NORTH DAKOTA STATE DEFERRED COMPENSATION PROGRAM

SECTION 457 DEFERRED COMPENSATION PLAN AND TRUST

Amended and Restated effective July 1, 2015

Adoption Resolution

Resolved, that effective July 1, 2015, the State of North Dakota has adopted the attached amended and restated Section 457 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.

Signature

10-29-15
Date

Executive Director
Title

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

SECTION 457 DEFERRED COMPENSATION PLAN

ARTICLE 1

PURPOSE

The North Dakota Public Employees Retirement System Board ("Board") hereby amends, reestablishes and reaffirms the Deferred Compensation Plan and Trust ("the Plan"). The Plan consists of the provisions set forth in this document. The primary purpose of this Plan is to retain present employees and attract new employees for participating employers by providing increased retirement income and other deferred benefits to employees and their beneficiaries in accordance with the provisions of section 457 of the Internal Revenue Code and amendments thereto. This Plan shall be an agreement solely between the employer and participating employees. The Plan is intended to satisfy the requirements of an eligible deferred compensation plan under Internal Revenue Code section 457(b) and shall be interpreted as such.

Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement for services between participating employees and their employer nor shall it be deemed to give a participating employee any right to be retained in the employ of, or under contract to, an employer. Nothing herein shall be construed to modify the terms of any employment contract or agreement for services between participating employees and their employer as this Plan is intended to be a supplement thereto.

ARTICLE 2

DEFINITIONS

2.1 **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 Deferrals, the earnings or losses of the Trust Fund (net of Trust Fund expenses) allocable to the Participant, and any distribution made to the Participant or the Participant's Beneficiary. The Account Balance also includes any account established under Article 7 for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a Beneficiary after the Participant's death, and any account established for an alternate payee (as defined in Code section 414(p)(8)).

2.2 **Administrator.** The North Dakota Public Employees Retirement System Board shall serve as the Plan's Administrator; however, the Administrator may designate an entity, person or persons as an administrative services provider to carry out certain nondiscretionary, administrative functions under the Plan, as described in Article 8.

2.3 **Beneficiary.** The person or persons designated by the Participant who is entitled to receive benefits under the Plan after the death of a Participant. If no person is designated by the Participant or if the designated Beneficiary predeceases the Participant, the Participant's estate shall be the Beneficiary.

2.4 **Board.** The North Dakota Public Employees Retirement System Board.

2.5 **Code.** The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

2.6 **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 section 125, 132(f), 401(k), 403(b) or 457(b) of the Code. Compensation also includes amounts paid to a Participant who has had a Severance from Employment, other than retirement or severance incentive payments, to the extent such amounts are paid by the later of 2½ months after the Participant's Severance from Employment or the end of the calendar year in which the Severance from Employment occurred, in accordance with Treas. Reg. section 1.457-(4)(d)(1). Effective for years beginning after December 31, 2008, Compensation shall include military differential wage payments, as defined in Code section 3401(h).

2.7 **Deferral(s).** The amount of Compensation deferred in any calendar year, including unused annual leave, sick leave and back pay, but excluding amounts payable under any bona fide vacation leave, sick leave, compensation time, severance pay, disability pay or death benefit plans of the Employer.

2.8 **Employee.** Each person, whether appointed or elected, employed by the Employer as a common law employee who performs services for the Employer for which Compensation is paid, and who has been determined by the Employer to be eligible to participate in the Plan in accordance with Section 3.1. Employee does not include an independent contractor.

2.9 **Employer.** The State of North Dakota, which includes any of the State's departments, divisions, agencies or institutions, as well as any city, county, or other political subdivision, agency or instrumentality of the State, within the meaning of section 414(d) of the Code and section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") that enters into an agreement with the Board to participate in the Plan.

2.10 **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 section 401(a)(17)), and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f), 401(k), 403(b) or 457(b) of the Code. Effective for years beginning after December 31, 2008, Compensation shall include military differential wage payments, as defined in Code

section 3401(h). Includible Compensation is determined without regard to any community property laws.

