

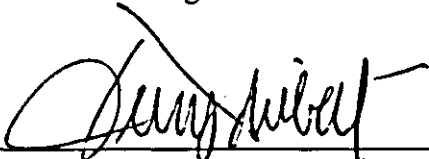
FLEXIBLE BENEFITS PLAN DOCUMENT
(Section 125 Plan)

NORTH TEXAS TOLLWAY AUTHORITY

EFFECTIVE DATE: *JANUARY 1, 2003*

The Public Employee Benefits Cooperative of North Texas ("PEBC") was created in 1998. On behalf of its member governments, the PEBC works diligently to keep health care costs affordable. In this era of skyrocketing health care and pharmacy costs, the PEBC is dedicated to providing choice, flexibility and value as we strive to manage costs without compromising the level of benefits. The PEBC provides many services including joint purchase of employee benefits and cost effective administration of PEBC programs. The Employers that are members of the PEBC share the belief that a quality employee benefits program is necessary to recruit and retain a quality workforce.

The purpose of this PEBC Model Plan Document is to provide the basis for individual Section 125 plans for member entities of the PEBC. The provisions of this document support the PEBC benefit plans. This PEBC Model Plan Document is not intended to serve as or take the place of particularized legal or tax advice. The PEBC recommends that you obtain the advice of your own legal and tax advisors who specialize in employee benefits and tax matters before deciding to rely upon the interpretations reflected in this document. The PEBC does not offer tax advice to member entities or to their employees. Therefore, an Employer desiring to rely upon legal or tax advice must retain its own legal and/or tax counsel for that purpose.



Signature of Plan Administrator for PEBC Member Entity

12/20/02

Date

NORTH TEXAS TOLLWAY AUTHORITY

FLEXIBLE BENEFITS PLAN

AMENDED AND RESTATED EFFECTIVE: JANUARY 1, 2003

FLEXIBLE BENEFITS PLAN DOCUMENT (SECTION 125 PLAN)

**FLEXIBLE BENEFITS PLAN DOCUMENT
TABLE OF CONTENTS**

	<u>Page</u>
ARTICLE 1	
FOREWORD AND PURPOSE	1
ARTICLE 2	
DEFINITIONS AND CONSTRUCTION	1
2.1 Definitions	
(a) Change in Status	1
(b) Code	1
(c) Component Plan	1
(d) Compensation	1
(e) Coverage Expenses	1
(f) Dependent	1
(g) Effective Date	2
(h) Eligible Employee	2
(i) Employer	2
(j) Employer Contribution	2
(k) Flexible Pay	3
(l) FMLA Leave	3
(m) Highly Compensated Employee	3
(n) Highly Compensated Participant	3
(o) Hire Date	3
(p) Key Employee	3
(q) Leave of Absence	3
(r) Participant	3
(s) Plan	3
(t) Plan Administrator	3
(u) Plan Year	3
(v) Spouse	3
(w) USERRA Leave	3
2.2 Construction	3
ARTICLE 3	
PARTICIPATION AND ENROLLMENT	4
3.1 Participation	4
(a) Eligibility to Participate	4
(b) Termination of Participation	4
(c) Reinstatement of Former Participants	4
(d) Participation Conditions	5
3.2 Enrollment	5

	(a) Enrollment Periods	6
3.3	Irrevocability of Elections	7
	(a) Change in Status Defined	7
	(b) Events Permitting Exception to Irrevocability Rule	8
3.4	Notification	13
3.5	Reduction of Certain Elections to Prevent Discrimination	13

ARTICLE 4

	CONTRIBUTIONS	13
4.1	Non-Elective Contributions and Opt-Out Contributions	13
4.2	Elective Contributions	14
	(a) Benefit	14
	(b) Flexible Pay Contributions	14
	(c) Election	14
4.3	Effect of Change in Status	14
4.4	FMLA Leave Rules and Payment Options	14
	(a) Pre-Pay Method	15
	(b) Pay-as-you-go Method	15
	(c) Catch-up Method	15
4.5	Non-FMLA Leaves of Absence	16

ARTICLE 5

	ADMINISTRATION	16
5.1	Allocation of Responsibility for Plan Administration	16
5.2	Administration	16
5.3	Claims Procedure	17
5.4	Other Administrative Powers and Duties	17
5.5	Rules and Decisions	18
5.6	Forms and Requests for Information	18
5.7	Responsibility for Plan	18
5.8	Funding Policy	19

ARTICLE 6

	AMENDMENT OF THE PLAN	19
--	-----------------------	----

ARTICLE 7

	TERMINATION OF THE PLAN	19
--	-------------------------	----

ARTICLE 8

	MISCELLANEOUS	19
8.1	No Contract of Employment	19
8.2	No Guarantee of Non-Taxability	19

8.3	Nondiscrimination	20
8.4	Construction of Agreement	20
8.5	Headings	20
8.6	Severability	20
8.7	Non-Alienation of Benefits	20
8.8	Effect of Mistake	20
8.9	Plan Provisions Controlling	21
8.10	Incorporation by Reference	21
8.11	Code Compliance	21

ARTICLE 9

SIGNATURE	22
------------------	-----------

EXHIBIT A

COMPONENT PLANS	A-1
------------------------	------------

ARTICLE 1

FOREWORD AND PURPOSE

The North Texas Tollway Authority hereby amends and restates the North Texas Tollway Authority Cafeteria Plan (the "Plan"); hereafter, to be known as the North Texas Tollway Authority Flexible Benefits Plan, effective *January 1, 2003*. This Plan was originally established effective September 1, 1997. This Plan is designed to permit eligible Participants to pay for coverage for themselves and their eligible Dependents under various Component Plans as shown on Exhibit A on a pre-tax salary reduction basis. Unless otherwise prohibited by law, all salary reductions will be on a pre-tax basis.

This Plan is intended to qualify as a "Cafeteria Plan" under Section 125 of the Internal Revenue Code of 1986 ("the Code"), as amended, and applicable regulations, and shall be interpreted to accomplish that objective.

