

FLEXIBLE BENEFITS (§125) PLAN

**Dunlap Community Unit School District
#323**

August 20, 2010

FLEXIBLE BENEFITS PLAN

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Dunlap Community Unit School District #323 FLEXIBLE BENEFITS (§125) PLAN

INTRODUCTION

Dunlap Community Unit School District #323 (the "Employer") hereby establishes this Flexible Benefits Plan (the "Plan") under Section 125 of the Internal Revenue Code of 1986. The purpose of this Plan is to provide eligible Employees of the Employer with the opportunity to choose among those benefits available to them under the Plan. The concept of this plan is to allow Employees to choose among different types of benefits based on their own particular goals, desires and needs.

The Plan is effective as August 20, 2010.

This Plan is designed to qualify as a "Cafeteria Plan" within the meaning of Code Section 125, under which an Employee elects to receive benefits under the Plan as includable or excludable from the Employee's income under Section 125(a) and other applicable Code Sections.

ARTICLE I DEFINITIONS

- 1.01 **"Administrator"** means the person, committee or entity specified by the Employer to be the administrator of this Plan. In the event an Administrator has not been appointed, or resigns from a prior appointment, the Employer shall be deemed to be the Administrator.
- 1.02 **"Benefit"** means any of the optional benefit choices available to a Participant as outlined in Article IV of this Plan.
- 1.03 **"COBRA"** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.
- 1.04 **"Code"** means the Internal Revenue Code of 1986, as amended or replaced from time to time.
- 1.05 **"Compensation"** means the cash remuneration received by the Participant from the Employer during a Plan Year prior to any salary reductions authorized hereunder.
- 1.06 **"Effective Date"** means the August 20, 2010.
- 1.07 **"Election Period"** means the 30-day period immediately preceding the

beginning of each Plan Year. Such period shall be applied on a uniform and nondiscriminatory basis for all Employees and Participants. However, an Employee's initial Election Period shall be determined pursuant to Section 5.01.

- 1.08 **"Eligible Employee"** means an Employee who is employed by the Employer on a permanent full-time basis.
- 1.09 **"Employee"** means any individual who is considered to be in a legal employer-employee relationship with the Employer for federal withholding tax purposes, which excludes any person who performs services as an independent contractor and does not include leased employees within the meaning of Code Section 414(n)(2).
- 1.10 **"Employer"** means Dunlap Community Unit School District #323, including any affiliate or successor thereof that subsequently adopts this Plan.
- 1.11 **"Highly Compensated Employee"** means, for the purposes of determining discrimination, an Employee described in Code Section 125(e) and the Treasury regulations thereunder.
- 1.12 **"Insurance Contract"** means any contract issued by an Insurer underwriting a Benefit.
- 1.13 **"Insurer"** means any insurance company that underwrites a Benefit under this Plan or, with respect to any self-funded benefits, the Employer.
- 1.14 **"Key Employee"** means an employee defined in Code Section 416(i) and the related Treasury regulations.
- 1.15 **"Participant"** means any Eligible Employee who elects to become a Participant pursuant to Section 2.03 and has not for any reason become ineligible to participate further in the Plan.
- 1.16 **"Plan"** means this instrument, including all amendments thereto.
- 1.17 **"Plan Election Agreement"** means an agreement between the Employee and the Employer under which the Employee revokes participation in the Plan and thereby bypasses the benefits of the Plan and any Salary Reduction Contributions provided under the Plan. The Plan Election Agreement shall also allow a Participant to choose between Benefits available under the Plan, or to elect to enroll in the Plan as permitted by the terms of this Plan after revoking participation in the Plan.
- 1.18 **"Plan Year"** means the 12-month period beginning on October 1st immediately after the Effective Date of this Plan and ending September 30th thereafter with respect to the initial Plan Year, with subsequent Plan Years thereafter beginning

on the immediately following October 1st and running through the following September 30th. The Plan Year shall be the coverage period for the Benefits provided under this Plan. In the event a Participant commences participation during a Plan Year, then the initial coverage period shall be that portion of the Plan Year commencing on such Participant's date of entry and ending on the last day of such Plan Year.

1.19 **"Premium Expenses" or "Premiums"** mean the Participant's cost for the self-funded or insured benefits described in Section 4.01.

