



Here is your new Plan Document

As your partner in the Deferred Compensation Program, Nationwide is pleased to present you with the **Amended and Restated 457(b) Governmental Plan Document** (Plan Document). Effective January 1, 2006, we will administer your deferred compensation program in accordance with this Plan Document.

We ask that you:

1. Review the enclosed Plan Document and contact us if you have questions. To help you understand what is new or different, we have prepared an *Explanation of Substantive Changes*, beginning on page 2 of this letter.
2. Please review this document with all appropriate staff and implement this Plan Document no later than December 31, 2005.
3. Retain this document, along with any loan amendments to your previous Plan Document, with your other important papers.

Why has the Plan Document been changed?

On July 11, 2003, the United States Department of Treasury issued final regulations for Internal Revenue Code Section 457. The Internal Revenue Service requires that governmental 457(b) plans conform to the final regulations as of January 1, 2006, and issued model amendments as guidance.

Most of the changes in your new Plan Document have been made to be consistent with the language in the model amendments. Also, a few substantive changes were incorporated to provide your participants with additional flexibility with their deferred compensation accounts, as permitted in the final regulations.

Nationwide has made it easy for your Plan to conform to the final regulations. The enclosed Plan Document not only complies with the final regulations, but also includes modifications that are a result of recent IRS regulations, rulings and guidance.

What else do I need to do?

Nothing! Once you've reviewed and adopted the Plan Document, you're all set.

We appreciate the opportunity to offer this important benefit to your employees.

If you have questions about the new Plan Document or any aspect of your deferred compensation program, please contact your Nationwide representative or call 1-877-NRS-FORU (877-677-3678), option 2.

Plan Document Checklist

- Read the *Explanation of Substantive Changes* along with your new *Plan Document*.
- Implement the *Amended and Restated 457(b) Governmental Plan Document* by December 31, 2005.
- Retain the new Plan Document.

Explanation of Substantive Changes

The IRS issued model amendments incorporating the provisions of Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the final regulations, and other pertinent IRS rulings and related legislation. Although the model amendments are for guidance only and do not have the effect of law, they have been incorporated into your 457(b) governmental Plan to the extent applicable.

The following is a brief description of modifications to the Plan document consistent with the final 457(b) regulations, the 457(b) model amendments, subsequent IRS guidance, proposed regulations, and other pertinent legislation. The specific Plan section is included so that you can refer to the Plan document. The Plan Document will be effective January 1, 2006.

ARTICLE I

Definitions

Account Balance – Account balance is a new term adopted by the IRS in the model amendments. The account balance is defined as the bookkeeping account maintained for each participant in the Plan. Within the account balance are sub-accounts, such as Plan Sponsor contributions, eligible rollover account(s), and plan-to-plan transfers into the Plan. Beneficiaries and alternate payees have separate account balances. [Section 1.01(b)]

Alternate Payee – An alternate payee is a person entitled to receive a benefit through a Domestic Relations Order (DRO). DROs are now a standard feature of your Plan. [Section 1.01 (c)]

Includible Compensation – This Plan adopts the model amendments' definition of includible compensation, to determine 100% of includible compensation contribution limit. Includible compensation is defined as W-2 compensation adjusted for elective deferrals. [Section 1.01 (j)]

Normal Retirement Age – The normal retirement age has not been modified and remains age 65, unless otherwise designated. However, the Plan now includes the special rule for determining normal retirement age applicable to police and firefighters. The final 457 regulations permit qualified police and firefighters to use an earlier normal retirement age, but no earlier than age 40. [Section 1.01 (m)]

Definition of Spouse – The Plan adopts the definition of spouse under the federal Defense of Marriage Act (DOMA), which is a person of the opposite sex who is a husband or wife. [Section 1.01 (u)]

ARTICLE II

Election to Defer Compensation

Deferrals During Leaves of Absence and Disability – Participants on leave of absence and participants who are disabled may continue to make deferrals to the extent that compensation continues to be paid. Disability benefits do not constitute a continuation of compensation. [Section 2.07 and 2.08]

ARTICLE III

Limitations on Amounts Deferred

Aggregation with Other 457(b) Plans – The 2003 final regulations require aggregation of 457(b) governmental plan contributions whether or not the plans are related. If the participant is contributing to an unrelated 457(b) governmental plan as well as to your 457(b) Plan and the contributions cause the participant to exceed the limits, the plans will not lose their tax-favored status. The Plan places the responsibility on the participant to provide participation information to the Plan Sponsor to monitor annual deferral limits. [Section 3.04]

Correction of Excess Deferrals – The model amendments permit the Plan to unilaterally correct excess deferrals during the plan year. Nationwide will distribute the excess deferrals at your direction as soon as administratively practicable. [Section 3.05]

Deferrals from Certain Sick Pay, Vacation Pay, and Back Pay – The proposed regulations recently issued by the IRS regarding Internal Revenue Code, as amended, Section 415 include a proposed amendment to Treasury Regulations 1.457-4(d) regarding deferrals of sick, vacation and back pay for former employees. Such deferrals may be made within 2 ½ months following severance from employment. This applies also to compensation paid to participants who are permanently and totally disabled, and compensation paid to participants relating to qualified military service under IRS Code section 414(u). [Section 3.06]

ARTICLE IV

Plan Sponsor Contributions

Plan Sponsor Contributions – Although not included in the model amendments, the Plan continues to permit the Plan Sponsor to make contributions should it desire to do so. [Section 4.01]

ARTICLE V

Distribution of Benefits

Benefit Distributions under Annuity – The model amendments assume that there is a trust for an eligible 457(b) governmental plan is a trust. However, this Plan permits the use of a trust, custodial agreement and/or an annuity contract.

