

**PLAINS INDEPENDENT SCHOOL DISTRICT**  
**SUPPLEMENTAL RETIREMENT PLAN**

(AS AMENDED AND RESTATED  
EFFECTIVE SEPTEMBER 1, 2013)

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**ADOPTION AGREEMENT  
OF  
PLAINS INDEPENDENT SCHOOL DISTRICT  
SUPPLEMENTAL RETIREMENT PLAN  
(AS AMENDED AND RESTATED EFFECTIVE SEPTEMBER 1, 2013)**

THIS ADOPTION AGREEMENT made this 20<sup>th</sup> day of JANUARY, <sup>2014</sup> ~~2013~~, by and between PLAINS INDEPENDENT SCHOOL DISTRICT, herein referred to as "School District", and the undersigned Trustees, herein referred to as "Trustees".

WITNESSETH:

WHEREAS, the School District, desiring to aid its Employees in making provision for their retirement, has heretofore adopted and maintained the PLAINS INDEPENDENT SCHOOL DISTRICT SUPPLEMENTAL RETIREMENT PLAN, herein referred to as "Plan"; and

WHEREAS, the School District now desires to amend and restate the Plan.

NOW, THEREFORE, to carry such amendment and restatement into effect and in consideration of the premises and the mutual covenants herein contained, the School District and the Trustees do hereby adopt the amended and restated **PLAINS INDEPENDENT SCHOOL DISTRICT SUPPLEMENTAL RETIREMENT PLAN**, the terms and conditions of which amended and restated plan are fully set out in the attached Articles I through XV, which are incorporated by reference as if set out at this point word for word, and the School District and Trustees do hereby mutually covenant and agree as set out therein.

The effective date of the original Plains Independent School District Supplemental Retirement Plan was September 1, 1981, and except as otherwise specifically designated in the plan document or hereinbelow, the effective date of the Plan as hereby amended and restated is September 1, 2013. Any former Member who has retired or whose employment with the School District has been terminated before September 1, 2013, shall be entitled on or after such date to only those benefits, if any, to which he or she is entitled on or after such date under the provisions of the Plan as in effect prior to September 1, 2013, and he or she shall not be entitled to any additional benefits under the amended and restated Plan as set forth herein unless he re-enters the service of the School District after such date, or unless the amended and restated Plan, as set forth herein, is further amended specifically to provide otherwise.

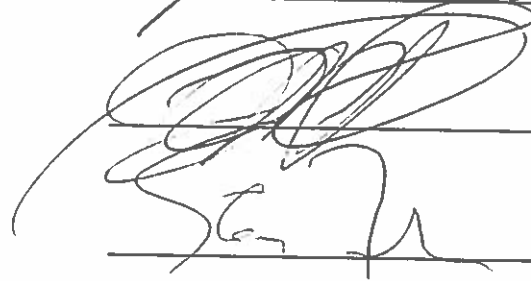
IN WITNESS WHEREOF, the parties have caused these presents to be executed on the day and year first written above.


PLAINS INDEPENDENT SCHOOL DISTRICT

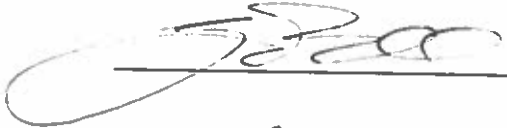
By:   
Title: President  
Authorized Officer

"School District"











"Trustees"

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ARTICLE I  
DEFINITIONS AND CONSTRUCTION

1.01 Definitions

When used herein, the following words shall have the following meanings unless the context clearly indicates otherwise:

- (1) "Anniversary Date" shall mean the last day of the plan year.
- (2) "Authorized Leave of Absence" shall mean a period of time during which the Employee has been or is hereafter absent from work with the consent and prior approval of the School District and absence from work while in the service of the armed forces of the United States for a period for which there is a right of reemployment as set forth in Chapter 43 of Title 38, United States Code.
- (3) "Beneficiary" shall mean the person or persons entitled to receive a Member's death benefit under the Member's beneficiary designation and under the provisions of this Plan. Whenever the rights of a Member are limited herein, the rights of his beneficiary shall also be limited.
- (4) "Board of Trustees" shall mean the Board of Directors of the School District as are elected and acting from time to time, which Board of Trustees shall also be the Trustees of this Plan.
- (5) "Code" and "IRC" shall mean the Internal Revenue Code of 1986, and amendments thereto.
- (6) "Compensation" shall mean the contract salary or base pay of an Employee for services rendered for the School District as an Employee. Overtime pay, pay for extra work, bonuses, and fringe benefits such as group hospitalization, insurance premiums or any amounts contributed to this or any other deferred compensation plan shall not be considered as a part of the Compensation of an Employee for purposes of this Plan.

In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, Compensation shall include all the following types of deferred compensation: (1) Elective contributions that are made by the School District on behalf of the Member that are not includable in gross income under IRC §§125, 402(e)(3), 402(h)(1)(B), 403(b), and 132(f)(4); (2) Compensation deferred under an eligible deferred compensation plan within the meaning of IRC §457(b); and (3) Employee contributions (under governmental plans) described in Code §414(h)(2) that are picked up by the School District and thus are treated as School District contributions.

For Plan Years beginning on or after January 1, 2002, Compensation in excess of \$200,000 shall be disregarded for all purposes. Such amount shall be adjusted by the Commissioner for increases in the cost of living in accordance with IRC §401(a)(17)(B). The cost of living adjustment in effect for a calendar year applies to any determination period beginning with or within such calendar year. If a determination period consists of fewer than twelve (12) months, the \$200,000 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is twelve (12).

- (7) "Effective date" shall mean September 1, 1981, the date upon which this Plan originally became effective.
- (8) "Employee" shall mean any individual who is a full-time employee with the School District. A full-time employee is an individual who is permanently employed by the School District and who normally works 20 hours per week or more. An individual who is only temporarily employed by the School District and/or who normally works less than 20 hours per week is not a full-time employee.
- (9) "Mandatory Member's Contribution" shall mean a contribution to purchase an annuity contract from an annuity provider approved by the School District under IRC §403(b) under a salary reduction agreement within the meaning of IRC §3121(a)(5)(D) filed with the School District which is not less than four percent (4%) of the Member's Compensation but not greater than six percent (6%) of the Member's Compensation determined in whole percentages as set forth in Section 3.01. Any other contribution to purchase an annuity contract under IRC §403(b) under a salary reduction agreement is not a Mandatory Member's Contribution for the purposes of the Plan.
- (10) "Member" shall mean any Employee who has qualified under and has become a Member of this Plan.
- (11) "Plan" shall mean the Plains Independent School District Supplemental Retirement Plan set forth in and by this document and all subsequent amendments hereto.
- (12) "Plan Year" shall mean the Plan's annual accounting period which shall end the last day of August each year.
- (13) "School District" and "Employer" shall mean the Plains Independent School District, a subdivision of the State of Texas.
- (14) "Trust Fund" shall mean all properties, real or personal, held by the Trustees pursuant to this Plan, together with all income, profits or increments thereon.
- (15) "Trustees" shall mean the Trustees at any time acting hereunder.

#### 1.02 Headings for Convenience

The headings of Articles and Sections herein are included solely for convenience or reference, and if there is any conflict between such headings and the text of this Plan, the text shall control.

#### 1.03 Masculine to Include Feminine

Wherever appropriate herein, the masculine shall be construed to include the feminine and neuter, the feminine shall be construed to include the masculine and neuter. Words used in the singular shall be construed to include the plural, and the plural to include the singular.

#### 1.04 Jurisdiction

The situs of this Plan and the Trust hereby created is the State of Texas. All legal questions pertaining to the Plan, all constructions, and all regulations, shall be determined in accordance with the laws of the State of Texas. All contributions shall be deemed to have been made under the laws thereof, and the Trustees shall be liable to account only in the courts of this State.

1.05 Severability

If any provision of this Plan shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof, but each provision shall be fully severable, and the Plan shall be construed and enforced as if said illegal or invalid provision had never been inserted herein.

1.06 USERRA

Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with IRC §414(u).