2.11 **Investment Provider.** Any organization that has been approved by the Board to provide investment products under the Plan.

2.12 **Normal Retirement Age.** Age 70 ½, or if later, the date the employee incurs a Severance from Employment. For purposes of the special section 457 catch-up limitation under Section 4.3, a Participant may designate, in writing, a Normal Retirement age that is earlier than age 70 ½ but not earlier than the earliest age at which the Participant has a right to retire and receive, under the applicable defined benefit pension plan of the Employer, immediate retirement benefits without actuarial or other reduction because of retirement before some later specified age. If the Participant is not eligible to receive benefits under a defined benefit pension plan maintained by the Employer, the Participant's designated Normal Retirement Age may not be earlier than age 55.

2.13 **Participant.** An individual who is currently deferring Compensation, or who has previously deferred Compensation under the Plan by salary reduction and who has not received a distribution of his or her entire benefit under the Plan.

2.14 **Plan.** The North Dakota Section 457(b) Deferred Compensation Plan and Trust, as amended or restated from time to time.

2.15 **Plan Year.** The calendar year.

2.16 **Severance from Employment.** The date 31 days after 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).

2.17 **Trust Fund.** The trust fund created under and subject to the provisions in Article 9.

2.18 **Trustee.** The Board, or such other trustee duly appointed and currently serving in accordance with the provisions of Article 9.

2.19 **Valuation Date.** Each business day or such other valuation date as specified by the Investment Provider for a particular investment product, or as otherwise designated by the Board.

ARTICLE 3

PARTICIPATION AND CONTRIBUTIONS

3.1 **Eligibility.** Each Employee who works a minimum of 20 hours per week for 20 or more weeks per year, who is at least age 18 and who fills a permanent position that is regularly funded and not of limited duration shall be eligible to participate in the Plan and may defer Compensation hereunder immediately upon satisfying the eligibility requirements under this Section 3.1.

3.2 **Election Required for Participation.** An Employee may elect to become a Participant by executing an election to defer a portion of his or her Compensation (and have that amount contributed as Deferrals on his or her behalf) and submitting it to the Administrator. This participation election shall be made pursuant to a deferral agreement under which the Employee agrees to be bound by all the terms and conditions of the Plan. The Administrator may establish a minimum deferral amount, and may change such minimums from time to time. Subject to the limits of Article 4, a Participant must currently defer a minimum of $25 per month. The participation election shall include selection of an Investment Provider. Any such election shall remain in effect until a new election is submitted.

3.3 **Commencement of Participation.** An Employee shall become a Participant as soon as administratively practicable following the date the Employee files a participation election pursuant to Section 3.2. Such election shall become effective no earlier than the calendar month following the month in which the election is made, or such other date as may be permitted under the Code.

3.4 **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 for the Administrator to administer the Plan, including, without limitation, whether the Employee is a participant in any other eligible plan under Code section 457(b).

3.5 **Contributions Made Promptly.** 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.

3.6 **Amendment of Deferral 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 Deferrals, as well as his or her investment direction and his or her designated Beneficiary through the Investment Provider(s). However, the Board retains the authority to limit the frequency of changes to the amount of Deferrals, applied uniformly to all Employees, as it deems appropriate. Unless the election specifies a later effective date, a change in the amount of Deferrals shall take effect as of the first day of the next following month or as soon as administratively practicable if later. A change in the investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Investment Provider.

3.7 **Leave of Absence.** Unless an election is otherwise revised, if a Participant is absent from work by leave of absence, Deferrals under the Plan shall continue to the extent that Compensation continues. If a Severance from Employment is determined to have occurred, the Participant may elect to receive a distribution of benefits as provided for in Article 5.

3.8 **Disability.** A disabled Participant may elect to make 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.

