



**DISTRICT OF COLUMBIA  
WATER AND SEWER AUTHORITY**

Board of Directors  
**Human Resources and Labor Relations Committee**

Tuesday, April 09, 2019  
11:00 am

- 1. Call to Order.....Ellen Boardman  
Vice Chair
- 2. [DC Water 401\(a\) and 457\(b\) plan documents](#)
- 3. Certification of Action Form
- 4. Adjournment.....Ellen Boardman  
Vice Chair

\* The DC Water Board of Directors may go into executive session at this meeting pursuant to the District of Columbia Open Meetings Act of 2010, if such action is approved by a majority vote of the Board members who constitute a quorum to discuss: matters prohibited from public disclosure pursuant to a court order or law under D.C. Official Code § 2-575(b)(1); contract negotiations under D.C. Official Code § 2-575(b)(1); legal, confidential or privileged matters under D.C. Official Code § 2-575(b)(4); collective bargaining negotiations under D.C. Official Code § 2-575(b)(5); facility security under D.C. Official Code § 2-575(b)(8); disciplinary matters under D.C. Official Code § 2-575(b)(9); personnel matters under D.C. Official Code § 2-575(b)(10);proprietary matters under D.C. Official Code § 2-575(b)(11); decision in an adjudication action under D.C. Official Code § 2-575(b)(13); civil or criminal matters where disclosure to the public may harm the investigation under D.C. Official Code § 2-575(b)(14), and other matters provided in the Act.

**DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**  
**DEFINED CONTRIBUTION PLAN**

**Effective July 1, 2017**  
**(with certain other effective dates noted herein)**

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**DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY  
DEFINED CONTRIBUTION PLAN**

**Amendment and Restatement  
Effective July 1, 2017  
(with certain other effective dates noted herein)**

**PREAMBLE**

The District of Columbia Water and Sewer Authority (the "Authority") established the DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY DEFINED CONTRIBUTION PLAN (the "Plan") originally effective as of January 2, 2000 and restated and amended as of January 1, 2002 and further restated and amended as of January 1, 2009. The Plan is a defined contribution plan with discretionary and nondiscretionary contributions that are made by the Authority. The Plan is designed to encourage eligible employees to save for retirement and to increase their security at retirement during their periods of active employment while the Plan remains in effect. The Plan is a discretionary contribution plan that is intended to qualify under section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code") and is a "governmental plan" within the meaning of Code § 414(d) and section 3(32) of the Employee Retirement Income Security Act of 1974, as amended. Therefore, pursuant to Code §§401(a)(5)(G) and 410(c)(1)(A), the Plan is intended to qualify as exempt from the nondiscrimination requirements of Code §401(a)(4) and the minimum coverage requirements of Code §410(b).

The Authority hereby amends and restates the Plan, effective generally as of July 1, 2017, in order to clarify the incorporation into this Plan the provisions of the Master Agreement on Compensation between the Authority and Compensation Unit 31 and to incorporate changes required by the Code and related Treasury guidance and Regulations.

Except as is otherwise explicitly provided in the Plan or as is required by applicable law, the terms of the Plan, as amended and restated by this document, shall apply only with respect to persons who are Employees of the Authority on and after July 1, 2017, and the rights, benefits and interests of any Employee who died, retired or otherwise terminated his or her employment with the Authority prior to July 1, 2017, shall be determined under the provisions of the Plan as in effect on the date such former Employee died, retired or otherwise terminated his or her employment with the Authority.

**ARTICLE 1**  
**DEFINITIONS**

When used herein, the following words and phrases have the following meaning, unless different meanings are clearly required by the context:

1.1 ADMINISTRATOR means the Authority or any other person, committee or entity that has been designated by the Authority as Administrator.

1.2 AUTHORITY means the District of Columbia Water and Sewer Authority and any successor or successors thereto.

1.3 AUTHORITY CONTRIBUTION means Basic Contributions, Matching Contributions, and Discretionary Contributions (if any) made by the Authority.

1.4 AUTHORIZED LEAVE OF ABSENCE means an authorized absence from active service, under conditions described in Section 3.3, which does not constitute a termination of employment

1.5 BASIC CONTRIBUTION ACCOUNT means that portion of a Participant's Plan Account which is attributable to Basic Contributions made under Section 4.1.

1.6 BASIC CONTRIBUTIONS means the basic contributions made by the Authority pursuant to Section 4.1.

1.7 BENEFICIARY means the person or persons designated by the Participant with the Administrator as being entitled to receive the Participant's Plan benefits upon the Participant's death, or, in some cases, after the death of the Participant's designated Beneficiary. If there is no designated Beneficiary, a Participant's Beneficiary shall be his or her surviving spouse, or if he or she has no surviving spouse, the Participant's estate.

1.8 BOARD means the Board of Directors of the Authority.

1.9 CODE means the Internal Revenue Code of 1986, as amended, and shall be deemed to include the regulations issued thereunder.

1.10 COMPENSATION means the regular or base salary or wages paid by the Authority to a Participant during each Plan Year (or portion thereof) that such person is a Participant. "Compensation" excludes amounts paid as overtime; compensatory time; gainsharing awards; bonuses; on-call, call-in or call-back pay; hazard pay; differentials; premium pay; penalties; and incentive and other extra compensation. "Compensation" shall include amounts which are paid out of an Employee's remuneration from the Authority and which are "elective contributions" which are not includible in income by reason of the application of Code §125, 401(k), 402, 403(b), deferrals under an eligible deferred compensation plan within the meaning of Code §457(b) or amounts deferred to a qualified transportation fringe benefit program which are not includible in gross income under Code §132(f)(4). "Compensation" does not include "elective contributions" that the Authority treats as "pick-up" contributions within the meaning of Code §414(h)(2).

Notwithstanding any other provision of the Plan, the Compensation of any Participant taken into account under the Plan for any year may not exceed the dollar limit under Code §401(a)(17). This dollar limitation shall be adjusted automatically at the same time and in the same manner as any cost-of-living increase adjustment made by the Secretary of the Treasury under Code §415(d) (as modified by Code §401(a)(17)). The Code §401(a)(17) dollar limit is two hundred seventy-five thousand dollars (\$280,000.00) for 2019 (to thereafter be adjusted automatically for

cost-of-living increases in accordance with §611(c) of the Economic Growth and Tax Relief Reconciliation Act of 2001). The cost-of-living adjustment in effect for a calendar year applies to Compensation for the Plan Year that begins with or within such calendar year.

The definition of "Compensation" for purposes of the Plan shall reflect the special rules applicable to differential wage payments, as defined by Code §3401(h)(2), in accordance with, and to the extent required by, §105(b) of the HEART Act and subsequent guidance issued thereunder. Accordingly, the differential wage payment shall be treated as compensation for purposes of applying the Code, including Code §415(c)(3) and Treasury Reg. §1.415(c)-2, but shall not be treated as Compensation for purposes of determining contributions under the Plan.

1.11 COMPENSATION UNIT 31 means those Employees who are covered by the Master Agreement on Compensation in the collective bargaining units represented by American Federation of Government Employees (AFGE) Locals 631, 872, 2553; American Federation of State, County and Municipal Employees (AFSCME), Local 2091; and National Association of Government Employees (NAGE), Local R3-06.

1.12 DISABLED OR DISABILITY means the total and permanent disability of the Participant (incurred while in the active service of the Authority) based on proof satisfactory to the Administrator. Total and permanent disability shall mean any medically determinable physical or mental impairment which can be expected to result in death or to last at least twelve (12) months, and by reason of which the Participant will be prevented from performing his normal duties for the Authority.

1.13 DISCRETIONARY CONTRIBUTION ACCOUNT means that portion of a Participant's Plan Account which is attributable to Discretionary Contributions made pursuant to Section 4.3.

1.14 DISCRETIONARY CONTRIBUTIONS means the discretionary contributions made by the Authority pursuant to Section 4.3.

1.15 EFFECTIVE DATE means July 1, 2017.

1.16 ELIGIBLE EMPLOYEE means any Employee (including an Employee in Compensation Unit 31) who is classified by the Authority as a "regular" or "at-will" full-time Employee other than: (a) an employee of the Authority who is covered by the Civil Service Retirement System (e.g., those individuals who were employed by the Authority's predecessor, the Water and Sewer Utility Administration of the District of Columbia Department of Public Works, prior to October 1, 1987 and who became covered by the Civil Service Retirement System pursuant to 5 U.S.C. §8331(1)(G)); (b) an Employee in Compensation Unit 31 who elects to remain in the District of Columbia Defined Contribution Plan after the Effective Date pursuant to the provisions of Article 15 of the Master Agreement on Compensation and the DC Water and Sewer Enabling Act — DC Law 11-111, Section 215(b); (c) a Leased Employee; and (d) an employee included in a unit of employees covered by a collective-bargaining agreement with the Authority that does not expressly provide for participation of such employees in this Plan, where there has been good-faith bargaining

between the Authority and the employees' representatives on the subject of retirement benefits. If a collective bargaining agreement expressly provides for participation in the Plan, an Employee covered by such an agreement shall be deemed to be an Eligible Employee as of the date specified therein (or if no date is specified in the collective bargaining agreement, as of the first day on which the Employee becomes a Participant in the Plan in accordance with the terms of such collective bargaining agreement). Employees who are classified by the Authority as "temporary" or "interns" are not Eligible Employees. In addition, "regular" or "at-will" Employees who are classified by the Authority as "part-time" are not Eligible Employees. An employee of the Authority who was covered under the Civil Service retirement System and experienced a severance from employment due to his retirement shall not become an Eligible Employee upon his subsequent reemployment with the Authority as an Employee.

1.17 EMPLOYEE means a person who is a regular employee of the Authority (as determined by the Administrator). The term "Employee" shall not include any person who is classified by the Authority as working or providing services in a non-employee capacity (including, without limitation, a person classified as an independent contractor) notwithstanding the later reclassification by a court or any regulatory agency of the person as a common law employee of the Authority.

1.18 EMPLOYMENT COMMENCEMENT DATE OR REEMPLOYMENT COMMENCEMENT DATE means the date on which a person first performs service for the Authority as an Employee following a Period of Severance.

1.19 LEASED EMPLOYEE means any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with Code §414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient.

1.20 MATCHING CONTRIBUTION ACCOUNT means that portion of a Participant's Plan Account which is attributable to matching contributions made under Section 4.2.

1.21 MATCHING CONTRIBUTIONS means the matching contributions made by the Authority pursuant to Section 4.2.

1.22 NON-REPRESENTED EMPLOYEE means any Employee who is not a member of a collective bargaining unit.

1.23 NORMAL RETIREMENT AGE means the Participant's sixty-fifth (65th) birthday.

1.24 NORMAL RETIREMENT DATE means the first day of the month coinciding with or next following a Participant's Normal Retirement Age.

1.25 PARTICIPANT means any Employee who participates in the Plan as provided in Article 2. A Participant shall continue to be a Participant as long as he or she has a Plan Account.

1.26 PERIOD OF SERVICE means a period of service commencing on the Employee's Employment Commencement date or Reemployment Commencement Date, whichever is applicable, and ending on the Employee's Severance from Service Date. Eligible Employees who were employed by the Water and Sewer Utility Administration of the District of Columbia Department of Public Works on April 17, 1996 and who became Employees of the Authority on April 18, 1996, shall, in determining their respective Periods of Service be given credit for periods of service with the Water and Sewer Utility Administration of the District of Columbia Department of Public Works.

1.27 PERIOD OF SEVERANCE means a period of time commencing on an Employee's Severance from Service Date and ending on the Employee's Reemployment Commencement Date.

1.28 PLAN ACCOUNT means the amount held under this Plan for the account of a Participant, and shall equal the sum as to each Participant of the Participant's Basic Contribution Account, Discretionary Contribution Account, Matching Contribution Account, and Rollover Contribution Account.

1.29 PLAN means the District of Columbia Water and Sewer Authority Defined Contribution Plan, as herein set forth and as it may hereafter be amended from time to time.

1.30 PLAN YEAR means the period beginning each January 1 and ending each December 31 during which this Plan is in effect.

1.31 REPRESENTED EMPLOYEE means any Employee who is a member of Compensation Unit 31 or another collective bargaining unit covered by the Plan.

1.32 ROLLOVER CONTRIBUTION ACCOUNT means that portion of a Participant's Plan Account which is attributable to contributions made under Section 4.5.

1.33 SEVERANCE FROM SERVICE DATE means the earlier to occur of: (a) the date on which an Employee quits, retires, or is discharged from employment with Authority or dies, or (b) the first date of a period in which an Employee remains absent from service (with or without pay) with the Authority for any reason other than quit, retirement, discharge or death, provided the employee does not return to service from such absence.

Solely for purposes of determining whether a Period of Severance has occurred, a Severance from Service Date shall not occur with respect to a Participant who is on Authorized Leave of Absence and who returns to work immediately following expiration of such Authorized Leave of Absence.

1.34 TAXABLE WAGE BASE means the maximum amount of earnings which may be considered wages for a year under Code §3121(a)(1) as in effect as of the beginning of the Plan Year. The Taxable Wage Base for each pay period shall be calculated by dividing the Taxable Wage Base in effect at the beginning of the Plan Year by the number of pay periods within that Plan Year.

1.35 TRUST means the trust established under a separate trust agreement which forms a part of this Plan.

1.36 TRUST FUND means the assets of the Trust.

1.37 TRUSTEE means the trustee of the Trust serving as such from time to time. As of the Effective Date, the Trustee is Fidelity.

1.38 VALUATION DATE means the last day of a Plan Year, and any other date or dates chosen by the Administrator as of which the Trust is valued pursuant to Article 7 or the Trust.

1.39 YEARS OF SERVICE means, for purposes of vesting, a Participant's total number of whole years and months of Periods of Service completed while an Eligible Employee. Any non-successive Periods of Service included in accordance with the provisions of Section 3.2 shall be aggregated and any Periods of Service less than a whole year or a whole month (whether or not consecutive) shall be aggregated on the basis that three hundred sixty-five (365) days of service equals a whole Year of Service and that thirty (30) days of service equals a whole month of service; provided, however, after aggregating a Participant's Periods of Service in accordance with the foregoing provisions hereof, any remaining days that constitute less than a whole month shall be disregarded.

## **ARTICLE 2** **PARTICIPATION**

2.1 INITIAL ELIGIBILITY. Each person who is a Participant on the Effective Date shall continue as a Participant in the Plan on the Effective Date.

### 2.2 SUBSEQUENT ELIGIBILITY.

(a) Each Employee who is employed by the Authority on the Effective Date but who is not an Eligible Employee on the Effective Date shall become a Participant on the date he or she subsequently becomes an Eligible Employee.

(b) Each Eligible Employee hired on or after the Effective Date will become a Participant on his or her date of hire, provided he or she is an Eligible Employee on that date. If an Employee is not an Eligible Employee on his or her date of hire, the Employee shall become a Participant on the date he or she subsequently becomes an Eligible Employee.

### 2.3 TERMINATION OF PARTICIPATION.

(a) After commencement of his or her participation, an Eligible Employee shall remain a Participant until the earlier of (1) the date he or she terminates employment with the Authority for any reason; or (2) the date he or she ceases to be an Eligible Employee.

(b) A Represented Employee who elects to remain a participant in the District of

Columbia 401(a) Defined Contribution Pension Plan after December 31, 2001 shall cease to be an Eligible Employee (and such Represented Employee shall not be entitled to participate in the Plan during any period in which the Represented Employee remains a participant in the District of Columbia 401(a) Defined Contribution Pension Plan).

