

CONTRIBUTION PREPAYMENT PROGRAM AGREEMENT

This agreement is made and entered into between _____ (“Employer”) and the Arizona State Retirement System (“ASRS”) concerning prepaying Employer’s pension contributions to the ASRS (the “Agreement”). This Agreement is intended to govern the process and Employer options that occur upon the Employer’s deposit of prepaid monies with the ASRS under its Contribution Prepayment Program (the “CPP”). Employer and ASRS are occasionally collectively referred to herein as the “Parties”.

1. WHEREAS Arizona Revised Statute (A.R.S.) § 38-737(D) permits employers to prepay their pension contributions with the ASRS; and
2. WHEREAS Employer desires to participate in the CPP via the terms and conditions set by ASRS and as set forth herein; and
3. WHEREAS Employer may participate in the CPP upon both (i) Employer providing to ASRS a duly adopted and executed copy of this Agreement and (ii) approval by ASRS.
4. WHEREAS Employer understands the Agreement only pertains to pre-paid contributions received by ASRS from Employer, and earnings on prepaid contribution as calculated by the ASRS.

RECITALS

- A. Approval of the Agreement. Employer’s governing body, or the Employer’s representative(s) authorized to act on behalf of the Employer, elect to participate in the CPP by providing to ASRS a signed copy of this Agreement.
- B. Effective Date. The effective date of this Agreement is _____, which is no sooner than the date Employer provides ASRS with a copy of a duly adopted and executed copy of this Agreement and the ASRS accepts and signs this agreement.
- C. Amendment. The terms of this Agreement may be amended only in writing upon the agreement of both ASRS and Employer, except as otherwise provided herein. Any such amendment or modification to this Agreement shall be adopted and executed in the same manner as required for the Agreement.
- D. Procedures. ASRS shall institute such procedures and processes as it deems necessary to administer the CPP and to carry out the purposes of this Agreement. Employer agrees to follow ASRS’s Contribution Prepayment Program Policy (“CPP Policy”) and related procedures and processes.

- E. Contributions. Pre-payment of contributions can be made at any time following the effective date of this Agreement. The minimum amount of pre-paid contributions the ASRS will accept is \$100,000.
- a. All Employer pre-paid contributions and assets attributable to Employer pre-paid contributions shall be separately accounted for by ASRS.
- F. Earnings Accrual Rate. All pre-paid contributions will earn an earnings accrual rate equal to the actual, compound, time weighted, net of investment expenses, rate of return on the ASRS pension investment portfolio. When a deposit is made, the earnings accrual rate will be calculated based on the first business day after the date of deposit.
- G. Amortization Inception Dates. After Employer's deposit of the pre-paid contributions, amortizations will commence at any time the Employer and ASRS mutually agree, in writing, subject to ASRS receiving sixty days' notice unless otherwise agreed to by the ASRS.
- H. Employer Elections: Employer shall make certain elections on the Addendum 1—Employer Elections page of this Agreement.
- a. Amortization Initiation Date. Employer will determine when to initiate the amortization period. Employer may also elect to defer determination of the amortization period. The initiation period may begin sixty days following the deposit, unless otherwise agreed to by the ASRS, or may be postponed multiple years until such time as determined by the Employer.
 - b. Amortization Period Length. Once Employer has chosen to initiate the amortization period, Employer will determine the length of time over which the prepaid monies balance will be amortized. The periods over which the balance may be amortized may be determined by Employer, however:
 - i. The period may not be greater than thirty years;
 - ii. The amounts need not be the same dollar amount each year; and
 - iii. The amortization period and other details must be acceptable to the ASRS when considering systems, administrative, and financial implications.
 1. Extensions to the amortization period will automatically result if the amortization of Employer's pre-paid contributions plus accrued earnings exceed Employer's actuarially-determined and legally-required contributions for a particular year. If it is determined that the pre-paid contributions plus accrued earnings do not cover a full

year extension, the ASRS will modify the period to such time as Employer's pre-paid balance becomes zero.

- I. Aggregation and Disaggregation of Pre-Paid Contributions. Employer is not required to aggregate pre-paid contributions. However, in the event Employer makes multiple prepaid contributions on different dates, the employer shall provide ASRS with an individual Addendum I—Employer Elections page for each prepaid contribution. If the Employer wants to retain the same election options with respect to amortization inception dates and amortization periods for pre-paid contribution amounts contributed to ASRS on different dates, the Employer may do so through Addendum I.
 - a. Disaggregation: Employer may disaggregate a pre-paid contribution into different amounts and retain the same election options with respect to amortization inception dates and amortization periods, for each amount. However, no pre-paid contribution may be disaggregated into amounts less than \$100,000.

