ELIGIBLE 457(b) PLAN
DOCUMENT AND TRUST AGREEMENT
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Plan to Compensation is a reference to the definition in this Section 1.05 unless the Plan reference specifies a modification to this definition or the Employer in the Adoption Agreement elects a modification. The Plan Administrator will take into account only Compensation actually paid for the relevant period. A Compensation payment includes Compensation paid by the Employer through another person under the common paymaster provisions in Code §§33121 and 3306. See Section 1.15 as to Compensation for an Independent Contractor. Compensation also includes any amount that the Internal Revenue Service in published guidance declares to constitute compensation for purposes of a 457 Plan.

(A) “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)).

(B) Modification to Compensation. The Employer must specify in its 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.

(C) Elective Contributions. Compensation under Section 1.05 includes Elective Contributions unless the Employer in its 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.

1.06 “Deferral Contributions” means as the Employer elects in Adoption Agreement Section 3.01, 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 “Employee” means an individual who provides services for the Employer, as a common law employee of the Employer. The Employer in its Adoption Agreement must elect or specify any Employee, or class of Employees, not eligible to participate in the Plan (an “Excluded Employee”). See Section 1.15 regarding potential treatment of an Independent Contractor as an Employee.

1.10 “Employer” means an employer who adopts this Plan by executing an Adoption Agreement.

1.11 “Employer Contribution” means Nonelective Contributions or Matching Contributions.


1.13 “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).

1.14 “Includible Compensation” means, for the Employee’s Taxable Year, the Employee’s total Compensation within the meaning of Code §415(e)(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.

1.15 “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 its Adoption Agreement.

1.16 “Leased Employee” means an Employee within the meaning of Code §414(n).

1.17 “Matching Contribution” means an Employer fixed or discretionary contribution made or forfeit allocated on account of Salary Reduction Contributions.

1.18 “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.

1.19 “Normal Retirement Age” means the age the Employer specifies in the Adoption Agreement consistent with Section 3.05(B).

1.20 “Participant” is an Employee other than an Excluded Employee who becomes a Participant in accordance with the provisions of Section 2.01.

1.21 “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 under which the Employer has elected to participate in this Eligible 457 Prototype Plan. The Employer in the Adoption Agreement must designate the name of the Plan. The Plan maintained by each adopting Employer is a separate Plan, independent from the plan of any other Employer adopting this Eligible 457 Prototype Plan. All section references within the Plan are Plan section references unless the context clearly indicates otherwise.

1.22 “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.

1.23 “Plan Entry Date” means the dates the Employer elects in Adoption Agreement Section 2.01.
1.24 “Plan Year” means the consecutive 12-month period the Employer elects in the Adoption Agreement.

1.25 “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.

1.26 “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.

1.27 “Salary Reduction Contribution” means a contribution the Employer makes to the Plan pursuant to a Participant’s Salary Reduction Agreement.

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

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

(B) “Continuous Service” 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 becomes 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 1.30, 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/her Deferred Compensation on the applicable date.

1.29 “State” means (a) one of the 50 states of the United States or the District of Columbia, or (b) a political subdivision of a State, or any agency or instrumentality of a State or its political subdivision. A State does not include the federal government or any agency or instrumentality thereof.
ARTICLE II
PARTICIPATION IN PLAN

1.30 A "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.

1.31 "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).

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

1.33 "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.

1.34 "Trust" means the Trust created under the adopting Employer's Plan. The Trust created and established under the adopting Employer's Plan is a separate Trust, independent of the trust of any other Employer adopting this Eligible 457 Prototype 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.

1.35 "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.

1.36 Type of 457 Plan. The Employer in the Adoption Agreement must specify both the sponsor type and plan type from the following:

(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.

(C) "Eligible 457 Plan" means a plan which satisfies the requirements of Code §457(b) and Treas. Reg. §§1.457-3 through -10.

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

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 its 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 not increase the amount of the Employer contribution returnable under this Section 3.01 for any earnings attributable to the contribution, but 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.

(C) Application to Leave of Absence and Disability. Unless a Participant in his/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.

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 Normal Retirement Age catch-up contributions and to age 50 catch-up contributions, if any, 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, beginning January 1, 2006) such larger amount as the Commissioner of the Internal Revenue may prescribe), or

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

3.05 NORMAL RETIREMENT AGE CATCH-UP CONTRIBUTION. For one or more of the Participant's last three Taxable Years ending before the Taxable Year in which the Participant attains Normal Retirement Age, the Participant's maximum Deferral Contributions may not exceed the lesser of:

(a) Twice the dollar amount under Section 3.04(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 70½.

(1) Participant Designation. The Employer in the Adoption Agreement may permit a Participant to designate his/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 70½.

(C) Pre-2002 Coordination. In determining a Participant’s underutilized limitation, the Plan Administrator, in accordance with Tres. 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/her Deferral Contributions. The Employer will allocate Employer Nonelective and Matching Contributions to the Account of each Participant who satisfies the allocation conditions in Adoption Agreement Section 3.08 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.

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 its 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. For taxable years beginning after December 31, 2001, 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 permit or not to permit Rollover Contributions to this Plan or may elect to limit an eligible Employee's right or a Participant's right to make a Rollover Contribution. If the Employer permits Rollover Contributions, any Participant (or, as applicable, any eligible Employee), with the Employer's written consent and after filing with the Trustee the form prescribed by the 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 a 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 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/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.

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, commencing for Plan Years beginning after December 31, 2002. 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 Dollar Limits. The table below shows the applicable dollar amounts described in paragraph 3.04(a) and limitations on age 50 catch-up contributions described in Section 3.06. These amounts are adjusted after 2006 for changes in the cost-of-living to the extent permitted in Code §415(d).

<table>
<thead>
<tr>
<th>Year</th>
<th>Applicable Dollar Amount</th>
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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 his/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/her Account beyond the time the Employer has elected in its 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 may elect the timing and method of payment of his/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.

(B) Number of Initial Elections/Subsequent Elections. A Participant 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/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.

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/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) Effective Date. Unless the Employer specifies a later effective date in the Adoption Agreement, the provisions of this Section 4.03 will apply for purposes of determining required minimum distributions for calendar years beginning with the 2002 calendar year.

(2) Coordination with Minimum Distribution Requirements Previously in Effect. If the effective date of this Section 4.03 is earlier than the 2003 calendar year, required minimum distributions for 2002 under the Plan will be determined as follows. If the total amount of 2002 required minimum distributions under the Plan made to the distributee prior to the effective date of this Section 4.03 equals or exceeds the required minimum distributions determined under this Section 4.03, then no additional distributions will be required to be made for 2002 on or after such date to the distributee. If the total amount of 2002 required minimum distributions under the Plan made to the distributee prior to the effective date of this Section 4.03 is less than the amount determined under this Section 4.03, the required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the distributee will be the amount determined under this Section 4.03.

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

(4) 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 Section 4.01(a)(9) of the Code and the Treasury regulations.

(C) Required Minimum Distributions during Participant’s Lifetime.

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

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

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

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

(D) Required Minimum Distributions after Participant’s Death.

(1) Death On or After Distributions Begin.

(a) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for 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.

(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 may 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.

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 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. 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.

(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 its 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 its 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/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).

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

(B) Rollover and Withholding Notice. At least 30 days and not more than 90 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/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 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) 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.

(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.

ARTICLE V
PLAN ADMINISTRATOR - DUTIES WITH RESPECT TO PARTICIPANTS’ ACCOUNTS

5.01 TERM / VACANCY. The Plan Administrator will serve until his/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/her Vested Account;

(n) To comply with the reporting and disclosure rules of ERISA if applicable to the Plan;

(o) 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;

(p) To undertake correction of any Plan failures as necessary to preserve Eligible Plan status; and

(q) 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/her accumulated Deferred Compensation, as of the most recent Accounting Date or any later date as the Plan Administrator may determine.

5.07 ALLOCATION OF NET INCOME, GAIN OR LOSS. As of each Accounting Date (and each other valuation date determined under Section 5.06), 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 whether the adjustment for net income gain or loss reflects actual Account earnings or an interest credit. 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/her Beneficiary, or transferred under Section 9.03 from his/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/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 its 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. 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/her last known address by certified or registered mail; (2) use the IRS letter forwarding program under Rev. Proc. 94-22; (3) use a commercial locator service, the internet or other general search method; (4) use the Social Security Administration or PBGC search program; or (5) use such other methods as the 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/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 permissive 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/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/her spouse as his/her Beneficiary under the Plan unless: (a) the decree or a QDRO provides otherwise; or (b) the Employer provides otherwise in an Addendum to its Adoption Agreement. The foregoing revocation provision (if applicable) applies only with respect to a Participant whose divorce or legal separation becomes effective on or following the date the Employer executes the Adoption Agreement, unless the Employer in its 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) 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 under Adoption Agreement Section 3.02 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/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/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 its 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/her address and any change of address. Any communication, statement or notice addressed to a Participant, or Beneficiary, at his/her last address filed with the 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/her affairs because of a mental condition, a physical condition, or by reason of age, the Plan Administrator or 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/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 Prototype Plan, except to the extent Federal law supersedes State law.

7.05 EMPLOYMENT NOT GUARANTEED. Nothing contained in this Plan, or any modification or amendment to the Plan, or in the creation of any Account, or the payment of any benefit, gives any Employee, Participant or Beneficiary any right to continue employment, any legal or equitable right against the Employer, the 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 or ERISA.

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 serve, 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(l), the Trustee may consent in writing to permit Participants in the Plan to direct the investment of 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 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 section 401(a), individual retirement accounts that are exempt under Code section 408(e), and eligible governmental plans that meet the requirements of Code section 457(b). For this purpose, a trust includes a custodial account that is treated as a trust under Code section 401(f) or under Code section 457(g)(3). For purposes of valuation, the value of the interest maintained by the Plan in such group trust shall be the fair market value of the portion of the group trust held for Plan, determined in accordance with generally recognized valuation procedures.

