

Contract  
Agreement Between

Township of Upper  
And

American Federation of State,  
County and Municipal Employees  
AFL-CIO  
District Council 71

Local 3779-A

January 1, 2015 through December 31, 2017



**District Council 71**

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PREAMBLE

**THIS AGREEMENT** by and between the **TOWNSHIP OF UPPER**, in the County of Cape May, New Jersey, a Municipal Corporation of the State of New Jersey, hereinafter called the "**TOWNSHIP**", and **DISTRICT COUNCIL 71, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME), AFL-CIO Majority Representative, and its affiliated Local 3779-A** hereinafter called the "**COUNCIL 71**", covering employees in the designated unit, has as its intent and purpose the promotion of harmonious employee relations between the employer and employees represented by the **COUNCIL 71**; the establishment of equitable and peaceful procedures for the amicable resolutions of all disputes and grievances and determination of wages, hours of work and other terms and conditions of employment. The effective date of this agreement shall be JANUARY 1, 2015 to DECEMBER 31, 2017.

**ARTICLE 1**

**RECOGNITION**

In accordance with the "Certification of Representative" of the Public Employment Relations Commission dated April 21, 1980 (Docket. No. RO-80-121), the **TOWNSHIP** recognizes **COUNCIL 71** as the exclusive collective negotiations agent for all employees covered in the aforementioned Certifications and more specifically including all laborers, truck drivers, equipment operators, mechanics, recreation maintenance workers, building maintenance workers, carpenters, and all non-professional employees employed by the **TOWNSHIP OF UPPER**, but excluding managerial, confidential and professional employees, police, emergency medical and craft employees and supervisors within the meaning of the Act.

**ARTICLE 2**

**DUES CHECK-OFF**

**A.** The **TOWNSHIP** agrees to deduct the monthly members dues from those employees who individually request that such deductions be made. Such request must be made, in writing, to the Employer (**TOWNSHIP**). The amounts to be deducted shall be certified in writing to the **TOWNSHIP** by **COUNCIL 71** and the aggregate deductions shall be remitted to **COUNCIL 71** by the **TOWNSHIP** together with a list of the names of all employees for whom the deductions were made.

**B.** It is understood and agreed that upon signing this Contract the "Agency Shop" concept, as established by the passage and signing of the amendments and supplements to the "New Jersey Employer-Employee Relations Act", shall take effect.

**ARTICLE 3**

**MANAGEMENT RIGHTS**

A. The **TOWNSHIP** hereby retains and reserves unto itself, without limitations, all powers, rights, authority, duties and responsibilities conferred upon and vested in it prior to the signing of this Agreement by the Laws and Constitution of the State of New Jersey and of the United States, including, but without limiting the generality of the foregoing, the following rights:

1. To the executive management and administrative control of the **TOWNSHIP** Government and its properties and facilities and the activities of its employees;

2. To hire all employees and, subject to the provisions of law, to determine their qualifications and conditions for continued employment or assignment and to promote and transfer employees;

3. To suspend, demote, discharge or take other disciplinary action for good and just cause according to law.

B. The exercise of the foregoing powers, rights, authority, duties and responsibilities of the **TOWNSHIP**, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this Agreement and then only to the extent such specific and express terms hereof are in conformance with the Constitution and Laws of New Jersey and of the United States.

C. Nothing contained herein shall be construed to deny or restrict the **TOWNSHIP** of its powers, rights, authority, duties and responsibilities under Title 40, Title 40A, Title 11 of the Revised

Statutes of the State of New Jersey, or any other Federal, State, County or Local Laws or Ordinances.

**ARTICLE 4**

**GRIEVANCE PROCEDURE**

A. **PURPOSE:**

1. The purpose of this procedure is to secure, at the lowest possible level, an equitable solution of the problems which may arise affecting the terms and conditions of this Agreement. The parties agree that this procedure will be kept as informal as may be appropriate.

2. Nothing herein contained shall be construed as limiting the right of any employee having a grievance to discuss the matter informally with any appropriate member of the department supervisory staff and having the grievance adjusted without the intervention of **COUNCIL 71**.

B. **DEFINITION:**

The term "grievance" as used herein means any controversy arising over the interpretation or adherence to the terms and conditions of this Agreement and may be raised by an individual, **COUNCIL 71** or the **TOWNSHIP**.

C. **NOTICE OF DISCIPLINE AND DISCHARGE:**

Other than an oral reprimand, the employee, the Local Union and the District Council shall be furnished with a written copy of any disciplinary action taken. Upon receipt of the notice of disciplinary action the employee may be given a form which the employee may use to opt out of disclosure to union officials. The reasons for such disciplinary action(s) shall be included in this written notification. As the **TOWNSHIP** recognizes **COUNCIL 71**, it is the responsibility of the Employer to

forward all new hire, disciplines, promotions, etc. to Council 71 as the Majority Representative to P. O. Box 207, Franklinville, New Jersey 08322 or Fax (856) 512-2193, and the Local 3304L. This will occur simultaneously as the employee is served.

D. **STEPS OF THE GRIEVANCE PROCEDURE:**

The following constitutes the sole and exclusive method of resolving grievances between the parties covered by this Agreement and shall be followed in its entirety unless any step is waived by mutual consent, in writing:

**STEP ONE:**

(a) An employee and/or Chapter Chair shall institute action under the provisions hereof within five (5) working days of the occurrence of the grievance and an earnest effort shall be made to settle the differences between the aggrieved employee and his immediate supervisor for the purpose of resolving the matter informally. Failure to act within said five (5) working days shall be deemed to constitute an abandonment of the grievance.

(b) The immediate supervisor shall render a decision within five (5) working days after receipt of the grievance. A copy of that decision shall be immediately filed with the Personnel Officer and the Township Clerk, or Deputy Township Clerk in the event of a conflict, who shall distribute a copy of such decision to the members of the Township Committee.

(c) In the event the grievance involves the Department of Public Works and a satisfactory resolution has not been reached under STEP ONE (b) above, the employee shall, in writing, file his grievance with the Superintendent of Public Works within five (5) working days following the determination by the immediate supervisor. A copy shall



also be filed with the Personnel Officer and the Township Clerk or Deputy Township Clerk in the event of a conflict. The Superintendent of Public Works shall render a written decision on the grievance within ten (10) working days following receipt of the grievance. A copy of that decision shall be immediately filed with the Personnel Officer and the Township Clerk, or Deputy Township Clerk in the event of a conflict, who shall distribute a copy of such decision to the members of the Township Committee.

**STEP TWO:**

(a) In the event a satisfactory settlement has not been reached under Step One, the employee and/or Chapter Chair shall, in writing and on forms supplied by the **TOWNSHIP** or **COUNCIL 71**, file the grievance with a member of Township Committee having general administrative and oversight responsibility for the Department within eight (8) working days following the STEP ONE determination. A copy shall also be filed with the Personnel Officer and the Township Clerk or Deputy Township Clerk in the event of a conflict.

(b) The member of Township Committee, or a representative appointed by such member of the Township Committee, shall render a written decision on the grievance within ten (10) working days following receipt of the grievance. A copy of that decision shall be immediately filed with the Personnel Officer and the Township Clerk, or Deputy Township Clerk in the event of a conflict, who shall distribute a copy of such decision to the members of the Township Committee.

