

**REGULAR MEETING OF THE CITY COUNCIL  
TUESDAY, JANUARY 6, 2015, AT 6:00 P. M.  
PASCAGOULA, MISSISSIPPI**

The City Council of the City of Pascagoula, Mississippi, met at City Hall in a regular meeting on Tuesday, January 6, 2015, at 6:00 p.m. Mayor Pro-Tem Freddy Jackson called the meeting to order with the following officials present:

Councilman Freddy Jackson  
Councilman Marvin Pickett, Sr.  
Councilwoman Brenda Simkins  
Councilman David Tadlock  
Councilman Scott Tipton

City Manager Joe Huffman  
City Attorney Eddie Williams  
Chief Deputy City Clerk Carol Groen

Mayor Harry J. Blevins was absent  
Councilman Burt Hill was absent  
City Clerk/Comptroller Bobby Parker was absent

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The invocation was given by Councilman Tadlock and the pledge of allegiance was led by Councilman Jackson.

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Frank Corder, Vice President of Pascagoula Youth Baseball Association, addressed the Council to discuss the renaming of the Youth Baseball Complex on Tucker Street. After several comments, the Council members advised they will take this under consideration. Mr. Corder asked if it could be approved before the opening of baseball season, which is March, 2015. Mr. Corder asked that the Association meet with the Council and Darcie Crew, Parks and Recreation Director, to discuss changing the name of the baseball complex and some other items. Mr. Corder thanked the Council for their time and consideration.

Frank Corder also asked permission to put out the youth sports registration signs through the end of January.

Councilman Tipton made a motion to approve the signage request. The motion was seconded by Councilwoman Simkins and received the following vote: Mayor Blevins "ABSENT". Councilmen Hill "ABSENT", Jackson "AYE", Pickett "AYE", Simkins "AYE", Tadlock "AYE", and Tipton "AYE". (Approved 1-6-15)

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Mayor Pro-Tem Freddy Jackson read a Proclamation designating Pascagoula as a Purple Heart City. The Proclamation is spread on the minutes as follows:

**PROCLAMATION**

**WHEREAS,** the City of Pascagoula has always supported its military veteran Population; and

**WHEREAS,** the Purple Heart is the oldest military decoration in present use and was initially created as the Badge of Military Merit by General George Washington in 1782; and

**WHEREAS,** the Purple Heart was the first American service award or decoration made available to the common soldier, and is specifically awarded to members of the United States Armed Forces who have been wounded or killed in combat with a declared enemy of the United States of America; and

**WHEREAS,** the mission of the Military Order of the Purple Heart is to foster an environment of goodwill among the combat-wounded veteran members and their families, promote patriotism, support legislative initiatives, and most importantly – to make sure we never forget; and

**WHEREAS,** the City of Pascagoula has a large, highly-decorated veteran population, including many Purple Heart recipients; and

**WHEREAS,** the City appreciates the sacrifices our Purple Heart recipients made in defending our freedoms, and believe it is important that we acknowledge them for their courage and show them the honor and support they have earned.

**NOW, THEREFORE, I,** Mayor Harry J. Blevins, by the authority vested in me as Mayor of the City of Pascagoula, do hereby proclaim the City of Pascagoula a

**PURPLE HEART CITY**

and encourage the citizens of the Pascagoula to show their appreciation for the sacrifices our Purple Heart recipients have made in defending our freedoms, to acknowledge their courage, and to show them the honor and respect they have earned.

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Harry J. Blevins  
Mayor

Mr. Beard, a Purple Heart recipient, thanked the Council for designating Pascagoula as a Purple Heart City and stated the members would like to participate in parades and other events in the City.

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Bob Hand, representing the Magnolia Classic Car Club, addressed the Council regarding appreciation for the 2014 Cruisin' the Coast event. Mr. Hand thanked the Council, Department Heads and all employees that helped make Cruisin' a very successful event. Mr. Hand presented a plaque to the Council. The Council members thanked Mr. Hand for the plaque and the car club's hard work on Cruisin' the Coast.

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A public hearing was held at this time for several property cleanup cases for 4307 Durham, 3311 Ronnie, and 1107 School. Donovan Scruggs, City Planner, provided an update on each parcel.

The Council then considered the following Resolution:

### **RESOLUTION**

**WHEREAS**, by order dated December 2, 2014, this Council authorized giving notice to the owners of the parcels of land listed in Exhibit A of a hearing before this Council at 6:00 P.M., January 6, 2015, to determine whether the parcels listed are in such a state of uncleanliness as to be a menace to the public health and safety of the community; and

**WHEREAS**, notice of the hearing has been given in the manner and time required by law; and

**WHEREAS**, the Council has received evidence from the staff of the City as to the condition of the parcels listed and the owners have been given an opportunity to be heard; and

**WHEREAS**, we find that the parcels of land listed in the exhibit are in such a state of uncleanliness as to be a menace to the public health and safety of this community:

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PASCAGOULA, MISSISSIPPI, AS FOLLOWS:**

**SECTION 1.** That the parcels of land listed in Exhibit A are hereby found and determined to be in such a state of uncleanliness as to be a menace to the public health and safety of the community.

**SECTION 2.** That, if the parcels are not cleaned by the owners within seven days of this date, the City Manager, by use of City personnel or a private contractor, shall have the parcels cleaned by removing any dilapidated buildings thereon, removing any standing water, by cutting any excess vegetation thereon, and by removing rubbish and debris. Thereafter, this Council shall adjudicate the actual cost of cleaning the parcels and such costs shall be an assessment against the parcels.

**EXHIBIT A**

<b><u>Tax Parcel Number and Property Address</u></b>	<b><u>Owner(s) and Mailing Address</u></b>	<b><u>Described at the following Jackson County, MS, Deed Books and Pages</u></b>
41700018.000 4307 Dunham	William Lee Kibby 17908 Goff Farm Road Moss Point, MS 39562	Deed Book 1600, Page 281
41945029.000 3311 Ronnie	Pamela R. Eaves 2503 Old Mobile Hwy Apt. 312 Pascagoula, MS 39581	Deed Book 1508, Page 253
41695070.000 1107 School	PARROTHEAD Properties, LLC P.O. Box 7192 Cape Porpoise, ME 04014 <b>(Footnote 1)</b>	Deed Book 1618, Page 288

**PARTIES WITH INTEREST**

**Footnote 1:** -David Ringer, 125 E. Main Street, P.O. Box 737, Florence, MS 39073  
 -Lewis W. McCall, Jr., 227 2<sup>nd</sup> Avenue SW, P.O. Box 160, Magee, MS 39111  
 -Lewis W. McCall, P.O. Box 7192, Cape Porpoise, ME 04014

**The following actions were taken by the City Council:**

**4307 Dunham -**

Councilman Tadlock made a motion to adopt the Resolution for 4307 Dunham as recommended. The motion was seconded by Councilman Pickett and received the following vote: Mayor Blevins "ABSENT". Councilmen Hill "ABSENT", Jackson "AYE", Pickett "AYE", Simkins "AYE", Tadlock "AYE", and Tipton "AYE". (Approved 1-6-15)

**3311 Ronnie -**

Councilman Tipton made a motion to adopt the Resolution for 3311 Ronnie as recommended. The motion was seconded by Councilman Tadlock and received the following vote: Mayor Blevins "ABSENT". Councilmen Hill "ABSENT", Jackson "AYE", Pickett "AYE", Simkins "AYE", Tadlock "AYE", and Tipton "AYE". (Approved 1-6-15)

**1107 School -**

Councilman Tadlock made a motion to adopt the Resolution for 1107 School as recommended. The motion was seconded by Councilwoman Simkins and received the following vote: Mayor Blevins "ABSENT". Councilmen Hill "ABSENT", Jackson "AYE", Pickett "AYE", Simkins "AYE", Tadlock "AYE", and Tipton "AYE". (Approved 1-6-15)

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A property cleanup hearing was held for 1013 School Avenue. This hearing was continued from the Council meeting of November 4, 2014. Donovan Scruggs, City Planner, provided an update on the property.

The Council then considered the following Resolution:

**RESOLUTION**

**WHEREAS**, by order dated October 7, 2014, this Council authorized giving notice to the owners of the parcel of land listed in Exhibit A of a hearing before this Council at 6:00 P.M., November 4, 2014, to determine whether the parcel listed is in such a state of uncleanness as to be a menace to the public health and safety of the community; and

**WHEREAS**, this matter was continued at the November 4, 2014, meeting until January 6, 2015; and

**WHEREAS**, notice of the hearing has been given in the manner and time required by law; and

**WHEREAS**, the Council has received evidence from the staff of the City as to the condition of the parcel listed and the owners have been given an opportunity to be heard; and

**WHEREAS**, we find that the parcel of land listed in the exhibit is in such a state of uncleanliness as to be a menace to the public health and safety of this community:

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PASCAGOULA, MISSISSIPPI, AS FOLLOWS:**

**SECTION 1.** That the parcel of land listed in Exhibit A is hereby found and determined to be in such a state of uncleanliness as to be a menace to the public health and safety of the community.

**SECTION 2.** That, if the parcel is not cleaned by the owners within seven days of this date, the City Manager, by use of City personnel or a private contractor, shall have the parcel cleaned by removing any dilapidated buildings thereon, removing any standing water, by cutting any excess vegetation thereon, and by removing rubbish and debris. Thereafter, this Council shall adjudicate the actual cost of cleaning the parcel and such costs shall be an assessment against the parcel.

**EXHIBIT A**

<b><u>Tax Parcel Number and Property Address</u></b>	<b><u>Owner(s) and Mailing Address</u></b>	<b><u>Described at the following Jackson County, MS, Deed Books and Pages</u></b>
41695059.000 1013 School	Javier Sandoval Martinez and Yerica Huerta Mendoza	Deed Book 1696, Page 176

1302 Communy Avenue  
Pascagoula, MS 39567

The above Resolution was introduced by Councilman Pickett, seconded for adoption by Councilwoman Simkins, and received the following vote: Mayor Blevins "ABSENT". Councilmen Hill "ABSENT", Jackson "AYE", Pickett "AYE", Simkins "AYE", Tadlock "AYE", and Tipton "AYE". The Mayor Pro Tem then declared the Resolution adopted on the 6<sup>th</sup> day of January 2015.

**The consent agenda was considered at this time:**

The first item for consideration was the minutes of the recessed regular Council meetings of December 16 and 22, 2014, as recommended by Brenda Reed, Asst. City Clerk.

Councilman Pickett made a motion to adopt and approve minutes of the recessed regular Council meetings of December 16 and 22, 2014, as recommended. The motion was seconded by Councilwoman Simkins and received the following vote: Mayor Blevins "ABSENT". Councilmen Hill "ABSENT", Jackson "AYE", Pickett "AYE", Simkins "AYE", Tadlock "AYE", and Tipton "AYE". (Approved 1-6-15)

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The next item for consideration was a request to approve the Pascagoula Parks & Recreation Department to host an Arbor Day event and advertise the resources of the City by giving trees to Jackson County residents at the Scranton Nature Center on February 13, 2015, as recommended by Darcie Crew, Parks & Recreation Director. The cost is \$250.00.

