

**DRAFT**

**2/9/16**

ICMA RETIREMENT CORPORATION GOVERNMENTAL  
PROFIT-SHARING 401(A) PLAN AND TRUST ADOPTION  
AGREEMENT WITH CITY OF APACHE JUNCTION, ARIZONA

Plan Number 10-8232

The Employer hereby establishes a Profit Sharing 401(a) Plan and Trust to be known as the Plan in the form of the ICMA Retirement Corporation Governmental Profit Sharing Plan and Trust.

This Plan is an amendment and restatement of an existing defined contribution profit sharing plan.

  X   Yes                             No

If yes, please specify the name of the defined contribution profit sharing plan which this Plan hereby amends and restates:

ICMA Retirement Corporation Governmental Profit Sharing 401(a) Plan and Trust adoption agreement, Plan number 10-8232 adopted November 4, 2003 by Resolution No. 03-05.

I. Employer: City of Apache Junction

II. Effective Date:

- X   1. Effective Date of Restatement. If this document is a restatement of an existing plan, the effective date of the Plan shall be January 1, 2007 unless an alternate effective date is hereby specified: April , 2016.
2. Effective Date of New Plan. If this is a new Plan, the effective date of the Plan shall be the first day of the Plan Year during which the Employer adopts the Plan, unless an alternate Effective Date is hereby specified:
3. Special Effective Dates. Please note here any elections in the Adoption Agreement with an effective date that is different from that noted in 1 or 2 above.

III. Plan Year will mean:

  X   The twelve (12) consecutive month period which coincides with the limitation year. (See Section 5.05(h) of the Plan.)

       The twelve (12) consecutive month period commencing on        and each anniversary thereof.

IV. Normal Retirement Age shall be age 65 (not to exceed age 65).

## V. ELEGIBILITY REQUIREMENTS

1. The following group or groups of Employees are eligible to participate in the Plan:  
☒ All Employees  
☐ All Full Time Employees  
☐ Salaried Employees  
☐ Nonunion Employees  
☐ Management Employees  
☐ Public Safety Employees  
☐ General Employees  
☒ Other Employees (Specify the group(s) of eligible employees below. Do not specify employees by name. Specific positions are acceptable.) City Manager, City Attorney, City Magistrate

The group specified must correspond to a group of the same designation that is defined in the statutes, ordinance, rules, regulations, personnel manuals or other material in effect in the state or locality of the Employer. The eligibility requirements cannot be such that an Employee becomes eligible only in the Plan Year in which the Employee terminates employment. Note: As stated in Sections 4.08 and 4.09, the Plan may, however, provide that Final Pay Contributions or Accrued Leave Contributions are the only contributions made under the Plan.

2. The Employer hereby waives or reduces the requirement of a twelve (12) month Period of Service for participation. The required Period of Service shall be (write N/A if an Employee is eligible to participate upon employment) N/A.

If this waiver or reduction is elected, it shall apply to all Employees within the Covered Employment Classification.

3. A minimum age requirement is hereby specified for eligibility to participate. The minimum age requirement is N/A (not to exceed age 21. Write N/A if not minimum age is declared.)

## VI. CONTRIBUTION PROVISIONS

1. The Employer shall contribute as follows (Choose all that apply):

Fixed Employer Contributions With or Without Mandatory Participant Contributions. (If Option B is chose, please complete section C.)

- ☐ A. Fixed Employer Contributions. The Employer shall contribute on behalf of each Participant \_\_\_\_\_% of Earnings or \$ \_\_\_\_\_ for the Plan Year (subject to the limitations of Article V of the Plan).  
\_\_\_\_\_ are required \_\_\_\_\_ are not required to be eligible for this Employer Contribution.

\_\_\_\_\_ B. Mandatory Participant Contributions for Plan Participation.

Required Mandatory Contributions. A Participant is required to contribute (subject to the limitations of Article V of the Plan) the specified amounts designated in items (i) through (iii) of the Contribution Schedule below:

\_\_\_\_\_ Yes      \_\_\_\_\_ No

Employee Opt-In Mandatory Contributions. To the extent that mandatory Participant contributions are not required by the Plan, each Employee eligible to participate in the Plan shall be given the opportunity to irrevocably elect to participate in the Mandatory Participant Contribution portion of the Plan by electing to contribute the specified amounts designated in items (i) through (iii) of the Contribution Schedule below for each Plan Year (subject to the limitations of Article V of the Plan):

\_\_\_\_\_ Yes      \_\_\_\_\_ No

Contribution Schedule.

