

# NEW MEXICO JUNIOR COLLEGE

## BOARD MEETING

Thursday, December 18, 2008

**Zia Room - Library**

4:00 p.m.

## AGENDA

- |                                                                             |                  |
|-----------------------------------------------------------------------------|------------------|
| A. Welcome                                                                  | Larry Hanna      |
| B. Adoption of Agenda                                                       | Larry Hanna      |
| C. Approval of Minutes of November 20, 2008                                 | Larry Hanna      |
| D. President's Report                                                       | Steve McCleery   |
| E. New Business                                                             |                  |
| 1. Consideration of New Plan Document for 403(b) Tax Deferred Contributions | Steve McCleery   |
| 2. Consideration of Revision of Supplement Retirement Plan                  | Steve McCleery   |
| 3. Consideration of Revision of Flexible Benefits Plan                      | Steve McCleery   |
| 4. Monthly Expenditures Report                                              | Dan Hardin       |
| 5. Monthly Revenue Report                                                   | Dan Hardin       |
| 6. Oil and Gas Revenue Report                                               | Dan Hardin       |
| 7. Schedule of Investments                                                  | Dan Hardin       |
| 8. Consideration of Request for Change in Degree Offerings                  | Sanderson/McCool |
| 9. Consideration of Board Election Resolution                               | Steve McCleery   |
| 10. Consideration of NMESC Implementing & Joint Powers Agreement            | Steve McCleery   |
| F. Public Comments                                                          | Larry Hanna      |
| G. Announcement of Next Meeting                                             | Larry Hanna      |
| H. Adjournment                                                              | Larry Hanna      |

# NEW MEXICO JUNIOR COLLEGE

## BOARD MEETING

NOVEMBER 20, 2008

### MINUTES

The New Mexico Junior College Board met on Thursday, November 20, 2008, beginning at 4:00 p.m. in the Zia Room of Pannell Library. The following members were present: Mr. Larry Hanna, Chairman; Ms. Patricia Chappelle, Secretary; Mr. Phillip Jones; Mrs. Mary Lou Vinson; Mr. Ron Black; Mrs. Yvonne Williams; and Mr. Guy Kesner.

Mr. Hanna called the meeting to order and welcomed visitors and guests present: Marie Wadsworth, Hobbs News Sun.

Upon a motion by Mr. Jones, seconded by Mrs. Vinson, the agenda was unanimously adopted, as presented.

Upon a motion by Mrs. Vinson, seconded by Mrs. Williams, the Board unanimously approved the minutes of October 16, 2008.

Under *President's Report*, Philip Berry introduced members of the Rodeo team and shared some of their accomplishments, as well as expressing appreciation for their help with the recent National Steer Roping event. Mike Henderson, Professor of Computer Assisted Drafting, shared pieces of art work from the architectural drafting class. Dr. McCleery shared a letter of appreciation from the J. F Maddox Foundation, who recently held their Board of Directors meeting at the Training & Outreach Center. August Fons reported that Naomi Phillips had recently been selected by the U.S. Department of Justice – National Institute of Corrections to serve as a NIC Regional Field Training Coordinator. Mickey Best reported that Dianna Marquez and the Adult Basic Education staff have been awarded the 2007-2008 Outstanding Adult Basic Education Program of the Year Award by the New Mexico Adult Education Association. Dr. McCleery reported the Small Business Development Center was hosting the New Mexico Small Business Development Center Networking meeting. In closing, the Board viewed the Tatum Volunteer Fire Department DVD.

*Under New Business*, Dan Hardin presented the October financial reports and with a motion by Mr. Jones, seconded by Ms. Chappelle, the Board unanimously approved the expenditures for October, 2008. Upon a motion by Mr. Kesner, seconded by Ms. Chappelle, the Board unanimously approved the Fiscal Watch Reports.

Calvin Smith presented a request from the Western Heritage Museum Advisory Board to add "Complex" to the name Western Heritage Museum. The change is an effort to become more visible and implies a larger, more diverse entity and becomes a much more effective marketing tool in trying to attract regional audiences. Western Heritage Museum Complex and Lea County Cowboy Hall of Fame will be the new title. Upon a motion by Mr. Jones, seconded by Mrs. Vinson, the Board unanimously approved the request.

Dr. McCleery presented a recommendation to move \$6,400,000 from reserves into capital projects. The funds will be committed to complete the following projects: Library (upstairs remodel); Caster remodel (old Cowboy Hall of Fame); Central Plant Expansion/Electrical Upgrade; Distance Education Equipment (Maddox matching grant); Landscaping/Fencing; and 2009-2010 Compensation (one time non-recurring). Upon a motion by Ms. Chappelle, seconded by Mrs. Williams, the Board unanimously approved the recommendation.

Regina Organ recommended Ms. Debbie Pruitt for the Director of Upward Bound position at an annual salary of \$45,147. Upon a motion by Ms. Chappelle, seconded by Mrs. Vinson, the Board unanimously approved the employment of Ms. Pruitt, effective November 21, 2008.

The Board presented various questions to begin discussions regarding annexation.

Mr. Hanna called for comments from the public. There being none, the next regular board meeting was scheduled for December 18, 2008, beginning at 4:00 p.m.

Upon a motion by Mr. Jones, seconded by Mr. Kesner, the board meeting adjourned at 5:30 p.m.

# MADDOX, HOLLOMAN & KIRKSEY, P.C.

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December 10, 2008

## Memorandum to the New Mexico Junior College Board

Ladies and Gentlemen:

Attached to this Memorandum are documents related to the two Section 403(b) plans that are sponsored by or available to employees of New Mexico Junior College.

The first plan (hereinafter known as "Plan 1") is a Voluntary Salary Reduction Plan. What this means is that an employee of New Mexico Junior College may reduce the amount of their salary on a pre-tax basis and pay it into the 403(b) plan. The New Mexico Junior College does not contribute to this plan. Until recently, it was not necessary to have a written plan for this type of arrangement. However, the Internal Revenue Service has issued new regulations that require a 403(b) plan to have a written plan in place no later than December 31, 2008.

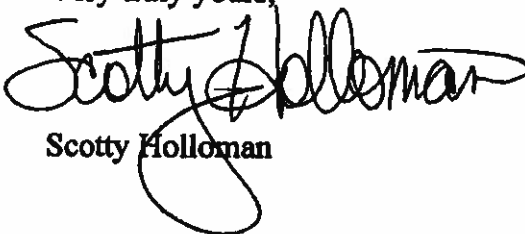
The Internal Revenue Service by Rev. Proc. 2007-71 issued a model plan, which would satisfy their requirements. AIG Retirement has slightly modified the approved IRS model plan and has provided it to institutions of higher education. Attached is the Adoption Agreement for the 403(b) plan document for public higher education institutions and the plan itself under sheet titled "Plan #1". This is the AIG Retirement form plan, please note that the Adoption Agreement has several elections. The elections were selected at a meeting attended by New Mexico Junior College administration and Julie Canon, representative of AIG Retirement.

New Mexico Junior College also sponsors another 403(b) plan which is known as Plan #2 and is a supplemental retirement plan. Plan 2 has a written plan. This written plan was originally adopted in 1999 and has been amended. Attached to this Memorandum under sheet titled "Plan #2" for your consideration is a document titled "403(b) and 415 Regulations Amendment" to bring Plan 2 current to comply with the final regulations under Section 403(b) and 415 of the Internal Revenue Code. Elections have been made under this amendment with the input of the New Mexico Junior College Administration.

The attached resolutions for Plan 1 and Plan 2 need to be considered and if appropriate adopted by the New Mexico Junior College Board at its meeting on December 18, 2008.

I have been requested to attend this meeting of the Board to answer any questions that you might have regarding this plan and amendment.

Very truly yours,

A handwritten signature in black ink that reads "Scotty Holloman". The signature is written in a cursive style with a large, looping flourish at the end.

Scotty Holloman

SH:sm

Enclosure: As stated

**PLAN #1**

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# Adoption Agreement For The 403(b) Plan Document For Public Higher Education Institutions

Employer hereby establishes a 403(b) plan by adopting the 403(b) Plan Document for Public Higher Education Institutions plan document (the "Plan") as modified by this Adoption Agreement and agrees that the following provisions shall be incorporated as part of the Plan document.

## EMPLOYER INFORMATION

Name of Employer: New Mexico Junior College

Federal Tax ID: 85-9193990

Employer's Address: 1 Thunderbird Circle, Hobbs, New Mexico 88240

Telephone Number: (575) 492-2790

Fax: (575) 492-2796

Contact Person:

Telephone/Extension: (575) 492-2790

E-mail: kmiller@nmjc.edu

Type of Organization:

Public Community College     Public College/University

Note: If Employer is not a public education institution, this document may not be used.

## PLAN INFORMATION

Name of Plan: New Mexico Junior College

403(b) Plan

Effective Date: This Adoption Agreement:

- establishes a Plan effective as of December 18, 2008 (the "Effective Date") and is the first 403(b) plan document established by the Employer.
- amends and restates a previously established 403(b) Plan document of the Employer. The effective date of this amended Plan is \_\_\_\_\_ (the "Effective Date").

Eligibility: Except as otherwise selected below, all employees are immediately eligible to make contributions under the Plan. Eligibility for Employer Contributions is based on applicable employment agreements or collective bargaining agreements to which an employee is subject. The plan shall not include:

- Employees who are eligible to participate in one or more plans described under Section 403(b)(12)(A) of the Code during the calendar year sponsored by the Employer.
- Employees who are students and regularly attending classes at the Employer institution during the calendar year (limited to Employers that are educational institutions).
- Employees who normally work fewer than 20 hours per week (must be 20 or less; equivalent to 1,000 hours or less in a year except as otherwise provided under applicable 403(b) regulations generally effective January 1, 2009) during the calendar year.
- Employees who are nonresident aliens and perform no services in the U.S. during the calendar year.

**Additional Eligibility Exclusions:** Notwithstanding the above, employees in the classes selected below are excluded for taxable years beginning prior to January 1, 2010 but shall be eligible for participation under the plan for taxable year beginning on or after January 1, 2010.

- Employees who make a one-time election to participate in a governmental plan described in Code Section 414(d) instead of a 403(b) plan.
- Professors who are providing services on a temporary basis to another school for up to one year and for whom Section 403(b) contributions are being made at a rate no greater than the rate each such professor would receive under the Section 403(b) plan of the original school.
- Employees who are affiliated with a religious order and who have taken a vow of poverty where the religious order provides for the support of such employees in their retirement.

**Note:** The inclusion of all common law employees will prevent an inadvertent violation of the eligibility requirements of Section 403(b)(A)(ii).

**Contributions into the Plan:**

**Employee Contributions** (in addition to salary reduction contributions):

Roth 403(b) Contributions to the Plan are permitted beginning on January 1, 2009.

Roth 403(b) Contributions are NOT permitted under the Plan

*(Default: If no election is made, Roth 403(b) Contributions are not permitted)*

**Employer Contributions** (if any):

No Employer Contributions will be made.

Employer Contributions will be made in accordance with applicable employment agreements and collective bargaining agreements, or as may be determined from year to year by the Employer.

*(Default: If no election is made, Employer Contributions are permitted)*

Notwithstanding any contrary language in the Plan, including this Adoption Agreement, the following Employer elections shall apply to Employer Contributions, After-tax Employee Elective Contributions, and Nonelective Employee Contributions under the Plan.

**EMPLOYER CONTRIBUTIONS** (Check one or more)

Basic non-matching contribution up to \_\_\_\_\_% of compensation

Matching contributions up to \_\_\_\_\_% of compensation

Other \_\_\_\_\_

**AFTER-TAX EMPLOYEE ELECTIVE CONTRIBUTIONS**

**NONELECTIVE EMPLOYEE CONTRIBUTIONS** up to \_\_\_\_\_% of compensation

**VESTING** (Check one of a – c to apply for all employer contribution sources. Check d if applicable.) Non-vested amounts shall be accounted for separately in accordance with applicable requirements of Code Section 403(c).

Forfeitures will be used to reduce future employer contributions or pay plan expenses.

100% Immediate

3 Year Cliff (0% Years 1-2, 100% at end of 2nd year)

6 Year Graded

After Year (of service)	Percent
1 Year	0%
2 Years	20%
3 Years	40%
4 Years	60%
5 Years	80%
6 Years	100%

100% vesting at death, disability, early and normal retirement



**LOANS FROM EMPLOYER CONTRIBUTIONS** *Applicable if loans are permitted under the terms of the Plan and underlying investment product.*

- Allowed from Employer non-matching contributions
- Allowed from Employer matching contributions
- No loans from Employer contributions

**WITHDRAWALS FROM EMPLOYER CONTRIBUTIONS ALLOWED AT** *(Check all that apply. Applicable if withdrawals are permitted under the terms of the Plan and underlying investment product.)*

- Attainment of age 59½
- Disability
- Severance from employment
- Hardship
- No in-service withdrawals allowed
- Allowed on all vested funds upon attainment of age \_\_\_\_\_
- Allowed upon full vesting of all employer contributions and attainment of age \_\_\_\_\_

**OTHER PROVISIONS RELATED TO EMPLOYER CONTRIBUTIONS (NOT-OPTIONAL)** *Applicable to the vested portion of the participant's account only.*

- Transfers permitted to purchase service credits
- No involuntary cash-outs

**15 Years of Service Catch Up Contributions:** The Plan will  or will not  permit employees with 15 years of service with the Employer that satisfy the conditions for the Special Section 403(b) Catch-up Limitation for Employees With 15 Years of Service (Section 3.2 of the Plan) to increase their Elective Deferrals limitation.

*(Default: If no election is made, Catch Up Contributions are permitted)*

**Investment Options:** Any Annuity Contracts and/or Custodial Accounts provided by Vendors authorized on Appendix A, which may be revised from time to time, are authorized to accept contributions under the Plan.

**Exchanges Within the Plan:** The Plan will  or will not  permit Participants to make Exchanges If permitted, Exchanges may occur between:

- Those organizations listed on Appendix A only.
- Those organizations listed on Appendix A and any other organization offering annuity contracts and or custodial accounts that satisfy the requirements of Section 403(b) of the Code who execute an information sharing agreement with Employer or its appointee for purposes of satisfying applicable compliance requirements.

*(Default: If no election made, Exchanges between organizations listed on Appendix A are: permitted)*

**Transfers Into the Plan:** The Plan will  or will not  accept Transfers from another employer's 403(b) plan.

*(Default: If no election is made, Transfers will be accepted)*

**Transfers From the Plan:** The Plan will  or will not  permit Transfers from the Plan to another employer's 403(b) plan, if requested by a former Participant.

*(Default: If no election is made, Transfers will be sent to another 403(b) plan.)*

**Financial Hardship Distributions:** Hardship Distributions are  or are not  available under the Plan subject to availability and any additional conditions that may apply under a Participant's 403(b) Individual Agreement(s) and as provided in Appendix A.

*(Default: If no election made, Hardship Distributions are permitted)*

**Loans:** Loans are  or are not  available under the Plan subject to availability and any additional conditions that may apply under a Participant's 403(b) Individual Agreement(s) and as provided in Appendix A.

*(Default: If no election made, loans are permitted)*

**Note:** The Plan prohibits loans to any Participant who has an existing outstanding defaulted loan under any retirement or deferred compensation plan sponsored by the Employer.

**Direct Roth Rollovers:** If Roth 403(b) Contributions are permitted to the Plan (above), direct rollovers from other Roth 403(b) or Roth 401(k) plans are  are not  accepted into the Plan or

Not Applicable because Roth Contributions are not permitted to the Plan.

*(Default: If no election made, direct rollovers of Roth contributions will be permitted)*

**Plan Administration:** The Plan shall be administered:

By Employer

Jointly by Employer and Vendors. Unless otherwise agreed to by the affected parties, Employer and the provider/issuer of each Funding Vehicle shall jointly act as Administrator of the Plan. Employer shall be responsible for matters relating to eligibility (including providing notice of the Plan to Employees), enrollment opportunities, Contributions authorizing disbursements in accordance with Section 5, and proper tax reporting on Contributions, Plan document maintenance and payroll related issues. The Funding Vehicles are responsible for matters relating to investing Contributions as directed by Participants, beneficiary designations, distributions authorized by the Employer, Exchanges, Transfers, Rollovers, loans, withdrawals and post-employment compliance, such as tax reporting, notice requirements and withholding on distributions.

By a designated Administrator. The Employer has named \_\_\_\_\_

\_\_\_\_\_ to act in this capacity.

The following section may be used to insert provisions for which there were no acceptable alternatives provided. It may be used to modify any portion of the Plan or Adoption Agreement.

**NOTE:** Any modifications should be carefully reviewed by Employer's legal counsel to ensure that changes do not adversely affect the Plan's qualification under Section 403(b) of the Code.

Other provisions of the Plan (Attach additional pages as necessary):

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### EMPLOYER ACKNOWLEDGEMENTS AND SIGNATURES

Employer acknowledges that it is an eligible public higher education institution under Section 170(b)(1)(A)(ii) of the Code and is authorized to offer a program qualified under Section 403(b) of the Internal Revenue Code.

**EMPLOYER**

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

Print Name of Signer: Steve McCleery

Title: President

Dated: \_\_\_\_\_



## 403(b) Plan Document For Public Higher Education Institutions

This plan document includes the IRS model language set forth in Rev. Proc. 2007-71 and has been modified to delete certain optional features and include provisions that were not included in the IRS model language. Higher Education institutions may modify this plan document by selecting certain options as provided in the Adoption Agreement, the terms of which are incorporated into this plan document.

### Section 1 - Definitions

The following words and terms, when used in the Plan, have the meaning set forth below.

- 1.1 **"Account"**: The account or accumulation maintained for the benefit of any Participant or Beneficiary under an Annuity Contract or a Custodial Account.
- 1.2 **"Account Balance"**: The value of the aggregate amount credited to each Participant's Account under all Accounts, including the Participant's Elective Deferrals, Roth 403(b) Contributions, the earnings or loss of each Annuity Contract or a Custodial Account (net of expenses) allocable to the Participant, any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant's death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account established under Section 6 for rollover contributions and plan-to-plan transfers made for a Participant, if such contributions are authorized under the Adoption Agreement, the account established for a Beneficiary after a Participant's death, and any account or accounts established for an alternate payee (as defined in Section 414(p)(8) of the Code).
- 1.3 **"Administrator"**: Unless otherwise indicated in the Adoption Agreement, the Employer is the Administrator. Notwithstanding this appointment, the Administrator may delegate, by separate agreement, any administrative responsibilities hereunder to one or more persons, committees, Vendors, or other organizations.
- 1.4 **"Annuity Contract"**: A nontransferable contract as defined in Section 403(b)(1) of the Code, established for each Participant by the Employer, or by each Participant individually, that is issued by an insurance company qualified to issue annuities in the state in which the Employer or Participant, as applicable, resides and that includes payment in the form of an annuity.
- 1.5 **"Beneficiary"**: The designated person who is entitled to receive benefits under the Plan after the death of a Participant, subject to such additional rules as may be set forth in the Individual Agreements.
- 1.6 **"Custodial Account"**: The group or individual custodial account or accounts, as defined in Section 403(b)(7) of the Code, established for each Participant by the Employer, and/or by each Participant individually, to hold assets of the Plan.
- 1.7 **"Code"**: The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.
- 1.8 **"Compensation"**: All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election under Section 2 made to reduce compensation in order to have Elective Deferrals under the Plan).
- 1.9 **"Disabled"**: The definition of disability provided in the applicable Individual Agreement.
- 1.10 **"Elective Deferral"**: The Employer contributions made to the Plan at the election of the Participant in lieu of receiving cash compensation. Elective Deferrals are limited to pre-tax salary reduction contributions.
- 1.11 **"Employee"**: Each individual, whether appointed or elected, who is a common law employee of the Employer performing services as an employee of the Employer. This definition is not applicable unless the employee's Compensation for performing services for a public education institution is paid by the Employer. Further, a person occupying an elective or appointive public office is not an employee performing services unless such office is one to which an individual is elected or appointed only if the individual has received training, or is experienced, in the field of education. A public office includes any elective or appointive office of a State or local government.
- 1.12 **"Employer"**: The public higher education institution identified in the Adoption Agreement as the Employer.
- 1.13 **"Employer Contributions"**: Any contributions made to the Plan by the Employer as provided in the Adoption Agreement.
- 1.14 **"Funding Vehicles"**: The Annuity Contracts or Custodial Accounts issued for funding amounts held under the Plan and specifically approved by Employer for use under the Plan.

- 1.15 **"Includible Compensation"**: An Employee's actual wages received by Employee for the most recent period of service that may be counted as a year of service under Section 403(b)(3) of the Code, and increased (up to the dollar maximum) by any compensation reduction election under Section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including any Elective Deferral under the Plan). Notwithstanding the foregoing, for purposes of determining Employer Contributions, Includible Compensation shall be subject to a maximum of \$230,000 (or such higher maximum as may apply under Section 401(a)(17) of the Code. The amount of Includible Compensation is determined without regard to any community property laws.
- 1.16 **"Individual Agreement"**: The agreements between a Vendor and the Employer and/or a Participant that constitutes or governs a Custodial Account or an Annuity Contract.
- 1.17 **"Participant"**: An individual for whom Elective Deferrals or other contributions permitted herein are currently being made, or for whom such contributions have previously been made, under the Plan and who has not received a distribution of his or her entire Account Balance under the Plan.
- 1.18 **"Plan"**: The name given to this Plan by the Employer in the Adoption Agreement.
- 1.19 **"Plan Year"**: The calendar year.
- 1.20 **"Related Employer"**: The Employer and any other entity which is under common control with the Employer under Section 414(b) or (c) of the Code. For this purpose, the Employer shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under Notice 89-23, 1989-1 C.B. 654.
- 1.21 **"Roth 403(b) Contribution"**: If authorized in the Adoption Agreement, any contribution made by a Participant which is designated as a Roth 403(b) Contribution in accordance with Section 10 of the Plan that qualifies as a Roth contribution under Section 402A of the Code.
- 1.22 **"Severance from Employment"**: For purpose of the Plan, Severance from Employment means Severance from Employment with the Employer and any Related Entity. However, a Severance from Employment also occurs on any date on which an Employee ceases to be an employee of a public education institution, even though the Employee may continue to be employed by a Related Employer that is another unit of the State or local government that is not a public education institution or in a capacity that is not employment with a public education institution (e.g., ceasing to be an employee performing services for a public education institution but continuing to work for the same State or local government employer).
- 1.23 **"Vendor"**: The provider of an Annuity Contract or Custodial Account, or any organization expressly authorized by such provider to act on their behalf under this Plan.
- 1.24 **"Valuation Date"**: Each business day of the Plan Year.

## Section 2 - Participation and Contributions

- 2.1 **Eligibility**. Except as otherwise excluded in the Adoption Agreement, each Employee shall be eligible to participate in the Plan and elect to have Elective Deferrals made on his or her behalf hereunder immediately upon becoming employed by the Employer. However, an Employee who is a student-teacher (i.e., a person providing service as a teacher's aid on a temporary basis while attending a school, college or university) is not eligible to participate in the Plan.
- 2.2 **Contributions**.
- (a) **Elective Deferrals**. An Employee elects to become a Participant by executing an election to reduce his or her Compensation (and have that amount contributed as an Elective Deferral on his or her behalf) and filing it with the appropriate Administrator. This Compensation reduction election shall be made on the agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. The Administrator may establish an annual minimum deferral amount no higher than \$200, and may change such minimum to a lower amount from time to time. The participation election shall also include designation of the Funding Vehicles and Accounts therein to which Elective Deferrals are to be made. Any such election shall remain in effect until a new election is filed. Only an individual who performs services for the Employer as an Employee may reduce his or her Compensation under the Plan. Each Employee will become a Participant in accordance with the terms and conditions of the Individual Agreements. Except as otherwise provided in the Plan, all Elective Deferrals shall be made on a pre-tax basis. An Employee shall become a Participant as soon as administratively practicable following the date applicable under the employee's election.
- (b) **Roth 403(b) Contributions**. If authorized in the Adoption Agreement and if permitted under an Employee's Individual Agreement(s), an Employee may elect to make Roth 403(b) Contributions to the Plan in accordance with Section 10 of the Plan. The Participant's election to make Roth 403(b) Contributions shall be made on the agreement provided by the Administrator and shall also include designation of the Funding Vehicles and Accounts therein to which Elective Deferrals are to be made. Any such election shall remain in effect until a new election is filed. The Administrator may

establish an annual minimum Roth 403(b) Contribution amount no higher than \$200, and may change such minimum to a lower amount from time to time.

