



## MEMORANDUM

TO: Supplemental Retirement Board of Trustees

FROM: Reid Chisholm, Assistant General Counsel

DATE: December 1, 2022

SUBJECT: Proposed revisions to the plan documents

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Staff proposes the following revisions to the plan documents for the NC 401(k) Plan and the NC 457 Plan (the "Plans"):

1. Allowing individual beneficiaries to name beneficiaries;
2. Clarifying that Roth contributions are a required feature of the Plans;
3. Clarifying that alternate payees and beneficiaries cannot roll funds into the Plans (or make other contributions);
4. Correcting and clarifying references to various types of contributions (NC 401(k) Plan only); and
5. Making other clarifications and corrections.

The only revision that changes the current operation of the Plans is adding the ability of beneficiaries to name their own beneficiaries. If an individual, or a trust that can be treated as an individual, acquires all or part of a participant's account as a beneficiary, the individual has the option to maintain the account in the NC 401(k) or NC 457 Plan. If an individual beneficiary then dies with assets remaining in the Plan, the assets are paid to the individual's estate. The Plans currently do not allow a beneficiary to name a beneficiary. The proposed revisions would allow an individual beneficiary to name a beneficiary, giving the beneficiary greater control over his/her plan assets.

The proposed revisions to the NC 401(k) Plan and NC 457 Plan are tracked in Attachments 1 and 2, respectively, to this memo.

The plan documents for the [NC 401\(k\) Plan](#) and the [NC 457 Plan](#) are posted on the Board's web page on [www.myncretirement.com](http://www.myncretirement.com).

### **Recommendation**

Staff recommends the Board adopt the amendments to the plan documents that are attached to this memo.

## **Attachment 1 – Proposed Revisions to the NC 401(k) Plan**

**SUPPLEMENTAL RETIREMENT INCOME PLAN OF  
NORTH CAROLINA**

**Effective January 1, 1985**

**As Amended and Restated on December 10, 2015**

**Amended through December ~~12~~, 202~~1~~**

## SUPPLEMENTAL RETIREMENT INCOME PLAN OF NORTH CAROLINA

Effective January 1, 1985

As Amended and Restated Effective December 10, 2015

Amended through December ~~12~~, 202~~2~~<sup>+</sup>

### ARTICLE 1. DEFINITIONS

- 1.01 “**Accounts**” means the Deferred Account, the Employer Account, effective as of June 1, 2006, the Roth Account, the Rollover Account and the Transfer Account.
- 1.02 “**Annual Dollar Limit**” means the annual dollar limit set forth in Section 401(a)(17)(A) of the Code, as adjusted from time to time for cost of living in accordance with Section 401(a)(17)(B) of the Code.
- 1.03 “**Annuity Starting Date**” means the first day of the first period for which an amount is paid following a Member’s retirement or other termination of employment.
- 1.04 “**Beneficiary**” means any person or persons (whether individual(s) or entity(ies)) named by a Member by written designation filed with the Administrator to receive benefits payable in the event of the Member’s death. If no such designation is in effect at the time of death of the Member, or if no person or persons so designated shall survive the Member, the Beneficiary shall be the estate of the Member. An alternate payee (pursuant to a qualified domestic relations order) or a Beneficiary (individual only, excluding trusts and other entities) with an Account also may designate a Beneficiary for the Account.
- 1.05 “**Board**” means the Supplemental Retirement Board of Trustees as established under the provisions of N.C.G.S. 135-96.
- 1.06 “**Catch-Up Contributions**” means, ~~effective January 1, 2002,~~ Tax-Deferred Contributions (effective January 1, 2002) and Roth Contributions (effective June 1, 2006) made to the Plan pursuant to Section 3.01(~~be~~), which constitute Catch-Up Contributions under Section 414(v) of the Code. The determination of whether any contribution constitutes a Catch-Up Contribution for a Plan Year shall be determined as of the end of such Plan Year, in accordance with Section 414(v) of the Code and the regulations thereunder.

from an eligible deferred compensation plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state shall be accounted for separately within the Member's Rollover Account. Beginning January 1, 2002, after-tax amounts rolled over from a plan qualified under Section 401(a) of the Code shall be accounted for separately within the Member's Rollover Account. Effective on and after June 1, 2006, amounts attributable to Roth Contributions directly rolled over from a plan qualified under Section 401(a) of the Code shall be credited to a Member's Roth Account (or subaccount thereof).

- 1.27 **“Rollover Contributions”** means amounts contributed pursuant to Section 3.08.
- 1.28 **“Roth Account”** means the account credited with Roth Contributions, and earnings on those contributions. Unless otherwise indicated, any reference in the Plan to the Roth Account shall be deemed to refer as well to the In-Plan Roth Conversion Subaccount described in Sections 7.05 and 9.10.
- 1.29 **“Roth Catch-Up Contributions”** means the amount of Catch-up Contributions that the Member elects to include in gross income at the of time of deferral into the Plan pursuant to Section 3.01(c).
- 1.30 **“Roth Contributions”** means the amount of Deferred Cash Contributions contributed under Section 3.01 that the Member elected to include in gross income at the time of deferral in the Plan pursuant to Section 3.01(c).
- 1.31 **“Special Contributions”** means all amounts contributed pursuant to Section 3.02 of the Plan.
- 1.32 **“Tax-Deferred Catch-Up Contributions”** means the amount of Catch-up Contributions that are excluded from gross income at the of time of deferral into the Plan.
- 1.33 **“Tax-Deferred Contributions”** means theat amounts contributed pursuant to Section 3.01 that are excluded from gross income at the of time of deferral into of the Plan.
- 1.34 **“Transfer Account”** means the account into which shall be credited the Transfer Contributions made by a Member and earnings on those contributions.
- 1.35 **“Transfer Contributions”** means the contributions which were transferred to the Plan by the

## ARTICLE 2. ELIGIBILITY AND MEMBERSHIP

### 2.01 Eligibility

Each employee shall be eligible to become a Member on any Enrollment Date coincident with or next following the date on or after the date he becomes an Employee of an Employer participating in the Plan (an "Eligible Employee").

