



COMMISSIONERS COURT COMMUNICATION

AGENDA DATE: 7/23/2012

CONSENT OR REGULAR: Regular

CONTRACT REFERENCE NO
(IF APPLICABLE): 2012-0321

SUBJECT: Approve the Summary Plan Description for the County's 132 Employee Parking Benefit Plan. The Summary Plan Description was approved by the Risk Pool Board during their meeting on June 25, 2012 and reviewed by the County Attorney's Office.

BACKGROUND/DISCUSSION OF TOPIC:

The County of El Paso currently sponsors an Employee Benefit Parking Plan. The purpose of the plan, is to allow eligible employees to pay qualified parking expenses using pre-tax dollars. This Summary Plan Description establishes up to date procedures and replaces the plan established in 2001.

FISCAL IMPACT:

The proposed Summary Plan Description memorializes current procedures and should not have a significant cost increase or decrease.

PRIOR COMMISSIONERS COURT ACTION:

Oct 8, 2001 -Commissioners Court approved the 132 Employee Parking Plan.

RECOMMENDATION:

Staff recommends for the Commissioners Court to approve the Employee Parking Plan.

COUNTY ATTORNEY APPROVAL:

The Summary Plan Description has been reviewed and approved by the County Attorney's Office.

SUBMITTED BY:	Sam Trujillo, Risk Manager Human Resources Department		
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COUNTY OF EL PASO

PARKING BENEFIT PLAN

Plan Documents and Summary Plan Descriptions
Effective: July 23, 2012

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PURPOSE OF THE PLAN: ADOPTION OF THE PLAN DOCUMENT

What is the purpose of the “*Plan*”?

The Plan Sponsor, as the settlor of the Plan, hereby adopts this Plan Document as the written description of the *Plan*. This Plan Document represents both the Plan Document and the Summary Plan Description (SPD) for Section 132.

This SPD is your guide to the benefits, provisions, and programs offered by this *Plan*. Services are subject to all provisions of the *Plan*, including the limitations and exclusions.

The *Plan* benefits described in this SPD are effective as of July 23, 2012. Please read this SPD carefully, paying special attention to the “Parking Benefits” section to better understand how your benefits work.

This SPD has been updated to comply with federal requirements including applicable provisions of Code § 132(f).

These benefits are made available to you based upon your eligibility as defined by the *Plan*. The County of El Paso expects you to use your Benefit Plan to its full extent, in a prudent manner.

The SPD is not a contract. The *Plan* shall not be deemed to constitute a contract between the County of El Paso and any *Plan Participant* or to be a consideration for, or an inducement or condition of, the employment of any *Employee*. Nothing in the SPD shall be deemed to give any *Employee* the right to be retained in the service of the County of El Paso or to interfere with the right of the County of El Paso to discharge any employee at any time.

We recommend that you contact the Claims Administrator to verify that your *Plan* will cover the expenses related to your situation.

Adoption of the *summary plan description*

The *Plan Sponsor*, as the settler of the *Plan*, hereby adopts this SPD as the written description of the *Plan*. This SPD amends and replaces any prior statement of the benefits contained in the Plan or any predecessor to the *Plan*.

IN WITNESS WHEREOF, the *Plan Sponsor* has caused this Plan Document to be executed.

GENERAL PLAN INFORMATION

GENERAL PLAN INFORMATION

Name of Plan: Parking Benefit Plan

Plan Sponsor: County of El Paso; 800 E. Overland, Suite 223, El Paso, TX 79901

Plan Administrator: County of El Paso; 800 E. Overland, Suite 223, El Paso, TX 79901
(Named Fiduciary)

Plan Sponsor ID No. (EIN): 74-6000762

Plan year: January 1—December 31

Plan Type: Parking Benefit Plan

Third party administrator: HealthSCOPE Benefits, Inc., 27 Corporate Hill Drive, Little Rock, AR 72205

Participating employer(s): County of El Paso

Agent for Service of Process: County of El Paso; 800 E. Overland, Suite 223, El Paso, TX 79901

DEFINITIONS

In this section, you will find the definitions for the italicized words found throughout this SPD. There may be additional words or terms that have a meaning that pertains to a specific section, and those definitions will be found in that section. **These definitions should not be interpreted as indications that charges for particular care, supplies or services are eligible for payment under the *Plan*; please refer to the appropriate sections of this SPD for that information.**

3.1 “Administrator” means the County of El Paso.

