



POST ACTION AGENDA NOTICE

REVISED: April 19, 2016

NOTICE OF THE EXECUTIVE AND REGULAR SESSIONS OF THE FOUNTAIN HILLS TOWN COUNCIL

Mayor Linda M. Kavanagh

Councilmember Dennis Brown
Councilmember Nick DePorter
Councilmember Cassie Hansen

Vice Mayor Henry Leger
Councilmember Alan Magazine
Councilmember Cecil A. Yates

TIME: 5:00 P.M. – EXECUTIVE SESSION
(Executive Session will be held in the Fountain Conference Room - 2nd floor)
6:30 P.M. – REGULAR SESSION

WHEN: THURSDAY, APRIL 21, 2016

WHERE: FOUNTAIN HILLS COUNCIL CHAMBERS
16705 E. AVENUE OF THE FOUNTAINS, FOUNTAIN HILLS, AZ

Councilmembers of the Town of Fountain Hills will attend either in person or by telephone conference call; a quorum of the Town's various Commission, Committee or Board members may be in attendance at the Council meeting.

Notice is hereby given that pursuant to A.R.S. § 1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the Town Council are audio and/or video recorded and, as a result, proceedings in which children are present may be subject to such recording. Parents, in order to exercise their rights may either file written consent with the Town Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the Town will assume that the rights afforded parents pursuant to A.R.S. § 1-602.A.9 have been waived.

PROCEDURE FOR ADDRESSING THE COUNCIL

Anyone wishing to speak before the Council must fill out a speaker's card and submit it to the Town Clerk prior to Council discussion of that Agenda item. Speaker Cards are located in the Council Chamber Lobby and near the Clerk's position on the dais.

Speakers will be called in the order in which the speaker cards were received either by the Clerk or the Mayor. At that time, speakers should stand and approach the podium. Speakers are asked to state their name and whether or not they reside in Fountain Hills (*do not provide a home address*) prior to commenting and to direct their comments to the Presiding Officer and not to individual Councilmembers. Speakers' statements should not be repetitive. *If a speaker chooses not to speak when called, the speaker will be deemed to have waived his or her opportunity to speak on the matter. Speakers may not (i) reserve a portion of their time for a later time or (ii) transfer any portion of their time to another speaker.*

If there is a Public Hearing, please submit the speaker card to speak to that issue during the Public Hearing.

Individual speakers will be allowed **three** contiguous minutes to address the Council. Time limits may be waived by (i) *discretion of the Town Manager upon request by the speaker not less than 24 hours prior to a Meeting*, (ii) *consensus of the Council at Meeting* or (iii) *the Mayor either prior to or during a Meeting*. Please be respectful when making your comments. If you do not comply with these rules, you will be asked to leave.

EXECUTIVE SESSION AGENDA

- **CALL TO ORDER** – Mayor Linda M. Kavanagh **5:00 PM**
- 1. **ROLL CALL AND VOTE TO GO INTO EXECUTIVE SESSION:** Pursuant to: (1) A.R.S. § 38-431.03(A)(3), discussion or consultation for legal advice with the attorney or attorneys of the public body, (2) A.R.S. § 38-431.03(A)(4), discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body’s position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation, and (3) discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body (*Specifically, (i) the Theater Lease; and (ii) the Town Manager’s performance evaluation.*)
- 2. **ADJOURNMENT. 6:23 PM**

REGULAR SESSION AGENDA

- **CALL TO ORDER AND PLEDGE OF ALLEGIANCE** – Mayor Linda M. Kavanagh **6:36 PM**
- **INVOCATION** – Jared A. Smout, 2nd Counselor, Bishopric, Fountain Hills Ward;
The Church of Jesus Christ of Latter-day Saints
- **ROLL CALL** – Mayor Linda M. Kavanagh
- **MAYOR’S REPORT**
 - i) The Mayor will read a **PROCLAMATION** recognizing May 5, 2016 as Fountain Hills Day of Prayer.
- **SCHEDULED PUBLIC APPEARANCES/PRESENTATIONS**
 - i) Mayor Kavanagh may review **RECENT EVENTS** attended relating to Economic Development.
 - ii) Recognition of the Fountain Hills High School Lady Falcons and Coach Mabery for winning the Division III State Soccer Championship for the second time in three years.
 - iii) Update by Director Shelly Mowrey regarding the Fountain Hills Coalition accomplishments, findings from the focus group, and a special recognition of MCSO School Resource Officer Jill Ochsner.
 - iv) Update by SPAC Chair Dana Saar regarding the Vision Fountain Hills survey.

CALL TO THE PUBLIC

Pursuant to A.R.S. §38-431-01(H), public comment is permitted (not required) on matters not listed on the agenda. Any such comment (i) must be within the jurisdiction of the Council and (ii) is subject to reasonable time, place, and manner restrictions. The Council will not discuss or take legal action on matters raised during “Call to the Public” unless the matters are properly noticed for discussion and legal action. At the conclusion of the call to the public, individual Councilmembers may (i) respond to criticism, (ii) ask staff to review a matter or (iii) ask that the matter be placed on a future Council agenda.

CONSENT AGENDA ITEMS - APPROVED AS LISTED

All items listed on the Consent Agenda are considered to be routine, non-controversial matters and will be enacted by one motion and one roll call vote of the Council. All motions and subsequent approvals of consent items will include all recommended staff stipulations unless otherwise stated. There will be no separate discussion of these items unless a Councilmember or member of the public so requests. If a Councilmember or member of the public wishes to discuss an item on the consent agenda, he/she may request so prior to the motion to accept the Consent Agenda or with notification to the Town Manager or Mayor prior to the date of the meeting for which the item was scheduled. The items will be removed from the Consent Agenda and considered in its normal sequence on the Agenda.

1. **CONSIDERATION** of approving the TOWN COUNCIL MEETING MINUTES from April 7, 2016.
2. **CONSIDERATION** of approving a LIQUOR LICENSE APPLICATION FOR AGENT CHANGE - ACQUISITION OF CONTROL submitted by Samir Sadik Yono, owner of Sports Gourmet LLC, DBA M All American Grill, located At 16872 E Ave of the Fountains, #104-106, Fountain Hills, AZ. This is for a series 12 (Restaurant).
3. **CONSIDERATION** of approving RESOLUTION 2016-09, adopting the Town of Fountain Hills Government Money Purchase Plan & Trust Adoption Agreements with the International City/County Management Association Retirement Corporation for the Town Manager and Town employees.
4. **CONSIDERATION** of approving the FINAL REPLAT of 11208 N. Indigo Drive, AKA Plat 203, Block 8, Lot 2 (APN 176-07-279) into two lots labeled Lot 2A and Lot 2B. Case # S 2016-05
5. **CONSIDERATION** of approving a PERMANENT ENCROACHMENT PERMIT, for Jim Wallace dba Saddle Bronc Grill, to place the "Bucking Horse and Rider" sculpture within the Public Alley and Saguaro Boulevard Rights-of-Way, just north of the existing Saddle Bronc Grill building.

***MAYOR ANNOUNCED ITEM #9 HAD BEEN REMOVED FROM THE AGENDA. REGULAR AGENDA ITEMS**

6. **DISCUSSION WITH POSSIBLE DIRECTION TO STAFF** regarding a possible COMMUNITY GARDEN. **STAFF TO PREPARE LEASE FOR LAND ADJACENT TO LIBRARY AS COMMUNITY GARDEN, ASSIST WITH WATER METER INSTALLATION & SITE PREP**
7. **CONSIDERATION** of PROFESSIONAL SERVICES AGREEMENT C2016-250 with Hunt & Caraway Architects, LTD for the Fire Station No. 2 architectural services in the amount of \$315,197.20. *This item was tabled from the April 7, 2016, Council meeting and has been moved to the May 5, 2016 Council meeting.* **NO ACTION TAKEN**
8. **DISCUSSION WITH POSSIBLE DIRECTION TO STAFF** relating to any item included in the League of Arizona Cities and Towns weekly LEGISLATIVE BULLETIN or relating to any ACTION PROPOSED OR PENDING BEFORE THE STATE LEGISLATURE. **NO ACTION TAKEN**
9. * **CONSIDERATION** of REMOVING Planning and Zoning Commission Chair Michael Archambault as per the Council Rules of Procedure; Section 9, Boards, Commissions, and Committees; Subsection 9.5, Terms, Vacancies, Removal; (F) Removal. **NO ACTION TAKEN**

10. **COUNCIL DISCUSSION/DIRECTION** to the Town Manager.

Item(s) listed below are related only to the propriety of (i) placing such item(s) on a future agenda for action or (ii) directing staff to conduct further research and report back to the Council:

i.) *None.* **COUNCILMEMBER BROWN: DISCUSS ELIMINATING DRIVEWAYS AND UTILITY CUTS FROM DISTURBANCE CALCULATIONS**

11. **SUMMARY OF COUNCIL REQUESTS** and **REPORT ON RECENT ACTIVITIES** by the Mayor, Individual Councilmembers, and the Town Manager. **NO ACTION TAKEN**

12. **ADJOURNMENT. 7:31 PM**

DATED this 14th day of April, 2016.


Bevelyn J. Bender, Town Clerk

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i.) *None.*

11. **SUMMARY OF COUNCIL REQUESTS and REPORT ON RECENT ACTIVITIES** by the Mayor, Individual Councilmembers, and the Town Manager.

12. **ADJOURNMENT.**

DATED this 14th day of April, 2016.


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TOWN OF FOUNTAIN HILLS PROCLAMATION

Whereas, the Town of Fountain Hills will join together with the entire country on May 5, 2016, to celebrate the 65th anniversary of the National Day of Prayer; and

Whereas, Congress, by Public Law 100-307, has called on our citizens to reaffirm the role of prayer in our society and to honor the religious diversity that our freedom permits by recognizing a National Day of Prayer; and

Whereas, we are ever mindful of the heroic men and women of our Armed Forces, especially those serving abroad and in harm's way; and

Whereas, we pray for God's blessings for our governments at town, state, and national levels to shower us with strength and wisdom in order to meet the challenges before us and to work together to bring hope for our community and to enhance the well-being of all citizens and families of Fountain Hills; and

Whereas, and we pray for strength and Divine direction in our educational systems, community businesses, media, and our places of worship; and

Whereas, uniting in prayer gives all people of faith, regardless of their denominations or religions, an opportunity to join fellow citizens in celebrating the power and love of God and our perpetual responsibility to Him and to others.

NOW, THEREFORE, I, Linda M. Kavanagh, Mayor of the Town of Fountain Hills, Arizona do hereby proclaim May 5, 2016, as **FOUNTAIN HILLS DAY OF PRAYER**.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the Town of Fountain Hills, Arizona, this 28th day of March, 2016.




Linda M. Kavanagh, Mayor

Attest:


Bevelyn J. Bender, Town Clerk



THE TOWN OF FOUNTAIN HILLS

proudly presents this

CERTIFICATE OF ACHIEVEMENT

in recognition of the

**FOUNTAIN HILLS HIGH SCHOOL LADY FALCONS
AND COACH MABERY FOR WINNING THE
DIVISION III STATE SOCCER CHAMPIONSHIP
FOR THE SECOND TIME IN THREE YEARS**

DATED 21st day of April, 2016


Linda M. Kavanagh, Mayor

ATTEST: 
Bevelyn J. Bender, Town Clerk



TOWN OF FOUNTAIN HILLS TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 4/7/2016

Meeting Type: Regular Session

Agenda Type: Consent

Submitting Department: Administration

Staff Contact Information: Bevelyn J. Bender, Town Clerk; 480-816-5115; bbender@fh.az.gov

Council Goal:

Strategic Values: Civic Responsibility

C3 Solicit feedback in decision-making

REQUEST TO COUNCIL (Agenda Language): CONSIDERATION of approving the TOWN COUNCIL MEETING MINUTES from April 7, 2016.

Applicant: NA

Applicant Contact Information:

Property Location:

Related Ordinance, Policy or Guiding Principle: A.R.S. §38-431.01

Staff Summary (background): The intent of approving previous meeting minutes is to ensure an accurate account of the discussion and action that took place at that meeting for archival purposes. Approved minutes are placed on the Town's website in compliance with state law.

Risk Analysis (options or alternatives with implications):

Fiscal Impact (initial and ongoing costs; budget status):

Budget Reference (page number):

Funding Source: NA

If Multiple Funds utilized, list here:

Budgeted; if No, attach Budget Adjustment Form: NA

Recommendation(s) by Board(s) or Commission(s):

Staff Recommendation(s): Approve

List Attachment(s): None

SUGGESTED MOTION (for Council use): Move to approve the consent agenda as listed

Prepared by:

Bevelyn J. Bender

Bevelyn Bender, Town Clerk

3/28/2016

Approved:

Grady E. Miller

Grady E. Miller, Town Manager

3/29/2016



TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 4/21/2016

Meeting Type: Regular Session

Agenda Type: Consent

Submitting Department: Administration

Staff Contact Information: Sonia Kukkola/Financial Services Technician (480)-816-5136

Strategic Planning Goal: Not Applicable (NA)

Operational Priority: Not Applicable (NA)

REQUEST TO COUNCIL (Agenda Language): Consideration of a LIQUOR LICENSE APPLICATION FOR ACQUISITION OF CONTROL AND AGENT CHANGE submitted by Samir Sadik Yono, Owner/Agent of Sports Gourmet LLC DBA M All American Grill, located at 16872 E Ave of the Fountains #104-106, Fountain Hills, AZ.

Applicant: Samir Sadik Yono

Applicant Contact Information: 480-287-5900

Owner: Samir Sadik Yono

Owner Contact Information: 480-370-0023

Property Location: 16872 E Ave of the Fountains #104-106 Fountain Hills, AZ

Related Ordinance, Policy or Guiding Principle: A.R.S. §4-201; 4-202; 4-203 & 4-205 and R19-1-102 and R19-1-311.

Staff Summary (background): CONSIDERATION of approving a LIQUOR LICENSE APPLICATION FOR ACQUISITION OF CONTROL AND AGENT CHANGE submitted by Samir Sadik Yono, Owner/Agent of Sports Gourmet LLC DBA All American Grill located at 16872 E Ave of the Fountains #104-106, Fountain Hills, AZ.

Risk Analysis (options or alternatives with implications): N/A

Fiscal Impact (initial and ongoing costs; budget status): N/A

Budget Reference (page number): N/A

Funding Source: NA

If Multiple Funds utilized, list here:

Budgeted; if No, attach Budget Adjustment Form: NA

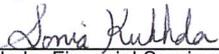
Recommendation(s) by Board(s) or Commission(s): N/A

Staff Recommendation(s): N/A

List Attachment(s): Front page of the application and staffs' recommendation

SUGGESTED MOTION (for Council use): Move to approve the LIQUOR LICENSE APPLICATION FOR ACQUISITION OF CONTROL AND AGENT CHANGE submitted by Samir Sadik Yono, Owner/Agent of Sports Gourmet LLC DBA All American Grill located at 16872 E Ave of the Fountains #104-106, Fountain Hills, AZ.

Prepared by:


Sonia Kukkola, Financial Services Technician 4/7/2016

Director's Approval:


Craig Rudolph, Finance Director 4/7/2016

Approved:


Grady E. Miller, Town Manager 4/7/2016

SA
4-503 & 4-505
APR 11 2016



03-21-16 P12:40 OUT

Posted 3-29-16 Council 4246
Down 4-19-16
DLIC USE ONLY

State of Arizona
Department of Liquor Licenses and Control
800 W. Washington 5th Floor
Phoenix, AZ 85007
(602) 542-5141

Date Processed:	03-17-16
CSR:	JB
60th Day:	05-16-16

16 MAR 17 04 PM 148

APPLICATION FOR AGENT CHANGE – ACQUISITION OF CONTROL – RESTRUCTURE

NOTE: 1) The fee for an agent change MUST be submitted with this application: \$100.00 for the first application and \$50.00 for each additional application, not to exceed \$1,000.00. (A.R.S. 4-209.H) NOTE 2) the \$100.00 fee for restructure/acquisition of control MUST be submitted with this application. (A.R.S. 4-209.A)

SECTION 1

Check the appropriate boxes

<input checked="" type="checkbox"/> Agent Change Complete Sections 1,2,3,4,5 & 7	<input checked="" type="checkbox"/> Acquisition of Control Complete Sections 1,2, 3 & 7	<input type="checkbox"/> Restructure Complete Sections 1,2,3,6 & 7
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SECTION 2

(COMPLETE THIS SECTION FOR AGENT CHANGE, ACQUISITION OF CONTROL OR RESTRUCTURE)

- Name: YONO, SAMIR SADIK 12078100
(EXISTING AGENT OR NEW AGENT) Last First Middle Liquor License #
- Owner Name: SPORTS GOURMET LLC Corp File #: L15396970
(Exactly as it appears on Liquor License) (If applicable)
- Business Name: M ALL AMERICAN GRILL Email: Redact
(Exactly as it appears on Liquor License)
- Business Location Address: 16872 E AVE OF THE FOUNTAINS #104-106 FOUNTAIN HILLS MARICOPA 85268
(Do not use P.O. Box Number) City COUNTY Zip
- Is the Business located within the incorporated limits of the above City or Town? Yes No
- Does the Business location address have a street address for a City or Town but is actually in the boundaries of another City, Town or Tribal Reservation? Yes No If Yes, what City, Town or Tribal Reservation is this Business located in: _____
- Mailing Address: REDACTED FOUNTAIN HILLS, AZ 85268
City State Zip
- Business Phone: 480-287-5900 Daytime Contact Phone REDACTED
- Does this transaction involve the sale of any portion of the percentage of ownership or corporate stock? Yes No If yes, submit a certified copy of minutes.
- Has there been any change of Controlling Persons? Yes No If yes, submit a copy of the minutes, amended articles of organization and/or amended operating agreement showing change

SECTION 3

(COMPLETE THIS SECTION FOR AGENT CHANGE, ACQUISITION OF CONTROL OR RESTRUCTURE)

Each new person listed in section III must submit a questionnaire (form LIC0101) and a Department approved fingerprint card which may be obtained at the Department of Liquor. A Controlling Person already disclosed to the Department is not required to submit a questionnaire.

1. List all Controlling Persons to be disclosed, current and new.

New	Last	First	Middle	Title	Address	City	State	Zip
<input type="checkbox"/>	YONO,	MICHAEL	SADIK	MEMBER	REDACTED	FOUNTAIN HILLS,	AZ	85268
<input checked="" type="checkbox"/>	YONO,	SAMIR	SADIK	MANAGER	REDACTED	FOUNTAIN HILL,	AZ	85268
<input checked="" type="checkbox"/>	YONO,	NASRAT	SADIK MANSOUR	MEMBER	REDACTED	FOUNTAIN HILLS,	AZ	85268
<input type="checkbox"/>								

(ATTACH ADDITIONAL SHEET(S) IF NECESSARY)

2. List stockholders, percentage owners and/or Controlling Members owning 10% or more

New	Last	First	Middle	% Owned	Address	City	State	Zip
<input type="checkbox"/>	YONO,	MICHAEL	SADIK	33%	REDACTED	FOUNTAIN HILLS,	AZ	85268
<input checked="" type="checkbox"/>	YONO,	SAMIR	SADIK	34%	REDACTED	FOUNTAIN HILL,	AZ	85268
<input checked="" type="checkbox"/>	YONO,	NASRAT	SADIK MANSOUR	33%	REDACTED	FOUNTAIN HILLS,	AZ	85268
<input type="checkbox"/>								

(ATTACH ADDITIONAL SHEET(S) IF NECESSARY)

If the ownership is owned by another entity, ATTACH AN OWNERSHIP FLOWCHART SHOWING THE OFFICERS, MEMBERS, CONTROLLING PERSON AND 10% OR MORE OWNERS FOR THE ENTITIES. Attach additional sheets as necessary in order to disclose all persons.

SECTION 4

(COMPLETE THIS SECTION FOR AGENT CHANGE)

1. As an Agent, will you be physically present and operating the licensed premise? [] Yes [] No
If you answered YES, you must provide a copy of your Basic and Management Training Certificate obtained from a Department approved Liquor Law training provider BEFORE YOUR APPLICATION FOR AGENT ACQUISITION OF CONTROL OR RESTRUCTURE CAN BE SUBMITTED. If you answered NO, go to question 2.

2. Is there a current Manager at this license premises disclosed to the Department with the current Basic and Management Training Certificate? [] Yes [] No

If yes, Name of current Manager: Last First Middle

Basic Training [] Yes [] No

Management Training [] Yes [] No

If "NO" for 1 and 2, a Manager with a current Basic and Management Training Certificate obtained from a Department approved Liquor Law training provider must be submitted within 30 days after filing the application for Agent Change, Acquisition of Control or Restructure.

SECTION 5

(COMPLETE THIS SECTION FOR AGENT CHANGE)

To be completed by the INDIVIDUAL OR EXISTING AGENT OR CORPORATE OFFICER OR LLC. CONTROLLING MEMBER:

1. License # _____

2. Current Agent Name: (Exactly as it appears on license) Last First Middle

I, (Print full name) _____, hereby consent to the appointment of Agent for this license. I agree to immediately assign a new Agent in the event that I am unable to discharge the duties of Agent for this license. I have not been convicted of a felony in the last five (5) years.

X _____ (Controlling Person/Existing Agent)

State of _____ County of _____ The foregoing instrument was acknowledged before me this

My commission expires on: _____

Day of Month Year

Signature of NOTARY PUBLIC

SECTION 6

(COMPLETE THIS SECTION FOR RESTRUCTURE)

Is there more than one licensed premises involved? [] YES [] NO

If YES, SEPARATE APPLICATIONS must be filed and fees paid for each license/location.

Type of current ownership:

Type of new ownership:

- [] J.T.W.R.O.S.
[] INDIVIDUAL
[] PARTNERSHIP
[] CORPORATION
[] LIMITED LIABILITY CO.
[] MANAGEMENT CO.
[] TRIBE
[] TRUST
[] OTHER (Explain) _____

- [] J.T.W.R.O.S.
[] INDIVIDUAL
[] PARTNERSHIP
[] CORPORATION
[] LIMITED LIABILITY CO.
[] MANAGEMENT CO.
[] TRIBE
[] TRUST
[] OTHER (Explain) _____

SECTION 7

(COMPLETE THIS SECTION FOR AGENT CHANGE, ACQUISITION OF CONTROL OR RESTRUCTURE)

To be completed by Controlling Person or existing Agent (if no agent changes) OR NEW Agent if applying for Agent change as listed in Section 2 Question 1.

I, (Print full name) SAMIR SADIK YONO, hereby declare that I am the APPLICANT filing this application. I have read the application and the contents and all statements are true, correct and complete.

X _____ (Controlling Person/Existing Agent)

State of ARIZONA County of MARICOPA The foregoing instrument was acknowledged before me this

My commission expires on:



17 of MARCH 2016 Day Month Year Signature of NOTARY PUBLIC Jennifer Benson

**TOWN OF FOUNTAIN HILLS
ADMINISTRATION DEPARTMENT
INTER OFFICE MEMO**

TO:	<i>(as applicable)</i> <ul style="list-style-type: none"> • Streets Division • Fire Department • Building Division • Community Services • Development Services • Law Enforcement • Licensing 	DATE:	3/29/16
FR:	Sonia Kukkola, Financial Services Technician	RE:	Liquor License Application Acquisition of control - Agent change

Attached is an Application for Agent Change-Acquisition of Control - for staff review.

Review the application, then sign, indicating staff's recommendation for approval (with or without stipulations) or denial.

If staff's recommendation is to deny and/or there are stipulations for approval, please attach a memo that specifies the reasoning and the memo will be forwarded on to the Town Council for their consideration of this application.

Name of Organization: Sports Gourmet LLC DBA M All American Grill 16872 E Ave of the Fountains #104-106, Fountain Hills AZ 85268

Applicant: Samir Sadik Yono

Date(s) of Event: N/A

Date Application Received: 3/21/16 **Town Council Agenda Date:** 04/21/16

STAFF REVIEW AND RECOMMENDATION:

Department/Division	Staff Member	Approved	Denied	N/A
Building Safety	Jason Field	X		
Community Services	Rachel Goodwin	X		
Development Services	Bob Rodgers	X		
Fire Department	Dave Ott	X		
Law Enforcement	Mark Fisher	X		
Licensing	Sonia Kukkola	X		
Street Department	Justin Weldy	X		

Attach report for denial or any recommendation requiring stipulations.



TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 4/21/2016

Meeting Type: Regular Session

Agenda Type: Consent

Submitting Department: Administration

Staff Contact Information: David Trimble, Admin. Services Director, 480-816-5125, dtrimble@fh.az.gov

Strategic Planning Goal: Not Applicable (NA)

Operational Priority: Not Applicable (NA)

REQUEST TO COUNCIL (Agenda Language): CONSIDERATION of approving RESOLUTION 2016-09, adopting the Town of Fountain Hills Government Money Purchase Plan & Trust Adoption Agreements with the International City/County Management Association Retirement Corporation for the Town Manager and Town employees.

Applicant: NA

Applicant Contact Information:

Owner:

Owner Contact Information:

Property Location:

Related Ordinance, Policy or Guiding Principle: ARS

Staff Summary (background): The Town has historically provided full-time employees with a 401a defined contribution retirement savings plan to both the Town Manager and other employees through the International City/County Management Association's retirement corporation (ICMA-RC). The IRS mandates plan documents (see attached) be reviewed on a regular basis and updated to reflect amendments for legislative and regulatory changes enacted since the prior period. The proposed updates are due by April 30th, and would not change the current Town savings plans for employees, Town Manager, or the administration of the plans.

Risk Analysis (options or alternatives with implications):

Fiscal Impact (initial and ongoing costs; budget status): None

Budget Reference (page number):

Funding Source: General Fund

If Multiple Funds utilized, list here:

Budgeted; if No, attach Budget Adjustment Form: Yes

Recommendation(s) by Board(s) or Commission(s): N/A

Staff Recommendation(s): Approve

List Attachment(s): Memos from ICMA-RC;
401 Governmental Money Purchase Plan & Trust Basic Document; Previous Plan Documents;
Resolution 2016-09

SUGGESTED MOTION (for Council use): Move to approve consent agenda.

Prepared by:



David Trimble, Administrative Services Director 4/13/2016

Director's Approval:



David Trimble, Administrative Services Director 4/13/2016

Approved:



Grady E. Miller, Town Manager 4/13/2016



September 2015

Re: 401 Plan Document Adoption — Action Required by April 30, 2016

Dear Plan Sponsor:

ICMA-RC is pleased to announce that our 401 plan document has been reviewed and approved by the Internal Revenue Service (IRS) and is available online for your review and adoption. A summary of the document and the adoption process is provided below and additional details are available within EZLink (www.icmarc.org/ezlink).

Six-Year IRS Review Schedule

The IRS has a six-year review schedule for the type of 401 plan documents ICMA-RC makes available. Following the IRS schedule, we submitted our updated plan documents for review and approval in 2012 and received favorable opinion letters last year. The documents incorporate amendments for legislative and regulatory changes enacted since the prior restatement in 2006 and are effective as of 2012.

Plan sponsors using the ICMA-RC document must execute a new adoption agreement by April 30, 2016. Taking action to adopt the restated plan document will ensure your plan is updated in accordance with current IRS regulations.

Plan Document Adoption — New Adoption Agreement Needed

In the past, we have utilized a negative election adoption process, in an effort to make the plan document adoption process as easy as possible. This time around, per instructions from the IRS, each plan sponsor using the ICMA-RC plan document will be required to execute a new adoption agreement by April 30, 2016. We have partially pre-populated the agreement for your plan, and you will need to fill in the blanks and execute the agreement.

Online Access to Plan Documents via EZLink

Everything you need is available in EZLink. You may access ICMA-RC's plan documents, adoption agreement, and related materials online by following these steps:

1. Log in to EZLink at www.icmarc.org/ezlink.
2. Under the My Plan tab, select the **View/Request Publications** link on the left.
3. Click the **Plan Documents** button on the right, in the Plan Document Materials box.

(Continued)

Please review the materials to ensure you are familiar with all of your options. **If your plan uses the ICMA-RC document, be sure to execute the adoption agreement prior to April 30, 2016.**

Individually-Designed Plan Documents

If your plan uses an individually-designed plan document, please check with your plan's legal counsel to ensure your document is updated in accordance with IRS regulations. You may find value in reviewing the ICMA-RC documents, as the information may be helpful as you consider future amendments to your individually-designed plan document. Now may also be a good time to consider adopting ICMA-RC's model plan documents.

Please contact your ICMA-RC Plan Sponsor Services team if you have any questions about the plan document adoption process and the action required on your part.

Thank you for allowing us to serve you.

Sincerely,

A handwritten signature in black ink that reads "Renee Briggs". The signature is written in a cursive, flowing style.

Renee Briggs
Vice President, Client Services



February 2016

IMMEDIATE ACTION REQUIRED – MAINTAIN IRS COMPLIANCE, AVOID IRS PENALTIES

Dear Plan Sponsor:

Action is required on your part to ensure your 401 plan with ICMA-RC continues to be operated in accordance with IRS regulations. **Please make this a high priority and take time this week to execute an adoption agreement for your 401 plan(s) with ICMA-RC, if you have not already done so.**

If your 401 plan uses the ICMA-RC plan document, failure to execute a new adoption agreement may result in the need for your organization to retain legal counsel and submit the plan to the IRS's Voluntary Correction Program. It could also result in your organization paying a fee to the IRS and being required to provide both a detailed description of why the current document was not adopted in a timely manner and the procedural changes you are implementing to ensure compliance in the future.

As the record keeper for your 401 plan, we maintain a plan document in compliance with the Internal Revenue Code and related regulations, and we are doing everything possible to keep your plan compliant with the regulations. This is a joint effort, which requires your help.

Please follow the steps below to execute an adoption agreement for the current plan document:

- 1. Review the adoption agreement for each of your 401 plans with ICMA-RC** — A partially pre-populated agreement for your plan is available online. Within EZLink (www.icmarc.org/login), click My Plan, then View/Request Publications, and then Plan Documents. Click the “Pickup Plan Adoption Agreement” button to access the pre-populated agreement for your plan.
- 2. Complete the adoption agreement** — You can complete the document electronically. Simply provide the information applicable to your plan in each section by checking the boxes provided and entering information as necessary.
- 3. Save the completed adoption agreement to your computer** — After you've reviewed the document to ensure you've completed each section, save it to your computer so you have a copy for your records.
- 4. Submit the completed adoption agreement to ICMA-RC** — On the Plan Documents page in EZLink, use the “Drop Off Plan Adoption Agreement” button to submit the completed document to ICMA-RC.

