

**Mott Community College
Optional Retirement Plan**

**Submitted for Board of Trustees Action at Meeting of
August 25, 2008**

The C. S. Mott Community College Board of Trustees has established the Mott Community College Optional Retirement Plan as a Code Section 403(a) defined contribution (money purchase) pension plan. The following text sets forth the provisions of the plan as amended and restated through November 27, 2006:

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Article I: Definitions

- 1.1 **Accumulation Account** means the separate account(s) established for each Participant. The current value of a Participant's Accumulation Account includes all Plan Contributions, less expense charges, and reflects credited investment experience.
- 1.2 **Annual Additions** means the sum of the following amounts credited to a Participant's Accumulation Account during the Limitation Year: (a) Plan Contributions; (b) forfeitures, if any; and (c) individual medical account amounts described in section 415(l)(2) and 419A(d)(2) of the Code, if any.
- 1.3 **Beneficiary(ies)** means the individual, institution, trustee, or estate designated by the Participant to receive the Participant's benefits at his or her death.
- 1.4 **Board** means the Institution's Board of Trustees.
- 1.5 **Code** means the Internal Revenue Code of 1986, as amended from time to time.
- 1.6 **Compensation** means the amount paid by the Institution to a Participant that must be reported as wages on the Participant's Form W2 plus any salary reduction contributions made by the Institution on behalf of the Participant which are not includible in the gross income of the Participant under Code Sections 125, 403(b), 457 or, for plan years beginning on and after January 1, 2001, by reason of Code § 132(f)(4), and any employee contributions under the Plan described in Code Section 404(h)(2) which are "picked up" by the Institution and thus are treated as employer contributions.

In addition to other applicable limitations stated in the Plan, and notwithstanding any other provision of the Plan to the contrary, for the 1996 through 2001 Plan Years, the annual Compensation of each employee taken into account under the Plan shall not exceed the OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit was \$150,000, as adjusted by the Commissioner of the Internal Revenue Service for increases in the cost of living in accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applied to any period, not exceeding 12 months, over which Compensation was determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12. For the 1996 through 2001 Plan Years, any reference in this Plan to the limitation under section 401(a)(17) of the Code shall mean the OBRA '93 annual compensation limit stated in this provision.

The annual Compensation of each Participant taken into account in determining allocations for any plan year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual Compensation means compensation during the plan year or such other consecutive 12 month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

Notwithstanding the above, employees who became Participants in the Plan before the first day of the plan year beginning after December 31, 1995, will be subject to the annual compensation

limit in effect under the Plan before that date, as determined by IRS regulations.

1.7 **Eligible Employee** means an individual employed by the Institution who is either classified as a regular employee (included in the table of Board-approved positions) or is classified as a limited-term employee (included in the supplemental table of date specific positions) and is also:

- full-time faculty,
- a full-time employee in the Supervisory/Managerial bargaining unit,
- a full-time professional administrator, or
- (effective July 28, 1997) a full-time employee in the Professional / Technical bargaining unit (or a non-union limited-term employee who performs Professional / Technical bargaining unit work) or an Exempt non-manager.

The term Eligible Employee shall not include any

- leased employee deemed to be an employee of the Institution as provided in Code Section 414(n), or
- a faculty or administrative staff member who works a full-time schedule but is not classified as a regular or limited-term employee.

As used in this section, “full-time” (a) when applied to eligible faculty means an individual so classified by the Institution and (b) when applied to other Eligible Employees means an individual who is hired on a 52 week per year, 40 hours per week basis.

1.8 **Fund Sponsor** means an insurance, variable annuity or investment company that provides Funding Vehicles available to Participants under this Plan.

1.9 **Funding Vehicles** means the annuity contracts or custodial accounts that satisfy the requirements of Code Section 401(f) issued for funding accrued benefits under this Plan and specifically approved by the Institution for use under this Plan.

1.10 **Institution** means Mott Community College.

1.11 **Institution Plan Contributions** means contributions made by the Institution under this Plan.

1.12 **Limitation Year** means a calendar year.

1.13 **MPSERS** means the Michigan Public School Employee Retirement System, a defined benefit governmental retirement plan.

1.14 **MPSERS Compensation** means “compensation” as defined in the Public School Employees Retirement Act of 1979, but only to the extent MPSERS Compensation does not exceed the Participant’s Compensation as defined in Section 1.6.

1.15 **Normal Retirement Age** means age 65.