ARTICLE 2

DEFINITIONS AND CONSTRUCTION

2.1 Definitions: Where the following capitalized words and phrases appear in this Plan they shall have the meaning set forth below, unless a different meaning is plainly required by the context:

- (a) **Change in Status:** For purposes of this Plan, a Participant will incur a "Change in Status" when he or she experiences any of the events described in Section 3.3(a) of this Plan. See Sections 3.3 and 4.3 of this Plan for requirements that must be met for a Participant to change his or her election during the Plan Year on account of a Change in Status.
- (b) **Code:** The Internal Revenue Code of 1986 as amended or as it may be amended from time to time, and regulations and rulings issued thereunder, as amended from time to time. References to a Code or "IRC" Section shall be deemed to be that Section as it now exists and reflecting any successor provisions.
- (c) **Component Plan:** Any one of the benefit plans adopted by the Employer and made available to employees through this Flexible Benefit Plan. All Component Plans shown on Exhibit A are thus incorporated into this Plan.
- (d) **Compensation:** For each Plan Year, a Participant's Compensation is defined as the actual compensation (including bonuses and overtime) accrued or paid by the Employer to the Participant for the period during which the Employee is a Participant in this Plan (without regard to any salary reduction under this Plan), but excluding reimbursed expenses, credits, or Employer-derived benefits under any plan of deferred compensation, and including amounts contributed to any Employer-sponsored 401(k), 403(b) plan, or other Employer-sponsored retirement plan by the Participant.
- (e) **Coverage Expenses:** The insurance premiums or other costs for the benefit coverage under this Plan or one of the Component Plans in Exhibit A which a Participant elects pursuant to Section 4.2. For each Plan Year, the Plan Administrator shall specify the premium or other cost for benefit coverage which is applicable to each of the Component Plans.
- (f) **Dependent:** A lawful Spouse, child, or other individual who is a federal tax dependent of a

Participant as defined by IRC § 152 and regulations thereunder at the time of enrollment in the Plan, subject to any further limitations provided by each Component Plan. The definition of a Dependent includes unmarried children up to age 25 who meet the dependency requirements of the Internal Revenue Code. Any child to whom Code § 152(e) applies (regarding a child of divorced parents) is eligible to be treated as a dependent of either but not both parents. While Dependents are not eligible to enroll as Participants in this Plan, this Plan may provide benefits to Dependents of Plan Participants.

- (g) **Effective Date:** This Plan has been amended and restated effective January 1, 2003.
- (h) **Eligible Employee:** Any full-time employee of the Employer who is actively employed and regularly scheduled to work at least 40 hours per week, and who has been employed by the Employer for 30 consecutive calendar days following the employee's Hire Date. Part-time employees are not eligible for this Plan unless your Employer specifically includes coverage for regularly employed part-time employees. See the Employment Policies of your Employer to determine if coverage is available for part-time employees and what conditions or restrictions may apply. If your Employer offers coverage to part-time employees, Eligible Employees include any part-time employee of the Employer who is actively employed and regularly scheduled to work at least 25 hours per week, and who has been employed by the Employer for 30 consecutive calendar days following the employee's Hire Date. Elected officials are eligible for this plan and are always considered actively at work as an employee. However, elected officials must complete the Enrollment Process within the required time frames.

The term "Eligible Employee" does not include temporary or leased employees or independent contractors. In addition, any individuals deemed ineligible to participate under the Code and related regulations are not Eligible Employees under this Plan. The term "Eligible Employee" includes 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.

An Eligible Employee who elects to opt-out of this Plan or any underlying Component Plan is considered not enrolled in those plans.

- (i) **Employer:** The Employer means the North Texas Tollway Authority.
- (j) **Employer Contribution:** The Employer Contribution for each Plan Year shall be the sum of (1) and (2) below:
 - (1) *Non-elective contributions:* The amount, if any, that the Employer makes available for the benefit of Participants for the Plan Year pursuant to Section 4.1.
 - (2) *Elective contributions:* The amount of Flexible Pay applied to a Participant's Coverage Expenses pursuant to a salary reduction agreement under the Plan (Section 4.2). It is intended hereunder that such amounts shall, for tax purposes (including Section 125 of the Code), constitute Employer Contributions.

- (k) **Flexible Pay:** The amount of Compensation that is applied on behalf of a Participant to pay his or her Coverage Expenses or that he or she may elect to receive as additional cash compensation, as described in Section 4.2. Flexible Pay may also be referred to as the amount of salary reduction which is applied to pay Coverage Expenses for Component Plans on a pre-tax basis.
- (l) **FMLA Leave:** Any leave taken by an Eligible Employee under the Family and Medical Leave Act of 1993 ("FMLA"), as amended.
- (m) **Highly Compensated Employee:** An employee as defined by Internal Revenue Code §414(q).
- (n) **Highly Compensated Participant:** A Participant as defined by Internal Revenue Code §125(e).
- (o) **Hire Date:** The date the Employee actively begins working for the Employer on a regular, full-time basis. If your Employer offers coverage to part-time employees, the Hire Date is the date the Employee actively begins working for the Employer on a regular, part-time basis.
- (p) **Key Employee:** An employee as defined by Internal Revenue Code § 416(i)(I).
- (q) **Leave of Absence:** Any FMLA Leave or any other approved leave of absence taken by an Eligible Employee under the Employer's policy regarding paid or unpaid leaves of absence.
- (r) **Participant:** Any Eligible Employee who has met the participation requirements of Section 3.1 and who has not, for any reason, become ineligible to participate in the Plan. An individual who becomes a Participant shall remain a Participant until all benefits due him or her under the provisions of the Plan have been paid or have otherwise been satisfied. All Eligible Employees are deemed to be Participants, regardless of any individual Participant's decision to elect to receive all of his or her compensation in cash in lieu of electing benefits under Component Plans, unless the Employee has elected to opt-out of this Plan.
- (s) **Plan:** The North Texas Tollway Authority Flexible Benefits Plan as set forth in this document and as amended from time to time.
- (t) **Plan Administrator:** The Plan Administrator is the North Texas Tollway Authority or its successor or successors, which shall have authority to administer the Plan as provided in Article 5.
- (u) **Plan Year:** The Plan Year means the 12-month period commencing on January 1st and ending on December 31st of the same year.
- (v) **Spouse:** An individual who is legally married to a Participant as determined under applicable State law and who is treated as a spouse for tax purposes under the Internal Revenue Code.
- (w) **USERRA Leave:** Any leave taken by an Eligible Employee under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), as amended.

2.2 Construction: As used in this Plan, the singular includes the plural, unless the context clearly indicates

the contrary.

ARTICLE 3

PARTICIPATION AND ENROLLMENT

3.1 Participation:

- (a) **Eligibility to Participate:** An individual is eligible to participate in this Plan if the individual satisfies the definition of an Eligible Employee in Section 2.1(h) above. Once an Eligible Employee has met the Plan's eligibility requirements, he or she may elect coverage under this Plan effective the first day of the next calendar month, or for any subsequent Plan Year, in accordance with the procedures described in Section 3.1(d) below.
- (b) **Termination of Participation:** A Participant may continue to participate in this Plan until the earlier of the following dates:
- (1) The last day of the calendar month in which the Participant terminates employment by death, disability, lay off, approved leave of absence, retirement or other separation from service;
 - (2) The last day of the calendar month in which the Participant ceases to work for the Employer as an Eligible Employee;
 - (3) The last day of the calendar month in which the Participant revokes his or her election to participate on account of and consistent with Section 3.2 below; or
 - (4) The date this Plan terminates.

