

Regulation DLB-R Las Cruces Public Schools

Related Entries: DLB

Responsible Office: Assistant Superintendent of Finance

TAX DEFERRED COMPENSATION

I. PURPOSE

To provide a tax deferred compensation plan in compliance with §403(b) of the Internal Revenue Code and appropriate Internal Revenue Service regulations. This regulation administers the school district's plan document (see Appendix A).

II. DEFINITIONS

- a. *Account* means the account or accumulation maintained for the benefit of any Participant or Beneficiary under an Annuity Contract or a Custodial Account.
- b. *Account Balance* means the bookkeeping account maintained for each Participant which reflects the aggregate amount credited to the Participant's Account under all Accounts, including the Participant's Elective Deferrals, any Non-elective Employer Contributions, the earnings or losses of each Annuity Contract or Custodial Account (net of expenses) allocable to the Participant, any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. Except to the extent provided in an applicable Individual Agreement, if a Participant has more than one Beneficiary at the time of the Participant's death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account established under Section 6 for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a Beneficiary after a Participant's death, and any account or accounts established for an alternate payee (as defined in §414(p)(8) of the Code).
- c. *Accumulated Leave* means any unpaid sick leave and/or vacation leave, as elected in the Adoption Agreement
- d. *Administrator* means the Employer, unless a different Administrator is identified in the Adoption Agreement.
- e. *Adoption Agreement* means the §403(b) Retirement Plan Adoption Agreement, as completed and executed by the Employer, and amended from time to time.
- f. *Annuity Contract* means a nontransferable contract as defined in §403(b)(1) of the Code, established for each Participant by the Employer, or by each Participant individually, as issued by an insurance company qualified to issue annuities in a state and that includes payment in the form of an annuity.
- g. *Beneficiary* means the designated person who is entitled to receive benefits under the Plan after the death of a Participant, subject to such additional rules as may be set forth in the Individual Agreements.
- h. *Custodial Account* means the group or individual custodial account or accounts, as defined in §403(b)(7) of the Code, established for each Participant by the Employer, or by each Participant individually, to hold assets of the Plan.

- i. *Code* means the Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.
- j. *Compensation* means all cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Section 125, 132(f), 401(k), 403(b), or 457(b) of Section the Code (including an election under Section 2 made to reduce compensation in order to have Elective Deferrals under the Plan). Compensation shall not include compensation paid after severance from employment except as may be permitted by Treas. Reg. § 1.403(b)-3(b)(4) or other applicable guidance.
- k. *Elective Deferral* means the employer contributions made to the Plan at the election of the Participant in lieu of receiving cash compensation. Elective Deferrals are limited to pre-tax salary reduction contributions.
- l. *Employee* means each individual, whether appointed or elected, who is a common law employee of the Employer performing services for a public school as an employee of the Employer. This definition is not applicable unless the employee's compensation for performing services for a public school is paid by the Employer. Further, a person occupying an elective or appointive public office is not an employee performing services for a public school unless such office is one to which an individual is elected or appointed only if the individual has received training, or is experienced, in the field of education. A public office includes any elective or appointive office of a state or local government.
- m. *Employer* means Las Cruces Public Schools.
- n. *Funding Vehicles* means the Annuity Contracts or Custodial Accounts issued for funding amounts held under the Plan and specifically approved by the Employer for use under the Plan.
- o. *Individual Agreement* means the agreement between a Service Provider and the Employer or a Participant that constitutes or governs a Custodial Account or an Annuity Contract.
- p. *Maximum Allowable Contribution (MAC)* means the maximum contribution that is allowable under §403(b).
- q. *Participant* means an individual for whom Elective Deferrals are currently being made, for whom Elective Deferrals have previously been made or for whom Non-Elective Employer Contributions are made under the Plan, and who has not received a distribution of his/her entire benefit under the Plan.
- r. *Plan* means the Employer's §403(b) plan, as herein set forth and as amended from time to time (see Appendix A).
- s. *Plan Year* means the calendar year.
- t. *Service Provider* means (a) An issuer of annuity contracts under §403(b)(I) of the Code, or a custodian of custodial accounts under §403(b) (7) of the Code; or (b) A

related entity of the foregoing that provides recordkeeping or administrative services in connection with such contracts or custodial accounts, e.g. brokers which has entered into an Individual Agreement with a Participant.

- u. *Third Party Administrator* means an entity that has specialized skills and knowledge to oversee the transactions and compliance of the Plan.
- v. *Valuation Date* means each business day, last day of the calendar month, last day of the calendar quarter or December 31, as applied by the Service Provider pursuant to the applicable Individual Agreement.

III. PROCESS

- A.** The school district shall maintain a legally recognized deferred compensation plan in compliance with §403(b) of the Code. All contracted employees (except temporary and seasonal) shall be eligible to participate in the Plan. The school district shall annually review the Plan document prior to the beginning of the new plan year to ensure compliance with current legislation and IRS regulations.
- B. Funding Vehicles (Investment Menu).** In the best interest of Plan participants, the school district will provide funding vehicles that are reputable and offer a variety of investment options and risk levels.
 - 1. Participants shall be limited to the Investment Menu that is listed on the LCPS website: <http://www.lcps.k12.nm.us/Departments/Finance/documents/403b>.
 - 2. The school district shall maintain a diversified selection of investment options that meets the needs of Plan participants.
 - 3. New Fund Families or Annuity Contracts may be added to the “investment menu” based upon the following criteria:
 - a. Adequate participation: Employees may petition the school district for the addition of a new Funding Vehicle. The petition shall contain the names and signatures of a minimum of 20 current employees who are eligible and desire to participate in the funding vehicle. The petition shall be accompanied by the most current prospectus and 10 years of performance data for the proposed Funding Vehicle.
 - b. Track record: The Funding Vehicle shall have performed well in the market and shall have a reasonable fee structure.
 - c. Reputable: The Funding Vehicle shall be reputable within the investment services industry.
 - 4. Orphan funding vehicles. The Investment Menu shall be reviewed annually, at the beginning of the plan year, for potentially Orphan Funding Vehicles. A Funding Vehicle will be considered as a potentially Orphan investment when participation in said Funding Vehicle drops below 50 percent of the Adequate Participation of a new Funding Vehicle (see III.B(c)1). Once a funding vehicle is deemed to be a potential Orphan, the school district shall contact, via United States First Class mail, the service providers marketing the investment product as to the “potential Orphan” status. The service provider shall be given a reasonable period of time (a minimum of 90 days) to increase participation to greater than 50 percent of the Adequate Participation of a new Funding

Vehicle (see III.B(c)1). If participation is less than 50 percent of the Adequate Participation of a new Funding Vehicle, the Funding Vehicle shall be declared “Orphaned” by the LCPS Associate Superintendent of Finance.

Once a Funding Vehicle is declared orphaned:

- a. The Assistant Superintendent of Finance shall notify all service providers authorized to market the product, TPA and the parent company of the declaration of the orphan declaration.
 - b. Participants who were contributing, via payroll deduction, to the Funding Vehicle at the time of the “Orphan Declaration” shall be permitted to continue contributing to the vehicle.
 - c. Orphaned Funding Vehicles shall not be eligible for new participants and shall be removed from the approved listing of Funding Vehicles.
 - d. Once a Funding Vehicle is declared Orphaned, Service providers shall follow the process for adding a new Funding Vehicle (III.B(c)).
- C. Service Providers. In the best interest of Plan participants, the school district shall engage a reputable service provider that is committed to the investment success of the employee and is available to the employee.
1. The school district shall perform due diligence research with the New Mexico Security Division on all individuals who apply to become an Authorized service Provider. Applicants who are under investigation by or who have unresolved issues with the New Mexico Securities Division shall not be eligible to become a Service Provider with LCPS.
 2. Eligibility of Service Provider (agent/broker). To be eligible to market Funding Vehicles to LCPS employees, Service Providers shall:
 - a. Complete the school district’s Service Provider application. (Appendix B.)
 - b. Have a physical office located within the boundaries of the school district; and
 - c. Be licensed by the State of New Mexico and the federal Securities and Exchange Commission (SEC) to sell the Funding Vehicle;
 3. Responsibilities and Privileges of Service Provider
 - a. Responsibilities. The Service Provider shall
 - i. assist the employee in the computation of the Maximum Allowable Contribution (MAC). This computation shall remain on file with the Service Provider.
 - ii. assist the employee with establishing an investment account with the Funding Vehicle prior to completing the online SRA.
 - iii. assist the employee in completing the SRA online at www.omni403b.com. The instructions for completing the SRA are available on the school district’s website at <http://lcps.k12.nm.us/Departments/Finance/403b.asp> (Appendix C).