1.16 **Optional Retirement Program** means the Institution’s defined contribution retirement plan established under the Optional Retirement Act of 1967, as set forth in this Plan.

- 1.17 **Participant** means any Eligible Employee of the Institution participating in this Plan.
- 1.18 **Participant Plan Contributions** mean contributions made by a Participant under this Plan. Participant Plan Contributions are designated as being picked-up by the Institution in lieu of contributions by the Participant, in accordance with Code Section 414(h)(2). The pick-up amounts cannot be received directly by the Participant and are required to be made.
- 1.19 **Plan** means the Institution's Defined Contribution Retirement Plan as set forth in this document.
- 1.20 **Plan Contributions** means contributions made under this Plan by the Institution and Participant.
- 1.21 **Plan Entry Date** means the first of the month beginning after the date that an employee has met the participation requirements set forth in Article III.
- 1.22 **Plan Year** means January 1 through December 31.
- 1.23 **Qualified Election** means, in the case of a legally married Participant, a waiver of a Qualified Joint and Survivor Annuity or a Qualified Pre-retirement Survivor Annuity. Any waiver of a Qualified Joint and Survivor Annuity or a Qualified Pre-retirement Survivor Annuity shall not be effective unless: (a) the Participant's spouse consents in writing to the election; (b) the election designates a specific Beneficiary(ies), including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (unless the spouse expressly permits designations by the Participant without any further spousal consent); (c) the spouse's consent acknowledges the effect of the election; and (d) the spouse's consent is witnessed by a Plan representative or notary public. Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment that may not be changed without spousal consent (or the spouse expressly permits designations by the Participant without any further spousal consent). If it is established to the satisfaction of a Plan representative that there is no spouse or that the spouse cannot be located, a waiver will be deemed a Qualified Election.

Any consent by a spouse obtained under this provision (or establishment that the consent of a spouse may not be obtained) shall be effective only with respect to such spouse. A consent that permits designations by the Participant without any requirement of further consent by such spouse must acknowledge that the spouse has the right to limit consent to a specific Beneficiary(ies), and a specific form of benefit where applicable, and that the spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Article VI.

- 1.24 **Qualified Joint and Survivor Annuity** means an immediate annuity for the life of the Participant with a survivor annuity for the life of the spouse that is not less than 50 percent (and not more than 100 percent) of the amount payable during the joint lives of the Participant and the spouse that can be purchased with the Participant's vested Accumulation Account. The percentage of the survivor annuity under the Plan shall be 50 percent.
- 1.25 **Qualified Pre-retirement Survivor Annuity** means an annuity for the life of the surviving spouse of a deceased Participant the actuarial equivalent of which is not less than 50 percent of the Participant's Accumulation Account(s) at the date of death.

Article II: Establishment of Plan

- 2.1 *Establishment of Plan.* The Board established the Plan as of February 1, 1995, and this document is effective as of that date except as otherwise stated herein. Plan Contributions shall be held for the exclusive benefit of Participants.

Required Participant Plan Contributions are designated “picked-up” by the Institution so as not to be included in the Participant’s gross income for federal tax purposes as provided by Code Section 414(h)(2).

Article III: Eligibility for Participation

- 3.1 **Eligibility.** Effective February 1, 1995, an Eligible Employee who is a member of MPSERS, may continue his membership in MPSERS or may elect within the time period prescribed below to participate in this Plan and retain a limited membership in MPSERS.

An individual who becomes an Eligible Employee after February 1, 1995, may elect within the time period prescribed below to become a member of MPSERS or may elect to participate in this Plan.

Within 90 days after February 1, 1995, individuals who are Eligible Employees as of that date shall elect to participate or not to participate in this Plan. An individual who becomes an Eligible Employee subsequent to February 1, 1995, shall make an election whether to participate in this Plan within 90 days following the date on which he/she qualifies as an Eligible Employee. An Eligible Employee not electing to participate in this Plan is deemed to have made an irrevocable election of membership in MPSERS.

If an Eligible Employee timely elects to participate in this Plan, participation shall become effective no later than the first full payroll period subsequent to receipt, by the Plan Administrator, of the Eligible Employee's enrollment form/notice.

- 3.2 **Notification.** The Institution will promptly notify each Eligible Employee of his/her right to participate in this Plan or MPSERS in accordance with Section 3.1. An Eligible Employee who elects to become a Participant in this Plan in accordance with Section 3.1 shall be entitled to the benefits and is bound by all the terms, provisions, and conditions of this Plan, including any amendments that, from time to time, may be adopted, and including the terms, provisions and conditions of any Funding Vehicle(s) in which Plan Contributions for the Participant have been invested.

