



KENAI PENINSULA BOROUGH SCHOOL DISTRICT

Assistant Superintendent

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October 25, 2010

MEMORANDUM

TO: Board of Education

FROM: Dave Jones, Assistant Superintendent

SUBJECT: Resolution Allowing Adoption and Amendment of 457(b) Retirement Plan

Attached is Resolution 10-11-3, a Resolution Allowing Adoption and Amendment of Kenai Peninsula Borough School District 457(b) Retirement Plan, giving School District employees a wider range of retirement options.

A copy of the Retirement Plan, the Trust Agreement, and the Amendment are included for your review and approval.

It is administration's recommendation that this Resolution Allowing Adoption and Amendment of 457(b) Retirement Plan be approved as presented.

Resolution 10-11-3

Kenai Peninsula Borough School District Board of Education

Certificate of Adoption

The undersigned hereby certifies that he/she is President of the Board of Education of the Kenai Peninsula Borough School District (the "District"), a governmental entity organized and existing under the laws of the State/Commonwealth of Alaska, and that the following resolution was duly adopted by the Kenai Peninsula Board of Education (the "Board") and was enacted pursuant to the authority granted to the Board and recorded in its minutes at a meeting of said Board at which a quorum was present on the _____ day of _____, 2010, and that the same has not been amended or rescinded and is in full force and effect:

**Resolution Allowing Adoption and Amendment of
Kenai Peninsula Borough School District 457(b) Retirement Plan**

WHEREAS, the District currently offers the Kenai Peninsula Borough School District 457(b) Retirement Plan (the "Plan") to give its employees the opportunity to save additional funds for retirement; and

WHEREAS, the District desires to allow multiple vendors; and

WHEREAS, there has been presented to the meeting a copy of the Adoption Agreement, Trust Agreement, and Amendment; and

WHEREAS, there has been presented to the meeting a copy of the proposed Eligible 457 Prototype Plan Salary Reduction Contributions/Employer Contributions Adoption Agreement, CPI Qualified Plan Consultants Inc. Eligible 457 Prototype Plan and Trust Agreement, and Amendment for 457(b) Plan; and

WHEREAS, after full discussion, the adoption and execution of the Plan and Trust Agreement and the adoption of the Amendments appear to be in the best interest of the District and its employees;

NOW, THEREFORE, it is hereby:

RESOLVED, that the Plan substantially in the form presented to the meeting be and is hereby adopted and approved by the Board, effective as of November 1, 2010; and

RESOLVED FURTHER, that a copy of the Plan and Trust Agreement be attached to and made a part of the minutes of this meeting as Exhibit A thereto; and

RESOLVED FURTHER, that the Amendments substantially in the form presented to the meeting be and is hereby adopted and approved by the Board, effective as of the date of this meeting as set forth above, and

RESOLVED FURTHER, that a copy of the Amendments be attached to and made a part of the minutes of this meeting as Exhibit B thereto, and

RESOLVED FURTHER, that District Senior Management (the "Committee") is hereby established as of November 1, 2010 and will serve as named Administrator of the Plan; and

FINALLY RESOLVED, that the Committee (or its designee) is authorized and directed to take such actions as may be necessary or advisable in connection with the implementation of the Plan and Trust Agreement and Amendments, including any amendments as may from time to time be required and to make such additional amendments to the Plan or execute such further documents as may be necessary or desirable, all without the further approval of the Board, except as to any matter that will have a substantial and material impact on the cost of funding or administering the Plan.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand and the seal of the Board this ____ day of _____, 2010.

Signature of President
Kenai Peninsula Board of Education

Print Name of President

Date

**ELIGIBLE 457 PROTOTYPE PLAN
SALARY REDUCTION CONTRIBUTIONS/EMPLOYER CONTRIBUTIONS
ADOPTION AGREEMENT**

**ELIGIBLE 457 PROTOTYPE PLAN
SALARY REDUCTION CONTRIBUTIONS/EMPLOYER CONTRIBUTIONS
ADOPTION AGREEMENT**

The undersigned, Kenai Peninsula Borough School District ("Employer"), by executing this Adoption Agreement, elects to become a participating Employer in the CPI Qualified Plan Consultants, Inc. (*Sponsor's Name*) Eligible 457 Prototype Plan ("Plan"). The Plan consists of this Adoption Agreement and the accompanying basic plan document. The Employer makes the following elections granted under the provisions of the Plan.

**ARTICLE I
DEFINITIONS**

PLAN (1.21). The name of the Plan as adopted by the Employer is Kenai Peninsula Borough School District 457(b) Eligible Deferred Compensation Plan

TYPE OF 457 PLAN (1.36). The Type of 457 Plan is a (*Choose one of (a) or (b)*):

- (a) **Governmental Eligible 457 Plan.** [Plan Section 1.36(A)]
- (b) **Tax-Exempt Organization Eligible 457 Plan.** [Plan Section 1.36(B)] [*Note: A Tax-Exempt Organization must restrict participation in the Plan to a select group of management or highly compensated employees.*]

EMPLOYEE (1.09). The following are Excluded Employees and are not eligible to participate in the Plan (*Choose (a) or choose one or more of (b) through (f) as applicable*):

- (a) **No exclusions.** All Employees are eligible to participate.
- (b) **Part-time Employees.** The Plan defines part-time Employees as Employees who normally work less than _____ hours per week.
- (c) **Hourly-paid Employees.**
- (d) **All Employees except top-hat group.** All Employees are Excluded Employees except those Employees who the Employer determines are in a select group of management or highly compensated employees as would constitute a "top-hat" group within the meaning of Title I of ERISA.
- (e) **Leased Employees.** The Plan excludes Leased Employees.
- (f) (*Specify*) Employees included in a unit of employees covered by a collective bargaining agreement that does not specifically provide for participation in the Plan.

[*Note: A Tax-Exempt Organization must elect (d) or in (f) must specify top-hat group Participants by name, title or otherwise.*]

INDEPENDENT CONTRACTOR (1.15). The Plan (*Choose one of (a), (b) or (c)*):

- (a) **Participate.** Permits Independent Contractors to participate in the Plan.
- (b) **Not participate.** Does not permit Independent Contractors to participate in the Plan.

Eligible 457 Prototype Plan
Salary Reduction Contributions/Employer Contributions Adoption Agreement

(c) **Specified Independent Contractors.** Permits the following specified Independent Contractors to participate: _____

[Note: If the Employer elects to permit any or all Independent Contractors to participate in the Plan, the term Employee as used in the Plan includes such participating Independent Contractors.]

COMPENSATION (1.05). Subject to the following elections, Compensation for purposes of allocation of Deferral Contributions means W-2 wages (including Elective Contributions). Compensation for an Independent Contractor means the amounts the Employer pays to the Independent Contractor for services, except as the Employer otherwise specifies below.

Modifications to Compensation definition. The Employer elects to modify the Compensation definition as follows (*Choose (a) or choose one or more of (b) through (f) as applicable*):

(a) **No modifications.** The Plan makes no modifications to the definition.

(b) **Fringe benefits.** The Plan excludes all reimbursements or other expense allowances, fringe benefits (cash and noncash), moving expenses, deferred compensation and welfare benefits.

(c) **Elective Contributions.** [Plan Section 1.05(C)] The Plan excludes a Participant's Elective Contributions.

(d) **Bonuses.** The Plan excludes bonuses.

(e) **Overtime.** The Plan excludes overtime.

(f) (*Specify*) _____

Compensation taken into account. For the Plan Year in which an Employee first becomes a Participant, the Plan Administrator, except as to Salary Reduction Contributions, will determine the allocation by taking into account (*Choose one of (g) or (h)*):

(g) **Plan Year.** The Employee's Compensation for the entire Plan Year.

(h) **Compensation while a Participant.** The Employee's Compensation only for the portion of the Plan Year in which the Employee actually is a Participant.

PLAN YEAR (1.24). Plan Year means the 12-consecutive month period (except for a short Plan Year) ending every (*Choose one of (a) or (b). Choose (c) as applicable*):

(a) **December 31.**

(b) **Other:** _____

(c) **Short Plan Year:** commencing on: _____ and ending on: _____.

EFFECTIVE DATE (1.08). (*Choose one of (a) or (b). Choose (c) as applicable*):

(a) **New Plan.** The Effective Date of the Plan is _____

(b) **Restated Plan.** The restated Effective Date is August 1, 2010. This Plan is a substitution and amendment of an existing 457 plan originally established effective as of May 19, 2001.

(c) **Special Effective Dates.** The following special Effective Dates apply: _____

NORMAL RETIREMENT AGE (1.19). A Participant attains Normal Retirement Age under the Plan (Choose one of (a) or (b). Choose (c) as applicable)

(a) **Plan designation.** [Plan Section 3.05(B)] When the Participant attains age _____.

(b) **Participant designation.** [Plan Section 3.05(B) and (B)(1)] When the Participant attains the age the Participant designates, which may not be earlier than the age at which the Participant has the right to retire and receive immediate retirement benefits without actuarial or similar reduction because of retirement under the defined benefit pension plan of the state and may not be later than age 70 ½. If the participant is not eligible to receive benefits under the defined pension plan, then the age the participant designates may not be earlier than age 65

(c) **Police/firefighters.** [Plan Section 3.05(B)(3)] (Choose one of (1) or (2)):

(1) **Plan designation.** When the Participant attains age _____.

(2) **Participant designation.** When the Participant attains the age the Participant designates, which may not be earlier than age _____ (no earlier than age 40) and may not be later than age _____ (no later than 70½).

ARTICLE II EMPLOYEE PARTICIPANTS

2.01 ELIGIBILITY.

Eligibility Conditions. To become a Participant in the Plan, an Employee must satisfy the following eligibility condition(s) (Choose (a) or choose one or more of (b) through (d) as applicable):

(a) **No eligibility conditions.** The Employee is eligible to participate in the Plan as of his/her first day of employment with the Employer.

(b) **Age.** Attainment of age _____.

(c) **Service.** Service requirement (Choose one of (1) or (2)):

(1) **Year of Service.** One year of Continuous Service.

(2) **Months(s) of Service.** _____ month(s) of Continuous Service.

(d) (Specify) _____

Plan Entry Date. "Plan Entry Date" means the Effective Date and (Choose one of (e) through (h)):

(e) **Monthly.** The first day of the month coinciding with or next following the Employee's satisfaction of the Plan's eligibility conditions.

- (f) **Annual.** The first day of the Plan Year coinciding with or next following the Employee's satisfaction of the Plan's eligibility conditions.
- (g) **Date of hire.** The Employee's employment commencement date with the Employer.
- (h) *(Specify)* The first payroll or payment date in the next month following the month in which the Employee files a Salary Reduction Agreement

**ARTICLE III
SALARY REDUCTION CONTRIBUTIONS, MATCHING CONTRIBUTIONS
AND NONELECTIVE CONTRIBUTIONS**

3.01 **TYPE AND AMOUNT.** The amount and type(s) of Deferral Contributions to the Plan for a Plan Year or other specified period will equal *(Choose one or more of (a) through (c) as applicable)*

- (a) **Salary Reduction Contributions.** The dollar or percentage amount by which each Participant has elected to reduce his/her Compensation, as provided in the Participant's Salary Reduction Agreement.
- (b) **Matching Contributions.** The Matching Contributions made in accordance with Section 3.03.
- (c) **Nonelective Contributions.** The following Nonelective Contribution *(Choose one or more of (1), (2) or (3) as applicable)*:

(1) **Discretionary contribution.** An amount the Employer in its sole discretion may determine.

(2) **Fixed contribution.** The following amount: _____.

(3) **Non-pro rata allocation.** The Plan Administrator will allocate the fixed or discretionary Nonelective Contributions as follows: _____.

3.02 **SALARY REDUCTION CONTRIBUTIONS.** A Participant's Salary Reduction Contributions are subject to the following limitation(s) in addition to those imposed by the Code *(Choose (a) or choose one or more of (b) through (d) as applicable)*.

(a) **No limitations.**

(b) **Maximum deferral amount:** _____.

(c) **Minimum deferral amount:** _____.

(d) *(Specify)* _____.

[Note: Any limitation the Employer elects in (b) through (d) will apply on a payroll basis unless the Employer otherwise specifies.]

Age 50 Catch-up Contributions. [Plan Section 3.06] The Plan *(Choose one of (e) or (f))*:

(e) **Permits.** Permits Participants to make age 50 catch-up contributions.

(f) **Does not permit.** Does not permit Participants to make age 50 catchup contributions.

[Note: Only a Governmental Eligible 457 Plan may permit age 50 catchup contributions.]

Sick, Vacation and Back Pay. [Plan Section 3.02(A)] The Plan *(Choose one of (g) or (h))*:

(g) **Permits.** Permits Participants to make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay.

(h) **Does not permit.** Does not permit Participants to make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay.

Automatic Enrollment. [Plan Section 3.02(B)] The Plan *(Choose one of (i) or (j))*:

(i) **Does not apply.** Does not apply the Plan's automatic enrollment provisions.

(j) **Applies.** Applies the Plan's automatic enrollment provisions. The Employer as a Salary Reduction Contribution will withhold _____% from each Participant's Compensation unless the Participant elects a lesser percentage (including zero) under his/her Salary Reduction Agreement. The automatic election will apply to *(Choose one of (1) or (2))*:

(1) **All Participants.** All Participants who as of _____ are not making Salary Reduction Contributions at least equal to the automatic amount.

(2) **New Participants.** Each Employee whose Plan Entry Date is on or following _____.

3.03 MATCHING CONTRIBUTIONS. The Employer's Matching Contribution is *(If the Employer elects Section 3.01(b), the Employer must elect one or more of (a), (b) or (c))*

(a) **Fixed formula.** An amount equal to _____% of each Participant's Salary Reduction Contributions.

(b) **Discretionary formula.** An amount (or additional amount) equal to a matching percentage the Employer from time to time may deem advisable of each Participant's Salary Reduction Contributions.

(c) *(Specify)* _____.

Time period for Matching Contributions. The Employer will determine its Matching Contribution based on Salary Reduction Contributions made during each *(Choose one of (d) through (g))*:

(d) **Plan Year.**

(e) **Plan Year quarter.**

(f) **Payroll period.**

(g) *(Specify):* At a time determined by the Employer.

Salary Reduction Contributions Taken into Account. In determining a Participant's Salary Reduction Contributions taken into account for the above-specified time period under the Matching Contribution formula, the following limitations apply *(Choose one of (h), (i), (j) or (k))*:

(h) **All Salary Reduction Contributions.** The Plan Administrator will take into account all Salary Reduction Contributions.

(i) **Specific limitation.** The Plan Administrator will disregard Salary Reduction Contributions exceeding _____% of the Participant's Compensation.

(j) **Discretionary.** The Plan Administrator will take into account the Salary Reduction Contributions as a percentage of the Participant's Compensation as the Employer determines.

(k) *(Specify):* _____

3.08 ALLOCATION CONDITIONS. The Plan does not apply any allocation conditions to Salary Reduction Contributions. To receive an allocation of a Matching Contribution or Nonelective Contribution, a Participant must satisfy the following condition(s) *Choose (a) or choose one or more of (b) through (f):*

(a) **No allocation conditions.**

(b) **Service condition.** The Participant must complete the following number of months of Continuous Service during the Plan Year: _____.

(c) **Employment condition.** The Participant must be employed by the Employer on the last day of the Plan Year.

(d) **Limited Severance Exception.** Any condition specified in (b) or (c) does not apply if the Participant incurs a Severance from Employment during the Plan Year on account of death, disability or attainment of Normal Retirement Age in the current Plan Year or in a prior Plan Year.

(e) **Limited allocation conditions.** The Plan does not impose an allocation condition for the following types of contributions: _____.

(f) *(Specify):* As determined by the Employer.