ARTICLE 4

LIMITATIONS ON AMOUNTS DEFERRED

4.1 **Basic Annual Limitation.** The maximum annual amount of Deferrals under the Plan for any calendar year shall not exceed the lesser of (1) the Applicable Dollar Amount or (2) the Participant's Includible Compensation for the calendar year. The Applicable Dollar Amount is the amount set forth under Code section 457(e)(15), as indexed in accordance with Code section 415(d).

4.2 **Age 50 Catch-up Contributions.** A Participant who will attain age 50 or more by the end of the calendar year is permitted to make an additional annual amount of Deferrals, up to the maximum age 50 catch-up Deferrals for the year. The maximum annual dollar amount of the age 50 catch-up Deferrals for a year is the amount set forth under Code section 414(v)(2), as indexed in accordance with Code section 414(v)(2)(C) and Code section 415(d).

4.3 **Special Section 457 Catch-up Limitation.** If the applicable year is one of the Participant's last three consecutive calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this Section 4.3 exceeds the amount computed under Section 4.1 and 4.2, then the annual limit on Deferrals under this Article 4 shall be the lesser of:

(a) An amount equal to two times the Applicable Dollar Amount under Section 4.1 for such year; or

(b) The sum of:

(1) An amount equal to the aggregate limit under Section 4.1 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 under Code section 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 4.2 and 4.3), minus the aggregate contributions to Pre-2002 Coordination Plans (as defined in Section 4.4(c)) for such years.

However, in no event can the deferred amount be more than the Participant's Compensation for the year.

4.4 **Special Rules.** For purposes of this Article 4, the following rules shall apply:

(a) If the Participant is or has been a participant in one or more other eligible plans within the meaning of Code section 457(b), then the Plan and all such other plans shall be considered one plan for the purposes of applying the limitation in this Article 4. 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) In applying Section 4.3, 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 was subject to the maximum amount described in Section 4.1 or any other plan limit required by Code section 457(b).

(c) For purposes of Section 4.3(b)(2), the term "contributions to Pre-2002 Coordination Plans" means any employer contribution, salary reduction or elective contribution under any other eligible Code section 457(b) plan, or a salary reduction or elective contribution under any other eligible Code section 401(k) qualified cash or deferred arrangement, Code section 402(h)(1)(B) simplified employee pension (SARSEP), Code section 403(b) annuity contract and Code section 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 section 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 4.3(b)(2) to the extent that the total of such contributions does not exceed the aggregate limit referred to in Code section 457(b)(2) for that year.

(d) For purposes of Sections 4.1, 4.2 and 4.3, an individual is treated as not having deferred compensation under a plan for a prior taxable year to the extent Excess Deferrals (as defined in Section 4.5) under the plan are distributed. 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.

4.5 **Correction of Excess Deferrals.** If the annual amount of Deferrals on behalf of a Participant for any calendar year exceeds the limitations described in this Article 4, or the annual amount of Deferrals on behalf of a Participant for any calendar year exceeds the limitations described in this Article 4 when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under Code section 457(b) for which the Participant provides information that is accepted by the Administrator, then the annual amount of Deferrals, to the extent in excess of the applicable limitation ("Excess Deferral"), and adjusted for any income or loss in value, if any, allocable thereto, shall be distributed to the Participant.

4.6 **Protection of Persons Who Serve in a Uniformed Service.** An Employee whose employment is interrupted by qualified military service under Code section 414(u) or who is on a leave of absence for qualified military service under Code section 414(u) may elect to make additional Deferrals upon resumption of employment with the Employer equal to the maximum amount of 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 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.

In addition, effective for deaths occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code section 414(u)(5)), this Plan shall provide all applicable benefits required in accordance with Code section 401(a)(37), but the provisions of Code section 414(u)(9) shall not apply to this Plan.

ARTICLE 5

DISTRIBUTION OF BENEFITS

5.1 **Benefit Distributions.** A Participant's Account Balance may not be paid to the Participant (or, if applicable, the Participant's Beneficiary), until one of the following events has occurred:

(a) the Participant's Severance from Employment;

(b) the Participant's death;

(c) an unforeseeable emergency, within the meaning of and subject to Section 5.4;

(d) the Participant elects a small Account Balance distribution in accordance with Section 5.5.