- iv. meet with the employee annually to review the investment performance and asset allocation within the portfolio.
- b. Privileges
 - i. At the discretion of the appropriate school principal or site supervisor, the Service Provider may meet with school district personnel on a voluntary basis at the school site during regular work hours.
 - ii. The Service Provider may leave contact and investment information with the school or school district site for distribution to school district employees.
- c. Expulsion or Suspension of Service Provider
 - i. Suspension. The Assistant Superintendent of Finance may suspend a Service Provider for up to one year for violation of school district rules and regulations or the marketing of non-approved products to school district employees while on school property.
 - ii. Expulsion. The Assistant Superintendent of Finance may expel a service provider that maliciously misrepresents a Funding Vehicle.
- D. Third Party Administrator. The school district may contract a Third Party Administrator (TPA) to monitor the transactions and tax compliance of the Plan.
 - 1. Qualifications of TPA. The TPA shall:
 - a. Be knowledgeable of and have experience in all sections of the Code that address Tax Deferred Compensation; and
 - b. Be knowledgeable and experienced with all pertinent Internal Revenue Service regulations; and
 - c. Maintain appropriate legal counsel and staff that is appropriately trained in deferred compensation law; and
 - d. Maintain an appropriate investment in technology to permit eligible employees to make on-line account changes and initial enrollment;
 - e. Be selected through the school district's procurement process.
 - 2. Duties of the TPA. The TPA shall:
 - a. Monitor compliance with the contribution limits of deferrals based upon contribution information provided by the school district.
 - b. Maintain and archive all employee 403(b) historical data and ensure confidentiality of all employee data, records and files.
 - c. Provide all necessary code-compliance forms for salary reductions such as Salary Reduction Agreement (SRA) via the TPA's website (www.omni403b.com) or, as requested, in hard copy or via email and update any such forms as needed.
 - d. Review employee files and online records to ensure that each participant has an IRS-compliant SRA on file.

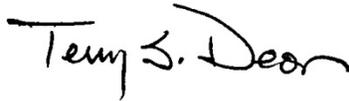
- e. Receive copies of SRAs online via its website or via facsimile or United States first class or priority mail.
 - f. Verify changes to SRAs by email to the LCPS Payroll Department.
 - g. Insure that distribution account funds are not comingled with any other accounts owned by the TPA.
 - h. Serve as common remitter for the school district's 403(b) Plan on behalf of the school district to promptly remit all funds to the appropriate participating service providers.
 - i. Receive, process and approve all employee requests for hardship withdrawals.
 - j. Approve distributions and rollovers under the school district's 403(b) plan.
 - k. Review qualified domestic relations orders to determine whether statutory elements are met, and make recommendation accordingly.
 - l. Provide amendments to the plan pursuant to the school district's request.
 - m. Notify the school district of federal laws and regulations, and changes in said laws, that directly affect the employer's plan.
 - n. Assist the school district with IRS audits by reviewing the issued IRS audit summary and by collecting and providing information and documentation to the IRS to the extent that such information exists. When appropriate, correspond and communicate with the IRS and provide support and guidance to the school district during an audit.
 - o. Provide error and omissions insurance coverage insuring against claims made, resulting or emanating from the services the TPA provides to the school district, with a limit of \$1,000,000 per claim, \$5,000,000 in aggregate.
- E. Notifications (Universal Notification Requirement). The school district shall provide notification to school district employees as to the plan availability annually.
- 1. New employees. Information will be provided to new employees in the "new employee packet" that is given to all newly hired employees at the time of their employment with the school district.
 - 2. Existing employees
 - a. The Finance Department will include information on plan availability in the LCPS "Nuts & Bolts" newsletter in December of each year.
 - b. The Finance Department will provide notice as to the availability of the plan on the employee's check stub in December of each year.
 - c. The Finance Department shall maintain the school district's website and iVisions portal to contain the most current information on the school district's plan.
- F. Enrollment in the plan

1. An employee electing to participate in the plan must enroll through the TPA website: www.omni403b.com.
2. The Finance Office will post instructions on how to enroll on the school district's website: <http://lcp.k12.nm.us/Departments/Finance/403b.asp>. See appendix C.

G. Changes in Plan election

1. A plan participant may make changes to his/her 403(B) participation at any time.
2. Changes in plan election must be completed through the TPA website.

H. Plan Distribution, withdrawals and transfers. Plan participants must contact the TPA via its website (www.omni403b.com) to initiate plan distributions, withdrawal or transfer to a different plan.



Assistant Superintendent for Finance

01-17-2013
Date Approved

History:

Legal Reference: IRS §125, 132(f), 401(k), and 403(b)

WHAT THIS IS FOR: With the issuance of final regulations under Code section 403(b) in 2007 which are generally effective January 1, 2009, the OMNI Group, Inc. is providing this model 403(b) Basic Plan Document and Adoption Agreement, which together will constitute the Plan (and which are based in part on the IRS model plan in Rev. Proc. 2007-71) solely for the convenience of the School District and its attorney.

WHAT YOU NEED TO DO: The OMNI Group, Inc. does not and cannot provide legal or tax advice. Completing this Adoption Agreement properly and ensuring that the District's 403(b) plan complies with Code section 403(b) in form and operation are the responsibility of the District, and requires careful attention to the District's own facts and circumstances and the laws and agreements under which it operates.

Accordingly, the School District should have its 403(b) plan agreement completed and reviewed by its own attorney before adoption. Particular items that the District's counsel should review with the District include, but are not limited to, that the Plan documents are consistent with the actual operation of the Plan as intended by the District and that the Plan conforms to local laws and to the extent applicable, labor agreements and memoranda.

THE OMNI GROUP, INC. MODEL 403(b) RETIREMENT PLAN ADOPTION AGREEMENT

School District Information; Applicability to Grandfathered Contracts:

1. Inclusion of All Public School Employees. [Basic Plan Document Sections 1.13 and 1.14] Employees of all *public* schools within the District are eligible to participate as employees in this Plan. Any schools within the District which are not considered *public* schools, e.g., private charter schools, are listed as follows:

[Note: charter schools can only be included in this Plan if such schools are eligible to participate in a governmental plan within the meaning of Code section 414(d) and ERISA section 3(32).]

2. Applicability to Employed Individuals. [Basic Plan Document Preamble] This is an amended and restated 403(b) Plan, and its provisions shall apply only to contracts for individuals employed by the School District on or after January 1, 2009, unless otherwise provided below:

[Note: Under Section 8.02 of Rev. Proc. 2007-71, a 403(b) plan is generally not required to include terms relating to contracts held on behalf of a participant or beneficiary, who, on January 1, 2009, is a former employee of the School District or a beneficiary of such a participant. However, the employer and issuer continue to have certain responsibilities with respect to determining whether loans from such contracts satisfy the limitations of the Internal Revenue Code regarding plan loans.]