- 3.3 **Enrollment in Plan.** To participate in this Plan, an Eligible Employee must complete the necessary enrollment form(s) and return them to the Institution. An employee who has been notified that he or she is eligible to participate but who fails to return the enrollment forms within the applicable 90-day period will be deemed to have made an irrevocable waiver of all of his or her rights under the Plan and shall automatically be enrolled in MPSERS.

- 3.4 **Reemployment.** A former employee who is reemployed by the Institution on or after February 1, 1995, will be eligible to participate in this Plan upon becoming an Eligible Employee.

- 3.5 **Termination of Participation.** A Participant will continue to be eligible for the Plan until one of the following conditions occur:

- his or her contributions under the Plan are terminated;
- he or she ceases to be an Eligible Employee;
- the Plan is terminated.

Article IV: Plan Contributions

4.1 *Plan Contributions.*

- a. Plan Contributions will be made for Eligible Employees who have satisfied the requirements of Article III. Institution Plan Contributions will only be made for Participants who have authorized the required Participant Plan Contributions.
- b. The required Participant Plan Contribution level continues after October 1, 1998 at 3.9% of MPSERS Compensation.
- c. After October 1, 1998, except as provided in (d) or (e) below, Institution Plan Contributions for Eligible Employees
 - who became Participants prior to January 1, 2003 and
 - who remain continuously employed by the Institution

shall be increased or decreased contemporaneously with the effective dates of newly-announced MPSERS rates corresponding to changes in the payroll contribution rate established by MPSERS from time to time (regardless of the funding source). That contribution level shall be composed of the sum of two factors. The first factor is the MPSERS contribution rate, including all actuarial elements which comprise the MPSERS contribution rate. The second factor is 3.54% of MPSERS Compensation, a contribution provided by the Institution to assist the Participant in purchasing, at his or her expense, health coverage as offered from time to time by the College for retiree purchase.

- d. However, beginning on January 1, 2007, Institutional Plan Contribution Rates for eligible employees who
 - are **not** included in the Professional/Technical Bargaining Unit or the Supervisory/Managerial Bargaining Unit, and
 - became Participants prior to January 1, 2003, and
 - who remain continuously employed by the Institution,

are revised as set forth in the table below:

Effective Date	Institutional Plan Contribution Rate
January 1, 2007	16.34%
October 1, 2007	15.64%
October 1, 2008	14.94%
October 1, 2009	14.24%
October 1, 2010 and thereafter	13.54%

All contribution rates are subject to further prospective change, pursuant to Section 9.1 of the Plan, subject to the Institution notifying affected classifications of employees at least 30 calendar days in advance of the effective date of the rate change.

- e. For Eligible Employees (including full-time faculty) who become Participants (or who resume participation following a break in continuous employment), on or after January 1, 2003, the Institutional Plan Contribution shall be 10% of MPSERS compensation.

As used in (c), (d) and (e) above, "continuously employed" or "continuous employment" shall mean ongoing active service as an employee of the Institution without a termination of such employment. A Participant's employment with the Institution shall be deemed to terminate upon his death, or upon his retirement, voluntary or involuntary termination of employment, unauthorized absence or failure to return to active employment with the Institution by the date on which an authorized leave of absence expires, as determined in accordance with the employment practices and procedures of the Institution from time to time in effect with respect to such matters. Unless otherwise expressly provided in this Plan, no Contributions shall be made with respect to any period of continuous employment in a status other than Eligible Employee. Temporary absences shall not be deemed a break in continuous employment in the following circumstances:

(1) If the Participant shall be absent from active employment with the Institution without pay on account of (i) illness, (ii) mental or physical disability, (iii) leave of absence or sabbatical granted by the Institution, or (iv) layoff; provided that if he fails to resume active employment within 30 days from the expiration of such illness, disability, or leave of absence, or if he fails promptly to report for work upon being recalled from such layoff, such failure shall be deemed a break in continuous employment. However, continued absence for any of the foregoing reasons which exceeds the maximum time permitted in an applicable labor contract, employment contract, state statute or federal statute shall be deemed a break in continuous employment.

(2) If the Participant shall leave the active employment of the Institution for the purpose of becoming (and thereupon becomes) a member of the Armed Forces of the United States, provided that if he fails to resume active employment within 90 days after his first eligibility for release or discharge from said Armed Forces, such failure shall be deemed a break in continuous employment.

