

**ADOPTION AGREEMENT AND AMENDMENTS  
FOR ARAPAHOE COUNTY SMART START SAVINGS  
457(b) DEFERRED COMPENSATION PLAN  
(JANUARY 1, 2025)**

**ADOPTION AGREEMENT FOR  
ELIGIBLE GOVERNMENTAL 457 PLAN**

The undersigned Employer, by executing this Adoption Agreement, establishes an Eligible 457 Plan ("Plan"). The Employer, subject to the Employer's Adoption Agreement elections, adopts fully the Plan provisions. This Adoption Agreement, the basic plan document and any attached Appendices, amendments, or agreements permitted or referenced therein, constitute the Employer's entire plan document. All "Election" references within this Adoption Agreement or the basic plan document are Adoption Agreement Elections. All "Article" or "Section" references are basic plan document references. Numbers in parentheses which follow election numbers are basic plan document references. Where an Adoption Agreement election calls for the Employer to supply text, the Employer may lengthen any space or line, or create additional tiers. When Employer-supplied text uses terms substantially similar to existing printed options, all clarifications and caveats applicable to the printed options apply to the Employer-supplied text unless the context requires otherwise. The Employer makes the following elections granted under the corresponding provisions of the basic plan document.

1. **EMPLOYER (1.11).**

Name: Arapahoe County, Colorado

Address: 5334 South Prince Street  
Street

Littleton City Colorado State 80120 Zip

Telephone: (720) 874-5551

Taxpayer Identification Number (TIN): 84-6000740

2. **PLAN NAME.**

Name: Arapahoe County Smart Start Savings 457(b) Deferred Compensation Plan

3. **PLAN YEAR (1.25).** Plan Year means the 12 consecutive month period (except for a short Plan Year) ending every (Choose one of a. or b. and choose c. if applicable): [Note: Complete any applicable blanks under Election c. with a specific date, e.g., "June 30" OR "the last day of February" OR "the first Tuesday in January." In the case of a Short Plan Year or a Short Limitation Year, include the year, e.g., "May 1, 2013."] ]

- a.  December 31.
- b.  Plan Year: ending: \_\_\_\_\_.
- c.  Short Plan Year: commencing: \_\_\_\_\_ and ending: \_\_\_\_\_.

4. **EFFECTIVE DATE (1.08).** The Employer's adoption of the Plan is a (Choose one of a. or b. Complete c. if new plan OR complete c. and d. if an amendment and restatement. Choose e. if applicable):

- a.  New Plan.
- b.  Restated Plan. The Plan is a substitution and amendment of an existing 457 plan.

**Initial Effective Date of Plan**

c.  March 19, 1985 (enter month day, year; hereinafter called the "Effective Date" unless 4d is entered below)

**Restatement Effective Date (If this is an amendment and restatement, enter effective date of the restatement.)**

d.  January 1, 2025 (enter month day, year)

**Special Effective Dates: (optional)**

e.  Describe: \_\_\_\_\_.

5. **CONTRIBUTION TYPES.** (If this is a frozen Plan (i.e., all contributions have ceased), choose a. only):

**Frozen Plan**

- a.  Contributions cease. All Contributions have ceased or will cease (Plan is frozen).
1. **Effective date of freeze:** \_\_\_\_\_ [Note: Effective date is optional unless this is the amendment or restatement to freeze the Plan.]

**Contributions.** The Employer and/or Participants, in accordance with the Plan terms, make the following Contribution Types to the Plan (Choose one or more of b. through d. if applicable):

- b.  **Pre-Tax Elective Deferrals.** The dollar or percentage amount by which each Participant has elected to reduce his/her Compensation, as provided in the Participant's Salary Reduction Agreement (Choose one or more as applicable.):

And will Matching Contributions be made with respect to Elective Deferrals?

1.  Yes. See Question 16.
2.  No.

And will Roth Elective Deferrals be made?

3.  Yes. [Note: The Employer may not limit Deferrals to Roth Deferrals only.]
4.  No.

- c.  **Nonelective Contributions.** See Question 17.

- d.  **Rollover Contributions.** See Question 30.

6. **EXCLUDED EMPLOYEES (1.10).** The following Employees are Excluded Employees and are not eligible to participate in the Plan (Choose one of a. or b.):

- a.  **No exclusions.** All Employees are eligible to participate.
- b.  **Exclusions.** The following Employees are Excluded Employees (Choose one or more of 1. through 4.):
  1.  **Part-time Employees.** The Plan defines part-time Employees as Employees who normally work less than \_\_\_\_\_ hours per week.
  2.  **Hourly-paid Employees.**
  3.  **Leased Employees.** The Plan excludes Leased Employees.
  4.  **Specify:** Temporary Employees. As to Nonelective Contributions, exclude Employees who are not classified as a Commissioner's Office Director (CAO), Community Resources Director, Facilities and Fleet Management Director, Finance Director (CFO), Human Resources Director (CHRO), Human Service Director, Information Technology Director (CIO), Open Spaces Director, Public Health Director, Public Works and Development Director.

7. **INDEPENDENT CONTRACTOR (1.16).** The Plan (Choose one of a., b. or c.):

- a.  **Participate.** Permits Independent Contractors to participate in the Plan.
- b.  **Not Participate.** Does not permit Independent Contractors to participate in the Plan.
- c.  **Specified Independent Contractors.** Permits the following specified Independent Contractors to participate:  
\_\_\_\_\_

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

8. **COMPENSATION (1.05).** Subject to the following elections, Compensation for purposes of allocation of Deferral Contributions means:

**Base Definition (Choose one of a., b., c. or d.):**

- a.  Wages, tips and other compensation on Form W-2.
- b.  Code §3401(a) wages (wages for withholding purposes).
- c.  415 safe harbor compensation.
- d.  Alternative (general) 415 Compensation.

[Note: The Plan provides that the base definition of Compensation includes amounts that are not included in income due to Code §§401(k), 125, 132(f)(4), 403(b), SEP, 414(h)(2), & 457. Compensation for an Independent Contractor means the amounts the Employer pays to the Independent Contractor for services, except as the Employer otherwise specifies below.]

**Modifications to Compensation definition.** The Employer elects to modify the Compensation definition as follows (Choose one of e. or f.):

- e.  **No modifications.** The Plan makes no modifications to the definition.
- f.  **Modifications (Choose one or more of 1. through 5.):**
1.  **Fringe benefits.** The Plan excludes all reimbursements or other expense allowances, fringe benefits (cash and noncash), moving expenses, deferred compensation and welfare benefits.
  2.  **Elective Contributions. [1.05(E)]** The Plan excludes a Participant's Elective Contributions.
  3.  **Bonuses.** The Plan excludes bonuses.
  4.  **Overtime.** The Plan excludes overtime.
  5.  **Specify:** \_\_\_\_\_

**Compensation taken into account.** For the Plan Year in which an Employee first becomes a Participant, the Plan Administrator will determine the allocation of matching and nonelective contributions by taking into account (Choose one of g. or h.):

- g.  **Plan Year.** The Employee's Compensation for the entire Plan Year. (N/A if no matching or nonelective contributions)
- h.  **Compensation while a Participant.** The Employee's Compensation only for the portion of the Plan Year in which the Employee actually is a Participant. (N/A if no matching or nonelective contributions)
9. **POST-SEVERANCE COMPENSATION (1.05(F)).** Compensation includes the following types of Post-Severance Compensation paid within any applicable time period as may be required (Choose one of a. or b.):
- a.  **None.** The Plan does not take into account Post-Severance Compensation as to any Contribution Type except as required under the basic plan document.
- b.  **Adjustments.** The following Compensation adjustments apply (Choose one or more):
1.  **Regular Pay.** Post-Severance Compensation will include Regular Pay and it will apply to all Contribution Types.
  2.  **Leave-Cashouts.** Post-Severance Compensation will include Leave Cashouts and it will apply to all Contribution Types.
  3.  **Nonqualified Deferred Compensation.** Post-Severance Compensation will include Deferred Compensation and it will apply to all Contribution Types.
  4.  **Salary Continuation for Disabled Participants.** Post-Severance Compensation will include Salary Continuation for Disabled Participants and it will apply to all Contribution Types.
  5.  **Differential Wage Payments.** Post-Severance Compensation will include Differential Wage Payments (military continuation payments) and it will apply to all Contribution Types.
  6.  **Describe alternative Post-Severance Compensation definition, limit by Contribution Type, or limit by Participant group:** \_\_\_\_\_
10. **NORMAL RETIREMENT AGE (1.20).** A Participant attains Normal Retirement Age under the Plan (Choose one of a. or b.):
- a.  **Plan designation.** [Plan Section 3.05(B)] When the Participant attains age \_\_\_\_\_. [Note: The age may not exceed age 70 1/2. The age may not be less than age 65, or, if earlier, the age at which a Participant may retire and receive benefits under the Employer's pension plan, if any.]
- b.  **Participant designation.** [Plan Section 3.05(B) and (B)(1)] When the Participant attains the age the Participant designates, which may not be earlier than the age the Participant would be eligible to receive a full and unreduced pension benefit under the Employer's pension plan and may not be later than age 70 1/2. If the Participant is not eligible to receive benefits under the Employer's pension plan, the Participant may designate a Normal Retirement Age that is not earlier than age 65 nor later than age 70 1/2. [Note: The age may not exceed age 70 1/2.]

**Special Provisions for Police or Fire Department Employees (Choose c. and/or d. as applicable):**

- c.  **Police department employees.** [Plan Section 3.05(B)(3)] (Choose 1. or 2.):
1.  **Plan designation.** [Plan Section 3.05(B)] When the Participant attains age \_\_\_\_\_. [Note: The age may not exceed age 70 1/2 and may not be less than age 40.]
  2.  **Participant designation.** [Plan Section 3.05(B) and (B)(1)] When the Participant attains the age the Participant designates, which may not be earlier than the age the Participant would be eligible to receive a full and unreduced pension benefit under the Employer's pension plan (no earlier than age 40) and may not be later than age 70 1/2. If the Participant is not eligible to receive benefits under the Employer's pension plan, the Participant may designate a Normal Retirement Age that is not earlier than age 55 nor later than age 70 1/2. [Note: The age may not exceed age 70 1/2.]



- d.  **Fire department employees.** [Plan Section 3.05(B)(3)] (Choose 1. or 2.):
1.  **Plan designation.** [Plan Section 3.05(B)] When the Participant attains age \_\_\_\_\_. [Note: The age may not exceed age 70 1/2 and may not be less than age 40.]
  2.  **Participant designation.** [Plan Section 3.05(B) and (B)(1)] When the Participant attains the age the Participant designates, which may not be earlier than the age the Participant would be eligible to receive a full and unreduced pension benefit under the Employer's pension plan (no earlier than age 40) and may not be later than age 70 1/2. If the Participant is not eligible to receive benefits under the Employer's pension plan, the Participant may designate a Normal Retirement Age that is not earlier than age 55 nor later than age 70 1/2. [Note: The age may not exceed age 70 1/2.]
11. **ELIGIBILITY CONDITIONS (2.01).** (Choose one of a. or b.):
- a.  **No eligibility conditions.** The Employee is eligible to participate in the Plan as of his/her first day of employment with the employer.
  - b.  **Eligibility conditions.** To become a Participant in the Plan, an Eligible Employee must satisfy the following eligibility conditions (Choose one or more of 1., 2. or 3.):
    1.  **Age.** Attainment of age \_\_\_\_\_.
    2.  **Service.** Service requirement (Choose one of a. or b.):
      - a.  **Year of Service.** One year of Continuous Service.
      - b.  **Months of Service.** \_\_\_\_\_ month(s) of Continuous Service.
    3.  **Specify:** \_\_\_\_\_
12. **PLAN ENTRY DATE (1.24).** "Plan Entry Date" means the Effective Date and (Choose one of a. through d.):
- a.  **Monthly.** The first day of the month coinciding with or next following the Employee's satisfaction of the Plan's eligibility conditions, if any.
  - b.  **Annual.** The first day of the Plan Year coinciding with or next following the Employee's satisfaction of the Plan's eligibility conditions, if any.
  - c.  **Date of hire.** The Employee's employment commencement date with the Employer.
  - d.  **Specify:** \_\_\_\_\_
13. **SALARY REDUCTION CONTRIBUTIONS (1.30).** A Participant's Salary Reduction Contributions under Election 5b. are subject to the following limitation(s) in addition to those imposed by the Code (Choose one of a. or b.):
- a.  **No limitations.**
  - b.  **Limitations.** (Choose one or more of 1., 2. or 3.):
    1.  **Maximum deferral amount.** A Participant's Salary Reductions may not exceed: 100% (specify dollar amount or percentage of Compensation).
    2.  **Minimum deferral amount.** A Participant's Salary Reductions may not be less than: 1% or \$10 (specify dollar amount or percentage of Compensation).
    3.  **Specify:** \_\_\_\_\_

[Note: Any limitation the Employer elects in b.1. through b.3. will apply on a payroll basis unless the Employer otherwise specifies in b.3.]

**Special NRA Catch-Up Contributions (3.05).** The Plan (Choose one of c. or d.):

- c.  **Permits.** Participants may make NRA catch-up contributions.  
**AND, Special NRA Catch-Up Contributions (Choose one of 1. or 2.): (N/A if no matching contributions)**
  1.  will be taken into account in applying any matching contribution under the Plan.
  2.  will not be taken into account in applying any matching contribution under the Plan.
- d.  **Does not permit.** Participants may not make NRA catch-up contributions.

**Age 50 Catch-Up Contributions (3.06).** The Plan (Choose one of e. or f.):

- e.  **Permits.** Participants may make age 50 catch-up contributions.  
**AND, Age 50 Catch-Up Contributions (Choose one of 1. or 2.): (N/A if no matching contributions)**
  1.  will be taken into account in applying any matching contribution under the Plan.

2.  will not be taken into account in applying any matching contribution under the Plan.
- f.  Does not permit. Participants may not make age 50 catch-up contributions.
14. **SICK, VACATION AND BACK PAY (3.02(A)).** The Plan (Choose one of a. or b.):
- a.  Permits. Participants may make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay.
- b.  Does Not Permit. Participants may not make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay.
15. **AUTOMATIC ENROLLMENT (3.02(B)).** Does the Plan provide for automatic enrollment (Choose one of the following) [Note: if Eligible Automatic Contribution Arrangement (EACA), select 15c and complete Questions 31 & 32]:
- a.  Does not apply. Does not apply the Plan's automatic enrollment provisions.
- b.  Applies. Applies the Plan's automatic enrollment provisions. The Employer as a Pre-Tax Elective Deferral will withhold \_\_\_\_\_% from each Participant's Compensation unless the Participant elects a different percentage (including zero) under his/her Salary Reduction Agreement. The automatic election will apply to (Choose one of 1. through 3.):
1.  All Participants. All Participants who as of \_\_\_\_\_ are not making Pre-Tax Elective Deferrals at least equal to the automatic amount.
  2.  New Participants. Each Employee whose Plan Entry Date is on or following: \_\_\_\_\_.
  3.  Describe Application of Automatic Deferrals: \_\_\_\_\_.
- c.  EACA. The Plan will provide an Eligible Automatic Contribution Arrangement (EACA). Complete Questions 31 & 32.
16. **MATCHING CONTRIBUTIONS (3.03).** The Employer Matching Contributions under Election 5.b.1. are made as follows (Choose one or more of a. through d.):
- a.  Fixed formula. An amount equal to \_\_\_\_\_ of each Participant's Salary Reduction Contributions.
- b.  Discretionary formula. An amount (or additional amount) equal to a matching percentage the Employer from time to time may deem advisable of each Participant's Salary Reduction Contributions.
- c.  Tiered formula. The Employer will make matching contributions equal to a uniform percentage of each tier of each Participant's Salary Reduction Contributions, determined as follows:

**NOTE:** Fill in only percentages or dollar amounts, but not both. If percentages are used, each tier represents the amount of the Participant's applicable contributions that equals the specified percentage of the Participant's Compensation (add additional tiers if necessary):

| Tiers of Contributions<br>(indicate \$ or %) | Matching Percentage |
|--|---------------------|
| First _____                                  | _____ %             |
| Next _____                                   | _____ %             |
| Next _____                                   | _____ %             |
| Next _____                                   | _____ %             |

- d.  Specify: \_\_\_\_\_

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

- e.  Plan Year.
- f.  Plan Year quarter.
- g.  Payroll period.
- h.  Specify: \_\_\_\_\_

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

- i.  All Salary Reduction Contributions. The Plan Administrator will take into account all Salary Reduction Contributions.
- j.  Specific limitation. The Plan Administrator will disregard Salary Reduction Contributions exceeding \_\_\_\_\_% of the

Participant's Compensation.

- k.  **Discretionary.** The Plan Administrator will take into account the Salary Reduction Contributions as a percentage of the Participant's Compensation as the Employer determines.
- l.  **Specify:** \_\_\_\_\_

**Allocation Conditions.** To receive an allocation of Matching Contributions, a Participant must satisfy the following allocation condition(s) (Choose one of m. or n.):

- m.  **No allocation conditions.**
- n.  **Conditions.** The following allocation conditions apply to Matching Contributions (Choose one or more of 1. through 4.):
  - 1.  **Service condition.** The Participant must complete the following number of months of Continuous Service during the Plan Year: \_\_\_\_\_.
  - 2.  **Employment condition.** The Participant must be employed by the Employer on the last day of the Plan Year.
  - 3.  **Limited Severance Exception.** Any condition specified in 1. or 2. does not apply if the Participant incurs a Severance from Employment during the Plan Year on account of death, disability or attainment of Normal Retirement Age in the current Plan Year or in a prior Plan Year.
  - 4.  **Specify:** \_\_\_\_\_

17. **NONELECTIVE CONTRIBUTIONS (1.19).** The Nonelective Contributions under Election 5.c. are made as follows: (Choose one):

- a.  **Discretionary - Pro-Rata.** An amount the Employer in its sole discretion may determine.
- b.  **Fixed - Pro Rata.** \_\_\_\_\_% of Compensation.
- c.  **Other.** A Nonelective Contribution may be made as follows:  
Fixed - Pro Rata, 4.5% of Compensation on a bi-weekly basis.

**Allocation Conditions. (3.08).** To receive an allocation of Nonelective Contributions, a Participant must satisfy the following allocation condition(s) (Choose one of d. or e.):

- d.  **No allocation conditions.**
- e.  **Conditions.** The following allocation conditions apply to Nonelective Contributions (Choose one or more of 1. through 4.):
  - 1.  **Service condition.** The Participant must complete the following number of months of Continuous Service during the Plan Year: \_\_\_\_\_.
  - 2.  **Employment condition.** The Participant must be employed by the Employer on the last day of the Plan Year.
  - 3.  **Limited Severance Exception.** Any condition specified in 1. or 2. does not apply if the Participant incurs a Severance from Employment during the Plan Year on account of death, disability or attainment of Normal Retirement Age in the current Plan Year or in a prior Plan Year.
  - 4.  **Specify:** \_\_\_\_\_

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

**Timing.** The Plan, in the absence of a permissible Participant election to commence payment later, will pay the Participant's Account (Choose one of a. through e.):

- a.  **Specified Date.** \_\_\_\_\_ days after the Participant's Severance from Employment.
- b.  **Immediate.** As soon as administratively practicable following the Participant's Severance from Employment.
- c.  **Designated Plan Year.** As soon as administratively practicable in the \_\_\_\_\_ Plan Year beginning after the Participant's Severance from Employment.
- d.  **Normal Retirement Age.** As soon as administratively practicable after the close of the Plan Year in which the Participant attains Normal Retirement Age.
- e.  **Specify:** As soon as administratively practicable following the Participant's formal request for the distribution. The Participant may request the distribution at any time following Severance from Employment

**Method.** The Plan, in the absence of a permissible Participant election, will distribute the Participant's Account under one of the following method(s) of distribution (Choose one or more of f. through j. as applicable):

- f.  **Lump sum.** A single payment.
- g.  **Installments.** Multiple payments made as follows: monthly, quarterly, semi-annually, annually



- h.  Installments for required minimum distributions only. Annual payments, as necessary under Plan Section 4.03.
- i.  Annuity distribution option(s): \_\_\_\_\_
- j.  Specify: Partial and full distributions

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

- k.  **Permits.** Permits a Participant, with Plan Administrator approval of the election, to elect to postpone distribution beyond the time the Employer has elected in a. through e. and also to elect the method of distribution (including a method not described in f. through j. above).
- l.  **Does not permit.** Does not permit a Participant to elect the timing and method of Account distribution.
- m.  **Specify:** The Participant has the right to elect the timing of the distribution and may elect the method from the elections marked in f. through j.

**Mandatory Distributions.** Notwithstanding any other distribution election, following Severance from Employment (Choose n. or o.):

- n.  **No Mandatory Distributions.** The Plan will not make a Mandatory Distribution.
- o.  **Mandatory Distribution.** If the Participant's Vested Account is not in excess of \$5,000 (unless a different amount selected below) as of the date of distribution, the Plan will make a Mandatory Distribution following Severance from Employment.
1.  **Mandatory Distribution.** If the Participant's Vested Account is not in excess of \$ 1,000 as of the date of distribution, the Plan will make a Mandatory Distribution following Severance from Employment.

**Rollovers in determination of \$5,000 threshold.** Unless otherwise elected below, amounts attributable to rollover contributions (if any) will be included in determining the \$5,000 threshold for timing of distributions, form of distributions or consent rules.

- p.  Exclude rollovers (rollover contributions will be excluded in determining the \$5,000 threshold)

**NOTE:** Regardless of the above election, if the Participant consent threshold is \$1,000 or less, then the Administrator must include amounts attributable to rollovers for such purpose. In such case, an election to exclude rollovers above will apply for purposes of the timing and form of distributions.

19. **BENEFICIARY DISTRIBUTION ELECTIONS.** Distributions following a Participant's death will be made as follows (Choose one of a. through d.):

- a.  **Immediate.** As soon as practical following the Participant's death.
- b.  **Next Calendar Year.** At such time as the Beneficiary may elect, but in any event on or before the last day of the calendar year which next follows the calendar year of the Participant's death. (N/A if participant is restricted)
- c.  **As Beneficiary elects.** At such time as the Beneficiary may elect, consistent with Section 4.03. (N/A if participant is restricted)
- d.  **Describe:** \_\_\_\_\_

[Note: The Employer under Election 19d. may describe an alternative distribution timing or afford the Beneficiary an election which is narrower than that permitted under Election 19c., or include special provisions related to certain beneficiaries, (e.g., a surviving spouse). However, any election under Election 19d. must require distribution to commence no later than the Section 4.03 required date.]

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

- a.  **None.** A Participant may not receive a distribution prior to Severance from Employment.
- b.  **Distributions.** Prior to Severance from Employment are permitted as follows (Choose one or more of 1. through 4.):
1.  **Unforeseeable emergency.** A Participant may elect a distribution from his/her Account in accordance with Plan Section 4.05(A) (for the Participant, spouse, dependents or beneficiaries)
2.  **De minimis exception.** [Plan Section 4.05(B)] If the Participant: (i) has an Account that does not exceed \$5,000; (ii) has not made or received an allocation of any Deferral Contributions under the Plan during the two-year period ending on the date of distribution; and (iii) has not received a prior Plan distribution under this de minimis exception, then (Choose one of a., b. or c.):
- a.  **Participant election.** The Participant may elect to receive all or any portion of his/her Account.
- b.  **Mandatory distribution.** The Plan Administrator will distribute the Participant's entire Account.
- c.  **Hybrid.** The Plan Administrator will distribute a Participant's Account that does not exceed \$ \_\_\_\_\_ and the Participant may elect to receive all or any portion of his/her Account that exceeds \$ \_\_\_\_\_ but that does not exceed \$5,000.
3.  **Age 70 1/2.** A Participant who attains age 70 1/2 prior to Severance from Employment may elect distribution of any or all



of his/her Account.

4.  Specify: \_\_\_\_\_

[Note: An Employer need not permit any in-service distributions. Any election must comply with the distribution restrictions of Code Section 457(d).]

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

- a.  **Apply.**
- b.  **Do not apply.**
- c.  **Specify:** \_\_\_\_\_

22. **ALLOCATION OF EARNINGS (5.07(B)).** The Plan allocates Earnings using the following method (Choose one or more of a. through f.):

- a.  **Daily.** See Section 5.07(B)(4)(a).
- b.  **Balance forward.** See Section 5.07(B)(4)(b).
- c.  **Balance forward with adjustment.** See Section 5.07(B)(4)(c). Allocate pursuant to the balance forward method, except treat as part of the relevant Account at the beginning of the Valuation Period \_\_\_\_\_% of the contributions made during the following Valuation Period: \_\_\_\_\_
- d.  **Weighted average.** See Section 5.07(B)(4)(d). If not a monthly weighting period, the weighting period is \_\_\_\_\_
- e.  **Directed Account method.** See Section 5.07(B)(4)(e).
- f.  **Describe Earnings allocation method:** \_\_\_\_\_

[Note: The Employer under Election 22f. may describe Earnings allocation methods from the elections available under Election 22 and/or a combination thereof as to any: (i) Participant group (e.g., Daily applies to Division A Employees OR to Employees hired after "x" date. Balance forward applies to Division B Employees OR to Employees hired on/before "x" date.); (ii) Contribution Type (e.g., Daily applies as to Discretionary Nonelective Contribution Accounts. Participant-Directed Account applies to Fixed Nonelective Contribution Accounts); (iii) investment type, investment vendor or Account type (e.g., Balance forward applies to investments placed with vendor A and Participant-Directed Account applies to investments placed with vendor B OR Daily applies to Participant-Directed Accounts and balance forward applies to pooled Accounts).]

