



CITY OF ESCANABA DEFINED BENEFIT RETIREMENT PLAN BOARD
Regular Meeting Agenda
November 17, 2023 – 9:00 a.m.
Room 102

Board members: James McNeil, Melissa Becotte, Heather Calouette, Vacant
Council Liaison: Ronald Beauchamp

1. Call to Order
2. Roll Call
3. Adjustments to the Agenda
4. Conflict of Interest Declaration
5. Old Business
6. New Business
 - A. Election of Officers (Chair & Vice-Chair)
 - B. Review of Statement of Investment Policy
 - C. Hiring of the Investment Manager
 - D. Hiring of the Actuary
 - E. Selection of the depository bank
7. Other Business
8. General Public Comment
9. Adjournment

The City of Escanaba will provide all necessary, reasonable aids and services, such as signers for the hearing impaired and audiotapes of printed materials being considered at the meeting to individuals with disabilities at the meeting/hearing upon five days' notice to the City of Escanaba. Individuals with disabilities requiring auxiliary aids or services should contact the City of Escanaba by writing or calling at (906) 786-9402.

Respectfully Submitted,

A handwritten signature in blue ink that reads "James McNeil".

James McNeil
City Manager/ City Assessor



Mission Statement:

Enhancing the enjoyment and livability of our community by providing quality municipal services.

The City of Escanaba is an equal opportunity employer and provider.

City of Escanaba Defined Benefit Retirement Plan Board

RULES OF PROCEDURE

1. AUTHORITY/PURPOSE

1.1. **General.** The Escanaba City Council created the City of Escanaba Defined Benefit Retirement Plan Board. The City of Escanaba Defined Benefit Retirement Plan Board is charged with oversight of the pension plan, established under the authority of Public Employee Retirement System Act (PERISA), and Michigan Public Act 314 of 1965 as amended.

1.2. **Membership.** The plan is governed by a five-member board consisting of the City Manager, City Controller, City Treasurer, one member of the City Council, and one member of the public with preference to any plan member.

1.3. The non-administrative members of the Board shall be appointed by the City Council with general concurrence.

1.4. **Statement of Investment Policy.** The Board shall adhere to the Statement of Investment Policy, as approved by the City Council. Any amendment to the Statement of Investment Policy shall be referred to the City Council for approval.

2. GENERAL RULES

2.1 **Meetings to be Public.** All meetings are subject to the Michigan Open Meetings Act.

2.2 **Quorum.** Three (3) members shall constitute a quorum necessary for the transaction of business. If a quorum is not present, those in attendance will be named and they shall adjourn to a later time.

2.3 **Journal of Proceedings.** An account of all proceedings shall be kept and shall be entered in a book constituting the official record and deposited to the City Clerk.

2.4 **Right of Floor.** Any member desiring to speak shall be recognized by the Chair and confine remarks to the subject under consideration.

2.5 **Election of Officers.** At the first regularly scheduled meeting of each year, the City of Escanaba Defined Benefit Retirement Plan Board shall hold an election of Officers for the positions of Chair and Vice Chair.

3. MEETINGS

3.1. **Public Notice of Meetings.** The City Clerk shall be responsible for providing the proper notice of all meetings as specified by the State Open Meetings Act.

3.2. **Regular Meetings.** The City of Escanaba Defined Benefit Plan Board shall meet semi-annually to review the annual actuarial valuation and review investment performance, and to attend to other business, upon the call of City Administration in collaboration with the Chair.

3.3. **Special Meetings.** Special meetings may be called by the City Administration in collaboration with the Chair. The call for a special meeting shall specify the day, the hour and the location. The City Clerk shall give public notice as specified by the State Open Meetings Act.

3.4. **Cancelled Meetings.** Any meeting may be cancelled to a later date and time provided that no adjournment shall be for a longer period than until the next scheduled meeting.

4. **CHAIR AND DUTIES**

4.1 **Chair.** The Chair, if present, shall preside as Chair at all meetings. In the absence of the Chair, the Vice Chair shall preside. In the absence of both the Chair and the Vice Chair, the Board shall elect a temporary Chair.

4.2 **Call to Order.** The meetings shall be called to order by the Chair or, in their absence, by the Vice Chair. In the absence of both the Chair and the Vice Chair, the meeting shall be called to order by the City Treasurer for the election of a temporary Chair.

4.3 **Preservation of Order.** The Chair shall preserve order and decorum; prevent attacks on personalities or the impugning of members' motives, and confine members in debate to the question under discussion.

5. **ORDER OF BUSINESS AND AGENDA**

5.1 **Order of Business.** The general rule as to the order of business in regular meetings shall be as follows:

1. Call to Order
2. Roll Call
3. Approval and/or Correction to Minutes of Previous Meeting
4. Approval/Adjustments to the Agenda
5. Conflict of Interest Declarations
6. Public Comment
7. Unfinished Business
8. New Business
9. General Public Comment
10. Board/Administration Comments/Announcements
11. Adjournment

5.2 **Agenda.** The order of business of each meeting shall be contained in the Agenda prepared by the City Treasurer in collaboration with the Chair. Agenda items must be submitted to the City Treasurer ten (10) days prior to the meeting. The Agenda shall be a listing by topics of subjects to be considered by the Board and shall be delivered to members of the Board at least five (5) days prior to the meeting. Draft meeting minutes shall be available for public review within ten (10) business days after the meeting.

5.3 **Voting.** A majority vote of those present shall be required to approve a motion, recommendation, or finding.

5.4 **Roll Call Votes.** A roll call vote shall be taken at the request of any member or when the Chair cannot determine the results of a voice vote.

5.5 **Minutes.** A majority vote consisting of at least a quorum shall be required to approve minutes.

6. **CITIZENS' RIGHTS**

6.1. **Addressing the Board.** Members of the public desiring to address the Board by oral communications on any agenda item shall first secure the permission of the Chair.

6.2. **Manner of Addressing the Board.** Each person addressing the Board shall approach the lectern and must give their name in an audible tone of voice for the record. All remarks shall be addressed to the Board as a body and not to any member thereof. No person, other than members of the Board and the person having the floor shall be permitted to enter into any discussion, either directly or through the members. No questions shall be asked except through the Chair.

6.3. **Personal and Slanderous Remarks.** Any person making personal, impertinent or slanderous remarks, or who shall become disorderly, while addressing the Board, will be requested to leave the lectern.

6.4. **Chair Will Refer Citizens' Complaints.** The Chair will refer citizens' complaints to City Administration. The City Clerk will review all complaints and report their findings to the City of Escanaba Defined Benefit Retirement Plan Board on or before their next regularly schedule meeting.

6.5. **Written Communications.** Interested parties may address the Board by written communication in regard to any matter concerning Board business by addressing their concern to the City Manager.

CITY OF ESCANABA
DEFINED BENEFIT RETIREMENT PLAN

October 19, 2023

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STATEMENT OF INVESTMENT POLICY
CITY OF ESCANABA
DEFINED BENEFIT RETIREMENT PLAN

- I. PURPOSE OF STATEMENT
- II. GENERAL OPERATION OF PLAN
- III. INVESTMENT APPROACH
- IV. INVESTMENT RESTRICTIONS
- V. PERFORMANCE MONITORING
- VI. COMMUNICATION
- VII. SUMMARY

ADOPTED 10/19/2023

I. PURPOSE

The purpose of the City of Escanaba Defined Benefit Retirement Plan (hereinafter referred as “Plan”) Investment Policy Statement (herein after referred to as “Statement”) is to establish, document and communicate to interested parties, the goals, philosophies, guidelines, objectives, and risk tolerances relating to investment of Plan assets.

II. GENERAL OPERATION OF THE PLAN

- A. The Plan is established under the authority of Michigan Public Act 314 of 1965 as amended, known as the Public Employee Retirement System Investment Act (“Act 314”).
- B. The Plan is governed by a five-member board (“Board”) consisting of the City Manager, City Controller, City Treasurer, one member of the City Council, and one member of the public with preference to any Plan member. The Board is responsible for oversight and decision making relating to the general operation of the Plan. The Board’s oversight and decision making includes, but is not limited to, selection and replacement of investment managers and actuarial consultant, asset allocation policy, maintenance of the Plan’s actuarial integrity and on-going evaluation of the Plan’s progress toward its various goals and objectives. The Board shall employ the “Prudent Man” doctrine when making decisions concerning the investment of Plan assets. Plan assets shall be managed with the long term interest and integrity of the Plan in mind.
- C. The Plan is funded through contributions by the City of Escanaba.
- D. The City Treasurer is responsible for keeping records of investment activity within the Plan. Such records are made available for public inspection at the Office of the City Treasurer, 410 Ludington, Escanaba, Michigan.
- E. Annually, the Plan is audited by a public accounting firm and evaluated by an actuarial consultant. Audits and actuarial valuations are also available for public inspection at the office of the City Treasurer.

III. INVESTMENT APPROACH

- A. It is the philosophy of the Plan to pursue management of Plan assets through the use of outside investment managers. For purposes of this document, mutual funds or mutual fund companies shall be deemed to be outside managers. Outside managers may also include, but are not limited to, affiliates of registered and licensed brokerage firms, registered professional money management firms, mutual funds, and money market instruments, banks, trust departments, and independent advisors. The Board may employ any number of outside managers it deems necessary for the effective administration of the Plan. The Board shall not undertake to select individual securities as an on-going means to achieve Plan objectives. For purposes of this document, mutual funds are not considered to be individual securities. Instead, selection of individual securities will be left solely to the discretion of investment managers hired by the Plan.
- B. For purposes of administration, the Board shall separate the overall investment portfolio into an equity component and a fixed income component. Each component will be comprised of cash and securities, the proportions of which shall be left to the discretion of the investment manager(s) controlling each respective component. Maximum equity exposure is hereby set at 65% of Plan assets. It shall be the responsibility of the Board to monitor on an on-going basis, the allocation

of dollars between fixed income and equity components, and to transfer funds between components as deemed necessary to achieve the objectives of the Plan.

- C. Plan assets will be managed in accordance with Michigan Public Act 314 of 1965 as amended . All external money managers are required to abide by all applicable provisions of Act 314 and by all applicable provisions of this Statement. External managers will be furnished with a copy of Act 314 and with a copy of this Statement and will be required to acknowledge in writing the receipt thereof. If a manager is unable to comply with any of the provisions of Act 314 or any provision of this Statement, he or she must communicate as such in writing prior to investing any assets of the Plan. All external managers are required to comply with applicable laws of the State of Michigan, whether now in force, or hereinafter enacted.
- D. Subject to the requirements set forth herein, all external money managers shall have full authority to select individual securities, and to determine an appropriate mix of cash and investments within their allotment of Plan assets.
- E. The Board shall determine if, and when, outside custodians shall be employed. If employed, outside custodians shall perform the following functions:
 - 1. Notify the Plan sponsor of transactions as they occur.
 - 2. Provide electronic quarterly statements detailing specific investment holdings with summaries of gains/losses, income received, and activity for the period covered.
 - 3. Provide safe keeping of assets.
- F. Outside custodians are not required when mutual funds are used. In the event the Board employs a registered mutual fund as an outside manager, the mutual fund's statements and other reporting shall be an acceptable substitute for the services of a custodian.
- G. In addition to the services of professional money managers and custodians, the Board may contract with outside parties for advisory and related services. Examples of such services may include brokerage, performance monitoring, studies, and general consultations. Decisions to contract for such services shall be made on the basis of perceived cost versus benefit.

IV INVESTMENT RESTRICTIONS

- A. Equity investments shall be limited to exchange listed securities which have a readily available market and for which prices are readily available. Exceptions to this provision will be considered when they are brought to the attention of the Board in writing prior to purchase of such securities. This provision shall not apply to registered mutual funds held by the Plan.
- B. Notwithstanding other provisions of this Statement, the following are examples of permitted investments for use by external managers: Treasury securities, agency securities, mortgage-backed instruments, guaranteed investment contracts, corporate bonds, common stocks, preferred stocks, mutual funds, ETFs, money market mutual funds, commercial paper, repurchase agreements and banker's acceptances. Securities not specifically mentioned are permissible investments if they are not prohibited under applicable law or under the provisions of this Statement.
- C. External money managers are required to notify the Board in writing in the event of any change that will have a significant impact on the operations of the firm. Written notice is required in the event of any of the following:
 - 1. Change in ownership of the firm

2. Change in portfolio managers
 3. Change in investment style
 4. Investigation of the firm or its management by a regulatory body
 5. Material litigation
- D. Upon written request from the Board, money managers will be required to furnish the Board references. Clients who have requested in writing that their identity not be disclosed may be excluded from such list. This provision does not apply to externally employed, registered, mutual funds.
- E. External money managers shall be required to disclose the existence of party in interest transactions and the corresponding details thereof. Notwithstanding SEC and other requirements, registered mutual funds are exempt from this provision.
- F. The Board shall ensure that portfolios are diversified with respect to risk, and where applicable, maturity. The Board shall not permit any one security to represent more than 5% of the overall fund, and shall not permit one industry to represent more than 30% of the fund. Mutual funds are not to be classified as individual securities for purposes of this provision. External money managers are not individually responsible for adhering to this provision, since they will not have knowledge of holdings outside of their management.
- G. External managers shall disclose to the Board in writing if any individual security exceeds 10% of the assets that they manage on behalf of the Plan. Additionally, external managers shall disclose to the Board in writing if any individual industry represents more than 50% of the assets that they manage on behalf of the Plan. Externally employed, registered mutual funds are exempt from this provision.
- H. The fixed income portfolio must carry an average rating of A or better by Standard & Poor's and Moody's. Money managers may hold below investment grade rated securities as long as the aggregate value of such securities does not exceed 10% of a manager's allotted funds. Mutual fund managers are exempt from this provision.
- I. The Board shall impose the following limitations on foreign securities. The board shall ensure that foreign equities do not exceed 15% of the overall investment portfolio. Foreign fixed income holdings shall not exceed 10% of the overall investment portfolio.

V. PERFORMANCE MONITORING

- A. The Board shall review year to date performance relative to established benchmarks. Performance review shall take place at semiannual regular meetings. It shall be the responsibility of the investment manager to report performance. If desired, the Board shall have the option to seek independent performance review.
- B. The Board shall use a blended portfolio consisting of 85% Russell 3000 Index and 15% MSCI ACWI ex-US Index as its proxy for the equity market. The Board acknowledges that investment managers will have varying disciplines. As such, the Board also acknowledges that the blended equity proxy may not be a relevant indicator in every case. The Board therefore will consider peer group equity comparisons when appropriate.