If a Participant has a separate account attributable to rollover contributions to the Plan pursuant to Section 7.1, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

5.2 **Benefit Distribution Election.**

(a) A Participant may elect to commence distribution of his or her Account Balance any time after Severance of Employment by filing an application for a distribution with the Administrator. However, in no event may distribution of benefits to the Participant commence later than April 1st of the year following the later of the year in which the Participant attains age 70 ½ or the year in which the Participant severs employment with the Employer. The amount of such required minimum distribution shall be determined in accordance with Code section 401(a)(9) and the regulations thereunder, as applicable to a governmental plan as defined in Code section 414(d).

(b) A Participant (or, if applicable, the Participant's Beneficiary) may elect a distribution in the form of a lump sum or systematic distribution option as permitted under the terms of the investment product(s), or may elect a direct rollover to an eligible retirement plan as described in Section 5.6. In addition, the Participant's entire interest in the Plan must be distributed over the life of the Participant or the lives of the Participant and designated Beneficiary over a period not extending beyond the life expectancy of the Participant or the life expectancy

of the Participant and designated Beneficiary. Notwithstanding any other provision of the Plan, the elected form of distribution shall comply with required distribution rules under Code section 401(a)(9) and the regulations thereunder, as applicable to a governmental plan as defined in Code section 414(d), including any minimum distribution incidental benefit requirements.

(c) Effective in 2009, notwithstanding subsections (a) and (b) above, a Participant (or, if applicable, the Participant's Beneficiary) who would have been required to receive required minimum distributions for 2009 but for the enactment of Code section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. In addition, notwithstanding Section 5.6(a)(3) of the Plan, and solely for the purpose of applying the direct rollover provisions of the Plan, the Board shall only offer direct rollover of 2009 RMDs and Extended 2009 RMDs that are received by a Participant or Beneficiary to the extent such distributions that would be Eligible Rollover Distributions without regard to Code section 401(a)(9)(H).

5.3 **Death Benefit Distributions.** Upon the death of the Participant, the Participant's Beneficiary may elect to receive the Participant's Account Balance in any form permitted under Section 5.2. However, if the Beneficiary of the Participant is the Participant's estate, the benefit will be payable only in a single lump sum. Such Beneficiary may also designate his or her own beneficiary, or if none is designated, the Beneficiary's estate will receive any benefits payable upon the Beneficiary's death. Notwithstanding any other provision in the Plan to the contrary, distributions upon the death of a Participant shall be made in accordance with the following requirements and shall otherwise comply with Code section 401(a)(9) and the regulations thereunder, as applicable to a governmental plan as defined in Code section 414(d), including any minimum distribution incidental benefit requirements.

(a) If the designated Beneficiary is not the Participant's surviving spouse, distributions after the Participant's death must either (1) begin to be distributed no later than December 31st of the calendar year immediately following the year of the Participant's death, payable over a period not to exceed the Beneficiary's life expectancy; or (2) be distributed no later than December 31st of the calendar year containing the fifth anniversary of the Participant's death.

(b) If the designated Beneficiary is the Participant's surviving spouse, distributions after the Participant's death must begin to be distributed by the later of December 31st of the calendar year immediately following the year of the Participant's death or December 31st of the calendar year in which the Participant would have

attained age 70 ½. Payments to a surviving spouse must be made over a period not to exceed the surviving spouse's life expectancy. Alternatively, the surviving spouse may elect to receive a total distribution of the Participant's Account Balance by no later than December 31st of the calendar year containing the fifth anniversary of the Participant's death.

(c) If required minimum distributions under Code section 401(a)(9) have begun prior to the death of the Participant, the remaining portion of the Participant's Account Balance shall be distributed to the Beneficiary at least as rapidly as under the method of distribution in effect prior to the Participant's death.