ARTICLE IV TIME AND METHOD OF PAYMENT OF BENEFITS

4.02 TIME/METHOD OF PAYMENT OF ACCOUNT. The Plan will distribute to a Participant who incurs a Severance from Employment his/her Vested Account as follows:

Timing. The Plan shall commence making payments to the Participant in accordance with the Election made by the Participant no earlier than *(Choose one of (a) through (e)):*

(a) **Specified Date.** _____ days after the Participant's Severance from Employment. *[Note: In a Tax-Exempt Organization 457 Plan, the Employer may wish to designate a specific payment date. This date will be the date upon which a Participant's Deferred Compensation is "made available" and therefore becomes taxable to the Participant, absent a proper Participant election to defer payment.]*

(b) **Immediate.** As soon as administratively practicable following the Participant's Severance from Employment.

(c) **Designated Plan Year.** As soon as administratively practicable in the _____ Plan Year beginning after the Participant's Severance from Employment.

(d) **Normal Retirement Age.** As soon as administratively practicable after the close of the Plan Year in which the Participant attains Normal Retirement Age.

(e) *(Specify)*: As allowed under the terms of each available investment vehicle

Method. The Plan, will distribute the Participant's Account in accordance with the payment option elected by the Participant and may include, but are not limited to *(Choose one or more of (f) through (j) as applicable)*:

(f) **Lump sum.** A single payment.

(g) **Installments.** Multiple payments made as follows: equal monthly installments over a term of years selected by the participant

(h) **Installments for required minimum distributions only.** Annual payments, as necessary under Plan Section 4.03.

(i) **Annuity distribution option(s):** monthly annuity payments based upon the Participant's life expectancy of the joint life expectancies of the Participant and his designated Beneficiary

(j) *(Specify)* As allowed under the terms of each available investment vehicle

Participant Election. [Plan Sections 4.02(A) and (B)] The Plan *(Choose one of (k), (l) or (m))*:

(k) **Permits.** Permits a Participant, with Plan Administrator approval of the election, to elect to postpone distribution beyond the time the Employer has elected in (a) through (e) and also to elect the method of distribution (including a method not described in (f) through (j) above).

(l) **Does not permit.** Does not permit a Participant to elect the timing and method of Account distribution.

(m) *(Specify)*: _____

4.03 **REQUIRED MINIMUM DISTRIBUTIONS.** The following elections apply to required minimum distributions under the Plan *(Choose one of (a) or (b) as applicable. Choose (c) and (d) as applicable)*.

(a) **Five-year rule.** If a Participant with a designated Beneficiary dies before the required beginning date, the Plan will distribute the Participant's Account by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(b) **Participant election.** A Participant or designated Beneficiary, on an individual basis in accordance with applicable Treasury regulations, may elect whether to apply the five-year rule or the life expectancy rule to the distribution of a deceased Participant's Account.

(c) **Effective date.** The required minimum distribution provisions of Section 4.03 apply commencing in 2003, or if later, on the Plan's Effective Date.

(d) **Special designated Beneficiary election.** A designated Beneficiary who is receiving payments under the five-year rule on or before December 31, 2002, may elect the life expectancy rule, in accordance with applicable Treasury regulations.

[Note: An Employer need not elect any of (a) through (d) above. These elections override certain "default" Plan provisions.]

4.05 **DISTRIBUTIONS PRIOR TO SEVERANCE FROM EMPLOYMENT.** A Participant prior to Severance from Employment may elect to receive a distribution of his/her Vested Account under the following distribution options *(Choose (a) or choose one or more of (b) through (e) as applicable)*

(a) **None.** A Participant may not receive a distribution prior to Severance from Employment.

- (b) **Unforeseeable emergency.** A Participant may elect a distribution from his/her Account in accordance with Plan Section 4.05(A).
- (c) **De minimis exception.** Subject to the terms of each available investment vehicle, [Plan Section 4.05(B)] if the Participant: (i) has an Account that does not exceed \$5,000; (ii) has not made or received an allocation of any Deferral Contributions under the Plan during the two-year period ending on the date of distribution; and (iii) has not received a prior Plan distribution under this de minimis exception, then *(Choose one of (1), (2) or (3))*:
- (1) **Participant election.** The Participant may elect to receive all or any portion of his/her Account.
- (2) **Mandatory distribution.** The Plan Administrator will distribute the Participant's entire Account.
- (3) **Hybrid.** The Plan Administrator will distribute a Participant's Account that does not exceed \$_____ and the Participant may elect to receive all or any portion of his/her Account that exceeds \$_____ but that does not exceed \$5,000.
- (d) **Age 70½.** A Participant who attains age 70½ prior to Severance from Employment may elect distribution of any or all of his/her Account.
- (e) **Distribution of Rollover Contributions.** Subject to the terms of each available investment vehicle, a Participant *(Choose one of (1) or (2))*:

- (1) **Distribution without restrictions.** May elect distribution of his/her Rollover Contributions Account in accordance with Plan Section 4.05(C) at any time.
- (2) **No distribution.** May not elect to receive distribution of his/her Rollover Contributions Account until the Plan has a distributable event under Plan Section 4.01.

(3) *(Specify)* _____

(f) *(Specify)* _____

[Note: An Employer in an Eligible 457 Plan need not permit any in-service distributions. In an Eligible 457 Plan, any election must comply with the distribution restrictions of Code §457(d).]

4.06 **QDRO.** The QDRO provisions of Plan Section 4.06 *(Choose one of (a), (b) or (c))*:

- (a) **Apply.**
- (b) **Do not apply.**
- (c) *(Specify)* _____

ARTICLE V

PLAN ADMINISTRATOR - DUTIES WITH RESPECT TO PARTICIPANTS' ACCOUNTS

5.07 **ALLOCATION OF NET INCOME, GAIN OR LOSS.** The Plan Administrator will allocate net income, gain or loss using the following method *(Choose one of (a), (b) or (c))*:

- (a) **Account Earnings.** The Plan credits to each Account the Account's actual earnings, including Trust earnings if applicable.

(b) **Interest.** The Plan credits to each Account interest at the rate of _____ % per annum compounded _____.

(c) (Specify) Daily, quarterly, annually or any other such period, as determined under the terms of each available investment vehicle.

5.11 VESTING/SUBSTANTIAL RISK OF FORFEITURE. A Participant's Deferral Contributions are [Note: If a Participant incurs a Severance from Employment before the specified events or conditions, the Plan will forfeit the Participant's Account.] Choose one of (a), (b), (c) or (d). Choose (e) as applicable)

(a) **100% Vested.** Immediately Vested without regard to additional Service.

(b) **Forfeiture under Vesting Schedule.** Vested according to the following vesting schedule:

Years of Service	Vested Percentage
_____	_____
_____	_____
_____	_____
_____	_____

For this purpose, a "Year of Service" means: _____.

(c) **Substantial Risk of Forfeiture.** Vested only when no longer subject to the following Substantial Risk of Forfeiture as follows (Choose (1) or (2)):

(1) The Participant must remain employed by the Employer until _____, unless earlier Severance from Employment occurs on account of death or disability, as the Plan Administrator shall establish.

(2) (Specify) _____

(d) (Specify) _____

(e) **Contributions affected.** The following contributions are subject to the vesting schedule under (b), Substantial Risk of Forfeiture under (c) or vesting as described in (d) (Choose one or more of (1), (2) or (3)):

(1) **Salary Reduction Contributions.**

(2) **Nonelective Contributions.**

(3) **Matching Contributions.**

(4) (Specify) _____

[Note: Any contribution type the Employer does not elect under (e) is immediately 100% Vested. If the Employer elects (a), it need not elect (e) or one of (f) through (i) below.]

Forfeiture Allocation. [Plan Sections 5.11(A) and 5.14] The Plan Administrator will allocate any Plan forfeitures *(Choose one of (f), (g), (h) or (i))*:

- (f) **Reversion.** As a reversion to the Employer. *[Note: Do not elect (f) in a Governmental Eligible 457 Plan.]*
- (g) **Additional Contributions.** As the following contribution type *(Choose one or (1) or (2))*:
 - (1) **Nonelective.** As an additional Nonelective Contribution.
 - (2) **Matching.** As an additional Matching Contribution.
- (h) **Reduce Fixed Contributions.** To reduce the following fixed contribution *(Choose one of (1) or (2))*:
 - (1) **Nonelective.** To reduce the Employer's fixed Nonelective Contribution.
 - (2) **Matching.** To reduce the Employer's fixed Matching Contribution.
- (i) *(Specify):* _____

**ARTICLE VIII
TRUST PROVISIONS – GOVERNMENTAL ELIGIBLE 457 PLAN**

8.01 MODIFICATION OR SUBSTITUTION OF TRUST. The following provisions apply to Article VIII of the Plan *(Choose one of (a) or (b) as applicable)*.

- (a) **Modifications.** The Employer modifies the Article VIII Trust provisions as follows: _____
_____ The remaining Article VIII provisions apply.
- (b) **Substitution.** The Employer replaces the Trust with the Trust Agreement attached to the Plan as "Appendix A."

8.04 DISCRETIONARY/NONDISCRETIONARY TRUSTEE. *(Choose one of (a) or (b))*:

- (a) **Discretionary trustee.** [Plan Section 8.04] The Trustee is a discretionary Trustee.
- (b) **Nondiscretionary trustee.** [Plan Section 8.04(A)] The Trustee is a nondiscretionary Trustee.

8.16 CUSTODIAL ACCOUNT/ANNUITY CONTRACT. The Employer will hold all or part of the Deferred Compensation in a Trust, unless Investment Provider elects to hold all or part of the deferred compensation in one or more custodial accounts or annuity contracts which satisfy the requirements of Code §457(g) *(Choose one or more of (a), (b) or (c) as applicable)*.

- (a) **Custodial account(s).**
- (b) **Annuity contract(s).**
- (c) *(Specify):* _____

[Note: The Employer under (c) may wish to identify the custodial accounts or annuity contracts or to designate a portion of the Deferred Compensation to be held in such vehicles versus held in the Trust.]

PLAN EXECUTION

The Employer hereby agrees to the provisions of the Eligible 457 Prototype Plan, as modified by the elections the Employer has made in this Adoption Agreement, and in witness of its agreement, the Employer, by its duly authorized officer or official, has executed this Adoption Agreement, on this ___ day of _____, _____.

Name of Employer: Kenai Peninsula Borough School District

Employer's EIN: 92-0030923

Signed: _____

[Name/Title]

The Trustee, by executing this Adoption Agreement, accepts its position as Trustee and agrees to all of the obligations, responsibilities and duties imposed upon the Trustee under the Prototype Plan and Trust Agreement. The Trustee has signified its acceptance, on this ___ day of _____, _____.

Name of Trustee: N/A

Signed: _____

[Name/Title]

**CPI QUALIFIED PLAN CONSULTANTS, INC.
ELIGIBLE 457 PROTOTYPE PLAN
AND
TRUST AGREEMENT**

CPI QUALIFIED PLAN CONSULTANTS, INC.
ELIGIBLE 457 PROTOTYPE PLAN AND TRUST AGREEMENT

CPI Qualified Plan Consultants, Inc., in its capacity as Eligible 457 Prototype Plan Sponsor, establishes this Eligible 457 Prototype Plan intended be an "eligible deferred compensation plan" as defined in Code §457(b) of the Internal Revenue Code of 1986, as amended. An Employer establishes a Plan and if applicable, a Trust under this Eligible 457 Prototype Plan by executing an Adoption Agreement. If the Employer adopts this Plan as a restated Plan in substitution for, and in amendment of, an existing plan, the provisions of this Plan, as a restated Plan, apply solely to an Employee on or after the restated Effective Date of the Employer's Plan. If an Employee incurs a Severance from Employment prior to the restated Effective Date, that Employee is entitled to benefits under the Plan as the Plan existed on the date of the Employee's Severance from Employment.

ARTICLE I
DEFINITIONS

1.01 **"Account"** means the separate Account(s) which the Plan Administrator or the Trustee maintains under the Plan for a Participant's Deferred Compensation. The Plan Administrator or Trustee may establish separate Accounts for multiple Beneficiaries of a Participant to facilitate required minimum distributions under Section 4.03 based on each Beneficiary's life expectancy.

1.02 **"Accounting Date"** means the last day of the Plan Year. The Plan Administrator will allocate Employer contributions and forfeitures for a particular Plan Year as of the Accounting Date of that Plan Year, and on such other dates, if any, as the Plan Administrator determines, consistent with the Plan's allocation conditions and other provisions.

1.03 **"Beneficiary"** means a person who the Plan or a Participant designates and who is or may become entitled to a Participant's Account upon the Participant's death. A Beneficiary who becomes entitled to a benefit under the Plan remains a Beneficiary under the Plan until the Plan Administrator or Trustee has fully distributed to the Beneficiary his/her Plan benefit. A Beneficiary's right to (and the Plan Administrator's or a Trustee's duty to provide to the Beneficiary) information or data concerning the Plan does not arise until the Beneficiary first becomes entitled to receive a benefit under the Plan.

1.04 **"Code"** means the Internal Revenue Code of 1986, as amended.

1.05 **"Compensation"** for purposes of allocating Deferral Contributions means W-2 wages plus Elective Contributions. Any reference in this

Plan to Compensation is a reference to the definition in this Section 1.05 unless the Plan reference specifies a modification to this definition or the Employer in the Adoption Agreement elects a modification. The Plan Administrator will take into account only Compensation actually paid for the relevant period. A Compensation payment includes Compensation paid by the Employer through another person under the common paymaster provisions in Code §§3121 and 3306. See Section 1.15 as to Compensation for an Independent Contractor. Compensation also includes any amount that the Internal Revenue Service in published guidance declares to constitute compensation for purposes of a 457 Plan.

(A) **"W-2 Wages"** W-2 wages means wages for federal income tax withholding purposes, as defined under Code §3401(a), plus all other payments to an Employee in the course of the Employer's trade or business, for which the Employer must furnish the Employee a written statement under Code §§6041, 6051 and 6052, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

(B) **Modification to Compensation.** The Employer must specify in its Adoption Agreement the Compensation the Plan Administrator is to take into account in allocating Deferral Contributions to a Participant's Account. For all Plan Years other than the Plan Year in which the Employee first becomes a Participant, the Plan Administrator will take into account only the Compensation determined for the portion of the Plan Year in which the Employee actually is a Participant.

(C) **Elective Contributions.** Compensation under Section 1.05 includes Elective Contributions unless the Employer in its Adoption Agreement elects to exclude Elective Contributions. "Elective Contributions" are amounts excludible from the Employee's gross income under Code §§125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b), 408(p) or 457, and contributed by the Employer, at the Employee's election, to a cafeteria plan, a qualified transportation fringe benefit plan, a 401(k) arrangement, a SARSEP, a tax-sheltered annuity, a SIMPLE plan or a Code §457 plan.

1.06 **"Deferral Contributions"** means as the Employer elects in Adoption Agreement Section 3.01, Salary Reduction Contributions, Nonelective Contributions and Matching Contributions. The Plan Administrator in applying the Code §457(b) limit will take into account Deferral Contributions in the Taxable Year in which deferred, or if later, in the

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Taxable Year in which the Deferral Contributions are no longer subject to a Substantial Risk of Forfeiture. The Plan Administrator in determining the amount of a Participant's Deferral Contributions disregards the net income, gain and loss attributable to Deferral Contributions unless the Deferral Contributions are subject to a Substantial Risk of Forfeiture. If a Deferral Contribution is subject to a Substantial Risk of Forfeiture, the Plan Administrator takes into the Deferral Contribution as adjusted for allocable net income, gain or loss in the Taxable Year in which the Substantial Risk of Forfeiture lapses.

1.07 **"Deferred Compensation"** means as to a Participant the amount of Deferral Contributions, Rollover Contributions and Transfers adjusted for allocable net income, gain or loss, in the Participant's Account.

1.08 **"Effective Date"** of this Plan is the date the Employer specifies in the Adoption Agreement. The Employer in the Adoption Agreement may elect special effective dates for Plan provisions the Employer specifies provided any such date(s) are permitted by the Code, by Treasury regulations, or by other applicable guidance.

