Amendment for Code Section 415 Regulations
Summary of Significant Changes

The benefits and contributions provided under retirement plans are subject to limits under Section 415 of the Internal Revenue Code.

Under these Section 415 limits, the "annual additions" credited to a participant's account in a defined contribution plan for any limitation year must not exceed the lesser of:

1. $40,000 (as adjusted for cost-of-living increases—$49,000 in 2009); or

2. 100% of the participant's compensation for the limitation year.

Under the Section 415 limits for a defined benefit plan, a participant's "annual benefit" may not exceed $160,000 (as adjusted for cost-of-living increases—$195,000 in 2009).

For both the defined contribution plan and the defined benefit plan, the Amendment for the Code Section 415 Regulations[1] incorporates changes to the Section 415 limits, which are required by recent regulations. The Amendment provides in part that Actual Compensation will be adjusted to include regular pay after severance from employment if:

1. the pay is regular compensation, overtime, commissions, bonuses or other similar payments;

2. the payment would have been paid to the participant prior to severance from employment if they had continued in employment; and

3. the payment is made by the later of 2½ months after severance from employment or by the end of the limitation year that includes the severance from employment.

The Amendment also provides that leave cashouts, deferred compensation, salary continuation payments for military service participants, and salary continuation payments for disabled participants are not included in the definition of compensation for purposes of Section 415.

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[1] For the defined contribution plan, the Amendment is formally called the "Amendment for the Final Code Section 415 Regulations." For the defined benefit plan, the Amendment is formally called the "Amendment for Final 415 Regulations and Pension Funding Equity Act."

AN ORDINANCE OF THE CITY OF CLINTON, OKLAHOMA

ORDINANCE NO. 916

AN ORDINANCE AMENDING THE EMPLOYEE RETIREMENT SYSTEM, DEFINED BENEFIT PLAN OF THE **CITY OF CLINTON**, OKLAHOMA, TO INCORPORATE THE FINAL IRC SECTION 415 REGULATIONS AND PROVISIONS OF THE PENSION FUNDING EQUITY ACT; AND AMENDING THE DEFINED CONTRIBUTION PLAN OF THE **CITY OF CLINTON**, OKLAHOMA, TO INCORPORATE THE FINAL IRC SECTION 415 REGULATIONS; AND AMENDING THE DEFINED CONTRIBUTION PLAN FOR THE POSITION OF CITY MANAGER OF THE **CITY OF CLINTON**, OKLAHOMA, TO INCORPORATE THE FINAL IRC SECTION 415 REGULATIONS; PROVIDING FOR EMPLOYER PICKUP OF MANDATORY CONTRIBUTIONS FOR THE DEFINED BENEFIT PLAN; PROVIDING FOR EFFECTIVE DATE, PROVIDING FOR REPEALER AND SEVERABILITY; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLINTON, OKLAHOMA:

Section 1. The Employee Retirement System, Defined Benefit Plan and Defined Contribution Plan and Defined Contribution Plan for the position of City Managerof the **City of Clinton**, Oklahoma, is hereby amended as shown on the attached Exhibit "A" and "B" and "C", which is incorporated herein by reference.

Section 2. All ordinances in conflict herewith are hereby repealed.

Section 3. Whereas, the Defined Benefit Plan contains provisions which are intended to constitute a pick-up program by the Employer which satisfies the requirements of section 414(h)(2) of the Internal Revenue Code of 1986 (the "Code"); and in accordance with the provisions of the plan, Mandatory Contributions (as defined in the Plan) are designated "picked-up" by the employer so as to not be included in Plan Participants' gross income for Federal income tax purposes as provided in Section 414(h)(2) of the Code. All Mandatory Contributions are to be paid by the employer in lieu of contributions by the Plan Participant. No Participant in the Plan shall have the option of choosing to receive the amounts of Mandatory Contributions directly in lieu of having such amounts paid by the employer to the Trustees of the Plan.

Section 4. If any part, article, section, or subsection of this ordinance shall be held invalid or unconstitutional for any reason, such holding shall not be construed to impair or invalidate the remainder of this ordinance, notwithstanding such holding.

Section 5. It being immediately necessary for the preservation of the public peace, health, safety, and welfare of the City of Clinton and the inhabitants thereof that this ordinance be put into full force and effect, an emergency is hereby declared to exist by reason whereof this ordinance shall be in full force and effect from and after its passage and approval.

END

The foregoing ordinance was introduced before the Clinton City Council on the _____ day of _____, 20____, and was duly adopted and approved by the Mayor and City Council of the City of Clinton on the _____ day of _____, 20_____, after compliance with notice requirements of the Open Meeting Law (25 OSA, Sections 301, et seq.).

ATTEST: _____ MAYOR

_____
CITY CLERK

Approved as to form and legality on _____, _____.