1.20 **"Salary Reduction Contributions"** means the contributions made by the Employer on behalf of Participants pursuant to Section 3.01 based upon the Participant's election of Benefits under this Plan. These contributions shall be allocated to the accounts established under the Plan pursuant to the Participants' elections made under this Plan. Salary Reduction Contributions shall apply only to Compensation that has not been actually or constructively received by the Participant as of the date of the agreement (after taking this Plan and Code Section 125 into account) and, subsequently does not become currently available to the Participant.

1.21 **"USERRA"** means the Uniform Services Employment and Reemployment Rights Act of 1994, as amended.

ARTICLE II **PARTICIPATION**

2.01 ELIGIBILITY

An Eligible Employee shall be entitled to in the Plan upon the Employee's initial date of service with the Employer.

2.02 EFFECTIVE DATE OF PARTICIPATION

An Eligible Employee shall be immediately eligible to become a Participant in the Plan, and the Eligible Employee will be considered to be participating in the Plan upon the Employee's initial date of service with the Employer unless the Employee withdraws from the Plan within the first ten (10) calendar days after the Employee's initial date of service or during the Election Period as provided in Section 5.01.

Furthermore, an Eligible Employee shall become a Participant with respect to the insured or self-funded Benefit effective as of the entry date under the Employer's group healthcare plan.

2.03 APPLICATION TO PARTICIPATE

If an Employee withdraws from the Plan and later seeks to become a Participant in the Plan and who is otherwise eligible to participate in this Plan shall, during the applicable Election Period, complete a Plan Election Form as an application to participate in the Plan and to make any election of benefits. This Plan Election Form shall be submitted to the Administrator during the applicable Election Period. The election made on such form shall be irrevocable until the end of the applicable Plan Year unless the Participant is entitled to change his Benefit elections pursuant to Section 5.03 hereof.

Notwithstanding the foregoing, an Employee who is eligible to participate in this Plan and who is covered by the Employer's insured or self-funded Benefit for the Employer's group healthcare plan under this Plan shall automatically become a Participant to the extent of the Premiums for such insurance or benefit coverage unless the Employee elects, during the Election Period, not to participate in the Plan.

2.04 TERMINATION OF PARTICIPATION

A Participant shall cease to be a Participant in this Plan upon the earlier of:

- (a) The effective date of the new Plan Year if the Participant revokes the Employee's election to participate during the applicable Election Period, or
- (b) The date when the Employee ceases to be an Eligible Employee because of retirement, termination of employment, layoff, reduction in hours making the Employee no longer an Eligible Employee, death, or any other reason specified in this Plan; or
- (c) The effective date of a permitted change in election under Section 5.03 of this Plan by which a Participant elects to no longer participate in the Plan; or
- (d) The termination of this Plan or any Benefit provided under this Plan, subject to the provisions of Section 7.02.

2.05 CHANGE OF EMPLOYMENT STATUS

If a Participant ceases to be an Eligible Employee because of a change in employment status or classification and then at a later date returns to employment status making the Employee an Eligible Employee, then Employee shall immediately become a Participant again as if the Employee were a new Employee.

2.06 TERMINATION OF EMPLOYMENT

If a Participant's employment with the Employer is terminated for any reason, including death, the Employee's participation in the Plan shall cease, subject to the Participant's right to continue coverage under any Insurance Contract or benefit plan for which premiums have already been paid.

ARTICLE III CONTRIBUTIONS TO THE PLAN

3.01 SALARY REDUCTION CONTRIBUTIONS

Benefits under the Plan shall be financed by Salary Reduction Contributions sufficient to support the cost of Benefits that a Participant has elected hereunder. The amount of the Salary Reduction Contribution shall be specified as the cost of Premiums for the insured or self-funded Benefit for the Employer's group healthcare plan. These contributions shall be allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made under Article V.

If the Premiums for the insured or self-funded Benefit for the Employer's group healthcare plan increases or decreases during the Plan Year, the amount of the Participant's Salary Reduction Contribution shall be adjusted in the same amount such that the amount of the Salary Reduction Contribution shall always be equivalent to the Premium. However, a Participant may revoke a Benefit election after the Plan Year has commenced and make a new election with respect to the remainder of the Plan Year by submitting a Plan Election Agreement, if both the revocation and the new election are on account of and consistent with a change in work or family status or such other permitted events as determined under Article V of the Plan and consistent with the rules and regulations of the U.S. Department of the Treasury. Salary Reduction Contribution amounts shall be contributed on a pro rata basis for each pay period for the Participant during the Plan Year. All individual Plan Election Agreements are deemed to be part of this Plan and incorporated by reference hereunder.