23. **HEART ACT PROVISIONS (1.31(C)(3)/3.13).** The Employer elects to (Choose one of a. or b. and c. or d.):

**Continued Benefit Accruals.**

- a.  **Not apply the benefit accrual provisions of Section 3.13.**
- b.  **Apply the benefit accrual provisions of Section 3.13.**

**Distributions for deemed severance of employment (1.31(C)(3))**

- c.  **The Plan does NOT permit distributions for deemed severance of employment.**
- d.  **The Plan permits distributions for deemed severance of employment.**

24. **VESTING/SUBSTANTIAL RISK OF FORFEITURE (5.11).** A Participant's Deferral Contributions are [Note: If a Participant incurs a Severance from Employment before the specified events or conditions, the Plan will forfeit the Participant's non-vested Account. Caution: if a Deferral is subject to vesting schedule or other substantial risk of forfeiture, it does not count as a deferral for purposes of the annual deferral limit until the year it is fully vested.] (Choose all that apply of a. through d.):

- a.  **100% Vested/No Risk of Forfeiture.** Immediately Vested without regard to additional Service and no Substantial Risk of Forfeiture. The following contributions are 100% Vested:
1.  **All Contributions.** (skip to 25.)
  2.  **Only the following contributions.** (select all that apply):
    - a.  **Salary Reduction Contributions.**
    - b.  **Nonelective Contributions.**
    - c.  **Matching Contributions.**
- b.  **Forfeiture under Vesting Schedule.** Vested according to the following:

**Contributions affected.** The following contributions are subject to the vesting schedule (Choose one or more of 1., 2. or 3.):

1.  **Salary Reduction Contributions.**

- 2.  Nonelective Contributions.
- 3.  Matching Contributions.
- 4.  Vesting Schedule.

| Years of Service | Vested Percentage |
|------------------|-------------------|
| _____            | _____ %           |
| _____            | _____ %           |
| _____            | _____ %           |
| _____            | _____ %           |
| _____            | _____ %           |

For vesting purposes, a "Year of Service" means:

5. \_\_\_\_\_

[Note: It is extremely rare to apply a vesting schedule to Salary Reduction Contributions.]

- c.  Substantial Risk of Forfeiture. Vested only when no longer subject to the following Substantial Risk of Forfeiture as follows:

Contributions affected. The following contributions are subject to the substantial risk of forfeiture under c. (Choose one or more of 1., 2. or 3.):

- 1.  Salary Reduction Contributions.
- 2.  Nonelective Contributions.
- 3.  Matching Contributions.

Risk Provisions: Vested only when no longer subject to the following Substantial Risk of Forfeiture as follows (Choose one of 4. or 5.):

- 4.  The Participant must remain employed by the Employer until \_\_\_\_\_, unless earlier Severance from Employment occurs on account of death or disability, as the Plan Administrator shall establish.
- 5.  Specify: \_\_\_\_\_

Additional Provisions (Choose d. if applicable)

- d.  Specify: \_\_\_\_\_

**FORFEITURE ALLOCATION.** [Plan Sections 5.11(A) and 5.14] The Plan Administrator will allocate any Plan forfeitures as selected below. The Employer has the option to use forfeitures to pay plan expenses first and then allocate the remaining forfeitures in accordance with the selections below: (Choose one of the following):

- e.  Additional Contributions. As the following contribution type (Choose one of 1. or 2.):
  - 1.  Nonelective. As an additional Nonelective Contribution.
  - 2.  Matching. As an additional Matching Contribution.
- f.  Reduce Fixed Contributions. To reduce the following fixed contribution (Choose one of 1. or 2.):
  - 1.  Nonelective. To reduce the Employer's fixed Nonelective Contribution.
  - 2.  Matching. To reduce the Employer's fixed Matching Contribution.
- g.  Specify: \_\_\_\_\_

25. **TRUST PROVISIONS.** The following provisions apply to Article VIII of the Plan (Choose as applicable; leave blank if not applicable):

- a.  Modifications. The Employer modifies the Article VIII Trust provisions as follows: \_\_\_\_\_. The remaining Article VIII provisions apply.
- b.  Substitution. The Employer replaces the Trust with the Trust Agreement attached to the Plan.

26. **CUSTODIAL ACCOUNT/ANNUITY CONTRACT (8.16).** The Employer will hold all or part of the Deferred Compensation in one or more custodial accounts or annuity contracts which satisfy the requirements of Code §457(g) (Choose a. or b., c. if applicable):

- a.  Custodial account(s).
- b.  Annuity contract(s).
- c.  Specify: \_\_\_\_\_

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

27. **VALUATION.** In addition to the last day of the Plan Year, the Trustee (or Plan Administrator as applicable) must value the Trust Fund (or Accounts) on the following Valuation Date(s) (Choose one of a. or b.):

- a.  No additional Valuation Dates.
- b.  Additional Valuation Dates. (Choose one or more of 1., 2. or 3.):
  - 1.  Daily Valuation Dates. Each business day of the Plan Year on which Plan assets for which there is an established market are valued and the Trustee or Employer is conducting business.
  - 2.  Last day of a specified period. The last day of each \_\_\_\_\_ of the Plan Year.
  - 3.  Specified Valuation Dates: \_\_\_\_\_

[Note: The Employer under Election 26b.3. may describe Valuation Dates from the elections available under Election 26b. and/or a combination thereof as to any: (i) Participant group (e.g., No additional Valuation Dates apply to Division A Employees OR to Employees hired after "x" date. Daily Valuation Dates apply to Division B Employees OR to Employees hired on/before "x" date.); (ii) Contribution Type (e.g., No additional Valuation Dates apply as to Discretionary Nonelective Contribution Accounts. The last day of each Plan Year quarter applies to Fixed Nonelective Contribution Accounts); (iii) investment type, investment vendor or Account type (e.g., No additional Valuation Dates apply to investments placed with vendor A and Daily Valuation Dates apply to investments placed with vendor B OR Daily Valuation Dates apply to Participant-Directed Accounts and no additional Valuation Dates apply to pooled Accounts).]

28. **TRUSTEE** (Select all that apply; leave blank if not applicable.):

- a.  Individual Trustee(s) who serve as Trustee(s) over assets not subject to control by a corporate Trustee. (Add additional Trustees as necessary.)

| Name(s) | Title(s) |
|---------|----------|
| _____   | _____    |
| _____   | _____    |
| _____   | _____    |

**Address and Telephone number** (Choose one of 1. or 2.):

- 1.  Use Employer address and telephone number.
- 2.  Use address and telephone number below:

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

\_\_\_\_\_

City State Zip

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

- b.  Corporate Trustee

Name: Empower Trust Company, LLC

Address: 8515 East Orchard Road  
Street

Greenwood Village Colorado 80111  
City State Zip

Telephone: (877) 694-4015

AND, the Corporate Trustee shall serve as:

c.  a Directed (nondiscretionary) Trustee over all Plan assets except for the following:

\_\_\_\_\_

d.  a Discretionary Trustee over all Plan assets except for the following:

\_\_\_\_\_

29. **PLAN LOANS (5.02(A)).** The Plan permits or does not permit Participant Loans (*Choose one of a. or b.*):

a.  Does not permit.

b.  Permitted pursuant to the Loan Policy.

30. **ROLLOVER CONTRIBUTIONS (3.09).** The Rollover Contributions under Election 5.d. are made as follows:

**Who may roll over** (*Choose one of a. or b.*):

a.  Participants only.

b.  Eligible Employees or Participants.

**Sources/Types.** The Plan will accept a Rollover Contribution (*Choose one of c. or d.*):

c.  All. From any Eligible Retirement Plan and as to all Contribution Types eligible to be rolled into this Plan.

d.  Limited. Only from the following types of Eligible Retirement Plans and/or as to the following Contribution Types:

\_\_\_\_\_

**Distribution of Rollover Contributions** (*Choose one of e., f. or g.*):

e.  Distribution without restrictions. May elect distribution of his/her Rollover Contributions Account in accordance with Plan Section 4.05(C) at any time.

f.  No distribution. May not elect to receive distribution of his/her Rollover Contributions Account until the Plan has a distributable event under Plan Section 4.01.

g.  Specify: \_\_\_\_\_

31. **EACA Automatic Deferral Provisions (3.14).**

**Participants subject to the Automatic Deferral Provisions.** The Automatic Deferral Provisions apply to Employees who become Participants after the Effective Date of the EACA (except as provided in d. below). Employees who became Participants prior to such Effective Date are subject to the following (a. – d. are optional):

a.  All Participants. All Participants, regardless of any prior Salary Reduction Agreement, unless and until a Participant makes an Affirmative Election after the Effective Date of the EACA.

b.  Election of at least Automatic Deferral amount. All Participants, except those who, on the Effective Date of the EACA, are deferring an amount which is at least equal to the Automatic Deferral Percentage.

c.  No existing Salary Reduction Agreement. All Participants, except those who have in effect a Salary Reduction Agreement on the effective date of the EACA regardless of the Salary Reduction Contribution amount under the Agreement.

d.  Describe: \_\_\_\_\_

**Automatic Deferral Percentage.** Unless a Participant makes an Affirmative Election, the Employer will withhold the following Automatic Deferral Percentage (select e. or f.):

e.  Constant. The Employer will withhold \_\_\_\_\_ % of Compensation each payroll period.

**Escalation of deferral percentage** (select one or leave blank if not applicable)

1.  Scheduled increases. This initial percentage will increase by \_\_\_\_\_ % of Compensation per year up to a maximum of \_\_\_\_\_ of Compensation.

2.  Other (described Automatic Deferral Percentage): \_\_\_\_\_

**Automatic Deferral Optional Elections**

f.  Optional elections (select all that apply or leave blank if not applicable)

**Suspended Salary Reduction Contributions.** If a Participant's Salary Reduction Contributions are suspended pursuant to a provision of the Plan (e.g., distribution due to military leave covered by the HEART Act), then a Participant's Affirmative Election will expire on the date the period of suspension begins unless otherwise elected below.



**Eligible 457 Plan**

1.  A Participant's Affirmative Election will resume after the suspension period.

**Special Effective Date.** Provisions will be effective as of the earlier of the Effective Date of the EACA provisions unless otherwise specified below.

2.  Special Effective Date: \_\_\_\_\_

**32. In-Plan Roth Rollover Contributions.**

a.  Yes, allowed.

**Effective Date** (enter date)

1.  In-Plan Roth Rollover Effective Date: October 1, 2022

**33. In-Plan Roth Rollover Transfers.**

a.  Yes, allowed.

**Effective Date** (enter date)

1.  In-Plan Roth Rollover Transfers Effective Date: October 1, 2022

**Eligible 457 Plan**

This Plan is executed on the date(s) specified below:

**Use of Adoption Agreement.** Failure to complete properly the elections in this Adoption Agreement may result in disqualification of the Employer's Plan. The Employer only may use this Adoption Agreement only in conjunction with the corresponding basic plan document.  
**Separate Trust Agreement.** An executed copy of the trust agreement must be attached to this Plan. The responsibilities, rights and powers of the Trustee shall be those specified in the trust agreement. The signature of the Trustee appears on the separate trust agreement.

EMPLOYER: Arapahoe County, Colorado

By: *Patricia Hernandez*

11/26/2024  
DATE SIGNED

PARTICIPATION AGREEMENT

The Employer, by executing this Participation Agreement, elects to become a Participating Employer in the Plan, to continue participation in the Plan or to cease status as a Participating Employer. The Participating Employer accepts, and agrees to be bound by, all of the elections granted under the provisions of the Plan as made by the Signatory Employer to the Execution Page of the Adoption Agreement, except as otherwise provided in this Participation Agreement. [Note: Each Participating Employer must execute a separate Participation Agreement.]

A. PARTICIPATING EMPLOYER INFORMATION

- a. Name: Office of the District Attorney, 18th Judicial District
b. Address: 6450 South Revere Parkway, Centennial, Colorado 80111
c. Telephone: (720)874-8500
d. Taxpayer Identification Number (TIN): 84-0616570

B. EFFECTIVE DATE(S)

- e. [X] NEW PLAN. The Participating Employer's adoption of this Plan constitutes the adoption of a new plan by the Participating Employer, effective as of: January 1, 2025.
f. [ ] RESTATEMENT. The Participating Employer's adoption of this Plan constitutes the adoption of an amendment and restatement of the Plan effective as of:
g. [ ] RESTATEMENT AND MERGER. The Participating Employer's adoption of this Plan constitutes the amendment and restatement of the Participating Employer's plan known as: which plan is being merged into this Plan effective as of:
h. [ ] CESSATION. The Participating Employer is ceasing its participation in the Plan effective as of:
i. [ ] SPECIAL EFFECTIVE DATES:

C. ALLOCATION OF CONTRIBUTIONS AND FORFEITURES

- Contributions and Forfeitures will be allocated together for Participating Employers unless a selection is made below (select j. or all that apply at k. - l.)
j. [X] N/A.
k. [ ] Contributions made by a Participating Employer will only be allocated to Participants employed by such Participating Employer.
l. [ ] Forfeitures of amounts attributable to a Participating Employer will only be used for the benefit of the Participants of such Participating Employer.

PARTICIPATING EMPLOYER: Office of the District Attorney, 18th Judicial District

By: [Signature] DATE SIGNED 11/25/2024

SIGNATORY EMPLOYER: Arapahoe County, Colorado

By: [Signature] DATE SIGNED 11/26/2024

**Addendum to Eligible Governmental 457 Plan**

Notwithstanding Section 3.09(E) of the Basic Plan document, the following elections will apply:

**Election 32 In-Plan Roth Rollover Elections**

Effective April 2, 2024, the plan will allow In-Plan Roth Rollovers as elected below:

In-Plan Roth Rollovers will exclude any outstanding participant loan balances or Self-Directed Brokerage assets, if applicable.

Distributable Events: In Plan Roth Rollover Election applies:

For In-Plan Roth Rollovers, the plan's existing in-service distribution provisions apply, including any restrictions on timing, vesting, etc. All amounts that are eligible for distribution as elected in the Adoption Agreement are eligible for In-Plan Roth Rollover.

**OR**

For In-Plan Roth Rollovers, only amounts that are eligible for distribution as elected below are eligible for In-Plan Roth Rollover. Note that any existing restrictions on timing, vesting, etc will apply:

Describe: \_\_\_\_\_

Contribution sources: A participant or beneficiary may elect to make an In-Plan Roth Rollover from the following sources:

All available sources under the Plan

**OR**

Pre-tax Elective Deferrals

Matching Contributions

Nonelective Contributions

Rollover Contributions

Describe: \_\_\_\_\_

Limits applicable to In-Plan Roth Rollovers: No special limits apply with respect to In-Plan Roth Rollovers unless designated below:

Roth rollovers may be only made from contribution sources that are fully vested (i.e. 100% vested). *If not elected, only the vested amount (if applicable) will be converted to Roth.*

A Participant may not make an In-Plan Roth Rollover of less than \$\_\_\_\_\_

Maximum number of In-Plan Roth Rollovers \_\_\_\_\_ per specified time period \_\_\_\_\_ (Rolling period, Plan Year, Quarterly)



**Election 33 In-Plan Roth Transfers**

Effective April 2, 2024, the plan will allow In-Plan Roth Transfers as elected below:

In-Plan Roth Transfers are reserved for converting non-Roth money that is not otherwise eligible for an In-Plan Roth Rollover. The participant does not need to meet a distributable event to convert non-Roth money to Roth. In-Plan Roth Transfers will exclude any outstanding participant loan balances or Self-Directed Brokerage assets, if applicable.

Contribution sources: A participant or beneficiary may elect to make an In-Plan Roth Transfer from the following sources:

All available sources under the Plan

**OR**

Pre-tax Elective Deferrals

Matching Contributions

Nonelective Contributions

Rollover Contributions

Describe: \_\_\_\_\_

Limits applicable to In-Plan Roth Transfers: No special limits apply with respect to In-Plan Roth Transfers, unless designated below:

Roth Transfers may be only made from contribution sources that are fully vested (i.e. 100% vested). *If not elected, only the vested amount (if applicable) will be converted to Roth.*

A Participant may not make an In-Plan Roth Transfer of less than \$ \_\_\_\_\_

Maximum number of In-Plan Roth Transfers: \_\_\_\_\_ per specified time period \_\_\_\_\_ (Rolling period, Plan Year, Quarterly)

Describe any special rules that may apply to In-Plan Roth Transfers under the Plan: \_\_\_\_\_

## AMENDMENT FOR CARES ACT

### ARTICLE 1 PREAMBLE; DEFINITIONS

- 1.1 **Adoption of Amendment.** The Employer adopts this Amendment to implement provisions of the Act which affect the Plan. All references to the Plan include the Plan's loan program, policy, or procedure to the extent applicable.
- 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 **Construction.** Except as otherwise provided in this Amendment, any Article or 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.
- 1.4 **Effect of restatement of Plan.** If the Employer restates the Plan then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates these provisions).
- 1.5 **Definitions.** Except as otherwise provided in this Amendment, terms defined in the Plan will have the same meaning in this Amendment. The following definitions apply specifically to this Amendment:
  - A. The "Act" is the Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act. This Amendment shall be interpreted and applied to comply with the Act.
  - B. A "Qualified Individual" means any individual who meets one or more of the criteria described in paragraphs (1), (2), (3), or (4). Participants, alternate payees and beneficiaries of deceased participants can be treated as Qualified Individuals. The Plan Administrator may rely on an individual's certification that the individual satisfies a condition to be a Qualified Individual unless the Plan Administrator has actual knowledge to the contrary. In applying the criteria, "COVID-19" means either the virus SARS-CoV-2 or coronavirus disease 2019; "an approved test" means a test approved by the Centers for Disease Control and Prevention (including a test authorized under the Federal Food, Drug, and Cosmetic Act); and a "member of the individual's household" means someone who shares the individual's principal residence. The criteria are as follows:
    - (1) The individual was diagnosed with COVID-19 by an approved test;
    - (2) The individual's spouse or dependent (as defined in Code §152) was diagnosed with COVID-19 by an approved test;
    - (3) The individual has experienced adverse financial consequences because: (a) the individual or the individual's spouse, or a member of the individual's household was quarantined, furloughed or laid off, or had work hours reduced due to COVID-19; (b) the individual, the individual's spouse, or a member of the individual's household was unable to work due to lack of childcare due to COVID-19; (c) A business owned or operated by the individual, the individual's spouse, or a member of the individual's household closed or reduced hours due to COVID-19; or (d) the individual, the individual's spouse, or a member of the individual's household had a reduction in pay (or self-employment income) due to COVID-19 or had a job offer rescinded or start date for a job delayed due to COVID-19; or
    - (4) The individual satisfies any other criteria determined by the Treasury or the IRS.

**ARTICLE 2  
IDENTIFYING INFORMATION; EMPLOYER ELECTIONS**

2.1 **Reserved.**

2.2 **Employer identifying information.**

A. Name of Employer: Arapahoe County, Colorado

B. Name of Plan: Arapahoe County Smart Start Savings 457(b) Deferred Compensation Plan

C. Type of Plan (*check one; optional*)

- (1)  401(k) Plan
- (2)  Profit-Sharing Plan (other than a 401(k) plan)
- (3)  Money Purchase Pension Plan
- (4)  Defined Benefit Plan (including a cash balance plan)
- (5)  403(b) Plan
- (6)  457(b) Plan sponsored by a governmental employer

- 2.3 **Relief for Qualified Individuals.** Will the Plan provide any or all of the following relief for Qualified Individuals: (1) Coronavirus-Related Distributions described in Article 3, (2) increased loan limits described in Section 4.2, (3) the loan repayment extension described in Section 4.3. (*Select one of (a), (b), or (c). If (c) is selected, then select one or more of (d), (e), and/or (f).*)
- (a)  **No.** The Plan will not provide any of these relief provisions.
  - (b)  **Yes.** The Plan will provide all of these relief provisions. The limitations on distributions described in Sections 2.3(d)(1) – (4) and the limitations on loans in Section 2.3(e)(1) – (3) and 2.3(f)(1)–(3) do not apply.
  - (c)  **Some.** The Plan will provide those relief provisions selected in (d), (e), or (f) below.
  - (d)  **The Coronavirus-Related Distribution provisions described in Article 3 (If (d) is selected, the Employer may optionally select one or more of (1), (2), (3), or (4).)**
    - (1)  Coronavirus-Related Distributions are not available from an account in which the Participant is not 100% vested.
    - (2)  Coronavirus-Related Distributions may be made only from the following accounts:
    - (3)  The maximum amount of Coronavirus-Related Distributions from the Plan to a Qualified Individual will not exceed: \$ \_\_\_\_\_. (*Enter amount less than \$100,000.*)
    - (4)  **The following additional provisions apply to Coronavirus-Related Distributions: The provisions of Article 3 of this Amendment apply only to the extent a Coronavirus-Related Distribution has been made to a Qualified Individual. To the extent the Plan does not operationally apply the rules of Article 3 of this Amendment, it does not apply to the Plan. The Plan Administrator shall document through administrative procedures or otherwise the manner in which the Plan operationally applied the rules under Article 3 of this Amendment. (Enter limitations or restrictions which are nondiscriminatory and not subject to Employer discretion.)**
  - (e)  **The increased loan limit described in Section 4.2 (If (e) is selected, the Employer may optionally select one or more of (1), (2), or (3).)**
    - (1)  The maximum dollar amount of loans pursuant to Section 4.2 will not exceed: \$ \_\_\_\_\_. (*Enter amount less than \$100,000.*)
    - (2)  The maximum percentage of the present value of the nonforfeitable accrued benefit that may be loaned pursuant to Section 4.2 will not exceed: \_\_\_\_\_%. (*Enter percentage less than 100%.*)
    - (3)  **The following additional provisions apply to the increased loan limit: The following additional provisions apply to the increased loan limit: The increased loan limits described in Section 4.2 of this Amendment apply only to the extent a loan has been made to a Qualified Individual in excess of the limits otherwise available under the Plan. To the extent the Plan does not operationally apply the increased loan limits described in Section 4.2 of**

this Amendment, it does not apply to the Plan. The Plan Administrator shall document through administrative procedures or otherwise the manner in which the Plan operationally applied the increased loan limits described in Section 4.2 of this Amendment. (Enter limitations or restrictions which are nondiscriminatory.)

- (f)  **The loan repayment extension described in Section 4.3 (If (f) is selected, the Employer may optionally select one or more of (1), (2), or (3).)**
- (1)  The Suspension Period will begin \_\_\_\_\_ (Enter date not before March 27, 2020) and end \_\_\_\_\_. (Enter date not later than December 31, 2020.)
- (2)  The Extension Period will be \_\_\_\_\_. (Enter period, up to one year, the due date of the loan will be extended, such as "six months.")
- (3)  The following additional provisions apply to the loan repayment extension: The loan repayment extension described in Section 4.3 of this Amendment applies only to the extent the due date to repay a loan has been extended for a Qualified Individual. To the extent the Plan does not operationally extend the due date for loan repayment as described in Section 4.3 of this Amendment, it does not apply to the Plan. The Plan Administrator shall document through administrative procedures or otherwise the manner in which the Plan operationally extended the due date for loan repayment as described in Section 4.3 of this Amendment. (Enter limitations or restrictions which are nondiscriminatory.)

- 2.4 **RMD waivers for 2020.** Unless the Employer elects otherwise below, the provisions of Section 5.2 apply and a Participant or Beneficiary who would have been required to receive a 2020 RMD or Extended 2020 RMD will receive the distribution unless the Participant or Beneficiary chooses not to receive the distribution.
- (a)  **No RMDs without request.** The provisions of Section 5.2 apply and a Participant or Beneficiary who would have been required to receive a 2020 RMD or Extended 2020 RMD will not receive the distribution unless the Participant or Beneficiary chooses to receive the distribution.
- (b)  **Split.** The provisions of Section 5.2 apply. A Participant or Beneficiary who would have been required to receive a 2020 RMD will not receive the distribution unless the Participant or Beneficiary chooses to receive the distribution. A Participant or Beneficiary who would have been required to receive an Extended 2020 RMD will receive the distribution unless the Participant or Beneficiary chooses not to receive the distribution.
- (c)  **No change to RMDs.** Payment of RMDs or Extended 2020 RMDs will be governed by the terms of the Plan without regard to this Amendment (i.e., no election is available to Participants or Beneficiaries).
- (d)  **Describe:** \_\_\_\_\_.

For purposes of Section 5.3, the Plan will also treat the following as eligible rollover distributions in 2020: (Choose one or none of (e), (f), (g), or (h): If no election is made, then a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code §401(a)(9)(I):

- (e)  2020 RMDs.
- (f)  2020 RMDs and Extended 2020 RMDs.
- (g)  2020 RMDs but only if paid with an additional amount that is an eligible rollover distribution without regard to Code §401(a)(9)(I).
- (h)  Describe: \_\_\_\_\_.

The provisions of Article 5, and the elections in this Section 2.4, will be effective on the date specified in Section 2.5. unless a different date is entered here: \_\_\_\_\_ (Optional. Enter a date between March 27, 2020 and December 31, 2020. RMD distributions before the selected effective date should have followed plan terms in effect before this Amendment.)