_____
CITY ATTORNEY

AMENDMENT TO CITY OF CLINTON PLAN
AMENDMENT FOR
FINAL 415 REGULATIONS AND PENSION FUNDING EQUITY ACT

ARTICLE I.
PREAMBLE

1.1 **Effective date of Amendment**. This Amendment is effective as indicated herein for the respective provisions.

1.2 **Superseding of inconsistent provisions**. This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.

1.3 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.

1.4 **Effect of restatement of Plan.** If the Employer restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates the final Code Section 415 Regulations provisions).

ARTICLE II.
ACTUAL COMPENSATION

2.1 **Effective date.** The provisions of this Article II shall apply to "Limitation Years" that begin more than 90 days after the close of the first regular legislative session of the legislative body with authority to amend the Plan that begins on and after July 1, 2007.

2.2 **Actual Compensation paid after "Severance from Employment."** Actual Compensation shall be adjusted, as set forth herein, for the following types of compensation paid after a Participant's "Severance from Employment" with the Employer maintaining the Plan (or any other entity that is treated as the Employer pursuant to Code Section 414(b), (c), (m) or (o)). However, amounts described in subsections (a), (b) and (c) below may only be included in Actual Compensation to the extent such amounts are paid by the later of 2½ months after "severance from Employment" or by the end of the "Limitation Year" that includes the date of such "Severance from Employment." Any other payment of compensation paid after "Severance from Employment" that is not described in the following types of compensation is not considered Actual Compensation within the meaning of Code Section 415(c)(3), even if payment is made within the time period specified above.

2.3 (a) **Regular pay.** Actual Compensation shall include regular pay after "Severance from Employment" if:

(1) 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

(2) The payment would have been paid to the Participant prior to a "Severance from Employment" if the Participant had continued in employment with the Employer.

(b) **Leave cashouts.** Leave cashouts shall not be included in Actual Compensation.

(c) **Deferred Compensation**. Actual Compensation will not include deferred compensation.

(d) **Salary continuation payments for military service Participants.** Actual Compensation does not include payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code Section 414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(e) **Salary continuation payments for disabled Participants.** Actual Compensation does not include compensation paid to a Participant who is permanently and totally disabled (as defined in Code Section 22(e)(3)).

2.4 **Administrative delay ("the first few weeks") rule.** Actual Compensation for a "Limitation Year" shall not include amounts earned but not paid during the "Limitation Year" solely because of the timing of pay periods and pay dates.

2.5 **Inclusion of certain nonqualified deferred compensation amounts.** If the Plan's definition of Compensation for purposes of Code Section 415 is the definition in Regulations Section 1.415(c)-2(b) (Regulations Section 1.415-2(d)(2) under the Regulations in effect for "Limitation Years" beginning prior to July 1, 2007) and the simplified compensation definition of Regulations Section 1.415(c)-2(d)(2) (Regulations Section 1.415-2(d)(10) under the Regulations in effect for "Limitation Years" prior to July 1, 2007) is not used, then Actual Compensation shall include amounts that are includible in the gross income of a Participant under the rules of Code Section 409A or Code Section 457(f)(1)(A) or because the amounts are constructively received by the Participant.

2.6 **Back Pay.** Payments awarded by an administrative agency or court or pursuant to a bona fide agreement by an Employer to compensate an Employee for lost wages are Actual Compensation for the "Limitation Year" to which the back pay relates, but only to the extent such payments represent wages and compensation that would otherwise be included in Actual Compensation under this Article.

2.7 **Change of "Limitation Year."** The "Limitation Year" may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's "Limitation Year," then the Plan is treated as if the Plan had been amended to change its "Limitation Year."

ARTICLE III.
PLAN COMPENSATION

3.1 **Compensation paid after "Severance from Employment."** Compensation for purposes of benefits (hereinafter referred to as Plan Compensation) shall be adjusted in the same manner as Actual Compensation pursuant to Article II of this Amendment if those amounts would have been included in Compensation if they were paid prior to the Participant's "Severance from Employment," except in applying Article II, the term "Limitation Year" shall be replaced with the term "Plan Year" and the term "Actual Compensation" shall be replaced with the term "Plan Compensation."

3.2 **Effective date of Plan Compensation provisions.** The provisions of this Article shall apply for Plan Years beginning on and after July 1, 2007.

ARTICLE IV.
CODE SECTION 415 LIMITATIONS

4.1 Annual Benefit.

(a) **Effective date.** The limitations of this Article apply in "Limitation Years" that begin more than 90 days after the close of the first regular legislative session of the legislative body with authority to amend the Plan that begins on or after July 1, 2007, except as otherwise provided herein.

