

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM DEFERRED
COMPENSATION 457(b) PLAN

Restated effective June 10, 2025 Amended Effective: January 1, 2026

Adoption Resolution

Resolved, that effective January 1, 2026, the State of North Dakota has amended the 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

Date

10/14/25

Executive Director

Title

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM DEFERRED COMPENSATION 457(B) PLAN

ARTICLE 1 PURPOSE

The North Dakota Public Employees Retirement System Board (“Board”) hereby amends, reestablishes and reaffirms the Section 457 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 and by providing additional investment opportunities that are not otherwise available under the North Dakota Section 457 Deferred Compensation Plan. 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, Employer Contributions, 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, Roth Contributions, 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 sections 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) so long as the Employee would have been able to use the leave if employment had continued. 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.** The amount of Compensation deferred by a Participant in any calendar year as a pre-tax deferral, Roth Contribution, or both and deposited by the Administrator.
- 2.8 Designated Beneficiary.** An individual Beneficiary within the meaning of Code section 401(a)(9)(E)(i).
- 2.9 Eligible Designated Beneficiary.** A Designated Beneficiary who meets the additional criteria under Code section 401(a)(9)(E)(ii).
- 2.10 Eligible Retired Public Safety Officer.** An individual who has had a Severance from Employment as a public safety officer, as defined in Code section 402(l)(4)(C), with an Employer.
- 2.11 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.
- 2.12 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 that enters into an agreement with the Board to participate in the Plan.
- 2.13 Employer Contribution.** Any nonelective contribution and/or matching contribution made pursuant to an election of the Employer accepted by the Plan Administrator.
- 2.14 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 the maximum amount under Code section 401(a)(17), and increased (up to the dollar maximum) by any compensation reduction election under sections 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.

- 2.15 Investment Provider.** Any organization that has been approved by the Board to provide investment products under the Plan.
- 2.16 Normal Retirement Age.** Age 70 ½, or if later, the date the employee incurs a Severance from Employment. However, for purposes of the special 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 is eligible to retire and receive immediate, unreduced retirement benefits under a defined benefit pension plan maintained by the Employer. If the Participant is not eligible to receive benefits under such a plan, the designated Normal Retirement Age may not be earlier than age 55. In all cases, the designated Normal Retirement Age for Purposes of the special catch-up limitation may not exceed age 70½.
- 2.17 Participant.** An individual who (i) is currently deferring Compensation, or who (ii) is entitled to an Employer Contribution, or (iii) has previously deferred Compensation under the Plan by salary reduction or received an Employer Contribution, and who has not received a distribution of his or her entire benefit under the Plan.
- 2.18 Plan.** The North Dakota Public Employees Retirement System Deferred Compensation 457(b) Plan, as amended or restated from time to time.
- 2.19 Plan Contributions.** Deferrals and Employer Contributions made to the Plan.
- 2.20 Plan Year.** The calendar year.
- 2.21 Qualified Health Insurance Premiums.** Premiums for coverage for an Eligible Retired Public Safety Officer, his spouse, and/or his dependents, as defined in Code section 152, by an accident or health plan or qualified long-term care insurance contract, as defined in Code section 7702B(b).
- 2.22 Required Beginning Date.** April 1 of the calendar year following the later of the calendar year in which the Participant incurs a Severance from Employment or reaches the required minimum distribution age under Code section 401(a)(9).
- 2.23 Roth Contribution.** An after-tax contribution made by a Participant to the Participant's Account Balance that satisfies both of the following conditions:
- (a) The Participant irrevocably designates the contribution as a Roth Contribution at the time of the deferral election and the contribution is made in lieu of all or a portion of the pre-tax deferrals the Participant is otherwise eligible to make under the Plan; and