Notwithstanding the foregoing, the eligibility for the Plan of Employees who otherwise would be eligible to become Members can be delayed by the Primary Administrator until the Primary Administrator is satisfied that the payroll systems applicable to those Employees have been significantly modified to permit such Employees to contribute to the Plan.

### 2.02 Membership

- (a) Each person who was a Member under the Plan on December 9, 2015 shall continue as a Member on December 10, 2015, subject to the provisions of Section 2.05.
- (b) Each other person who is an Eligible Employee shall become a Member on the first Enrollment Date which is at least 60 days, or such shorter period as the Employer determines, after the date he files with the Employer a Notice in accordance with procedures prescribed by the Primary Administrator on which he:
  - (i) makes the election described in Section 3.01;
  - (ii) authorizes the Employer to reduce his Compensation to make Deferred Cash Contributions on his behalf;
  - (iii) makes an investment election; and
  - (iv) names a Beneficiary,

or, if earlier, the date on which a Special Contribution under Section 3.02 is made on his behalf.

### 2.03 Reemployment of Former Employees and Former Members

Any person reemployed by the Employer as an Eligible Employee, who was previously a Member or who was previously eligible to become a Member shall be immediately eligible to become a Member of the Plan and shall be eligible to make Deferred Cash~~Tax-Deferred~~ Contributions upon the filing of a Notice in accordance with Section 2.02. Any person reemployed by the Employer as

an Eligible Employee, who was not previously eligible to become a Member, shall become a Member upon completing the eligibility requirements described in Section 2.01 and the membership requirements in Section 2.02.

#### **2.04 Transferred Members**

A Member who remains in the employ of the Employer but ceases to be an Eligible Employee shall continue to be a Member of the Plan but shall not be eligible to make Deferred Cash eContributions or receive allocations of ~~Tax-Deferred Contributions or~~ Employer Special eContributions while his employment status is other than as an Employee.

#### **2.05 Termination of Membership**

A Member's membership shall terminate on the date he is no longer employed by an Employer unless the Member is entitled to benefits under the Plan, in which event his membership shall terminate when those benefits are distributed to him.

#### **2.06 Automatic Enrollment**

- (a) **General Rule.** If automatic enrollment is authorized by the General Assembly, and except as provided in Section 2.06(c) below, if an Eligible Employee has not affirmatively elected either to make or not to make Deferred Cash Contributions under Section 3.01, such Eligible Employee is deemed to have elected to become a Member and have an enrollment application filed on his behalf. The Member will be deemed to have elected to defer a set percentage of his Compensation to the Plan, in the percentage established by the General Assembly and as set forth in procedures of the Primary Administrator. An Eligible Employee will have a reasonable period of time, as established by the Primary Administrator, after receipt of any notice required by the Code, Treasury Regulations, and other applicable guidance, to make an affirmative election regarding Deferred Cash Contributions before the deemed election to make such contributions shall become effective.
- (b) **Default Investment.** When an Investment Fund has not been affirmatively selected by the Member, contributions made under the deemed election of Section 2.06(a) shall be invested in a default Investment Fund determined by the Primary Administrator and the Board.
- (c) **Employee Election.** This Section 2.06 shall not apply, or shall cease to apply, to the extent an Eligible Employee files an enrollment application or elects to have no Deferred Cash

## ARTICLE 3. CONTRIBUTIONS

### 3.01 Deferred Cash Contributions

- (a) A Member may elect on his application filed under Section 2.02 to reduce by a specified percentage or whole dollar amount his Compensation payable while a Member and have that amount contributed to the Plan by the Employer. Such total amount contributed shall not exceed 80% of such Member's Compensation (or said lesser percentage as the Primary Administrator may determine). That amount shall be contributed to the Plan by the Employer as Deferred Cash Contributions in a manner to be determined by the Primary Administrator. Any Deferred Cash Contributions elected under this Section 3.01 shall be allocated to the Member within the Plan Year for which they are contributed and shall be paid to the Trustee as soon as practicable. Deferred Cash Contributions shall be further limited as provided below and in Section 3.06.
- (b) Effective for taxable years beginning after December 31, 2001, a Member who is eligible to make Deferred Cash Contribution under Section 3.01(a) of the Plan and who has attained or will attain age 50 by the last day of the taxable year may elect, in accordance with procedures prescribed by the Primary Administrator, to make Catch-Up Contributions for that taxable year in accordance with and subject to the limitations of Section 414(v) of the Code. Such Catch-Up Contributions shall be subject to the following special rules:
  - (i) A Member's Catch-Up Contributions shall not be taken into account for purposes of applying the limitations under Sections 402(g) and 415 of the Code.
  - (ii) The determination of whether a Deferred Cash Contribution under this Section constitutes a Catch-Up Contribution for any taxable year shall be determined as of the end of such taxable year, in accordance with Section 414(v) of the Code. Deferred Cash Contributions that are intended to be Catch-Up Contributions for a taxable year but which do not qualify as Catch-Up Contributions as of the end of the taxable year shall be treated for all purposes under the Plan as Deferred Cash Contributions made under Section 3.01(a).
  - (iii) In the event that the sum of a Member's Catch-Up Contributions and similar contributions to any other qualified defined contribution plan maintained by the Employer exceeds the dollar limit on Catch-Up Contributions under Section 414(v) of the Code for any taxable year as in effect for such taxable year, the Member shall be deemed to have elected a return of the Catch-Up Contributions



in excess of the limit under Section 414(v) of the Code and such amount shall be treated in the same manner as "excess deferrals" under Section 3.01(e).