(b) **"Annual Benefit."** The "Annual Benefit" otherwise payable to a Participant under the Plan at any time shall not exceed the "Maximum Permissible Benefit." If the benefit the Participant would otherwise accrue in a "Limitation Year" would produce an "Annual Benefit" in excess of the "Maximum Permissible Benefit," then the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the "Maximum Permissible Benefit."

(c) **Adjustment if in two defined benefit plans.** If the Participant is, or has ever been, a Participant in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the Employer or a "Predecessor Employer," the sum of the Participant's "Annual Benefits" from all such plans may not exceed the "Maximum Permissible Benefit." Where the Participant's employer-provided benefits under all such defined benefit plans (determined as of the same age) would exceed the "Maximum Permissible Benefit" applicable at that age, the Employer shall limit a Participant's benefit in accordance with the terms of the Plans.

(d) **Grandfather of limits prior to July 1, 2007.** The application of the provisions of this Article shall not cause the "Maximum Permissible Benefit" for any Participant to be less than the Participant's Accrued Benefit under all the defined benefit plans of the Employer or a "Predecessor Employer" as of the end of the last "Limitation Year" beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, Regulations, and other published guidance relating to Code Section 415 in effect as of the end of the last "Limitation Year" beginning before July 1, 2007, as described in Regulations Section 1.415(a)-1(g)(4).

(e) **Other rules applicable.** The limitations of this Article shall be determined and applied taking into account the rules in Amendment Section 4.3.

4.2 **Definitions.** For purposes of this Amendment, the following definitions apply.

(a) **Annual Benefit.** "Annual Benefit" means a benefit that is payable annually in the form of a "Straight Life Annuity." Except as provided below, where a benefit is payable in a form other than a "Straight Life Annuity," the benefit shall be adjusted to an actuarially equivalent "Straight Life Annuity" that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this Article. For a Participant who has or will have distributions commencing at more than one Annuity Starting Date, the "Annual Benefit" shall be determined as of each such Annuity Starting Date (and shall satisfy the limitations of this Article as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other Annuity Starting Dates. For this purpose, the determination of whether a new Annuity Starting Date has occurred shall be made without regard to Regulations Section 1.401(a)-20, Q&A 10(d), and with regard to Regulations Section 1.415(b)1(b)(1)(iii)(B) and (C).

No actuarial adjustment to the benefit shall be made for (a) survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the Participant's benefit were paid in another form; (b) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or (c) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Code Section 417(e)(3) and would otherwise satisfy the limitations of this Article, and the Plan provides that the amount payable under the form of benefit in any "Limitation Year" shall not exceed the limits of this Article applicable at the Annuity Starting Date, as increased in subsequent years pursuant to Code Section 415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

The determination of the "Annual Benefit" shall take into account Social Security supplements described in Code Section 411(a)(9) and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant Regulations Section 1.411(d)-4, Q&A-3(c), but shall disregard benefits attributable to Employee contributions or rollover contributions.

Effective for distributions in Plan Years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a "Straight Life Annuity" shall be made in accordance with (1) or (2) below.

(1) **Benefit forms not subject to Code Section 417(e)(3).** The "Straight Life Annuity" that is actuarially equivalent to the Participant's form of benefit shall be determined under this subsection (1) if the form of the Participant's benefit is either (a) a nondecreasing annuity (other than a "Straight Life Annuity") payable for a period of not less than the life of the Participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or (b) an annuity that decreases during the life of the Participant merely because of (1) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (2) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code Section 401(a)(11)).

(i) **"Limitation Years" beginning before July 1, 2007.** For "Limitation Years" beginning before July 1, 2007, the actuarially equivalent "Straight Life Annuity" is equal to the annual amount of the "Straight Life Annuity" commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount: (I) the interest rate and mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and (II) 5% interest rate assumption and the applicable mortality table defined in the Plan for that Annuity Starting Date.

(ii) **"Limitation Years" beginning on or after July 1, 2007.** For "Limitation Years" beginning on or after July 1, 2007, the actuarially equivalent "Straight Life Annuity" is equal to the greater of (I) the annual amount of the "Straight Life Annuity" (if any) payable to the Participant under the Plan commencing at the same Annuity Starting Date as the Participant's form of benefit; and (II) the annual amount of the "Straight Life Annuity" commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using a 5% interest rate assumption and the applicable mortality table defined in the Plan for that Annuity Starting Date.

(2) **Benefit Forms Subject to Code Section 417(e)(3).** The "Straight Life Annuity" that is actuarially equivalent to the Participant's form of benefit shall be determined under this paragraph if the form of the

Participant's benefit is other than a benefit form described in Amendment Section 4.2(a)(1) above. In this case, the actuarially equivalent "Straight Life Annuity" shall be determined as follows:

(i) **Annuity Starting Date in Plan Years Beginning After 2005.** If the Annuity Starting Date of the Participant's form of benefit is in a Plan Year beginning after 2005, the actuarially equivalent "Straight Life Annuity" is equal to the greatest of (I) the annual amount of the "Straight Life Annuity" commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using the interest rate and mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; (II) the annual amount of the "Straight Life Annuity" commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table defined in the Plan; and (III) the annual amount of the "Straight Life Annuity" commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using the applicable interest rate and applicable mortality table defined in the Plan, divided by 1.05.

