemnity and Limitations on Liability

(a) **Indemnity**

The employer shall indemnify and defend the plan administrator and any of its employees against any and all claims, loss, damages, expenses (including reasonable attorneys fees), and liability arising in connection with the administration of the plan, except when the same is judicially determined to be due to the gross negligence or willful misconduct of such individual.

(b) **Limitations on Liability**

Notwithstanding any of the preceding provisions of the plan, none of the trustee(s), the employer, the plan administrator and each individual acting as an employee or agent of any of them shall be liable to any participant, former participant, spouse or beneficiary for any claim, loss, liability or expense incurred in connection with the plan, except when the same shall have been judicially determined to be due to the gross negligence or willful misconduct of such person.

(c) **Insurance**

The employer shall purchase insurance as is deemed appropriate to provide indemnification for the plan administrator and any other individuals against liability or losses occurring by reason of act or omission in their capacity as fiduciaries for the plan.

Section 7.04 - Expenses of Administration

The plan administrator shall serve without compensation for its service as plan administrator. Reasonable and necessary expenses and costs incurred by the plan administrator in supervising the administration of the plan and its assets shall be paid by the employer as directed by the plan administrator. Any of such expenses and costs not paid by the employer shall be paid from plan assets as directed by the plan administrator.

Section 7.05 - Bonding of the Plan Administrator

The plan administrator or any other person handling funds or other property of the plan shall be bonded as may be required by law and the expense of providing such bond shall be paid by the employer or from plan assets.

Section 7.06 - Participants to Furnish Required Information

Each participant will furnish to the plan administrator such information as the plan administrator considers necessary or desirable for the purposes of administering the plan, and the provisions of the plan respecting any payments thereunder are conditioned upon the participant's furnishing promptly such true, full and complete information as the plan administrator may request.

Any notice or information which, according to the terms of the plan or the rules of the plan administrator, must be filed with the plan administrator shall be deemed so filed at the time that the information is actually received by the plan administrator.

The employer, the plan administrator and any person or persons involved in the administration of the plan shall be entitled to rely upon any certification, statement or representation made or evidence furnished by a participant with respect to his age or other facts required to be determined under any of the provisions of the plan and shall not be liable on account of the payment of any monies or the doing of any act or failure to act in reliance thereon. Any such certification, statement, representation or evidence, upon being duly made or furnished, shall be conclusively binding upon the person furnishing same; but it shall not be binding upon the employer, the plan administrator or any other person or persons involved in the administration of the plan, and nothing herein contained shall be construed to prevent any of such parties from contesting any such certification, statement, representation or evidence or to relieve the participant from the duty of submitting satisfactory proof of such fact.

Section 7.07 - Claims Procedure

(a) The following provisions shall apply:

(1) **Method of Making Claim**

Claims for benefits under the plan may be filed with the plan administrator on forms supplied by the employer. An authorized representative of a claimant may act on behalf of a claimant, provided that the representative is appointed in a writing that is signed by the claimant and supplied to the plan administrator. The term "claimant," when used in this procedure and in the claims review procedure below, shall include a duly appointed representative.

(2) **Time and Manner of Giving Notice of Adverse Benefit Determination**

If a claim is wholly or partially denied, the plan administrator shall notify the claimant of the adverse benefit determination, in writing, no later than 90 days after the claim was received by the plan. This period begins when a claim is received by the plan, whether or not the claim contains all information necessary to make a benefit determination.

If the plan administrator determines that special circumstances require more time to process a claim, this period may be extended up to a maximum of 90 additional days. If such an extension is required, the plan administrator shall give written notice no later than 90 days after the claim was received by the plan. The written notice shall describe the special circumstances requiring the extension and the expected date by which the benefit determination will be made.

In its consideration of the claim, the plan administrator shall consult the documents and instruments constituting the plan and all other documents that may have a bearing on its interpretation, including past interpretations or claims of the same general type. The plan Administrator shall also, where appropriate, consult the Internal Revenue Service, Department of Labor, or other governmental or private publications or authorities which may assist the plan administrator to interpret plan language or administrative procedures.