(c) Employer Contributions.

- (1) If authorized in the Adoption Agreement, the Employer may make nonelective Employer contributions to Accounts of designated Employees. Employer contributions shall be determined in accordance with the Adoption Agreement. Contributions made under this Section 2.2(c) shall be deposited into each Participant's Account in accordance with Section 2.5 of the Plan.
- (2) Employer may make contributions into the 403(b) Contracts of former Employees, provided that any such contributions satisfy all of the following conditions:
  - (a) Contributions may not be made later than the fifth calendar year following the year in which the former Employee ceased to be an Employee.
  - (b) Contributions may not be made following the month of the former Employee's death.
  - (c) Contributions shall be 100% vested at all times.
  - (d) Contributions shall be based on "includible compensation" as defined in Section 403(b)(3) of the Code as modified by IRS regulations and shall be subject to the limitations of Section 415(c)(1) of the Code.

Subject to (b) above, amounts not contributed by Employer to any former Employee's 403(b) Contract due to the contribution limitations of Section 415(c) of the Code shall be contributed in the next Plan Year (and each succeeding Plan Year) until the Employer contributes all amounts due to Participant. No contributions may be made after the last day of the fifth year following the year in which the Participant's Severance from Employment occurred.

- 2.3 **Information Provided by the Employee.** Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan, including any information required under the Individual Agreements.
- 2.4 **Change in Elective Deferrals Election.** Subject to the provisions of the applicable Individual Agreements, an Employee may at any time revise his or her participation election, including a change of the amount of his or her Elective Deferrals or a change in the allocation of his or her Elective Deferrals to reflect pre-tax deferrals or after-tax deferrals to the Roth 403(b) Contribution option (if permitted in the Plan), and the designation of Funding Vehicles and Accounts. A change in the investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees.
- 2.5 **Contributions Made Promptly.** Elective Deferrals under the Plan shall be transferred to the applicable Funding Vehicle within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant, unless an earlier date is required by applicable state law. Employer contributions shall be transferred to the applicable Funding Vehicle within a reasonable period of time but in no event later than thirty (30) days after the end of the Employer's regular work year for which such contributions were owed.
- 2.6 **Leave of Absence.** Unless an election is otherwise revised, if an Employee is absent from work by leave of absence, Elective Deferrals under the Plan shall continue to the extent that Compensation continues.

### Section 3 - Limitations on Amounts Deferred

- 3.1 **Basic Annual Limitation.** Except as provided in Sections 3.2 and 3.3, the maximum amount of the Elective Deferral under the Plan for any calendar year shall not exceed the lesser of (a) the applicable dollar amount or (b) the Participant's Includible Compensation for the calendar year. The applicable dollar amount is the amount established under Section 402(g)(1)(B) of the Code, which is \$15,500 for 2008, and is adjusted for cost-of-living after 2008 to the extent provided under Section 415(d) of the Code.
- 3.2 **Special Section 403(b) Catch-up Limitation for Employees With 15 Years of Service.** If authorized in the Adoption Agreement, the applicable dollar amount under Section 3.1(a) for any "qualified employee" is increased (to the extent provided in the Individual Agreements) by the least of:
  - (a) \$3,000;
  - (b) The excess of:
    - (1) \$15,000, over
    - (2) The total special 403(b) catch-up elective deferrals made for the qualified employee by the qualified organization for prior years; or

(c) The excess of:

- (1) \$5,000 multiplied by the number of years of service of the employee with the qualified organization, over
- (2) The total Elective Deferrals and, if applicable, Roth 403(b) Contributions made for the employee by the qualified organization for prior years.

For purposes of this Section 3.2, a "qualified employee" means an employee who has completed at least 15 years of service taking into account only employment with the Employer.

- 3.3 **Age 50 Catch-up Elective Deferral Contributions.** An Employee who is a Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Elective Deferrals and, if applicable, Roth 403(b) Contributions, up to the maximum age 50 catch-up Elective Deferrals for the year. The maximum dollar amount of the age 50 catch-up Elective Deferrals and, if applicable, Roth 403(b) Contributions for a year is \$5,000 for 2008, and is adjusted for cost-of-living after 2008 to the extent provided under the Code.
- 3.4 **Coordination.** If the Adoption Agreement authorizes contributions under Section 3.2 of the Plan, amounts in excess of the limitation set forth in Section 3.1 shall be allocated first to the special 403(b) catch-up under Section 3.2 and next as an age 50 catch-up contribution under Section 3.3. However, in no event can the amount of the Elective Deferrals and, if applicable, Roth 403(b) Contributions for a year be more than the Participant's Includible Compensation for the year.
- 3.5 **Special Rule for a Participant Covered by Another Section 403(b) Plan.** For purposes of this Section 3, if the Participant is or has been a participant in one or more other plans under Section 403(b) of the Code (and any other plan that permits elective deferrals under Section 402(g) of the Code), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Section 3. For this purpose, the Administrator shall take into account any other such plan maintained by any Related Employer and shall also take into account any other such plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan. Notwithstanding the foregoing, another plan maintained by a Related Entity shall be taken into account for purposes of Section 3.2 only if the other plan is a § 403(b) plan.
- 3.6 **Correction of Excess Elective Deferrals.** If the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another plan of the employer under Section 403(b) of the Code (and any other plan that permits elective deferrals under Section 402(g) of the Code for which the Participant provides information that is accepted by the Administrator), then the Elective Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant in accordance with applicable IRS guidance. Notwithstanding the foregoing, if Roth 403(b) Contributions are elected in the Adoption Agreement, the correction of excess amounts shall be made pursuant to Section 10.7.
- 3.7 **Protection of Persons Who Serve in a Uniformed Service.** An Employee whose employment is interrupted by qualified military service under Section 414(u) of the Code or who is on a leave of absence for qualified military service under Section 414(u) of the Code may elect to make additional Elective Deferrals upon resumption of employment with the Employer equal to the maximum Elective Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Elective Deferrals, if any, actually made for the Employee during the period of the interruption or leave. Except to the extent provided under Section 414(u) of the Code, this right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).
- 3.8 **Annual Contribution Limits.** The aggregate amount contributed into a Participant's 403(b) Account for any year shall not exceed the amount permitted under Section 415(c) of the Code based on the Participant's most recent period of service determined under Section 403(b)(3) of the Code. If any Employer Contributions cause a Participant's 403(b) Contract to exceed the annual contribution limitation of Section 415(c)(1) of the Code, the excess contributions shall be segregated and treated in a manner consistent with applicable IRS guidance on excess "annual additions".

## Section 4 - Loans

- 4.1 **Loans.** If authorized in the Adoption Agreement, loans shall be permitted under the Plan to the extent permitted by and in accordance with the Individual Agreements controlling the Account assets from which the loan is made and by which the loan will be secured.
- 4.2 **Information Coordination Concerning Loans.** Each Vendor is responsible for all information reporting and tax withholding required by applicable federal and state law in connection with distributions and loans. To minimize the instances in which Participants have taxable income as a result of loans from the Plan, the Administrator(s) shall take such steps as may be appropriate to coordinate the limitations on loans set forth in Section 4.3, including the collection of

information from Vendors, and transmission of information requested by any Vendor, concerning the outstanding balance of any loans made to a Participant under the Plan or any other plan of the Employer. The Administrator(s) shall also take such steps as may be appropriate to collect information from Vendors, and transmission of information to any Vendor, concerning any failure by a Participant to repay timely any loans made to a Participant under the Plan or any other plan of the Employer.

- 4.3 **Maximum Loan Amount.** No loan to a Participant under the Plan may exceed the lesser of:
- (a) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Administrator (not taking into account any payments made during such one-year period); or
  - (b) one half of the value of the Participant's vested Account Balance (as of the Valuation Date immediately preceding the date on which such loan is approved by the Administrator).

For purposes of this Section 4.3, any loan from any other plan maintained by the Employer and any Related Employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.

- 4.4 **Loan Repayments For Participants in Military Service.** Notwithstanding any other provision of the Plan or any Annuity Contract or Custodial Account, loan repayments by eligible uniformed services personnel may be suspended as permitted under Section 404(u)(4) of the Code and the terms of any loan shall be modified to conform to the requirements of the Uniformed Services Employment and Reemployment Rights Act.

## Section 5 - Benefit Distributions

- 5.1 **Benefit Distributions At Severance from Employment or Other Distribution Event.** Except as permitted under Section 3.6 (relating to excess Elective Deferrals), Section 5.3 (relating to withdrawals of amounts rolled over into the Plan), Section 5.4 (relating to hardship), or Section 10.7 (relating to excess Roth 403(b) Contributions and/or excess Elective Deferrals) distributions from a Participant's Account may not be made earlier than the earliest of the date on which the Participant has a Severance from Employment, dies, becomes Disabled, or attains age 59½. Notwithstanding the foregoing and in accordance with the terms of the Individual Agreements, the withdrawal restrictions described above do not apply to Elective Deferrals made to an Annuity Contract and attributable earnings as of December 31, 1988. Distributions shall otherwise be made in accordance with the terms of the Individual Agreements.
- 5.2 **Minimum Distributions.** Each Individual Agreement shall comply with the minimum distribution requirements of Section 401(a)(9) of the Code and the regulations thereunder. For purposes of applying the distribution rules of Section 401(a)(9) of the Code, each Individual Agreement is treated as an individual retirement account (IRA) and distributions shall be made in accordance with the provisions of § 1.408-8 of the Income Tax Regulations, except as provided in Treas. Reg. § 1.403(b)-6(e).
- 5.3 **In-Service Distributions From Rollover Account.** If the Funding Vehicle in which a Participant's Account is invested maintains a separate account attributable to rollover contributions to the Plan, to the extent permitted by the applicable Individual Agreement, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.
- 5.4 **Hardship Withdrawals.** If authorized under the Adoption Agreement,
- (a) hardship withdrawals shall be permitted under the Plan to the extent permitted by the Individual Agreements controlling the Account assets to be withdrawn to satisfy the hardship. No Elective Deferrals shall be allowed under the Plan or any other Plan of the Employer during the 6-month period beginning on the date the Participant receives a distribution on account of hardship.
  - (b) The Individual Agreements shall provide for the exchange of information among the Employer and the Vendors to the extent necessary to implement the Individual Agreements. Notwithstanding any Individual Agreement, the Plan only permits hardship withdrawals that satisfy the "safe harbor" standards with respect to establishing an immediate and heavy financial need (under Treas. Reg. § 1.401(k)-1(d)(3)(iii)(B) and, except as the Vendor specifically agrees to administer under another permitted standard, satisfying the lack of other resources requirement (under Treas. Reg. 1.401(k)-1(d)(3)(iv)(E)) including the Vendor notifying the Employer of the withdrawal in order for the Employer to implement the resulting 6-month suspension of the Participant's right to make Elective Deferrals under the Plan or any other Plan of the Employer.



## 5.5 **Rollover Distributions.**

- (a) A Participant or the Beneficiary of a deceased Participant (or a Participant's spouse or former spouse who is an alternate payee under a domestic relations order, as defined in Section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect to have any portion of an eligible rollover distribution (as defined in Section 402(c)(4) of the Code) from the Plan paid directly to an eligible retirement plan (as defined in Section 402(c)(8)(B) of the Code) specified by the Participant in a direct rollover. In the case of a distribution to a Beneficiary who at the time of the Participant's death was neither the spouse of the Participant nor the spouse or former spouse of the participant who is an alternate payee under a domestic relations order, a direct rollover is payable only to an individual retirement account or individual retirement annuity (IRA) that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of Section 408(d)(3)(C) of the Code).
- (b) Each Vendor shall be separately responsible for providing, within a reasonable time period before making an initial eligible rollover distribution, an explanation to the Participant of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.

## Section 6 - Rollovers to the Plan and Transfers

### 6.1 **Eligible Rollover Contributions to the Plan.**

- (a) **Eligible Rollover Contributions.** To the extent provided in the Individual Agreements, an Employee who is a Participant who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. Such rollover contributions shall be made in the form of cash only. The Vendor may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of Section 402(c)(8)(B) of the Code. However, unless Roth 403(b) Contributions are authorized under the Adoption Agreement, in no event does the Plan accept a rollover contribution from a Roth elective deferral account under an applicable retirement plan described in Section 402A(e)(1) of the Code.
- (b) **Eligible Rollover Distribution.** For purposes of Section 6.1(a), an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (1) any installment payment for a period of 10 years or more, (2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, (3) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Section 401(a)(9) of the Code, or corrective distribution of excess amounts in accordance with Sections 3.6 and 10.7. In addition, an eligible retirement plan means an individual retirement account described in Section 408(a) and 408A of the Code, an individual retirement annuity described in Section 408(b) and 408A of the Code, a qualified trust described in Section 401(a) of the Code, an annuity plan described in Section 403(a) or 403(b) of the Code, or an eligible governmental plan described in Section 457(b) of the Code, that accepts the eligible rollover distribution.
- (c) **Separate Accounts.** Unless otherwise provided by the terms of applicable Individual Agreements, Vendors shall provide separate accounting for any eligible rollover distribution paid to the Plan.

### 6.2 **Plan-to-Plan Transfers to the Plan.**

- (a) If authorized under the Adoption Agreement, the Administrator may permit a transfer of assets to the Plan as provided in this Section 6.2. Such a transfer is permitted only if the other plan provides for the direct transfer of each person's entire interest therein to the Plan and the participant is an Employee or former Employee of the Employer. The Administrator and any Vendor accepting such transferred amounts may require that the transfer be in cash or other property acceptable to it. The Administrator or any Vendor accepting such transferred amounts may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Treas. Reg. § 1.403(b)-10(b)(3) and to confirm that the other plan is a plan that satisfies Section 403(b) of the Code.
- (b) The amount so transferred shall be credited to the Participant's Account Balance, so that the Participant or Beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit with respect to that Participant or Beneficiary immediately before the transfer.
- (c) To the extent provided in the Individual Agreements holding such transferred amounts, the amount transferred shall be held, accounted for, administered and otherwise treated in the same manner as an Elective Deferral or, if applicable, Roth 403(b) Contribution by the Participant under the Plan, except that (1) the Individual Agreement which holds any amount transferred to the Plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under Section 403(b) of the Code, the Individual Agreement must impose restrictions on distributions to the Participant or Beneficiary whose assets are being transferred that are not less

stringent than those imposed on the transferor plan and (2) the transferred amount shall not be considered an Elective Deferral under the Plan in determining the maximum deferral under Section 3.

**6.3 Plan-to-Plan Transfers from the Plan.**

- (a) If authorized under the Adoption Agreement, Participants and Beneficiaries may elect to have all or any portion of their Account Balance transferred to another plan that satisfies Section 403(b) of the Code in accordance with Treas. Reg. § 1.403(b)-10(b)(3). A transfer is permitted under this Section 6.3(a) only if the Participants or Beneficiaries are Employees or former Employees of the Employer under the receiving plan and the other 403(b) plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.
- (b) The other 403(b) plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under Section 403(b) of the Code, the other plan shall impose 403(b) restrictions on distributions to the Participant or Beneficiary whose assets are transferred that are not less stringent than those imposed under the Plan. In addition, if the transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the Plan, the other plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the transferor plan (e.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).
- (c) Upon the transfer of assets under this Section 6.3, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 6.3 (for example, to confirm that the receiving plan satisfies Section 403(b) of the Code and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Treas. Reg. § 1.403(b)-10(b)(3).

**6.4 Contract and Custodial Account Exchanges.**

- (a) If authorized in the Adoption Agreement, a Participant or Beneficiary is permitted to change the investment of his or her Account Balance among the Vendors under the Plan, subject to the terms of the Individual Agreements. However, unless otherwise indicated on the Adoption Agreement, exchanges are not permitted to Vendors that are not eligible to receive contributions under Section 2. If the Adoption Agreement authorizes exchanges to a Vendor that is not eligible to receive contributions under Section 2, the conditions in paragraphs (b) through (d) of this Section 6.4 must be satisfied.
- (b) The Participant or Beneficiary must have an Account Balance immediately after the exchange that is at least equal to the Account Balance of that Participant or Beneficiary immediately before the exchange (taking into account the Account Balance of that Participant or Beneficiary under both Section 403(b) contracts or custodial accounts immediately before the exchange).
- (c) The Individual Agreement with the receiving Vendor has distribution restrictions with respect to the Participant that are not less stringent than those imposed on the investment being exchanged.
- (d) The Employer enters into an agreement with the receiving Vendor for the other contract or custodial account under which the Employer and the Vendor will from time to time in the future provide each other with the following information:
  - (1) Information necessary for the resulting contract or custodial account, or any other contract or custodial accounts to which contributions have been made by the Employer, to satisfy Section 403(b) of the Code, including the following:
    - (i) the Employer providing information as to whether the Participant's employment with the Employer is continuing, and notifying the Vendor when the Participant has had a Severance from Employment (for purposes of the distribution restrictions in Section 5.1);
    - (ii) the Vendor notifying the Employer of any hardship withdrawal under Section 5.3 if the withdrawal results in a 6-month suspension of the Participant's right to make Elective Deferrals under the Plan; and
    - (iii) the Vendor providing information to the Employer or other Vendors concerning the Participant's or Beneficiary's Section 403(b) contracts or custodial accounts or qualified employer plan benefits (to enable a Vendor to determine the amount of any plan loans and any rollover accounts that are available to the Participant under the Plan in order to satisfy the financial need under the hardship withdrawal rules of Section 5.3); and

- (2) Information necessary in order for the resulting contract or custodial account and any other contract or custodial account to which contributions have been made for the Participant by the Employer to satisfy other tax requirements, including the following:
  - (i) the amount of any plan loan that is outstanding to the Participant in order for a Vendor to determine whether an additional plan loan satisfies the loan limitations of Section 4.3, so that any such additional loan is not a deemed distribution under Section 72(p)(1); and
  - (ii) information concerning the Participant's or Beneficiary's Roth Contributions and after-tax employee contributions in order for a Vendor to determine the extent to which a distribution is includible in gross income.
- (e) If any Vendor ceases to be eligible to receive Elective Deferrals under the Plan, the Vendor shall enter into an information sharing agreement as described in Section 6.4(d) with the Employer if the Employer's existing contract with the Vendor does not provide for the exchange of information described in Section 6.4(d)(1) and (2).

#### 6.5 Permissive Service Credit Transfers

- (a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan. A transfer under this Section 6.5(a) may be made before the Participant has had a Severance from Employment.
- (b) A transfer may be made under Section 6.5(a) only if the transfer is either for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which Section 415 of the Code does not apply by reason of Section 415(k)(3) of the Code.
- (c) In addition, if a plan-to-plan transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the transferor plan, the Plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the transferor plan (e.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).

### Section 7 - Investment of Contributions

- 7.1 Manner of Investment. All Elective Deferrals, Roth 403(b) Contributions, Employer Contributions or other amounts contributed to the Plan, all property and rights purchased with such amounts under the Funding Vehicles, and all income attributable to such amounts, property, or rights shall be held and invested in one or more Annuity Contracts or Custodial Accounts. Each Custodial Account shall provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.
- 7.2 Investment of Contributions. Each Participant or Beneficiary shall direct the investment of his or her Account among the investment options available under the Annuity Contract or Custodial Account in accordance with the terms of the Individual Agreements. Transfers and exchanges among Annuity Contracts and Custodial Accounts may be made under this Section 7.2 to the extent provided in the Individual Agreements and permitted under applicable Income Tax Regulations.
- 7.3 Current and Former Vendors. The Administrator shall maintain a list of all Vendors under the Plan. Such list is hereby incorporated as part of the Plan. Each Vendor and the Administrator shall exchange such information as may be necessary to satisfy Section 403(b) of the Code or other requirements of applicable law. In the case of a Vendor which is not eligible to receive Elective Deferrals under the Plan (including a Vendor which has ceased to be a Vendor eligible to receive Elective Deferrals under the Plan and a Vendor holding assets under the Plan in accordance with Section 6.2 or 6.4), the Employer shall keep the Vendor informed of the name and contact information of the Administrator in order to coordinate information necessary to satisfy Section 403(b) of the Code or other requirements of applicable law.

### Section 8 - Amendments to the Plan

- 8.1 Termination of Contributions. The Employer has adopted the Plan with the intention and expectation that contributions will be continued indefinitely. However, the Employer has no obligation or liability whatsoever to maintain the Plan for any length of time and may discontinue contributions under the Plan at any time without any liability hereunder for any such discontinuance.
- 8.2 Amendment. The Employer reserves the authority to amend this Plan at any time, provided however that any amendment which reduces contractual rights or benefits under an Individual Agreement shall apply prospectively only except as required under the Code and applicable regulations promulgated thereunder.

## Section 9 - Miscellaneous

- 9.1 **Non-Assignability.** Except as provided in Section 9.2 and 9.3, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.
- 9.2 **Domestic Relation Orders.** Notwithstanding Section 9.1, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any state ("domestic relations order"), then the amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.
- 9.3 **IRS Levy.** Notwithstanding Section 9.1, the Administrator may direct payment from a Participant's or Beneficiary's Account the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.
- 9.4 **Tax Withholding.** Contributions to the Plan are subject to applicable employment taxes (including, if applicable, Federal Insurance Contributions Act (FICA) taxes with respect to Elective Deferrals and Roth 403(b) Contributions, which constitute wages under Section 3121 of the Code). Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including Section 3401 of the Code and the Employment Tax Regulations thereunder). A payee shall provide such information as the Administrator or Vendor may need to satisfy income tax withholding obligations, and any other information that may be required by guidance issued under the Code.
- 9.5 **Payments to Minors and Incompetents.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid in conformity with applicable Annuity Contracts or Custodial Accounts. If the applicable Annuity Contracts or Custodial Accounts do not address the issue of payments to minors and incompetents, then the Administrator shall direct payment of the benefit to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.
- 9.6 **Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned to the party that made the contribution.
- 9.7 **Procedure When Distributees Cannot Be Located.** The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the records of the Employer or the Administrator, (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. To the extent consistent with the administrative procedures of a Vendor and/or Administrator under the Plan Accounts of participants or other distributees who cannot be located may be escheated to the State in which the distributee last resided, subject to any limitations upon such procedures under applicable federal or state law.
- 9.8 **Incorporation of Individual Agreements.** The Plan, together with the Adoption Agreements and any Individual Agreements, is intended to satisfy the requirements of Section 403(b) of the Code and the Income Tax Regulations thereunder. Terms and conditions of the Adoption Agreement and applicable Individual Agreements are hereby incorporated by reference into the Plan, excluding those terms that are inconsistent with the Plan or Section 403(b) of the Code. In such event, the Individual Agreements shall be interpreted, to the extent possible, in a manner to conform to the Plan and applicable requirements, provided however that the Plan may not enlarge the rights of the Employer, the Administrator, or a Participant under the Individual Agreement
- 9.9 **Governing Law.** The Plan will be construed, administered and enforced according to the Code and the laws of the state in which the Employer has its principal place of business.
- 9.10 **Headings.** Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

- 9.11 **Gender.** Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.
- 9.12 **Indemnification.** If Employer appoints an Employee or committee of Employees to represent Employer as the Administrator of the Plan, Employer shall, to the extent permitted by applicable law, indemnify any such Employee acting on its behalf in this capacity. Such individuals shall be indemnified from any and all liability that may arise by reason of his action or failure to act concerning this Plan, excepting any willful misconduct or criminal acts.
- 9.13 **No Employer Liability.** Employer shall have no liability for the payment of benefits under the Plan provided that the providers of the applicable Annuity Contracts and Custodial Accounts receive written direction for the payment of benefits in accordance with Section 6. Each Participant shall look solely to the providers of applicable Annuity Contracts and Custodial Accounts for receipt of payments or benefits under the Plan.