Nothing contained in this Section 3.1(b), however, shall preclude a former Participant from exercising his or her rights under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), if applicable. In addition, a Participant commencing FMLA Leave shall be allowed to continue to participate in the Plan with respect to any Component Plan which provides group health coverage, subject to Employer policies and subject to the terms of the underlying plans. The rights of a Participant who is commencing FMLA Leave, USERRA Leave, or other approved leave of absence to continue participation as to any Component Plan shall be determined by the Employer's policy for employees on a Leave of Absence and is subject to the terms of the underlying plans.

- (c) **Reinstatement of Former Participants:** A former Participant may become a Participant again if and when he or she meets the participation requirements of Section 3.1(a). A former Participant who terminates coverage under any Component Plan pursuant to Section 3.3 shall be allowed to participate in this Plan again as permitted by regulations described in Section 3.3 and may enroll pursuant to a Change in Status as described in Section 3.2(a)(3).

Except as otherwise provided for in the applicable Component Plan, a former Participant who is

rehired within 30 days or less of the date of a termination of employment will be reinstated with the same election that the individual had prior to the termination. A Participant's rehire date is defined as the date Employee begins working for the Employer on a regular basis following the Participant's most recent termination of employment. If the rehire date of a former Participant is more than 30 days following the Participant's termination of employment date and the former Participant is otherwise eligible to participate in the Plan pursuant to Section 2.1(a) and applicable Component Plans, the individual must make a new election.

(d) **Participation Conditions:** As a condition of participation and receipt of benefits under this Plan, each Participant agrees to do all of the following:

- (1) Complete the Enrollment Process, as determined by the Employer's policies, described in Section 3.2 below even if the Participant chooses not to select any benefits. Any enrollment materials must be received by the Employer's Office of Human Resources or Director of Personnel within 14 days of the Employee's Hire Date.
- (2) Observe all Plan rules and regulations.
- (3) Submit to the Plan Administrator all reports, bills, and other information that the Plan Administrator may reasonably require in order to administer the Plan.

3.2 Enrollment: An Eligible Employee (as defined in Section 2.1(h)) who meets the participation requirements in Section 3.1 may enroll (or re-enroll) in the Plan by completing the Enrollment Process as determined by the Employer during an enrollment period described in subsection (a) below. The Enrollment Process specifies the Eligible Employee's elections for the Plan Year for benefit coverage under the Component Plans for which he or she is eligible and confirms his or her agreement to use the necessary amount of Flexible Pay to pay for Coverage Expenses, if any. Any enrollment materials submitted by an Eligible Employee, whether in paper or electronic form, must meet any standards for completeness and accuracy that the Plan Administrator may establish. It is the Employee's responsibility to ensure his or her completed enrollment materials are submitted to the Employer's Office of Human Resources or Director of Personnel. Failure to follow the Employer's designated Enrollment Process will result in a default election in the Plan and in underlying Component Plan(s), subject to the Employer's policies, as described in Section 3.2(a)(1) below.

An Eligible Employee who elects to opt-out of this Plan or any underlying Component Plan is considered not enrolled in those plans.

A Participant's elections shall not be effective prior to the date the completed enrollment materials are submitted to the Employer's Office of Human Resources or Director of Personnel, unless the election is submitted as a result of and consistent with a birth, adoption, or placement for adoption.

Any election submitted by a Participant in accordance with this Section shall remain in effect until the earlier of the following dates:

- (1) The last day of the calendar month in which the Participant terminates participation as

permitted by the Plan; or

- (2) The effective date (as determined by the Plan Administrator) of a subsequently filed election form submitted following the requirements of subsections (a)(2) and (3) below.

(a) Enrollment Periods:

- (1) *Initial Enrollment Period (When First Eligible):* Each newly hired Eligible Employee of the Employer shall have an Initial Enrollment Period which begins on the first day of employment with the Employer (the Hire Date) and terminates 14 calendar days thereafter. For example, an employee who begins regular, full-time employment on January 1 has an Initial Enrollment Period beginning on January 1 and ending on January 15. If an Eligible Employee makes an election to participate during the Initial Enrollment Period, then the individual becomes a Participant on the first day of the month following 30 consecutive calendar days of employment as a regular active Eligible Employee.

If a newly hired Eligible Employee fails to follow the Employer's Enrollment Process, the Plan Administrator may make a default election for that employee following the Employer's policies. The default election will include automatic participation in this Plan and may include enrollment in a Component Plan subject to the Employer's policies. An Employee's failure to complete the Enrollment Process will authorize the use of Flexible Pay to pay for Coverage Expenses for the Component Plan(s) in which the Employee has been enrolled as a default election.

A newly hired Eligible Employee who completes the Enrollment Process but does not elect to participate when first eligible may not enroll until the next Annual Enrollment Period unless he or she meets the requirements described under Section 3.3 below. In order to elect not to participate in the Plan, the Employee must provide the Plan Administrator with certification, using Plan Administrator's Certification of Other Coverage Form, indicating that the Participant has obtained or will obtain required coverage under another plan. The Plan Administrator reserves the right to disregard the Participant's certification of other coverage if the Plan Administrator has reason to believe that the Participant's certification is incorrect. The Employee must provide proof of other coverage within thirty-one (31) days of other coverage effective date. Failure to provide proof of coverage will result in a default election into this Plan and Component Plan(s) subject to the Employer's policies.

- (2) *Annual Enrollment Period:* The Plan Administrator will designate an Annual Enrollment Period prior to the beginning of each Plan Year during which Eligible Employees can make elections for the upcoming Plan Year. An election is made by completing the Enrollment Process, as required by the Employer's policies, during the Annual Enrollment Period by the due date established by the Plan Administrator. This due date must be in advance of the beginning of the upcoming Plan Year. If an Eligible Employee makes an election to participate during an Annual Enrollment Period, then the individual becomes a Participant on the first day of the next Plan Year. Elections made during the

Annual Enrollment Period will become effective on the first day of the applicable Plan Year and cannot be changed as described under Section 3.3 below.