(ii) **Annuity Starting Date in Plan Years Beginning in 2004 or 2005.** If the Annuity Starting Date of the Participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent "Straight Life Annuity" is equal to the annual amount of the "Straight Life Annuity" commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greater annual amount: (I) the interest rate and mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and (II) a 5.5% interest rate assumption and the applicable mortality table defined in the Plan.

(b) **Defined Benefit Dollar Limitation.** "Defined Benefit Dollar Limitation" means, effective for "Limitation Years" ending after December 31, 2001, $160,000, automatically adjusted under Code Section 415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a "Straight Life Annuity." The new limitation shall apply to "Limitation Years" ending with or within the calendar year of the date of the adjustment, but a Participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. If elected by the Employer in Amendment Section 2.4, the automatic annual adjustment of the "Defined Benefit Dollar Limitation" under Code 415(d) shall apply to Participants who have had a separation from employment.

(c) **Employer.** "Employer" means, for purposes of this Article, the Employer that has adopted the Plan, and all members of a controlled group of corporations, as defined in Code Section 414(b), as modified by Code Section 415(h)), all commonly controlled trades or businesses (as defined in Code Section 414(c), as modified, except in the case of a brother-sister group of trades or businesses under common control, by Code Section 415(h)), or affiliated service groups (as defined in Code Section 414(m)) of which the adopting Employer is a part, and any other entity required to be aggregated with the employer pursuant to Code Section 414(o).

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

(e) **Limitation Year.** "Limitation Year" means the period specified in the Plan that is used to apply the Code Section 415 limitations.

(f) **Maximum Permissible Benefit.** "Maximum Permissible Benefit" means the "Defined Benefit Dollar Limitation" (adjusted where required, as provided below).

(1) Adjustment for Less Than 10 Years of Participation or Service: If the Participant has less than 10 years of participation in the Plan, the "Defined Benefit Dollar Limitation" shall be multiplied by a fraction -- (i) the numerator of which is the number of "Years of Participation" in the Plan (or part thereof, but not less than one year), and (ii) the denominator of which is ten (10).

(2) Adjustment of "Defined Benefit Dollar Limitation" for Benefit Commencement Before Age 62 or after Age 65: Effective for benefits commencing in "Limitation Years" ending after December 31, 2001, the "Defined Benefit Dollar Limitation" shall be adjusted if the Annuity Starting Date of the Participant's benefit

is before age 62 or after age 65. If the Annuity Starting Date is before age 62, the "Defined Benefit Dollar Limitation" shall be adjusted under Section 4.2(f)(2)(i), as modified by Amendment Section 4.2(f)(2)(iii). If the Annuity Starting Date is after age 65, the "Defined Benefit Dollar Limitation" shall be adjusted under Amendment Section 4.2(f)(2)(ii), as modified by Amendment Section 4.2(f)(2)(iii).

(i) Adjustment of "Defined Benefit Dollar Limitation" for Benefit Commencement Before Age 62:

(I) "Limitation Years" Beginning Before July 1, 2007. If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a "Limitation Year" beginning before July 1, 2007, the "Defined Benefit Dollar Limitation" for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a "Straight Life Annuity" commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the "Defined Benefit Dollar Limitation" (adjusted under Amendment Section 4.2(f)(1) for years of participation less than ten (10), if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate and mortality table (or other tabular factor) specified in the Plan; or (2) a five-percent (5%) interest rate assumption and the applicable mortality table as defined in the Plan.

(II) "Limitation Years" Beginning on or After July 1, 2007.

(A) Plan Does Not Have Immediately Commencing "Straight Life Annuity" Payable at both Age 62 and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a "Limitation Year" beginning on or after July 1, 2007, and the Plan does not have an immediately commencing "Straight Life Annuity" payable at both age 62 and the age of benefit commencement, the "Defined Benefit Dollar Limitation" for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a "Straight Life Annuity" commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the "Defined Benefit Dollar Limitation" (adjusted under Amendment Section 4.2(f)(1) for years of participation less than ten (10), if required) with actuarial equivalence computed using a five-percent (5%) interest rate assumption and the applicable mortality table for the Annuity Starting Date as defined in the Plan(and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date).