- (b) The Employer treats the contribution as includible in the Participant's gross income at the time the amount would have been paid to the Participant in cash, had the Participant not elected to defer it.
- 2.24 **Roth Contribution Account.** A separate account established within the Plan that consists of after-tax contributions made in accordance with Code section 402A.
- 2.25 **Severance from Employment.** Thirty-one 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).
- 2.26 **Trust Fund.** The trust fund created under and subject to the provisions in Article 9.
- 2.27 **Trustee.** The Board, or such other trustee duly appointed and currently serving in accordance with the provisions of Article 9.
- 2.28 **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 Deferrals.**
 - (a) 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 as either pre-tax contribution or Roth Contributions) 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.
 - (b) If the Participant fails to designate whether the deferrals are to be made as pre-tax contributions or Roth Contributions, the Participant will be deemed to have designated the deferrals as pre-tax contributions; provided, however, that effective January 1, 2026, if the Participant is subject to Code section 414(v)(7), then, regardless of the Participant's actual designation), the Participant will be deemed to have irrevocably designated as Roth Contributions any deferrals that are made pursuant to Code section 414(v) at such time that either (i) the Participant's

aggregate Deferrals exceed the limit imposed by Code section 457(b)(2) (or Code section 457(b)(3) if applicable) or (ii) the Participant's pre-tax contributions exceed the limit imposed by Code section 457(b)(2) (or Code section 457(b)(3) if applicable). The same method of deemed Roth designation shall apply uniformly to all Participants for any Plan Year. Pre-tax contributions shall be allocated to the pre-tax contribution Account Balance of the Participant as of the date of contribution. Roth Contributions shall be allocated to the Roth Contribution Account of the Participant as of the date of contribution.

- 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 or becomes eligible for Employer Contributions under Section 3.9. Such election shall become effective no earlier than the date the Employee files a participation election pursuant to Section 3.2 or becomes eligible for Employer Contributions under Section 3.9, as permitted under Code section 457(b)(4)(A). 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.
- 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. For this purpose, 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.
- 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. A change shall remain in effect until superseded by another election or until the Administrator requires a Participant to complete a new election. A Participant may change his or her election or deemed election to make pre-tax contributions and/or Roth Contributions at any time by filing a new election with

the Administrator. Any such changes shall be effective as soon as administratively practicable after the change is filed. An election to make pre-tax contributions and/or Roth Contributions shall not be valid with respect to any period during which the Participant is not an Employee. No election or deemed election to make, change, or discontinue such contributions shall be given retroactive effect, except as may be permitted under Treasury Regulation section 1.414(v)-2(c) or other applicable guidance issued by the Secretary of the Treasury. This includes elections to make Deferrals in excess of the applicable dollar limit under Code section 415(e)(15) as Roth Contributions by a Participant who will attain age 50 or more by the end of the calendar year and whose compensation is determined to exceed the wage limitation under Code section 414(v)(7)(A), provided that any such correction method is applied consistently to all similarly situated Participants.

- 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.
- 3.9 Employer Contributions.** A Participant shall become entitled to Employer Contributions as elected by the Employer and communicated to the Plan Administrator in a form acceptable to the Administrator. An Employee who is not a Participant shall become a Participant immediately upon becoming entitled to an Employer Contribution pursuant to the Employer's election, regardless of whether such Employee elects to make Deferrals.

