

REQUEST FOR PROPOSAL

for

457(b) DEFERRED COMPENSATION ADMINISTRATION AND RECORDKEEPING SERVICES

22-23/07



PORT OF OAKLAND

PURCHASING DEPARTMENT
530 WATER STREET
OAKLAND, CA 94607



PORT OF OAKLAND

REQUEST FOR PROPOSAL

RFP No.: 22-23/07, 457(b) Deferred Compensation Administration and Recordkeeping Services

The Port of Oakland (the "Port"), through its Purchasing Department, is hereby soliciting competitive proposals to serve as the recordkeeper and custodian for the Port's 457(b) Deferred Compensation Plan. The successful Respondent will be required to provide all services insurance, bonding, and licenses to complete this project.

Proposal Information

Proposal Title	457(b) Deferred Compensation Administration and Recordkeeping Services
Proposal Type	Professional Services
Proposal Number	22-23/07
Proposal Issued	September 23, 2022
Department Requesting Services	Finance Department
Pre-Proposal Meeting	None
Scheduled Publication Date	September 23, 2022
Proposal Due Date and Time	November 3, 2022 until 11:00 a.m.

Instructions for Submitting Proposals

Electronic Delivery Address	https://lf.portoakland.com/ Please login to Liquid Files at the above listed URL and click on the "Register" button to upload your proposal to nsioson@portoakland.com . Do not email your proposal to the buyer directly. Your proposal must be uploaded to the Liquid Files' site to be accepted by the Port. Once your Proposal has been uploaded to Liquid Files, you will receive a copy of the email that Liquid Files generates to the buyer with your proposal. (Note: Liquid Files limits the file size to a maximum of 3 Gigabytes (GB), and there will be a slight delay as to when Liquid Files emails your Proposal to the buyer, so please upload your files early so that they will be received by the due date and time.)
Submittal Copies	One (1) Original proposal as a single file in Adobe Portable Document Format (pdf) transmitted to the above listed Buyer <u>via Liquid Files</u> . (If your file size is larger than 3 GB, please modify it to be less than 3 GB.)
Late Submittals	Electronic Proposals received after the Proposal Due Date and Time stated above will not be downloaded by the Port.

How to Obtain Proposal Documents

Copies of the Proposal documents may be obtained at:

Location	Address
Physical	Port of Oakland--Purchasing Department 530 Water Street, Oakland, CA 94607 Monday through Friday 9:00 AM to 4:00 PM (510) 627-1140
Website	http://www.portofoakland.com/business/bids-rfps/ Or navigate to the Port of Oakland's main website at: http://www.portofoakland.com/ , then click on "Bids/RFPs" from the banner on the top of the page, and then scroll down to download the RFP.

Questions about the Proposal

Questions and/or Requests for Information (RFI) must be submitted in writing and can be submitted by email as follows:

Primary Contact	Nickulaus Sioson Email: nsioson@portoakland.com
Question/RFI Due Date	October 12, 2022 until 4:00 p.m. Please submit questions as soon as possible. No questions regarding the specifications will be responded to after the above date. All pertinent questions will be responded to and answered in writing no later than the Response Date listed below.
Response Date	October 20, 2022 All pertinent questions will be responded to via addendum emailed to all prospective proposers and placed on the Port's website. Proposers who did not receive a copy of the addendum should download it from the Port's website. See the "How to Obtain Proposal Documents" section for our web address. All addenda must be acknowledged on the RFP Acknowledgement and Signature form.

Once the RFP is issued, and until a recommendation for award is made to the Board of Port Commissioners at a public Board of Port Commissioners meeting (or in cases where a recommendation for award does not require a public Board meeting, when Proposers are notified by Port staff of the recommendation for award), each Proposer and its representatives, agents, and affiliates, shall not contact members of the Evaluation Committee, Port staff or the Board of Port Commissioners to discuss or ask questions about the contents of this RFP or the selection process. All questions shall be submitted in writing as described in this RFP. Any inappropriate contact by a Proposer, its representatives, agents, and/or affiliates may result in the Proposers' proposal being disqualified.

Full Opportunity

The Port's policy prohibits discrimination or preferential treatment because of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer-related medical condition, a known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation.

It is the policy of the Port of Oakland to encourage and facilitate full and equitable opportunities for small local businesses to participate in its contracts for the provision of goods and services. It is further the Port's policy that no discrimination shall be permitted in small local business participation in Port contracts or in the subcontracting of Port contracts. The successful Respondent shall comply with the Port's non-discrimination policy.

Title VI Solicitation Notice: The Port of Oakland, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The Port reserves the right to reject any or all proposals, to waive any irregularities or informalities not affected by law, to evaluate the proposals submitted, and to award the contract according to the proposal which best serves the interests of the Port.

John Banisadr,
Port Purchasing Manager

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Attachments:

Title		Must Be Returned with Proposal
1	Non-Collusion Declaration	Yes
2	Statement of Equal Employment Opportunity	Yes
3	RFP Acknowledgement and Signature Form	Yes
4	Proposal Worksheet	Yes
5	Port of Oakland Non-Discrimination and Small Local Business Utilization Policy A. Chart for Submitting Data for Calculation of Preference Points B. Local Participation Questionnaire C. Monthly Utilization of Local and Small Business Enterprises D. Final Utilization of Local and Small Business Enterprises	Yes Attachment 5-A and 5-B are required with the Proposal. (Note: If you are submitting a new Certification Application for preference points, then your completed application is due 7 business days prior to the proposal due date.) Attachments 5-C and –D are required after contract award final completion of the project.
6	Non-Discrimination and Small Local Business Utilization Policy Program Affidavit	Yes
7	City of Oakland City Charter §728 Living Wage Information A. Employer Self-Evaluation for Port of Oakland Living Wage B. Certificate of Compliance—Living Wage	No (Attachment 7-A and 7-B are required prior to entering into contract with the Port of Oakland)

Title		Must Be Returned with Proposal
8	Statement of Living Wage Requirements	Yes
9	Supplier Insurance Requirements	No
10	Insurance Acknowledgement Statement	Yes
11	Administrative Service Agreement--(Acceptance of Certain Required Administrative Services Agreement Representations and Certifications)	Yes
12	Port of Oakland Deferred Compensation Plan	No
13	Asset Allocation	No
14	Investment Policy Statement	No

I. Project Overview

The Port of Oakland ("Port") is seeking proposals from qualified providers of administration and recordkeeping services for governmental 457(b) deferred compensation plans. Providers who have demonstrated expertise in 457(b) deferred compensation administration, recordkeeping services, plan education, communication, investment selection, custodial management, and other related services are encouraged to submit a proposal.

The Port maintains an eligible governmental deferred compensation plan in accordance with Section 457 of the Internal Revenue Code ("IRC 457"). The Port's 457(b) Deferred Compensation Plan, ("Plan") (**Attachment 12**), was established in 1977 and the Port has delegated certain administrative and other duties to the Port's Deferred Compensation Plan Advisory Committee ("Committee") in accordance with IRC 457 and the Plan. The Plan is available to all permanent Port employees on a voluntary basis and allows participants to defer a portion of their compensation until future years. Distributions may be made only at death, retirement, termination, disability or some other event, as provided in the Plan in accordance with applicable State law and IRC 457.

The primary goals of this Request for Proposal include the following:

1. Enhancing and assisting with participant retirement outcomes and participation;
2. Assisting the Committee with selecting the most appropriate investment menu(s);
3. Providing participant education and communication services;
4. Providing robust on-line transaction and information capabilities;
5. Providing support for as many administrative functions as deemed appropriate;
6. Assisting with transparent and best-value pricing for recordkeeping, administration, and custody fees;
7. Providing for an efficient, orderly and timely transition of assets and services if necessary;
8. Partnering with the Committee during quarterly administrative Committee meetings and bi-annual Committee investment meetings as follows: (i) assist with preparation and dissemination of materials (ii) attend all Committee meetings (currently virtual but intending to commence in-person during 2023); and (iii) assist with documentation of meetings and follow-up of Committee actions; and
9. Appointing a designated representative to the Port who will be the primary contact available to assist the Port and Committee with Plan related matters.

The qualified firm must have extensive experience working with governmental employers in the administration of the Plan, as well as the coordination between the Plan and the California Public Employees Retirement System, as necessary. The Port seeks proposals and interaction directly with 457(b) deferred compensation and recordkeeping service providers and not agents or brokers.

About the Port of Oakland

The Port was established in 1927 and oversees the Oakland seaport, Oakland International Airport, Commercial Real Estate, and 20 miles of waterfront. The Oakland seaport is one of the top ten busiest container ports in the U.S.; Oakland International Airport is the second largest San Francisco Bay Area airport offering over 300 daily passenger and cargo flights; and the Port's real estate includes commercial developments such as Jack London Square and hundreds of acres of public parks and conservation areas. Together, through Port operations and those of its tenants and users, the Port generates approximately 84,100 jobs in the region and over 1,000,000 jobs are related to the Port across the United States. The Port is an independent governmental department of the City of Oakland.

II. Scope of Services

The Port sponsors the 457(b) Deferred Compensation Plan for the exclusive benefit of eligible participants and their beneficiaries. As of June 30, 2022, the Plan consisted of 573 participant accounts and total plan assets were valued at approximately \$103.5 million. Additionally, the Plan held approximately 50 loans to participants totaling approximately \$714,107. The following is a chart of certain Plan information for the current and preceding three (3) Plan years as of December 31:

	<u>2021</u>	<u>2020</u>	<u>2019</u>
Total Plan Assets:	\$126.2M	\$113.5M	\$98.2M
Total Participant Accounts (e.g., terminated and active participant accounts)	571	573	576
Total Active Participant Accounts	307	306	319
Total Employee Contributions (deferrals)	\$4.2M	\$4.4M	\$4.4M
Total Number (#) of new Loans	9	12	14
Total Number (#) of all Loans	43	47	50
Total Number (#) of lump Distributions	22	20	18
Total Number (#) of Unique Participants that took Required Minimum Distributions	41	31	40

The Plan offers participants forty-five (45) various investment options and one (1) stable value fund option (**Attachment 13**). Recommendations for investment options are made to and approved by the Deferred Compensation Advisory Committee, in accordance with the Plan's Investment Policy Statement (**Attachment 14**). The Plan's investment menu has been designed and developed over time, and the Deferred Compensation Advisory Committee intends to maintain the same investment menu going forward.

The Plan presently utilize a "zero revenue sharing" fee model, in which any revenue sharing monies generated by Plan investments are returned to participant accounts or are off-set by a reduced administration fee. The current Recordkeeper charges an explicit percentage-based fee to provide its services and also collects a percentage-based fee on behalf of the Port that is used to pay for other Plan expenses.

The incumbent, Empower Retirement, currently provides the following services to the Plan: (i) recordkeeping services; (ii) custodial services; and (iii) investment advisory and analytic services to Plan participants.

A. General Services

Proposers providing a proposal in response to this Request for Proposal ("RFP") must address whether they can provide services for each and every item listed below. While this is not intended to be a complete list of all services that may be required, the Port expects the selected Proposer to assist the Port and the Deferred Compensation Advisory Committee in the following areas:

1. Administration of the Plan, including but not limited to: (i) participant enrollment; (ii) establishment and maintenance of participant accounts; (iii) maintenance and administration of beneficiary designations; (iv) recordkeeping of deferrals and contribution and allocation to participant accounts; (v) investment transfers and elections; (vi) distributions (including unforeseen withdrawals, loans and/or transfers; (vii) compliance with tax withholding, reporting and notices; (viii) establishing missing participant procedures and handling of returned mail; and (ix) maintain Plan transaction history with archiving capabilities.
2. Knowledge of current California and Federal legal requirements for the administration and qualification of governmental 457(b) deferred compensation plans.
3. Provide the Committee with a broad range of investment options with various risk tolerances which include coverage of current assets classes and investments and no restrictions on manager, vehicle or share class choices.

4. Assist the Committee with the selection of a qualified default investment alternative and at least one stable value fund.
5. Provide custodial services. Proposer, an affiliate thereof, or a qualified third-party provider of custodial services, will act as Custodian of a custodial bank account for the Plan and will register and safe-keep all Plan assets; execute and settle all buy, sell and reinvestment transactions; and, collect and report all dividend and interest payments. All cash contributions to the Plan pending investment, all cash being transferred among the investment options offered by the Plan, and all cash awaiting distribution to the Plan's participants and beneficiaries will be held in a custodial bank account for the exclusive benefit of the Plan's participants and their beneficiaries.
6. Conduct one-on-one and/or group participant education meetings and/or participant investment planning meetings with trained representatives to present worksite educational seminars and participant meetings on the details of the Plan and the Plan's investments.
7. Attend and assist the Committee with administrative and investment meetings.
8. Provide full prospectus and fund fact sheets for all recommended investment options.
9. Prepare and issue quarterly statements to all plan participants.
10. Update the Plan document, Summary Plan Description and notices with respect to changes in the Plan's investment options and legally required changes as well as offer best practice recommendations (e.g., arbitration, class action waiver provisions).
11. Communicate directly with Plan participants concerning relevant changes in tax legislation which affect relevant defined contribution and deferred compensation plans, changes in enrollments, investment options, transmittal of distributions, and distribution of quarterly benefit statements.
12. Prepare and file all reports as required under State and Federal law.
13. Provide a detailed transition/migration plan from the current 457(b) Plan administrator, including expected timeline and responsible party for the transition of services.

B. Locations of Sites

The Port currently has employees at the various sites. For the purpose of conducting any annual meetings or investment planning sessions for employees and retirees, the Proposer will conduct them in person (or in special situations via videoconference) at the Port's Headquarters (530 Water Street, Oakland), the Oakland International Airport (1 Airport Drive, Oakland), and/or another Port location in Oakland as determined by the Port.

C. Projected Timeline and Length of Contract

It is anticipated that the term of this agreement will be as follows:

1. Initial term of five (5) years; and
2. Three (3) options to extend for two (2) years during each option, for a total potential option extension of six (6) years.

The renewal option will be exercised exclusively at the discretion of the Port.

III. Port Policy and Other Requirements

The selected Respondent will be required to comply with the following Port Policy and Other Requirements:

1. Non-Discrimination and Small Local Business Utilization Policy (NDSLBP):

The Port desires to maximize the participation of small local business and has instituted a Non-Discrimination and Small Local Business Utilization Policy (NDSLBP). The NDSLBP consists of two parts:

- Non-Discrimination policy which all Suppliers (Respondents) must adhere to, by providing the enclosed "Non-Discrimination and Small Local Business Utilization Policy Program Affidavit" (**Attachment 6**) with their proposals

- Preference points are awarded to small local businesses who qualify under the Port's definition of a small local business. In order to qualify for preference points, Suppliers (Respondents) must be either certified by the proposal due date or may apply online at: <http://srd.portofoakland.com/>. The application and any supporting documentation must be submitted to the Port's Social Responsibility Division seven (7) business days prior to the proposal due date. To apply, please click on the above link and then on the link titled "Register New Company?" and follow the instructions.

A summary of the Port's Non-Discrimination and Small Local Business Utilization Policy is included herein as **Attachment 5**. The entire policy is available at:

http://www.portofoakland.com/files/PDF/responsibility/NDSLBP_00810.pdf

Suppliers already certified with the Port do not need to submit proof of certification, but still need to check the Port's certification database at: <http://srd.portofoakland.com/> to ensure their certification has not expired and must fill out the Chart for Submitting Data for Calculation of Preference Points (**Attachment 5-A**), and the Local Participation Questionnaire (**Attachment 5-B**), and submit them with your proposal. All Suppliers (Respondents) must still provide proof of adhering to the Port's Non-Discrimination policy by submitting the NDSLBP Program Affidavit.

A copy of the Port-certified Small Local Business Enterprises can also be downloaded at: <http://srd.portofoakland.com/>

For questions or assistance regarding NDSLBP, contact Kamal Hubbard (510) 627-1162, or khubbard@portoakland.com in the Port's Social Responsibility Division.

2. Insurance Requirements:

All Respondents who plan on submitting a proposal in response to this RFP must meet the Port's Insurance requirements listed in **Attachment 9** and must provide proof of insurance at the time of project award. Respondents must include a statement (**Attachment 10**) with their proposal agreeing to the Port's insurance requirements and indicate they will be able to obtain the proper insurances at the time of project award.

3. Living Wage Policy:

On March 5, 2002, the voters in the City of Oakland passed Measure I, adding to the City Charter Section 728 ("§728") entitled "Living Wage and Labor Standards at Port-assisted Businesses." §728 requires Port Aviation and Maritime businesses that meet specified minimum threshold requirements to pay all nonexempt employees a Living Wage rate established by City Ordinance and adjusted annually based on the Consumer Price Index for the San Francisco, Oakland, and San Jose area. The current Living Wage rate as of July 1, 2022 is at least \$16.14 with credit given to the employer for the provision to covered employees of health benefits, and \$18.53 without credit for the provision of health benefits. Specifically, §728 applies to Port contractors and financial assistance recipients with the Aviation or Maritime divisions that have contracts worth more than \$50,000 and that employ more than 20 employees who spend more than 25% of their time on Port-related work. §728 also provides covered employers with incentives to provide health benefits to employees, establishes a worker retention policy, requires covered employers to submit quarterly payroll reports and requires covered employers to allow Port representatives access to payroll records in order to monitor compliance and labor organization representatives access to workforces during non-work time and on non-work sites. Covered employers are responsible for complying with the provisions of §728 from the date the covered contract is entered into. When a contract is awarded, the Respondent will be required to fill out the attached Employer Self-Evaluation for Port of Oakland Living Wage Form (**see Attachment 7-A**) and Certificate of Compliance—Living Wage (**see Attachment 7-B**) and return them to the Social Responsibility Division. (i.e., do not include these forms in with your proposal).

Respondent shall acknowledge reviewing the Port's Living Wage program and compliance, by submitting the Statement of Living Wage Requirement (**Attachment 8**) with their proposal.

4. Port's Administrative Services Agreement:
Submission of a proposal will confirm that the Respondent fully understands and agrees with the required representations and certifications set forth on **Attachment 11** which will be revised only as necessary to be consistent with the provisions of this RFP. Any objections to any provisions in the required representations and certifications set forth in **Attachment 11** and/or this RFP must clearly be identified in your proposal. Changes are discouraged.

IV. Submission Requirements

Please respond to the following 8 submission requirements in a straightforward, concise delineation of your capabilities proposed to satisfy the requirements of the RFP. The Port will use your responses to objectively determine your capabilities and experience. Please label your responses 1 through 8, in the order presented below. Please limit your total response to the number of pages indicated below (excludes the required attachment forms provided with this RFP).

Submittal Format:

Responses may not be longer than **26 pages** formatted to fit an 8 1/2" x 11" paper and in no smaller than 10-point font. Each section shall be labeled according to the sections below. Once printed by the Port, submittals must be able to fit into a 9" x 11.5" folder.

1. **Company Information:** Provide the name of your company (including the name of any parent company), business address, email address, Federal Tax ID number, telephone and fax numbers, and names and titles of key management personnel, and a brief history of your company. Provide a brief statement of who is authorized to submit the proposal on the behalf of your company. Please make sure that person signs and dates the statement. Provide proof that your firm possess all special licensing required for sales, marketing and/or servicing the 457(b) Plan.
- a. Please list all individuals at the firm whose primary responsibility is increasing firm racial diversity of underrepresented minorities or increasing the numbers of women. Please include their name, bio, and year hired for their current position.
 - b. Please list programs for recruitment of underrepresented minorities or women and number of years your firm has participated or sponsored such programs.

If your company is making any exceptions to the terms set forth in **Attachment 11** and/or this RFP, they must be clearly set forth in your proposal and noted in this section. Exceptions are discouraged and may result in lower evaluation points during the Port's evaluation of your proposal.

2. **Knowledge and Experience:** Does your firm currently provide comprehensive 457(b) Plan services to public sector employees and retirees? Please also provide the below relevant information about your company:
- a. Your company's knowledge and experience, including a list of three or more projects (in similar size and scope to that in this RFP), with brief descriptions that demonstrate your experience.
 - b. Provide the names of key personnel who will be assigned to do the work under this project and provide their relevant experience.
 - c. Describe what sets your firm apart from other firms providing similar services and why should the Port select your firm.
 - d. Describe how your firm works to keep professional turnover rates to a minimum. If turnover does occur, describe actions taken to ensure that relationship satisfaction is maintained and that there is no interruption to ongoing client initiatives.
 - e. Describe your approach to working with plan sponsors to determine areas for potential improvement to a plan and/or implementing best practice approaches.
 - f. Do you guarantee service performance? If so, please describe and include samples of items that you would agree to as part of a contract for plan administration services clearly specifying any penalty compensation

- g. Provide information about your company's policies and procedures to protect and safeguard the security of the plan participant's data, including but not limited to the protection of "remote" information. (Remote information is information that may be accessed remotely via such devices as laptops, computers, smartphones, or other PDAs.) Please provide the following: (This documentation will not count against your stated proposal page limit.)
 - i. Any data protection standards or certifications (e.g. NIST RMF, ISO/IEC 27001, COBIT, COSO, ITIL);
 - ii. Your company's processes and protocols for dealing with cyber threats and how data is secured within the system, including standard and advanced authentication procedures (i.e., PIN, audit trail, confirmations);
 - iii. Whether your Company has experienced a reportable security breach (to clients/regulators) in the last three years? If yes, explain the circumstances and remedial actions taken as a result; and
 - iv. Copy of any insurance policy in place that would cover losses caused by cybersecurity and identity theft breaches (including breaches caused by internal threats, such as misconduct by employees or contractors, and breaches caused by external threats, such as unauthorized third-party access to a plan participant's account and related fraudulent activity).
3. **Client References:** Provide names, addresses, and contact information for three (3) current similarly sized clients (preferably public sector clients). Provide the size and scope of each project and a brief description of the projects. Please make sure all contact information is current. By providing such information, you authorize us to contact such clients.
4. **Plan and Approach:** Provide an overview describing the general approach and methodology of your company's ability to fulfill **all** the "General Services" listed under the "Scope of Services" section of this RFP. Please also use this section to describe any additional services you propose to provide. Also, please discuss your plan and approach to the following items:
 - a. Disaster recovery plans and policies.
 - b. Off-site storage for backup files.
 - c. Data security/privacy policies and procedures for the Port and participants in the Plan (including cybersecurity protections).
 - d. On-boarding and enrollment of new participants.
 - e. Paperless Port and participant transactions.
 - f. Online participant and Port accessibility and availability.
 - g. Providing Customer service to both the participants and the Port.
 - h. Policies and procedures for handling missing participants, including handling returned mail.
 - i. Provide a detailed plan for migrating services from the current provider. Plan should include timeline, fees and/or costs, responsible party and describe administrative support and services provided to assist the Plan sponsor and its participants with a smooth transition.
5. **Proposed Costs:** Provide the cost for all of your services on the Proposal Worksheet and attach any proposed fee schedule. It is important that you provide your fee schedule so that the Port can evaluate your proposal. Make sure your costs cover all the items listed in the "General Services" section of the "Scope of Services" section of this RFP, as well as the overall Total Cost for any services you propose to provide above and beyond the services listed in the "General Services" section. Please make sure to identify which charges are to be paid by the plan participants versus the Port. Proposers are responsible for ensuring that all costs are set forth in this section. In particular, (if applicable) make sure to provide any and all costs for the following items:

- a. Per participant fees, if any (e.g., distribution fees, QDRO analysis fees);
- b. Asset based fees and/or charges, if any;
- c. Recordkeeping fees;
- d. Migration fees;
- e. Termination fees;
- f. Hourly fees, if applicable;
- g. Indirect fees (e.g., direct mailing, travel charges);
- h. Any other direct or indirect fees and charges that might apply.

