



Washington Township Health Care District

2000 Mowry Avenue, Fremont, California 94538-1716 • (510) 797-1111

Nancy Farber, Chief Executive Officer

*Board of Directors
Patricia Danielson, RHIT
Jacob Eapen, M.D.
William F. Nicholson, M.D.
Bernard Stewart, D.D.S.
Michael J. Wallace*

BOARD OF DIRECTORS' MEETING

**Thursday, May 31, 2018– 6:00 P.M.
Board Room, 2000 Mowry Avenue**

AGENDA

PRESENTED BY:

- | | | |
|--|--|---|
| I. CALL TO ORDER &
PLEDGE OF ALLEGIANCE | | Michael Wallace
Board Member |
| II. ROLL CALL | | Dee Antonio
District Clerk |
| III. COMMUNICATIONS | | |
| A. Oral | | |
| B. Written | | |
| IV. CLOSED SESSION | | |
| A. Conference with Legal Counsel-Anticipated
Litigation pursuant to Government Code
section 54956.9(d)(2) (1 matter) | | Nancy Farber
Chief Executive Officer |
| B. Conference involving a trade secret pursuant to
Health & Safety Code section 32106 | | |
| C. Report on personnel matters, Cal Gov. Code
Section 54957 | | |
| V. OPEN SESSION | | |
| Report on Closed Session | | Michael Wallace
Board Member |
| VI. ACTION | | |
| A. Resolution No. 1188: Resolution of the Board
of Directors of Washington Township Health
Care District Authorizing the Establishment of
an Internal Revenue Code Section 115 Trust
for other Post Employment Benefits and
Approval of Related Plan and Agreements | | Motion Required |
| VII. ADJOURNMENT | | Michael Wallace
Board Member |



Washington Hospital Healthcare System

2000 Mowry Avenue Fremont California 94538-1716 • (510) 797-1111
www.whhs.com

DEVCO FINANCIAL STATEMENTS

Reporting Period 9

Month of March 2018

Nancy Farber, Chief Executive Officer

Washington Township Health Care District • Washington Hospital • Institute for Joint Restoration and Research
Sandy Amos R.N. Infusion Center • Taylor McAdam Bell Neuroscience Institute • Washington Center for Wound Healing and Hyperbaric Medicine
Washington Outpatient Imaging Center • Washington Outpatient Rehabilitation Center • Washington Outpatient Surgery Center
Washington Radiation Oncology Center • Washington Special Care Nursery • Washington Urgent Care • Washington Women's Center



Washington Township Hospital
Development Corporation
Summary Income Statement
March 2018

	Current Month			Year - To - Date			
	Actual	Budget	Variance	Actual	Budget	Variance	Favorable/(Unfavorable) %
(1) Visits	3,624	3,716	(92)	30,371	30,776	(405)	(1.3%)
(2) Treatments & Procedures	152	264	(112)	2,312	3,013	(701)	(23.3%)
(3) Total	3,776	3,980	(204)	32,683	33,789	(1,106)	(3.3%)
Gross Revenue							
(4) Patient Revenue	3,872,615	4,228,434	(355,819)	32,757,535	34,975,881	(2,218,346)	(6.3%)
(5) Other Revenue	840,068	780,917	59,151	7,399,828	7,064,815	335,013	4.7%
(6) Total Gross Revenue	4,712,683	5,009,351	(296,668)	40,157,363	42,040,696	(1,883,333)	(4.5%)
Deductions							
(7) Total Deductions	1,985,606	2,176,384	190,778	15,836,555	18,010,457	2,173,902	12.1%
Contractual Percentage	51.3%	51.5%	0.2%	48.3%	51.5%	3.2%	
(8) Net Revenue	2,727,077	2,832,967	(105,890)	24,320,808	24,030,239	290,569	1.2%
Expenses							
(9) Purchased Labor	804,267	805,447	1,180	6,997,146	7,016,295	19,149	0.3%
(10) Purchased Benefits	267,245	265,351	(1,894)	2,323,380	2,349,841	26,461	1.1%
(11) Supplies	354,876	318,580	(36,296)	2,741,468	2,864,360	122,892	4.3%
(13) Professional Fees	235,959	269,376	33,417	2,335,299	2,509,691	174,392	6.9%
(14) Purchased Services	202,028	206,351	4,323	1,795,907	1,816,132	20,225	1.1%
(16) Depreciation and Amort	85,138	98,198	13,060	751,677	859,620	107,943	12.6%
(17) Utilities	11,336	22,619	11,283	197,780	203,316	5,536	2.7%
(18) Building Lease	458,242	421,935	(36,307)	3,892,436	3,843,003	(49,433)	(1.3%)
(19) Other Expenses	135,085	126,465	(8,620)	1,138,072	1,165,658	27,586	2.4%
(20) Total Expenses	2,554,176	2,534,322	(19,854)	22,173,165	22,627,916	454,751	2.0%
(21) Net Operating Income/Loss	172,901	298,645	(125,744)	2,147,643	1,402,323	745,320	53.1%
(22) Minority Interest	98,885	183,304	84,419	1,176,490	1,035,121	(141,369)	(13.7%)
(23) Net Income/Loss	74,016	115,341	(41,325)	971,153	367,202	603,951	164.5%

STRATEGIC PLANNING
PRIORITIES & PROGRESS REPORT
May 25, 2018

I. LEGISLATION

Federal and Local Economic Update

The national economic outlook remains cautiously optimistic. The latest national labor figures showed adequate job growth and a declining unemployment rate. Given recent key economic indicators, it is anticipated that the Federal Reserve will again raise the target interest rate by a quarter point in June.

The Bureau of Labor Statistics job report showed the U.S. economy created 164,000 jobs in April, as the unemployment rate declined to 3.9% from 4.1% in the previous month. This is the lowest national unemployment rate since December 2000. Claims for U.S. jobless benefits continue to remain at historically low levels, coming in recently at 222,000. The four-week moving average, a less volatile measure, declined to 213,250. The national housing market continues to remain strong with demand outpacing supply as we enter the typically busy summer season. However, rising interest rates and growing home prices may test the durability of the housing market as activity picks up in the coming months.

The California economy delivered a disappointing jobs report in March (state unemployment data lags national data by a month) with job growth coming in at a lackluster 5,400 jobs as the state's unemployment rate remained at 4.3%. According to a recent federal study, California's economy has surpassed the United Kingdom to become the world's fifth largest as California's gross domestic product rose by \$127 billion from 2016 to 2017, surpassing \$2.7 trillion. Similar to the national market, the California housing market remains strong and rising prices remain an issue amidst strong demand that continues to outpace supply.

Locally, the District's unemployment rate decreased slightly in March (local unemployment data lags national data by a month) to 2.7% from 3.0% in the previous month. Just over 5,100 District residents in the labor force are unemployed.

Analysis of all of the economic measures included above is ongoing and carefully monitored for potential impacts to hospitals and opportunities for Washington to contribute expertise and advocacy through our elected officials.

State and Federal Legislative Update

CA Legislature

The Legislature has until today, May 25, for fiscal committees to hear and report to the floor bills introduced in their house and June 1 is the last day for each house to pass bills introduced in that house. The legislature must also pass a budget bill by June 15.

One of the bills that has been introduced worth highlighting includes:

AB 3087 (Kalra) California Health Care Cost, Quality, and Equity Commission

This bill passed out of the Assembly Health Committee and was heard in the Assembly Appropriations committee on May 23 and was placed on the Suspense File, which will be discussed today May 25. It is still expected this bill will make it to the Assembly Floor for consideration. Existing federal law, the federal Patient Protection and Affordable Care Act (PPACA), enacted various health care coverage market reforms that took effect January 1, 2014. PPACA required each state, by January 1, 2014, to establish an American Health Benefit Exchange to facilitate the purchase of qualified health benefit plans by qualified individuals and qualified small employers. PPACA defines a “qualified health plan” as a plan that, among other requirements, provides an essential health benefits package. Existing state law creates the California Health Benefit Exchange, also known as Covered California, to facilitate the purchase of qualified health plans by qualified individuals and qualified small employers. This bill would create the California Health Care Cost, Quality, and Equity Commission, an independent state agency, to control in-state health care costs and set the amounts accepted as payment by health plans, hospitals, physicians, physician groups, and other health care providers.. The bill would provide that funding for the commission would be provided from the Managed Care Fund and the Insurance Fund, subject to appropriation by the Legislature. The bill would provide that the commission would have 11 paid members, including the Secretary of California Health and Human Services or his or her designee, a CalPERS representative, and 9 members with specified experience appointed to staggered 6-year terms by the Governor, Senate Committee on Rules, and Speaker of the Assembly. The bill would require the commission to convene an advisory committee to meet at least quarterly with 15 volunteer members, including, but not limited to, a representative of a licensed health facility and a representative of CalPERS.

State Budget

Governor Brown recently released his May revise of the proposed state budget and it continues to show large revenue growth. The Governor is proposing spending of more than \$195 billion, which includes \$4.4 billion for the State Rainy Day Fund. To provide some perspective, in the ‘11/’12 budget the state’s spending was \$120 billion. In the May revise the Governor did include new spending for the homeless populations and for mental health care. Some of the proposals include:

- No Place Like Home Initiative to be placed on the November ballot; this initiative would propose to use \$2 billion of the Prop 63 funds for housing for homeless individuals.

- Repayment of \$254 million to counties for state mandates that had been repealed related to the counties treatment of seriously emotionally disturbed children. The expectation is the counties would use these funds for early mental health intervention and prevention services for youth.
- \$50 million for counties to support intensive outreach services and treatment for homeless individuals with mental illness.
- \$55 million for psychiatry graduate medical education programs.

Federal Legislature

Opioid Crisis

Earlier this month, the House Energy and Commerce Committee advanced 57 primarily bipartisan bills to address the opioid crisis, including legislation to amend the Controlled Substances Act (CSA), enhance prevention and privacy-related initiatives, modify Medicare Parts B and D coverage and payment policies, and update Food and Drug Administration (FDA) policies. The Committee also adopted FDA legislation to reform the over-the-counter (OTC) drug approval process and reauthorize animal drug and generic animal drug user fee programs. Chairman Walden stated that the Committee is on track to report a package of opioid bills to the full House of Representatives in the coming weeks.

Prescription Drug Prices

On May 11, 2018, President Trump unveiled his long awaited Blueprint to Lower Drug Prices. The 44-page document, titled "American Patients First," includes a three-page outline of the Trump Administration's two-phase blueprint. The first phase involves actions the president "may direct HHS to take immediately," and the second involves additional items under active HHS consideration, for which the department is soliciting feedback.

The Blueprint is a combination of policies already laid out in the White House budget proposal for fiscal year (FY) 2019 along with new ideas. It is designed to address four issues identified by the Administration as critical to reducing the cost of prescription drugs:

- High list prices,
- A lack of negotiating tools in government programs,
- Rising out-of-pocket costs for consumers, and
- Foreign governments freeriding off of American investment and innovation.

The Blueprint also calls on Congress to remove statutory roadblocks to lowering prices.

To address these challenges, the Blueprint says that "President Trump has called on the Administration to propose new strategies to take bold actions to:

1. Improve competition and end the gaming of regulatory processes,
2. Support better negotiation of drug discounts through government insurance programs,
3. Create incentives for pharmaceutical companies to lower list prices, and
4. Reduce consumer out-of-pocket spending at the pharmacy and other care settings."

II. FOUNDATION

Critical Care Capital Campaign

The capital campaign has been under way for over a year now and has raised \$5.1 million towards the goal of \$7.5 million. The total raised includes \$546,000 raised from the employee giving campaign.

33rd Annual Golf Tournament

The Foundation's annual golf tournament was held on Thursday, May 3, at Castlewood Country Club. 180 golfers joined us on the day, and the event netted out \$90,000. Significantly more golfers stayed for the awards banquet, possibly because the tournament was held on a Thursday. 200 diners attended the banquet.

RESOLUTION NO. 1188

**RESOLUTION OF THE BOARD OF DIRECTORS OF WASHINGTON
TOWNSHIP HEALTH CARE DISTRICT AUTHORIZING THE
ESTABLISHMENT OF AN INTERNAL REVENUE CODE SECTION 115
TRUST FOR OTHER POST EMPLOYMENT BENEFITS AND APPROVAL
OF RELATED PLAN AND AGREEMENTS**

WHEREAS, the Washington Township Health Care District is a local health care district ("District") which owns and operates a general acute care hospital and provides essential healthcare services to the population residing within the District's political boundaries, including the cities of Fremont, Newark, Union City, parts of South Hayward and Sunol;

WHEREAS, the District provides certain employees and retirees post-employment benefits, referred to as Other Post Employment Benefits ("OPEB");

WHEREAS, the District's financial and legal advisors have advised the District to create an Internal Revenue Code Section 115 Trust to hold assets to offset the OPEB accounting liability (the "Trust");

WHEREAS, the District's financial advisors have advised the District to adopt an investment policy for the Trust (the "OPEB Investment Policy") and to authorize the appointment of an investment manager and investment consultant;

WHEREAS, in connection with establishing the Trust, the District's financial and legal advisors have also advised the District that it would be in the best interests of both the retirees who are eligible for OPEB benefits and the District for the District to adopt a consolidated benefit plan document that governs all of the OPEB benefits ("OPEB Plan"); and

WHEREAS, the Board of Directors of the District ("Board"), having considered the reports and recommendations from its Staff and advisors, has determined that it is in the best interest of the District to authorize the creation of the Trust, to grant authority to the Chief Executive Officer or her designee to enter into the agreements reasonably necessary to create the Trust, to adopt the OPEB Plan, to approve the OPEB Investment Policy for the Trust, and to appoint an investment manager and an investment consultant for the Trust.

NOW THEREFORE, BE IT RESOLVED THAT:

1. The Chief Executive Officer is hereby authorized to enter into the agreement or agreements attached hereto as Exhibit A with US Bank to create the Trust and to have US Bank serve as the trustee of the Trust ("Trustee") and perform related custodial duties.

2. The Chief Executive Officer is hereby authorized to enter into an agreement or agreements with Wilshire Associates Incorporated, a California corporation, to serve as the professional investment manager for the Trust.

3. The Chief Executive Officer is hereby authorized to enter into an agreement or agreements with Cambridge Associates, LLC to serve as the investment consultant for the Trust.

4. The Board approves the OPEB Investment Policy attached hereto as Exhibit B.

5. The Board approves the OPEB Plan attached hereto as Exhibit C and the Chief Executive Officer is authorized to execute the OPEB Plan.

6. The Chief Executive Officer is hereby authorized to take any and all actions necessary to execute any and all instruments and do any and all things deemed by her to be necessary, or desirable, to carry out the intent and purposes of the foregoing resolutions. The Chief Executive Officer is authorized to enter into any additional agreements necessary to establish or fund the Trust, to transfer funds or assets related to the Trust, and appoint or designate individuals authorized to transfer funds or assets related to the Trust.

7. The President, Treasurer, and Secretary of the Board are authorized to sign any documentation determined by any of them to be necessary and proper for the creation of or funding of the Trust; in addition, the Secretary is hereby authorized to certify to Trustee the names of the officers of the District who are authorized to sign for the District and the offices respectively held by them, together with specimens of their signatures, and in case of any change of any holder of any such office, the fact of such change and the names of the new officers and the offices respectively held by them, together with specimens of their signatures.

Passed and adopted by the Board of Directors of the Washington Township Health Care District this ____ day of _____, 2018 by the following vote:

AYES:

NOES:

ABSENT:

MICHAEL J. WALLACE
President, Board of Directors
Washington Township Health Care District

WILLIAM F. NICHOLSON, M.D.
Secretary, Board of Directors
Washington Township Health Care District

EXHIBIT A
TRUST AGREEMENT(S)

See attached.