(3) **Content of Notice of Adverse Benefit Determination**

Notice of adverse benefit determination described in this section must set forth in a manner calculated to be understood by the claimant:

- (i) the specific reason(s) for the adverse determination;
- (ii) specific plan provisions upon which the determination is based;
- (iii) a description and explanation of any additional material or information needed for the claimant to perfect the claim;
- (iv) a description of the plan's review procedures and applicable time limits; and
- (v) a statement of the claimant's right to bring a civil action under Section 502(a) of ERISA following an adverse benefit determination on review.

(4) **Claims Review Procedure**

If the plan administrator makes an adverse benefit decision as described above, a claimant may request that the plan administrator review the claim and the adverse benefit determination. The claimant must make this request no later than 60 days after receiving the written notice provided for above. This period begins when a request for review is filed in accordance with the plan's reasonable procedures, whether or not the request for review contains all information necessary to make a benefit determination.

A claimant may submit written comments, documents, records, or other information relating to the claim for consideration in the review. The review shall take into account all such information submitted by the claimant, regardless of whether it was submitted or considered in the initial benefit determination.

Upon request, the claimant shall have reasonable access to and free copies of all documents, records, and other information that is relevant to the claim. A document, record or other information shall be considered to be relevant to a claim if it:

- (i) was relied upon, submitted, considered or generated in the course of making the benefit determination; or
- (ii) demonstrates compliance with the administrative processes and safeguards required in the making of the benefit determination.

The plan administrator shall notify the claimant of the determination on the review not later than 60 days after the receipt of the claimant's request for review. If the plan administrator determines that special circumstances require more time to process the review of a claim, this period may be extended up to a maximum of 60 additional days. If such an extension is required, the plan administrator shall give written notice no later than 60 days after the receipt of the request for review. The written notice shall describe the special circumstances requiring the extension and the expected date by which the review determination will be made. If the plan administrator

extends the review period due to a claimant's failure to submit information necessary to decide a claim, the deadline by which the plan administrator must make its determination on review shall be suspended from the date on which it notifies the claimant of the extension until the date the claimant responds to the request for additional information.

(5) **Notice of Decision on Review**

The plan administrator shall notify a claimant in writing of the benefit determination on review. If the benefit determination is adverse, the notification shall set forth in a manner calculated to be understood by the claimant:

- (i) the specific reason(s) for the adverse determination;
- (ii) specific plan provisions upon which the determination is based;
- (iii) a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to and copies of all documents, records, and other information relevant (as defined above) to the claim for benefits;
- (iv) a statement describing any voluntary appeal procedures offered by the plan;
- (v) a statement of the claimant's right to bring a civil action under Section 502(a) of ERISA; and
- (vii) the following statement: "You and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your local U.S. Department of Labor Office and your State insurance regulatory agency."

This claims procedure is designed so as not to contain any provision and unduly inhibits or hampers the initiation or processing of claims for benefits, nor shall it be administered in such a manner. Specifically, no fee shall be charged as a prerequisite to making a claim or appealing an adverse benefit decision.

Section 7.08 - Benefits Payable to Minors and Incompetents

If any person entitled to payments under the plan shall be a minor or is, in the judgement of the plan administrator, otherwise legally incapable of personally receiving and giving a valid receipt for any payment due under the plan, the plan administrator may, unless and until claims shall have been made by a duly appointed guardian of such person, make such payment or any part thereof to such person's spouse, children or other person deemed by the plan administrator to have incurred or assumed responsibility for the expenses of such person, except that with regard to a participant or beneficiary declared to be incompetent, his or her benefit may only be paid to an individual with a valid power of attorney or a court appointed guardian. Any such payment will be a complete discharge of any liability under the plan for such payment. The plan administrator shall have no liability of any kind to any person for failure to exercise the authority given by this Section 7.08.

Section 7.09 - Payments to Participants

Any payment to any participant, beneficiary, or legal representative, in accordance with the terms and provisions of the plan, shall to the extent thereof be in full satisfaction of all claims hereunder against the plan; and any such participant or beneficiary or legal representative, as a condition precedent to such payment, may be required to execute a receipt and release therefor in such form as shall be determined by the plan administrator.