(3) Foregoing subsections (1) and (2) shall not prevent the Institution and the Participant from mutually determining in writing that his status as an employee or Participant, as the case may be, shall terminate (or have terminated) at any designated time, either with or without cause.

Plan Contributions are to be credited to Participants no later than the end of the month following the month in which MPSERS compensation is paid.

- 4.2 ***When Contributions Are Made.*** Plan Contributions for a Participant will begin no later than the first full payroll period subsequent to receipt, by the Plan Administrator, of the Eligible Employee's enrollment form/notice. Plan Contributions will be forwarded to the Fund Sponsor(s) in accordance with the procedures established by the Institution. Institution Plan Contributions and Participant Plan Contributions will be forwarded to the Fund Sponsor(s) at least monthly, but not later than any deadline imposed by applicable law.
- 4.3 ***Allocation of Contributions.*** A Participant may allocate Plan Contributions to the Funding Vehicle(s) in any whole-number percentages that equal 100 percent. A Participant may change his or her allocation of future or prior contributions to the Funding Vehicle(s) subject to any restrictions imposed by the Fund Sponsor.

- 4.4 **Leave of Absence.** During a paid leave of absence, Plan Contributions will continue to be made for a Participant on the basis of MPSEERS Compensation then being paid to the Participant by the Institution. During an approved paid sabbatical, Plan contributions will continue to be made to and for a Participant based on the Participant's compensation as defined in Article I: Definitions, 1.6 of this Plan Document. No Plan Contributions will be made during an unpaid leave of absence.
- 4.5 **Transfer of Funds from Another Plan.** The Fund Sponsor shall accept contributions that are transferred directly from any other plan qualified under sections 401(a) or 403(a) of the Code, whether such plans are funded through a trustee arrangement or through an annuity contract, if such contributions are attributable only to employer and employee contributions and the earnings thereon and accompanied by instructions showing the respective amounts attributable to employer and employee contributions. Such funds and the accumulation generated from them shall always be fully vested and nonforfeitable. Effective January 1, 2002, the Plan will accept a direct rollover of an eligible rollover distribution from:
- a. A qualified plan described in section 401(a) or 403(a) of the Code including after-tax employee contributions.
 - b. A tax sheltered annuity plan described in section 403(b) of the Code, excluding after-tax employee contributions.
 - c. An eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.
- 4.6 **Acceptance of Rollover Contributions.** The Plan will accept a Participant contribution of an eligible rollover distribution from:
- a. A qualified plan described in section 401(a) or 403(a) of the Code.
 - b. A tax sheltered annuity plan described in section 403(b) of the Code.
 - c. An eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.
- The Plan will also accept a Participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.
- 4.7 **Uniformed Services.** Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with §414(u) of the Code.
- 4.8 **Maximum Plan Contributions.** The Annual Additions that may be contributed or allocated to a Participant's account under the Plan for any limitation year shall not exceed the lesser of:
- a. \$40,000, as adjusted for increases in the cost-of-living under section 415(d) of the Code, or
 - b. 100 percent of the Participant's Recognized Compensation, within the meaning of section 415(c)(3) of the Code, for the limitation year.

The compensation limit referred to in (b) shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or section 419(f)(2) of the Code), if any, otherwise treated as an Annual Addition.

"Recognized Compensation" of a Participant from the Institution for any year means the amount determined by the Institution to be the total earnings paid to the Participant during such year for service as an eligible individual. Recognized Compensation includes any contributions made by salary reduction to any other plan which meets the requirements of Code sections 125, 403(b), 457 or 132(f)(4), whether or not such contributions are actually excludable from the Participant's gross income for federal income tax purposes. However, Recognized Compensation of a Participant for any calendar year shall not exceed the annual compensation amount determined by the IRS and adjusted for each year after 1996 to take into account any cost of living increase provided for that year in accordance with regulations prescribed by the Secretary of the Treasury under Code section 401(a)(17).

To the extent permitted by Code Section 415 and the regulations promulgated thereunder, if the Annual Additions exceed the Section 415 limitations, the excess amounts will be disposed of as follows: (a) any Participant Plan Contributions (plus any gain attributable to the excess), to the extent they would reduce the excess amount, will be returned to the Participant; and, to the extent necessary, (b) if, after the application of (a) an excess still exists, the excess will be held unallocated in a suspense account and will be applied to reduce Institution Plan Contributions in succeeding limitation years.

