

PUBLIC NOTICE

Notice is Hereby Given that the Tooele City Council and the Redevelopment Agency (RDA) of Tooele City will meet in a Work Meeting, on Wednesday, May 17, 2023, at 5:30 p.m. The Meeting will be Held in the Tooele City Hall Council Chambers, Located at 90 North Main Street, Tooele, Utah. The Complete public notice is posted on the Utah Public Notice Website www.utah.gov, the Tooele City Website www.tooelecity.org, and at Tooele City Hall. To request a copy of the public notice or for additional inquiries please contact Michelle Pitt, City Recorder at (435)843-2111 or michellep@tooelecity.org

We encourage you to join the City Council meeting electronically by visiting the **Tooele City YouTube Channel**, at <https://www.youtube.com/@tooelecity> or by going to YouTube.com and searching "Tooele City Channel".

AGENDA

1. **Open City Council Meeting**
2. **Roll Call**
3. **Mayor's Report**
4. **Council Members' Report**
5. **Discussion Items**
 - a. **Resolution 2023-38** A Resolution of the Tooele City Council Adopting the Modified Public Employees Health Program (PEHP) IRC Section 125 Cafeteria Prototype Plan for Tooele City's Cash-in-Lieu/Waiver Program
Presented by Kami Perkins, City Attorney
 - b. **Fiscal Year 2023-2024 Budget Discussion**
6. **Closed Meeting**
~ Litigation, Property Acquisition, and/or Personnel
7. **Adjourn**

Michelle Y. Pitt, Tooele City Recorder

Pursuant to The Americans With Disabilities Act, Individuals Needing Special Accommodations Should Notify Michelle Y. Pitt, Tooele City Recorder, At 435-843-2111 Or Michellep@Tooelecity.Org, Prior To The Meeting.

TOOELE CITY CORPORATION

RESOLUTION 2023-38

A RESOLUTION OF THE TOOELE CITY COUNCIL ADOPTING THE MODIFIED PUBLIC EMPLOYEES HEALTH PROGRAM (PEHP) IRC SECTION 125 CAFETERIA PROTOTYPE PLAN FOR TOOELE CITY'S CASH-IN-LIEU/WAIVER PROGRAM.

WHEREAS, in November 2021, Goldenwest Insurance notified Tooele City that they were reevaluating their ongoing administration of Section 125 Cafeteria Programs and began discussions to transition our plan administration to the Public Employees Health Program (PEHP); and,

WHEREAS, on May 18, 2022, Tooele City adopted Resolution 2022-34 the PEHP Prototype Plan documents for administration of our Section 125 Cafeteria programs; and,

WHEREAS, after adoption, Tooele City administration realized that the adopted Prototype Plan documents did not include the Cash-in-lieu/Waiver plan component which allows Tooele City the ability to provide eligible employees with the opportunity to choose between taxable Compensation and Qualified Benefits made available under or in conjunction with the Plan without impacting the favorable tax status of our group health plan premiums, as permitted by Section 125 of the Internal Revenue Code ("IRC") as amended; and,

WHEREAS, Tooele City administration worked with PEHP legal counsel to modify their Section 125 Cash-in-Lieu Cafeteria Prototype Plan document for Tooele City's Cash-in-lieu/waiver plan; and,

WHEREAS, Tooele City desires to adopt the modified Prototype Plan documents for administration of our IRC Section 125 Cash-in-Lieu Cafeteria Programs effective July 1, 2022, the date Tooele City transitioned the ongoing administration of our Section 125 Cafeteria plan to PEHP.

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that the document attached as Exhibit A is duly adopted by Tooele City as the Plan Documents to be used for the administration of Tooele City's IRC Section 125 Cash-in-Lieu/Waiver Cafeteria Program.

This Resolution is necessary for the immediate preservation of the peace, health, safety, or welfare of Tooele City and shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this ____ day of _____, 2023.