- C. The Board shall use the Bloomberg US Aggregate Index as its proxy for bond market returns. Additionally, the Board shall evaluate the credit quality and duration of the Plan's fixed income component relative to its market proxy.
- D. In addition to monitoring the total return of investments, the Board shall review investment volatility relative to established benchmarks. Standard deviation shall be the primary measure of volatility.

VI. COMMUNICATION

- A. External money managers shall furnish the Board with an electronic quarterly statement containing a list of holdings, a summary of gains and losses, a portfolio valuation, and a summary of activity. Fixed income managers are required to furnish semiannual calculations of duration, average maturity and credit quality. If registered mutual funds are employed by the Board, they shall be responsible only for adhering to their individual regulatory reporting requirements.

VII. SUMMARY

- A. This Statement sets forth the philosophies, goals, objectives, tolerances and methodologies for the investment of Plan assets. Absent provisions to the contrary, all parties involved in the investing of Plan assets are expected to adhere to the provisions found herein.
- B. Should any provision of this Statement be found to be in conflict with Michigan Law, Michigan Law shall preside over the terms of this Statement.

IT IS HEREBY CERTIFIED THAT WE HAVE RECEIVED A COPY OF THE STATEMENT OF INVESTMENT POLICY OF THE CITY OF ESCANABA DEFINED BENEFIT RETIREMENT PLAN. WE HAVE ALSO BEEN FURNISHED WITH A COPY OF MICHIGAN PUBLIC ACT 314. WE FURTHER CERTIFY THAT WE HAVE READ THE AFOREMENTIONED DOCUMENTS AND AGREE TO ABIDE BY THE TERMS AND CONDITIONS CONTAINED THEREIN.

Name of Firm: _____

Name of Representative: _____

Title of Representative: _____

Signature of Representative: _____

Date: _____

**CITY OF ESCANABA
DEFINED BENEFIT RETIREMENT PLAN**

ARTICLE I - PURPOSE

The City of Escanaba hereby adopts the City of Escanaba Defined Benefit Retirement Plan (“Plan”), effective as of the Effective Date listed in Section 2.12. Prior to the Effective Date, the City of Escanaba participated in the Municipal Employees' Retirement System of Michigan Retirement Plan (the “Prior Plan”). The City elected to terminate participation in the Prior Plan as of the Effective Date, and to transfer all of its assets and liabilities from the Prior Plan to this Plan effective as of the Transfer Date listed in Section 2.28. The rights and benefits, if any, of an Employee who terminated employment prior to the Effective Date shall be determined in accordance with the provisions of the Prior Plan in effect as of the date on which the Employee terminated employment unless this Plan provides otherwise.

The Plan is intended to meet the requirements of Sections 401(a) and 501(a) of the Internal Revenue Code of 1986, as amended.

ARTICLE II - DEFINITIONS

2.1 Accrued Benefit means the benefit commencing at the Participant's Normal Retirement Date, determined in accordance with Section 5.1. In the event a Participant terminates employment prior to his or her Normal Retirement Date or Early Retirement Date, the Participant's Accrued Benefit shall be equal to the amount determined in accordance with Section 5.1, computed as of the Participant's date of employment termination based on Final Average Compensation, Compensation and Credited Service determined as of the date of such termination.

2.2 Actuarial or Actuarially Equivalent means equality in value of the aggregate amounts expected to be received under different forms of payment. Such equivalents shall be based on actuarial assumptions approved from time to time by the Plan Administrator with the advice of the Plan actuary.

(a) Plan Assumptions.

(1) Benefit Commencement Dates Preceding the Transfer Date. With respect to any Participant whose monthly Plan benefit payments commence after the Effective but before the Transfer Date, Actuarial Equivalence among optional forms of benefit shall be calculated using (i) an interest rate of 7.00% per annum; and (ii) the mortality assumptions that are described in Section V.4.a. of the Municipal Employees’ Retirement System Actuarial Policy dated June 16, 2023.

(2) Benefit Commencement Dates On or After the Transfer Date. With respect to any Participant whose monthly Plan benefit payments commence on or after the Transfer Date, Actuarial Equivalence among optional forms of benefit shall be calculated using interest rate and mortality assumptions determined by the Plan actuary as set forth in a separate actuarial policy.

(b) Section 415 Assumptions. Special rules apply to the calculation of Actuarially Equivalent benefits for purposes of applying the annual limits on benefits contained in

Section 5.9. Those special rules are contained in Section 5.9. The definitions that are set forth below shall apply for purposes of Section 5.9.

(1) For Calendar Years 2003 Through 2007. This subsection (b)(1) applies for calendar years that begin on or after January 1, 2003 and before January 1, 2008. The “Applicable Mortality Table” means the mortality table set forth in Rev. Rul. 2001-62, 2001-53, I.R.B. 632 and the “Applicable Interest Rate” means the interest rate set forth in Section 417(e)(3)(A)(ii)(II) of the Code for the first calendar month preceding the calendar month during which the Annuity Starting date occurs.

(2) For Calendar Year 2008 and Subsequent Calendar Years. This subsection (b)(2) applies for calendar years that begin on or after January 1, 2008.

[a] The “Applicable Mortality Table” means the mortality table prescribed by Code Section 417(e)(3). For any distribution with an annuity starting date on or after the effective date of these subsections and before the adoption date of these subsections, if application of the amendment as of the annuity starting date would have caused a reduction in the amount of any distribution, such reduction is not reflected in any payments made before the adoption date of these subsections. However, the amount of any such reduction that is required under Code Section 415(b)(2)(B) must be reflected actuarially over any remaining payments to the Participant.

[b] The “Applicable Interest Rate” means the rate of interest determined by the applicable interest rate described by Code Section 417(e) after its amendment by PPA. Specifically, 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) determined as of the first calendar month preceding the first day of the calendar month during which the annuity starting date occurs. For this purpose, the first, second, and third segment rates are the first, second, and third segment rates which 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 the preceding paragraph 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 “Section 417(e)(3)(A)(ii)(II) for “Section 412(b)(5)(B)(ii)(II),” and

[iii] the applicable percentage under Code Section 430(h)(2)(G) is treated as being 20% in 2008, 40% in 2009, 60% in 2010, and 80% in 2011.

For purposes of this subsection (b), a Participant's annuity starting date shall be the first day of the first period for which an amount is paid as an annuity or, in the case of a benefit that is not payable in the form of an annuity, the first day on which all events have occurred which entitled to Participant to such benefit.

2.3 Code means the Internal Revenue Code of 1986, as amended from time-to-time.

2.4 Compensation shall have the same meaning as such term had under the Prior Plan as of the date immediately preceding the Effective Date, and as further described on Page 5 of the MERS Defined Benefit Plan Adoption Agreement Addendum for the Prior Plan (incorporated by reference to this Plan as Attachment A).

(a) Certain Qualifying Military Service. A Participant who terminates employment with the Employer because of qualified military service in the uniformed services of the United States, and is reemployed by the same Employer after completion of the qualified military service, shall be treated as receiving compensation from the Employer during such period of qualified military service equal to (i) the compensation the Participant would have received during such period if the Participant were not in qualified military service, determined based on the rate of pay the Participant would have received from the Employer but for the absence during the period of qualified military service, or (ii) if the compensation the Participant would have received during such period was not reasonably certain, the Participant's average compensation from the Employer during the twelve (12) month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service) within the time limits specified under USERRA. If a Participant or former Participant dies while performing qualified military service, the Participant's or former Participant's beneficiary shall be entitled to any benefits (including Employer Contributions relating to the period of qualified military service), and the rights and features associated with those benefits, that would have been provided if the Participant or former Participant had been reemployed by the Employer and died while an active eligible Participant.

(b) Compensation Limit. The Compensation of each Participant taken into account in determining benefit accruals in any Plan Year beginning after December 31, 2022, shall not exceed \$265,000 (or such other amount provided in the Code). Such amount shall be adjusted for increases in the cost of living in accordance with Code Section 401(a)(17)(B), except that the dollar increase in effect on January 1 of any calendar year shall be effective for the determination period beginning with or within such calendar year. For any short determination period, the Compensation limit shall be an amount equal to the Compensation limit for the calendar year in which the determination period begins multiplied by the ratio obtained by dividing the number of full months in the short determination period by twelve (12).

2.5 Teamsters Participant means a Participant who was a member of the Teamsters Division of the Prior Plan as of the date immediately preceding the Effective Date.

2.6 General Electric Participant means a Participant who was a member of the General Elct Division of the Prior Plan as of the date immediately preceding the Effective Date.

2.7 Non-Union Participant means a Participant who was a member of the Non Union Division of the Prior Plan as of the date immediately preceding the Effective Date.

2.8 Dispatchers Participant means a Participant who was a member of the Dispatchers Division of the Prior Plan as of the date immediately preceding the Effective Date.

2.9 Part-Time Emp Participant means a Participant who was a member of the Part-Time Emp Division of the Prior Plan as of the date immediately preceding the Effective Date.

2.10 Water/Wastewater Teamsters Participant means a Participant who was a member of the Water/Wastewater Teamsters Division of the Prior Plan as of the date immediately preceding the Effective Date.

2.11 Early Retirement Date. A Participant's Early Retirement Date is the first day of the month coinciding with or next following the earlier of: (1) the date on which a Participant has attained age 50 and completed at least 25 Years of Service for vesting with the Employer; or (2) the date on which a Participant has attained age 55 and completed at least 15 Years of Service for vesting with the Employer.

2.12 Effective Date of this Plan shall be October 19, 2023, unless otherwise indicated herein as to specific Plan provisions.

2.13 Eligible Spouse or Spouse means a spouse to whom the Participant is legally married on the Participant's benefit commencement date; provided, however, that in the event of a Participant's death before the Participant's benefit commencement date, Eligible Spouse shall mean the spouse to whom the Participant has been married throughout the one-year period immediately preceding the death of the Participant.

2.14 Employee means any person who is receiving remuneration for personal services rendered to the Employer or to any other employer required to be aggregated with the Employer under Code Sections 414(b), (c), (m) or (o) (an "Affiliated Employer") (or who would be receiving such remuneration except for an unauthorized leave of absence). Notwithstanding the foregoing, Employee shall not include:

(a) any employee of an Affiliated Employer, unless such Affiliated Employer has specifically adopted this Plan in writing;

(b) any individual who is not reported on the payroll records of the Employer as a common law employee (in particular, it is expressly intended that any individual who is not treated as common law employee by the Employer on its payroll records and any out-sourced worker shall not be an Employee and shall be excluded from Plan participation, even if a court or administrative agency determines that such individual is a common law employee and not an independent contractor);

(c) any individual who is classified under the Employer's regular personnel policies as an intern or seasonal employee; and

(d) any individual who voluntarily elects in writing or by employment contract to waive participation in the Plan, provided each such individual's basic rate of compensation from the Employer exceeds the maximum earnings covered by Social Security. Such waiver of participation shall be irrevocable and must comply with relevant law.

Any individual who was excluded from the Plan on the basis that he or she was not a common law employee of the Employer and who is later found by a court of law to be a common law employee of the Employer shall, except in the case of an individual who is described in subsection (b) above be eligible to participate in the Plan only from the date on which the court's order finding the individual to be a common law employee is entered.

- 2.15 Employer means the City of Escanaba, any successor that shall maintain this Plan and any predecessor that has maintained this Plan.
- 2.16 Fiduciary (or Fiduciaries) means the City of Escanaba is the Named Fiduciary. Other persons or entities may become Plan fiduciaries to the extent of any delegation of discretion under the Plan by the Named Fiduciary that is accepted by said other person or entity.
- 2.17 Final Average Compensation means one-third (1/3) of the aggregate amount of compensation paid and earned by a Participant during the period of three (3) consecutive years (determined using whole calendar months) of the Participant's credited service in which the aggregate amount of Compensation paid and earned is highest. If the Participant has less than three (3) years of credited service, Final Average Compensation means the aggregate amount of compensation paid and earned by the Participant divided by the Participant's credited service. For purposes of determining Final Average Compensation, any portion of a lump sum payment earned for work performed outside the Final Average Compensation period shall be excluded.
- 2.18 Hour of Service. means each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer.
- 2.19 Normal Retirement Date means the later of (1) the date on which the Participant attains age 60, or (2) the Participant's tenth anniversary of participation in the Plan.
- 2.20 Participant means an Employee who is participating in the Plan under the terms of Section 3.1.
- 2.21 Plan means the City of Escanaba Defined Benefit Retirement Plan as set forth herein.
- 2.22 Plan Administrator means the City of Escanaba.
- 2.23 Plan Year. The initial Plan Year shall be the period commencing on the Effective Date and ending on June 30, 2024. Thereafter, the Plan Year shall be the 12-consecutive month period commencing on July 1 and ending on June 30 of each year.
- 2.24 Prior Plan means the Municipal Employees' Retirement System of Michigan Defined Benefit Plan as in effect on the date immediately preceding the Effective Date.
- 2.25 Retirement means the date as of which a Participant has terminated employment for reasons other than death and after the Participant has fulfilled all requirements to be eligible for a normal, early or disability retirement benefit. Retirement shall occur on the day that immediately follows the Participant's last day of employment (or authorized leave of absence, if later). For this purpose an authorized leave of absence means an absence that is authorized by the Employer under a consistent and non-discriminatory application of the Employer's standard personnel practices, provided that the Participant retires or returns within the period specified in the authorized leave of absence.
- 2.26 Straight Life Pension means a pension payable for the life of the Participant, without provision for payment of benefits after his or her death.
- 2.27 Sponsor means the City of Escanaba.

2.28 Transfer Date means the date on which plan assets will be transferred from MERS to this Plan pursuant to the MERS Retirement Board Termination Policy and Procedure.

2.29 Trust (or Trust Fund or Fund) means the fund maintained for the benefit of Plan Participants pursuant to the City of Escanaba Defined Benefit Retirement Plan Trust Agreement as from time to time amended.

2.30 Trustee means the person or entity named as trustee herein or in any separate trust forming a part of this Plan, and any successors.

2.31 Unreduced Early Retirement Date. A Participant's Unreduced Early Retirement Date is the first day of the month coinciding with or next following the date on which a Participant has attained age 55 and completed at least 25 Years of Service for vesting with the Employer.