3. Application of IRS Transition Guidance to Disregard Certain Pre-2009 Contracts. [Basic Plan Document Preamble and Section 7.3] The School District elects to treat as not part of its Plan any contracts issued before 2009 as to which it is permissible for the School District to treat as not part of its Plan as provided in Section 8 of Rev. Proc. 2007-71, applicable regulations, and other applicable guidance, subject to any requirement of reasonable good faith efforts to include the contract as part of the Plan as required under such Revenue Procedure, or other applicable guidance, except as follows [list any exceptions]:

4. Plan Administrator. [Basic Plan Document Section 1.4] The School District shall serve as Administrator of the Plan generally responsible for internal Plan operations on the part of the District, unless otherwise provided below. (OMNI will serve as third party administrator of the Plan in accordance with its separate administrative service agreement with the District). Also, please provide contact information for the Administrator if it is not the School District:

Plan Participation and Contribution Provisions

5. Employee Eligibility. [Basic Plan Document Section 2.1] All employees are generally eligible for immediate Plan participation and to make Salary Reduction Contributions, except that the Plan excludes (i) employees who are persons providing service as a teacher's aide on a temporary basis while attending a school, college or university (i.e., student teachers exempt from FICA on account of performing services described in Code section 3121(b)(10)) or (ii) normally work fewer than 20 hours per week, unless otherwise provided below:

- Include all employees who normally work under 20 hours per week.
- Include persons providing service as a teacher's aide on a temporary basis while attending a school, college or university (i.e., student teachers exempt from FICA on account of performing services described in Code section 3121(b)(10))

[Note: If the Plan excludes employees who normally work less than 20 hours per week, in accordance with the terms of the Plan at section 2.1, this generally must be determined on the basis of whether, for the 12-month period beginning on the date the employee's employment commences, the School District reasonably expects the employee to work fewer than 1000 hours of service, and for each calendar year ending after the close of the at 12-month period, the employee has worked fewer than 1000 hours of service. Careful attention must be paid to compliance with the 20-hour rule by the District as it is necessary to the tax-qualification of the Plan.]

[Note: Persons occupying an elected or appointive public office are not eligible for the Plan unless such office is one to which the individual is elected or appointed only if the individual has received training, or is experienced, in the field of education.]

6. Employer Nonelective Contributions. [Basic Plan Document Section 2.7]

Employer Nonelective Contributions are not permitted under the Plan unless elected below:

6.1 Employer Nonelective Contributions of Accumulated Leave.

Employer Nonelective Contributions of Accumulated Leave shall be permitted under the Plan.

(a) In this event, for each Plan Year, the Employer Nonelective Contribution of Accumulated Leave shall be made to the Employees specified in (b), below, in:

A dollar amount of contribution equal to the value of unused, bona fide (*select as applicable*):

- sick leave,
- vacation pay,

("Accumulated Leave") determined in accordance with the Employer's collective bargaining agreement or memorandum of agreement or equivalent with Employees of the Employer, contributed to the Employer Contributions Account for the Plan Year of severance from employment. If permitted under the Employer's collective bargaining agreement, to the extent the amount exceeds the Participant's annual additions limit under Section 415(c) of the Code for that year, such excess shall be carried over by the Employer, without interest, and not contributed to the Plan in such limitation year, but shall be contributed to the Employer Contributions Account of the Participant in each of the next 5 calendar years following the Plan Year in which the Participant has a severance from employment with the Employer, up to the annual additions limit under Section 415(c) of the Code to the extent permitted by Section 403(b)(3) of the Code and applicable regulations thereunder, or until such contributions equal the value of unused bona fide sick leave at severance from employment, whichever comes first.

If a former Employee dies during the first five (5) calendar years following the date on which the Participant ceases to be an Employee, notwithstanding the foregoing, an Employer Nonelective Contribution for the calendar year in which the Employee dies, shall not exceed the lesser of:

- (i) The excess of the former Employee's Includible Compensation for his or her last year of service as defined in section 403(b)(4) of the Code and applicable regulations thereunder over the contributions previously made for the former Employee for the calendar year in which the former Employee died; or
- (ii) The total contributions that would have been made on the former Employee's behalf if he or she had survived to the end of such 5-year period.

IMPORTANT NOTE: Employer Nonelective Contributions must be nonelective by employees under relevant documents and in operation. An employee may not be permitted to take any amount of such contributions in cash at or prior to severance of employment. If Employer Nonelective Contributions are available to collectively bargained employees or to other employees subject to an employment agreement, such Employer Nonelective Contributions formula must also be clearly reflected in the terms of the collective bargaining agreement or employment agreement, as applicable, as nonelective. The federal tax rules related to Employer Nonelective Contributions are complex and in some aspects unclear. OMNI assumes no responsibility for the tax consequences to the Employer or to any Employee or Beneficiary of any such Employer contributions failing to qualify as nonelective contributions within the meaning of the Code and the regulations thereunder. Employers are advised to consult with their own counsel regarding this matter, and should consider seeking a private letter ruling if they wish certainty with respect to the treatment of such contributions under their Plan.

(b) If selected above, Employer Nonelective Contributions of Accumulated Leave shall be made for all Employees, excluding only those checked below:

- Collectively bargained employees who participate in the following unions/collective bargaining units/teacher associations:
-
- Employees whose employment is NOT governed by a collective bargaining agreement between the Employer and employee representatives
 - Management employees
 - Superintendent
 - Principals

- Administrator
- Other (specify): _____

6.2 Discretionary Employer Nonelective Contributions.

Employer Nonelective Contributions shall be permitted under the Plan at the discretion of the Employer.

Plan Distribution, Loan, Transfer, Exchange and Domestic Relations Order Provisions

7. Loans. [Basic Plan Document Section 4.1] The Plan permits loans (subject to the terms and conditions of the annuity contracts and/or custodial accounts used to fund the Plan), unless otherwise provided below:

_____ Loans are not permitted _____

8. Cash-Outs of Small Account Balances. [Basic Plan Document Section 5.2] Upon severance from employment, unless selected below, account balances of \$1,000 or less will be cashed out and paid directly to participants.

Upon severance from employment, account balances of \$5,000 or less at severance from employment, not including rollover accounts, will be cashed out and the consent of the participant to such cashout shall not be required, provided that account balances of over \$1,000 will automatically be rolled over to the following individual retirement account (IRA) selected by the Administrator if the participant does not affirmatively elect a direct distribution or rollover to another plan or IRA: _____

[Name of default IRA and provider]

[Note: a selection of a \$5000 limit shall be ineffective unless the Administrator selects a default IRA for cashouts.]

9. Hardship Distributions. [Basic Plan Document 5.5] A participant may elect to receive a hardship distribution under the terms and conditions described in the Plan, unless otherwise provided below:

Hardship distributions shall not be available under the Plan.

[Note: if hardship distributions under the Plan are allowed, the Plan and Vendors will apply the IRS "safe harbor" rules for such distributions. One of the requirements of the safe harbor rules is that the Participant must suspend elective deferrals to this and most other employee benefit plans of the School District for 6 months. This must be coordinated with the District's payroll procedures. See section 5.5 of the Plan for more information.]

10. Plan-to-Plan Transfers [Basic Plan Document Sections 6.2 and 6.3]

Transfers to and from the Plan and another plan shall not be permitted unless selected below:

- Transfers to this Plan from another plan in accordance with Plan Section 6.2 are permitted.
- Transfers from this Plan to another plan in accordance with Plan Section 6.3 are permitted.

[Note: transfers from one 403(b) plan to another require that distribution restrictions under such other plan be maintained under this Plan.]

11. Domestic Relations Orders/Qualified Domestic Relations Orders [Basic Plan Document Section 9.2]

Unless selected below, any domestic relations order must also meet the requirements of a "Qualified Domestic Relations Order" under Section 414(p) of the Code.

The Plan will not require that domestic relations orders meet the requirements of "Qualified Domestic Relations Order" under Section 414(p) of the Code.

Adoption by the School District. The School District, acting through an officer and pursuant to authorization of the School District's governing board, hereby adopts the OMNI Group, Inc. Model 403(b) Retirement Plan, subject to the terms of the OMNI Group, Inc. Model 403(b) Retirement Plan Basic Plan Document and Adoption Agreement with the selections made above.

The School District further understands and acknowledges that:

- The OMNI Group, Inc. is a third party administrator and is not a party to the Plan and shall not be responsible for any tax or legal aspects of the Plan. The School District assumes responsibility for these matters.
- It has counseled, to the extent necessary, with its own legal and tax advisors.
- The obligations of the OMNI Group, Inc. shall be governed solely by the provisions of its Service Agreement with the School District.
- To the extent that the OMNI Group, Inc. is not in material breach of its obligations as set forth in the Services Agreement, the OMNI Group, Inc. shall incur no liability for carrying out actions directed by the School District or the Administrator.
- The OMNI Group, Inc. shall be under no obligation to update this Adoption Agreement or the Basic Plan Document for any subsequent changes in applicable law unless specifically retained by the School District to do so.

