

Firth School District (#59) 403b PLAN

Firth School District #59 (the *School District*) has for some time and pursuant to Code § 403(b) accommodated the desires of Participants by reducing the taxable pay of each to the extent elected and remitting like amounts as 403b Paycheck Savings to an approved Investment Provider chosen by that Participant to be applied to a Code § 403(b) annuity contract or added to a Code § 403(b) mutual fund account for that Participant. To date, the only documented provisions of such arrangement and rights and obligations are as contained in written elections, annual notices of universal availability, annuity contracts and depository/custodial agreements that apply to the mutual fund account.

The U.S. Dept of Treasury issued final regulations in 2007 under Code § 403(b), requiring certain annuity contracts or mutual fund accounts to be maintained after 2008 pursuant to a plan document of an eligible employer that specifies all the material terms and conditions for eligibility, benefits, applicable limitations, the contracts available under the plan, and the time and form under which benefit distributions will be made, and which may further specify when and under what circumstances hardship withdrawal distributions, loans, plan-to-plan or annuity contract-to-annuity contract transfers, and acceptance of rollovers to the plan may be made. The School District, as an eligible employer, adopts this Plan so that the Investment Providers of affected annuity contracts and mutual fund accounts of Employees of the School District may arrange with the School District to have those annuity contracts and mutual fund accounts maintained pursuant to this Plan.

Accordingly and pursuant to the 2007 Regulations and IRS Revenue Procedure 2007-71, the School District has contacted each Investment Provider to which any 403b Paycheck Savings have been remitted on or since January 1, 2005, requesting the Investment Provider to provide available information about its Annuity Contracts and Mutual Fund Accounts that have received contributions paid directly from the School District. Each Investment Provider has been notified of the name and contact information of the Administrator. The School District has requested each Investment Provider to cooperate with the School District in its efforts to include each Annuity Contract and each Mutual Fund Account as part of and to be maintained pursuant to this Plan of the School District, and to enter into information sharing and other agreements with the School District.

This Plan and document hereby apply to each Annuity Contract or Mutual Fund Account

during the time that an information sharing agreement is in place between the Investment Provider and the School District that, among other things, obligates the Investment Provider to (a) reform to the extent necessary to meet and continue each Annuity Contract or Mutual Fund Account in accordance with the requirements of Treasury Regulation § 1.403(b)-3, and (b) distribute each Annuity Contract and Mutual Fund Account as soon as administratively practicable following termination of this Plan by the School District, in light of any restrictions contained in the Individual

Agreements.

The School District shall maintain a current listing of such Investment Providers as described in section 7.3 below.

No other annuity contract or mutual fund account is maintained by or pursuant to this Plan. Nevertheless, if an Investment Provider of a Code § 403(b) annuity contract or Code § 403(b) mutual fund account held by an Employee or former Employee requests information reasonably necessary before a distribution or loan may be made from a Code § 403(b) annuity contract or Code § 403(b) mutual fund account, the Administrator

will provide that information then included in School District records to the requesting Investment Provider. Doing so shall not of itself render the Code § 403(b) annuity contract or Code § 403(b) mutual fund account to be maintained pursuant to this Plan.

Section 1 Definition of Terms Used

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

- 1.1 **403b Paycheck Savings:** Contributions made by the School District into an Annuity Contract or Mutual Fund Account at the election and agreement of the Participant for a reduction of a corresponding amount to Compensation otherwise payable to the Participant. No 403b Paycheck Savings will be contributed after December 31, 2008 into an Annuity Contract or Mutual Fund Account unless the Investment Provider has entered into an information sharing agreement with the School District.
- 1.2 **Administrator:** Business Manager is generally the Administrator. However, for Individual Agreements issued by an Investment Provider, the Investment Provider is the Administrator as to those responsibilities identified herein to be performed by the Investment Provider.
- 1.3 **Annuity Contract:** A nontransferable contract (as defined in Code § 403(b)(1)), established by a Participant (or by the School District for a Participant) under or is maintained pursuant to this Plan and that is issued by an Investment Provider that is an insurance company qualified to issue annuities in Idaho and that includes payment in the form of an annuity, per Income Tax Regulation §§ 1.403(b)-2 and - 8(c). Also, the contract must satisfy the incidental benefit requirement of Income Tax Regulation § 1.401-1(b)(1)(ii), in form or operation, as provided in Tax Regulation § 1.403(b)-6(g). The Participant's rights to benefits under the contract are at all times nonforfeitable. The Investment Provider shall track the tax-deferred contributions (and investment earnings) under an Annuity Contract separately from the Roth (after-tax) contributions (and investment earnings) under that same Annuity Contract. The Investment

Provider shall also track any non-Roth, after-tax contributions (and investment earnings) under an Annuity Contract separately from the tax-deferred contributions (and investment earnings) and any Roth (after-tax) contributions (and investment earnings) under that same Annuity Contract.