If the limitations are exceeded because the Participant is also participating in another plan required to be aggregated with this Plan for Code Section 415, then the extent to which annual contributions under this Plan will be reduced, as compared with the extent to which annual benefits or contributions under any other plans will be reduced, will be determined by the Institution in a manner as to maximize the aggregate benefits payable to the Participant from all plans. If the reduction is under this Plan, the Institution will advise affected Participants of any additional limitation on their annual contributions required by this paragraph.

Article V: Funding Vehicles

5.1 **Funding Vehicles.** Plan Contributions are invested in one or more Funding Vehicles available to Participants under this Plan. The Fund Sponsors and their Funding Vehicles are:

A. Teachers Insurance and Annuity Association (TIAA)

TIAA Group Retirement Annuity

Traditional Annuity
Real Estate Account

B. College Retirement Equities Fund (CREF)

CREF Group Retirement Unit-Annuity:

Stock Account
Money Market Account
Bond Market Account
Social Choice Account
Global Equities Account
Growth Account
Equity Index Account

The Institution's current selection of Fund Sponsors and Funding Vehicles is not intended to limit future additions or deletions of Fund Sponsors and Funding Vehicles. Any additional accounts offered by a Fund Sponsor will automatically be made available to Participants in accordance with the procedures established by the Institution and the Fund Sponsor.

5.2 **Fund Transfers.** Subject to a Funding Vehicle's rules for transfers and in accordance with the provisions of the Code for maintaining the tax deferral of the Accumulation Account(s), a Participant may transfer funds accumulated under the Plan among the Plan's approved Funding Vehicles to the extent permitted by the Funding Vehicles.

For a Participant who has terminated employment with the Institution, this Plan's transfer rules will continue to govern vested amounts accumulated under the Plan.

Article VI: Vesting

- 6.1 ***Plan Contributions.*** Plan Contributions shall be fully vested and nonforfeitable when such Plan Contributions are made.

Article VII: Benefits

7.1 **Retirement Benefits.** A Participant who has terminated employment may elect to receive retirement benefits under any of the forms of benefit, as provided below.

Forms of Benefit. The forms of benefit are the benefit options offered by the Funding Vehicles available under this Plan. These forms are equally available to all Participants choosing the Funding Vehicle. The forms of benefit available under this Plan include:

- Single life annuities as provided under the Funding Vehicle contract.
- Joint and survivor annuities as provided under the Funding Vehicle contract.
- Cash withdrawals, to the extent the Funding Vehicle permits and subject to the limitations in the "Cash Withdrawal" section of this Article.
- Fixed period annuities, as permitted by the Funding Vehicle contract.
- Retirement Transition Benefit.
- Such other annuity and withdrawal options as provided under the Funding Vehicle contract.

7.2 **Cash Withdrawals.** A Participant who has terminated employment may receive benefits in any form that the relevant Funding Vehicle permits, including a cash withdrawal. Cash withdrawals may not be received while the Participant is still employed by the Institution.

7.3 **Retirement Transition Benefit.** The Retirement Transition Benefit (RTB) permits a Participant to receive a one-time lump-sum payment of up to 10 percent of his or her Accumulation Account(s) in TIAA and/or the CREF account(s) at the time annuity income begins, provided the one-sum payment from each TIAA contract and/or CREF account(s) doesn't exceed 10 percent of the respective Accumulation Account(s) being converted to retirement income.

7.4 **Survivor Benefits.** If a Participant dies before the start of retirement benefit payments, the full current value of the Accumulation Account(s) is payable to the Beneficiary(ies) under the options offered by the Funding Vehicle. Distribution of Survivor Benefits is subject to the required distribution rules set forth in Code Section 401(a)(9).

7.5 **Application for Benefits.** Procedures for receipt of benefits are initiated by writing directly to the Fund Sponsor. Benefits will be payable by the Fund Sponsor upon receipt of a satisfactorily completed application for benefits and supporting documents. The necessary forms will be provided to the Participant, the surviving spouse, or the Beneficiary(ies) by the Fund Sponsor.

7.6 **Minimum Distribution Requirements.** The requirements of this section shall apply to any distribution of a Participant's vested Accumulation Account(s) and will take precedence over any inconsistent provisions of this Plan except as otherwise provided in the "Joint and Survivor Annuity Requirements" section of Article VII. Distributions in all cases will be made in accordance with Code Section 401(a)(9) and the regulations promulgated thereunder, including the minimum distribution incidental benefit requirement of Section 1.401(a)(9)-2 of the proposed regulations.