Section 7.10 - Abandonment of Benefits

Each participant and other person entitled to benefits hereunder shall file with the plan administrator from time to time, in writing, his address and each change of address and any check representing payment hereunder and any communication addressed to such person hereunder at his last address filed with the plan administrator (or, if no such address has been filed, then at his last address as indicated on the records of the employer) shall be binding on such person for all purposes of the plan, and the plan administrator shall not be obliged to search for or ascertain the location of any such person.

If the plan administrator, for any reason, is in doubt as to whether benefit payments are being received by the person entitled thereto, it may, by registered mail addressed to the person concerned at his address last known to the plan administrator, notify such person that all unmailed and future benefit payments shall be henceforth withheld until he provides the plan administrator with evidence of his continued life and his proper mailing address.

If a benefit is abandoned or otherwise forfeited because the participant or beneficiary cannot be found, such benefit will be reinstated if a subsequent claim is made by the located participant or beneficiary. Furthermore, upon plan termination a participant or beneficiary may not be considered lost until the plan can force a distribution (is no longer immediately distributable); if considered lost, the benefits should be protected outside the plan (e.g., via the purchase of an annuity or the creation of an IRA, etc.)

Section 7.11 - Required Notification

Whenever a distribution is made from the plan which is a qualifying rollover distribution, the plan administrator shall give to the recipient a written explanation of (a) the provisions under which such a distribution can be transferred without current tax to an eligible retirement plan, and (b) the applicable Code provisions describing the possible current taxation treatment of such distribution if it is not transferred to an eligible retirement plan.

Section 7.12 - Failure to Designate Beneficiary

If a participant fails to designate a beneficiary, if such designation is for any reason illegal or ineffective, or if no beneficiary survives the participant, his death benefits otherwise payable under this plan shall be paid:

- (a) to his surviving spouse;

(b) if there is no surviving spouse, to the duly appointed and qualified executor or other personal representative of the participant to be distributed in accordance with the participant's will or applicable intestacy law;

(c) if no such representative is duly appointed and qualified within six months after the date of death of such deceased participant, then to such persons as, at the date of his death, would be entitled to share in the distribution of such deceased participant's personal estate under the provisions of the applicable statute then in force governing the descent of intestate property, in the proportions specified in such statute; or

(d) absent any of the above actions, as may be directed by any court of jurisdiction.

ARTICLE 8

AMENDMENT AND TERMINATION

Section 8.01 - Amendment to Plan

(a) **Right To Amend**

Subject to the restrictions enumerated below, the plan sponsor may amend this plan at any time in any manner deemed advisable to the lawful extent possible.

(b) **Method of Amendment**

Every amendment shall be in writing and duly executed by an authorized officer or other authorized person acting on behalf of the plan sponsor.

(c) **Restrictions to Amendment**

No amendment to the plan (including a change in the actuarial basis for determining optional or early retirement benefits) shall be effective to the extent that it has the effect of decreasing a participant's accrued benefit, or otherwise places greater restrictions or conditions on a participant's rights to Code Section 411(d)(6) protected benefits accrued as of the date of such restriction or condition. For purposes of this paragraph, a plan amendment that has the effect of (1) eliminating or reducing an early retirement benefit or a retirement-type subsidy, or (2) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the pre-amendment conditions of the subsidy. Notwithstanding the preceding sentences, a participant's accrued benefit, early retirement benefit, retirement-type subsidy, or optional form of benefit may be reduced to the extent permitted under Code section 412(d)(2), or to the extent permitted under IRS Reg. 1.411(d)-3 and IRS Reg. 1.411(d)-4.

Furthermore no amendment to the plan shall have the effect of decreasing a participant's vested interest determined without regard to such amendment as of the later of the date such amendment is adopted or the date it becomes effective. If the plan's vesting schedule is amended, or the plan is amended in any way that directly or indirectly affects the computation of the participant's nonforfeitable percentage or if the plan is deemed amended by an automatic change to or from a top-heavy vesting schedule, in the case of an employee who is a participant as of the later of the date such amendment or change is adopted or the date it becomes effective, the nonforfeitable percentage (determined as such date) or such employee's employer-provided accrued benefit will not be less than the percentage computed under the plan without regard to such amendment or change. Furthermore, each participant with at least 3 years of service with the employer may elect, within a reasonable period after the adoption of the amendment or change, to have the nonforfeitable percentage computed under the plan without regard to such amendment or change. For participants who do not have at least one hour of service in any plan year beginning after December 31, 1988, the preceding sentence shall be applied by substituting "5 years" where "3 years" appears.