SECTION 115 TRUST AGREEMENT

This Section 115 Trust Agreement (the "Agreement") is between the Washington Township Health Care District, a local health care district, organized under the laws of the State of California (the "Customer"), and U.S. Bank National Association, a national banking association organized under the laws of the United States with offices in Minneapolis, Minnesota (the "Bank");

WHEREAS, the Customer is the sponsor of the Plan (as defined below) and wishes to appoint the Bank as the trustee of certain assets of the Plan, and the Bank wishes to accept the appointment; and

WHEREAS, the Customer and the Bank intend that the trust created by this Agreement is intended to qualify as an exempt trust pursuant to Section 115 of the Internal Revenue Code, and as a grantor trust pursuant to Sections 671 et seq. of the Internal Revenue Code, of which the Customer is the grantor, and this Agreement shall be construed accordingly;

NOW, THEREFORE, the parties hereto do hereby agree as follows:

SECTION 1 DEFINITIONS

- 1.1. "**Account**" means (i) the trust maintained under this Agreement for the Assets (as defined below), which trust is known as the Washington Township Health Care District OPEB Trust and (ii) where the context requires, one or more Sub-accounts (as defined below).
- 1.2. "**Accounting Standards**" means Governmental Accounting Standards Board (GASB) Codification Statement No. 72, *Fair Value Measurement and Application*.
- 1.3. "**Assets**" means the securities, cash, and other property the Customer deposits, or causes to be deposited, from time to time under this Agreement, including contributions made under the Plan and amounts the Customer causes to be transferred to the Account from another funding medium maintained for the Plan; investments and reinvestments thereof; and income thereon, as provided herein.
- 1.4. "**Beneficiaries**" means beneficiaries of Participants (as defined below).
- 1.5. "**CFR**" means the Code of Federal Regulations.
- 1.6. "**Client-controlled Asset**" means an asset that is neither registered in the name of the Account (with the Bank designated as trustee), the Bank (with or without trust designation), or the Bank's nominee nor maintained by the Bank at a Depository (as defined below) or with a sub-custodian nor held by the Bank in unregistered or bearer form or in such form as will pass title by delivery.
- 1.7. "**Code**" means the Internal Revenue Code of 1986, as amended.
- 1.8. "**Depository**" means any central securities depository (such as the DTC), international central securities depository (such as Euroclear Bank SA/NV), or Federal Reserve Bank.
- 1.9. "**DTC**" means the Depository Trust Company.

1.10. “**Employer Securities**” means securities issued by an employer of employees covered by the Plan or issued by an affiliate of such employer.

1.11. “**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

1.12. “**Funding Policy**” means a periodic written analysis of the Plan’s cash-flow history, short-term financial needs, long-term financial needs, sources of money for plan-administration expenses, expected levels and timing of contributions, expected levels and timing of distributions, liquidity needs (including but not limited to the anticipated liquidity required to make benefit distributions), sponsor’s ability to provide future funding, and other significant information which could affect cash-flow or the exercise of discretion to manage the Assets.

1.13. “**Guidelines**” means the written investment objectives, policies, strategies, and restrictions for the Account (or for any Sub-accounts therein), including but not limited to proxy-voting guidelines, as amended from time to time.

1.14. “**Harm**” means claims, costs, damages, delayed payment or non-payment on Assets sold, expenses (including attorneys’ and other professional fees), fines, interest, liabilities, losses, penalties, stockholders’ assessments (asserted on account of asset registration), and taxes.

1.15. “**Indemnified Person**” means the Bank and its affiliates and their directors, officers, employees, successors, and assigns for purposes of Section 9.2.1 hereof, or the Customer and its affiliates and their directors, officers, employees, successors, and assigns, for purposes of Section 9.2.2 hereof.

1.16. “**Investment Advice**” means a recommendation, or a suggestion to engage in or refrain from taking a particular course of action, as to (i) the advisability of acquiring, holding, disposing of, or exchanging any Asset or any securities or other investment property or (ii) the Guidelines, the Funding Policy, the permissible investments set forth in this Agreement, the composition of the Plan’s portfolio, or the selection of persons to provide investment advice or investment management services with respect to the Assets.

1.17. “**Investment Advisers Act**” means the Investment Advisers Act of 1940, as amended.

1.18. “**Investment Company Act**” means the Investment Company Act of 1940, as amended.

1.19. “**Investment Manager**” means any person or firm (other than the Bank) which (i) has the power to manage, acquire, or dispose of any asset of a plan; (ii) is registered as an investment adviser under the Investment Advisers Act or is a bank as defined in the Investment Advisers Act or is an insurance company qualified to manage, acquire, or dispose of any asset of a plan under the laws of more than one State; (iii) has acknowledged in writing that it is a fiduciary with respect to the Plan; and (iv) has been appointed to manage Assets as provided under this Agreement.

1.20. “**Investment Powers**” means the powers set forth in Section 4.1 hereof.

1.21. “**IRS**” means the Internal Revenue Service.

1.22. “**Legal Action**” means any freeze order, garnishment, levy, restraining order, search warrant, subpoena, writ of attachment or execution, or similar order relating to the Account.

1.23. “**Messaging System**” means any financial-messaging system, network, or service acceptable to the Bank, such as the Society for Worldwide Interbank Financial Telecommunication messaging system.

- 1.24. “**Participants**” means Plan participants.
- 1.25. “**Plan**” means the plan listed in **Exhibit A (Covered Plan)** hereto.
- 1.26. “**Plan Administrator**” means the plan administrator listed in **Exhibit A (Covered Plan)** hereto.
- 1.27. “**Plan Type**” means the plan type listed in **Exhibit A (Covered Plan)** hereto.
- 1.28. “**Private Fund**” means an “investment company” that is not subject to registration with the SEC (as defined below) under the Investment Company Act, pursuant to Section 3(c)(1) or (7) thereof.
- 1.29. “**SEC**” means the United States Securities and Exchange Commission.
- 1.30. “**Securities Exchange Act**” means the Securities Exchange Act of 1934, as amended.
- 1.31. “**State**” means the State of the United States of America first written above.
- 1.32. “**Statement Recipient**” means the Plan Administrator, each Investment Manager, and anyone else the Plan Administrator so designates.
- 1.33. “**Sub-account**” means a separate portion of the Account.
- 1.34. “**Trustee Type**” means the trustee type listed in **Exhibit A (Covered Plan)** hereto.

SECTION 2 ABOUT THE PLAN

2.1. **Generally.** The Customer hereby represents and warrants that the Plan is a Plan Type, the Customer is the sponsor of the Plan, and the Plan Administrator is the administrator (and not the third-party administrator) of the Plan.

2.2. **Tax Status.** The Customer hereby represents and warrants as follows:

2.2.1. **The Account.** The Customer has obtained IRS approval, or an opinion from a lawyer licensed in the State, which approval or opinion states substantially the following: The Account satisfies all the requirements of Code Section 115 and is exempt from federal, State, and local income tax. The Account’s trustee is not required to file or furnish to any taxing authority or any taxpayer any federal, state, or local taxes, tax returns, or information returns with respect to the Plan or Account. No contribution to, or benefit distribution from, the Account is includible in the gross income of any Participant or Beneficiary under Code Section 61, State law, or local law or is wages for Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), or income-tax withholding purposes.

2.2.2. **The Plan.** The Plan is a “governmental plan” as defined in Section 414(d) of the Internal Revenue Code of 1986, as amended; is a “Section 401(a)(24) governmental plan” as defined in Revenue Ruling 2011-1; and is not subject to Federal income taxation. The Plan’s governing document expressly provides that it is impossible for any part of the corpus or income of the Plan to be used for, or diverted to, purposes other than for the exclusive benefit of the Plan participants and their beneficiaries; provided however, that the Plan’s governing document allows for the reversion to the Customer of any excess assets upon the termination of the Plan. And, the Plan is prohibited from assigning any part of its equity

or interest in the trust.

2.2.3. **Examination.** The Plan is not under examination by the IRS.

2.3. **Fiduciary Status.**

2.3.1. The Customer hereby represents and warrants as follows:

2.3.1.1. **ERISA.** The Plan is (i) a “governmental plan” within the meaning of ERISA Section 3(32) and (ii) pursuant to ERISA Section 4(b)(1), not subject to ERISA.

2.3.1.2. **Enabling Law.** The sections of State or local statute, rule, ordinance, or by-law listed in **Exhibit A (Covered Plan)** hereto authorize the Customer to establish the Plan and to establish a financial-institution trust (separate and apart from the State) for the Plan, including the authority to adopt this Agreement.

2.3.1.3. **Public Deposits.** None of the Assets is subject to a public-deposits, public-funds, or other State law that would require the Bank to set aside any direct government obligations, government-guaranteed obligations, surety bonds, letters of credit, or other assets as security, regardless of the type or amount of capital of the Bank, the amount of public deposits held by the Bank, or the extent to which the Assets are not insured by the Federal Deposit Insurance Corporation or exceed federal deposit insurance limits.

2.4. **GASB Status.** The Customer hereby represents and warrants that the Account (i) is a “qualifying trust” or “equivalent arrangement” as those terms are defined in GASB Statement No. 45, *Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions*” and (ii) meets the “specified criteria” described in GASB Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions*.

2.5. **Full Faith and Credit; Taxing Power; Debts**

2.5.1. Neither the full faith and credit nor the taxing power of the Customer is pledged to the distribution of benefits under this Agreement. Except for contributions and other amounts under this Agreement, no other amounts are pledged to such distributions. Such distributions are neither general nor special obligations of the Customer but are payable solely from the Assets of the Account, as more fully described herein. No Participant, Beneficiary, or employee of the Customer may compel the exercise of the taxing power by the Customer.

2.5.2. Distributions of benefits under this Agreement are not debts of the Customer within the meaning of any constitutional or statutory limitation or restriction. Such distributions are not legal or equitable pledges, charges, liens, or encumbrances, upon any of the Customer's property, or upon any of its income, receipts, or revenues, except amounts in the Account which are, under the terms of the Plan and this Agreement, set aside for distributions. Neither the members of the governing body of the Customer nor its officers, employees, agents, or volunteers are liable under this Agreement.

**SECTION 3
APPOINTMENT AND ACCEPTANCE**

3.1. **Appointment; Acceptance.** The Customer hereby represents and warrants that applicable law provides that the Customer may appoint a trustee of any assets of the Plan. Pursuant to that power of

appointment, the Customer hereby appoints the Bank as trustee of the Assets, and the Bank hereby accepts such appointment, subject to the terms of this Agreement.

3.2. **Establishment of Account.**

3.2.1. **Assets Held in Account.** The Customer hereby deposits Assets, or causes Assets to be deposited, with the Bank. The Customer hereby represents and warrants that all Assets are Plan assets. The Bank holds Assets in trust. As directed by the Plan Administrator, the Bank will establish one (1) or more Sub-accounts and allocate Assets among Sub-accounts.

3.2.2. **Separate and Apart; Exclusive Benefit.** The principal and income of the Account will be held separate and apart from the assets of the Customer and, except as permitted by law, will never inure to the benefit of the Customer and will be held for the exclusive purposes of providing benefits to Participants and Beneficiaries under the Plan and defraying reasonable expenses of administering the Plan. It will be impossible, whether by amending this Agreement or otherwise, at any time before the satisfaction of all liabilities to Participants and Beneficiaries under the Plan for any part of the principal or income of the Account to be used for, or diverted to, other purposes. The Bank will keep the Assets (other than deposits at the Bank) separate and apart from the assets of the Bank, pursuant to paragraph (b) (Separation of fiduciary assets) of 12 CFR Section 9.13 and paragraph (c) (Segregation of fiduciary and general assets) of 12 United States Code Section 92a.

3.2.3. **Disposition of Certain Contributions.**

3.2.3.1. **Mistake of Fact.** If a Customer contribution to the Account was made by a mistake of fact, the Customer may direct the Bank to return the contribution to the Customer within one (1) year of such contribution. In such a case, the Customer will direct the return of no more than the excess of the amount contributed over the amount that would have been contributed had no mistake occurred, adjusted for the excess's pro rata share of any net loss (but not any net gain) experienced by the Account while the excess was held in the Account.

3.2.3.2. **Not Qualified.** Customer contributions to the Account are conditioned upon the Trust's initial qualification under Code Section 115. If the Trust receives an adverse determination with respect to its initial qualification, the Customer may direct the Bank to return Customer contributions to the Customer within one (1) year of such determination, provided such return is consistent with Code Section 115.

3.3. **Direction.** The Bank is subject to the directions of the Customer, the Plan Administrator, and any Investment Manager as set forth herein.

3.4. **Allocation of Duty to Manage the Assets.**

3.4.1. **Plan Administrator.**

3.4.1.1. **Guidelines; Funding Policy.** The Customer hereby reserves to the Plan Administrator sole discretion to determine the Guidelines; to establish and carry out a Funding Policy consistent with the objectives of the Plan and the requirements of applicable law; and to deliver the Guidelines, the Funding Policy, and this Agreement to each person that has discretion to manage Plan assets. The Customer hereby represents and warrants that (i) the Guidelines, the Funding Policy, and the permissible investments set forth herein are the only investment restrictions imposed upon the Account by the Customer and (ii) following such restrictions will not cause a violation of any applicable law.

3.4.1.2. **Power to Manage, Appoint.** The Customer hereby reserves to the Plan Administrator discretion to manage the Assets (subject to the Guidelines, the Funding Policy, and the permissible investments set forth herein) and to appoint an investment manager or managers to manage (including the power to acquire and dispose of) the Assets.

3.4.2. **Investment Manager.** The Customer hereby represents and warrants that any investment manager so appointed (i) is an Investment Manager and (ii) unless the Customer notifies the Bank to the contrary, has sole discretion to manage the Assets (subject to the Guidelines, the Funding Policy, and the permissible investments set forth herein).

3.4.3. **Bank.**

3.4.3.1. With respect to Assets that are subject to an Investment Manager's discretion to manage, the Bank has no discretion to manage, and the Bank exercises the Investment Powers only as directed by the Investment Manager.

3.4.3.2. With respect to Assets that are not subject to an Investment Manager's discretion to manage, the Bank has no discretion to manage, and the Bank exercises the Investment Powers only as directed by the Plan Administrator.

3.4.3.3. **Sweep Direction.** To the extent the Bank has no discretion and has received no such direction as to cash Assets held in the Account, the Bank will use such Assets to purchase a position in the sweep vehicle identified in an exhibit hereto or, if none is identified, will hold such Assets un-invested.

**SECTION 4
POWERS OF THE BANK**

4.1. **Investment Powers.** Subject to Section 3.4 hereof, the Bank has the power to:

4.1.1. **Purchase, Hold, and Sell Assets.** Purchase with, and hold as, Assets without distinction between principal and income any securities or property, without limitation by any rule of law limiting the investment of trust assets in or to certain kinds of investments or prescribing the portion of a trust which may be invested in any kind of investment, including, but not limited to, any securities or property administered, advised, custodied, held, issued, offered, sponsored, supported by the credit of, underwritten, or otherwise serviced by the Bank or by the Bank's affiliate, and to sell the same. Without limiting the generality of the foregoing:

4.1.1.1. **Examples of Permissible Investments.** The Bank may so invest and reinvest in any real or personal property, including, but not limited to, DTC-eligible securities; Fed book-entry securities; domestic open-end mutual funds; global securities; American depositary receipts; closely-held or restricted stock; collective investment funds; deposit accounts at a bank, such as certificates of deposit, demand deposit accounts, or money market deposit accounts; derivatives (forwards, futures, options, or swaps); life-insurance or annuity contracts; loan agreements or notes; real-estate deeds, leases, or mortgages; Private Funds; or Employer Securities.

4.1.1.2. **81-100 Group Trusts.** The Bank may deposit and hold Assets in, pool Assets with other participating trusts in, and withdraw Assets from, a group trust which is exempt from taxation under Code Section 501(a) pursuant to the principles of Revenue Ruling 81-100, as amended, subject to the group-trust instrument. Any such group-trust instruments, including those listed on an

exhibit hereto, are hereby incorporated herein by reference and prevail over contrary provisions of this Agreement, and the subject group trusts are hereby adopted as part of the Plan.

4.1.2. **Process Corporate Actions.**

4.1.2.1. Respond to voluntary corporate actions (such as proxies, redemptions, or tender offers) and mandatory corporate actions (such as class actions, mergers, stock dividends, or stock splits) affecting shareholders of an Asset, after providing notice of any such action to any person authorized under this Agreement to direct the exercise of the Investment Powers with respect to the Asset.