In-Service Distributions from Eligible Rollover Accounts – IRS Revenue Ruling 2004-12 permits distributions of rollovers to the extent such rollovers are maintained in a sub-account. The Plan maintains separate accounting for rollovers into the Plan making such rollovers eligible for in-service distributions. [Section 5.08]

Unforeseeable Emergency Distributions – The 2003 final regulations permit participants and beneficiaries to take unforeseeable emergency distributions. The model amendments provide that only participants are eligible for unforeseeable emergencies. Presumably this is because beneficiaries are entitled to take distributions at any time. For this reason, the Plan refers only to participants being eligible for unforeseeable emergency distributions; beneficiaries are eligible for distributions at any time. [Section 5.09]

Due to emergency legislation enacted as a result of Hurricanes Katrina, Rita, and Wilma, a provision has been incorporated that permits the Plan to amend its criteria for unforeseeable emergency distributions accordingly without the need to further amend the Plan document.

Voluntary In-Service Distributions – The 457(b) regulations permit distribution of smaller accounts of \$5,000 or less be distributed if there have been no prior voluntary de minimis distributions and no deferrals made in the prior two years. The model amendments assume mandatory de minimis in-service distributions. However, the Plan does not adopt this provision and continues to permit de minimis in-service distributions on a voluntary basis. [Section 5.10]

ARTICLE VI

Eligible Rollovers and Plan-to-Plan Transfers

Sub-Account for Eligible Rollover Contributions – IRS Revenue Ruling 2004-12 permits distributions of rollovers to the extent such rollovers are maintained in a separate account. The Plan maintains separate accounting for rollovers into the Plan and such rollovers are eligible for in-service distributions. [Section 6.01 (b)]

Loans – The model amendments related to loans are not included in the Plan document. Loans continue to be an available feature that may be added on to your Plan. If your Plan currently offers loans, the loan amendment continues to be part of your Plan document and is incorporated in this Plan document accordingly.

ARTICLE VII

Domestic Relations Orders

Domestic Relations Orders – The Plan now includes the acceptance of DROs as a standard Plan feature. The previous DRO amendment has been incorporated into the Plan document. The Administrator will continue to review and process DROs submitted to the Plan. [Sections 7.01-7.05]

ARTICLE IX

Investment of Deferred Amounts

Limitations on Transfers and Exchanges – Although generally the Plan permits participants, beneficiaries, and alternate payees to self-direct its investment selections with minimum limitations, there are some investment options that have restrictions that will be imposed. In addition, the Plan provides for market timing restrictions in accordance with restrictions imposed by a funding provider, the Administrator, and/or a regulatory agency. [Section 9.04]

ARTICLE XII

Miscellaneous

Non-Assignability – 457(b) governmental plan assets remain non-assignable. With certain exceptions, such assets cannot be transferred. However, the model amendments permit the Plan to attach the assets of a participant, beneficiary, or alternate payee to pay a federal income tax levy. Under the Bankruptcy Abuse Protection and Consumer Protection Act of 2005, assets in an eligible 457(b) plan may be exempted from bankruptcy proceedings. [Sections 12.01 and 12.02]

Mistake of Fact Rule – The model amendments extends and adopts the mistake-of-fact rule found in IRS Revenue Ruling 91-4 applicable to ERISA qualified plans. Although not subject to ERISA, 457(b) governmental plans are permitted by the IRS to refund mistaken contributions within one year after the payment of the mistaken contribution. [Section 12.03]

