

**CLEVELAND PUBLIC LIBRARY**

**Human Resources Committee Report**

November 19, 2009

**Resolution regarding the Adoption of an additional  
Section 457 Deferred Compensation arrangement**

WHEREAS, the Library previously closed its Internal Revenue Code ("IRC") Section 403(b) arrangements to new contributions due to regulatory requirements (the "403(b) Plans"); and

WHEREAS, the Library expects to terminate the 403(b) Plans, effective in 2011; and

WHEREAS, eligible Library employees may continue to make elective before-tax contributions under arrangements meeting the requirements of IRC Section 457; and

WHEREAS, although the Library currently maintains an IRC Section 457 Plan through the Ohio Public Employees Deferred Compensation Plan (the "Ohio Deferred Compensation Plan"), this arrangement does not offer investment vehicles through ING, the primary vendor to the 403(b) Plans; and

WHEREAS, allowing the ING investment vehicles under an IRC Section 457 Plan would enable rollovers into such plan from the terminated 403(b) Plans in a manner that would avoid certain investment-related fees and charges that may otherwise be assessed as a result of the rollover;

WHEREAS, ING offers an IRC Section 457 Plan that would allow the avoidance of the aforementioned investment fees and charges upon rollover; and

WHEREAS, the Library is permitted to sponsor and maintain an IRC Section 457 Plan with ING, without affecting its ability to continue the Ohio Deferred Compensation Plan;

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of Trustees of the Cleveland Public Library as follows:

RESOLVED, that, in addition to the current Ohio Deferred Compensation Plan which shall remain in place, the Library adopts a new IRC Section 457 Plan through ING, identified as the "Cleveland Public Library Deferred Compensation Plan (through ING)" substantially in the form attached hereto as Exhibit "A"- "Base Plan Document" and Exhibit "B"- (the "NEW ING Plan"); and

RESOLVED, that the effective date of the New ING Plan shall be January 1, 2010 or such earlier (after the date hereof) or later date as may be necessary, convenient and appropriate for the orderly establishment and operation of such plan; and

RESOLVED, that the appropriate officers of the Library be, and each of them hereby is, authorized and empowered in the name and on behalf of the Library to take or cause to be taken any and all such further actions, to execute and deliver or cause to be executed and delivered all documents, instruments and agreements, and to make such filings, in the name and on behalf of the Library, to incur and pay all such fees and expenses and to engage such advisors as they shall in their judgment determine to be necessary, desirable or advisable to carry out fully the intent and purposes of the foregoing resolutions and the execution by such officers of any such document, instrument or agreement or the payment of any such expenses or the doing by them of any act in connection with the foregoing matters shall conclusively establish their authority therefore and the approval of the documents, instruments or agreements so executed, the expenses so paid, the filings so made and the actions so taken.

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**SPECIMEN ADOPTION AGREEMENT FOR  
457(b) DEFERRED COMENSATION PLAN  
FOR GOVERNMENTAL EMPLOYERS**

The undersigned Employer adopts the 457(b) Deferred Compensation Plan for Governmental Employers for those Employees who will qualify as Participants hereunder, to be known as the

Cleveland Public Library Deferred Compensation Plan (through ING)

It will be effective as of the date specified below. The Employer hereby selects the following Plan specifications:

**EMPLOYER INFORMATION (Plan Section 1.9)**

**Name of Employer:** Cleveland Public Library

**Address:** 325 Superior Ave. E

Cleveland, Ohio 44114  
City State Zip

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

**Employer Identification Number:** \_\_\_\_\_ - \_\_\_\_\_

**Location of Employer's Principal Office:**

state  commonwealth  district of \_\_\_\_\_  other: Cleveland Public Library  
and the Plan will be governed in accordance with retirement plan laws of the state of Ohio.

**Employer Fiscal Year:**

The 12-consecutive month period commencing on January 1 and ending on December 31.

**PLAN INFORMATION**

This specimen document includes a number of provisions which are optional, or as part of which there are different options that may be selected. Such provisions are generally indicated in the Adoption Agreement. This does not mean that other provisions may not also be optional, or that other options may not be available. The selection of appropriate options is solely the responsibility of the plan sponsor and should be done only after consulting with the client's own knowledgeable counsel.  
(5/1/09)

**Effective Date:**

This Adoption Agreement of the 457(b) Deferred Compensation Plan for Governmental Employers will:

- establish a new Plan effective as of [January 1, 2010].
- constitute an amendment and restatement in its entirety of a previously established 457(b) Plan of the Employer which was effective \_\_\_\_\_. Except as specifically provided in the Plan, the effective date of this amendment and restatement is \_\_\_\_\_.

**Plan Year (Plan Section 1.22):**

The 12-consecutive month period commencing on January 1 and ending on December 31.

**Name of Administrator (Plan Section 1.1):**

Employer (Use Employer Address)

Name(s) Cleveland Public Library

Address 325 Superior Ave. E  
Cleveland, Ohio 44114

Telephone \_\_\_\_\_

Administrator's I.D. Number \_\_\_\_\_ - \_\_\_\_\_

**ELIGIBILITY (Plan Section 2.1)**

**Eligible Individuals for Purposes of Participant Deferral Contributions:**

- All Employees
- All Employees other than the following group or groups of Employees elected below:
  - Nonresident aliens with no U.S. source of income (**excluded**)
  - Employees who normally work less than 20 hours per week (**non-regular or substitute employees excluded**)
  - Students performing services for the Employer whose Compensation is not considered wages under the Federal Insurance Contributions Act ("FICA") (**excluded**)
  - Collectively bargained employees (**included, but as contemplated under collective bargaining agreement**)

NOTE: The group(s) specified must correspond to a group of the same designation that is defined in statutes, ordinances, rules, regulations, personnel manuals or other authority for the state or local jurisdiction of the Employer.

**Leased Employees**

For purposes of this section, the term Eligible Individual:

- will not** include any leased employees described in Code Section 414(n).

**Independent Contractors**

For purposes of this section, the term Eligible Individual:

- Will **not** include Independent Contractors (**X**)
- Will include all Independent Contractors (**NA**)
- Will include all Independent Contractors other than as specified below:

(NA) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CONTRIBUTIONS AND ALLOCATIONS**

**Deferral of Accumulated Sick Pay, Accumulated Vacation Pay and Back Pay (Plan Section 3.1(b)):**

Participant may elect to defer (check all that are applicable) to the Plan:

- accumulated sick pay
- accumulated vacation pay
- back pay

**(yes to all of the above, but only to the extent otherwise payable in cash)**

Note: any amounts deferred under Section 3.1(b) of the Plan must be consistent with applicable state and local law, including, but not limited to, the terms of any collective bargaining agreements.