Councilman Pickett made a motion to approve the Pascagoula Parks & Recreation Department to host an Arbor Day event and advertise the resources of the City by giving trees to Jackson County residents at the Scranton Nature Center on February 13, 2015, at a cost of \$250.00 as recommended. The motion was seconded by Councilwoman Simkins and received the following vote: Mayor Blevins "ABSENT". Councilmen Hill "ABSENT", Jackson "AYE", Pickett "AYE", Simkins "AYE", Tadlock "AYE", and Tipton "AYE". (Approved 1-6-15)

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The next item for consideration was a request to approve signs announcing the Arbor Day tree giveaway event at the Scranton Nature Center to be placed on Highway 90 at Pascagoula Street and at Highway 90 at Chicot Street two weeks prior to the event as recommended by Darcie Crew, Parks & Recreation Director.

Councilman Pickett made a motion to approve signs announcing the Arbor Day tree giveaway event at the Scranton Nature Center to be placed on Highway 90 at Pascagoula Street and at Highway 90 at Chicot Street two weeks prior to the event as recommended. The motion was seconded by Councilwoman Simkins and received the following vote: Mayor Blevins

“ABSENT”. Councilmen Hill “ABSENT”, Jackson “AYE”, Pickett “AYE”, Simkins “AYE”, Tadlock “AYE”, and Tipton “AYE”. (Approved 1-6-15)

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The next item for consideration was a request to advertise the resources of the City by allowing the Parks & Recreation Department to host a Dr. Seuss Birthday Party event on February 27, 2015, as recommended by Darcie Crew, Parks & Recreation Director. The City would be providing activities, prizes, and giveaways in the amount not to exceed \$500.00.

Councilman Pickett made a motion to advertise the resources of the City by allowing the Parks & Recreation Department to host a Dr. Seuss Birthday Party event on February 27, 2015, in an amount not to exceed \$500.00 as recommended. The motion was seconded by Councilwoman Simkins and received the following vote: Mayor Blevins “ABSENT”. Councilmen Hill “ABSENT”, Jackson “AYE”, Pickett “AYE”, Simkins “AYE”, Tadlock “AYE”, and Tipton “AYE”. (Approved 1-6-15)

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The next item for consideration was Budget Amendment No. 15.17 in the Utility Fund for sewer system improvements related to the new Jackson County Detention Facility as recommended by Bobby Parker, City Clerk/Comptroller.

The budget amendment is spread on the minutes as follows:

<b>City of Pascagoula</b> <b>Budget Amendment # 15.17</b> <b>January 6, 2015</b>			
	<u>Current Budget</u>	<u>Budget Amendment</u>	<u>Amended Budget</u>
<b><u>Utility Fund</u></b>	-	-	-
<b>- <u>Revenues:</u></b>	-		-
<b>- <u>Charges For Services:</u></b>			
<b>Service Charge - Sewer</b>	-	<b>175,000</b>	<b>175,000</b>
<b>Total Revenues</b>	-	<b>175,000</b>	<b>175,000</b>
<b><u>Expenditures:</u></b>			
<b>- <u>Sewer Operation &amp; Maintenance:</u></b>			
<b>- <u>Capital Outlay:</u></b>			

<b>Sewer System Impr. - New Jail</b>	-	175,000	175,000
<b>Total Expenditures</b>	-	175,000	175,000
<b>Net Change in Fund Balance</b>		-	
<b>To amend budget to provide expenditure authority for the sewer system upgrades related to the new County Detention Facility as provided for in the MOU dated 6/3/13 and the related revenue.</b>			

Councilman Pickett made a motion to approve the budget amendment as recommended and presented. The motion was seconded by Councilwoman Simkins and received the following vote: Mayor Blevins “ABSENT”. Councilmen Hill “ABSENT”, Jackson “AYE”, Pickett “AYE”, Simkins “AYE”, Tadlock “AYE”, and Tipton “AYE”. (Approved 1-6-15)

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The next item for consideration was an amendment to the Public Trust Tidelands Lease for Lowry Island as recommended by Eddie Williams, City Attorney. The amendment expands the allowable uses to encompass the entire project.

Councilman Pickett made a motion to approve an amendment to the Public Trust Tidelands Lease for Lowry Island as recommended and authorize the Mayor to execute the related documents. The motion was seconded by Councilwoman Simkins and received the following vote: Mayor Blevins “ABSENT”. Councilmen Hill “ABSENT”, Jackson “AYE”, Pickett “AYE”, Simkins “AYE”, Tadlock “AYE”, and Tipton “AYE”. (Approved 1-6-15)

(A copy of the related documents is filed in the minute file of this meeting and incorporated herein by reference.)

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The next item for consideration was an Order authorizing the final approval of a tax exemption for Mississippi Laundry Services, LLC, as recommended by Eddie Williams, City Attorney.

The Order is spread on the minutes as follows:

**ORDER AUTHORIZING FINAL APPROVAL  
OF TAX EXEMPTION REQUEST BY  
MISSISSIPPI LAUNDRY SERVICES, LLC**

**WHEREAS**, Section 17-21-5 of the Mississippi Code of 1972 authorizes municipal governing authorities, in their discretion, to grant exemptions from ad valorem taxation, except ad valorem taxation for school district purposes, for new structures, or improvements to or renovations of existing structures located in the designated Central Business District of the municipality, for a period of not more than seven (7) years from the date of completion of the new structure or the improvement to or renovation of the existing structure for which the exemption is granted; and

**WHEREAS**, the City Council, on or about January 18, 2011, established a policy for the granting of such exemptions; and

**WHEREAS**, Mississippi Laundry Services, LLC, made application to the City Council for preliminary approval of an exemption request for construction improvements on certain property in the Central Business District that were expected to equal or exceed \$279,000 in value; and

**WHEREAS**, the City Council, by a resolution dated February 5, 2013, granted preliminary approval for the tax exemption request made by Mississippi Laundry Services, LLC; and

**WHEREAS**, the improvements to the real property have now been completed by Mississippi Laundry Services, LLC and a certificate of occupancy has been granted by the City of Pascagoula, a copy of which is attached hereto as Exhibit A; and

**WHEREAS**, the Director of Community and Economic Development has recommended to the Council the final approval of the tax exemption request previously made by Mississippi Laundry Services, LLC, such recommendation being attached hereto as Exhibit B; and

**WHEREAS**, Mississippi Laundry Services, LLC, is the owner in fee simple of the real property located at 2126 Denny Avenue and bearing Parcel Identification No. 41703404.000, which parcel is the site of the improvements; and

**WHEREAS**, the City Council does find that Mississippi Laundry Services, LLC, has met all of the requirements of the Council's policies for granting a tax exemption pursuant to Section 17-21-5 of the Mississippi Code of 1972:

**NOW, THEREFORE, BE IT ORDERED AS FOLLOWS:**

**SECTION 1.** All the statements made in the foregoing preambles are incorporated herein and found to be factual.

**SECTION 2.** The request of Mississippi Laundry Services, LLC, for final approval of a tax exemption on the property now known as “Mississippi Laundry Services, LLC” and located at 2126 Denny Avenue and bearing Parcel No. 41703404.000 is hereby granted for a period of six (6) years commencing January 1, 2014.

**SECTION 3.** The exemption granted herewith shall be for eighty (80) percent of the City of Pascagoula ad valorem taxes on the value of the improvements made to the parcel by Mississippi Laundry Services, LLC, exclusive of any taxes imposed for School District purposes.

**SECTION 4.** The City Clerk shall file this resolution in a book kept in the Clerk’s office for that purpose and a copy of this resolution shall likewise be filed with the Chairman of the Mississippi Department of Revenue, the State Auditor of Public Accounts and the Jackson County Tax Assessor.

The above Order was introduced by Councilman Pickett, seconded for adoption by Councilwoman Simkins, and received the following vote: Mayor Blevins “ABSENT”. Councilmen Hill “ABSENT”, Jackson “AYE”, Pickett “AYE”, Simkins “AYE”, Tadlock “AYE”, and Tipton “AYE”. The Mayor Pro-Tem then declared the Order adopted on the 6<sup>th</sup> day of January 2015.

(A copy of the related documents is filed in the minute file of this meeting and incorporated herein by reference.)

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The next item for consideration was a Resolution authorizing the transfer of certain real property owned by the City of Pascagoula to the Pascagoula Redevelopment Authority as recommended by Eddie Williams, City Attorney. The property is adjacent to the Hancock Bank property.

The Resolution is spread on the minutes as follows:

**RESOLUTION AUTHORIZING TRANSFER OF CERTAIN  
REAL PROPERTY OWNED BY THE CITY OF PASCAGOULA  
TO THE PASCAGOULA REDEVELOPMENT AUTHORITY;  
AND FOR RELATED PURPOSES.**

**WHEREAS**, the City of Pascagoula has heretofore acquired certain real property formerly belonging to Hancock Bank and located on Watts Avenue, which property was acquired by a Special Warranty Deed appearing of record in Book 1523, Page 163-166 of the Land Deed Records, a true and correct copy of which is attached hereto as an exhibit to this Resolution and hereinafter referred to as “Hancock Property”; and

**WHEREAS**, the City Council, by Resolution dated the 5<sup>th</sup> day of April, 2011, established an urban renewal agency for the City of Pascagoula known as the Pascagoula Redevelopment Authority (PRA); and

**WHEREAS**, pursuant to the aforesaid Resolution, the City Council vested in the PRA certain rights, powers, functions and duties, including the authority to pursue economic development initiatives for various parcels of land belonging to the City of Pascagoula; and

**WHEREAS**, the mandate to the PRA is in keeping with the 2009 Urban Renewal Plan previously adopted by the City Council; and

**WHEREAS**, the PRA was created by the City Council to provide a more effective and flexible means for the ultimate development of City-owned property; and

**WHEREAS**, it will be in the best interest of the citizens of this community that the City of Pascagoula convey the aforesaid Hancock Property to the PRA for economic development purposes in keeping with the Resolution establishing the PRA and applicable state statutes conferring such authority; and

**WHEREAS**, the City Council has been advised that the PRA is willing to accept the conveyance of the aforesaid property:

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

**SECTION 1.** The statements set forth in the foregoing preambles to this Resolution are hereby found as fact.

**SECTION 2.** The Mayor is authorized and directed to execute any and all documents necessary to effect a transfer of the property herein referred to as the “Hancock Property” to the Pascagoula Redevelopment Authority for the purpose of undertaking the economic development thereof.

**SECTION 3.** The Mayor is authorized to effect this transfer without consideration being paid or given by the Pascagoula Redevelopment Authority, but with the condition that, should the Pascagoula Redevelopment Authority cease to exist prior to any conveyance of the property,

or should it fail to develop the property in keeping with the purposes set forth herein and in accordance with the 2009 Urban Renewal Plan of the City, then in such event, title to the same shall revert to the City of Pascagoula.

The above Resolution was introduced by Councilman Pickett, seconded for adoption by Councilwoman Simkins and received the following vote: Mayor Blevins "ABSENT". Councilmen Hill "ABSENT", Jackson "AYE", Pickett "AYE", Simkins "AYE", Tadlock "AYE", and Tipton "AYE". The Mayor Pro Tem then declared the Resolution adopted on the 6th day of January, 2015.

(A copy of the related documents is filed in the minute file of this meeting and incorporated herein by reference.)

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The next item for consideration was a request to approve Government Portal for credit card processing in conjunction with Sports Conductor registration as recommended by Darcie Crew, Parks & Recreation Director. Government Portal will charge the customer a 3.5% fee to use a credit card on-line or in person (Model B). The program fee will come directly to the City of Pascagoula and the processing fee will be paid directly to Government Portal. There are no fees to the City for this service.