- 2.5 **Effective Date.** This Amendment is effective March 27, 2020, or as soon as practical thereafter, or, if later, the following date: \_\_\_\_\_. (Optional. Enter a date not later than December 31, 2020.)

### ARTICLE 3 CORONAVIRUS-RELATED DISTRIBUTIONS



- 3.1 **Application.** This Article 3 will apply if Section 2.3(b) or Section 2.3(d) is selected.
- 3.2 **Coronavirus-Related Distribution(s).** Subject to the provisions described in Section 2.3(d)(4), if any, a Qualified Individual may take one or more Coronavirus-Related Distributions. The accounts from which the amount may be distributed shall be limited if selected in Sections 2.3(d)(1) and (2). However, if the Plan is a Defined Benefit Plan, and the Qualified Individual has not separated from service, the Qualified Individual may not take a Coronavirus-Related Distribution prior to attaining the earlier of Normal Retirement Age or age 59½. The provisions of this Section will apply notwithstanding any limitation in the Plan on partial distributions or any otherwise applicable plan or administrative limits on the number of allowable distributions.
- 3.3 **Repayment of distribution.** If the Plan permits a Participant to make rollover contributions, then a such a Participant who received a Coronavirus-Related Distribution (from this Plan and/or another eligible retirement plan as defined in Code §402(c)(8)(B)), at any time during the 3-year period beginning on the day after receipt of the distribution, may make one or more contributions to the Plan, as rollover contributions, in an aggregate amount not to exceed the amount of such distribution.
- 3.4 **Definition of Coronavirus-Related Distribution.** A "Coronavirus-Related Distribution" means a distribution to a Qualified Individual during the period beginning January 1, 2020 and ending December 30, 2020. The total amount of Coronavirus-Related Distributions to a Qualified Individual pursuant to this Amendment from all plans maintained by the Employer, or any related employer described in Code §414(b), (c), (m), or (o), shall not exceed \$100,000, (or such lesser amount specified in Section 2.3(d)(3)). The Coronavirus-Related Distributions from the Plan to a Qualified Individual will not exceed the amount of the individual's vested account balance or the present value of the individual's vested accrued benefit.

#### ARTICLE 4 PARTICIPANT LOAN RELIEF

- 4.1 **Application.** This Article 4 will apply only if the Plan permits participant loans. Section 4.2 will apply if Section 2.3(b) or Section 2.3(e) is selected. Section 4.3 will apply if Section 2.3(b) or Section 2.3(f) is selected.
- 4.2 **Increased loan limit.** Notwithstanding the loan limitation that otherwise would apply, the Plan will determine the loan limit under Code §72(p)(2)(A) for a loan to a Qualified Individual, made during the period beginning March 27, 2020 and ending September 22, 2020, by substituting "\$100,000" (or such lesser amount specified in Section 2.3(e)(1)) for "\$50,000," and by substituting "100% (or such lesser percentage specified in Section 2.3(e)(2)) of the present value of the nonforfeitable accrued benefit of the employee under the Plan" for "one-half of the present value of the nonforfeitable accrued benefit of the employee under the Plan" (or its equivalent). The provisions described in Section 2.3(e)(3), if any, will apply in connection with loans to Qualified Individuals.
- 4.3 **Extension of certain repayments.** If a Qualified Individual has an outstanding loan from the Plan on or after March 27, 2020, then: (1) if the date for any repayment of such loan occurs during the Suspension Period, the due date is extended for the Extension Period; (2) the due date of the loan will be extended by the Extension Period; (3) the Plan will adjust any subsequent repayments to reflect the extension of the due date and any interest accrued during the Suspension Period; and (4) the Plan will disregard the Extension Period in determining the 5-year period and the loan term under Code §72(p)(2)(B) or (C). The provisions described in Section 2.3(f)(3), if any, will apply in connection with the suspension and extension described in this Section. The Suspension Period, unless otherwise specified in Section 2.3(f)(1), will begin March 27, 2020 and end December 31, 2020. The Extension Period, unless otherwise specified in Section 2.3(f)(2) will be one year. The provisions of this Section 4.3 will be applied in accordance with Section 5.B. of Notice 2020-50, or any subsequent applicable guidance, and the adjustment described in (3) may reflect the "safe harbor" described therein.

**ARTICLE 5  
WAIVER OF 2020 REQUIRED MINIMUM DISTRIBUTIONS (RMDs)**

- 5.1 **Application.** This Article 5 will apply only to defined contribution plans, including 401(k) Plans, Profit-Sharing Plans, Money Purchase Pension Plans, 403(b) Plans, and 457(b) Plans sponsored by governmental employers. The definitions in Section 5.4 will apply in interpreting Section 2.4.
- 5.2 **Waiver; default provision.** This Section 5.2 will apply unless Section 2.4(c) is selected or to the extent 2.4(d) overrides it. Notwithstanding the provisions of the Plan relating to RMDs, whether a Participant or Beneficiary who would have been required to receive 2020 RMDs, and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2020 RMDs, or (2) Extended 2020 RMDs will receive those distributions is determined in accordance with the option chosen in Section 2.4. Notwithstanding the option chosen in Section 2.4, a Participant or Beneficiary will be given an opportunity to make an election as to whether or not to receive those distributions. If the Plan permits a Beneficiary of a deceased Participant to make the election to use the 5-year rule or the life expectancy rule, the deadline to make the election may be extended to reflect the adoption of Code §401(a)(9)(I).
- 5.3 **Direct rollovers.** Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), and solely for purposes of applying the direct rollover provisions of the Plan, certain additional distributions in 2020, as elected by the Employer in Section 2.4, will be treated as eligible rollover distributions. If no election is made by the Employer in Section 2.4, then a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code §401(a)(9)(I).
- 5.4 **Definitions.** “RMDs” means required minimum distributions described in Code §401(a)(9). “2020 RMDs” means required minimum distributions the Plan would have been required to distribute in 2020 (or permitted to pay in 2021 for the 2020 calendar year for a Participant with a required beginning date of April 1, 2021) but for the enactment of Code §401(a)(9)(I). “Extended 2020 RMDs” means one or more payments in a series of substantially equal distributions (that include the 2020 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant’s designated Beneficiary, or for a period of at least 10 years.
- 5.5 **Installment payments.** A Participant or Beneficiary receiving payment of 2020 RMDs or 2020 Extended RMDs pursuant to this Article 5 may receive them in any method (including installments or partial distributions) which would have been permitted under the terms of the Plan if the amounts would have been RMDs but for the enactment of Code §401(a)(9)(I).

\* \* \* \* \*

Employer:

This Amendment has been executed on November 26, 2024.  
(enter date)

By: Patricia Hernandez  
(Authorized Signer for Employer)

**AMENDMENT TO IMPLEMENT SECURE ACT AND OTHER LAW CHANGES  
ARAPAHOE COUNTY SMART START SAVINGS 457(B) DEFERRED COMPENSATION PLAN**

**ARTICLE 1  
PREAMBLE**

- 1.1 **Adoption and effective date of Amendment.** The Employer hereby adopts this Amendment to the Employer's Plan. Each Article specifies the effective date of its provisions. Also see Section 1.5.
- 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. Except as otherwise provided in this Amendment, terms defined in the Plan will have the same meaning in this Amendment. Most Articles include definitions which are specific to that Article. Also see Section 1.6.
- 1.3 **Numbering.** Except as otherwise provided in this Amendment, 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.
- 1.4 **Intention; Construction.** The purpose of this amendment is to amend the Plan in accordance with pension-related provisions of the Further Consolidated Appropriations Act of 2019 ("FCAA") in general, and Division O of that Act, the Setting Every Community Up for Retirement Enhancement Act of 2019 ("SECURE"), in specific. It also addresses a provision of the Bipartisan American Miners Act ("BAMA"), which is also part of FCAA, as well as a section of the Coronavirus Aid, Relief, and Economic Security Act ("CARES"). The provisions of this Amendment shall be interpreted and applied to be consistent with FCAA and CARES and IRS guidance issued in connection therewith, whether such guidance is issued before or after the date of this amendment.
- 1.5 **Effect of subsequent restatement or amendment of Plan.** If the Employer restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates these provisions). Some Articles in this amendment may not apply to a particular plan at the time the Amendment is executed but they will apply in the future based on subsequent amendments.
- 1.6 **Preservation of prior amendments.** If the Employer previously amended the Plan after December 20, 2019 to implement a provision contained in one or more Articles of this Amendment, that prior amendment shall remain in effect and will not be superseded by this Amendment, unless Section 1.6(a) is selected. For example, if the Employer previously adopted an amendment to implement the BAMA provisions of Article 10, that amendment remains in effect, notwithstanding the provisions of this Amendment, unless Section 1.6(a) is selected.

(a) [ ] This amendment supersedes all prior inconsistent amendments of the Plan.

**ARTICLE 2  
INSTRUCTIONS; ELECTIONS**

- 2.1 **Instructions.** Select 2.3a if all defaults are accepted. Select 2.3b and as applicable 2.4 - 2.10 if the Employer wishes to select other than the default for a particular provision.
- 2.2 **Reserved.**
- 2.3 **Operating Elections.** Many subsequent Articles of this Amendment refer to elections appearing in this Article 2. Each of Sections 2.4 through 2.10 refers to a corresponding Article. For example, Section 2.4 has the elections related to Article 4. The definitions in those Articles apply to the elections in the corresponding Section of this Article 2, and those elections have the same effective date as the corresponding Article. Each Section of this Article lists the default provisions which will apply if no election is made. If you accept the default(s), there is no need to complete the Section. There are no elective provisions which apply to Article 3 or Articles 11 through 16. The following are the defaults and a summary of the Articles for which there are no elections.
- Article 3. Reserved.
  - Article 4. QBADs are not permitted.
  - Article 5. Distributions of RMDs will not begin before a Participant turns 72.
  - Article 6. The Plan will apply its RMD provisions with respect to the 5-year rule in administering the 10-year rule.
  - Article 7. RMDs subject to 5-Year Rule for participants who died from 2015 through 2019 are extended one year unless the beneficiary objects.
  - Article 8. Reserved.
  - Article 9. Reserved.
  - Article 10. The amendment does not modify the minimum age for in-service distributions.
  - Article 11. Administrative policy can permit distributions of Discontinued Lifetime Income Investments.
  - Article 12. Updated RMD tables and 2022 transition.
  - Article 13. Reserved.



- Article 14. Reserved.
- Article 15. Reserved.
- Article 16. Deemed IRA accounts are not subject to maximum age.

Check (a) or (b).

- (a)  All defaults apply. Skip the rest of Article 2 and sign the amendment.
- (b)  One or more defaults do not apply. Complete those sections in Article 2 for which you do not accept the default; then sign the amendment.

2.4 **Article 4 – Birth/Adoption Distributions.** In the absence of an election below, Article 4 does NOT apply. To permit QBADs (Qualified Birth and Adoption Distributions), check (a). If QBADs are available, they apply to all accounts except as provided in Article 4 or in elections (b), (c), (d) or (e). (Select all that apply.)

- (a)  Article 4 applies effective January 1, 2020, unless a different date is selected in (1) below.
- (1)  \_\_\_\_\_ (Enter date after December 31, 2019.)
- (b)  QBADs may only be made from accounts in which the Participant is fully vested.
- (c)  QBADs are not available if the Participant has severed employment.
- (d)  Describe additional limitations: \_\_\_\_\_ (must be definitely determinable and not subject to discretion)
- (e)  QBADs are available from the following Accounts: \_\_\_\_\_ (must be definitely determinable and not subject to discretion)

2.5 **Article 5 – RMD Timing.** Unless Section 2.5(a) is selected, distribution of RMDs will begin for Affected Participants no sooner than April 1 of the calendar year following the year the Participant attains age 72.

- (a)  Distribution of RMDs to Affected Participants will NOT be delayed on account of this Amendment (i.e., distributions will generally commence no later than April 1 of the calendar year following the year the Affected Participant attains age 70 1/2), in accordance with Section 5.5. This election is effective for distributions after December 31, 2019, except as specified below (Optional: select either or both of (1) or (2)):
- (1)  Section 5.5 is effective for distributions after \_\_\_\_\_ and prior to the earlier of January 1, 2022 or the date entered in 2.5(a)(2). (Enter date on or after December 31, 2019.)
- (2)  Section 5.5 is repealed for distributions after \_\_\_\_\_ (enter date on or after the date entered in 2.5(a)(1) and before January 1, 2022), subject to the anti-cutback rule of Code §411(d)(6) to the extent applicable.

2.6 **Article 6 – 10-Year Rule for Beneficiary RMDs.** RMDs to an Eligible Designated Beneficiary of a Participant who dies prior to the Participant's RBD will be made as elected below. In the absence of an election in Section 2.6, the Plan's provisions about Beneficiary elections with regard to the 5-Year Rule will apply, substituting the 10-Year Rule for the 5-Year Rule.

- (a)  **Beneficiary election.** The Eligible Designated Beneficiary may elect application of the 10-Year Rule or the Life Expectancy rule. If the Beneficiary does not make a timely election (Select one of (1) or (2)):
- (1)  **10-year rule.** The 10-year rule applies to the Eligible Designated Beneficiary.
- (2)  **Life Expectancy Rule.** The Life Expectancy rule applies to the Eligible Designated Beneficiary.
- (b)  **10-year rule.** The 10-year rule applies to the Eligible Designated Beneficiary.
- (c)  **Life Expectancy rule.** The Life Expectancy rule applies to the Eligible Designated Beneficiary.
- (d)  **Shorter Period.** The entire interest of the Eligible Designated Beneficiary will be distributed no later than December 31 of the \_\_\_\_\_ (enter a number of years, not exceeding "tenth") year following the year of the Participant's death.
- (e)  **Other:** (Describe, e.g., the 10-Year Rule applies to all Beneficiaries other than a surviving spouse Beneficiary.)  
\_\_\_\_\_

2.7 **Article 7 – CARES RMD Waivers; 5-Year Rule.** Unless the Employer elects otherwise below, beneficiaries of Applicable Participant Accounts will have the option to extend distribution under the 5-Year Rule by one year, and in the absence of a beneficiary election the extension will apply.

- (a)  **No extension without request.** The provisions of Section 7.2 apply but in the absence of a beneficiary election the extension will NOT apply.
- (b)  **Not Apply.** Article 7 will NOT apply to this Plan.

2.8 **Article 8 – Reserved.**

2.9 **Article 9 – Reserved.**

2.10 **Article 10 – In-Service Distributions.** In the absence of an election below, Article 10 does NOT apply. To permit in-service distributions at age 59 1/2, check (a). Check (b) to specify an age greater than 59 1/2. If Article 10 applies, it applies to all Accounts except as limited in Article 10.

- (a)  Article 10 applies effective on or after the first day of the first plan year beginning after December 31, 2019, unless a different date is selected in (1) below.
- (1)  \_\_\_\_\_ (Enter date on or after the first day of the first plan year beginning after December 31, 2019.)
- (b)  Age at which in-service distributions are permitted \_\_\_\_\_ (Enter age greater than 59 1/2.) This provision applies effective on or after the first day of the first plan year beginning after December 31, 2019, unless a different date is selected in (1) below.
- (1)  \_\_\_\_\_ (Enter date on or after the first day of the first plan year beginning after December 31, 2019.)

**ARTICLE 3  
RESERVED**

**ARTICLE 4  
BIRTH/ADOPTION DISTRIBUTIONS – SECURE Act §113**

- 4.1 **Application.** This Article 4 will apply only if the Employer elects in Section 2.4(a) for this Article 4 to apply, effective on the date specified in Section 2.4(a).
- 4.2 **Distribution Authorized.** Except as limited by Section 2.4 (b), (c), (d), (e), a Participant may request a distribution of up to \$5,000 (per child or Eligible Adoptee) as a QBAD. The Participant may request the distribution whether or not the Participant has severed employment unless Section 2.4(c) is selected. This \$5,000 limit shall be reduced by QBADs to the Participant made with respect to the same child or Eligible Adoptee by other plans maintained by the Employer or a related employer described in Code §414(b), (c), (m), or (o). The Plan Administrator may adopt a policy imposing frequency limitations or other reasonable administrative conditions for QBADs.
- 4.3 **Definitions.** The following definitions apply for this Article 4 and Section 2.4:
- (a) A "QBAD" is a Qualified Birth or Adoption Distribution described in Code §72(t)(2)(H)(iii). A QBAD must be made during the 1-year period beginning on the date on which a child of the Participant is born or on which the legal adoption of an Eligible Adoptee by the Participant is finalized.
- (b) An "Eligible Adoptee" is an individual, other than a child of the Participant's spouse, who has not attained age 18 or is physically or mentally incapable of self-support. An individual is considered physically or mentally incapable of self-support if that individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long-continued and indefinite duration. This provision shall be applied in a manner consistent with Part D of IRS Notice 2020-68.
- 4.4 **Rollover.** A Participant who received one or more QBADs from this Plan may, if the Plan then permits the Participant to make rollover contributions, make one or more contributions in an aggregate amount not to exceed the amount of such QBADs. The Plan will treat such a contribution as a rollover contribution made by direct trustee-to-trustee transfer within 60 days of distribution.
- 4.5 **Reliance.** The Plan Administrator may rely on an individual's reasonable representation that the individual is eligible to receive a QBAD unless the Plan Administrator has actual knowledge to the contrary.
- 4.6 **Status.** A QBAD is not an eligible rollover distribution for purpose of the obligation to permit a direct rollover under Code §401(a)(31), the notice requirement of Code §402(f), or the mandatory withholding rules of Code §3405(c)(1).

**ARTICLE 5  
REQUIRED BEGINNING DATE – SECURE Act §114**

- 5.1 **Application.** This Article 5 will apply to all plans, regardless of type. It is effective with regard to RMDs required to be made after December 31, 2019.
- 5.2 **Delay of Required Beginning Date.** An Affected Participant's RBD shall not be earlier than April 1 of the calendar year following the year the Affected Participant attains age 72. For purposes of determining an Affected Participant's RBD, an Affected Participant will be treated as a more than 5% owner if the Participant was a 5-percent owner (as defined in Code §416(i)(1)(B)) as to the Plan Year ending in the calendar year the Participant attains age 72.
- 5.3 **Spousal Distributions.** If an Affected Participant dies prior to the Participant's RBD, and the Participant's sole Designated Beneficiary is the Participant's surviving spouse, then the RMDs to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 72, if later. However, this Section will apply only if the Plan, prior to this Amendment, permitted a surviving spouse to delay RMD distributions to December 31 of the calendar year in which the Participant would have attained age 70 1/2.
- 5.4 **Definitions.** The following definitions apply for this Article 5 and Section 2.5:



- (a) A Participant is an "Affected Participant" if the Participant was born after June 30, 1949.
- (b) An "RMD" is a Required Minimum Distribution as described in Code §401(a)(9).
- (c) A Participant's "RBD" is the Participant's Required Beginning Date as described in Code §401(a)(9)(C), as amplified by Section 5.2.

5.5 **Optional Distribution Timing.** If the Employer elects in Section 2.5(a) for this Section 5.5 to apply, the timing and form of distributions to an Affected Participant will be determined as though this Article 5 had not been adopted. Distributions pursuant to this paragraph, which are not RMDs, will be treated as eligible rollover distributions for purposes of the direct rollover provisions of Code §401(a)(31). This Section 5.5 will no longer be effective for distributions after December 31, 2021, or, if earlier, the date specified in Section 2.5(a)(2).

**ARTICLE 6  
BENEFICIARY RMDs – SECURE Act §401**

- 6.1 **Application.** This Article 6 will apply to all plans. This Article will not apply to qualified annuities described in SECURE Act §401(b)(4)(B).
- 6.2 **Effective Date.** Except as provided in Section 6.4, Article 6 will apply to Participants who die on or after the Effective Date of this Article. Generally, the Effective Date of this Article is January 1, 2022. The Effective Date of this Article 6 in the case of a collectively-bargained plan will be the date determined in SECURE Act §401(b)(2). See Section 6.5 regarding the limited application of this Article to certain accounts of Participants who died before the Effective Date of this Article.
- 6.3 **Death before RBD.** If the Participant dies before the Participant's RBD, the Plan will distribute or commence distribution of the Participant's Vested Accrued Benefit not later than as follows:
- (a) **No Designated Beneficiary.** If there is no Designated Beneficiary as of September 30 of the year following the calendar year of the Participant's death, the Beneficiary's entire interest will be distributed under the 5-Year Rule.
  - (b) **Eligible Designated Beneficiary.** If the distributee of a Participant's account is an Eligible Designated Beneficiary, the Beneficiary's entire interest will be distributed under the Life Expectancy Rule unless the 10-Year Rule applies. The Employer may elect application of the Life Expectancy rule or the 10-Year Rule in Section 2.6. In the absence of an election in Section 2.6, the Plan's provisions with regard to election of the 5-Year Rule will apply, substituting the 10-Year Rule for the 5-Year Rule. A permitted Beneficiary election must be made no later than the earlier of December 31 of the calendar year in which distribution would be required to begin under the Life Expectancy Rule, or by December 31 of the calendar year which contains the tenth anniversary of the Participant's (or, if applicable, surviving spouse's) death.
  - (c) **Other Designated Beneficiaries.** If the distributee of the Participant's account is a Designated Beneficiary who is not an Eligible Designated Beneficiary, then the Beneficiary's entire interest will be distributed under the 10-Year Rule.
  - (d) **10-Year Rule.** If distribution of a deceased Participant's account thereof is subject to the "10-Year Rule," then the Plan will distribute the account in full no later than December 31 of the tenth year following the year of the Participant's death. No RMDs are required to be distributed from the account prior to that date.
- 6.4 **Death after RBD.** If the Participant dies on or after the Participant's RBD, the Participant's remaining interest will be distributed at least as rapidly as under the method of distribution being used as of the date of the participant's death, using the Life Expectancy Rule, as, and to the extent, provided by applicable guidance. If the Beneficiary is a Designated Beneficiary that is not an Eligible Designated Beneficiary, the Plan will distribute the remaining account in full no later than December 31 of the tenth year following the year of the Participant's death.
- 6.5 **Beneficiary Death.** If an Eligible Designated Beneficiary receiving distributions under the Life Expectancy Rule dies before receiving distribution of the Beneficiary's entire interest in the Participant's account, the Plan will distribute that interest in full no later than December 31 of the 10<sup>th</sup> year following the year of the Eligible Designated Beneficiary's death. Similarly, if a Participant died before the Effective Date of this Article 6, and the beneficiary died after such Effective Date, but prior to receiving full distribution of the beneficiary's interest, the Plan will distribute that interest in full no later than December 31 of the tenth year following the year of the beneficiary's death.
- 6.6 **Age of Majority.** If a child of the Participant was receiving distributions under the Life Expectancy rule, when the child reaches the age of Majority, the Plan will distribute the child's account in full no later than 10 years after that date, provided the child is not otherwise an Eligible Designated Beneficiary, such as a disabled or chronically ill individual.
- 6.7 **Definitions; operating rules.** The following definitions and operating rules apply for this Article 6 and Section 2.6:
- (a) An "RMD" is a Required Minimum Distribution as described in Code §401(a)(9).

- (b) A Participant's "RBD" is the Participant's Required Beginning Date as described in Code §401(a)(9)(C) and the Plan. Also see Section 5.2.
- (c) A distributee of a Participant's account is a "Designated Beneficiary" if the distributee is an individual or trust who is a beneficiary of the account (whether pursuant to a designation by the Participant or application of the Plan terms) and who is a designated beneficiary under Code §401(a)(9) and Treas. Reg. §1.401(a)(9)-4, Q&As-4 and -5.
- (d) An individual is an "Eligible Designated Beneficiary" of a Participant if the individual qualifies as a Designated Beneficiary and is (1) the Participant's spouse, (2) the Participant's child who has not reached the age of Majority, (3) an individual not more than 10 years younger than the Participant, (4) a disabled individual, as defined in Code §72(m)(7), or (5) an individual who has been certified to be chronically ill (as defined in Code §7702B(c)(2)) for a reasonably lengthy period, or indefinitely. Certain trusts may be treated as Eligible Designated Beneficiaries pursuant to Code §401(a)(9)(H)(iv) and (v).
- (e) Whether a child has reached the age of "Majority" is determined under Code §401(a)(9)(F) and applicable regulations and guidance issued thereunder.
- (f) The "Life Expectancy Rule" for distributing RMDs is described in Code §401(a)(9)(B)(iii) and is further described in the Plan.
- (g) The "5-Year Rule" for distributing RMDs is described in Code §401(a)(9)(B)(ii) and is further described in the Plan.
- (h) The "10-Year Rule" is described in Section 6.3(d).
- (i) **Shorter period.** Section 2.6(e) may specify a shorter period to be used in place of the tenth year after the death of a Participant or Beneficiary.
- (j) **Separate share rule.** All references in this Article to a Participant's Account and a Beneficiary's interest in that account will be applied separately to each separate account determined under Treas. Reg. §1.401(a)(9)-8, Q&A 2 and 3, and Code §401(a)(9)(H)(iv).