- 1.4 **Beneficiary:** The person either affirmatively designated by the Participant to the Investment Provider or by default designated in the Individual Agreement to receive any benefits under the Individual Agreement after the death of a Participant, subject to such additional rules as may be set forth in the Individual Agreement.
- 1.5 **Mutual Fund Account:** An individual custodial account (as defined in Code § 403(b)(7) and Income Tax Regulation § 1.403(b)-8(d)) established by a Participant (or by the School District for the Participant) under or is maintained pursuant to this Plan for the Investment Provider to hold assets as Plan benefits for the Participant. Also, the Individual Agreement regarding the Mutual Fund Account must specify that the Mutual Fund Account will
- a. be invested only in stock of a regulated investment company (as defined in Code § 851(a) relating to mutual funds),
 - b. not be part of a retirement income account, and
 - c. not be loaned to the School District or used for, or diverted to, any purpose other than the exclusive benefit of the Participant or Beneficiary before all liabilities with respect to Participants and their Beneficiaries have been satisfied.

The Investment Provider shall track the tax-deferred contributions (and investment earnings) under a Mutual Fund Account separately from the Roth (after-tax) contributions (and investment earnings) under that same Mutual Fund Account. The Investment Provider shall also track any non-Roth, after-tax contributions (and investment earnings) under a Mutual Fund Account separately from the tax deferred contributions (and investment earnings) and any Roth (after-tax) contributions (and investment earnings) under that same Mutual Fund Account.

- 1.6 **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.
- 1.7 **Compensation:** All cash compensation for services to the School District, 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 School District includible in the Employee's gross income for the calendar year but for a compensation

reduction election under Code § 125, 132(f), 401(k), 403(b), or 457(b) (including an election under Section 2 made to reduce compensation for 403b Paycheck Savings).

- 1.8 **Effective Date:** This documentation for the Plan is effective January 1, 2009.
- 1.9 **Employee:** Each individual, whether appointed or elected, who is a common law employee of the School District performing services for a public school as an employee of the School District. This definition is not applicable unless the employee's compensation for performing services for a public school is paid by the School District. 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.
- 1.10 **Includible Compensation:** An Employee's actual wages in box 1 of Form W-2 for a year for services to the School District, but subject to a maximum of \$200,000 (or such higher maximum as may apply under Code § 401(a)(17)) and increased (up to the dollar maximum) by any compensation reduction election under Code § 125, 132(f), 401(k), 403(b), or 457(b) (including any 403b Paycheck Savings). The amount of Includible Compensation is determined without regard to any community property laws. The only wages included that are paid to a former Employee after Severance from Employment are those
- a. for a payroll period that begins before the Severance from Employment,
 - b. paid by the end of the Plan Year in which the Severance from Employment occurs, or, if later, within 2½ months of the Severance from Employment,
 - c. paid to a Participant who is permanently and totally disabled, and
 - d. paid to a Participant relating to qualified military service under Code § 414(u).
- 1.11 **Individual Agreement:** The agreements between an Investment Provider and the School District or a Participant that constitutes or governs a Mutual Fund Account or an Annuity Contract. The Individual Agreements shall require the exchange of information by and among the School District, the Administrator, those hired to assist the Administrator hereunder, and each Investment Provider as necessary for any of them to discharge their functions under this Plan and as otherwise provided herein.
- 1.12 **Investment Provider:** The provider of an Annuity Contract or Mutual Fund Account that is part of or governed by this Plan, as listed per Section 7.3.

- a. A current Investment Provider is a provider of Annuity Contracts or Mutual Fund Accounts while the Plan permits 403b Paycheck Savings to be made into such Annuity Contracts or Mutual Fund Accounts.
 - b. A former Investment Provider is a provider of any Annuity Contract or Mutual Fund Account that has not completely paid out to the Participant or Beneficiary but as to which the Plan no longer permits any further 403b Paycheck Savings to be made. The School District shall provide former Investment Providers information as to whether the Participant's employment with the School District is continuing, and notifying the former Investment Provider when the Participant has had a Severance from Employment (for purposes of the distribution restrictions in Section 5.1)
- 1.13 **Participant:** An Employee as to whom 403b Paycheck Savings have been made, but has not yet received a distribution of his or her entire benefits from Annuity Contracts and Mutual Fund Accounts.
- 1.14 **Plan:** Firth School District (#59) 403b Plan.
- 1.15 **Plan Year:** The calendar year.
- 1.16 **Related Employer:** The School District and any other entity which is under common control with the School District under Code § 414(b) or (c). For this purpose, the School District shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under Notice 89-23, 1989-1 CB 654.
- 1.17 **Required Minimum Payouts:** Payments made each year by the Investment Provider until and including the year of the Participant's death which total for each such year an amount equal to the balance of the Annuity Contract or Mutual Fund Account as of the end of the prior year, divided by the distribution period set forth in the Uniform Lifetime Table at Income Tax Regulation § 1.401(a)(9)-9, A-2, for the Participant's age on the Participant's birthday for that year.
- 1.18 **Severance from Employment:** For purpose of the Plan, the Administrator shall treat as a Severance of Employment the end of employment of an Employee by
- a. the School District and any Related Entity (as detailed in Income Tax Regulation §§ 1.401(k)-1(d) and 1.403(b)-2(b)(19)), and
 - b. 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).