### **GovtPortal**

Congratulations on your selection of our GovtPortal platform! Please read the following, fill in the blanks, and fax (770-804-2001) or email (Team@GovtPortal.com) this information for prompt and efficient implementation of the most technologically advanced online filing protocols available in the nation, with the highest security in the industry. The service can be canceled at any time, but we would appreciate a 30 days' notice

#### **1. NAME AND CONTACT INFORMATION:**

Contact Name:

Street Address:

City, State Zip:

Phone & Email:

Recreation Dept. Website (if any):

Finance Contract (for credit card reports):

#### **2. BANKING INFORMATION: (for deposit only)**

**Please ensure all applicable voided checks are attached**

Bank Name:

Bank Address:

Please initial below:

I have attached all applicable voided checks for deposits of transaction funds. I have filled in, signed, and attached a W-9 form. The address information for the municipality is correctly listed above. If not please correct.

I acknowledge that GovtPortal is setting up a merchant services account with a certified Visa, MasterCard, and Discover processing bank on behalf of my Municipality.

Model A: City Absorbs Processing Fees  Model B: Processing Fee Charged to Card Holder

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

Signed: \_\_\_\_\_

GOVTPORTAL INC/ by GovtPortal

Please scan and email to [Team@GovtPortal.com](mailto:Team@GovtPortal.com) or fax to 1.770.804.2001 desires to work with Flat Rate Processing and wishes to utilize the GovtPortal online payment feature. For this reason, the Municipality grants permission to GovtPortal to access our records and share those records with Flat Rate Processing. We respectfully, request that this process begin immediately and request that these records be shared with Flat Rate within two business days of receiving this signed permission and request.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name & Title

Councilman Pickett made a motion to approve Government Portal for credit card processing in conjunction with Sports Conductor registration for the Parks & Recreation Department as recommended and authorize the City Manager to execute the related documents. The motion was seconded by Councilwoman Simkins and received the following vote: Mayor Blevins “ABSENT”. Councilmen Hill “ABSENT”, Jackson “AYE”, Pickett “AYE”, Simkins “AYE”, Tadlock “AYE”, and Tipton “AYE”. (Approved 1-6-15)

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The next item for consideration was a request to approve and adopt the 2015 City of Pascagoula Cafeteria Plan Document as recommended by Brenda Germany, Human Resources Generalist.

The document is spread on the minutes as follows:

# CITY OF PASCAGOULA

2015

## CAFETERIA PLAN

### ARTICLE I. Introductory Provisions

CITY OF PASCAGOULA (“the Employer”) hereby establishes the CITY OF PASCAGOULA Cafeteria Plan (“the Plan”) effective January 1, 2015 (“the Effective Date”). Capitalized terms used in this Plan that are not otherwise defined shall have the meanings set forth in Article II.

This Plan is designed to allow an Eligible Employee to pay for his or her share of Contributions under one or more Insurance Plans on a pre-tax Salary Reduction basis.

This Plan is intended to qualify as a “cafeteria plan” under Code § 125 and the regulations issued thereunder. The terms of this document shall be interpreted to accomplish that objective.

Although reprinted within this document, the different components of this Plan shall be deemed separate plans for purposes of administration and all reporting and nondiscrimination requirements imposed on such components by the Code.

### ARTICLE II. Definitions

“**Accidental Death & Dismemberment (AD&D) Insurance Benefits**” means the Employee’s Accidental Death & Dismemberment Insurance Plan coverage for purposes of this Plan.

“**Accidental Death & Dismemberment (AD&D) Insurance Plan(s)**” means the plan(s) that the Employer maintains for its Employees providing benefits through a group insurance policy or policies in the event of the accidental death and/or dismemberment policy. The Employer may substitute, add, subtract, or revise at any time the menu of such plans and/or the benefits, terms, and conditions of any such plans. Any such substitution, addition, subtraction, or revision will be communicated to Participants and will automatically be incorporated by reference under this Plan.

“**Benefits**” means the Premium Payment Benefits.

“**Benefit Package Option**” means a qualified benefit under Code § 125(f) that is offered under a cafeteria plan, or an option for coverage under an underlying accident or health plan (such as an indemnity option, an HMO option, or a PPO option under an accident or health plan).

“**Change in Status**” has the meaning described in Section 4.6.

“**COBRA**” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Contributions**” means the amount contributed to pay for the cost of Benefits (including self-funded Benefits as well as those that are insured), as calculated under Section 6.2 for Premium Payment benefits.

“**Committee**” means the Benefits Committee (or the equivalent thereof) of CITY OF PASCAGOULA CAFETERIA PLAN.

**“Compensation”** means the wages or salary paid to an Employee by the Employer, determined prior to (a) any Salary Reduction election under this Plan; (b) any salary reduction election under any other cafeteria plan; and (c) any compensation reduction under any Code § 132(f)(4) plan; but determined after (d) any salary deferral elections under any Code § 401(k), 403(b), 408(k), or 457(b) plan or arrangement. Thus, “Compensation” generally means wages or salary paid to an Employee by the Employer, as reported in Box 1 of Form W-2, but adding back any wages or salary forgone by virtue of any election described in (a), (b), or (c) of the preceding sentence.

**“Dental Insurance Benefits”** means the Employee’s Dental Insurance Plan coverage for purposes of this Plan.

**“Dental Insurance Plan(s)”** means the plan(s) that the Employer maintains for its Employees (and for their Spouses and Dependents that may be eligible under the terms of such plan(s)) providing dental benefits through a group insurance policy or policies. The Employer may substitute, add, subtract, or revise at any time the menu of such plans and/or the benefits, terms, and conditions of any such plans. Any such substitution, addition, subtraction, or revision will be communicated to Participants and will automatically be incorporated by reference under this Plan.

**“Dependent”** means any individual who is a tax dependent of the Participant as defined in Code § 152, with the following exceptions: (a) for purposes of accident or health coverage (to the extent funded under the Premium Payment Component, and for purposes of the Health FSA Component), (1) a dependent is defined as in Code § 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof; and (2) any child to whom IRS Rev. Proc. 2-008-48 applies. Furthermore, notwithstanding anything in the foregoing that may be to the contrary, a “Dependent” shall also include for purposes of any accident or health coverage provided under this plan a child of a Participant who has not attained age 27 by the end of any given taxable year.

**“Earned Income”** means all income derived from wages, salaries, tips, self-employment, and other Compensation (such as disability or wage continuation benefits), but only if such amounts are includible in gross income for the taxable year. Earned income does not include any other amounts excluded from earned income under Code § 32(c)(2), such as amounts received under a pension or annuity or pursuant to workers’ compensation.

**“Effective Date”** of this Plan has the meaning described in Article 1.

**“Election Form/Salary Reduction Agreement”** means the form provided by the Administrator for the purpose of allowing an Eligible Employee to participate in this Plan by electing Salary Reductions to pay for Premium Payment Benefits. This form may be in either paper or electronic form at the Employer’s discretion in accordance with the procedures detailed in Article IV.

**“Eligible Employee”** means an Employee eligible to participate in this Plan, as provided in Section 3.1.

**“Employee”** means an individual that the Employer classifies as a common-law employee and who is on the Employer’s W-2 payroll, but does not include the following: (a) any leased employee (including but not limited to those individuals defined as leased employees in Code § 414(n)) or an individual classified by the Employer as a contract worker, independent contractor, temporary employee, or casual employee for the period during which such individual is so classified, whether or not any such individual is on the Employer’s W-2 payroll or is determined by the IRS or others to be a common-law employee of the Employer; (b) any individual who performs services for the Employer but who is paid by a temporary or other employment or staffing agency for the period during which such individual is paid by such agency, whether or not such individual is determined by the IRS or others to be a common-law employee of the Employer; (c) any employee covered under a collective bargaining agreement; (d) any self-employed individual; (e) any partner in a partnership; (f) any more-than-2% shareholder in a Subchapter S corporation. The term “Employee” does include “former Employees” for the limited purpose of allowing continued eligibility for benefits under the Plan for the remainder of the Plan Year in which an Employee

ceases to be employed by the Employer, but only to the extent specifically provided elsewhere under this Plan.

**“Employer”** means CITY OF PASCAGOULA FBP, and any Related Employer that adopts this Plan with the approval of CITY OF PASCAGOULA FBP. Related Employers that have adopted this Plan, if any, are listed in Appendix A of this Plan. However, for purposes of Articles XI and XIV and Section 15.3, “Employer” means only CITY OF PASCAGOULA CAFETERIA PLAN.

**“Employment Commencement Date”** means the first regularly scheduled working day on which the Employee first performs an hour of service for the Employer for Compensation.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended. CITY OF PASCAGOULA CAFETERIA PLAN is not subject to ERISA nor does CITY OF PASCAGOULA CAFETERIA PLAN adopt ERISA. Any references to ERISA herein are for reference purposes only

**“FMLA”** means the Family and Medical Leave Act of 1993, as amended.

**“Health Insurance Benefits”** means any insurance benefits providing medical or other health insurance coverage through a group insurance policy or policies.

**“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, as amended.

**“HMO”** means a health maintenance organization Benefit Package Option under a Medical Insurance Plan.

**“HRA”** means a health reimbursement arrangement as defined in IRS Notice 2002-45.

**“Insurance Benefits”** means benefits offered through the Insurance Plans.

**“Insurance Plan(s)”** means a plan or plans offering benefits through a group insurance policy or policies.

**“Medical Insurance Benefits”** means the Employee’s Medical Insurance Plan coverage for purposes of this Plan.

**“Medical Insurance Plan(s)”** means the plan(s) that the Employer maintains for its Employees (and for their Spouses and Dependents that may be eligible under the terms of such plan), providing major medical type benefits through a group insurance policy or policies (with HMO and PPO options). The Employer may substitute, add, subtract, or revise at any time the menu of such plans and/or the benefits, terms, and conditions of any such plans. Any such substitution, addition, subtraction, or revision will be communicated to Participants and will automatically be incorporated by reference under this Plan.

**“Open Enrollment Period”** with respect to a Plan Year means any period before the beginning of the Plan Year that may be prescribed by the Administrator as the period of time in which Employees who will be Eligible Employees at the beginning of the Plan Year may elect benefits.

**“Participant”** means a person who is an Eligible Employee and who is participating in this Plan in accordance with the provisions of Article III. Participants include (a) those who elect one or more of the Medical Insurance Benefits and (b) those who elect instead to receive their full salary in cash and to pay for their share of their Contributions under the Medical Insurance Plan.

**“Period of Coverage”** means the Plan Year, with the following exceptions: (a) for Employees who first become eligible to participate, it shall mean the portion of the Plan Year following the date on which participation commences, as described in Section 3.1; and (b) for Employees who terminate participation, it shall mean the portion of the Plan Year prior to the date on which participation terminates, as described in Section 3.2.

“**Plan**” means the CITY OF PASCAGOULA FBP Cafeteria Plan as set forth herein and as amended from time to time.

“**Plan Administrator**” means the CITY OF PASCAGOULA CAFETERIA PLAN Human Resources designee or the equivalent thereof for CITY OF PASCAGOULA CAFETERIA PLAN, who has the full authority to act on behalf of the Plan Administrator, except with respect to appeals, for which the Committee has the full authority to act on behalf of the Plan Administrator, as described in Section 13.1.