TOOELE CITY COUNCIL

(For)

(Against)

ABSTAINING: _____

TOOELE CITY MAYOR

(Approved)

(Disapproved)

ATTEST:

Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form:

Roger Evans Baker, Tooele City Attorney

Exhibit A

Prototype Plan Documents for:

- Amended 125 Cafeteria Plan
- Limited Flexible Spending Account Plan & Health Savings Program
- Section 125 Insurance Premium Payment Plan

And,

Cafeteria Plan Administrative Agreement with Public Employees Health Program (PEHP)

125 CAFETERIA PLAN

FOR TOOEELE CITY

ARTICLE 1 PURPOSE

1.1 Purpose of Plan. The purpose of the Plan is to provide Eligible Employees of Tooele City, Utah (“Employer”) with the opportunity to choose between taxable Compensation and Qualified Benefits made available under or in conjunction with the Plan as permitted by Section 125 of the Internal Revenue Code (“IRC”) as amended. Such Qualified Benefits shall be as described in the Benefit Programs outlined herein, which Benefit Programs are incorporated herein and form part of the Plan.

1.2 Effective Date. The effective date of this Plan is ~~January 1, 2023~~ July 1, 2022.

1.3 Source of Funds. The Plan and Benefit Programs forming part of the Plan shall be funded and maintained by contributions from Employer.

1.4 Tax Compliance.

(a) The Plan, and certain or all of the Benefit Programs forming part of the Plan, are intended to result in favorable tax treatment to Participants, Beneficiaries or the Employer, as the case may be. The Plan is therefore intended to comply with any requirements of the Internal Revenue Code (the “Code”) and regulations there under which impose conditions to such favorable tax treatment. The Plan is specifically intended to qualify as a “cafeteria Plan” under Section 125 of the Code.

(b) To the extent that any Benefit Program or other feature of the Plan is required to satisfy a standard or other prerequisite to favorable tax treatment, the Plan is intended to facilitate and ensure compliance therewith. Notwithstanding any other terms of the Plan, as with respect to any Benefit Program subject to such prerequisites, the terms of such Benefits Program, including those relating to coverage and Benefits, are hereby intended to be legally enforceable, and each such Benefit Program is intended to be maintained for the exclusive benefit of Eligible Employees.

(c) Each Benefit Program or other component of the Plan may be deemed to be, and shall be treated as, a separate Plan to the extent required or permitted by law, as determined by the Plan Administrator or other legal authority. In the event a Benefit Program, or any portion thereof, is determined to have failed to comply with one or more prerequisites to favorable tax treatment as prescribed under the Code or applicable regulations, that Benefit Program or portion thereof shall be deemed to be and shall be treated as a separate benefit Plan, and the remaining Benefit programs, or portions thereof, shall not be affected by such non-compliance.

(d) The Plan is intended not to discriminate in favor of Highly Compensated Individuals as to eligibility to participate, contributions and Benefits, and to comply in this respect with the requirements of the Code. If, in the judgment of the Plan Administrator, the operation of the Plan in any Plan Year would result in such discrimination, then the Plan Administrator shall select and exclude from coverage under the Plan such Highly Compensated Individuals who are Plan Participants, and/or reduce contributions and/or Benefits under the Plan by Highly Compensated Individuals who are Plan Participants, to the extent necessary to assure that, in the judgment of the Plan Administrator, the Plan does not discriminate against any individuals.

ARTICLE 2 DEFINITIONS

When used in the Plan, certain terms are capitalized and shall have the respective meanings set forth in this Article or in certain other Articles of the Plan.

Beneficiary. “Beneficiary” means a person who is eligible to receive Benefits under a Benefit Program maintained under the Plan by reason of another individual’s active or former service with the Employer.

Benefits. “Benefits” means any amounts paid to a Participant for Qualified Benefits available from time to time under the Plan.

Benefit Program. “Benefit Program” means the Health Care Reimbursement Program, Premium Payment Plan, and the Dependent Day Care Assistance Program as set forth in this Plan.

COBRA. “COBRA” means the Consolidated Omnibus Budget

Reconciliation Act of 1985, as amended from time to time.

Code. “Code” means the Internal Revenue Code of 1986, as amended from time to time.

