

**GOVERNMENTAL 457(b) PLAN DOCUMENT,  
CUSTODIAL ACCOUNT AGREEMENT  
AND  
SERVICES AGREEMENT**

This document is intended to be adopted by a governmental entity, and should be reviewed by the sponsor and the sponsor's legal counsel prior to execution by the sponsor.

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## INTRODUCTION

The Plan established hereunder is intended to constitute an eligible deferred compensation plan as described in IRC Section 457(b) which is maintained by a State, political subdivision of a state, or any agency or instrumentality of a State or political subdivision of a State.

The Custodial Account established hereunder is intended to serve as a funding vehicle for the eligible deferred compensation plan established hereunder, constitute a custodial account described in IRC Section 401(f), and shall be treated as a trust under the rules described in Treas. Reg. Section 1.457-8(a).

The Services Agreement established hereunder is intended to set forth the administrative recordkeeping services for the eligible deferred compensation plan established hereunder.

The Plan document, the Custodial Account, and Services Agreement are attached hereto and constitute an integral part of this document.

### **SPONSOR INFORMATION (the "Sponsor")**

(a) Sponsor's Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Contact's Name: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

(1) Sponsor's Employer Identification Number: \_\_\_\_\_

(2) Sponsor's fiscal year end: \_\_\_\_\_

(3) Applicable State Law: \_\_\_\_\_

(4) Type of governmental entity/instrumentality: \_\_\_\_\_

- (b) The term “Sponsor” includes the following eligible employers (as defined in IRC Section 457(e)(1)(A)) (list each participating eligible employer and its Employer Identification Number):

\_\_\_\_\_  
\_\_\_\_\_

- (c) Plan Administrator’s Name (if not the Sponsor) (**the “Plan Administrator”**):

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

The Plan Administrator is the agent for service of legal process for the Plan.

**PLAN INFORMATION (the “Plan”)**

(a) Name of Plan: \_\_\_\_\_

(b) Plan Year end (month/day): \_\_\_\_\_

(c) Plan status (check appropriate box):

(1)  New Plan. Effective Date: \_\_\_\_\_

(2)  Amendment. Effective Date: \_\_\_\_\_

**PLAN EXECUTION**

IN WITNESS WHEREOF, the Sponsor hereby adopts the Plan or amends the Plan, as set forth herein, by execution by its duly authorized officer, effective as of the Effective Date set forth above.

Sponsor's Name: \_\_\_\_\_

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**CUSTODIAL ACCOUNT INFORMATION (the "Custodial Account")**

Effective Date: \_\_\_\_\_

**CUSTODIAN INFORMATION (the "Custodian")**

Fidelity Management Trust Company  
c/o FMR Corp. Legal Department, FESCo Group  
82 Devonshire Street, Mail Zone F7A  
Boston Massachusetts 02109

**CUSTODIAL ACCOUNT AGREEMENT EXECUTION**

IN WITNESS WHEREOF, the Sponsor and the Custodian have caused the Custodial Account Agreement, as set forth herein, to be executed by their duly authorized officers, effective as of the Effective Date set forth above.

Sponsor's Name: \_\_\_\_\_

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**FIDELITY MANAGEMENT TRUST COMPANY**

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**SERVICES AGREEMENT INFORMATION (the "Services Agreement")**

Effective Date: \_\_\_\_\_

**SERVICE PROVIDER INFORMATION ("Fidelity")**

Fidelity Investments Institutional Operations Company, Inc.  
c/o FMR Corp. Legal Department, FESCO Group  
82 Devonshire Street, Mail Zone F7A  
Boston Massachusetts 02109

**SERVICES AGREEMENT EXECUTION**

IN WITNESS WHEREOF, the Sponsor and Fidelity Investments Institutional Operations Company, Inc. have caused the Services Agreement, as set forth herein, to be executed by its duly authorized officer, effective as of the Effective Date set forth above.

Sponsor's Name: \_\_\_\_\_

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Fidelity Investments Institutional Operations Company, Inc.

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

# GOVERNMENTAL 457(b) PLAN DOCUMENT

## ARTICLE I

### DEFINITIONS

The following definitions apply to this Plan unless the context plainly requires otherwise. Any variation shall have the meaning ascribed to the defined term.

Section 1.01 Account means a Participant's entire interest in the Plan, to which is credited contributions as further described in Article III and the investment experience thereon, and to which is also debited allocated administrative expenses, if any.

Section 1.02 Alternate Payee means an individual who is entitled to payment from a Participant's Account pursuant to a Qualified Domestic Relations Order as described in Treas. Reg. Section 1.457-10(c), or any successor regulation or guidance.

Section 1.03 Beneficiary means a beneficiary of a Participant, a Participant's estate, or any other person whose interest in the Plan is derived from the Participant, including an Alternate Payee.

Section 1.04 Benefit Commencement Date means the date selected by the Participant or Beneficiary to receive: (a) a single-sum distribution of the fair market value of his or her Account or (b) the first in a series of scheduled payments made with respect to his or her Account.

Section 1.05 Benefit Payment Option means one of the optional forms in which benefits may be paid to a Participant and/or Beneficiary under this Plan.

Section 1.06 Compensation means all remuneration paid or payable to a Participant by the Sponsor for services rendered.

Section 1.07 Deferred Compensation means the amount of Compensation deferred by a Participant under this Plan pursuant to a Deferred Compensation Agreement.

Section 1.08 Deferred Compensation Agreement means the written, electronic or other binding and legally valid form of agreement between a Participant and the Sponsor pursuant to which the Participant agrees to accept a reduction in Compensation and the Sponsor agrees to contribute the amount of such reduction to the Participant's Account under this Plan.

Section 1.09 Discretionary Employer Contribution means the amount, if any, contributed by the Sponsor to this Plan pursuant to Section 3.03.

Section 1.10 Eligible Employee means each individual who renders services to the Sponsor and is characterized as an employee or an independent contractor of the Sponsor for

Federal income and wage tax withholding. The above notwithstanding, the term Eligible Employee shall not include any individual whose terms and conditions of employment are determined through collective bargaining unless such collective bargaining agreement provides for the coverage of such person as a Participant in this Plan.

Section 1.11 Eligible Retirement Plan means any account, annuity, plan or trust described in IRC Section 402(c)(8)(B).

Section 1.12 Eligible Rollover Distribution means any distribution in the form of an eligible rollover distribution defined in IRC Section 402(c)(4).

Section 1.13 Includible Compensation means, with respect to a taxable year, the Participant's compensation, as defined in IRC Section 415(c)(3), for services performed for the Sponsor. Includible Compensation shall be determined without regard to community property laws

Section 1.14 IRC means the Internal Revenue Code of 1986, as amended.

Section 1.15 Investment Options means the various investments available to a Participant as may be approved by the Plan Administrator from time to time.

Section 1.16 Normal Retirement Age means age 65.

Section 1.17 Participant means any Eligible Employee who has been admitted to participate in this Plan pursuant to the provisions of Article II. An individual shall remain a Participant, regardless of whether such individual is an Eligible Employee of the Sponsor, if there remain any amounts credited to his or her Account.

Section 1.18 Plan means the arrangement set forth herein, the title of which is set forth in the Introduction, as it may be amended from time to time.

Section 1.19 Plan Administrator means the Sponsor or the person or persons designated by the Sponsor pursuant to Section 10.01 to administer the Plan, as set forth in the Introduction.

Section 1.20 Plan Year means the calendar year.

Section 1.21 Qualified Domestic Relations Order or "QDRO" means any judgment, decree or order as defined in IRC Section 414(p).

Section 1.22 Required Beginning Date means April 1st of the calendar year following the later of: (a) the calendar year in which the Participant attains Age 70 1/2; or (b) the calendar year in which the Participant retires.



Section 1.23 Rollover Amount means that portion of an Eligible Rollover Distribution from this Plan that, by election of the prospective distributee, is transferred directly or indirectly to an Eligible Retirement Plan.

Section 1.24 Severance from Employment means a voluntary or involuntary termination of employment or expiration of all contractual relationships with the Sponsor for any reason including death or disability, or for no reason. For purposes of the foregoing sentence, an approved leave of absence by an employee shall not constitute a Severance from Employment, and the expiration of all contracts with an Independent Contractor shall only qualify as a Severance from Employment if there is a good-faith and complete termination of the contractual relationship.

Section 1.25 Sponsor means the State, political subdivision of a State, or agency or instrumentality of a State or political subdivision of a State set forth in the Introduction that has established this Plan. The Sponsor is, and shall remain during its sponsorship of the Plan, an “eligible employer” as is defined in IRC Section 457(e)(1)(A).

Section 1.26 State Law means any statutes, court decisions, executive orders, administrative rulings, regulations or other proclamations having the force of law in the state in which Sponsor is located and which is set forth in the Introduction.

Section 1.27 Valuation Date means each business day on which the securities exchanges are open.

## ARTICLE II

### ELIGIBILITY AND PARTICIPATION

Section 2.01 Initial Eligibility. Any Eligible Employee may elect to participate in this Plan by completing a Deferred Compensation Agreement authorizing the Sponsor to reduce his or her Compensation by a specific amount and to contribute such amount to an Account established on his or her behalf. An Eligible Employee shall become a Participant immediately following the acceptance and approval of such individual's properly completed Deferred Compensation Agreement by the Plan Administrator. Any independent contractor to the Sponsor may elect to participate in this Plan pursuant to the terms of this Section 2.01, subject to any applicable provisions in the Treasury Regulations issued under IRC Section 457 which are hereby incorporated by reference.

Section 2.02 Procedure for and Effect of Admission. Any Eligible Employee who elects to become a Participant shall complete a Deferred Compensation Agreement by written or other means as prescribed by the Plan Administrator. The Plan Administrator reserves the right to reject any Deferred Compensation Agreement which does not conform with uniform, non-discriminatory procedures it shall prescribe and advise the Eligible Employee of the appropriate method of correction. By becoming a Participant, such Eligible Employee shall for all purposes be deemed to have assented to the terms and provisions of this Plan and to all amendments thereto.

## ARTICLE III

### CONTRIBUTIONS TO THE PLAN

#### Section 3.01 Elective Deferred Compensation Agreement.

(a) General. Each Eligible Employee electing to participate in this Plan shall complete a Deferred Compensation Agreement which authorizes the Sponsor to reduce his or her Compensation by the specified amount, subject to the limitations and conditions of Section 3.02. A Deferred Compensation Agreement shall not be binding upon the Sponsor until accepted and approved by the Plan Administrator. Any Deferred Compensation Agreement to defer Compensation for any calendar month by salary reduction must be entered into before the first day of the month in which the compensation is paid or made available, except that such Agreement may be entered into on or before the first day on which the Participant performs services for the Sponsor with respect to the first month in which the Eligible Employee performs service for the Sponsor. In the case of an Eligible Employee's election to defer accumulated sick pay, accumulated vacation pay and/or back pay that is not yet payable, a Deferred Compensation Agreement must be entered into before the date on which such sick pay,

vacation pay and back pay would otherwise have been payable, which date must be before the Eligible Employee's Severance from Employment.

(b) Revisions to Deferred Compensation Agreement.

(1) Factual Entries. A Participant may change factual information (such as name, address, date of birth, etc.) by filing a revised Deferred Compensation Agreement ("Revised Deferred Compensation Agreement") with the Plan Administrator at any time.

(2) Elective Entries. A Participant may change the designated Deferred Compensation at any time by completing a Revised Deferred Compensation Agreement and filing the Revised Deferred Compensation Agreement with the Plan Administrator in the manner prescribed by the Plan Administrator. No Revised Deferred Compensation Agreement shall become effective with respect to any calendar month unless it is entered into by the Participant and accepted and approved by the Plan Administrator prior to the first day of such calendar month.

(3) Incomplete Items. Any item that is not completed in a Revised Deferred Compensation Agreement shall have no effect on that item stated in the immediate prior Deferred Compensation Agreement.

(c) Cancellation and Reinstatement of Deferred Compensation Agreements. A Deferred Compensation Agreement may be canceled or suspended by the Participant at any time by delivery by the Participant of written notice to the Plan Administrator. The Plan Administrator shall prescribe uniform rules regarding the effective date of and conditions governing the cancellation or suspension of a Deferred Compensation Agreements. A Participant who has canceled or suspended a Deferred Compensation Agreement may reinstate such Agreement by filing a Revised Deferred Compensation Agreement with the Plan Administrator, as provided in this Article III, provided such individual is still an Eligible Employee at such time.

Section 3.02 Deferred Compensation Election.

(a) In General. A tentative Deferred Compensation election shall be set forth in the Deferred Compensation Agreement as a specified dollar amount or a whole percentage (up to 100%) of a Participant's Includible Compensation with respect to each payroll period, subject to any limitations established by the Plan Administrator from time to time and at any time regarding the maximum amount of Compensation which may be deferred. The tentative Deferred Compensation election shall be allocated to a Participant's Account only after the Plan Administrator has made such adjustments thereto as it deems necessary to satisfy the requirements of Paragraphs (b), (c), and (d) of this section.

(b) General Limitation. Except as set forth in Section 3.02(c) or (d), in no event shall the total of the Deferred Compensation and the Discretionary Employer Contribution made with respect to any Participant during any taxable year exceed the lesser of: (1) the applicable dollar amount set forth in IRC Section 457(e)(15): \$12,000 for 2003; \$13,000 for 2004; \$14,000 for 2005; \$15,000 for 2006; and thereafter, the \$15,000 amount shall be adjusted for cost-of-living in the manner described in IRC Section 457(e)(15)(B) and the regulations thereunder, or (2) 100% of such Participant's Includible Compensation for the taxable year.

(c) Special Section 457 Catch-up. Notwithstanding any provision in Section 3.02(b) to the contrary, with respect to any one or more of the three (3) taxable years ending before the date of the Participant's Normal Retirement Age, a Participant may elect to have Deferred Compensation contributed to the Plan in an amount not to exceed (when combined with any Discretionary Employer Contribution made with respect to such Participant for such taxable year) the lesser of:

- (1) Twice the dollar amount in effect for such taxable year under IRC Section 457(e)(15), or
- (2) The amount of the Participant's "Underutilized Limitation" for the Participant's taxable year, as determined pursuant to Treas. Reg. Section 1.457-4(c)(3)(ii) and any successor regulations or guidance of similar import.

A Participant may elect to apply the 457(b) catch-up limitation under the Plan only once, regardless of whether the full amount of the limitation is utilized or whether the limitation is utilized for all three years.

(d) Catch-Up Contributions for Individuals Age 50 and Older. Any Participant who is projected to attain age 50 before the end of a calendar year (or such other date as the Treasury Department may require by regulations) may elect to have additional Deferred Compensation contributed to the Plan in an amount not to exceed the catch-up limit under IRC Section 414(v) for the taxable year. The maximum amount of age 50 catch-up contributions for a taxable year under IRC Section 414(v) is as follows: \$2,000 for 2003; \$3,000 for 2004; \$4,000 for 2005; \$5,000 for 2006; and thereafter, the \$5,000 amount shall be adjusted for cost-of-living. Notwithstanding the foregoing, this paragraph shall not apply for any taxable year for which a higher limitation under the special Section 457 catch-up described in Section 3.02(c) applies to such Participant, to the extent required by applicable statute or regulations.

Section 3.03 Discretionary Employer Contributions. The Sponsor may decide, in its sole discretion and subject to the general limitation described in Section 3.02(b) and the 457(b) catch-up limitations described in Section 3.02(c), to make contributions to the Accounts of Eligible Employees from time to time. Such contributions may constitute, in whole or in part, so-called matching contributions with respect to Deferred Compensation Amounts elected for a

Plan Year by Eligible Employees. Any such Discretionary Employer Contributions shall be credited to the appropriate Participants' Accounts.

Section 3.04 Transfers from Other Eligible Deferred Compensation Plans.

(a) To the extent permitted by IRC Section 457(b) and applicable guidance thereunder, a Beneficiary or a Participant who is performing services for the Sponsor may transfer amounts deferred by such Participant to another eligible deferred compensation plan of a governmental entity (as defined in IRC Section 457(b)) to this Plan, provided that the Participant has had a Severance from Employment with the transferring employer and the transferor plan provides for transfers. Such transferred amounts shall be accepted and allocated to such Participant's or Beneficiary's Account under this Plan provided that such transfers are in cash or other property acceptable to the Plan Administrator. The Plan Administrator may request proof that the plan from which amounts are to be transferred is an eligible deferred compensation plan of a governmental entity, and such other information and documentation as it deems necessary. Transferred amounts shall not be subject to the limitations of Section 3.02, provided, however, that the actual amount deferred during the calendar year under both plans shall be taken into account in calculating the deferral limitations for that year. The Participant or Beneficiary whose deferral amounts are being transferred shall have a deferral amount immediately after the transfer at least equal to the deferral amount with respect to that Participant immediately before the transfer.

(b) To the extent permitted by IRC Section 457(b) and applicable guidance thereunder, the Plan may accept a transfer of all assets of an eligible deferred compensation plan of a governmental entity (as defined in IRC Section 457(b)) within the same State as the Plan. Such transferred amounts shall be accepted and allocated to all applicable Accounts under this Plan provided that such transfers are in cash or other property acceptable to the Plan Administrator. The Plan Administrator may request proof that the plan from which amounts are to be transferred is an eligible deferred compensation plan of a governmental entity, and such other information and documentation as it deems necessary. Transferred amounts shall not be subject to the limitations of Section 3.02, provided, however, that the actual amount deferred during the calendar year under both plans shall be taken into account in calculating the deferral limitations for that year. The Participant or Beneficiary whose deferral amounts are being transferred shall have a deferral amount immediately after the transfer at least equal to the deferral amount with respect to that Participant or Beneficiary immediately before the transfer. In addition, the Participant or Beneficiary whose deferral amounts are being transferred shall not be eligible for additional annual deferrals under the Plan unless such Participant or Beneficiary is performing services for the Sponsor.

(c) To the extent permitted by IRC Section 457(b) and applicable guidance thereunder, a Participant or Beneficiary may elect to transfer amounts credited under another eligible deferred compensation plan of the Sponsor to his or her Account

hereunder at any time, subject to any terms and conditions which are imposed by the provider of such investment option under such other eligible deferred compensation plan.

### Section 3.05 Transfers to Other Eligible Deferred Compensation Plans

(a) To the extent permitted by IRC Section 457(b) and applicable guidance thereunder, all assets of the Plan may be transferred to the eligible deferred compensation plan of a governmental entity (as defined in IRC Section 457(b)) within the same State as the Plan (the "Receiving Plan"). Such transferred amounts shall be accepted and allocated to all applicable accounts under the Receiving Plan provided that such transfers are in cash or other property acceptable to the plan administrator of the Receiving Plan. The plan administrator of the Receiving Plan may request proof that the plan from which amounts are to be transferred is an eligible deferred compensation plan of a governmental entity, and such other information and documentation as it deems necessary. Transferred amounts under the Receiving Plan shall not be subject to the limitations as set forth in Section 3.02, provided, however, that the actual amount deferred during the calendar year under both plans shall be taken into account in calculating the deferral limitations for that year. The Participant or Beneficiary whose deferral amounts are being transferred shall have a deferral amount immediately after the transfer at least equal to the deferral amount with respect to that Participant or Beneficiary immediately before the transfer. In addition, the Participant or Beneficiary whose deferral amounts are being transferred shall not be eligible for additional annual deferrals under the Receiving Plan unless such Participant or Beneficiary is performing services for the sponsor of the Receiving Plan.

(b) To the extent permitted by IRC Section 457(b) and applicable guidance thereunder, a Participant or Beneficiary may elect to transfer amounts credited under his or her Account hereunder to another eligible deferred compensation plan of the Sponsor at any time, subject to any terms and conditions which are imposed by the provider of such investment option under such other eligible deferred compensation plan.

Section 3.06 Timing of Contributions. All Deferred Compensation elected under Section 3.02 shall be transferred to the funding vehicle under the Plan that satisfies the requirements of IRC Section 457(g) no later than fifteen (15) business days after the end of the month in which such Deferred Compensation otherwise would have been paid to the Participant, absent participation in this Plan. The above notwithstanding, in the event of extraordinary circumstances, Deferred Compensation may be transferred to such funding vehicle at a later date, but in all events within a period that is reasonable for the proper administration of the Accounts. Upon transfer to such funding vehicle, Deferred Compensation shall be promptly allocated to Participants' Accounts.

Section 3.07 Vesting of Contributions. All Participants shall be fully vested in the amounts credited to his or her Account at all times.

Section 3.08 Excess Deferrals Other Than as a Result of the Individual Limitation. Any excess deferrals resulting from a failure of the Plan to apply the limitations of Treas. Reg. Section 1.457-4(c)(1)-(3) to amounts deferred under the Plan (computed without regard to the

individual limitation under Prop. Treas. Reg. Section 1.457-5) shall be distributed to the Participant, with allocable net income, as soon as administratively practicable after the Plan determines that the amount is an excess deferral.

Section 3.09 Excess Deferrals Resulting from the Individual Limitation. Any excess deferrals to the Plan which result from a failure of a Participant to comply with the individual limitation set forth in Treas. Reg. Section 1.457-5 for a taxable year shall be distributed to the Participant, with allocable net income, as soon as administratively practicable after the Sponsor determines that the amount is an excess deferral. In making this determination, the Sponsor may aggregate all plans in which the Participant participates by virtue of such Participant's relationship with the Sponsor, and shall, in its sole discretion, determine the amount(s), source(s) and timing of such distributions to the Participant that are required for compliance with the requirements of IRC Section 457 and the regulations thereunder.

## ARTICLE IV

### BENEFITS ON SEVERANCE FROM EMPLOYMENT

#### Section 4.01 Eligibility for and Timing of Benefits.

(a) Each Participant who is an employee of the Sponsor shall be entitled to receive the benefits as defined in this Article IV of the Plan on the Benefit Commencement Date following the Participant's Severance from Employment.

(b) Notwithstanding anything herein to the contrary, all distributions from the Plan shall be subject to the distribution requirements of IRC Section 401(a)(9) and the regulations thereunder.

Section 4.02 Form of Benefits. Upon a Severance from Employment, a Participant shall receive a benefit from this Plan equal to the balance of his or her Account as of the Valuation Date occurring on the date of distribution (or, if no valuation occurs on such date, the Valuation Date immediately preceding the date of distribution). Such payment shall be made in accordance with the Benefit Payment Option elected by the Participant.

Section 4.03 Benefit Payment Options. Except as otherwise provided in this Section 4.03, any benefit payable under this Article IV shall be payable in any one or any combination of the following Benefit Payment Options, provided it complies with the distribution requirements of IRC Section 401(a)(9) and the regulations thereunder:

(a) one lump sum; or

(b) under a systematic withdrawal plan (installments).

#### Section 4.04 Eligible Rollover Distributions.

(a) General. If all or any portion of a prospective distribution is an Eligible Rollover Distribution, the prospective distributee shall have the right to elect to have all or any portion of the Eligible Rollover Distribution treated as a Rollover Amount. Subject to satisfaction of the requirements of IRC Section 457(e)(16) and this Section, Rollover Amounts shall be delivered directly by this Plan to an Eligible Retirement Plan as designated by the distributee. The election described in this Section shall be made not more than ninety (90), and not less than thirty (30) days prior to the Benefit Commencement Date of the distribution. The prospective distributee may waive the thirty-day minimum period if such waiver is electronic or in writing and in a form acceptable to the Plan Administrator.

(b) Effect of Delivery of Rollover Amounts. Each prospective distributee, by electing to have any portion of his or her Eligible Rollover Distribution treated as a Rollover Amount, agrees that, upon transmittal as instructed of the funds to which such election applies, the Plan Administrator, the Plan Sponsor and all other persons and entities associated with the operation and maintenance of this Plan shall be released from all duties, obligations, responsibilities and liabilities in connection with the amount so transmitted. None of the persons or entities so released shall be responsible to see to the crediting or application of the funds so transferred.

### ARTICLE V

#### DEATH BENEFITS

Section 5.01 Form and Amount of Death Benefits. Upon the death of a Participant, death benefits shall be payable as follows:

(a) Death Prior to Benefit Commencement Date. If a Participant's death occurs before his or her Benefit Commencement Date, his or her Beneficiary shall elect a Benefit Commencement Date that is no later than the December 31st of the calendar year in which the fifth (5th) anniversary of the date of the Participant's death occurs and a Benefit Payment Option that requires a complete distribution of the Participant's Account by such date. If the Beneficiary is the Participant's surviving spouse, such spouse may elect that distributions commence at any time on or before the later of: (1) December 31st of the calendar year immediately following the calendar year of the Participant's death, or (2) December 31st of the calendar year in which the Participant would have attained age 70 ½, in a payment option that provides payments no longer than over the life of such spouse (or over a period not extending beyond his or her life expectancy). If the surviving spouse dies before completion of such payments, the remaining balance of the Account shall be paid to his or her estate.



(b) Death After Benefit Commencement Date. If a Participant's death occurs after he/she has begun to receive benefits under a Benefit Payment Option, the remaining payments, if any, shall be payable to the Participant's Beneficiary commencing within the thirty (30) day period commencing with the sixty-first (61st) day following the Participant's death. If the Beneficiary is any person other than the Participant's surviving spouse, such payments must be completed on or before the 5th anniversary of the Participant's death. In no event shall the Sponsor or Plan Administrator be liable to the Beneficiary for the amount of any payment made in the name of the Participant before the Plan Administrator receives proof of death of the Participant. If the Beneficiary dies before completion of such payments, the remaining balance of the Account shall be paid to his or her estate.

(c) Section 401(a)(9) Compliance. Notwithstanding any other provision of this Article, all distributions shall commence not later than the latest permissible Benefit Commencement Date under IRC Section 401(a)(9) and regulations thereunder, and each benefit shall be distributed at a rate not less than the minimum distribution rate prescribed for such benefit under IRC Section 401(a)(9) and the regulations thereunder.

#### Section 5.02 Beneficiary Designation.

(a) In General. The Participant shall file with the Plan Administrator a written designation of primary and contingent Beneficiary which shall indicate the person or persons who shall receive benefits payable under this Plan upon the Participant's death. The Participant accepts and acknowledges the burden for executing and filing a proper Beneficiary designation with the Plan Administrator.

(b) Change in Beneficiary Designation. Any change in Beneficiary designation shall become effective only upon receipt of the form by the Plan Administrator whether or not the Participant is living at the time of such receipt. Any change of Beneficiary designation filed in proper form with the Plan Administrator shall revoke all prior Beneficiary designations.

(c) Adequacy of Beneficiary Designation. The Plan Administrator shall determine the acceptability of a Beneficiary designation or change of Beneficiary designation. The Plan Administrator shall notify the Participant if the Beneficiary designation is not acceptable and inform the Participant of the method of correction. A corrected Beneficiary designation shall be effective as of the date on which the Participant first attempts to designate such individual.

(d) Death Without Beneficiary Designation. If a Participant dies without having designated a beneficiary or if every designated beneficiary has predeceased the Participant, the benefit payment under this Plan shall be made to the properly appointed fiduciary of the Participant's estate provided that if a fiduciary has not been appointed and qualified within 120 days after the death, the payment shall be made in accordance with State Law.

## ARTICLE VI

### WITHDRAWALS AND PAYMENTS NOT DEPENDENT ON A SEVERANCE FROM EMPLOYMENT

Section 6.01 Transfers to Certain Plans for the Purchase of Service Credit. Any Participant, who is a participant in a defined benefit governmental plan (as defined in IRC Section 414(d)) of the same state as the Sponsor, may elect to have all or a portion of his or her Account hereunder directly transferred in a trustee to trustee transfer made from this Plan to the defined benefit governmental plan, if the transferred assets are used (1) for the purchase of permissive past service credit (as defined in IRC Section 415(n)(3)(A)) under the receiving defined benefit governmental plan, or (2) as a repayment to which IRC Section 415 does not apply by reason of IRC Section 415(k)(3).