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

- (1) 60 days after the amendment is adopted;
- (2) 60 days after the amendment becomes effective; or
- (3) 60 days after the participant is issued written notice of the amendment by the employer or plan administrator.

With respect to benefits accrued as of the later of the adoption or effective date of the amendment, the vested percentage of each participant will be the greater of the vested percentage under the old vesting schedule or the vested percentage under the new vesting schedule.

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

Section 8.02 – Limitations on Plan Amendments Increasing Benefit Liabilities

(a) General

A plan amendment that has the effect of increasing the liabilities of the plan by reason of any increase in benefits, the establishment of new benefits, a change in the rate of benefit accrual, or a change in the rate of benefit vesting shall not take effect in a plan year if the plan's Adjusted Funding Target Attainment Percentage for the plan year as last certified by the plan's enrolled actuary or otherwise presumed to be in accordance with the requirements of Code Section 436 and the regulations thereunder:

(1) is less than 80 percent but not presumed to be less than 60 percent, unless or until the plan sponsor contributes to the plan, in addition to any minimum required contribution under Code Section 430, a Section 436 contribution, which for purposes of this Section 8.02 in this situation is an amount equal to the increase in the plan's funding target for the plan year attributable to the amendment, provided that benefit accruals are not currently discontinued pursuant to Section 4.02 when such a Code Section 436 contribution is intended to be made, or

(2) is presumed to be less than 60 percent, unless or until the plan's enrolled actuary certifies the plan's Adjusted Funding Target Attainment Percentage for the plan year to be at least 60 percent in accordance with Code Section 436 and the regulations thereunder, or

(3) is 80 percent or more but would in fact be less than 80 percent when accounting for the amendment and other applicable plan year prior activity as set forth in the next sentence, unless or until the plan sponsor contributes to the plan, in addition to any minimum required contribution under Code Section 430, a Code Section 436 contribution, which for purposes of this Section 8.02 in

this situation is an amount sufficient to result in a certified Adjusted Funding Target Attainment Percentage of at least 80 percent when accounting for the amendment and other applicable plan year prior activity as set forth in the next sentence, provided that benefit accruals are not currently discontinued pursuant to Section 4.02 when such a Code Section 436 contribution is intended to be made. When assessing the impact of the amendment on the plan's Adjusted Funding Target Attainment Percentage for the plan year, in addition to taking into account the amendment, any other plan amendment that took effect earlier in the plan year and any contributions for the plan year or the prior plan year made earlier in the plan year, including those made in accordance with this Section 8.02 or Section 4.02, must also be taken into account to the extent such prior amendments and such prior contributions were not taken into account in the plan's Adjusted Funding Target Attainment Percentage for the plan year as last certified by the plan's enrolled actuary.

The term Adjusted Funding Target Attainment Percentage has the same meaning as under IRS Reg. 1.436-1(j)(1).

(b) **Applicable Plan Amendment Exception**

Section 8.02(a) does not apply to an amendment that has the effect of increasing the liabilities of the plan by reason of a change in the rate of benefit vesting if the amendment provides only for mandatory increases in the rate of benefit vesting that are necessary for the plan to remain in compliance with the qualification requirements of the Internal Revenue Code and ERISA.

(c) **Applicable Plan Amendment Effective Date**

For purposes of Section 8.02(a), an applicable amendment is considered to take effect on the first date on which any individual who is or could be a participant or beneficiary under the plan, and who satisfies all conditions set forth in the amendment in order to benefit under the amendment, obtains a legal right to the provisions of the amendment that increase the liabilities of the plan.

Section 8.03 - Termination of the Plan

(a) **Right to Terminate**

Although it is the expectation of the plan sponsor and each participating employer to continue its participation in the plan hereunder, the continuance of plan participation and the accrual of future benefits hereunder is not a contractual obligation; and the plan sponsor and each participating employer expressly reserves the right at any time to discontinue its participation in the plan and to cease future benefit accruals on behalf of its employees.