4.1.2.2. Notwithstanding anything herein to the contrary, the Bank will, without providing notice, (i) cause Assets to participate in any mandatory exchange transaction that neither requires nor permits approval by the owner of the Assets and (ii) file any proof of claim received by the Bank regarding class-action litigation over a security held in the Account during the class-action period, regardless of any waiver, release, discharge, satisfaction, or other condition that might result from such filing.

4.1.3. **Lend Securities.** Engage in securities-lending transactions with Assets, to the extent the Customer and the Bank have entered into a separate securities-lending agreement with respect to the Assets.

4.1.4. **Hire Service Providers.** Hire service providers (including, but not limited to, investment managers, investment advisers, and brokers) to assist the Bank in exercising the foregoing powers, including any service provider that is affiliated with the Bank.

4.1.5. **Do Other Things.** Perform other acts necessary to the proper discharge of its duties under this Agreement.

4.2. **Administrative Powers.** The Bank has the power to:

4.2.1. **Safe-keep Assets.** Safe-keep Assets as set forth herein.

4.2.2. **Exchange Foreign Currency.** Exchange foreign currency into and out of United States dollars through customary channels, including the Bank's foreign-exchange department.

4.2.3. **Borrow Money.** As directed by the Plan Administrator, borrow funds on an interest-free basis to the extent expressly permitted under applicable law.

4.2.4. **Settle Purchases and Sales.** Settle purchases and sales as set forth herein.

4.2.5. **Register Assets.** Register any Asset in the name of the Account (with the Bank designated as trustee), the Bank (with or without trust designation), or the Bank's nominee or to hold any Asset in unregistered or bearer form or in such form as will pass title by delivery, provided that the Bank's records at all times show that all such assets are part of the Account.

4.2.6. **Maintain Assets at a Depository or with a Sub-custodian.** Maintain Assets that are (i) book-entry securities at any Depository or with any sub-custodian and to permit such Assets to be registered in the name of the Account (with the Bank designated as trustee), the Bank (with or without trust designation), the Bank's nominee, the Depository, the Depository's nominee, the sub-custodian, or the sub-custodian's nominee and (ii) physical securities at the Bank's office in the United States and in a safe place.

4.2.7. **Collect Income.** Collect income as set forth herein.

4.2.8. **Advance Funds or Securities.** Advance funds or securities in furtherance of settling securities transactions and other financial-market transactions under this Agreement.

4.2.9. **Sign Documents.** Make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any or all other instruments that may be necessary or appropriate to the proper discharge of its duties under this Agreement.

4.2.10. **Distribute Assets.** As directed by the Plan Administrator, distribute Assets, including benefit distributions to or for the benefit of Participants and Beneficiaries (or to a guardian, conservator, or other legal representative on behalf of a Participant or Beneficiary that the Plan Administrator has determined to be incompetent) and distributions in payment of Plan expenses.

4.2.11. **Retain Disputed Funds.** Withhold delivery or distribution of Assets that are the subject of a dispute pending final adjudication of the dispute by a court of competent jurisdiction.

4.2.12. **Hold Assets Un-invested.** Hold Assets un-invested pending investment, distribution, resolution of a dispute, or for other operational reasons, and to deposit the same in an interest-bearing or noninterest-bearing deposit account of the Bank, notwithstanding any sweep direction for the Account.

4.2.13. **Litigate.** Bring or defend lawsuits involving the Account at the sole expense of the Account and to settle the same; provided, however, that the Bank shall not settle a lawsuit involving the Account without the prior written consent of the Customer.

4.2.14. **Provide Statements.** Provide statements as set forth herein.

4.2.15. **Provide Ancillary Services.** Provide ancillary services to the Account for no more than reasonable compensation.

4.2.16. **Hire Service Providers.** Hire service providers (including, but not limited to, attorneys, depositories, and sub-custodians) to assist the Bank in exercising the foregoing powers, including any service provider that is affiliated with the Bank.

4.2.17. **Do Other Things.** Perform other acts necessary to the proper discharge of its duties under this Agreement.

SECTION 5 SAFE-KEEP ASSETS

5.1. **Safe-keeping.** As directed by the Customer, the Bank will from time to time receive Assets. The Bank will safe-keep the Assets.

SECTION 6 SETTLE PURCHASES AND SALES

6.1. The Bank will settle purchases made with Assets and sales of Assets, according to the Bank's instruction-deadline schedule, provided that the Bank has all the information and the Account has all the assets necessary for the purchase or sale.

6.2. The Customer hereby represents and warrants that neither the Customer nor the Plan Administrator will (i) notify any third party that, despite the fact that the Account has insufficient assets for the transaction, the Bank will settle the purchase of an asset nor (ii) direct anyone else to provide such notice.

SECTION 7 COLLECT INCOME

7.1. The Bank will collect all income, principal, and other distributions due and payable on Assets.

7.2. If the Plan Administrator or an Investment Manager directs the Bank to search the DTC's Legal Notice System for notice that a particular Asset is in default or has refused payment after due demand, then the Bank will conduct such a search and notify such directing party of any such notice the Bank finds therein.

SECTION 8 PROVIDE STATEMENTS

8.1. **Accounting.** The Bank will maintain proper books of account and complete records of Assets and transactions in the Account, including increases or decreases in the value of the Account due to contributions to the Account, distributions from the Account, investment experience on Assets, and expenses and fees actually charged to the Account.

8.2. **Statements.**

8.2.1. **Account Statements.** The Bank will furnish each Statement Recipient with (i) an Account statement with the frequency designated below (or as subsequently agreed upon by the Bank and the Customer) within thirty (30) calendar days after the end of the reporting period and (ii) a final Account statement within thirty (30) calendar days after the Bank has transferred all Assets from the Account as provided under this Agreement. Such Account statements will reflect Asset transactions during the reporting period and ending Asset holdings. To the extent the Plan Administrator has established an account in the Bank's on-line portal and granted access thereunder to Statement Recipients, the Bank will furnish such Account statements by way of such system. If no frequency is so designated or agreed upon, the Customer will be deemed to have designated "Monthly".

(Check at least one):

- Monthly
- Quarterly
- Semi-annually
- Annually

8.2.2. **Client-controlled Assets.** The Bank will exclude Client-controlled Assets from the Account statements. The Customer hereby acknowledges that (i) such assets are not held in the Account and (ii) the Bank is not trustee of such assets and not responsible for performing any duties under this Agreement with respect to such assets.

8.3. **Confirmations; Notification by Agreement.** Except to the extent the Assets are subject to the Bank's discretion to manage, the Account statements described above (including their timing and form) serve as the sole written notification of any securities transactions effected by the Bank for the Account. Even so, the Customer has the right to demand that the Bank provide written notification of such transactions pursuant to 12 CFR Sections 12.4(a) or (b) at no additional cost to the Customer.

8.4. **Valuation.** For purposes of reporting the value of an Asset on an Account statement:

8.4.1. **Pricing, If Available.** The Bank will report a value that is (i) provided to the Bank by a third-party pricing vendor or (ii) readily determinable on an established market, if such value is available to the Bank when preparing the statement.

8.4.2. **Pricing, If Unavailable.** If such value is unavailable, the Customer will, upon the Bank's request, direct the Bank as to the value; the Bank will then report such value. Absent such a direction, the Bank will report the most recent value that the Bank received from the Asset's broker, fund accountant, general partner, issuer, manager, transfer agent, or other service provider (commonly known as a pass-through price).

8.4.2.1. To the extent the value of an Asset is so reported, the Customer hereby represents and warrants as follows: (i) The Customer received, read, and understood any governing documents (such as a limited liability company agreement, limited partnership agreement, trust agreement, or declaration of trust), offering documents (such as a fact sheet, offering circular, offering memorandum, private placement memorandum, prospectus, or summary description), and subscription documents (such as an adoption agreement or subscription agreement) for the Asset; understands the Asset's eligibility requirements, fees and expenses, transfer and withdrawal limitations, type, category, issuer, objectives, principal strategies and risks, current underlying investments, and the identity of the Asset's administrator, investment advisor, auditor, and other service providers (and any affiliations among them) and the services they provide, respectively, to the Asset and the compensation they receive therefor. (ii) Such value reflects such documents, investment-related information, service-provider information, and fee-and-expense information.

8.4.2.2. To the extent an Asset is (i) an Employer Security the value of which is not readily determinable on an established market or (ii) real estate, the Customer hereby covenants as follows: The Customer will obtain a written valuation of such property from an independent third-party appraiser whenever required by applicable law and, regardless of whether required by applicable law, at least annually. Each appraiser will be independent of all parties other than the Plan and will have the facilities and expertise to do the valuation. Each valuation will state the appraiser's qualifications, the property's value (and the methods used to determine it), a description of the property, the factors considered in making the valuation, the purpose of the valuation, the significance of the valuation methods, the effective date of the valuation, the economic and industry outlook, the property's book value, and the property's marketability. If the property is an Employer Security, each valuation will also state the issuer's nature, history, and financial condition, as well as the actively-traded market-price of similar issuers' securities. Before relying on the valuation, the Customer will read and understand the valuation, verify the accuracy of the underlying information, make sure the appraiser's assumptions and methods are reasonable, discuss the appraisal with the appraiser, determine that reliance on the appraiser's advice is reasonably justified, and determine that the Customer need not hire a second independent third-party appraiser to review the valuation or to prepare another valuation.

8.4.3. **Limitations.** The Customer hereby acknowledges that the Bank is performing a routine, ministerial, non-discretionary valuation function; that the reported value might be neither fair market value nor fair value (under Accounting Standards or applicable law); and that the reported value is not a substitute for (i) investigating the Asset's value in connection with a decision to acquire, hold, dispose of, or exchange any securities or other investment property; (ii) obtaining and ensuring the reliability of an independent third-party appraisal with respect to such a decision; or (iii) obtaining Investment Advice.

8.4.4. **Pricing Sources; Methodology.** Upon the Customer's request, the Bank will provide the Customer (or the certified public accountant engaged by the Plan Administrator to opine on the Plan's financial statements) with information about the Bank's pricing sources and methodologies.

8.5. **Statement Review.** The Plan Administrator will review the Account statements promptly upon delivery.

SECTION 9 LIMITATIONS ON DUTIES; INDEMNIFICATION

9.1. **Limitations on Duties.** The duties of the Bank will be strictly limited to those set forth in this Agreement, and no implied covenants, duties, responsibilities, representations, warranties, or obligations will be read into this Agreement against the Bank. Without limiting the generality of the foregoing, the Bank has no duty to:

9.1.1. Request or obtain a ruling or other guidance from the IRS or any other governmental authority as to (or otherwise determine, monitor, or question) the tax character or consequences of the form and operation of the Account, provided that the Plan Administrator may direct the Bank to sign a request for such guidance where the Plan trustee's signature is required by law (such as certain applications for recognition of exemption from income tax).

9.1.2. Act as the administrator of the Plan, including, but not limited to, construing the terms of the Plan; determining eligibility for Plan benefits (including, but not limited to, eligibility for participation, vesting, or distribution, as well as the timing, amount, or form thereof); resolving benefit claims or claim appeals; prescribing forms (including, but not limited to, forms for electing participation, distribution, or withdrawal or for providing notices to Participants or Beneficiaries); establishing, maintaining, or reconciling to any individual accounts; selecting or monitoring any forfeiture funds or any investment alternatives (including default investment alternatives) into which Participants or Beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts; disclosing any plan-related, investment-related, or fee-and-expense information required to be disclosed to Participants or Beneficiaries; or receiving investment, distribution, or other directions from Participants or Beneficiaries.

9.1.3. Act as trustee of any Plan assets other than the Assets.

9.1.4. Act as investment manager of, or take notice of the management of, any Plan assets other than Assets that are subject to the Bank's discretion to manage (if any).

9.1.5. Provide Investment Advice.

9.1.6. Act as record-keeper or broker that makes the Plan's designated investment alternatives available to Participants or Beneficiaries (such as on a record-keeping platform or similar mechanism).

9.1.7. Determine, monitor, or collect Plan contributions; rather, the Bank will be subject to the Plan Administrator's direction regarding such matters; or monitor compliance with any applicable funding requirements.

9.1.8. Inspect, review, or examine any Client-controlled Asset or governing, offering, subscription, or similar document with respect thereto, to determine whether the asset or document is authentic, genuine, enforceable, properly signed, appropriate for the represented purpose, is what it

purports to be on its face, or for any other purpose, or to execute such document, or to take physical possession of such asset or document.

9.1.9. (i) Collect any income, principal, or other distribution due and payable on an Asset if the Asset is in default or if payment is refused after due demand or (ii) except as expressly provided herein, to notify the Customer in the event of such default or refusal.

9.1.10. Provide notice of, or forward, mini-tenders (which are tender offers for less than 5% of an outstanding equity or debt issue) for any equity issue or, if any of the following is true, for any debt issue: The debt issue is not registered with the SEC. The debt issue has a "first received, first buy" basis with no withdrawal privilege and includes a guarantee of delivery clause. Or, the tender offer includes the statement that "the purchase price includes all accrued interest on the note and has been determined in the sole discretion of the buyer and may be more than or less than the fair market value of the notes" or similar language.

9.1.11. Question whether any direction received under this Agreement is prudent or consistent with the terms of the Plan; to solicit or confirm directions; or to question whether any direction received under this Agreement by email or Messaging System, or entered into the Customer's or Plan Administrator's account in the Bank's on-line portal, is unreliable or has been compromised, such as by identity-theft.

9.1.12. Calculate, withhold, prepare, sign, disclose, file, report, remit, or furnish to any taxing authority or any taxpayer any federal, State, or local taxes, tax returns, or information returns that may be required to be calculated, withheld, prepared, signed, disclosed, filed, reported, remitted, or furnished with respect to the Plan (such as paying Plan benefits) or Account, except to the extent such duties are required by law to be performed only by the Bank in its capacity as trustee under this Agreement or are expressly set forth herein.

9.1.13. Monitor service providers hired by the Customer or by the Plan Administrator.

9.1.14. Maintain or defend any legal proceeding in the absence of indemnification, to the Bank's satisfaction, against all expenses and liabilities which it may sustain by reason thereof.

9.1.15. Advance funds or securities or otherwise expend or risk its own funds or incur its own liability in the exercise of its powers or rights or performance of its duties under this Agreement.

9.1.16. Escheat any Asset, whether in connection with a benefit-distribution check issued by the Bank under this Agreement or in any other circumstance, except to the extent the Plan Administrator directs the Bank to the contrary.

9.2. **Indemnification.**

9.2.1. The Customer hereby indemnifies and releases each Indemnified Person, and holds each Indemnified Person harmless from and against, and an Indemnified Person will incur no liability to any person for, any Harm that may be imposed on, incurred by, or asserted against an Indemnified Person by reason of the Indemnified Person's action or omission in connection with this Agreement or the Account (including, but not limited to, an action or omission that is consistent with directions provided under this Agreement), except to the extent that a court of competent jurisdiction has made a final judgment that the Harm resulted directly from the Indemnified Person's willful misconduct, gross negligence, bad faith, material breach of this Agreement, or breach of fiduciary duty.

9.2.2. To the extent that a court of competent jurisdiction has made a final judgment that the Harm resulted directly from the Bank's willful misconduct, gross negligence, bad faith, material breach of this Agreement or breach of fiduciary duty, the Bank hereby indemnifies and releases Customer, and holds Customer harmless from and against any Harm, and Customer will incur no liability to any person for, any Harm that may be imposed on, incurred by, or asserted against the Customer by reason of such willful misconduct, gross negligence, bad faith, material breach of this Agreement or breach of fiduciary duty.

9.2.3. The foregoing provisions will survive the Indemnified Person's termination as such and the termination of this Agreement.

9.3. **Force Majeure.** No party is liable for any delay or failure in performing its obligations under this Agreement caused by wars (whether declared or not and including existing wars), revolutions, insurrections, riots, civil commotion, acts of God, accidents, fires, explosions; stoppages of labor, strikes, or other differences with employees (other than the Bank's disputes with its employees); laws, regulations, orders, or other acts of any governmental authority; or any other circumstances beyond its reasonable control. Nor will any such failure or delay give any party the right to terminate this Agreement.