**Age 50 Plus Catch-Up Contributions (Plan Section 3.3):**

Age 50 Plus Catch-Up Contributions will be permitted under the Plan.

**Transfers into the Plan (Plan Section 3.7):**

Transfers into the Plan from an eligible 457 plan sponsored by another governmental employer  will not be permitted.

**Rollovers:**

Rollover Contributions  will be permitted under the Plan (Plan Section 3.8).

**Normal Retirement Age (Plan Section 1.14):**

For purposes of the Special 457 Catch-Up Deferral Election under Section 3.2, Normal Retirement Age will be:

Option 1: Employer determines Normal Retirement Age (NA)

The NRA is a range of age(s) beginning at:

- the earliest retirement age at which an individual could receive unreduced benefits under the Employer's defined benefit pension plan
- Age 65
- Other: \_\_\_\_\_

This specimen plan document is intended to assist you and your counsel in adopting a 457(b) plan. Modifications may be required to meet your plan's particular objectives. (5/1/09)

**NOTE: Age specified can be the earlier of age 65 or, if applicable, date above at which a Participant could receive unreduced benefits from Employer's defined benefit pension Plan.**

and ending at:

Age 70½

Other: \_\_\_\_\_

**NOTE 1: Normal Retirement Age cannot be later than age 70 ½.**

**NOTE 2: Beginning and ending ages may be the same age, if elected by the Employer.**

Option 2: Participant determines Normal Retirement Age (X)

the Normal Retirement Age elected by the Participant that is between:

- the earlier of the earliest retirement age under the Employer's pension plan at which the Participant immediately could receive unreduced retirement benefits or age 65; and
- age 70 ½.

**(determined and applied in a manner consistent with the Ohio Public Employees Deferred Compensation Plan definition of "Normal Retirement Age")**

**NOTE 3: The Employer is not permitted to have more than one Normal Retirement Age for each Participant under all of the plans under Section 457(b) of the Code that it sponsors.**

**Normal Retirement Age for Police or Firefighters (NA)**

For purposes of the Special 457 Catch-Up Deferral Election under Section 3.2, Normal Retirement Age will be:

the earliest retirement age at which an individual could receive unreduced benefits under the Employer's pension plan

Age 40

Age 55

Age 65

Age 70 1/2

Other: \_\_\_\_\_

**NOTE: Age specified for this option generally may not be less than age 40 or more than age 70 1/2.**

the Normal Retirement Age elected by the Participant that is between:

- age 40; and
- age 70 1/2.



**DISTRIBUTIONS**

**Distribution Options (Plan Section 4.2(c)):**

- Joint and Survivor Annuity (X)
- Lump sum (X)
- Immediate or Deferred Annuity (including life annuities and installment payment annuities) (X)
- Systematic distribution option permitted under the Investment Product. (X)
- Other: \_\_\_\_\_

NOTE: Distribution options selected are available to the extent permitted by applicable law and the terms of the Investment Product.

In the event that a Participant does not elect a form of payment at the time that distributions are required to begin in accordance with Section 4.2, any benefits payable to the Participant will be made as follows:

- In the form of an Annuity payable over the Life Expectancy of the Participant that meets the requirements of Section 401(a)(9) of the code
- Lump sum (X)
- Other: \_\_\_\_\_

**Death Benefits Payable to Beneficiary (Plan Section 4.3(d)):**

Amounts payable to the Beneficiary may be elected by the Beneficiary in the following forms of benefit payment:

- Same distribution options as available to the Participant (X)
- Other:

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

NOTE: Distribution options selected are available to the extent permitted by applicable law and the terms of the Investment Product.

In the event a Beneficiary fails to make an election as to a benefit distribution option, any benefit payable to such Beneficiary will be distributed in accordance with Section 401(a)(9) of the Code.

**Rollovers**

Distribution of a Participant 457 Rollover Account and a Participant Non-457 Rollover Account (Plan Section 4.1(b)):

Amounts payable under a Participant 457 Rollover Account and a Participant Non-457 Rollover Account will be paid to a Participant:

- Upon attainment of an event as described in Section 4.1
- Upon the request of a Participant (X)
- Other:

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**Unforeseeable Emergency Withdrawals (Plan Section 4.5):**

Unforeseeable Emergency Withdrawals  will be permitted under the Plan.

If Unforeseeable Emergency withdrawals are allowed by the Plan, the amount eligible for such withdrawals will consist of:

- The Participant Account (X)
- The Participant Deferral Account
- The Participant 457 Rollover Account
- The Participant Non-457 Rollover Account

A Participant  may take an Unforeseeable Emergency Withdrawal resulting from the illness or accident of a primary Beneficiary designated by the Participant.

**Small Balance Distribution (Plan Section 4.6):**

Small balance distributions attributable to a Participant Deferral Account will not be permitted under the Plan.

**Transfer of Amounts for Purchase of Service Credits in Governmental Retirement System (Plan Section 4.8)**

Participant will be permitted to transfer amounts under the Plan to a governmental retirement system in order to purchase service credits.

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**Loans to Participants (Plan Section 4.10):**

Loans **will not** be permitted under the Plan.

**Distributions for Health Insurance and Long Term Care (Plan Section 4.11):**

Distributions to pay for health insurance and long term care **will not** be permitted under the Plan.

**CERTIFICATION AND SIGNATURE**

The undersigned Employer hereby represents that it is a unit of a State or local government or an agency or instrumentality of one or more units of a State or local government as described in Code Section 414(d).

This Adoption Agreement and the Plan document together constitute the Plan. The Plan is a specimen plan, not a master or prototype plan, and has not been approved by the IRS. The adoption of this Plan and related tax consequences are the responsibility of the Employer and its independent tax and legal advisors.

IN WITNESS WHEREOF, the Employer hereby causes this Plan to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

EMPLOYER:

\_\_\_\_\_  
(enter name)

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

7853245.1 (OGLETREE)

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**SPECIMEN 457(b) DEFERRED COMPENSATION PLAN FOR  
GOVERNMENTAL EMPLOYERS  
BASIC PLAN DOCUMENT**

This specimen plan document, consisting of a basic plan document and adoption agreement, is for illustrative purposes only presented by ING for consideration of a plan sponsor's legal counsel and reflects a good faith interpretation of the Internal Revenue Code and 457 regulations. Because specific facts, circumstances, and laws of various states may impact a 457(b) plan, interested parties should consult legal counsel regarding any modifications that may be required. This document has not been reviewed or approved by the Internal Revenue Service, and the submission of the document to the IRS for a Private Letter Ruling by any interested party is also solely the responsibility of the plan sponsor. ING may update this specimen document from time to time as new guidance become available. Therefore, modifications to the document may be required. (5/1/09)

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SPECIMEN DOCUMENT

SPECIMEN 457(b) DEFERRED COMPENSATION  
PLAN FOR GOVERNMENTAL EMPLOYERS

PREAMBLE

The Employer hereby establishes the Code Section 457(b) Deferred Compensation Plan for Governmental Employers (the "Plan").