(b) **Method of Termination**

Discontinuance of participation in the plan with respect to a given entity shall occur upon the occurrence of any of the following events:

- (1) dissolution or liquidation of the plan sponsor or a participating employer;
- (2) legal adjudication of the plan sponsor or a participating employer as bankrupt;

(3) the preparation and execution of a written instrument by a participating employer reciting its intention to cease plan participation and stop future benefit accruals as of a stated date;

(4) the preparation and execution of a written instrument by the plan sponsor reciting its intention to terminate the plan as of a stated date.

(c) **Effect of Termination**

Upon termination or partial termination of the plan, as these terms are defined in Code Section 411(d)(3) and regulations thereunder, the rights of each participant or other person so affected to benefits accrued to the date of such termination or partial termination (to the extent funded as of such date) shall immediately become nonforfeitable. The payment of such benefits or portions thereof shall be in accordance with Section 9.04.

Furthermore, in the event of plan termination, the benefit of any highly compensated active or former employee is limited to a benefit that is nondiscriminatory under Code Section 401(a)(4).

Section 8.04 - Continuance With Successor Employers

Unless the plan has previously been terminated, a successor to the business of the plan sponsor, by whatever form or manner resulting, may continue the plan without the necessity of executing a supplemental plan and such successor shall ipso facto succeed to all applicable rights, powers and duties of the plan sponsor and employer hereunder. The employment of any employee who is continued in the employ of such successor shall not be deemed to have been terminated or severed for any purpose hereunder.

Section 8.05 - Plan Merger

In the event of a merger or consolidation with or a transfer of assets or liabilities to any other plan, each participant will receive a benefit immediately after such merger, consolidation or transfer (if the plan had then terminated) which is at least equal to the benefit the participant was entitled to immediately before such merger, consolidation or transfer (if the plan had terminated).

ARTICLE 9

TRUST AND TRUSTEE

Section 9.01 - Trustee

The term trustee means the corporate trustee or individual trustees appointed by the plan sponsor to administer the trust maintained for the purposes of the plan and such duly appointed and qualified successor trustee as the employer may designate from time to time.

Section 9.02 - Purpose of Trust and Trust Agreement

A trust shall be maintained for the purposes of the plan and the monies thereof shall be invested in accordance with the terms of the trust agreement which forms a part of this plan. All contributions will be paid into the trust and all benefits under the plan will be paid from the assets of the trust. The responsibility, power and duties of the trustee and the provisions of the trust are as identified in the separate trust agreement referenced in Section 1.29.

Section 9.03 - Benefits Supported Only By Trust

Any person having any claim under the plan will look solely to the assets of the trust for satisfaction. Except to the extent provided by ERISA, nothing contained in this plan or trust shall constitute a guarantee by the employer, plan administrator or trustee that the assets of the trust will be sufficient to pay any benefit to any person.

Section 9.04 - Distribution of Plan Assets Upon Termination Of The Plan

Upon termination of the plan and subject to prior approval of the Internal Revenue Service as evidenced by the issuance of a determination letter (if the employer elects to file an application for such letter) and subject to the requirements and approval, if applicable, of the PBGC, the plan assets shall be apportioned and distributed in accordance with the following procedure:

(a) The plan administrator shall determine the date of distribution and the asset value to be distributed, after taking into account the expenses of such distribution;

(b) The plan administrator shall determine the method of distribution of the asset value (that is, whether distribution shall be by payment in cash, by the maintenance of another or substitute trust fund, or in kind based on the then fair market value) for each participant and other persons entitled to benefits under the plan;

(c) The plan administrator shall allocate the asset value as of the date of distribution of the assets in the manner set forth below, on the basis that the amount required to provide any given benefit shall mean the actuarially equivalent single sum value of the accrued benefit on the date of the termination of the plan, or if the method of distribution involves the purchase of an insured annuity equal to the accrued benefit on the date of termination of the plan, the amount required to provide the benefit shall mean the single premium payable to the life insurance company for such annuity. Any actuarially equivalent value shall be calculated in a manner consistent with any applicable PBGC or Internal Revenue Service regulations. The plan administrator shall allocate the asset value among the participants on the basis of benefits included in and in the manner and order

set forth in the following priority categories or in such other manner as may be required by regulations issued under Section 4044 of ERISA or as may be required by the Internal Revenue Service:

(1) voluntary participant contributions, if any; (2) mandatory participant contributions, if any; (3) benefits to retired participants or beneficiaries who began receiving benefits at least three (3) years before the termination date of the plan (including those benefits which would have been received for at least three (3) years by participants had they retired at their normal retirement ages) based on the plan provisions in effect during the five (5) year period ending on the termination date of the plan under which such benefits would have been the least; (4) all other benefits guaranteed by the PBGC; (5) all other nonforfeitable benefits under the plan; and (6) all other benefits under the plan.

If assets available for allocation under any of the priority categories, other than (5) and (6), are insufficient to provide full benefit for all persons in such category, the benefit otherwise payable to such persons shall be reduced proportionately. No person shall receive an allocation based on a benefit in a lower category if he is entitled to an allocation based on that same benefit in a higher category. Any allocation shall be subject to the contingent restrictions of Section 5.07. If, after such allocation has been made, any residual assets remain, such assets shall be returned to the employer. Alternatively, if excess assets remain, the employer may amend the plan at termination to increase benefits in a nondiscriminatory manner so that all plan assets are applied to provide benefits.

Any distributions made pursuant to this Section 9.04 shall be in accordance with the distribution requirements specified in Article 4.

Section 9.05 - Loans to Participants and Beneficiaries

Loans to participants and beneficiaries are not permitted under the plan.

ARTICLE 10

MISCELLANEOUS AND EXECUTION

Section 10.01 - No Right to Employment

Participation in this plan shall not give any participant the right to be retained in the employment of the employer or any other right or interest not specified herein.

Section 10.02 - Inalienability of Benefits

No benefit or interest available hereunder will be subject to assignment or alienation, either voluntarily or involuntarily. This section does not preclude, however, the trustee or any insurance company from complying with a qualified domestic relations order as that term is defined in Code Section 414(p). Notwithstanding any other provision of the plan, in the event a QDRO is received by the plan administrator, benefits shall be payable in accordance with such QDRO and with Code Section 414(p). Payments under a QDRO may be made prior to the participant's "earliest retirement age" (as defined in Code Section 414(p)).

Effective for judgments, orders and decrees issued, and settlement agreements entered into, on or after the effective date of this plan restatement, the Plan's prohibition against assignment or alienation shall not apply to any offset of a participant's benefits against an amount that the participant is ordered or required to pay to the plan if:

- (i) the order or requirement to pay arises:
 - (I) under a judgment of conviction for a crime involving such plan,
 - (II) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of Part 4 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, or
 - (III) pursuant to a settlement agreement between the Secretary of Labor and the participant, or a settlement agreement between the Pension Benefit Guaranty Corporation and the participant, in connection with a violation (or alleged violation) of Part 4 of such Subtitle by a fiduciary or any other person,
- (ii) the judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the plan against the participant's benefits provided under the plan, and
- (iii) in a case in which the survivor annuity requirements of Code Section 401(a)(11) apply with respect to distributions from the plan to the participant, if the participant has a spouse at the time at which the offset is to be made
 - (I) either such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the plan (or it is established to the satisfaction of a plan representative that such consent may not be obtained by reason of circumstances described in Code Section 417(a)(2)(B)), or an election to waive the right of the spouse to either a qualified joint

and survivor annuity or a qualified preretirement survivor annuity is in effect in accordance with the requirements of Code Section 417(a),

(II) such spouse is ordered or required in such judgment, order, decree or settlement to pay an amount to the plan in connection with a violation of Part 4 of such Subtitle, or

(III) in such judgment, order, decree or settlement, such spouse retains the right to receive the survivor annuity under a qualified joint and survivor annuity provided pursuant to Code Section 401(a)(11)(A)(i) and under a qualified preretirement survivor annuity provided pursuant to Code Section 401(a)(11)(A)(ii), determined in accordance with the following:

