

**PENSION PROTECTION ACT ("PPA") AND HEROES EARNINGS ASSISTANCE AND RELIEF TAX  
ACT OF 2008 ("HEART") AMENDMENT**

**ARTICLE I  
PREAMBLE**

- 1.1 Adoption by Service Provider.** The Service Provider, on behalf of the Employer, adopts this amendment to reflect recent law changes. The effective date of the adoption will be the first Plan Year beginning after December 31, 2009.
- 1.2 Employer's Election.** The Employer adopts all the default provisions of this Amendment except as elected in Article II. If the Employer restates their Plan, this Amendment will remain in effect until a document incorporating the provisions of PPA and the Heart Act is adopted or if the provisions become obsolete.
- 1.3 Supersession of inconsistent provisions.** This Amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with those of this Amendment.

**ARTICLE II  
EMPLOYER ELECTIONS**

The Employer only needs to elect an option offered in Sections 2.2 through 2.6 if they wish to override the default provisions as elected by the Service Provider. If no selections are made the default provisions are adopted and the Employer does not need to execute this Amendment.

- 2.1 Default provisions.** The following defaults have been elected by the Service Provider:
- a. Effective for plan years beginning after December 31, 2009, nonspouse beneficiary rollovers are allowed on distributions.
  - b. Unforeseeable emergency distributions to a Participant's beneficiary are not allowed.
  - c. The option to permit in-service distributions at age 62 (with respect to amounts attributable to a money purchase pension plan, target benefit plan, or any other defined contribution plan that has received a transfer of assets from a pension plan) is not adopted.
  - d. Continued benefit accruals pursuant to the HEART Act provisions are not permitted.
- 2.2 Non-spousal rollovers (Article V)** Non-spousal rollovers will be permitted after December 31, 2006 unless elected otherwise in the section below. Section V of this Amendment provides that all such distributions are permitted after December 31, 2009.
- a. The following option is elected instead of the default:
    - 1.  Non-spousal rollovers are not allowed.
    - 2.  Non-spousal rollovers are allowed effective \_\_\_\_\_ (not earlier than January 1, 2009 but no later than January 1, 2011).
- 2.3 Unforeseeable Emergencies (Article VI).** Distributions for unforeseeable emergencies will not be paid to a Participant's beneficiary unless elected below:

- a.  Unforeseeable emergency distributions are allowed for beneficiary expenses pursuant to Reg. Sections 1.457-6(c)(2)(i), (ii) and (iii).

**2.4 In-service distributions (Article VII).** In-service distributions at age 62 will not be allowed unless elected below:

- a.  In-service distributions will be allowed for Participants at age 62 (generally applies only for money purchase plans but may apply to any other defined contribution plans that have received a transfer of assets from a pension plan including a target benefit plan) effective as of the first day of the 2010 Plan Year unless another date is elected below:

- 1.  \_\_\_\_\_ may not be earlier than the first day of the 2007 Plan Year)

OR,

- 2.  The Plan already provides for in-service distributions and the restrictions set forth in the Plan (as to age and distribution frequency) apply to those distributions made at age 62.

**2.5 Continued Benefit Accruals (Article XIV)** Continued benefit accruals for the HEART Act (Section 14.2) will not apply unless elected below:

- a.  The provisions of Amendment Section 14.2 apply.

**2.6 Final 415 Regulations.** Regular compensation for services, commissions, bonuses or other similar payments that would have been payable to a Participant before termination, are automatically included in compensation if paid within the later of (i) end of the Plan Year in which separation of service occurs or (ii) within two and one-half (2 ½) months after separation of service. In addition, the following amounts paid within the same period will be Compensation (select all that apply):

- a.  payments for accrued leave, including sick leave and/or vacation time, the Participant would have had available had employment continued.
- b.  amounts received from a non-qualified, unfunded deferred compensation plan that would have been payable if employment had continued but only to the extent includible in gross income.

**ARTICLE III  
PARTICIPANT DISTRIBUTION NOTIFICATION**

**3.1 180-day notification period.** For any distribution notice issued in Plan Years beginning after December 31, 2006, any reference to the 90-day maximum notice period prior to a distribution pursuant to Code Sections 402(f), 411(a)(11) or 417 will become 180 days.

**3.2 Notice of right to defer distribution.** For any distribution notice issued in Plan Years beginning after December 31, 2006, the description of a Participant's right, if any, to defer receipt of a distribution will describe the consequences of failing to defer receipt of the distribution. For notices issued before the 90<sup>th</sup> day after the issuance of Treasury regulations (unless future Revenue Service guidance requires otherwise) the notice will include a description indicating the investment options available under the Plan, including any applicable fees, if the Participant elects to defer distribution.

**ARTICLE IV  
ROLLOVER OF AFTER-TAX/ROTH AMOUNTS**

- 4.1** Direct rollover to qualified plan/403(b) plan. If applicable, for taxable years beginning after December 31, 2006, a Participant may elect to transfer employee (after-tax) or Roth elective deferral contributions by means of a direct rollover to a qualified plan or to a 403(b) plan that agrees to account separately for amounts so transferred, including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income.