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

3.3 “Compensation” means wages within the meaning of section 3401(a) of the Code for purposes of federal income tax withholding at the source (but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed) that are paid to an *Employee* by the *Employer*, determined after any salary deferral elections under any Code §401(k), 403(b), 408(k) or 457(b) plan or arrangement, and any salary reduction elections under any Code §125 cafeteria plan, but prior to any reduction due to a *Compensation Reduction* election under this *Plan* and any reduction due to a compensation reduction election under any other Code §132(f)(4) Code §132(f)(4) transportation fringe benefit plan.

3.4 “Compensation Reduction” means the amount by which the Participant's Compensation is reduced and applied by the *Employer* under this *Plan* to pay on a pre-tax basis for one or more of the *Transportation Benefits* elected by the *Participant*.

3.5 “Cost” has the meaning described in Section 7.2.

3.6 “Effective Date” means July 23, 2012.

3.7 “Election Form/Parking Conversion or Reimbursement Plan Agreement” means a form provided by the *Administrator* for the purpose of allowing an *Eligible Employee* to elect *Parking Benefits* and any *Compensation Reductions* required to pay for those *Parking Benefits*. It includes an agreement pursuant to which a *Participant* who is also an *Eligible Employee* authorizes the *Employer* to make any required *Compensation Reductions*. To be effective, an *Election Form/Parking Conversion or Reimbursement Plan Agreement* must be filed by the *Eligible Employee* on a form, and in the manner, authorized by the *Administrator*. Subject to the preceding sentence, an *Election Form/Parking Conversion or Reimbursement Plan Agreement* shall become effective and shall terminate as provided in Article V.

3.8 “Eligible Employee” means a person who is a regular full-time Employee of the Participating Employer, regularly scheduled to work for the Participating Employer in an employer-Employee relationship. Such person must be scheduled to work at least 30 hours per week in order to be considered “full-time.”

3.9 “Employee” shall mean (1) a person who is a regular full-time Employee of the Participating Employer; or (2) county and district officers and as otherwise permitted by the Plan Administrator pursuant to Section 157.01(a) of the Texas Local Government Code, as amended.

3.10 “Employer” means the County of El Paso.

3.11 “Employer Contribution” means an amount credited to the *Parking Account* of an *Eligible Employee* who is a *Participant* in the *Plan*. *Employer Contributions* for a *Plan Year* shall be available only to pay *Parking Expenses* for that *Plan Year*, and to the extent not so used shall be forfeited.

3.12 “Employment” means the performance of services by an *Employee* for the *Employer*.

3.13 “Open Enrollment Period” *Open Enrollment Period* with respect to a *Plan Year* means the month of October preceding the *Plan Year*, or such other period as may be prescribed by the *Administrator*.

3.14 “Participant” shall mean any *Employee* who is eligible for benefits under the *Plan*.

3.15 “Period of Coverage” means a calendar month.

3.16 “Plan” means the County of El Paso Parking Benefit Plan as set forth herein and as amended from time to time.

3.17 “Plan Year” means the calendar year (i.e., the 12-month period commencing January 1 and ending on December 31), provided, however, that a period of less than 12 months may be a *Plan Year* for the final *Plan Year*, and for a transition period to a different *Plan Year*.

3.18 “Qualified Parking Expenses” has the meaning described in Section 7.4.

3.19 “Related Employer” means any employer affiliated with the County of El Paso that, under Code §414(b), Code §414(b), (c), (m), or (o), is treated as a single employer with the County of El Paso.

