

**Council Meeting: June 29, 2010****SUBJECT: ADOPTION OF 457 DEFERRED COMPENSATION PLAN WRAP AROUND DOCUMENT; ADOPTION OF ICMA MODEL PLAN****REPORT IN BRIEF**

Staff recommends adoption of a “Wrap Around Document” to coordinate the City’s three existing 457 deferred compensation plans. In addition, staff recommends adoption of the ICMA model plan document in lieu of the City’s individually maintained 457 plan document. The new 457 plan document includes a provision to permit loans from participants’ deferred compensation funds.

BACKGROUND

The City of Sunnyvale has established per Resolution No. 301-80 (and as amended thereafter), a Deferred Compensation Plan under Section 457(b) of the Internal Revenue Code (IRC) which allows eligible employees to defer compensation on a pre-tax basis through payroll deductions. Money placed in these accounts grows on a federally tax-free basis until withdrawn.

The City of Sunnyvale currently sponsors eligible 457 plans through three different providers: the CalPERS 457 Deferred Compensation Plan (“CalPERS”), the Nationwide Retirement Solutions, Inc. Deferred Compensation Plan for Public Employees (“Nationwide”), and the 457 Governmental Deferred Compensation Plan and Trust (ICMA) (“ICMA”).

Under IRS rules, every 457 plan is required to have a “plan document” that details the administration of the plan. Historically, the City of Sunnyvale has maintained its own plan document which must be updated regularly to comply with changes in the tax code. ICMA offers a model plan document for use by its clients, and both CalPERS and Nationwide each have their own plan documents.

The City has an obligation to ensure that its 457 plan document complies with the tax code, and to operate and administer the plan as a prudent fiduciary in accordance with the plan document. In an effort to streamline and facilitate the administration of the City’s 457 plans, staff recommends replacing the City’s plan document with the ICMA model plan document and adopting a “Wrap Around Document” (Attachment A) that coordinates the CalPERS,

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Nationwide, and ICMA plans. The advantage of this approach is that the City will no longer be responsible for making amendments to the individual plan document when relevant tax rules change. Instead, the City can rely on the expertise of its providers to ensure that the City's plan documents comply with all applicable federal rules and regulations. In addition, the "Wrap Around Document" will ensure consistency between the three different 457 plans offered by the City.

EXISTING POLICY

The General Plan, Planning and Management Element, Sub-element 7.3 Legislative Management, Goal 7.3D: Maintain a quality workforce, consistent with laws, the Charter, and adopted policies in order to assure that City services are provided in an effective manner. Action Statement 7.3D.1a states: to maintain a competitive pay and benefits package for employees.

Generally, a Deferred Compensation Plan is considered to be a component of the benefits package for employees as included in the Memoranda of Understanding and the Salary Resolution.

DISCUSSION

The elimination of the City's plan document, adoption of the ICMA model plan and adoption of the "Wrap Around Document" will be invisible to most employees. The plan documents used by the three providers are substantially similar. The items that require customization for the City are covered in the "Wrap Around Document."

The only substantial change is the incorporation of a provision in the "Wrap Around Document" that will allow the City to develop and implement a 457 plan loan program. The Human Resources Department will work with the plan providers to establish a loan program or programs consistent with IRS rules and regulations. Federal law and regulations allow loan features to be offered without requiring participants to meet the "extraordinary and unforeseeable emergency" standard applicable to emergency withdrawals. Employers have increasingly offered 457 plan loan options as an alternative to allow participants to gain access to their accounts when needed.

FISCAL IMPACT

Adoption of the ICMA model plan will reduce administrative costs associated with keeping the City's plan document updated. Additionally, there are no administrative costs to the City associated with implementing a 457 plan loan program.

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PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

ALTERNATIVES

1. Adopt a "Wrap Around Document" for the City's 457 deferred compensation plan, including the loan provision, using the ICMA model plan document.
2. Do not adopt a "Wrap Around Document" for the City's 457 deferred compensation plan, including the loan provision, using the ICMA model plan document.

RECOMMENDATION

Staff recommends approval of Alternative 1: Adopt a "Wrap Around Document" for the City's 457 deferred compensation plan, including the loan provision, using the ICMA model plan document.

Reviewed by:

Teri Silva, Director of Human Resources

Prepared by: Nicole Adamo, Human Resources Analyst

Approved by:

Gary M. Luebbbers
City Manager

Attachments

- A. City of Sunnyvale "Wrap Around Document"
- B. ICMA Plan Document
- C. PERS Plan Document
- D. Nationwide Plan Document

CITY OF SUNNYVALE
DEFERRED COMPENSATION PLAN WRAP AROUND DOCUMENT
Amended and Restated as of June 29, 2010

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City of Sunnyvale
Deferred Compensation Plan
Wrap Around Plan Document
Effective June 29, 2010

INTRODUCTION

The City of Sunnyvale (the “City”) sponsors several eligible deferred compensation plans established under section 457(b) of the Internal Revenue Code. This document (the “Wrap Plan”) incorporates the plans listed in Appendix I. This Wrap Plan also restates and replaces the “City of Sunnyvale Deferred Compensation Plan” adopted November 25, 1997 and last amended August 9, 2005. Capitalized terms are as contained in each plan except as defined in Article 1.

Article 1. DEFINITIONS.

1.1 “Account” means the bookkeeping account maintained with respect to each Participant under each Individual Plan in which the Participant participates and reflects the value of the deferred compensation credited to the Participant, including the Participant’s deferrals, the earnings or losses of the investments allocable to the Account (net of expenses of the investment), any transfers made into or out of the Account for the Participant’s benefit, rollovers accepted by the Plan on the Participant’s behalf and any distributions made from the Account.

1.2 “Code” means the Internal Revenue Code of 1986, as amended from time to time.

1.3 “Employee” means an individual who is a common-law employee of the City paid through the payroll system used by the City to pay individuals the City treats as employees subject to employment and income tax withholding and for whom it withholds such taxes. The term “Employee” will not include (a) any individual employed by the City who is a nonresident alien with no United States source income from the City; and (b) any individual receiving payments characterized by the City as salary continuation payments, regardless of whether such payments are subject to tax withholding except as provided in Section 3.2 and (c) any employee in a non-benefited, temporary classification. If, during any period, the City has not treated an individual as an Employee and, for that reason, has not withheld income and employment taxes with respect to that individual, then that individual will not be an Employee for that period, even if the individual is determined, retroactively, to have been a common law employee during all or any portion of that period by the Internal Revenue Service or a judgment or settlement in a judicial proceeding.

1.4 “Includible Compensation” means a Participant’s compensation, as defined in Section 415(c)(3) of the Code, for services performed for the City, including amounts paid after severance of employment to the extent permitted under Treasury Regulation section 1.415(c)-2(d)(3) and available for deferral under Section 3.2 below. Includible Compensation shall be determined without regard to any community property laws.

1.5 “Individual Plan(s)” means one of the plans listed on Appendix I and incorporated by reference in Article 2.

1.6 “Normal Retirement Age” means the age used to determine the three year catch up period prior to Normal Retirement Age under the Plan and shall be the age designated by a Participant for any Plan Year that is not earlier than the earliest year in which the Participant will be eligible to retire without actuarial or similar reduction under the California Public Employees’ Retirement System or any other defined benefit plan that is the Participant’s primary public retirement plan; provided, however, that such age may not be later than age 70 ½. A Participant who is employed by the City full-time as a qualified police or firefighter as defined in Treasury Regulation section 1.457-4(c)(3)(v)(B) and its reference to section 415(b)(2)(H)(ii)(I) of the Code, may elect a Normal Retirement Age between age 47 and 70 ½.

1.7 “Participant” means an individual who has an Account under an Individual Plan.

1.8 “Plan Administrator” means the City Manager notwithstanding that an Individual Plan may name an administrator for such Individual Plan.

Article 2. INCORPORATED PLANS.

The Individual Plans sponsored by the City are listed in Appendix I. The list of plans included on Appendix I may be amended from time to time by the City. The terms of the

Individual Plans listed in Appendix I are incorporated by reference, however, if there is any inconsistency or contradictions between the Individual Plans listed in Appendix I and this document, this document will control.

Article 3. PARTICIPATION.

3.1 Deferral Elections. Each eligible Employee may participate in one or any of the Individual Plans by electing to defer payment of part of his or her Includible Compensation. An Employee is “eligible” upon meeting the requirements set forth in an Individual Plan in which the Employee elects to defer. An election to defer under an Individual Plan is effective to defer Includible Compensation paid for the first day of the first full payroll period of the month immediately following the month in which such election is made. A new Employee’s election to defer under an Individual Plan may be effective on the first day of the first full payroll period of employment if elected on or before the date of employment. An election to defer Includible Compensation shall remain in effect until revoked or changed by the Participant. Any elections to defer Includible Compensation, to revoke or change such an election, shall be in the form and manner required by the Plan Administrator. A Participant may elect to participate in one or more of the Individual Plans.

3.2 Deferral of Sick Pay and Vacation Pay. A Participant may elect to defer Includible Compensation in the form of accumulated sick pay and vacation pay if such an election is made before the beginning of the month in which such amounts would

otherwise be paid or made available and the participant is an employee in that month. If the accumulated sick pay or vacation pay is payable before a Participant's last day of employment, an election to defer such amounts must be made before the date such pay would be paid absent such election.

Article 4. LIMITS ON DEFERRALS.

4.1 Annual Limit. Unless sections 4.2 or 4.3 apply, the maximum amount of annual deferrals that can be made for a year by a Participant shall be the lesser of (a) 100% of Includable Compensation for the year, or (b) the applicable annual dollar limit provided under section 457(e)(15) of the Code, as adjusted for cost of living increases.

4.2 Age 50 Catch Up. A Participant who will attain age 50 or more in any year may defer an amount in excess of the maximum amount provided in Section 4.1 above. The additional deferral amount under this Section 4.2 shall not exceed the dollar limit provided in section 414(v) of the Code, as adjusted for cost of living increases.

4.3 Pre-Retirement Catch Up. For one or more of the last three years ending before the year in which the Participant attains Normal Retirement Age, a Participant may elect to defer the maximum amount determined under this Section 4.3, if such amount exceeds the maximum deferral limit under Section 4.1 above. The amount of deferrals permitted under this Section 4.3 shall not exceed the lesser of:

(a) an amount equal to two (2) times the applicable dollar limit provided under section 457(e)(15), or

(b) the sum of (1) an amount equal to the aggregate Section 4.1 limit for the current year plus each prior calendar year beginning with 2002 during which the Participant was eligible to participate in one of the Plans or a predecessor plan sponsored by the City less the aggregate amount of salary and wages that the Participant deferred under the Plan during such years, plus (2) an amount equal to the aggregate limit referred to in section 457(b)(2) of the Code for each prior calendar year from 1979 through 2001 during which the Participant was eligible to participate in the Plan minus the aggregate contributions described for pre-2002 coordination years under Treasury Regulation section 1.457-4(c)(3).

4.4 Application of Limits to a Participant. The annual limits on deferrals under this Article 4 apply to a Participant by taking in account such Participant's deferrals under each Individual Plan.

4.5 Correction of Excess Deferrals. In the event any participant has deferrals for the year in excess of the permissible limits under the Code, corrective distributions shall be made from the Individual Plans as directed by the Plan Administrator.

Article 5. LOANS.

Loans may be provided under the Individual Plans incorporated into this Wrap Plan; provided, however, that the limitation on the amounts of loans that may be made under any Individual Plan shall take into account the balances of a Participant's Account under each Individual Plan as well as any other loan outstanding under each of the Individual Plans.

Article 6. HARDSHIP DISTRIBUTIONS.

Unless otherwise provided in an Individual Plan, the Plan Administrator shall approve all hardship or emergency distributions from any Individual Plan. The Participant must submit all requests for hardship or emergency distributions to the Plan Administrator, who will forward an approved request to the respective Individual Plan. Approval of requests for hardship or emergency distributions shall be subject to the standards set forth in the respective Individual Plans and applicable IRS regulations.

Article 7. TRUST.

All assets and income of each Individual Plan within this Wrap Plan shall be held in trust as provided under section 457(g) of the Code for the exclusive benefit of Participants and the City nor any creditor of the City shall have any interest in or claim against any part of the assets of any trust held under any Individual Plan. The City Manager shall serve as

trustee of any trust established under the Wrap Plan unless the City has substituted another trustee to serve under any trust connected to an Individual Plan.

Article 8. DISTRIBUTIONS.

Distributions shall be made at the time and in the manner and form as provided in the applicable Individual Plan. Each Individual Plan shall comply with the distribution requirements of section 401(a)(9) of the Code.

Article 9. NONASSIGNABILITY.

9.1 Nonassignability. Except as provided in Section 9.2, the rights of a Participant or Beneficiary under any Individual Plan may not be sold, assigned, pledged, committed, transferred, or otherwise conveyed, and any attempt to assign or transfer rights or benefits under any Individual Plan shall not be recognized. Except as otherwise required by law, the rights of a Participant or Beneficiary under any Individual Plan shall not be subject to attachment, garnishment, or execution, or to transfer by operation of law in the event of bankruptcy or insolvency of the Participant or Beneficiary or otherwise.

9.2 Domestic Relations Orders. To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law, any portion of a Participant's Account may be paid or set aside for payment to a spouse, former spouse, or child of the Participant. Where

necessary to carry out the terms of such an order, a separate account shall be established with respect to the spouse, former spouse, or child who shall be entitled to choose investment options in the same manner as the Participant. Any amount so set aside for a spouse, former spouse, or child shall be paid out in a lump sum at the earliest date that benefits may be paid to the Participant, unless the judgment, decree, or order directs a different form of payment. Nothing in this Section 10.2 shall be construed to authorize any amount to be distributed under any Individual Plan at a time or in a form that is not permitted under Section 457 of the Code.

A Participant's right to receive benefits under any Individual Plan shall be reduced to the extent that any portion of a Participant's Account has been paid or set side for payment to a spouse, former spouse, or child pursuant to Section 10.2 or to the extent that the City or the Wrap Plan is otherwise subject to a binding judgment, decree, or order for the attachment, garnishment, or execution of any portion of the Participant's Account or of any distributions therefrom. The Participant shall be deemed to have released the City and Wrap Plan from any claim with respect to such amounts in any case in which (i) the City, any Individual Plan, or any plan representative has been served with legal process or otherwise joined in a proceeding relating to such amounts, (ii) the Participant has been notified of the pendency of such proceeding in the manner prescribed by the law of the jurisdiction in which the proceeding is pending for service of process or by mail from the City or a plan representative to the Participant's last known mailing address, and (iii) the Participant fails to obtain an order of the court in the proceeding relieving the City and the Individual Plan from the obligation to comply with the judgment, decree, or order.

9.3 Participation in Legal Proceedings. Neither the City nor any plan representative shall be obligated to incur any cost to defend against or set aside any judgment, decree, or order relating to the division, attachment, garnishment, or execution of the Participant's Account or of any distribution therefrom. Notwithstanding the foregoing, if the City, the Wrap Plan, or a plan representative is joined in any such proceeding, a plan representative shall take such steps as it deems necessary and appropriate to protect the terms of the Wrap Plan.

Article 10. PLAN ADMINISTRATION.

10.1 Plan Administration. Except as provided in Section 10.2, the administration of the Wrap Plan shall be under the exclusive control of the City and its City Manager. The decisions of the City shall be final, binding and conclusive on all interested persons for all purposes. Any elections required of the City under any Individual Plan shall be made by the Plan Administrator. To the maximum extent permitted by law, each employee of the City responsible for the administration of the Wrap Plan shall be held harmless for all acts performed in good faith in connection with the Wrap Plan. Any designation of eligible employees required by any Individual Plan shall be evidenced by the submission of enrollment materials for any Employee. The City Manager shall serve as "Administrator" of any Individual Plan that requires the City to designate an "Administrator" under such plan.

10.2 Delegation of Authority. The City may delegate any employee or employees of the City, third party administrator, or any independent contractor the authority to act as the City's agent with respect to any matter within the control of the City, provided that any such delegation of authority shall be subject to revocation by the City. Any act that the City is required or authorized to perform under the terms of this Wrap Plan, including any communication to be made or received by the City and the adoption of any supplementary guidelines or procedures, may be performed by an agent of the City, provided such person is acting within the scope of that person's delegation of authority from the City. To the maximum extent permitted by law, each employee of the City shall be held harmless for any act performed in good faith in connection with the Wrap Plan. Any independent contractor who is retained to perform services under the Wrap Plan shall perform such services solely as the agent of the City and shall not be liable to any Participant or Beneficiary for any act performed (or not performed) hereunder.

Article 11. GENERAL PROVISIONS.

11.1 Amendment and Termination. The City reserves the right at any time to amend or modify the Wrap Plan without the consent of any Participant or Beneficiary. Except as may be required to maintain the status of the Wrap Plan as an Eligible Deferred Compensation Plan under section 457 of the Code or to comply with other applicable law, no amendment or modification shall impair any individual's right to benefits under the Wrap Plan or any Individual Plan with respect to amounts previously credited to

Participants' Accounts. The City may terminate any Individual Plan or this Wrap Plan at any time.

11.2 Effect on Employment. Nothing contained herein shall give any employee the right to be retained in the employment of the City or affect the right of the City to terminate any employee's employment.

11.3 Incompetence of Payee. If the City shall find that any person to whom any amount is payable under the Wrap Plan is unable to care for his or her affairs, is a minor, or has died, any payment due him or her, or his or her estate, may be paid to his or her spouse, a child, a relative or any other person having maintaining or having custody of such person, unless a prior claim against such amount has been made by a duly appointed legal representative. Any such payment shall be a complete discharge of all liability under the Wrap Plan or Individual Plan.

11.4 Applicable Law. This Wrap Plan shall be construed under the laws of the State of California and in conformity with the requirements of section 457 of the Code and all regulations thereunder applicable to eligible deferred compensation plans.

EXECUTION

To record the adoption of this Wrap Plan as set forth herein, the City has authorized the undersigned to execute this document below, to be effective June 29, 2010.

CITY OF SUNNYVALE

By: _____

Title: _____

Date: _____

**CITY OF SUNNYVALE DEFERRED COMPENSATION PLAN WRAP AROUND
DOCUMENT
Appendix I
Effective June 29, 2010**

The Individual Plans within the City of Sunnyvale Deferred Compensation Plan Wrap
Around Document are as follows:

1. The CalPERS 457 Deferred Compensation Plan Document
2. The Nationwide Retirement Solutions, Inc. Deferred Compensation Plan for
Public Employees
3. 457 Governmental Deferred Compensation Plan and Trust (ICMA)

457 Governmental Deferred Compensation Plan & Trust



DEFERRED COMPENSATION PLAN AND TRUST

As Amended and Restated Effective January 1, 2006

Article I. Purpose

The Employer hereby establishes and maintains the Employer's Deferred Compensation Plan and Trust, hereafter referred to as the "Plan." The Plan consists of the provisions set forth in this document.

The primary purpose of this Plan is to provide retirement income and other deferred benefits to the Employees of the Employer and the Employees' Beneficiaries in accordance with the provisions of Section 457 of the Internal Revenue Code of 1986, as amended (the "Code").

This Plan shall be an agreement solely between the Employer and participating Employees. The Plan and Trust forming a part hereof are established and shall be maintained for the exclusive benefit of Participants and their Beneficiaries. No part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

Article II. Definitions

- 2.01 Account.** The bookkeeping account maintained for each Participant reflecting the cumulative amount of the Participant's Deferred Compensation, including any income, gains, losses, or increases or decreases in market value attributable to the Employer's investment of the Participant's Deferred Compensation, and further reflecting any distributions to the Participant or the Participant's Beneficiary and any fees or expenses charged against such Participant's Deferred Compensation.
- 2.02 Accounting Date.** Each business day that the New York Stock Exchange is open for trading, as provided in Section 6.06 for valuing the Trust's assets.
- 2.03 Administrator.** The person or persons named in writing to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described. The Employer may remove any person as Administrator upon 75 days' advance notice in writing to such person, in which case the Employer shall name another person or persons to act as Administrator. The Administrator may resign upon 75 days' advance notice in writing to the Employer, in which case the Employer shall name another person or persons to act as Administrator.
- 2.04 Automatic Distribution Date.** April 1 of the calendar year after the Plan Year the Participant attains age 70½ or, if later, has a Severance Event.
- 2.05 Beneficiary.** The person or persons designated by the Participant in his or her Joinder Agreement who shall receive any benefits payable hereunder in the event of the Participant's death. In the event that the Participant names two or more Beneficiaries, each Beneficiary shall be entitled to equal shares of the benefits payable at the Participant's death, unless otherwise provided in the Participant's Joinder Agreement. If no beneficiary is designated in the Joinder Agreement, if the Designated Beneficiary predeceases the Participant, or if the designated Beneficiary does not survive the Participant for a period of fifteen (15) days, then the estate of the Participant shall be the Beneficiary. If a married Participant resides in a community or marital property state, the Participant shall be responsible for obtaining appropriate consent of his or her spouse in the event the Participant designates someone other than his or her spouse as Beneficiary. The preceding sentence shall not apply with respect to a Deemed IRA under Article IX.
- 2.06 Deemed IRA.** A separate account or annuity established under the Plan that complies with the requirements of Section 408(q) of the Code, the Income Tax Regulations thereunder, and any other IRS guidance.

- 2.07 Deferred Compensation.** The amount of Includible Compensation otherwise payable to the Participant which the Participant and the Employer mutually agree to defer hereunder, any amount credited to a Participant's Account by reason of a transfer under Section 6.09 or 6.10, a rollover under Section 6.11, or any other amount which the Employer agrees to credit to a Participant's Account.
- 2.08 Dollar Limitation.** The applicable dollar amount within the meaning of Section 457(b)(2)(A) of the Code, as adjusted for the cost-of-living in accordance with Section 457(e)(15) of the Code.
- 2.09 Employee.** Any individual who provides services for the Employer, whether as an employee of the Employer or as an independent contractor, and who has been designated by the Employer as eligible to participate in the Plan.
- 2.10 Employer.** _____, which is a political subdivision, agency or instrumentality of the [State/Commonwealth] of _____, described in Section 457(e)(1)(A) of the Code.
- 2.11 457 Catch-Up Dollar Limitation.** Twice the Dollar Limitation.
- 2.12 Includible Compensation.** Includible Compensation of a Participant means "compensation," as defined in Section 415(c)(3) of the Code, for services performed for the Employer. Includible Compensation shall be determined without regard to any community property laws. For purposes of a Participant's Joinder Agreement only and not for purposes of the limitations in Article V, Includible Compensation shall include pre-tax contributions (excluding direct employer contributions) to an integral part trust of the employer providing retiree health care benefits.
- 2.13 Joinder Agreement.** An agreement entered into between an Employee and the Employer, including any amendments or modifications thereof. Such agreement shall fix the amount of Deferred Compensation, specify a preference among the investment alternatives designated by the Employer, designate the Employee's Beneficiary or Beneficiaries, and incorporate the terms, conditions, and provisions of the Plan by reference.
- 2.14 Normal Limitation.** The maximum amount of Deferred Compensation for any Participant for any taxable year (other than amounts referred to in Sections 6.09, 6.10, and 6.11).
- 2.15 Normal Retirement Age.** Age 70½, unless the Participant has elected an alternate Normal Retirement Age by written instrument delivered to the Administrator prior to a Severance Event. A Participant's Normal Retirement Age determines the period during which a Participant may utilize the 457 Catch-Up Dollar Limitation of Section 5.02(b) hereunder. Once a Participant has to any extent utilized the catch-up limitation of Section 5.02(b), his Normal Retirement Age may not be changed.