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

**AMENDED AND RESTATED 457(b) GOVERNMENTAL PLAN DOCUMENT
Effective January 1, 2006**

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

**ARTICLE I
Definitions**

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

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

- (h) **ELIGIBLE ROLLOVER ACCOUNT** means the separate bookkeeping account(s) maintained by the Administrator within the Plan for a Participant for amounts of eligible rollover contributions under Section 6.01 Eligible Rollover Contributions to the Plan.
- (i) **ELIGIBLE ROLLOVER DISTRIBUTION** means an Eligible Rollover Distribution as defined in IRC Section 402(c)(4), including Eligible Rollover Distributions to a surviving Spouse under IRC Section 402(c)(9).
- (j) **INCLUDIBLE COMPENSATION** means a Public Employee's actual wages in box 1 of Form W-2 for a given year for services performed for the Plan Sponsor, but subject to a maximum of \$200,000 (or such higher maximum as may apply under IRC Section 401(a)(17)) and increased (up to the dollar maximum) by any Compensation reduction election under IRC Sections 125, 132(f), 401(k), 403(b), or 457(b), including an election to defer Compensation under Section 2.02 Election Required for Participation.
- (k) **INDEPENDENT CONTRACTOR** means any person receiving any type of Compensation from the Plan Sponsor or any of its agencies, departments, subdivisions or instrumentalities for which services are rendered pursuant to one or more written or oral contracts, if such a person is not a Public Employee.
- (l) **IRC** means the Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.
- (m) **NORMAL RETIREMENT AGE** means any age that is on or after the earlier of age 65 or the age at which Participants have the right to retire and receive, under the basic defined benefit pension plan of the employer (or a money purchase plan in which the Participant also participates if the Participant is not eligible to participate in a defined benefit plan), immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age. However, the Normal Retirement Age shall not be later than age 70 ½. Alternatively, a Plan may provide that a Participant is allowed to designate a Normal Retirement Age within these ages. For purposes of the special Section 457 catch-up in Section 3.03 Special Section 457 Catch-up Limitation, an entity sponsoring more than one eligible plan shall not permit a Participant to have more than one Normal Retirement Age under the eligible plans it sponsors.
- Special Rule for Eligible Plans of Qualified Police or Firefighters.** An eligible plan with Participants that include qualified police or firefighters as defined under IRC Section 415(b)(2)(H)(ii)(I) may designate a Normal Retirement Age for such qualified police and firefighters that is earlier than the earliest Normal Retirement Age designated under the general rule above, but in no event may the Normal Retirement Age be earlier than age 40. Alternatively, a Plan may allow a qualified police or firefighter Participant to designate a Normal Retirement Age that is between age 40 and age 70 ½.
- (n) **PARTICIPANT** means an individual who is currently deferring Compensation or who has previously deferred Compensation under the Plan by salary reduction and who has not received a distribution of his entire Account Balance under the Plan. Only individuals who perform services for the Plan Sponsor as a Public Employee or Independent Contractor may defer Compensation under the Plan.

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

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

ARTICLE II

Election to Defer Compensation

- 2.01 **Eligibility to Participate.** Each Public Employee shall be eligible to participate in the Plan and defer Compensation hereunder immediately upon becoming employed by the Plan Sponsor.
- 2.02 **Election Required for Participation.** A Public Employee may elect to become a Participant by executing a Participation Agreement and consenting to defer a portion of his Compensation by a

reduction of salary of the Annual Deferral amount specified in the Participation Agreement, signing it, and filing it with the Administrator. A Public Employee, by filing the Participation Agreement with the Administrator, agrees to be bound by all the terms and conditions of the Plan. The Administrator may establish a minimum deferral amount, and may change such minimum deferral amounts from time to time. The Participation Agreement shall also include designation of investment specifications and a designation of Beneficiary. Failure of the Participant to properly execute the Participation Agreement will cause any designation of Beneficiary thereon to be invalid. Any Beneficiary election shall remain in effect until the Participant files an executed amendment with the Administrator pursuant to Section 2.05 Amendment of Participation Elections.

- 2.03 **Information Provided by the Participant.** Each Public Employee enrolling in the Plan should provide to the Plan Sponsor at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Plan Sponsor to administer the Plan, including, without limitation, whether the Public Employee is a Participant in any other eligible plan under IRC 457(b).
- 2.04 **Commencement of Participation.** A Public Employee shall become a Participant as soon as administratively practicable following the date the Public Employee files a Participation Agreement pursuant to Section 2.02 Election Required for Participation, or is participating as otherwise permitted by law. Such election shall become effective no earlier than the calendar month following the month in which the election is made. However, a new Public Employee may defer Compensation payable in the calendar month during which the Participant first becomes a Public Employee if a Participation Agreement providing for the deferral is entered into on or before the first day on which the Participant performs services for the Plan Sponsor.
- 2.05 **Amendment of Participation Elections.** Subject to other provisions of the Plan, a Participant may at any time revise his participation election, including changes to his investment direction and changes to his Designated Beneficiary. Changes to the investment direction shall take effect once accepted by the Administrator.
- 2.06 **Amendment of Annual Deferral Election.** A Participant may revoke an election to participate and may amend the amount of Compensation to be deferred by filing with the Administrator a revocation or amendment on a form and in the procedural manner approved by the Administrator. Any amendment which increases or decreases the amount of Annual Deferrals for any pay period shall be effective only if an agreement providing for such an amendment is entered into before the beginning of the month in which the pay period commences. Any revocation or amendment of the Annual Deferrals shall be effective prospectively only. Any amendment of the Annual Deferrals, unless the election specifies a later effective date, shall take effect as of the first day of the next following month or as soon as administratively practicable, if later.
- 2.07 **Leaves of Absence.** Unless a deferral election is otherwise revised, if a Participant is absent from work by leave of absence, Annual Deferrals under the Plan shall continue to the extent that Compensation continues.
- 2.08 **Participant Disability.** A disabled Participant may elect to defer Compensation during any portion of a period of disability to the extent the Participant has actual Compensation (not imputed compensation and not disability benefits) from which to defer to the Plan and has not had a Severance from Employment, as determined by the Plan Sponsor.
- 2.09 **Protection of Persons Who Serve in a Uniformed Service.** A Public Employee whose employment is interrupted by qualified military service under IRC Section 414(u) or who is on a leave of absence for qualified military service under IRC Section 414(u) may elect to make additional