ELIGIBILITY FOR PARTICIPATION

4.1 When does my participation begin?

An *Eligible Employee* who is not a *Participant* in the *Plan* shall become a *Participant* on the first day of the first *Period of Coverage* commencing on or after the date he or she becomes an *Eligible Employee*, provided the *Employee* is still an *Eligible Employee* on that first day. If the *Employee* is not an *Eligible Employee* on that first day, the *Employee* shall become a *Participant* when he or she first is an *Eligible Employee* on the first day of a later *Period of Coverage*.

4.2 When does my participation end?

An *Employee* who is a *Participant* will cease to be a *Participant* when the first of the following occurs:

- (a) the *Employee* ceases to be an *Employee*;
- (b) the *Employee* is no longer an *Eligible Employee* and has no balance in his or her *Parking Account*;
or
- (c) the *Plan* terminates.

Reimbursements from an *Employee's Parking Account* after the *Employee* ceases to be a *Participant* will be made only pursuant to Section 7.9.

4.3 How can I participate following termination of my employment or loss of eligibility?

An individual (whether or not a *Participant*) who ceases to be a *Participant* for any reason other than termination of this *Plan* must satisfy the requirements of Section 3.8 without regard to any prior period of participation in this *Plan* and without regard to any service prior to the individual's current service as an *Employee*, in order to once again become a *Participant*.

5.1 How do I initially elect a compensation reduction for purposes of the Plan?

An *Eligible Employee*'s initial *Compensation Reduction* election, which may be submitted but cannot become effective before the *Eligible Employee* becomes a *Participant*, shall be made by submitting a properly completed *Parking Conversion or Reimbursement Plan Form* to the *Administrator* before (a) the first day of the *Period of Coverage* in which *Compensation Reductions* will commence (or such earlier deadline as the *Administrator* shall determine in its sole discretion) and (b) the date on which the *Parking Benefits* to which the election relates (i.e., the *Parking Benefits* that will be paid in whole or in part by the *Compensation Reductions*) are provided.

An *Eligible Employee*'s initial *Compensation Reduction* election will automatically renew for subsequent *Periods of Coverage* unless the *Eligible Employee* submits another *Parking Conversion or Reimbursement Plan Agreement* to the *Administrator* in accordance with Section 5.2, in which case the *Eligible Employee*'s initial election will end immediately before the first day of the first *Period of Coverage* to which the new *Parking Conversion or Reimbursement Plan Agreement* relates. Notwithstanding anything in this *Plan* to the contrary, a *Participant*'s *Election Form/Parking Conversion or Reimbursement Agreement*, and all future *Compensation Reductions* authorized by that *Agreement*, shall terminate as soon as administratively feasible after the *Participant* ceases to be an *Eligible Employee*.

5.2 How do I subsequently elect a compensation reduction for purposes of the Plan?

An *Eligible Employee* who is a *Participant* and who has a *Parking Conversion or Reimbursement Plan* in effect (including an election to make no *Compensation Reductions*) may make a new *Compensation Reduction* election for future *Periods of Coverage* by submitting a properly completed *Election Form/Parking Conversion or Reimbursement Plan Agreement* to the *Administrator*. The new *Election Form/Parking Conversion or Reimbursement Plan Agreement* must be submitted to the *Administrator* before (a) the first day of the first *Period of Coverage* to which the new election applies (or such earlier deadline as the *Administrator* shall determine in its sole discretion); and (b) the date on which the *Parking Benefits* to which the election relates are provided.

A *Parking Conversion or Reimbursement Plan Agreement* pursuant to this Section 5.2 will automatically renew for subsequent *Periods of Coverage* unless the *Eligible Employee* submits another *Election Form/Parking Conversion or Reimbursement Plan Agreement* to the *Administrator*, in which case the *Eligible Employee*'s then current election will end immediately before the first day of the first *Period of Coverage* to which the replacement *Election Form/Compensation Reduction Agreement* applies. Notwithstanding anything in this *Plan* to the contrary, a *Participant*'s *Election Form/Parking Conversion or Reimbursement Plan Agreement*, and all future *Compensation Reductions* authorized by that *Agreement*, shall terminate as soon as administratively feasible after the *Participant* ceases to be an *Eligible Employee*. If a *Participant* becomes an *Eligible Employee* again after losing *Eligible Employee* status, the first *Compensation Reduction* election after *Eligible Employee* status is restored shall be treated as an initial election subject to Section 5.1.