ARTICLE II  
ELIGIBILITY AND MEMBERSHIP

2.01 Membership

Each Employee of the School District as of the effective date of this Plan shall be eligible to become a Member of the Plan as of the Effective Date of the Plan if the Employee agrees to make beginning with the Effective Date of the Plan the Mandatory Member's Contributions required by Section 3.01.

2.02 Membership Following Effective Date

Following the Effective Date of the Plan, an Employee of the School District shall be eligible to become a Member of the Plan only as of the first day of a plan year coincident with or following the date the Employee becomes an Employee of the School District if the Employee agrees to make beginning with the first day of such Plan Year the Mandatory Member's Contributions required by Section 3.01. If an Employee who is otherwise eligible to become a Member of the Plan as of the Effective Date or as of the first day of a Plan Year fails to agree to make the Mandatory Member's Contributions or if an Employee's membership terminates under Section 2.03, such Employee shall again be eligible to become a Member only as of the first day of a succeeding Plan Year if the Employee agrees to make beginning with the first day of such succeeding Plan Year the Mandatory Member's Contributions required by Section 3.01.

2.03 Termination of Membership

An Employee's membership in the Plan shall terminate immediately upon the Employee ceasing to be an Employee of the School District or upon the effective date of the Employee's revoking or otherwise failing to make the Mandatory Member's Contributions required by Section 3.01. An Employee shall not be considered as failing to make the Mandatory Member's Contributions by reason of not making a contribution to purchase an annuity contract under IRC §403(b) because such Employee received no compensation for a payroll period but remained an Employee. An Employee whose membership in the Plan is terminated shall not thereafter be eligible to again become a Member until the Employee has again met the eligibility requirements of Section 2.02 following such termination of membership.



ARTICLE III  
CONTRIBUTIONS

**3.01 Mandatory Member's Contributions**

Each Member during his or her membership in the Plan shall be required to contribute to a tax deferred annuity (IRC §403(b) annuity) for the Member with an insurance or annuity provider approved by the School District the amount equal to or greater than four percent (4%) of such Member's Compensation but which does not exceed six percent (6%) of such Member's Compensation. The Mandatory Member's Contribution shall be in whole percentages of the Member's Compensation. The Member shall be designated as the owner of the annuity contract. The Mandatory Member's Contribution shall be withheld by the School District from each Member's paycheck as a salary reduction and paid directly to the insurance or annuity company. Each Member shall at all times maintain on file with the School District a signed authorization providing for the required payroll reduction.

**3.02 School District Contributions**

For each Plan Year, the School District shall contribute to the Trustees for the account of each Member of the Plan an amount equal to one hundred percent (100%) of the Mandatory Member's Contribution of each Member during such Plan Year. The School District may make payment of its contribution for any Plan Year on any date it elects, provided only that the total contribution for a Plan Year is made not later than two and one-half months following the end of the Plan Year. The foregoing withstanding, the Board of Trustees may increase, decrease or eliminate completely the contribution for any Plan Year by appropriate resolution adopted on or before the last day of the Plan Year. Contributions shall be made only out of the current and accumulated earnings (determined including tax revenue as earnings) of the School District before federal and state taxes and contributions to this and any other qualified plan.

**3.03 Forfeiture of Advance Contribution**

If an Employee's membership in the Plan shall terminate before the last day of a Plan Year for which the School District has made a contribution for such Member under Section 3.02 for such Plan Year, the Member shall then forfeit and the Member's account under the Plan shall then be debited with the following designated amount which is applicable to such terminated Member:

- (1) If such termination of membership occurs because the Member leaves the employment of the School District for any reason other than death or total and permanent disability, the full amount of any School District contribution for the Member under Section 3.02 for such Plan Year shall be forfeited.
- (2) If such termination of membership occurs because of the Member's death or total and permanent disability, the amount of any unearned portion of an advance School District contribution for the Member under Section 3.02 for such Plan Year shall be forfeited. The unearned portion of any advance School District contribution for the Member under Section 3.02 shall be the advance contribution for that portion of the Compensation of the Employee for the remainder of the Plan Year following the Employee's termination of membership.

Once an amount is forfeited hereunder, the Member cannot thereafter recapture or recoup such forfeited amount. All forfeitures shall occur as of the date of termination of membership and shall reduce (and be allocated in lieu thereof) the next succeeding School District contribution required under Section 3.02.

ARTICLE IV  
ALLOCATIONS

4.01 Members' Accounts

The Trustees shall establish and maintain an account in the name of each Member and shall credit and/or debit such account as more fully provided herein.

4.02 Method of Allocation

As of each Anniversary Date and at such more frequent allocation dates as the Trustees deem advisable, the Trustees shall adjust the account of each Member as follows:

- (1) All contributions, if any, made by the School District to the Trustees for the account of the Member since the next preceding allocation date under the provisions of Section 3.02 shall be credited to such Member's account.
- (2) The net income or loss of the Trust Fund, as herein defined, since the next preceding allocation date shall be allocated among the accounts of Members which had a balance immediately following the next preceding allocation date, and each such account shall be credited with that portion of such net income or loss which the balance of such account was of the balance of all such accounts immediately following the next preceding allocation date except as provided in Section 8.07 of the Plan. In making such allocation, there shall be excluded from each such account any amount debited against such account under the provisions of Subsection 4.02(3) below since the next preceding allocation date, and it shall be conclusively presumed that no part of the net income or loss is attributable to contributions made to the Trustees since the next preceding allocation date.
- (3) Each Member's account shall be debited with the amount of any forfeitures from such account upon the occurrence of such forfeitures and with the total of all payments made to such Member or his beneficiary being paid by the Trustees.

4.03 Net Income or Net Loss

The net income, or net loss, of the Trust Fund shall be determined by the Trustees on each Anniversary Date and at such more frequent allocation dates as the Trustees deem advisable, and such net income or loss shall be allocated to the Members' accounts under the provisions of Section 4.02. The net income or net loss of the Trust Fund shall be ascertained by the Trustees (whose findings shall be conclusive) and shall mean the profit and income actually realized minus the losses and expenses actually incurred and paid from the Trust, plus any net increase or minus any net decrease in the value of the assets of the Trust Fund not actually realized. The assets of the Trust Fund shall be valued by the Trustees at market value as of each Anniversary Date and such more frequent allocation dates as the Trustees deem advisable.

4.04 Maximum Benefit Limitation

Anything to the contrary herein notwithstanding, the allocations under the foregoing provisions shall be subject to the following:

- (1) "Annual Additions" to a Member's account for any Limitation Year shall not exceed the limitations of IRC §415 which are incorporated herein by reference. If the School District contribution which would otherwise be contributed or allocated to the Member's account would cause the "Annual Additions" for the Limitation Year to exceed the IRC §415 limit, the amount contributed or allocated will be reduced so the Annual Addition for the Limitation Year will equal to IRC §415 limit and any amount which would have been allocated to

such Member may be allocated to other Members. Notwithstanding any provision of the Plan to the contrary, if the IRC §415 limits is exceeded for any Member, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure 2006-27 or any superseding guidance, including but not limited to, the preamble of the final IRC §415 regulations.