Name of Adopting School District [Basic Plan Document Section 1.14]:

Signature of Authorized District Officer

Print Name and Title of Officer

Date: _____, 2008

THE LAS CRUCES PUBLIC SCHOOLS
403(b) RETIREMENT PLAN DOCUMENT

Amended and Restated Effective as of January 1, 2009

THE LAS CRUCES PUBLIC SCHOOLS

403(b) RETIREMENT PLAN DOCUMENT

(As Amended and Restated Effective as Of January 1, 2009)

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**THE LAS CRUCES PUBLIC SCHOOLS
403(b) RETIREMENT PLAN DOCUMENT**

(As Amended and Restated Effective as Of January 1, 2009)

PREAMBLE

WHEREAS, the Employer has heretofore maintained an arrangement intended to satisfy the requirements of Section 403(b) of the Code;

WHEREAS, final regulations under Section 403(b) of the Code issued by the Internal Revenue Service on July 26, 2007 require that the Employer's 403(b) arrangement be maintained pursuant to the terms of a written plan document; and

WHEREAS, through execution of an Adoption Agreement, the Employer wishes to amend and restate the Employer's 403(b) arrangement as set forth herein and in such Adoption Agreement, effective as of January 1, 2009.

NOW THEREFORE, the Employer hereby amends and restates its 403(b) arrangement as provided herein and in the Adoption Agreement, effective as of January 1, 2009. Except as otherwise provided in the Adoption Agreement, the terms of this amending restatement shall apply only to employees of the Employer who remain employed by the Employer on or after January 1, 2009; and the rights, benefits and obligations of employees who terminated employment, retired or died before January 1, 2009 shall be governed by the rules applicable to the 403(b) arrangement as of December 31, 2008.

**SECTION 1
DEFINITION OF TERMS USED**

The following words and terms, when used in the Plan, have the meaning set forth below.

1.1 Account

The account or accumulation maintained for the benefit of any Participant or Beneficiary under an Annuity Contract or a Custodial Account.

1.2 Account Balance

The bookkeeping account maintained for each Participant which reflects the aggregate amount credited to the Participant's Account under all Accounts, including the Participant's Elective Deferrals, any Nonelective Employer Contributions, the earnings or losses of each Annuity Contract or Custodial Account (net of expenses) allocable to the

Participant, any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. Except to the extent provided in an applicable Individual Agreement, if a Participant has more than one Beneficiary at the time of the Participant's death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account established under Section 6 for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a Beneficiary after a Participant's death, and any account or accounts established for an alternate payee (as defined in Section 414(p)(8) of the Code).

1.3 Accumulated Leave

Any unpaid sick leave and/or vacation leave, as elected in the Adoption Agreement.

1.4 Administrator

The Employer, unless a different Administrator is identified in the Adoption Agreement.

1.5 Adoption Agreement

The 403(b) Retirement Plan Adoption Agreement, as completed and executed by the Employer, and amended from time to time.

1.6 Annuity Contract

A nontransferable contract as defined in Section 403(b)(1) of the Code, established for each Participant by the Employer, or by each Participant individually, that is issued by an insurance company qualified to issue annuities in a State and that includes payment in the form of an annuity.

1.7 Beneficiary

The designated person who is entitled to receive benefits under the Plan after the death of a Participant, subject to such additional rules as may be set forth in the Individual Agreements.

1.8 Custodial Account

The group or individual custodial account or accounts, as defined in Section 403(b)(7) of the Code, established for each Participant by the Employer, or by each Participant individually, to hold assets of the Plan.

1.9 Code

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

1.10 Compensation

All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Section 125, 132(f), 401(k), 403(b), or 457(b) of

the Code (including an election under Section 2 made to reduce compensation in order to have Elective Deferrals under the Plan). Compensation shall not include compensation paid after severance from employment except as may be permitted by Treas. Reg. § 1.403(b)-3(b)(4) or other applicable guidance.

1.11 Disabled

The definition of disability provided in the applicable Individual Agreement, or if none, the definition of disability set forth in Section 72(m)(7) of the Code.

1.12 Elective Deferral

The Employer contributions made to the Plan at the election of the Participant in lieu of receiving cash compensation. Elective Deferrals are limited to pre-tax salary reduction contributions.

1.13 Employee

Each individual, whether appointed or elected, who is a common law employee of the Employer performing services for a public school as an employee of the Employer. This definition is not applicable unless the employee's compensation for performing services for a public school is paid by the Employer. Further, a person occupying an elective or appointive public office is not an employee performing services for a public school unless such office is one to which an individual is elected or appointed only if the individual has received training, or is experienced, in the field of education. A public office includes any elective or appointive office of a State or local government.

1.14 Employer

The public school district identified in the Adoption Agreement.

1.15 Funding Vehicles

The Annuity Contracts or Custodial Accounts issued for funding amounts held under the Plan and specifically approved by Employer for use under the Plan.

1.16 Includible Compensation

An Employee's actual wages in box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of \$200,000 (or such higher maximum as may apply under Section 401(a)(17) of the Code) and increased (up to the dollar maximum) by any compensation reduction election under Section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including any Elective Deferral under the Plan). The amount of Includible Compensation is determined without regard to any community property laws.

1.17 Individual Agreement

The agreement between a Service Provider and the Employer or a Participant that constitutes or governs a Custodial Account or an Annuity Contract.

1.18 Nonelective Employer Contribution

A nonelective employer contribution, either at the discretion of the Employer or of accumulated but unused sick leave or vacation pay, if selected in the Adoption Agreement.

1.19 Participant

An individual for whom Elective Deferrals are currently being made, for whom Elective Deferrals have previously been made, or for whom Nonelective Employer Contributions are made, under the Plan and who has not received a distribution of his or her entire benefit under the Plan.

1.20 Plan

The Employer's 403(b) plan, as herein set forth and as amended from time to time.

1.21 Plan Year

The calendar year.

1.22 Related Employer

The Employer and any other entity which is under common control with the Employer under Section 414(b) or (c) of the Code. For this purpose, the Employer shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under Internal Revenue Service Notice 89-23.

1.23 Service Provider

(i) An issuer of annuity contracts under Section 403(b) (1) of the Code, or a custodian of custodial accounts under Section 403(b) (7) of the Code; or (ii) A related entity of the foregoing that provides recordkeeping or administrative services in connection with such contracts or custodial accounts e.g. brokers which has entered into an Individual Agreement with a Participant.

1.24 Severance from Employment

For purpose of the Plan, Severance from Employment means severance from employment with the Employer and any Related Entity. However, a Severance from Employment also occurs on any date on which an Employee ceases to be an employee of a public school, even though the Employee may continue to be employed by a Related Employer that is another unit of the State or local government that is not a public school or in a capacity that is not employment with a public school (e.g., ceasing to be an employee performing services for a public school but continuing to work for the same State or local government employer).

1.25 Valuation Date

Each business day, last day of the calendar month, last day of the calendar quarter, or December 31st, as applied by the Service Provider pursuant to the applicable Individual Agreement.

SECTION 2

PARTICIPATION AND CONTRIBUTIONS

2.1 Eligibility

Each Employee shall be eligible to participate in the Plan and elect to have Elective Deferrals made on his or her behalf hereunder immediately upon becoming employed by the Employer.

2.2 Compensation Reduction Election

An Employee elects to become a Participant by executing an election to reduce his or her Compensation (and have that amount contributed as an Elective Deferral on his or her behalf) and filing it with the Administrator. This Compensation reduction election shall be made on the agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. The Administrator may establish an annual minimum deferral amount no higher than \$200, and may change such minimum to a lower amount from time to time. The participation election shall also include designation of the Funding Vehicles and Accounts therein to which Elective Deferrals or Nonelective Employer Contributions are to be made and a designation of Beneficiary. Any such election shall remain in effect until a new election is filed. Only an individual who performs services for the Employer as an Employee may reduce his or her Compensation under the Plan. Each Employee will become a Participant in accordance with the terms and conditions of the Individual Agreements. All Elective Deferrals and Nonelective Employer Contributions shall be made on a pre-tax basis. An Employee shall become a Participant as soon as administratively practicable following the date applicable under the Employee's election.