5.4 **Unforeseeable Emergency Distributions.** If the Participant has an unforeseeable emergency before Severance from Employment, the Participant may elect to receive a lump sum distribution equal to an amount not to exceed the amount reasonably necessary to satisfy the emergency need, which may include amounts necessary to pay federal, state or local income taxes or penalties reasonably anticipated to result from the distribution, as determined by the Administrator.

For this purpose, an unforeseeable emergency is defined as a severe financial hardship of the Participant resulting from an illness or accident of the Participant, the Participant's spouse or dependents (as defined in Code section 152(a) without regard to Code section 152(b)(1), (b)(2) and (d)(1)(B)); loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of natural disaster); the need to pay for the funeral expenses of the Participant's spouse or dependent (as defined in Code section 152(a) without regard to Code section 152(b)(1), (b)(2) and (d)(1)(B)); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. For example, the imminent foreclosure of or eviction from the Participant's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including nonrefundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Except as otherwise specifically provided in this Section 5.4, neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency.

A distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement of 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.

5.5 **Distribution of Small Account Balances.** Upon proper written request to the Administrator, a Participant may elect to receive a distribution of his or her total Account Balance in a lump sum if the Account Balance does not exceed $5,000 (or the dollar limit under Code section 411(a)(11), if greater) without regard to amounts attributable to rollover contributions under Section 7.1, no Deferrals have been made for the Participant during the two-year period immediately prior to the date of distribution, and the Participant has not previously received a distribution of his or her Account Balance under this Section 5.5.

5.6 **Direct Rollovers.** Notwithstanding any provision of the Plan to the contrary, a Distributee shall be permitted to elect to have an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan in a direct rollover, at the time and in the manner prescribed by the Administrator.

(a) An "Eligible Rollover Distribution" means any distribution of all or a portion of a Participant's Account Balance, except that an Eligible Rollover Distribution does not include:

(1) any distribution that is one of 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 a designated Beneficiary, or for a specified period of 10 years or more;

(2) any distribution made under Section 5.4 as a result of an unforeseeable emergency; or

(3) any distribution to the extent such distribution is a required minimum distribution under Code section 401(a)(9).

(b) An "Eligible Retirement Plan" means an individual retirement account described in Code section 408(a), an individual retirement annuity 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), or a Roth IRA described in Code section 408A, that accepts the Distributee's Eligible Rollover Distribution. However, for an Eligible Rollover Distribution to a designated Beneficiary other than the surviving spouse, an Eligible Retirement Plan is only an individual retirement account described in Code section 408(a) or an individual retirement annuity described in Code section 408(b) that is treated as an inherited IRA in accordance with Code section 402(c)(11).

(c) A "Distributee" includes a Participant or former Participant or the Participant's or former Participant's designated Beneficiary. In addition, the Participant's or former Participant's spouse or former spouse are Distributees with regard to the interest of the spouse or former spouse.

5.7 **Amount of Account Balance.** For all purposes under the Plan, the amount of any payment under this Article 5 shall be based on the amount of the Account Balance on the preceding Valuation Date, plus Deferrals made to the Plan from the Valuation Date to the date of distribution.

ARTICLE 6

LOANS

This Plan does not permit loans from the Account Balances of Participants.

ARTICLE 7

ROLLOVERS AND TRANSFERS

7.1 **Rollover Contributions to the Plan.** A Participant who is an Employee and who is entitled to receive an Eligible Rollover Distribution (as defined in Section 5.6(a) but excluding any after-tax employee contributions) from another eligible retirement plan (as defined in Code section 402(c)(8)) may request to have all or a portion of such 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).

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 section 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 retirement plan that is an eligible governmental plan under Code section 457(b).

7.2 **Plan-to-Plan Transfers to the Plan.** Participants who are participants in another eligible governmental plan under Code section 457(b) may transfer assets to this Plan as provided in this Section 7.2, but only if the other plan provides for the direct transfer of each Participant's interest therein to the Plan. The Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Code section 457(e)(10) and Treas. Reg. section 1.457-10(b) and to confirm that the other plan is an eligible governmental plan as defined in Treas. Reg. section 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 Deferrals by the Participant under the Plan, except that transferred amounts shall not be considered a Deferral under the Plan in determining the maximum deferral under Article 4.