- (2) The Limitation Year shall be the Plan Year unless some other twelve (12) consecutive month period is designated in writing as permitted by the Regulations promulgated under IRC §415 .
- (3) The IRC §415 limit, incorporated by reference, means effective for Limitation Years beginning after December 31, 2001, Annual Additions shall not exceed the lesser of (i) \$40,000 (adjusted pursuant to IRC §415(d) and Treasury Regulation §1.415(d)-1(b); or (ii) 100% of the Member's 415 Compensation for the Limitation Year. 415 Compensation for any Limitation Year shall be the compensation actually paid or made available to the Member within the Limitation Year. 415 Compensation means wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the School District to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in Regulation §1.62-2(c)), and excluding the following: (i) School District contributions to a plan of deferred compensation which are not includible in the Employee's gross income for the taxable year in which contributed, or School District contributions under a simplified employee pension plan to the extent such contributions are excludable from the Employee's gross income, or any distributions from a plan of deferred compensation;(ii) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;(iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and(iv) Other amounts which receive special tax benefits, or contributions made by the School District (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in IRC §403(b) (whether or not the contributions are actually excludable from the gross income of the Employee). 415 Compensation shall include any elective deferral, as defined in IRC §402(g)((3) and any amount which is contributed by the Employer at the election of the Member and which is not includible in the gross income of the Member under IRC §§125, 457, and 132(f)(4). For Limitation Years beginning on and after July 1, 2007, 415 Compensation shall include payments which are: (i) made by the later of two and one-half months after the Employee's severance from employment (within the meaning of IRC §401(k)(2)(B)(i)(I)) or the end of the limitation year which includes the date of severance from employment and (ii) which would have been paid to the Employee while the Employee continued in employment with the School District and are regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation. Any payments not described above are not considered 415 Compensation if paid after severance from employment, even if

paid within two and one-half months following severance from employment. For years beginning after December 31, 2008: (i) an individual receiving a differential wage payment, as defined by Code §3401(h)(2), is treated as an employee of the employer making the payment; and (ii) the differential wage payment is treated as Compensation.

- (4) Annual Additions means the sum credited to a Member's account for any limitation year of: (i) School District contributions, (ii) Employee contributions, (iii) forfeitures, (iv) amounts allocated to an individual medical benefit account as defined in IRC §415(l)(2), (v) amounts attributable to post-retirement medical benefits allocated to the separate account of key employee pursuant to IRC §419A(d)(1), (vi) Annual Additions under an annuity contract described in IRC §403(b). The following are not Annual Additions: (i) Rollover contributions (as defined in IRC §5401(A)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(b)(3), 408(d)(3) and 457(e)(16)); (ii) Repayments of loans made to a Member from the Plan; (iii) Repayments of amounts described in IRC §§411(a)(7)(B) and 411(a)(3)(d) or repayments of contributions to a governmental plan as described in IRC §415(k)(3); (iv) catch-up contributions; (v) payments payment made to restore losses to a plan resulting from actions by a fiduciary for which there is a reasonable risk of liability for breach of fiduciary duty under applicable federal or state law, where Members who are similarly situated are treated similarly with respect to the payments. Notwithstanding anything in the Plan to the contrary, Employer Contributions are treated as credited to a Member's account for a particular Limitation Year only if the contributions are actually made to the Plan no later than the fifteenth (15<sup>th</sup>) day of the tenth (10<sup>th</sup>) calendar month following the end of the fiscal year with or within which the particular Limitation Year ends.

ARTICLE V  
PAYMENT OF BENEFITS UPON DEATH, RETIREMENT OR SEVERANCE

5.01 Time of Payment

A Member's benefits under the Plan shall be paid to the Member or his beneficiary only following the Member's death or other termination of employment, as provided in this Article V.

5.02 Severance Benefits

Each Member who leaves the employment of the School District for any reason, other than death or total and permanent disability, shall have the right to receive payment out of his or her account under the Plan (not to exceed the balance of such account) of only the following designated amount which is applicable to such terminated Member:

- (1) If such termination of employment occurs before the Member has completed two (2) years of continuous employment with the School District, the terminated Member shall receive nothing. All accumulated School District Contributions and all accumulated earnings shall be forfeited.
- (2) If such termination of employment occurs after the Member has completed two (2) years but before the Member has completed three (3) years of continuous employment with the School District, the Terminated Member shall receive the aggregate School District Contributions. All accumulated earnings shall be forfeited.
- (3) If such termination of employment occurs after the Member has completed three (3) years of continuous employment with the School District, the terminated Member shall receive the full balance of his or her account.

Any balance of a Member's account to which the Member is not entitled to receive shall be forfeited upon the Member's termination of employment. Once an amount is forfeited hereunder, the terminated Member cannot thereafter recapture or recoup such forfeited amount. All forfeitures shall reduce (and be allocated in lieu thereof) the next succeeding School District Contribution required under Section 3.02.

5.03 Disability Benefits

The Trustees shall determine if a Member has become totally and permanently disabled. In the event of the total and permanent disability of a Member, the Member shall have the right to receive payment of the full balance of his or her account under the Plan.

5.04 Death Benefits

- (1) In the event of the death of a Member, the Trustees shall pay to the deceased Member's designated beneficiary or beneficiaries the full balance of the deceased Member's account under the Plan.
- (2) In the case of a death occurring on or after January 1, 2007, if a Member dies while performing qualified military service (as defined in Code §414(u)), the Member's beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Member had resumed employment and then terminated employment on account of death. The Plan will credit the Member's qualified military service as service for vesting purposes, as though the Member had resumed employment under USERRA immediately prior to the Member's death.

- (3) At any time and from time to time each Member shall have the unrestricted right to designate the beneficiary to receive payment of such Member's death benefits. Each such designation shall be evidenced by a written instrument filed with the Trustees, signed by the Member.
- (4) If no such designation is on file with the Trustees at the time of the death of the Member, or if the beneficiary is not alive at the time of the Member's death and no contingent beneficiary has been designated, then the Trustees shall pay the balance of the deceased Member's account under the Plan in the following order of priority: (1) the Member's surviving spouse; (2) the Member's children, including adopted children, per stirpes; (3) the Member's surviving parents, in equal shares; or (4) the Member's estate. If the designated beneficiary does not predecease the Member, but dies prior to distribution of the benefit, the benefit will be paid to the beneficiary's estate.
- (5) If a Member has designated the spouse as beneficiary, a divorce decree that relates to such spouse shall revoke the Member's designation of the spouse as beneficiary unless the decree or a "qualified domestic relations order" (within the meaning of IRC §414(p)) provides otherwise or a subsequent beneficiary designation is made.
- (6) In the event a distribution is to be made to a minor or incompetent individual, the Trustees may direct that such distribution be paid to the court-appointed legal guardian or any other person authorized under state law to receive such distribution, or if none, then in the case of a minor individual, to a parent of such individual, or to the custodian for such individual under the Uniform Gift to Minors Act. Such payment to the guardian, custodian or parent of a minor or incompetent individual shall fully discharge the Trustees, the School District and the Plan from further liability on account thereof.
- (7) The Trustees may require the execution and delivery of such documents and papers and receipts as may be deemed necessary in order to be assured that the payment of any of said death benefits is properly made.

#### 5.05 Manner of Payment

The payment of benefits under the Plan to a terminated, disabled or retired Member or to the beneficiary of a deceased Member may be paid in cash or in any one or more of the following ways, as designated by the Trustees:

- (1) In a lump sum;
- (2) In equal, periodic payments over a term certain made from the Trust directly to the Member and/or the Member's beneficiary and the payment of which is not conditioned upon the survival of the Member or beneficiary;
- (3) The purchase and distribution of a nontransferable annuity (including a variable annuity) for the life of the Member, for the life of the Member and a term certain not exceeding the Member's life expectancy and the life expectancy of the Member and his then living spouse at the time the first annuity payment is made, or for the life of the Member and with a survivor's annuity for the life of such Member's spouse in an amount not to exceed the amount of the annuity payable during joint lives of the Member and spouse;
- (4) By any combination of the above.

#### 5.06 Continuous Employment

A Member shall be credited with one year of continuous employment for each Plan Year during which the Member completed the minimum number of contract days as an Employee of the School District. For a contract Employee, the minimum number of contract days is one day plus one-half of the normal number of annual days for which each Employee of the class of Employees of which the Employee is a part is normally employed by the School District. For Employees who are not contract employees, the minimum number of contract days is one day plus one-half of the normal number of working days for the Employee for the Plan Year. In determining years of continuous employment, only Plan Years during the period beginning on the last date on which the Employee entered the employ of the School District and in which there has been no break in the Employee's employment except for an Authorized Leave of Absence, shall be counted. A Member on an Authorized Leave of Absence shall not be deemed to have terminated employment, provided, however, should the Member fail to return to the active service of the School District within 90 days following the expiration of an Authorized Leave of Absence for reasons other than death or total and permanent disability or within the time for reemployment under Chapter 43 of Title 38, United States Code following the Employee's release from the service of the armed forces, the Member shall be deemed to have terminated employment at the beginning of such leave of absence. The period of any Authorized Leave of Absence shall be excluded in determining the period of continuous employment of an Employee except as required by Section 1.06.