The Plan is established pursuant to applicable state law and is intended to comply with the provisions of Section 457(b) of the Internal Revenue Code of 1986, as amended, Income Tax Regulations thereunder and applicable law. The Plan consists of the provisions set forth in this basic plan document and the Adoption Agreement, and is applicable to each Eligible Individual.

ARTICLE I  
DEFINITIONS

As used in this Plan, the following words and phrases will have the meanings set forth herein unless a different meaning is clearly required by the context.

1.1 "Administrator" means the person(s), committee or organization appointed by the Employer pursuant to Section 5.2 to administer the Plan and perform administrative functions for the Plan as specified by the Employer.

1.2 "Adoption Agreement" means the separate agreement that is executed by the Employer and sets forth the elective provisions of the Plan. The Adoption Agreement is considered a part of the Plan.

1.3 "Age 50 Plus Catch-Up Contribution" means the catch-up contribution for Participants who attain age 50 by the end of the calendar year, as permitted under Section 414(v) of the Code and pursuant to Section 3.3.

1.4 "Beneficiary" means the individual, individuals or trust designated by the Participant in writing on a form acceptable to the Administrator, and received by the Administrator before the Participant's death, to receive any undistributed amounts under the Participant Account which becomes payable upon the Participant's death. A Beneficiary may designate his own Beneficiary. If a Participant or Beneficiary does not designate a Beneficiary in a form acceptable to the Administrator, then his estate will be deemed to be his Beneficiary. In addition, any Beneficiary designation will meet the requirements of applicable state law.

1.5 "Code" 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.

1.6 "Compensation" means for an Employee 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, 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 Sections 125, 132(f), 401(k), 403(b) or 457(b) of the Code (including an election under Article III to defer Compensation under the Plan). For purposes of an Independent Contractor or Leased Employee, "Compensation" will mean all amounts payable to a Participant from the Employer as remuneration for services rendered which would be includible in income for federal tax purposes if not deferred under this Plan, subject to the provisions of the current Code.

1.7 "Eligible Individual" means any Employee who is in one or more of the classifications specified in the Adoption Agreement, and, if elected by the Employer, may include Leased Employees and Independent Contractors.

1.8 "Employee" means any common law employee who is employed by the Employer and who performs services for the Employer for which Compensation is payable.

1.9 "Employer" means a state or the District of Columbia, any political subdivision of a state or the District of Columbia, or any agency or instrumentality of a state or the District of Columbia, which satisfies the definition of Section 457(e)(1)(A) of the Code (together with any other entity required to be aggregated with such governmental employer under Sections 414(b), (c), (m) or (o) of the Code) and which has adopted this Plan as indicated in the Adoption Agreement.

1.10 "Includible Compensation" an Employee's actual wages in box 1 of Form W-2 for the Employer, but increased (up to the dollar maximum) by any compensation reduction election under Section 125, 132(f), 402(g)(3) or 457(b) of the Code. The amount of Includible Compensation is determined without regard to any community property laws. Pursuant to Section 1.457-4(d)(1) of the Income Tax Regulations, Includible Compensation will include any payments made to a Participant who has had a Severance from Employment, provided that the Includible Compensation is paid by the later of 2 ½ months after the Participant's Severance from Employment or the end of the calendar year that contains the date of such Participant's Severance from Employment. In addition, pursuant to Section 1.457-4(d)(1) of the Income Tax Regulations, Includible Compensation will include payments made to an individual who does not currently perform services for the Employer by reason of qualified military service (as defined in Section 414(u)(5) of the Code) to the extent those payments do not exceed the amount the individual would have received if the individual had continued to perform services for the Employer rather than enter qualified military service. Includible Compensation will not include Employee pick-up contributions described in Section 414(h)(2) of the Code.

1.11 "Independent Contractor" means any person to whom Compensation from the Employer is payable for services rendered pursuant to one or more written or oral contracts, if such person is not a common-law employee.

This specimen plan is intended to assist you and your counsel in adopting a governmental 457 plan. Modifications may be required to meet your plan's particular objectives. (5/1/09)

1.12 “Investment Product” means group or individual annuity contracts or such other investment arrangements issued by or offered through the Provider and used to hold assets of the Plan.

1.13 “Leased Employee” means any person (other than an Employee of the Employer) who, pursuant to an agreement between the Employer and any other person or entity (“leasing organization”) has performed services for the Employer (or for the Employer and related persons determined in accordance with Section 414(n)(6) of the Code) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the Employer. Contributions or benefits provided for a leased employee by the leasing organization which are attributable to services performed for the Employer will be treated as provided by the Employer.

A leased employee will not be considered an employee of the Employer if: (a) such individual is covered by a money purchase pension plan sponsored by the leasing organization providing: (1) a nonintegrated employer contribution rate of at least 10 percent of compensation, as defined in Section 415(c)(3) of the Code, including amounts contributed pursuant to a salary reduction agreement which are excludable from the individual’s gross income under Section 125, 402(e)(3), 402(h)(1)(B), 403(b) or 132(f)(4) of the Code, (2) immediate participation, and (3) full and immediate vesting, and (b) leased employees do not constitute more than 20 percent of the Employer’s nonhighly compensated work force.

1.14 “Normal Retirement Age” means the age specified in the Adoption Agreement that is used for the Special 457 Catch-up Contribution election under Section 3.2. The Employer is not permitted to have more than one Normal Retirement Age for each Participant under all plans under Section 457(b) of the Code that it (together with any other entity required to be aggregated with the Employer under Sections 414(b), (c), (m) or (o) of the Code) sponsors.

1.15 “Participant” means any individual who has entered into a Participation Agreement to make deferrals under the Plan or has previously made deferrals under the Plan and who has not yet received a distribution of his entire Participant Account under the Plan.

1.16 “Participant Account” means the total of the Participant Deferral Account, the Participant 457 Rollover Account, and the Participant Non-457 Rollover Account for each Participant, the account established for a Beneficiary after a Participant’s death, and any account or accounts established for an alternate payee (as defined in Section 414(p)(8) of the Code).

1.17 “Participant Deferral Account” means that portion of the Participant Account (including any earnings and losses attributable thereon) established and maintained by the Administrator for each Participant with respect to his deferral of Compensation to the Plan, including any amounts transferred in accordance with Section 3.7.