Section 2 Participation and Contributions

2.1 Eligibility.

- a. **General Rule of Universal Availability.** Subject to the exceptions set forth in Section 2.1.b., each Employee performing services for the School District shall be eligible to elect 403b Paycheck Savings.

- b. **Exceptions to Eligibility.**
 - (1) **Student-Teachers.** An Employee who is a student-teacher as defined in Code § 3121(b)(10) (i.e., a person providing service as a teacher's aid on a temporary basis while attending a school, college or university) is not eligible to elect to have 403b Paycheck Savings made on his or her behalf.

 - (2) **Less Than ½ Time Employees.** An Employee who normally works fewer than 20 hours per week is not eligible to elect to have 403b Paycheck Savings made on his or her behalf. An Employee normally works fewer than 20 hours per week if,
 - (i) for the 12-month period beginning on the date the Employee's employment commenced, the School District reasonably expects the Employee to work fewer than 1,000 hours of service (as defined under Code § 410(a)(3)(C)) and,

 - (ii) for each Plan Year ending after the end of that 12-month period, the Employee has worked fewer than 1,000 hours of service.

2.2 **Information Provided by the Employee.** Before an eligible Employee may make a 403b Paycheck Savings election, that Employee must provide to the Administrator any information necessary or advisable for the Administrator to operate the Plan (as well as keeping the Administrator updated regarding such information, and providing additional information as the Administrator may later determine is so needed, including any information about Individual Agreements).

2.3 **403b Paycheck Savings Election.** An eligible Employee elects to become a Participant by executing an election to reduce his or her Compensation (and have a like amount contributed as 403b Paycheck Savings on his or her behalf) and filing it with the Administrator. In doing so, the eligible Employee must

- a. make this election using a 403b Paycheck Savings Agreement provided

by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan, including the requirement that at least \$200 for the Plan Year shall be deferred from the Participant's Compensation.

- b. irrevocably designate on the 403b Paycheck Savings Agreement which portion, if any, is to be made on a tax-deferred basis and which portion, if any, is to be made on a Roth (after-tax) basis.
- c. designate which of the current Investment Providers the School District is to forward the reduced Compensation.
- d. designate which existing Annuity Contract or Mutual Fund Account into which the elected 403b Paycheck Savings are to be placed into, or which type—an Annuity Contract or Mutual Fund Account—the elected 403b Paycheck Savings are to be placed into.

The School District will reduce Compensation as elected 403b Paycheck Savings

beginning with the first payday that is at least 15 days after the completed and signed 403b Paycheck Savings Agreement is filed with the Administrator. The School District shall continue to reduce Compensation pursuant to that 403b Paycheck Savings Agreement until 15 days after a newly completed and signed 403b Paycheck Savings Agreement is received and thus takes effect.

An Employee's participation in the Plan is subject to the terms and conditions of the Individual Agreements.

2.4 **Change in 403b Paycheck Savings 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

- a. the amount of his or her 403b Paycheck Savings,
- b. which portions of future 403b Paycheck Savings shall be tax-deferred and which shall be Roth (after-tax), and the designation of Investment Provider, and
- c. the type of Annuity Contracts or Mutual Fund Accounts therein for future 403b Paycheck Savings.

The Employee shall use a 403b Paycheck Savings Agreement provided by the Administrator to make such a change, and it shall only be effective as to paydays that occur more than 15 days after filed with the Administrator. The new 403b

Paycheck Savings Agreement will not be effective to the extent it may otherwise result in 403b Paycheck Savings of the Participant being less than \$200 for the Plan Year.

- 2.5 **Contributions Made Promptly.** Within 10 calendar days of the payday which the reduced Compensation would otherwise have been paid to the Participant, the School District shall transfer to the designated Investment Provider (for deposit into the designated Annuity Contract or Mutual Fund Account) an amount equal to the Compensation reduced pursuant to a 403b Paycheck Savings Agreement.
- 2.6 **Leave of Absence.** Unless an election is otherwise revised, the School District shall continue the elected 403b Paycheck Savings while an Employee is absent from work by leave of absence.