Proposers must include all information about pricing in their proposals. Although the Port will base its selection upon a consideration of all factors, pricing information is required in order for the Port to ensure that it is receiving the requested services at a fair and reasonable price. Failure to include pricing information in your proposal may result in a rejection of the proposal as non-responsive.

6. **Debarment Statement:** Provide a written statement that your company has not been debarred from providing services to any State or Federal Agency within the last five (5) years. Sign and date your statement. If your company has been debarred, you will need to provide background information and the reason(s) for the debarment. Provide the name and contact information for the agency that debarred your company. The Port must review the reason(s) and duration for the debarment before it can determine if your company can be considered for this project.
7. **Litigation and Other Information:** Provide information describing any litigation, arbitration, active or settled governmental investigations, or any other similar actions that your company, its principals, directors, and/or employees have been involved in during the last five (5) years relating to your company's services. Please list (a) name and court case or other identification number of each matter, (b) jurisdiction in which it was filed, and (c) outcome of matter (e.g. whether the case is pending, a judgment was entered, a settlement was reached or the case was dismissed). The Port will review the reason and timing of the action before it can determine if your company can be considered for this project. Failure to provide the litigation information may disqualify your proposal.
8. **Required Forms and Adherence to Port Policy and Other Requirements:** The Respondent must fill out all of the forms included in this RFP (listed under the "Attachments" section and marked with a "Yes" in the column titled "Must Be Returned with Proposal"), and return them with your proposal. By returning the listed forms, your company is supporting and agreeing to the Port Policy and Other Requirements (listed in Section III, "Port Policy and Other Requirements" of this RFP). Failure of the Respondent to provide any of the required forms may result in your proposal being rejected for non-responsiveness. These required forms will not count against the maximum page count (indicated above) for your response.

V. Evaluation Criteria

Prior to contract award, the Port must be assured that the Respondent selected has all of the resources required to successfully perform under the contract. This includes, but is not limited to, personnel with skills required, equipment/materials and financial resources sufficient to provide services called for under this contract. If during the evaluation process, the Port is unable to assure itself of the Respondent's ability to perform under the contract, if awarded, the Port has the option of requesting from the Respondent any information that the Port deems necessary to determine the Respondent's capabilities. If such information is required, the Respondent will be notified and will be permitted five (5) working days to submit the requested information.

In awarding the contract, the Port will evaluate a number of factors in combination. Please make sure you have submitted responses to all items listed in the Submission Requirements section, as your responses will be evaluated based on the weights listed below.

A. Evaluation Weights

Item	Criteria	Weights
	<u>Adherence to Port Policy and Other Requirements and Debarment Statement</u> Proposals from companies who have not or will not adhere to the Port Policy and Other Requirements or who have been debarred and have not provided sufficient reasons/justification for the Port to review the circumstances surrounding the debarment will not be forwarded to the evaluation committee for review. (Items 6 and 8 of the Submission Requirements section.)	Pass/Fail
1	<u>Company Information, Client References, Litigation and Other Information, and Required Forms</u> Respondent's capacity to provide professional service as evidenced by past performance, company information, reference checks, litigation and other information, and required forms. (Items 1, 3, 7, and 8 of the Submission Requirements section.)	15%
2	<u>Knowledge and Experience</u> Respondent's knowledge and experience in providing 457(b)Deferred Compensation Administration as evidenced from your response to item 2 of Submission Requirements section.	25%
3	<u>Plan and Approach</u> As evidenced from your response to item 4 of the Submission Requirements section. The migration plan will be of particular importance and weight to the Port.	30%
4	<u>Proposed Costs</u> As evidenced from your response to item 5 of the Submission Requirements section, and as provided on the Proposal Worksheet.	15%
5	<u>Non-Discrimination and Small Local Business Utilization Policy (NDSLBP)</u> Does your company meet the Port's definition of Small Local Business and/or make a commitment to the Port's values and programs {e.g., mentoring small and/or very small local businesses and providing meaningful work for small and/or very small local sub-consultants; utilization of college and high school interns from the Local Impact Area (LIA); participation in job fairs and trade fairs targeted to LIA residents and businesses; and other work showing the consultant's efforts to contribute to the economic development of the LIA}? The Port will evaluate companies that have provided substantiating documentation to prove they meet the Port's NDSLBP program and award points accordingly to qualifying companies.	15%
	Total	100%

B. Selection Procedure:

All proposals received by the deadline which meet the RFP's requirements will be presented to the evaluation committee comprised of Port of Oakland staff and possibly external members. The evaluation committee will evaluate the proposals and score all submissions according to the evaluation criteria above. The selection process may include interviews (at the discretion of the evaluation committee) for the top-scoring submissions. If interviews are to take place, the Port will notify the top scoring Respondents. Interview details and scoring requirements will be provided to selected Respondents prior to the interviews.

VI. Additional Provisions

The terms "Company", "Consultant", "Contractor", "Proposer", "Respondent", "Seller", "Supplier", and "Vendor" whenever appearing in this RFP or any attachments, are used interchangeably to refer to the company or firm submitting a proposal in response to this RFP.

A. Port's Legal Name and Jurisdiction

The Port of Oakland (the "Port") is legally known as the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners. The Port is an independent department of the City of Oakland. The Port has exclusive control and management of all Port facilities and properties. Port facilities and properties consist of marine terminals, a railway intermodal terminal and container storage areas (collectively, the "Seaport"); the Oakland International Airport (the "Airport"); and commercial and industrial land and properties (collectively, "Commercial Real Estate"); and other recreational land, other land, undeveloped land, and water areas, all located in Oakland, CA. The Port issues Purchase Orders under the name "Port of Oakland".

B. Ownership of Proposal

All rights to information developed, disclosed, or provided in a Proposal and its attendant submissions are the property of Port, unless a Respondent makes specific reference to data that is considered proprietary. To the extent that a Respondent does not make specific reference to data that is considered "confidential" and proprietary, submission of an RFP constitutes the Respondent's express (a) grant and assignment of a perpetual, transferable (in whole or in part), non-exclusive, royalty-free license to the Port for copyright, patent, or other intellectual property right (collectively referred to as "intellectual property"), and (b) agreement that the Port may use any such intellectual property without charge for any lawful purpose in connection with other Port development projects, including without limitation the creation of derivative works and issuance of sublicenses.

C. Deadline for Receipt of Proposal

Proposals must be delivered to the "Electronic Delivery Address" via Liquid Files listed in the Request for Proposal (RFP) no later than the date and time specified in the RFP. When you upload your Proposal to Liquid Files, you will receive a copy of the email that Liquid Files generates to the buyer with your proposal. There will be a slight delay in when Liquid Files emails your Proposal to the Port, so please ensure you have uploaded your Proposal with sufficient time to allow Liquid Files to generate an email to the Port. The Port will use the date and time stamp on the email document that is generated from Liquid Files as proof of timely delivery. (Please note: The Port may not actually download your proposal until after the date and time for delivery has passed.) Proposals received after the date and time specified in the RFP will not be downloaded by the Port.

D. Public Records Act

Under the California Public Records Act (Gov. Code § 6250 et seq.), the Port may be obligated to make available to the public the submitted proposal and all correspondence and written questions submitted during the Request for Proposal process. However, such disclosure shall not be made prior to the date on which the Port publishes the identity of the apparent successful proposer or issues a Notice of Intent to Award, if such notice is issued.

If Respondent believes portions of its proposal contain trade secrets or proprietary financial information that should be exempt from disclosure under the Public Records Act, **Respondent shall submit a separate copy of its entire proposal with the protected material redacted with black boxes, which each redaction specifically marked as "CONFIDENTIAL"**. Such separate copy shall not constitute the proposal, but shall be used, if needed and appropriate, in response to an applicable Public Records Act request. If Respondent does not submit such a separate redacted proposal, Respondent shall be deemed as not claiming that any portion of its proposal contains trade secrets or proprietary financial information.

The Port reserves the right to independently determine whether any document is subject to disclosure and to make such information available to the extent required by applicable law, without any restriction or notice to Respondent.

E. Indemnification

If Respondent is selected to receive a contract, it will be required to agree to the indemnification clause contained in the Port's Administrative Services Agreement (**Attachment 11**).

F. Reimbursable Expenses

All expenses incidental to performing Consultant's Basic Services including, but not limited to, overtime, reproduction of documents and other materials associated with Respondent's deliverables and presentation materials; transportation and subsistence; telephone, computer, facsimile, or other similar costs; and the like, shall be included within the Contract Price.

G. Port's Right to Modify

Respondents are advised that the Port has not incurred any obligations or duties in soliciting this Request for Proposals. The Port, at its sole discretion, reserves the right to reject any or all proposals submitted in response to this RFP; to request additional information or clarification of information submitted; to cancel or modify, in part or in its entirety, this RFP; to request new RFPs or pursue any other means for obtaining the desired services; to waive any informalities or minor irregularities in the RFP, and other inconsequential deviations from the RFP's requirements. The Board of Port Commissioners retains the right to award this project in part or in total to the Respondent(s) of its choice, and to decide to undertake the project or to terminate the project at any time prior to approval of a formal contract.

H. Conflicts of Interest

By submitting a proposal, the Respondent represents that it is familiar with Section 1090 and Section 87100 et seq. of the California Government Code, and that it does not know of any facts that constitute a violation of said sections in connection with its proposal. Respondent also represents that its proposal has completely disclosed to the Port all facts bearing upon any possible interests, direct or indirect, which Respondent believes any member of the Port, or other officer, agent or employee of the Port or any department presently has, or will have, in any agreement arising from this RFP, or in the performance thereof, or in any portion of the profits there under. Willful failure to make such disclosure, if any, shall constitute ground for rejection of the proposals or termination of any agreement by the Port for cause. Respondent agrees that if it enters into a contract with the Port, it will comply with all applicable conflict of interest codes adopted by the City of Oakland and Port of Oakland and their reporting requirements.

I. Cost of Preparing a Response

All costs for developing a response to this RFP and attending any proposal meetings or selection meetings are entirely the responsibility of the Respondent and shall not be chargeable to the Port.

J. Compliance with Law

The Respondent must comply with all laws, ordinances, regulations and codes of the Federal, State, and Local Governments, which may in any way affect the preparation of proposals or the performance of the contract.

K. Respondent's Relationship

The Respondent's (and Respondent's employees' and contractors') relationship to the Port shall be that of independent contractor and not deemed to be an employee or agent of the Port.

L. Proposal Considerations and Legal Proceeding Waiver

The Port has absolute discretion with regard to acceptance and rejection of proposals. In order to be considered the party submitting a proposal waives the right to bring legal proceedings challenging the Board of Port Commissioners choice of the award.

M. False Statements

False statements in a proposal will disqualify the proposal.

N. Taxes

The Respondent will be responsible for all Federal, State, and Local taxes.

O. Grade of Service

The Respondent must provide professional service and maintain appropriate personnel to provide expedient and courteous service.

P. The Respondent's Liability

The Respondent shall be responsible for any and all damages to the Port's premises resulting from the negligent acts or willful misconduct of the Respondent's agents or employees.

Q. Amendments

The Port may, at its sole discretion, issue amendments to this RFP at any time before the time set for receipt of proposals. The Respondents are required to acknowledge receipt of any amendments (addenda) issued to this RFP by acknowledging the Addendum in the space provided on the RFP Acknowledgement and Signature Form. The Port shall not be bound by any representations, whether oral or written, made at a pre-proposal, pre-contract, or site meeting, unless such representations are incorporated in writing as an amendment to the RFP or as part of the final contract. All questions or requests for clarification concerning material terms of the contract should be submitted in writing for consideration as an amendment.

R. Withdrawal or Modification of Offers

The Respondent may modify or withdraw an offer in writing at any time before the deadline for submission of an offer.

S. Acceptance

Any offer received shall be considered an offer which may be accepted or rejected, in whole or in part, by the Port based on initial submission with or without discussions or negotiations.

T. Representations

No representations or guarantees of any kind, either made orally, or expressed or implied, are made with regard to the matters contained in this document, including any attachments, letters of transmittal, or any other related documents. The Respondent must rely solely on its own independent assessment as the basis for the submission of any offer made.

U. Award Consideration

The Port shall not be bound to accept the lowest-quote fee and will award the contract (if any) to the company/firm selected through the competitive process (and any subsequent interviews) outlined in this RFP.

V. Contract Termination

The Port may terminate the agreement (and or contract) with the Respondent on thirty days' notice for the failure of the Respondent to comply with any term(s) of the agreement/contract between the Port and the Respondent.

W. Protest Procedures

Any party that has timely submitted a responsive proposal that contends or claims that the Port's proposed award of the subject contract fails to comply with the Port's rules and regulations or with law must file a protest in accordance with the provisions set forth below:

1. Any protest must be submitted in writing to Daria Edgerly, Secretary of the Board, and received by the Port no later than 5:00 p.m. by the third (3rd) business day following publication of the identity of the apparent successful proposer (or of Notice of Intent to Award, if such notice is issued).

2. The protest must include the name, address and telephone number of the person representing the protesting party.
3. The initial protest document must contain a complete statement of the basis for the protest, including in detail, all grounds for protest including referencing the specific portion of the solicitation document that forms the basis for the protest, and including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the protest. Any matters not set forth in the written protest shall be deemed waived. All factual contentions must be supported by competent, admissible and credible evidence.

Any protest not conforming to the foregoing shall be rejected by the Port without recourse.



Non-Collusion Declaration

RFP No.: 22-23/07, 457(b) Deferred Compensation Administration and Recordkeeping Services

(To Be Executed By Proposer and Submitted With Proposal)

I, _____, declare as follows:

That I am the _____ of _____, the party making the attached proposal; that the attached proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham proposal, or that anyone shall refrain from proposing; that the proposer has not in any manner, directly or indirectly, sought by agreement, communication, or to fix any overhead, profit, or cost element of the proposal price, or that of any other proposer, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and further, that the proposer has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

Any person executing this declaration on behalf of a proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of _____, 202__, at

_____, _____

Signature

Authority: Public Contract Code 7106

CCP 2015.5



PORT OF OAKLAND

Statement of Equal Employment Opportunity

**RFP No.: 22-23/07, 457(b) Deferred Compensation Administration and
Recordkeeping Services**

I hereby certify that I _____ (Legal Name of Respondent/Supplier/Consultant/Contractor), will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer-related medical condition, a known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation.

I declare under penalty of perjury under the laws of the State of California that the information I have provided herein is true and correct and is of my own personal knowledge.

Signature

Print Name

Title

Date



PORT OF OAKLAND

RFP Acknowledgement and Signature Form

**RFP No.: 22-23/07, 457(b) Deferred Compensation Administration and
Recordkeeping Services**

The undersigned having carefully examined the location of the proposed work, the local conditions of the place where the work is to be done, the Invitation, the General Conditions, the Specifications and all of the documents for this project, proposes to enter into a contract with the Port of Oakland to perform the work listed in this RFP, including all of its component parts, and to furnish any and all required labor, materials, equipment, insurance, bonding, taxes, transportation and services required for this project in strict conformity with the plans and specifications prepared, including any Addenda, within the time specified.

Addendum Acknowledgement:

The following addendum (addenda) is (are) acknowledged in this RFP: _____

Acknowledgement and Signature:

1. No Proposal is valid unless signed in ink by the person authorized to make the proposal.
2. I have carefully read, understand and agree to the terms and conditions on all pages of this RFP. The undersigned agrees to furnish the services stipulated in this RFP.
3. Respondent agrees to the form and content of Administrative Services Agreement (**Attachment 11**) and agrees not to propose any contractual terms that conflict with such form, unless it specifies any exceptions in its Proposal.
4. Respondent is registered to do business in the State of California, or if not, will obtain such registration prior to entering into an agreement with the Port for this RFP.
5. I understand my Proposal and all related documents may be released in their entirety in response to a request under the California Public Records Act, subject to any separate copy I submit in accordance with Section VI.D of this RFP.
6. I represent that I am familiar with Section 1090 and Section 87100 et seq. of the California Government Code, and that I do not know of any facts that constitute a violation of said Sections in connection with the proposal.

Respondent's Name: _____

Title: _____

Company Name: _____

Address: _____

Telephone: _____ Fax: _____

Email: _____ Cell Number: _____

Contractor License # (if applicable): _____ Expiration Date: _____

Federal Tax Identification Number: _____

Authorized Signature: _____ Date: _____

**RFP No.: 22-23/07, 457(b) Deferred Compensation Administration and Recordkeeping Services**

Provide your estimated costs for the services on this Proposal Worksheet utilizing the information of plan data as of June 30, 2022 and chart of current investments in the Plan. Attach any proposed fee schedule. It is important that you provide your fee schedule so that the Port can evaluate your proposal. Make sure your costs cover all the items listed in the "General Services" of this RFP, and section "5 Proposed Cost" of the "Submission Requirements" section of this RFP, as well as the overall Total Cost for any services you propose to provide. If your Total Cost is based on a percentage fee of assets under management, please clearly delineate how you have calculated the yearly cost and what assumptions you have used.

Please make sure to identify which charges are to be paid by the plan participants versus the Port.

Proposers must include all information about pricing in their proposals. Failure to include pricing information in your proposal may result in a rejection of the proposal as non-responsive.

I. Initial Five (5) Year Term

Item	Yearly Costs	Total Cost
1	Year One (1)	\$
2	Year Two (2)	\$
3	Year Three (3)	\$
4	Year Four (4)	\$
5	Year Three (5)	\$
Total Proposed Cost (Lines 1-5)		\$

II. First Two (2) Year Option

Item	Yearly Costs	Total Cost
1	Year One (1)	\$
2	Year Two (2)	\$
Total Proposed Cost (Lines 1-2)		\$

**RFP No.: 22-23/07, 457(b) Deferred Compensation Administration and
Recordkeeping Services**

III. Second Two (2) Year Option

Item	Yearly Costs	Total Cost
1	Year One (1)	\$
2	Year Two (2)	\$
Total Proposed Cost (Lines 1-2)		\$

IV. Third Two (2) Year Option

Item	Yearly Costs	Total Cost
1	Year One (1)	\$
2	Year Two (2)	\$
Total Proposed Cost (Lines 1-2)		\$

Respondent Name: _____ Title: _____

Company Name: _____

Authorized Signature: _____ Date: _____



Non-Discrimination: Port of Oakland (Port) policy prohibits discrimination or preferential treatment because of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer-related medical condition, a known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation.

Local Business Utilization: On October 7, 1997, the Board of Port Commissioners initiated a formal policy to encourage full participation of firms from its Local Business Area ("LBA"), the counties of Alameda and Contra Costa, particularly those in its Local Impact Area ("LIA"), in its work. The LIA includes the cities of Oakland, Alameda, Emeryville and San Leandro. The LBA includes all cities within the counties of Alameda and Contra Costa. The Port will also take into consideration efforts the prime and sub-consultants make to assist in the community, e.g., assigning meaningful work to small and/or very small local sub-consultants, mentor protégé relationships, participation in job/trade fairs, hiring interns, pro bono work, and working with local schools, etc.

Consultant Preference Points: The Port allots preference points for the percentage of work being performed by consultants/sub-consultants located in either the LBA or the LIA and for community involvement (i.e. mentoring, intern programs, job fairs, community rehabilitation groups and re-entry programs) for a maximum total of up to 15 points. These points are added to a maximum of 85 technical points for a composite maximum of 100 points in evaluating consultant proposals as follows:

- Up to 5 points will be credited proportionately (counting the whole team, prime consultant and sub-consultant(s)) for LIA certified firms, and 2.5 for LBA certified firms.
Note: LIA/LBA credit is given only for certified firms which have had established active offices in the respective area for at least a year at the time of proposal due date, and NOT for outside firms which plan to do the project work at a LIA/LBA office;
- An additional 3 points will be credited for an LIA certified prime consultant (proportionate to the share of prime consultant work in the case of a joint venture) and 1.5 points for an LBA certified prime consultant;
- Up to 4 points will be credited proportionately (counting the whole team, prime consultant and sub-consultant(s)) for Very Small Business Enterprise (VSBE) certified firms, and 2 points for Small Business Enterprise (SBE certified firms); and
- Up to 3 points for commitment to the Port's values and programs, e.g., mentoring small and/or very small local businesses and providing meaningful work for small and/or very small local sub-consultants; utilization of college and high school interns from the LIA; participation in job fairs and trade fairs targeted to LIA residents and businesses; and other work showing the consultant's efforts to contribute to the economic development of the LIA.

In summary, please submit the following attachments in each copy of your proposal:

1. Attachment 5-A, Chart for Submitting Data for Calculation of Preference Points. List the team members' (prime and subs) names, roles, location and LIA/LBA/SBE/VSBE status in the format shown in Attachment 5-A. Be specific as to the nature and estimated percentage of the work to be performed by the prime, any joint venture partners and/or sub-consultants.
2. Attachment 5-B, Local Participation Questionnaire. Complete for each sub-consulting firm or individual, as well as for the prime consultant.

3. Attachment 5-C and 5-D, Monthly and Final Utilization of Local and Small Business Enterprises are required after contract award. Attachment 5-C is required after contract award and a final report attachment 5-D, is required after completion of the project.

Any proposal that fails to complete and submit the above two items (Prime *and* sub-consultants) will not be considered. For firms headquartered outside the LIA/LBA wishing to obtain credit for their local office, for the purpose of this project shall utilize personnel from this local office. Additionally, mail, correspondence and telephone calls will be made to this local office.

To obtain credit for these factors and for any preference points on this RFP, consultants or any team member must be certified by the proposal due date or submit an application:

- Consultants or any team members wishing to be certified by the Port must submit a Certification Application, with all supporting documentation seven (7) business days prior to the proposal due date. The questionnaire and checklist of necessary supporting documents for certification may be obtained at: <http://www.portoakland.com/srd/>. For questions regarding certification, you may contact Social Responsibility Division (SRD) at (510) 627-1627 or email SRDAdmin@portoakland.com. Firms certified by the Port of Oakland do not need to submit proof of certification.

(Please note Port certification must be current and not expired to count for preference points. Certification is valid for a two-year period.)

For questions or assistance regarding this section, contact Kamal Hubbard (510) 627-1162, or khubbard@portoakland.com in the Port's Social Responsibility Division.