5.3 When will I receive an Election Form/Parking Conversion or Reimbursement Plan Agreement ?

Forms will be available at New Employee Orientation, During Open Enrollment, or in the County of El Paso Human Resources Department.

humanresources@epcounty.com

5.4 Are elections irrevocable?

A *Compensation Reduction* election under the *Plan* is irrevocable for the duration of each *Period of Coverage* to which it relates.

- A. A member may end their participation in the monthly parking plan at the end of the month
- B. A member may end their participation in the bi-weekly deduction at the end of the pay period

FUNDING

6.1 Who contributes to this Parking Account?

Participant Contributions. Participants who want to receive *Parking Benefits* must elect to have their contributions deducted by completing a *Parking Conversion or Reimbursement Plan Form*. A Participants *Reductions* may only be elected by the timely submission of a properly completed *Parking Conversion or Reimbursement Plan Agreement*. A *Participant's Election Form/Compensation Reduction Agreement* shall terminate as soon as administratively feasible after the *Participant* ceases to be an *Eligible Employee*.

6.2 How are Compensation Reductions used to make contributions?

Compensation Reductions Per Pay Period. Compensation Reductions shall be made only for the *Parking Benefits* elected in the applicable *Election Form/Compensation Reduction Agreement*. The (aggregate) *Compensation Reduction* for a bi-weekly pay period for a *Participant* for the *Parking Benefits* elected shall be an amount equal to (1) the *Participant's Cost* for such *Benefits* times the number of monthly *Periods of Coverage* remaining in the *Plan Year* (commencing with the first *Period of Coverage* elected by the *Participant*), (2) divided by the number of pay periods remaining in the *Plan Year*, or as otherwise agreed upon between the *Employer* and the *Participant*. In calculating the number of pay periods remaining in the *Plan Year*, the third pay period, if any, ending in any month shall not be counted. (Consequently, solely for purposes of calculating *Compensation Reductions*, there are 26 pay periods or 12 months in a full *Plan Year*.) No *Compensation Reduction* shall be taken from the third bi-weekly paycheck in any month.

Compensation Reduction Balance Upon Termination of Coverage. If, as of the date that any elected *Parking Benefit* under this *Plan* terminates, a *Participant's* year-to-date *Compensation Reductions* exceed or are less than the *Participant's* required contributions for the coverage, then the *Employer* will, as applicable, either return the excess to the *Participant* as additional taxable wages or recoup the due *Compensation Reduction* amounts from any remaining *Compensation*. This rule is intended to apply, for example, where due to payroll practices, a *Participant's* year-to-date *Compensation Reductions* exceed what the employee owes for the period of coverage preceding the termination date. This Section does not override the forfeiture rule (unused amounts are forfeited where a *Participant* ceases to participate). However, the forfeiture rule does not apply to excess *Compensation Reductions* as described in this Section 6.2(c).

6.3 How is the Plan funded?

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. While the *Employer* has complete responsibility for the payment of benefits out of its general assets, it may hire an outside paying agent to make benefit payments on its behalf. The maximum amount of contributions that may be made under this *Plan* for a *Participant* (*Participant contributions*) for a *Period of Coverage* is the total *Cost* for that *Period of Coverage* of the *Parking Benefits* elected, subject to the limits described in Sections 7.6 and 7.7.

BENEFITS

7.1 **What benefits are available?**

The benefits available under this *Plan* are *Qualified Parking Benefits* (as defined in Section 7.3).

7.2 **What are the benefit costs?**

The monthly cost for a particular *Parking Benefit* equals the monthly *Parking Benefit* amount elected by the *Participant*.