9.4. **Damages.** No party is liable for any indirect, incidental, special, punitive, or consequential damages arising out of or in any way related to this Agreement or the performance of its obligations under this Agreement. This limitation applies even if the party has been advised of, or is aware of, the possibility of such damages.

9.5. **Statements.** The Bank is not liable with respect to the propriety of the Bank's actions or omissions reflected in a statement provided under this Agreement, except to the extent (i) a Statement Recipient objects to the Bank within ninety (90) calendar days after delivery of such statement or (ii) such acts or omissions could not be discovered through reasonable examination of such statement.

SECTION 10 FEES AND EXPENSES

10.1. **Fees.** The Bank is entitled to receive compensation for providing services under this Agreement. A schedule of that compensation is attached as **Exhibit B (Fee Schedule for Plans)** hereto.

10.2. **Expenses.** Reasonable expenses, fees, costs, and other charges incurred by the Bank in providing services under this Agreement (including, but not limited to, compensation, expenses, fees, costs, and other charges payable to service providers hired under this Agreement) are expenses of the Account, and the same will not be offset from the Bank's compensation unless required by applicable law.

10.3. **Outstanding Fees and Expenses.** To the extent of any outstanding compensation, expenses, fees, costs, or other charges incurred by the Bank in providing services under this Agreement, the Customer hereby grants the Bank a first-priority lien and security interest in, and right of set-off against, the Assets. The Bank may execute that lien and security interest, and exercise that right, at any time.

10.4. **Advance of Funds or Securities.** To the extent of any advance of funds or securities under this Agreement, the Customer hereby grants the Bank a first-priority lien and security interest in, and right of set-off against, the Assets. The Bank may execute that lien and security interest, and exercise that right, at any time. Furthermore, nothing in this Agreement constitutes a waiver of any of the Bank's rights as a securities intermediary under Uniform Commercial Code §9-206.

SECTION 11 TERMINATION

11.1. **Termination of Agreement.** This Agreement terminates upon the effective date of the Bank's resignation or removal under this Agreement.

11.2. **Resignation; Removal.**

11.2.1. The Bank may resign under this Agreement by notice to the Customer. The Customer may remove the Bank under this Agreement by notice to the Bank. The resignation or removal will be effective no earlier than ninety (90) calendar days after delivery of the notice, except to the extent the parties agree in writing to a different effective date. By such effective date, the Customer will appoint a new trustee and provide the Bank with the new trustee's signed, written acknowledgment of trusteeship. If the Customer fails to do so, the Bank will have the right to petition a court at Account expense for appointment of a new trustee.

11.2.2. Upon receiving such acknowledgment or notice of such court-appointment, the Bank will transfer Assets to the new trustee as directed by the Customer or by the court, as the case may be. However, the Bank will not be required to transfer any Assets until the Bank has received payment or reimbursement for all (i) compensation, expenses, fees, costs, or other charges incurred by the Bank in providing services under this Agreement and (ii) funds or securities advanced under this Agreement.

11.3. **Reversion.** Upon Plan termination, the Plan Administrator may direct the Bank to return Assets to the Customer, provided (i) Assets were sufficient to satisfy all Plan benefits; (ii) Assets were first distributed to satisfy all such benefits; and (iii) such return is consistent with Code Section 115 including, without limitation, that none of the Assets will be distributed to any entity that is not a State, a political subdivision of a State, or an entity the income of which is excluded from gross income under Code section 115. The Customer hereby represents and warrants that the Plan Administrator will not give such a direction unless all applicable conditions under law for reversion have already been satisfied.

SECTION 12 MISCELLANEOUS

12.1. **Freedom to Deal with Third Parties.** The Bank is free to render services to others, whether similar to those services rendered under this Agreement or of a different nature.

12.2. **Binding Obligations.** The Customer and the Bank each hereby represent and warrant that (i) it has the power and authority to transact the business in which it is engaged and to execute, deliver, and perform this Agreement and has taken all action necessary to execute, deliver, and perform this Agreement and (ii) this Agreement constitutes its legal, valid, and binding obligation enforceable according to the terms hereof.

12.3. **Complete Agreement; Amendment; Prevalence.**

12.3.1. **Complete Agreement.** This Agreement contains a complete statement of all the arrangements between the parties with respect to its subject matter and supersedes any existing agreements between them concerning the subject.

12.3.2. **Amendment.** This Agreement may be amended at any time, in whole or in part, by a written instrument signed by the Customer and the Bank. Notwithstanding the foregoing, the terms of **Exhibit B (Fee Schedule for Plans)** hereto alone govern amendments thereto.

12.3.3. **Prevalence of This Agreement.** The Customer hereby represents and warrants that the Plan document, as amended from time to time, is (i) not relevant to the powers, rights, and duties of the Bank under this Agreement and (ii) not inconsistent with this Agreement (including, but not limited to, with regard to the identity of any fiduciary). In the event of such an inconsistency, this Agreement prevails with respect to the powers, rights, and duties of the Bank.

12.4. **Governing Law; Venue.** This Agreement will be governed, enforced, and interpreted according to the laws of the State without regard to conflicts of laws, except where pre-empted by federal law. All legal actions or other proceedings directly or indirectly relating to this Agreement will be brought in federal court (or, if unavailable, State court) sitting in the State. The parties hereby submit to the jurisdiction of any such court in any such action or proceeding and waive any immunity from suit in such court or execution, attachment (whether before or after judgment), or other legal process in or by such court.

12.5. **Successors and Assigns.**

12.5.1. This Agreement binds, and inures to the benefit of, the Customer, the Bank, and their respective successors and assigns.

12.5.2. No party may assign any of its rights under this Agreement without the consent of each other party, which consent will not be unreasonably withheld. The Customer hereby acknowledges that the Bank will withhold consent unless and until the Bank verifies an assignee's identity according to the Bank's Customer Identification Program and, to that end, the Customer hereby agrees to notify the Bank of such assignment and provide the Bank with the assignee's name, physical address, EIN, organizational documents, certificate of good standing, and license to do business, as well as other information that the Bank may request. No consent is required if a party merges with, consolidates with, or sells substantially all of its assets to another entity, provided that such other entity assumes without delay, qualification, or limitation all obligations of that party under this Agreement by operation of law or by contract.

12.6. **Severability.** The provisions of this Agreement are severable. The invalidity of a provision herein will not affect the validity of any other provision.

12.7. **No Vested Benefits.** Neither the creation nor the operation of the Account causes the vesting of any Participant's or Beneficiary's right to Plan benefits.

12.8. **Solvency.** The Customer hereby represents and warrants that the Customer is neither insolvent nor subject to any pending bankruptcy proceeding. The Customer will promptly notify the Bank of any such insolvency or proceeding.

12.9. **Tax-Lot Selection-Method.** The Customer hereby directs the Bank to use the following tax-lot selection-method for the Account, except to the extent the Customer directs the Bank to the contrary: Average Federal Tax Cost (in which shares are sold across all tax lots using the average cost) and, to the extent such method is not permitted for Account investments, First In First Out (in which shares are sold from tax lots having the earliest federal tax acquisition date).

12.10. **Shareholder Communications Act Election.** Under the Shareholder Communications Act of 1985, as amended, the Bank must try to permit direct communications between a company that issues a

security held in the Account (the "Securities-Issuer") and any person who has or shares the power to vote, or the power to direct the voting of, that security (the "Voter"). Unless the Voter registers its objection with the Bank, the Bank must disclose the Voter's name, address, and securities positions held in the Account to the Securities-Issuer upon the Securities-Issuer's request ("Disclosure"). To the extent that the Customer is the Voter, the Customer hereby (i) acknowledges that failing to check one and only one box below will cause the Customer to be deemed to have consented to Disclosure and (ii) registers its (*check only one*):

- Consent to Disclosure
- Objection to Disclosure.

12.11. Authorized Persons. With respect to this Agreement:

12.11.1. The Customer will notify the Bank of the identity of each (i) employee of the Customer who is authorized to act on the Customer's behalf, (ii) third-party agent that is authorized to act on the Customer's behalf, and (iii) employee of each third-party agent who is authorized to act on such agent's behalf. In no event is any such agent authorized to amend this Agreement or to terminate this Agreement.

12.11.2. If the Plan Administrator is the Customer, then any such employee or agent has the same authority with respect to the Plan Administrator as such employee or agent has with respect to the Customer. If the Plan Administrator is not the Customer, then the Customer will notify the Bank of the identity of each (i) employee of the Customer who is authorized to act on the Plan Administrator's behalf, (ii) third-party agent that is authorized to act on the Plan Administrator's behalf, and (iii) employee of each third-party agent who is authorized to act on such agent's behalf. In no event is any such agent authorized to amend this Agreement or to terminate this Agreement.

12.11.3. The Bank may assume that any such employee or agent continues to be so authorized, until the Bank receives notice to the contrary from the Customer (or, with respect to any such employee of any such agent, from such agent).

12.11.4. The Customer hereby represents and warrants that any such employee or agent was duly appointed pursuant to a procedure specified in the Plan and is appropriately monitored and covenants that the Customer (or the Plan Administrator, as the case may be) will furnish such employee or agent with a copy of this Agreement, as amended from time to time, and with a copy of any communications given under this Agreement to the Customer (or to the Plan Administrator, as the case may be). The Customer hereby acknowledges that (i) such employee's or agent's actions or omissions are binding upon the Customer (or upon the Plan Administrator, as the case may be) as if the Customer (or the Plan Administrator, as the case may be) had taken such actions or made such omissions itself and (ii) the Bank is indemnified, released, and held harmless accordingly.

12.12. Delivery of Directions.

12.12.1. Any direction, notice, or other communication provided for in this Agreement will be given in writing and (i) unless the recipient has timely delivered a superseding address under this Agreement, addressed as provided under this Agreement, (ii) entered into the Customer's or Plan Administrator's account, as the case may be, in the Bank's on-line portal, or (iii) sent to the Bank by Messaging System.

If to the Bank:

Authorized Officer: c/o _____,

Vice President and Relationship Manager

U.S. Mailing Address: _____

Phone Number: _____

Email Address: _____

If to the Customer:

Authorized Officer: c/o Christopher Henry, Senior Associate Administrator and Chief Financial Officer

U.S. Mailing Address: 2000 Mowry Avenue

Fremont, CA 94538

Phone Number: (510) 797-1111

Email Address: Chris_Henry@WHHS.com

If to the Plan Administrator:

See Exhibit A (Covered Plan) hereto.

12.12.2. Any direction received under this Agreement by email or Messaging System, or entered into the Customer's or Plan Administrator's account in the Bank's on-line portal, is deemed to be given in a writing signed by the sender. The Customer hereby represents and warrants that the Customer and the Plan Administrator maintain commercially reasonable security measures for preventing unauthorized access to their respective portal accounts; to the email accounts of their employees, agents, and agents' employees; and to any Messaging System used by their employees, agents, and agents' employees, and the Customer hereby assumes all risk to the Account of such unauthorized access. The Customer hereby acknowledges that the Customer is fully informed of the protections and risks associated with the various methods of transmitting directions to the Bank and that there may be more secure methods of transmitting directions than the methods selected by the Customer, the Plan Administrator, and their agents.

12.13. Plan Expenses; Benefit-payment Account.

12.13.1. **Plan Expenses.** The Plan Administrator may direct the Bank from time to time to charge an expense, or type of expense, against the Account. The Customer hereby represents and warrants that any expense, or type of expense, so directed to be charged is a permissible Plan expense (and is not a settlor expense).

12.13.2. **Benefit-payment Account.** The Customer hereby covenants that (i) any direction under this Agreement to distribute Assets to or for the benefit of Participants and Beneficiaries through any benefit-payment account will comply with any applicable trust requirement and anti-inurement requirement; (ii) any such benefit-payment account will be registered in the name of the Account (with the Bank designated as trustee and with only Bank personnel designated as authorized signers), the Bank (with only Bank personnel designated as authorized signers), or a Plan trustee other than the Bank (with no Bank personnel designated as authorized signers) or will be maintained by an insurance company

qualified to do business in a State of the United States and regulated and supervised and subject to periodic examination by an agency of such State pursuant to an administrative services only (ASO) contract between such insurance company and the Customer (with no Bank personnel as authorized signers); and (iii) any such other trustee will be a bank or trust company that has been granted trust powers under State or federal law. If any such benefit-payment account is so registered in the name of another trustee, then the Customer hereby acknowledges that (x) the benefit-payment account is a Client-controlled Asset, (y) the Bank is not a co-trustee with the other trustee; no asset is held by the Bank and the other trustee; the Bank will not use reasonable care to prevent the other trustee from committing a breach; and the Bank is not liable with respect to the actions or omissions of the other trustee; and (z) the Customer alone has the duty to appoint and monitor the other trustee, and the Customer will indemnify, release, and hold harmless the Bank under this Agreement for the actions and omissions of the other trustee.

12.14. Co-fiduciary Responsibility. Except as may be required by applicable law, no fiduciary with respect to the Plan (i) is responsible for the actions or omissions under this Agreement of any other fiduciary with respect to the Plan or (ii) has a duty to question whether any other fiduciary with respect to the Plan is fulfilling its own responsibilities under this Agreement.

12.15. Spendthrift. Except as expressly permitted by the terms of the Plan and applicable law, (i) no Participant or Beneficiary has the power to assign or alienate a beneficial interest in the Account; (ii) neither the Bank, the Customer, nor the Plan Administrator will recognize an assignment or alienation of a beneficial interest in the Account; and (iii) no beneficial interest in the Account is subject to attachment, garnishment, execution following judgment, or other legal process.

12.16. Uncashed Benefit-Distribution Checks. To the extent the Bank holds cash Assets un-invested pending distribution to a Participant or Beneficiary in an interest-bearing or noninterest-bearing deposit account of the Bank on the void-after date imprinted on the underlying benefit-distribution check issued by the Bank under this Agreement, the Customer hereby directs the Bank to use such Assets promptly thereafter as provided in any sweep direction for the Account.

12.17. Legal Advice. The Customer hereby acknowledges that it (i) did not receive legal advice from the Bank concerning this Agreement, (ii) had an adequate opportunity to consult an attorney of its choice before executing this Agreement, and (iii) executed this Agreement upon its own judgment and, if sought, the advice of such attorney.

12.18. Waiver of Jury Trial. Each party hereby irrevocably waives all right to a trial by jury in any action, proceeding, claim, or counterclaim (whether based on contract, tort, or otherwise) directly or indirectly arising out of or relating to this Agreement.

12.19. Legal Action. If the Bank is served with a Legal Action, then the Bank will, to the extent permitted by law, use commercially reasonable efforts to notify the Customer of such service. The Customer will reimburse the Bank for any expenses, fees, costs, or other charges incurred by the Bank in responding to the Legal Action, including, but not limited to, any fees charged by an attorney of the Bank's choice. If the Customer notifies the Bank that the Customer is seeking a protective order to resist the Legal Action, then the Bank will provide reasonable cooperation at the Customer's request and sole cost and expense. In any event, the Bank may comply with the Legal Action at any time, except to the extent the Bank has received a protective order that prevents the Bank from complying.

12.20. Interpleader. With respect to Assets that are the subject of a dispute, the Bank may file an interpleader action or other petition with a court of competent jurisdiction for directions with respect to the dispute. The Customer will reimburse the Bank for any expenses, fees, costs, or other charges

incurred by the Bank in filing such petition and implementing such directions, including, but not limited to, any fees charged by an attorney of the Bank's choice. Before disbursing Assets pursuant to such directions, the Bank will deduct therefrom an amount in payment or reimbursement for all (i) compensation, expenses, fees, costs, or other charges incurred by the Bank in providing services under this Agreement and (ii) funds or securities advanced under this Agreement.

12.21. **Representations and Warranties.** The Customer hereby covenants that, if any of the representations or warranties that it provides in this Agreement becomes inaccurate or incomplete, it will promptly notify the Bank thereof and of any fact, omission, event, or change of circumstances related thereto.

12.22. **Publicity.** No party will disclose the existence of this Agreement or any terms thereof in advertising, promotional, or marketing materials without obtaining, in each case, the prior written consent of each other party.