Section 3 Limitations on Amounts Deferred

- 3.1 **Annual Limitation on 403b Paycheck Savings.** The School District shall not reduce Compensation for any calendar year pursuant to a Participant's 403b Paycheck Savings Agreement in an amount that exceeds the applicable Code § 402(g)(1) amount as adjusted for cost-of-living under Code § 415(d). For 2007, the Code § 402(g)(1) amount is \$15,500 for those Employees not yet age 50 by December 31, 2007 and is \$20,500 for those age 50 or older by December 31, 2007. In no event shall the School District reduce Compensation beyond the amount of the Participant's Includible Compensation for the calendar year.
- 3.2 **Special Rule for a Participant Covered by Another Code § 403(b) Plan or a Code § 401(k) Plan.** For purposes of Section 3.1, if the Participant is or has been a participant in one or more other plans under Code § 403(b) or Code § 401(k) (and any other plan that permits elective deferrals under Code § 402(g)), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of Section 3.1. 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.
- 3.3 **Correction of Excess 403b Paycheck Savings.**
 - a. By March 25 after the end of each calendar year and based on any information provided by the Participant, the Administrator shall determine if the 403b Paycheck Savings on behalf of a Participant for any calendar year exceed the limitations of Section 3.1, or such 403b Paycheck Savings exceed the limitations of Section 3.1 when combined with other

amounts deferred by the Participant under another plan of the School District under Code § 403(b) or Code § 401(k) (and any other plan that permits elective deferrals under Code § 402(g) for which the Participant provides information that is accepted by the Administrator).

- b. By March 31 after the end of the calendar year as to which an excess has been determined, the Administrator shall notify and instruct each Investment Provider of the amount of any excess to be distributed from each Annuity Contract or Mutual Fund Account.
- c. By April 15 after the end of the calendar year as to which an excess has been determined and corrective payout instructed, an Investment Provider shall distribute from the Annuity Contract or Mutual Fund Account to the Participant the excess instructed by the Administrator (adjusted for any income or loss in value, if any, allocable thereto).

3.4 Protection of Persons Who Serve in a Uniformed Service.

- a. The School District will permit an Employee whose employment is interrupted by qualified military service under Code § 414(u) or who is on a leave of absence for qualified military service under Code § 414(u) to elect to make additional 403b Paycheck Savings upon resumption of employment with the School District.
- b. The amount such an Employee may elect is equal to the maximum 403b Paycheck Savings that the Employee could have elected during the period of interruption or leave if the Employee's employment with the School District had continued (at the same level of Compensation) without the interruption or leave, reduced by the 403b Paycheck Savings, if any, actually made for the Employee during the period of the interruption or leave.
- c. Except to the extent provided under Code § 414(u), an Employee's right to make such additional 403b Paycheck Savings 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 No Loans

No Investment Provider shall make any loans to the Participant from any Annuity Contracts or Mutual Fund Accounts. Participants may, however, continue to repay loans made prior to this Plan document pursuant to terms that comply with Code § 72(p); all other loan balances are immediately due and payable, and if not repaid by

March 31, 2009, shall be treated as a defaulted loan and deemed distribution.

Section 5 Benefit Distributions

5.1 Benefit Distributions at Severance from Employment or Other Distribution Event. Except as permitted under Section 5.5 (relating to hardship payouts), Section 3.4 (relating to excess 403b Paycheck Savings), Section 5.4 (relating to withdrawals of amounts rolled over into an Annuity Contract or Mutual Fund Account), or Section 8.3 (relating to termination of the Plan), an Investment Provider may only make distributions from a Participant's Annuity Contract or Mutual Fund Account after the Participant—

- a. has a Severance from Employment (as confirmed by the Administrator),
- b. attains age 59½,
- c. dies, or
- d. becomes disabled (as determined by the Investment Provider pursuant to the terms of the Individual Agreement).

Distributions shall otherwise be made in accordance with the terms of the Individual Agreements.

5.2 Lump-sum Payouts; Delivery of Fully Paid Insurance Annuity Contracts. The terms of the Individual Agreement may permit the Investment Provider to make distributions in the form of a lump-sum payment or by delivery of a fully paid insurance annuity contract to the Participant or Beneficiary, but only with the consent of the Participant or Beneficiary and if the Participant or Beneficiary does not elect a direct rollover as provided in Section 5.5.

5.3 Required Minimum Payouts. As to each Individual Agreement, the Investment Provider shall make the minimum distributions required by Code § 401(a)(9) and the regulations thereunder, in accordance with this Section 5.3.

- a. Required Minimum Payouts shall begin by April 1 of the year following the calendar year in which the Participant attains age 70½ or, if later, by April 1 of the year following the year in which the Participant retires or otherwise has a Severance from Employment. This is the Participant's *required beginning date*.
- b. If Required Minimum Payouts do not commence until the calendar year of

the required beginning date, the Investment Provider shall make two (2) Required Minimum Payouts during that calendar year:

- (1) one for the calendar year in which the Participant attains age 70½ or, if later, by April 1 of the year following the year in which the Participant retires or otherwise has a Severance from Employment, and
 - (2) the second for the calendar year of the required beginning date.
- c. For purposes of applying the distribution rules of Code § 401(a)(9), the Investment Provider shall treat each Individual Agreement as an individual retirement account (IRA) and the minimum distribution required by reason of each Individual Agreement shall be made only from and by reason of that Annuity Contract or Mutual Fund Account, in accordance with the provisions of Income Tax Regulations § 1.408-8, except as provided in Income Tax Regulations § 1.403(b)-6(e). For example, even if the sole Beneficiary is the surviving spouse of the Participant, the Investment Provider shall not treat the Annuity Contract or Custodial Agreement as the Beneficiary's own.
- d. To the extent permitted in the Individual Agreement (with or without the Participant's consent), the Investment Provider may
- (1) make the Required Minimum Payouts for the calendar year in which the Participant attains age 70½ or, if later, in which the Participant retires or otherwise has a Severance from Employment, by the end of such calendar year.
 - (2) make monthly or quarterly installments that total, for a calendar year, the Required Minimum Payouts for that calendar year, and/or
 - (3) distribute a greater amount (not to exceed the amount of the remaining balance of the Annuity Contract or Mutual Fund Account) during a year than the Required Minimum Payouts for that calendar year.

5.4 In-Service Distributions from Rollover Account and Pre-2009 Issued Annuity Contracts. To the extent the Investment Provider has kept track of the benefits under an Annuity Contract or Mutual Fund Account attributable to contributions rolled over into the Plan (and subsequent investment earnings thereon) separate from the benefits from other contributions (and investment earnings thereon), the Investment Provider may distribute all or any portion of the rolled-over benefits to the Participant whenever so elected by the Participant. Also, for Annuity Contracts issued before January 1, 2009, in-service

distributions are permitted.

5.5 **Hardship Payout.**

a. Upon request from a Participant and his or her agreement to bear the cost of professional assistance analyzing the eligibility for a hardship payout and preparing any documents incident to such request, the Administrator shall determine (or contract out for determination) whether the Participant is eligible for a hardship payout and in what amount, but only to the extent consistent with Income Tax Regulations §§ 1.403(b)-6(d)(2) and 1.401(k)-1(d)(3). The Administrator shall take into account as financial resources available to the Participant

- (1) any amount of eligible rollover contributions (see Section 6.1) that the Participant may withdraw while an active employee from any Annuity Contract or Mutual Fund Account, and
- (2) any amount available as a loan or other non-hardship withdrawal from any other plan or arrangement under Code § 403(b) or 401(a) of which the Administrator is aware.

The Administrator shall only approve or direct hardship payouts from an Annuity Contract or Mutual Fund Account to the extent determined without investment earnings. The Administrator shall assess against an Annuity Contract or Mutual Fund Account of the requesting Participant any costs incurred by the Administrator in making such a determination, including determinations that the Participant's situation is not eligible for a hardship or is eligible for hardship but only for an amount less than requested by the Participant.

b. The Administrator shall direct the Investment Provider with respect to the Annuity Contract or Mutual Fund Account to make a hardship payout of an amount specified by the Administrator (and to make payment of the amount assessed against the Annuity Contract or Mutual Fund Account as the cost for making the determination). The Investment Provider shall pay from the Annuity Contract or Mutual Fund Account the amount as directed and specified by the Administrator. The Investment Provider shall then make the hardship payout from Annuity Contract(s) and/or Mutual Fund Account(s), but only to the extent—

- (1) directed by the Administrator,
- (2) of the aggregate amount of tax-deferred contributions to the Annuity Contract or Mutual Fund Account (determined without investment earnings), and

- (3) otherwise allowed by the Individual Agreement controlling the Annuity Contract or Mutual Fund Account

If the Investment Provider has not kept track of the amount of the tax-deferred 403b Paycheck Savings that have been made into the Annuity Contract or Mutual Fund Account separate from investment earnings, then no hardship distribution may be made by reason or out of tax-deferred 403b Paycheck Savings.

- c. The Investment Provider shall notify the School District and the Administrator of the date and amount of the hardship payout.
- d. The School District shall suspend all 403b Paycheck Savings by the Participant for 6 months beginning on the date the Participant receives the hardship payout.

5.6 Rollover Distributions.

- a. Before payment of any amount under an Investment Agreement that qualifies as an eligible rollover distribution (as defined in Code § 402(c)(4)) from an Annuity Contract or Mutual Fund Account, the Investment Provider must give the Participant or the Beneficiary (or a Participant's spouse or former spouse who is an alternate payee under a domestic relations order, as defined in Code § 414(p)) the option to have any portion thereof paid directly to an eligible retirement plan (as defined in Code § 402(c)(8)(B)) specified by the Participant, Beneficiary or alternate payee in a direct rollover. For this purpose, an amount shall be an 'eligible rollover distribution' for this purpose even if less than \$200.
- b. Each Investment 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, in accordance with Code § 402(f).
- c. 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 Code § 408(d)(3)©).