**ARTICLE 7  
EXTENSION OF 5-YEAR RULE FOR RMDs – CARES §2203**

- 7.1 **Application.** This Article 7 does not apply if the Employer has selected Section 2.7(b); otherwise, it is effective January 1, 2020.
- 7.2 **Waiver; default provision.** The beneficiary of an Applicable Participant Account will have the option to extend the deadline to distribute the account for one year. The default in the absence of a beneficiary election will be to extend the distribution, unless the Employer elects in Section 2.7(a) for the default to be not to extend unless the beneficiary requests it.
- 7.3 **Definitions.** The following definitions apply for this Article 7 and Section 2.7:
  - (a) "RMDs" means required minimum distributions described in Code §401(a)(9).
  - (b) The "5-Year Rule" for distributing RMDs is described in Code §401(a)(9)(B)(ii) and is further described in the Plan.
  - (c) "Applicable Participant Account" means the remaining account of a Participant who died during the years 2015-2019, to the extent the account is subject to the 5-Year Rule.

**ARTICLE 8  
RESERVED**

**ARTICLE 9  
RESERVED**

**ARTICLE 10  
IN-SERVICE PENSION DISTRIBUTIONS – BAMA §104**

- 10.1 **Application.** This Article 10 will apply if the Employer elects in Section 2.10 for this Article 10 to apply, effective on the date specified in Section 2.10(a).
- 10.2 **Distribution at 59 1/2.** A Participant can take an in-service distribution at age 59 1/2, or, if later, the age (if any) specified in Section 2.10(b). Such a distribution will be limited to the vested portion of the Participant's accrued benefit or account and will be subject to all Plan provisions related to in-service distributions. The Plan can operationally permit distributions as early as January 1 of the calendar year the Participant attains 59 1/2 (or such later age).
- 10.3 **Limited application to Profit-Sharing Plans.** If the Employer elects in Section 2.10 for this Article 10 to apply, this Article 10 will apply to an account in a 401(k) Plan or a Profit-Sharing Plan which holds assets transferred from a Money Purchase Pension Plan or a Defined Benefit Plan.

**ARTICLE 11  
DISTRIBUTIONS OF DISCONTINUED LIFETIME INCOME INVESTMENTS – SECURE §109**

- 11.1 **Application.** This Article 11 is effective for Plan Years beginning after December 31, 2019.
- 11.2 **Distributions authorized.** The Plan Administrator may authorize Participants to request, and as soon as practical after a Participant makes the request, the Plan will make a distribution of a Discontinued Lifetime Income Investment. Distribution under this Article is limited to the 90-day period prior to the date on which the Lifetime Income Investment is no longer authorized to be held as an investment option under the Plan. Such distribution will be in the form of a Qualified Distribution, or in the form of a Qualified Plan Distribution Annuity Contract, as determined by the Plan Administrator. The Plan Administrator will administer this section in a reasonable, nondiscriminatory manner, and may authorize distributions of some Discontinued Lifetime Income Investments and not others.
- 11.3 **Definitions.** The terms "Lifetime Income Investment," "Qualified Distribution" and "Qualified Plan Distribution Annuity Contract" have the meanings set forth in Code §401(a)(38)(B). A "Discontinued Lifetime Income Investment" is a Lifetime Income Investment which will no longer be authorized to be held as an investment option under the Plan.

**ARTICLE 12  
UPDATED LIFE EXPECTANCY TABLES – TREAS. REG. §1.401(a)(9)-9**

- 12.1 **Application.** This Article 12 will apply to all plans and is effective for distribution calendar years beginning on or after January 1, 2022.
- 12.2 **New RMD Tables.** Any Plan reference to the life expectancy tables detailed in Treas. Reg. §1.401(a)(9), such as the Uniform Life Table, the Single Life Table, or the Joint and Last Survivor Table, refers to these tables as published in Treas. Reg. §1.401(a)(9)-9 from time to time, and is subject to adjustment as described in Treas. Reg. §1.401(a)(9)-9(f).

**ARTICLE 13  
RESERVED**

**ARTICLE 14  
RESERVED**

**ARTICLE 15  
RESERVED**

**ARTICLE 16  
REPEAL OF DEEMED IRA MAXIMUM AGE – SECURE §107**

- 16.1 **Application.** This Article 16 will apply only if the Plan permits deemed IRA contributions (sometimes called "designated IRA" contributions) described in Code §408(q). It is effective January 1, 2020.
- 16.2 **No Maximum Age.** To the extent the Plan otherwise permits a Participant to make deemed IRA contributions, the Participant may make such contributions regardless of whether the Participant has attained age 70 1/2 or any other age.

This Amendment has been executed this 26<sup>th</sup> day of NOVEMBER, 2024.

Name of Plan: Arapahoe County Smart Start Savings 457(b) Deferred Compensation Plan

Name of Employer: Arapahoe County, Colorado

By:   
EMPLOYER

**BASE PLAN DOCUMENT**  
**FOR ARAPAHOE COUNTY SMART START SAVINGS**  
**457(b) DEFERRED COMPENSATION PLAN**



**ARAPAHOE COUNTY SMART START SAVINGS 457(B) DEFERRED COMPENSATION PLAN**

## TABLE OF CONTENTS

|  |   |  |  |
|--|---|--|--|
| <b>ARTICLE I, DEFINITIONS</b>                              |   | (EACA).....  | 10   |
| 1.01   | Account.....                                      | 3.15 In-Plan Roth Rollover Contribution .....  | 11   |
| 1.02   | Accounting Date .....                             | <b>ARTICLE IV, TIME AND METHOD OF<br/>PAYMENT OF BENEFITS</b>                                |  |
| 1.03   | Beneficiary.....                                  | 4.01   | Distribution Restrictions.....   |
| 1.04   | Code.....   | 4.02   | Time and Method of Payment of Account.....                                     |
| 1.05   | Compensation .....                                | 4.03   | Required Minimum Distributions.....  |
| 1.06   | Deferral Contributions .....                      | 4.04   | Death Benefits .....   |
| 1.07   | Deferred Compensation .....                       | 4.05   | Distributions Prior to Severance from Employment... 15                         |
| 1.08   | Effective Date .....                              | 4.06   | Distributions Under Qualified Domestic Relations<br>Orders (QDROs) .....       |
| 1.09   | Elective Deferrals .....                          | 4.07   | Direct Rollover of Eligible Rollover Distributions –<br>Governmental Plan..... |
| 1.10   | Employee.....                                     | 4.08   | Election to Deduct from Distribution .....                                     |
| 1.11   | Employer .....                                    | <b>ARTICLE V, PLAN ADMINISTRATOR - DUTIES<br/>WITH RESPECT TO PARTICIPANTS'<br/>ACCOUNTS</b> |  |
| 1.12   | Employer Contribution .....                       | 5.01   | Term/Vacancy .....   |
| 1.13   | ERISA.....  | 5.02   | Powers and Duties .....  |
| 1.14   | Excess Deferrals .....                            | 5.03   | Compensation .....   |
| 1.15   | Includible Compensation .....                     | 5.04   | Authorized Representative .....  |
| 1.16   | Independent Contractor.....                       | 5.05   | Individual Accounts/Records .....  |
| 1.17   | Leased Employee.....                              | 5.06   | Value of Participant's Account .....   |
| 1.18   | Matching Contribution.....                        | 5.07   | Account Administration, Valuation and Expenses .....                           |
| 1.19   | Nonelective Contribution.....                     | 5.08   | Account Charged.....   |
| 1.20   | Normal Retirement Age .....                       | 5.09   | Ownership of Fund/Tax-Exempt Organization .....                                |
| 1.21   | Participant.....                                  | 5.10   | Participant Direction of Investment.....                                       |
| 1.22   | Plan .....  | 5.11   | Vesting/Substantial Risk of Forfeiture .....                                   |
| 1.23   | Plan Administrator.....                           | 5.12   | Preservation of Eligible Plan Status .....                                     |
| 1.24   | Plan Entry Date.....                              | 5.13   | Limited Liability .....  |
| 1.25   | Plan Year .....                                   | 5.14   | Lost Participants.....   |
| 1.26   | Pre-Tax Elective Deferrals.....                   | 5.15   | Plan Correction.....   |
| 1.27   | Rollover Contribution.....                        | <b>ARTICLE VI, PARTICIPANT<br/>ADMINISTRATIVE PROVISIONS</b>                                 |  |
| 1.28   | Roth Elective Deferrals.....                      | 6.01   | Beneficiary Designation .....  |
| 1.29   | Salary Reduction Agreement .....                  | 6.02   | No Beneficiary Designation .....   |
| 1.30   | Salary Reduction Contribution.....                | 6.03   | Salary Reduction Agreement.....  |
| 1.31   | Service .....                                     | 6.04   | Personal Data to Plan Administrator .....                                      |
| 1.32   | State .....                                       | 6.05   | Address for Notification .....   |
| 1.33   | Substantial Risk of Forfeiture .....              | 6.06   | Participant or Beneficiary Incapacitated.....                                  |
| 1.34   | Tax-Exempt Organization.....                      | <b>ARTICLE VII, MISCELLANEOUS</b>  |  |
| 1.35   | Taxable Year.....                                 | 7.01   | No Assignment or Alienation .....  |
| 1.36   | Transfer.....                                     | 7.02   | Effect on Other Plans .....  |
| 1.37   | Trust.....  | 7.03   | Word Usage.....  |
| 1.38   | Trustee .....                                     | 7.04   | State Law.....   |
| 1.39   | Type of 457 Plan.....                             | 7.05   | Employment Not Guaranteed .....  |
| 1.40   | Vested .....                                      | 7.06   | Notice, Designation, Election, Consent and Waiver... 23                        |
| <b>ARTICLE II, ELIGIBILITY AND<br/>PARTICIPATION</b>       |   | <b>ARTICLE VIII, TRUST PROVISIONS—<br/>GOVERNMENTAL ELIGIBLE 457 PLAN</b>                    |  |
| 2.01   | Eligibility.....                                  | 8.01   | Governmental Eligible 457 Plan.....  |
| 2.02   | Participation upon Re-Employment.....             | 8.02   | Acceptance/Holding .....   |
| 2.03   | Change in Employment Status.....                  | 8.03   | Receipt of Contributions.....  |
| <b>ARTICLE III, DEFERRAL<br/>CONTRIBUTIONS/LIMITATIONS</b> |   | 8.04   | Full Investment Powers.....  |
| 3.01   | Amount.....                                       | 8.05   | Records and Statements.....  |
| 3.02   | Salary Reduction Contributions.....               | 8.06   | Fees and Expenses from Fund.....   |
| 3.03   | Matching Contributions .....                      | 8.07   | Professional Agents.....   |
| 3.04   | Normal Limitation .....                           | 8.08   | Distribution of Cash or Property .....   |
| 3.05   | Normal Retirement Age Catch-Up Contribution ..... | 8.09   | Resignation and Removal.....   |
| 3.06   | Age 50 Catch-Up Contribution .....                | 8.10   | Successor Trustee.....   |
| 3.07   | Contribution Allocation .....                     | 8.11   | Valuation of Trust .....   |
| 3.08   | Allocation Conditions .....                       |  |  |
| 3.09   | Rollover Contributions .....                      |  |  |
| 3.10   | Distribution of Excess Deferrals .....            |  |  |
| 3.11   | Deemed IRA Contributions .....                    |  |  |
| 3.12   | Roth Elective Deferrals.....                      |  |  |
| 3.13   | Benefit Accrual.....                              |  |  |
| 3.14   | Eligible Automatic Contribution Arrangement       |  |  |

8.12 Participant Direction of Investment ..... 25  
8.13 Third Party Reliance ..... 25  
8.14 Invalidity of Any Trust Provision ..... 25  
8.15 Exclusive Benefit ..... 25  
8.16 Substitution of Custodial Account or Annuity  
Contract ..... 26  
8.17 Group Trust Authority ..... 26

**ARTICLE IX, AMENDMENT, TERMINATION,  
TRANSFERS**

9.01 Amendment by Employer/Sponsor ..... 27  
9.02 Termination/Freezing of Plan ..... 27  
9.03 Transfers ..... 27  
9.04 Purchase of Permissive Service Credit ..... 27

## ARTICLE I DEFINITIONS

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

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

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

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

### 1.05 "**Compensation**"

**(A) Uses and Context.** Any reference in the Plan to Compensation is a reference to the definition in this Section 1.05, unless the Plan reference, or the Employer in the Adoption Agreement, modifies this definition. Except as the Plan otherwise specifically provides, the Plan Administrator will take into account only Compensation actually paid during (or as permitted under the Code, paid for) the relevant period. A Compensation payment includes Compensation paid by the Employer through another person under the common paymaster provisions in Code §§3121 and 3306. In the case of an Independent Contractor, Compensation means the amounts the Employer pays to the Independent Contractor for services, except as the Employer otherwise specifies in the Adoption Agreement. The Employer in the Adoption Agreement may elect to allocate contributions based on a Compensation within specified 12 month period which ends within a Plan Year.

**(B) Base Definitions and Modifications.** The Employer in the Adoption Agreement must elect one of the following base definitions of Compensation: W-2 Wages, Code §3401(a) Wages, or 415 Compensation. The Employer may elect a different base definition as to different Contribution Types. The Employer in the Adoption Agreement may specify any modifications thereto, for purposes of contribution allocations under Article III. If the Employer fails to elect one of the above-referenced definitions, the Employer is deemed to have elected the W-2 Wages definition.

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

nature or location of the employment or services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

**(2) Code §3401(a) Wages (income tax wage withholding).** Code §3401(a) Wages means wages within the meaning of Code §3401(a) for the purposes of income tax withholding at the source, but determined without regard to any rules that limit the remuneration included in wages based on the nature or the location of the employment or the services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

**(3) Code §415 Compensation (current income definition/simplified compensation under Treas. Reg. §1.415(c)-2(d)(2)).** Code §415 Compensation means the Employee's wages, salaries, fees for professional service and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits and reimbursements or other expense allowances under a nonaccountable plan as described in Treas. Reg. §1.62-2(c)).

Code §415 Compensation does not include:

**(a) Deferred compensation/SEP/SIMPLE.** Employer contributions (other than Elective Deferrals) to a plan of deferred compensation (including a simplified employee pension plan under Code §408(k) or to a simple retirement account under Code §408(p)) to the extent the contributions are not included in the gross income of the Employee for the Taxable Year in which contributed, and any distributions from a plan of deferred compensation (whether or not qualified), regardless of whether such amounts are includible in the gross income of the Employee when distributed.

**(b) Option exercise.** Amounts realized from the exercise of a non-qualified stock option (an option other than a statutory option under Treas. Reg. §1.421-1(b)), or when restricted stock or other property held by an Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture under Code §83.

**(c) Sale of option stock.** Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option as defined under Treas. Reg. §1.421-1(b).

**(d) Other amounts that receive special tax benefits.** Other amounts that receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includible in the gross income of the Employee and are not salary reduction amounts under Code §125).

**(e) Other similar items.** Other items of remuneration which are similar to any of the items in Sections 1.11(B)(3)(a) through (d).



**(4) Alternative (general) 415 Compensation.** Under this definition, Compensation means as defined in Section 1.05(B)(3) but with the addition of: (a) amounts described in Code §§104(a)(3), 105(a), or 105(h) but only to the extent that these amounts are includible in Employee's gross income; (b) amounts paid or reimbursed by the Employer for moving expenses incurred by the Employee, but only to the extent that at the time of payment it is reasonable to believe these amounts are not deductible by the Employee under Code §217; (c) the value of a nonstatutory option (an option other than a statutory option under Treas. Reg. §1.421-1(b)) granted by the Employer to an Employee, but only to the extent that the value of the option is includible in the Employee's gross income for the Taxable Year of the grant; (d) the amount includible in the Employee's gross income upon the Employee's making of an election under Code §83(b); and (e) amounts that are includible in the Employee's gross income under Code §409A or Code §457(f)(1)(A) or because the amounts are constructively received by the Participant. [Note if the Plan's definition of Compensation is W-2 Wages or Code §3401(a) Wages, then Compensation already includes the amounts described in clause (e).]

**(C) Deemed 125 Compensation.** Deemed 125 Compensation means, in the case of any definition of Compensation which includes a reference to Code §125, amounts under a Code §125 plan of the Employer that are not available to a Participant in cash in lieu of group health coverage, because the Participant is unable to certify that he/she has other health coverage.

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

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

**(F) Post-Severance Compensation.** Compensation includes Post-Severance Compensation to the extent the Employer elects in the Adoption Agreement or as the Plan otherwise provides. Post-Severance Compensation is Compensation paid after a Participant's Severance from Employment from the Employer, as further described in this Section 1.05(F). As the Employer elects, Post-Severance Compensation may include any or all of regular pay, leave cash-outs, or deferred compensation paid within the time period described in Section 1.05(F)(1), and may also include salary continuation for disabled Participants, all as defined below. Any other payment paid after Severance from Employment that is not described in this Section 1.05(F) is not Compensation even if payment is made within the time period described below. Post-Severance Compensation does not include severance pay, parachute payments under Code §280G(b)(2) or payments under a nonqualified unfunded deferred compensation plan unless the payments would have

been paid at that time without regard to Severance from Employment.

**(1) Timing.** Post-Severance Compensation includes regular pay, leave cashouts, or deferred compensation only to the extent the Employer pays such amounts by the later of 2 1/2 months after Severance from Employment or by the end of the Limitation Year that includes the date of such Severance from Employment.

**(a) Regular pay.** Regular pay means the payment of 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, but only if 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.

**(b) Leave cash-outs.** Leave cash-outs means payments for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued and if Compensation would have included those amounts if they were paid prior to the Participant's Severance from Employment.

**(c) Deferred compensation.** As used in this Section 1.05(F), deferred compensation means the payment of deferred compensation pursuant to an unfunded deferred compensation plan, if Compensation would have included the Deferred Compensation if it had been paid prior to the Participant's Severance from Employment, 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.

**(2) Salary continuation for disabled Participants.** Salary continuation for disabled Participants means Compensation paid to a Participant who is permanently and totally disabled (as defined in Code §22(e)(3)).

**(3) Differential Wage Payments.** An individual receiving a Differential Wage Payment, as defined by Code §3401(h)(2), shall be treated as an employee of the employer making the payment and the Differential Wage Payment shall be treated as compensation for purposes of Code §457(b) and any other Internal Revenue Code section that references the definition of compensation under Code §415, including the definition of Includible Compensation as provided in Section 1.15.

1.06 **"Deferral Contributions"** means as the Employer elects on the Adoption Agreement, Salary Reduction Contributions, Nonelective Contributions and Matching Contributions. The Plan Administrator in applying the Code §457(b) limit will take into account Deferral Contributions in the Taxable Year in which deferred, or if later, in the Taxable Year in which the Deferral Contributions are no longer subject to a Substantial Risk of Forfeiture. The Plan Administrator in determining the amount of a Participant's Deferral Contributions disregards the net income, gain and loss attributable to Deferral Contributions unless the Deferral Contributions are subject to a Substantial Risk of Forfeiture. If a Deferral Contribution is subject to a Substantial Risk of Forfeiture, the Plan Administrator takes into the Deferral Contribution as adjusted for allocable net income, gain or loss in the Taxable Year in which the Substantial Risk of Forfeiture lapses.

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

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

1.09 "**Elective Deferrals**" means a contribution the Employer makes to the Plan pursuant to a Participant's Salary Reduction Agreement, as described in Section 3.02. The term "Elective Deferrals" includes Pre-Tax Elective Deferrals and Roth Elective Deferrals.

1.10 "**Employee**" means an individual who provides services for the Employer, as a common law employee of the Employer. The Employer in the Adoption Agreement must elect or specify any Employee, or class of Employees, not eligible to participate in the Plan (an "Excluded Employee"). See Section 1.16 regarding potential treatment of an Independent Contractor as an Employee.

1.11 "**Employer**" means the entity specified in the Adoption Agreement, any successor which shall maintain this Plan; and any predecessor which has maintained this Plan. In addition, where appropriate, the term Employer shall include any Participating Employer.

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

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

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

1.15 "**Includible Compensation**" means, for the Employee's Taxable Year, the Employee's total Compensation within the meaning of Code §415(c)(3) paid to an Employee for services rendered to the Employer. Includible Compensation includes Deferral Contributions under the Plan, compensation deferred under any other plan described in Code §457, and any amount excludible from the Employee's gross income under Code §§401(k), 403(b), 125 or 132(f)(4) or any other amount excludible from the Employee's gross income for Federal income tax purposes. The Employer will determine Includible Compensation without regard to community property laws.

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

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

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

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

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

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

1.22 "**Plan**" means the 457 plan established or continued by the Employer in the form of this basic Plan and (if applicable) Trust Agreement, including the Adoption Agreement. The Employer in the Adoption Agreement must designate the name of the Plan. All section references within the Plan are Plan section references unless the context clearly indicates otherwise.

1.23 "**Plan Administrator**" is the Employer unless the Employer designates another person to hold the position of Plan Administrator. The Plan Administrator may be a Participant.

1.24 "**Plan Entry Date**" means the dates the Employer elects in Adoption Agreement.

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

1.26 "**Pre-Tax Elective Deferrals**" means a Participant's Salary Reduction Contributions which are not includible in the Participant's gross income at the time deferred and have been irrevocably designated as Pre-Tax Elective Deferrals by the Participant in his or her Salary Reduction Agreement. A Participant's Pre-Tax Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Pre-Tax Elective Deferrals.

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

1.28 "**Roth Elective Deferrals**" means a Participant's Salary Reduction Contributions that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth Elective Deferrals by the Participant in his or her Salary Reduction Agreement. A Participant's Roth Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Roth Elective Deferrals. However, forfeitures may not be allocated to such account. The Plan must also maintain a record of a Participant's investment in the contract (i.e., designated Roth contributions that have not been distributed) and the year in which the Participant first made a Roth Elective Deferral.

1.29 "**Salary Reduction Agreement**" means a written agreement between a Participant and the Employer, by which

the Employer reduces the Participant's Compensation for Compensation not available as of the date of the election and contributes the amount as a Salary Reduction Contribution to the Participant's Account.

1.30 "**Salary Reduction Contribution**" means a contribution the Employer makes to the Plan pursuant to a Participant's Salary Reduction Agreement.

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

(A) **Qualified Military Service.** Service includes any qualified military service the Plan must credit for contributions and benefits in order to satisfy the crediting of Service requirements of Code §414(u). A Participant whose employment is interrupted by qualified military service under Code §414(u) or who is on a leave of absence for qualified military service under Code §414(u) may elect to make additional Salary Reduction Contributions upon resumption of employment with the Employer equal to the maximum Deferral Contributions that the Participant could have elected during that period if the Participant's employment with the Employer had continued (at the same level of Compensation) without the interruption of leave, reduced by the Deferral Contributions, if any, actually made for the Participant during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave). The Employer shall make appropriate make-up Nonelective Contributions and Matching Contributions for such a Participant as required under Code §414(u). The Plan shall apply limitations of Article III to all Deferral Contributions under this paragraph with respect to the year to which the Deferral Contribution relates.

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

(C) "**Severance from Employment.**"

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

(2) **Independent Contractor.** An Independent Contractor has a Severance from Employment when the contract(s) under which the Independent Contractor performs services for the Employer expires (or otherwise terminates), unless the Employer anticipates a renewal of the contractual relationship or the Independent Contractor becoming an Employee. The Employer anticipates renewal if it intends to contract for the services provided under the expired contract and neither the Employer nor the Independent Contractor has eliminated the Independent Contractor as a potential provider of such services under the new contract. Further, the Employer intends to contract for services conditioned only upon the Employer's need for the services provided under the expired contract or the Employer's availability of funds. Notwithstanding the preceding provisions of this Section 1.31, the Plan Administrator will consider an Independent Contractor to have incurred a Severance from Employment: (a) if the Plan Administrator or Trustee will not pay any Deferred Compensation to an

Independent Contractor who is a Participant before a date which is at least twelve months after the expiration of the Independent Contractor's contract (or the last to expire of such contracts) to render Services to the Employer; and (b) if before the applicable twelve-month payment date, the Independent Contractor performs Service as an Independent Contractor or as an Employee, the Plan Administrator or Trustee will not pay to the Independent Contractor his or her Deferred Compensation on the applicable date.

(3) **Deemed Severance.** Notwithstanding Section 1.05(F), if the Employer elects in the Adoption Agreement, then if a Participant performs service in the uniformed services (as defined in Code §414(u)(12)(B)) on active duty for a period of more than 30 days, the Participant will be deemed to have a severance from employment solely for purposes of eligibility for distribution of amounts not subject to Code §412. However, the Plan will not distribute such a Participant's Account on account of this deemed severance unless the Participant specifically elects to receive a benefit distribution hereunder. If a Participant elects to receive a distribution on account of this deemed severance, then no Deferral Contributions may be made for the Participant during the 6-month period beginning on the date of the distribution. If a Participant would be entitled to a distribution on account of a deemed severance, and a distribution on account of another Plan provision, then the other Plan provision will control and the 6-month suspension will not apply.

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

1.33 "**Substantial Risk of Forfeiture**" exists if the Plan expressly conditions a Participant's right to Deferred Compensation upon the Participant's future performance of substantial Service for the Employer.

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

1.35 "**Taxable Year**" means the calendar year or other taxable year of a Participant.

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

1.37 "**Trust**" means the Trust created under the adopting Employer's Plan. A Trust required under a Governmental Eligible 457 Plan is subject to Article VIII. Any Trust under a Tax-Exempt Organization Eligible 457 Plan is subject to Section 5.09.

1.38 "**Trustee**" means the person or persons who as Trustee execute the Employer's Adoption Agreement, or any successor in office who in writing accepts the position of Trustee.