- (iv) If a Member makes Catch-Up Contributions under a qualified defined contribution plan maintained by an employer other than the Employer and/or Code Section 403(b) plan for any taxable year and those contributions when added to his Catch-Up Contributions exceed the dollar limit on Catch-Up Contributions under Section 414(v) of the Code for that taxable year, the Member may allocate all or a portion of such "excess Catch-Up Contributions" to this Plan. In the event such Member notifies the Administration of the "excess Catch-Up Contributions" in the same manner as is required for allocated "excess deferrals" under Section 3.01(d), such "excess Catch-Up Contributions" shall be distributed in the same manner as "excess deferrals" under Section 3.01(f).
  - (v) The Employer shall not take a Member's Catch-Up Contributions into account for purposes of determining the amount of Special Contributions under Section 3.02.
  - (vi) A Member's Catch-Up Contributions shall be subject to the same withdrawal and distribution restrictions as Deferred Cash Contributions made under Section 3.01(a).
- (c) Unless a Member makes an election under the provisions of this paragraph (c), Deferred Cash Contributions and Catch-Up Contributions made by a Member under paragraphs (a) and (b) above shall be deemed to be Tax-Deferred~~Pre-Tax~~ Contributions. Effective as of June 1, 2006, in lieu of making Deferred Cash Contributions and Catch-Up Contributions on a pre-tax basis pursuant to the provisions of paragraphs (a) and (b) above, a Member may elect, in accordance with procedures prescribed by the Primary Administrator, to have some or all of the Deferred Cash Contributions and/or Catch-Up Contributions that otherwise would be contributed to the Plan on a pre-tax basis designated as Roth Contributions or Roth Catch-Up Contributions, as applicable, and included in his gross income at the time of deferral. Such election, once made, may only be revoked with respect to Deferred Cash Contributions to be contributed after the effective date of the revocation election. ~~Notwithstanding the foregoing, Members' opportunity to make Roth Contributions can be delayed by the Primary Administrator until the Primary Administrator is satisfied that the payroll systems applicable to those Employees have been significantly modified to permit such Employees to individual choose whether their contributions to the Plan will be made as Tax Deferred Contributions or Roth~~

~~Contributions.~~

- (d) In no event shall the Member's Deferred Cash Contributions and similar contributions made on his behalf by the Employer to all plans, contracts or arrangements subject to the provisions of Section 401(a)(30) of the Code in any calendar year exceed the applicable dollar limitation contained in Section 402(g) of the Code in effect for such calendar year, except as permitted under Section 414(v) of the Code. If a Member's Deferred Cash Contributions in a calendar year reach that dollar limitation, his election of Deferred Cash Contributions for the remainder of the calendar year will be cancelled. As of the first pay period of the calendar year following such cancellation, the Member's election of Deferred Cash Contributions shall again become effective in accordance with his previous election, unless the Member elects otherwise in accordance with Section 3.04.
- (e) In the event that the sum of the Deferred Cash Contributions and similar contributions to any other qualified defined contribution plan maintained by the Employer exceeds the dollar limitation on elective deferrals under Section 402(g) of the Code for any calendar year as in effect for such calendar year, the Member shall be deemed to have elected a return of Tax-Deferred Contributions in excess of such limit ("excess deferrals") from this Plan. A Member who has made both Tax-Deferred Contributions and Roth Contributions for the applicable calendar year may designate, under procedures prescribed to the Primary Administrator, whether such excess deferrals shall be attributed first to his Tax-Deferred Contributions or his Roth Contributions. In the event a Member fails to make such an election, the excess deferrals shall be attributed first to his Tax-Deferred Contribution. In the event a Member has made both Tax-Deferred Contributions and Roth Contributions for the applicable calendar year, the excess deferrals shall be first attributed to the Member's Tax-Deferred Contributions. The excess deferrals, together with Earnings, shall be returned to the Member no later than the April 15 following the end of the calendar year in which the excess deferrals were made. In the event any Tax-Deferred or Roth Contributions returned under this paragraph (e) were matched by Special Contributions under Section 3.02, those Special Contributions, together with Earnings, shall be forfeited and used to reduce Employer contributions.
- (f) If a Member makes tax-deferred contributions under (i) another qualified defined contribution plan maintained by an employer other than the Employer and/or (ii) any Code

under rules uniformly applicable to all employees similarly situated, an Employee may elect to have the Special Contributions allocated on his behalf under this paragraph (a) not contributed to this Plan, but rather contributed on his behalf to another eligible retirement plan (as defined in Sections 402(c)(8)(B)(iii)-(vi) of the Code) sponsored by the Employer.

- (b) The Employer may make Special Contributions to the Plan on behalf of each Member who (i) has Deferred Cash Contributions made on his behalf during the Plan Year pursuant to an election under Section 3.01(a), and (ii) has fulfilled such period of eligibility service to receive such contribution as the Employer shall determine (provided that such period shall not in any case exceed one year) in an amount to be determined by the General Assembly or such other governing body which has such authority. These contributions shall be promptly paid to the Trustee by the Employer. The Special Contributions under this paragraph (b), if any, for each Plan Year shall be allocated to the Employer's eligible Members who have ~~Deferred CashTax-Deferred~~ Contributions made on their behalf during the Plan Year, on a uniform basis, in proportion to their ~~Deferred CashTax-Deferred~~ Contributions made during the Plan Year for which the Special Contribution is being made. Each Special Contribution under this paragraph (b) shall consist of contributions by each Employer in proportion to the aggregate ~~Deferred CashTax-Deferred~~ Contributions made pursuant to Section 3.01(a), if any, of the eligible Members in its service. Special Contributions under this paragraph (b) are made expressly conditioned on the Plan satisfying the provisions of Section 3.01(b). If any portion of the ~~Deferred CashTax-Deferred~~ Contributions to which the Special Contribution relates is returned to the Member under Section 3.01, the corresponding Special Contributions shall be forfeited. Notwithstanding the foregoing, the General Assembly or such other governing body which has such authority may provide that, effective on or after January 1, 2007, the amount of Special Contributions made by each Employer pursuant to this paragraph (b) may be determined separately for separate groups of such Employer's eligible Members (as defined pursuant to the preceding provisions of this paragraph (b)); provided, however, that (i) each separate group shall consist of a 'reasonable class' of each Employer's eligible Members as determined by the Primary Administrator, and (ii) each Employer shall not create more than three separate groups of eligible Members during any Plan Year for purposes of making Special Contributions under this paragraph (b) for such Plan Year. Each separate group of an Employer's eligible Members shall be determined solely on the basis of years of service completed by such eligible Members while employed by that