(c) An Employee who ceases to be an Eligible Employee but who remains employed by the Authority, shall continue to accrue credit for Years of Service for purposes of vesting in his or her Plan Account, but such Employee shall not receive any allocation or contribution under Article 4 with respect to Compensation paid for any payroll period beginning on or after the date the Employee ceases to be an Eligible Employee. Thus, for example, a Represented Employee who ceases to be an Eligible Employee on the Effective Date because he or she elects to remain a participant in the District of Columbia 401(a) Defined Contribution Pension Plan after December 31, 2001 shall cease to be entitled to, and shall not receive, any allocation of contributions under Article 4 with respect to Compensation attributable to any payroll period in which the Represented Employee remains a participant in the District of Columbia 401(a) Defined Contribution Pension Plan.

(d) An Employee who ceases to be an Eligible Employee (including a Represented Employee who elects to remain in the District of Columbia 401(a) Defined Contribution Pension Plan after December 31, 2001) who has an undistributed Plan Account shall be treated as a Participant with respect to the investment and distribution of his or her Plan Account until such Plan Account is distributed or forfeited pursuant to the terms of the Plan.

#### 2.4 RESUMPTION OF PARTICIPATION.

(a) A Participant who ceases to be an Eligible Employee for any reason and who subsequently becomes an Eligible Employee will become a Participant in the Plan on the first day of the first payroll period commencing after he or she again becomes an Eligible Employee. Thus, for example, a Represented Employee who elects to cease participation in the District of Columbia 401(a) Defined Contribution Pension Plan after the Effective Date and become a participant in the Plan shall become a Participant in the Plan on the first day of the first payroll period commencing after he or she ceases participation in the District of Columbia 401(a) Defined Contribution Pension Plan. Under no circumstances shall a Represented Employee be entitled to a contribution under both the Plan and the District of Columbia 401(a) Defined Contribution Pension Plan with respect to any Compensation earned or paid after the Effective Date.

(b) If a Participant terminates employment and subsequently resumes employment with the Authority as an Eligible Employee, he or she shall resume participation on the first day of the first payroll period commencing after his or her Reemployment Commencement Date.

2.5 DETERMINATION OF ELIGIBILITY. The Administrator shall, in its discretion, determine the eligibility of Employees in accordance with the provisions of this Article 2.

**ARTICLE 3**  
**CREDITED SERVICE**

3.1 **PERIODS OF SERVICE COUNTED FOR VESTING PURPOSES.** All Years of Service completed by an Employee shall be counted in determining his vested interest in the Plan except Periods of Service which are disregarded under the provisions of Section 3.2.

3.2 **EFFECT OF PERIOD OF SEVERANCE ON CREDIT FOR PERIODS OF SERVICE.**

(a) If an Eligible Employee's employment with the Authority terminates and the Employee resumes employment before incurring a six (6) month Period of Severance, then the Employee's Period of Service earned prior to his or her Period of Severance shall be reinstated to the Employee's credit for all purposes of the Plan.

(b) Except as provided in Section 3.2(c), if an Eligible Employee's employment with the Authority terminates and the Employee incurs a six (6) month Period of Severance, the Employee shall be treated as a new Employee upon return to employment with the Authority and the Employee's Period of Service before the six (6) month Period of Severance will not be taken into account in determining whether the Employee is vested in any Authority contributions made after the Employee's Reemployment Commencement Date. In addition, any Period of Service after the Period of Severance shall not be taken into account for purposes of determining whether the Employee is vested in his or her pre-severance Plan Account.

(c) Notwithstanding the provisions of Section 3.2(b), an Eligible Employee who was laid off and who subsequently resumes employment after being recalled by the Authority shall receive credit for the Period of Service earned prior to the Period of Severance. Similarly, an Eligible Employee who is reinstated by the Authority following a wrongful discharge shall receive credit for the Period of Service earned prior to the Period of Severance.

(d) In the event that any Periods of Service are disregarded pursuant to the provisions of this Section 3.2, separate accounts shall be maintained for the Employee's pre-severance and post-severance Plan Account until such Employee becomes fully vested in his post-severance Plan Account.

3.3 **AUTHORIZED LEAVES OF ABSENCE.**

(a) A Period of Service shall not be deemed to have terminated by the commencement of an Authorized Leave of Absence. An Authorized Leave of Absence is a temporary absence from active service (1) granted by the Authority on account of vacation, holiday, illness, incapacity (including a temporary short-term disability) or jury duty, (2) required by law or granted by the Authority on account of service in the Armed Forces of the United States, (3) during which the individual remains in active pay status, or (4) any other absence for reasons other than resignation, discharge, termination by mutual agreement, Disability or retirement.

(b) Subject to any applicable law, an Authorized Leave of Absence shall be deemed to have expired: (1) upon the return to service as an Employee after the Leave of Absence has commenced, (2) when it expires by the terms under which it was granted, or (3) upon the death or Disability of the Participant.

(c) If any Participant on an Authorized Leave of Absence fails to answer an inquiry by the Authority as to the status of the Authorized Leave of Absence, the Administrator may determine that the Leave of Absence had or has expired.

**ARTICLE 4**  
**CONTRIBUTIONS AND INVESTMENTS**

4.1 **BASIC CONTRIBUTIONS.**

(a) Subject to the provisions of Article 2, a Basic Contribution shall be made by the Authority for each Participant. A Participant is eligible for an allocation of the Basic Contribution for each pay period beginning on or after the Effective Date during which the Participant is employed by the Authority.

(b) The Basic Contribution for each pay period on or after the Effective Date will be allocated to the Basic Contribution Account of those Participants who received Compensation from the Authority during the relevant pay period as follows:

(1) Non-Represented Employees. Each Participant who is receiving Compensation as a Non-Represented Employee shall receive an allocation each pay period equal to the following amount:

(i) An amount equal to seven percent (7%) of the Participant's Compensation for that pay period; and

(ii) An amount equal to five percent (5%) of the Participant's Compensation for that pay period in excess of the Taxable Wage Base for that pay period, if any.

(2) Represented Employees. Each Participant who is receiving Compensation as a Represented Employee shall receive an allocation each pay period equal to the following amount:

(i) An amount equal to seven percent (7%) of the Participant's Compensation for that pay period; and

(ii) Effective with the first payroll period beginning on or after July 6, 2017, an amount equal to five percent (5%) of the Participant's Compensation for that pay period in excess of the Taxable Wage Base for that pay period, if any.

(c) The Basic Contribution for each Participant shall be made within forty-five (45) days following the end of each pay period.

#### 4.2 MATCHING CONTRIBUTIONS.

(a) Subject to the provisions of Article 2, a Matching Contribution shall be made by the Authority to the Matching Contribution Account of each Participant who makes salary deferrals to the District of Columbia Water and Sewer Authority 457(b) Plan, in the following manner:

(1) Non-Represented Employees. Each Participant who is receiving Compensation as a Non-Represented Employee shall receive a Matching Contribution equal to one hundred percent (100%) of the Participant's salary deferrals for that pay period not in excess of five percent (5%) of Compensation for that pay period.

(2) Represented Employees. Each Participant who is receiving Compensation as a Represented Employee shall receive Matching Contribution equal to one hundred (100%) of the Participant's salary deferrals for that pay period not in excess of five percent (5%) of Compensation for that pay period.

(b) Although Employees of the Authority who are covered by the Civil Service Retirement System are eligible to participate in the District of Columbia Water and Sewer Authority 457(b) Plan, such individuals are not Participants in this Plan and are not eligible for a Matching Contribution under the terms of this Plan.

4.3 DISCRETIONARY CONTRIBUTIONS. Subject to the limits of Section 4.8, from time to time the Authority may make a Discretionary Contribution on behalf of one or more Participants. The amount of any Discretionary Contribution shall be determined by the Authority in its sole discretion. The Participants eligible to receive such Discretionary Contribution, and the dollar amount or percentage of Compensation allocable to each Participant eligible to receive such Discretionary Contribution, shall be fixed by a written resolution of the Board at the time such Discretionary Contribution is approved. Each such resolution of the Board shall be incorporated into and made a part of the Plan.

4.4 EMPLOYEE CONTRIBUTIONS. Employee contributions to the Plan are neither required nor permitted.

4.5 CONTRIBUTIONS TO ROLLOVER CONTRIBUTION ACCOUNT. Any Participant may transfer to the Trust any Rollover Contributions as defined in Section 4.6. An Employee's Rollover Contribution shall be credited to and held in the Participant's Rollover Contribution Account. A Participant's Rollover Contribution Account shall be one hundred percent (100%) vested in the Participant at all times. A Rollover Contribution shall not be taken into account in determining the annual additions to an Employee's Plan Account under Section 4.8.

4.6 DEFINITION OF "ROLLOVER CONTRIBUTION". The term "Rollover

"Contribution" means an amount contributed to the Plan on or before the sixtieth (60th) day after the day the contributing Employee received it, if the amount received by the Employee is a distribution which is eligible for rollover to the Plan under Code §402 and the amount is a distribution from one of the following: (i) another retirement plan qualified under §401(a) or 403(a) of the Code, excluding after-tax employee contributions; (ii) to the extent permitted under the Code, as amended by EGTRRA, an individual retirement account or annuity described in Code §§408(a) or (b), but only if the distribution would otherwise be includible in gross income; (iii) to the extent permitted under the Code, a distribution made from an annuity contract described in Code §403(b), excluding after-tax employee contributions; or (iv) to the extent permitted under the Code, a distribution from an eligible plan under Code §457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

The term "Rollover Contribution" also means assets representing a Participant's nonforfeitable interest in another retirement plan qualified under §401(a), 403(a) or 403(b) of the Code, in a plan described in Code §457(b) that is sponsored by a governmental entity described in Code §457(e)(1)(A), or in an individual retirement account or annuity, which assets have been transferred directly from the trustee (or other fiduciary) of such other plan, account or annuity to the Trustees of this Plan; provided, however, that such direct transfer shall not be accepted by the Trustee unless (A) the transfer constitutes an "elective transfer" under §1.411(d)-4 Q&A-3(b) of regulations promulgated by the Secretary of the Treasury, (B) the plan from which the transfer is made provides no protected benefits under §411(d)(6) of the Code which are not already provided under the Plan or (C) the transfer constitutes a direct rollover under §402 of the Code.

In addition to the preceding, to the extent permitted under the Code, as amended by EGTRRA, the term "Rollover Contribution" shall further mean a direct rollover contribution of a distribution made from an annuity contract described in Code §403(b), excluding after-tax contributions, and from an eligible plan under Code §457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

The Administrator may reject any Rollover Contribution which is not qualified to be a Rollover Contribution to the Plan under the foregoing or under the Code. The Administrator may make all investigations necessary to determine whether any amount submitted as a Rollover Contribution may be received.

4.7 MILITARY SERVICE BENEFITS. Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code § 414(u).

4.8 LIMITS ON ANNUAL ADDITIONS.

(a) Basic Limitations. Notwithstanding any other provision of this Plan, a Participant's total annual additions under this Plan for any Plan Year shall not exceed the lesser of (a) fifty-six thousand dollars (\$56,000) (for 2019, as indexed for future years), or (b) one hundred percent (100%) of the Participant's compensation for such Plan Year. The compensation limit referred to in (b) in the immediately preceding sentence shall not apply to any contribution for

medical benefits after separation from service (within the meaning of Code §401(h) or Code §419A(f)(2)) which is otherwise treated as an annual addition. "Annual additions" for this purpose means the sum of (i) contributions under Sections 4.1, 4.2, and 4.3 of this Plan allocable to the Participant's Plan Account, (ii) any forfeitures allocable to the Participant's Plan Account and (iii) amounts described in Code §§401(h) and 419A(f)(2).

Notwithstanding the preceding, the limitations of Code §415 and the Final Treasury Regulations issued under Code §415 (applying the special rules under the Final Treasury Regulations applicable to governmental plans) are hereby incorporated by reference.

Accordingly, the following rules shall apply under Code §415 and the Final Treasury Regulations issued thereunder:

Annual additions shall not include restorative payments. A restorative payment is a payment made to restore losses to the Plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are restorative payments only if the payments are made in order to restore some or all of the Plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). This includes payments to the Plan made pursuant to a court approved settlement, to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty are not restorative payments and generally constitute contributions that are considered annual additions.

Notwithstanding the preceding, annual additions also do not include: (i) the direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (ii) rollover contributions (as described in Code §§ 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (iii) repayments of loans made to a Participant from the Plan; and (iv) repayments of amounts described in Code §411(a)(7)(B) (in accordance with Code §411(a)(7)(C)) and Code §411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code §414(d) as described in Code §415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.

For purposes of this Section, "compensation" refers to the Participant's earned income, wages, salaries, and fees for professional services actually rendered in the course of employment with the Authority (including, but not limited to, commissions paid to salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses) and excluding the following:

(i) Authority contributions to a plan of deferred compensation which are not includible in the Participant's gross income for the taxable year in which contributed, or

Authority contributions under a simplified employee pension plan to the extent such contributions are deductible by the Participant, or any distributions from a plan of deferred compensation;

- (ii) Other amounts which received special tax benefits.

The definition of compensation for purposes of applying the limitations of this Section includes regular pay paid to a Participant after the Participant's severance from employment with the Employer maintaining the Plan (or any other entity that is treated as the Employer pursuant to Code §§414(b), (c), (m) or (o)) provided (i) the payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments and the payment would have been paid to the Participant prior to the severance from employment if the Participant had continued in employment with the Employer and (ii) the amounts are paid by the later of two and one-half (2½) months after severance from employment or the end of the limitation year that includes the date of such severance from employment. Any other payment of compensation paid after severance of employment other than compensation specified in this paragraph is not considered compensation for purposes of applying the limitations of this Section, even if the payment is made within the time period specified in subsection (ii) of the previous sentence.

For purposes of applying the limitations of this Section, compensation for a limitation year is the Compensation actually paid or includible in gross income during such year.

Notwithstanding the preceding sentence, compensation for a Participant who is permanently and totally disabled (as defined in Code §22(e)(3)) is the compensation such Participant would have received for the limitation year if the Participant had been paid at the rate of compensation paid immediately before becoming permanently and totally disabled. Such imputed compensation for the disabled Participant may be taken into account only if contributions made on behalf of such Participant are nonforfeitable when made.

Notwithstanding the preceding, "compensation" includes any elective deferral (as defined in Code §402(g)(3)) and any amount which is contributed or deferred by the Authority at the election of the Participant and which is not includible in the gross income of the Participant by reason of Code §§125, 457 or 132(f)(4).

Annual additions also shall not include: (i) the direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (ii) rollover contributions (as described in Code §§ 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (iii) repayments of loans made to a Participant from the Plan; and (iv) repayments of amounts described in Code §411(a)(7)(B) (in accordance with Code §411(a)(7)(C)) and Code §411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code §414(d)) as described in Code §415(k)(3), as well as Authority restorations of benefits that are required pursuant to such repayments.

(b) Combined Limitations. If a Participant participates in any other defined contribution sponsored by the Authority which is qualified under Code §401(a), his or her annual

additions under such plan shall be aggregated with his or her annual additions under this Plan, and his or her annual additions under this Plan shall be reduced, if necessary, so that the aggregate of such annual additions does not exceed the limitations set forth in (a) above.