Annual Deferrals upon resumption of employment with the Plan Sponsor equal to the maximum Annual Deferrals that the Public Employee could have elected during that period if the Public Employee's employment with the Plan Sponsor had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made for the Public Employee during the period of the interruption or leave. This right applies for five (5) years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

ARTICLE III

Limitations on Amounts Deferred

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

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

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

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

3.03 **Special Section 457 Catch-up Limitation.** If the applicable year is one of a Participant's last 3 calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this Section 3.03 exceeds the amount computed under Sections 3.01 Basic Annual Limitation, and 3.02 Age 50 Catch-up Annual Deferral Contributions, then the Annual Deferral limit under this Section 3.03 shall be the lesser of:

- (a) An amount equal to 2 times the Section 3.01 Basic Annual Limitation for such year; or
- (b) The sum of:
 - (1) An amount equal to (A) the aggregate Section 3.01 Basic Annual Limitation limit for the current year plus each prior calendar year beginning after December 31, 2001 during which the Participant was a Public Employee under the Plan, minus (B) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus

- (2) An amount equal to (A) the aggregate limit referred to in IRC Section 457(b)(2) for each prior calendar year beginning after December 31, 1978 and before January 1, 2002 during which the Participant was a Public Employee, determined without regard to Section 3.02 Age 50 Catch-up Annual Deferral Contributions, and this Section 3.03, minus (B) the aggregate contributions to Pre-2002 Coordination Plans for such years.

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

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

- (a) **Participant Covered By More Than One Eligible Plan.** If the Participant is or has been a Participant in one or more other eligible plans within the meaning of IRC Section 457(b) for a given year, then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Article III. For this purpose, the Plan Sponsor shall take into account any other such eligible plan established by the Plan Sponsor.
- (b) **Pre- Participation Years.** In applying Section 3.03 Special Section 457 Catch-up Limitation, a prior year shall be taken into account only if (i) the Participant was eligible to participate in the Plan during all or a portion of the year and (ii) Compensation deferred, if any, under the Plan during the year was subject to the Basic Annual Limitation described in Section 3.01 or any other plan ceiling required by IRC Section 457(b).
- (c) **Pre-2002 Coordination Years.** For purposes of Section 3.03(b)(2)(B), "Contributions to Pre-2002 Coordination Plans" means any Plan Sponsor contribution, salary reduction or elective contribution under any other eligible IRC Section 457(b) plan, or a salary reduction or elective contribution under any IRC Section 401(k) qualified cash or deferred arrangement, IRC Section 402(h)(1)(B) simplified employee pension (SARSEP), IRC Section 403(b) annuity contract, and IRC Section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in IRC Section 501(c)(18), including plans, arrangements or accounts maintained by the Plan Sponsor or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 3.03(b)(2)(B) to the extent that the total of such contributions does not exceed the aggregate limit referred to in IRC Section 457(b)(2) for the year.
- (d) **Disregard Excess Deferral.** For purposes of Sections 3.01 Basic Annual Limitation, 3.02 Age 50 Catch-up Annual Deferral Contributions, and 3.03 Special Section 457 Catch-up Limitation, an individual is treated as not having deferred Compensation under the plan for a prior taxable year to the extent Excess Deferrals under the Plan are distributed, as described in Section 3.05. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as a Correction of Excess Deferrals under Section 3.05 for those prior years.

3.05 **Correction of Excess Deferrals.**

- (a) If Annual Deferrals credited to a Participant's Account Balance during the current Plan Year exceed the limitations described above as determined by the Plan Sponsor, the Administrator shall return the excess as directed by the Plan Sponsor as soon as administratively practicable after the Administrator is notified that there is an Excess Deferral.

- (b) If the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above as determined by the Plan Sponsor, or the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another eligible deferred compensation plan pursuant to IRC Section 457(b) then the Annual Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed as soon as administratively practicable by the Administrator at the determination and direction of the Plan Sponsor.

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

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

ARTICLE IV

Plan Sponsor Contributions

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

ARTICLE V

Distribution of Benefits

5.01 **Benefit Distributions at Retirement or Other Severance from Employment.** Except for In-Service Distributions from Eligible Rollover Accounts under Section 5.08, Unforeseeable Emergency withdrawals under Section 5.09, and Voluntary In-Service Smaller Account Distributions under Section 5.10, or otherwise specifically allowed by the Plan, distributions from the Plan may not be made to a Participant earlier than:

- (a) the calendar year in which the Participant attains age 70 ½; or
- (b) the calendar year in which the Participant retires or otherwise has a Severance from Employment. All irrevocable elections of a benefit commencement date by a Participant or a Beneficiary made prior to January 1, 2002 and defaulted distributions (other than a defaulted distribution to an annuity option) may be voided at the election of the Participant or the Beneficiary.