Compensation. An Eligible Employee’s “Compensation” for any Plan Year means the Compensation paid to the Eligible Employee by the Employer during that period which is currently treated as wages for income tax withholding purposes pursuant to Code Section 3401(a) (determined without regard to any rules under said Code Section that limit the remuneration included in wages based on the nature or location of the employment or the services performed), plus all other payments of Compensation to the Eligible Employee by the Employer for such period which is not included above, but which is subject to reporting under Code Section 6401(d) and 6051(a)(3), and further including amounts contributed by the Eligible Employee under a salary reduction agreement with the Employer which are excludable from taxable income under Code Section 125, 457, 402(g), and 414(h).

Dependent. Except as otherwise provided under the Plan, the term “Dependent” with respect to a Participant (or, if the Participant is married, by the Participant and Spouse) shall have the meaning of that term given by section 152 of the Code, as amended from time to time. Solely for purposes of the Medical Expense Reimbursement Program, Dependent includes a child (son, daughter, stepson, stepdaughter, or child legally adopted) of a participant, who has not attained age 27 as of the end of the taxable year, regardless of whether that child is married or meets the residency, support, and other tests described in IRC §152(c) for a dependent.

Eligible Employee. Eligible Employee means any benefit eligible Employee working for and compensated by Employer, ~~whatever department or division of the State of Utah,~~ who satisfies the eligibility requirements of the Plan as prescribed in Section 3.1 and as defined by the Employer.

Employee. For purposes of this document, Employee means an individual who works for the Employer in an **active** Employee-Employer relationship, including any elected or appointed official; is eligible to participate in the group health insurance plan offered by Employer and receives wages for employment with the Employer.

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Employer. “Employer” means Tooele City, which has taken all necessary steps to adopt this Cafeteria Plan.

Enrollment. “Enrollment” shall be the period beginning on May 1st of each Plan Year and ending on June 15th of each Plan Year. In the case of an Employee who first becomes eligible to participate in a Plan after the commencement of a Plan Year, such Employee shall have sixty (60) days following the date the Employee commences work to complete the Salary Reduction agreement and deliver them to Employer.

Health Care Reimbursement Program. The “Health Care Reimbursement Program” is a Benefit Program, the terms and conditions of which are set forth in this plan document.

Highly Compensated Employee. “Highly Compensated Employee” means, with respect to any Plan year, an Employee of the Employer who meets the definition of highly compensated in Code Section 414(q) and Section 125 (b)(1) and (d), as amended from time to time.

Key Employee. A “Key Employee” is any current or former Employee of the Employer (and the Beneficiaries of such Employee) who at anytime during the determination period was an Employee that met or meets the definition of a Key Employee in Code Section 416(i)(I), as amended from time to time.

Participant. A “Participant” is a current Eligible Employee who has elected to participate and has enrolled in the Plan for the Plan Year pursuant to the procedures prescribed in Article 4.

Plan. “Plan” means the Cafeteria Plan created by this document, including all Benefit Programs hereunder, and all documents associated with the Plan or any Benefit Program.

Plan Administrator. The “Plan Administrator” is the person, committee, entity or other third party designated under Article 6.1 to serve as administrator of the Plan. In the absence of such designation, the Employer shall serve as the Plan Administrator.

Plan Year. “Plan Year” means the 12-month participation period beginning on July 1st and ending on June 30th. ~~30th or during the two and one-half months ending on September 15th day immediately following the Plan Year.~~

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Qualified Benefits. “Qualified Benefits” ~~shall~~ means a benefit under the Benefit Program[s] described herein.

Qualified Expense. “Qualified Expense” ~~shall~~ means any amount paid or incurred by a Participant for Qualified Benefits not otherwise reimbursed under any other source.

Salary Reduction Agreement. “Salary Reduction Agreement” means a voluntary agreement whereby an Employee agrees to reduce his or her Compensation for the forthcoming Plan Year (or if the agreement becomes effective after the beginning of the Plan Year, for the balance of the Plan Year), for purposes of obtaining the Qualified Benefits offered by the Plan.

Spending Account[s]. “Spending Account[s]” ~~shall~~ means the account[s] established in the Participant’s name and which is used to record amounts allocated to a Participant for a Benefit Program and their expenditure for Qualified Benefits.