#### 5.07 No Duplication Of Benefits

There shall be no duplication of benefits under this Plan, and the death, disability, retirement or severance benefits provided under one section to or on behalf of a Member shall be exclusive of the benefits, if any, payable to or on behalf of the same Member under all other sections of the Plan. In determining the form and time of payment to be designated, the Trustees may take into consideration the desires of the distributee, what the Trustees feel to be in the best interests of the distributee with respect to both tax and non-tax matters and such other matters as the Trustees deem relevant. Should there be a disagreement between the Trustees and the distributee as to the form of payment or should the Trustees be uncertain as to the form of payment which would be in the best interests of the concerned parties, the Trustees may, if they so desire, seek such judicial protection as the Trustees deem necessary to obtain any needed or desired judicial determination, declaratory judgment, or instruction as to action hereunder.

#### 5.08 Required Distribution

##### (1) General rules

- (a) **Effective Date.** The requirements of this Section 5.08 shall apply to any distribution of a Member's benefits in the Plan and will take precedence over any inconsistent provisions of this Plan. The provisions of this Section 5.08 will apply for purposes of determining required minimum distributions for calendar years beginning after December 31, 2001.
- (b) **Coordination with minimum distribution requirements previously in effect.** If the "effective date" of this amendment is earlier than calendar years beginning with the 2003 calendar year, required minimum distributions for 2002 under this Section will be determined as follows. If the total amount of 2002 required minimum distributions under the Plan made to the distributee prior to the "effective date" of this Section equals or exceeds the required minimum distributions determined under this Section, then no additional distributions will be required to be made for 2002 on or after such date to the distributee. If the total amount of 2002 required minimum distributions under the Plan made to the distributee prior to the "effective date" of this

Section is less than the amount determined under this amendment, then required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the distributee will be the amount determined under this Section.

- (c) Requirements of Treasury Regulations incorporated. All distributions required under this Section will be determined and made in accordance with the Regulations under IRC §401(a)(9) and the minimum distribution incidental benefit requirement of IRC §401(a)(9)(G).
- (d) Limits on distribution periods. As of the first distribution calendar year, distributions to a Member may only be made in accordance with the Section 5.05. If such distributions are not made in a single-sum, then they may only be made over one of the following periods: (i) the life of the Member, (ii) the joint lives of the Member and a "designated Beneficiary", (iii) a period certain not extending beyond the life expectancy of the Member, or (iv) a period certain not extending beyond the joint life and last survivor expectancy of the Member and a "designated Beneficiary".
- (e) TEFRA Section 242(b)(2) elections.
  - (i) Notwithstanding the other provisions of this Section, distributions may be made on behalf of any Member, who has made a designation in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and in accordance with all of the following requirements (regardless of when such distribution commences):
    - (I) The distribution by the Plan is one which would not have disqualified such plan under IRC §401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.
    - (II) The distribution is in accordance with a method of distribution designated by the Member whose interest in the plan is being distributed or, if the Member is deceased, by a Beneficiary of such Member.
    - (III) Such designation was in writing, was signed by the Member or the Beneficiary, and was made before January 1, 1984.
    - (IV) The Member had accrued a benefit under the Plan as of December 31, 1983.
    - (V) The method of distribution designated by the Member or the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Member's death, the Beneficiaries of the Member listed in order of priority.
  - (ii) A distribution upon death will not be covered by the transitional rule of this Subsection unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Member.



- (iii) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Member, or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in (i)(I) and (i)(V) of this Subsection.
- (iv) If a designation is revoked, any subsequent distribution must satisfy the requirements of IRC §401(a)(9) and the Regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy IRC §401(a)(9) and the Regulations thereunder, but for the IRC §242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).
- (v) In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Regulation §1.401(a)(9)-8, Q&A-14 and Q&A-15, shall apply.

(2) Time and manner of distribution

- (a) Required beginning date. The Member's entire interest will be distributed, or begin to be distributed, to the Member no later than the Member's "required beginning date".
- (b) Death of Member before distributions begin. If the Member dies before distributions begin, the Member's entire interest will be distributed, or begin to be distributed, no later than as follows:
  - (i) If the Member's surviving spouse is the Member's sole "designated Beneficiary", then, except as otherwise provided herein, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Member died, or by December 31 of the calendar year in which the Member would have attained age 70½, if later.
  - (ii) If the Member's surviving spouse is not the Member's sole "designated Beneficiary", then, except as provided in Section 5.08(2)(c) below, distributions to the "designated Beneficiary" will begin by December 31 of the calendar year immediately following the calendar year in which the Member died.
  - (iii) If there is no "designated Beneficiary" as of September 30 of the year following the year of the Member's death, the Member's entire interest

will be distributed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

- (iv) If the Member's surviving spouse is the Member's sole "designated Beneficiary" and the surviving spouse dies after the Member but before distributions to the surviving spouse begin, this Section 5.08(2)(b), other than Section 5.08(2)(b)(i), will apply as if the surviving spouse were the Member.

For purposes of this Section 5.08(2)(b) and Section 5.08(2)(c), unless Section 5.08(2)(b)(iv) applies, distributions are considered to begin on the Member's "required beginning date". If Section 5.08(2)(b)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 5.08(2)(b)(i). If distributions under an annuity purchased from an insurance company irrevocably commence to the Member before the Member's "required beginning date" (or to the Member's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 5.08(2)(b)(i)), the date distributions are considered to begin is the date distributions actually commence.

- (c) Forms of distribution. Unless the Member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the "required beginning date", as of the first "distribution calendar year" distributions will be made in accordance with Sections 5.08(3) and 5.08(4). If the Member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of IRC §401(a)(9) and the Regulations thereunder.

(3) Required minimum distributions during Member's lifetime

- (a) Amount of required minimum distribution for each "distribution calendar year". During the Member's lifetime, the minimum amount that will be distributed for each "distribution calendar year" is the lesser of the following:
  - (i) the quotient obtained by dividing the "Member's account balance" by the distribution period in the Uniform Lifetime Table set forth in Regulation Section 1.401(a)(9)-9, using the Member's age as of the Member's birthday in the "distribution calendar year"; or
  - (ii) if the Member's sole "designated Beneficiary" for the "distribution calendar year" is the Member's spouse, the quotient obtained by dividing the "Member's account balance" by the number in the Joint and Last Survivor Table set forth in Regulation §1.401(a)(9)-9, using the Member's and spouse's attained ages as of the Member's and spouse's birthdays in the "distribution calendar year".
- (b) Lifetime required minimum distributions continue through year of Member's death. Required minimum distributions will be determined under this Section 5.08(3) beginning with the first "distribution calendar year" and up to and including the "distribution calendar year" that includes the Member's date of death.

(4) Required minimum distributions after Member's death

- (a) Death on after date distributions begin.
- (i) Member survived by "designated Beneficiary". If the Member dies on or after the date distributions begin and there is a "designated Beneficiary", the minimum amount that will be distributed for each "distribution calendar year" after the year of the Member's death is the quotient obtained by dividing the "Member's account balance" by the longer of the remaining "life expectancy" of the Member or the remaining "life expectancy" of the Member's "designated Beneficiary", determined as follows:
- (A) The Member's remaining "life expectancy" is calculated using the age of the Member in the year of death, reduced by one for each subsequent year.
- (B) If the Member's surviving spouse is the Member's sole "designated Beneficiary", the remaining "life expectancy" of the surviving spouse is calculated for each "distribution calendar year" after the year of the Member's death using the surviving spouse's age as of the spouse's birthday in that year. For "distribution calendar years" after the year of the surviving spouse's death, the remaining "life expectancy" of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
- (C) If the Member's surviving spouse is not the Member's sole "designated Beneficiary", the "designated Beneficiary's" remaining "life expectancy" is calculated using the age of the Beneficiary in the year following the year of the Member's death, reduced by one for each subsequent year.
- (ii) No "designated Beneficiary". If the Member dies on or after the date distributions begin and there is no "designated Beneficiary" as of September 30 of the year after the year of the Member's death, the minimum amount that will be distributed for each "distribution calendar year" after the year of the Member's death is the quotient obtained by dividing the "Member's account balance" by the Member's remaining "life expectancy" calculated using the age of the Member in the year of death, reduced by one for each subsequent year.
- (b) Death before date distributions begin.
- (i) Member survived by "designated Beneficiary". Except as provided in Section 5.08(2)(c), if the Member dies before the date distributions begin and there is a "designated Beneficiary", the minimum amount that will be distributed for each "distribution calendar year" after the year of the Member's death is the quotient obtained by dividing the "Member's account balance" by the remaining "life expectancy" of the Member's "designated Beneficiary", determined as provided in Section 5.08(4)(a).
- (ii) No "designated Beneficiary". If the Member dies before the date distributions begin and there is no "designated Beneficiary" as of September 30 of the year following the year of the Member's death,

distribution of the Member's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