(B) Plan Has Immediately Commencing "Straight Life Annuity" Payable at both Age 62 and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a "Limitation Year" beginning on or after July 1, 2007, and the Plan has an immediately commencing "Straight Life Annuity" payable at both age 62 and the age of benefit commencement, the "Defined Benefit Dollar Limitation" for the Participant's Annuity Starting Date is the lesser of the limitation determined under Amendment Section 4.2(f)(2)(i)(II)(A) and the "Defined Benefit Dollar Limitation" (adjusted under Amendment Section 4.2(f)(1) for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the immediately commencing "Straight Life Annuity" under the Plan at the Participant's Annuity Starting Date to the annual amount of the immediately commencing "Straight Life Annuity" under the Plan at age 62, both determined without applying the limitations of this Article.

(ii) Adjustment of "Defined Benefit Dollar Limitation" for Benefit Commencement After Age 65:

(I) "Limitation Years" Beginning Before July 1, 2007. If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning before July 1, 2007, the "Defined Benefit Dollar Limitation" for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a "Straight Life Annuity" commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the "Defined Benefit Dollar Limitation" (adjusted under Amendment Section 4.2(f)(1) for years of participation less than ten (10), if required) with actuarial equivalence computed using

whichever of the following produces the smaller annual amount: (1) the interest rate and mortality table (or other tabular factor) specified in the Plan; or (2) a five-percent (5%) interest rate assumption and the applicable mortality table as defined in the Plan.

(II) "Limitation Years" Beginning Before July 1, 2007.

(A) Plan Does Not Have Immediately Commencing "Straight Life Annuity" Payable at both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a "Limitation Year" beginning on or after July 1, 2007, and the Plan does not have an immediately commencing "Straight Life Annuity" payable at both age 65 and the age of benefit commencement, the "Defined Benefit Dollar Limitation" at the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a "Straight Life Annuity" commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the "Defined Benefit Dollar Limitation" (adjusted under Amendment Section 4.2(f)(1)for years of participation less than 10, if required), with actuarial equivalence computed using a 5% interest rate assumption and the applicable mortality table for that Annuity Starting Date as defined in the Plan (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date).

(B) Plan Has Immediately Commencing "Straight Life Annuity" Payable at both Age 65 and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a "Limitation Year" beginning on or after July 1, 2007, and the plan has an immediately commencing "Straight Life Annuity" payable at both age 65 and the age of benefit commencement, the "Defined Benefit Dollar Limitation" at the Participant's Annuity Starting Date is the lesser of the limitation determined under Amendment Section 4.2(f)(2)(ii)(II)(A) and the "Defined Benefit Dollar Limitation" (adjusted under Amendment Section 4.2(f)(1) for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing "Straight Life Annuity" under the Plan at the Participant's Annuity Starting Date to the annual amount of the adjusted immediately commencing "Straight Life Annuity" under the Plan at age 65, both determined without applying the limitations of this Article. For this purpose, the adjusted immediately commencing "Straight Life Annuity" under the Plan at the Participant's Annuity Starting Date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing "Straight Life Annuity" under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Participant who is age 65 and has the same accrued benefit as the Participant.

(iii) Notwithstanding the other requirements of this Amendment Section 4.2(f)(2), no adjustment shall be made to the "Defined Benefit Dollar Limitation" to reflect the probability of a Participant's death between the Annuity Starting Date and age 62, or between age 65 and the Annuity Starting Date, as applicable, if benefits are not forfeited upon the death of the Participant prior to the Annuity Starting Date. To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Participant's death if the Plan does not charge Participants for providing a qualified preretirement survivor annuity, as defined in Code Section 417(c), upon the Participant's death.

(3) Minimum benefit permitted: Notwithstanding anything else in this Section to the contrary, the benefit otherwise accrued or payable to a Participant under this Plan shall be deemed not to exceed the "Maximum Permissible Benefit" if:

(i) the retirement benefits payable for a "Limitation Year" under any form of benefit with respect to such Participant under this Plan and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the Employer do not exceed $10,000

multiplied by a fraction – (I) the numerator of which is the Participant's number of Years (or part thereof, but not less than one year) of Service (not to exceed ten (10)) with the Employer, and (II) the denominator of which is ten (10); and

(ii) the Employer (or a "Predecessor Employer") has not at any time maintained a defined contribution plan in which the Participant participated (for this purpose, mandatory Employee contributions under a defined benefit plan, individual medical accounts under Code Section 401(h), and accounts for post-retirement medical benefits established under Code Section 419A(d)(1) are not considered a separate defined contribution plan).

(g) **Predecessor Employer**. "Predecessor Employer" means, with respect to a Participant, a former employer of such Participant if the Employer maintains a Plan that provides a benefit which the Participant accrued while performing services for the former employer. A former entity that antedates the Employer is also a "Predecessor Employer" with respect to a Participant if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity. For this purpose, the formerly affiliated plan rules in Regulations Section 1.415(f)-1(b)(2) apply as if the Employer and "Predecessor Employer" constituted a single employer under the rules described in Regulations Section 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Regulations Section 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the "Predecessor Employer" relationship, such as a transfer of benefits or plan sponsorship.

