NORTH DAKOTA STATE DEFERRED COMPENSATION PROGRAM

SECTION 457 COMPANION PLAN DOCUMENT

Amended and Restated

Effective July 1, 2007

Adoption Resolution

Resolved, that effective July 1, 2007, the State of North Dakota has adopted the attached amended and restated Section 457 Companion Plan. The Plan is intended to satisfy the requirements of Section 457(b) of the Internal Revenue Code of 1986, as amended, and its associated regulations.

Sparb Collins
Signature

10-19-07
Date

Executive Director
Title

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

SECTION 457 COMPANION PLAN

ARTICLE 1
DEFINITIONS

1.1 **Administrative Service Provider**

"Administrative Service Provider" means any entity or individual designated by the Board to provide contractual administrative services to the Plan.

1.2 **Administrator**

"Administrator" means the North Dakota Public Employees Retirement System.

1.3 **Beneficiary**

"Beneficiary" means a beneficiary designated by the Participant. If no beneficiary has been designated or if the designated beneficiary(ies) predeceases the Participant, "Beneficiary" means the estate of the Participant.

1.4 **Board**

"Board" means the North Dakota Public Employees State Retirement Board.

1.5 **Code**

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

1.6 **Deferred Compensation**

"Deferred Compensation" means amounts deferred under Article 4, including unused annual leave, sick leave and back pay. It does not include any amount payable under any bona fide vacation leave, sick leave, compensation time, severance pay, disability pay or death benefit plans of the Employer.

1.7 **Employee**

"Employee" means an individual who works a minimum average of 20 hours per week for 20 or more weeks per year, is at least 18 years of age, and fills a permanent position that is regularly funded and not of limited duration. "Employee" does not include independent contractors.

1.8 **Employer**

"Employer" means the State of North Dakota, and any of its departments, divisions, agencies or institutions. Employer also means any city, county or other political subdivision of the State of North Dakota that enters into an agreement with the Board to extend this Plan to its Employees.

1.9 **Gross Compensation**

"Gross Compensation" means the gross salary which would be paid to the Participant by the Employer for the calendar year, before payroll taxes or any other deductions are withheld, if a Deferred Compensation Agreement had not been entered into between the Participant and the Employer. "Gross Compensation" does not include retirement or severance incentive payments.

1.10 **Includible Compensation**

"Includible Compensation" means compensation for services performed for the Employer for the calendar year and shall include any elective deferral (as defined in Section 402(g) of the Code) and amounts contributed or deferred by the Employer at the election of the Employee and which, by reason of Section 125, 132(f)(4) or 457 of the Code are not includible in the Participant's gross income. Includible Compensation is determined without regard to any community property laws.

1.11 **Investment Provider**

"Investment Provider" means an individual or entity designated by the Board to provide investment management services to the Plan.

1.12 **Normal Retirement Age**

"Normal Retirement Age" means the date chosen by the Participant not beginning before the earliest date (but not later than age 70 1/2) on which the Participant has the right to retire under the retirement plan of the Employer in which the Participant is enrolled and to receive immediate retirement benefits without actuarial reduction. If a Participant continues eligible employment after

age 7 1/2, Normal Retirement Age is the date the Participant incurs a Separation from Service under the Plan.

1.13 **Participant**

"Participant" means an Employee who meets the eligibility requirements of Article 3 and applies for membership in accordance with the provisions of Article 4.

1.14 **Plan**

"Plan" means the Section 457 Companion Plan described and established in this document by the Board.

1.15 **Separation From Service**

"Separation from Service" means 31 days after the Participant's death, retirement, or severance of the entire employment relationship with the Employer.

1.16 **Unforeseeable Emergency**

"Unforeseeable Emergency" means severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant or of the Participant's dependent (as defined in Code Sec. 152(a)), loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the Participant's control, or as is determined by IRS regulations.

ARTICLE 2
PURPOSE

The purpose of the Plan is two-fold:

2.1 **For the Employer**

To retain present Employees and attract additional qualified Employees for the benefit of the Employer, by providing the opportunity for additional investment opportunities to Employees that are not otherwise available under the separate North Dakota State Deferred Compensation Plan, and to allow increased retirement benefits to its Employees.

2.2 **For the Employees**

To increase retirement benefits for Employees by providing them with an alternative deferred compensation program not available except through the Employer.