PORT OF OAKLAND

Chart for Submitting Data for Calculation of Preference Points

Company	Nature of Work to be Performed	Prime or Sub?	Location of Firm	*LIA/LBA SBE/VSBE Certification Status	Percent of Total Contract	Percent of Sub-consulting Work
(Name of Prime)		Prime				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
Total (must add up to 100%)					100%	100%

*** In order to qualify for preference points, the firm must be certified by the Port of Oakland.** Local Impact Area (LIA), Local Business Area (LBA), Small Business Enterprise (SBE), Very Small Business Enterprise (VSBE)

Notes:

- Please make sure the column labeled "Percent of Total Contract" adds up to 100%
- Please make sure the column labeled "Percent of Sub-consulting Work" adds up to 100% of the Sub-consulting work.



(Use additional paper if necessary)

1. Is the consultant or large sub-consultant mentoring or providing a professionally meaningful share of the project to small and/or very small LIA firms on this project? Yes___ No___

If the response is "yes", please provide specific details on how the mentoring or sharing will be performed. In addition, be specific as to the nature of the relationship and the persons responsible for implementing it.

2. (A) Do any team members regularly use local students as interns in their work? Yes___ No ___
(B) Do any team members currently use local students as interns in their work? Yes___ No ___
(C) Have any team members used local students as interns in past work? Yes ___ No___
(D) If planning to use interns on this project, how will you utilize them?

If you answered "yes" to any of these questions, please state from what schools or programs the interns were obtained, what type of work was performed by them, and any other details that might be relevant, i.e. paid internship, length of service, number of interns.

3. Have firms in the team participated in other community projects, e.g., job fairs targeted to local neighborhoods, youth or school programs, community rehabilitation groups, etc.? Yes___ No___
If so, please give details:



PORT OF OAKLAND

Monthly Utilization of Local and Small Business Enterprises

PRIME CONTRACTOR		BUSINESS ADDRESS				CONTRACT BID AMOUNT		DATE OF THIS REPORT	
PORT PROJECT NAME				PORT PROJECT NUMBER	WORK AUTHORIZATION #	TOTAL CONTRACT AMOUNT INCLUDING CHANGE ORDERS		PROJECT COMPLETION DATE	
(1) Name and Address of Small/Local Firm [Prime, Subcontractor, Supplier or Trucking Broker]	(2) Description of Work Performed and or Materials Supplied	(3) Prime and Sub(s) Original Bid Amount	(4) Port Certification Number	CONTRACT PAYMENTS					
				(5a) * LIABE Dollars	(5b) * LBABE Dollars	(5c) * SBE Dollars	(5d) * VSBE Dollars	(6) Date Work Completed	(7) Date of Final Payment
TOTAL				\$	\$	\$	\$		

List all certified local/small prime and subs regardless of tiers through out the life of the project, whether or not firms were listed on the original bid. Xerox this page if additional sheets are needed.

If actual sub dollars were different than the approval amount at time of award, provide comments on back of form. List actual amount paid to each sub at the above chart.

* LIABE (Local Impact Area Business Enterprise), LBABE (Local Business Area Business Enterprise), SBE (Small Business Enterprise), and VSBE (Very Small Business Enterprise).

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE, TRUE AND CORRECT

AUTHORIZED CONTRACTOR REPRESENTATIVE SIGNATURE and TITLE	BUSINESS PHONE NUMBER	DATE
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Distribution:

Original – SRD

Copy To – Engineering Construction / Resident Engineer

Instructions--Monthly Utilization of Local and Small Business Enterprises

- (I) Enter the project information requested on the first two rows on page 00816-1 (Prime Contractor, Business Address, Contract Bid Amount, etc.)
- (II) Provide the following information **for each portion of the contract work performed by (and for each amount of materials supplied by) a Port-certified small and/or local business**, including the prime contractor if the prime is a Port-certified small/local business:

- Column 1: Name and address of the firm performing work and/or supplying materials.
- Column 2: Description of the work performed and/or materials supplied by said firm.
- Column 3: For subcontractor, supplier or trucker: dollar amount of the bid submitted by the firm to prime bidder, as listed in the Subcontractor and Supplier List Form submitted by prime bidder with its bid. If the subcontractor, supplier or trucker was not listed in the Subcontractor and Supplier List Form, enter "0". For small/local prime bidder: dollar amount of the prime bidder's bid excluding all subcontractor/supplier/trucking broker bid amounts, as listed in the Subcontractor and Supplier List Form.
- Column 4: Port Certification Number of firm. (Port-certified small/local subcontractors, suppliers and truckers should provide their certification number to the Prime Bidder and notify Prime Bidder in writing with the date of the decertification if their status changes during the course of the project.)
- Columns 5a-5d Enter the dollar amount of the work performed and/or materials supplied by the firm in either Column 5a, 5b, 5c or 5d, depending on the firm's certification status. Firm certification status must be certified and determined at the time of bid by Port of Oakland. The certified firm is issued a letter by the Port of Oakland that states their certification status as well as the expiration date of the certification. Firms' certification status may be obtained by accessing the Port of Oakland website (<http://srd.portofoakland.com/>) or by calling (510) 627-1627. Refer to the following table for a description of the certification status:

Certification Status	Description
LIABE (Local Impact Area Business Enterprise)	firm located in Oakland, Alameda, Emeryville, or San Leandro
LBABE (Local Business Area Business Enterprise)	firm located in Alameda County or Contra Costa County
SBE (Small Business Enterprise)	business with 3 year average annual gross revenue not to exceed \$36,000,000
VSBE (Very Small Business Enterprise)	business with 3 year average annual gross revenue not to exceed \$5,000,000

If the firm was decertified before completing its portion of the work of this contract, enter the dollar amount of ALL work performed/ materials supplied by the firm, INCLUDING WORK PERFORMED/MATERIALS SUPPLIED AFTER THE DATE OF DECERTIFICATION. **If the amount listed in Column 5 differs from the amount listed in Column 3, provide an explanation in the 'COMMENTS' section as provided.**

- Column 6: Date on which the firm listed in Column 1 completed the work described in Column 2.
- Column 7: Date on which prime contractor made the 'final payment' for the work described in Column 2 to subcontractor/supplier/trucking broker.

- (III) In the 'TOTAL' row, enter the column sums of the dollar amounts listed in Columns 5a through 5d.
- (IV) The authorized contractor representative shall certify the information supplied by signing in the space provided. **Per Port of Oakland provisions, Final Payment WILL NOT be made until this form is properly filled out and submitted to the Port of Oakland.**

COMMENTS:



PORT OF OAKLAND

Final Utilization of Local and Small Business Enterprises

PRIME CONTRACTOR		BUSINESS ADDRESS				CONTRACT BID AMOUNT		DATE OF THIS REPORT	
PORT PROJECT NAME				PORT PROJECT NUMBER	WORK AUTHORIZATION #	TOTAL CONTRACT AMOUNT INCLUDING CHANGE ORDERS		PROJECT COMPLETION DATE	
(1) Name and Address of Small/Local Firm [Prime, Subcontractor, Supplier or Trucking Broker]	(2) Description of Work Performed and or Materials Supplied	(3) Prime and Sub(s) Original Bid Amount	(4) Port Certification Number	CONTRACT PAYMENTS					
				(5a) * LIABE Dollars	(5b) * LBABE Dollars	(5c) * SBE Dollars	(5d) * VSBE Dollars	(6) Date Work Completed	(7) Date of Final Payment
TOTAL				\$	\$	\$	\$		

List all certified local/small prime and subs regardless of tiers through out the life of the project, whether or not firms were listed on the original bid. Xerox this page if additional sheets are needed.

If actual sub dollars were different than the approval amount at time of award, provide comments on back of form. List actual amount paid to each sub at the above chart.

* LIABE (Local Impact Area Business Enterprise), LBABE (Local Business Area Business Enterprise), SBE (Small Business Enterprise), and VSBE (Very Small Business Enterprise).

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE, TRUE AND CORRECT		
AUTHORIZED CONTRACTOR REPRESENTATIVE SIGNATURE and TITLE	BUSINESS PHONE NUMBER	DATE

Distribution:

Original – SRD

Copy To – Engineering Construction / Resident Engineer

Instructions--Final Utilization of Local and Small Business Enterprises

- (I) Enter the project information requested on the first two rows on page 00816-1 (Prime Contractor, Business Address, Contract Bid Amount, etc.)
- (II) Provide the following information **for each portion of the contract work performed by (and for each amount of materials supplied by) a Port-certified small and/or local business**, including the prime contractor if the prime is a Port-certified small/local business:

- Column 1: Name and address of the firm performing work and/or supplying materials.
- Column 2: Description of the work performed and/or materials supplied by said firm.
- Column 3: For subcontractor, supplier or trucker: dollar amount of the bid submitted by the firm to prime bidder, as listed in the Subcontractor and Supplier List Form submitted by prime bidder with its bid. If the subcontractor, supplier or trucker was not listed in the Subcontractor and Supplier List Form, enter "0". For small/local prime bidder: dollar amount of the prime bidder's bid excluding all subcontractor/supplier/trucking broker bid amounts, as listed in the Subcontractor and Supplier List Form.
- Column 4: Port Certification Number of firm. (Port-certified small/local subcontractors, suppliers and truckers should provide their certification number to the Prime Bidder and notify Prime Bidder in writing with the date of the decertification if their status changes during the course of the project.)
- Columns 5a-5d Enter the dollar amount of the work performed and/or materials supplied by the firm in either Column 5a, 5b, 5c or 5d, depending on the firm's certification status. Firm certification status must be certified and determined at the time of bid by Port of Oakland. The certified firm is issued a letter by the Port of Oakland that states their certification status as well as the expiration date of the certification. Firms' certification status may be obtained by accessing the Port of Oakland website (<http://srd.portofoakland.com/>) or by calling (510) 627-1627. Refer to the following table for a description of the certification status:

Certification Status	Description
LIABE (Local Impact Area Business Enterprise)	firm located in Oakland, Alameda, Emeryville, or San Leandro
LBABE (Local Business Area Business Enterprise)	firm located in Alameda County or Contra Costa County
SBE (Small Business Enterprise)	business with 3 year average annual gross revenue not to exceed \$36,000,000
VSBE (Very Small Business Enterprise)	business with 3 year average annual gross revenue not to exceed \$5,000,000

If the firm was decertified before completing its portion of the work of this contract, enter the dollar amount of ALL work performed/ materials supplied by the firm, INCLUDING WORK PERFORMED/MATERIALS SUPPLIED AFTER THE DATE OF DECERTIFICATION. **If the amount listed in Column 5 differs from the amount listed in Column 3, provide an explanation in the 'COMMENTS' section as provided.**

- Column 6: Date on which the firm listed in Column 1 completed the work described in Column 2.
- Column 7: Date on which prime contractor made the 'final payment' for the work described in Column 2 to subcontractor/supplier/trucking broker.

- (III) In the 'TOTAL' row, enter the column sums of the dollar amounts listed in Columns 5a through 5d.
- (IV) The authorized contractor representative shall certify the information supplied by signing in the space provided. **Per Port of Oakland provisions, Final Payment WILL NOT be made until this form is properly filled out and submitted to the Port of Oakland.**

COMMENTS:



PORT OF OAKLAND

**Non-Discrimination and Small Local
Business Utilization Policy Program Affidavit**

**RFP No.: 22-23/07, 457(b) Deferred Compensation Administration and
Recordkeeping Services**

I hereby certify that I _____ (Legal Name of Respondent/Supplier/Consultant/Contractor), shall carry out applicable requirements in the award and administration of this contract and cooperate with the Port of Oakland in meeting its commitments and objectives with regard to ensuring nondiscrimination, and shall use best efforts to ensure that barriers to participation of Small Local Businesses do not exist.

Upon execution of an Agreement, the selected consultant will be required to complete Small and Local attainment reports and a final report at contract completion, and submit them to the Social Responsibility Division.

I declare under penalty of perjury under the laws of the State of California that the information I have provided herein is true and correct.

Signature

Print Name

Title

Date



PORT OF OAKLAND

City of Oakland City Charter § 728 Living Wage Information

EMPLOYERS SUBJECT TO §728 OF THE CITY CHARTER MUST COMPLY WITH THE FOLLOWING REQUIREMENTS:

- 1) Pay all non-exempt employees the living wage rates (As of July 1, 2022, \$18.53 without health benefits or \$16.14 with health benefits). Port Ordinance No. 3666, as amended also requires that covered businesses provide employees at least twelve compensated days off per year, including holidays.
- 2) Pay at least \$2.39 per hour worked toward the provision of health care benefits for employees and/or their dependents, if the employer claims credit for health benefits.
- 3) **Provide written notification to each current and new employee, at time of hire, of his or her rights to receive the benefits under the provisions of these regulations.** The notification shall be provided in English, Spanish and other languages spoken by a significant number of the employees, and shall be posted prominently in communal areas at the work site. A copy of said notification is available from the Port Division of Social Responsibility.
- 4) Provide all employees earning less than \$12/hour notification in English, Spanish, and any other language spoken by a significant number of employees of their right to advance Earned Income Credit payments.
- 5) **Submit name, address, date of hire, occupation classification, rate of pay, benefits paid for each of its employees, and compensated time off in a web accessed monitoring system at <https://www.elationsys.com/app/Registration/> by March 31st, June 30th, September 30th, and December 31st of each year.** If a covered employer has obtained a waiver from the Port Board of Directors, then the employer must still submit an annual payroll report covering each of its employees by December 31st of each year. Failure to provide the list within five days of the due date will result in a penalty of \$500 per day. Covered employers shall maintain payrolls and basic records for all employees and shall preserve them for a period of at least three years after the close of the compliance period.
- 6) Require subcontractors, tenants and subtenants, or licensees who are covered by these requirements to comply with the provisions of these regulations. **Covered employers shall be responsible for including language committing the subcontractor's, tenant's or licensee's agreement to comply, in the contract with the subcontractor.** Covered employers shall submit a copy of such subcontracts or other such agreements to the Port Division of Social Responsibility.
- 7) Permit authorized Port representatives access to work sites and, with employee consent, relevant payroll records for the purpose of monitoring compliance with these regulations, investigating employee complaints of non-compliance and evaluating the operation and effects of these regulations, including the production for inspection and copying of its payroll records for any or all of its employees for the applicable compliance period. Permit a representative of the labor organizations in its industry to have access to its workforce at the Port during non-working time and in non-work areas to ensure compliance.

Employers who fail to submit documents, declarations or information required to demonstrate compliance with these regulations shall be deemed noncompliant or non-responsive and subject to the remedies as set forth in §728.



PORT OF OAKLAND

**Employer Self-Evaluation for
Port of Oakland Living Wage**

COVERED BUSINESS CHECKLIST WRITE YES/NO ANSWER IN APPROPRIATE BOX:

1. ☐ Is the Business entering into a contract, tenancy agreement or subordinate agreement (such as, subcontract, subtenancy, or sublicense) with the Port? *If no, go on to question 2. If yes, go to question 3.*
2. ☐ Has the Business amended an existing contract, tenancy agreement or subordinate agreement at any time since April 2002? *If no to 1 and 2, stop here: the business is not covered. If yes, go to question 3.*
3. ☐ Is the contract with Aviation or Maritime divisions for a value of greater than \$50,000 over the life of the contract (over the next five years if contract is for less than a year and expected to be renewed or extended)? *If no, stop here; the contract is not covered. If yes, go to question 4.*
4. ☐ Is the contract for service other than the delivery of products, equipment or commodities? *If no, stop here: the business is not covered. If yes, go to question 5.*
5. ☐ Does the Business employ more than 20 employees who spend at least 10 hours per week (4 hours per week if part time employees) working under the contract with the Port or on Port property? Indicate the number of employees that are employed by the Contractor _____. *If no, stop here the business is not covered. If yes, go to question 6, exemptions for specified employees of a covered employer.*

All employees of a covered employer are required to be provided compensation and other benefits as provided under §728 of the Charter, except for specified employees exempt under the following exemptions. The following questions should be answered for each employee.

6. ☐ *Does the employee work less than 25% of his/her time (10 hours per week for full time employee) under the contract with the Port? If yes, stop here; the specified employee is exempt. If no, go to question 7.*
7. ☐ *Is the employee under 21 years of age, employed by a government agency or nonprofit for after school or summer employment, or as a trainee for 90 days or less? If yes, stop here; the specified employee is exempt. If no, go to question 8.*
8. ☐ *Has the Business obtained a waiver that covers the employee? If yes, stop here; the specified employee is exempt. If no, go to question 9.*
9. ☐ *Is the employee participating in a bona-fide temporary job-training program in which a significant part of the compensation consists of acquiring specialized knowledge, abilities or skills in a recognized trade? If yes, stop here; the specified employee is exempt. If no, go to question 10.*

10. ☐ *Is the employee a volunteer who is not compensated other than for incidental expenses or stipends? If yes, stop here; the specified employee is exempt. If no, go to question 11.*
11. ☐ *Is the employee working for the Business less than 20 hours per week for a period of 6 months or less? If yes, stop here the specified employee is exempt. If no, go to question 12.*
12. ☐ *Of the remaining employees (employees for which no exemption applies as indicated by your answers to questions 6 through 11), are there 20 or fewer non-exempt employees working for the employer under the Port Contract? If yes, stop here; each of the remaining specified employee(s) is/are exempt. If no, each of the remaining specified employee(s) is covered by §728.*

The undersigned authorized representative of Contractor hereby certifies under penalty of perjury that all of the information on this form is true and accurate.

_____ Company Name	_____ Signature of Authorized Representative
_____ Address	_____ Type or Print Name & Title
_____ Area Code and Phone	_____ Email Address
_____ Name of Primary Contact	_____ Date
_____ Project Name (Be Specific)	

Submit Completed Checklist To:

Kamal Hubbard

Port of Oakland

Social Responsibility Division

530 Water Street

Oakland, CA 94607

Phone: (510) 627-1162 Fax: (510) 451-1656

Email: khubbard@portoakland.com



PORT OF OAKLAND

Certificate of Compliance – Living Wage

The City of Oakland Living Wage Charter §728 ("§728") and Port Ordinance No. 3666 ("Ordinance 3666") as amended, provide that certain employers that enter into a contract, lease, license (or a subcontract, sublease, sublicense, or other agreement) with the Port for \$50,000 or more over the term of the contract and certain recipients of Port financial assistance for \$50,000 or more shall pay a prescribed minimum level of compensation to their covered employees ("Employees").

The undersigned ("Contractor") submits this certificate under penalty of perjury and as a condition of payment of its invoice(s) for service provided under the _____ agreement between the Port and Contractor.

- 1) Contractor hereby certifies that it is in compliance with §728 and Ordinance 3666 with respect to all non-exempt Employees of Contractor engaged in Port-related employment or work on Port property.
- 2) Contractor hereby acknowledges that the Port is relying on Contractor's certification of compliance with §728 and Ordinance 3666 as a condition of payment of Contractor's invoice(s).
- 3) Contractor understands that it may be subject to fines or penalties for noncompliance with §728 and Ordinance 3666 up to and including potential fines of \$500 per day until Contractor complies.
- 4) Contractor hereby certifies that claims, records and statements relating to Contractor's compliance with §728 and Ordinance 3666 are true and accurate, that such claims, records and statements are made with the knowledge that the Port will rely on such claims, records and statements, and that such claims, records and statements are submitted to the Port for the express benefit of Contractor's employees engaged in Port-related employment or work on Port property.

Please check the appropriate box and sign below

- ☐ Contractor hereby certifies its compliance with all of its obligations under §728 and Ordinance 3666;
- ☐ Contractor hereby certifies that all Employees of Contractor working under Contractor's contract with the Port are compensated at wage rate(s) greater than \$12.00 per hour;
- ☐ Contractor hereby certifies that it is not currently covered by §728 or Ordinance 3666. Contractor further certifies that should §728 or Ordinance 3666 become applicable, Contractor will comply with all of its Living Wage obligations.

All terms used herein and not defined shall have the meaning ascribed to such terms in §728 and Ordinance 3666.

The undersigned authorized representative of Contractor hereby certifies under penalty of perjury that all of the information on this form is true and accurate.

Company Name	Signature of Authorized Representative
Address	Type or Print Name & Title
Phone and Email	Date
Project Name (Be Specific)	

Submit to: Kamal Hubbard, Port of Oakland, Social Responsibility Division, 530 Water Street, Oakland, CA 94607. Email: khubbard@portoakland.com



PORT OF OAKLAND

Statement of Living Wage Requirements

**RFP No.: 22-23/07, 457(b) Deferred Compensation Administration and
Recordkeeping Services**

I hereby certify that I _____ (Legal Name of Respondent/Supplier/Consultant/Contractor), has reviewed the Living Wage Requirements, included herein as Attachment 7 to this Request for Proposal and will comply with said Requirements. Upon execution of an Agreement, the selected consultant will be required to complete the Employer Self-Evaluation Form and Certificate of Compliance – Living Wage Form of this Request for Proposal, and submit them to the Social Responsibility Division.

I declare under penalty of perjury under the laws of the State of California that the information I have provided herein is true and correct.

Signature

Print Name

Title

Date



PORT OF OAKLAND

Supplier Insurance Requirements

**RFP No.: 22-23/07, 457(b) Deferred Compensation Administration and
Recordkeeping Services**

All the Port's Insurance requirements are incorporated into the Port's Administrative Services Agreement attached to this Request for Proposal (**Attachment 11**).



PORT OF OAKLAND

Insurance Acknowledgement Statement

**RFP No.: 22-23/07, 457(b) Deferred Compensation Administration and
Recordkeeping Services**

I hereby certify that _____ (Legal Name of Respondent) agrees to meet all of the Port's Insurance requirements included in this in the Administrative Services Agreement attached to this Request for Proposal and Respondent will be able to evidence such insurance when and if awarded the contract and will provide proof of insurance at the time of project award if awarded the contract.

I declare under penalty of perjury under the laws of the State of California that the information I have provided herein is true and correct and is of my own personal knowledge.