7.3 **What Qualified Parking Expenses are eligible?**

A *Participant* can receive benefits in the form of reimbursements for *Qualified Parking Expenses* (*Qualified Parking Benefits*), subject to the limits described in Sections 7.6 and 7.7. Any such election must include an election to pay the *Eligible Employee's Cost* for such benefits on a pre-tax *Compensation Reduction* basis.

- (a) on or near the *Employer's* business premises (including parking on or near the *Employee's* regular place of *Employment*)
- (b) Provided by an Employer. Parking is provided by an *Employer* if (1) the parking is on property that the *Employer* owns or leases; (2) the *Employer* pays for the parking; or (3) the *Employer* reimburses the *Employee* for parking expenses.
- (c) Exclusion From Qualified Parking Expenses. Notwithstanding the above, *Qualified Parking Expenses* do not include any of the following:
 - parking on or near property used by the *Employee* for residential purposes;
 - the value of parking provided to an *Employee* that is excludable from his or her gross income as a working condition fringe under Code §132(a)(3); and
 - reimbursements paid to the *Employee* for parking costs that are excludable from his or her gross income as an amount paid under an accountable plan under Treas. Reg. §1.62-2.

7.4 **What are the maximum and minimum benefits?**

- (a) Maximum Reimbursement Available; Statutory Limitations. Except as otherwise provided in this Article VI, payment shall be made to the *Participant* as reimbursement for *Parking Expenses* incurred or paid during the *Period of Coverage* for which the *Participant's* election is effective. No payment otherwise due to a *Participant* hereunder shall exceed the smallest of the following:
 - the balance of the relevant subaccount(s) in the *Participant's Parking Account*; or
 - the Statutory Limits for the applicable *Parking Benefit*.
- (b) Changes. For subsequent *Plan Years*, the maximum and minimum dollar limits may be changed by the *Administrator* and shall be communicated to *Employees* through the *Election Form/Compensation Reduction Agreement* or another document.

7.5 Monthly Statutory Limits for Parking Benefits

- (a) Monthly Limit for Qualified Parking Expenses. Reimbursements for *Qualified Parking Expenses* will not exceed the applicable monthly limit described in Code §132(f), Code §132(f), as adjusted for inflation. If an *Employee* obtains a qualified parking space the monthly limit for *Qualified Parking Expenses* shall apply to the individual designated as the "prime member" in accordance with Treas. Reg. §1.132-9, Q/A-22.
- (b) Calculating Limits Where Benefits Are Provided for More Than One Month. The *Employer* may reimburse *Employees* for *Parking Expenses* incurred in more than one month, provided that the reimbursement for each month is calculated separately and does not exceed the applicable statutory monthly limit.

7.6 How is the account established?

The *Administrator* will establish and maintain an account (*Parking Account*) with respect to each *Participant*, but it will not create a separate fund or otherwise segregate assets for this purpose. The *Parking Account* will be merely a recordkeeping account for the purpose of keeping track of contributions and determining forfeitures. Each *Parking Account* will have a separate subaccount for each *Parking Benefit* provided under this *Plan*.

- (a) Crediting of Accounts. For each *Period of Coverage*, the appropriate subaccount within each *Participant's Parking Account* will be credited with (1) an amount equal to the *Participant's Compensation Reductions*, if any, for that *Period of Coverage*;
- (b) Debiting of Accounts. For each *Period of Coverage*, the appropriate subaccount within each *Participant's Parking Account* will be debited for any reimbursement of *Parking Expenses* incurred or paid during the *Period of Coverage*.
- (c) No Negative Balances. No *Parking Account*, and no subaccount within a *Parking Account*, may ever have a negative balance.