We will review the document to ensure it's completed in its entirety before countersigning the document and returning an executed copy to you. Be sure to keep a copy of the executed document for your records.

Please contact your ICMA-RC Plan Sponsor Services team at (800) 326-7272 if you have any questions about the plan document adoption process and the action required on your part.

Thank you for allowing us to serve you and for your prompt attention to this critical requirement.

Sincerely,

Renee Briggs
Vice President, Client Services

401 Governmental Money Purchase Plan & Trust Basic Document



**ICMA RETIREMENT CORPORATION
GOVERNMENTAL MONEY PURCHASE PLAN & TRUST
BASIC DOCUMENT**

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**ICMA RETIREMENT CORPORATION
GOVERNMENTAL MONEY PURCHASE PLAN & TRUST**

I. PURPOSE

The Employer hereby adopts this Plan and Trust to provide funds for its Employees' retirement, and to provide funds for their Beneficiaries in the event of death. The benefits provided in this Plan shall be paid from the Trust. The Plan and the Trust forming a part hereof are adopted and shall be maintained for the exclusive benefit of eligible Employees and their Beneficiaries. Except as provided in Sections 4.12 and 14.03, no part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

II. DEFINITIONS

- 2.01 Account.** A separate record which shall be established and maintained under the Trust for each Participant, and which shall include all Participant subaccounts created pursuant to Article IV, plus any Participant Loan Account created pursuant to Section 13.03. Each subaccount created pursuant to Article IV shall include any earnings of the Trust and adjustments for withdrawals, and realized and unrealized gains and losses allocable thereto. The term "Account" may also refer to any of such separate subaccounts.
- 2.02 Accounting Date.** Each day that the New York Stock Exchange is open for trading, and such other dates as may be determined by the Plan Administrator, as provided in Section 6.06 for valuing the Trust's assets.
- 2.03 Adoption Agreement.** The separate agreement executed by the Employer through which the Employer adopts the Plan and elects among the various alternatives provided thereunder, and which upon execution, becomes an integral part of the Plan.
- 2.04 Beneficiary.** The person or persons (including a trust) designated by the Participant who shall receive any benefits payable hereunder in the event of the Participant's death. The designation of such Beneficiary shall be in writing to the Plan Administrator. A Participant may designate primary and contingent Beneficiaries. Where no designated Beneficiary survives the Participant or no Beneficiary is otherwise designated by the Participant, the Participant's Beneficiary shall be his/her surviving spouse or, if none, his/her estate.

Notwithstanding the foregoing, the Beneficiary designation is subject to the requirements of Article XII unless the Employer elects otherwise in the Adoption Agreement.

Notwithstanding the foregoing, where elected by the Employer in the Adoption Agreement (the "QJSA Election"), the Beneficiary designation is subject to the requirements of Article XVII.

Notwithstanding the foregoing, to the extent permitted by the Employer, a Beneficiary receiving required minimum distributions in accordance with Article X and not in a benefit form elected under Article XI or XII, may designate a Beneficiary to receive the required minimum distributions that would have otherwise been payable to the initial Beneficiary but for his or her death.

2.05 Break in Service. A Period of Severance of at least twelve (12) consecutive months.

In the case of an individual who is absent from work for maternity or paternity reasons, the twelve (12) consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Break in Service. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of the birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.

2.06 Code. The Internal Revenue Code of 1986, as amended from time to time.

2.07 Covered Employment Classification. The group or groups of Employees eligible to make and/or have contributions to this Plan made on their behalf, as specified by the Employer in the Adoption Agreement.

2.08 Disability. A physical or mental impairment which is of such permanence and degree that, as determined by the Employer, a Participant is unable because of such impairment to perform any substantial gainful activity for which he/she is suited by virtue of his/her experience, training, or education and that has lasted, or can be expected to last, for a continuous period of not less than twelve (12) months, or can be expected to result in death. The permanence and degree of such impairment shall be supported by medical evidence. If the Employer maintains a long-term disability plan, the definition of Disability shall be the same as the definition of disability in the long-term disability plan.

2.09 Earnings.

- (a) **General Rule.** Earnings, which form the basis for computing Employer Contributions, are all of each Participant's W-2 earnings which are actually paid to the Participant during the Plan Year, plus any contributions made pursuant to a salary reduction agreement which are not includible in the gross income of the Employee under section 125, 402(e)(3), 402(h)(1)(B), 403(b), 414(h)(2), 457(b), or, effective January 1, 2001, 132(f)(4) of the Code. Earnings shall include any pre-tax contributions (excluding direct employer contributions) to an integral part trust of the Employer providing retiree health care benefits. Earnings shall also include any other earnings as defined and elected by the Employer in the Adoption Agreement. Unless the Employer elects otherwise in the Adoption Agreement, Earnings shall exclude overtime compensation and bonuses.
- (b) **Limitation on Earnings.** For any Plan Year beginning after December 31, 2001, the annual Earnings of each Participant taken into account in determining allocations shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual Earnings means Earnings during the Plan Year or such other consecutive 12-month period over which Earnings is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual Earnings for the determination period that begins with or within such calendar year.

If a determination period consists of fewer than twelve (12) months, the annual Earnings limit is an amount equal to the otherwise applicable annual Earnings limit multiplied by the fraction, the numerator of which is the number of months in the short Plan Year and the denominator of which is twelve (12). If Earnings for any prior determination period are taken

into account in determining a Participant's allocations for the current Plan Year, the Earnings for such prior year are subject to the applicable annual Earnings limit in effect for that prior year.

- (c) **Limitations for Governmental Plans.** In the case of an eligible participant in a governmental plan (within the meaning of section 414(d) of the Code), the dollar limitation shall not apply to the extent the Earnings which are allowed to be taken into account under the Plan would be reduced below the amount which was allowed to be taken into account under the Plan as in effect on July 1, 1993, as adjusted for increases in the cost-of-living in accordance with section 401(a)(17)(B) of the Code. For purposes of this Section, an eligible participant is an individual who first became a Participant in the Plan during a Plan Year beginning before the first Plan Year beginning after December 31, 1993.
- 2.10 Effective Date.** The first day of the Plan Year during which the Employer adopts the Plan, unless the Employer elects in the Adoption Agreement an alternate date as the Effective Date of the Plan.
- 2.11 Employee.** Any individual who has applied for and been hired in an employment position and who is employed by the Employer as a common law employee; provided, however, that Employee shall not include any individual who is not so recorded on the payroll records of the Employer, including any such person who is subsequently reclassified by a court of law or regulatory body as a common law employee of the Employer. For purposes of clarification only and not to imply that the preceding sentence would otherwise cover such person, the term Employee does not include any individual who performs services for the Employer as an independent contractor, or under any other non-employee classification.
- 2.12 Employer.** The unit of state or local government or an agency or instrumentality of one (1) or more states or local governments that executes the Adoption Agreement.
- 2.13 Hour of Service.** Each hour for which an Employee is paid or entitled to payment for the performance of duties for the Employer.
- 2.14 Nonforfeitable Interest.** The nonforfeitable interest of the Participant or his/her Beneficiary (whichever is applicable) is that percentage of his/her Employer Contribution Account balance, which has vested pursuant to Article VII. A Participant shall, at all times, have a one hundred percent (100%) Nonforfeitable Interest in his/her Participant Contribution, Rollover, and Voluntary Contribution Accounts.
- 2.15 Normal Retirement Age.** The age which the Employer specifies in the Adoption Agreement. If the Employer enforces a mandatory retirement age, the Normal Retirement Age is the lesser of that mandatory age or the age specified in the Adoption Agreement.
- 2.16 Participant.** An Employee or former Employee for whom contributions have been made under the Plan and who has not yet received all of the payments of benefits to which he/she is entitled under the Plan. A Participant is treated as benefiting under the Plan for any Plan Year during which the participant received or is deemed to receive an allocation in accordance with Treas. Reg. section 1.410(b)-3(a).
- 2.17 Period of Service.** For purposes of determining an Employee's initial or continued eligibility to participate in the Plan or the Nonforfeitable Interest in the Participant's Account balance derived from Employer Contributions, an Employee will receive credit for the aggregate of all time period(s)

commencing with the Employee's first day of employment or reemployment and ending on the date a Break in Service begins. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee will also receive credit for any Period of Severance of less than twelve (12) consecutive months. Fractional periods of a year will be expressed in terms of days.

Notwithstanding anything to the contrary herein, if the Plan is an amendment and restatement of a plan that previously calculated service under the hours of service method, service shall be credited in a manner that is at least as generous as that provided under Treas. Regs. section 1.410(a)-7(g).

- 2.18 Period of Severance.** A continuous period of time during which the Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.
- 2.19 Plan.** This Plan, as established by the Employer, including any elected provisions pursuant to the Adoption Agreement.
- 2.20 Plan Administrator.** The person(s) or entity named to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described, which is the ICMA Retirement Corporation or any successor Plan Administrator.
- 2.21 Plan Year.** The twelve (12) consecutive month period designated by the Employer in the Adoption Agreement.
- 2.22 Trust.** The Trust created under Article VI of the Plan which shall consist of all of the assets of the Plan derived from Employer and Participant contributions under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

III. ELIGIBILITY

- 3.01 Service.** Except as provided in Sections 3.02 and 3.03 of the Plan, an Employee within the Covered Employment Classification who has completed a twelve (12) month Period of Service shall be eligible to participate in the Plan at the beginning of the payroll period next commencing thereafter. The Employer may elect in the Adoption Agreement to waive or reduce the twelve (12) month Period of Service.

If the Employer maintains the plan of a predecessor employer, service with such employer shall be treated as Service for the Employer.

- 3.02 Age.** The Employer may designate a minimum age requirement, not to exceed age twenty-one (21), for participation. Such age, if any, shall be declared in the Adoption Agreement.
- 3.03 Return to Covered Employment Classification.** In the event a Participant is no longer a member of Covered Employment Classification and becomes ineligible to make contributions and/or have contributions made on his/her behalf, such Employee will become eligible for contributions immediately upon returning to a Covered Employment Classification. If such Participant incurs a Break in Service, eligibility will be determined under the Break in Service rules of the Plan.

In the event an Employee who is not a member of a Covered Employment Classification becomes a member, such Employee will be eligible to participate immediately if such Employee has satisfied the minimum age and service requirements and would have otherwise previously become a Participant.

3.04 Service Before a Break in Service. All Periods of Service with the Employer are counted toward eligibility, including Periods of Service before a Break in Service.

IV. CONTRIBUTIONS

4.01 Employer Contributions. For each Plan Year, the Employer will contribute to the Trust an amount as specified in the Adoption Agreement. The Employer's full contribution for any Plan Year shall be due and paid not later than thirty (30) working days after the close of the Plan Year. Each Participant will share in Employer Contributions for the period beginning on the date the Participant commences participation under the Plan and ending on the date on which such Employee severs employment with the Employer or is no longer a member of a Covered Employment Classification, and such contributions shall be accounted for separately in his/her Employer Contribution Account. Notwithstanding anything to the contrary herein, if so elected by the Employer in the Adoption Agreement, an Employee shall be required to make contributions as provided pursuant to Section 4.03 or 4.04 in order to be eligible for Employer Contributions to be made on his/her behalf to the Plan.

4.02 Forfeitures. All amounts forfeited by terminated Participants, pursuant to Section 7.06, shall be allocated to a suspense account and used to reduce dollar for dollar Employer Contributions otherwise required under the Plan for the current Plan Year and succeeding Plan Years, if necessary. Forfeitures may first be used to pay the reasonable administrative expenses of the Plan, with any remainder being applied to reduce Employer Contributions.

4.03 Mandatory Participant Contributions. If the Employer so elects in the Adoption Agreement, each eligible Employee shall make contributions at a rate prescribed by the Employer or at any of a range of specified rates, as set forth by the Employer in the Adoption Agreement, as a requirement for his/her participation (1) in the Plan or (2) in this portion of the Plan. Once an eligible Employee becomes a Participant and makes an election hereunder, he/she shall not thereafter have the right to discontinue or vary the rate of such Mandatory Participant Contributions. Such contributions shall be accounted for separately in the Participant Contribution Account. Such Account shall be at all times nonforfeitable by the Participant.

If the Employer so elects in the Adoption Agreement, the Mandatory Participant Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). Any contribution picked-up under this Section shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

To constitute a Pick-Up Contribution, (1) the Employer must specify that the contributions are being paid by the Employer in lieu of contributions by the Employee, and (2) the Employee must not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the Employer to the Plan.

4.04 Employer Matching Contributions of Voluntary Participant Contributions. If the Employer so elects in the Adoption Agreement, Employer Matching Contributions shall be made on behalf of an eligible Employee for a Plan Year only if the Employee agrees to make Voluntary Participant Contributions for that Plan Year. The rate of Employer Contributions shall, to the extent specified in

the Adoption Agreement, be based upon the rate at which Voluntary Participant Contributions are made for that Plan Year. Employer Matching Contributions shall be accounted for separately in the Employer Contribution Account.

- 4.05 Voluntary Participant Contributions.** If the Employer so elects in the Adoption Agreement, an eligible Employee may make after-tax voluntary (unmatched) contributions under the Plan for any Plan Year in any amount up to twenty five percent (25%) of his/her Earnings for such Plan Year. Matched and unmatched contributions shall be accounted for separately in the Participant's Voluntary Contribution Account. Such Account shall be at all times nonforfeitable by the Participant.
- 4.06 Deductible Employee Contributions.** The Plan will not accept deductible employee contributions which are made for a taxable year beginning after December 31, 1986. Contributions made prior to that date will be maintained in a Deductible Employee Contribution Account. The Account will share in the gains and losses under the Plan in the same manner as described in Section 6.06 of the Plan. Such Account shall be at all times nonforfeitable by the Participant.
- 4.07 Final Pay Contributions.** If the Employer so elects in the Adoption Agreement, Participants shall be eligible to make or receive Final Pay Contributions under this Plan in accordance with Article XVIII. Notwithstanding the foregoing, this election may only be made if the Employer also elects to make contributions under Section 4.01.
- 4.08 Accrued Leave Contributions.** If the Employer so elects in the Adoption Agreement, eligible Participants shall be eligible to make or receive Accrued Leave Contributions under this Plan in accordance with Article XIX. Notwithstanding the foregoing, this election may only be made if the Employer also elects to make contributions under Section 4.01.
- 4.09 Military Service Contributions.** Notwithstanding any provision of the Plan to the contrary, effective December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the Code.

Effective December 12, 1994, if the Employer has elected in the Adoption Agreement to make loans available to Participants, loan repayments will be suspended under the Plan as permitted under section 414(u)(4) of the Code.

- 4.10 Changes in Participant Election.** A Participant may elect to change his/her rate of Voluntary Participant Contributions at any time or during an election period as designated by the Employer. A Participant may discontinue such contributions at any time or during an election period as designated by the Employer.
- 4.11 Portability of Benefits.**
- (a) Unless otherwise elected by the Employer in the Adoption Agreement, the Plan will accept Participant (which shall include, for purposes of this subsection, an Employee within the Covered Employment Classification whether or not he/she has satisfied the minimum age and service requirements of Article III,) rollover contributions and/or direct rollovers of distributions (including after-tax contributions) made after December 31, 2001 that are eligible for rollover in accordance with Section 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), or 457(e)(16) of the Code, from all of the following types of plans:

- (1) A qualified plan described in Section 401(a) or 403(a) of the Code;

- (2) An annuity contract described in Section 403(b) of the Code;
 - (3) An eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state; and
 - (4) An individual retirement account or annuity described in Section 408(a) or 408(b) of the Code (including SEPs, and SIMPLE IRAs after two years of participating in the SIMPLE IRA).
- (b) Notwithstanding the foregoing, the Employer may reject the rollover contribution if it determines, in its discretion, that the form and nature of the distribution from the other plan does not satisfy the applicable requirements under the Code to make the transfer or rollover a nontaxable transaction to the Participant;
 - (c) For indirect rollover contributions, the amount distributed from such plan must be rolled over to this Plan no later than the sixtieth (60th) day after the distribution was made from the plan, unless otherwise waived by the IRS pursuant to Section 402(c)(3) of the Code.
 - (d) The amount transferred shall be deposited in the Trust and shall be credited to a Rollover Account. Such Account shall be one hundred percent (100%) vested in the Participant.
 - (e) The Plan will accept accumulated deductible employee contributions as defined in section 72(o)(5) of the Code that were distributed from a qualified retirement plan and transferred (rolled over) pursuant to section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3) of the Code. Notwithstanding the above, this transferred (rolled over) amount shall be deposited to the Trust and shall be credited to a Deductible Employee Contributions Account. Such Account shall be one-hundred percent (100%) vested in the Participant.
 - (f) A Participant may, upon approval by the Employer and the Plan Administrator, transfer his/her interest in another plan maintained by the Employer that is qualified under section 401(a) of the Code to this Plan, provided the transfer is effected through a one-time irrevocable written election made by the Participant. The amount transferred shall be deposited in the Trust and shall be credited to sources that maintain the same attributes as the plan from which they are transferred. Such transfer shall not reduce the accrued years or service credited to the Participant for purposes of vesting or eligibility for any Plan benefits or features.

4.12 Return of Employer Contributions. Any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the date of contribution.

V. LIMITATION ON ALLOCATIONS

5.01 Participants Only in This Plan.

- (a) If the Participant does not participate in, and has never participated in another qualified plan or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer, or an individual medical account, as defined by section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, the amount of Annual Additions which may be credited to the Participant's Account for any Limitation Year will not

exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan. If the Employer Contribution that would otherwise be contributed or allocated to the Participant's Account would cause the Annual Additions for the Limitation Year to exceed the Maximum Permissible Amount, the amount contributed or allocated will be reduced so that the Annual Additions for the Limitation Year will equal the Maximum Permissible Amount.

- (b) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant on the basis of a reasonable estimation of the Participant's Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.
- (c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.
- (d) If, as a result of an inadvertent reasonable error in estimating the Maximum Permissible Amount for a Participant in accordance with Subsection (b) or pursuant to Subsection (c) or as a result of the allocation of forfeitures, there is an Excess Amount, the excess will be disposed of as follows:
 - (1) Any Mandatory Participant Contributions that are not "picked up" by the Employer or Voluntary Participant Contributions, to the extent they would reduce the Excess Amount, will be returned to the Participant;
 - (2) If after the application of paragraph (1) an Excess Amount still exists, and the Participant is covered by the Plan at the end of the Limitation Year, the Excess Amount in the Participant's Account will be used to reduce Employer Contributions (including any allocation of forfeitures) for such Participant in the next Limitation Year, and each succeeding Limitation Year if necessary;
 - (3) If after the application of paragraph (1) an Excess Amount still exists, and the Participant is not covered by the Plan at the end of the Limitation Year, the Excess Amount will be held unallocated in a suspense account. The suspense account will be applied to reduce future Employer Contributions (including allocation of any forfeitures) for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year if necessary;
 - (4) If a suspense account is in existence at any time during a particular Limitation Year, all amounts in the suspense account must be allocated and reallocated to Participants' accounts before any Employer or any Employee contributions may be made to the Plan for that Limitation Year. Excess Amounts in a suspense account may not be distributed to Participants or former Participants.

5.02 Participants in Another Defined Contribution Plan.

- (a) Unless the Employer provides other limitations in the Adoption Agreement, this Section applies if, in addition to this Plan, the Participant is covered under another qualified defined contribution plan maintained by the Employer, or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer, or an individual medical account,

as defined by section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, during any Limitation Year. The Annual Additions which may be credited to a Participant's Account under this Plan for any such Limitation Year will not exceed the Maximum Permissible Amount reduced by the Annual Additions credited to a Participant's Account under the other plans and welfare benefit funds for the same Limitation Year. If the Annual Additions with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the Employer are less than the Maximum Permissible Amount and the Employer contribution that would otherwise be contributed or allocated to the Participant's Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual Additions under all such plans and funds for the Limitation Year will equal the Maximum Permissible Amount. If the Annual Additions with respect to the Participant under such other defined contribution plans and welfare benefit funds in the aggregate are equal to or greater than the Maximum Permissible Amount, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.

- (b) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant in the manner described in Section 5.01(b).
- (c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.
- (d) If, pursuant to Subsection (c) or as a result of the allocation of forfeitures, a Participant's Annual Additions under this Plan and such other plans would result in an Excess Amount for a Limitation Year, the Excess Amount will be deemed to consist of the Annual Additions last allocated, except that Annual Additions attributable to a welfare benefit fund or individual medical account will be deemed to have been allocated first regardless of the actual allocation date.
- (e) If an Excess Amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributed to this Plan will be the product of,
 - (1) The total Excess Amount allocated as of such date, multiplied by
 - (2) The ratio of (i) the Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan to (ii) the total Annual Additions allocated to the Participant for the Limitation Year as of such date under this and all the other prototype qualified defined contribution plans.
- (f) Any Excess Amount attributed to this Plan will be disposed in the manner described in Section 5.01(d).

5.03 Definitions. For the purposes of this Article, the following definitions shall apply:

- (a) **Annual Additions:** The sum of the following amounts credited to a Participant's account for the Limitation Year:

- (1) Employer Contributions;
- (2) Forfeitures;
- (3) Employee contributions; and
- (4) Allocations under a simplified employee pension.

Amounts allocated, after March 31, 1984, to an individual medical account, as defined in section 415(l)(2) of the Code, which is part of a pension or annuity plan maintained by the Employer, are treated as Annual Additions to a defined contribution plan.

For this purpose, any Excess Amount applied under Sections 5.01(d) or 5.02(f) in the Limitation Year to reduce Employer Contributions will be considered Annual Additions for such Limitation Year.

- (b) **Compensation:** A Participant's wages, salaries, and fees for professional services and other amounts received (without regard to whether an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in Treas. Reg. section 1.62-2(c))), and excluding the following:
- (1) Employer Contributions to a plan of deferred compensation which are not includible in the Employee's gross income for the taxable year in which contributed, or Employer Contributions under a simplified employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation; and
 - (2) Other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in section 403(b) of the Code (whether or not the amounts are actually excludable from the gross income of the Employee).
 - (3) Notwithstanding the above, Compensation shall include:
 - (a) any elective deferrals (as defined in section 402(g)(3) of the Code), and
 - (b) any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of sections 125, 132(f)(4) or 457 of the Code.

For purposes of applying the limitations of this Article, Compensation for a Limitation Year is the Compensation actually paid or made available during such year.

- (c) **Defined Contribution Dollar Limitation:** \$40,000, as adjusted for increases in the cost-of-living in accordance with section 415(d) of the Code.
- (d) **Employer:** The Employer that adopts this Plan.

- (e) **Excess Amount:** The excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount.

Any Excess Amount shall include allocable income. The income allocable to an Excess Amount is equal to the sum of allocable gain or loss for the Plan Year and the allocable gain or loss for the period between the end of the Plan Year and the date of distribution (the gap period). The Plan may use any reasonable method for computing the income allocable to an Excess Amount, provided that the method is used consistently for all Participants and for all corrective distributions under the Plan for the Plan Year, and is used by the Plan for allocating income to Participants' Accounts.

- (f) **Limitation Year:** A calendar year, or the twelve (12) consecutive month period elected by the Employer in the Adoption Agreement. All qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

- (g) **Maximum Permissible Amount:** The maximum Annual Addition that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year shall not exceed the lesser of:

- (1) The Defined Contribution Dollar Limitation, or
- (2) One hundred percent (100%) (25% for Limitation Years before January 1, 2002) of the Participant's Compensation for the Limitation Year.

The compensation limit referred to in (2) shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or section 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve (12) consecutive month period, the Maximum Permissible Amount will not exceed the Defined Contribution Dollar Limitation multiplied by the following fraction:

Number of months in the short Limitation Year: 12

VI. TRUST AND INVESTMENT OF ACCOUNTS

6.01 Trust. A Trust is hereby created to hold all of the assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The trustee shall be the Employer or such other person which agrees to act in that capacity hereunder.

6.02 Investment Powers. The trustee or the Plan Administrator, acting as agent for the trustee, shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is controlled by Participants, pursuant to Section 13.03.

- (a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, notes, debentures, mortgages, certificates of deposit, contracts with insurance

companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit. Assets of the Trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.

- (b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans qualified under section 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plan, the declaration of trust of such common, collective, or commingled trust fund shall constitute a part of this Plan.
- (c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other plan or trust qualified under section 401(a) of the Code or any other plan described in section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Plan Administrator, or such custodian as the Plan Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.
- (d) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.
- (e) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Plan Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.
- (f) Upon such terms as may be deemed advisable by the Employer or the Plan Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the Plan, to exercise and enforce any and all rights

of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.

- (g) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.
- (h) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Plan Administrator, in any bank or banks.
- (i) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

6.03 Taxes and Expenses. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Plan Administrator, as may be agreed upon from time to time by the Employer and the Plan Administrator, and reimbursement for reasonable expenses incurred by the Plan Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust. However, no person who is a fiduciary within the meaning of section 3(21)(A) of ERISA and regulations promulgated thereunder, and who receives full-time pay from the Employer may receive compensation from the Trust, except for expenses properly and actually incurred.

6.04 Payment of Benefits. The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Plan Administrator, or by any custodian or other person so authorized by the Employer to make such disbursement. Benefits under this Plan shall be paid only if the Plan Administrator, custodian or other person decides in his/her discretion that the applicant is entitled to them. The Plan Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.

6.05 Investment Funds. In accordance with uniform and nondiscriminatory rules established by the Employer and the Plan Administrator, the Participant may direct his/her Accounts to be invested in one (1) or more investment funds available under the Plan; provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Employer and shall not include any investment in collectibles, as defined in section 408(m) of the Code.

6.06 Valuation of Accounts. As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and Beneficiaries.

6.07 Participant Loan Accounts. Participant Loan Accounts shall be invested in accordance with Section 13.03 of the Plan. Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Section 6.05.

VII. VESTING

7.01 Vesting Schedule. The portion of a Participant's Account attributable to Mandatory Participant Contributions and Voluntary Participant Contributions, and the earnings thereon, shall be at all times nonforfeitable by the Participant. A Participant shall have a Nonforfeitable Interest in the percentage of his/her Employer Contribution Account established under Section 4.01, 4.04, 18.02(a) and 19.02(a) determined pursuant to the schedule elected by the Employer in the Adoption Agreement.

7.02 Crediting Periods of Service. Except as provided in Section 7.03, all of an Employee's Periods of Service with the Employer are counted to determine the nonforfeitable percentage in the Employee's Account balance derived from Employer Contributions. If the Employer maintains the plan of a predecessor employer, service with such employer will be treated as service for the Employer.

For purposes of determining years of service and Breaks in Service for the purposes of computing a Participant's nonforfeitable right to the Account balance derived from Employer Contributions, the twelve (12) consecutive month period will commence on the date the Employee first performs an hour of service and each subsequent twelve (12) consecutive month period will commence on the anniversary of such date.

7.03 Service After Break in Service. In the case of a Participant who has a Break in Service of at least five (5) years, all Periods of Service after such Breaks in Service will be disregarded for the purpose of determining the nonforfeitable percentage of the Employer-derived Account balance that accrued before such Break, but both pre-Break and post-Break service will count for the purposes of vesting the Employer-derived Account balance that accrues after such Break. Both Accounts will share in the earnings and losses of the fund.

In the case of a Participant who does not have a Break in Service of at least five (5) years, both the pre-Break and post-Break service will count in vesting both the pre-Break and post-Break Employer-derived Account balance.

In the case of a Participant who does not have any nonforfeitable right to the Account balance derived from Employer Contributions, years of service before a period of consecutive one (1) year Breaks in Service will not be taken into account in computing eligibility service if the number of consecutive one (1) year Breaks in Service in such period equals or exceeds the greater of five (5) or the aggregate number of years of service. Such aggregate number of years of service will not include any years of service disregarded under the preceding sentence by reason of prior Breaks in Service.

If a Participant's years of service are disregarded pursuant to the preceding paragraph, such Participant will be treated as a new Employee for eligibility purposes. If a Participant's years of service may not be disregarded pursuant to the preceding paragraph, such Participant shall continue to participate in the Plan, or, if terminated, shall participate immediately upon reemployment.

7.04 Vesting Upon Normal Retirement Age. Notwithstanding Section 7.01 of the Plan, a Participant shall have a Nonforfeitable Interest in his/her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 7.06 of the Plan, if he/she is employed on or after his/her Normal Retirement Age.

7.05 Vesting Upon Death or Disability. Notwithstanding Section 7.01 of the Plan, in the event of Disability or death, a Participant or his/her Beneficiary shall have a Nonforfeitable Interest in his/

her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 7.06 of the Plan.

7.06 Forfeitures. Except as provided in Sections 7.04 and 7.05 of the Plan or as otherwise provided in this Section 7.06, a Participant who separates from service prior to obtaining full vesting shall forfeit that percentage of his/her Employer Contribution Account balance which has not vested as of the date such Participant incurs a Break in Service of five (5) consecutive years or, if earlier, the date such Participant receives, or is deemed under the provisions of Section 9.04 to have received, distribution of the entire Nonforfeitable Interest in his/her Employer Contribution Account.

No forfeiture will occur solely as a result of a Participant's withdrawal of Employee Contributions.

Forfeitures shall be allocated in the manner described in Section 4.02.

7.07 Reinstatement of Forfeitures. If the Participant returns to the employment of the Employer before incurring a Break in Service of five (5) consecutive years, any amounts forfeited pursuant to Section 7.06 shall be reinstated to the Participant's Employer Contribution Account on the date of repayment by the Participant of the amount distributed to such Participant from his/her Employer Contribution Account; provided, however, that if such Participant forfeited his/her Account balance by reason of a deemed distribution, pursuant to Section 9.04, such amounts shall be automatically restored upon the reemployment of such Participant. Such repayment must be made before the earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer, or the date the Participant incurs a Break in Service of five (5) consecutive years.

VIII. BENEFITS CLAIM

8.01 Claim of Benefits. A Participant or Beneficiary shall notify the Plan Administrator in writing of a claim of benefits under the Plan. The Plan Administrator shall take such steps as may be necessary to facilitate the payment of such benefits to the Participant or Beneficiary.