1.18 “Participant 457 Rollover Account” means that portion of the Participant Account (including any earnings and losses attributable thereon) established and maintained by the Administrator for each Participant with respect to Rollover Contributions received from another plan under Section 457(b) of the Code sponsored by an employer defined in Code Section 457(e)(1)(A) in accordance with Section 3.8.

1.19 “Participant Non-457 Rollover Account” means that portion of the Participant Account (including any earnings and losses attributable thereon) established and maintained by the Administrator for each Participant with respect to Rollover Contributions rolled over from all rollover eligible plans other than from another plan under Section 457(b) of the Code sponsored by an employer defined in Code Section 457(e)(1)(A) in accordance with Section 3.8.

1.20 “Participation Agreement” means an agreement, which meets the requirements of Section 2.4, entered into between an Eligible Individual and the Employer pursuant to which an Eligible Individual agrees to commence deferring amounts from Compensation to the Plan and thus to become a Participant.

1.21 “Plan” means the name of the Plan as indicated in the Adoption Agreement.

1.22 “Plan Year” means the Plan's 12-consecutive month accounting year as elected by the Employer in the Adoption Agreement.

1.23 “Provider” means ING Life Insurance and Annuity Company and/or ReliaStar Life Insurance Company or such other provider entity as the Employer may approve.

1.24 “Rollover Contribution” means, if so elected by the Employer in the Adoption Agreement, contributions made by a Participant (or, if applicable, Eligible Individual) pursuant to Section 3.8 of “eligible rollover distributions” in accordance with Section 402(c)(4) of the Code.

1.25 “Severance from Employment” means the date on which the Employee dies, retires or otherwise has a severance from employment with the Employer, as determined by the Administrator.

1.26 “Special Section 457 Catch-up Contributions” means the catch-up contribution for a Participant in the three consecutive years prior to the year in which the Participant reaches Normal Retirement Age, as permitted under Section 457(b)(3) of the Code and pursuant to Section 3.2.

1.27 “Unforeseeable Emergency” means a financial hardship of the Participant or Beneficiary resulting from:

- (a) An illness or accident of:
  - (1) the Participant or the Beneficiary
  - (2) the spouse of the Participant or Beneficiary, or
  - (3) the dependent of the Participant or Beneficiary;
- (b) Loss of the Participant's or Beneficiary's property due to casualty; or
- (c) Similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary.

In addition, if permitted in the Adoption Agreement, an Unforeseeable Emergency means a severe financial hardship of the Participant resulting from an illness or accident of a primary Beneficiary designated by the Participant under the Plan.

A determination of an Unforeseeable Emergency will be based on each Participant's and Beneficiary's specific facts and circumstances.

## ARTICLE II PARTICIPATION

### 2.1 Eligibility

Each Eligible Individual will be a Participant in the Plan when he satisfies the eligibility requirements specified in the Adoption Agreement and has executed a Participation Agreement.

### 2.2 Determination of Eligibility and Effective Date of Participation

(a) The Administrator will determine whether an Eligible Individual has satisfied the eligibility requirements specified in the Adoption Agreement based upon information furnished by the Employer. Such determination will be conclusive and binding and the criteria for such determination will be applied uniformly to all Participants.

(b) The Participant will provide investment direction for contributions made to an Investment Product on such forms as may be required by the Provider.

### 2.3 Termination of Eligibility

In the event a Participant will go from a classification of an Eligible Individual to a non-Eligible Individual, such Participant will not be able to defer Compensation to the Plan until he is again reclassified as an Eligible Individual. The Participant Account of such inactive Participant will continue to be allocated any attributable earnings and losses based on the investment direction supplied by the Participant.

## 2.4 Participation Agreements

(a) In order to participate in the Plan, a Participant must complete a Participation Agreement with the Employer and file such Participation Agreement in a manner and method determined by the Administrator. The Participation Agreement will specify:

- (1) The amount (expressed either as a dollar amount or as a percentage) of the Participant's Compensation which the Participant agrees to defer, subject to the limitations of Article III; and
- (2) The date as of which reduction and deferral of Compensation pursuant to the Participation Agreement will begin.

(b) A Participant may defer Compensation payable in the calendar month during which the Eligible Individual first becomes a Participant if the Participation Agreement providing for such deferral is entered into on or before the first day of the month in which the Compensation is paid or becomes available.

(c) Notwithstanding subsection (b), a new Employee who is also an Eligible Individual may become a Participant and defer Compensation payable in the calendar month during which he first becomes an Employee if a Participation Agreement providing for the deferral is entered into on or before the first day on which he performs services for the Employer.

(d) A Participant may, by amendment of a Participation Agreement or by any manner as the Administrator may prescribe, do any of the following:

- (1) change the specification of the investment for any contributions to a Participant Account under an Investment Product; or
- (2) change prospectively the amount of Compensation to be deferred.

An amendment to the Participation Agreement will be effective as early as administratively practicable, but not earlier than the first day of the following calendar month in which the Compensation is paid or made available.

## 2.5 Information Provided by the Employee

Each Eligible Individual 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 he is a participant in any other eligible plan under Section 457(b) of the Code.

## 2.6 Contributions Made Promptly

All contributions under the Plan shall be transferred to the applicable Investment Product within a period that is not longer than is reasonable for the proper administration of the Participant

This specimen plan is intended to assist you and your counsel in adopting a governmental 457 plan. Modifications may be required to meet your plan's particular objectives. (5/1/09)

Accounts. For purposes of this requirement, amounts deferred under the Plan by a Participant must be transferred to the Investment Product within 15 business days following the month in which these amounts would otherwise have been paid to the Participant.

## 2.7 Leave of Absence

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

# ARTICLE III CONTRIBUTIONS AND LIMITATIONS

## 3.1 Deferrals

(a) Except as provided in Section 3.2 and 3.3 and subject to any applicable law or under any applicable collective bargaining agreement, the maximum amount which may be deferred by a Participant in any taxable year will not exceed the lesser of (1) the applicable dollar amount provided under Section 457(b)(2) of the Code (adjusted for cost of living under Section 457(e)(15) of the Code) or (2) 100% of the Participant's Includible Compensation.

(b) If elected by the Employer in the Adoption Agreement, a Participant may elect to defer accumulated sick pay, accumulated vacation pay and back pay, provided the Participant enters into a Participation Agreement pursuant to Section 2.4 to defer such pay before the amounts would otherwise be paid or made available. A Participant who is a former Employee may defer accumulated sick pay, vacation pay and back pay, provided that the Participant enters into a Participation Agreement pursuant to Section 2.4 prior to the first day of the calendar month to defer such pay before the amounts would otherwise be paid or made available, provided that such amounts are payable within the later of 2 ½ months after the Participant's Severance from Employment or the end of the calendar year that includes the date of the Participant's Severance from Employment.