## Section 10 – Roth 403(b) Contribution Provisions

- 10.1 **General Application.** This Section 10 shall apply only if the Employer has elected to permit Roth Contributions under the Plan as indicated on the Adoption Agreement.
- 10.2 **Roth 403(b) Contributions.** Participants may make Roth 403(b) Contributions to their Accounts under the Plan if authorized by the Employer on the Adoption Agreement. Unless otherwise provided, such contributions shall be treated as Elective Deferrals and are therefore subject to the requirements and limitations imposed by Section 402(g) of the Code. A Participant's Roth 403(b) Contributions shall be allocated to a separate account maintained for such deferrals as described in Section 10.3.
- 10.3 **Separate Accounting Requirements.** Contributions and withdrawals of Roth 403(b) Contributions, and earnings or losses thereon, shall be credited and debited to each Participant's Account and shall be separately accounted for under each Employee's Account. Gains, losses, and other credits or charges shall be separately allocated on a reasonable and consistent basis for each Employee's Roth 403(b) Contributions. Except as provided in Section 10.6, no contributions other than Roth 403(b) Contributions and properly attributable earnings may be credited to each Employee's Roth subaccount.
- 10.4 **Deposit Requirements.** Roth 403(b) Contributions shall be deposited with the applicable Funding Vehicles as soon as practicable in accordance with Section 2.5 of the Plan, unless an earlier date is required under state law.
- 10.5 **Direct Roth Rollovers From the Plan.** Notwithstanding Section 5.5 of the Plan, Participants may only make a direct rollover of a distribution of Roth 403(b) Contributions (and earnings thereon) to another 403(b) plan with Roth contribution features; to a 401(k) Plan with Roth contribution features, or to a Roth IRA described in Section 408A of the Code, and only to the extent the rollover is permitted under the rules of Section 402(c) of the Code.
- 10.6 **Roth Rollovers Into the Plan.** Notwithstanding Section 6.1 of the Plan, and unless otherwise indicated on the Adoption Agreement, direct rollovers of Roth 403(b) Contributions and Roth 401(k) contributions and earnings thereon from another 403(b) plan with Roth contribution features, or from a 401(k) Plan with Roth contribution features are permitted, provided that the Funding Vehicles selected by a Participant will accept such Roth Rollovers. Direct rollovers shall only be permitted if the transmitting plan satisfies the conditions set forth in Section 402A(e)(1) of the Code and only to the extent the rollover is permitted under the rules of Section 402(c) of the Code.
- 10.7 **Correction of Excess Deferrals.** To the extent consistent with the administrative procedures of a Vendor and/or Administrator under the Plan excess deferrals may be returned in a uniform manner without respect to an employee's status as a highly compensated or nonhighly compensated employee.
- 10.8 **Definition of Roth 403(b) Contributions.** A Roth 403(b) Contribution is an Employee contribution that is:
- (a) designated irrevocably by the Employee as such on his or her salary reduction/deduction form to be a Roth 403(b) Contribution; and
  - (b) treated by the Employer as includible in the Employee's income.
- 10.9 **Roth Caveat.** Employer, Administrator and providers of Annuity Contracts and Custodial Accounts shall utilize good faith compliance efforts to conform to the requirements applicable to Roth 403(b) Contributions based on applicable IRS guidance related to such contributions. The Plan shall be administered and interpreted in the manner necessary to ensure compliance with such guidance.

The Employer has evidenced its intent to adopt this Plan by executing the Adoption Agreement which is a part of this 403(b) Plan document. This Plan document, the Adoption Agreement, and any underlying Annuity Contracts and Custodial Accounts provided by the Vendors authorized by the Employer, as well as necessary forms and administrative policies and procedures incorporated by the Employer, an Administrator or any Funding Vehicle shall constitute the entire Plan.

**PLAN #1**  
**RESOLUTION**

**RESOLUTION OF THE BOARD OF NEW MEXICO JUNIOR COLLEGE  
ADOPOTING A WRITTEN 403(B) PLAN**

**WHEREAS, New Mexico Junior College (hereinafter, the "Employer") sponsors the New Mexico Junior College 403(b) Plan ("Plan"); and**

**WHEREAS, it has not been necessary to have a written document for the Plan; and**

**WHEREAS, changes to certain regulations for the Internal Revenue Code of 1986, as amended ("Code") require the Plan to have a written document as of December 31, 2008; and,**

**WHEREAS, there has been presented to the Board of New Mexico Junior College ("Board") an Adoption Agreement for the 403(b) Plan Document for Public Higher Education Institutions and attached 403(b) Plan Document for Higher Education Institutions ("Plan Documents"); and**

**WHEREAS, the Employer desires to establish the Plan in writing to comply with the requirements of certain provisions of the Code and the final Treasury Regulations as promulgated under section 403(b) of the Code and other applicable law; and**

**NOW THEREFORE, BE IT RESOLVED, that the Plan Documents are adopted and approved, effective December 18, 2008, and the President and any other proper officers of the Employer are authorized and directed to execute the Plan Documents and deliver the Plan Documents to any administrator of the Plan one or more counterparts of the Plan Documents.**

**BE IT FURTHER RESOLVED, that the proper officers of the Employer shall act as soon as possible to do all things necessary to implement the terms of the Plan Documents.**

**PLAN #2**



# FINAL 403(b) AND 415 REGULATIONS AMENDMENT

## ARTICLE I PREAMBLE

- 1.1 Adoption and effective date of amendment. This amendment of the plan is adopted to reflect certain provisions of the Internal Revenue Code of 1986, as amended (the "Code") and the final Treasury Regulations promulgated under Sections 403(b) and 415 of the Code, respectively (cumulatively, the "Regulations"). This amendment is intended to comply with the requirements of such final regulations and should be construed in accordance therewith. Except as otherwise provided, this amendment shall be effective as of January 1, 2009. The provisions relating to transfers and exchanges under the Plan are effective as of September 25, 2007, unless otherwise provided in the plan documentation and consistent with applicable law. The provisions in Sections 2.7 and 2.8 of this amendment are effective January 1, 2008, unless otherwise provided in the plan documentation and consistent with applicable law. The provisions relating to certain excluded Employees as specified in section 2.5 below shall become effective as indicated herein, but not later than January 1, 2010.
- 1.2 Supersession of inconsistent provisions. This amendment shall supersede 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 or any other amendment 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 included in such restatement or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates the requirements of the final Treasury Regulations under Code sections 403(b) and 415).
- 1.5 Application of provisions. Certain provisions of this Amendment relate to the requirements of Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). If the Plan to which this Amendment relates is a plan that is exempt from the requirements of ERISA as provided by Section 4 of such statute, then such ERISA provisions shall not apply.

## ARTICLE II ELECTIVE PROVISIONS

- 2.1 Hardship withdrawals: If hardship withdrawals are permitted under the terms of the Plan, hardship distributions will be subject to Section 1.401(k)-1(d)(3) of the Regulations. Accordingly, hardship distributions will be processed as indicated below *[check either safe harbor or general event test. If the plan does not permit hardship withdrawals, please so indicate by choosing the final option.]*
- Safe Harbor event test: Hardship withdrawals, if permitted, are limited to the applicable safe harbor events under Treas. Reg. §1.401(k)-1(d)(3)(iii)(B).
- General event test: Hardship withdrawals, if permitted, may follow any requirements established under a contract or account selected by the Participant, subject to applicable provisions governing hardship withdrawals under 401(k) plans.
- Hardship withdrawals are not permitted.

**In the event no options are selected, and the plan currently permits hardship distributions, the safe harbor events test is deemed to have been selected.**

In addition, the distribution will be deemed necessary (under Treas. Reg. 1.401(k)-1(d)(3)(iv)(E)) if the Employee has obtained all other currently available distributions and non-taxable loans under the Plan and all other plans maintained by the Employer, and the Employee is prohibited from making Elective Deferrals under the Plan or any other plan of the Employer for a period of 6 months after receipt of the hardship distribution.

**2.2 Exchanges Within the Plan: Unless you elect otherwise below, Exchanges are permitted to any approved provider authorized to receive new contributions.**

Choose any options below that apply:

- No Exchanges permitted
- Exchanges also permitted to providers included in the Plan but not authorized to receive new contributions.
- Exchanges also permitted to providers outside of the Plan that have entered into an information sharing agreement with the Plan Sponsor.

**2.3 Transfers Into the Plan: The Plan will  or will not  accept qualifying Plan-to-Plan Transfers from another 403(b) plan.**

**(Default: If no election is made, the Plan will accept qualifying Plan-to-Plan Transfers from another 403(b) plan)**

**2.4 Transfers From the Plan: The Plan will  or will not  permit qualifying Plan-to-Plan Transfers from the Plan to another 403(b) plan, if requested by a Participant that meets the requirements under the Regulations to direct such a transfer.**

**(Default: If no election is made, the Plan will permit qualifying Plan-to-Plan Transfers from the Plan to another 403(b) plan willing to accept the transfer.)**

**2.5 Excluded Employees for Elective Contributions/Deferrals:**

**(a) General Rules for Elective Deferrals. Unless exclusions are selected under this section 2.5 or pursuant to Article III, all Employees shall be immediately eligible to make Elective Deferrals with the Employer under the Plan. (Note: The inclusion of all common law employees will prevent an inadvertent violation of the universal availability requirements of Section 403(b)(12)(A)(II).)**

Subject to and in accordance with the requirements of the Regulations, the following category(ies) of employees shall not be eligible to participate in the plan:

- Employees who are eligible to participate in one or more plans described under Section 403(b)(12)(A) of the Code (e.g., a 401(k) plan, 457(b) plan or another 403(b) plan of the employer) during the calendar year.
- Employees who are students and regularly attending classes at the Employer institution during the calendar year (limited to Employers that are educational institutions).
- Employees who normally work fewer than 20 hours per week (must be 20 or less. Refer to Section 3.2, below)
- Employees who are nonresident aliens and perform no services in the U.S. during the calendar year.

**(b) Special rules effective on or after January 1, 2010: Notwithstanding the above, employees in the classes selected below are excluded for taxable years beginning prior to**

January 1, 2010, but shall be eligible for participation under the plan for taxable years beginning on or after January 1, 2010;

- Employees who make a one-time election to participate in a governmental plan as described in Code section 414(d) instead of a 403(b) plan
- Professors who are providing services on a temporary basis to another school for up to one year and for whom section 403(b) contributions are being made at a rate no greater than the rate each such professor would receive under the section 403(b) plan of the original school
- Employees who are affiliated with a religious order and who have taken a vow of poverty where the religious order provides for the support of such employees in their retirement

(c) Eligibility Exclusions for Employees subject to a collective bargaining agreement: Notwithstanding the above, if on July 26, 2007, the Plan excluded from eligibility employees who are covered by a collective bargaining agreement, then such Employees, unless included in a category of employees otherwise permissibly excluded from participation in accordance with the Regulations, shall be eligible for participation in the plan on the later of (i) the first day of the first taxable year that begins after December 31, 2008; or (ii) the earlier of (A) the date on which the related collective bargaining agreement terminates (determined without regard to any extension thereof after July 26, 2007); or (B) July 26, 2010.

## 2.6 Excluded Employees for Employer Contributions:

**General Rules for Employer Contributions:** Unless exclusions are selected in this section 2.6 or pursuant to Article III, all Employees shall be eligible for Employer Contributions. (Note: Excluding employees from becoming eligible to receive Employer Contributions may require additional non-discrimination testing in accordance with Section 1.403(b)-5 of the Regulations including, but not limited to, the requirements of Code Section 410(b).)

The following category(ies) of employees shall not be eligible to receive employer contributions other than elective deferrals under the Plan:

- Employees who are students and regularly attending classes at the Employer institution during the calendar year (limited to Employers that are educational institutions).
- Employees who normally work fewer than 20 hours per week. (Note: If the requisite number of hours per week exceeds 20 hours, such exclusion may affect non-discrimination testing under the Plan.)
- Employees who are nonresident aliens and perform no services in the U.S. during the calendar year.
- Employees covered by a collective bargaining agreement (unless the terms of the collective bargaining agreement provide for participation in the Plan).

*Note that the election of the following exclusions from eligibility for employer contributions other than elective deferrals may adversely affect required non-discrimination testing under the Plan.*

- Employees who are eligible to participate in one or more plans described under Section 403(b)(12)(A) of the Code (e.g., a 401(k) plan, 457(b) plan or another 403(b) plan of the employer) during the calendar year.
- Employees who make a one-time election to participate in a governmental plan described in Code section 414(d) instead of a 403(b) plan.
- Professors who are providing services on a temporary basis to another school for up to one year and for whom section 403(b) contributions are being made at a rate no greater than the rate each such professor would receive under the section 403(b) plan of the original school.

- Employees who are affiliated with a religious order and who have taken a vow of poverty where the religious order provides for the support of such employees in their retirement.
- Other (Please identify the category(ies) of employees to be excluded from receiving Employer contributions other than elective deferrals.)

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**2.7 Compensation From which Elective Deferrals May be Made:**

(a) Unless you elect otherwise below, Participants shall be allowed to make Elective Deferrals with respect to all compensation that is paid prior to severance from employment with the Employer.

Compensation shall exclude:

- Overtime
  - Bonuses
  - Commissions
  - Other (specify): \_\_\_\_\_
- 
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(b) Participants shall be allowed to make Elective Deferrals with respect to compensation that is paid after severance from employment with the Employer, if such compensation is either (i) compensation for pay periods beginning prior to severance from employment (i.e., the last paycheck), or (ii) "regular" pay, such as overtime, shift differential, commissions, bonuses, or other similar payments (that would have been paid prior to severance if the Participant had continued in employment) that is paid by the later of 2 1/2 months after severance from employment or the last day of the limitation year that includes the date of severance.

(c) Unless you elect otherwise below, Participants shall not be allowed to make Elective Deferrals with respect to Compensation (other than regular compensation as described in 2.7(b) above) that is paid after severance from employment (check all that apply):

Participants may make Elective Deferrals from the following types of post-severance compensation (check all that apply):

- Payments for unused accrued sick, vacation or other leave (that could have been used by the Participant had he/she continued in employment) that is paid by the later of 2 1/2 months after severance from employment or the last day of the limitation year that includes the date of severance
- Amounts payable to the Participant under a nonqualified unfunded deferred compensation plan (if the payment would have been made at the same time if the Participant had continued in employment) that are paid by the later of 2 1/2 months after severance from employment or the last day of the limitation year that includes the date of severance
- Salary continuation payments to disabled Participants (as described in Treas. Reg. Section 1.415(c)-2(e)(4))

- Salary continuation payments to Participants who are not currently providing services by reason of qualified military service (as described in Treas. Reg. Sections 1.415(c)-2(e)(4), 1.415(c)-2(g)(4) or 1.415(c)-2(g)(7)).

2.8 Compensation for Purposes of Employer Contributions:

The following elections shall apply for determining the amount of, or the allocation of, Employer contributions under the Plan. Regardless of the elections below, the amount of Compensation taken into account under the Plan for any year shall not exceed the maximum amount permitted under Section 401(a)(17) for such year.

In the event that no options are selected, Compensation shall mean Section 415 "safe harbor" compensation for the Plan Year, less pre-entry date compensation.

(a) Compensation shall mean (check one):

- W-2 wages (wages, tips and other compensation reported in Box 1 of Form W-2), increased by Elective Contributions
- Section 3401(a) wages (wages for federal income tax withholding purposes), increased by Elective Contributions
- Section 415 "safe harbor" compensation, as defined in Treas. Reg. Section 1.415(c)-2(d)(2), including Elective Contributions
- Other (specify): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Note: Allocating Employer contributions on the basis of a definition of Compensation other than the first three alternatives above (as adjusted by the permissible exclusions elected below) may subject the Plan to additional nondiscrimination tests, including the Section 414(s) nondiscriminatory compensation test and (if the definition of Compensation does not satisfy the 414(s) test) the general nondiscrimination test under Section 401(a)(4).*

(b) Compensation shall be based on the following determination period (check one):

- the Plan Year;
- the calendar year coinciding with or ending within the Plan Year;

(c) Compensation shall exclude (check all that apply):

- No exclusions
- Elective Contributions: amounts excludible from the Participant's taxable income by reason of the Participant's election to defer under Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b)
- Pre-Entry Date Compensation: compensation earned prior to the date the Participant is first eligible for Employer contributions
- Expense reimbursements/expense allowances, fringe benefits, moving expenses, deferred compensation and welfare benefits
- Overtime

- Bonuses
- Commissions
- Other (specify) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*Note: Allocating Employer contributions on the basis of a definition of Compensation that excludes items of compensation other than the first three alternatives above may subject the Plan to additional nondiscrimination tests, including the Section 414(s) nondiscriminatory compensation test and (if the definition of Compensation does not satisfy the 414(s) test) the general nondiscrimination test under Section 401(a)(4).*

(d) Unless otherwise excluded above, Compensation shall include post-severance "regular pay" (i.e., base pay, overtime, shift differential, commissions, bonuses or similar payments) that is paid by the later of (i) 2 1/2 months after severance from employment, or (ii) the last day of the limitation year that includes the date of severance, so long as such amounts would have been paid to the Participant prior to severance if the Participant had continued in employment. This would include, for example, the Participant's final paycheck, if paid to the Participant after severance from employment.

(e) Unless otherwise elected below, Compensation shall exclude all other compensation that is paid after severance from employment.

Compensation shall include the following types of post-severance compensation:

- Payments for unused accrued sick, vacation or other leave (that could have been used by the Participant had he/she continued in employment) that is paid by the later of 2 1/2 months after severance from employment or the last day of the limitation year that includes the date of severance
- Amounts payable to the Participant under a nonqualified unfunded deferred compensation plan (if the payment would have been made at the same time if the Participant had continued in employment) that are paid by the later of 2 1/2 months after severance from employment or the last day of the limitation year that includes the date of severance
- Salary continuation payments to disabled Participants (as described in Treas. Reg. Section 1.415(c)-2(e)(4))
- Salary continuation payments to Participants who are not currently providing services by reason of qualified military service (as described in Treas. Reg. Sections 1.415(c)-2(e)(4), 1.415(c)-2(g)(4) or -1.415(c)-2(g)(7)).

### ARTICLE III ELIGIBILITY AND ELIGIBLE EMPLOYEES

- 3.1 General rule for eligibility: Subject to Sections 2.5 and 2.6 above, each Employee shall become eligible to participate in the Plan and elect to have Elective Contributions/Deferrals made on his or her behalf hereunder immediately upon employment with the Employer.
- 3.2 Determination of Employees who normally work less than 20 hours per week: If the plan excludes from participation those employees who normally work 20 hours per week or less, in

accordance with the Regulations, an Employee normally will be deemed to work fewer than 20 hours per week if for the 12-month period beginning on the date of hire the Employer reasonably expects the Employee to work fewer than 1,000 hours and, for each subsequent plan year ending after this initial employment year, the Employee worked fewer than 1,000 hours in the preceding 12-month period.

- 3.3 Provisions relating to IRS Notice 89-23: Any class of Employees that have been excluded from eligibility in the Plan in accordance with IRS Notice 89-23 that are not otherwise included in a category of Employees which may be excluded from eligibility under the Plan and in accordance with applicable law, shall be eligible to participate in the Plan,

*(Note that the exclusions permitted under IRS Notice 89-23 include, but are not limited to, employees who are covered by a collective bargaining agreement, employees who make a one-time election to participate in a governmental plan described in Code Section 414(d) instead of a 403(b) plan, professors who are providing services on a temporary basis to another public school for up to one year and for whom section 403(b) contributions are being made at a rate no greater than the rate each such professor would receive under the section 403(b) plan of the original public school, and employees who are affiliated with a religious order and who have taken a vow of poverty where the religious order provides for the support of such employees in their retirement.)*

## **ARTICLE IV ROLLOVERS, TRANSFERS AND EXCHANGES**

*(Note that the Regulations include significant changes to the availability of rollovers, transfers and exchanges under and between plans, including the repeal of IRS Revenue Ruling 90-24 which became effective September 25, 2007.)*

### 4.1 Eligible Rollover Contributions to the Plan.

(a) Eligible Rollover Contributions. To the extent provided in the investment arrangements and the Plan, including Article II above, an Employee who is a Participant who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. Such rollover contributions shall be made in the form of cash only. The provider may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of section 402(c)(8)(B) of the Code. However, unless Roth 403(b) Contributions are authorized under the Plan, in no event does the Plan accept a rollover contribution from a Roth elective deferral account under an applicable retirement plan described in section 402A(e)(1) of the Code.

(b) Eligible Rollover Distribution. For purposes of Section 4.1(a), an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (1) any installment payment for a period of 10 years or more, (2) any distribution made as a result of an unforeseeable emergency or upon hardship of the employee, (3) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9) of the Code, or corrective distribution of excess amounts in accordance with the Plan. In addition, an eligible retirement plan means an individual retirement account described in section 408(a) and 408A of the Code, an individual retirement annuity described in section 408(b) and 408A of the Code, a qualified trust described in section 401(a) of the Code, a plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution.

(c) Separate Accounts. Unless otherwise provided by the terms of applicable investment arrangements, providers shall provide separate accounting for any eligible rollover distribution paid to the Plan.

#### 4.2 Plan-to-Plan Transfers to the Plan.

(a) To the extent provided in the investment arrangements and the Plan, including Article II above, the Administrator may permit a transfer of assets to the Plan as provided in this section. Such a transfer is permitted only if the other plan provides for the direct transfer of each person's entire interest therein to the Plan and the person is an Employee or former Employee of the Employer. The Administrator and any provider accepting such transferred amounts may require that the transfer be in cash or other property acceptable to it. The Administrator or any provider accepting such transferred amounts may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Treas. Reg. § 1.403(b)-10(b)(3) and to confirm that the other plan is a plan that satisfies section 403(b) of the Code.

(b) The amount so transferred shall be credited to the Participant's Account, so that the Participant or Beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit with respect to that Participant or Beneficiary immediately before the transfer.

(c) To the extent provided in the investment arrangements holding such transferred amounts, the amount transferred shall be held, accounted for, administered and otherwise treated in the same manner as an Elective Deferral or, if applicable, Roth 403(b) Contribution by the Participant under the Plan, except that (1) the investment arrangement which holds any amount transferred to the Plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under section 403(b) of the Code, the investment arrangement must impose restrictions on distributions to the Participant or Beneficiary whose assets are being transferred that are not less stringent than those imposed under the transferor plan, and (2) the transferred amount shall not be considered an Elective Deferral under the Plan in determining the maximum deferral under the Plan.

#### 4.3 Plan-to-Plan Transfers from the Plan.

(a) To the extent provided in the investment arrangements and the Plan, including Article II above, Participants and Beneficiaries may elect to have all or any portion of their Account transferred to another plan that satisfies section 403(b) of the Code in accordance with Treas. Reg. § 1.403(b)-10(b)(3). A transfer is permitted under this Section 4.3(a) only if the Participants or Beneficiaries are Employees or former Employees of the Employer under the receiving plan and the receiving plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the receiving plan immediately after the transfer at least equal to the amount transferred.

(b) The receiving 403(b) plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under section 403(b) of the Code, the other plan shall impose 403(b) restrictions on distributions to the Participant or Beneficiary whose assets are transferred that are not less stringent than those imposed under the Plan. In addition, if the transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the Plan, the receiving plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the transferor plan (e.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).

(c) Upon the transfer of assets under this Section 4.3, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 4.3 (for



example, to confirm that the receiving plan satisfies section 403(b) of the Code and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Treas. Reg. § 1.403(b)-10(b)(3).

#### 4.4 Contract and Custodial Account Exchanges.

(a) To the extent provided in the investment arrangements and the Plan, including Article II above, a Participant or Beneficiary is permitted to change the investment of his or her Account among the providers under the Plan, subject to the terms of the investment arrangements. However, unless otherwise indicated in the Plan, exchanges are not permitted to providers that are not eligible to receive contributions. If the Plan authorizes exchanges to a provider that is not eligible to receive contributions, the conditions in paragraphs (b) through (d) of this Section 4.4 must be satisfied.

(b) The Participant or Beneficiary must have an Account balance immediately after the exchange that is at least equal to the Account balance of that Participant or Beneficiary immediately before the exchange (taking into account the Account balance of that Participant or Beneficiary under both section 403(b) contracts or custodial accounts immediately before the exchange).

(c) The investment arrangement with the receiving provider has distribution restrictions with respect to the Participant that are not less stringent than those imposed on the investment being exchanged.