- (a) Limits on Settlement Options. Distributions may only be made over one of the following periods (or a combination thereof): i) the life of the Participant; ii) the life of the Participant and a designated Beneficiary(ies); iii) a period certain not extending beyond

the life expectancy of the Participant; or iv) a period certain not extending beyond the joint and last survivor life expectancy of the Participant and designated Beneficiary(ies).

- (b) The entire interest of a Participant must be distributed or begin to be distributed no later than the Participant's required Beginning Date. The Required Beginning Date of a Participant is April 1 following the calendar year in which the Participant attains age 70 1/2 or, if later, April 1 following the calendar year in which the Participant retires.
- (c) Death Distribution Provisions. Upon the death of the Participant, the following distribution provisions will take effect:
 - i) If the Participant dies after distribution of his or her vested Accumulation Account has begun, the remaining portion of the vested Accumulation Account(s) will continue to be distributed at least as rapidly as under the method of distribution being used before the Participant's death;
 - ii) If the Participant dies before distribution of his or her vested Accumulation Account(s) begins, distribution of the Participant's entire vested Accumulation Account(s) shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death except where an election is made to receive distributions in accordance with (1) or (2) below:
 - (1) If any portion of the Participant's vested Accumulation Account is payable to a designated Beneficiary(ies), distributions may be made over a period certain not greater than the life expectancy of the designated Beneficiary(ies) commencing by December 31 of the calendar year immediately following the calendar year in which the Participant died;
 - (2) If the designated Beneficiary(ies) is the Participant's surviving spouse, the date distributions are required to begin in accordance with (1) above must not be earlier than the later of (a) December 31 of the calendar year immediately following the calendar year in which the Participant died and (b) December 31 of the calendar year in which the Participant would have attained age 70 1/2.

If the Participant has not made an election pursuant to this section by the time of his or her death, the Participant's designated Beneficiary(ies) must elect the method of distribution no later than the earlier of (1) December 31 of the calendar year in which distributions would be required to begin under this section, or (2) December 31 of the calendar year that contains the fifth anniversary of the date of death of the Participant. If the Participant has no designated Beneficiary(ies), or if the designated Beneficiary(ies) does not elect a method of distribution, distribution of the Participant's entire vested Accumulation Account(s) must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

7.7 Commencement of Benefits. Unless the Participant elects otherwise, distribution of benefits will begin no later than the 60th day after the latest of the close of the Plan Year in which:

- (a) the Participant attains age 65 (or Normal Retirement Age, if earlier);
- (b) occurs the 10th anniversary of the year in which the Participant commenced participation in the Plan; or,

- (c) the Participant terminates service with the Institution.

Notwithstanding the foregoing, the failure of a Participant and spouse to consent to a distribution while a benefit is immediately distributable shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this section.

A Participant who elects to defer receipt of benefits may not do so to the extent that he or she is creating a death benefit that is more than incidental.

- 7.8 **Joint and Survivor Annuity Requirements.** The provisions of this section shall apply to any married Participant who is credited with one Hour of Service at the Institution on or after August 23, 1984. However, any Participant in this Plan not receiving benefits as of August 23, 1984 may elect to have benefits paid in a manner described herein.

Pre-retirement Spousal Entitlement. Unless a Qualified Election is made, if a married Participant dies before the date benefits commence, the Participant's vested Accumulation Account shall be applied toward the purchase of a Qualified Pre-retirement Survivor Annuity, unless the surviving spouse otherwise elects within a reasonable time after the Participant's death. The surviving spouse may elect, within a reasonable time after the Participant's death, (i) to have such annuity distributed, (ii) to receive the Participant's Accumulation Account in a lump sum, or (iii) to receive payment of the Participant's Accumulation Account in accordance with any other optional form permitted by the Funding Vehicle(s) subject to Section 7.6, within (or commencing within) a reasonable period after the Participant's death.

Notification of Pre-retirement Spousal Entitlement. In the case of a Qualified Pre-retirement Survivor Annuity, the Institution shall provide each Participant, within the applicable period for such Participant, a written explanation of the Qualified Pre-retirement Survivor Annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements for notification of a Qualified Joint and Survivor Annuity.

The applicable period for a Participant is whichever of the following periods ends last: (a) the period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35; (b) a reasonable period after an Eligible Employee becomes a Participant; or (c) a reasonable period ending after this section first applies to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation of service in the case of a Participant who separates from service before attaining age 35.