ARTICLE 3
ELIGIBILITY TO PARTICIPATE

3.1 **Eligibility**

Every Employee is eligible for membership under this Plan. Such eligibility, however, shall terminate at any time employment with the Employer is terminated. All deferred compensation paid under this Plan shall be paid pursuant to Article 10.

ARTICLE 4
PARTICIPATION

4.1 **Deferred Compensation Agreement**

An Employee may become a Participant by executing with the Employer, a Deferred Compensation agreement that will set aside from the Employee's current Gross Compensation, a separate and additional amount as Deferred Compensation. Subject to the limits of Article 8, at the time of entering into a Deferred Compensation agreement, a Participant must agree to defer a minimum of $25 per month.

4.2 **Deferral Eligibility**

Compensation may be deferred and credited to the Participant's Deferred Compensation account for any calendar month only if an agreement providing for such deferral has been entered into before the beginning of such calendar month and the Employee is receiving a paycheck in that month. Lump sum payments of unused annual leave, sick leave and back pay may be deferred and credited to the Participant's Deferred Compensation account, subject to the requirements set forth in the preceding sentence and the deferral limitations set forth in Article 8.

4.3 **Leave of Absence**

(a) If a Participant is on an approved leave of absence without pay from the Employer, participation in the Plan will continue. If a separation is determined to have occurred, the benefits of the Participant shall be paid as provided in Article 10.

(b) Notwithstanding any other provision of this Plan, a Participant returning from qualified military service protected under the Uniformed Services Employment and Reemployment Rights Act (Chapter 43 of Title 38, United States Code) shall be provided all participation, contribution and benefit rights required under that Act and Section 414(u) of the Code.

ARTICLE 5
ALLOCATION OF DEFERRED COMPENSATION

5.1 **Separate Account**

A separate bookkeeping account shall be maintained under the Plan for each Participant of the Plan, to which shall be credited during the year, at such times as shall be prescribed by the Board, an amount equal to the Participant's Deferred Compensation with respect to that year. Such account shall be known as the Participant's Section 457 Deferred Compensation account.

5.2 **Credits and Debits**

The Participant's Deferred Compensation account shall be credited or debited from time to time to reflect investment earnings and administrative expenses.

ARTICLE 6
ESTABLISHMENT OF TRUST

6.1 Establishment of Trust

The assets of the Plan, including all Employee Deferred Compensation contributions, property, rights purchased with Deferred Compensation, and all income attributable to such assets, are held in trust by the Board for the exclusive benefit of participating Employees and their Beneficiaries. The trust is intended to be exempt from taxation under Sections 457(g) and 501(a) of the Internal Revenue Code of 1986 as amended.

6.2 Trustee

The Board shall be the trustee for the Plan.

6.3 Alienation of Benefits Prohibited

Neither the Participant nor the Participant's designated Beneficiary, or any other designee, has any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payments or assets under this Plan. Such payments or assets are non-assignable and non-transferable. The Participant's rights under this Plan are not subject to the rights of creditors of the Participant, any Beneficiary, the Board or the Employer and shall be exempt from execution, attachment, prior assignment, or any other judicial relief or order for the benefit of creditors or other third persons.

Notwithstanding the foregoing, payments or assets under this Plan may be paid to an alternate payee in accordance with a qualified domestic relations order, as defined in Code Section 414(p) (as such applies to governmental plans), and in accordance with Code Section 401(a)(13). Distributions to alternate payees shall be made in a lump sum within 120 days after the later of the date the order is deemed to be qualified pursuant to the Plan's policies and procedures or the date the order is entered by the court.

ARTICLE 7
ADMINISTRATION OF THE PLAN

7.1 Administration

The Board shall supervise the operation of the Plan, maintain records and supply information to the Participants or others. In administering this Plan, the Board shall have any applicable rights, powers and duties granted to it by law for the administration of the North Dakota Public Employees Retirement System.

7.2 Specific Powers and Duties

The Board shall:

(a) Exercise exclusive authority to invest and manage assets of the Plan. However, the Board may permit Participants to direct and control the investment of their contributions, together with accumulated earnings, among the investment options established by the Board.

(b) Establish and adopt a statement of investment objectives and policies setting forth the manner and parameters of the investment of the assets of the Plan. The statement of investment objectives and policies shall be established in a manner consistent with the purposes of the Plan. The Board shall monitor the performance of the investments of the Plan to ensure such remain consistent with the investment policy established by the Board.