ARTICLE IX
AMENDMENT, TERMINATION, TRANSFERS

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

(a) To amend this Plan and Trust Agreement and its 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 its 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.

The Prototype Plan Sponsor also may amend the Plan and Trust in writing (including adoption of a
substitute Plan and Trust) without any adopting Employer being required to re-execute its Adoption Agreement, provided that the Sponsor considers the amendment necessary or advisable to continue the Plan as an Eligible 457 Plan and the amendment does not modify or affect any Employer’s Adoption Agreement elections.

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 plans 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.
AMENDMENT FOR
PENSION PROTECTION ACT OF 2006
AND OTHER LAW CHANGES
(457(b) Plan)

Instructions

Adoption of this Amendment (Articles I through X) enables an employer to comply in form with PPA and other law changes that are effective since the effective date of the 457 final regulations. This Amendment reflects guidance issued through May 2008. This Amendment assumes that the employer already has amended the plan for the final 457 regulations issued in 2003 (reflecting EGTRRA) and for automatic rollovers as applicable to governmental plans.

Timing of amendment. An employer may adopt this Amendment currently for an ongoing plan (with appropriate modifications as described in these instructions and in the notes within the Amendment). However, PPA specifically provides that amendments for PPA are not required prior to the last day of the 2009 plan year (the last day of the 2011 plan year for governmental plans). The IRS has not issued any guidance regarding the amendment of a 457(b) plan for non-PPA law changes since the issuance of the final 457 regulations. However, we recommend that a governmental employer amend for these provisions by the PPA amendment deadline. The IRS has not issued any guidance regarding the timing of amendments (PPA or otherwise) for an eligible 457 plan of a tax-exempt entity. Nonetheless, we recommend a tax-exempt employer adopt the Amendment as soon as possible to avoid a 457 plan failure because of non-compliant plan provisions. This Amendment is not an IRS model amendment and has not been reviewed by the IRS.

Governmental vs. tax-exempt 457(b) plan. All of the Articles of this Amendment may apply to an eligible governmental 457 plan (referred to as a “governmental 457(b) plan”). Only the unforeseeable emergency provisions (Article II), the post-severance compensation provisions (Article III) and the QDRO provisions (Article IV) may apply to an eligible 457 plan of a tax-exempt entity. The other Articles of this Amendment do not apply to an eligible 457 plan of a tax-exempt entity.

Execution. We have not designed this Amendment for adoption by a 457 plan sponsor for all adopting employers. Instead, each adopting employer must execute the Amendment. Also, the employer may need to make modifications to the Amendment to reflect the operation of the employer’s plan. However, since this Amendment is not a pre-approved document, the employer’s mere modification of the Amendment does not have any adverse impact on the validity of the Amendment. For example, the employer may modify this Amendment by simply deleting any “deselected” Articles, and then remembering the remaining Articles that the employer actually adopts.

Election to adopt Amendment provisions. None of the provisions of this Amendment are mandatory for 457(b) plans except Article III (to the extent the employer permits any deferrals from Post-Severance Compensation) and Article X (as to governmental 457(b) plans), although proposed legislation would make mandatory the non-spouse beneficiary rollover provisions (Article VII).

Article III states the regulatory rule (adopted in the April 2007 final Post-Severance Compensation regulations) that a participant may defer from an amount received following severance from employment only if the amount satisfies the definition of Post-Severance Compensation. This provision is mandatory unless the plan currently does not permit deferrals from any compensation following severance from employment (including a participant's paycheck received after the date of severance). Such a provision would be unusual. Under Article III, the employer either may elect not to permit any deferrals from Post-Severance Compensation, or may elect the types of Post-Severance Compensation from which a participant may defer.
Article X reflects a participant's ability to roll over directly an eligible rollover distribution after December 31, 2007, to a Roth IRA. This provision is mandatory for a governmental 457(b) plan.

Check-boxes at the end of each Article (except Article X) allow the employer to "deselect" any Article that is not applicable to the employer's plan. This Amendment recites the earliest effective date for each provision. If the employer operationally adopted a discretionary provision later than the earliest effective date, the employer should modify the effective date of that provision. For example, if an employer, as of January 1, 2007, did not permit rollover of non-spouse beneficiary distributions, but decided, beginning July 1, 2007, to permit such rollovers, the employer should modify the language of Article VII to state "for distributions after June 30, 2007," rather than "for distributions after December 31, 2006." Except for Article III (Post-Severance Compensation) and Article VI (EACA provisions), an employer could adopt this Amendment without modification if the employer operationally has adopted each provision as of the stated effective date. However, adoption of Article VI requires the employer to make specific elections, as explained in the notes to Article VI. In addition, the employer must make specific elections if it wishes to change the defaults in Article III, as explained in the notes to Article III.

Specific Articles of this Amendment. The rest of these Instructions provide a brief explanation of each of the Articles of the Amendment after Article I, the Preamble.

Definition of unforeseeable emergency (Article II). Article II incorporates 2007 regulatory changes to the definition of unforeseeable emergency for purposes of a 457(b) plan distribution (either governmental or tax-exempt). These changes modify (and expand) the definition of "dependent" in the same manner as the 401(k) final regulations modified the definition of "dependent" for purposes of a 401(k) plan safe harbor hardship distribution. While PPA mandated that the IRS modify the rules defining unforeseeable emergency to permit a distribution to the participant on account of a need of the participant's beneficiary under the plan that would constitute an unforeseeable emergency if it occurred with respect to the participant's spouse or dependent (see PPA §826), the 2003 final 457 regulations already included references to an unforeseeable emergency of the beneficiary. While it is not clear whether the 2003 final regulations referenced a participant's designated beneficiary (during the participant's lifetime) rather than the participant's death beneficiary (following the participant's death), the IRS did not modify the regulatory provisions defining an unforeseeable emergency when it updated the regulations in April 2007 (following the PPA mandate), except for the definition of "dependent" as reflected in this Amendment. Therefore, assuming the April 2007 regulations comply with the PPA mandate, the 2003 regulations already permitted the beneficiary unforeseeable emergency mandated by PPA.

Post-Severance Compensation (Article III). A 457(b) plan (either governmental or tax-exempt) can permit deferrals (elected either by a participant or by the employer) from Post-Severance Compensation only as defined in the regulations. See Treas. Reg. §1.457-4(d). The definition of Post-Severance Compensation for this purpose mirrors the definition of Post-Severance Compensation for purposes of the 415 limitations adopted in the 2007 final 415 regulations. An employer may elect under Article III not to permit deferrals from Post-Severance Compensation or to permit deferrals from any or all of the Post-Severance Compensation categories, but Article III provides a default that adopts some, but not all, of the permitted categories. However, Article III permits the employer to "deselect" any category of Post-Severance Compensation in the default, and to elect any category not in the default. The introductory note to Article III explains the default provisions of that Article.

EACA provisions (Article VI). A governmental 457(b) plan may include automatic enrollment provisions that satisfy the requirements for an eligible automatic contribution arrangement ("EACA"). A EACA normally offers two statutory benefits: (1) the plan has an extended period, without the imposition of an employer excise tax, to make corrective distributions in case of an ADP or ACP test failure; and (2)
the plan may provide for a 90-day permissible withdrawal period for a participant who initially is subject to the automatic enrollment provisions, but who does not wish to defer the automatic enrollment amounts. Since a governmental 457(b) plan is not subject to the ADP or ACP test, the 90-day permissible withdrawal period is the only benefit to a governmental 457(b) plan of satisfying the EACA rules. Since a governmental 457(b) plan is not subject to Title I of ERISA, the plan with a EACA feature does not have to invest the automatic deferrals in a qualified default investment alternative ("QDIA"), as does a plan subject to Title I. See Prop. Treas. Reg. §1.414(w)-1(b)(4). Of course, the employer should not adopt this Article unless the employer has operated or intends to operate the Plan as a EACA.

Hurricane relief (Article VIII). Article VIII of this Amendment incorporates the hurricane relief granted to Hurricane Katrina victims by KETRA, and extended to Hurricanes Rita and Wilma victims by GOZone. Qualified hurricane distributions and the increased loan limit available to qualified individuals under the statutory hurricane relief provisions were not available after December 31, 2006. This Amendment does not incorporate the guidance of Announcement 2005-70, which permitted retirement plans to make certain hardship or emergency distributions, and loans, to individuals affected by Hurricane Katrina, and applied liberalized rules to hardship or emergency distributions and loans. While the relief under Announcement 2005-70 applied to governmental 457(b) plans, a governmental employer permitting the relief under Announcement 2005-70 had to amend its plan to permit the relief by the last day of the 2006 plan year. In contrast, a governmental employer may adopt an amendment to incorporate the statutory hurricane relief by the last day of the first plan year beginning on or after January 1, 2009 (i.e., the end of the 2009 plan year). See Code §1402Q(d)(2)(A), flush language. If the employer adopted some, but not all, of the available statutory hurricane relief provisions, the employer will need to modify the Amendment accordingly. The employer should “deselect” Article VIII if the plan operationally did not apply the hurricane relief provisions.

Health and long-term care distributions (Article IX). PPA provided for an election to exclude from gross income, for taxable years beginning after December 31, 2006, certain distributions from a governmental 457(b) plan used to pay qualified health insurance premiums of an Eligible Retired Public Safety Officer. This election is inapplicable where the plan does not cover Eligible Retired Public Safety Officers. While the IRS may not require plan language to implement the provisions of this income exclusion, we include “enabling” provisions in the Amendment.