(d) The Employer enters into an agreement with the receiving provider for the other contract or custodial account under which the Employer and the provider will from time to time in the future provide each other with the following information:

(1) Information necessary for the resulting contract or custodial account, or any other contract or custodial accounts to which contributions have been made by the Employer, to satisfy section 403(b) of the Code, including the following:

(i) the Employer providing information as to whether the Participant's employment with the Employer is continuing, and notifying the provider when the Participant has had a severance from employment (for purposes of the distribution restrictions);

(ii) the provider notifying the Employer of any hardship withdrawal if the withdrawal results in a 6-month suspension of the Participant's right to make Elective Deferrals under the Plan; and

(iii) the provider providing information to the Employer or other providers concerning the Participant's or Beneficiary's section 403(b) contracts or custodial accounts or qualified employer plan benefits (to enable a provider to determine the amount of any plan loans and any rollover accounts that are available to the Participant under the Plan in order to satisfy the financial need under the hardship withdrawal rules); and

(2) Information necessary in order for the resulting contract or custodial account and any other contract or custodial account to which contributions have been made for the Participant by the Employer to satisfy other tax requirements, including the following:

(i) the amount of any plan loan that is outstanding to the Participant in order for a provider to determine whether an additional plan loan satisfies the loan limitations of the Code so that any such additional loan is not a deemed distribution under section 72(p)(1); and

(ii) Information concerning the Participant's or Beneficiary's Roth Contributions and after-tax employee contributions in order for a provider to determine the extent to which a distribution is includible in gross income.

(e) If any provider ceases to be eligible to receive Elective Deferrals under the Plan, the provider shall enter into an information sharing agreement as described in Section 4.4(d) with the Employer if the Employer's existing contract with the provider does not provide for the exchange of information described in Section 4.4(d)(1) and (2).

#### 4.5 Permissive Service Credit Transfers.

(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, and subject to any applicable federal and/or state limitations, then the Participant may elect to have any vested portion of the Participant's Account transferred to the defined benefit governmental plan. A transfer under this Section 4.5(a) may be made before the Participant has had a Severance from Employment.

(b) A transfer may be made under Section 4.5(a) only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code.

(c) In addition, if a plan-to-plan transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the transferor plan, the Plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the transferor plan (e.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).

## ARTICLE V DISTRIBUTIONS AND LOANS

5.1 Distributions from contracts other than custodial accounts or amounts attributable to elective deferrals (employer contributions held in annuity contracts). Except as provided under the Plan for correction of excess deferrals or plan termination, the portion of a Participant's Account not attributable to elective deferrals and which is held in annuity accounts may not be distributed until the earlier of (i) the stated event identified under the terms of the Plan document for receipt of such non-elective employer contributions, or (ii) severance from employment. If prior to this amendment the Plan imposed no restrictions on such distributions, the requirements of this section will apply only to those contracts established on or after the effective date of this amendment. If the Plan document or the contract(s) do not specify a stated event, the stated event for contracts issued on or after the effective date of this amendment shall be the earliest of attainment of age 59½, severance from employment, disability, and death.

5.2 Distributions from custodial accounts that are not attributable to elective deferrals (employer contributions held in custodial accounts). Except as provided under provisions of the Plan relating to excess deferrals or plan termination, the portion of a Participant's Account not attributable to elective deferrals and which is held in custodial accounts may not be distributed prior to the earliest of the date on which the Participant has a severance from employment, dies, becomes disabled within the meaning of Code section 72(m)(7), or attains age 59½. Any amounts transferred out of a custodial account to an annuity contract or retirement income account and the earning thereon continue to be subject to this paragraph.

5.3 Distribution of section 403(b) elective deferrals.

(a) Except as permitted under provisions of the Plan relating to excess elective deferrals or plan termination, distributions from a Participant's Account may not be made earlier than the

earliest of the date on which the Participant has a severance from employment, dies, has a hardship, becomes disabled within the meaning of Code section 72(m)(7), or attains age 59½.

(b) Notwithstanding the foregoing and in accordance with the terms of the Individual Agreements, the withdrawal restrictions described above do not apply to elective deferrals made to an annuity contract and attributable earnings as of December 31, 1988. Distributions shall otherwise be made in accordance with the terms of the investment arrangements.

5.4 Hardship Distributions. To the extent permitted under the terms of the Plan and the applicable investment arrangements, including section 2.1 above, hardship distributions may be made under the Plan.

5.5 Loans. If authorized in the Plan, loans shall be permitted to the extent permitted by and in accordance with the investment arrangements controlling the Account assets from which the loan is made and by which the loan will be secured.

(a) Information Coordination Concerning Loans. Each provider is responsible for all information reporting and tax withholding required by applicable federal and state law in connection with distributions and loans. To minimize the instances in which Participants have taxable income as a result of loans from the Plan, the Administrator(s) shall take such steps as may be appropriate to coordinate the limitations on loans set forth below, including the collection of information from providers, and transmission of information requested by any provider, concerning the outstanding balance of any loans made to a Participant under the Plan or any other plan of the Employer. The Administrator(s) shall also take such steps as may be appropriate to collect information from providers, and transmission of information to any provider, concerning any failure by a Participant to repay timely any loans made to a Participant under the Plan or any other plan of the Employer.

(b) Maximum Loan Amount. No loan to a Participant under the Plan may exceed the lesser of:

(1) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made, or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Administrator (not taking into account any payments made during such one-year period); or

(2) one half of the value of the Participant's vested Account balance (as of the Valuation Date immediately preceding the date on which such loan is approved by the Administrator) reduced by the amount of any outstanding loan balances.

(c) If this Plan is not subject to the provisions of ERISA, to the extent provided in the investment arrangements and the Plan, loans may be permitted up to the lesser of (1) the amount determined under (b)(1) above, or (2) the greater of (i) the amount determined under (b)(2) above, or (ii) \$10,000 less the amount of any outstanding loans.

For purposes of this section, any loan from any other plan maintained by the Employer and any related employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.

(d) Loan Repayments For Participants in Military Service. Notwithstanding any other provision of the Plan or any Annuity Contract or Custodial Account, loan repayments by eligible uniformed services personnel may be suspended as permitted under section 404(u)(4) of the Code and the terms of any loan shall be modified to conform to the requirements of the Uniformed Services Employment and Reemployment Rights Act.

- 5.6 Minimum Distributions. Each investment arrangement shall comply with the minimum distribution requirements of section 401(a)(9) of the Code and the regulations thereunder. For purposes of applying the distribution rules of section 401(a)(9) of the Code, each investment arrangement is treated as an individual retirement account (IRA) and distributions shall be made in accordance with the provisions of § 1.408-8 of the Income Tax Regulations, except as provided in Treas. Reg. § 1.403(b)-6(e).
- 5.7 Vesting provisions. Nonvested account values must be accounted for separately in accordance with section 403(c) of the Code until they become 100% vested. Elective contributions and any earnings thereon are always fully vested and nonforfeitable. The Plan shall take a participant's elective contributions/deferrals into account in determining the Participant's vested benefits under the Plan. Thus, for example, the Plan shall take elective contributions into account for applying provisions permitting the repayment of distributions to allow forfeited amounts to be restored, and the provisions of Code Sections 410(a)(5)(D)(iii) and 411(a)(6)(D)(iii) permitting a plan to disregard certain service completed prior to breaks-in-service (sometimes referred to as "the rule of parity").

## ARTICLE VI AMENDMENT AND TERMINATION

- 6.1 Right to amend: The Employer reserves the right to amend or terminate the Plan at any time, provided that no such amendment may cause any amounts held under the Plan to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and Beneficiaries, and provided further that no amendment or termination of the Plan may reduce the benefits accrued by or the amount credited to the Account of any Participant, reduce any Participant's Vested percentage in that portion of the Participant's account attributable to Employer Contributions made before the day such amendment is adopted or becomes effective, whichever is later, or eliminate or reduce any optional form of distribution or benefit or any early retirement benefit provided by the Plan.
- 6.2 Distribution upon Plan Termination: Upon Plan termination, Participant Accounts shall be distributed in either (i) the form of a lump sum distribution, or (ii) in the form of the Annuity Contract(s), in accordance with and subject to Section 403(b) of the Code and the applicable Regulations thereunder. All distributions made pursuant to the Plan termination and in accordance with the requirements of Section 1.403(b)-10 of the Regulations, either in cash or in the form of distributed Annuity Contracts which impose the applicable restrictions of Code Section 403(b)(11) which survive such termination, shall be made in accordance with the applicable requirements of the Code, as determined by, and pursuant to the direction of, the Employer and/or the Plan Administrator.

## ARTICLE VII TIMING OF CONTRIBUTION REMITTANCE

- 7.1 Employer Contributions: Employer contributions shall be transferred to the provider of the applicable funding vehicle within a reasonable period of time.
- 7.2 Elective Contributions/Deferrals subject to ERISA: If the Plan is subject to the requirements of ERISA, elective deferrals accumulated through payroll deductions shall be paid to the provider of the applicable funding vehicle as of the earliest date on which such contributions can reasonably be segregated from the Employer's general assets, but no later than such time specified or permitted by the Department of Labor regulations.

7.3 Elective Contributions/Deferrals not subject to ERISA: If the Plan is not subject to the requirements of ERISA, the Employer shall remit contributions to the provider of the applicable funding vehicle within a "reasonable" time following withholding from the employees' pay, or such date as required by applicable state law.

**ARTICLE VIII  
CORRECTIVE DISTRIBUTIONS**

Notwithstanding any other provision of the Plan to the contrary, for limitation years beginning on or after July 1, 2007, if (notwithstanding the application of the provisions of the Plan titled "Special Code Limitations") the limit on annual additions under Section 415 is exceeded for the limitation year, the excess annual additions shall be segregated and accounted for separately (as required under Treas. Reg. Section 1.403(b)-3(b)(2)) until corrected (by distribution or otherwise) in a manner consistent with applicable IRS guidance regarding the correction of excess annual additions.

**ARTICLE IX  
PLAN DOCUMENT**

The Plan document, as amended, the adoption agreement (if applicable), as amended, and any underlying annuity contracts and/or custodial accounts provided by the provider(s) authorized by the Employer, as well as necessary forms and administrative policies and procedures incorporated by the Employer, an Administrator, or any Funding Vehicle, shall constitute the entire Plan.

This amendment has been executed this 18th day of December, 2008.

Name of Employer: New Mexico Junior College

Name of Plan: New Mexico Junior College Supplemental Retirement Plan

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

Name: Steve McCleery  
(Print)

Title: President

**SUMMARY OF MATERIAL MODIFICATIONS**  
for the

New Mexico Junior College Supplemental Retirement Plan  
(Name of Plan)

(1) **General.** This is a Summary of Material Modifications regarding the New Mexico Junior College Supplemental Retirement Plan (the "Plan"). This Summary of Material Modifications supplements and amends the Summary Plan Description (SPD) which was previously provided to you. You should retain this document with your copy of the SPD.

(2) **Identification of Employer.** The legal name, address and Federal Employer Identification number of the Employer are:

New Mexico Junior College

EIN: 85-9193990

1 Thunderbird Circle

Hobbs, NM 88240

(3) **Description of Modifications.**

***Why is the Plan being amended?***

The Plan is being amended to incorporate required regulatory changes, including the regulations recently issued under sections 403(b) and 415 of the Internal Revenue Code of 1986, as amended (the "Code").

***When are the changes effective?***

Unless otherwise indicated, the Plan is amended effective as of January 1, 2009. Certain provisions of the Plan relating to transfers and exchanges became effective September 25, 2007, in accordance with applicable law. The changes relating to the definition of compensation are generally effective January 1, 2008.

***What classes of employees are excluded for purposes of making elective deferrals?***

**Section A.** All employees shall be immediately eligible to make elective deferrals under this Plan except for those classifications indicated below.

- All employees who participate in a Section 401(k) plan, a Section 457(b) plan, or another 403(b) plan of the Employer.
- Employees who are students and regularly attending classes at the Employer institution during the calendar year (limited to Employers that are educational institutions).
- Employees who normally work fewer than 20 hours per week (must be 20 or less). However, if you work at least 1,000 hours in the previous year, you will be considered to work at least 20 hours per week.
- Employees who are nonresident aliens and perform no services in the U.S. during the calendar year.

**Section B.** In addition to the exclusions above, the following classifications of employees will be excluded for years prior to 2010, but shall become eligible to participate effective January 1, 2010.

- Employees who make a one-time election to participate in a governmental Plan instead of a 403(b) Plan.

- Professors who are providing services on a temporary basis to another school for up to one year and who meet certain other criteria.
- Employees who are affiliated with a religious order and who have taken a vow of poverty.

**Section C.** There are special rules for employees covered by a collective bargaining agreement. If you are covered by a collective bargaining agreement and you have been excluded because the Plan excluded those employees covered by a collective bargaining agreement on July 26, 2007, then you will become eligible to participate in the Plan on the later of (i) The first day of the first taxable year that begins after December 31, 2008; or (ii) The earlier of (A) The date on which the related collective bargaining agreement terminates (determined without regard to any extension thereof after July 26, 2007); or (B) July 26, 2010.

**What classes of employees are excluded from receiving employer contributions (other than elective deferrals) made to the Plan?**

Classes of employees indicated below are not eligible to receive employer contributions (other than elective contributions/ deferrals).

- All employees who are eligible to participate in Section 401(k) plan, a Section 457(b) plan or another Section 403(b) plan of the Employer.
- Employees who are students and regularly attending classes at the Employer Institution during the calendar year (limited to Employers that are educational institutions).
- Employees who normally work fewer than 20 hours per week during the calendar year. However, if you work at least 1,000 hours in the previous year, you will be considered to work at least 20 hours per week.
- Employees who are nonresident aliens and perform no services in the U.S. during the calendar year.
- Employees who make a one-time election to participate in a governmental plan instead of the Plan.
- Professors who are providing services on a temporary basis to another school for up to one year and who meet certain other criteria.
- Employees who are affiliated with a religious order and who have taken a vow of poverty.
- Employees who are covered by a collective bargaining agreement.
- Other \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**While I am employed, from what compensation may I make elective deferrals?**

Unless indicated below, you may make elective deferrals from all compensation that is paid prior to your severance from employment.

You will not be allowed to make elective deferrals from:

- Overtime
- Bonuses
- Commissions

Other (specify): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Can I make elective deferrals from my last paycheck or other regular pay that is paid to me after my severance from employment?**

Yes. You may make elective deferrals from compensation that is paid after severance from employment with the employer, if such compensation is either (i) compensation for pay periods beginning prior to severance from employment (i.e., the last paycheck), or (ii) "regular" pay, such as overtime, shift differential, commissions, bonuses, or other similar payments (that would have been paid prior to severance if you had continued in employment) that is paid by the later of 2 1/2 months after severance from employment or the last day of the limitation year that includes the date of severance.

**From what other types of post-severance compensation may I make elective deferrals?**

Unless indicated below, you may not make elective deferrals with respect to Compensation (other than regular compensation) that is paid after severance from employment:

You may make elective contributions/ deferrals from the following types of post-severance compensation if indicated:

- Payments for unused accrued sick, vacation or other leave (that could have been used had you continued in employment) that is paid by the later of 2 1/2 months after severance from employment or the last day of the limitation year that includes the date of severance.
- Amounts payable to you under a nonqualified unfunded deferred compensation Plan (if the payment would have been made at the same time if you had continued in employment) that are paid by the later of 2 1/2 months after severance from employment or the last day of the limitation year that includes the date of severance.
- Certain salary continuation payments to disabled participants.
- Salary continuation payments to you during a period of qualified military service.

**What is my compensation for purposes of determining the amount and allocation of my employer contributions (other than elective deferrals)?**

Compensation for determining employer contributions other than elective deferrals means (if no box is checked Compensation means Section 415 "safe harbor" compensation):

- W-2 wages (wages, tips and other compensation reported in Box 1 of Form W-2), increased by Elective Contributions
- Section 3401(a) wages (wages for federal income tax withholding purposes), increased by Elective Contributions
- Section 415 "safe harbor" compensation, including Elective Contributions
- Other (specify): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**What time period does the Plan use for determining my compensation for purposes of employer contributions?**

Compensation shall be based on the determination period indicated below, or the Plan Year if no options are indicated:

- the Plan Year (refer to your SPD);
- the calendar year coinciding with or ending within the Plan Year;

**Are there any exclusions from compensation when determining employer contributions, and if so, what types of compensation are excluded?**

The items indicated below will be excluded from compensation for purposes of determining employer contributions.

- No exclusions
- Elective Contributions: amounts excludible from your taxable income by reason of your election to defer under any other plan or arrangement of your Employer.
- Pre-Entry Date Compensation: compensation earned prior to the date you are first eligible for employer contributions
- Expense reimbursements/expense allowances, fringe benefits, moving expenses, deferred compensation and welfare benefits
- Overtime
- Bonuses
- Commissions
- Other (specify): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**When determining employer contributions, will amounts paid after my severance from employment be included?**

Unless otherwise excluded above, Compensation will include post-severance "regular pay" (i.e., base pay, overtime, shift differential, commissions, bonuses or similar payments) that is paid by the later of (i) 2 1/2 months after severance from employment, or (ii) the last day of the limitation year that includes the date of severance, so long as such amounts would have been paid to you prior to severance if you had continued in employment. This would include, for example, your final paycheck, if paid to you after severance from employment.

In addition, compensation will include the types of post-severance compensation indicated below:

- Payments for unused accrued sick, vacation or other leave (that could have been used by you had you continued in employment) that is paid by the later of 2 1/2 months after severance from employment or the last day of the limitation year that includes the date of severance
- Amounts payable to you under a nonqualified unfunded deferred compensation Plan (if the payment would have been made at the same time if you had continued in employment) that are paid by the later of 2 1/2 months after severance from employment or the last day of the limitation year that includes the date of severance

- Certain salary continuation payments to disabled Participants
- Salary continuation payments to you during a period of qualified military service

**May I change my investments among providers under the Plan?**

Yes. Subject to the terms of your investments, you will be permitted to exchange investments among those providers approved to receive contributions under the terms of the Plan. Before directing any exchange, you should verify the terms of your investments.

Yes. Subject to the terms of your investments, you will be permitted to exchange investments among those providers approved to receive contributions under the terms of the Plan as well as those providers of products identified by the Plan Sponsor that have entered into an information sharing agreement in accordance with the requirements of the final 403(b) regulations. Before directing any exchange, you should verify the terms of your investments.

No. Investment exchanges are not permitted under the Plan.

**May I transfer amounts from another 403(b) plan into this Plan?**

Yes

No

**May I transfer amounts to another 403(b) plan from this Plan?**

Yes

No

**When can I receive a distribution under the Plan?**

You may receive a distribution from the Plan if (a) you are no longer employed by the employer (b) you have met a stated event as provided under the terms of the Plan (refer to your SPD), or (c) the Plan has been terminated by your employer in accordance with and subject to the requirements of the final 403(b) regulations. If your Plan does not specify a stated event, the stated event for contracts issued on or after the date of this amendment will be the earliest of age 59½, severance from employment, disability or death.

**May I receive a distribution due to hardship?**

Yes. Your employer has selected the "safe harbor" events test. If permitted under your investments, hardship withdrawals are permitted for certain expenses which are deemed to be immediate and heavy financial needs. These expenses are (a) expenses already incurred or necessary for anticipated medical care, for yourself, your spouse, your children or your dependents; (b) purchase (excluding mortgage payments) of your principal residence; (c) payment of tuition and related educational fees, including room and board expenses, for the next 12 months of post-secondary education for the yourself, your spouse, your children or your dependents; (d) the payment of amounts necessary to prevent your eviction from your principal residence or the foreclosure on the mortgage of your principal residence; (e) payments for burial or funeral expenses for your deceased parent, spouse, children or dependents; (f) expenses for the repair of damage to your principal residence that would qualify for the casualty deduction under the Internal Revenue Code or (g) such other circumstances as may be specified in the Treasury regulations. A hardship distribution is only permitted if you have obtained all other currently available distributions and non-taxable loans under the Plan and all other plans maintained by the Employer. Your right to make elective deferral contributions to any Plan of the employer will be suspended for 6 months after you take a hardship distribution.

Yes. Your employer has selected the general events test. If permitted under your investments, hardship withdrawals are permitted for certain expenses which are immediate and heavy financial needs as determined by your Administrator under Internal Revenue Code section 401(k) and the Treasury Regulations. Your right to make elective deferral contributions to any Plan of the employer will be suspended for 6 months after you take a hardship distribution.

No. Hardship withdrawals are not permitted.

***May I take a loan from the Plan?***

No, loans are not permitted from the Plan.

Yes, if permitted under your investment vehicle, loans are permitted up to certain limits in accordance with the terms of the Plan and the Code.

***What is the maximum loan amount?***

Generally, you cannot receive a loan from the Plan that exceeds the lesser of:

- (1) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to you on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to you during the one-year period ending on the day before the date the loan is approved by the Administrator (not taking into account any payments made during such one-year period); or
- (2) one half of the value of your vested account balance (as of the Valuation Date immediately preceding the date on which such loan is approved by the Administrator) reduced by the amount of any outstanding loan balances.

For purposes of this limit any loan from any other Plan maintained by the employer and any related employer shall be treated as if it were a loan made from the Plan, and your vested interest under any such other Plan shall be considered a vested interest under this Plan; provided, however, that this provision shall not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.

***May my employer terminate this Plan?***

Yes. The final 403(b) regulations permit your employer to terminate the Plan at any time and distribute the assets. The final 403(b) regulations require that in the event of a Plan termination, all of the Plan's assets must be distributed either in the form of annuity contracts or as a lump sum distribution as soon as administratively practicable following the termination of the Plan. The Plan Administrator will provide you with further information regarding your distribution rights in the event of the Plan's termination.

**PLAN #2**  
**RESOLUTION**

**RESOLUTION OF THE BOARD OF NEW MEXICO JUNIOR COLLEGE  
REGARDING THE NEW MEXICO JUNIOR COLLEGE SUPPLEMENTAL  
RETIREMENT PLAN**

WHEREAS, New Mexico Junior College (hereinafter "the Employer"), sponsors the New Mexico Junior College Supplemental Retirement Plan, ("Plan"); and,

WHEREAS, the Employer desires to amend the Plan to comply with the requirements of certain provisions of the Internal Revenue Code of 1986 as amended (the "Code") and the final Treasury of Regulations promulgated under sections 403(b) and 415 of the Code ("Final Regulations"); and,

WHEREAS, a document titled "Final 403(b) and 415 Regulations Amendment" ("Amendment") has been presented for adoption to the Board of New Mexico Junior College ("Board") to amend the Plan to comply with the Final Regulations and to comply with certain provisions of the Code; and,

NOW THEREFORE, IT IS HEREBY RESOLVED, that the Amendment is hereby approved and adopted to be effective December 18, 2008, except as otherwise provided in the Amendment.

BE IT FURTHER RESOLVED, that the President and other officers of the Employer are authorized and directed to execute the Amendment and to deliver to the Administrator of the Plan one or more counterparts of the Amendment.

BE IT FURTHER RESOLVED, that the proper officers of the Employer shall act as soon as possible to notify employees of the adoption of the Amendment by delivering a copy of the Summary of Material Modifications presented to this meeting, which form is approved.

**MASTER FLEXIBLE BENEFITS PLAN**  
for the employees of:

**New Mexico Junior College**

PLAN NAME:

**New Mexico Junior College Flexible Benefits Plan**

PLAN NUMBER:

**501**

Adopted:

05/01/1989

As Amended:

01/01/2002



# MASTER FLEXIBLE BENEFITS PLAN

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# MASTER FLEXIBLE BENEFITS PLAN

## **ARTICLE I: Introduction**

### **1.1 The Flexible Benefit Plan**

The Plan Sponsor listed in the Article XII ("Adoption") has established a Flexible Benefit Plan whose document consists of this Master Flexible Benefit Plan and one or more Optional Benefit Plans listed in that same Article. The Master Plan describes general provisions and procedures related to enrollment, participation, purchasing benefits, and administration. Optional Benefit Plans describe the additional provisions and procedures that will apply to each specific Optional Benefit. Adopted Optional Benefit Plans may be either included within this document or in a separate document included indirectly by reference.

### **1.2 Purpose of the Plan**

The purpose of this Plan is to provide eligible Employees of the Plan Sponsor a choice among cash and the qualified benefits described in the adopted Optional Benefit Plans.

### **1.3 Cafeteria Plan Status**

This Plan is intended to qualify as a "Cafeteria Plan" under Section 125 of the Internal Revenue Code of 1986, as amended, and is to be interpreted in a manner consistent with the requirements of that section and applicable regulations.