**STEP THREE:**

(a) In the event that the grievance has not been resolved at Step Two, then within eight (8) working days following the decision under Step Two, the grievant and **COUNCIL 71** may then have the

matter submitted to the Township Committee. The grievant and **COUNCIL 71** shall initiate Step Three by filing the written grievance with the Township Personnel Officer and the Township Clerk, or Deputy Township Clerk in the event of a conflict.

(b) The Township Committee shall provide the grievant and **COUNCIL 71** the opportunity for a full and impartial hearing of the dispute with both sides (**COUNCIL 71** and management) offering argument and testimony where necessary. Said hearing is to be held within ten (10) working days after receipt by the Township Clerk, or Deputy Township Clerk in the event of a conflict, of a demand for such a hearing, which demand may be filed by any party to this Agreement. A written decision shall thereafter be rendered by the Township Committee within ten (10) working days from the date of the hearing.

(c) In the event that a hearing is not demanded, the Township Committee shall, nevertheless, review the matter and make a determination within twenty (20) working days from the filing of the grievance with the Township Clerk, or Deputy Township Clerk in the event of a conflict.

**STEP FOUR: APPEAL TO DEPARTMENT OF PERSONNEL.**

(a) In the event that the aggrieved employee and/or **COUNCIL 71** is dissatisfied with the decision of the Township Committee, such employee may, if permitted by law and by the rules and regulations from time to time established by the New Jersey Department of Personnel ("Department"), seek a review by the Department, which review shall be initiated and conducted in accordance with the rules and regulations of said Department.

(b) Any employee wishing to appeal to the Department shall do so by filing the appropriate request within fifteen (15) days of the decision of the Township Committee. In the event that an appeal to the Department is not initiated within such fifteen (15) day period, such failure shall constitute an abandonment and waiver of the right to seek a review by the Department.

(c) In the event of an appeal to the Department, any costs and expenses involved in such a proceeding, including but not limited to legal fees, shall be the sole and exclusive responsibility of the party incurring same.

**STEP FIVE: ARBITRATION.**

(a) In the event an employee elects not to appeal the decision of the Township Committee to the New Jersey Department of Personnel, such employee may, if permitted by law and by the rules and regulations from time to time established by the Public Employment Relations Commission (hereinafter PERC), appeal said decision to PERC. An arbitrator shall be selected in accordance with the rules and regulations of PERC.

(b) Any request to PERC must be initiated by the aggrieved employee within fifteen (15) days of the decision of the Township Committee. Failure of the employee to file an appeal within such time period shall constitute an abandonment and waiver of the right to appeal to PERC.

(c) The arbitrator shall be bound and governed by the provisions of this Agreement and restricted to the application of the facts presented to him/her involved in the grievance. The arbitrator shall not have the authority to add to, modify, detract from or alter in

any way the provisions of this Agreement or any amendment or supplement thereto.

(d) The decision rendered by any arbitrator selected pursuant to this Article shall be final and binding upon both parties to this Agreement.

(e) The **TOWNSHIP** expressly reserves the right to seek a judicial review of any appeal filed with PERC and, if appropriate, to seek an Order of a Court of competent jurisdiction restraining such appeal and/or arbitration.

(f) The cost for the services of the arbitrator shall be borne equally by the **TOWNSHIP** and **COUNCIL 71**. Any and all other additional costs including legal fees shall be paid by the party incurring same.

E. **COUNCIL 71 REPRESENTATIVE IN GRIEVANCE PROCEDURE:**

1. At the request of the aggrieved employee, COUNCIL 71 Chapter Chair (Shop Steward) may participate in the grievance procedure at Steps One and Two. The grievance form shall contain a checkoff which the employee may use to opt out of union participation.

2. The International Representative of **COUNCIL 71** and **COUNCIL 71** Chapter Chair (Shop Steward) may participate in the grievance procedure at all subsequent steps.

**ARTICLE 5**

**SENIORITY**

A. Seniority, which is defined as continuous employment with the **TOWNSHIP** from the date of last hire, will be given due consideration by the **TOWNSHIP** under the following circumstances:

1. The most senior employees shall be given preference in the selection of vacations provided that there is no interference with the normal operations of the **TOWNSHIP**.

2. The employer shall assign overtime, preferential days off, working out of title and shifts based upon an employee's seniority to the fullest extent possible and provided that there is no interference with the normal operations of the **TOWNSHIP**. For example, the operations of the **TOWNSHIP** may require the specific skills of a particular employee or, in order to complete a special project, the same employee should receive the overtime assignment. Taking into consideration **TOWNSHIP** operations, to the greatest extent possible, assignments shall be made on a rotating basis. This means that in the assignment of overtime, for example, management shall offer such work to that employee with the most seniority. On the next occasion when overtime is required, management shall offer it to the employee with the next highest seniority and such a schedule shall be followed until a complete cycle is completed with regard to the employees in the bargaining unit. If a particular employee waives his seniority rights with respect to preferential assignment of overtime on a particular occasion, it shall be offered to the employee next in line based on seniority principles. There shall be no obligation on the **TOWNSHIP's** part to offer preferential assignment to an employee who has waived seniority preference until there has been a complete rotation within the department. However, there shall be no rotation (but seniority will be applied) with respect to least desirable task assignments, including any employee working out of title, provided there is no interference with the normal operations of the **TOWNSHIP**.

3. Seniority for overtime purposes with regard to snowplowing shall be determined in accordance with Article 8(A).

4. Job openings in the bargaining unit shall be filled by that individual having the best skills and abilities to perform the work. If two (2) employees are equally qualified to perform the work, then the employee with the most seniority will be given preference for the job. Promotions shall follow step-by-step progression as set forth in the current organizational chart for the **TOWNSHIP**. A copy of said chart is attached hereto as Exhibit A. No employee shall be promoted above the next step in line nor shall a promotion be given which jumps over a step as set forth on the organizational chart.

5. In the event of a dispute between the parties hereto, an earnest effort shall be made to resolve the differences and an informal meeting shall be held between the affected employee(s), **COUNCIL 71** representatives and the **TOWNSHIP**. In the event that the parties cannot agree, then the grievance procedure specified herein shall control.

**B. ROTATIONAL ORDER LIST:**

Lists showing a rotational order of each employee, the total Overtime worked and the total Overtime refused by each employee shall be maintained in the work unit. Such lists shall be made available for semi-annual reviews upon requests to Union Officers, Stewards and employees. This review is for the purpose Overtime Equalization.

**C. LAY-OFFS:**

1. Any lay-offs which may be necessitated during the term of this Agreement shall be in accordance with seniority so that the first employee laid off in a particular classification shall be the employee with the least seniority.

2. The classifications are: Equipment Operator, Truck Driver and Laborer. Additional classifications are Mechanic, Senior Recreation Maintenance Worker, Recreation Maintenance Worker, Carpenter, Senior Carpenter, Senior Mechanic, Mechanic's Helper, Maintenance Repairer, Groundskeeper and Building Maintenance Worker.

3. In addition to the above, any lay-offs shall occur in accordance with the procedures, rules and regulations promulgated by the New Jersey Department of Personnel.

4. At least ten (10) business days prior to a decision by the TOWNSHIP to contract out work which may possibly result in the layoff of an employee who performs or could perform the same functions, the TOWNSHIP shall notify the District Council in writing.