Other PPA provisions (Articles IV, V, VII and X). Article IV is a minor clarification regarding the scope of a qualified domestic relations order (“QDRO”), which any 457(b) plan (either governmental or tax-exempt) which applies the QDRO provisions typically would adopt. Article V extends the notice period prior to an eligible rollover distribution from 90 days to 180 days. Most plans have taken advantage of this provision. Article VII adopts the PPA non-spouse beneficiary rollover provisions. The employer should “deselect” Article VII if the plan operationally has not permitted non-spouse beneficiary rollovers. As stated above, Article X recognizes a participant’s ability to roll over directly an eligible rollover distribution after December 31, 2007, to a Roth IRA, and is mandatory.
AMENDMENT FOR 457(b) PLAN

Peralta Community College District, as Employer sponsor ("Employer"), adopts this Amendment to the Peralta Community College District 457(b) Plan ("Plan").

RECATALS

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

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

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

ARTICLE I
PREAMBLE

1.1 Adoption and effective date of Amendment. The Employer adopts this Amendment to the Plan to reflect recent law changes. This Amendment is effective as indicated below for the respective provisions.

1.2 Superseding of inconsistent provisions. This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.

1.3 Employer’s election. The Employer adopts all Articles of this Amendment, except those Articles which the Employer specifically elects not to adopt.

1.4 Construction. Any “Section” reference in this Amendment refers only to this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to the Plan article, section or other numbering designations.

ARTICLE II
DEFINITION OF UNFORESEEABLE EMERGENCY

2.1 Application. Effective for taxable years beginning after December 31, 2001, this Article II applies only if the Plan permits a distribution to a Participant on account of an unforeseeable emergency.

2.2 Definition of unforeseeable emergency. An unforeseeable emergency is a severe financial hardship of a Participant or Beneficiary resulting from: (1) illness or accident of the Participant, the Participant’s Beneficiary, or the Participant’s or Beneficiary’s spouse or dependent (as defined in Code §152), and, for taxable years beginning on or after January 1, 2005, without regard to Code §152(b)(1), (b)(2), and (d)(1)(B); (2) loss of the Participant’s or Beneficiary’s property due to casualty; (3) the need to pay for the funeral expenses of the Participant’s or Beneficiary’s spouse or dependent (as defined in Code §152, and, for taxable years beginning on or after January 1, 2005, without regard to Code §152(b)(1), (b)(2), and (d)(1)(B)); or (4) other similar extraordinary and unforeseeable circumstances arising from events beyond the Participant’s or Beneficiary’s control.

2.3 Definition of Beneficiary. The Participant’s Beneficiary is a person who a Participant designates and who is or may become entitled to a Participant’s Plan account upon the Participant’s death.

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

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[X] Article II is not adopted.

ARTICLE III
DEFERRALS FROM POST-SEVERANCE COMPENSATION

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

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

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

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

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

[X] (2) Election to include last paycheck ONLY. Of the amounts described in this Section 3.2(a), the Employer elects to include only such amounts that are included in the final paycheck paid to the Participant at the end of the pay period that includes the Participant’s date of severance from employment.
Note: The Employer may modify the provisions of this election to conform to the Employer's particular pay practices (for example, to include a separate bonus check paid to the employee on the same day as the final paycheck).

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV
QUALIFIED DOMESTIC RELATIONS ORDERS

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

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

[Note: This Article IV reflects a PPA provision which mandated DOL clarification of the QDRO statute. The DOL issued interim final regulations on March 7, 2007. If the plan does not provide for distributions pursuant to a QDRO, the Employer should check "Article IV is not adopted" below.]

[ ] Article IV is not adopted.

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

[ ] The subsequent provisions of this Amendment are not adopted.

ARTICLE V
PARTICIPANT DISTRIBUTION NOTIFICATION

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

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

[ ] Article III is not adopted.
ARTICLE VI
ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGEMENT

[Default: This Article VI provides that in the absence of an alternative election by the Employer: (1) the Automatic Deferral applies to all Participants, except those who have in effect a Salary Reduction Agreement on the Automatic Deferral effective date (regardless of amount); and (2) the permissible withdrawal right applies to all Participants who have automatic deferrals under the EACA. If the Employer accepts these default provisions, the Employer need not make an election in this Section, but still must complete the Automatic Deferral Percentage in Section 6.1(a). If the Employer wishes to deviate from either or both of the defaults, the Employer must make either or both alternative elections, as applicable, in Section 6.1(c) and/or Section 6.1(d) of this Article VI. Note also that Section 6.1 specifies a EACA effective date commencing with the 2008 plan year. If this is not correct, the Employer will need to modify Section 6.1. If the Employer does not wish to have Automatic Deferrals, the Employer should check "Article VI is not adopted" below.]

6.1 Eligible Automatic Contribution Arrangement ("EACA"). Effective for plan years beginning after December 31, 2007, the Employer maintains a Plan with automatic enrollment provisions as an Eligible Automatic Contribution Arrangement ("EACA"), and the Employer elects to apply the permissible withdrawal provisions as described in Section 6.4. A Plan is a EACA as defined in Code §414(w) if the Plan satisfies: (1) the uniformity requirements under Section 6.2; and (2) the notice requirements under Section 6.3.

(a) Automatic Deferral Percentage. The Employer will withhold ____% from a Participant’s Compensation each payroll period.

[Note: The Employer may modify this provision if it wishes to provide for a graduated automatic deferral percentage based on years of participation in the EACA, rather than a fixed percentage that applies to all Participants.]

(b) Participants subject to Automatic Deferral: disregard all current deferral elections. Unless the Employer elects in Section 6.1(c) immediately below to apply the Automatic Deferral to a different group of Participants, the Automatic Deferral applies to all Participants, except those who have in effect a salary reduction agreement on the Automatic Deferral effective date, regardless of the elective deferral amount (including zero) under the Agreement.

(c) [ ] Alternative election regarding Participants subject to Automatic Deferral: disregard Participants deferring at least Automatic Deferral Percentage. In lieu of Section 6.1(b) the Employer elects to apply the Automatic Deferral to all Participants, except those who, on the Automatic Deferral effective date, are deferring an amount which is at least equal to the Automatic Deferral Percentage.

[Note: The Employer may modify this provision if it applies or has applied the Automatic Deferral to a different group of Participants, such as all Participants on the Automatic Deferral effective date (regardless of any prior deferral election).]

6.2 Uniformity. The Plan satisfies the uniformity requirement if the Plan provides an Automatic Deferral Percentage that is a uniform percentage of Compensation. However, the Plan does not violate the uniform Automatic Deferral Percentage merely because:

(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 Automatic Deferral provisions; or

(b) No reduction from prior default percentage. The Plan does not reduce an Automatic Deferral Percentage that, immediately prior to the effective date of the EACA provisions was higher (for any Participant) than the Automatic Deferral Percentage.
6.3 **EACA notice.** The plan satisfies the notice requirement if the Plan Administrator annually provides a EACA notice to each Participant a reasonable period prior to each plan year the Employer maintains the Plan as a 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 EACA Plan Year.

(b) **Mid-year notice/new Participant or Plan.** If: (a) an Employee becomes eligible to make elective deferrals in the Plan during a 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 a EACA, the Plan Administrator must provide the EACA notice no later than the date the Employee becomes eligible to make elective deferrals.

(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.

6.4 **EACA permissible withdrawal.** 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 6.4, unless the Employer elects in Section 6.4(d) below to limit the group of Participants who are eligible for the permissible withdrawal. If the Employer elects to limit the group of Participants who are eligible for the permissible withdrawal, only a Participant who is a member of that eligible group may make the election to withdraw.

(a) **Amount.** If a Participant elects a permissible distribution under this Section 6.4 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).

(b) **Timing.** The Participant may make an election to withdraw the Automatic Deferrals under the EACA no later than 90 days 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. The effective date of the election must not be later than the last day of the payroll period that begins after the date the Participant makes the election to withdraw the Automatic Deferrals.

(c) **Fees.** The Plan Administrator may reduce the permissive distribution amount by any generally applicable fees. However, the Plan may not charge a different fee for distribution under this Section 6.4 than applies to other distributions.

(d) [ ] **Alternative election to limit Permissible withdrawals.** The Employer elects to limit permissible withdrawal of EACA Automatic Deferrals as follows (Choose (1) or choose and complete (2)):

[ ] (1) **Participant with EACA Automatic Deferrals only.** Only Participants who do not have Deferral Contributions in the Plan prior to the EACA’s effective date may elect a permissible withdrawal.

[ ] (2) **Describe:**

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6.5 Definitions.

(a) Definition of Automatic Deferral. An Automatic Deferral is an elective deferral that results from the operation of the Plan’s automatic enrollment provisions. Under the Automatic Deferral, the Employer automatically will reduce by the Automatic Deferral Percentage elected in this Amendment the Compensation of each Participant subject to the Automatic Deferral, as specified in Section 6.1 of this Amendment. The Plan Administrator will cease to apply the Automatic Deferral to a Participant who makes a Contrary Election as defined in this Section 6.5.

(b) Definition of Automatic Deferral Percentage/Increases. The Automatic Deferral Percentage is the amount of Automatic Deferral which the Employer elects in this Amendment (including any scheduled increase to the Automatic Deferral Percentage the Employer may elect by a modification of this Amendment). If a Participant has elected to defer an amount which is less than the Automatic Deferral Percentage the Employer has elected in this Amendment, and the Employer elects to apply the Automatic deferral to all Participants except those who, on the effective date of the Automatic Deferral, are deferring an amount which is at least equal to the Automatic Deferral Percentage, the Automatic Deferral Percentage includes only the incremental amount necessary to increase the Participant’s Elective Deferral to equal the Automatic Deferral Percentage (including any scheduled increases thereto).

(c) Definition of Contrary Election. A Contrary Election is a Participant’s election made after the effective date of the Automatic Deferral not to defer any Compensation or to defer an amount which is more or less than the Automatic Deferral percentage.