Section 6.02 Qualified Domestic Relations Orders. The Sponsor and the Plan Administrator shall comply with any “qualified domestic relations order” as defined in IRC Section 414(p) (a “QDRO”), including an order requiring the distribution of a Participant’s benefits to an Alternate Payee in advance of the general rules for distributions set forth herein. To the extent required in a QDRO, any portion of a Participant’s benefits may be paid to (or a portion of a Participant’s Account may be set aside for the benefit of) the Participant’s spouse, former spouse or other Alternate Payee. Upon receipt of notification of any judgment, decree or order which relates to the provision of child support, alimony payments, or marital property rights of a spouse, former spouse, child, or other dependent of a Participant and which is made pursuant to a state domestic relations and/or community property law (“Court Order”), the Plan Administrator shall, within a reasonable period after receipt of such Court Order, determine whether it satisfies the requirements of a QDRO.

(a) Segregation of Account, Payment. The Plan Administrator may segregate in a separate account in the Plan, the amounts which would be payable to the Alternate Payee pursuant to a QDRO. Such amounts may be paid to the Alternate Payee in advance of the general distribution rules under this Plan.

(b) Status, Rights and Privileges of Alternate Payees. Except as otherwise provided herein, an Alternate Payee shall have the status and rights of a Beneficiary under this Plan to the exclusion of all other rights associated with Participants under this Plan, including the right to receive payment under the terms of the QDRO at the time and manner specified in such QDRO (provided, however, that such payment may not be made in a form which is not available to Participants under the Plan), and the right to direct the manner in which Plan amounts allocated to such Alternate Payee are invested.

(c) QDRO Expenses. Any expense related to the administration of a QDRO shall be assessed against the Participant’s Account.

## ARTICLE VII

### ESTABLISHMENT AND MAINTENANCE OF ACCOUNTS

Section 7.01 Establishment of Accounts. An Account shall be established in the name of each Participant and maintained by the Plan Administrator as a recording of the aggregate Deferred Compensation, transferred assets, Investment Option allocations, earnings and any other information deemed necessary to administer such Account. Such Account shall become the basis for determining benefits under the Plan.

Section 7.02 Reporting of Accounts. A report of the status of a Participant's Account and any Account activity shall be furnished by the Plan Administrator at intervals as determined by the Sponsor, provided, however that such report shall be provided no less frequently than annually. Such reports may be furnished electronically to the extent permitted by applicable law.

## ARTICLE VIII

### INVESTMENT OF DEFERRED COMPENSATION

Section 8.01 General. The Plan Administrator shall, after deducting any applicable administrative expense charges, allocate the Deferred Compensation as directed by the Participant among the Investment Option(s) selected pursuant to this Article VIII. The market value or cash value of the Participant's Account shall be dependent upon the investment return experience of the Participant's elected Investment Option(s).

Section 8.02 Investment Direction by Participants.

(a) Direction Rights. Each Participant shall direct the Plan Administrator as to the Investment Option(s) in which his or her Account shall be invested. Beneficiaries and/or Alternate Payees shall also direct the investment of their Accounts. In such a case, the provisions of this Section 8.02 shall also apply to investment directions by such Beneficiaries and Alternate Payees.

(b) Available Investment Options. The Plan Administrator may offer such Investment Options as it determines in the exercise of its sole and absolute discretion, provided that each Investment Option must be a registered investment company for which participant level recordkeeping services are made available by the Plan recordkeeper. The Plan Administrator may offer additional Investment Options or eliminate Investment Options as it determines in the exercise of its sole and absolute discretion.

(c) Transmission of Investment Directions. Investment directions must be (1) communicated in writing or electronically to the Plan Administrator or through another medium approved by the Plan Administrator, (2) effective prospectively only, and only as to Investment Options available for investment after the direction is transmitted to the Plan Administrator and (3) effective as promptly as practicable after receipt by the Plan Administrator. Until an investment direction becomes effective, the Plan Administrator, the Sponsor and their agents shall be fully protected in following the previous investment direction which is to be superseded by the new investment direction, or the default investment direction described in Section 8.02(d).

(d) Default Investment Direction. In the event that a Participant declines or fails to provide investment directions with respect to his or her Account, the Plan Administrator shall determine the appropriate manner in which such assets are to be invested, and the Plan Administrator, the Sponsor and their agents shall be fully protected with regard to such action. Any subsequent designation of Investment Option(s) by the Participant shall be effective with respect to future Deferred Compensation and all amounts previously invested by the Plan Administrator.

Section 8.03 Losses Under the Plan. The Plan Administrator, Sponsor, any trustee or custodian of the assets of the Plan and any employee thereof shall not be accountable or liable for any investment losses to a Participant's Account incurred by virtue of implementing the directions (or lack of directions) of the Participant with respect to the investment of the Account or due to any reasonable administrative delay in implementing such directions.

## ARTICLE IX

### ESTABLISHMENT OF FUNDING VEHICLE

Section 9.01 Funding Vehicle. The Sponsor has established a Custodial Account with Fidelity Management Trust Company in the form set forth in the attached Introduction and Custodial Account Agreement. The Custodial Account is intended to constitute a custodial account as described in IRC Section 401(f) and Treas. Reg. Section 1.401(f)-1, which shall be treated as a trust under the rules described in Treas. Reg. Section 1.457-8. In addition, the Sponsor may establish a trust described in IRC Section 457(g) and Treas. Reg. Section 1.457-8 to hold any assets of the Plan. Finally, the sponsor may utilize as funding vehicles other custodial contracts or annuity contracts described in IRC Section 401(f) and Treas. Reg. Section 1.401(f)-1, which shall each be treated as a trust under the rules described in Treas. Reg. Section 1.457-8. Any such trust, custodial account or annuity contract shall comply with IRC Section 457(g) and constitute a valid funding vehicle under applicable State Law.

## ARTICLE X

### PLAN ADMINISTRATION

Section 10.01 Appointment and Tenure. The Sponsor may appoint a Plan Administrator, as set forth in the Introduction. In absence of such appointment, the Sponsor shall serve as the Plan Administrator.

Section 10.02 Delegation. The Plan Administrator may delegate to any person or persons, the authority to sign any documents on its behalf, or to perform any act(s) within its authority as set forth in Section 10.03 below.

Section 10.03 Authority of Plan Administrator. The Plan Administrator shall have the full discretionary authority to administer the Plan in all of its details, to perform the duties assigned to it by the Sponsor or under applicable State Law, and to perform any act(s) necessary to carry out such duties including, but not limited to, the following:

- (a) To maintain and preserve records relating to Participants, former Participants, Beneficiaries and Alternate Payees;
- (b) To prepare and furnish to Participants all information required under applicable law or the provisions of this Plan;
- (c) To prepare sufficient Eligible Employee data, maintain separate Accounts for Participants and make required payments of benefits;

(d) To prepare and file or publish with all appropriate government officials all reports and other information required under law to be so filed or published;

(e) To engage consultants, including legal, investment and actuarial advisors, and rely on recommendations therefrom;

(f) To determine all claims for benefits under the Plan, and to provide procedures for determination of claims for benefits. In so doing, the Plan Administrator shall have the complete discretion and authority to make, amend, interpret and enforce all appropriate rules and regulations for the administration of the Plan and to decide or resolve any and all questions, including interpretations of the Plan, as may arise in such administration; and

(g) To retain records on elections and waivers by Participants and their Beneficiaries, as further set forth herein.

Section 10.04 Construction of the Plan. The Plan Administrator shall resolve questions arising in the administration, interpretation and application of the Plan. The Plan Administrator shall correct any defect, reconcile any inconsistency, or supply any omission with respect to this Plan. All decisions or actions of the Plan Administrator in respect to any question arising out of the administration, interpretation and application of the Plan and the rules and regulations promulgated hereunder shall be final and conclusive and binding upon all persons having any interest in the Plan.

Section 10.05 Plan Expenses. Except as otherwise provided below, the expenses incurred by the Sponsor and the Plan Administrator in connection with the establishment and operation of the Plan shall be expenses of the Sponsor. Expenses incurred by the Plan Administrator in connection with the operation of the Plan (including, but not limited to appropriate expenses of any service providers) shall be paid from the Participants' Accounts, unless otherwise paid by the Sponsor. The above notwithstanding, in no event shall expenses be paid from Participants' Accounts if such payment is impermissible under State Law.

Section 10.06 Reporting and Disclosure. The Plan Administrator shall keep all individual and group records relating to Participants and Beneficiaries and all other records necessary for the proper operation of the Plan and Administration of Participant Accounts, including but not limited to investment reports, audits and quarterly reports.

Section 10.07 Right to Suspend Benefits and Correct Errors. The Plan Administrator shall take such steps as are considered necessary and appropriate to remedy any inequity that results from incorrect information received or communicated in good faith or as the consequence of an administrative error. The Plan Administrator may suspend the payment until satisfied as to the correctness of the payment or the person to receive the payment or to allow filing in any court of competent jurisdiction of a suit in such form as the Plan Administrator considers appropriate for a legal determination of the benefits to be paid and the persons to receive them.

The Plan Administrator specifically reserves the right to correct errors of every sort, and the Participant hereby agrees as Participant or on behalf of any Beneficiary or Beneficiaries to any method of error correction as the Plan Administrator shall specify. The objective of any such method of error correction shall be, to the extent reasonably possible, to adjust the Account of the Participant by reversing transactions or taking other actions to approach the situation that would have existed if the error had not been made. The Plan Administrator shall also be authorized to recover any payment made in error including the right to make deductions from future benefits.

Section 10.08 Reliance on Electronic Instructions, Directions, Signatures, Contracts and Records. For all purposes under the Plan, the Plan Administrator and the Sponsor may (but are not required to) give the same effect to electronic instructions, directions, signatures, contracts, records or similar communications (collectively, “records and signatures”) as it would give to written records and signatures, and the Plan Administrator’s and the Sponsor’s actions in so doing shall be protected to the same extent as if such electronic records and signatures were, in fact, in written form. Any such electronic records and signatures shall be retained and provided by the Plan Administrator and/or the Sponsor in accordance with applicable law. For all purposes under the Plan, the term “electronic” or “electronically” shall mean relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

Section 10.09 Claims Procedures. Any person claiming a benefit, or requesting an interpretation or ruling under the Plan, or requesting information under the Plan, shall present his or her request in writing to the Plan Administrator. Any dispute over payment from Accounts under the Plan shall be resolved by the Plan Administrator pursuant to its written claims procedures. Such claims procedures shall comply with applicable State Laws including, but not limited to, civil service rules and applicable collective bargaining agreements.

## ARTICLE XI

### AMENDMENT, TERMINATION AND SUSPENSION

Section 11.01 Amendment. The Sponsor may, by action of its chief executive or its governing body as appropriate, amend this Plan. Except as otherwise permitted by State Law, no amendment shall deprive any Participant or Beneficiary of any right or benefit to which the Participant or Beneficiary is entitled under this Plan immediately prior to the effective date of such amendment.

Section 11.02 Suspension of Contributions. The Plan Administrator may temporarily suspend the acceptance of Deferred Compensation as necessary to facilitate appropriate administration of this Plan or to comply with any federal, State or local law. Written notice of such suspension shall be provided to all Participants and may accompany the distribution of payroll check. No such suspension shall deprive a Participant or Beneficiary of any right or benefit to which the Participant or Beneficiary is entitled under this Plan immediately prior to the effective date of such amendment or suspension.

Section 11.03 Termination. The Sponsor may, by appropriate action of its chief executive or governing body as appropriate, terminate this Plan. Except as otherwise permitted by State Law, no such termination shall deprive a Participant or Beneficiary of any benefits to which the Participant or Beneficiary is entitled under this Plan immediately prior to the effective date of such termination. Following such termination, each Participant shall be entitled to immediate distribution of his or her Account. Upon receipt of such distribution, the Sponsor, the Plan Administrator, and any agents, delegates and Eligible Employees thereof shall be relieved of any obligation with respect to such Participant under this Plan.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

Section 12.01 Nonalienation of Benefits - Attachment. Except as set forth in Section 6.02 with regard to Qualified Domestic Relations Orders, no Participant or Beneficiary shall have the right to alienate, anticipate, commute, pledge, encumber or assign any of the benefits or payments under this Plan, except the right to designate a Beneficiary or Beneficiaries as hereinabove provided. The rights of the Participant under this Plan shall not be subject to the rights of creditors of the Participant and shall be exempt from execution, attachment, prior assignment, or any other judicial relief or order for the benefit of any creditors or other third persons having claims against the Participant.

Section 12.02 No Contract of Employment or Otherwise. Neither the establishment of the Plan, nor the participation in the Plan, shall be construed as giving any Participant or Eligible



Employee the right to be retained in the service of the Sponsor as an employee or independent contractor.

Section 12.03 Severability of Provisions. If any provision of this Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and this Plan shall be construed and enforced as if such provisions had not been included.

Section 12.04 Heirs, Assigns and Personal Representatives. This Plan shall be binding upon the heirs, executors, administrators, successors and assigns of the parties, including each Participant and Beneficiary, present and future (except that no successor to the Sponsor shall be considered a sponsor of the Plan unless that successor adopts this Plan).

Section 12.05 Headings and Captions. The headings and captions herein are provided for reference and convenience only, shall not be considered part of the Plan, and shall not be employed in the construction of the Plan.

Section 12.06 Controlling Law. This Plan shall be construed and enforced according to applicable State law and the IRC, and shall be interpreted in a manner consistent with the maintenance of its status as an “eligible deferred compensation plan” as defined in Section 457(b) of the IRC. Reference to any section of the IRC or State law shall be deemed to incorporate any required amendment of such section as necessary to maintain the status of this Plan as an eligible deferred compensation plan.

Section 12.07 Payments to Minors, Etc. Any benefit payable to or for the benefit of a minor, an incompetent person or other person incapable of receipting therefor shall be deemed paid when paid to such person’s guardian or to the party providing or reasonably appearing to provide for the care of such person, and such payment shall fully discharge the Plan Administrator, the Sponsor, and all other parties with respect thereto.

Section 12.08 Lost Payees. A benefit shall be deemed forfeited if the Plan Administrator is unable to locate a Participant or Beneficiary to whom payment is due. Such benefit shall not be deemed forfeited for a period of at least five (5) years following the date on which the benefit payments would otherwise commence. Such forfeitures may be used to defray administrative expenses of the Plan.

Section 12.09 Reliance on Data and Consents. The Sponsor, the Plan Administrator, and all other persons or entities associated with the operation of the Plan, the administration management of its assets, and the provision of benefits thereunder, may reasonably rely on the truth, accuracy and completeness of all data provided by a Participant, and/or Beneficiary, including, without limitation, data with respect to age, health and marital status. Furthermore, the Sponsor, the Plan Administrator, and all persons identified above may reasonably rely on all consents, elections and designations filed with the Plan or those associated with the administration operation of the Plan by any Participant or Beneficiary, or the representatives of such persons without duty to inquire into the genuineness of any such consent, election or designation. None of the aforementioned persons or entities associated with the administration

operation of the Plan, its assets and the benefits provided under the Plan shall have any duty to inquire into any such data, and all may rely on such data being current to the date of reference. It shall be the duty of the Participant or Beneficiary to advise the appropriate parties of any change in such data. The Plan Administrator shall not be liable for the consequences of such change in data.

Section 12.10 Tax Consequences. Subject to the provisions of Section 12.11, the Sponsor does not represent or guarantee that any particular Federal or State income, estate, payroll, personal property or other tax consequences will occur because of the Participant's or Beneficiary's participation in this Plan. The Participant shall be responsible to obtain appropriate advice regarding all questions related to Federal, State or local income, estate, payroll, personal property or other tax consequences arising from participation in this Plan.

Section 12.11 Withholding; Payroll Taxes. The trustee or custodian shall be entitled to withhold from payments or benefits hereunder any income tax or payroll taxes required to be withheld from such payments under local, state or federal law.

Section 12.12 Equal Access to Benefits, Rights and Features. Any determination made by the Sponsor with respect to the availability of benefits, rights and features under this Plan shall apply on a non-discriminatory basis allowing equal access for all Participants; provided, however, that such access may be limited by the terms of a collective bargaining agreement or individual employment contract.

Section 12.13 Effective Date. The effective date of this Plan shall be the date specified in the Introduction.

Section 12.14 Entire Agreement. This Plan and all properly adopted amendments to the Plan shall govern the provision of deferred compensation benefits pursuant to IRC Section 457(b). No other instrument, communication statement of any sort shall modify this Plan in any way or be relief upon the parties to this Agreement.

**END OF TEXT OF PLAN DOCUMENT**

**SEE NEXT PAGE FOR CUSTODIAL ACCOUNT AGREEMENT**

## CUSTODIAL ACCOUNT AGREEMENT

**THIS CUSTODIAL ACCOUNT AGREEMENT**, dated as of the Effective Date set forth in the Introduction, is between the Sponsor, identified in the Introduction, and the Custodian, also identified in the Introduction.

### WITNESSETH:

**WHEREAS**, the Sponsor is the sponsor of the IRC Section 457(b) eligible deferred compensation plan identified as the Plan in the introduction; and

**WHEREAS**, the Sponsor wishes to establish a custodial account described in IRC Section 401(f) that is treated as a trust under the rules described in Treas. Reg. Section 1.457-8 and which is exempt from taxation under Section 501(a) of the IRC, to hold and invest assets of the Plan for the exclusive benefit of Participants in the Plan and their beneficiaries in accordance with IRC Section 457(g); and

**WHEREAS**, the Custodian, a Massachusetts trust company, is willing to hold as custodian the aforesaid plan assets and invest such plan assets in several investment options selected by the Sponsor; and

**WHEREAS**, the Sponsor also wishes to have the Custodian perform certain ministerial recordkeeping and administrative services for the Plan; and

**WHEREAS**, the Custodian is willing to perform certain recordkeeping and administrative services for the Plan if the services are purely ministerial in nature and are provided within a framework of Plan provisions, guidelines and interpretations conveyed in writing to the Custodian by the Administrator.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants and agreements set forth below, the Sponsor and the Custodian agree as follows:

### **Section 1. Definitions.**

The following terms as used in this Custodial Account Agreement have the meaning indicated unless the context clearly requires otherwise:

- (a) “Administrator” shall mean the “Plan Administrator” of the Plan, as set forth in the Introduction.
- (b) “Agreement” shall mean this Custodial Account Agreement, as it may be amended and in effect from time to time.
- (c) “Custodial Account” shall mean the custodial account established by the Sponsor and the Custodian pursuant to the provisions of this Agreement.

- (d) “Custodian” shall mean Fidelity Management Trust Company, a Massachusetts trust company, and any successor to all or substantially all of its trust and/or custodial business as described in Section 10(c). The term Custodian shall also include any Successor Trustee appointed pursuant to Section 10 to the extent such successor agrees to serve as custodian under this Agreement.
- (e) “EDT” shall mean electronic data transfer or similar electronic communication methods which are secure communication methods and are acceptable to the Custodian in its sole discretion.
- (f) “Effective Date” shall mean the effective date for the Custodial Account set forth in the Introduction.
- (g) “Fidelity Mutual Funds” shall mean the investment companies advised by Fidelity Management & Research Company or any of its affiliates.
- (h) “FIIOC” shall mean Fidelity Investments Institutional Operations Company, Inc., an affiliate of the Custodian.
- (i) “Final Reporting Date” shall mean the date as of which the Custodian resigns or is removed pursuant to Section 9 hereof or the date as of which this Agreement terminates pursuant to Section 11 hereof.
- (j) “Introduction” shall mean the introductory pages attached hereto, which shall be incorporated entirely by reference herein and which constitute an integral part of the Agreement set forth herein.
- (k) “IRC” shall mean the Internal Revenue Code of 1986, as it has been or may be amended from time to time.
- (l) “Participant” shall mean, with respect to the Plan, any employee, former employee or alternate payee with an account under the Plan which has not yet been fully distributed and/or forfeited, and shall include the designated beneficiary(ies) with respect to the account of any deceased employee, former employee or alternate payee until such account has been fully distributed and/or forfeited.
- (m) “PIN” shall mean an individual’s personal identification number established in accordance with procedures specified by the Custodian in its sole discretion.
- (n) “Plan” shall mean the eligible deferred compensation plan for which this Custodial Account serves as a funding vehicle, as set forth in the Introduction.
- (o) “Recordkeeping Reconciliation Period” shall mean the period beginning on the date of the initial transfer of assets to the Custodial Account and ending on the date of the completion of the reconciliation of Participant records.

- (p) “Reporting Date” shall mean the last day of each fiscal quarter of the Plan, or such other date(s) as mutually agreed to by the Custodian and the Sponsor.
- (q) “Sponsor” shall mean the eligible employer as defined in IRC Section 457(e)(1)(A) which has established the Plan, as set forth in the Introduction.
- (r) “Successor Trustee” shall mean the trustee or custodian appointed pursuant to Section 10 hereof.
- (s) “Termination Date” shall mean the date on which this Agreement terminates.

## **Section 2. Custodial Account.**

The Sponsor hereby establishes the Custodial Account with the Custodian, effective as of the first business day occurring on or after the Effective Date on which the Custodian receives an initial contribution of money or other property acceptable to the Custodian in its sole discretion, made by the Sponsor or transferred from a previous trustee or custodian under the Plan. The Custodial Account shall consist of (1) an initial contribution of money or other property acceptable to the Custodian in its sole discretion, made by the Sponsor or transferred from a previous trustee or custodian under the Plan, (2) such additional sums of money or other property acceptable to the Custodian in its sole discretion as shall from time to time be delivered to the Custodian under the Plan, (3) all investments made therewith and proceeds thereof, and (4) all earnings and profits thereon, less the payments that are made by the Custodian as provided herein, without distinction between principal and income. The Custodian hereby accepts the Custodial Account on the terms and conditions set forth in this Agreement. In accepting this Custodial Account, the Custodian shall be accountable for the assets received by it, subject to the terms and conditions of this Agreement.

## **Section 3. Exclusive Benefit of Custodial Account Assets.**

As required under section 457(g) of the IRC, no part of the Custodial Account’s assets or income may be used for, or diverted to, purposes other than the exclusive benefit of the Participants in the Plan or their beneficiaries or to pay the reasonable expenses of Plan administration, prior to the satisfaction of all liabilities with respect to Participants and their beneficiaries.

## **Section 4. Disbursements.**

### **(a) Administrator-Directed Disbursements.**

The Custodian shall make disbursements in the amounts and in the manner that the Administrator directs from time to time in writing. The Custodian shall have no responsibility to ascertain such direction’s (i) compliance with the terms of the Plan (except to the extent that the terms of the Plan have been communicated to the Custodian in writing by the Sponsor or the Administrator) or with any applicable law, or (ii) effect for tax purposes or otherwise. The Custodian shall have no responsibility to see to the application of any disbursement.

(b) Limitations.

The Custodian shall not be required to make any disbursement in excess of the net realizable value of the assets of the Custodial Account at the time of the disbursement. The Custodian shall make cash disbursements in accordance with the applicable source and fund withdrawal hierarchy specified by the Administrator in writing.

**Section 5. Investment of Custodial Account Assets.**

(a) Selection of Investment Options.

The Sponsor shall be solely responsible for the selection of investment options under the Plan and this Custodial Account. The Custodian shall not render investment advice to any person in connection with the selection of such options.

(b) Available Investment Options.

The Sponsor shall direct the Custodian as to (1) the investment options in which the Custodial Account shall be invested during the Recordkeeping Reconciliation Period, and (2) the investment options in which Plan Participants may invest following the Recordkeeping Reconciliation Period. The investment options to be available during the Recordkeeping Reconciliation Period shall be determined by the Sponsor and set forth in a separate written agreement between the Sponsor and FIIOC. The investment options to be available following the Recordkeeping Reconciliation Period shall also be determined by the Sponsor in its sole discretion and set forth in a separate written agreement between the Sponsor and FIIOC. The Sponsor may choose to make available to Participants in the Plan all of the Fidelity Mutual Funds which are determined by Fidelity Investments, from time to time, to be available for investment by participants in eligible deferred compensation plans generally.

(c) Participant Direction and Exchanges.

As authorized under the Plan, each Plan Participant shall have the right to direct the Custodian as to the investment option(s) in which the assets in the Participant's accounts shall be invested among the available investment options. Such directions may be made by Plan Participants in writing, by telephone, electronically, via the Internet or by such other electronic means maintained for such purpose by the Custodian or its agent. Exchange hours, via a Participant service representative, are 8:00 a.m. Eastern Standard Time ("ET") to 12:00 midnight ET on each business day. A "business day" is any day on which the New York Stock Exchange ("NYSE") is open. Exchanges through the Voice Response Service ("VRS") and through NetBenefits<sup>SM</sup> (or similar electronic or Internet-based medium) may be made virtually 24 hours a day. FIIOC reserves the right to change these exchange guidelines at any time in its sole discretion. The NYSE's normal closing time is 4:00 p.m. ET. In the event that the NYSE alters its closing time for any reason, all references to 4:00 p.m. ET shall mean the NYSE closing time, as altered. Participants may call on any business day to exchange between Mutual Funds. If the request is confirmed by FIIOC before 4:00 p.m. ET, it will receive that day's trade date. Requests confirmed by FIIOC after 4:00 p.m. ET will receive the next business day's trade date.

In the event that the Custodian fails to receive a proper direction regarding an allocation for a Participant, or if such direction is incomplete or unclear, the Sponsor hereby directs the Custodian to invest the assets in the default investment selection of Fidelity Money Market Trust – Retirement Government Money Market Portfolio (or, if not available, in Fidelity Money Market Trust – Retirement Money Market Portfolio, or if not available, in Fidelity U.S. Government Reserves, or, if not available, in Fidelity Cash Reserves), pending receipt of proper instructions from the Participant, without liability to anyone for any loss resulting from the delay in implementing such instructions or fund allocation. The Sponsor acknowledges that after the Custodian receives proper direction, any gains or losses attributable to the investment in the default fund shall be taken into account by the Custodian in the allocation of assets to a Participant’s individual account. The Sponsor hereby acknowledges that it has received from the Custodian a copy of the prospectus for the default investment selection of Fidelity Money Market Trust – Retirement Government Money Market Portfolio and for each Fidelity Mutual Fund selected by the Sponsor as a Plan investment option. Custodial Account investments in all Fidelity Mutual Funds shall be subject to the following limitations:

(i) Execution of Purchases and Sales. Purchases and sales of Fidelity Mutual Funds (other than for exchanges) shall be made on the date on which the Custodian receives from the Administrator in good order all information, documentation and wire transfer of funds (if applicable) necessary to accurately effect such transactions; provided, however, that each day that the Fidelity Select Funds are open for business as set forth in the Funds’ then current prospectuses (“Business Day”), the Sponsor hereby directs the Custodian to submit for processing all instructions for purchases and redemptions, but not exchanges, of shares of Fidelity Select Funds only once each Business Day immediately prior to the last time on such Business Day at which the Fidelity Select Funds’ net asset values are calculated on such Business Day as specified in the Fidelity Select Funds’ then current prospectuses. For purposes of this Agreement, “in good order” shall mean in a state or condition acceptable to FIIOC in its sole discretion, which FIIOC determines is reasonably necessary for accurate execution of the intended transaction. A Fidelity Select Fund is a Fund available for purchase under this Agreement that is managed by an affiliate of FMR Corp., a Delaware corporation, and designated as a Select Portfolio in its prospectus. Exchanges of Mutual Funds shall be made in accordance with the Exchange Guidelines described above. In the event that the Custodian commits a transactional error relating to a Participant’s investment instructions, the Sponsor or the Participant must notify the Custodian in writing of such incorrect execution of such investment instructions within the earlier of (1) six (6) months of such transaction’s occurrence or (2) forty-five (45) days after the Participant is provided with a quarterly statement that contains such transactional error. Upon expiration of such period, the Custodian shall have no liability whatsoever to anyone with respect to the propriety of its acts or for any loss resulting from such misallocated investments in the Participant’s account.

(ii) Voting. At the time of mailing of the notice of each annual or special stockholders’ meeting of any Fidelity Mutual Fund, the Custodian shall send a copy of the notice and all proxy solicitation materials to each Plan Participant who has shares of such Fidelity Mutual Fund credited to his or her accounts, together with a voting direction form for return to the Custodian or its designee, to the extent such materials are

provided to the Custodian by the issuer of such Fidelity Mutual Fund. The Custodian may provide the notice and proxy solicitation materials electronically, to the extent permitted by applicable law. The Participant shall have the right to direct the Custodian as to the manner in which the Custodian is to vote the shares credited to the Participant's accounts (both vested and unvested). The Custodian shall vote the shares as directed by the Participant. The Custodian shall not vote any shares for which it has received no directions from the Participant. During the Recordkeeping Reconciliation Period, the Sponsor shall have the right to direct the Custodian as to the manner in which the Custodian is to vote the shares of the Fidelity Mutual Funds in the Custodial Account, including Fidelity Mutual Fund shares held in any short-term investment fund or liquidity reserve. In any event, the Custodian shall not vote any Mutual Fund shares for which it has received no directions from the Sponsor.