ARTICLE III - PARTICIPATION AND SERVICE

3.1 Eligibility. Any Employee, former Employee, or beneficiary of a former Employee (1) who participated in the Prior Plan on the date immediately preceding the Effective Date; and (2) for whom an asset and related liability are transferred to this Plan from the Prior Plan on the Transfer Date became a Participant in this Plan as of the Effective Date.

3.2 Credited Service. The following rules apply for purposes of determining a Participant's credited service under the Plan.

(a) General Rule. Prior service to which a Participant is entitled, including periods during which a Participant is in receipt of workers' compensation weekly benefits, shall be credited to the Participant's individual service account. Service shall be credited in years and twelfths (1/12) of a year. Not more than one year of credited service shall be credited to a Participant on account of all service rendered to the Employer in any period of 12 consecutive months. Not more than 1/12 of a year of credited service shall be credited to a Participant on account of all service rendered to the Employer in a calendar month. Credited service shall not be credited for any calendar month during which a Participant completes less than 20 Hours of Service for the applicable month.

(b) Special Rule. The Special Rule described in this subsection 3.2(b) shall apply solely for purposes of determining service credit for purposes of vesting and early retirement eligibility, and shall not apply for benefit accrual purposes.

(1) Act 88 Service Credit. For purposes of vesting and early retirement eligibility, a Participant shall be credited with service performed for another "reciprocal unit", as that term is defined in MCL 38.1102(d); provided, however, that such service credit will only include service performed for the reciprocal unit during the period of time during which the reciprocal unit elected to be subject to Michigan Public Act 88 of 1961.

(2) Prior MERS Service Credit. For purposes of vesting and early retirement eligibility, a Participant shall be credited with service performed before the Effective Date for any municipality or court that participated in the MERS Defined Benefit Plan or the MERS Defined Contribution Plan while the service was performed (a "MERS Participating Employer"); provided, however, that the following service will not be credited under this subsection:

(i) Service of less than one year with the MERS Participating Employer;

(ii) Service that has been forfeited under Section 42 of the MERS Defined Benefit Plan Document, except that non-vested service related to employee contributions that are distributed under the required minimum distributions provisions of Code Section 401(a)(9) shall be recognized;

(iii) Service that preceded a break in membership of more than 240 consecutive months;

(iv) Service concurrently acquired in more than one MERS Participating Employer;

(v) Non-vested service accrued at a participating municipality or court before the municipality or court became a MERS Participating Employer; and

(vi) Service performed for a municipality or court after the municipality or court has terminated participation with MERS.

3.3 Purchased Service. A Participant may purchase up to five years of credited service if (1) the purchase is permitted by and consistent with a resolution adopted by the City of Escanaba City Council; and (2) the Participant makes an immediate contribution to the Plan equal to an amount that is Actuarially Equivalent to the present value of the Participant's accrued benefit after crediting the specified amount of purchased service. Any service credit purchased under this Section must not result in the Participant exceeding any applicable benefit accrual or payment limitation imposed by this Plan or relevant law.

ARTICLE IV - ELIGIBILITY FOR BENEFITS

4.1 Normal Retirement and Late Retirement. Each eligible Participant shall receive a normal or late retirement benefit calculated pursuant to Sections 5.1 and 5.4, respectively. Payment of said normal or late retirement benefit shall commence as of the first day of the month coincident with or next following the later of: (a) the date on which the Participant has terminated employment with the Employer and has attained his or her Normal Retirement Date; or (b) the Participant's Late Retirement Date.

A Participant's Late Retirement Date shall be the date after his or her Normal Retirement Date on which he or she has terminated employment with the Employer.

4.2 Eligibility for Reduced Early Retirement Benefit. A Participant whose employment with the Employer is terminated on or after his or her Early Retirement Date shall be entitled to a reduced early retirement benefit as provided in Section 5.2 of the Plan. Said early retirement benefit shall commence as of the first day of the month coinciding with or next following the later of: (1) the date on which such Participant has terminated employment with the Employer; or (2) the date on which the Participant's properly completed application for an early retirement benefit is approved by the Plan Administrator.

4.3 Eligibility for Unreduced Early Retirement Benefit. A Participant whose employment with the Employer is terminated on or after his or her Unreduced Early Retirement Date shall be entitled to an unreduced early retirement benefit as provided in Section 5.3 of the Plan. Said unreduced early retirement benefit shall commence as of the first day of the month coinciding with or next following the later of: (1) the date on which such Participant has terminated employment with the Employer; or (2) the date on which the Participant's properly completed application for an early retirement benefit is approved by the Plan Administrator

4.4 Eligibility for Deferred Vested Pension. A Participant whose employment with the Employer is terminated prior to his or her Normal Retirement Date shall be entitled to a deferred vested pension, commencing not earlier than his or her Normal Retirement Date; provided, however, that at the election of the Participant, said deferred vested retirement benefit shall commence as of the first day of any month coinciding with or next following his or her Early Retirement Date.

4.5 Eligibility for Death Benefit. The Eligible Spouse or other designated beneficiary of a Participant who dies may be entitled to a death benefit as determined under, and commencing in accordance with, Section 5.5 of the Plan.

4.6 Eligibility of Certain Individuals for Disability Retirement Benefit. A Participant may be entitled to a disability benefit as determined under, and commencing in accordance with, Section 5.6 of the Plan.

ARTICLE V - AMOUNT AND FORM OF BENEFITS

5.1 Normal Retirement Benefit. Each Participant whose benefit commencement date occurs after the Effective Date and who is eligible to receive a normal retirement benefit in accordance with Section 4.1 shall be entitled to a Straight Life Pension that is calculated as set forth below.

(a) All Participants Except for Part-Time Emp Participants. Any Participant who is not a Part-Time Emp Participant shall be entitled to a Straight Life Pension that is calculated as set forth below.

(1) Step One: Calculate the product of (a) the Participant's Final Average Compensation; multiplied by (b) the Participant's total number of years (and fractional years) of credited service determined pursuant to Section 3.2; multiplied by (c) 2.25%.

(2) Step Two: Multiply one twelfth (1/12) by the lesser of (a) the amount calculated in Step One above; or (b) 80% of the Participant's Final Average Compensation. The amount calculated pursuant to the preceding sentence is the amount of the monthly benefit payable to the Participant as a Straight Life Pension.

(b) Part-Time Emp Participants. Any Part-Time Emp Participant shall be entitled to a Straight Life Pension that is calculated as set forth below.

(1) Step One: Calculate the product of (a) the Participant's Final Average Compensation; multiplied by (b) the Participant's total number of years (and fractional years) of credited service determined pursuant to Section 3.2; multiplied by (c) 2.00%.

(2) Step Two: Multiply one twelfth (1/12) by the amount calculated in Step One above. The amount calculated pursuant to the preceding sentence is the amount of the monthly benefit payable to the Participant as a Straight Life Pension.

If a Participant dies or becomes disabled (as described in Plan Section 5.6) while performing qualified military service (as defined in Code Section 414(u)), the Participant shall be considered for benefit accrual purposes to have resumed employment in accordance with the individual's reemployment rights under USERRA on the day preceding death or disability (as the case may be) and to have terminated employment on his actual date of death or disability.

5.2 Reduced Early Retirement Benefit. A Participant who is eligible for a reduced early retirement benefit hereunder shall be entitled to a reduced monthly Straight Life Pension equal to the participant's Accrued Benefit determined under the provisions of Section 5.1, reduced by a reduction factor. The reduction factor shall be 0.50%, multiplied by the number of months, rounded to the next higher number of months and not less than zero, by which the date of retirement precedes the date the member or vested former member would attain Normal Retirement Age. The amount of the reduction shall not be greater than 60%. Such amount shall further be adjusted as necessary based on the payment option(s) selected by the member or vested former member among those available

5.3 Unreduced Early Retirement Benefit. A Participant who is eligible for an unreduced early retirement benefit hereunder shall be entitled to an unreduced monthly Straight Life Pension equal to the participant's Accrued Benefit determined under the provisions of Section 5.1.

5.4 Late Retirement Benefit. A Participant may continue his or her employment with the Employer beyond his or her Normal Retirement Date. In such event, no retirement benefit will be paid to the Participant before the Participant's actual Retirement, subject, however, to any required minimum distributions pursuant to Section 5.9. Said late retirement benefit shall commence as set forth in Section 4.1 and shall be equal to the greater of (1) the Participant's Accrued Benefit determined as of his Late Retirement Date; or (2) the Actuarial Equivalent of the Participant's normal retirement benefit.

5.5 Death Benefit.

(a) Surviving Spouse and Surviving Minor Child Benefits.

(1) Surviving Spouse of a Deceased Active Participant.

[a] A retirement allowance shall be paid for life to the surviving spouse of a deceased active Participant if each of the following conditions is met:

[i] The Participant was married to the surviving spouse at the time of the Participant's death.

[ii] The Participant had not named another individual as monthly pension beneficiary at the time of death.

[iii] The Participant was not receiving any form of benefits from the Plan at the time of death.

[b] Payment of a retirement allowance to the surviving spouse of a deceased active Participant shall be effective as of the first day of the calendar month in which the Participant died. The amount of a surviving spouse's retirement allowance shall be 85% of the deceased active Participant's accrued retirement allowance (as determined pursuant to Section 5.1), but not less than the amount that would be paid under Section 5.5(c) if the surviving spouse had been designated as the monthly pension beneficiary by the Participant. The surviving spouse is required to complete and submit an application on the form prepared by the Plan Administrator, along with other forms and documents required, before benefits will commence.

[c] The remarriage of a surviving spouse shall not affect the surviving spouse's eligibility to receive the retirement allowance.

(2) Surviving Spouse of Vested Former Participant

[a] A retirement allowance shall be paid for life to the surviving spouse of a deceased vested former Participant if each of the following conditions is met:

[i] The vested former Participant was married to the surviving spouse at the time of death.

[ii] The vested former Participant had not named another individual as monthly pension beneficiary in the manner set forth in Section 5.5(c) at the time of death.

[iii] The vested former Participant was not receiving any form of benefits from the Plan Administrator at the time of death.

[b] A retirement allowance shall be paid to the surviving spouse of a deceased vested former Participant, the effective date of which shall be the first day of the month following the month of the later of:

[i] the date on which the vested former Participant would have first satisfied the age and service requirements for retirement under Article IV; or

[ii] the date on which a completed application on the form prepared by the Plan Administrator, along with other forms and documents required by the Plan Administrator, is received by the Plan Administrator.

Retroactive benefits shall not be payable for any period prior to the effective date as determined above.

The amount of a surviving spouse's retirement allowance shall be 85% of the deceased vested former Participant's accrued retirement allowance (as determined pursuant to subsection (4)), but not less than the amount that would be paid under Section 5.5(c) if the surviving spouse had been designated as the monthly pension beneficiary by the deceased vested former Participant.

[c] The remarriage of a surviving spouse shall not affect the surviving spouse's eligibility to receive the surviving spouse's retirement allowance.

(3) Surviving Minor Child of a Deceased Active Participant or Vested Former Participant

[a] A retirement allowance shall be paid to each surviving minor child of a deceased active Participant or a deceased vested former Participant if each of the following conditions is met:

[i] The active Participant or vested former Participant does not have a Section 5.5(c) named monthly pension beneficiary other than the active Participant or vested former Participant's spouse at the time of death.

[ii] The surviving minor child has not attained age 21 years as of the later of (i) the deceased active Participant or deceased vested former Participant's death, or (ii) the date on which a surviving spouse is no longer receiving a surviving spouse's retirement allowance.

[b] Payment of a retirement allowance to a surviving minor child shall be effective on the first day of the month of the Participant's death, except that no retirement allowance shall be payable to any surviving minor child for any month for which the surviving spouse is paid a retirement allowance. An authorized representative of the minor child(ren) is required to complete and submit an application on the form prepared by the Plan Administrator, along with other forms and documents required, prior to commencement of benefits.

The amount of retirement allowance paid to each surviving minor child shall be an equal share (divided among the then-surviving minor children, if more than one) of 50% of the deceased active Participant or deceased vested former Participant's retirement allowance, as determined pursuant to subsection (4). Such amount shall be paid to each surviving minor child until the earlier of that surviving minor child's twenty-first birthday or the death of that child, with such amount then reallocated to remaining minor surviving children, if any, in equal shares.

(4) Calculation of Benefit. For purposes of this Section 5.5(a), a deceased active Participant's or a deceased vested former Participant's accrued retirement benefit shall be computed under the following presumptions:

[a] The deceased active Participant or deceased vested former Participant shall be presumed to have retired on the day preceding death.

[b] The deceased active Participant or deceased vested former Participant shall be presumed to have elected the Straight Life Pension form or payment.

(5) In the case of an active Participant who dies while performing qualified military service as defined in 414(u) of the Code, the survivors of a deceased active Participant who died on or after January 1, 2007 shall be entitled to any additional benefits, including benefit accruals relating to the period of qualified military service, provided under the Plan had the active Participant resumed and then terminated employment on account of death. Under section 414(u)(8)(C) of the Code, an active Participant who dies while performing qualified

military service shall be deemed to have made any employee contributions upon which benefit accruals described hereunder are contingent.

(b) Death of an Active Participant Resulting From Injury or Disease Arising Out of and In Course of Duty. If, after notice is provided to the Plan Administrator and appropriate review is made, the death of an active Participant is determined by the Plan Administrator to be the natural and proximate result, independent of all other causes, of a personal injury or disease arising out of and in the course of the active Participant's actual performance of duty with the Employer, the following additional provisions shall apply to Sections 5.5(a)(1) and 5.5(a)(3), all other provisions being the same.

(1) The amount of retirement allowance paid to a surviving spouse shall not be less than 25% of the deceased active Participant's Final Average Compensation.

(2) The amount of retirement allowance paid to surviving minor child(ren) shall not be less than equal shares of 25% of the deceased active Participant's final average compensation.

(c) Monthly Pension Beneficiary Retirement Allowance.

(1) Monthly Pension Beneficiary Retirement Allowance on behalf of a Deceased Active Participant

[a] An active Participant may name a monthly pension beneficiary for the exclusive purpose of being paid a monthly pension beneficiary retirement allowance under this section in the manner and subject to the conditions set out below.