(d) Effective Date of Contrary Election. A Participant’s Contrary Election generally is effective as of the first payroll period which follows the Participant’s Contrary Election. However, a Participant may make a Contrary Election which is effective: (a) for the first payroll period in which he/she becomes a Participant if the Participant makes a Contrary 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 effective date of the Automatic Deferral, if the Participant makes a Contrary Election not later than the effective date of the Automatic Deferral. A Participant who makes a Contrary Election is not thereafter subject to the Automatic Deferral or to any scheduled increases thereto, even if the Participant later revokes or modifies the Contrary Election. A Participant’s Contrary Election continues in effect until the Participant subsequently changes his/her salary reduction agreement.

[Note: If the Employer operationally has not applied the EACA provisions, the Employer should check “Article VI is not adopted” below.]

[✓] Article VI is not adopted.

ARTICLE VII
DIRECT ROLLOVER OF NON-SPouse BENEFICIARY DISTRIBUTION

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

7.2 Certain requirements not applicable. Although a non-spouse beneficiary may roll over directly a distribution as provided in Section 7.1, the distribution is not subject to the direct rollover requirements of Code §401(a)(31), 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.

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

7.4 Required minimum distributions not eligible for rollover. A non-spouse beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other IRS guidance.

7.5 Mandatory default rollover not applicable. The mandatory default rollover provisions of the Plan under Code §401(a)(31)(B), relating to mandatory distributions (of an eligible rollover distribution) greater than $1,000, do not apply to distributions to a non-spouse beneficiary.

[Note: The rollover option described in this Article VII is not mandatory. If the Employer has elected not to provide the rollover for non-spouse beneficiaries, the Employer should check “Article VII is not adopted” below.

[ ] Article VII is not adopted.

ARTICLE VIII
STATUTORY HURRICANE RELIEF

8.1 Qualified Hurricane Distribution. A Participant may take a Qualified Hurricane Distribution, provided that the aggregate amount of Qualified Hurricane Distributions received by a Participant for any taxable year (from all plans maintained by the Employer, including any member of any controlled group that includes the Employer) may not exceed $100,000.

(a) Repayment of distribution. If the Plan permits rollover contributions, a Participant who receives a Qualified Hurricane Distribution, 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. [Note: The Plan must permit rollover contributions for a Participant to repay the distribution, since the repayment is a rollover contribution.]

(b) Definition of Qualified Hurricane Distribution. A “Qualified Hurricane Distribution” means a distribution defined in Code §1400Q(a)(4)(A), which does not exceed the amount limitation described in this Section 8.1.

8.2 Recontributing of home purchase withdrawal. If the Plan permits rollover contributions, a Participant who received a Qualified Distribution (relating to a hardship distribution to purchase or construct a principal residence in an applicable hurricane disaster area), but who, on account of the hurricane, did not use the funds to purchase or construct a principal residence, may make one or more contributions to the Plan, as rollover contributions, during the Applicable Period, in an aggregate amount not to exceed the amount of such Qualified Distribution. [Note: The Plan must permit rollover contributions for a Participant to recontribute the distribution, since the recontributing is a rollover contribution.]

(a) Definition of Qualified Distribution. A “Qualified Distribution” for purposes of this Section 8.2 means any qualified Katrina distribution, any qualified Rita distribution, and any qualified Wilma distribution, as defined in Code §1400Q(b)(2).

(b) Definition of Applicable Period. The “Applicable Period” for purposes of this Section 8.2 means the applicable period as defined in Code §1400Q(b)(3).
8.3 **Increased loan limit and repayment extension.** 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 Applicable Period by substituting "$100,000" for "$50,000," and by substituting "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." [Note: This provision assumes the Plan Administrator applied the maximum hurricane relief provisions available under Code §1400Q. The Employer should modify this Section 8.3 if the Plan Administrator applied a different provision. For example, if the Plan Administrator applied an increased loan limit but retained the 50% of vested account balance limit, the Employer should delete the remainder of Section 8.3 after "$50,000," and end the sentence with "$50,000."]

(a) Extension of certain repayments. If a Qualified Individual has an outstanding loan from the Plan on or after the Qualified Beginning Date, then: (i) if the date for any repayment of such loan occurs during the period beginning on the Qualified Beginning Date and ending on December 31, 2006, the due date is extended for one year; (ii) the Plan will adjust any subsequent repayments to reflect the extension of the due date under (i) and any interest accrued during the extension; and (iii) the Plan will disregard the period of extension described in (i) in determining the 5-year period and the loan term under Code §72(p)(2)(B) or (C).

(b) **Definition of Qualified Individual.** A "Qualified Individual" for purposes of this Section 8.3 means any qualified individual as defined in Code §1400Q(c)(3).

(c) **Definition of Applicable Period.** The "Applicable Period" for purposes of this Section 8.3 means the applicable period as defined in Code §1400Q(c)(4).

(d) **Definition of Qualified Beginning Date.** The "Qualified Beginning Date" for purposes of this Section 8.3 means the qualified beginning date as defined in Code §1400Q(c)(4).

[Note: The hurricane relief provided for in this Article VIII is not mandatory. If the Employer operationally did not apply any statutory hurricane relief provisions, the Employer should check "Article VIII is not adopted" below.]

[X] Article VIII is not adopted.

### ARTICLE IX

#### HEALTH AND LONG-TERM CARE INSURANCE DISTRIBUTIONS

9.1 **Election to deduct from distribution.** For distributions in taxable years beginning after December 31, 2006, an Eligible Retired Public Safety Officer may elect annually for that taxable year to have the Plan deduct an amount from a distribution which the Eligible Retired Public Safety Officer otherwise would receive and include in income. The Plan will pay such deducted amounts directly to the provider as described in Section 9.2, to pay qualified health insurance premiums.

9.2 **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).

9.3 **Definitions.**
(a) Eligible retired public safety officer. An “Eligible Retired Public Safety Officer” is an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a Public Safety Officer with the Employer.

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

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

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

[ ] Article IX is not adopted.

ARTICLE X
DIRECT ROLLOVER TO ROTH

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

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

IN WITNESS WHEREOF, the Employer has executed this Amendment on this 11th day of November 2011.

Peralta Community College District
Employer

By: [Signature]
Jennife [Print Name, Title]

[Print Name, Title]
AMENDMENT FOR
EACA PROVISIONS OF
PENSION PROTECTION ACT OF 2006
(Governmental 457(b) Plan)

What provisions of the law does this Amendment cover?

Adoption of this Amendment enables an employer to comply in form with Pension Protection Act of 2006 ("PPA") law changes relating to the establishment of an eligible automatic contribution arrangement ("EACA"). This Amendment supplements the "general" PPA amendment (see ERISA Form 521A) that includes all other generally applicable PPA provisions and other law changes for a governmental 457(b) plan. A plan that has adopted EACA provisions will need to adopt BOTH amendments. We have prepared this Amendment as a separate plan amendment because of the length of the Amendment and the fact that it is not used by the majority of plans.

This Amendment reflects guidance issued through January 2010, including the final regulations issued in February 2009.

Which plans are required to be amended?

Only those plans that have implemented, or will implement, a EACA provision must adopt this amendment.

When must plans be amended?

PPA specifically provides that amendments for PPA are not required for a governmental plan prior to the last day of the 2011 plan year. If an employer implemented a EACA in 2009 or earlier, then the Amendment must be adopted by the last day of the 2011 plan year.

Can I modify the Amendment?

Yes, you can. This Amendment is not an IRS model amendment and has not been reviewed by the IRS.

In addition to the Amendment, we have provided a sample Adopting Resolution (for an employer to adopt the Amendment).
AMENDMENT FOR
EACA PROVISIONS
(Governmental 457(b) Plan)

ARTICLE I
PREAMBLE

1.1 Effective date of Amendment. The Employer adopts this Amendment to the Plan to include Eligible Automatic Contribution Arrangement (EACA). This Amendment is effective as indicated below for the respective provisions.

1.2 Superseding of inconsistent provisions. This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.

1.3 Construction. Except as otherwise provided in this Amendment, any reference to “Section” 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 will 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 PPA provisions).

ARTICLE II
EMPLOYER ELECTIONS

2.1 EACA Automatic Deferral Provisions
Does the plan already include automatic deferral provisions that satisfy the elections in this Section 2.1.b?
(If unsure, complete this Section 2.1.b. to supersede any inconsistent provisions - restating an existing provision will not have any adverse effect on the Plan.)

a. [ ] Yes (skip to 2.2.)

b. [ ] No (complete automatic deferral provisions below)

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 b.4. below). Employees who became Participants prior to such Effective Date are subject to the following (1. – 4. are optional):

1. [ ] 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.

2. [ ] 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.

3. [ ] 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.

4. [ ] Describe:________________________________________________________________

Automatic Deferral Percentage. Unless a Participant makes an Affirmative Election, the Employer will withhold the following Automatic Deferral Percentage (select 5. or 6.):

5. [ ] Constant. The Employer will withhold _________% of Compensation each payroll period.
Escalation of deferral percentage (select one or leave blank if not applicable)

a. [ ] Scheduled increases. This initial percentage will increase by ____% of Compensation per year up to a maximum of ____% of Compensation.
b. [ ] Other (described Automatic Deferral Percentage):

Automatic Deferral Optional Elections

6. [ ] 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.

a. [ ] 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 of Sections 2.2. or 2.3 unless otherwise specified below.

b. [ ] Special Effective Date:

2.2 Other EACA Provisions.

a. [ ] Applies

Effective Date (enter date)
1. EACA Effective Date: ____________ (not earlier than December 31, 2007)

EACA Termination Date (leave blank if not applicable)
a. [ ] EACA provisions no longer apply. The EACA provisions applied as of the Effective Date specified in 1. but the provisions no longer apply effective as of:

Permissible Withdrawals. Does the Plan permit Participant permissible withdrawals (as defined in Amendment Section 3.4) within 90 days (or less) of first automatic deferral? (select one)

2. [ ] No.
3. [ ] Yes, within 90 days of first automatic deferral
4. [ ] Yes, within ______ days (may not be less than 30 nor more than 90 days)

Affirmative Election. For Plan Years beginning on or after January 1, 2010, will Participants who make an Affirmative Election continue to be covered by the EACA provisions (i.e., their Affirmative Election will remain intact but they must receive an annual notice)? (select one)

5. [ ] Yes (if selected, then the annual notice must be provided to Participants).
6. [ ] No.