- (i) \_\_\_\_\_% of Earnings,
- (ii) \$\_\_\_\_\_, or
- (iii) a whole percentage of Earnings between the range of \_\_\_\_\_ (insert range of percentages between 1% and 20% inclusive (e.g., 3%, 6%, or 20%; 5% to 7%)), as designated by the Employee in accordance with guidelines and procedures established by the Employer for the Plan Year as a condition of participation in the Plan. A Participant must pick a single percentage and shall not have the right to discontinue or vary the rate of such contributions after becoming a Plan Participant.

Employer "Pick Up". The Employer hereby elects to "pick up" the Mandatory Participant Contributions. <sup>1</sup>

\_\_\_\_\_ Yes      \_\_\_\_\_ No ("Yes" is the default provision under the Plan if no selection is made.)

\_\_\_\_\_ C. Election Window. (Complete if Option B is selected.)

Newly eligible Employees shall be provided an election window of \_\_\_\_\_ days (no more than 60 calendar days) from the date of initial eligibility during which they may make the election to participate in the Mandatory Participant Contribution portion of the Plan. Participation in the Mandatory Participation Contribution portion of the Plan shall begin the first of the month following the end of the election window.

An Employee's election is irrevocable and shall remain in force until the Employee terminates employment or ceases to be eligible to participate in

the Plan. In the event of re-employment to an eligible position, the Employee's original election will resume. In no event does the Employee have the option of receiving the pick-up contribution amount directly.

☒ Discretionary Employer Contributions

The Employer will determine the amount of Employer contributions to be made to the Plan for each Plan Year. The amount of Employer contributions to be allocated to the Account of each Participant will be based on the ratio for the Plan Year that such Participant's Earnings bear to the Earnings of all Participants eligible for such contributions.

☐ Fixed Employer Match of Voluntary After-Tax Participant Contributions.

The Employer shall contribute on behalf of each Participant \_\_\_\_\_ % of Earnings for the Plan Year (subject to the limitations of Article V of the Plan) for each Plan Year that such Participant has contributed \_\_\_\_\_ % of Earnings or \$ \_\_\_\_\_. Under this option, there is a single, fixed rate of Employer contributions, but a Participant may decline to make the required Participant contributions in any Plan Year, in which case no Employer contributions will be made on the Participant's behalf in that Plan Year.

☐ Variable Employer Match of Voluntary After-Tax Participant Contributions.

The Employer shall contribute on behalf of each Participant an amount determined as follows (subject to the limitations of Article V of the Plan):

\_\_\_\_\_ % of the Voluntary Participant Contributions made by the Participant for the Plan Year (not including Participant contributions exceeding \_\_\_\_\_ % of Earnings \$ \_\_\_\_\_);

PLUS \_\_\_\_\_ % of the contributions made by the Participant for the Plan Year in excess of those included in the above paragraph (but not including Voluntary Participant Contributions exceeding in the aggregate \_\_\_\_\_ % of Earnings or \$ \_\_\_\_\_).

Employer Matching Contributions on behalf of a Participant for a Plan Year shall not exceed \_\_\_\_\_ \$ or \_\_\_\_\_ % of Earnings, whichever is \_\_\_\_\_ more or \_\_\_\_\_ less.

2. Each Participant may make a voluntary (unmatched), after tax contribution, subject to the limitations of Section 4.06 and Article V of the Plan:

☒ Yes ☐ No ("No" is the default provision under the Plan if no selection is made.)

3. Employer contributions for a Plan Year shall be contributed to the Trust in accordance with the following payment schedule (no later than the 15<sup>th</sup> day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable depending on the basis on which the Employer keeps its books) with or within which the particular Limitation year ends, or in accordance with applicable law): as 457 Deferred Compensation Plan contributions are paid.
4. Participant contributions for a Plan Year shall be contributed to the Trust in accordance with the following payment schedule (no later than the 15<sup>th</sup> day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable depending on the basis on which the Employer keeps its books) with or within which the particular Limitation year ends, or in accordance with applicable law): as 457 Deferred Compensation Plan contributions are paid.
5. In the case of a Participant performing qualified military service (as defined in Code section 414(u)) with respect to the Employer:
- A. Plan contributions will be made based on differential wage payments:  
  X   Yes             No (“Yes” is the default provision under the Plan if no selection is made.)  
  