(c) Establish an administrative budget sufficient to perform the duties under the Plan and to draw upon authorized sources to fund the budget.

(d) Pay Plan benefits and related taxes from the assets of the Plan.

(e) Obtain by employment or contract all the services necessary or appropriate to administer the Plan, including actuarial, auditing, custodial, investment, legal and record keeping services.

(f) Procure and dispose of the goods and property of the Plan necessary for its proper administration.

(g) Represent the Employers in all matters concerning the administration of the Plan.

(h) Have full power and authority to adopt rules and regulations for the administration of the Plan and to interpret, alter, amend, or revoke any rules and rules and regulations so adopted.

7.3 **Accounting**

For accounting purposes, the Board will maintain a summary of the individual Deferred Compensation accounts of all Participants of the Plan whose benefits have not been annuitized. The accounting summary shall be identified as the General 457 Deferred Compensation Account and will reflect from time to time the total deferred liability of the Plan as well as the individual balances for all Participants of the Plan.

7.4 **Delegation of Responsibilities**

The Board may delegate the duties and responsibilities established under the Plan in a manner consistent with its fiduciary responsibilities as established under this Article.

7.5 **Compliance Authority**

The Board may administratively alter the terms of the Plan as it determines to be necessary or appropriate to maintain the status of the Plan as an eligible deferred compensation plan under Section 457 of the Code.

ARTICLE 8
LIMITATION OF DEFERRAL

8.1 **Maximum Deferral**

(a) Regular Deferral Limit

Except as provided in Section 8.2 and subject to rules adopted by the Board, the maximum amount that may be deferred under the Plan for the calendar year shall not exceed the lesser of:

1. the applicable dollar limit determined under Section 457(e)(15) of the Code, or
2. 100 percent of the Participant's Includible Compensation.

(b) Older Worker Deferral Limit

The applicable dollar limit for deferrals established under paragraph (a) of this Section 8.1 is increased for eligible participants who have attained the age of 50 before the close of the calendar year by the amounts permitted under Section 414(v) of the Code.

8.2 **Catch-up Provision**

For one or more of the Participant's last three calendar years ending before the Participant attains Normal Retirement Age under the Plan, the maximum that may be deferred under the Plan for the calendar year shall be the lesser of:

(a) twice the applicable dollar limit established under paragraph (a) of Section 8.1 for the calendar year, or

(b) so much of the maximum deferral established under paragraph (a) of Section 8.1 for calendar years beginning after December 31, 1978 and before the current calendar year as has not been used.

8.3 **The Deferral Limitation**

The maximum deferral of any individual who is a participant in another deferred compensation plan under Section 457 of the Code sponsored by the Employer shall be reduced by the amount of deferred compensation of any other plan so that the limitations set forth in Sections 8.1 and 8.2 above are not exceeded. The Participant will be responsible for the proper tax reporting for any contributions in excess of the maximum deferral limitation in Sections 8.1 and 8.2.

For any calendar year, if a Participant is eligible to make deferrals in excess of the regular deferral limit under both the Older Worker Deferral Limit in Section 8.1(b) and the catch-up provision of this Section 8.2, the Participant may make additional deferrals equal to either the Older Worker Deferral Limit under Section 8.1(b) or the catch-up provision of this Section 8.2, whichever amount is greater.

ARTICLE 9
ELIGIBILITY FOR BENEFITS

9.1 **Eligibility For Benefits**

Each Participant or Beneficiary shall be entitled to benefits under the Plan upon the date of Separation from Service of the Participant with the Employer or upon the occurrence of an Unforeseeable Emergency.

9.2 **Unforeseeable Emergency**

Benefits to a Participant or Beneficiary are distributable in the event of an Unforeseeable Emergency. The circumstances that constitute an Unforeseeable Emergency depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise, by liquidation of the Participant's or Beneficiary's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the Plan. The amount distributed because of an Unforeseeable Emergency may not exceed that reasonably needed to satisfy the emergency.

9.3 **Small Benefit Cashouts**

Notwithstanding any other provision of this Plan, the Board, upon request by the Participant, may elect to distribute benefits of to a Participant if:

(a) the total amount of the accrued benefit under the Plan is less than or equal to $5,000;

(b) no amount has been deferred by the Participant under the Plan for the most recent two-year period ending on the distribution date; and

(c) there has been no prior distribution under this Article 9 to the Participant, not including distribution under Section 9.2.