Section 6

Rollovers to the Plan and Transfers

6.1 Eligible Rollover Contributions to the Plan.

- a. **Eligible Rollover Contributions.** On the request of a Participant who is entitled to receive an eligible rollover distribution from another eligible retirement plan, any current Investment Provider may (but is not required to) accept payment of all or any portion of that eligible rollover distribution into an Annuity Contract or Mutual Fund Account for such Participant on the terms and conditions of Individual Agreements then available from that current Investment Provider. Before a current Investment Provider may accept such a rollover, it must require such documentation from the distributing plan as the Investment Provider deems necessary
- (1) to confirm that the distributing plan is an eligible retirement plan within the meaning of Code § 402(c)(8)(B),
 - (2) to confirm that it is receiving an eligible rollover distribution as defined in Section 6.1.b. from the distributing plan, and
 - (3) to effectuate the rollover in accordance with Code § 402.
- However, in no event shall an Investment Provider accept into an Annuity Contract or Mutual Fund Account a rollover contribution from a Roth (after-tax) elective deferral account under an applicable retirement plan described in Code § 402A(e)(1) or a Roth IRA described in Code § 408A at a time when 403b Paycheck Savings may not be permitted on a Roth (after-tax) basis. Such rollover contributions may be made in cash or other property acceptable to that current Investment Provider.
- 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 Code § 401(a)(9).

In addition, an eligible retirement plan means an individual retirement account described in Code § 408(a), an individual retirement annuity

described in Code § 408(b), a qualified trust described in Code § 401(a), an annuity plan described in Code § 403(a) or 403(b), or an eligible governmental plan described in Code § 457(b).

- c. **Separate Accounting.** The Investment Provider shall track the benefits from any eligible rollover distribution paid into an Annuity Contract or Mutual Fund Account (and subsequent investment earnings) separately from all other benefits under such Annuity Contract or Mutual Fund Account.

6.2 **Plan-to-Plan Transfers to the Plan.**

- a. Upon the joint instruction from the School District and the Administrator, current Investment Providers may (but shall not be required to) accept into individual Annuity Contracts or Mutual Fund Accounts a transfer of assets to the Plan as provided in this Section 6.2 for a class of Employees, current or former, who are participants or beneficiaries in another Code § 403(b) plan that provides for the direct transfer of each person's entire interest therein to the Plan
- b. A current Investment Provider may only accept such a transfer if the transferring Code § 403(b) plan's administrator provides documentation the Investment Provider deems necessary to effectuate the transfer in accordance with Income Tax Regulations § 1.403(b)-10(b)(3) and to confirm that the other plan satisfies Code § 403(b). The Investment Provider accepting such transferred amounts may require that the transfer be in cash or other property acceptable to it.
- c. The current Investment Providers receiving the amount so transferred shall credit the amount received on behalf of a Participant to the Participant's Annuity Contract or Mutual Fund Account, so that the Participant whose assets are being transferred has accumulated benefits immediately after the transfer at least equal to his or her accumulated benefits immediately before the transfer.
- d. To the extent provided in the Individual Agreements governing the Annuity Contract or Mutual Fund Account receiving the amounts, the Investment Provider shall hold, account, administer and otherwise treat the received amount in the same manner as 403b Paycheck Savings by the Participant, except that
 - (1) if the received amount is subject to any Code § 403(b) distribution restrictions, the Individual Agreement must impose restrictions on distributions to the Participant or Beneficiary that are at least as stringent as than those imposed by the transferring Code § 403(b)

plan, and

- (2) the received amount shall not be considered 403b Paycheck Savings in determining the maximum deferral under Section 3.

6.3 Plan-to-Plan Transfers from the Plan.

- a. Upon the joint instruction from the School District and the Administrator, a class of Participants and Beneficiaries may elect to have all or any portion of their balances in their respective Annuity Contracts or Mutual Fund Accounts transferred to another Code § 403(b) plan specified by the School District and Administrator but only if
 - (1) the affected Participants or Beneficiaries are employees or former employees of the employer (or the business of the employer) that sponsors the receiving Code § 403(b) plan,
 - (2) the receiving Code § 403(b) plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries,
 - (3) the receiving Code § 403(b) plan requires that it credit the amount received on behalf of a Participant or Beneficiary so that the Participant or Beneficiary whose assets are so transferred has accumulated benefits immediately after the transfer at least equal to his or her accumulated benefits immediately before the transfer,
 - (4) the receiving Code § 403(b) plan provides that the transferred benefits are subject to distribution restrictions that are not less stringent than those imposed under the Plan, and
 - (5) the receiving Code § 403(b) plan provides that if the transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in an Annuity Contract or Mutual Fund Account, the receiving Code § 403(b) plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in that Annuity Contract or Mutual Fund Account (e.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions to the Annuity Contract or Mutual Fund Account).
- b. If so elected by a Participant, each Investment Provider of any Annuity Contracts and Mutual Fund Accounts of the Participant shall transfer the assets elected to the receiving Code § 403(b) plan, in accordance with Income Tax Regulations § 1.403(b)-10(b)(3), but only after the Investment Provider receives documentation from the receiving Code § 403(b) plan to the satisfaction of the Investment Provider necessary to effectuate the

transfer in accordance with Code § 403 and Income Tax Regulations § 1.403(b)-10(b)(3).