#### ARTICLE 6

#### COUNCIL 71 RIGHTS, ACTIVITIES AND REPRESENTATION

A. Accredited representatives of **COUNCIL 71** may enter the **TOWNSHIP** facilities or premises at reasonable hours for the purpose of observing working conditions or assisting in the adjustment of grievances. When **COUNCIL 71** decides to have its representative enter the **TOWNSHIP** facilities or premises, it shall request permission from the Township Committee through notification to the Township Clerk, or Deputy Township Clerk in the event of a conflict, stating the reasons therefore, and such permission shall be obtained by the Township Clerk, or Deputy Township Clerk in the event of a conflict, from the Township Committee and the Township Clerk, or Deputy Township Clerk in the event of a conflict, shall communicate such permission to **COUNCIL 71**. Such permission will not be unreasonably withheld, provided there will be no interference with the normal operations of the business of the **TOWNSHIP**

government or the normal duties of employees. There shall be no **COUNCIL 71** business transacted nor meetings held on **TOWNSHIP** time or property.

B. A Chief **COUNCIL 71** Chapter Chair (Shop Steward) and a **COUNCIL 71** Chapter Chair (Shop Steward) shall be the representatives of **COUNCIL 71** in the **TOWNSHIP**. Whenever changes are made by the election of a Chief **COUNCIL 71** Chapter Chair (Shop Steward) and/or **COUNCIL 71** Chapter Chair (Shop Steward), the names of the newly elected representatives shall be submitted, in writing, to the Township Clerk, or Deputy Township Clerk in the event of a conflict, within two (2) working days of such election.

C. All elected and/or appointed **COUNCIL 71** officials of the **TOWNSHIP OF UPPER** shall be permitted time off, without loss of pay or benefits, to investigate grievances by employees covered under this Agreement, or to engage in other **COUNCIL 71** activities and education provided, however, that the maximum time permitted all such elected and/or appointed **COUNCIL 71** officials shall be an aggregate of seven (7) days or fifty-six (56) man hours during each calendar year of this Agreement. It is understood that the total of seven (7) days or a maximum of fifty-six (56) man hours shall apply in the aggregate during each calendar year during the term of this Agreement and it is expressly understood that each elected and/or appointed official shall not individually be entitled to seven (7) days per year for such activities. The **TOWNSHIP** shall not unreasonably deny permission for time off in order to engage in such activities, provided that such activities do not interfere with the normal operations of the business of the **TOWNSHIP** or the normal duties of the employees. Any employee who will be off work and engaged in such activities shall notify the Township Clerk, or Deputy Township Clerk in the event of a conflict, of such fact at least ten (10)



days prior to the intended absence. The **TOWNSHIP** reserves the right to request such date be altered when it is reasonable to do so: (i) in order to insure the orderly and efficient transaction of **TOWNSHIP** business; and (ii) to insure there will not be any unreasonable interference with the conduct of **TOWNSHIP** business and operations.

D. An employee covered by the within Agreement shall be permitted to attend grievance hearings, arbitration hearings or Civil Service (Department of Personnel) hearings or any meeting called by the **TOWNSHIP** which may, in any way, affect the employee's terms and conditions of employment and/or the terms and conditions of this Agreement without loss of pay or benefits to said employee. Any preparation for grievance hearings, arbitration hearings or Civil Service (Department of Personnel) hearing shall be conducted by the affected employee on his own time and preparation for such hearing shall never be conducted on **TOWNSHIP** time.

E. Each employee shall, if he/she requests, be given an opportunity to review any evaluation of his/her work performance or conduct prepared during the term of this Contract. This provision would include all information and documentation found in personnel folders or permanent supplementary personnel files.

#### ARTICLE 7

##### HOURS AND OVERTIME; COMPENSATORY TIME

A. The normal work week shall consist of forty (40) hours per week, five (5) days per week, Monday through Friday.

B. All work performed by an employee on Saturday or Sunday shall be compensated for at the premium rate of time and one-half (1-1/2). This provision does not apply where an employee (for example, a recreation

worker, lifeguard, etc.) is scheduled to work on a Saturday or Sunday and is scheduled for time off during Monday through Friday.

C. All work performed by an employee beyond the normal eight (8) hour workday shall be compensated for at the premium rate of time and one-half (1-1/2). When this occurs on a holiday, the employee will be compensated at two and one-quarter (2-1/4) times the employee's regular rate. This is the holiday rate of one and one-half times the overtime rate of one and one-half (1.5 x 1.5) for work performed by an employee beyond 8 hours on a holiday. After sixteen (16) consecutive hours of work an employee shall be compensated at double the normal rate commencing with the sixteenth (16th) hour and for each hour thereafter. When this occurs on a holiday, the "normal rate" to be doubled upon the 16th consecutive hour is the holiday rate of time and one-half of the employee's regular rate. In other words, if the 16th consecutive hour occurs on a holiday, the employee will be compensated at three times the employee's regular rate.

D. The provisions of Paragraphs (B) and (C) shall apply notwithstanding the fact that the Township Administrative Offices may be closed either for the entire day or some portion thereof because of storm, snowfall, other weather conditions or other emergency or disaster. Stated differently, Department of Public Works (DPW) personnel are frequently required to report for work when other **TOWNSHIP** offices are closed and other employees do not report for work or may be sent home prior to the conclusion of the normal work day. The fact that **TOWNSHIP** employees other than DPW personnel are excused from reporting for duty shall not result in any change in the amount of compensation for DPW personnel. Moreover, DPW personnel shall not be entitled to any compensatory time for working during such conditions.

E. The overtime provisions of this Article shall apply only to full-time employees in permanent or probationary status and not to summer, seasonal, part-time or temporary employees.

F. All employees shall receive a fifteen (15) minute break in the morning and a fifteen (15) minute break in the afternoon. A break may not be combined with lunch and shall not occur within the first hour of work that day or within one-half hour of the end of the day or the lunch break. The break shall be taken at the employee's present location at the specified time. At the discretion of the supervisor, breaks may be staggered throughout the day provided that employees not at the same location as a supervisor must call the supervisor at both the start and end of the breaks. Employees not at the same location as a supervisor must call the supervisor at the start and the end of a lunch break.

G. Overtime shall be offered on the basis of generally accepted seniority principles and in accordance with Article 5(A)(2) hereof.

H. Nothing contained herein shall prevent the **TOWNSHIP** from hiring temporary employees, part-time employees, summer or seasonal employees.

I. Employees specifically identified in Paragraph "H" above shall not be used with the purpose of avoiding overtime for regular full-time employees covered by this Agreement.

J. The mechanics shall not be included in the overtime rotation with respect to snow plowing and salting operations.

K. At the employee's option, he/she may elect to receive compensatory time in lieu of payment for overtime hours worked. The election to use compensatory time in lieu of payment for overtime hours worked must be exercised before the close of the pay period during which

the overtime situation occurs. Compensatory time shall be subject to the following:

- (1) The total number of accumulated hours which may be carried to the following calendar year shall not exceed 60 hours, except that any hours accumulated in December may also be carried to the following calendar year.
- (2) The employee shall be entitled to receive cash compensation for unused accumulated compensatory time when the employment relationship is terminated.
- (3) The employer shall allow for the use of compensatory time within a reasonable period of time following the employee's request to take time off unless the operation of the department would be unduly disrupted by the employee's absence from work.

#### ARTICLE 8

##### WORKING CONDITIONS PERTAINING TO TRASH TRUCKS

A. Utilization of manpower on trash trucks is a management prerogative; however, any substantial changes from existing routines shall occur after notification to and consultation with shop stewards.

