

**AMENDMENT FOR
PENSION PROTECTION ACT OF 2006
HIDALGO COUNTY 457(b) PLAN**

Hidalgo County, as Employer sponsor ("Employer"), adopts this Amendment to the Hidalgo County 457(b) Plan ("Plan").

RECITALS

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

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

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

**ARTICLE I
PREAMBLE**

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

**ARTICLE II
DEFINITION OF UNFORESEEABLE EMERGENCY**

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

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

[] Article II is not adopted.

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

*[Default: This Article III provides that in the absence of an alternative election by the Employer: (1) a Participant may defer (or the Employer may make Employer contributions to the Plan) from regular pay (as described in Section 3.2(a)) and from leave cashouts and deferred compensation (as described in Section 3.2(b)), but not from salary continuation payments for military service Participants (as described in Section 3.2(c)) or from salary continuation payments for disabled Participants (as described in Section 3.2(d)). The Employer may reverse any of these default elections, by checking the appropriate box. If the Employer elects in Section 3.2(d) to include salary continuation payments for disabled Participants, the Employer **also** must elect whether to apply the provision only to non-highly compensated Participants, or to apply the provision to all Participants for the fixed or determinable period specified in the election in Section 3.2(d)(1), and may apply Section 3.2(d) only if the Employer's disability plan actually provides disability compensation to all Participants. If the Plan currently does not permit (and the Employer does not wish to permit) deferrals from **any** compensation following Severance from Employment (including a Participant's last paycheck received after the date of severance), the Employer should check "Article III is not adopted" below.]*

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

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

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

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

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

Note: The Employer may modify the provisions of this election to conform to the Employer's particular pay practices (for example, to include a separate bonus check paid to the employee on the same day as the final paycheck).

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

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

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

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

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

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

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

(ii) **Fixed or determinable period.** This provision applies to all employees who are permanently and totally disabled, for the following period: _____ (e.g., for a period of two years from the date of the disability). [Note: The election in this Section 3.2(d)(1)(ii) applies only if the Employer's disability plan actually provides disability payments to all permanently and totally disabled Participants.]

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

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

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

ARTICLE IV QUALIFIED DOMESTIC RELATIONS ORDERS

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

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

[Note: This Article IV reflects a PPA provision which mandated DOL clarification of the QDRO statute. The DOL issued final regulations in June 2010. If the plan does not provide for distributions pursuant to a QDRO, the Employer should check "Article IV is not adopted" below.]

Article IV is not adopted.

THE REMAINING ARTICLES OF THIS AMENDMENT DO NOT APPLY TO A NON-GOVERNMENTAL TAX-EXEMPT ENTITY. IF THE EMPLOYER IS A TAX-EXEMPT ENTITY, THE EMPLOYER SHOULD CHECK “The subsequent provisions of this Amendment are not adopted.” ALTERNATIVELY, THE EMPLOYER MAY DELETE THE TEXT OF ARTICLES V THROUGH VIII.

The subsequent provisions of this Amendment are not adopted.

**ARTICLE V
PARTICIPANT DISTRIBUTION NOTIFICATION**

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

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

Article III is not adopted.

**ARTICLE VI
DIRECT ROLLOVER OF NON-SPOUSE BENEFICIARY DISTRIBUTION**

6.1 **Non-spouse beneficiary rollover right.** For distributions in plan years beginning after December 31, 2009, and unless otherwise elected in Section 6.1a below, for distributions after December 31, 2006, a non-spouse beneficiary who is a “designated beneficiary” under Code §401(a)(9)(E) and the regulations thereunder, by a direct trustee-to-trustee transfer (“direct rollover”), may roll over all or any portion of his or her distribution to an individual retirement account (“IRA”) the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.

a. For distributions after December 31, 2006, and prior to the first day of the first plan year beginning after December 31, 2009 (select one):

1. Non-spousal rollovers are not allowed.

2. Non-spousal rollovers are allowed effective _____ (not earlier than January 1, 2007 and not later than January 1, 2010).

6.2 **Certain requirements not applicable.** Although a non-spouse beneficiary may roll over directly a distribution as provided in Section 6.1, any distribution made prior to the first day of the first plan year beginning after December 31, 2009, is not subject to the direct rollover requirements of Code §401(a)(31) (including Code §401(a)(31)(B), the notice requirements of Code §402(f) or the mandatory withholding requirements of Code §3405(c)). If a non-spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a “60-day” rollover.

6.3 **Trust beneficiary.** If the Participant’s named beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code §401(a)(9)(E).

6.4 **Required minimum distributions not eligible for rollover.** A non-spouse beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other Revenue Service guidance. If the Participant dies before his or 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.

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

- 7.1 **Election to deduct from distribution.** For distributions in taxable years beginning after December 31, 2006, an Eligible Retired Public Safety Officer may elect annually for that taxable year to have the Plan deduct an amount from a distribution which the Eligible Retired Public Safety Officer otherwise would receive and include in income. The plan will pay such deducted amounts directly to the provider as described in Section 7.2, to pay qualified health insurance premiums.
- 7.2 **Direct payment.** The Plan will pay directly to the provider of the accident or health plan or qualified long-term care insurance contract the amounts the Eligible Retired Public Safety Officer has elected to have deducted from the distribution. Such amounts may not exceed the lesser of \$3,000 or the amount the Participant paid for such taxable year for qualified health insurance premiums, and which otherwise complies with Code §402(l).
- 7.3 **Definitions.**
- (a) **Eligible retired public safety officer.** An “Eligible Retired Public Safety Officer” is an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a Public Safety Officer with the Employer.
- (b) **Public safety officer.** A “Public Safety Officer” has the same meaning as in Section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(9)(A)).
- (c) **Qualified health insurance premiums.** The term “qualified health insurance premiums” means premiums for coverage for the Eligible Retired Public Safety Officer, his/her spouse, and dependents (as defined in Code §152), by an accident or health plan or qualified long-term care insurance contract (as defined in Code §7702B(b)).

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

Article IX is not adopted.

**ARTICLE VIII
DIRECT ROLLOVER TO ROTH**

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

Plan Related Amendments

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

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

_____.

Hidalgo County
Employer

By: _____

[Print Name, Title]