- c. Upon the transfer of assets under this Section 6.3, the 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.
- d. In addition, if a plan-to-plan transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in this Plan, the Investment Provider shall treat the amount transferred from the Annuity Contract or Mutual Fund Account as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in this Plan (e.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).

6.4 Annuity Contract and Mutual Fund Account Exchanges.

- a. A Participant or Beneficiary is permitted to exchange any Annuity Contract or Mutual Fund Account of that Participant or Beneficiary for or into an Annuity Contract or Mutual Fund Account with any current Investment Provider, subject to approval by both Investment Providers and to the terms of both Individual Agreements involved.
- b. The Participant or Beneficiary must have a balance, in the aggregate, of Annuity Contracts and Mutual Fund Accounts immediately after the exchange that is at least equal to the balance, in the aggregate, of Annuity Contracts and Mutual Fund Accounts immediately before the exchange.

6.5 Permissive Service Credit Transfers.

- a. If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code § 414(d)) 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 balance of the Participant's Annuity Contract or Mutual Fund Account transferred to the defined benefit governmental plan. A transfer under this Section 6.5.e. may be made before the Participant has had a Severance from Employment.
- b. The Investment Provider shall only make the transfer elected under Section 6.5.e. after the Investment Provider has been supplied documentation from which the Investment Provider is satisfied the transfer is either for the purchase of permissive service credit (as defined in Code § 415(n)(3)(A)) under the receiving defined benefit governmental

plan or a repayment to which Code § 415 does not apply by reason of Code § 415(k)(3).

Section 7 Investment of Contributions

- 7.1 **Manner of Investment.** Once contributed, Investment Providers shall hold and invest all property and rights purchased with such amounts under the Individual Agreements, and all income attributable to such amounts, property, or rights in one or more Annuity Contracts or Mutual Fund Accounts until properly distributed in accordance with this Plan.
- 7.2 **Investment of Contributions.** Each Participant or Beneficiary shall instruct the Investment Provider directly regarding the investment of his or her Annuity Contract or Mutual Fund Account among the investment options available under the Annuity Contract or Mutual Fund Account, in accordance with the terms of the Individual Agreements. Transfers among Annuity Contracts and Mutual Fund Accounts may be made to the extent provided in the Individual Agreements, permitted under applicable Income Tax Regulations, and if to a different Investment Provider, as specified in Section 6.4.
- 7.3 **Current and Former Investment Providers.** The Administrator shall maintain a list of all Investment Providers, current and former. Such list is hereby incorporated as part of the Plan. The Administrator shall provide the initial list and
any updates to the list to each Investment Provider. Each Investment Provider and the Administrator shall exchange such information as may be necessary to satisfy Code § 403(b) or other requirements of applicable law. In the case of an Investment Provider which is not eligible to receive 403b Paycheck Savings (including an Investment Provider which has ceased to be an Investment Provider eligible to receive 403b Paycheck Savings and an Investment Provider holding assets in accordance with Section 6.2 or 6.4), the School District shall keep the Investment Provider informed of the name and contact information of the Administrator in order to coordinate information necessary to satisfy Code § 403(b) or other requirements of applicable law.

Section 8 Amendment and Plan Termination

- 8.1 **Termination of Contributions.** The School District is not obligated to maintain the Plan for any length of time and may discontinue 403b Paycheck Savings to the Plan at any time without any liability hereunder for any such discontinuance.

- 8.2 **Amendment and Termination.** The School District reserves the authority to amend or terminate this Plan at any time.
- 8.3 **Distribution upon Termination of the Plan.** The School District may provide that, in connection with a termination of the Plan and subject to any restrictions contained in the Individual Agreements, all Annuity Contract and Mutual Fund Accounts will be distributed, provided that the School District and any Related Employer on the date of termination do not make contributions (at the election of employees or otherwise) to an alternative Code § 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 to the extent permitted by the Income Tax Regulations. Delivery of a fully paid individual insurance annuity contract is treated as a distribution for this purpose.

Section 9 Miscellaneous

- 9.1 **Non-Assignability.** Except as provided in Sections 9.2 and 9.3, the interests of each Participant or Beneficiary in Annuity Contracts and Mutual Fund Accounts 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 in an Annuity Contract or Mutual Fund Account under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.
- 9.2 **Domestic Relation Orders.** The Administrator shall establish reasonable procedures for determining the status of any 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 made pursuant to the domestic relations law of any State (*domestic relations order*) is a *qualified domestic relations order (QDRO)* set forth in Code § 414(p) and for effectuating distribution pursuant to the QDRO. Notwithstanding Section 9.1—
- a. upon receipt of any domestic relations order, the Administrator shall have determined (pursuant to the adopted QDRO procedures) whether the domestic relations order is a QDRO.