(c) Aggregation of Employers. The foregoing maximum contributions which may be made under this Plan shall be further limited by reason of the existence of other qualified retirement plans maintained by any other members of a controlled group of corporations, of one of a group of trades or businesses under common control (as described in Code §§414(b) or (c), as modified by Code §415(h)), or of an affiliated service group (as described in Code §§414(m) or (o)) to the extent such limitation is required by Code §415. The Administrator shall advise affected Participants of any additional limitation required by the preceding sentence.

(d) Tax-Exempt Employer Contributions. Notwithstanding anything in the Plan to the contrary, in the case of an Authority that is exempt from Federal income tax (including a governmental Authority), Authority contributions are treated as credited to a Participant's Plan Account for a particular limitation year only if the contributions are actually made to the Plan no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the Authority keeps its books) with, or within which, the particular limitation year ends.

4.9 DISPOSITION OF EXCESS ANNUAL ADDITIONS. If the annual additions (within the meaning of Code §415) are exceeded for any Participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure 2006-27 or any superseding guidance, including, but not limited to, the preamble of the Final §415 Regulations.

4.10 PARTICIPANT'S INVESTMENT ELECTIONS. The Administrator may establish and implement procedures pursuant to which each Participant and each former Participant with a vested Plan Account shall be permitted to direct the investment of all or a portion of his or her Plan Account into one or more investment options described in Article 7. If any such Participant or former Participant fails to make an investment election, such Participant's or former Participant's Plan Account shall be invested in an investment option, or a combination of investment options, selected by the Administrator, which offer(s) reasonable opportunities for capital appreciation, preservation of capital, and/or liquidity. Investment elections may be changed at least quarterly on any January 1, April 1, July 1 or October 1, subject, however, to any rules established by the Administrator and any rules or restrictions of any insurance company or other entity serving as the manager or funding vehicle of any of the investment funds. Investment elections shall be subject to such uniform rules and procedures as the Administrator shall establish. Any earnings or losses attributable to a Participant's directed investments shall be allocated to that Participant's Account.

**ARTICLE 5**  
**DISTRIBUTIONS**

5.1 **RETIREMENT.**

(a) Each Participant who is an Employee on his or her attainment of Normal Retirement Age, to the extent not then vested, shall become fully vested and, following termination of employment (which shall include for all purposes under this Plan, a severance from employment), the Participant shall be entitled to receive the full amount of the Plan Account in a lump sum.

(b) Distribution to a Participant under this Section shall be made, or shall commence, as soon as is practicable after the end of the month in which the Participant's termination of employment with the Authority occurs, and after arrangements for payment have been made by the Administrator and the Trustee, unless the Participant elects to defer the distribution to a later date which is no later than the Participant's required distribution commencement date under Section 5.7.

5.2 **DEATH OF PARTICIPANT.** If a Participant's employment is terminated because of the death of the Participant, the Participant's entire Plan Account, to the extent not then vested, shall become fully vested in the Participant. Upon the death of a Participant, the Participant's vested Plan Account shall be paid to the Participant's Beneficiary.

Payment of the Participant's Plan Account on death shall be made in a lump sum. Payment of the Participant's Plan Account on death shall be made, or shall commence, as soon as is practicable following satisfactory proof of the Participant's death and after arrangements for payment have been made by the Administrator and the Trustee. The Administrator may require such proper proof of death and such evidence of the right of any person to receive the Plan Account of a deceased Participant as the Administrator may deem desirable.

The death benefits of a Participant who dies after his or her benefits under the Plan begin are those specified, if any, under the form in which the Participant's benefits were being paid.

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

5.3 **DISABILITY.** If a Participant's employment with the Authority terminates because of his or her Disability, the Participant's entire Plan Account, to the extent not then vested, shall become fully vested in the Participant and shall be paid to the Participant in a lump sum as soon as is practicable following the date Disability has been determined and after arrangements for payment have been made by the Administrator and the Trustee; provided, however, that no payment shall be made, or shall commence, to a Participant without the Participant's consent given in a manner required by the Administrator prior to the Participant's Normal Retirement Date.

5.4 TERMINATION PRIOR TO RETIREMENT.

(a) Vesting. If a Participant's employment with the Authority terminates for any reason other than retirement, disability or death, his or her Plan Account shall be vested in the Participant as follows:

(1) Contributions to the Participant's Basic Contribution Account, Matching Contribution Account and Discretionary Contribution Account shall become vested according to the following schedule:

<b>PERIODS OF SERVICE FOR VESTING</b>	<b>VESTED PERCENTAGE</b>
Less than 3 years	0%
3 years or more	100%

(2) A Participant shall at all times be one hundred percent (100%) vested in his or her Rollover Contribution Account, if any.

(b) Upon a Participant's termination of employment under this Section, the Participant may elect an immediate distribution in a lump sum as soon as administratively practicable, or may elect to defer the distribution until a later date which is no later than the Participant's required distribution commencement date under Section 5.7.

(c) If a terminated Participant is not vested in his or her Basic, Matching and Discretionary Contribution Accounts, such Accounts shall be forfeited and used to pay Plan expenses or reduce future Authority contributions in the manner described below. The terminated Participant's Basic, Matching and Discretionary Contribution Accounts shall be forfeited on the date on which the Participant terminates employment with the Authority. Forfeitures shall be restored, if at all pursuant Section 5.4(d). Forfeitures of Matching Contributions may be used to pay any expenses payable by the Trust for the Plan Year or to reduce the Matching Contributions for the Plan Year. Forfeitures of Basic Contributions and Discretionary Contributions may be used to pay any expenses payable by the Trust for the Plan Year or to reduce the Basic Contributions for the Plan Year.

(d) Rehired Participant. A Participant who is not vested in his or her Basic, Matching and Discretionary Contribution Accounts upon termination of employment and who forfeits his or her Basic, Matching and Discretionary Contribution Accounts shall be entitled to a restoration of the forfeited amount only as provided in this Section 5.4(d). If a terminated Participant is rehired before he or she incurs a six (6) month Period of Severance, the Participant's Basic, Matching and Discretionary Contribution Accounts which were previously forfeited shall be restored the Participant's Plan Account. If a terminated Participant is rehired after he or she incurs a six (6)

month Period of Severance, the Participant's Basic, Matching and Discretionary Contribution Accounts which were previously forfeited shall not be restored to the Participant's Plan Account.

5.5 COMMENCEMENT OF BENEFITS.

(a) Except as provided in Section 5.2 (relating to distributions following a Participant's death) no payment shall be made, or commence, to a Participant without the Participant's consent given in a manner required by the Administrator prior to the Participant's Normal Retirement Date.

(b) A Participant's distribution must be made or must commence no later than his or her "required distribution commencement date", which is the first day of April of the calendar year following the later of the calendar year in which the Participant retires with the Authority or the calendar year in which the Participant attains age seventy and one-half (70½).

5.6 DIRECT ROLLOVER. Notwithstanding any other provision of the Plan to the contrary, any Distributee who is to receive an Eligible Rollover Distribution may elect the direct trustee-to-trustee rollover of the distribution to an Eligible Retirement Plan. A direct rollover election must be made pursuant to the procedures established by the Plan Administrator and must specify the Eligible Retirement Plan to which the direct rollover is to be made. If the Distributee elects a direct rollover as permitted hereunder, the Plan Administrator shall make the rollover as elected. For purposes of this Section, the term "Eligible Rollover Distribution" has the meaning given such term in Code §401(a)(31)(C) and currently means any distribution of all or any portion of the balance to the credit of the Distributee, except (i) any distribution that is one of a series of substantially equal periodic payments (not less frequent than annual) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten (10) years or more, (ii) any distribution to the extent such distribution is required under Code §401(a)(9), (iii) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Authority securities) and (iv) any portion of a distribution which is a hardship distribution.

For purposes of this Section, the term Eligible Retirement Plan has the meaning given such term in Code §401(a)(31)(D) and currently means (i) an individual retirement account described in Code §408(a), (ii) an individual retirement annuity described in Code §408(b) (other than an endowment contract), (iii) an annuity plan described in Code §403(a), (iv) a qualified trust that is a defined contribution plan described in Code §401(a), the terms of which permit the acceptance of direct rollovers, (v) an annuity contract described in Code §403(b), (vi) an eligible deferred compensation plan described in Code §457(b) which is maintained by an eligible Authority described in Code §457(e)(1)(A), if that plan agrees to separately account for amounts transferred into that plan from this Plan, and (vii) a Roth IRA described in Code §408A, provided that the requirements of Code §408A and the Treasury regulations issued thereunder are satisfied.

For purposes of this Section, the term Distributee includes the Participant and the Participant's surviving spouse. In addition, Distributee includes the Participant's spouse or former

spouse who is the alternate payee under a domestic relations order, as defined in Code §414(p), with respect to the payee's interest under the Plan. In addition, for distributions to Eligible Retirement Plans described in (i) and (ii), above, Distributee also includes the Participant's surviving non-spouse Beneficiary who is a designated beneficiary within the meaning of Code § 401(a)(9)(E).

5.7 REQUIRED DISTRIBUTIONS. Notwithstanding any provision of the Plan to the contrary, the Plan will apply the minimum distribution requirements of Code §401(a)(9) in accordance with the Final Regulations under Code §401(a)(9) that were issued in April 2002. To the extent that there is any conflict between the provisions of Code §401(a)(9) and the Regulations thereunder and any other provision in the Plan, the provisions of Code §401(a)(9) and the Regulations thereunder, including Treasury Regulation §§1.401(a)(9)-1 through 1.401(a)(9)-8, will control. If the Participant's spouse is not the Beneficiary with respect to any distribution of benefits to a Beneficiary, the method of distribution elected must satisfy the incidental death benefit requirements specified in §401(a)(9)(G) of the Code.

5.8 METHOD OF DISTRIBUTION.

(a) Each Participant's vested Plan Account shall be distributed in a cash lump sum.

(b) Notwithstanding any other provision of the Plan to the contrary, if the present value of a Participant's vested Plan Account to be distributed does not exceed five thousand dollars (\$5,000), such Participant's vested Plan Account will be distributed in a lump sum as soon as practicable after the date on which the Participant becomes entitled to the distribution.

Notwithstanding the above, any "mandatory distribution" (within the meaning of Notice 2005-5, Q&A-2) under this Section of an amount in excess of one thousand dollars (\$1,000) will be made as a direct rollover (as defined in Section 5.6) to an individual retirement account designated by the Administrator in accordance with Code §401(a)(31)(B). In determining the present value of a Participant's Plan Account under this Section, that portion of a Participant's vested Plan Account which is attributable to rollover contributions (and earnings allocable thereto) within the meaning of Code §§402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii) and 457(e)(16) shall be disregarded.

**ARTICLE 6**  
**ADMINISTRATION**

6.1 ADMINISTRATION. The Plan shall be administered by the Authority. The term "Administrator", as used in the Plan, shall refer to the Authority or to those employees of the Authority who have the power to act for the Authority with respect to the Plan.

6.2 DESIGNATION OF EMPLOYEES WHO MAY ACT FOR THE AUTHORITY. The Authority may designate one or more employees who may act for the Authority with respect to the Plan. In the absence of any designation by the Board to the contrary, such employees shall include the Authority's General Manager, Human Resources Director, and Benefits Manager, or the

equivalent job titles. The term Administrator, as used in the Plan, shall refer to those employees designated to act for the Authority, either individually or collectively, as appropriate. The Authority shall advise the Trustee of the names of the individuals and the scope of their authority with respect to the Plan. Any individual who is designated as having the right to act for the Authority with respect to the Plan shall be deemed to have relinquished such power (and shall no longer have any right to act for the Authority with respect to the Plan) upon his or her termination of employment with the Authority. The Board may, in its discretion, rescind the authority of any employee to act for the Authority, with or without cause, by giving notice to the employee and to the Trustee.

6.3 POWERS AND RESPONSIBILITIES. The Administrator shall have the following powers and responsibilities:

- (a) Under advice of counsel, who shall be counsel to the Authority, construing the Plan, and remedying any ambiguities, inconsistencies or omissions.
- (b) Determining all questions relative to the eligibility of employees to be Participants and the benefits of Participants or beneficiaries.
- (c) Establishing reasonable rules for the administration of the Plan.
- (d) Maintaining appropriate records relating to Participants and their beneficiaries.
- (e) If procedures are implemented to permit Participants to direct the investment of their Plan Accounts, designating to the Trustee the investment vehicles to be established under Section 7.3 and the portion of each Participant's Plan Account to be invested in each such vehicle.
- (f) Preparing and filing such reports and returns with respect to the Plan as are required by law.
- (g) Allocating income, gains and losses among Plan Accounts.
- (h) To establish and or modify a loan program pursuant to the terms of Article 10.
- (i) Performing other duties necessary for the administration of this Plan which appear to the Administrator to be necessary or appropriate in order properly to administer and operate the Plan.

The Administrator shall discharge its duties for the exclusive purpose of providing benefits hereunder and defraying the reasonable expenses of operating the Plan and with the skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

In carrying out its duties herein, the Administrator shall have discretionary authority to exercise all powers and to make all determinations, consistent with the terms of the Plan, in all

matters entrusted to it, and its determinations shall be given deference and shall be final and binding on all interested parties.

6.4 CERTIFICATIONS AND INVESTIGATIONS.

(a) Whenever in the administration of the Plan a certification by the Authority or Authority is required to be given to the Administrator, or if the Administrator shall deem it necessary that a matter be proved by certification of the Authority or Authority prior to taking or omitting any action hereunder, such certification shall be duly made, and the matter shall be deemed proved, by an instrument delivered to the Administrator, signed in the name of the Authority or Authority by its duly authorized representative. The Administrator shall be empowered to act, and shall be protected in acting, upon such instrument. Further, the Administrator shall be empowered to act, and shall be protected in acting, upon any notice, resolution, order, offer, telegram, letter or other document believed by the Administrator to be genuine and to have been signed by the proper party or parties.

(b) The Administrator shall not be required to make any investigation to determine the identity or mailing address of any person entitled to benefits under this Plan and shall be entitled to withhold the payment of benefits until the identity and mailing addresses of persons entitled to benefits are certified to it by the Authority or Authority or by such person.

6.5 CLAIMS PROCEDURE.

(a) Initial Claim. A Participant or a Participant's spouse, dependent or beneficiary (hereinafter referred to as a "Claimant") who believes he or she is entitled to any Benefit under this Plan may file a claim with the Administrator. The Administrator shall review the claim itself or appoint an individual or an entity to review the claim.

The Claimant shall be notified within ninety (90) days after the claim is filed whether the claim is allowed or denied, unless the Claimant receives written notice from the Administrator or appointee of the Administrator prior to the end of the ninety (90) day period stating that special circumstances require an extension of the time for decision, such extension not to extend beyond the day which is one hundred eighty (180) days after the day the claim is filed.

If the Plan Administrator denies a claim, it must provide to the Claimant, in writing or by electronic communication:

- (i) The specific reasons for the denial;
- (ii) A reference to the Plan provision or insurance contract provision upon which the denial is based;
- (iii) A description of any additional information or material that the Claimant must provide in order to perfect the claim;
- (iv) An explanation of why such additional material or information is

necessary; and

(v) Notice that the Claimant has a right to request a review of the claim denial and information on the steps to be taken if the Claimant wishes to request a review of the claim denial.