- (iii) Death of surviving spouse before distributions to surviving spouse are required to begin. If the Member dies before the date distributions begin, the Member's surviving spouse is the Member's sole "designated Beneficiary", and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 5.08(2)(b)(i), this Section 5.08(4)(b) will apply as if the surviving spouse were the Member.
- (5) WRERA. Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), a Member or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs, or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Member, the joint lives (or joint life expectancy) of the Member and the Member's designated Beneficiary, or for a period of at least ten (10) years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Member or Beneficiary chooses to receive such distributions. Members and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence.
- (6) Definitions. For purposes of this Section, the following definitions apply:
- (a) "Designated Beneficiary" means the individual who is designated as the Beneficiary under the Plan and is the "designated Beneficiary" under IRC §401(a)(9) and Regulation §1.401(a)(9)-4.
  - (b) "Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Member's death, the first "distribution calendar year" is the calendar year immediately preceding the calendar year which contains the Participant's "required beginning date". For distributions beginning after the Member's death, the first "distribution calendar year" is the calendar year in which distributions are required to begin under Section 5.08(2). The required minimum distribution for the Member's first "distribution calendar year" will be made on or before the Member's "required beginning date". The required minimum distribution for other "distribution calendar years," including the required minimum distribution for the "distribution calendar year" in which the Member's "required beginning date" occurs, will be made on or before December 31 of that "distribution calendar year".
  - (c) "Life expectancy" means the life expectancy as computed by use of the Single Life Table in Regulation §1.401(a)(9)-9.
  - (d) "Member's account balance" means the Member's account balance as of the last Valuation Date in the calendar year immediately preceding the "distribution calendar year" (valuation calendar year) increased by the amount of any contributions made and allocated or Forfeitures allocated to the account balance as of the dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar

year after the Valuation Date. For this purpose, the Board may exclude contributions that are allocated to the account balance as of dates in the valuation calendar year after the Valuation Date, but that are not actually made during the valuation calendar year. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the "distribution calendar year" if distributed or transferred in the valuation calendar year.

- (e) "Required beginning date" means with respect to any Member, April 1 of the calendar year following the later of the calendar year in which the Member attains age 70½ or the calendar year in which the Member retires.

(7) Transition rules.

- (a) For plans in existence before 2003. Required minimum distributions before 2003 were made pursuant to Section (6), if applicable, and Sections 5.08(7)(b) through (d) below.
- (b) 2000 and Before. Required minimum distributions for calendar years after 1984 and before 2001 were made in accordance with IRC §401(a)(9) and the proposed Regulations thereunder published in the Federal Register on July 27, 1987 (the "1987 Proposed Regulations").
- (c) 2001. Required minimum distributions for calendar year 2001 were made in accordance with IRC §401(a)(9) and the 1987 Proposed Regulations.
- (d) 2002. Required minimum distributions for calendar year 2002 were made in accordance with IRC §401(a)(9) and the 1987 Proposed Regulations.

5.09 Direct Rollovers

Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this Article, effective with respect to distributions made after December 31, 2001, a distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

Effective with respect to distributions made on or after March 28, 2005, in the event of a distribution of an "eligible rollover distribution" greater than \$1,000 that is made in accordance with the provisions of the Plan, if the Member does not elect to have such distribution paid directly to an "eligible retirement plan" specified by the Member in a direct rollover or to receive the distribution directly, the Board shall pay the distribution in a direct rollover to an individual retirement plan designated by the Board.

For purposes of this Section, the following definitions shall apply:

- (1) **Eligible rollover distribution:** An eligible rollover distribution is any distribution described in IRC §402(c)(4) and generally includes any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under IRC §401(a)(9), the portion of any distribution that is not includible in gross income (determined without regard to the

exclusion for net unrealized appreciation with respect to employer securities); any distribution which is made upon hardship of distributee; and any other distribution reasonably expected to total less than \$200 during a year.

Notwithstanding the above, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax voluntary Employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in IRC §408(a) or (b), or to a qualified defined contribution plan described in IRC §401(a) or §403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includible.

- (2) **Eligible retirement plan:** An eligible retirement plan is an individual retirement account described in IRC §408(a), an individual retirement annuity described in IRC §408(b) , an annuity plan described in IRC §403(a), or a qualified trust described in IRC §401(a) which is exempt from tax under IRC §501(a), an eligible plan under IRC §457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision and which agrees to separately account for amounts transferred into such plan from this Plan, and an annuity contract described in IRC §403(b), that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in IRC §414(p). If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account, an eligible retirement plan with respect to such portion shall include only another designated Roth account of the individual from whose account the payments or distributions were made, or a Roth IRA of such individual.
- (3) **Distributee:** A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in IRC §414(p) , are distributees with regard to the interest of the spouse or former spouse.
- (4) **Direct rollover:** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

#### 5.10 Member Notice

A Member entitled to an "eligible rollover distribution" must receive a written explanation of the right to a "direct rollover", the tax consequences of not making a "direct rollover", and if applicable, any available special income tax elections. For any "direct rollover" notice issued in Plan Years beginning after December 31, 2006, the notice must be provided no less than thirty (30) days and no more than one hundred eighty (180) days before the date distributions may begin. The "direct rollover" notice must be provided to all Members, unless the total amount the Member will receive as a distribution during the calendar year is expected to be less than \$200.

### 5.11 Direct Rollover to Roth IRA

For distributions made after December 31, 2007, a Member or beneficiary may elect to roll over directly an "eligible rollover distribution" to a Roth IRA described in Code §408A(b). For this purpose, the term "eligible rollover distribution" includes employee after-tax contributions, if applicable.

### 5.12 Direct Rollover of Non-Spouse Distribution

For distributions after December 31, 2006, a non-spouse beneficiary, only as otherwise permitted by the Plan who is a "designated beneficiary" under Code §401(a)(9)(E) and the Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an Individual Retirement Account (IRA) the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an "eligible rollover distribution" under Code §401(a)(31).

The distribution is subject to the direct rollover requirements of Code §401(a)(31) (including Code §401(a)(31)(B)), the notice requirements of Code §402(f) and the mandatory withholding requirements of Code §3405(c). If a non-spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a sixty (60) day (non-direct) rollover.

If the Member's named beneficiary is a trust, the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code §401(a)(9)(E).

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

### 5.13 Distribution Upon Divorce

Upon approval of the Board of Trustees, in the sole discretion of the Board of Trustees, the Trustees of the Plan shall pay all or a portion of the benefits of a Member or former Member to an alternate payee other than the Member pursuant to a Domestic Relations Order which the Trustees determine to be a Qualified Domestic Relations Order as defined in Subchapter A of Chapter 804 of the Texas Government Code. Such payment to the alternate payee may be made prior to the time the Member would normally qualify for payment of benefits under the Plan, provided the time for payment complies with the requirements of a Qualified Domestic Relations Order as defined in Subchapter A of Chapter 804 of the Texas Government Code. Payment of benefits to an alternate payee under the provisions of this section shall not be prohibited by Section 10.05 of the Plan. There shall be no duplication of benefits under this Plan, and the death, disability, retirement or severance benefits or benefits paid to an alternate payee provided under one section of this Plan to or on behalf of a Member shall be inclusive of the benefits, if any, payable to or on behalf of the same Member under all other sections of this Plan.