3.02 APPLICATION OF CONTRIBUTIONS

As soon as reasonably practical after each payroll period, the Employer shall apply the Salary Reduction Contributions to provide the Benefits elected by the affected Participants. Amounts designated for the Participant's Premium Expense Reimbursement Account shall likewise be credited to such account for the purpose of paying Premium Expenses.

3.03 PERIODIC CONTRIBUTIONS

Notwithstanding the requirement provided above and in other Articles of this Plan that Salary Reduction Contributions be contributed to the Plan by the Employer on behalf of an Employee on a level and pro rata basis for each payroll period, the Administrator may implement a procedure in which Salary Reduction Contributions are contributed throughout the Plan Year on a periodic basis that is not pro rata for each payroll period.

**ARTICLE IV
BENEFITS**

4.01 BENEFIT OPTIONS

Each Participant may elect to have the amount of his contributions applied to any one or more of the following Benefits specified in this Article IV of the Plan. The descriptions of all Benefits that are available under the Plan are provided in this Article IV of the Plan.

4.02 HEALTHCARE PLAN PREMIUM BENEFIT

Payment shall be made to the appropriate insurer or self-funded plan for the Employer's group healthcare plan group in amounts equal to the premiums otherwise payable by (or on behalf of) the Participant during the Plan Year, for coverage of the Participant, or the Participant's spouse or dependents as applicable, under the healthcare insurance programs maintained by the Employer pursuant to this Plan. Each Participant shall have the right to select that portion of his or her available benefit funds to be used to provide such benefit. The maximum benefit under this Section 4.02 for such benefit shall be the amount of premiums due during the Plan Year. In the event of premium changes that become effective during a Plan Year, a Participant's existing election as to a salary reduction shall automatically be adjusted to reflect the increases or decreases, as provided in Section 3.01 of this Plan.

4.03 CASH BENEFIT

In lieu of the receiving other Benefits herein provided, should a Participant waive such other Benefits, such Participant shall be deemed to have elected to receive a cash payment of \$70.00 per month (or \$840.00 over a 12-month period) from the Plan.

4.04 NONDISCRIMINATION REQUIREMENTS

(a) It is the intent of this Plan to provide benefits to a classification of

employees which the Secretary of the Treasury finds not to be discriminatory in favor of the group in whose favor discrimination may not occur under Code Section 125.

- (b) It is the intent of this Plan not to provide qualified benefits as defined under Code Section 125 to Key Employees in amounts that exceed 25% of the aggregate of such Benefits provided for all Eligible Employees under the Plan. For purposes of the preceding sentence, qualified benefits shall not include benefits that (without regard to this paragraph) are includable in gross income.
- (c) If the Administrator deems it necessary to avoid discrimination or possible taxation to Key Employees or a group of employees in whose favor discrimination may not occur in violation of Code Section 125, it may, but shall not be required to, reduce contributions or non-taxable Benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reduce contributions or non-taxable benefits, it shall be done in the following manner. First, the non-taxable Benefits of the affected Participant (either an employee who is highly compensated or a Key Employee, whichever is applicable) who has elected the highest amount of non-taxable Benefits for the Plan Year shall have his non-taxable benefits reduced until the discrimination tests set forth in this Section are satisfied or until the amount of his non-taxable Benefits equals the non-taxable Benefits of the affected Participant who has elected the second highest amount of non-taxable Benefits. This process shall continue until the nondiscrimination tests set forth in this Section are satisfied.

ARTICLE V PARTICIPANT ELECTIONS

5.01 INITIAL ELECTIONS

An Employee who meets the eligibility requirements of Section 2.01 shall have during the initial Election Period for this Plan or during the first ten (10) calendar days from the Employee's initial date of service with the Employer (whichever is applicable) to submit a Plan Election Agreement regarding participation in this Plan or to elect Benefits provided by this Plan for the remainder of the Plan Year in accordance to Section 2.03.

If such Eligible Employee fails to make such election by submitting a Plan Election Agreement during this 10-day period or during the initial Election Period, such Eligible Employee will be deemed to have elected to participate in the Healthcare Plan Premium Benefit under Section 4.02 of the Plan for the

remainder of the Plan Year. Section 5.02 will be applicable with regard to subsequent annual elections to participate in the Plan.