## **ARTICLE II: Definitions**

Wherever used in this Master Plan, its included Optional Benefit Plans and the plan summary, unless a different meaning is clearly required by context or the terms of an adopted Optional Benefit Plan, the following terms mean:

"Administrator." The Sponsor, Employer or such other person or committee as may be appointed from time to time by the Employer to supervise the administration of the Plan. If another entity is not designated as administrator in Article XII ("Adoption") or the Optional Benefit Plans adopted under this Plan and included in this document or by reference, this term will mean the Plan Sponsor.

"Change in Status Event." Any of the events described below, as well as any other events included under subsequent changes in Code Sec. 125 or regulations issued under that Code section, which the Plan Administrator (in its sole discretion and in accordance with prevailing IRS guidance) decides to recognize on a uniform and consistent basis for the purpose of granting or denying a change of benefit election:

*Legal Marital Status:* A change in a Participant's legal marital status, including marriage, death of a spouse, divorce, legal separation or annulment;

*Number of Dependents:* Events that change a Participant's number of tax Dependents, including birth and death. In the case of Dependent Care expenses, a change in the number of qualified individuals is sufficient to meet this definition.

*Change in Employment Status:* A change in employment status of the Participant, the Participant's Spouse or the Participant's Dependents that affects benefit eligibility under a cafeteria plan (including this Plan or other employee benefit plan (including the Benefit Plan(s) or Policy(ies) of the employer of the Participant, Spouse, or Dependents) such as: termination or commencement of employment, a strike or lockout, a commencement of or return from an unpaid leave of absence, a change in worksite, switching from salaried to hourly-paid or union to non-union or vice versa, incurring a reduction or

increase in hours of employment (e.g., going from part-time to full-time), or any other similar change which makes the individual become (or cease to be) eligible for a particular employee benefit.

*Dependent Eligibility Requirements:* An event that causes a Participant's Dependent to satisfy or cease to satisfy the Dependent eligibility requirements for a particular benefit, such as attaining a specified age, getting married, or ceasing to be a Student;

*Change in Residence:* A change in the place of residence of the Participant, the Participant's Spouse or the Participant's Dependent.

*Commencement or termination of adoption proceedings.* Written documentation is required but final placement is not required to trigger this change of status event.

"COBRA." Means the health plan continuation coverage provisions of the Consolidated Omnibus Budget Reconciliation Act of 1986.

"Code." The Internal Revenue Code of 1986, as amended from time to time. Reference to any section or subsection of the Code includes reference to any comparable or succeeding provisions of any legislation, which amends, supplements or replaces such section or subsection.

"Compensation." The wages or salary paid to an Employee by the Employer determined prior to (a) any Salary Reduction election under this Plan, (b) any Salary Reduction election under any other cafeteria plan, and (c) any compensation reduction under any Code Sec. 132(f)(4) plan, but determined after (d) any salary deferral elections under any Code Sec. 401(k), 403(b), 408(k), or 457(b) plan or arrangement. Thus, Compensation generally means wages or salary paid and as reported as "Wages, tips and other compensation" on Form W-2, but adding back wages or salary forgone by any employee election described in (a), (b), or (c) above.

"Dependent." Any person who falls within the definition of dependent provided in Section 152 of the Code with the following exceptions: (a) for the purposes of accident and health plans, any child to whom a QMSCO or to whom Code Sec. 152(e) applies (regarding a child of divorced parents, etc. where one or both parents have custody of the child for more than half of the calendar year and were the parents together provide more than half of the child's support for the calendar year) is treated as a dependent of both parents; and (b) for purposes of a Dependent Care Flexible Spending Account Plan, "Dependent" shall be further qualified to mean any individual who regularly spends at least eight hours each day in the participant's household and: (1) who is under the age of 13 and with respect to whom a parent is entitled to an exemption under Section 151(e) of the Code; or (2) who is physically or mentally incapable of caring for himself.

"Dependent Care Flexible Spending Account Plan." The Employer's Dependent Care Flexible Spending Account Plan under IRC Sec. 129, as amended from time to time, included in this document but only if listed in Article XII ("Adoption") as being in force.

"Effective Date." The first day benefits are available under this Plan as specified in the Adoption section of this Plan.

"Elective Vacation Days Plan." The Employer's adopted Elective Vacation Days Plan as amended from time to time, included in this document but only if listed in Article XII ("Adoption") as being in force.

"Employee." Each individual currently or formerly employed by the Employer. Employees do not include self-employed individuals as described in IRC Sec. 401(c), leased employees, contract workers, independent contractors, temporary employees, casual employees, or those paid by temporary or other employment or staffing agencies. Employees covered under a collective bargaining agreement are not Employees unless that agreement specifically permits.

"Employer." The Plan Sponsor as specified in the Adoption section of this plan organized under the laws of its State.

"ERISA." The Employee Retirement Income Security Act of 1974.

"Fiduciary." The "Named Fiduciary" identified in Article XII ("Adoption") and shall be subject to service of process on behalf of the Plan.

"Flexible Spending Arrangement." Reimbursement benefits designed to meet the requirements of IRC Sec. 125 regulations. Employee and Employer contributions considered Premium payments that authorize the Plan Administrator to reimburse Participants' out-of-pocket expenses for either or both medical and dependent care.

"FMLA." The Family and Medical Leave Act of 1993.

"FSA." Flexible Spending Arrangement.

"HIPAA." The Health Insurance Portability And Accountability Act of 1996.

"Key Employee." Any person who is a Key Employee as defined in section 416(i)(1) of the Code.

"Life Insurance Plan." The Employer's Group-Term Life Insurance Plan under IRC Sec. 79, as amended from time to time, included in this document but only if Article XII ("Adoption") if this plan lists it as being in force.

"Master Plan." The portion of this "Plan" setting forth the general cafeteria plan provisions that govern employee participation in the plan and the election, receipt and administration of the adopted Optional Benefit Plans included therein.

"Medical Flexible Spending Account Plan." The Employer's Medical Flexible Spending Account Plan as amended from time to time, included in this document but only if listed in Article XII ("Adoption") as being in force.

"Non-Elective Employer Contribution." The dollar amount of Employer contributions that an Employee may use each year to offset the cost of benefit Premiums that are elected. Unless specifically authorized in Article XII ("Adoption"), these amounts never become a part of the Participant's taxable income. The availability and amount of these contributions will be determined each year by the Employer.

"Participant." Any employee who the Administrator has determined meets the eligibility requirements specified in Article XII ("Adoption") and has submitted to the Administrator a current, valid election of benefits, has been enrolled in one or more Optional Benefits under this Plan in accordance with Article III and whose enrollment has not been terminated.

"Period of Coverage." That portion of the Plan Year during which a Participant may receive benefits provided through this Plan by virtue of his election of benefits and payment of required premiums. The Period of Coverage begins on the first day of participation and extends incrementally (as the Premium is paid) to the earlier of the end of the Plan Year or the date of benefit termination. Premiums paid will be used to cover the next unpaid Premium period. Benefit coverage does not extend beyond the Period of Coverage to periods for which no premium has been paid.

"Plan." The Sponsor's Flexible Benefits Plan as named and adopted in Article XII ("Adoption") of this Plan and as set forth herein, including all amendments and supplements hereto, this Master Plan and each adopted optional benefit plan; whether included in this document or included by reference.

"Plan Year." The 12-month period, adopted by the Sponsor and ending on the Plan Year End Date set forth in Article XII ("Adoption") of this Plan, during which each participant's benefit election may be valid. The first Plan Year will begin on the Effective Date and may be less than 12 months. If this plan is so amended, a subsequent Plan Year may be designated by the Sponsor to be less than 12 months if necessary to adjust

the Plan Year End to meet other valid business purposes. All annual amounts and limits for Premiums and benefits will be prorated for Plan Years of less than 12 months.

"Premium." The Employee's share of the cost of each eligible benefit listed in the Adoption section of this plan. Non-Elective Employer Contributions may offset the employee's contribution to Premium in part or in full.

"Premium Reimbursement Plan." The Premium Reimbursement Plan as amended from time to time, included in this document but only if listed in Article XII ("Adoption") as being in force.

"QMCSO." A qualified medical child support order, as defined in ERISA Sec. 609(a).

"Salary Reduction." This is a voluntary, irrevocable reduction in Employee Compensation that has not been constructively received. The Employer uses Salary Reduction amounts to purchase qualified benefits elected by the Participant. Salary Reduction amounts are the property of the Employer and are part of the Employer's general assets. They become Employer contributions for the purposes of this Plan and to secure tax advantages. When added to any available Non-Elective Employer Contributions, these become the Employee's share of the purchase price for each qualified Optional Benefit elected under this plan.

"Spouse." Means an individual who is legally married to a Participant (and who is treated as a spouse under the Code). But, for purposes of the Dependent Care Flexible Spending Account Plan provisions (if adopted by the Sponsor as an Optional Benefit under the plan), it shall not include an individual legally separated from the Participant under a divorce or separate maintenance decree, nor shall it include an individual who, although married to the Participant, files a separate federal income tax return, maintains a separate principal residence from the Participant during the last six months of the taxable year, and does not furnish more than half of the cost of maintaining the principal place of abode of the Qualifying Individual.

"Student." Means an individual who, during each of five (5) or more calendar months during the Plan Year, is a full time student at any college or university, the primary function of which is the conduct of formal instruction, which routinely maintains a regular faculty and curriculum, and which normally has an enrolled student body in attendance at the location where its educational activities are regularly presented.

A pronoun or adjective in the masculine gender includes the feminine gender, and the singular includes the plural, unless the context clearly indicates otherwise.

## **ARTICLE III: Participation**

### **3.1 Eligibility to Participate**

Each Employee who receives Compensation from the Employer is eligible to participate in the Plan if they meet the specific requirements for eligibility and complete any specified waiting period set forth in Article XII ("Adoption") of this Plan and meet any additional requirements set forth in any of the Optional Benefit Plans adopted as part of this Plan.

### **3.2 Commencement of Participation**

An eligible Employee will become a Participant upon the submission of a valid, completed benefit election form as described in Article VI, acceptance by the Administrator, and upon the later of (a) the Effective Date or (b) the first day of the month following the date he becomes eligible to participate under this Article.

### **3.3 Cessation of Participation**

An Employee will cease to be a Participant in any Plan Year on the earlier of (a) the date on which the Plan terminates, (b) the date on which he ceases to be eligible to participate under Article 3.1, or (c) the date on which required Premium payments or Employee contributions are not made.

This provision will not prevent Employees from continuing any Optional Benefit under the provisions of that Optional Benefit Plan or, if applicable, COBRA.

### **3.4 Reinstatement of Former Participant**

A former Participant reinstated within 30 days of their termination will become a Participant again if they are reinstated in the same Plan Year during which they terminated and are otherwise eligible under the Provisions of Article III (except waiting period requirements will be waived). All former benefit elections will be reestablished and be unchanged unless the requirements of Article VII are met. Missed premium payments must be caught up. Those reinstated after 30 days from their termination, will be considered as new hires and must meet the eligibility requirements of Section 3.1 before becoming eligible to participate again. Once eligible, they may elect benefits in the manner specified in Article VI.

### **3.5 FMLA Leaves of Absence**

If this Employer is subject to the FMLA, notwithstanding any provision to the contrary in this Plan, if a Participant goes on qualifying leave under the FMLA, then to the extent required by the FMLA, the Employer will continue to maintain the Participant's group accident or health plan benefits on the same terms and conditions as if the Participant were still an active Employee including continued payment by the Employer of its share of the Premium and/or continued crediting of Non-Elective Employer Contributions, if available through this Plan.

If the Participant elects to continue his coverage(s) for covered accident or health plan benefits, the election must be in writing, made before the first day of leave, and specify the method by which the Employee will pay his or her share of the premium(s) for that portion of the leave period that is within the current Plan Year. If the agreed to premium payments are more than 30 days late, the Administrator may terminate coverage after giving 15 days written notice that the premiums have not been paid and that the affected benefit(s) will be terminated. Payment options for Participants are identified in Article XII ("Adoption") of this Plan.

If the Participant does not elect to continue his or her coverage(s), they will cease while the Participant is on FMLA leave. The Participant will be permitted to re-enter the Plan upon return from such leave on the same basis as before the leave, or as otherwise required by FMLA but benefit payments will not be made for expenses incurred while the benefit was revoked.

Entitlement to non-health benefits during and after FMLA leave will be determined by Plan provisions covering non-FMLA leave as described in Section 3.6.

### **3.5 Non-FMLA Leaves of Absence**

If a participant goes on an unpaid leave of absence that does not affect eligibility, the Participant will continue in their elected plans and the Premium due will be paid in a manner determined by the Administrator (in its sole discretion and in accordance with prevailing IRS guidance); either pre-payment before going on leave, by after-tax contributions during leave, or "catch-up" payments after the leave ends.

If eligibility for one or more benefits is lost during the leave of absence, the election change rules in Section 7.4 ("Change of Status") will apply.

## ***ARTICLE IV: Optional Benefits***

### **4.1 Optional Benefits**

A Participant may choose under this Plan to receive his full compensation for any Plan Year in cash or to have a portion of it, together with any available Non-Elective Employer Contributions, applied by the

Employer toward the cost of one or more Optional Benefits listed as available in Article XII (“Adoption”) of this Plan.

#### **4.2 Description of Benefits Other Than Cash**

While the election to receive one or more of the optional benefits may be made under this Master Plan, the benefits will be provided not by this Master Plan but by the adopted Optional Benefit Plans and applicable insurance policies and contracts listed as currently available in Article XII (“Adoption”) of this plan. The types and amounts of benefits available under each option described in Article XII (“Adoption”), the additional requirements for participating in such option, and the other terms and conditions of coverage and benefits under such option are as set forth in the adopted Optional Benefit Plans and contracts that have been made a part of (or are incorporated by reference in) this Plan.

#### **4.3 Cash Benefit**

To the extent that an eligible employee chooses not to purchase optional benefits, he will be deemed to have elected to take his original Compensation as cash. If Non-Elective Employer Contributions are available, the employer may, but only if so specified in Article XII (“Adoption”) of this plan, permit a portion of that contribution to be received as additional taxable compensation by the employee.

#### **4.4 Maximum Benefit**

Adopted Optional Benefits may have a benefit limit, a maximum benefit amount selected during enrollment. The Benefit Limit for Optional Benefits whose plans are part of this document will be listed on the Coverage Certificate. Plans included by reference may have additional limits. The Administrator will treat all elections in excess of these maximums as taxable.

#### **4.5 Deferred Compensation**

No Optional Benefit offered under this Plan will be designed or administered in such a manner as to permit a Participant to defer the receipt of compensation except when an IRC Sec. 401(k) Cash or Deferred Arrangement is included as an optional benefit. Unused benefits or Premiums may not be refunded and claims incurred in one Plan Year will not be reimbursed as a benefit from a subsequent Plan Year.

### ***ARTICLE V: Methods of Purchasing Benefits***

#### **5.1 Benefit Premiums**

The purchase price of each Optional Benefit will be the benefit Premium. The Sponsor will establish and announce this amount before the beginning of each Plan Year and reserves the right to change the amount at any time.

#### **5.2 Purchase Options**

Each Plan Year the employer will identify the allowable methods for purchasing optional benefits described in Article IV. These may include Salary Reduction and, at the discretion of the Employer and with no guarantee of continuation, Non-Elective Employer Contributions which may also be made available on a non-discriminatory basis. During the Benefit Election described in Article VI, the Employee will determine the amount of Salary Reduction and any available Non-Elective Employer Contributions that will be allocated to pay the Premium for each elected optional benefit.

#### **5.3 All Premiums Are Considered Employer Contributions**

The Optional Benefits provided under this Plan are tax qualified, therefore, the amounts of Premium paid for Optional Benefits either through Salary Reduction or through Non Elective Employer Contributions are considered for the purposes of this Plan and the Code to be Employer contributions.

## 5.4 Maximum Employer Contributions

The maximum employer contribution for each Optional Benefit shall not exceed the sum of Salary Reductions and any available Non-Elective Employer Contributions elected by the Participant for the elected Optional Benefit.

## 5.5 Premium Payments

The Plan Year purchase price of each optional benefit shall be the Plan Year Premium for that benefit. For the convenience of Participants, the amount of this Premium will be pro-rated and uniformly deducted during pay-periods designated by the Employer. The full annual premium for each elected benefit will be paid by Non-Elective Employer Contributions, if available, and Participant Salary Reduction unless the Plan is terminated, the Participant terminates employment, or the Participant ceases to be eligible before the end of the Plan Year. In the case of a change of election under the terms of Article VII, new premium obligations will be established for the Period of Coverage following the date of the election change.

## 5.6 Payments for Continued Benefits

When an Employee ceases for any reason to be eligible for an Optional Benefits, he also ceases to be eligible for all Non-Elective Employer Contributions. If the provisions of the Optional Benefit Plan permit continuation, and the Employee (or former Employee) chooses to continue the benefit, the Employee (or former Employee) must pay the full Premium (including portions formerly paid from Non Elective Employer Contributions) in order to continue to receive the benefit.

The Administrator may, on a uniform and consistent basis, permit that Premium to be paid by salary reduction from the last paycheck (if the Employee is terminated) or from subsequent paychecks if the Employee continues to receive taxable Compensation from the Employer. This provision does not permit such payments for benefits beyond the end of the Plan Year during which Employee ceased to be eligible.

## 5.7 All Premiums Paid From General Assets

All of the Premiums paid for Optional Benefits under this Plan shall be paid from the general assets of the Employer, but insurance premium payments are paid as provided in the applicable insurance policy. Nothing herein will be construed to require the Employer or the Administrator to maintain any fund or to segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in any fund, account or asset of the Employer from which any payment under this Plan may be made. There is no trust or other fund from which Benefits are paid. While the Employer has complete responsibility for the payment of benefits out of its general assets (unless a different procedure is specified in any applicable insurance policy), it may hire an unrelated third party paying agent to make benefit payments on its behalf. The maximum contribution that may be made under this Plan for a Participant is described in Section 5.4.

## ***ARTICLE VI: Benefit Election***

### 6.1 Enrollment Period

The enrollment period is the 30 days prior to the first day of each Plan Year and any other period that may be prescribed by the Sponsor. During the enrollment period the Administrator shall provide needed election and/or enrollment forms and compensation reduction agreements to each eligible Employee. The enrollment period ends on the first day of the Plan Year unless the Administrator specifies an earlier date.

### 6.2 Election Procedure

Each Participant who desires one or more Optional Benefits described in Article IV for the Plan Year shall so specify in writing on the election form(s) provided by the Administrator and shall agree to any necessary reduction in his compensation and, when available, the allocation of Non-Elective Employer Contributions to the Premium for elected benefits. Each election form must be completed and returned to the



Administrator on or before such date as the Administrator shall specify, which date shall be no later than the first day of the Plan Year for which the Participant's compensation reduction agreement will apply.

### 6.3 Valid Election

Forms submitted in accordance with Sec. 6.2 become valid when they are reviewed and approved by the Administrator. Participant elections become effective upon approval by the Administrator. However, no clerical error may be used to deny benefits or cash Compensation to an employee. When the Administrator determines that a clerical error has occurred, a timely correction to the election form may be made to preserve the validity of the election form.

If required by an Optional Benefit plan, additional election or enrollment forms for Optional Benefits must accompany valid election forms for this Plan. To guarantee enrollment, the administrator of each Optional Benefit plan must approve the forms submitted.

### 6.4 Effective Date of Elections

A valid election form shall be effective as of the first day of the Plan Year or the date on which the Participant becomes eligible if the Plan Year has begun.

### 6.5 New Employees

A special enrollment period will begin as soon as practical after an Employee becomes eligible under Article III and the Administrator provides the written election forms and compensation reduction agreements described in this Article VI to the Employee. If the Employee is eligible for and desires one or more Optional Benefits listed in Article XII ("Adoption") for the balance of the Plan Year, he shall so specify on the election forms and shall agree to a reduction in his compensation as provided in this Article VI. The special enrollment period ends on or before such date as the Administrator shall specify, which date shall be no later than thirty days following the Employee's attainment of eligibility (including any applicable waiting periods).

### 6.6 Failure to Elect

Employees failing to return a completed election form to the Administrator on or before the specified due date for the Plan Year in which he became eligible, shall be deemed to have elected to receive his full compensation in cash and will lose any claim to Non-Elective Employer Contributions, if any are made available through this Plan. Elections made in the prior Plan Year will not carryover automatically to the next Plan Year unless a Default Election is established in Article XII ("Adoption") of this Plan.

### 6.7 Irrevocability of Participant Elections During the Plan Year

Elections made under the Plan (or deemed to be made under this Article VI) shall be irrevocable by the Participant during the Plan Year, subject to a change in status. A Participant may revoke a benefit election for the balance of a Plan Year and make a new election only if the new election is both on account of and consistent with a change in status as described in Article VII.

## **ARTICLE VII: Benefit Election Changes**

### 7.1 Changes in Benefit Elections

All benefit elections made under Article VI are irrevocable during the Plan Year and Period of Coverage unless the change is "on account of and corresponds with" one of the events listed in this article. The Plan Administrator (in its sole discretion and in accordance with prevailing IRS guidance) shall determine, based on current regulations and prevailing IRS guidance, whether a requested change is on account of and consistent with or corresponds a Change in Status or other event described in this Article VII.

### 7.2 Valid Changes of Election

Unless otherwise specified, the Participant must request an election change in writing and within 30 days of the event which gives rise to the requested change. If approved by the Administrator, the change will become effective on the next Premium deduction day following the approval except in the case of a birth, adoption or placement for adoption when, if requested, the change may be made retroactive to the date of the event.

The events which may trigger a change of election are described in the following sections but, to be valid, the requested change of election must be both on account of and consistent with the event giving rise to the request. Specific consistency rules that must also be met are described below.

### 7.3 Types of Benefits Subject to Election Change Rules

The regulations for IRC Sec. 125 and this Plan prohibit or restrict election changes to certain types of benefits within a Plan Year or Period of Coverage. The types of benefits to which these rules apply are:

- Medical Flexible Spending Accounts (Medical FSAs)
- Non FSA Health and Accident Plans
- Dependent Care Flexible Spending Accounts (Dependent Care FSAs)
- Group Term Life, Disability and Dismemberment Coverage
- Adoption Assistance Plan
- 401(k) Plans

Consult Article XII ("Adoption") to determine which of these benefit types is available under this Plan as an adopted Optional Benefit. That article classifies those benefits by the types listed above.

### 7.4 Changes In Status

If a Participant experiences a Change of Status Event as defined in Article II ("Definitions"), he may revoke his current election(s) for Medical FSAs, Non FSA Health and Accident Plans, Dependent Care FSAs, Group Term Life, Disability and Dismemberment Coverage and make a consistent change, as defined in this Article, for the balance of the Plan Year if:

- a. The Change in Status results in the Employee, Spouse or Dependent gaining or losing eligibility for coverage under either this Plan or a plan of the employer of the Employee's Spouse or Dependent;
- b. And the election change corresponds with the actual gain or loss of coverage, not merely gaining or losing eligibility.

A Change in Status that affects eligibility for a plan includes a Change in Status that results in an increase or decrease in the number of an Employee's family members who may benefit from the coverage.

The benefit to be changed must be of the same type as the benefit for which eligibility has been gained or lost.

In addition to this general rule, the following rules apply in the specific situations listed:

*Loss of Dependent Eligibility.* If the Change Of Status Event involves your divorce, annulment or legal separation from your Spouse, the death of your Spouse or Dependent, or your Dependent ceasing to satisfy the eligibility requirements for coverage, you may choose to reduce or cancel any benefit elections but only for the affected Spouse or Dependent.

Notwithstanding the foregoing, if the Participant, the Participant's Spouse, or Dependent becomes eligible for COBRA (or similar health plan continuation coverage under state law) under this Employer's Plan, the Participant may increase his or her election to pay for such coverage.

*Gain of Coverage Eligibility Under Another Employer's Plan.* If the Change Of Status Event results in a gain of eligibility and a gain of new coverage, other than Flexible Spending Accounts, under another employer's plan for the Participant's Spouse, or Dependent, then current coverage under this Plan may be decreased, but only for the affected Spouse or Dependent. (In the case of group term life, disability and dismemberment benefits, if listed as "Optional Benefits" under this plan, coverages may be either increased or decreased when eligibility is either gained or lost.)