1.39 **Type of 457 Plan.** This Plan is an Eligible 457 Plan, which is a plan which satisfies the requirements of Code §457(b) and Treas. Reg. §§1.457-3 through -10. The Employer in the Adoption Agreement must specify whether the plan is either a Governmental Eligible 457 Plan or a Tax-Exempt Organization Eligible 457 Plan, as defined below:

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

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

1.40 **"Vested"** means a Participant's Deferral Contributions that are not subject to a Substantial Risk of Forfeiture, including a vesting schedule.



**ARTICLE II**  
**ELIGIBILITY AND PARTICIPATION**

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

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

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

**ARTICLE III**  
**DEFERRAL CONTRIBUTIONS/LIMITATIONS**

3.01 AMOUNT.

**(A) Contribution Formula.** For each Plan Year, or other period the Employer specifies in the Adoption Agreement, the Employer will contribute to the Plan the type and amount of Deferral Contributions the Employer elects in the Adoption Agreement.

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

The Trustee will decrease the Employer contribution returnable for any losses attributable to it. The Trustee may require the Employer to furnish it whatever evidence the Trustee deems necessary to enable the Trustee to confirm the amount the Employer has requested be returned is properly returnable.

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

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

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

**(B) Automatic Enrollment.** The Employer in the Adoption Agreement may provide for automatic Salary Reduction Contributions of a specified amount, subject to giving notice to affected Participants of the automatic election and of their right to make a contrary election.

A Governmental Employer under an Eligible 457 Plan may elect to provide an Eligible Automatic Contribution Arrangement ("EACA"). If the Employer elects to provide an EACA, the Employer will amend the Plan to add necessary language.

**(C) Application to Leave of Absence and Disability.** Unless a Participant in his or her Salary Reduction Agreement elects otherwise, the Participant's Salary Reduction Agreement shall continue to apply during the Participant's leave of absence or the Participant's disability (as the Plan Administrator shall

establish), if the Participant has Compensation other than imputed compensation or disability benefits.

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

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

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

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

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

3.05 NORMAL RETIREMENT AGE CATCH-UP CONTRIBUTION. If selected in the Adoption Agreement, a Participant may elect to make this catch-up election. For one or more of the Participant's last three Taxable Years ending before the Taxable Year in which the Participant attains Normal Retirement Age, the Participant's maximum Deferral Contributions may not exceed the lesser of:

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

**(A) Underutilized Limitation.** A Participant's underutilized limitation is equal to the sum of: (i) the normal limitation for the Taxable Year, and (ii) the normal limitation for each of the prior Taxable Years of the Participant commencing after 1978 during which the Participant was eligible to participate in the Plan and the Participant's Deferral Contributions were subject to the Normal Limitation or any other Code §457(b) limit, less the amount of Deferral Contributions for each such prior Taxable Year, excluding age 50 catch-up contributions.

**(B) Normal Retirement Age.** Normal Retirement Age is the age the Employer specifies in the Adoption Agreement provided that the age may not be: (i) earlier than the earliest of age 65 or the age at which Participants have the right to retire and receive under the Employer's defined benefit plan (or money purchase plan if the Participant is not eligible to participate in a defined benefit plan) immediate retirement benefits without actuarial or other reduction because of retirement before a later specified age; or (ii) later than age 70 1/2.

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

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

**(3) Police and Firefighters.** In a Governmental Eligible 457 Plan with qualified police or firefighter Participants within the meaning of Code §415(b)(2)(H)(ii)(I), the Employer in the Adoption Agreement may elect (or permit the qualified Participants to elect) a Normal Retirement Age as early as age 40 and as late as age 70 1/2.

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

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

If an Employer elects to permit age 50 catch-up contributions, all Employees who are eligible to make Salary Reduction Contributions under this Plan and who have attained age 50 before the close of the Taxable Year are eligible to make age 50 catch-up contributions for that Taxable Year in accordance with, and subject to the limitations of, Code §414(v). Such catch-up contributions are not taken into account for purposes of the provisions of the Plan implementing the required limitations of Code §457. If, for a Taxable Year, an Employee makes a catch-up contribution under Section 3.05, the Employee is not eligible to make age 50 catch-up contributions under this Section 3.06. A catch-up eligible Participant in each Taxable Year is entitled to the greater of the amount determined under Section 3.05 or Section 3.06 Catch-Up Amount plus the Section 3.04 Normal Limitation.

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

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

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

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

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

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

**(f) Other nonelective.** The Plan Administrator will allocate Nonelective Contributions for a Plan Year as specified in the Adoption Agreement.

**3.08 ALLOCATION CONDITIONS.** The Plan Administrator will determine the allocation conditions applicable to Nonelective Contributions or to Matching Contributions (or to both) in accordance with the Employer's elections in the Adoption Agreement. The Plan Administrator will not allocate to a Participant any portion of an Employer Contribution (or forfeiture if applicable) for a Plan Year or applicable portion thereof in which the Participant does not satisfy the applicable allocation condition(s).

**3.09 ROLLOVER CONTRIBUTIONS.** If elected in the Adoption Agreement, an Employer sponsoring a Governmental Eligible 457 Plan may permit Rollover Contributions.

**(A) Operational Administration.** The Employer, operationally and on a nondiscriminatory basis, may elect to limit an eligible Employee's right or a Participant's right to make a Rollover Contribution. Any Participant (or as applicable, any eligible Employee), with the Employer's written consent and after filing with the Trustee the form prescribed by the Plan Administrator, may make a Rollover Contribution to the Trust. Before accepting a Rollover Contribution, the Trustee may require a Participant (or eligible Employee) to furnish satisfactory evidence the proposed transfer is in fact a "Rollover Contribution" which the Code permits an employee to make to an eligible retirement plan. The Trustee, in its sole discretion, may decline to accept a Rollover Contribution of property which could: (1) generate unrelated business taxable income; (2) create difficulty or undue expense in storage, safekeeping or valuation; or (3) create other practical problems for the Trust.

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

**(C) Separate Accounting.** If an Employer permits Rollover Contributions, the Plan Administrator must account separately for: (1) amounts rolled into this Plan from an eligible retirement plan (other than from another Governmental Eligible 457 plan); and (2) amounts rolled into this Plan from another Governmental Eligible 457 Plan. The Plan Administrator for purposes of ordering any subsequent distribution from this Plan,

may designate a distribution from a Participant's Rollover Contributions as coming first from either of (1) or (2) above if the Participant has both types of Rollover Contribution Accounts.

**(D) May Include Roth Deferrals.** If this Plan is an eligible governmental 457(b) plan which accepts Roth Elective Deferrals, then a Rollover Contribution may include Roth Deferrals made to another plan, as adjusted for Earnings. Such amounts must be directly rolled over into this Plan from another plan which is qualified under Code §401(a), from a 403(b) plan, or from an eligible governmental 457 plan. The Plan must account separately for the Rollover Contribution, including the Roth Deferrals and the Earnings thereon.

**(E) In-Plan Roth Rollover Contributions.** A Governmental Employer under an Eligible 457 Plan may elect to permit In-Plan Roth Rollover Contribution. If the Employer decides to permit In-Plan Roth Rollover Contributions, the Employer will amend the Plan to add necessary language.

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

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

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

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

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

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

**3.12 ROTH ELECTIVE DEFERRALS.** The Employer may elect in the Adoption Agreement to permit Roth Elective Deferrals. Unless elected otherwise, Roth Elective Deferrals shall be treated in the same manner as Elective Deferrals. The Employer may, in operation, implement deferral election procedures provided such procedures are communicated to Participants and permit Participants to modify their elections at least once each Plan Year.

**(A) Elective Deferrals.** "Elective Deferral" means a contribution the Employer makes to the Plan pursuant to a Participant's Salary Reduction Agreement, as described in

Section 3.02. The term "Elective Deferrals" includes Pre-tax Elective Deferrals and Roth Elective Deferrals.

**(B) Pre-Tax Elective Deferrals.** "Pre-Tax Elective Deferrals" means a Participant's Salary Reduction Contributions which are not includible in the Participant's gross income at the time deferred and have been irrevocably designated as Pre-Tax Elective Deferrals by the Participant in his or her Salary Reduction Agreement. A Participant's Pre-Tax Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Pre-Tax Elective Deferrals.

**(C) Roth Elective Deferrals.** "Roth Elective Deferrals" means a Participant's Salary Reduction Contributions that are includible in the Participant's gross income at the time deferred and have been irrevocably designated as Roth Elective Deferrals by the Participant in his or her Salary Reduction Agreement. A Participant's Roth Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Roth Elective Deferrals. However, forfeitures may not be allocated to such account. The Plan must also maintain a record of a Participant's investment in the contract (i.e., designated Roth contributions that have not been distributed) and the year in which the Participant first made a Roth Elective Deferral.

**(D) Ordering Rules for Distributions.** The Administrator operationally may implement an ordering rule procedure for withdrawals (including, but not limited to, withdrawals on account of an unforeseeable emergency) from a Participant's accounts attributable to Pre-Tax Elective Deferrals or Roth Elective Deferrals. Such ordering rules may specify whether the Pre-Tax Elective Deferrals or Roth Elective Deferrals are distributed first. Furthermore, such procedure may permit the Participant to elect which type of Elective Deferrals shall be distributed first.

**(E) Corrective distributions attributable to Roth Elective Deferrals.** For any Plan Year in which a Participant may make both Roth Elective Deferrals and Pre-Tax Elective Deferrals, the Administrator operationally may implement an ordering rule procedure for the distribution of Excess Deferrals (Treas. Reg. §1.457-4(e)). Such an ordering rule may specify whether the Pre-Tax Elective Deferrals or Roth Elective Deferrals are distributed first, to the extent such type of Elective Deferrals was made for the year. Furthermore, such procedure may permit the Participant to elect which type of Elective Deferrals shall be distributed first.

**(F) Loans.** If Participant loans are permitted under the Plan, then the Administrator may modify the loan policy or program to provide limitations on the ability to borrow from, or use as security, a Participant's Roth Elective Deferral account. Similarly, the loan policy or program may be modified to provide for an ordering rule with respect to the default of a loan that is made from the Participant's Roth Elective Deferral account and other accounts under the Plan.

**(G) Rollovers.** A direct rollover of a distribution from Roth Elective Deferrals shall only be made to a Plan which includes Roth Elective Deferrals as described in Code §402A(e)(1) or to a Roth IRA as described in Code §408A, and only to the extent the rollover is permitted under the rules of Code §402(c).

The Plan shall accept a rollover contribution of Roth Elective Deferrals only if it is a direct rollover from another Plan which permits Roth Elective Deferrals as described in Code

§402A(e)(1) and only to the extent the rollover is permitted under the rules of Code §402(c). The Employer, operationally and on a uniform and nondiscriminatory basis, may decide whether to accept any such rollovers.

The Plan shall not provide for a direct rollover (including an automatic rollover) for distributions from a Participant's Roth Elective Deferral account if the amount of the distributions that are eligible rollover distributions are reasonably expected to total less than \$200 during a year. In addition, any distribution from a Participant's Roth Elective Deferrals are not taken into account in determining whether distributions from a Participant's other accounts are reasonably expected to total less than \$200 during a year. Furthermore, the Plan will treat a Participant's Roth Elective Deferral account and the Participant's other accounts as held under two separate plans for purposes of applying the automatic rollover rules. However, eligible rollover distributions of a Participant's Roth Elective Deferrals are taken into account in determining whether the total amount of the Participant's account balances under the Plan exceed the Plan's limits for purposes of mandatory distributions from the Plan.

The provisions of the Plan that allow a Participant to elect a direct rollover of only a portion of an eligible rollover distribution but only if the amount rolled over is at least \$500 is applied by treating any amount distributed from a Participant's Roth Elective Deferral account as a separate distribution from any amount distributed from the Participant's other accounts in the Plan, even if the amounts are distributed at the same time.

**(H) Automatic Enrollment.** If the Plan utilizes an automatic enrollment feature as described in Section 3.02(B), then any such automatic contribution shall be a Pre-Tax Elective Deferral.

**(I) Operational Compliance.** The Plan Administrator will administer Roth Elective Deferrals in accordance with applicable regulations or other binding authority.

**3.13 BENEFIT ACCRUAL.** If the Employer elects to apply this Section, then effective as of the date adopted, for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.

**(A) Determination of benefits.** The amount of Matching Contributions to be made pursuant to this Section 3.13 shall be determined as though the amount of Salary Reduction Contributions of an individual treated as reemployed under this Section on the basis of the individual's average actual Salary Reduction Contributions for the lesser of: (i) the 12-month period of service with the Employer immediately prior to qualified military service; or (ii) the actual length of continuous service with the Employer.

**3.14 ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGEMENT (EACA).** As elected in the Adoption Agreement, the Employer maintains a Plan with automatic enrollment provisions as an Eligible Automatic Contribution Arrangement ("EACA"). Accordingly, the Plan will satisfy the (1) uniformity requirements, and (2) notice requirements under this Section.

**(A) Uniformity.** The Automatic Deferral Percentage must be a uniform percentage of Compensation. All Participants in the EACA, are subject to Automatic Deferrals, except to the extent otherwise provided in this Plan. If a Participant's Affirmative Election expires or otherwise ceases to be in effect, the Participant will immediately thereafter be subject to Automatic Deferrals, except to the extent otherwise provided in this Plan. However, the Plan does not violate the uniform Automatic Deferral Percentage merely because the Plan applies any of the following provisions:

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

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

**(c) Applying statutory limits.** The Plan limits the Automatic Deferral amount so as not to exceed the limits of Code Section 457(b)(2) (determined without regard to Age 50 Catch-Up Deferrals).

**(B) EACA notice.** The Plan Administrator annually will provide a notice to each Participant a reasonable period prior to each plan year the Employer maintains the Plan as an EACA ("EACA Plan Year").

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

**(b) Mid-year notice/new Participant or Plan.** If: (a) an Employee becomes eligible to make Salary Reduction Contributions in the Plan during an EACA Plan Year but after the Plan Administrator has provided the annual EACA notice for that plan year; or (b) the Employer adopts mid-year a new Plan as an EACA, the Plan Administrator must provide the EACA notice no later than the date the Employee becomes eligible to make Salary Reduction Contributions. However, if it is not practicable for the notice to be provided on or before the date an Employee becomes a Participant, then the notice will nonetheless be treated as provided timely if it is provided as soon as practicable after that date and the Employee is permitted to elect to defer from all types of Compensation that may be deferred under the Plan earned beginning on that date.

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

**(C) EACA permissible withdrawal.** If elected in in the Adoption Agreement, a Participant who has Automatic Deferrals under the EACA may elect to withdraw all the Automatic Deferrals (and allocable earnings) under the provisions of this Section 3.14. Any distribution made pursuant to this Section will be processed in accordance with normal distribution provisions of the Plan.

**(a) Amount.** If a Participant elects a permissible withdrawal under this Section, then the Plan must make a

distribution equal to the amount (and only the amount) of the Automatic Deferrals made under the EACA (adjusted for allocable gains and losses to the date of the distribution). The Plan may separately account for Automatic Deferrals, in which case the entire account will be distributed. If the Plan does not separately account for the Automatic Deferrals, then the Plan must determine earnings or losses in a manner similar to the rules of Treas. Reg. §1.401(k)-2(b)(2)(iv) for distributions of excess contributions.

**(b) Fees.** Notwithstanding the above, the Plan Administrator may reduce the permissible distribution amount by any generally applicable fees. However, the Plan may not charge a greater fee for distribution under this Section than applies to other distributions. The Plan Administrator may adopt a policy regarding charging such fees consistent with this paragraph.

**(c) Timing.** The Participant may make an election to withdraw the Automatic Deferrals under the EACA no later than 90 days, or such shorter period as specified in the Adoption Agreement, after the date of the first Automatic Deferral under the EACA. For this purpose, the date of the first Automatic Deferral is the date that the Compensation subject to the Automatic Deferral otherwise would have been includible in the Participant's gross income. Furthermore, a Participant's withdrawal right is not restricted due to the Participant making an Affirmative Election during the 90 day period (or shorter period as specified in Adoption Agreement.).

**(d) Rehired Employees.** For purposes of this Section, an Employee who for an entire Plan Year did not have contributions made pursuant to a default election under the EACA will be treated as having not had such contributions for any prior Plan Year as well.

**(e) Effective date of the actual withdrawal election:** The effective date of the permissible withdrawal will be as soon as practicable, but in no event later than the earlier of (1) the pay date of the second payroll period beginning after the election is made, or (2) the first pay date that occurs at least 30 days after the election is made. The election will also be deemed to be an Affirmative Election to have no Salary Reduction Contributions made to the Plan.

**(f) Related matching contributions.** The Plan Administrator will not take any deferrals withdrawn pursuant to this section into account in computing the contribution and allocation of matching contributions, if any. If the Employer has already allocated matching contributions to the Participant's account with respect to deferrals being withdrawn pursuant to this Section, then the matching contributions, as adjusted for gains and losses, must be forfeited. Except as otherwise provided, the Plan will use the forfeited contributions to reduce future contributions or to reduce plan expenses.

**(D) Compensation.** Compensation for purposes of determining the amount of Automatic Deferrals has the same meaning as Compensation with regard to Salary Reduction Contributions in general.

#### **(E) Definitions.**

**(a) Definition of Automatic Deferral.** An Automatic Deferral is a Salary Reduction Contribution that results from the operation of this Article III. Under the Automatic Deferral, the Employer automatically will reduce by the Automatic Deferral Percentage as elected the Compensation of each Participant subject to the EACA. The Plan Administrator will cease to apply the Automatic Deferral to a Participant who makes an Affirmative Election as defined in this Section.

**(b) Definition of Automatic Deferral Percentage/Increases.** The Automatic Deferral Percentage is the percentage of Automatic Deferral (including any scheduled increase to the Automatic Deferral Percentage the Employer may elect).

**(c) Effective date of EACA Automatic Deferral.** The effective date of an Employee's Automatic Deferral will be as soon as practicable after the Employee is subject to Automatic Deferrals under the EACA, consistent with (a) applicable law, and (b) the objective of affording the Employee a reasonable period of time after receipt of the notice to make an Affirmative Election (and, if applicable, an investment election).

**(d) Definition of Affirmative Election.** An Affirmative Election is a Participant's election made after the EACA's Effective Date not to defer any Compensation or to defer more or less than the Automatic Deferral Percentage.

**(e) Effective Date of Affirmative Election.** A Participant's Affirmative Election generally is effective as of the first payroll period which follows the payroll period in which the Participant made the Affirmative Election. However, a Participant may make an Affirmative Election which is effective: (a) for the first payroll period in which he or she becomes a Participant if the Participant makes an Affirmative Election within a reasonable period following the Participant's entry date and before the Compensation to which the Election applies becomes currently available; or (b) for the first payroll period following the EACA's effective date, if the Participant makes an Affirmative Election not later than the EACA's effective date.

#### **3.15 IN-PLAN ROTH ROLLOVER CONTRIBUTION**

**(a) Employer Election.** The Employer in its Adoption Agreement in which the Employer has elected to permit Roth Deferrals also will elect whether to permit an In-Plan Roth Rollover Contribution in accordance with this Section with regard to otherwise distributable amounts and/or otherwise nondistributable amounts. If the Employer elects to permit such contributions, the Employer in its Adoption Agreement will specify the Effective Date thereof which may not be earlier than distributions made after September 27, 2010, and may not be earlier than January 1, 2013 in the case of rollovers of otherwise nondistributable amounts. An In-Plan Roth Rollover Contribution means a Rollover Contribution to the Plan that consists of a distribution or transfer from a Participant's Plan Account, other than a Roth Deferral Account, that the Participant transfers to the Participant's In-Plan Roth Rollover Contribution Account in the Plan, in accordance with Code §402(c)(4). In-Plan Roth Rollover Contributions will be subject to the Plan rules related to Roth Deferral Accounts, subject to preservation of protected benefits.

**(b) Eligibility for Distribution and Rollover.** A Participant may not make an In-Plan Roth Rollover Contribution with regard to an otherwise distributable amount which is not an Eligible Rollover Distribution.

**(1) Parties eligible to elect.** For purposes of eligibility for an In-Plan Roth Rollover, the Plan will treat a Participant's surviving spouse Beneficiary or alternate payee spouse or alternate payee former spouse as a Participant. A non-spouse Beneficiary may not make an In-Plan Roth Rollover.

**(2) Distribution from partially Vested account.** In-Plan Roth Rollovers are permitted only from Vested amounts allocated to a qualifying source but may be made from partially Vested Accounts. If a distribution is made to a Participant who



has not incurred a Severance from Employment and who is not fully Vested in the Participant's Account from which the In-Plan Roth Rollover Contribution is to be made, and the Participant may increase the Vested percentage in such Account.

**(c) Form and Source of Rollover.**

**(1) Direct Rollover.** An In-Plan Roth Rollover Contribution may be made only by a Direct Rollover.

**(2) Account source.** A Participant may make an In-Plan Roth Rollover from any account (other than a Roth account).

**(3) Cash or in-kind.** The Plan Administrator will effect an In-Plan Roth Rollover Contribution by rolling over the Participant's current investments to the In-Plan Roth Rollover Account. A Plan loan so rolled over without changing the repayment schedule is not treated as a new loan. However the Employer may provide that loans cannot be rolled over in an In-Plan Roth Rollover.

**(4) No Rollover or Distribution Treatment.** Notwithstanding any other Plan provision, an In-Plan Roth Rollover Contribution is not a Rollover Contribution for

purposes of the Plan. Accordingly: (a) if the Employer in its Adoption Agreement has elected \$5,000 as the Plan limit on Mandatory Distributions, the Plan Administrator will take into account amounts attributable to an In-Plan Roth Rollover Contribution, in determining if the \$5,000 limit is exceeded, regardless of the Employer's election as to whether to count Rollover Contributions for this purpose; (b) no spousal consent is required for a Participant to elect to make an In-Plan Roth Rollover Contribution; (c) protected benefits with respect to the amounts subject to the In-Plan Roth Rollover are preserved; and (d) mandatory 20% federal income tax withholding does not apply to the In Plan Roth Rollover Contribution.

**(5) In-Plan Roth Rollover Contribution Account.**

An In-Plan Roth Rollover Contribution Account is a sub-account the Plan Administrator may establish to account for a Participant's Rollover Contributions attributable to the Participant's In-Plan Roth Rollover Contributions. The Plan Administrator has authority to establish such a sub-account, and to the extent necessary, may establish sub-accounts based on the source of the In-Plan Roth Rollover Contribution. The Plan Administrator will administer an In-Plan Roth Rollover Contribution Account in accordance with Code and the Plan provisions.

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

**4.01 DISTRIBUTION RESTRICTIONS.** Except as the Plan provides otherwise, the Plan Administrator or Trustee may not distribute to a Participant the amounts in his or her Account prior to one of the following events:

- (a) The Participant's attaining age 70 1/2;
- (b) The Participant's Severance from Employment; or
- (c) The Participant's death.

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

**(A) Participant Election of Time and Method.** The Employer in the Adoption Agreement must elect whether to permit Participants to elect the timing and method of distribution of their Account in accordance with this Section 4.02. The Plan Administrator must consent to the specific terms of any such Participant election and the Plan Administrator in its sole discretion may withhold consent. Subject to the foregoing conditions, a Participant: (1) may elect to postpone distribution of his or her Account beyond the time the Employer has elected in the Adoption Agreement, to any fixed or determinable date including, but not beyond, the Participant's required beginning date; and (2) may elect the method of payment. A Participant in a Tax Exempt Organization Eligible 457 Plan may elect the timing and method of payment of his or her Account no later than 30 days before the date the Plan Administrator or Trustee first would commence payment of the Participant's Account in accordance with the Adoption Agreement. The Plan Administrator must furnish to the Participant a form for the Participant to elect the time and a method of payment. A Participant in a Governmental Eligible 457 Plan is not subject to any such requirement in election the timing or method of payment.

**(B) Number of Initial Elections/Subsequent Elections.** A Participant in a Tax-Exempt Organization Eligible 457 Plan may make any number of elections or revoke any prior election under Section 4.02(A) within the election period. Once the initial election period expires, a Participant, before payment would commence under the Participant's initial election, may make one additional election to defer (but not to accelerate) the timing of payment of his or her Account and also as to the method of payment.

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

**(D) Mandatory Distribution.** The Employer in the Adoption Agreement will elect whether the Plan will make Mandatory

Distributions. If the Employer elects Mandatory Distributions, the Employer may determine operationally whether to include Rollover Contributions in determining whether the Participant is subject to Mandatory Distributions.

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

**(A) General Rules.**

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

**(2) Requirements of Treasury Regulations Incorporated.** All distributions required under this Section 4.03 will be determined and made in accordance with the Treasury regulations under Code §401(a)(9).

**(B) Time and Manner of Distribution.**

**(1) Required Beginning Date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.

**(2) Death of Participant Before Distribution Begins.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

**(a) Spouse Designated Beneficiary.** If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then, except as the Employer may elect in the Adoption Agreement, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant dies, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.

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

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

**(d) Death of Spouse.** If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 4.03(B)(2) other than Section 4.03(B)(2)(a), will apply as if the surviving spouse were the Participant.

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

**(3) Forms of Distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 4.03(C) and 4.03(D). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code §401(a)(9) and the Treasury regulations.

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

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

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

**(b) Younger Spouse.** If the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Treas. Reg. §1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

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

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

**(1) Death On or After Distributions Begin.**

**(a) Participant Survived by Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

**(i) Participant's Life Expectancy.** The Participant's remaining life expectancy is calculated using the attained age of the Participant as of the Participant's birthday in

the calendar year of death, reduced by one for each subsequent calendar year.