[i] The naming of a monthly pension beneficiary shall be in a format required by and submitted to the Plan Administrator, accompanied by such documentation and information as the Plan Administrator may require, and it must be received by the Plan Administrator prior to the death of the Participant.

[ii] A spouse married to the Participant at the time of the designation of the monthly pension beneficiary election must consent (in a format required by and submitted to the Plan Administrator) to the naming of the monthly pension beneficiary if that monthly pension beneficiary is a person other than the spouse (unless otherwise provided by a judgment of divorce or other order of the court that meets the requirements of applicable law), unless the Plan Administrator determines that the spouse cannot be located or other extenuating circumstances.

[iii] The designation of a monthly pension beneficiary may be revoked or changed in a format required by and submitted to the Plan Administrator by the Participant at any time prior to the earlier of the death of the Participant and the commencement of his or her retirement benefits, subject to all other requirements of the designation of a monthly pension beneficiary (including the consent of the Participant's current spouse, if any, in a format required by and submitted to the Plan Administrator, unless the Plan Administrator determines that the spouse cannot be located or other extenuating circumstances).

[iv] Any designation or status of a monthly pension beneficiary shall terminate immediately upon the marriage of the Participant, and that Participant's spouse shall then become the Participant's monthly pension beneficiary, unless otherwise required by a judgment of divorce or other order of the court that meets the requirements of applicable law. Nothing herein shall prevent a Participant from designating someone other than a current spouse as a monthly pension beneficiary, provided that such designation includes the consent of the Participant's current spouse, in a format required by and submitted to the Plan Administrator, unless the Plan Administrator determines that the spouse cannot be located or other extenuating circumstances.

[v] Notwithstanding anything in this Plan to the contrary, the designation or status of a spouse as a monthly pension beneficiary shall terminate immediately upon entry of a judgment of divorce terminating the marriage of the Participant and such spouse, unless otherwise required by a judgment of divorce or other order of the court that meets the requirements of applicable law. Nothing herein shall prevent a Participant from designating a former spouse as a monthly pension beneficiary subsequent to the entry of their judgment of divorce, provided that such designation is consistent with all other terms and requirements of this Plan (including the consent of the Participant's current spouse, if any, in a format required by and submitted to the Plan Administrator, unless the Plan Administrator determines that the spouse cannot be located or other extenuating circumstances).

[b] A monthly pension beneficiary retirement allowance shall be paid to the monthly pension beneficiary of a deceased active Participant for life, effective on the later of the first day of the month in which the deceased active Participant died, if both of the following conditions are met:

[i] The active Participant dies while still employed by the Employer.

[ii] A spouse married to the active Participant at the time of death consented, in a format required by and submitted to the Plan Administrator, to the designation of the monthly pension beneficiary if it is someone other than the spouse married to the active Participant at the time of death (unless such designation is ordered by a judgment of divorce or other order of the court that meets the requirements of applicable law).

The monthly pension beneficiary is required to complete and submit to the Plan Administrator in a format required by the Plan Administrator, accompanied by such documentation and information as the Plan Administrator shall require prior to commencement of benefits.

[c] The amount of the monthly pension beneficiary retirement allowance payable to a monthly pension beneficiary of a deceased active Participant shall be computed under the following presumptions, notwithstanding the failure to satisfy the specific requirements of Article IV:

[i] The deceased active Participant shall be presumed to have retired on the later of (1) the day first day of the month preceding the Participant's death, or (2) the first day of the month following the month in which the monthly pension beneficiary completes and submits an application to the Plan Administrator, on forms provided by the Plan

Administrator and accompanied by such documentation and information as the Plan Administrator may require.

[ii] The deceased active Participant shall be presumed to have elected a joint and 100% survivor annuity and named the monthly pension beneficiary as monthly pension beneficiary.

[iii] If the monthly pension beneficiary is the spouse of the deceased active Participant, the amount of retirement allowance payable to the monthly pension beneficiary shall not be less than the amount that would have been payable under Section 5.5(a) if there had been no named monthly pension beneficiary.

(2) Monthly Pension Beneficiary Retirement Allowance on behalf of a Deceased Vested Former Participant

[a] A vested former Participant may name a monthly pension beneficiary for the exclusive purpose of being paid a monthly pension beneficiary retirement allowance under this section in the manner and subject to the conditions set out below.

[i] The naming of a monthly pension beneficiary shall be in a format required by and submitted to the Plan Administrator, accompanied by such documentation and information as the Plan Administrator may require, and it must be received by the Plan Administrator prior to the death of the Participant.

[ii] A spouse married to the Participant at the time of the designation of the monthly pension beneficiary election must consent (in a format required by and submitted to the Plan Administrator) to the naming of the monthly pension beneficiary if that monthly pension beneficiary other than the spouse (unless otherwise provided by a judgment of divorce or other order of the court that meets the requirements of applicable law), unless the Plan Administrator determines that the spouse cannot be located or other extenuating circumstances.

[iii] The designation of a monthly pension beneficiary may be revoked or changed (in a format required by and submitted to the Plan Administrator) by the Participant at any time prior to the earlier of the death of the Participant and the commencement of his or her retirement benefits, subject to all other requirements of the designation of a monthly pension beneficiary (including the consent of the Participant's current spouse, if any, in a format required by and submitted to the Plan Administrator, unless the Plan Administrator determines that the spouse cannot be located or other extenuating circumstances).

[iv] Any designation or status of a monthly pension beneficiary shall terminate immediately upon the marriage of the Participant, and that Participant's spouse shall then become the Participant's monthly pension beneficiary unless otherwise required by a judgment of divorce or other order of the court that meets the requirements of applicable law. Nothing herein shall prevent a Participant from designating someone other than a current spouse as a monthly pension beneficiary, provided that such designation includes the consent of the Participant's current spouse, in a format required by and submitted to the Plan Administrator, unless the Plan Administrator determines that the spouse cannot be located or other extenuating circumstances.

[v] Notwithstanding anything in this Plan to the contrary, the designation or status of a spouse as a monthly pension beneficiary shall terminate immediately upon entry of a judgment of divorce terminating the marriage of the Participant and such spouse, unless otherwise required by a judgment of divorce or other order of the court that meets the requirements of applicable law. Nothing herein shall prevent a Participant from designating a former spouse as a monthly pension beneficiary subsequent to the entry of their judgment of divorce, provided that such designation is consistent with all other terms and requirements of this Plan (including the consent of the Participant's current spouse, if any, in a format required by and submitted to the Plan Administrator, unless the Plan Administrator determines that the spouse cannot be located or other extenuating circumstances).

[b] A monthly pension beneficiary retirement allowance shall be paid to the monthly pension beneficiary of a deceased vested former Participant for life. Such allowance shall be effective on the latest of

[i] the first day of the month in which the vested former Participant died, or

[ii] the first day of the month following the month in which the vested former Participant would have first satisfied age and service requirements for retirement, or

[iii] the first day of the month following the date that the monthly pension beneficiary completes and submits an application to the Plan Administrator on forms provided by the Plan Administrator and accompanied by such documentation and information as the Plan Administrator may require. Retroactive benefits shall not be payable.

[c] The amount of the monthly pension beneficiary retirement allowance payable to a monthly pension beneficiary shall be computed under the following presumptions, notwithstanding the failure to satisfy the specific requirements of Article IV:

[i] The deceased vested former Participant shall be presumed to have commenced receipt of the retirement allowance on the later of (1) the date the vested former Participant would have first satisfied age and service requirements for retirement, or (2) the date the monthly pension beneficiary completes and submits an application to the Plan Administrator in a format determined by the Plan Administrator, along with all other forms and documents required prior to commencement of payments.

[ii] The deceased vested former Participant shall be presumed to have elected a joint and 100% survivor annuity and named the designated monthly pension beneficiary as monthly pension beneficiary.

[iii] If the monthly pension beneficiary is the spouse of the deceased vested former Participant, the amount of retirement allowance payable to the monthly pension beneficiary shall not be less than the amount that would have been payable under Section 5.5(a) if there had been no named monthly pension beneficiary.

5.6 Disability Benefit.

(a) An active Participant who becomes incapacitated such that the Participant is unable to continue his or her current employment with the Employer may apply for and receive a disability retirement benefit upon submission to the Plan Administrator of an application provided by the Plan Administrator, accompanied by such information the Plan Administrator may require, if each of the following conditions is met:

(1) The Participant files an application for disability retirement benefits with the Plan Administrator within two (2) years after his or her employment with the Employer terminates as a result of such incapacity.

(2) The Participant undergoes such medical examinations and tests as may be ordered by the Plan Administrator. Medical examination shall be made by or under the direction of a medical advisor selected by the Plan Administrator who shall issue a written medical examination report. "Medical examination" includes but is not limited to physical or psychiatric examination of the Participant, and/or a review of the Participant's application and medical records.

(3) The Plan Administrator reviews the entire record, including the medical advisor's report, and concludes that the Participant is unable to continue his or her current employment with the Employer because, and as a result of his or her incapacity, and that the incapacity is likely to be permanent.

(4) The Plan Administrator determines that the Employer is unable to continue to employ the Participant, and accommodate the Participant's incapacity with other work that is reasonably related to the Participant's past training, experience, education and compensation.

(b) A disability retirement benefit shall be effective as of the first day of the calendar month next following the date on which the completed application for disability retirement benefits is received by the Plan Administrator, or, if later, the date of the Participant's termination of employment with the Employer resulting from the incapacity.

(c) The amount of a disability retirement benefit shall be determined in accordance with the benefit programs that are applicable to the disability retiree's credited service.

(d) If the Plan Administrator finds that the disability of an active Participant applying for disability retirement benefits was the natural and proximate result of a personal injury or disease arising out of and in the course of the Participant's actual performance of duty in the employ of the Employer, and not the aggravation of a preexisting injury or disease, then, if the Participant meets all other requirements of subsection (a), the disability retirement benefit determined under subsection (c) shall not be less than 25% of the Participant's Final Average Compensation. For purposes of this subsection (d), Final Average Compensation shall be determined for all credited service as of the date of termination of employment under the Final Average Compensation in effect on the termination date.

(e) The Plan Administrator may require a disability retiree, prior to his or her attainment of Early Retirement Date, to undergo periodic medical examinations as described in Section 5.6(a)(2), but no more frequently than annually. If, upon medical examination and upon the advice of the medical advisor, the Plan Administrator determines that the disability retiree is

no longer incapacitated from performing his or her former job with the Employer, disability retirement benefits shall be terminated upon 60 days' prior notice. If a disability retiree fails or refuses to submit to or cooperate with a medical examination, disability retirement benefits shall be immediately suspended with notice to the disability retiree. If a disability retiree fails or refuses to submit to or cooperate with a medical examination for six months after such suspension, his or her disability retirement benefits shall be terminated. A disability retiree whose benefits have been discontinued shall be deemed a former disability retiree.

(f) If a former disability retiree returns to covered employment with the Employer within five years after the date of discontinuation of disability retirement benefits, the former disability retiree shall recommence participation in the Plan, with all credited service the individual had accrued at the time of disability retirement.

(g) A former disability retiree who does not again become a Participant described in subsection (f) shall become a vested former Participant.

(h) Service shall not be credited for the period during which a disability retiree is being paid or was paid a disability retirement allowance.

5.7 Deferred Vested Pension Benefit. A Participant who is eligible for a deferred vested pension benefit shall be entitled to a retirement benefit that is Actuarially Equivalent to the Participant's Accrued Benefit determined in accordance with Section 5.1. Effective as of the Effective Date, each Participant shall be fully vested in his or her Accrued Benefit.

5.8 Payment of Benefit.

(a) Normal Form of Payment. If a retiring Participant or vested former Participant is married at the retirement allowance effective date, benefits shall be paid in the form of a joint and 100% survivor annuity, with the spouse as monthly pension beneficiary, unless the retiring Participant or vested former Participant elects another form of payment, and his or her spouse consents to that election in a signed writing. This requirement may be waived if it is determined by the Plan Administrator that the consent of the spouse cannot be obtained because of extenuating circumstances. The remarriage of a surviving spouse shall have no effect on the right of the surviving spouse to receive a survivor benefit. If a retiring Participant or vested former Participant is not married at the retirement allowance effective date, benefits shall be paid in the form of a Straight Life Pension, unless the Participant elects in writing to receive his or her benefit in one of the forms listed in Section 5.8(b).

(b) Optional Benefits. In lieu of the benefits provided for in Section 5.8(a), a Participant may elect an Actuarially Equivalent optional benefit, provided that any spousal consent required by Section 5.8(a) is provided. Such Actuarially Equivalent optional benefit may be:

(1) A monthly benefit payable for the life of the Participant with a percentage (50%, 75%, or 100%) of such monthly benefit as specified by the Participant continued to his or her Eligible Spouse or other designated beneficiary after his or her death. If the named monthly beneficiary dies before the Participant, effective as of the date of the Plan Administrator's receipt of such documentation as the Plan Administrator shall require, the Participant's benefit shall be converted to a straight life annuity, and payable thereafter for the Participant's remaining life. If the required documentation is received by the Plan Administrator within six months after the

beneficiary's death, then the Participant's benefit shall be converted to a straight life annuity retroactive to the month following the month of the beneficiary's death. If the required documentation is received by the Plan Administrator later than six months after the beneficiary's death, then the retiree's benefit shall be converted to a straight life annuity effective as of the month following the month in which the required documentation is received by the Plan Administrator, with no retroactive payment.

(2) A monthly benefit payable for the life of the Participant with a guaranteed period of 60 months, 120 months, 180 months, or 240 months, as specified by the Participant. Under this form of benefit payment, the retiree is paid an actuarially reduced retirement allowance for life. If the retiree dies prior to the expiration of the guaranteed period selected by the retiree, the named monthly pension beneficiary is paid a survivor benefit equal to the full amount of the reduced retirement allowance for the balance of the guaranteed period remaining after the death of the retiree, after which benefits to the named monthly pension beneficiary end. Immediately upon the death of the monthly pension beneficiary before the expiration of the guaranteed period, or at any other time, the retiree may replace the current monthly pension beneficiary with a new monthly pension beneficiary by completing and submitting a written designation form provided by the Plan Administrator. If the retiree's election of the form of payment required that his or her spouse consent to that election in a signed writing, and the retiree remains married to that spouse, written consent by that spouse to retiree's designation of the new monthly pension beneficiary is required; this requirement may be waived if it is determined by the Plan Administrator that the signature of the participant's spouse cannot be obtained because of extenuating circumstances. If the monthly pension beneficiary dies before the expiration of the guaranteed period (and after the death of the retiree), the single sum actuarial present value of any remaining guaranteed retirement allowance payments shall be paid to the estate of such monthly pension beneficiary.