1.09 **"Employee"** means an individual who provides services for the Employer, as a common law employee of the Employer. The Employer in its Adoption Agreement must elect or specify any Employee, or class of Employees, not eligible to participate in the Plan (an "Excluded Employee"). See Section 1.15 regarding potential treatment of an Independent Contractor as an Employee.

1.10 **"Employer"** means an employer who adopts this Plan by executing an Adoption Agreement.

1.11 **"Employer Contribution"** means Nonelective Contributions or Matching Contributions.

1.12 **"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended.

1.13 **"Excess Deferrals"** means Deferral Contributions to a Governmental Eligible 457 Plan or to a Tax-Exempt Organization Eligible 457 Plan for a Participant that exceed the Taxable Year maximum limitation of Code §§457(b) and (e)(18).

1.14 **"Includible Compensation"** means, for the Employee's Taxable Year, the Employee's total Compensation within the meaning of Code §415(c)(3) paid to an Employee for services rendered to the Employer. Includible Compensation includes Deferral Contributions under the Plan, compensation deferred under any other plan described in Code §457, and any amount excludible from the

Employee's gross income under Code §§401(k), 403(b), 125 or 132(f)(4) or any other amount excludible from the Employee's gross income for Federal income tax purposes. The Employer will determine Includible Compensation without regard to community property laws.

1.15 **"Independent Contractor"** means any individual who performs service for the Employer and who the Employer does not treat as an Employee or a Leased Employee. The Employer in the Adoption Agreement may elect to permit Independent Contractors to participate in the Plan. To the extent that the Employer permits Independent Contractor participation, references to Employee in the Plan include Independent Contractors and Compensation means the amounts the Employer pays to the Independent Contractor for services, except as the Employer otherwise specifies in its Adoption Agreement.

1.16 **"Investment Provider"** means the provider of the investment vehicles as approved by the Employer.

1.17 **"Leased Employee"** means an Employee within the meaning of Code §414(n).

1.18 **"Matching Contribution"** means an Employer fixed or discretionary contribution made or forfeiture allocated on account of Salary Reduction Contributions.

1.19 **"Nonelective Contribution"** means an Employer fixed or discretionary contribution not made as a result of a Salary Reduction Agreement and which is not a Matching Contribution.

1.20 **"Normal Retirement Age"** means the age the Employer specifies in the Adoption Agreement consistent with Section 3.05(B).

1.21 **"Participant"** is an Employee other than an Excluded Employee who becomes a Participant in accordance with the provisions of Section 2.01.

1.22 **"Plan"** means the 457 plan established or continued by the Employer in the form of this basic Plan and (if applicable) Trust Agreement, including the Adoption Agreement under which the Employer has elected to participate in this Eligible 457 Prototype Plan. The Employer in the Adoption Agreement must designate the name of the Plan. The Plan maintained by each adopting Employer is a separate Plan, independent from the plan of any other Employer adopting this Eligible 457 Prototype Plan. All section references within the Plan are Plan section references unless the context clearly indicates otherwise.

1.23 **"Plan Administrator"** is the Employer unless the Employer designates another person to

hold the position of Plan Administrator. The Plan Administrator may be a Participant.

1.24 **“Plan Entry Date”** means the dates the Employer elects in Adoption Agreement Section 2.01.

1.25 **“Plan Year”** means the consecutive 12-month period the Employer elects in the Adoption Agreement.

1.26 **“Rollover Contribution”** means the amount of cash or property which an eligible retirement plan described in Code §402(c)(8)(B) distributes to an eligible Employee or to a Participant in an eligible rollover distribution under Code §402(c)(4) and which the eligible Employee or Participant transfers directly or indirectly to a Governmental Eligible 457 Plan. A Rollover Contribution includes net income, gain or loss attributable to the Rollover Contribution. A Rollover Contribution excludes after-tax Employee contributions, as adjusted for net income, gain or loss.

1.27 **“Salary Reduction Agreement”** means a written agreement between a Participant and the Employer, by which the Employer reduces the Participant’s Compensation for Compensation not available as of the date of the election and contributes the amount as a Salary Reduction Contribution to the Participant’s Account.

1.28 **“Salary Reduction Contribution”** means a contribution the Employer makes to the Plan pursuant to a Participant’s Salary Reduction Agreement.

1.29 **“Service”** means any period of time the Employee is in the employ of the Employer. In the case of an Independent Contractor, Service means any period of time the Independent Contractor performs services for the Employer on an independent contractor basis. An Employee or Independent Contractor terminates Service upon incurring a Severance from Employment.

(A) Qualified Military Service. Service includes any qualified military service the Plan must credit for contributions and benefits in order to satisfy the crediting of Service requirements of Code §414(u). A Participant whose employment is interrupted by qualified military service under Code §414(u) or who is on a leave of absence for qualified military service under Code §414(u) may elect to make additional Salary Reduction Contributions upon resumption of employment with the Employer equal to the maximum Deferral Contributions that the Participant could have elected during that period if the Participant’s employment with the Employer had continued (at the same level of Compensation) without the interruption of leave, reduced by the

Deferral Contributions, if any, actually made for the Participant 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). The Employer shall make appropriate make-up Nonelective Contributions and Matching Contributions for such a Participant as required under Code §414(u). The Plan shall apply limitations of Article III to all Deferral Contributions under this paragraph with respect to the year to which the Deferral Contribution relates.

(B) “Continuous Service” as the Adoption Agreement describes means Service with the Employer during which the Employee does not incur a Severance from Employment.

(C) “Severance from Employment.”

(1) **Employee.** An Employee has a Severance from Employment when the Employee ceases to be an Employee of the Employer. A Participant does not incur a Severance from Employment if, in connection with a change in employment, the Participant’s new employer continues or assumes sponsorship of the Plan or accepts a Transfer of Plan assets as to the Participant.

(2) **Independent Contractor.** An Independent Contractor has a Severance from Employment when the contract(s) under which the Independent Contractor performs services for the Employer expires (or otherwise terminates), unless the Employer anticipates a renewal of the contractual relationship or the Independent Contractor becoming an Employee. The Employer anticipates renewal if it intends to contract for the services provided under the expired contract and neither the Employer nor the Independent Contractor has eliminated the Independent Contractor as a potential provider of such services under the new contract. Further, the Employer intends to contract for services conditioned only upon the Employer’s need for the services provided under the expired contract or the Employer’s availability of funds. Notwithstanding the preceding provisions of this Section 1.30, the Plan Administrator will consider an Independent Contractor to have incurred a Severance from Employment: (a) if the Plan Administrator or Trustee will not pay any Deferred Compensation to an Independent Contractor who is a Participant before a date which is at least twelve months after the expiration of the Independent Contractor’s contract (or the last to expire of such contracts) to render Services to the Employer; and (b) if before the applicable twelve-month payment date, the Independent Contractor performs Service as an Independent Contractor or as an Employee, the Plan Administrator or Trustee will not pay to the Independent Contractor his/her Deferred Compensation on the applicable date.

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1.30 “**State**” means (a) one of the 50 states of the United States or the District of Columbia, or (b) a political subdivision of a State, or any agency or instrumentality of a State or its political subdivision. A State does not include the federal government or any agency or instrumentality thereof.

1.31 A “**Substantial Risk of Forfeiture**” exists if the Plan expressly conditions a Participant’s right to Deferred Compensation upon the Participant’s future performance of substantial Service for the Employer.

1.32 “**Tax-Exempt Organization**” means any tax-exempt organization other than a governmental unit or a church or qualified church-controlled organization within the meaning of Code §3121(w)(3).

1.33 “**Taxable Year**” means the calendar year or other taxable year of a Participant.

1.34 “**Transfer**” means a transfer of Eligible 457 Plan assets to another Eligible 457 Plan which is not a Rollover Contribution and which is made in accordance with Section 9.03.

1.35 “**Trust**” means the Trust created under the adopting Employer’s Plan. The Trust created and established under the adopting Employer’s Plan is a separate Trust, independent of the trust of any other Employer adopting this Eligible 457 Prototype Plan. A Trust required under a Governmental Eligible 457 Plan is subject to Article VIII. Any Trust under a Tax-Exempt Organization Eligible 457 Plan is subject to Section 5.09.

1.36 “**Trustee**” means the person or persons who, as Trustee execute the Employer’s Adoption Agreement, or any successor in office who in writing accepts the position of Trustee.

1.37 **Type of 457 Plan.** The Employer in the Adoption Agreement must specify both the sponsor type and plan type from the following:

(A) “**Governmental Eligible 457 Plan**” means an Eligible 457 Plan established by a State.

(B) “**Tax-Exempt Organization Eligible 457 Plan**” means an Eligible 457 Plan established by a Tax-Exempt Organization.

(C) “**Eligible 457 Plan**” means a plan which satisfies the requirements of Code §457(b) and Treas. Reg. §§1.457-3 through -10.

1.38 “**Vested**” means a Participant’s Deferral Contributions that are not subject to a Substantial Risk of Forfeiture, including a vesting schedule.

ARTICLE II PARTICIPATION IN PLAN

2.01 **ELIGIBILITY.** Each Employee who is not an Excluded Employee becomes a Participant in the Plan in accordance with the eligibility conditions and as of the Plan Entry Date the Employer elects in its Adoption Agreement. If this Plan is a restated Plan, each Employee who was a Participant in the Plan on the day before the Effective Date continues as a Participant in the Plan, irrespective of whether he/she satisfies the eligibility conditions in the restated Plan, unless the Employer indicates otherwise in the Adoption Agreement.

2.02 **PARTICIPATION UPON RE-EMPLOYMENT.** A Participant who incurs a Severance from Employment will re-enter the Plan as a Participant on the date of his/her re-employment. An Employee who satisfies the Plan’s eligibility conditions but who incurs a Severance from Employment prior to becoming a Participant will become a Participant on the later of the Plan Entry Date on which he/she would have entered the Plan had he/she not incurred a Severance from Employment or the date of his/her re-employment. Any Employee who incurs a Severance from Employment prior to satisfying the Plan’s eligibility conditions becomes a Participant in accordance with Adoption Agreement Section 2.01.

2.03 **CHANGE IN EMPLOYEE STATUS.** If a Participant has not incurred a Severance from Employment but ceases to be eligible to participate in the Plan, by reason of becoming an Excluded Employee, the Plan Administrator must treat the Participant as an Excluded Employee during the period such a Participant is subject to the Adoption Agreement exclusion. The Plan Administrator determines a Participant’s sharing in the allocation of Employer Contributions by disregarding his/her Compensation paid by the Employer for services rendered in his/her capacity as an Excluded Employee. However, during such period of exclusion, the Participant, without regard to employment classification, continues to share fully in Plan income allocations under Section 5.07 and to accrue vesting service if applicable.

ARTICLE III DEFERRAL CONTRIBUTIONS/LIMITATIONS

3.01 **AMOUNT.**

(A) **Contribution Formula.** For each Plan Year, or other period the Employer specifies in the Adoption Agreement, the Employer will contribute to the Plan

the type and amount of Deferral Contributions the Employer elects in its Adoption Agreement.

(B) Return of Contributions. The Employer contributes to this Plan on the condition its contribution is not due to a mistake of fact. If the Plan has a Trust, the Trustee, upon written request from the Employer, must return to the Employer the amount of the Employer's contribution (adjusted for net income, gain or loss) made by the Employer on account of a mistake of fact. The Trustee will not return any portion of the Employer's contribution under the provisions of this paragraph more than one year after the Employer made the contribution on account of a mistake of fact. In addition, if any Participant Salary Reduction Contribution is due to a mistake of fact, the Employer or the Trustee upon written request from the Employer shall return the Participant's contribution (adjusted for net income, gain or loss), within one year after payment of the contribution.

The Trustee will not increase the amount of the Employer contribution returnable under this Section 3.01 for any earnings attributable to the contribution, but the Trustee will decrease the Employer contribution returnable for any losses attributable to it. The Trustee may require the Employer to furnish it whatever evidence the Trustee deems necessary to enable the Trustee to confirm the amount the Employer has requested be returned is properly returnable.

(C) Time of Payment of Contribution. If the Plan has a Trust, the Employer may pay its contributions for each Plan Year to the Trust in one or more installments and at such time(s) as the Employer determines, without interest. A Governmental Employer shall deposit Salary Reduction Contributions to the Trust within a period that is not longer than is reasonable for the administration of Participant Accounts.

3.02 SALARY REDUCTION CONTRIBUTIONS. The Employer in the Adoption Agreement must elect whether the Plan permits Salary Reduction Contributions, and also the Plan limitations, if any, which apply to Salary Reduction Contributions. Unless the Employer elects otherwise in the Adoption Agreement, all such limitations apply on a payroll basis.

(A) Deferral from Sick, Vacation and Back Pay. The Employer in the Adoption Agreement must elect whether to permit Participants to make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay.

(B) Automatic Enrollment. The Employer in the Adoption Agreement may provide for automatic Salary Reduction Contributions of a specified amount, subject to giving notice to affected

Participants of the automatic election and of their right to make a contrary election.

(C) Application to Leave of Absence and Disability. Unless a Participant in his/her Salary Reduction Agreement elects otherwise, the Participant's Salary Reduction Agreement shall continue to apply during the Participant's leave of absence or the Participant's disability (as the Plan Administrator shall establish), if the Participant has Compensation other than imputed compensation or disability benefits.

3.03 MATCHING CONTRIBUTIONS. The Employer in the Adoption Agreement must elect whether the Plan permits Matching Contributions and, if so, the type(s) of Matching Contributions, the time period applicable to any Matching Contribution formula, and as applicable, the amount of Matching Contributions and the Plan limitations, if any, which apply to Matching Contributions. Any Matching Contributions apply to Normal Retirement Age catch-up contributions and to age 50 catch-up contributions, if any, unless the Employer elects otherwise in the Adoption Agreement.

3.04 NORMAL LIMITATION. Except as provided in Sections 3.05 and 3.06, a Participant's maximum Deferral Contributions (excluding Rollover Contributions and Transfers) under this Plan for a Taxable Year may not exceed the lesser of:

(a) The applicable dollar amount as specified under Code §457(e)(15) (or, beginning January 1, 2006) such larger amount as the Commissioner of the Internal Revenue may prescribe), or

(b) 100% of the Participant's Includible Compensation for the Taxable Year.

3.05 NORMAL RETIREMENT AGE CATCH-UP CONTRIBUTION. For one or more of the Participant's last three Taxable Years ending before the Taxable Year in which the Participant attains Normal Retirement Age, the Participant's maximum Deferral Contributions may not exceed the lesser of:

(a) Twice the dollar amount under Section 3.04(a) normal limitation, or (b) the underutilized limitation.

(A) Underutilized Limitation. A Participant's underutilized limitation is equal to the sum of: (i) the normal limitation for the Taxable Year, and (ii) the normal limitation for each of the prior Taxable Years of the Participant commencing after 1978 during which the Participant was eligible to participate in the Plan and the Participant's Deferral Contributions were subject to the normal limitation or any other Code §457(b) limit, less the amount of Deferral

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Contributions for each such prior Taxable Year, excluding age 50 catch-up contributions.

(B) Normal Retirement Age. Normal Retirement Age is the age the Employer specifies in the Adoption Agreement provided that the age may not be: (i) earlier than the earliest of age 65 or the age at which Participants have the right to retire and receive under the Employer's defined benefit plan (or money purchase plan if the Participant is not eligible to participate in a defined benefit plan) immediate retirement benefits without actuarial or other reduction because of retirement before a later specified age; or (ii) later than age 70½.

(1) Participant Designation. The Employer in the Adoption Agreement may permit a Participant to designate his/her Normal Retirement Age as any age including or between the foregoing ages.

(2) Multiple 457 Plans. If the Employer maintains more than one Eligible 457 Plan, the Plans may not permit any Participant to have more than one Normal Retirement Age under the Plans.