7.7 Forfeiture of Accounts

(a) Unused Amounts Where Participating in Plan. If any balance remains in the *Participant's Parking Account* for a *Period of Coverage* after all reimbursements have been made and the *Participant* continues to participate in the *Plan* following such *Period of Coverage*, such balance shall be carried over to reimburse the *Participant* for *Parking Expenses* incurred or paid during a subsequent *Period of Coverage*. Any *Employee Contributions* for a *Plan Year* in excess of those required to reimburse *Parking Expenses* incurred or paid during that *Plan Year* shall be forfeited immediately following the last day on which *Parking Expenses* for that *Plan Year* could be submitted for *reimbursement*. Reimbursement must be received by March 31st of the following plan year.

(b) Forfeiture of Unused Amounts Where Participant Ceases to Participate and/or Does Not Cash Checks. Any balance that remains in a *Parking Account* after an individual ceases to be a *Participant* and all permitted reimbursements have been made for *Parking Expenses* incurred or paid through the date that individual ceased to be a *Participant*, shall be forfeited. In addition, any *Parking Benefit* payments that are unclaimed (e.g., uncashed benefit checks) by the close of the *Plan Year, March 31st* of the following plan year, the *Period of Coverage* in which the *Parking Expense* was incurred or paid shall be forfeited.

(c) Effect of Forfeitures. Amounts forfeited under this *Plan* shall be forfeited to the *Employer*, who may use them at any time and for any purpose. A *Participant* shall have no rights whatsoever with respect to forfeited amounts.

7.8 Reimbursement Procedure (a.k.a. Bona Fide Reimbursement Arrangement)

(a) Timing. Within a reasonable period of time not to exceed 30 days after receipt by the *Administrator* of a reimbursement claim from a *Participant*, the *Employer* will reimburse the *Participant* for the *Participant's* reimbursable *Parking Expenses* (if the *Administrator* approves the claim), or the *Administrator* will notify the *Participant* that his or her claim has been denied. Such notification will set out the reasons the request was denied.

(b) Claims Substantiation. A *Participant* who has elected to receive *Parking Benefits* for a *Period of Coverage* may apply for reimbursement by submitting a *Parking Conversion or Reimbursement Plan Enrollment Form* in writing to the *Administrator* in such form as the *Administrator* may prescribe, but in no event later than 90 days following the end of the plan year on which the *Parking Expense* was incurred or paid, setting forth:

- the name of the *Participant* incurring the *Expenses*;
- the nature and date of the *Expenses* incurred or paid;
- the amount of the requested cash reimbursement;
- the name of the person, organization or entity to whom the *Expense* was or is to be paid; and

The application shall be accompanied by bills, invoices, statements from an independent third party, parking receipts or other evidence of payment showing the amounts of such *Parking Expenses*, together with any additional documentation that the *Administrator* may request. The information requested from the *Employee* may vary depending on the facts and circumstances surrounding the *Expenses*, including the method of payment and the particular Parking method used by the *Employee*. For example, where no third party is able to provide a statement, the *Administrator* may accept *Employee* certification. Except for the final reimbursement claim for a *Period of Coverage*, no claim for reimbursement may be made unless and until the aggregate claims for reimbursement is satisfied.

(d) Claims Denied. For reimbursement claims that are denied, see Section 9.9.

7.9 Reimbursements After Termination

Parking Expenses incurred or paid after a *Participant* ceases to be a *Participant* will not be reimbursed by the *Plan*. A former *Participant* (or the former *Participant*'s estate if the former *Participant* is deceased) may claim reimbursement for any *Parking Expenses* incurred or paid when the former *Participant* was a *Participant*, however, provided that the former *Participant* (or the former *Participant*'s estate) files a claim no later than 90 days after the Plan Year (and the other applicable requirements of this *Plan* are met).

Amounts remaining in the *Employee's Parking Account* after expiration of the post-participation claim period described above shall be forfeited. The value of *Parking Expenses* provided to an *Employee* with respect to a month in which the individual is not an employee shall be included in the *Employee's* wages for income tax purposes pursuant to Treas. Reg. §1.132-9, Q/A-9.

RECORDKEEPING AND ADMINISTRATION

8.1 Administrator

The administration of this *Plan* shall be under the supervision of the *Administrator*. It is the principal duty of the *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*.