Spouse. “Spouse” means a person to whom a Participant is legally married. An individual shall be deemed to be a “Spouse” of a Participant as with respect to any expense which is payable or reimbursable under the Plan if that individual is legally married to the Participant at the time the expense is incurred.

Status Change, Family Status Change, and/or Employment Status Change. “Status Change, Family Status Change and/or Employment Change” means a change in status, family status or employment status as defined in Article 4.5 of this Plan.

**ARTICLE 3
ELIGIBILITY AND PARTICIPATION**

3.1 Eligibility Requirements.

(a) Each Eligible Employee shall be eligible to become a Participant on the first day of employment.

(b) The Eligible Employee must have other ~~employergroup~~-sponsored insurance coverage which meets the minimum essential coverage requirement of the Affordable Care Act (ACA).

~~(i) Insurance coverage that is ineligible and does not satisfy the group-sponsored insurance provision includes, but is not limited to: an individual plan, either on or off the exchange; and is not government-sponsored coverage, such as Medicare; government-sponsored Medicaid; a Tricare plan that does not meet the minimum essential coverage requirement of the Affordable Care Act (ACA); health insurance provided to school/college students through a higher education program; or, coverage provided by Tooele City's group health plan as an insured on another employee's policy for reasons such as, both spouses are employed or the employee is covered under their City-employee parent's plan. or Tricare.~~

(c) An Eligible Employee shall have thirty (30) days following the date the Employee commences work to complete the Enrollment Cash-In Lieu of Health Plan/Waiver Form, provide the required proof of other qualifying coverage, and to deliver the same to Employer's Plan Administrator. If the Plan Administrator does not receive the Enrollment Waiver form within sixty (60) days of employment, the Employee shall not be eligible to participate in the Plan until the next Plan Year.

3.2 Cessation of Participation Generally. A Participant shall cease to be a Participant in the Plan as of the earliest of:

(a) the first day of a Plan Year for which the Participant does not elect to participate in any Benefit Program;

(b) the date a Participant ceases to be an Eligible Employee and thereafter fails to make required or voluntary contributions under the Plan; or

(c) the date on which the Plan is terminated.

3.3 Family Medical Leave. A Participant who takes an unpaid leave of absence under the Family and Medical Leave Act of 1993 (“FMLA Leave”) may revoke ~~his~~ election to participate under any Benefit Program offered under this Plan, for the remainder of the Plan Year in which such leave of absence commences. Such revocation shall be in accordance with such procedures as prescribed by the Plan Administrator.

ARTICLE 4 PARTICIPATION ELECTIONS PROCEDURES

4.1 Election Rights. Each Eligible Employee who has satisfied the eligibility requirements of Section 3.1 may elect to ~~decline waive~~ health insurance coverage under the Plan and instead receive a cash payment by completing and delivering a ~~Cash-In-Lieu of Health Plan/n-Enrollment~~ Waiver Form as prescribed under Section 4.4. An Employee’s participation status shall be renewed through the same process during open enrollment.

4.2 Payment in Lieu of Participation. Employers ~~s~~ shall provide a contribution to Eligible Employees in a cash payment through payroll. If the Eligible Employee receives a cash payment, the cash payment shall be treated as compensation and income and will be reported on all applicable tax forms as income.

4.3 Election procedures.

(a) At least 60 days prior to the commencement of each Plan Year, the Plan Administrator shall make available to each Eligible Employee a ~~Cash-In-Lieu of Health Plan/Waiver Form n-Enrollment Waiver Form~~ in electronic or paper form in regard to participation in the Plan for the next Plan Year. In the case of an Employee who first becomes eligible to participate in the Plan after the commencement of a Plan Year, such participation ~~Cash-In-Lieu of Health Plan/Waiver Form Enrollment Waiver Form~~ shall be made available as prescribed under Section 3.1.

(b) Each Eligible Employee who desires to participate in a Benefit Program for a Plan Year shall so designate such on the ~~Cash-In-Lieu of Health Plan/Waiver Form Enrollment Waiver Form~~.