8.02 Appeal Procedure. If any claim for benefits is initially denied by the Plan Administrator, the claimant shall file the appeal with the Employer, whose decision shall be final, to the extent provided by Section 15.07.

IX. COMMENCEMENT OF BENEFITS

9.01 Normal and Elective Commencement of Benefits. A Participant who retires, becomes Disabled or incurs a severance from employment (separation from service for Plan Years beginning before 2002) for any other reason may elect by written notice to the Plan Administrator to have his or her vested Account balance benefits commence on any date, provided that such distribution complies with Section 9.02. Such election must be made in writing during the ninety (90) day period ending on the date as of which benefit payments are to commence. A Participant's election shall be revocable and may be amended by the Participant.

The failure of a Participant to consent to a distribution while a benefit is immediately distributable, within the meaning of section 9.02 of the Plan, shall be deemed to be an election to defer commencement of payment of any benefit.

9.02 Restrictions on Immediate Distributions. Notwithstanding anything to the contrary in Section 9.01 of the Plan, if the value of a Participant's vested Account balance is at least \$1,000, and the

Account balance is immediately distributable, the Participant must consent to any distribution of such Account balance. The Participant's consent shall be obtained in writing during the ninety (90) day period ending on the date as of which benefit payments are to commence. No consent shall be required, however, to the extent that a distribution is required to satisfy section 401(a)(9) or 415 of the Code.

The Plan Administrator shall notify the Participant of the right to defer any distribution until the Participant's Account balance is no longer immediately distributable. Such notification shall include a general description of the material features, and an explanation of the relative values of, the optional forms of benefit available under the Plan in a manner that would satisfy section 417(a)(3) of the Code, and shall be provided no less than thirty (30) and no more than ninety (90) days before the date as of which benefit payments are to commence. However, distribution may commence less than thirty (30) days after the notice described in the preceding sentence is given, provided (i) the distribution is one to which sections 401(a)(11) and 417 of the Code do not apply or, if the QJSA Election is made by the Employer in the Adoption Agreement, the waiver requirements of Section 17.04(a) are met; (ii) the Plan Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option); and (iii) the Participant, after receiving the notice, affirmatively elects a distribution.

In addition, upon termination of this Plan if the Plan does not offer an annuity option (purchased from a commercial provider) and if the Employer does not maintain another 401(a) defined contribution plan, the Participant's Account balance will, without the Participant's consent, be distributed to the Participant in a lump sum. However, if the Employer maintains another 401(a) defined contribution plan, the Participant's Account balance will be transferred, without the Participant's consent, to the other plan if the Participant does not consent to an immediate distribution.

An Account balance is immediately distributable if any part of the Account balance could be distributed to the Participant (or surviving spouse) before the Participant attains or would have attained (if not deceased) the later of Normal Retirement Age or age sixty-two (62).

For purposes of determining the applicability of the foregoing consent requirements to distributions made before the first day of the first plan year beginning after December 31, 1988, the Participant's vested Account balance shall not include amounts attributable to accumulated deductible employee contributions within the meaning of section 72(o)(5)(B) of the Code.

9.03 Transfer to Another Plan.

- (a) If a Participant becomes eligible to participate in another plan maintained by the Employer that is qualified under section 401(a) of the Code, the Plan Administrator shall, at the written election of such Participant, transfer all or part of such Participant's Account to such plan, provided the plan administrator for such plan certifies to the Plan Administrator that its plan provides for the acceptance of such a transfer. Such transfers shall include those transfers of the nonforfeitable interest of a Participant's Account made for the purchase of service credit in defined benefit plans maintained by the Employer. For purposes of this Plan, any such transfer shall not be considered a distribution to the Participant subject to spousal consent as described in Section 9.10.

(b) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(c) **Definitions.** For the purposes of Subsection (b), the following definitions shall apply:

(1) **Eligible Rollover Distribution.** Any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and (iii) the portion of any other distribution(s) that is not includible in gross income.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) **Eligible Retirement Plan.** (i) an individual retirement account described in section 408(a) of the Code or an individual retirement annuity described in section 408(b) of the Code (collectively, an "IRA"); (ii) an annuity plan described in section 403(a) of the Code; (iii) an annuity contract described in section 403(b) of the Code, (iv) an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan; or (v) a qualified plan described in section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee, under a qualified domestic relations order, as defined in section 414(p) of the Code.

(3) **Distributee.** Participant; in addition, the Participant's surviving spouse and the spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse.

(4) **Direct Rollover.** A payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

9.04 De Minimis Accounts. Notwithstanding the foregoing provisions of this Article, prior to January 1, 2002, if a Participant terminates service, and the value of his/her Nonforfeitable Interest in his/her Account is not greater than the dollar limit under section 411(a)(11)(A) of the Code, the Participant's benefit shall be paid (to the extent it constitutes an Eligible Rollover Distribution) in the form of a direct rollover to the Plan Administrator's designated IRA, unless he/she affirmatively elects to receive a cash payment or a Direct Rollover in accordance with procedures established by the Plan Administrator.

On or after January 1, 2002, if a Participant terminates service, and the value of his/her Nonforfeitable Interest in his/her Account is less than \$1,000, the Participant's benefit shall be paid as soon as practicable to the Participant in a single lump sum distribution. If the value of the Participant's Account is at least \$1,000 but not more than the dollar limit under section 411(a)(11)(A) of the Code, the Participant may elect to receive his/her Nonforfeitable Interest in his/her Account. Such distribution shall be made as soon as practicable following the request, in a lump sum.

For purposes of this Section, if a Participant's Nonforfeitable Interest in his/her Account is zero, the Participant shall be deemed to have received a distribution of such Nonforfeitable Interest in his/her Account.

9.05 Withdrawal of Voluntary Contributions. A Participant may upon written request withdraw a part of or the full amount of his/her Voluntary Contribution Account. Such withdrawals may be made at any time, provided that no more than two (2) such withdrawals may be made during any calendar year. No forfeiture will occur solely as the result of any such withdrawal.

9.06 Withdrawal of Deductible Employee Contributions. A Participant may upon written request withdraw a part of or the full amount of his/her Deductible Employee Contribution Account. Such withdrawals may be made at any time, provided that no more than two (2) such withdrawals may be made during any calendar year. No forfeiture will occur solely as the result of any such withdrawal.

9.07 In-Service Distribution from Rollover Account. Where elected by the Employer in the Adoption Agreement, a Participant that has a separate account attributable to rollover contributions to the Plan, may at any time elect to receive a distribution of all or any portion of the amount held in the Rollover Account.

9.08 In-Service Distributions. Unless otherwise elected by the Employer in the Adoption Agreement, a Participant who has reached age 70½ regardless of his Nonforfeitable Interest in his/her entire Employer Contribution Account, shall, upon written request, receive a distribution of a part of or the full amount of the balance in any or all of his vested Accounts. Such distributions may be requested at any time, provided that no more than two (2) such distributions may be made during any calendar year.

9.09 Latest Commencement of Benefits. Notwithstanding anything to the contrary in this Article, benefits shall begin no later than the Participant's Required Beginning Date, as defined under Section 10.05, or as otherwise provided in Section 10.04.

9.10 Spousal Consent. Notwithstanding the foregoing, if the Employer elected the QJSA Election in the Adoption Agreement, a married Participant must first obtain his or her spouse's notarized consent to request a distribution (other than a Qualified Joint and Survivor Annuity), withdrawal, or rollover under this Article IX.

X. DISTRIBUTION REQUIREMENTS

10.01 General Rules.

- (a) Subject to the provisions of Article XII or XVII if so elected by the Employer in the Adoption Agreement, the requirements of this Article shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this Article X apply to calendar years beginning after December 31, 2002.

With respect to distributions under the Plan made in or for Plan Years beginning on or after January 1, 2002 and prior to January 1, 2003, the Plan will apply the minimum distribution requirements of section 401(a)(9) of the Code in accordance with the regulations under section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary.

- (b) All distributions required under this Article shall be determined and made in accordance with the regulations under section 401(a)(9) of the Code, and the minimum distribution incidental benefit requirement of section 401(a)(9)(G) of the Code.
- (c) Limits on Distribution Periods. As of the first Distribution Calendar Year, distributions to a Participant, if not made in a single-sum, may only be made over one of the following periods:
- (1) The life of the Participant,
 - (2) The joint lives of the Participant and a designated Beneficiary,
 - (3) A period certain not extending beyond the life expectancy of the Participant, or
 - (4) A period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated Beneficiary.
- (d) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Article XVII, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

10.02 Time and Manner of Distribution

- (a) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.
- (b) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
- (1) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then, distributions to the surviving spouse will begin by December

31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.

- (2) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (3) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (4) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 10.02(b), other than Section 10.02(b)(1), will apply as if the surviving spouse were the Participant.

For purposes of this Section 10.02(b) and Section 10.04, unless Section 10.02(b)(4) applies, distributions are considered to begin on the Participant's required beginning date. If Section 10.02(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 10.02(b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 10.02(b)(1)), the date distributions are considered to begin is the date distributions actually commence.

- (c) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 10.03 and 10.04. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations.

10.03 Required Minimum Distributions During Participant's Lifetime

- (a) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
 - (1) the quotient obtained by dividing the Participant's Account Balance by the distribution period set forth in the Uniform Lifetime Table found in Section 1.401(a)(9)-9, Q&A-2, of the Final Income Tax Regulations using the Participant's age as of the Participant's birthday in the distribution calendar year; or
 - (2) if the Participant's sole designated Beneficiary for the distribution calendar year

is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3, of the regulations using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

- (b) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 10.03 beginning with the first distribution calendar year and continuing up to, and including, the distribution calendar year that includes the Participant's date of death.

10.04 Required Minimum Distributions After Participant's Death

- (a) Death On or After Date Distributions Begin.
- (1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:
- (a) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (b) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
- (c) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (2) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

- (b) Death Before Date Required Distributions Begin.
- (1) Participant Survived by Designated Beneficiary. If the Participant dies before the date required distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 10.04(a).
 - (2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 10.02(b)(1), this Section 10.04(b) will apply as if the surviving spouse were the Participant.

10.05 Definitions

- (a) **Designated Beneficiary.** The individual who is designated by the Participant (or the Participant's surviving spouse) as the Beneficiary of the Participant's interest under the Plan and who is the designated Beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-4 of the regulations.
- (b) **Distribution Calendar Year.** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 10.02(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.
- (c) **Life Expectancy.** Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1, of the regulations.
- (d) **Participant's Account Balance.** The Account Balance as of the last Accounting Date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account Balance as of dates in the valuation calendar year after the Accounting Date and decreased by distributions made in the valuation calendar year after the Accounting Date.

The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

- (e) **Required Beginning Date.** The Required Beginning Date of a Participant is April 1 of the calendar year following the later of the calendar year in which the Participant attains age seventy and one-half (70½), or the calendar year in which the Participant retires.

XI. MODES OF DISTRIBUTION OF BENEFITS

11.01 Normal Mode of Distribution. Unless an elective mode of distribution is elected as provided in Section 11.02, benefits shall be paid to the Participant in the form of a lump sum payment.

Notwithstanding the foregoing, where the Employer made the “QJSA Election” in the Adoption Agreement, unless an elective mode of distribution is elected in accordance with Article XVII, benefits shall be paid to the Participant in the form provided for in Article XVII.

11.02 Elective Mode of Distribution. Subject to the requirements of Articles X, XII and XVII, a Participant may revocably elect to have his/her Account distributed in any one (1) of the following modes in lieu of the mode described in Section 11.01:

- (a) **Equal Payments.** Equal monthly, quarterly, semi-annual, or annual payments in an amount chosen by the Participant continuing until the Account is exhausted.
- (b) **Period Certain.** Approximately equal monthly, quarterly, semi-annual, or annual payments, calculated to continue for a period certain chosen by the Participant.
- (c) **Other.** Any other sequence of payments requested by the Participant.
- (d) **Lump Sum.** Where the Employer did make the QJSA Election in the Adoption Agreement, a Participant may also elect a lump sum payment.

11.03 Election of Mode. A Participant’s election of a payment option must be made in writing between thirty (30) and ninety (90) days before the payment of benefits is to commence.

11.04 Death Benefits. Subject to Article X (and Article XII or XVII if so elected by the Employer in the Adoption Agreement),

- (a) In the case of a Participant who dies before he/she has begun receiving benefit payments, the Participant’s entire Nonforfeitable Interest shall then be payable to his/her Beneficiary within ninety (90) days of the Participant’s death. A Beneficiary who is entitled to receive benefits under this Section may elect to have benefits commence at a later date, subject to the provisions of Article X. The Beneficiary may elect to receive the death benefit in any of the forms available to the Participant under Sections 11.01 and 11.02. If the Beneficiary is the Participant’s surviving spouse, and such surviving spouse dies before payment commences, then this Section shall apply to the beneficiary of the surviving spouse as though such surviving spouse were the Participant.
- (b) Should the Participant die after he/she has begun receiving benefit payments, the Beneficiary shall receive the remaining benefits, if any, that are payable, under the payment

schedule elected by the Participant. Notwithstanding the foregoing, the Beneficiary may elect to accelerate payments of the remaining balances, including but not limited to, a lump sum distribution.

XII. SPOUSAL DEATH BENEFIT REQUIREMENTS

12.01 Application. Unless otherwise elected by the Employer in the Adoption Agreement, on or after January 1, 2006, the provisions of this Article shall take precedence over any conflicting provision in this Plan. The provisions of this Article, known as the “Beneficiary Spousal Consent Election,” shall apply to any Participant who is credited with any Period of Service with the Employer on or after August 23, 1984, and such other Participants as provided in Section 12.04.

12.02 Spousal Death Benefit.

- (a) On the death of a Participant, the Participant’s Vested Account Balance will be paid to the Participant’s Surviving Spouse. If there is no Surviving Spouse, or if the Participant has waived the spousal death benefit, as provided in Section 12.03, such Vested Account Balance will be paid to the Participant’s designated Beneficiary.
- (b) The Surviving Spouse may elect to have distribution of the Vested Account Balance commence within the ninety (90) day period following the date of the Participant’s death, or as otherwise provided under Section 11.04. The Account balance shall be adjusted for gains or losses occurring after the Participant’s death in accordance with the provisions of the Plan governing the adjustment of Account balances for other types of distributions.

12.03 Waiver of Spousal Death Benefit.

The Participant may waive the spousal death benefit described in Section 12.02 at any time; provided that no such waiver shall be effective unless: (a) the Participant’s Spouse consents in writing to the election; (b) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent); (c) the Spouse’s consent acknowledges the effect of the election; and (d) the Spouse’s consent is witnessed by a Plan representative or notary public. If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed to meet the requirements of this Section.

Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited.

12.04 Definitions. For the purposes of this Section, the following definitions shall apply:

- (a) Spouse (Surviving Spouse): The Spouse or Surviving Spouse of the Participant, provided that a

former Spouse will be treated as the Spouse or Surviving Spouse and a current Spouse will not be treated as the Spouse or Surviving Spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.

- (b) **Vested Account Balance:** The aggregate value of the Participant's vested Account balances derived from Employer and Employee contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the Participant's life. The provisions of this Article shall apply to a Participant who is vested in amounts attributable to Employer Contributions, Employee contributions (or both) at the time of death or distribution.

XIII. LOANS TO PARTICIPANTS

13.01 Availability of Loans to Participants.

- (a) If the Employer has elected in the Adoption Agreement to make loans available to Participants, a Participant may apply for a loan from the Plan subject to the limitations and other provisions of this Article.
- (b) The Employer shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by the Plan Administrator and are not inconsistent with the provisions of this Article, and that loans are made available to all Participants on a reasonably equivalent basis.

13.02 Terms and Conditions of Loans to Participants. Any loan by the Plan to a Participant under Section 13.01 of the Plan shall satisfy the following requirements:

- (a) **Availability.** Loans shall be made available to all Participants on a reasonably equivalent basis.
- (b) **Nondiscrimination.** Loans shall not be made to highly compensated Employees in an amount greater than the amount made available to other Employees.
- (c) **Interest Rate.** Loans must be adequately secured and bear a reasonable interest rate.
- (d) **Loan Limit.** No Participant loan shall exceed the present value of the Participant's Nonforfeitable Interest in his/her Account.
- (e) **Foreclosure.** In the event of default, foreclosure on the note and attachment of security will not occur until a distributable event occurs in the Plan.
- (f) **Reduction of Account.** Notwithstanding any other provision of this Plan, the portion of the Participant's vested Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than one hundred percent (100%) of the Participant's nonforfeitable Account balance (determined without regard to the preceding sentence) is payable to the surviving spouse, then the Account balance shall be adjusted by first reducing the nonforfeitable Account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving spouse.

- (g) **Amount of Loan.** At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the Participant or Beneficiary from the Plan and from all other plans of the Employer that are qualified employer plans under section 72(p)(4) of the Code shall not exceed the lesser of:
- (1) \$50,000, reduced by the excess (if any) of
 - (a) The highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan is made, over
 - (b) The outstanding balance of loans from the Plan on the date on which such loan is made; or
 - (2) One-half (½) of the value of the Participant's Nonforfeitable Interest in all of his/her Accounts under this Plan (or \$10,000, if greater, for loans prior to January 1, 2006).

For the purpose of the above limitation, all loans from all qualified employer plans, including 457(b) plans, under Code section 72(p)(4) of the Code are aggregated.

- (h) **Application for Loan.** The Participant must give the Employer adequate written notice, as determined by the Employer, of the amount and desired time for receiving a loan. No more than one (1) loan may be made by the Plan to a Participant in any calendar year. No loan shall be approved if an existing loan from the Plan to the Participant is in default to any extent.
- (i) **Length of Loan.** The terms of any loan issued or renegotiated after December 31, 1993, shall require the Participant to repay the loan in substantially equal installments of principal and interest, at least quarterly (except as otherwise provided in Treasury Regulation section 1.72(p)-1, Q&A-9 for certain leave of absence and military leave), over a period that does not exceed five (5) years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time after the loan is made as the principal residence of the Participant, the five (5) year limit shall not apply. In this event, the period of repayment shall not exceed a reasonable period determined by the Employer. Principal installments and interest payments otherwise due may be suspended during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this Subsection (i), with a revised payment schedule (within such term) instituted at the end of such period of suspension. If the Participant fails to make any installment payment, the Plan Administrator may, according to Treasury Regulation 1.72(p)-1, allow a cure period, which cure period cannot continue beyond the last day of the calendar quarter following the calendar quarter in which the required installment payment was due.
- (j) **Prepayment.** The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.
- (k) **Note.** The loan shall be evidenced by a promissory note executed by the Participant and delivered to the Employer, and shall bear interest at a reasonable rate determined by the Employer.

Unless waived by a Participant, any plan loan that is outstanding on the date that active duty military service begins will accrue interest at a rate of no more than 6% during the period of military service in accordance with the provisions of the Servicemembers Civil Relief Act (SCRA), 50 USC App. § 526 and subject to the notice requirements contained therein. This limitation applies even if loan payments are suspended during the period of military service as permitted under the Plan and Treasury regulations.

- (l) **Security.** The loan shall be secured by an assignment of that portion the Participant's right, title and interest in and to his/her Employer Contribution Account (to the extent vested), Participant Contribution Account, and Rollover Account that is equal to fifty percent (50%) of the Participant's Account (to the extent vested).
- (m) **Assignment or Pledge.** For the purposes of paragraphs (h) and (i), assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan.
- (n) **Spousal Consent.** If the Employer elected the QJSA Election in the Adoption Agreement, the Participant must first obtain his or her spouse's notarized consent to the loan.
- (o) **Other Terms and Conditions.** The Employer shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the qualification of the Plan and Trust under section 401(a) of the Code, or to prevent the treatment of the loan for tax purposes as a distribution to the Participant. The Employer, in its discretion for any reason, may fix other terms and conditions of the loan, not inconsistent with the provisions of this Article.

13.03 Participant Loan Accounts.

- (a) Upon approval of a loan to a Participant by the Employer, an amount not in excess of the loan shall be transferred from the Participant's other investment fund(s), described in Section 6.05 of the Plan, to the Participant's Loan Account as of the Accounting Date immediately preceding the agreed upon date on which the loan is to be made.
- (b) The assets of a Participant's Loan Account may be invested and reinvested only in promissory notes received by the Plan from the Participant as consideration for a loan permitted by Section 13.01 of the Plan or in cash. Uninvested cash balances in a Participant's Loan Account shall not bear interest. No person who is otherwise a fiduciary of the Plan shall be liable for any loss, or by reason of any breach, that results from the Participant's exercise of such control.
- (c) Repayment of principal and payment of interest shall be made by payroll deduction or, where repayment cannot be made by payroll deduction, by check, and shall be invested in one (1) or more other investment funds, in accordance with Section 6.05 of the Plan, as of the next Accounting Date after payment thereof to the Trust. The amount so invested shall be deducted from the Participant's Loan Account.
- (d) The Employer shall have the authority to establish other reasonable rules, not inconsistent with the provisions of the Plan, governing the establishment and maintenance of Participant Loan Accounts.

XIV. PLAN AMENDMENT, TERMINATION AND OPTIONAL PROVISIONS

14.01 Amendment by Employer. The Employer reserves the right, subject to Section 14.02 of the Plan, to amend the Plan from time to time by either:

- (a) Filing an amended Adoption Agreement to change, delete, or add any optional provision, or
- (b) Continuing the Plan in the form of an amended and restated Plan and Trust.

No amendment to the Plan shall be effective to the extent that it has the effect of decreasing a Participant's accrued benefit. Notwithstanding the preceding sentence, a Participant's Account balance may be reduced to the extent permitted under section 412(c)(8) of the Code. For purposes of this paragraph, a Plan amendment which has the effect of decreasing a Participant's Account balance or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit. Furthermore, if the vesting schedule of the Plan is amended, in the case of an Employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date) of such Employee's right to his/her Employer-derived accrued benefit will not be less than his percentage computed under the plan without regard to such amendment.

No amendment to the Plan shall be effective to eliminate or restrict an optional form of benefit. The preceding sentence shall not apply to a Plan amendment that eliminates or restricts the ability of a Participant to receive payment of his or her Account balance under a particular optional form of benefit if the amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit being eliminated or restricted. For this purpose, a single-sum distribution form is otherwise identical only if the single-sum distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the Participant) except with respect to the timing of payments after commencement.

The Employer may (1) change the choice of options in the Adoption Agreement, (2) add overriding language in the Adoption Agreement when such language is necessary to satisfy sections 415 or 416 of the Code because of the required aggregation of multiple plans, (3) amend administrative provisions of the trust or custodial document in the case of a nonstandardized plan and make more limited amendments in the case of a standardized plan such as the name of the plan, employer, trustee or custodian, plan administrator and other fiduciaries, the trust year, and the name of any pooled trust in which the Plan's trust will participate, (4) add certain sample or model amendments published by the Internal Revenue Service or other required good faith amendments which specifically provide that their adoption will not cause the plan to be treated as individually designed, and (5) add or change provisions permitted under the Plan and/or specify or change the effective date of a provision as permitted under the Plan and correct obvious and unambiguous typographical errors and/or cross-references that merely correct a reference but that do not in any way change the original intended meaning of the provisions.

14.02 Amendment of Vesting Schedule. If the Plan's vesting schedule is amended, or the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage, each Participant may elect, within a reasonable period after the adoption of the amend-

ment or change, to have the nonforfeitable percentage computed under the Plan without regard to such amendment or change.

The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end on the latest of:

- (a) Sixty (60) days after the amendment is adopted;
- (b) Sixty (60) days after the amendment becomes effective; or
- (c) Sixty (60) days after the Participant is issued written notice of the amendment by the Employer or Plan Administrator.

14.03 Termination by Employer. The Employer reserves the right to terminate this Plan. However, in the event of such termination no part of the Trust shall be used or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries, except as provided in this Section.

Upon Plan termination or partial termination, all Account balances shall be valued at their fair market value and the Participant's right to his/her Employer Contribution Account shall be one hundred percent (100%) vested and nonforfeitable. Such amount and any other amounts held in the Participant's other Accounts shall be maintained for the Participant until paid pursuant to the terms of the Plan.

Any amounts held in a suspense account, after all liabilities of the Plan to Participants and Beneficiaries have been satisfied or provided for, shall be paid to the Employer in accordance with the Code and regulations thereunder.

In the event that the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Internal Revenue Code, any contribution made by the Employer incident to that initial qualification must be returned to the Employer within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the Employer's return for the year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

14.04 Discontinuance of Contributions. A permanent discontinuance of contributions to the Plan by the Employer, unless an amended and restated Plan is established, shall constitute a Plan termination. In the event of a complete discontinuance of contributions under the Plan, the Account balance of each affected Participant shall be nonforfeitable.

14.05 Amendment by Plan Administrator. The Plan Administrator may amend this Plan upon thirty (30) days written notification to the Employer; provided, however, that any such amendment must be for the express purpose of maintaining compliance with applicable federal laws and regulations of the Internal Revenue Service. Such amendment shall become effective unless, within such 30-day period, the Employer notifies the Administrator, in writing, that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as Administrator hereunder.

14.06 Optional Provisions. Any provision which is optional under this Plan shall become effective if and only if elected by the Employer and agreed to by the Plan Administrator.

XV. ADMINISTRATION

15.01 Powers of the Employer. The Employer shall have the following powers and duties:

- (a) To appoint and remove, with or without cause, the Plan Administrator;
- (b) To amend or terminate the Plan pursuant to the provisions of Article XIV;
- (c) To appoint a committee to facilitate administration of the Plan and communications to Participants;
- (d) To decide all questions of eligibility (1) for Plan participation, and (2) upon appeal by any Participant, Employee or Beneficiary, for the payment of benefits;
- (e) To engage an independent qualified public accountant, when required to do so by law, to prepare annually the audited financial statements of the Plan's operation;
- (f) To take all actions and to communicate to the Plan Administrator in writing all necessary information to carry out the terms of the Plan and Trust; and
- (g) To notify the Plan Administrator in writing of the termination of the Plan.

15.02 Duties of the Plan Administrator. The Plan Administrator shall have the following powers and duties:

- (a) To construe and interpret the provisions of the Plan;
- (b) To maintain and provide such returns, reports, schedules, descriptions, and individual Account statements, as are required by law within the times prescribed by law; and to furnish to the Employer, upon request, copies of any or all such materials, and further, to make copies of such instruments, reports, descriptions, and statements as are required by law available for examination by Participants and such of their Beneficiaries who are or may be entitled to benefits under the Plan in such places and in such manner as required by law;
- (c) To obtain from the Employer such information as shall be necessary for the proper administration of the Plan;
- (d) To determine the amount, manner, and time of payment of benefits hereunder;
- (e) To appoint and retain such agents, counsel, and accountants for the purpose of properly administering the Plan;
- (f) To distribute assets of the Trust to each Participant and Beneficiary in accordance with Article X of the Plan;
- (g) To pay expenses from the Trust pursuant to Section 6.03 of the Plan; and
- (h) To do such other acts reasonably required to administer the Plan in accordance with its provisions or as may be provided for or required by law.

- 15.03 Protection of the Employer.** The Employer shall not be liable for the acts or omissions of the Plan Administrator, but only to the extent that such acts or omissions do not result from the Employer's failure to provide accurate or timely information as required or necessary for proper administration of the Plan.
- 15.04 Protection of the Plan Administrator.** The Plan Administrator may rely upon any certificate, notice or direction purporting to have been signed on behalf of the Employer which the Plan Administrator believes to have been signed by a duly designated official of the Employer.
- 15.05 Resignation or Removal of Plan Administrator.** The Plan Administrator may resign at any time effective upon sixty (60) days prior written notice to the Employer. The Plan Administrator may be removed by the Employer at any time upon sixty (60) days prior written notice to the Plan Administrator. Upon the resignation or removal of the Plan Administrator, the Employer may appoint a successor Plan Administrator; failing such appointment, the Employer shall assume the powers and duties of Plan Administrator. Upon the resignation or removal of the Plan Administrator, any Trust assets invested by or held in the name of the Plan Administrator shall be transferred to the trustee in cash or property, at fair market value, except that the return of Trust assets invested in a contract issued by an insurance company shall be governed by the terms of that contract.
- 15.06 No Termination Penalty.** The Plan Administrator shall have no authority or discretion to impose any termination penalty upon its removal.
- 15.07 Decisions of the Plan Administrator.** All constructions, determinations, and interpretations made by the Plan Administrator pursuant to Section 15.02(a) or (d) or by the Employer pursuant to Section 15.01(d) shall be final and binding on all persons participating in the Plan, given deference in all courts of law to the greatest extent allowed by applicable law, and shall not be overturned or set aside by any court of law unless found to be arbitrary or capricious, or made in bad faith.

XVI. MISCELLANEOUS

- 16.01 Nonguarantee of Employment.** Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee, or as a right of an Employee to be continued in the employment of the Employer, as a limitation of the right of the Employer to discharge any of its Employees, with or without cause.
- 16.02 Rights to Trust Assets.** No Employee or Beneficiary shall have any right to, or interest in, any assets of the Trust upon termination of his/her employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable under the Plan to such Employee or Beneficiary out of the assets of the Trust. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the Trust and none of the fiduciaries shall be liable therefor in any manner.
- 16.03 Nonalienation of Benefits.** Except as provided in Sections 16.04 and 16.06 of the Plan, benefits payable under this Plan shall not 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, prior to actually being received by the person entitled to the benefit under the terms of the Plan; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The Trust shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.

16.04 Qualified Domestic Relations Order. Notwithstanding Section 16.03 of the Plan, amounts may be paid with respect to a Participant pursuant to a domestic relations order, but if and only if the order is determined to be a qualified domestic relations order within the meaning of section 414(p) of the Code or any domestic relations order entered before January 1, 1985.

16.05 Nonforfeiture of Benefits. Subject only to the specific provisions of this Plan, nothing shall be deemed to deprive a Participant of his/her right to the Nonforfeitable Interest to which he/she becomes entitled in accordance with the provisions of the Plan.

16.06 Incompetency of Payee. In the event any benefit is payable to a minor or incompetent, to a person otherwise under legal disability, or to a person who, in the sole judgment of the Employer, is by reason of advanced age, illness, or other physical or mental incapacity incapable of handling the disposition of his/her property, the Employer may apply the whole or any part of such benefit directly to the care, comfort, maintenance, support, education, or use of such person or pay or distribute the whole or any part of such benefit to:

- (a) The parent of such person;
- (b) The guardian, committee, or other legal representative, wherever appointed, of such person;
- (c) The person with whom such person resides;
- (d) Any person having the care and control of such person; or
- (e) Such person personally.