8.2 Powers of the Administrator

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

- (a) to construe and interpret this *Plan*, including all possible ambiguities, inconsistencies and omissions in the *Plan* and related documents, and to decide all questions of fact, questions relating to eligibility and participation, and questions of benefits under this *Plan*;
- (b) to prescribe procedures to be followed and the forms to be used by *Employees* and *Participants* to make elections pursuant to this *Plan*;
- (c) to prepare and distribute information explaining this *Plan* and the benefits under this *Plan* in such manner as the *Administrator* determines to be appropriate;
- (d) to request and receive from all *Employees* and *Participants* such information as the *Administrator* shall from time to time determine to be necessary for the proper administration of this *Plan*;
- (e) to furnish each *Employee* and *Participant* with such reports with respect to the administration of this *Plan* as the *Administrator* determines to be reasonable and appropriate, including appropriate statements setting forth the amounts by which a *Participant's* Compensation has been reduced in order to provide benefits under this *Plan*;
- (f) to receive, review and keep on file such reports and information concerning the benefits covered by this *Plan* as the *Administrator* determines from time to time to be necessary and proper;
- (g) to appoint and employ such individuals or entities to assist in the administration of this *Plan* as it determines to be necessary or advisable, including legal counsel and benefit consultants;
- (h) to sign documents for the purposes of administering this *Plan*, or to designate an individual or individuals to sign documents for the purposes of administering this *Plan*; and
- (i) to maintain the books of accounts, records, and other data in the manner necessary for proper administration of this *Plan* and to meet any applicable disclosure and reporting requirements.

8.3 Reliance on Participant, Tables, etc.

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

8.4 Provision for Third-Party Plan Service Providers

The *Administrator*, subject to approval of the *Employer*, may employ the services of such persons as it may deem necessary or desirable in connection with the operation of the *Plan*. Unless otherwise provided in the service agreement, obligations under this *Plan* shall remain the obligation of the *Employer*.

8.5 Liability

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

8.6 Compensation of Plan Administrator

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

8.7 Inability to Locate Payee

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

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 paid or to be paid to a *Participant* or other person, the *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 *Administrator* may include withholding of any amounts due to the *Plan* or the *Employer* from *Compensation* paid by the *Employer*.

9.1 Expenses

All reasonable expenses incurred or paid in administering the *Plan* are currently paid by the *Employer*.

9.2 No Contract of Employment

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

9.3 Amendment and Termination

This *Plan* has been established with the intent of being maintained for an indefinite period of time. Nonetheless, the *Employer* may amend or terminate all or any part of this *Plan* at any time by a decision of the *Employer* or by any person or persons authorized by the *Employer* to take such action.

9.4 Governing Law

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 any other federal law.

9.5 Code Compliance

It is intended that this *Plan* meet all applicable requirements of the Code, and of all regulations issued thereunder. This *Plan* shall be construed, operated and administered accordingly, and in the event of any conflict between any part, clause or provision of this *Plan* and the Code, 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.

9.6 No Guarantee of Tax Consequences

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

9.7 Indemnification of Employer

If any *Participant* receives one or more payments or reimbursements under Article VII that are not for *Transportation Expenses*, such *Participant* shall indemnify and reimburse the *Employer* for any liability that it may incur for failure to withhold federal income taxes, Social Security taxes, or other taxes from such payments or reimbursements.

9.8 Non-Assignability of Rights

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

9.9 Procedure If Benefits Are Denied Under This Plan

If a claim for reimbursement under this *Plan* is wholly or partially denied, a written notice of adverse benefit determination shall be furnished to the claimant within a reasonable period of time, not to exceed 90 days after receipt of the claim by the *Administrator*. Upon receipt of an adverse benefit determination, the claimant must within 60 days appeal in writing the denial to the *Administrator* (seeking reconsideration of the denial). This appeal step is a prerequisite to pursuing any other avenues of relief.

9.10 Headings

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

9.11 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 set forth in this document, the provisions of this *Plan* shall be controlling.

9.12 Severability

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