Employer. Years of service completed by an eligible Member shall be determined as of a specific date or as of an applicable Plan Year in a manner uniformly consistent for all eligible Members of the Employer. Notwithstanding the foregoing, a separate group of the Employer's eligible Members shall not be deemed a 'reasonable class' of the Employer's eligible Members if such separate group consists of less than 20 percent of all eligible Members of the Employer, unless such separate group consists of all eligible Members of the Employer employed as of a specific date occurring on or after the later of January 1, 2007 or the date that separate group is first established for that Employer by the General Assembly or such other governing body. Each Employer's Special Contributions under this paragraph (b), if any, for each Plan Year shall be allocated to the Employer's group of eligible Members who have ~~Deferred CashTax-Deferred~~ Contributions made on their behalf during the Plan Year on a uniform basis, as the General Assembly or such other governing body shall so determine, in proportion to their ~~Deferred CashTax-Deferred~~ Contributions made during the Plan Year for which the Special Contribution is being made, and the allocation rates applicable to the separate groups of each Employer shall be based on either a 'smoothly increasing schedule' or 'smoothly decreasing schedule' as defined below. Each Special Contribution under this paragraph (b) shall consist of contributions by each Employer in proportion to the aggregate Deferred Cash Contributions made pursuant to Section 3.01(a), if any, of the group of eligible Members in its service. A 'smoothly increasing schedule' is a schedule under which the allocation rate for each separate group of the Employer's eligible Members does not exceed the allocation rate for the immediately preceding group (that is, the group with the next lower number of years of service) by more than 100 percent for the same Plan Year. A 'smoothly decreasing schedule' is a schedule under which the allocation rate for each separate group of the Employer's eligible Members for the same Plan Year is not less than one half of the allocation rate for the immediately preceding group (that is, the group with the next lower number of years of service). These contributions shall be promptly paid to the Trustee by the Employer. In the event those Special Contributions subject to forfeitures have been distributed to the Member, the Employer shall make reasonable efforts to recover the contributions from the Member.

- (c) With respect to Employees who are law enforcement officers and are Members or eligible to become Members of Part "B" or Part "C", the Employer shall contribute to the Plan on behalf of each such Member or eligible Member an amount equal to such percentage, as

- (b) For purposes of this Section, the “annual addition” to a Member’s Accounts under this Plan or any other qualified defined contribution plan maintained by the Employer shall be the sum of:
- (i) the total contributions, including Deferred Cash Contributions, made on the Member’s behalf by the Employer,
  - (ii) all ~~M~~member contributions, exclusive of any Transfer Contributions or Rollover Contributions, and
  - (iii) forfeitures, if applicable, and
  - (iv) solely for purposes of clause (i) of paragraph (a) above, amounts described in Sections 415(1)(1) and 419A(d)(2) allocated to the Member that have been allocated to the Member’s Accounts under this Plan or his accounts under any other such qualified defined contribution plan maintained by an Employer. For purposes of this paragraph (b), any Special Contributions distributed or forfeited under the provisions of Section 3.01, shall be included in the annual addition for the year allocated.

Annual additions shall not include Rollover Contributions, loan repayments made under Article 8, excess deferrals timely distributed from the Plan under Section 3.01(e) or (f), and Catch-Up Contributions.

- (c) For purposes of this Section, the term “Statutory Compensation” with respect to any Member shall mean the wages, salaries, and other amounts paid in respect of such Member by the Employer for personal services actually rendered, determined after any reduction of Compensation pursuant to Section 414(h)(2) of the Code, and including (but limited to) overtime, shift differentials, longevity payments, and amounts contributed by the Employer pursuant to a salary reduction agreement which are not includible in the gross income of the employee under Section 125, 132(f), 402(g)(3), 414(v), or 457(b) of the Code, but excluding deferred compensation and other distributions which receive special tax benefits under the Code. Effective for Plan Years beginning on or after July 1, 2007, Statutory Compensation (i) shall include amounts required to be recognized under the provisions of U.S. Treasury Department regulation 1.415(c)-2(e) and (ii) shall not exceed the limitation on compensation under Section 401(a)(17) of the Code. Effective January 1, 2009, Statutory Compensation shall include differential wage payments within the meaning of Section 3401(h) of the Code.

- (c) Notwithstanding paragraphs (a) and (b) above, effective on and after such date as shall be prescribed by the Primary Administrator, the Plan may accept on behalf of an Employee before-tax amounts that are either:
- (i) contributed by the Member on or before the 60th day after the day such amounts were received by the Member from an individual retirement account or individual retirement annuity of the Member described in Section 408(a) or 408(b), respectively, of the Code, or
  - (ii) are directly rolled over from such individual retirement account or individual retirement annuity of the Member.

Notwithstanding the foregoing, the Plan shall not accept any amount unless such amount is eligible to be rolled over to a qualified trust in accordance with applicable law and the Member provides evidence satisfactory to the Primary Administrator that such amount qualifies for rollover treatment.

Neither an alternate payee nor a Beneficiary is permitted to make a Rollover Contribution to the Plan.

### **3.09 Contributions During Period of Military Leave**

- (a) Notwithstanding any provision of this Plan to the contrary, contributions and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code. Without regard to any limitations on contributions set forth in this Article 3, a Member who has a period of service in the uniformed services of the United States beginning on or after August 1, 1990 and who returns to service with the Employer having applied to return while his reemployment rights were protected by law may elect to contribute to the Plan the Deferred Cash Contributions, including Catch-Up Contributions that could have been contributed to the Plan in accordance with the provisions of the Plan had he remained continuously employed by the Employer throughout such period of absence (“make-up contributions”). Effective ~~on and after~~ June 1, 2006, a Member who elects to make ~~Deferred Cash Tax-Deferred~~ Contributions and/or Catch-Up Contributions under this paragraph and who would have been able to make Roth Contributions during the period of applicable period of military leave had he been an active member in the Plan during such period, may further elect, pursuant to the provisions of Section 3.01, whether Deferred Cash Contributions~~those amounts~~ shall be designated as Tax-Deferred