The receipt of the person to whom any such payment or distribution is so made shall be full and complete discharge therefor.

16.07 Inability to Locate Payee. Anything to the contrary herein notwithstanding, if the Employer is unable, after reasonable effort, to locate any Participant or Beneficiary to whom an amount is payable hereunder, such amount shall be forfeited and held in the Trust for application against the next succeeding Employer Contribution or contributions required to be made hereunder. Notwithstanding the foregoing, however, such amount shall be reinstated, by means of an additional Employer contribution, if and when a claim for the forfeited amount is subsequently made by the Participant or Beneficiary or if the Employer receives proof of death of such person, satisfactory to the Employer. To the extent not inconsistent with applicable law, any benefits lost by reason of escheat under applicable state law shall be considered forfeited and shall not be reinstated.

16.08 Mergers, Consolidations, and Transfer of Assets. The Plan shall not be merged into or consolidated with any other plan, nor shall any of its assets or liabilities be transferred into any such other plan, unless each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer that is equal to or greater than the benefit he/she would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Plan had then terminated).

16.09 Employer Records. Records of the Employer as to an Employee's or Participant's Period of Service, termination of service and the reason therefor, leaves of absence, reemployment, Earnings, and Compensation will be conclusive on all persons, unless determined to be incorrect.

16.10 Gender and Number. The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.

16.11 Applicable Law. The Plan shall be construed under the laws of the State where the Employer is located, except to the extent superseded by federal law. The Plan is established with the intent that it meets the requirements under the Code. The provisions of this Plan shall be interpreted in conformity with these requirements.

In the event of any conflict between the Plan and a policy or contract issued hereunder, the Plan provisions shall control; provided, however, no Plan amendment shall supersede an existing policy or contract unless such amendment is required to maintain qualification under section 401(a) and 414(d) of the Code.

XVII. SPOUSAL BENEFIT REQUIREMENTS

17.01 Application. Effective as of January 1, 2006, where elected by the Employer in the Adoption Agreement (the "QJSA Election"), the provisions of this Article shall take precedence over any conflicting provision in this Plan. If elected, the provisions of this Article shall apply to any Participant who is credited with any Period of Service with the Employer on or after August 23, 1984, and such other Participants as provided in Section 17.05.

17.02 Qualified Joint and Survivor Annuity. Unless an optional form of benefit is selected pursuant to a Qualified Election within the ninety (90) day period ending on the Annuity Starting Date, a married Participant's Vested Account Balance will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant's Vested Account Balance will be paid in the form of a Straight Life Annuity. The Participant may elect to have such annuity distributed upon the attainment of the Earliest Retirement Age under the Plan.

17.03 Qualified Preretirement Survivor Annuity. If a Participant dies before the Annuity Starting Date, then fifty percent (50%) of the Participant's Vested Account Balance shall be applied toward the purchase of an annuity for the life of the Surviving Spouse; the remaining portion shall be paid to such Beneficiaries (which may include such Spouse) designated by the Participant. Notwithstanding the foregoing, the Participant may waive the spousal annuity by designating a different Beneficiary within the Election Period pursuant to a Qualified Election. To the extent that less than one hundred percent (100%) of the vested Account balance is paid to the Surviving Spouse, the amount of the Participant's Account derived from Employee contributions will be allocated to the Surviving Spouse in the same proportion as the amount of the Participant's Account derived from Employee contributions is to the Participant's total Vested Account Balance. The Surviving Spouse may elect to have such annuity distributed within a reasonable period after the Participant's death. Further, such Spouse may elect to receive any death benefit payable to him/her hereunder in any of the forms available to the Participant under Section 11.02.

17.04 Notice Requirements.

- (a) In the case of a Qualified Joint and Survivor Annuity as described in Section 17.02, the Plan Administrator shall, no less than thirty (30) days and no more than ninety (90) days prior to the Annuity Starting Date, provide each Participant a written explanation of: (i) the terms and conditions of a Qualified Joint and Survivor Annuity; (ii) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit; (iii) the rights of a Participant's Spouse; and (iv) the right to make, and the effect

of, a revocation of a previous election to waive the Qualified Joint and Survivor Annuity. However, if the Participant, after having received the written explanation, affirmatively elects a form of distribution and the Spouse consents to that form of distribution (if necessary), benefit payments may commence less than 30 days after the written explanation was provided to the Participant, provided that the following requirements are met:

- (1) The Plan Administrator provides information to the Participant clearly indicating that the Participant has a right to at least 30 days to consider whether to waive the Qualified Joint and Survivor Annuity and consent to a form of distribution other than a Qualified Joint and Survivor Annuity;
 - (2) The Participant is permitted to revoke an affirmative distribution election at least until the Annuity Starting Date, or if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant;
 - (3) The Annuity Starting Date is after the date that the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant; and
 - (4) Distribution in accordance with the affirmative election does not commence before the expiration of the 7-day period that begins after the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant.
- (b) In the case of a Qualified Preretirement Survivor Annuity as described in Section 17.03, the Plan Administrator shall provide each Participant within the applicable period for such Participant a written explanation of the Qualified Preretirement Survivor Annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements of Subsection (a) applicable to a Qualified Joint and Survivor Annuity.

The applicable period for a Participant is whichever of the following periods ends last:

- (i) the period beginning with the first day of the Plan Year in which the Participant attains age thirty-two (32) and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age thirty-five (35);
- (ii) a reasonable period ending after the individual becomes a Participant;
- (iii) a reasonable period ending after Subsection (c) ceases to apply to the Participant;
- (iv) a reasonable period ending after this Article first applies to the Participant.

Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation from service in the case of a Participant who separates from service before attaining age thirty-five (35).

For purposes of applying the preceding paragraph, a reasonable period ending after the enumerated events described in (ii), (iii) and (iv) is the end of the two (2) year period beginning one (1) year prior to the date the applicable event occurs, and ending one (1) year after that date. In the case of a Participant who separates from service before the Plan Year in which age thirty-five (35) is attained, notice shall be provided within the two (2) year period beginning one (1) year prior to separation and ending one (1) year after separation. If such a Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be redetermined.

- (c) Notwithstanding the other requirements of this Section, the respective notices prescribed by this Section need not be given to a Participant if (1) the Plan “fully subsidizes” the costs

of a Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity, and (2) the Plan does not allow the Participant to waive the Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity and does not allow a married Participant to designate a non-Spouse Beneficiary. For purposes of this Subsection (c), a plan fully subsidizes the costs of a benefit if no increase in cost or decrease in benefits to the Participant may result from the Participant's failure to elect another benefit.

17.05 Definitions. For the purposes of this Section, the following definitions shall apply:

- (a) **Annuity Starting Date:** The first day of the first period for which an amount is paid as an annuity or any other form.
- (b) **Election Period:** The period which begins on the first day of the Plan Year in which the Participant attains age thirty-five (35) and ends on the date of the Participant's death. If a Participant separates from service prior to the first day of the Plan Year in which age thirty-five (35) is attained, with respect to the Account balance as of the date of separation, the Election Period shall begin on the date of separation.

Pre-age thirty-five (35) waiver: A Participant who will not yet attain age thirty-five (35) as of the end of any current Plan Year may make a special Qualified Election to waive the Qualified Preretirement Survivor Annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age thirty-five (35). Such election shall not be valid unless the Participant receives a written explanation of the Qualified Preretirement Survivor Annuity in such terms as are comparable to the explanation required under Section 17.04(a). Qualified Preretirement Survivor Annuity coverage will be automatically reinstated as of the first day of the Plan Year in which the Participant attains age thirty-five (35). Any new waiver on or after such date shall be subject to the full requirements of this Article.

- (c) **Earliest Retirement Age:** The earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.
- (d) **Qualified Election:** A waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity. Any waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity shall not be effective unless: (a) the Participant's Spouse consents in writing to the election; (b) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent); (c) the Spouse's consent acknowledges the effect of the election; and (d) the Spouse's consent is witnessed by a Plan representative or notary public. Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further Spousal consent). If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed a Qualified Election.

Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by

such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Section 17.04.

- (e) **Qualified Joint and Survivor Annuity:** An immediate annuity for the life of the Participant with a survivor annuity for the life of the Spouse which is fifty percent (50%) of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and which is the amount of benefit which can be purchased with the Participant's Vested Account Balance.
- (f) **Spouse (Surviving Spouse):** The Spouse or Surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or Surviving Spouse and a current Spouse will not be treated as the Spouse or Surviving Spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.
- (g) **Straight Life Annuity:** An annuity payable in equal installments for the life of the Participant that terminates upon the Participant's death.
- (h) **Vested Account Balance:** The aggregate value of the Participant's vested Account balances derived from Employer and Employee contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the Participant's life. The provisions of this Article shall apply to a Participant who is vested in amounts attributable to Employer Contributions, Employee contributions (or both) at the time of death or distribution.

17.06 Annuity Contracts. Where benefits are to be paid in the form of a life annuity pursuant to the terms of this Article, a nontransferable annuity contract shall be purchased from a life insurance company and distributed to the Participant or Surviving Spouse, as applicable. The terms of any annuity contract purchased and distributed by the Plan shall comply with the requirements of this Plan and section 417 of the Code.

XVIII. FINAL PAY CONTRIBUTIONS

18.01 Eligibility. Effective as of January 1, 2006, if elected by the Employer in the Adoption Agreement, Final Pay Contributions on behalf of each Participant equal to the equivalent of the accrued unpaid final pay, as defined in the Adoption Agreement ("Final Pay"), shall be contributed to the Plan.

18.02 Contribution Amount. At the election of the Employer in the Adoption Agreement, the Final Pay Contributions may be made as either (a) Employer Final Pay Contributions, or (b) Employee Designated Final Pay Contributions, as described below.

- (a) Employer Final Pay Contributions. The Employer shall contribute to the Plan for each Participant the equivalent of a designated amount of accrued unpaid final pay upon termination of employment of the Participant, as the Employer so elects in the Adoption Agreement. The Employer's contribution for any Plan Year shall be due and paid not later than the time prescribed by applicable law.

The Employer Final Pay Contributions shall be accounted for in the Employer Contribution Account.

- (b) Employee Designated Final Pay Contributions. The Employer shall contribute to the Plan for each Participant all or any portion of a Participant's Final Pay, as elected by the Participant. The Employer may limit the amount of Final Pay to be elected to be contributed to the Plan. Once elected, an Employee's election shall remain in force and may not be revised or revoked.

The Employee Designated Final Pay Contributions shall be accounted for in the Participant Contribution Account, and are nonforfeitable by the Participant at all times.

The Employee Designated Final Pay Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). The contributions shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

A Participant cannot elect to receive cash in lieu of any Final Pay Contribution.

18.03 Equivalencies. The Final Pay Contribution shall be determined by multiplying the Participant's current daily rate of pay from the Employer times the amount of accrued unpaid leave being converted.

18.04 Excess Contributions. Final Pay Contributions are limited to the extent of applicable law and any Code limitation. No Final Pay Contribution shall be made to the extent that it would exceed the applicable Code section 415 limitation, as set forth in Article V. Any excess contributions as a result of the Code section 415 limitation shall remain in the Participant's leave bank.

XIX. ACCRUED LEAVE CONTRIBUTIONS

19.01 Eligibility. Effective as of January 1, 2006, if elected by the Employer in the Adoption Agreement, Accrued Leave Contributions on behalf of each eligible Participant equal to the equivalent of the accrued unpaid leave, as defined in the Adoption Agreement ("Accrued Leave"), shall be contributed to the Plan. Eligibility for Accrued Leave Contributions is limited to only those Participants or class of Participants that the Employer elects in the Adoption Agreement.

19.02 Contribution Amount. At the election of the Employer in the Adoption Agreement, the Accrued Leave Contributions may be made as either (a) Employer Accrued Leave Contributions, or (b) Employee Designated Accrued Leave Contributions, as described below.

- (a) Employer Accrued Leave Contributions. The Employer shall contribute to the Plan for each eligible Participant the equivalent of a designated amount of accrued unpaid leave each year, as the Employer so elects in the Adoption Agreement. The Employer's contribution for any Plan Year shall be due and paid not later than the time prescribed by applicable law.

The Employer Accrued Leave Contributions shall be accounted for in the Employer Contribution Account.

- (b) Employee Designated Accrued Leave Contributions. The Employer shall contribute to the Plan for each eligible Participant all or any portion of a Participant's Accrued Leave,

as elected by the Participant. The Employer may limit the amount of Accrued Leave to be elected to be contributed to the Plan. Once elected, an Employee's election shall remain in force and may not be revised or revoked.

The Employee Designated Accrued Leave Contributions shall be accounted for in the Participant Contribution Account, and are nonforfeitable by the Participant at all times.

The Employee Designated Accrued Leave Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). The contributions shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

A Participant cannot elect to receive cash in lieu of any Accrued Leave Contribution.

- 19.03 Equivalencies.** The Accrued Leave Contribution shall be determined by multiplying the Participant's current daily rate of pay from the Employer times the amount of accrued unpaid leave being converted.
- 19.04 Excess Contributions.** Accrued Leave Contributions are limited to the extent of applicable law and any Code limitation. No Accrued Leave Contribution shall be made to the extent that it would exceed the applicable Code section 415 limitation, as set forth in Article V. Any excess contributions as a result of the Code section 415 limitation shall remain in the Participant's leave bank.

DECLARATION OF TRUST

This Declaration of Trust (the "Group Trust Agreement") is made as of the 19th day of May, 2001, by VantageTrust Company, which declares itself to be the sole Trustee of the trust hereby created.

WHEREAS, the ICMA Retirement Trust was created as a vehicle for the commingling of the assets of governmental plans and governmental units described in Section 818(a)(6) of the Internal Revenue Code of 1986, as amended, pursuant to a Declaration of Trust dated October 4, 1982, as subsequently amended, a copy of which is attached hereto and incorporated by reference as set out below (the "ICMA Declaration"); and

WHEREAS, the trust created hereunder (the "Group Trust") is intended to meet the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, and is established as a common trust fund within the meaning of Section 391:1 of Title 35 of the New Hampshire Revised Statutes Annotated, to accept and hold for investment purposes the assets of the Deferred Compensation and Qualified Plans held by and through the ICMA Retirement Trust.

NOW, THEREFORE, the Group Trust is created by the execution of this Declaration of Trust by the Trustee and is established with respect to each Deferred Compensation and Qualified Plan by the transfer to the Trustee of such Plan's assets in the ICMA Retirement Trust, by the Trustees thereof, in accord with the following provisions:

1. Incorporation of ICMA Declaration by Reference; ICMA By-Laws. Except as otherwise provided in this Group Trust Agreement, and to the extent not inconsistent herewith, all provisions of the ICMA Declaration are incorporated herein by reference and made a part hereof, to be read by substituting the Group Trust for the Retirement Trust and the Trustee for the Board of Trustees referenced therein. In this respect, unless the context clearly indicates otherwise, all capitalized terms used herein and defined in the ICMA Declaration have the meanings assigned to them in the ICMA Declaration. In addition, the By-Laws of the ICMA Retirement Trust, as the same may be amended from time-to-time, are adopted as the By-Laws of the Group Trust to the extent not inconsistent with the terms of this Group Trust Agreement.

Notwithstanding the foregoing, the terms of the ICMA Declaration and By-Laws are further modified with respect to the Group Trust created hereunder, as follows:

- (a) any reporting, distribution, or other obligation of the Group Trust vis-à-vis any Deferred Compensation Plan, Qualified Plan, Public Employer, Public Employer Trustee, or Employer Trust shall be deemed satisfied to the extent that such obligation is undertaken by the ICMA Retirement Trust (in which case the obligation of the Group Trust shall run to the ICMA Retirement Trust); and
 - (b) all provisions dealing with the number, qualification, election, term and nomination of Trustees shall not apply, and all other provisions relating to trustees (including, but not limited to, resignation and removal) shall be interpreted in a manner consistent with the appointment of a single corporate trustee.
2. Compliance with Revenue Procedure 81-100. The requirements of Revenue Procedure 81-100 are applicable to the Group Trust as follows:
 - (a) Pursuant to the terms of this Group Trust Agreement and Article X of the By-Laws, investment in the Group Trust is limited to assets of Deferred Compensation and Qualified Plans, investing through the ICMA Retirement Trust.
 - (b) Pursuant to the By-Laws, the Group Trust is adopted as a part of each Qualified Plan that invests herein through the ICMA Retirement Trust.

- (c) In accord with the By-Laws, that part of the Group Trust's corpus or income which equitably belongs to any Deferred Compensation and Qualified Plan may not be used for or diverted to any purposes other than for the exclusive benefit of the Plan's employees or their beneficiaries who are entitled to benefits under such Plan.
 - (d) In accord with the By-Laws, no Deferred Compensation Plan or Qualified Plan may assign any or part of its equity or interest in the Group Trust, and any purported assignment of such equity or interest shall be void.
3. **Governing Law.** Except as otherwise required by federal, state or local law, this Declaration of Trust (including the ICMA Declaration to the extent incorporated herein) and the Group Trust created hereunder shall be construed and determined in accordance with applicable laws of the State of New Hampshire.
4. **Judicial Proceedings.** The Trustee may at any time initiate an action or proceeding in the appropriate state or federal courts within or outside the state of New Hampshire for the settlement of its accounts or for the determination of any question of construction which may arise or for instructions.

IN WITNESS WHEREOF, the Trustee has executed this Declaration of Trust as of the day and year first above written.

VANTAGETRUST COMPANY

By 
Angela C. Montez

Assistant Corporate Secretary

ICMA-RC Services LLC, a wholly owned broker-dealer subsidiary of ICMA-RC, member FINRA/SIPC.



ATTN.: NEW BUSINESS UNIT
P.O. BOX 96220
WASHINGTON, DC 20090-6220
1-800-669-7400
WWW.ICMARC.ORG
EN ESPAÑOL LLAME AL 1-800-669-8216

BKT000-015-200904-452

ICMA Retirement Corporation Prototype Money Purchase Plan & Trust Adoption Agreement

*Previous Plan
Documents*

**ICMA RETIREMENT CORPORATION
PROTOTYPE MONEY PURCHASE PLAN & TRUST
ADOPTION AGREEMENT
#001**

Account Number **109091**

The Employer hereby establishes a Money Purchase Plan and Trust to be known as _____
TOWN OF FOUNTAIN HILLS MANAGEMENT

(the "Plan") in the form of the ICMA Retirement Corporation Prototype Money Purchase Plan and Trust.

This Plan is an amendment and restatement of an existing defined contribution money purchase plan.

Yes

No

If yes, please specify the name of the defined contribution money purchase plan which this Plan hereby amends and restates:

The Town of Fountain Hills Management

I. Employer: **TOWN OF FOUNTAIN HILLS**

II. Prototype Sponsor:

Name: ICMA Retirement Corporation

Address: 777 N. Capitol Street, N.E.
Washington, D.C. 20002-4240

Telephone Number: (202) 962-4600

III. The Effective Date of the Plan shall be the first day of the Plan Year during which the Employer adopts the Plan, unless an alternate Effective Date is hereby specified: **03/21/91**

IV. Plan Year will mean:

The twelve (12) consecutive month period which coincides with the limitation year. (See Section 6.05(i) of the Plan.)

The twelve (12) consecutive month period commencing on **03/21** and each anniversary thereof.

V. Normal Retirement Age shall be age **62.0** (not to exceed age 65).

VI. ELIGIBILITY REQUIREMENTS:

1. The following group or groups of Employees are eligible to participate in the Plan:

All Employees
 All Full-Time Employees
 Salaried Employees
 Non-union Employees
 Management Employees
 Public Safety Employees
 General Employees
 Other (specify below)
TOWN MANAGER

The group specified must correspond to a group of the same designation that is defined in the statutes, ordinances, rules, regulations, personal manuals or other material in effect in the state or locality of the Employer.

2. The Employer hereby waives or reduces the requirement of a twelve (12) month Period of Service for participation. The required Period of Service shall be N/A (write N/A if an Employee is eligible to participate upon employment).

If this waiver or reduction is elected, it shall apply to all Employees within the Covered Employment Classification.

3. A minimum age requirement is hereby specified for eligibility to participate. The minimum age requirement is 21 (not to exceed age 21. Write N/A if no minimum age is declared.)

VII. CONTRIBUTION PROVISIONS

1. The Employer shall contribute as follows (choose one, if applicable):
 Fixed Employer Contributions With or Without Mandatory Participant Contributions.

The Employer shall contribute on behalf of each Participant 8.50 % of Earnings or \$ 0 for the Plan Year (subject to the limitations of Article VI of the Plan). Each Participant is required to contribute 6.00 % of Earnings or \$ 0 for the Plan Year as a condition of participation in the Plan. (Write "0" if no contribution is required.) If Participant Contributions are required under this option, a Participant shall not have the right to discontinue or vary the rate of such contributions after becoming a Plan Participant.

The Employer hereby elects to "pick up" the Mandatory/Required Participant Contribution.

Yes

No

[Note to Employer: Neither an opinion letter issued by the Internal Revenue Service with respect to the Prototype Plan, nor a determination letter issued to an adopting Employer is a ruling by the Internal Revenue Service that Participant contributions that are picked up by the Employer are not includable in the Participant's gross income for federal income tax purposes. The Employer may seek such a ruling.

Picked up contributions are excludable from the Participant's gross income under section 414(h)(2) of the Internal Revenue Code of 1986 only if they meet the requirements of Rev. Rul. 81-35, 1981-1 C.B. 255. Those requirements are (1) that the Employer must specify that the contributions, although designated as employee contributions, are being paid by the Employer in lieu of contributions by the employee; and (2) the employee must not have the option of receiving the contributed amounts directly instead of having them paid by the Employer to the plan.]

Fixed Employer Match of Participant Contributions.

The Employer shall contribute on behalf of each Participant ___% of Earnings for the Plan Year (subject to the limitations of Articles V and VI of the Plan) for each Plan Year that such Participant has contributed ___% of Earnings or \$___. Under this option, there is a single, fixed rate of Employer contributions, but a Participant may decline to make the required Participant contributions in any Plan Year, in which case no Employer contribution will be made on the Participant's behalf in that Plan Year.

Variable Employer Match of Participant Contributions.

The Employer shall contribute on behalf of each Participant an amount determined as follows (subject to the limitations of Articles V and VI of the Plan):

___% of the Participant contributions made by the Participant for the Plan Year (not including Participant contributions exceeding ___ of Earnings or \$ ___);

PLUS ___% of the contributions made by the Participant for the Plan Year in excess of those included in the above paragraph (but not including Participant contributions exceeding in the aggregate ___% of Earnings or \$ ___).

Employer Contributions on behalf of a Participant for a Plan Year shall not exceed \$ ___ or ___% of Earnings, whichever is more or less.

2. Each Participant may make voluntary (unmatched), after-tax contribution, subject to the limitations of Section 4.05 and Articles V and VI of the Plan.

Yes No

3. Employer contributions and Participant contributions shall be contributed to the Trust in accordance with the following payment schedule:

BI-WEEKLY

VIII. EARNINGS

Earnings, as defined under Section 2.09 of the Plan, shall include:

(a) Overtime Yes No

(b) Bonuses Yes No

IX. LIMITATION ON ALLOCATIONS

If the Employer (i) maintains or ever maintained another qualified plan in which any Participant in this Plan is (or was) a participant or could possibly become a participant, and/or (ii) maintains a welfare benefit fund (as defined in section 419(e) of the Code) or an individual medical account (as defined in section 415(l)(2) of the Code, under which amounts are treated as Annual Additions with respect to any Participant in this Plan) the Employer hereby agrees to limit contributions to all such plans as provided herein, if necessary in order to avoid excess contributions (as described in Sections 6.03 and 6.04 of the Plan).

1. If the Participant is covered under another qualified defined contribution plan maintained by the Employer, other than a Regional Prototype Plan, the provisions of Section 6.02(a) through (f) of the Plan will apply as if the other plan were a Master Prototype Plan, unless another method has been indicated below.

Other Method. (Provide the method under which the plans will limit total Annual Additions to the Maximum Permissible Amount, and will properly reduce any excess amounts, in a manner that precludes Employer discretion.)

2. If the Participant is or has ever been a participant in a defined benefit plan maintained by the Employer, and if the limitation in Section 6.04 of the Plan would be exceeded, then the Participant's Projected Annual Benefit under the defined benefit plan shall be reduced in accordance with the terms thereof to the extent necessary to satisfy such limitation. If such plan does not provide for such reduction, or if the limitation is still exceeded after the reduction, annual additions shall be reduced to the extent necessary in the manner described in Sections 6.01 through 6.03. The methods of avoiding the limitation described in this paragraph will not apply if the Employer indicates another method below.

Other Method. (Note to Employer: Provide below language which will satisfy the 1.0 limitation of section 415(e) of the Code. Such language must preclude Employer discretion. See section 1.415-1 of the Regulations for guidance.)

3. The limitation year is the following 12-consecutive month period: _____

X. VESTING PROVISIONS

The Employer hereby specifies the following vesting schedule, subject to (1) the minimum vesting requirements as noted and (2) the concurrence of the Plan Administrator.

<u>Years of Service Completed</u>	<u>Specified Percent Vesting</u>	<u>Minimum Vesting Requirements**</u>
Zero	<u>100</u> %	No minimum
One	<u>100</u> %	No minimum
Two	<u>100</u> %	No minimum
Three	<u>100</u> %	Not less than 20%
Four	<u>100</u> %	Not less than 40%
Five	<u>100</u> %	Not less than 60%
Six	<u>100</u> %	Not less than 80%
Seven, or more	<u>100</u> %	Must equal 100%

(**These minimum vesting requirements conform to the Code's three to seven year vesting schedule. If the employee becomes 100% vested by the completion of five years of service, there is no minimum for years three and four.)

XI. Loans are permitted under the Plan, as provided in Article XIV:

Yes No

- XII. The Employer hereby attests that it is a unit of state or local government or an agency or instrumentality of one or more units of state or local government.
- XIII. The Prototype Sponsor hereby agrees to inform the Employer of any amendments to the Plan made pursuant to Section 15.05 of the Plan or of the discontinuance or abandonment of the Plan.
- XIV. The Employer hereby appoints the Prototype Sponsor as the Plan Administrator pursuant to the terms and conditions of the ICMA RETIREMENT CORPORATION PROTOTYPE MONEY PURCHASE PLAN & TRUST.

The Employer hereby agrees to the provisions of the Plan and Trust.

- XV. The Employer hereby acknowledges it understands that failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.
- XVI. An adopting Employer may not rely on a notification letter issued by the National or District Office of the Internal Revenue Service as evidence that the Plan is qualified under section 401 of the Internal Revenue Code. In order to obtain reliance with respect to plan qualification, the Employer must apply to the appropriate key district office for a determination letter.

This Adoption Agreement may be used only in conjunction with basic Plan document number 001.

In Witness Whereof, the Employer hereby causes this Agreement to be executed on this 1st day of July, 1995.

EMPLOYER

Accepted: ICMA RETIREMENT CORPORATION

By: [Signature]

By: [Signature]

Title: Mayor

Title: Corporate Secretary

Attest: [Signature]

Attest: [Signature]

Town Clerk

RESOLUTION NO. 1995 - 35

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA; AMENDING AND RESTATING THE ADOPTION AGREEMENT FOR THE TOWN OF FOUNTAIN HILLS MANAGEMENT PLAN; AND DECLARING AN EMERGENCY.

WHEREAS, the Town has previously established a money purchase retirement plan known as the Town of Fountain Hills Management Plan pursuant to the specific provisions of an Adoption Agreement; and

WHEREAS, the Council has previously adopted resolutions requiring the Town to "pick up" the mandatory employee contributions made on behalf of the Town Manager under the Plan; and

WHEREAS, ICMA Retirement Corporation (RC) has amended and restated its basic plan document and Adoption Agreements to comply with changes required by the Unemployment Compensation Act of 1992 (UCA '92), the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), and to install RC's daily valuation recordkeeping system; and

WHEREAS, the Council desires to amend and restate the Adoption Agreement incorporating all prior amendments to the Adoption Agreement and adopting the new Adoption Agreement provided by the RC.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the Town of Fountain Hills, Arizona, that the Town hereby amends and restates the money purchase retirement plan known as the "Town of Fountain Hills Management Plan" (hereafter, the "Plan") in the form of the ICMA Prototype Money Purchase Pension Plan and Trust, pursuant to the specific provisions of the amended and restated Adoption Agreement; and

BE IT FURTHER RESOLVED, that the effective date of such amendment and restatement shall be March 21, 1991, the original effective date of the Adoption Agreement, except for the new rates of contributions by the Town and the employees (which are picked up by the Town) which shall be effective July 1, 1995; and

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute the amended and Restated Adoption Agreement for and on behalf of the Town; and

BE IT FURTHER RESOLVED, that the immediate operation of this resolution is necessary for the preservation of the public peace, health, and safety and therefore an emergency is hereby

declared to exist and this Resolution shall be in full force and effect immediately after its passage and adoption.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Fountain Hills, Arizona, this 15th day of June, 1995.



John A. Cutillo, Mayor

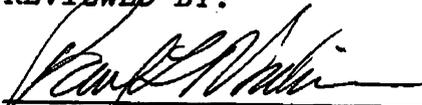
Attest: Cassie B. Hansen
Cassie B. Hansen,
Town Clerk

APPROVED AS TO FORM:



William E. Farrell
Town Attorney

REVIEWED BY:



Paul B. Nordin
Town Manager

July 17, 1995

Paul Nordin
Town Manager
Town of Fountain Hills
P. O. Box 17958
Fountain Hills, AZ 85269

RE: ICMA Retirement Corporation Account Number 109091

Dear Mr. Nordin:

The ICMA Retirement Corporation is pleased to accept the Town of Fountain Hills as a sponsor of the ICMA Retirement Corporation Prototype Money Purchase Plan and Trust. A copy of the executed adoption agreement is enclosed.

The ICMA Retirement Corporation Prototype Money Purchase Plan and Trust is classified by the IRS as a non-standard regional prototype plan and the ICMA Retirement Corporation is the prototype sponsor. As such, we will notify you annually whether we continue to be the prototype sponsor, whether any amendments have been made to the regional prototype plan, and, if amendments have been made, the requirements you must satisfy in order to be entitled to maintain your plan as a regional prototype.