Signature

Print Name

Title

Date

ATTACHMENT 11

ADMINISTRATIVE SERVICES AGREEMENT

The undersigned hereby agrees that if selected to provide services to the Plan, the following representations and certifications will be incorporated into the Administrative Services Agreement. Limited drafting changes may be negotiated during any agreement negotiation. (Note – These provisions are not exhaustive and other provisions will be presented in any Administrative Services Agreement executed by the Port):

1. **Privacy:** Contractor agrees to maintain and hold in confidence all Nonpublic Personal Information ("NPI") received in connection with the performance of Services under this Agreement. Contractor shall not use or disclose NPI to any third party, other than to its affiliates and third-party service providers, and to other Plan service providers, without Plan Sponsor's written consent, except as permitted or required by law. Any third-party service provider retained by Contractor who has access to NPI shall agree in writing to be bound by obligations of confidentiality and non-disclosure. Contractor's current Privacy Notice is attached to this Agreement.
2. **Cybersecurity:** Contractor shall implement reasonable administrative, physical and technical safeguards to help protect Plan participant-level information as prescribed by applicable federal, state, and local laws, rules, regulations, directives, and other governmental requirements or regulation related to the privacy, security, and protection of Plan participant-level information, including state breach notification laws, state and federal privacy and cybersecurity laws and other consumer protection laws (e.g. California Civ. Code s. 1798.82(a), Gramm-Leach-Bliley Act and accepted industry practices such as the National Institute of Standards and Technology Cybersecurity Framework (NIST-CSF)). At a minimum, such safeguards for the protection of Plan participant-level information shall include: (i) limiting access of Plan participant-level information to authorized persons; (ii) securing the transmission, storage and disposal of Plan participant-level information; (iii) conducting background checks on authorized employees consistent with applicable law; (iv) establishing a written incident response plan, and (v) providing appropriate privacy and information security training to our authorized employees. If Plan participant-level information is provided by Contractor to one or more unaffiliated third parties for processing and/or storage, we will conduct periodic assessments of such third parties based on the risk they present and the continued adequacy of their cybersecurity practices. Contractor maintains network security and privacy liability coverage for events affecting Adviser, our affiliates and events originating from our third-party vendors.
3. **Business Continuity & Disaster Recover:** Contractor will maintain business continuity and disaster recovery procedures to address the security, integrity and availability of the technology, operational, financial, human and other resources required to provide the Services. Such procedures shall be designed to enable Contractor to continue to perform mission-critical Services in the event of a natural disaster or other interruption of normal business operations. Further, Contractor agrees to review and test such disaster recovery procedures at least once annually. Upon request by the Plan Sponsor, Contractor will provide a written summary of its then-current policies, procedures or programs, including an overview of recent business continuity exercise results.
4. **SSAE 16:** No less frequently than annually, Contractor shall timely provide Plan Sponsor with a copy of the reviews performed by Contractor's external auditors under the "Statement of Standards for Attestation Engagements Number 16 Reporting on Controls at a Service Organization of the American Institute of Certified Public Accountants (SSAE16) SOC 1, SOC 2, or any new or replacement standards or protocols established by the American Institute of Certified Public Accountants.

5. **Indemnification:** Contractor agrees to hold harmless and indemnify Plan Sponsor/Administrator and their officers, directors and employees against any and all expenses, costs, attorney fees, fines, liabilities and damages actually incurred by Plan Sponsor/Administrator in connection with any actual or threatened claim, action, suit, proceeding, settlement or compromise which results from the negligent acts or omissions of Empower, its officers, directors, employees or authorized representatives.
6. **Standard of Care:** Contractor acknowledges and warrants that none of the disqualifications described in Section 411 of ERISA apply to the Contractor; and specifically agrees to perform its duties under this Agreement with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in an enterprise of like character and with like aims.
7. **Disclosure of Direct and Indirect Fees:** Contractor agrees to provide full disclosure of direct and indirect fees, commissions, penalties, and other compensation, including reimbursement for expenses, that may be paid by or on behalf of the organization in connection with the provisions of services to the Port and/or the Plan. Such disclosure shall be updated promptly.
8. **Governing Law:** This Agreement shall be construed and enforced in accordance with and governed by the laws of the state of California, without regard to conflict of law principles, and any claim arising under or related to this Agreement shall be subject to the exclusive jurisdiction of the federal and state courts located in California.
9. **Insurance:** Contractor agrees to provide and maintain all insurance coverages described in this Section 9:

Commercial General Liability Insurance

- **Coverage:** Standard ISO Commercial General Liability form.
- **Limits:** \$5,000,000 per occurrence; \$5,000,000 annual general aggregate; \$5,000,000 products and completed operations aggregate; \$5,000,000 each offense for personal and advertising injury. If necessary, limits can be satisfied by Umbrella and/or Excess Liability follow form policies.
- **Additional Insured:** The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees.
- Cross liability/separation of insureds.
- Waiver of subrogation in favor of additional insured.

Business Automobile Liability Insurance

- **Coverage:** Standard ISO Business Automobile Liability form for all owned, non-owned and hired automobiles.
- **Limits:** \$1,000,000 each accident, except \$5,000,000 for vehicles operating in the South Field, the Aviation Operating Area ("AOA"), or any active airfields of the Oakland International Airport.
- **Additional Insured:** The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees.
- Waiver of subrogation in favor of additional insured.

Workers' Compensation and Employer's Liability Insurance

- **Coverage:** Statutory Workers' Compensation and Side B Employer's Liability form.
- **Limits:** Statutory for workers' compensation and \$1,000,000 per accident, \$1,000,000 bodily injury each employee, and \$1,000,000 policy limit for bodily injury by disease, for Employer's Liability.
- Waiver of subrogation in favor of the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees.

Professional Liability Insurance

- **Coverage:** For errors and omissions arising out of the Services.
- **Limits:** \$10,000,000 per claim and annual aggregate.
- **Additional Term:** At least 2 years after completion and acceptance of the Services.
- If the Services involve software or technology services, Technology or Cyber Liability coverage, including coverage for privacy liability.
- If the Services involve outsourced technology or internet services, Network and Media Liability coverage.
- Waiver of subrogation in favor of the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents, and employees.

Financial Institution Bond

- **Coverage:** For dishonesty, burglary, robbery, forgery, alteration, and similar crime exposure.
- **Limits:** \$10,000,000 per claim and annual aggregate.

Other Insurance Requirements:

- **Notice of Cancellation.** Upon written request, Contractor will offer proof of insurance renewal or extension within thirty (30) days following the expiration date of any of the policies required. If such coverage is canceled or reduced, Contractor shall, within fifteen (15) days of receipt of written notice from Plan Sponsor of such cancellation or reduction in coverage but in no event later than the effective date of cancellation or reduction, file with the Port Risk Management Department a certificate showing that the required insurance has been reinstated or provided through another insurance company or company.
- **Proof of Insurance/Insurer Rating.** Contractor must deliver to the Port Risk Management Department, prior to the commencement of the Services, certificates of insurance evidencing all required insurance and additional insured status for the Port. All required insurance shall be provided by insurance companies with current A.M. Best ratings of A- VII or better. Upon failure to so file such insurance certificate, the Port may without further notice and at its option either (1) exercise the Port's rights; or (2) procure such insurance coverage at Contractor's expense and Contractor shall promptly reimburse

the Port for such expense (Services may be interrupted without proper evidence). In addition to the certificate of insurance, Contractor shall provide copies of the actual insurance policies if requested by the Port.

- Please send certificates and other required insurance information to:

Port of Oakland
Attn: Risk Management Dept.
530 Water Street
Oakland, CA 94607
Email: risktransfer@portoakland.com

- **Deductibles/Self-Insured Retentions:** Contractor shall provide at least the same duty to defend the Port for any deductible/self-insured retention as would be provided by the insurance in absence of such deductible/self-insured retention. This shall not be read to limit Contractor's obligations under other provisions in any way.

Dated: _____

[Signature/Name/Title]



PORT OF OAKLAND

**Port of Oakland
Deferred Compensation Plan**

**RFP No.: 22-23/07, 457(b) Deferred Compensation Administration and
Recordkeeping Services**

**Attachment 12
Port of Oakland Deferred Compensation Plan**

AMENDMENT ONE
DEFERRED COMPENSATION PLAN OF PORT OF OAKLAND

WHEREAS, the Port of Oakland sponsors the Deferred Compensation Plan of Port of Oakland ("Plan"), an eligible governmental deferred compensation plan; and

WHEREAS, Section 11.02 of the Plan's basic plan document allows Port of Oakland to amend the Plan; and

WHEREAS, Port of Oakland wishes to make the following amendments to the Plan's basic plan document, effective as of the 1st day of August, 2013.

NOW, THEREFORE, the Plan is amended as follows:

1. Section 1.06, is hereby amended to add the following additional paragraph:

If no estate executor or administrator is appointed within six months after the Participant's death, then the Participant's beneficiary or beneficiaries shall be those individuals who can verify by affidavit or court order to the satisfaction of the Advisory Committee that they are legally entitled to the benefits hereunder.

2. Section 5.04(c), is hereby removed in its entirety.

3. Section 5.05(a), is hereby amended to replace Section 5.05(a) with the following text:

(a) If the Participant or the Participant's "Primary Beneficiary" has an Unforeseeable Emergency before retirement or other Severance from Employment by Participant, the Participant may elect to receive a lump sum distribution equal to the amount requested or, if less, the maximum amount determined by the Administrator to be permitted to be distributed under this Section 5.05 and Treasury Regulation § 1.457-6(c). For purposes of this section, the "Primary Beneficiary" will be the primary beneficiary named on the participant's most recent beneficiary designation, as determined by the plan administrator. Notwithstanding the foregoing, distribution under this section due to Unforeseeable Emergency of a Participant's Primary Beneficiary will be made only if the Participant's Primary Beneficiary was properly designated pursuant to this Plan as the Participant's Primary Beneficiary at the time the events giving rise to the Unforeseeable Emergency occurred.

Effective this 1st day of August, 2013
EMPLOYER'S AUTHORIZED SIGNOR:

By: 

Its: Eric O'Neil

Date: 8-1-13

ADOPTION AGREEMENT

GREAT-WEST RETIREMENT SERVICES®

SECTION 457(b)

ELIGIBLE DEFERRED COMPENSATION PLAN

FOR GOVERNMENTAL EMPLOYERS

Adopted By: Port of Oakland
Employer

Deferred Compensation Plan of Port of Oakland
Plan Name

GREAT-WEST RETIREMENT SERVICES
SECTION 457(b)
ELIGIBLE DEFERRED COMPENSATION PLAN
FOR GOVERNMENTAL EMPLOYERS

The Employer named below is a governmental "eligible employer" within the meaning of Code § 457(e)(1)(A) and hereby establishes (or, as applicable, amends and restates) a deferred compensation plan for eligible Employees as provided in this Adoption Agreement and the accompanying 2012 Great-West Retirement Services Section 457(b) Eligible Deferred Compensation Plan sample Basic Plan Document.

A. EMPLOYER INFORMATION.

1. EMPLOYER'S NAME AND ADDRESS:

Port of Oakland

530 Water Street

Oakland, CA 94607

2. TELEPHONE NUMBER: (510) 627-1519

3. TAX ID NUMBER: 94-1746312

4. NAME OF PLAN: Deferred Compensation Plan of Port of Oakland

5. NAME OF PLAN ADMINISTRATOR (the Employer unless another person(s) is appointed as set forth in Section 9.02 of the Plan):

Port of Oakland

B. EFFECTIVE DATE. *(Check box 1 OR box 2 and fill in the blank(s).)*

1. ☐ This is a new Plan having an effective date of the date the Employer executes this Adoption Agreement or, if later: _____.

2. ☒ This is an amended and restated Plan.

The effective date of the original Plan was January 5, 1977.

The effective date of the amended and restated Plan is the date the Employer executes this Adoption Agreement.

C. CUSTODY OF ASSETS. *(Check each box that applies.)*

Internal Revenue Code ("Code") § 457(g) shall be satisfied by setting aside Plan assets for the exclusive benefit of Participants and Beneficiaries, as follows:

1. ☐ in a Trust pursuant to the provisions of Article VII of the Plan. The Employer, or certain employees (or holders of certain positions with Employer) as named in this Adoption Agreement shall be the Trustee. *Note: if the Employer is the Trustee, it is the responsibility of the Employer to determine that it has the authority under applicable law to act as Trustee.*
2. ☐ in a Trust pursuant to a separate written trust agreement entered into between the Employer and the bank or trust company named in this Adoption Agreement.
3. ☒ in one or more annuity contracts meeting the requirements of Code § 401(f).
4. ☒ in a custodial account meeting the requirements of Code § 401(f), pursuant to a separate written agreement with the Custodian named in this Adoption Agreement.

D. ELIGIBLE EMPLOYEES. *(Check each box that applies.)*

"Employee" shall mean:

1. ☐ any full-time employee
2. ☐ any permanent part-time employee
3. ☐ any seasonal, temporary or similar part-time employee
4. ☐ any elected or appointed official
5. ☐ any independent contractor
6. ☒ other employees: All individuals who perform service for Employer and who are classified by Employer, in its discretion, as regular or permanent full-time or part-time employees, who work at least 50% of the scheduled work hours, for their job classification for each pay period.

If Box D.4. is not checked, elected or appointed officials will not be treated as Employees and will not be eligible to participate in the Plan, without regard to whether they are treated as common-law employees or independent contractors for other purposes.

The following are the additional requirements or limitations, if any, for one or more of the specified class(es) of employees to be eligible to participate in the Plan:

In the event the classification of an individual who is excluded from the definition of Employee is determined to be erroneous or is retroactively revised, the individual shall nonetheless continue to be

excluded from the definition of Employee and shall be ineligible for benefits for all periods prior to the date Employer determines its classification of the individual is erroneous or should be revised.

E. PARTICIPANT LOANS. *(Check Box 1 OR Box 2.)*

1. ☒ The Administrator MAY direct the Trustee to make Participant loans in accordance with Article IV of the Plan.
2. ☐ The Administrator MAY NOT direct the Trustee to make Participant loans in accordance with Article IV of the Plan.

F. DISTRIBUTION OF SMALL ACCOUNT BALANCES. *(Check Box 1, 2 OR 3.)*

1. ☐ The Administrator SHALL direct the Trustee to distribute account balances of \$1,000 or less meeting the requirements of Section 5.03(b) of the Plan without Participant consent.
2. ☐ The Administrator SHALL direct the Trustee to distribute account balances in excess of \$1,000 but not exceeding \$5,000 meeting the requirements of Section 5.03(b) of the Plan without Participant consent.
3. ☒ The Administrator SHALL NOT direct the Trustee distribute any account balances without Participant consent.

G. IN-SERVICE DE MINIMIS DISTRIBUTIONS. *(Check Box 1, 2, 3 OR 4.)*

1. ☐ The Administrator SHALL direct the Trustee to distribute account balances of \$1,000 or less meeting the requirements of Section 5.04(b) of the Plan without Participant consent.
2. ☐ The Administrator SHALL direct the Trustee to distribute account balances in excess of \$1,000 but not exceeding \$5,000 meeting the requirements of Section 5.04(b) of the Plan without Participant consent.
3. ☒ The Administrator SHALL NOT direct the Trustee to distribute any account balances without Participant consent. Administrator directs the Trustee to distribution any account balances with Participant consent meeting the requirements of Section 5.04(a).
4. ☐ The Administrator SHALL NOT direct the Trustee to distribute any account balances meeting the requirements of Section 5.04(a) or 5.04(b).

H. ROLLOVERS. *(Check each box that applies.)*

1. ☒ Rollovers from eligible Code § 457(b) plans SHALL BE allowed pursuant to Section 6.01 of the Plan.
2. ☒ Rollovers from plans qualified under Code §§ 401(a), 401(k), 403(a) and 403(b) SHALL BE allowed pursuant to Section 6.01 of the Plan.
3. ☒ Rollovers from Individual Retirement Accounts and Annuities described in Code §§ 408(a) and (b) SHALL BE allowed pursuant to Section 6.01 of the Plan.

4. ☒ If Box 1 of Section M is checked, eligible rollovers contributions of designated Roth contributions made from an applicable retirement plan described in §402A(e)(1) SHALL BE allowed.

I. QUALIFIED DOMESTIC RELATIONS ORDERS. *(Check Box 1 OR Box 2.)*

1. ☒ The Plan SHALL accept qualified domestic relations orders as provided in Section 13.02 of the Plan.
2. ☐ The Plan SHALL NOT accept qualified domestic relations orders as provided in Section 13.02 of the Plan.

J. FICA REPLACEMENT ("3121") PLAN.

Check each box that applies if this Plan is a retirement system providing FICA replacement retirement benefits pursuant to regulations under Code § 3121(b)(7)(F).

1. Eligible Employees *(check each box that applies):*
- a. ☐ full-time employees and/or
- b. ☐ part-time employees, and complete the following:
2. Contributions *(check each box that applies and fill in the appropriate blank):*
- a. ☐ The Employer shall make an annual contribution to each Participant's account equal to _____ percent of such Participant's Compensation.
- b. ☐ Each Participant is required to make an annual contribution of _____ percent of Compensation.

(Note: The total percentage of a and b must equal at least 7.5%.)

In the event that this Plan is a retirement system providing FICA replacement retirement benefits as described above, all references in the Plan Document to in-service distributions for De Minimis accounts, age 70 ½ and Unforeseeable Emergency distributions shall be null and void. In addition, Permissive Service Credit Transfers in Section 6.04 may not be made prior to Severance of Employment.

K. NONELECTIVE EMPLOYER CONTRIBUTIONS. *(Note any Employer contribution will reduce, dollar for dollar, the amount a Participant can contribute.)*
(Check Box 1 OR Box 2 AND complete Box 3.)

1. ☐ The Employer will not make any nonelective employer contributions to the Plan.
2. ☒ The Employer will make nonelective employer contributions to the Plan. Such contributions are vested at 100% upon contribution to the plan for the following Eligible Employees: *(Complete Box a, b or c.)*

- a. ☐ all Eligible Employees checked in Section D. above and for the following amount \$ _____.
- b. ☐ only the following class(es) of Eligible Employees and amounts set forth below:
- _____
- _____
- c. ☒ to Eligible Employees selected by the employer in its sole discretion and in such amounts as the Employer may determine at its sole discretion.

3. Employees designated as eligible to receive nonelective employer contributions ☒ are ☐ are not required to complete enrollment forms in order to receive such contributions.

L. AUTOMATIC ENROLLMENT. *(Check Box 1 OR Box 2.)*

1. ☐ Effective for Plan Years beginning on and after _____, this Plan will use an automatic enrollment feature.
2. ☒ This Plan will NOT use automatic enrollment.

M. ROTH CONTRIBUTIONS. *(Check Box 1 OR Box 2.)*

1. ☒ Participant Roth Contributions SHALL BE allowed after January 1, 2013.
(Enter either January 1, 2011, or a date later than January 1, 2011.)
2. ☐ Participant Roth Contributions SHALL NOT BE allowed.

N. PAYMENT OPTIONS. *(Check each box that applies.)*

The following forms of payment will be allowed under the Plan to the extent consistent with the limitations of Code § 401(a)(9) and proposed or final Treasury regulations thereunder.

☒ A single lump-sum payment;

☒ Installment payments for a period of years;

☒ Partial lump-sum payment of a designated amount, with the balance payable in installment payments for a period of years;

☒ Annuity payments (payable on a monthly, quarterly, or annual basis) for the lifetime of the Participant or for the lifetimes of the Participant and Beneficiary;

☒ Such other forms of installment payments as may be approved by the Employer.

☐ A Participant who is an eligible retired public safety officer, as defined under Code § 402(l)(4)(B), may elect to have distributions made directly to an insurer to pay qualified health insurance 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 § 7703B(b).

O. IN-PLAN ROTH ROLLOVERS. *(Check Box 1 OR Box 2.)*

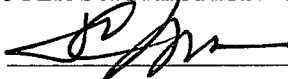
1. ☒ If box 1 of Section M is checked, In-Plan Roth Rollovers SHALL BE allowed in accordance with Section 6.01 after January 1, 2013. (Enter either January 1, 2011, or a date later than January 1, 2011.)
2. ☐ In-Plan Roth Rollover SHALL NOT BE allowed.

This Adoption Agreement to the sample Basic Plan Document attached hereto is duly executed on behalf of the Employer by the undersigned authorized signors.

The Employer further understands and acknowledges that:

- The sample Basic Plan Document including this Adoption Agreement is a sample provided as a courtesy to the Employer and has not been approved by the Internal Revenue Service. Obtaining such approval, if desired by the Employer, is solely the responsibility of the Employer.
- Great-West Retirement Services is not a party to the Plan and shall not be responsible for any tax or legal aspects of the Plan. The Employer assumes responsibility for these matters.
- Employer has counseled to the extent necessary, with its own legal and tax advisors.
- Great-West Retirement Services will send courtesy amendments for changes in applicable law to Employer's adopting this sample Basic Plan Document until a restated sample Basic Plan Document is made available. We will cease providing amendments to prior versions of the sample Basic Plan Document and only those Employers adopting the restated sample Basic Plan Document will receive sample amendments.

EMPLOYER'S AUTHORIZED SIGNORS:

By:  By: _____
Title: JC LYTLE, EXECUTIVE Title: _____
Date: 8-1-13 Date: _____

CUSTODIAN

[Complete this section only if box C.4. was checked.]

Employer has elected to meet the trust requirement of Code § 457(g) by setting Plan assets aside for the exclusive benefit of Participants and Beneficiaries in a custodial account meeting the requirements of Code § 401(f) and satisfying Code § 457(g)(3). The bank or trust company custodian named below shall be the "deemed trustee" of Plan assets held pursuant to the custodial agreement.

Note: for a list of entities qualified to act as a custodian for this purpose, please refer to IRS Announcement 2007-47, or its successor.

- A. Effective January 1, 2002, the following named bank or trust company is hereby appointed as custodian of all or a portion of the assets of the Employer's § 457(b) Deferred Compensation Plan:

Wells Fargo

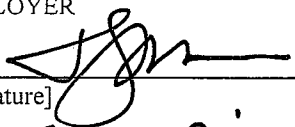
- B. INDIVIDUAL(S) AUTHORIZED TO ISSUE INSTRUCTIONS TO CUSTODIAN/TRUSTEE:

Stacie Chestnut, Human Resources Supervisor

Sara Lee, Chief Financial Officer

This appointment is duly signed on behalf of the Employer and the Custodian.

EMPLOYER

By: 
[Signature]

Exec Dir.
[Title]

8-1-13
[Date]

CUSTODIAN

By: 
[Signature]

Vice President
[Title]

8/14/2013
[Date]

GREAT-WEST RETIREMENT SERVICES®

SECTION 457(b)

ELIGIBLE DEFERRED COMPENSATION PLAN

FOR GOVERNMENTAL EMPLOYERS

BASIC PLAN DOCUMENT

INTRODUCTION TO GREAT-WEST
SECTION 457(b) ELIGIBLE DEFERRED COMPENSATION PLAN
FOR GOVERNMENTAL EMPLOYERS

The attached sample Basic Plan Document may be used together with the related Adoption Agreement by eligible governmental employers and their counsel as a model in preparing a deferred compensation plan document intended to satisfy § 457(b) of the Internal Revenue Code of 1986, as amended. In general, under a § 457(b) plan, which is also referred to as an “eligible deferred compensation plan,” a participant may defer amounts of compensation (and income earned on those deferrals) and avoid federal income taxation until those amounts are paid to the participant.

The following types of governmental entities may establish eligible § 457(b) plans:

1. The 50 states of the United States and the District of Columbia;
2. A political subdivision of a state (for example, a county or municipality); and
3. Any agency or instrumentality of a state or a political subdivision of a state.

This sample Basic Plan Document contains provisions that may be included in an eligible governmental deferred compensation plan. No local, state or federal government has passed on the legal sufficiency (including the conformity with § 457) of this sample Basic Plan Document. It was prepared for your convenience and is not intended to provide you with legal or accounting advice, nor should it be implemented without regard to your particular needs or any applicable laws of your state or local jurisdiction. Neither Great-West Retirement Services, a unit of Great-West Life & Annuity Insurance Company, nor any of its affiliated companies, (collectively referred to herein as “Great-West”) assumes any liability to any person or entity with respect to the adequacy of this document for any purpose, or with respect to any tax, accounting or legal ramifications arising from its use. You and your counsel should review and, where appropriate, modify the provisions to meet your particular needs and applicable local laws. Alterations to the Adoption Agreement are permissible, but any such alteration that requires a Plan amendment must be set forth in a separate amendment attached to the front of the plan document.