(3) Police and Firefighters. In a Governmental Eligible 457 Plan with qualified police or firefighter Participants within the meaning of Code §415(b)(2)(H)(ii)(I), the Employer in the Adoption Agreement may elect (or permit the qualified Participants to elect) a Normal Retirement Age as early as age 40 and as late as age 70½.

(C) Pre-2002 Coordination. In determining a Participant's underutilized limitation, the Plan Administrator, in accordance with Treas. Reg. §1.457-4(c)(3)(iv), must apply the coordination rule in effect under now repealed Code §457(c)(2). The Plan Administrator also must determine the normal limitation for pre-2002 Taxable Years in accordance with Code §457(b)(2) as then in effect.

3.06 AGE 50 CATCH-UP CONTRIBUTION. An Employer sponsoring a Governmental Eligible 457 Plan must specify in the Adoption Agreement whether the Participants are eligible to make age 50 catch-up contributions.

If an Employer elects to permit age 50 catch-up contributions, all Employees who are eligible to make Salary Reduction Contributions under this Plan and who have attained age 50 before the close of the Taxable Year are eligible to make age 50 catch-up contributions for that Taxable Year in accordance with, and subject to the limitations of, Code §414(v). Such catch-up contributions are not taken into account for purposes of the provisions of the plan implementing the required limitations of Code §457. If, for a Taxable Year, an Employee makes a catch-up contribution under Section 3.05, the Employee is not eligible to make age 50 catch-up contributions under this Section 3.06. A catch-up eligible

Participant in each Taxable Year is entitled to the greater of the amount determined under Section 3.05 or Section 3.06 catch-up amount plus the Section 3.04 normal limitation.

3.07 CONTRIBUTION ALLOCATION. The Plan Administrator will allocate to each Participant's Account his/her Deferral Contributions. The Employer will allocate Employer Nonelective and Matching Contributions to the Account of each Participant who satisfies the allocation conditions in Adoption Agreement Section 3.08 in the following manner:

(a) Fixed match. To the extent the Employer makes Matching Contributions under a fixed Adoption Agreement formula, the Plan Administrator will allocate the Matching Contribution to the Account of the Participant on whose behalf the Employer makes that contribution. A fixed Matching Contribution formula is a formula under which the Employer contributes a specified percentage or dollar amount on behalf of a Participant based on that Participant's Salary Reduction Contributions.

(b) Discretionary match. To the extent the Employer makes Matching Contributions under a discretionary Adoption Agreement formula, the Plan Administrator will allocate the Matching Contributions to a Participant's Account in the same proportion that each Participant's Salary Reduction Contributions taken into account under the formula bear to the total Salary Reduction Contributions of all Participants.

(c) Tiered match. If the Matching Contribution formula is a tiered formula, the Plan Administrator will allocate separately the Matching Contributions with respect to each tier of Salary Reduction Contributions, in accordance with the tiered formula.

(d) Discretionary nonelective. The Plan Administrator will allocate discretionary Nonelective Contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year, unless the Employer elects otherwise in the Adoption Agreement.

(e) Fixed nonelective. The Plan Administrator will allocate fixed Nonelective Contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year, unless the Employer elects otherwise in the Adoption Agreement.

3.08 ALLOCATION CONDITIONS. The Plan Administrator will determine the allocation conditions applicable to Nonelective Contributions or to Matching Contributions (or to both) in accordance with the Employer's elections in its Adoption

Agreement. The Plan Administrator will not allocate to a Participant any portion of an Employer Contribution (or forfeiture if applicable) for a Plan Year or applicable portion thereof in which the Participant does not satisfy the applicable allocation condition(s).

3.09 ROLLOVER CONTRIBUTIONS. For taxable years beginning after December 31, 2001, an Employer sponsoring a Governmental Eligible 457 Plan may permit Rollover Contributions.

(A) Operational Administration. The Employer, operationally and on a nondiscriminatory basis, may elect to permit or not to permit Rollover Contributions to this Plan or may elect to limit an eligible Employee's right or a Participant's right to make a Rollover Contribution. If the Employer permits Rollover Contributions, any Participant (or as applicable, any eligible Employee), with the Employer's written consent and after filing with the Trustee the form prescribed by the Plan Administrator, may make a Rollover Contribution to the Trust. Before accepting a Rollover Contribution, the Trustee may require a Participant (or eligible Employee) to furnish satisfactory evidence the proposed transfer is in fact a "Rollover Contribution" which the Code permits an employee to make to a eligible retirement plan. The Trustee, in its sole discretion, may decline to accept a Rollover Contribution of property which could: (1) generate unrelated business taxable income; (2) create difficulty or undue expense in storage, safekeeping or valuation; or (3) create other practical problems for the Trust.

(B) Pre-Participation Rollover. If an eligible Employee makes a Rollover Contribution to the Trust prior to satisfying the Plan's eligibility conditions, the Plan Administrator and Trustee must treat the Employee as a limited Participant (as described in Rev. Rul. 96-48 or in any successor ruling). A limited Participant does not share in the Plan's allocation of any Employer Contributions and may not make Salary Reduction Contributions until he/she actually becomes a Participant in the Plan. If a limited Participant has a Severance from Employment prior to becoming a Participant in the Plan, the Trustee will distribute his/her Rollover Contributions Account to the limited Participant in accordance with Article IV.

(C) Separate Accounting. If an Employer permits Rollover Contributions, the Plan Administrator must account separately for: (1) amounts rolled into this Plan from an eligible retirement plan (other than from another Governmental Eligible 457 plan); and (2) amounts rolled into this Plan from another Governmental Eligible 457 Plan. The Plan Administrator for purposes of ordering any subsequent distribution from this Plan, may designate a distribution from a Participant's Rollover Contributions as coming first from either of (1) or (2)

above if the Participant has both types of Rollover Contribution Accounts.

3.10 DISTRIBUTION OF EXCESS DEFERRALS. In the event that a Participant has Excess Deferrals, the Plan will distribute to the Participant the Excess Deferrals and allocable net income, gain or loss, in accordance with this Section 3.10.

(A) Governmental Eligible 457 Plan. The Plan Administrator will distribute Excess Deferrals from a Governmental Eligible 457 Plan as soon as is reasonably practicable following the Plan Administrator's determination of the amount of the Excess Deferral.

(B) Tax-Exempt Organization Eligible 457 Plan. The Plan Administrator will distribute Excess Deferrals from a Tax-Exempt Organization Eligible 457 Plan no later than April 15 following the Taxable Year in which the Excess Deferral occurs.

(C) Plan Aggregation. If the Employer maintains more than one Eligible 457 Plan, the Employer must aggregate all such Plans in determining whether any Participant has Excess Deferrals.

(D) Individual Limitation. If a Participant participates in another Eligible 457 Plan maintained by a different employer, and the Participant has Excess Deferrals, the Plan Administrator may, but is not required, to correct the Excess Deferrals by making a corrective distribution from this Plan.

3.11 DEEMED IRA CONTRIBUTIONS. A Governmental Employer under an Eligible 457 Plan may elect to permit Participants to make IRA contributions to this Plan in accordance with the Code §408(q) deemed IRA rules, commencing for Plan Years beginning after December 31, 2002. If the Employer elects to permit deemed IRA contributions to the Plan, the Employer will amend the Plan to add necessary IRA language and either the Rev. Proc. 2003-13 sample deemed IRA language or an appropriate substitute.

3.12 DOLLAR LIMITS. The table below shows the applicable dollar amounts described in paragraph 3.04(a) and limitations on age 50 catch-up contributions described in Section 3.06. These amounts are adjusted after 2006 for changes in the cost-of-living to the extent permitted in Code §415(d).

Year	Applicable Dollar Amount	Catch-up Contribution Limitation
2002	\$11,000	\$1,000
2003	\$12,000	\$2,000
2004	\$13,000	\$3,000
2005	\$14,000	\$4,000

2006	\$15,000	\$5,000
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**ARTICLE IV
TIME AND METHOD OF
PAYMENT OF BENEFITS**

4.01 DISTRIBUTION RESTRICTIONS.

Except as the Plan provides otherwise, the Plan Administrator or Trustee may not distribute to a Participant his/her Account prior to one of the following events:

- (a) The Participant's attaining age 70½;
- (b) The Participant's Severance from Employment; or
- (c) The Participant's death.

4.02 TIME AND METHOD OF PAYMENT OF ACCOUNT.

The Plan Administrator, or Trustee at the direction of the Plan Administrator, will distribute to a Participant who has incurred a Severance from Employment the Participant's Vested Account under one or any combination of payment methods and at the time(s) the Adoption Agreement specifies. If the Adoption Agreement permits more than one time or method, the Plan Administrator, in the absence of a Participant election described below, will determine the time and method applicable to a particular Participant. In no event will the Plan Administrator direct (or direct the Trustee to commence) distribution, nor will the Participant elect to have distribution commence, later than the Participant's required beginning date, or under a method that does not satisfy Section 4.03.

(A) Participant Election of Time and Method. The Employer in the Adoption Agreement must elect whether to permit Participants to elect the timing and method of distribution of their Account in accordance with this Section 4.02. The Plan Administrator must consent to the specific terms of any such Participant election and the Plan Administrator in its sole discretion may withhold consent. Subject to the foregoing conditions, a Participant: (1) may elect to postpone distribution of his/her Account beyond the time the Employer has elected in its Adoption Agreement, to any fixed or determinable date including, but not beyond, the Participant's required beginning date; and (2) may elect the method of payment. A Participant may elect the timing and method of payment of his/her Account no later than 30 days before the date the Plan Administrator or Trustee first would commence payment of the Participant's Account in accordance with the Adoption Agreement. The Plan Administrator must furnish to the Participant a form for the Participant to elect the time and a method of payment.

(B) Number of Initial Elections/Subsequent Elections. A Participant may make any number of elections or revoke any prior election under Section

4.02(A) within the election period. Once the initial election period expires, a Participant, before payment would commence under the Participant's initial election, may make one additional election to defer (but not to accelerate) the timing of payment of his/her Account and also as to the method of payment.

(C) No Election/Default. If the Participant does not make a timely election regarding the time and method of payment, the Plan Administrator will pay or direct the Trustee to pay the Participant's Account in accordance with the Adoption Agreement.

4.03 REQUIRED MINIMUM DISTRIBUTIONS. The Plan Administrator may not distribute nor direct the Trustee to distribute the Participant's Account, nor may the Participant elect any distribution his/her Account, under a method of payment which, as of the required beginning date, does not satisfy the minimum distribution requirements of Code §401(a)(9) or which is not consistent with applicable Treasury regulations.

(A) General Rules.

(1) Effective Date. Unless the Employer specifies a later effective date in the Adoption Agreement, the provisions of this Section 4.03 will apply for purposes of determining required minimum distributions for calendar years beginning with the 2002 calendar year.

(2) Coordination with Minimum Distribution Requirements Previously in Effect. If the effective date of this Section 4.03 is earlier than the 2003 calendar year, required minimum distributions for 2002 under the Plan will be determined as follows. If the total amount of 2002 required minimum distributions under the Plan made to the distributee prior to the effective date of this Section 4.03 equals or exceeds the required minimum distributions determined under this Section 4.03, then no additional distributions will be required to be made for 2002 on or after such date to the distributee. If the total amount of 2002 required minimum distributions under the Plan made to the distributee prior to the effective date of this Section 4.03 is less than the amount determined under this Section 4.03, the required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the distributee will be the amount determined under this Section 4.03.

(3) Precedence. The requirements of this Section 4.03 will take precedence over any inconsistent provisions of the Plan.

(4) Requirements of Treasury Regulations Incorporated. All distributions required under this Section 4.03 will be determined and made in

accordance with the Treasury regulations under Code §401(a)(9).

(B) Time and Manner of Distribution

(1) **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.

(2) **Death of Participant Before Distribution Begins.** 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:

(a) Spouse Designated Beneficiary. If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then, except as the Employer may elect in the Adoption Agreement, 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 70½, if later.

(b) Non-Spouse Designated Beneficiary. If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then, except as the Employer may elect in the Adoption Agreement, distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(c) No Designated Beneficiary. If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(d) Death of Spouse. 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 4.03(B)(2) other than Section 4.03(B)(2)(a), will apply as if the surviving spouse were the Participant.

For purposes of this Section 4.03(B) and Section 4.03(D), unless Section 4.03(B)(2)(d) applies, distributions are considered to begin on the Participant's required beginning date. If Section 4.03(B)(2)(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 4.03(B)(2)(a). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving

spouse before the date distributions are required to begin to the surviving spouse under Section 4.03(B)(2)(a), the date distributions are considered to begin is the date distributions actually commence.

(3) **Forms of Distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 4.03(C) and 4.03(D). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 4.01(a)(9) of the Code and the Treasury regulations.

(C) Required Minimum Distributions during Participant's Lifetime.

(1) **Amount of Required Minimum Distribution for Each Distribution Calendar Year.** During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(a) ULT. The quotient obtained by dividing the Participant's account balance by the number in the Uniform Life Table set forth in Treas. Reg. §1.401(a)(9)-9, using the Participant's attained age as of the Participant's birthday in the distribution calendar year; or

(b) Younger Spouse. 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 Treas. Reg. §1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(2) **Lifetime Required Minimum Distributions Continue Through Year of Participant's Death.** Required minimum distributions will be determined under this Section 4.03(C) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(D) Required Minimum Distributions after Participant's Death.

(1) Death On or After Distributions Begin.

(a) Participant Survived by Designated Beneficiary. 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

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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:

(i) Participant's Life Expectancy. The Participant's remaining life expectancy is calculated using the attained age of the Participant as of the Participant's birthday in the calendar year of death, reduced by one for each subsequent calendar year.

(ii) Spouse's Life Expectancy. 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 attained 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.

(iii) Non-Spouse's Life Expectancy. 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 attained age of the Beneficiary as of the Beneficiary's birthday in the calendar year following the calendar year of the Participant's death, reduced by one for each subsequent calendar year.

(b) 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 calendar year after the calendar year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the calendar 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 attained age of the Participant as of the Participant's birthday in the calendar year of death, reduced by one for each subsequent calendar year.

(2) Death before Date Distributions Begin.

(a) Participant Survived by Designated Beneficiary. Except as the Employer may elect in the Adoption Agreement, 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, determined as provided in Section 4.03(D)(1).

(b) 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 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.

(c) Death of 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 to the surviving spouse under Section 4.03(B)(2)(a), this Section 4.03(D)(2) will apply as if the surviving spouse were the Participant.

(E) Definitions

(1) **Designated Beneficiary**. The individual who is designated as the Beneficiary under the Plan and is the designated beneficiary under Code §401(a)(9) and Treas. Reg. §1.401(a)(9)-1, Q&A-4.

(2) **Distribution calendar year**. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which the distributions are required to begin under Section 4.03(B)(2). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(3) **Life expectancy**. Life expectancy as computed by use of the Single Life Table in Treas. Reg. §1.401(a)(9)-9.

(4) **Participant's account balance**. The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date.

The account balance for the valuation calendar year includes any Rollover Contributions or Transfers to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(5) **Required beginning date.** A Participant's required beginning date is the April 1 of the calendar year following the later of: (1) the calendar year in which the Participant attains age 70½, or (2) the calendar year in which the Participant retires or such other date under Code §401(a)(9) by which required minimum distributions must commence.

4.04 **DEATH BENEFITS.** Upon the death of the Participant, the Plan Administrator must pay or direct the Trustee to pay the Participant's Account in accordance with Section 4.03. Subject to Section 4.03, a Beneficiary may elect the timing and method of payment in the same manner as a Participant may elect under Section 4.02, if such elections apply.

4.05 **DISTRIBUTIONS PRIOR TO SEVERANCE FROM EMPLOYMENT.** The Employer must elect in the Adoption Agreement whether to permit in-service distributions of a Participant's Vested Account under this Section 4.05, notwithstanding the Section 4.01 distribution restrictions.