We look forward to providing the Town of Fountain Hills with the most exceptional retirement program available in the industry. If you have any questions, or need supplies, please do not hesitate to contact the Employer Services staff at (800) 326-7272.

Sincerely,



A. E. Dunston
Sr. Plan Analyst

Enclosure

IN WITNESS WHEREOF, the Employer has caused this Third Amendment to be executed on this 5th day of August, 1999.

EMPLOYER:

ACCEPTED:

TOWN OF FOUNTAIN HILLS, ARIZONA ICMA RETIREMENT CORPORATION

By Sharon Morgan
Sharon Morgan, Mayor

By [Signature]

Attest: Cassie B. Hansen
Cassie B. Hansen, Town Clerk

Attest: [Signature]

NOV. 22 1999

Document ID: IA070517_ATY Page 3

COPY

777 North Capitol Street, NE
Washington, DC 20002-4240
1-202-962-4600
FAX 1-202-962-4601
Toll Free 1-800-868-7400
Internet: <http://www.icmrc.org>

April 6, 2000

Julie Ghetti
Town Accountant
Town of Fountain Hills
P. O. Box 17958
Fountain Hills, AZ 85269

RE: ICMA Retirement Corporation Account Numbers 109091 and 109344

Dear Ms. Ghetti:

Enclosed are counter-executed originals of the Adoption Agreements for the above referenced plans. Please retain these documents in your files.

If I can be of any further assistance, please give me a call at 1-800-326-7272.

Sincerely,



A. E. Dunston
Senior Implementation Analyst

Enclosures



ICMA RETIREMENT CORPORATION
The public service Vantagepoint since 1972

ICMA-RC Services, Inc. is a controlled affiliate of the ICMA Retirement Corporation. Member NASD and SIPC.

#9091

FIRST AMENDMENT TO ADOPTION AGREEMENT OF TOWN OF FOUNTAIN HILLS MANAGEMENT ICMA RETIREMENT CORPORATION PROTOTYPE MONEY PURCHASE PLAN AND TRUST

WHEREAS, the Town of Fountain Hills, Arizona (the "Employer"), became a participating Employer in the ICMA Retirement Corporation Management Plan (the "Plan") by execution of an Adoption Agreement effective March 21, 1991;

WHEREAS, the Employer is authorized, pursuant to the Plan, to adopt amendments to the Adoption Agreement; and

WHEREAS, the Employer has determined that amendments are required to assure the Plan's successful operation and administration.

NOW, THEREFORE, pursuant to the authority granted in the Plan, the following amendments are adopted:

1. Paragraph 1 of Section VII is amended in its entirety, effective with respect to Participant Earnings paid on or after July 11, 1996, to read as follows:

"VII. CONTRIBUTION PROVISIONS

1. The Employer shall contribute as follows (choose one):

(X) Fixed Employer Contributions With or Without Mandatory Employee contributions.

The Employer shall contribute on behalf of each Participant 9.0% of Earnings for the Plan Year (subject to the limitations of Article VI of the Plan). Each Participant is required to contribute 7.5% of Earnings for the Plan Year as a condition of participation. (Write "0" if no contribution is required.) If the Participant contributions are required under this option, a Participant shall not have the right to discontinue or vary the rate of such contributions after becoming a Plan Participant.

The Employer hereby elects to "pick up" the Mandatory/Required Participant Contribution.

X Yes No

2. Nothing in this First Amendment shall be construed to adversely affect the rights of any Participant to any benefit provided under the Plan nor to decrease any accrued benefit under the Plan, except to the extent permitted under the Internal Revenue code or necessary to maintain the Plan as one qualified under Section 401(a) of the Internal Revenue Code.

IN WITNESS WHEREOF, the Employer has caused this First Amendment to be executed on this 11th day of July, 1996.

EMPLOYER:

ACCEPTED:

TOWN OF FOUNTAIN HILLS, ARIZONA

ICMA RETIREMENT CORPORATION

By Jerry Miles
Jerry Miles, Mayor

By Steph W. Nordhoff
Title CORPORATE SECRETARY

Attest: Cassie B. Hansen
Cassie B. Hansen, Town Clerk

Attest: Kimberly M. Marshall

RECEIVED AUG 02 1996

**THIRD AMENDMENT TO ADOPTION AGREEMENT
OF
TOWN OF FOUNTAIN HILLS MANAGEMENT
ICMA RETIREMENT CORPORATION
PROTOTYPE MONEY PURCHASE PLAN AND TRUST**

WHEREAS, the Town of Fountain Hills, Arizona (the "Employer"), became a participating Employer in the ICMA Retirement Corporation Town of Fountain Hills Management Plan (the "Plan") by execution of an Adoption Agreement effective March 21, 1991;

WHEREAS, the Employer is authorized, pursuant to the Plan, to adopt amendments to the Adoption Agreement; and

WHEREAS, the Employer has determined that amendments are required to assure the Plan's successful operation and administration.

NOW, THEREFORE, pursuant to the authority granted in the Plan, the following amendments are adopted:

1. Paragraph 1 of Section VII is amended in its entirety, effective with respect to Participant Earnings paid on or after August 16, 1999, to read as follows:

"VII. CONTRIBUTION PROVISIONS

1. The Employer shall contribute as follows (choose one):

(X) Fixed Employer Contributions With or Without
Mandatory Employee contributions.

The Employer shall contribute on behalf of each Participant 11% of Earnings for the Plan Year (subject to the limitations of Article VI of the Plan). Each Participant is required to contribute 11% of Earnings for the Plan Year as a condition of participation. (Write "0" if no contribution is required.) If the Participant contributions are required under this option, a Participant shall not have the right to discontinue or vary the rate of such contributions after becoming a Plan Participant.

The Employer hereby elects to "pick up" the Mandatory/Required Participant Contribution.

 X Yes No"

2. Nothing in this Third Amendment shall be construed to adversely affect the rights of any Participant to any benefit provided under the Plan nor to decrease any accrued benefit under the Plan, except to the extent permitted under the Internal Revenue code or necessary to maintain the Plan as one qualified under Section 401(a) of the Internal Revenue Code.

NOV 22 1999

IN WITNESS WHEREOF, the Employer has caused this Third Amendment to be executed on this 5th day of August, 1999.

EMPLOYER:

ACCEPTED:

TOWN OF FOUNTAIN HILLS, ARIZONA ICMA RETIREMENT CORPORATION

By Sharon Morgan
Sharon Morgan, Mayor

By [Signature]

Attest: Cassie B. Hansen
Cassie B. Hansen, Town Clerk

Attest: A. E. Dunston

NOV 22 1999

COPY

777 North Capitol Street, NE
Washington, DC 20002-4240
1-202-982-4600
FAX 1-202-982-4601
Toll Free 1-800-669-7400
Internet: <http://www.icmarc.org>

April 6, 2000

Julie Ghetti
Town Accountant
Town of Fountain Hills
P. O. Box 17958
Fountain Hills, AZ 85269

RE: ICMA Retirement Corporation Account Numbers 109091 and 109344

Dear Ms. Ghetti:

Enclosed are counter-executed originals of the Adoption Agreements for the above referenced plans. Please retain these documents in your files.

If I can be of any further assistance, please give me a call at 1-800-326-7272.

Sincerely,



A. E. Dunston
Senior Implementation Analyst

Enclosures



ICMA RETIREMENT CORPORATION
The public service Vantagepoint since 1972

**ICMA RETIREMENT CORPORATION
GOVERNMENTAL MONEY PURCHASE PLAN & TRUST
(AMENDED) ADOPTION AGREEMENT**

Plan# 109344

The Employer hereby establishes a Money Purchase Plan and Trust to be known as Town of Fountain Hills (the "Plan") in the form of the ICMA Retirement Corporation Governmental Money Purchase Plan and Trust (MPP 01/01/06).

[]

This Plan is an amendment and restatement of an existing defined contribution money purchase plan.

Yes

No

If yes, please specify the name of the defined contribution money purchase plan which this Plan hereby amends and restates:

Town of Fountain Hills

Effective Date: July 1, 2013

Summary of Change: Vesting Change, NRA

I. Employer: Town of Fountain Hills

II. The Effective Date of the Plan shall be the first day of the Plan Year during which the Employer adopts the Plan, unless an alternate Effective Date is hereby specified: 11/1/1994 (e.g., January 1, 2006 for the MPP 01/01/06 Plan)

III. Plan Year will mean:

The twelve (12) consecutive month period which coincides with the limitation year. (See Section 5.03(f) of the Plan.)

The twelve (12) consecutive month period commencing on 07/01 and each anniversary thereof.

IV. Normal Retirement Age shall be age 59.5 (not to exceed age 65).

V. ELIGIBILITY REQUIREMENTS:

1. The following group or groups of Employees are eligible to participate in the Plan:

X	All Employees
	All Full-Time Employees
	Salaried Employees
	Non-union Employees
	Management Employees
	Public Safety Employees
	General Employees
X	Other Employees (specify describe the group(s) of eligible employees below)
	EXCLUDE TOWN MANAGER

The group specified must correspond to a group of the same designation that is defined in the statutes, ordinances, rules, regulations, personnel manuals or other material in effect in the state or locality of the Employer. Also, the eligibility requirements for participation in the Plan cannot be such that Employees become Participants only in the Plan Year in which the Employees terminate employment (i.e., stand-alone final pay plans).

2. The Employer hereby waives or reduces the requirement of a twelve (12) month Period of Service for participation. The required Period of Service shall be N/A (write N/A if an Employee is eligible to participate upon employment).

If this waiver or reduction is elected, it shall apply to all Employees within the Covered Employment Classification.

3. A minimum age requirement is hereby specified for eligibility to participate. The minimum age requirement is N/A (not to exceed age 21. Write N/A if no minimum age is declared.)

VI. CONTRIBUTION PROVISIONS

1. The Employer shall contribute as follows (choose all that apply):

Fixed Employer Contributions With or Without Mandatory Participant Contributions.
(If section B or C is chosen, please complete section D. Section E is optional.)

A. Fixed Employer Contributions. The Employer shall contribute on behalf of each Participant 11 % of Earnings for the Plan Year (subject to the limitations of Article V of the Plan). Mandatory Participant Contributions are required to be eligible for this Employer Contribution.

B. Mandatory Participant Contributions for Plan Participation. A Participant is required to contribute (subject to the limitations of Article V of the Plan)

- (i) 11 % of Earnings,
- (ii) \$ _____, or
- (iii) a whole percentage of Earnings between the range of _____ (*insert range of percentages between 0% and 20% (e.g., 3%, 6%, or 20%; 5% to 7%)*), as designated by the Employee in accordance with guidelines and procedures established by the Employer

for the Plan Year as a condition of participation in the Plan. A Participant shall not have the right to discontinue or vary the rate of such contributions after becoming a Plan Participant.

The Employer hereby elects to "pick up" the Mandatory Participant Contributions.¹

Yes No

C. Mandatory Participant Contributions for this Portion of the Plan. Each Employee eligible to participate in the Plan shall be given the opportunity to irrevocably elect to participate in the Mandatory Participant Contribution portion of the Plan by electing to contribute _____ (*insert range of percentages between 0% and 20% (e.g., 3%, 6%, or 20%; 5% to 7%)*) of the Employee's Earnings to the Plan for each Plan Year (subject to the limitations of Article V of the Plan).

A Participant shall not have the right to discontinue or vary the rate of such contributions after becoming a Participant in this portion of the Plan.

The Employer hereby elects to "pick up" the Mandatory Participant Contributions.²

Yes No

D. Election Window. Newly eligible Employees shall be provided an election window of N/A days (*no more than 60 calendar days*) from the date of initial eligibility during which they may make the election to participate in the Mandatory Participant

¹ Neither an IRS advisory letter nor a determination letter issued to an adopting Employer is a ruling by the Internal Revenue Service that Participant contributions that are picked up by the Employer are not includable in the Participant's gross income for federal income tax purposes. Pick-up contributions are not mandated to receive private letter rulings, however, if an adopting employer wishes to receive a ruling on pick-up contributions they may request one in accordance with Revenue Procedure 2007-4 (or subsequent guidance).

² See footnote 1 above.

Contribution portion of the Plan. Participation in the Mandatory Participant Contribution portion of the Plan shall begin the first of the month following the end of the election window.

An Employee's election is irrevocable and shall remain in force until the Employee terminates employment or ceases to be eligible to participate in the Plan. In the event of re-employment to an eligible position, the Employee's original election will resume. In no event does the Employee have the option of receiving the pick-up contribution amount directly.

Fixed Employer Match of Voluntary Participant Contributions.

The Employer shall contribute on behalf of each Participant % of Earnings for the Plan Year (subject to the limitations of Article V of the Plan) for each Plan Year that such Participant has contributed % of Earnings or \$. Under this option, there is a single, fixed rate of Employer contributions, but a Participant may decline to make the required Participant contributions in any Plan Year, in which case no Employer contribution will be made on the Participant's behalf in that Plan Year.

Variable Employer Match of Voluntary Participant Contributions.

The Employer shall contribute on behalf of each Participant an amount determined as follows (subject to the limitations of Article V of the Plan):

% of the Voluntary Participant Contributions made by the Participant for the Plan Year (not including Participant contributions exceeding % of Earnings or \$);

PLUS % of the contributions made by the Participant for the Plan Year in excess of those included in the above paragraph (but not including Voluntary Participant Contributions exceeding in the aggregate % of Earnings or \$).

Employer Matching Contributions on behalf of a Participant for a Plan Year shall not exceed \$ or % of Earnings, whichever is more or less.

2. Each Participant may make a voluntary (unmatched), after-tax contribution, subject to the limitations of Section 4.05 and Article V of the Plan.

Yes No

3. Employer contributions for a Plan Year shall be contributed to the Trust in accordance with the following payment schedule (no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable depending on the basis on which the Employer keeps its books) with or within which the particular Limitation year ends, or in accordance with applicable law):

Bi-weekly

4. Participant contributions for a Plan Year shall be contributed to the Trust in accordance with the following payment schedule (no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable depending on the basis on which the Employer keeps its books) with or within which the particular Limitation year ends, or in accordance with applicable law):

Bi-weekly

VII. EARNINGS

Earnings, as defined under Section 2.09 of the Plan, shall include:

(a) Overtime

Yes No

(b) Bonuses

Yes No

(c) Other Pay (*specifically describe any other types of pay to be included below*)

--

VIII. The Employer will permit rollover contributions in accordance with Section 4.11 of the Plan.

Yes No

IX. LIMITATION ON ALLOCATIONS

If the Employer maintains or ever maintained another qualified plan in which any Participant in this Plan is (or was) a participant or could possibly become a participant, the Employer hereby agrees to limit contributions to all such plans as provided herein, if necessary in order to avoid excess contributions (as described in Sections 5.02 of the Plan).

1. If the Participant is covered under another qualified defined contribution plan maintained by the Employer, the provisions of Section 5.02(a) through (f) of the Plan will apply unless another method has been indicated below.

Other Method. (Provide the method under which the plans will limit total Annual Additions to the Maximum Permissible Amount, and will properly reduce any excess amounts, in a manner that precludes Employer discretion.)

--

2. The limitation year is the following 12-consecutive month period:

07/01 – 06/30

X. VESTING PROVISIONS

The Employer hereby specifies the following vesting schedule, subject to (1) the minimum vesting requirements and (2) the concurrence of the Plan Administrator. *(For the blanks below, enter the applicable percent – from 0 to 100 (with no entry after the year in which 100% is entered), in ascending order.)*

<u>Period of Service Completed</u>	<u>Percent Vested</u>
Zero	%
One	20 %
Two	40 %
Three	60 %
Four	80 %
Five	100 %
Six	%
Seven	%
Eight	%
Nine	%
Ten	%

XI. Loans are permitted under the Plan, as provided in Article XIII of the Plan:

Yes No

XII.

1. **In-service distributions** are permitted under the Plan after a participant attains (select one of the below options as provided in Section 9.08):

- Age 70 1/2 (Default)
- Normal Retirement Age
- Not permitted at any age

2. **Tax-free distributions of up to \$3,000** for the payment of qualifying insurance premiums for eligible retired public safety officers are available under the Plan.

Yes No (Default)

XIII. In-service distributions of the Rollover Account are permitted under the Plan as provided in Section 9.07.

Yes No (Default)

XIV. SPOUSAL PROTECTION

The Plan will provide the following level of spousal protection (select one):

- A. Participant Directed Election. The normal form of payment of benefits under the Plan is a lump sum. The Participant can name any person(s) as the Beneficiary of the Plan, with no spousal consent required.
- B. Beneficiary Spousal Consent Election (Article XII). The normal form of payment of benefits under the Plan is a lump sum. Upon death, the surviving spouse is the Beneficiary, unless he or she consents to the Participant's naming another Beneficiary. (This is the default provision under the Plan if no selection is made.)
- C. QJSA Election (Article XVII). The normal form of payment of benefits under the Plan is a 50% qualified joint and survivor annuity with the spouse (or life annuity, if single). In the event of the Participant's death prior to commencing payments, the spouse will receive an annuity for his or her lifetime.

XV. FINAL PAY CONTRIBUTIONS

The Plan will provide for Final Pay Contributions if either 1 or 2 below is selected.

Final Pay shall be defined as (select one):

- A. Accrued unpaid vacation
- B. Accrued unpaid sick leave
- C. Accrued unpaid vacation and sick leave
- D. Other (*insert definition of final pay*)

that would otherwise be payable to the Employee in cash upon termination.

1. **Employer Final Pay Contribution.** The Employer shall contribute on behalf of each Participant _____% of Final Pay to the Plan (subject to the limitations of Article V of the Plan).

2. **Employee Designated Final Pay Contribution.** Each Employee eligible to participate in the Plan shall be given the opportunity at enrollment to irrevocably elect to contribute _____% (*insert fixed percentage of final pay to be contributed*) or up to _____% (*insert maximum percentage of final pay to be contributed*) of Final Pay to the Plan (subject to the limitations of Article V of the Plan).

Once elected, an Employee's election shall remain in force and may not be revised or revoked. If the employer elects to "pick up" these amounts, in no event does the Employee have the option of receiving the pick-up contribution amount directly.

The Employer hereby elects to "pick up" the Employee Designated Final Pay Contribution thereby treating such contributions as Employer-made contributions for federal income tax purposes.

Yes No

XVI. ACCRUED LEAVE CONTRIBUTIONS

The Plan will provide for accrued unpaid leave contributions if either 1 or 2 is selected below.

Accrued Leave shall be defined as (select one):

- A. Accrued unpaid vacation
- B. Accrued unpaid sick leave
- C. Accrued unpaid vacation and sick leave
- D. Other (*insert definition of accrued leave*)

that would otherwise be payable to the Employee in cash.

1. **Employer Accrued Leave Contribution.** The Employer shall contribute as follows (choose one of the following options):

For each Plan Year, the Employer shall contribute on behalf of each Eligible Participant the unused Accrued Leave in excess of _____ (*insert number of hours/days/weeks*) to the Plan (subject to the limitations of Article V of the Plan).

For each Plan Year, the Employer shall contribute on behalf of each Eligible Participant _____% of unused Accrued Leave to the Plan (subject to the limitations of Article V of the Plan).

2. **Employee Designated Accrued Leave Contribution.**

Each eligible Participant shall be given the opportunity at enrollment to irrevocably elect to contribute _____% (*insert fixed percentage of accrued unpaid leave to be contributed*) or up to _____% (*insert maximum percentage of accrued unpaid leave to be contributed*) of Accrued Leave to the Plan (subject to the limitations of Article V of the Plan).

Once elected, an Employee's election shall remain in force and may not be revised or revoked. If the employer elects to "pick up" these amounts, in no event does the Employee have the option of receiving the pick-up contribution amount directly.

The Employer hereby elects to "pick up" the Employee Designated Final Pay Contribution thereby treating such contributions as Employer-made contributions for federal income tax purposes.

Yes No

In order to allow for Final Pay Contributions and/or Accrued Leave Contributions, as defined in sections XV and XVI above, the Plan must also include additional sources of ongoing contributions, such as Fixed Employer Contributions or Mandatory Participant Contributions. In accordance with IRS Guidance, ICMA-RC will not process Final Pay Contribution or Accrued Leave Contribution Features as part of a "Stand Alone" Final Pay Plan.

XVII. The Employer hereby attests that it is a unit of state or local government or an agency or instrumentality of one or more units of state or local government.

XVIII. The Plan Administrator hereby agrees to inform the Employer of any amendments to the Plan made pursuant to Section 14.05 of the Plan or of the discontinuance or abandonment of the Plan.

XIX. The Employer hereby appoints the ICMA Retirement Corporation as the Plan Administrator pursuant to the terms and conditions of the ICMA RETIREMENT CORPORATION GOVERNMENTAL MONEY PURCHASE PLAN & TRUST.

The Employer hereby agrees to the provisions of the Plan and Trust.

XX. The Employer hereby acknowledges it understands that failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

XXI. An adopting Employer may rely on an advisory letter issued by the Internal Revenue Service as evidence that the Plan is qualified under section 401 of the Internal Revenue Code to the extent provided in applicable IRS revenue procedures and other official guidance.

In Witness Whereof, the Employer hereby causes this Agreement to be executed on this 15th day of July, 2013.

EMPLOYER

ICMA RETIREMENT CORPORATION
777 North Capital St., NE
Washington, DC 20002-4290
202-962-8096

By: Jane McIntosh

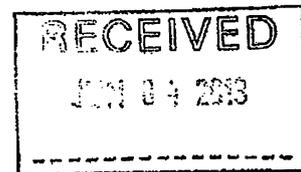
By: Angela C. Mandy

Title: H.R. Administrator

Title: Assistant Secretary

Attest: Catherine E. Whyte

Attest: Phil [Signature]



RESOLUTION 2016-09

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, ADOPTING THE TOWN OF FOUNTAIN HILLS GOVERNMENT MONEY PURCHASE PLAN & TRUST ADOPTION AGREEMENTS WITH THE INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION RETIREMENT CORPORATION FOR THE TOWN MANAGER AND TOWN EMPLOYEES.

WHEREAS, the Town of Fountain Hills (the “Town”) has historically provided full-time employees with a 401(a) defined contribution retirement savings plan for the Town Manager and Town Staff through the International City/County Management Association Retirement Corporation (“ICMA-RC”) (the “401 Plans”); and

WHEREAS, the Internal Revenue Service (the “IRS”) has a six-year review schedule for the 401 Plans and requires the 401 Plans be updated to incorporate amendments for legislative and regulatory changes since the prior restatement; and

WHEREAS, the IRS has reviewed and approved the 401 Plans and now requires execution of new Governmental Money Purchase Plan & Trust Adoption Agreements (the “Agreements”).

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The Agreement - Plan Number 109091 is hereby approved in substantially the form and substance attached hereto as Exhibit A and incorporated herein by reference.

SECTION 3. The Agreement - Plan Number 109344 is hereby approved in substantially the form and substance attached hereto as Exhibit B and incorporated herein by reference.

SECTION 4. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to cause the execution of the 401 Plans and to take all steps necessary to carry out the purpose and intent of this Resolution.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED BY the Mayor and Council of the Town of Fountain Hills,
Arizona, April 21, 2016.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:

Linda M. Kavanagh, Mayor

Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

Grady E. Miller, Town Manager

Andrew J. McGuire, Town Attorney

EXHIBIT A
TO
RESOLUTION 2016-09

[Plan Number 109091]

See following pages.

ICMA RETIREMENT CORPORATION

**GOVERNMENTAL MONEY PURCHASE PLAN & TRUST
ADOPTION AGREEMENT**



**ICMA RETIREMENT CORPORATION
GOVERNMENTAL MONEY PURCHASE PLAN & TRUST
ADOPTION AGREEMENT**

Plan Number 109091

The Employer hereby establishes a Money Purchase Plan and Trust to be known as TOWN OF FOUNTAIN HILLS
(the "Plan") in the form of the ICMA Retirement Corporation Governmental Money Purchase Plan and Trust.

This Plan is an amendment and restatement of an existing defined contribution money purchase plan.

Yes No

If yes, please specify the name of the defined contribution money purchase plan which this Plan hereby amends and restates:

TOWN OF FOUNTAIN HILLS

I. Employer: TOWN OF FOUNTAIN HILLS

II. Effective Dates

1. **Effective Date of Restatement.** If this document is a restatement of an existing plan, the effective date of the Plan shall be January 1, 2007 unless an alternate effective date is hereby specified: _____

(Note: An alternate effective date can be no earlier than January 1, 2007.)

2. **Effective Date of New Plan.** If this is a new Plan, the effective date of the Plan shall be the first day of the Plan Year during which the Employer adopts the Plan, unless an alternate Effective Date is hereby specified:

3. **Special Effective Dates.** Please note here any elections in the Adoption Agreement with an effective date that is different from that noted in 1. or 2. above.

(Note provision and effective date.)

III. Plan Year will mean:

- The twelve (12) consecutive month period which coincides with the limitation year. (See Section 5.03(f) of the Plan.)
- The twelve (12) consecutive month period commencing on _____ and each anniversary thereof.

IV. Normal Retirement Age shall be age 62.0 (not to exceed age 65).

Important Note to Employers: Normal Retirement Age is significant for determining the earliest date at which the Plan may allow for in-service distributions. Normal Retirement Age also defines the latest date at which a Participant must have a fully vested right to his/her Account. There are IRS rules that limit the age that may be specified as the Plan's Normal Retirement Age. The Normal Retirement Age cannot be earlier than what is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed. An age under 55 is presumed not to satisfy this requirement, unless the Commissioner of Internal Revenue determines that the facts and circumstances show otherwise.

Whether an age between 55 and 62 satisfies this requirement depends on the facts and circumstances, but an Employer's good

Whether an age between 55 and 62 satisfies this requirement depends on the facts and circumstances, but an Employer's good faith, reasonable determination will generally be given deference. A special rule, however, applies in the case of a plan where substantially all of the participants in the plan are qualified public safety employees within the meaning of section 72(t)(10)(B) of the Code, in which case an age of 50 or later is deemed not to be earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed.

V. ELIGIBILITY REQUIREMENTS

1. The following group or groups of Employees are eligible to participate in the Plan:

- All Employees
- All Full Time Employees
- Salaried Employees
- Non union Employees
- Management Employees
- Public Safety Employees
- General Employees
- Other Employees (Specify the group(s) of eligible employees below. Do not specify employees by name. Specific positions are acceptable.) _____

The group specified must correspond to a group of the same designation that is defined in the statutes, ordinances, rules, regulations, personnel manuals or other material in effect in the state or locality of the Employer. The eligibility requirements cannot be such that an Employee becomes eligible only in the Plan Year in which the Employee terminates employment. **Note:** As stated in Sections 4.07 and 4.08, the Plan may, however, provide that Final Pay Contributions or Accrued Leave Contributions are the only contributions made under the Plan.

2. The Employer hereby waives or reduces the requirement of a twelve (12) month Period of Service for participation. The required Period of Service shall be (write N/A if an Employee is eligible to participate upon employment) N/A.

If this waiver or reduction is elected, it shall apply to all Employees within the Covered Employment Classification.

3. A minimum age requirement is hereby specified for eligibility to participate. The minimum age requirement is N/A (not to exceed age 21. Write N/A if no minimum age is declared.)

VI. CONTRIBUTION PROVISIONS

1. **The Employer shall contribute as follows:** (Choose all that apply, but at least one of Options A or B. If Option A is not selected, Employer must pick up Participant Contributions under Option B.)

Fixed Employer Contributions With or Without Mandatory Participant Contributions. (If Option B is chosen, please complete section C.)

A. Employer Contributions. The Employer shall contribute on behalf of each Participant _____% of Earnings or \$ _____ for the Plan Year (subject to the limitations of Article V of the Plan).
Mandatory Participant Contributions

are required are not required

to be eligible for this Employer Contribution.

B. Mandatory Participant Contributions for Plan Participation.

Required Mandatory Contributions. A Participant is required to contribute (subject to the limitations of Article V of the Plan) the specified amounts designated in items (i) through (iii) of the Contribution Schedule below:

Yes No

Employee Opt-In Mandatory Contributions. Each Employee eligible to participate in the Plan shall be given the opportunity to irrevocably elect to participate in the Mandatory Participant Contribution portion of the Plan by electing to contribute the specified amounts designated in items (i) through (iii) of the Contribution Schedule below for each Plan Year (subject to the limitations of Article V of the Plan):

Yes No

Contribution Schedule.

- (i) _____ % of Earnings,
(ii) \$ _____, or
(iii) a whole percentage of Earnings between the range of _____ (insert range of percentages between 1% and 20% inclusive (e.g., 3%, 6%, or 20%; 5% to 7%)), as designated by the Employee in accordance with guidelines and procedures established by the Employer for the Plan Year as a condition of participation in the Plan. A Participant must pick a single percentage and shall not have the right to discontinue or vary the rate of such contributions after becoming a Plan Participant.

Employer "Pick up". The Employer hereby elects to "pick up" the Mandatory Participant Contributions¹ (pick up is required if Option A is not selected).

Yes No ("Yes" is the default provision under the Plan if no selection is made.)

- C. **Election Window** (Complete if Option B is selected):
Newly eligible Employees shall be provided an election window of _____ days (no more than 60 calendar days) from the date of initial eligibility during which they may make the election to participate in the Mandatory Participant Contribution portion of the Plan. Participation in the Mandatory Participant Contribution portion of the Plan shall begin the first of the month following the end of the election window.

An Employee's election is irrevocable and shall remain in force until the Employee terminates employment or ceases to be eligible to participate in the Plan. In the event of re-employment to an eligible position, the Employee's original election will resume. In no event does the Employee have the option of receiving the pick-up contribution amount directly.

2. The Employer may also elect to contribute as follows:

- A. **Fixed Employer Match of Voluntary After-Tax Participant Contributions.** The Employer shall contribute on behalf of each Participant _____ % of Earnings for the Plan Year (subject to the limitations of Article V of the Plan) for each Plan Year that such Participant has contributed _____ % of Earnings or \$ _____. Under this option, there is a single, fixed rate of Employer contributions, but a Participant may decline to make the required Participant contributions in any Plan Year, in which case no Employer contribution will be made on the Participant's behalf in that Plan Year.
- B. **Variable Employer Match of Voluntary After-Tax Participant Contributions.** The Employer shall contribute on behalf of each Participant an amount determined as follows (subject to the limitations of Article V of the Plan):
_____ % of the Voluntary Participant Contributions made by the Participant for the Plan Year (not including Participant contributions exceeding _____ % of Earnings or \$ _____);

¹ Neither an IRS advisory letter nor a determination letter issued to an adopting Employer is a ruling by the Internal Revenue Service that Participant contributions that are "picked up" by the Employer are not includable in the Participant's gross income for federal income tax purposes. Pick-up contributions are not mandated to receive private letter rulings; however, if an adopting employer wishes to receive a ruling on pick-up contributions they may request one in accordance with Revenue Procedure 2012-4 (or subsequent guidance).