Great-West is not a party to any plan which you may adopt, and Great-West has no responsibility, accountability, or liability to you, any employer, any participant or any beneficiary with regard to the operation or adequacy of this sample plan document, any § 457(b) plan prepared from this sample Basic Plan Document or any future amendments made to this sample Basic Plan Document including amendments to satisfy any changes in applicable law. You should consult with your legal counsel prior to adopting any plan document.

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SECTION 457(b) ELIGIBLE DEFERRED COMPENSATION PLAN

INTRODUCTION

In accordance with the provisions of § 457 of the Internal Revenue Code of 1986, as amended, the Employer named in the Adoption Agreement hereby establishes this § 457(b) Eligible Deferred Compensation Plan, hereinafter referred to as the “Plan.” Nothing contained in this Plan shall be deemed to constitute an employment agreement between any Participant and Employer, and nothing contained herein shall be deemed to give a Participant any right to be retained in the employ of Employer.

I. DEFINITIONS

- 1.01 “Account Balance.” The bookkeeping account maintained with respect to each Participant which reflects the value of the deferred Compensation credited to the Participant, including the Participant’s Annual Deferrals, the Participant’s Designated Roth Contributions if allowed by the plan, the earnings or loss of the Fund (net of Fund expenses) allocable to the Participant, any transfers for the Participant’s benefit and any distribution made to the Participant or the Participant’s Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant’s death, then each Beneficiary’s share of the Account Balance shall be treated as a separate account for each Beneficiary. The Account Balance includes any account established under Article VI for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a Beneficiary after a Participant’s death, any account or accounts established for an Alternate Payee (as defined in Code § 414(p)(8)), and any amounts treated as an in-plan Roth direct rollover.
- 1.02 “Administrator.” Administrator means the person, persons or entity appointed by the Employer to administer the Plan as set forth in the Adoption Agreement. Administrator shall not include the recordkeeper or any company which issues policies, contracts or investment media to the Plan in respect of a Participant.
- 1.03 “Adoption Agreement.” Adoption Agreement means the agreement which, together with this sample Basic Plan Document, constitutes the Plan.
- 1.04 “Alternate Payee.” Alternate Payee means the spouse, former spouse, child or other dependent of a Participant who has acquired an interest in the Participant’s account pursuant to a Qualified Domestic Relations Order (QDRO) pursuant to Section 13.02. Alternate Payees shall be treated as Beneficiaries for all purposes under the Plan except that Alternate Payees shall be allowed to request a distribution of all or a portion of their account balance at any time, subject to the terms of the QDRO.
- 1.05 “Annual Deferral.” The amount of Compensation deferred in any taxable year as a pre-tax deferral, Roth contribution, or both, if allowed by the Plan.

- 1.06 “Beneficiary.” The designated person (or, if none, the Participant’s surviving spouse, if any, and then the Participant’s estate) who is entitled to receive benefits under the Plan after the death of a Participant.
- 1.07 “Code.” The sections of the Internal Revenue Code of 1986, as now in effect or as hereafter amended or recodified. References herein to specific section numbers of the Code shall be deemed to include Treasury regulations and Internal Revenue Service guidance thereunder as in effect now, as amended or recodified in corresponding provisions of any future United States internal revenue law.
- 1.08 “Compensation.” All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses and overtime pay, that is includible in the Employee’s gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee’s gross income for the calendar year but for a compensation reduction election under Code §§ 125, 132(f), 401(k), 403(b), or 457(b) (including an election to defer compensation under Article III). To the extent permitted by Treasury regulations or other similar guidance (including, without limitation, the requirements contained in Treasury Regulations §§ 1.457-4(d)(1) and 1.415-2(e)(3)(i)), accrued bona fide sick, vacation or other leave pay so long as the Participant would have been able to use the leave if employment had continued and it is paid within the longer of two and one-half (2 ½) months after the Participant’s severance from employment or the end of the calendar year in which the Participant severs employment with the Employer.

For Plan Years after December 31, 2008, to the extent permitted by the applicable Code provisions and Treasury regulations, Compensation shall include pay received by a Participant from the Employer while performing Qualified Military Service but only to the extent the pay does not exceed the amounts the Participant would have received if the Participant had continued to perform services for the employer rather than entering Qualified Military Service.

- 1.09 “Custodian.” The bank, trust company or other person, if any, selected by the Employer in the Adoption Agreement and who is authorized to hold Plan assets in a custodial account in accordance with regulations issued by the Secretary of the Treasury pursuant to Code § 401(f).
- 1.10 “Employee.” Each natural person (individual) who is employed by the Employer, either as a common law employee or an independent contractor, including elected or appointed individuals, as selected in the Adoption Agreement. Any employee who is included in a unit of employees covered by a collective bargaining agreement that does not specifically provide for participation in the Plan shall be excluded.
- 1.11 “Employer.” The eligible governmental entity sponsoring the Plan as named in the Adoption Agreement.

- 1.12 “Includible Compensation.” An employee’s actual wages in Box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of \$200,000 (or such higher maximum as may apply under Code § 401(a)(17)) and increased (up to the applicable limit contained in Code § 401(a)(17)) by any compensation reduction election under Code §§ 125, 132(f), 401(k), 403(b), or 457(b) (including an election to defer Compensation under Article III).
- 1.13 “Nonelective Employer Contribution.” Nonelective Employer Contribution is a contribution made by an Employer for the Participant with respect to which the Participant does not have the choice to receive the contribution in cash or property. Such term may also include an employer matching contribution.
- 1.14 “Normal Retirement Age.” Normal Retirement Age means age 70½, unless the Participant has elected an alternate Normal Retirement Age and delivered such election to the Administrator prior to beginning Special § 457 Catch-up contributions as described in Section 3.03 of the Plan. Once a Participant has begun making Special § 457 Catch-up contributions, his Normal Retirement Age may not be changed.

For Participants eligible to receive benefits under the Employer’s basic defined benefit pension plan or a money purchase pension plan (herein collectively referred to as “pension plan”), a Participant’s alternate Normal Retirement Age may not be earlier than the earliest date the Participant has the right to retire and receive immediate retirement benefits under such pension plan, without actuarial or similar reduction because of retirement before some later specified age, and the date selected may not be later than age 70 ½.

If the Participant is not eligible to receive benefits under a basic defined benefit pension plan or money purchase pension plan, the Participant’s alternate Normal Retirement Age may not be earlier than age 65 nor later than age 70 ½.

A special rule shall apply to qualified police or firefighters under the Plan, if any. Any qualified police or firefighter, as defined under Code § 415(b)(2)(H)(ii)(I), who is participating in the Plan may choose a Normal Retirement Age that is not earlier than age 40 nor later than age 70 ½.

- 1.15 “Participant.” An individual who is currently deferring Compensation, or who has previously deferred Compensation under the Plan by salary reduction or received a Non-elective Employer Contribution and who has not received a distribution of his or her entire benefit under the Plan. Except for purposes of Articles II, IV, and X, the term “Participant” shall include a former Participant. The Administrator, if he or she is otherwise eligible, may participate in the Plan.
- 1.16 “Participation Agreement.” The agreement entered into and filed by an Employee with the Employer pursuant to Article II, in which the Employee elects to become a Plan Participant.

- 1.17 “Plan.” The Plan named in the Adoption Agreement and consisting of the Adoption Agreement and this Sample Basic Plan Document.
- 1.18 “Plan Year.” The calendar year.
- 1.19 “Qualified Military Service.” Any service in the uniformed service (as defined in Chapter 43 of Title 38 of the United States Code as in effect as of December 12, 1994) by any individual if such individual is entitled to reemployment rights under such Chapter with respect to such service.
- 1.20 “Severance from Employment.” The date the Employee dies, retires, or otherwise has a severance from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the Code). An Employee whose employment is interrupted by Qualified Military Service under Code § 414(u) shall be deemed severed from employment until such time as he or she is reemployed following the term of duty. Effective for Plan Years after December 31, 2008, if a Participant called to Qualified Military Service receives a distribution from the Plan due to severance, the Participant’s deferrals to the Plan shall be suspended for six-months following the date of the distribution. All other Participants shall be deemed to have severed his employment with the Employer for purposes of this Plan when both parties consider the employment relationship to have terminated and neither party anticipates any future employment of the Participant by the Employer.
- In the case of a Participant who is an independent contractor, Severance from Employment shall be deemed to have occurred when the Participant’s contract for services has completely expired and terminated, there is no foreseeable possibility that the Employer shall renew the contract or enter into a new contract for services to be performed by the Participant, and it is not anticipated that the Participant shall become an Employee of the Employer.
- 1.21 “Trust or Custodial Agreement.” The written agreement (or declaration) made by and between the Employer and the Trustee under which the Trust Fund is maintained. Custodial accounts and annuity contracts described in Code § 401(f) may be treated as trusts under the rules described in Treasury Regulation § 1.457-8(a)(3).
- 1.22 “Trust Fund.” The trust fund created under and subject to the Trust Agreement or Custodial Agreement, as selected in the Adoption Agreement.
- 1.23 “Trustee.” The Trustee duly appointed and currently serving under the Trust Agreement if selected in the Adoption Agreement.
- 1.24 “Valuation Date.” Each business day.

II. PARTICIPATION AND CONTRIBUTIONS

- 2.01 Eligibility. Individuals performing services for the Employer, as selected in the Adoption Agreement, shall be eligible to participate in the Plan upon becoming employed by the Employer unless specifically restricted in the Adoption Agreement.
- 2.02 Election Required for Participation. An Employee may elect to become a Participant by executing a Participation Agreement to defer a portion of his or her Compensation (and have that amount contributed as an Annual Deferral on his or her behalf) and filing it in good order with the Administrator. In entering into the Participation Agreement, the Participant elects to participate in this Plan and consents to the deferral by the Employer of the amount specified in the Participation Agreement from the Participant's gross compensation for each payroll period and agrees to be bound by all the terms and conditions of the Plan. Such deferral shall continue in effect until modified, disallowed or revoked in accordance with the terms of this Plan or until the Participant ceases employment with the Employer.

Any prior Employee who was a Participant in the Plan and is rehired by Employer may resume participation in the Plan by entering into a Participation Agreement so long as any distributions being taken from this Plan are terminated prior to the resumption of deferrals under the Plan.

The Employer retains the right to establish minimum deferral amounts per payroll period, and to change such minimums from time to time and to limit the number and/or timing of enrollments into the Plan in the Participation Agreement. No adjustment in future deferrals shall be made if a periodic deferral is missed or is less than the amount elected. The Employer or Administrator shall have the right to modify or disallow the periodic deferral of Compensation elected by the Participant:

- (a) in excess of the limitations stated in Article III;
- (b) in excess of the Participant's net Compensation for any payroll period;
- (c) upon any change in the length of the payroll period utilized by Employer. In such case the periodic deferral shall be adjusted so that approximately the same percentage of pay shall be deferred on an annual basis;
- (d) in order to round periodic deferrals to the nearest whole dollar amount;
- (e) to reduce the future deferrals in the event that the amount actually deferred for any payroll period exceeds, for any reason whatsoever, the amount elected by the Participant. In the alternative, such amount of excess deferral may be refunded to the Participant; or
- (f) if the deferral elected for any payroll period is less than the minimum amount specified by the Employer or Administrator.

The participation election, or such other form as approved by the Administrator, shall include the Employee's designation of investment funds. Any such election shall remain in effect until a new election is filed. A change in the investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees.

The Participant may also designate a Beneficiary(ies) to receive any amounts that may be distributed in the event of death of the Participant prior to the complete distribution of benefits. A Participant may change the designated Beneficiary(ies) at any time by filing such change with the Administrator in a manner approved by the Administrator. A change in the Beneficiary designation shall take effect when the election is accepted by the Administrator. If no such designation is in effect on the Participant's death, the Beneficiary shall be the Participant's surviving spouse, if any, or if none, the Participant's estate.

2.03 Nonelective Employer Contributions. If selected in the Adoption Agreement, the Employer may make nonelective contributions to the Plan in the amounts and to the Employees designated under the Adoption Agreement.

2.04 Commencement of Participation.

(a) Voluntary Enrollment. An Employee shall become a Participant as soon as administratively practicable following the date the Employee files a participation election pursuant to Section 2.02. Such election shall become effective no earlier than the calendar month following the month in which the election is made. A new Employee may defer compensation payable in the calendar month during which the Participant first becomes an Employee if an agreement providing for the deferral is entered into on or before the first day on which the Participant performs services for the Employer.

(b) Automatic Enrollment. Notwithstanding Section 2.01 and Section 2.02, to the extent permitted by applicable law, the Administrator may establish procedures whereby, as a term or condition of employment, each employee is deemed to have elected to participate in the Plan and consents to the deferral by the Employer of a specified amount (or a uniform percentage of Compensation for an Eligible Automatic Contribution Arrangement intended to satisfy Code § 414(w)) for any payroll period for which a Participation Agreement is not in effect. If such procedures are in place, a Participant may elect a different deferral amount per payroll period, including zero, by entering into a Participation Agreement. This last sentence is not applicable to Participants in a Plan that is a retirement system providing FICA replacement retirement benefits pursuant to regulations under Code § 3121(b)(7)(F).

For Eligible Automatic Contribution Arrangements intended to satisfy Code § 414(w), in addition to the above, the Administrator shall provide to each Participant affected by this Section 2.04(b) with an annual notice that satisfies the

requirements contained in Code § 414(w) and any applicable guidance issued thereunder. These requirements include:

- (1) A description of the Participant's rights and obligations under the automatic arrangement that is sufficiently accurate to apprise the Participant of such rights and obligations;
- (2) Satisfying the requirements for notice contained in Treasury Regulation § 1.401(k)-3(d)(2)(ii);
- (3) Describing the level of elective contributions that will be made on the Participant's behalf in the event the Participant does not make an affirmative election;
- (4) Describing the Participant's rights to not have automatic elective contributions made to the Plan on the Participant's behalf;
- (5) Describing how contributions will be invested absent the Participant's affirmative investment election;
- (6) Describing the Participant's right to make a permissive withdrawal of the automatic elective contributions and the applicable rules governing such withdrawals; and
- (7) Providing the notice to Participants within a reasonable period of time prior to each Plan Year (or in the year the Employee first becomes eligible to enroll in the Plan, within a reasonable period of time prior to becoming an Eligible Employee).

For automatic enrollment arrangements not intending to satisfy Code § 414(w), the Employer must satisfy the requirements of IRS Revenue Ruling 2000-33.

- 2.05 Information Provided by the Participant. Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable, in the sole discretion of the Administrator, for the Administrator to administer the plan, including, without limitation, whether the Employee is a participant in any other eligible plan under Code § 457(b).
- 2.06 Contributions Made Promptly. Annual Deferrals by the Participant under the Plan shall be transferred to the Trust Fund within a period that is not longer than is reasonable for the proper administration of the Participant's Account Balance in a manner consistent with the requirements contained in Treasury Regulation § 1.457-8(a)(2)(ii). For this purpose, Annual Deferrals shall be treated as contributed within a period that is not longer than is reasonable for the proper administration if the contribution is made to the Trust Fund within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant.

- 2.07 Amendment of Annual Deferrals Election. Subject to other provisions of the Plan, a Participant may at any time revise his or her participation election, including a change of the amount of his or her Annual Deferrals. Unless the election specifies a later effective date, a change in the amount of the Annual Deferrals shall take effect as of the first day of the next following month or as soon as administratively practicable if later. A revocation of deferrals shall take effect as soon as administratively practicable under the Employer's payroll system. Notwithstanding the above, if a negative election procedure has been implemented pursuant to Section 2.04(b), a Participant may enter into or modify a Participation Agreement at any time to provide for no deferral; provided that Participants in a Plan that is a retirement system providing FICA replacement retirement benefits pursuant to regulations under Code § 3121(b)(7)(F) are not permitted to modify their Participation Agreement to provide for no deferrals or to revoke their Participation Agreement.
- 2.08 Leave of Absence. Unless an election is otherwise revised, if a Participant is absent from work by leave of absence, Annual Deferrals under the Plan shall continue to the extent that Compensation continues.
- 2.09 Disability. A disabled Participant may elect to make Annual Deferrals during any portion of the period of his or her disability to the extent that he or she has actual Compensation (not imputed Compensation and not disability benefits) from which to make contributions to the Plan and has not had a Severance from Employment.
- 2.10 Revocation of Deferrals. In addition to a Participant's ability to change or revoke an election as described in Section 2.07, a Participant's request for a distribution in the event of an Unforeseeable Emergency as defined in Section 5.05(b) shall in addition be treated as a request for revocation of deferrals as of a date determined by the Administrator for the period of time determined under Section 5.05(f). Revocation of deferrals is not a distributable event, however, and the Participant's Account may only be distributed as provided in Article V.
- 2.11 Re-Enrollment. A Participant who revokes the Participation Agreement may again become a Participant at the times and in the manner authorized by the Administrator, by entering into a new Participation Agreement to defer Compensation payable no earlier than the first payroll period after the first day of the month after such new Participation Agreement is entered into by the Participant and accepted by the Administrator.
- 2.12 Designated Roth Contributions.
- (a) Designated Roth Contributions. If authorized by the Employer in the Adoption Agreement, each Participant may make designated Roth Contributions; provided, however, that a Participant shall not make a Roth Contribution to the Plan for any Plan Year to the extent such Roth Contribution would exceed the limitations of Article III.

- (1) General Application. This Subsection will apply to designated Roth Contributions beginning with the effective date specified in the Adoption Agreement but in no event before the first day of the first taxable year beginning on or after January 1, 2011.
 - (i) As of the effective date under (1), the Plan will accept elective deferrals designated as Roth Contributions made on behalf of Participants. A Participant's designated Roth Contributions will be allocated to a separate account maintained for such deferrals as described in (2).
 - (ii) Unless specifically stated otherwise, designated Roth Contributions will be treated as Elective Deferrals for all purposes under the Plan.
- (2) Separate Accounting. Contributions and withdrawals of designated Roth Contributions will be credited and debited to the Roth Contribution Account maintained for each Participant.
 - (i) The Plan will maintain a record of the amount of designated Roth Contributions in each Participant's Roth Contribution Account.
 - (ii) Gains, losses and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Roth Contribution Account and the Participant's other accounts under the Plan.
 - (iii) No contributions other than designated Roth Contributions and properly attributable earnings will be credited to each Participant's Roth Contribution Account.
- (3) Designated Roth Contributions Defined. A Designated Roth Contribution is an elective deferral that is:
 - (i) Designated irrevocably by the Participant at the time of the deferral election as a Roth Contribution that is being made in lieu of all or a portion of the pre-tax deferrals the Participant is otherwise eligible to make under the Plan; and
 - (ii) Treated by the Employer as includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a deferral election

III. LIMITATIONS ON AMOUNTS DEFERRED

- 3.01 Basic Annual Limitation Effective for Calendar Years On and After January 1, 2002. The maximum amount of the Annual Deferral under the Plan for any calendar year shall not exceed the lesser of (i) the Applicable Dollar Amount or (ii) the Participant's Includible Compensation for the calendar year. The Applicable Dollar Amount is the amount established under Code § 457(e)(15) applicable as follows:
- \$11,000 for 2002;
 - \$12,000 for 2003;
 - \$13,000 for 2004;
 - \$14,000 for 2005; and
 - \$15,000 for 2006 and thereafter.

After 2006, the Applicable Dollar Amount is adjusted for cost-of-living under Code § 457(e)(15)(B). The Annual Deferral amount does not include any rollover amounts received by the Plan under Treasury Regulation § 1.457-10(e).

- 3.02 Age 50 Catch-up Annual Deferral Contributions. A Participant who will attain age 50 or older by the end of the calendar year is permitted to elect an additional amount of Annual Deferrals, up to the maximum age 50 catch-up Annual Deferrals for the year. The maximum dollar amount of the age 50 catch-up Annual Deferrals for a year is as follows:
- \$1,000 for 2002;
 - \$2,000 for 2003;
 - \$3,000 for 2004;
 - \$4,000 for 2005;
 - \$5,000 for 2006 and thereafter. After 2006, the \$5,000 amount is adjusted for cost-of-living under Code § 414(v)(2)(C). Age 50 catch-up contributions are subject to the requirements of Code § 414(v).

- 3.03 Special § 457 Catch-up Limitations for Calendar Years Beginning On and After January 1, 2002. If the applicable year is one of a Participant's last three calendar years ending before the year in which the participant attains Normal Retirement Age and the amount determined under this Section exceeds the amount computed under Sections 3.01 and 3.02, then the Annual Deferral limit under this Section shall be the lesser of:

- (a) an amount equal to two times the Section 3.01 applicable dollar limit for such year; or
- (b) the sum of:
 - (1) An amount equal to the aggregate Section 3.01 limit for the current year plus each prior calendar year beginning after December 31, 2001, during which the Participant was an Employee under the Plan, minus the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus

- (2) An amount equal to the aggregate limit referred to in Code § 457(b)(2) for each prior calendar year beginning after December 31, 1978, and before January 1, 2002, during which the Participant was an Employee (determined without regard to Sections 3.02 and 3.03), minus the aggregate contributions to Pre-2002 Coordination Plans for such years.

However, in no event can the deferred amount be more than the Participant's Compensation for such years unless the Employer is making non-elective Employer contributions.

3.04 Coordination of Age 50 Catch-up with Special § 457 Catch-up. The Age 50 Catch-up does not apply for any taxable year for which a higher limitation applies under the Special § 457 Catch-up described in Section 3.03. A Participant who is eligible for the Age 50 Catch-up for a Plan Year and for whom the Plan Year is also one of the Participant's last three taxable years ending before the Participant attains Normal Retirement Age is eligible for the larger of:

- (a) The basic annual limitation described in Section 3.01 and the Age 50 Catch-up described in Section 3.02, or
- (b) The Special § 457 Catch-up described in Section 3.03.

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

- (a) Participant Covered By More Than One Eligible Plan. If the Participant is or has been a participant in one or more other eligible plans within the meaning of Code § 457(b), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Article III. For this purpose, the Administrator shall take into account any other such eligible plan maintained by the Employer and shall also take into account any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.
- (b) Pre-Participation Years. In applying Section 3.03, a year shall be taken into account only if the Participant was eligible to participate in the Plan during all or a portion of the year and Compensation deferred, if any, under the Plan during the year was subject to the Basic Annual Limitation described in Section 3.01 or any other plan ceiling required by Code § 457(b).
- (c) Pre-2002 Coordination Years. For purposes of Section 3.03(b)(2), "contributions to Pre-2002 Coordination Plans" means any employer contribution, salary reduction or elective contribution under any other eligible Code § 457(b) plan, or a salary reduction or elective contribution under any Code § 401(k) qualified cash or deferred arrangement, Code § 402(h)(1)(B) simplified employee pension (SARSEP), Code § 403(b) annuity contract, and Code § 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a

contribution to an organization described in Code § 501(c)(18), including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 3.03(b)(2) to the extent that the total of such contributions does not exceed the aggregate limit referred to in Code § 457(b)(2) for that year.