**(ii) Spouse's Life Expectancy.** If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the attained age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

**(iii) Non-Spouse's Life Expectancy.** If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the attained age of the Beneficiary as of the Beneficiary's birthday in the calendar year following the calendar year of the Participant's death, reduced by one for each subsequent calendar year.

**(b) No Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the calendar year after the calendar year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the calendar year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the attained age of the Participant as of the Participant's birthday in the calendar year of death, reduced by one for each subsequent calendar year.

**(2) Death before Date Distributions Begin.**

**(a) Participant Survived by Designated Beneficiary.** Except as the Employer may elect in the Adoption Agreement, if the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 4.03(D)(1).

**(b) No Designated Beneficiary.** If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

**(c) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin.** If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 4.03(B)(2)(a), this Section 4.03(D)(2) will apply as if the surviving spouse were the Participant.

**(d) 5-year or Life Expectancy rule; possible election.** The Employer in its Adoption Agreement will elect whether distribution of the Participant's Account will be made in accordance with the life expectancy rule under Section 4.03(D)(2)(a) or the 5-year rule under Section 4.03(D)(2)(b). The Employer's election may permit a Designated Beneficiary to elect which of these rules will apply or may specify which rule applies. However, the life expectancy rule (whether subject to

election or not) applies only in the case of a Designated Beneficiary. The 5-year rule applies as to any Beneficiary who is not a Designated Beneficiary. A permitted election under this Section must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 4.03(D)(2)(a), or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death.

#### (E) Definitions.

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

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

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

**(4) Participant's account balance.** The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any Rollover Contributions or Transfers to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

**(5) Required beginning date.** A Participant's required beginning date is the April 1 of the calendar year following the later of: (1) the calendar year in which the Participant attains age 70 1/2, or (2) the calendar year in which the Participant retires or such other date under Code §401(a)(9) by which required minimum distributions must commence.

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

If a Participant dies while performing qualified military service (as defined in Code §414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death.

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

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

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.

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

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

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

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

**(B) QDRO Procedures.** The Plan Administrator must establish reasonable procedures to determine the qualified status of a domestic relations order. Upon receiving a domestic relations order, the Plan Administrator promptly will notify the Participant and any alternate payee named in the order, in writing, of the receipt of the order and the Plan's procedures for determining the qualified status of the order. Within a reasonable period of time after receiving the domestic relations order, the Plan Administrator must determine the qualified status of the order and must notify the Participant and each alternate payee, in writing, of the Plan Administrator's determination. The Plan Administrator must provide notice under this paragraph by mailing to the individual's address specified in the domestic relations order.

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

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

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

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

**(A) Participant Election.** A Participant (including for this purpose, a former Employee) in a Governmental Eligible 457 Plan may elect, at the time and in the manner the Plan

Administrator prescribes, to have any portion of his or her eligible rollover distribution from the Plan paid directly to an eligible retirement plan specified by the Participant in a direct rollover election. For purposes of this election, a "Participant" includes as to their respective interests, a Participant's surviving spouse and the Participant's spouse or former spouse who is an alternate payee under a QDRO.

**(B) Rollover and Withholding Notice.** At least 30 days and not more than 180 days prior to the Trustee's distribution of an eligible rollover distribution, the Plan Administrator must provide a written notice (including a summary notice as permitted under applicable Treasury regulations) explaining to the distributee the rollover option, the applicability of mandatory 20% federal withholding to any amount not directly rolled over, and the recipient's right to roll over within 60 days after the date of receipt of the distribution ("rollover notice").

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

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

**(E) Non-spouse beneficiary rollover right.** A non-spouse beneficiary who is a "designated beneficiary" under Section 4.03(E)(1), 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 the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.

**(1) Certain requirements not applicable.** Although a non-spouse beneficiary may roll over directly a distribution as provided in Section 4.07(E), the distribution is not subject to the direct rollover requirements of Code §401(a)(31) (including the automatic rollover provisions of Code §401(a)(31)(B)), the notice requirements of Code §402(f) 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.

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

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

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

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

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

A Participant or beneficiary may elect to roll over directly an eligible rollover distribution to a Roth IRA described in Code §408A(b). For this purpose, the term "eligible rollover distribution" includes a rollover distribution described in this Section.

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

**(4) Mandatory distribution.** A mandatory distribution is an eligible rollover distribution without the Participant's consent before the Participant attains the later of age 62 or Normal

Retirement Age (see paragraph 3.05 (B)). A distribution to a beneficiary is not a mandatory distribution.

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

**4.08 ELECTION TO DEDUCT FROM DISTRIBUTION.** 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 pay qualified health insurance premiums.

**(A) Direct payment.** The Plan will pay directly to the provider of the accident or health insurance plan or qualified long-term care insurance contract the amounts the Eligible Retired Public Safety Officer has elected to have deducted from the distribution. Such amounts may not exceed the lesser of \$3,000 or the amount the Participant paid for such taxable year for qualified health insurance premiums, and which otherwise complies with Code §402(l).

**(B) Definitions.**

**(1) Eligible retired public safety officer.** An "Eligible Retired Public Safety Officer" is an individual who, by reason of disability or attainment of Normal Retirement Age, is separated from service as a Public Safety Officer with the Employer.

**(2) 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)).

**(3) Qualified health insurance premiums.** The term "qualified health insurance premiums" means premiums for coverage for the Eligible Retired Public Safety Officer, his or her spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in Code §7702B(b)).



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

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

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

- (a) To select a committee to assist the Plan Administrator;
- (b) To select a secretary for the committee, who need not be a member of the committee;
- (c) To determine the rights of eligibility of an Employee to participate in the Plan and the value of a Participant's Account;
- (d) To adopt rules and procedures and to create administrative forms necessary for the proper and efficient administration of the Plan provided the rules, procedures and forms are not inconsistent with the terms of the Plan;
- (e) To construe and enforce the terms of the Plan and the rules and regulations the Plan Administrator adopts, including interpretation of the Plan documents and documents related to the Plan's operation;
- (f) To direct the distribution of a Participant's Account;
- (g) To review and render decisions respecting a claim for (or denial of a claim for) a benefit under the Plan;
- (h) To furnish the Employer with information which the Employer may require for tax or other purposes;
- (i) To establish a policy in making distributions for unforeseeable emergencies;
- (j) To establish under a Governmental Eligible 457 Plan, policies regarding the receipt of Rollover Contributions and default rollover distributions;
- (k) To establish a policy regarding the making and the receipt of Transfers;
- (l) To establish a policy regarding Participant or Beneficiary direction of investment;
- (m) To engage the services of any person to invest any Account under this Plan and to direct such person to make payment to a Participant of his or her Vested Account;
- (n) To establish under a Governmental Eligible 457 Plan, a policy (see Section 5.02(A)) which the Trustee must observe in making loans, if any, to Participants and Beneficiaries;
- (o) To undertake correction of any Plan failures as necessary to preserve eligible Plan status; and
- (p) To undertake any other action the Plan Administrator deems reasonable or necessary to administer the Plan.

The Plan Administrator shall have total and complete discretion to interpret and construe the Plan and to determine all questions arising in the administration, interpretation and application of the Plan. Any determination the Plan

Administrator makes under the Plan is final and binding upon any affected person.

**(A) Loan Policy.** In a Governmental Eligible 457 Plan, the Plan Administrator, in its sole discretion, may establish, amend or terminate from time to time, a nondiscriminatory policy which the Trustee must observe in making Plan loans, if any, to Participants and to Beneficiaries. If the Plan Administrator adopts a loan policy, the loan policy must be a written document and must include: (1) the identity of the person or positions authorized to administer the participant loan program; (2) the procedure for applying for a loan; (3) the criteria for approving or denying a loan; (4) the limitations, if any, on the types and amounts of loans available; (5) the procedure for determining a reasonable rate of interest; (6) the types of collateral which may secure the loan; and (7) the events constituting default and the steps the Plan will take to preserve Plan assets in the event of default. A loan policy the Plan Administrator adopts under this Section 5.02(A) is part of the Plan, except that the Plan Administrator may amend or terminate the policy without regard to Section 9.01.

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

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

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

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

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

**5.07 ACCOUNT ADMINISTRATION, VALUATION AND EXPENSES.**

**(A) Individual Accounts.** The Plan Administrator, as necessary for the proper administration of the Plan, will maintain, or direct the Trustee to maintain, a separate Account, or multiple Accounts, in the name of each Participant to reflect the Participant's Account Balance under the Plan. The Plan Administrator will make its allocations of Employer Contributions and of Earnings, or will request the Trustee to make such allocations, to the Accounts of the Participants as necessary to maintain proper Plan records and in accordance with the applicable: (i) Contribution Types; (ii) allocation conditions; (iii) investment account types; and (iv) Earnings allocation methods. The Plan Administrator may also maintain, or direct the Trustee to maintain, a separate temporary Account for Participant forfeitures which occur during a Plan Year, pending their accrual and allocation in accordance with the Plan terms, or for other special items as the Plan Administrator

determines is necessary and appropriate for proper plan administration.

**(1) By Contribution Type.** The Plan Administrator, will establish Plan Accounts for each Participant as necessary to reflect his or her Accounts attributable to the following Contribution Types and the Earnings attributable thereto: Pre-Tax Deferrals, Roth Deferrals, Matching Contributions, Nonelective Contributions, Rollover Contributions (including Roth versus pre-tax amounts), and Transfers.

**(2) By investment account type.** The Plan Administrator will establish separate Accounts for each Participant as necessary to reflect his or her investment account types as described below:

**(a) Pooled Accounts.** A Pooled Account is an Account which for investment purposes is not a Segregated Account or a Participant-Directed Account. If any or all Plan investment Accounts are Pooled Accounts, each Participant's Account has an undivided interest in the assets comprising the Pooled Account. In a Pooled Account, the value of each Participant's Account Balance consists of that proportion of the net worth (at fair market value) of the Trust Fund which the net credit balance in his or her Account (exclusive of the cash value of incidental benefit insurance contracts) bears to the total net credit balance in the Accounts of all Participants plus the cash surrender value of any insurance contracts held by the Trustee on the Participant's life. As of each Valuation Date, the Plan Administrator must reduce a Participant-Directed Account for any forfeiture arising from Section 5.07 after the Plan Administrator has made all other allocations, changes or adjustments to the Account (excluding Earnings) for the valuation period.

**(b) Participant-Directed Accounts.** A Participant-Directed Account is an Account that the Plan Administrator establishes and maintains or directs the Trustee to establish and maintain for a Participant to invest in one or more assets that are not pooled assets held by the Trust, such as assets in a brokerage account or other property in which other Participants do not have any interest. As the Plan Administrator determines, a Participant-Directed Account may provide for a limited number and type of investment options or funds, or may be open-ended and subject only to any limitations imposed by applicable law. A Participant may have one or more Participant-Directed Accounts in addition to Pooled or Segregated Accounts. A Participant-Directed Account is credited and charged with the Earnings. As of each Valuation Date, the Plan Administrator must reduce a Participant-Directed Account for any forfeiture arising from Section 5.07 after the Plan Administrator has made all other allocations, changes or adjustments to the Account (excluding Earnings) for the valuation period.

**(c) Segregated Accounts.** A Segregated Account is an Account the Plan Administrator establishes and maintains or directs the Trustee to establish and maintain for a Participant: (i) to facilitate installment payments; (ii) to hold a QDRO amount; (iii) to prevent a distortion of Plan Earnings allocations; or (iv) for such other purposes as the Plan Administrator may direct. A Segregated Account receives all income it earns and bears all expense or loss it incurs. The Trustee will invest the assets of a Segregated Account consistent with the purpose for which the Plan Administrator or Trustee established the Account. As of each Valuation Date, the Plan Administrator must reduce a Segregated Account for any forfeiture arising after the Plan

Administrator has made all other allocations, changes or adjustments to the Account (excluding Earnings) for the Valuation Period. Notwithstanding anything in this Section to the contrary, transferred amounts are not required to be separately accounted for and may be combined with the corresponding Account maintained in this Plan provided all rights, benefits and features and other attributes are identical with respect to each account, or are identical after the combination and such combination does not result in the impermissible elimination of any Code §411(d)(6) protected benefits.

**(3) Amount of Account/distributions.** The amount of a Participant's Account, as determined by the Plan Administrator, is equal to the sum of all contributions, Earnings and other additions credited to the Account, less all distributions (including distributions to Beneficiaries and to alternate payees and also including disbursement of Plan loan proceeds), expenses and other charges against the Account as of a Valuation Date or other relevant date. For purposes of a distribution under the Plan, the amount of a Participant's Account Balance is determined based upon its value on the Valuation Date immediately preceding or coinciding with the date of the distribution. If any or all Plan investment Accounts are Participant-Directed Accounts, the directing Participant's Account Balance consists of the assets held within the Participant-Directed Account and the value of the Account is determined based upon the fair market value of such assets.

**(4) Account statements.** As soon as practicable after the Accounting Date of each Plan Year, the Plan Administrator will deliver to each Participant (and to each Beneficiary) a statement reflecting the amount of his or her Account Balance in the Trust as of the statement date or most recent Valuation Date. No Participant, except the Plan Administrator/Participant or Trustee/Participant, has the right to inspect the records reflecting the Account of any other Participant.

**(B) Allocation of Earnings.** This Section 5.07(B) applies solely to the allocation of Earnings of the Trust Fund. The Plan Administrator will allocate Employer Contributions and Participant forfeitures, if any, in accordance with Article III. Earnings means the net income, gain or loss earned by a particular Account, by the Trust, or with respect to a contribution or to a distribution, as the context requires.

**(1) Allocate as of Valuation Date.** As of each Valuation Date, the Plan Administrator must adjust Accounts to reflect Earnings for the Valuation Period since the last Valuation Date.

**(2) Definition of Valuation Date.** A Valuation Date under this Plan is each: (a) Accounting Date; (b) Valuation Date the Employer elects in the Adoption Agreement; or (c) Valuation Date the Plan Administrator establishes. The Employer in the Adoption Agreement or the Plan Administrator may elect alternative Valuation Dates for the different Contribution Types which the Plan Administrator maintains under the Plan.

**(3) Definition of Valuation Period.** The Valuation Period is the period beginning on the day after the last Valuation Date and ending on the current Valuation Date.

**(4) Allocation methods.** The Plan Administrator will allocate Earnings to the Participant Accounts in accordance with the daily valuation method, balance forward method, balance

forward with adjustment method, weighted average method, Participant-Directed Account method, or other method the Employer elects under the Adoption Agreement. The Employer in the Adoption Agreement may elect alternative methods under which the Plan Administrator will allocate the Earnings to the Accounts reflecting different Contribution Types or investment Account types which the Plan Administrator maintains under the Plan. The Plan Administrator first will adjust the Participant Accounts, as those Accounts stood at the beginning of the current Valuation Period, by reducing the Accounts for any forfeitures, distributions, and loan disbursement payments arising under the Plan, for expenses charged during the Valuation Period to the Accounts (expenses directly related to a Participant's Account). The Plan Administrator then, subject to the restoration allocation requirements of the Plan, will allocate Earnings under the applicable valuation method.

**(a) Daily valuation method.** If the Employer in the Adoption Agreement elects to apply the daily valuation method, the Plan Administrator will allocate Earnings on each day of the Plan Year for which Plan assets are valued on an established market and the Trustee is conducting business. Under the daily valuation method, all assets subject to such method are subject to daily valuation. The assets may be held in Participant-Directed Accounts or in Accounts which are subject to Trustee or other fiduciary investment direction.

**(b) Balance forward method.** If the Employer in the Adoption Agreement elects to apply the balance forward method, the Plan Administrator will allocate Earnings pro rata to the adjusted Participant Accounts, since the last Valuation Date.

**(c) Balance forward with adjustment method.** If the Employer in the Adoption Agreement elects to apply the balance forward with adjustment method, the Plan Administrator will allocate pursuant to the balance forward method, except it will treat as part of the relevant Account at the beginning of the Valuation Period the percentage of the contributions made as the Employer elects in the Adoption Agreement, during the Valuation Period the Employer elects in the Adoption Agreement.

**(d) Weighted average method.** If the Employer in the Adoption Agreement elects to apply a weighted average allocation method, the Plan Administrator will allocate pursuant to the balance forward method, except it will treat a weighted portion of the applicable contributions as if includible in the Participant's Account as of the beginning of the Valuation Period. The weighted portion is a fraction, the numerator of which is the number of months in the Valuation Period, excluding each month in the Valuation Period which begins prior to the contribution date of the applicable contributions, and the denominator of which is the number of months in the Valuation Period. The Employer in the Adoption Agreement may elect to substitute a weighting period other than months for purposes of this weighted average allocation.

**(e) Participant-Directed Account method.** The Employer in the Adoption Agreement must elect to apply the Participant-Directed Account method to any Participant-Directed Account under the Plan. Under the Participant-Directed Account method: (i) each Participant-Directed Account is credited and charged with the Earnings such Account generates; (ii) the Employer's election, if any, in the Adoption Agreement of another method for the allocation of Earnings will not apply to any Participant-Directed Account; and (iii) the Participant-

Directed Account may be valued as often as daily, but will be valued at least annually, and all assets in the Account are not necessarily valued on the same frequency. An Account which is subject to the Participant-Directed Account method includes an individual brokerage account or similar account in title to the Trustee for the benefit of the Participant.

**(C) Allocation of Net Income, Gain or Loss (No Trust).** In a Tax-Exempt Eligible 457 Plan that does not maintain a trust the Plan Administrator will allocate net income, gain or loss in accordance with this provision. As of each Accounting Date (and each other valuation date determined under the Adoption Agreement), the Plan Administrator will adjust Accounts to reflect net income, gain or loss, if any, since the last Accounting Date or Account valuation. The Employer in the Adoption Agreement will elect the method for allocating net income gain or loss. The Plan Administrator will continue to allocate net income, gain and loss to a Participant's Account subject to an installment distribution, until the Account is fully distributed.

**5.08 ACCOUNT CHARGED.** The Plan Administrator will charge all distributions made to a Participant or to his or her Beneficiary, or transferred under Section 9.03 from his or her Account, against the Account of the Participant when made.

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

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

**5.11 VESTING/SUBSTANTIAL RISK OF FORFEITURE.** The Employer in the Adoption Agreement may

elect to apply a vesting schedule or to specify any other Substantial Risk of Forfeiture applicable to any or all Deferral Contributions.

**(A) Forfeiture Allocation.** The Employer in the Adoption Agreement must elect the method the Plan Administrator will use to allocate any Participant forfeitures, including those related to lost Participants under Section 5.14. However, if a forfeiture allocation method is not selected in the adoption agreement, forfeitures are allocated as an Employer Contribution. The Plan Administrator will allocate a forfeiture in the Plan Year in which the forfeiture occurs or in the next following Plan Year.

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

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

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

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

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

If a lost Participant whose Account was forfeited thereafter at any time but before the Plan has been terminated makes a claim for his or her forfeited Account, the Plan Administrator will restore the forfeited Account to the same dollar amount as the amount forfeited, unadjusted for net income, gains or losses occurring subsequent to the forfeiture. The Plan Administrator will make the restoration in the Plan Year in which the lost Participant makes the claim, first from the amount, if any, of Participant forfeitures the Plan Administrator otherwise would allocate for the Plan Year, then from the amount, if any, of Trust net income or gain for the Plan Year and last from the amount or

additional amount the Employer contributes to the Plan for the Plan Year. The Plan Administrator will distribute the restored Account to the lost Participant not later than 60 days after the close of the Plan Year in which the Plan Administrator restores the forfeited Account.

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

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

**ARTICLE VI**  
**PARTICIPANT ADMINISTRATIVE PROVISIONS**

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

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

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

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

**6.03 SALARY REDUCTION AGREEMENT.**

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

**(B) Election Timing.** A Participant's Salary Reduction Agreement may not take effect earlier than the first day of the calendar month following the date the Participant executes the

Salary Reduction Agreement and as to Compensation paid or made available in such calendar month. However, if an Employee is eligible to become a Participant during the Employee's calendar month of hire, the Employee may execute a Salary Reduction Agreement on or before the date he/she becomes an Employee, effective for the month in which he/she becomes an Employee.

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

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

**6.04 PERSONAL DATA TO PLAN ADMINISTRATOR.** Each Participant and each Beneficiary of a deceased Participant must furnish to the Plan Administrator such evidence, data or information as the Plan Administrator considers necessary or desirable for the purpose of administering the Plan. The provisions of this Plan are effective for the benefit of each Participant upon the condition precedent that each Participant will furnish promptly full, true and complete evidence, data and information when requested by the Plan Administrator, provided the Plan Administrator advises each Participant of the effect of his or her failure to comply with its request.

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

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

**ARTICLE VII  
MISCELLANEOUS**

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

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

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

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

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

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



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

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

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

**8.03 RECEIPT OF CONTRIBUTIONS.** The Trustee is accountable to the Employer for the funds contributed to it by the Employer or the Plan Administrator, but the Trustee does not have any duty to see that the contributions received comply with the provisions of the Plan.

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

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

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

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

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

considerations and on such terms and conditions as the Trustee decides;

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

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

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

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

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

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

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

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

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

(n) To furnish to the Employer and the Plan Administrator an annual statement of account showing the condition of the Trust and all investments, receipts, disbursements and other transactions effected by the Trustee during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year, which accounts will be conclusive on all persons, including the Employer and the Plan Administrator, except as to any act or transaction concerning which the Employer or the Plan Administrator files with the Trustee written exceptions or objections within 90 days after the receipt of the accounts; and

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

**(A) Nondiscretionary Trustee.** The Employer in the Adoption Agreement may elect to appoint a Nondiscretionary Trustee, subject to this Section 8.04(A). The Nondiscretionary Trustee does not have any discretion or authority with regard to the

investment of the Trust, but must act solely as a directed Trustee hereunder. The Nondiscretionary Trustee is authorized and empowered to exercise and perform the above Section 8.04 powers, rights and duties provided that the Trustee shall act solely as a directed Trustee and only in accordance with the written direction of the Employer, the Plan Administrator or of a Participant as applicable. The Nondiscretionary Trustee is not liable for making, retaining or disposing of any investment or for taking or failing to take any other action, in accordance with proper Employer, Plan Administrator or Participant direction.

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

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

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

8.08 DISTRIBUTION OF CASH OR PROPERTY. The Trustee may make distribution under the Plan in cash or property, or partly in each, at its fair market value as determined by the Trustee.

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

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

8.10 SUCCESSOR TRUSTEE.

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

having appointed itself as Trustee and as having filed the Employer's acceptance of appointment as successor Trustee with the former Trustee.

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

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

8.12 PARTICIPANT DIRECTION OF INVESTMENT. Consistent with the Plan Administrator's policy adopted under Section 5.02(1), the Trustee may consent in writing to permit Participants in the Plan to direct the investment to the Trust assets. The Plan Administrator will advise the Trustee of the portion of the Trust credited to each Participant's Account under the Plan, and subject to such Participant direction. As a condition of Participant direction, the Trustee may impose such conditions, limitations and other provisions as the Trustee may deem appropriate and as are consistent with the Plan Administrator's policy. The Trustee will report to the Plan Administrator the net income, gain or losses incurred by each Participant-Directed Account separately from the net income, gain or losses incurred by the general Trust during the Trust Year.

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

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

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

demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary. The Trust created under the Employer's Plan is irrevocable and its assets will not inure to the benefit of the Employer.

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

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

**ARTICLE IX  
AMENDMENT, TERMINATION, TRANSFERS**

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

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

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

The Employer must make all amendments in writing. The Employer may amend the Plan by an Adoption Agreement election, by addenda, by separate amendment, or by restatement of the Adoption Agreement or Plan. Each amendment must state the date to which it is either retroactively or prospectively effective. The Employer also may not make any amendment that affects the rights, duties or responsibilities of the Trustee or the Plan Administrator without the written consent of the affected Trustee or the Plan Administrator.

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

9.03 TRANSFERS. The Employer may enter into a Transfer agreement with another employer under which this Plan: (a) may accept a Transfer of a Participant's Account in the other employer's Eligible 457 Plan; or (b) may Transfer a Participant's (or Beneficiary's) Account in this Plan to the other employer's Eligible 457 Plan. The plan sponsors of the plans involved in the Transfer both must be States or both must be Tax-Exempt Organizations and the plans must provide for Transfers. The Participant or Beneficiary, after the Transfer will have Deferred Compensation in the recipient plan at least equal to his or her Deferred Compensation in the transferring plan immediately before the Transfer. Any Transfer also must comply with applicable Treasury regulations, and in particular Treas. Reg. §§1.457-10(b)(2) as to post-severance transfers between Governmental Eligible 457 Plans; 1.457-10(b)(3) as to transfers of all assets between Governmental Eligible 457 Plans; 1.457-10(b)(4) as to transfers between Governmental Eligible 457 Plans of the same Employer; and 1.457-10(b)(5) as to post-severance transfers between Tax-Exempt Organization Eligible 457 Plans. The Plan Administrator will credit any Transfer accepted under this Section 9.03 to the Participant's Account and will treat the transferred amount as a Deferral Contribution for all purposes of this Plan except the Plan Administrator, will not treat such Transfer as a Deferral Contribution subject to the limitations of Article III. In addition, in the case of a Transfer between Tax-Exempt Organization Eligible Plans, the recipient plans shall apply a Participant's distribution elections made under the transferor plan in accordance with Treas. Reg. §1.457-10(b)(6)(ii). The Plan's Transfer of any Participant's or Beneficiary's Account under this Section 9.03 completely discharges the Employer, the Plan Administrator, the Trustee and the Plan from any liability to the Participant or Beneficiary for any Plan benefits.