## 3.2 Special 457 Catch-Up Contributions

(a) In any one or more of a Participant's last three calendar years ending before the year in which the Participant attains Normal Retirement Age, as defined in the Adoption Agreement, the Participant may elect to defer an amount not exceeding the lesser of (1) twice the dollar amount permitted as a general deferral under Section 3.1 or (2) the sum of the maximum deferral permitted under Section 3.1 for the current tax year and as much of the applicable deferral limit under Section 457(b)(2) of the Code in prior years before the current tax year that had not previously been used ("underutilized amount"). For purposes of this Section, a prior year will be taken into account only if such year began after December 31, 1978, and the Participant was eligible to participate in the Plan during all or a portion of the prior year. A Participant may only make this election under this subsection once with respect to any plan under Section 457(b) of the Code of the Employer.

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(b) In determining a Participant's underutilized amount, the Plan will take into consideration:

- (1) Prior to 2002, if a Participant made deferrals to the Plan and deferrals to any other plan under Section 457(b) of the Code, salary reduction contributions made to plans under Section 401(k) of the Code, plans under Section 403(b) of the Code, simplified employee pension (SARSEP) plans under Section 402(h)(1) of the Code, simple retirement accounts under Section 408(p) of the Code, and amounts deferred under any plan for which a deduction is allowed because of a contribution to an organization described in Section 501(c)(18) of the Code, such deferrals to the other plans will be taken into account in determining a Participant's underutilized amount under Section 457(b)(2) of the Code. In addition, Includible Compensation will be limited to the limitation in effect in the calendar year in which the deferrals were made. If such deferrals cumulatively exceed the then-applicable dollar amount in Section 457(b)(2) of the Code in the year that such amounts were deferred, then there will be no underutilized amount for that year.
- (2) To the extent that the Employer did not maintain a plan under Section 457(b) of the Code, no underutilized limitation is available to a Participant for that prior year.
- (3) After 2001, only deferrals to plans under Section 457(b) of the Code will be taken into account for purposes of determining the underutilized amount.
- (4) Age 50 Plus Catch-Up Contributions will not be taken into account for purposes of determining a Participant's underutilized amount.

### 3.3 Age 50 Plus Catch-Up Contributions

If elected by the Employer in the Adoption Agreement, a Participant who has attained age 50 before the close of the calendar year may elect Age 50 Plus Catch-up Contributions and commence making such contributions to his Participant Deferral Account. Such contributions are not subject to the limitations of Section 457(b) of the Code. The maximum dollar amount of the Age 50 Plus Catch-up Contributions for a calendar year adjusted for cost of living under Section 414(v)(2)(C) of the Code.

### 3.4 Maximum Amount of Catch-Up Contributions

Any catch-up contributions made by a Participant pursuant to Section 3.2 or Section 3.3 may not exceed the greater of (1) the amount that the Participant is eligible to defer under Section 3.2 or (2) the amount that the Participant is eligible to defer under Section 3.3.

### 3.5 Participant Covered by More than one 457(b) Plan

If a Participant is or has been a participant in one or more other plans under Section 457(b) of the Code in the same calendar year, then the Plan and all such other plans will be considered as one plan for purposes of applying the limitations of this Article III. For this purpose, the Administrator will take into account any other such plan of the Employer under Section 457(b) of the Code and, to the extent the Participant provides the Administrator with sufficient information concerning his participation, any such other plans under Section 457(b) of the Code in which the individual participated in the same calendar year.

### 3.6 Excess Deferrals

(a) In the event that the limit on deferral contributions is exceeded pursuant to this Article III, the Administrator will direct the Provider as to the proper correction method permissible under applicable law, including calculation of any earnings or losses and the proper tax reporting with respect to such distributions as soon as administratively practicable after the Administrator determines that the amount is an excess deferral.

(b) A Participant who participates in the Plan and another 457(b) plan of another employer will be responsible for complying with the deferral limits of this Article III. In the event of an excess amount, the Participant will notify the Administrator so that the excess may be distributed as soon as practicable after the Administrator determines that the amount is an excess deferral.

### 3.7 Transfers from Other Plans under Section 457(b) of the Code

(a) If elected by the Employer in the Adoption Agreement, the Plan will accept transfers of amounts previously deferred under another plan under Section 457(b) of the Code maintained by another employer as defined in Section 457(e)(1)(A) of the Code.

(b) A transfer under subsection (a) will only be permitted if:

- (1) the transferring plan provides for the transfer of such amounts, and
- (2) the Participant has a benefit equal to the amount immediately after the transfer to least equal to the amount under the Plan immediately before the transfer.

(c) The Administrator may require such documentation from the transferring plan as it deems necessary to effectuate the transfer in accordance with Section 1.457-10(b) of the Income Tax Regulations and to confirm that the transferring plan is an eligible government plan as defined in Section 1.457-2(f) of the Income Tax Regulations. The amount so transferred will be credited to the Participant Deferral Account and will be held, accounted for, administered and otherwise treated in the same manner as amounts deferred under Section 3.1, except that the

transferred amounts will not be taken into consideration for purposes of Section 457(b)(2) of the Code for the year of transfer.

### 3.8 Rollovers to the Plan

(a) If elected by the Employer in the Adoption Agreement and with the consent of the Administrator, amounts that are considered eligible rollover distributions as defined in Section 402(c)(4) of the Code may be rolled over by an Eligible Individual, whether or not a Participant at the time, from an eligible retirement plan, as defined in subsection (b) below. A Participant who is a surviving spousal Beneficiary or an alternate payee (who is a spouse or former spouse) of another eligible retirement plan may roll over eligible rollover distributions from such eligible retirement plan as further defined in subsection (b). The amounts rolled over from an eligible retirement plan other than a plan under Section 457(b) of the Code maintained by an employer as defined in Section 457(e)(1)(A) of the Code will be allocated to the Participant Non-457 Rollover Account. The amounts rolled over from another plan under Section 457(b) of the Code maintained by such employer as defined in Section 457(e)(1)(A) of the Code will be allocated to the Participant 457 Rollover Account. Amounts in the Participant Non-457 Rollover Account will be accounted for separately from amounts in the Participant 457 Rollover Account.