“**Plan Year**” means the calendar year (i.e., the 12-month period commencing January 01 and ending on December 31, except in the case of a short plan year representing the initial Plan Year or where the Plan Year is being changed, in which case the Plan Year shall be the entire short plan year.

“**PPO**” means the preferred provider organization Benefit Package Option under the Medical Insurance Plan.

“**Premium Payment Benefits**” means the Premium Payment Benefits that are paid for on a pre-tax Salary Reduction basis as described in Section 6.1.

“**Premium Payment Component**” means the Component of this Plan described in Article VI.

“**QMCSO**” means a qualified medical child support order, as defined in ERISA § 609(a).

“**Related Employer**” means any employer affiliated with CITY OF PASCAGOULA FBP that, under Code § 414(b), § 414(c), or § 414(m), is treated as a single employer with CITY OF PASCAGOULA FBP for purposes of Code § 125(g)(4).

“**Salary Reduction**” means the amount by which the Participant’s Compensation is reduced and applied by the Employer under this Plan to pay for one or more of the Benefits, as permitted for the applicable Component, before any applicable state and/or federal taxes have been deducted from the Participant’s Compensation (i.e., on a pre-tax basis).

“**Specified Disease or Illness Insurance Benefits**” means the Employee’s Specified Disease or Illness Insurance Plan coverage for purposes of this Plan.

“**Specified Disease or Illness Insurance Plan(s)**” means the plan(s) that the Employer maintains for its Employees (and for their Spouses and Dependents that may be eligible under the terms of such plan(s)) providing certain benefits with regard to a particular critical illness or illnesses (e.g., a “cancer policy” or the like) through a group insurance policy or policies. The Employer may substitute, add, subtract, or revise at any time the menu of such plans and/or the benefits, terms, and conditions of any such plans. Any such substitution, addition, subtraction, or revision will be communicated to Participants and will automatically be incorporated by reference under this Plan.

“**Spouse**” means an individual who is legally married to a Participant as determined under applicable state law (and who is treated as a spouse under the Code)

“**Vision Insurance Benefits**” means the Employee’s Vision Insurance Plan coverage for purposes of this Plan.

“**Vision Insurance Plan(s)**” means the plan(s) that the Employer maintains for its Employees (and for their Spouses and Dependents that may be eligible under the terms of such plan(s)) providing vision benefits through a group insurance policy or policies. The Employer may substitute, add, subtract, or revise at any time the menu of such plans and/or the benefits, terms, and conditions of any such plans. Any such substitution, addition, subtraction, or revision will be communicated to Participants and will automatically be incorporated by reference under this Plan.

### **ARTICLE III. Eligibility and Participation**

### **3.1 Eligibility to Participate**

An individual is eligible to participate in this Plan if the individual: (a) is an Employee; (b) is working 40 Hours or more per week; and (c) has been employed by the Employer for a consecutive period of 30 days, counting his or her Employment Commencement Date as the first such day. Eligibility for Premium Payment Benefits may also be subject to the additional requirements, if any, specified in the Medical Insurance Plan. Once an Employee has met the Plan's eligibility requirements, the Employee may elect coverage effective the first day of the next calendar month, in accordance with the procedures described in Article IV.

### **3.2 Termination of Participation**

A Participant will cease to be a Participant in this Plan upon the earlier of:

- the termination of this Plan; or
- the date on which the Employee ceases (because of retirement, termination of employment, layoff, reduction of hours, or any other reason) to be an Eligible Employee. Notwithstanding the foregoing, for purposes of pre-taxing COBRA coverage certain Employees may continue eligibility for certain periods on the terms and subject to the restrictions described in Section 6.4 for Insurance Benefits.

Termination of participation in this Plan will automatically revoke the Participant's elections. The Medical Insurance Benefits will terminate as of the date specified in the Medical Insurance Plan.

### **3.3 Participation Following Termination of Employment or Loss of Eligibility**

If a Participant terminates his or her employment for any reason, including (but not limited to) disability, retirement, layoff, or voluntary resignation, and then is rehired within 30 days or less after the date of a termination of employment, then the Employee will be reinstated with the same elections that such individual had before termination. If a former Participant is rehired more than 30 days following termination of employment and is otherwise eligible to participate in the Plan, then the individual may make new elections as a new hire as described in Section 3.1. Notwithstanding the above, an election to participate in the Premium Payment Component will be reinstated only to the extent that coverage under the Medical Insurance Plan is reinstated. If an Employee (whether or not a Participant) ceases to be an Eligible Employee for any reason (other than for termination of employment), including (but not limited to) a reduction of hours, and then becomes an Eligible Employee again, the Employee must complete the waiting period described in Section 3.1 before again becoming eligible to participate in the Plan.

### **3.4 FMLA Leaves of Absence**

*(a) Health Benefits.* Notwithstanding any provision to the contrary in this Plan, if a Participant goes on a qualifying leave under the FMLA, then to the extent required by the FMLA, the Employer will continue to maintain the Participant's Health Insurance Benefits on the same terms and conditions as if the Participant were still an active Employee. That is, if the Participant elects to continue his or her coverage while on leave, the Employer will continue to pay its share of the Contributions.

An Employer may require participants to continue all Health Insurance Benefits coverage for Participants while they are on paid leave (provided that Participants on non-FMLA paid leave are required to continue coverage). If so, the Participant's share of the Contributions shall be paid by the method normally used during any paid leave (for instance, on a pre-tax Salary Reduction basis).

In the event of unpaid FMLA leave (or paid FMLA leave where coverage is not required to be continued), a Participant may elect to continue his or her Health Insurance Benefits during the leave. If the Participant elects to continue coverage while on FMLA leave, then the Participant may pay his or her share of the Contributions in one of the following ways:

- with after-tax dollars, by sending monthly payments to the Employer by the due date established by the Employer;
- with pre-tax dollars, by having such amounts withheld from the Participant's ongoing Compensation (if any), including unused sick days and vacation days, or pre-paying all or a

portion of the Contributions for the expected duration of the leave on a pre-tax Salary Reduction basis out of pre-leave Compensation. To pre-pay the Contributions, the Participant must make a special election to that effect prior to the date that such Compensation would normally be made available (pre-tax dollars may not be used to fund coverage during the next Plan Year); or

- under another arrangement agreed upon between the Participant and the Plan Administrator (e.g., the Plan Administrator may fund coverage during the leave and withhold “catch-up” amounts from the Participant’s Compensation on a pre-tax or after-tax basis) upon the Participant’s return.

If the Employer requires all Participants to continue Health Insurance Benefits during an unpaid FMLA leave, then the Participant may elect to discontinue payment of the Participant’s required Contributions until the Participant returns from leave. Upon returning from leave, the Participant will be required to repay the Contributions not paid by the Participant during the leave. Payment shall be withheld from the Participant’s Compensation either on a pre-tax or after-tax basis, as agreed to by the Plan Administrator and the Participant.

If a Participant’s Health Insurance Benefits coverage ceases while on FMLA leave (e.g., for non-payment of required contributions), then the Participant is permitted to re-enter the Medical Insurance Benefits upon return from such leave on the same basis as when the Participant was participating in the Plan prior to the leave, or as otherwise required by the FMLA. In addition, the Plan may require Participants whose Health Insurance Benefits coverage terminated during the leave to be reinstated in such coverage upon return from a period of unpaid leave, provided that Participants who return from a period of unpaid, non-FMLA leave are required to be reinstated in such coverage.

*(b) Non-Health Benefits.* If a Participant goes on a qualifying leave under the FMLA, then entitlement to non-health benefits is to be determined by the Employer’s policy for providing such Benefits when the Participant is on non-FMLA leave, as described in Section 3.5. If such policy permits a Participant to discontinue contributions while on leave, then the Participant will, upon returning from leave, be required to repay the Contributions not paid by the Participant during the leave. Payment shall be withheld from the Participant’s Compensation either on a pre-tax or after-tax basis, as may be agreed upon by the Plan Administrator and the Participant or as the Plan Administrator otherwise deems appropriate.

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

If a Participant goes on an unpaid leave of absence that does not affect eligibility, then the Participant will continue to participate and the Contributions due for the Participant will be paid by pre-payment before going on leave, by after-tax contributions while on leave, or with catch-up contributions after the leave ends, as may be determined by the Plan Administrator. If a Participant goes on an unpaid leave that affects eligibility, then the election change rules detailed in Article IV will apply.

## **ARTICLE IV. Method and Timing of Elections; Irrevocability of Elections**

### **4.1 Elections When First Eligible**

An Employee who first becomes eligible to participate in the Plan mid-year may elect to commence participation in one or more Benefits on the first day of the month after the eligibility requirements have been satisfied, provided that an Election Form/Salary Reduction Agreement is submitted to the Plan Administrator before the first day of the month in which participation will commence. An Employee who does not elect benefits when first eligible may not enroll until the next Open Enrollment Period, unless an event occurs that would justify a mid-year election change, as described in Article IV.

The Employer reserves the right, within its discretion, to allow or require any or all of the election procedures detailed in this Article 4.1 to be performed electronically.

Benefits shall be subject to the additional requirements, if any, specified in the Medical Insurance Plan. The provisions of this Plan are not intended to override any exclusions, eligibility requirements, or waiting periods specified in any Insurance Plans.

#### **4.2 Elections During Open Enrollment Period**

During each Open Enrollment Period with respect to a Plan Year, the Plan Administrator shall provide an Election Form/Salary Reduction Agreement to each Employee who is eligible to participate in this Plan. The Election Form/Salary Reduction Agreement shall enable the Employee to elect to participate in the various Components of this Plan for the next Plan Year and to authorize the necessary Salary Reductions to pay for the Benefits elected. The Election Form/Salary Reduction Agreement must be returned to the Plan Administrator on or before the last day of the Open Enrollment Period, and it shall become effective on the first day of the next Plan Year. If an Eligible Employee fails to return the Election Form/Salary Reduction Agreement during the Open Enrollment Period, then the Employee may not elect any Benefits under this Plan until the next Open Enrollment Period, unless an event occurs that would justify a mid-year election change, as described in Article IV.

The Employer reserves the right, within its discretion, to allow or require any or all of the election procedures detailed in this Article 4.2 to be performed electronically.

#### **4.3 Failure of Eligible Employee to File an Election Form/Salary Reduction Agreement**

If an Eligible Employee fails to file an Election Form/Salary Reduction Agreement within the time period described in Sections 4.1 and 4.2, then the Employee may not elect any Benefits under the Plan (a) until the next Open Enrollment Period; or (b) until an event occurs that would justify a mid-year election change, as described in Article IV. If an Employee who fails to file an Election Form/Salary Reduction Agreement is eligible for Medical Insurance Benefits and has made an effective election for such Benefits, then the Employee's share of the Contributions for such Benefits will be paid with after-tax dollars outside of this Plan until such time as the Employee files, during a subsequent Open Enrollment Period (or after an event occurs that would justify a mid-year election change as described in Article IV), a timely Election Form/Salary Reduction Agreement to elect Premium Payment Benefits. Until the Employee files such an election, the Employer's portion of the Contribution will also be paid outside of this Plan.