*Change In The Amount Of Dependent Care or Adoption Assistance Expenses.* A consistent and conforming change of election in the Dependent Care Flexible Spending Account, if listed as an Optional Benefit in this Plan, may be made if the Change Of Status Event results in a change in the number of qualified individuals, the eligibility of dependent care expenses for the available tax exclusion, and when: a) Changes in hours or work shifts require more or less dependent care services; b) Children in care begin or end the school term; c) The employee or spouse changes work hours or location, changing the need for or the availability of dependent care services. An election change may be made when a Change Of Status Event occurs *even if that change does not cause the loss or gain of eligibility.*

*Change in Group Term Life Insurance and Disability Income and Dismemberment Insurance.* An election to increase or decrease coverage under these plans, if they are adopted Optional Benefits, may be made when a Change Of Status Event occurs *even if that change does not cause the loss or gain of eligibility.*

## 7.5 Benefit and Insurance Rates or Premiums Changed

When insured life or Non-FSA Health or Accident Plan premium rates (whether established by the carrier or the Plan Sponsor) for coverage provided to the Employee, Spouse or Dependent changes, an election change or revocation may be permitted to respond to the change in rates or coverage in a manner consistent with the insurance changes. After determining whether the change is *significant*, the Administrator may:

- a. If the rate changes are *not significant*, make automatic uniform and prospective changes in elections to reflect the new rates or coverage;
- b. If the rate change is a *significant* increase, permit the Participant to rescind coverage and elect, on a prospective basis, coverage under a similar plan and, if no similar plan exists, the Participant may cancel the election; or
- c. If the rate change is a *significant* decrease, permit an eligible Employee to commence participation in the benefit whose rates have decreased even if a prior election had not been made (but only if the Optional Benefit Plan permits the enrollment).

No changes to Medical FSA elections will be permitted solely because of changes in rates or premiums charged for medical services or non-FSA health or accident plans.

When dependent care rates charged by a provider who is not a "relative" (as defined in the regulations or other IRS guidance for IRC Sec. 125) of the Participant by blood or marriage, those changed rates may be reflected in a changed Dependent Care FSA election without regard to the source or cause of the change (actions taken by the participant or the provider). The Participant may add, change or delete their election on a consistent basis.

## 7.6 Significant Coverage Curtailment and Added/Deleted Benefit Options

If the Plan Administrator determines that a Participant's Benefit Plan or coverage under the plan is *significantly* curtailed, affected Participants may prospectively elect coverage under another Benefit Plan or Policy option (offered by this Sponsor or another for which this participant is eligible) that provides "similar" coverage.

"Similar" coverage will be deemed to be available if it is of a "similar" general type (e.g., major medical to major medical) and offers similar coverage (e.g., family to family, single to single, etc.). Medical FSAs will not be considered similar to insured plans.

A *significant* curtailment must, at least, be an overall reduction in coverage to Participants in general.

If during the Plan Year, the Plan adds or deletes an Optional Benefit, a Participant may, on a prospective basis, enroll in the new Optional Benefit and, if the new Optional Benefit is an insurance plan, make corresponding election changes with respect to coverage under another insured Benefit Plan or Policy option that provides similar coverage. Only if no similar coverage options exist, will the Participant be permitted to drop coverage.

When the dependent care services of a provider change, those changes may be reflected in a changed Dependent Care FSA election without regard to the source or cause of the change (actions taken by the participant or the provider). The participant may add, change or delete their election on a consistent basis.

No changes in Medical FSA elections will be permitted solely because this or another Plan Sponsor curtails insurance coverage for the Participant, his spouse or dependent.

### 7.7 Coverage Changes in Other Employer Plans

A corresponding change in an election for Optional Benefits other than Medical FSAs may be made by a participant in this Plan if a change is required or permitted by another Plan of this Employer or another Employer that covers an eligible Employee, their Spouse, former Spouse or Dependent but only if: a) The other plan's benefit to be changed is one qualified under IRC Sec. 125(f); b) The other Plan's changes are consistent with the then current federal regulations for IRC Sec. 125; and c) the permitted change in the other employer plan election is actually made.

A corresponding change may also be made to Optional Benefit elections other than Medical FSAs when the other employer plans permits new elections for periods of coverage that differ from those of this Plan.

### 7.8 Loss of Coverage Under Group Health Plan of Governmental or Educational Institution

A change in benefit elections for Non FSA Health Plans may be made to add coverage of like kind when the Employee, Spouse or Dependent loses coverage under other group health plans sponsored by a governmental or educational institution including: a) A State's children's health insurance program (CHIP) under Title XXI of the Social Security Act; b) a medical care program of an Indian Tribal government, the Indian Health Service, or a tribal organization; c) a State health benefits risk pool; or d) a foreign government group health plan.

Lost coverages provided under this Section 7.8 include benefits excepted under HIPAA such as insured dental and vision plans.

No election change will be permitted solely because an employee, spouse or dependent gains coverage under one or more of these programs.

### 7.9 Special Enrollment Rights required by HIPAA (the Health Insurance Portability and Accountability Act of 1996)

Nothing in these plan provisions is intended to limit election changes for Accident or Health Plans (including Medical FSAs) that conform with the special enrollment rights under HIPAA (IRC Sec. 9801(f)); including the right to add group health coverage (that is not an excepted benefit under HIPAA) under this Plan when other health plan coverage for the Participant, a Participant's Spouse, or a Participant's Dependent is lost due to legal separation, divorce, death, termination of employment, reduction in hours, the exhaustion of the maximum COBRA period, or if a new Dependent is acquired as a result of marriage, birth, adoption, or placement for adoption.

When a new election is permitted under this provision, other Dependents of the Participant may also be enrolled even though coverage had been previously declined.

In the case of birth, adoption or placement for adoption of a dependent, changes made within 30 days of the event may be made retroactive to the event date.

### **7.10 Changes Permitted Due To COBRA Qualifying Events**

If an Employee, Spouse, or Dependent becomes eligible for continuation coverage under this Employer's group health plans subject to the provisions of COBRA (or similar state law), an eligible Employee may change their election for Optional Benefits to pay for the continuation coverage of the Employee, Spouse or Dependent.

### **7.10 Changes Permitted Due to FMLA**

When the Plan Sponsor is subject to the FMLA, Participants who are granted leave under the FMLA, may make one of the following changes to health and accident plans (including Medical FSAs), when consistent with the FMLA and approved by the Administrator:

- a) Change elections at the beginning of leave and, if the Participant returns to work, change their election at the end of the leave.
- b) Revoke their election.
- c) Maintain the option to reinstate their former election for the remainder of the Plan Year if they return to work, even if benefits have been terminated when leave began or during the leave.

The methods available for purchasing benefits during leave approved under the FMLA are found in Article XII ("Adoption").

### **7.11 Judgment, Decree or Order**

When a judgment, decree or order resulting from a divorce, legal separation, annulment, or change in legal custody specifically requires, the Plan Administrator may permit an eligible Employee to make a consistent change of election to commence, terminate, increase or reduce benefit coverage under the Sponsor's Health and Accident Plans (including Medical FSAs).

Coverage for a dependent child may only be terminated if the child actually becomes enrolled in an equivalent plan elsewhere.

### **7.12 Entitlement to Medicare, Medicaid or Other Government Programs**

If an eligible Employee, Spouse, or Dependent receives or loses entitlement to Medicare or Medicaid (or other State and Federal Programs that duplicate Optional Benefits under this Plan), the eligible Employee may make consistent changes in their Health Plan elections (including Medical FSAs) to commence, increase, terminate, or reduce coverages that are lost or provided as a result of official decisions made under these programs.

### **7.13 Changes Permitted Under Cash Or Deferred Arrangements (CODA)**

When a CODA plan is offered under this Plan, the IRC Sec. 401(k) rules permitting changes will be used to determine permissible changes in 401(k) and 401(m) elections.

### **7.14 Changes by the Administrator**

In addition to the events listed above, if the Administrator determines, during any Plan Year that the Plan may fail to satisfy for that Plan Year any non-discrimination requirement imposed by the Code, the Administrator shall take such action deemed appropriate, under rules uniformly applicable to similarly situated Participants, to assure compliance with such requirement or limitation. Action may include, without limitation, a modification of elections by Highly Compensated Employees, Principle Shareholders or Owners, or Key Employees with or without the consent of such Employees.

Should it become necessary to reduce elections by Highly Compensated, Principle Shareholders or Owners, and/or Key Employees to meet non-discrimination requirements, a non-discretionary, percentage reduction sufficient to meet the non-discrimination requirements will be applied to the elections of all Highly Compensated, Principle Shareholder or Owners, and/or Key Employees regardless of their utilization of the affected benefit(s).

## **ARTICLE VIII: Plan Administration**

### **8.1 Duties of the Administrator**

It shall be a principal duty of the Employer as Plan Administrator to see that the Plan is carried out, in accordance with its terms, for the exclusive benefit of persons entitled to participate in the Plan without discrimination among them. The Employer will have full power to administer the Plan in all of its details subject to the requirements of ERISA. For this purpose, the Employer's powers as Administrator will include, but will not be limited to, the following authority, in addition to all other powers provided by this Plan:

- (a) To make and enforce such rules and regulations as it deems necessary or proper for the efficient administration of the Plan;
- (b) To make a good faith interpretation of the Plan that will be final and conclusive on all persons claiming benefits under the Plan;
- (c) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan;
- (d) To compute the amount of benefits that will be payable to any Participant or other person in accordance with the provisions of the Plan, and to determine the person or persons to whom such benefits will be paid;
- (e) To authorize the payment of benefits;
- (f) To appoint such agents, counsel, accountants and actuaries as may be required to assist in administering the Plan; and
- (g) To allocate and delegate its responsibilities under the Plan and to designate other persons to carry out any of its responsibilities under the Plan. Any such allocation, delegation or designation will be a written instrument and in accordance with Section 405 of ERISA.

### **8.2 Examination of Records**

The Administrator will make available to each Participant the records that pertain to the Participant for examination at reasonable times during normal business hours.

### **8.3 Reliance on Tables, Etc.**

In administering the Plan, the Administrator will be entitled, to the extent permitted by law, to rely conclusively on all tables, valuations, certificates, opinions and reports which are furnished by any accountant, counsel or other expert who is employed or engaged by the Administrator.

### **8.4 Named Fiduciary**

The Administrator (or the Plan Sponsor if no Administrator is named) will be a "named fiduciary" for purposes of Section 402(A)(1) of ERISA with authority to control and manage the operation and administration of the Plan, and will be responsible for complying with all of the reporting and disclosure requirements of Part 1 of Subtitle B of Title I of ERISA.

## **8.5 Non-discriminatory Exercise of Authority**

Whenever, in the administration of the Plan, any discretionary action by the Administrator is required, the Administrator shall exercise its authority in a non-discriminatory manner so that all persons similarly situated will receive substantially the same treatment.

## **8.6 Indemnification of Administrator**

The Employer agrees to indemnify and to defend to the fullest extent permitted by law any Employee serving as the Administrator or as a member of a committee designated as Administrator (including any Employee or former Employee who formerly served as Administrator or as a member of such committee) against all liabilities, damages, costs and expenses (including attorney's fees and amounts paid in settlement of any claims approved by the Employer) occasioned by any act or omission in connection with the Plan, if such act or omission is in good faith.

## ***ARTICLE IX: Claims and Review Procedures for Denied Benefits***

### **9.1 Claims Procedure For Insured Benefits**

Participants will utilize the procedures for denied benefits outlined in each of the Optional Benefit Plans or this document. In the case of insured benefits, those procedures will be established and managed by the insurance carrier.

### **9.2 Claims Procedure for Flexible Spending Arrangement Claims**

If any person believes he is being denied any rights or benefits under the Plan, such person may file a claim in writing with the Administrator. If any claim is wholly or partially denied, the Administrator will notify the person of its decision in writing within 30 days. The notification will be written in a manner calculated to be understood by the person and will contain (a) specific reasons for the denial, (b) specific reference to pertinent Plan provisions, (c) a description of any additional material or information necessary for the person to perfect his or her claim and an explanation of why the material or information is necessary and (d) information as to the steps to be taken if the person wishes to submit a request for review. If notification is not given within these periods, the claim will be considered denied as of the last day of the period and the person may request a review of his claim.

### **9.3 Review Procedures for Flexible Spending Arrangement Claims**

Within 30 days after the date of which a person receives a written notice of denied claim (or, if applicable, within 30 days after the date on which such denial is considered to have occurred) the person (or his duly authorized representative) may (a) file a written request with the Administrator for a review of his denied claim and of pertinent documents and (b) submit written issues and comments to the Administrator. The Administrator will notify the person of its decision in writing. The notification will be written in a manner calculated to be understood by the person and will contain specific reasons for the decision as well as specific references to pertinent Plan provisions. The decision on review will be made within 30 days after the Administrator receives the request for review. If the Administrator elects, at his discretion, to hold a hearing, a final determination will be made within 30 days of the hearing. If the decision on review is not made within these periods, the claim will be considered denied.

## ***ARTICLE X: Plan Initiation***

### **10.1 Plan Adoption**

Upon adoption and on the Effective Date, the provisions of this plan become applicable to the Sponsor and become available to eligible employees.

## 10.2 Amendment or Termination of the Plan

The Sponsor has established the Plan with the bona fide intention and expectation that it will be continued indefinitely, but the Plan may be amended or terminated at the sole discretion of the Sponsor by a written instrument signed by the Employer or his designated agent.

## 10.3 Plan Publication

A Summary Plan Description of the Plan shall be given to all Participants promptly after adoption of the Plan. If Participants have questions concerning the operation of the Plan or the eligibility of benefits under the Plan, the Administrator or a designated representative may be contacted either in person or in writing to have the Plan made available. Plan publication using electronic media will be considered to meet this provision if Participants are notified in writing that this method will be used and that a written copy of the Summary Plan Description will be available upon request.

## 10.4 Government Filings

The Plan Administrator shall cause the timely filing with proper government authorities and timely furnishing to all Participants of all documents required by Part I of Title I of the ERISA.

## ***ARTICLE XI: Participant Rights***

### 11.1 Limitation of Rights

Neither the establishment of the Plan nor any amendment thereof will be construed as giving to any Participant or other person any legal or equitable right against the Administrator or the Employer, except as expressly provided herein, and in no event will the terms of employment or service of any Participant be modified or in any way be affected hereby.

Nothing herein contained is intended to be or shall be construed as constituting a contract or other arrangement between any Employee and the Employer to the effect that such Employee will be employed for any specific period of time. All Employees are considered to be employed at the will of the Employer.

### 11.2 Benefits Solely From General Assets

The benefits provided hereunder will be paid solely from the general assets of the Employer. Nothing herein will be construed to require the Employer or the Administrator to maintain any fund or segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in, any fund, account or asset of the Employer from which any payment under the Plan may be made.

### 11.3 No Interest

Interest shall not be credited or paid to Participants on Premium amounts withheld to pay for the Premiums of elected benefits.

### 11.4 Non-assignability of Rights

The right of any Participant to receive any reimbursement under the Plan shall not be alienable by the Participant by assignment of any other method, and will not be subject to be taken by his creditors by any process whatsoever, and any attempt to cause such right to be so subjected will not be recognized, except to such extent as may be required by law.

### 11.5 No Guarantee of Tax Consequences

Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant will be excludable from the Participant's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether each payment under the



adopted Optional Benefit Plans either included in this document or included by reference is excludable from the Participant's gross income for federal and state income tax purposes, and to notify the Employer if the Participant has reason to believe that any such payment is not so excludable.

### **11.6 Indemnification of Company by Participants**

If any Participant receives one or more payments or reimbursements under this Plan that do not qualify for tax exclusion, the Participant shall indemnify and reimburse the Sponsor for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payment or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional federal and state income tax that the Participant would have owed if the payments or reimbursements had been made to the Participant as regular cash compensation, plus the Participant's share of any Social Security tax that would have been paid on such compensation, less any such additional income and Social Security tax actually paid by the Participant.

### **11.7 Information to be Furnished**

Participants shall provide the Sponsor and Administrator with such information and evidence, and shall sign such documents, as may reasonably be requested from time to time for the purpose of administration of the Plan.

### **11.8 Participant Rights Under ERISA**

It is intended that this Plan meet all the applicable requirements of ERISA. Optional Benefits that are group accident and health benefits (including Medical FSAs) are subject to ERISA. When Participant makes a valid election of any Optional Benefit that is covered by ERISA, the following statement of rights applies:

As a participant in this Plan you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all plan participants shall be entitled to: (a) Examine, without charge, at the plan administrator's office and at other specified locations, such as worksites and union halls, all plan documents, including insurance contracts, collective bargaining agreements, and copies of all documents filed by the plan with the U.S. Department of Labor, such as plan descriptions; (b) Obtain copies of all plan documents and other plan information upon written request to the plan administrator. The administrator may make a reasonable charge for copies.

In addition to creating rights for plan participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate your plan, called "fiduciaries" of the plan, have a duty to do so prudently and in the interest of your and other plan participants and beneficiaries.

No one, including your employer, your union or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a benefit or exercising your rights under ERISA. If your claim for a benefit is denied in whole or in part, you must receive a written explanation of the reason for the denial.

You have the right to have the Plan review and reconsider your claim. Under ERISA, there are steps you can take to enforce the above rights.

For instance, if you request materials from the plan and do not receive them within 30 days, you may file suit in federal court. In such a case, the court may require the plan administrator to provide the materials and pay up to \$100 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the administrator.

If you have a claim for benefits that is denied or ignored, in whole or in part, you may file suit in state or federal court. If it should happen that plan fiduciaries misuse the plan's money, or if you are discriminated

against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in federal court.

The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

If you have any questions about this statement or about your rights under ERISA, you should contact the nearest Area Office of the U.S. Labor-Management Services Administration, Department of Labor.

## **ARTICLE XII: Adoption**

### **12.1 Establishment of Plan.**

The Employer named below hereby establishes a Cafeteria Plan pursuant to Section 125 of the Internal Revenue Code of 1986 as amended, by adopting the plan named below and the Optional Benefit Plans listed in Article 13.5 and the terms and provisions of these Plans.

### **12.2 Plan Sponsor, Fiduciary and Administrator**

The following named Employer is the Plan Sponsor, Fiduciary and Administrator referred to in this Plan Document:

Name: New Mexico Junior College

Business Address: 5317 Lovington Hwy.  
Hobbs, NM 88240

Telephone: (505) 392-4527 Employer ID Number: 85-0193990

Employer's Designated Representative (Optional):

None

### **12.3 Plan Identification**

The adopted Plan shall be identified as:

Plan Name: New Mexico Junior College Flexible Benefits Plan

Plan Number: 501 Plan Effective Date: 05/01/1989

Plan Year End: Each December 31st

### **12.4 Eligibility to Participate**

Employees may participate in the plan only after meeting the following requirements:

All full time employees (excluding seasonal and temporary) become eligible the first day of the month following the date of employment.

### **12.5 Optional Benefit Plans**

Eligible employees may elect to participate in each of the following Optional Benefit Plans during their enrollment. The plans describing the provision of these Optional Benefits are either adopted and included in this document or adopted and included by reference to other documents:

**Health and Accident Plans:**

Medical Flexible Spending Account to an annual maximum of \$1200.00.  
Group Medical, Dental, and Vision insurance plans as adopted by the Sponsors.

**Group Term Life Plans:**

Not Available

**Other Benefits:**

Dependent Care Flexible Spending Account to an annual maximum of \$5000.00.

**Requirements for taking Elective Vacation Days:**

Not Available

**Taxable Cash:**

When Non-Elective Employer Contributions are available, employees may only elect to convert those contributions to taxable cash under the following terms:

Not available

**12.6 Methods of Purchasing Benefits**

During the election period, eligible employees can select from among the methods of purchasing benefits listed below:

Salary Reduction

**12.7 Premium Payment Options While On Leave Under The FMLA**

The following premium payment options apply only to the health and accident benefits available under this Plan and are available only when the Sponsor is subject to the FMLA and when the Employer authorizes leave under the FMLA:

Pay-as-you-go-during leave

**12.7 FSA Claims Grace Period and Closing Accounts**

Unless otherwise specified in the adopted Optional Benefit Plans included in this document or included by reference, all claims for Flexible Spending Account benefits must be received by the plan Administrator within the following Grace Period that will begin on the last day of the Participant's Period of Coverage and end:

90 days following the end of the Plan Year (Flexible Spending Accounts only).

Each Participant's Flexible Spending Account will be closed at the end of the claims grace period unless it is continued under the provisions of the Flexible Spending Account's Optional Benefit Plan.

## 12.8 Continuation Beyond Termination

When a participating Employee terminates his or her employment with the Sponsor before the end of the Plan Year, benefits provided under group health coverage will continue in the manner described below:

No Benefit continuation will be permitted except as provided by the terms of an adopted an Optional Benefit Plan

## 12.9 Default Election

The Administrator will not carry elections from prior years forward to the next plan year unless the Employee completes a valid, signed enrollment form, except under these conditions:

No elections will be assumed to have been made without a valid, signed enrollment form for the Plan Year.

## 12.10 Minimum Reimbursement

For Flexible Spending Account claims submitted before the end of the Plan Year, the Employer agrees to make timely reimbursement of all valid claims when the reimbursements due exceed: \$25.00 (Flexible Spending Accounts Only).

## 12.11 Governing Law

The Plan will be construed, administered and enforced according to the laws of the State of New Mexico, to the extent not superseded by the Code, ERISA or any other federal law.

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IN WITNESS WHEREOF, The Employer has caused this Plan to be executed in its name and on its behalf by its officers thereunto duly authorized this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Authorized Officer:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

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

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# NEW MEXICO JUNIOR COLLEGE

Vice President for Finance

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To: **New Mexico Junior College Board Members**  
From: Dan Hardin  
Date: December 9, 2008  
RE: Expenditure and Revenue Reports for November

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November is month five or 42 percent of the 2008/2009 fiscal year. The expenditure report reflects expenditure totals that include funds expended and encumbered. The total year-to-date funds expended and/or encumbered through November 2008 is \$16,261,126.00.

In the November expense report the Instruction and General year-to-date subtotal is \$9,709,311.00, which is 41% of the budget. Most areas of expenditures are normal for this time of year. Academic Support has some outstanding encumbrances that increased its percentage of budget. Institutional Support has a lower percentage of expenditures to budget due to having the fringe benefit budget in Institutional Support, which is expensed to the other areas during the year. In the other unrestricted funds, Internal Service Departments have a high percentage of expenditures, but we are running credits each month to Internal Service for charge outs from Instruction and General to Internal Service. Auxiliary Enterprises, Student Aid, and Athletics expend different than the other areas due to costs at the beginning of each semester. Total expenditures in unrestricted funds are \$9,709,311.00, which is 41% of the budget amount.

In the restricted funds, Grant spending is at 33% of the budget. In the restricted Student Aid, the Financial Aid department has been working in getting Pell and Student loans ready. We will see the expense for these in December and January. Total expenditures for restricted funds are \$2,428,983.00.

Plant fund expenditures and encumbrances are \$4,122,832.00. This number includes the piping to the ATC building for HVAC, encumbrances for the design work on the Central Plant and electrical upgrades, paving improvements, and several other institutional projects.

Total expenditures and encumbrances through November 2008 is \$16,261,126.00, which is 38% of the budget.

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The Revenue remains positive due to the Oil and Gas revenue that has been so strong through the first four months of the fiscal year. We are below the projected budget for tuition and fees and interest income for the year. Total unrestricted revenue through November is \$12,605,872.00. The good news is that Auxiliary Enterprises revenue is up for the year compared to last year. The revenue for the restricted funds is staying current with the expenditures for grants and restricted financial aid.

The year-to-date Revenue for November 2008 is \$15,211,758.00.

The Oil and Gas report shows the actual Oil and Gas revenue for July through October, and the accrual of \$350,000.00 for November. During the first four months of actual Oil and Gas revenue, we are \$3,608,969.00 over budget. We believe that we have seen the peak in the Oil and Gas revenue during the month of September.

The Investment report reflects the \$11,625,000.00 invested with LGIP.

This is the Financial Report for November 2008.