9.04 PURCHASE OF PERMISSIVE SERVICE CREDIT.

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

**AMENDMENT  
TO  
MASTER SERVICES AGREEMENT**

**Important Note: Service Agreement Amendments, Pricing Change Agreements, and other contractual documents must be duly executed by both parties prior to the effective date of the changes. Backdating contracts or funding agreements is in violation of our corporate governance and regulatory requirements. Changes cannot be implemented prior to the date all documents are fully executed, even if that requires the effective date to be postponed. There are no exceptions to the rule that the effective date must follow the date all documents are executed.**



**AMENDMENT**  
to the  
**MASTER SERVICES AGREEMENT**

for  
**Arapahoe County, CO**  
**Group No. 100439**

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THIS AMENDMENT is entered into by and between Arapahoe County, CO ("**Plan Sponsor**") and the affiliate that provides recordkeeping services to Plan Sponsor (which is one of Empower Retirement, LLC, Empower Annuity Insurance Company of America, Empower Annuity Insurance Company or Empower Plan Services, LLC) ("**Empower**") and;

Empower and Plan Sponsor are parties to the Master Services Agreement dated April 2, 2024, (as such agreement has or may be amended from time to time, the "**Agreement**") under which Empower provides certain administrative services to Plan Sponsor;

The parties have agreed to amend the Agreement as follows:

1. Schedule C Trust Agreement for the Arapahoe County 457(b) Plan is hereby added to the Agreement.
2. In all other respects, the Agreement shall remain in full force and effect.
3. This Amendment Effective Date is the date signed by the parties.
4. Each party agrees that this Amendment and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures reasonably believed to be genuine on this Amendment or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

By signing this Amendment, the parties certify that they agree to be bound by its terms and that they have the authority to sign it.

**[Signature page to follow]**

**For: Arapahoe County, CO**

Signature: Patrick L Hernandez

Name: PATRICK L HERNANDEZ

Title: DIRECTOR HUMAN RESOURCES

Date: 11/26/2024

**For: Empower**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**SCHEDULE C:  
TRUST AGREEMENT**

**for the Arapahoe County 457(b) Plan**

**Group Account Number: 100439-01**

This Trust Agreement Schedule ("**Schedule**") is entered into by the parties under the Master Services Agreement between Empower and Plan Sponsor dated April 2, 2024 ("**Agreement**"). This Schedule is entered into between Plan Sponsor and Empower Trust Company, LLC, an Affiliate of Empower and a trust company chartered under the laws of the State of Colorado having a place of business in Greenwood Village, Colorado ("**Trustee**") effective as of April 2, 2024. This Schedule incorporates by reference, and each party is bound by, the terms of the Agreement. As such, this Schedule forms a separate and independent Trust Agreement for the Plan. If the terms of the Agreement and this Schedule conflict, this Schedule controls, but only regarding the Services (defined below) rendered by Trustee hereunder. The terms of this Schedule do not govern nor have any applicability to other relationships or services between Empower, or any other Empower Affiliate, and Plan Sponsor. The words "include," "includes," and "including" in this Schedule are to be read as if they were followed by the phrase "without limitation".

Plan Sponsor has established or adopted the Plan for its eligible employees and their beneficiaries. A trust is maintained in connection with the Plan (the "**Trust**") to which Plan contributions are to be made to be held by the Trustee and to be managed, invested and reinvested for the exclusive benefit of Participants. The Plan and Trust are intended to qualify as a plan and trust which meet the applicable requirements of Section 401(a) and 501(a) or Section 457(b) and (g), whichever is applicable of the Internal Revenue Code of 1986, as amended, or any successor thereto. Plan Sponsor is a fiduciary to the Plan and is authorized under the terms of the Plan to appoint a Trustee. Plan Sponsor desires Trustee to hold Plan funds and Trustee is willing to hold such funds under the terms of this Schedule. Plan Sponsor wishes to appoint Empower Trust Company, LLC, as Trustee under the terms hereof. Plan Sponsor warrants and represents that it is permitted, under its governing laws, including applicable state and local laws, to appoint Empower Trust Company, LLC, as Trustee. The parties agree as follows:

**1. Creation and Operation of the Trust**

**1.1 Services.** Trustee shall provide the services stated in this Schedule or as further described in schedules or appendixes to this Schedule (collectively, the "**Services**").

**1.2 Establishment/Acceptance of Trust.** To carry out the purposes of the Plan, the Trust is created and established or, if previously established, is continued. Trustee accepts this Trust and shall act as Trustee hereunder, but only on the terms stated in this Schedule and the Agreement. Subject to the terms of this Schedule and the Agreement, all right, title and interest in and to the estate of the Trust fund vest exclusively in Trustee.

**1.3 Acceptance of Property.** The Trust Fund will include only those assets which Trustee initially accepts, and assets that are subsequently added to the Trust Fund under this Schedule (the "**Trust Fund**"). Only assets actually received by Trustee will become part of the Trust Fund. Plan Sponsor is responsible for effectuating the transfer of any assets held by a prior trustee or custodian to Trustee. Trustee shall hold all assets so received, together with the income therefrom and any other increment thereon, under the terms of this Schedule without distinction between principal and income and without liability for the payment of interest thereon. Trustee is not considered a party to the Plan and, if this Schedule conflicts with the provisions of the Plan or any other instrument or agreement forming part of such Plan, this Schedule controls. Trustee has only such duties relating to the Plan as are stated in this Schedule.

**1.3.1 Payroll Contributions Before TOA.** If Trustee agrees in writing to accept and hold in trust employer and employee contributions to the Plan from payroll contributions that occur before TOA, this Schedule Effective Date is modified to the date that such contributions are determined to be in

good order by Trustee, and the Agreement will be in effect for the limited purpose of accepting such contributions and holding them in trust. The contributions will be held in trust in a plan level account and Plan Sponsor shall provide written Direction to Trustee as to how such contributions will be invested until allocated to Participant accounts following TOA as Directed by Plan Sponsor. Trustee is not responsible as trustee for any assets that have not been received and accepted. If TOA occurs at the beginning of a calendar year and payroll contributions are accepted in the prior calendar year under this section, Trustee is not responsible for performing compliance testing or for preparing the Plan's Form 5500 for the prior calendar year.

#### **1.4 Investment Powers.**

**1.4.1** Trustee has no discretion or authority relating to the investment of Trust assets, but shall act solely as a directed Trustee, and under this Schedule shall invest and reinvest the principal and income of the Trust and keep the Trust invested in such investments in securities or other property, real or personal, within or outside the United States, including interests and part interests in any bond and mortgage or note and mortgage and interests and part interests in certificates of deposit, commercial paper and other short-term or demand obligations, secured or unsecured, whether issued by governmental or quasi-governmental agencies or corporations or by any firm or corporation, capital, common and preferred, voting and nonvoting stock (regardless of dividend or earnings record) and including shares of mutual funds, annuity or investment contracts issued by an insurance company, and financial options and futures or any other form of option, and shall hold such securities or property in one or more funds; or in any fund created and administered by Trustee or any other bank or Investment Manager, as defined in Paragraph 2.4.6 of this Schedule, for the collective investment of the assets of employee benefit trusts that is (i) a collective investment fund or (ii) a group trust that meets all of the conditions of Revenue Ruling 81-100, as modified by Revenue Ruling 2011-1, (and while any portion of the Trust Fund is so invested, such collective investment fund or group trust constitutes part of the Plan, and the instrument creating such fund constitutes part of this Schedule). Trustee may keep such portion of the Trust Fund in cash and cash balances or hold all or any portion of the Trust Fund in savings accounts, certificates of deposit, and other types of time or demand deposits with any financial institution or quasi-financial institution, either domestic or foreign (including Trustee and its Affiliates) as Directed by the Plan Administrator, Plan Sponsor, Investment Manager, or other designated fiduciary of the Plan.

**1.4.2** To the maximum extent permitted by law, Trustee is not liable for the acquisition, retention or disposition of any assets of the Trust Fund or for any loss to or diminution of such assets unless due to Trustee's own willful misconduct or failure to act in good faith.

**1.4.3** Trustee is not the Plan Administrator. Trustee is a directed Trustee under the Direction of the Plan Administrator, Plan Sponsor, Participants (only if the investment of Plan assets are Directed by Participants as provided below), Investment Manager, as appointed by Plan Sponsor or Plan Administrator, or other fiduciary designated under the Plan, who is not the Trustee. The duties and obligations of Trustee hereunder are limited to those expressly imposed on it by this Schedule and the Agreement, notwithstanding any reference contrary in the Plan, and no further duties or obligations of Trustee are implied. For example, Trustee has no initial or ongoing duty to determine the prudence of any Plan investment Directed to be made by Plan Sponsor or any delegate thereof, to diversify Plan investments, or to make or monitor investment decisions. The Plan Administrator, Plan Sponsor or Investment Manager, as applicable, and not the Trustee are solely responsible for the prudent selection of Plan investments and for the ongoing duty to monitor and remove imprudent Plan investments. Trustee is not liable for any loss to, or diminution of the Plan assets, or for any other loss or damage which may result from the discharging of its duties hereunder if it acts in good faith and under the terms of this Schedule and under the applicable federal or state laws, rules, and regulations.

**1.4.4** Plan Administrator, Plan Sponsor or other designated fiduciary shall select investment alternatives for the Plan (each an "**Investment Alternative**") which include some or all of the following types, or some other type reasonably acceptable to Trustee from an administrative standpoint: (i) securities issued by open-end investment companies registered under the Investment Company Act of 1940 ("**Mutual Funds**"), (ii) notes evidencing loans to Participants under the terms of the Plan, (iii) annuity or investment contracts issued by an insurance company, (iv) a portfolio of securities and obligations which

is intended to produce a fixed rate of investment return, including guaranteed investment contracts (“GICs”), United States government securities, corporate bonds, notes, debentures, convertible securities, preferred stocks, and interests in collective investment funds maintained by banks or other financial institutions which invest in such securities and obligations and other similar investments, in each case as chosen by Plan Sponsor, Plan Administrator or an Investment Manager, (v) portfolios of securities managed by an Investment Manager for which market values can be obtained readily from securities exchanges or pricing services subscribed to by Trustee, (vi) portfolios of securities issued by Mutual Funds, managed by an Investment Manager or Plan Administrator, and (vii) interests in collective investment funds and group trusts under Revenue Ruling 81-100, as modified by Revenue Ruling 2011-1, maintained by Trustee or another bank or financial institution for qualified plans.

**1.4.5** If the investment of Plan assets is to be Directed by Participants, the Plan Administrator, Plan Sponsor or other designated fiduciary, who is not the Trustee, shall be solely responsible for the Plan selecting a broad range of investment alternatives among which Participants may designate investments of their accounts, providing Participants with information concerning the designated Investment Alternatives, and restricting the frequency with which Participants may issue investment instructions.

**1.4.6** Plan Administrator, Plan Sponsor or other designated fiduciary may appoint an “Investment Manager” to manage any Investment Alternative, or any part of an Investment Alternative. Any Investment Manager so appointed must be (i) an investment adviser registered as such under the Investment Advisers Act of 1940 (“Advisers Act”), (ii) a bank, as defined in the Advisers Act, (iii) an insurance company qualified to perform investment management services under the laws of more than one state of the United States, or (iv) another entity who has agreed to be fiduciary relating to the Plan. If such appointment occurs, the appointing fiduciary shall notify Trustee of any such appointment by delivering to Trustee notice of the appointment of each Investment Manager hereunder, in the form provided by Trustee, together with an acknowledgment by the Investment Manager that it is a fiduciary of the Plan. Alternatively, the Plan Administrator or Plan Sponsor, in its capacity as a fiduciary, may manage an Investment Alternative. In either case, the appointing fiduciary shall specify to Trustee the Investment Alternative that will be subject to such investment management. The appointing fiduciary shall determine that, while each Investment Manager is acting in that capacity, that such Investment Manager satisfies the requirements of this paragraph 1.4.6. Trustee shall invest and reinvest the portion of the Trust Fund subject to such investment management only in the manner Directed by the Investment Manager, the Plan Administrator or Plan Sponsor, as applicable. During the term of such appointment, Trustee has no liability for the acts or omissions of such Investment Manager, the Plan Administrator or Plan Sponsor, and except as provided in the preceding sentence, is under no obligation to invest, review, or otherwise manage the portion of the Trust Fund subject to such investment management. Trustee may maintain separate accounts within the Trust Fund for the assets of the Trust Fund subject to such investment management. The appointing fiduciary may terminate its appointment of an Investment Manager at any time and shall notify Trustee of such termination. Trustee shall be protected in assuming that the appointment of an Investment Manager remains in effect until it is otherwise notified in writing by the appointing fiduciary.

**1.4.7** If an Investment Manager appointed hereunder is a bank or a trust company, or an affiliate of a bank or trust company, Trustee shall, on the Direction of Plan Sponsor, transfer funds to such bank, trust company, or affiliate for investment through the medium of any collective investment fund created and administered by such bank, trust company, or affiliate, acting as trustee therefor, for the collective investment of the assets of employee benefit trusts, provided that such fund is (i) a bank collective investment fund or (ii) a group trust that meets all of the conditions of Revenue Ruling 81-100, as modified by Revenue Ruling 2011-1. To implement the provisions of this subsection, Trustee may enter into any required ancillary trust, agency or other type of agreement with an Investment Manager, or its affiliate, as described in the preceding sentence.

## **1.5 Payments.**

Subject to the provisions of this Schedule, Trustee shall transfer cash or other property from the Trust Fund to such persons as designated by Plan Sponsor or Plan Administrator, at such addresses, in such amounts, for such purposes and in such manner as Plan Sponsor or Plan Administrator may Direct, provided that

such transfer is administratively feasible, and Trustee shall incur no liability for any such payment made at the Direction of Plan Administrator. Plan Sponsor or Plan Administrator shall be solely responsible to ensure that any payment made at its Direction conforms with the provisions of the Plan, the provisions of this Schedule, and the Code, and Trustee has no duty to determine the rights or benefits of any person in the Trust Fund or under the Plan or to inquire into the right or power of Plan Sponsor or Plan Administrator to Direct any such payment.

## **2 Powers of the Trustee**

**2.1** Trustee may exercise under Directions from the Plan Administrator, Plan Sponsor, an Investment Manager, or a Participant, as applicable, the following powers in respect of any property, real or personal, of the Trust Fund, it being intended that these powers be construed in the broadest possible manner:

**2.1.1** to sell at public or private sale for cash or on credit or partly for cash and partly on credit;

**2.1.2** to exchange securities or property held by it for other securities or property, or partly for such securities or property and partly for cash, and to exercise conversion, subscription, option and similar rights relating to securities held by it, and to make payments in connection therewith;

**2.1.3** to compromise and adjust all debts or claims due to or made against it, to participate in any plan of reorganization, consolidation, merger, combination, liquidation or other similar plan or any action thereunder, or any contract, lease, mortgage, purchase, sale or other action by any corporation or other entity;

**2.1.4** to exercise any conversion privilege or subscription right available in connection with any such property; to oppose or to consent to the reorganization, consolidation, merger or readjustment of the finances of any corporation, company or association or to the sale, mortgage, pledge or lease of the property of any corporation, company or association any of the securities of which may at any time be held in the Trust Fund and to do any act with reference thereto, including the exercise of options, the making of agreements or subscriptions and the payments of expenses, assessments or subscriptions, which may be deemed necessary or advisable in connection therewith and to hold and retain any securities or other property which it may so acquire;

**2.1.5** to make distributions in cash or in specific property, real or personal, or an undivided interest therein, or partly in cash and partly in such property;

**2.1.6** to start or defend suits or legal proceedings and to represent the Trust in all suits or legal proceedings; to settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust, provided that Trustee shall notify Plan Sponsor or Plan Administrator of all such suits, legal proceedings and claims and, except in the case of a suit, legal proceeding or claim involving solely Trustee's action or omissions to act, shall obtain the written Direction of Plan Sponsor or Plan Administrator before settling, compromising or submitting to binding arbitration any claim, suit or legal proceeding of any nature whatsoever. The Trustee shall have no obligation to undertake, defend or continue to maintain any action or proceeding arising in connection with the Trust, unless and until Plan Sponsor requests the Trustee to do so and agrees in writing to indemnify the Trustee against the Trustee's costs, expenses and liabilities (including attorneys' fees and expenses) relating thereto, to be primarily liable for such payment and to make periodic payments in respect of such fees and expenses during such proceedings. If Plan Sponsor thereafter does not pay such costs, expenses and liabilities in a reasonably timely manner, the Trustee shall discontinue participation in such action or proceeding, and charge the assets of the Trust Fund if sufficient for any unpaid fees and expenses;

**2.1.7** on the written Direction of Plan Sponsor or Plan Administrator, to enter into any contract or policy with an insurance company or companies, for insurance coverage or otherwise, provided that, except as provided in Section 1.3, Trustee shall be the sole owner of all such contracts or policies and all such contracts or policies will be held as assets of the Trust Fund; and



**2.1.8** to transfer assets of the Trust Fund to a successor trustee as provided in this Schedule.

**2.2** Notwithstanding that Trustee acts solely as a directed Trustee, Trustee has the following ministerial powers and authority, to be exercised in its sole discretion, relating to the Trust Fund:

**2.2.1** to employ suitable agents and custodians;

**2.2.2** to delegate to its Affiliate, or others, any or all of its duties arising out of this Schedule, including recordkeeping and reporting;

**2.2.3** to register any securities or other property held by it hereunder in its own name or in the name of a nominee with or without the addition of words indicating that such securities or other property are held in a fiduciary capacity and to hold any securities or other property in bearer form and to deposit any securities or other property in a depository or clearing corporation;

**2.2.4** to reverse any erroneous or provisional credit entries to the Trust Fund retroactively to the date on which the correct entry or no entry should have been made;

**2.2.5** to make, execute and deliver, as Trustee, all deeds, leases, mortgages, conveyances, waivers, releases, subscription documents, or other instruments in writing necessary or desirable for the accomplishment of any of the foregoing powers, provided that in connection with the acquisition, holding or disposition of securities or other property other than publicly-traded securities, that the Investment Manager, Plan Sponsor, or Plan Administrator, as the case may, has provided written Direction in a form satisfactory to Trustee; and

**2.2.6** generally to do all ministerial acts, whether expressly authorized, which Trustee may deem necessary or desirable in carrying out its duties under this Schedule.

**2.3 Insurance Contracts.** Trustee may, at the Direction of Plan Sponsor or Plan Administrator, (i) enter into one or more contracts issued by an insurance company, including such contracts providing for investment in a separate account maintained by an insurance company, (ii) transfer to any such insurance companies a portion of the Trust Fund under any such contracts, and (iii) hold any such contracts as a part of the Trust Fund until Directed otherwise by Plan Sponsor or Plan Administrator. Trustee has no responsibility to review any contract or the creditworthiness of the insurance company issuing such contract at any time. Plan Sponsor or Plan Administrator may Direct Trustee to (i) demand or accept withdrawals or other distributions under any such contracts; (ii) exercise or not to exercise any rights, powers, privileges and options under any such contracts; and (iii) assign, amend, modify, or terminate any such contracts. Trustee shall take no action relating to any such contracts except at the Direction of Plan Sponsor or Plan Administrator. Trustee has no liability for complying with, or failing to act in the absence of, any such Direction of Plan Sponsor or Plan Administrator. Any insurance companies issuing any contracts as described in this section may deal with Trustee as the absolute owner of any such contracts and need not inquire as to the authority of Trustee to act regarding such contracts. The underlying assets of such insurance company in which such contracts are invested are not considered assets of the Plan or part of the Trust Fund.

## **2.4 Fiduciary Standards.**

**2.4.1** Trustee shall perform those duties under this Schedule that constitute it as a fiduciary with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent trustee acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Trustee shall exercise reasonable care relating to its remaining duties and obligations under this Schedule.

**2.4.2** Trustee shall not be responsible for the administration of the Plan, for determining the funding policy of the Plan or the adequacy of the Trust Fund to meet and discharge liabilities under the Plan, or for the investments of the Plan. Trustee shall not be responsible for any failure of Plan Administrator

or Plan Sponsor to discharge any of their respective responsibilities relating to the Plan nor be required to enforce payment of any contributions to the Trust Fund, which duty is assigned to the Plan Administrator, as a named fiduciary to the Plan, and Trustee is a directed Trustee relating to contributions and has no obligation to take any action to collect any contributions except on the Direction of the Plan Administrator.

## **2.5 Prohibition of Diversion.**

**2.5.1** At no time before the satisfaction of all liabilities relating to Participants in the Plan will any part of the corpus or income of the Trust Fund be used for, or diverted to, purposes other than for the exclusive benefit of such Participants. Except as provided below and Section 4, the assets of the Trust Fund never inure to the benefit of Plan Sponsor and will be held for the exclusive purpose of providing benefits to Participants in the Plan and defraying the reasonable expenses of administering the Plan.

**2.5.2** In the case of a contribution that is made by Plan Sponsor by a mistake of fact, subsection 2.5.1 above does not prohibit the return to Plan Sponsor of such contribution, without any earnings, but reduced by any losses, at the Direction of Plan Sponsor or Plan Administrator within one year after the payment of the contribution.

**2.5.3** If a contribution by Plan Sponsor is expressly conditioned on initial qualification of the Plan under Section 401 of the Code, and if the Plan does not so qualify, then subsection 2.5.1 above does not prohibit the return to Plan Sponsor of such contribution, without any earnings, but reduced by any losses, at the Direction of Plan Sponsor or Plan Administrator within one year after the date of denial of qualification of the Plan, if permitted by the Code.

**2.5.4** If a contribution by Plan Sponsor is expressly conditioned on the deductibility of the contribution under Section 404 of the Code, then if such deduction is disallowed, subsection 2.5.1 above does not prohibit the return to Plan Sponsor of such contribution, without any earnings, but reduced by any losses, at the Direction of Plan Sponsor or Plan Administrator, if disallowed, within one year after the date of such disallowance.

## **2.6 Valuation of the Trust Fund and Periodic Accounts.**

**2.6.1** Trustee shall report the value of securities or other property held in the Trust Fund as follows:

**2.6.1.1** Publicly traded securities for which a price is readily available will be reported based on information and financial publications of general circulation, generally available statistical and valuation services, and records of security exchanges, or from quotes from brokers customarily used by Trustee for security pricing purposes;

**2.6.1.2** Units or shares in Mutual Funds will be reported at the most recently announced net asset value under regulations under the Investment Company Act of 1940;

**2.6.1.3** Units or shares in limited liability companies, or other funds other than Mutual Funds (each, together with units or shares of Mutual Funds, a "**Fund**") or group trusts will be reported at their most recent asset value or other unit or share value stated by the Fund or its operator received by Trustee before the date of the production of any particular statement of account;

**2.6.1.4** Units in group trusts will be reported at the value stated by the trustee of the group trust;

**2.6.1.5** Contracts of a type that Trustee, acting reasonably, determines to be an over-the-counter derivative ("**OTC Derivative Contracts**") will be reported at the price provided by the applicable Investment Manager, a vendor selected by that Investment Manager, Plan Sponsor or Plan Administrator; and

**2.6.1.6** Other securities or other property will be reported at prices certified by the applicable Investment Manager or at the price provided by a vendor or appraiser selected by the Investment Manager, Plan Sponsor or Plan Administrator.

**2.6.2** Trustee shall follow general market practice regarding reviewing the reasonableness of prices received by it under Section 2.6.1.1 but is not responsible for any error or inaccuracy in any such price as received by Trustee. Plan Sponsor, Plan Administrator, or the applicable Investment Manager, as applicable, shall be deemed to have directed Trustee as to any price reported under clauses 2.6.1.2 through 2.6.1.6, and Trustee will not review or verify any such price.

**2.6.3** Plan Sponsor, Plan Administrator or the applicable Investment Manager shall assess whether the prices reported by Trustee reflect the fair market value or fair value of the applicable asset at the time as of which Trustee reports the value of the Trust Fund. Trustee shall not make a fair value adjustment of any price received by it, although it will incorporate into its reports any fair value adjustment that Plan Sponsor, Plan Administrator, or an Investment Manager may provide instructions for, if it is practicable for Trustee to do so from an operational perspective. Trustee is fully protected in relying on the prices reported under this Section 2.6 for all purposes under this Schedule, as well as any requirements of the Financial Accounting Standards Board or Governmental Accounting Standards Board.

**2.6.4** Reported prices of securities and other property (particularly values of OTC Derivative Contracts and other assets lacking a readily available price) are indicative values only and do not indicate the actual terms at which the relevant asset or liability could be sold or unwound.

**2.6.5** Trustee has no responsibility to determine the price of OTC Derivative Contracts except as separately agreed to in writing between Plan Sponsor and Trustee.