With respect to all rights other than the right to vote, the Custodian shall follow the directions of the Participant, and if no such directions are received, the directions of the Sponsor. The Custodian shall have no duty to solicit directions from Participants, the Administrator or the Sponsor.

(d) Reliance by Custodian on Directions.

(i) The Custodian shall not be liable for any loss or expense which arises from any Participant's exercise or non-exercise of rights under this Section 5 over the assets held in such Participant's accounts.

(ii) The Custodian shall not be liable for any loss or expense, or by reason of any breach, which arises from the Sponsor's exercise or non-exercise of rights under this Section 5, unless it was clear on the direction's face that the actions to be taken under the Sponsor's directions would be contrary to the terms of the Plan, as communicated in writing to the Custodian, or this Agreement.

(e) Custodian's Powers.

The Custodian shall have the following powers and authority:

(i) Subject to paragraphs (b) and (c) of this Section 5, to sell, exchange, convey, transfer, or otherwise dispose of any property held in the Custodial Account, by private contract or at public auction. No person dealing with the Custodian shall be bound to see to the application of the purchase money or other property delivered to the Custodian or to inquire into the validity, expediency, or propriety of any such sale or other disposition;

(ii) Subject to paragraphs (b) and (c) of this Section 5, to invest all or any part of the assets of the Custodial Account in short-term investments (including interest-bearing accounts with the Custodian or money market mutual funds advised by affiliates of the Custodian) and in any collective investment trust or group trust, including any collective investment trust or group trust maintained by the Custodian which then



provides for the pooling of the assets of plans which are described in Sections 401(a) and 457(b) of the IRC and exempt from tax under section 501(a) of the IRC (or any comparable provisions of any future legislation that amends, supplements or supercedes these IRC sections), provided that such collective investment trust or group trust is exempt from tax under the IRC or regulations or rulings issued by the IRS. The provisions of the documents governing such collective investment trusts or group trusts, as may be amended from time to time, shall govern any investment therein and are hereby made a part of this Agreement;

(iii) To cause any securities or other property held as part of the Custodial Account to be registered in the Custodian's own name, in the name of one or more of its nominees, or in the Custodian's account with the Depository Trust Company of New York and to hold any investments in bearer form; provided, however, the books and records of the Custodian shall at all times show that all such investments are part of the Custodial Account;

(iv) To keep that portion of the Custodial Account in cash or cash balances as the Sponsor or Administrator may, from time to time, deem to be in the best interest of the Custodial Account;

(v) To make, execute, acknowledge, and deliver any and all documents of transfer or conveyance and to carry out the powers herein granted;

(vi) To borrow funds from a bank or other financial lending institution which is not affiliated with the Custodian in order to provide sufficient liquidity to process Plan transactions in a timely fashion; provided, however, that the cost of such borrowing shall be allocated in a reasonable fashion to the investment fund(s) requiring such liquidity;

(vii) To settle, compromise, or submit to arbitration any claims, debts, or damages due to or arising from the Custodial Account; to commence or defend lawsuits or legal or administrative proceedings; to represent the Custodial Account in all lawsuits and legal and administrative hearings; and to pay all reasonable costs and expenses arising from any such action from the Custodial Account, if not paid by the Sponsor;

(viii) To employ legal, accounting, clerical, and other assistance as may be required in carrying out the provisions of this Agreement and to pay their reasonable expenses and compensation from the Custodial Account, if not paid by the Sponsor; and

(ix) To do all other acts, although not specifically mentioned herein, as the Custodian may deem necessary to carry out any of the foregoing powers and the purposes of the Custodial Account and this Agreement.

## **Section 6. Recordkeeping and Administrative Services to Be Performed.**

### (a) General.

The Custodian shall perform those recordkeeping and administrative services which are necessary for it to fulfill its responsibilities hereunder. In addition, the Custodian, or an affiliate of the Custodian, shall perform the recordkeeping and administrative services that are agreed to by the Sponsor and FIIOC in a separate Services Agreement, as it may be amended from time to time. All services hereunder shall be performed within the framework of the Administrator's directions to the Custodian, provided in a form and manner acceptable to the Custodian, regarding the Plan's provisions, guidelines and interpretations. The Custodian shall not perform any service that might cause the Custodian, in its sole judgment, to be deemed to (i) exercise any discretionary authority or discretionary control respecting management of the Plan or exercise any authority or control respecting management or disposition of its assets, (ii) render investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such Plan, or have any authority or responsibility to do so, or (iii) have any discretionary authority or discretionary responsibility in the administration of the Plan.

### (b) Accounts.

The Custodian shall keep accurate accounts of all investments, receipts, disbursements, and other transactions hereunder, and shall report the value of the assets held in the Custodial Account as of each Reporting Date and the Final Reporting Date. Within thirty (30) days following each Reporting Date (or within sixty (60) days following the Final Reporting Date), the Custodian shall file with the Administrator an account setting forth all investments, receipts, disbursements, and other transactions effected by the Custodian between such Reporting Date or the Final Reporting Date, as appropriate, and the immediately preceding Reporting Date, and setting forth the value of the Custodial Account as of such Reporting Date or the Final Reporting Date, as appropriate. Except as otherwise required by law, upon the expiration of six (6) months from the date of filing such account with the Administrator, the Custodian shall have no liability or further accountability to any person or entity with respect to the propriety of its acts or transactions shown in such account (or any Participant-level report provided to a Participant), except with respect to such acts or transactions as to which a written objection was filed with the Custodian within such six (6) month period.

### (c) Inspection and Audit.

Prior to the termination of this Agreement, all records generated by the Custodian in accordance with Subsections 6(a) and 6(b) shall be open to inspection and audit by the Administrator or any person designated by the Administrator, during the Custodian's regular business hours. Upon the resignation or removal of the Custodian or the termination of this Agreement, the Custodian shall provide to the Administrator, at no expense to the Sponsor, in the format regularly provided to the Administrator, a statement of each Participant's account as of the Final Reporting Date, and the Custodian shall provide to the Administrator or the Plan's new recordkeeper such further records as may be reasonably requested, at the Sponsor's expense.

(d) Status of Plan.

The Sponsor has asserted that the Plan is intended to be an eligible deferred compensation plan as defined in Section 457(b) of the IRC and the Custodial Account established hereunder is intended to be tax-exempt under Section 501(a) of the IRC. The Sponsor has the sole responsibility for ensuring the Plan's full compliance with applicable law. If the Plan ceases to be an eligible deferred compensation plan as defined in Section 457(b) of the IRC, the Sponsor shall promptly notify the Custodian in writing.

(e) Returns, Reports and Information.

The Administrator shall be responsible for the preparation and filing of all returns, reports, and information required of the Custodial Account or Plan by law, unless otherwise provided in the separate Services Agreement between the Sponsor and FIIOC. The Custodian shall provide the Administrator with such information as the Administrator may reasonably request to make these filings. The Administrator shall also be responsible for making any disclosures to Participants which may be required by law, unless otherwise provided in the separate Services Agreement between the Sponsor and FIIOC.

**Section 7. Compensation and Expenses.**

Unless otherwise paid by the Sponsor, the Custodian shall collect directly out of Participants' accounts within the Custodial Account all reasonable expenses of account custody, maintenance and recordkeeping, except to the extent such amounts are paid by the Sponsor in a timely manner. All expenses of the Custodian relating directly to the acquisition and disposition of investments constituting part of the Custodial Account, and all taxes of any kind whatsoever that may be levied or assessed under existing or future laws upon or in respect of the Custodial Account or the income thereof, shall be a charge against and paid from the appropriate Plan Participants' accounts. The Custodian may redeem Fidelity Mutual Fund shares and use the proceeds of such redemption to pay the foregoing expenses, taxes or fees, or bill the Sponsor directly for such expenses, taxes or fees.

**Section 8. Directions and Indemnification.**

(a) Identity of Administrator and Sponsor.

The Custodian shall be fully protected in relying on the fact that the Administrator and the Sponsor under the Plan are the individuals or entities named in the Introduction or such other individuals or entities as the Sponsor may subsequently notify the Custodian in a manner acceptable to the Custodian.

(b) Directions from Administrator.

Whenever the Administrator provides a direction to the Custodian, the Custodian shall not be liable for any loss or expense arising from the direction if (i) the direction is contained in a writing (or is oral and immediately confirmed in a writing) signed by any individual whose name and signature have been submitted in writing (and not withdrawn) to the Custodian by the

Administrator in a form acceptable to the Custodian in its sole discretion and (ii) the Custodian reasonably believes the signature of the individual to be genuine, unless it was clear on the direction's face or the Custodian had actual knowledge that the actions to be taken under such direction would be contrary to the terms of this Agreement. Such direction may also be provided to the Custodian by the Administrator through EDT and the Custodian shall be fully protected in relying on such electronic direction as if it were a direction made in writing by the Administrator.

(c) Directions from Sponsor.

Whenever the Sponsor provides a direction to the Custodian, the Custodian shall not be liable for any loss or expense arising from the direction if (i) the direction is contained in a writing (or is oral and immediately confirmed in a writing) signed by any individual whose name and signature have been submitted in writing (and not withdrawn) to the Custodian by the Sponsor in a form acceptable to the Custodian in its sole discretion and (ii) the Custodian reasonably believes the signature of the individual to be genuine, unless it was clear on the direction's face or the Custodian had actual knowledge that the actions to be taken under the direction would be contrary to the terms of this Agreement. Such direction may also be provided to the Custodian by the Sponsor through EDT and the Custodian shall be fully protected in relying on such electronic direction as if it were a direction made in writing by the Sponsor.

(d) Co-Fiduciary Liability.

The Custodian shall not be liable for any loss or expense arising from any act or omission of any fiduciary under the Plan, except as required by law.

(e) Indemnification.

To the extent permitted under State Law, the Sponsor shall indemnify the Custodian, its agents and its affiliates and the successors to all of such entities, and the employees of the Custodian (collectively, "the indemnified parties"), against, and hold the indemnified parties harmless from, any and all loss, damage, penalty, liability, cost and expense, including, without limitation, reasonable attorneys' fees and disbursements, that may be incurred by, imposed upon, or asserted against the indemnified parties by reason of any claim, regulatory proceeding, or litigation arising from any act done or omitted to be done by any individual or person with respect to the Plan or the Custodial Account, excepting only any and all loss, damage, penalty, liability, cost or expense arising solely from the indemnified parties' negligence or bad faith.

(f) Survival.

The provisions of this Section 8 shall survive the termination of this Agreement.

**Section 9. Resignation or Removal of Custodian.**

The Custodian may resign at any time upon sixty (60) days' prior notice to the Sponsor, unless a shorter notice period is agreed to by the Sponsor. Such notice may be made in writing or by EDT, if acceptable to the Sponsor. The Sponsor may remove the Custodian at any time

upon sixty (60) days' prior notice to the Custodian, unless a shorter notice period is agreed to by the Custodian. Such notice may be made in writing or by EDT, if acceptable to the Custodian.

#### **Section 10. Successor Trustee.**

(a) Appointment.

If the office of Custodian becomes vacant for any reason, the Sponsor may appoint a Successor Trustee under this Agreement, which may be either a trustee or a custodian of the assets of the Plan. Such appointment may be made in writing or by EDT, if acceptable to the Custodian. The Successor Trustee shall have all of the rights, powers, privileges, obligations, duties, liabilities, and immunities granted to the Custodian under this Agreement. Neither the Custodian nor the Successor Trustee shall be liable for the acts or omissions of the other with respect to the Custodial Account.

(b) Acceptance.

As of the date on which the Successor Trustee accepts its appointment under this Agreement, title to and possession of the Custodial Account assets shall immediately vest in the Successor Trustee without any further action on the part of the Custodian except as may be required to evidence such transition. The Custodian shall execute all instruments and do all acts that may be reasonably necessary and requested in writing or by EDT by the Sponsor or the Successor Trustee to vest title to all Custodial Account assets in the Successor Trustee or to deliver all Custodial Account assets to the Successor Trustee.

(c) Corporate Action.

Any successor to the Custodian or the Successor Trustee, either through sale or transfer of the business or trust department of the Custodian or the Successor Trustee, or through reorganization, consolidation, or merger, or any similar transaction of either the Custodian or the Successor Trustee, shall, upon consummation of the transaction, become the Successor Trustee under this Agreement.

#### **Section 11. Termination.**

This Agreement may be terminated at any time by the Sponsor upon sixty (60) days' prior notice to the Custodian, unless a shorter notice period is agreed to by the Custodian. Such notice may be made in writing or by EDT, if acceptable to the Custodian. As of the Termination Date, the Custodian shall transfer and deliver to such individual or entity as the Sponsor shall designate, all cash and assets constituting the Custodial Account as of the Termination Date. If, by the Termination Date, the Sponsor has not notified the Custodian in writing, or by EDT if acceptable to the Custodian, as to the individual or entity to which such cash and assets are to be transferred and delivered, the Custodian may bring an appropriate action or proceeding for leave to deposit with a court of competent jurisdiction. The Custodian shall be reimbursed by the Sponsor for all costs and expenses of any such action or proceeding including, without limitation, reasonable attorneys' fees and disbursements.

## **Section 12. Resignation, Removal, and Termination Notices.**

All notices of resignation, removal, or termination under this Agreement must be in writing and mailed to the party to which the notice is being given by certified or registered mail, return receipt requested, to the Sponsor as indicated in the Introduction, and to the Custodian, c/o FMR Corp. Legal Department, FESCo Legal Group, Fidelity Investments, 82 Devonshire Street, Mail Zone F7A, Boston, Massachusetts 02109, or to such other addresses of which the parties have notified each other in writing. Notwithstanding the foregoing, such notices may be provided by EDT, if acceptable to the recipient, in the form and manner designated by such recipient.

## **Section 13. Duration.**

This Custodial Account shall continue in effect without limit as to time, subject, however, to the provisions of this Agreement relating to amendment, modification, and termination hereof.

## **Section 14. Amendment or Modification.**

This Agreement may be amended or modified at any time and from time to time only by an instrument executed by both the Sponsor and the Custodian. Notwithstanding the foregoing, the Custodian may unilaterally change the fees charged to the Sponsor and Plan participants for maintaining the Custodial Account with sixty (60) days' prior written notice to the Sponsor, unless otherwise agreed to in writing with the Sponsor. In addition, notwithstanding the first sentence of this Section 14, the Custodian may unilaterally amend this Agreement at any time in its sole discretion in order to comply with applicable law, and shall notify the Sponsor of such amendment(s) as soon as practicable.

## **Section 15. General.**

### **(a) Performance by Custodian, Its Agents or Affiliates.**

The Sponsor acknowledges and authorizes that the services to be provided under this Agreement shall be provided by the Custodian, its agents or affiliates, including, but not limited to, FIIOC, Fidelity Brokerage Services LLC, and REDIBook ECN LLC, or the successor of any of them, and that certain of such services may be provided pursuant to one or more separate contractual agreements or relationships.

### **(b) Entire Agreement.**

This Agreement contains all of the terms agreed upon between the parties with respect to the subject matter hereof.

(c) Waiver.

No waiver by either party of any failure or refusal to comply with an obligation hereunder shall be deemed a waiver of (i) any other obligation hereunder or (ii) any subsequent failure or refusal to comply with any other obligation hereunder.

(d) Successors and Assigns.

The stipulations in this Agreement shall inure to the benefit of, and shall bind, the successors and assigns of the respective parties.

(e) Partial Invalidity.

If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(f) Section Headings.

The headings of the various sections and subsections of this Agreement have been inserted only for the purpose of convenience and are not part of this Agreement, and shall not be deemed in any manner to modify, explain, expand or restrict any of the provisions of this Agreement.

(g) Effective Date.

The effective date of this Custodial Account Agreement shall be the date specified in the Introduction.

**Section 16. Governing Law.**

(a) Massachusetts Law Controls.

This Agreement is being made in the Commonwealth of Massachusetts, and the Custodial Account shall be administered as a custodial account under Massachusetts law. The validity, construction, effect, and administration of this Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, except to the extent those laws are superseded by Federal law.

(b) Custodial Account Agreement Controls.

The Custodian is not a party to the Plan, and in the event of any conflict between the provisions of the Plan and the provisions of this Agreement, the provisions of this Agreement shall control.

**END OF TEXT OF CUSTODIAL ACCOUNT AGREEMENT**

**SEE NEXT PAGE FOR SERVICES AGREEMENT**



## SERVICES AGREEMENT

This Service Agreement dated as of the Effective Date set forth in the Introduction is between the Sponsor, identified in the Introduction, and Fidelity, also identified in the Introduction.

### WITNESSETH:

**WHEREAS**, Sponsor and Fidelity desire to enter into a services agreement, pursuant to which Fidelity will offer to the Sponsor's eligible employees and their beneficiaries ("Participants") in the plan ("Plan") the opportunity to defer compensation under Section 457(b) of the Internal Revenue Code of 1986, as amended (the "IRC"); and

**WHEREAS**, Sponsor wishes to have Fidelity perform certain ministerial recordkeeping services in accordance with the Plan; and

**WHEREAS**, Sponsor has established a custodial account described in IRC Section 401(f) that is treated as a trust under the rules described in Treas. Reg. Section 1.457-8 and which is exempt from taxation under Section 501(a) of the IRC to hold assets of the Plan for the exclusive benefit of Plan Participants in accordance with IRC Section 457(g); and

**WHEREAS**, Fidelity is willing to perform such services, but only if such services are purely ministerial in nature and are provided within the explicit provisions, guidelines and interpretations conveyed in writing to Fidelity by Sponsor.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants and agreements set forth below, Sponsor and Fidelity agree as follows:

#### **Section 1. Services to be Performed**

Fidelity shall have the responsibility to perform only those recordkeeping services set forth on Schedule "A" attached hereto and made a part hereof, as amended from time to time. Fidelity shall not perform any service that it considers, in its sole judgment, would cause Fidelity to be treated as a "Fiduciary" of the Plan within the meaning of applicable law. It is hereby acknowledged by Sponsor that certain of such services may be performed by an affiliate or agent of Fidelity pursuant to one or more other contractual arrangements or relationships.

#### **Section 2. Directions**

##### **a. By Sponsor**

Sponsor shall provide to Fidelity such policies, interpretations, decisions, rules, practices, procedures and directions (collectively, "Directions" and individually, a "Direction") as Fidelity may reasonably request to enable it to perform the services required in accordance with Schedule "A" (which Schedule shall itself be deemed a

Direction) or as Fidelity may require, in its sole judgment, to prevent it from being considered a Fiduciary.

Whenever Sponsor provides a Direction to Fidelity, Fidelity shall be fully protected in relying on the Direction if contained in writing or provided by secure electronic means (or if oral, thereafter confirmed in writing or by secure electronic means), signed by any individual whose name and signature have been submitted by Sponsor in writing to Fidelity in the form of the letter attached hereto as Schedule "B", provided Fidelity reasonably believes the signature of the individual to be genuine. Fidelity shall have no responsibility to ascertain any Direction's: (i) accuracy; (ii) compliance with the terms of the Plan or the related custody agreement (except to the extent that the terms of the Plan have been communicated to Fidelity in writing by the Sponsor); (iii) compliance with the terms of other applicable state or federal law, or (iv) effect for tax purposes or otherwise, except as required under the terms of this Services Agreement. Sponsor hereby directs Fidelity to treat as Directions:

- (i) any transmittal of contributions or data pursuant to Schedule "A"; and
- (ii) any instruction received via the telephone, electronically, via the internet or by such other means maintained by Fidelity for such purpose, as to the investment of amounts credited to an account, given through Fidelity's telephone exchange system in accordance with Section 4(b) herein by a person identifying himself or herself, to the satisfaction of Fidelity, as the employee of Sponsor for whom the account is maintained.

**b. By Participants**

Each participant, beneficiary or alternate payee ("Participant") shall direct Fidelity to invest the assets in the Participant's individual account as between the available investment options as identified in Schedule "A" attached hereto. Participants may make such directions by use of the Voice Response Service ("VRS") and through NetBenefits<sup>sm</sup> (or similar electronic or Internet-based medium), maintained by Fidelity for such purposes, in accordance with Section 4(b) herein. Participants may also direct Fidelity in writing in which case Fidelity shall act on such written instructions, if sent to the proper address and received in good order before 4 p.m. Eastern Time, on the business day so received. If such written instructions are received after 4 p.m. Eastern Time, Fidelity shall act on said written instructions (if in good order) on the next business day. Sponsor hereby agrees that Fidelity may act upon any such telephonic, electronic or written instructions without question and agrees that any such instructions shall be treated for all purposes hereunder in the same manner as a Sponsor Direction (as defined in Section 2(a) above).

All telephone conversations shall be recorded for the protection of the Participant, Sponsor and Fidelity. A confirmation of the exchange of existing

balances and/or change in allocation of future contributions shall be mailed to the Participant within five (5) business days of the telephonic instruction or within five (5) business days of the receipt, in good order, of a written instruction.

### **Section 3. Investment Options**

Fidelity shall provide recordkeeping services for the investment options as selected by Sponsor and described in Schedule "A" attached hereto. Sponsor represents and warrants that the power to determine which investment options are made available under the Plan is properly reserved to Sponsor under the relevant custodial account documents. Sponsor further represents that it fully understands that Fidelity shall have no responsibility for the selection of investment options under the Plan and shall not render investment advice to any person in connection with the selection of such options.

### **Section 4. General Operating Procedures**

#### **a. Contributions and Redemptions**

Fidelity shall execute the purchase and sale of Mutual Fund shares (other than for exchanges) if such purchase(s) and sale(s) are based on a proper Direction. Purchases and sales of Mutual Funds (other than for exchanges) shall be made on the date on which Fidelity receives from the Administrator in good order all information, documentation and wire transfer of funds (if applicable), necessary to accurately effect such transactions.

Redemption requests for distributions to third parties (including alternate payees, beneficiaries, investment advisers and other third parties), or distributions to the Participant which require additional processing, will be processed by Fidelity as soon as is administratively practicable.

#### **b. Exchanges**

Exchanges shall be processed as follows: Exchange hours, via a Participant service representative, are 8:00 a.m. Eastern Time ("ET") to 12:00 midnight ET on each business day. A "Business Day" is any day on which the New York Stock Exchange ("NYSE") is open. Exchanges through the voice response system ("VRS") and through NetBenefits (or similar electronic or Internet based medium) may be made virtually 24 hours a day. Fidelity reserves the right to change these guidelines at any time in its sole discretion. The NYSE's normal closing time is 4:00 p.m. ET. In the event that the NYSE alters its closing time for any reason, all references to 4:00 p.m. ET shall mean the NYSE closing time, as altered. Participants may call on any Business Day to exchange between Mutual Funds. If the request is confirmed by Fidelity before 4:00 p.m. ET, it will receive that day's trade date. Requests confirmed by Fidelity after 4:00 p.m. ET will receive the next Business Day's trade date. Participants may call Fidelity on any Business Day to

exchange between the mutual funds that are available to Participants in accordance with this Agreement.

**c. Select Funds**

Notwithstanding any provision of this Agreement to the contrary, each day that the Fidelity Select Funds designated on Schedule A are open for business as set forth in the Funds' then current prospectuses ( for the purposes of this paragraph "Business Day"), Sponsor directs Fidelity to submit to the transfer agent for the Fidelity Select Funds for processing all instructions for contributions and redemptions, but not exchanges, of shares of the Fidelity Select Funds only once each Business Day immediately prior to the last time at which a Fidelity Select Fund's net asset value is calculated on such Business Day as specified in the Fidelity Select Fund's then current prospectus. Sponsor represents and warrants that the Plan's custodian has been directed by the Sponsor that all instructions for contributions or redemptions of shares of the Fidelity Select Funds received throughout any Business Day shall be submitted for processing to the transfer agent for the Fidelity Select Funds only once each Business Day immediately prior to the last time at which a Fidelity Select Fund's net asset value is calculated on such Business Day as specified in the Fidelity Select Fund's then current prospectus. Sponsor further represents that neither the Custodial Agreement nor any other document governing the operation of the Plan grants to participants or the Plan's custodian the right to direct Fidelity to submit contribution or redemption instructions to the transfer agent for the Fidelity Select Funds other than in accordance with the Direction from the Sponsor to Fidelity given in this Section 4(c).

**Section 5. Distribution Requests, Federal Income Tax Withholding and Reporting**

Fidelity shall not process a distribution request without receiving the following information from Sponsor concerning each distribution:

- (a) The name, address (not a post office box), and social security number of the Participant (and the Participant's spouse or other beneficiary if applicable). By forwarding such information, Sponsor is deemed to have certified the accuracy of such information.
- (b) A statement of the reason for the payment or distribution and directions as to the type of distribution requested.

If the Sponsor does not provide Fidelity with the information listed in (a) and (b) above, the responsibility for withholding federal income taxes and the reporting thereof shall remain with Sponsor. In circumstances where Fidelity does withhold federal income tax from Participant distributions in accordance with Schedule "A", Fidelity shall, in a timely and proper manner, deposit and report such amounts under Fidelity's own tax identification number.

## **Section 6. Documentation**

The Sponsor must use the Fidelity 457(b) Plan Document and corresponding Custodial Account Agreement. The Sponsor may not add, delete or modify either document in any way except as set forth in the Plan Document and Custodial Account Agreement. Sponsor shall provide Fidelity with all Directions (as defined in Section (2)(a)) which Fidelity may reasonably request from time to time in order to perform the recordkeeping services under this Agreement.

## **Section 7. Records**

For the duration of this Agreement, all records generated by Fidelity in the course of performing services in accordance with Schedule "A" shall be open to inspection and audit by Sponsor, or any person designated by Sponsor, during Fidelity's regular business hours at Fidelity's office where such records are maintained. Upon the termination of this Agreement, Fidelity shall provide to Sponsor, in the format theretofore regularly provided to Sponsor, a statement of accounts as of the termination of this Agreement, which will provide substantially the same information compiled as of such termination as the normal quarterly statement of Accounts. Fidelity shall also provide to Sponsor, or to any successor recordkeeper designated by Sponsor, such other records and information as Sponsor may reasonably request, and Fidelity shall be entitled to reasonable compensation from Sponsor for the provision of such other records or information which will be based on reasonable and customary charges for such services. Upon request of Sponsor, Fidelity shall provide all records and information under this section in a format mutually agreed upon by the parties.

## **Section 8. Qualification Status**

This Plan is intended to meet the requirements under Section 457 of the Internal Revenue Code. The Sponsor has sole responsibility for ensuring that the Plan meets the requirements under IRC Section 457, and Fidelity may assume until advised to the contrary that the Plan meets such requirements.

## **Section 9. Compensation**

As consideration for its services under this Agreement, Fidelity shall be entitled to compensation as follows: Each Participant's account will be assessed an annual maintenance fee of \$24. The annual maintenance fee will be deducted directly from Participants' Accounts, unless paid to Fidelity by the Employer on behalf of its Participants. Fidelity reserves the right to change the amount of the annual maintenance fee at any time in its sole discretion, upon sixty (60) days notice the Sponsor and Participants. 25% of the annual maintenance fee due with respect to Participants' accounts will be deducted or payable at the end of March, June, September, and December of each calendar year.

## **Section 10. Duration**

This Agreement shall continue in effect without limit as to time, subject, however, to the provisions of this Agreement relating to amendment and termination thereof.

## **Section 11. Amendment**

This Agreement may be amended or modified at any time by an instrument executed by Sponsor and Fidelity. Any Schedule to this Agreement may be amended or modified at any time by an instrument executed by Sponsor and Fidelity.

## **Section 12. Termination**

Either party, by sixty (60) days written notice to the other, may terminate this Agreement, unless the parties agree to a shorter notice period.