#### **4.4 Irrevocability of Elections**

Unless an exception applies (as described in this Article IV), a Participant's election under the Plan is irrevocable for the duration of the Period of Coverage to which it relates. Unless otherwise noted in this section, a Participant's election under the Plan is irrevocable for the duration of the Period of Coverage to which it relates. In other words, unless an exception applies, the Participant may not change any elections for the duration of the Period of Coverage regarding:

- Participation in this Plan;
- Salary Reduction amounts; or
- election of particular Benefit Package Options.

#### **4.5 Procedure for Making New Election If Exception to Irrevocability Applies**

*(a) Timeframe for Making New Election.* A Participant (or an Eligible Employee who, when first eligible under Section 3.1 or during the Open Enrollment Period, declined to be a Participant) may make a new election within 30 days of the occurrence of an event described in Section 4.6 or 4.7, as applicable, but only if the election under the new Election Form/Salary Reduction Agreement is made on account of and is consistent with the event and if the election is made within any specified time period (e.g., for Sections 4.7(d) through 4.7(j), within 30 days after the events described in such Sections unless otherwise required by law). Notwithstanding the foregoing, a Change in Status (e.g., a divorce or a dependent's losing student status) that results in a beneficiary becoming ineligible for coverage under the Medical Insurance Plan shall automatically result in a corresponding election change, whether or not requested by the Participant within the normal 30-day period.

*(b) Effective Date of New Election.* Elections made pursuant to this Section 4.5 shall be effective for the balance of the Period of Coverage following the change of election unless a subsequent event allows for a further election change. Except as provided in Section 4.7(e) for HIPAA special enrollment rights in the event of birth, adoption, or placement for adoption, all election changes shall be effective on a prospective basis only (i.e., election changes will become effective no earlier than the first day of the next calendar month following the date that the election change was filed, but, as determined by the Plan Administrator,

election changes may become effective later to the extent that the coverage in the applicable Benefit Package Option commences later).

#### **4.6 Changes in Status Defined**

A Participant may make a new election upon the occurrence of certain events as described in Section 4.7, including a Change in Status, for the applicable Component. "Change in Status" means any of the events described below, as well as any other events included under subsequent changes to Code § 125 or regulations issued thereunder, which the Plan Administrator, in its sole discretion and on a uniform and consistent basis, determines are permitted under IRS regulations and under this Plan:

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

*(b) Number of Dependents.* Events that change a Participant's number of Dependents, including birth, death, adoption, and placement for adoption;

*(c) Employment Status.* Any of the following events that change the employment status of the Participant or his or her Spouse or Dependents:

(1) a termination or commencement of employment;

(2) a strike or lockout;

(3) a commencement of or return from an unpaid leave of absence;

(4) a change in worksite; and (5) if the eligibility conditions of this Plan or other employee benefits plan of the Participant or his or her Spouse or Dependents depend on the employment status of that individual and there is a change in that individual's status with the consequence that the individual becomes (or ceases to be) eligible under this Plan or other employee benefits plan, such as if a plan only applies to salaried employees and an employee switches from salaried to hourly-paid, union to non-union, or full-time to part-time (or vice versa), with the consequence that the employee ceases to be eligible for the Plan;

*(d) Dependent Eligibility Requirements.* An event that causes a Dependent to satisfy or cease to satisfy the Dependent eligibility requirements for a particular benefit, such as attaining a specified age, or any similar circumstance; and

*(e) Change in Residence.* A change in the place of residence of the Participant or his or her Spouse or Dependents.

#### **4.7 Events Permitting Exception to Irrevocability Rule**

A Participant may change an election as described below upon the occurrence of the stated events for the applicable Component of this Plan:

*(a) Open Enrollment Period.* A Participant may change an election during the Open Enrollment Period.

*(b) Termination of Employment.* A Participant's election will terminate under the Plan upon termination of employment in accordance with Sections 3.2 and 3.3, as applicable.

*(c) Leaves of Absence.* A Participant may change an election under the Plan upon FMLA leave in accordance with Section 3.4 and upon non-FMLA leave in accordance with Section 3.5.

*(d) Change in Status.* A Participant may change his or her actual or deemed election under the Plan upon the occurrence of a Change in Status (as defined in Section 4.6), but only if such election change is made on account of and corresponds with a Change in Status that affects eligibility for coverage under a plan of the Employer or a plan of the Spouse's or Dependent's employer (referred to as the general consistency requirement). A Change in Status that affects eligibility for coverage under a plan of the Employer or a plan of the Spouse's or Dependent's employer includes a Change in Status that results in an increase or decrease in the number of an Employee's family members (i.e., a Spouse and/or Dependents) who may benefit from the coverage.

*(1) Loss of Spouse or Dependent Eligibility; Special COBRA Rules.* For a Change in Status involving a Participant's divorce, annulment or legal separation from a Spouse, the death of a Spouse or a Dependent, or a Dependent's ceasing to satisfy the eligibility requirements for coverage, a Participant may only elect to cancel accident or health insurance coverage for (a) the Spouse involved in the divorce, annulment, or legal separation; (b) the deceased Spouse or Dependent; or (c) the Dependent that ceased to satisfy the eligibility requirements. Canceling

coverage for any other individual under these circumstances would fail to correspond with that Change in Status. Notwithstanding the foregoing, if the Participant or his or her Spouse or Dependent becomes eligible for COBRA (or similar health plan continuation coverage under state law) under the Employer's plan (and the Participant remains a Participant under this Plan in accordance with Section 3.2), then the Participant may increase his or her election to pay for such coverage (this rule does not apply to a Participant's Spouse who becomes eligible for COBRA or similar coverage as a result of divorce, annulment, or legal separation).

(2) *Gain of Coverage Eligibility Under Another Employer's Plan.* For a Change in Status in which a Participant or his or her Spouse or Dependent gains eligibility for coverage under a cafeteria plan or qualified benefit plan of the employer of the Participant's Spouse or Dependent as a result of a change in marital status or a change in employment status, a Participant may elect to cease or decrease coverage for that individual only if coverage for that individual becomes effective or is increased under the Spouse's or Dependent's employer's plan. The Plan Administrator may rely on a Participant's certification that the Participant has obtained or will obtain coverage under the Spouse's or Dependent's employer's plan, unless the Plan Administrator has reason to believe that the Participant's certification is incorrect.

(e) *HIPAA Special Enrollment Rights.* If a Participant or his or her Spouse or Dependent is entitled to special enrollment rights under a group health plan (other than an excepted benefit), as required by HIPAA under Code § 9801(f), then a Participant may revoke a prior election for group health plan coverage and make a new election (including, when required by HIPAA, an election to enroll in another benefit package under a group health plan), provided that the election change corresponds with such HIPAA special enrollment right. As required by HIPAA, a special enrollment right will arise in the following circumstances:

- a Participant or his or her Spouse or Dependent declined to enroll in group health plan coverage because he or she had coverage, and eligibility for such coverage is subsequently lost because:
  - (1) the coverage was provided under COBRA and the COBRA coverage was exhausted;
  - or
  - (2) the coverage was non-COBRA coverage and the coverage terminated due to loss of eligibility for coverage or the employer contributions for the coverage were terminated;
- a new Dependent is acquired as a result of marriage, birth, adoption, or placement for adoption. An election to add previously eligible Dependents as a result of the acquisition of a new Spouse or Dependent child shall be considered to be consistent with the special enrollment right. An election change on account of a HIPAA special enrollment attributable to the birth, adoption, or placement for adoption of a new Dependent child may, subject to the provisions of the underlying group health plan, be effective retroactively (up to 30 days).

For purposes of this Section 4.7

(f), the term "loss of eligibility" includes (but is not limited to) loss of eligibility due to legal separation, divorce, cessation of dependent status, death of an employee, termination of employment, reduction of hours, or any loss of eligibility for coverage that is measured with reference to any of the foregoing; loss of coverage offered through an HMO that does not provide benefits to individuals who do not reside, live, or work in the service area because an individual no longer resides, lives, or works in the service area (whether or not within the choice of the individual), and in the case of HMO coverage in the group market, no other benefit package is available to the individual; a situation in which an individual incurs a claim that would meet or exceed a lifetime limit on all benefits; and a situation in which a plan no longer offers any benefits to the class of similarly situated individuals that includes the individual.

(g) *Certain Judgments, Decrees and Orders.* If a judgment, decree, or order (collectively, an "Order") resulting from a divorce, legal separation, annulment, or change in legal custody (including a QMCSO) requires accident or health coverage (including an election for Health FSA Benefits) for a Participant's child (including a foster child who is a Dependent of the Participant), then a Participant may (1) change his or her election to provide coverage for the child (provided that the Order requires the Participant to

provide coverage); or (2) change his or her election to revoke coverage for the child if the Order requires that another individual (including the Participant's Spouse or former Spouse) provide coverage under that individual's plan and such coverage is actually provided.

*(h) Medicare and Medicaid.* If a Participant or his or her Spouse or Dependent who is enrolled in a health or accident plan under this Plan becomes entitled to (i.e., becomes enrolled in) Medicare or Medicaid (other than coverage consisting solely of benefits under Section 1928 of the Social Security Act providing for pediatric vaccines), then the Participant may prospectively reduce or cancel the health or accident coverage of the person becoming entitled to Medicare or Medicaid. Furthermore, if a Participant or his or her Spouse or Dependent who has been entitled to Medicare or Medicaid loses eligibility for such coverage, then the Participant may prospectively elect to commence or increase the accident or health coverage of the individual who loses Medicare or Medicaid eligibility.

*(i) Change in Cost.* For purposes of this Section 4.7(h), "similar coverage" means coverage for the same category of benefits for the same individuals (e.g., family to family or single to single). For example, two plans that provide major medical coverage are considered to be similar coverage.

*(1) Increase or Decrease for Insignificant Cost Changes.* Participants are required to increase their elective contributions (by increasing Salary Reductions) to reflect insignificant increases in their required contribution for their Benefit Package Option(s), and to decrease their elective contributions to reflect insignificant decreases in their required contribution.

The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will determine whether an increase or decrease is insignificant based upon all the surrounding facts and circumstances, including but not limited to the dollar amount or percentage of the cost change. The Plan Administrator, on a reasonable and consistent basis, will automatically effectuate this increase or decrease in affected employees' elective contributions on a prospective basis.

*2) Significant Cost Increases.* If the Plan Administrator determines that the cost charged to an Employee of a Participant's Benefit Package Option(s) significantly increases during a Period of Coverage, then the Participant may (a) make a corresponding prospective increase in his or her elective contributions (by increasing Salary Reductions); (b) revoke his or her election for that coverage, and in lieu thereof, receive on a prospective basis coverage under another Benefit Package Option that provides similar coverage; or (c) drop coverage prospectively if there is no other Benefit Package Option available that provides similar coverage. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide whether a cost increase is significant in accordance with prevailing IRS guidance.

*(3) Significant Cost Decreases.* If the Plan Administrator determines that the cost of any Benefit Package Option significantly decreases during a Period of Coverage, then the Plan Administrator may permit the following election changes: (a) Participants enrolled in that Benefit Package Option may make a corresponding prospective decrease in their elective contributions (by decreasing Salary Reductions); (b) Participants who are enrolled in another Benefit Package Option may change their election on a prospective basis to elect the Benefit Package Option that has decreased in cost Medical Insurance Plan); or (c) Employees who are otherwise eligible under Section 3.1 may elect the Benefit Package Option that has decreased in cost on a prospective basis, subject to the terms and limitations of the Benefit Package Option. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide whether a cost decrease is significant in accordance with prevailing IRS guidance.