If yes is selected, this is effective beginning January 1, 2009 unless another later effective date is filled in here \_\_\_\_\_.
- B. Participants who die or become disabled will receive Plan contributions with respect to such service:  
       Yes        X   No (“No” is the default provision under the Plan if no selection is made.)  
  
If yes is selected, this is effective for participants who die or became disabled while performing qualified military service on or after January 1, 2007 unless another later effective date is filled in here \_\_\_\_\_.

## VII. CASH OR DEFERRED ARRANGEMENT UNDER SECTION 401(k)

1. This Plan will include a cash or deferred arrangement allowing for Elective Deferrals under section 401(k) of the Code:<sup>2</sup>

       Yes        X   No (“No” is the default provision under the Plan if no selection is made.) (If “no” is selected skip to Section VIII.)

Each Participant may elect to make Elective Deferrals, not to exceed \_\_\_\_\_ % of Earnings for the Plan Year, subject to the limitations of Article V of the Plan.

The provisions of the cash or deferred arrangement (the “401(k) feature”) may be made effective as of the first day of the Plan Year in which the 401(k) feature is

adopted. However, under no circumstances may a salary reduction agreement or other deferral mechanism be adopted retroactively.

2. The Employer will match Elective Deferrals:

\_\_\_\_\_ Yes \_\_\_\_\_ No (“No” is the default provision under the Plan if no selection is made.)

The Employer will contribute as follows (choose one, if applicable):

\_\_\_\_\_ Employer Percentage Match of Elective Deferrals.

The Employer shall contribute on behalf of each Participant an amount determined as follows (subject to the limitations of Article V of the Plan):

\_\_\_\_\_ % of the Elective Deferrals made on behalf of the Participant for the Plan Year (not including Elective Deferrals exceeding \_\_\_\_\_ % of Earnings or \$\_\_\_\_\_);

PLUS \_\_\_\_\_ % of the Elective Deferrals made on behalf of the Participant for the Plan Year in excess of those included in the above paragraph (but not including Elective Deferrals exceeding in the aggregate \_\_\_\_\_ % of Earnings or \$\_\_\_\_\_).

Employer Contributions on behalf of a Participant for a Plan Year shall not exceed \$ \_\_\_\_\_ or \_\_\_\_\_ % of Earnings, whichever is \_\_\_\_\_ more or \_\_\_\_\_ less.

\_\_\_\_\_ Employer Dollar Match of Elective Deferrals.

The Employer shall contribute on behalf of each Participant an amount determined as follows (subject to the limitations of Article V of the Plan):

\$ \_\_\_\_\_ for each \_\_\_\_\_ % of Earnings or \$ \_\_\_\_\_ that the Employer contributes on behalf of the Participant s Elective Deferrals for the Plan Year (not including Elective Deferrals exceeding \_\_\_\_\_ % of Earnings or \$ \_\_\_\_\_);

PLUS \$ \_\_\_\_\_ for each \_\_\_\_\_ % of Earnings or \$ \_\_\_\_\_ that the Employer contributes on behalf of the Participant as Elective Deferrals for the Plan Year in excess of those included in the above paragraph (but not including Elective Deferrals exceeding in the aggregate \_\_\_\_\_ % or Earnings or \$ \_\_\_\_\_).

Employer Contributions on behalf of a Participant for a Plan Year shall not exceed \$ \_\_\_\_\_ or \_\_\_\_\_ % of Earnings, whichever is \_\_\_\_\_ more or \_\_\_\_\_ less.

3. The Employer will permit Elective Deferrals and Catch-up Contributions elections to be made during the annual election window of \_\_\_\_\_ days (at least 30

calendar days). The election window will run from \_\_\_\_\_ to \_\_\_\_\_ (insert annual time frame for the election window or multiple time periods) and will not apply retroactively.

4. Roth Provisions. As provided in Section 20.03, Participants are permitted to make Roth Elective Deferrals from Compensation in the amount or percentage specified in a salary reduction agreement:

\_\_\_\_\_ Yes      \_\_\_\_\_ No (“No” is the default provision under the Plan if no selection is made.)