2.3 Information Provided by the Employee

Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan, including any information required under the Individual Agreements.

2.4 Change in Participant Election

Subject to the provisions of the applicable Individual Agreements, an Employee may at any time revise his or her participation election, including a change of the amount of his or her Elective Deferrals, his or her investment direction, and his or her designated Beneficiary. A change in the investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Service Provider.

2.5 Contributions Made Promptly

Elective Deferrals under the Plan shall be transferred to the applicable Funding Vehicle within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant.

2.6 Leave of Absence

Unless an election is otherwise revised, if an Employee is absent from work by leave of absence, Elective Deferrals under the Plan shall continue to the extent that Compensation continues.

2.7 Nonelective Employer Contributions

Non-elective Employer Contributions are not permitted under the Plan.

SECTION 3 LIMITATIONS ON AMOUNTS DEFERRED

3.1 Basic Annual Limitations

(a) **Elective Deferrals.** Except as provided in Sections 3.2 and 3.3, the maximum amount of a Participant's Elective Deferral under the Plan for any calendar year shall not exceed the lesser of (a) the applicable dollar amount or (b) the Participant's Includible Compensation for the calendar year. The applicable dollar amount is the amount established under Section 402(g)(1)(B) of the Code, which is \$15,500 for 2008, and is adjusted for cost-of-living after 2008 to the extent provided under Section 415(d) of the Code.

(b) **All Annual Additions.** Elective Deferrals and Nonelective Employer Contributions shall not exceed the limit on "annual additions" under Code section 415(c), including, without limitation and to the extent applicable, Code sections 415(c)(3)(E), 415(c)(7) and 415(k)(4). The Contribution Limit for any calendar year shall be based on a limitation year which is the calendar year and on Includible Compensation. Nonelective Employer Contributions for a former Employee following a Severance from Employment must not exceed the limitation of Code section 415(c)(1) up to the lesser of the dollar amount in Code section 415(c)(1)(A) or the former Employee's annual Includible Compensation based on the former employee's average monthly compensation during his or her most recent year of service.

3.2 Special Section 403(b) Catch-up Limitation for Employees with 15 Years of Service

Because the Employer is a qualified organization (within the meaning of Section 1.403(b)-4(c)(3)(ii) of the Income Tax Regulations), the applicable dollar amount under Section 3.1(a) for any "qualified employee" is increased (to the extent provided in the Individual Agreements) by the least of:

- (a) \$3,000;
- (b) The excess of:
 - (1) \$15,000, over

(2) The total special 403(b) catch-up elective deferrals made for the qualified employee by the qualified organization for prior years; or

(c) The excess of:

(1) \$5,000 multiplied by the number of years of service of the employee with the qualified organization, over

(2) The total Elective Deferrals made for the employee by the qualified organization for prior years.

For purposes of this Section 3.2, a “qualified employee” means an employee who has completed at least 15 years of service taking into account only employment with the Employer.

3.3 Age 50 Catch-up Elective Deferral Contributions

An Employee who is a Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Elective Deferrals, up to the maximum age 50 catch-up Elective Deferrals for the year. The maximum dollar amount of the age 50 catch-up Elective Deferrals for a year is \$5,000 for 2008, and is adjusted for cost-of-living after 2008 to the extent provided under the Code.

3.4 Coordination.

Amounts in excess of the limitation set forth in Section 3.1 shall be allocated first to the special 403(b) catch-up under Section 3.2 and next as an age 50 catch-up contribution under Section 3.3. However, in no event can the amount of the Elective Deferrals for a year be more than the Participant's Compensation for the year.

3.5 Special Rule for a Participant Covered by another Section 403(b) Plan

For purposes of this Section 3, if the Participant is or has been a participant in one or more other plans under Section 403(b) of the Code (and any other plan that permits elective deferrals under Section 402(g) of the Code), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Section 3. For this purpose, the Administrator shall take into account any other such plan maintained by any Related Employer and shall also take into account any other such plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan. Notwithstanding the foregoing, another plan maintained by a Related Entity shall be taken into account for purposes of Section 3.2 only if the other plan is a Section 403(b) plan.

3.6 Correction of Excess Elective Deferrals

If the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another plan of the employer under Section 403(b) of the Code (and any other plan that permits elective deferrals under Section

402(g) of the Code for which the Participant provides information that is accepted by the Administrator), then the Elective Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant.

3.7 Protection of Persons Who Serve in a Uniformed Service

An Employee whose employment is interrupted by qualified military service under Section 414(u) of the Code or who is on a leave of absence for qualified military service under Section 414(u) of the Code may elect to make additional Elective Deferrals upon resumption of employment with the Employer equal to the maximum Elective Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Elective Deferrals, if any, actually made for the Employee during the period of the interruption or leave. Except to the extent provided under Section 414(u) of the Code, this right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

SECTION 4 LOANS

4.1 Loans

No loans shall be permitted under the Plan. To the extent that the terms of the Individual Agreements may be inconsistent with the terms of the Plan regarding loans, the terms of the Plan shall supersede the terms of any such Individual Agreements.

SECTION 5 BENEFIT DISTRIBUTIONS

5.1 Benefit Distributions At Severance from Employment or Other Distribution Event

Except as permitted under Section 3.6 (relating to excess Elective Deferrals), Section 5.4 (relating to withdrawals of amounts rolled over into the Plan), Section 5.5 (relating to hardship), or Section 8.3 (relating to termination of the Plan), distributions from a Participant's Account may not be made earlier than the earliest of the date on which the Participant has a Severance from Employment, dies, becomes Disabled, or attains age 59 1/2. Distributions shall otherwise be made in accordance with the terms of the Individual Agreements.

5.2 Small Account Balances

Involuntary cash-out distributions shall be made only for Account Balances that do not exceed \$1,000 (including any separate account that holds rollover contributions under Section 6.1), and the automatic individual retirement plan rollover requirements of Section 401(a)(31)(B) of the Code shall not apply.

5.3 Minimum Distributions

Each Individual Agreement shall comply with the minimum distribution requirements of Section 401(a)(9) of the Code and the regulations thereunder. For purposes of applying the distribution rules of Section 401(a)(9) of the Code, each Individual Agreement is treated as an individual retirement account (IRA) and distributions shall be made in accordance with the provisions of Section 1.408-8 of the Income Tax Regulations, except as provided in Section 1.403(b)-6(e) of the Income Tax Regulations.

5.4 In-Service Distributions from Rollover Account

If a Participant has a separate account attributable to rollover contributions to the Plan, to the extent permitted by the applicable Individual Agreement, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

5.5 Hardship Withdrawals

(a) Hardship withdrawals shall be permitted under the Plan to the extent permitted by the Individual Agreements controlling the Account assets to be withdrawn to satisfy the hardship. If applicable under an Individual Agreement, no Elective Deferrals shall be allowed under the Plan during the 6-month period beginning on the date the Participant receives a distribution on account of hardship.

(b) The Individual Agreements shall provide for the exchange of information among the Employer or Employer's agent and the Service Provider(s) to the extent necessary to implement the Individual Agreements, including, in the case of a hardship withdrawal that is automatically deemed to be necessary to satisfy the Participant's financial need (pursuant to Section 1.401(k)-1(d)(3)(iv)(E) of the Income Tax Regulations), the Service Provider notifying the Employer of the withdrawal in order for the Employer to implement the resulting 6-month suspension of the Participant's right to make Elective Deferrals under the Plan. In addition, in the case of a hardship withdrawal that is not automatically deemed to be necessary to satisfy the financial need (pursuant to Section 1.401(k)-1(d)(3)(iii)(B) of the Income Tax Regulations), the Service Provider shall obtain information from the Employer or other Service Provider(s) to determine the amount of any plan loans and rollover accounts that are available to the Participant under the Plan to satisfy the financial need.