(b) Review Procedures. A request for review of a denied claim must be made in writing to the Plan Administrator within sixty (60) days after receiving notice of denial. The decision upon review will be made within sixty (60) days after the Plan Administrator's receipt of a request for review, unless special circumstances require an extension of time for processing, in which case a decision will be rendered not later than one hundred twenty (120) days after receipt of a request for review. A notice of such an extension must be provided to the Claimant within the initial sixty (60) day period and must explain the special circumstances and provide an expected date of decision.

The reviewer shall afford the Claimant an opportunity to review and receive, without charge, all relevant documents, information and records and to submit issues and comments in writing to the Plan Administrator. The reviewer shall take into account all comments, documents, records and other information submitted by the Claimant relating to the claim regardless of whether the information was submitted or considered in the initial benefit determination.

Upon completion of its review of an adverse initial claim determination, the Plan Administrator will give the Claimant, in writing or by electronic notification, a notice containing:

- (i) its decision;
- (ii) the specific reasons for the decision;
- (iii) the relevant Plan provisions or insurance contract provisions on which its decision is based;
- (iv) a statement that the Claimant is entitled to receive, upon request and without charge, reasonable access to, and copies of, all documents, records and other information in the Plan's files which is relevant to the Claimant's claim for benefits; and
- (v) if an internal rule, guideline, protocol or other similar criterion was relied upon in making the adverse determination on review, a statement that a copy of the rule, guideline, protocol or other similar criterion will be provided without charge to the Claimant upon request.

(c) Calculation of Time Periods. For purposes of the time periods specified in this Section, the period of time during which a benefit determination is required to be made begins at the time a claim is filed in accordance with the Plan procedures without regard to whether all the information necessary to make a decision accompanies the claim. If a period of time is extended due to a Claimant's failure to submit all information necessary, the period for making the determination

shall be tolled from the date the notification is sent to the Claimant until the date the Claimant responds.

6.6 ADVICE. The Administrator may secure specialized advice or assistance as it deems necessary or desirable in connection with the administration and operation of the Plan and shall be entitled to rely conclusively upon, and shall be fully protected in any action or omission taken by it in good faith reliance upon, any advice or opinion so obtained.

6.7 DELEGATION. The Administrator shall have the power and authority to delegate from time to time by written instrument all or any part of its duties, powers or responsibilities under the Plan, both ministerial and discretionary, as it deems appropriate, to any person, and in the same manner to revoke any such delegation of duties, powers or responsibilities. Any action of such person in the exercise of duties, powers or responsibilities delegated to such person shall have the same force and effect for all purposes hereunder as if such action had been taken by the Administrator. Further, the Administrator may authorize one or more persons to execute any certificate or document on behalf of the Administrator, in which event any person notified by the Administrator of such authorization shall be entitled to accept and conclusively rely upon any such certificate or document executed by such person as representing action by the Administrator until such third person shall have been notified of the revocation of such authority. Except to the extent required by applicable law, the Administrator shall not be liable for any act or omission of any person to whom the Administrator's duties, powers or responsibilities have been delegated, nor shall any person to whom any duties, powers or responsibilities have been delegated have any liabilities with respect to any duties, powers or responsibilities not delegated to such person, except to the extent required by applicable law.

6.8 LIABILITY; INDEMNIFICATION. Except to the extent required by applicable law, the Administrator shall not incur any liability: (i) by virtue of any contract, agreement, bond or other instrument made or executed by the Administrator, (ii) for any act or failure to act, or any mistake or judgment made by the Administrator, with respect to the business of the Plan, unless resulting from the Administrator's gross negligence or willful misconduct, or (iii) for the neglect, omission or wrongdoing of the Administrator or of any person employed or retained by the Administrator. The Authority shall indemnify and hold harmless the Administrator from the effects and consequences of the Administrator's acts, omissions and conduct with respect to the Plan, except to the extent that such effects and consequences shall result from the Administrator's own willful misconduct or gross negligence. The foregoing right to indemnification shall be in addition to such other rights as the Administrator may enjoy as a matter of law or by reason of insurance coverage of any kind. Rights granted hereunder shall be in addition to and not in lieu of any rights to indemnification to which the Administrator may be entitled pursuant to the by-laws of the Authority. In all computations, the Administrator shall be entitled to rely fully upon data furnished by the Authority and upon information furnished it by or on behalf of an Employee or Employees.

6.9 INSURANCE. The Plan may purchase, as an expense of the Plan, liability insurance for the Plan and/or for its fiduciaries to cover liability or losses occurring by reason of an act or omission by a fiduciary. In addition, any fiduciary may purchase, from and for the fiduciary's own account, insurance to protect the fiduciary in the event of a breach of fiduciary duty, and the

Authority may also purchase insurance to cover the potential liability of one or more persons who serve in a fiduciary capacity with regard to the Plan.

6.10 NO BONDING REQUIREMENT. Unless otherwise determined by the Authority or unless required by law, the Administrator shall not be required to give any bond or other security in any jurisdiction.

6.11 COMPENSATION. The Administrator shall serve without compensation, but all expenses of the Administrator incurred in the performance of duties hereunder shall be proper charges to the Trust and shall be paid therefrom unless the Authority, in its discretion, chooses to pay such expenses.

## **ARTICLE 7** **TRUST AND TRUSTEE**

7.1 TRUST FUND. The Trust Fund shall consist of all contributions made or transferred to the Trust Fund as provided herein, and the investments and reinvestments thereof and the income thereon which shall be accumulated and added to principal.

7.2 TRUSTEE CONTROL. The Trustee shall hold and invest the funds and assets received by the Trustee under this Plan subject to the terms of this Plan and for the purposes herein set forth. The Trustee shall be responsible only for such funds and assets as shall actually be received by the Trustee as Trustee hereunder.

So long as a Trustee is acting, title to any of the assets of the Trust Fund may be held or registered in the name of a nominee of the Trustee for ease of dealing with the same, provided that the books of the Trust reflect actual ownership. The Trustee shall be liable for the acts of its nominees. The assets so held or registered shall at all times remain in the possession or under the control of the Trustee.

7.3 INVESTMENT OPTIONS. If procedures are implemented which permit Participants to direct the investment of their Plan accounts, the Trustee shall establish such investment options as the Administrator shall direct, and shall divide the trust among investment options in accordance with the investment directions of Participants which are made as provided in this Plan. Investment options shall be established either by direct investment or through the medium of a bank, a trust fund, an insurance contract or regulated investment company mutual fund, as the Administrator shall direct. Each investment option (a) shall be held and administered as part of the Trust, but (b) shall be separately invested and accounted for.

The assets of the Trust invested in each of the options shall be separately valued at fair market value as of the appropriate Valuation Date.

**ARTICLE 8**  
**AMENDMENT**

8.1 **AMENDMENT.** Except as herein limited, the Authority shall have the right to amend this Plan at any time to any extent that it may deem advisable. The Authority's authority to amend the Plan shall include, but shall not be limited to, the authority to prospectively revise the schedule of Authority contributions for any one or more Participants and/or to discontinue future Authority Contributions for any one or more Participants. Any amendment of the Plan shall be set forth in an instrument in writing approved by the Chair of the Board of Directors. All Participants, the Authority, the Administrator and the Trustee shall be bound by any amendment to this Plan except that:

(a) No amendment shall increase the duties or liabilities of the Administrator or the Trustee without the consent of such party; and

(b) No amendment shall have the effect of vesting in the Authority any interest in or control over any of the assets held by the Trustee pursuant to this Plan.

8.2 **PROCEDURE.** Amendments may be made in the form of written resolutions or by a separate written document and, except in the case of an amendment adopted pursuant to the next sentence hereof, shall be adopted pursuant to action by the Board (including pursuant to any standing authorization for any officer, director or committee to adopt amendments) in accordance with its applicable procedures, including, where applicable, by majority vote or consent in writing. In addition, and as an alternative, to amendment of the Plan by action of the Board, the General Manager of the Authority shall be and is hereby authorized to adopt on behalf of the Authority and to execute any technical amendments to the Plan which are required by law and to also adopt and execute any discretionary amendments to the Plan which are deemed advisable by the General Manager of the Authority, so long as the General Manager reasonably concludes that such amendments do not materially change the terms of the Plan.

**ARTICLE 9**  
**TERMINATION**

9.1 **RIGHT TO TERMINATE.** It is expected that this Plan and the payment of contributions hereunder will continue indefinitely, but the continuance of this Plan is not assumed as a contractual obligation of any Authority. The Authority shall have the right at any time, and without the consent of any party, to terminate this Plan in its entirety.

9.2 **EFFECT OF TERMINATION.** Upon a termination of this Plan or upon a complete discontinuance of contributions to the Plan, if and to the extent required under applicable law, the Plan Account of each affected Participant shall become fully vested. Upon such termination, the Administrator shall instruct the Trustee to distribute such Plan Account to each affected Participant (or his or her Beneficiaries), by suitable instrument of transfer and delivery thereof. The distribution of the Plan Account of each Participant shall be a single lump sum payment.

9.3 PROCEDURE. Discontinuance or termination under this Article shall be valid only if it is approved by the Board.

9.4 MERGER, CONSOLIDATION OR TRANSFER OF ASSETS OF THE AUTHORITY. In the event of merger or consolidation of the Authority, or transfer of all or substantially all of its assets to any corporation or other business, provisions may be made by any successor organization for the continuance of this Plan, and said successor shall in such event be substituted in place of the Authority by an appropriate instrument confirming such substitution and adopting this Plan. Notice of such substitution delivered to the Trustee shall be authority to the Trustee to recognize such successor in place of the Authority. The continuation of this Plan shall be by a separate plan and trust, to which the Trustee shall transfer the Plan Accounts of Employees of that Authority.

9.5 MERGER, CONSOLIDATION OR TRANSFER OF ASSETS OF THE PLAN. In the event of the merger, consolidation or transfer of the assets of the Plan with any other pension or profit sharing plan, such action shall be on terms providing that each Participant in this Plan would (if the transferee plan then terminated) receive a benefit immediately after the merger, consolidation or transfer which is not less than the benefit the Participant would have been entitled to receive immediately before such action (if the Plan had then terminated).

## **ARTICLE 10** **LOANS TO PARTICIPANTS**

10.1 LOAN ADMINISTRATION. The Authority or an entity designated by the Authority to administer the loan program (the "Loan Administrator") is authorized to establish and administer a loan program as provided herein.

Participants who are actively employed by the Authority (i.e., no on an Authorized Leave of Absence) may make written application to the Loan Administrator for a loan. The Loan Administrator shall review the loan application and approve or deny the application in writing, in accordance with the uniform and non-discriminatory loan policy set forth in this Article. Any such loan shall be made from the assets of, and shall be charged against, the borrower's Plan Account. Any such loan shall be charged against the sub-accounts of the borrower's Plan Account in the following order: (a) Rollover Contribution Account; (b) Matching Contribution Account; (c) Basic Contribution Account; and (d) Discretionary Contribution Account.

10.2 FREQUENCY, NUMBER. Until a loan from the Plan to a borrower, including any interest due, is completely repaid, such borrower shall not be permitted to borrow additional amounts from the Plan.

10.3 AMOUNT, AVAILABILITY. The minimum amount which a borrower may borrow at any one time from the Plan, exclusive of interest, is one thousand dollars (\$1,000). The maximum amount which a borrower may borrow from the Plan, when added to the outstanding balance of all other loans from the Plan and from any other qualified plans maintained by the Authority and any entity required to be aggregated with the Authority pursuant to Code §72(p), exclusive of interest,

shall not exceed the lesser of: (a) fifty thousand dollars (\$50,000), reduced by the excess (if any) of the highest outstanding balance of loans from the Plan to the borrower during the one (1) year period ending on the day before the date on which such loan was made, over the outstanding balance of loans from the Plan to the borrower on the date on which such loan was made; or (b) fifty percent (50%) of the borrower's vested Plan Account, determined as of the origination date of the loan in the same manner as provided in Section 10.7. A borrower's vested interest in the Plan shall be determined in accordance with Code §72(p)(2)(A). In addition, the Loan Administrator shall approve a loan made pursuant to this Article only if the Loan Administrator determines, in his or her sole and absolute discretion, that the amount of such loan is reasonable based on factors that are legally considered by commercial entities in the business of making similar loans. In no event shall a loan be made which would be taxed under Code §72(p) as a distribution from the Plan.

10.4 NON-DISCRIMINATION. Loans shall be available to Participants, or beneficiaries who have become entitled to receive a benefit under the Plan, on a reasonably equivalent basis, without regard to an individual's race, color, religion, age, sex or national origin. In approving such loans, the Loan Administrator shall not discriminate in favor of highly compensated employees (within the meaning of Code §414(q)) as to the general availability of loans, as to the terms of repayment, or as to the amount of such loans in proportion to the vested portion of the Borrower's Plan Account.

10.5 LOAN APPROVAL. The Loan Administrator shall approve or deny the loan application based on the same factors which commercial lenders in the business of making similar types of loans legally recognize for purposes of loan availability. The Loan Administrator may examine such factors as creditworthiness, financial need, adequacy of security and risk of loss to the Plan in the event of default. Based on these factors, Participants and beneficiaries other than active employees may be offered loans on different terms and conditions due to valid economic differences.

10.6 INTEREST RATE. Each loan shall bear a reasonable rate of interest, to be established by the Loan Administrator. A reasonable rate of interest means an interest rate which is at least the rate of interest currently being charged by commercial lenders in the area for the use of money which they lend under similar circumstances (including creditworthiness of the borrower and the security given for the loan). The Loan Administrator shall not discriminate among borrowers in the matter of interest, but loans may bear different interest rates if, in the Loan Administrator's opinion, the difference is justified by different terms for repayment, the security of the collateral, or changes in economic conditions. No loans will be granted during any period in which the reasonable commercial interest rate for money loaned under similar circumstances exceeds the maximum legal rate that may be charged to individuals for loans of this nature under applicable usury laws.

The Loan Administrator may from time to time set appropriate processing and loan administration fees, and require the borrower to pay such fees as a condition of securing the loan or debit the borrower's Plan Account for such fees.

10.7 COLLATERAL. Each loan, to the extent of the amount of the indebtedness, including interest, shall be secured by the assignment of up to fifty percent (50%) of the borrower's vested Plan Account, determined as of the origination date of the loan, supported by the borrower's

collateral promissory note for the payment of the indebtedness, including interest, payable to the order of the Trustee. No more than fifty percent (50%) of the borrower's vested Plan Account, determined as of the origination date of the loan, may be used as collateral for loans hereunder. Subject to applicable provisions of law, each loan shall be further supported by the Participant's execution of an agreement, in a form specified by the Loan Administrator, to repay the loan by payroll deduction over a term and in a manner specified by the Loan Administrator. In addition to the assignment of any part of the borrower's Plan Account, the Loan Administrator may require such additional collateral as he or she may deem necessary to adequately secure such loan. The Loan Administrator shall choose collateral that the Plan can sell or foreclose on in the event of default, that will not leave the Plan with a loss of principal or interest, and that would be sufficient in the same context in a commercial setting. The assignment of any part of the borrower's Plan Account provided for above shall be void for any period of time during which the loan fails to comply with Code §4975(d)(1).

10.8 REPAYMENT. Except as provided in regulations or other formal guidance issued by the Secretary of the Treasury, loans shall be repaid by payroll deductions. Any loan to a borrower shall be repaid in such manner and over such period as will constitute level amortization of such loan over the term of the loan (with payments not less frequently than quarterly), and the term of the loan shall not exceed such period (not to exceed five years, or such longer period as may be allowed without causing the loan to be taxed under Code §72(p) as a distribution from the Plan) as the Loan Administrator shall determine. All payments by a borrower on any such loan, including interest, shall be credited to such borrower's Plan Account.