*(j) Change in Coverage.* The definition of "similar coverage" under Section 12.4(h) applies also to this Section 12.4(i).

*(1) Significant Curtailment.* If coverage is "significantly curtailed" (as defined below), Participants may elect coverage under another Benefit Package Option that provides similar coverage. In

addition, as set forth below, if the coverage curtailment results in a “Loss of Coverage” (as defined below), then Participants may drop coverage if no similar coverage is offered by the Employer. The Plan Administrator in its sole discretion, on a uniform and consistent basis, will decide, in accordance with prevailing IRS guidance, whether a curtailment is “significant,” and whether a Loss of Coverage has occurred

*(a) Significant Curtailment Without Loss of Coverage.* If the Plan Administrator determines that a Participant’s coverage under a Benefit Package Option under this Plan (or the Participant’s Spouse’s or Dependent’s coverage under his or her employer’s plan) is significantly curtailed without a Loss of Coverage (for example, when there is a significant increase in the deductible, the co-pay, or the out-of-pocket cost-sharing limit under an accident or health plan during a Period of Coverage, the Participant may revoke his or her election for the affected coverage, and in lieu thereof, prospectively elect coverage under another Benefit Package Option that provides similar coverage. Coverage under a plan is deemed to be “significantly curtailed” only if there is an overall reduction in coverage provided under the plan so as to constitute reduced coverage generally.

*(b) Significant Curtailment With a Loss of Coverage.* If the Plan Administrator determines that a Participant’s Benefit Package Option coverage under this Plan (or the Participant’s Spouse’s or Dependent’s coverage under his or her employer’s plan) is significantly curtailed, and if such curtailment results in a Loss of Coverage during a Period of Coverage, then the Participant may revoke his or her election for the affected coverage and may either prospectively elect coverage under another Benefit Package Option that provides similar coverage or drop coverage if no other Benefit Package Option providing similar coverage is offered by the Employer.

*(c) Definition of Loss of Coverage.* For purposes of this Section 4.7(i)(1), a “Loss of Coverage” means a complete loss of coverage (including the elimination of a Benefit Package Option, an HMO ceasing to be available where the Participant or his or her Spouse or Dependent resides, or a Participant or his or her Spouse or Dependent losing all coverage under the Benefit Package Option by reason of an overall lifetime or annual limitation). In addition, the Plan Administrator, in its sole discretion, on a uniform and consistent basis, may treat the following as a Loss of Coverage:

- a substantial decrease in the medical care providers available under the Benefit Package Option (such as a major hospital ceasing to be a member of a preferred provider network or a substantial decrease in the number of physicians participating in the PPO for the Medical Insurance Plan or in an HMO);
- a reduction in benefits for a specific type of medical condition or treatment with respect to which the Participant or his or her Spouse or Dependent is currently in a course of treatment; or
- any other similar fundamental loss of coverage.

*(2) Addition or Significant Improvement of a Benefit Package Option.* If during a Period of coverage the Plan adds a new Benefit Package Option or significantly improves an existing Benefit Package Option, the Plan Administrator may permit the following election changes: (a) Participants who are enrolled in a Benefit Package Option other than the newly added or significantly improved Benefit Package Option may change their elections on a prospective basis to elect the newly added or significantly improved Benefit Package Option; and (b) Employees who are otherwise eligible under Section 3.1 may elect the newly added or significantly improved Benefit Package Option on a prospective basis, subject to the terms and limitations of the Benefit Package Option. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide whether there has been an addition of, or a significant improvement in, a

Benefit Package Option in accordance with prevailing IRS guidance.

*(3) Loss of Coverage Under Other Group Health Coverage.* A Participant may prospectively change his or her election to add group health coverage for the Participant or his or her Spouse or Dependent, if such individual(s) loses coverage under any group health coverage sponsored by a governmental or educational institution, including (but not limited to) the following: a state children's health insurance program (SCHIP) under Title XXI of the Social Security Act; a medical care program of an Indian Tribal government (as defined in Code § 7701(a)(40)), the Indian Health Service, or a tribal organization; a state health benefits risk pool; or a foreign government group health plan, subject to the terms and limitations of the applicable Benefit Package Option(s).

*(4) Change in Coverage Under Another Employer Plan.* A Participant may make a prospective election change that is on account of and corresponds with a change made under an employer plan (including a plan of the Employer or a plan of the Spouse's or Dependent's employer), so long as (a) the other cafeteria plan or qualified benefits plan permits its participants to make an election change that would be permitted under applicable IRS regulations; or (b) the Plan permits Participants to make an election for a Period of Coverage that is different from the plan year under the other cafeteria plan or qualified benefits plan. For example, if an election is made by the Participant's Spouse during his or her employer's open enrollment to drop coverage, the Participant may add coverage to replace the dropped coverage. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide whether a requested change is on account of and corresponds with a change made under the other employer plan, in accordance with prevailing IRS guidance. A Participant entitled to change an election as described in this Section 4.7 must do so in accordance with the procedures described in Section 4.5.

*(k) CHIP Special Enrollment Rights*

Notwithstanding anything else in this document to the contrary, special enrollment rights shall be made available as a result of a loss of eligibility for Medicaid or for coverage under a state children's health insurance program (SCHIP) or as a result of eligibility for a state premium assistance subsidy under the plan from Medicaid or SCHIP.

**4.8 \*\*\*Reserved\*\*\***

**4.9 Election Modifications Required by Plan Administrator**

The Plan Administrator may, at any time, require any Participant or class of Participants to amend the amount of their Salary Reductions for a Period of Coverage if the Plan Administrator determines that such action is necessary or advisable in order to

(a) satisfy any of the Code's nondiscrimination requirements applicable to this Plan or other cafeteria plan;

(b) prevent any Employee or class of Employees from having to recognize more income for federal income tax purposes from the receipt of benefits hereunder than would otherwise be recognized;

(c) maintain the qualified status of benefits received under this Plan; or

(d) satisfy Code non-discrimination requirements or other limitations applicable to the Employer's qualified plans. In the event that contributions need to be reduced for a class of Participants, the Plan Administrator will reduce the Salary Reduction amounts for each affected Participant, beginning with the Participant in the class who had elected the highest Salary Reduction amount and continuing with the Participant in the class who had elected the next-highest Salary Reduction amount, and so forth, until the defect is corrected.

## **ARTICLE V. Benefits Offered and Method of Funding**

### **5.1 Benefits Offered**

When first eligible or during the Open Enrollment Period as described under Article IV, Participants will be given the opportunity to elect Premium Payment Benefits, as described in Article VI.

### **5.2 Employer and Participant Contributions**

*(a) Employer Contributions.* For Participants who elect Insurance Benefits described in Article VI, the Employer may contribute a portion of the Contributions as provided in the open enrollment materials furnished to Employees and/or on the Election Form/Salary Reduction Agreement.

*(b) Participant Contributions.* Participants who elect any of the Medical Insurance Benefits described in Article VI may pay for the cost of that coverage on a pre-tax Salary Reduction basis, or with after-tax deductions, by completing an Election Form/Salary Reduction Agreement.

### **5.3 Using Salary Reductions to Make Contributions**

*(a) Salary Reductions per Pay Period.* The Salary Reduction for a pay period for a Participant is, for the Benefits elected,

- (1) an amount equal to the annual Contributions for such Benefits (as described in Section 6.2 for Premium Payment Benefits;
- (2) an amount otherwise agreed upon between the Employer and the Participant; or
- (3) an amount deemed appropriate by the Plan Administrator (i.e., in the event of shortage in reducible Compensation, amounts withheld and the Benefits to which Salary Reductions are applied may fluctuate).

*(b) Considered Employer Contributions for Certain Purposes.* Salary Reductions are applied by the Employer to pay for the Participant's share of the Contributions for the Premium Payment Benefits are considered to be Employer contributions

*(c) Salary Reduction Balance Upon Termination of Coverage.* If, as of the date that any elected coverage under this Plan terminates, a Participant's year-to-date Salary Reductions exceed or are less than the Participant's required Contributions for the coverage, then the Employer will, as applicable, either return the excess to the Participant as additional taxable wages or recoup the due Salary Reduction amounts from any remaining Compensation.

*(d) After-Tax Contributions for Premium Payment Benefits.* For those Participants who elect to pay their share of the Contributions for any of the Medical Insurance Benefits with after-tax deductions, both the Employee and Employer portions of such Contributions will be paid outside of this Plan.

### **5.4 Funding This Plan**

All of the amounts payable under this Plan shall be paid from the general assets of the Employer, but Premium Payment Benefits are paid as provided in the applicable insurance policy. Nothing herein will be construed to require the Employer or the Plan Administrator to maintain any fund or to segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in any fund, account, or asset of the Employer from which any payment under this Plan may be made. There is no trust or other fund from which Benefits are paid. While the Employer has complete responsibility for the payment of Benefits out of its general assets (except for Premium Payment Benefits paid as provided in the applicable insurance policy), it may hire an unrelated third-party paying agent to make Benefit payments on its behalf. The maximum contribution that may be made under this Plan for a Participant is the total of the maximums that may be elected as Employer and Participant Contributions for Premium Payment Benefits, as described in Section 6.2.

## **ARTICLE VI. Premium Payment Component**

### **6.1 Benefits**

The only Insurance Benefits that are offered under the Premium Payment Component are benefits under the Medical, Dental, Accident, Accidental Death & Dismemberment, Specific Disease or Condition Insurance Plan(s). Notwithstanding any other provision in these Plan(s), these benefits are subject to the terms and conditions of the Insurance Plan(s), and no changes can be made with respect to such Insurance Benefits under this Plan (such as mid-year changes in election) if such changes are not permitted under the applicable Insurance Plan. An Eligible Employee can

(a) elect benefits under the Premium Payment Component by electing to pay for his or her share of the Contributions for Medical Insurance Benefits on a pretax Salary Reduction basis (Premium Payment Benefits); or

(b) elect no benefits under the Premium Payment Component and to pay for his or her share of the Contributions, if any, for Medical Insurance Benefits with after-tax deductions outside of this Plan. Unless an exception applies (as described in Article IV), such election is irrevocable for the duration of the Period of Coverage to which it relates.

### **6.2 Contributions for Cost of Coverage**

The annual Contribution for a Participant's Premium Payment Benefits is equal to the amount as set by the Employer, which may or may not be the same amount charged by the insurance carrier.

### **6.3 Insurance Benefits Provided Under Insurance Plans**

Insurance Benefits will be provided by the Insurance Plans, not this Plan. The types and amounts of Insurance Benefits, the requirements for participating in the Insurance Plans, and the other terms and conditions of coverage and benefits of the Insurance Plans are set forth in the Insurance Plans. All claims to receive benefits under the Insurance Plans shall be subject to and governed by the terms and conditions of the Insurance Plans and the rules, regulations, policies, and procedures adopted in accordance therewith, as may be amended from time to time.