B. When a laborer is absent from a trash or recycling truck crew, the replacement for the absent laborer shall be the available laborer of the Department of Public Works with the least seniority and if there is not a laborer available, then the replacement shall be the employee with the least seniority from among the other employees of the Department of Public Works.

C. The crew working the rear of the trash truck shall be entitled to certain hazardous duty pay as set forth in Article 13 hereof.

**ARTICLE 8A**

**SPECIFIC CONDITIONS DURING SNOW PLOWING OR SALTING;**

**ASSIGNMENT OF RESPONSIBILITY BETWEEN DEPARTMENTS**

(A) Only one (1) employee shall be required in a truck when it is engaged in snow plowing or salting.

(B) The assignment of overtime for snow plowing and salting activities shall be made on the basis of a seniority list within the Department of Public Works in accordance with the provisions of Article 5 of this Agreement.

(C) The mechanic shall not be included in the overtime rotation with respect to snow plowing and salting operations. Supervisors and Assistant Supervisors that will be operating snow plowing and salting trucks shall participate in such overtime assignments pursuant to a seniority list which includes union employees and Supervisors and Assistant Supervisors. Supervisors and Assistant Supervisors that are not operating such trucks are not subject to this limitation.

**ARTICLE 9**

**HOLIDAYS**

- A. The following days shall be recognized as holidays with pay:
1. New Year's Day (January 1)
  2. Martin Luther King, Jr.'s Birthday
  3. Presidents' Day
  4. Good Friday
  5. Memorial Day
  6. Independence Day (July 4)
  7. Labor Day
  8. Columbus Day

9. Veteran's Day
10. Thanksgiving Day
11. Friday following Thanksgiving Day
12. Christmas Day
13. Six (6) days for personal emergency

B. In addition to the holidays listed above, any other day designated as a holiday by Executive Order of the President of United States, the Governor of New Jersey or Township Committee shall be treated as a holiday.

C. Employees who are scheduled to work on the recognized holidays noted in this Article shall be paid for the holiday plus time and one-half (1-1/2) for the holiday as such.

D. If the following holidays fall on a Saturday or Sunday, they shall be celebrated on the State holiday schedule; if the following holidays are celebrated on a Monday per State holiday schedule, they shall be celebrated on the State schedule as opposed to the traditional date for the day:

President's Day

Columbus Day

Veteran's Day

The following holidays shall be celebrated on the traditional date regardless of the day on which they actually fall:

New Year's Day

Independence Day

Christmas Day

E. Employees must work their regularly scheduled workday before and their regularly scheduled workday after a holiday in order to be paid

for the holiday. This does not apply to those employees who are on an approved leave.

**ARTICLE 10**

**VACATIONS**

A. Annual vacation leave, with pay, shall be earned according to the schedule shown below. The schedule below shall refer to calendar years and not employment years; e.g., on the schedule shown below an employee hired during 1992 shall be considered as having completed his first year on December 31, 1992; his fifth year on December 31, 1996; his tenth year as of December 31, 2001, etc.

1. First year (defined as remainder of the calendar year from date of hire until December 31) - One (1) working day per month for each full calendar month of service to a maximum of twelve (12) days.

2. Second through 4th year - 14 days per year.

3. Over 4 years (starting year 5) - 17 days per year.

4. Over 10 years (starting year 11) - 20 days per year.

5. Over 20 years (starting year 21) - 23 days per year.

B. Vacation leave shall accrue according to the following schedule:

1. First Year - one (1) day per full calendar month of service.

2. Second Year - one (1) day per full calendar month of service until completion of one (1) full employment year, consisting of twelve (12) consecutive months, at which time the remainder of the full second year vacation time shall accrue.

3. After Second Year - full vacation time shall accrue on January 1st, of each year.

C. Vacation allowance must be taken during the current calendar year and, to the extent possible, may be taken at such time as requested by employees unless the supervisor or the appointing authority determines that it cannot then be taken because of pressure or demands of work. Any unused vacation time may be carried forward into the next succeeding year only.

D. The selection of vacation time shall be in accordance with seniority principles with the employee having the most seniority given first preference. Selection shall be made as follows:

1. By December 1st of each year, employees shall have selected and posted vacation schedules for the period January 1st through June 30th next following.

2. By June 1st of each year, employees shall select and post vacation schedules for the period July 1st through December 31st next following.

3. There shall be no minimum vacation period, provided that an employee requesting a vacation day must submit his request for approval by 9:00 a.m. at least two (2) working days in advance of the scheduled vacation period and the employee must receive either a verbal or written confirmation from his supervisor that the request has been granted.

4. If an employee fails or neglects to make a vacation selection by the dates indicated above, then such employee may select a vacation schedule which does not conflict with the work schedule of other employees, but in making such selection, that employee may not rely on seniority.



ARTICLE 11

GROUP INSURANCE

A. Subject to any and all applicable legal and regulatory requirements, the **TOWNSHIP** shall provide medical insurance; a dental plan; a prescription plan and a life insurance plan. The employee shall pay a contribution to the cost of health benefits in the minimum amount required by state law. These benefits will be made available to eligible employees only after completion of the entry probation period.

B. The insurance currently consists of the following:

- (1) Selection of medical plan is Horizon Blue Cross Blue Shield of New Jersey Direct Access Plan;
- (2) Horizon Blue Cross Blue Shield of New Jersey Prescription Drug Coverage;
- (3) Delta Dental PPO Plus Premier Plan;
- (4) Fifteen Thousand Dollar (\$15,000.00) life insurance plan with AIG.
- (5) A 1,200.00 per year Health Reimbursement Account (HRA). This HRA shall be limited to those medical care expenses originating from medical plan co-pays, co-insurance and deductibles and prescription plan co-pays. It will not roll over from year to year. Attached to this agreement as Appendix A is an explanation of eligibility, enrollment and health reimbursement benefits provided by the anticipated administrator of the Township's HRA plan, AmeriFlex.
- (6) The current medical insurance broker and consultant for the **TOWNSHIP** is Marsh & McLennan Agency.

The **TOWNSHIP** represents that each of the plans based on the above is currently in full force and effect. In the event that the **TOWNSHIP** elects to substitute any other type of coverage, the benefits available under such alternate coverage shall be better than or equal to those benefits payable under the aforesaid plans so long as the costs of such benefits do not increase by more than 5% over the costs for the prior year. If benefits costs for the current plan increase by more than 5% over the costs for the prior year, the **TOWNSHIP** and **COUNCIL 71** will work in good faith to review the costs of better than or equal to benefits from alternate plans with a cost equal to or less than 5% over the costs for the prior year. If no such plan is available at better than or equal to benefits at a cost less than 5% over the costs of the prior year, alternative benefits shall be obtained with the best available plan at a cost equal to or less than 5% over the cost for the prior year; provided however, any such alternative plan must provide better than or equal to benefits to those under the Direct 10 State Health Benefits Plan, or the most comparable State Health Benefits Plan available in the event the Direct 10 Plan is no longer offered, or the **TOWNSHIP** will provide said State Health Benefits Plan. The parties understand that selection of the carrier is a managerial prerogative not subject to the terms of this collective bargaining agreement.

C. The terms of the Delta Dental Plan will be identical to the terms of said Plan offered to all employees and staff. However, employer agrees to assume up to \$500.00 of orthodontic costs for eligible employees and their dependents during the term of this Contract.