(c) To be effective for any Plan Year, a ~~Cash-In-Lieu of Health Plan/Waiver Form n-Enrollment Waiver Form~~ must be completed and returned to the Plan Administrator or its delegate at least fifteen (15) days prior to the first day of that Plan Year. If an Eligible Employee fails to deliver ~~an~~ a ~~Cash-In-Lieu of Health~~

~~Plan/Waiver Form Enrollment Waiver Form~~ to the Plan Administrator prior to the first day of a Plan Year, the Eligible Employee shall not be eligible to participate in any Benefit Program for that Plan Year.

(d) An Eligible Employee must complete and deliver a Cash-In-Lieu of Health Plan/Waiver Form ~~an Enrollment Waiver Form~~ to the Plan Administrator for each Plan Year for each Benefit Program in which the Eligible Employee desires to participate.

4.4 Irrevocable Status of Elections. Except as otherwise provided in this Article 4 and Article 3.3, any election made or deemed to have been made by an Eligible Employee with regard to participating or declining to participate in any Benefit Program offered within the Plan and with respect to any Plan Year shall be irrevocable for the duration of that Plan Year. During Family Medical Leave, a Participant may exercise whatever rights such Participant has under the Family Medical Leave Act and regulations promulgated thereunder as more fully set forth in Article 3.3.

4.5 Status Changes, Family or Employment Status Changes.

(a) Notwithstanding Section 4.4 above, a Participant may revoke the Cash-In-Lieu of Health Plan/Waiver Form ~~Enrollment Waiver Form~~ with respect to a Benefit Program in effect for a Plan Year or, alternatively, may modify a prior election to take effect for the remainder of the Plan Year, if the revocation and the new election or modification, as the case may be, is on account of and consistent with a Status Change, Family Status Change or Employment Status Change. In this regard, a benefit election revocation or modification shall be deemed to be consistent with a Status Change, Family Status Change and/or Employment Change only if the revocation or modification is necessary or appropriate as a result of the Status Change, Family Status Change and/or Employment Change.

(b) For purposes of subsection (a) above, a “Family Status Change,” “Employment Status Change,” and/or “Status Change” as with respect to a Participant shall include the following:

- (i) the marriage, divorce or legal separation of the Participant;
- (ii) the death of the Participant’s Spouse or Dependent;
- (iii) the birth or adoption of a child of the Participant;
- (iv) the commencement or termination of employment of the Participant’s Spouse;

- (v) a change from part-time to full-time employment status (or vice versa) by the Participant or the Participant's Spouse;
- (vi) the taking of an approved unpaid leave of absence by the Participant or the Participant's Spouse which leave shall include entering into or returning from "uniformed service" as defined under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA); or the occurrence of a special Enrollment period as defined in Section 9801(f) of the Code);
- (vii) a significant change in the health coverage of the Participant or the Participant's Spouse attributable to the Spouse's employment; or
- (viii) such other events that the Plan Administrator determines will permit a change or revocation of an election during a Plan Year under regulations and rulings of the Internal Revenue Service.

(c) Any new election made under subsection (a) above shall be effective at such time as the Plan Administrator shall prescribe, but not earlier than the date of the Family Status Change and/or Employment Status Change form is completed and returned to the Plan Administrator or its delegate. Status Change, Family Status Change and/or Employment Change elections must be made and received by the Plan Administrator within 30 days of when the event occurred. If the Status Change, Family Status Change and/or Employment Status Change form is not received by the Plan Administrator within 30 days of the Family Status Change, the Status Change, and/or Employment Status Change request shall be denied.

4.6 Effect of Separation from Service.

(a) Except as specifically provided under the Plan, a Participant who separates from service during a Plan Year shall not receive any additional payment during the Plan Year.

(b) A Participant whose benefit election[s] for a Plan Year are revoked under subsection (a) shall not be entitled to make any new benefit elections in regard to the remaining portion of that Plan Year of separation. A former Participant, who returns to service as an Eligible Employee within 30 days, may have the previous election reinstated for the remainder of that Plan Year. If the former Participant returns to service as an Eligible Employee after 30 days, that Employee may make a new election or resume the previous election for the remainder of that Plan Year.