If an Eligible Employee fails to file an election with respect to an upcoming Plan Year on a timely basis, the default election will be that the elections made by a Participant for the immediately preceding Plan Year will continue to apply. If applicable, the Flexible Pay deducted from a Participant's paycheck on a pre-tax basis may be changed to reflect the change in Coverage Expenses for the cost of Component Plans in which the Participant is enrolled for the Plan Year.

- (3) *Change in Status:* A Participant who incurs a Change in Status as described under Section 3.3 below shall have an enrollment period that begins on the date of the event and terminates 31 days thereafter. In addition, a former Participant who returns from FMLA Leave, USERRA Leave, or other approved leave of absence (subject to the Employer's policies on a leave of absence and subject to the terms of the underlying Component Plans) shall be granted an enrollment period commencing on the date of such return. Other events that may trigger an opportunity to change a Participant's election mid-year are outlined in Section 3.3 below.

3.3 Irrevocability of Elections: Except as provided in Section 3 of this Plan, a Participant's election under this Plan is irrevocable for the duration of the Plan Year to which it relates. In other words, for the duration of the Plan Year, a Participant may not change his or her participation in this Plan, Component Plan elections or his or her Flexible Pay salary reduction amounts, unless an exception applies.

In addition, a Participant's right to elect or change benefit coverage may be limited to the extent that such rights are limited in a Component Plan (e.g., by PEBC medical or dental plan rules) or in rules adopted by the Plan Administrator.

The exceptions to the irrevocability requirement which would permit a mid-year election change in benefits and the Flexible Pay salary reduction amount elected are described below in Section 3.3(b).

(a) **Change in Status Defined:** A Participant may make a new election upon the occurrence of certain events as described in Section 3.3(b) below, including a Change in Status. "Change in Status" means any of the events described below as a Change in Family Status or a Change in Employment Status, as well as any other events included under subsequent changes to IRC Section 125 or applicable regulations, which the Plan Administrator, in its sole discretion and on a uniform and consistent basis, determines are permitted under IRS regulations:

- (1) *Change in Family Status:* The following changes for a Participant, a Participant's Spouse or the Participant's Dependents:
- *Legal Marital Status:* A change in a Participant's legal marital status, including marriage, death of a Spouse, divorce, legal separation or annulment;
 - *Number of Dependents:* Events that change a Participant's number of Dependents (see the definition of a Dependent in Section 2.1(f)), including birth, death, adoption,

and placement for adoption;

- *Dependent Eligibility Requirements:* An event that causes a Participant's Dependent to satisfy or no longer meet the Dependent eligibility requirements for a particular benefit, such as attaining a specified age, getting married, or any similar circumstance; and
 - *Change in Residence:* A change in the primary place of residence of the Participant, the Participant's Spouse or the Participant's Dependent which directly results in an immediate loss of eligibility for coverage under a Component Plan for that individual (e.g., moving outside an HMO service area).
- (2) *Change in Employment Status:* Any change in the employment status of the Participant, the Participant's Spouse or the Participant's Dependents that affects benefit eligibility under a cafeteria plan (including this Plan) or another employee benefit plan (including the health insurance plans) of the employer of the Participant, the Spouse, or Dependents, such as:
- termination or commencement of employment;
 - a strike or lockout;
 - a commencement of or return from an unpaid leave of absence;
 - USERRA Leave;
 - a change in work site;
 - switching from a salaried to hourly-paid position or from union to non-union, or vice versa;
 - incurring a reduction or increase in hours of employment (e.g., going from part-time to full-time employment); or
 - any other similar change which makes the individual become or cease to be eligible for a particular employee benefit plan.

The act of retiring does not constitute a qualified change in status event allowing additional dependents to be added to the Plan.

(b) **Events Permitting Exception to Irrevocability Rule:** A participant may change an election as described below:

- (1) *Annual Enrollment Period:* A Participant may change an election during the Annual Enrollment Period in accordance with Section 3.2(a)(2) of this Plan.
- (2) *Termination of Employment:* A Participant's election will terminate under the Plan upon termination of employment in accordance with Section 3.1(b) of this Plan.
- (3) *FMLA:* A Participant may change an election under the Plan upon FMLA leave in accordance with Section 4.4 of this Plan.
- (4) *Change in Status:* A Participant may change or terminate his or her actual or deemed election under the Plan upon the occurrence of a Change in Family Status or a Change in

Employment Status as defined in Section 3.3(a), but only if the election change or termination is made on account of and corresponds with a Change in Status that affects eligibility for coverage of a Participant, a Participant's Spouse, or a Participant's Dependent (this is referred to as the "general consistency requirement" under IRS guidelines). A Change in Status that affects eligibility for coverage under a plan sponsored by a Spouse's or Dependent's employer includes a Change in Status that results in an increase or decrease in the number of an Eligible Employee's family members who may benefit from the coverage. The act of retiring does not constitute a qualified change in status event allowing additional dependents to be added to the Plan.

The Component Plans listed in Appendix A may have additional requirements that must be met in order for a Participant to change an election during the year. Eligibility to enroll in Component Plans is subject to the limits and provisions in those Plans.

The Plan Administrator shall determine, based on prevailing IRS guidance, whether a requested change is on account of and corresponds with a Change in Status.

Assuming that the general consistency requirement is satisfied, a requested change must also satisfy the following specific consistency requirements in order for a Participant to be able to alter his or her election based on the Change in Status:

(a) Change in Family or Employment Status:

- *Loss of Dependent Eligibility:* 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 coverage for the Spouse or Dependent involved. Canceling coverage for any other individual under these circumstances would fail to correspond with that Change in Status. However, if the Participant or his or her Spouse or Dependent becomes eligible for COBRA (or for similar health plan continuation coverage under a state law) under the Employer's Plan, 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).
- *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 another employer's cafeteria plan or another employer's qualified benefit plan 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, but only if coverage for that individual becomes effective or is increased under the other employer's plan. The Participant must provide the Plan Administrator with certification, using the Plan Administrator's Certification of Other Coverage Form, indicating that the Participant has obtained or will obtain coverage under the other plan. The Plan Administrator reserves the right to disregard the Participant's certification of other coverage if the Plan

Administrator has reason to believe that the Participant's certification is incorrect. The Participant agrees to provide proof of other coverage within thirty-one (31) days of the effective date for the other coverage. Failure to provide proof within 31 days will result in the Participant's new election to be considered void, and the Participant's election will be restored to its status immediately prior to the requested change, subject to the terms of the underlying Plans.