The aggregate of the benefit payments that are expected to be paid to the Participant and his designated beneficiary under any of the above optional forms of payment shall be the Actuarial Equivalent of the straight life annuity that is described in subsection (a) above.

(c) Divorce. If a retiree receiving benefits in the form of a joint and survivor annuity under Section 5.8(b)(1) is divorced from the spouse who was his or her named beneficiary at the time benefit payments commenced, the designation of the former spouse as monthly pension beneficiary shall terminate immediately upon entry of the judgment of divorce and the retiree shall be entitled to receive his or her retirement allowance in the form of a Straight Life Pension (no new beneficiary can be named), effective on and after the first day of the month next following the receipt by the Plan Administrator of a true copy of the judgment of divorce and/or other order of the court, together with any other documentation required by the Plan Administrator, unless the Plan Administrator receives a copy of the judgment of divorce and/or other order of the court that maintains the survivor beneficiary rights of such ex-spouse. If a retiree receiving benefits in the form a life annuity with guaranteed period under Section 5.8(b)(2) is divorced from the spouse who was his/her named beneficiary at the time benefit payments commenced, the designation of the former spouse as the retiree's beneficiary shall terminate immediately upon entry of the judgment of divorce, unless the judgment of divorce and/or other order of the court maintains the beneficiary rights of such ex-spouse. Where the ex-spouse's rights are terminated, and the retiree's period certain has not yet expired, the retiree may name a new beneficiary (or beneficiaries) for

the remaining period certain by submitting instructions to the Plan Administrator in a format determined by the Plan Administrator based on procedures established by the Plan Administrator.

(d) Eligible Domestic Relations Orders. Certain terms and requirements for payment of retirement allowances in forms provided in this section are subject to eligible domestic relations orders under the Eligible Domestic Relations Order Act.

(e) Written Explanation. Each Participant or vested former Participant who applies for a retirement allowance shall be given a written explanation, prior to the effective date of retirement, of the optional forms of payment provided in this section.

In the event of distribution of benefits pursuant to Section 401(a)(9) of the Code where the Participant or the vested former Participant fails to make an election of benefit form pursuant to this Section, benefits to an unmarried Participant or vested former Participant shall be paid in the a Single Life Annuity, and benefits to a married Participant or vested former Participant shall be paid in the form of a joint and 100% survivor annuity.

5.9 Maximum Annual Pension Benefit by Law. Regardless of any other provision in this Plan to the contrary, in no event shall the maximum annual pension benefit payable to any Participant from this Plan exceed the limits set forth below.

(a) The limitations of this Section 5.9 shall apply in Limitation Years beginning on or after July 1, 2007, except as otherwise provided herein.

(b) The Annual Benefit otherwise payable to a Participant under the Plan at any time will not exceed the Maximum Permissible Benefit. If the benefit the 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 will be reduced) to the extent necessary so that the benefit does not exceed the Maximum Permissible Benefit.

(c) If a 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 Participant's benefit accrual will be limited in accordance with this Section 5.9.

(d) The application of the limitations of this Section 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 Regulation Section 1.415(a)-1(g)(4). The preceding sentence applies only if all such defined benefit plans met the requirements of Code Section 415, for all Limitation Years beginning before May 6, 1986. The preceding sentence applies only if such defined benefit

plans met the requirements of Code Section 415, for all Limitation Years beginning before January 1, 1987.

(e) The limitations of this Section 5.9 will be determined and applied taking into account the rules in Section 5.9(g) below.

(f) Definitions.

(1) Annual Benefit. A benefit which 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 must 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 Section. 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 Section 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 Regulation Section 1.401(a)-20, Q&A 10(d), and with regard to Regulation Section 1.415(b)-1(b)(1)(iii)(B) and (C).

No actuarial adjustment to the benefit shall be made for (a) 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; (b) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and post-retirement medical benefits); or (c) 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 Section, and the plan provides that the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Section 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 to Regulation Section 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 after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with Section 5.9(f)(1)[a] or [b] below.

[a] 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 5.9(f)(1)[a] 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

of (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)).

[i] Limitation Years beginning before July 1, 2007. For Limitation Years beginning before July 1, 2007, 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: (I) the interest rate specified in Section 2.4(a) of the Plan and the mortality table (or other tabular factor) specified in Section 2.4(a) of the Plan for adjusting benefits in the same form; and (II) a 5% interest rate assumption and the applicable mortality table defined in Section 2.4(b) of the Plan for that annuity starting date.

[ii] Limitation Years beginning on or after July 1, 2007. For Limitation Years beginning on or after July 1, 2007, 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 a 5% interest rate assumption and the applicable mortality table defined in Section 2.4(b) of the Plan for that annuity starting date.

[b] 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 5.9(f)(1)[a]. 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 benefit occurs during 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 2.2(a) of the Plan and the mortality table (or other tabular factor) specified in Section 2.2(a) of the Plan 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% interest rate assumption and the applicable mortality table defined in Section 2.2(b) of the Plan; 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 2.2(b) of the Plan and the applicable mortality table defined in Section 2.2(b) of the Plan, divided by 1.05.

However, effective for benefits with annuity starting dates during Limitation Years beginning after December 31, 2008, item [b][i][c] in the foregoing paragraph does not apply to a plan maintained by an eligible employer under Code Section 408(p)(2)(C)(i) (generally, an employer that had no more than 100 employees who received at least \$5,000 of compensation from the employer during the preceding year).

[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 2.2(a) of the Plan and the mortality table (or other tabular factor) specified in Section 2.2(a) of the Plan for adjusting benefits in the same form; and [b] a 5.5% interest rate assumption and the applicable mortality table defined in Section 2.2(b) of the Plan.

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 5.9(f)(1)[b][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 Section, 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 2.2(a) of the Plan and the mortality table (or other tabular factor) specified in Section 2.2(a) of the Plan for adjusting benefits in the same form (as provided under the Plan as of the date of distribution);

b. the applicable interest rate defined in Section 2.2(b) of the Plan and the applicable mortality table defined in Section 2.2(b) of the Plan (as provided under the Plan as of the date of distribution); and

c. the applicable interest rate defined in Section 2.2(b) of the Plan (as in effect on the last day of the 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 2.2(b) of the Plan.

(2) Compensation. wages as defined in Code Section 3401(a) and all other payments of compensation by the Employer (in the course of the Employer's trade or business) for a Plan Year for which the Employer is required to furnish the Participant 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)). Notwithstanding the foregoing, compensation purposes of this Section 5.9 shall include any elective deferral (as defined in Code Section 402(g)(3)), and any amount which is contributed by the Employer at the election of the Participant pursuant to a salary reduction agreement and which is not includible in the gross income of the Participant by reason of Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b) or 457(b), and Employee contributions described in Code Section 414(h)(2) that are treated as Employer contributions.

For Limitation Years beginning on or after July 1, 2007, 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:

[a] 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;

[b] 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

[c] 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.

Compensation for purposes of this Section 5.9 shall not include 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 and salary continuation payments to a Participant who is permanently and totally disabled, as defined in Code Section 22(e)(3).

Effective for Plan Years beginning after December 31, 2008, an individual who is receiving a differential wage payment, as defined by Code Section 3401(h)(2), shall be treated as an Employee of the Employer making the payment. The differential wage payment shall be treated as compensation for purposes of Code Section 415(c)(3) and Section 1.415(c)-2 of the Regulations and the Plan shall not be treated as failing to meet the requirements of any provisions described in Code Section 414(u)(1)(C) by reason of any contribution or benefit that is based on the differential wage payment.

Back pay, within the meaning of Regulation Section 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.

Except as otherwise provided herein, if, in connection with the adoption of any amendment, the definition compensation for purposes of this Section 5.9 has been modified, then for Plan Years prior to the Plan Year that includes the adoption date of such amendment, compensation for purposes of this Section 5.9 means compensation determined pursuant to the terms of the Plan then in effect.

Compensation shall not include amounts paid as compensation to a non-resident alien, as defined in Code Section 7701(b)(1)(B), who is not a Participant in the Plan to the extent the compensation is excludable from gross income and is not effectively connected with the conduct of a trade or business within the United States.

(3) Defined Benefit Dollar Limitation. Effective for Limitation Years ending after December 31, 2001, the Defined Benefit Dollar Limitation is \$160,000, automatically adjusted under Code Section 415(d), effective January 1 of each year, 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.

(4) Employer: For purposes of this Section 5.9, Employer shall mean the employer that adopts this Plan, and all members of a controlled group of corporations (as defined in Code Section 414(b), as modified by Code Section 415(h)), all commonly controlled trades or businesses (as defined in Code Section 414(c) as modified, except in the case of a brother-sister group of trades or businesses under common control, by Code Section 415(h)), or affiliated service groups (as defined in Code Section 414(m)) of which the Employer is a part, and any other entity required to be aggregated with the Employer pursuant to Regulations under Code Section 414(o).

(5) 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 of a 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.

(6) Limitation Year. A calendar year, or the 12- consecutive-month period elected by the Employer. All qualified Plans maintained by the Employer must use the same Limitation Year. The Limitation Year for purposes of this Plan shall be the same as the Plan 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.

(7) Maximum Permissible Benefit. The Defined Benefit Dollar Limitation (adjusted where required, as provided below).

[a] Adjustment for Less Than 10 Years of Participation or Service. 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, but not less than one year) of Participation in the Plan, and [ii] the denominator of which is 10.

[b] Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62 or after Age 65. Effective for benefits commencing in Limitation Years ending after December 31, 2001, 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 is before age 62, the Defined Benefit Dollar Limitation shall be adjusted under Section 5.9(f)(7)[b][i], as modified by Section 5.9(f)(7)[b][iii]. If the annuity starting date is after age 65, the Defined Benefit Dollar Limitation shall be adjusted under Section 5.9(f)(7)[b][ii], as modified by Section 5.9(f)(7)[b][iii].

[i] Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62.

a. Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for 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 5.9(f)(7)[a] for Years of Participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate specified in Section 2.2(a) of the Plan and the mortality table (or other tabular factor) specified in Section 2.4(a) of the Plan; or (2) a 5% interest rate assumption and the applicable mortality table as defined in Section 2.2(b) of the Plan. This reduction shall not apply to certain disability and survivor benefits that are described in Internal Revenue Code Section 415(b)(2)(I).

b. Limitation Years Beginning on or After July 1, 2007.

1. 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 occurs in a Limitation Year beginning on or after July 1, 2007, 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 for 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 5.9(f)(7)[a] for Years of Participation less than 10, if required) with actuarial equivalence computed using a 5% interest rate assumption and the applicable mortality table for the annuity starting date as defined in Section 2.2(b) of the Plan (and expressing the Participant's age based on completed calendar months as of the annuity starting date). This reduction shall not apply to certain disability and survivor benefits that are described in Internal Revenue Code Section 415(b)(2)(I).

2. 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 occurs in a Limitation Year beginning on or after July 1, 2007, 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 5.9(f)(7)[b][i]a. and the Defined Benefit Dollar Limitation (adjusted under Section 5.9(f)(7)[a] 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.

c. Notwithstanding any other provisions of this Section 5.9(f)(7)[b][i], the age-adjusted dollar limit that is applicable to a Participant shall not decrease on account of an increase in age or performance of additional service.

[ii] Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement After Age 65.

a. Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for 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 5.9(f)(7)[a] for Years of Participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate specified in Section 2.2(a) of the Plan and the mortality table (or other tabular factor) specified in Section 2.2(a) of the Plan; or (2) a 5% interest rate, assumption and the applicable mortality table as defined in Section 2.2(b) of the Plan.

b. Limitation Years Beginning on or After July 1, 2007.

1. 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 occurs in a Limitation Year beginning on or after July 1, 2007, 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 5.9(f)(7)[a] for Years of Participation less than 10, if required), with actuarial equivalence computed using a 5% interest rate assumption and the applicable mortality table for that annuity starting date as defined in Section 2.2(b) of the Plan (and expressing the Participant's age based on completed calendar months as of the annuity starting date).

2. 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 occurs in a Limitation Year beginning on or after July 1, 2007, 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 5.9(f)(7)[b][ii]a. and the Defined Benefit Dollar Limitation (adjusted under Section 5.9(f)(7)[a] 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 Section. 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.

[iii] Notwithstanding the other requirements of this Section 5.9(f)(7)[b], for purposes of adjusting the Defined Benefit Dollar Limitation for the Participant's annuity starting date under Section 5.9(f)(7)[b][i]a., 5.9(f)(7)[b][i]b.1., 5.9(f)(7)[b][ii]a. or 5.9(f)(7)[b][i]b.1., no adjustment shall be made 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.

[c] Minimum Benefit Permitted. Notwithstanding anything else in this Section to the contrary, the benefit otherwise accrued or payable to a Participant under this Plan shall be deemed not to exceed the Maximum Permissible Benefit if:

[i] the retirement benefits payable for a Limitation Year under any form of benefit with respect to such Participant under this Plan and under all other defined benefit plans (without regard to whether a Plan has been terminated) ever maintained by the Employer do not exceed \$10,000 multiplied by a fraction— [a] the numerator of which is the Participant's number of Years (or part thereof, but not less than one year) of Service (not to exceed 10) with the Employer, and [b] 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).

(8) 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.

(9) 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.

(10) 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: [a] 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 [b] 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 shall more than one Year of Participation be credited for any 12-month period.

(g) Other Rules.

(1) 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 Section. 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.

(2) 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 to Regulation Section 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 Regulation Section 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 benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan in a transfer of distributable benefits pursuant to Regulation Section 1.411(d)-4, Q&A-3(c), the amount transferred is treated as a benefit paid from the transferor plan.

(3) Formerly Affiliated Plans of the Employer. A formerly affiliated plan of the 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.

(4) 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.

(5) Special Rules. The limitations of this Section shall be determined and applied taking into account the rules in Regulation Section 1.415(f)-1(d), (e) and (h).