D. Employer agrees to reimburse each employee up to a total of \$150.00 per year for vision care covering such employee and employee's dependents.

E. An employee who retires after twenty-five (25) years or more of continuous employment with the **TOWNSHIP** shall be entitled to the continuance of medical coverage under such uniform conditions for retirees as the governing body shall prescribe and as are permitted by law.

F. In the event that an employee in the Bargaining Unit is eligible to be covered under the insurance plans specified in this Article, and such employee voluntarily waives such coverage because such employee is covered under a policy issued to his/her spouse through the spouse's employment, the **TOWNSHIP** employee waiving coverage under the **TOWNSHIP** plan or plans shall be entitled to receive a payment in the amount of Two Thousand Dollars (\$2,000.00) as a result of waiving **TOWNSHIP** insurance coverage if the **TOWNSHIP** plan permits such payment. Said amount shall be payable to eligible employees at the first pay period in December of each year when such employee has not been covered under the **TOWNSHIP's** policy at any time during that preceding calendar year. In order to qualify for this bonus payment, an employee must complete the necessary forms and file same with the Treasurer's Office by December 31st of each year for the following calendar year. In order to qualify for such bonus payment, such employee must also comply with all regulations established by the **TOWNSHIP** in this regard. Notwithstanding the foregoing, in accordance with state requirements an employee is not entitled to such waiver benefit if his or her spouse is covered under NJSHBP.

G. Employee Health Benefits Plan contributions from employee salary shall be calculated throughout the term of this Agreement on an annual basis in the same manner and using the same formula as they were calculated as of 1/1/2015 (Tier 4) under the State Law commonly known as Chapter 78. In the event a current employee's salary increase in 2016 is the sole cause of a higher employee contribution from the prior year under the foregoing Tier 4 formula, the employee's contribution percentage shall remain the same as calculated on 1/1/15. However, this contribution "freeze" in the event of a salary increase in 2016 does not apply to changes in contribution amounts due to premium increases. Also, if the employee changes the type of coverage (i.e., single to employee plus, employee plus to family, etc.), the employee shall pay the Tier 4 contribution for that new coverage.

## ARTICLE 12

### SICK LEAVE, BEREAVEMENT LEAVE

#### A. SERVICE CREDIT FOR SICK LEAVE:

1. All permanent employees shall be entitled to sick leave with pay in accordance with the schedule noted below.

2. As used in this Article, sick leave shall mean paid leave that may be granted to an employee who, through sickness or injury, becomes incapacitated to a degree that makes it impossible for him or her to perform the duties of his or her position or who is quarantined by a physician because he has been exposed to a contagious disease. Sick leave may also be used for the attendance of the employee upon a member of the immediate family who is seriously ill. Immediate family shall be defined as the spouse, child or grandchild of the employee; and the mother, father, sister/brother of the employee or employee's spouse.

3. An employee shall be entitled to a five (5) day death or tragedy leave for the death or tragedy in the immediate family as that term is defined in this Article. An employee shall be entitled to one (1) day death leave for the death of an aunt, uncle, niece or nephew. If additional time is required, the employee shall be permitted to charge same against sick leave.

4. Sick leave shall not be permitted for any extended period during which the employee is required to act as nurse or housekeeper during the period of illness.

B. **AMOUNT OF SICK LEAVE:**

1. Sick leave shall accrue on the following basis:

(a) Full-time employees employed on January 1st of each year shall accrue fifteen (15) sick days per year.

(b) New employees hired after January 1st of any year shall, during the first twelve (12) months of employment, earn one (1) sick day for each full month of employment. After twelve (12) months of consecutive employment, such employee shall be entitled to accrue the balance of any sick leave commencing with the start of the thirteenth (13th) month until January 1st next.

(c) Part-time employees shall accrue sick leave in accordance with the foregoing schedule and on a pro rata basis.

2. Employees shall be permitted to accumulate sick leave from year to year.

C. REPORTING OF ABSENCE ON SICK LEAVE:

1. If an employee is absent for reasons that entitle him to sick leave, his supervisor shall be notified promptly prior to the employee's usual reporting time.

2. The employee's failure to notify his/her supervisor may be cause for denial of sick leave for that absence and shall be construed as absence without leave and may be cause for disciplinary action.

3. An employee's absence without notice for five (5) consecutive days shall constitute a resignation.

4. Any abuse of sick leave by an employee shall constitute cause for disciplinary action.

D. VERIFICATION OF SICK LEAVE:

1. An employee may have a maximum of three (3) sick leave occurrences (which may consist of one or more continuous work days) during a calendar year which need not be accompanied by a physician's medical statement. An employee may be required to submit a medical statement for any sick leave occurrences in excess of three (3) whenever it is determined, in the sole judgment and discretion of the **TOWNSHIP**, that an employee shows an abusive pattern of sick leave occurrences, in which event, such employee shall be placed on a Proof of Illness Status. Once placed on a Proof of Illness Status, an employee shall be required to submit a medical statement for all sick leave occurrences thereafter. Such medical statement must indicate the nature of the illness and the fact that the employee could not report for work, the medical treatment prescribed, and that the employee is now medically fit to return to his/her job and perform the duties thereof. An employee that has been placed on Proof of Illness Status may be removed by the TOWNSHIP after that employee shows no pattern of abuse for a twelve (12) month period.

2. The **TOWNSHIP** may require an employee who has been absent because of a personal illness, as a condition of returning to duty, to be examined, at the expense of the **TOWNSHIP** by a physician designated by the **TOWNSHIP**. Such examination shall establish whether the employee is capable of performing his normal duties and that his return will not jeopardize the health of other employees.

E. **"BUY-BACK" OF ACCUMULATED SICK LEAVE:**

Upon retirement from employment with the **TOWNSHIP OF UPPER**, an employee shall be entitled to be reimbursed in an amount equal to fifty percent (50%) of the unused accumulated sick leave, which reimbursement shall be made at one hundred percent (100%) of such employee's then-current salary, but in no event, shall such reimbursement exceed the sum of Ten Thousand Dollars (\$10,000.00).

F. **DEATH OR TRAGEDY LEAVE:**

An employee shall be entitled to a five (5) day death or tragedy leave for the death or tragedy in the immediate family. The term immediate family shall be defined as follows: Spouse, child or grandchild of the employee; the mother, father, sister/brother of the employee or employee's spouse and the grandparents of the employee. If additional time is required, the employee shall be permitted to charge same against sick leave.

**ARTICLE 13**

**SALARIES AND COMPENSATION**

A. **COMPENSATION:**

1. Each employee covered under this Contract shall receive a pay increase during the term of this Contract as follows:

<u>Year</u>	<u>Increase</u>
(a) January 1, 2015 to December 31, 2015	None
(b) January 1, 2016 to December 31, 2016	2%
(c) January 1, 2017 to December 31, 2017	2%

2. Such increases shall be increases to the employee's base salary. No step increases shall be paid for the year 2015. For years 2016 and 2017 step increases shall be paid with the employee receiving the step level pay the employee is entitled to based on his or her years of service.

3. The **TOWNSHIP** reserves the right to establish a separate salary scale for any employee covered by this Contract who is hired on or after January 1, 2015 and to establish such scale by Ordinance or such other manner as permitted by law.

4. The Building Maintenance position shall receive an increase in year 2016 of \$1,000.00, representing 10 years in that position.