The events of default shall be listed specifically in the borrower's Loan Agreement. The Loan Agreement provisions are deemed part of the Plan with respect to that borrower. Generally, a borrower is in default if one or more of the following events occurs: (a) any false or misleading representation, warranty, or statement is made by the borrower in connection with the borrower's Loan Agreement; (b) failure by the borrower to pay any loan obligation when due; (c) failure by the borrower to observe or perform any warranty, covenant, condition or agreement under the Loan Agreement; (d) the borrower's death or retirement; (e) the borrower's request for a distribution of the borrower's Plan Account (other than a hardship distribution of that portion of the Participant's vested account which is not used as collateral for any loan hereunder); or (f) the borrower's termination of employment. If a borrower defaults in the repayment of the loan, the borrower's Plan Account used as collateral shall be charged with the full unpaid balance of the loan, including any accrued but unpaid interest, as of the earliest date on which the borrower may elect to receive a distribution of a portion or all of his or her Plan Account. If the borrower's Plan Account used as collateral is insufficient to repay the remaining balance of the loan, including interest, such borrower shall be liable for and continue to make payments on any balance still due. Any costs incurred by the Trustee or Loan Administrator in collecting amounts due, including attorney's fees, shall be added to the principal balance of the loan and treated accordingly.

10.9 PARTICIPANT CONSENT TO LOAN SET-OFFS. No loan shall be made to a Participant unless the Participant consents to the loan and to the fact that, if the loan defaults, the Participant's account may be reduced as provided in this Article, before the Participant attains the age of sixty-five (65). The consent of the Participant must be made within the one hundred and eighty

(180) day period before the making of the loan. For purposes of this Section, any renegotiation, extension, renewal or other revision of a loan shall be treated as a new loan made on the day of the renegotiation, extension, renewal or other revision.

10.10 DISTRIBUTIONS PROHIBITED. No distribution under the Plan shall be made to any Participant or former Participant or to a Beneficiary of any such Participant unless all unpaid loans, including accrued interest, have been repaid or otherwise discharged.

10.11 NO ALIENATION. A loan made to a borrower shall not be treated as an assignment or alienation of any portion of the borrower's Plan Account due to the fact that the loan will be secured by the borrower's Plan Account and all loans made to Participants and beneficiaries shall be made in a manner to be exempt from the tax imposed on prohibited transactions under Code §4975(d)(1).

10.12 DISCLOSURE. Every borrower must receive from the Loan Administrator a statement which describes the procedure for loan application, the events constituting default and the steps which will be taken by the Plan in the event of default, and a clear statement of the charges involved in each loan transaction. The statement of charges shall include the dollar amount of the loan and the annual interest rate.

10.13 LOAN SUSPENSION. Loan repayments may be suspended as permitted under Code §414(u)(4).

10.14 APPLICABILITY OF LOAN PROVISIONS TO REPRESENTED EMPLOYEES PARTICIPATING IN DISTRICT OF COLUMBIA DEFINED CONTRIBUTION PLAN. The provisions of this Article 10 shall not apply to a Represented Employee who elects to remain a participant in the District of Columbia 401(a) Defined Contribution Pension Plan after December 31, 2001.

## **ARTICLE 11** **MISCELLANEOUS**

11.1 NO RIGHT TO EMPLOYMENT. Participation in this Plan shall not give any person the right to be retained in the employ of the Authority, or any right or interest in this Plan other than as herein provided.

11.2 HEADINGS. The headings and sub-headings in this instrument are inserted for convenience of reference only and are not to be considered in construing the provisions hereof.

11.3 COUNTERPARTS. This instrument may be executed in any number of counterparts, each of which shall be deemed an original, and said counterparts shall constitute but one and the same instrument, which may be sufficiently evidenced by any one counterpart.

11.4 GOVERNING LAW. This Plan shall be construed, administered and governed in all respects under and by the laws of the District of Columbia, except to the extent District of Columbia

law shall have been preempted by federal law.

11.5 RULES AND REGULATIONS. By becoming a Participant, every Participant shall thereby be deemed to have agreed to abide by the rules and regulations of the Administrator made in accordance with this Plan, and to sign all papers necessary for the compliance therewith.

11.6 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN. In the event that all, or any portion, of the distribution payable to a Participant or a Beneficiary shall remain unpaid solely because the Administrator cannot ascertain the whereabouts of the Participant or Beneficiary, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, the amount so distributable shall be treated as a forfeiture and used to reduce the Basic Contribution or Matching Contribution for that Plan Year. However, the dollar amount, unadjusted for gains or losses in the interim, shall be reinstated if a claim for the benefit is made by the Participant or Beneficiary to whom it was payable. If a benefit payable to an unlocated Participant or Beneficiary is subject to escheat pursuant to applicable state law, neither the Trustee nor the Authority shall be liable to any person for any payment made in accordance with such law.

11.7 NO ASSIGNMENT OF BENEFITS. Except as expressly provided herein, no benefits under the Plan may be assigned or alienated, and the Trustee shall pay all amounts payable hereunder, and shall distribute all assets distributable hereunder, to any person, into the hands of such person and not unto any other person or corporation whatsoever, whether claiming by his or her authority or otherwise; nor may said payments be anticipated. Except as expressly provided herein, the interest of any Participant hereunder may not be assigned or encumbered, nor shall it be subject to attachment or other judicial process. However, deposit to the credit of the account of any person in a bank or trust company designated by such person in writing shall be deemed to be the equivalent of payment into the hands of such person. Notwithstanding the foregoing, amounts held for the benefit of a Participant may be paid in accordance with a “domestic relations order” as defined under Code § 414(p).

All rights and benefits (including, but not limited to, rights of election of payment form and designation of Beneficiary) afforded to a Participant or Beneficiary in this Plan shall be subject to the rights afforded to any alternate payee under a domestic relations order, as defined in Code § 414(p). Notwithstanding anything contained herein to the contrary, to the full extent permitted under Code § 414(p), the terms of any domestic relations order, amounts in which a Participant is vested and which are assigned to an alternate payee pursuant to such domestic relations order may be paid in a lump sum as soon as possible to such alternate payee, notwithstanding the employment status or other factors affecting the ability of a Participant to receive a current distribution of all or part of his Plan Account.

11.8 EXCLUSIVE BENEFIT. The Trust Fund shall be held by the Trustee for the exclusive purpose of providing benefits to Participants and their beneficiaries and defraying reasonable expenses of administering the Plan. No part of the Trust shall ever inure to the benefit of the Authority, except that:

- (a) Any contribution made to the Trust Fund by the Authority which is

attributable to a mistake of fact may be returned to the within one year after such contribution was made;

(b) All contributions shall be conditioned on the initial qualification of the Plan under Code §401, and if the Plan does not qualify, then such contributions may be returned to the Authority within one year after the date of denial of qualification of the Plan.

(c) If a return of contributions pursuant to the foregoing is due to a good faith mistake of fact or a good faith mistake in determining the deductibility of the contribution:

(i) The amount which may be returned is the excess of the amount contributed over the amount that would have been contributed had there not occurred a mistake of fact or a mistake in determining the deduction; and

(ii) Earnings attributable to such excess contribution may not be withdrawn, but losses attributable thereto must reduce the amount to be returned; and

(iii) In no event may a return of contributions be due which would cause the Account of any Participant to be reduced to an amount less than the amount which would have been credited to the Participant's Account if the mistaken amount had not been contributed.

11.9 STATUTE OF LIMITATIONS. No legal action may be commenced or maintained to recover benefits under this Plan more than twelve (12) months after the final review/appeal decision by the Plan Administrator has been rendered (or deemed rendered).

11.10 INCAPACITY. If the Administrator shall receive evidence satisfactory to it that a Participant or Beneficiary entitled to receive any benefit under the Plan is, at the time when such benefit becomes payable, a minor, or is physically or mentally incompetent to receive such benefit and to give a valid release therefor, and that another person or an institution is then maintaining or has custody of such Participant or Beneficiary, and that no guardian, committee or other representative of the estate of such Participant or Beneficiary shall have been duly appointed, the Administrator may direct the Trustee to make payments of such benefit otherwise payable to such Participant or Beneficiary, to such other person or institution, including a custodian under a Uniform Gifts to Minors Act, or corresponding legislation (who shall be an adult, a guardian of the minor or a trust company), and such payments shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, as evidence of its adoption of this Plan, the Authority has caused this Plan to be executed, and, if a separate Trust Agreement is not entered into between the Authority and the Trustee, the Trustee has joined herein to evidence its acceptance of the provisions of the Plan applicable to the Trustee, generally effective as of July 1, 2017.

**WITNESS/ATTEST:**

**DISTRICT OF COLUMBIA WATER AND  
SEWER AUTHORITY**

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY 457(B) PLAN

As Amended and Restated Effective January 1, 2019

**DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY 457(b) PLAN**

As Amended and Restated Effective January 1, 2019

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**DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY 457(b) PLAN**

**ARTICLE 1**  
**INTRODUCTION AND PURPOSE OF PLAN**

1.1 **RESTATEMENT OF PLAN.** The District of Columbia Water and Sewer Authority (the "Authority ") adopted the District of Columbia Water and Sewer Authority 457(b) Plan (the "Plan") effective January 2, 2000. The Authority amended and restated the Plan, effective as of January 1, 2002, in order to incorporate the provisions of the Master Agreement on Compensation between the Authority and Compensation Unit 31 and to incorporate the applicable provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001. The Authority again amends and restates this Plan effective as of January 1, 2019 to update and clarify the Plan.

The Plan shall be maintained for the exclusive benefit of covered individuals and is intended to qualify as an "eligible deferred compensation plan" within the meaning of §457(b) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

Except as is otherwise explicitly provided in the Plan or as is required by applicable law, the terms of the Plan, as amended and restated by this document, shall apply only with respect to persons who are Employees of the Authority on and after January 1, 2019, and the rights, benefits and interests of any Employee who died, retired or otherwise terminated his employment with the Authority prior to January 1, 2019, shall be determined under the provisions of the Plan as in effect on the date such former Employee died, retired or otherwise terminated his employment with the Authority.

1.2 **PURPOSE OF PLAN.** The purpose of this Plan is to enable eligible Employees who become covered under the Plan to enhance their retirement security by permitting them to enter into agreements with the Authority to defer a portion of their Compensation and receive benefits at retirement, death or in the event of financial hardship due to unforeseeable emergencies.

**ARTICLE 2**  
**DEFINITIONS AND CONSTRUCTION**

2.1 **DEFINITIONS.** The following terms, when used in this Plan, have the meanings set forth below, unless a different meaning is clearly required by the context:

**ADMINISTRATOR** means the Authority or those persons authorized to act for the Authority in accordance with Article 8.

**AUTHORITY** means the District of Columbia Water and Sewer Authority and any successor or successors thereto.

**BENEFICIARY** means the person, persons or legal entity designated by the Participant on his or her designation form as being entitled to receive the Participant's Plan Account upon

the Participant's death, or, in some cases, after the death of the Participant's designated Beneficiary. If there is no designated Beneficiary, a Participant's Beneficiary shall be his or her surviving spouse, or if he or she has no surviving spouse, his or her estate.

BOARD means the Board of Directors of the Authority.

CODE means the Internal Revenue Code of 1986, as amended and includes any regulations promulgated thereunder.

COMPENSATION means the regular or base salary or wages paid by the Authority to a Participant during each Plan Year (or portion thereof) during which such person is a Participant, specifically excluding overtime; compensatory time; gainsharing awards; bonuses; on-call, call-in or call-back pay; hazard pay; differentials; premium pay; penalties; and incentive and other extra compensation.

COMPENSATION UNIT 31 means those Employees in the collective bargaining units represented by American Federation of Government Employees (AFGE) Locals 631, 872, 2553; American Federation of State, County and Municipal Employees (AFSCME), Local 2091; and National Association of Government Employees (NAGE) Local R3-06) who are covered by the Master Agreement on Compensation.

DEFERRAL means the annual amount of Compensation that a Participant elects to defer pursuant to a properly executed Salary Deferral Agreement.

DEFERRAL ACCOUNT means the functional subaccount representing a Participant's interest in the Plan derived from Deferrals.

EFFECTIVE DATE means January 1, 2019, the generally effective date of this amendment and restatement of the Plan. The initial effective date of the Plan was January 2, 2000.

ELIGIBLE EMPLOYEE means any Employee (including an Employee in Compensation Unit 31 and an employee of the Authority who is covered by the Civil Service Retirement System) who is classified by the Authority as a "regular" or "at-will" full-time Employee other than an employee included in a unit of employees covered by a collective-bargaining agreement with the Authority that does not expressly provide for participation of such employees in this Plan, where there has been good-faith bargaining between the Employer and the employees' representatives on the subject of retirement benefits. If a collective bargaining agreement expressly provides for participation in the Plan, an Employee covered by such an agreement shall be deemed to be an Eligible Employee as of the date specified therein (or if no date is specified in the collective bargaining agreement, as of the first day on which the Employee becomes a Participant in the Plan in accordance with the terms of such collective bargaining agreement). Employees who are classified by the Authority as "temporary" or "interns" are not Eligible Employees. In addition, "regular" or "at-will" Employees who are classified by the Authority as "part-time" are not Eligible Employees.

EMPLOYEE means any person employed by the Authority; provided, however, that the term "Employee" shall not include any person who is classified by the Authority as working or providing services in a non-employee capacity (including, without limitation, a person classified as an independent contractor) notwithstanding the later reclassification by a court or any regulatory agency of the person as a common law employee of the Authority.

INCLUDIBLE COMPENSATION means a Participant's Compensation within the meaning of Code §415(c)(3).

MANDATORY DISTRIBUTION means a distribution that is an eligible rollover distribution that is made without the Participant's consent and before the Participant attains the later of age 62 or normal retirement age and such distribution does not exceed \$5,000 pursuant to Code §401(a)(31)(B).

NORMAL RETIREMENT AGE means age sixty-five (65).

PARTICIPANT means any Eligible Employee who participates in the Plan as provided in Article 2. A Participant shall continue to be a Participant as long as he or she has a Plan Account.

PLAN means the District of Columbia Water and Sewer Authority 457(b) Plan as it may be amended from time to time.

PLAN ACCOUNT means the account established and maintained on behalf of a Participant as provided in Section 8.3, which includes any functional account (such as the Deferral Account or a Rollover Account) as may be established by the Administrator from time to time and any earnings, losses and/or allocable expenses allocated thereto.

PLAN YEAR means each twelve (12) month period beginning January 1 and ending December 31 during which the Plan is in effect.

ROLLOVER ACCOUNT means the functional subaccount representing a Participant's interest in the Plan derived from a rollover contribution made under Section 4.9.

SALARY DEFERRAL AGREEMENT means the agreement between a Participant and the Authority to defer receipt by the Participant of Compensation not yet paid or otherwise made available to the Participant. Such agreement shall state the Deferral amount to be withheld from a Participant's Compensation and shall become effective in accordance with the rules and procedures established by the Administrator from time to time, but in no event before the first day of the month: (1) after the day the Administrator receives a properly executed Salary Deferral Agreement for the Participant, and (2) following the month in which the Compensation is paid or made available. Notwithstanding the preceding and subject to the provisions of Article 3, if a newly-hired Eligible Employee executes a Salary Deferral Agreement prior to the first day he or she performs services for the Employer, the Salary Deferral Agreement may become effective during his or her first month of employment.