12.23. **Counterparts and Duplicates.** This Agreement may be executed in any number of counterparts, each of which, without production of the others, will be deemed to be an original, but all of which together will constitute the same instrument. This Agreement, and any direction, notice, or other communication given under this Agreement, may be proved either by an executed original or by a reproduced copy thereof (including, but not limited to, an electronic file copy thereof).

12.24. **Effective Date.** This Agreement will become effective when all parties have signed it. The date of this Agreement will be the date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature).

IN WITNESS WHEREOF, an authorized officer of each party hereby executes this Agreement on the date stated beneath that party's signature.

THE CUSTOMER (AS DEFINED IN THIS AGREEMENT)

By: _____
(Signature of the Customer's authorized officer)

Nancy Farber
(Printed name of the Customer's authorized officer)

Its: Chief Executive Officer
(Title of the Customer's authorized officer)

Dated: _____

U.S. BANK NATIONAL ASSOCIATION

By: _____
(Signature)

(Printed name)

Its: Vice President and Relationship Manager

Dated: _____

SECTION 115 TRUST AGREEMENT

Exhibit A

Covered Plan

Trustee Type

(Check only one):

- Directed trustee
- Discretionary trustee

Plan:

Washington Township Health Care District OPEB Plan

Plan Type

(Check only one):

- DC other postemployment benefits
- DB other postemployment benefits

Plan Type

Governmental; the enabling law is:
 The Local Health Care District Law, California Health & Safety Code §
 32000 et. seq

Plan Administrator

(Check only one):

- The Plan Administrator is the Customer.
- The Plan Administrator is not the Customer; see below instead.

Plan Administrator: _____ Committee
 (Do not enter the name of any third-party administrator.)

Authorized Officer: c/o _____

U.S. Mailing Address: _____

Phone Number: _____

Email Address: _____

Effective Date. This Exhibit will become effective when all parties have signed it. The date of this Exhibit will be the date this Exhibit is signed by the last party to sign it (as indicated by the date associated with that party's signature).

IN WITNESS WHEREOF, an authorized officer of each party hereby executes this Exhibit on the date stated beneath that party's signature.

THE CUSTOMER (AS DEFINED IN THIS AGREEMENT)

By: _____
(Signature of the Customer's authorized officer)

Nancy Farber
(Printed name of the Customer's authorized officer)

Its: Chief Executive Officer
(Title of the Customer's authorized officer)

Dated: _____

U.S. BANK NATIONAL ASSOCIATION

By: _____
(Signature)

(Printed name)

Its: Vice President and Relationship Manager

Dated: _____

SECTION 115 TRUST AGREEMENT

Exhibit B

Fee Schedule for Plans

Amendment. USBNA may amend this Fee Schedule by delivering an amended and restated Fee Schedule or another written notice to the Client. Such amendment will be effective thirty (30) calendar days after such delivery.

Approval. The Client hereby acknowledges that it: (i) is independent of U.S. Bank and has authority to enter into, extend, and renew contracts for the services described herein and to approve the fees described herein; (ii) has received, read, and understands a fully-executed copy of the Account's governing service contract(s); (iii) understands and approves the services and fees described herein; (iv) agrees to the process described herein for amending the Fee Schedule; and (iv) FOR A MANAGED ACCOUNT, has received, read, and understands USBNA's Mutual Fund Compensation Disclosure.

Signature. The Client hereby executes this Fee Schedule as of this _____ day of _____, 20_____.

Client: **Washington Hospital Healthcare System**

By: _____
(Signature of Client's authorized officer)

(Printed name of Client's authorized officer)

Its: _____
(Title of Client's authorized officer)

Effective Date: _____

Shares of registered investment companies, and units of private funds, are not deposits or obligations of, or endorsed or guaranteed in any way by, any bank, including any bank affiliated with U.S. Bancorp. Nor does the Federal Deposit Insurance Corporation, the Federal Reserve Board, or any other governmental agency insure such products. An investment in such products involves investment risks, including the possible loss of principal, due to fluctuations in each product's net asset value. Deposits products are offered by U.S. Bank National Association, member FDIC.

EXHIBIT B
OPEB INVESTMENT POLICY

See attached.

WASHINGTON TOWNSHIP HEALTH CARE DISTRICT
OTHER POST- EMPLOYMENT BENEFITS

Statement of Investment Guidelines of Objectives and Policies

May 9, 2018

INTRODUCTION

The following objectives and guidelines have been established by the Board of Directors in order to administer the Washington Township Health Care District's Other Post-Employment Benefits (OPEB) portfolio investments in a manner consistent with applicable statutory requirements. The Board of Directors reserve the right to amend and change these objectives and guidelines in the future as they deem prudent.

A. INVESTMENT OBJECTIVES

1. The overall financial objective of the OPEB investment portfolio is to meet present and future obligations to beneficiaries, while minimizing long-term contributions to OPEB (by earning an adequate return on OPEB assets), with moderate volatility in year-to-year contribution levels. In pursuit of this objective, all investment-related decisions will be made with the goal of maximizing expected benefits to the OPEB and its beneficiaries.
2. The primary investment return objective of the OPEB portfolio is to provide a satisfactory return on investment for the support of the above objective based upon the prudent investor standard. The specific investment objective of OPEB is to attain an average annual nominal total return (net of investment management fees) over the long term (running five year periods) of 7.5%. It is recognized that the nominal return objective may be difficult to attain in every five-year period, but should be attainable over a series of five year periods.

B. AUTHORITIES AND RESPONSIBILITIES

1. The Board of Directors is responsible for approving the investment policy of the Washington Township Health Care System's OPEB portfolio. The Board may authorize the appointment of investment managers (who may also serve as named fiduciaries) and any other investment advisor(s) as may be deemed appropriate in the execution of this policy.
2. Under the direction of the Board of the District, the Chief Executive Officer or designee is responsible for the implementation of this policy.
3. The Chief Executive Officer or designee should report investment activities of the OPEB portfolio to the Board quarterly. This report should include, where appropriate, a maturity schedule, current yield, market value, type of investment, institution and cost. In addition, the report must include third party confirmation that investment activities are occurring within the guidelines of this Policy.

C. INVESTMENT MANAGEMENT STRUCTURE

1. The OPEB portfolio will be managed by external investment managers who may also be designated as "a named fiduciary" as may be applicable. The investment managers have complete discretion to manage the assets in each particular portfolio to best achieve OPEB's investment objectives, within the guidelines set forth in this policy statement.

D. PORTFOLIO COMPOSITION AND ASSET ALLOCATION

1. The total OPEB portfolio shall be diversified both by asset class (e.g., equities, bonds, and cash equivalents) and within each asset class (e.g., within equities by economic sector, industry, quality, size, etc.). The purpose of diversification is to provide reasonable assurance that no single security or class of securities will have a disproportionate impact on the total OPEB portfolio.

The initial transition of OPEB portfolio assets into investments as directed by a new Investment Manager will be spread over a 12-month period.

Where possible cash contributions will be netted with cash outflows to avoid excessive investment transactions.

2. To achieve its investment objective, the OPEB portfolio shall be divided into three parts: an "Equity Class", a "Fixed Income Class" and a "Diversifier Class". The OPEB portfolio's long-term commitment to these asset classes shall be as follows:

	Long-Term <u>Target</u>	<u>Range</u>
Equity Class	60%	55-65%
Fixed Income Class	20%	15-25%
Diversifier Class	20%	15-25%

Over the long run, the allocation among the various classes is expected to be the single most important determinant of the OPEB portfolio's investment performance.

Cash is held at the discretion of the investment managers, with the understanding that performance will be measured against equity benchmarks (for equity managers) or fixed income benchmarks (for fixed income managers). The portfolio will be periodically rebalanced through withdrawals, through the direction of new cash flow, or through transfers of assets among investment managers.

3. The **Equity Class**: The purpose of the Equity Class is to achieve a total return that, over a market cycle provides for growth in principal and current income (along with that from the Fixed Income Fund) sufficient to support current benefit payments, while in the long run preserving the purchasing power of the OPEB portfolio's assets. It is recognized that the pursuit of this objective could entail the assumption of greater market variability and risk.

4. The Equity Class has a target allocation of 60% of total OPEB portfolio assets at market value. Although the actual percentage of equities and equity reserves will vary with market conditions, levels shall not exceed 65% or fall below 55%. If out of compliance, the investment manager will rebalance back to within target allocation ranges within 30 days. This performance shall be measured by the Chief Executive Officer or designee.
5. The **Fixed Income Class**: The purpose of the Fixed Income Class (bonds and cash equivalents) is to provide further diversification and reduce the overall volatility of the OPEB portfolio and therefore reduce the variability of contribution amounts to the OPEB portfolio. This class also provides for a reduction in volatility of lower asset prices and is expected to reduce the overall volatility of the OPEB portfolio, and to produce current income (to be added to dividend income from the Equity Class) in support of current benefit payments.
6. The Fixed Income Class has a target allocation of 20% of total OPEB portfolio assets at market value. Although the actual percentage will fluctuate with market conditions, levels shall not exceed 25% or fall below 15%. If out of compliance, the investment manager will rebalance back to within target allocation ranges within 30 days. This performance shall be measured by the Chief Executive Officer or designee.
7. **The Diversifier Class**: The purpose of the Diversifier Class allocation (alternative strategies or asset classes) is to provide uncorrelated sources of return from traditional equity and fixed income classes. This allocation is expected to provide further diversification and reduce the overall volatility of the OPEB portfolio.
8. The Diversifier Class has a target allocation of 20%, of the total OPEB portfolio assets at market value. Although the actual percentage will fluctuate with market conditions, levels shall not exceed 25% or fall below 15%. If out of compliance, the investment manager will rebalance back to within target allocation ranges within 30 days. This performance shall be measured by the Chief Executive Officer or designee.
9. Additions to principal shall be allocated to investment classes according to policy.

E. GUIDELINES FOR THE EQUITY CLASS

1. The investment return objective for the Equity Class is to outperform broad market benchmarks net of fees and costs, when measured over rolling three-year and five-year periods, although performance over shorter and longer periods will be considered. In addition, investment manager performance will be measured against the median return of an appropriate universe of investment managers with broadly similar investment styles.
2. The Equity Class will be broadly diversified according to country, region, economic sector, industry, number of holdings, and other investment characteristics. Multiple managers of different focuses and styles should be considered if necessary to ensure sufficient diversification of this allocation.
3. Decisions as to individual security selection, security size and quality, number of industries and holdings, current income levels, and turnover are left to broad investment manager discretion, subject to the usual standards of fiduciary prudence. However, in no case shall a single security or issuer exceed 10% of the market value of the Equity Class. In addition,

no single major industry shall represent more than 25% of the market value of the Equity Class.

4. Unless otherwise instructed, equity managers may at their discretion hold investment reserves of either cash equivalents or bonds without limitation in terms of asset size or period of time, but with the understanding that performance will be measured against all-equity indexes as described above in paragraph E.1.

F. GUIDELINES FOR THE FIXED INCOME CLASS

1. The investment return objective of the Fixed Income Class is to outperform broad market benchmarks, net of costs and fees when measured over rolling three-year and five-year periods, although performance over shorter and longer periods will be considered.
2. Fixed Income Class managers may employ active management techniques but changes in overall portfolio duration should be moderate and incremental. The Board may want to discuss the duration guidelines with its fixed income managers to ensure that it is consistent with the managers' investment strategies.
3. To ensure sufficient diversification, multiple managers with different credit, region, strategy focuses may be utilized.
4. In general, the fixed income portfolio shall be well diversified with respect to country, type, industry, and issuer in order to minimize risk exposure. However, obligations issued or guaranteed by the U.S. Government may be held without limitation.

G. GUIDELINES FOR THE DIVERSIFIER CLASS

1. The objective of the Diversifier Class is to provide a return source not strongly correlated with either the Equity Class or the Fixed Income Class, and therefore provide benefits of reduced volatility of total fund returns.
2. The participating asset classes in the Diversifier Class may change from time to time, based on the evolving market opportunity set.
3. Credit Opportunities and Real Assets classes are included in the Diversifier Class. In general, active management is to be utilized for this Class and broad market benchmarks are to be used for performance measurement purposes.

H. GUIDELINES FOR TRANSACTIONS

1. As a general guideline that should apply to all assets managed, investment managers are held to the highest fiduciary standards and all transactions should be entered into on the basis of best execution.

I. MONITORING OF OBJECTIVES AND RESULTS

1. All objectives and policies are in effect until modified by the Board, which will review these at least annually for their continued pertinence.
2. If at any time an investment manager believes that any aspect of the policy guidelines inhibits the investment performance of the account, it is the investment manager's responsibility to clearly communicate this view to the Chief Executive Officer or designee as soon as reasonably possible.
3. The OPEB portfolio will be monitored on a continual basis for consistency in investment philosophy, return relative to objectives, and investment risk as measured by asset concentrations, exposure to extreme economic conditions, and market volatility. Portfolios will be reviewed by the Chief Executive Officer or designee on a quarterly basis, but results will be evaluated over rolling three- to five-year periods. However, the Staff will regularly review each investment manager in order to confirm that the factors underlying the performance expectations remain in place.
4. In addition to the information required in Section B. of this Policy, each investment manager will report the following information on a quarterly basis: total return (on a time-weighted basis) gross and net of all commissions and fees, additions and withdrawals from the account, current holdings at cost and at market, and purchases and sales for the quarter. Regular communication concerning investment strategy and outlook is expected. In addition, investment managers are required to inform the Chief Executive Officer or designee promptly of any material change in firm ownership, organizational structure, professional personnel, account structure (e.g., number, asset size and account minimum), major investment adjustments, or fundamental investment philosophy.
5. Funds held pending deployment will not count towards portfolio benchmark monitoring.

J. MONITORING THE INVESTMENT MANAGER

1. Investment manager performance should be measured by how they construct the risk and return characteristics of the OPEB portfolio as compared to the policy portfolio benchmark.
2. The investment return of each Asset Class (Equity, Fixed Income and Diversifier) shall be compared to their market benchmark.
3. The percentage of Class's outperforming their benchmark over time shall be monitored for consistency of outperformance.
4. The risk adjusted fund performance shall be measured against other like funds or peer group.

May, 2018

EXHIBIT C
OPEB PLAN

See attached.

**WASHINGTON TOWNSHIP HEALTH CARE DISTRICT
OPEB PLAN**

**WASHINGTON TOWNSHIP HEALTH CARE DISTRICT
OPEB PLAN**

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WASHINGTON TOWNSHIP HEALTH CARE DISTRICT
OPEB PLAN

Washington Township Health Care District (Employer) hereby adopts the Washington Township Health Care District OPEB Plan (Plan) on the date set forth on the signature page hereof, for the exclusive benefit of its eligible retirees and certain members of their families.

RECITALS

Whereas:

- A. The Employer currently provides various retiree medical benefits to its eligible retirees and certain members of their families pursuant to a number of plan documents, policies, procedures, resolutions and memoranda of understanding adopted by the Employer over the years, commonly known as "other post employment benefits" or "OPEB."
- B. The Employer has decided to provide funding for some or all of these other post employment benefits, in such amounts as the Employer may determine from time to time, in the Employer's sole and absolute discretion, by making contributions to an OPEB trust that is exempt from taxation pursuant to section 115 of the Internal Code of 1986, as amended (Code).
- C. In connection with establishing the OPEB trust, the Employer has also decided that it would be in the best interests of both the retirees who are eligible for such benefits and the Employer for the Employer to adopt a consolidated benefit plan document that governs all of these benefits in order to ensure that the plan documentation requirements set forth in the OPEB trust are satisfied for such benefits.
- D. The Employer now wishes to adopt this consolidated benefit plan document incorporating into one plan the provisions of these benefits and, to the extent necessary and appropriate, to further amend and clarify the operation of these benefits.

OPERATIVE PROVISIONS

Now, therefore, the Employer hereby adopts this Washington Township Health Care District OPEB Plan upon the following terms and conditions:

ARTICLE 1. GENERAL

1.01. Plan Name.

The name of the Plan is the "Washington Township Health Care District OPEB Plan."

1.02. Effective Date.

The effective date of the Plan is the date hereof.

1.03. Exclusive Benefit.

It is the intention of the Employer that the Plan is created and maintained for the exclusive benefit of the Employer's eligible retirees and certain of their family members.