5.6 Rollover Distributions

(a) A Participant or the Beneficiary of a deceased Participant (or a Participant's spouse or former spouse who is an alternate payee under a domestic relations order, as defined in Section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect to have any portion of an eligible rollover distribution (as defined in Section 402(c)(4) of the Code) from the Plan paid directly to an eligible retirement plan (as defined in Section 402(c)(8)(B) of the Code) specified by the Participant in a direct rollover. In the case of a distribution to a Beneficiary who at the time of the Participant's death was neither the spouse of the Participant nor the spouse or former spouse of the participant who is an alternate payee under a domestic relations order, a direct rollover is

payable only to an individual retirement account or individual retirement annuity (IRA) that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of Section 408(d)(3)(C) of the Code).

(b) Each Service Provider shall be separately responsible for providing, within a reasonable time period before making an initial eligible rollover distribution, an explanation to the Participant of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.

SECTION 6

ROLLOVERS TO THE PLAN AND TRANSFERS

6.1 Eligible Rollover Contributions to the Plan

This Section 6.1 shall be subject to any conditions or limitations imposed by the Employer or Administrator from time to time.

(a) Eligible Rollover Contributions

To the extent provided in the Individual Agreements, an Employee who is a Participant who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. Such rollover contributions shall be made in the form of cash only. The Service Provider may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of Section 402(c)(8)(B) of the Code. However, in no event shall the Plan accept a rollover contribution from a Roth elective deferral account under an applicable retirement plan described in Section 402A(e)(1) of the Code or a Roth IRA described in Section 408A of the Code.

(b) **Eligible Rollover Distribution** For purposes of Section 6.1(a), an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (1) any installment payment for a period of 10 years or more, (2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, or (3) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Section 401(a)(9) of the Code. In addition, an eligible retirement plan means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, a qualified trust described in Section 401(a) of the Code, an annuity plan described in Section 403(a) or 403(b) of the Code, or an eligible governmental plan described in Section 457(b) of the Code, that accepts the eligible rollover distribution.

(c) **Separate Accounts.** The Service Provider shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan.

6.2 Plan-to-Plan Transfers to the Plan

(a) At the direction of the Employer, for a class of Employees who are participants or beneficiaries in another plan under Section 403(b) of the Code, the Administrator may permit a transfer of assets to the Plan as provided in this Section 6.2. Such a transfer is permitted only if the other plan provides for the direct transfer of each person's entire interest therein to the Plan and the participant is an employee or former employee of the Employer. The Administrator and any Vendor accepting such transferred amounts may require that the transfer be in cash or other property acceptable to it. The Administrator or any Vendor accepting such transferred amounts may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Section 1.403(b)-10(b)(3) of the Income Tax Regulations and to confirm that the other plan is a plan that satisfies Section 403(b) of the Code.

(b) The amount so transferred shall be credited to the Participant's Account Balance, so that the Participant or Beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit with respect to that Participant or Beneficiary immediately before the transfer.

(c) To the extent provided in the Individual Agreements holding such transferred amounts, the amount transferred shall be held, accounted for, administered and otherwise treated in the same manner as an Elective Deferral by the Participant under the Plan, except that (1) the Individual Agreement which holds any amount transferred to the Plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under Section 403(b) of the Code, the Individual Agreement must impose restrictions on distributions to the Participant or Beneficiary whose assets are being transferred that are not less stringent than those imposed on the transferor plan and (2) the transferred amount shall not be considered an Elective Deferral under the Plan in determining the maximum deferral under Section 3.

6.3 Plan-to-Plan Transfers from the Plan

(a) At the direction of the Employer, the Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account Balance transferred to another plan that satisfies Section 403(b) of the Code in accordance with Section 1.403(b)-10(b)(3) of the Income Tax Regulations. A transfer is permitted under this Section 6.3(a) only if the Participants or Beneficiaries are employees or former employees of the employer (or the business of the employer) under the receiving plan and the other plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.

(b) The other plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under Section 403(b) of the Code, the other plan shall impose restrictions on distributions to the Participant or Beneficiary whose assets are transferred that are not less stringent than those imposed under the Plan. In addition,

if the transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the Plan, the other plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the transferor plan (e.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).

(c) Upon the transfer of assets under this Section 6.3, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 6.3 (for example, to confirm that the receiving plan satisfies Section 403(b) of the Code and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Section 1.403(b)-10(b)(3) of the Income Tax Regulations.

6.4 Contract and Custodial Account Exchanges

This Section 6.4 shall be subject to any conditions or limitations imposed by the Employer or Administrator from time to time.

(a) A Participant or Beneficiary is permitted to change the investment of his or her Account Balance among the Service Providers under the Plan, subject to the terms of the Individual Agreements and the conditions in paragraphs (b) through (d) of this Section 6.4 are satisfied.

(b) The Participant or Beneficiary must have an Account Balance immediately after the exchange that is at least equal to the Account Balance of that Participant or Beneficiary immediately before the exchange (taking into account the Account Balance of that Participant or Beneficiary under both Section 403(b) contracts or custodial accounts immediately before the exchange).

(c) The Individual Agreement with the receiving Service Provider has distribution restrictions with respect to the Participant that are not less stringent than those imposed on the investment being exchanged.

(d) The Employer or its agent (which may include The OMNI Group, Inc.) enters into an agreement with the receiving Service Provider for the other contract or custodial account under which the Employer and the Service Provider will from time to time in the future provide each other with the following information:

(1) Information necessary for the resulting contract or custodial account, or any other contract or custodial accounts to which contributions have been made by the Employer, to satisfy Section 403(b) of the Code, including the following: (i) the Employer providing information as to whether the Participant's employment with the Employer is continuing, and notifying the Service Provider when the Participant has had a Severance from Employment (for purposes of the distribution restrictions in Section 5.1); (ii) the Service Provider notifying the Employer of any hardship withdrawal under

Section 5.5 if the withdrawal results in a 6-month suspension of the Participant's right to make Elective Deferrals under the Plan; and (iii) the Service Provider providing information to the Employer or other Service Providers concerning the Participant's or Beneficiary's Section 403(b) contracts or custodial accounts or qualified employer plan benefits (to enable a Service Provider to determine the amount of any plan loans and any rollover accounts that are available to the Participant under the Plan in order to satisfy the financial need under the hardship withdrawal rules of Section 5.5);

(2) Information necessary in order for the resulting contract or custodial account and any other contract or custodial account to which contributions have been made for the Participant by the Employer to satisfy other tax requirements, including the following: (i) the amount of any plan loan that is outstanding to the Participant in order for a Service Provider to determine whether an additional plan loan satisfies the loan limitations of Section 4.1, so that any such additional loan is not a deemed distribution under Section 72(p)(1); and (ii) information concerning the Participant's or Beneficiary's after-tax employee contributions in order for a Service Provider to determine the extent to which a distribution is includible in gross income; and

(3) Such other information as the Employer or its agent (which may include The OMNI Group Inc.) may require.

(e) If any Service Provider ceases to be eligible to receive Elective Deferrals under the Plan, the Employer will enter into an information sharing agreement as described in Section 6.4(d) to the extent the Employer's contract with the Service Provider does not provide for the exchange of information described in Section 6.4(d)(1) and (2).

6.5 Permissive Service Credit Transfers

This Section 6.5 shall be subject to any conditions or limitations imposed by the Employer or Administrator from time to time.

(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan. A transfer under this Section 6.5(a) may be made before the Participant has had a Severance from Employment.

(b) A transfer may be made under Section 6.5(a) only if the transfer is either for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which Section 415 of the Code does not apply by reason of Section 415(k)(3) of the Code.

(c) In addition, if a plan-to-plan transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the transferor plan, the Plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's

interest in the transferor plan (e.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).

6.6 ROTH

Not applicable.