(A) **Unforeseeable Emergency.** In the event of a Participant's unforeseeable emergency, the Plan Administrator may make a distribution to a Participant who has not incurred a Severance from Employment (or who has incurred a Severance but will not begin to receive payments until some future date). In the event of an unforeseeable emergency, the Plan Administrator also may accelerate payments to a Participant or to a Beneficiary. The Plan Administrator will establish a policy for determining whether an unforeseeable emergency exists. An unforeseeable emergency is a severe financial hardship of a Participant or Beneficiary resulting from: (1) illness or accident of the Participant, the Beneficiary, or the Participant's or Beneficiary's spouse or dependent (as defined in Code §152(a)); (2) loss of the Participant's or Beneficiary's property due to casualty; (3) the need to pay for the funeral expenses of the Participant's or Beneficiary's spouse or dependent (as defined in Code §152(a)); or (4) other similar extraordinary and unforeseeable circumstances arising from events beyond the Participant's or Beneficiary's control. The Plan Administrator will not pay the Participant or the Beneficiary more than the amount reasonably necessary to satisfy the emergency need, which may include amounts necessary to pay taxes or penalties on the distribution. The Plan Administrator will not make payment to the extent the Participant or Beneficiary may relieve the financial hardship by cessation of deferrals under the Plan, through insurance or other reimbursement, or by liquidation

of the individual's assets to the extent such liquidation would not cause severe financial hardship.

(B) **De minimis distribution.** In accordance with the Employer's Adoption Agreement elections, the Plan Administrator may allow a Participant to elect to receive a distribution or the Plan Administrator will distribute (without a Participant election) any amount of the Participant's Account where: (1) the Participant's Account (disregarding Rollover Contributions) does not exceed \$5,000 (or such other amount as does not exceed the Code §411(a)(11)(A) dollar amount); (2) the Participant has not made or received an allocation of any Deferral Contributions under the Plan during the two-year period ending on the date of distribution; and (3) the Participant has not received a prior distribution under this Section 4.05(B).

(C) **Distribution of Rollover Contributions.** The Employer in its Adoption Agreement may elect to permit a Participant to request and to receive distribution of the Participant's Account attributable to Rollover Contributions (but not to Transfers) before the Participant has a distributable event under Section 4.01.

4.06 **DISTRIBUTIONS UNDER QUALIFIED DOMESTIC RELATIONS ORDERS (QDROs).** Notwithstanding any other provision of this Plan, the Employer in its Adoption Agreement may elect to apply the QDRO provisions of this Section 4.06. If Section 4.06 applies, the Plan Administrator (and any Trustee) must comply with the terms of a QDRO, as defined in Code §414(p), which is issued with respect to the Plan.

(A) **Time and Method of Payment.** This Plan specifically permits distribution to an alternate payee under a QDRO at any time, notwithstanding any contrary Plan provision and irrespective of whether the Participant has attained his/her earliest retirement age (as defined under Code §414(p)) under the Plan. A distribution to an alternate payee prior to the Participant's attainment of earliest retirement age is available only if the QDRO specifies distribution at that time or permits an agreement between the Plan and the alternate payee to authorize an earlier distribution. Nothing in this Section 4.06 gives a Participant a right to receive distribution at a time the Plan otherwise does not permit nor authorizes the alternate payee to receive a form of payment the Plan does not permit.

(B) **QDRO Procedures.** The Plan Administrator must establish reasonable procedures to determine the qualified status of a domestic relations order. Upon receiving a domestic relations order, the Plan Administrator promptly will notify the Participant and any alternate payee named in the order, in writing, of the receipt of the order and the Plan's procedures for determining the qualified status of the

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order. Within a reasonable period of time after receiving the domestic relations order, the Plan Administrator must determine the qualified status of the order and must notify the Participant and each alternate payee, in writing, of the Plan Administrator's determination. The Plan Administrator must provide notice under this paragraph by mailing to the individual's address specified in the domestic relations order.

(C) Accounting. If any portion of the Participant's Account Balance is payable under the domestic relations order during the period the Plan Administrator is making its determination of the qualified status of the domestic relations order, the Plan Administrator must maintain a separate accounting of the amounts payable. If the Plan Administrator determines the order is a QDRO within 18 months of the date amounts first are payable following receipt of the domestic relations order, the Plan Administrator will distribute or will direct the Trustee to distribute the payable amounts in accordance with the QDRO. If the Plan Administrator does not make its determination of the qualified status of the order within the 18-month determination period, the Plan Administrator will distribute or will direct the Trustee to distribute the payable amounts in the manner the Plan would distribute if the order did not exist and will apply the order prospectively if the Plan Administrator later determines the order is a QDRO.

To the extent it is not inconsistent with the provisions of the QDRO, the Plan Administrator may segregate or may direct the Trustee to segregate the QDRO amount in a segregated investment account. The Plan Administrator or Trustee will make any payments or distributions required under this Section 4.06 by separate benefit checks or other separate distribution to the alternate payee(s).

4.07 DIRECT ROLLOVER OF ELIGIBLE ROLLOVER DISTRIBUTIONS – GOVERNMENTAL PLAN.

(A) Participant Election. A Participant (including for this purpose, a former Employee) in a Governmental Eligible 457 Plan may elect, at the time and in the manner the manner the Plan Administrator prescribes, to have any portion of his/her eligible rollover distribution from the Plan paid directly to an eligible retirement plan specified by the Participant in a direct rollover election. For purposes of this election, a "Participant" includes as to their respective interests, a Participant's surviving spouse and the Participant's spouse or former spouse who is an alternate payee under a QDRO.

(B) Rollover and Withholding Notice. At least 30 days and not more than 90 days prior to the Trustee's distribution of an eligible rollover distribution, the Plan Administrator must provide a written notice

(including a summary notice as permitted under applicable Treasury regulations) explaining to the distributee the rollover option, the applicability of mandatory 20% federal withholding to any amount not directly rolled over, and the recipient's right to roll over within 60 days after the date of receipt of the distribution ("rollover notice").

(C) Default distribution or rollover. Except as provided in Paragraph (D), in the case of a Participant who does not elect timely to roll over or to receive distribution of his/her Account, the Plan Administrator or the Trustee, at the Plan Administrator's direction, may distribute to the Participant or may directly roll over the Participant's Account in accordance with the Plan's rollover notice.

(D) Mandatory default rollover. If (1) the Plan is a Governmental Eligible 457 Plan, (2) the Plan makes a mandatory distribution after the 401(a)(31)(B) Effective Date, greater than \$1,000, and (3) the participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the participant in a direct rollover or to receive the distribution directly, then the plan administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the plan administrator.

(E) Definitions. The following definitions apply to this Section:

(1) **Eligible rollover distribution.** An eligible rollover distribution is any distribution of all or any portion of a Participant's Account, except an eligible rollover distribution does not include: (a) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's designated Beneficiary, or for a specified period of ten years or more; (b) any Code §401(a)(9) required minimum distribution; (c) any unforeseeable emergency distribution; and (d) any distribution which otherwise would be an eligible rollover distribution, but where the total distributions to the Participant during that calendar year are reasonably expected to be less than \$200.

(2) **Eligible retirement plan.** An eligible retirement plan is an individual retirement account described in Code §408(a), an individual retirement annuity described in Code §408(b), an annuity plan described in Code §403(a), a qualified plan described in Code §401(a), an annuity contract (or custodial agreement) described in Code §403(b), or an eligible deferred compensation plan described in Code §457(b) and maintained by an Employer described in Code §457(e)(1)(A), which accepts the Participant's,

the Participant's spouse or alternate payee's eligible rollover distribution.

(3) **Direct rollover.** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

(4) **Mandatory distribution.** A mandatory distribution is an eligible rollover distribution without the Participant's consent before the Participant attains the later of age 62 or Normal Retirement Age (see paragraph 3.05 (B)). A distribution to a beneficiary is not a mandatory distribution.

(5) **401(a)(31)(B) Effective Date.** The 401(a)(31)(B) Effective Date is the date of the close of the first regular legislative session of the legislative body with the authority to amend the Plan that begins on or after January 1, 2006.

**ARTICLE V
PLAN ADMINISTRATOR - DUTIES WITH
RESPECT TO PARTICIPANTS' ACCOUNTS**

5.01 TERM / VACANCY. The Plan Administrator will serve until his/her successor is appointed. In case of a vacancy in the position of the Plan Administrator, the Employer will exercise any and all of the powers, authority, duties and discretion conferred upon the Plan Administrator pending the filling of the vacancy.

5.02 POWERS AND DUTIES. The Plan Administrator will have the following powers and duties:

- (a) To select a Committee to assist the Plan Administrator;
- (b) To select a Secretary for the Committee, who need not be a member of the Committee;
- (c) To determine the rights of eligibility of an Employee to participate in the Plan and the value of a Participant's Account;
- (d) To adopt rules and procedures and to create administrative forms necessary for the proper and efficient administration of the Plan provided the rules, procedures and forms are not inconsistent with the terms of the Plan;
- (e) To construe and enforce the terms of the Plan and the rules and regulations the Plan Administrator adopts, including interpretation of the Plan documents and documents related to the Plan's operation;
- (f) To direct the distribution of a Participant's Account;

(g) To review and render decisions respecting a claim for (or denial of a claim for) a benefit under the Plan;

(h) To furnish the Employer with information which the Employer may require for tax or other purposes;

(i) To establish a policy in making distributions for unforeseeable emergencies;

(j) To establish under a Governmental Eligible 457 Plan, policies regarding the receipt of Rollover Contributions and default rollover distributions;

(k) To establish a policy regarding the making and the receipt of Transfers;

(l) To establish a policy regarding Participant or Beneficiary direction of investment;

(m) To engage the services of any person to invest any Account under this Plan and to direct such person to make payment to a Participant of his/her Vested Account;

(n) To comply with the reporting and disclosure rules of ERISA if applicable to the Plan;

(o) To establish under a Governmental Eligible 457 Plan, a policy (see Section 5.02(A)) which the Trustee must observe in making loans, if any, to Participants and Beneficiaries;

(p) To undertake correction of any Plan failures as necessary to preserve Eligible Plan status; and

(q) To undertake any other action the Plan Administrator deems reasonable or necessary to administer the Plan.

The Plan Administrator shall have total and complete discretion to interpret and construe the Plan and to determine all questions arising in the administration, interpretation and application of the Plan. Any determination the Plan Administrator makes under the Plan is final and binding upon any affected person.

(A) Loan Policy. In a Governmental Eligible 457 Plan, the Plan Administrator, in its sole discretion, may establish, amend or terminate from time to time, a nondiscriminatory policy which the Trustee must observe in making Plan loans, if any, to Participants and to Beneficiaries. If the Plan Administrator adopts a loan policy, the loan policy must be a written document and must include: (1) the identity of the person or positions authorized to administer the

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participant loan program; (2) the procedure for applying for a loan; (3) the criteria for approving or denying a loan; (4) the limitations, if any, on the types and amounts of loans available; (5) the procedure for determining a reasonable rate of interest; (6) the types of collateral which may secure the loan; and (7) the events constituting default and the steps the Plan will take to preserve Plan assets in the event of default. A loan policy the Plan Administrator adopts under this Section 5.02(A) is part of the Plan, except that the Plan Administrator may amend or terminate the policy without regard to Section 9.01.

(B) QDRO Policy. If the QDRO provisions of Section 4.06 apply, the Plan Administrator will establish QDRO procedures.

5.03 COMPENSATION. The Plan Administrator and the members of the Committee will serve without compensation for services, but the Employer will pay all expenses of the Plan Administrator and Committee.

5.04 AUTHORIZED REPRESENTATIVE. The Plan Administrator may authorize any one of the members of the Committee, if any, or the Committee's Secretary, to sign on the Plan Administrator's behalf any Plan notices, directions, applications, certificates, consents, approvals, waivers, letters or other documents.

5.05 INDIVIDUAL ACCOUNTS / RECORDS. The Plan Administrator will maintain a separate Account in the name of each Participant to reflect the value of the Participant's Deferred Compensation under the Plan. The Plan Administrator will maintain records of its activities.

5.06 VALUE OF PARTICIPANT'S ACCOUNT. The value of each Participant's Account consists of his/her accumulated Deferred Compensation, as of the most recent Accounting Date or any later date as the Plan Administrator may determine.

5.07 ALLOCATION OF NET INCOME, GAIN OR LOSS. As of each Accounting Date (and each other valuation date determined under Section 5.06), the Plan Administrator will adjust Accounts to reflect net income, gain or loss, if any, since the last Accounting Date or Account valuation. The Employer in the Adoption Agreement will elect whether the adjustment for net income gain or loss reflects actual Account earnings or an interest credit. The Plan Administrator will continue to allocate net income, gain and loss to a Participant's Account subject to an installment distribution, until the Account is fully distributed.

5.08 ACCOUNT CHARGED The Plan Administrator will charge all distributions made to a

Participant or to his/her Beneficiary, or transferred under Section 9.03 from his/her Account, against the Account of the Participant when made.

5.09 OWNERSHIP OF FUND/TAX-EXEMPT ORGANIZATION. If the Employer is a Tax-Exempt Organization, the Plan is an unfunded plan and all Deferred Compensation, property and rights to property purchased by Deferred Compensation and all income attributable thereto remain, until paid or made available under the Plan, the sole property and rights of the Employer, subject only to the claims of the Employer's general creditors. No Participant or Beneficiary will have any vested interest or secured or preferred position with respect to an Account or have any claim against the Employer except as a general creditor. No Participant or Beneficiary shall have any right to sell, assign, transfer or otherwise convey his or her Account or any interest in his or her Deferred Compensation. The Employer or the Plan Administrator, acting as the Employer's agent, may enter into a trust agreement solely for the purpose of investing all or part of the Accounts, which will be subject to the claims of the Employer's general creditors, and in which the Participants or Beneficiaries will not have a vested interest nor a secured or preferred position or have any claim except as the Employer's general creditor. The Employer may not purchase life insurance contracts under this Plan unless the Employer retains all incidents of ownership in such contracts, the Employer is the sole beneficiary of such contracts and the Employer is not under any obligation to transfer the contracts or pass through the proceeds to any Participant or to his/her Beneficiary. The Employer may adopt and attach to the Plan as "Appendix A," the Internal Revenue Service Model Rabbi Trust under Rev. Proc. 92-64 (as amended) to hold the assets of a Tax-Exempt Organization Eligible 457 Plan. If the Employer adopts the Model Rabbi Trust, the Plan incorporates by reference the provisions of the Model Rabbi Trust as if fully set forth herein.

5.10 PARTICIPANT DIRECTION OF INVESTMENT. Subject to the terms of the Plan Administrator's adopted policy, if any, and also to written consent of the Trustee, if the Plan has a Trust, a Participant will have the right to direct the investment or re-investment of the assets comprising the Participant's Account. The Plan Administrator will account separately for the Participant-directed Accounts. The Participant's right to direct investment does not give the Participant any vested interest or secured or preferred position with respect to assets over which he/she has investment responsibility.

5.11 VESTING / SUBSTANTIAL RISK OF FORFEITURE. The Employer in the Adoption Agreement may elect to apply a vesting schedule or to specify any other Substantial Risk of Forfeiture applicable to any or all Deferral Contributions.

(A) Forfeiture Allocation. The Employer in its Adoption Agreement must elect the method the Plan Administrator will use to allocate any Participant forfeitures, including those related to lost Participants under Section 5.14. The Plan Administrator will allocate a forfeiture in the Plan Year in which the forfeiture occurs or in the next following Plan Year.

5.12 PRESERVATION OF ELIGIBLE PLAN STATUS. The Plan Administrator may elect to sever from this Plan and to treat as a separate 457 plan, the Accounts of any Participants who have Excess Deferrals that the Plan Administrator has not corrected in accordance with Section 3.10 or in the case of any other Code §457(b) failure that the Employer may not otherwise correct, and which failure would result in the Plan ceasing to be an Eligible 457 Plan. In such event, the Plan Administrator will take any necessary or appropriate action consistent with the Employer's maintenance of separate 457 plans and with preservation of Eligible 457 Plan status of this Plan.