PLUS _____% of the contributions made by the Participant for the Plan Year in excess of those included in the above paragraph (but not including Voluntary Participant Contributions exceeding in the aggregate _____% of Earnings or \$ _____).

Employer Matching Contributions on behalf of a Participant for a Plan Year shall not exceed \$ _____ or _____% of Earnings, whichever is _____ more or _____ less.

3. Each Participant may make a voluntary (unmatched), after tax contribution, subject to the limitations of Section 4.05 and Article V of the Plan:

Yes No (*"No" is the default provision under the Plan if no selection is made.*)

4. Employer contributions for a Plan Year shall be contributed to the Trust in accordance with the following payment schedule (no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable depending on the basis on which the Employer keeps its books) with or within which the particular Limitation year ends, or in accordance with applicable law):

BI-WEEKLY

5. Participant contributions for a Plan Year shall be contributed to the Trust in accordance with the following payment schedule (no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable depending on the basis on which the Employer keeps its books) with or within which the particular Limitation year ends, or in accordance with applicable law):

BI-WEEKLY

6. In the case of a Participant performing qualified military service (as defined in Code section 414(u)) with respect to the Employer:

- A. Plan contributions will be made based on differential wage payments:

Yes No (*"Yes" is the default provision under the Plan if no selection is made.*)

If yes is selected, this is effective beginning January 1, 2009 unless another later effective date is filled in here:

- B. Participants who die or become disabled will receive Plan contributions with respect to such service:

Yes No (*"No" is the default provision under the Plan if no selection is made.*)

If yes is selected, this is effective for participants who died or became disabled while performing qualified military service on or after January 1, 2007, unless another later effective date is filled in here:

VII. EARNINGS

Earnings, as defined under Section 2.09 of the Plan, shall include:

1. Overtime
 Yes No
2. Bonuses
 Yes No
3. Other Pay (specifically describe any other types of pay to be included below)

VIII. ROLLOVER PROVISIONS

1. The Employer will permit rollover contributions in accordance with Section 4.12 of the Plan:
 Yes No (*"Yes" is the default provision under the Plan if no selection is made.*)
2. Direct rollovers by non-spouse beneficiaries are effective for distributions after 2006 unless the Plan delayed making them available. If the Plan delayed making such rollovers available, check the box below and indicate the later effective date in the space provided.
 Effective Date is _____
(Note: Plans must offer direct rollovers by non-spouse beneficiaries no later than plan years beginning after December 31, 2009.)

IX. LIMITATION ON ALLOCATIONS

If the Employer maintains or ever maintained another qualified plan in which any Participant in this Plan is (or was) a participant or could possibly become a participant, the Employer hereby agrees to limit contributions to all such plans as provided herein, if necessary in order to avoid excess contributions (as described in Section 5.02 of the Plan).

1. If the Participant is covered under another qualified defined contribution plan maintained by the Employer, the provisions of Section 5.02(a) through (e) of the Plan will apply unless another method has been indicated below.
 Other Method. (Provide the method under which the plans will limit total Annual Additions to the Maximum Permissible Amount, and will properly reduce any excess amounts, in a manner that precludes Employer discretion.)
2. The Limitation Year is the following 12 consecutive month period: _____
3. Unless the Employer elects a delayed effective date below, Article 5 of the Plan will apply to limitations years beginning on or after July 1, 2007. _____

(The effective date listed cannot be later than 90 days after the close of the first regular legislative session of the legislative body with authority to amend the plan that begins on or after July 1, 2007.)

X. VESTING PROVISIONS

The Employer hereby specifies the following vesting schedule, subject to (1) the minimum vesting requirements and (2) the concurrence of the Plan Administrator. (For the blanks below, enter the applicable percent – from 0 to 100 (with no entry after the year in which 100% is entered), in ascending order.)

Period of Service Completed	Percent Vested
Zero	100 %
One	100 %
Two	100 %
Three	100 %
Four	100 %
Five	100 %
Six	100 %
Seven	100 %
Eight	100 %
Nine	100 %
Ten	100 %

XI. WITHDRAWALS AND LOANS

1. In-service distributions are permitted under the Plan after a participant attains (select one of the below options):

- Normal Retirement Age
 Age 70½ (*"70½" is the default provision under the Plan if no selection is made.*)
 Alternate age (after Normal Retirement Age): _____
 Not permitted at any age

2. A Participant shall be deemed to have a severance from employment solely for purposes of eligibility to receive distributions from the Plan during any period the individual is performing service in the uniformed services for more than 30 days.

- Yes No (*"Yes" is the default provision under the plan if no selection is made.*)

3. Tax-free distributions of up to \$3,000 for the direct payment of qualifying insurance premiums for eligible retired public safety officers are available under the Plan.

- Yes No (*"No" is the default provision under the Plan if no selection is made.*)

4. In-service distributions of the Rollover Account are permitted under the Plan, as provided in Section 9.07.

- Yes No (*"No" is the default provision under the Plan if no selection is made.*)

5. Loans are permitted under the Plan, as provided in Article XIII of the Plan:

- Yes No (*"No" is the default provision under the Plan if no selection is made.*)

XII. SPOUSAL PROTECTION

The Plan will provide the following level of spousal protection (select one):

- 1. **Participant Directed Election.** The normal form of payment of benefits under the Plan is a lump sum. The Participant can name any person(s) as the Beneficiary of the Plan, with no spousal consent required.
- 2. **Beneficiary Spousal Consent Election (Article XII).** The normal form of payment of benefits under the Plan is a lump sum. Upon death, the surviving spouse is the Beneficiary, unless he or she consents to the Participant's naming another Beneficiary. (*"Beneficiary Spousal Consent Election" is the default provision under the Plan if no selection is made.*)
- 3. **QJSA Election (Article XVII).** The normal form of payment of benefits under the Plan is a 50% qualified joint and survivor annuity with the spouse (or life annuity, if single). In the event of the Participant's death prior to commencing payments, the spouse will receive an annuity for his or her lifetime. (If C is selected, the spousal consent requirements in Article XII also will apply.)

XIII. FINAL PAY CONTRIBUTIONS

The Plan will provide for Final Pay Contributions if either 1 or 2 below is selected.

The following group of Employees shall be eligible for Final Pay Contributions:

- All Eligible Employees
- Other: _____

Final Pay shall be defined as (select one):

- A. Accrued unpaid vacation
- B. Accrued unpaid sick leave
- C. Accrued unpaid vacation and sick leave
- D. Other (*insert definition of Final Pay – must be leave that Employee would have been able to use if employment had continued and must be bona fide vacation and/or sick leave*):

- 1. **Employer Final Pay Contribution.** The Employer shall contribute on behalf of each Participant _____ % of Final Pay to the Plan (subject to the limitations of Article V of the Plan).
- 2. **Employee Designated Final Pay Contribution.** Each Employee eligible to participate in the Plan shall be given the opportunity at enrollment to irrevocably elect to contribute ____ % (insert fixed percentage of final pay to be contributed) or up to _____% (insert maximum percentage of final pay to be contributed) of Final Pay to the Plan (subject to the limitations of Article V of the Plan).

Once elected, an Employee's election shall remain in force and may not be revised or revoked.

XIV. ACCRUED LEAVE CONTRIBUTIONS

The Plan will provide for accrued unpaid leave contributions annually if either 1 or 2 is selected below.

The following group of Employees shall be eligible for Accrued Leave Contributions:

- All Eligible Employees
- Other: _____

Accrued Leave shall be defined as (select one):

- A. Accrued unpaid vacation
- B. Accrued unpaid sick leave
- C. Accrued unpaid vacation and sick leave
- D. Other (insert definition of accrued leave that is bona fide vacation and/or sick leave):

1. **Employer Accrued Leave Contribution.** The Employer shall contribute as follows (choose one of the following options):

- For each Plan Year, the Employer shall contribute on behalf of each Eligible Participant the unused Accrued Leave in excess of _____ (insert number of hours/days/weeks (circle one)) to the Plan (subject to the limitations of Article V of the Plan).
- For each Plan Year, the Employer shall contribute on behalf of each Eligible Participant _____% of unused Accrued Leave to the Plan (subject to the limitations of Article V of the Plan).

2. **Employee Designated Accrued Leave Contribution.**

Each eligible Participant shall be given the opportunity at enrollment to irrevocably elect to contribute _____% (insert fixed percentage of accrued unpaid leave to be contributed) or up to _____% (insert maximum percentage of accrued unpaid leave to be contributed) of Accrued Leave to the Plan (subject to the limitations of Article V of the Plan). Once elected, an Employee's election shall remain in force and may not be revised or revoked.

XV. The Employer hereby attests that it is a unit of state or local government or an agency or instrumentality of one or more units of state or local government.

XVI. The Employer understands that this Adoption Agreement is to be used with only the ICMA Retirement Corporation Governmental Money Purchase Plan and Trust. This ICMA Retirement Corporation Governmental Money Purchase Plan and Trust is a restatement of a previous plan, which was submitted to the Internal Revenue Service for approval on April 2, 2012, and received approval on March 31, 2014.

The Plan Administrator hereby agrees to inform the Employer of any amendments to the Plan made pursuant to Section 14.05 of the Plan or of the discontinuance or abandonment of the Plan. The Employer understands that an amendment(s) made pursuant to Section 14.05 of the Plan will become effective within 30 days of notice of the amendment(s) unless the Employer notifies the Plan Administrator, in writing, that it disapproves of the amendment(s). If the Employer so disapproves, the Plan Administrator will be under no obligation to act as Administrator under the Plan.

XVII. The Employer hereby appoints the ICMA Retirement Corporation as the Plan Administrator pursuant to the terms and conditions of the ICMA RETIREMENT CORPORATION GOVERNMENTAL MONEY PURCHASE PLAN & TRUST.

The Employer hereby agrees to the provisions of the Plan and Trust.

- XVIII. The Employer hereby acknowledges it understands that failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.
- XIX. An adopting Employer may rely on an advisory letter issued by the Internal Revenue Service as evidence that the Plan is qualified under section 401 of the Internal Revenue Code to the extent provided in applicable IRS revenue procedures and other official guidance.

In Witness Whereof, the Employer hereby causes this Agreement to be executed on this _____ day of _____, 20_____.

EMPLOYER

ICMA RETIREMENT CORPORATION
 777 North Capitol St., NE Suite 600
 Washington, DC 20002
 800-326-7272

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Attest: _____

Attest: _____

EXHIBIT B
TO
RESOLUTION 2016-09

[Plan Number 109344]

See following pages.

ICMA RETIREMENT CORPORATION

**GOVERNMENTAL MONEY PURCHASE PLAN & TRUST
ADOPTION AGREEMENT**



**ICMA RETIREMENT CORPORATION
GOVERNMENTAL MONEY PURCHASE PLAN & TRUST
ADOPTION AGREEMENT**

Plan Number 109344 _____

The Employer hereby establishes a Money Purchase Plan and Trust to be known as TOWN OF FOUNTAIN HILLS
(the "Plan") in the form of the ICMA Retirement Corporation Governmental Money Purchase Plan and Trust.

This Plan is an amendment and restatement of an existing defined contribution money purchase plan.

Yes No

If yes, please specify the name of the defined contribution money purchase plan which this Plan hereby amends and restates:

TOWN OF FOUNTAIN HILLS

I. Employer: TOWN OF FOUNTAIN HILLS

II. Effective Dates

1. **Effective Date of Restatement.** If this document is a restatement of an existing plan, the effective date of the Plan shall be January 1, 2007 unless an alternate effective date is hereby specified: 1/1/2016

(Note: An alternate effective date can be no earlier than January 1, 2007.)

2. **Effective Date of New Plan.** If this is a new Plan, the effective date of the Plan shall be the first day of the Plan Year during which the Employer adopts the Plan, unless an alternate Effective Date is hereby specified:

3. **Special Effective Dates.** Please note here any elections in the Adoption Agreement with an effective date that is different from that noted in 1. or 2. above.

(Note provision and effective date.)

III. Plan Year will mean:

The twelve (12) consecutive month period which coincides with the limitation year. (See Section 5.03(f) of the Plan.)

The twelve (12) consecutive month period commencing on July 1 _____ and each anniversary thereof.

IV. Normal Retirement Age shall be age 59.5 (not to exceed age 65).

Important Note to Employers: Normal Retirement Age is significant for determining the earliest date at which the Plan may allow for in-service distributions. Normal Retirement Age also defines the latest date at which a Participant must have a fully vested right to his/her Account. There are IRS rules that limit the age that may be specified as the Plan's Normal Retirement Age. The Normal Retirement Age cannot be earlier than what is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed. An age under 55 is presumed not to satisfy this requirement, unless the Commissioner of Internal Revenue determines that the facts and circumstances show otherwise.

Whether an age between 55 and 62 satisfies this requirement depends on the facts and circumstances, but an Employer's good

Whether an age between 55 and 62 satisfies this requirement depends on the facts and circumstances, but an Employer's good faith, reasonable determination will generally be given deference. A special rule, however, applies in the case of a plan where substantially all of the participants in the plan are qualified public safety employees within the meaning of section 72(t)(10)(B) of the Code, in which case an age of 50 or later is deemed not to be earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed.

V. ELIGIBILITY REQUIREMENTS

1. The following group or groups of Employees are eligible to participate in the Plan:

- All Employees
- All Full Time Employees
- Salaried Employees
- Non union Employees
- Management Employees
- Public Safety Employees
- General Employees
- Other Employees (Specify the group(s) of eligible employees below. Do not specify employees by name. Specific positions are acceptable.) Exclude Town Manager

The group specified must correspond to a group of the same designation that is defined in the statutes, ordinances, rules, regulations, personnel manuals or other material in effect in the state or locality of the Employer. The eligibility requirements cannot be such that an Employee becomes eligible only in the Plan Year in which the Employee terminates employment. **Note:** As stated in Sections 4.07 and 4.08, the Plan may, however, provide that Final Pay Contributions or Accrued Leave Contributions are the only contributions made under the Plan.

2. The Employer hereby waives or reduces the requirement of a twelve (12) month Period of Service for participation. The required Period of Service shall be (write N/A if an Employee is eligible to participate upon employment) N/A.

If this waiver or reduction is elected, it shall apply to all Employees within the Covered Employment Classification.

3. A minimum age requirement is hereby specified for eligibility to participate. The minimum age requirement is N/A (not to exceed age 21. Write N/A if no minimum age is declared.)

VI. CONTRIBUTION PROVISIONS

1. **The Employer shall contribute as follows:** (Choose all that apply, but at least one of Options A or B. If Option A is not selected, Employer must pick up Participant Contributions under Option B.)

Fixed Employer Contributions With or Without Mandatory Participant Contributions. (If Option B is chosen, please complete section C.)

A. Employer Contributions. The Employer shall contribute on behalf of each Participant 11 % of Earnings or \$ _____ for the Plan Year (subject to the limitations of Article V of the Plan).

Mandatory Participant Contributions

are required are not required

to be eligible for this Employer Contribution.

B. Mandatory Participant Contributions for Plan Participation.

Required Mandatory Contributions. A Participant is required to contribute (subject to the limitations of Article V of the Plan) the specified amounts designated in items (i) through (iii) of the Contribution Schedule below:

Yes No

Employee Opt-In Mandatory Contributions. Each Employee eligible to participate in the Plan shall be given the opportunity to irrevocably elect to participate in the Mandatory Participant Contribution portion of the Plan by electing to contribute the specified amounts designated in items (i) through (iii) of the Contribution Schedule below for each Plan Year (subject to the limitations of Article V of the Plan):

Yes No

Contribution Schedule.

- (i) 11 % of Earnings,
(ii) \$ _____, or
(iii) a whole percentage of Earnings between the range of _____ (*insert range of percentages between 1% and 20% inclusive (e.g., 3%, 6%, or 20%; 5% to 7%)*), as designated by the Employee in accordance with guidelines and procedures established by the Employer for the Plan Year as a condition of participation in the Plan. A Participant must pick a single percentage and shall not have the right to discontinue or vary the rate of such contributions after becoming a Plan Participant.

Employer "Pick up". The Employer hereby elects to "pick up" the Mandatory Participant Contributions¹ (pick up is required if Option A is not selected).

Yes No (*"Yes" is the default provision under the Plan if no selection is made.*)

- C. Election Window (Complete if Option B is selected):
Newly eligible Employees shall be provided an election window of N/A days (no more than 60 calendar days) from the date of initial eligibility during which they may make the election to participate in the Mandatory Participant Contribution portion of the Plan. Participation in the Mandatory Participant Contribution portion of the Plan shall begin the first of the month following the end of the election window.

An Employee's election is irrevocable and shall remain in force until the Employee terminates employment or ceases to be eligible to participate in the Plan. In the event of re-employment to an eligible position, the Employee's original election will resume. In no event does the Employee have the option of receiving the pick-up contribution amount directly.

2. The Employer may also elect to contribute as follows:

- A. Fixed Employer Match of Voluntary After-Tax Participant Contributions. The Employer shall contribute on behalf of each Participant ___% of Earnings for the Plan Year (subject to the limitations of Article V of the Plan) for each Plan Year that such Participant has contributed ___% of Earnings or \$ _____. Under this option, there is a single, fixed rate of Employer contributions, but a Participant may decline to make the required Participant contributions in any Plan Year, in which case no Employer contribution will be made on the Participant's behalf in that Plan Year.
- B. Variable Employer Match of Voluntary After-Tax Participant Contributions. The Employer shall contribute on behalf of each Participant an amount determined as follows (subject to the limitations of Article V of the Plan):
___ % of the Voluntary Participant Contributions made by the Participant for the Plan Year (not including Participant contributions exceeding ___% of Earnings or \$ _____);

¹ Neither an IRS advisory letter nor a determination letter issued to an adopting Employer is a ruling by the Internal Revenue Service that Participant contributions that are "picked up" by the Employer are not includable in the Participant's gross income for federal income tax purposes. Pick-up contributions are not mandated to receive private letter rulings; however, if an adopting employer wishes to receive a ruling on pick-up contributions they may request one in accordance with Revenue Procedure 2012-4 (or subsequent guidance).

PLUS _____% of the contributions made by the Participant for the Plan Year in excess of those included in the above paragraph (but not including Voluntary Participant Contributions exceeding in the aggregate _____% of Earnings or \$ _____).

Employer Matching Contributions on behalf of a Participant for a Plan Year shall not exceed \$ _____ or _____% of Earnings, whichever is _____ more or _____ less.

3. Each Participant may make a voluntary (unmatched), after tax contribution, subject to the limitations of Section 4.05 and Article V of the Plan:

Yes No (*"No" is the default provision under the Plan if no selection is made.*)

4. Employer contributions for a Plan Year shall be contributed to the Trust in accordance with the following payment schedule (no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable depending on the basis on which the Employer keeps its books) with or within which the particular Limitation year ends, or in accordance with applicable law):

BI-WEEKLY

5. Participant contributions for a Plan Year shall be contributed to the Trust in accordance with the following payment schedule (no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable depending on the basis on which the Employer keeps its books) with or within which the particular Limitation year ends, or in accordance with applicable law):

BI-WEEKLY

6. In the case of a Participant performing qualified military service (as defined in Code section 414(u)) with respect to the Employer:

- A. Plan contributions will be made based on differential wage payments:

Yes No (*"Yes" is the default provision under the Plan if no selection is made.*)

If yes is selected, this is effective beginning January 1, 2009 unless another later effective date is filled in here:

- B. Participants who die or become disabled will receive Plan contributions with respect to such service:

Yes No (*"No" is the default provision under the Plan if no selection is made.*)

If yes is selected, this is effective for participants who died or became disabled while performing qualified military service on or after January 1, 2007, unless another later effective date is filled in here:

VII. EARNINGS

Earnings, as defined under Section 2.09 of the Plan, shall include:

- 1. Overtime
 Yes No
- 2. Bonuses
 Yes No
- 3. Other Pay (specifically describe any other types of pay to be included below)

VIII. ROLLOVER PROVISIONS

- 1. The Employer will permit rollover contributions in accordance with Section 4.12 of the Plan:
 Yes No (*"Yes" is the default provision under the Plan if no selection is made.*)
- 2. Direct rollovers by non-spouse beneficiaries are effective for distributions after 2006 unless the Plan delayed making them available. If the Plan delayed making such rollovers available, check the box below and indicate the later effective date in the space provided.
 Effective Date is _____
(Note: Plans must offer direct rollovers by non-spouse beneficiaries no later than plan years beginning after December 31, 2009.)

IX. LIMITATION ON ALLOCATIONS

If the Employer maintains or ever maintained another qualified plan in which any Participant in this Plan is (or was) a participant or could possibly become a participant, the Employer hereby agrees to limit contributions to all such plans as provided herein, if necessary in order to avoid excess contributions (as described in Section 5.02 of the Plan).

- 1. If the Participant is covered under another qualified defined contribution plan maintained by the Employer, the provisions of Section 5.02(a) through (e) of the Plan will apply unless another method has been indicated below.
 Other Method. (Provide the method under which the plans will limit total Annual Additions to the Maximum Permissible Amount, and will properly reduce any excess amounts, in a manner that precludes Employer discretion.)
- 2. The Limitation Year is the following 12 consecutive month period: _____
- 3. Unless the Employer elects a delayed effective date below, Article 5 of the Plan will apply to limitations years beginning on or after July 1, 2007. _____

(The effective date listed cannot be later than 90 days after the close of the first regular legislative session of the legislative body with authority to amend the plan that begins on or after July 1, 2007.)

X. VESTING PROVISIONS

The Employer hereby specifies the following vesting schedule, subject to (1) the minimum vesting requirements and (2) the concurrence of the Plan Administrator. (For the blanks below, enter the applicable percent – from 0 to 100 (with no entry after the year in which 100% is entered), in ascending order.)

Period of Service Completed	Percent Vested
Zero	0 %
One	20 %
Two	40 %
Three	60 %
Four	80 %
Five	100 %
Six	100 %
Seven	100 %
Eight	100 %
Nine	100 %
Ten	100 %

XI. WITHDRAWALS AND LOANS

1. In-service distributions are permitted under the Plan after a participant attains (select one of the below options):
 - Normal Retirement Age
 - Age 70½ (*"70½" is the default provision under the Plan if no selection is made.*)
 - Alternate age (after Normal Retirement Age): _____
 - Not permitted at any age

2. A Participant shall be deemed to have a severance from employment solely for purposes of eligibility to receive distributions from the Plan during any period the individual is performing service in the uniformed services for more than 30 days.
 - Yes
 - No (*"Yes" is the default provision under the plan if no selection is made.*)

3. Tax-free distributions of up to \$3,000 for the direct payment of qualifying insurance premiums for eligible retired public safety officers are available under the Plan.
 - Yes
 - No (*"No" is the default provision under the Plan if no selection is made.*)

4. In-service distributions of the Rollover Account are permitted under the Plan, as provided in Section 9.07.
 - Yes
 - No (*"No" is the default provision under the Plan if no selection is made.*)

5. Loans are permitted under the Plan, as provided in Article XIII of the Plan:
 - Yes
 - No (*"No" is the default provision under the Plan if no selection is made.*)

XII. SPOUSAL PROTECTION

The Plan will provide the following level of spousal protection (select one):

- 1. Participant Directed Election. The normal form of payment of benefits under the Plan is a lump sum. The Participant can name any person(s) as the Beneficiary of the Plan, with no spousal consent required.
- 2. Beneficiary Spousal Consent Election (Article XII). The normal form of payment of benefits under the Plan is a lump sum. Upon death, the surviving spouse is the Beneficiary, unless he or she consents to the Participant's naming another Beneficiary. (*"Beneficiary Spousal Consent Election" is the default provision under the Plan if no selection is made.*)
- 3. QJSA Election (Article XVII). The normal form of payment of benefits under the Plan is a 50% qualified joint and survivor annuity with the spouse (or life annuity, if single). In the event of the Participant's death prior to commencing payments, the spouse will receive an annuity for his or her lifetime. (If C is selected, the spousal consent requirements in Article XII also will apply.)

XIII. FINAL PAY CONTRIBUTIONS

The Plan will provide for Final Pay Contributions if either 1 or 2 below is selected.

The following group of Employees shall be eligible for Final Pay Contributions:

- All Eligible Employees
- Other: _____

Final Pay shall be defined as (select one):

- A. Accrued unpaid vacation
- B. Accrued unpaid sick leave
- C. Accrued unpaid vacation and sick leave
- D. Other (*insert definition of Final Pay – must be leave that Employee would have been able to use if employment had continued and must be bona fide vacation and/or sick leave*):

- 1. **Employer Final Pay Contribution.** The Employer shall contribute on behalf of each Participant _____ % of Final Pay to the Plan (subject to the limitations of Article V of the Plan).
- 2. **Employee Designated Final Pay Contribution.** Each Employee eligible to participate in the Plan shall be given the opportunity at enrollment to irrevocably elect to contribute ____ % (insert fixed percentage of final pay to be contributed) or up to _____ % (insert maximum percentage of final pay to be contributed) of Final Pay to the Plan (subject to the limitations of Article V of the Plan).

Once elected, an Employee's election shall remain in force and may not be revised or revoked.

XIV. ACCRUED LEAVE CONTRIBUTIONS

The Plan will provide for accrued unpaid leave contributions annually if either 1 or 2 is selected below.

The following group of Employees shall be eligible for Accrued Leave Contributions:

- All Eligible Employees
- Other: _____

Accrued Leave shall be defined as (select one):

- A. Accrued unpaid vacation
- B. Accrued unpaid sick leave
- C. Accrued unpaid vacation and sick leave
- D. Other (insert definition of accrued leave that is bona fide vacation and/or sick leave):

1. **Employer Accrued Leave Contribution.** The Employer shall contribute as follows (choose one of the following options):

- For each Plan Year, the Employer shall contribute on behalf of each Eligible Participant the unused Accrued Leave in excess of _____ (insert number of hours/days/weeks (circle one)) to the Plan (subject to the limitations of Article V of the Plan).
- For each Plan Year, the Employer shall contribute on behalf of each Eligible Participant _____ % of unused Accrued Leave to the Plan (subject to the limitations of Article V of the Plan).

2. **Employee Designated Accrued Leave Contribution.**

Each eligible Participant shall be given the opportunity at enrollment to irrevocably elect to contribute _____ % (insert fixed percentage of accrued unpaid leave to be contributed) or up to _____ % (insert maximum percentage of accrued unpaid leave to be contributed) of Accrued Leave to the Plan (subject to the limitations of Article V of the Plan). Once elected, an Employee's election shall remain in force and may not be revised or revoked.

XV. The Employer hereby attests that it is a unit of state or local government or an agency or instrumentality of one or more units of state or local government.

XVI. The Employer understands that this Adoption Agreement is to be used with only the ICMA Retirement Corporation Governmental Money Purchase Plan and Trust. This ICMA Retirement Corporation Governmental Money Purchase Plan and Trust is a restatement of a previous plan, which was submitted to the Internal Revenue Service for approval on April 2, 2012, and received approval on March 31, 2014.

The Plan Administrator hereby agrees to inform the Employer of any amendments to the Plan made pursuant to Section 14.05 of the Plan or of the discontinuance or abandonment of the Plan. The Employer understands that an amendment(s) made pursuant to Section 14.05 of the Plan will become effective within 30 days of notice of the amendment(s) unless the Employer notifies the Plan Administrator, in writing, that it disapproves of the amendment(s). If the Employer so disapproves, the Plan Administrator will be under no obligation to act as Administrator under the Plan.

XVII. The Employer hereby appoints the ICMA Retirement Corporation as the Plan Administrator pursuant to the terms and conditions of the ICMA RETIREMENT CORPORATION GOVERNMENTAL MONEY PURCHASE PLAN & TRUST.

The Employer hereby agrees to the provisions of the Plan and Trust.

XVIII. The Employer hereby acknowledges it understands that failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

XIX. An adopting Employer may rely on an advisory letter issued by the Internal Revenue Service as evidence that the Plan is qualified under section 401 of the Internal Revenue Code to the extent provided in applicable IRS revenue procedures and other official guidance.

In Witness Whereof, the Employer hereby causes this Agreement to be executed on this _____ day of _____, 20_____.

EMPLOYER

ICMA RETIREMENT CORPORATION
777 North Capitol St., NE Suite 600
Washington, DC 20002
800-326-7272

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Attest: _____

Attest: _____



TOWN OF FOUNTAIN HILLS

TOWN COUNCIL

AGENDA ACTION FORM

Meeting Date: 4/21/2016

Meeting Type: Regular Session

Agenda Type: Consent

Submitting Department: Development Services

Staff Contact Information: Bob Rodgers, Senior Planner, 480-816-5138, rrodgers@fh.az.gov

Strategic Priority: Not applicable

Council Goal: Not applicable

REQUEST TO COUNCIL:

CONSIDERATION of approving the FINAL REPLAT of 11208 N. Indigo Drive, AKA Plat 203, Block 8, Lot 2 (APN 176-07-279) into two lots labeled Lot 2A and Lot 2B. Case # S 2016-05

Applicant: Paul I. Rogers, Jr., The Trapezium Consulting Group, LLC

Applicant Contact Information: 7898 E. Acoma Drive Ste 100
Scottsdale, AZ 85260
(480) 483-1500

Property Location: 11208 N. Indigo Drive, Fountain Hills, AZ

Related Ordinance, Policy or Guiding Principle:

Fountain Hills Subdivision Ordinance , Section 2.07 Replats

Staff Summary (background):

The subject property is 1.24 acres (53,999 sq ft) in size. This property was rezoned from R1-35 to R-3 at the May 7, 2015 Town Council meeting. The proposal was originally to build four luxury condominiums on the property. Due to economic issues, that proposal has been abandoned in favor of splitting the lot into two lots and building two single-family homes.

Single-family homes are permitted uses in the R-3 zoning district.

Lot 2A will contain 29,282 sq ft in area. Lot 2B will contain 24,717 sq ft in area. The R-3 zoning district requires that building lots contain a minimum of 6,000 sq ft in area. Therefore, both proposed lots will have more than the minimum required area.