A Participant's alternate Normal Retirement Age may not be earlier than the earliest date that the Participant will become eligible to retire and receive immediate, unreduced retirement benefits under the Employer's basic defined benefit retirement plan covering the Participant (or a money purchase pension plan in which the Participant also participates if the Participant is not eligible to participate in a defined benefit plan), and may not be later than the date the Participant will attain age 70½. If the Participant will not become eligible to receive benefits under a basic defined benefit retirement plan (or money purchase pension plan, if applicable) maintained by the Employer, the Participant's alternate Normal Retirement Age may not be earlier than 65 and may not be later than age 70½. In no event may a Participant's normal retirement age be different than the normal retirement age under the Employer's other 457(b) plans, if any.

In the event the Plan has Participants that include qualified police or firefighters (as defined under Section 415(b)(2)(H)(ii)(I) of the Code), a normal retirement age may be designated for such qualified police or firefighters that is not earlier than age 40 or later than age 70½. Alternatively, qualified police or firefighters may be permitted to designate a normal retirement age that is between age 40 and age 70½.

- 2.16 Participant.** Any Employee who has joined the Plan pursuant to the requirements of Article IV. For purposes of section 6.11 of the Plan, the term Participant includes an employee or former Employee of the Employer who has not yet received all of the payments of benefits to which he/she is entitled under the Plan.
- 2.17 Percentage Limitation.** 100 percent of the participant's Includible Compensation available to be contributed as Deferred Compensation for the taxable year.
- 2.18 Plan Year.** The calendar year.
- 2.19 Retirement.** The first date upon which both of the following shall have occurred with respect to a participant: Severance Event and attainment of age 65.
- 2.20 Severance Event.** A severance of the Participant's employment with the Employer within the meaning of Section 457(d)(1)(A)(ii) of the Code.

In general, a Participant shall be deemed to have experienced a Severance Event for purposes of this Plan when, in accordance with the established practices of the Employer, the employment relationship is considered to have actually terminated. In the case of a Participant who is an independent contractor of the Employer, a Severance Event shall be deemed to have occurred when the Participant's contract under which services are performed has completely expired and terminated, there is no foreseeable possibility that the Employer will renew the contract or enter into a new contract for the Participant's services, and it is not anticipated that the Participant will become an Employee of the Employer, or such other events as may be permitted under the Code.

- 2.21 Trust.** The Trust created under Article VI of the Plan which shall consist of all compensation deferred under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

Article III. Administration

- 3.01 Duties of the Employer.** The Employer shall have the authority to make all discretionary decisions affecting the rights or benefits of Participants which may be required in the administration of this Plan. The Employer's decisions shall be afforded the maximum deference permitted by applicable law.
- 3.02 Duties of Administrator.** The Administrator, as agent for the Employer, shall perform nondiscretionary administrative functions in connection with the Plan, including the maintenance of Participants' Accounts, the provision of periodic reports of the status of each Account, and the disbursement of benefits on behalf of the Employer in accordance with the provisions of this Plan.

Article IV. Participation in the Plan

- 4.01 Initial Participation.** An Employee may become a Participant by entering into a Joinder Agreement prior to the beginning of the calendar month in which the Joinder Agreement is to become effective to defer compensation not yet earned, or such other date as may be permitted under the Code. A new employee may defer compensation in the calendar month during which he or she first becomes an employee if a Joinder Agreement is entered into on or before the first day on which the employee performs services for the Employer.
- 4.02 Amendment of Joinder Agreement.** A Participant may amend an executed Joinder Agreement to change the amount of Includible Compensation not yet earned which is to be deferred (including the reduction of such future deferrals to zero). Such amendment shall become effective as of the beginning of the calendar month commencing after the date the amendment is executed, or such other date as may be permitted under the Code. A Participant may at any time amend his or her Joinder Agreement to change the designated Beneficiary, and such amendment shall become effective immediately.

Article V. Limitations on Deferrals

5.01 Normal Limitation. Except as provided in Section 5.02, the maximum amount of Deferred Compensation for any Participant for any taxable year, shall not exceed the lesser of the Dollar Limitation or the Percentage Limitation.

5.02 Catch-Up Limitations.

- (a) *Catch-up Contributions for Participants Age 50 and Over:* A Participant who has attained the age of 50 before the close of the Plan Year, and with respect to whom no other elective deferrals may be made to the Plan for the Plan Year by reason of the Normal Limitation of Section 5.01, may enter into a Joinder Agreement to make elective deferrals in addition to those permitted by the Normal Limitation in an amount not to exceed the lesser of:
- (1) The applicable dollar amount as defined in Section 414(v)(2)(B) of the Code, as adjusted for the cost-of-living in accordance with Section 414(v)(2)(C) of the Code; or
 - (2) The excess (if any) of
 - (i) The Participant's Includible Compensation for the year, or
 - (ii) Any other elective deferrals of the Participant for such year which are made without regard to this Section 5.02(a).

An additional contribution made pursuant to this Section 5.02(a) shall not, with respect to the year in which the contribution is made, be subject to any otherwise applicable limitation contained in Section 5.01 above, or be taken into account in applying such limitation to other contributions or benefits under the Plan or any other plan. This Section 5.02(a) shall not apply in any year to which a higher limit under Section 5.02(b) applies.

- (b) *Last Three Years Catch-up Contribution:* For each of the last three (3) taxable years for a Participant ending before his or her attainment of Normal Retirement Age, the maximum amount of Deferred Compensation shall be the lesser of:
- (1) The 457 Catch-Up Dollar Limitation, or
 - (2) The sum of
 - (i) The Normal Limitation for the taxable year, and
 - (ii) The Normal Limitation for each prior taxable year of the Participant commencing after 1978 less the amount of the Participant's Deferred Compensation for such prior taxable years. A prior taxable year shall be taken into account under the preceding sentence only if (x) the Participant was eligible to participate in the Plan for such year, and (y) compensation (if any) deferred under the Plan (or such other plan) was subject to the Normal Limitation.

5.03 Sick, Vacation and Back Pay. If the Employer so elects, a Participant may defer all or a portion of the value of the Participant's accumulated sick pay, accumulated vacation pay and/or back pay, provided that such deferral does not cause total deferrals on behalf of the Participant to exceed the Dollar Limitation or Percentage Limitation (including any Catch-up Dollar Limitation) for the year of deferral. The election to defer such sick, vacation and/or back pay must be made in a manner and at a time permitted under Section 1.457-4(d) of the Income Tax Regulations.

For Plan Years beginning before January 1, 2009, pursuant to proposed IRS regulations issued under Section 415 of the Code, the Plan may permit deferrals from compensation, including sick, vacation and back pay, so long as the amounts are paid within 2½ months following severance from employment and the other requirements of Sections

457(b) and 415 of the Code are met. For Plan Years beginning on or after January 1, 2009, pursuant to final IRS regulations issued under Section 415 of the Code, the Plan may permit deferrals from compensation, including sick, vacation and back pay, so long as the amounts are paid by the later of: (i) 2½ months following severance from employment, and (ii) the end of the calendar year that includes the date of such severance from employment, and the other requirements of Sections 457(b) and 415 of the Code are met. Additionally, the agreement to defer such amounts must be entered into prior to the first day of the month in which the amounts otherwise would be paid or made available.

- 5.04 Other Plans.** Notwithstanding any provision of the Plan to the contrary, the amount excludible from a Participant's gross income under this Plan or any other eligible deferred compensation plan under Section 457(b) of the Code shall not exceed the limits set forth in Sections 457(b) and 414(v) of the Code.
- 5.05 Excess Deferrals.** Any amount that exceeds the maximum Dollar Limitation or Percentage Limitation (including any applicable Catch-Up Dollar Limitation) for a taxable year, shall constitute an excess deferral for that taxable year. Any excess deferral shall be distributed in accordance with the requirements for excess deferrals under the Code and Section 1.457-4(e) of the Income Tax Regulations or other applicable Internal Revenue Service guidance.
- 5.06 Protection of Person Who Serves in a Uniformed Service.** An Employee whose employment is interrupted by qualified military service under Section 414(u) of the Code or who is on leave of absence for qualified military service under Section 414(u) of the Code may elect to contribute additional Deferred Compensation upon resumption of employment with the Employer equal to the maximum Deferred Compensation that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Includible Compensation) without the interruption or leave, reduced by Deferred Compensation, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

Article VI. Trust and Investment of Accounts

- 6.01 Investment of Deferred Compensation.** A Trust is hereby created to hold all the assets of the Plan (except Deemed IRA contributions and earnings thereon held pursuant to Article IX) for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The trustee shall be the Employer or such other person that agrees to act in that capacity hereunder.
- 6.02 Investment Powers.** The trustee or the Administrator, acting as agent for the trustee, shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is directed by Participants, pursuant to Section 6.05 or to the extent that such powers are restricted by applicable law.
- (a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, loans, notes, debentures, certificates of deposit, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit. Assets of the Trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.
 - (b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans described under Sections 457 or 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plans the declaration of trust of such commonly collective, or commingled trust fund shall constitute a part of this Plan.
 - (c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled

or collective basis with the assets of any other 457 plan or trust qualified under Section 401(a) of the Code or any other plan described in Section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Administrator, or such custodian as the Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.

- (d) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.
- (e) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.
- (f) Upon such terms as may be deemed advisable by the Employer or the Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the Plans to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.
- (g) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.
- (h) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Administrator, in any bank or banks.
- (i) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

6.03 Taxes and Expenses. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon the Plan, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Administrator, as may be agreed upon from time to time by the Employer and the Administrator, and reimbursement for reasonable expenses incurred by the Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust.

6.04 Payment of Benefits. The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Administrator, or by any custodian or other person so authorized by the Employer to make such disbursement. The Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.

6.05 Investment Funds. In accordance with uniform and nondiscriminatory rules established by the Employer and the Administrator, the Participant may direct his or her Accounts to be invested in one (1) or more investment

funds available under the Plan; provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Employer. Neither the Employer, the Administrator, nor any other person shall be liable for any losses incurred by virtue of following such directions or with any reasonable administrative delay in implementing such directions.

6.06 Valuation of Accounts. As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and Beneficiaries.

6.07 Participant Loan Accounts. Participant loan accounts shall be invested in accordance with Section 8.03 of the Plan. Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Sections 6.05 and 6.06.

6.08 Crediting of Accounts. The Participant's Account shall reflect the amount and value of the investments or other property obtained by the Employer through the investment of the Participant's Deferred Compensation pursuant to Sections 6.05 and 6.06. It is anticipated that the Employer's investments with respect to a Participant will conform to the investment preference specified in the Participant's Joinder Agreement, but nothing herein shall be construed to require the Employer to make any particular investment of a Participant's Deferred Compensation. Each Participant shall receive periodic reports, not less frequently than annually, showing the then current value of his or her Account.

6.09 Post-Severance Transfers Among Eligible Deferred Compensation Plans.

- (a) *Incoming Transfers:* A transfer may be accepted from an eligible deferred compensation plan maintained by another employer and credited to a Participant's or Beneficiary's Account under the Plan if:
- (1) In the case of a transfer for a Participant, the Participant has had a Severance Event with that employer and become an Employee of the Employer;
 - (2) The other employer's plan provides that such transfer will be made; and
 - (3) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer.

The Employer may require such documentation from the predecessor plan as it deems necessary to effectuate the transfer in accordance with Section 457(e)(10) of the Code, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. The Employer may refuse to accept a transfer in the form of assets other than cash, unless the Employer and the Administrator agree to hold such other assets under the Plan.

- (b) *Outgoing Transfers:* An amount may be transferred to an eligible deferred compensation plan maintained by another employer, and charged to a Participant's or Beneficiary's Account under this Plan, if:
- (1) In the case of a transfer for a Participant, the Participant has a Severance Event with the Employer and becomes an employee of the other employer;
 - (2) The other employer's plan provides that such transfer will be accepted;
 - (3) The Participant or Beneficiary and the employers have signed such agreements as are necessary to assure that the Employer's liability to pay benefits to the Participant has been discharged and assumed by the other employer; and

- (4) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer.

The Employer may require such documentation from the other plan as it deems necessary to effectuate the transfer, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. Such transfers shall be made only under such circumstances as are permitted under Section 457 of the Code and the regulations thereunder.

6.10 Transfers Among Eligible Deferred Compensation Plans of the Employer.

- (a) *Incoming Transfers.* A transfer may be accepted from another eligible deferred compensation plan maintained by the Employer and credited to a Participant's or Beneficiary's Account under the Plan if:
 - (1) The Employer's other plan provides that such transfer will be made;
 - (2) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and
 - (3) The Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Plan unless the Participant or Beneficiary is performing services for the Employer.
- (b) *Outgoing Transfers.* A transfer may be accepted from another eligible deferred compensation plan maintained by the Employer and credited to a Participant's or Beneficiary's Account under the Plan if:
 - (1) The Employer's other plan provides that such transfer will be accepted;
 - (2) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and
 - (3) The Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Employer's other eligible deferred compensation plan unless the Participant or Beneficiary is performing services for the Employer.

6.11 Eligible Rollover Distributions.

- (a) *Incoming Rollovers:* An eligible rollover distribution may be accepted from an eligible retirement plan and credited to a Participant's Account under the Plan. The Employer may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of Section 402(c)(8)(B) of the Code. The Plan shall separately account (in one or more separate accounts) for eligible rollover distributions from any eligible retirement plan.
- (b) *Outgoing Rollovers:* 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 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.
- (c) *Definitions:*
 - (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 Sections 401(a)(9) and 457(d)(2) of the Code; and any distribution made as a result of an unforeseeable emergency of the employee. For purposes of distributions from other eligible retirement plans rolled over into this Plan, the term eligible rollover distribution shall not include the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), such as after-tax contributions.

- (2) *Eligible Retirement Plan:* An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Sections 403(a) or 403(b) of the Code, a qualified trust described in Section 401(a) of the Code, or an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by an eligible governmental employer described in Section 457(e)(1)(A) of the Code, that accepts the distributee's eligible rollover distribution.
- (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.

6.12 Trustee-to-Trustee Transfers to Purchase Permissive Service Credit. All or a portion of a Participant's Account may be transferred directly to the trustee of a defined benefit governmental plan (as defined in Section 414(d) of the Code) if such transfer is (a) for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under such plan, or (b) a repayment to which Section 415 of the Code does not apply by reason of subsection (k)(3) thereof, within the meaning of Section 457(e)(17) of the Code.

6.13 Treatment of Distributions of Amounts Previously Rolled Over From 401(a) and 403(b) Plans and IRAs. For purposes of Section 72(t) of the Code, a distribution from this Plan shall be treated as a distribution from a qualified retirement plan described in Section 4974(c)(1) of the Code to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in Section 4974(c) of the Code).

6.14 Employer Liability. In no event shall the Employer's liability to pay benefits to a Participant under this Plan exceed the value of the amounts credited to the Participant's Account; neither the Employer nor the Administrator shall be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

Article VII. Benefits

7.01 Retirement Benefits and Election on Severance Event.

- (a) *General Rule:* Except as otherwise provided in this Article VII, the distribution of a Participant's Account shall commence as of a Participant's Automatic Distribution Date, and the distribution of such benefits shall be made in accordance with one of the payment options described in Section 7.02. Notwithstanding the foregoing, but subject to the following paragraphs of this Section 7.01, the Participant may elect following a Severance Event to have the distribution of benefits commence on a fixed determinable date other than that described in the preceding sentence, but not later than April 1 of the year following the year of the Participant's Retirement or attainment of age 70½, whichever is later. The Participant's right to change his or her election with respect to commencement of the distribution of benefits shall not be restrained by this Section 7.01.

Notwithstanding the foregoing, the Administrator, in order to ensure the orderly administration of this provision, may establish a deadline after which such election to defer the commencement of distribution of benefits shall not be allowed.

- (b) *Loans*: Notwithstanding the foregoing provisions of this Section 7.01, no election to defer the commencement of benefits after a Severance Event shall operate to defer the distribution of any amount in the Participant's loan account in the event of a default of the Participant's loan.

7.02 Payment Options. As provided in Sections 7.01, 7.04 and 7.05, a Participant may elect to have value of the Participant's Account distributed in accordance with one of the following payment options, provided that such option is consistent with the limitations set forth in Section 7.03:

- (a) Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Participant, continuing until his or her Account is exhausted;
- (b) One lump-sum payment;
- (c) Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain chosen by the Participant;
- (d) Annual Payments equal to the minimum distributions required under Section 401(a)(9) of the Code, including the incidental death benefit requirements of Section 401(a)(9)(G), over the life expectancy of the Participant or over the life expectancies of the Participant and his or her Beneficiary;
- (e) Payments equal to payments made by the issuer of a retirement annuity policy acquired by the Employer;
- (f) A split distribution under which payments under options (a), (b), (c) or (e) commence or are made at the same time, as elected by the Participant under Section 7.01, provided that all payments commence (or are made) by the latest benefit commencement date permitted under Section 7.01;
- (g) Any other payment option elected by the Participant and agreed to by the Employer and Administrator.

A Participant's selection of a payment option under Subsections (a), (c), or (g) above may include the selection of an automatic annual cost-of living increase. Such increase will be based on the rise in the Consumer Price Index for All Urban Consumers (CPI-U) from the third quarter of the last year in which a cost-of-living increase was provided to the third quarter of the current year. Any increase will be made in periodic payment checks beginning the following January.

7.03 Limitation on Options. No payment option may be selected by a Participant under subsections 7.02(a) or (c) unless the amount of any installment is not less than \$100. No payment option may be selected by a Participant under Sections 7.02, 7.04, or 7.05 unless it satisfies the requirements of Sections 401(a)(9) and 457(d)(2) of the Code, including that payments commencing before the death of the Participant shall satisfy the incidental death benefit requirements under Section 401(a)(9)(G) of the Code.

7.04 Minimum Required Distributions. Notwithstanding any provision of the Plan to the contrary, the Plan shall comply with the minimum required distribution rules set forth in Sections 457(d)(2) and 401(a)(9) of the Code, including the incidental death benefit requirements of Section 401(a)(9)(G) of the Code.

7.05 Post-Retirement Death Benefits.

- (a) Should the Participant die after he or she has begun to receive benefits under a payment option, the remaining payments, if any, under the payment option shall continue until the Administrator receives notice of the Participant's death. Upon notification of the Participant's death, benefits shall be payable to the Participant's Beneficiary commencing not later than December 31 of the year following the year of the Participant's death, provided that the Beneficiary may elect to begin benefits earlier than that date.

- (b) In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining benefits payable under the payment option applicable to the Beneficiary shall, subject to the requirements set forth in Section 7.04, be paid to an additional beneficiary designated by the Beneficiary. If no additional beneficiary is named, payment shall be made to the Beneficiary's estate in a lump sum.
- (c) In the event that the Participant's estate is the Beneficiary, payment shall be made to the estate in a lump sum.

7.06 Pre-Retirement Death Benefits.

- (a) Should the Participant die before he or she has begun to receive the benefits provided by Section 7.01, the value of the Participant's Account shall be payable to the Beneficiary commencing not later than December 31 of the year following the year of the Participant's death, provided that the Beneficiary may elect to begin benefits earlier than that date.
- (b) In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining value of the Participant's Account shall be paid to the estate of the Beneficiary in a lump sum. In the event that the Participant's estate is the Beneficiary, payment shall be made to the estate in a lump sum.

7.07 Unforeseeable Emergencies.

- (a) In the event an unforeseeable emergency occurs, a Participant or Beneficiary may apply to the Employer to receive that part of the value of his or her Account that is reasonably needed to satisfy the emergency need. If such an application is approved by the Employer, the Participant or Beneficiary shall be paid only such amount as the Employer deems necessary to meet the emergency need, but payment shall not be made to the extent that the financial hardship may be relieved through cessation of deferral under the Plan, insurance or other reimbursement, or liquidation of other assets to the extent such liquidation would not itself cause severe financial hardship.
- (b) An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship of a Participant or Beneficiary resulting from an illness or accident of the participant or beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent (as defined in Section 152 of the Code, and, for taxable years beginning on or after January 1, 2005, without regard to Sections 152(b)(1), (b)(2), and (d)(1)(B) of the Code); loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or the Beneficiary. For example, the imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Finally, the need to pay for the funeral expenses of a spouse or a dependent (as defined in section 152 of the Code, and, for taxable years beginning on or after January 1, 2005, without regard to Sections 152(b)(1), (b)(2), and (d)(1)(B) of the Code) may also constitute an unforeseeable emergency. Except as otherwise specifically provided in this Section 7.07(b), the purchase of a home and the payment of college tuition are not unforeseeable emergencies.

7.08 In-Service Distribution of Rollover Contributions. Effective January 1, 2006, the Employer may elect to allow Participants to receive an in-service distribution of amounts attributable to rollover contributions to the Plan. If the Employer has elected to make such distributions available, a Participant that has a separate account attributable to rollover contributions to the Plan may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

7.09 In-Service Distribution to Participants Age 70½ or Older. A Participant who has reached age 70½ and has not yet had a Severance Event, may, at any time, request a distribution of all or a part of his or her Account. A Participant may only receive two (2) such distributions pursuant to this Section 7.09 in any calendar year.

7.10 Distribution De Minimis Accounts. Notwithstanding the foregoing provisions of this Article VII:

- (a) *Mandatory Distribution.* If the value of a Participant's Account is less than \$1,000, the Participant's Account shall be paid to the Participant in a single lump sum distribution, provided that:
 - (1) No amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution; and
 - (2) There has been no prior distribution under the Plan to the Participant pursuant to this Section 7.10.
- (b) *Voluntary Distribution.* If the value of the Participant's Account is at least \$1,000 but not more than the dollar limit under Section 411(a)(11)(A) of the Code, the Participant may elect to receive his or her entire Account in a lump sum payment if:
 - (1) No amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution; and
 - (2) There has been no prior distribution under the Plan to the Participant pursuant to this Section 7.10.

Article VIII. Loans to Participants

8.01 Availability of Loans to Participants.

- (a) The Employer may elect to make loans available to Participants in this Plan. If the Employer has elected to make loans available to Participants, a Participant may apply for a loan from the Plan subject to the limitations and other provisions of this Article. However, no loans are available from Deemed IRAs.
- (b) The Employer shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by the Administrator and are not inconsistent with the provisions of this Article, and that loans are made available to all Participants on a reasonably equivalent basis.