4.7 Payment of Contributions While on FMLA Leave.

A Participant who takes unpaid FMLA Leave and who elects to continue participation under this Plan shall not continue to receive payment during the FMLA period.

4.8 Uniformed Service Under USERRA. A Participant who is absent from employment with the Employer on account of being in “uniformed service,” as that term is defined by the USERRA, may elect to continue participation in the Plan. The coverage period shall be in accordance with USERRA § 4317, as amended from time to time.

4.9 Changes by a Plan Administrator. The Employer may adopt such rules and take such actions as it deems necessary or desirable to assure that the various statutory or other limitations on Benefits provided to the Eligible Employees are satisfied. Such action may include a modification of any election made by a Participant as to the amount of salary reduction contributions to be made by the Participant under the Plan during a Plan Year.

ARTICLE 5 NONDISCRIMINATION AND APPEALS

5.1 Nondiscrimination. Notwithstanding any provision of the Plan to the contrary, in no event shall the aggregate amount of reimbursements or other Benefits provided to Key Employees under the Plan for a Plan Year exceed twenty-five percent (25%) of the aggregate amount of such reimbursements or other Benefits provided to all Participants for such Plan Year. The Plan Administrator may adopt such rules as it deems necessary or desirable to assure that the foregoing limitation is satisfied, including imposing restrictions on the amount of contributions a Key Employee may elect to receive under the Plan for a Plan Year. Any such rules shall be uniformly applied to similarly situated individuals.

5.2 Appeals Procedure.

(a) Any Participant or other person who believes that a benefit is then due to such person under the Plan (a “claimant”), including one greater than that initially determined by the Plan Administrator, may file an appeal in writing with the Plan Administrator.

(b) The Plan Administrator shall within ninety (90) days of the receipt of an appeal either allow or deny the appeal in writing. A denial of an appeal shall be written in a manner calculated to be understood by the claimant and shall

include:

- (i) the specific reason or reasons for the denial;
- (ii) specific references to pertinent Plan provisions on which the denial is based;
- (iii) a description of any additional material or information necessary for the claimant to perfect the claim for the benefit believed due and an explanation of why such material or information is necessary; and
- (iv) an explanation of the Plan's claim review procedure.

(c) A claimant whose appeal is denied (or the claimant's duly authorized representative) may, within sixty (60) days after receipt of denial of the appeal:

- (i) submit a written request for review to the Plan Administrator;
- (ii) submit pertinent documents; and
- (iii) submit issues and comments in writing.

(d) The Plan Administrator shall notify the claimant in writing of its decision on review within sixty (60) days of receipt of a request for review. The decision on review shall be written in a manner calculated to be understood by the claimant and shall include specific reasons for the decision and specific references to the pertinent Plan provision on which the decision is based.

(e) The 90-day and 60-day periods described in subsections (b) and (d), respectively, may be extended at the discretion of the Plan Administrator for a second ninety (90) or sixty (60) day period, as the case may be, provided that written notice of the extension is furnished to the claimant prior to the termination of the initial period, indicating the special circumstances requiring such extension of time and the date by which a final decision is expected.

(f) A claimant may state the reason or reasons forming the basis of the Plan Administrator review to a benefit under the Plan and may submit written evidence in support of the this review made under and in accordance with the procedures set forth in this Section. Such action is not required. However, the failure to state a reason or to submit written evidence in support of a Plan Administrator review shall permanently bar the claimant from raising such reason or submitting such evidence in any forum at a later date.

(g) Participants and Beneficiaries shall not be entitled to challenge the Plan Administrator's determinations in judicial or administrative proceedings without first complying with the procedures in this Article. The decisions made pursuant

to this Section are intended to be final and binding on Participants, Beneficiaries and others.

**ARTICLE 6
ADMINISTRATION OF THE PLAN**

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6.1 Plan Administrator. The Employer has determined to act as the Plan Administrator and named fiduciary of the Plan.