SEVERANCE FROM EMPLOYMENT means the severance of a Participant's employment (under Code §457(d)(1)(A)(ii), as amended by the Economic Growth and Tax Relief Reconciliation Act of 2001) with the Employer for any reason, including retirement and death. Any Participant who is granted a leave of absence by the Employer will not be treated as incurring a Severance from Employment as long as the leave of absence is approved by the Employer. If an approved leave of absence is terminated by the Employer or the Participant without the resumption of the employment relationship, the Participant shall be treated as incurring a Severance from Employment under this Plan as of the date of termination of the leave of absence.

Effective for years beginning after December 31, 2008, for purposes of Code §457(d)(1)(A)(ii), a Participant shall be treated as having had a Severance from Employment during any period the Participant is performing service in the uniformed services described in Code §3401(h)(2)(A), in accordance with section 105 of the HEART Act and any subsequent guidance issued thereunder.

TRUST means the separate trust agreement which forms a part of this Plan or the custodial account or contract established to satisfy the requirements of Code §457(g).

TRUST FUND means the assets of the Trust.

TRUSTEE means the trustee of the Trust (or, where applicable, the custodian of a custodial account established under Code §§457(g) and 401(f)) serving as such from time to time and any successor and/or additional trustees (or qualified custodians or annuity contract issuers).

UNFORESEEABLE EMERGENCY means a severe financial hardship to the Participant resulting from (a) an illness or accident of the Participant, the Participant's spouse, the Participant's dependent (as defined in Code §152(a)) or (to the extent permitted under Code §457(b), as modified by the Pension Protection Act of 2006) the Participant's Beneficiary; (b) loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); (c) the need to pay for funeral expenses of the Participant's spouse or dependent (as defined in Code §152(a)); or (d) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The circumstances that will constitute an "Unforeseeable Emergency" will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved:

- (a) through reimbursement or compensation by insurance or otherwise;
- (b) by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or
- (c) by cessation of deferrals under the Plan.

Without limiting the generality of the foregoing, the term "Unforeseeable Emergency" shall not include foreseeable personal expenditures normally budgetable, such as a down payment on a home, the purchase of an automobile, college or other educational expenses, and the like. The decision of the Administrator or its designee concerning the payment of benefits under this Section shall be made in accordance with Treas. Reg. §1.457-2(h)(4) and shall be final and binding upon the Participant. The amount of the payment will be limited to the amount reasonably needed to satisfy the emergency need.

VALUATION DATE means the last day of a Plan Year, and any other date or dates chosen by the Administrator as of which the Trust is valued.

2.2 PLURALS AND GENDER. Where appearing in the Plan, the masculine gender shall include the feminine and neuter genders, and the singular shall include the plural, and vice versa, unless the context clearly indicates a different meaning.

2.3 INCORPORATION OF TRUST AGREEMENT. The Trust Agreement, as the same may be amended from time to time, is intended to be and hereby is incorporated by reference into this Plan and for all purposes shall be deemed a part of the Plan.

2.4 HEADINGS. The headings and sub-headings in this Plan are inserted for the convenience of reference only and are to be ignored in any construction of the provisions hereof.

2.5 SEVERABILITY. In case any provision of this Plan shall be held illegal or void, such illegality or invalidity shall not affect the remaining provisions of this Plan, but shall be fully severable, and the Plan shall be construed and enforced as if said illegal or invalid provisions had never been inserted herein.

2.6 REFERENCES TO GOVERNMENTAL REGULATIONS. References in this Plan to regulations issued by the Internal Revenue Service, the Department of the Treasury, or other governmental agencies shall include all regulations, rulings, procedures, releases and other position statements issued by any such agency.

### **ARTICLE 3** **PARTICIPATION IN THE PLAN**

3.1 ELIGIBILITY. Each Eligible Employee who was a Participant immediately prior to the Effective Date shall continue to be a Participant in the Plan as of the Effective Date. Each other Eligible Employee may become a Participant effective as of the first day of the payroll period following his or her date of hire, provided he or she is an Eligible Employee on that date. If an Employee is not an Eligible Employee on the first day of the payroll period following his or her date of hire, the Employee may become a Participant on the date he or she subsequently becomes an Eligible Employee. Each Eligible Employee who desires to become a Participant must enroll in the Plan pursuant to Section 3.2.

3.2 ENROLLMENT. Eligible Employees may enroll in the Plan by completing a Salary Deferral Agreement and submitting it to the Administrator prior to the first day of any payroll period. Deferrals shall commence in accordance with the rules and procedures established by the Administrator from time to time, but in no event before the payroll period

beginning after the Administrator receives a properly executed Salary Deferral Agreement for the Participant.

3.3 TERMINATION OF PARTICIPATION. After commencement of participation, an Eligible Employee shall remain a Participant until the earlier of (a) the date he or she incurs a Severance from Employment; or (b) the date he or she ceases to be an Eligible Employee. An Employee who ceases to be an Eligible Employee who has an undistributed Plan Account shall be treated as a Participant with respect to the investment and distribution of his or her Plan Account until such Plan Account is distributed pursuant to the terms of the Plan.

3.4 RESUMPTION OF PARTICIPATION. A Participant who incurs a Severance from Employment or who ceases to be an Eligible Employee for any reason and who subsequently becomes an Eligible Employee will become a Participant in this Plan on the first day he or she again becomes an Eligible Employee and re-enrolls in the Plan pursuant to Section 3.2.

3.5 DETERMINATION OF ELIGIBILITY. The Administrator shall, in its discretion, determine the eligibility of Employees in accordance with the provisions of this Article 3.

#### **ARTICLE 4** **DEFERRAL OF COMPENSATION**

4.1 DEFERRALS. Subject to the provisions of this Article 4, a Participant may elect, by executing a Salary Deferral Agreement and submitting it to the Administrator, to have the Authority make Deferrals to the Plan on his or her behalf for such Plan Year equal to the amount of Deferral set forth in such Salary Deferral Agreement which will be made or commence as of the effective date specified in the Salary Deferral Agreement or as soon as administratively practicable thereafter, subject to the restrictions regarding the effective date of Deferral elections described in the following paragraph. Deferrals are subject to the limitations specified in Section 4.2 of the Plan.

As required by Code §457(b)(4), Compensation may generally be deferred under the Plan for a calendar month only if an election providing for the Deferral has been made by the Participant prior to the first day of the month following the date in which the Compensation is paid or made available. Notwithstanding the preceding, Compensation may be deferred by a newly-hired Eligible Employee during his or her first day he or she performs services for the Authority if the election is submitted prior to the first day he or she performs services for the Employer.

Pursuant to the administrative rules established by the Authority, Deferrals shall be made through regular payroll deductions. Any Deferrals made under Section 4.1 shall be credited to the Participant's Deferral Account.

A Participant shall at all times be fully vested in any Deferrals he or she elects to contribute to the Plan under this Section, and any deemed earnings thereon.

#### 4.2 MAXIMUM DEFERRAL.

(a) Primary Limitation. The maximum Deferral amount for any Participant in any taxable year under the Plan shall not exceed the lesser of the "applicable dollar amount" (as set forth in Code §457(e)(15)(A) as adjusted pursuant to Code §457(e)(15)(B)) or one hundred percent (100%) of the Participant's Includible Compensation for the taxable year, all as provided in Code §457 and the regulations thereunder. Any Catch-up Deferrals made pursuant to Section 4.2(b) or (c) and/or any Rollover Contributions made pursuant to Section 4.9 shall not be subject to the limitations described in this Section. The "applicable dollar amount" for the 2019 calendar year is nineteen thousand dollars (\$19,000).

(b) Catch-up Limitation. For each of the last three (3) taxable years ending before a Participant's attainment of Normal Retirement Age, the maximum Deferral amount shall be the lesser of: (1) twice the "applicable dollar amount" under Code §457(b)(3)(A) as set out in Section 4.2(a), or (2) the sum of (A) the primary limitation amount determined under Section 4.2(a) for the current year, and (B) that portion of the primary limitation amount determined under Section 4.2(a) not utilized in prior taxable years in which the Participant was eligible to participate in the Plan. A Participant may use a prior year only if the Deferrals under the Plan in existence during that year were subject to the maximum deferral amount described in Treas. Reg. §1.457-2(e). The catch-up limitation is available to a Participant during one three-year period only. If the Participant uses the catch-up limitation and then postpones retirement or returns to work after retirement, the catch-up limitation shall not be available again.

(c) Additional Deferrals for Participants Age 50 or Older. Notwithstanding any other provision of this Plan, all Participants who are eligible to make Deferrals under this Plan and who are at least age fifty (50) shall be eligible to make catch-up deferrals ("Catch-Up Deferrals") in accordance with, and subject to the limitations of, Code §414(v) (as added to the Code by the Economic Growth and Tax Relief Reconciliation Act of 2001).

(1) For purposes of this subsection, a Participant who is projected to attain age fifty (50) before the end of a calendar year is deemed to be age fifty (50) as of the January 1 of that year.

(2) Except as provided herein, the term "Catch-Up Deferrals" means elective deferrals which are made to the Plan, pursuant to an eligible Participant's written election and subject to such uniform administrative rules as the Administrator shall establish, which exceed an "applicable limit," defined as:

(A) any limit under Code §457(b)(2) or 457(e)(15) on Deferrals which are permitted to be made (without regard to section 414(v) of the Code and this subsection of the Plan) with respect to the Participant to the Plan; or

(B) any limit on Deferrals which are permitted to be made (determined without regard to section 414(v) of the Code and this subsection of the Plan) with respect to the

Participant to the Plan under the terms of the Plan that is not required under the Code.

If an eligible Participant's elective deferrals exceed an "applicable limit" listed above that is determined on a calendar or taxable year basis, such elective deferrals may be herein considered a Catch-Up Deferral at the time of deferral, but only to the extent that the deferrals, when combined with all other Catch-Up Deferrals made with respect to the Participant for the taxable year, do not exceed the lesser of (A) the applicable dollar amount determined under Code §414(v)(2)(B) (six thousand dollars (\$6,000) for 2019), or (B) the excess of the Participant's compensation (determined as described in Code §415(c)(3)) for the Participant's taxable year over the sum of the Participant's elective deferrals, as defined in Code §414(u)(2)(C) but excluding any contributions made under this Section 4.2(c), for the Participant's taxable year. No Participant shall be permitted to make a Catch-Up Deferral under this Section 4.2(c) for any year in which the special catch-up limitation in Section 4.2(b) is used with respect to the Participant.

(d) Coordination With Other Eligible Deferred Compensation Plans.

If a Participant participates in more than one eligible deferred compensation plan (as defined in Code §457) other than a plan that is a qualified governmental excess benefit arrangement (as defined in Code §415(m)(3)), the maximum deferral under all such eligible deferred compensation plans shall not exceed the limitations described in Sections 4.2(a), (b) and (c) above.

4.3 MINIMUM DEFERRAL. Each Eligible Employee who becomes a Participant must agree to defer at a rate of a minimum of ten dollars (\$10) per payroll period.

4.4 MODIFICATIONS TO AMOUNT DEFERRED. Subject to such procedures and within such time periods as may be established by the Administrator from time to time, a Participant may change Deferrals with respect to Compensation not yet earned by submitting a new, properly executed Salary Deferral Agreement to the Administrator. Such change shall take effect in accordance with the rules and procedures established by the Administrator from time to time, but no earlier than the first day of the month following receipt by the Administrator of the properly executed Salary Deferral Agreement from the Participant. Modifications (other than a revocation of participation as provided in Section 4.5) are subject to the overall limitations on Deferrals contained in the Plan.

4.5 REVOCATION OF DEFERRAL. Any Participant may revoke his or her Deferrals in accordance with such procedures as may be established by the Administrator from time to time. The Participant's full Compensation on a nondeferred basis will then be restored within such time period as may be established by the Administrator, but no earlier than the first day of the month following receipt of written notice by the Administrator from the Participant. Notwithstanding a revocation under this Section, the Participant's benefits under the Plan shall be paid only as provided in Article 5.

4.6 DURATION OF DEFERRAL ELECTION. Once a Deferral election has been made by the Participant, the election shall continue in effect until the Participant's Severance from Employment, unless the Participant modifies the Deferral in accordance with Section 4.4 or revokes the Deferral in accordance with Section 4.5.

4.7 TIME FOR MAKING DEFERRAL CONTRIBUTIONS. The Authority shall contribute Deferrals to the Trust within forty-five (45) days following the end of the pay period to which the Deferrals relates.

4.8 USERRA. Notwithstanding anything in the Plan to the contrary, contributions and service credit with respect to qualified military service will be provided in accordance with Code §414(u).

4.9 ROLLOVER CONTRIBUTIONS. Any Participant may transfer to the Trust any "Rollover Contributions" (as defined herein). A Participant's Rollover Contribution shall be credited to and held in the Participant's Rollover Account. A Participant's Rollover Account shall be one hundred percent (100%) vested in the Participant at all times.

(a) Distributed Amounts Which Are Rolled Over. The term "Rollover Contribution" means an amount contributed to the Plan on or before the sixtieth (60<sup>th</sup>) day after the day the contributing Participant received it from one or more of the following, but only if the amount received by the Employee is a distribution which is eligible for rollover to the Plan under Code §402(c)(4):

(1) another eligible deferred compensation plan described in Code §457(b) which is maintained by an eligible employer described in Code §457(e)(1)(A);

(2) a qualified retirement plan under Code §401(a) or 403(a) (excluding after-tax contributions);

(3) an annuity contract described in Code §403(b) (excluding after-tax contributions); or

(4) an individual retirement account or annuity described in Code §408(a) or (b) that is eligible to be rolled over and would otherwise be includible in gross income; or

(5) an individual retirement account or annuity under a SIMPLE plan described in Code §408(p) that is eligible to be rolled over and would otherwise be includible in gross income after the two year period beginning on the date on which the participant first participated in the SIMPLE plan.

If a Participant is permitted to roll over amounts into the Plan under this subsection, the Plan shall provide separate accounting for the amounts so rolled over.

(b) Direct Rollovers. The term "Rollover Contribution" also means assets representing a Participant's nonforfeitable interest in one or more of the following, which assets have been transferred directly from the trustee (or other fiduciary) of such other plan, account or annuity to the Trustee of this Plan; provided, however, that such direct transfer constitutes a direct rollover under Code §402:

(1) another eligible deferred compensation plan described in Code §457(b) which is

maintained by an eligible employer described in Code §457(e)(1)(A);

(2) a qualified retirement plan under Code §401(a) or 403(a) (excluding after-tax contributions);

(3) an annuity contract described in Code §403(b) (excluding after-tax contributions);

(4) an individual retirement account or annuity described in Code §408(a) or (b) that is eligible to be rolled over and would otherwise be includible in gross income; or

(5) an individual retirement account or annuity under a SIMPLE plan described in Code §408(p) that is eligible to be rolled over and would otherwise be includible in gross income after the two year period beginning on the date on which the participant first participated in the SIMPLE plan.

If a Participant is permitted to directly roll over amounts into the Plan under this subsection, the Plan shall provide separate accounting for the amounts so directly rolled over.

The Administrator may reject any Rollover Contribution which is not qualified to be a Rollover Contribution to the Plan under the foregoing or under the Code. The Administrator may make all investigations necessary to determine whether any amounts submitted as a Rollover Contribution may be received.