**2.6.6** Trustee or its agent shall keep records of all transactions relating to the Trust Fund, which will be made available at reasonable times during normal working hours to persons designated by Plan Sponsor or as may be required by law. Trustee or its agent shall render an accounting and statement of the Trust Fund assets and their values to Plan Sponsor as or for Plan Administrator at least annually. Plan Administrator may approve or file objections to such accounting for itself and Plan Sponsor by an instrument in writing delivered to Trustee. If Plan Administrator does not file with Trustee objections to any such accounting within ninety days after its receipt, Plan Administrator is deemed to have approved such accounting for itself and Plan Sponsor. In such case, or on the written approval of Plan Administrator of any such accounting, Trustee and its agent are, if permitted by law, be discharged from all liability for its act or failures to act described in such accounting. Except as otherwise provided in the Code, no person, other than Plan Sponsor or Plan Administrator, may require an accounting or bring any action against Trustee relating to the Trust Fund.

**2.6.7** Nothing contained in this Schedule or in the Plan deprives Trustee or its agent of the right to have a judicial settlement of its accounts. In any proceeding for a judicial settlement of the accounts of Trustee or its agent or for instructions regarding the Trust, the only necessary parties thereto in addition to Trustee and its agent as appropriate will be the Plan Administrator. If Trustee or its agent so elects, it may join as a party or parties defendant any other person or persons.

**2.7 Plan Administrator.** Plan Sponsor shall certify to Trustee and its agent the names of the entity or persons constituting the Plan Administrator and of any other persons with authority to provide Direction for the Plan under this Schedule. All Direction to Trustee or its agent by Plan Administrator or any other authorized representatives must be in writing which includes Direction received by electronic methods acceptable to the Trustee. Trustee and its agent may rely without further inquiry on all such written Direction received from the Plan Administrator or any other authorized persons.

## **2.8 Plan-to-Plan Transfers; Rollovers.**

**2.8.1** Trustee or its agent may transfer part or all of the property representing a Participant's interest in the Plan to the trustees of any trust qualified under Section 401(a) of the Code or Section 457(g) of the Code, whichever is applicable, in a plan-to-plan transfer, or relating to an eligible

rollover distribution, to any eligible retirement plan as provided under Section 402(c) of the Code or Section 457(e) of the Code, whichever is applicable. Trustee or its agent may make such a transfer only at the Direction of the Plan Administrator.

**2.8.2** Trustee or its agent may accept as part of the Trust Fund such property as is acceptable to Trustee which represents a Participant's retirement benefits transferred from a trust qualified under Section 401(a) of the Code or Section 457(g) of the Code, whichever is applicable, or transferred as a permissible rollover under Section 402(c) or 408(d)(3) of the Code or Section 457(e) of the Code, whichever is applicable. The amount of such benefits will always be separately accounted for by Plan Sponsor. A Participant will always be fully vested in any property so transferred as a rollover to the Trust Fund. Such property will be distributed to the Participant at the Direction of the Plan Administrator within the time required for distribution of his retirement benefits under the applicable provisions of the Plan.

## **2.9 Participating Employers.**

**2.9.1** Any entity that is required to be treated as a single employer or otherwise required to be aggregated with Plan Sponsor and which has adopted the Plan under its terms (a "**Participating Employer**") becomes a party to this Schedule on Plan Sponsor delivering to Trustee or its Affiliates documentation that it shall adopt the Plan, to become a party to this Schedule, and to be bound by all the terms of the Plan and this Schedule. Plan Sponsor has the sole authority to enforce this Schedule for all Participating Employers and Trustee, or its agent will not deal with any such Participating Employer except by dealing with Plan Sponsor as such Participating Employer's agent. Irrespective of the number of Participating Employers which may become parties to this Schedule, Trustee or its agent shall in all respects invest and administer the Trust Fund as a single fund for investment and accounting purposes without allocation of any part of the Trust Fund as between Plan Sponsor and any Participating Employer.

**2.9.2** A Participating Employer which has adopted the Plan stops being a party to this Schedule on Plan Sponsor delivering to Trustee documentation that it is terminating its participation in the Plan. In such event, or in the event of the termination of Plan Sponsor or of any such Participating Employer, or in the event of the establishment, modification or continuance of any other retirement plan which separately or in conjunction with this Plan is qualified under Section 401(a) of the Code, Trustee or its agent continue to hold the portion of the Trust Fund which is attributable to the participation in the Plan of the employees and their beneficiaries affected by such termination, and this Schedule continues in force relating to such portion, until otherwise Directed by the Plan Administrator, under the provisions of the Plan and the Code.

**2.10 Alienation.** No interest in the Trust Fund is assignable or subject to anticipation, sale, transfer, mortgage, pledge, charge, garnishment, attachment, bankruptcy or encumbrance or levy of any kind, and the Trustee or its agent shall not recognize any attempt to assign, sell, transfer, mortgage, pledge, charge, garnish, attach or otherwise encumber the same except if such attempt is made under (i) a court order determined by the Plan Administrator to be a qualified domestic relations order, as defined in Section 414 of the Code or (ii) as required by a federal tax levy made under Section 6331 of the Code, (iii) under an offset under Section 401(a)(13)(C) of the Code or (iv) as otherwise allowed under the Code.

**2.11 Bond.** Trustee shall not be required to give any bond or any other security for the faithful performance of its duties under this Schedule except as required by law.

## **2.12 Proxies and Other Incidents of Ownership**

**2.12.1** The Trustee has no discretion relating to voting proxies, tendering shares in a tender or exchange offer, or exercising any other rights of ownership.

**2.12.2** The Trustee shall deliver or cause to be delivered, as Directed by Plan Sponsor or Plan Administrator, to Plan Sponsor, Plan Administrator, the designated Investment Manager, or a designated transfer agent, all proxies and proxy related materials relating to investments held under the Schedule received by Trustee.

**2.12.3** Plan Sponsor shall assign a fiduciary (which may be a person, committee or entity designated by Plan Sponsor, or Plan Sponsor, but which will not be the Trustee) who is responsible for voting proxies, tendering shares and exercising shareholder rights.

**2.12.4** For investments held in Participant-directed brokerage accounts, each Participant is responsible for directly voting proxies, tendering shares and exercising shareholder rights.

### **3 Compensation and Expenses**

**3.1** Trustee shall be compensated under the Agreement, where such fees may be paid by an Affiliate to the Trustee on behalf of the Plan. Trustee may liquidate Trust assets in satisfaction of its fees hereunder in the event of non-payment by Plan Sponsor.

**3.2** Trustee shall pay out of the Trust Fund, income taxes levied or assessed under existing or future laws against the Trust Fund, (including all Participant accounts) on direction by a regulatory authority or agency or Plan Sponsor or Plan Administrator, as applicable.

**3.3** Plan Sponsor shall pay, or if not paid by Plan Sponsor and the Plan so permits, Plan Sponsor Directs Trustee to pay from the Trust Fund, the reasonable expenses relating to the Plan and Trust Fund that are permitted by law to be paid from the Trust Fund.

### **4 Use of Confidential Information**

In addition to the obligations regarding Confidential Information in the Agreement, Plan Sponsor authorizes Trustee to disclose Confidential Information to: (i) any subcustodian, subcontractor, agent, securities depository, securities exchange, broker, third party agent, proxy solicitor, issuer, or any other person that Trustee believes is reasonably required to receive such information in connection with Trustee's provision of relevant services under this Schedule; (ii) its professional advisors, auditors or public accountants; (iii) its Affiliates, and (iv) any revenue authority or any governmental entity relating to the processing of any tax relief claim.

### **5 Resignation & Termination**

#### **5.1 Resignation or Removal of Trustee.**

**5.1.1** Trustee may resign at any time by giving ninety days' notice to Plan Sponsor. Plan Sponsor may remove Trustee at any time by giving ninety days' notice to Trustee. In the case of the resignation or removal of Trustee, Plan Sponsor shall appoint a successor trustee who will have the same powers and duties as those conferred on Trustee. If Plan Sponsor fails to appoint a successor Trustee as of the effective date of the Trustee resignation or removal or as of the effective date of the termination of this Schedule and no other Trustee remains, the Trustee will treat Plan Sponsor as having appointed itself as Trustee and as having filed Plan Sponsor's acceptance of appointment as successor Trustee with the Trustee.

**5.1.2** Trustee shall execute, acknowledge and deliver all documents and written instruments necessary to transfer and deliver all of the assets of the Trust Fund and all rights and privileges therein to the successor trustee or, in its discretion, to a court of competent jurisdiction as the Trustee deems necessary, within a reasonable time, after reserving such reasonable amount as it deems necessary to provide for any expenses and payments then chargeable against the Trust Fund for which the Trust Fund may be liable, or for payment of the retiring Trustee's fees and expenses in connection with the settlement of its account or otherwise. If the assets so withheld are insufficient or excessive for such purposes, the retiring Trustee shall be entitled to reimbursement for any deficiency out of the Trust Fund from the successor trustee, or shall deliver the excess to the successor trustee, as applicable. Following the effective date of the removal or resignation of Trustee, on request, the Trustee shall provide Plan Sponsor a written account of all Trust Fund transactions since the most recent report provided to Plan Sponsor. The

provisions of Section 2.6 apply to such account. The term "Trustee" as used in this Schedule apply to any successor trustee.

**5.1.3** On the appointment of a successor trustee, the resigning and removed Trustee is discharged from further accountability for the Trust Fund, and is under no further duty, obligation or responsibility for the disposition by such successor trustee of the Trust Fund or any part thereof.

**5.2 Termination.** This Schedule may be terminated as follows:

**5.2.1** If the Agreement or the Recordkeeping Services Schedule with an Affiliate of the Trustee is terminated, this Schedule terminates as of the date of termination of such Agreement or Recordkeeping Services Schedule with no further notice required from either party to the other; or

**5.2.2** This Schedule may be terminated at any time under Section 5.1. Notwithstanding the foregoing, Plan Sponsor may terminate the underlying Trust on ninety days prior notice to Trustee. On receipt of such notice of termination, the Trustee shall, after payment of all expenses incurred in the administration of the Trust Fund and such compensation as to which Trustee may be entitled, distribute the Trust Fund in cash or in kind to such persons or entities, including Plan Sponsor, at such time and in such amounts as Plan Administrator shall Direct, which Direction must be in conformity with the provisions of the Plan and applicable provisions of the Code. Notwithstanding the foregoing, Trustee shall not be required to pay out any assets of the Trust Fund until it receives such rulings or determinations of the Internal Revenue Service or any other administrative agency as it may deem necessary or appropriate to assure itself that any such payment is made under the provisions of law or that it will not subject the Trust Fund or the Trustee, individually or as such Trustee, to liability. Plan Sponsor or Plan Administrator must obtain such rulings.

## **6 Miscellaneous.**

**6.1** This Schedule, including the terms of the Agreement, and all appendixes, exhibits, schedules, notices and attachments thereto, constitutes the entire agreement of the parties relating to the subject matter hereof, and supersedes all prior drafts, agreements, negotiations and proposals, written or verbal, relating to the Services, and supersedes any prior trust agreement, statement, or representation relating to the obligations of the Trustee, whether oral or written. Except as otherwise provided in this Schedule, this Schedule may be modified only by an amendment signed by authorized representatives of each party. By signing this Schedule, the parties certify they have read and understood it, that they agree to be bound by its terms, and that they have the authority to sign it. This Schedule is not binding on either party until signed by both parties.

**6.2** Notwithstanding anything contained in this Section to the contrary, no amendment diverts any part of the Trust Fund to, and no part of the Trust Fund will be used for, any purpose other than for the exclusive purpose of providing benefits to Participants; provided, however, that nothing in this Section limits or otherwise prevents the payment from the Trust Fund of expenses and other charges as provided in Section 3.

**6.3 Assignment.** This Agreement binds on and inures to the benefit of each of the parties, their Affiliates, successors and permitted assigns; provided, however, that neither party may assign its rights or obligations hereunder without the other party's prior written consent.

**6.4 Governing Law.** Notwithstanding anything in the Agreement, if not preempted by federal law, this Schedule and the Trust is construed, regulated, and administered under the laws of the State of Colorado, as applicable, without regard to conflict of law principles, and any claim arising under or related to this Schedule is subject to the exclusive jurisdiction of the federal and state courts located in Colorado.

**6.5 Notices.** All notices required by this Schedule must be in writing and must be sent to Trustee as stated below or to Plan Sponsor, as applicable. Plan Sponsor will be deemed to have received any applicable notices for the Plan Administrator. All notices sent are effective on receipt. Provided,



however, that on either party's written request, such communications shall be sent to such other address as a party may specify. No communication binds either party until such party receives it.

**Trustee:**  
Notice To Trustee: Empower Trust Company, LLC  
8515 East Orchard Road  
Greenwood Village, CO 80111  
Attn: Trust Officer

With a copy to: Empower Trust Company, LLC  
8515 East Orchard Road  
Greenwood Village, CO 80111  
Attn: General Counsel

**Plan Sponsor:**  
Notice To Plan Sponsor Plan Sponsor's address of record as provided to the Trustee or its Affiliates.

**6.6 Reports.** The Trustee has accepted this Trust with the understanding that Plan Sponsor or Plan Administrator has entered or is entering into a service agreement with an Affiliate of the Trustee whereby such Affiliate will provide recordkeeping services for all Plan assets held under this Schedule. The recordkeeping reports and related financial information provided by Affiliate constitute the reports of the Trustee.

**Empower Trust Company, LLC**

**Arapahoe County, CO**

\_\_\_\_\_  
Signature

Patrick L Hernandez  
Signature

\_\_\_\_\_  
Printed Name

PATRICK L HERNANDEZ  
Printed Name

\_\_\_\_\_  
Title

DIRECTOR HUMAN RESOURCES  
Title

\_\_\_\_\_  
Date Signed

11/26/2024  
Date Signed

## **LOAN POLICY**

## Plan Loan Administration Policy

**Plan Name: Arapahoe County 457 Deferred Compensation Plan (the "Plan")**

**Plan Number: 100439-01**

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### Article I. Loan Eligibility

#### Section 1.01

Loans may be requested by a participant via a Plan Administrative Form, the participant's account online and/or by speaking with a Participant Call Center representative, as determined by the Plan's administration procedures.

Only active participants in the Plan may request a loan.

### Article II. Loan Origination and Administration Fees

#### Section 2.01

Loan origination and administration fees, as applicable may be assessed and deducted from the participant's account, as directed by the Plan Administrator. Applicable loan fees are disclosed and agreed to by the Plan Sponsor and are also disclosed and agreed to by the participant at the time the loan is requested.

### Article III. Minimum and maximum loan amounts

#### Section 3.01

The minimum loan amount that a participant may request is \$1000.

#### Section 3.02

The maximum loan amount that a participant may request is \$50,000.00 or 50% of the vested account balance, whichever is less. The \$50,000.00 is reduced by the highest outstanding loan balance during the past 12 months or any existing loan balances on the date a new loan is made, whichever is greater.

#### Section 3.03

The Plan Administrator is solely responsible for ensuring that the aggregated loan amount available to participants in all plans sponsored by the same employer (or by a member of the employer's controlled group) is the lesser \$50,000.00 or 50% of the vested account balance and for reducing the maximum loan amount available from the Plan by the highest outstanding loan balance during the past 12 months for any loan(s) issued by such other plan(s). The Plan Administrator is solely responsible to direct the Plan's recordkeeper to aggregate Plan loans with loans issued by such other plan(s) and to provide loan data from such other plan(s) which is required by the recordkeeper in order to process and administer loans from the Plan for purposes of this section.

## **Article IV. Number of loans permitted**

### **Section 4.01**

The number of loans a participant may have outstanding at one time is one (1).

## **Article V. Loan Requests and Loan Refinancing**

### **Section 5.01 Loans require an Enforceable Agreement**

An enforceable agreement between the participant and the Plan is required for all loans. Loans will not be issued by the Plan unless the participant acknowledges and agrees to the Loan terms. If the loan proceeds are issued from the Plan via a check, the participant must acknowledge and agree to the loan terms which appear with the check by endorsing and depositing the loan proceeds. If the loan proceeds are issued from the Plan via an ACH transfer to the participant, the participant must acknowledge and agree to the loan terms at the time the loan is requested.

### **Section 5.02 Loan Refinancing**

A participant may request an additional loan amount by refinancing and replacing the existing loan(s) with a new loan. The refinanced loan term cannot exceed the shortest term of all replaced loan(s) and cannot be refinanced if the term of replacement loan is less than the minimum term for a new loan as allowed under this Loan Policy. Participants may not refinance a loan that has been reported as a deemed distribution.

### **Section 5.03 Plan Administrator Approval**

The Plan Administrator must adopt the Plan Loan Policy before loan requests will be processed by the Plan's recordkeeper. Participant loan requests require the approval of the Plan Administrator prior to issuance by the Plan, consistent with the Plan's administration procedures.

## **Article VI. Distribution of loan amount**

### **Section 6.01**

Loan distribution amounts will be depleted across the available money sources in a prorated manner pursuant to the plan's procedures or as otherwise instructed by the Plan Administrator.

## **Article VII. Types of loans available**

### **Section 7.01 General Purpose Loan**

A General Purpose Loan has a term of twelve (12) - sixty (60) months. No reason or documentation is required when a participant requests a General Purpose Loan. The interest rate for this type of loan is fixed for the life of the loan. The interest rate is .5% over the Prime Rate published in the Wall Street Journal on the first business day of the month the loan is originated.

## **Section 7.02 Principal Residence Loan**

A Principal Residence Loan has a term of sixty-one (61) - three hundred and sixty (360) months. This type of loan must be utilized for the purchase of a primary residence. The interest rate is .5% over the Prime Rate published in the Wall Street Journal on the first business day of the month the loan is originated.

## **Article VIII. Deduction of Interest on Plan Loans**

### **Section 8.01**

Interest paid on Plan loans is not eligible for an income tax deduction by the participant.

## **Article IX. Loan Payment Requirements**

### **9.01 Repayments in General**

Active employees must make timely loan repayments as per the amortization schedule. Further, where this loan policy allows partial repayments and early loan payoff, the administrative policies of the plan allow for repayments to be made via a method other than payroll deduction. Loan repayments will be allocated to the participant's account according to the investment election in effect at the time the payment is processed. Loan repayments are generally deposited pro rata into the money sources originally used to fund the loan proceeds.

### **9.02 Repayment Method**

The Plan Sponsor will deduct and remit loan repayments following the plan's issuance of a loan. The Plan Sponsor is responsible for providing the recordkeeper information regarding the employment status of the participant in a timely manner. The Plan Sponsor will ensure that loan repayments are deducted in full and remitted on a timely basis in accordance with the loan amortization schedule. However, the Plan Administrator may determine, on a uniform and nondiscriminatory basis, to allow such Participants to remit loan installment repayments via Payroll deduction. Any repayment amount remitted and credited to the loan that is less than the full installment payment amount required per the amortization schedule, plus accrued interest, results in a loan in arrears and subject to default. Exceptions to this Section appear in Section 10.02.

### **9.03 Delinquent Loans and Repayment Grace Period**

Loans are in arrears and delinquent when any payment is missed, an amount remitted and credited to the loan is less than that required under the amortization schedule, plus accrued interest, or as otherwise treated as delinquent pursuant to this loan policy. Subject to any restrictions on repayments after termination of employment described in Section 9.06 and the conditions under which a loan will be automatically offset under Section 9.07 of this policy, the Plan's grace period allows for the late loan repayment(s) to be cured by the applicable deadline. The late loan repayments, plus any accrued interest, must be made by the end of the grace period. The Plan's loan grace period shall be the end of the calendar quarter following the calendar quarter in which payment is first delinquent. If the late loan payment plus accrued interest is not repaid to the Plan by the end of the Plan's grace period, the entire outstanding loan balance, consisting of the missed payments, remaining principal and accrued but unpaid interest, will be treated as a deemed distribution from the Plan.

#### **9.04 Deemed Distribution in General**

A loan delinquency that is not cured by the end of the plan's grace period results in a loan default and treatment of the loan under this policy as a deemed distribution. A deemed distribution of a defaulted loan is not an actual plan distribution, but is treated as a distribution for tax purposes. IRS regulations require the defaulted loan to be reported to the IRS as a deemed distribution and as taxable income to the participant on IRS Form 1099-R in the year in which the loan defaulted.

Since a deemed distribution is not treated as an actual distribution, the loan obligation against the participant's account remains and the participant's obligation to repay the loan shall continue. In addition, interest on the loan shall continue to accrue until such time as the loan is either offset or fully paid.

Participants with a previously defaulted loan are generally not allowed to take a new loan under this policy until such loan is fully paid. However, the Plan Administrator may determine, on a uniform and nondiscriminatory basis, to allow such Participants to take a new loan(s) and will direct the recordkeeper accordingly. Participants may not refinance a loan that has been reported as a deemed distribution. Any loan payments made after the loan is treated as a deemed distribution will be recorded on an after-tax cost basis within the Participant's account.

#### **9.05 Repayment upon Distributable Event other than Termination of Employment**

If a Participant has not terminated service, but is otherwise eligible for a distributable event (e.g., age 59 ½ partial withdrawal), the repayment obligation continues under the terms of the amortization schedule and any outstanding loan amount will reduce the amount available for partial distribution(s) and any new loan, as applicable.

If the loan is not timely repaid in accordance with Sections 9.01 and 9.02, the Plan Administrator may direct the recordkeeper to offset the unpaid loan obligation against the participant's vested balance. In addition, the participant may elect to offset the loan balance when a distributable event occurs under the plan.

#### **9.06 Repayment of Outstanding Loan upon Termination of Employment**

Repayment via installment of an outstanding loan upon termination of service is not allowed under this policy. Participants who leave service prior to the end of the loan term will be required to pay off the loan at termination of employment. The loan shall be due and payable upon termination of employment and will be offset in accordance with Section 9.07.

In accordance with the administrative policies of the Plan, Participants who leave service prior to the end of the loan term may (or be required to) continue to make loan repayments in a manner other than payroll deduction. In this instance, if the loan is not timely paid in Section 9.03 and unless the loan is offset, the loan will be treated as a deemed distribution in accordance with Section 9.04.

#### **9.07 Loan Offset Following Termination of Employment**

The participant's outstanding loan balance will be offset upon the Participant receiving any form of distribution after termination of employment. Notwithstanding the above, prior to receiving a distribution, the participant may elect to offset the loan balance against the vested account balance. In such event unless the delinquent loan has not already been reported as a deemed distribution on IRS Form 1099-R, the entire amount of the outstanding loan balance (plus accrued interest) will be reported as a loan offset distribution on IRS Form 1099-R in the year the offset occurs.



## **9.08 Death**

The Plan Administrator may direct the recordkeeper to offset the loan of a deceased participant. If the recordkeeper is not notified a participant is deceased, outstanding loans of a deceased participant remain subject to the provisions of this policy that address the reporting of a delinquent loan as a deemed distribution and the reporting of a deemed distribution as taxable income to the participant on IRS Form 1099-R. At the time a claim for benefits deemed to be in good order is made by the beneficiary, the outstanding loan principal and accrued interest shall be treated as an offset distribution from the plan. Unless the delinquent loan has not already been reported as a deemed distribution on IRS Form 1099-R, the entire amount of the outstanding loan balance (plus accrued interest) will be reported as a loan offset distribution and as taxable income to the participant on IRS Form 1099-R in the year the offset occurs. A deceased participant's loan may not be transferred or assumed by the participant's beneficiary(ies).

## **9.09 Leaves of Absence**

Suspension of loan repayments administered by the Plan Sponsor via payroll deduction is permitted during a participant's leave of absence approved by the Plan Sponsor for a period not exceeding one (1) year either without pay from the employer or at a rate of pay that is less than the amount of the installment payments required under the terms of the loan. The Plan Administrator must provide information to the plan's recordkeeper concerning the start and stop dates of an approved leave of absence and to the extent the participant does not elect to continue making repayments, the Plan Administrator directs the recordkeeper to reamortize the loan effective when the participant returns from the approved leave of absence. Notwithstanding the plan loan leave of absence policies described above, the participant must repay the loan in full by the original maturity date of the loan. Interest on the loan continues to accrue during the leave of absence.

If the participant takes a military leave of absence and the interest rate on the loan is greater than 6% during the leave period, the Plan Administrator may direct the recordkeeper to reduce the interest rate on the loan to 6%. Upon the participant's return from military leave, the Plan Administrator may direct the recordkeeper to extend the term of the loan by the term of the military leave, not to exceed five (5) years. The loan will be reamortized to reflect the new payment schedule, as applicable. Interest on the loan continues to accrue during the leave of absence.

## **Article X. Loan Payoffs**

### **10.01 Loan Payoffs in Full**

A loan can be repaid at any time. The participant may obtain a loan payoff quote via the participant website or a participant services representative. Where a loan is paid in full, but a trailing payment is received, the recordkeeper will return the excess back to the participant.

Repayment in full of the outstanding loan principal and accrued interest may be made at any time. If payment is made by any means other than certified funds, then subsequent loans and distributions will be held for ten (10) calendar days following the receipt of the payment.

### **10.02 Exceptions to Standard Loan Repayment Policies**

A participant may make loan repayments via payroll deduction or by other means in order to catch-up on a past due amount or to reduce the principal amount of the loan. Additional loan repayments in advance of the applicable due date reflected on the amortization schedule are credited to the loan in accordance with the administrative policies of

the Plan. Any loan repayments will first be applied to the accrued interest and remaining principal amount of any payment in arrears.

## **Article XI. Adoption of the Loan Policy by the Plan Administrator**

### **Section 11.01**

The Plan Administrator is responsible for adopting, amending, interpreting and administering the provisions of the Plan's Loan Policy. The Plan Administrator has developed this Loan Policy consistent with the requirements of the Plan's recordkeeper and will consult with the recordkeeper prior to making any changes.