5.02 SUBSEQUENT ANNUAL ELECTIONS

During the Election Period prior to each subsequent Plan Year, each Participant (and each Eligible Employee who elected not to participate in the Plan in the prior Plan Year) shall be given the opportunity to make a Benefit election regarding Plan Benefits for the next Plan Year. The Participant or Eligible Employee must make such an election and satisfy the requirements of Section 2.03 during the Election Period. Any such election shall be effective for any Benefit premiums incurred during the Plan Year, which follows the end of the Election Period. With regard to subsequent annual elections, the following options shall apply:

- (a) A Participant or Eligible Employee who failed to initially elect to participate may elect different or new Benefits under the Plan during the Election Period;
- (b) A Participant may terminate participation in the Plan by completing the appropriate section of the Plan Election Agreement and submitting to the Administrator during the Election Period indicating that the Participant does not want to participate in the Plan for the next Plan Year;
- (c) An Employee who elects not to participate for the Plan Year following the Election Period will have to wait until the next Election Period before again electing to participate in the Plan; and
- (d) Participants shall be automatically enrolled with the same coverage for the subsequent Plan Year unless the Participant elects, during the Election Period, not to participate in the Plan or to change the Benefit election for the new Plan Year.

5.03 CHANGE OF ELECTION

A Participant may change a Benefit election during the Plan Year to which such election relates with respect to the remainder of such Plan Year if, under the facts and circumstances, the changes are necessitated by and consistent with change of election events acceptable under the rules and regulations adopted by the U.S. Department of the Treasury, the provisions of which are incorporated by reference.

An election change is considered consistent if the qualifying event affects eligibility under the Employer's Plan, and that the same event results in an increase or decrease in the number of family members who may benefit from coverage under the Plan. The qualifying event must directly affect coverage for the individual the change in election is made for. In addition, if the Participant, spouse or dependent gains eligibility for coverage under a family member's plan as a result of a change in marital status or a change in employment status,

then a Participant's election change to cease or decrease coverage for that individual corresponds with that change in status only if coverage for that individual becomes applicable or is increased under the family member plan.

Regardless of the consistency requirement, if the Participant, the Participant's spouse, or dependent becomes eligible for continuation coverage under the Employer's group health plans as provided in Code Section 4980B or any similar state law and the Participant retains eligibility under the Plan hereunder, the Participant may use Salary Reduction Contributions under this Plan to pay for the continuation coverage.

Any new election shall be effective on the first of the month immediately after the change in election is submitted to the Employer in the manner that complies with Section 2.03. For the purposes of this subsection, a change in election may include the following events or other events permitted by Treasury regulations:

- (a) *Change in Status.* A Participant may change or terminate an actual or deemed election under the Plan upon the occurrence of a Change in Status, but only if such change or termination is made on account of and corresponds with a Change in Status that affects coverage eligibility of a Participant, Participant's Spouse, or Dependent. The Administrator (in its sole discretion) shall determine, based on prevailing IRS guidance, whether a requested change is on account of and corresponds with a Change in Status. Assuming the general consistency requirement is satisfied, a requested change must also satisfy the following specific consistency requirements in order for a Participant to be able to alter an election based on that change.
 - (1) **Legal Marital Status:** Events that change a Participant's legal marital status, including marriage, divorce, death of a spouse, legal separation or annulment;
 - (2) **Number of Dependents:** Events that change a Participant's number of dependents, including birth, adoption, placement for adoption, or death of a dependent;
 - (3) **Employment Status:** Any of the following events that change the employment status of the Participant, spouse, or dependent: termination or commencement of employment, a strike or lockout, commencement or return from an unpaid leave of absence, incurring a reduction or increase in hours of employment, or a change in work site. In addition, if the eligibility conditions of this Plan or other employee benefit plan of the Employer of the Participant, spouse, or dependent depend on the employment status of that individual and there is a change in that individual's employment status with the consequence that the individual becomes (or ceases to be) eligible under the plan,

then that change constitutes a change in employment under this subsection;