7.3 **Plan-to-Plan Transfers from the Plan.** Participants and Beneficiaries may elect to have all or any portion of their Account Balance transferred to another eligible governmental plan within the meaning of Code section 457(b) and Treas. Reg. section 1.457-2(f). A transfer is permitted for a Participant under this Section 7.3 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 only if the other eligible governmental plan provides for the acceptance of plan-to-plan transfers with respect to Participants and Beneficiaries and for each Participant or Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.

Upon the transfer of assets under this Section 7.3, 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. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 7.3 (e.g., to confirm that the receiving plan is an eligible governmental plan and to assure that the

transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Treas. Reg. section 1.457-10(b).

7.4 **Permissive Service Credit Transfers.** A Participant may elect to have any portion of his or her Account Balance transferred to a tax-qualified, governmental defined benefit plan (as defined in Code section 414(d)) that provides for the acceptance of plan-to-plan transfers for the purchase of permissive service credit (as defined in Code section 415(n)(3)(A) under the receiving governmental defined benefit plan or a repayment to which Code section 415 does not apply by reason of Code section 415(k)(3). A transfer for such purpose may be made before the Participant has had a Severance from Employment.

ARTICLE 8

ADMINISTRATION

This Plan shall be administered by the Administrator, as directed by the Board, in accordance with Code section 457 and applicable regulations thereunder. The Board shall have the authority to make all discretionary decisions affecting the rights or benefits of the Participants which may be required in administration of this Plan. The Board's decisions shall be afforded the maximum deference permitted by applicable law. The Board shall exercise all rights, powers and duties granted to it by law and as necessary to administer the Plan. The Board shall approve or disapprove Investment Providers and may contract with Investment Providers to offer investment products under the Plan and provide services to the Plan as the Board deems appropriate.

The Board may delegate specific duties and responsibilities under the Plan, including by contracting with an administrative service provider or providers to perform specific, nondiscretionary administrative functions under the Plan, including the maintenance of Participants' Account Balances, the provision of periodic reports on the status of each Account Balance, the disbursement of benefits on behalf of the Board in accordance with the terms of this Plan, the maintenance of Beneficiary designations and the selection of investment products offered to Participants. The Board shall supervise the operation of the Plan, maintain records and supply information to the Participants or other parties.

ARTICLE 9

TRUST FUND

9.1 **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 insurance annuity contracts or custodial account contracts that have been entered into with one or more Investment Providers by the Board that meet the exclusive benefit and other requirements of Code sections 457(g) and 401(f). Under the terms of the insurance annuity and custodial account contracts under this Section 9.1 it shall be impossible, prior to the satisfaction of all liabilities with respect to the Accounts of Participants and Beneficiaries, for any part of the assets or income of the contracts to be used for, or diverted to, any purpose other than for the exclusive benefit of the Participants and Beneficiaries of the Plan and Trust. For purposes of this Article 9, custodial accounts and annuity contracts shall be treated as held in trust so long as such custodial accounts and annuity contracts satisfy the requirements set forth in Treas. Reg. section 1.457-8(a)(3).

Assets of the Plan held in insurance annuity or custodial account contracts that do not meet the exclusive benefit requirements of the preceding paragraph shall be held in trust by the Board for the exclusive benefit of participating Employees and their Beneficiaries. The terms of the Trust Fund under this Section 9.1 must make it impossible, prior to the satisfaction of all liabilities with respect to the Accounts of Participants and Beneficiaries, for any part of the assets or income of the contracts to be used for, or diverted to, any purpose other than for the exclusive benefit of the Participants and Beneficiaries of the Plan and Trust. The Trust Fund shall be established pursuant to a written agreement that constitutes a valid trust under the laws of the State of North Dakota. The trust is intended to be exempt from taxation under Code sections 457(g) and 501(a).