ARTICLE VI  
ADMINISTRATION OF PLAN

**6.01 Administrator of the Plan**

The general administration of the Plan shall be vested in the Trustees of the Plan. The Trustees of the Plan may by appropriate resolution delegate to the Superintendent of the School District and his staff all or such portion of the general administration of the Plan as the Trustees deem advisable, provided, however, the Trustees shall always remain the higher authority, and the actions of the Trustees shall prevail over any conflicting action of the Superintendent or his staff. Any administrative duties and powers delegated to the Superintendent and his staff may be revoked or limited at any time by the Trustees through appropriate resolution.

**6.02 Administrative Procedure**

The following procedures for administration of the Plan shall apply to such Trustees:

- (1) The Trustees may choose appropriate officers and keep appropriate records of their proceedings and the administration of the Plan. The Trustees shall make available to any Member, retired Member, or beneficiary of a deceased Member for examination during business hours such records as pertain to such person.
- (2) The Trustees shall hold meetings upon such notice, at such place or places and at such times as they may from time to time determine. Notice shall not be required if waived in writing. A majority of the Trustees shall constitute a quorum for the transaction of business. All resolutions or other actions taken by the Trustees at any meeting shall be by vote of a majority of those present at such meeting. Resolutions may be adopted or other action taken without a meeting upon written consent signed by a majority of the Trustees.
- (3) The Trustees may create any subcommittee that they may deem necessary for the proper administration of this Plan, and each subcommittee shall be granted such rights and powers as the Trustees may see fit to delegate to the subcommittee. The Trustees shall be responsible fully for any action of the subcommittee.
- (4) No Trustee shall have any right to vote or decide upon any matter relating solely to himself or to any of his rights or benefits under the Plan. If the other Trustees are not able to agree on such matter, it shall be decided by standard arbitration procedure. The provisions of this section shall not apply if such matter affects all Trustees equally or substantially so.

**6.03 Finality of Decisions**

The decision of the Trustees in matters within their jurisdiction shall be final, binding, and conclusive upon the School District and upon each Employee, Member, Trustee, beneficiary of a deceased Member and every other person or party interested or concerned.

**6.04 General Powers of the Trustees**

The Trustees shall have general supervision of the administration of this Plan and its enforcement, according to the terms and provisions hereof, and shall have the power and discretion to construe the terms of the Plan and determine all questions arising in connection with the administration, interpretation and application of the Plan, and shall have all powers necessary to accomplish these purposes, including, but not by way of limitation, the right, power and authority:



- (1) To make rules and regulations and bylaws for the administration of the Plan which are not inconsistent with the terms and provisions hereof;
- (2) To construe all terms, provisions, conditions, and limitations of this Plan;
- (3) To correct any defect or supply any omission or reconcile any inconsistency that may appear in this Plan;
- (4) To select, employ, and compensate from time to time, such accountants, attorneys, and other agents and employees, as the Trustees may deem necessary or advisable in the proper and efficient administration of this Plan;
- (5) The discretion to determine all questions relating to eligibility, the amount and payment of benefits, and claims for benefits;
- (6) To determine all questions relating to the administration of this Plan, (a) when differences of opinion arise between the School District, the Trustees, a Member, or any of them; and (b) whenever it is deemed advisable to determine such questions in order to promote the uniform administration of the Plan for the benefit of all parties concerned; and
- (7) To give specific directions with respect to, (a) the making of distribution payments; and (b) the making of other payments.

#### 6.05 School District to Supply Information

To enable the Trustees to perform its functions, the School District shall supply full and timely information to the Trustees of all matters relating to the pay of all its Members, their retirement, death, or other cause for termination of employment, and such other pertinent facts as the Trustees may require.

#### 6.06 Claims Procedure

The Trustees shall establish and maintain a reasonable procedure for the filing of claims for benefits by a Member or beneficiary, the handling and consideration of claims and the review of claims that have been denied.

#### 6.07 Unclaimed Account Procedure

The Trustees shall not be obligated to search for, or ascertain the whereabouts of any Member, ex-Member, or beneficiary. The Trustees, by certified or registered mail addressed to his last known address of record with the Trustees or the School District, shall notify any Member, ex-Member, or beneficiary that he is entitled to a distribution under this Plan, the notice shall quote the provisions of this section. If the Member, ex-Member or beneficiary fails to claim his distributive share and make his whereabouts known in writing to the Trustees within one (1) year from the date of mailing of the notice the entire interest and benefits to such Member, ex-Member or beneficiary in the Plan shall be permanently forfeited on the next Anniversary Date and applied in the same manner as provided in Section 5.02.

ARTICLE VII  
ESTABLISHMENT OF TRUST

7.01 Trust Fund

All contributions under the Plan shall be made to the Trustees to be held and administered in trust by the Trustees, together with any income therefrom and increases thereof, for the benefit of the Members, former Members, and their beneficiaries.

7.02 Acceptance of Trust

The Trustees accept the Trust hereby created and covenant to act as Trustees thereof, but only upon the express terms and conditions of this Plan. The Trustees shall receive, hold, preserve, invest and reinvest, manage, use, disburse, pay over, and otherwise dispose of the Trust assets in the manner and for the uses and purposes stipulated in this Plan and in accordance with the terms and provisions hereof.

7.03 Change of Trustees

The Trustees of this Plan shall always be the same as the Board of Trustees of the School District, and as the members of the Board of Trustees of the School District change from time to time so shall the members of the Trustees of this Plan; provided, however, the Trustees of this Plan at any time shall continue to act until their successor Trustees have been qualified and have accepted. Any Trustee may resign at any time by giving at least thirty (30) days written notice to the Board of Trustees of the School District, and the remaining members of the Board of Trustees of the School District shall continue to serve as the Trustees under this Plan. Should all Trustees resign, then the Board of Trustees of the School District shall appoint a successor trustee by adoption of appropriate resolution. The actual appointment and qualification of a successor Trustee to whom the Trust Fund may be transferred are conditions which must be fulfilled before the resignation of all of the Trustees will become effective.

7.04 Payments Solely from Trust Fund

All benefits payable under this Plan shall be paid or provided for solely from the Trust Fund, and neither the School District nor the Trustees assume any liability or responsibility for the adequacy thereof. The Trustees may require execution and delivery of such instruments as are deemed necessary to assure proper payment of any benefits.

7.05 Impossibility of Diversion and Exceptions

Other than under the circumstances set out in this Section 7.05 hereinbelow, it shall be impossible for any part of the corpus or income of the Trust Fund to be used for or diverted to purposes other than for the exclusive benefit of the Members and their beneficiaries. The foregoing provision does not preclude the return to the School District of a contribution Made through a mistake of fact or the return to the School District of a contribution which was made conditioned on the qualification of the Plan as described in Section 10.08, and the Plan does not so qualify. The return to the School District of an amount under the foregoing provisions must be made within one year of the mistaken payment of the contribution or the date of denial of qualification, as the case may be. The amount to be returned to the School District is the excess of the amount contributed by the School District over the amount that would have been contributed by the School District had there not occurred a mistake of fact. Earnings attributable to the excess contribution may not be returned to the School District, but losses attributable thereto must reduce the amount to be so returned. Furthermore, if the withdrawal of the amount attributable to the mistaken contribution would cause the balance of the individual account of any Member to be reduced to less than the balance which would have been in the account had the mistaken amount not been contributed, then the amount to be returned to the School District will be limited so as to avoid such reduction.

7.06 Trustees Acting Alone

If at any point in time there be more than one Trustee appointed and qualified hereunder, a majority of the Trustees may exercise all rights, powers and authority given to the Trustees hereunder. A majority of the Trustees may delegate to any one or more Trustees the right, power and authority to act alone and without the joinder of any other Trustee in exercising all rights, powers and authority given to the Trustees hereunder. No purchaser at any sale made by a Trustee or persons dealing with a Trustee hereunder shall be obligated to see to the application of any money or property paid or delivered to the Trustee. No person dealing with a Trustee shall be obligated to inquire into the expediency or propriety of any transaction or the authority of the Trustee to enter into and consummate the same upon such terms as the Trustee may deem advisable.