1.04. Income Tax And ERISA Status.

A. The Plan is intended to qualify as a health plan under Code sections 105 and 106 covering health expenses through the reimbursement of retiree health insurance premiums such that any benefits that a retiree or a beneficiary receives under the Plan shall be excluded from gross income. The Plan is a "governmental plan" as defined in Code section 414(d) and section 3(32) of ERISA and, as such, is exempt from the provisions of ERISA.

B. There is no assurance that the intended tax benefits under the Plan will be available. Neither the Employer, nor the Administrator, nor its designated representative makes any commitment or guarantee that any amounts elected or paid 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 is excludable from the Participant's gross income for federal and State income tax purposes, and to notify the Participant's Employer if the Participant has reason to believe that any such payment is not so excludable. Each Participant, by accepting a benefit under the Plan, agrees to be liable for any taxes, tax penalties and interest that may be imposed by the Internal Revenue Service, or any other governmental agency, with respect to these benefits.

1.05. Administrator Of The Plan.

The person(s), individual(s) or committee appointed by the Employer shall be the Administrator of the Plan. If the Employer does not appoint an Administrator, the Employer's Chief Financial Officer shall be the Administrator. The Administrator may engage the services of one or more third parties to assist the Administrator with the administration of the Plan.

1.06. Defined Terms.

All initially capitalized terms are defined terms and will be defined in the General Definitions article.

1.07. Plan Documents.

The Plan consists of this plan document and the insurance policies, health maintenance organization (HMO) contracts, service contracts, provider agreements, other plan documents, policies, procedures, resolutions and memoranda of understanding adopted by the Employer over the years, and all related documents, as such may be in effect from time to time, that are incorporated herein by this reference (Governing Documents), pursuant to which the Employer has provided the following other post employment benefits:

- A. The Retiree Prescription Drug Reimbursement Program;
- B. The Early Retiree Health Benefit Plan;
- C. The Medicare Part B premiums reimbursement program; and
- D. The plan that provides a monthly medical expense reimbursement benefit (currently four hundred forty dollars (\$440) per month) for employees who retire on or after age sixty (60) with at least twenty (20) years of service.

ARTICLE 2. GENERAL DEFINITIONS

For purposes of the Plan, the following definitions shall apply:

2.01. Administrator.

"Administrator" means the person(s), individual(s) or committee appointed by the Employer from time to time with authority and responsibility to manage and direct the operation and administration of the Plan.

2.03. Code.

"Code" means the Internal Revenue Code of 1986, as it may be amended from time to time.

2.04. Employer.

"Employer" means Washington Township Health Care District.

2.05. ERISA.

"ERISA" means the Employee Retirement Income Security Act of 1974, as it may be amended from time to time.

2.06. Governing Documents.

"Governing Documents" means the documents that are incorporated by reference into this Plan pursuant to the Plan Documents section, above.

2.07. HIPAA.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as it may be amended from time to time, and the regulations issued thereunder.

2.08. HMO.

"HMO" means a health maintenance organization.

2.09. Participant.

"Participant" means any retiree of the Employer who has (i) met the Plan's eligibility requirements, (ii) properly completed and returned the applications and agreements required under, and in accordance with, the Application For Participation section, below, (iii) commenced participation in the Plan pursuant to the Commencement Of Participation section, below, and (iv) is or may become eligible to receive a benefit under the Plan, or whose eligible family members may be eligible to receive any such benefit.

2.10. Plan.

"Plan" means the retiree welfare benefits plan as set forth herein and any amendments hereto.

2.11. Plan Year.

"Plan Year" means the twelve (12) consecutive month period ending on the last day of December each year.

ARTICLE 3. ELIGIBILITY AND PARTICIPATION

3.01. Eligible Employees; Excluded Employees.

The retirees who are eligible to participate in the Plan and who are excluded from participation in the Plan are set forth in the Governing Documents. In addition to the retirees who are excluded from participation in the Plan as set forth in the Governing Documents, the Plan excludes the following retirees (even if they might otherwise satisfy the eligibility criteria specified in the Plan or the Governing Documents):

- A. Retirees who were employees of the Employer whose employment was governed by the terms of a collective bargaining agreement between employee representatives (within the meaning of Code section 7701(a)(46)) and the Employer under which employee welfare benefits were the subject of good faith bargaining, unless the collective bargaining agreement specifically requires participation in the Plan, but only to the extent provided for in the collective bargaining agreement and only to the extent such participation is not inconsistent with the requirements of the Code;
- B. Retirees who were employees of an employer that is affiliated with the Employer that has not adopted the Plan; and
- C. A retiree who was a worker whom the Employer did not treat as an employee even if either (i) the individual might have otherwise satisfied certain legal tests or criteria to have been considered a common law employee of the Employer or (ii) the individual is subsequently determined to have been a common law employee of the Employer by a local State or federal governmental entity or by a court of competent jurisdiction.

3.02. Eligibility Requirements.

The eligibility requirements that retirees, who are not otherwise excluded from participation in the Plan, must satisfy in order to participate in the Plan are set forth in the Governing Documents.

3.03. Commencement Of Participation.

Each retiree who is not otherwise excluded from participation in the Plan and who has satisfied the Plan's eligibility requirements shall become a Participant in the Plan as set forth in the Governing Documents.

3.04. Participation.

By becoming a Participant, the retiree agrees to be bound by all terms, conditions and covenants of the Plan as then in effect or as thereafter amended.

3.05. Application For Participation.

To become a Participant, an eligible retiree shall (i) complete any application or agreements as may be required by the Employer, the Administrator, an insurance company, HMO, health care service plan or other service provider and (ii) return such properly completed applications and agreements to the Employer, the Administrator, the insurance company, HMO, health care service plan or other service provider on or before the deadline as established by the Employer, the Administrator, the insurance company, HMO, health care service plan or other service provider.

3.06. Termination Of Participation.

- A. A Participant and the Participant's covered family members will cease to be covered by the Plan as set forth in the Governing Documents.
- B. The Administrator may rescind coverage under the Plan of any individual if the individual or someone on behalf of the individual either (i) performs an act, practice, or omission that constitutes fraud or (ii) makes an intentional misrepresentation of material fact in applying for or obtaining coverage, or obtaining benefits, under the Plan. The Administrator may (i) void coverage for the individual for the period of time coverage was in effect or (ii) terminate coverage as of a date to be determined at the Administrator's sole and absolute discretion. The rescission may have a retroactive date; provided, however, that a rescission may have a retroactive date with respect to a group health plan benefit that is provided under the Plan only if the Administrator provides at least thirty (30) days advance written notice to each individual who would be affected by such rescission. The Administrator will refund all Participant contributions paid for any coverage rescinded; provided, however, that the refund will be offset, in

whole or in part, by any claims paid by the Plan that would not have been paid but for the fraud or intentional misrepresentation. In addition, the Administrator may exercise its rights under the Repayment Of Overpayment Of Benefits section, below.

ARTICLE 4. PLAN BENEFITS

4.01. Benefits In General.

The benefits under the Plan shall consist of the benefits provided pursuant to the Governing Documents as in effect from time to time.

4.02. Insured And Self-Insured Benefits.

- A. The benefits payable under the Plan from insurance policies, HMO contracts, health care service plan documents, or other service provider agreements shall be provided by such insurance companies, HMOs, health care service plans or other service providers with which the Employer or the Administrator contracts from time to time in order to provide the benefits under the Plan.
1. Such insurance policies, HMO contracts, health care service plan documents, or other service provider agreements shall be purchased and maintained by the Employer or the Administrator, on behalf of the Plan.
 2. Such insurance policies, HMO contracts, health care service plan documents, or other service provider agreements may provide for the receipt of premium payments from the Employer, though premium payments may consist of contributions from the Employer and contributions from the Participants who are eligible under the provisions of the applicable insurance policies, HMO contracts, health care service plan documents, or other service provider agreements.
 3. Any dividends, or retroactive rate or other refunds which may be or may become payable under the insurance policies, HMO contracts, health care service plan documents, or other service provider agreements shall be the property of, and shall be retained by, the Employer to the extent the dividends, or retroactive rate or other refunds do not exceed the aggregate contributions to the cost of the benefit under the insurance policy, HMO contract, health care service plan document, or other service provider agreement made by the Employer from its

own funds. In the event such dividends, or retroactive rate or other refunds exceed the aggregate contributions to the cost of the benefit under the insurance policy, HMO contract, health care service plan document, or other service provider agreement made by the Employer from its own funds, such dividends shall be returned to the appropriate plan and used to reduce Participant contributions toward the cost of the benefit provided under the specific insurance policy, HMO contract, health care service plan document, or other service provider agreement to which the dividend or retroactive rate or other refund is attributable. Any medical loss ratio rebates received by the Employer or the Plan shall be used in accordance with and to the extent required by the Patient Protection and Affordable Care Act, the Health Care and Education Reconciliation Act of 2010, any subsequent legislation, and the lawful guidance published thereunder.

4. The Employer shall have no obligation under the Plan for any insured benefits or benefits provided by another provider beyond the payment of the Employer's share of the appropriate premium and the remittance of each eligible Participant's share of the premium to the insurance company, HMO, health care service plan or other service provider to the extent that such premiums have been paid to the Employer by the Participant.
5. The Employer shall not be responsible for the validity of any insurance policy, HMO contract, health care service plan document, or other service provider agreement issued by an insurance company, HMO, health care service plan or other service provider, or for the failure on the part of any insurance company, HMO, health care service plan or other service provider to make payments provided for under any such insurance policy, HMO contract, health care service plan document, or other service provider agreement, or for the action of any person that may delay or render void or unenforceable, in whole or in part, any such insurance policy, HMO contract, health care service plan document, or other service provider agreement.

- B. The benefits payable under the Plan other than from insurance policies, HMO contracts, health care service plan documents, or other service provider agreements may be paid from an employee welfare benefits plan trust, which may be, but shall not be

required to be, tax exempt pursuant to Code section 115 or Code section 501(c)(9).

- C. The benefits payable under the Plan, other than from insurance policies, HMO contracts, health care service plan documents, or other service provider agreements, or through an employee welfare benefits plan trust, if any, shall be paid from the general assets of the Employer.

4.03. Funding.

- A. The Employer shall determine, in its sole and absolute discretion, at any time and from time to time, the amount or percentage of the cost of the benefits provided under the Plan to be paid by the Employer and the amount or percentage of the cost of the benefits provided under the Plan to be paid by the Participants. The Employer shall announce such amounts or percentages at such times as are deemed necessary or appropriate by the Employer. Any and all changes to such amounts or percentages as announced by the Employer shall be effective as of the time(s) established by the Employer without regard to whether the Employer has adopted an amendment to the Plan or to any Governing Document. The Employer's contributions to the Plan shall not become assets of the Plan unless and until such amounts are actually paid to the Plan by the Employer.
- B. To the extent that the Employer makes any Plan contributions to a trust that is tax exempt pursuant to Code section 115, it shall be impossible for any part of the corpus or income of the Plan to be used for, or diverted to, purposes other than for the exclusive benefit of the Participants and their beneficiaries except as set forth in the Reversions section, below.
- C. To the extent that the Employer, the Participants, or both the Employer and the Participants make Plan contributions to a trust that is tax exempt pursuant to Code section 501(c)(9), the corpus and income of the Plan shall be used for the exclusive benefit of the Participants and their benefits as set forth in the trust agreement for such trust except as set forth in the Reversions section, below.

4.04. Distributions To Incapacitated Participants.

Whenever, in the Administrator's opinion, a person who is entitled to receive any payment of benefits under the Plan is unable to manage his or her personal financial affairs by reason of minority, death, illness or

infirmity, mental incapacity or incompetency of any kind, the Administrator may in its discretion:

- A. Make payments to the persons or institutions that are providing for the care and maintenance of the Participant or beneficiary and continue to make such payments to them until a duly appointed legal representative makes a claim for the payment;
- B. Apply the payment for the benefit of such Participant or beneficiary in such manner as the Administrator considers advisable;
- C. Make payments to the legally appointed guardian of such person;
- D. Make payments as directed by a court of competent jurisdiction;
or
- E. Deposit any amount due to a minor to his credit in any savings or commercial bank of the Administrator's choice.

Any payment made pursuant to the terms of this Distribution To Incapacitated Participants section shall be a complete discharge of any liability of the Plan, the Employer, the Administrator, the Administrator's designated representative, or any other person for the making of such payment under the provisions of the Plan.

4.05. Repayment Of Overpayment Of Benefits.

- A. By accepting payment of benefits under the Plan, the Participant or beneficiary receiving the payment agrees that, in the event of overpayment, the Participant or beneficiary will promptly repay the amount of overpayment, without interest, upon notice by the Administrator; provided that, if the Participant or beneficiary has not repaid the overpayment within thirty (30) days after notice:
 - 1. The Participant or beneficiary will also pay an amount equal to simple interest at the rate of ten percent (10%) per annum (or the highest rate allowable, if less) on the unpaid amount from the date of overpayment to the date of repayment, and, in addition, will pay all legal fees, court costs and the reasonable time value of the Administrator or Employer, or any of their employees or agents, related to the collection of such overpayment; and
 - 2. The Administrator may deduct all or any portion of the overpayment, with interest, that is not timely repaid, from

any amount that would otherwise then be payable or that may become payable, to the Participant or beneficiary under the Plan.

- B. In the event that the Plan makes a payment to a Participant, beneficiary or third party that is in excess of the amount otherwise due under the Plan, the Plan shall have an equitable lien on the excess portion of such payment, which shall be regarded by the Plan as a distinct and separate fund held by such Participant, beneficiary or third party subject to such lien. Such lien shall continue in effect to any account of such Participant, beneficiary or third party to which all or any portion of such payment is transferred, and as to any tangible or intangible asset acquired by such Participant, beneficiary or third party using all or any portion of such payment.

ARTICLE 5. PLAN ADMINISTRATION

5.01. Employment Records.

The Employer shall maintain sufficient employment records to determine benefits under the Plan for each Participant. The Employer shall make such records available to the Administrator, in a timely manner, and the Employer shall be responsible for the accuracy of such information, upon which the Administrator is entitled to rely.

5.02. Reports And Disclosure.

The Administrator shall prepare, file and distribute, in a timely manner, all reports and information to be disclosed to Participants as may be required by the Code or applicable State law. The Administrator shall prepare such reports from records kept by it and information furnished by the Employer.

5.03. Retention Of Records.

Every person subject to a requirement to file any description or report or to certify any information thereof under applicable law shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained or clarified and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts and applicable resolutions, and shall keep such records available for examination for a period of not less than six (6) years after the filing date of the documents based on the information which they contain.

5.04. Powers And Responsibilities.

- A. The Employer shall be empowered to appoint and remove the Administrator from time to time as it deems necessary for the proper administration of the Plan and to assure that the Plan is being operated for the exclusive benefit of the Participants and their beneficiaries in accordance with the terms of the Plan, the Code and applicable State law.
- B. The Employer shall periodically review the performance of any fiduciary or other person to whom duties have been delegated or allocated by it under the provisions of the Plan, or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Employer or by a qualified person specifically designated by the Employer, through day-to-day conduct and evaluation, or through other appropriate means.

5.05. Designation Of Administrative Authority.

- A. Any person, including, but not limited to, the employees of the Employer, shall be eligible to serve as an Administrator. Any person appointed by the Employer to serve as the Administrator shall signify such appointee's acceptance by filing written acceptance with the Employer. An Administrator may resign by delivering a written resignation to the Employer, or may be removed by the Employer with or without cause by delivery of written notice of removal, to take effect at a date specified therein, or upon delivery to the Administrator if no date is specified.
- B. The Employer, upon the resignation or removal of an Administrator, shall promptly designate in writing a successor to this position.