- (4) **Dependent Satisfies or Ceases to Satisfy the Eligibility Requirements:** An event that causes the Participant's dependent to satisfy or cease to satisfy the requirements for coverage due to attainment of age, student status, or any similar circumstance.; and
 - (5) **Residency:** A change in the place of residence of the Participant, (the Participant's Spouse or Dependent allows the Participant to change or drop insured Benefits.
- (b) *HIPAA Special Enrollment Rights.* If a Participant, spouse, or dependent is entitled to special enrollment right under a group health plan, as required by Code Section 9801(f), then the Participant may revoke a prior election for health coverage and make a new election (including Salary Reduction Contributions), provided the election corresponds with such special enrollment rights. A special enrollment right might arise if medical coverage was declined for the Employee, spouse or dependent under the group health plan because of outside medical coverage and eligibility for such coverage is subsequently lost due to legal separation, divorce, death, termination of employment, reduction in hours, or exhaustion of the maximum COBRA period, or if a new dependent is acquired. For purposes of this provision, (1) an election to prospectively add previously eligible dependents as a result of the acquisition of a new spouse or dependent child shall be considered to be consistent with the special enrollment right; and (2) a HIPAA special enrollment election attributable to the birth or adoption of a new dependent child may, subject to the provisions of the underlying group health plan, be effective retroactively (up to 30 days).
- (c) *Certain Judgments, Decrees and Orders.* Notwithstanding subsection (a), if a judgment, decree, or order ("order") resulting from a divorce, legal separation, annulment, or change in legal custody requires healthcare coverage for a Participant's dependent child (including a foster child who is a dependent), a Participant may:
- (1) The Participant may elect to add or increase coverage if an order requires the Participant to cover a dependent; or
 - (2) The Participant may decrease or cancel coverage for the child if the order requires the Participant's spouse, former spouse or another individual to cover the dependent, and the dependent actually becomes covered under the Plan of the spouse, former spouse or other individual.
- (d) *Medicare and Medicaid.* Notwithstanding subsection (a), if a Participant,

spouse or dependent becomes entitled to Medicare or Medicaid (other than coverage consisting solely of benefits under Section 1928 of the Social Security Act program for distribution of pediatric vaccines), the Participant may prospectively reduce or cancel the health or accident coverage of the person becoming entitled to coverage. Furthermore, if the Participant, spouse, or dependent entitled to Medicare or Medicaid loses eligibility for such coverage, then the Participant may prospectively elect to commence or increase the health or accident coverage.

(e) *Change in Coverage.* A Participant shall be permitted to change an election as a result of a change under this subsection:

(1) *Significant Curtailment or Cessation of Coverage.* If the coverage under a Benefit is deemed by the Administrator to be significantly curtailed or ceases during a Plan Year, affected Participants may revoke their elections of such Benefit and, in lieu thereof, elect to receive on prospective basis coverage under another plan with similar coverage. Health plan coverage is deemed "significantly curtailed" only if there is an overall reduction in coverage, which reduces coverage to all Participants in general. If a significant curtailment does not result in a loss of coverage, alternate coverage can be elected, but coverage cannot be dropped. If the curtailment results in a loss of coverage, the election can be dropped, but only if no other benefit option for similar coverage is available.

The Administrator will decide, in accordance with prevailing IRS guidance which states that a significant curtailment of coverage includes a significant increase in deductible; significant increase in co-payments; and a significant increase in the out-of-pocket cost sharing amounts under the Plan, whether curtailment is "significant" and whether a substitute benefit option constitutes "similar coverage" based upon all surrounding facts and circumstances. The Administrator will also decide, in accordance with prevailing IRS guidance, what constitutes a "loss of coverage" based on final regulations stating plan sponsors may consider the following events: a substantial decrease in the medical providers available under the option; a reduction in benefits for a specific type of medical condition for which treatment is being received; and any similar fundamental loss of coverage.

(2) *Addition or Elimination of Benefit Package Option Providing Similar Coverage.* If, during the Plan Year the Plan adds or eliminates a benefit package option or other coverage option, then affected Participants may elect the newly-added option (or elect another option if an option has been eliminated) prospectively and make corresponding election changes with respect to other benefit

package options providing similar coverage. If the Plan significantly improves a Benefit, Participants who elected other Benefit Options and Employee who are not enrolled, may elect the Benefit if allowed on each respective insured plan. The Administrator will decide, in accordance with prevailing IRS guidance, whether other benefit options constitute "similar coverage" based upon all surrounding facts and circumstances.