8.02 Terms and Conditions of Loans to Participants. Any loan by the Plan to a Participant under Section 8.01 of the Plan shall satisfy the following requirements:

- (a) *Availability.* Loans shall be made available to all Participants on a reasonably equivalent basis.
- (b) *Interest Rate.* Loans must be adequately secured and bear a reasonable interest rate.
- (c) *Loan Limit.* No Participant loan shall exceed the present value of the Participant's Account.
- (d) *Foreclosure.* In the event of default on any installment payment, the outstanding balance of the loan shall be a deemed distribution. In such event, an actual distribution of a plan loan offset amount will not occur until a distributable event occurs in the Plan.
- (e) *Reduction of Account.* Notwithstanding any other provision of this Plan, the portion of the Participant's Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan.
- (f) *Amount of Loan.* At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the Participant from the Plan and from all other plans of the Employer that are either eligible deferred compensation plans described in section 457(b) of the Code or qualified employer plans under Section 72(p)(4) of the Code shall not exceed the lesser of:

- (1) \$50,000, reduced by the excess (if any) of
 - (i) The highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan is made; or
 - (ii) The outstanding balance of loans from the Plan on the date on which such loan is made; or
 - (2) One-half of the value of the Participant's interest in all of his or her Accounts under this Plan.
- (g) *Application for Loan.* The Participant must give the Employer adequate written notice, as determined by the Employer, of the amount and desired time for receiving a loan. No more than one (1) loan may be made by the Plan to a Participant's in any calendar year. No loan shall be approved if an existing loan from the Plan to the Participant is in default to any extent.
- (h) *Length of Loan.* Any loan issued shall require the Participant to repay the loan in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed five (5) years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time (determined at the time of the loan is made) after the loan is made as the principal residence of the Participant, the five (5) year limit shall not apply. In this event, the period of repayment shall not exceed a reasonable period determined by the Employer. Principal installments and interest payments otherwise due may be suspended for up to one (1) year during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this subsection (h), with a revised payment schedule (within such term) instituted at the end of such period of suspension.
- (i) *Prepayment.* The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.
- (j) *Promissory Note.* The loan shall be evidenced by a promissory note executed by the Participant and delivered to the Employer, and shall bear interest at a reasonable rate determined by the Employer.
- (k) *Security.* The loan shall be secured by an assignment of the participant's right, title and interest in and to his or her Account.
- (l) *Assignment or Pledge.* For the purposes of paragraphs (f) and (g), assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan.
- (m) *Other Terms and Conditions.* The Employer shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the qualification of the Plan and Trust under Section 457 of the Code, or to prevent the treatment of the loan for tax purposes as a distribution to the Participant. The Employer, in its discretion for any reason, may also fix other terms and conditions of the loan, including, but not limited to, the provision of grace periods following an event of default, not inconsistent with the provisions of this Article and Section 72(p) of the Code, and any applicable regulations thereunder.

8.03 Participant Loan Accounts.

- (a) Upon approval of a loan to a Participant by the Employer, an amount not in excess of the loan shall be transferred from the Participant's other investment fund(s), described in Section 6.05 of the Plan, to the Participant's loan account as of the Accounting Date immediately preceding the agreed upon date on which the loan is to be made.

- (b) The assets of a Participant's loan account may be invested and reinvested only in promissory notes received by the Plan from the Participant as consideration for a loan permitted by Section 8.01 of the Plan or in cash. Uninvested cash balances in a Participant's loan account shall not bear interest. Neither the Employer, the Administrator, nor any other person shall be liable for any loss, or by reason of any breach, that results from the Participant's exercise of such control.
- (c) Repayment of principal and payment of interest shall be made by payroll deduction or, where repayment cannot be made by payroll deduction, by check, and shall be invested in one (1) or more other investment funds, in accordance with Section 6.05 of the Plan, as of the next Accounting Date after payment thereof to the Trust. The amount so invested shall be deducted from the Participant's loan account.
- (d) The Employer shall have the authority to establish other reasonable rules, not inconsistent with the provisions of the Plan, governing the establishment and maintenance of Participant loan accounts.

Article IX. Deemed IRAs

9.01 General. This Article IX of the Plan reflects section 602 of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), as amended by the Job Creation and Worker Assistance Act of 2002. This Article is intended as good faith compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and guidance issued thereunder. This Article IX shall supersede the provisions of the Plan to the extent that those provisions are inconsistent with the provisions of this Article IX.

Effective for Plan Years beginning after December 31, 2002, the Employer may elect to allow Employees to make voluntary employee contributions to a separate account or annuity established under the Plan that complies with the requirements of Section 408(q) of the Code and any regulations promulgated thereunder (a "Deemed IRA"). The Plan shall establish a separate account for the designated Deemed IRA contributions of each Employee and any earnings properly allocable to the contributions, and maintain separate recordkeeping with respect to each such Deemed IRA.

9.02 Voluntary Employee Contributions. For purposes of this Article, a voluntary employee contribution means any contribution (other than a mandatory contribution within the meaning of Section 411(c)(2) of the Code) that is made by the Employee and which the Employee has designated, at or prior to the time of making the contribution, as a contribution to which this Article applies.

9.03 Deemed IRA Trust Requirements. This Article shall satisfy the trust requirement under Section 408(q) of the Code and the regulations thereto. IRAs established pursuant to this Article shall be held in one or more trusts or custodial accounts (the "Deemed IRA Trusts"), which shall be separate from the Trust established under the Plan to hold contributions other than Deemed IRA contributions. The Deemed IRA Trusts shall satisfy the applicable requirements of Sections 408 and 408A of the Code, which requirements are set forth in section 9.05 and 9.06, respectively, and shall be established with a trustee or custodian meeting the requirements of Section 408(a)(2) of the Code ("Deemed IRA Trustee"). To the extent that the assets of any Deemed IRAs established pursuant to this Article are held in a Deemed IRA Trust satisfying the requirements of this Section 9.03, such Deemed IRA Trust, and any amendments thereto, is hereby adopted as a trust maintained under this Plan with respect to the assets held therein, and the provisions of such Deemed IRA Trust shall control so long as any assets of any Deemed IRA are held thereunder.

9.04 Reporting Duties. The Deemed IRA Trustee shall be subject to the reporting requirements of Section 408(i) of the Code with respect to all Deemed IRAs that are established and maintained under the Plan.

9.05 Deemed Traditional IRA Requirements. Deemed IRAs established in the form of traditional IRAs shall satisfy the following requirements:

- (a) *Exclusive Benefit.* The Deemed IRA account shall be established for the exclusive benefit of an Employee or his or her Beneficiaries.

(b) *Maximum Annual Contributions.*

- (1) Except in the case of a rollover contribution (as permitted by Sections 402(c), 402(e)(6), 403(a)(4), 403(b)(8), 403(b)(10), 408(d)(3) and 457(e)(16) of the Code), no contributions will be accepted unless they are in cash, and the total of such contributions shall not exceed:

\$3,000 for any taxable year beginning in 2002 through 2004;

\$4,000 for any taxable year beginning in 2005 through 2007; and

\$5,000 for any taxable year beginning in 2008 and years thereafter.

After 2008, the limit will be adjusted by the Secretary of the Treasury for cost-of-living-increases under Section 219(b)(5)(C) of the Code. Such adjustments will be in multiples of \$500.

- (2) In the case of an Employee who is 50 or older, the annual cash contribution limit is increased by:

\$500 for any taxable year beginning in 2002 through 2005; and

\$1,000 for any taxable year beginning in 2006 and thereafter.

- (3) No contributions will be accepted under a SIMPLE IRA plan established by any employer pursuant to Section 408(p) of the Code. Also, no transfer or rollover of funds attributable to contributions made by a particular employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is an IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the 2-year period beginning on the date the Employee first participated in that employer's SIMPLE IRA plan.

- (c) *Collectibles.* If the Deemed IRA Trust acquires collectibles with within the meaning of Section 408(m) of the Code after December 31, 1981, Deemed IRA Trust assets will be treated as a distribution in an amount equal to the cost of such collectibles.

- (d) *Life Insurance Contracts.* No part of the Deemed IRA Trust funds will be invested in life insurance contracts.

(e) *Minimum Required Distributions.*

- (1) Notwithstanding any provision of this Deemed IRA to the contrary, the distribution of the Employee's interest in the account shall be made in accordance with the requirements of Section 408(a)(6) of the Code and the Income Tax Regulations thereunder, the provisions of which are herein incorporated by reference. If distributions are made from an annuity contract purchased from an insurance company, distributions thereunder must satisfy the requirements of Q&A-4 of Section 1.401(a)(9)-6T of the Income Tax Regulations (or Section 1.401(a)(9)-6 of the Income Tax Regulations, as applicable), rather than paragraphs (2), (3) and (4) below and Section 9.05(f). The minimum required distributions calculated for this IRA may be withdrawn from another IRA of the Employee in accordance with Q&A-9 of Section 1.408-8 of the Income Tax Regulations.
- (2) The entire value of the account of the Employee for whose benefit the account is maintained will commence to be distributed no later than the first day of April following the calendar year in which such Employee attains age 70½ (the "required beginning date") over the life of such Employee or the lives of such Employee and his or her Beneficiary.
- (3) The amount to be distributed each year, beginning with the calendar year in which the Employee attains age 70½ and continuing through the year of death shall not be less than the quotient obtained by dividing the value of the IRA (as determined under section 9.05(f)(3)) as of the end of the preceding year by the distribution period in the Uniform Lifetime Table in Q&A-2 of Section 401(a)(9)-9 of the Income Tax Regulations, using the Employee's age of his or her birthday in the year. However, if the Employee's sole Beneficiary is his or her surviving spouse and such spouse is more than 10 years younger than the Employee, then the distribution period is determined under the Joint

and Last Survivor Table in Q&A-3 of Section 1.401(a)(9)-9 of the Income Tax Regulations, using the ages as of the Employee's and spouse's birthdays in the year.

- (4) The required minimum distribution for the year the Employee attains age 70½ can be made as late as April 1 of the following year. The required minimum distribution for any other year must be made by the end of such year.
- (f) *Distribution Upon Death.*
- (1) *Death On or After Required Beginning Date.* If the Employee dies on or after the required beginning date, the remaining portion of his or her interest will be distributed at least as rapidly as follows:
 - (i) If the Beneficiary is someone other than the Employee's surviving spouse, the remaining interest will be distributed over the remaining life expectancy of the Beneficiary, with such life expectancy determined using the Beneficiary's age as of his or her birthday in the year following the year of the Employee's death, or over the period described in paragraph (1)(iii) below if longer.
 - (ii) If the Employee's sole Beneficiary is the Employee's surviving spouse, the remaining interest will be distributed over such spouse's life or over the period described in paragraph (1)(iii) below if longer. Any interest remaining after such spouse's death will be distributed over such spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death, or, if the distributions are being made over the period described in paragraph (1)(iii) below, over such period.
 - (iii) If there is no Beneficiary, or if applicable by operation of paragraph (1)(i) or (1)(ii) above, the remaining interest will be distributed over the Employee's remaining life expectancy determined in the year of the Employee's death.
 - (iv) The amount to be distributed each year under paragraph (1)(i), (ii), or (iii), beginning with the calendar year following the calendar year of the Employee's death, is the quotient obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of Section 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's or Employee's age in the year specified in paragraph 1(i), (ii), or (iii) and reduced by 1 for each subsequent year.
 - (2) *Death Before Required Beginning Date.* If the Employee dies before the required beginning date, his or her entire interest will be distributed at least as rapidly as follows:
 - (i) If the Beneficiary is someone other than the Employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Employee's death, over the remaining life expectancy of the Beneficiary, with such life expectancy determined using the age of the Beneficiary as of his or her birthday in the year following the year of the Employee's death, or, if elected, in accordance with paragraph (2)(iii) below.
 - (ii) If the Employee's sole Beneficiary is the Employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Employee's death (or by the end of the calendar year in which the Employee would have attained age 70½, if later), over such spouse's life, or, if elected, in accordance with paragraph (2)(iii) below. If the surviving spouse dies before distributions are required to begin, the

remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's Beneficiary's remaining life expectancy determined using such Beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with paragraph (2)(iii) below. If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death.

- (iii) If there is no Beneficiary, or if applicable by operation of paragraph (2)(i) or (2)(ii) above, the entire interest will be distributed by the end of the calendar year containing the fifth anniversary of the Beneficiary's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under paragraph (2)(ii) above).
 - (iv) The amount to be distributed each year under paragraph (2)(i) or (ii) is the quotient to be obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of Section 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's age in the year specified in paragraph (2)(i) or (ii) and reduced by 1 for each subsequent year.
 - (v) The "value" of the IRA includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of Section 1.408-8 of the Income Tax Regulations.
 - (vi) If the sole Beneficiary is the Employee's surviving spouse, the spouse may elect to treat the IRA as his or her own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a Beneficiary.
- (g) *Nonforfeitable.* The interest of an Employee in the balance in his or her Deemed IRA account is nonforfeitable at all times.
- (h) *Reporting.* The Deemed IRA Trustee of a Deemed Traditional IRA shall furnish annual calendar-year reports concerning the status of the Deemed IRA account and such information concerning required minimum distributions as is prescribed by the Commissioner of Internal Revenue.
- (i) *Substitution of Deemed IRA Trustee.* If the Deemed IRA Trustee is a non-bank trustee or custodian, the non-bank trustee or custodian shall substitute another trustee or custodian if the non-bank trustee or custodian receives notice from the Commissioner of Internal Revenue that such substitution is required because it has failed to comply with the requirements of Section 1.408-2(e) of the Income Tax Regulations and Section 1.408-2T of the Income Tax Regulations.

9.06 Deemed Roth IRA Requirements. Deemed IRAs established in the form of Roth IRAs shall satisfy the following requirements:

- (a) *Exclusive Benefit.* The Deemed Roth IRA shall be established for the exclusive benefit of an Employee or his or her Beneficiaries.
- (b) *Maximum Annual Contributions.*
 - (1) *Maximum Permissible Amount.* Except in the case of a qualified rollover contribution or recharacterization (as defined in (6) below), no contribution will be accepted unless it is in cash and the total of such contributions to all the Employee's Roth IRAs for a taxable year does not exceed

the applicable amount (as defined in (2) below), or the Employee’s compensation (as defined in (8) below) if less, for that taxable year. The contribution described in the previous sentence that may not exceed the lesser of the applicable amount or the Employee’s compensation is referred to as a “regular contribution.” A “qualified rollover contribution” is a rollover contribution that meets the requirements of Section 408(d)(3) of the Code, except the one-rollover-per-year rule of Section 408(d)(3)(B) does not apply if the rollover contribution is from another IRA other than a Roth IRA (a “nonRoth IRA”). Contributions may be limited under (3) through (5) below.

(2) *Applicable Amount.* The applicable amount is determined under (i) or (ii) below:

- (i) If the Employee is under age 50, the applicable amount is:
 - \$3,000 for any taxable year beginning in 2002 through 2004;
 - \$4,000 for any taxable year beginning in 2005 through 2007; and
 - \$5,000 for any taxable year beginning in 2008 and years thereafter.
- (ii) If the Employee is 50 or older, the applicable amount is:
 - \$3,500 for any taxable year beginning in 2002 through 2004;
 - \$4,500 for any taxable year beginning in 2005;
 - \$5,000 for any taxable year beginning in 2006 through 2007; and
 - \$6,000 for any taxable year beginning in 2008 and years thereafter.

After 2008, the limits in paragraph (2)(i) and (ii) above will be adjusted by the Secretary of the Treasury for cost-of-living increases under Section 219(b)(5)(C) of the Code. Such adjustments will be in multiples of \$500.

(3) If (i) and/or (ii) below apply, the maximum regular contribution that can be made to all the Employee’s Roth IRAs for the taxable year is the smaller amount determined under (i) or (ii).

- (i) The maximum regular contribution is phased out ratably between certain levels of modified adjusted gross income (“modified AGI,” defined in (7) below) in accordance with the following table:

Filing Status	Modified AGI		
	Full Contribution	Phase-out Range	No Contribution
Single or Head of Household	\$95,000 or less	Between \$95,000 and \$110,000	\$110,000 or more
Joint Return or Qualifying Widower	\$150,000 or less	Between \$150,000 and \$160,000	\$160,000 or more
Married-Separate Return	\$0	Between \$0 and \$10,000	\$10,000 or more

If the Employee's modified AGI for a taxable year is in the phase-out range, the maximum regular contribution determined under this table for that taxable year is rounded up to the next multiple of \$10 and not reduced below \$200.

- (ii) If the Employee makes regular contributions to both Roth and nonRoth IRAs for a taxable year, the maximum regular contribution that can be made to all the Employee's Roth IRAs for that taxable year is reduced by the regular contributions made to the Employee's nonRoth IRAs for the taxable year.
- (4) *Qualified Rollover Contribution Limit.* A rollover from a nonRoth IRA cannot be made to this IRA if, for the year the amount is distributed from the nonRoth IRA, (i) the Employee is married and files a separate return, (ii) the Employee is not married and has modified AGI in excess of \$100,000 or (iii) the Employee is married and together the Employee and the Employee's spouse have modified AGI in excess of \$100,000. For purposes of the preceding sentence, a husband and wife are not treated as married for a taxable year if they have lived apart at all times during that taxable year and file separate returns for the taxable year.
- (5) *SIMPLE IRA Limits.* No contributions will be accepted under a SIMPLE IRA plan established by any employer pursuant to Section 408(p) of the Code. Also, no transfer or rollover of funds attributable to contributions made by a particular employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is, an IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the 2-year period beginning on the date the Employee first participated in that employer's SIMPLE IRA plan.
- (6) *Recharacterization.* A regular contribution to a nonRoth IRA may be recharacterized pursuant to the rules in Section 1.408A-5 of the Income Tax Regulations as a regular contribution to this IRA, subject to the limits in (3) above.
- (7) *Modified AGI.* For purposes of (3) and (4) above, an Employee's modified AGI for a taxable year is defined in Section 408A(c)(3)(C)(i) of the Code and does not include any amount included in adjusted gross income as a result of a rollover from a nonRoth IRA (a "conversion").
- (8) *Compensation.* For purposes of (1) above, compensation is defined as wages, salaries, professional fees, or other amounts derived from or received for personal services actually rendered (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses) and includes earned income, as defined in Section 401(c)(2) of the Code (reduced by the deduction the self-employed individual takes for contributions made to a self-employed retirement plan). For purposes of this definition, Section 401(c)(2) of the Code shall be applied as if the term trade or business for purposes of Section 1402 of the Code included service described in subsection (c)(6). Compensation does not include amounts derived from or received as earnings or profits from property (including but not limited to interest and dividends) or amounts not includible in gross income. Compensation also does not include any amount received as a pension or annuity or as deferred compensation. The term "compensation" shall include any amount includible in the Employee's gross income under Section 71 of the Code with respect to a divorce or separation instrument described in subparagraph (A) of Section 71(b)(2) of the Code. In the case of a married Employee filing a joint return, the greater compensation of his or her spouse is treated as his or her own compensation but only to the extent that such spouse's compensation is not being used for purposes of the spouse making a contribution to a Roth IRA or a deductible contribution to a nonRoth IRA.
- (c) *Collectibles.* If the Deemed IRA Trust acquires collectibles within the meaning of Section 408(m) of the Code after December 31, 1981, Deemed IRA Trust assets will be treated as a distribution in an amount equal to the cost of such collectibles.

- (d) *Life Insurance Contracts.* No part of the Deemed IRA Trust funds will be invested in life insurance contracts.
- (e) *Distributions Before Death.* No amount is required to be distributed prior to the death of the Employee for whose benefit the account was originally established.
- (f) *Minimum Required Distributions.*
- (1) Notwithstanding any provision of this IRA to the contrary, the distribution of the Employee's interest in the account shall be made in accordance with the requirements of Section 408(a)(6) of the Code, as modified by section 408A(c)(5), and the regulations thereunder, the provisions of which are herein incorporated by reference. If distributions are made from an annuity contract purchased from an insurance company, distributions thereunder must satisfy the requirements of section 1.401(a)(9)-6T of the Temporary Income Tax Regulations (taking into account Section 408A(c)(5) of the Code) (or Section 1.401(a)(9)-6 of the Income Tax Regulations, as applicable), rather than the distribution rules in paragraphs (2), (3) and (4) below.
- (2) Upon the death of the Employee, his or her entire interest will be distributed at least as rapidly as follows:
- (i) If the Beneficiary is someone other than the Employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the year of the Employee's death, over the remaining life expectancy of the Beneficiary, with such life expectancy determined using the age of the beneficiary as of his or her birthday in the year following the year of the Employee's death, or, if elected, in accordance with paragraph (2)(iii) below.
- (ii) If the Employee's sole Beneficiary is the Employee's surviving spouse, the entire interest will be distributed starting by the end of the calendar year following the calendar year of the Employee's death (or by the end of the calendar year in which the Employee would have attained age 70½, if later), over such spouse's life, or, if elected, in accordance with paragraph (2)(iii) below. If the surviving spouse dies before distributions are required to begin, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's Beneficiary's remaining life expectancy determined using such Beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with paragraph (2)(iii) below. If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death.
- (iii) If there is no Beneficiary, or if applicable by operation of paragraph (2)(i) or (2)(ii) above, the entire interest will be distributed the end of the calendar year containing the fifth anniversary of the Employee's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under paragraph 2(ii) above).
- (iv) The amount to be distributed each year under paragraph (2)(i) or (ii) is the quotient obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of Section 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's age in the year specified in paragraph (2)(i) or (ii) and reduced by 1 for each subsequent year.

- (3) The “value” of the IRA includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of Section 1.408-8 of the Income Tax Regulations.
- (4) If the sole Beneficiary is the Employee’s surviving spouse, the spouse may elect to treat the IRA as his or her own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a Beneficiary.
- (g) *Nonforfeitable.* The interest of an Employee in the balance in his or her account is nonforfeitable at all times.
- (h) *Reporting.* The Deemed IRA Trustee of a Deemed Roth IRA shall furnish annual calendar-year reports concerning the status of the Deemed IRA account and such information concerning required minimum distributions as is prescribed by the Commissioner of Internal Revenue.
- (i) *Substitution of Deemed IRA Trustee.* If the Deemed IRA Trustee is a non-bank trustee or custodian, the non-bank trustee or custodian shall substitute another trustee or custodian if the non-bank trustee or custodian receives notice from the Commissioner of Internal Revenue that such substitution is required because it has failed to comply with the requirements of Section 1.408-2(e) of the Income Tax Regulations and Section 1.408-2T of the Income Tax Regulations.

Article X. Non-Assignability

10.01 General. Except as provided in Article VIII and Section 10.02, no Participant or Beneficiary shall have any right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights are expressly declared to be non-assignable and non-transferable.

10.02 Domestic Relations Orders.

- (a) *Allowance of Transfers:* To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) that (1) relates to the provision of child support, alimony payments, or marital property rights and (2) is made pursuant to a state domestic relations law, and (3) is permitted under Sections 414(p)(11) and (12) of the Code, any portion of a Participant’s Account may be paid or set aside for payment to a spouse, former spouse, child, or other dependent of the Participant (an “Alternate Payee”). Where necessary to carry out the terms of such an order, a separate Account shall be established with respect to the Alternate Payee who shall be entitled to make investment selections with respect thereto in the same manner as the Participant. Any amount so set aside for an Alternate Payee shall be paid in accordance with the form and timing of payment specified in the order. Nothing in this Section shall be construed to authorize any amount to be distributed under the Plan at a time or in a form that is not permitted under Section 457(b) of the Code and is explicitly permitted under the uniform procedures described in Section 10.2(d) below. Notwithstanding the foregoing sentence, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State, then the amount of the Participant’s Account shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order. Any payment made to a person pursuant to this Section shall be reduced by any required income tax withholding.
- (b) *Release from Liability to Participant:* The Employer’s liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to an Alternate Payee to paragraph (a) of this Section and the Participant and his or her Beneficiaries shall be deemed to have released the Employer and the Plan Administrator from any claim with respect to such amounts.