9.4 **Plan to Plan Transfers**

(a) Upon Separation from Service, a Participant shall be entitled to benefits. If such Participant Separates from Service with the Employer for the purpose of accepting or taking

employment with any other employer having an Internal Revenue Code Section 457 deferred compensation plan, the Board, after consulting with the Employee, may transfer the Employee's Deferred Compensation account to the Section 457 plan of the Employee's new employer.

(b) The Board may, upon receiving a written request from a Participant, receive the transfer of monies from a Section 457 deferred compensation plan of another employer for and on behalf of the Participant. The transferred contributions shall be subject to the provisions of this Plan; however, such contributions shall not be treated as contributions for the purposes of the limits of Article 8.

(c) Subject to the rules established by the Board and as permitted under Section 457(e)(17) of the Code, an Employee may elect at any time to transfer all or a portion of the Employee's Deferred Compensation account to a defined benefit governmental plan (as defined in Section 414(d) of the Code) for the purchase of permissive service credit (as defined in Section 415(n) of the Code) or for repayments under Section 415(k)(3) of the Code.

ARTICLE 10
PAYMENT OF BENEFITS

10.1 Distribution Election

Upon proper application in a manner approved by the Board, a Participant or Beneficiary who is eligible to receive benefits under Article 9 shall receive benefits at the time and manner elected by the Participant or Beneficiary. This election must be made consistent with the other distribution requirements of this Article 10.

10.2 Required Distribution Date

Distributions to Participants or their Beneficiaries must commence no later than April 1 of the calendar year following the later of the calendar year in which the Participant reaches age 70 1/2 or retires.

10.3 Distribution Over Life Expectancy

The Participant's entire interest in the Plan must be distributed over the life of the Participant or the lives of the Participant and a designated Beneficiary, over a period not extending beyond the life expectancy of the Participant or the life expectancy of the Participant and designated Beneficiary.

When a Participant dies **after** distribution of benefits has begun, the remaining portion of the Participant's interest shall be distributed at least as rapidly as under the method of distribution prior to the Participant's death.

When a Participant dies **before** distribution of benefits has begun, the entire interest of the Participant shall be distributed within five years of the Participant's death. The five-year payment rule does not apply to any portion of the Participant's interest which is payable to a designated Beneficiary over the life or life expectancy of the Beneficiary and which begins within one year after the date of the Participant's death. The five year payment rule does not apply to any portion of the Participant's interest which is payable to a surviving spouse payable over the life or life expectancy of the spouse and which begins no later than the date the Participant would have reached age 70 1/2.

10.4 **Additional Distribution Requirements**

Notwithstanding any other provision of this Plan, distributions under the Plan shall comply with the limits set forth in Section 401(a)(9) of the Code, including the minimum distribution incidental benefit requirements under Code Section 401(a)(9)(G), and the Treasury Regulations prescribed thereunder. The requirements of this Section 10.4 shall override any inconsistent provisions of the Plan.

10.5 **Payable Benefits**

Benefits under this Article shall be measured by the credits in the Participant's Deferred Compensation account on the date or dates the benefits are payable under the Plan and shall be payable in a lump sum or in equal monthly, quarterly, semiannual or annual installments over a period of one or more years.

10.6 **Death Benefit Payments**

In the event of the Participant's death prior to receiving payment in full of his benefits under the Plan, the Board shall pay directly to the Participant's named Beneficiary the amount otherwise payable to the Participant on the date of the Participant's death. If the Beneficiary of the Participant is the Participant's estate, the benefit will be paid in lump sum.

10.7 **Direct Rollovers**

A Distributee may elect, in a manner consistent with Section 457(e)(16) of the Code and at the time and in the manner prescribed by the Board, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover, except that a Distributee may not elect a Direct Rollover of a distribution or series of distributions of less than $200 in a single calendar year. For purposes of applying this Section 10.7, the following definitions shall apply:

(a) **Eligible Rollover Distribution.** An Eligible Rollover Distribution is any distribution of all or any portion of the balance of a participating member's account to the credit of the Distributee except that an Eligible Rollover Distribution does not include:

1. 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 his designated beneficiary, or for a specified period of ten years or more;

2. Any distribution to the extent such distribution is required under Code Section 401(a)(9);

3. The portion of any distribution that is not includable in a Distributee's gross income (determined without regard to the exclusion for net unrealized unappreciation with respect to Employer securities); or

4. Any corrective distribution of excess contributions and any corrective distribution of excess aggregate contributions and income allowable to such corrective distributions.