#### VIII. EARNINGS

Earnings, as defined under Section 2.10 of the Plan, shall include:

1. Overtime  
    \_\_\_X\_\_\_ Yes      \_\_\_\_\_ No
2. Bonuses  
    \_\_\_X\_\_\_ Yes      \_\_\_\_\_ No
3. Other pay (specifically describe any other types of pay to be included below)

#### IX. ROLLOVER PROVISIONS

1. The Employer will permit rollover contributions in accordance with Section 4.13 of the Plan:

\_\_\_X\_\_\_ Yes      \_\_\_\_\_ No (“Yes” is the default provision under the Plan if no selection is made.)

2. The Plan will accept a direct rollover contribution to a Designated Roth Account as permitted in Section 20.05(b) (401(k) plans with Roth feature only):

\_\_\_X\_\_\_ Yes      \_\_\_\_\_ No (“Yes” is the default provision under the Plan if no selection is made.)

3. The Plan will allow In-Plan Roth Conversions as provided in Section 20.06 (401(k) plans with Roth feature only):

\_\_\_X\_\_\_ Yes      \_\_\_\_\_ No (“Yes” is the default provision under the Plan if no selection is made.)

4. Direct rollovers by non-spouse beneficiaries are effective for distribution after 2006 unless the Plan delayed making them available. If the Plan delayed making such rollovers available, check the box below and indicate the later effective date in the space provided.

\_\_\_\_\_ Effective Date is \_\_\_\_\_.

(Note: Plans must offer direct rollovers by non-spouse beneficiaries no later than plan years beginning after December 31, 2009.)

## X. LIMITATION ON ALLOCATIONS

If the Employer maintains or ever maintained another qualified plan in which any Participant in this Plan is (or was) a participant or could possibly become a participant, the Employer hereby agrees to limit contributions to all such plans as provided herein, if necessary in order to avoid excess contributions (as described in Section 5.04 of the Plan).

1. If the Participant is covered under another qualified defined contribution plan maintained by the Employer, the provisions of Section 5.04(a) through € of the Plan will apply, unless another method has been indicated below.

\_\_\_\_\_ Other Method. (Provide the method under which the plans will limit total Annual Additions to the Maximum Permissible Amount, and will properly reduce any excess amounts, in a manner that precludes Employer discretion.)

2. The Limitation Year is the following 12 consecutive month period: \_\_\_\_\_.
3. Unless the Employer elects a delayed effective date below, Article 5 of the Plan will apply to limitation years beginning on or after July 1, 2007. \_\_\_\_\_.  
(The effective date listed cannot be later than 90 days after the close of the first regular legislative session of the legislative body with authority to amend the plan that begins on or after July 1, 2007.)

## XI. VESTING PROVISIONS

The Employer hereby specifies the following vesting schedule, subject to (1) the minimum vesting requirements and (2) the concurrence of the Plan Administrator. (For the blanks below, enter the applicable percent – from 0 to 100 (with no entry after the year in which 100% is entered), in ascending order.)

<u>Period of Service Completed</u>	<u>Percent Vested</u>
Zero	<u>100</u> %
One	<u>          </u> %
Two	<u>          </u> %
Three	<u>          </u> %
Four	<u>          </u> %
Five	<u>          </u> %
Six	<u>          </u> %
Seven	<u>          </u> %
Eight	<u>          </u> %
Nine	<u>          </u> %
Ten	<u>          </u> %



## XII. WITHDRAWALS AND LOANS

1. Qualified reservist distributions are available under the Plan (401(k) plans only):  
☒ Yes      ☐ No ("Yes" is the default provision under the Plan if no selection is made.)
2. In-service distributions are permitted under the Plan, as provided in Section 9.08, after a participant attains age (select one of the below options):  
☒ 59 ½  
☐ 70 ½ ("70 ½" is the default provision under the Plan if no selection is made.)  
☐ Not permitted at any age.
3. A Participant shall be deemed to have a severance from employment solely for purposes of eligibility to receive distributions from the Plan during any period the individual is performing service in the uniformed services for more than 30 days:  
☐ Yes      ☒ No ("Yes" is the default provision under the Plan if no selection is made.)
4. Tax-free distribution of up to \$3,000 for the direct payment of qualifying insurance premiums for eligible retired public safety officers are available under the Plan.  
☒ Yes      ☐ No ("No" is the default provision under the Plan if no selection is made.)
5. In-service distribution of the Rollover Account are permitted under the Plan as provided in Section 9.09.  
☒ Yes      ☐ No ("No" is the default provision under the Plan if no selection is made.)
6. The Plan will provide the following with respect to loans:
  - a. Loans are permitted under the Plan, as provided in Article XIII of the Plan:  
☐ Yes      ☒ No ("No" is the default provision under the Plan if no selection is made.)
  - b. Designated Roth Accounts will be available as a source for loans under the Plan (401(k) plans with Roth feature only):  
☐ Yes      ☒ No ("No" is the default provision under the Plan if no selection is made.)