- (3) *Change in Coverage of Spouse or Dependent under another Employer's Plan.* A Participant may make a prospective election change that corresponds with changes made under any employer's cafeteria or qualified benefits plan, so long as (a) the spouse's or dependent's plan permits the change and the change is permitted under Code Section 125 or (b) the spouse or dependent makes the change during an annual enrollment period that occurs in the middle of the Participant's Plan Year. The Administrator will decide, in accordance with prevailing IRS guidance, whether a requested change is on account of and corresponds with a change made under the plan of the spouse's or dependent's employer.
- (4) *Loss of Coverage under a Plan Maintained by a Governmental or Educational institution.* A Participant may add coverage for a Participant, spouse or dependent, if the same Participant, spouse, or dependent loses coverage under any group health coverage plan sponsored by a governmental or Educational Institution.

A Participant who terminates and is rehired within a period of fifteen (15) days or less shall be deemed to have continued coverage during such period of termination as if he or she was never terminated unless there is another qualifying event. Missing payments shall be made whole during the remainder of the Plan Year. There shall be no coverage loss to the Participant. A Participant who terminates and is rehired after a period of more than fifteen (15) days shall be able to change elections.

ARTICLE VI **ADMINISTRATION**

6.01 PLAN ADMINISTRATION

The operation of the Plan shall be under the supervision of the Administrator. It shall be a principal duty of the Administrator to see that the Plan is carried out in accordance with its terms, and for the exclusive benefit of Employees entitled to participate in the Plan. The Administrator shall have full power to administer the Plan in all of its details, subject, however, to the pertinent provisions of the Code. The Administrator's powers shall include, but shall not be limited to the following

authority, in addition to all other powers provided by this Plan:

- (a) To make and enforce such rules and regulations as the Administrator deems necessary or proper for the efficient administration of the Plan;
- (b) To interpret the Plan, the Administrator's interpretations thereof in good faith to be final and conclusive on all persons claiming benefits by operation of the Plan;
- (c) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan and to receive benefits provided by operation of the Plan;
- (d) To reject elections or to limit contributions or Benefits for certain highly compensated participants if it deems such to be desirable in order to avoid discrimination under the Plan in violation of applicable provisions of the Code;
- (e) To provide Employees with a reasonable notification of their benefits available by operation of the Plan; and
- (f) To appoint such agents, counsel, accountants, consultants, and actuaries as may be required to assist in administering the Plan.

Any procedure, discretionary act, interpretation or construction taken by the Administrator shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to comply with the terms of Code Section 125 and the Treasury regulations thereunder. Benefits under this Plan will be paid only if the Administrator decides in its discretion that the Participant is entitled to them.

6.02 EXAMINATION OF RECORDS

The Administrator shall make available to each Participant, Eligible Employee and any other Employee of the Employer such records as pertain to their interest under the Plan for examination at reasonable times during normal business hours.

6.03 PAYMENT OF EXPENSES

Any reasonable administrative expenses related to the Plan shall be paid by the Employer.

6.04 INSURANCE CONTROL CLAUSE

In the event of a conflict between the terms of this Plan and the terms of an Insurance Contract of an independent third party Insurer whose product is then

being used in conjunction with this Plan, the terms of the Insurance Contract shall control as to those Participants receiving coverage under such Insurance Contract. For this purpose, the Insurance Contract shall control in defining the persons eligible for insurance, the dates of their eligibility, the conditions which must be satisfied to become insured, if any, the benefits Participants are entitled to and the circumstances under which insurance terminates.

6.05 INDEMNIFICATION OF ADMINISTRATOR

The Employer agrees to indemnify and to defend to the fullest extent permitted by law any Employee serving as the Administrator or as a member of a committee designated as Administrator (including any Employee or former Employee who previously served as Administrator or as a member of such committee) against all liabilities, damages, costs and expenses (including attorney's fees and amounts paid in settlement of any claims approved by the Employer) occasioned by any act or omission to act in connection with the Plan, if such act or omission is carried out in good faith.

ARTICLE VII AMENDMENT OR TERMINATION OF PLAN

7.01 AMENDMENT

The Employer, at any time or from time to time, may amend any or all of the provisions of the Plan without the consent of any Employee or Participant. No amendment shall have the effect of modifying any benefit election of any Participant in effect at the time of such amendment, unless such amendment is made to comply with Federal, state or local laws, statutes or regulations.

7.02 TERMINATION

The Employer is establishing this Plan with the intent that it will be maintained for an indefinite period of time. Notwithstanding the foregoing, the Employer reserves the right to terminate the Plan, in whole or in part, at any time. In the event the Plan is terminated, no further contributions shall be made.