5.13 LIMITED LIABILITY. The Employer will not be liable to pay plan benefits to a Participant in excess of the value of the Participant's Account as the Plan Administrator determines in accordance with the Plan terms. Neither the Employer nor the Plan Administrator will be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

5.14 LOST PARTICIPANTS. If the Plan Administrator is unable to locate any Participant or Beneficiary whose Account becomes distributable (a "lost Participant"), the Plan Administrator will apply the provisions of this Section 5.14.

(A) Attempt to Locate. The Plan Administrator will attempt to locate a lost Participant and may use one or more of the following methods: (1) provide a distribution notice to the lost Participant at his/her last known address by certified or registered mail; (2) use the IRS letter forwarding program under Rev. Proc. 94-22; (3) use a commercial locator service, the internet or other general search method; (4) use the Social Security Administration or PBGC search program; or (5) use such other methods as the Plan Administrator believes prudent.

(B) Failure to Locate. If a lost Participant remains unlocated for 6 months following the date the Plan Administrator first attempts to locate the lost Participant using one or more of the methods described in Section 5.14(A), the Plan Administrator may forfeit the lost Participant's Account. If the Plan Administrator forfeits the lost Participant's Account, the forfeiture occurs at the end of the above-described 6-month period and the Plan Administrator will allocate the forfeiture in accordance with Section 5.11. The Plan Administrator under this Section

5.14(B) will forfeit the entire Account of the lost Participant, including Salary Reduction Contributions.

If a lost Participant whose Account was forfeited thereafter at any time but before the Plan has been terminated makes a claim for his/her forfeited Account, the Plan Administrator will restore the forfeited Account to the same dollar amount as the amount forfeited, unadjusted for net income, gains or losses occurring subsequent to the forfeiture. The Plan Administrator will make the restoration in the Plan Year in which the lost Participant makes the claim, first from the amount, if any, of Participant forfeitures the Plan Administrator otherwise would allocate for the Plan Year, then from the amount, if any, of Trust net income or gain for the Plan Year and last from the amount or additional amount the Employer contributes to the Plan for the Plan Year. The Plan Administrator will distribute the restored Account to the lost Participant not later than 60 days after the close of the Plan Year in which the Plan Administrator restores the forfeited Account.

(C) Nonexclusivity and Uniformity. The provisions of this Section 5.14 are intended to provide permissible but not exclusive means for the Plan Administrator to administer the Accounts of lost Participants. The Plan Administrator may utilize any other reasonable method to locate lost Participants and to administer the Accounts of lost Participants, including the default rollover under Section 4.07(C) and such other methods as the Revenue Service or the U.S. Department of Labor ("DOL") may in the future specify. The Plan Administrator will apply Section 5.14 in a reasonable manner, but may in determining a specific course of action as to a particular Account, reasonably take into account differing circumstances such as the amount of a lost Participant's Account, the expense in attempting to locate a lost Participant, the Plan Administrator's ability to establish and the expense of establishing a rollover IRA, and other factors. The Plan Administrator may charge to the Account of a lost Participant the reasonable expenses incurred under this Section 5.14 and which are associated with the lost Participant's Account.

5.15 PLAN CORRECTION. The Plan Administrator, in conjunction with the Employer and Trustee as appropriate, may undertake such correction of Plan errors as the Plan Administrator deems necessary, including but not limited to correction to maintain the Plan's status as an Eligible 457 Plan. The Plan Administrator under this Section 5.15 also may undertake Plan correction in accordance with any correction program that the Internal Revenue Service makes applicable to 457 plans.

**ARTICLE VI
PARTICIPANT ADMINISTRATIVE
PROVISIONS**

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6.01 BENEFICIARY DESIGNATION. A Participant from time to time may designate, in writing, any person(s) (including a trust or other entity), contingently or successively, to whom the Plan Administrator or Trustee will pay the Participant's Account (including any life insurance proceeds payable to the Participant's Account) in the event of death. A Participant also may designate the method of payment of his/her Account. The Plan Administrator will prescribe the form for the Participant's written designation of Beneficiary and, upon the Participant's filing the form with the Plan Administrator, the form revokes all designations filed prior to that date by the same Participant. A divorce decree, or a decree of legal separation, revokes the Participant's designation, if any, of his/her spouse as his/her Beneficiary under the Plan unless: (a) the decree or a QDRO provides otherwise; or (b) the Employer provides otherwise in an Addendum to its Adoption Agreement. The foregoing revocation provision (if applicable) applies only with respect to a Participant whose divorce or legal separation becomes effective on or following the date the Employer executes the Adoption Agreement, unless the Employer in its Adoption Agreement specifies a different effective date.

6.02 NO BENEFICIARY DESIGNATION. If a Participant fails to name a Beneficiary in accordance with Section 6.01, or if the Beneficiary named by a Participant predeceases the Participant, then the Plan Administrator will pay the Participant's remaining Account in accordance with Article IV in the following order of priority, to:

- (a) The Participant's surviving spouse; or
- (b) The Participant's children (including adopted children), in equal shares by right of representation (one share for each surviving child and one share for each child who predeceases the Participant with living descendents); and if none to
- (c) The Participant's estate.

If the Beneficiary survives the Participant, but dies prior to distribution of the Participant's entire Account, the Trustee will pay the remaining Account to the Beneficiary's estate unless: (1) the Participant's Beneficiary designation provides otherwise; or (2) the Beneficiary has properly designated a beneficiary. A Beneficiary only may designate a beneficiary for the Participant's Account Balance remaining at the Beneficiary's death, if the Participant has not previously designated a successive contingent beneficiary and the Beneficiary's designation otherwise complies with the Plan terms. The Plan Administrator will direct a Trustee if applicable as to the method and to whom the Trustee will make payment under this Section 6.02.

6.03 SALARY REDUCTION AGREEMENT.

(A) General. A Participant must elect to make Salary Reduction Contributions on a Salary Reduction Agreement form the Plan Administrator provides for this purpose. The Salary Reduction Agreement must be consistent with the Employer's Adoption Agreement elections and the Plan Administrator in a Salary Reduction Agreement may impose such other terms and limitations as the Plan Administrator may determine.

(B) Election Timing. A Participant's Salary Reduction Agreement may not take effect earlier than the first day of the calendar month following the date the Participant executes the Salary Reduction Agreement and as to Compensation paid or made available in such calendar month. However, if an Employee is eligible to become a Participant during the Employee's calendar month of hire, the Employee may execute a Salary Reduction Agreement on or before the date he/she becomes an Employee, effective for the month in which he/she becomes an Employee.

(C) Sick, Vacation and Back Pay. If the Employer under Adoption Agreement Section 3.02 permits Participants to make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay, a Participant who will incur a Severance from Employment may execute a Salary Reduction Agreement before such amounts are paid or made available provided: (i) such amounts are paid or made available before the Participant incurs the Severance; and (ii) the Participant is an Employee in that month.

(D) Modification of Salary Reduction Agreement. A Participant's Salary Reduction Agreement remains in effect until a Participant modifies it or ceases to be eligible to participate in the Plan. A Participant may modify his/her Salary Reduction Agreement by executing a new Salary Reduction Agreement. Any modification will become effective no earlier than the beginning of the calendar month commencing after the date the Participant executes the new Salary Reduction Agreement. Filing a new Salary Reduction Agreement will revoke all Salary Reduction Agreements filed prior to that date. The Employer or Plan Administrator may restrict the Participant's right to modify his/her Salary Reduction Agreement in any Taxable Year.

6.04 PERSONAL DATA TO PLAN ADMINISTRATOR. Each Participant and each Beneficiary of a deceased Participant must furnish to the Plan Administrator such evidence, data or information as the Plan Administrator considers necessary or desirable for the purpose of administering the Plan. The provisions of this Plan are effective for the benefit of each Participant upon the condition

precedent that each Participant will furnish promptly full, true and complete evidence, data and information when requested by the Plan Administrator, provided the Plan Administrator advises each Participant of the effect of his failure to comply with its request.

6.05 ADDRESS FOR NOTIFICATION. Each Participant and each Beneficiary of a deceased Participant must file with the Plan Administrator from time to time, in writing, his/her address and any change of address. Any communication, statement or notice addressed to a Participant, or Beneficiary, at his/her last address filed with the Plan Administrator, or as shown on the records of the Employer, binds the Participant, or Beneficiary, for all purposes of this Plan.

6.06 PARTICIPANT OR BENEFICIARY INCAPACITATED. If, in the opinion of the Plan Administrator or of the Trustee, a Participant or Beneficiary entitled to a Plan distribution is not able to care for his/her affairs because of a mental condition, a physical condition, or by reason of age, the Plan Administrator or at the direction of the Plan Administrator, the Trustee, may make the distribution to the Participant's or Beneficiary's guardian, conservator, trustee, custodian (including under a Uniform Transfers or Gifts to Minors Act) or to his/her attorney-in-fact or to other legal representative upon furnishing evidence of such status satisfactory to the Plan Administrator and to the Trustee. The Plan Administrator and the Trustee do not have any liability with respect to payments so made and neither the Plan Administrator nor the Trustee has any duty to make inquiry as to the competence of any person entitled to receive payments under the Plan.

ARTICLE VII MISCELLANEOUS

7.01 NO ASSIGNMENT OR ALIENATION. A Participant or Beneficiary does not have the right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments under the Plan or Trust and the Plan Administrator and the Trustee will not recognize any such anticipation, assignment, or alienation. The payments and the rights under this Plan are nonassignable and nontransferable. Furthermore, a Participant's or Beneficiary's interest in the Trust is not subject to attachment, garnishment, levy, execution or other legal or equitable process.

7.02 EFFECT ON OTHER PLANS. This Plan does not affect benefits under any other retirement, pension, or benefit plan or system established for the benefit of the Employer's Employees, and participation under this Plan does not affect benefits receivable under any such plan or system, except to the extent provided in such plan or system.

7.03 WORD USAGE. Words used in the masculine will apply to the feminine where applicable, and wherever the context of the Plan dictates, the plural will be read as the singular and the singular as the plural.

7.04 STATE LAW. The laws of the state of the Employer's principal place of business will determine all questions arising with respect to the provisions of this Prototype Plan, except to the extent Federal law supersedes State law.

7.05 EMPLOYMENT NOT GUARANTEED. Nothing contained in this Plan, or any modification or amendment to the Plan, or in the creation of any Account, or the payment of any benefit, gives any Employee, Participant or Beneficiary any right to continue employment, any legal or equitable right against the Employer, the Plan Administrator, the Trustee, any other Employee of the Employer, or any agents thereof except as expressly provided by the Plan.

7.06 NOTICE, DESIGNATION, ELECTION, CONSENT AND WAIVER. All notices under the Plan and all Participant or Beneficiary designations, elections, consents or waivers must be in writing and made in a form the Plan Administrator specifies or otherwise approves. To the extent permitted by Treasury regulations or other applicable guidance, any Plan notice, election, consent or waiver may be transmitted electronically. Any person entitled to notice under the Plan may waive the notice or shorten the notice period except as otherwise required by the Code or ERISA.

ARTICLE VIII TRUST PROVISIONS—GOVERNMENTAL ELIGIBLE 457 PLAN

8.01 GOVERNMENTAL ELIGIBLE 457 PLAN. The provisions of this Article VIII apply to a Governmental Eligible 457 Plan and do not apply to a Tax-Exempt Organization Eligible 457 Plan. The Employer in the Adoption Agreement may elect to substitute another trust (attached to this Plan as "Appendix A") or to modify any provision of Article VIII, consistent with Code §457(g) and applicable Treasury regulations.

8.02 ACCEPTANCE / HOLDING. The Trustee accepts the Trust created under the Plan and agrees to perform the duties and obligations imposed. The Trustee must hold in trust under this Article VIII, all Deferred Compensation until paid in accordance with the Plan terms.

8.03 RECEIPT OF CONTRIBUTIONS. The Trustee is accountable to the Employer for the funds contributed to it by the Employer or the Plan Administrator, but the Trustee does not have any duty

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to see that the contributions received comply with the provisions of the Plan.

8.04 FULL INVESTMENT POWERS. The Trustee has full discretion and authority with regard to the investment of the Trust, except with respect to a Trust asset under Participant direction of investment, in accordance with Section 8.12. The Trustee is authorized and empowered, but not by way of limitation, to exercise and perform the following powers, rights and duties:

(a) To invest any part or all of the Trust in any common or preferred stocks, open-end or closed-end mutual funds, put and call options traded on a national exchange, United States retirement plan bonds, corporate bonds, debentures, convertible debentures, commercial paper, U. S. Treasury bills, U. S. Treasury notes and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts of any type, mortgages, notes or other property of any kind, real or personal, and to buy or sell options on common stock on a nationally recognized options exchange with or without holding the underlying common stock, as a prudent person would do under like circumstances. Any investment made or retained by the Trustee in good faith will be proper but must be of a kind constituting a diversification considered by law suitable for trust investments;

(b) To retain in cash so much of the Trust as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust in a bank account at reasonable interest;

(c) To invest, if the Trustee is a bank or similar financial institution supervised by the United States or by a State, in any type of deposit of the Trustee (or a bank related to the Trustee within the meaning of Code §414(b)) at a reasonable rate of interest or in a common trust fund as described in Code §584, or in a collective investment fund, the provisions of which the Trust incorporates by this reference, which the Trustee (or its affiliate, as defined in Code §1504) maintains exclusively for the collective investment of money contributed by the bank (or its affiliate) in its capacity as Trustee and which conforms to the rules of the Comptroller of the Currency;

(d) To manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or personal, in such manner, for such considerations and on such terms and conditions as the Trustee decides;

(e) To credit and distribute the Trust as directed by the Plan Administrator of the Plan. The Trustee will not be obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustee will be accountable only to the Plan Administrator for any payment or distribution made by it in good faith on the order or direction of the Plan Administrator;

(f) To borrow money, to assume indebtedness, extend mortgages and encumber by mortgage or pledge;

(g) To compromise, contest, arbitrate or abandon claims and demands, in the Trustee's discretion;

(h) To have with respect to the Trust all of the rights of an individual owner, including the power to exercise any and all voting rights associated with Trust assets, to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, to tender shares and to exercise or sell stock subscriptions or conversion rights;

(i) To lease for oil, gas and other mineral purposes and to create mineral severances by grant or reservation; to pool or unitize interest in oil, gas and other minerals; and to enter into operating agreements and to execute division and transfer orders;

(j) To hold any securities or other property in the name of the Trustee or its nominee, with depositories or agent depositories or in another form as it may deem best, with or without disclosing the trust relationship;

(k) To perform any and all other acts in its judgment necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust;

(l) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until a court of competent jurisdiction makes a final adjudication;

(m) To file all tax returns required of the Trustee;

(n) To furnish to the Employer and the Plan Administrator an annual statement of account showing the condition of the Trust and all investments, receipts, disbursements and other transactions effected by the Trustee during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year, which accounts will be conclusive on all persons,

including the Employer and the Plan Administrator, except as to any act or transaction concerning which the Employer or the Plan Administrator files with the Trustee written exceptions or objections within 90 days after the receipt of the accounts; and

(o) To begin, maintain or defend any litigation necessary in connection with the administration of the Trust, except that the Trustee will not be obliged or required to do so unless indemnified to its satisfaction.

(A) Nondiscretionary Trustee. The Employer in the Adoption Agreement may elect to appoint a Nondiscretionary Trustee, subject to this Section 8.04(A). The Nondiscretionary Trustee does not have any discretion or authority with regard to the investment of the Trust, but must act solely as a directed Trustee hereunder. The Nondiscretionary Trustee is authorized and empowered to exercise and perform the above Section 8.04 powers, rights and duties provided that the Trustee shall act solely as a directed Trustee and only in accordance with the written direction of the Employer, the Plan Administrator or of a Participant as applicable. The Nondiscretionary Trustee is not liable for making, retaining or disposing of any investment or for taking or failing to take any other action, in accordance with proper Employer, Plan Administrator or Participant direction.