### **6.4 Health Insurance Benefits; COBRA**

Notwithstanding any provision to the contrary in this Plan, to the extent required by COBRA, a Participant and his or her Spouse and Dependents, as applicable, whose coverage terminates under the Health Insurance Benefits because of a COBRA qualifying event (and who is a qualified beneficiary as defined under COBRA), shall be given the opportunity to continue on a self-pay basis the same coverage that he or she had under the Health Insurance Plan(s) the day before the qualifying event for the periods prescribed by COBRA. Such continuation coverage shall be subject to all conditions and limitations under COBRA. Contributions for COBRA coverage for Health Insurance Benefits may be paid on a pre-tax basis for current Employees receiving taxable compensation (as may be permitted by the Plan Administrator on a uniform and consistent basis, but may not be prepaid from contributions in one Plan Year to provide coverage that extends into a subsequent Plan Year) where COBRA coverage arises either

(a) because the Employee ceases to be eligible because of a reduction in hours; or

(b) because the Employee's Dependent ceases to satisfy the eligibility requirements for coverage.

For all other individuals (e.g., Employees who cease to be eligible because of retirement, termination of employment, or layoff), Contributions for COBRA coverage for Health Insurance Benefits shall be paid on an after-tax basis (unless may be otherwise permitted by the Plan Administrator on a uniform and consistent basis, but may not be prepaid from contributions in one Plan Year to provide coverage that extends into a subsequent Plan Year).

## **ARTICLES VII. – XII. \*\*\*RESERVED\*\*\***

## **ARTICLE XIII. Appeals Procedure**

### **13.1 Procedure If Benefits Are Denied Under This Plan**

If a claim for reimbursement under this Plan is wholly or partially denied, then claims shall be administered in accordance with the claims procedure set forth in the summary plan description for this Plan. The Committee acts on behalf of the Plan Administrator with respect to appeals.

### **13.2 Claims Procedures for Insurance Benefits**

Claims and reimbursement for Insurance Benefits shall be administered in accordance with the claims procedures for the Insurance Benefits, as set forth in the plan documents and/or summary plan description(s) for the Insurance Plan(s).

## **ARTICLE XIV. Recordkeeping and Administration**

### **14.1 Plan Administrator**

The administration of this Plan shall be under the supervision of the Plan Administrator. It is the principal duty of the Plan Administrator to see that this Plan is carried out, in accordance with its terms, for the exclusive benefit of persons entitled to participate in this Plan without discrimination among them.

### **14.2 Powers of the Plan Administrator**

The Plan Administrator shall have such duties and powers as it considers necessary or appropriate to discharge its duties. It shall have the exclusive right to interpret the Plan and to decide all matters thereunder, and all determinations of the Plan Administrator with respect to any matter hereunder shall be conclusive and binding on all persons. Without limiting the generality of the foregoing, the Plan Administrator shall have the following discretionary authority:

- (a) to construe and interpret this Plan, including all possible ambiguities, inconsistencies, and omissions in the Plan and related documents, and to decide all questions of fact, questions relating to eligibility and participation, and questions of benefits under this Plan (provided that, notwithstanding the first paragraph in this Section 14.2, the Committee shall exercise such exclusive power with respect to an appeal of a claim under Section 13.1);
- (b) to prescribe procedures to be followed and the forms to be used by Employees and Participants to make elections pursuant to this Plan;
- (c) to prepare and distribute information explaining this Plan and the benefits under this Plan in such manner as the Plan Administrator determines to be appropriate;
- (d) to request and receive from all Employees and Participants such information as the Plan Administrator shall from time to time determine to be necessary for the proper administration of this Plan;
- (e) to furnish each Employee and Participant with such reports with respect to the administration of this Plan as the Plan Administrator determines to be reasonable and appropriate, including appropriate statements setting forth the amounts by which a Participant's Compensation has been reduced in order to provide benefits under this Plan;
- (f) to receive, review, and keep on file such reports and information regarding the benefits covered by this Plan as the Plan Administrator determines from time to time to be necessary and proper;
- (g) to appoint and employ such individuals or entities to assist in the administration of this Plan as it determines to be necessary or advisable, including legal counsel and benefit consultants;
- (h) to sign documents for the purposes of administering this Plan, or to designate an individual or individuals to sign documents for the purposes of administering this Plan;
- (i) to secure independent medical or other advice and require such evidence as it deems necessary to decide any claim or appeal; and

(j) to maintain the books of accounts, records, and other data in the manner necessary for proper administration of this Plan and to meet any applicable disclosure and reporting requirements.

#### **14.3 Reliance on Participant, Tables, etc.**

The Plan Administrator may rely upon the direction, information, or election of a Participant as being proper under the Plan and shall not be responsible for any act or failure to act because of a direction or lack of direction by a Participant. The Plan Administrator will also be entitled, to the extent permitted by law, to rely conclusively on all tables, valuations, certificates, opinions, and reports that are furnished by accountants, attorneys, or other experts employed or engaged by the Plan Administrator.

#### **14.4 \*\*\*Reserved\*\*\***

#### **14.5 Fiduciary Liability**

To the extent permitted by law, the Plan Administrator shall not incur any liability for any acts or for failure to act except for their own willful misconduct or willful breach of this Plan.

#### **14.6 Compensation of Plan Administrator**

Unless otherwise determined by the Employer and permitted by law, any Plan Administrator that is also an Employee of the Employer shall serve without compensation for services rendered in such capacity, but all reasonable expenses incurred in the performance of their duties shall be paid by the Employer.

#### **14.7 Bonding**

The Plan Administrator shall be bonded to the extent required by ERISA.

#### **14.8 Insurance Contracts**

The Employer shall have the right (a) to enter into a contract with one or more insurance companies for the purposes of providing any benefits under the Plan; and (b) to replace any of such insurance companies or contracts at its discretion. Any dividends, retroactive rate adjustments, or other refunds of any type that may become payable under any such insurance contract shall not be assets of the Plan but shall be the property of and be retained by the Employer, to the extent that such amounts are less than aggregate Employer contributions toward such insurance.

#### **14.9 Inability to Locate Payee**

If the Plan Administrator is unable to make payment to any Participant or other person to whom a payment is due under the Plan because it cannot ascertain the identity or whereabouts of such Participant or other person after reasonable efforts have been made to identify or locate such person, then such payment and all subsequent payments otherwise due to such Participant or other person shall be forfeited following a reasonable time after the date any such payment first became due.

#### **14.10 Effect of Mistake**

In the event of a mistake as to the eligibility or participation of an Employee, the allocations made to the account of any Participant, or the amount of benefits paid or to be paid to a Participant or other person, the Plan Administrator shall, to the extent that it deems administratively possible and otherwise permissible under Code § 125 or the regulations issued thereunder, cause to be allocated or cause to be withheld or accelerated, or otherwise make adjustment of, such amounts as it will in its judgment accord to such Participant or other person the credits to the account or distributions to which he or she is properly entitled under the Plan. Such action by the Plan Administrator may include withholding of any amounts due to the Plan or the Employer from Compensation paid by the Employer.

### **ARTICLE XV. General Provisions**

#### **15.1 \*\*\*Reserved\*\*\***

#### **15.2 No Contract of Employment**

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

### **15.3 Amendment and Termination**

This Plan has been established with the intent of being maintained for an indefinite period of time. Nonetheless, the Employer may amend or terminate all or any part of this Plan at any time for any reason and any such amendment or termination will automatically apply to the Related Employers that are participating in this Plan.

### **15.4 Governing Law**

This Plan shall be construed, administered, and enforced according to the laws of the State of Mississippi, to the extent not superseded by the Code, ERISA, or any other federal law.

### **15.5 Code and ERISA Compliance**

It is intended that this Plan meet all applicable requirements of the Code, ERISA (if ERISA is applicable) and of all regulations issued thereunder. This Plan shall be construed, operated, and administered accordingly, and in the event of any conflict between any part, clause, or provision of this Plan and the Code and/or ERISA (if ERISA is applicable), the provisions of the Code and ERISA (if ERISA is applicable) shall be deemed controlling, and any conflicting part, clause, or provision of this Plan shall be deemed superseded to the extent of the conflict.

### **15.6 No Guarantee of Tax Consequences**

Neither the Plan Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under this Plan will be excludable from the Participant's gross income for federal, state, or local income tax purposes. It shall be the obligation of each Participant to determine whether each payment under this Plan is excludable from the Participant's gross income for federal, state, and local income tax purposes and to notify the Plan Administrator if the Participant has any reason to believe that such payment is not so excludable.

### **15.7 Indemnification of Employer**

If any Participant receives one or more payments or reimbursements under this Plan on a tax-free basis and if such payments do not qualify for such treatment under the Code, then such Participant shall indemnify and reimburse the Employer for any liability that it may incur for failure to withhold federal income taxes, Social Security taxes, or other taxes from such payments or reimbursements.

### **15.8 Non-Assignability of Rights**

The right of any Participant to receive any reimbursement under this Plan shall not be alienable by the Participant by assignment or any other method and shall not be subject to claims by the Participant's creditors by any process whatsoever. Any attempt to cause such right to be so subjected will not be recognized, except to the extent required by law.

### **15.9 Headings**

The headings of the various Articles and Sections are inserted for convenience of reference and are not to be regarded as part of this Plan or as indicating or controlling the meaning or construction of any provision.

### **15.10 Plan Provisions Controlling**

In the event that the terms or provisions of any summary or description of this Plan are in any construction interpreted as being in conflict with the provisions of this Plan as set forth in this document, the provisions of this Plan shall be controlling.

### **15.11 Severability**

Should any part of this Plan subsequently be invalidated by a court of competent jurisdiction, the remainder of the Plan shall be given effect to the maximum extent possible.

CITY OF PASCAGOULA  
CAFETERIA PLAN  
AMENDMENT NUMBER 2013-01

The City of Pascagoula hereby amends the City of Pascagoula Cafeteria Plan, (hereinafter referred to as the "Plan") as follows, effective as of January 1, 2013:

1. The PLAN DOCUMENT and SUMMARY PLAN DESCRIPTION are hereby amended by the addition of the Flexible Spending Account as approved by the Council of the City of Pascagoula on November 6, 2012 and will include the following benefits:

"HEALTHCARE REIMBURSEMENT ACCOUNT"  
AND  
"DEPENDENT CARE ASSISTANCE PLAN"

- (a) The maximum amount that an Employee may contribute to the Healthcare Reimbursement Account for the Plan year is \$2,400 as set forth by the Employer and in compliance with the limitation of \$2,500 per Plan year as set forth in Section 125 of the Internal Revenue Code. The maximum amount that an Employee may contribute to the Dependent Care Assistance Plan is \$5,000 per Plan year as set forth under Section 129 of the Internal Revenue Code.
- (b) The Plan year will run from January 1 through December 31. Eligible Healthcare Reimbursement Account and Dependent Care Assistance Plan expenses are those expenses which are incurred during the Plan year. Once the Plan year comes to an end, Employees will have a grace period of two months and 15 days to submit eligible expenses for reimbursement. At the end of the grace period, should an Employee have a balance in either the Healthcare Reimbursement Account or Dependent Care Assistance Plan, the Employee must submit a claim within 30 days or forfeit the balance to the Employer.

**IN WITNESS HEREOF**, and as conclusive evidence of the adoption of the foregoing instrument comprising the 2015 CITY OF PASCAGOULA CAFETERIA PLAN Salary Reduction Plan, the CITY COUNCIL OF THE CITY OF PASCAGOULA has caused this Plan to be executed, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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

Its: City Manager \_\_\_\_\_

Councilman Pickett made a motion to approve and adopt the 2015 City of Pascagoula Cafeteria Plan Document as recommended and authorize the City Manager to execute the related documents. The motion was seconded by Councilwoman Simkins and received the following vote: Mayor Blevins "ABSENT". Councilmen Hill "ABSENT", Jackson "AYE", Pickett "AYE", Simkins "AYE", Tadlock "AYE", and Tipton "AYE". (Approved 1-6-15)

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The next item for consideration was a bid award to Suncoast Infrastructure, Inc., Florence, MS, for sewer rehab contract work in the amount of \$1,736,284.00 as recommended by Jaci Turner, City Engineer, and Compton Engineering, Inc.

