



KENAI PENINSULA BOROUGH SCHOOL DISTRICT

Assistant Superintendent

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January 26, 2010

MEMORANDUM

TO: Board of Education

FROM: Dave Jones, Assistant Superintendent

THROUGH: Steve Atwater, Superintendent

SUBJECT: 403(b) and 457 Written Plan Changes

Tax deferred options are a critical component to employees in managing their finances and retirement planning. There are two types of IRS tax deferred programs available to employees: 403(b) and 457 plans. Employees may initiate either plan and/or both plans.

The Finance Committee has discussed changes to these tax deferred programs beneficial to employees during their meetings on November 2, 2009 and January 11, 2010.

403(b) Written Plan

As you know, wide sweeping changes to IRS code relative to 403 (b) plans became effective on January 1, 2009. The Written Plan developed and written with the assistance of Gatekeeper, our third party administrator (TPA) was conservatively prepared. There were many unknowns experienced by all parties involved in this industry at that time. CPI Common Remitter Services (CPI) acquired Gatekeeper and started providing the district services effective September 1, 2009.

In the original plan, an area of concern for the District was liability relative to the loan opportunities provided by 403(b) vendors. Based on this concern, the plan was originally adopted without any loan provisions. After reviewing service provider agreements, information sharing agreements, and industry standards accepted by vendors allowing loans, it became clear that loans to active employees did not present a liability to the District. Based on this new information, it was recommended that loans be allowed to current employees. Allowing loans to former employees was also discussed, however, enough concerns about liability remained that loans to former employees was not initially recommended.

Further research and discussion has been held relative to any liability associated with loans to former employees. It has become clear that any liability to the District can be eliminated through the terms and conditions allowed in the plan. The Borough Attorney has reviewed the proposed document and has cleared it for adoption. Therefore it is the Administration's recommendation to allow loans to former employees as well as current employees.

457 Written Plan

ICMA Retirement Corporation (ICMA) was engaged by the District to offer a 457 plan to employees in October of 2007. Due to the newness of these plans, a conservative approach was taken and ICMA was the only vendor authorized to offer a 457 plan at that time.

Most 403 (b) providers also offer 457 plans. Under the guidance of our TPA, expansion of the 457 plan to include the District's 403 (b) providers also offering a 457 plan would be beneficial to employees and would not present any risk to the District. This change to multiple vendors would require a revision to the District's 457 Written Plan which has been a discussion item with the Finance Committee.

Questions raised at the Finance Committee are currently being researched and the subsequent document changes will need to be reviewed by the Borough Attorney. This item will be brought forward for Board action when the review has been completed.

Recommendation

The attached revised Article 6 of the District's 403 (b) Written Plan allowing loans to current and former employees is presented and recommended for approval by the Board of Education.

ARTICLE 6.
LOANS

- 6.1 **Loans.** No loans shall be permitted under the Plan, notwithstanding the terms of the Individual Agreement(s) controlling the Account assets which may permit loans.

Kenai Peninsula Borough School District Board of Education

Certificate of Adoption

The undersigned hereby certifies that he/she is Secretary of the Board of Education of the Kenai Peninsula Borough School District(the “District”), a governmental entity organized and existing under the laws of the State/Commonwealth of Alaska, and that the following resolution was duly adopted by the Kenai Peninsula Borough School District Board of Education (the “Board”) and was enacted pursuant to the authority granted to the Board and recorded in its minutes at a meeting of said Board at which a quorum was present on the _____ day of _____, 20____, and that the same has not been amended or rescinded and is in full force and effect:

Resolution Adopting Amendment to Kenai Peninsula Borough School District403(b) Retirement Plan

WHEREAS, the District currently offers the Kenai Peninsula Borough School District403(b) Retirement Plan (the “Plan”) to give its employees the opportunity to save additional funds for retirement; and

WHEREAS, the District desires to amend the Plan, effective as of the date of adoption; and

WHEREAS, there has been presented to the meeting a copy of the proposed amendment to the Plan; and

WHEREAS, after full discussion, the adoption and execution of the amendment to the Plan appear to be in the best interest of the District and its employees;

NOW, THEREFORE, it is hereby:

RESOLVED, that the Plan be amended substantially in the form presented below and that such amendment to the Plan is hereby adopted and approved by the Board, effective as of the date of adoption:

ARTICLE 6, “Loans”, shall be restated in its entirety as follows:

ARTICLE 6

Loans

6.1 **Loans**. Loans shall be permitted under the Plan to the extent permitted by the Individual Agreement(s) controlling the Account assets from which the loan is made and by which the loan will be secured.