8.05 RECORDS AND STATEMENTS. The records of the Trustee pertaining to the Trust will be open to the inspection of the Plan Administrator and the Employer at all reasonable times and may be audited from time to time by any person or persons as the Employer or Plan Administrator may specify in writing. The Trustee will furnish the Plan Administrator whatever information relating to the Trust the Plan Administrator considers necessary.

8.06 FEES AND EXPENSES FROM FUND. The Trustee will receive reasonable annual compensation in accordance with its fee schedule as published from time to time. The Trustee will pay from the Trust all fees and expenses the Trustee reasonably incurs in its administration of the Trust, unless the Employer pays the fees and expenses.

8.07 PROFESSIONAL AGENTS. The Trustee may employ and pay from the Trust reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee may delegate to any agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Trust, and the Trustee may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

8.08 DISTRIBUTION OF CASH OR PROPERTY. The Trustee may make distribution

under the Plan in cash or property, or partly in each, at its fair market value as determined by the Trustee.

8.09 RESIGNATION AND REMOVAL. The Trustee or the Custodian may resign its position by giving written notice to the Employer and to the Plan Administrator. The Trustee's notice must specify the effective date of the Trustee's resignation, which date must be at least 30 days following the date of the Trustee's notice, unless the Employer consents in writing to shorter notice.

The Employer may remove a Trustee or a Custodian by giving written notice to the affected party. The Employer's notice must specify the effective date of removal which date must be at least 30 days following the date of the Employer's notice, except where the Employer reasonably determines a shorter notice period or immediate removal is necessary to protect Plan assets.

8.10 SUCCESSOR TRUSTEE.

(A) Appointment. In the event of the resignation or the removal of a Trustee, where no other Trustee continues to service, the Employer must appoint a successor Trustee if it intends to continue the Plan. If two or more persons hold the position of Trustee, in the event of the removal of one such person, during any period the selection of a replacement is pending, or during any period such person is unable to serve for any reason, the remaining person or persons will act as the Trustee. If the Employer fails to appoint a successor Trustee as of the effective date of the Trustee resignation or removal and no other Trustee remains, the Trustee will treat the Employer as having appointed itself as Trustee and as having filed the Employer's acceptance of appointment as successor Trustee with the former Trustee.

(B) Automatic Successor. Any corporation which succeeds to the trust business of the Trustee, or results from any merger or consolidation to which the Trustee is a party, or is the transferee of substantially all the Trustee's assets, will be the successor to the Trustee under this Trust. The successor Trustee will possess all rights, duties and powers under this Trust as if the successor Trustee were the original Trustee. Neither the Trustee nor the successor Trustee need provide notice to any interested person of any transaction resulting in a successor Trustee. The successor Trustee need not file or execute any additional instrument or perform any additional act to become successor Trustee.

8.11 VALUATION OF TRUST. The Trustee will value the Trust as of each Accounting Date to determine the fair market value of the Trust assets. The Trustee will value the Trust on such other date(s) the Plan Administrator may direct.

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8.12 PARTICIPANT DIRECTION OF INVESTMENT. Consistent with the Plan Administrator's policy adopted under Section 5.02(l), the Trustee may consent in writing to permit Participants in the Plan to direct the investment to the Trust assets. The Plan Administrator will advise the Trustee of the portion of the Trust credited to each Participant's Account under the Plan, and subject to such Participant direction. As a condition of Participant direction, the Trustee may impose such conditions, limitations and other provisions as the Trustee may deem appropriate and as are consistent with the Plan Administrator's policy. The Trustee will report to the Plan Administrator the net income, gain or losses incurred by each Participant directed Account separately from the net income, gain or losses incurred by the general Trust during the Trust Year.

8.13 THIRD PARTY RELIANCE. No person dealing with the Trustee will be obliged to see to the proper application of any money paid or property delivered to the Trustee, or to inquire whether the Trustee has acted pursuant to any of the terms of the Trust. Each person dealing with the Trustee may act upon any notice, request or representation in writing by the Trustee, or by the Trustee's duly authorized agent, and will not be liable to any person whomsoever in so doing. The certificate of the Trustee that it is acting in accordance with the Trust will be conclusive in favor of any person relying on the certificate.

8.14 INVALIDITY OF ANY TRUST PROVISION. If any clause or provision of this Article VIII proves to be or is adjudged to be invalid or void for any reason, such void or invalid clause or provision will not affect any of the other provisions of this Article VIII and the balance of the Trust provisions will remain operative.

8.15 EXCLUSIVE BENEFIT. The Trustee will hold all the assets of the Trust for the exclusive benefit of the Participants and their Beneficiaries and neither the Employer nor the Trustee will use or divert any part of the corpus or income of the Trust for purposes other than the exclusive benefit of the Participants and Beneficiaries of the Plan. The Employer will not have any right to the assets held by the Trustee and the Trust assets will not be subject to the claims of the Employer's creditors or, except as provided in Section 4.06, of the creditors of any Participant or Beneficiary. No Participant or Beneficiary shall have any right to sell, assign, transfer or otherwise convey his or her Account or any interest in his or her Deferred Compensation. Notwithstanding the foregoing, the Plan Administrator may pay from a Participant's or Beneficiary's Account the amount the Plan 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. The Trust created under the Employer's Plan is irrevocable and its assets will not inure to the benefit of the Employer.

8.16 SUBSTITUTION OF CUSTODIAL ACCOUNT OR ANNUITY CONTRACT. The Employer in the Adoption Agreement may elect to use one or more custodial accounts or annuity contracts in lieu of or in addition to the Trust established in this Article VIII. Any such custodial account or annuity contract must satisfy the requirements of Code §457(g)(3) and applicable Treasury regulations.

8.17 GROUP TRUST AUTHORITY. "Notwithstanding any contrary provision in this Plan, the Trustee may, unless restricted in writing by the Plan Administrator, transfer assets of the plan to a group trust that is operated or maintained exclusively for the commingling and collective investment of monies provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under Code section 401(a), individual retirement accounts that are exempt under Code section 408(e), and eligible governmental plans that meets the requirements of Code section 457(b). For this purpose, a trust includes a custodial account that is treated as a trust under Code section 401(f) or under Code section 457(g)(3). For purposes of valuation, the value of the interest maintained by the Plan in such group trust shall be the fair market value of the portion of the group trust held for Plan, determined in accordance with generally recognized valuation procedures.

ARTICLE IX AMENDMENT, TERMINATION, TRANSFERS

9.01 AMENDMENT BY EMPLOYER / SPONSOR. The Employer has the right at any time and from time to time:

(a) To amend this Plan and Trust Agreement and its Adoption Agreement in any manner it deems necessary or advisable in order to continue the status of this Plan as an Eligible 457 Plan; and

(b) To amend this Plan and Trust Agreement and its Adoption Agreement in any other manner, including deletion, substitution or modification of any Plan, Trust or Adoption Agreement provision.

The Employer must make all amendments in writing. The Employer may amend the Plan by an Adoption Agreement election, by addenda, by separate amendment, or by restatement of the Adoption Agreement or Plan. Each amendment must state the date to which it is either retroactively or prospectively effective. The Employer also may not

make any amendment that affects the rights, duties or responsibilities of the Trustee or the Plan Administrator without the written consent of the affected Trustee or the Plan Administrator.

The Prototype Plan Sponsor also may amend the Plan and Trust in writing (including adoption of a substitute Plan and Trust) without any adopting Employer being required to re-execute its Adoption Agreement, provided that the Sponsor considers the amendment necessary or advisable to continue the Plan as an Eligible 457 Plan and the amendment does not modify or affect any Employer's Adoption Agreement elections.

9.02 TERMINATION / FREEZING OF PLAN. The Employer has the right, at any time, to terminate this Plan or to cease (freeze) further Deferral Contributions to the Plan. Upon termination or freezing of the Plan, the provisions of the Plan (other than provisions permitting continued Deferral Contributions) remain operative until distribution of all Accounts. Upon Plan termination, the Plan Administrator or Trustee shall distribute to Participants and Beneficiaries all Deferred Compensation as soon as is reasonably practicable following termination.

9.03 TRANSFERS. The Employer may enter into a Transfer agreement with another employer under which this Plan: (a) may accept a Transfer of a Participant's Account in the other employer's Eligible 457 Plan; or (b) may Transfer a Participant's (or Beneficiary's) Account in this Plan to the other employer's Eligible 457 Plan. The plan sponsors of the plans involved in the Transfer both must be States or both must be Tax-Exempt Organizations and the plans must provide for Transfers. The Participant or Beneficiary, after the Transfer will have Deferred Compensation in the recipient plan at least equal to his or her Deferred Compensation in the transferring plan immediately before the Transfer. Any Transfer

also must comply with applicable Treasury regulations, and in particular Treas. Reg. §§1.457-10(b)(2) as to post-severance transfers between Governmental Eligible 457 Plans; 1.457-10(b)(3) as to transfers of all assets between Governmental Eligible 457 Plans; 1.457-10(b)(4) as to transfers between Governmental Eligible 457 Plans of the same Employer; and 1.457-10(b)(5) as to post-severance transfers between Tax-Exempt Organization Eligible 457 Plans. The Plan Administrator will credit any Transfer accepted under this Section 9.03 to the Participant's Account and will treat the transferred amount as a Deferral Contribution for all purposes of this Plan except the Plan Administrator, will not treat such Transfer as a Deferral Contribution subject to the limitations of Article III. In addition, in the case of a Transfer between Tax-Exempt Organization Eligible Plans, the recipient plans shall apply a Participant's distribution elections made under the transferor plan in accordance with Treas. Reg. §1.457-10(b)(6)(ii). The Plan's Transfer of any Participant's or Beneficiary's Account under this Section 9.03 completely discharges the Employer, the Plan Administrator, the Trustee and the Plan from any liability to the Participant or Beneficiary for any Plan benefits.

9.04 PURCHASE OF PERMISSIVE SERVICE CREDIT. A Participant in a Governmental Eligible 457 Plan, prior to otherwise incurring a distributable event under Article IV, may direct the Trustee to transfer (as of January 1, 2002, or later) all or a portion of his/her Account to a governmental defined benefit plan (under Code §414(d)) for: (a) the purchase of permissive service credit (under Code §415(n)(3)(A)) under such plan, or (b) the repayment of contributions and earnings previously refunded with respect to a forfeiture of service credited under the plan (or under another governmental plan within the same State) to which Code §415 does not apply by reason of Code §415(k)(3).

* * * * *

AMENDMENT FOR 457(b) PLAN

Kenai Peninsula Borough School District, as Employer sponsor (“Employer”), adopts this Amendment to the Kenai Peninsula Borough School District 457(b) Eligible Deferred Compensation Plan (“Plan”).

RECITALS

Recent law changes, including the Pension Protection Act of 2006 (“PPA”), affect the Plan; and

The Plan gives the Employer the authority to make amendments to the Plan, and the Employer wishes to update the Plan for law changes currently in effect.

The Employer therefore amends the Plan by adding the following provisions to the Plan:

ARTICLE I PREAMBLE

- 1.1 **Adoption and effective date of Amendment.** The Employer adopts this Amendment to the Plan to reflect recent law changes. This Amendment is effective as indicated below for the respective provisions.
- 1.2 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Employer’s election.** The Employer adopts all Articles of this Amendment, except those Articles which the Employer specifically elects not to adopt.
- 1.4 **Construction.** Any “Section” reference in this Amendment refers only to this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to the Plan article, section or other numbering designations.

ARTICLE II DEFINITION OF UNFORESEEABLE EMERGENCY

- 2.1 **Application.** Effective for taxable years beginning after December 31, 2001, this Article II applies only if the Plan permits a distribution to a Participant on account of an unforeseeable emergency.
- 2.2 **Definition of unforeseeable emergency.** An unforeseeable emergency is a severe financial hardship of a Participant or Beneficiary resulting from: (1) illness or accident of the Participant, the Participant’s Beneficiary, or the Participant’s or Beneficiary’s spouse or dependent (as defined in Code §152, and, for taxable years beginning on or after January 1, 2005, without regard to Code §152(b)(1), (b)(2), and (d)(1)(B)); (2) loss of the Participant’s or Beneficiary’s property due to casualty; (3) the need to pay for the funeral expenses of the Participant’s or Beneficiary’s spouse or dependent (as defined in Code §152, and, for taxable years beginning on or after January 1, 2005, without regard to Code §152(b)(1), (b)(2), and (d)(1)(B)); or (4) other similar extraordinary and unforeseeable circumstances arising from events beyond the Participant’s or Beneficiary’s control.
- 2.3 **Definition of Beneficiary.** The Participant’s Beneficiary is a person who a Participant designates and who is or may become entitled to a Participant’s Plan account upon the Participant’s death.

[Note: If the Plan does not permit distributions on account of unforeseeable emergency, the Employer should check "Article II is not adopted" below.]

Article II is not adopted.

**ARTICLE III
DEFERRALS FROM POST-SEVERANCE COMPENSATION**

3.1 **Post-severance deferrals limited to Post-Severance Compensation.** For taxable years beginning after December 31, 2001, deferrals are permitted from an amount received following Severance from Employment only if the amount is Post-Severance Compensation as defined in Section 3.2.

3.2 **Post-Severance Compensation defined.** Post-Severance Compensation for purposes of this Article III includes the amounts described in (a) and (b) below, paid after a Participant's Severance from Employment with the Employer, but only to the extent such amounts are paid by the later of 2½ months after Severance from Employment or the end of the calendar year that includes the date of such Severance from Employment. The Employer, by its election in this Amendment, may elect to *exclude* from the definition of Post-Severance Compensation the amounts described in (a) or (b) below. The Employer, by its election in this Amendment, also may elect to *include* in the definition of Post-Severance Compensation the amounts described in (c) or (d) below, or both.

(a) **Regular pay.** Post-Severance Compensation *includes* (unless the Employer elects either in (a)(1) or in (a)(2) below not to include some or all of the amounts described in this (a)) regular pay after Severance of Employment if: (i) the payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and (ii) the payment would have been paid to the Participant prior to a Severance from Employment if the Participant had continued in employment with the Employer. (*Choose only one of (1) or (2), if applicable.*)

(1) Election not to include regular pay. The Employer elects not to include any of the amounts described in this Section 3.2(a) as Post-Severance Compensation.

(2) Election to include last paycheck ONLY. Of the amounts described in this Section 3.2(a), the Employer elects to include only such amounts that are included in the final paycheck paid to the Participant at the end of the pay period that includes the Participant's date of severance from employment.

(b) **Leave cashouts and deferred compensation.** Post-Severance Compensation *includes* (unless the Employer elects in (b)(1) below not to include all of the amounts described in this (b)) leave cashouts if those amounts would have been included in the definition of Compensation if they were paid prior to the Participant's Severance from Employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued. In addition, Post-Severance Compensation includes payments of deferred compensation if the compensation would have been included in the definition of Compensation if it had been paid prior to the Participant's Severance from Employment, and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the Participant had continued in employment with the Employer and only to the extent that the payment is includible in the Participant's gross income.

(1) Election not to include leave cashouts and deferred compensation. The Employer elects not to include any of the amounts described in this (b) as Post-Severance Compensation.

(c) **Salary continuation payments for military service Participants.** Post-Severance Compensation does *not* include (unless the Employer elects (c)(1) below to include all of the amounts described in this (c)) payments to an individual who does not currently perform services for the Employer by reason of Qualified Military Service (as described in Code §414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering Qualified Military Service.

(1) Election to include salary continuation payments for military service Participants. The Employer elects to *include* all of the amounts described in this (c) as Post-Severance Compensation.