- 5.02 **Election of Benefit Commencement Date.** A Participant may elect to commence distribution of benefits at any time after retirement or other Severance from Employment, as determined and confirmed by the Plan Sponsor by a notice filed with the Administrator before the date on which benefits are to commence. However, in no event may distribution of benefits commence later than the date described in Section 5.04(b) Required Beginning Date.
- 5.03 **Forms of Distribution – Benefit Payment Options.** Benefits shall be paid in accordance with the payment option elected by the Participant. Payment, method of payment, and settlement options are available as provided by each of the available investment specifications. The Participant shall elect the method of payment based upon the options then available under the Plan, including but not limited to lump sum distributions, periodic payment by fixed amount, periodic payment by fixed time period, partial lump sum payment or purchased annuity. A Participant or Beneficiary who has chosen a payment option, other than the purchased annuity option, shall have the ability to change his payment option subject to any restrictions or limitations imposed by the Plan, the Administrator, an investment option provider, any regulatory agency, or as otherwise required by law.
- 5.04 **Required Minimum Distributions.** All distributions under the Plan must comply with IRC Section 401(a)(9) and the regulations issued thereunder. The provisions of this Section 5.04 will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year. The term Designated Beneficiary as used in this Section 5.04 shall have the meaning set forth in Treasury Regulation Section 1.401(a)(9)-4.
- (a) **Requirements of Treasury Regulations Incorporated into Plan.** All distributions required under this Section 5.04 will be determined and made in accordance with the Treasury Regulations under promulgated under IRC Section 401(a)(9).
- (b) **Required Beginning Date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date, which is to begin no later than April 1 following the calendar year in which the Participant attains age 70 ½ or has a Severance from Employment, whichever is later.
- (c) **Death of Participant before Distributions Begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
- (1) If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant dies, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, if later.
 - (2) If the Participant's surviving Spouse is not the Participant's sole Designated Beneficiary, distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
 - (3) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, and there are no other Designated Beneficiaries, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

- (4) If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this Section 5.04 will apply as if the surviving Spouse were the Participant.
- (d) **Required Minimum Distributions during Participant's Lifetime.** During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
- (1) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
 - (2) if the Participant's sole Designated Beneficiary for the distribution calendar year is the Participant's Spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the distribution calendar years.
- (e) **Death On or After Date Distributions Begin and Participant Survived by Designated Beneficiary.**
- (1) If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's Designated Beneficiary, determined as follows: The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
 - (2) If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, the remaining life expectancy of the surviving Spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For distribution calendar years after the year of the surviving Spouse's death, the remaining life expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.
 - (3) If the Participant's surviving Spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
 - (4) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed, in accordance with Section 8.01 Acceptance of Beneficiary Designation by Administrator, for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

- (f) **Death before Date Distributions Begin and Participant Survived by Designated Beneficiary.** If the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's Designated Beneficiary.
- (1) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution, in accordance with Section 8.01 Acceptance of Beneficiary Designation by Administrator, of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (g) **Death of the Surviving Spouse before Distributions to Surviving Spouse are Required to Begin.** If the Participant dies before the date distributions begin, the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, and the surviving Spouse dies before distributions are required to begin, this Section 5.04 will apply as if the surviving Spouse were the Participant.
- (h) **Election of Payment Option.** If a Participant or Beneficiary fails to elect a payment option that meets the requirements of IRC Section 401(a)(9), the Administrator will initiate such a distribution. A Participant or Beneficiary who has chosen a payment option, other than an annuity option, shall have the ability to change his or her payment option.
- 5.05 **Order of Priorities.** This Section 5.05 has been prepared in accordance with Treasury Regulations promulgated under IRC Section 401(c)(9). To the extent there is a conflict between Section 5.04 or this Section 5.05 and the IRC, the provisions of the IRC and applicable Treasury Regulations shall prevail. For any calendar year, a Beneficiary may elect distribution of a greater amount (not to exceed the amount of the remaining Account Balance in lieu of the amount calculated using the formula set forth in Section 5.04.
- 5.06 **Death Benefit Distributions.** If the Participant dies before the benefits to which he is entitled under the Plan have been paid or exhausted, then the remaining benefits payable under the Plan shall be paid to his Designated Beneficiary. The Beneficiary shall have the right to elect the time and form of distribution of such benefits, subject to the limitations set forth in the Plan.
- 5.07 **Amount of Account Balance.** Except as provided in Section 5.03 Forms of Distribution, the amount of any payment under this Article V shall be based on the amount of the Account Balance on the preceding Valuation Date.
- 5.08 **In-Service Distributions from Eligible Rollover Accounts.** If a Participant has an Eligible Rollover Account attributable to eligible rollover contributions to the Plan, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the Eligible Rollover Account.
- 5.09 **Unforeseeable Emergency Distributions.**
- (a) **Distribution.** If the Participant has an Unforeseeable Emergency before retirement or other Severance from Employment, the Participant may elect to receive a lump sum distribution equal to the amount requested or, if less, the maximum amount determined by the Administrator to be permitted to be distributed under this Section 5.09.