6.2 Powers and Duties of Plan Administrator. Except as specifically provided otherwise, the Plan Administrator shall have final and binding discretionary authority to control and manage the operation and administration of the Plan, including all rights and powers necessary or convenient to the carrying out all of its functions hereunder, whether or not such rights and powers are specifically enumerated herein. In exercising its responsibilities hereunder, the Plan Administrator may manage and administer the Plan through the use of agents (who may include Employees of the Employer). Without limiting the generality of the foregoing, and in addition to the other powers set forth in this Article 9, the Plan Administrator shall have the following express authorities:

- (a) To construe and interpret the Plan, decide all questions of eligibility and determine the amount, manner and time of payment of any Benefits hereunder, all in the sole discretion of the Plan Administrator. Any such construction, interpretation, etc., shall be final and binding on Participants, Beneficiaries and all other persons.
- (b) To prescribe procedures to be followed by Participants in filing requests for reimbursements of proper expenses, and to authorize payment of such expense reimbursements.
- (c) To prepare and distribute, in such manner as the Plan Administrator determines to be appropriate, information explaining the Plan.
- (d) To receive from the Employer, and from Participants and Beneficiaries, such information, and to maintain records concerning such information, as shall be necessary for the proper administration of the Plan.
- (e) To furnish the Employer upon request such annual and other reports with respect to the administration of the Plan as are reasonable and appropriate.
- (f) To review and decide claims for Benefits, and the review of the denial of any such claims, pursuant to and to the extent provided in Article 7, including any interpretations of the Plan, which decisions and interpretations the Plan Administrator shall have full discretion and authority to make hereunder.

6.3 Consultation With Advisors. Except as specifically provided herein, the Plan Administrator (or any other fiduciary designated pursuant to Section 6.5) may employ one or more persons to render advice with regard to any responsibility it may have under the Plan. The Plan Administrator may consult with counsel, actuaries, accountants, physicians or other advisors (who may be counsel, actuaries, accountants, physicians or other advisors for the Employer) and may also from time to time utilize the services of Employees and agents of the Employer in the discharge of its responsibilities.

6.4 Records and Reports. The Plan Administrator and Employer shall take all such action as it deems necessary or appropriate to comply with governmental laws and regulations relating to the maintenance of records, notifications to Participants, filings with the Internal Revenue Service and U.S. Department of Labor, and all other such requirements applicable to the Plan.

6.5 Designation of Other Fiduciaries. The Employer may designate in writing other persons to carry out a specified part or parts of the Plan Administrator's responsibilities hereunder (including the power to designate other persons to carry out a part of such designated responsibility); provided, however, that such designation may not include any power to manage or control assets of the Plan, or to amend the Plan. Any such designation must be accepted by the designated person, who shall acknowledge in writing that such person is a fiduciary with respect to the Plan.

6.6 Obligations of Plan Administrator and Employers.

(a) The Plan Administrator shall make such determinations as are necessary to accomplish the purposes of the Plan with respect to individual Participants or classes of such Participants.

(b) The Employer shall notify the Plan Administrator of facts relevant to such determinations, including without limitation, length of service, compensation for services, date of death, permanent disability, granting or terminating of leave of absence, age, retirement, termination of service for any reason (but indicating such reason), and termination of participation. The Employer shall also notify the Plan Administrator of all other facts that may be necessary for the Plan Administrator to discharge its responsibilities hereunder.

**ARTICLE 7
AMENDMENT OR TERMINATION**

7.1 Amendment or Termination of Plan.

(a) The Employer reserves the right at any time and from time to time to amend or terminate in whole or in part any of the provisions of the Plan or Benefit Program.

(b) Any such amendment or termination shall be effective as of the date specified by the Employer. An amendment may be affected by establishment, modification, or termination of a Benefit Program by Employer. Any such amendment or termination may take effect retroactively or otherwise.

(c) In the event of a termination or reduction of Benefits under the Plan or any Benefit Program, the Plan shall be liable only for benefit payments due and owing as of the effective date of such termination or reduction, and no payments scheduled to be made on or after such effective date shall result in any liability to the Plan, the Plan Administrator, the Employer, or any agent thereof.

7.2 Form of Amendment or Termination. Any amendment or termination of the Plan or any part of the Plan shall be made by an instrument in writing, duly certified, reflecting that such change has been authorized by Employer or the Plan Administrator.