(6) Aggregation with Multiemployer Plans. 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 Section. If accruals under this Plan would otherwise exceed the foregoing limits, then the rate of benefit accrual under this Plan shall be reduced to the extent necessary so that the total Annual Benefits payable at any time under all relevant defined benefit plans will not exceed the Maximum Permissible Benefit.

5.10 Distribution Restrictions.

(a) Distribution Requirements for Calendar Years Prior to 2002. F-3 and F-3A of Section 1.401(a)(9)-1 of the 1987 proposed Treasury regulations shall apply for purposes of determining minimum required distributions for calendar years prior to 2002.

(b) Distribution Requirements for Calendar Years 2002 through 2005. The minimum distribution requirements of Code Section 401(a)(9) that were proposed in January 2001 shall apply for purposes of determining minimum required distributions for calendar years 2002, 2003, 2004 and 2005.

(c) Distribution Requirements for Calendar Years Beginning After December 31, 2005. This Section 5.9(c) shall apply for calendar years beginning after December 31, 2005.

(1) Precedence and Treasury Regulations Incorporated. Subject to the joint and survivor annuity requirements that are set forth in this Article V, the requirements of subsection 5.9(c) shall take precedence over any inconsistent provisions of the Plan. All distributions required under this Section will be determined and made in accordance with the Treasury regulations under Code Section 401(a)(9), including the incidental death benefit requirement of Code Section 401(a)(9)(G) and the regulations thereunder.

(2) Limitation on Distribution Periods. As of the first distribution calendar year, distributions, if not made in a single sum, may only be made over one of the following periods (or a combination thereof):

- [a] the life of the Participant;
- [b] the life of the Participant and a designated beneficiary;
- [c] a period certain not extending beyond the Life Expectancy of the Participant; or
- [d] a period certain not extending beyond the joint and last survivor expectancy of the Participant and the designated beneficiary.

(3) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Section, other than subsection (c)(2), distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

(4) Time and Manner of Distribution.

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

[b] Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

[i] if the Participant's surviving Spouse is the Participant's sole designated beneficiary, then, except as provided in the adoption agreement, distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 72, if later.

[ii] if the Participant's surviving Spouse is not the Participant's sole designated beneficiary, then, except as provided in Section 5.10(c)(9), 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 December 31 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 subsection [b] other than subsection [b][ii], will apply as if the surviving Spouse were the Participant.

For purposes of this subsection [b] and subsection (c)(7), distributions are considered to begin on the Participant's required beginning date (or, if [iv] above

applies), the date distributions are required to begin to the surviving Spouse under subsection [i] above. 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 subsection [i] above, the date distributions are considered to begin is the date distributions actually commence.

[c] Form 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 5.10(c)(5), (6) and (7). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury regulations. Any part of the Participant's interest which is in the form of an individual account described in Code Section 414(k) will be distributed in a manner satisfying the requirements of Code Section 401(a)(9) and the Treasury regulations that apply to individual accounts.

(5) Determination of Amount to be Distributed Each Year.

[a] 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 5.10(c)(6) or (7);

[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 annual percentage increase in a cost of living index that is based on prices of all items and issued by the Bureau of Labor Statistics;

b. To the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in subsection (c)(6) dies or is no longer the Participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Code Section 414(p);

c. to provide cash refunds of employee contributions upon the Participant's death; or

d. to pay increased benefits that result from a Plan amendment.

[b] Amount Required to be Distributed by Required Beginning Date. 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 subsection (4)[b][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.

[c] 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.

(6) Requirements For Annuity Distributions That Commence During Participant's Lifetime.

[a] 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 non-spouse 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 Q&A 2 of Section 1.401(a)(9)-6 of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of Participant and a non-spouse 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.

[b] 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 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 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 subsection (6)[b], 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 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.

(7) Requirements For Minimum Distributions Where Participant Dies Before Date Distributions Begin.

[a] Participant Survived by Designated Beneficiary. Except as provided in Section 5.10(c)(9), 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 subsection (4)[a] or [b], 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 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 the beneficiary's birthday in the calendar year that contains the annuity starting date.

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

[c] Death of Surviving Spouse Before Distributions to Surviving Spouse 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 5.10 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 subsection (4)[a].

(8) Definitions.

[a] Designated Beneficiary. The individual who is designated as the beneficiary is the designated beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-4, Q&A-1, of the Treasury regulations.

[b] Distribution Calendar Year. A calendar year for which 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 5.10(c)(4).

[c] Life Expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

[d] Required Beginning Date. The Required Beginning Date of a Participant is April 1 of the calendar year following the later of the calendar year in which the Participant attains age 72 or the calendar year in which the Participant retires.

(9) Special Elections.

[a] Election to Apply 5 Year Rule to Distributions to Designated Beneficiaries. If the Participant dies before distributions begin and there is a designated beneficiary, distribution to the designated beneficiary is not required to begin by the date specified in subsection (c)(4), but the Participant's entire interest will be distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death. 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 either the Participant or the surviving Spouse begin, this election will apply as if the surviving Spouse were the Participant.

[b] Election to Allow Participants or Beneficiaries to Elect 5 Year Rule. Participants or beneficiaries may elect on an individual basis whether the 5 year rule or the life expectancy rule in Sections 5.10(c)(4) and (7) applies to distributions after the death of a Participant who has a designated beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 5.10(c)(4), or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving Spouse's) death. If neither the Participant nor beneficiary makes an election under this paragraph, distributions will be made in accordance with Sections 5.10(c)(4) and (7) and, if applicable, the election in subsection (9)[a] above.

5.11 Cost of Living Adjustment. The Normal Retirement, Early Retirement, Disability Retirement or death benefit payable to an eligible Participant or to the Beneficiary of a deceased eligible Participant shall be increased annually by a post-retirement cost of living adjustment (the "COLA"), calculated as set forth below; provided, however, that the annual increase under this Section shall not apply to a PartTime Emp Participant.

(a) Teamsters Participants, General Electric Participants, Non-Union Participants, and Dispatchers Participants. With regard to Teamsters Participants, General Electric Participants, Non-Union Participants, and Dispatchers Participants, the additional retirement allowance representing the COLA amount shall be an amount determined by multiplying (i) one percent (1%), by (ii) the amount of the monthly benefit payment determined at the time of the Participant's retirement (including all adjustments for early retirement and form of payment), with no prior adjustments under the provisions of COLA included.

(b) Water/Wastewater Teamsters Participants. With regard to Water/Wastewater Teamsters Participants, the additional retirement allowance representing the COLA amount shall be an amount determined by multiplying (i) two and a half percent (2.5%), by (ii) the amount of the monthly benefit payment determined at the time of the Participant's retirement (including all adjustments for early retirement and form of payment), with no prior adjustments under the provisions of COLA included.

5.12 Employment Termination Prior to Effective Date. Notwithstanding anything in this Plan document to the contrary, the form and amount of the monthly retirement benefit of each

Participant who terminated employment with the Employer prior to the Effective Date shall be determined in accordance with the Prior Plan document that was in effect at the time of the Participant's employment termination.

ARTICLE VI - PAYMENTS FROM THE TRUST FUND

6.1 Pension Benefit Payments. Pension benefit payments shall be made to an eligible Participant or his Beneficiary from the Fund in such form or forms as the Participant has elected commencing on the first day of the month following the Participant's date of retirement. Such benefits may be provided through the purchase of an annuity policy from an insurance company in the Trustee's sole discretion.

6.2 Death Benefit Payment. If a Participant dies before benefits under the Plan have commenced, death benefit payments (if any) shall be made to the Participant's eligible beneficiary in accordance with Section 5.5. If a Participant dies after distribution of his or her interest has commenced, the remaining portion of such interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.

6.3 Reemployed Retired Participant. Benefit payments to any individual who is receiving a benefit under the Plan and is subsequently rehired by the Employer shall continue during that individual's period of reemployment with the Employer. The monthly benefit that is payable upon a Participant's subsequent employment termination date shall be reduced by the Actuarial Equivalent of any benefit payments (other than disability retirement benefit payments) that such Participant received prior to his or her Normal Retirement Date.

6.4 Non-Duplication of Benefits. Notwithstanding any provision of the Plan to the contrary, if any Participant becomes a former Employee due to a severance from employment with the Employer and again becomes a Participant, such renewed participation shall not result in duplication of benefits. Accordingly, if such Participant has received a distribution of all or a portion of his or her Accrued Benefit, then the normal retirement benefit and Accrued Benefit shall be actuarially reduced by the amount of such distribution.

6.5 Benefits Payable to Incompetents. If the Plan Administrator shall find that any person to whom a benefit is payable is unable to care for his or her affairs because of accident or illness, or is a minor, the Plan Administrator shall pay the benefit pursuant to whatever is ordered by a court of competent jurisdiction.

6.6 Nonalienation of Benefits.

(a) In General. The Fund shall not in any manner be liable for or subject to the debts or liability of any Participant or retired Participant. No right or benefit payable under the Plan shall ever be subject in any manner to alienation, sale, transfer, assignment, pledge or encumbrance of any kind either voluntarily or involuntarily.

(b) Exception for EDROs. Subsection (a) shall not apply to an "eligible domestic relations order" defined in Act 46 of 1991, Public Employees Retirement System Eligible Domestic Relations Order Act of Michigan. The administrator shall establish a written procedure to determine the eligible status of domestic relations orders and to administer distributions under such eligible orders. Further, to the extent provided under an "eligible domestic relations order,"

a former spouse of a Participant shall be treated as a spouse or surviving spouse for all purposes under the Plan.

(c) Exception for Certain Debts to Plan. Subsection (a) shall not apply to an offset to a Participant's Accrued Benefit against an amount that the Participant is ordered or required to pay to the Plan with respect to a judgment, order, or decree issued, or a settlement entered into in accordance with Code Sections 401(a)(13)(C) and (D).

ARTICLE VII - FINANCING

7.1 Trust Fund. All contributions made under this Plan shall be paid to the Trustee and deposited in the Fund. Except as otherwise provided in Section 9.6 below, all assets of the Fund, including investment income, shall be retained for the exclusive benefit of Participants and their beneficiaries, shall be used to pay benefits to such persons or to pay administrative expenses to the extent not paid by the Employers, shall not be diverted to or used for purposes other than for the exclusive benefit of the Participants in the Plan or their beneficiaries, and shall not revert to or inure to the benefit of any Employer. Notwithstanding anything herein to the contrary, on the request of the Employer, a contribution which was made by a mistake of fact shall be returned to the requesting entity within one year after the payment of the contribution, or the disallowance of the deduction (to the extent disallowed).

The Named Fiduciary shall exercise the power to manage and control the assets of the Trust which are held for the benefit of Plan Participants.

7.2 Employer Contributions. The Employer shall make contributions in such amounts and at such times as the Employer shall determine to be necessary to provide the benefits under the Plan determined by the application accepted actuarial methods and assumptions. The method of funding shall be consistent with Plan objectives.

Forfeitures arising under the Plan because of severance of employment before a Participant becomes eligible for a pension hereunder or for any other reason shall be applied to reduce the cost of the Plan, and not to increase the benefits otherwise payable to Participants.

7.3 Plan-to-Plan Transfers from Qualified Plans. With the consent of the Sponsor, amounts may be transferred to this Plan from other tax qualified plans under Code Section 401(a), provided the plan from which such funds are transferred permits the transfer to be made and the transfer will not jeopardize the tax-exempt status of the Plan or Trust or create adverse tax consequences for the Employer.

ARTICLE VIII - ADMINISTRATION OF THE PLAN

8.1 Plan Administrator and Designation of Administrative Authority. The Plan Administrator shall be the Sponsor. The Sponsor may appoint any person, including, but not limited to, the Employees of the Employer, to perform the duties of the Plan Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Sponsor. Upon the resignation or removal of any individual performing the duties of the Plan Administrator, the Sponsor may designate a successor.

8.2 Responsibilities. The Employer, Plan Administrator, Trustee and Investment Advisor shall have only those specific powers, duties, responsibilities and obligations as are specifically given them under this Plan or any other contract related hereto. The Employer shall have the sole responsibility for making the contributions that are necessary to provide benefits under the Plan, and shall have the sole authority to appoint and remove the Trustee, Plan Administrator and any Investment Advisor that may be provided for under the Trust, and to amend or terminate, in whole or in part, this Plan or the Trust. The Plan Administrator shall have the sole responsibility for the administration of this Plan, which responsibility is specifically described in this Plan, the Trust and administrative procedures, if any. The Trustee shall have the sole responsibility for the administration of the Trust and the management of the assets held under the Trust, all as specifically provided in the Trust and/or other contract.

The Employer, Plan Administrator, Trustee and Investment Advisor each warrants that any directions given, information furnished, or action taken by it shall be in accordance with the provisions of the Plan and/or other related contract, as the case may be, that authorizes or provides for such direction, information or action. Furthermore, each may rely upon such direction, information or action as being proper under this Plan, and is intended under this Plan that each shall be responsible for the proper exercise of its own responsibilities and obligations under this Plan and shall not be responsible for any act or failure to act of another. No fiduciary guarantees the Fund in any manner against investment loss or depreciation in asset value.

8.3 Records and Reports. The Plan Administrator shall keep a record of all actions taken and shall keep all other books of account, records, policies, and other data that may be necessary for proper administration of the Plan and shall be responsible for supplying all information and reports to the Internal Revenue Service, Participants, Beneficiaries and others as required by law.

8.4 Other Plan Administrator Powers and Duties. The Plan Administrator shall have such duties and powers as may be necessary to discharge its duties hereunder, including but not by way of limitation, the duties and powers described below.

(a) The Plan Administrator shall have authority to construe and interpret the Plan, decide all questions of eligibility and determine the amount, manner and time of payment of any benefits hereunder.

(b) The Plan Administrator shall have authority to prescribe procedures and forms to be followed by Participants or beneficiaries filing applications for benefits.

(c) The Plan Administrator shall have authority to prepare and distribute, in such manner as the Plan Administrator determines to be appropriate, information explaining the Plan, and to receive from the Participants such information as is necessary for the proper administration of the Plan.

(d) The Plan Administrator shall have authority to appoint or employ individuals to assist in the administration of the Plan and any other agents it deems advisable, including one or more investment managers (pursuant to the terms of the Trust) and legal and actuarial counsel and to pay the cost associated with such appointment or employment from Plan assets.

(e) The Plan Administrator shall have authority to receive, evaluate and act on all claims for benefits under the Plan in accordance with the procedure described in this subsection (e).