(h) **Severance from Employment.** "Severance from Employment" means, with respect to any individual, cessation from being an Employee of the Employer maintaining the Plan. An Employee does not have a "Severance from Employment" if, in connection with a change of employment, the Employee's new employer maintains the Plan with respect to the Employee.

(i) **Straight Life Annuity.** "Straight Life Annuity" means an annuity payable in equal installments for the life of a Participant that terminates upon the Participant's death.

(j) **Year of Participation.** "Year of Participation" means, with respect to a Participant, each accrual computation period (computed to fractional parts of a year) for which the following conditions are met: (1) the Participant is credited with at least the number of Hours of Service (or Period of Service if the Elapsed Time Method is used) for benefit accrual purposes, required under the terms of the Plan in order to accrue a benefit for the accrual computation period, and (2) the Participant is included as a Participant under the eligibility provisions of the Plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a "Year of Participation" credited to the Participant shall equal the amount of benefit accrual service credited to the Participant for such accrual computation period. A Participant who is permanently and totally disabled within the meaning of Code Section 415(c)(3)(C)(i) for an accrual computation period shall receive a "Year of Participation" with respect to that period.

In addition, for a Participant to receive a "Year of Participation" (or part thereof) for an accrual computation period, the Plan must be established no later that the last day of such accrual computation period. In no event shall more than one "Year of Participation" be credited for any 12-month period.

(k) **Year of Service.** "Year of Service" means, for purposes of Amendment Section 4.2(d), each accrual computation period (computed to fractional parts of a year) for which a Participant is credited with at least the number of Hours of Service (or Period of Service if the Elapsed Time Method is used) for benefit accrual purposes, required under the terms of the Plan in order to accrue a benefit for the accrual computation period, taking into account only service with the Employer or a "Predecessor Employer."

4.3 **Other rules.**

(a) **Benefits under terminated plans.** If a defined benefit plan maintained by the Employer has terminated with sufficient assets for the payment of benefit liabilities of all plan participants and a Participant in the plan has not yet commenced benefits under the plan, the benefits provided pursuant to the annuities purchased to provide the Participant's benefits under the terminated plan at each possible Annuity Starting Date shall be taken into account in applying the limitations of this Article. If there are not sufficient assets for the payment of all Participants' benefit liabilities, the benefits taken into account shall be the benefits that are actually provided to the Participant under the terminated plan.

(b) **Benefits transferred from the Plan.** If a Participant's benefits under a defined benefit plan maintained by the employer are transferred to another defined benefit plan maintained by the Employer and the transfer is not a transfer of distributable benefits pursuant Regulations Section 1.411(d)-4, Q&A-3(c), then the transferred benefits are not treated

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

(c) **Formerly affiliated plans of the Employer.** A "Formerly Affiliated Plan of an Employer" shall be treated as a plan maintained by the Employer, but the formerly affiliated plan shall be treated as if it had terminated immediately prior to the cessation of affiliation with sufficient assets to pay Participants' benefit liabilities under the Plan and had purchased annuities to provide benefits.

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

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

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

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

(2) Effective for "Limitation Years" ending after December 31, 2001, a multiemployer plan shall be disregarded for purposes of applying the compensation limitation of Section 4.2(f)(1) to a plan which is not a multiemployer plan.

AMENDMENT TO
CITY OF CLINTON PLAN

AMENDMENT FOR THE FINAL CODE SECTION 415 REGULATIONS

ARTICLE I.
PREAMBLE

1.1 **Effective date of Amendment.** This Amendment is adopted to reflect certain provisions of the final Code Section Regulations. This Amendment is effective for limitation years and plan years that begin more than 90 days after the close of the first regular legislative session of the legislative body with authority to amend the Plan that begins on or after July 1, 2007, except as otherwise provided herein.

1.2 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.

1.3 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.

1.4 **Effect of restatement of Plan.** If the Employer restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates the final Code §415 Regulation provisions).

ARTICLE II.
FINAL SECTION 415 REGULATIONS

2.1 **Effective date.** The provisions of this Article II shall apply to limitation years that begin more than 90 days after the close of the first regular legislative session of the legislative body with authority to amend the Plan that begins on and after July 1, 2007.

2.2 **Actual Compensation paid after severance from employment.** Actual Compensation shall be adjusted, as set forth herein, for the following types of compensation paid after a 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)). However, amounts described in subsections (a) and (b) below may only be included in Actual Compensation to the extent such amounts are paid by the later of 2½ months after severance from employment or by 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 that is not described in the following types of compensation is not considered Actual Compensation within the meaning of Code § 415(c)(3), even if payment is made within the time period specified above.