**B. UNIFORMS OR CLOTHING TO BE WORN ON THE JOB:**

1. Each employee shall be allowed a clothing allowance during each calendar year in the maximum amount of \$600.00. Said clothing allowance is intended to cover work clothes, work boots and outer-wear suitable and appropriate to the employee's job description and duties. In order to obtain reimbursement, the employee must present receipts for work-related clothing and apparel to the Treasurer's office.

2. Employees shall not be required to wear uniforms on the job, but the clothing worn by an employee must be appropriate and acceptable and is subject to the approval of the Road Supervisor. Whenever the Supervisor determines that the clothing worn by an employee is inappropriate, the Supervisor may send such employee home for a change



of clothing and such employee shall be docked and shall not be compensated for the time during which the employee returns home to become properly attired and returns to the job.

3. Each employee will be required to wear work boots, which shall be adequate and appropriate to preserve the employee's safety and to minimize injury. All employees in the Bargaining Unit shall be required to wear shirts during all hours of employment.

C. LONGEVITY:

1. Employees hired prior to January 1, 1996 shall be entitled to an additional sum known as "Longevity Pay", which shall be in addition to the compensation and benefits otherwise payable.

2. Longevity payments shall be computed or calculated as a percentage and solely on the base salary of an employee for the then current year. In calculating the amount, the employee's projected total base salary for the entire year shall be used, even though such salary may be increased by one (1) or more increments throughout the year.

3. Longevity payments shall be paid in accordance with the following schedule:

<u>Years of Service</u>	<u>Amount of Increase Based on Longevity</u>
After 5 years/60 months	2%
After 10 years/120 months	4%
After 15 years/180 months	6%
After 20 years/240 months	8%
After 25 years/300 months	10%

4. Longevity payments shall be paid in a lump sum and by separate check not later than the first (1st) pay period in January,

after adoption of the annual Salary Ordinance and following the anniversary of an employee's date of hire.

Example: An employee hired on April 1, 1995 will complete five (5) years or sixty (60) months of employment on March 31, 2000. Such employee will be entitled to a longevity payment in January, 2001. The amount will equal two percent (2%) of such employee's total base salary for 2001.

This same employee will have completed ten (10) years or one hundred twenty (120) months of employment on March 31, 2005 and will be entitled to a longevity payment in January, 2006. That amount will equal four percent (4%) of that employee's total base salary for 2006.

5. Any employee entitled to be paid longevity who retires, resigns or otherwise terminates employment with the **TOWNSHIP**, shall be paid longevity in accordance with the above schedule and in accordance with the date scheduled for such payment. Nothing contained herein, however, shall be construed as prohibiting the **TOWNSHIP** from making a longevity payment under such circumstances in advance of the time when it would otherwise be scheduled to be made.

6. Notwithstanding the provisions of Paragraph 3 above, longevity pay for eligible employees (those hired prior to January 1, 1996) will be capped and longevity pay will be payable up to a maximum of Three Thousand Dollars (\$3,000.00). Any employee who was at or above the capped amount of Three Thousand Dollars (\$3,000.00) on January 1, 1996 shall be capped at the 1996 amount.

7. Longevity pay has been eliminated for any employee hired on or after January 1, 1996.

D. WORKING OUT OF CLASS:

If an employee works in a higher paid classification for one (1) or more days, such employee shall be paid at the higher rate of pay for all days worked in the higher classification.

E. ADDITIONAL PAY TO CREW OF SANITATION VEHICLES:

Laborers employed in the collection of trash and assigned to the rear of a trash truck shall, in addition to any other compensation payable pursuant to this Contract, receive an additional sum to be known as "Hazardous Duty Pay", which shall be payable at the rate of \$.25 per hour. The hours so worked shall be certified to the Township Treasurer by the Road Supervisor for payroll purposes.

F. THANKSGIVING BONUS

Each employee in the bargaining unit will be provided with a turkey or a certificate in the amount of thirty dollars (\$30.00) in advance of the Thanksgiving holiday. In lieu of a gift card, the **TOWNSHIP** may provide a sweatshirt to the employee.

ARTICLE 14

WORK RULES AND TOWNSHIP POLICY

A. The **TOWNSHIP** may adopt and post or otherwise disseminate such rules, regulations and **TOWNSHIP** policies as it may desire, provided that the same are not contrary to this Agreement and further provided that the employees shall have the right to grieve with reference to the same within five (5) working days after the same are posted and served upon the Local Union Representative and the District Council.

**ARTICLE 15**

**NO-STRIKE PLEDGE**

A. **COUNCIL 71** covenants and agrees that during the term of this Agreement neither **COUNCIL 71**, nor any person acting in its behalf, will cause, authorize or support, nor will any of its members take part in a strike (i.e., the concerted failure to report for duty, or willful absence of any employee from his position, or stoppage of work or abstinence in whole or in part, from the full, faithful and proper performance of the employee's duties of employment), work stoppage, slowdown, walkout or other job action against the **TOWNSHIP**. **COUNCIL 71** agrees that such action would constitute a material breach of this Agreement.

B. In the event of a strike, slowdown, walkout or other job action, it is covenanted and agreed that participation in any such activity by an employee covered under the terms of this Agreement shall be deemed grounds for termination of employment of such employee or employees, subject, however, to the application of the Grievance Procedure contained in Article 3.

C. Nothing contained in this Agreement shall be construed to limit or restrict the **TOWNSHIP** of its right to seek and obtain such judicial relief as it may be entitled to have in law or in equity for injunction or damages or both in the event of such breach by **COUNCIL 71** or its members.

**ARTICLE 16**

**NON-DISCRIMINATION**

A. There shall be no discrimination by the **TOWNSHIP** or **COUNCIL 71** against an employee on account of race, color, creed, sex, sexual preference or national origin.

B. There shall be no discrimination, interference, restraint or coercion by the **TOWNSHIP** or any of its representatives against any of the employees covered under this Agreement because of their membership or non-membership in **COUNCIL 71** or because of any lawful activities by such employees on behalf of **COUNCIL 71**. **COUNCIL 71**, its members and agents, shall not discriminate against, interfere with, restrain or coerce any employees covered under this Agreement who are not members of **COUNCIL 71** and shall not solicit membership in **COUNCIL 71** or the payment of dues during work time.

**ARTICLE 17**

**SEPARABILITY AND SAVINGS**

A. If any provision of this Agreement or any application of this Agreement to any employee or group of employees is held invalid by operation of law or by a Court or other tribunal of competent jurisdiction, such provision shall be inoperative but all other provisions shall not be affected thereby and shall continue in full force and effect.

**ARTICLE 18**

**PROBATIONARY PERIOD; INITIAL SALARY**

A. Every new person hired or appointed shall be deemed to be a probationary employee and on probation in the position to which he is hired or appointed for a period of ninety (90) days. Prior to his

completion of the probationary period, the employee shall be evaluated by the Department Head to determine whether he shall be granted permanent status.

B. Any employee failing to satisfactorily complete his/her probation shall be demoted, in the event such becomes necessary, to his/her last permanent position, or if such employee does not have a permanent classification, such probationary employee may be dismissed.

C. A probationary employee shall be hired at a salary designated by Resolution of the Township Committee. That salary shall remain in effect until the probationary period of ninety (90) days is completed. Upon the successful completion of the probationary period, such employee shall then be compensated at the maximum salary authorized for such position as determined by the Salary Ordinance then in effect in the **TOWNSHIP**, unless the **TOWNSHIP** has established a separate salary scale pursuant to Article 13, Section A(3).