- J. Offset. Pre-paid contributions and earnings will be utilized to offset future Employer contributions required by the ASRS. Once Employer makes its amortization election, the Employer, or the ASRS if requested by the Employer, will calculate the dollar amount to be utilized by Employer during the fiscal year to offset Employer contributions due throughout the year.
 - a. Employer will reduce the dollar amount of each payroll deposit to the ASRS by the dollar amount to be utilized based on the amortization schedule.
 - b. If Employer is considered to be one reporting unit, but has multiple reporting Employers listed in the ASRS's most recent applicable governmental accounting standards report, the ASRS will allocate funding between those multiple Employers based on the written preferences stated by the reporting unit and follow any applicable statute, legal agreement, or ordinance enacted for such a purpose.
 - c. For Employers who engage in an annual 26 pay period cycle, in years where a 27th payroll occurs, Employer must make an affirmative declaration that an offset shall be used for the 27th payroll. If the declaration is not made, ASRS will not include a 27th offset.
 - d. Employer's request for offset shall be in writing signed by Employer's authorized representative, and ASRS may rely conclusively upon such writing.

- K. Payroll Process. Employer shall submit payroll contribution files reflecting the full employee and Employer contribution rate in effect for the fiscal year. It is the sole responsibility of Employer to ensure the Employer's payroll/contribution reporting system is able to accommodate this requirement.

- a. Employer must maintain and transmit to the ASRS its contributions file representing the total actual contributions due to the ASRS, which includes both the actual contributions paid during each payroll cycle, and any offset amounts made according to the amortization schedule.
 - b. The contribution file shall reflect the full employee and Employer contribution amount due, and shall not be adjusted for pre-paid contributions to be applied.
 - c. Employer is responsible for determining the actual cash amount due to the ASRS each payroll cycle. This cash amount will be equal to the actuarially-determined contribution rate less any offsets determined by the amortization schedule.
 - d. Intra-Year Adjustments: Each year, any differences between the sum of Employer's offset amount as determined by the amortization schedule and the actual cash payments made by Employer, and the amount actually due by Employer, will be calculated by Employer by May 1 of each year and added or subtracted as appropriate from the remaining pre-paid contributions balance. In the case where the pre-paid contributions balance is insufficient, an additional amount will be required from Employer by May 31 of the current year.
- L. Irrevocable Cash Transfers. Once Employer contributes prepaid monies, ASRS cannot and shall not return any portion of the received funds, or the related earnings, to the Employer.
- M. Representations. The Parties represent that that they have freely and voluntarily entered into this Agreement without any degree of duress or compulsion whatsoever and that the Parties have been represented and advised of the terms of this Agreement by their counsel. Employer acknowledges that it has had the opportunity to consult with an attorney of its choice, has read and understands the terms of this Agreement, and voluntarily accepts those terms. Employer further declares and represents that no promise, inducement, or agreement not herein expressed has been made to it, and that this Agreement contains the entire agreement between the Parties regarding the subject matter of this Agreement. Employer has received and read ASRS's CPP Policy and agrees to abide by it. Each person signing this Agreement hereby warrants and represents that he or she is expressly authorized and empowered by the party on whose behalf the person's signature appears to bind that party to each of the obligations set forth herein.
- N. Indemnification. Employer shall indemnify, defend, and hold harmless ASRS and all of the officers, trustees, agents and employees from and against any loss, liability, claims, causes of action, suits, or expense (including reasonable attorneys' fees and defense costs, lien fees, judgments, fines, penalties, expert witness fees, appeals, and claims for damages of any nature whatsoever) arising out of, related to or in connection with (1) the performance of ASRS's duties or responsibilities under this Agreement, except to the

extent that such loss, liability, suit or expense results or arises from ASRS's own gross negligence, willful misconduct or material breach of this Agreement, or (2) without limiting the scope of Paragraph L of this Agreement, any acts taken or transactions effected in accordance with written directions from Employer or any of its authorized representatives or any failure of ASRS to act in the absence of such written directions to the extent ASRS is authorized to act only at the direction of Employer

- O. Waiver. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
- P. Severability. If any part, clause, provision or condition of this Agreement is held to be void, invalid, or inoperative, such part, clause, provision or condition will be severed and will not render invalid the remaining portions of this Agreement.
- Q. Incorporation of Amendments to Applicable Laws and Accounting Standards. Any references to sections of federal or state statutes or regulations or accounting standards shall be deemed to include a reference to any amendments thereof and any successor provisions thereto.
- R. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- S. Governing Law. Nothing herein precludes the Parties' right to take action to enforce the terms of the Agreement. This Agreement is governed by the laws of Arizona.

Date: _____

By: _____

Name: _____

Position: _____

Employer: _____

Date: _____

By: _____

Name: _____

Position: _____

Arizona State Retirement System

SAMPLE

ADDENDUM 1—EMPLOYER ELECTIONS

Dollar Amount Received by ASRS: _____

Date Received: _____

Initial Employer Elections:

A. Amortization Initiation Date: (check one)

_____ Period Beginning: _____

Postpone

B. Amortization Period Length:

_____ Year(s)

The amortization period:

- The period may not be greater than thirty years;
- The amounts need not be the same dollar amount each year.

Employer must provide 60 days' written notice to ASRS to initiate, or change, either the amortization initiation date or the amortization period length, unless otherwise agreed to by ASRS.

The amortization period, change frequency, and other details must be acceptable to the ASRS when considering systems, administrative, and financial implications.

Date: _____

By: _____

Name: _____

Position: _____

Employer: _____

Date: _____

By: _____

Name: _____

Position: _____

Arizona State Retirement System