ARTICLE VIII  
ADMINISTRATION OF TRUST

**8.01 General Administration**

All income, profits, recoveries, contributions and any and all monies, securities, and properties of any kind at any time received or held by the Trustees hereunder shall be held for investment purposes as a commingled Trust Fund. The Trustees shall maintain an account in the name of a Member, but the maintenance of an account designated as the account of a Member shall not mean that such Member shall have a greater or lesser interest than that due to him by operation of the Plan, and shall not be considered as segregating any funds or property from any other funds or property contained in the commingled fund. No Member shall have any specific title to any specific asset in the Trust Fund.

**8.02 Expenses of Administration**

The School District expects to pay the expenses of the Trustees in the administration of the Trust, and all expenses properly incurred by a Trustee shall be reimbursed or paid by the School District, but such expenses shall be paid from the Trust Fund if not paid by the School District.

**8.03 Accounting**

Within a reasonable time following each Anniversary Date, the Trustees shall render a written account of their administration of the Trust Fund showing all receipts and disbursements during such year, the then value of the assets of the Trust Fund, and the status of each Member's account and changes therein during the Plan Year.

**8.04 Payments to Members**

The Trustees may make any payment hereunder by mailing their check for the amount thereof to the person to whom such payment is to be made, or may make distribution in kind, or partly in kind and partly in money, all as more fully hereinafter set out. Any distributions in kind shall be made at the fair market value of such distributed property on the date of such distribution.

**8.05 Taxes**

If any tax shall be imposed upon the Trustees (pursuant to the provisions of any law now or hereafter enacted or made applicable hereto) upon or with respect to the assets or income of the Trust, then the Trustees are hereby empowered to pay such tax, or taxes, out of the assets of the Trust. The Trustees, however, shall not be obligated to pay such tax as long as they shall contest the validity thereof in good faith. In determining to pay or contest the validity of any such tax, the Trustees may obtain the advice of counsel, who may be counsel of the School District, and for all or any acts or omissions pursuant to the advice of counsel, the Trustees shall be held completely harmless.

**8.06 Powers of the Trustees**

The Trustees shall have all rights, powers, privileges and authority now or hereafter given to a Trustee under the Texas Trust Code subject to the following limitations and additions:

- (1) All rights, powers, privileges and authority of the Trustees shall be subject to all limitations specifically stated elsewhere in the Plan;
- (2) The Trustees are relieved from the duties, restrictions, and liabilities under §§113.052, 113.053, 113.054, 113.055, 113.058 or 114.085(b) of the Texas Trust Code;
- (3) A successor Trustee shall be liable for a breach of trust of a predecessor under §114.002 of the Texas Trust Code only if the successor Trustee has actual

knowledge of a situation constituting a breach of trust committed by the predecessor;

- (4) An individual Trustee shall be liable for any act or omission, including a loss or depreciation in value of the trust property or for a failure to make a profit, only if such act or omission constitutes gross negligence, bad faith or fraud of that individual trustee;
- (5) The Trustees are given discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, which need not be in accordance with the provisions of the Texas Trust Code;
- (6) The Trustees may, without limitation, invest and reinvest as a temporary or permanent investment all or a part of the trust fund in certificates of deposit, savings accounts, or similar deposits with any bank or financial institution which is supervised by the United States or a state thereof or in any common trust fund or collective investment fund maintained by any such bank or other financial institution even though such bank or other financial institution is the School District, a trustee of the Plan, or another adopting entity of the Plan;
- (7) The Trustees may, without limitation, buy, retain, and sell trust property for speculation, including, but not limited to, puts, calls, options, commodities, commodity futures, other futures contracts, mineral and royalty interests, oil and gas working interests, and partnership interests;
- (8) The Trustees may, without limitation, acquire and retain trust property unproductive of income;
- (9) The Trustees may, without limitation, buy or sell, or buy or grant an option to buy or sell, for cash or for credit, or for part cash and part credit, with or without security, real or personal property of any kind or nature;
- (10) The Trustees may, without limitation, buy stocks, bonds, and/or other securities on the margin and may leave stocks, bonds, and/or other securities in street name with a securities broker or dealer and may pledge stocks, bonds, and/or other securities to the securities broker or dealer as collateral for the purchase of stocks, bonds, and/or other securities on the margin;
- (11) The Trustees may, without limitation, invest and reinvest in insurance contracts, including but not limited to annuity contracts, deposit administration contracts, and other investment funds administered by an insurance or annuity company;
- (12) The Trustees may appoint an Investment Manager pursuant to V.T.C.A., Government Code §802.204. The Trustees are not liable for the acts or omissions of such an Investment Manager, nor are the Trustees obligated to invest or otherwise manage any asset of the Plan subject to management by the Investment Manager;
- (13) This Plan shall always be construed in favor of the validity of any act or omission by or of the Trustees. As far as possible, no subsequent legislation or regulation shall be in limitation of the rights, powers or privileges granted herein or in the Texas Trust Code as it exists at the time of the execution hereof;

Each reference herein to a section of the Texas Trust Code shall refer to such section as it exists at the time of the execution hereof, and to any subsequent provision of law which amends, replaces or continues such section.

#### 8.07 Special Investment Funds

The Trustees may establish a Special Investment Fund through an investment contract or annuity with an insurance company, through an investment manager or stockbroker, or through self-administration. The Trustees may direct that all or a uniformly designated portion of the balance of each account be transferred to and invested in a Special Investment Fund or may permit each Member for whose benefit an account is maintained to direct the Trustees, from time to time, that all or a portion of the Member's account be transferred to or invested in a Special Investment Fund pursuant to specific rules to be established by the Plan Administrator. As of each Valuation Date, all accounts invested on the Special Investment Fund shall be charged or credited with net earnings, gains, losses and expenses as well as any appreciation or depreciation in the market value using publicly listed fair market values when available as follows: (1) to the extent assets in the Special Investment Fund are accounted for as pooled assets or investments, the allocation of earnings, gains and losses of each Member's account shall be based upon the total amount of funds so invested in a manner proportionate to the Member's share of such pooled investment; and (2) to the extent the assets in a Special Investment Fund are accounted for as segregated assets, the allocation of earnings, gains and losses from such assets shall be made on a separate and distinct basis. Each Special Investment Fund shall bear any and all administrative expenses, liabilities and obligations which the Trustees determine were incurred on behalf of such Special Investment Fund and shall further bear a prorata portion, as shall be determined by the Trustees, of any and all common administrative expenses, liabilities and obligations incurred by the Trustees. The Trustees, in their sole discretion, may require that any direction be given by written instruction signed by the instructing party and delivered to the Trustees, or any such person that the Trustees shall direct.

#### 8.08 Loans to Members

The Trustees may, but shall not be required to, make loans to Members of the Plan pursuant to specific rules to be established by the Trustees and subject to the following:

- (1) Loans shall be available to all Members on a reasonably equivalent basis, and the rules established by the Trustees shall be uniformly and consistently followed and applied to all Members, provided that the Trustees may make distinctions on reasonable grounds such as credit worthiness or financial need and may designate and lend up to a uniformly applied percentage of a Member's respective vested interest to Members with both large and small vested interests if such designated percentage is deemed by the Trustees to be consistent with the requirements of adequate security;
- (2) All loans shall bear a reasonable rate of interest determined by the Trustees and agreed to by the borrowing Member, after the Trustees have taken into consideration all relevant things, including, but not by way of limitation, current market conditions and current yield on trust investments;
- (3) All loans shall be fully and adequately secured and the Trustees may determine that a Member's vested interest is full and adequate security;
- (4) All loans shall have a specified period of time for repayment; and
- (5) The Trustees may, but shall not be required to, identify all loans as being a segregated investment for the respective Member's account under the Plan.

The Trustees shall not foreclose upon or offset against a Member's benefits under the Plan as a result of a Member's default in the repayment of a loan to the Member until the time for normal payment of such benefits to the Member has occurred as described in Article V of the Plan. Foreclosure upon or offset against a Member's benefits under the Plan shall be considered a distribution to the Member.