5.06. Allocation And Delegation Of Responsibilities.

If more than one person is appointed as the Administrator, the responsibilities of each appointed person may be specified by the Employer and accepted in writing by each Administrator. In the event that the Employer makes no such delegation, the Administrators may allocate the responsibilities among themselves, in which event the Administrators shall notify the Employer in writing of such action and specify the responsibilities of each Administrator. Except where there has been an allocation and delegation of administrative authority pursuant to this section, if there shall be more than one Administrator,

they shall act by a majority of their number, but may authorize one or more of them to sign all papers on their behalf. The Administrators may act with or without a meeting being called or held and shall keep minutes of all meetings held and a record of all actions taken by written consent. No Administrator may participate in any decision that involves solely the Administrator's interest as a Participant in the Plan.

5.07. Powers And Duties Of The Administrator.

The primary responsibility of the Administrator is to administer the Plan for the exclusive benefit of the Participants and their beneficiaries, subject to the specific terms of the Plan. The Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to interpret and construe the terms of the Plan, to decide any disputes and resolve any ambiguities which may arise relative to the rights of the Participants and their beneficiaries, under the terms of the Plan, and to determine all questions arising in connection with the administration, interpretation and application of the Plan. Any such determination by the Administrator shall be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any such procedure, discretionary act, interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall comply with the terms of the Code and all regulations issued pursuant thereto. The Administrator shall have all powers necessary or appropriate to accomplish its duties under the Plan.

5.08. Administrative Functions.

The Administrator shall:

- A. Determine Participant eligibility;
- B. Except to the extent that an insurer or other service provider has the power to do so under a Governing Document, determine the amount of benefits which shall be payable to any person in accordance with the provisions of the Plan, inform the Employer, the trustee of any trust that holds the Plan's assets, and any party to a Governing Document, as appropriate, of the amount of such benefits, and provide a full and fair review to any claim for benefits which has been denied in whole or in part to the extent set forth in the Claims Procedures article, below;

- C. Designate other person(s) to carry out any duty or power which would otherwise be a fiduciary responsibility of the Administrator under the terms of the Plan including but not limited to delegating certain claims administration duties to a claims administrator, provided that any such delegation or allocation of responsibilities shall be set out in a written instrument executed by the Administrator and the designated party and, provided further, that the fiduciary responsibilities of the Administrator with respect to each benefit payable under the Plan from insurance policies, HMO contracts, health care service plan documents, or other service provider agreements shall be deemed to have been delegated and allocated to the insurance company, HMO, health care service plan or other service provider with which the Employer or the Administrator contracts from time to time in order to provide such benefit under the Plan;
- D. Process claims and appeals from claims denied to the extent set forth in the Claims Procedures article, below; and
- E. Make recommendations to the Employer concerning any phase of Plan management or administration.

5.09. Appointment And Responsibility Of Representatives.

- A. With the consent of the Employer or its designee, the Administrator shall have the right and the power to appoint one or more representatives, accountants, counsel, specialists, and other advisory and clerical persons as it deems necessary or desirable to assist the Administrator in the administration of the Plan. All usual and reasonable expenses of such representatives, accountants, counsel, specialists, and other advisory and clerical persons may be paid in whole by the Plan, in whole by the Employer (if the Employer agrees to do so in advance), or in part by the Plan and in part by the Employer (if the Employer agrees to do so in advance).
- B. The Administrator may designate any person as its agent for any purpose. The designated representative of the Administrator shall be responsible only for those specific powers, duties, responsibilities and obligations specifically given to it by the Administrator. The Administrator, the Employer and any person to whom the Administrator may delegate any duty or power in connection with the Plan's administration may rely upon all tables, valuations, certificates, reports and opinions furnished by any duly appointed actuary, accountant (including employees who are actuaries or accountants), legal counsel, or other specialist, and

they shall be fully protected whenever they take action based in good faith in reliance thereon. All actions taken in good faith reliance on advice from the advisors are conclusive upon all persons. Any benefits not paid by the Plan shall not be the responsibility of the designated representatives.

5.10. Appointment Of Fiduciaries And Agents.

The Employer or its designee shall have the right to hire and fire any fiduciary or agent, including the Administrator, the trustee of any trust maintained for the Plan, or any agent designated pursuant to the Appointment And Responsibility Of Representatives section, above.

5.11. Compensation Of Administrator.

The Administrator(s) shall receive no compensation from the Plan for acting as such, but the Plan shall reimburse the Administrator(s) for all necessary and proper expenses incurred in carrying out its duties under the Plan.

5.12. Use Of Electronic Media.

In accordance with Treasury regulations, the Administrator and the Trustee may use telephonic or electronic media to satisfy the notice requirements under this Plan.

5.13. HIPAA Privacy, Security And Transaction Standards.

Inasmuch as (i) certain members of the Employer's workforce may have access to protected health information (PHI) and electronic PHI, as defined in HIPAA and its implementing regulations (HIPAA Rules), for administrative functions of the Plan, and (ii) HIPAA and its implementing regulations require that the group health plan be amended to incorporate certain provisions and that the group health plan sponsor agree to such provisions in order for a group health plan's sponsor to have access to PHI from the group health plan, the Employer and the Plan shall comply with the applicable privacy, security and administration regulations promulgated under HIPAA, as they may be in effect from time to time. In addition, the following provisions shall govern the use and disclosure of PHI by the Plan to the Employer by a group health plan benefit provided under the Plan (to the extent not inconsistent with such regulations):

A. Hybrid Entity Designations.

If the Plan is a hybrid entity as defined in the HIPAA Rules, then:

1. The Employer designates that the health care components of the Plan are the group health plan benefits provided under the Plan, if any, whether fully insured, self-insured, or a combination, and the administration functions of the Plan that relate to such benefits.
2. The Employer designates that the other components of the Plan are not health care components of the Plan.
3. The other components of the Plan that are not health care components shall be treated as if they were a separate legal entity from the health care components of the Plan for purposes of the following provisions.

B. Permitted Disclosure Of Enrollment/Disenrollment Information.

The Plan (or a health insurance issuer or HMO with respect to the Plan) may disclose to the Employer information on whether the individual is participating in the Plan, or is enrolled in or has disenrolled from a health insurance issuer or HMO offered by the Plan.

C. Permitted Uses And Disclosure Of Summary Health Information.

The Plan (or a health insurance issuer or HMO with respect to the Plan) may disclose summary health information, as defined in the HIPAA Rules, to the Employer, provided the Employer requests the summary health information for the purpose of obtaining premium bids from health plans for providing health insurance coverage under the Plan or modifying, amending, or terminating the Plan.

D. Uses And Disclosure For Plan Administrative Purposes.

Unless otherwise permitted by law, and subject to the conditions of disclosure described in the Conditions Of Disclosure For Plan Administration Purposes subsection, below, and obtaining written certification pursuant to the Certification Of The Employer subsection, below, the Plan (or a health insurance issuer or HMO on behalf of the Plan) may disclose PHI and electronic PHI to the Employer; provided, however, that the Employer may use or disclose such PHI for Plan administration purposes only.

1. "Plan administration purposes" means administration functions performed by the Employer on behalf of the Plan,

such as quality assurance, claims processing, auditing, and monitoring.

2. Plan administration functions do not include functions performed by the Employer in connection with any other benefit or benefit plan of the Employer, and they do not include any employment-related functions.

Notwithstanding the provisions of the Plan to the contrary, in no event shall the Employer be permitted to use or disclose PHI in a manner that is inconsistent with section 164.504(f) of the HIPAA Rules.

E. Conditions Of Disclosure For Plan Administration Purposes.

The Employer agrees that, with respect to any PHI (other than enrollment or disenrollment information, summary health information, and information disclosed pursuant to a signed authorization that complies with section 164.508 of the HIPAA Rules, that are not subject to these restrictions) disclosed to it by the Plan (or a health insurance issuer or HMO on behalf of the Plan), the Employer shall:

1. Not use or further disclose the PHI other than as permitted or required by the Plan or as required by law;
2. Ensure that any agent, including a subcontractor, to whom it provides PHI received from the Plan agrees to the same restrictions and conditions that apply to the Employer with respect to PHI;
3. Not use or disclose the PHI for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Employer;
4. Report to the Plan any use or disclosure of the information that is inconsistent with the uses or disclosures provided for of which it becomes aware;
5. Make available PHI to comply with HIPAA's right to access in accordance with section 164.524 of the HIPAA Rules;
6. Make available PHI for amendment and incorporate any amendments to PHI in accordance with section 164.526 of the HIPAA Rules;

7. Make available the information required to provide an accounting of disclosures in accordance with section 164.528 of the HIPAA Rules;
8. Make its internal practices, books and records relating to the use and disclosure of PHI received from the Plan available to the Secretary of Health and Human Services for purposes of determining compliance by the Plan with HIPAA's privacy requirements;
9. If feasible, return or destroy all PHI received from the Plan that the Employer still maintains in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and
10. Ensure that the adequate separation between the Plan and the Employer (i.e., the "firewall") required by section 164.504(f)(2)(iii) of the HIPAA Rules is satisfied.

F. Conditions Of Disclosure Of Electronic PHI To The Employer.

The Employer further agrees that if it creates, receives, maintains, or transmits any electronic PHI (other than enrollment or disenrollment information, summary health information, and information disclosed pursuant to a signed authorization that complies with section 164.508 of the HIPAA Rules, that are not subject to these restrictions) on behalf of the Plan, the Employer shall:

1. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI;
2. Ensure that the adequate separation between the Plan and the Employer (i.e., the "firewall") required by section 164.504(f)(2)(iii) of the HIPAA Rules is supported by reasonable and appropriate security measures;
3. Ensure that any agents (including subcontractors) to whom the Employer provides such electronic PHI agree to implement reasonable and appropriate security measures to protect the information; and

4. Report to the Plan any electronic PHI security incident of which it becomes aware.

G. Adequate Separation Between The Plan And The Employer.

The Employer shall allow only those employees of the Employer who are responsible for the Plan's administration functions to have access to the PHI. No other employees of the Employer shall have access to PHI. These employees shall have access to and use PHI only to the extent necessary to perform the plan administration functions that the Employer performs for the Plan. In the event that any of these specified employees do not comply with the provisions of this provision, such employee(s) shall be subject to disciplinary action by the Employer for noncompliance pursuant to the Employer's employee discipline and termination of employment procedures. The Employer shall ensure that the preceding provisions are supported by reasonable and appropriate security measures to the extent that such employees have access to electronic PHI.

H. Certification Of The Employer.

The Plan (or a health insurance issuer or HMO with respect to the Plan) shall disclose PHI to the Employer only upon the receipt of a certification by the Employer that the Plan has been amended to incorporate the provisions required by section 164.504(f)(2)(ii) of the HIPAA Rules and that the Employer agrees to the conditions of disclosure set forth in the Conditions Of Disclosure For Plan Administration Purposes subsection, above.

I. Genetic Information.

The Plan shall comply with the requirements of the Genetic Information Nondiscrimination Act Of 2008 (GINA) to the extent required by the provisions of GINA and the regulations thereunder, effective as of May 21, 2009, or such later date as may be provided under the regulations under GINA.

ARTICLE 6. CLAIMS PROCEDURES

6.01. Claims For Benefits.

In order to receive benefits under the Plan, the Participant or beneficiary must submit satisfactory proof of entitlement to such a benefit as set forth in this Claims Procedures article.

6.02. Filing Claims.

- A. In the event that a Participant or beneficiary has a claim for any benefit under any insurance policy, HMO contract, health care service plan document, or other service provider agreement, then the Participant or beneficiary shall file the claim with the insurance company, HMO, health care service plan or other service provider in accordance with the applicable Governing Document. In the event that a Participant or beneficiary has a claim for any other benefit under the Plan, then the Participant or beneficiary shall file a claim with the Administrator on forms provided for such purpose. Upon request, the Administrator shall provide a Participant, beneficiary or the Participant's or beneficiary's designated representative with any and all necessary forms.

- B. Any Participant, beneficiary, or duly authorized representative of a Participant or beneficiary (Claimant) may file a claim for benefits to which such Claimant believes he or she is entitled. Claims must be made in writing and delivered to the Administrator or to the appropriate insurance company, HMO, health care service plan or other service provider in accordance with the applicable claims procedure under the applicable insurance policy, HMO contract service contract or other agreement or this Claims Procedure article, as appropriate. Claimants shall provide the Administrator or the appropriate insurance company, HMO, health care service plan or other service provider 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.

- C. Unless otherwise announced by the Administrator, a claim for benefits under any applicable insurance policy, HMO contract, service contract or other agreement must be filed within the time period provided in the applicable insurance policy, HMO contract, service contract or other agreement under which the benefit is provided. Claims for benefits incurred during a Plan Year that are not governed by an applicable insurance policy, HMO contract, service contract or other agreement must be made no later than three (3) months after the end of the Plan Year when the claim arose. Any delinquent claims will not be paid.

6.03. Initial Determination Of Claim.

A. Claims Governed By A Contract.

Claims for specific benefit payments or reimbursements that are governed by any insurance policy, HMO contract, health care service plan document, or other service provider agreement shall be adjudicated under the terms of the agreement under which such benefit payment or reimbursement is provided.

B. Claims Not Governed By A Contract.

Claims for specific benefit payments or reimbursements that are not governed by any insurance policy, HMO contract, health care service plan document, or other service provider agreement shall be adjudicated under the terms of the Governing Document under which such benefit payment or reimbursement is provided. If, however, such Governing Document does not contain its own claims policies and procedures for such specific benefit payments or reimbursements:

1. The Administrator shall have full discretion to grant or deny a claim in whole or in part.
2. The Administrator will notify the Claimant, in writing, of the granting or denying, in whole or in part, of such claim, within thirty (30) days after receipt of such claim; provided, however, that if the Administrator determines that an extension of time for processing the claim is necessary due to matters beyond the control of the Administrator, this period may be extended no more than fifteen (15) days from the end of the initial thirty (30) day period.
3. If an extension of time is necessary, the Claimant must be given a written notice to this effect prior to the expiration of the initial thirty (30) day period and the notice must indicate the special circumstances requiring the extension and the date by which a decision will be made. If such an extension is necessary due to a failure of the Claimant to submit the information necessary to decide the claim, the notice shall specifically describe the required information and the Claimant shall submit the specified information no later than forty-five (45) days from receipt of the notice by the Claimant.

4. If a claim is denied in whole or in part, the Administrator's notice denying such claim shall set forth, in a manner calculated to be understood by the Claimant, the following:
 - a. The specific reason or reasons for the denial;
 - b. Specific reference to pertinent Plan provisions on which the denial is based;
 - c. A description of any additional material or information necessary for the Claimant to perfect the claim and an explanation of why such material information is necessary; and
 - d. An explanation of the Plan's claim review procedures.
5. If notice of the granting or denying of a claim is not furnished in accordance with the preceding provisions, the claim shall be deemed denied and the Claimant shall be permitted to exercise the Claimant's right to review pursuant to the Claims Appeals section, below.

6.04. Claims Appeals.

If a claim for benefits governed by the Claims Governed By A Contract subsection, above, is fully or partially denied, the insurance company's, HMO's, health care service plan's or other service provider's appeals procedures shall be followed. If, however, a claim for benefits governed by the Claims Not Governed By A Contract subsection, above, is fully or partially denied, then either the Governing Document's appeals procedures shall be followed. If, however, such Governing Document does not contain its own appeals procedures, the following appeals procedures shall apply:

- A. If a Claimant wishes to appeal a denial of a claim, the Claimant or the Claimant's duly authorized representative:
 1. May request a review upon written application to the Administrator;
 2. May submit written comments, documents, records, and other information relating to the claim; and
 3. May obtain, upon request and free of charge, reasonable access to, and copies of, all documents, records,

and other information relevant (determined in accordance with Department of Labor regulations section 2560.503-1(m)(8)) to the Claimant's claim for benefits.