- (c) *Participation in Legal Proceedings:* The Employer and Administrator shall not be obligated to defend against or set aside any judgment, decree, or order described in paragraph (a) or any legal order relating to the garnishment of a Participant's benefits, unless the full expense of such legal action is borne by the Participant. In the event that the Participant's action (or inaction) nonetheless causes the Employer or Administrator to incur such expense, the amount of the expense may be charged against the Participant's Account and thereby reduce the Employer's obligation to pay benefits to the Participant. In the course of any proceeding relating to divorce, separation, or child support, the Employer and Administrator shall be authorized to disclose information relating to the Participant's Account to the Alternate Payee (including the legal representatives of the Alternate Payee), or to a court.
- (d) *Determination of Validity of Domestic Relations Orders:* The Administrator shall establish uniform procedures for determining the validity of any domestic relations order. The Administrator's determinations under such procedures shall be conclusive and binding on all parties and shall be afforded the maximum amount of deference permitted by law.

10.03 IRS Levy. Notwithstanding Section 10.01, the Administrator may pay from a Participant's or Beneficiary's Account balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

10.04 Mistaken Contribution. To the extent permitted by applicable law, if any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

10.05 Payments to Minors and Incompetents. If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such persons as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

10.06 Procedure When Distributee Cannot Be Located. The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Employer or Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guarantee Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Trust shall continue to hold the benefits due such person.

Article XI. Relationship to Other Plans and Employment Agreements

This Plan serves in addition to any other retirement, pension, or benefit plan or system presently in existence or hereinafter established for the benefit of the Employer's employees, and participation hereunder shall not affect benefits receivable under any such plan or system. Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement between any Participant and the Employer or to give any Participant the right to be retained in the employ of the Employer. Nor shall anything herein be construed to modify the terms of any employment contract or agreement between a Participant and the Employer.

Article XII. Amendment or Termination of Plan

The Employer may at any time amend this Plan provided that it transmits such amendment in writing to the Administrator at least 30 days prior to the effective date of the amendment. The consent of the Administrator shall not be required in order for

such amendment to become effective, but the Administrator shall be under no obligation to continue acting as Administrator hereunder if it disapproves of such amendment.

The Administrator may at any time propose an amendment to the Plan by an instrument in writing transmitted to the Employer at least 30 days before the effective date of the amendment. Such amendment shall become effective unless, within such 30-day period, the Employer notifies the Administrator in writing that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as Administrator hereunder.

The Employer may at any time terminate this Plan. In the event of termination, assets of the Plan shall be distributed to Participants and Beneficiaries as soon as administratively practicable following termination of the Plan. Alternatively, assets of the Plan may be transferred to an eligible deferred compensation plan maintained by another eligible governmental employer within the same State if (a) all assets held by the Plan (other than Deemed IRAs) are transferred; (b) the receiving plan provides for the receipt of transfers; (c) the Participants and Beneficiaries whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and (d) the Participants or Beneficiaries whose deferred amounts are being transferred is not eligible for additional annual deferrals in the receiving plan unless the Participants or Beneficiaries are performing services for the employer maintaining the receiving plan.

Except as may be required to maintain the status of the Plan as an eligible deferred compensation plan under Section 457(b) of the Code or to comply with other applicable laws, no amendment or termination of the Plan shall divest any Participant of any rights with respect to compensation deferred before the date of the amendment or termination.

Article XIII. Applicable Law

This Plan and Trust shall be construed under the laws of the state where the Employer is located and is established with the intent that it meet the requirements of an “eligible deferred compensation plan” under Section 457(b) of the Code, as amended. The provisions of this Plan and Trust shall be interpreted wherever possible in conformity with the requirements of that Section of the Code.

In addition, notwithstanding any provision of the Plan to the contrary, the Plan shall be administered in compliance with the requirements of Section 414(u) of the Code.

Article XIV. Gender and Number

The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.

DECLARATION OF TRUST

This Declaration of Trust (the "Group Trust Agreement") is made as of the 19th day of May, 2001, by Vantage Trust Company, which declares itself to be the sole Trustee of the trust hereby created.

WHEREAS, the ICMA Retirement Trust was created as a vehicle for the commingling of the assets of governmental plans and governmental units described in Section 818(a)(6) of the Internal Revenue Code of 1986, as amended, pursuant to a Declaration of Trust dated October 4, 1982, as subsequently amended, a copy of which is attached hereto and incorporated by reference as set out below (the "ICMA Declaration"); and

WHEREAS, the trust created hereunder (the "Group Trust") is intended to meet the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, and is established as a common trust fund within the meaning of Section 391:1 of Title 35 of the New Hampshire Revised Statutes Annotated, to accept and hold for investment purposes the assets of the Deferred Compensation and Qualified Plans held by and through the ICMA Retirement Trust.

NOW, THEREFORE, the Group Trust is created by the execution of this Declaration of Trust by the Trustee and is established with respect to each Deferred Compensation and Qualified Plan by the transfer to the Trustee of such Plan's assets in the ICMA Retirement Trust, by the Trustees thereof, in accord with the following provisions:

- (a) *Incorporation of ICMA Declaration by Reference; ICMA By-Laws.* Except as otherwise provided in this Group Trust Agreement, and to the extent not inconsistent herewith, all provisions of the ICMA Declaration are incorporated herein by reference and made a part hereof, to be read by substituting the Group Trust for the Retirement Trust and the Trustee for the Board of Trustees referenced therein. In this respect, unless the context clearly indicates otherwise, all capitalized terms used herein and defined in the ICMA Declaration have the meanings assigned to them in the ICMA Declaration. In addition, the By-Laws of the ICMA Retirement Trust, as the same may be amended from time-to-time, are adopted as the By-Laws of the Group Trust to the extent not inconsistent with the terms of this Group Trust Agreement.

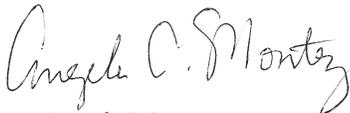
Notwithstanding the foregoing, the terms of the ICMA Declaration and By-Laws are further modified with respect to the Group Trust created hereunder, as follows:

1. any reporting, distribution, or other obligation of the Group Trust vis-à-vis any Deferred Compensation Plan, Qualified Plan, Public Employer, Public Employer Trustee, or Employer Trust shall be deemed satisfied to the extent that such obligation is undertaken by the ICMA Retirement Trust (in which case the obligation of the Group Trust shall run to the ICMA Retirement Trust); and
 2. all provisions dealing with the number, qualification, election, term and nomination of Trustees shall not apply, and all other provisions relating to trustees (including, but not limited to, resignation and removal) shall be interpreted in a manner consistent with the appointment of a single corporate trustee.
- (b) *Compliance with Revenue Procedure 81-100.* The requirements of Revenue Procedure 81-100 are applicable to the Group Trust as follows:
1. Pursuant to the terms of this Group Trust Agreement and Article X of the By-Laws, investment in the Group Trust is limited to assets of Deferred Compensation and Qualified Plans, investing through the ICMA Retirement Trust.
 2. Pursuant to the By-Laws, the Group Trust is adopted as a part of each Qualified Plan that invests herein through the ICMA Retirement Trust.
 3. In accord with the By-Laws, that part of the Group Trust's corpus or income which equitably belongs to any Deferred Compensation and Qualified Plan may not be used for or diverted to any purposes other than for the exclusive benefit of the Plan's employees or their beneficiaries who are entitled to benefits under such Plan.

4. In accord with the By-Laws, no Deferred Compensation Plan or Qualified Plan may assign any or part of its equity or interest in the Group Trust, and any purported assignment of such equity or interest shall be void.
- (c) *Governing Law.* Except as otherwise required by federal, state or local law, this Declaration of Trust (including the ICMA Declaration to the extent incorporated herein) and the Group Trust created hereunder shall be construed and determined in accordance with applicable laws of the State of New Hampshire.
- (d) *Judicial Proceedings.* The Trustee may at any time initiate an action or proceeding in the appropriate state or federal courts within or outside the state of New Hampshire for the settlement of its accounts or for the determination of any question of construction which may arise or for instructions.

IN WITNESS WHEREOF, the Trustee has executed this Declaration of Trust as of the day and year first above written.

VANTAGETRUST COMPANY

By: 

Name: Angela Montez

Title: Assistant Secretary

ICMA-RC Services LLC, a wholly owned broker-dealer subsidiary of ICMA-RC, member FINRA/SIPC.



**ATTN.: RECORDS MANAGEMENT UNIT
P.O. BOX 96220
WASHINGTON, DC 20090-6220
1-800-669-7400
WWW.ICMARC.ORG
EN ESPAÑOL LLAME AL 1-800-669-8216**

BKT000-014-200902-454

Employer Adoption Kit

CalPERS Supplemental Income
457 PLAN



SUPPLEMENTAL INCOME PLANS
SMART INVESTING FOR **YOUR RETIREMENT.**



Offer your employees a retirement benefit at no additional cost to you as the employer!

For more than a decade, CalPERS has been offering a Deferred Compensation Plan to local employers and their employees. Our commitment always remains the same — to provide financial security, value, low cost and quality customer service to employers and plan participants. We continually seek to discover enhancement opportunities that will not only benefit employees who are currently enrolled, but those who will participate in the future.

The CalPERS approach

- Provide world-class investment management and plan design
- Investment staff expertise focused solely on CalPERS Plans
- Access to outside best-in-class investment managers and consultants
- Ability to leverage CalPERS size to pool assets and spread costs across a broad base
- Ability to create customized investment fund combinations and products uniquely CalPERS

CalPERS makes doing business easy

- Access to CalPERS Web site, customer service toll-free line, and dedicated Account Managers
- Provide comprehensive employee communications and education
- Onsite employee enrollment and educational meetings led by CalPERS Account Managers
- One-on-one individual appointments with Account Managers
- Plan features with optional loan program and Self-Managed Brokerage Account

Dedicated Employer Web site www.calpers-sip.com

- Information and guidelines for adopting the Plan
- Up-to-date information on Plan rules and enhancements
- Download or order forms and educational material for quick and easy employee enrollments

Forms
Master List of Forms
Enrollment Form
Change Authorization Form
Designation of Beneficiary Form
Notification Separation of Service — Employer Use Only

Benefits to your employees

- Simple and low fee structure
- Contributions are on a pre-tax basis and investments grow tax-deferred
- Experienced retirement educators help participants define retirement goals
- Access to financial learning resources and tools
- Automated payroll deduction of contributions
- Easy account access via Web site and Plan Information Line

Dedicated Participant Web site <http://calpers.ingplans.com> 1-800-260-0659

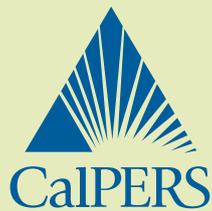
- Participant account information and management online or through the Plan Information Line — both are easy to access and simple to use
- View, download, and print account statements, including 18 months of history
- Change Investment selections among various Investment Fund options
- Automatic account rebalancing — Automatically rebalances participant account to current investment elections
- Reallocation of account balances — Redistribute fund balances across multiple funds in one simple transaction
- Ability to view beneficiary information online
- Download forms and stay up-to-date on Plan rules
- Download account data to Quicken® & Microsoft® Money

SMART INVESTING FOR **YOUR RETIREMENT.**

For more information

on how to put the CalPERS Supplemental Income
457 Plan to work for your employees, please contact
CalPERS at **1-800-696-3907**, or visit the Employer
Resource Center at **www.calpers-sip.com** today!

SMART INVESTING FOR **YOUR RETIREMENT.**



www.calpers-sip.com

1-800-696-3907

Supplemental Income Plans
Investment Office
P.O. Box 942713
Sacramento, CA 94229



Employer Adoption Checklist Coversheet

Below is a listing of forms and documents that are required for the adoption of this Plan. When submitting the executed documents, please fill out and include this **Employer Adoption Checklist** as a coversheet to the documents listed below.

If you have any questions regarding this list or the enclosed forms, please contact us at **1-800-696-3907**.

AGENCY NAME

The following documents are included in this packet:

→ **REQUIRED FORMS**

Board Approved Resolution *(with original signatures)*

Employer Adoption Agreement *(with original signatures)*

Employer Specifications Data Sheet

Optional Provisions

Employer Loan Provision Form

Self-Managed Account Employer Enrollment Form

Please mail your documentation to one of the following addresses:

Standard Delivery:

CalPERS Supplemental Income 457 Plan
 Attn: Installation
 P.O. Box 2647
 Lewiston, ME 04241

Overnight Delivery:

ING
 CalPERS 457 Plan Administration
 1775 Lisbon Road
 Lewiston, ME 04240

**Thank you for considering the
 CalPERS Supplemental Income
 457 Plan as a supplemental savings
 option for your employees.**

Follow these simple steps to adopt the CalPERS Supplemental Income 457 Plan today!

STEP 1 ▶ Request your governing body to adopt the CalPERS Supplemental Income 457 Plan using the **Model Resolution** enclosed in this kit.

STEP 2 ▶ Execute a copy of the enclosed **Employer Adoption Agreement**

STEP 3 ▶ Complete the **Employer Specifications Data Sheet**

STEP 4 ▶ **Optional provisions:**
 Complete the **Employer Loan Provision Form** if you have an automated payroll process and would like to offer participants the ability to borrow from their plan accounts

 Complete the **Self Managed Account Employer Enrollment Form** if you intend to offer the Self-Managed Brokerage Account to your employees

STEP 5 ▶ Complete the **Employer Adoption Checklist Coversheet** and enclose with the appropriate documentation, original signatures and mail Standard or Overnight Delivery:

Standard Delivery:

CalPERS Supplemental Income 457 Plan
 Attn: Installation
 P.O. Box 2647
 Lewiston, ME 04241

Overnight Delivery:

ING
 CalPERS Supplemental Income 457 Plan Administration
 1775 Lisbon Road
 Lewiston, ME 04240

If you have any questions about adopting the CalPERS Supplemental Income 457 Plan, contact us at **1-800-696-3907**.

Upon receipt of the executed documents, the Administrator, will:

- Sign the **Adoption Agreement** as an agent of the CalPERS Board of Administration, accepting the Employer into the CalPERS Supplemental Income 457 Plan
- Assign an **Employer Plan ID** to confirm participation in the Plan
- Send New Employer a **Welcome Packet** that includes:
 - **Confirmation of Participation in the Plan**
 - **Instructions of when to begin submitting enrollments and submission of payroll contributions**
 - **Copy of all official documents**
- An Account Manager will contact the Employer to schedule a **New Employer Orientation** and **Employee Presentations**

NOTE: The **Employer Plan ID Number** must be provided on all subsequent transaction requests submitted to the Administrator for processing.



SUPPLEMENTAL INCOME PLANS

MODEL RESOLUTION RESOLUTION APPROVING ADOPTION OF CALIFORNIA PUBLIC EMPLOYEES' DEFERRED COMPENSATION PLAN

WHEREAS, _____ (*Employer*) desires to establish a[n additional] deferred compensation plan for the benefit of its employees; and

WHEREAS, the Board of Administration (the "Board") of the California Public Employees' Retirement System ("CalPERS") has established the California Public Employees Deferred Compensation Plan (the "CalPERS Plan") which may be adopted by a governmental employer the employees of which are public employees; and

WHEREAS, _____ (*Employer*) believes that the CalPERS Plan and the investment options available thereunder will provide valuable benefits to its employees; and

WHEREAS, the Board has appointed ING to perform administrative services under the CalPERS Plan and to act as the Board's agent in all matters relating to the administration of the CalPERS Plan;

NOW, THEREFORE, BE IT RESOLVED that _____ (*Employer*) adopts the CalPERS Plan for the benefit of its employees and authorizes and directs the _____ (*Title of Board Delegate*) to execute the attached adoption agreement on behalf of _____ (*Employer*) and to provide ING with such information and cooperation as may be needed on an ongoing basis in the administration of the CalPERS plan. A copy of this resolution, the agreement, and any attachments thereto shall be on file in the office of _____ (*Office of Record*).

Passed and adopted as a resolution of the _____ (*Board of Employer*), at a meeting held on _____ (*Date*).

_____ (*Board Chair*)

Attest: _____ (*Employer Seal*)



SUPPLEMENTAL INCOME PLANS

EMPLOYER ADOPTION AGREEMENT

By executing this Agreement, the employer identified below (the "Employer") adopts the California Public Employees' Deferred Compensation Plan (the "Plan") for the benefit of its employees. The Employer further agrees and represents as follows:

1. The Employer is a political subdivision of the State of California eligible to adopt the Plan for the benefit of its employees.
2. The Employer has duly adopted a resolution (copy attached) or taken such other official action as required for its lawful adoption and implementation of this Plan and has authorized the undersigned to execute this agreement on behalf of the Employer.
3. The Employer has been furnished with and reviewed a copy of the Plan document which explains the rights and obligations of the Employer under the Plan, as well as the rights and options available to the Employer's employees under the Plan; the Employer agrees to follow the terms of the Plan document, which are incorporated herein by reference.
4. The Employer understands and agrees that all amounts deferred under the Plan are to be invested in the Public Employees' Deferred Compensation Fund (the "Fund"), an investment entity established to hold amounts deferred under the Plan, and that the Employer shall have no right to sell, redeem, or otherwise liquidate its investments in the Fund, except as provided under Article 9 of the Plan.
5. The Employer understands that, except for certain responsibilities delegated to the Employer under the Plan, the administration of the Plan and Fund is subject to the exclusive control of the Board of Administration of the Public Employees' Retirement System (the "Board"). The Employer further understands that the Board has appointed ING to perform administrative services under the Plan and to act as the Board's agent in all matters relating to administration of the Plan; the Employer agrees to deal directly with ING (or any successor agent duly appointed by the Board) on all matters relating to its participation in the Plan and to cooperate with ING in the dissemination of Plan information to the Employer's employees. For purposes of this Agreement, the term "administrative services" shall include, but not be limited to, establishing and maintaining accounts for Plan participants, providing regular accounting reports, and other general record keeping and administrative functions necessary for proper maintenance of the Plan.
6. The information set forth on the attached specifications data page is complete and accurate and may be relied upon by the Board and ING in the administration of the Plan on behalf of the Employer and its employees, unless and until the Employer has provided ING with a written modification of such specifications.
7. The Employer has been furnished with a copy of a manual that describes the procedures to be followed by the Employer in the administration of the Plan for its employees, and the Employer agrees to adhere to the procedures set forth in that manual, and in any revisions thereof, or procedural notices that are hereafter furnished to the Employer.
8. The Employer agrees to make the Plan available to its employees and otherwise to abide by this Agreement commencing on the effective date shown on the attached specifications page; this Agreement shall remain in full force and effect unless terminated by the Employer or the Board upon sixty (60) days notice.

(Name of Employer) _____

By: _____

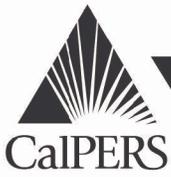
(Title) _____

Date: _____

Accepted by ING on behalf of the Board of Administration of the Public Employees' Retirement System

By: _____

Date: _____ Witness: _____



SUPPLEMENTAL INCOME PLANS

SPECIFICATIONS DATA SHEET

I. GENERAL INFORMATION

Employer Name: _____ Approx. Number of Employees: _____

Employer Tax Identification Number: ___ - ___ - ___ Fiscal Year End Date: ___ - ___ - ___

Employer Address: _____
Street

_____ City State Zip

Contact: _____ Email: _____ Telephone #: _____

Administrative Contact: _____ Email: _____ Telephone #: _____

Choose One: Adding CalPERS as a Plan Provider Converting assets to CalPERS 457 Plan

II. ASSET TRANSFER INFORMATION (Complete ONLY if converting assets to CalPERS 457 Plan)

Former Plan Provider: _____

Address: _____
Street

_____ City State Zip

Contact: _____ Email: _____ Telephone #: _____

III. CONTRIBUTION INFORMATION

Frequency of Payroll Deductions: Weekly Bi-weekly Semi Monthly Monthly

Contribution data will be transmitted by: Electronic Transmission Contribution Remittance Form

Funding will be provided by: Wire Transmission **State Street Bank ABA # 011000028**
BPS - PERS 457 DEFERRED COMPENSATION PLAN
Account # 0282-055-3

Check Payable to **CalPERS 457 Program** and submitted by certified mail.

IV. SIGNATURES

Employer Signature _____ Date ____ / ____ / ____

The plan administrator will complete the information below:

ING Signature _____ Date ____ / ____ / ____

Authorized Agent

Employer Plan Number assigned by ING: 450 _____



SUPPLEMENTAL INCOME PLANS

Loan Rules and Procedures

This document is hereby adopted by CalPERS pursuant to its authority under Article 8 of the Plan Document, and is intended to comply with the requirements of Section 457 and Section 72(p)(2) of the Internal Revenue Code, and the Federal Truth-in-Lending Act. CalPERS reserves the right to amend or revise this document at any time.

Effective for all loans granted pursuant to the Plan Document, the following rules and procedures shall apply:

1. Any Participant, as that term is defined in Article 1 of the Plan Document, may apply for a loan from the Plan. The charge to the Participant will be \$50 per loan application. There are no annual maintenance fees or asset-based fees.
2. A Participant may apply for a loan over the Customer Service Line or Internet site maintained for the Plan.
3. If the loan application is approved, the Participant will receive the loan check along with a *Truth-in-Lending Disclosure Statement*. The promissory note and security agreement will be printed on the back of the loan check. The notice will contain the amount financed, the finance charge, the loan's annual percentage rate, the repayment procedure, the security interest and a copy for the participant.
4. The minimum loan amount is \$1,000. The maximum loan amount is the lesser of: (1) 50 percent of the Participant's vested account balance as of the Valuation Date immediately preceding the date on which the loan is approved, or (2) \$50,000, less the highest outstanding loan balance over the last 12 months. For the purpose of determining the maximum loan amount available to a Participant, any loan from any other plan maintained by a participating employer will be treated as if it were a loan made from this Plan, and the Participant's vested interest under the other plan will be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph will not be applied so as to allow the amount of a loan from this Plan to exceed the amount that would otherwise be permitted under federal law.
5. If a Participant has an outstanding loan from any other plan maintained by a participating employer, CalPERS will accept a transfer of the Participant's unencumbered account balance from the other plan, less the amount of the outstanding loan balance payable to the other plan,
6. If a Participant has an outstanding loan with the CalPERS 457 Plan and requests a transfer of his or her account to another plan maintained by a participating employer, CalPERS will process the transfer of the Participant's unencumbered account balance less the outstanding loan balance payable to the CalPERS 457 Plan. Further transfer requests will not be processed until the Participant's loan with the CalPERS 457 Plan has been repaid in full.
7. The minimum time period for borrowing is one year. The maximum time period for borrowing is 5 years.
8. The maximum number of loans permitted at one time is one. No new loan may be taken until the outstanding loan is paid off. Loan refinancing is not allowed.
9. A loan to a Participant may only be secured by an interest in the Participant's vested account balance.

10. Loan disbursements will be taken pro rata across all money sources and investment funds in the Participant's account.
11. A loan will bear an interest rate of the Prime Rate plus one percent. All repayments plus interest will inure to the Participant's account.
12. Loan repayments will be automatically deducted from the Employer's payroll system, and remitted with the regular payroll beginning the second month, or as soon thereafter as is administratively practicable. Payroll transmission including loan repayments will be via an automated process.
13. Loan repayments by the Participant will be reinvested according to the Participant's current investment elections.
14. A Participant may prepay his/her loan in full at any time by paying the outstanding loan balance by cashier's check or certified check. Partial payments are not allowed.
15. CalPERS will treat a loan in default if any scheduled repayment remains unpaid after the expiration of the maximum grace period – the last day of the calendar quarter following the calendar quarter in which the required repayment was due, or if there is outstanding principal existing on the loan after the last scheduled repayment date. If a loan is defaulted, the Participant's vested account balance will be offset by the outstanding loan balance to the extent that a distribution from such account is permissible under the Plan. This will be reported as earned income and a 1099R will be issued. The Participant will be permanently ineligible for any future loans from the Plan and will be prohibited from making contributions to the Plan until 12 calendar months has elapsed from the date the defaulted loan has been repaid in full.
16. Upon death, disability, retirement or termination of employment, the Participant's outstanding loan balance will be immediately due and payable. Failure to repay upon death, disability, retirement or termination will be deemed a distribution and will be reported as earned income and a 1099R will be issued.