#### 4.10 EXCESS DEFERRALS.

(a) Return of Excess Deferrals. Except as provided in (b), below, in accordance with any guidance issued by the Internal Revenue Service, any amount deferred by a Participant in any taxable year under Section 4.1 which causes the limits described in Section 4.2 to be exceeded shall be distributed to the Participant, with allocable net income, as soon as administratively practicable after the Administrator determines that the limits described in Section 4.2 have been exceeded.

(b) Excess Deferrals Arising From Application of the Individual Limitation. Notwithstanding (a), above, Participant Deferrals to the Plan which cause the limits described in Section 4.2 to be exceeded as a result of the Participant's participation in plans other than eligible Code section 457(b) plans maintained by the Employer may, but are not required to be, returned to the Participant, with allocable net income, as soon as administratively practicable after the Administrator determines that the limits described in Section 4.2 have been exceeded.

### **ARTICLE 5**

#### **DISTRIBUTION OF BENEFITS**

5.1 ELIGIBILITY FOR PAYMENT. Distribution of a Participant's Plan Account (including, without limitation, any Rollover Account) shall not occur prior to the earliest of: (a) the calendar year in which the Participant attains age seventy and one-half (70-1/2), (b) the Participant's Severance from Employment, (c) the Participant's death, or (d) the date the

Participant incurs a financial hardship due to an Unforeseeable Emergency. Notwithstanding the preceding, a Participant shall be permitted to receive a distribution from the Participant's Plan Account under the Plan as provided in, and subject to the conditions of, Section 5.2 or 5.5.

5.2 DISTRIBUTION DUE TO UNFORESEEABLE EMERGENCY. A Participant may request a distribution due to a severe financial hardship by submitting a written request to the Administrator accompanied by evidence to demonstrate that the circumstances being experienced qualify as an Unforeseeable Emergency. The Administrator shall have the authority to require such evidence as deemed necessary to determine if a distribution is warranted. If an application for a hardship distribution due to an Unforeseeable Emergency is approved, the distribution shall be limited to an amount sufficient to meet the emergency. The allowed distribution shall be payable in a method determined by the Administrator according to such procedures and within such time periods as may be established by the Administrator from time to time.

All decisions by the Administrator or its designee in matters relating to distributions under this Section shall be final and binding on all parties.

5.3 TIMING OF DISTRIBUTIONS. Except as otherwise provided herein, distribution of a Participant's Plan Account shall be made as soon as administratively practicable following the end of the month containing the distribution event (but no later than sixty (60) days after the Plan Year in which occurs the later of (a) the Participant's Severance from Employment, or (b) the Participant's attainment of Normal Retirement Age). Notwithstanding the preceding, distribution of a Participant's Plan Account must be made no later than the first day of April following the calendar year in which the later of (a) the Participant's Severance From Employment with the Authority or (b) attainment of age seventy and one-half (70-1/2) occurs.

5.4 DEATH DISTRIBUTION PROVISIONS.

(a) Timing and Form of Distribution. If the Participant dies before distribution of his or her Plan Account, then the Participant's Plan Account will be distributed to the Beneficiary in the form of a lump sum payment as soon as administratively practicable after the Participant's death.

(b) Determination of Beneficiary. The Administrator may require such proper proof of death and such evidence of the right of any person to receive the Plan Account of a deceased Participant as the Administrator may deem desirable. The Administrator's determination of death and of the right of any person to receive payment shall be conclusive.

5.5 IN-SERVICE DISTRIBUTIONS OF SMALL AMOUNTS. A Participant shall be entitled to elect, and the Administrator shall be permitted to make (without the Participant's consent), a distribution from the Plan of the balance of the Participant's Plan Account prior to the Participant's attainment of age seventy and one-half (70-1/2), Severance from Employment or death and without the Participant being required to produce evidence of the occurrence of an Unforeseeable Emergency if (i) the amount of the distribution does not exceed the dollar

limitation of Code §411(a)(11)(A), (ii) the Participant has not, during the two (2) year period ending on the date of the distribution under this Section, made any contributions to the Participant's Plan Account maintained under the Plan and (iii) the Participant has not received a prior distribution under this Section.

5.6 RESTRICTIONS ON DISTRIBUTIONS. Notwithstanding any other provision in the Plan to the contrary, distribution shall be made only in accordance with Code §457(d) and regulations prescribed by the Internal Revenue Service under Code §§457 and 401(a)(9). To the extent that there is any conflict between the provisions of Code §§457 and 401(a)(9) and the Regulations thereunder and any other provision in the Plan, the provisions of Code §§457 and 401(a)(9) and the Regulations thereunder will control. The Plan shall comply with the Final and Temporary Regulations under the Code §401(a)(9) which were released in April 2002 and June 2004; provided, however, that if subsequent controlling Regulations are issued under Code §401(a)(9), the Plan shall comply with such subsequent Regulations as of the latest permissible effective date for such compliance.

## **ARTICLE 6** **FORM OF PARTICIPANT'S BENEFIT DISTRIBUTION**

6.1 METHOD OF DISTRIBUTION. Each Participant's Plan Account shall be distributed in a cash lump sum. To the extent that the Participant's vested Plan Account (excluding the Rollover Account) is \$1,000 or less, such Plan Account may be paid out immediately without the Participant's consent.

6.2 DIRECT ROLLOVER OPTION. Notwithstanding any other provision of the Plan to the contrary, any Distributee who is to receive an Eligible Rollover Distribution may elect the direct trustee-to-trustee rollover of the distribution to an Eligible Retirement Plan. A direct rollover election must be made pursuant to the procedures established by the Administrator and must specify the Eligible Retirement Plan to which the direct rollover is to be made. If the Distributee elects a direct rollover as permitted hereunder, the Administrator shall make the rollover as elected.

For purposes of this Section, the term "Eligible Rollover Distribution" has the meaning given such term in Code section 401(a)(31)(C) and currently means any distribution on or after January 1, 2002 of all or any portion of the balance to the credit of the Distributee, except (a) any distribution that is one of a series of substantially equal periodic payments (not less frequent than annual) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten (10) years or more; (b) any distribution to the extent such distribution is required under Code section 401(a)(9); (c) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); (d) any distribution which is made upon hardship of the Participant; (e) any corrective distribution; and (f) any deemed distribution.

For purposes of this Section, the term Eligible Retirement Plan has the meaning given

such term in Code section 401(a)(31)(D) and currently means (a) an individual retirement account described in Code section 408(a), (b) an individual retirement annuity described in Code section 408(b) (other than an endowment contract), (c) an annuity plan described in Code section 403(a), (d) a qualified trust that is a defined contribution plan described in Code section 401(a), the terms of which permit the acceptance of direct rollovers, (e) an annuity contract described in Code section 403(b), (f) an eligible plan under Code section 457(b) which is maintained by a State, political subdivision of a State, or any agency or instrumentality of a State or political subdivision of a State, and (g) a Roth IRA described in Code Section 408A, provided the requirements of Code Section 408A and the Treasury Regulations issued thereunder are satisfied. This definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a "domestic relations order", as defined in Code section 414(p)(1)(A)(i).

For purposes of this Section, the term Distributee includes the Participant and the Participant's surviving spouse. In addition, Distributee includes the Participant's spouse or former spouse who is the alternate payee under a "domestic relations order", as defined in Code section 414(p)(1)(A)(i), with respect to the payee's interest under the Plan.

In addition, for distributions due to the death of the Participant, the Participant's non-spouse Beneficiary who is a designated beneficiary within the meaning of Code Section 401(a)(9)(E) may elect a direct trustee to trustee rollover of the death benefit to an Eligible Retirement Plan described in (a) or (b) above. Said transfer shall meet the requirements of the Pension Protection Act of 2006 including the requirement that the IRA be set up solely to receive the death benefit and is subject to the minimum required distribution rules applicable to beneficiaries.

6.3 MANDATORY OR CASH OUT DISTRIBUTION. The Administrator may make an immediate distribution of the vested Plan Account that does not exceed \$5,000 (excluding the Rollover Account) after Severance From Employment with the Authority in a cash lump sum to the extent it is not subject to the Automatic Rollover provisions of Section 6.4. Any such distribution will be made as soon as administratively feasible after the date the Participant experiences a Severance From Employment.

6.4 AUTOMATIC ROLLOVERS. In the event a Mandatory Distribution exceeds \$1,000 but does not exceed \$5,000 (excluding the Rollover Account) and the Participant does not elect to have such distribution paid directly to an eligible retirement plan that is specified by the Participant in a direct rollover or does not elect to receive the distribution directly, then the Administrator will pay the distribution in a direct rollover to an individual retirement account designated by the Administrator in accordance with Code §401(a)(31)(B) ("Automatic Rollovers").

## **ARTICLE 7**

### **BENEFICIARY INFORMATION**

7.1 DESIGNATION. Each Participant shall have the right to designate a Beneficiary or Beneficiaries to receive the amount which may be payable under the Plan upon his death.

Such designation of Beneficiary shall be in writing and delivered to the Administrator, and shall be effective when received by the Administrator. The Participant shall have the right to change such designation by notice in writing to the Administrator. Such change of Beneficiary shall become effective upon its receipt by the Administrator. Any such change shall be deemed to revoke all prior designations.

7.2 SPECIAL RULES. The designated Beneficiary or Beneficiaries will receive the balance of the Participant's Plan Account balance upon the Participant's death in accordance with Section 5.4 and the following:

(a) Participants may designate primary and secondary Beneficiaries. A secondary Beneficiary and/or Beneficiaries will become entitled to a distribution of any remaining balance of the Participant's Plan Account only after the death of any and all primary Beneficiaries.

(b) If more than one Beneficiary is named in either category, benefits will be paid according to the following rules:

(1) Beneficiaries can be designated to share equally in, or to receive specific percentages of, the remaining balance, if any, of the Participant's vested Plan Account.

(2) If a Beneficiary dies before the Participant, only the surviving Beneficiaries will be eligible to receive any Plan benefits in the event of the death of the Participant. If more than two Beneficiaries are originally named to receive different percentages of the benefits, surviving Beneficiaries will share in the same proportion to each other as indicated in the original designation.

(c) A person, trustee, estate or other legal entity may be designated as a Beneficiary.

(d) If a Beneficiary has not been designated, or a designation is ineffective due to the death of any and all Beneficiaries prior to the death of the Participant, or the Administrator is unable for a period of one (1) year to locate the designated Beneficiary, or the designation is ineffective for any reason, the following:

(1) the Participant's spouse or

(2) if the Participant does not have a spouse, the Participant's estate.

**ARTICLE 8**  
**PLAN ADMINISTRATION AND FUNDING**

8.1 PLAN ADMINISTRATION.

(a) The Plan shall be administered by the Authority. The term Administrator, as used in the Plan, shall refer to the Authority or to those employees of the Authority who have the power to act for the Authority with respect to the Plan.

(b) The Authority may designate one or more employees who may act

for the Authority with respect to the Plan. In the absence of any designation by the Board to the contrary, such employees shall include the Authority's General Manager, Human Resources Director and Benefits Manager. The term Administrator, as used in the Plan, shall refer to those employees designated to act for the Authority, either individually or collectively, as appropriate. The Authority shall advise the Trustee of the names of the individuals and the scope of their authority with respect to the Plan. Any individual who is designated as having the right to act for the Authority with respect to the Plan shall be deemed to have relinquished such power (and shall no longer have any right to act for the Authority with respect to the Plan) upon his or her termination of employment with the Authority. The Board may, in its discretion, rescind the authority of any employee to act for the Authority, with or without cause, by giving notice to the employee and to the Trustee.

(c) The Administrator shall have complete control over and responsibility for the operation and administration of the Plan and shall direct payment of Plan benefits. The Administrator shall have all of the power and authority necessary to administer the Plan and shall have the power to adopt, interpret, alter, amend or revoke rules and regulations necessary to administer the Plan. Any action on matters within the discretion of the Administrator (or any employee acting for the Authority, in its capacity as Administrator) shall be final and conclusive.

(d) The Administrator may employ agents and provide for such clerical, legal, actuarial, accounting, advisory or other services as it deems necessary to perform its duties under this Plan. The Administrator may enter into agreements on behalf of the Authority necessary to implement the Plan.

(e) The duties and powers reserved to the Administrator may be allocated among those individuals who have been designated as having the power to act for the Authority with respect to the Plan, so long as such allocation is pursuant to written procedures adopted by the Authority, in which case, no person acting for the Authority shall have any liability, with respect to any duties or powers not allocated to him or her, for the acts or omissions of any other person acting for the Authority with respect to the Plan.

(f) No individual designated as having power to act for the Authority shall be precluded from becoming a Participant in the Plan if he or she would be otherwise eligible, but such individual shall not be entitled to act upon matters or to sign any documents relating specifically to his or her own participation under the Plan, except when such matters or documents relate to benefits generally.

(g) A person who has been designated by the Authority as having the power to act for the Authority with respect to the Plan may delegate any of his or her duties or powers to other employees of the Authority, to the Trustee with its consent, or to any other person or firm.

(h) The Administrator shall maintain adequate records of its actions and proceedings in administering this Plan and shall file all reports and take all other actions as it deems appropriate in order to comply with the Code.

(i) Where rights are reserved in this Plan to the Authority, such rights shall be exercised only by action of the Board, except to the extent provided in Section 10.1 and to the extent that one or more employees have been given the power to act for the Authority with respect to the Plan in accordance with this Article 8 or where the Board, by written resolution, delegates any additional power to one or more employees of the Authority. Subject to the rights reserved to the Board acting on behalf of the Authority as set forth in this Plan, no member of the Board, acting solely in his or her capacity as a member of the Board, shall have any duties or powers under this Plan.

(j) The Administrator shall not be responsible in any way for any action or omission of the Trustee or any other fiduciaries in the performance of its duties and obligations as set forth in this Plan and in the Trust Agreement. The Administrator shall also not be responsible for any act or omission of any of its agents, or with respect to reliance upon advice of its counsel (whether or not such counsel is also counsel to the Authority or the Trustee), provided that the Administrator relied in good faith upon the action of such agent or the advice of such counsel. Each employee acting for the Authority with respect to the Plan shall be indemnified and held harmless by the Authority against liability or losses occurring by reason of any act or omission with respect to the Plan, except with regard to any fraudulent or criminally prosecutable act committed by the employee in connection with such act or omission.

8.2 FUNDING REQUIREMENTS. All assets held in respect of the Plan, including all Plan Accounts and all Deferrals and earnings on Plan Accounts, shall be held in trust or in an alternative funding medium for the exclusive benefit of Participants and their Beneficiaries as required under Code §457(g) in accordance with an instrument in writing satisfying the requirements of Code §457(g).

8.3 ACCOUNTS. The Authority shall establish and maintain a Plan Account on behalf of each Participant, which shall consist of the Participant's Deferral Account, Rollover Account and any other functional subaccount which the Administrator elects to establish. The Plan Account (and separate functional subaccounts) shall be for accounting purposes only and shall not require a segregation of the Trust, and no Participant or Beneficiary shall acquire any right to or interest in any specific asset of the Trust as a result of the allocations provided for under this Plan. Such Plan Account shall be valued at fair market value as of the last day of the Plan Year and such other dates as necessary for the proper administration of the Plan and each Participant shall receive a periodic written accounting of his or her Plan Account balance following such valuation. Each Participant's Plan Account shall be credited with the amount of any Deferrals and any Rollover contributions pursuant to Section 4.9 and shall be further credited or debited, as applicable, with (i) any increase or decrease resulting from investments pursuant to Section 8.5, (ii) any expenses incurred by the Authority in maintaining and administering this Plan, which may be paid out of the Plan, and (iii) the amount of any distribution.