- (b) **Unforeseeable Emergency Defined.** An Unforeseeable Emergency is defined as a severe financial hardship of the Participant resulting from: an illness or accident of the Participant, the Participant's Spouse, or the Participant's dependent (as defined in IRC Section 152(a)); loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); the need to pay for the funeral expenses of the Participant's Spouse or dependent (as defined in IRC Section 152(a)); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant, or as otherwise permitted by law. For example, the imminent foreclosure of or eviction from the Participant's primary residence may constitute an Unforeseeable Emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an Unforeseeable Emergency. Except as otherwise specifically provided in this Section 5.09, neither the purchase of a home nor the payment of college tuition is an Unforeseeable Emergency.
- (c) **Unforeseeable Emergency Distribution Standard.** A distribution on account of Unforeseeable Emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the Plan, or as otherwise permitted by law.
- (d) **Distribution Necessary to Satisfy Emergency Need.** Distributions because of an Unforeseeable Emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

5.10 **Voluntary In-Service Smaller Account Distributions.** A Participant who is an active Public Employee of the Plan Sponsor may request to receive a distribution of the combined total Annual Deferrals under the Plan if the following requirements are met:

- (a) The Participant's total Annual Deferrals in the Account Balance under the Plan does not exceed \$5,000 (or the dollar limit under IRC Section 411(a)(11), if greater); and
- (b) The Participant has not previously received a voluntary in-service smaller account distribution under the Plan; and
- (c) There have been no Annual Deferrals under the Plan with respect to the Participant during the two-year period ending on the date of the in-service distribution.

ARTICLE VI

Eligible Rollovers and Plan-to-Plan Transfers

6.01 Eligible Rollover Contributions to the Plan.

- (a) **Incoming Rollover Contributions.** A Participant who is a Public Employee and who is entitled to receive an Eligible Rollover Distribution from another Eligible Retirement Plan may request to have all or a portion of the Eligible Rollover Distribution paid to the Plan, provided,
 - (1) the Eligible Rollover Distribution is made entirely in the form of U.S. dollars, and,

- (2) the Participant demonstrates to the Administrator's satisfaction that the amount is a qualifying Eligible Rollover Distribution under IRC Sections 402(c)(4), 403(a)(4), or 408(d)(3).
- (b) **Definition of Eligible Rollover Distribution.** For purposes of Section 6.01(a) Incoming Rollover Contributions, an Eligible Rollover Distribution means any contribution of all or any portion of a Participant's benefit under another Eligible Retirement Plan to the Plan, except that an Eligible Rollover Distribution does not include:
- (1) any installment payment for a period of 10 years or more,
 - (2) any distribution made as a result of an Unforeseeable Emergency, or
 - (3) For any other distribution, the portion, if any, of the distribution that is a required minimum distribution under IRC Section 401(a)(9).
- (c) **Separate Account for Eligible Rollover Contributions.** The Plan shall establish and maintain for the Participant an Eligible Rollover Account for any Eligible Rollover Distribution paid to the Plan from any Eligible Retirement Plan that is not an eligible governmental plan under IRC Section 457(b). In addition, the Plan shall establish and maintain for the Participant an Eligible Rollover Account for any Eligible Rollover Distribution paid to the Plan from any Eligible Retirement Plan that is an eligible governmental plan under IRC Section 457(b).
- 6.02 **Permissive Rollovers to an Eligible Retirement Plan.** A Participant or the surviving Spouse of a Participant (or a Participant's former Spouse who is the Alternate Payee under a Domestic Relations Order, as defined in IRC Section 414(p)) who is entitled to an Eligible Rollover Distribution may elect, at the time and in the manner prescribed by the Administrator, to have all or any portion of the distribution paid directly to an Eligible Retirement Plan specified by the Participant in a direct rollover.
- 6.03 **Plan-to-Plan Transfers to the Plan of Eligible Governmental 457(b) Assets.**
- (a) **Permissive Plan-to-Plan Transfers.** At the direction of the Plan Sponsor, the Administrator may permit a class of Participants who are Participants in another eligible governmental IRC Section 457(b) Plan to transfer assets to the Plan as provided herein. Such a transfer is permitted only if the other Plan provides for the direct transfer of each Participant's interest therein to the Plan. Transfers from other eligible deferred compensation Plans (as defined in IRC Section 457) to the Plan will be accepted at the Participant's request if such transfers are in cash.
 - (b) **Effect of Transfers on Annual Deferral Limitations.** Any such transferred amount shall not be subject to the limitations of Section 3.01 Basic Annual Limitation, 3.02 Age 50 Catch-up Annual Deferral Contributions, and 3.03 Special Section 457 Catch-up Limitation, as an Annual Deferral, provided however, that the actual amount deferred during the calendar year under both Plans shall be taken into account in calculating the maximum Annual Deferral for that year. The amount so transferred shall be credited to the Participant's Account Balance and shall be held, accounted for, administered, and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan.
 - (c) **Required Documentation for Transfers to the Plan.** The Administrator may require such documentation from the other Plan as it deems necessary to effectuate the transfer in accordance

with IRC Section 457(e)(10) and Treasury Regulation Section 1.457-10(b) and to confirm that the other Plan is an eligible governmental plan as defined in Treasury Regulation 1.457-2(f).