Contributions or Roth Contributions and whether Catch-Up Contributions shall be designated as Tax-Deferred Catch-Up Contributions or Roth Catch-Up Contributions. For purposes of determining the amount of make-up contributions a Member may make, his Compensation for the period of the absence shall be deemed to be the rate of the Member's Compensation (up to the Annual Dollar Limit) he would have received had he remained employed as an Employee for that period or, if such rate is not reasonably certain, on the basis of the Member's rate of annual Compensation during the 12 month period immediately prior to such period of absence (or if shorter, the period of employment immediately preceding such period). Any Deferred Cash Contributions, including Catch-Up Contributions so determined shall be limited as provided in Section 3.01 with respect to the Plan Year or Years to which such contributions relate rather than the Plan Year in which payment is made. Any payment to the Plan described in this paragraph shall be made during the applicable repayment period. The repayment period shall equal three times the period of military leave, but not longer than five years and shall begin on the latest of: (i) the Member's date of reemployment, (ii) October 13, 1996, or (iii) the date the Employer notifies the Employee of his rights under this Section 3.09. The earnings (or losses) on make-up contributions shall be credited commencing with the date the make-up contribution is made in accordance with the provisions of Article 4.

- (b) With respect to a Member who makes the election described in paragraph (a) above, the Employer shall make Special Contributions on the make-up contributions in the amount described in the provisions of Section 3.02(b) as in effect for the Plan Year to which such make-up contributions relate. Employer Special Contributions under the preceding sentence shall be made during the period described in paragraph (a) above. In addition, with respect to a Member who is eligible to make the election described in paragraph (a), an Employer shall make any applicable Special Contributions that would have been contributed to the Plan in accordance with the provisions of Section 3.02(a), Section 3.02(c), or Section 3.02(d) had he remained continuously employed by the Employer throughout the period of absence during which he was in the uniformed services of the United States. The earnings (or losses) on Special Contributions shall be credited commencing with the date the contributions are made in accordance with the provisions of Article 4. Any limitations on Special Contributions shall be applied with respect to the Plan Year or Years to which such contributions relate rather than the Plan Year or Years in which payment is made.

in effect with respect to the Member's ~~Deferred Cash Tax-Deferred~~ Contributions.

Unless a Participant provides, in accordance with administrative procedures established by the Primary Administrator, an initial investment election for the amounts to be re-characterized under an In-Plan Roth Conversion under Sections 7.05 or 9.10, the In-Plan Roth Conversion amount will remain invested among the same Plan investments in which said amounts were invested prior to the In-Plan Roth Conversion. On and after the date an In-Plan Roth Conversion is completed, any transfers/reallocations made pursuant to Section 4.05 shall apply to the Participant's entire Roth Account, including any amount held in the Participant's In-Plan Roth Conversion Subaccount.

#### **4.03 Responsibility for Investments**

Each Member is solely responsible for the selection of his investment options. The Trustee, the Board, the Primary Administrator, the Employer, and the officers, supervisors and other employees of the Employer are not empowered to advise a Member as to the manner in which his Accounts shall be invested. The fact that an Investment Fund is available to Members for investment under the Plan shall not be construed as a recommendation for investment in that Investment Fund. If a Member fails to make any investment election covering his Accounts, his Accounts shall be invested in the Short-Term Investment Fund, or such other Fund as the Primary Administrator determines, under uniform and nondiscriminatory rules, until such time as the Member makes such election.

#### **4.04 Change of Election**

A Member may change his investment elections under Section 4.02 by giving such advance Notice as the Primary Administrator shall prescribe. The changed investment election shall become effective as soon as administratively practicable following receipt of such Notice and shall be effective only with respect to subsequent contributions.

#### **4.05 Transfers/Reallocation Between Funds**

A Member may elect under uniform rules (effective on and after February 1, 2004, including, but not limited to, rules with respect to market timing) prescribed by the Primary Administrator regarding the reallocation/transfer of all or any portion of a Member's Accounts among the Investment Funds, in multiples of 1%, by giving such advance Notice as the Primary Administrator shall prescribe. Subject to uniform rules (effective on and after February 1, 2004, including, but not limited to, rules with respect to market timing) prescribed by the Primary Administrator regarding



the date on which the Member would have attained age 72.

- (d) In no event, however, shall the provisions of this Section operate so as to allow the distribution of a Member's Account to begin later than the April 1 following the calendar year in which he attains age 72 or retires, if later.
- (e) Unless otherwise permitted by the Primary Administrator, a Member's distribution request shall be paid no sooner than 60 days following termination of employment, unless the Member (1) has retired; (2) is eligible for a distribution under Article 78; or (3) is required by the Code, Treasury Regulations, or the provisions of the Plan to take a distribution.

#### **9.04 Mandatory Distribution of De Minimis Accounts**

- (a) Notwithstanding any provision of the Plan to the contrary, if a Member has a termination of employment and the value of the Member's Accounts amounts to \$1,000 or less, the Primary Administrator may distribute the Member's entire account in a lump sum payment following notification to the Plan's recordkeeper of the Member's termination of employment; provided that the Member is not reemployed by an Employer as of the date of distribution and the value of the Member's Accounts remains less than \$1,000 as of the date of the distribution.
- (b) Notwithstanding the above, in the event that the Member's account is deemed to be Bailey Vested, the Member's account will not be subject to a mandatory distribution under Section 9.04(a). For the purposes of this section 9.04(b), "Bailey Vested" shall mean a Member who had contributed or contracted to contribute to the Plan prior to August 12, 1989.

#### **9.05 Status of Accounts Pending Distribution**

Until completely distributed under Section 9.03, the Accounts of a Member who is entitled to a distribution at a future date shall continue to be invested as part of the funds of the Plan and the Member (or his Beneficiary in the event of the death of the Member) shall retain investment transfer rights as described in Section 4.05 during this period. Until the commencement of payments under Section 9.03, a Member shall be permitted to make a partial withdrawal from his Account pursuant to the provisions of Section 7.03.

#### **9.06 Proof of Death and Right of Beneficiary or Other Person**

## **ARTICLE 11. MANAGEMENT OF FUNDS**

### **11.01 Trust Agreement**

All the funds of the Plan shall be held by the Board in its separate capacity as trustee under a trust agreement in the form of the North Carolina General Statutes adopted, or as amended, by the General Assembly of North Carolina for use in providing the benefits of the Plan and paying its expenses not paid directly by the Employer. The Employer shall have no liability for the payment of benefits under the Plan or for the administration of the funds paid over to the Plan.