- *Loss of Other Coverage:* If a Participant or his or her Spouse or Dependent declined coverage under the group health plan because of outside medical coverage, and eligibility for the outside coverage is subsequently lost due to legal separation, divorce, death, termination of employment, reduction in hours, or exhaustion of the maximum COBRA period, then the Participant may revoke the prior election and make a new election pursuant to Section 3.2(a)(3) above, providing the new election is consistent with the event.
- *Addition of a New Dependent:* If a new Dependent is acquired as a result of marriage, birth, adoption, or placement for adoption, then a Participant may make an election change pursuant to Section 3.2(a)(3) above providing the new election is consistent with the event. For purposes of this provision, (i) an election to add previously eligible Dependents as a result of the acquisition of a new Spouse or Dependent child is considered to be consistent with the event; and (ii) a mid-year election change attributable to the birth or adoption of a new Dependent child may, subject to the provisions of the underlying group health plan, be effective on the date of the birth, adoption or placement for adoption provided the Dependent is added within 31 days of the event.
- *Certain Judgments, Decrees and Orders:* If a judgment, decree, or order (an "Order") resulting from a divorce, legal separation, annulment or change in legal custody (including a qualified medical child support order) requires medical, dental or other benefits coverage for a Participant's Dependent child (including a foster child who is a Dependent of the Participant), a Participant may (i) change his or her election to provide coverage for the Dependent child (provided that the Order requires the Participant to provide coverage); or (ii) change his or her election to revoke coverage for the Dependent child if the Order requires that another individual (including the Participant's Spouse or former Spouse) provide coverage under that individual's plan. The change in election will be subject to the terms of the underlying Component Plans.
- *Medicare and Medicaid:* Subject to applicable State or Federal regulations, if a Participant or his or her Spouse or Dependent who is enrolled in a Component Plan becomes entitled to Medicare or Medicaid (other than coverage consisting solely of benefits under Section 1928 of the Social Security Act providing for pediatric vaccines), the Participant may prospectively reduce or cancel the Component Plan coverage of the person becoming entitled to Medicare or Medicaid. Further, if a Participant or his or her Dependent who has been entitled to Medicare or Medicaid loses eligibility for such coverage, then the Participant

may prospectively elect to commence or increase coverage under the Component Plans incorporated under this Plan.

(b) Change in Plan Costs or Coverage:

- *Change in Component Plan Cost:*

- (a) Automatic Increase or Decrease for Insignificant Cost Changes:* If the Participant's share of the premium for a Component Plan increases or decreases during a Plan Year by an insignificant amount, then the Flexible Pay salary reductions under each affected Participant's election shall be prospectively increased or decreased to reflect such change. The Plan Administrator, on a reasonable and consistent basis, will automatically effectuate this prospective increase or decrease in the affected Participants' elective contributions in accordance with such cost changes. The Plan Administrator (in its sole discretion) will decide, in accordance with prevailing IRS guidance, whether increases or decreases in costs are "insignificant" based upon all the surrounding facts and circumstances (including, but not limited to, the dollar amount or percentage of the cost change).

- (b) Significant Cost Increases:* If the Participant's share of the premium for a Component Plan significantly increases during a Plan Year, then the Participant may either (i) make a corresponding prospective increase in Flexible Pay elective contributions; (ii) revoke his or her election for that coverage and receive coverage under another Plan option that provides similar coverage, including similar plans offered by another employer; or (iii) drop coverage prospectively if there is no other similar plan option available. The Plan Administrator in its sole discretion, and on a uniform and consistent basis, will decide, in accordance with prevailing IRS guidance, whether a cost increase is significant and what constitutes "similar coverage" based upon all surrounding facts and circumstances.

- (c) Significant Cost Decreases:* If the Plan Administrator determines that the cost of any Component Plan significantly decreases during a Plan Year, then the Plan Administrator may permit Participants enrolled in other benefit plans to prospectively enroll in the Component Plan that is decreasing in cost. The Plan Administrator in its sole discretion, and on a uniform and consistent basis, will decide, in accordance with prevailing IRS guidance, whether a cost decrease is significant.

- *Change in Coverage:*

- (a) Significant Curtailment or Loss of Coverage:* If the Plan Administrator determines that coverage under a Component Plan is significantly curtailed or ceases during a Plan Year, the Participant may revoke his or her election under the Plan and prospectively elect coverage under another Component

Plan that provides similar coverage, subject to the rules of that Component Plan. If the curtailment constitutes a "loss of coverage", as decided by the Plan Administrator, the Participant may elect coverage under a similar plan or drop coverage if no other similar coverage is offered by the Employer.

Coverage under a Component benefit plan is deemed "significantly curtailed" only if there is an overall reduction in coverage provided to Participants under the plan (for example, significantly increased deductibles or copays). A "loss of coverage" means a complete loss of coverage, such as the elimination of an HMO Component Plan option, or a Participant losing all coverage by reaching a plan's lifetime maximum benefit. For example, minor changes in network providers participating in a medical or dental plan do not meet the definition of a "significant" loss of coverage under this Plan.

The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide, in accordance with prevailing IRS guidance, and considering the provisions of the underlying Component Plan(s), whether a curtailment is "significant" or a "loss of coverage" and whether a substitute Component Plan constitutes "similar coverage" based upon all the surrounding facts and circumstances.

- (b) Addition or Significant Improvement of Component Plan:* If during a Plan Year the Plan adds a new Component Plan or significantly improves an existing Component Plan, then on a prospective basis an affected Participant may change his or her election to select the newly-added or improved option. In addition, Eligible Employees not currently participating in the Plan may elect the newly added or improved Component Plan on a prospective basis, subject to the terms and limitations of that Component Plan. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide, in accordance with prevailing IRS guidance, and considering the provisions of the Component Plan, whether there has been an addition of or significant improvement in a Component Plan option.
- (c) 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 ("CHIP"); a medical care program of an Indian Tribal government, Indian Health Service or tribal organization; a state health benefits risk pool; or a foreign government group health plan, subject to the terms and limitations of the underlying Component Plan.
- (d) Change in Coverage Under Another Employer's Plan:* To avoid "election lock," a Participant may make a prospective election change that is on account of and corresponds with a change made under the plan of the

Spouse's, former Spouse's, or Dependent's employer, as long as: (i) the other cafeteria plan or qualified benefit plan permits its participants to make an election change that would be permitted under applicable IRS regulations; or (ii) 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. The Plan Administrator shall determine, based on prevailing IRS guidance, whether a requested change is on account of and corresponds with a change made under the other employer plan.