# NEW MEXICO JUNIOR COLLEGE

## Expenditure Report

### November 2008

42% of Year Completed

**2007-08**

**2008-09**

Fund	Final Budget	Year-to-Date Expended or Encumbered	Percentage of Budget Expended	Budget	Current Expended or Encumbered	Year-to-date Expended or Encumbered	Percentage of Budget Expended
<b>CURRENT UNRESTRICTED FUND</b>							
Instruction and General:							
Instruction	7,262,681	3,769,693	52%	7,840,180	641,899	3,419,006	44%
Academic Support	2,164,157	1,076,181	50%	2,621,892	257,422	1,223,784	47%
Student Services	1,295,661	540,875	42%	1,351,746	130,740	579,048	43%
Institutional Support	4,336,056	1,123,024	26%	5,221,494	273,937	1,083,894	21%
Operation & Maintenance of Plant	2,482,594	997,500	40%	2,598,425	267,153	1,206,204	46%
<b>Subtotal - Instruction &amp; General</b>	<b>17,541,149</b>	<b>7,507,273</b>	<b>43%</b>	<b>19,633,737</b>	<b>1,571,151</b>	<b>7,511,936</b>	<b>38%</b>
Student Activities	191,170	107,071	56%	189,726	16,961	94,184	50%
Research	0	0	0%	0	0	0	0%
Public Service	0	0	0%	0	0	0	0%
Internal Service Departments	435,705	242,882	56%	553,001	37,791	339,475	61%
Student Aid	441,303	312,503	71%	444,870	23,470	245,225	55%
Auxiliary Enterprises	1,608,281	1,059,991	66%	1,669,818	135,345	981,847	59%
Athletics	872,833	382,846	44%	1,038,988	97,141	536,644	52%
<b>Total Current Unrestricted Fund</b>	<b>21,090,441</b>	<b>9,612,566</b>	<b>46%</b>	<b>23,530,140</b>	<b>1,881,859</b>	<b>9,709,311</b>	<b>41%</b>
<b>CURRENT RESTRICTED FUND</b>							
Grants	2,044,682	587,280	29%	1,970,852	115,597	646,870	33%
Student Aid	4,000,000	1,668,984	42%	4,000,000	81,453	1,782,113	45%
<b>Total Current Restricted Fund</b>	<b>6,044,682</b>	<b>2,256,264</b>	<b>37%</b>	<b>5,970,852</b>	<b>197,050</b>	<b>2,428,983</b>	<b>41%</b>
<b>PLANT FUNDS</b>							
Capital Outlay / Bldg. Renewal & Repl.							
Projects from Institutional Funds	11,730,830	7,708,940	66%	9,025,102	472,696	2,836,631	31%
Projects from State GOB Funds	1,840,485	1,612,115	88%	1,586,048	0	217,323	14%
Projects from State STB Funds	320,000	320,000	0%	1,580,000	422,348	658,784	42%
Projects from General Fund	555,458	327,919	59%	178,282	0	0	0%
Projects from Private Funds	465,801	36,150	8%	485,049	4,179	410,094	85%
Projects from State ER&R	389,405	0	0%	212,022	0	0	0%
Projects from State BR&R	1,376,769	0	0%	699,526	0	0	0%
Projects from Auxiliary BR&R	14,042	0	0%	302	0	0	0%
<b>Subtotal - Capital and BR&amp;R</b>	<b>16,692,790</b>	<b>10,005,124</b>	<b>60%</b>	<b>13,766,331</b>	<b>899,223</b>	<b>4,122,832</b>	<b>30%</b>
Debt Service							
Revenue Bonds	0	0	0%	0	0	0	0%
<b>Total Plant Funds</b>	<b>16,692,790</b>	<b>10,005,124</b>	<b>60%</b>	<b>13,766,331</b>	<b>899,223</b>	<b>4,122,832</b>	<b>30%</b>
<b>GRAND TOTAL EXPENDITURES</b>	<b>43,827,913</b>	<b>21,873,954</b>	<b>50%</b>	<b>43,267,323</b>	<b>2,978,132</b>	<b>16,261,126</b>	<b>38%</b>

# NEW MEXICO JUNIOR COLLEGE

## Revenue Report

### November 2008

42% of Year Completed

**2007-08**

**2008-09**

Fund	Final Budget	Year-to-date Revenue	Percentage of Budget Received	Budget	Current Revenue	Year-to-date Revenue	Percentage of Budget Received
<b>CURRENT UNRESTRICTED FUND</b>							
<b>Instruction and General:</b>							
Tuition and Fees	3,137,649	2,271,034	72%	3,259,000	350,383	2,072,479	64%
State Appropriations	7,990,100	4,110,003	51%	8,299,600	641,108	3,381,014	41%
Advalorem Taxes - Oil and Gas	5,200,000	3,342,563	64%	5,200,000	1,141,106	5,359,549	103%
Advalorem Taxes - Property	2,800,000	66,314	2%	3,100,000	0	46,489	1%
Interest Income	285,000	195,422	69%	508,252	16,528	94,505	19%
Other Revenues	229,100	149,662	65%	246,100	30,614	194,555	79%
<b>Subtotal - Instruction &amp; General</b>	<b>19,641,849</b>	<b>10,134,998</b>	<b>52%</b>	<b>20,612,952</b>	<b>2,179,739</b>	<b>11,148,591</b>	<b>54%</b>
Student Activities	0	0	0%	0	0	0	0%
Public Service	0	0	0%	0	0	0	0%
Internal Service Departments	0	0	0%	0	0	0	0%
Auxiliary Enterprises	2,240,048	1,157,587	52%	2,331,600	130,129	1,325,406	57%
Athletics	189,100	16,292	9%	320,500	26,375	131,875	41%
<b>Total Current Unrestricted</b>	<b>22,070,997</b>	<b>11,308,877</b>	<b>51%</b>	<b>23,265,052</b>	<b>2,336,243</b>	<b>12,605,872</b>	<b>54%</b>
<b>CURRENT RESTRICTED FUND</b>							
Grants	1,768,222	892,909	50%	1,970,852	141,386	669,878	34%
Student Aid	4,000,000	1,514,028	38%	4,000,000	35,568	1,472,748	37%
<b>Total Current Restricted</b>	<b>5,768,222</b>	<b>2,406,937</b>	<b>42%</b>	<b>5,970,852</b>	<b>176,954</b>	<b>2,142,626</b>	<b>36%</b>
<b>PLANT FUNDS</b>							
Capital Outlay / Bldg. Renewal & Repl.							
Projects from State GOB Funds	1,840,485	1,576,099	86%	1,586,048	0	54,841	3%
Projects from State STB Funds	320,000	0	0%	1,535,000	0	363,419	24%
Projects from General Fund	537,995	0	0%	178,282	0	45,000	25%
Projects from Private Funds	0	0	0%	0	0	0	0%
Interest Income	0	0	0%	0	0	0	0%
<b>Total Plant Funds</b>	<b>2,698,480</b>	<b>1,576,099</b>	<b>58%</b>	<b>3,299,330</b>	<b>0</b>	<b>463,260</b>	<b>0%</b>
<b>GRAND TOTAL REVENUES</b>	<b>30,537,699</b>	<b>15,291,913</b>	<b>50%</b>	<b>32,535,234</b>	<b>2,513,197</b>	<b>15,211,758</b>	<b>47%</b>



# NEW MEXICO JUNIOR COLLEGE

## Oil and Gas Revenue Report

### November 2008

42% of Year Completed

		OIL		GAS		COMBINED		
Month of	Distribution	Price per BBL	Lea County BBLs sold	Price per MCF	Lea County MCF sold	Monthly Revenue	2006-07 Original Budget	Variance Over (Under) Budget
Actual	July	\$114.17	3,061,229	\$11.67	16,203,348	1,267,202	350,000	917,202
Actual	August	\$131.10	2,682,103	\$12.59	14,217,636	1,222,043	350,000	872,043
Actual	September	\$131.71	2,840,992	\$13.63	16,287,197	1,378,618	350,000	1,028,618
Actual	October	\$113.77	2,857,287	\$10.36	15,889,310	1,141,106	350,000	791,106
Accrual	November					350,000	350,000	0
Accrual	December							0
Accrual	January							0
Accrual	February							0
Accrual	March							0
Accrual	April							0
Accrual	May							0
Accrual	June							0
Y.T.D. Production Tax Revenue						5,358,969	1,750,000	3,608,969
Y.T.D. Equipment Tax Revenue						580	0	580
<b>Total Year-to-Date Oil &amp; Gas and Equipment Tax Revenue</b>						<b>5,359,549</b>	<b>1,750,000</b>	<b>3,609,549</b>

*Source: New Mexico Taxation and Revenue Department*

**NEW MEXICO JUNIOR COLLEGE**  
**Schedule of Investments**  
**November 2008**

42% of Year Completed

Financial Institution	Amount Invested	Date Invested	Maturity Date	Period of Investment (Days)	Account Number	Interest Rate	Interest Earned
State of New Mexico Local Government Investment Pool	11,625,000	N/A	N/A	N/A	7102-1348	1.136%	11,123
<b>Total investments</b>	<b><u>11,625,000</u></b>						<b><u>11,123</u></b>

Summary of Current Month's Activity	
Beginning amount	11,625,000
Plus: deposits	0
Less: withdrawals	0
Capital Projects	7,191,733
Reserves Invested	4,433,267
<b>Total LGIP Investment</b>	<b>11,625,000</b>

Capital Projects	11/30/2008
Technology Upgrade	180,885.12
Workforce Training Center	2,175.00
High Tech Start Up	13,346.40
Vehicles	45,124.08
Drawings & Master Plan	12,805.63
Baseball Field	43,878.82
Rodeo Arena	138,261.68
Dormitory Landscape	1,622.23
Millen Fence/Landscape	109,164.94
JAST	133,361.46
Computer Equipment Rebates	8,810.95
Marketing	49,932.06
Equestrian Center	450,000.00
Flooring Repair	4,896.14
Student Housing Construction	635,110.15
Testing Center Remodel	1,450,000.00
Frame & Door Replacement	150,000.00
Campus Village Development Proj	20,252.86
Continuing Education	16,991.00
Millen Drive Signalization	95,000.00
Electrical Upgrade	543,600.50
Campus Signage	38,120.00
Campus Paving	130,427.42
Roof Replacement	271,747.09
Interior Lighting-Energy Retrofit	73,532.47
WHM-Consultant	15,000.00
Workforce Training-Landscape	269,880.67
Old Dorms Renovation	866,073.96
CDL Truck Driving Program	43,262.14
Bulk Fuel	0.00
Millen Dr. Sewer & Water	53,218.82
Board Room	15,786.44
Concrete Upgrade	47,922.91
Campus Construction	215,883.60
Oil & Gas Training Center	204,245.04
Workforce Training/Outreach	3,354.43
Infrastructure	0.00
Professional Writing/Publishing	50,000.00
Public Sector	7,351.53
Campus Security	150,000.00
Caster Bleachers	131,871.22
Caster Old CHOF Remodel	299,304.09
Track/Arena Area Enhancement	68,380.00
Roadway Entrance-Rodeo/CDL	60,000.00
Lumens Software-Distance Learning	5,000.00
Welding Lab	50,000.00
Copier Replacement	12,917.66
Workforce Training Contingency	3,234.68
<b>Total</b>	<b>7,191,733.19</b>

NOTE: Capital projects total does not include encumbered funds



# NEW MEXICO Junior College

**TO:** NMJC Board of Trustees and Dr. Steve McCleery  
**FROM:** Larry Sanderson and Jeff McCool  
**DATE:** December 9, 2008  
**RE:** Request for Change in Degree Offerings

As you know, for the past several years NMJC has been very actively engaged in development of online course offerings. Online offerings coordinated by the Division of Training and Outreach routinely account for over 20% of student credit hours offered by NMJC (please see attached charts).

Development of online courses and, eventually, online degree offerings was identified as a goal for NMJC beginning in our 1999-2004 Strategic Plan.

You might be interested to review the profile of our current online students:

- 788 students (28.1% of our total student body) are taking online classes in Fall 2008
- Average age = 24.9 versus our campus-wide average of 29.3
- Average SCH per student = 5.8 (roughly two courses)
  - o Students 21+ years old total 466, account for 3,013 SCH or an average of 6.7 SCH per student
  - o Students under 21 years of age total 322, account for 1,599 SCH or an average of 4.9 SCH per student
- FT students take an average of 1 out of 5 classes online
- PT students take an average of 1 out of 4 classes online
- 75% of our online SCH come from Lea County, 25% from outside Lea County

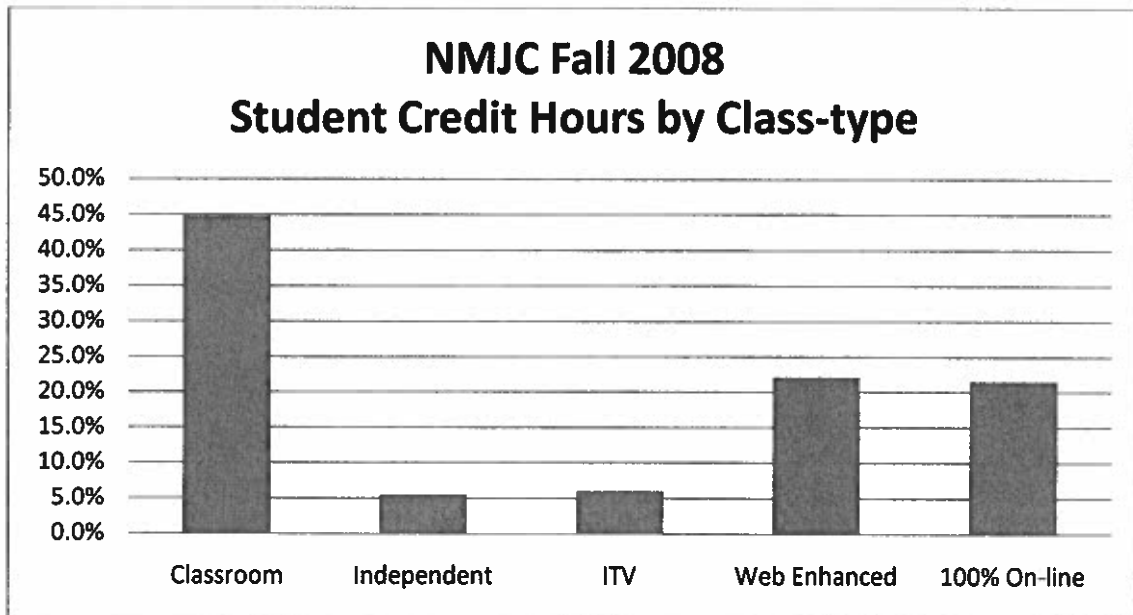
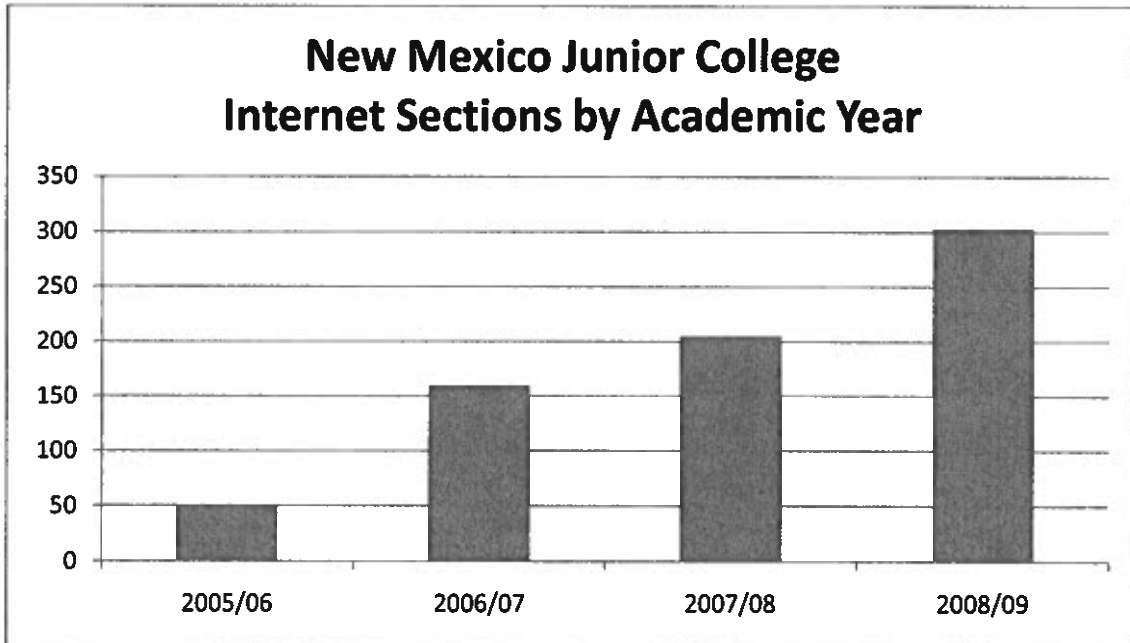
NMJC is clearly ready to take the next step by offering not only individual courses but complete degrees in the online environment. The Division of Training and Outreach has been working with various academic divisions and Dr. Gratton to create plans for AA, AS and AAS degrees that can be earned from NMJC fully online. Currently there are three degrees ready for implementation: Energy Technology (focused on the nuclear industry), Criminal Justice and Business Management.

The next step in the process is for NMJC to apply to The Higher Learning Commission for a "Change in Educational Offerings" which involves an amendment of our accreditation status to allow the college to issue degrees earned fully online. Such a request for change must be formally approved by our governing Board. Therefore, we are asking you to consider and approve a resolution authorizing Dr. McCleery to request from The Higher Learning Commission, on behalf of NMJC, a Change in Educational Offerings pursuant to HLC policy.

If you support this action we suggest the following language for a resolution:

The NMJC Board of Trustees approves plans for offering AA, AS and AAS degrees online beginning in the summer semester 2009. Dr. Steve McCleery is authorized to present a request for Change in Educational Offerings to The Higher Learning Commission on behalf of this Board and the institution.

Thank you for your consideration of our request.



## RESOLUTION

NEW MEXICO JUNIOR COLLEGE BOARD ELECTION TO BE HELD IN  
THREE OF THE SEVEN VOTING DISTRICTS  
LEA COUNTY, NEW MEXICO  
TUESDAY, MARCH 3, 2009  
7:00 A.M. TO 7:00 P.M.

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PUBLIC NOTICE IS HEREBY GIVEN that a New Mexico Junior College Board election shall be held in three of the seven voting districts, Lea County, New Mexico, on Tuesday, the 3rd day of March, 2009 at which time there shall be submitted for vote to the qualified, registered elector of the District, the following matter:

**The term of office for three board positions on the New Mexico Junior College Board shall expire on April 1, 2009. It is necessary that an election take place to fill these positions. The term of office for these Board members is six years.**

The polls for said election will be opened at 7:00 a.m. on the day of said election and will be closed at 7:00 p.m. Precincts shall be consolidated for this election. The polling place for the consolidated precincts (such polling place being located within the consolidated precinct) is as follows:

### ELECTION PRECINCTS

DISTRICT NO.	CONSOLIDATED	POLLING PLACES
I	Lea County Precincts 2, 3, 10, 13, 21, 26 & that portion of 14 West of 17 <sup>th</sup> Street between Jefferson & Avenue D Chaves County Precincts Part of 1, Part of 41	Tatum Schools Auditorium Third & Highway Tatum, New Mexico
III	Lea County Precincts 18, 20, 22, 23, 28	New Mexico Junior College 5317 Lovington Highway Hobbs, New Mexico
VI	Lea County Precincts 35, 43, 51, 52, 55, and That portion of 53 South of Marland & North of Texas between Elm Street & Dal Paso	Southern Heights Elementary 101 East Texas Hobbs, New Mexico

A map of the district is available for inspection at the President's Office, New Mexico Junior College or in the office of the County Clerk.

Each voter shall cast his or her ballot in the precinct and district for which he or she resides and is currently registered and for the candidate of that district.

Residents of the New Mexico Junior College District living in the above districts who are qualified electors of the State of New Mexico, shall be eligible to become a candidate to serve as a member of the New Mexico Junior College Board and shall file a declaration of candidacy on the form prescribed by law for the district in which they reside with the County Clerk of Lea County, Lea County Courthouse, Lovington, New Mexico on the 48th day before the election, January 14, 2009, commencing at 9:00 a.m. and ending at 5:00 p.m. on the same day.

No ballot on the Board Member election shall be received by any polling place board unless the person offering to vote is a registered, qualified elector of the District.

Residents of the New Mexico Junior College District who are qualified electors of the State of New Mexico and residents of the district for which they desire to become write-in candidate as a member of the New Mexico Junior College Board shall file a declaration of intent to be a write-in candidate on the form prescribed by law with the County Clerk of Lea County, Lea County Courthouse, Lovington, New Mexico, before 5:00 p.m. on the 35th day before the election, January 27, 2009.

The registration books of Lea County shall be closed by the County Clerk at 5:00 p.m. on Tuesday, February 3, 2009. Any person otherwise eligible to vote as a qualified elector and not currently registered, may register prior to such time at the city clerk's office or in the office of the County Clerk.

Voting machines shall be used for this Board Member election.

Absentee voting shall be at the Office of the County Clerk, Lea County Courthouse, Lovington, New Mexico during the regular hours and days of business beginning at 8:00 a.m. on Friday, February 6, 2009, and ending at 5:00 p.m. on Friday, February 27, 2009. Absentee ballots can be obtained from the Office of the County Clerk, Lea County, New Mexico.

Any information concerning absentee ballots, polling places or any other matters relating to the election can be obtained from the Office of the County Clerk, Lea County, New Mexico.

IN TESTIMONY WHEREOF, the New Mexico Junior College Board of the New Mexico Junior College District, Lea County, New Mexico has caused this notice to be published as required by law and dated this 18th day of December, 2008.

\_\_\_\_\_  
CHAIRMAN

ATTEST: \_\_\_\_\_

SECRETARY

**IMPLEMENTING AGREEMENT  
FOR THE JOINT POWERS AGREEMENT FOR THE  
CONTINUING OPERATION OF THE  
NEW MEXICO EDUCATION SERVICES CENTER  
Amended as of July 1, 2008**

This Implementing Agreement for the Joint Powers Agreement for the Continuing Operation of the New Mexico Education Services Center (the "Implementing Agreement") is made for the purpose of detailing the expectations and understandings of the Council to manage the affairs of the New Mexico Education Services Center ("NMESC"), an entity formed by New Mexico Junior College ("NMJC"), Northern New Mexico College ("NNMC"), and Santa Fe Community College ("SFCC"), pursuant to Sections 11-1-1 through 11-1-7, NMSA 1978, and under authority of a Joint Powers Agreement, dated March 6, 2006, and updated effective July 1, 2008 to include New Mexico Institute of Mining and Technology ("NMIMT"). The Governing Boards of NMJC, NNMC, NMIMT, and SFCC each will approve this Implementing Agreement.

**ARTICLE I  
DEFINITIONS**

Capitalized terms shall have the definitions assigned in the prefatory paragraph above and in this section. In addition, capitalized terms not defined in this section shall have the meanings assigned in the Joint Powers Agreement for the Continuing Operation of the New Mexico Education Services Center dated as of July 1, 2008 (the "Joint Powers Agreement" or "JPA"), by and among NMJC, NNMC, NMIMT, and SFCC, unless the context clearly requires otherwise.

"Member" means the President of each Party or his or her designee that is a member of the Council.

"Council" means an administrative board established under Section III of the JPA to govern the NMESC.

**ARTICLE II  
OPERATIONAL PHILOSOPHY**

The NMESC shall be operated (i) in an efficient, cost-effective manner in order to maximize the benefits of the NMESC to students, employees and other authorized beneficiaries and (ii) consistently with the JPA and the mission statements of all Parties to the Joint Powers Agreement. Consistent with that philosophy, the operation of the NMESC shall be organized under the control of the Council, as its governing body, and with support of a Management Committee, defined below, which shall be charged to direct and manage the operational details of the NMESC for the benefit of the Parties, and under the policy direction and guidance provided by the Council.

### **ARTICLE III CONDUCT OF BUSINESS**

A. Powers of the Council. The Council shall be the governing body of the NMESC, with ultimate authority to manage the affairs of the NMESC. The Council may take any and all actions necessary or convenient to carry out the powers authorized by or consistent with the Joint Powers Agreement.

B. Council Actions. Actions of the Council shall be authorized by a vote of all Members of the Council. A quorum shall consist of a majority of the Members of the Council.

C. Council Officers. The Council shall elect from among its Members the following officers, which officers shall perform the duties described:

1. President. The President of the Council shall preside at meetings of the Council, and shall execute any documents required to carry out the decisions of the Council. The President shall prepare the agenda for each meeting, and shall provide direction on policy and operational strategies appropriate to execution of the mission and responsibilities of the NMESC.