#### 8.09 Annuity Contracts

The Board, if it so desires, may direct the Trustees to purchase retirement income contracts or annuity contracts (including variable annuity contracts), or any combination thereof, as provided herein, upon the lives of all Members of the Plan or upon the lives of only those Members who request the Trustees to do so. Any such direction by the Board and request by a Member must be in writing and delivered to the Trustees and must designate the amount which is to be invested in such contracts and the type of contracts to be purchased. Up to the full amount of a Member's account under the Plan may be invested in such contracts. Each such contract issued on the life of a Member shall contain a provision, in substance, that neither the Member nor any beneficiary shall have the right to alienate, encumber or assign any of the benefits, proceeds or avails of the contract. The Trustees shall establish and maintain a segregated insurance and annuity account in the name of each Member for whom insurance and/or an annuity is purchased and shall credit and/or charge such account as more fully provided herein. All insurance and annuity contracts purchased by the Trustees on the life of such Member shall be charged against such account, and any gain or loss on ultimate disposition of such contracts by maturity or otherwise, as well as all dividends or premiums or other charges or credits thereon, shall be charged or credited, as the case may be, only to such account. Of the amount allocated to the Member's regular accounts under Article IV for any Plan Year, there shall be transferred to such Member's segregated insurance and annuity account that amount requested by the Board or Member and approved by the Trustees as provided in this Section. No insurance or annuity company issuing contracts upon the application of the Trustees shall be deemed to be a party to this Plan nor shall it be responsible for its validity. The Trustees shall be the owner of all contracts on the life of any Member and shall have the right to exercise all options and privileges described in all such contracts. No such insurance or annuity company shall be required to look into the terms of this Plan or be responsible to see that any action of the Trustees is authorized by its terms. In regard to any application to any insurance or annuity company and in the exercise of any right or option contained in any contract, the insurance or annuity company may rely upon the signature of any one Trustee and shall be saved harmless and completely discharged in acting at the direction and authorization of such Trustee. Any issuing insurance company shall be discharged from all liability for any amount paid to the Trustees or paid in accordance with the direction of the Trustees, or any one or more of them, and no such company shall be obliged to see to the distribution or further application of any monies so paid by it.

ARTICLE IX  
AMENDMENT OF PLAN AND DISCONTINUANCE OF CONTRIBUTIONS

9.01 Amendment

No change may be made in the Plan which shall vest in the School District, directly or indirectly, any interest, ownership or control in any of the present or subsequent Trust Fund. No part of the Trust Fund shall, by reason of any amendment, be used for, or diverted to, purposes other than for the exclusive benefit of the Members and their beneficiaries, or for the administrative expenses of the Plan, nor shall any amendment reduce any then beneficial interest of a Member in the Trust Fund. Subject to these limitations, the Board of Trustees of the School District may make any amendment to the Plan including, but not limited to, an increase or decrease of contributions, change or modification of the method of allocation of contributions, change of any provisions relating to the administration of the Plan, change of any provisions relating to the distribution or payment, or both, of any of the assets of the Trust Fund. Specifically, but not by way of limitation, the Board of Trustees may make any amendment necessary to acquire or maintain the qualified status of the Plan under the Code, whether or not retroactive.

9.02 Declaration of Intent

The School District has established the Plan with the bona fide intention and expectation that from year to year it will be able to, and will deem it advisable to, make its contributions as herein provided. However, the School District realizes that circumstances not now foreseen, or circumstances beyond its control, may make it either impossible or inadvisable to continue to make its contributions to the Trustees. Therefore, the Board of Trustees shall have the power to discontinue contributions hereto, or to terminate the Plan at any time hereafter. Each Member and the Trustees shall be notified of such termination or discontinuance.

9.03 Termination of Plan

If the Board of Trustees shall decide to terminate the Plan completely, it shall be terminated as of the date specified in the resolution of the Board of Trustees. Upon termination of the Plan, after payment of all expenses and proportional adjustment of Members' accounts to reflect such expenses, Fund profits or losses, and reallocations to the date of termination, each Member or retired Member shall be entitled to receive any amounts then credited to his account in the Fund. The Trustees may make payment of such amounts in cash or in assets of the Trust Fund, as determined by the Trustees. In the event of termination of the Plan, partial termination of the Plan and/or complete discontinuance of contributions required hereunder, the Members, former Members, and beneficiaries of deceased Members with respect to which the Plan is terminated, partially terminated or contributions discontinued shall have a fully vested and nonforfeitable interest in the amounts credited to their respective accounts at the time of such termination, partial termination or discontinuance of contributions notwithstanding any other provisions of the Plan.



ARTICLE X  
MISCELLANEOUS

**10.01 Not Contract of Employment**

The adoption and maintenance of this Plan shall not be deemed to constitute a contract between School District and any Employee, or to be a consideration for, or inducement or condition of, the employment of any person. Nothing herein contained shall be deemed to give any Employee the right to be retained in the employ of School District or to interfere with the right of School District to discharge any Employee at any time, nor shall the Plan be deemed to give School District the right to require any Employee to remain in the employ of School District, or to interfere with any Employee's right to terminate his employment.

**10.02 Notices**

The Trustees shall not be bound by any notice, direction, requisition, advice, or request unless or until it shall have been received by the Trustees at the administrative offices of the School District. The Trustees shall be protected in acting upon any notice, resolution, order, certificate, opinion, telegram, letter or other documents believed by the Trustees to be genuine and to have been signed by the proper party or parties.

**10.03 Liabilities of Trustees**

Each Trustee's responsibility and liability hereunder is limited to his own acts or omissions which constitute gross negligence or willful misconduct and as set out in this Section. The Trustees shall be fully protected from any and all responsibility for the adequacy of the Trust assets to meet and discharge any or all payments under this Plan. The School District agrees to indemnify the Trustees from any liabilities, loss, cost, or damage that the Trustees may incur in the exercise and performance of their duties and power hereunder. The School District further agrees to assume the defense of any and all actions, suits, or proceedings brought or advanced by any Employee, Member, beneficiary, or personal representative of such Employee or Member, or any combination of them against the Trustees and/or the Trust. The School District further agrees to indemnify and protect the Trustees from any and all claims, demands, suits, or proceedings at law or in equity which may be brought by any such Employee, Member, beneficiary, or legal representative. Except as may be unavoidably required by law, no bond or other security shall be required of any Trustee.

**10.04 Judicial Protection**

The Trustees may seek judicial protection by any action or proceeding deemed necessary to settle the accounts of the Trustees, to obtain a judicial determination or a declaratory judgment as to a question of construction of the Plan, or to obtain instruction as to action hereunder. The Trustees need join as parties defendant in any such action only the School District (and any Member filing objection to an accounting under Section 8.03, with respect to a suit to settle accounts), although the Trustees may join other parties, if, as, and when desired.

**10.05 Alienation of Interest Forbidden**

The right of any Member or beneficiary to any benefit or payment under this Plan shall not be subject to voluntary or involuntary transfer, alienation, or assignment, and, to the fullest extent permitted by law, shall not be subject to attachment, execution, garnishment, sequestration or other legal or equitable process. In the event a Member or beneficiary who is receiving or is entitled to receive benefits under the Plan attempts to assign, transfer or dispose of such right, or if an attempt is made to subject said right to such process, such assignments, transfer or disposition shall be null and void. This Section shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Member pursuant to a domestic relations order, unless such order is determined to be a qualified domestic relations order as defined in Subchapter A of Chapter 804 of the Texas Government Code.

10.06 Term

This Plan shall remain in effect, unless sooner terminated, as long as necessary to accomplish the purposes for which it is created, and shall then terminate under the provisions of Article IX.

10.07 Conditional on Approval by Internal Revenue Service

This Plan and Trust instrument is based upon the condition precedent that it shall be initially approved and qualified by the Internal Revenue Service as meeting the requirements of §401 of the Code, and regulations issued thereunder with respect to employees' trusts so that contributions will not be taxable to the Employees as income until finally distributed from the Trust or made available to the distributee.

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