**ARTICLE 8
MISCELLANEOUS**

8.1 Exemption for ERISA. This Plan is exempt from the Employers Retirement Income Security Act of 1974 pursuant to 29 U.S.C. 1003(b).

8.2 No Guarantee of Employment, etc. Neither the maintenance of the Plan nor any part thereof shall be construed as giving any Participant hereunder or other Employees any right to remain in the employ of the Employer and none of the terms hereof shall be construed as an express or implied contract between the Employer and any Participant or Beneficiary. All terms and conditions of this Plan are subject to unilateral modification, or termination by Employer. No commissioner, officer, or Employee of the Employer in any way guarantees to any Participant or Beneficiary the payment of any benefit or amount that may become due in accordance with the terms of the Plan.

8.3 Required Information to Be Furnished.

(a) Each Participant and Beneficiary will furnish to the Plan Administrator such information as the Plan Administrator considers necessary or desirable for purposes of administering the Plan, and the provisions of the Plan respecting any payments hereunder are conditional upon the prompt submission by the Participant or Beneficiary of such true, full, and complete information as the Plan Administrator may request.

(b) Any communication, statement or notice to a Participant and Beneficiary addressed to the last post-office address filed with the Plan Administrator, or if no such address was filed with the Plan Administrator, then to the last post-office address of the Participant or Beneficiary as shown on the Employer's records, will be binding on the Participant or Beneficiary for all purposes of this Plan and neither the Plan Administrator nor the Employer shall be obliged to search for or ascertain the whereabouts of any Participant or Beneficiary.

8.4 Nonalienation. To the fullest extent permitted by law, Participants and Beneficiaries shall have no right to assign, transfer, hypothecate, encumber, commute or anticipate an interest in any Benefits under the Plan, and the payment of Benefits shall in no way be subject to any legal process to levy upon or attach the same for payment of any claim against any Participant or Beneficiary.

8.5 Recovery of Overpayments. Notwithstanding any other provision of the Plan to the contrary, the Plan Administrator shall be authorized on behalf of the Plan to institute or cause to be instituted action to recover an overpayment of Benefits made pursuant to the Plan to any Participant or Beneficiary as authorized by the Code.

8.6 Payment of Benefits to Persons Under Legal Disability. Whenever and as often as any person entitled to payments under the Plan shall be determined to be a minor or under other legal disability or otherwise incapacitated in any way so as to be unable to manage such person's financial affairs, or otherwise incapable of giving a valid receipt and discharge for any payment, the Plan Administrator, in its sole discretion, may direct that all or any portion of such payments be made (i) to such person, (ii) to such person's legal guardian or conservator, or (iii) to such person's Spouse or to any other person, in any manner the Plan Administrator considers advisable, to be expended for the person's benefit. The decision of the Plan Administrator shall, in each case, be final and binding upon all persons. Any payment made pursuant to the power herein conferred shall operate as a complete discharge of the obligations under

the Plan in respect thereof of the Plan, the Employer, and the Plan Administrator.

8.7 Controlling Law. To the extent not preempted by the law of the United States of America, the laws of the State of Utah shall be the controlling law in all matters relating to the Plan and shall apply.

8.8 Severability. If any provision of the Plan is held to be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the Plan, but the Plan shall be construed and enforced as if said illegal and invalid provision had never been included herein.

8.9 Limitations on Provisions. The provisions of the Plan and any Benefits provided by the Plan shall be limited as described herein. Any benefit payable under any other Employee Benefit Plan maintained by the Employer shall be paid solely in accordance with the terms and provisions of such Plan, and nothing in this Plan shall operate or be construed in any way to modify, amend, or affect the terms and provisions of such other Plan.

8.10 Gender and Number. Masculine gender shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular, unless the context clearly indicates otherwise.

8.11 Headings. All article and section headings in the Plan are intended merely for convenience and shall in no way be deemed to modify or supplement the actual terms and provisions set for thereunder.

8.12 Counterparts. This Plan may be executed in several counterparts, and each shall be an original without reference to the others.

IN WITNESS WHEREOF, I certify that I have authority to do hereby execute the Plan on behalf of Employer:

Name: _____

Title: _____

Signature

Date