7. (401(k) plans only) Hardship withdrawals are permitted under the Plan as provided in Section 9.07 but only if specifically elected by the Employer.

\_\_\_\_\_ Yes \_\_\_\_\_ No (“No” is the default provision under the Plan if no selection is made.)

If selected, hardship distributions will be available for the following accounts:

- a. Employer Contribution Accounts (Non-forfeitable Interest):

\_\_\_\_\_ Yes \_\_\_\_\_ No (“No” is the default provision under the Plan if no selection is made.)

- b. Participant Elective Deferral Account (not including earnings thereon accrued after December 31, 1988):

\_\_\_\_\_ Yes \_\_\_\_\_ No (“Yes” is the default provision under the Plan if no selection is made.)

- c. The determination of any deemed immediate and heavy financial need will be expanded to include any immediate and heavy financial need of the Participant’s Primary Beneficiary, as provided in Section 9.07 (b)(3):

\_\_\_\_\_ Yes \_\_\_\_\_ No (“Yes” is the default provision under the Plan if no selection is made.)

### XIII. SPOUSAL PROTECTION

The Plan will provide the following level of spousal protection (select one):

- \_\_\_\_\_ 1. Participant direct Election. The normal form of payment of benefits under the Plan is a lump sum. The Participant can name any person(s) as the Beneficiary of the Plan, with no spousal consent required.
- X   2. Beneficiary Spousal Consent Election (Article XII). The normal form of payment of benefits under the Plan is a lump sum. Upon death, the surviving spouse is the Beneficiary, unless he or she consents to the Participant’s naming another Beneficiary. (“Beneficiary Spousal Consent Election” is the default provision under the Plan if no selection is made.)
- \_\_\_\_\_ 3. QJSA Election (Article XVII). The normal form of payment of benefits under the Plan is a 50% qualified joint and survivor annuity with the spouse (or life annuity, if single). In the event of the Participant’s death prior to commencing payments, the spouse will receive an annuity for his or her lifetime. (If C is selected, the spousal consent requirements in Article XII also will apply.)

### XIV. FINAL PAY CONTRIBUTIONS

The Plan will provide for Final Pay Contributions if either 1 or 2 below is selected.

The following group of Employees shall be eligible for Final Pay Contributions:

\_\_\_\_\_ All Eligible Employees

\_\_\_\_\_ Other: \_\_\_\_\_

Final Pay shall be defined as (select one):

\_\_\_\_\_ A. Accrued unpaid vacation

\_\_\_\_\_ B. Accrued unpaid sick leave

\_\_\_\_\_ C. Accrued unpaid vacation and sick leave.

\_\_\_\_\_ D. Other (insert definition of Final Pay – must be leave that Employee would have been able to use if employment had continued and must be bona fide vacation and/or sick leave): \_\_\_\_\_

\_\_\_\_\_ 1. Employer Final Pay Contribution. The Employer shall contribute on behalf of each Participant \_\_\_\_\_ % of Final Pay to the Plan (subject to the limitations of Article V of the Plan).

\_\_\_\_\_ 2. Employee Designated Final Pay Contribution. Each Employee eligible to participate in the Plan shall be given the opportunity at enrollment to irrevocably elect to contribute \_\_\_\_\_ % (insert fixed percentage of final pay to be contributed) or up to \_\_\_\_\_ % (insert maximum percentage of final pay to be contributed) of Final Pay to the Plan (subject to the limitations of Article V of the Plan).

Once elected, an Employee's election shall remain in force and may not be revised or revoked.

#### XV. ACCRUED LEAVE CONTRIBUTIONS

The Plan will provide for accrued unpaid leave contributions annually if either 1 or 2 is selected below.

The following group of Employees shall be eligible for Accrued Leave Contributions:

\_\_\_\_\_ All Eligible Employees

\_\_\_\_\_ Other: \_\_\_\_\_.