For applying the preceding paragraph, a reasonable period ending after the enumerated events is the end of the two-year period beginning one year before the date the applicable event occurs, and ending one year after that date. For a Participant who separates from service before the Plan Year in which age 35 is attained, notice should be provided within the two-year period beginning one year before separation and ending one year after separation. If such a Participant thereafter returns to employment with the Institution, the applicable period for such Participant shall be redetermined.

Post-retirement Spousal Entitlement. Unless a Qualified Election is made within the 90-day period ending on the date benefits commence, a married Participant's vested Accumulation Account will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant's vested Accumulation Account will be paid in the form of a single life annuity.

Notification of Post-retirement Spousal Entitlement. In the case of a Qualified Joint and Survivor Annuity, the Institution shall no less than 30 days and no more than 90 days before the

date benefits commence provide each Participant a written explanation of: (a) the terms and conditions of a Qualified Joint and Survivor Annuity; (b) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit; (c) the rights of a Participant's spouse; and (d) the right to waive a Qualified Joint and Survivor Annuity.

If the Participant, after receiving the explanation, elects a form of benefit and the spouse consents to the benefit (if necessary), the Plan will not fail to satisfy the requirements of this paragraph merely because the annuity starting date is less than 30 days after the written explanation is given to the Participant provided (1) the explanation is provided prior to the annuity starting date; (2) the distribution does not commence before the expiration of the 7-day period that begins the day after the explanation is provided to the Participant; and (3) prior to the expiration of the 7-day period, or the annuity starting date, if later, the Participant may revoke the distribution election

7.9 **Direct Rollovers.** This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

For this section, the following definitions apply:

1) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

2) Eligible retirement plan: An eligible retirement plan is a qualified retirement plan described in section 401(a) or section 403(a), of the Code, a tax sheltered annuity plan described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. An eligible retirement plan also includes an individual retirement account described in Code Section 408(a), an individual retirement annuity described in section 408(b) of the Code. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.

3) Distributee: A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

4) Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

7.10 **Loans.** Subject to the terms of the Funding Vehicles, loans are available to Participants before the commencement of benefit payments.

Article VIII: Administration

- 8.1 **Plan Administrator.** The senior Human Resources Manager of the Institution, located at 1401 E. Court St., Flint, MI 48503, is the administrator of this Plan and is responsible for enrolling Participants, sending Plan Contributions for each Participant to the Fund Sponsors, and for performing other duties required for the operation of the Plan.
- 8.2 **Authority of the Institution.** The Institution has all the powers and authority expressly conferred upon it herein and further, grants the Plan Administrator discretionary and final authority to determine all questions concerning eligibility and contributions under the Plan, to interpret and construe all terms of the Plan, including any uncertain terms, and to determine any disputes arising under and all questions concerning administration of the Plan. Any determination made by the Institution shall be given deference, if it is subject to judicial review, and shall be overturned only if it is arbitrary or capricious. In exercising these powers and authority, the Institution will always exercise good faith, apply standards of uniform application, and refrain from arbitrary action. The Institution may employ attorneys, agents, and accountants as it finds necessary or advisable to assist it in carrying out its duties. The Institution, by action of its Board, may designate a person or persons other than the senior Human Resources Manager to carry out any of its powers, authority, or responsibilities. Any delegation will be set forth in writing.
- 8.3 **Action of the Institution.** Any act authorized, permitted, or required to be taken by the Institution under the Plan, which has not been delegated in accordance with the "Authority of the Institution" section of Article VIII, may be taken by a majority of the members of the Board, either by vote at a meeting, or in writing without a meeting. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Institution under the Plan will be in writing and signed by either (i) a majority of the members of the Board, or by any member or members as may be designated by an instrument in writing, signed by all members, as having authority to execute the documents on its behalf, or ii) a person who becomes authorized to act for the Institution in accordance with the provisions of the "Authority of the Institution" section of Article VIII. Any action taken by the Institution that is authorized, permitted, or required under the Plan and is in accordance with Funding Vehicles contractual obligations are final and binding upon the Institution, and all persons who have or who claim an interest under the Plan, and all third parties dealing with the Institution.
- 8.4 **Indemnification.** To the maximum extent permitted by law, the Institution will satisfy any liability actually and reasonably incurred by any members of the Board or any person to whom any power, authority or responsibility of the Institution is delegated pursuant to the "Authority of the Institution" section of Article VIII (other than the Fund Sponsors). These liabilities include expenses, attorney's fees, judgements, fines, and amounts paid in connection with any threatened, pending or completed action suit or proceeding related to the exercise (or failure to exercise) of this authority. This is in addition to whatever rights of indemnification exist under the articles of incorporation, regulations or by-laws of the Institution, under any provision of law, or under any other agreement.
- 8.5 **Investment Manager.** To the extent that Participants allocate contributions to the TIAA Real Estate Account, TIAA will be the investment manager and exercise fiduciary responsibility with respect to the account balance in the TIAA Real Estate Account. TIAA acknowledges that it is a fiduciary with respect to such assets.