9.2 **Trustee.** The Board shall be the Trustee for the Plan, unless the Board duly appoints another individual or entity to serve as trustee and such individual or entity agrees to act in that capacity hereunder. 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 liable to pay benefits under this Plan only to the extent of amounts that are available under the investment products selected by Participants and Beneficiaries, and neither the Board nor Employers shall be responsible for the investment or performance results of such investment products.

9.3 **Specific Powers and Duties.** The Board shall:

(a) Select Investment Providers(s) who offer investment products from which Participants may choose to invest their Account Balances. The Board permits Participants to direct and control the investment of their contributions, together with accumulated earnings, among the investment options offered by the Investment Provider(s).

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

(c) Direct Investment Providers to pay Plan benefits and related taxes from the assets of the Plan.

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

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

(f) 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.

9.4 **Accounting.** For accounting purposes, the Board will maintain a summary of the individual Account Balances of all Participants of the Plan whose benefits have not been annuitized. The accounting summary shall be identified as the general account of the North Dakota Section 457 Deferred Compensation Plan and Trust 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.

ARTICLE 10

MISCELLANEOUS

10.1 **Nonassignability.** Except as provided in Sections 10.2 and 10.3, the interests of each Participant or Beneficiary under this Plan are not subject to the claims of creditors. Participants and Beneficiaries shall not 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 nonassignable and nontransferable. Nor shall any unpaid benefits be subject to attachment, garnishment or execution for the payment of any debts or judgments or be transferable by operation of law in the event of bankruptcy or insolvency of the Participant or any other person.

10.2 **Domestic Relations Orders.** A Participant's benefit may be subject to division under a domestic relations orders between the Participant and the alternate payee (as defined in Code section 414(p)(8)) if the order is determined to be a qualified domestic relations order (as defined in Code section 414(p)(1) and modified by Code section 414(p)(11)). The Administrator shall establish reasonable procedures for determining the qualified status of a domestic relations order and for effectuating distribution pursuant to a qualified domestic relations order. Distribution shall be made to an alternate payee in a single lump sum pursuant to a domestic relations order within 21 days after the later of the date the order is deemed to be qualified pursuant to the Plan policies and procedures or the date the order is entered by the court, without regard to whether the Participant is eligible for a distribution of benefits under the Plan.

10.3 **IRS Levy.** Notwithstanding Section 10.1, 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.

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

10.5 **Payments to Minors and Incompetents.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Investment Provider, benefits will be paid to such person as the Investment Provider 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.

10.6 **Distributee Cannot be Located.** The Investment Provider shall make all reasonable attempts to determine the identity and address of a Participant or Participant's Beneficiary entitled to benefits under the Plan. If the Investment Provider 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.

10.7 **Applicable Law.** This Plan and Trust shall be construed under the laws of the State of North Dakota with the intent that it meets the requirements of an eligible deferred compensation plan under Code section 457(b), as amended. The provisions of this Plan and Trust shall be interpreted whenever possible in conformity with the requirements of that Code section.

10.8 **Gender and Number.** The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where context requires otherwise.

ARTICLE 11

AMENDMENT OR TERMINATION

11.1 **Amendment or Termination of the Plan.** The Board may terminate (with 60 days notice to the Employer and the Participants and Beneficiaries) or amend the provisions of this Plan at any time; provided, however, no termination or amendment shall affect the rights of a Participant or a Beneficiary to the receipt of benefits with respect to any Compensation deferred before termination or amendment, as adjusted for the investment experience of the Participant's or Beneficiary's Account Balance prior to or subsequent

to the termination or amendment of the Plan. An Employer who has entered into agreement with the Board to participate in this Plan may, with 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 described in the preceding sentence.

11.2 **Distribution Upon Termination.** Upon termination of the Plan, the Board shall direct distribution of the assets of the Plan and Trust Fund to Participants and Beneficiaries in a manner that is consistent with and satisfies the provisions of Section 5.2 as soon as administratively practicable after a resolution to terminate the Plan is adopted.