#### ARTICLE 19

##### WORKERS COMPENSATION

A. JOB-RELATED INJURY: When an employee sustains a job-related injury, he/she shall be entitled to receive his/her full salary from the **TOWNSHIP** and such employee shall be required to endorse over the **TOWNSHIP** any and all funds received from Workmen's Compensation.

B. JOB-RELATED INJURY - SEVEN (7) DAYS OR LESS: Whenever an employee sustains a job-related injury and is not absent for more than seven (7) days, no time will be charged against such employee's sick or vacation time provided that such employee immediately notifies his/her Department Head or immediate supervisor of the occurrence of such job-related injury.

C. EFFECTIVE DATE: The provisions of Article 19 shall become effective on the date of signing of this Contract by the **TOWNSHIP** and by **COUNCIL 71** representatives.

## ARTICLE 20

### CALL-IN TIME; MEAL ALLOWANCE

A. An employee who is required to return to work during periods other than his/her regularly scheduled shift, shall be guaranteed pay for two (2) hours at time and one-half his/her normal rate of pay, notwithstanding the fact that the employee may be required to work less than two (2) hours.

B. In the event that the call-in period exceeds two (2) hours, any additional time will be at the rate of time and one-half.

C. An employee shall receive a meal allowance of Ten Dollars (\$10.00) after each twelve (12) hours of continuous work.

D. An employee who is required to work on weekends shall be entitled to a meal allowance of Six Dollars (\$6.00) after each four (4) hours of continuous work. The provisions of Subparagraph (C) above do not apply to weekend work.

## ARTICLE 21

### HEALTH AND SAFETY

A. The **TOWNSHIP** will, at all times, maintain a work environment that is safe and healthful. When necessary, the **TOWNSHIP** will provide employees with protective clothing or wearing apparel, tools or devices that are or may be reasonably necessary to protect the health and safety of the employees. The **TOWNSHIP** reserves the right, as a management prerogative, to establish rules, regulations and procedures for the

safety of **TOWNSHIP** employees. The failure of an employee to abide by such rules, regulations and directives may result in disciplinary action.

B. The provisions of this Article are not intended and shall not be construed as providing any additional rights or remedies which are in addition to those already provided by New Jersey Law.

## ARTICLE 22

### MISCELLANEOUS PROVISIONS

#### A. LICENSE AND CDL LICENSE REQUIREMENTS:

1. All employees are expected to have and maintain a valid New Jersey driver's license as a condition of employment. All job titles except laborer and building maintenance worker shall be required to have a Commercial Driver's License ("CDL") in the performance of that employee's duties. Such CDL shall be obtained by the employee and shall be maintained in good standing as a condition of employment. However, the **TOWNSHIP** shall reimburse the employee that portion of the Division of Motor Vehicles fee for a CDL renewal that is above the standard drivers license renewal fee, provided such employee uses his or her CDL for job duties with the **TOWNSHIP**.

2. If an employee required to maintain a CDL loses such license said employee shall be demoted to the title of laborer provided said employee possesses a valid New Jersey driver's license.

3. If any employee shall have his or her New Jersey driver's license suspended for any reason said employee shall be offered a one time opportunity for demotion to laborer if said position is available within the **TOWNSHIP** and the **TOWNSHIP** can accommodate the employee's lack of a license during the period of suspension without interfering with normal **TOWNSHIP** operations. This opportunity is not available for a



license suspension of greater than seven months. If a laborer or building maintenance worker shall have his or her New Jersey driver's license suspended he or she shall be offered the same opportunity to continue in the position if the **TOWNSHIP** can accommodate the employee's lack of a license during the period of suspension (not to exceed seven months) without interfering with normal **TOWNSHIP** operations. In the event more than one employee has his or her driver's license suspended the offer of an available laborer position shall be given to the employee with the most seniority. The **TOWNSHIP** does not guarantee a position will be available or remain available. If a position is not available or if the suspension is greater than seven months or if an employee loses his or her license a second time the employee may be terminated. It is understood and agreed that, except for a short term isolated occurrence, the lack of a valid driver's license causes a significant disruption to **TOWNSHIP** operations.

4. The **TOWNSHIP** shall provide time during normal working hours for an employee to study and practice for the examination for a CDL.

5. Any prior practice inconsistent with the terms of this Article is hereby superceded and replaced by the provisions of this Article.

B. **DEATH OR TRAGEDY LEAVE:** [See Article 12].

C. **PART TIME EMPLOYEES:**

The Township may from time to time hire part time employees for various positions. Other than as required by Township policy or applicable law, part time employees are not entitled to any benefits or salaries set forth in this agreement. Any such salary or benefits shall

be set by the Township from time to time as permitted by law. For purposes of this agreement, part time employees are defined as:

- a) seasonal or temporary employees that may work a full week (40 hours); and
- b) long term employees working less than 30 hours a week

No such part time employee shall be hired to effectuate the layoff of an existing employee. Part time employees shall be hired to supplement the workforce in the event of retirements or to achieve added efficiency without the expense of additional full time staff. Part time employees shall not be union members or pay union dues.

#### **ARTICLE 23**

#### **FULLY BARGAINED PROVISIONS**

This Agreement represents and incorporates the complete and final understanding and settlement by the parties on all bargainable issues which were or could have been the subject of negotiation.

#### **ARTICLE 24**

#### **EFFECTIVE DATE**

The provisions of this Contract shall become effective January 1, 2015.

#### **ARTICLE 25**

#### **TERM AND RENEWAL**

This Agreement shall be in full force and effect as of January 1, 2015 and shall remain in effect to and including December 31, 2017. This Agreement shall continue in full force and effect from year to year thereafter unless one party or the other gives notice, in writing, at least one hundred twenty (120) days prior to the expiration date of this Agreement of a desire to change, modify or terminate this Agreement.

## Appendix A

### ARTICLE III. ELIGIBILITY AND PARTICIPATION

#### 3.1 Eligibility to Participate

An individual is an Eligible Employee and may participate in this Plan if the individual is an Employee; regularly works 30 hours or more per week; and is enrolled in the Employer's Medical/Rx Plan. Once an Employee becomes an Eligible Employee by meeting the Plan's eligibility requirements and submitting an Enrollment Form to the Administrator, the Eligible Employee's coverage under the Plan as a Participant will commence on the first day of the month coinciding with or following the date the eligibility requirements have been met.

#### 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
- 14. the date on which the Employee ceases (because of retirement, termination of employment, layoff, reduction in hours, or any other reason) to be an Eligible Employee, provided that eligibility may continue beyond such date for purposes of COBRA coverage, as may be permitted by the Administrator on a uniform and consistent basis under Section 7.7.

Reimbursements from the HRA Account after termination of participation will be made pursuant to Section 7.7 (relating to a run-out period for submitting claims incurred prior to termination and relating to COBRA).

#### 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 of the date of a termination of employment, the Employee will be reinstated with the same HRA Account balance that such individual had before termination. If an Employee (whether or not a Participant) terminates employment and is not rehired within 30 days or ceases to be an Eligible Employee for any other reason, including (but not limited to) a reduction in 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 and USERRA Leaves of Absence

Notwithstanding any provision to the contrary in this Plan, if a Participant goes on a qualifying leave under the FMLA or USERRA (if the Employer is subject to either or both of these), and if

Employer is subject to either or both of same, then to the extent required by the FMLA or USERRA, as applicable, the Employer will continue to maintain the Participant's Benefits on the same terms and conditions as if the Participant were still an active Eligible Employee.