ARTICLE 4 LIMITATIONS ON AMOUNTS DEFERRED

- 4.1 Basic Annual Limitation.** In accordance with Code section 457(b)(2), the maximum annual amount of Plan Contributions for any calendar year shall not exceed the lesser of (1) the applicable dollar amount set forth under Code section 457(e)(15)(A), as indexed under Code section 457(e)(15)(B) or (2) the Participant's Includible Compensation for the calendar year.
- 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 additional annual Deferrals up to the applicable dollar amount under Code section 414(v), as indexed in accordance with Code section 414(v)(2)(C). The adjusted dollar amount under Code section 414(v)(2)(E), as increased by the cost of living adjustment in effect for such calendar year, shall apply to a Participant who will attain age 60 but will not attain age 64 by the end of the calendar year.
- 4.3 Special Section 457 Catch-up Limitation.** In accordance with Code section 457(b)(3), 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 Plan Contributions 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 (A) the aggregate limit under Section 4.1 for the current calendar year plus each prior calendar year beginning after December 31, 2001 during which the Participant was an Employee under the Plan, minus (B) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus
 - (2) An amount equal to (A) 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 (B) the aggregate contributions to Pre-2002 Coordination Plans (as defined by Treasury Regulations and provided 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 this Plan and all such other plans shall be considered as one plan for the purposes of applying the foregoing limitation of 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 Plan Contributions on behalf of a Participant for any calendar year exceeds the limitations described in this Article 4, or the annual amount of Plan Contributions 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 Plan Contributions, 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 Correction of § 414(v)(7) Roth Catch-Up Errors. If a Participant subject to Code section 414(v)(7) fails to designate catch-up contributions under Code section 414(v) as Roth Contributions, and such contributions exceed the applicable dollar limit under Code section 457(e)(15), the failure may be corrected in accordance with Treasury Regulation §1.414(v)-2(c)(2)(ii) or (iii), or other applicable guidance issued by the Secretary of the Treasury. The same correction method shall apply to all similarly situated Participants for any Plan Year.

4.7 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.

If such Participant elects to make such additional Deferrals, then the Employer shall make up the related matching Employer Contributions which would have been required had such Deferrals actually been made during the period of qualified military service. The make-up contributions by the Employer shall be made as soon as practicable after the Participant makes such make-up contributions.

If the Participant timely resumes employment in accordance with USERRA after a qualified military leave, the Employer shall make any nonelective Employer Contributions that would have been made if the Participant had remained employed during the Participant's qualified military service. Such contributions must be made no later than ninety (90) days after the date of such reemployment or when contributions are normally due for the year in which the qualified military service was performed, if later.

In determining the amount of Deferrals and Employer Contributions, a Participant shall be treated as receiving compensation from the Employer during such period of qualified military service equal to: (i) the compensation the Participant would have received during such period if the Participant were not in qualified military service, determined based on the rate of pay the Participant would have received from the Employer but for the absence during the period of qualified military service; or (ii) if the compensation the Participant would have received during such period is not reasonably certain, the Participant's average compensation from the Employer during the twelve (12) month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

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 Distribution Restrictions.

- (a) In accordance with Code section 457(d), a Participant, or, if applicable, a Beneficiary, shall be eligible to receive a distribution of his or her Account Balance if the Participant:
 - (1) has a Severance from Employment;
 - (2) dies;
 - (3) is eligible for a distribution under Section 5.4;
 - (4) has a Severance from Employment and is subject to the mandatory distribution of the Account Balance under Section 5.7.
- (b) Paragraph (a) notwithstanding, a Participant's account attributable to rollover contributions made pursuant to Section 7.1 may be distributed to a Participant at any time, to the extent that the rollover contributions made pursuant to Section 7.1 have been separately accounted for by the Administrator.

- 5.2 Benefit Distribution Election.** A Participant may elect to commence distribution of his or her Account Balance any time after retirement or other Severance of Employment by filing an application for a distribution with the Administrator.

5.3 Payment Options.

- (a) A Participant (or, if applicable, a Beneficiary) entitled to a distribution under this Article 5 may elect to receive payment in any of the following forms of distribution:
 - (1) a lump sum payment of the total Account Balance;
 - (2) annual, monthly, or quarterly installment payments as permitted under the terms of the investment product(s); or
 - (3) a direct rollover to an Eligible Retirement Plan as described in Section 7.2.
- (b) A lump sum payment of a Participant's Account may be made without the consent of the Participant or Beneficiary if their Account Balance does not exceed \$1,000 taking into account their Rollover Contribution Account, unless the Participant elects 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 in a lump sum.

5.4 Distribution Events.

- (a) Unforeseeable Emergency Distributions. In accordance with Code section 457(d)(1)(A)(iii) and Treasury Regulation § 1.457-6(c)(1), if the Participant has an unforeseeable emergency before Severance from Employment, 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 5.4(a).
 - (1) 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(a), neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency.