### **11.02 Exclusive Benefit Rule**

Except as otherwise provided in the Plan, no part of the corpus or income of the funds of the Plan shall be used for, or diverted to, purposes other than for the exclusive benefit of Members and other persons entitled to benefits under the Plan. No person shall have any interest in or right to any part of the earnings of the funds of the Plan, or any right in, or to, any part of the assets held under the Plan, except as and to the extent expressly provided in the Plan not in conflict with the North Carolina General Statutes adopted, or as amended, by the General Assembly of North Carolina.

### **11.03 Investment in Group Trust**

Notwithstanding any provision of the Plan to the contrary, the Plan's assets may be invested in a group trust described in Revenue Ruling 81-100 or a successor thereto, and the terms of such group trust shall be deemed incorporated into this Plan document.

## **Attachment 2 – Proposed revisions to the NC 457 Plan**

**North Carolina Public Employee Deferred Compensation Plan (NC 457  
Plan)**

**Effective November 12, 1974**

**As Amended and Restated on December 14, 2017**

**Amended through December 1, 2022**~~Revised August 26, 2021~~

## **Article I      The Plan and the Trust**

### **Section 1.1      Establishment of the Plan**

Pursuant to N.C.G.S. § 143B-426.24, the State of North Carolina has established the Plan for the primary purpose of providing retirement income and other deferred benefits to the Employees (and their Beneficiaries) of Participating Employers in accordance with the provisions of Code § 457. The Plan consists of the provisions set forth in this amended and restated Plan document and N.C.G.S. § 143B-426.24. The Plan is intended to be a Code § 457(b) plan for employees of governmental entities described in Code § 457(e)(1)(A).

### **Section 1.2      Effective Date**

The Plan was originally effective on November 12, 1974. This amended and restated Plan document is effective as of ~~December 14~~January 1, 2017.

### **Section 1.3      Plan Trust**

The assets and income of the Plan shall be held by the Board in its separate capacity as trustee under a trust agreement in the form of the North Carolina General Statutes as adopted, or as amended, by the General Assembly of North Carolina for use in providing the benefits of the Plan and paying its expenses not paid directly by the Employer. The Employer shall have no liability for the payment of benefits under the Plan or for the administration of the funds paid over to the Plan.

### **Section 1.4      Exclusive Benefit Rule**

Except as otherwise provided in the Plan, no part of the corpus or income of the assets of the Plan shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants, Beneficiaries, and Alternate Payees. No person shall have any interest in or right to any part of the earnings of the assets of the Plan, or any right in, or to, any part of the assets held under the Plan, except as and to the extent expressly provided in the Plan and not in conflict with the North Carolina General Statutes as adopted, or as amended, by the General Assembly of North Carolina.

### **Section 1.5      Group Trust**

Notwithstanding any provision of this Plan document to the contrary, the Plan's assets may be invested in a group trust described in IRS Revenue Ruling 81-100 or a successor thereto, and the terms of such group trust shall be deemed incorporated into this Plan document.

### **Section 1.6      Vesting**

Each Participant is immediately 100% vested in all of the Deferred Compensation in his or her Account, including Additional Employer Contributions, unless otherwise provided by the North Carolina General Statutes.

## Article II Definitions

For purposes of this Plan document, the following terms shall have the meanings set forth below in this Article II.

### Section 2.1 Account

The bookkeeping account maintained for each Participant that reflects the cumulative amount of the Participant's Deferred Compensation. Each Participant's Account shall be adjusted to reflect any income, gains, losses, or increases or decreases in market value attributable to the Employer's investment of the Participant's Deferred Compensation and shall also be adjusted to reflect any distributions and any fees or expenses charged against such Participant's Deferred Compensation. For purposes of this section, the term "Participant" includes Beneficiaries and Alternate Payees that receive part or all of a Participant's Account.

### Section 2.2 Annual Deferral Amount

The sum of (a) the Employee Deferral Amount; (b) Additional Employer Contributions pursuant to Section 4.3; and (c) any contribution of accumulated sick pay, accumulated vacation pay, or accumulated back pay under Section 3.3 contributed to the Plan during a taxable year.

### Section 2.3 Applicable Law

Provisions of the North Carolina General Statutes, Code, Treasury Regulations, ~~and~~ IRS guidance, court orders, and other state and federal laws that are applicable to the Plan.

### Section 2.4 Beneficiary

The person or persons (whether individual(s) or entity(ies)) designated by the Participant, according to the procedures required by the Plan Administrator and/or Third-party Administrator, to receive any benefits payable under the Plan in the event of the Participant's death. In the event that the Participant names two or more Beneficiaries, each Beneficiary shall be entitled to equal shares (per capita) of the benefits payable at the Participant's death, unless otherwise provided by the Participant according to the procedures required by the Plan Administrator and/or Third-party Administrator. If no Beneficiary is designated, or if the designated Beneficiary predeceases the Participant, then the estate of the Participant shall be the Beneficiary. A Participant may change his or her Beneficiary at any time according to the procedures required by the Plan Administrator and/or Third-party Administrator, and such change shall become effective upon acceptance by the Plan Administrator or Third-party Administrator. An Alternate Payee or a Beneficiary (individual only, excluding trusts and other entities) may designate a Beneficiary according to the terms of this provision following the establishment of the Alternate Payee's or the Beneficiary's Account.

### Section 2.5 Board

The North Carolina Supplemental Retirement Board of Trustees.

### Section 2.6 Catch-Up Dollar Limitation

or are made at the same time, as elected by the Participant under Section 5.1, provided that all payments commence (or are made) by the latest benefit commencement date under Section 5.1;

(g) A split distribution under which payments under options (a), (b), (c) or (e) commence or are made at different times, as elected by the Participant or Beneficiary, as applicable, provided that all payments commence (or are made) by the latest benefit commencement date required under the Plan; and

(h) Subject to Section 5.3, any payment option elected by the Participant or Beneficiary, as applicable, and agreed to by the Plan Administrator and Third-party Administrator.