- (d) Disregard Excess Deferral. For purposes of Sections 3.01, 3.02 and 3.03, an individual is treated as not having deferred Compensation under a plan for a prior taxable year to the extent Excess Deferrals under the plan are distributed, as described in Section 3.06. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an Excess Deferral for those prior years.

3.06 Correction of Excess Deferrals. If the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under Code § 457(b) for which the Participant provides information that is accepted by the Administrator, then the Annual Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto in accordance with applicable guidance), shall be distributed to the Participant.

3.07 Protection of Persons Who Serve in a Uniformed Service. An Employee whose employment is interrupted by qualified military service under Code § 414(u) may elect to make additional Annual Deferrals upon resumption of employment with the Employer equal to the maximum Annual Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made for the Employee 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).

IV. LOANS

If so specified in the Adoption Agreement, a Participant who is an Employee may apply for and receive a loan from his or her Account Balance as provided in this Article IV or pursuant to a loan policy executed by the Plan Administrator. Any such loan may not be for an amount less than the minimum amount specified by the Administrator. If not specified by the Administrator, the minimum loan amount shall be \$1,000.

Except as modified by the loan policy adopted by the Plan Administrator from time to time, the following rules shall apply to loans under the Plan. Any loans that are issued under the Plan shall be administered in a manner consistent with the requirements

contained in Code § 72(p), Treasury Regulation § 1.72(p)-1 and any other applicable guidance issued thereunder.

4.01 Maximum Loan Amount. No loan to a Participant hereunder may exceed the lesser of:

- (a) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Administrator (not taking into account any payments made during such one-year period), or
- (b) one-half of the value of the Participant's vested Account Balance.

For purposes of this Section 4.02, any loan from any other plan maintained by the Employer shall be treated as if it were a loan made from this Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan under this Section 4.02 to exceed the amount that would otherwise be permitted in the absence of this paragraph.

4.02 Loan Provisions. The terms of the loan shall:

- (a) require level amortization with payments not less frequently than quarterly throughout the repayment period, except that alternative arrangements for repayment may apply in the event that the borrower is on a bona fide unpaid leave of absence for a period not to exceed one year for leaves other than a qualified military leave within the meaning of Code § 414(u) or for the duration of an interruption of employment which is due to qualified military service;
- (b) require that the loan be repaid within five years unless the Participant certifies in writing to the Administrator that the loan is to be used to acquire any dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as a principal residence of the Participant; and
- (c) provide for a reasonable rate of interest to be fixed by the Administrator from time to time. The Administrator shall not discriminate among Participants in the matter of interest rates, but loans granted at different times may bear different interest rates based upon prevailing rates at the time.

A loan to a Participant shall be considered a directed investment option for such Participant's account balance.

4.03 Security for Loan; Default.

- (a) Security. Any loan to a Participant under the Plan shall be secured by the pledge of the portion of the Participant's interest in the Plan invested in such loan.

- (b) Default. In the event that a Participant fails to make a loan payment under this Article IV by the end of the calendar quarter following the calendar quarter in which such payment was due, a default on the loan shall occur. In the event of such default;
- (1) all remaining payments on the loan shall be immediately due and payable;
 - (2) interest will continue to accrue on the unpaid balance until the loan is repaid in full; and
 - (3) the Participant shall be permanently ineligible for any future loans from the Plan unless, in the Administrator's sole discretion, the Participant is deemed to be credit worthy and agrees to repay the loan through payroll deduction.

In the case of any default on a loan to a Participant, the Administrator shall apply the portion of the Participant's interest in the Plan held as security for the loan in satisfaction of the loan on the date of Severance from Employment. In addition, the Administrator shall take any legal action it shall consider necessary or appropriate to enforce collection of the unpaid loan, with the costs of any legal proceeding or collection to be charged to the Account Balance of the Participant.

Notwithstanding anything elsewhere in the Plan to the contrary, in the event a loan is outstanding hereunder on the date of a Participant's death, his or her estate shall be his or her Beneficiary as to the portion of his or her interest in the Plan invested in such loan (with the Beneficiary or Beneficiaries as to the remainder of his or her interest in the Plan to be determined in accordance with otherwise applicable provisions of the Plan).

- 4.04 Repayment. The Participant shall be required, as a condition to receiving a loan, to enter into an irrevocable agreement authorizing Employer to make payroll deductions from his or her Compensation so long as the Participant is an Employee and to transfer such payroll deduction amounts to the Trustee in payment of such loan plus interest. Repayments of a loan shall be made by payroll deduction of equal amounts (comprised of both principal and interest) from each paycheck, with the first such deduction to be made as soon as practicable after the loan funds are disbursed; provided, however, a Participant may prepay the entire outstanding balance of his loan at any time; and provided, further, that if any payroll deductions cannot be made in full because a Participant is on an unpaid leave of absence or is no longer employed by the Employer or the Participant's paycheck is insufficient for any other reason, the Participant shall pay directly to the Plan the full amount that would have been deducted from the Participant's paycheck, with such payment to be made by the last business day of the calendar month in which the amount would have been deducted. Loan repayments are, at the Employer's election, suspended for Qualified Military Service as permitted by Code § 414(u)(4).

V. BENEFIT DISTRIBUTIONS

5.01 Distributions from the Trust. The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Trustee, or by any custodian or other person so authorized by the Employer to make such distribution. Neither the Administrator, the Trustee, the Custodian nor any other person shall be liable with respect to any distribution from the Trust made at the direction of the Employer or a person authorized by the Employer to give disbursement direction.

5.02 Conditions for Distributions.

(a) § 457(b) Deferred Compensation. Payments from a Participant's § 457(b) Deferred Compensation account shall not be made to the Participant or Beneficiary earlier than:

- (1) the Participant's Severance from Employment or death pursuant to Sections 5.03 and 5.06;
- (2) the Participant's account meets all of the requirements for an in-service de minimis distribution pursuant to Section 5.04(a) and/or (b);
- (3) the Participant incurs an approved Unforeseeable Emergency pursuant to Section 5.05;
- (4) the Participant at anytime elects to receive a distribution of all or any portion of the amount of rollover contributions held in the separate rollover account(s) pursuant to Section 5.04(c);
- (5) the calendar year in which an in-service Participant attains age 70 ½ pursuant to Section 5.04(d); or
- (6) Plan termination under Section 11.01.

(b) Latest Distribution Date. To comply with Code § 401(a)(9) and the Treasury regulations issued thereunder, in no event, shall any distribution to a Participant under this Article V begin later than the April 1 of the year following the calendar year in which the participant attains age 70 ½ or April 1 of the year following the year in which the Participant retires or otherwise has a Severance from Employment, whichever is later. If the Participant delays the distribution due in the calendar year he turns age 70 ½ or severs employment, as applicable, to the following calendar year, a second required minimum distribution must be taken by the end of that calendar year. Such distributions must be made in accordance with Section 5.06.

5.03 Severance from Employment for Any Reason, Including Retirement.

- (a) Subject to Section 5.03(b), distributions to a Participant shall commence following Severance from Employment, on the regular distribution commencement date (as the Employer or Administrator may establish from time-to-time) elected by the Participant, in a form and manner determined pursuant to Sections 5.07, 5.08 and 5.09. If the Participant does not elect otherwise, the distribution shall be paid commencing on the Participant's Required Beginning Date under a payment method meeting the requirements of Code § 401(a)(9) and the regulations thereunder.
- (b) If, in the Adoption Agreement, the Plan elected mandatory distributions of Account Balances of \$1,000 or less and if 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 Administrator will pay the distribution in a lump sum to the Participant at the Participant's last known mailing address.

If, in the Adoption Agreement, the Plan elected mandatory distributions of amounts greater than \$1,000 but not greater than \$5,000, and if 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 Administrator will pay the distribution amount in a direct rollover to an individual retirement plan designated by the plan administrator.

5.04 In-Service Distributions.

- (a) Voluntary In-Service Distribution of De Minimis Accounts. A Participant who is an active Employee may elect to receive a distribution of the total amount payable to the Participant under the Plan if the following requirements are met:
 - (1) the portion of the total amount payable to the Participant under the Plan does not exceed an amount specified from time to time by the Administrator (not in excess of \$5,000 or other applicable limit under the Code);
 - (2) the Participant has not previously received an in-service distribution of the total amount payable to the Participant under the Plan; and
 - (3) no amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the in-service distribution.
- (b) Involuntary In-Service Distribution of De Minimis Accounts. If so elected in the Adoption Agreement, the Administrator shall distribute the total amount payable

under the Plan to a Participant who is an active Employee if the following requirements are met:

- (1) the Participant has not previously received an in-service distribution of the total amount payable to the Participant under the Plan;
- (2) no amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the in-service distribution; and
- (3) the total amount payable to the Participant under the Plan, does not exceed the amount selected in the Adoption Agreement.

If, in the Adoption Agreement, the Plan elected mandatory distributions of \$1,000 or less, and if 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 Administrator will pay the distribution in a lump sum to the Participant at the Participant's last known mailing address.

If, in the Adoption Agreement, the Plan elected mandatory distributions greater than \$1,000 but not greater than \$5,000, and if 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 Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the plan administrator.

- (c) Rollovers. If a Participant has a separate account attributable to rollover contributions to the Plan, the Participant may, at any time, elect to receive a distribution of all or any portion of the amount held in the rollover account(s).
- (d) Calendar Year Participant Attains Age 70 ½. The Participant may request an in-service distribution in the calendar year the Participant will/has attained age 70 ½ or older,
- (e) FICA Replacement Plan Exception. As indicated in the Adoption Agreement, Participants in a Plan intended to qualify as a retirement system providing FICA replacement retirement benefits pursuant to regulations under Code § 3121(b)(7)(F) are not eligible for In-Service De Minimis or in-service age 70 ½ distributions prior to severance.

5.05 Unforeseeable Emergency Distributions.

- (a) Distribution. If the Participant or Beneficiary has an Unforeseeable Emergency before retirement or other Severance from Employment by Participant, the Participant may elect to receive a lump sum distribution equal to the amount requested or, if less, the maximum amount determined by the Administrator to be

permitted to be distributed under this Section 5.05 and Treasury Regulation § 1.457-6(c).

- (b) Unforeseeable Emergency Defined. Pursuant to Treasury Regulation § 1.457-6(c)(2), An unforeseeable emergency must be defined in the plan as a severe financial hardship of the participant or beneficiary resulting from an illness or accident of the participant or beneficiary, the participant's or beneficiary's spouse, or the participant's or beneficiary's dependent (as defined in section 152, and, for taxable years beginning on or after January 1, 2005, without regard to section 152(b)(1), (b)(2), and (d)(1)(B)); loss of the participant's or beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, such as damage that is the result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or the beneficiary. For example, the imminent foreclosure of or eviction from the participant's or beneficiary's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Finally, the need to pay for the funeral expenses of a spouse or a dependent (as defined in section 152, and, for taxable years beginning on or after January 1, 2005, without regard to section 152(b)(1), (b)(2), and (d)(1)(B)) of a participant or beneficiary may also constitute an unforeseeable emergency. Except as otherwise specifically provided in this paragraph (c)(2)(i) of Treasury Regulation § 1.457-6, the purchase of a home and the payment of college tuition are not unforeseeable emergencies under paragraph (c)(2)(i) of Treasury Regulation § 1.457-6.
- (c) Unforeseeable Emergency Distribution Standard. A distribution on account of Unforeseeable Emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship or by cessation of deferrals under the Plan.
- (d) Distribution Necessary to Satisfy Emergency Need. Distributions because of an Unforeseeable Emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution).
- (e) The Administrator shall have the right to request and review all pertinent information necessary to assure that Unforeseeable Emergency withdrawal requests are consistent with the provisions of Code § 457.
- (f) The Employer or Administrator may suspend the Participant's salary deferral election during the pendency of the Participant's request for an Unforeseeable

Emergency distribution. Payment of an Unforeseeable Emergency distribution shall result in mandatory suspension of deferrals for a minimum of six months from the date of payment (or such other period as mandated in applicable Treasury regulations).

- (g) As indicated in the Adoption Agreement, Participants in a Plan that is a retirement system providing FICA replacement retirement benefits pursuant to regulations under Code § 3121(b)(7)(F) are not eligible for Unforeseeable Emergency distributions.

5.06 Death Benefit Distributions. Upon receipt of satisfactory proof of the Participant's death, the Participant's remaining Account Balance shall be paid under a method satisfying the required minimum distribution rules of Code § 401(a)(9) and the Treasury regulations thereunder. In the case of a Participant who dies while performing Qualified Military Service under Code § 414(u), the Beneficiaries of the Participant shall, to the extent required by Code § 401(a)(37), be entitled to any additional benefits (other than benefit accruals relating to the period of Qualified Military Service) that would be provided under the Plan had the Participant resumed and then terminated employment on account of death.

- (a) Death of Participant Before Participant's Required Beginning Date. If the Participant dies before the required beginning date, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

- (1) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then, except as provided in Section 5.06(e) and unless the surviving spouse elects the five-year rule, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.

A Beneficiary is deemed to elect the five-year rule if distributions do not begin by the required beginning date provided in this Section.

- (2) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then, unless the Beneficiary elects the five-year rule, distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

A Beneficiary is deemed to elect the five-year rule if distributions do not begin by the required beginning date provided in this Section.

- (3) 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.
- (4) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 5.06(a), other than Section 5.06(a)(1), will apply as if the surviving spouse were the Participant.

For purposes of this Section 5.06(a) and Section 5.06(e) unless Section 5.06(a)(4) applies, distributions are considered to begin on the Participant's required beginning date. If Section 5.06(a)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 5.06(a)(1). 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 5.06(a)(1)), the date distributions are considered to begin is the date distributions actually commence.

- (b) 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 Section 5.06. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code § 401(a)(9) and the Treasury regulations.
- (c) Amount of Required Minimum Distribution for Each Distribution Calendar Year During the Participant's Lifetime. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
 - (1) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation § 1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
 - (2) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Treasury Regulation § 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.

- (d) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under Sections 5.06(c) and (d) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.
- (e) Amount of Required Minimum Distribution Where Death Occurs On or After Participant's Required Beginning Date.
 - (1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the Participant's required beginning date 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) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
 - (ii) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
 - (iii) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
 - (2) 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 following the calendar year of the Participant's death, 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

Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

- (f) Amount of Required Minimum Distribution Where Death Occurs Before Participant's Required Beginning Date.
- (1) Participant Survived by Designated Beneficiary. If the Participant dies before the required beginning date and there is a designated Beneficiary, 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 remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 5.06(e).
 - (2) No Designated Beneficiary. If the Participant dies before the required beginning date and there is no designated Beneficiary as of September 30 of the calendar year following the calendar 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.
 - (3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the required beginning date, 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 5.06(a)(1), this Section 5.06(f)(3) will apply as if the surviving spouse were the Participant.
- (g) Designated Beneficiary. The individual who is designated as the Beneficiary under the Plan and is the designated Beneficiary under Code § 401(a)(9) and Treasury Regulation § 1.401(a)(9)-1, Q&A-4.
- (h) 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 distributions are required to begin under Section 5.06(a). 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.

- (i) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Treasury Regulation § 1.401(a)(9)-9.
- (j) 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 amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- (k) Required Beginning Date. The date specified under Code § 401(a)(9) when distributions are required to begin, which, for a Participant, is April 1 following the year the Participant attains age 70 ½ or retires and severs service with the Employer, whichever is later.

5.07 Payment Options. A payee's election of a payment option must be made prior to the date that the payment of benefits is to commence or such earlier date as may be permitted by the Plan. If a timely election of a payment option is not made, benefits shall be paid in accordance with Section 5.08. Subject to applicable law and the other provisions of this Plan, distributions may be made in accordance with one of the following payment options if selected in the Adoption Agreement.

- (a) A single lump-sum payment of the entire Account Balance;
- (b) Installment payments for a period of years (payable on a monthly, quarterly, semi-annual, or annual basis) which extends no longer than the life expectancy of the payee as permitted under Code § 401(a)(9) using the Tables in Treasury Regulation § 1.401(a)(9)-9. The Account Balance for this calculation (other than the final installment payment) is the Account Balance as of the end of the year prior to the year for which the distribution is being calculated;
- (c) Partial lump-sum payment of a designated amount, with the balance payable in installment payments for a period of years, as described in subsection (b);
- (d) Annuity payments (payable on a monthly, quarterly or annual basis) for the lifetime of the payee or for the lifetimes of the payee and Beneficiary in compliance with Code § 401(a)(9);
- (e) Such other forms of installment payments as may be approved by the Employer consistent with the requirements of Code § 401(a)(9); or
- (f) A Participant who is an eligible retired public safety officer, as defined under Code § 402(l)(4)(B), may elect to have distributions made directly to an insurer to

pay qualified health insurance premiums for coverage for the eligible retired public safety officer, his/her spouse and dependents, by an accident of health insurance plan or qualified long-term care insurance contract as defined in Code § 7703B(b). Any elections and distributions under this Section 5.07(f) shall be made in a manner consistent with the requirements and limits contained in Code § 402(l) and any applicable guidance issued thereunder.

5.08 Default Distribution Option. In the absence of an effective election by the Participant as to the commencement and/or form of benefits, distributions shall be made in accordance with the applicable requirements of Code §§ 401(a)(9) and 457(d), and final Treasury regulations thereunder. In the absence of an effective election by the Beneficiary or Alternate Payee as to the commencement and/or form of benefits, distribution shall be made in a lump sum.

5.09 Limitations on Distribution Options. Notwithstanding any other provision of this Article V, Plan distributions shall satisfy the requirements of this Section 5.09.

- (a) No distribution option may be selected by a payee under this Article V unless it satisfies the applicable requirements of Code §§ 401(a)(9) and 457(d), and final Treasury regulations thereunder.
- (b) The terms of this Article V shall be construed in accordance with all applicable Code sections.

5.10 Eligible Rollover Distributions.

- (a) General. Notwithstanding any provision of the Plan to the contrary that would otherwise limit an election under this Section, a Participant, the surviving spouse of a Participant (or a Participant's former spouse who is the Alternate Payee under a qualified domestic relations order as defined in Code § 414(p)) (herein collectively called "distributee") may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan in a direct rollover or an in-plan Roth direct rollover. A non-spousal Beneficiary may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid in a direct rollover to an inherited IRA referred to in Code § 402(c)(11).
- (b) Definitions. For purposes of this Section, the following definitions shall apply.

- (1) Eligible Rollover Distribution. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee or the non-spousal Beneficiary, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of 10 years or more; any distribution

to the extent such distribution is required under Code § 401(a)(9); any deemed distribution under the provisions of Code § 72(p); the portion of any distribution that is not includable in gross income; any distribution of excess deferrals; and any distribution on account of an Unforeseeable Emergency.

- (2) Eligible Retirement Plan. An eligible retirement plan is any plan described in Code § 402(c)(8). An eligible retirement plan is described as an individual retirement account described in Code § 408(a), an individual retirement annuity described in Code § 408(b), a Roth IRA* described in Code § 408A, an annuity plan described in Code § 403(a), a qualified trust described in Code § 401(a) (including § 401(k)), a tax-sheltered annuity described in Code § 403(b) or another eligible deferred compensation plan described in Code § 457(b) that accepts the distributee's eligible rollover distribution. *Effective for distributions made on/after January 1, 2008, an eligible retirement plan includes a Roth IRA described in Code § 408A.
- (3) Distributee. A distributee includes an Employee or former Employee, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the Alternate Payee under a qualified domestic relations order, as defined in Code § 414(p), are distributees with regard to the interest of the spouse or former spouse.
- (4) Direct Rollover. A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee or to the inherited IRA specified by the non-spousal Beneficiary.

- 5.11 Elections. Elections under this Section shall be made in such form and manner as the Administrator may specify from time to time. To the extent permitted by and in accordance with the Code, any irrevocable elections as to the form or timing of distributions executed prior to January 1, 2002, are hereby revoked.
- 5.12 Practices and Procedures. The Employer or Plan Administrator may adopt practices and procedures applicable to existing and new distribution elections.
- 5.13 Taxation of Distributions. To the extent required by law, income and other taxes shall be withheld from each benefit payment and payments shall be reported to the appropriate governmental agency or agencies.
- 5.14 Required Minimum Distribution Waiver of 2009. Notwithstanding any other provisions of Article V. of the Plan, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Code ("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'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. If the Participant or Beneficiary has not elected to receive a 2009 RMD or Extended 2009 RMD then the Participant or Beneficiary will not receive a 2009 or Extended 2009 RMD unless the Participant elects to receive the distribution(s).

VI. ROLLOVERS AND TRANSFERS

6.01 Eligible Rollover Contributions to the Plan.

- (a) If so specified in the Adoption Agreement, and only to the extent so specified, a Participant who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. The Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code § 402 and to confirm that such plan is an eligible retirement plan within the meaning of Code § 402(c)(8)(B).
- (b) In-Plan Roth Rollover. If so specified in the Adoption Agreement, and only to the extent so specified, a Participant, the surviving spouse of a Participant (or a Participant's former spouse who is the Alternate Payee under a qualified domestic relations order as defined in Code § 414(p)) (herein collectively called "distributee") may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid to the Plan in an in-plan Roth rollover to the distributee's Designated Roth Contribution Account. A loan transferred in an in-plan Roth direct rollover without changing the repayment schedule is not treated as a new loan for purposes of Code § 72(p). The amount rolled over in an in-plan Roth direct rollover continues to be taken into consideration for mandatory distributions.
- (c) For purposes of Section 6.01(a), an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, as defined in Section 5.10(b)(2), except that an eligible rollover distribution does not include:
 - (1) any installment payment for a period of 10 years or more,
 - (2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee,
 - (3) any deemed distribution under the provisions of Code § 72(p),
 - (4) the portion of any distribution that is not includable in gross income,

- (5) any distribution of excess deferrals or
 - (6) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Code § 401(a)(9).
- (c) Notwithstanding any other provisions of Section 6.01 of the Plan, and solely for purposes of applying the rollover provisions of the Plan, 2009 RMDs and Extended 2009 RMDs, will be treated as eligible rollover distributions.
- (d) The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under Code § 457(b). The Plan shall establish and maintain a separate account for any Roth Contributions paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under Code § 457(b). In addition, the Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible governmental plan under Code § 457(b). The Plan shall establish and maintain a separate account for any Roth Contributions paid to the Plan from any eligible retirement plan that is an eligible governmental plan under Code § 457(b).
- (e) Notwithstanding the above, unless otherwise provided by the Employer in the Adoption Agreement, the Plan will accept a rollover contribution from another Roth Contribution Account under an applicable retirement plan described in Code § 402A(e)(1) and only to the extent the rollover is permitted under the rules of Code § 402(c) and § 1.402A-2 of the Treasury regulations. The Plan Administrator or other responsible party must provide the Plan with a statement indicating the first year of the five-taxable-year period and the portion of the rollover distribution that is attributable to investment in the contract under Code § 72 or a statement that the distribution is a qualified distribution.