A Participant entitled to make a new election under this Section 3.3(b) must do so within 31 days of the event as described above. An Employee who is eligible to elect Component Plan coverage paid for by salary reductions, but who declined to do so during the Initial Enrollment Period or Annual Enrollment Period, may do so within 31 days of the occurrence of an event described above, but only if the new election is made on account of and is consistent with the event. Subject to the provisions of the underlying group health Component Plans, elections made to add medical coverage for a newborn or newly adopted Dependent child may be effective on the date of the birth or adoption provided the Dependent is added within 31 days. All other new elections will be effective on the first day of the calendar month coincident with or immediately following the date the Participant files a new election with the Plan Administrator. Elections made pursuant to this Section 3.3(b) shall be effective for the balance of the Plan Year in which the election is made, unless a subsequent event (described above) allows further election change.

- 3.4 Notification:** At the request of the Participant, the Plan Administrator shall give reasonable notification of the status of that Participant under the Plan, and shall make available a Summary Plan Description summarizing the terms of the Plan.
- 3.5 Reduction of Certain Elections to Prevent Discrimination:** If the Plan Administrator determines, before or during any Plan Year, that the Plan may fail to satisfy any requirement imposed by the Code or any limitation on pre-tax contributions for Key Employees or Highly Compensated Individuals, the Plan Administrator shall take such action(s) as he or she deems appropriate under rules uniformly applicable to similarly situated Participants to assure compliance with such requirement or limitation. Such action may include, without limitation, a modification or revocation of a Highly Compensated Individual's or Key Employee's election without the consent of such Employee.

ARTICLE 4

CONTRIBUTIONS

- 4.1 Non-Elective Contributions and Opt-Out Contributions:** For each Plan Year, the Employer, in its sole discretion, may make on behalf of Participants a non-elective Contribution or provide a contribution based on an Employee's election to opt-out of Component Plans, to provide benefits for such Participant and his or her Dependents, if applicable, under the Plan. The amount of a non-Elective or opt-out Contribution shall be calculated for each Plan year in a uniform and non-discriminatory manner based on the Participant's employment during the Plan Year, participation in underlying Component Plan(s), and such other factors as the Employer shall prescribe.

4.2 Elective Contributions:

- (a) **Benefit:** Eligible Employees elect to participate in this Plan and pay for their share of premiums for Component Plans with pre-tax Flexible Pay dollars. In no event will benefits under the Plan be provided in the form of deferred compensation.
- (b) **Flexible Pay Contributions (salary reduction amounts):** Each Participant may authorize the Plan Administrator to withhold from his or her Compensation for the Plan Year an amount of Flexible Pay up to or equal to the Coverage Expenses for Component Plans in which the Participant has enrolled. The maximum salary reduction amount for any Plan Year is the total of the Participant's share of the premium or cost for all Component Plans in which the Participant is enrolled.

For purposes of this Plan, Flexible Pay amounts (in other words, employee contributions) are considered Employer contributions.

Flexible Pay amounts will reduce the Participant's Compensation ratably on each pay day during the Plan Year following the effective date of the Participant's participation in the Plan, unless the Employer provides otherwise. For Participants whose salary during the year is paid to them over a period of time less than a year, Flexible Pay amounts will be withheld in installments as determined by the Plan Administrator.

- (c) **Election:** A Participant's election to authorize withholding of Flexible Pay (under Section 4.2(b)) will be made during the Enrollment Process following the Employer's policies. Any election which, in the determination of the Plan Administrator, exceeds the limitation on Flexible Pay established in Section 4.2(b) may be treated as void or as an election to withhold the maximum amount permissible under the Plan.

4.3 Effect of Change in Status: If a Participant incurs a Change in Status (as defined in Section 3.3) during the Plan Year, the Participant may change his or her benefit election under the Plan so long as the requested change meets all IRS and Plan requirements as described in Section 3.3. A Participant's requested benefit election change must be consistent with the event prompting the change, following IRS and Plan requirements and subject to the sole discretion and interpretation by the Plan Administrator. These rules shall also apply to a Participant on FMLA Leave or USERRA Leave. In the event of a benefit election change, appropriate adjustments shall be made, in accordance with rules adopted by the Plan Administrator, in the amount withheld from or added to the Participant's pay for the balance of the year to reflect any changes in the Participant's benefit elections.

4.4 FMLA Leave Rules and Payment Options: 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 any health insurance benefits for any Component Plan that provides group health coverage 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 FMLA leave, the Employer will continue to pay its share of the premium. However, a Participant has the right to terminate benefits under this Plan due to approved FMLA leave, as stated in Section 3.1(b)(1).

If the participant elects to continue coverage while on FMLA leave, then the Participant may pay his or her share of the premium in one of the following ways, subject to the Employer's policies for handling payment, which are subject to change:

- (a) **Pre-Pay Method:** A Participant may pre-pay (prior to commencement of FMLA Leave) all or a portion of the expected amounts due during the FMLA Leave period. Pre-paid contributions may be made out of pre-leave Compensation, including from unused sick days or vacation days. However, any contributions deducted from pre-leave Compensation will be made on a pre-tax basis unless otherwise prohibited by law. The Participant may not use this pre-pay option to fund coverage for the next Plan Year, if the 12-week FMLA Leave period will extend into a following Plan Year.
- (b) **Pay-as-you-go Method:** A Participant may pay amounts due during the FMLA Leave period on the same schedule as if the Participant were not on leave. Generally, these payments will be made on an after-tax basis, but such payments can be made on a pre-tax basis to the extent that they are made from taxable Compensation (including from unused sick days or vacation days) due to the Participant while on leave. If the Participant fails to make the required payments, the Employer is not required to continue the Participant's coverage while on FMLA Leave. However, at the Employer's discretion, the Employer has the option to continue the coverage for a Participant who fails to make the required premium payments while on FMLA Leave, and the Employer will be entitled to recoup those payments as described under the Catch-up Method below, even if this was not agreed to in advance. The Employer may recoup these funds on a pre-tax or after-tax basis, at its discretion.
- (c) **Catch-up Method:** At the Employer's discretion, the Employer may advance the Participant's share of premiums and may use a catch-up method to recoup the Participant's share of premiums if, and only if, the Employer and the Participant agree in advance of the FMLA Leave coverage period that: (i) the Participant elects to continue coverage while on FMLA Leave; (ii) the Employer assumes responsibility for advancing the Participant's share of premiums while on FMLA Leave; and (iii) the advanced amounts will be paid by the Participant when the Participant returns from FMLA Leave. Catch-up payments paid by the Participant from other than pre-leave Compensation are made on an after-tax basis.

If the Participant's FMLA Leave is substituted paid leave under the FMLA, the Participant's share of the premiums must be paid by the method normally used during any paid leave.