(a) In general the survivor annuity described in this subparagraph (iii)(III) shall be determined as if:

(A) the participant terminated employment on the date of the offset,

(B) there was no offset,

(C) the plan permitted commencement of benefits only on or after normal retirement age,

(D) the plan provided only the minimum-required qualified joint and survivor annuity, and

(E) the amount of the qualified preretirement survivor annuity under the plan is equal to the amount of the survivor annuity payable under the minimum-required qualified joint and survivor annuity. The term “minimum-required qualified joint and survivor annuity” means the qualified joint and survivor annuity which is the actuarial equivalent of the participant’s accrued benefit (within the meaning of Code Section 411(a)(7)) and under which the survivor annuity is 50 percent of the amount of the annuity which is payable during the joint lives of the participant and the spouse.”

A plan shall not be treated as failing to meet the requirements of Code Sections 401(a), 401(k), 403(b), or 409(d) solely by reason of an offset described in this Section 10.02.

Section 10.03 - Aggregation of Employers

For purposes of determining compliance with the rules of Code Sections 410(b), 401(a)(4) and 401(a)(26), the following individuals shall be considered (but not necessarily for purposes of determining eligibility for benefits under this plan): (a) any employee of the employer plus any employee of any employer which is required to be aggregated with such employer pursuant to Code Sections 414(b), 414(c), 414(m) or 414(o) and (b) any leased employee deemed to be an employee of an employer described in the prior paragraph as provided in Code Sections 414(n) or 414(o). The term leased employee means any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person (leasing organization) has performed services for the recipient (or for the recipient and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full-time basis for a period of at least one year, and such services are performed under the primary direction and control of the employer. Contributions or

benefits provided a leased employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer. A leased employee shall not be considered an employee of the recipient if: (a) such employee is covered by a money purchase pension plan providing: (1) a nonintegrated employer contribution rate of at least 10 percent of compensation, as defined in Code Section 415(c)(3), but including amounts contributed by the employer pursuant to a salary reduction agreement which are excludable from the employee's gross income under Code Sections 125, 402(e)(3), 402(h) or 403(b), (2) immediate participation, and (3) full and immediate vesting; and (b) leased employees do not constitute more than 20 percent of the recipient's nonhighly compensated workforce.

Section 10.04 - Conflict with Insurance Contract

In the event of any conflict between the terms of this plan and the terms of any insurance contract issued hereunder, the plan provisions shall control. In particular, the payment of any benefits attributable to insurance or annuity contracts are part of the plan's total benefit and will be subject to all distribution conditions and requirements of Article 4.

Section 10.05 - Application of Insurance Dividends and Credits

Any payments by an insurer on account of credits such as dividends, experience rating credits, or surrender or cancellation credits shall be applied, within the taxable year of the employer in which received or within the next succeeding taxable year, toward the next premiums due before any further employer contributions are so applied.

Section 10.06 - Owner-employees

If this plan provides contributions or benefits for any individual who is an owner-employee, then such contributions or benefits shall be based only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which this plan is established. For purposes of this Section 10.06, owner-employee means an individual who is a sole proprietor, or who is a partner owning more than 10% of either the capital or profit-interests of the partnership.

Section 10.07 - Construction and Action by Employer

This plan shall be construed in accordance with the laws of the State of Texas. Words used in the singular shall include the plural, the masculine gender shall include the feminine, and vice versa whenever appropriate. Whenever, under the terms of the plan, the plan sponsor or an employer is required or permitted to take some action, such may be taken by any officer who has been duly authorized by his respective board of directors.

Section 10.08 - Spouse

Effective June 26, 2013, and pursuant to the United States Supreme Court's decision in the case styled *United States v. Windsor*, as of that date the term "spouse," when used anywhere in this Plan, shall mean any person married to a Participant in a jurisdiction that recognizes the marriage.

IN WITNESS WHEREOF, Pedernales Electric Cooperative, Inc. has caused this instrument, the Pedernales Electric Cooperative, Inc. Employees Defined Benefit Retirement Plan to be executed and attested hereto on this the _____ day of _____, 2019.

PEDERNALES ELECTRIC COOPERATIVE, INC.

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: _____