(a) **Regular pay.** Actual Compensation shall include regular pay after severance of employment if:

(1) 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

(2) The payment would have been paid to the participant prior to a severance from employment if the participant had continued in employment with the Employer.

(b) **Leave cashouts and deferred compensation.** Leave cashouts shall not be included in Actual Compensation. Further, deferred compensation shall not be included in Actual Compensation.

(c) **Salary continuation payments for military service participants.** Actual Compensation does not include payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code § 414(u)(1)).

(d) **Salary continuation payments for disabled Participants.** Actual Compensation does not include

compensation paid to a participant who is permanently and totally disabled (as defined in Code § 22(e)(3)).

2.3 **Administrative delay ("the first few weeks") rule.** Actual Compensation for a limitation year shall not include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates.

2.4 **Inclusion of certain nonqualified deferred compensation amounts.** If the Plan's definition of Compensation for purposes of Code § 415 is the definition in Regulation Section 1.415(c)-2(b) (Regulation Section 1.415-2(d)(2) under the Regulations in effect for limitation years beginning prior to July 1, 2007) and the simplified compensation definition of Regulation 1.415(c)-2(d)(2) (Regulation Section 1.415-2(d)(10) under the Regulations in effect for limitation years prior to July 1, 2007) is not used, then Actual Compensation shall include amounts that are includible in the gross income of a Participant under the rules of Code § 409A or Code § 457(f)(1)(A) or because the amounts are constructively received by the Participant.

2.5 **Definition of annual additions.** The Plan's definition of "annual additions" is modified as follows:

(a) **Restorative payments.** Annual additions for purposes of Code § 415 shall not include restorative payments. A restorative payment is a payment made to restore losses to a Plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under 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 a 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.

(b) **Other Amounts.** Annual additions for purposes of Code § 415 shall not include: (1) The direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (2) 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)); (3) Repayments of loans made to a participant from the Plan; and (4) 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.

(c) **Date of tax-exempt Employer contributions.** Notwithstanding anything in the Plan to the contrary, Employer contributions are treated as credited to a participant's 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 Employer keeps its books) with or within which the particular limitation year ends.

2.6 **Change of limitation year.** The limitation year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's limitation year, then the Plan is treated as if the Plan had been amended to change its limitation year.

2.7 **Excess Annual Additions.** Notwithstanding any provision of the Plan to the contrary, 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.

2.8 Aggregation and Disaggregation of Plans.

(a) For purposes of applying the limitations of Code § 415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the Employer (or a "predecessor

Employer") under which the participant receives annual additions are treated as one defined contribution plan. The "Employer" means the Employer that adopts this Plan and all members of a controlled group or an affiliated service group that includes the Employer (within the meaning of Code §§ 414(b), (c), (m) or (o)), except that for purposes of this Section, the determination shall be made by applying Code § 415(h), and shall take into account tax-exempt organizations under Regulation Section 1.414(c)-5, as modified by Regulation Section 1.415(a)-1(f)(1). For purposes of this Section:

(1) A former employer is a "predecessor employer" with respect to a participant in a plan maintained by an employer if the employer maintains a plan under which the participant had accrued a benefit while performing services for the former employer, but only if that benefit is provided under the plan maintained by the employer. For this purpose, the formerly affiliated plan rules in Regulation Section 1.415(f)-1(b)(2) apply as if the employer and predecessor employer constituted a single employer under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor Employer relationship, such as a transfer of benefits or plan sponsorship.

(2) With respect to an employer of a participant, a former entity that antedates the employer is a "predecessor Employer" with respect to the participant if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.

(b) **Break-up of an affiliate employer or an affiliated service group.** For purposes of aggregating plans for Code § 415, a "formerly affiliated plan" of an employer is taken into account for purposes of applying the Code § 415 limitations to the employer, but the formerly affiliated plan is treated as if it had terminated immediately prior to the "cessation of affiliation." For purposes of this paragraph, a "formerly affiliated plan" of an employer is a plan that, immediately prior to the cessation of affiliation, was actually maintained by one or more of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)), and immediately after the cessation of affiliation, is not actually maintained by any of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)). For purposes of this paragraph, a "cessation of affiliation" means the event that causes an entity to no longer be aggregated with one or more other entities as a single employer under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the employer under the employer affiliation rules of Regulation Section 1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

(c) **Midyear Aggregation.** Two or more defined contribution plans that are not required to be aggregated pursuant to Code § 415(f) and the Regulations thereunder as of the first day of a limitation year do not fail to satisfy the requirements of Code § 415 with respect to a participant for the limitation year merely because they are aggregated later in that limitation year, provided that no annual additions are credited to the participant's account after the date on which the plans are required to be aggregated.