ARTICLE III
ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGEMENT

3.1 Eligible Automatic Contribution Arrangement ("EACA"). As elected in Amendment Section 2.2, 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 under Amendment Section 3.2, and (2) notice requirements under Amendment Section 3.3.

3.2 Uniformity. The Automatic Deferral Percentage must be a uniform percentage of Compensation. All Participants in the EACA, as defined in Amendment Section 2.1, are subject to Automatic Deferrals, except to the extent otherwise provided in Amendment Section 2.2. 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 Amendment Section 2.2. 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).

3.3 **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.

3.4 **EACA permissible withdrawal.** If elected in Amendment Section 2.2, 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 Amendment Section 3.4. 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 Amendment Section 2.2, 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 Amendment Section 2.2.).

(d) **Rehired Employees.** For purposes of Amendment Section 3.4(c) above, 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.

3.5 **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.

3.6 **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 elected in this Amendment the Compensation of each Participant subject to the EACA, as specified in Amendment Section 2.2. The Plan Administrator will cease to apply the Automatic Deferral to a Participant who makes an Affirmative Election as defined in this Amendment Section 3.6.

(b) **Definition of Automatic Deferral Percentage/ Increases.** The Automatic Deferral Percentage is the percentage of Automatic Deferral which the Employer elects in Amendment Section 2.1 or elsewhere in the Plan (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.

* * * * *

This amendment has been executed this __________ day of

_________________________________.

Name of Plan: ___________________________________________

Name of Employer: _______________________________________

By: ___________________________________________________

EMPLOYER

**CERTIFICATE OF ADOPTING RESOLUTION**

The undersigned authorized representative of ____________________________________________ (the Employer) hereby certifies that the following resolutions were duly adopted by Employer on ______________, and that such resolutions have not been modified or rescinded as of the date hereof;

RESOLVED, that the EACA Amendment to the Plan (the Amendment) is hereby approved and adopted and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Amendment.

The undersigned further certifies that attached hereto is a copy of the Amendment approved and adopted in the foregoing resolution.

Date: ________________________________________________

Signed: _____________________________________________

______________________________
[print name/title]

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GOVERNMENTAL 457(b) PLAN
ROTH DEFERRAL AMENDMENT

Instructions

This Amendment that adds the ability to make Roth elective deferrals to an existing governmental 457(b) plan. The Amendment assumes that the 457(b) plan provides for elective deferrals.

This Amendment does not provide for in-plan Roth rollovers. A separate amendment will allow an employer to add that feature.

In addition to the Amendment, we have provided a sample Resolution (to adopt the Amendment) and a sample Summary of Material Modifications (SMM). While governmental plans are not subject to Title I of ERISA and therefore are not subject to the summary plan description or SMM requirements, we include the SMM language for an employer that provides an SPD or similar communication to participants. The SMM and forms must be modified to meet the terms of the Plan being amended.

GOVERNMENTAL 457(b) PLAN
ROTH DEFERRAL AMENDMENT

PREAMBLE

1.1 Adoption and effective date of amendment. The Employer adopts this Amendment to reflect Code Section 402A, as amended by the Small Business Jobs Act of 2010 ("SBJA"). This Amendment is intended as good faith compliance with the requirements of Code Section 402A and guidance issued thereunder, and this Amendment shall be interpreted in a manner consistent with such guidance. This Amendment shall be effective as of the date selected below.

1.2 Eligible governmental 457 plan. The Employer is an eligible employer as defined in Code §457(e)(1)(A).

1.3 Supersession of inconsistent provisions. This Amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.

ARTICLE II
ADOPTION AGREEMENT ELECTIONS

2.1 Effective Date. Roth Elective Deferrals are permitted under the Plan as of ________________ (enter a date no earlier than January 1, 2011).

2.2 Unforeseeable emergency. If the Plan permits distributions of Elective Deferrals on account of an unforeseeable emergency, may a Participant receive such a distribution of Roth Elective Deferrals?

   a. [ ] N/A. The Plan does not permit distributions of Elective Deferrals on account of an unforeseeable emergency.

   b. [ ] No, Roth Elective Deferrals may not be withdrawn on account of an unforeseeable emergency.

   c. [X] Yes, Roth Elective Deferrals may be withdrawn on account of an unforeseeable emergency subject to the same conditions that apply to Pre-tax Elective Deferrals.
ARTICLE III
ROTH ELECTIVE DEFERRALS

3.1 Roth Elective Deferrals are permitted. The Plan’s definitions and terms shall be amended as follows to allow for Roth Elective Deferrals as of the effective date entered at 2.1. Roth Elective Deferrals shall be treated in the same manner as Elective Deferrals for all Plan purposes except as provided in Article II of this amendment. 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.

3.2 Elective Deferrals. “Elective Deferral” means a contribution the Employer makes to the Plan pursuant to a Participant’s Salary Reduction Agreement. As of the effective date entered at 2.1, the term “Elective Deferrals” includes Pre-tax Elective Deferrals and Roth Elective Deferrals.

3.3 Pre-Tax Elective Deferrals. "Pre-Tax Elective Deferrals“ means a Participant’s Elective Deferrals 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 deferral election. A Participant’s Pre-Tax Elective Deferrals will be separately accounted for, as will gains and losses attributable to those Pre-Tax Elective Deferrals. All Elective Deferrals prior to this amendment are Pre-Tax Elective Deferrals.

3.4 Roth Elective Deferrals. "Roth Elective Deferrals" means a Participant’s Elective Deferrals 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 deferral election. 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. Roth Elective Deferrals are not considered Employee Contributions for Plan purposes.

3.5 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.

3.6 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.

3.7 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.

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

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

3.8.2 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.

3.8.3 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.

3.9 **Automatic Enrollment.** If the Plan utilizes an automatic enrollment feature (i.e., in the absence of an affirmative election by a Participant, a certain amount of Compensation will automatically be contributed to the Plan as an Elective Deferral), then such contribution shall be a Pre-Tax Elective Deferral.

3.10 **Operational Compliance.** The Plan Administrator will administer Roth Elective Deferrals in accordance with applicable regulations or other binding authority not reflected in this amendment. Any applicable regulations or other binding authority shall supersede any contrary provisions of this Amendment.

This Amendment has been executed this 4th day of November, 2011.

Name of Plan: Peralta Community College District 457(b) Plan

Name of Employer: Peralta Community College District

By: Jennifer Benford Seibert, Benefits Coordinator

Date 11/01/11
CERTIFICATE OF GOVERNMENTAL ENTITY ADOPTION RESOLUTION

The undersigned [Secretary] of ________________________ (the Employer) hereby certifies that the following resolutions were duly adopted by the [governing body] of the [Employer] on ________________, __________, and that such resolutions have not been modified or rescinded as of the date hereof;

RESOLVED, that Amendment Number __________ to the ________________________ Plan (the Amendment) effective ________________, __________, presented at this meeting to the [governing body] is hereby approved and adopted and that the proper [officers] of the [Employer] are hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Amendment.

RESOLVED, that the proper [officers] of the [Employer] shall act as soon as possible to notify Plan Participants of the adoption of this Amendment by delivering to each Participant a copy of the summary description of the changes to the Plan in the form of the Summary of Material Modifications presented at this meeting to the [governing body], which form is hereby approved.

The undersigned further certifies that attached hereto as Exhibits A and B respectively, are true copies of the Amendment and Summary of Material Modifications approved and adopted in the foregoing resolutions.

____________________________________ [Secretary]

Date: ________________________________

SIGN HERE
SUMMARY OF MATERIAL MODIFICATIONS
for the
Peralta Community College District 457(b) Plan
(Name of Plan)
(Date)

(1) **General.** This is a Summary of Material Modifications regarding the
Peralta Community College District 457(b) Plan ("Plan"). This Summary of
Material Modifications supplements the Summary Plan Description ("SPD") previously provided to you.
You should retain this document with your copy of the SPD.

(2) **Employer Information.** The legal name, address and Federal employer identification number of
the Employer are:

Peralta Community College District
333 East 8th Street
Oakland, CA 94606
EIN: 94-1590799

(3) **Summary Description of Modification.** Below is a summary of the modification made to our
Plan.

**Ability to make Roth Deferrals**

Beginning ________________, you will have a new way to save money in our 457 Plan—money
which will not be taxed when you take a Plan distribution. This new way for you to defer money into our
Plan is called a "Roth deferral."

You will be able to continuing making deferrals as you always have (these are pre-tax deferrals
and are referred to as Regular deferrals), or you may make the new Roth deferral. If you make a Regular
deferral, then your taxable income is reduced by the deferral contribution so you pay less in federal
income taxes. Later, when the Plan distributes the deferrals and earnings, you will pay the taxes on those
deferrals and the earnings. Therefore, with a Regular deferral, federal income taxes on the deferral
contributions and on the earnings are only postponed. Eventually, you will have to pay taxes on these
amounts.