SECTION 7 **INVESTMENT OF CONTRIBUTIONS**

7.1 Manner of Investment

All Elective Deferrals or other amounts contributed to the Plan, all property and rights purchased with such amounts under the Funding Vehicles, and all income attributable to such amounts, property, or rights shall be held and invested in one or more Annuity Contracts or Custodial Accounts. Each Custodial Account shall provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

7.2 Investment of Contributions

This Section 7.2 shall be subject to any conditions or limitations imposed by the Employer or Administrator from time to time. Each Participant or Beneficiary shall direct the investment of his or her Account among the investment options available under the Annuity Contract or Custodial Account in accordance with the terms of the Individual Agreements. Transfers among Annuity Contracts and Custodial Accounts may be made to the extent provided in the Individual Agreements and permitted under applicable Income Tax Regulations.

7.3 Current and Former Service Providers

The Administrator shall maintain a list of all Service Providers under the Plan. Such list is hereby incorporated as part of the Plan. Each Service Provider and the Administrator shall exchange such information as may be necessary to satisfy Section 403(b) of the Code or other requirements of applicable law. In the case of a Service Provider which is not eligible to receive Elective Deferrals under the Plan (including a Service Provider which has ceased to be a Service Provider eligible to receive Elective Deferrals under the Plan and a Service Provider holding assets under the Plan in accordance with Section 6.2 or 6.4), the Employer shall keep the Service Provider informed of the name and contact information of the Administrator in order to coordinate information necessary to satisfy Section 403(b) of the Code or other requirements of applicable law.

SECTION 8
AMENDMENT AND PLAN TERMINATION

8.1 Termination of Contributions

The Employer has adopted the Plan with the intention and expectation that contributions will be continued indefinitely. However, the Employer has no obligation or liability whatsoever to maintain the Plan for any length of time and may discontinue contributions under the Plan at any time without any liability hereunder for any such discontinuance.

8.2 Amendment and Termination

The Employer reserves the authority to amend or terminate this Plan at any time.

8.3 Distribution upon Termination of the Plan

The Employer may provide that, in connection with a termination of the Plan and subject to any restrictions contained in the Individual Agreements, all Accounts will be distributed, provided that the Employer and any Related Employer on the date of termination do not make contributions to an alternative Section 403(b) contract that is not part of the Plan during the period beginning on the date of plan termination and ending 12 months after the distribution of all assets from the Plan, except as permitted by the Income Tax Regulations.

SECTION 9
MISCELLANEOUS

9.1 Non-Assignability

Except as provided in Section 9.2 and 9.3, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.

9.2 Domestic Relation Orders

Notwithstanding Section 9.1, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order"), then the amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order which may include, if provided in the

Adoption Agreement, requiring that any such domestic relations order also meet the requirements of a "qualified domestic relations order" under Section 414(p) of the Code.

9.3 IRS Levy

Notwithstanding Section 9.1, the Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

9.4 Tax Withholding

Contributions to the Plan are subject to applicable employment taxes (including, if applicable, Federal Insurance Contributions Act (FICA) taxes with respect to Elective Deferrals, which constitute wages under Section 3121 of the Code). Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including Section 3401 of the Code and the Employment Tax Regulations thereunder). A payee shall provide such information as the Administrator may need to satisfy income tax withholding obligations, and any other information that may be required by guidance issued under the Code.

9.5 Payments to Minors and Incompetents

If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

9.6 Mistaken Contributions

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

9.7 Procedure When Distributee Cannot Be Located

The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Employer's or the Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. If the Administrator is unable to locate such a

person entitled to benefits hereunder, or if there has been no claim made for such benefits, the funding vehicle shall continue to hold the benefits due such person.

9.8 Incorporation of Individual Agreements

The Plan, together with the Individual Agreements, is intended to satisfy the requirements of Section 403(b) of the Code and the Income Tax Regulations thereunder. Terms and conditions of the Individual Agreements are hereby incorporated by reference into the Plan, excluding those terms that are inconsistent with the Plan or Section 403(b) of the Code.

9.9 Governing Law

The Plan will be construed, administered and enforced according to the Code and the laws of the State in which the Employer has its principal place of business.

9.10 Headings

Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

9.11 Gender

Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.

ADOPTION

**Adoption of the LAS CRUCES PUBLIC SCHOOLS
403(b) Retirement Plan**

The LAS CRUCES PUBLIC SCHOOLS acting through an officer and pursuant to authorization of its governing board, hereby adopts the LAS CRUCES PUBLIC SCHOOLS 403(b) Retirement Plan, subject to its terms and, the terms of any other agreements as deemed appropriate, attached hereto and made a part hereof, and the Adoption Agreement and the selections made therein.

Name of Adopting School District
LAS CRUCES PUBLIC SCHOOLS

Signature of Authorized District Officer

Print Name and Title of Officer

Date: _____, 2009

RESOLUTION TO AMEND
THE Las Cruces Public Schools
403(b) RETIREMENT PLAN

WHEREAS, the Las Cruces Public Schools (“Employer”) maintains the Las Cruces Public Schools 403(b) Retirement Plan Document (“Plan”); and

WHEREAS, the Plan was duly adopted on the _____ day of _____, 200__ by the Employer; and

WHEREAS, the Employer desires to conform the Plan to the requirements of the Heroes Earnings Assistance and Relief Act of 2009 (“HEART”) and the Worker, Retiree and Employer Recovery Act of 2008 (“WRERA”);

NOW, THEREFORE, BE IT RESOLVED that sections **1.16 Includible Compensation, 1.24 Severance from Employment, and 5.3 Minimum Distributions**, of the Plan are hereby amended to read as follows:

1.16 Includible Compensation

An Employee's actual wages in box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of \$200,000 (or such higher maximum as may apply under Section 401(a)(17) of the Code) and increased (up to the dollar maximum) by any compensation reduction election under Section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including any Elective Deferral under the Plan). The amount of Includible Compensation is determined without regard to any community property laws. Beginning in 2009 and thereafter, such term also includes any “differential pay” that may be received while performing qualified military service under Section 414(u) of the Code.

1.24 Severance from Employment

For purpose of the Plan, Severance from Employment means severance from employment with the Employer and any Related Entity. However, a Severance from Employment also occurs on any date on which an Employee ceases to be an employee of a public school, even though the Employee may continue to be employed by a Related Employer that is another unit of the State or local government that is not a public school or in a capacity that is not employment with a public school (e.g., ceasing to be an employee performing services for a public school but continuing to work for the same State or local government employer). Notwithstanding any provision to the contrary, a Participant is treated as having a severance from employment during any period that such individual is performing service in the uniformed services described in Code §3401(h)(2)(A).

5.3 Minimum Distributions

Each Individual Agreement shall comply with the minimum distribution requirements of Section 401(a)(9) of the Code and the regulations thereunder. For purposes of applying the distribution rules of Section 401(a)(9) of the Code, each Individual Agreement is treated as an individual retirement account (IRA) and distributions shall be made in accordance with the provisions of Section 1.408-8 of the Income Tax Regulations, except as provided in Section 1.403(b)-6(e) of the Income Tax Regulations. Notwithstanding the preceding, any distributions otherwise required under this section for the 2009 tax year are waived in accordance with the provisions of the Worker, Retiree and Employer Recovery Act of 2008, unless such waiver cannot be accommodated under the Individual Agreement that governs a Participant's Account.

BE IT FURTHER RESOLVED that the Plan shall include the following new sections **5.7 Qualified Military Service Distributions** and **9.12 Qualified Military Service Benefits**:

5.7 Qualified Military Service Distributions

Any Participant whose employment is interrupted by qualified uniformed service in the military under section 414(u) of the Code and dies or incurs a Disability while so serving shall be deemed to have resumed employment with the Employer on the day preceding such death or Disability and then to have incurred a Severance From Service on the actual date of death or Disability.

Any Participant that takes a distribution from the Plan under Section 414(u) following an interruption in employment that qualifies as qualified uniformed service thereunder may not make Elective Deferrals for a period of six (6) months following the date such distribution occurred.

9.12 Qualified Military Service Benefits

Notwithstanding any other provision of this Plan, any Participant whose employment is interrupted by qualified uniformed service in the military under section 414(u) of the Code shall be entitled to all rights, benefits and protections afforded to such individuals thereunder, and such provisions are incorporated into this Plan. Uniformed services by any individual shall be determined as described in section 3401(h)(2)(A) of the Code.