SUPPLEMENTAL INCOME PLANS

LOAN PROGRAM EMPLOYER ENROLLMENT

Please note: you must have an automated payroll process in order to participate in the loan program.

I. GENERAL INFORMATION

Employer Name: _____ Employer Plan Number (if applicable): _____

II. ADOPTION OF CALPERS 457 LOAN PROGRAM

By signing this form, the Employer, the sponsor of the Plan referenced above, which began participating in the CalPERS 457 Program pursuant to an Adoption Agreement dated _____, _____, hereby adopts the CalPERS 457 Loan Program.

The Employer will deduct loan repayments directly from employee salary and remit payments along with deferrals. The repayment method for contributions and loan repayments must be made by an acceptable automated method.

III. SIGNATURES

Employer's Signature _____ Date ____ / ____ / ____

Please return form to:

Standard Delivery: CalPERS 457 Plan
Attn: Administration
P.O. Box 2647
Lewiston, ME 04241

Overnight Delivery: ING
CalPERS 457 Plan Administration
1775 Lisbon Road
Lewiston, ME 04240

Fax Delivery: (888) 228-6185



SUPPLEMENTAL INCOME PLANS

SELF-MANAGED ACCOUNT EMPLOYER ENROLLMENT State Street Brokerage*

I. GENERAL INFORMATION

Employer Name: _____ Employer Plan Number: **450** ___ ___ ___
Contact Name: _____ Telephone # _____

II. ADOPTION OF CALPERS 457 Self-Managed Account Option

By signing this form, the Employer, the sponsor of the Plan referenced above, which began participating in the CalPERS 457 Program pursuant to an Adoption Agreement dated _____, _____, hereby adopts the CalPERS 457 Self-Managed Account Option as one of the investment options available under the plan.

III. SIGNATURES

Employer's Signature _____ Date ___ ___ / ___ ___ / ___ ___

Would you like to keep Self-Managed Accounts Enrollment Kits on hand Yes No

If yes, please indicate the number of kits requested _____

*State Street Brokerage, a division of State Street Capital Markets, LLC. Member of NASD, SIPC, BSE

Standard Delivery: CalPERS 457 Plan
Attn: Administration
P.O. Box 2647
Lewiston, ME 04241

Overnight Delivery: ING
CalPERS 457 Plan Administration
1775 Lisbon Road
Lewiston, ME 04240

Fax Delivery: (888) 228-6185

CalPERS 457 Deferred Compensation Plan Document

The purpose of this Plan is to provide deferred compensation for California public employees that elect to participate in the Plan. This Plan is established pursuant to sections 21670 through 21685 of the Government Code of the State of California and is intended to constitute an "eligible deferred compensation plan" within the meaning of section 457 of the Federal Internal Revenue Code. This amended and restated Plan is effective January 1, 2002.

Article 1 - Definitions

The following terms when used herein shall have the following meaning:

1.1 Account: The bookkeeping account maintained with respect to each Participant which reflects the value of the deferred compensation credited to the Participant, including the Participant's Deferrals, the earnings or loss of the Fund (net of Fund expenses) allocable to the Participant, any Transfers for the Participant's benefit, and any distributions made to the Participant or the Participant's Beneficiary.

If a Participant has more than one Beneficiary at the time of the Participant's death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account established under Section 7.2 for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a Beneficiary after a Participant's death, and any account or accounts established for an alternate payee (as defined in section 414(p)(8) of the Code).

1.2 Adoption Agreement: The agreement under which an Employer becomes a participating Employer under this Plan.

1.3 Beneficiary: The person or persons designated by the Participant to receive distributions from the Participant's Account after the Participant's death.

1.4 Board: The Board of Administration of CalPERS.

1.5 Code: The Federal Internal Revenue Code of 1986, as amended from time to time.

1.6 Deferral: An amount credited to a Participant's Account by reason of the Participant's agreement to defer a portion of his or her salary or wages.

1.7 Deferral Agreement: The agreement between an Employer and an Employee, including any amendments thereto, which specifies the amount of Deferrals to be made by the Employee. Each

Deferral Agreement or amendment thereto shall be made or confirmed in writing under procedures established by the Board.

1.8 Eligible Deferred Compensation Plan: An eligible governmental plan as defined in Section 1.457-2(f) of the Income Tax Regulations.

1.9 Employee: Any individual who is a common law employee of an Employer and is a member of CalPERS or for whom the Board is otherwise authorized to administer this Plan under the Government Code.

1.10 Employer: Any political subdivision of the State of California for which the Board is authorized to administer this Plan under the Government Code and that has become a participating employer under this Plan pursuant to Article 2. Where required by the context, references to the Employer shall mean the current or former Employer of the Employee or Participant.

1.11 Fund: The Public Employees' Deferred Compensation Fund that has been established as part of the Plan pursuant to section 21676 of the Government Code. For purposes of Section 9.1 of this Plan, the Fund shall not include the asset management and services account maintained pursuant to section 21678 of the Government Code.

1.12 Government Code: Those statutes of the State of California that have been codified as the Government Code.

1.13 Includible Compensation: A Participant's compensation, as defined in Section 415(c)(3) of the Code, for services performed for the Employer. Includible Compensation shall be determined without regard to any community property laws.

1.14 Investment Option: One of the available alternatives for crediting investment earnings to a Participant's Account, which shall be based upon the performance of one or a combination of the investment portfolios maintained under the Fund.

1.15 Normal Retirement Age: The age used to determine the three-year period in which a Participant may utilize the catch-up limitation under Section 4.3 A Participant may designate as his or her Normal Retirement Age the age that will be attained in any Year that is not earlier than the earliest Year in which the Participant will be eligible to retire without actuarial or similar reduction under CalPERS or another retirement system and that is not later than age 70 1/2. Once a Participant has utilized the catch-up limitation under Section 4.3 or under a comparable provision of another Eligible Deferred Compensation Plan, that Participant's Normal Retirement Age may not thereafter be changed. An Employer sponsoring more than one Eligible Deferred Compensation Plan may not permit a Participant to have more than one Normal Retirement Age under the Eligible Deferred Compensation Plans it sponsors.

1.16 Participant: Any Employee or former Employee for whom a Deferral has been credited under the Plan and for whom an Account is maintained.

1.17 CalPERS: The Public Employees' Retirement System of the State of California.

1.18 Plan: The California Public Employees' Deferred Compensation Plan established pursuant to sections 21670 through 21685 of the Government Code, the terms of which are set forth in this Plan document. To the extent required under section 457 of the Code, each Employer's participation in this Plan shall be treated as a separate plan, and each Employer's separate plan shall be deemed to include any other Eligible Deferred Compensation Plan maintained by that Employer.

1.19 Required Beginning Date: April 1st of the Year following the Year of a Participant's attainment of age 70½ or Severance from Employment, whichever is later.

1.20 Severance from Employment: The date that the Employee dies, retires, or otherwise has a severance from employment with the Employer, as determined by the Employer (and taking into account guidance issued under the Code). An Employee's rights upon Severance from Employment with an Employer shall be unaffected by whether the Employee thereafter becomes an Employee of another Employer that has adopted this Plan.

1.21 Transfer: An amount credited to a Participant's Account by reason of a transfer from another Eligible Deferred Compensation Plan.

1.22 Trustee: The Board of Administration of CalPERS

1.23 Unforeseeable Emergency: A severe financial hardship of the Participant resulting from: an illness or accident of the Participant, the Participant's spouse, or the Participant's dependent (as defined in Section 152(a) of the Code); loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); the need to pay for the funeral expenses of the Participant's spouse or dependent (as defined in Section 152(a) of the Code); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. For example, the imminent foreclosure of or eviction from the Participant's primary residence may constitute an Unforeseeable Emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an Unforeseeable Emergency. A need to send a child to college or to purchase a new home shall not constitute an Unforeseeable Emergency.

1.24 Year: A calendar year.

Article 2 - Employer Participation

2.1 Initial Participation: This Plan shall be available to the Employees of an Employer only if the Employer has executed an Adoption Agreement and provided the Board with such information as the Board deems necessary to administer the Plan on behalf of the Employer.

2.2 Terms of Participation: By executing an Adoption Agreement, an Employer agrees to adhere to all terms and conditions of the Plan, to invest all Deferrals and Transfers in the Fund, and to follow all administrative procedures established by the Board. Except as otherwise provided herein, the terms of this Plan shall apply on a uniform basis to all Employers participating hereunder.

2.3 Duration of Employer Participation: In the event that an Employer withdraws from participation in the Plan, all amounts credited to the Accounts of the Employer's participating Employees will continue to be held in the Fund and will be distributed in accordance with the terms of the Plan, except to the extent of any transfers from the Plan pursuant to Section 7.3.

Article 3 - Employee Participation

3.1 Eligibility: Except as provided in section 21670 of the Government Code, all Employees of an Employer shall be eligible to participate in the Plan.

3.2 Initial Enrollment: In order to become a Participant, an Employee must enter into a Deferral Agreement, which shall become effective no earlier than the calendar month following the month in which the agreement is made. A Deferral Agreement will be given effect only if the Deferral amount elected therein satisfies whatever minimum the Board may establish, and the Employee provides all information called for on the agreement form.

3.3 Effect of Deferral Agreement: Commencing with the effective date of an Employee's Deferral Agreement, his or her gross salary or wages shall be reduced by the Deferral amount specified in the Deferral Agreement. Deferrals shall continue to be made in such amount unless and until the Deferral Agreement is amended or the Employee has a Severance from Employment with the Employer. Subject to the limitations of Article 4, Deferrals shall not be subject to Federal or California income tax withholding and shall not be reported as gross income on the Employee's annual wage statement (Form W-2). However, Deferrals shall be subject to FICA taxation when earned.

3.4 Amendment of Deferral Agreement: A Participant may amend or revoke his or her Deferral Agreement at any time, provided, however, that no change in the amount of a Participant's Deferrals will become effective until the calendar month following the month in which the Deferral Agreement is amended.

3.5 Investment Options: Upon enrollment, the Participant shall designate the Investment Option or Investment Options to which his or her Deferrals are to be allocated. A Participant may thereafter re-allocate his or her Account balance among the available Investment Options. The minimum amounts or percentages that may be allocated among Investment Options, and the timing and frequency of re-allocations, shall be subject to such limitations and procedures as the Board may from time to time establish.

3.6 Beneficiary Designation: Upon enrollment, the Participant shall designate a Beneficiary to receive distributions from the Participant's Account in the event of the Participant's death. A Participant may change his or her designated Beneficiary at any time, provided that an amended Beneficiary designation shall be given effect only if it is signed by the Participant and delivered to a Plan representative (or post-marked for delivery) prior to the Participant's death. A Participant may designate any person or persons as Beneficiaries. Unless otherwise provided in the Beneficiary designation form, each designated Beneficiary shall be entitled to equal shares of the benefits payable after the Participant's death. If the Participant fails to designate a Beneficiary, or if no designated Beneficiary survives the Participant for a period of fifteen (15) days, then the estate of the Participant shall be the Beneficiary. Notwithstanding the foregoing, a Participant's Beneficiary designation shall not be given effect and shall be overridden to the extent that such a designation would impair the rights of any surviving spouse under applicable law.

3.7 Additional Deferrals: An Employer may make additional Fund investments with respect to any Employee, resulting in additional credits to the Account of such Employee. Any such additional credits shall be treated as Deferrals for all purposes of the Plan. The Employer shall notify the Board of any such additional Deferrals, and each Employee for whom such Deferrals are to be made must complete a Deferral Agreement, regardless of whether elective Deferrals are to be made by such Employee.

Article 4 - Deferral Limitations

4.1 General Limitation: Except as provided in Section 4.2 or 4.3, a Participant's Deferrals for a Year shall not exceed the lesser of:

- (a) the Applicable Dollar Amount, or
- (b) the Participant's Includible Compensation for the Year.

The Applicable Dollar Amount is the amount established under section 457(e)(15) of the Code applicable as set forth below:

For the following years:	The Applicable Dollar Amount is:
2002	\$11,000
2003	\$12,000
2004	\$13,000
2005	\$14,000
2006 or thereafter	\$15,000

The Applicable Dollar Amount is adjusted for cost-of-living after 2006 to the extent provided under Section 415(d) of the Code.

4.2 Age 50 Catch-up Deferral Contributions: A Participant who will attain age 50 or more by the end of the Year is permitted to elect an additional amount of Deferrals, up to the maximum Age 50 Catch-up Deferrals for the year. The maximum dollar amount of the Age 50 Catch-up Deferrals for a year is as follows:

For the following years:	The maximum Age 50 Catch-up Dollar Amount is:
2002	\$1,000
2003	\$2,000
2004	\$3,000
2005	\$4,000
2006 or thereafter	\$5,000

The maximum dollar amount of the Age 50 Catch-up Deferrals is adjusted for cost-of-living after 2006 to the extent provided under the Code.

4.3 Special Section 457 Catch-up Limitation: If a Participant has designated a proper Normal Retirement Age in the manner established by the Board, then for one or more of the three (3) Years ending before the Year in which a Participant attains that Normal Retirement Age, the Participant's Deferrals shall not exceed the lesser of:

(a) An amount equal to 2 times the Section 4.1 Applicable Dollar Amount for such year, or

(b) The sum of:

(1) An amount equal to (A) the aggregate Section 4.1 limit for the current year plus each prior calendar year beginning after December 31, 2001 during which the Participant was an Employee under the Plan, minus (B) the aggregate amount of salary and wages that the Participant deferred under the Plan during such years, plus

(2) An amount equal to (A) the aggregate limit referred to in Section 457(b)(2) of the Code for each prior calendar year beginning after December 31, 1978 and before January 1, 2002 during which the Participant was an Employee (determined without regard to Sections 4.2 and 4.3), minus (B) the aggregate contributions to Pre-2002 Coordination Plans for such years.

4.4 Special Rules: For purposes of this Section 4, the following rules shall apply:

(a) Participant Covered By More Than One Eligible Plan. If the Participant is or has been a participant in one or more other eligible plans within the meaning of Section 457(b) of the Code, then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Section 4. For this purpose, the Employer shall take into account any other such eligible plan maintained by the Employer and shall also take into account any other such eligible plan for which the Employer receives from the Participant sufficient information concerning his or her participation in such other plan.

(b) Pre-Participation Years. In applying Section 4.3, a year shall be taken into account only if (i) the Participant was eligible to participate in the Plan during all or a portion of the year and (ii) salary and wages, if any, under the Plan during the year was subject to the Basic Annual Limitation described in Section 4.1 or any other plan ceiling required by Section 457(b) of the Code.

(c) Pre-2002 Coordination Years. For purposes of Section 4.3(b)(2)(B), “contributions to Pre-2002 Coordination Plans” means any employer contribution, salary reduction or elective contribution under any other eligible Code Section 457(b) plan, or a salary reduction or elective contribution under any Code Section 401(k) qualified cash or deferred arrangement, Code Section 402(h)(1)(B) simplified employee pension (SARSEP), Code Section 403(b) annuity contract, and Code Section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in Section 501(c)(18) of the Code, including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 4.3(b)(2)(B) to the extent that the total of such contributions does not exceed the aggregate limit referred to in Section 457(b)(2) of the Code for that year.

(d) Disregard Excess Deferral. For purposes of Sections 4.1, 4.2 and 4.3, an individual is treated as not having deferred compensation under a plan for a prior taxable year to the extent Excess Deferrals under the plan are distributed, as described in Section 4.6. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an Excess Deferral for those prior years.

4.5 Deferrals After Severance from Employment, Including Sick, Vacation, and Back Pay:

A participant who has not had a severance from employment may elect to defer accumulated sick pay, accumulated vacation pay, and back pay under the following terms:

(a) deferrals attributable to accumulated sick pay, accumulated vacation pay, and back pay may be deferred for any calendar month only if an agreement providing for the deferral is entered into before the beginning of the month in which the amounts would otherwise be paid or made available and the participant is an employee on the date the amounts would otherwise be paid or made available, or

(b) deferrals attributable to accumulated sick pay, accumulated vacation pay, and back pay may be made for former employees with respect to compensation described in Section 1.415(c)-2(e)(3)(ii) of the Proposed Income Tax Regulations (relating to certain compensation paid within 2½ months following severance from employment), compensation described in Section 1.415(c)-2(g)(4) of the Proposed Income Tax Regulations (relating to compensation paid to participants who are permanently and totally disabled), and compensation relating to qualified military service under Section 414(u) of the Code.

4.6 Correction of Excess Deferrals: If the Deferrals on behalf of a Participant for any calendar year exceed the limitations described above, or the Deferrals on behalf of a Participant for any calendar year exceed the limitations described above when combined with other amounts deferred by the Participant under another Eligible Deferred Compensation Plan for which the Participant provides information that is accepted by the Employer, then the Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant.

4.7 Protection of Persons Who Serve in a Uniformed Service: An Employee whose employment is interrupted by qualified military service under Section 414(u) of the Code or who is on a leave of absence for qualified military service under Section 414(u) of the Code may elect to make additional Deferrals upon resumption of employment with the Employer equal to the maximum Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of salary or wages) without the interruption or leave, reduced by the Deferrals, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

Article 5 - Participant Accounts

5.1 Crediting of Accounts: All Deferrals and Transfers with respect to a Participant shall be credited to the Participant's Account as of the date such amounts are invested in the Fund in accordance with the procedures established by the Board. The Employer shall remit to CalPERS all Deferrals and Transfers directed by Participants to be invested in the Fund as soon as practicable after such amounts are withheld from the Participant's salary or wages or are available from the transferor plan, as applicable.

5.2 Account Balances: The value, or balance, of each Participant's Account shall equal the aggregate value of the Fund investments held with respect to the Participant, based on the Investment Options selected by the Participant, and the method of valuation established by the Board. Each Participant shall periodically receive a statement which shows his or her Account balance and summarizes any credits or other transactions since the preceding statement. In the event that an individual has participated in this Plan by reason of employment with two or more Employers, separate Accounts shall be maintained for such individual with respect to each employment relationship.

Article 6 - Distributions

6.1 Commencement of Distributions upon Severance from Employment: Upon a Participant's Severance from Employment with an Employer, the Participant may elect to receive distributions under one of the optional distribution forms described in Section 6.2, or the Participant may elect a deferred commencement date under Section 6.3. If no election is made by the date the Participant attains age 65 (or, if later, 30 days after the Participant's Severance from Employment), distributions shall commence as soon as practicable thereafter in the form of substantially equal annual installments over 10 years.

6.2 Optional Distribution Forms: Prior to the commencement date under Section 6.1 or Section 6.3, as applicable, the Participant may elect to have his or her Account distributed in one of the following forms:

- (a) a single lump sum payment;
- (b) installment payments for a period of years (payable on an annual, semi-annual, quarterly, or monthly basis) which extends no longer than the life expectancy of the Participant or such longer period as permitted under Section 6.8(b);
- (c) partial lump sum payment of a designated amount;

(d) annuity payments (payable on an annual, quarterly, or monthly basis) for the Participant's lifetime, or for the lifetimes of the Participant and the Participant's Beneficiary if permitted under Section 6.8;

(e) any combination of the above forms of distribution; or

(f) such other form of installment payments as may be approved by the Board consistent with the limitations of Section 6.8.

The Participant may elect the option of an automatic cost-of-living increase in the case of fixed dollar installment payments under subsection (b) above. Such increase will be based on the rise in the Consumer Price Index (CPI). Any increase will be made in periodic payment checks beginning January of the following year. Such increase shall be funded solely from the Participant's Account.

6.3 Deferred Commencement Date: A Participant may elect a deferred commencement date for part or all of the Participant's Account balance at any time prior to attaining age 65 (or, if later, 30 days after the Participant's Severance from Employment). Such date may not be later than the Participant's Required Beginning Date.

6.4 In-Service Distributions From Rollover Account: If a Participant has a separate account attributable to rollover contributions to the Plan, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account under any optional distribution form described in Section 6.2.

6.5 Cash-outs and Combined Payments: The Board reserves the right to adopt guidelines, which shall be uniformly applied to all Plan Participants and Beneficiaries, under which Account balances below a specified level may be distributed in a lump sum upon Severance from Employment or at a deferred commencement date and installment payments below a specified amount may be combined and paid at less frequent intervals (but not less frequently than annually). In addition, the Board reserves the right, subject to the limitations of section 457(e)(9)(A) of the Code, to establish uniform guidelines under which a Participant's Account balances may be distributed in a lump sum either before or after the Participant's Severance from Employment, and either with or without the Participant's consent, provided that (i) the Participant's Account balance does not exceed \$1,000 in the case of a distribution without the Participant's consent (\$5,000 before March 28, 2005), (ii) the Participant's Account balance does not exceed \$5,000 in the case of a distribution with the Participant's consent, (iii) no Deferral has been credited to the Participant's Account in the preceding twenty-four (24) months, and (iv) no prior payment has been made to the Participant under Section 6.1 or this Section 6.5.

6.6 Unforeseeable Emergency Distributions:

In the event of an Unforeseeable Emergency prior to or after the commencement of distributions, a Participant (or Beneficiary after the death of the Participant) may apply to receive that part of the value of the Participant's Account that is reasonably needed to satisfy the emergency need, including any income tax resulting from the distribution. Payment will not be made to the extent that the financial hardship may be satisfied through cessation of Deferrals, insurance or other reimbursement, or a liquidation of other assets to the extent such liquidation would not itself cause severe financial hardship.

6.7 Death Benefits: Upon the Participant's death, the Participant's remaining Account balance shall be payable to the Beneficiary commencing on the sixty-first (61st) day after the date of the Participant's death, unless, within sixty (60) days of the Participant's death, the Beneficiary elects a deferred commencement date that is consistent with the limitations set forth below. Prior to the Beneficiary's commencement date, the Beneficiary may elect to receive the Participant's remaining Account balance under any optional distribution form described in Section 6.2, provided that the elected distribution form satisfies the limitations set forth below. If a Beneficiary fails to make a timely election of an optional distribution form, death benefits shall be paid in the form of substantially equal annual installments over 10 years (or over such shorter period as may be required under the limitations set forth below).

(a) If the Participant dies prior to the Participant's Required Beginning Date and the Beneficiary is the Participant's surviving spouse, the commencement date shall be no later than the last day of the Year in which the Participant would have attained age 70½ (or, if later, the Year immediately following the Year of the Participant's death) and shall be paid over a period that does not exceed the Beneficiary's life expectancy using the single life table in Section 1.401(a)(9)-9, A-1, of the Income Tax Regulations for the spouse's age on the spouse's birthday for that year.

(b) If the Participant dies prior to the Participant's Required Beginning Date and the Beneficiary is not the Participant's surviving spouse, the entire Account balance shall be distributed no later than (i) the last day of the Year which includes the fifth (5th) anniversary of the Participant's death, or (ii) if distributions to the Beneficiary commence by the last day of the Year immediately following the Year of the Participant's death, the entire Account balance shall be distributed over the Beneficiary's life expectancy determined in the year following the year of the Participant's death using the single life table in Section 1.401(a)(9)-9, A-1, of the Income Tax Regulations for the Beneficiary's age on the Beneficiary's birthday for that year, reduced by one for each year that has elapsed after that year.