With a Roth deferral, you must pay current income tax on the deferral contribution. If you elect to
make Roth deferrals, the deferrals are subject to federal income taxes in the year of deferral, but the
deferrals and, in most cases, the earnings on the deferrals are not subject to federal income taxes when
distributed to you. In order for the earnings to be distributed tax-free, there must be a qualified
distribution from your Roth deferral account.

In order to be a qualified distribution, the distribution must occur after one of the following: (1)
your attainment of age 59½, (2) your disability, or (3) your death. In addition, the distribution must occur
after the expiration of a 5-year participation period. The 5-year participation period is the 5-year period
beginning on the calendar year in which you first make a Roth contribution to our Plan (or to another
governmental 457(b) plan, a 401(k) plan or a 403(b) plan if such amount was rolled over into our Plan)
and ending on the last day of the calendar year that is 5 years later. For example, if you make your first
Roth deferral under this Plan on November 30, 2011, your participation period will end on December 31, 2015. It is not necessary that you make a Roth contribution in each of the five years.

If a distribution from your Roth deferral account is not a qualified distribution, the earnings distributed with the Roth deferrals will be taxable to you at the time of distribution (unless you roll over the distribution to a Roth IRA or to another governmental 457(b) plan, a 401(k) plan or a 403(b) plan that will accept the rollover). In addition, in some cases, there may be a 10% excise tax on the earnings that are distributed.

Whenever you receive a distribution, the Administrator will deliver to you a more detailed explanation of your options. However, the tax rules are very complex and you should consult with qualified tax counsel before making a choice.

**Treatment of Roth deferrals under our Plan**

Roth deferrals are generally treated in the same manner as Regular deferrals. This means that these amounts are always fully vested and are subject to the distribution restrictions and provisions set forth in the Summary Plan Description and Plan.

[MODIFY THE FOLLOWING PROVISIONS TO CONFORM TO THE PROVISIONS SELECTED IN THE AMENDMENT AND THE PLAN. IF Roth Deferrals are treated under the Plan in the same manner as pre-tax deferrals, then delete all of the language below. Otherwise, retain the bulleted items where Roth Deferrals are treated differently than pre-tax deferrals.]

However, there are some additional restrictions that apply to amounts in your Roth deferral account.

- You may not take a loan from your Roth deferral account.

- The Plan permits you to withdraw your Regular deferral contributions on account of an unforeseeable emergency. However, you may not receive an unforeseeable emergency distribution from your Roth deferral account.
SUPPLEMENTAL AMENDMENT FOR
HEART AND WRERA
(457(b) Plan)

What provisions of the law does this Amendment cover?

Adoption of this Amendment enables an employer to comply in form with: (1) Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) (including HEART Act guidance contained in IRS Notice 2010-15); and (2) suspension of 2009 Required Minimum Distributions (RMDs) as set forth in the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA).

The Amendment assumes the employer either has restated the plan for EGTRRA. This Amendment does not include provisions for which SunGard has previously provided a separate “tack-on” amendment (e.g., the PPA amendment, ERISA Form 521A).

Which plans are required to be amended?

A. **HEART Act.** All Plans must be amended to reflect the changes made by the HEART Act. The IRS in early 2010 issued Notice 2010-15. This Notice provides guidance on the impact on plans of the HEART Act provisions relating to military service rights and benefits. We have incorporated the guidance of Notice 2010-15 into this Amendment. Specifically, this Amendment:

1. Clarifies, in accordance with Notice 2010-15, that differential wages are compensation for 415 purposes, but not necessarily plan allocation purposes, and provides an option to include or exclude differential wages from plan compensation.

2. Provides for vesting credit for qualified military service in case of a participant’s death while performing qualified military service, as required by Notice 2010-15.

3. Adds an election to not permit distributions on account of “deemed” severance that occurs in case of service in the uniformed services, whether or not the plan otherwise permits distribution on account of “actual” severance, as provided in Notice 2010-15. It also clarifies that if a participant is entitled to a distribution by reason of a “deemed” severance and another provision (e.g., qualified reservist distribution), the provision other than “deemed” severance will control, and the 6-month suspension required in case of a “deemed” severance distribution will not apply.

4. Clarifies that any deferrals made on differential pay (as well as any matching contributions on such deferrals) may operationally be excluded from the ADP and ACP tests.

B. **WRERA’s 2009 RMD waiver provisions.** WRERA provides that the RMD provisions of Code §401(a)(9) do not apply for 2009. This Amendment includes the IRS model amendment from IRS Notice 2009-82 which provides that Participants and beneficiaries may elect between receiving and not receiving distributions that include 2009 Required Minimum Distributions (RMDs) and, if a Participant or beneficiary makes no election, then the Plan will discontinue making distributions that include 2009 RMDs. An Employer may still adopt this Amendment even if no one in the Plan was subject to 2009 RMDs (in which case the Amendment would have no effect on the Plan).

If a Plan used the alternative default set forth in IRS Notice 2009-82 (i.e., absent an election, 2009 RMDs would continue), then the Employer must elect 2.3a. Similarly, if the Employer adopted a different approach to 2009 RMDs than either option provided in Notice 2009-82 (e.g., the plan did not provide an option not to take 2009 RMDs, or changed from one approach to another during 2009), the Employer must select 2.3b or c (as appropriate).
When must plans be amended?

The HEART Act provides that plans subject to certain HEART provisions are treated as operating in accordance with the plan terms if the employer amends the plan by the last day of the 2010 plan year (2012 for governmental plans). For qualified plans, under Notice 2010-15, the IRS has extended to this date the remedial amendment period for adoption of all required HEART provisions.

Similar to the HEART Act amendment timing rules, WRERA provides that plans subject to the 2009 RMD waiver are treated as operating in accordance with the plan terms if the employer amends the plan by the last day of the 2011 plan year (2012 for governmental plans).

The IRS has not issued specific guidance relating to the timing of HEART or WRERA amendments for 457(b) plans. However, in light of requests for a 457(b) plan HEART and WRERA amendment, we have issued this Amendment for employers who wish to adopt the Amendment at this time.

Can I modify the Amendment?

Yes, but note that the WRERA provisions are based on IRS sample amendments set forth in Notice 2009-82.

In addition to the Amendment, we have provided a sample Adopting Resolution (for an employer to adopt the Amendment, if applicable) and a sample Summary of Material Modifications (SMM) (if applicable). In most cases, an employer will only need to provide an SMM if the optional HEART Act provisions are elected in the Amendment (since the changes to the RMD requirements made by WRERA no longer apply). You must modify or make selections on the SMM to match the terms of the Plan being amended.
AMENDMENT FOR
HEART AND WRERA
(Defined Contribution Plan)

ARTICLE I
PREAMBLE

1.1 Effective date of Amendment. The Employer adopts this Amendment to the Plan to reflect recent law changes. This Amendment is effective as indicated below for the respective provisions.

1.2 Superseding of inconsistent provisions. This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.

1.3 Employer's election. The Employer adopts all the default provisions of this Amendment except as otherwise elected in Article II.

1.4 Construction. Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within 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 any Plan article, section or other numbering designations.

1.5 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 HEART and WRERA provisions).

ARTICLE II
EMPLOYER ELECTIONS

The Employer only needs to complete the questions in Sections 2.2 through 2.3 below in order to override the default provisions set forth below.

2.1 Default Provisions. Unless the Employer elects otherwise in this Article, the following defaults will apply:

   a. Continued benefit accruals pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) are not provided.

   b. Differential wage payments are treated as Compensation for all Plan benefit purposes.

   c. The Plan permits distributions pursuant to the HEART Act on account of "deemed" severance of employment.

   d. Requirement Minimum Distributions (RMDs) for 2009 were suspended unless a Participant or Beneficiary elected to receive such distributions.

2.2 HEART ACT provisions (Article III).

Continued benefit accruals. Amendment Section 3.2 will not apply unless elected below:

   a. [ ] The provisions of Amendment Section 3.2 apply effective as of: (select one)
      1. [ ] the first day of the 2007 Plan Year
      2. [ ] ___________ (may not be earlier than the first day of the 2007 Plan Year).
3. [ ]

**Differential pay.** Differential wage payments (as described in Amendment Section 3.3) will be treated, for Plan Years beginning after December 31, 2008, as compensation for all Plan benefit purposes unless b. is elected below:

b. [ ] In lieu of the above default provision, the employer elects the following (select all that apply; these selections do not affect the operation of Amendment Section 3.3(ii)):

1. [ ] the inclusion is effective for Plan Years beginning after __________ (may not be earlier than December 31, 2008).
2. [ ] the inclusion only applies to Compensation for purposes of Elective Deferrals.

**Distributions for deemed severance of employment.** The Plan permits distributions pursuant to Amendment Section 3.4 unless otherwise elected below:

c. [ ] The Plan does not permit such distributions.

d. [ ] The Plan permits such distributions effective as of __________ (may not be earlier than January 1, 2007).

2.3 **WRERA (RMD waivers for 2009).** The provisions of Amendment Section 4.1 apply (RMDs are suspended unless a Participant or Beneficiary elects otherwise) unless otherwise elected below:

a. [ ] The provisions of Amendment Section 4.2 apply (RMDs continued unless otherwise elected by a Participant or Beneficiary).

b. [ ] RMDs continued in accordance with the terms of the Plan without regard to this Amendment (i.e., no election available to Participants or Beneficiaries).

c. [ ] Other:

For purposes of Amendment Section 4.3, the Plan will also treat the following as eligible rollover distributions in 2009: (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)(H)):

d. [ ] 2009 RMDs and Extended 2009 RMDs (both as defined in Article IV of this Amendment).

e. [ ] 2009 RMDs (as defined in Article IV of this Amendment) but only if paid with an additional amount that is an eligible rollover distribution without regard to Code §401(a)(9)(H).

**ARTICLE III**

**HEART ACT PROVISIONS**

3.1 **Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code §414(u)), the Participant’s Beneficiary is 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 employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant’s qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant’s death.