## **Section 13. Indemnification**

To the extent permitted under State Law, the Sponsor shall indemnify Fidelity, its agents and its affiliates and the successors to all of such entities, and the employees of Fidelity (collectively, “the indemnified parties”), against, and hold the indemnified parties harmless from, any and all loss, damage, penalty, liability, cost and expense, including, without limitation, reasonable attorneys’ fees and disbursements, that may be incurred by, imposed upon, or asserted against the indemnified parties by reason of any claim, regulatory proceeding, or litigation arising from any act done or omitted to be done by any individual or person with respect to the Plan, excepting only any and all loss, damage, penalty, liability, cost or expense arising solely from the indemnified parties’ negligence or bad faith.

## **Section 14. Electronic Services**

(a) Fidelity may provide communications and services (“Electronic Services”) and/or software products (“Electronic Products”) via electronic media, including, but not limited to Fidelity Plan Sponsor WebStation<sup>®</sup>. The Sponsor and its agents agree to use such Electronic Services and Electronic Products only in the course of reasonable administration of or participation in the Plan and to keep confidential and not publish, copy, broadcast, retransmit, reproduce, commercially exploit or otherwise disseminate the Electronic Products or Electronic Services or any portion thereof without Fidelity’s written consent, except, in cases where Fidelity has specifically notified the Sponsor that the Electronic Products or Services are suitable for delivery to Sponsor’s Participants, for non-commercial personal use by Participants or beneficiaries with respect to their participation in the Plan or for their other retirement planning purposes.

(b) All Electronic Products and Services shall be clearly identified as originating from Fidelity or its affiliate. The Sponsor shall promptly remove Electronic Products or Services from its computer network and/or Intranet, or replace the Electronic Products or Services with updated products or services provided by Fidelity, upon written notification (including written notification via facsimile) by Fidelity.

(c) All Electronic Products shall be provided to the Sponsor without any express or implied legal warranties or acceptance of legal liability by Fidelity, and all Electronic Services shall be provided to the Sponsor without acceptance of legal liability related to or arising out of the electronic nature of the delivery or provision of such Services. No rights are conveyed to any property, intellectual or tangible, associated with the contents of the Electronic Products or Services and related material. Fidelity hereby grants to the Sponsor a non-exclusive, non-transferable revocable right and license to use the Electronic Products and Services in accordance with the terms and conditions of this Agreement.

(d) To the extent that any Electronic Products or Services utilize Internet services to transport data or communications, Fidelity will take, and Sponsor agrees to follow, reasonable security precautions, however, Fidelity disclaims any liability for interception of any such data or communications. Fidelity reserves the right not to accept data or communications transmitted via electronic media by the Sponsor or a third party if it determines that the media does not provide adequate data security, or if it is not administratively feasible for Fidelity to use the data security provided. Fidelity shall not be responsible for, and makes no warranties regarding access, speed or availability of Internet or network services, or any other service required for electronic communication. Fidelity shall not be responsible for any loss or damage related to or resulting from any changes or modifications to the Electronic Products or Services after delivering it to the Sponsor.

## **Section 15. General**

This Agreement supersedes all written and oral agreements, communications or negotiations among the parties, and it constitutes the complete and full understanding and agreement of the parties with regard to the subject matter hereof. No waiver by any party of any failure or refusal to comply with an obligation thereunder shall be deemed a waiver of any other subsequent failure or refusal to so comply. This Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the respective parties. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, except to the extent such laws are superseded by applicable federal laws or regulations.

## **Section 16. Titles**

The headings of Sections of this Agreement and the headings for each of the attached schedules are for convenience only and do not define or limit the contents thereof.

**Section 17. Incorporation of Schedules**

All Schedules and any subsequent amendments, attached hereto, and referenced herein, are hereby incorporated within this Agreement as if set forth fully herein.



## SCHEDULE A

### RECORDKEEPING SERVICES

1. Participant service representatives are available each business day from 8:00 a.m. ET - 12:00 Midnight ET to provide toll free telephone service for Participant inquiries and transactions.
2. Through the automated voice response system and on-line account access via the world wide web, Participants also have virtually 24 hour account inquiry and transaction capabilities.
3. For security purposes, all calls are recorded. In addition, several levels of security are available including the verification of a personal identification number or such other personal identifier as may be agreed to from time to time by the Sponsor and the Trustee.
4. Provide Plan and Participant level accounting for the following asset classifications:
  - Deferred Compensation
  - Employer Contribution
5. Provide Plan and Participant level accounting for the following investment options:

#### MUTUAL FUNDS:

##### Fidelity Mutual Funds

For purposes of this Agreement, "Fidelity Mutual Funds" shall mean registered investment companies advised by Fidelity Management & Research Company. All operating guidelines, procedures and direct fund expenses are governed by each mutual fund's respective prospectus. In accordance with the Sponsor's wishes, the following Fidelity Mutual Funds are available for investment to the Plan's Participants:

All Fidelity Mutual Funds which are available for investment by institutional retirement plans, including Fidelity Select Funds, and including Fidelity Mutual Funds which subsequently become available for investment by institutional retirement plans.

6. Process exchanges (transfers) between available investment options each Business Day and provide daily valuation of Participant accounts.
7. Fidelity may provide certain e-mail messages to Plan participants and beneficiaries for which it has valid e-mail addresses. Such e-mail messages will be sent to those Plan

participants and beneficiaries who provide Fidelity with a valid e-mail address, either through NetBenefits<sup>sm</sup>, Participant Service Representatives, paper-based forms and applications, or for whom Fidelity receives a valid e-mail address from the Sponsor. Any Plan participant or beneficiary for whom Fidelity does not have a valid e-mail address may or may not receive a substantially similar paper version of such e-mailed message.

8. Provide Plan participants with the ability to electronically receive confirmations of certain participant initiated transactions through NetBenefits<sup>sm</sup>, changes to investment option selections, changes to deferral elections and exchanges between investment options, in lieu of the paper confirmation of the transaction that would otherwise be provided to the Plan participant via first class mail. Electronic confirmations of transactions are generated upon execution of a transaction and paper confirmations of transactions are delivered by mail within three to five calendar days of the transaction.
9. Prepare, reconcile and deliver a Trial Balance Report presenting all money classes and investments, as requested by Sponsor. The Trial Balance Report is based on the market value as of the last business day of the period requested and, in the absence of unusual circumstances, the Trial Balance Report shall be delivered no later than twenty (20) days after the end of each period requested.
10. Prepare, reconcile and deliver an Administrative Report, which may present both on a Participant and a total Plan basis all money classes, investment positions and a summary of all activity of Participants and Plan as of the last business day of the period requested as requested by Sponsor. In the absence of unusual circumstances, the Administrative Report shall be delivered no later than twenty (20) days after the end of each period requested.
11. Provide paper quarterly account statements to Plan participants via first class mail. However, upon the Plan participant's request, Fidelity will provide quarterly account statements electronically via NetBenefits<sup>sm</sup> in place of the paper statements, and offer the Plan participant the ability to generate customized electronic statements via NetBenefits<sup>sm</sup> for account activity during such periods of time as the Plan participant may request.
12. Reconcile and process Participant withdrawal requests as approved and directed by Sponsor. All withdrawal requests shall be paid based on the current market values of a Participant's account, not advanced or estimated values.
13. Prepare, file with IRS, and distribute 1099R year-end tax reports for Participants who have taken a distribution from the Plan during the tax year.
14. Process requests for transfers and/or rollovers of Participant account balances to and from other investment options and/or providers for the Plan.
15. Process changes related to the administration of the Plan, such as, but not limited to, Participant name and address changes, and beneficiary data, provided Fidelity has the capability to maintain the data.

16. Process Qualified Domestic Relations Orders in accordance with Sponsor's written Direction to Fidelity.
17. Process contributions, on a periodic basis, in the prescribed Fidelity format. Fidelity shall not process contribution information unless: (i) it is in good order; and (ii) the contribution check accompanies the tape or diskette (unless funds are sent by wire). Funds by wire shall not be sent until Fidelity notifies Sponsor that all tape or diskette information is in good order and can be processed. Fidelity shall immediately process contribution information received by wire in good order, and may require up to three (3) business days to process contribution information received in good order by a contribution check.
18. Annual prospectuses and semiannual shareholder reports for mutual funds will be mailed to the Sponsor, and to Participants upon request or when making an initial investment in a mutual fund.
19. Process and reconcile Participant account corrections upon the Sponsor's written request to correct excess contributions, excess aggregate contributions and/or mistakes of fact. Process and reconcile Participant account corrections upon the Sponsor's or Participant's written request to correct excess deferrals. Such corrections shall only be made in accordance with Section 2 of this Agreement.
20. Calculate a Participant's minimum required distribution upon request by a Participant, provided the Participant and/or Sponsor has provided Fidelity with all information required by Fidelity (in the format required by Fidelity). The accuracy of such calculations is limited by the quantity and quality of data provided to Fidelity by the Participant and/or Sponsor.
21. Provide Electronic Funds Transfer (EFT) service to participants to receive plan distributions electronically including: Cash Dividends, Withdrawals, Systematic Withdrawal Payments (SWPs), and Minimum Required Distributions (MRDs).
22. Provision of Plan Sponsor Webstation ("Webstation") functionality. Webstation may be used to access information such as plan specific balances, participant balances, fund prices, history information, loan information, and update participant data. The Sponsor will be given an individual Webstation User ID and password solely for their use. The Webstation ID and password are proprietary information that should not be shared with other individuals. The Sponsor will provide Fidelity in writing the names of the authorized administrative users for the purpose of establishing their security profile. The Sponsor will immediately notify Fidelity in writing as staffing changes occur, and upon the termination of any employee who was an authorized administrative user so that Fidelity can disable the Webstation User ID and password.

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## DOMA Guidance for ICMA-RC Plan Sponsor Clients

On August 30, 2013, the Treasury Department and the IRS provided some welcome guidance regarding federal treatment of same-sex marriages following the Supreme Court's Windsor decision striking Section 3 of the Defense of Marriage Act ("DOMA"). Specifically, the guidance made clear that the "state of celebration" will establish whether same-sex married couples are entitled to be treated as spouses for federal tax purposes. Where the legally married same-sex couples currently live will not matter: their federal tax status will be the same as the federal tax status for married opposite-sex couples.

The guidance also made clear that only a union specifically called "marriage" in the relevant state or country would be considered a marriage for federal tax purposes. Thus, a civil union or a registered domestic partnership, or other non-marital formal relationship, will not be considered a marriage for federal tax purposes.

The guidance is effective September 16, 2013, but may be relied upon for prior periods. So, at least by September 16, plans should begin providing same-sex spouses the same rights as opposite-sex spouses, including Qualified Domestic Relations Orders ("QDROs"), Required Minimum Distribution rights, rollovers, and unforeseeable emergency withdrawals. Also by September 16, subject to further IRS guidance, plans should also have procedures in place to obtain spousal consent from same-sex spouses where the rules or plan provisions require spousal consent (including, for example, the designation of a non-spouse beneficiary for plans that have adopted the Qualified Joint and Survivor Annuity requirements).

Retirement plan sponsors in states that *do not* celebrate or recognize same-sex marriages should consult with their internal or local counsel to determine how to navigate divergent state and federal treatment of same-sex marriages.

Retirement plan sponsors in the District of Columbia and in states that *do* celebrate or recognize same-sex marriages should also consult with their internal or local counsel and *should consider taking the following steps:*

- **Obtain same-sex marriage information from employees and modify payroll systems accordingly**  
Employers should have a means of identifying plan participants who are in same-sex marriages. For instance, if an employer has been requiring same-sex spouses to complete domestic-partner information, the employer will now need to distinguish between those employees that are actually married and those that are in true domestic-partner relationships.
- **Review plan documents and procedures:**
  1. Plan sponsors should carefully review all retirement plan documents, to identify any definitions of "marriage" and "spouse" that need updating. Employers using ICMA-RC's model plan documents, without modification, can rest assured that the plan document is consistent with the new federal definition of spouse. Plan sponsors using individually designed plan documents will need to identify any required changes, and make the necessary operational changes, by September 16, 2013.

*(Continued)*

2. Particular areas to review, to the extent not handled by ICMA-RC for the plan sponsor, are:
  - Benefit-distribution materials and procedures
  - Minimum required distributions materials and procedures
  - QDRO materials and procedures
  - Open enrollment materials
  - Beneficiary designation forms and procedures
- Plan sponsors of individually designed plans should consider removing references to DOMA, even if the reference is implicit, such as a statement that “whether a person is married will be determined in accordance with federal law.”
- Plan sponsors should ensure that Human Resources materials and manuals also are updated to be consistent with the changes to Plan materials and procedures.

**IRS Resources:**

- **August 30, 2013 Guidance:**  
<http://www.irs.gov/pub/irs-drop/rr-13-17.pdf>
- **Same-Sex Couples FAQ:**  
<http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples>
- **Domestic Partner FAQ:**  
<http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Registered-Domestic-Partners-and-Individuals-in-Civil-Unions>



**ICMA RETIREMENT CORPORATION  
GOVERNMENTAL 457 DEFERRED COMPENSATION  
PLAN & TRUST AMENDMENT FOR  
THE HEROES EARNINGS ASSISTANCE AND RELIEF TAX ACT OF 2008**

Pursuant to Section XII of the ICMA Retirement Corporation 457 Governmental Deferred Compensation Plan & Trust (the “Plan”) to add a new Appendix B as follows, effective as provided therein.

**Appendix B**

**ARTICLE I  
PREAMBLE**

- 1.01 **Applicability.** This Appendix memorializes the operation of the Plan in accordance with the Heroes Earnings Assistance and Relief Tax Act.
- 1.02 **Superseding of Inconsistent Provisions.** This Appendix supersedes the provisions of the Plan and Adoption Agreement to the extent those provisions are inconsistent with the provisions of this Appendix.
- 1.03 **Construction.** Except as otherwise provided herein, any reference to “Section” in this Appendix refers only to sections within this Appendix and is not a reference to the Plan. The Article and Section numbering in this Appendix is solely for purposes of this Appendix and does not relate to any Plan article, section, or other numbering designations.

**ARTICLE II  
ACCRUAL OF ADDITIONAL BENEFITS**

- 2.01 **Death Benefits with Respect to Qualified Military Service.** In the case of a Participant who dies on or after January 1, 2007 while performing qualified military service (as defined in Code section 414(u)) with respect to the Employer, his/her Beneficiary shall have a Nonforfeitable Interest in all employer contributions to the Participant to the extent that he/she would have had had the Participant resumed and then terminated employment on account of death.
- 2.02 **Benefit Accruals with Respect to Qualified Military Service.** Notwithstanding any provision of the Plan to the contrary, effective as elected by the Employer but no earlier than January 1, 2007, if the Employer so elects, Participants who die or become Disabled while

performing qualified military service (as defined in Code section 414(u)) with respect to the Employer shall receive Plan contributions as permitted under Code section 414(u)(9).

2.03 Benefit Accruals with Respect to Differential Wage Payments. If the Employer so elects, effective as elected by the Employer but no earlier than January 1, 2009, Plan contributions shall be made based on differential wage payments (as such term is defined in Code section 3401(h)(2)).

2.04 Deemed Severance from Employment.

- (a) Unless otherwise elected by the Employer, effective January 1, 2009, a Participant shall be deemed to have a severance from employment solely for purposes of eligibility to receive distributions from the Plan during any period the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) for more than 30 days.
- (b) If a Participant receives a distribution pursuant to subsection (a), then the Participant shall not be permitted to defer compensation during the six-month period beginning on the date of the distribution.
- (c) If a Participant receives a distribution which could be attributable to:

- (i) a deemed severance from employment described in subsection (a); or

- (ii) another distribution event under the Plan,

then the distribution shall be considered made pursuant to the distribution event referenced in paragraph (ii), and the Participant shall not be subject to the limitation on Deferred Compensation as set forth in subsection (b).



## DOMA Guidance for ICMA-RC Plan Sponsor Clients

On August 30, 2013, the Treasury Department and the IRS provided some welcome guidance regarding federal treatment of same-sex marriages following the Supreme Court's Windsor decision striking Section 3 of the Defense of Marriage Act ("DOMA"). Specifically, the guidance made clear that the "state of celebration" will establish whether same-sex married couples are entitled to be treated as spouses for federal tax purposes. Where the legally married same-sex couples currently live will not matter: their federal tax status will be the same as the federal tax status for married opposite-sex couples.

The guidance also made clear that only a union specifically called "marriage" in the relevant state or country would be considered a marriage for federal tax purposes. Thus, a civil union or a registered domestic partnership, or other non-marital formal relationship, will not be considered a marriage for federal tax purposes.

The guidance is effective September 16, 2013, but may be relied upon for prior periods. So, at least by September 16, plans should begin providing same-sex spouses the same rights as opposite-sex spouses, including Qualified Domestic Relations Orders ("QDROs"), Required Minimum Distribution rights, rollovers, and unforeseeable emergency withdrawals. Also by September 16, subject to further IRS guidance, plans should also have procedures in place to obtain spousal consent from same-sex spouses where the rules or plan provisions require spousal consent (including, for example, the designation of a non-spouse beneficiary for plans that have adopted the Qualified Joint and Survivor Annuity requirements).

Retirement plan sponsors in states that *do not* celebrate or recognize same-sex marriages should consult with their internal or local counsel to determine how to navigate divergent state and federal treatment of same-sex marriages.

Retirement plan sponsors in the District of Columbia and in states that *do* celebrate or recognize same-sex marriages should also consult with their internal or local counsel and *should consider taking the following steps*:

- **Obtain same-sex marriage information from employees and modify payroll systems accordingly**  
Employers should have a means of identifying plan participants who are in same-sex marriages. For instance, if an employer has been requiring same-sex spouses to complete domestic-partner information, the employer will now need to distinguish between those employees that are actually married and those that are in true domestic-partner relationships.
- **Review plan documents and procedures:**
  1. Plan sponsors should carefully review all retirement plan documents, to identify any definitions of "marriage" and "spouse" that need updating. Employers using ICMA-RC's model plan documents, without modification, can rest assured that the plan document is consistent with the new federal definition of spouse. Plan sponsors using individually designed plan documents will need to identify any required changes, and make the necessary operational changes, by September 16, 2013.

*(Continued)*



2. Particular areas to review, to the extent not handled by ICMA-RC for the plan sponsor, are:
  - Benefit-distribution materials and procedures
  - Minimum required distributions materials and procedures
  - QDRO materials and procedures
  - Open enrollment materials
  - Beneficiary designation forms and procedures
- Plan sponsors of individually designed plans should consider removing references to DOMA, even if the reference is implicit, such as a statement that “whether a person is married will be determined in accordance with federal law.”
- Plan sponsors should ensure that Human Resources materials and manuals also are updated to be consistent with the changes to Plan materials and procedures.

IRS Resources:

- **August 30, 2013 Guidance:**  
<http://www.irs.gov/pub/irs-drop/rr-13-17.pdf>
- **Same-Sex Couples FAQ:**  
<http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples>
- **Domestic Partner FAQ:**  
<http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Registered-Domestic-Partners-and-Individuals-in-Civil-Unions>



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Bradenton, FL 34205  
purchasing@mymanatee.org

## Solicitation Addendum

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**Addendum No.:** 02  
**Solicitation No.:** 18-R067464MS  
**Project No.:** N/A  
**Solicitation Title:** Corrosion and Odor Control Services  
**Addendum Date:** 10.24.2017  
**Procurement Contact:** Monica Sell, [monica.sell@mymanatee.org](mailto:monica.sell@mymanatee.org)

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**18-R067464MS IS AMENDED AS SET FORTH HEREIN. RESPONSES TO QUESTIONS POSED BY PROSPECTIVE PROPOSERS ARE PROVIDED BELOW. THIS ADDENDUM IS HEREBY INCORPORATED IN AND MADE A PART OF CORROSION AND ODOR CONTROL SERVICES NO. 18-R067464MS.**

**Change to:**

**SCOPE OF SERVICES, SECTION B.05, GENERAL REQUIREMENTS OPTION 2: MAGNESIUM HYDROXIDE**

The successful Proposer shall provide all new or 'like new' storage and dosing equipment at the beginning of the Contract term and replacement of equipment, as applicable, throughout the Contract term. Like new shall be defined as refurbished, clean, and electrically and mechanically operational. New and 'like new' equipment must have a guarantee period in which all parts and labor for repairs are covered 100% by successful Proposer.

**Change to:**

**SCOPE OF SERVICES, SECTION B.05(E), GENERAL REQUIREMENTS OPTION 2: MAGNESIUM HYDROXIDE**

Successful Proposer shall provide ~~double contained~~ storage tanks at all dosing locations that are 1000 gallon or greater size, based on the site and County requirements.

**Delete:**

**SCOPE OF SERVICES, SECTION B.05(F), GENERAL REQUIREMENTS OPTION 2: MAGNESIUM HYDROXIDE**

~~F. Upon request by the County, Successful Proposer shall provide tertiary containment at certain locations. NOTE: The County reserves the right to upgrade or increase the~~

ICMA RETIREMENT CORPORATION  
GOVERNMENTAL 457 DEFERRED COMPENSATION  
AMENDMENT FOR POST-EGTRRA LEGISLATIVE AND REGULATORY CHANGES

Pursuant to Article XII of the ICMA Retirement Corporation Governmental Deferred Compensation Plan & Trust (the "Plan"), ICMA Retirement Corporation, as Plan Administrator, hereby adopts this Amendment on behalf of all adopting Employers to add a new Appendix A as follows, effective as provided therein.

**Appendix A**

**ARTICLE I  
PREAMBLE**

- 1.01 Applicability.** This Appendix memorializes the operation of the Plan in accordance with the following legislative and regulatory items.
- (a) Pension Protection Act of 2006;**
  - (b) Emergency Economic Stabilization Act of 2008;**
  - (c) Worker, Retiree, and Employer Recovery Act of 2008;**
  - (d) Katrina Emergency Tax Relief Act of 2005; and**
  - (e) Gulf Opportunity Zone Act of 2005.**
- 1.02 Superseding of Inconsistent Provisions.** This Appendix supersedes the provisions of the Plan and Adoption Agreement to the extent those provisions are inconsistent with the provisions of this Appendix.
- 1.03 Construction.** Except as otherwise provided herein, any reference to "Section" in this Appendix refers only to sections within this Appendix and is not a reference to the Plan. The Article and Section numbering in this Appendix is solely for purposes of this Appendix and does not relate to any Plan article, section, or other numbering designations.

**ARTICLE II  
PENSION PROTECTION ACT OF 2006**

- 2.01 Background.** On August 17, 2006, the Pension Protection Act, Pub. L. No. 109-280 ("PPA"), became law. It amended the Code to provide for a number of changes with regard to Code section 401(a) plans and Code section 457 plans. This Article incorporates the relevant provisions of PPA into the Plan.
- 2.02 Required Notice for Participant Distributions.** With respect to any distribution notice and election form that is, under the terms of the Plan, to be delivered 90 days before the date as of which a distribution is to be made, the window for giving Participants such distribution notices and election forms shall be extended to 180 days before the date as of which a distribution is to commence. This Section 2.02 shall be effective for calendar years beginning after December 31, 2006.
- 2.03 Rollover by a Non-Spouse Designated Beneficiary.**
- (a) Unless otherwise elected by the Employer, for Plan Years beginning after December 31, 2006 but on or before December 31, 2009, a non-spouse Beneficiary who qualifies as a "designated beneficiary" under Code section 401(a)(9)(E) may establish an individual retirement plan that will be treated as an Inherited IRA pursuant to the provisions of Code section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

- (b) Notwithstanding the election made in subsection (a), for Plan Years beginning after December 31, 2009, a non-spouse Beneficiary who qualifies as a “designated beneficiary” under Code section 401(a)(9)(E) may establish an individual retirement plan that will be treated as an Inherited IRA pursuant to the provisions of Code section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.
- (c) Notwithstanding anything herein to the contrary, a death benefit distribution shall not be eligible for transfer to an Inherited IRA to the extent such distribution is a required minimum distribution under Code section 401(a)(9).

**2.04 Distributions for Unforeseen Financial Emergencies.**

- (a) Unless otherwise elected by the Employer, after August 31, 2007, the determination of any unforeseen emergency will be expanded to include circumstances of severe financial hardship resulting from an illness or accident of a Primary Beneficiary or other similar extraordinary and unforeseeable circumstances of a Primary Beneficiary that result in a severe financial hardship.
- (b) A “Primary Beneficiary” is an individual or individuals who are named as a Beneficiary under the terms of the Plan and who have a right to all or a portion of the Participant’s account balance upon the Participant’s death.

**2.05 Distributions for Health and Long-Term Care Insurance for Public Safety Officers.**

- (a) If elected by the Employer, for Plan Years beginning after December 31, 2006, Eligible Retired Public Safety Officers may elect after separation from service to have up to \$3,000 distributed tax-free annually from the Plan in order to pay for Qualified Health Insurance Premiums for an accident or health plan (including a self-insured plan) or a qualified long-term care insurance contract. The Plan shall make such distributions directly to the provider of the accident or health plan or qualified long-term care insurance contract.
- (b) The term “Eligible Retired Public Safety Officer” means 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 who maintains the eligible retirement plan from which distributions pursuant to this Article are made. The term “Public Safety Officer” has the same meaning given such term by section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968.
- (c) The term “Qualified Health Insurance Premiums” means premiums for coverage for the Eligible Retired Public Safety Officer, his spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in Code section 7702(B)).

**2.06 Rollovers to Roth IRAs.** Effective for distributions after December 31, 2007, a Participant may elect to have any portion of an Eligible Rollover Distribution paid directly to a Roth IRA described in Code section 408A.

**ARTICLE III  
EMERGENCY ECONOMIC STABILIZATION ACT OF 2008**

**3.01 Background.** On October 3, 2008, the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343 (“EESA”), became law. With regard to retirement plans, EESA generally permits plans to allow repayments of certain prior qualified distributions for home purchases for participants affected by certain 2008 Midwestern severe storms, tornadoes, and flooding and to permit repayments of prior qualified distributions for home purchases. This Article incorporates the relevant provisions of EESA into the Plan.

**3.02 Qualified Disaster Recovery Assistance Distributions and Repayment Thereof.** The provisions relating to qualified disaster recovery assistance distributions and repayment thereof set forth in section 702 of EESA shall apply to the Plan.

**3.03 Repayment of Prior Qualified Distributions for Home Purchases to Plan.** The provisions relating to repayment of prior qualified distributions for home purchases set forth in section 702 of EESA shall apply to the Plan.

**ARTICLE IV  
WORKER, RETIREE, AND EMPLOYER RECOVERY ACT OF 2008**

- 4.01 Background.** On December 23, 2008, the Worker, Retiree, and Employer Recovery Act of 2008, Pub. L. No. 110-458 (“WRERA”), became law. WRERA amended Code section 401(a)(9) to suspend required minimum distributions for 2009. It is also possible that legislation will be enacted in the future that suspends required minimum distributions for 2010 or a later year. This Article incorporates the relevant provisions of WRERA into the Plan and describes the Plan terms that will apply in the event that required minimum distributions are suspended in a year subsequent to 2009.
- 4.02 Application of Minimum Distribution Requirements.** The minimum distribution requirements of section 401(a)(9) of the Code shall only apply to the Plan to the extent that such requirements are applicable by law for a year.
- 4.03 Special Rule for Scheduled Installment Payments.** All installment payments scheduled to be distributed to a Participant prior to the effective date of a suspension of the required minimum distribution provisions of Code section 401(a)(9) shall be distributed as scheduled unless the Participant affirmatively elects to have the payments stopped. Notwithstanding the foregoing, for purposes of this Section 4.03, the effective date of the suspension of the required minimum distribution provisions for 2009 shall be deemed January 6, 2009.