**ARTICLE V  
DIRECT ROLLOVER OF NON-SPOUSAL DISTRIBUTION**

- 5.1 Non-spouse beneficiary rollover right.** For distributions after December 31, 2006, and unless otherwise elected in Section 2.3 of this Amendment, for distributions after December 31, 2006, a non-spouse beneficiary who is a “designated beneficiary” under Code Section 401(a)(9)(E) and the regulations hereunder, by a direct trustee-to-trustee transfer (“direct rollover”) may roll over all or any portion of his or her distribution to an individual retirement account the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.
- 5.2 Certain requirements not applicable.** Although a non-spouse beneficiary may roll over directly a distribution as provided in Section 5.1, any distribution made prior to January 1, 2010 is not subject to the direct rollover requirements of Code Section 401(a)(31) (including Code Section 401(a)(31)(B), the notice requirements of Code Section 401(f) or the mandatory withholding requirements of Code Section 3405(c)). If a non-spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a “60-day” rollover.
- 5.3 Trust beneficiary.** If the Participant’s named beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the Trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code Section 401(a)(9)(E).
- 5.4 Required minimum distributions not eligible for rollover.** A non-spouse beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other Revenue Service guidance. If the participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. Section 1.401(a)(9)-3, A-4(c) in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary’s distribution.

**ARTICLE VI  
DISTRIBUTION TO BENEFICIARY FOR UNFORESEEABLE EMERGENCY**

- 6.1 Beneficiary based distribution.** If elected in Amendment Section 2.3.a, Participants faced with an unforeseeable emergency pursuant to Treas. Reg. Section 1.457-6(c)(2), includes a severe financial hardship of the Participant’s primary beneficiary under the Plan. Such event must be one that would constitute an unforeseeable emergency if it occurred with respect to the Participant’s spouse or dependent as defined by and within the requirements established by the Internal Revenue Code. For purposes of this Article, a Participant’s “primary beneficiary under the Plan” is an individual who is named as a beneficiary under the Plan and has an unconditional right to all or a portion of the Participant’s account balance under the Plan upon the Participant’s death.

**ARTICLE VII  
IN-SERVICE PENSION DISTRIBUTIONS**

- 7.1 Age 62 distributions.** If elected in Amendment Section 2.4.a, then beginning as of the date specified in such Section, if the Plan is a money purchase pension plan, a target benefit plan or any other defined contribution plan that has received a transfer of assets from a pension plan, a participant who has attained age 62 and who has not separated from employment may elect to receive a distribution of his or her vested account balance (or in case of a transferee plan, of the transferred account balance).

**ARTICLE VIII  
DIRECT ROLLOVER TO ROTH IRA**

- 8.1 Roth IRA rollover.** For taxable years beginning after December 31, 2007, a Participant may elect to transfer distributions from a qualified plan, 403(b) or governmental 457(b) directly into a Roth IRA. The conversion will be subject to the Roth IRA conversion rules and the taxable portion of the rollover amount is taxed at the time of the conversion.

**ARTICLE IX  
QUALIFIED DOMESTIC RELATIONS ORDERS (QDRO's)**

- 9.1 Permissible QDRO's.** Effective April 6, 2007, a domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order ("QDRO") will not fail to be a QDRO: (i) solely because the order is issued after or revises another domestic relations order or QDRO; or (ii) solely because the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.
- 9.2 Other QDRO requirements apply.** A domestic relations order described in the Basic Plan Document is subject to the same requirements and protections that apply to QDRO's.

**ARTICLE X  
PUBLIC SAFETY EMPLOYEES**

- 10.1 Health and Long-term care Insurance.** For Plan Years beginning after December 31, 2009, a Participant who is an Eligible Retired Public Safety Officer may elect to receive a tax free distribution from the Plan each calendar year up to the lesser of (1) the amount paid by such Participant for Qualified Health Insurance Premiums of the Participant, his or her spouse, or dependents (as defined in IRC Section 152) for such taxable year, or (2) \$3000.00. Such distribution must be made from one or more accounts or sources that would otherwise be taxable when distributed, and payment of the premiums must be made directly to the provider of the accident or health insurance plan or qualified long-term care insurance contract by deduction from a distribution from the Plan.

For purposes of this amendment, the term "Eligible Retired Public Safety Officer" means an individual who, by reason of Disability or attainment of Normal Retirement Age, is separated from service as a Public Safety Officer with the Employer. The term "Public Safety Officer" shall have the same meaning given such term by section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(9)(A)). Finally, the term "Qualified Health Insurance Premiums" means premiums for coverage for the Eligible Retired Public Safety Officer, his spouse, and dependents, by an accident or health insurance plan or Qualified Long-Term Care Insurance Contract (as defined in IRC Section 7702B(b)).

This Amendment has been executed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Employer: \_\_\_\_\_

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

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

**ARTICLE XIV  
HEART ACT PROVISIONS**

- 14.1 Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death.
- 14.2 Benefit accrual.** If the Employer so elects in Amendment Section 2.5, then for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled on or after January 1, 2007 (as defined under the terms of the Plan) while performing qualified military service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.
- a. Determination of benefits. The Plan will determine the amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under this Section 14.2 for purposes of applying paragraph Code Section 414(u)(8)(c) on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of: (i) the 12-month period of service with the Employer immediately prior to qualified military service; or (ii) if service with the Employer is less than 12-months, the actual length of continuous service with the Employer.
- 14.3 Differential wage payments.** For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), is treated as an employee of the employer making the payment, (ii) the differential wage payment is treated as compensation, and (iii) the Plan is not treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(c) by reason of any contribution or benefit which is based on the differential wage payment.
- 14.4 Severance from employment.** Notwithstanding Section 14.3(i), an individual is treated as having been severed from employment during any period the individual is performing service in the uniformed services described in Code Section 3401(h)(2)(A).
- a. Nondiscrimination requirement. Section 14.3(iii) applies only if all employees of the Employer performing service in the uniformed services as previously described are entitled to receive differential wage payments (as defined in Code Section 3401(h)(2)) on a reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments on reasonably equivalent terms.

Keri Watt

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NOTE: The Employer only needs to execute this Amendment if an election has been made in Article II.

This Amendment has been executed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Employer: \_\_\_\_\_

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

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