BE IT FURTHER RESOLVED that this amendment is effective as required under HEART and WRERA.

IN WITNESS WHEREOF, the Employer has caused this Amendment to be adopted this ____ day of _____, 2012.

Las Cruces Public Schools

By: _____



Las Cruces Public Schools 403(b) Service Provider Application

Name: _____
Company: _____
Address: _____
Address: _____
City, St, Zip: _____
Email: _____
URL: _____

Attach Business Card Here

Information to attach to application

- Copy of License to sell investment/product
- Business Card

Below is a list of the investment providers that participate in the District's 403(b) plan. Please indicate the Funding Vehicle you are authorized to provide.

- 403B ASP (American Funds and Phoenix Funds)
- AIG Valic
- AIG/American General
- American Fidelity Assurance Co.
- American United Life Inc Co 1
- Franklin Templeton Bank and Trust
- Horace Mann Life Ins. Co
- Lincoln Investment Planning
- Putnam Investments
- Reliastar Life Insurance Co.
- Security Benefit Life
- _____

List as of 10/12/09. See web page at <http://lcps.k12.nm.us/Departments/Finance/403b.asp> for current listing.

Service Provider Rules, Responsibilities and Expectations

- At the discretion of the principal, a Service Provider may meet with district personnel at a school site.
- Prior to entering a district site, the Service Provider shall acquire a letter of introduction and authorization from the District's Finance Officer. This letter only evidences that an individual is authorized to sell a product. The principal must grant the permission to enter the building to meet with employees.
- Any meeting with district personnel during the school day shall not interrupt the educational process. For example, instructional staff shall not be pulled out of class to meet with a Service Provider.
- Meeting with a Service Provider shall not be a requirement of the individual staff member.
- The Service Provider shall assist the employee in the computation of the Maximum Allowable Contribution (MAC). This computation shall remain on file with the Service Provider.
- The Service Provider shall establish the account with the investment provider prior to completing the online SRA.
- The Service Provider is expected to assist the employee in completing the Salary Reduction Agreement (SRA) online at www.omni403b.com. The instructions for completing the SRA are available on the District's web page at <http://lcps.k12.nm.us/Departments/Finance/403b.asp>.
- The Service Provider is expected to meet with the employee annually to review the performance and asset allocation of the portfolio.

Non-Compliance Remedy

Any action of a Service Provider that violates the District's rules and responsibilities will result in the suspension or expulsion of a Service Provider.

Attestation

I hereby attest that I am properly licensed to sell the products indicated above and; I have read and understand the rules, responsibilities and expectations and; I have read and understand the non-compliance remedy statement and: I agree to adhere to the rules, responsibilities and expectations listed above.

Signature of Service Provider

Date

Signature of Asst. Superintendent of Finance

Date

Instructions to Complete the Online SRA

- Please visit www.omni403b.com for the online SRA.
- Along the top of the page click on the Participants tap, then scroll down to 403(b) plan forms and click on Salary Reduction Agreement online.



Step 1 of 3: Supply Information | Step 2 of 3: Confirm Entries | Step 3 of 3: Submission Confirmation

- Please supply the information requested below.
- Read all agreements on this form before submitting.
- Fields having a red asterisk notation are required.

403(b) Salary Reduction Agreement (SRA) For Tax Sheltered Annuities and Custodial Accounts

IMPORTANT NOTICE: Before You Sign, Read All Information on this form:

A Tax Sheltered Annuity (“TSA”) is an investment account that is set aside for your retirement (only), and is paid for with “pre-tax” dollars. A Custodial Account (“CA”) is the group or individual custodial account or accounts, established for each Employee, by the Employer, or by each Employee individually, to hold assets of the Plan. Unless utilizing the catch-up provisions, your Maximum Allowable Contribution (“MAC”) cannot exceed \$16,500 (\$22,000 if age 50 or over). Both TSA & CA receive tax deferred treatment.

Please supply the information requested below. All fields marked with a red asterisk are required. Use the drop down box to first select the State then Employer Name.

Part 1: Employer Information

*Employer State:

*Employer Name:

*Date of Hire: (MM/DD/YYYY)

BEFORE CONTINUING: Please verify that you have selected the correct **Employer State** and **Employer Name**. If you later change either of these values, information entered below may be lost.

Part 2: Employee Information

Please check here if you have contributed to a 403(b) plan with another employer this calendar year.

If so, please provide **the amount of the year-to-date contributions you have made to the other employer's**

plan: \$ **and the name of the other employer**

* Social Security Number: * First Name: MI: * Last Name:

The above named Employee where applicable, agrees as follows:

1. To modify his/her salary reduction(s) as indicated above.
2. That his/her Employer transfers the above stated funds on Employee's behalf to OMNI® for remittance to the selected Service Provider(s).
3. This SRA is legally binding and irrevocable with respect to amounts paid.
4. This SRA may be changed with respect to amounts not yet paid.
5. This SRA may be terminated at any time for amounts not yet paid or available, and that a termination request is permanent and remains in effect until a new SRA is submitted.
6.
 - a. That OMNI® does not choose the annuity contract or custodial account in which your contributions are invested.
 - b. OMNI® does not endorse any authorized Service Provider, nor is it responsible for any investments.
 - c. OMNI® makes no representation regarding the advisability, appropriateness, or tax consequences of the purchase of the TSA and/or CA described herein.
 - d.
 - i. OMNI® shall not have any liability whatsoever for any and all losses suffered by Employee with regard to his/her selection of the TSA and/or CA, its terms, the selection of any service provider, the financial condition, operation of or benefits provided by said service provider, or his/her selection and purchase of shares by any service provider. Nothing herein shall affect the terms of employment between Employer and Employee.
 - ii. Employee acknowledges that Employer has made no representation to Employee regarding the advisability, appropriateness, or tax consequences of the purchase of the annuity and/or custodial account described herein.
 - iii. The Employer shall not have any liability for any and all losses suffered by an Employee with regard to the selection(s) of any TSA and/or CA, any related terms and conditions, the selection of any service provider, the financial condition, operation of or benefits provided by any service provider or the selection and purchase of shares by any service provider.
7. To be responsible for setting up and signing the legal documents necessary to establish a TSA or CA.
8. To be responsible for naming a death beneficiary under their TSA or CA. This is normally done at the time the contract or account is established. Beneficiary designations should be reviewed periodically.
9. When provided all required information in a timely manner, OMNI® is responsible for determining that salary reductions do not exceed the allowable contribution limits under applicable law, and will complete MAC calculations as required by law.
10. To contact OMNI® and complete the appropriate OMNI® forms for any requests for distributions, loans, hardship withdrawals, account exchanges plan-to-plan transfers or rollover contributions. Processing fees for the foregoing transactions may apply.
11. This SRA is subject to the terms of the Services Agreement between OMNI® and Employer, and to the Information Sharing Agreement between OMNI® and the Service Providers, copies of which may be obtained from Employer.
12. This agreement supersedes all prior salary reduction agreements and shall automatically terminate if Employee's employment is terminated.

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By clicking the button below labeled "Continue", I hereby confirm that the information on this form is correct and complete to the best of my knowledge. I certify that I have read this complete agreement and that my salary reductions do not exceed contribution limits as determined by Applicable Law. I understand my responsibilities as an Employee under this Program, and I request that Employer take the action specified in this agreement. I understand that all rights under the annuity or custodial account established by me under the Program are enforceable solely by my beneficiary, my authorized representative or me.

* Re-enter Social Security # to verify (9-digit format, no dashes or spaces):

Reset

Continue

Please note: Javascript must be enabled for this form to be properly submitted. If you are having difficulty submitting the form, please ensure that your browser settings enable Javascript usage.

Part 4

- Read Agreement and Acknowledgements
- Re-Enter Social Security Number
- Click Continue Button to go to confirmation screen.
- You will be asked to verify information.
 - Re-Enter Social Security Number
 - Click Submit.

*A confirmation email will be sent to the employee's email that was provided. OMNI will then give notification to Las Cruces Public Schools to start/change/stop deduction.