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

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

A transfer is permitted under this Section 6.04(a) for a Participant only if the Participant has had a Severance from Employment with the Plan Sponsor and is a Public Employee of the entity that maintains the other eligible governmental 457(b) Plan. Further, a transfer is permitted under this Section 6.04(a) only if the other eligible governmental 457(b) plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.

- (b) **Outgoing Plan-to-Plan Transfers While Employed.** If the Plan Sponsor offers an eligible governmental 457(b) plan other than the Plan, and such other plan accepts transfers, the Participant may transfer the Account Balance in cash from the Plan to the other plan.
- (c) **Limitation of Liability.** Upon the transfer of assets under this Section 6.04, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 6.04 (for example, to confirm that the receiving plan is an eligible governmental plan under paragraph (a) of this Section 6.04, and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Treas. Reg. 1.457-10(b).

6.05 Permissive Service Credit Transfers.

- (a) If a Participant or Beneficiary is also a Participant in a tax-qualified defined benefit governmental plan (as defined in IRC Section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant or Beneficiary, then the Participant or Beneficiary may elect to have any portion of the Participant's or Beneficiary's Account Balance transferred to the defined benefit governmental plan. A transfer under this Section 6.05(a) will not be treated as a distribution and, therefore, may be made before the Participant has had a Severance from Employment.
- (b) A transfer may be made under Section 6.05(a) only if the transfer is either for the purchase of permissive service credits (as defined in section 415(n)(3)(A)) under the receiving defined benefit governmental plan or a repayment to which IRC Section 415 does not apply by reason of IRC Section 415(k)(3).

ARTICLE VII

Domestic Relations Orders

- 7.01 Receipt of Domestic Relations Orders.** When the Plan Sponsor, Administrator, or Plan receives a Domestic Relations Order (DRO), judgment, decree, or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital

property rights of a Spouse or former Spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State, then the amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the DRO as the Alternate Payee. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the DRO.

Upon receipt of a DRO:

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

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

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

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

- 7.04 **Rights of an Alternate Payee to Receive Distributions.** The Alternate Payee is entitled to receive distributions immediately upon the establishment of the separate Account Balance pursuant to Section 7.03 Processing of a DRO. Commencement of distributions must begin no later than April 1st following the year in which the Alternate Payee attains age 70 ½. Distributions made to an Alternate Payee are reported as taxable income to the Alternate Payee in the calendar year in which the distributions are received by the Alternate Payee. State taxes, if applicable, and federal taxes will be withheld from any distribution on the Alternate Payee's Account Balance based upon the tax withholding elections of the Alternate Payee. The Alternate Payee may not make any contributions to the account but is permitted to designate Beneficiaries for the Account Balance and to exercise exchanges among the investment options as permitted by the Plan.
- 7.05 **No Liability for Prior Distributions.** In the event that it is determined that a DRO is valid and the Participant has begun receiving distributions from the Plan, the Alternate Payee must commence distributions within sixty (60) days following the date the DRO is determined to be valid. The Administrator shall only process a DRO to the extent possible based upon the then current value or benefit in the Participant's Account Balance.

ARTICLE VIII

Designation of BENEFCIARY

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

ARTICLE IX

Investment of Deferred Amounts

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

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

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

ARTICLE X

Administration of Plan

- 10.01 **Exclusive Benefit of Participants and Beneficiaries.** The Plan Sponsor may at any time amend, modify or terminate the Plan under Section 13.01 Amendment and Termination, without the consent of the Participant (or any Beneficiary or Alternate Payee thereof); provided, however, that the assets of the Plan shall be held for the exclusive benefit of Participants and Beneficiaries at all times.
- 10.02 **No Third Party Interest in Plan.** Any companies that may issue any policies, contracts, or other forms of investment media used by the Plan Sponsor or specified by the Participant, are not parties to this Plan and such companies shall have no responsibility or accountability to any Participant, Beneficiary, or Alternate Payee with regard to the operation of this Plan.
- 10.03 **Tax Consequences of Participation in Plan.** The Plan Sponsor and the Administrator do not represent or guarantee that any particular Federal or State income, payroll, personal property, or other tax consequence will occur because of participation in this Plan. The Participant, Beneficiary, or Alternate Payee should consult with his own representative regarding all questions of Federal and State income, payroll, personal property, or other tax consequences arising from participation in this Plan.
- 10.04 **Appointment of Agents.** The Administrator shall have the power to appoint agents to act for and in the administration of this Plan and to select depositories for the assets of this Plan.
- 10.05 **Construction.** This Plan shall be construed, administered, and enforced according to the Constitution, laws of the state in which the Plan Sponsor resides, and the IRC.
- 10.06 **Total Agreement.** This Plan and any properly adopted amendment or modification shall constitute the total agreement or contract between the Plan Sponsor and the Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by the Participant.

- 10.07 **Effect of Adopted Plan Amendment.** This Plan and any properly adopted amendment or modification shall be binding on the parties hereto and their respective heirs, administrators, trustees, successors, and assignees and on all Participants, Beneficiaries, and Alternate Payees.