ARTICLE III.
PLAN COMPENSATION

3.1 **Compensation paid after severance from employment.** Compensation for purposes of allocations (hereinafter referred to as Plan Compensation) shall be adjusted in the same manner as Actual Compensation pursuant to Article II of this Amendment, except in applying Article II, the term "limitation year" shall be replaced with the term "plan year" and the term "Actual Compensation" shall be replaced with the term "Plan Compensation."

AMENDMENT TO
CITY OF CLINTON PLAN

AMENDMENT FOR THE FINAL CODE SECTION 415 REGULATIONS

ARTICLE I.
PREAMBLE

1.1 **Effective date of Amendment.** This Amendment is adopted to reflect certain provisions of the final Code Section Regulations. This Amendment is effective for limitation years and plan years that begin more than 90 days after the close of the first regular legislative session of the legislative body with authority to amend the Plan that begins on or after July 1, 2007, except as otherwise provided herein.

1.2 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.

1.3 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.

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ARTICLE II.
FINAL SECTION 415 REGULATIONS

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(a) **Regular pay.** Actual Compensation shall include regular pay after severance of employment if:

(1) 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

(2) The payment would have been paid to the participant prior to a severance from employment if the participant had continued in employment with the Employer.

(b) **Leave cashouts and deferred compensation.** Leave cashouts shall not be included in Actual Compensation. Further, deferred compensation shall not be included in Actual Compensation.

(c) **Salary continuation payments for military service participants.** Actual Compensation does not include payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code § 414(u)(1)).

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compensation paid to a participant who is permanently and totally disabled (as defined in Code § 22(e)(3)).

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(b) **Other Amounts.** Annual additions for purposes of Code § 415 shall not include: (1) The direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (2) 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)); (3) Repayments of loans made to a participant from the Plan; and (4) 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.

(c) **Date of tax-exempt Employer contributions.** Notwithstanding anything in the Plan to the contrary, Employer contributions are treated as credited to a participant's 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 Employer keeps its books) with or within which the particular limitation year ends.

2.6 **Change of limitation year.** The limitation year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's limitation year, then the Plan is treated as if the Plan had been amended to change its limitation year.

2.7 **Excess Annual Additions.** Notwithstanding any provision of the Plan to the contrary, 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.

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(a) For purposes of applying the limitations of Code § 415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the Employer (or a "predecessor

Employer") under which the participant receives annual additions are treated as one defined contribution plan. The "Employer" means the Employer that adopts this Plan and all members of a controlled group or an affiliated service group that includes the Employer (within the meaning of Code §§ 414(b), (c), (m) or (o)), except that for purposes of this Section, the determination shall be made by applying Code § 415(h), and shall take into account tax-exempt organizations under Regulation Section 1.414(c)-5, as modified by Regulation Section 1.415(a)-1(f)(1). For purposes of this Section:

(1) A former employer is a "predecessor employer" with respect to a participant in a plan maintained by an employer if the employer maintains a plan under which the participant had accrued a benefit while performing services for the former employer, but only if that benefit is provided under the plan maintained by the employer. For this purpose, the formerly affiliated plan rules in Regulation Section 1.415(f)-1(b)(2) apply as if the employer and predecessor employer constituted a single employer under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor Employer relationship, such as a transfer of benefits or plan sponsorship.

(2) With respect to an employer of a participant, a former entity that antedates the employer is a "predecessor Employer" with respect to the participant if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.

(b) **Break-up of an affiliate employer or an affiliated service group.** For purposes of aggregating plans for Code § 415, a "formerly affiliated plan" of an employer is taken into account for purposes of applying the Code § 415 limitations to the employer, but the formerly affiliated plan is treated as if it had terminated immediately prior to the "cessation of affiliation." For purposes of this paragraph, a "formerly affiliated plan" of an employer is a plan that, immediately prior to the cessation of affiliation, was actually maintained by one or more of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)), and immediately after the cessation of affiliation, is not actually maintained by any of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)). For purposes of this paragraph, a "cessation of affiliation" means the event that causes an entity to no longer be aggregated with one or more other entities as a single employer under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the employer under the employer affiliation rules of Regulation Section 1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

(c) **Midyear Aggregation.** Two or more defined contribution plans that are not required to be aggregated pursuant to Code § 415(f) and the Regulations thereunder as of the first day of a limitation year do not fail to satisfy the requirements of Code § 415 with respect to a participant for the limitation year merely because they are aggregated later in that limitation year, provided that no annual additions are credited to the participant's account after the date on which the plans are required to be aggregated.

ARTICLE III.
PLAN COMPENSATION

3.1 **Compensation paid after severance from employment.** Compensation for purposes of allocations (hereinafter referred to as Plan Compensation) shall be adjusted in the same manner as Actual Compensation pursuant to Article II of this Amendment, except in applying Article II, the term "limitation year" shall be replaced with the term "plan year" and the term "Actual Compensation" shall be replaced with the term "Plan Compensation."