- (2) 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.
- (3) Distributions because of an unforeseeable emergency may not exceed the amount reasonably necessary to satisfy the emergency (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to results from the distribution).
- (4) Effective January 1, 2026, a Participant may self-certify that they meet the requirements for an unforeseeable emergency distribution under this Section, in accordance with Code section 457(d)(4) and applicable IRS guidance. The Administrator shall accept such self-certification in lieu of independent verification, provided the Participant certifies that:
 - i. The distribution is necessary to address a severe financial hardship resulting from an unforeseeable emergency as defined in this Section;
 - ii. The Participant lacks other available resources to meet the emergency need; and
 - iii. The amount requested does not exceed the amount reasonably necessary to satisfy the emergency, including anticipated taxes and penalties
- (b) The Administrator may adopt forms and procedures to implement this provision and may rely on the Participant's certification unless the Administrator has actual knowledge to the contrary. Voluntary Distribution of Small Amounts. 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 \$7,000 (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 Plan Contributions 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 5.4.

5.5 Death Benefit. If a Participant dies before the distribution of his or her entire Account Balance, the remaining Account Balance shall be distributed to the Beneficiary(ies) as soon as administratively practicable after the Participant's death, unless the Beneficiary elects a later payment date, subject to Code section 401(a)(9). A Beneficiary may elect to receive the Participant's Account Balance under any distribution option available under Section 5.3, subject to Code section 401(a)(9).

5.6 Required Distribution Rules.

- (a) The provisions of this Section 5.6 take precedence over any inconsistent provisions of the Plan. As required by Code section 457(d)(2), the Plan shall comply with the minimum distribution requirements of Code section 401(a)(9), as applicable to an eligible governmental plan described in Treasury Regulation § 1.457-2(f). All distributions under this Plan shall be made in accordance with a reasonable and good faith interpretation of Code section 401(a)(9) and the regulations promulgated thereunder, including the incidental death benefit rules under Code section 401(a)(9)(G) and the changes under the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, SECURE 2.0 of 2022, and Treasury Regulation sections 1.401(a)(9)-1 through -9, as each may be amended from time to time.
- (b) A Participant's Accounts will be distributed, beginning not later than as required under paragraph (c), over one of the following periods (or a combination thereof):
 - (1) The life of the Participant;
 - (2) The life of the Participant and a Designated Beneficiary;
 - (3) A period certain not extending beyond the life expectancy of the Participant;
or
 - (4) A period certain not extending beyond the joint and last survivor life expectancy of the Participant and Designated Beneficiary;
- (c) A Participant's Account shall be distributed to the Participant beginning no later than April 1 of the calendar year following the later of (i) the calendar year in which the Participant attains the applicable age within the meaning of Code section 401(a)(9)(C)(v) or (ii) the calendar year in which the Participant has a Severance from Employment.
- (d) Subject to regulations or other guidance issued under Code section 401(a)(9), upon the death of the Participant before distribution of their Account has begun under paragraph (c), the following distribution provisions shall take effect:
 - (1) The portion of the Participant's Account payable to a Beneficiary that is not a Designated Beneficiary shall be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (2) The portion of the Participant's Account payable to a Designated Beneficiary who is not an Eligible Designated Beneficiary shall be distributed by December 31 of the calendar year containing the tenth anniversary of the Participant's death.
 - (3) The portion of the Participant's Account payable to an Eligible Designated Beneficiary shall be distributed, pursuant to the election of the Eligible

Designated Beneficiary, either (i) by December 31 of the calendar year containing the tenth anniversary of the Participant's death, or (ii) beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of the Eligible Designated Beneficiary or over a period not exceeding the life expectancy of the Eligible Designated Beneficiary. If the Eligible Designated Beneficiary is the surviving Spouse, the Eligible Designated Beneficiary may elect to delay payment under item (ii) until December 31 of the calendar year in which the Participant would have attained the applicable age within the meaning of Code section 401(a)(9)(C)(v). If the Eligible Designated Beneficiary does not elect a method of distribution as provided above, the Participant's Accounts shall be distributed in accordance with item (i).