**ARTICLE V  
KATRINA EMERGENCY TAX RELIEF ACT OF 2005  
AND GULF OPPORTUNITY ZONE ACT OF 2005**

- 5.01 Background.** On September 23, 2005, the Katrina Emergency Tax Relief Act of 2005, Pub. L. No. 109-73 (“KETRA”), became law, and on December 21, 2005, the Gulf Opportunity Zone Act of 2005, Pub. L. No. 109-135 (“GOZA”), became law. Generally, KETRA and GOZA permit plans to allow repayments of certain prior qualified distributions for home purchases for Participants affected by Hurricanes Katrina, Rita, and/or Wilma. This Article incorporates the relevant provisions of KETRA and GOZA into the Plan.
- 5.02 Qualified Hurricane Distributions and Repayment Thereof.** The provisions relating to qualified hurricane distributions and repayment thereof set forth in section 1400Q(a) of the Code shall apply to the Plan.
- 5.03 Repayment of Prior Qualified Distributions for Home Purchases to Plan.** The provisions relating to repayment of prior qualified distributions for home purchases set forth in Code section 1400Q(b) shall apply to the Plan.

**ICMA RETIREMENT CORPORATION**  
**GOVERNMENTAL 457 DEFERRED COMPENSATION PLAN & TRUST**  
**AMENDMENT TO ADD ROTH PROVISIONS**  
**(UPDATED JANUARY 2013)**

Pursuant to Article XII of the ICMA Retirement Corporation 457 Governmental Deferred Compensation Plan & Trust (the "Plan"), the Plan is hereby amended to add a new Article X regarding Roth contributions. If the Employer affirmatively elects to allow Roth Elective Deferrals and In-Plan Roth Conversions, the provisions of this Amendment shall be effective for Participants as of the date specified by the Employer in the *Statement of Intent to Add Roth Provisions to a ICMA-RC 457 Governmental Deferred Compensation Plan & Trust*. If no election is made by the Employer, the provisions of this section will not be available to Participants.

**FIRST**

The following is hereby added as a new Article X to the Plan document as follows:

**X. ROTH PROVISIONS** – This Article X has no effect unless and until the Employer affirmatively elects to permit Roth Elective Deferrals.

**10.01 Definitions**

- (a) **Designated Roth Account.** A bookkeeping account established and maintained to record the Participant's Roth Elective Deferrals, In-Plan Roth Conversions, rollovers from designated Roth accounts under other eligible retirement plans, and the income gains and losses thereon. Unless specifically stated otherwise, all references in the Plan to a Participant's Account shall include a Participant's Designated Roth Account.
- (b) **In-Plan Roth Conversion.** (1) A distribution from a Participant's Pre-Tax Account that is rolled over to the Participant's Designated Roth Account under the Plan, as described in Code section 402A(c)(4)(B); or (2) a transfer from an amount in the Participant's Pre-Tax Account not otherwise distributable from the Plan to the Participant's Designated Roth Account under the Plan, as described in Code section 402A(c)(4)(E). Notwithstanding anything herein to the contrary, an amount is only eligible for an In-Plan Roth Conversion to the extent permitted under applicable IRS guidance interpreting Code section 402A(c)(4).
- (c) **Pre-Tax Account.** A bookkeeping account established and maintained to record the portion of the Participant's Account attributable to amounts other than Roth Elective Deferrals, In-Plan Roth Conversions, rollovers from designated Roth accounts under other eligible retirement plans, and the income gains and losses thereon. Unless specifically stated otherwise, all references in the Plan to a Participant's Account shall include a Participant's Pre-Tax Account.
- (d) **Qualified Roth Contribution Program.** A program described in paragraph (1) of Code section 402A(b), under which a Participant may make Roth Elective Deferrals in lieu of all or a portion of the elective deferrals the Participant is otherwise eligible to make under the Plan.
- (e) **Roth Elective Deferral.** Deferred Compensation contributed pursuant to Section 10.02 by a Participant, which amounts are:
  - (i) designated irrevocably by the Participant at the time of the deferral as a Roth elective deferral that is being made in lieu of all or a portion of the pre-tax elective deferrals the Participant is otherwise eligible to make under the Plan; and
  - (ii) treated by the Employer as includible in the Participant's income at the time the Participant otherwise would have received that amount as Includible Compensation.

**10.02 Permitted Roth Elective Deferrals**

- (a) As of the effective date of this Article, a Participant shall be permitted to make Roth Elective Deferrals from his or her Includible Compensation in such amount or percentage as may be specified in the Joinder Agreement. A Participant's Roth Elective Deferrals will be allocated to a Designated Roth Account maintained for such deferrals.
- (b) Unless specifically stated otherwise, Roth Elective Deferrals will be treated as Deferred Compensation for all purposes under the Plan.

### **10.03 Separate Accounting**

- (a) Contributions and withdrawals of Roth Elective Deferrals, In-Plan Roth Conversions and rollovers from a designated Roth account under an eligible retirement plan will be credited and debited to a Participant's Designated Roth Account.
- (b) The Plan will maintain a record of the amount of Roth Elective Deferrals, In-Plan Roth Conversions, and rollovers from a designated Roth account under an eligible retirement plan in each Participant's Designated Roth Account.
- (c) Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Designated Roth Account and the Pre-Tax Account under the Plan.
- (d) No contributions other than Roth Elective Deferrals, In-Plan Roth Conversions, and rollovers from a designated Roth account under an eligible retirement plan and properly attributable income gains and losses thereon will be credited to a Participant's Designated Roth Account.

### **10.04 Direct Rollovers**

- (a) Notwithstanding anything to the contrary in the Plan, a direct rollover of a distribution from a Designated Roth Account under the Plan shall be made only to another designated Roth account under an eligible retirement plan or to a Roth IRA described in section 408A of the Code, and only to the extent the rollover is permitted under the rules of section 402(c) of the Code.
- (b) Notwithstanding anything to the contrary in the Plan, the Plan will accept a rollover contribution to a Designated Roth Account only if it is a direct rollover from another designated Roth account under an eligible retirement plan, or if the rollover is an In-Plan Roth Conversion defined in section 10.05 of this document.
- (c) Eligible rollover distributions from a Participant's Designated Roth Account are taken into account in determining whether the total amount of the Participant's Account under the Plan exceeds \$1,000 for purposes of mandatory distributions from the Plan.

### **10.05 In-Plan Roth Conversion. Unless otherwise elected by the Employer, as of the effective date of this Article the Plan shall allow for In-Plan Roth Conversions.**

- (a) **Tax Treatment.** The amount of an In-Plan Roth Conversion shall be includible in the Participant's gross income, as though it were not part of a qualified rollover contribution.
- (b) **Irrevocability.** Any election made by the Participant pursuant to Section 10.05(a) shall be irrevocable.
- (c) **Treatment of Loans.** Outstanding plan loans shall be excluded from In-Plan Roth Conversions. Notwithstanding anything herein to the contrary, an In-Plan Roth Conversion shall not accelerate or otherwise cause a Participant to default on an outstanding plan loan.

### **10.06 Availability of Loans from Designated Roth Accounts.** A participant's Designated Roth Account balance can be included to determine a Participant loan amount under Article VIII. However, unless the Employer elects otherwise, Designated Roth Accounts will not be available as a source for loans under the Plan.

## **SECOND**

Former Articles X through XIV of the Plan document are hereby re-numbered XI through XV to reflect the addition of the Roth Provisions.

**RESOLUTION 15-99**

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, APPROVING AND ADOPTING DEFERRED COMPENSATION PLAN DOCUMENT; AUTHORIZING EXECUTION OF RELATED DOCUMENTS; MAKING RELATED FINDINGS; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Manatee County Board of County Commissioners (the Commission) has previously approved and adopted the Manatee County Deferred Compensation Plan (the Plan) to provide employees of the County with access to a retirement plan supplemental to the provisions of the Florida Retirement System; and

**WHEREAS**, to be considered in compliance with § 457(b) of the United States Internal Revenue Code and related IRS regulations, a governmental § 457(b) Plan must adopt a Plan Document compliant with the Pension Protection Act of 2006 (PPA); and

**WHEREAS**, the attached Manatee County Deferred Compensation Plan Document, developed in cooperation with the MassMutual Financial Group, contains the required PPA provisions; and

**WHEREAS**, it is the Commission's intention to continue the Plan while reserving the right to terminate or amend the Plan at any time; and

**WHEREAS**, the Commission, as the governing body of Manatee County, a political subdivision of the State of Florida, has the authority to adopt the Plan; and

**WHEREAS**, the Commission finds that it is in the best interests of the County government, and its employees, that this retirement funding option be available to its employees.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Manatee County, Florida, that:

1. The Board of County Commissioners of Manatee County hereby approves and adopts the attached Manatee County Deferred Compensation Plan Document, which is attached hereto and incorporated herein, but reserves the right to terminate or amend the Plan at any time.



**Resolution R-15-99**

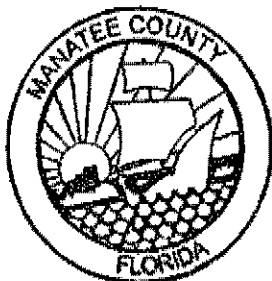
- 2. The County Administrator or his or her designee is authorized to execute the Plan Document and related Plan Document Certification form attached thereto.

**BE IT FURTHER RESOLVED** that this Resolution supersedes all prior conflicting resolutions.

**BE IT FURTHER RESOLVED** that should any section, sentence or clause of this Resolution be deemed unlawful by a court of competent jurisdiction, such section is severable and no other provision hereof shall be affected and all other provisions of this Resolution shall continue in full force and effect to the extent permitted by law.

**BE IT FURTHER RESOLVED** that this Resolution shall take effect immediately upon its adoption.

**PASSED AND DULY ADOPTED** by the Board of County Commissioners of Manatee County, Florida, with a quorum present and voting, this 26th day of July, 2015.



ATTEST:

R.B. SHORE  
CLERK OF THE CIRCUIT COURT

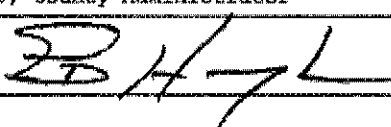
**BOARD OF COUNTY COMMISSIONERS  
MANATEE COUNTY, FLORIDA**

By: *Betsy Benac*  
Betsy Benac, Chairperson

By: *R.B. Shore*  
Deputy Clerk

### 457(b) PLAN DOCUMENT CERTIFICATION

This form must be submitted to MassMutual along with your signed Specimen document.

Employer Name: Manatee County	
Plan Name: Manatee County Deferred Compensation Plan	
Effective Date of Plan: October 1, 2014	MassMutual Group Number: 107790
Please select one of the following below:	
<input checked="" type="checkbox"/> I, the undersigned employer representative, certify that the employer has adopted MassMutual's specimen 457(b) Plan Document without any modifications and have provided MassMutual with a copy of the adopted plan document.	
<input type="checkbox"/> I, the undersigned employer representative, certify that the employer has adopted MassMutual's specimen 457(b) Plan Document <u>with</u> modifications and have provided MassMutual with a copy of the adopted document. I understand that the modifications will need to be approved by MassMutual to ensure that they conform to our Contract and Administrative Services Agreement with MassMutual, and their record keeping system and product. The provisions we have modified are as follows:	
<u>Plan Sections</u>	<u>Modifications</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
Name of Authorized Signer: (please print)	
Ed Hunzaker, County Administrator	
Signature: 	Date: 7-28-15

**MANATEE COUNTY DEFERRED COMPENSATION PLAN**

**Effective Date of This Document October 1, 2014**

Neither MassMutual nor any of its employees can provide legal or tax advice in connection with the execution of this specimen document. Prior to execution of this document, you should consult with your legal or tax advisor on whether this document is appropriate for your plan.

GN - 107790  
GPLANLVL - CORRSPND

Specimen 457(b) Plan Document  
Deferred Compensation Plan  
Ver 102011

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**457(b) PLAN DOCUMENT**  
**DEFERRED COMPENSATION PLAN**  
**PREAMBLE**

**Adoption of Plan**

The Manatee County Deferred Compensation Plan (hereinafter "the Plan"), an eligible deferred compensation plan within the meaning of Section 457(b) of the Internal Revenue Code of 1986, as amended (hereinafter the "Code"), of a State or local government as described in Code Section 457(e)(1)(A), adopted by Manatee County (hereinafter the "Employer") effective October 1, 2014.

**Purpose of Plan**

The primary purpose of this Plan is to permit Employees of the Employer to enter into an agreement which will provide for deferral of payment of a portion of his or her current compensation until death, retirement, severance from employment, or other event, in accordance with the provisions of the Code Section 457(b), with other applicable provisions of the Code, and in accordance with the General Statutes of the State.

**Status of Plan**

It is intended that the Plan shall qualify as an eligible deferred compensation plan within the meaning of Code Section 457(b) sponsored by an eligible employer within the meaning of Code Section 457(e)(1)(A), i.e., a State, political subdivision of a State, and agency or instrumentality of a State or political subdivision of a State.

**Tax Consequences of Plan**

The Employer does not and cannot represent or guarantee that any particular federal or State income, payroll, or other tax consequence will occur by reason of participation in this Plan. A Participant should consult with his or her own counsel or other representative regarding all tax or other consequences of participation in this Plan.

## SECTION I DEFINITIONS

### 1.1 Plan Definitions

For purposes of this Plan, the following words and phrases have the meaning set forth below, unless a different meaning is plainly required by the context:

An "**Account Balance**" means the bookkeeping account maintained with respect to each Participant which reflects the value of the deferred Compensation credited to the Participant, including the Participant's Annual Deferrals, the earnings or loss of the Trust Fund (net of Trust Fund expenses) allocable to the Participant, any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant's death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account established under Section VII for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a Beneficiary after a Participant's death, and any account or accounts established for an alternate payee (as defined in Code Section 414(p)(8)).

The "**Administrator**" means the Employer. The term Administrator includes any person or persons, committee, or organization appointed by the Employer to administer the Plan.

An "**Annual Deferral**" means the amount of Compensation deferred in any calendar year.

The "**Beneficiary**" of a Participant means the person or persons (or, if none, the Participant's estate) who is entitled under the provisions of the Plan to receive a distribution in the event the Participant dies before receiving distribution of his or her entire interest under the Plan.

The "**Code**" means the Internal Revenue Code of 1986, as now in effect or as hereafter amended from time to time. Reference to a Code Section includes such section and any comparable section or sections of any future legislation that amends, supplements, or supersedes such section.

The "**Compensation**" of a Participant means all cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, including, as applicable, compensation attributable to services as an independent contractor, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code Section 125, 132(f), 401(k), 403(b), or 457(b) (including an election to defer compensation under Section II).

Any payments described below made to a Participant after a Severance from Employment shall qualify as Compensation for purposes of the Plan, but only if the payments are made by the later of (a) the end of the calendar year in which the Severance from Employment occurred or (b) within 2 ½ months of such Severance from Employment:

- (a) Payments that, absent a Severance from Employment, would have been paid to the Participant while the Participant continued in employment with the Employer, but only if such payments constitute regular compensation for services during the Participant's regular working hours, compensation for services outside the Participant's regular working hours (such as overtime or a shift differential), commissions, bonuses or other similar compensation.
- (b) Payments for 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.

Any payment that is not described above shall not be considered Compensation if it is paid after the date of the Participant's Severance from Employment, even if it is paid within 2 ½ months of such date. Thus, for example, Compensation does not include severance pay.

For years beginning after December 31, 2008, (a) a Participant receiving a differential wage payment, as defined by Code §3401(h)(2), by reason of qualified military service (within the meaning of Code Section 414(u)), is treated as an Employee of the Employer making the payment and (b) the differential wage payment is treated as Compensation.

An "Employee" means each natural person who is employed by the Employer as a common law employee on a full time basis and any employee in an elected or appointed position; provided, however, that the term Employee shall not include a leased employee or any employee who is included in a unit of employees covered by a collective bargaining agreement that does not specifically provide for participation in the Plan.

Any individual who is not treated by the Employer as a common law employee of the Employer shall be excluded from Plan participation even if a court or administrative agency determines that such individual is a common law employee of the Employer, unless the Employer has included the individual in Plan participation as an independent contractor.

An "Employer" means the eligible employer (within the meaning of Code Section 457(e)(1)) that has adopted the Plan. In the case of an eligible employer that is an agency or instrumentality of a political subdivision of a State within the meaning of Code Section 457(e)(1)(A), the term Employer shall include any other agency or instrumentality of the same political subdivision that has adopted the Plan.

"Includible Compensation" means, with respect to a taxable year, the Participant's compensation as defined in Code Section 415(c)(3) and the regulations thereunder, for services performed for the Employer. The amount of Includible Compensation is determined without regard to any community property laws.

"Normal Retirement Age" means age 65.

A Participant's Normal Retirement Age must be the same as his or her normal retirement age under any other eligible deferred compensation plan or plans sponsored by the Employer. The designation of a Normal Retirement Age under the Plan does not compel retirement with the Employer.



The "**Participant**" means an individual who is currently deferring Compensation, or who has previously deferred Compensation under the Plan by salary reduction and who has not received a distribution of his or her entire benefit under the Plan. Only individuals who perform services for the Employer as an Employee may defer Compensation under the Plan.

"**Plan Year**" means the calendar year.

"**Severance from Employment**" means the date that the Employee dies, retires, or otherwise has a severance from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the Code). Solely for the purpose of determining whether the Participant is entitled to receive a distribution of his or her Account Balance pursuant to Section 6.2, a Participant shall be treated as having incurred a severance from employment during any period the Participant is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) while on active duty for a period of more than 30 days.

The "**State**" means the State that is the Employer or of which the Employer is a political subdivision, and any agency, or instrumentality, including any agency or instrumentality of a political subdivision of the State, or the State in which the Employer is located.

The "**Trust Fund**" means the trust fund created under and subject to a trust agreement or a custodial account or contract described in Code Section 401(f) held on behalf of the Plan.

The "**Valuation Date**" means each business day.

## SECTION II PARTICIPATION AND CONTRIBUTIONS

### 2.1 Eligibility

Each Employee shall be eligible to participate in the Plan and defer Compensation hereunder immediately upon becoming employed by the Employer.

### 2.2 Election

An Employee may elect to become a Participant by executing an election to defer a portion of his or her Compensation (and to have that amount contributed as an Annual Deferral on his or her behalf) and filing such election with the Administrator. This participation election shall be made on the deferral agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. Any such election shall remain in effect until a new election is filed. The Administrator may establish a minimum deferral amount, and may change such minimums from time to time. The deferral agreement shall also include designation of investment funds and a designation of Beneficiary.

- (a) **Special Deferral Election of Sick, Vacation, or Back Pay:** A Participant who has not had a Severance from Employment may authorize a special election to defer accumulated sick pay, accumulated vacation pay, and back pay for any calendar month if an election to defer is entered into before the beginning of the month in which the amounts would otherwise be paid or made available and the Participant is an Employee on the date the amounts would otherwise be paid or made available. For this purpose, Compensation that would otherwise be paid for a payroll period that begins before Severance from Employment is treated as an amount that would otherwise be paid or made available before an Employee has a Severance from Employment. In addition, a Participant who is a former Employee may authorize a special election to defer accumulated sick pay, accumulated vacation pay, and back pay that is paid by the later of 2 ½ months following the date of the Participant's Severance from Employment or the end of the calendar year in which the Severance from Employment occurred, provided that the special election to defer is entered into before the amount is currently available.

### 2.3 Commencement of Participation

An Employee shall become a Participant as soon as administratively practicable following the date the Employee files an election pursuant to Section 2.2. Such election shall become effective no later than the calendar month following the month in which the election is made. A new Employee may defer compensation payable in the calendar month during which the Participant first becomes an Employee if an agreement providing for the deferral is entered into on or before the first day on which the Participant performs services for the Employer.

#### **2.4 Amendment of Annual Deferral Election, Investment Direction, or Beneficiary Designation**

Subject to other provisions of the Plan, a Participant may at any time revise his or her participation election, including a change of the amount of his or her Annual Deferrals, his or her investment direction and his or her designated Beneficiary. Unless the election specifies a later effective date, a change in the amount of the Annual Deferrals shall take effect as of the first day of the next following month or as soon as administratively practicable if later. A change in the investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Administrator.

#### **2.5 Information Provided by the Participant**

Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the plan, including, without limitation, whether the Employee is a participant in any other eligible plan under Code Section 457(b).

#### **2.6 Contributions Made Promptly**

Annual Deferrals by the Participant under the Plan shall be transferred to the Trust Fund within a period that is not longer than is reasonable for the proper administration of the Participant's Account Balance. For this purpose, Annual Deferrals shall be treated as contributed within a period that is not longer than is reasonable for the proper administration if the contribution is made to the Trust Fund within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant, or earlier if required by law.

#### **2.7 Employer Contributions**

Nothing in this Plan prohibits the Employer from making annual deferrals to the Account Balance of a Participant on a non-elective basis, subject to the Participant's contribution limits in Section III.

#### **2.8 Leave of Absence**

Unless an election is otherwise revised, if a Participant is absent from work by leave of absence, Annual Deferrals under the Plan shall continue to the extent that Compensation continues.

#### **2.9 Disability**

A disabled Participant (as determined by the Administrator) may elect Annual Deferrals during any portion of the period of his or her disability to the extent that he or she has actual Compensation (not imputed Compensation and not disability benefits) from which to make contributions to the Plan and has not had a Severance from Employment.

## **2.10 Protection of Persons Who Serve in a Uniformed Service**

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

A reemployed Employee shall also be entitled to an allocation of any additional Employer Contributions, if applicable, that such Employee would have received under the Plan had the Employee continued to be employed as an eligible Employee during the period of qualified military service. Such restorative Employer Contributions (without interest), if applicable, shall be remitted by the Employer to the Plan on behalf of the Employee within 90 days after the date of the Employee's reemployment or, if later, as of the date the contributions are otherwise due for the year in which the applicable qualified military service was performed.

## **2.11 Corrective Measures**

In the event that an otherwise eligible Employee is erroneously omitted from Plan participation, or an otherwise ineligible individual is erroneously included in the Plan, the Employer shall take such corrective measures as may be permitted by applicable law. Such measures may include, in the case of an erroneously omitted Employee, contributions made by the Employer to the Plan on behalf of such Employee equal to the missed deferral opportunity, subject to the Participant's contribution limits in Section III, and, in the case of an erroneously included individual, a payment by the Employer to such individual of additional compensation in an amount equal to the amount of the individual's elective deferrals under the Plan.

### **SECTION III LIMITATIONS ON AMOUNTS DEFERRED**

#### **3.1 Basic Annual Limitation**

- (a) The maximum amount of the Annual Deferral and, if applicable, Employer Contributions under the Plan for any calendar year shall not exceed the lesser of:
  - (i) The "applicable dollar amount" (as defined in paragraph (b) below); or
  - (ii) The Participant's Includible Compensation for the calendar year.
- (b) The "applicable dollar amount" means the amount established under Code Section 457(e)(15), as indexed, and in accordance with Section 3.4(a).
- (c) Rollover amounts received by the Plan under Treasury Regulation Section 1.457-10(e) and any plan-to-plan transfer into the Plan made pursuant to Section 7.2 shall not be applied against the Annual Deferral limit.

#### **3.2 Age 50 Catch-up Annual Deferral Contributions**

A Participant who will attain age 50 or more by the end of a calendar year is permitted to elect an additional amount of Annual Deferral for the calendar year, up to the maximum age 50 catch-up Annual Deferral limit under §414(v)(2), as indexed.

The amount of the age 50 catch-up Annual Deferral for any calendar year cannot exceed the amount of the Participant's Compensation, reduced by the amount of the elective deferred compensation, or other elective deferrals, made by the Participant under the Plan and in accordance with Section 3.4(a).

The age 50 catch-up Annual Deferral limit is not available to a Participant for any calendar year for which the Special Section 457 Catch-up Limitation described in Section 3.3 is available and applied.

#### **3.3 Special Section 457 Catch-up Limitation**

Notwithstanding the provisions of Sections 3.1 and 3.2, with respect to a year that is one of a Participant's last three (3) calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this Section 3.3 exceeds the amount computed under Sections 3.1 and 3.2, then the Annual Deferral limit under this Section 3.3 shall be the lesser of:

- (a) An amount equal to two (2) times the Section 3.1 Applicable Dollar Amount for such year; or
- (b) The sum of:

- (i) An amount equal to (A) the aggregate Section 3.1 limit for the current year plus each prior calendar year beginning after December 31, 2001, during which the Participant was an Employee under the Plan, minus (B) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus
- (ii) An amount equal to (A) the aggregate limit referred to in Code Section 457(b)(2) for each prior calendar year beginning after December 31, 1978, and before January 1, 2002, during which the Participant was an Employee (determined without regard to Sections 3.2 and 3.3), minus (B) the aggregate contributions to Pre-2002 Coordination Plans (as defined in Section 3.4(c)) made by or on behalf of the Participant for such years.

However, in no event can the deferred amount be more than the Participant's Compensation for the year.

### 3.4 Special Rules

For purposes of this Section III, the following rules shall apply:

- (a) Participant Covered By More Than One Eligible Plan. If the Participant is or has been a participant in one or more other eligible plans within the meaning of Code Section 457(b), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Section III. For this purpose, the Administrator shall take into account any other such eligible plan maintained by the Employer and shall also take into account any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.
- (b) Pre-Participation Years. In applying Section 3.3, a year shall be taken into account only if (i) the Participant was eligible to participate in the Plan during all or a portion of the year and (ii) Compensation deferred, if any, under the Plan during the year was subject to the Basic Annual Limitation described in Section 3.1 or any other plan ceiling required by Code Section 457(b).
- (c) Pre-2002 Coordination Years. For purposes of Section 3.3(b)(ii)(B), "contributions to Pre-2002 Coordination Plans" means any employer contribution, salary reduction or elective contribution under any other eligible Code Section 457(b) plan, or a salary reduction or elective contribution under any Code Section 401(k) qualified cash or deferred arrangement, Code Section 402(h)(1)(B) simplified employee pension (SARSEP), Code Section 403(b) annuity contract, and Code Section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in Code Section 501(c)(18), including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 3.3(b)(ii)(B) to the extent that the total of such contributions does not exceed the aggregate limit referred to in Code Section 457(b)(2) for that year.

- (d) **Disregard Excess Deferral.** For purposes of Sections 3.1, 3.2, and 3.3, an individual is treated as not having deferred compensation under a plan for a prior taxable year if excess deferrals under the plan are distributed, as described in Section 3.5. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an excess deferral for those prior years.

### **3.5 Correction of Excess Deferrals**

If the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under Code Section 457(b) for which the Participant provides information that is accepted by the Administrator, then the Annual Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant as soon as administratively practicable after the Administrator determines that the amount is an excess deferral.

## **SECTION IV INVESTMENT RESPONSIBILITIES**

### **4.1 Investment of Deferred Amount**

Each Participant or Beneficiary shall direct the investment of amounts held in his or her Account Balance under the Plan among the investment options of the Trust Fund. The investment of amounts segregated on behalf of an alternate payee pursuant to a Plan approved domestic relations order (as defined under Code Section 414(p)) may be directed by such alternate payee to the extent provided in such order. In the absence of such direction, such amounts shall be invested in the same manner as they were immediately before such segregation was made on account of such order. Each Account Balance shall share in any gains or losses of the investment(s) in which such account is invested.

### **4.2 Investment Election for Future Contributions**

A Participant may amend his or her investment election at such times and by such manner and form as prescribed by the Administrator. Such election will, unless specifically stated otherwise, apply only to future amounts contributed under the Plan.

### **4.3 Investment Changes for an Existing Account Balance**

The Participant, Beneficiary, alternate payee, or Administrator may elect to transfer amounts in his Account Balance among and between those investments available under the Trust Fund at such times and by such manner and form prescribed by the Administrator, subject further to any restrictions or limitations placed on any investment by the Administrator to be uniformly applied to all Participants.

### **4.4 Investment Responsibility**

To the extent that a Participant, Beneficiary, or alternate payee exercises control over the investment of amounts credited to his Account Balance, the Employer, the Administrator, and any other fiduciary of the Plan shall not be liable for any losses that are the direct and necessary result of investment instructions given by a Participant, Beneficiary or an alternate payee.

### **4.5 Default Investment Fund**

The Employer shall maintain a Default Investment Fund which shall be held and administered under the Trust Fund. Any Participant who does not make an investment election on the deferral agreement provided by the Administrator will have his contributions invested in the Default Investment Fund until such time he provides investment direction under Sections 4.2 and 4.3. Additionally, a Beneficiary or alternate payee who does not make an investment election will have his Account Balance invested in the Default Investment Fund until such time he provides investment direction under Section 4.3. The interest of each Participant, Beneficiary, or alternate payee under the Plan in the Default Investment Fund shall be an undivided interest.