3.2 **Benefit accrual.** If the Employer elects in Amendment Section 2.2 to apply this Section 3.2, then effective as of the date specified in Amendment Section 2.2, 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 Plan will determine the amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under this Section 3.2 for purposes of applying paragraph Code §414(u)(8)(C) on the basis of the individual’s average actual employee contributions or elective deferrals 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.

3.3 **Differential wage payments.** For years beginning after December 31, 2008: (i) an individual receiving a differential wage payment, as defined by Code §3401(h)(2), is treated as an employee of the employer making the payment; (ii) the differential wage payment is treated as compensation for purposes of Code §415(c)(3) and Treas. Reg. §1.415(c)-2 (e.g., for purposes of Code §415, including the definition of post-severance compensation for deferral purposes under Treas. Reg. §1.457-4(d)(1)); and (iii) the Plan is not treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) (or corresponding plan provisions, including, but not limited to, Plan provisions related to the ADP or ACP test) by reason of any contribution or benefit which is based on the differential wage payment. The Plan Administrator operationally may determine, for purposes of the provisions described in Code §414(u)(1)(C), whether to take into account any deferrals, and if applicable, any matching contributions, attributable to differential wages. Differential wage payments (as described herein) will also be considered compensation for all Plan purposes unless otherwise elected at Amendment Section 2.2.

Section 3.3(iii) above applies only if all employees of the Employer performing service in the uniformed services described in Code §3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code §3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the Employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code §§410(b)(3), (4), and (5)).

3.4 **Deemed Severance.** Notwithstanding Section 3.3(i), 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 the individual may not make an elective deferral or employee contribution 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 (such as a qualified reservist distribution), then the other Plan provision will control and the 6-month suspension will not apply.

**ARTICLE IV**

**WAIVER OF 2009 REQUIRED DISTRIBUTIONS**

4.1 **Suspension of RMDs unless otherwise elected by Participant.** This paragraph does not apply if the Employer elected Amendment Section 2.3a, b, or c. Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(H) (“2009 RMDs”), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 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 (“Extended 2009 RMDs”), will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence.
4.2 Continuation of RMDs unless otherwise elected by Participant. This paragraph applies if Amendment Section 2.3a is selected. Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 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 ("Extended 2009 RMDs"), will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence.

4.3 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 2009, as elected by the Employer in Amendment Section 2.3, will be treated as eligible rollover distributions. If no election is made by the Employer in Amendment Section 2.3, then a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code §401(a)(9)(H).

* * * * * *

This Amendment has been executed this 4th day of November, 2011.

Name of Plan: Peralta Community College District 457(b) Plan

Name of Employer: Peralta Community College District

By: Jennifer Benford Seibert

EMPLOYER
CERTIFICATE OF ADOPTING RESOLUTION

The undersigned authorized representative of Peralta Community College District (the Employer) hereby certifies that the following resolutions were duly adopted by Employer on ________________, and that such resolutions have not been modified or rescinded as of the date hereof;

RESOLVED, the HEART/WRERA Amendment to the ____________________________ Plan (the Amendment) is hereby approved and adopted and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the amendment.

The undersigned further certifies that attached hereto is a copy of the Amendment approved and adopted in the foregoing resolution.

Date: ________________

Signed: __________________________

Jennifer Benford Seibert, Benefits Coordinator
[print name/title]

11/04/11
SUMMARY PLAN DESCRIPTION
MATERIAL MODIFICATIONS

I
INTRODUCTION

This is a Summary of Material Modifications regarding the _______ (“Plan”). This is merely a summary of the most important changes to the Plan and information contained in the Summary Plan Description (“SPD”) previously provided to you. It supplements and amends that SPD so you should retain a copy of this document with your copy of the SPD. If you have any questions, contact the Administrator. If there is any discrepancy between the terms of the Plan, as modified, and this Summary of Material Modifications, the provisions of the Plan will control.

II
SUMMARY OF CHANGES

Military Service. If you are a veteran and are reemployed under the Uniformed Services Employment and Reemployment Rights Act of 1994, your qualified military service may be considered service with the Employer. There may also be benefits for employees who die or become disabled while on active duty. Employees who receive wage continuation payments while in the military may benefit from law changes effective in 2009. If you think you may be affected by these rules, ask the Plan Administrator for further details.

[ ] Distributions for deemed severance of employment. If you are on active duty for more than 30 days, then the Plan treats you as having severed employment for distribution purposes. This means that you may request a distribution from the Plan. If you request a distribution on account of this deemed severance of employment, then you are not permitted to make any contributions to the Plan for 6 (six) months after the date of the distribution.

[ ] Differential pay. If you receive wage continuation payments (referred to as differential pay), then the Plan will generally only treat these amounts as Compensation for salary deferral purposes.
2010 AMENDMENT FOR
PENSION PROTECTION ACT OF 2006
AND OTHER LAW CHANGES
(457(b) Plan)

Instructions

Adoption of this Amendment (Articles I through VIII) enables an employer, except as explained in this paragraph, to comply in form with PPA and other law changes that are effective since the effective date of the 457 final regulations. This Amendment reflects guidance issued through January 2010. This Amendment assumes that the employer already has amended the plan for the final 457 regulations issued in 2003 (reflecting EGTRRA) and for automatic rollovers as applicable to governmental plans. This Amendment does not include statutory hurricane relief provisions. These provisions are in a separate amendment (see ERISA Form 526), and a governmental employer applying statutory hurricane relief provisions must adopt the amendment by the last day of the 2009 plan year. See Code §1400Q(d)(2)(A), flush language. This Amendment also does not include provisions to establish the plan as an eligible automatic contribution arrangement ("EACA"). The EACA provisions are in a separate amendment (see ERISA Form 532), and a governmental employer applying the EACA provisions must adopt the amendment by the last day of the 2011 plan year. Finally, this Amendment does not include provisions reflecting the enactment of the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART Act"), or the 2009 required minimum distribution ("RMD") waiver in the Worker, Retiree and Employer Recovery Act of 2008 ("WRERA"), as these provisions are in a separate amendment (see ERISA Form 522). Governmental employers have until the last day of the 2012 plan year (2010 plan year in case of a non-governmental plan) to amend for the HEART Act, and until the last day of the 2012 plan year (2011 plan year in case of a non-governmental plan) to amend for the 2009 RMD waiver provisions of WRERAA separate amendment will address the HEART Act and WRERA provisions.

This Form 521A replaces Form 521. We have deleted the EACA and statutory hurricane relief provisions from this Form 521A to shorten the form. Governmental 457(b) plans should adopt either Form 521 or this Form 521A, and also will need to adopt the separate HEART/WRERA amendment (ERISA Form 522). In addition, as noted in the preceding paragraph, an employer adopting this Form 521A may need to adopt Form 526 or Form 532, or both, to include EACA or statutory hurricane relief provisions.

Timing of amendment. An employer may adopt this Amendment currently for an ongoing plan (with appropriate modifications as described in these instructions and in the notes within the Amendment). PPA specifically provides that amendments for PPA for a governmental plan are not required prior to the last day of the 2011 plan year (the last day of the 2009 plan year for non-governmental plans). The IRS has not issued any guidance regarding the amendment of a 457(b) plan for non-PPA law changes since the issuance of the final 457 regulations. However, a governmental employer should amend for these provisions by the PPA amendment deadline. The IRS has not issued any guidance regarding the timing of amendments (PPA or otherwise) for an eligible 457 plan of a tax-exempt entity. Nonetheless, we recommend a tax-exempt employer adopt the Amendment as soon as possible to avoid a 457 plan failure because of non-compliant plan provisions. This Amendment is not an IRS model amendment and has not been reviewed by the IRS.

Governmental vs. tax-exempt 457(b) plan. All of the Articles of this Amendment may apply to an eligible governmental 457 plan (referred to as a "governmental 457(b) plan"). Only the unforeseeable emergency provisions (Article II), the post-severance compensation provisions (Article III) and the QDRO provisions (Article IV) may apply to an eligible 457 plan of a tax-exempt entity. The other Articles of this Amendment do not apply to an eligible 457 plan of a tax-exempt entity.
Execution. We have not designed this Amendment for adoption by a 457 plan sponsor for all adopting employers. Instead, each adopting employer must execute the Amendment. Also, the employer may need to make modifications to the Amendment to reflect the operation of the employer's plan. However, since this Amendment is not a pre-approved document, the employer's mere modification of the Amendment does not have any adverse impact on the validity of the Amendment. For example, the employer may modify this Amendment by simply deleting any "deselected" Articles, and then renumbering the remaining Articles that the employer actually adopts.

Election to adopt Amendment provisions. None of the provisions of this Amendment are mandatory for 457(b) plans except Article III (to the extent the employer permits any deferrals from Post-Severance Compensation), Article VI (as to governmental 457(b) plans for plan years beginning after December 31, 2009), and Article VIII (as to governmental 457(b) plans).

Article III states the regulatory rule (adopted in the April 2007 final Post-Severance Compensation regulations) that a participant may defer from an amount received following severance from employment only if the amount satisfies the definition of Post-Severance Compensation. This provision is mandatory unless the plan currently does not permit deferrals from any compensation following severance from employment (including a participant's paycheck received after the date of severance). Such a provision would be unusual. Under Article III, the employer either may elect not to permit any deferrals from Post-Severance Compensation, or may elect the types of Post-Severance Compensation from which a participant may defer.

Article VI reflects a non-spouse beneficiary's ability to roll over a death benefit directly to an inherited IRA for plan years beginning after December 31, 2009. However, the employer must make an election in Article VI (Section 6.1a) if the plan did not permit non-spouse beneficiary rollovers for distributions after December 31, 2006, and before the first day of the first plan year beginning after December 31, 2009, or if the plan began permitting such rollovers as of a date later than the post-December 31, 2006, effective date. In addition, Article VI reflects the pre-2010 plan year rules for treatment of a non-spouse beneficiary distribution not as an eligible rollover distribution (see Section 6.2).