The amended property lines will not create any non-conformities and both lots will meet the minimum area R-3 zoning district requirements.

Risk Analysis (options or alternatives with implications):

Council should be aware that approval of this re-plat does not alter the zoning classification. It will only replat the multi-family zoned lot into two smaller multi-family (R-3) zoned lots. Under the current R-3 zoning

standards, Lot 2A could allow for up to nine dwelling units and Lot 2B could allow for up to eight dwelling units if they are developed as a multi-family use.

This does not increase the overall potential density of the property and the applicant has stated that his intention is to build two single-family homes only on the newly formed lots.

Disapproval will require the applicants to keep the existing lot configuration.

Fiscal Impact (initial and ongoing costs; budget status): None anticipated

Staff Recommendation(s):

Staff believes that allowing the lot to be split will not be detrimental to the neighborhood. The proposed re-plat conforms to the Town's Zoning Ordinance and Subdivision Ordinance requirements. Staff recommends approval of the replat as presented.

Attachment(s):

- Application
- Replat Plan

SUGGESTED MOTION:

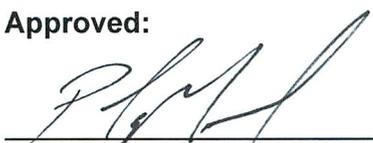
Move to approve the FINAL REPLAT of 11208 N. Indigo Drive, in order to split the lot into two lots labeled Lot 2A and Lot 2B for the purpose of allowing the construction of two single-family homes as presented.

Case # S 2016-05

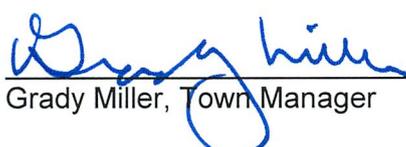
Submitted by:



Senior Planner & Zoning Administrator 4/11/2016

Approved:


Development Services Director 4/12/2016

Approved:


Grady Miller, Town Manager 4/13/2016



DO Not write in this space –official use only

S2016-05 (M#6666)

11208 North Indigo Drive

Lot Split

2nd submittal

04/04/2016

The Town of Fountain Hills

PLANNING & ZONING DEPARTMENT - APPLICATION

- | | | | |
|-------------------------------------|--|--------------------------|--|
| <input type="checkbox"/> | Abandonment (Plat or Condominium) | <input type="checkbox"/> | Appeal of Administrator's Interpretation |
| <input type="checkbox"/> | Area Specific Plan & Amendments | <input type="checkbox"/> | Concept Plan |
| <input type="checkbox"/> | Condominium Plat | <input type="checkbox"/> | Cut/Fill Waiver |
| <input type="checkbox"/> | Development Agreement | <input type="checkbox"/> | HPE Change or Abandonment |
| <input type="checkbox"/> | General Plan Amendment | <input type="checkbox"/> | Ordinance (Text Amendment) |
| <input type="checkbox"/> | Planned Unit Development | <input type="checkbox"/> | Preliminary / Final Plat |
| <input checked="" type="checkbox"/> | Replat (Lot joins, lot splits, lot line adjustments) | <input type="checkbox"/> | Special Use Permit & Amendments |
| <input type="checkbox"/> | Rezoning (Map) | <input type="checkbox"/> | Temporary Use Permit (Median Fee, if applicable) |
| <input type="checkbox"/> | Site Plan Review (vehicles sales) | <input type="checkbox"/> | Other |
| <input type="checkbox"/> | Variance | | |

PROJECT NAME / NATURE OF PROJECT: Lot Split

LEGAL DESCRIPTION: Plat Name Final Plat 203 Block 8 Lot 2

PROPERTY ADDRESS: 11208 E Indigo Drive, Fountain Hills, AZ 85268

PARCEL SIZE (Acres) 1.24 ASSESSOR PARCEL NUMBER 176-07-279

NUMBER OF UNITS PROPOSED ~~X~~ 2 TRACTS 0

EXISTING ZONING R-3 PROPOSED ZONING R-3

Applicant

Mrs. Bruce A Tully Day Phone 480-483-1500 ext 2

Mr.

Ms. Address: 7950 E Redfield Road City: Scottsdale State: AZ Zip: 85260

Email: bruce@trapeziumgroup.com

Owner

Mrs. Bruce F. Lubitz Day Phone 480-968-7767

Mr.

Ms. Address: 2722 W Carla Vista Drive City: Chandler State: AZ Zip: 85224

If application is being submitted by someone other than the owner of the property under consideration, the section below must be completed.

SIGNATURE OF OWNER _____ DATE _____

I HEREBY AUTHORIZE _____ TO FILE THIS APPLICATION.

Subscribed and sworn before me this _____ day of _____, 20____.

My Commission Expires _____

Notary Public _____ MUNIS _____

APPLICATION # _____

REVISIONS:
REV. 1
REV. 2
REV. 3
DESIGN BY: N/A
DRAWN BY: PR
SCALE:
DATE: 3/22/16
JOB NO.
16-021
1 of 1

RE-PLAT OF LOT 2, BLOCK 8 FOUNTAIN HILLS ARIZONA FINAL PLAT NO 203

A REPLAT OF LOT 2, BLOCK 8 OF FOUNTAIN HILLS FINAL PLAT NO. 203 AS RECORDED IN BOOK 149, PAGE 29 IN THE RECORDS OF MARICOPA COUNTY RECORDER, ARIZONA BEING A PORTION OF SECTION 22, TOWNSHIP 3 NORTH, RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA

CONVEYANCE AND DEDICATION:
 KNOW ALL MEN BY THESE PRESENTS THAT BRUCE F LUBITZ AND DEBBIE S. LUBITZ AS TRUSTEES OF THE DERRICK STONE TRUST, AS OWNER, HAVE RE-SUBDIVIDED UNDER THE NAME OF "FINAL PLAT OF LOT 2, BLOCK 8, FOUNTAIN HILLS ARIZONA FINAL PLAT NO. 203" IN SECTION 22, TOWNSHIP 3 NORTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASELINE AND MERIDIAN, MARICOPA COUNTY, ARIZONA AS SHOWN PLATTED HEREON, AND HEREBY PUBLISHES THIS PLAT AS AND FOR THE PLAT OF SAID "FINAL PLAT OF LOT 2, BLOCK 8, FOUNTAIN HILLS ARIZONA FINAL PLAT NO. 203", AND HEREBY DECLARES THAT SAID PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF ALL LOTS, EASEMENTS, TRACTS AND STREETS CONSTITUTING THE SAME, AND THAT EACH LOT, TRACT AND STREET SHALL BE KNOWN BY THE NUMBER, LETTER AND NAME GIVEN EACH RESPECTIVELY, AND THAT BRUCE F LUBITZ AND DEBBIE S. LUBITZ AS TRUSTEES OF THE DERRICK STONE TRUST, AS OWNER, HEREBY DEDICATES TO THE PUBLIC FOR USE AS SUCH THE STREETS AND HEREBY DEDICATES TO THE PUBLIC THE DRAINAGE AND PUBLIC UTILITY EASEMENTS AS SHOWN ON SAID PLAT. IN WITNESS BRUCE F LUBITZ AND DEBBIE S. LUBITZ AS TRUSTEES OF THE DERRICK STONE TRUST, AS OWNER, HAS HEREUNTO CAUSED ITS NAME TO BE SIGNED AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF BRUCE F LUBITZ, TRUSTEE.

BY: _____ DATE: _____

 OWNER'S NAME AND TITLE

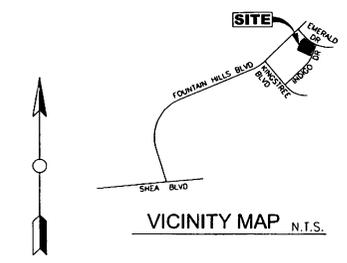
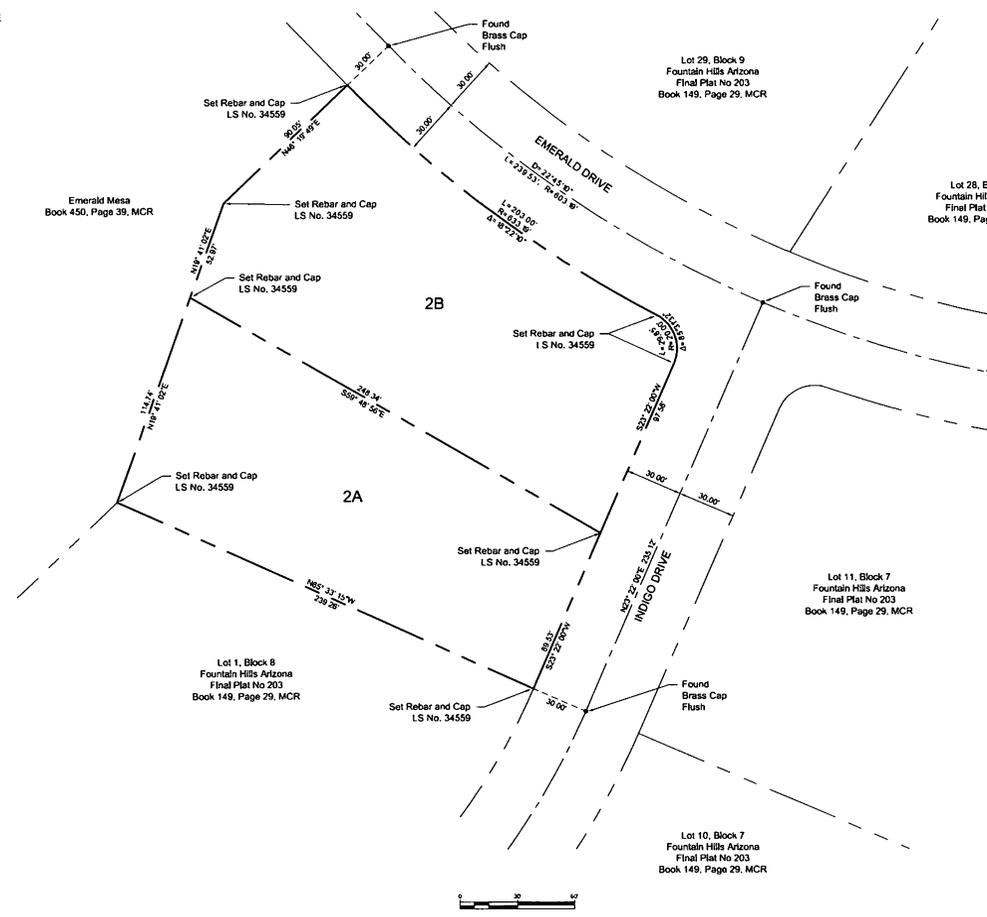
NOTARY ACKNOWLEDGEMENT:
 STATE OF ARIZONA
 COUNTY OF MARICOPA
 ON THIS, THE ____ DAY OF _____, (YEAR), BEFORE ME THE
 UNDERSIGNED _____ (TITLE) PERSONALLY APPEARED
 _____ (NAME) WHO ACKNOWLEDGES THAT
 HE/SHE EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES
 CONTAINED THEREIN.
 IN WITNESS WHEREOF I HEREUNTO SET MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC
 MY COMMISSION EXPIRES _____

PROPERTY OWNER:
 BRUCE F. LUBITZ AND DEBBIE S. LUBITZ AS TRUSTEES OF THE
 DERRICK STONE TRUST
 2722 WEST CARLA VISTA DRIVE
 CHANDLER, ARIZONA 85224
 480-968-7767

AREAS:
 LOT 1: 29,282 SQUARE FEET
 LOT 2: 24,717 SQUARE FEET
 TOTAL GROSS: 53,999 SQUARE FEET, 1.23965 ACRES

ASSURANCE STATEMENT:
 No assurance has been required for this subdivision plat.
 No utility service improvements have been required for this subdivision plat.



TOWN APPROVAL:
 APPROVED BY THE TOWN COUNCIL OF FOUNTAIN HILLS, ARIZONA.
 THIS ____ DAY OF _____, (YEAR).

BY: _____ ATTEST: _____
 MAYOR TOWN CLERK

APPROVALS:
 THIS PLAT WAS APPROVED BY THE TOWN ENGINEER AND THE
 COMMUNITY DEVELOPMENT DIRECTOR.

BY: _____
 TOWN ENGINEER

DATE: _____

BY: _____
 COMMUNITY DEVELOPMENT DIRECTOR

DATE: _____

SURVEYOR'S CERTIFICATION:
 THIS IS TO CERTIFY THE SURVEY AND SUBDIVISION PREMISES DESCRIBED
 AND PLATTED HEREON WERE MADE UNDER MY DIRECTION DURING THE
 MONTH OF DECEMBER 2015, THAT THE PLAT IS CORRECT AND ACCURATE,
 THAT THE MONUMENTS SHOWN HEREON HAVE BEEN LOCATED OR
 ESTABLISHED AS DESCRIBED AND LOT CORNERS HAVE BEEN
 PERMANENTLY SET.



PAUL M. MILLER
 REGISTERED LAND SURVEYOR
 REGISTRATION NO. 34559, AZ.



TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 4/21/2016

Meeting Type: Regular Session

Agenda Type: Consent

Submitting Department: Development Services

Staff Contact Information: Randy Harrel, Town Engineer; 480-816-5112; e-mail: rharrel@fh.az.gov

Strategic Planning Goal: Not Applicable (NA)

Operational Priority: Not Applicable (NA)

REQUEST TO COUNCIL (Agenda Language): CONSIDERATION of approving a permanent Encroachment Permit to Jim Wallace/Saddle Bronc Grill to place the "Bucking Horse and Rider" sculpture within the public Alley and Saguaro Blvd. rights-of-way, just northerly of the existing Saddle Bronc Grill building.

Applicant: Saddle Bronc Grill; 11056 N. Saguaro Blvd., Fountain Hills, AZ 85268; www.saddlebroncgrill.com

Applicant Contact Information: Jim Wallace; Cell: 480.828.3574

Owner: same

Owner Contact Information: same

Property Location: 11056 N. Saguaro Blvd.

Related Ordinance, Policy or Guiding Principle: Town Code, Article 16-1; Encroachments

Staff Summary (background): The Saddle Bronc Grill has applied for a permanent Encroachment Permit to place a statue titled "Bucking Horse and Rider" within the public Alley and Saguaro Blvd. rights-of-way near their intersection.

The pre-incorporation building currently housing the Saddle Bronc Grill has zero lot line setbacks. (The building lies right on the right-of-way/property lines of both Saguaro Blvd. and of the intersecting Plat 202 Alley; so the full landscaped width between the building and the sidewalk/alley pavement is public right-of-way).

Staff has determined that the Saddle Bronc Grill has available sign space, as this statue is considered a sign. This proposal is personal as the applicant is not under any requirement from the Town to provide any sculpture or other publicly visible art.

The Plat 202 Property Owners' Association has recommended approval of this sculpture/ location.

Because the Alley only has right-in, right-out access onto Saguaro Blvd., the proposed statue will not obstruct any roadway sightlines. The statue location provides adequate clear zones away from the Saguaro Blvd. and the Alley traffic lanes.

Chapter 16 of the Town Code delegates to the Town Engineer approval authority for private encroachments into the public right-of-way. However, because of the somewhat unusual nature of this public right-of-way

usage, because of the subjective aesthetic nature of art, and because this above-ground improvement will be permanent, Staff has placed this item on the Town Council's agenda for consideration.

The statue and its base will remain the property of the Saddle Bronc Grill, and that property owner will be responsible for all necessary costs of acquisition, construction, operation, and maintenance.

Risk Analysis (options or alternatives with implications): None.

Fiscal Impact (initial and ongoing costs; budget status): None.

Budget Reference (page number): N/A

Funding Source: NA

If Multiple Funds utilized, list here: N/A

Budgeted; if No, attach Budget Adjustment Form: NA

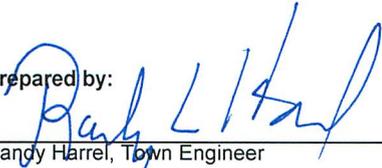
Recommendation(s) by Board(s) or Commission(s): N/A

Staff Recommendation(s): Staff recommends approving an Encroachment Permit for the "Bucking Horse and Rider" sculpture, subject to the Town Engineer's technical requirements.

List Attachment(s): Encroachment Permit request, photo of statue poster; 2 annotated photos of site; Staff-annotated aerial photo; Plat 202 Approval Letter

SUGGESTED MOTION (for Council use): Move to approve an Encroachment Permit for the "Bucking Horse and Rider" sculpture located within the public right-of-way, adjacent to the Saddle Bronc Grill, subject to the Town Engineer's technical requirements.

Prepared by:



Randy Harrel, Town Engineer 4/11/2016

Director's Approval:



Paul Mood, Development Services Director 4/11/2016

Approved:



Grady E. Miller, Town Manager 4/12/2016



Town of FOUNTAIN HILLS
Phone (480) 816-5100

Permit No. E _____

RIGHT-OF-WAY ENCROACHMENT PERMIT

Application Date: _____

Expiration Date: _____
Not to exceed six months from application date

Applicant Saddle Bronc Grill
Address 11056 N. Saguaro Blvd
City, State, Zip Fountain Hills AZ 85268
Contractor _____
Address _____
City, State, Zip _____

Contact _____
24-Hour Phone _____
Bond/Security _____
Deposit _____
Contractor _____
License# _____

Town Bus. Lic # 2507 State Tax # 20493824-W Insurance Expiration Date 04/2017

Project/Location/Parcel _____
Scope of Work and Schedule _____
 Trench Pit Each Other

***Any item left in the right-of-way overnight must have lighted barricades placed around it.**

PERMIT IS BEING REQUESTED FOR:

- Roadways Landscape
- Drainage Driveway
- Utilities Other _____

FEES:

Base Fee 50.00
Trench (Linear Feet) _____
Pit (Square Feet) _____
In Lieu Payments _____
Other Fees _____
Total Fees _____

INSPECTOR Allen Bryan 602-721-4761

ADDITIONAL TOWN REQUIREMENTS

THE APPLICANT SHALL NOTIFY THE TOWN ENGINEERING DEPARTMENT (INSPECTION LINE – 480-816-5198) NOT LESS THAN 24 HOURS PRIOR TO STARTING WORK UNDER THIS PERMIT. The Town Engineer shall also be notified 24 hours prior to any backfill being placed. Failure to provide said notification will subject the work to re-excavation, removal or replacement as may be required for Town inspection, at the applicant's expense. The applicant shall take full responsibility for all work done under this permit and shall complete the work in a workmanlike manner, including cleanup, restoration of right-of-way and repair of damaged property. Notify Town of Fountain Hills inspector not less than 24 hours in advance when the project is ready for punch list. Failure to get a final inspection and acceptance of work will extend the warranty period indefinitely.

THIS PERMIT IS SUBJECT TO THE TERMS AND CONDITIONS ON THE FOLLOWING PAGE.

****Failure to obtain an inspection before completion may result in additional fees and/or penalties****

MUNIS App#		Amount Paid:	
Date Paid:		Method of Payment:	
Paid By:		Check No.	

Official Use Only:

APPLICATION SUBMITTAL REQUIREMENTS

1. All applications shall submit:
 - A completed and signed permit form
 - One set of construction plans
 Additionally, all applicants except public utilities shall have a Town of Fountain Hills Business (privilege) License and a State Contractors License.
2. When road or lane closures are required during the work, one set of Traffic Control Plans shall be submitted to epermits@fh.az.gov (including a name and phone number for 24-hour contact person), 72 hours prior to planned start of work. No street or alley closures shall occur without written approval of the Traffic Control Plans.
3. The applicant shall provide information for the contractor or subcontractor that will be performing the work, including address, office phone, 24-hour phone, contact, contractor license number, Town business license number, state tax number and insurance certificates/endorsements for each.

TERMS AND CONDITIONS OF PERMIT

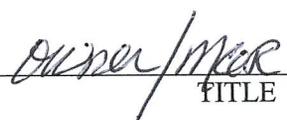
FOR AND IN CONSIDERATION of the granting of this permit for the purpose set forth herein, the applicant hereby agrees, covenants and binds itself, its successors and assigns, to all responsibilities and liabilities of all applicable Town, State and Federal regulations and to all requirements and conditions set forth in this permit.

1. All work must conform to MAG Specifications and Details, as revised by the Town of Fountain Hills.
2. Traffic control for any work performed within the public right-of-way shall conform to the Manual of Uniform Traffic Control Devices. Maintenance of traffic control shall be the responsibility of the applicant. Should any deficient barricading or signing occur, and the Town has to correct traffic control, the applicant will be assessed a fee per the Town fee schedule.
3. The applicant must maintain (i) General liability and commercial automobile insurance in minimum amounts of \$500,000 each, with endorsements naming the Town of Fountain Hills as an additional insured, and (ii) Statutory Workman’s Compensation Insurance. The applicant shall be responsible for all liability imposed by law for personal injury or property damage arising out of or related to work performed under this permit or arising out of the applicant’s failure to perform its work under this permit. If any claim for such liability is made against the Town of Fountain Hills, its officers or employees, applicant shall defend, indemnify and hold them harmless for, from, and against such claim, including claims alleging the negligence of the Town, its officers and employees.
4. All work shall be the sole expense of the applicant and shall be done in such a manner as to minimize inconvenience and hazards to vehicular or pedestrian traffic.
5. The proposed work shall be located and constructed to the satisfaction of the Town Engineer or duly authorized representative.
6. The applicant shall conform to all provisions of the Arizona Blue Stake Law, and shall call 1-800-STAKE-IT a minimum of 48 hours prior to any work involving excavation.
7. If any of the right-of-way occupied and used by applicant is deemed by the Town Superintendent of Streets to be needed or required for Town use, this permit may be revoked by the Town and all rights hereunder will be immediately terminated and upon notice from the Town. Upon receipt of a termination notice, the applicant shall immediately (i) remove all property placed in the right-of-way by or on behalf of the applicant, and (ii) restore the right-of-way to its prior condition, as determined by the Town.
8. Excavated or stored material shall not be placed or stored on pavement, sidewalk, or traveled roadway surface unless specifically stated and approved in this permit.
9. Excavation within the roadway, and within three feet from pavement edges, shall be recompact to a minimum of 95% relative density (ASTM D-698) within two feet of the bottom of the pavement section and 90% below two feet. All excavation will require the applicant to pay for and furnish the Town with compaction tests. The minimum amount of tests required will be: (i) one for every two feet of fill for lateral cuts, and (ii) one every 500 feet for every two feet of fill for longitudinal cuts. The minimum amount of test required three feet beyond the pavement edge will be one every 500 feet. Compaction test results shall be submitted prior to placing finish asphalt or finalizing work under the permit. Non-shrink backfill may be placed in lieu of the above compaction requirements. Asphalt or aggregate base course thickness shall meet existing thickness, minimum 2” AC on 6” ABC. A temporary patch of cold mix will be allowed.
10. The applicant is responsible for submittal and payment related to any testing requirements.
11. In addition to the specific conditions of permit set forth herein, the applicant shall be subject to and abide by all applicable provisions of Section 16 of the Fountain Hills Town Code dealing with encroachment.
12. **Notify Town of Fountain Hills Street Department 48 hours in advance for removal, replacement or new installation of signs.**
13. Lack of diligence in performing or protection of the work zone may result in cancellation of the permit, an administrative fee, and cost of restoration by the Town, and/or a penalty under the Town Code (Section 16-1-12).
14. Except as set forth in this paragraph 14, the rights and obligations under this permit will expire on the date set forth on the first page hereof, but not later than 180 days from the application date. If the proposed work is not complete and inspection has not been performed, applicant must reapply for a new permit. If approved by the Town Engineer as part of the plans submitted above, the non-exclusive license to maintain infrastructure improvements in the Town’s rights-of-way may continue beyond the term of this permit; provided, however, that such continued occupancy (i) shall not create any property rights to the applicant and (ii) may cause the applicant to later be required to move or remove its improvements, at its sole expense, upon reasonable notice from the Town. Please initial that you have read and agree to the terms and conditions above.

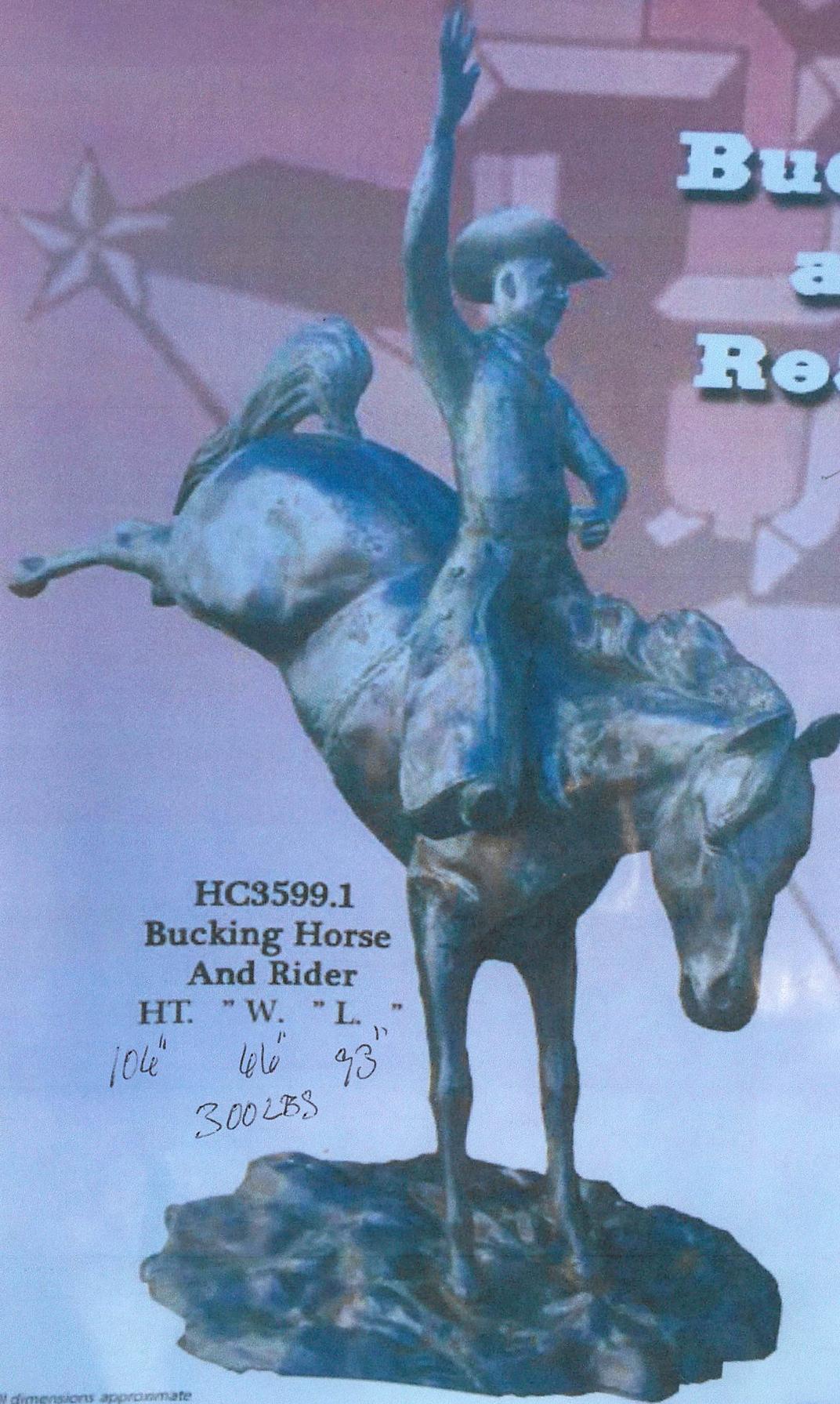
Initial

AGREED TO AND ACCEPTED:


SIGNATURE OF APPLICANT


TITLE

Upon signature of the applicant acknowledging (i) all of the requirements set forth above and (ii) authority to sign on behalf of the applicant, a PERMIT AND NON-EXCLUSIVE LICENSE is hereby granted to the applicant to enter upon and use the portion of the Town’s right-of-way as shown on the plans submitted as set forth above.