(c) If the Participant dies after the Participant's Required Beginning Date or after the commencement of distributions in the form of an annuity, the Beneficiary may not elect to defer the commencement of death benefits, and the Participant's remaining Account shall be distributed at least as rapidly as under the method selected by the Participant.

(d) In the event that a Beneficiary dies before all payments to the Beneficiary have been completed, the remaining value of the Participant's Account shall be paid to the estate of the Beneficiary in a lump sum.

(e) If there are two or more Beneficiaries, the provisions of this Section 6.7 and Section 6.8 shall be applied separately to each Beneficiary with respect to that Beneficiary's share in the Participant's Account.

(f) No Beneficiary shall have any right of recovery against the Employer or the Plan for any distributions that are made in the name of the Participant before a Plan representative has been duly notified of the Participant's death.

6.8 Latest Distribution Date:

(a) In general. In no event shall any distribution under this Section 6 begin later than the Required Beginning Date. If distributions commence in the calendar year following the later of the calendar year in which the Participant attains age 70 1/2 or the calendar year in which the Severance from Employment occurs, the distribution on the date that distribution commences must be at least equal to the minimum installment payment for the year that the Participant has a Severance from Employment (determined under paragraph (b)) and an amount at least equal to the minimum installment payment for the year after Severance from Employment (determined under paragraph (b)) must also be paid before the end of the calendar year of commencement. .

(b) Minimum installment amount. Unless a lower amount is permitted under Code Section 401(a)(9), the minimum installment amount is the amount payable equal to a fraction of the Account balance equal to one divided by the distribution period set forth in the Uniform Lifetime Table at Section 1.401(a)(9)-9, A-2, of the Income Tax Regulations for the Participant's age on the Participant's birthday for that year. If the Participant's age is less than age 70, the distribution period is 27.4 plus the number of years that the Participant's age is less than age 70. The Account balance for this calculation (other than the final installment payment) is the Account balance as of the end of the year prior to the year for which the distribution is being calculated.

6.9 Distributions/Rollovers from Fund:

(a) In general. Except as otherwise provided herein, all distributions shall be made directly from the Fund to the Participant or Beneficiary. To the extent required by law, income and other taxes shall be withheld from each benefit payment, and payments shall be reported to the appropriate governmental agency or agencies.

(b) Rollover Distributions. A Participant or the surviving spouse of a Participant (or a Participant's former spouse who is the alternate payee under a domestic relations order, as defined in Section 414(p) of the Code) who is entitled to an eligible rollover distribution may

elect, at the time and in the manner prescribed by the Board, to have all or any portion of the distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover.

(c) Definitions. For purposes of this Section 6.9, an eligible rollover distribution means any distribution of all or any portion of a Participant's Account balance, except that an eligible rollover distribution does not include (a) any installment payment under Section 6.2 for a period of 10 years or more (b) any distribution made under Section 6.6 as a result of an unforeseeable emergency, or (c) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Section 401(a)(9). In addition, an eligible retirement plan means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, a qualified trust described in Section 401(a) of the Code, an annuity plan described in Section 403(a) or 403(b) of the Code, or an eligible governmental plan described in Section 457(b) of the Code, that accepts the eligible rollover distribution.

6.10 Annuities: In the event that a Participant or Beneficiary elects to receive distributions in the form of a life annuity or another annuity form that cannot be distributed from the Fund, the portion of the Participant's Account balance allocable to that form of distribution shall be distributed from the Fund and used to purchase a commercial annuity contract under which that form of annuity is provided. The amount of the annuity payments to the Participant or Beneficiary shall equal the amounts payable under such annuity contract.

Article 7 - Transfers

7.1 Acceptance of Transfers: A Transfer will be accepted and credited to a Participant's Account under the Plan if such Transfer is made from another Eligible Deferred Compensation Plan maintained by the Employer or another employer and is made in cash or other property that the Board accepts for investment in the Fund. Any Transfer so credited to a Participant's Account shall be invested in the Fund, and the portion of the Participant's Account balance attributable to such Transfer shall be distributed in accordance with the terms of the Plan.

7.2 Eligible Rollover Contributions to the Plan:

(a) A Participant who is an Employee and who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. The Board may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of Section 402(c)(8)(B) of the Code.

(b) For purposes of this Section 7.2, an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (1) any installment payment for a period of 10 years or more, (2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, or (3) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Section 401(a)(9) of the Code. In addition, an eligible retirement plan means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, a qualified trust described in Section 401(a) of the Code, an annuity plan described in Section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution.

(c) The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under Section 457(b) of the Code. In addition, the Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is an eligible governmental plan under Section 457(b) of the Code.

7.3 Transfers to other Plans:

(a) At the election of a Participant, all or a portion of the Participant's Account balance may be transferred to another Eligible Deferred Compensation Plan maintained by the Employer or another employer of the Participant, provided that such other plan accepts transfers and the transfer is otherwise in accordance with Section 457(e)(10) of the Code and Section 1.457-10(b) of the Income Tax Regulations.

(b) In connection with an Employer withdrawal from participation in the Plan, such Employer may direct the transfer of all Participant Account balances to another Eligible Deferred Compensation Plan, provided that such other plan accepts transfers and the transfer is otherwise in accordance with Section 457(e)(10) of the Code and Section 1.457-10(b) of the Income Tax Regulations.

7.4 Transfer Conditions: The Board reserves the right to limit the terms and conditions under which Transfers will be accepted from or made to other Eligible Deferred Compensation Plans, including requiring such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Section 457(e)(10) of the Code and Section 1.457-10(b) of the Income Tax Regulations and to confirm that the other plan is an Eligible Deferred Compensation Plan.

7.5 Permissive Service Credit Transfers: If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account balance transferred to such defined benefit governmental plan as may be permitted by such defined benefit governmental plan. A transfer under this Section 7.5 may be made before the Participant has had a Severance from Employment; provided, however, that such a transfer may be made only if the transfer is either for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which Section 415 of the Code does not apply by reason of Section 415(k)(3) of the Code.

Article 8 – Loans

8.1 Loans: A Participant who is an Employee may apply for and receive a loan from his or her Account Balance as provided in this Section 8. Any such loan may not be for an amount less than \$1,000.

8.2 Maximum Loan Amount: No loan to a Participant hereunder may exceed the lesser of:

(a) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Plan (not taking into account any payments made during such one-year period), or

(b) one half of the value of the Participant's vested Account Balance (as of the Valuation Date immediately preceding the date on which such loan is approved by the Plan).

For purposes of this Section 8.2, any loan from any other plan maintained by a participating employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan under this Section 8.2 to exceed the amount that would otherwise be permitted in the absence of this paragraph.

8.3 Terms of Loan: The terms of the loan shall:

(a) require level amortization with payments not less frequently than quarterly throughout the repayment period, except that alternative arrangements for repayment may apply in the event that the borrower is on an bona fide unpaid leave of absence for a period not to exceed one year for

leaves other than a qualified military leave within the meaning of Section 414(u) of the Code or for the duration of a leave which is due to qualified military service;

(b) require that the loan be repaid within five years; and

(c) provide for interest at a rate equal to one percentage point above the prime rate as published in the Wall Street Journal on the first business day of the month in which the loan is approved by the Plan.

8.4 Security for Loan; Default:

(a) Security. Any loan to a Participant under the Plan shall be secured by the pledge of the portion of the Participant's interest in the Plan invested in such loan.

(b) Default. In the event that a Participant fails to make a loan payment under this Section 8 within 90 days after the date such payment is due, a default on the loan shall occur. In the event of such default, (i) all remaining payments on the loan shall be immediately due and payable, (ii) effective as of the first day of the calendar month next following the month in which any such loan default occurs, the interest rate for such loan shall be (if higher than the rate otherwise applicable) the rate being charged on loans from the Plan that are approved by the Plan in the month in which such default occurs, (iii) no contributions shall be made on such Participant's behalf prior to the first payroll period that follows by 12 calendar months the date of repayment in full of such loan, and (iv) the Participant shall be permanently ineligible for any future loans from the Plan.

In the case of any default on a loan to a Participant, the Plan shall apply the portion of the Participant's interest in the Plan held as security for the loan in satisfaction of the loan on the date of Severance from Employment.

Notwithstanding anything elsewhere in the Plan to the contrary, in the event a loan is outstanding hereunder on the date of a Participant's death, his or her estate shall be his or her Beneficiary as to the portion of his or her interest in the Plan invested in such loan (with the Beneficiary or Beneficiaries as to the remainder of his or her interest in the Plan to be determined in accordance with otherwise applicable provisions of the Plan).

8.5 Repayment: The Participant shall be required, as a condition to receiving a loan, to enter into an irrevocable agreement authorizing the Employer to make payroll deductions from his or her Compensation as long as the Participant is an Employee and to transfer such payroll deduction amounts to the Trustee in payment of such loan plus interest. Repayments of a loan shall be made by payroll deduction of equal amounts (comprised of both principal and interest) from each paycheck, with the first such deduction to be made as soon as practicable after the

loan funds are disbursed; provided however, that a Participant may prepay the entire outstanding balance of his loan at any time (but may not make a partial prepayment); and provided, further, that if any payroll deductions cannot be made in full because a Participant is on an unpaid leave of absence or is no longer employed by a participating employer (that has consented to make payroll deductions for this purpose) or the Participant's paycheck is insufficient for any other reason, the Participant shall pay directly to the Plan the full amount that would have been deducted from the Participant's paycheck, with such payment to be made by the last business day of the calendar month in which in which the amount would have been deducted.

Article 9 - Participant Rights

9.1 Participants' Interest in the Fund: The Fund shall constitute a trust held for the exclusive benefit of Participants and Beneficiaries under the Plan. The Board is the Trustee of the Fund. No part of the corpus or income of the Fund shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries, and no Employer or creditor of an Employer shall have any interest in or claim against any part of the assets of the Fund.

9.2 Benefits Based on Account Balances: The benefits payable to each Participant (and his or her Beneficiary) shall be measured by and limited to the amounts properly credited to the Participant's Account. A Participant shall have no claim under the Plan for any loss or diminution of his or her Account balance that is attributable to any loss in the value of the investment portfolios of the Fund that correspond with the Investment Options selected by the Participant.

9.3 Nonassignability: Except as provided in Section 9.4, the rights of a Participant or Beneficiary under this Plan may not be sold, assigned, pledged, committed, transferred, or otherwise conveyed, and any attempt to assign or transfer rights or benefits under this Plan shall not be recognized. Except as otherwise required by law, the rights of a Participant or Beneficiary under this Plan shall not be subject to attachment, garnishment, or execution, or to transfer by operation of law in the event of bankruptcy or insolvency of the Participant or Beneficiary or otherwise.

9.4 Transfers under Domestic Relations Orders: To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law, any portion of a Participant's Account may be paid or set aside for payment to a spouse, former spouse, or child of the Participant. Where necessary to carry out the terms of such an order, a separate account shall be established with respect to the spouse, former spouse, or child who shall be entitled to choose Investment Options in the same manner as the Participant. Any amount so set aside for a spouse, former spouse, or child shall be paid out in a lump sum at the earliest date that benefits may be paid to the Participant, unless the judgment, decree, or order directs a different form of payment. Nothing in this Section 9.4 shall

be construed to authorize any amount to be distributed under the Plan at a time or in a form that is not permitted under Section 457 of the Code.

9.5 Release from Liability to Participant: A Participant's right to receive benefits under the Plan shall be reduced to the extent that any portion of a Participant's Account has been paid or set aside for payment to a spouse, former spouse, or child pursuant to Section 9.4 or to the extent that the Employer or the Plan is otherwise subject to a binding judgment, decree, or order for the attachment, garnishment, or execution of any portion of the Participant's Account or of any distributions therefrom. The Participant shall be deemed to have released the Employer and the Plan from any claim with respect to such amounts in any case in which (i) the Employer, the Plan, or any Plan representative has been served with legal process or otherwise joined in a proceeding relating to such amounts, (ii) the Participant has been notified of the pendency of such proceeding in the manner prescribed by the law of the jurisdiction in which the proceeding is pending for service of process or by mail from the Employer or a Plan representative to the Participant's last known mailing address, and (iii) the Participant fails to obtain an order of the court in the proceeding relieving the Employer and the Plan from the obligation to comply with the judgment, decree, or order.

9.6 Participation in Legal Proceedings: Neither the Employer nor any Plan representative shall be obligated to incur any cost to defend against or set aside any judgment, decree, or order relating to the division, attachment, garnishment, or execution of the Participant's Account or of any distribution therefrom. Notwithstanding the foregoing, if the Employer, the Plan, or a Plan representative is joined in any such proceeding, a Plan representative shall take such steps as it deems necessary and appropriate to protect the terms of the Plan.

Article 10 - Terms of Fund Investments

10.1 Use of Fund: Except as otherwise provided herein, the Fund shall serve as the exclusive investment vehicle for amounts held under this Plan. By executing an Adoption Agreement, each participating Employer shall agree to accept the terms and conditions of Fund investments set forth herein and to invest all Deferrals and Transfers with respect to its Employees in the Fund. Except as otherwise authorized by the Board, Fund investments shall be restricted to participating Employers that have adopted this Plan.

10.2 Administration of Fund: As provided in section 21677 of the Government Code, the Board has the exclusive control of the administration and investment of the Fund. As provided in section 21676 of the Government Code, the Board may retain a bank or trust company to serve as a custodian for safekeeping, recordkeeping, delivery, securities valuation, investment performance reporting, or other services in connection with the investment of the Fund. In addition, the Board may retain one or more investment managers or investment advisors to manage or participate in the management of the investment portfolios of the Fund. All expenses

and fees incurred in the administration of the Fund shall be treated as Plan expenses under Section 11.4.

10.3 Investment Options: The Board shall establish such Investment Options as it deems necessary to provide Participants with a diversified range of alternatives, including but not limited to Investment Options of the type described in section 21673 of the Government Code. Each Investment Option shall be based upon the investment performance of one or a combination of separate investment portfolios maintained under the Fund. The Board shall specify the investment objectives and characteristics of each Investment Option and the corresponding investment portfolio or portfolios and shall provide Employers and eligible Employees with a written description of each available Investment Option. The Board, in its sole discretion, may add, eliminate, or consolidate Investment Options and corresponding investment portfolios from time to time. In the event that an Investment Option is eliminated, the Board shall provide prior notice of such elimination, and if the Participants whose Accounts were wholly or partially allocated to that Investment Option do not make a re-allocation, the Board shall re-allocate such amounts to the available Investment Option or Investment Options that the Board in its sole discretion deems most comparable to the eliminated Investment Option.

10.4 Fund Investments: Subject to the limitations of applicable law and such further limitations as the Board may establish, each investment portfolio of the Fund may hold any form of investment that is consistent with its investment objectives. Without limiting the generality of the foregoing, the investment portfolios may hold equity or debt securities (other than securities issued by any Employer), fixed or variable annuity contracts (including deposit administration contracts) issued by life insurance companies, certificates of deposit or fixed rate investment contracts issued by a bank or similar institution, and such short-term instruments or deposits as the Board deems necessary to satisfy the liquidity needs of the Fund. In addition, each investment portfolio may hold shares, units, or participating interests in regulated investment companies, common or collective trust funds maintained by banks or similar institutions, investment partnerships, or other pooled investment funds or trusts that may issue participating interests to Eligible Deferred Compensation Plans.

10.5 Valuation and Accounting: Each investment portfolio of the Fund shall be valued at least monthly, and the value of each Participant's Account shall be determined by reference to the portion of the Participant's Account allocable to each investment portfolio. The valuation of each investment portfolio shall reflect income received and accrued, realized and unrealized gains and losses, and allocable Fund expenses. The value of each Participant's interest in an investment portfolio may be measured in units, shares, or dollars. In addition, the Board shall maintain records showing the value of the Fund investments allocable to all Participants (and deceased Participants) whose entitlement to benefits under the Plan is attributable to employment with each participating Employer.

10.6 Redemption Restrictions: No Employer shall have any right to redeem, revoke, sell, or otherwise liquidate any contribution to or investment in the Fund, except as may be necessary to:

(a) effectuate a Participant's election to transfer all or a portion of his or her Account balance to another Eligible Deferred Compensation Plan pursuant to Section 7.3(a);

(b) effectuate a transfer of Participant Account balances to another Eligible Deferred Compensation Plan as part of an Employer's withdrawal from this Plan pursuant to Section 7.3(b);

(c) effectuate the purchase of an annuity contract, as provided in Section 6.10; or

(d) correct an investment in the Fund made by reason of a mistake of fact.

Nothing in paragraphs (a) through (d), above, shall give any Employer the right to redeem, revoke, sell, or otherwise liquidate any Fund investment, unless the Board or its designee has been provided with adequate evidence of the Employer's right to do so.

Article 11 - Administration of Plan

11.1 Duties of Board: Except as provided in Section 11.3, the administration of the Plan shall be under the exclusive control of the Board. The decisions of the Board shall be final, binding, and conclusive on all interested persons for all purposes. No member of the Board shall be entitled to act on or decide any matters relating solely to himself or herself or any of his or her rights or benefits under the Plan. To the maximum extent permitted by law, each member of the Board shall be held harmless for all acts performed in good faith in connection with the Plan.

11.2 Delegation of Authority: The Board may delegate to any individual member of the Board, any employee or employees of CalPERS, or any independent contractor the authority to act as the Board's agent with respect to any matter within the control of the Board, provided that any such delegation of authority shall be subject to revocation by the Board. Any act that the Board is required or authorized to perform under the terms of this Plan, including any communication to be made or received by the Board and the adoption of any supplementary guidelines or procedures, may be performed by an agent of the Board, provided such person is acting within the scope of that person's delegation of authority from the Board. To the maximum extent permitted by law, each employee of CalPERS shall be held harmless for any act performed in good faith in connection with the Plan. Any independent contractor who is retained to perform services under the Plan shall perform such services solely as the agent of the Board and shall not be liable to any Employer, Participant, or Beneficiary for any act performed (or not performed) hereunder.

11.3 Duties of Employer: In accordance with procedures established by the Board, the Employer shall be responsible:

- (a) to assure that participation in the Plan is limited to Employees of the Employer and to make the Plan available to all eligible Employees;
- (b) to assure that Deferrals are properly deducted from the salaries and wages of participating Employees and remitted on a timely basis to the Fund and to report the amount of such Deferrals on Employee's wage statements in the manner required under applicable law;
- (c) to assure that Deferrals, taking account of amounts deferred under any other Eligible Deferred Compensation Plan maintained by the Employer, do not exceed the limitations described in Article 4;
- (d) to approve distribution elections and applications, including applications for withdrawals on account of Unforeseeable Emergencies, in accordance with the requirements of Article 6;
- (e) to provide the Board with such information and in such form as the Board deems necessary for the proper administration of the Plan; and
- (f) to carry out such other responsibilities as the Employer and the Board may agree.

11.4 Plan Expenses: The expenses of administering the Plan and Fund, including (i) expenses incurred by the Board in the administration of the Plan and Fund, (ii) fees and expenses approved by the Board for investment advisory, custodial, recordkeeping, and other plan administration and communication services, and (iii) any other expenses or charges allocable to the Plan or the Fund that have been approved by the Board shall be charged to the Fund or, as appropriate, to a particular Investment Option or Investment Options under the Fund and shall be reflected in Participants' Account balances as provided in Section 5.2. Brokerage fees, transfer taxes, and any other costs incident to the purchase or sale by the Fund of securities or other investments shall be deemed to be part of the cost of such securities or investments or deducted in computing the sales proceeds therefrom and shall be accounted for accordingly. Notwithstanding the foregoing, the Board reserves the right, as provided in section 21675 of the Government Code, to enter into arrangements with Employers under which specified administration costs are borne by such Employers or charged against additional Deferrals under Section 3.7 at the time invested in the Fund.

11.5 Communications from Participants: All enrollments, elections, designations, applications and other communications by or from an Employee, Participant, Beneficiary, or legal representative of any such person regarding that person's rights under the Plan shall be made in the form and manner established by the Board and shall be deemed to have been made and delivered only upon actual receipt by the person designated by the Board to receive such

communication. Neither the Board nor the Employer shall be required to give effect to any such communication that is not made on the prescribed form and in the prescribed manner and that does not contain all information called for on the prescribed form. The Employer shall promptly furnish the Board or its designee a copy of any such communication that is delivered or transmitted to the Employer.

11.6 Communications to Employers: All notices, statements, reports, and other communications from the Board to any Employer shall be deemed to have been duly given when delivered to, or when mailed by first class mail, to the official of the Employer who has been designated by the Employer in connection with its Adoption Agreement (or as a modification of the information provided in connection with its Adoption Agreement) to receive such communications.

11.7 Communications to Participants: All notices, statements, reports, and other communications from the Board or an Employer to any Employee, Participant, Beneficiary, or legal representative of any such person shall be deemed to have been duly given when delivered to, or when mailed by first class mail, to such person at his or her last mailing address appearing on the Plan records.

11.8 Time Periods: As necessary or desirable to facilitate the proper administration of the Plan and consistent with the requirements of section 457 of the Code, the Board may further restrict the time periods during which a Participant or Beneficiary is required to make any election under the Plan, including the making or amending of a Deferral Agreement, the making or amending of Investment Option selections, the election of distribution commencement dates or distribution forms.

Article 12 - General Provisions

12.1 Amendment: Subject to the requirements of the Government Code, the Board reserves the right at any time to amend or modify the Plan without the consent of any Employer, Participant, or Beneficiary. The Board shall give notice of any such amendment or modification to participating Employers. Except as may be required to maintain the status of the Plan as an Eligible Deferred Compensation Plan under section 457 of the Code or to comply with other applicable law, no amendment or modification shall impair any individual's right to benefits under the Plan or expand any Employer's obligation to provide benefits with respect to amounts previously credited to Participants' Accounts.

12.2 Effect on Employment: Nothing contained herein shall give any Employer the right to be retained in the employment of an Employer or affect the right of an Employer to terminate any Employee's employment.

12.3 Binding Contract: The terms of this Plan, as duly amended from time to time, shall constitute a contract between each Participant and the Employer and shall be binding, as applicable, upon their heirs, administrators, trustees, successors, assigns, and Beneficiaries.

12.4 Supplementary Information and Procedures: Any explanatory brochures, pamphlets, or notices distributed by the Board to Employees, Participants, Beneficiaries, or Employers shall be distributed for information purposes and shall not override any provision of this Plan or give any person any claim or right not provided for under this Plan. Notwithstanding the foregoing, to the extent that the terms of this Plan document authorize the Board to adopt supplementary guidelines or procedures, any publication announcing such guidelines or procedures may be relied upon by the persons to whom it is distributed, unless and until modified by a subsequent publication. Any procedural requirement described in any such publication shall be binding upon the Employee, Participant, Beneficiary, or Employer, as applicable, to the same extent as if such requirement were set forth in this Plan document.

12.5 Incompetence of Payee: If an Employer or the Board shall find that any person to whom any amount is payable under the Plan is unable to care for his or her affairs, is a minor, or has died, any payment due him or her, or his or her estate, may be paid to his or her spouse, a child, a relative, or any other person having maintaining or having custody of such person, unless a prior claim therefor has been made by a duly appointed legal representative. Any such payment shall be a complete discharge of all liability under the Plan thereof.