(b) **Eligible Retirement Plan.** An Eligible Retirement Plan as described in Section 402(c)(8)(B) is an individual retirement account described in Code Section 408(a), an annuity plan described in Code Section 408(b), an annuity plan described in Code Section 403(a), a qualified trust described in Code Section 401(a), an eligible deferred compensation plan described in Code Section 457(b) that is maintained by a governmental entity described in Code Section 457 (e)(1)(A), an annuity contract described in Code Section 403(b) that accepts the Distributee's Eligible Rollover Distribution. In the case of an Eligible Rollover Distribution to a designated beneficiary other than a spouse or former spouse, an Eligible Retirement Plan is only an individual retirement account described in Code Section 408(a) or an annuity plan described in Code Section 408(b) that is treated as an inherited IRA in accordance with the provisions of Code Section 402(c)(11).

(c) **Distributee.** A Distributee includes an employee or former employee. In addition, the employee's or former employee's designated beneficiary or the employee's or former employee's spouse or former 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 Section 414(p), with regard to the interest of the spouse or former spouse, are Distributees.

(d) **Direct Rollover.** A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

10.8 **Eligible Rollover Contributions to the Plan**

(a) A Participant who is an Employee and 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 Section 402 and to confirm that such plan is an eligible retirement plan within the meaning of Code Section 402(c)(8)(B).

(b) For purposes of this Section 10.8, "Eligible Rollover Distribution" has the meaning as set forth in Section 10.7 (a), and excludes after-tax employee contributions, and "Eligible Retirement Plan" has the meaning as set forth in Section 10.7 (b).

(c) 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 deferred compensation plan described in Code Section 457(b) that is maintained by a governmental entity described in Code Section 457 (e)(1)(A). 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 Retirement Plan that is an eligible deferred compensation plan described in Code Section 457(b) that is maintained by a governmental entity described in Code Section 457 (e)(1)(A). For purposes of small benefit cashouts under Section 9.3, amounts held in a separate rollover account shall be disregarded in determining the total amount of a Participant's accrued benefit under the Plan.

ARTICLE 11
MISCELLANEOUS PROVISIONS

11.1 **Tax Benefits**

The Employer and the Board do not and will not warrant any tax benefits or advantages under the Plan.

11.2 **Employer Rights**

Nothing in the document shall in any way affect the rights of the Employer or the Employee to terminate the employment relationship between them.

11.3 **Employee Rights**

Each Employee, upon having elected to become a Participant, shall be deemed to have assented to the terms and conditions of the Plan. Each Participant shall at all reasonable times be allowed to examine his particular Deferred Compensation account to determine its status and condition, and the Administrative Service Provider shall submit to the Participant periodic reports of the progress of the Participant's account.

ARTICLE 12
TERMINATION

12.1 **Right to Freeze or Terminate Plan**

(a) The Board may, within 60 days notice to the Employer and the Participants and Beneficiaries, terminate the Plan at any time as to new participants and contributions. Upon such termination, the Plan will continue in operation but without any further crediting of Deferred Compensation.

(b) The Board may, within 60 days notice to the Employer and the Participants and Beneficiaries, terminate this Plan in its entirety. In the event of a complete termination of the Plan, the Participants will be deemed to have separated from service as of the date of the Plan termination, deferrals shall cease, and benefits shall be payable as otherwise provided in the Plan.

(c) An Employer who has entered into an agreement with the Board to extend the Plan to their eligible Employees may, within 60 days notice to the Board and their Participants and Beneficiaries, terminate their participation agreement in a manner consistent with and in the same manner as provided in paragraph (b) above.

12.2 **Right to Amend Plan**

The Board has the right to amend the Plan at any time and from time to time; provided, however, that no such amendment shall, with respect to any Participant, reduce the benefits provided under the plan as derived from Deferred Compensation credited to the Participant before the effective date of any such amendment.

12.3 **Interpretation of the Plan**

This Plan shall be construed under the law of the State of North Dakota.