6.02 Plan-to-Plan Transfers to the Plan. At the direction of the Employer, the Administrator may permit a class of Participants who are participants in another eligible governmental plan under Code § 457(b) to transfer assets to the Plan as provided in this Section 6.02. Such a transfer is permitted only if the other plan provides for the direct transfer of each Participant's interest therein to the Plan. The Administrator may require in its sole discretion that the transfer be in cash or other property acceptable to the Administrator. The Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Code § 457(e)(10) and Treasury Regulation § 1.457-10(b) and to confirm that the other plan is an eligible governmental plan as defined in Treasury Regulation § 1.457-2(f). The amount so transferred shall be credited to the Participant's Account Balance and shall be held, accounted for, administered and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan, except that the transferred amount shall not be considered an Annual Deferral under the Plan in determining the maximum deferral under Article III.

6.03 Plan-to-Plan Transfers from the Plan.

- (a) At the direction of the Employer, the Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account Balance transferred to another eligible governmental plan within the meaning of Code § 457(b) and Treasury Regulation § 1.457-2(f). An in-service transfer is permitted under this Section only if the Participant is transferring to another eligible governmental plan maintained by Employer. In all other circumstances, a transfer is permitted under this Section 6.03(a) for a Participant only if the Participant has had a Severance from Employment with the Employer and is an Employee of the entity that maintains the other eligible governmental plan. Further, a transfer is permitted under this Section 6.03(a) only if the other eligible governmental plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.
- (b) Upon the transfer of assets under this Section 6.03, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 6.03 (for example, to confirm that the receiving plan is an eligible governmental plan under paragraph (a) of this Section 6.03 and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Treasury Regulation § 1.457-10(b).

6.04 Permissive Service Credit Transfers.

- (a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code § 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan. A transfer under this Section 6.04(a) may be made before the Participant has had a Severance from Employment.
- (b) A transfer may be made under Section 6.04(a) if the transfer is either for the purchase of permissive service credit (as defined in Code § 415(n)(3)(A)) under the receiving defined benefit governmental plan or a repayment to which Code § 415 does not apply by reason of Code § 415(k)(3) or as otherwise allowed by the Internal Revenue Service.
- (c) As indicated in the Adoption Agreement, Participants in a Plan that is a retirement system providing FICA replacement retirement benefits pursuant to regulations

under Code §3121(b)(7)(F) are not eligible for permissive service credit transfers prior to a Severance of Employment.

VII. CREATION OF TRUST AND TRUST FUND

- 7.01 Trust Fund. All amounts of Annual Deferrals, all property and rights purchased with such amounts and all income attributable to such amounts, property or rights shall be held and invested in the Trust Fund in accordance with this Plan and the Trust Agreement. The Trust Fund, and any sub trust established under the Plan, shall be established pursuant to a written agreement that constitutes a valid trust under applicable state law. The Trustee shall ensure that all investments, amounts, property and rights held under the Trust Fund are held for the exclusive benefit of Participants and their Beneficiaries. The Trust Fund shall be held in trust pursuant to the Trust Agreement for the exclusive benefit of Participants and their Beneficiaries and defraying reasonable expenses of the Plan and of the Trust Fund. It shall be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Trust Fund to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

The trust requirement of Code § 457(g) may be satisfied by a trust agreement, a custodial agreement or the annuity contract, if any. The trust requirement shall be satisfied in the manner specified in the Adoption Agreement. If so elected in the Adoption Agreement, the Employer or certain Employees of (or holders of certain positions with) the Employer shall be named as Trustee in the Adoption Agreement and Plan assets shall be set aside in trust pursuant to this Article VII.

If the Employer does not elect to self-trustee the Plan, the Employer must elect one of the following options in the Adoption Agreement:

- (a) Plan assets will be set aside in trust pursuant to a separate written trust agreement entered into between the Employer and the bank or trust company named as Trustee named in the Adoption Agreement. The Employer shall enter into a separate written trust agreement with the Trustee.
- (b) Plan assets shall be set aside in one or more annuity contracts issued by an insurance company qualified to do business in the state where the contract is issued. The owner of the annuity contract is the “deemed trustee” of the assets invested under the contract for purposes of Code § 457(g).
- (c) Plan assets shall be set aside in one or more custodial accounts described in Code § 401(f) with the bank or trust company named in the Adoption Agreement as Custodian and “deemed trustee” for purposes of Code § 457(g). The Employer shall enter into a separate written custodial agreement with the Custodian.

7.02 Establishment of Trust. The Employer or named Employees of Employer (or certain holders of positions with the Employer) named in the Adoption Agreement shall serve as Trustee of a Trust hereby created to hold all of the assets of the Plan for the exclusive benefit of Participants and Beneficiaries. The Trust shall consist of all contributions made under the Plan and the investment earnings thereon. All contributions and the earnings thereon less payments made under the terms of the Plan, including fees and expenses, shall constitute the Trust. Except to the extent that the Employer enters into a separate written trust agreement with a bank or trust company Trustee, the assets in Trust shall be administered as provided in this sample Basic Plan Document.

7.03 Appointment and Termination of Trustee. A Trustee may be named by the Employer and may be a Participant. The Trustee shall remain in office at the will of the Employer and may be removed from office at any time by the Employer, with or without cause. Such removal shall be effective upon delivery of written notice to the Trustee or at such later time as may be designated in such notice; provided that any such notice of removal shall take effect no sooner than 30 days and no later than 60 days after the delivery thereof, unless such 30 or 60 day period shall be waived. The Trustee may resign at any time upon giving written notice to the Employer or at such later time as may be designated in the notice of resignation; provided that (a) any such notice of resignation shall take effect no sooner than 30 days and no later than 60 days after the delivery thereof, unless such 30 day or 60 day period shall be waived and (b) upon such resignation or removal the Employer shall have the power and the duty to designate and appoint a successor Trustee, and the actual appointment of a successor Trustee is a condition that must be fulfilled before the resignation or removal of the Trustee shall become effective.

Upon appointment, the successor Trustee shall have all the rights, powers, privileges, liabilities and duties of the predecessor Trustee. The Trustee so resigned or removed shall take any and all action necessary to vest the rights, powers, privileges, liabilities and duties of the Administrator in his, her or its successor.

7.04 Acceptance. By signing the Adoption Agreement the Trustee accepts the Trust created under the Plan and agrees to perform the obligations imposed.

7.05 Control of Plan Assets. The assets of the Trust or evidence of ownership shall be held by the Trustee, under the terms of the Plan and under either this Article VII or under the separate written trust agreement with a bank or trust company. If the assets represent amounts transferred from a former plan, the Trustee shall not be responsible for the propriety of any investment under the former plan.

7.06 General Duties of the Trustee. The Employer or named individuals in the employ of the Employer named as Trustee(s) in the Adoption Agreement shall be responsible for the administration of investments held in the Plan. The Trustee's duties shall include:

- (a) receiving contributions under the terms of the Plan;

- (b) making distributions from Plan assets held in Trust in accordance with written instructions received from an authorized representative of the Employer;
- (c) keeping accurate records reflecting its administration of the Trust assets and making such records available to the Employer for review and audit. Within 90 days after each Plan Year, and within 90 days after its removal or resignation, the Trustee shall file with the Employer an accounting of its administration of the Trust assets during such year or from the end of the preceding Plan Year to the date of removal or resignation. Such accounting shall include a statement of cash receipts and disbursements since the date of its last accounting and shall contain an asset list showing the fair market value of investments held in the Trust as of the end of the Plan Year.

The value of marketable investments shall be determined using the most recent price quoted on a national securities exchange or over the counter market. The value of non-marketable investments shall be determined in the sole judgment of the Trustee which determination shall be binding and conclusive. The value of investments in securities or obligations of the Employer in which there is no market shall be determined in the sole judgment of the Employer and the Trustee shall have no responsibility with respect to the valuation of such assets. The Employer shall review the Trustee's accounting and notify the Trustee in the event of its disapproval of the report within 90 days, providing the Trustee with a written description of the items in question. The Trustee shall have 60 days to provide the Employer with a written explanation of the items in question; and

- (d) employing such agents, attorneys or other professionals as the Trustee may deem necessary or advisable in the performance of its duties.

The Trustee's duties shall be limited to those described above. The Employer shall be responsible for any other administrative duties required under the Plan or by applicable law.

7.07 Investment Powers of the Trustee. The Trustee shall implement an investment program based on the Employer's investment objectives. If either the Employer or the Participant fails to issue investment directions as provided in Sections 8.01 and 8.02, the Trustee shall have authority to invest the Trust assets in its sole discretion. In addition to powers given by law, the Trustee may:

- (a) invest the Trust assets in any form of property, including common and preferred stocks, exchange and trade put and call options, bonds, money market instruments, mutual funds (including Trust assets for which the Trustee or its affiliates serve as investment advisor), Treasury bills, deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit, and other forms of securities or investment of any kind, class, or character whatsoever, or in any other property, real or personal, having a ready market;

- (b) invest and reinvest all or any part of the Trust assets in any insurance policies or other contracts with insurance companies including but not limited to individual or group annuity, deposit administration, and guaranteed interest contracts. Such contracts shall be held in the name of the Trustee;
- (c) transfer any assets of the Trust to any group or common, collective or commingled fund that is maintained by a bank or other institution that is established to permit the pooling of assets of separate Trusts so long as such fund is available to § 457(b) plans;
- (d) hold cash un-invested and deposit same with any banking or savings institution at reasonable interest;
- (e) deposit fees earned from revenue sharing, 12(b)(1) fees, any investment gains and any otherwise unallocated trust assets into an account to be invested in any employer-directed investment option available under the Plan;
- (f) join in or oppose the reorganization, recapitalization, consolidation, sale or merger of corporations or properties, including those in which it is interested as a Trustee, upon such terms as it deems wise;
- (g) hold investments in nominee or bearer form;
- (h) to vote or refrain from voting any stocks, bonds, or other securities held in the Trust, to exercise any other right appurtenant to any securities or other property held in the Trust, to vote or refrain from voting proxies;
- (i) exercise all ownership rights with respect to assets held in the Trust; and
- (j) do any and all other acts that may be deemed necessary in the performance of the Trustee's duties hereunder.

7.08 Trustee Fees and Expenses. All reasonable costs, charges and expenses incurred by the Trustee in connection with the administration of the Trust assets (including fees for legal services rendered to the Trustee) may be paid by the Employer, but if not paid by the Employer when due, shall be paid from the Trust. Such reasonable compensation to a bank or trust company Trustee as may be agreed upon from time to time between the Employer and the Trustee may be paid by the Employer, but if not paid by the Employer when due, shall be paid by the Trust. The Trustee shall have the right to liquidate Trust assets to cover its fees. Notwithstanding the foregoing, no compensation other than reimbursement for expenses shall be paid to a Trustee who is the Employer or a full-time Employee. In the event any part of the Trust assets become subject to tax, all taxes incurred shall be paid from the Trust unless the Administrator advises the Trustee not to pay such tax. If pursuant to 7.07(e) an account holding un-invested trust assets is in existence at anytime during the Plan Year, all amounts in the account shall be first used

to offset any plan expenses and any amounts remaining shall be allocated to Participant's accounts no later than the end of the Plan Year.

- 7.09 Exclusive Benefit Rules. No part of the Trust assets shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants, former Participants with an interest in the Plan and the Beneficiary or Beneficiaries of a deceased Participant having an interest in the Trust assets at the death of the Participant.
- 7.10 Trustee Actions. Every action taken by the Trustee shall be presumed to be a fair and reasonable exercise of the authority vested in or the duties imposed upon him, her or it. The Trustee shall be deemed to have exercised reasonable care, diligence and prudence and to have acted impartially as to all persons interested, unless the contrary be proven by affirmative evidence. The Trustee shall not be liable for amounts of Compensation deferred by Participants or for other amounts payable under the Plan.
- 7.11 Delegation. Subject to any applicable laws and any approvals required by the Employer, the Trustee may delegate any or all powers and duties hereunder to another person, persons or entity and may pay reasonable compensation for such services as an administrative expense of the Plan to the extent such compensation is not otherwise paid.
- 7.12 Division of Duties and Indemnification.
- (a) The Trustee shall have the authority and discretion to manage and govern the Trust assets to the extent provided in this instrument, but does not guarantee the Trust in any manner against investment loss or depreciation in asset value or guarantee the adequacy of the Trust assets to meet and discharge all or any liabilities of the Plan.
 - (b) The Trustee shall not be liable for the making, retention or sale of any investment or reinvestment made by it, as herein provided, or for any loss to, or diminution of the Trust assets or for any other loss or damage which may result from the discharge of its duties hereunder except to the extent it is judicially determined that the Trustee has failed to exercise the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims.
 - (c) The Employer warrants that all directions issued to the Trustee by it or the Administrator shall be in accordance with the terms of the Plan and not contrary to the provisions of the Code.
 - (d) The Trustee shall not be answerable for any action taken pursuant to any direction, consent, certificate or other paper or document on the belief that the same is genuine and signed by the proper person. All directions by the Employer or the Administrator shall be in writing from the authorized individual or individuals named in the Adoption Agreement.

- (e) The duties and obligations of the Trustee shall be limited to those expressly imposed upon it by this instrument or subsequently agreed upon by the parties. Responsibility for administrative duties required under the Plan or applicable law not expressly imposed upon or agreed to by the Trustee shall rest solely with the Employer.
- (f) The Trustee shall be indemnified and held harmless by the Employer from and against any and all liability to which the Trustee may be subjected, including all expenses reasonably incurred in its defense, for any action or failure to act resulting from compliance with the instructions of the Employer, the Employees or agents of the Employer, the Administrator, or any other fiduciary to the Plan, and for any liability arising from the actions or inactions of any predecessor Trustee, custodian or other fiduciaries of the Plan.
- (g) The Trustee shall not be responsible in any way for the application of any payments it is directed to make or for the adequacy of the Trust assets to meet and discharge any and all liabilities under the Plan.

VIII. INVESTMENTS

- 8.01 Investment Options. Employer shall have the sole discretion to select one or more investment options to be offered under the Plan. These investment options may include specified life insurance policies, annuity contracts or investment media issued by an insurance company. It shall be the sole responsibility of the Employer to ensure that all investment options offered under the Plan are appropriate and in compliance with any and all state laws pertaining to such investments.
- 8.02 Participant Investment Direction. If the Employer chooses to designate one or more investment options in which Participants may direct investment of their Account(s), Participants shall have the option to direct the investment of their Account(s) from among the investment options designated by the Employer. The Participant's right to transfer among or out of any such investment options shall be subject to any timing or other restrictions imposed upon Participants by the providers of the investment options chosen by the Participant, including, but not limited to market-timing restrictions, excessive trading restrictions and redemption fees. The Trustee or Custodian, as applicable, shall hold title to such investment options. A Participant's right to direct the investment of Account balances shall apply only to making selections among the options made available under the Plan and only to the extent specified by the Employer pursuant to uniform rules. The terms of this paragraph, including any trading restrictions or fees, shall also apply to Beneficiary and Alternate Payee accounts.
- (a) Each Participant shall designate on the form prescribed by the Administrator the one or more investment options in which he or she wishes to have his Account invested and may change such investment directions in accordance with and at the

time or times specified under uniform rules established by the Administrator or the investment provider, as applicable. The Participant's Account shall be debited or credited as appropriate to reflect all gains or losses on such investments. If a Participant has the right to direct the investment of his Account but does not provide such direction pursuant to uniform rules established by Employer, the Participant's Account shall be invested in the investment option selected by the Plan.

- (b) Neither the Employer, the Administrator, the Trustee, the Custodian nor any other person shall be liable for any loss incurred by virtue of following the Participant's directions or by reason of any reasonable administrative delay in implementing such directions.
- (c) The Employer may from time to time change the investment options made available under the Plan pursuant to uniform rules established by the Administrator. If the Employer eliminates an investment option, all Participants who had chosen that investment option shall select another option. If the Participant does not select a new option, money remaining in the eliminated investment option shall be reinvested at the direction of the Employer. The Participants shall have no right to require the Employer to select or retain any investment option. Any change with respect to investment options made by the Employer or a Participant, however, shall be subject to the terms and conditions (including any rules or procedural requirements) of the affected investment options.

8.03 Employer Investment Direction.

- (a) To the extent the Employer chooses not to allow Participant direction of the investment of his or her Account, the Employer shall have the right to direct the Trustee or Custodian with respect to investments of the Trust assets, may appoint an investment manager to direct investments or may give the Trustee sole investment management responsibility. The Employer or investment manager shall make any investment directive in writing. Such instructions regarding the delegation of investment responsibility shall remain in force until revoked or amended in writing. The Trustee shall not be responsible for the propriety of any investment made at the direction of the Employer or an investment manager and shall not be required to consult with or advise the Employer regarding the investment quality of any directed investment held hereunder. In the absence of such written directive, the Trustee shall automatically invest the available cash in its discretion in an appropriate interim investment until specific investment directions are received.

- (b) If the Employer fails to direct the investment of Trust assets or name an investment manager and the Trustee or Custodian do not have investment authority, the Administrator shall have full investment authority.

8.04 Participant Accounts. The Administrator shall maintain or cause to be maintained one or more individual accounts for each Participant. Such accounts shall include separate accounts, as necessary, for Code § 457(b) Deferred Compensation, Code § 457(b) rollovers, IRA rollovers, other qualified plan and Code § 403(b) plan rollovers and such other accounts as may be appropriate from time to time for plan administration. At regular intervals established by the Administrator, each Participant's account(s) shall be credited with the amount of any Deferred Compensation paid into the Trust; debited with any applicable administrative or investment expense, including, but not limited to, fees charged to Participants, allocated on a reasonable and consistent basis; credited or debited with investment gain or loss, as appropriate; and debited with the amount of any distribution. Each Participant shall be notified in writing of the balance in his Account at least once a year.

IX. ADMINISTRATION

9.01 Administrator. Employer shall be the Administrator unless another person or persons is appointed by the Employer in the Adoption Agreement pursuant to Section 9.02.

9.02 Appointment and Termination of Administrator. An Administrator may be named in the Adoption Agreement by the Employer and may be a Participant. The Administrator shall remain in office at the will of the Employer and may be removed from office at any time by the Employer, with or without cause. Such removal shall be effective upon delivery of written notice to the Administrator or at such later time as may be designated in such notice; provided that any such notice of removal shall take effect no later than 60 days after the delivery thereof, unless such 60 day period shall be waived. The Administrator may resign at any time upon giving written notice to the Employer or at such later time as may be designated in the notice of resignation provided that; (a) any such notice of resignation shall take effect no later than 60 days after the delivery thereof, unless such 60 day period shall be waived; and (b) upon such resignation or removal the Employer shall have the power and the duty to designate and appoint a successor Administrator, and the actual appointment of a successor Administrator is a condition that must be fulfilled before the resignation or removal of the Administrator shall become effective. Upon appointment, the successor Administrator shall have all the rights, powers, privileges, liabilities and duties of the predecessor Administrator. The Administrator so resigned or removed shall take any and all action necessary to vest the rights, powers, privileges, liabilities and duties of the Administrator in the successor.

9.03 Duties of Administrator. Subject to any applicable laws and any approvals required by the Employer, the Administrator shall have full power and authority to adopt rules, regulations and procedures for the administration of the Plan, and to interpret, alter,

amend, or revoke any rules, regulations or procedures so adopted. The Administrator's duties shall include:

- (a) appointing the Plan's attorney, accountant, actuary, custodian or any other party needed to administer the Plan or the Plan assets;
- (b) directing the Trustee or Custodian with respect to payments from the Plan assets held in Trust;
- (c) communicating with Employees regarding their participation and benefits under the Plan, including the administration of all claims procedures;
- (d) filing any returns and reports with the Internal Revenue Service or any other governmental agency;
- (e) reviewing and approving any financial reports, investment reviews, or other reports prepared by any party appointed under paragraph (a);
- (f) establishing a funding policy and investment objectives consistent with the purposes of the Plan; and
- (g) construing and resolving any question of Plan interpretation. The Administrator's interpretation of Plan provisions including eligibility and benefits under the Plan is final.

9.04 Administrative Fees and Expenses. All reasonable costs, charges and expenses incurred by the Administrator in connection with the administration of the Plan (including fees for legal services rendered to the Administrator) may be paid by the Employer, but if not paid by the Employer when due, shall be paid from Plan assets. Such reasonable compensation to the Administrator as may be agreed upon from time to time between the Employer and Administrator may be paid by the Employer, but if not paid by the Employer when due shall be paid from Plan assets. Notwithstanding the foregoing, no compensation other than reimbursement for expenses shall be paid to an administrator who is the Employer or a full-time Employee of the Employer. In the event any part of the assets in the Plan become subject to tax, all taxes incurred shall be paid from the Plan assets unless the Administrator instructs the Trustee or Custodian not to pay such tax.

9.05 Actions of Administrator. Every action taken by the Administrator shall be presumed to be a fair and reasonable exercise of the authority vested in or the duties imposed upon him, her or it. The Administrator shall be deemed to have exercised reasonable care, diligence and prudence and to have acted impartially as to all persons interested, unless the contrary be proven by affirmative evidence. The Administrator shall not be liable for amounts of Compensation deferred by Participants or for other amounts payable under the Plan.

- 9.06 Delegation. Subject to any applicable laws and any approvals required by the Employer, the Administrator may delegate any or all powers and duties hereunder to another person, persons or entity, and may pay reasonable compensation for such services as an administrative expense of the Plan to the extent such compensation is not otherwise paid.
- 9.07 Investment and Service Providers. Any company which issues policies, contracts or investment media to the Employer or in respect of a Participant is not a party to this Plan and such company shall have no responsibility, accountability or liability to the Employer, the Administrator, any Participant or any Beneficiary with regard to the operation or adequacy of this Plan, including any future amendments made thereto.

X. LEAVE OF ABSENCE

- 10.01 Paid Leave of Absence. If a Participant is on an approved leave of absence from the Employer with Compensation, or on approved leave of absence without Compensation that does not constitute a Severance from Employment, which under the Employer's current practices is generally a leave of absence without Compensation for a period of one year or less, said Participant's participation in the Plan may continue.
- 10.02 Unpaid Leave of Absence. If a Participant is on an approved leave of absence without Compensation and such leave of absence continues to such an extent that it becomes a Severance from Employment, said Participant shall have separated from service with the Employer for purposes of this Plan. Upon termination of leave without pay and return to active status, the Participant may enter into a new Participation Agreement to be effective when permitted by Section 2.11.