The Plan Administrator shall have discretionary authority and shall make all determinations as to the right of any person to a benefit. The Plan Administrator shall make each claim determination in a uniform and nondiscriminatory manner, provided that such determination shall be made within 90 days after the receipt of the claim by the Plan Administrator. The Plan Administrator shall either grant the claim, deny the claim, or notify the Participant, former Participant, or Beneficiary (hereafter "Claimant") that special circumstances have required the extension of time for the processing of the claim, such extension not to exceed 180 days from the original notice.

Within 30 days after denial of any benefit under the Plan, the Plan Administrator shall give to the Claimant written notice by certified mail, directed to their last address of record with the Plan Administrator, of the denial of claim for benefits. The notice shall set forth the specific reasons for such denial, shall make specific reference to Plan provisions upon which the denial is based, shall describe any additional material or information necessary for the Claimant to perfect their claim and why such material or information is necessary, and shall advise the Claimant that they may file a written appeal of the determination with the Plan Administrator within one hundred eighty (180) days after receipt of such Notice. In connection with such appeal, the Claimant or their duly authorized representative may review pertinent documents and submit issues and comments in writing. Failure of the Claimant to file written appeal with the Plan Administrator within the allowable 180-day period shall constitute an irrevocable consent by the Claimant to the Plan Administrator's decision denying the benefit claimed, and the Plan Administrator's written notice shall so state. Within 60 days after receipt of the request for review and receipt of all documents needed for the review, the Plan Administrator shall notify the Claimant either as to the decision on the appeal or that special circumstances require an extension of time for processing, such extension not to exceed 120 days from the date of the filing of the appeal. The claim appeal shall be reviewed by a fiduciary who is neither the party who made the initial adverse determination nor a subordinate of that party. The review may not afford deference to the initial denial of benefits and must take into account all comments, documents, records and other information submitted by the claimant, without regard to whether such information was previously submitted or relied upon in the initial determination.

(f) The Plan Administrator shall have authority to arrange for all services necessary for the proper administration of the Plan and to pay, from Plan assets, reasonable compensation pursuant to a reasonable contract for all such services. The Plan Administrator may arrange for any or all of such services to be supplied by the Employer and pay such compensation from Plan assets to the Employer in accordance with the requirements of relevant law.

8.5 Rules and Decisions. The Plan Administrator may adopt such rules as it deems necessary, desirable and appropriate. All rules and decisions of the Plan Administrator shall be uniformly and consistently applied to all Participants in similar circumstances. When making a determination or calculation, the Plan Administrator shall be entitled to rely upon information that is furnished by a Participant or beneficiary, the legal counsel to the Plan, the Actuary, the Plan accountants, the Trustee, the Investment Advisors or other consultants.

8.6 Authorization of Benefit Payments. The Plan Administrator shall issue directions to the directed Trustee concerning all benefits that are to be paid from the Fund pursuant to the provisions of the Plan and warrants that all such directions are in accordance with this Plan.

8.7 Application and Forms for Pension. The Plan Administrator may require a Participant or beneficiary to complete and file with the Plan Administrator an application for benefits and all other forms that are approved by the Plan Administrator and to furnish all pertinent information, including proof of age, that is requested by the Plan Administrator. The Plan Administrator may rely upon all such information so furnished, including the Participant's or beneficiary's current mailing address.

8.8 Facility of Payment. Whenever, in the opinion of the Plan Administrator, a person who is entitled to receive any payment of a benefit or installment thereof from this Plan is under a legal disability or is incapacitated in any way so as to be unable to manage his financial affairs, the Trustee may be given instructions to make payments to such person or to his or her legal representative or to a relative or friend of such person for his or her benefit, or the Plan Administrator may instruct the directed Trustee to apply the payment for the benefit of such person in such manner as the Authorized Employer Representative considers advisable. Any payment of a benefit or installment thereof in accordance with the provisions of this Section shall be a complete discharge of any liability for the making of such payment under the provisions of the Plan.

8.9 Indemnification. The governing body of the Employer, the Plan Administrator, and the individual members thereof shall be indemnified by the Employer and not from the Fund against any and all liabilities arising by reason of any act or failure to act that is made in good faith pursuant to the provisions of the plan, including expenses that are reasonably incurred in the defense of any claim relating thereto.

ARTICLE IX - AMENDMENT AND TERMINATION OF PLAN

9.1 Right to Terminate. In accordance with the procedures set forth in this Article IX and applicable law, the Sponsor may terminate the Plan in whole or in part at any time. In the event of the dissolution, merger, consolidation or reorganization of the Sponsor, the Plan shall terminate and the Fund shall be dealt with as set forth in this Article IX unless the Plan is continued by a successor to the Sponsor, pursuant to Section 9.8.

9.2 Right to Amend. The Sponsor reserves the right to make from time to time any amendment or amendments to this Plan which do not cause any part of the Fund to be used for, or diverted to, any purpose other than the exclusive benefit of Participants or their beneficiaries.

9.3 Effect of Amendment or Termination. No amendment of the Plan shall deprive any person who has a vested interest in the Plan of any such vested interest unless such deprivation shall be required to qualify or maintain qualification of the Plan under the Internal Revenue Code. No amendment or termination of the Plan shall cause any part of the Fund to revert to the Sponsor except as provided under Section 9.6 below. Upon termination or partial termination of the Plan, each affected Participant shall become fully vested in his or her Accrued Benefit. In the event of merger or consolidation with another plan or transfer of assets or liabilities to another plan, each Participant shall be entitled to the same or greater benefit under such other plan as he or she would have been entitled to under this Plan if this Plan had terminated at such time. This Section 9.3 shall be administered in accordance with the Code and applicable Michigan law.

9.4 Allocation of the Fund on Termination or Partial Termination. In the event of termination or partial termination of the Plan, the assets then remaining in the Fund, after providing the expenses of the Plan, shall be allocated, to the extent they shall be sufficient, for the purpose of paying benefits in the order of precedence and in the manner set forth in Section 9.5 hereof.

9.5 Disposition of Assets on Termination or Partial Termination. Upon any termination (full or partial), all amounts shall be allocated in accordance with the provisions hereof and the Accrued Benefit, to the extent funded as of such date, of each affected Participant shall become fully vested and shall not thereafter be subject to forfeiture. However, Participants who were not fully vested at the time they received a complete distribution of their vested benefits prior to the date of termination, shall not become entitled to any additional vested benefits on account of Plan termination. The preceding sentence does not apply to Participants who are affected by a partial termination by operation of law. Upon full termination of the Plan, the Employer shall direct the distribution of the assets in the Trust Fund to the Participants in a manner which is consistent with the terms of this Plan, the Code, and relevant Michigan law. In such case, the Trustee shall distribute the assets to the remaining Participants in the Plan and to retired Participants in cash or through the purchase of irrevocable deferred commitments from an insurer, subject to provision for expenses of administration or liquidation. Such distributions shall be allocated in the following order to the extent of the sufficiency of such assets, basing such allocation on the Accrued Benefit for each such Participant at the date of termination of the Plan: (1) to provide pensions to retired Participants who have retired under the Plan prior to its termination without reference to the order of retirement; (2) to provide normal retirement benefits to Participants who have reached their Normal Retirement Dates but have not retired on the date of termination, without reference to the order in which they shall have reached their Normal Retirement Date; and (3) to provide normal retirement benefits to Participants who have not yet reached their Normal Retirement Date on the date of termination, without reference to the order in which they will reach their Normal Retirement Date. Such benefits will be based upon Accrued Benefits as of the date of termination.

If the assets of the Fund that are applicable to any of the foregoing categories are insufficient to provide full benefits for all persons in such group, the benefits that are otherwise payable to such individuals shall be reduced proportionately. The Actuary shall calculate the allocation of the assets of the Fund in accordance with the above priority categories and certify his calculations to the Plan Administrator.

9.6 Residual Amounts. In no event shall the Employer receive any amounts from the Trust Fund upon termination of the Plan, except that, and notwithstanding any other provision of the Plan, it shall receive such amounts, if any, as may remain after the satisfaction of all liabilities of the Plan and arising out of any variations between actual requirements and expected actuarial requirements.

9.7 No Additional Liability. Upon termination of the Plan, a Participant shall have recourse toward satisfaction of his or her nonforfeitable benefit only from the Plan assets, subject to applicable Michigan law.

9.8 Successor Sponsor. In the event of the dissolution, merger, consolidation or reorganization of the Employer, provision may be made by which the Plan and Trust will be continued by its successor; and, in that event, such successor shall be substituted for the Employer under the Plan. The substitution of the successor shall constitute an assumption of the Employer's Plan liabilities

by the successor and the successor shall have all the powers, duties, and responsibilities of the Employer under the Plan.

9.9 Plan Assets. In the event of any merger or consolidation of the Plan, or transfer in whole or in part of the assets and liabilities of the Trust Fund to another trust fund held under any other plan of deferred compensation maintained or to be established for the benefit of all or some of the Participants of this Plan, the assets of the Trust Fund applicable to such Participants shall be transferred to the other trust fund only if:

(a) each Participant would be entitled to a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he or she would have been entitled to immediately before the merger, consolidation or transfer (if this Plan had then terminated);

(b) the Sponsor shall comply with reporting and disclosure requirements applicable to the proposed transaction;

(c) resolutions of the governing body of the relevant Employer under this Plan, and any new or successor employer of the affected Participants, shall authorize such transfer of assets; and, in the case of the new or successor employer of the affected Participants, its resolutions shall include an assumption of liabilities with respect to such Participants' inclusion in the new employer's plan, and

(d) such other plan and trust are qualified under Code Sections 401(a) and 501(a).

ARTICLE X - MISCELLANEOUS

10.1 Unclaimed Pension Checks. If a check in payment of a benefit payable under this Plan has been mailed by regular United States mail to the last address of the payee furnished to the Plan and the check is returned unclaimed, payments to such payee shall be discontinued and shall be held by the Plan while the Plan Administrator conducts a search for the payee. If the Plan Administrator is unable to locate the payee after such a search, then the amount held in the Plan for said payee shall be forfeited. Said forfeiture shall occur as of the last day of the Plan Year in which the Plan Administrator concludes its search without locating the payee. If the payee later files a claim for benefits with the Plan, the Employer must promptly reinstate the forfeited benefit on behalf of the payee. Payment of the restored benefit to said payee will commence as soon as reasonably possible after the Plan Administrator determines that the Plan authorizes the payment.

10.2 Correction of Errors. Notwithstanding any other provision of this Plan to the contrary, the Sponsor and the Plan Administrator reserve the right to correct (retroactively, if necessary) any error in the Plan language or in the administration of the Plan which was inadvertently made in the good faith creation and/or administration of this Pension program.

10.3 Nonguarantee of Employment. Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Participant, or as a right of Participant to be continued in the employment of the Employer, or as a limitation of the right of the Employer to discharge any of its Participants, with or without cause.

10.4 Gender and Number. Whenever applicable, the masculine pronoun shall include the feminine pronoun, and the singular shall include the plural.

CITY OF ESCANABA

Dated: _____

By: _____

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into effective _____, 2023, by and between the CITY OF ESCANABA DEFINED BENEFIT RETIREMENT BOARD (hereinafter referred to as “Client”), and CAVANAUGH MACDONALD CONSULTING, LLC, 3550 Busbee Parkway, Suite 250, Kennesaw, GA 30144 (hereinafter referred to as “Consultant”).

WITNESSETH:

WHEREAS, the Client is desirous of retaining professional actuarial valuation and consulting services for the CITY OF ESCANABA DEFINED BENEFIT RETIREMENT PLAN (hereinafter referred to as “Plan”), and

WHEREAS, the Client has selected Cavanaugh Macdonald Consulting, LLC for that purpose;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and promises herein contained, the parties hereto agree as follows:

I. SCOPE OF WORK

A. The Consultant shall provide the services as follows:

1. At the direction of the Client, the Consultant shall prepare detailed actuarial valuations of the Plan, such valuations to provide an orderly measurement of the progress and status of the Plan, to be based on detailed and up-to-date tabulations of active and inactive participants, current pensioners investment experience, and any other such detailed information as Consultant and the Client may mutually determine to be pertinent to the purpose of the review. Such actuarial valuations shall provide all financial and statistical information as may be currently required to prepare financial statements under generally accepted accounting principles, and any statutory or regulatory requirements for reporting to State and Federal agencies as is now or may hereafter be enacted or adopted, to include the services listed under section 2, Project Tasks of the TERMS & COMPENSATION portion of this Agreement.
2. The Consultant warrants to Client that the services performed under this Agreement will be performed in accordance with generally accepted industry standards.
3. Nothing in this Agreement is intended or shall be construed to give the Consultant discretionary authority or discretionary responsibility in the management of business operations or administration of the Plan. The relationship of Consultant (or any of its officers, directors, or employees) to the Client (or any of its officers, directors, or employees) is intended to

be only that of an independent contractor and service provider and not employee, agent, fiduciary or other similar relationship.

4. Consultant agrees to provide written updates to Client informing it of any changes or amendments regarding governmental accounting and reporting requirements established by any regulatory authority. All updates to Client will include fiscal and reporting impact of new accounting rules.
5. The Consultant shall provide Client with verbal consultations during the Initial Term of this Agreement on any renewal thereof at no additional cost.

(Collectively, the “Services”).

II. TERM & COMPENSATION

- A. The term of this Agreement shall be for a period of six (6) years beginning on June 30, 2023 and ending on June 30, 2029 (the “Initial Term”) and may be renewed upon mutual agreement of the parties for an additional two years on the same terms and conditions set forth in this Agreement.
- B. The Client agrees to compensate the Consultant for the provision of the Services under this Agreement as follows:

Services Fee

The Services Fee shall be a fixed fee for the actuarial valuation reports as follows:

	Fee Quote for Year Beginning June 30,					
	2023	2024	2025	2026	2027	2028
Regular Annual Valuation Services	\$13,500	\$13,750	\$14,000	\$14,250	\$14,500	\$14,750

Project Task

- Annual Actuarial Valuation Reports
 - Valuation Planning
 - Data Collection
 - Reviewing and setting the actuarial bases for the valuation
 - Determination of actuarial costs
 - Review of valuation results
 - Annual report presentation

 - Preparation of annual financial accounting disclosure as required in GASB statements Nos. 67/68.
 - Preparation for and attendance at Pension Board Meeting
 - Up to five benefit calculations per year
 - Preparation of experience study to be implemented with the June 30, 2028 actuarial valuation
- C. Additional Work - Additional work outside the scope of services in this proposal will be billed at the hourly rate structure as follows and is required to have written approval of the Client or the City of Escanaba, Michigan prior to work being performed:

Title	Hourly Rate
Principal or Chief Actuary	\$380 - \$440
Consulting Actuary	\$340 - \$400
Senior Actuary/Associate Actuary	\$320 - \$375
Senior Actuarial Analyst	\$270 - \$350
Actuarial Analyst	\$260 - \$300
Other	\$135 - \$150

The Consultant will provide a fixed fee quote if the scope can be defined.