If a Participant or Beneficiary fails to make a timely election of a payment option, benefits shall be paid (1) in a lump sum or as otherwise permitted by the Plan, as selected by the Plan Administrator; or (2) as required by Applicable Law.

### **Section 5.3 Limitation on Options**

Notwithstanding any other provision of this Article V, all distributions from the Plan shall conform to the requirements of Code § 401(a)(9) and applicable Treasury Regulations and IRS guidance thereunder (collectively, the “Distribution Rules”), including the incidental death benefit provisions of Code § 401(a)(9)(G), and no payment option may be selected by a Participant or Beneficiary under Section 5.2, 5.4, or 5.5 unless it satisfies the Distribution Rules. The Distribution Rules shall override any Plan provision that is inconsistent with the Distribution Rules.

### **Section 5.4 Post-Retirement Death Benefits**

If (1) the Participant has begun receiving benefits on an installment basis but dies before all installments have been paid; and (2) his or her surviving Beneficiary is a sole person (including a trust that qualifies as a sole “designated beneficiary” under Treasury Regulation § 1.401(a)(9)), then such installments shall continue to be paid to the Beneficiary, unless the Beneficiary elects otherwise. Otherwise, if the Participant has begun receiving benefits but dies before the entire Account has been paid, then the remaining amount of the Participant’s Account shall be paid to the Beneficiary in a lump sum. Any different payment option elected by a Beneficiary under this Section 5.4 must provide for payments at a rate that is at least as rapid under the payment option under which benefits were paid to the Participant. In no event shall the Plan Administrator be responsible for paying any amount to the Beneficiary in the name of the Participant before the Plan Administrator receives proof of death of the Participant. If at the sole person Beneficiary begins receiving payments pursuant to this section but dies prior to a full distribution of the Participant’s account, the remaining amount of the Participant’s account shall be distributed pursuant to this Section 5.4 as if the sole person Beneficiary were the Participant paid in a lump sum to the Beneficiary’s estate.

### **Section 5.5 Pre-Retirement Death Benefits**

If the Participant dies before he or she has begun to receive the benefits provided by Section 5.1, the value of the Participant’s Account shall be payable to the Beneficiary according to the provisions of Sections 5.2 and 5.3. Notwithstanding the foregoing, in the event that the Beneficiary is other than a sole person (including a trust that qualifies as a sole “designated beneficiary” under Treasury Regulation § 1.401(a)(9)), payment shall be made in a lump sum. The benefit commencement date

under this Section 5.5 shall not be later than the latest of (i) December 31 of the year following the year of the Participant's death; (ii) for non-installment distributions, the December 31 of the fifth year following the year of the Participant's death; or (iii) if the Beneficiary is the Participant's spouse, December 31 of the year in which the Participant would have attained age 72. If ~~at the sole person~~ Beneficiary ~~begins receiving payments pursuant to this section but~~ dies prior to a full distribution of the Participant's account, the remaining amount of the Participant's account shall be distributed pursuant to this Section 5.5 as if the sole person Beneficiary were the Participant~~paid in a lump sum to the Beneficiary's estate.~~

## **Section 5.6 Unforeseeable Emergencies**

(a) In the event an unforeseeable emergency occurs, a Participant may apply to the Third-party Administrator (or Plan Administrator, if no Third-party Administrator) to receive that part of the value of his or her Account that is reasonably needed to satisfy the emergency need. If such an application is approved by the Third-party Administrator (or Plan Administrator, if no Third-party Administrator), the Participant shall be paid only such amount as the Third-party Administrator (or Plan Administrator, if no Third-party Administrator) deems necessary to meet the emergency need, but payment shall not be made to the extent that the financial hardship may be relieved through cessation of deferral under the Plan, insurance, or other reimbursement, or liquidation of other assets to the extent such liquidation would not itself cause severe financial hardship.

(b) An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship to the Participant resulting from a sudden unexpected illness or accident of the Participant, his or her spouse, or a dependent (as defined in Code § 152 and for taxable years beginning on or after January 1, 2005, without regard to Code §§ 152(b)(1), (b)(2), and (d)(1)(B)) of the Participant, 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 a natural disaster), or other similar and extraordinary unforeseeable circumstances arising as a result of events beyond the control of the Participant. Imminent foreclosure of or eviction from the Participant's primary residence, the need to pay for medical expenses (including non-refundable deductibles and the cost of prescription drug medication), and the need to pay for the funeral expenses of a spouse or a dependent (as defined in Code § 152 and for taxable years beginning on or after January 1, 2005, without regard to Code §§ 152(b)(1), (b)(2), and (d)(1)(B)) may each constitute an unforeseeable emergency. However, the need to send a Participant's child to college or to purchase a new home shall not, of itself, be considered an unforeseeable emergency. The determination as to whether such an unforeseeable emergency exists shall be based on the merits of each individual case. Unforeseeable emergency distributions may be made from pre-tax or Roth Deferred Compensation (including rollover contributions).

### **(c) IRS Relief Events**

(1) This Section 5.6(c) is intended to implement the relief granted to Relief Participants pursuant to the IRS Announcements for the Relief Events as described in Section 5.6(c)(6).

(2) To the extent that an unforeseeable emergency withdrawal described in Section 5.6(a) is elected by a Relief Participant, as defined below, because of a unforeseeable emergency resulting from the applicable Relief Event (a "Relief Withdrawal"), the unforeseeable emergency withdrawal provisions of the Plan set forth in Sections 5.6(a) and (b) are modified to adopt the liberalized unforeseeable emergency withdrawal standards and procedural requirements set forth in the



loan shall be canceled, and the outstanding loan balance shall be distributed pursuant to this Plan document. If a Participant enters the uniformed services of the United States, the interest rate applicable to the unpaid loan balance during the period of leave shall be reduced to 6%, in accordance with the Soldiers' and Sailors' Civil Relief Act of 1940; provided that, the Participant provides the Plan Administrator with written notice and a copy of his or her military orders no later than 180 days after the date that the Participant completes such military service.

(4) Upon a Participant's reemployment from the leave of absence, the Participant shall resume payments either in the same amount as before the leave with the full balance due upon the expiration of the repayment period or by re-amortizing the loan in substantially level installments over the remaining term of the loan.