Article VIII reflects a participant's ability to roll over directly an eligible rollover distribution after December 31, 2007, to a Roth IRA. This provision is mandatory for a governmental 457(b) plan.

Check-boxes at the end of each optional Article allow the employer to "deselect" any Article that is not applicable to the employer's plan. This Amendment recites the earliest effective date for each provision. If the employer operationally adopted a discretionary provision later than the earliest effective date, the employer should modify the effective date of that provision. Except for Article III (Post-Severance Compensation), an employer could adopt this Amendment without modification if the employer operationally has adopted each provision as of the stated effective date. In addition, the employer must make specific elections if it wishes to change the defaults in Article III or in Article VI, as explained in those Articles.

Specific Articles of this Amendment. The rest of these Instructions provide a brief explanation of each of the Articles of the Amendment after Article I, the Preamble.

Definition of unforeseeable emergency (Article II). Article II incorporates 2007 regulatory changes to the definition of unforeseeable emergency for purposes of a 457(b) plan distribution (either governmental or tax-exempt). These changes modify (and expand) the definition of "dependent" in the same manner as the 401(k) final regulations modified the definition of "dependent" for purposes of a 401(k) plan safe harbor hardship distribution. While PPA mandated that the IRS modify the rules defining unforeseen emergency to permit a distribution to the participant on account of a need of the
participant’s beneficiary under the plan that would constitute an unforeseeable emergency if it occurred
with respect to the participant’s spouse or dependent (see PPA §826), the 2003 final 457 regulations
already included references to an unforeseeable emergency of the beneficiary. While it is not clear
whether the 2003 final regulations referenced a participant’s designated beneficiary (during the
participant’s lifetime) rather than the participant’s death beneficiary (following the participant’s death),
the IRS did not modify the regulatory provisions defining an unforeseeable emergency when it updated
the regulations in April 2007 (following the PPA mandate), except for the definition of “dependent” as
reflected in this Amendment. Therefore, assuming the April 2007 regulations comply with the PPA
mandate, the 2003 regulations already permitted the beneficiary unforeseeable emergency mandated
by PPA.

Post-Severance Compensation (Article III). A 457(b) plan (either governmental or tax-exempt)
can permit deferrals (elected either by a participant or by the employer) from Post-Severance
Compensation only as defined in the regulations. See Treas. Reg. §1.457-4(d). The definition of Post-
Severance Compensation for this purpose mirrors the definition of Post-Severance Compensation for
purposes of the 415 limitations adopted in the 2007 final 415 regulations. An employer may elect under
Article III not to permit deferrals from Post-Severance Compensation or to permit deferrals from any or
all of the Post-Severance Compensation categories, but Article III provides a default that adopts some,
but not all, of the permitted categories. However, Article III permits the employer to “deselect” any
category of Post-Severance Compensation in the default, and to elect any category not in the default. The
introductory note to Article III explains the default provisions of that Article.

Health and long-term care distributions (Article VII). PPA provided for an election to exclude
from gross income, for taxable years beginning after December 31, 2006, certain distributions from a
governmental 457(b) plan used to pay qualified health insurance premiums of an Eligible Retired Public
Safety Officer. This election is inapplicable where the plan does not cover Eligible Retired Public Safety
Officers. While the IRS may not require plan language to implement the provisions of this income
exclusion, we include “enabling” provisions in the Amendment.

Other PPA provisions (Articles IV, V, VI and VIII). Article IV is a minor clarification regarding
the scope of a qualified domestic relations order (“QDRO”), which any 457(b) plan (either governmental
or tax-exempt) which applies the QDRO provisions typically would adopt. Article V extends the notice
period prior to an eligible rollover distribution from 90 days to 180 days. Most plans have taken
advantage of this provision. As stated above, Article VI adopts the PPA non-spouse beneficiary rollover
provisions. As stated above, Article VIII recognizes a participant’s ability to roll over directly an eligible
rollover distribution after December 31, 2007, to a Roth IRA, and is mandatory.
AMENDMENT FOR 457(b) PLAN

Peralta Community College District, as Employer sponsor ("Employer"), adopts this Amendment to the Peralta Community College District 457(b) Plan ("Plan").

RECITALS

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

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

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

ARTICLE I
PREAMBLE

1.1 Adoption and effective date of Amendment. The Employer adopts this Amendment to the Plan to reflect recent law changes. This Amendment is effective as indicated below for the respective provisions.

1.2 Superseding of inconsistent provisions. This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.

1.3 Employer’s election. The Employer adopts all Articles of this Amendment, except those Articles which the Employer specifically elects not to adopt.

1.4 Construction. Any “Section” reference in this Amendment refers only to this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to the Plan article, section or other numbering designations.

ARTICLE II
DEFINITION OF UNFORESEEABLE EMERGENCY

2.1 Application. Effective for taxable years beginning after December 31, 2001, this Article II applies only if the Plan permits a distribution to a Participant on account of an unforeseeable emergency.

2.2 Definition of unforeseeable emergency. An unforeseeable emergency is a severe financial hardship of a Participant or Beneficiary resulting from: (1) illness or accident of the Participant, the Participant’s Beneficiary, or the Participant’s or Beneficiary’s spouse or dependent (as defined in Code §152, and, for taxable years beginning on or after January 1, 2005, without regard to Code §152(b)(1), (b)(2), and (d)(1)(B)); (2) loss of the Participant’s or Beneficiary’s property due to casualty; (3) the need to pay for the funeral expenses of the Participant’s or Beneficiary’s spouse or dependent (as defined in Code §152, and, for taxable years beginning on or after January 1, 2005, without regard to Code §152(b)(1), (b)(2), and (d)(1)(B)); or (4) other similar extraordinary and unforeseeable circumstances arising from events beyond the Participant’s or Beneficiary’s control.

2.3 Definition of Beneficiary. The Participant’s Beneficiary is a person who a Participant designates and who is or may become entitled to a Participant’s Plan account upon the Participant’s death.

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

ARTICLE III
DEFERRALS FROM POST-SEVERANCE COMPENSATION

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

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

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

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

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

[ ] (2) Election to include last paycheck ONLY. Of the amounts described in this Section 3.2(a), the Employer elects to include only such amounts that are included in the final paycheck paid to the Participant at the end of the pay period that includes the Participant’s date of severance from employment.
(b) Leave cashouts and deferred compensation. Post-Severance Compensation includes (unless the Employer elects in (b)(1) below not to include all of the amounts described in this (b)) leave cashouts if those amounts would have been included in the definition of Compensation if they were paid prior to the Participant's Severance from Employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued. In addition, Post-Severance Compensation includes payments of deferred compensation if the compensation would have been included in the definition of Compensation if it had been paid prior to the Participant's Severance from Employment, and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the Participant had continued in employment with the Employer and only to the extent that the payment is includable in the Participant's gross income.

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

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

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

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

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

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

[ ] (ii) Fixed or determinable period. This provision applies to all employees who are permanently and totally disabled, for the following period:

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

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

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

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

ARTICLE IV
QUALIFIED DOMESTIC RELATIONS ORDERS

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

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

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

[ ] Article IV is not adopted.

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

[ ] The subsequent provisions of this Amendment are not adopted.

ARTICLE V
PARTICIPANT DISTRIBUTION NOTIFICATION

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

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

[ ] Article III is not adopted.
ARTICLE VI
DIRECT ROLLOVER OF NON-SPOUSE BENEFICIARY DISTRIBUTION

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

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

   1. [ ] Non-spousal rollovers are not allowed.
   2. [X] Non-spousal rollovers are allowed effective 12/31/09 (not earlier than January 1, 2007 and not later than January 1, 2010).

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

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

6.4 Required minimum distributions not eligible for rollover. A non-spouse beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. §1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary’s distribution.

ARTICLE VII
HEALTH AND LONG-TERM CARE INSURANCE DISTRIBUTIONS

7.1 Election to deduct from distribution. For distributions in taxable years beginning after December 31, 2006, an Eligible Retired Public Safety Officer may elect annually for that taxable year to have the Plan deduct an amount from a distribution which the Eligible Retired Public Safety Officer otherwise would receive and include in income. The plan will pay such deducted amounts directly to the provider as described in Section 7.2, to pay qualified health insurance premiums.

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

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

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

(c) *Qualified health insurance premiums.* The term "qualified health insurance premiums" means premiums for coverage for the Eligible Retired Public Safety Officer, his/her spouse, and dependents (as defined in Code §152), by an accident or health plan or qualified long-term care insurance contract (as defined in Code §7702B(b)).

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

[ ] Article IX is not adopted.

**ARTICLE VIII**

**DIRECT ROLLOVER TO ROTH**

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

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

IN WITNESS WHEREOF, the Employer has executed this Amendment on this November 4, 2011

Peralta Community College District

Employer

By: [Signature]

Jennifer Benford Seibert, Benefits Coordinator

[Print Name, Title]
CERTIFICATE OF ADOPTING RESOLUTION

The undersigned authorized representative of Peralta Community College District (the Employer) hereby certifies that the following resolutions were duly adopted by Employer on November 4, 2011, and that such resolutions have not been modified or rescinded as of the date hereof;

RESOLVED, the PPA Amendment to the Peralta Community College District Plan (the Amendment) is hereby approved and adopted and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the amendment.

The undersigned further certifies that attached hereto is a copy of the Amendment approved and adopted in the foregoing resolution.

Date: 11/04/11

Signed: Jennifer Berford

Jennifer Berford Seibert, Benefits Coordinator

[print name/title]