#### **4.6 Statements**

The Administrator will cause statements to be issued periodically to reflect the contributions and actual earnings posted to the Account Balances.

**SECTION V  
LOANS**

**5.1 No Loans**

There shall be no loans made to Participants from the Plan.

## SECTION VI DISTRIBUTIONS

### 6.1 Distributions from the Plan

- (a) **Earliest Distribution Date.** Payments from a Participant's Account Balance shall not be made earlier than:
- (i) the Participant's Severance from Employment pursuant to Section 6.2
  - (ii) the Participant's death pursuant to Section 6.3
  - (iii) Plan termination under Section 10.3
  - (iv) an unforeseeable emergency withdrawal pursuant to Section 6.10(a), if permitted under the Plan
  - (v) a de minimis account balance distribution pursuant to Section 6.10(b), if permitted under the Plan
  - (vi) a rollover account withdrawal pursuant to Section 6.10(c), if permitted under the Plan
  - (vii) attainment of age 70 ½ withdrawal pursuant to Section 6.10(d), if permitted under the Plan
  - (viii) Qualified Military Service Deemed Severance withdrawal pursuant to Section 6.10(e), if permitted under the Plan
  - (ix) Qualified Military Reservist withdrawal pursuant to Section 6.10(f), if permitted under the Plan
  - (x) Qualified Distributions for Retired Public Safety Officers pursuant to Section 6.11, if permitted under the Plan
- (b) **Latest Distribution Date.** In no event shall any distribution under this Section VI begin later than the Participant's "required beginning date". Such required minimum distributions must be made in accordance with Section 6.6.
- (c) **Amount of Account Balance.** Except as provided in Section 6.3, the amount of any payment under this Section VI shall be based on the amount of the Account Balance as of the Valuation Date.

### 6.2 Benefit Distributions Upon Severance from Employment

Upon Severance from Employment (other than due to death), a Participant may elect to commence distribution of benefits at any time after such Severance from Employment by filing a

request with the Administrator before the date on which benefits are to commence. However, in no event may distribution of benefits commence later than his or her "required beginning date".

Distributions required to commence under this section shall be made in the form of benefit provided under Section 6.5. Distributions postponed until the Participant's "required beginning date" will be made in a manner that meets the requirements of Section 6.6.

### **6.3 Distributions on Account of Participant's Death**

Upon receipt of satisfactory proof of the Participant's death, the designated Beneficiary may file a request with the Administrator to elect a form of benefit provided under Section 6.5 and made in a manner that meets the requirements of Section 6.6.

- (a) Death of Participant Before Distributions Begin. If the Participant dies before his or her distributions begin, the designated Beneficiary may elect to have distributions to be made (i) in full within 5 years of the Participant's death (5-year rule) or (ii) in installments over the designated Beneficiary's "life expectancy" (life expectancy rule).

If the designated Beneficiary does not make an election by September 30 of the year following the year of the Participant's death, the Participant's Account Balance will be distributed in a lump sum payment by December 31 of the calendar year containing the fifth anniversary of the Participant's death or if the Participant's spouse is the sole designated Beneficiary by December 31 of the year the Participant would have attained age 70 ½.

- (b) Death of Participant On or After Date Distributions Begin. If the Participant dies on or after his or her distributions began, the Participant's Account Balance shall be paid to the Beneficiary at least as rapidly as under the payment option used before the Participant's death.

For purposes of this Section, a Participant who dies on or after January 1, 2007, while performing qualified military service (as defined in Code Section 414(u)) will be deemed to have resumed employment in accordance with the Participant's reemployment rights under chapter 43 of title 38, United States Code, on the day preceding death and to have terminated employment on the actual date of death for purposes of determining the entitlement of the Participant's survivors to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan, in accordance with the provisions of Code Sections 401(a)(37), 414(u)(9), and 457(g)(4).

### **6.4 Distribution of Small Account Balances Without Participant's Consent**

Notwithstanding any other provision of the Plan to the contrary, if the amount of a Participant's or Beneficiary's Account Balance (including the rollover contribution separate account) is not in excess of the amount specified below on the date that payments commence under Section 6.2 or on the date the Administrator is notified of the Participant's death, the Administrator may direct

payment without the Participant's or Beneficiary's consent as soon as practicable following the Participant's retirement, death, or other Severance from Employment.

- (a) The Plan does not provide for distribution of small Account Balances without Participant or Beneficiary consent.

#### **6.5 Forms of Distribution**

In an election to commence benefits under Section 6.2, a Participant entitled to a distribution of benefits under this Section VI may elect to receive payment in any of the following forms of distribution:

- (a) a lump sum payment of the Participant's total Account Balance.
- (b) partial distribution of the Participant's Account Balance.
- (c) in a series of installments over a period of years (payable on a monthly, quarterly, semi-annual or annual basis) which extends no longer than the life expectancy of the Participant as permitted under Code Section 401(a)(9).
- (d) a purchase of a single premium nontransferable annuity contract for such term and in such form as the Participant selects that provides for payments in the form of an irrevocable annuity each calendar year of amounts not less than the amount required under Code Section 401(a)(9).

#### **6.6 Minimum Distribution Requirements**

- (a) General Rules.

Notwithstanding anything in this Plan to the contrary, distributions from this Plan shall commence and be made in accordance with Code Section 401(a)(9) and the regulations promulgated thereunder. Additionally, the requirements of this Section 6.6 will take precedence over any inconsistent provisions of the Plan.

- (b) Time and Manner of Distribution.

- (i) 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".
- (ii) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
  - (A) If the Participant's surviving spouse is the Participant's sole "designated Beneficiary", then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year

in which the Participant dies, or by December 31 of the calendar year in which the Participant would have attained age 70  $\frac{1}{2}$ , if later.

- (B) If the Participant's surviving spouse is not the Participant's sole "designated Beneficiary" (i.e., multiple beneficiaries), then distributions to the "designated Beneficiaries" will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (C) If the Participant's sole "designated Beneficiary" is not the Participant's spouse, then distributions to the "designated Beneficiary" will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (D) If there is no "designated Beneficiary" as of September 30 of the year following the year of the Participant's death, the Participant's Account Balance will be distributed in a lump sum payment by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (E) 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 subparagraph (b)(ii), other than subsection (b)(ii)(A), will apply as if the surviving spouse were the Participant.

For purposes of this subparagraph (ii) and paragraph (d), unless subsection (b)(ii)(D) applies, distributions are considered to begin on the Participant's "required beginning date". If subsection (b)(ii)(E) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subsection (b)(ii)(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 subsection (b)(ii)(A)), the date distributions are considered to begin is the date distributions actually commence.

- (iii) Death of Participant On or After Distributions Begin. If the Participant dies on or after distributions begin and before depleting his or her Account Balance, distributions must commence to the "designated Beneficiary" by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (iv) Forms of Distribution. Unless the Participant's Account Balance is distributed in the form of an annuity contract or in a lump sum on or before the Participant's "required beginning date", as of the first distribution calendar year, distributions will be made in accordance with paragraphs (c) and (d). If the Participant's

interest is distributed in the form of an annuity contract, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9).

(c) Required Minimum Distributions During the Participant's Lifetime.

(i) 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) The quotient obtained by dividing the "Participant's account balance" by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9, Q&A-2 using the Participant's age as of the Participant's birthday in the "distribution calendar year"; or

(B) if the Participant's sole "designated Beneficiary" for the "distribution calendar year" is the Participant's spouse and the spouse is more than 10 years younger than the Participant, the quotient obtained by dividing the "Participant's account balance" by the distribution period in the Joint and Last Survivor Table set forth in Treasury Regulation Section 1.401(a)(9)-9, Q&A-3 using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the "distribution calendar year".

(ii) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this paragraph (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.

For purposes of this Section 6.6(d), the Participant's and Beneficiary's "life expectancy" determination will use the Single Life Table set forth in Treasury Regulation Section 1.401(a)(9)-9, Q&A-1.

(i) Death On or After Date 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 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:

- (1) The Participant's remaining "life expectancy" is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (2) If the Participant's surviving spouse is the Participant's sole "designated Beneficiary", the remaining "life expectancy" of the surviving spouse is calculated for each "distribution calendar year" after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For "distribution calendar years" after the year of the surviving spouse's death, the remaining "life expectancy" of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
- (3) If the Participant's surviving spouse is not the Participant's sole "designated Beneficiary" (i.e., multiple beneficiaries), the "designated Beneficiary's" remaining "life expectancy" is calculated using the age of the oldest Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (4) If the Participant's sole "designated beneficiary" is not the Participant's spouse, the "designated Beneficiary's" remaining "life expectancy" is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(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 year after the year of the Participant's death, 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 Participant's remaining "life expectancy" calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) Death Before Date Distributions Begin.

(A) Participant Survived by Designated Beneficiary.

Except as provided in this Section, 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 follows:

- (1) 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.
- (2) If the Participant's surviving spouse is not the Participant's sole "designated Beneficiary" (i.e., multiple beneficiaries), the "designated Beneficiary's" remaining "life expectancy" is calculated using the age of the oldest Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (3) If the Participant's sole "designated beneficiary" is not the Participant's spouse, the "designated Beneficiary's" remaining "life expectancy" is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(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 distributed 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 subsection (b)(ii)(A), this subparagraph (d)(ii) will apply as if the surviving spouse were the Participant.

(e) Definitions.

- (i) A Participant's "required beginning date" is April 1 of the year that follows the later of (1) the calendar year the Participant attains age 70 ½ or (2) retires due to Severance from Employment. If the Participant postpones the required distribution due in calendar year he or she attains age 70 ½ or severs employment, to the "required beginning date", the second required minimum distribution must be taken by the end of that year.

- (ii) Participant's "designated Beneficiary" means the individual who is designated as the Beneficiary under Section 8.1 and is the designated Beneficiary under Code Section 401(a)(9) and Treasury Regulation Section 1.401(a)(9)-4.
- (iii) A "distribution calendar year" means 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 the Participant attains age 70 ½ or retires, if later. For distributions beginning after the Participant's death, the first "distribution calendar year" is the calendar year in which distributions are required to begin under subparagraph (b)(ii).

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".

- (iv) A married Participant's "life expectancy", whose spouse is the sole Beneficiary and is more than 10 years younger than the Participant, means the Participant's and spouse Beneficiary's life expectancy as computed by use of the Joint and Last Survivor Life Table under Treasury Regulation Section 1.401(a)(9)-9, Q&A 3. All other Participants will have his or her life expectancy computed by use of the Uniform Lifetime Table under Treasury Regulation Section 1.401(a)(9)-9, Q&A 2. A deceased Participant's or Beneficiary's "life expectancy" means his or her life expectancy as computed by use of the Single Life Table under Treasury Regulation Section 1.401(a)(9)-9, Q&A 1.
- (v) A "Participant's account balance" means 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 amounts rolled over or transferred to the Plan either in the valuation calendar year or in the "distribution calendar year" if distributed or transferred in the valuation calendar year.

- (f) Special Provision Applicable to 2009 Required Minimum Distributions.

A Participant who would otherwise be required to receive a minimum distribution from the Plan in accordance with Code Section 401(a)(9) for the 2009 "distribution calendar year" may elect not to receive any such distribution that is payable with respect to the 2009 "distribution calendar year".

Notwithstanding the provisions of Section 6.9(b)(iii), the Administrator may permit a Participant who receives a minimum distribution from the Plan for the 2009 "distribution calendar year" to make a direct rollover of such distribution to an "eligible retirement plan" in accordance with the provisions of Section 6.9.

The Administrator may also permit a Participant or former Participant who has received a minimum distribution for the 2009 "distribution calendar year" to roll over such distribution back into the Plan, provided the requirements of Code Section 402(c), as modified by Notice 2009-82, extending the 60-day rollover deadline, and the requirements of Section 7.1 are otherwise satisfied. If the distribution received by the Participant included amounts in addition to the minimum required under Code Section 401(a)(9), the Administrator may allow the Participant to include a portion or all of the amount that was not a minimum distribution in the Rollover Contribution made to the Plan in accordance with this paragraph.

The provisions of this Section 6.6(f) are effective for minimum payments made for the 2009 "distribution calendar year" and do not include any minimum payment that is made in 2009, but is attributable to a different year (i.e., the participant reached his required beginning date in 2008, but payment of the 2008 minimum is not made until 2009).

#### **6.7 Payments to Minors and Incompetents**

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

#### **6.8 Procedure When Distributee Cannot Be Located**

The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown in the Administrator's records; (b) use of the Internal Revenue Service letter forwarding program under IRS Revenue Procedure 94-22; (c) use of a commercial locator service, the internet or other general search method; (d) use of the Social Security Administration search program; or (e) use such other methods as the Administrator believes prudent.

If the Participant or Beneficiary has not responded within 6 months, the Plan shall continue to hold the benefits due such person until, in the Administrator's discretion, the Plan is required to take other action under applicable law.

Notwithstanding the foregoing, if the Administrator is unable to locate a person entitled to benefits hereunder after applying the search methods set forth above, then the Administrator, in its sole discretion, may pay an amount that is immediately distributable to such person in a direct rollover to an individual retirement plan designated by the Administrator.

**6.9 Direct Rollover**

- (a) A Participant or spouse Beneficiary (or a Participant's spouse or former spouse who is the alternate payee under a domestic relations order, as defined in Code Section 414(p)) who is entitled to an "eligible rollover distribution" may elect, at the time and in the manner prescribed by the Administrator, to have all or any portion of the distribution paid directly to an "eligible retirement plan" specified by the Participant or spouse Beneficiary in a direct rollover.
- (b) For purposes of this Section 6.9, an "eligible rollover distribution" means any distribution of all or any portion of a Participant's Account Balance, except that an eligible rollover distribution does not include (i) any distribution that is one of a series of substantially equal periodic payment made not less frequently than annually for the life or life expectancy of the Participant or the joint lives or life expectancies of the Participant and the Participant's designated beneficiary, or for a specified period of ten years or more (ii) any distribution made as a result of an unforeseeable emergency, or (iii) any distribution that is a required minimum distribution under Code Section 401(a)(9).

In addition, an "eligible retirement plan" with respect to the Participant, the participant's spouse, or the Participant's spouse or former spouse who is an alternate payee under a domestic relations order as defined in Code Section 414(p) means any of the following: (i) an individual retirement account described in Code Section 408(a), (ii) an individual retirement annuity described in Code Section 408(b), (iii) an annuity plan described in Code Section 403(a), (iv) a qualified defined contribution plan described in Code Section 401(a), (v) an annuity contract described in Code Section 403(b), (vi) an eligible deferred compensation plan described in Code Section 457(b) that is maintained by a State, political subdivision of a State, or any agency or instrumentality of a State or political subdivision of a State, or (vii) effective for distributions made on or after January 1, 2008, a Roth IRA, as described in Code Section 408A, provided, that for distributions made before January 1, 2010, such rollover shall be subject to the limitations contained in Code Section 408A(c)(3)(B).

- (c) A Beneficiary who is not the spouse of the deceased Participant may elect a direct rollover of a distribution to an individual retirement account described in Code Section 408(b) or to a Roth individual retirement account described in Code Section 408A(b) ("IRA"), provided that the distributed amount satisfies all the requirements to be an eligible rollover distribution. The direct rollover must be made to an IRA established on behalf of the designated nonspouse Beneficiary that will be treated as an inherited IRA pursuant to the provisions of Code Section 402(c)(11). The IRA must be established in a manner that identifies it as an IRA with respect to a deceased Participant and also identifies the deceased Participant and the nonspouse Beneficiary.

**6.10 Inservice Distributions**

- (a) Unforeseeable Emergency Distributions. If the Participant who has not incurred a Severance from Employment or Beneficiary has an unforeseeable emergency, the Administrator may approve a single sum distribution of the amount requested or, if less,

the maximum amount determined by the Administrator to be permitted to be distributed under this Section 6.10(a), Treasury Regulation Section 1.457-6(c) or other regulatory guidance. The Administrator shall determine whether an unforeseeable emergency exists based on relevant facts and circumstances, and Treasury Regulation Section 1.457-6(c) or other regulatory guidance.

- (i) An unforeseeable emergency is defined as a severe financial hardship resulting from the following:
- (A) an illness or accident of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent or the Participant's "primary Beneficiary";
  - (B) loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster);
  - (C) the need to pay for the funeral expenses of a Participant's or Beneficiary's spouse, Participant's or Beneficiary's dependent or "primary Beneficiary" of the Participant;
  - (D) the need to pay for medical expenses of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, Participant's or Beneficiary's dependent or the Participant's "primary Beneficiary" which are not reimbursed or compensated by insurance or otherwise, including non-refundable deductibles, as well as for the cost of prescription drug medication;
  - (E) the imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence; or
  - (F) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary. However, except as otherwise specifically provided in this Section 6.10(a), certain circumstances are not considered an unforeseen emergency such as the purchase of a home or the payment of college tuition or credit card debt.

For purposes of this paragraph, if the Participant is not deceased, a "primary Beneficiary" shall be limited to a primary Beneficiary under the Plan, which is an individual who is named as a Beneficiary pursuant to Section 8.1 and has an unconditional right to all or a portion of the Participant's Account Balance upon the death of the Participant, and which shall not include a contingent beneficiary. Additionally, dependent shall be limited to the definition under Code Section 152(a), and, for taxable years beginning on or after January 1, 2005, without regard to Code Sections 152(b)(1), (b)(2) and (d)(1)(B).

- (ii) **Unforeseeable emergency distribution standard.** A distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise; by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or by cessation of deferrals under the Plan if the cessation of deferrals would alleviate the financial need.
- (iii) **Distribution necessary to satisfy emergency need.** Distributions because of an unforeseeable emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, State, or local income taxes or penalties reasonably anticipated to result from the distribution).
- (b) **De minimis Account Balance Distributions.** A Participant before Severance of Employment may request a distribution of his or her total Account Balance (excluding the rollover contribution separate account), which shall be paid in a lump sum payment as soon as practical following the direction if (i) the total Account Balance does not exceed \$5,000 (or the dollar limit under Code Section 411(a)(11), if greater), (ii) the Participant has not previously received a distribution of their total Account Balance payable to the Participant under this Section 6.10(b), and (iii) no Annual Deferral has been made with respect to the Participant during the two-year period ending immediately before the date of the distribution.
- The Plan does not permit the Administrator to direct payments under the terms of this Section 6.10(b) without the Participant's consent.
- (c) **Rollover Account Distributions.** If a Participant has a separate account attributable to rollover contributions under the Plan, the Participant before Severance of Employment may at any time elect to receive an inservice distribution of all or any portion of the amount held in the rollover separate account.
- (d) **Age 70 ½ Distributions.** Prior to Severance from Employment, a Participant may withdraw all or a portion of his or her Account Balance on or after first day of the calendar year in which the Participant shall attain age 70½.
- (e) **Qualified Military Service Deemed Severance Distributions.** The Plan does not permit "qualified military service deemed severance withdrawals".
- (f) **Qualified Military Reservist Distributions.** The Plan does not permit "qualified military reservist withdrawals".

#### **6.11 Qualified Distributions for Retired Public Safety Officers**

The Plan does not permit qualified distributions for retired public safety officers.

## **SECTION VII ROLLOVERS AND PLAN TRANSFERS**

### **7.1 Eligible Rollover Contributions to the Plan**

- (a) A Participant who is an Employee or a Participant who has separated from service and has an Account Balance and who is entitled to receive an eligible rollover distribution from another "eligible retirement plan", as defined in 6.9(b) excluding the direct rollover of after-tax contributions, may request to have all or a portion of the eligible rollover distribution paid to the Plan. The Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code Section 402 and to confirm that such plan is an "eligible retirement plan" within the meaning of Code Section 402(c)(8)(B).
- (b) If an Employee makes a rollover contribution to the Plan of amounts that have previously been distributed to him or her, the Employee must deliver to the Administrator the cash that constitutes his or her rollover contribution within 60 days of receipt of the distribution from the distributing "eligible retirement plan". Such delivery must be made in the manner prescribed by the Administrator.
- (c) The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any "eligible retirement plan" that is an eligible governmental plan under Code Section 457(b). In addition, the Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any "eligible retirement plan" that is not an eligible governmental plan under Code Section 457(b).

### **7.2 Plan-to-Plan Transfers to the Plan**

At the direction of the Employer, the Administrator may permit Participants or Beneficiaries who are participants or beneficiaries in another eligible governmental plan under Code Section 457(b) to transfer assets to the Plan as provided in this Section 7.2. Such a transfer is permitted only if the other plan provides for the direct transfer of each Participant's or Beneficiary's interest therein to the Plan. The Administrator may require in its sole discretion that the transfer be in cash or other property acceptable to the Administrator. The Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Code Section 457(e)(10) and Treasury Regulation Section 1.457-10(b) and to confirm that the other plan is an eligible governmental plan as defined in Treasury Regulation Section 1.457-2(f). The amount so transferred shall be credited to the Participant's Account Balance and shall be held, accounted for, administered and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan, except that the transferred amount shall not be considered an Annual Deferral under the Plan in determining the maximum deferral under Section III.

### **7.3 Plan-to-Plan Transfers from the Plan**

- (a) At the direction of the Employer, the Administrator may permit Participants or Beneficiaries to elect to have his or her Account Balance transferred to another eligible governmental plan within the meaning of Treasury Regulatory Section 1.457-2(f), if the other eligible governmental plan provides for the receipt of transfers, the Participant or Beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that Participant or Beneficiary immediately before the transfer, and the conditions of subparagraph (i), (ii), or (iii) are met.
- (i) A transfer from the Plan to another eligible governmental plan is permitted in the case of a transfer for a Participant if the Participant has had a Severance from Employment with the Employer and is performing services for the entity maintaining the other eligible governmental plan.
- (ii) A transfer from the Plan to another eligible governmental plan is permitted if:
- (A) The transfer is to another eligible governmental plan within the same State as the Plan;
- (B) All the assets held by the Plan are transferred; and
- (C) A Participant or Beneficiary whose amounts deferred are being transferred is not eligible for additional annual deferrals in the other eligible governmental plan unless he or she is performing services for the entity maintaining the other eligible governmental plan.
- (iii) A transfer from the Plan to another eligible governmental plan of the Employer is permitted if:
- (A) The transfer is to another eligible governmental plan of the Employer (and, for this purpose, an employer is not treated as the Employer if the Participant's compensation is paid by a different entity); and
- (B) A Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the other eligible governmental plan unless he or she is performing services for the entity maintaining the other eligible governmental plan.
- (b) Upon the transfer of assets under this Section 7.3, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section (for example, to confirm that the receiving plan is an eligible governmental plan under paragraph (a) of this Section 7.3, and to assure that the transfer



is permitted under the receiving plan) or to effectuate the transfer pursuant to Treasury Regulation Section 1.457-10(b).

#### **7.4 Permissive Service Credit Transfers**

- (a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code Section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan. A transfer under this Section 7.4(a) may be made before the Participant has had a Severance from Employment and without regard to whether the defined benefit governmental plan is maintained by the Employer. The distribution rules applicable to the defined benefit governmental plan to which any amounts are transferred under this Section 7.4 shall apply to the transferred amounts and any benefits attributable to the transferred amounts.
- (b) A transfer may be made under Section 7.4(a) only if the transfer is either for the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under the receiving defined benefit governmental plan, including service credit for periods for which there is no performance of services, service credited in order to provide an increased benefit for service credit which a participant is receiving under the plan, and service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in Code Section 415(n)(3)(C)(i)) of an educational organization described in Code Section 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12) or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed, without application of the limitations of Code Section 415(n)(3)(B) in determining whether the transfer is for the purchase of permissive service credit, or a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3).

## **SECTION VIII BENEFICIARY**

### **8.1 Beneficiary Designation**

A Participant has the right, by written notice filed with the Administrator, to designate one or more beneficiaries to receive any benefits payable under the Plan in the event of the Participant's death prior to the complete distribution of benefits. The Participant accepts and acknowledges that he or she has the burden for executing and filing, with the Administrator, a proper beneficiary designation form.

The form for this purpose shall be provided by the Administrator. The form is not valid until it is signed, filed with the Administrator by the Participant, and accepted by the Administrator. Upon the Participant filing the form and acceptance by the Administrator, the form revokes all beneficiary designations filed prior to that date by the Participant.

If no such designation is in effect upon the Participant's death, or if no designated Beneficiary survives the Participant, the Beneficiary shall be the Participant's estate. If a Beneficiary dies after becoming entitled to receive a distribution under the Plan but before distribution is made to him or her in full the estate of the deceased Beneficiary shall be the Beneficiary as to the balance of the distribution.

## **SECTION IX ADMINISTRATION AND ACCOUNTING**

### **9.1 Administrator**

The Administrator shall have the responsibility and authority to control the operation and administration of the Plan in accordance with the terms of the Plan, the Code and regulations thereunder, and any State law as applicable.

The Administrator may contract with a financially responsible independent contractor to administer and coordinate the Plan under the direction of the Administrator. The Administrator shall have the right to designate a plan coordinator or other party of its choice to perform such services under this agreement as may be mutually agreed to between the Administrator and the plan coordinator or other party. Notwithstanding any other provisions to the contrary, the Administrator agrees that it shall be solely responsible to the Employer for any and all services performed by a plan coordinator, subcontractor, assignee, or designee under this agreement.

The Administrator has full and complete discretionary authority to determine all questions of Plan interpretation, policy, participation, or benefit eligibility in a manner consistent with the Plan's documents, such determinations shall be conclusive and binding on all persons except as otherwise provided by law.

### **9.2 Administrative Costs**

All reasonable expenses of administration may be paid out of the Plan assets unless paid (or reimbursed) by the Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, or any person or persons retained or appointed by any named fiduciary incident to the exercise of his or her duties under the Plan, including, but not limited to, fees of accountants, counsel, investment managers, agents (including nonfiduciary agents) appointed for the purpose of assisting the Administrator in carrying out the instructions of Participants as to the directed investment of his or her accounts and other specialists and his or her agents, and other costs of administering the Plan. In addition, unless specifically prohibited under statute, regulation or other guidance of general applicability, the Administrator may charge to the Account Balance of an individual a reasonable charge to offset the cost of making a distribution to the Participant, Beneficiary, or Alternate Payee. If liquid assets of the Plan are insufficient to cover the fees of the Administrator, then Plan assets shall be liquidated to the extent necessary for such fees. In the event any part of the Plan assets becomes subject to tax, all taxes incurred will be paid from the Plan assets. Until paid, the expenses shall constitute a liability of the Trust Fund described in Section 11.1.

### **9.3 Paperless Administration**

The Administrator may use telephonic or electronic media to satisfy any notice requirements required by this Plan, to the extent permissible under regulations (or other generally applicable guidance). In addition, a Participant's consent to immediate distribution may be provided through telephonic or electronic means, to the extent permissible under regulations (or other generally

applicable guidance). The Administrator also may use telephonic or electronic media to conduct plan transactions such as enrolling participants, making (and changing) salary reduction elections, electing (and changing) investment allocations, and other transactions, to the extent permissible under regulations (or other generally applicable guidance).

## **SECTION X AMENDMENTS**

### **10.1 Amendment**

The Employer may at any time either prospectively or retroactively amend the Plan by notifying Participants of such action. The Employer shall not have the right to reduce or affect the value of any Participant's Account Balance or any rights accrued under the Plan prior to amendment.

### **10.2 Conformation**

The Employer shall amend and interpret the Plan to the extent necessary to conform to the requirements of Code Section 457 and any other applicable law, regulation or ruling, including amendments that are retroactive. In the event the Plan is deemed by the Internal Revenue Code to be administered in a manner inconsistent with Code Section 457, the Employer shall correct such inconsistency within the period provided in Code Section 457(b).

### **10.3 Plan Termination**

In the event of the termination of the Plan, all Account Balances shall be disposed to or for the benefit of each Participant or Beneficiary in accordance with the provisions of Section VI or Section VII as soon as reasonably practicable following the Plan's termination. The Employer shall not have the right to reduce or affect the value of any Participant's account or any rights accrued under the Plan prior to termination of the Plan. The Participant's or Beneficiary's written consent to the commencement of distribution shall not be required regardless of the value of his or her Account Balance.