If a Participant's coverage ceases while on FMLA leave, the Participant will be permitted to re-enter the Plan upon return from such leave on the same basis as the Participant was participating in the Plan prior to the leave, or otherwise required by the FMLA, and subject to the terms of the underlying Component Plans.

With respect to participation in non-health Component Plans during FMLA Leave, the Employer may continue a Participant's coverage under any or all of such non-health Component Plans to enable the Employer to meet its obligation of providing coverage under such Component Plans upon the

Participant's return from FMLA Leave. If the Employer does so, the Employer will be entitled to recoup the cost incurred for paying the Participant's share of the premiums during the Participant's FMLA Leave. Participant entitlement to non-health benefit plans is determined by the Employer's policy for providing such benefits when the Participant is on non-FMLA leave, as described below in Section 4.5, and is subject to the eligibility requirements of underlying Component Plans.

- 4.5 Non-FMLA Leaves of Absence:** If a Participant goes on an unpaid leave of absence that does not affect eligibility under the Plan, then the Participant will continue to participate and the premium 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 allowed by the Plan Administrator.

If a Participant goes on an unpaid leave of absence that affects eligibility, such as USERRA Leave, or if the Participant fails to pay premiums when due resulting in coverage termination, the election change rules in Section 3.3 will apply. To the extent COBRA applies, the Participant may continue coverage under COBRA.

ARTICLE 5

ADMINISTRATION

- 5.1 Allocation of Responsibility for Plan Administration:** The Employer and Plan Administrator have only those powers, duties, responsibilities, and obligations that are specifically given or delegated to them under this Plan.

- (a) The Employer shall have the sole authority to appoint and remove the Plan Administrator.
- (b) The Plan Administrator shall have the sole responsibility for the administration of the Plan, which responsibility is specifically described herein.
- (c) The Employer and the Plan Administrator each warrants that any directions given, information furnished, or action taken by it shall be in accordance with the provisions of the Plan authorizing or providing for such direction, information or action. Furthermore, each may rely upon any direction, information or action of the other as being proper under the Plan, and is not required under the Plan to inquire into the propriety of any direction, information or action. It is intended under this Plan that each shall be responsible for the proper exercises of its own powers, duties, responsibilities and obligations under the Plan and shall not be responsible for any act or failure to act of another party.

- 5.2 Administration:** The Plan shall be administered by the Plan Administrator, which may appoint or employ persons to assist in the administration of the Plan and may appoint or employ any other agents it deems advisable, including legal counsel, actuaries, auditors, bookkeepers and recordkeepers to serve at the Plan Administrator's direction. All usual and reasonable expenses of the Plan and the Plan Administrator shall be paid by the Employer from its assets outside the Plan, by the Employer's allocating such expenses to the various Participant accounts, or by charging expenses directly to the Plan.

5.3 Claims Procedure: The Plan Administrator, or a party designated by the Plan Administrator, shall make all determinations as to the right of any person to a claim under the Plan. If an assertion of any such right by a Participant or Dependent is wholly or partially denied, the Plan Administrator, or the designated party, will provide the claimant a written notice within 90 days after receipt of the claim, unless circumstances warrant an extension of time not to exceed an additional 90 days, setting forth:

- (a) The specific reason or reasons for such denial;
- (b) Specific reference to pertinent Plan provisions on which the denial is based;
- (c) A description of any additional material or information necessary for the claimant to submit to perfect the claim and an explanation of why such material or information is necessary; and
- (d) A description of the Plan's claims review procedure. A review is available upon written request by the claimant to the Plan Administrator, or the designated party, within 60 days after receipt by the claimant of written notice of the denial of the claim, and includes the right to examine pertinent documents and submit issues and comments in writing to the Plan Administrator or the designated party.

The decision on review shall be made within 60 days after receipt of the request for review, unless circumstances warrant an extension of time not to exceed an additional 60 days. The decision may incorporate provisions and rules of the underlying Component Plans. The decision shall be in writing and drafted in a manner designed to be understood by the claimant, and shall include specific reasons for the decision with references to the specific Plan provisions on which the decision is based.

5.4 Other Administrative Powers and Duties: The Plan Administrator shall have such powers and duties as may be necessary to discharge its duties, including the power:

- (a) to construe and interpret the Plan, including all possible ambiguities, inconsistencies, and omissions in the Plan and related documents; decide all questions of eligibility and participation, consistent with the provisions of the underlying Component Plans where appropriate; and determine the manner and time of election of any benefits hereunder;
- (b) to prepare and distribute, in such manner as the Plan Administrator determines to be appropriate, information explaining the Plan;
- (c) to receive from the Employer and from Participants information necessary for the proper administration of the Plan;
- (d) to furnish the Employer, upon request, annual reports with respect to the administration of the Plan that are reasonable and appropriate;
- (e) to receive, review and keep on file (as it deems convenient and proper) reports of benefit payments by the Employer and reports of disbursements for expenses;

- (f) to prepare and file on a timely basis such reports and information concerning the benefits covered by this Plan as the Plan Administrator determines from time to time to be necessary and proper;
- (g) to keep records necessary for purposes of determining whether the requirements of IRC § 125 are met;
- (h) to require Eligible Employees and Participants to complete and file with it election and other forms which the Plan Administrator may from time to time determine to be appropriate and to furnish all information determined to be necessary for the administration of this Plan. The Plan Administrator may rely on information so furnished;
- (i) to reject, terminate or cut back elections made by Highly Compensated Participants before or during the periods of coverage to which they relate in order to prevent discriminatory proportional utilization or to prevent the Plan from exceeding the 25% limit on non-taxable benefits provided to Key Employees.

The Plan Administrator shall have no power to add to, subtract from or modify any of the terms of the Plan, or to change or add to any benefits provided by the Plan, or to waive or fail to apply any requirements of eligibility for a benefit under the Plan or under a Component Plan unless otherwise provided herein.