- 8.6 **No Reversion.** Under no circumstances or conditions will any Plan Contributions of the Institution revert to, be paid to, or inure to the benefit of, directly or indirectly, the Institution. However, if Plan Contributions are made by the Institution by mistake of fact, these amounts may be returned to the Institution within one year of the date that they were made.
- 8.7 **Statements.** The Institution will determine the total amount of contributions to be made for each Participant from time to time on the basis of its records and in accordance with the provisions of this Article. When each contribution payment is made by the Institution, the Institution will prepare a statement showing the name of each Participant and the portion of the payment that is made for him or her, and will deliver the statement to the appropriate Fund Sponsors with the contributions payment. Any determination by the Institution, made after an appropriate investigation of facts and circumstances and evidenced by a statement delivered to the Fund Sponsors, is final and binding on all Participants, their Beneficiaries or contingent annuitants, or any other person or persons claiming an interest in or derived from the contribution's payment.
- 8.8 **Reporting.** Records for each Participant under this Plan are maintained on the basis of the Plan Year. At least once a year the Fund Sponsors will send each Participant a report summarizing the status of his or her Accumulation Account(s) as of December 31 each year. Similar reports or illustrations may be obtained by a Participant upon termination of employment or at any other time by writing directly to the Fund Sponsors.

Article IX: Amendment and Termination

- 9.1 ***Amendment and Termination.*** While it is expected that this Plan will continue indefinitely, the Institution reserves the right to amend, otherwise modify, or terminate the Plan, or to discontinue any further contributions or payments under the Plan, by resolution of its Board. In the event of a termination of the Plan or complete discontinuance of Plan Contributions, the Institution will notify all Participants of the termination. As of the date of complete or partial termination, all Accumulation Accounts will become nonforfeitable to the extent that benefits are accrued.
- 9.2 ***Limitation.*** Notwithstanding the provisions of the "Amendment and Termination" section of Article IX, the following conditions and limitations apply:
- (a) No amendment shall be made which will operate to recapture for the Institution any contributions previously made under this Plan. However, Plan Contributions made based on a mistake of fact may be returned to the Institution within one year of the date on which the Plan Contribution was made. Also, Plan Contributions made in contemplation of approval by the Internal Revenue Service may be returned to the Institution if the Internal Revenue Service fails to approve the Plan.
 - (b) No amendment will deprive, take away, or alter any then accrued right of any Participant insofar as Plan Contributions are concerned.

Article X: Miscellaneous

- 10.1 ***Plan Non-Contractual.*** Nothing in this Plan will be construed as a commitment or agreement on the part of any person to continue his or her employment with the Institution, and nothing in this Plan will be construed as a commitment on the part of the Institution to continue the employment or the rate of Compensation of any person for any period, and all employees of the Institution will remain subject to discharge to the same extent as if the Plan had never been put into effect.
- 10.2 ***Claims of Other Persons.*** The provisions of the Plan will not be construed as giving any Participant or any other person, firm, or corporation, any legal or equitable right against the Institution, its officers, employees, or trustees, except the rights as specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.
- 10.3 ***Merger, Consolidation, or Transfers of Plan Assets.*** In the event of a merger or consolidation with, or transfer of assets to, another plan, each Participant will receive immediately after such action a benefit under the plan that is equal to or greater than the benefit he or she would have received immediately before a merger, consolidation, or transfer of assets or liabilities.
- 10.4 ***Non-Alienation of Retirement Rights or Benefits.*** No benefit under the Plan may, at any time, be subject in any manner to alienation, encumbrance, the claims of creditors or legal process to the fullest extent permitted by law. No person will have power in any manner to transfer, assign, alienate, or in any way encumber his or her benefits under the Plan, or any part thereof, and any attempt to do so will be void and of no effect. However, this Plan will comply with any judgment, decree or order which establishes the rights of another person to all or a portion of a Participant's benefit under this Plan to the extent that it is a "qualified domestic relations order" under section 414(p) of the Code.

Employer Identification Number: _____

(Signature of Plan Administrator)