ARTICLE VIII MISCELLANEOUS

8.01 PLAN INTERPRETATION

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner. This Plan shall be read in its entirety and not severed except as provided in Section 8.11.

8.02 GENDER AND NUMBER

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

8.03 WRITTEN DOCUMENT

This Plan, in conjunction with any separate written document which may be required by law, is intended to satisfy the written Plan requirement of Code Section 125 and any Treasury Regulations thereunder relating to cafeteria plans.

8.04 EXCLUSIVE BENEFIT

This Plan shall be maintained for the exclusive benefit of the Employees who participate in the Plan.

8.05 PARTICIPANT'S RIGHTS

This Plan shall not be deemed to constitute an employment contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon him as a Participant of this Plan.

8.06 ACTION BY THE EMPLOYER

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

8.07 NO GUARANTEE OF TAX CONSEQUENCES

The Administrator or the Employer may not make any commitment or guarantee that any amounts paid to or for the benefit of a Participant under the Plan will be excludable from the Participant's gross income for Federal or state income tax purposes, or that any other Federal or state tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether each payment under the Plan is excludable from the Participant's gross income for Federal and state income tax purposes, and to notify the Employer, if the Participant has reason to believe that any such payment is not so excludable. Notwithstanding the foregoing, the rights of

Participants under this Plan shall be legally enforceable.

8.08 INDEMNIFICATION OF EMPLOYER BY PARTICIPANTS

If any Participant receives one or more payments or reimbursements under the Plan that are not for a permitted Benefit, such Participant shall indemnify and reimburse the Employer, whichever is appropriate, for any liability it may incur for failure to withhold Federal or state income tax or Social Security tax from such payments or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional Federal and state income tax (plus any penalties) that the Participant would have owed if the payments or reimbursements had been made to the Participant as regular cash compensation, plus the Participant's share of any Social Security tax that would have been paid on such compensation, less any such additional income and Social Security tax actually paid by the Participant.

8.09 FUNDING

Unless otherwise required by law, contributions to the Plan need not be placed in trust or dedicated to a specific Benefit, but shall instead be considered general assets of the Employer, whichever is applicable. Furthermore, and unless otherwise required by law, nothing herein shall be construed to require the Employer or the Administrator to maintain any fund or 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 the Plan may be made,

8.10 GOVERNING LAW

This Plan is governed by the Code and the Treasury regulations issued thereunder (as they might be amended from time to time). In no event shall the Employer guarantee the favorable tax treatment sought by this Plan. To the extent not preempted by Federal law, the provisions of this Plan shall be construed, enforced and administered according to the laws of the State of Illinois.

8.11 SEVERABILITY

If any provision of the Plan is held invalid or unenforceable, its invalidity or unenforceability shall not affect any other provisions of the Plan, and the Plan shall be construed and enforced as if such provision had not been included herein.

8.12 CAPTIONS

The captions contained herein are inserted only as a matter of convenience and for reference, and in no way define, limit, enlarge or describe the scope or

intent of the Plan, nor in any way shall affect the Plan or the construction of any provision thereof.

8.13 FAMILY AND MEDICAL LEAVE ACT

Notwithstanding any provision in the Plan to the contrary, if a Participant qualifies for leave under the Family and Medical Leave Act of 1993 (FMLA) and elects to continue coverage(s) while on leave, then to the extent required by the FMLA, the Employer will continue to maintain the Participant's Benefits on the same terms and conditions as if the Participant were still active.

If a Participant's Benefits coverage ceases while on FMLA leave, the Participant, will be permitted to re-enter the Plan upon return from such leave on the same basis he participated in the Plan prior to the leave, or as otherwise required by the FMLA.

8.14 OTHER APPROVED LEAVES OF ABSENCES

If a Participant qualifies for a leave of absence under the Employer's leave of absence policy, Benefits shall be continued as specified by such policy, or if not covered by such policy, no continuation of Benefits under this Plan shall be permitted.

8.15 UNIFORM SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with USERRA and the regulations thereunder.

IN WITNESS HEREOF, on behalf of Dunlap Community Unit School District #323, this Flexible Benefits Plan is hereby adopted and implemented on this 20th day of August, 2010.

By:

Legal Agent for the Plan:

(Signature)

(Title of District Official)

Director of Finance
Dunlap Community Unit School District #323
3020 W. Willow Knolls Road
Peoria, Illinois 61614
Phone: (309) 691-3955
Fax: (309) 691-6764