XI. AMENDMENT OR TERMINATION OF PLAN

- 11.01 Termination. The Employer may at any time terminate this Plan; provided, however, that no termination shall affect the amount of benefits, which at the time of such termination shall have accrued for Participants or Beneficiaries. Such accrued benefit shall include any Compensation deferred before the time of the termination and income thereon accrued to the date of the termination. Such amount shall be calculated in accordance with Section 8.04 and the terms and conditions of the affected investment option. Upon such termination, each Participant in the Plan shall be deemed to have revoked his agreement to defer future Compensation as provided in Section 2.10 as of the date of such termination and Section 2.04(b) shall no longer be in effect. Each Participant's full Compensation on a nondeferred basis shall be restored. Upon plan termination, all amounts deferred will be distributed to Participants or Beneficiaries as soon as administratively practicable after the termination date.
- 11.02 Amendment. The Employer may amend the provisions of this Plan at any time; provided, however, that no amendment shall affect the amount of benefits which at the time of such amendment shall have accrued for Participants or Beneficiaries, to the extent

of Compensation deferred before the time of the amendment and income thereon accrued to the date of the amendment, calculated in accordance with Section 8.04 and the terms and conditions of the investment options hereunder; and provided further, that no amendment shall affect the duties and responsibilities of the Trustee or Custodian unless executed by the Trustee or Custodian.

To the extent permitted by applicable law, the Employer delegates to the Administrator the authority to adopt rules, regulations or procedures from time to time as may be necessary or desirable to conform Plan provisions to, or to elaborate Plan provisions in light of, technical amendments to the Code, Treasury regulations or other guidance issued under the Code, and such rules, regulations or procedures are hereby ratified by the Employer as having the force and effect of Plan amendments.

- 11.03 Copies of Amendments. The Administrator shall provide a copy of any Plan amendment to any Trustee or custodian and to the issuers of any investment options selected pursuant to Section 8.01.

XII. TAX TREATMENT OF AMOUNTS CONTRIBUTED

It is intended that pursuant to Code § 457, the amount deferred shall not be considered current compensation for purposes of federal income taxation except to the extent that the amount deferred is Designated Roth Contributions. This rule shall also apply to state income taxation unless applicable state laws provide otherwise. Such amounts shall, however, be included as compensation to the extent required under the Federal Insurance Contributions Act (FICA). Payments under this Plan shall supplement retirement and death benefits payable under the Employer's group insurance and retirement plans, if any.

XIII. NON-ASSIGNABILITY

- 13.01 Non-Assignability. Except as provided in Sections 13.02 and 13.03, the interests of each Participant or Beneficiary under the plan are not subject to the claims of the Participant's or Beneficiary's creditors, and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.
- 13.02 Qualified Domestic Relations Orders. If so specified in the Adoption Agreement, domestic relations orders approved by the Administrator shall be administered as follows.
- (a) Notwithstanding Section 13.01, if a final judgment, decree, or order (including approval of a property settlement) that is related to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant (herein called an Alternate Payee) is made pursuant to the domestic relations law of any State and meets the

requirements of Code § 414(p), then such order shall be referred to as a Qualified Domestic Relations Order (“QDRO”). If a QDRO is duly filed upon the Administrator, then the amount of the Participant’s Account Balance shall be paid to or set aside in a separate account for Alternate Payee(s) as elected by the Alternate Payee. Payments to the Alternate Payee shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the QDRO and may charge the Participant and Alternate Payee a fee as established from time to time.

Where necessary to carry out the terms of such a QDRO, a separate account shall be established with respect to the Alternate Payee(s) and such person shall be entitled to make investment selections with respect thereto in the same manner as the Participant, except to the extent restricted by the employer or a specific investment option under the plan. All costs and charges incurred in carrying out the investment selection shall be deducted from the account created for the spouse, former spouse or child making the investment selection. The Alternate Payee may select from among the forms of payment available to Participants except a joint and survivor annuity naming the Alternate Payee and a subsequent spouse. Withholding and income tax reporting shall be done with respect to the Alternate Payee under the terms of the Code as amended from time to time.

- (b) The Employer’s liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to a spouse, former spouse or child pursuant to this Section. No amount shall be paid or set aside unless the Employer, or its agents or assigns, has been provided with satisfactory evidence releasing them from any further claim by the Participant with respect to these amounts. The Participant shall be deemed to have released the Employer from any claim with respect to such amounts in any case in which the Employer has been notified of or otherwise joined in a proceeding relating to a QDRO which sets aside a portion of the Participant’s account for a spouse, former spouse or child, and the Participant fails to obtain an order of the court in the proceeding relieving the Employer from the obligation to comply with the QDRO.
- (c) The Employer shall not be obligated to comply with any judgment, decree or order that attempts to require the Plan to violate any Plan provision or any provision of Code § 457. Neither the Employer nor its agents or assigns shall be obligated to defend against or set aside any judgment, decree, or order described herein or any legal order relating to the division of a Participant’s benefits under the Plan unless the full expense of such legal action is borne by the Participant. In the event that the Participant’s action (or inaction) nonetheless causes the Employer, its agents or assigns to incur such expense, the amount of the expense may be charged against the Participant’s account and thereby reduce Employer’s obligation to pay benefits to the Participant. In the course of any proceeding relating to divorce, separation, or child support, the Employer, its agents and

assigns shall be authorized to disclose information relating to Participant's individual account to the Participant's spouse, former spouse or child (including the legal representatives of the spouse, former spouse or child), or to a court.

13.03 IRS Levy. Notwithstanding Section 13.01, the Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that participant 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.

13.04 Mistaken Contributions. If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contributions (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

If the Plan utilizes an Eligible Automatic Contribution Arrangement intended to satisfy Code § 414(w), the Participant may elect a return of their elective deferrals (as adjusted for applicable earnings and losses), if such election is made prior to the 91st day after the date of the first elective contribution is deducted from the employee's Compensation. Any employer contributions shall be forfeited. Any forfeitures arising under the Plan shall be subject to the provisions of Sections 7.07 and 7.08 applicable to unallocated trust assets.

13.05 Payments to Minors and Incompetents. To the extent the Employer or Administrator determines that the following procedure meets applicable state or local law, if a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

13.06 Procedure When Distributee Cannot Be Located. The Administrator shall make all reasonable attempts to determine the identity and address of a participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means:

- (a) the mailing by certified mail of a notice to the last known address shown on the Employer's or Administrator's records,
- (b) notification sent to the Social Security Administration, Internal Revenue Service or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans) and

- (c) the payee has not responded within six months.

If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the trust fund shall continue to hold the benefits due such person until in the Employer's or Administrator's sole discretion, the Plan is required to take other action under applicable law except that if, in the Adoption Agreement, the Plan elected mandatory distributions greater than \$1,000, then the Administrator will pay the distribution for such person in a direct rollover to an individual retirement plan designated by the plan administrator.

XIV. DISCLAIMER

14.01 The Employer and the Administrator make no endorsement, guarantee or any other representation and shall not be liable to the Plan or to any Participant, Beneficiary or any other person with respect to:

- (a) the financial soundness, investment performance, fitness, or suitability (for meeting a Participant's objectives, future obligations under the Plan, or any other purpose) of any investment option offered pursuant to Section 8.01 or any investment vehicle in which amounts deferred under the Plan are actually invested or
- (b) the tax consequences of the Plan to any Participant, Beneficiary or any other person.

EMPLOYER PARTICIPATION

15.01 Notwithstanding any other provisions of this Plan and if so specified in the Adoption Agreement, the Employer may contribute additional amounts into the Plan on behalf of any Participant, so long as the total amount contributed by the Employer when added to the Annual Deferral made by the Participant does not exceed the maximum deferral permitted by Article III for the calendar year. The amount of such Employer contribution and the Employees or independent contractors eligible to receive such contributions shall be detailed in an amendment attached to this Plan document. Such Employer contributions shall be wages for services rendered by the Participant to the Employer during the payroll period contributed.

INTERPRETATION

16.01 Governing Law. This Plan shall be construed under the laws of the state in which the Employer is located.

- 16.02 Internal Revenue Code § 457. This Plan is intended to be an eligible deferred compensation plan within the meaning of Code § 457 and shall be interpreted so as to be consistent with such Section and all regulations promulgated thereunder.
- 16.03 Word Usage. Words used herein in the singular shall include the plural and the plural the singular where applicable, and one gender shall include the other genders where appropriate.
- 16.04 Headings. The headings of sections, sections or other subdivisions hereof are included solely for convenience of reference. If there is any conflict between such headings and the text of the Plan, the text shall control.
- 16.05 Entire Agreement. This Plan, the executed Adoption Agreement and any properly adopted amendment thereof, shall constitute the total agreement or contract between the Employer and the Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by the Participant. This Plan and any properly adopted amendment shall be binding on the parties hereto and their respective heirs, administrators, Trustees, successors, assigns and on all designated Beneficiaries of the Participant.



RFP No.: 22-23/07, 457(b) Deferred Compensation Administration and Recordkeeping Services

Port of Oakland Deferred Compensation Plan Investment Options

Ticker Symbol	Fund Name	Ticker Symbol	Fund Name
ARTMX	Artisan Mid Cap Investor	POKSVF	Port of Oakland Stable Value Fund
BSFIX	Baron Small Cap Instl	PRBLX	Parnassus Core Equity Investor
COSVX	Columbia Overseas Value Adv	PRGSX	T. Rowe Price Global Stock
CSIFX	Calvert Balanced A	PRUZX	PGIM Jennison Utility Z
CSMUX	Carillon Scout Mid Cap R-6	PTTAX	PIMCO Total Return A
FLCNX	Fidelity® Contrafund® K6	PYGNX	Payden GNMA
FLMVX	JPMorgan Mid Cap Value L	RAGTX	Virtus Technology A
FLPSX	Fidelity® Low-Priced Stock	RBEDX	American Funds 2025 Trgt Date Retire R2E
FPURX	Fidelity® Puritan®	RBEFX	American Funds 2035 Trgt Date Retire R2E
FSLEX	Fidelity® Envir and Alt Engy Fund	RBEJX	American Funds 2015 Trgt Date Retire R2E
JBALX	Janus Henderson Balanced I	RBEMX	American Funds 2055 Trgt Date Retire R2E
JCAPX	Janus Henderson Forty I	RBHHX	American Funds 2045 Trgt Date Retire R2E
JDEUX	JPMorgan US Research Enhanced Equity R6	RERHX	American Funds Europacific Growth R5E
LDLKX	Lord Abbett Short Duration Income R4	RNPHX	American Funds New Perspective R5E
MXGTX	Empower Aggressive Profile Instl	TROIX	T. Rowe Price Overseas Stock I
MXHRX	Empower Moderately Agg Prfl Instl	UBVFX	Undiscovered Managers Behavioral Val R6
MXITX	Empower Moderate Profile Instl	VFIAX	Vanguard 500 Index Admiral (Idx)
MXJUX	Empower Moderately Cnsrv Pfl Instl	VIMAX	Vanguard Mid Cap Index Admiral (Idx)
MXKVX	Empower Conservative Profile Instl	VSMAX	Vanguard Small Cap Index Adm (Idx)
OIERX	JPMorgan Equity Income R5	VTSAX	Vanguard Total Stock Mkt Idx Adm (Idx)
PAVLX	T. Rowe Price Value Adv	WAMCX	Wasatch Ultra Growth
PCKAX	PIMCO StocksPLUS® Small A	WAPSX	Western Asset Core Plus Bond IS
PIREX	Principal Real Estate Securities Inst	WHIAX	Delaware Ivy High Income Fund Class A



PORT OF OAKLAND

Investment Policy Statement

**RFP No.: 22-23/07, 457(b) Deferred Compensation Administration and
Recordkeeping Services**

**Attachment 14
Investment Policy Statement**

INVESTMENT POLICY STATEMENT

A. PURPOSE:

This Investment Policy Statement ("Policy Statement") sets forth the goals and objectives for the investment options available under the Port of Oakland Deferred Compensation Plan (the "Plan"). The purpose of this Policy Statement is to guide the Advisory Committee (the "Committee") and the Investment Sub-Committee in effectively supervising, monitoring and managing the investment options available under the Plan. This Policy Statement is designed to allow for sufficient flexibility in the management oversight process, while also setting forth reasonable parameters to promote the exercise of reasonable prudence and care with respect to the investment options available under the Plan. This Policy Statement provides a framework for the selection of investment options, a procedure for the ongoing evaluation of the investment options available under the Plan, and guidelines for terminating and replacing any available investment option(s).

However, and for the avoidance of doubt, no provision or provisions within this Policy Statement shall, in and of itself/themselves, be construed as obligating the Committee or Investment Sub-Committee to take or omit to take any particular action in any case whatsoever, and the Committee and Investment Sub-Committee reserve the right to exercise their absolute discretion in making decisions as to the Plan's investment options to the fullest extent permissible under applicable law or regulation, and any instrument(s) governing the Plan.

B. BACKGROUND:

The Plan was established and is administered by the Committee and is intended to qualify as a Section 457 plan. The Plan is intended to provide eligible employees with a means to save monies on a tax-advantaged basis in order to assist the employee in reaching his/her retirement goals. The Plan allows each eligible employee to direct how contributions made to his or her Plan account are invested among a diverse menu of investment options selected by the Committee.

The Committee shall choose which investment options shall be available under the Plan and shall monitor the investment options' compliance with this Policy Statement.

The Committee and the Plan's recordkeeper do not provide investment advice to any participant or assist any participant in deciding how to allocate contributions to the participants' Plan accounts. No fiduciary shall be responsible for any financial loss that may be incurred by any participant as a result of the participant's investment direction or as a result of any action taken in accordance with the participant's investment direction.

C. INVESTMENT OPTION SELECTION:

The Committee recognizes that there is investment risk inherent in all investment options. Furthermore, the Committee recognizes that individual participants each have their own level of risk tolerance. The Committee shall, therefore, select a broad array of investment options providing different levels of risk and historical return. To this end, the Committee shall generally endeavor to select investment options based upon the following criteria:

1. Selected investment options shall generally represent the major asset classes, and may represent the major asset categories, as set forth below. As deemed appropriate, both active and passive management styles will generally be utilized. For purposes of this Policy Statement, the following shall be considered major asset classes (by roman numeral) and asset categories (by letter), as defined by Morningstar® (an independent fund evaluation company), provided that subsequent changes to such asset classes and categories by Morningstar® shall not be deemed to change these guidelines except to the extent that this Policy Statement is specifically amended to reflect the same:
 - i. International
 - a. Foreign Large Growth
 - b. Foreign Large Blend
 - c. World Stock
 - d. European Stock
 - ii. Domestic Equity
 - a. Small Cap Growth
 - b. Small Cap Blend
 - c. Small Cap Value
 - d. Mid Cap Growth
 - e. Mid Cap Blend
 - f. Mid Cap Value
 - g. Large Cap Growth
 - h. Large Cap Blend
 - i. Large Cap Value
 - j. Specialty Real Estate
 - k. Specialty Technology
 - l. Specialty Utilities
 - iii. Balanced
 - a. Allocation
 - b. Target Date
 - iv. Taxable Bond
 - a. High-Yield Bond
 - b. Intermediate-Term Bond
 - c. Intermediate Government Bond
 - v. Money Market
 - vi. Stable Value
2. The Committee shall select investment options based upon such administrative, quantitative and qualitative criteria as are set forth in this Policy Statement, and/or as the Committee shall otherwise deem appropriate in each particular case.
3. The expense ratio of the investment options must be competitive with other investment options with similar objectives as measured by the applicable Morningstar® Category average.

4. Wherever advisable and practicable, the Committee will choose investment options that are offered by companies that have a reputation as being among the industry's leaders.
5. Wherever advisable and practicable, the selected investment options shall have at least three years of investment history. Furthermore, the Committee will attempt to choose investment options where the investment manager exhibits style (i.e., growth or value, large cap or small cap) consistency over at least a three-year period of time. Lastly, wherever advisable and practicable, the specific fund manager shall have managed the fund for at least two years.
6. Subject to the above criteria, the Committee shall endeavor to choose investment options that exhibit competitive historical returns on both a total return and risk-adjusted basis (applying similar standards to those set forth in the next following Section), over such time frames as the Committee shall deem appropriate in each particular case, and with the understanding that past performance is not necessarily indicative of future performance.

D. INVESTMENT OPTION PERFORMANCE STANDARDS:

The Committee shall review each of the selected investment options at least annually to evaluate the investment option's performance. The Committee may utilize a qualified, knowledgeable third party to assist in the evaluation process. The investment option review shall incorporate statistical analysis provided by an independent third party. The Committee shall utilize the following performance benchmarks:

1. **Actively Managed and Passive Funds:** Each Fund shall be benchmarked against its respective peer group as determined by the Morningstar® Category. The Morningstar® Category identifies funds based on their actual investment styles as measured by the underlying portfolio holdings over the trailing 36-month period.
 - **Return Composite:** The Return Composite measures the fund's performance relative to its peer group on a net-of-fee basis. It is calculated by taking the equally weighted average of the 3, 5 and 10 year return percentiles.
 - **Sharpe Composite:** The Sharpe Composite measures the fund's risk-adjusted performance relative to its peer group. It is calculated by taking the equally weighted average of the 3 and 5 year Sharpe percentiles.
 - **Overall Composite:** The average of the Return Composite and the Sharpe Composite determines the Overall Composite where an Overall Composite above the 50.0% percentile is considered above benchmark.
 - **Morningstar® Ratings:** The Morningstar® Rating is a quantitative measure of risk-adjusted returns. This rating shows how well a fund has balanced risk and return relative to other funds in the same Morningstar® Category. The Morningstar® Rating is calculated over a 3, 5 and 10 year time period on a 1-through 5 scale. A 3, 4 or 5 rating is considered "Above Benchmark," while a 1 or 2 rating is considered "Below Benchmark."

- **Overall Rating:** The below matrix combines the **Overall Composite** with the **Morningstar® Rating** to determine if a fund is Above Benchmark, Neutral or Below Benchmark for the most recent quarter-end time period.

Overall Composite		Morningstar® Rating	Overall Rating
$\geq 50.0\%$	AND	3, 4 or 5	Above Benchmark
$\geq 50.0\%$	OR	3, 4 or 5	Neutral Rating
$< 50.0\%$	AND	1 or 2	Below Benchmark

- **Long-Term Rolling Analysis**

To assess the long-term consistency of fund performance, the previous 12 quarters are examined based on the accumulated Overall Ratings:

Consecutive Quarters Below Benchmark		Quarters Below out of trailing 12	Long-Term Rolling Analysis
< 4 Quarters	AND	< 7	Pass
≥ 4 Quarters	OR	≥ 7 Quarters	Fail
Overall Rating: $\leq 25.0\%$			Fail

2. **Fixed Income Fund (Stable Value Fund):** The performance of the Stable Value Fund (after fees) shall be compared to the yield of three-year Treasury notes, on a constant maturity basis. The requirements pertaining to the investment of the assets of the Stable Value Fund shall be set forth in separate Investment Guidelines.

The Committee recognizes that fund and investment manager performance can move in cycles over time and that each particular investment option's performance cannot be expected to always be superior. Likewise, the Committee recognizes that removing an underperforming fund may be advisable in certain cases, but will also "lock in" previous losses with respect to the particular fund. As such, the Committee will generally monitor selected investment option performance on a periodic basis, but not less frequently than annually. In light of these considerations, the Committee may choose to give fund managers sufficient time to remedy any underperformance before the investment option is deleted from the available investment option array available under the Plan, as it may determine in its sole discretion.

While the primary analysis of each investment option will be quantitative, the Committee reserves the right to make decisions regarding the investment options based upon administrative, qualitative and/or other criteria that it believes will be in the best interest of the Plan and its participants.

Within the guidelines set forth above, the Committee will evaluate investment options with the assistance of a knowledgeable third party. Investment options that do not perform at or above their respective benchmark will be subject to the Plans' policies regarding underperforming investment options.

E. UNDERPERFORMING INVESTMENT OPTIONS:

The Committee may take the following steps in the event that an investment option's Overall Rating is "Below Benchmark" for the current quarter, and/or where the option's Long-Term Rolling Analysis is "Fail."

1. If an investment option's Overall Rating is "Below Benchmark" for the current quarter, the investment option may be placed on a "watch list." Additional information will be gathered as to why the investment option is underperforming. The Committee may, in its discretion, invite the fund manager to meet and explain the reasons for the investment option's underperformance and its future expectations. Should an investment option that was on the "watch list" subsequently exceed performance standards, it will generally be taken off the "watch list."
2. If the investment option's Overall Rating continues "Below Benchmark" for four consecutive quarters or seven out of the trailing twelve quarters, or receives an Overall Rating of 25% or less, then the investment option's Long-Term Rolling Analysis is "Fail." The Committee may, in its discretion, (i) close the investment option to new contributions; (ii) select a new investment option in the same asset class and/or asset category; and/or (iii) terminate the investment option. If an investment option is terminated, the Committee will transfer its assets after designating an existing or new investment option to receive the assets from the terminated option. To the extent practical and advisable, and in recognition of the Committee's belief that stability as to investment options is generally in the best interests of Plan participants, termination of investment options will generally occur only once per calendar year, unless the Committee determines in its discretion that particular circumstances prevailing would indicate that an earlier termination would be advisable.

F. OTHER CONSIDERATIONS:

The Committee, in its discretion, may conduct informal reviews and evaluations of an investment option at any time. The Committee may place an investment option under formal review, or immediately terminate an investment option for any reason, including, but not limited to, the following:

1. The investment option has changed managers, or such a change appears imminent;
2. The investment option or its manager has had a significant change in ownership or control;
3. The investment option has changed its investment mandate or has experienced style drift, departing from the investment objectives or parameters set forth in its prospectus at the time it was selected for the Plan;
4. The investment option has experienced substantial portfolio turnover;
5. The investment option has experienced difficulty in transacting trades, fund transfers, or pricing;
6. The investment option has experienced other changes or problems in its procedures, operations, investing, reporting, or lack of employee participation, which in the Committee's view, has or could detract from the objectives of the Plan;
7. Any other circumstance regarding the investment option that the Committee determines is in conflict with this Policy Statement; or

8. Where the investment option, its manager or fund complex has been involved in a scandal, lawsuit, legal or regulatory violation, or similar circumstance that may be detrimental to the marketing of the Plan to participants, or that otherwise may reflect poorly on its professionalism or trustworthiness.

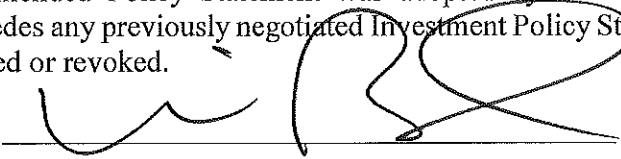
G. CHANGES TO POLICY STATEMENT:

This Policy Statement has been formulated by the Committee based on its consideration of a wide range of policies, and describes the prudent investment process that the Committee deems most appropriate for the Plan. The Committee shall review this Policy Statement at least annually. The Committee may amend this Policy Statement as it deems advisable from time to time.

H. AGREEMENT:

This amended Policy Statement was adopted by the Committee on November 20, 2017 and supersedes any previously negotiated Investment Policy Statements, and shall remain in force until amended or revoked.

Signed


Committee Chairperson

12/5/17
Date