2. Vice President. In the President's absence, the Vice-President shall perform the duties of the President.

3. Secretary/Treasurer. The Secretary/Treasurer shall keep or cause to be kept a book of minutes of all meetings of the Council at the principal office of the NMESC or at such other location as the Council may authorize. The Secretary/Treasurer shall attest the signature of the presiding officer on documents and instruments executed by the Council, shall be responsible for issuing notices of meetings and other notices provided by the Council, shall be responsible for appropriate distribution of Council meeting agendas, and shall otherwise be responsible for documenting the actions and proceedings of the Council. The Secretary/Treasurer shall, in conjunction with the fiscal agent, maintain adequate and correct accounts of Council funds, shall be responsible for presenting the financial reports to the Council, shall be responsible for signing or co-signing an authorization to prepare and make payments on behalf of the Council, and shall be responsible for performing such other duties as may be assigned by the Council.

D. Management Committee. The Council shall establish a Management Committee, which shall be organized as defined in Article IX, below, and which shall meet periodically to discuss and direct operating issues relevant to the effective operation of the NMESC. The Management Committee shall report its recommendations and actions directly to the President of the Council, and shall submit periodic written reports of its activities, actions, and recommendations to the entire Council.

E. Council Committees. The Council may appoint other committees from time to time as may be necessary or convenient to carry out the Council's powers, provided that such committees must consist of at least two Members. Actions requiring Council approval shall not be delegated to committees.



F. Delegation of Certain Authority. The Council may delegate to individual Members authority to execute instruments, endorse checks and expend funds of the Council for any purpose not inconsistent with the Joint Powers Agreement.

G. Compensation. No Member of the Council shall be compensated for service thereon. Any reimbursement of expenses shall be based upon actual expenses or shall be disbursed in accordance with the Per Diem Reimbursement Act or implementing regulations, if a budget to pay for such expenses has been approved by the Council.

H. Anti-Nepotism. No Member of the Council shall be employed in the operation of the New Mexico Education Services Center. Members shall not approve the employment of any person who is the mother, mother-in-law, father, father-in-law, son, son-in-law, daughter, or daughter-in-law of a Member. No Member shall directly or indirectly sell or be a party to any transaction to sell equipment, supplies, insurance or services under contract to the New Mexico Education Services Center, except as provided in the New Mexico Procurement Code, NMSA 1978 §§ 13-1-1, *et seq.*

#### **ARTICLE IV COUNCIL MEETINGS**

A. Meetings. The Council shall meet at least annually to conduct the business of the NMESC.

1. Annual Meeting. The Council shall meet annually prior to the end of each Fiscal Year to review and define policy and to take such additional action as may be necessary or desirable as authorized by or not inconsistent with the Joint Powers Agreement.

- a. Notices of the scheduled annual meetings shall be provided in writing to each Member at least ten (10) days in advance of each meeting.
- b. The annual meeting shall be held for the following purposes:
  - Elect or confirm officers and select or reaffirm its fiscal agent;
  - Adopt organizational documents or amendments to such documents for the Council, including the Joint Powers Agreement, Implementing Agreement, and any contractual documents required to continue operation of the NMESC;
  - Adopt the annual budget for the ensuing year and any modifications to the current year's budget as may be required;
  - Ratify certain actions already taken and the actions of the Management Committee; and
  - Schedule any additional Council meetings to be held.

2. Special/Emergency Meetings. The Council may hold special or emergency meetings in addition to the annual meeting as needed to conduct the affairs of the NMESC. Notices of special meetings shall be provided in writing to each Member. Notices of emergency meetings shall be provided as far in advance as reasonably possible, in writing if possible, to each Member.

B. Place of Meetings. Meetings of the Council shall be held at the place and time set forth in a meeting notice.

**ARTICLE V  
COUNCIL RECORDS**

The Council shall maintain adequate records and documentation of its business and actions. The Council's public records may be inspected as provided in the Inspection of Public Records Act, NMSA 1978 §§ 14-2-1, *et seq.*, by contacting the NMESC Council's Secretary/Treasurer of record.

**ARTICLE VI  
FISCAL MANAGEMENT**

The fiscal agent for the NMESC shall be Santa Fe Community College, which shall:

A. Purchase all equipment, goods and services in compliance with the New Mexico Procurement Code. The fiscal agent is authorized to procure equipment and services on behalf of the Council. The fiscal agent shall provide for employment of NMESC staff, and for payment of contractual services for the Operator of the NMESC facilities and of such other costs as may be included in the approved budget. Payments shall be made consistent with Article III.C.3 of this document.

B. Present to the Council, at its regular annual meeting prior to the end of each Fiscal Year, a recommended operating budget for the following Fiscal Year, based on recommendation of the Management Committee. Based upon the operating budget approved by the Council, the fiscal agent shall establish the percentage of revenue to be transferred by each party to the Joint Powers Agreement for operation of the NMESC and for funding of the equipment replacement.

C. Oversee the approved budget and report to the Council the financial status of all accounts established on behalf of the Council, and summarize all expenditures and revenues associated with each account. The fiscal agent shall provide periodic financial reports to the Management Committee and an annual report at the scheduled annual meeting of the Council, and shall identify if additional billings need to be authorized to cover expenses over the approved budget levels.

D. Bill and collect from each Party the appropriate fees and costs as established in the approved annual budget and authorized schedule of transfers. The fiscal agent shall report to the Council those Parties whose accounts become and remain delinquent.

E. Maintain inventories of equipment and fixed assets acquired for NMESC and provide assistance to the Parties in support of claims for ER&R credit that each Party may submit.

**ARTICLE VII  
ALLOCATION OF EXPENSES/PAYMENT OF FEES**

A. The operational expenses and equipment replacement costs of the NMESC shall be allocated to the Parties according to the approved annual budget and the authorized schedule of transfers.

1. Costs to be included in the operating budget include: Contractual payments to the NMESC Operator, Personnel Services expenses, Other Contracted services, Training, Travel, Operating Expenses, and Administrative Expenses.

2. Capital Projects and Repair and Replacement Expenses shall be estimated and an amount included in the authorized schedule of transfers.

B. The Council shall approve the percentage of revenue to be transferred by each Party to the Joint Powers Agreement for the payment of Expenses contained in the operating budget and for funding of planned equipment repair and replacement. The fiscal agent shall bill each Party its share of the operating costs and equipment repair and replacement on a quarterly basis at the start of each quarter. Each Party shall transfer its share of the billed costs to the fiscal agent within fifteen (15) business days after the date of the billings submitted by the fiscal agent.

C. The fiscal agent shall also bill and collect any membership fees that may become due upon acceptance of new Parties to the JPA.

D. The fiscal agent shall pay all expenses in a timely manner, per Article VI.A.

## **ARTICLE VIII MANAGEMENT COMMITTEE**

The Management Committee shall be established as outlined in Articles II and III D, with the following duties and responsibilities.

A. Membership. Each Party shall appoint its lead IT Technical representative to the Management Committee, which person shall be responsible for attending to the operational details of the NMESC. Members of the Management Committee shall select a chair of the Committee, who shall serve for a one-year term, or until a new chair shall be selected.

B. Meetings. The Management Committee shall meet at least bi-monthly, to review training needs, budgets, operating issues, and shared work load, and to determine allocation of resources to individual Party projects, as needed for continued operation of the NMESC. Decisions on direction and actions shall be based on a majority vote. All actions shall be reported periodically to the President of the Council, or as required for execution of authorizing documents. Meetings of the Management Committee shall not be open to the public.

C. Coordination of NMESC Operator's Work. The Management Committee shall review and establish direction for use of the NMESC Operator and NMESC staff to provide consistent and level distribution of workload and resources in support of all Members. The Management Committee shall establish metrics for determining allocation of resources, and guidelines for authorization of projects and work assignments. Actions of the Committee shall not exceed budget available for funding staff or contracted services.

D. Operating Plan. The Management Committee shall discuss and develop an annual Operating Plan that identifies the overall operation of the NMESC and the targeted projects and assignments. This plan shall be presented to the Council in support of the annual budget, and in

support of any plans for upgrade and replacement of shared equipment. Periodic reports to the Council shall reference progress made in completing work outlined in the Operating Plan.

E. Management of Staff and Contractors. The Management Committee shall establish guidelines for management of NMESC staff resources, including reporting relationships, and for managing work of independent contractors. All personnel actions and contracting shall be conducted under the auspices of the fiscal agent, and within the policies and financial practices established by the fiscal agent.

## **ARTICLE IX ADDITION OF PARTIES; CONTRIBUTIONS TO MEMBERSHIP**

Secondary and post-secondary public educational entities, which have entered into service contracts with the Council and are not in default, may apply to join the NMESC in accordance with the following conditions. Membership requests from qualifying applicants will be considered at the Council's regular meeting. Additional Parties shall be approved by a majority vote that shall include approving by unanimous votes of the original Parties: NMJC, NNMC, NMIMT, and SFCC, in order to be effective.

A. Full Membership. Full Membership rights are not attained until full membership payments have been made. An exception is made for the original Parties.

1. Full Membership for other than the original NMESC Parties requires an initial non-refundable membership contribution of \$30,000, or as amended by the original Parties. The initial contribution shall be made within fifteen (15) business days of the new fiscal year, or upon being accepted for membership. The initial contribution shall be deposited in the NMESC Membership Fund.
2. In addition, the new party shall be assessed an amount equal to the highest assessment paid by any Party for support of the annual operating costs of the NMESC and for equipment repair and replacement costs. New parties shall contribute such amounts on a quarterly basis as billed by the fiscal agent, consistent with the payment by original Parties.
3. New parties will be charged a negotiated fee for the projected or actual costs and expenses of integrating the new party's financial, student, and employee data into the NMESC operations. Such fee shall be proportional to the compatibility of the new party's systems and operating environment with those used by NMESC. New parties may exercise voting rights and all other rights of membership and shall be subject to all obligations of full membership.

B. NMESC Membership Fund. Funds paid into the NMESC Membership Fund shall be allocated and distributed in accordance with direction of the Council, consistent with the JPA and based on recommendations of the Management Committee.

**ARTICLE X  
AMENDMENT OF IMPLEMENTING AGREEMENT**

A. Amendment. This Implementing Agreement may be amended by majority vote of the Council, from time to time, in any manner not inconsistent with the Joint Powers Agreement.

B. Record of Amendment. Any amendment to this Implementing Agreement shall be included with the original Implementing Agreement, along with the record of action taken by the Council to enact such amendment, per Article V.

**THIS IMPLEMENTING AGREEMENT IS HEREBY ADOPTED as the  
Implementing Agreement for the Joint Powers Agreement for the Continuing Operation of  
the New Mexico Education Services Center by the Education Services Center Council, on  
this 1<sup>st</sup> day of July, 2008.**

By: \_\_\_\_\_  
President and Council Member

By: \_\_\_\_\_  
Vice-President and Council Member

By: \_\_\_\_\_  
Secretary/Treasurer and Council Member

**JOINT POWERS AGREEMENT**  
**for the Continuing Operation of the New Mexico Education Services Center**  
**Supersedes JPA dated March 6, 2006**

**THIS JOINT POWERS AGREEMENT** (“Agreement”) is made and entered into by and among the SANTA FE COMMUNITY COLLEGE (“SFCC”), NEW MEXICO JUNIOR COLLEGE (“NMJC”), NORTHERN NEW MEXICO COLLEGE (“NNMC”), and NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY (“NMIMT”) (each individually, a “Party” and collectively “the Parties”; SFCC, NMJC, and NNMC are collectively the “Existing Parties”). Each Party is designated as an Institution of Higher Education of the State, or established by New Mexico’s Constitution, and is a state educational institution and a public agency as defined in Section 11-1-2(A) NMSA 1978. This Agreement will be submitted to the Governing Board of each Party for approval.

**WHEREAS**, the Parties are authorized to enter into Agreements in accordance with and pursuant to the Joint Powers Agreements Act, Sections 11-1-1 through 11-1-7 NMSA 1978 (the “Act”), and, pursuant to this authority, SFCC, NMJC, and NNMC did enter into an Agreement (the “NMESC Agreement”), which was approved by the State Department of Finance and Administration on March 6, 2006, and under which SFCC, NMJC, and NNMC did establish the “New Mexico Education Services Center” (the “NMESC”); and

**WHEREAS**, the purpose of the NMESC Agreement is to provide for the operation of a facility where equipment and administrative software (collectively, the “System”) is supported for the benefit of the Parties, including, but not limited to, secondary and post-secondary education offered by the Parties, and for improvement of educational experiences of students, working conditions of employees and services offered by the Parties and other authorized beneficiaries, and the purpose of this Agreement is to provide for the continued operation of such facility; and

**WHEREAS**, the Existing Parties desire to provide for the addition of other public entities providing post secondary educational programs in the State as parties to this Agreement, and NMIMT desires to become a party to this Agreement; and

**WHEREAS**, the Parties are exercising common powers in that:

A. pursuant to Section 21-13-10(B) NMSA 1978 the Governing Board of each of the Existing Parties has the power to accept gifts, to accept federal aid and, to purchase, hold, sell and rent property and equipment and to promote the general welfare of their respective institutions for the best interest of educational service to the people of the institutional district and the State;

B. pursuant to Section 21-13-10(A) NMSA 1978, the Governing Board of each of the Existing Parties has the duty to determine the financial and educational policies of its educational institution, provide for the management of its educational institution, and the execution of its policies by selecting a competent president for its educational institution, and

upon the recommendation of its president, to employ other administrative personnel, instructional staff or other personnel as may be needed for the operation, maintenance and administration of its educational institution; and

C. pursuant to the Constitution of the State and Chapter 21, Articles 1 and 11, NMSA 1978, NMIMT may exercise common powers; and

D. pursuant to the Act, the Parties desire to enter into this Agreement to exercise their common powers to operate the NMESC; and

**WHEREAS**, pursuant to Section 13-1-135(A) of the Procurement Code, Sections 13-1-1 through 13-1-199 NMSA 1978 (the "Code"), in November, 2002, the Existing Parties entered into a Cooperative Procurement Agreement ("CPA") for the procurement of an integrated administrative operating software system and associated services; and

**WHEREAS**, pursuant to Section 13-1-135(B) of the Code, the Existing Parties have modified the CPA to provide for mutually held funds and other terms and conditions involving contribution and payment of public funds and/or property and disbursement of the same in accordance with the Act and Section 13-1-135(B) of the Code and to constitute the NMESC board, as hereinafter defined, to administer this Agreement.

**NOW THEREFORE**, the Parties, in consideration of the mutual covenants and agreements contained herein, and in order to set forth the methods and means by which the purpose of this Agreement will be achieved, do hereby agree as follows:

## **I. DEFINITIONS**

Capitalized terms shall have the definitions assigned in the prefatory paragraphs above, in this Section 1, and in the remaining portions of this Agreement.

"Implementing Agreement" means an Implementing Agreement adopted by the NMESC Council, as this may be modified from time to time, which provides the operating procedures for the NMESC, in support of the Joint Powers Agreement.

"Educational Services" includes all services related to support of the System, including housing, hardware, staffing, services, software, operating costs, maintenance and security of the System for the Parties.

"Fiscal Year" means July 1<sup>st</sup> of any calendar year through June 30<sup>th</sup> of the following calendar year.

"Governing Board" means the governing board of a Party.

"Party" means SFCC, NMJC, NNMC, NMIMT and such other qualifying educational entities hereafter as may be authorized by the Council.

“New Mexico Education Services Center Council” or “Council” means an administrative board established under Section 11-1-5 of the Act and consisting of a single representative of each of Party, as constituted in Paragraph III of this Agreement.

“Operator” means the entity with which the Council contracts for the operation and management of the System for improvement of educational experiences of students, working conditions of employees and services offered by the NMESC.

“State” means the State of New Mexico.

## **II. SCOPE OF AGREEMENT**

### **A. The Parties hereby agree:**

1. To contract with an Operator to provide physical space for, operate and manage the NMESC for the purpose of this Agreement; and

2. To select a Party to act as the fiscal agent for the NMESC (the “Fiscal Agent”) and be responsible for the receipt of funds and the payment of financial obligations of the NMESC in compliance with the applicable requirements of the Implementing Agreement, the Financial Reporting Manual for Higher Education issued by the State Higher Education Department, federal statutes and regulations, and State statutes and regulations. At direction of the Council, the Fiscal Agent shall:

a. Establish financial records and cash accounts to permit timely and accurate recording and reporting of NMESC revenues and expenses in comparison with the adopted budget, and such accounts of assets and liabilities as reasonably deemed necessary by the Council;

b. Invoice the Parties for a percentage of the total operating expenses in accordance with the approved budget adopted by the Council, and in accordance with the Implementing Agreement;

c. Give notice to the Parties when further contributions to the NMESC operation are deemed necessary by the Council;

d. Maintain financial and personnel records as required by applicable laws and regulations; and

e. Establish and maintain an inventory of equipment pursuant to the Audit Act, Sections 12-6-1 through 12-6-14 NMSA 1978, and applicable federal statutes and regulations.

3. To develop contracts for the delivery of services to secondary and post-secondary public educational entities which are not parties to this Agreement.



### **III. THE COUNCIL**

The affairs of the NMESC shall be governed by the Council. The Council shall be comprised of the President of each Party or his or her designee; provided, however, that any such designee must be a full-time employee of the entity he or she represents. The Council shall call and convene such meetings as may be necessary to adopt or modify the Implementing Agreement to ensure the efficient and orderly operation of the NMESC, and to address such organizational and other matters as may be necessary or convenient.

### **IV. EFFECTIVE DATE AND TERM**

This Agreement shall become effective as of July 1, 2008, and subject to approval by the Secretary of the State Department of Finance and Administration. This Agreement shall remain in effect until terminated pursuant to Paragraphs V and VI below.

### **V. NOTICE OF INTENT TO TERMINATE**

Except as provided in Paragraph XVI, A Party shall give written notice to the Council of its intent to terminate its participation in this Agreement for the following Fiscal Year on or before January 1 of the current Fiscal Year.

### **VI. TERMINATION**

This Agreement shall terminate at the end of any Fiscal Year for which a majority of the Parties serve or have previously served written notice of intent to terminate this Agreement pursuant to Paragraph V.

### **VII. AVAILABILITY OF MONIES**

The Parties agree to pursue State, federal, tribal, local and private funds in order to accomplish the purposes of this Agreement, and that any such funds received will be utilized in accordance with applicable State and federal laws and regulations.

### **VIII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties and approved by the Secretary of the State Department of Finance and Administration.

## **IX. LIABILITY**

A. No Party shall be responsible for liability incurred as a result of another Party's acts or omissions, in connection with this Agreement or otherwise. Any such liability is subject to the immunities and limitations of the State Tort Claims Act, Sections 41-4-1 through 41-4-29 NMSA 1978.

B. Each Party shall be solely responsible for fiscal or other sanctions, penalties or fines occasioned as a result of its own violation or alleged violation of requirements applicable to the performance of this Agreement or otherwise. Each Party shall be liable for its acts or failure for act in accordance with this Agreement, subject to the immunities and limitations of the State Tort Claims Act, Sections 41-4-1 through 41-4-29 NMSA 1978.

## **X. INSURANCE**

The Fiscal Agent shall obtain insurance for the NMESC consistent with the requirements of the State Tort Claims Act and shall include extended risk coverage for the assets allocated to and managed by the NMESC.

## **XI. MERGER**

This Agreement incorporates all of the agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this Agreement. No prior agreements or understandings, verbal or otherwise, of the Parties or their agents shall become valid or enforceable unless embodied in this Agreement or set forth in the Implementing Agreement.

## **XII. DISPOSITION, DIVISION OR DISTRIBUTION OF PROPERTY; RETURN OF SURPLUS FUNDS**

If, upon termination of this Agreement, any Party to this Agreement has property or funds in its possession belonging to another Party or to NMESC, the same shall be returned to the respective Parties in proportion to each Party's original contribution. Upon termination of NMESC, any NMESC assets shall be distributed to the Parties in proportion to each Party's contribution to NMESC. Any disagreements as to distribution of property or funds shall be determined by the Council.

## **XIII. SUBCONTRACTING**

The Fiscal Agent shall not subcontract any portion of its services to be performed under this Agreement or obligate itself in any manner to a third party with respect to any rights or responsibilities under this Agreement without prior written approval from the other Parties. The

Fiscal Agent shall provide the other Parties with evidence of compliance with the Code for any contract, subcontract, including records of advertisement of bid, proposals received and methods used to select each subcontractor as required by State Procurement Code. Any subcontract agreement shall include all provisions necessary to allow the Fiscal Agent to meet its obligations and requirements under this Agreement.

#### **XIV. STRICT ACCOUNTABILITY FOR RECEIPTS AND DISBURSEMENTS**

The Fiscal Agent shall be strictly accountable for receipts and disbursements relating to this Agreement and shall make all financial records available to the other Parties, the State Department of Finance and Administration and the State Auditor upon request. The Fiscal Agent and NMESC shall each maintain all financial records for at least three (3) years after this Agreement has been terminated.

#### **XV. ADDITIONAL PARTIES**

Other post-secondary public educational entities and secondary public educational entities may join the NMESC upon approval by each Party, contribution of an equitable payment from the educational entity, to be determined at time of approval pursuant to the Implementing Agreement and rules of the NMESC, and by amendment of this Agreement. Upon approval by each Party the educational entity shall be a Party with all rights and responsibilities under this Agreement.

#### **XVI. APPROPRIATIONS**

The terms of this Agreement are contingent upon sufficient appropriation and authorization being granted by the State Legislature and governing bodies of each Party. If sufficient appropriation or authorization is not so granted, that Party may terminate its participation in this Agreement upon written notice from that Party to each other Party. A Party's decision as to whether sufficient appropriations or authorizations are available for its participation shall be final, binding, and accepted by the other Parties. In addition, if the Council determines that a Party's or Parties' withdrawal for lack of appropriations means that there is insufficient appropriation or authorization for NMESC to continue, this Agreement shall terminate upon written notice from the Council to each Party. The Council's decision as to whether sufficient appropriations or authorizations are available shall be final, binding, and accepted by the Parties.

#### **XVII. EEOC COMPLIANCE**

The Fiscal Agent shall require that all contractors or subcontractors hired pursuant to this Agreement comply with all federal and State laws and regulations pertaining to equal opportunity.

**XVIII. NOTICE**

The contact persons to whom any notice hereunder shall be given shall be:

- A. Santa Fe Community College  
(name) Sheila Ortego  
(title) President  
(address) 6401 Richards Avenue, Santa Fe, NM 87508  
Telephone: (505) 428-1201  
Facsimile: (505) 428-1296
  
- B. New Mexico Junior College  
(name) Steve McCleery  
(title) President  
(address) 5317 Lovington Highway, Hobbs, NM 88240  
Telephone: (575) 392-5018  
Facsimile: (575) 392-2526
  
- C. Northern New Mexico College  
(name) Jose Griego  
(title) President  
(address) 921 Paseo de Onate, Espanola, NM 87532  
Telephone: (505) 747-2140  
Facsimile: (505) 581-4130
  
- D. New Mexico Institute of Mining and Technology  
(name) Daniel H. Lopez  
(title) President  
(address) 801 Leroy Place, Socorro, NM 87801  
Telephone: (575) 835-5600  
Facsimile: (575) 835-5655

**XIX. BINDING EFFECT**

This Agreement is binding on, and the benefits inure solely to the Parties hereto, their successors and transferees, and not to any other person, persons, or other legal entities.

**XX. APPLICABLE LAW**

This Agreement is governed by the laws of the State.

**IN WITNESS WHEREOF**, the Parties have herein below set their hand.

**SANTA FE COMMUNITY COLLEGE**

By: \_\_\_\_\_  
Its: President

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

**NEW MEXICO JUNIOR COLLEGE**

By: \_\_\_\_\_  
Its: President

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

**NORTHERN NEW MEXICO COLLEGE**

By: \_\_\_\_\_  
Its: President

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

**NEW MEXICO INSTITUTE OF MINING  
AND TECHNOLOGY**

By: \_\_\_\_\_  
Its: President

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

This Agreement has been approved by:

**STATE OF NEW MEXICO  
DEPARTMENT OF FINANCE AND ADMINISTRATION**

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_