8.4 EXPENSES. Unless paid by the Authority, the Administrator may direct the Trustee to make disbursements from the Trust to pay administrative expenses, which shall

mean: (i) all expenses of the Plan and Trust, including legal, accounting, actuarial, custodial, brokerage, consulting and other fees and expenses incurred in the establishment, amendment, administration and termination of the Plan and Trust, (ii) compensation of the Trustee and other fiduciaries of the Plan to the extent provided in the Plan and Trust Agreement, and (iii) all taxes of any nature whatsoever, including interest and penalties, assessed against or imposed upon the Trust or the income thereof; such taxes, interest and penalties shall constitute a charge upon the Trust. Notwithstanding the foregoing, the Administrator may request the Authority to advance any or all such expenses and/or taxes on behalf of the Trust, subject to the Authority's right of reimbursement from the Trust.

8.5 INVESTMENTS. Subject to such limitations as may from time to time be required by law, imposed by the Administrator or contained elsewhere in the Plan, and subject to such operating rules and procedures as may be imposed from time to time by the Administrator, each Participant (including for this purpose former Participants with a deferred vested benefit and/or a Beneficiary) shall have the right to direct the investment of his or her Plan Account in accordance with the following:

(a) The Administrator shall establish the investment media from among which each Participant may direct the investment of his or her Plan Account. The Administrator may, in its absolute discretion, change, modify or limit such investment media and may establish uniform rules and procedures to be followed in directing the Trustee with respect to the investment of Participants' Plan Account in such investment media.

(b) The Administrator shall determine the manner, period, and frequency of investment elections (e.g., daily, weekly, or monthly). Different terms and conditions may be specified for different investment media (e.g., monthly elections for one investment medium and daily elections for another investment medium). Any term or condition imposed by the Administrator may apply to a Participant's entire Plan Account or may be applied separately to different investment media or to different types of contributions (e.g., future contributions versus the current balance of the Plan Account). Except as the Administrator shall otherwise determine, any initial or subsequent investment designation shall be in writing, on a form supplied by and filed with the Administrator or its designee, and shall be effective on such date as may be specified by the Administrator or its designee. The Administrator may arrange for telephone or other electronic investment designations to the extent that such facilities are made available by the funding agency, and may establish (and thereafter change) a limit on the number of designations that may be made by any Participant during a specified period.

(c) All contributions and other amounts added to a Participant's Plan Account (except for investment earnings) shall be allocated among the separate investment media in accordance with the then effective investment designation. Except as the Administrator shall otherwise determine, any distributions shall be taken proportionately from each separate investment medium in which the Plan Account is invested at the time of the distribution. As of the effective date of any new investment designation, the entire balance of the Participant's Plan Account at that date shall be reallocated among the designated investment media according to the percentages specified in the investment designations (unless

the Administrator permits, and the Participant has designated, different allocations as between existing balances and future contributions), but no reallocations of the Participant's Plan Account are to be made merely to adjust for disproportionate investment growth among such funds (other than in response to a subsequent investment designation filled with respect to the Participant's Plan Account).

(d) In the event the Administrator or its designee receives an initial or revised investment designation which it deems to be incomplete, unclear, not in accordance with procedures established pursuant to this Section 8.5 or otherwise improper, the Participant's investment designation then in effect shall remain in effect (or, in the case of a deficiency in an initial designation, the Participant shall be deemed to have filed no designation) until a complete investment designation is filed in accordance with the rules and procedures established by the Administrator.

(e) The Administrator, at any time and in its sole discretion, may suspend or terminate the operation of this Section 8.5 in its entirety or with respect to a portion of the Trust.

(f) It is intended that all Participants be required to direct the investment of their Plan Account to the extent set forth in this Section 8.5. In the event that the Administrator possesses at any time instructions as to the investment of less than all of a Participant's Plan Account, the Participant shall be deemed to have designated that the non-direction portion of his or her Plan Account be invested in the guaranteed interest fund (or if a guaranteed interest fund does not then exist, in the separate investment medium which most closely resembles a money market fund). To the extent that the Administrator finds it to be administratively appropriate to hold a portion of the Trust out of the operation of this Section 8.5, or to the extent that the operation of this Section 8.5 is suspended or terminated with respect to any portion of the Trust as aforesaid, or to the extent that the preceding sentence cannot be implemented because a money market fund does not exist, then the Administrator shall direct the Trustee with respect to the investment.

(g) The Administrator may determine at any time to vary the rules provided above to accord with the requirements of any investment medium, for ease in administration or for any other reason.

(h) Notwithstanding anything contained herein to the contrary, neither the Administrator, the Authority, the Trustee nor any other person who may be deemed a fiduciary hereunder shall have any liability for any loss arising from or as a result of any investment direction given by a Participant pursuant to this Section 8.5. In addition, such persons or entities shall have no responsibility to determine the appropriateness of any individual Participant's investment direction.

8.6 ERRONEOUS ALLOCATIONS. No Participant shall be entitled to any allocations to his Plan Account or earnings thereon in excess of those permitted under any provisions of the Plan or the Code. If it is determined at any time that the Administrator erred in allocating contributions to any Participant's Plan Account or in excluding or including any

person as a Participant, then the Administrator, in its discretion, shall determine the manner in which such error shall be corrected. The Plan Accounts of all Participants may be revised, if necessary, in order to correct such error.

8.7 PAPERLESS COMMUNICATIONS. Notwithstanding anything contained herein to the contrary, the Administrator from time to time may establish uniform procedures whereby with respect to any or all instances herein where a writing is required, including but not limited to any required written notice, election, consent, authorization, instruction, direction, designation, request or claim, communication may be made by any other means designated by the Administrator, including by paperless communication, and such alternative communication shall be deemed to constitute a writing to the extent permitted by applicable law, provided that such alternative communication is carried out in accordance with such procedures in effect at such time.

## **ARTICLE 9** **CLAIMS PROCEDURE**

9.1 CLAIM FOR BENEFITS. Each person eligible for a benefit under the Plan shall apply for such benefit by filing a claim with the Administrator on a form or forms prescribed by the Administrator. If no form or forms have been prescribed, a claim for benefits shall be made in writing to the Administrator setting forth the basis for the claim. Each person making a claim for benefits shall furnish the Administrator with such documents, evidence, data, or information in support of such claim, as the Administrator considers necessary or desirable.

9.2 NOTICE OF DENIAL. If a claim for benefits under this Plan is denied, either in whole or in part, the Administrator shall advise the claimant in writing of the amount of his benefit, if any, and the specific reasons for the denial. The Administrator shall also furnish the claimant at that time with a written notice containing:

- (a) A specific reference to pertinent Plan provisions;
- (b) A description of any additional material or information necessary for the claimant to perfect his claim, if possible, and an explanation of why such material or information is needed; and
- (c) An explanation of the Plan's claim review procedure.

The written notice of claim denial shall be provided to the claimant within a reasonable period of time, but not more than one hundred eighty (180) days after receipt of the claim by the Administrator, unless special circumstances require an extension of time for processing the claim, in which case the Administrator shall provide a written notice of such extension to the claimant before the expiration of the initial one hundred eighty (180) day period. In no event shall such extension exceed ninety (90) days from the end of such initial period.

9.3 RIGHT TO RECONSIDERATION. Within sixty (60) days of receipt of the information described in Section 9.2 above, the claimant shall, if he or she desires further review, file a written request for reconsideration with the Administrator.

9.4 REVIEW OF DOCUMENTS. So long as the claimant's request for review is pending (including the sixty (60) day period described in Section 9.3 above), the claimant or his duly authorized representative may review pertinent Plan documents and the Trust Agreement (and any pertinent related documents) and may submit issues and comments in writing to the Administrator.

9.5 DECISION BY ADMINISTRATOR. A final and binding decision shall be made by the Administrator within sixty (60) days of the filing by the claimant of his request for reconsideration; provided, however, that if the Administrator, in its discretion, feels that a hearing with the claimant or his representative present is necessary or desirable, this period shall be extended an additional sixty (60) days.

9.6 NOTICE BY ADMINISTRATOR. The Administrator's decision shall be final and binding upon the claimant (and any other person claiming through the claimant) and shall be conveyed to the claimant in writing. Such decision shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, with specific references to the pertinent Plan provisions on which the decision is based.

**ARTICLE 10**  
**AMENDMENT OR TERMINATION OF PLAN**

10.1 AMENDMENT OF PLAN. The Authority shall have the right to amend this Plan, in whole or in part, at any time to any extent that it may deem advisable. Any amendment of the Plan shall be set forth in an instrument in writing. All Participants, the Authority, the Administrator and the Trustee shall be bound by any amendment to this Plan except that no amendment shall increase the duties or liabilities of the Trustee without its consent. Amendments may be made in the form of written resolutions or by a separate written document and, except in the case of an amendment adopted pursuant to the next sentence hereof, shall be adopted pursuant to action by the Board (including pursuant to any standing authorization for any officer, director or committee to adopt amendments) in accordance with its applicable procedures, including, where applicable, by majority vote or consent in writing. In addition, and as an alternative, to amendment of the Plan by action of the Board, the General Manager of the Authority shall be and is hereby authorized to adopt on behalf of the Authority and to execute any technical amendments to the Plan which are required by law and to also adopt and execute any discretionary amendments to the Plan which are deemed advisable by the General Manager of the Authority, so long as the General Manager reasonably concludes that such amendments do not materially change the terms of the Plan. Copies of all amendments shall be delivered to the Trustee and the Administrator.

10.2 TERMINATION. Although the Authority has established this Plan with the intention and expectation to maintain the Plan indefinitely, the Board may terminate or discontinue the Plan in whole or in part at any time without any liability for such termination or

discontinuance. Upon Plan termination, all Deferrals shall cease. The Administrator, in its sole discretion, shall retain all Deferrals and Plan Account balances until distribution of benefits commences under Article 5 in the form determined under Article 6 or shall distribute all Deferrals and Plan Account balances to Participants and Beneficiaries at such times and in such manner as it deems appropriate.

**ARTICLE 11**  
**MISCELLANEOUS**

11.1 **NO RIGHT TO EMPLOYMENT.** Participation in this Plan shall not give any person the right to be retained in the employ of the Authority, or any right or interest in this Plan other than as herein provided.

11.2 **HEADINGS.** The headings and sub-headings in this instrument are inserted for convenience of reference only and are not to be considered in construing the provisions hereof.

11.3 **GOVERNING LAW.** This Plan shall be construed, administered and governed in all respects under and by the laws of the District of Columbia.

11.4 **RULES AND REGULATIONS.** By becoming a Participant, every Participant shall thereby be deemed to have agreed to abide by the rules and regulations of the Administrator made in accordance with this Plan.

11.5 **LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN.** In the event that all, or any portion, of the distribution payable to a Participant or a Beneficiary shall remain unpaid solely because the Administrator cannot ascertain the whereabouts of the Participant or Beneficiary, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, the amount so distributable shall continue to held for the benefit of such missing Participant or Beneficiary. However, the Administrator may arrange for the distribution of such amount to an account opened in the name of the missing Participant or Beneficiary with a bank, insurance company or other financial institution, and upon the transfer of such amount to such bank, insurance company or other financial institution, neither the Trustee, the Administrator nor the Authority shall have any obligation to any person with respect to such amount. If a benefit payable to a missing Participant or Beneficiary is subject to escheat pursuant to applicable state law, neither the Trustee, the Administrator nor the Authority shall be liable to any person for any payment made in accordance with such law.

11.6 **NO ASSIGNMENT OF BENEFITS.** Except as expressly provided herein, no benefits under the Plan may be assigned or alienated, and the Trustee shall pay all amounts payable hereunder, and shall distribute all assets distributable hereunder, to any person, into the hands of such person and not unto any other person or corporation whatsoever, whether claiming by his or her authority or otherwise; nor may said payments be anticipated. Except as expressly provided herein, the interest of any Participant hereunder may not be assigned or encumbered, nor shall it be subject to attachment or other judicial process. However, deposit to the credit of the account of any person in a bank or trust company designated by such person in

writing shall be deemed to be the equivalent of payment into the hands of such person.

11.7 DOMESTIC RELATIONS ORDERS. All rights and benefits (including, but not limited to, rights of election of payment form and designation of Beneficiary) afforded to a Participant or Beneficiary in this Plan shall be subject to the rights afforded to any alternate payee under a domestic relations order, as defined in Code §414(p). Notwithstanding anything contained herein to the contrary, to the full extent permitted under Code §414(p), the terms of any domestic relations order, amounts in which a Participant is vested and which are assigned to an alternate payee pursuant to such domestic relations order may be paid in a lump sum as soon as possible to such alternate payee, notwithstanding the employment status or other factors affecting the ability of a Participant to receive a current distribution of all or part of his Plan Account.

11.8 NO DIVERSION OF FUNDS. It is the intention of the Authority that it shall be impossible for any part of the corpus or income of the Trust to be used for, or diverted to, purposes other than for the exclusive benefit of the Participants or their Beneficiaries and the defrayal of reasonable expenses of the Plan and Trust, except as otherwise specifically permitted under this Plan.

11.9 LIABILITY LIMITED. Neither the Authority, the Administrator, the Trustee, nor any other person shall have any liability or responsibility with respect to this Plan, except as expressly provided herein. Neither the establishment of this Plan nor any modification of the Plan nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving a Participant or other person any legal or equitable right against the Authority except as provided in the Plan.

11.10 INCAPACITY. If the Administrator shall receive evidence satisfactory to it that a Participant or Beneficiary entitled to receive any benefit under the Plan is, at the time when such benefit becomes payable, a minor, or is physically or mentally incompetent to receive such benefit and to give a valid release therefor, and that another person or an institution is then maintaining or has custody of such Participant or Beneficiary, and that no guardian, committee or other representative of the estate of such Participant or Beneficiary shall have been duly appointed, the Administrator may direct the Trustee to make payments of such benefit otherwise payable to such Participant or Beneficiary, to such other person or institution, including a custodian under a Uniform Gifts to Minors Act, or corresponding legislation (who shall be an adult, a guardian of the minor or a trust company), and such payments shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

11.11 BENEFITS LIMITED TO FUND. The benefits of this Plan shall be only as can be provided by the assets of the Fund, and no liability for the payment of benefits under the Plan shall be imposed upon the Authority.

11.12 COOPERATION OF PARTIES. All parties to this Plan and any party claiming any interest hereunder agree to perform any and all acts and execute any and all documents and papers which are necessary or desirable for carrying out this Plan or any of its provisions.

11.13 REPRESENTATIONS. The Authority does not represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will result from participation in this Plan. A Participant should consult with professional tax advisors to determine the tax consequences of his or her participation. Furthermore, the Authority does not represent or guarantee successful investment of Deferrals and shall not be required to repay any loss which may result from any investment or lack of investment.

11.14 SEVERABILITY. If a court of competent jurisdiction holds any provisions of this Plan to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

11.15 STATUTE OF LIMITATIONS. No legal action may be commenced or maintained to recover benefits under this Plan more than twelve (12) months after the final review/appeal decision by the Administrator has been rendered (or deemed rendered).

IN WITNESS WHEREOF, the District of Columbia Water and Sewer Authority has caused these presents to be executed by a duly authorized officer on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**DISTRICT OF COLUMBIA WATER AND  
SEWER AUTHORITY**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_