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

If a Participant goes on a leave of absence that is not subject to the FMLA or USERRA, the Participant will be treated as having terminated participation, as described above under Section 3.2.

## **ARTICLE IV. METHOD AND TIMING OF ENROLLMENT**

### **4.1 Enrollment When First Eligible**

An Employee who first becomes an Eligible Employee by meeting the Plan's eligibility requirements will commence participation in this Plan as outlined in Section 3.1, provided that the Eligible Employee submits an Enrollment Form to the Administrator before the first day on which participation is to commence. Once the Eligible Employee is enrolled as a Participant, his or her participation will continue month-to-month and year-to-year until his or her participation ceases pursuant to Section 3.2. The Enrollment Form shall identify the Spouse and Dependents whose Medical Care Expenses may be submitted to the HRA. The Participant must promptly notify the Administrator if this information changes.

## **ARTICLE V. BENEFITS OFFERED AND METHOD OF FUNDING**

### **5.1 Benefits Offered**

When an Eligible Employee becomes a Participant in accordance with Articles III and IV, an HRA Account will be established for such Participant to receive Benefits in the form of reimbursements for Medical Care Expenses, as described in Article VII. In no event shall Benefits be provided in the form of cash or any other taxable or nontaxable benefit other than reimbursement for Medical Care Expenses.

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

The Employer funds the full amount of the HRA Accounts. There are no Participant contributions for Benefits under the Plan. Under no circumstances will the Benefits be funded with salary reduction contributions, employer contributions (e.g., flex credits) or otherwise under a cafeteria plan, nor will salary reduction contributions or employer contributions be treated as Employer contributions to the Plan.

### **5.3 Funding This Plan**

All of the amounts payable under this Plan shall be paid from the general assets of the Employer. Nothing herein will be construed to require the Employer or the 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.

## **ARTICLE VII. HEALTH REIMBURSEMENT BENEFITS**

### **7.1 Benefits**

The Plan will reimburse Participants for Medical Care Expenses up to the unused amount in the Participant's HRA Account, as set forth and adjusted under Section 7.3.

### **7.2 Eligible Medical Care Expenses**

Under the HRA Account, a Participant may receive reimbursement for Medical Care Expenses incurred during a Period of Coverage.

(a) *Incurred.* A Medical Care Expense is incurred at the time the medical care or service giving rise to the expense is furnished, and not when the individual incurring the expense is formally billed for, is charged for, or pays for the medical care. Medical Care Expenses incurred before a Participant first becomes covered by the Plan are not eligible.

(b) *Medical Care Expenses Generally.* "Medical Care Expenses" are the following:

- In-Network Medical Plan Copays
- In-Network Medical Plan Coinsurance
- Out-of-Network Medical Plan Deductible
- Out-of-Network Medical Plan Copays
- Out-of-Network Medical Plan Coinsurance
- Rx Plan Copays

(c) *Cannot Be Reimbursed or Reimbursable From Another Source.* Medical Care Expenses may be reimbursed from the Participant's HRA Account only to the extent that the Participant or other individual incurring the expense is not reimbursed for the expense (nor is the expense reimbursable) through the Health Insurance Plan, other insurance, or any other accident or health plan (but see Section 7.9 if the other health plan is a Health FSA). If only a portion of a Medical Care Expense has been reimbursed elsewhere (e.g., because the Health Insurance Plan imposes co-payment or deductible limitations), the HRA Account may reimburse the remaining portion of such expense if it otherwise meets the requirements of this Article VII.

(d) *Expenses for OTC Drugs and Medicines Not Reimbursable after December 31, 2010 without a Doctor's Prescription.* Notwithstanding anything else in this document to the contrary, no expense for an over-the-counter drug or medicine incurred on or after January 1, 2011 shall be reimbursable by the HRA Account unless a valid prescription for same (as determined under applicable state law) is provided.

### **7.3 Maximum Benefits**

- (a) *Maximum Benefits.* The maximum dollar amount that may be credited to an HRA Account for an Employee who participates for an entire 12-month Period of Coverage is \$1,200.00 employee-only coverage, \$1,200.00 employee plus spouse coverage, \$1,200.00 employee plus child coverage and \$1,200.00 family coverage.
- (b) *Changes.* For subsequent Plan Years, the maximum dollar limit may be changed by the Administrator and shall be communicated to Employees through the Enrollment Form, the SPD or another document. If a Participant enters the HRA Plan mid-year, then the Participant will be credited with the full annual contribution.
- (c) *Nondiscrimination.* Reimbursements to Highly Compensated Individuals may be limited or treated as taxable compensation to comply with Code § 105(h), as may be determined by the Administrator in its sole discretion.

### **7.5 Carryover of Accounts**

If any balance remains in the Participant's HRA account after all reimbursements have been made for the Period of Coverage, such balance shall be forfeited. However, upon termination of employment or other loss of eligibility, the Participant's coverage ceases, and expenses incurred after such time will not be reimbursed unless COBRA continuation coverage is elected as provided in Section 7.7. In addition, any HRA benefit payments that are unclaimed (e.g., uncashed benefit checks) by the close of the Plan Year following the Period of Coverage in which the Medical Care Expense was incurred shall be forfeited.

When a Participant ceases to be a Participant, the Participant will not be able to receive reimbursements for Medical Care Expenses incurred after his or her participation terminates. However, such Participant (or the Participant's estate) may claim reimbursement for any Medical Care Expenses incurred during the Period of Coverage prior to termination of participation, provided that the Participant (or the Participant's estate) files a claim by 3 month(s) following the Participant's termination date.

### **7.7 Reimbursements After Termination; COBRA**

When a Participant ceases to be a Participant under Section 3.2, the Participant will not be able to receive reimbursements for Medical Care Expenses incurred after his or her participation terminates. However, such Participant (or the Participant's estate) may claim reimbursement for any Medical Care Expenses incurred during the Period of Coverage prior to termination of participation, provided that the Participant (or the Participant's estate) files a claim within 3 month(s) following the Participant's termination date.

Notwithstanding any provision to the contrary in this Plan, to the extent required by COBRA, the Participant and his or her Spouse and Dependents (Qualified Beneficiaries), whose coverage terminates under the HRA Account because of a COBRA qualifying event, shall be given the opportunity to continue (on a self-pay basis) the same coverage that he or she had under the HRA Account on the day before the qualifying event for the periods prescribed by COBRA (subject to all conditions and limitations under COBRA). However, in the event that such coverage is modified for all similarly-situated non-COBRA Participants prior to the date continuation coverage is elected, Qualified Beneficiaries shall be eligible to continue the same coverage that is provided to similarly situated non-COBRA Participants. At the beginning of each month in the Period of Coverage, Qualified Beneficiaries shall be credited with the reimbursement amount that is made available to similarly situated non-COBRA beneficiaries, and any unused reimbursement amounts from the previous Period of Coverage shall be carried over to the next Period of Coverage (provided that the applicable premium is paid). A premium for COBRA continuation coverage shall be charged to Qualified Beneficiaries in such amounts and shall be payable at such times as are established by the Administrator and permitted by COBRA.