12.6 Applicable Law: This Plan shall be construed under the laws of the State of California and in conformity with the requirements of section 457 of the Code and all regulations thereunder applicable to Eligible Deferred Compensation Plans.

**NATIONWIDE RETIREMENT SOLUTIONS, INC.
DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES**

**457(b) GOVERNMENTAL PLAN AND
INVESTMENT AND TRUST/CUSTODIAL DOCUMENT
Effective January 1, 2006**

The Plan consists of the provisions set forth in this document, and any loan amendments which are incorporated as if fully rewritten herein, and is applicable to each Public Employee who elects to participate in the Plan. The Plan is effective as to each such Public Employee upon the date he becomes a Participant by entering into and filing with the Administrator the Participation Agreement referred to herein.

**ARTICLE I
Definitions**

1.01. The following terms shall, for purposes of this Plan, have the meaning set forth below.

- (a) **ADMINISTRATOR** means Nationwide Retirement Solutions, Inc.
- (b) **ACCOUNT BALANCE** means the bookkeeping account maintained with respect to each Participant which reflects the value of the deferred Compensation credited to the Participant, including the Participant's Annual Deferrals, the earnings or losses of the Participant's account (net applicable account expenses and fees) allocable to the Participant. The Account Balance includes any Plan Sponsor contributions under Section 4.01, any Eligible Rollover Accounts(s), any plan-to-plan transfers, and any account established for a Beneficiary after a Participant's death. If a Participant has more than one Designated Beneficiary at the time of the Participant's death, then a separate account shall be established and maintained for each Beneficiary.
- (c) **ALTERNATE PAYEE** means a person entitled to receive a benefit under the Plan through a Domestic Relations Order, as defined in IRC Section 414(p)(8).
- (d) **ANNUAL DEFERRAL** means the amount of Compensation deferred by a Participant during a calendar year of Compensation and any contributions by the Plan Sponsor to the Participant's account.
- (e) **BENEFICIARY** means the person(s) properly designated by a Participant under Section 8.01 Designation of Beneficiary, or, if none, the Participant's estate, which is entitled to receive benefits under the Plan after the death of the Participant.
- (f) **COMPENSATION** means all cash compensation for services to the Plan Sponsor, including salary, wages, fees, commissions, bonuses, and overtime pay that is includible in the Public Employee's gross income for the calendar year, plus amounts that would be cash Compensation for services to the Plan Sponsor includible in the Public Employee's gross income for the calendar year but for a Compensation reduction election under IRC Sections 125, 132(f), 401(k), 403(b), or 457(b), including an election to defer Compensation under Article II Election to Defer Compensation of the Plan.
- (g) **ELIGIBLE RETIREMENT PLAN** means an individual retirement account described in IRC Section 408(a), individual retirement annuity described in IRC Section 408(b), a qualified trust

described in IRC Section 401(a), an annuity plan described in IRC Section 403(a) or 403(b), or an eligible governmental plan described in IRC Section 457(b).

- (h) **ELIGIBLE ROLLOVER ACCOUNT** means the separate bookkeeping account(s) maintained by the Administrator within the Plan for a Participant for amounts of eligible rollover contributions under Section 6.01 Eligible Rollover Contributions to the Plan.
- (i) **ELIGIBLE ROLLOVER DISTRIBUTION** means an Eligible Rollover Distribution as defined in IRC Section 402(c)(4), including Eligible Rollover Distributions to a surviving Spouse under IRC Section 402(c)(9).
- (j) **INCLUDIBLE COMPENSATION** means a Public Employee's actual wages in box 1 of Form W-2 for a given year for services performed for the Plan Sponsor, but subject to a maximum of \$200,000 (or such higher maximum as may apply under IRC Section 401(a)(17)) and increased (up to the dollar maximum) by any Compensation reduction election under IRC Sections 125, 132(f), 401(k), 403(b), or 457(b), including an election to defer Compensation under Section 2.02 Election Required for Participation. The amount of Includible Compensation shall be determined without regard to any community property laws.
- (k) **INDEPENDENT CONTRACTOR** means any person receiving any type of Compensation from the Plan Sponsor or any of its agencies, departments, subdivisions or instrumentalities for which services are rendered pursuant to one or more written or oral contracts, if such a person is not a Public Employee.
- (l) **INVESTMENT TRUST/CUSTODIAL FUND** means a fund established by the Plan Sponsor as a convenient method of setting aside a portion of its assets to meet its obligations under the Plan.
- (m) **IRC** means the Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.
- (n) **NORMAL RETIREMENT AGE** means any age that is on or after the earlier of age 65 or the age at which Participants have the right to retire and receive, under the basic defined benefit pension plan of the employer (or a money purchase plan in which the Participant also participates if the Participant is not eligible to participate in a defined benefit plan), immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age. However, the Normal Retirement Age shall not be later than age 70 ½. Alternatively, a Plan may provide that a Participant is allowed to designate a Normal Retirement Age within these ages. For purposes of the special Section 457 catch-up in Section 3.03 Special Section 457 Catch-up Limitation, an entity sponsoring more than one eligible plan shall not permit a Participant to have more than one Normal Retirement Age under the eligible plans it sponsors.

Special Rule for Eligible Plans of Qualified Police or Firefighters. An eligible plan with Participants that include qualified police or firefighters as defined under IRC Section 415(b)(2)(H)(ii)(I) may designate a Normal Retirement Age for such qualified police and firefighters that is earlier than the earliest Normal Retirement Age designated under the general rule above, but in no event may the Normal Retirement Age be earlier than age 40. Alternatively, a Plan may allow a qualified police or firefighter Participant to designate a Normal Retirement Age that is between age 40 and age 70 ½.

- (o) **PARTICIPANT** means an individual who is currently deferring Compensation or who has previously deferred Compensation under the Plan by salary reduction and who has not received a distribution of his entire Account Balance under the Plan. Only individuals who perform services for the Plan Sponsor as a Public Employee or Independent Contractor may defer Compensation under the Plan.
- (p) **PARTICIPATION AGREEMENT** means the application to enroll and participate in the Plan that is completed by the Public Employee and provided to the Administrator. The Participation Agreement form for this purpose shall be provided by the Administrator and will have no effect until it is signed, filed with the Administrator by the Participant, and accepted by the Administrator prior to the Participant's death.
- (q) **PLAN** means the Plan for Public Employees as set forth in this plan document and as it may be amended from time to time.
- (r) **PLAN SPONSOR** means the county, municipality, or other instrumentality of the State, which is an eligible governmental employer pursuant to IRC Section 457(e)(1), for which services are performed by Public Employees, and which participates in this Plan.
- (s) **PLAN YEAR** means the calendar year in which the Plan becomes effective, and each succeeding calendar year during the existence of the Plan.
- (t) **PUBLIC EMPLOYEE** means any person who receives any type of Compensation from the Plan Sponsor for services rendered to the Plan Sponsor (including, but not limited to, elected or appointed officials and salaried employees).
- (u) **SEVERANCE FROM EMPLOYMENT** means the date on which the Participant dies, retires or otherwise has a Severance from Employment with the Plan Sponsor. An Independent Contractor is considered to have a Severance from Employment with the Plan Sponsor upon the expiration of the contract (or in the case of more than one contract, all contracts) under which services are performed for the Plan Sponsor if the expiration constitutes a good-faith and complete termination of the contractual relationship. An Independent Contractor shall not be considered Severed from Employment with the Plan Sponsor, and shall not receive any benefits hereunder unless (i) at least 12 months have expired since the date on which the last contract pursuant to which the Independent Contractor provided any services to the Plan Sponsor was terminated, and (ii) the Independent Contractor has performed no services for the Plan Sponsor during the 12-month period referred to herein either as an Independent Contractor or Public Employee.
- (v) **SPOUSE** means a person of the opposite sex who is a husband or wife, as defined under Title 28, Chapter 15, Section 1738 of the United States Code.
- (w) **TRUSTEE/CUSTODIAN** means a bank, trust company, financial institution, or other legally authorized entity appointed by the Plan Sponsor to have custody of Plan assets in the Investment/Custodial Fund.
- (x) **VALUATION DATE** means each business day/the last day of the calendar month/the last day of the calendar quarter/each December 31.

- 1.02 **Gender and Plurals.** Whenever used herein, the masculine gender shall include the feminine and the singular shall include the plural unless the provisions of the Plan specifically require a different construction.

ARTICLE II

Election to Defer Compensation

- 2.01 **Eligibility to Participate.** Each Public Employee shall be eligible to participate in the Plan and defer Compensation hereunder immediately upon becoming employed by the Plan Sponsor.
- 2.02 **Election Required for Participation.** A Public Employee may elect to become a Participant by executing a Participation Agreement and consenting to defer a portion of his Compensation by a reduction of salary of the Annual Deferral amount specified in the Participation Agreement, signing it, and filing it with the Administrator. A Public Employee, by filing the Participation Agreement with the Administrator, agrees to be bound by all the terms and conditions of the Plan. The Administrator may establish a minimum deferral amount, and may change such minimum deferral amounts from time to time. The Participation Agreement shall also include designation of investment specifications and a designation of Beneficiary. Failure of the Participant to properly execute the Participation Agreement will cause any designation of Beneficiary thereon to be invalid. Any Beneficiary election shall remain in effect until the Participant files an executed amendment with the Administrator pursuant to Section 2.05 Amendment of Participation Elections.
- 2.03 **Information Provided by the Participant.** Each Public Employee enrolling in the Plan should provide to the Plan Sponsor at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Plan Sponsor to administer the Plan, including, without limitation, whether the Public Employee is a Participant in any other eligible plan under IRC 457(b).
- 2.04 **Commencement of Participation.** A Public Employee shall become a Participant as soon as administratively practicable following the date the Public Employee files a Participation Agreement pursuant to Section 2.02 Election Required for Participation, or is participating as otherwise permitted by law. Such election shall become effective no earlier than the calendar month following the month in which the election is made. However, a new Public Employee may defer Compensation payable in the calendar month during which the Participant first becomes a Public Employee if a Participation Agreement providing for the deferral is entered into on or before the first day on which the Participant performs services for the Plan Sponsor.
- 2.05 **Amendment of Participation Elections.** Subject to other provisions of the Plan, a Participant may at any time revise his participation election, including changes to his investment direction and changes to his Designated Beneficiary. Changes to the investment direction shall take effect once accepted by the Administrator.
- 2.06 **Amendment of Annual Deferral Election.** A Participant may revoke an election to participate and may amend the amount of Compensation to be deferred by filing with the Administrator a revocation or amendment on a form and in the procedural manner approved by the Administrator. Any amendment which increases or decreases the amount of Annual Deferrals for any pay period shall be effective only if an agreement providing for such an amendment is entered into before the beginning of the month in which the pay period commences. Any revocation or amendment of the Annual Deferrals shall be effective prospectively only. Any amendment of the Annual Deferrals, unless the election specifies a later effective date, shall take effect as of the first day of the next following month or as soon as administratively practicable, if later.

- 2.07 **Leaves of Absence.** Unless a deferral election is otherwise revised, if a Participant is absent from work by leave of absence, Annual Deferrals under the Plan shall continue to the extent that Compensation continues.
- 2.08 **Participant Disability.** A disabled Participant may elect to defer Compensation during any portion of a period of disability to the extent the Participant has actual Compensation (not imputed compensation and not disability benefits) from which to defer to the Plan and has not had a Severance from Employment, as determined by the Plan Sponsor.
- 2.09 **Protection of Persons Who Serve in a Uniformed Service.** A Public Employee whose employment is interrupted by qualified military service under IRC Section 414(u) or who is on a leave of absence for qualified military service under IRC Section 414(u) may elect to make additional Annual Deferrals upon resumption of employment with the Plan Sponsor equal to the maximum Annual Deferrals that the Public Employee could have elected during that period if the Public Employee's employment with the Plan Sponsor had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made for the Public Employee during the period of the interruption or leave. This right applies for five (5) years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

ARTICLE III

Limitations on Amounts Deferred

- 3.01 **Basic Annual Limitation.** The maximum amount of the Annual Deferral under the Plan for any calendar year shall not exceed the lesser of (i) the Basic Annual Limitation or (ii) the Participant's Includible Compensation for the calendar year. The Applicable Dollar Amount is the amount established under IRC Section 457(e)(15) applicable as set forth below:

2002	\$11,000
2003	\$12,000
2004	\$13,000
2005:	\$14,000
2006:	\$15,000, adjusted for cost-of-living after 2006 to the extent provided under IRC Section 415(d).

- 3.02 **Age 50 Catch-up Annual Deferral Contributions.** A Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Annual Deferrals, up to the maximum Age 50 Catch-up Annual Deferrals for the year. The maximum dollar amount of the Age 50 Catch-up Annual Deferrals for a year is as follows:

2002	\$1,000
2003	\$2,000
2004	\$3,000
2005:	\$4,000
2006:	\$5,000, adjusted for cost-of-living after 2006 to the extent provided under the IRC.

- 3.03 **Special Section 457 Catch-up Limitation.** If the applicable year is one of a Participant's last 3 calendar years ending before the year in which the Participant attains Normal Retirement Age and

the amount determined under this Section 3.03 exceeds the amount computed under Sections 3.01 Basic Annual Limitation, and 3.02 Age 50 Catch-up Annual Deferral Contributions, then the Annual Deferral limit under this Section 3.03 shall be the lesser of:

- (a) An amount equal to 2 times the Section 3.01 Basic Annual Limitation for such year; or
- (b) The sum of:
 - (1) An amount equal to (A) the aggregate Section 3.01 Basic Annual Limitation limit for the current year plus each prior calendar year beginning after December 31, 2001 during which the Participant was a Public Employee under the Plan, minus (B) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus
 - (2) An amount equal to (A) the aggregate limit referred to in IRC Section 457(b)(2) for each prior calendar year beginning after December 31, 1978 and before January 1, 2002 during which the Participant was a Public Employee, determined without regard to Section 3.02 Age 50 Catch-up Annual Deferral Contributions, and this Section 3.03, minus (B) the aggregate contributions to Pre-2002 Coordination Plans for such years.

However, in no event can the aggregate deferred amounts and contributions be more than the Participant's Compensation for the calendar year.

3.04 **Special Rules.** For purposes of this Article III, the following rules shall apply:

- (a) **Participant Covered By More Than One Eligible Plan.** If the Participant is or has been a Participant in one or more other eligible plans within the meaning of IRC Section 457(b) for a given year, then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Article III. For this purpose, the Plan Sponsor shall take into account any other such eligible plan established by the Plan Sponsor.
- (b) **Pre- Participation Years.** In applying Section 3.03 Special Section 457 Catch-up Limitation, a prior year shall be taken into account only if (i) the Participant was eligible to participate in the Plan during all or a portion of the year and (ii) Compensation deferred, if any, under the Plan during the year was subject to the Basic Annual Limitation described in Section 3.01 or any other plan ceiling required by IRC Section 457(b).
- (c) **Pre-2002 Coordination Years.** For purposes of Section 3.03(b)(2)(B), "Contributions to Pre-2002 Coordination Plans" means any Plan Sponsor contribution, salary reduction or elective contribution under any other eligible IRC Section 457(b) plan, or a salary reduction or elective contribution under any IRC Section 401(k) qualified cash or deferred arrangement, IRC Section 402(h)(1)(B) simplified employee pension (SARSEP), IRC Section 403(b) annuity contract, and IRC Section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in IRC Section 501(c)(18), including plans, arrangements or accounts maintained by the Plan Sponsor or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 3.03(b)(2)(B) to the extent that the total of such contributions does not exceed the aggregate limit referred to in IRC Section 457(b)(2) for the year.
- (d) **Disregard Excess Deferral.** For purposes of Sections 3.01 Basic Annual Limitation, 3.02 Age 50 Catch-up Annual Deferral Contributions, and 3.03 Special Section 457 Catch-up Limitation,

an individual is treated as not having deferred Compensation under the plan for a prior taxable year to the extent Excess Deferrals under the Plan are distributed, as described in Section 3.05. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as a Correction of Excess Deferrals under Section 3.05 for those prior years.

3.05 **Correction of Excess Deferrals.**

- (a) If Annual Deferrals credited to a Participant's Account Balance during the current Plan Year exceed the limitations described above as determined by the Plan Sponsor, the Administrator shall return the excess as directed by the Plan Sponsor as soon as administratively practicable after the Administrator is notified that there is an Excess Deferral.
- (b) If the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above as determined by the Plan Sponsor, or the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another eligible deferred compensation plan pursuant to IRC Section 457(b) then the Annual Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed as soon as administratively practicable by the Administrator at the determination and direction of the Plan Sponsor.

3.06 **Deferrals After Severance from Employment, Including Sick, Vacation, and Back Pay Under an Eligible Plan.** A Participant who has not had a Severance from Employment may elect to defer accumulated sick pay, accumulated vacation pay, and back pay under an eligible plan. Such amounts may be deferred for any calendar month only if an agreement providing for the deferral is entered into before the beginning of the month in which the amounts would otherwise be paid or made available and the Participant is a Public Employee on the date the amounts would otherwise be paid or made available, in accordance with Section 2.02 Election Required for Participation, and Section 2.04 Commencement of Participation.

In addition, to the extent permitted by law, deferrals may be made for former Public Employees with respect to Compensation described in Treasury Regulation Section 1.415(c)-2(e)(3)(ii) (relating to certain Compensation paid within 2 ½ months following Severance from Employment), Compensation described in Treasury Regulation Section 1.415(c)-2(g)(4) (relating to Compensation paid to Participants who are permanently and totally disabled), and Compensation relating to qualified military service under IRC Section 414(u).

ARTICLE IV

Plan Sponsor Contributions

- 4.01 The Plan Sponsor may contribute to the Plan for Participants. Plan Sponsor contributions shall vest at the time such contributions are made. For purposes of administering Sections 3.01 Basic Annual Limitation, 3.02 Age 50 Catch-up Annual Deferral Contributions, and 3.03 Special Section 457 Catch-up Limitation, Plan Sponsor contributions shall apply toward the maximum deferral limits in the Plan Year that such contributions are made.

ARTICLE V

Distribution of Benefits

- 5.01 **Benefit Distributions at Retirement or Other Severance from Employment.** Except for In-Service Distributions from Eligible Rollover Accounts under Section 5.08, Unforeseeable Emergency withdrawals under Section 5.09, and Voluntary In-Service Smaller Account Distributions under Section 5.10, or otherwise specifically allowed by the Plan, distributions from the Plan may not be made to a Participant earlier than:
- (a) the calendar year in which the Participant attains age 70 ½; or
 - (b) the calendar year in which the Participant retires or otherwise has a Severance from Employment. All irrevocable elections of a benefit commencement date by a Participant or a Beneficiary made prior to January 1, 2002 and defaulted distributions (other than a defaulted distribution to an annuity option) may be voided at the election of the Participant or the Beneficiary.
- 5.02 **Election of Benefit Commencement Date.** A Participant may elect to commence distribution of benefits at any time after retirement or other Severance from Employment, as determined and confirmed by the Plan Sponsor by a notice filed with the Administrator before the date on which benefits are to commence. However, in no event may distribution of benefits commence later than the date described in Section 5.04(b) Required Beginning Date.
- 5.03 **Forms of Distribution – Benefit Payment Options.** Benefits shall be paid in accordance with the payment option elected by the Participant. Payment, method of payment, and settlement options are available as provided by each of the available investment specifications. The Participant shall elect the method of payment based upon the options then available under the Plan, including but not limited to lump sum distributions, periodic payment by fixed amount, periodic payment by fixed time period, partial lump sum payment or purchased annuity. A Participant or Beneficiary who has chosen a payment option, other than the purchased annuity option, shall have the ability to change his payment option subject to any restrictions or limitations imposed by the Plan, the Administrator, an investment option provider, any regulatory agency, or as otherwise required by law.
- 5.04 **Required Minimum Distributions.** All distributions under the Plan must comply with IRC Section 401(a)(9) and the regulations issued thereunder. The provisions of this Section 5.04 will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year. The term Designated Beneficiary as used in this Section 5.04 shall have the meaning set forth in Treasury Regulation Section 1.401(a)(9)-4.
- (a) **Requirements of Treasury Regulations Incorporated into Plan.** All distributions required under this Section 5.04 will be determined and made in accordance with the Treasury Regulations under promulgated under IRC Section 401(a)(9).
 - (b) **Required Beginning Date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date, which is to begin no later than April 1 following the calendar year in which the Participant attains age 70 ½ or has a Severance from Employment, whichever is later.
 - (c) **Death of Participant before Distributions Begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

- (1) If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant dies, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, if later.
 - (2) If the Participant's surviving Spouse is not the Participant's sole Designated Beneficiary, distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
 - (3) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, and there are no other Designated Beneficiaries, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (4) If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this Section 5.04 will apply as if the surviving Spouse were the Participant.
- (d) **Required Minimum Distributions during Participant's Lifetime.** During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
- (1) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
 - (2) if the Participant's sole Designated Beneficiary for the distribution calendar year is the Participant's Spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the distribution calendar years.
- (e) **Death On or After Date Distributions Begin and Participant Survived by Designated Beneficiary.**
- (1) If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's Designated Beneficiary, determined as follows: The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
 - (2) If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, the remaining life expectancy of the surviving Spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For distribution calendar years after the year of the surviving Spouse's death, the remaining life expectancy of the surviving Spouse is calculated using the

age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.

- (3) If the Participant's surviving Spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (4) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed, in accordance with Section 8.01 Acceptance of Beneficiary Designation by Administrator, for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(f) **Death before Date Distributions Begin and Participant Survived by Designated Beneficiary.** If the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's Designated Beneficiary.

- (1) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution, in accordance with Section 8.01 Acceptance of Beneficiary Designation by Administrator, of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(g) **Death of the Surviving Spouse before Distributions to Surviving Spouse are Required to Begin.** If the Participant dies before the date distributions begin, the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, and the surviving Spouse dies before distributions are required to begin, this Section 5.04 will apply as if the surviving Spouse were the Participant.

(h) **Election of Payment Option.** If a Participant or Beneficiary fails to elect a payment option that meets the requirements of IRC Section 401(a)(9), the Administrator will initiate such a distribution. A Participant or Beneficiary who has chosen a payment option, other than an annuity option, shall have the ability to change his or her payment option.

5.05 **Order of Priorities.** This Section 5.05 has been prepared in accordance with Treasury Regulations promulgated under IRC Section 401(c)(9). To the extent there is a conflict between Section 5.04 or this Section 5.05 and the IRC, the provisions of the IRC and applicable Treasury Regulations shall prevail. For any calendar year, a Beneficiary may elect distribution of a greater amount (not to exceed the amount of the remaining Account Balance in lieu of the amount calculated using the formula set forth in Section 5.04.

5.06 **Death Benefit Distributions.** If the Participant dies before the benefits to which he is entitled under the Plan have been paid or exhausted, then the remaining benefits payable under the Plan shall be paid to his Designated Beneficiary. The Beneficiary shall have the right to elect the time and form of distribution of such benefits, subject to the limitations set forth in the Plan.