- 5.5 Rules and Decisions:** The Plan Administrator may adopt such rules and procedures as it deems necessary, desirable, or appropriate for the administration of this Plan. All rules, procedures and decisions of the Plan Administrator shall be uniformly and consistently applied to all Participants in similar circumstances. When making a determination or calculation, the Plan Administrator shall be entitled to rely upon information furnished by a Participant, a Dependent, the duly authorized representative of a Participant or Dependent or the legal counsel of the Plan Administrator. The Plan Administrator shall not be responsible for any act or failure to act because of a direction or lack of direction provided by a Participant.
- 5.6 Forms and Requests for Information:** The Plan Administrator may require a Participant to complete and file such forms as are provided for herein and all other forms prescribed by the Plan Administrator, and to furnish all pertinent information requested by the Plan Administrator. The Plan Administrator may rely upon all such information, including the Participant's last known mailing address, as being proper under the Plan and shall not be responsible for verifying the accuracy of information provided by the Participant.
- 5.7 Responsibility for Plan:** The complete authority to control and manage the operation and administration of the Plan shall be placed on the Plan Administrator, which shall be solely responsible for the operation of the Plan in accordance with its terms and consistent with the provisions of Component Plans. 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. The Administrator(s) of the Component Plans shall have no responsibility for, nor liability toward, the operation and administration of this Plan.

- 5.8 Funding Policy:** All of the amounts payable under this Plan shall be paid from the funds of the Employer. 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.

ARTICLE 6

AMENDMENT OF THE PLAN

The Employer has the right to modify, alter or amend this Plan in whole or in part, at any time, provided, however, that no such amendment shall diminish or eliminate any claim for any benefit to which a Participant has become entitled prior to such amendment. Notwithstanding the foregoing, the Employer shall have the limited right to amend the Plan at any time retroactively or otherwise, in such respects and to such extent as may be necessary to fully qualify it as a "cafeteria plan" under existing and applicable laws and regulations, including Section 125 of the Internal Revenue Code and if to the extent necessary to accomplish such purpose, may by such amendment decrease or otherwise affect benefits to which Participants may have already become entitled.

ARTICLE 7

TERMINATION OF THE PLAN

This Plan has been established by the Employer with the intent of being maintained for an indefinite period of time. However, the Employer reserves the right at any time to terminate or partially terminate the Plan. Should the Employer decide to terminate or partially terminate the Plan, the Plan Administrator shall be notified of such termination in writing and shall proceed at the direction of the Employer to take the necessary steps to discontinue the operation of the Plan in an appropriate and timely manner.

ARTICLE 8

MISCELLANEOUS

- 8.1 No Contract of Employment:** Nothing in this Plan 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.
- 8.2 No Guarantee of Non-Taxability:** This Plan is designed and intended to be operated as a "cafeteria plan" under Section 125 of the Code. Nonetheless, neither the Plan Administrator nor the Employer makes any commitment or guarantee that a Participant's benefits will be excludable from the Participant's gross income for federal, state or local income tax purposes. It is the obligation of each Participant to determine whether each payment under this Plan is excludable from the Participant's gross income, and to notify the Plan Administrator if the Participant has any reason to believe that such payment is not excludable. Neither the Employer nor Plan Administrator shall in any way be liable for any taxes or other liability incurred by a Participant or anyone claiming through him or her by virtue of

participation in this Plan. The Plan does not prohibit the payment of taxable benefits under certain of the Component Plans.

8.3 Nondiscrimination: In accordance with Section 125(b)(1) and (2), Section 129(d), and Section 105 of the Code, the Plan is intended not to discriminate in favor of Highly Compensated Employees as to eligibility to participate or as to contributions and benefits, nor to provide more than 25% of all statutory nontaxable benefits to Key Employees. If, in the operation of the Plan, more than 25% of the total nontaxable benefits are found to be provided to Key Employees, or the Plan discriminates in any other manner (or is in danger of so discriminating), then notwithstanding any other provision contained in this Plan, the Plan Administrator shall reduce or adjust such contributions and/or benefits under the Plan as shall be necessary to assure that, in the judgment of the Plan Administrator, the Plan will not discriminate.

All rules, procedures and decisions of the Plan Administrator shall be adopted, made and/or applied in such fashion that they do not discriminate in favor of Highly Compensated Employees and Key Employees. It is intended that these nondiscrimination rules be applied as required by Section 125 and applicable regulations.

8.4 Construction of Agreement: This Plan shall be construed, administered and enforced according to the laws of the State of Texas to the extent not superseded by the Code or other federal law. All rights, duties and obligations created by virtue of this Plan shall be legally enforceable by the appropriate parties.

8.5 Headings: The headings of sections and subsections in this document are for ease of reference only and are not to be regarded as part of this Plan or as indicating or controlling the meaning or construction of any provision.

8.6 Severability: In the event that any provision of this Plan is held illegal or invalid for any reason, the remaining provisions of this Plan will not be affected. All remaining provisions shall be fully severable and this Plan shall, to the extent practicable, be construed and enforced as if the illegal or invalid provision had never been inserted.

8.7 Non-Alienation of Benefits: Except as expressly provided by the Plan Administrator, no benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to do so shall be void. No benefit under the Plan shall in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any person.

8.8 Effect of Mistake: In the event of a mistake as to the eligibility or participation of an employee, or the allocations made to the account of any Participant, or the amount of benefits made or to be made to a Participant or other person, the Plan Administrator shall, to the extent it deems possible, 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 the Plan or the Employer from Compensation paid by the Employer.

- 8.9 Plan Provisions Controlling:** In the event that the terms or provisions of any summary or description of this Plan, or of any other instrument, are in any construction interpreted as being in conflict with the provisions of this Plan as herein set forth, the provisions of this Plan shall be controlling.
- 8.10 Incorporation by Reference:** The actual terms and conditions of the separate Component Plans or insurance policies offered under this Plan are contained in separate, written documents governing each respective benefit, and they shall govern in the event of a conflict between the individual plan document and this Plan as to substantive content. To that end, each separate document as amended or subsequently replaced, is hereby incorporated by reference as if fully recited herein.
- 8.11 Code Compliance:** It is intended that this Plan meet all applicable requirements of the Code and 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, the provisions of the Code shall be deemed controlling, and any conflicting part, clause or provision of this Plan shall be deemed superseded to the extent of the conflict.

ARTICLE 9

SIGNATURE

The above Plan is hereby amended and restated, to be effective as of January 1, 2003, this 20th day of December, 2002.

North Texas Tollway Authority

By: _____

A handwritten signature in black ink, appearing to read "Jerry D. Bisset", is written over a horizontal line. The signature is cursive and somewhat stylized.

EXHIBIT A

COMPONENT PLANS

EFFECTIVE DATE: January 1, 2003

GROUP INSURANCE/BENEFIT PLANS:

PEBC EPO Medical Plan including Pharmacy and Mental Health Components
PEBC PPO Medical Plan including Pharmacy and Mental Health Components
HMO Medical Plan
PEBC Dental Plan
Dental HMO Plans
**Optional Term Life and AD&D/Voluntary Accident Insurance (to the extent allowable
by the Internal Revenue Code)**