## **SECTION XI TRUST FUND**

### **11.1 Trust Fund**

All amounts in a Participant's or Beneficiary's Account Balance, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held and invested in the Trust Fund in accordance with this Plan. The Trust Fund, and any subtrust established under the Plan, shall be established pursuant to a written agreement that constitutes a valid trust, custodial agreement, annuity contract, or similar agreement under the laws of the State. All investments, amounts, property, and rights held under the Trust Fund shall be held in trust for the exclusive benefit of Participants and their Beneficiaries and defraying reasonable expenses of the Plan and of the Trust Fund. Prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, no part of the assets and income of the Trust Fund may be used for, or diverted to, for purposes other than for the exclusive benefit of Participants and their Beneficiaries. The Employer has no beneficial interest in the Trust Fund and no part of the Trust Fund shall ever revert to the Employer, directly or indirectly, provided, however, that a contribution or any portion thereof made by the Employer through a mistake of fact under Section 12.4 shall upon written request of the Employer, reduced by losses attributable thereto, shall be returned to the Employer.

## **SECTION XII MISCELLANEOUS**

### **12.1 Non-Assignability**

Except as provided in Sections 12.2 and 12.3, no benefit under the Plan at any time shall be subject in any manner to anticipation, alienation, assignment (either at law or in equity), encumbrance, garnishment, levy, execution, or other legal or equitable process; and no person shall have power in any manner to anticipate, transfer, assign (either law or in equity), alienate or subject to attachment, garnishment, levy, execution, or other legal or equitable process, or in any way encumber his or her benefits under the Plan, or any part thereof, and any attempt to do so shall be void except to such extent as may be required by law.

### **12.2 Domestic Relation Orders**

The Employer shall establish reasonable procedures to determine the status of domestic relations orders and to administer distributions under domestic relations orders which are deemed to be qualified orders. Such procedures shall be in writing and shall comply with the provisions of Code Section 414(p) and regulations issued thereunder.

Notwithstanding Section 12.1, the Administrator may affect a Participant's Account Balance for a "qualified domestic relations order" as defined in Code Section 414(p), and those other domestic relations orders permitted to be so treated by the Administrator under the provisions of the Retirement Equity Act of 1984. The amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the qualified domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan.

### **12.3 IRS Levy**

Notwithstanding Section 12.1, the Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service to the Plan 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.

### **12.4 Mistaken Contributions**

Notwithstanding any other provision of the Plan or the Trust Fund to the contrary, in the event any contribution of an Employer is made under a mistake of fact (and not a Plan operational error), such contribution may be returned to the Employer within one year after the payment of the contribution. Earnings attributable to the excess contribution may not be returned to the Employer, but losses attributable thereto must reduce the amount to be so returned.

### **12.5 Employment**

Neither the establishment of the Plan nor any modification thereof, nor the establishment of any account, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the Employer except as herein provided; and, in no event, shall the terms or employment of any Employee be modified or in any way affected hereby.

### **12.6 Successors and Assigns**

The Plan shall be binding upon and shall inure to the benefit of the Employer, its successors and assigns, all Participants and Beneficiaries and their heirs and legal representatives.

### **12.7 Written Notice**

Any notice or other communication required or permitted under the Plan shall be in writing, and if directed to the Administrator shall be sent to the designated office of the Administrator, and, if directed to a Participant or to a Beneficiary, shall be sent to such Participant or Beneficiary at his or her last known address as it appears on the Administrator's record. To the extent permitted by law, regulation or other guidance from an appropriate regulatory agency, the Administrator, Employer or any other party may provide any notice or disclosure, obtain any authorization or consent, or satisfy any other obligation under the Plan through the use of any other medium acceptable to the Administrator. Such other medium may include, but is not necessarily limited to, electronic or telephonic medium. In addition, any communication or disclosure to or from Participants or Beneficiaries that is required under the terms of the Plan to be made in writing may be provided in any other medium (electronic, telephonic, or otherwise) that is acceptable to the Administrator and permitted under applicable law.

### **12.8 Total Agreement**

This Plan and Participant deferral election, and any subsequently adopted Plan amendment thereof, shall constitute the total agreement or contract between the Employer and the Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by the Participant.

### **12.9 Gender**

As used herein the masculine shall include the neuter and the feminine where appropriate.

### **12.10 Controlling Law**

This Plan is created and shall be construed, administered and interpreted in accordance with Code Section 457 and the regulations thereunder, and under laws of the State as the same shall be at the time any dispute or issue is raised. If any portion of this Plan is held illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder shall be unaffected.



IN WITNESS WHEREOF, the Employer has executed this Plan document this 28th day  
of July, 2015

Manatee County

SEAL


By 

Name Ed Hunzeker

Title County Administrator

Attest:

NA

  
(Witness)

Title \_\_\_\_\_



**Nationwide**<sup>®</sup>  
is on your side

Page 1 of 2

**Date prepared**

August 24, 2015

**Plan number**

0037018001

**Questions?**

Call 888-333-4202

**Visit us online**

Go to [nationwide.com](http://nationwide.com) to learn about products, services and more.

KIM STROUD  
MANATEE COUNTY BOCC  
PO BOX 1000  
BRADENTON, FL 34206-1000

### **Important Plan loan procedure changes**

**Email for faster service**  
For quicker processing, please send your signed procedures by email to [loanfyi@nationwide.com](mailto:loanfyi@nationwide.com)

Dear Kim Stroud,

Nationwide Retirement Solutions consistently strives to improve our service to you and your Plan loan participants, which is why we're enhancing our loan administration capabilities. Please see the details below.

#### **Loan procedure details**

The enclosed Plan Loan Procedures offer greater flexibility to adopt or change your Plan's loan program. Updates include:

- Easy selection of Plan provisions; we've included our current policy for each provision
- An updated Cure Period provision; the Cure Period is the amount of time a participant has to make a missed repayment before the loan defaults and becomes a deemed distribution
- Updates to online loan capabilities to expedite participant loan requests

#### **What you need to do**

- Please review your Plan's current loan program provisions outlined in the enclosed Plan Loan Procedures
- Sign and date the procedures and return all pages (1 through 6) by September 23, 2015 by email to [loanfyi@nationwide.com](mailto:loanfyi@nationwide.com) or by using the envelope provided

**NOTE:** To ensure the most effective operation of your Plan's loan program(s), newly executed Plan Loan Procedures and any applicable Amendments are required.

**See reverse side for additional information**

**Additional information**

We've enclosed Plan Loan Procedures which identify your Plan's current loan provisions.

At this time, the Plan has not selected online loan capability which is a valuable tool for participants offering them greater flexibility, access and expedited processing. **If the Plan wishes to offer this functionality to Plan participants, please select the appropriate option in Internet Utilization Section 8, page 6 of Addendum A.**

**For help when you need it**

If you have any questions or need additional information, please contact one of our loan specialists at 888-333-4202. Our specialists are available Monday through Friday, 8 a.m. to 6 p.m. Eastern time. Thank you for entrusting Nationwide to help your participants prepare for and live in retirement.

Sincerely,



Katie Moore  
Associate Vice President  
Public Sector Client Services



**Nationwide**  
is on your side

## Nationwide Retirement Solutions Governmental 457(b) Plan Loan Procedures

Page 1 of 6

**Plan name:** MANATEE COUNTY BOCC

Nationwide Retirement Solutions, Inc. ("NRS") agrees as the Administrative Service Provider to administer loans in accordance with the terms of these Plan Loan Procedures and the attached "**Plan Election Worksheet**" (see Addendum A) as approved by the Plan Sponsor of the Plan. The Plan Sponsor directs the Plan Administrator of the Plan to administer loans in accordance with this document. The Plan Sponsor or the Plan Administrator may amend these Plan Loan Procedures within any constraints placed by NRS. Any such amendments shall bind the Plan Sponsor and the Plan Administrator. The Plan Sponsor is encouraged to consult with legal advisors in determining whether the procedures identified herein are appropriate for the Plan.

The Plan Sponsor and Plan Administrator (collectively the "Client") acknowledge that NRS may need to make changes from time-to-time to the administrative procedures set forth herein and may request amendments to the Plan documents to maintain the Plan's Loan Program. In such a case, NRS will provide the Client with timely notice of such changes as they become necessary.

The following Plan Loan Procedures shall govern Participant loans offered in the Plan Sponsor's 457(b) Plan ("Plan"):

- 1. Loan Administration** – Client delegates to NRS certain administrative duties regarding the administration of loans from the Plan, which are set forth herein and which may be modified by NRS upon timely notice to and acceptance by the Plan Sponsor.
- 2. Loan Eligibility** - Any Plan Participant, who falls into one of the employee statuses that the Client has elected, is eligible for a loan from the Plan. Each Participant is entitled to one outstanding loan from the Plan at any time. In addition, a Participant who has defaulted on a previous loan shall not be eligible for another loan from the Plan until all defaulted loans are repaid in full, including accrued interest.
- 3. Loan Initiation and Loan Application** - In order to receive a loan from the Plan, an eligible Participant must complete all required documents provided in the Loan Application and return them to NRS. Before a loan is issued, the Participant must enter into a legally enforceable Loan Agreement as provided by NRS in the Loan Application, on behalf of the Plan. A loan initiation fee will be deducted from the Participant's account(s) after the loan has been funded by the Participant's account(s).
- 4. Loan Security** - By accepting a loan, the Participant is giving the Plan a security interest in his or her vested Plan balance equal to the total loan amount, but not to exceed 50% of the Participant's vested Plan balance.
- 5. Loan Money Source** - A loan shall be modeled taking into account the Participant's entire Plan account balance. Loans shall be funded only from a Participant's available Plan account pre-tax money sources. To the extent that a Participant has a self-directed brokerage account, no funding from such self-directed brokerage account shall be permitted.
- 6. Minimum and Maximum Loan Term** - The minimum and maximum loan term over which a loan may be repaid is the term elected by the Client. Except as otherwise provided herein, the maximum loan term shall not exceed 5 years.

# Nationwide Retirement Solutions

## Governmental 457(b) Plan Loan Procedures

Page 2 of 6

**Plan name:** MANATEE COUNTY BOCC

**7. Minimum/Maximum Loan Amount** - The minimum loan amount permitted shall be the amount elected by the Client. The maximum amount of any loan permitted under the Plan shall comply with Section 72(p) of the Internal Revenue Code and (when added to the outstanding balance of all other loans from all plans sponsored by the same employer) is the lesser of (i) \$50,000, reduced by the excess (if any) of (A) the highest outstanding balance of loans from all plans sponsored by the same employer, during the one-year period ending on the day before the date on which the loan was made over (B) the outstanding balance of loans from all plans sponsored by the same employer, on the date on which the loan is made, or (ii) one half of the present value of the Participant's vested account balance.

**8. Loan Amortization** - Each loan shall be amortized with interest accruing immediately, with repayments beginning approximately 30 days from the date the loan is processed, in substantially equal repayments consisting of principal and interest during the term of the loan. Repayments of principal and interest shall be made in a manner and pursuant to the terms set forth in the Loan Agreement. The amount of the final payment may be higher or lower depending upon the Participant's repayment history.

**9. Loan Repayment** - Repayment of any loan made to a Participant shall be made in a manner and pursuant to the terms set forth in the Loan Agreement. Loans must be repaid according to the repayment method elected by the Client. The Participant receiving a loan shall be required to furnish the information and authorization necessary to effectuate the foregoing repayments prior to the commencement of a loan. In the event that a Participant elects to receive a distribution from the Plan that is less than 100% of his outstanding account balance at a time when such person has a loan outstanding, the Participant shall continue to make repayments on the loan.

**10. Loan Prepayment** - The entire amount of a loan, including outstanding principal and any accrued interest, may be paid without penalty prior to the end of the term of the loan in the manner prescribed by NRS.

**11. Loan Overpayment** - In the event that NRS receives a loan overpayment, any amount over the repayment amount due will be applied or refunded according to the administrative policies of NRS.

**12. Cure Period** - If a Participant fails to make a loan repayment when due, the missed repayment must be made within the cure period elected by the Client.

**13. Default** - If any repayment is not received by NRS by the end of the cure period, the entire amount of the loan will be defaulted and treated as a deemed distribution, effective as of the end of the cure period elected by the Client. A deemed distribution is treated as a distribution from the Plan for federal (and possibly state or local) income tax purposes; therefore amounts treated as a deemed distribution will be subject to federal, state and/or local income taxes, and certain excise taxes and penalties may apply. NRS will issue a Form 1099-R to the Participant reflecting the deemed distribution. Any payment made on a defaulted loan will be applied to the outstanding balance of the loan including accrued interest. Such repayment(s), following the date of default, will be treated as after tax amounts and the Participant will receive tax basis in his or her Plan account for such amounts.

The entire loan, including any accrued interest, will also be due and payable immediately in the event of the death of the Participant. The outstanding balance of the loan will be treated as a deemed distribution following the date of notification of such death provided such notification is in good order as determined by NRS.

# Nationwide Retirement Solutions

## Governmental 457(b) Plan Loan Procedures

Page 3 of 6

**Plan name:** MANATEE COUNTY BOCC

**14. Loans Offered from Other Administrative Service Providers** - In the event the employer offers the Plan through multiple service providers, the Client and/or Participant and not NRS shall at all times remain responsible for ensuring that any loan received under the Plan is in accordance with the limits in Section 7. NRS shall apply the maximum loan amount limit and any other limits imposed under the Internal Revenue Code without regard to any other loans received by the Participant from any other administrative service provider(s) under this Plan or any other plan maintained by the Plan Sponsor.

**15. Suspension of Loan Repayments.**

**a. Military Leave of Absence** - A Participant's obligation to repay any loan under the Plan may be suspended as may be required by law, during the period in which the Participant is performing service in the United States military. The Participant must resume repayment of the loan upon his or her completion of military service and the outstanding loan balance, including any accrued interest and fees, must be repaid and may be re-amortized over a period that does not exceed the latest permissible term for a loan under the regulations plus the period of the military service. While the Participant is on active duty in the United States military, the interest rate on the loan shall not exceed 6%, compounded annually unless the Participant elects in writing during or after his or her military leave of absence to have the loan's higher existing interest rate, if applicable, apply to the loan. The Plan Sponsor assumes responsibility to notify NRS when a Participant begins and returns from a military leave of absence.

**b. Non-Military Leave of Absence** - In addition, a Participant's obligation to repay any loan under the Plan may be suspended during the period (not to exceed one year) while the Participant is on an approved non-military leave of absence and the Participant provides requested documentation regarding the non-military leave of absence from his or her employer. The Participant must resume repayment of the loan upon the earlier of his or her return from non-military leave of absence, or one year of suspension. At such point the outstanding loan balance, including any accrued interest and fees, must be repaid or may be re-amortized over a period that does not exceed the latest permissible term for a loan under the regulations. The Plan Sponsor assumes responsibility to notify NRS when a Participant begins and returns from a non military leave of absence.

**16. Loan Interest Rate** - The interest rates for a loan shall be commensurate with interest rates being charged by entities in the business of lending money under similar circumstances. The loan interest rate will be the Prime Rate plus an additional amount expressed as a percentage elected by the Client, plus any other administrative and/or asset fees, as applicable. The Prime Rate shall be the prime rate published by the Wall Street Journal two weeks prior to the end of the most current calendar-year quarter and the new rate will be effective on the first day of the new calendar quarter. The loan interest rate may be adjusted for Participants performing service in the United States military as may be required by law (See Provision 15a.)

**17. Fees** - Fees described in these loan procedures will appear as administrative charges on Participant statements. These fees are subject to change by NRS upon reasonable notice to the Plan Sponsor.

**a. Loan Initiation Fee** - A loan initiation fee of \$50 will be deducted from the Participant's account at the time the loan is funded.

**b. Annual Loan Maintenance Fee** - An annual loan maintenance fee of \$50 will be deducted from the participant's account on the anniversary date of the original loan initiation, until the loan is repaid in full or the loan has defaulted. In the event that the loan defaults, the annual loan maintenance fee will no longer be assessed and the annual loan default fee described below (See Provision 17f) will be applied.

**c. Asset Fees** - The amount of the outstanding loan balance will be subject to the maximum asset fee, administrative charge or such other fees NRS is entitled to receive under its separate agreement with the Plan Sponsor.

# Nationwide Retirement Solutions Governmental 457(b) Plan Loan Procedures


**Plan name:** MANATEE COUNTY BOCC

- d. **Insufficient Funds Fee** - If NRS is unable to process an ACH debit repayment or personal check on the date due, through no fault of NRS, a fee of \$ will be deducted \$25 from the Participant's account.
- e. **Loan Default Fee** - At the time a loan is treated as a deemed distribution, a \$50 fee will be deducted from the Participant's account.
- f. **Annual Loan Default Fee** - An annual loan default fee of \$50 will be will be deducted from the Participant's account on the anniversary date of the original loan default until the loan is repaid in full or offset.

**18. Loans for the Purchase of a Principal Residence** - All loans issued by the Plan will be general purpose loans to be repaid in no more than five years unless the Client elects to offer loans for the purchase of the Participant's principal residence. If the Client elects to allow loans for the purchase of a principal residence, all of the provisions of this document will apply unless otherwise specified.

**19. Loan Correction** - In the event a loan correction becomes necessary, at the Plan Sponsor's direction, NRS may undertake methods prescribed by the IRS or through any IRS correction program.

**20. Adoption of Plan Loan Procedures** - The undersigned Plan Sponsor or Plan Administrator, as applicable, hereby adopt these Plan Loan Procedures effective for loans issued on or after the Effective Date set forth below, and instructs NRS to administer loans made to Plan Participants in accordance with these terms and the Client elections made on the attached "Plan Election Worksheet" (See Addendum A). Prior to implementing a loan program, the Plan Sponsor acknowledges or acknowledged the following: (i) that the Plan Sponsor has decided to offer loans under the Plan and the Plan Administrator is instructing NRS to administer loans under the Plan; (ii) that the Plan Sponsor understands that, as a result of offering loans under the Plan, the Plan Participants could be subject to adverse tax consequences upon default of the loan; (iii) that the Plan Sponsor has independently weighed these risks, and despite the risks has determined that offering loans under the Plan is in the best interest of Plan Participants; (iv) that any previous loan procedures or loan reference documents other than the Plan Document itself, are hereby superseded by these Plan Loan Procedures; and (v) NRS shall not be liable for any adverse tax consequences described in (ii), except as specifically stated under paragraph 14 herein, resulting from the Plan Sponsor's decision to offer loans under the Plan.

Plan Sponsor Name ("Sponsor"):	Manatee County Board of County Comm.
Street Address:	1112 Manatee Ave West
City, State, Zip Code:	Bradenton, FL 34205
Signer's Email Address:	Kim.Stroud@mymanatee.org
Plan Name ("Plan"):	MANATEE COUNTY BOCC
Plan Number:	0037018001
Plan Sponsor or Plan Administrator Signature:	
Title:	Division Manager
Date of Adoption*:	
* Unless otherwise indicated below, the Date of Adoption shall be the Effective Date.	
Effective Date:	11/1/2015

An executed copy of these Procedures (including the attached Addendum A - Plan Election Worksheet) should be returned to Nationwide Retirement Solutions.



Addendum A - Plan Election Worksheet

The following provisions identify Plan elections which are incorporated and made a part of the attached "Plan Loan Procedures." In the event that an election is not made within any section, Nationwide Retirement Solutions ("NRS") will administer the loan program according to current NRS policies as listed under each provision below. The current NRS policies may be changed by NRS at any time. Unless otherwise specified, only one election is allowed per provision. The elections contained herein apply solely to the Plan. Any provisions, including limitations, do not extend to any other plans offered by the Sponsor.

**1. Loan Eligibility:**

Plan elects to allow the following Participants the ability to initiate a loan under the Plan. The Plan Sponsor is solely responsible for informing NRS of any future changes in the Participant's employment status (check all that apply).

- Employed
- Approved Non-military Leave of Absence (only available for ACH)
- Military Leave of Absence (only available for ACH)
- Disabled (only available for ACH)
- Retired (only available for ACH)
- Terminated (only available for ACH)

**Current NRS Policy:** All listed Participant employment statuses are eligible to initiate a loan if ACH is the elected repayment method (See Provision 4). If the repayment method elected is Payroll Deduction (See Provision 4), the only eligible Participant employment status is Employed.

**2. General Purpose Loan Terms:**

**2(a). Minimum Loan Term**

Plan elects the following minimum loan term:

- One year
- Other – Specify minimum loan term: 6 months (not to be less than six months)

**Current NRS Policy:** The minimum loan term is one year.

**2(b). Maximum Loan Term**

Plan elects the following maximum loan term:

- Five years
- Other - Specify maximum loan term: \_\_\_\_\_ (not to exceed a term of five years)

**Current NRS Policy:** The maximum loan term is five years.

**3. Minimum Loan Amount:**

Plan elects to have a minimum loan amount of:

- \$1,000
- Other – Specify minimum loan amount: \$\_\_\_\_\_ (not to be less than \$500)

**Current NRS Policy:** The minimum loan amount is \$1,000.

**4. Repayment Method:**

Plan elects to provide Participants with one of the following loan repayment methods:

- Monthly Automated Clearing House ("ACH")
- Payroll Deduction (Plan Sponsor will be required to provide a payroll calendar.

(This repayment method is limited to Employed status – see Provision 1)

**Current NRS Policy:** Monthly ACH is the repayment method.



# Nationwide Retirement Solutions

## Governmental 457(b) Plan Loan Procedures

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### Addendum A - Plan Election Worksheet

#### 5. Cure Period:

If a Participant misses a scheduled loan repayment, the missed repayment must be received by the end of the specified cure period. Plan elects to apply a cure period with the following length:

31 Days

60 Days

90 Days

The quarter following the quarter in which the scheduled repayment was missed

**Current NRS Policy:** The cure period is 31 days when ACH is the elected repayment method (See Provision 4). The cure period is 60 days when the repayment method elected is Payroll Deduction (See Provision 4).

#### 6. Loan Interest Rate:

Plan elects the following interest rate for Participant loans:

Prime Rate plus 1% plus applicable fees

Prime Rate plus 2% plus applicable fees

Prime Rate plus \_\_\_\_\_% (not to be lower than 0%) plus applicable fees

**Current NRS Policy:** Prime Rate plus 2% plus applicable fees.

#### 7. Loans for the Purchase of a Principal Residence:

7(a). Plan elects to permit loans for the purchase of the Participant's principal residence:

Yes

No

In the event Plan elects to allow Principal Residence loans, only one Principal Residence loan outstanding at a time is permitted. The Principal Residence loan is included in the maximum number of outstanding loans (See Provision 2 of the Plan Loan Procedures). Additionally, the Participant will be required to sign a Principal Residence Certificate and provide NRS with sufficient additional documents to support the purchase of a principal residence. Internet initiation is not available for Principal Residence loans.

**Current NRS Policy:** Principal Residence loans are not allowed.

7(b). Minimum Loan Term: Plan elects to have a minimum loan term for Principal Residence loans of:

Five years

Other – Specify minimum loan term: 1 year (not to be less than one year)

**Current NRS Policy:** Principal Residence loans have a minimum term of five years.

7(c). Maximum Loan Term: Plan elects to have a maximum loan term for Principal Residence loans of:

15 Years

Other - Specify maximum loan term: \_\_\_\_\_ (not to exceed a term of 30 years)

**Current NRS Policy:** Principal Residence loans have a maximum term of 15 years.

#### 8. Internet Utilization:

Plan elects to allow Participants to use the internet for:

Only the modeling of loans

Both modeling and initiation of loans

Plan declines the use of the internet for either the modeling or initiation of loans

**Current NRS Policy:** Participants can use the internet for modeling and initiation of loans.

Loan initiation on the internet is limited to General Purpose loans. Principal Residence loans will not be initiated electronically. Additional limitations exist for particular repayment methods and employment statuses.

**MANATEE COUNTY BOCC**

*(Name of Employer)*

**DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES**

**457 GOVERNMENTAL PLAN AND TRUST**

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## 457 GOVERNMENTAL PLAN AND TRUST

The Employer adopts this 457 Governmental Plan and Trust. The Plan is intended to be an “eligible deferred compensation plan” as defined in Code §457(b) of the Internal Revenue Code of 1986 (“Eligible 457 Plan”). The Plan consists of the provisions set forth in this plan document and is applicable to the Employer and each Employee who elects to participate in the Plan. 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 execution of this Plan. The Plan is effective as to each Employee upon the date he/she becomes a Participant by entering into and filing with the Employer or the Administrative Services Provider a Participation Agreement or an Acknowledgement Form/Card.

### ARTICLE I DEFINITIONS

1.01 **“Account”** means the separate Account(s) which the Administrative Services Provider or the Trustee maintains under the Plan for a Participant’s Deferred Compensation. The Administrative Services Provider 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.

1.03 **“Acknowledgement Form/Card”** means the application to the Administrative Services Provider to participate in the Plan when the Plan is a Social Security replacement plan.

1.04 **“Administrative Services Provider”** means Nationwide Retirement Solutions, Inc. which acts as the third party administrative services provider appointed by the Employer to carry out nondiscretionary administrative functions for the Plan.

1.05 **“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 Beneficiary has received full distribution of his/her Plan benefit. A Beneficiary’s right to (and the Administrative Services Provider’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.

1.06 **“Code”** means the Internal Revenue Code of 1986, as amended.

1.07 **“Compensation”** for purposes of allocating Deferral Contributions means the employee’s wages, salaries, fees for professional services, and other amounts received without regard to whether or not an amount is paid in cash for personal services actually rendered in the course of employment with the Employer, to the extent that the amounts are includible in gross income (or to the extent amount would have been received and includible in gross income but for an election under Code §§ 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), and 457(b), including an election to defer Compensation under Article III. See Section 1.16 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 an Eligible 457 Plan.

**(A) Elective Contributions.** Compensation under Section 1.07 includes 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.

**(B) Differential wage payments.** For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined by Code § 3401(h)(2), shall be treated as an employee of the employer making the payment; (ii) the differential wage payment shall be treated as compensation; and (iii) the plan will not be treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

1.08 **“Deferral Contributions”** means Salary Reduction Contributions, Nonelective Contributions and Matching Contributions. The Employer or the Administrative Services Provider (if applicable) in applying the Code § 457(b) limit will take into account Deferral Contributions in the Taxable Year in which deferred. The Employer or Administrative Services Provider (if applicable) in determining the amount of a Participant’s Deferral Contributions disregards the net income, gain and loss attributable to Deferral Contributions.

1.09 **“Deferred Compensation”** means as to a Participant the amount of Deferral Contributions,

## 457 Governmental Plan and Trust

Rollover Contributions and Transfers adjusted for allocable net income, gain or loss, in the Participant's Account.

1.10 **"Effective Date"** of this Plan is the date indicated on the execution line unless the Code, Treasury regulations, or other applicable guidance provides otherwise.

1.11 **"Employee"** means an individual who provides services for the Employer, as a common law employee of the Employer. See Section 1.16 regarding potential treatment of an Independent Contractor as an Employee.

1.12 **"Employer"** means an employer who adopts this Plan by executing the Plan.

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

1.14 **"Excess Deferrals"** means Deferral Contributions to an Eligible 457 Plan for a Participant that exceed the Taxable Year maximum limitation of Code §§457(b) and (e)(18).

1.15 **"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.

1.16 **"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 may 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.

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. The Employer may provide for matching contributions.

1.19 **"Nonelective Contribution"** means an Employer fixed or discretionary contribution not made as a result of a Participation Agreement and which is not a Matching Contribution. The Employer may provide for nonelective contributions.

1.20 **"Normal Retirement Age"** means the age designated by the Participant unless the Employer designates in writing a Normal Retirement Age. The Normal Retirement Age designated by the Participant or Employer shall be no earlier than age 65 or the age at which Participants have the right to retire and receive, under the basic defined benefit pension plan of the Employer (or a money purchase plan in which the Participant also participates if the Participant is not eligible to participate in a defined benefit plan), immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age. The Normal Retirement Age also shall not exceed age 70½.

*Special Rule for Eligible Plans of Qualified Police or Firefighters.* A Participant who is a qualified police officer or firefighter as defined under Code §415(b)(2)(H)(ii)(I) may designate a Normal Retirement Age between age 40 and age 70 ½.