~~Notwithstanding the above, no loan shall be made under the Plan to a Participant after the date of the Participant's Severance from Employment with the Employer.~~

6.2 **Terms of Loans.**

- (a) If loans are permitted by this Article 6 of the Plan, and to the extent permitted by the Individual Agreement(s) controlling the Account assets from which the loan is made, the Vendor shall determine the terms of the loan, such as the repayment period of the loan, the security for the loan, the amount and method of repayment and the rate of interest to be paid on such loan. The Vendor shall set forth in writing the rules and regulations with respect to loans which are to provide, at a minimum, the following: (i) the identity of the person or position authorized to administer the loan program; (ii) the procedure for applying for loans; (iii) the basis on which loans will be approved or denied; (iv) limitations (if any) on the types and amount of loans offered; (v) the procedure for determining a reasonable rate of interest; (vi) the types of collateral which may secure a loan; (vii) available methods by which the loan can be repaid; and (viii) the events constituting default and the steps that will be taken to preserve Plan assets in the event of a default.
- (b) If loans are permitted by this Article 6 of the Plan, the Administrator shall determine the process for pre-authorization of the loan, such as confirmation that the loan is permitted under the terms of the Plan and the loan satisfies the limitations on the maximum loan amount available under Article 6 of the Plan. The Administrator shall set forth in writing the rules and regulations with respect to the pre-authorization of loans which are to provide, at a minimum, the following: (i) the identity of the person or position authorized to pre-authorize loans under the Plan; (ii) the procedure for applying for the pre-authorization of loans; (iii) the basis on which the pre-authorization of loans will be approved or denied; and (iv) the limitations on the maximum loan amount available under the Plan.
- (c) If loans are permitted by this Article 6 of the Plan, and to the extent permitted by the Individual Agreement(s) controlling the Account assets from which the loan is made, loans will be made only in the event that the loans: (i) are evidenced by an enforceable agreement; (ii) bear a reasonable rate of interest; (iii) are adequately secured; (iv) are amortized evenly and at least quarterly, and (v) (except in the case of a loan used to acquire a principal residence) are repayable within 5 years;

Rules and procedures promulgated and provided by the Vendor and/or contained in the Individual Agreement(s) and rules and procedures for pre-authorization of loans promulgated and provided by the Administrator shall be deemed a part of the Plan for purposes of Code section 403(b) and

its regulations and shall be deemed to comply in every way with Code section 72(p) and its related regulations.

6.3 **Information Coordination Concerning Loans.** Each Vendor is responsible for all information reporting and tax withholding required by applicable federal and state law in connection with distributions and loans. To minimize the instances in which Participants have taxable income as a result of loans from the Plan, the Administrator shall take such steps as may be appropriate to coordinate the limitations on loans set forth in Section 6.4 of the Plan, including the collection of information from Vendor(s), and transmission of information requested by any Vendor, concerning the outstanding balance of any loans made to a Participant under the Plan or any other plan of the Employer. The Administrator shall also take such steps as may be appropriate to collect information from Vendor(s), and transmission of information to any Vendor, concerning any failure by a Participant to repay timely any loans made to a Participant under the Plan or any other plan of the Employer.

6.4 **Maximum Loan Amount.** No loan to a Participant under the Plan may exceed the lesser of:

- (a) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is pre-authorized by the Administrator (not taking into account any payments made during such one-year period); or
- (b) one-half of the value of the Participant's Vested Account Balance (as of the Valuation Date immediately preceding the date on which such loan is pre-authorized by the Administrator).

For purposes of this Section 6.4, any loan from any other plan maintained by the Employer and any Related Employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a Vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.

6.5 **Loan Repayments by Payroll Reduction.** To the extent permitted by the Administrator and to the extent permitted by the Individual Agreement(s) controlling the Account assets from which the loan is made and/or the Vendor(s) of such Individual Agreement(s), loan repayments may be made by payroll reduction subject to an authorization by the Participant to have such loan repayment amounts deducted from the Participant's Compensation on an after-tax basis and remitted by the Administrator to the applicable Funding Vehicle.

- 6.6 **New Loan Restriction in Event of Outstanding Defaulted Prior Loan.** Notwithstanding any other provision of the Plan or the Individual Agreement(s), no loan may be made to a Participant under the Plan if the Participant has an outstanding balance due on a defaulted prior loan made under the Plan or any other plan maintained by the Employer or any Related Employer, as described in Section 6.4 of the Plan, at the time of the Participant's request for the new loan. However, the new loan may be made to the Participant if the Participant is repaying the defaulted prior loan by making loan repayments by payroll reduction at the time of the Participant's request for the new loan, subject to the provisions of Section 6.5 of the Plan and as permitted by the Administrator and the applicable Individual Agreement for loans made under the Plan and as permitted under and subject to the provisions of such other plan for loans made under any other plan.
- 6.7 **Loan Repayments for Participants in Military Service.** Notwithstanding any other provision of the Plan or the Individual Agreement(s), loan repayments by a Participant whose employment is interrupted by qualified military service under Code section 414(u) or who is on a leave of absence for qualified military service under Code section 414(u) may be suspended as permitted under Code section 414(u)(4) and the terms of any loan shall be modified to conform to the requirements set forth in USERRA and its regulations.

and

RESOLVED FURTHER, that a copy of the above-stated amendment to the Plan be made a part of the minutes of this meeting; and

FINALLY RESOLVED, that the Benefits Plan Committee (or its designee) is authorized and directed to execute and implement the amendment to the Plan substantially in the form presented to the meeting.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand and the seal of the Board this _____ day of _____, 20_____.

Signature of Secretary
Kenai Peninsula Borough School District Board of
Education

Print Name of Secretary