- b. if the domestic relations order is so determined to be a QDRO, then the Administrator shall instruct the Investment Providers of the amounts to be paid from the Participant's Annuity Contracts and Mutual Fund Accounts to the alternate payee consistent with the directives of the QDRO, regardless of whether the Participant is then eligible for a distribution of benefits from the impacted Annuity Contracts and Mutual Fund Accounts.
- c. whether the domestic relations order is or is not found to be a QDRO, the Administrator shall assess a specified amount against an Annuity Contract or Mutual Fund Account of the Participant for the costs incurred by the Administrator in making such a determination and direct any Investment Provider with respect to any Annuity Contract or Mutual Fund Account of the Participant to make payment of the specified amount, as directed by the Administrator, from the Annuity Contract or Mutual Fund Account.

9.3 **IRS Levy.** Notwithstanding Section 9.1, the Administrator will direct the Investment Provider to pay from the balance of a Participant's or Beneficiary's Annuity Contract or Mutual Fund Account 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 and Reporting on 403b Paycheck Savings.** The School District will compute and withhold Federal Insurance Contributions Act (FICA) and other employment taxes to the extent required of the School District's payroll on all 403b Paycheck Savings (and remit such withheld employment taxes and pay the employer's portion to the appropriate taxing authorities). The School District will compute and withhold Federal income taxation on any 403b Paycheck Savings unless the Participant has designated irrevocably to be tax-deferred (not Roth, after-tax) contributions. The School District will also report such 403b Paycheck Savings on IRS Forms 941, 945 and W-2 to the extent required. An Employee shall provide such information as the School District may need to satisfy this withholding obligation, and any other information that may be required by guidance issued under the Code.

9.5 **Tax Withholding and Reporting on Payouts from the Annuity Contracts and Mutual Fund Accounts.** The Investment Provider shall withhold income taxes from any benefit payment made from any Annuity Contract or Mutual Fund Account to the extent required by applicable income tax withholding requirements

such as Code § 3401 and the Employment Tax Regulations thereunder (and remit such withheld employment taxes and pay the employer's portion to the appropriate taxing authorities). The Investment Provider will also report such 403b Paycheck Savings on IRS Forms 945 and 1099-R to the extent required. A

payee shall provide such information as the Investment Provider may need to satisfy income tax withholding obligations, and any other information that may be required by guidance issued under the Code.

- 9.6 **Mistaken Contributions.** If any 403b Paycheck Savings contribution (or any portion of a contribution) is made to an Annuity Contract or Mutual Fund Account under 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.
- 9.7 **Incorporation of Individual Agreements.** The Plan, together with the Individual Agreements, is intended to satisfy the requirements of Code § 403(b) 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 Code § 403(b).
- 9.8 **Governing Law.** The Plan will be construed, administered and enforced according to the Code and the laws of the State of Idaho.
- 9.9 **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.
- 9.10 **Gender.** Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.

Firth School District #59

By: _____ DATED: _____
Sid Tubbs, Superintendent

Consent of Board of Trustees
of
Firth School District #59

THE UNDERSIGNED, being all of the members of the Board of Trustees of Firth School District #59 and after discussion in an open, properly noticed and held meeting hereby signify that the foregoing document for the Firth School District (#59) 403b Plan was approved by majority vote of the Board.

_____ DATED: _____
Barlow Cook, Chairman

_____ DATED: _____
Casey Park, Vice Chairman

_____ DATED: _____
John Monson, Treasurer

_____ DATED: _____
Ramona Mitchell, Trustee

_____ DATED: _____
Brian Esplin, Trustee

Firth School District (#59) 403b PLAN

“Freeze” Amendment

Firth School District #59 (the *School District*) sponsors and maintains the Firth School District (#59) 403b Plan (the *Plan*). The School District has adopted or is at this time adopting a comprehensive document for governing the Plan. Pursuant to the reserved authority set forth in sections 8.1 and 8.2 of the Plan document, the School District hereby amends the Plan so that no 403b Paycheck Savings will be allowed under the Plan as to paydays occurring after December 31, 2008 (and no other contributions under the Plan made after December 31, 2008).

Firth School District #59

By: _____ DATED: _____
Sid Tubbs, Superintendent

Consent of Board of Trustees
of
Firth School District #59

THE UNDERSIGNED, being all of the members of the Board of Trustees of Firth School District #59 and after discussion in an open, properly noticed and held meeting hereby signify that the foregoing document for the Firth School District (#59) 403b Plan was approved by majority vote of the Board.

_____ DATED: _____
Barlow Cook, Chairman

_____ DATED: _____
Casey Park, Vice Chairman

_____ DATED: _____
John Monson, Treasurer

_____ DATED: _____
Ramona Mitchell, Trustee

_____ DATED: _____
Brian Esplin, Trustee