- 5.07 **Amount of Account Balance.** Except as provided in Section 5.03 Forms of Distribution, the amount of any payment under this Article V shall be based on the amount of the Account Balance on the preceding Valuation Date.
- 5.08 **In-Service Distributions from Eligible Rollover Accounts.** If a Participant has an Eligible Rollover Account attributable to eligible rollover contributions to the Plan, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the Eligible Rollover Account.
- 5.09 **Unforeseeable Emergency Distributions.**
- (a) **Distribution.** If the Participant has an Unforeseeable Emergency before retirement or other Severance from Employment, the Participant may elect to receive a lump sum distribution equal to the amount requested or, if less, the maximum amount determined by the Administrator to be permitted to be distributed under this Section 5.09.
 - (b) **Unforeseeable Emergency Defined.** An Unforeseeable Emergency is defined as a severe financial hardship of the Participant resulting from: an illness or accident of the Participant, the Participant's Spouse, or the Participant's dependent (as defined in IRC Section 152(a)); loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); the need to pay for the funeral expenses of the Participant's Spouse or dependent (as defined in IRC Section 152(a)); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant, or as otherwise permitted by law. For example, the imminent foreclosure of or eviction from the Participant's primary residence may constitute an Unforeseeable Emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an Unforeseeable Emergency. Except as otherwise specifically provided in this Section 5.09, neither the purchase of a home nor the payment of college tuition is an Unforeseeable Emergency.
 - (c) **Unforeseeable Emergency Distribution Standard.** A distribution on account of Unforeseeable Emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the Plan, or as otherwise permitted by law.
 - (d) **Distribution Necessary to Satisfy Emergency Need.** Distributions because of an Unforeseeable Emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).
- 5.10 **Voluntary In-Service Smaller Account Distributions.** A Participant who is an active Public Employee of the Plan Sponsor may request to receive a distribution of the combined total Annual Deferrals under the Plan if the following requirements are met:
- (a) The Participant's total Annual Deferrals in the Account Balance under the Plan does not exceed \$5,000 (or the dollar limit under IRC Section 411(a)(11), if greater); and
 - (b) The Participant has not previously received a voluntary in-service smaller account distribution under the Plan; and

- (c) There have been no Annual Deferrals under the Plan with respect to the Participant during the two-year period ending on the date of the in-service distribution.

ARTICLE VI

Trustees/Custodian:

6.01 **Investment and Trust/Custodial Fund.** The Plan Sponsor shall establish an Investment and Trust/Custodial Fund for the purpose of holding Plan assets for the exclusive benefit of the Plan's Participants or Beneficiaries.

6.02 **Trust/Custodial Provisions:**

- (a) **Trustees/Custodian.** The Trustees/Custodian shall be, at any time the individual or individuals duly appointed and authorized by the Plan Sponsor.
- (b) **Adoption of Investment Options.** The Trustee/Custodian or the Plan Sponsor shall work with the Plan Administrator to adopt various investment options for the investment of Plan assets. Additionally, the Trustee/Custodian or the Plan Sponsor shall monitor and evaluate the appropriateness of those offerings by the Plan. The Trustees/Custodian or the Plan Sponsor may de-select investment options that are determined to be no longer appropriate for offering. In the event investment options are de-selected, the Trustees/Custodian or Plan Sponsor may move, or require Participants to move, Account Balances to an alternative investment option offered by the Plan. By exercising such right to select investment options or by failing to respond to notice to transfer from a de-selected investment option, Participants, Beneficiaries, and Alternate Payees agree that no Plan fiduciaries will be liable for any investment losses or lost investment opportunity under the Plan.
- (c) **Designation of Fiduciaries.** The Plan Sponsor, Trustees/Custodian, and their designees are fiduciaries under the Plan. Each Fiduciary has only those duties or responsibilities specifically assigned to him under the Plan or delegated to him in writing by another fiduciary. Each fiduciary may assume that any direction, information, or action of another fiduciary is proper and need not inquire into the propriety of any such action, direction or information. Except as provided by law, no fiduciary will be responsible for the malfeasance, misfeasance or nonfeasance of any other fiduciary.
- (d) **Fiduciary Standards.**
 1. The Trustees/Custodian and all other fiduciaries shall discharge their duties with respect to this Plan solely in the interest of the Participants and Beneficiaries of the Plan. Such duties shall be discharged for the exclusive purpose of providing benefits to the Participants and Beneficiaries and defraying expenses of the Plan.
 2. All fiduciaries shall discharge their duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and as defined by applicable State law.
- (e) **Trustees/Custodian's Powers and Duties.** The Trustees/Custodian's powers and duties shall be those defined under applicable State law.

- (f) **Exempt Status.** This Plan and Investment and Trust/Custodial Fund is intended to be exempt from taxation under IRC Section 501(a) and is intended to comply with IRC Section 457(g). The Trustees/Custodian shall be empowered to submit or designate appropriate agents to submit this Plan and Investment and Trust/Custodial Fund to the Internal Revenue Service for a determination of the eligibility of the Plan under Section 457, and the exempt status of the Investment and Trust/Custodial Fund under Section 501(a).

ARTICLE VII

Eligible Rollovers and Plan-to-Plan Transfers

7.01 Eligible Rollover Contributions to the Plan.

- (a) **Incoming Rollover Contributions.** A Participant who is a Public Employee and who is entitled to receive an Eligible Rollover Distribution from another Eligible Retirement Plan may request to have all or a portion of the Eligible Rollover Distribution paid to the Plan, provided,
- (1) the Eligible Rollover Distribution is made entirely in the form of U.S. dollars, and,
 - (2) the Participant demonstrates to the Administrator's satisfaction that the amount is a qualifying Eligible Rollover Distribution under IRC Sections 402(c)(4), 403(a)(4), or 408(d)(3).
- (b) **Definition of Eligible Rollover Distribution.** For purposes of Section 7.01(a) Incoming Rollover Contributions, an Eligible Rollover Distribution means any contribution of all or any portion of a Participant's benefit under another Eligible Retirement Plan to the Plan, except that an Eligible Rollover Distribution does not include:
- (1) any installment payment for a period of 10 years or more,
 - (2) any distribution made as a result of an Unforeseeable Emergency, or
 - (3) For any other distribution, the portion, if any, of the distribution that is a required minimum distribution under IRC Section 401(a)(9).
- (c) **Separate Account for Eligible Rollover Contributions.** The Plan shall establish and maintain for the Participant an Eligible Rollover Account for any Eligible Rollover Distribution paid to the Plan from any Eligible Retirement Plan that is not an eligible governmental plan under IRC Section 457(b). In addition, the Plan shall establish and maintain for the Participant an Eligible Rollover Account for any Eligible Rollover Distribution paid to the Plan from any Eligible Retirement Plan that is an eligible governmental plan under IRC Section 457(b).

- 7.02 **Permissive Rollovers to an Eligible Retirement Plan.** A Participant or the surviving Spouse of a Participant (or a Participant's former Spouse who is the Alternate Payee under a Domestic Relations Order, as defined in IRC Section 414(p)) who is entitled to an Eligible Rollover Distribution may elect, at the time and in the manner prescribed by the Administrator, to have all or any portion of the distribution paid directly to an Eligible Retirement Plan specified by the Participant in a direct rollover.

7.03 **Plan-to-Plan Transfers to the Plan of Eligible Governmental 457(b) Assets.**

- (a) **Permissive Plan-to-Plan Transfers.** At the direction of the Plan Sponsor, the Administrator may permit a class of Participants who are Participants in another eligible governmental IRC Section 457(b) Plan to transfer assets to the Plan as provided herein. Such a transfer is permitted only if the other Plan provides for the direct transfer of each Participant's interest therein to the Plan. Transfers from other eligible deferred compensation Plans (as defined in IRC Section 457) to the Plan will be accepted at the Participant's request if such transfers are in cash.
- (b) **Effect of Transfers on Annual Deferral Limitations.** Any such transferred amount shall not be subject to the limitations of Section 3.01 Basic Annual Limitation, 3.02 Age 50 Catch-up Annual Deferral Contributions, and 3.03 Special Section 457 Catch-up Limitation, as an Annual Deferral, provided however, that the actual amount deferred during the calendar year under both Plans shall be taken into account in calculating the maximum Annual Deferral for that year. The amount so transferred shall be credited to the Participant's Account Balance and shall be held, accounted for, administered, and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan.
- (c) **Required Documentation for Transfers to the Plan.** The Administrator may require such documentation from the other Plan as it deems necessary to effectuate the transfer in accordance with IRC Section 457(e)(10) and Treasury Regulation Section 1.457-10(b) and to confirm that the other Plan is an eligible governmental plan as defined in Treasury Regulation 1.457-2(f).

7.04 **Plan-to-Plan Transfers from the Plan to another Eligible Governmental 457(b) Plan.**

- (a) **Outgoing Plan-to-Plan Transfers Pursuant to Severance of Employment.** At the direction of the Plan Sponsor, the Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account Balance transferred to another eligible governmental plan within the meaning of IRC Section 457(b) and Treas. Reg. 1.457-2(f).

A transfer is permitted under this Section 7.04(a) for a Participant only if the Participant has had a Severance from Employment with the Plan Sponsor and is a Public Employee of the entity that maintains the other eligible governmental 457(b) Plan. Further, a transfer is permitted under this Section 7.04(a) only if the other eligible governmental 457(b) plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.

- (b) **Outgoing Plan-to-Plan Transfers While Employed.** If the Plan Sponsor offers an eligible governmental 457(b) plan other than the Plan, and such other plan accepts transfers, the Participant may transfer the Account Balance in cash from the Plan to the other plan.
- (c) **Limitation of Liability.** Upon the transfer of assets under this Section 7.04, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 7.04 (for example, to confirm that the receiving plan is an eligible governmental plan under paragraph (a) of this Section 7.04, and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Treas. Reg. 1.457-10(b).

7.05 **Permissive Service Credit Transfers.**

- (a) If a Participant or Beneficiary is also a Participant in a tax-qualified defined benefit governmental plan (as defined in IRC Section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant or Beneficiary, then the Participant or Beneficiary may elect to have any portion of the Participant's or Beneficiary's Account Balance transferred to the defined benefit governmental plan. A transfer under this Section 7.05(a) will not be treated as a distribution and, therefore, may be made before the Participant has had a Severance from Employment.
- (b) A transfer may be made under Section 7.05(a) only if the transfer is either for the purchase of permissive service credits (as defined in section 415(n)(3)(A)) under the receiving defined benefit governmental plan or a repayment to which IRC Section 415 does not apply by reason of IRC Section 415(k)(3).

ARTICLE VIII

Domestic Relations Orders

8.01 **Receipt of Domestic Relations Orders.** When the Plan Sponsor, Administrator, or Plan receives a Domestic Relations Order (DRO), judgment, decree, or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a Spouse or former Spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State, then the amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the DRO as the Alternate Payee. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the DRO.

Upon receipt of a DRO:

- (a) The Administrator shall notify the Participant and Alternate Payee of the receipt of the DRO, and
- (b) Within a reasonable time, the Administrator will follow the procedures adopted by the Plan Sponsor to determine the validity of the DRO. In the event the Administrator believes that the DRO is acceptable, it will process the DRO in accordance with the Administrator's procedures. If the DRO does not appear to be acceptable, the Administrator may contact the Plan Sponsor for a final determination and instruction regarding final disposition of the DRO.

8.02 **Validity of a DRO.** For purposes of this Article VII, a valid DRO is a judgment, decree, order, or approval of a marital property settlement made pursuant to a state domestic relations law (including community property law), relating to the property rights of a Participant and Alternate Payee. In addition, the DRO must:

- (a) Create or recognize the existence of the right of an Alternate Payee to all or a portion of the benefits payable with respect to a Participant under the Plan;
- (b) Clearly specify the following information:

- (1) The name and last known mailing address of the Participant and Alternate Payee covered by the DRO; and
 - (2) The amount or percentage, or the manner in which the amount or percentage is to be determined, of the Participant's benefits to be paid to the Alternate Payee; and
 - (3) The number of payments or period to which the DRO applies; and
 - (4) The Plan to which such DRO applies.
- (c) Provide a form of payment to the Alternate Payee that is permitted under the Plan; and,
- (d) Not require the payment of benefits to an Alternate Payee which are required by a prior DRO to be paid to another Alternate Payee.

8.03 **Processing of a DRO.** If it has been determined that a DRO applies to a Participant's account, unless specifically directed otherwise by the Plan Sponsor, the Administrator shall comply with the DRO. The Administrator may place a restrictive hold on a Participant's Account Balance while it determines the validity of, and/or processes a DRO. The Administrator shall establish a separate Account Balance for the Alternate Payee and transfer the assigned value or benefit from the Participant's account into the Alternate Payee's separate Account Balance.

8.04 **Rights of an Alternate Payee to Receive Distributions.** The Alternate Payee is entitled to receive distributions immediately upon the establishment of the separate Account Balance pursuant to Section 7.03 Processing of a DRO. Commencement of distributions must begin no later than April 1st following the year in which the Alternate Payee attains age 70 ½. Distributions made to an Alternate Payee are reported as taxable income to the Alternate Payee in the calendar year in which the distributions are received by the Alternate Payee. State taxes, if applicable, and federal taxes will be withheld from any distribution on the Alternate Payee's Account Balance based upon the tax withholding elections of the Alternate Payee. The Alternate Payee may not make any contributions to the account but is permitted to designate Beneficiaries for the Account Balance and to exercise exchanges among the investment options as permitted by the Plan.

8.05 **No Liability for Prior Distributions.** In the event that it is determined that a DRO is valid and the Participant has begun receiving distributions from the Plan, the Alternate Payee must commence distributions within sixty (60) days following the date the DRO is determined to be valid. The Administrator shall only process a DRO to the extent possible based upon the then current value or benefit in the Participant's Account Balance.

ARTICLE IX

Designation of BENEFICIARY

9.01 **Acceptance of Beneficiary Designation by Administrator.** The Participant shall have the right to file with the Administrator, a signed, written beneficiary or change of beneficiary form designating the person or persons who shall receive the benefits payable under the Plan in the event of the Participant's death. If the Participant dies without having a valid beneficiary form on file, the benefits will be paid to the Participant's estate or as otherwise required by applicable state law. A change in the Beneficiary designation shall take effect when the election is accepted by the Administrator, and must be on a form and in the procedural manner approved by the Administrator.

- 9.02 **Participant Obligation to File Beneficiary Designation Form.** The Participant accepts and acknowledges that he has the burden of executing and filing with the Administrator prior to the Participant's death a proper beneficiary designation form.

ARTICLE X

Investment of Deferred Amounts

- 10.01 **Designation for Investment.** Deferred Compensation amounts shall be delivered by the Plan Sponsor to the Trustees/Custodian or its designated agent for investment pursuant to the Participant's, Beneficiary's, or Alternate Payee's investment specifications.
- 10.02 **Participant's Investment Specifications.** The Plan Sponsor shall use the Participant's, Beneficiary's, or Alternate Payee's investment specifications to determine the value of any deferred compensation account and/or Eligible Rollover Account maintained with respect to the Participant as if the amounts had been invested according to such specifications. Any change in the investment direction, whether it applies to amounts previously deferred, contributed, rolled over, or transferred, or amounts to be deferred, contributed, rolled over, or transferred in the future, shall only be effective prospectively and shall be effective on a date consistent with, in conformance with, and subject to any restrictions, limitations, or fees imposed by the Plan Sponsor, the Administrator, an investment option provider, any regulatory agency, or as otherwise required by law.

After the death of the Participant, the Participant's Designated Beneficiary shall have the right to amend the Participant's, or the Beneficiary's, own investment direction by signing and filing with the Administrator an amendment on a form and in the procedural manner approved by the Administrator. Any change in an investment direction by a Beneficiary shall be effective on a date consistent with, in conformance with, and subject to any restrictions, limitations, or fees imposed by the Plan Sponsor, the Administrator, an investment option provider, any regulatory agency, or as otherwise required by law.

- 10.03 **Participant Account Credits and Debits.** All interest, dividends, charges for premiums and administrative expenses, and changes in value due to market fluctuations applicable to each Participant's Account Balance shall be credited or debited to the account. All dividends will be reinvested in the associated investment option.
- 10.04 **Limitations on Transfers and Exchanges.** The Plan Sponsor and the Administrator may adopt rules and procedures to govern Participant elections and directions concerning a Participant's, Beneficiary's, or Alternate Payee's investment specifications and may impose limitations on transfers and exchanges from one investment option with the Plan to another. These rules and procedures shall be in addition to any established by investment providers to the Plan. The Plan Sponsor and the Administrator may decline to implement any investment instructions for a Participant, Beneficiary, or Alternate Payee where they deem appropriate.

ARTICLE XI

Administration of Plan

- 11.01 **Exclusive Benefit of Participants and Beneficiaries.** The Plan Sponsor may at any time amend, modify or terminate the Plan under Section 13.01 Amendment and Termination, without the consent of the Participant (or any Beneficiary or Alternate Payee thereof); provided, however, that the assets of the Plan shall be held for the exclusive benefit of Participants and Beneficiaries at all times.

- 11.02 **No Third Party Interest in Plan.** Any companies that may issue any policies, contracts, or other forms of investment media used by the Plan Sponsor or specified by the Participant, are not parties to this Plan and such companies shall have no responsibility or accountability to any Participant, Beneficiary, or Alternate Payee with regard to the operation of this Plan.
- 11.03 **Tax Consequences of Participation in Plan.** The Plan Sponsor and the Administrator do not represent or guarantee that any particular Federal or State income, payroll, personal property, or other tax consequence will occur because of participation in this Plan. The Participant, Beneficiary, or Alternate Payee should consult with his own representative regarding all questions of Federal and State income, payroll, personal property, or other tax consequences arising from participation in this Plan.
- 11.04 **Appointment of Agents.** The Administrator shall have the power to appoint agents to act for and in the administration of this Plan and to select depositories for the assets of this Plan.
- 11.05 **Construction.** This Plan shall be construed, administered, and enforced according to the Constitution, laws of the state in which the Plan Sponsor resides, and the IRC.
- 11.06 **Total Agreement.** This Plan and any properly adopted amendment or modification shall constitute the total agreement or contract between the Plan Sponsor and the Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by the Participant.
- 11.07 **Effect of Adopted Plan Amendment.** This Plan and any properly adopted amendment or modification shall be binding on the parties hereto and their respective heirs, administrators, trustees, successors, and assignees and on all Participants, Beneficiaries, and Alternate Payees.

ARTICLE XII

Authority of Plan Sponsor and Administrator

- 12.01 **Authority Binding on Participants, Beneficiaries, and Alternate Payees.** The Plan Sponsor, the Administrator, or their respective agents shall be authorized to resolve any questions of fact necessary to decide the Participant's right under this Plan and such decision shall be binding on the Participant, Beneficiary, and any Alternate Payee, provided, however, that assets of the Plan shall be held for the exclusive benefit of Participants and Beneficiaries at all times.
- 12.02 **Authority to Interpret Plan.** The Plan Sponsor, the Administrator, or their respective agents shall be authorized to construe the Plan and to resolve any ambiguity in the Plan.
- 12.03 **Investment Losses.** The Participant specifically agrees not to seek recovery against the Plan Sponsor, the Administrator or any other employee, contractee, or agent of the Plan Sponsor or Administrator for any loss sustained by a Participant, a Beneficiary, or an Alternate Payee for the non-performance of their duties, negligence, or any other misconduct of the above-named persons, except that this paragraph shall not excuse fraud or wrongful taking by any person.
- 12.04 **Suspension of Benefit Payments.** The Plan Sponsor, the Administrator, or their respective agents, if in doubt concerning the correctness of their action in making a payment of a benefit, may suspend the payment until satisfied as to the correctness of the payment or the identity of the person to receive the payment or allow the filing in any State court of competent jurisdiction, a suit in such form as they consider appropriate for a legal determination of the benefits to be paid and the persons to receive them. The Plan Sponsor shall comply with the final orders of the court in any such suit

and all Participants, Beneficiaries, and Alternate Payees consent to be bound thereby insofar as it affects the benefits payable under this Plan or the method or manner of payment.

- 12.05 **Hold Harmless.** The Plan Sponsor, the Administrator, and their respective agents are hereby held harmless from all court costs and all claims for the attorney's fees arising from any action brought by any Participant, Beneficiary, or Alternate Payee under this Plan or to enforce his rights under this Plan, including any amendment, modification or termination hereof.
- 12.06 **Litigation.** The Administrator shall not be required to participate in any litigation concerning the Plan except upon written demand from the Plan Sponsor. The Administrator may compromise, adjust or effect settlement of litigation when specifically instructed to do so by the Plan Sponsor.

ARTICLE XIII

Miscellaneous

- 13.01 **Non-Assignability.** Except as provided in Article VII and Section 12.02 IRS Levy, the interests of each Participant and Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable. Furthermore, in accordance Section 522 of the Bankruptcy Abuse Protection and Consumer Protection Act of 2005 ("the Act"), retirement funds that are in a fund that is exempt from taxation under IRC Section 457 may be exempted from an individual's property estate for purposes of the Act.
- 13.02 **IRS Levy.** Notwithstanding Section 12.01 Non-Assignability, the Administrator may pay from a Participant's, Beneficiary's, or Alternate Payee's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant, Beneficiary, or Alternate Payee or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant, Beneficiary, or Alternate Payee.
- 13.03 **Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

ARTICLE XIV

Amendment and Termination

- 14.01 **Amendment and Termination.** The Plan Sponsor may at any time modify, amend, suspend, or terminate the Plan in whole or in part (including retroactive amendments) or cease deferring Compensation pursuant to the Plan for some or all Participants. In the event of such an action, the Plan Sponsor shall deliver to each affected Participant a notice of such modification, amendment, or termination or a notice that it shall cease deferring Compensation; provided, however, that the Plan Sponsor shall not have the right to reduce or affect the value of any Participant's Account Balance or any rights accrued under the Plan prior to such modification, amendment, termination, or cessation.

- 14.02 **No Effect of Plan on Employment of Participants.** Neither the establishment of the Plan nor any modification thereof, nor the establishment of an account, nor any agreement between the Plan Sponsor and the Administrator nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the Plan Sponsor except as herein provided, and in no event shall the terms of employment of the Public Employee, Independent Contractor, or Participant be modified or in any way affected.
- 14.03 **Interpretation.** This Plan is intended to be an eligible deferred compensation Plan under IRC Section 457, and shall be interpreted and administered in a manner consistent with the IRC. This Plan may be amended to the extent that it may be necessary to conform the Plan to the requirements of IRC Section 457 and any other applicable law, regulation, or ruling, including amendments that are retroactive to the effective date of the Plan. In the event that the Plan is deemed by the Internal Revenue Service to be administered in a manner inconsistent with the Internal Revenue Code, the Plan Sponsor shall correct such administration.

ARTICLE XV

Prior Plan

If the Plan Sponsor has already accepted and adopted the Plan (the “Prior Plan”), as defined by IRC Section 457, then the Plan Sponsor intends that this Plan shall amend and restate the Prior Plan. In such event, this Plan shall apply to all Participants in the Prior Plan on the effective date hereof, and also to each Public Employee who elects to participate in this Plan on and after the effective date hereof.

ARTICLE XVI

Effective Date

This Plan shall be effective on the date and year written below.

IN WITNESS WHEREOF, the undersigned has executed this Plan this _____

day of _____, _____.

By: _____

(signature)

(printed name)

(title/role)

(Plan Name)

Please retain this copy for your records.

ARTICLE XV
Prior Plan

If the Plan Sponsor has already accepted and adopted the Plan (the “Prior Plan”), as defined by IRC Section 457, then the Plan Sponsor intends that this Plan shall amend and restate the Prior Plan. In such event, this Plan shall apply to all Participants in the Prior Plan on the effective date hereof, and also to each Public Employee who elects to participate in this Plan on and after the effective date hereof.

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(signature)

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(Plan Name)

Please tear out this page and return to Nationwide Retirement Solutions.