Benefit calculations are \$300 per calculation beyond five each fiscal year. Standard EDROs are \$1,200 per calculation, and EDRO recalculations are \$550.

- D. The Consultant agrees to comply with all applicable federal, state and local laws and rules and agrees to act in accordance with the standards of the actuarial profession.

- E. The Consultant shall submit an invoice upon completion of the entire actuarial valuation report. Invoices for services rendered shall be sent to the email address set forth in the NOTICE section of this Agreement to the attention of James McNeil. The Client shall pay such invoices within thirty (30) days of its receipt

and approval of said invoices. The Client is not obligated to pay, and will withhold from payment, any amounts the Client has in dispute with the Consultant based on Consultant's non-performance or negligent performance of any of the Services under this Agreement.

III. REPRESENTATIONS OF CONSULTANT

Consultant covenants to Client that:

- A. Consultant has full power and authority to enter into this Agreement and to perform the services described herein. Execution of this Agreement by Consultant will not violate any other Agreement with a third party. The person signing this Agreement on behalf of Consultant has been properly authorized and empowered to enter into this Agreement.
- B. There are no pending or threatened suits, legal proceedings, claims, or governmental investigations against or with respect to Consultant relating to actuarial services as more specifically described in this Agreement.
- C. All statements made and materials supplied by Consultant regarding its qualifications to perform the services contemplated under this Agreement, including without limitation, Consultant's response to Client's request for proposals, are true and correct and are not misleading for any reason, including by reason of omission.
- D. Consultant acknowledges that the foregoing representations of warranty shall be continuing, and agrees to promptly inform Client in writing should any of the foregoing become untrue.

IV. INDEMINIFICATION INSURANCE

Consultant shall indemnify, defend, and hold harmless Client and its agents, employees, officers and trustees, and each of them, from any and all claims or liabilities of whatsoever or kind in nature, including judgments, interests, attorneys' fees, and all other costs, fees, expenses, and charges which Client and its agents, employees, or officers and trustees, or each of them may incur arising out of any act, omission, breach of this Agreement, or other activity conducted by Consultant or its agents, employees or other representatives in connection with this Agreement. Consultant shall maintain during the period of this Agreement professional liability insurance of at least Two Million and 00/100 (\$2,000,000.00) Dollars in policy limits covering claims or suits arising out of Consultant's services; Consultant will include Client as an additional insured on the policy as to matters covered by this Agreement and Consultant shall furnish to Client evidence of that insurance prior to commencement of the Services. Consultant agrees to maintain such insurance from the time Services commence until such Services are completed. Failure to maintain or renew insurance coverage or to provide evidence of renewal may be treated by Client as a breach of contract.

V. RIGHT TO AUDIT

- A. For all work performed under this Agreement, Client has the right to inspect, examine and make copies of any and all books, accounts, records (including digital), and other documents related to the performance of Services by Consultant. Consultant shall, at its own expense, make such records available for inspection and audit (including copies and extracts of records, as required) by the Client at all reasonable times and within one (1) week of an audit request.
- B. The Client shall, at all times during the term of this Agreement and for a period of seven (7) years following the termination of this Agreement, keep and maintain records of the services performed. Documents and records shall be maintained by Consultant necessary to clearly reflect all work and actions taken in its performance of its services. All such records shall be maintained in accordance with generally accepted accounting principles.
- C. Costs of any audits conducted under the authority of this section and not addressed elsewhere shall be borne by the client unless the audit identifies significant findings that would benefit the Client. Consultant shall reimburse the Client for the total cost of an audit that identifies significant findings that would benefit the Client.
- D. This Section V. shall not be construed to limit, revoke or abridge any other rights, powers, or obligations relating to audits which the Client may have by federal, state or municipal law, whether those rights, powers, or obligations are express or implied.

VI. NOTICES

All notices and reports after the date of this Agreement, and any other communications required hereunder, shall be in writing and shall be deemed to have been duly given (i) if delivered in person or by courier, on the date it is delivered; (ii) if sent by certified or registered mail or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; and (iii) if sent by facsimile or email, on generation of confirmation, to the following respective addresses, until a different address is specified in writing by one party to the other party:

To Consultant:
Cavanaugh Macdonald Consulting, LLC
Attention: Larry Langer
819 North Brainard Street
Naperville, IL 60563
(630) 632-8668 - Telephone
(678) 388-1730 - Facsimile
larryl@cavmacconsulting.com

To Client:
City of Escanaba Defined Benefit Retirement Board
Attn: James McNeil
City Manager/City Assessor, Retirement Board Secretary
First Floor City Hall
410 Ludington Street
Escanaba, MI 49829
(906) 789-7322 - Telephone
(906) 786-4755 – Facsimile
jmcneil@escanaba.org

VII. BREACH OF AGREEMENT

If either party shall default in the performance of its obligations under this Agreement, then the non-defaulting party shall notify the other party of such default in writing. The defaulting party shall have fifteen (15) days within which to cure such default or, if such default cannot be cured within fifteen (15) days, then the defaulting party shall commence cure within such fifteen (15) days and diligently proceed cure until its completion. If the defaulting party fails to cure such default within the appropriate time period, or if a substantially similar default occurs twice within any twelve (12) month period which is reasonably deemed to be material to the overall obligations of the parties under this Agreement, then the non-defaulting party shall have the right to terminate and cancel this Agreement by notice in writing to the defaulting party immediately notwithstanding the six (6) month notice provision for early termination under Section VIII. The non-defaulting party shall have the right to recover from the defaulting party all costs, losses, and damages, including reasonable attorney's fees, caused by such default.

VIII. GENERAL CONDITIONS

The parties further agree as follows:

- A. Termination – This Agreement may otherwise be terminated: (a) by the Consultant providing written notice to the Client at least six (6) months prior to the period for which the valuation is to be performed, or (b) by the Client providing written notice to the Consultant at least seven (7) days prior to such termination provided, however, that this Agreement may be terminated by the Consultant pursuant to clause (a) above only for reasonable cause relating to the Consultant's continued ability to effectively provide services to the Client. Such reasonable causes shall include but not be limited to substantial turnover of key personnel. This Agreement may be terminated by the Client pursuant to clause (b) above for any reason or no reason. This Agreement shall terminate automatically on the occurrence of any of the following events:

- Bankruptcy or insolvency of the Consultant;
- Sale of the business of the Consultant;
- Dissolution of the business of the Consultant;
- Assignment of this Agreement by the Consultant without the consent of the Client.

In the event the Agreement is terminated by Client, the Consultant shall be paid for work actually performed to the date of termination, plus bona fide expenses to date of termination, less the cost to the Client of making good any deficiencies, correcting work improperly performed and any additional cost to the Client for removing or replacing the Consultant. Said final payment shall be made to the Consultant within 30 days of the date of final invoice.

- B. Assignment – The Consultant agrees to make no assignment of any of its rights, duties or obligations under this Agreement without the specific approval of the Client.
- C. Force Majeure - Notwithstanding the foregoing, a party's failure to perform any of its obligations under the Agreement shall be excused if and to the extent (and only for so long as) such failure arises out of (a) causes beyond the reasonable control and without the fault or negligence of the nonperforming party including, but not restricted to failure of Internet or communication lines, telephone or other interconnect problems, errors, configuration problems or incompatibility of computer hardware or software; voluntary shutdown of the server to address computer viruses, or other similar problems; or severe weather, earthquakes, labor disputes, fire, flood, explosion, Act of God, terrorist act, war insurrection, riot, government regulation or act, vandalism, strike quarantine, failure of transmission or power supply.
- D. Governing Law - This Agreement shall be construed in accordance with the laws of the State of Michigan. Venue as to any actions shall rest in the City of Escanaba, Michigan.
- E. Confidentiality – The Consultant may not disclose to any third party any Client member specific information that it may receive intentionally or unintentionally as a result of performing its duties under this Agreement, unless required by applicable law or Client provides its written approval.
- F. Severability – If any provision of this Agreement shall be waived or be determined invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unaffected thereby and shall remain binding and in full force and effect.

- G. Binding Authority – The Consultant hereby certifies that the person signing the Agreement on behalf of the Consultant has full authority to enter into the subject Agreement with the Client and to legally bind the Consultant to the terms herein.

IX. MISCELLANEOUS

If any provision of this Agreement is or should become inconsistent with any law or rule of any governmental or regulatory body having jurisdiction over the subject matter of this Agreement, the provision will be deemed to be rescinded or modified in accordance with any such law or rule. In all other respects, this Agreement will continue and remain in full force and effect. No term or provision of this Agreement may be waived or changed except in writing signed by the party against whom such waiver or change is sought to be enforced. The failure of either party to insist at any time upon strict compliance with this Agreement or with any of the terms of the Agreement or any continued course of such conduct on either party's part will not constitute or be considered a waiver by either party of any of their respective rights or privileges. This Agreement contains the entire understanding between Client and Consultant concerning the subject matter of this Agreement. In the performance of this Agreement, Consultant agrees to comply with federal and state laws concerning discrimination and equal opportunity, including, but not limited to, 42 U.S.C. § 2000(d), *et seq.* and T.C.A. § 4-21-101, *et seq.* In the event of the termination of employment or affiliation of actuarial consultants working on Client's account or any principal of Consultant, Consultant agrees to provide Client with written notice within five (5) business days.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective on the date first hereinabove recited.

CLIENT

By: _____

Title: _____

CONSULTANT

By: _____
Larry Langer

Title: Principal and Consulting Actuary_____



INVESTMENT MANAGEMENT AGREEMENT

AGREEMENT, effective this ____ day of _____, 2023, Between the City of Escanaba Defined Benefit Retirement Board, ("Client") whose Address is 410 Ludington Street, Escanaba, MI 49829 and First Bank Upper Michigan, a Michigan Banking Corporation, whose address is 1921 3rd Avenue North, Escanaba, MI 49829 ("Advisor").

1. **Appointment.** Client hereby establishes an "Account" and appoints and retains the Advisor to manage and supervise the Account. Client may choose to self-direct the investments or authorizes Advisor to direct the investments, make and implement all investment decisions therein; all without prior consultation with Client as to any particular investment decision, but in accordance with such investment objectives, limitations and policy as Client may, from time-to-time, have furnished the Advisor. The Account shall consist of the funds, securities and other assets that may be transferred in from other sources and subsequently include any changes, additions and withdrawals thereto, including earnings and profits. Client may add to, withdraw from or change the assets of the Account by written, oral, or telephone request to the Advisor.

- The Advisor will fully invest this account.
 The Client will self-direct the investments in this account.

2. **Custody of Account.** First Bank Upper Michigan Investment Management Group shall serve as the Custodian of this Account. First Bank Upper Michigan Investment Management Group shall have the sole responsibility for the custody and safekeeping of the assets of the Account.

3. **Investment Policy.** Client shall specify the general investment objectives and policy to be followed by Advisor in its exercise of the investment authority granted hereunder, including such limitations on the authority of Advisor as client might impose. The initial investment objectives and policy, and limitations of authority shall be set forth in the Investment Policy Statement, and may be amended from time-to-time by the Client in writing to the Advisor.

4. **Reports to Clients.** Advisor will send Client a monthly or quarterly report, including a statement of assets.

- I wish to receive a monthly report.
 I wish to receive a quarterly report.

5. **Examination of Reports.** Client shall examine each such statement promptly and if Client does not notify Advisor of the disapproval of any such statement in writing within one year after receipt thereof, Client shall be deemed to have approved the statement.

6. **Confidentiality.** This Agreement and any communications between the parties shall be treated as confidential and shall not be disclosed to third parties except as required by law or authorized in writing by the Client.

7. **Brokerage.** Unless otherwise directed by Client and in compliance with any applicable federal securities laws, orders may be placed with such brokers, dealers or banks as Advisor may select.

8. **Proxies.** First Bank Investment Management Group will receive all proxies. Shares will be voted in accordance with its Investment Policies, unless other arrangements have been made.

9. **Compensation.** Advisor's Compensation for the services shall be 25 basis points per annum deducted from the account in monthly installments.

10. **Liability of Advisor.** Advisor shall not be responsible or liable for any error of judgment, or for any mistake of law, for any costs, expenses, liability, losses or decline in the value of any securities or other assets in the Account unless it is established to have been caused by the Advisor's misfeasance or bad faith on the performance of Advisor's duties, or by reason of Advisor's disregard of its obligations under this Agreement, or breach of any statutory duty.

11. **Agreement Not Assignable.** No assignment (as that term is defined in the *Investment Advisors Act of 1940*) of this agreement may be made by Advisor without written consent of Client.
12. **Termination.** This Agreement may be terminated at any time upon (180) days prior written notice by either party, or at such other interval as may be mutually agreed to, with termination being effective on the date stated in the notice.
13. **Notices.** Notices required to be given under this agreement shall be delivered in person or sent by first class mail to the client.
14. **Entire Agreement; Interpretation; Effectiveness.** This Agreement constitutes the entire agreement of the parties with respect to Advisor's Services for the Account and can be amended only by a written agreement signed by the parties. This agreement shall be interpreted and construed under federal law to the extent permitted, and the laws of the State of Michigan shall govern any parts not governed thereby. This Agreement shall not be effective until executed and accepted by the Advisor in its office.

In Witness Whereof, the parties have caused this Agreement to be effective on the date set forth above.

AUTHORIZED SIGNATURES

Dated: _____, 2023

Authorized Signature #1

Name: _____

Title: _____

Dated: _____, 2023

Authorized Signature #2 (if required)

Name: _____

Title: _____

**ACCEPTED:
FIRST BANK INVESTMENT MANAGEMENT GROUP**

Dated: _____, 2023

By: _____

Robert Valentine

Its: _____

Vice President