(b) For purposes of this Section, the term “eligible retirement plan” means any other plan under Section 457(b) of the Code maintained by an employer as defined in Section 457(e)(1)(A) of the Code, a plan under Section 403(b) of the Code, a plan under Section 401(a) of the Code, an individual retirement account as described in Section 408(a) of the Code, and an individual retirement annuity as described in Section 408(b) of the Code. For purposes of this Section, the term “amounts rolled over from an eligible retirement plan” means:

- (1) amounts rolled to the Plan directly from another eligible retirement plan on behalf of an Eligible Individual (or Participant, surviving spouse or alternate payee, as applicable); and
- (2) eligible rollover distributions as defined in Section 402(c)(4) of the Code received by an Eligible Individual (or Participant, surviving spouse or alternate payee, as applicable) from another eligible retirement plan that are rolled over by him to the Plan within sixty (60) days, following his receipt thereof.

### 3.9 Investments

Amounts deferred under the Plan will be invested in any Investment Product. Participants will direct the investment of their Participant Accounts among the investment options available under the Investment Product. Contributions will be allocated to a Participant Account in accordance with this Article III and earnings and losses attributable to such contributions will be allocated to such Participant Account. If any provision of an Investment Product agreement is not consistent with the Plan provisions, the terms of the Plan will control.

This specimen plan is intended to assist you and your counsel in adopting a governmental 457 plan. Modifications may be required to meet your plan’s particular objectives. (5/1/09)

### 3.10 Protection of Persons Who Serve In a Uniformed Service

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

(b) In the case of a Participant who dies while performing qualified military service (as defined in Section 414(u) of the Code), the Beneficiaries are entitled to any additional benefits (other than deferrals relating to the period of qualified military service) provided under the Plan had the Participant resumed employment and then had a Severance from Employment on account of death.

## ARTICLE IV BENEFIT DISTRIBUTIONS

### 4.1 Distributions Under the Plan

(a) A Participant Deferral Account may not be paid to a Participant (or, if applicable, the Beneficiary) until one of the following events has occurred:

- (1) upon the Participant's Severance from Employment;
- (2) an Unforeseeable Emergency, within the meaning of and subject to Section 4.5, if permitted under the Adoption Agreement; or
- (3) the election of a small balance distribution within the meaning of and subject to Section 4.6, if permitted under the Adoption Agreement.

(b) A Participant may choose to receive a distribution from his 457(b) Rollover Account and Participant Non-457(b) Rollover Account at the time elected by the Employer in the Adoption Agreement.

(c) An Independent Contractor will be considered to have a Severance from Employment upon the expiration of all of the contracts under which services are performed for the Employer, if the expiration constitutes a good faith and complete termination of the contractual relationship. An expiration of such contractual relationship will not be considered to be a good faith and complete termination if the Employer anticipates a renewal of such contractual relationship or the Independent Contractor becomes an Employee.



#### 4.2 Determination of Benefits Payable to a Participant

(a) Upon attainment of a distributable event described in Section 4.1, but in no event later than the requirement to commence minimum distribution payments in accordance with Section 401(a)(9) of the Code, a Participant may elect a benefit distribution option to which benefits will be paid.

(b) Upon a Participant's application for benefits, the Administrator will direct the distribution of a Participant Account in accordance with this Section 4.2.

(c) A Participant may choose a benefit distribution option as selected by the Employer in the Adoption Agreement. In the event a Participant fails to make an election as to a benefit distribution option, any benefit payable to such Participant will be distributed as elected by the Employer in the Adoption Agreement. The terms of any annuity contract purchased and distributed by the Plan to a Participant will comply with the requirements of the Plan.

#### 4.3 Determination of Benefits Upon Death

(a) Upon the death of a Participant, the Administrator will direct that the deceased Participant's Participant Account, be distributed to the Beneficiary in accordance with the provisions of this Section 4.3.

(b) The designation of a Beneficiary will be made on a form satisfactory to the Administrator. A Participant or Beneficiary may at any time revoke his designation of a Beneficiary or change his Beneficiary by filing written notice of such revocation or change with the Administrator. In the event no valid designation of Beneficiary exists at the time of the Participant's or Beneficiary's death, the death benefit will be payable to the Participant's or Beneficiary's estate.

(c) The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the Participant Account of a deceased Participant or Beneficiary, as the Administrator may deem appropriate. The Administrator's determination of death and of the right of any person to receive payment will be conclusive.

(d) Death benefits payable to a Beneficiary will be made in a form as selected by the Beneficiary in accordance with the available options as elected by the Employer in the Adoption Agreement. In the event a Beneficiary fails to make an election as to a benefit distribution option, any benefit payable to such Beneficiary will be distributed in accordance with Section 401(a)(9) of the Code. The terms of any annuity contract purchased and distributed by the Plan to a Beneficiary will comply with the requirements of the Plan.

#### 4.4 Minimum Distributions.

All distributions under the Plan shall comply with the minimum distribution requirements of Section 401(a)(9) of the Code and the Income Tax Regulations.

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#### 4.5 Unforeseeable Emergency Withdrawals

(a) If elected by the Employer in the Adoption Agreement, a Participant or Beneficiary may request an Unforeseeable Emergency withdrawal subject to the following requirements:

- (1) The request for an Unforeseeable Emergency withdrawal will be determined by the Administrator based on the Participant's or Beneficiary's relevant facts and circumstances.
- (2) The request for an Unforeseeable Emergency may be made only to the extent that such emergency is or may not be relieved through:
  - reimbursement or compensation from insurance or otherwise;
  - liquidation of the Participant's or Beneficiary's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or
  - cessation of the Participant's deferrals under the Plan.
- (3) Distributions due to an Unforeseeable Emergency must be limited to the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

(b) A Participant or Beneficiary may request an Unforeseeable Emergency withdrawal by submitting that request in writing on the Plan's approved form to the Administrator, who will review and approve the request. If the request is denied, a request for review of the determination may be made in writing to such entity as the Administrator may designate, provided that such entity has accepted the designation. If the review of the determination fails to confirm a claim of Unforeseeable Emergency, an appeal may be made to the appellate committee established by the Administrator in writing. If at any time a request of an Unforeseeable Emergency withdrawal is approved, the Employer may thereupon direct the Provider to distribute so much of the Participant Account as is necessary to provide the amount approved to meet the Unforeseeable Emergency, as determined by the Administrator.

#### 4.6 Small Balance Distribution

If elected by the Employer in the Adoption Agreement and upon proper written request, a Participant may elect to receive a small balance distribution, payable in a lump sum, if the Participant Deferral Account value is \$5,000 or less, and the Participant has not deferred into the Plan for a period of two years prior to distribution. A Participant may take a small balance distribution under this Section only once while a Participant under the Plan.