(d) **Salary continuation payments for disabled Participants.** Post-Severance does *not* include Compensation paid to a Participant who is permanently and totally disabled (as defined in Code §22(e)(3)) (unless the Employer elects (d)(1) below to include all of the amounts described in this (d)). If elected, this provision will apply either only to non-highly compensated Participants or to all Participants for the fixed or determinable period specified in Section 3.2(d)(1)(ii) below.

(1) Election to include salary continuation payments for disabled Participants. The Employer elects to *include* all of the amounts described in this (d) as Post-Severance Compensation. In addition, this provision will apply as follows (*Choose only one of (i) or (ii)*):

(i) Non-highly compensated only. This provision applies only to disabled employees who are non-highly compensated employees immediately before becoming disabled.

(ii) Fixed or determinable period. This provision applies to all employees who are permanently and totally disabled, for the following period: _____
(*e.g., for a period of two years from the date of the disability*).

3.3 **Limitation on Post-Severance Compensation.** Any payment of Compensation paid after Severance of Employment that is not described in Section 3.2(a), (b), (c) or (d) above is not Post-Severance Compensation, even if payment is made by the later of 2½ months after Severance from Employment or by the end of the calendar year that includes the date of such Severance of Employment.

[Note: If the Employer operationally has not permitted deferrals from any Post-Severance Compensation, the Employer should check "Article III is not adopted" below.]

Article III is not adopted. The Plan does not permit any deferral contributions from any amount a Participant receives following Severance from Employment.

ARTICLE IV QUALIFIED DOMESTIC RELATIONS ORDERS

4.1 **Permissible QDROs.** Effective April 6, 2007, a domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order ("QDRO") will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.

4.2 **Other QDRO requirements apply.** A domestic relations order described in Section 4.1 is subject to the same requirements and protections that apply to QDROs.

[Note: This Article IV reflects a PPA provision which mandated DOL clarification of the QDRO statute. The DOL issued interim final regulations on March 7, 2007. If the plan does not provide for distributions pursuant to a QDRO, the Employer should check "Article IV is not adopted" below.]

Article IV is not adopted.

ARTICLE V PARTICIPANT DISTRIBUTION NOTIFICATION

- 5.1 **180-day notification period.** For any distribution notice issued in plan years beginning after December 31, 2006, any reference to the 90-day maximum notice period prior to distribution in applying the notice requirements of Code §402(f) (the rollover notice relating to an eligible rollover distribution), means 180 days.

[Note: Although a plan need not extend to 180 days the 90-day earliest notice date provided under prior law, there is no reason for an employer not to take advantage of the extended notice period. This Amendment provides enabling language.]

Article V is not adopted.

ARTICLE VI ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGEMENT

- 6.1 **Eligible Automatic Contribution Arrangement ("EACA").** Effective for plan years beginning after December 31, 2007, the Employer maintains a Plan with automatic enrollment provisions as an Eligible Automatic Contribution Arrangement ("EACA"), and the Employer elects to apply the permissible withdrawal provisions as described in Section 6.4. A Plan is a EACA as defined in Code §414(w) if the Plan satisfies: (1) the uniformity requirements under Section 6.2; and (2) the notice requirements under Section 6.3.

(a) **Automatic Deferral Percentage.** The Employer will withhold _____% from a Participant's Compensation each payroll period.

(b) **Participants subject to Automatic Deferral: disregard all current deferral elections.** Unless the Employer elects in Section 6.1(c) immediately below to apply the Automatic Deferral to a different group of Participants, the Automatic Deferral applies to all Participants, except those who have in effect a salary reduction agreement on the Automatic Deferral effective date, regardless of the elective deferral amount (including zero) under the Agreement.

(c) **Alternative election regarding Participants subject to Automatic Deferral: disregard Participants deferring at least Automatic Deferral Percentage.** In lieu of Section 6.1(b) the Employer elects to apply the Automatic Deferral to all Participants, except those who, on the Automatic Deferral effective date, are deferring an amount which is at least equal to the Automatic Deferral Percentage.

- 6.2 **Uniformity.** The Plan satisfies the uniformity requirement if the Plan provides an Automatic Deferral Percentage that is a uniform percentage of Compensation. However, the Plan does not violate the uniform Automatic Deferral Percentage merely because:

(a) **Years of participation.** The Automatic Deferral Percentage varies based on the number of plan years the Participant has participated in the Plan while the Plan has applied Automatic Deferral provisions; or

(b) **No reduction from prior default percentage.** The Plan does not reduce an Automatic Deferral Percentage that, immediately prior to the effective date of the EACA provisions was higher (for any Participant) than the Automatic Deferral Percentage.

6.3 **EACA notice.** The plan satisfies the notice requirement if the Plan Administrator annually provides a EACA notice to each Participant a reasonable period prior to each plan year the Employer maintains the Plan as a EACA (“EACA Plan Year”).

(a) **Deemed reasonable notice/new Participant.** The Plan Administrator is deemed to provide timely notice if the Plan Administrator provides the EACA notice at least 30 days and not more than 90 days prior to the beginning of the EACA Plan Year.

(b) **Mid-year notice/new Participant or Plan.** If: (a) an Employee becomes eligible to make elective deferrals in the Plan during a EACA Plan Year but after the Plan Administrator has provided the annual EACA notice for that plan year; or (b) the Employer adopts mid-year a new Plan as a EACA, the Plan Administrator must provide the EACA notice no later than the date the Employee becomes eligible to make elective deferrals.

(c) **Content.** The EACA notice must provide comprehensive information regarding the Participants’ rights and obligations under the Plan and must be written in a manner calculated to be understood by the average Participant.

6.4 **EACA permissible withdrawal.** A Participant who has Automatic Deferrals under the EACA may elect to withdraw all the Automatic Deferrals (and allocable earnings) under the provisions of this Section 6.4, unless the Employer elects in Section 6.4(d) below to limit the group of Participants who are eligible for the permissible withdrawal. If the Employer elects to limit the group of Participants who are eligible for the permissible withdrawal, only a Participant who is a member of that eligible group may make the election to withdraw.

(a) **Amount.** If a Participant elects a permissible distribution under this Section 6.4 the Plan must make a distribution equal to the amount (and only the amount) of the Automatic Deferrals made under the EACA (adjusted for allocable gains and losses to the date of the distribution).

(b) **Timing.** The Participant may make an election to withdraw the Automatic Deferrals under the EACA no later than 90 days after the date of the first Automatic Deferral under the EACA. For this purpose, the date of the first Automatic Deferral is the date that the Compensation subject to the Automatic Deferral otherwise would have been includible in the Participant’s gross income. The effective date of the election must not be later than the last day of the payroll period that begins after the date the Participant makes the election to withdraw the Automatic Deferrals.

(c) **Fees.** The Plan Administrator may reduce the permissive distribution amount by any generally applicable fees. However, the Plan may not charge a different fee for distribution under this Section 6.4 than applies to other distributions.

(d) **Alternative election to limit Permissible withdrawals.** The Employer elects to limit permissible withdrawal of EACA Automatic Deferrals as follows (*Choose (1) or choose and complete (2)*):

(1) Participant with EACA Automatic Deferrals only. Only Participants who do not have Deferral Contributions in the Plan prior to the EACA’s effective date may elect a permissible withdrawal.

(2) Describe: _____

6.5 **Definitions.**

(a) **Definition of Automatic Deferral.** An Automatic Deferral is an elective deferral that results from the operation of the Plan’s automatic enrollment provisions. Under the Automatic Deferral, the Employer automatically will reduce by the Automatic Deferral Percentage elected in this Amendment the Compensation of each Participant subject to the Automatic Deferral, as specified

in Section 6.1 of this Amendment. The Plan Administrator will cease to apply the Automatic Deferral to a Participant who makes a Contrary Election as defined in this Section 6.5

- (b) **Definition of Automatic Deferral Percentage/ Increases.** The Automatic Deferral Percentage is the amount of Automatic Deferral which the Employer elects in this Amendment (including any scheduled increase to the Automatic Deferral Percentage the Employer may elect by a modification of this Amendment). If a Participant has elected to defer an amount which is less than the Automatic Deferral Percentage the Employer has elected in this Amendment, and the Employer elects to apply the Automatic deferral to all Participants except those who, on the effective date of the Automatic Deferral, are deferring an amount which is at least equal to the Automatic Deferral Percentage, the Automatic Deferral Percentage includes only the incremental amount necessary to increase the Participant's Elective Deferral to equal the Automatic Deferral Percentage (including any scheduled increases thereto).
- (c) **Definition of Contrary Election.** A Contrary Election is a Participant's election made after the effective date of the Automatic Deferral not to defer any Compensation or to defer an amount which is more or less than the Automatic Deferral percentage.
- (d) **Effective Date of Contrary Election.** A Participant's Contrary Election generally is effective as of the first payroll period which follows the Participant's Contrary Election. However, a Participant may make a Contrary Election which is effective: (a) for the first payroll period in which he/she becomes a Participant if the Participant makes a Contrary Election within a reasonable period following the Participant's Entry Date and before the Compensation to which the Election applies becomes currently available; or (b) for the first payroll period following the effective date of the Automatic Deferral, if the Participant makes a Contrary Election not later than the effective date of the Automatic Deferral. A Participant who makes a Contrary Election is not thereafter subject to the Automatic Deferral or to any scheduled increases thereto, even if the Participant later revokes or modifies the Contrary Election. A Participant's Contrary Election continues in effect until the Participant subsequently changes his/her salary reduction agreement.

[Note: If the Employer operationally has not applied the EACA provisions, the Employer should check "Article VI is not adopted" below.]

Article VI is not adopted.

ARTICLE VII DIRECT ROLLOVER OF NON-SPOUSE BENEFICIARY DISTRIBUTION

- 7.1 **Non-spouse beneficiary rollover right.** For distributions after December 31, 2006, a non-spouse beneficiary who is a "designated beneficiary" under Code §401(a)(9)(E) and the regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his/her distribution to an individual retirement account (including a Roth IRA) the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.
- 7.2 **Certain requirements not applicable.** Although a non-spouse beneficiary may roll over directly a distribution as provided in Section 7.1, the distribution is not subject to the direct rollover requirements of Code §401(a)(31), the notice requirements of Code §402(f) or the mandatory withholding requirements of Code §3405(c). If a non-spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a "60-day" rollover.
- 7.3 **Trust beneficiary.** If the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code §401(a)(9)(E).
- 7.4 **Required minimum distributions not eligible for rollover.** A non-spouse beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other IRS guidance.

- 7.5 **Mandatory default rollover not applicable.** The mandatory default rollover provisions of the Plan under Code §401(a)(31)(B), relating to mandatory distributions (of an eligible rollover distribution) greater than \$1,000, do not apply to distributions to a non-spouse beneficiary.

[Note: The rollover option described in this Article VII is not mandatory. If the Employer has elected not to provide the rollover for non-spouse beneficiaries, the Employer should check "Article VII is not adopted" below.]

Article VII is not adopted.

ARTICLE VIII STATUTORY HURRICANE RELIEF

- 8.1 **Qualified Hurricane Distribution.** A Participant may take a Qualified Hurricane Distribution, provided that the aggregate amount of Qualified Hurricane Distributions received by a Participant for any taxable year (from all plans maintained by the Employer, including any member of any controlled group that includes the Employer) may not exceed \$100,000.
- (a) **Repayment of distribution.** If the Plan permits rollover contributions, a Participant who receives a Qualified Hurricane Distribution, at any time during the 3-year period beginning on the day after receipt of the distribution, may make one or more contributions to the Plan, as rollover contributions, in an aggregate amount not to exceed the amount of such distribution. *[Note: The Plan must permit rollover contributions for a Participant to repay the distribution, since the repayment is a rollover contribution.]*
- (b) **Definition of Qualified Hurricane Distribution.** A "Qualified Hurricane Distribution" means a distribution defined in Code §1400Q(a)(4)(A), which does not exceed the amount limitation described in this Section 8.1.
- 8.2 **Recontribution of home purchase withdrawal.** If the Plan permits rollover contributions, a Participant who received a Qualified Distribution (relating to a hardship distribution to purchase or construct a principal residence in an applicable hurricane disaster area), but who, on account of the hurricane, did not use the funds to purchase or construct a principal residence, may make one or more contributions to the Plan, as rollover contributions, during the Applicable Period, in an aggregate amount not to exceed the amount of such Qualified Distribution.
- (a) **Definition of Qualified Distribution.** A "Qualified Distribution" for purposes of this Section 8.2 means any qualified Katrina distribution, any qualified Rita distribution, and any qualified Wilma distribution, as defined in Code §1400Q(b)(2).
- (b) **Definition of Applicable Period.** The "Applicable Period" for purposes of this Section 8.2 means the applicable period as defined in Code §1400Q(b)(3).
- 8.3 **Increased loan limit and repayment extension.** Notwithstanding the loan limitation that otherwise would apply, the Plan will determine the loan limit under Code §72(p)(2)(A) for a loan to a Qualified Individual made during the Applicable Period by substituting "\$100,000" for "\$50,000," and by substituting "the present value of the nonforfeitable accrued benefit of the employee under the Plan" for "one-half of the present value of the nonforfeitable accrued benefit of the employee under the Plan."
- (a) **Extension of certain repayments.** If a Qualified Individual has an outstanding loan from the Plan on or after the Qualified Beginning Date, then: (i) if the date for any repayment of such loan occurs during the period beginning on the Qualified Beginning Date and ending on December 31, 2006, the due date is extended for one year; (ii) the Plan will adjust any subsequent repayments to reflect the extension of the due date under (i) and any interest accrued during the extension; and (iii) the Plan will disregard the period of extension described in (i) in determining the 5-year period and the loan term under Code §72(p)(2)(B) or (C).

- (b) **Definition of Qualified Individual.** A “Qualified Individual” for purposes of this Section 8.3 means any qualified individual as defined in Code §1400Q(c)(3).
- (c) **Definition of Applicable Period.** The “Applicable Period” for purposes of this Section 8.3 means the applicable period as defined in Code §1400Q(c)(4).
- (d) **Definition of Qualified Beginning Date.** The “Qualified Beginning Date” for purposes of this Section 8.3 means the qualified beginning date as defined in Code §1400Q(c)(4).

Article VIII is not adopted.

**ARTICLE IX
HEALTH AND LONG-TERM CARE INSURANCE DISTRIBUTIONS**

- 9.1 **Election to deduct from distribution.** For distributions in taxable years beginning after December 31, 2006, an Eligible Retired Public Safety Officer may elect annually for that taxable year to have the Plan deduct an amount from a distribution which the Eligible Retired Public Safety Officer otherwise would receive and include in income. The plan will pay such deducted amounts directly to the provider as described in Section 9.2, to pay qualified health insurance premiums.
- 9.2 **Direct payment.** The Plan will pay directly to the provider of the accident or health insurance plan or qualified long-term care insurance contract the amounts the Eligible Retired Public Safety Officer has elected to have deducted from the distribution. Such amounts may not exceed the lesser of \$3,000 or the amount the Participant paid for such taxable year for qualified health insurance premiums, and which otherwise complies with Code §402(l).
- 9.3 **Definitions.**
 - (a) **Eligible retired public safety officer.** An “Eligible Retired Public Safety Officer” is an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a Public Safety Officer with the Employer.
 - (b) **Public safety officer.** A “Public Safety Officer” has the same meaning as in Section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(9)(A)).
 - (c) **Qualified health insurance premiums.** The term “qualified health insurance premiums” means premiums for coverage for the Eligible Retired Public Safety Officer, his/her spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in Code §7702B(b)).

[Note: If the Employer does not employ any employees who are or may be Eligible Retired Public Safety Officers, the Employer may check “Article IX is not adopted” below.]

Article IX is not adopted.

**ARTICLE X
DIRECT ROLLOVER TO ROTH**

- 10.1 **Roth IRA rollover.** For distributions made after December 31, 2007, a Participant may elect to roll over directly an eligible rollover distribution to a Roth IRA described in Code §408A(b).

Except as provided in this Amendment, the Plan remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the Employer has executed this Amendment on this

_____.

Employer

By: _____

[Print Name, Title]