ARTICLE XI

Authority of Plan Sponsor and Administrator

- 11.01 **Authority Binding on Participants, Beneficiaries, and Alternate Payees.** The Plan Sponsor, the Administrator, or their respective agents shall be authorized to resolve any questions of fact necessary to decide the Participant's right under this Plan and such decision shall be binding on the Participant, Beneficiary, and any Alternate Payee, provided, however, that assets of the Plan shall be held for the exclusive benefit of Participants and Beneficiaries at all times.
- 11.02 **Authority to Interpret Plan.** The Plan Sponsor, the Administrator, or their respective agents shall be authorized to construe the Plan and to resolve any ambiguity in the Plan.
- 11.03 **Investment Losses.** The Participant specifically agrees not to seek recovery against the Plan Sponsor, the Administrator or any other employee, contractee, or agent of the Plan Sponsor or Administrator for any loss sustained by a Participant, a Beneficiary, or an Alternate Payee for the non-performance of their duties, negligence, or any other misconduct of the above-named persons, except that this paragraph shall not excuse fraud or wrongful taking by any person.
- 11.04 **Suspension of Benefit Payments.** The Plan Sponsor, the Administrator, or their respective agents, if in doubt concerning the correctness of their action in making a payment of a benefit, may suspend the payment until satisfied as to the correctness of the payment or the identity of the person to receive the payment or allow the filing in any State court of competent jurisdiction, a suit in such form as they consider appropriate for a legal determination of the benefits to be paid and the persons to receive them. The Plan Sponsor shall comply with the final orders of the court in any such suit and all Participants, Beneficiaries, and Alternate Payees consent to be bound thereby insofar as it affects the benefits payable under this Plan or the method or manner of payment.
- 11.05 **Hold Harmless.** The Plan Sponsor, the Administrator, and their respective agents are hereby held harmless from all court costs and all claims for the attorney's fees arising from any action brought by any Participant, Beneficiary, or Alternate Payee under this Plan or to enforce his rights under this Plan, including any amendment, modification or termination hereof.
- 11.06 **Litigation.** The Administrator shall not be required to participate in any litigation concerning the Plan except upon written demand from the Plan Sponsor. The Administrator may compromise, adjust or effect settlement of litigation when specifically instructed to do so by the Plan Sponsor.
- 11.07 **Exclusive Benefit of Participants and Beneficiaries.** Notwithstanding any contrary provision of the Plan, including any annuity contract issued under the Plan, in accordance with IRC Section 457(g), all amounts of Compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such account, property, or rights shall be held for the exclusive benefit of Participants and Beneficiaries under the Plan and shall be held in a trust, in an annuity contract, as defined in IRC Section 401(f), or in one or more custodial accounts. For purposes of this paragraph:
- (a) a trust must be established under the Plan pursuant to a written agreement that constitutes a valid trust under the law of the state in which the Plan Sponsor is located,

- (b) an annuity contract shall be issued by an insurance company qualified to do business in the state where the contract was issued and may not include any life, health or accident, property casualty or liability insurance contract, and
- (c) the custodian of any custodial account created pursuant to this Plan must be a bank, as described in IRC Section 408(n), or a person who meets the non-bank trustee requirements of paragraphs (2)-(6) of Section 1.408-2(e) of the Income Tax Regulations relating to the use of non-bank trustees.

ARTICLE XII

Miscellaneous

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

ARTICLE XIII

Amendment and Termination

- 13.01 **Amendment and Termination.** The Plan Sponsor may at any time modify, amend, suspend, or terminate the Plan in whole or in part (including retroactive amendments) or cease deferring Compensation pursuant to the Plan for some or all Participants. In the event of such an action, the Plan Sponsor shall deliver to each affected Participant a notice of such modification, amendment, or termination or a notice that it shall cease deferring Compensation; provided, however, that the Plan Sponsor shall not have the right to reduce or affect the value of any Participant's Account Balance or any rights accrued under the Plan prior to such modification, amendment, termination, or cessation.
- 13.02 **No Effect of Plan on Employment of Participants.** Neither the establishment of the Plan nor any modification thereof, nor the establishment of an account, nor any agreement between the Plan Sponsor and the Administrator nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the Plan Sponsor except as herein

provided, and in no event shall the terms of employment of the Public Employee, Independent Contractor, or Participant be modified or in any way affected.

- 13.03 **Interpretation.** This Plan is intended to be an eligible deferred compensation Plan under IRC Section 457, and shall be interpreted and administered in a manner consistent with the IRC. This Plan may be amended to the extent that it may be necessary to conform the Plan to the requirements of IRC Section 457 and any other applicable law, regulation, or ruling, including amendments that are retroactive to the effective date of the Plan. In the event that the Plan is deemed by the Internal Revenue Service to be administered in a manner inconsistent with the Internal Revenue Code, the Plan Sponsor shall correct such administration.

ARTICLE XIV

Prior Plan

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

Article XV

Effective Date

This Plan shall be effective as of January 1, 2006.