Accrued Leave shall be defined as (select one):

\_\_\_\_\_ A. Accrued unpaid vacation

\_\_\_\_\_ B. Accrued unpaid sick leave

\_\_\_\_\_ C. Accrued unpaid vacation and sick leave.

\_\_\_\_\_ D. Other (insert definition of accrued leave that is bona fide vacation and/or sick leave): \_\_\_\_\_

\_\_\_\_\_ 1. Employer Accrued Leave Contribution. The Employer shall contribute as follows (choose one of the following options):

\_\_\_\_\_ For each Plan Year, the Employer shall contribute on behalf of each Eligible Participant the unused Accrued Leave in excess of \_\_\_\_\_ (insert number of hours/days/weeks (circle one)) to the Plan (subject to the limitations of Article V of the Plan).

\_\_\_\_\_ For each Plan Year, the Employer shall contribute on behalf of each Eligible Participant \_\_\_\_\_ % of unused Accrued Leave to the Plan (subject to the limitations of Article V or the Plan).

\_\_\_\_\_ 2. Employee Designated Accrued Leave Contribution.

Each eligible Participant shall be given the opportunity at enrollment to irrevocably elect to contribute \_\_\_\_\_ % (insert fixed percentage of accrued unpaid leave to be contributed) or up to \_\_\_\_\_ % (insert maximum percentage of accrued unpaid leave to be contributed) of Accrued Leave to the Plan (subject to the limitations of Article V of the Plan).

Once elected, an Employee's election shall remain in force and may not be revised or revoked.

XVI. The Employer hereby attests that it is a unit of state or local government or an agency or instrumentality of one or more units of state or local government.

XVII. The Employer understands that this Adoption Agreement is to be used with only the ICMA Retirement Corporation Governmental Profit Sharing Plan and Trust. This ICMA Retirement Corporation Governmental Profit Sharing Plan and Trust is a restatement of a previous plan, which was submitted to the Internal Revenue Service for approval on April 2, 2012, and received approval on March 31, 2014.

The Plan Administrator hereby agrees to inform the Employer of any amendments to the Plan made pursuant to Section 14.05 of the Plan or of the discontinuance or abandonment of the Plan. The Employer understands that an amendment(s) made pursuant to Section 14.05 of the Plan will become effective within 30 days of notice of the amendment(s). If the Employer so disapproves, the Plan Administrator will be under no obligation to act as Administrator under the Plan.

XVIII. The Employer hereby appoints the ICMA Retirement Corporation as the Plan Administrator pursuant to the terms and conditions of the ICMA RETIREMENT CORPORATION GOVERNMENTAL PROFIT SHARING PLAN AND TRUST.

The Employer hereby agrees to the provisions of the Plan and Trust.

- XIX. The Employer hereby acknowledges it understands that failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.
- XX. An adopting Employer may rely on an advisory letter issued by the Internal Revenue Service as evidence that the Plan is qualified under section 401 of the Internal Revenue Code to the extent provided in applicable IRS revenue procedures and other official guidance.

In Witness Whereof, the Employer hereby causes this Agreement to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

CITY OF APACHE JUNCTION  
300 E. Superstition Blvd.  
Apache Junction, AZ 85119

ICMA RETIREMENT CORPORATION  
777 North Capitol Street, NE Suite 600  
Washington, D.C. 20002  
800-326-7272

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

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

Print Name: John S. Insalaco

Print Name: \_\_\_\_\_

Title: Mayor

Title: Corporate Secretary

Attest: \_\_\_\_\_  
Kathleen Connelly, City Clerk

Attest: \_\_\_\_\_

Title: City Clerk

Title: \_\_\_\_\_

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<sup>1</sup> Neither the IRS advisory letter nor a determination letter issued to an adopting Employer is a ruling by the Internal Revenue Service that Participant contributions that are "picked-up" by the Employer are not includable in the Participant's gross income for federal tax purposes. Pick-up contributions are not mandated to receive private letter rulings, however, if an adopting employer wishes to receive a ruling on pick-up contributions they may request one in accordance with Revenue Procedure 2012-4 (or subsequent guidance).

<sup>2</sup> Under current law, the cash or deferred arrangement option under section 401(k) of the Code is not available to an employer that is a State or local government or political subdivision thereof, or any agency or instrumentality thereof, unless that employer established a cash or deferred arrangement on or before May 6, 1986.