#### 4.7 Rollovers From The Plan

(a) Notwithstanding any provision of the Plan to the contrary, a Participant will be permitted to elect to have any eligible rollover distribution (as defined in Section 402(c)(4) of the Code) paid directly to an eligible retirement plan (as defined in Section 3.8(b)) or to a Roth IRA established under Code Section 408A specified by the Participant. The Participant will, in the time and manner prescribed by the Administrator, specify the amount to be rolled over and the eligible retirement plan to receive such rollover. Any portion of a distribution which is not rolled over will be distributed directly to the Participant.

(b) The election described in subsection (a) also applies to the surviving spouse who is the designated Beneficiary of the Participant or a spouse or former spouse who is the alternate payee, provided that such spouse, former spouse or alternate payee directs the transfer of an eligible rollover distribution, as defined in Section 402(c)(4) of the Code into an eligible retirement plan, as defined in Section 3.8(b), in which such spouse, former spouse or alternate payee is a participant.

(c) A non-spousal Beneficiary may elect to roll over death benefits amounts in accordance with Section 402(c)(11) of the Code provided that:

- (1) such amounts are rolled over to an inherited IRA via a direct trustee-to-trustee transfer;
- (2) such election is made by December 31 of the year following the year of the Participant's death; and
- (3) the rolled over amounts are eligible rollover distributions as defined in Section 402(c)(4) of the Code.

#### 4.8 Permissive Service Credit Transfers

(a) If a Participant is also a participant in a tax qualified defined benefit governmental plan (as defined in Section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of his or her Participant Account transferred to the defined benefit governmental plan in accordance with Section 457(e)(17) of the Code. A transfer under this Section may be made before the Participant has had a Severance from Employment.

(b) A transfer may be made under subsection (a) only if the transfer is either for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which Section 415 of the Code does not apply by reason of Section 415(k)(3) of the Code.

#### 4.9 Transfers to Other Plans under Section 457(b) of the Code Upon Severance From Employment

(a) Upon a Participant's Severance from Employment, a Participant may elect to have all or a portion of the Participant Account transferred to the plan under Section 457(b) of the Code of an employer defined in Section 457(e)(1)(A) of the Code. Such amounts will be transferred at the Participant's election, provided:

- (1) The plan under Section 457(b) of the Code to which the Participant's benefit is being transferred provides for the acceptance of such amounts;
- (2) The Participant or Beneficiary has a benefit equal to the amount immediately after the transfer to least equal to the amount under the Plan immediately before the transfer; and
- (3) In the case of a transfer made on behalf of a Participant, such individual has had a Severance from Employment with the Employer and is performing services for the employer maintaining the receiving plan.

(b) Upon the transfer of amounts under subsection (a), the Plan's liability to pay benefits to the Participant or Beneficiary under the Plan will be discharged to the extent of the amount so transferred on behalf of 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 or effectuate the transfer pursuant to Section 1.457-10(b) of the Income Tax Regulations.

#### 4.10 Loans to Participants

(a) This Section will apply only if elected by the Employer in the Adoption Agreement. For purposes of this Section, all plans of the Employer will be considered one plan in accordance with Section 72(p) of the Code and regulations thereunder, and the balance of all loans under any plan of the Employer under which the Participant participates must be aggregated in determining the maximum loan available under subsection (c).

(b) The Provider may, in accordance with the Administrator's direction, make loans to Participants under the following circumstances: (1) loans will be made available to all Participants on a reasonably equivalent basis; (2) loans will bear a reasonable rate of interest; (3) loans will be adequately secured; and (4) will provide for periodic repayment over a reasonable period of time. Such loans may also be subject to the requirements of the Investment Product.

- (c) No loan made pursuant to this Section shall exceed the lesser of:
  - (1) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans from the Plan to the Participant during the one-year period ending on the day before the date on which such loan is made, over the outstanding balance of loans from the Plan to the Participant on the date on which such loan was made, or
  - (2) one-half (1/2) of the Participant Account.

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

(d) Loans will provide for level amortization with payments to be made not less frequently than quarterly over a period not to exceed five (5) years. However, loans used to acquire any dwelling unit which, within a reasonable time, is to be used (determined at the time the loan is made) as a principal residence of the Participant will, provide for periodic repayment over a reasonable period to be determined by the Administrator of time that may exceed five (5) years. Notwithstanding the foregoing, in the event a Participant enters the uniformed services of the United States and retains reemployment rights under law, repayments will be suspended and interest will cease to accrue during the period of leave and the period of repayment will be extended by the number of months of leave in the uniformed services. In the event a Participant is on an Employer approved, bona fide leave of absence without pay, loan payments may be suspended (but interest will continue to accrue) for the period of leave but not to exceed one year; however, the loan must be repaid by the original loan repayment date.

(e) An assignment or pledge of any portion of a Participant's interest in the Plan will be treated as a loan under this Section.

(f) Any security interest held by the Plan by reason of an outstanding loan to the Participant will be taken into account in determining the amount of the death benefit or single lump-sum payment.

#### 4.11 Distributions from Governmental Plans for Health and Long Term Care.

If elected by the Employer in the Adoption Agreement and pursuant to Section 457(a)(3) of the Code, annual distributions of up to \$3,000 from the Plan are excludable for income tax purposes if the following conditions are satisfied: (1) the distribution is used to pay for qualified health insurance premiums (accident, health insurance or long term care) for an eligible public safety officer, or spouse or dependent of the public safety officer, (2) the public safety officer is separated from service due to disability or attainment of the age which the Participant has the right to retire and receive unreduced retirement benefits from the Employer's basic pension plan,

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and (3) the distributions are paid directly to the insurer or to the administrator of a self-insured plan.

## ARTICLE V ADMINISTRATION

### 5.1 Powers and Responsibilities of the Employer

(a) The Employer will have full power to interpret and construe the Plan in a manner consistent with its terms and the provisions of Section 457 of the Code, including the applicable Income Tax Regulations and to establish practices and procedures conforming to those provisions. In all such cases, the Employer's determination will be final and conclusive upon all persons. It is recognized that unusual circumstances may occur and questions may arise that are not specifically covered by any provision of the Plan, and the Employer will have the right to resolve all such questions. Notwithstanding the above, the Employer's power and responsibility under the Plan will not extend to, nor have any control over, those responsibilities and duties of the Provider.

(b) The Employer will be empowered to appoint and remove the Administrator from time to time as it deems necessary for the proper administration of the Plan to assure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan and the Code.

(c) The Employer will periodically review the performance of any person to whom duties have been delegated or allocated by it under the provisions of this Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Employer or by a qualified person specifically designated by the Employer, through day-to-day conduct and evaluation, or through other appropriate ways.