1.21 **"Participant"** is an Employee who elects to participate in the Plan in accordance with the provisions of Section 2.01 or an individual who has previously deferred Compensation under the Plan by a Participation Agreement and has not received a complete distribution of his/her Account.

1.22 **"Participation Agreement"** means the agreement to enroll and participate in the Plan that is completed by the Participant and provided to the Administrative Services Provider. The Participation Agreement is the agreement, by which the Employer reduces the Participant's Compensation for contribution to the Participant's Account.

1.23 **"Plan"** means the 457 plan established or continued by the Employer in the form of this Plan and (if applicable) Trust Agreement. All section references within the Plan are Plan section references unless the context clearly indicates otherwise.

1.24 **"Plan Entry Date"** means the date on which an Employee completes and files a Participation Agreement with the Administrative Services Provider.

1.25 **"Plan Year"** means the calendar year.

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 an

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 Contribution**” means a contribution the Employer makes to the Plan pursuant to a Participation Agreement.

1.28 “**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**” 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 1.28, the Administrative Services Provider will consider an Independent Contractor to have incurred a Severance from Employment: (a) if the Administrative Services Provider 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 Administrative Services Provider or Trustee will not pay to the Independent Contractor his/her Deferred Compensation on the applicable date.

(3) **Uniformed Services.** for purposes of distributions to an individual in the uniformed services, such individual will be treated as incurring a Severance from Employment during any period the individual is performing service in the uniformed services described in Code § 3401(h)(2)(A). However, the plan will not distribute the benefit to such an individual without that individual’s consent, so long as the individual is receiving differential wage payments.

If an individual elects to receive a distribution under this provision, the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.

1.29 “**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.

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

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1.31 **“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.

1.32 **“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 Plan and is subject to Article VIII.

1.33 **“Trustee”** means the person or persons designated by the Employer to serve in the position of Trustee.

### ARTICLE II PARTICIPATION IN PLAN

2.01 ELIGIBILITY. Each Employee becomes a Participant in the Plan as soon as he/she completes and files a Participation 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.

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.

2.03 SPECIAL ELIGIBILITY PROVISIONS FOR PARTICIPANTS IN A PLAN USED AS A SOCIAL SECURITY REPLACEMENT PLAN. Notwithstanding any provision to the contrary, the provisions of this Section 2.03 will apply if the Employer elects in a written agreement with the Administrative Services Provider to use the Plan as a Social Security replacement plan. If the Plan is used as a Social Security replacement plan, the provisions of Sections 4.05(a) and 5.03 will not apply.

**(A) Eligibility to participate for new Employees.** A new Employee shall, as a condition of employment participate in the Plan sign and file with the Administrative Services Provider an Acknowledgement Form/Card and thereby consenting to a reduction of salary by the amount of the Deferral Contribution specified in the Acknowledgement Form/Card. Contributions to the Participant’s Account must equal at least 7.5% of the Participant’s Compensation, or such other minimum amount as shall be required for the Plan to be considered a retirement system under Code §3121(b)(7)(F) and Treas. Reg. 31.3121(b)(7)-2, and the reduction in the Participant’s salary shall begin immediately thereafter.

**(B) Eligibility to participate for current Employees.** An Employee who is newly eligible to participate in the Plan shall, prior to becoming eligible to participate in the Plan, sign and file with

the Administrative Services Provider an Acknowledgement Form/Card and thereby consent to a reduction of salary by the amount of the Deferral Contribution specified in the Acknowledgement Form/Card. Allocations to the Participant’s Account must equal at least 7.5% of the Participant’s Compensation or such other minimum amount as shall be required for the Plan to be considered a retirement system under Code §3121(b)(7)(F) and Treas. Reg. §31.3121(b)(7)-2, and the reduction in the Participant’s salary shall begin no earlier than the first pay period commencing during the first month after the date on which the Acknowledgement Form/Card is filed with the Administrative Services Provider.

**(C) Takeover Plans.** If the Plan is a restated Plan, an Employee who participated in the predecessor plan shall become a Participant in the Plan upon the Employer’s execution of the enabling documents for this Plan. Allocations to each such Participant’s Account must equal at least 7.5% of the Participant’s Compensation, or such other minimum amount as shall be required for the Plan to be considered a retirement system under Code §3121(b)(7)(F) and Treas. Reg. §31.3121(b)(7)-2, and the reduction in the Participant’s salary shall begin immediately thereafter.

### ARTICLE III DEFERRAL CONTRIBUTIONS/LIMITATIONS

#### 3.01 AMOUNT.

**(A) Contribution Formula.** For each Plan Year, the Employer will contribute to the Plan the amount of Deferral Contributions the Employee elects to defer under the Plan.

**(B) Return of Contributions.** The Employer contributes to this Plan on the condition its contribution is not due to a mistake of fact. If any Participant Salary Reduction Contribution is due to a mistake of fact, the Employer or the Trustee upon written request from the Employer will return the Participant’s contribution, within one year after payment of the contribution.

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.** An Employer will deposit Salary Reduction Contributions to the Trust within a period that is not longer than is reasonable for the administration of Participant Accounts. Neither the Administrative Services Provider nor the Trustee is responsible for the delay of deposits of Salary Reduction Contributions caused by the Employer.

**3.02 SALARY REDUCTION CONTRIBUTIONS.** The Plan does not apply any limitations on Salary Reduction Contributions other than the limitations applicable under the Code.

**(A) Deferral from Sick, Vacation and Back Pay.** Participants may make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay.

**(B) Application to Leave of Absence and Disability.** The Participation Agreement will continue to apply during the Participant's leave of absence or the Participant's disability (as the Employer shall establish), if the Participant has Compensation other than imputed compensation or disability benefits.

**(C) Post-severance deferrals limited to Post-Severance Compensation.** Deferral Contributions are permitted from an amount received following Severance from Employment only if the amount is Post-Severance Compensation.

**Post-Severance Compensation defined.** Post-Severance Compensation includes the amounts described in (1) and (2) 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.

**(1) Regular pay.** Post-Severance Compensation *includes* 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.

**(2) Leave cashouts.** Post-Severance Compensation *includes* 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.

**(3) Salary continuation payments for military service Participants.** Post-Severance Compensation includes 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.

**Limitation on Post-Severance Compensation.** Any payment of Compensation paid after Severance of Employment that is not described in Section 3.02(C)(1) or 3.02(C)(2) 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.

**3.03 NORMAL LIMITATION.** Except as provided in Sections 3.04 and 3.05, 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.

**3.04 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 3.03 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 Contributions for each such prior Taxable Year, excluding age 50 catch-up contributions.

**(B) 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.

**(C) Pre-2002 Coordination.** In determining a Participant's underutilized limitation, the

## 457 Governmental Plan and Trust

coordination rule in effect under now repealed Code §457(c)(2) applies. Additionally, the normal limitation for pre-2002 Taxable Years is applied in accordance with Code § 457(b)(2) as then in effect.

3.05 AGE 50 CATCH-UP CONTRIBUTION. 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 3.04, the Employee is not eligible to make age 50 catch-up contributions under this Section 3.05. A catch-up eligible Participant in each Taxable Year is entitled to the greater of the amount determined under Section 3.04 or Section 3.05 catch-up amount plus the Section 3.03 normal limitation.

3.06 CONTRIBUTION ALLOCATION. The Administrative Services Provider will allocate to each Participant's Account his/her Deferral Contributions.

3.07 ALLOCATION CONDITIONS. The Plan does not impose any allocation conditions.

3.08 ROLLOVER CONTRIBUTIONS. The Plan permits 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 Administrative Services Provider, 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 an 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 Administrative Services Provider and Trustee must treat the Employee as a limited Participant (as described in Rev. Rul. 96-48 or in any successor ruling). 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 Administrative Services Provider must account separately for: (1) amounts rolled into this Plan from an eligible retirement plan (other than from another Eligible 457 plan); and (2) amounts rolled into this Plan from another Eligible 457 Plan. The Administrative Services Provider 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.

3.09 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 3.09.

The Administrative Services Provider will distribute Excess Deferrals from an Eligible 457 Plan as soon as is reasonably practicable following the Administrative Services Provider's or Employer's determination of the amount of the Excess Deferral.

**(A) 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.

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

3.10 DOLLAR LIMITS. The table below shows the applicable dollar amounts described in paragraph 3.03(a) and limitations on age 50 catch-up contributions described in Section 3.05. 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	Age 50+ 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

#### ARTICLE IV TIME AND METHOD OF PAYMENT OF BENEFITS

##### 4.01 DISTRIBUTION

**RESTRICTIONS.** Except as the Plan provides otherwise, the Administrative Services Provider or Trustee may not distribute to a Participant his/her Account prior to the Participant's Severance from Employment, the calendar year in which the Participant attains age 70½, or such other event for which federal legislation is enacted or regulatory relief granted permitting the Plan to make distributions to qualifying Participants.

**(A) Distribution of Rollover Contributions.** To the extent the Employer permits Rollover Contributions (but not Transfers) to this Plan, a Participant may receive a distribution of such Rollover Contributions without regard to the restrictions found in this Section 4.01.

**4.02 TIME AND METHOD OF PAYMENT OF ACCOUNT.** The Administrative Services Provider, or Trustee at the direction of the Administrative Services Provider, will distribute to a Participant who has incurred a Severance from Employment the Participant's Account under one or any combination of payment methods elected by the Participant. The Participant may elect one of the following methods of payment: (1) lump sum payment, (2) partial lump sum payment, (3) installment, or (4) an annuity. In no event will the Administrative Services Provider 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.

Subject to any restrictions imposed by the Participant's investment providers and the Administrative Services Provider, the Participant: (1) may elect to commence distribution no earlier than is administratively practical following Severance from Employment; (2) may elect to postpone distribution of his/her Account to any fixed or determinable date including, but not beyond, the Participant's required beginning date; and (3) 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 Participant first would be eligible to commence payment of the Participant's Account. The Administrative Services Provider must furnish to the Participant a form for the Participant to elect the time and a method of payment.

**4.03 REQUIRED MINIMUM DISTRIBUTIONS.** The Administrative Services Provider 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) **Precedence.** The requirements of this Section 4.03 will take precedence over any inconsistent provisions of the Plan.

(2) **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, 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, 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

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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 the distribution calendar year of the Participant's death is obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant. 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. For each distribution calendar year after the year of the Participant's death, the minimum amount that will be distributed is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated Beneficiary.

(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. 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 distribution calendar year means 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.

(F) **General 2009 waiver.** The requirements of Code § 401(a)(9) and the provisions of the Plan relating thereto, will not apply for the distribution calendar year 2009.

(1) **Special rule regarding waiver period.** For purposes of Code § 401(a)(9) and the provisions of the Plan relating thereto: (a) the required beginning date with respect to any individual will be determined without regard to this Article IV for purposes of applying Code § 401(a)(9) for distribution calendar years other than 2009; and (b) if the 5-year rule of Code § 401(a)(9)(B)(ii) applies, the 5-year period described therein shall be determined without regard to calendar year 2009.

(2) **Eligible rollover distributions.** If all or any portion of a distribution during 2009 is treated as an eligible rollover distribution but would not be so treated if the minimum distribution requirements under Code § 401(a)(9) had applied during 2009, then the Plan will not treat such distribution as an eligible rollover distribution for purposes of the direct rollover rules of Code § 401(a)(31), the notice requirements of Code §402(f), or the 20% withholding requirement of Code §3405(c).

(3) **Participant may elect.** The Plan will permit an affected Participant to elect whether to receive his/her RMD distribution for 2009. If the Participant fails to notify the Administrative Services Provider of his/her waiver, the Plan will distribute the 2009 RMD to the Participant.

4.04 DEATH BENEFITS. Upon the death of the Participant, the Administrative Services Provider 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.

In the case of a death occurring on or after January 1, 2007, if a participant dies while performing qualified military service (as defined in Code § 414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the participant

had resumed and then terminated employment on account of death.

**4.05 DISTRIBUTIONS PRIOR TO SEVERANCE FROM EMPLOYMENT.** Notwithstanding the Section 4.01 distribution restrictions, the Plan permits the following in-service distributions in accordance with this Section.

**(A) Unforeseeable Emergency.** In the event of a Participant's unforeseeable emergency, the Administrative Services Provider may make a distribution to a Participant who has not incurred a Severance from Employment.

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 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 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. The Administrative Services Provider 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 Administrative Services Provider 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.

The Participant's Beneficiary is a person who a Participant designates as a "primary beneficiary" and who is or may become entitled to a Participant's Plan account upon the Participant's death.

A Participant's unforeseeable emergency event includes a severe financial hardship of the participant's primary Beneficiary under the Plan, that would constitute an emergency event if it occurred with respect to the participant's spouse or dependent as defined under Code § 152.

**(B) De minimis distribution.** A Participant may elect to receive a distribution of his/her 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.** A Participant may request and receive distribution of his/her 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 QDRO provisions will apply. The Administrative Services Provider (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. 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.** Upon receiving a domestic relations order, the Administrative Services Provider 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 order. Within a reasonable period of time after receiving the domestic relations order, the Administrative Services Provider must determine the qualified status of the order and must notify the Participant and each alternate payee, in writing, of the Administrative Services Provider's determination. The Administrative Services Provider 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 Administrative Services Provider is making its determination of the qualified status of the domestic relations order, the Administrative Services Provider may maintain a separate accounting of the amounts payable. If the Administrative Services Provider determines the order is a QDRO within 18 months of the date amounts first are payable following receipt of the domestic relations order, the Administrative Services Provider will distribute or will direct the Trustee to distribute the payable amounts in accordance with the

QDRO. If the Administrative Services Provider does not make its determination of the qualified status of the order within the 18-month determination period, the Administrative Services Provider 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 Administrative Services Provider later determines the order is a QDRO.

To the extent it is not inconsistent with the provisions of the QDRO, the Administrative Services Provider may segregate or may direct the Trustee to segregate the QDRO amount in a segregated investment account. The Administrative Services Provider 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).

**(D) Permissible QDROs.** 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.

#### 4.07 DIRECT ROLLOVER OF ELIGIBLE ROLLOVER DISTRIBUTIONS – GOVERNMENTAL PLAN.

**(A) Participant Election.** A Participant (including for this purpose, a former Employee) may elect, at the time and in the manner the Administrative Services Provider 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 180 days prior to the Trustee’s distribution of an eligible rollover distribution, the Administrative Services Provider 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) Non-spouse Beneficiary rollover right.** 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 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.

**(1) Certain requirements not applicable.** Although a non-spouse Beneficiary may roll over directly a distribution, commencing with distributions after December 31, 2009, the distribution will be subject to the direct rollover requirements of Code § 401(a)(31) (including the automatic rollover provisions of Code § 401(a)(31)(B)), the notice requirements of Code § 402(f) and 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.

**(2) 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).

**(3) 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 Revenue Service guidance. If the participant dies before his/her required beginning date and the non-spouse Beneficiary rolls over to an IRA the maximum amount eligible for rollover, the Beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. § 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse Beneficiary’s distribution.

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

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

(4) **Mandatory distribution.** The Administrative Services Provider is directed to make a mandatory distribution, which is an eligible rollover distribution, without the Participant's consent provided that the Participant's Account is less than \$1,000. 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.

4.08 **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 4.08(A).

(A) **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 healthcare premiums, and which otherwise complies with Code § 402(l).

**(B) Definitions.**

(1) **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, has experienced a Severance from Employment as a Public Safety Officer with the Employer.

(2) **Public safety officer.** A "Public Safety Officer" has the same meaning as in § 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3796b(9)(A)).

(3) **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 plan or qualified long-term care insurance contract (as defined in Code § 7702B(b)).

**ARTICLE V  
ADMINISTRATIVE SERVICES PROVIDER -  
DUTIES**

5.01 **TERM / VACANCY.** The Administrative Services Provider will serve until his/her successor is appointed. In case the Employer has not appointed a successor Administrative Services Provider, the Employer will exercise any and all duties of the Administrative Services Provider pending the filling of the vacancy.

5.02 **DUTIES.** The Administrative Services Provider will have the following duties:

- (a) To create administrative forms necessary for the proper and efficient administration of the Plan provided the forms are not inconsistent with the terms of the Plan;
- (b) To enforce the terms of the Plan and its procedures, including this document and such other documents related to the Plan's operation;
- (c) To make, at the direction of the Participant or Beneficiary or pursuant to Section 4.07(D)(4), distributions of an Account;
- (d) To review in accordance with the Plan's procedures respecting a claim for (or denial of a claim for) a benefit under the Plan;
- (e) To furnish the Employer with information which the Employer may require for tax or other purposes;
- (f) To make distributions on account of unforeseeable emergency in accordance with the Plan's procedures;
- (g) To accept Deferral Contributions, Employer Contributions, and Rollover Contributions;

- (h) To accept Transfers;
- (i) To accept Participant or, in the case of a deceased Participant, Beneficiary direction of investment;
- (j) To comply with any reporting and disclosure rules applicable to the Plan;
- (k) To make loans to Participants if elected by the Employer;
- (l) To appoint agents to act for and in performing its third party administrative services to the Plan; and
- (m) To undertake any other action the Administrative Services Provider deems reasonable or necessary to provide third party administrative services to the Plan.

5.03 LOANS TO PARTICIPANTS. The Employer may elect to permit the Administrative Services Provider and/or Trustee to make Plan loans to Participants by executing a participant loan program document with the Administrative Services Provider. Any loan by the Plan to a Participant shall be made in compliance with Code § 72(p). If Plan loans are permitted, the Administrative Services Provider, with the approval and direction of the Employer, may establish, amend or terminate from time to time, nondiscriminatory administrative procedures for administering loans. Such loan procedures must be a written document and must include: (1) the procedure for applying for a loan; (2) the criteria for approving or denying a loan; (3) the limitations, if any, on the types and amounts of loans available; and (4) the events constituting default and the steps the Plan will take to preserve Plan assets in the event of default. Any administrative procedures adopted under this Section 5.03 shall be construed as part of the Plan.

5.04 INDIVIDUAL ACCOUNTS / RECORDS. The Administrative Services Provider will maintain a separate Account in the name of each Participant to reflect the value of the Participant's Deferred Compensation under the Plan.

5.05 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 Administrative Services Provider may determine.

5.06 ALLOCATION OF NET INCOME, GAIN OR LOSS. As of each Accounting Date (and each other valuation date determined under Section 5.04), the Administrative Services Provider will adjust Accounts to reflect net income, gain or loss, if any, since the last Accounting Date or Account valuation.

The Administrative Services Provider 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.

5.07 ACCOUNT CHARGED. The Administrative Services Provider 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.

5.08 PARTICIPANT DIRECTION OF INVESTMENT. Subject to the terms and conditions required by the Administrative Services Provider and the Trustee, if any, a Participant will have the right to direct the investment or re-investment of the assets comprising the Participant's Account. The Administrative Services Provider 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.

5.09 VESTING / SUBSTANTIAL RISK OF FORFEITURE. Each Participant's Account will be immediately 100% vested.

5.10 PRESERVATION OF ELIGIBLE PLAN STATUS. The Employer may take any such necessary and appropriate action to preserve the status of the Plan as an Eligible 457 Plan.

5.11 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 Administrative Services Provider determines in accordance with the Plan terms. The Employer, the Administrative Services Provider, or the Trustee will not be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

5.12 LOST PARTICIPANTS. If the Administrative Services Provider is unable to locate any Participant or Beneficiary whose Account becomes distributable (a "lost Participant"), the Administrative Services Provider will apply the provisions of this Section 5.12.

**(A) Attempt to Locate.** The Administrative Services Provider 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 Administrative Services Provider believes prudent.

**(B) Failure to Locate.** If a lost Participant is not located after 6 months following the date the Administrative Services Provider first attempts to locate the lost Participant using one or more of the methods described in Section 5.12(A), the Administrative Services Provider may employ the unclaimed property processes of the state of the lost Participant’s last known address. Neither the Administrative Services Provider nor the Trustee shall be responsible for restoring the Account (including potential gains) if a lost Participant whose Account was deposited with a state later makes a claim for his/her Account.

**(C) Nonexclusivity and Uniformity.** The provisions of this Section 5.12 are intended to provide permissible but not exclusive means for the Administrative Services Provider to administer the Accounts of lost Participants. The Administrative Services Provider may utilize any other reasonable method to locate lost Participants and to administer the Accounts of lost Participants, including such methods as the Revenue Service or other regulatory agency may in the future specify. The Administrative Services Provider will apply Section 5.12 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 Administrative Services Provider’s ability to establish and the expense of establishing a rollover IRA, and other factors. The Administrative Services Provider may charge to the Account of a lost Participant the reasonable expenses incurred under this Section 5.12 and which are associated with the lost Participant’s Account.

5.13 PLAN CORRECTION. The Administrative Services Provider, as directed by the Employer, may undertake such correction of Plan errors as the Employer deems necessary, including but not limited to correction to maintain the Plan’s status as an “eligible deferred compensation plan” under the Code.

**ARTICLE VI  
PARTICIPANT ADMINISTRATIVE  
PROVISIONS**

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 Administrative Services Provider 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 Administrative Services Provider will prescribe the form for the Participant’s written

designation of Beneficiary and, upon the Participant’s filing the form with the Administrative Services Provider, the form revokes all designations filed prior to that date by the same Participant. Provided the Administrative Services Provider has been provided reasonable notice thereof, 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 Participant has re-designated his/her former spouse as Beneficiary following the date of the divorce decree, or other decree of legal separation. 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 Plan.

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 Administrative Services Provider will pay the Participant’s remaining Account to 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, and the Beneficiary’s designation otherwise complies with the Plan terms. The Administrative Services Provider 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 PARTICIPATION AGREEMENT.

**(A) General.** A Participant must elect to make Salary Reduction Contributions on a Participation Agreement form the Administrative Services Provider provides for this purpose. The Participation Agreement must be consistent with the procedures of the Administrative Services Provider. The Participation Agreement may impose such other terms and limitations as the Employer or Administrative Services Provider may determine.

**(B) Election Timing.** A Participation Agreement may not take effect earlier than the first day of the calendar month following the date the Participant executes the Participation 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 Participation 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 adopts a policy that 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 Participation 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 Participation Agreement.** A Participation 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 Participation Agreement by executing a new Participation Agreement. Any modification will become effective no earlier than the beginning of the calendar month commencing after the date the Participant executes the new Participation Agreement. Filing a new Participation Agreement will revoke all Participation Agreements filed prior to that date. The Employer or Administrative Services Provider may restrict the Participant's right to modify his/her Participation Agreement in any Taxable Year.

**6.04 PERSONAL DATA TO ADMINISTRATIVE SERVICES PROVIDER.** Each Participant and each Beneficiary of a deceased Participant must furnish to the Administrative Services Provider such evidence, data or information as the Administrative Services Provider 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 Administrative Services Provider, provided the Administrative Services Provider 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 Administrative Services Provider 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 Administrative Services Provider, 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 evidence is submitted to the Administrative Services Provider which supports an opinion that 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 Administrative Services Provider or 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 Administrative Services Provider and to the Trustee. The Administrative Services Provider and the Trustee do not have any liability with respect to payments so made and neither the Administrative Services Provider 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 Administrative Services Provider and the Trustee will not recognize any such anticipation, assignment, or alienation. The payments and the rights under this Plan are non-assignable and nontransferable. Subject to Section 8.15, 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

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Administrative Services Provider, 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 acceptable to the Administrative Services Provider. 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.

7.07 LIMITATIONS ON TRANSFERS AND EXCHANGES. The Employer and the Administrative Services Provider may adopt procedures to govern Participant elections and directions concerning a Participant's, Beneficiary's, or Alternate Payee's investment specifications and may impose limitations on transfers and exchanges from one investment option with the Plan to another. These procedures shall be in addition to any established by investment providers to the Plan. The Employer and the Administrative Services Provider may decline to implement any investment instructions for a Participant, Beneficiary, or Alternate Payee where either deems appropriate.

7.08 EMPLOYER RESPONSIBILITY FOR DISTRIBUTION OF PLAN RELATED INFORMATION. The Employer will distribute all Plan related amendments, restated plan documents, and deferred compensation plan tax related documentation to the Administrative Service Providers when there are multiple Administrative Service Providers of the Plan.

7.09 USE OF PLAN ASSETS THAT ARE NOT ATTRIBUTABLE TO AN ACCOUNT. If the Plan receives money that is not attributable to an Account, then the Employer will direct the Administrative Services Provider as to the use of these amounts. Examples include, but are not limited to, money received by the Plan as part of a settlement, litigation award or fee reimbursement. The Employer may use these amounts to offset Plan expenses or may allocate these amounts to Participants or as it deems appropriate

### ARTICLE VIII TRUST PROVISIONS

8.01 APPLICATION. The provisions of this Article VIII apply only if the Employer has not elected to substitute another trust, custodial accounts or annuity contracts in lieu of the Trust established under this Article VIII.

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 Administrative Services Provider, but the Trustee does not have any duty to see that the contributions received comply with the provisions of the Plan.

8.04 FULL INVESTMENT POWERS. The Trustee is authorized and empowered, but not by way of limitation, to exercise and perform the following 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 Administrative Services Provider 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 Administrative Services Provider for any payment or distribution made by it in good faith on the order or direction of the Administrative Services Provider;

(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;

(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 Administrative Services Provider 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 Administrative Services Provider, except as to any act or transaction concerning which the Employer or the Administrative Services Provider 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

**8.05 RECORDS AND STATEMENTS.** The records of the Trustee pertaining to the Trust will be open to the inspection of the Employer at all reasonable times and may be audited from time to time by any person or persons as the Employer may specify in writing. The Trustee will furnish the Administrative Services Provider whatever information relating to the Trust the Administrative Services Provider 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 Administrative Services Provider. The Trustee's notice must specify the effective date of the Trustee's resignation, which date must be at least 30 days

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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 Administrative Services Provider may direct.

8.12 PARTICIPANT DIRECTION OF INVESTMENT. Consistent with the Administrative Services Provider's policy adopted under Section 5.02(i), the Trustee may consent in writing to permit Participants in the Plan to direct the investment to the Trust assets. The Administrative Services Provider 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 Administrative Services Provider's policy. The Trustee will report to the Administrative Services Provider 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/her Account or any interest in his/her Deferred Compensation. Notwithstanding the foregoing, the Administrative Services Provider may pay from a Participant's or Beneficiary's Account the amount the Administrative Services Provider 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 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 Administrative Services Provider, 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 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 in any other manner, including deletion, substitution or modification of any Plan or Trust.

The Employer must make all amendments in writing. The Employer may amend the Plan by addenda, by separate amendment, or by restatement of the 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 Administrative Services Provider without the written consent of the affected Trustee or the Administrative Services Provider.

The Employer will accept amendments from the Administrative Services Provider (including adoption of a substitute Plan and Trust) without being required to re-execute the Plan, provided that the

amendments are necessary to continue the Plan as an Eligible 457 Plan.

**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 Administrative Services Provider or Trustee shall distribute to Participants and Beneficiaries all Deferred Compensation as soon as is reasonably practicable following termination.

**9.03 TRANSFERS.** The Plan: (a) may accept a Transfer of a Participant's Account in another employer's Eligible 457 Plan; or (b) may Transfer a Participant's (or Beneficiary's) Account in this Plan to the another employer's Eligible 457 Plan. The other plan involved in the Transfer must provide for Transfers. The Participant or Beneficiary, after the Transfer will have Deferred Compensation in the recipient plan at least equal to his/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 Eligible 457 Plans; 1.457-10(b)(3) as to transfers of all assets between Eligible 457 Plans; and 1.457-10(b)(4) as to transfers between Eligible 457 Plans of the same Employer. The Administrative Services Provider 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 such Transfer will not be treated as a Deferral Contribution subject to the limitations of Article III. The Plan's Transfer of any Participant's or Beneficiary's Account under this Section 9.03 completely discharges the Employer, the Administrative Services Provider, 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, 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).

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**IN WITNESS WHEREOF**, the undersigned has executed this Plan and Trust to become effective the 30 day of June, 2011 for the:

# 0037018001 MANATEE COUNTY BOCC  
(Plan Name)

By: Adopted by Negative Consent of Plan Sponsor  
(signature)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(title/role)