- (e) Subject to regulations or other guidance issued under Code section 401(a)(9), upon the death of the Participant after distribution of their Account has begun under paragraph (c), any remaining portion of their Account shall continue to be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death; provided, however, that the portion of the Participant's Account payable to a Designated Beneficiary who is not an Eligible Designated Beneficiary shall be distributed in its entirety by December 31 of the calendar year containing the tenth anniversary of the Participant's death.
- (f) Upon the death of an Eligible Designated Beneficiary, or the attainment of age 21 of an Eligible Designated Beneficiary who is a minor child of the Participant, before distribution of the Participant's entire Account under paragraphs (d) or (e), the remainder of the Participant's Account shall be distributed by December 31 of the calendar year containing the tenth anniversary of the Eligible Designated Beneficiary's death, or by December 31 of the calendar year in which the child attains age 31, as applicable.
- (g) Any distribution required under the incidental death benefit requirements of Code section 401(a) shall be treated as a distribution required under this Section 5.6.
- (h) 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).

- (i) Effective 2020, notwithstanding any other provisions of this Plan, a Participant who would have been required to receive required minimum distributions in 2020 (or paid in 2021 for the 2020 calendar year for a recipient with a Required Beginning Date of April 1, 2021) but for the enactment of section 401(a)(9)(I) of the Code (“2020 RMD”), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2020 RMDs, or (2) one or more payments (that include the 2020 RMDs) in a series of substantially equal periodic payments made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancies) of the Participant and the Participant’s designated Beneficiary, or for a period of at least 10 years (“Extended 2020 RMDs”), will receive those 2020 distributions unless the Participant or Beneficiary elects not to receive such distribution. Notwithstanding the preceding sentence, a Participant or Beneficiary will be given an opportunity to make an election as to whether or not to receive such 2020 RMD distributions.

5.7 Designated Beneficiary. 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 Plan Contributions made to the Plan from the Valuation Date to the date of distribution.

5.8 Retired Public Safety Officer Health Premiums. Pursuant to Code section 457(a)(3), Eligible Retired Public Safety Officers may elect an annual distribution of the lesser of the amount paid by such Eligible Retired Public Safety Officer, or \$3,000, for the payment of Qualified Health Insurance Premiums.

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 has enrolled and is currently eligible to defer Compensation under this Plan and who is entitled to receive an Eligible Rollover Distribution (as defined in Section 7.2(b) 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 or Roth Contributions 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 or Roth Contribution paid to the Plan from any Eligible Retirement Plan that is an eligible governmental plan under Code section 457(b).

7.2 Direct Rollovers.

- (a) Notwithstanding any provision of the Plan to the contrary, a Distributee may elect to have an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan as specified by the Distributee in a Direct Rollover, at the time and in the manner prescribed by the Administrator.
- (b) For purposes of this Section 7.2, the following definitions shall apply:
 - (1) “Direct Rollover” means an Eligible Rollover Distribution that is paid directly to an Eligible Retirement Plan for the benefit of the Distributee.
 - (2) “Distributee” means a Participant, the spouse of the Participant, the Participant’s former spouse who is an alternate payee under a qualified domestic relations order as defined in Code section 414(p), and a Participant’s non-spouse Beneficiary, any of whom is eligible to receive a distribution from the Plan.
 - (3) “Eligible Retirement Plan” as defined under Code section 402(c)(8)(B), means (i) an individual retirement account described in Code section 408(a); (ii) an individual retirement annuity described in Code section 408(b); (iii) a simple retirement account described in Code section 408(p)(1) following the two year period described in Code section 72(t)(6); (iv) an annuity plan described in Code section 403(a); (v) a plan described in Code section 403(b); (vi) a qualified plan described in Code section 401(a); (vii) a Code section 457(b) eligible deferred compensation plan that is maintained by a governmental entity described in Code section 457(e)(1)(A); and (viii) effective January 1, 2008, a Roth individual retirement account described in Code section 408A(e), provided the Distributee’s adjusted gross income does not exceed any limit applicable under federal law for the tax year in which the distribution occurs.