- B. The written request for review must be received by the Administrator within one hundred eighty (180) days after the Claimant receives notice that the Claimant's claim for Plan benefits has been denied.
- C. The decision on the review shall be made by the Administrator, who may, in its discretion, hold a hearing on the denied claim; provided, however, that the following requirements shall apply:
 - 1. The review of the denied claim shall not afford deference to the initial claim denial and shall be conducted by an appropriate named fiduciary who is neither the individual who made the adverse benefit determination that is the subject of the review nor the subordinate of such individual;
 - 2. If the adverse benefit determination that is the subject of the review was based in whole or in part on a medical judgment, the appropriate named fiduciary of the Plan shall consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment, and who shall not be the individual who was consulted in connection with the adverse benefit determination that is the subject of the review, nor the subordinate of such individual; and
 - 3. Any medical or vocational experts whose advice was obtained on behalf of the Plan in connection with a Claimant's adverse benefit determination shall be identified without regard to whether the advice was relied upon in making the benefit determination.
- D. The Administrator shall make its decision promptly, and not later than sixty (60) days after the Administrator's receipt of the request for a review, unless the Administrator determines that special circumstances require an extension of time for processing the claim. If the Administrator determines that an extension of time for processing is required, this period may be extended no more than sixty (60) days from the end of the initial sixty (60) day period, in which case the Administrator shall give the Claimant a written notice to this effect prior to the expiration of the initial sixty (60) day period and the notice shall indicate the special

circumstances requiring the extension of time and the date by which a decision will be made on review.

- E. The decision on review must be written in a manner calculated to be understood by the Claimant. In the case of an adverse benefit determination, the notification to the Claimant shall set forth, in a manner calculated to be understood by the Claimant, the following:
1. The specific reason or reasons for the denial;
 2. Specific reference to pertinent Plan provisions on which the denial is based; and
 3. A statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant (determined in accordance with Department of Labor regulations section 2560.503-1(m)(8)) to the Claimant's claim for benefits.
- F. If the decision on review is not furnished to the Claimant within the time required in this section, the claim shall be deemed denied on review and the Claimant shall be permitted to exercise the Claimant's right to legal remedy pursuant to the remaining sections of this Claims Procedures article.

6.05. Legal Actions.

- A. A Claimant must submit a written claim and exhaust the preceding claims procedures before legal recourse of any type is sought. Except as explicitly permitted by statute, the Administrator, any appropriate insurance company, HMO, health care service plan or other service provider specified in any Governing Document and the Employer are the only necessary parties to any action or proceeding that involves the Plan or the administration of the Plan. No Participants or their beneficiaries or any person having or claiming to have an interest under the Plan is entitled to notice of process. Any final judgment that is not appealable for any reason (including the passage of time) and that is entered in an action or proceeding involving the Plan is binding and conclusive on the parties to the Plan and all persons having or claiming to have any interest under the Plan.
- B. Judicial review of a Claimant's denied claim shall be limited to a determination of whether there was an abuse of discretion. A

Claimant may commence no legal action more than three (3) years after the final decision denying the claim.

6.06. Administration Pending Resolution Of Disputes.

If a dispute arises with respect to any matter under the Plan, the Administrator may refrain, or direct the appropriate insurance company, HMO, health care service plan or other service provider, from taking any other or further action in connection with the matter involved in the controversy until the dispute has been resolved under the Plan or the appropriate Governing Document. If a dispute arises as to the proper amount or recipient of any payment of benefits, the Administrator, in the Administrator's sole and absolute discretion, may withhold or cause to be withheld such payment until the dispute has been settled by the parties concerned, or the Administrator or the appropriate insurance company, HMO, health care service plan or other service provider may deposit such funds or property with the court in an interpleader action brought under the law of the State having jurisdiction.

6.07. Time.

The filing of claims or receipt of notices of rulings and any event starting a time period shall be deemed to commence with personal delivery signed for by the Claimant or by affidavit of personal service, or the date of actual receipt of certified mail or date returned if delivery is refused or a Claimant has moved without giving the Administrator a forwarding address.

6.08. Other Claims.

Any issue, any claim or any dispute that any Participant or beneficiary may have under the Plan shall be governed by the provisions of this Claims Procedures article as if the issue, claim or dispute were a claim for a specific benefit under the Plan, even if the issue, claim or dispute does not pertain to a specific benefit under the Plan. Therefore, for example, a Claimant must file any such issue, claim or dispute in writing, the claims procedures set forth above shall apply to any such issue, claim or dispute (unless the Administrator, in its sole and absolute discretion, adopts separate claims procedures for any such issue, claim or dispute), the Claimant exhaust the applicable claims procedures before legal recourse of any type is sought, and a Claimant may commence no legal action more than three (3) years after the final decision denying the claim with respect to any such issue, claim or dispute.

ARTICLE 7. AMENDMENTS AND TERMINATION

7.01. No Vested Rights.

No Participant shall have any vested right to any benefits provided under the Plan.

7.02. Amendments.

- A. The Employer reserves the right to amend the Plan, including any Governing Document, at any time, even after the Participant has performed the services required to earn a benefit under this Plan and even after the Participant's termination of employment with the Employer, in its sole and absolute discretion, without the consent of the Administrator, any fiduciary, or any Participant or beneficiary; provided, however, that, except in accordance with the provisions of the Plan, including any Governing Document, or as otherwise specifically permitted by law, no such amendment shall affect any right to claim reimbursement of benefits incurred prior to such amendment. The Employer may make any amendment that it determines to be necessary or desirable, with or without retroactive effect, to comply with the law.
- B. Any such amendment shall be made by means of a written instrument, identified as an amendment of the Plan or the Governing Document, effective as of a specified date, and adopted by the Employer through the action of the Employer's governing body, a designated representative of the Employer's governing body, or anyone with authority from the Employer. No amendment to or restatement of the Plan shall affect any designation of a representative of the Employer's governing body or any delegation of authority from the Employer that is in effect at the time of such amendment or restatement unless the amendment or restatement specifically modifies such designation or delegation.
- C. Notwithstanding the preceding subsections, a Governing Document may be amended, modified, terminated, or replaced by the Employer without the need for a written amendment to the Plan, and such Governing Document shall be deemed to be amended by any such amendment, modification, termination or replacement by the Employer without further action by the Employer.
- D. Notwithstanding any other provision of the Plan or a Governing Document to the contrary, if there is a scrivener's error in properly

transcribing the provisions of the Plan or a Governing Document, it shall not be a violation of the Plan or Governing Document terms to operate the Plan in accordance with its proper provisions, rather than in accordance with the terms of the Plan or the Governing Document, pending correction of the Plan or the Governing Document through amendment. In addition, any provisions of the Plan or a Governing Document improperly added as a result of scrivener's error shall be considered null and void as of the date such error occurred.

- E. In accordance with, but only to the extent required by, the Patient Protection and Affordable Care Act, the Health Care and Education Reconciliation Act of 2010, any subsequent legislation, and the lawful guidance published thereunder, if any amendment to a group health plan constitutes a material modification in any of the terms of the plan or coverage involved (as defined for purposes of section 102 of ERISA) that is not reflected in the most recently provided summary of benefits and coverage, the Administrator shall provide notice of such modification to enrollees not later than sixty (60) days prior to the date on which such modification will become effective.

7.03. Plan Termination.

The Employer reserves the right to terminate the Plan in part or in whole at any time, in its sole and absolute discretion, by appropriate action; provided, however, that such termination shall not affect any right to claim reimbursement of benefits incurred prior to such termination. In the event of the dissolution, merger, consolidation or reorganization of the Employer, the Plan shall terminate unless the Plan is continued by a successor to the Employer.

7.04. Reversions.

- A. In the case of a Plan contribution that is made by the Employer to the trustee of a trust by mistake, the trustee may return such contribution to the Employer as set forth in the trust agreement for the trust.
- B. Upon the termination of the Plan, if there is any balance remaining in any trust maintained for the Plan after the satisfaction of all liabilities to the Participants and their beneficiaries, the trustee of such trust shall treat said balance as set forth in the trust agreement; provided, however, that if the trust agreement does not contain its own provisions regarding

said balance, the trustee of such trust shall return said balance to the Employer.

7.05. Enactment Of Legislation.

If the federal government, any State or other jurisdiction enacts a law that prohibits the continuance of the Plan or any Governing Document, or the Code or other existing laws are interpreted so as to prohibit the continuance of the Plan or any Governing Document, the Plan or the affected Governing Document shall terminate automatically coincident with the effective date of such law or interpretation.

7.06. Merger Or Consolidation Of The Employer.

If the Employer merges or consolidates with or into another entity, or transfers substantially all of the assets of the Employer to another entity, the Plan and any Governing Documents shall be treated as provided for in the agreement governing such transaction and be continued by the surviving entity resulting from such merger or consolidation, or the entity to which the assets have been transferred, and such entity shall succeed to all rights, powers and duties of the Employer under the Plan and the applicable Governing Documents.

ARTICLE 8. MISCELLANEOUS

8.01. No Assignment Of Benefits.

- A. Subject to the exceptions provided below and as otherwise specifically permitted by law, no assets or benefits under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a spouse or former spouse, or for any other relative of the Participant, prior to actually being received by the person entitled to the benefit under the terms of the Plan. The prohibition against assignments includes, but is not limited to, a prohibition of any assignment to any provider of medical services or supplies. Any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy shall be void. Nor shall any such benefits in any manner be liable for, or subject to, the debts, contracts, liabilities, or torts of any person entitled to such benefits.

- B. Although benefits shall not be subject to alienation, a covered person may direct, in writing, that benefits payable to such

covered person be paid instead to an institution in which the covered person is or was hospitalized, to a provider of medical services or supplies furnished or to be furnished to the covered person, or to a person or entity that has provided or paid for, or agreed to provide or pay for, a service or supply covered by the Plan. Any such direction to pay a third party is not an assignment of any right under this Plan or of any legal or equitable right to institute a court proceeding. Any payment by the Plan to such a third party does not make the payee an assignee. Notwithstanding the foregoing, the Plan reserves the right to make payment directly to the covered person and to refuse to honor such direction and assignment. No payment by the Plan pursuant to such direction shall be considered recognition by the Plan of a duty or obligation to pay a provider of medical services or supplies except to the extent the Plan actually chooses to do so.

- C. The prohibitions contained in this No Assignment Of Benefits section shall not apply to the extent a Participant or beneficiary is indebted to the Plan, for any reason, under any provision of the Plan. At the time a distribution is to be made to or for a Participant's or beneficiary's benefit, such proportion of the amount distributed as shall equal such indebtedness shall be retained by the Plan to apply against or discharge such indebtedness. Prior to such application, however, the Administrator must give written notice to the Participant or beneficiary that such indebtedness is to be so paid in whole or part from the Participant's benefit. If the Participant or beneficiary does not agree that the indebtedness is a valid claim against the Participant's benefit, the Participant or beneficiary shall be entitled to a review of the validity of the claim in accordance with procedures provided in the Claims Procedures article.

8.02. Nondiversion.

Except as provided under the Reversions section, above, it shall be impossible for any part of the Plan's assets, if any, to be used for, or diverted to, any purpose other than the exclusive benefit of Participants or their beneficiaries at any time prior to the satisfaction of all rights and liabilities, fixed and contingent, with respect to Participants or their beneficiaries hereunder, either by the operation, amendment, revocation or termination of the Plan. No part of the Participant's benefits under the Plan shall be paid, distributed or made available to the Employer at any time, except as expressly provided by the Plan.

8.03. No Rights To Employer's Assets.

No Participant or beneficiary shall have any rights to, or interest in, any assets of the Employer upon termination of employment or otherwise, except as provided in the Plan, and then only to the extent of the benefits payable under the Plan to such Participant or beneficiary.

8.04. Limitation Of Rights; Employment Relationship.

Nothing contained in the Plan shall be construed as a contract of employment between the Employer and any employee, or as a right of any employee to be continued in the employment of the Employer, or as creating or modifying the terms of an employee's employment, or as a limitation on the right of the Employer to discharge any employee, with or without cause. Unless the law or the Plan explicitly provides otherwise, rights under any other employee benefit plan maintained by the Employer (for example, benefits upon an employee's death, retirement, or other termination) do not create any rights under the Plan to benefits or continued participation. The fact that an individual is eligible to receive benefits under the Plan does not create any rights under any other employee benefit plan maintained by any Employer, unless that plan or the law explicitly provides otherwise.

8.05. Limitation Of Rights Of Participants And Others.

Neither the establishment of the Plan, nor any modifications thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any Participant or any other person any legal or equitable right against the Employer, the Administrator, or its designated representative, except as expressly provided herein or as provided by law.

8.06. Release From Liability.

Any payment to any Participant, or to the Participant's legal representative or beneficiary, in accordance with the provisions of the Plan, shall to the extent thereof be in full satisfaction of all claims hereunder against the Plan, the Employer, the Administrator, any Plan fiduciary, and the insurance company, HMO, health care service plan or other service provider, any of whom may require such Participant, legal representative or beneficiary, as a condition precedent to such payment, to execute a receipt and release therefor in such form as shall be determined by the Employer, the Administrator, any Plan fiduciary, or the insurance company, HMO, health care service plan or other service provider, as the case may be.

8.07. Indemnity.

The Employer hereby agrees to indemnify and hold harmless each present and future Administrator and its employees, and all duly authorized agents, against all liabilities, costs and expenses, including, without limitation, attorneys' fees reasonably incurred by, or imposed upon, such person in connection with, or arising out of, any claims, demands, suits, actions or proceedings in which such indemnified party may be involved, except in the case of the willful misconduct of any such indemnified party. Expenses shall include the cost of reasonable settlement made with the view to curtailment of costs of litigation. The foregoing right of indemnification shall not be exclusive of other rights to which such indemnified party may be entitled as a matter of law.

8.08. Expenses.

Upon written instructions from the Administrator, the Plan shall pay the expenses necessary to carry out the administration of the Plan that are not paid by the Employer.

8.09. Insurers Not A Party.

No insurance company, HMO, health care service plan or other service provider shall be considered a party to the Plan, nor to any future amendment to the Plan. The rights and obligations of any insurance company, HMO, health care service plan or other service provider are those specified in the Governing Document and no provisions of any portion of the Plan shall be deemed to alter or change the terms of such Governing Document.

8.10. State Insurance Laws.

The Plan is designed to be consistent with State insurance laws, to the extent that they are not preempted by any applicable federal law.

8.11. Construction.

No provision of the Plan shall be construed to conflict with any Treasury Department, Department of Labor or Internal Revenue Service regulation, ruling, release or proposed regulation or other order which affects, or could affect, the terms of the Plan. If any provision is susceptible of more than one interpretation, such interpretation shall be given thereto as is consistent with the Plan being in conformity with the Code and administered in conformity with all federal or State laws that apply to the Plan.

8.12. Headings.

The headings and subheadings of the Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

8.13. Uniformity.

All provisions of the Plan shall be interpreted and applied in a uniform, nondiscriminatory manner.

8.14. Gender And Number.

Any reference in the masculine gender herein shall be deemed to also include the feminine gender, unless expressly provided otherwise. Wherever appropriate, any reference in this document in the singular shall include the plural and any reference in the plural shall include the singular.

8.15. Controlling Law.

Unless otherwise provided in the Plan, the Plan shall be construed and enforced according to the laws of the United States of America to the extent applicable, otherwise by the laws of California including California's choice-of-law rules, except to the extent those laws would require application of a State other than California.

8.16. Severability.

In the event that any provisions of this document shall be held illegal or invalid for any reason by operation of law or a court of competent jurisdiction, said illegality or invalidity shall not affect the remaining legal and valid provisions of this document. This document shall continue as if said illegal or invalid provisions had not been included herein either initially, or beyond the date it is first held to be illegal or invalid; provided the basic purposes hereof can be effected through the remaining valid and legal provisions.

8.17. Waiver.

Failure to insist upon strict compliance with any provision of the Plan shall not be deemed to be a waiver of such provision or any other provision; waiver of breach of any provision of the Plan shall not be deemed to be a waiver of any other provision or subsequent breach of such provision. No term, condition, or provision of the Plan shall be deemed waived unless the purported waiver is in a writing signed by the

party to be charged. No written waiver shall be deemed a continuing waiver unless so specifically stated in the writing, and such waiver shall operate only as to the specific term, condition, or provision waived.

8.18. Entire Document.

This document and any documents incorporated herein by reference, exhibits, appendices or supplements hereto shall constitute the entire document and shall govern the rights, liabilities and obligations of the parties under the Plan, except as it may be modified by a duly authorized and adopted amendment. No statements contained in any other writing or communication, including, but not limited to, a summary plan description or a summary of material modifications, shall constitute the terms of the Plan.

Executed this _____ day of _____, 2018.

Washington Township Health Care
District

By: _____

Title: _____