(i) **Prepayment.** The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.

### **Section 9.3 CARES Act Provisions**

(a) Notwithstanding any other provision of this Article 9, this section applies to the extent permitted by the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law 116-136).

(b) A "CRD-eligible Participant" is a Participant who qualifies for a "coronavirus-related distribution" pursuant to Section 2202(a)(4)(A)(ii) of the CARES Act.

(c) From March 27, 2020 through September 22, 2020, the maximum loan amount for a CRD-eligible Participant is the lesser of \$100,000 or 100% of the Participant's ~~A~~account balance.

(d) From March 27, 2020 through September 22, 2020, a CRD-eligible Participant is permitted to take a second loan from the Plan.

(e) If a CRD-eligible Participant has an outstanding loan repayment due in the period from March 27, 2020 through December 31, 2020, the participant can defer this repayment through the end of 2020 and restart repayment in January 2021. The term of the loan shall be extended as follows:

(1) For deferral requests through July 5, 2020, the term shall be extended to account for the number of pay periods in 2020 for which payments were deferred; and

(2) For deferral requests from July 6, 2020 through December 31, 2020, the term shall be extended for 12 months from the end of the current term.

However, interest continues to accrue during the deferral period. Following the deferral period, the Plan Administrator shall re-amortize the loan such that the loan shall be repaid with interest in full in substantially equal payments over the remaining term of the loan.

## Article X Non-assignability

### Section 10.1 In General

Except as provided in Article IX or this Article X or as required by Applicable Law, no benefit or right to receive payment under the Plan shall be commuted, sold, assigned, pledged, transferred, or otherwise conveyed or encumbered, and any attempt to do so is void. Such benefits and rights are expressly declared to be non-assignable and non-transferable.

### Section 10.2 Domestic Relations Orders

(a) An alternate payee as defined by Code § 414(p)(8) (“Alternate Payee”) may receive part or all of a Participant’s Account pursuant to a domestic relations order as defined by Code § 414(p)(1)(A)(i) (“Domestic Relations Order”). The Plan Administrator or Third-party Administrator may establish a separate Account for an Alternate Payee for the purpose of administering a Domestic Relations Order.

(b) Any payment made pursuant to a Domestic Relations Order shall be reduced by any required income tax withholding.

(c) The Plan Administrator, in its sole discretion, shall determine the validity of a proposed Domestic Relations Order and whether a Domestic Relations Order can be administered. The Plan Administrator’s determinations shall be conclusive and shall be afforded the maximum deference permitted by Applicable Law.

(d) An Alternate Payee shall receive his or her amount of the Participant’s Account as soon as administratively feasible or as otherwise provided in the Domestic Relations Order. Sections 5.2 and 5.3 apply to distributions to an Alternate Payee as if the Alternate Payee were the Participant; provided that, the Plan Administrator, in order to ensure the orderly administration of this provision, may establish a deadline after which such election to defer the commencement of distribution of benefits shall not be allowed.

(e) Any expense incurred by the Plan Administrator may be charged against the Participant’s Account or as provided in a Domestic Relations Order, charged against the Accounts of the Participant and the alternate payee. In the course of reviewing, responding to, or administering a Domestic Relations Order (or a proposed Domestic Relations Order or similar proceeding or document), the Plan Administrator and Third-party Administrator shall be authorized to disclose information relating to the Participant’s Account to the Participant’s spouse, former spouse, dependent, or child (including the legal representatives of the spouse, former spouse, or child) or to a court. Following receipt of a (i) Domestic Relations Order; (ii) draft or purported Domestic Relations Order; (iii) or similar document, the Plan Administrator or Third-party Administrator may suspend distributions from an Account pending review of any documents and, if applicable, receipt and administration of a Domestic Relations Order.

(f) The Plan Administrator’s and Participating Employer’s liability to pay benefits to a

## **Article XIV Roth Elective Deferrals and Conversions**

### **Section 14.1 General Application**

(a) Participants are permitted to make, and ~~The~~ the Plan will accept, Roth elective deferrals made on behalf of Participants and Roth rollover contributions. A Participant's Roth elective deferrals and Roth rollover contributions will each be allocated to a separate account maintained for such deferrals as described in Section 14.2.

(b) Unless specifically stated otherwise, Roth elective deferrals and Roth rollover contributions will be treated as Deferred Compensation for all purposes under the Plan, including eligibility for matching contributions; provided, however, that a Participant, Alternate Payee, or Beneficiary may elect, in the manner prescribed by the Plan Administrator, to override the default rules governing where in a Plan's distribution hierarchy Roth elective deferral contributions and/or Roth rollover contributions will fall.

### **Section 14.2 Separate Accounting**

(a) Contributions and withdrawals of Roth elective deferrals and/or Roth rollover contributions will be credited and debited to the Roth elective deferral and/or Roth rollover contributions account maintained for each Participant.

(b) The Plan will maintain a record of the amount of Roth elective deferrals in each Participant's Roth elective deferral account. The Plan will maintain a record of the amount of Roth elective rollover contributions in each Participant's Roth rollover contributions account.

(c) Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Roth elective deferral account, Roth rollover contributions account, and the remainder of the Participant's Account under the Plan to the extent required by Code section 402A and the Treasury Regulations thereunder.

(d) Except as provided in Section 14.5 below, no contributions other than Roth elective deferrals and properly attributable earnings will be credited to each Participant's Roth elective deferral account and no contributions other than Roth rollover contributions and properly attributable earnings will be credited to each Participant's Roth rollover contributions account.

### **Section 14.3 Direct Rollovers**

(a) Notwithstanding Section 6.2, a direct rollover of a distribution from a Roth elective deferral account under the Plan will only be made to another Roth elective deferral account under an applicable retirement plan described in Code § 402A(e)(1) or to a Roth IRA described in Code § 408A, and only to the extent the rollover is permitted under the rules of Code § 402(c).

(b) Notwithstanding Section 6.2 and except as provided in Section 14.5 below, the Plan will accept a rollover contribution to a Roth rollover contribution account only if it is a direct rollover from another Roth elective deferral account under an applicable retirement plan described in Code §