In the case of a distribution to a Participant’s non-spouse Beneficiary, an Eligible Retirement Plan means the plans described in subparagraphs (1) and (2) only, to the extent consistent with the provisions under Code section 402(c)(11) and any successor provisions thereto or additional guidance issued thereunder.

- (4) “Eligible Rollover Distribution,” as defined in Code section 402(f)(2)(A), means any distribution of all or any portion of the balance to the credit of the Distributee under the Plan, excluding the following:

- i. 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;
- ii. any distribution made under Section 5.4(a) as a result of an unforeseeable emergency;
- iii. any distribution to the extent such distribution is a required minimum distribution under Code section 401(a)(9); or
- iv. other items designated by regulations, or by the Commissioner in revenue rulings, notices, or other guidance, as items that do not constitute an eligible rollover distribution.

7.3 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 7.3, 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 as a pre-tax deferral or a Roth Contribution and shall be held, accounted for, administered and otherwise treated in the same manner as Plan Contributions under the Plan, except that transferred amounts shall not be considered a Plan Contribution under the Plan in determining the maximum deferral under Article 4.

7.4 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 7.4 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 7.4, 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 7.4 (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).

7.5 Permissive Service Credit Transfers. Pursuant to Treas. Reg. § 1.457-10(b)(8), 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.

7.6 In-Plan Roth Rollover.

- (a) Effective as of January 1, 2026, any amount held in a Participant's Account (other than a Roth Contribution Account or a subaccount of the Participant's rollover contribution account holding Roth Rollover Contributions and earnings thereon) is eligible for direct rollover to the Participant's Roth Contribution Account under the Plan, or to the subaccount of the rollover contribution account holding Roth Contributions, as applicable, even if not otherwise eligible for distribution under the terms of the Plan.
- (b) A Participant's election under this Section shall be subject to the reasonable administrative procedures established by the Administrator, Code section 402A(c)(4) and the regulations thereunder, and any subsequent guidance from the Internal Revenue Service.
- (c) The taxable portion of the Participant's Account Balance rolled over under this Section to a Roth Contribution Account or a subaccount holding Roth rollover contributions shall be included in the Participant's gross income for the tax year in which the rollover occurs.

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 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, and the maintenance of Beneficiary designations. 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 Plan Contributions, property, rights purchased with Plan Contributions, 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).
- 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) 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 recordkeeping 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.

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 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.** If the Administrator does not have current contact information for or is unable to identify a Participant or Beneficiary, the Administrator shall make reasonable attempts to determine the address and identity of the Participant or Beneficiary entitled to benefits under the Plan. A reasonable attempt to locate a missing or lost Participant or Beneficiary shall include (a) providing notice to the Participant at the Participant's last known address via certified mail; (b) determining whether the Employer's records or the records of another plan maintained by the Employer has a more current address for the Participant; (c) attempting to contact any named Beneficiary of the Participant; and (d) searching for the missing Participant via free electronic search tools, such as internet search engines, public record databases, obituaries, and social media. If such search methods are unsuccessful, based on the facts and circumstances, the Administrator may use other search methods, including using internet search tools, commercial locator services, credit reporting agencies, information brokers, investigation databases, and analogous services that may involve charges. The Administrator may charge missing Participants and Beneficiaries reasonable expenses for efforts to find them. In the event that the Administrator is unable to locate a Participant or Beneficiary entitled to benefits under the Plan, the Trustee shall continue to hold the benefits due to such person under the Plan in the Participant's Account.
- 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 Article 5 as soon as administratively practicable after a resolution to terminate the Plan is adopted.