Councilman Pickett made a motion to approve the bid award to Suncoast Infrastructure, Inc. for sewer rehab contract work in the amount of \$1,736,284.00 as recommended and authorize the City Manager to execute the related documents. The motion was seconded by Councilwoman Simkins and received the following vote: Mayor Blevins “ABSENT”. Councilmen Hill “ABSENT”, Jackson “AYE”, Pickett “AYE”, Simkins “AYE”, Tadlock “AYE”, and Tipton “AYE”. (Approved 1-6-15)

(A copy of the related documents are filed in the minute file of this meeting and incorporated herein by reference.)

\*\*\*\*\*

The next item for consideration was a Gas Ops FORMS Solution quote to provide a compliance management system for the Gas Department as recommended by Jaci Turner, City Engineer. Additional information regarding this item is spread on the minutes as follows:

**INVOICE**

**INVOICE NUMBER:** SNND-12302014CPAS

**INVOICE DATE:** December 30, 2014

**BILL TO / SOLD TO:** City of Pascagoula  
Attn: Accounts Payable  
4011 14<sup>th</sup> Street  
Pascagoula, MS 39568

**PURCHASE ORDER NO: 01401308-000**

**REMIT PAYMENT TO:** GasOps iQ, Inc.  
1521 Rolling Hills Dr.  
Crystal Lake, IL 60014

**TERMS: DUE UPON RECEIPT**

<b>Date(s)</b>	<b>Item / Description</b>	<b>Amount</b>
2014	One-Time Setup Fee and Configuration Services GasOps OAMS	\$2500.
<b>Totals</b>		<b>\$2500.</b>

Approved By / Electronic Signature:

Hitesh Patadia  
Principal / Managing Partner

**INVOICE**

**INVOICE NUMBER:** SNND-1008CPAS  
**INVOICE DATE:** December 30, 2014  
**BILL TO / SOLD TO:** City of Pascagoula  
Attn: Accounts Payable  
4011 14<sup>th</sup> Street  
Pascagoula, MS 39568

**PURCHASE ORDER NO: 01401308-000**

**REMIT PAYMENT TO:** GasOps iQ, Inc.  
1521 Rolling Hills Dr.  
Crystal Lake, IL 60014

**TERMS: DUE UPON RECEIPT**

<b>Date(s)</b>	<b>Item / Description</b>	<b>Amount</b>
1/1/2014 – 12/31/2014	Annual Service Fee for GasOps OAMS Solution	\$4800
Totals		\$4800

Approved By / Electronic Signature:

Hitesh Patadia  
Principal / Managing Partner

Councilman Pickett made a motion to approve a Gas Ops FORMS Solution quote to provide a compliance management system for the Gas Department as recommended. The motion was seconded by Councilwoman Simkins and received the following vote: Mayor Blevins “ABSENT”. Councilmen Hill “ABSENT”, Jackson “AYE”, Pickett “AYE”, Simkins “AYE”, Tadlock “AYE”, and Tipton “AYE”. (Approved 1-6-15)

\*\*\*\*\*

**The following new business items were considered at this time:**

The first item for consideration was a Resolution approving the Exchange Agreement with NOAA for property in the Riverfront Addition in exchange for property lying west of Anchor Square on the East Bank of the Pascagoula River as recommended by Eddie Williams, City Attorney.

The Resolution documents are spread on the minutes as follows:

**RESOLUTION AUTHORIZING EXECUTION OF EXCHANGE AGREEMENT WITH THE UNITED STATES OF AMERICA AND AUTHORIZING EXECUTION OF WARRANTY DEED TO EFFECT THE FIRST STAGE OF A PROPERTY EXCHANGE**

**WHEREAS**, on or about October 29, 2008, the City of Pascagoula acquired from Jackson County, Mississippi, certain real property located on the East Bank of the Pascagoula River and which has now been platted as the “Riverfront Addition” per plat thereof recorded in Plat Book 24 at Page 19 of the Records of Plats on file in the office of the Chancery Clerk of Jackson County, Mississippi; and

**WHEREAS**, the City acquired and platted the aforesaid Riverfront Addition for the purpose of encouraging economic development along the riverfront in a formerly blighted industrial area; and

**WHEREAS**, included in the plat of Riverfront Addition is a parcel designated as Lot 1, Block B, thereof, which parcel is outlined in red on the aerial photograph attached hereto as Exhibit A to this Resolution; and

**WHEREAS**, also outlined in red on the attached exhibit is a portion of Delmas Avenue extending westward from “Anchor Street” to the East Bank of the Pascagoula River and traversing certain property now being used by the National Oceanic and Atmospheric Administration (NOAA) for its activities on the East Bank of the Pascagoula River; and

**WHEREAS**, outlined in yellow on the attached exhibit is certain property that now belongs to the United States Government and is also being utilized by NOAA in conjunction with its East Bank activities; and

**WHEREAS**, several years ago the City and NOAA entered into certain discussions for the possible exchange of the City properties outlined in red for the NOAA property outlined in

yellow, the NOAA property being immediately west of Lot 1, Block A, of the Riverfront Addition wherein is situated the City's "Anchor Square Complex"; and

**WHEREAS**, it is the desire of the City to acquire the NOAA tract as a passive park area that will augment and accentuate the Anchor Square Complex and provide continuity for the City's proposed developments along the north side of Delmas Avenue as the same extends through the area; and

**WHEREAS**, to effect an exchange of properties, it was necessary for an act of the United States Congress to be procured authorizing the same and which resulted in the legislation being passed on the 15<sup>th</sup> day of June, 2012, a true and correct copy of which is attached hereto as Exhibit B; and

**WHEREAS**, it is the intent of the parties that the City of Pascagoula will acquire the property outlined in yellow on Exhibit A and that the United States Government will in turn acquire the two tracts that are outlined in red on the attached exhibit; and

**WHEREAS**, in order to effectuate the exchange it is necessary for the City of Pascagoula to enter into an Exchange Agreement (the form of which is attached hereto as Exhibit C) with the United States of America represented by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration on behalf of NOAA's National Marine Fisheries Service, which calls for the exchange to take place in multiple stages, with the first stage being the conveyance by the City of Lot 1, Block C, of the Riverfront Addition to the United States Government pursuant to a Warranty Deed, the form of which is attached hereto as Exhibit D; and

**WHEREAS**, appraisals of all three tracts that are involved in this transaction have been made by Michael J. Heidelberg wherein it has been determined that the fair market value of the property owned by the Government exceeds the fair market value of the tracts to be conveyed by the City to the United States Government pursuant to the attached Exchange Agreement by some \$7,000.00; and

**WHEREAS**, the City Council finds that after consideration of various costs involved in the negotiation of the attached Exchange Agreement including payment for surveys, title opinions and appraisals, that the exchange of the properties as contemplated herein will result in a complete quid pro quo and is in the best interest of the City of Pascagoula:

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

**SECTION 1.** The Mayor is authorized and directed to execute, on behalf of the City of Pascagoula, the Exchange Agreement the form of which is attached hereto and incorporated herein as Exhibit C.

**SECTION 2.** The Mayor is also authorized and directed, on behalf of the City of Pascagoula, to execute the Warranty Deed, the form of which is attached hereto as Exhibit D, conveying Lot 1, Block C, of the Riverfront Addition to the United States.

**SECTION 3.** Upon completion of this first stage of the exchange process, the City Attorney is authorized and directed, pursuant to terms of the attached Exchange Agreement, to begin the process for the City to vacate that portion of Delmas Avenue which is described and outlined on the attached Exhibit A and to prepare the Special Warranty Deed from the City to the United States Government to effect this second stage of the Exchange Agreement.

**SECTION 4.** All of the matters set forth in the preambles to this Resolution are determined by the City Council to be factual and true and correct representations of the negotiations had by and between the City of Pascagoula and United States Government to date pursuant to the legislation authorizing the Exchange Agreement and adopted by the United States Congress on June 15, 2012.

The above Resolution was introduced by Councilman Tipton, seconded for adoption by Councilwoman Simkins, and received the following vote: Mayor Blevins "ABSENT". Councilmen Hill "ABSENT", Jackson "AYE", Pickett "AYE", Simkins "AYE", Tadlock "AYE", and Tipton "AYE". The Mayor Pro Tem then declared the Resolution adopted on the 6th day of January, 2015.

(A copy of the Exhibits are filed in the minute file of this meeting and incorporated herein by reference.)

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The next item for consideration was the Order for the docket of claims as follows:

**ORDER**

**WHEREAS**, the attached docket of claims for the period December 12, 2014, through January 2, 2015, has been presented to the City Council for allowance and approval.

**WHEREAS**, it appears that all of said claims are proper and should be allowed;

**NOW, THEREFORE, IT IS ORDERED** that all claims shown on said dockets are hereby allowed and approved for payment.

The above Order was introduced by Councilwoman Simkins, seconded for adoption by Councilman Pickett, and received the following vote: Mayor Blevins "ABSENT". Councilmen Hill "ABSENT", Jackson "AYE", Pickett "AYE", Simkins "AYE", Tadlock "AYE", and Tipton "AYE". The Mayor Pro-Tem then declared the Order adopted on the 6th day of January, 2015.

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Joe Huffman, City Manager, requested approval to renew the advertising contract with See South Mississippi (Newcomer & Visitor's Guide).

Councilwoman Simkins made a motion to approve the renewal of the advertising contract and authorize the City Manager to execute related documents. The motion was seconded by Councilman Tipton and received the following vote: Mayor Blevins "ABSENT". Councilmen Hill "ABSENT", Jackson "AYE", Pickett "AYE", Simkins "AYE", Tadlock "AYE", and Tipton "AYE". (Approved 1-6-15)

(A copy of the related documents is filed in the minute file of this meeting and incorporated herein by reference.)

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Paul Gray, 2510 Forrest Street, addressed the Council regarding permission to collect signatures for the legalization of marijuana. Eddie Williams, City Attorney, stated Mr. Gray was free to collect signatures and, once obtained take the petition to the State Legislature.

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Joe Huffman, City Manager, stated that the City is accepting applications for School Board member. Applications are to be turned in to the City Manager's office. The deadline for turning in applications is January 21, 2014.

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There being no further business to come before the Council at this time, Councilwoman Simkins made a motion to recess until Tuesday, January 20, 2015, at 6:00 p.m. to transact such business as may lawfully come before the Council. The motion was seconded by Councilman Tipton and received the following vote: Mayor Blevins "ABSENT". Councilmen Hill "ABSENT", Jackson "AYE", Pickett "AYE", Simkins "AYE", Tadlock "AYE", and Tipton "AYE".

The meeting ended at 6:47 p.m.

APPROVED:

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Freddy Jackson, Mayor Pro Tem

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Marvin Pickett, Sr., Councilman – Ward 1

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Brenda Simkins, Councilwoman at Large

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David Tadlock, Councilman – Ward 3

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Scott Tipton, Councilman – Ward 5

ATTEST:

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Carol Groen, Chief Deputy City Clerk