### 5.2 Designation of Administrative Authority

The Employer may appoint a committee ("Committee") of one or more persons to serve as the Administrator and to discharge the Administrator's responsibilities under the Plan. The Employer may remove a Committee member for any reason by giving such member ten (10) days written notice and may thereafter fill any vacancy thus created. If the Employer does not appoint a Committee to administer the Plan, the Employer will be the Administrator.

### 5.3 Allocation and Delegation of Responsibilities

If more than one person is appointed as Administrator, the responsibilities of each Administrator may be specified by the Employer and accepted in writing by each Administrator. In the event that the Employer makes no such delegation, the Administrators may allocate the responsibilities among themselves, in which event the Administrators will notify the Employer in writing of such action and specify the responsibilities of each Administrator.

### 5.4 Powers and Duties of the Administrator

The primary responsibility of the Administrator is to administer the Plan for the benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Administrator will administer the Plan in accordance with its terms and will have the power and discretion to construe the terms of the Plan and determine all questions arising in connection with the administration, interpretation, and application of the Plan. Any such determination by the Administrator will be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as will be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction will be done in a nondiscriminatory manner based upon uniform principles consistently applied and will be consistent with the intent that the Plan will continue to be deemed a qualified plan under the terms of Section 457 of the Code, and will comply with the terms of all Income Tax Regulations issued pursuant thereto. The Administrator will have all powers necessary or appropriate to accomplish his duties under this Plan. The Administrator will be charged with the duties of the general administration of the Plan, including, but not limited to, the following:

- (a) the discretion to determine all questions relating to the eligibility of Employees and Independent Contractors to participate or remain a Participant hereunder and to receive benefits under the Plan;
- (b) determine the amounts to be contributed to each Participant Account;
- (c) to authorize and direct the Provider with respect to all disbursements to which a Participant is entitled under the Plan;
- (d) to maintain all necessary records for the administration of the Plan;
- (e) to maintain practices and procedures necessary to administer the Plan as are consistent with the terms hereof;
- (f) to determine the type of any Investment Product to be purchased from the Provider; and

(g) to assist any Participant regarding his rights, benefits, or elections available under the Plan.

#### 5.5 Records and Reports

The Administrator will keep a record of all actions taken and will keep all other books of accounts, records, and other data that may be necessary for proper administration of the Plan and will be responsible for supplying all information and reports to the Internal Revenue Service, Participants, Beneficiaries and others as required by law.

#### 5.6 Appointment of Advisors

The Administrator may appoint/employ such agents, attorneys, actuaries, accountants, auditors, investment counsel, and clerical assistants, and other persons as the Administrator deems necessary or desirable in connection with the administration of this Plan.

#### 5.7 Information from the Employer

To enable the Administrator to perform his functions, the Employer will supply the necessary information to the Administrator on a timely basis regarding the Participants under the Plan, including but not limited to Compensation, date of hire, date of death, Severance from Employment, and such other pertinent facts and data as the Administrator may require. The Administrator may rely upon such information as is supplied by the Employer and will have no duty or responsibility to verify such information.

#### 5.8 Payment of Expenses

All expenses of administration will be paid by the Employer. Such expenses will include any expenses incident to the functioning of the Administrator, including, but not limited to, fees of accountants, counsel, and other specialists and their agents, and other costs of administering the Plan.

### ARTICLE VI AMENDMENT AND TERMINATION

#### 6.1 Amendment

(a) The Employer will have the right at any time to amend this Plan subject to the limitations of this Section. Any such amendment will become effective as provided therein upon its execution.



(b) No amendment to the Plan will be effective if it authorizes or permits any part of the Investment Product (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of Participants or Beneficiaries; or causes any reduction in the amount credited to the account of any Participant or Beneficiary; or causes or permits any portion of the Investment Product to revert to or become property of the Employer.

## 6.2 Termination

(a) The Employer will have the right at any time to terminate the Plan by resolution of its governing board. In addition, the Employer must deliver written notice of discontinuance of the Investment Product to the Provider.

(b) Upon the full termination of the Plan, the Employer will direct the distribution of the assets to Participants and Beneficiaries in a manner which is consistent with and satisfies the provisions of Article IV as soon as administratively practicable after termination of the Plan.

## 6.3 Transfer of Entire Plan Assets to Another Eligible Plan Within the Same State

Subject to this Section, the Employer may direct the transfer of all assets of the Plan to another plan under Section 457(b) of the Code Section 457(e)(1)(A) of the Code and that is located in the same state, provided that the requirements of Section 457(b) of the Code and Section 1.457(b)-10(b)(3) of the Income Tax Regulations are satisfied.

# ARTICLE VII MISCELLANEOUS

## 7.1 Assets For Exclusive Benefit Of Participants And Beneficiaries

All amounts in the Participant Accounts under this Plan, all property and rights which may be purchased with such amounts and all income attributable to such amounts, property or rights will be held in trust (or a custodial account or annuity contract described in Section 401(f) of the Code) for the exclusive benefit of Participants and their Beneficiaries. All such amounts will not be subject to the claims of the Employer's general creditors.

## 7.2 Participant Rights

This Plan will not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant, Employee, or Independent Contractor. Nothing contained in this Plan will be deemed to give any Participant, Employee, or Independent Contractor the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant, Employee or Independent Contractor at any time regardless of the effect which such discharge will have upon him as a Participant in this Plan.

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### 7.3 Alienation

Subject to applicable state law (and Section 401(g) of the Code if the Investment Product consists of an annuity contract) and except as provided in Section 7.4, no benefit which will be payable to any person (including a Participant or his Beneficiary) will be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same will be void; and no such benefit will in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor will be subject to attachment or legal process for or against such person, and the same will not be recognized except to such extent as may be required by law.

### 7.4 Recognition of Approved Domestic Relations Orders

Notwithstanding Section 7.3, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order") and Section 414(p) of the Code, then the amount of the Participant Account shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.

### 7.5 IRS Levy

Notwithstanding Section 7.3, if a Participant or Beneficiary is entitled to a distribution in accordance with Section 5, the Administrator may pay from a Participant's or Beneficiary's Account the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

### 7.6 Distribution for Minor Beneficiary or Incompetent

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 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.

## 7.7 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.

## 7.8 Procedure When Distributee Cannot Be Located

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

## 7.9 Governing Law

The Plan will be construed, administered and enforced according to the Code and the laws of the state in which the Employer has its principal place of business.

## 7.10 Headings

Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

## 7.11 Gender

Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.

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This specimen plan is intended to assist you and your counsel in adopting a governmental 457 plan. Modifications may be required to meet your plan's particular objectives. (5/1/09)