**Buckin'
and
Rearing**

**HC3599.1
Bucking Horse
And Rider
HT. " W. " L. "**

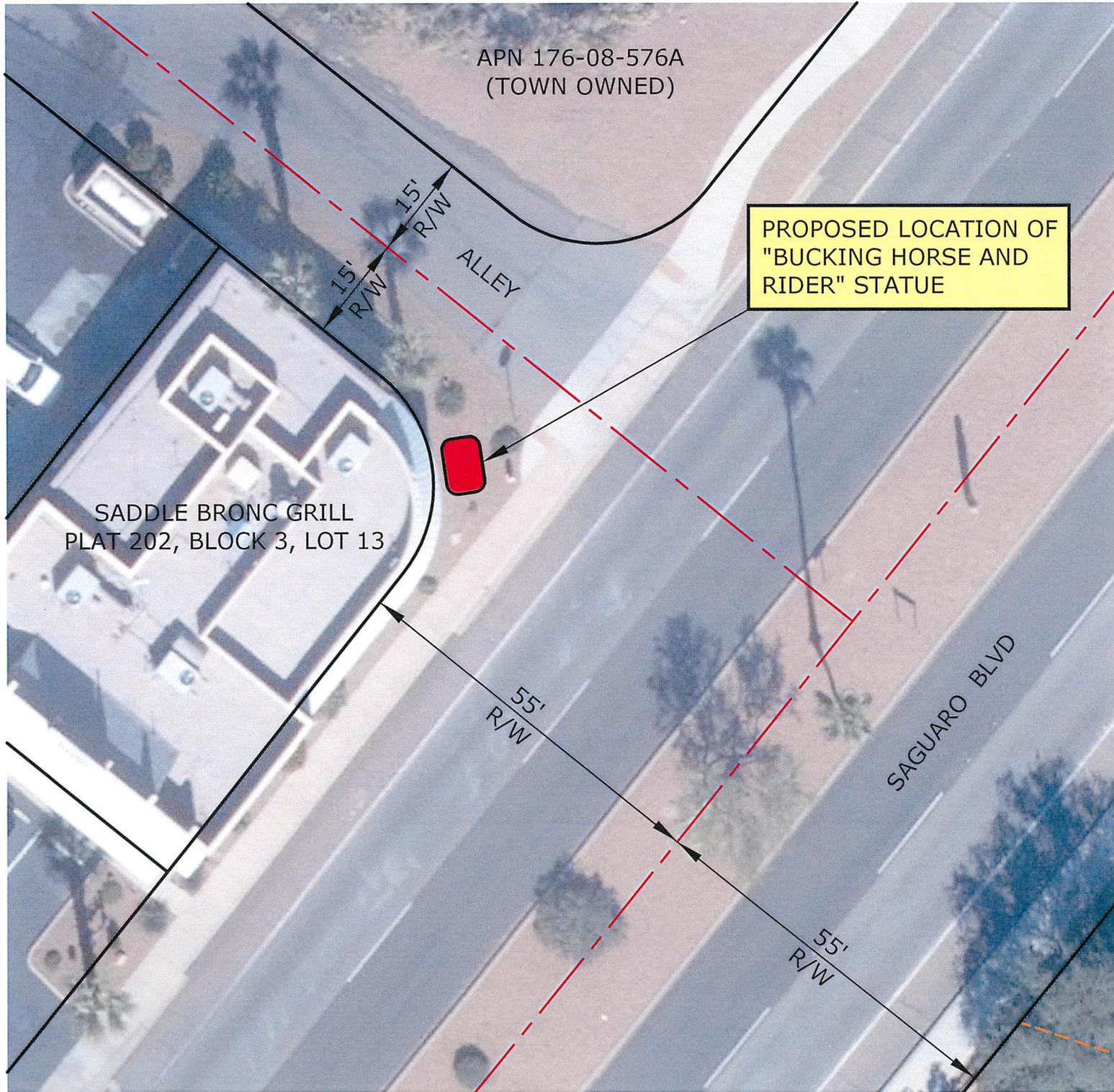
106" 46" 93"
300 LBS

All dimensions approximate



4 concrete cylinders
some ^{or} tubes 2 Foot Deep or
deeper
Stone will cover the top
with only horses feet exposed





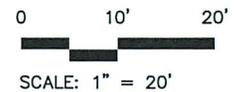
DEVELOPMENT SERVICES

**SADDLE BRONC GRILL
11056 N. SAGUARO BLVD**

ENCROACHMENT PERMIT
REQUEST - STATUE IN
PUBLIC ALLEY R/W

LEGEND:

- LOTLINE
- ROW
- CENTERLINE



Fountain Hills

Property Management and Real Estate

April 6, 2016

Saddle Bronc Grill
11056 N. Saguaro Blvd.
Fountain Hills, AZ 85268

Att: Jim Wallace

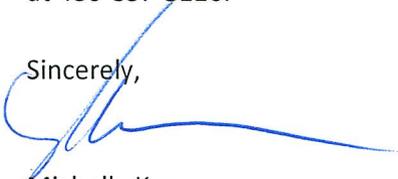
Dear Mr. Wallace,

You recently submitted a request for permission to install a statue on your lot at the above subject address. This lot is located in the Plat 202 Property Owners Association.

After considering your request the Board of Directors has approved the installation. It shall be installed as indicated on the request.

If you need anything further from the Association prior to the Town Council meeting please contact me at 480-837-5226.

Sincerely,



Michelle Kern
Property Manager



TOWN OF FOUNTAIN HILLS

TOWN COUNCIL AGENDA ACTION FORM

Meeting Date: 4/21/2016

Meeting Type: Regular Session

Agenda Type: Regular

Submitting Department: Community Services

Staff Contact Information: Mark Mayer -

Strategic Planning Goal: Not Applicable (NA)

Operational Priority: Not Applicable (NA)

REQUEST TO COUNCIL (Agenda Language): Discussion with possible direction to staff regarding a Community Garden

Applicant: N/A

Applicant Contact Information: N/A

Owner: N/A

Owner Contact Information: N/A

Property Location:

Related Ordinance, Policy or Guiding Principle:

Staff Summary (background): Staff Summary (background): On March 14, 2016 Mayor Linda Kavanaugh, Town Manager Grady Miller and Community Services Director Mark Mayer met with Dr. Iyoti Patel to discuss the possibility of establishing a Community Garden in Town. Dr. Patel indicated that she had recently hosted a meeting at her home to talk with others from the community that were interested in the project and willing to sign up for one of the committees being formed. Dr. Patel indicated that her group was interested in approaching the Town to utilize the space in the Town's Civic Complex adjacent to the Library. This site has a number of advantages including that it is Town owned, it is currently not being utilized, has adjacent parking and water and power are available. Staff suggested that the group look into working with the Fountain Hills Cultural and Civic Association to be able to solicit and deposit charitable donations to support the Community Garden and to potentially enter into a lease with the Town for the space.

Attached are two letters from Jerry Miles the Treasurer of the FHCCA. The first indicating that the Community Garden group had been accepted into the FHCCA's umbrella of non-profit 501(c)3 status. The second letter is a request from the FHCCA to agree to enter into a lease agreement for the Town property for \$1 per year renewable annually.

If the Council is agreeable the staff would work with the Town Attorney to prepare a document for review and approval by both the Community Garden group's and the Town Council.

Dr. Patel will be attending the meeting and has asked to address the Council as well as answer any questions that the group might have.

Risk Analysis (options or alternatives with implications):

Fiscal Impact (initial and ongoing costs; budget status):

Budget Reference (page number):

Funding Source: NA

If Multiple Funds utilized, list here:

Budgeted; if No, attach Budget Adjustment Form: NA

Recommendation(s) by Board(s) or Commission(s):

Staff Recommendation(s): Staff is recommending supporting the concept of a Community Garden and the development of a lease between the two parties for review by the Town Council

List Attachment(s): Two letters from Jerry Miles, Treasurer of the FHCCA I site map

SUGGESTED MOTION (for Council use): Motion to request staff to work with the Town Attorney to develop a lease for the potential use of the property adjacent to the Library as a Community Garden.

Prepared by:

NA 4/12/2016

Director's Approval:


Mark Mayer, Community Services Director 3/28/2016

Approved:


Grady E. Miller, Town Manager 4/12/2016

Fountain Hills Community Garden

April 21st, 2016



What is a Community Garden?

- ▶ A community garden is green space that is worked on by a group of volunteers in our town. It inspires the growth of fruits and vegetables, creates a center for education, social service and community spirit.



Our Vision

- ▶ Our garden will be a gathering place where residents can connect with their Mind, Body and Spirit through contact with nature, physical activities, and social interactions.
- ▶ To offer a quiet and restful garden setting for the enjoyment of the natural world of plants, birds, insects, and soil.
- ▶ It will be a place of inter-generational relationships, where Master Gardeners can share their wisdom about water conservation, progressive gardening techniques, composting to young children and adults.

Our Vision

- ▶ It can be a place where young students learn about service and giving back to the community. And seniors can find a place to belong and a sense of purpose.
- ▶ The organic fruits and vegetables grown in the garden can be donated to food banks, shelters, and help underserved families.

Proposed Programs

- ▶ **Cooperative Garden Beds** - Raised, handicap accessible beds for a joint-community growing experience where children and adults can work together and grow a variety of vegetables.
- ▶ **Educational Workshops** - Learning centers led by Master gardeners will allow persons of all ages to learn the basics of gardening, composting, soil, seasons, and plants.
- ▶ **Kid's Learning Garden-** A place where children can learn to grow, use imaginative play for free exploration of the soil and plants along with formal, hands-on, curriculum-based gardening programs.

Proposed Programs

- ▶ **Individual Garden Plots-** Lots will be available for “rent” to community members. Individuals can create their own expression with recycled materials, raised beds, or vertical gardens. Gardeners and groups are encouraged to use eco-friendly, organic gardening methods and share their produce with the community.
- ▶ **Food Donation-** A partnership with local churches, food banks, shelters and volunteer programs to provide organic produce to those in need.
- ▶ **Art Display-** Offer a place for an Art Walk, Sculptures, Musical Performances, Cultural activities enhancing the town’s reputation as a leader in the Arts.

Proposed Programs

- ▶ **Tree Orchard** - A collection of trees that provide shade to our community garden.
- ▶ **Reflection Garden** - a Zen garden where locals can experience all their senses among medicinal plants, bells, wind chimes, herbs and fragrant flower smells.
- ▶ Hummingbird feeders, Bee program, Composting, Rain catch, Solar Panels, Desert plants, walk-ways and more.....

How does a Community Garden enhance our Community?

- ▶ It becomes a reason for families to move to our town. Rank in the top places to raise a family in AZ with a eco-preserving, energy conscious, forward-thinking community.
- ▶ Our town schools would lead by example and become role models for other schools in the District.
- ▶ Provide a source for healthy, organic foods to our community.
- ▶ Improve the health of our young families and senior community with a safe green place to find purpose, nutrition and activity.

What Do We Have So Far?

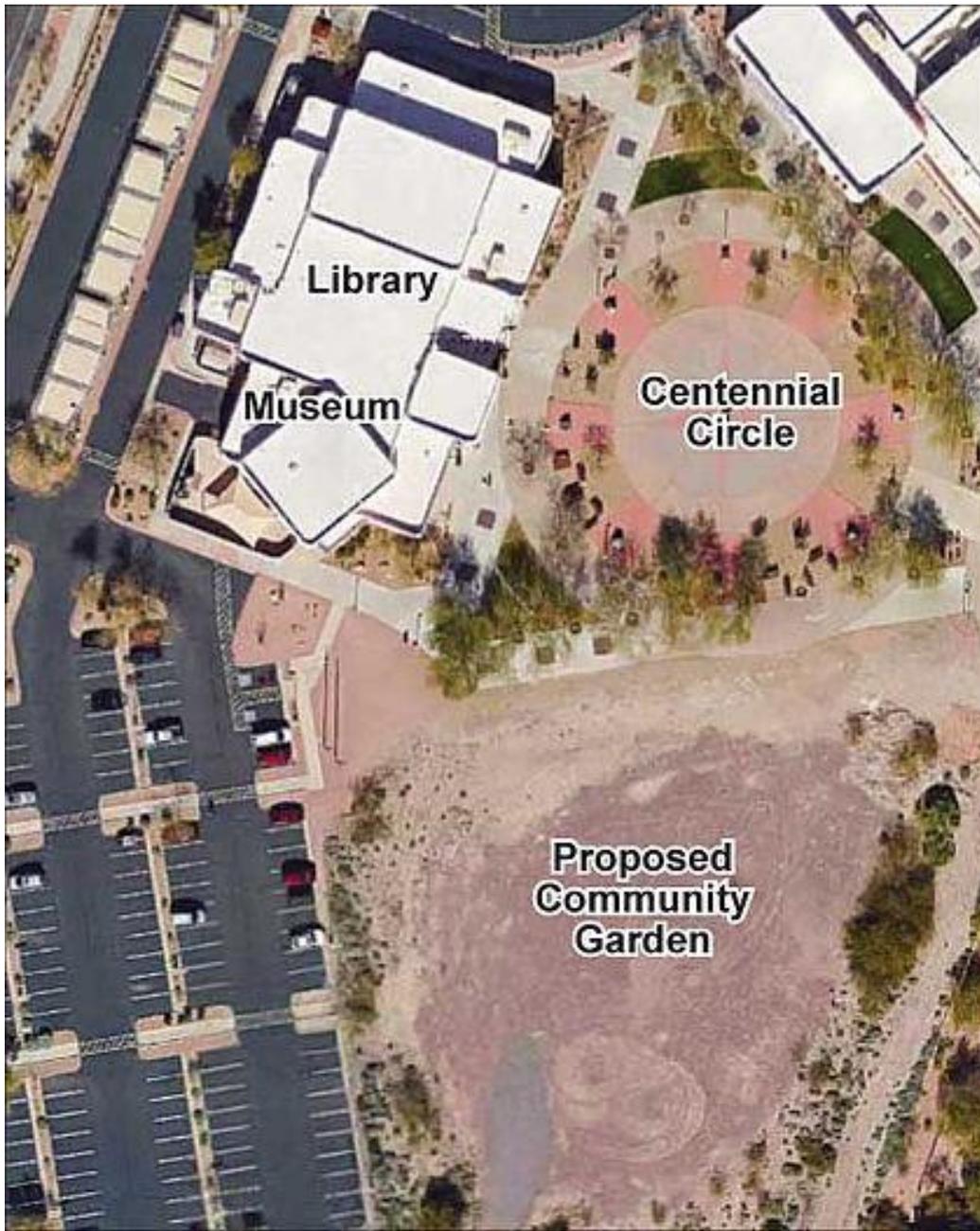
- ▶ **A Parent Non-Profit Organization-** The Greening Committee under the Fountain Hills Cultural and Civic Association is a 501©3. Donations will be directed to the Greening of Downtown program. All donations will roll over to the Greening Committee if the garden project terminates.
- ▶ **Interest** from 100+ local volunteers, service groups, businesses, FH School Superintendent, Chamber of Commerce, ASU Global Institute for Sustainability and Maricopa Master Gardeners Program.
- ▶ **Collaboration** with other social service and education groups in Fountain Hills. The Fountain Hills Cultural and Civic Association with the Greening of Downtown Committee, the Fountain Hills School District, the River of Time Museum.
- ▶ **Fundraising** through local and national Grant Programs, community fundraising efforts through residents, businesses and the Girl Scouts.

How are we paying for this?

- ▶ This is a 100% Volunteer Effort with over 100 + resident support, a landscape architect, an engineer, contractors and several Master Gardeners committed
- ▶ We have 5 Teams with Volunteer Team Leaders : Administration, Construction, Garden Design, Fundraising & Marketing
- ▶ Our fundraising efforts to date: application for grants from Safeway, SRP, Republic Services, national grants for community gardens through American Community Gardening Association and partnership with Fry's and Bashas
- ▶ We are seeking donations from individuals, groups and businesses
- ▶ We are planning fundraisers to raise awareness and donor support
- ▶ Revenue will be generated from gardening classes and hosting events, collecting membership fees and lot lease fees
- ▶ We plan to partner with other local organizations with a similar vision and share expenses.

How can the Town of Fountain Hills support this program?

- ▶ **We need your support for the Garden**
- ▶ **Land for the Garden-** we would like to propose a tentative Public land near the Library. We are asking the town to lease the lot to the Fountain Hills Cultural & Civic Association for \$1/year. This lot will be developed in phases and in collaboration with other educational and service related organizations in town to host an area of public interest, tourism, education and recognition.
- ▶ **Water Supply-** the lot currently has access to water from a capped off main on El Lago Blvd. We are asking the town to provide a water meter to the lot. If the town uses this property in the future for other projects, they will have invested in this much needed infrastructure already.



Fountain Hills Community Garden

We Ask the Town:

1. For Their Support of the Garden
2. A lease for use of the town lot for \$1/year
3. A water meter to be installed at the lot





Thank You!



**FOUNTAIN HILLS CULTURAL &
CIVIC ASSOCIATION**

Post Office Box 18254
Fountain Hills, AZ 85269

March 21, 2016

Mayor Linda Kavanagh
Town Hall
16705 E. Avenue of the Fountains
Fountain Hills, AZ 85268

Dear Mayor Kavanagh,

This letter is to inform you and the Town Council that the Fountain Hills Cultural & Civic Association has voted to place Dr. Iyoti Patel's Community Garden group under its non-profit corporation 501(c)(3) umbrella. Our Federal Tax ID number is 86-0358244.

The Community Garden group will use the FHCCA website. Also, any funds donated to the Community Garden cause will be placed in the FHCCA bank account in a separate, designated fund.

Should you or any Town Council members have questions regarding this arrangement, please feel free to contact me, as I am the FHCCA treasurer.

Sincerely yours,



Jerry Miles
cc: Town Manager and Town Council Members



FOUNTAIN HILLS CULTURAL & CIVIC ASSOCIATION

Post Office Box 18254
Fountain Hills, AZ 85269

March 21, 2016

Mayor Linda Kavanagh
Fountain Hills Town Hall
16705 E. Avenue of the Fountains
Fountain Hills, AZ 85268

Dear Mayor Kavanagh,

The Fountain Hills Cultural & Civic Association is requesting a lease agreement with the Town of Fountain Hills for the vacant land southeast of the Library/Museum which was originally intended for the building of a performing arts building.

The FHCCA would like to use this land immediately for a Community Garden under the direction of one of our members, Dr. Iyoti Patel. The FHCCA is a non-profit 501(c)(3) corporation, Federal Tax ID #86-0358244.

We are requesting a nominal rental fee of \$1 per year for the use of this land, with automatic annual renewal unless a 30-day notice is filed by either the FHCCA or the Town of Fountain Hills.

If there are any questions regarding this proposal, please contact me on my cell, 480-518-5183 or at my home phone, 480-837-3214.

Thank you for your consideration.

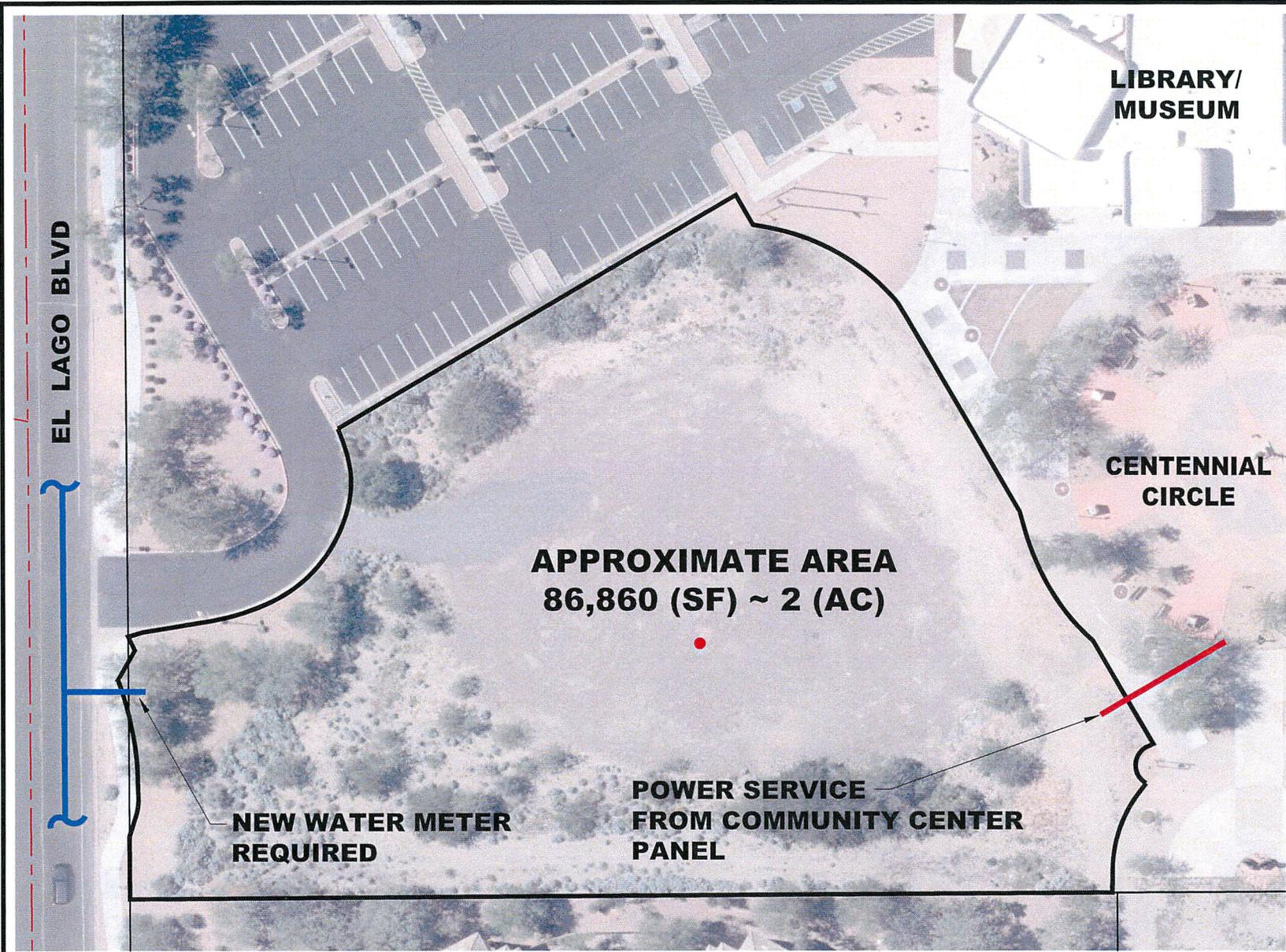
Sincerely yours,



Jerry Miles
FHCCA Treasurer

cc: Town Manager and Town Council Members

FHCCA is a 501(c)(3) non-profit corporation, Tax ID #86-0358244

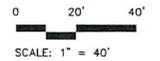


DEVELOPMENT SERVICES

COMMUNITY GARDEN
PROPOSED SITE

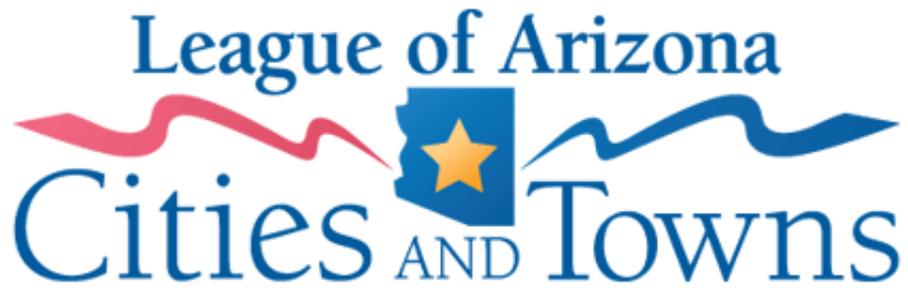
LEGEND:

- LOTLINE
- RIGHT OF WAY
- CENTERLINE
- SUBJECT SITE



- AERIAL PHOTO FLIGHT: 11/14
- TOPOGRAPHICAL MAP: 9/91
- FEMA FLOOD DELINEATION: 10/13

THIS TOPO/AERIAL MAPPING IS SUITABLE FOR GENERAL PLANNING PURPOSES, BUT SHOULD NOT BE USED FOR DESIGN.



— Legislative Bulletin —

Issue 13 - April 8, 2016

Legislative Overview

Today is the 89th day of session. The majority of activity was on the floor this week, as only a few committees heard executive nominations or had presentations. The chambers are processing a moderate amount of bills, as the governor announced he wants to see the budget develop before he signs any more legislation. Very little activity occurred on bills of municipal interest.

Reports indicate that there is some budget activity; leadership is meeting with small groups of their membership but few details have emerged. There were two documents available through the media that demonstrate the Senate and the House are about \$18 million apart in spending, with the House having the higher number, but the documents do not contain much detail. We will keep you apprised as the budget develops.

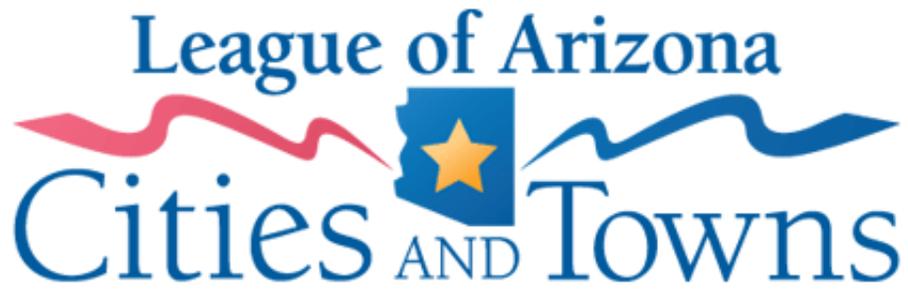
To date 106 bills have passed, with 105 signed, and one vetoed, the cursive writing mandate.

Legislative Bill Monitoring

(All bills being actively monitored by the League [can be found here.](#))

[HB 2107: S/E structured sober living homes](#)

[SB 1248: S/E pet dealer regulations](#)



— Legislative Bulletin —

Issue 14 - April 15, 2016

Legislative Overview

Today is the 96th day of session. Once again most activity was on the floor, but even that was light. The chambers are slowly processing bills, seemingly adhering to the governor's advice to not send him bills until there is significant progress on the budget. A couple of bills of municipal interest, [HB2107](#) and [HB2483](#) had activity.

Earlier in the week there was some talk of a possible budget going forward, but as of today there's no visible movement. Last year the budget passed in the middle of March and the legislature adjourned April 3rd.

We remain at 106 bills passed, 105 signed, and one vetoed, the cursive writing mandate.

Legislative Bill Monitoring

(All bills being actively monitored by the League [can be found here.](#))

[HB 2107: S/E structured sober living homes](#)

[HB 2483: municipal population estimates; use](#)

2. A Fountain Hills' resident for at least one year, unless the Council specifically waives this time or residency requirement for a specific board, commission or committee.
 3. A qualified elector, except youth appointees.
- B. Prohibited Appointees. Town employees or appointed officers shall not be eligible for appointment to any board, commission, or committee but may be requested to provide staff support thereto. Councilmembers are prohibited from serving on regularly scheduled commissions as listed in Subsection 9.1(B) above and the Board of Adjustment.
- C. Ex-Officio Members. The Mayor, with the consent of the Council, may from time to time appoint ex-officio members to those boards, commissions or committees as set forth in the bylaws of such body. Such members shall serve at the pleasure of the Mayor and Council. Ex-officio members shall not be entitled to vote on any matter brought before the commission.

9.5 TERMS, VACANCIES, REMOVAL

- A. Terms. All members of unscheduled boards, commissions, and committees shall serve a term of up to three years, or until the board, commission, or committee is dissolved, unless Council action, Town Code, or Arizona Revised Statutes specifically designates terms.
- B. Staggered Terms for Smaller Boards. For those regularly scheduled boards, commissions, and committees having five members or fewer, the terms of office shall be staggered so that no more than three terms shall expire in any single year when possible; provided, however, that no staggering of terms shall be required for any boards, commission, or committee that will be in existence for a single term.
- C. Staggered Terms for Larger Boards. For those boards, commissions, and committees having more than five members but less than eight members, the terms of office shall be staggered so that no more than four terms shall expire in any single year when possible; provided, however, that no staggering of terms shall be required for any board, commission, or committee that will be in existence for a single term.
- D. Simultaneous Service Limitation. No individual may serve as a voting member on more than one regularly scheduled or unscheduled board, commission, and committee at one time.
- E. Vacancies. A vacancy on a board, commission, or committee shall be deemed to have occurred upon the following:

1. Death or resignation of a member of a board, commission, or committee.
 2. A member ceasing to be a resident of the Town of Fountain Hills, unless the Council has provided that such member may be a non-resident.
 3. Three successive unexcused or unexplained absences by a member from any regular or special board, commission, or committee meetings. However, the term of all members shall extend until their successors are appointed and qualified.
- F. Removal. Any board, commission, or committee member may be removed as a member to that board, commission, or committee upon a vote of not less than four Councilmembers for any cause as determined by the Council.
- G. Filling Vacancy. Whenever a vacancy has occurred on one board, commission, or committee procedures described in Sections 9.2, 9.3, and 9.4 above will be used to generate applicants, interview applicants, and make a recommendation for a potential appointee.
- H. Re-appointment. An incumbent member of a board, commission, or committee seeking reappointment shall submit, in writing on a form provided by the Town Clerk that includes a request for the Council's consideration of reappointment in addition to the consent to executive session form by the published deadline in order to be considered for appointment by the Council. The member may include any new or additional information that is relevant to the original application already on file

9.6 APPLICABILITY OF THE ARIZONA OPEN MEETING LAW

All boards, commissions, and committees are subject to the Arizona Open Meeting Law and therefore shall attend the Town's Annual Open Meeting Law training.

9.7 RESIDENCY REQUIREMENT

Members of all boards, commissions or committees shall be residents of the Town.



TOWN OF FOUNTAIN HILLS
16705 E. Avenue of the Fountains
Fountain Hills, AZ 85268
480.816.5100/Fax:480.837.3145

March 30, 2016

Michael Archambault
15033 N. El Sobrante Blvd.
Fountain Hills, AZ 85268

Commissioner Michael Archambault,

It has come to my attention from various sources that you have publically embarrassed our town staff and council by the implied accusations and derogatory comments you made on Facebook.

The Code of Ethics that you signed when you accepted the position of commissioner clearly states that you must conduct yourself in a manner as to maintain public confidence in our town government. Our Code of Ethics further states that any commissioner must adhere to the highest ideals of honor, ethics and integrity and promote trust among members of the council and commissions.

In your posts on Facebook February 24th and 25th, you implied that the town staff, mayor and council were not properly executing town ordinances on the MorningStar job site, specifically related to the installation of unsafe drywall, foundations and plumbing and calling into question the validity of inspections. You then continued with a statement calling into question the integrity and transparency of the Council.

“How long is the Mayor and Council going to allow this fiasco to go on?”...“I’ve put in a public records request to see what the heck is going on behind the scenes that we as law abiding citizens have a right to know about our elected officials.”

You also overstepped your authority as a commission member by questioning the town staff about an issue not related to commission business. You stated in your Facebook post that you got your information from “town hall.” You also surreptitiously acquired said information, bypassing the authority of the town manager.

In addition, I have just been informed that because of your reckless behavior, the N'Shea Group has now filed a civil complaint against you. This can only result in more harm to the town's reputation.

Any private citizen has the right to question anything that goes on at town hall. But a commissioner is held to a higher standard and must live up to that higher standard as he or she pledged when signing the Town Code of Ethics.

Based on the above facts, I am requesting your resignation from the Planning and Zoning Commission effective immediately.

A handwritten signature in blue ink that reads "Mayor Linda M. Kavanagh". The signature is written in a cursive, flowing style.

Mayor Linda M. Kavanagh

cc: Grady Miller

From: [Linda Kavanagh](#)
To: [Bev Bender](#)
Subject: Fw: P & Z Commission Resignation
Date: Tuesday, April 19, 2016 9:57:49 AM

From: Linda Kavanagh
Sent: Tuesday, April 5, 2016 4:01 PM
To: Michael Archambault (P&Z)
Cc: Grady Miller; Nancy Walter
Subject: P & Z Commission Resignation

Commissioner Archambault,

On March 30th I sent you a letter requesting your resignation from the Planning & Zoning Commission. As of today, I have not heard back from you.

I would like to know your decision by Friday, April 15th, or I intend to agendize this item for the council meeting on April 21st.

Thank you,
Mayor Kavanagh

Mayor Linda M Kavanagh
Town of Fountain Hills
lkavanagh@fh.az.gov
480.816-5101